Accommodating Territorial Contestation and National Constitutional Change: The Cases of Cyprus and Ireland

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ABSTRACT

Although, Article 3(5) TEU declares that the aim of the European Union (EU) ‘to promote peace, its values and the well-being of its peoples’, its actual record in catalysing conflict resolution is rather mixed. Notwithstanding, it has been particularly successful in accommodating territorial contestation within its borders and in its immediate neighbourhood. The article focuses on the main legal mechanism that has allowed the EU to achieve this aim. Despite the very different political and historical contexts, the Union legal order has managed to accommodate the border disputes in Cyprus and Ireland mainly by extending the application of EU law beyond its territory. This remarkable flexibility will also enable the EU to accommodate national constitutional change that a potential reunification of either of the two islands will trigger.

INTRODUCTION

The European Union’s historical success as a peacemaker between France and Germany has inspired many to wonder whether the EU may also bring peace to other conflict zones, especially within its borders and in its immediate neighbourhood.[[2]](#footnote-2) This query is even more justified given the aim of the EU ‘to promote peace, its values and the well-being of its peoples’.[[3]](#footnote-3) At the same time, the Commission has declared that conflict resolution is a key foreign priority, presenting it as an ‘essential aspect of the EU’s external action’.[[4]](#footnote-4)

With regard to its immediate neighbourhood, Tocci has pointed out that the ‘EU’s ‘structural diplomacy’ i.e., the various forms of association and integration offered by the EU, is potentially well tailored to induce long-run structural change both within and between countries’.[[5]](#footnote-5) According to that rationale, the closer the form of association is with EU, the stronger the potential to achieve the respective conflict resolution goal. As it has been argued,

Europeanisation in the field of secessionist conflict settlement and resolution should be understood as a process which is activated and encouraged by European institutions, primarily the European Union, by linking the final outcome of the conflict to a certain degree of integration of the parties involved in it into European structures. [[6]](#footnote-6)

So, ‘[t]he European Union is not in itself the initiator of the peace process in any direct sense. Instead, it serves as an added factor (ie. a catalyst) that encourages conflict resolution to take place more quickly than might have been expected’. [[7]](#footnote-7) It is the impact of conditionality and socialization that might have a ‘catalytic effect’ on conflict transformation, thus emphasizing both the direct and the indirect forms of EU impact.[[8]](#footnote-8)

However, the accession of the Republic of Cyprus (RoC) to the EU failed to ‘catalyse’ a settlement of the age-old dispute shedding doubts on whether the ‘catalytic effect’ thesis could accurately represent the reality. Equally, the often minimum and mainly indirect involvement of the Union in the settlement of other intrastate conflicts that have taken place within its borders, such as the ones in the Basque country, Catalonia and Northern Ireland, point to the limits of the theory.

In other words, the empirical evidence questions (at the very least) any linear conceptualization of a ‘catalytic effect’ of EU integration on border and intrastate conflicts. Instead, it suggests that there is a clear ‘break point’ in the linearity of enhanced conflict resolution potential on the part of the EU at the moment of the accession of any given state. The EU is better equipped to ‘catalyse’ the resolution of a conflict before the EU accession of a candidate state rather than after. This is what has been called ‘the paradox of the Europeanisation of intra-state conflicts’.[[9]](#footnote-9)

After the accession of any candidate state, the Union tends to accommodate the relevant conflict within its political and legal order rather than mobilize its resources to resolve it.[[10]](#footnote-10) Equally, after the withdrawal of a Member State such as in the case of Brexit, the EU strives to absorb the frictions and tensions that such political decision creates on the relevant border conflict(s). [[11]](#footnote-11) In both occasions, it does so mainly by extending the application of EU law beyond the Union’s territory to such an extent that the respective territorial borders would experience a significantly lower level of friction. The present article provides for an account of the legal mechanism of the extra-territorial application of EU law that has allowed the Union to accommodate border disputes by focusing on the cases of Cyprus which acceded to the EU in 2004 and Northern Ireland that withdrew from the EU in 2020. It points to the remarkable flexibility that the Union legal order has exhibited in accommodating those conflicts that entail territorial contestation.

The remainder of this article is organised as follows. The next section sets those border conflicts in their broader political and historical contexts while the following one analyses the legal arrangements that have allowed their accommodation within the Union legal order. The last part discusses how the flexibility of the EU constitutional order will enable it to accommodate a possible national constitutional change that the potential reunification of either of those islands will entail.

THE CONTEXT

At the heart of every border conflict,[[12]](#footnote-12) there is a territorial contestation marked by a territorial border that is under dispute. In the case of Cyprus, that is the ceasefire line (Green Line) that marks the territorial division of the island while in Northern Ireland, that is the Irish territorial border. In both cases, there is the open question of the unification of those islands. Having said that, while in the case of Cyprus, the EU legal order was asked to accommodate such territorial contestation when the island acceded to the EU, in the case of Northern Ireland, the EU mainly faced such challenge when the United Kingdom (UK) was withdrawing from the Union.

*(Northern) Cyprus*

The RoC gained its sovereign independence from the UK by virtue of three treaties, namely the Treaty of Guarantee, the Treaty of Alliance and the Treaty of Establishment and a Constitution, all of which came into operation the same day – 16 August 1960.[[13]](#footnote-13) In order to achieve a political compromise between the UK, Greece and Turkey and to ensure the balance between the island’s two main ethno-religious segments, a complicated power-sharing structure was designed.[[14]](#footnote-14) The Constitution was drawn up explicitly in terms of the Greek-Cypriot and the Turkish-Cypriot communities while all of the principles of consociational democracy—grand coalition, proportionality, autonomy and veto—were elaborately embodied in it. Despite the fact that the United Kingdom, Greece and Turkey guaranteed the state of affairs, this regime was short-lived. Following the first, low-scale, inter-communal armed conflict in December 1963, the vast majority of the Turkish Cypriot representatives withdrew from their posts in the executive, legislative and judiciary while others were prevented from assuming their positions.[[15]](#footnote-15) Still, despite the fact that since 1964, the RoC does not operate as a bicommunal State, it is the aforementioned international legal framework that regulates its existence in the international arena.[[16]](#footnote-16)

Having said that, it was the 1974 Turkish military intervention in the aftermath of a coup against the President of Cyprus orchestrated by the military regime in Greece that consolidated the territorial segregation of the two communities. This led in November 1983 to the Turkish Cypriots proclaiming their independence as the Turkish Republic of Northern Cyprus (TRNC). The UN Security Council deplored ‘the purported secession of part of the Republic of Cyprus’ and called upon all States ‘not to recognise the purported State of the “Turkish Republic of Northern Cyprus” set up by secessionist acts.’[[17]](#footnote-17)

With regard to the EU-Cyprus relations, on 4 July 1990, RoC’s then Foreign Minister, George Iacovou*,* on behalf of the whole island, presented an application for membership to the European Community. Three years later, the Commission issued its Opinion.[[18]](#footnote-18) There, it considered Cyprus to be eligible for membership[[19]](#footnote-19) but noted that

the fundamental freedoms laid down by the Treaty, […] and the universally recognised political, economic, social and cultural rights […] would have to be guaranteed as part of a comprehensive settlement restoring constitutional arrangements covering the whole of the Republic of Cyprus.[[20]](#footnote-20)

This is the main reason why it concluded that ‘Cyprus’s integration with the Community implies a peaceful, balanced and lasting settlement of the Cyprus question.’[[21]](#footnote-21) It felt, however, that it was necessary to clarify that in case of a failure to reach a settlement through the inter-communal talks under the UN auspices, the situation should be reassessed.[[22]](#footnote-22)

Hoping to use the ‘carrots’ and ‘sticks’ offered by the accession negotiations, the then UN Secretary-General Kofi Annan invited the two communities to re-launch their talks for the comprehensive settlement of the Cyprus conflict. In December 1999, the Helsinki European Council, commenting on those important developments, expressed its ‘strong support for the UN Secretary-General’s efforts to bring the process to a successful conclusion.’[[23]](#footnote-23) It also underlined that a political settlement would ‘facilitate the accession of Cyprus to the European Union’ but clarified that, in case a settlement was not reached by the completion of the negotiations, the Council’s decisions would ‘be made without the above being a precondition. In this, the Council would “take all the relevant factors” into account.’[[24]](#footnote-24) In exchange, Turkey achieved its long-standing aim to be officially declared as a candidate State for accession to the EU.

It is difficult to overemphasise the importance of the conclusions of the European Council in Helsinki. The rationale of lifting the conditionality for the Greek-Cypriot-run RoC rested on a realist logic of conflict settlement. According to it, the Turkish and Turkish Cypriot desire to reap the conditional benefits of membership, and the high costs entailed in the absence of a solution before accession, would create the ‘ripe’ conditions for a settlement by generating Turkish incentives to change their positions. In other words, a conditional ‘stick’ both to Turkey and the breakaway State of TRNC would raise the costs of the *status quo*. In addition, the EU ‘carrot’ would encourage the parties, including the Greek Cypriots, to support reunification within the EU.

Such a strategy was effective enough to ensure the support of Turkey, and most importantly the Turkish Cypriots, to the UN-sponsored plan for the Comprehensive Settlement of the Cyprus Problem—commonly known as the Annan Plan.[[25]](#footnote-25) Their community overwhelmingly voted in favour of the reunification of the island in the simultaneous referendums in April 2004. However, it failed to foresee the stance of the Greek Cypriots after they signed the Treaty of Accession in 2003 when they had, thereby, ensured that the RoC would become an EU Member State. In fact, the then RoC’s President, Papadopoulos*,* in his dramatic speech on 7 April 2004, asked the Greek Cypriots to say ‘a resounding NO on 24 April,’[[26]](#footnote-26) pointing out that if the Greek Cypriots rejected the Plan still the internationally recognised Republic of Cyprus would ‘become a full and equal member of the European Union.’[[27]](#footnote-27) Indeed, the Greek Cypriot community rejected the Annan Plan in an almost 3:1 ratio. A week later, on 1 May 2004, Cyprus became an EU Member despite the fact that it could not control a significant part of its territory. As we will see in the next section, the Union constitutional order managed to accommodate this territorial contestation by partially extending the application of EU law on an area where the *acquis* is suspended.

*(Northern) Ireland*

Following resolutions by the parliaments in Dublin and London, Ireland was united with Great Britain by the Acts of Union 1800-01. To accommodate deep-seated differences between unionists and nationalists on the island of Ireland, Westminster passed the Government of Ireland Act 1920. This ‘was based on partition between the six counties in the North, comprising Northern Ireland with a Parliament in Belfast, and the remainder of Ireland with a Parliament in Dublin’.[[28]](#footnote-28) The Irish resistance, however, during the Irish War of Independence led the United Kingdom to sign the Anglo-Irish Treaty with representatives of the Irish Republic.[[29]](#footnote-29) The treaty provided for the establishment of the Irish Free State and gave the right to Northern Ireland to opt out of it.[[30]](#footnote-30) Indeed, Northern Ireland exercised this right and a parliamentary system of devolved government was established in the region while the rest of the island eventually achieved its independence. Having failed to effectively address the needs of the nationalist/republican/Irish/Catholic community, Westminster suspended the devolution arrangements in the North in March 1972. During an era of political violence known as ‘The Troubles’, Northern Ireland was directly governed by London. It was the Good Friday/Belfast Agreement (GFA) that put an end to the sectarian violence that had plagued the region for decades. The GFA highlighted that Northern Ireland is an integral part of the United Kingdom but established its constitutionally recognized right to secede.[[31]](#footnote-31) Such unique constitutional status was ‘accompanied by unusual multi-level governance: regional, north/south and British/Irish.’[[32]](#footnote-32)

Although the text of the GFA does not include many references to the EU,[[33]](#footnote-33) Meehan has explained that EU membership has facilitated the peacebuilding process of the GFA.[[34]](#footnote-34) ‘The sharing of sovereignty within the EU has spilled over into some sharing of sovereignty over Northern Ireland’.[[35]](#footnote-35) In a way, the GFA ‘was premised on the assumption of common policies and interests across a wide range of policy areas’,[[36]](#footnote-36) which the EU membership of both the United Kingdom and the Republic of Ireland had secured. The fact that both the United Kingdom and the Republic have been participating in the single market and the EU customs union meant that their land border was by definition invisible and they did not have to negotiate its status.

This is why the decision of the UK to withdraw from the EU put all three strands of the GFA at risk of deep fissures.[[37]](#footnote-37) It challenges ‘the narrative of a shared and interdependent Northern Ireland’[[38]](#footnote-38) and impedes the sharing of sovereignty across the region, since the United Kingdom and (by extension) Northern Ireland are no longer part of the EU. By definition, this situation changes the balance of powers between the two Guarantors: the United Kingdom and the Republic of Ireland. At the same time, there was a question whether Brexit would lead to the loss of EU funding from which the peace process in Northern Ireland had benefited.[[39]](#footnote-39) Finally, the creation of a customs border would have posed a significant threat to the island of Ireland as a single economic area and a safe space. In particular, such a development

would not only require a massive investment by Ireland, as the EU Member State required to enforce the EU external customs border with the UK at this point, but also bring back painful memories of the times of conflict on the island, when the trade border was not only (ab)used for intimidation through its harsh enforcement, but also had a real impact on livelihoods.[[40]](#footnote-40)

And although all interested parties accepted the importance of the ‘Northern Irish question’ in the context of the Brexit negotiations,[[41]](#footnote-41) keeping the Irish territorial border frictionless proved to be a formidable challenge. In the next section, we will examine how the EU legal order extended the application of EU law to a region of a State, which withdrew from the Union in order to accommodate this territorial contestation.

ACCOMMODATING TERRITORIAL CONTESTATION

In the case of Cyprus, the Union legal order had to accommodate the territorial contestation created by the non-consensual secession of the TRNC and the failure to reach a settlement at the moment that the divided island was acceding to the EU. In the case of Northern Ireland, such challenge became apparent at the moment that the UK decided to withdraw from the EU. Despite this significant difference, the main mechanism that the Union used in both cases was the extra-territorial application of EU law in order to ease the frictions created by those divisions. In the case of northern Cyprus, this was mainly achieved through Protocol No 10 of the Act of Accession 2003.[[42]](#footnote-42) In the case of Northern Ireland, the fabled Protocol of the UK’s Withdrawal Agreement (WA) as amended by the Windsor Framework is the main conduit for the extra-territorial application of EU law in the region.[[43]](#footnote-43)

*(Northern) Cyprus*

On 24 April 2004, the Turkish Cypriots approved the Annan Plan while the Greek Cypriot community rejected it in simultaneous referendums. Despite this, a week later, Cyprus as a whole became an EU member state. To accommodate this territorial contestation, the EU legal order had to prove its remarkable flexibility.

At the very centre of the EU’s pragmatic approach lies Protocol No 10 on Cyprus of the Act of Accession 2003, which describes the terms of RoC’s accession. It allows the Union’s legal order to manage the unprecedented (for an EU member state) situation of not controlling part of its territory without recognising the respective breakaway entity. In the preamble of the Protocol, the EU member states and the acceding states considered that in the absence of a comprehensive settlement, it was necessary to provide for the terms under which EU law would apply to northern Cyprus. So, Article 1(1) Protocol No 10 provides that the application of the *acquis* is suspended there. The main scope of this provision is to limit the responsibilities and liability of Cyprus as a Member State under EU law. Although Cyprus joined the Union with its entire territory, its government cannot guarantee effective implementation of EU law north of the Green line.[[44]](#footnote-44) In fact, according to the European Court of Human Rights, it is Turkey that exercises effective control in those areas.[[45]](#footnote-45) However, the scope of the suspension is territorial. This means that the Turkish Cypriot citizens of the Cyprus Republic residing in the northern part of the island should be able to enjoy, as far as possible, the rights attached to Union citizenship that are not linked to the territory as such.[[46]](#footnote-46)

Following a possible future solution of the Cyprus issue, the Council of the EU acting unanimously on the basis of a proposal from the Commission, may eventually decide to withdraw the suspension in full or in part.[[47]](#footnote-47) Until the withdrawal of the suspension takes place, Article 2 allows the Council to define the terms under which the provisions of EU law applies to the territorial ‘border’ between the government-controlled areas and northern Cyprus. As such, it provided the legal basis for the adoption of the Green Line Regulation.[[48]](#footnote-48) This legislative device has allowed the partial application of the EU *acquis* in northern Cyprus. In particular, it has made possible to establish some free movement of goods and persons with an area outside the territorial scope of EU law despite the fact that an unrecognised state lies there. It has done so without recognising the breakaway state. It is a prime example of ‘engagement without recognition.’[[49]](#footnote-49)

Concerning the free movement of persons, Article 2(1) of the Green Line Regulation provides that the RoC has the responsibility to carry out checks on all persons crossing the ceasefire line with the aim of combating illegal immigration of third-country nationals and to detect and prevent any threat to public security and public policy.[[50]](#footnote-50) With regard to the free movement of goods, the challenge that the EU had to face was the following. It had to establish trade relations with a territory where there is an unrecognised government without actually recognising it. In order to do so, the Union, in agreement with the RoC, authorised a Turkish Cypriot NGO, the Turkish Cypriot Chamber of Commerce, to issue accompanying documents so that goods originating in northern Cyprus may cross the line and be circulated in southern Cyprus and the rest of the Union market as EU products.[[51]](#footnote-51)

It is clear from the aforementioned that the intention of the drafters of Protocol No 10 was never ‘to exclude the application of all provisions of [Union] law with a bearing on areas under the control of the Turkish Cypriot community.’[[52]](#footnote-52) In fact, Article 3 of Protocol No 10 allows measures with a view to promoting the economic development of northern Cyprus. This provision clarifies that the division of the island should not rule out economic assistance of the Union to its more impoverished part. Indeed, on 27 February 2006, the Council unanimously adopted the Financial Aid Regulation which establishes an instrument for encouraging the economic development of the Turkish Cypriot community.[[53]](#footnote-53)

Undoubtedly, the existence of this legal framework highlights the flexibility of the EU constitutional order which allows it to accommodate territorial contestation. Because of this flexibility, the Union can even engage with an unrecognised entity that has been established as a result of a non-consensual secession.

Of course, this accommodation was made possible through the consent of the metropolitan state and primary legislation in the form of an Accession Treaty. If RoC had not consented to it, it would have been impossible for the EU legal order to engage with the regime in northern Cyprus to such an extent. An effort from the EU and the other Member States to build economic and political relations with the breakaway entity unilaterally and without RoC’s explicit consent, would have led to a breach of the duty of loyal cooperation.[[54]](#footnote-54) This is one of the arguments that the Cypriot government has put forward to block the proposal for a Regulation that would establish direct trade relations between the Union and the unrecognised TRNC.[[55]](#footnote-55) In particular, they emphasised that due to the duty of loyal cooperation, the EU and its member states should respect the closure of the ports in northern Cyprus and not build direct economic relations between the breakaway state and the rest of the EU without the explicit consent of the Republic.[[56]](#footnote-56)

This points to the limitations of the EU’s pragmatic approach and the mechanism of extraterritorial application of Union. It has not led to the complete normalisation of the relations between the EU and northern Cyprus. It has merely eased the frictions created by the territorial division of the island. Still, it is important to highlight that without formally recognising the breakaway entity that lies within its borders, the Union engages with it regarding trade, free movement of people and economic assistance—accommodating this territorial contestation.

*(Northern) Ireland*

The United Kingdom’s withdrawal from the EU posed a significant challenge to the progress that had been achieved in Northern Ireland–one of the most impoverished areas in Europe. Brexit could raise significant frictions along the territorial border between the two sides of Ireland and its all-island economy. If the United Kingdom had decided to remain in the single market and the EU customs union after Brexit, the vast majority of these challenges would have been avoided.

In her Lancaster House speech, however, former Prime Minister May clarified that the United Kingdom’s aim was to leave both the single market and the EU customs union.[[57]](#footnote-57) She reaffirmed this message in her Florence speech,[[58]](#footnote-58) her Mansion House speech[[59]](#footnote-59) and numerous other occasions. Similarly her successor, Boris Johnson, never moved from the position that the United Kingdom should not take part in the single market and the customs union after the end of the transition period.

This position made the challenge of keeping the Irish border free of any physical infrastructure significantly harder. In order to achieve this elusive aim, the United Kingdom as a whole had to opt for a relationship with the EU that is much closer than the one described in its red lines. Alternatively, the United Kingdom could accept that Northern Ireland would have a closer relationship with the EU than the rest of the country.

This dilemma was described in the December 2017 Joint Report. According to the infamous Paragraph 49,

the United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements. The United Kingdom’s intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.[[60]](#footnote-60)

In other words, the overall aim of the negotiations was to address the challenge of the Irish border through the overall EU–UK relationship. If this was to prove impossible, then specific ‘technological’ solutions would be applied to Northern Ireland. Should the two sides fail to reach agreement on these specific solutions, then Northern Ireland at a minimum or the United Kingdom as a whole should remain aligned to the single market and the EU customs union.

The first time that this arrangement was legally codified was in a Protocol on Ireland/Northern Ireland contained in the draft Withdrawal Treaty published by the EU on 28 February 2018. According to this, a common regulatory area comprising the EU and Northern Ireland would be established, and the region would remain part of the EU customs territory. As a result of the British objections, the EU significantly amended the Protocol on Ireland/Northern Ireland in the November 2018 draft WA. This provided for a UK-wide ‘backstop’ solution. Barring a deal on free trade that would secure a frictionless border, the United Kingdom as a whole would remain in a ‘bare bones’ customs union with the EU. Additionally, Northern Ireland would remain aligned to the single market rules necessary to maintain the free movement of goods across the Irish border. Notwithstanding, the then-Prime Minister failed to secure Westminster’s consent in three consecutive attempts. After that, it was patently obvious that her position had become untenable. The following summer she resigned, and her successor Boris Johnson was elected. Johnson’s declared aim was to re-negotiate the post-Brexit arrangement applying to Northern Ireland.

Indeed, in October 2019, an agreement on a revised WA was achieved. The new and final Brexit Deal is almost identical to Theresa May’s except for one significant change: the fabled backstop (and the changes in the non-legally binding political declaration). The new arrangement for Northern Ireland is no longer an insurance policy that would kick in should the future UK–EU relationship prove unable to keep the Irish border open. Instead, it is a differentiated arrangement for the region that could only collapse should the regional parliament decide so or if a future arrangement supersedes it.

The major difference with the February 2018 EU proposal for a Northern Ireland-specific arrangement is that the current deal recognizes that *de jure* Northern Ireland remains within the UK customs union.[[61]](#footnote-61) This amendment was considered necessary not least because in the meantime section 55 of the Taxation (Cross-Border Trade) Act 2018 was introduced. According to it, Northern Ireland should not be in a separate customs territory than the rest of the United Kingdom. From a substance point of view, the fact that the region would remain *de jure* part of the UK customs territory in accordance with Article XXIV:2 GATT ensures that it has access to the free trade agreements to which the United Kingdom is signatory party.Notwithstanding, EU customs legislation continues to apply to the region even after the end of the transition period.[[62]](#footnote-62) Similarly, Articles 30 and 110 TFEU[[63]](#footnote-63) that prohibit customs duties and discriminatory internal taxation on imported goods from EU Member States and a significant part of the EU *acquis* on the free movement of goods remain applicable with regard to Northern Ireland,[[64]](#footnote-64) as is the case for EU law provisions concerning VAT and excise.[[65]](#footnote-65) This makes the region *de facto* part of the EU customs territory in the sense that this crucial part of the law of the EU internal market enjoys extraterritorial application over this area.

In practice, this hybrid regime meant that after the end of the transition period, trade between the two shores of the Irish Sea would not be frictionless anymore. According to Article 263 of the Union Customs Code, goods that are taken out of Northern Ireland and sent to Great Britain would have to be covered by a pre-departure declaration. The situation would be significantly more complicated for trade flows in the opposite direction: from Great Britain to Northern Ireland. Apart from complying with EU import formalities, including entry summary declarations and customs declarations, traders would also face tariffs if the relevant goods were not wholly obtained in the United Kingdom. More importantly, when it came to live animals, animal products and plants, systematic sanitary and phytosanitary checks would be required to take place at entry points to secure the integrity of the Union’s single market.[[66]](#footnote-66)

Initially, those unavoidable frictions were largely addressed by allowing for grace periods. With regard to food, for instance, major retailers did not need to comply with all the EU’s usual certification requirements when importing goods from the rest of the United Kingdom. However, once those grace periods expired, there was the fear that the systems of those supermarkets and other retailers would be overwhelmed by the existence of complex bureaucratic requirements.

Realising the significant risks this could entail for the economy and the politics of the region, the EU and the UK reached a compromise in agreeing the Windsor Framework. This ‘permits the partial disapplication of EU rules for goods provided their final destination is in Northern Ireland.’[[67]](#footnote-67) Following this agreement, the amended Article 6(2) of the Protocol allows

specific arrangements for the movement of goods within the United Kingdom’s internal market, consistent with Northern Ireland’s position as part of the customs territory of the United Kingdom in accordance with this Protocol, where the goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the Union’s internal market and customs union.

In essence, this arrangement creates a ‘green lane’ through which goods coming to Northern Ireland from the rest of the UK are moved with greater ease than those which are at risk of moving to the EU.[[68]](#footnote-68) ‘The latter transit the Irish Sea on the basis of “red lane” arrangements, to be applied at the Irish Sea border as if the goods were entering the Single Market from’ a third country.[[69]](#footnote-69)

Overall, like in the case of Cyprus, the EU legal order managed to accommodate the territorial contestation on the island of Ireland by applying a significant part of EU law extra-territorially.

ACCOMODATING NATIONAL CONSTITUTIONAL CHANGE

The extra-territorial application of EU law has allowed the Union to accommodate territorial contestation in those divided islands. However, such territorial division might end in the future. It is the remarkable flexibility of the EU legal order that will enable it to accommodate not only territorial contestation but also the national constitutional change that a potential unification of either of the two islands will entail.

*(Northern) Cyprus*

In the event of a settlement, Article 4 of the Protocol No 10 provides for a simplified procedure that enables the Union to accommodate the terms of the relevant unification plan. In particular, it allows the EU, via a unanimous Council Decision, to alter the terms of Cyprus’s EU accession, which are contained in the Act of Accession 2003. In other words, it allows the Council to amend primary law (i.e., Act of Accession 2003) through a unanimous decision to ease the transition of northern Cyprus within the Union.[[70]](#footnote-70)

Indeed, if the April 2004 referendums had approved the new state of affairs envisaged in the Annan Plan, the Council of the European Union, would have adopted on the basis of Article 4 the Draft Act of Adaptation of the Terms of Accession of the United Cyprus Republic to the European Union as a Regulation.[[71]](#footnote-71) What is particularly interesting is that the accommodation of any settlement of the Cyprus issue which is based on the agreed parameters (ie. bizonal, bicommunal federation with political equality) would entail significant derogations from EU law. The reason for that is that if the bi-zonality of the future unified federal Cyprus were to be reflected in the fact that each ‘federated state would be administered by one community which would be guaranteed a clear majority of the population and of land ownership in its area’,[[72]](#footnote-72) it is almost definite that certain permanent restrictions to the free movement of persons and capital will be deemed necessary. This is why the aforementioned Draft Act included restrictions on the right of non-residents in the federal Greek-Cypriot and Turkish-Cypriot states to purchase immovable property; restrictions on the right of Cypriot citizens to reside in a federal state of which they do not hold the internal federal state citizenship status; restrictions on the right not only of Greek and Turkish nationals but also of Union citizens to reside in Cyprus, after the comprehensive settlement takes place, in order for the demographic ratio between permanent residents, speaking either Greek or Turkish as mother tongue, not to be substantially altered. So, the Article 4 provision underlines the willingness and the flexibility of the Union to accommodate the terms of a solution of the Cyprus issue even if it entails derogations from EU law.

Overall, Article 4 of Protocol No 10 contains an enabling clause that would allow the Union to accommodate a solution to the Cyprus issue despite possible frictions with EU law. This is far from unexpected given the declared aim of the EU ‘to promote peace, its values and the well-being of its peoples’.[[73]](#footnote-73) Still, it is another reminder of the flexibility of the Union legal order that allows it to accommodate national constitutional change as well.

*(Northern) Ireland*

‘Westminster has formally conceded that Northern Ireland can secede from the United Kingdom to join a united Ireland, if its people, and the people of the Irish Republic, voting separately, agree to this’.[[74]](#footnote-74) Article 1 of the legally binding British-Irish Agreement recognizes such right in no uncertain terms. In particular, the UK and the Republic of Ireland:

(ii) recognise that it is for the people of the island of Ireland alone, […] to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland […];

(iv) affirm that if, in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above to bring about a united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation to give effect to that wish.

Those international legal obligations concerning the status of Northern Ireland have also been enshrined in UK legislation. Section 1 of the Northern Ireland Act 1998 is a rare example of a provision of a constitutional statute explicitly recognising the right of secession of a region. Schedule 1 of the Northern Ireland Act describes under which circumstances a referendum for the reunification of Ireland can and should be called by the UK Secretary of State. In *Re McCord*, the High Court of Justice in Northern Ireland discussed and clarified the aforementioned Northern Ireland Act provisions.[[75]](#footnote-75) It held that the Secretary of State has:

a discretionary power to order a border poll under Schedule 1 paragraph 1 even where she is not of the view that it is likely that the majority of voters would vote for Northern Ireland to cease to be part of the United Kingdom and to become part of a united Ireland.[[76]](#footnote-76)

However, if it appears to her that a majority would be likely to vote for a united Ireland, then, she is under a duty to call a poll.[[77]](#footnote-77)

From an EU law point of view, a national constitutional change that would entail a reunification such as in the case of Ireland could follow the precedent of the German reunification. In this, the application of the Union *acquis* was extended to East Germany without any amendment to the primary legislation, as agreed upon in a special meeting of the European Council in Dublin in April 1990. ‘The necessary acts of secondary law were adopted on the basis of delegation of powers to the Commission, in order to avoid that the EU legislative process was overtaken by the speed of historical events.’[[78]](#footnote-78) The difference is that, in Germany’s case, the *acquis* did not apply at all in the East before reunification.[[79]](#footnote-79) In Northern Ireland, even after the United Kingdom’s withdrawal from the EU, a substantial part of EU law continues to enjoy extraterritorial application due to the Protocol on Ireland/Northern Ireland attached to the United Kingdom’s Withdrawal Agreement.

Former Taoiseach Enda Kenny asked for a special provision in any Brexit deal to allow Northern Ireland to re-join the EU should it be united with the Republic.[[80]](#footnote-80) At the time of that request, the question was focused on what such a provision would look like. There is only one EU law provision that explicitly regulates the (re)unification of a (member-) state: the aforementioned Article 4 of Protocol No 10 on Cyprus of the Act of Accession 2003. However, a similar provision was not included. Instead, the European Council acknowledged:

‘that the Good Friday Agreement expressly provides for an agreed mechanism whereby a united Ireland may be brought about through peaceful and democratic means; and, in this regard, the European Council acknowledges that, in accordance with international law, the entire territory of such a united Ireland would thus be part of the European Union.’[[81]](#footnote-81)

The examples of both Germany and Cyprus show that the EU legal order is flexible enough to accommodate a national constitutional change that the reunification of Ireland would entail. In Germany, the relevant adaptations took place through secondary legislation. In the case of Cyprus, they will be enshrined as amendments to primary legislation. In the absence of a specific provision either in the United Kingdom’s Withdrawal Agreement or in the Trade and Cooperation Agreement, the re-accession of Northern Ireland to the EU would probably follow the precedent of German reunification.

CONCLUSION

For a multi-level constitutional order of states whose very raison d’être has been the promotion of peace between its members, the ability to accommodate territorial contestation is of critical importance. In the cases of Cyprus and Ireland, the Union managed to accommodate those border disputes by mainly extending the application of EU law in areas beyond its territorial scope. Protocol No 10 of the Act of Accession 2003 allows the partial application of EU law in northern Cyprus without recognising the breakaway entity. Similarly, the Protocol on Ireland/Northern Ireland as amended by the Windsor Framework ensures the frictionless nature of the territorial border in Ireland by extending *inter alia* the application of EU customs law. In none of those cases, those legal arrangements managed to comprehensively resolve the underlying disputes. But they did ease the frictions on the borders create by the territorial division.

The flexibility of the EU legal order is such that it may even allow it to accommodate the potential reunification of those islands in the future. In the case of Cyprus, there is a bespoke primary law provision that will regulate this transition. In the case of Northern Ireland, the paradigm of the German reunification offers a clear pathway to address the potential challenges. None of those legal mechanisms will resolve the underlying disputes over the constitutional future of those regions. But their existence will ease the tensions and fissures that the potential reunifications might raise. It is up to the communities living in those parts of Europe to decide their constitutional and European futures and the EU has the toolbox to accommodate those decisions.

1. \* Professor of European Constitutional Law, University of East Anglia, UK. Thanks to the editors and reviewers for comments on earlier drafts. The usual disclaimer applies. [↑](#footnote-ref-1)
2. See generally Emel Akçali*,* ‘The European Union’s Competency in Conflict Resolution: The Cases of Bosnia, Macedonia and Cyprus’, in Thomas Diez and Nathalie Tocci (eds.), *Cyprus: A Conflict at the Crossroads* (Manchester, 2009), 180–197; Elise Féron and Fatma Güven Lisaliner*,* ‘The Cyprus Conflict in a Comparative Perspective: Assessing the Impact of European Integration’, in Thomas Diez and Nathalie Tocci (eds.), *Cyprus: A Conflict at the Crossroads* (Manchester, 2009)*,* 198–216. [↑](#footnote-ref-2)
3. Art 3(5) TEU. [↑](#footnote-ref-3)
4. See for instance European Commission,European Neighbourhood Policy Strategy Paper, COM(2004)373 final, 12 May 2004, 3. [↑](#footnote-ref-4)
5. Nathalie Tocci*,* *EU Accession Dynamics and Conflict Resolution* (Farnham, 2004): 173; see also Nathalie Tocci*,* ‘Comparing the EU’s Role in Neighbourhood Conflicts’, in Marise Cremona (ed.), *Developments in EU External Relations Law* (Oxford, 2008), 216–243. [↑](#footnote-ref-5)
6. Bruno Coppieters *et al.* (eds.), *Europeanization and Conflict Resolution: Case Studies from the European Periphery* (Brussels, 2004): 2. [↑](#footnote-ref-6)
7. James Ker-Lindsa*y,* ‘The European Union as a Catalyst for Conflict Resolution: Lessons from Cyprus on the Limits of Conditionality’, Working Paper Series No. 1, Helen Bamber Centre for the Study of Rights and Conflict, Kingston University London, April 2007, available at: http://eprints.kingston.ac.uk/5596/1/Ker-Lindsay-J-5596.pdf (30 September 2024). [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Nikos Skoutaris ‘The Paradox of the Europeanisation of Intra-State Conflicts’, *German Yearbook of International law* 59 (2016) 223–253. [↑](#footnote-ref-9)
10. Skoutaris ‘The Paradox of the Europeanisation of Intra-State Conflicts’. [↑](#footnote-ref-10)
11. For an analysis see Nikos Skoutaris, *‘*Border Conflicts and Territorial Differentiation after Brexit: The cases of Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus’ in Benjamin Leruth, Stefan Gänzle and Jarle Trondal (eds.), *The Routledge Handbook of Differentiation in the European Union* (London, 2022) 680–695. [↑](#footnote-ref-11)
12. For the purposes of the article, a discursive definition of conflict following the work of Diez et al. is used. According to them, ‘we observe the existence of a conflict when an actor constructs his or her identity or interests in such a way that these cannot be made compatible with the identity or interests of another actor. Conflict is therefore discursively constructed. This means that […] we do not consider violence as a necessary element of conflict.’ Thomas Diez, Stephan Stetter and Mathias Albert, ‘The European Union and Border Conflicts: The Transformative Power of Integration’, *International Organization*,60(3) (2006), 563–593: 565. [↑](#footnote-ref-12)
13. See generally www.kypros.org/Constitution/English/. [↑](#footnote-ref-13)
14. Nikos Skoutaris, *The Cyprus Issue: The Four Freedoms in a (Member-) State under Siege.* (Oxford, 2011): 15–22. [↑](#footnote-ref-14)
15. Skoutaris, *The Cyprus Issue*, 22–26. [↑](#footnote-ref-15)
16. See UN Security Council Resolution 186 (1964). [↑](#footnote-ref-16)
17. UN Security Council Resolution 541 (1983). This was reiterated in UN Security Council Resolution 550 (1984). [↑](#footnote-ref-17)
18. Bulletin of the European Communities, Supplement 5/93, ‘The Challenge of Enlargement’, Commission Opinion on the Application by the Republic of Cyprus for Membership, on the Basis of COM(93)313 final, 30 June 1993. [↑](#footnote-ref-18)
19. Commission, ‘The Challenge of Enlargement’, para. 48. [↑](#footnote-ref-19)
20. *Ibid.,* para. 10. [↑](#footnote-ref-20)
21. *Ibid.*,para. 47. [↑](#footnote-ref-21)
22. *Ibid.,* para. 51. [↑](#footnote-ref-22)
23. Helsinki European Council, Presidency Conclusions, Helsinki, 10-11 December 1999, available at: http://www.europarl.europa.eu/summits/hel1\_en.htm (30 September 2024). [↑](#footnote-ref-23)
24. European Council, Presidency Conclusions*,* para. 9. [↑](#footnote-ref-24)
25. See The Comprehensive Settlement of the Cyprus Problem, 31 March 2004, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/Annan\_Plan\_MARCH\_30\_2004.pdf (30 March 2024). [↑](#footnote-ref-25)
26. Press and Information Office of the Republic of Cyprus, Declaration by the President of the Republic Mr Tassos Papadopoulos regarding the referendum of 24th April 2004, Press Release, 7 April 2004. [↑](#footnote-ref-26)
27. *Ibid*. [↑](#footnote-ref-27)
28. Peter Leyland, *The Constitution of the United Kingdom: A Contextual Analysis* (2nd edn) (Oxford, 2012): 21; for a brief historic account of how the partition on the island of Ireland was established, see Diarmaid Ferriter, *The Border: The Legacy of a Century of Anglo-Irish Politics* (London, 2019). [↑](#footnote-ref-28)
29. ###  See Articles of Agreement for a Treaty between Great Britain and Ireland (Anglo-Irish Treaty), 6 December 1921, available at: https://www.quillproject.net/resources/resource\_item/290/16630.

 [↑](#footnote-ref-29)
30. Anglo-Irish Treaty, Arts 11-12. [↑](#footnote-ref-30)
31. The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland, N. Ir.-U.K., Apr. 10, 1998, Cm 3883, art 1; Northern Ireland Act 1998, s 1. [↑](#footnote-ref-31)
32. Katy Hayward, (2017) ‘Specific Solutions’ & ‘Distinct Arrangements’: More of the Same for Post-Brexit NI?’, Slugger O’Toole, 11 December 2017, available at: https://sluggerotoole.com/2017/12/11/specific-solutions-distinct-arrangements-more-of-the-same-for-post-brexit-ni/ (30 September 2024). [↑](#footnote-ref-32)
33. The text of the GFA has three sets of references to the EU. The first aims to ensure ‘effective coordination

and input by Ministers [from the Northern Ireland Executive] to national [the United Kingdom] policy-making, including on EU issues’ (Strand One, para 32). A second set relates to the work of the North South Ministerial

Council (Strand Two, para 17; Strand Three, paras 5 and 31). The third set underlines the need for the Irish and

UK governments ‘to develop still further the unique relationship between their peoples and the close

cooperation between their countries as friendly neighbours and as partners in the European Union’ (British–

Irish Agreement, Preamble). [↑](#footnote-ref-33)
34. Elizabeth Meehan*,* Britain’s Irish Question: Britain’s European Question? British-Irish Relations in the Context of European Union and the Belfast Agreement, *Review of International Studies*, 26(1) (2000), 83–97. [↑](#footnote-ref-34)
35. Sionaidh Douglas-Scott, ‘A UK Exit from the EU: The End of the *United* Kingdom or a New Constitutional Dawn?,Oxford Legal Studies Research Paper No. 25/2015, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2574405: 9 (30 September 2024). [↑](#footnote-ref-35)
36. David Phinnemore, and Katy Hayward, ‘UK Withdrawal (“Brexit”) and the Good Friday Agreement’, Study for the Policy Department for Citizens’ Rights and Constitutional Affairs, November 2017, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596826/IPOL\_STU(2017)596826\_EN.pdf: 7 (30 September 2024). [↑](#footnote-ref-36)
37. The Joint Report recognizes that ‘the United Kingdom’s withdrawal from the European Union presents a significant and unique challenge in relation to the island of Ireland’. Joint Report from the negotiators of the EU and the UK Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the EU (Joint Report), 8 December 2017, available at: https://commission.europa.eu/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1\_en: para. 42 (30 September 2024). [↑](#footnote-ref-37)
38. Stephen Farry, and Sorcha Eastwood, ‘ How to Underpin a Special Deal for Northern Ireland’, UK in a Changing Europe, 31 October 2017, available at: http://ukandeu.ac.uk/how-to-underpin-a-special-deal-for-northern-ireland (30 September 2024). [↑](#footnote-ref-38)
39. On funds see Trevor Salmon, The EU’s Role in Conflict Resolution: Lessons from Northern Ireland, *European Foreign Affairs Review*, 7, (2002), 337-358: 353-357. [↑](#footnote-ref-39)
40. Dagmar Schiek, ‘The Island of Ireland and “Brexit” – A Legal-Political Critique of the Draft Withdrawal Agreement’. QPol, 22 March 2018, available at: https://qpol.qub.ac.uk/island-of-ireland-brexit-draft-withdrawal-agreement/: 6, (30 September 2024). [↑](#footnote-ref-40)
41. In her letter to President of the European Council Donald Tusk with which she triggered Article 50 TEU, former UK Prime Minister Theresa May (2016–2019) expressed her intention ‘to avoid a return to a hard border’ ‘Prime Minister’s letter to Donald Tusk triggering Article 50’, 29 March 2017, available at: www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50. This position was broadly in line with the post-referendum letter she received from the First Minister and the then Deputy First Minister of Northern Ireland, Arlene Foster, and Martin McGuiness ‘Letter to PM’, 10 August 2016, available at: www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/Letter%20to%20PM%20from%20FM%20%26%20dFM.pdf. Enda Kenny, former Taoiseach (2011–2017), described Brexit as ‘arguably the greatest economic challenge for this island in 50 years’, ‘Irish Times Brexit Summit Keynote Address’, 7 November 2016, available at a https://merrionstreet.ie/merrionstreet/en/news-room/speeches/irish\_times\_brexit\_summit\_-\_keynote\_address\_by\_the\_taoiseach.html; while Leo Varadkar, former Taoiseach (2017–2020) noted that ‘every single aspect of life in Northern Ireland could be affected by Brexit’, ‘Clock Is Ticking on Brexit Talks’, 4 August 2017, available at: www.bbc.co.uk/news/uk-northern-ireland-40819687. The EU also recognised that ‘the unique circumstances and challenges on the island of Ireland will require flexible and imaginative solutions’, see ‘EU Negotiating Directives’, 22 May 2017, available at: https://www.consilium.europa.eu/en/press/press-releases/2017/05/22/brexit-negotiating-directives/ (30 September 2024). [↑](#footnote-ref-41)
42. Act Concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on Which the European Union is founded—Protocol No 10 on Cyprus, 2003 OJ L 236, 46 (Protocol No 10 on Cyprus). [↑](#footnote-ref-42)
43. Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Protocol on Ireland/Northern Ireland, 2020 OJ L 29, 102. [↑](#footnote-ref-43)
44. European Court of Justice, Case C-420/07, *Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams,* Opinion of AG Kokott*,* 2009 ECR I-3571: paras. 40–41. [↑](#footnote-ref-44)
45. European Court of Human Rights, *Cyprus v. Turkey,* Judgment of 10 May 2001, RJD 2001-IV: para. 77. [↑](#footnote-ref-45)
46. Max Uebe*,* ‘Cyprus in the European Union’, *German Yearbook of International Law* 46 (2004), 375–400: 384. [↑](#footnote-ref-46)
47. Protocol No 10 on Cyprus, Art 1(2). [↑](#footnote-ref-47)
48. EC Regulation 866/2004 of 29 April 2004, OJ 2004 L 161, 128 (Green Line Regulation). [↑](#footnote-ref-48)
49. Nikos Skoutaris, ‘Accommodating Secession Within the EU Constitutional Order of States’, *Virginia Journal of International Law* 64 (2024), 293–348: 318—321. [↑](#footnote-ref-49)
50. Green Line Regulation, Art 2(2). [↑](#footnote-ref-50)
51. Green Line Regulation, Art 4(5) Green Line Regulation. [↑](#footnote-ref-51)
52. See *Meletis Apostolides*, AG Kokott: para. 40. [↑](#footnote-ref-52)
53. EC Council Regulation 389/2006 of 27 February 2006, OJ 2006 L 65, 5. [↑](#footnote-ref-53)
54. Art 4(3) TEU. [↑](#footnote-ref-54)
55. Commission Proposal for a Council Regulation on Special Conditions for Trade with Those Areas of the Republic of Cyprus in Which the Government of the Republic of Cyprus Does not Exercise Effective Control, COM (2004) 466 final (July 7, 2004). [↑](#footnote-ref-55)
56. Skoutaris, *The Cyprus Issue* 151–53. [↑](#footnote-ref-56)
57. Theresa May, ‘The Government’s Negotiating Objectives for Exiting the EU: PM Speech’, 17 January 2017, available at: www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech (30 September 2024). [↑](#footnote-ref-57)
58. Theresa May, ‘PM’s Florence Speech: A New Era of Cooperation and Partnership between the UK and the EU’, 22 September 2017, available at: www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu (30 September 2024). [↑](#footnote-ref-58)
59. Theresa May, ‘PM Speech on Our Future Economic Partnership with the European Union’, 2 March 2018, available at: www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union (30 September 2024). [↑](#footnote-ref-59)
60. Joint Report, para 49. [↑](#footnote-ref-60)
61. Withdrawal Agreement, Protocol on Ireland/Northern Ireland, Art 4. [↑](#footnote-ref-61)
62. *Ibid*., Art 5(3). [↑](#footnote-ref-62)
63. *Ibid.*, Art 5(5). [↑](#footnote-ref-63)
64. *Ibid.*, Art 5(4). [↑](#footnote-ref-64)
65. *Ibid.*, Art 8. [↑](#footnote-ref-65)
66. *Ibid.*, Art 5(4). [↑](#footnote-ref-66)
67. Colin RG Murray and Niall Robb, ‘From the Protocol to the Windsor Framework’ Northern Ireland Legal Quarterly Vol. 74 No. AD1 (2023) 1–21: 6. [↑](#footnote-ref-67)
68. Joint Committee Decision 1/2023, Art 7. [↑](#footnote-ref-68)
69. Murray and Robb, ‘From the Protocol to the Windsor Framework’: 6. [↑](#footnote-ref-69)
70. See Marise Cremona and Nikos Skoutaris, ‘Speaking of the De…rogations: Accommodating a Solution of the Cyprus Issue Within the Union Legal Order’, (2009) 11 Journal of Balkan & Near Eastern Studies 381–395: 387–394. [↑](#footnote-ref-70)
71. Annan Plan, Appendix D. [↑](#footnote-ref-71)
72. Report of the Secretary-General of 3 April 1992, S/1992/23780: para 20. [↑](#footnote-ref-72)
73. Art 3(5) TEU. [↑](#footnote-ref-73)
74. John McGarry, ‘Asymmetrical Autonomy in the United Kingdom’ in Marc Weller and Katherine Nobbs (eds), *Asymmetric Autonomy and the Settlement of Ethnic Conflicts* (Philadelphia, 2010) 148-182: 156. [↑](#footnote-ref-74)
75. *In re Raymond McCord* [2018] NIQB 106. [↑](#footnote-ref-75)
76. *In re Raymond McCord*, para. 18. [↑](#footnote-ref-76)
77. *In re Raymond McCord*,para. 20. [↑](#footnote-ref-77)
78. Dagmar Schiek ‘“Hard Brexit”—How to Address the New Conundrum for the Island of Ireland’, Queen’s University Belfast School of Law: Research Paper 2018–02, available at: https://www.qub.ac.uk/brexit/Brexitfilestore/Filetoupload,743693,en.pdf (30 March 2024). On how the EU legal order accommodated the German reunification, see Christian Tomuschat, ‘A United Germany Within the European Community’, 27 (1990) Common Market Law Review 415–443; see alsoChristiaan W.A. Timmermans, ‘German Unification and Community Law’,27 (1990) Common Market Law Review 437–449. [↑](#footnote-ref-78)
79. The German Democratic Republic’s relationship to the then-European Economic Community (EEC) was clarified in the Court of Justice’s judgment. See Case 14/74, *Norddeutsches Vieh- und Fleischkontor GmbH v. Hauptzollamt Hamburg-Jonas – Ausfuhrerstattung*, 1974 E.C.R. 899. The Court held that the relevant rules exonerating West Germany from applying the rules of EEC law to German internal trade ‘does not have the result of making the German Democratic Republic part of the Community, but only that a special system applies to it as a territory which is not part of the Community’. [↑](#footnote-ref-79)
80. Daniel Boffey, *Irish Leader Calls for United Ireland Provision in Brexit Deal*, The Guardian, 23 February 2017, available at: https://www.theguardian.com/politics/2017/feb/23/irish-leader-enda-kenny-calls-for-united-ireland-provision-in-brexit-deal (30 March 2024). [↑](#footnote-ref-80)
81. European Council, ‘Statement in the minutes to the agreement on the Brexit negotiating guidelines on 29 April 29, 2017’, 23 June 2017: 4. [↑](#footnote-ref-81)