

I note in passing one further important case to which Article 20 is relevant. If the United Kingdom took the reasonable view on clear evidence that the objectives of the Protocol were no longer being proportionately served by its provisions because, for example, it was not any longer "*protecting the 1998 Agreement in all its dimensions*", the United Kingdom could seek agreement to end those provisions that would be, for obvious reasons, "*no longer necessary*" to achieve the Protocol's objectives. If the EU were to decline consent to its termination, the issue could be referred to the arbitration tribunal on the basis of evidence that the Protocol was having the opposite effect of its whole purpose.

Alternatively, if agreement were not forthcoming, it could respectably be argued, if the facts clearly warranted it, that there had been an unforeseen and fundamental change of circumstances affecting the essential basis of the treaty on which the United Kingdom's consent had been given. Those facts might, for example, be that the prolonged operation of the Backstop was having a socially destabilising effect in Northern Ireland, contrary to its objectives.

Article 62 of the Vienna Convention on the Law of Treaties, which is reflective of the customary international law rule *rebus sic stantibus*, permits the termination of a treaty in such circumstances. It is in my view clear and undoubted in those exceptional circumstances that international law provides the United Kingdom with the right to terminate the Withdrawal Agreement. If that were to happen, the United Kingdom would no doubt offer to continue to observe the unexhausted obligations in connection, for example, with citizens' rights.