

TUTORIAL #1

Review the following material:

- Doyle & Hickey, chapter 9, sections 1 to 3;
- Doyle & Hickey, chapter 11, section 3 (on standing and *ius tertii*);
- *Cahill v Sutton* [1980] IR 269;
- *Crotty v An Taoiseach* [1987] IR 713; and,
- *SPUC v Coogan* [1989] IR 734.

QUESTION

After the withdrawal of the United Kingdom from the European Union, the Irish Government decides that for the better protection of the country's national security, Ireland should become a member of the North Atlantic Treaty Organisation ("NATO"). After brief negotiations, the permanent representatives to NATO of the members of the alliance sign the Accession Protocol for the Republic of Ireland on 21 February 2021. The signing ceremony takes place in the presence of Minister of Foreign Affairs and Trade, Brian O'Brian. The protocol states:

Protocol to the North Atlantic Treaty on the Accession of the Republic of Ireland

The Parties to the North Atlantic Treaty Organisation, signed at Washington on April 4, 1949, Being satisfied that the security of the North Atlantic area will be enhanced by the accession of the Republic of Ireland to that Treaty, agree as follows:

Article I

Upon the entry into force of this Protocol, the Secretary General of the North Atlantic Treaty Organisation shall, on behalf of all the Parties, communicate to the Government of the Republic of Ireland an invitation to accede to the North Atlantic Treaty. In accordance with Article 10 of the Treaty, the Republic of Ireland shall become a Party to the Treaty on the date when it deposits its instrument of accession with the Government of the United States of America.

Article II

The present Protocol shall enter into force when each of the Parties to the North Atlantic Treaty has notified the Government of the United States of America of its acceptance thereof. The Government of the United States of America shall inform all the Parties to the North Atlantic Treaty of the date of receipt of each such notification and of the date of the entry into force of the present Protocol.

Article III

The present Protocol, of which the English and French texts are equally authentic, shall be deposited in the Archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of all the Parties to the North Atlantic Treaty.

In witness whereof, the undersigned plenipotentiaries have signed the present Protocol.

Signed at Brussels on the 22nd day of February 2021

Although Ireland's accession to NATO has cross-party support in Dail Eireann, some citizens oppose this, asserting that Ireland should preserve its military neutrality which it has maintained since the 1930s. Among the opponents to ratification is the Pacifist Fellowship of Ireland ("PaFI"). PaFI is a non-governmental organisation that rejects war as a means of resolving international disputes, and believes that peace and justice should be sought exclusively through non-violent means. PaFI has about 125,000 members nationally. Moreover, its membership numbers soared after a spokesperson for the Irish Government announced that accession to NATO requires a modest increase in the defence budget, which the Government plans to achieve either through a small *increase* in taxes, or a small *reduction* in the HSE-provided medical services budget and/or the state education budget. One of the new members of PaFI is Patrick Fitzpatrick, an Irish soldier, who previously lost one of his legs in a United-Nations-authorized peacekeeping mission. Patrick relies heavily on the HSE-provided medical services for continuing his treatment and rehabilitation.

PaFI's board, recognizing widespread opposition sentiment in Irish society, is interested in bringing a lawsuit challenging the constitutionality and/or legality of Ireland's joining NATO. You are the in-house legal adviser to PaFI, and you are asked to advise the board, with reference to case law on the following questions:

- a. Is PaFI well positioned to bring such a lawsuit, or would another litigant (e.g., Patrick Fitzpatrick) be a better placed or more proper plaintiff to bring the said lawsuit (assuming he is supported with legal advice and financial support from PaFI to prosecute the lawsuit)?
- b. Assuming that PaFI or another litigant, e.g., Patrick Fitzpatrick, decides to bring a lawsuit, and assuming that the plaintiff has standing, *when* should that litigant file the lawsuit? Should the suit be filed before the Oireachtas passes legislation granting the Government authority to ratify the Treaty? After the legislation passes, but before the Government ratifies the Treaty? Or, after the Government ratifies the Treaty?
- c. Assuming that PaFI fails to successfully challenge Ireland's joining NATO, is it possible for PaFI or Patrick Fitzpatrick to challenge the constitutionality of the statutes that subsequently *increase* the tax burden or other statutes which *reduce* the HSE-provided medical services budget—where such *increases* or *decreases* in budget authority appear to be imposed in connection with the increased defence budget?

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Come to the tutorial with written answers (supported by legal authority) for each of the three questions posed. Be prepared to discuss the questions and to speak about your answers.