



# **Brexit:** *Negotiating Impossible Things*

*...a book about negotiations as much as it is  
about Brexit...*

*By Tom Hayes*



## **Preface**

This is a book about negotiations as much as it is about Brexit. It is primarily written for my colleagues in the labour relations community within BEERG/HR Policy Global, but we are happy to make it available to the wider negotiating community of which we are a part.

I use Brexit to makes some points about what I consider to be good negotiating practice. It is not an academic text, based on complex models of negotiations. It draws on the hard lessons I have learned over 50 years in the business. And the many mistakes I have made and suffered for.

For those interested in such things, my own “model” of negotiations is constructed out of a melange of Walton and McKersie’s *A Behavioural Theory of Labour Negotiations*, still the best book ever written on the subject, Fisher and Ury’s *Getting to Yes*, and other books from those involved in the Harvard Negotiating Project, for example, Sebenius, Burns and Mnookin *Kissinger the Negotiator*.

In writing this I have made use of books written by those involved in the Brexit process, such as Michel Barnier, and also of the invaluable resource that is the series of interviews conducted by *UK in a Changing Europe*. Blogs by writers such as Chris Grey and Steve Peers have been a staple of my reading since the early days of Brexit, as well as articles and papers by academics and commentators such as Brigid Laffan, John O’Brennan, Fintan O’Toole, Denis MacShane and Fabian Zuleeg.

As I say in the book, Brexit is a unique example of a negative-sum negotiation, a negotiation which both parties end up worse off than when they began. All the more unique for the negotiation being initiated by the weaker party, the UK. I try to explain why I think the UK put itself in this

position. Apart from a visceral hatred of the European project on the part of true-believing Brexiteers, many of them were convinced that the European Union was on the point of disintegration and that Brexit would push it over the edge. A “liberated” UK would then be free to pick up the pieces and remake Europe in its own image.

Ironically, Brexit relit the fire of unity and solidarity as the EU 27 came together and dealt with Brexit as a disciplined and cohesive polity. It marked a major step on the road to what Brigid Laffan [calls](#) “Collective Power Europe”, further consolidated in its response to Covid, and now to the brutal Russian invasion of Ukraine.

Instead of leading a loose, free-trade Europe, built out of the ruins of the EU destroyed by Brexit, the UK find itself on its own, outside, offering pound-shop trade deals to countries on the far side of the world. A far cry from what Vote Leave offered the UK electorate.

This book is about political, business and labour negotiations conducted within a rules-based order where we are not given to suggesting that we will annihilate the other party with atomic weapons if our demands are not met. It is the rules-based order that allows us to live liberal, democratic lives but even within that order there are power imbalances and not all parties are equal. Which is why life tends to be a constant negotiation as we search for ways to live together even when we disagree profoundly with one another.

This book owes much to my many friends who have discussed both negotiations and Brexit with me over the years: Robbie Gilbert, Derek Mooney, Alan Wild, Rick Warters, Wilma Liebman, Vince Toman, Andre Declerck, Steven D’Haeseleer and many others. They will know who they are. And a second thanks to Derek for organising the book so it could be made available to download.

The usual caveat applies. While I am the Executive Director of BEERG, now part of HR Policy Global, the views expressed here are my own and should not be taken as any sort of statement of policy.

Finally, I could not have written this without the support of Celeste, my wife and partner of 48 years. She pushed me to write it and she then read and reread it not only for typos and mistakes, but also to call attention to my stupidities, unsubstantiated opinions, and bad writing. And there were plenty of all three. I could not have done this without her. She is very much the co-author of this book.

So, if you do download and read this book then please take it for what it is, an attempt to pass on some learnings about negotiations to those coming behind me in our chosen craft.

Tom Hayes

*France, March 9<sup>th</sup>, 2022*



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# Chapter 1

## TO BEGIN

I remember when I first started to write seriously about Brexit. It was in October 2016, some months after the UK had voted narrowly in the June referendum to leave the European Union. The vote was, as everyone knows, 52% to 48%, with the 52% representing just 37% of the total electorate. England voted Leave, as did Wales. Scotland and Northern Ireland voted Remain.

We were running one of our BEERG training programs in the Hotel Estela in Sitges. As usual, we took some extra holiday time in the hotel after the program was finished. I had started reading extensively about Brexit to be able to answer the questions that were coming from our members, some of the biggest multinational companies in the world. Until then, we had simply reported on the Brexit vote and the resulting political developments in our weekly newsletter.

I remember writing:

*“Brexit cannot be the “will of the people” because there is no such thing as the “will of the people.” All there ever is in a democracy is a particular majority for a particular policy on a particular day. If you do not agree with the policy you are free to argue and campaign to have it changed. Electoral decisions are not written in stone, never to be revisited.”*



I haven't changed my mind about that since. Arguing against policies you disagree with is the essence of democratic politics.

I started writing a weekly Brexit Briefing for our members. Sometime later we decided to share the Briefings more widely. They can be found at <https://beergbrexit.blog/>

This book is not a rehash of those blogs. Nor a rewriting of them. They remain as they were written. Right or wrong.

*BEERG* stands for the Brussels European Employee Relations Group. As the name suggests, our focus is on labour and employee relations, the interaction of employers and employees involving collective forms of representation, such as trade unions, works councils, and, my own particular area of expertise, European Works Councils.

I realised early in the Brexit process that we could use our knowledge of the dynamics of labour negotiations as a way of understanding how relations between the EU and the UK might play out.

Now that Brexit “has been done” this book looks at how the negotiations between the EU and the UK unfolded and what lessons those involved in labour, and other forms of negotiations, can learn from what happened.

### ***Belief***

All negotiations begin with belief. Belief that you will have achieved what you want to achieve by the time the negotiations are finished.

The belief of the Brexiteers<sup>1</sup> can be stated simply. They wanted the UK to leave the European Union. They did not want the UK to become part of a “country

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<sup>1</sup> I use the word Brexiteers to refer to all of those who wanted the UK to leave the European Union. It includes those who were previously referred to as Eurosceptics or Europhobes. Using one descriptive word is, I think, better than juggling three or four.

called Europe.” They wanted the UK to be an independent, sovereign state. A perfectly honourable ambition and simply stated.

But belief alone is not sufficient. Closing your eyes and believing hard will not get you to where you want to be. Belief is not a plan.

Leaving the European Union turned out to be a lot more complex and difficult than Brexiteers thought it would be. It still is. Despite assertions to the contrary, Brexit is only “done” in the strictly legal sense. It is certainly not done in any meaningful economic sense. The UK is still deeply interconnected with, and dependent on European markets. That is not going to change anytime soon.

Brexiteers believed that leaving would be easy and could be done quickly. They also believed that Brexit would trigger a domino effect and that other countries would follow the UK out.

But then Brexiteers are somewhat reminiscent of the queen in Alice in Wonderland:

*Alice laughed. 'There's no use trying,' she said. 'One can't believe impossible things.'*

*I daresay you haven't had much practice,' said the Queen. 'When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six impossible things before breakfast.'*

The then Dutch finance minister, Jeroen Dijsselbloem, who was also the president of the Eurogroup, once accused Boris Johnson of “saying things that are intellectually impossible, politically unavailable.” Little has changed.

### ***Obligations and Interests***

One of the “impossible things” that bedevilled the Brexit process was confusion on the part of Brexiteers between “obligations” and “interests.” Brexit meant that the UK was leaving the EU. There was a perceived “obligation” on both parties to negotiate a Withdrawal Agreement setting out the terms of exit, for example,

to protect the interests of EU citizens living in the UK and UK citizens living in the EU. Such an agreement was also in their mutual interest.

Of course, Brexiteers will argue that there was no “obligation” on the part of the UK to negotiate on the financial settlement or the “Irish Question.” The EU saw it differently and said there was an obligation. If there were no negotiations on the financial settlement or, on Ireland, there would be no deal. Was the UK in any position to argue?

But there was never an “obligation” on the part of the EU to agree any future deal with the UK. Of course, Article 50 imposed an obligation to open negotiations, but opening negotiations can never imply an obligation to reach an agreement. Countless negotiations end in failure.

The UK had a deal with the EU. It was called membership. Brexit meant the UK was rejecting that deal. It would leave and become a “third country.”

There are plenty of “third countries” in the world that have no deals of any sort with the EU. There is no “obligation” on the part of the EU to open negotiations for agreements with third countries. It may be in the EU’s “interest” to do so, but it is for the EU to determine its own interests. It may get it wrong and misjudge its interests, but that’s life.

Throughout the Brexit process we see many on the British side constantly assert that the EU had an “obligation” not only to offer the UK a future deal, but that the obligation stretched to offering the UK a deal on the terms the UK demanded. Theresa May’s Lancaster House, Florence, and Mansion House speeches are implicitly premised on this, that the EU had an obligation to offer the UK a deal that would prevent no-deal chaos and that such a deal had to be on terms of the UK’s liking.

The EU had no “obligation” to prevent the UK suffering economically as a result of its Brexit choice. It was certainly in the EU’s “interests” to negotiate a deal with the UK, but that deal had to be on terms that the EU believed put its interests first.

It was not only the May government which believed that the EU had an obligation to do a favourable deal with the UK. Brexiteers outside government believed it as well. Why else argue, for example, that the Vienna Convention on Treaties, GATT Article XXIV, and even Article 50 of the TEU, imposed such an obligation on the EU? Other than the wilder Ultras, did any of the Brexiteers really believe that “no-deal” was the best way forward? Brexiteers betrayed their desperation and insecurity by their never-ending search for something, anything, that would force the EU to offer the UK a favourable agreement.

### ***Implosion***

Then again, it seems to me that Brexiteers never expected to have to negotiate post-Brexit arrangements with a cohesive EU27, which is why they thought it would be easy. In their eyes, the departure of a country the size of the UK would psychologically shatter the EU. How to deal with Brexit Britain would cause deep divisions among its members, between North and South, East and West. They expected the EU to be mortally wounded.

There was an expectation that Ireland would follow the UK out. After all, as many Brexiteers believed, was not Ireland totally economically dependent on the UK? They saw the Ireland of old, not Ireland as it is today.

Not only did Ireland not follow the UK out. Ireland, Northern Ireland, and the possible return of a physical border between the two parts of the island, turned out to be the great “unknown unknown” of Brexit, causing problems at every turn, problems that continue to persist today even though Brexit is supposed to “have been done.”

Brexiteers had no plan for dealing with an EU that had failed to implode or, at the very least, was in turmoil. If there was a plan it was never made public. They kept it well hidden. And if there was a plan it was never acted on. So, we must assume that there was no such plan. They certainly had no plan for dealing with the Irish border issue.

Instead of picking up the pieces of a shattered Europe the UK found itself on its own, outside, wondering what to do next. It was like a family that had sold the house and had to be out shortly but had made no move to buy a new house or to find alternative accommodation of any kind.

***We'd rather anything else than this***

It has always seemed to me that most of the UK political elite, across the spectrum, Right and Left, never accepted the legitimacy of the model of European integration developed by Monnet and proposed by Schuman when he first outlined the plan for a European Coal and Steel Community (ECSC) in 1950.

The UK elite believed that transnational governance, as envisaged by Monnet and Schuman, was an affront to national sovereignty. Further, the UK political consensus back in the early 1950s was that if Britain was to get involved with the “Schuman Plan” it would undermine its position as the centre of a worldwide empire and later, as the empire faded, the Commonwealth.

In British eyes, first the ECSC and the then European Economic Community (EEC or “Common Market” as it was widely known) were ill-conceived constructs and, as such, were doomed to fail. The European nation state was the natural order of things and intergovernmental cooperation between nation states was the only way for such states to work together. The British insistence on the primacy and sovereignty of the European nation state was, and is, somewhat ironic given its imperial and colonial history.

The belief that the “European project” was inherently ill-conceived and could implode at any time runs like the letters in a stick of Brighton rock through British political thinking about Europe. Even after the UK left the EU and the EU had failed to implode, there are still many British politicians and commentators who continue to think that European disintegration is only a matter of time. Events since the brutal and barbaric Russian invasion of Ukraine should have put an end, once and for all, to any such thoughts. Europe is now rapidly emerging as

a political and security superpower to complement the economic superpower it has long been.

The UK leaving the EU and becoming, once again, in its own words, an “independent, sovereign state” was nothing more than a return to what a majority of the British political elite, Labour as well as Conservative, had always believed should be the case. In their eyes the UK’s destiny lay in trading freely with whoever it wanted to trade with, no matter where in the world those trading partners were located. The British were an island, seagoing people.

The UK could never be part of a “country called Europe<sup>2</sup>.”

### ***Gritted Teeth***

Not only did the UK object to the creation of the European Economic Community (EEC), but it also actively tried to ensure that it never came into being. When it failed to do so, it set about creating a rival organisation, the European Free Trade Association, (EFTA). When EFTA failed to gain any real traction the UK, driven by economic necessity and through gritted teeth, reluctantly applied to join the EEC.

But the UK application to join was blocked by France’s President De Gaulle. Not once, but twice. First in 1963, and again in 1967.

It was only in 1973, after De Gaulle’s political exit, that the UK finally got to join. Even then, latecomer as it was, it thought it could bend the EEC to its will and get it to rewrite its rules to suit the UK economy and its worldwide empire/commonwealth.

Sir Con O’Neill, the lead UK civil service Common Market negotiator in 1970-2, commented that the only possible British approach to the existing Community body of rules was ‘Swallow the lot, and swallow it now’. The EEC was not going to change its rules to accommodate the British. This was a lesson that was to be learned all over again with Brexit. As Piers Ludlow noted in an [LSE Blog](#) in

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<sup>2</sup> I am indebted to many Tweets from Roland Smith for the words “a country called Europe.”

2017, from the beginning the UK was always “deluded” about its negotiating power with the EEC.

The UK was an unhappy and restive member from the beginning. It found itself in a club it did not really want to be a member of and was forever chaffing against the rules.

Looking back - there was never a moment when the UK was not trying to negotiate or renegotiate some aspect or other of its EU membership. At every turn, it wanted the benefits without the obligations.

The “impossible thing” to believe, to borrow from the queen in Alice, is not that the UK left the EU. It is that it ever joined in the first place.

No sooner had it become a member in 1973, than in 1974 Harold Wilson, newly returned to 10 Downing Street as Labour Prime Minister, was calling for a renegotiation of the terms of membership.

The early 1980s were dominated by Margaret Thatcher’s demands to be “given back” her money. In fairness to Thatcher, in the latter half of the 1980s, she did promote the idea of the “European Single Market” and sent Arthur Cockfield to Brussels to help drive the project forward. The significance of the British contribution to the Single Market project is not to be underestimated.

Later in the 80s, there were constant tussles between Thatcher and her senior ministers over UK involvement in ERM, the forerunner to the Euro. These tussles saw her party lose confidence in her leadership and eject her from 10 Downing Street.

The martyrdom of the “Blessed Margaret,” which allegedly prevented the completion of her free market “revolution,” is one of the abiding myths of the Brexiteers. For them, quitting the EU allows the UK to take up where she left off. As I was writing this, the *Daily Telegraph* carried yet another [article](#) from the arch-Brexiter Alister Heath demanding that the Johnson government push through a raft of Thatcherite policies to make it impossible for a future Labour

government to even contemplate re-joining the European Union, or even the Single Market.

For Brexiteers, such as Heath, there can never be enough distance between the UK and the EU. If only, they sigh, the island could be towed somewhere into the Atlantic or, better yet, into the Pacific, all would be so much better. Unfortunately, geography is such a cruel master.

John Major, who succeeded Thatcher, famously negotiated the UK opt-out from the Maastricht Treaty, the legal basis for the Euro. He also took the UK out of future EU social policy developments. The Conservatives made sure that the UK was not part of “Schengen,” the internal passport-free EU travel area. The Labour government of Tony Blair did not try to reverse the Schengen or Euro opt-outs. It did re-join the social policy stream, though without any great enthusiasm.

Cameron, who became Prime Minister in 2010, tried to prise further opt-outs from Brussels for the City of London from EU financial regulations. His negotiations around this issue lit the fuse that led to Brexit.

Such British “exceptionalism” deeply coloured the UK’s approach to the subsequent Brexit negotiations. As the Luxembourg Prime Minister, Xavier Bettel, once said: “The UK was in, with a lot of opt-outs. Now it wanted to be out with a lot of opt-ins.”

As we will see, it failed to do so.

### ***Negotiating impossible things***

The story of the negotiations between the UK and the EU over Brexit is the story of a country, the UK, that embarked on a major economic and constitutional change while being ill-prepared to do so. The UK voted to leave the EU. That was clear.

But the UK would still need the EU after it left, because the EU was its biggest import/export market, for both goods and services. What Brexit meant was that



the UK was going to build new barriers to trade between itself and its biggest market. To make life a lot more difficult for its own exporters and importers.

It set out to do this not knowing what it wanted, not knowing where it wanted to end up when Brexit was completed. This was not an oversight. Those who promoted Brexit had deliberately fashioned it that way. Their plan was: vote to leave and we will decide afterwards what it means and what to do next.

No wonder the negotiations proved difficult and complex and caused political bitterness in the UK, bitterness which still persists.

But even if the UK had been clear about what it wanted from Brexit, had been clear about what sort of deal it wanted from the EU, could it have negotiated it? I doubt it.

Leave to one side the political and security dimensions of the EU. Focus on the economic. The deal which the UK had as an EU Member State, membership of the Customs Union and the Single Market delivering frictionless trade between the UK and the other 27 Member States, could not be bettered.

The EU's internal market was the UK's home market. How could it get a better deal by leaving? You only have to ask the question to know the answer. It couldn't.

Why would the other 27 Member States give the UK an equivalent deal after it had left as it had as a Member State? Let it have all the benefits with none of the obligations?

Brexit was always going to make trade between the EU and the UK more difficult unless the EU was prepared to sacrifice its own principles to facilitate the UK. Which it wasn't going to do. The UK thought the EU might bend. It didn't. A mistake the UK has been making since the 1950s.

The UK was never going to be able to negotiate "impossible things."

## ***Not a good idea***

One final point. As will be clear from the above and from the pages that follow, I never thought that Brexit was a good idea. I could never see how creating barriers to trade with your biggest market could be economically beneficial. Nothing that has happened since has changed my opinion.

I readily accept that there could be valid, non-economic reasons for Brexit, such as recovering sovereignty that was believed to have been lost, even if it never was. But if that was the motive there was never any honesty about it. No admission that reasserted sovereignty would come with a steep economic price tag. That there were choices to be made, trade-offs to be negotiated.

Instead, it was loudly claimed that Britain could have it all, could leave the European Union and yet retain all the economic benefits of the Single Market and the Customs Union. Not only would it be as well off outside the EU as it was inside. It would do even better.

The UK could have its cake and eat it. Cakeism, as it came to be called.

Some Brexiteers believe that the reason things did not work out as anticipated is because those charged with delivering Brexit did not “believe hard enough.” But belief, while important, will not change fundamental facts.

No matter how hard you believe it will not make the UK the equal to the EU27. No matter how hard you believe it will not diminish the reliance of the UK on the Calais-Dover trade route. And belief alone will not deliver the type of trade deal that would make the Irish “front stop” unnecessary.

These pages tell the story of the negotiating clash between Brexit Britain and the European Union over the terms on which Britain would leave and how it would relate to the EU in the future as an “ex-member” after it left and became, in the Brussels jargon, a “third-country.”

Judge for yourself whether there was a winner and a loser. Or was everyone a loser<sup>3</sup>?

I'm Irish. A European citizen, living in France. To use an Americanism: Ireland had a lot of skin in the Brexit game, as we will see. We were not, and are not, neutral bystanders. Being Irish, speaking English, gives a unique insight into British thinking. We read their newspapers, see their television, support their club football teams. We are soaked in British popular culture.

But we are not the same and we see things differently.

There was never going to be an Irexit. I do not believe there ever will be.

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<sup>3</sup> In this book the "EU" refers to the EU27, that is the European Union minus the UK. The "UK" refers to the "United Kingdom of Great Britain and Northern Ireland", often referred to as "Britain". GB (Great Britain) refers to England, Scotland, and Wales.

## **Chapter 2**

### **UNDERSTANDING NEGOTIATIONS**

If we are going to look at Brexit as a negotiation, and what we can learn from the process, then it is best to set out what I understand by negotiations.

What follows is not an attempt at an academic approach to describing negotiation processes, full of decision matrixes and game theory analysis. Instead, it is built around my own “modus operandi” when it comes to labour relations negotiations and the way I think about things, learnt over fifty years in the business.

I have read the books and know the theory. However, nothing teaches like doing and making mistakes. Accepting that you have made mistakes, and then trying to learn from those mistakes. Listening and taking advice. Knowing that we live in a world of imperfect knowledge and that we can never know all we should know before we begin any negotiation.

Because when we begin any negotiation, no matter how well we have prepared, we will have knowledge gaps, and we will probably work on unfounded assumptions about the interests of the other party. Gaps we need to fill and assumptions we need to correct as the process unfolds.

Negotiating is very hard work. But negotiating as a way of resolving differences is better than the alternatives.

## ***Not just a table***

Mention the word negotiation to most people and they will immediately think of people sitting across a table from one another trying to work out a deal. They would be right as negotiations do indeed involve sitting across the table and talking things through. But in complex negotiations the “table” is just one small part of it, and many other factors come into play.

You need to do a great deal of preparation before you get to the “table” if the negotiation is to be a success. “We’ll make it up on the day” never works. Negotiation is 90% preparation and anticipation. 10% talking.

For the most part, negotiations should be a positive-sum game which leave both parties better off or at least, believing that they are better off, which is just as important. Being better off does not always mean that you have added to the sum of your resources. It could mean, for instance, that you have put an end to a damaging situation that was costing you considerably.

Brexit was unusual in being a negative-sum game, a negotiation that left both parties worse off than when they began, especially where business was concerned. Ordinary people were hit as well. For UK citizens, travelling to and from Europe, or setting up home in Europe, became more complex and costly. Even Boris the dog now needs new paperwork to go on holidays with the family.

Brexiters will argue that they had big “wins” in recovering sovereignty, but most people find it difficult to pay with sovereignty at the supermarket check-out.

## ***Leverage***

The outcome of any negotiation is not determined by the most eloquent talker in the room or by those who can make the best debating points, though being able to state your position succinctly helps, especially when you are trying to change the other party’s attitudes and expectations. The single, biggest determining factor in

any negotiation is leverage, the strengths you have which makes the other party do the deal on your terms, not theirs.

Leverage can be derived from many sources. Size obviously matters, and it matters more often than not. As the historian, David [Cannadine](#), notes about the Napoleonic wars in his *Victorious Century, The United Kingdom 1800 – 1906*:

*As so often in protracted and geographically extended wars between great powers, it was not just a matter of tactics and strategy and generalship, important those these were and are, but of the relevant distribution of resources between the combatants. Once the British, Austrians, Prussians and Russians had finally agreed to unite in a concerted campaign.... It meant that Napoleon must sooner or later be beaten, notwithstanding his undoubted military brilliance.*

A brilliant general can maximise the use of limited resources and win a battle on any given day over a less intelligent general with superior resources. Intelligence is itself a source of leverage. But the leverage of intelligence will be fleeting compared to the leverage of superior resources. To put it very bluntly. “Might” might not always be right, but it generally wins<sup>4</sup>.

Change “brilliant general” to “brilliant talker” and you get the point.

“Brilliant talker” is not a reference to Boris Johnson, though Johnson’s command of language is exceptional, even if at time it ends up being nothing more than a babbling brook of words. But Johnson does allow us to make an important point about language in negotiations.

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<sup>4</sup> I wrote this before the Russian invasion of Ukraine. My references to “might” and “right” refer to negotiations within a rules-based system, in which both parties accept that there are rules to be observed. Which is what happened with Brexit and happens every day with business and labour negotiations. The Russian invasion of Ukraine is clearly a break with our rules-based system. How to deal with that is outside the scope of this book.

In a Zoom call in 2020 with Ursula von der Leyen, the EU Commission President, Johnson said that to move the trade negotiations forward both sides needed to “put a tiger in the tank.”

Now, if you are old enough, you will remember the phrase from the 1960s. It was used in a TV ad for Esso petrol, a tiger being one of Esso’s brand images. But if you were not English (or Irish or American) nor of that age, the phrase was meaningless.

What had a “tiger” got to do with anything? Why would you put a tiger in a tank? What sort of tank? Was the tiger expected to drive the tank? Or fire its guns? Where would you find a tiger in the first place to put in a tank? And tigers are an endangered species, so why would you want to put one in a tank? Surely, you would return it to the wild, to its natural habitat?

In multinational, multicultural, multilingual negotiations you need to be aware that language has limitations. “Slang” and local idioms do not travel and can easily be misunderstood. The same with jokes. Try telling an Irish Kerryman joke to a German!

A great deal of “across the table” talk in negotiation consists of one side trying to convince the other that it has greater leverage than in reality it has and that if its demands are not conceded there will be a steep price to be paid. British “no deal” threats in the Brexit negotiations are a good example of this. “If you do not cut us a good deal we will leave with no deal, and you will be the ones that will suffer as a result.”

With experienced negotiators, as with the EU in the Brexit talks, bluffs like this do not work. But never underestimate how a party to a negotiation can convince themselves that they have leverage they do not have and act accordingly.

Many Brexiteers genuinely believed that no-deal would hurt the EU more than the UK. No matter how skilled a negotiator you are, it is always difficult to deal with delusions. Especially the delusions of those who believe in the righteousness of their cause.

We will see how leverage played out during the Brexit process. We will also see how a lack of preparation, a failure to define objectives, the ignoring of stakeholders, underestimating the strengths of the other party, and failing to build a team and to staff it properly, damaged whatever chance the British might have had of securing a Brexit deal that delivered what the British people were promised in the 2016 referendum campaign. Or thought they were promised.

### ***Buying a car***

You go to an auto dealer with your old car, hoping to trade it in for a new one. You find one you like, one that ticks all the boxes, and at a price you like. You have already visited several other dealers and you have seen some cars that you are happy with, even if they were not exactly what you were looking for. You and the salesperson discuss the details and strike a deal.

You drive away with your new car, a win for you. She pockets a profit, a win for her. The transaction is positive for you both.

Your **objective** from the outset was clear. Trade in your old car for a new car that was better than the one you had at a price you could afford. You knew exactly what you wanted.

The negotiation was a positive-sum game. You both won.

Your negotiating position with the dealer was strengthened because you had seen, elsewhere, other cars that would be suitable if you could not do a deal on the one she had to offer. You had **options**. You had an alternative to the deal she had to offer you. This is what writers on negotiations call your BATNA – *Best Alternative to a Negotiated Agreement*.

In negotiations, options are one of the things that give you leverage. Your BATNA needs to be credible. Remember, the other party will also have done their homework and will quickly spot if you are bluffing.

What was the UK's BATNA in the Brexit negotiations?



If the UK failed to cut a deal with the EU, what options had it got? No-deal? Was that ever a credible alternative? While the willingness to walk away is one of the strongest tools that a negotiator has, the other side has to know that you have somewhere “to walk to.” If they know you haven’t, that you are walking out into the dark, without a light to show the way, they will let you go. Because they know you will probably have to walk back in, diminished and weaker.

Buying your new car, you also had the comfort of the “**status quo**.” You drive to the auto dealer with your old car. If you cannot do a deal, you drive away again. You are no worse off than you were when you arrived. Certainly, you are not as well off as you could have been had you done a deal. But before you even started to talk to the dealer you knew where “no deal” would leave you. At worst, with the “status quo” of your old car. More likely, talking to another dealer.

The problem for the UK in the Brexit negotiations was that the “status quo,” EU membership, was what was no longer tolerable. By voting “Leave” the UK was quitting the status quo. If the UK’s negotiations with the EU on a new deal failed, where was the UK to go? What were its options?

There is no special EU status for ex-members, no half-way house, a bit in and a bit out, no matter how many on the British side thought there was, or that a special status could be created for the UK. They also thought that they were entitled to a special deal and that the EU had an “obligation” to offer them such a deal.

Because of the belief on the UK side that the EU had an “obligation” to offer it a deal, no real thought was ever given to what would happen if there was “no-deal.”

Our approach to any negotiation is governed by our **expectations** of what can be achieved. Our expectations should be formed by careful research before we open the negotiations. For example, in my own field European Works Councils (EWCs) a management team faced with the challenge of negotiating an EWC agreement would:

- *Read the relevant legislation carefully and understand what is required*
- *Look at agreements that other companies have negotiated*
- *Check if there are court judgements on EWCs that could have a bearing on the matter*
- *Talk to colleagues in other companies who have been through the process*
- *Take advice from experts*
- *Seek to understand the expectations of employee representatives*

As a result, the management team should be able to work out what is reasonably and realistically possible. Is there a ZOPA – a *Zone of Possible Agreement*?

Unreal expectations of what can be achieved lead to disappointment and frustration. Unreal expectations can be formed over time through “hearing stuff,” reading unfounded posts on social media, living in a “bubble” or “echo chamber” with people all of whom have the same views as you and bounce them back at you. Which can end up with you grossly overestimating your own position and underestimating the strength of the other party.

You see unreal expectations at work in TV property programs, especially those British programs about buying a “place in the sun” in France, Spain, or Italy.

*So, tell me, what’s your budget?*

*Well, we have £175K to spend.*

*And what are you looking for?*

*We would like a 3-bedroom apartment, with a large terrace, a sea view, and just 5-minutes’ walk from the beach.*

*You might need to think about that. What you describe would probably take at least £300K in this location.*

*But Jeremy and Samantha got a place like that for £175K in Playa del Sol.*

*Yes, but that was Playa del Sol. Not here. Here, property is a lot more expensive. If you want what you are asking for you will have to up your budget. Or look elsewhere.*

There is nothing wrong with being ambitious in a negotiation and trying to achieve the best deal you can. But ambition alone will not get you a deal outside the limits of the possible. Negotiations are always rooted in objective reality. The facts will not bend to accommodate what you want.

The British never really understood the European Union and what it was about. Perhaps it was the “island” nature of the UK, its imperial history, its sense of its own story and its place in the world, that contributed to a lack of empathy on the part of the UK’s political elite(s) with the European ideal of “ever closer union”. The UK’s expectations of “Europe” were transactional, strictly commercial. For the British Europe was “nothing personal, just business.”

Which is not to say that mainland European elites are all “saints.” They are not. They can be as transactional as the British. But, even on the worst of days, they do see “Europe” as more than just business. There is a deal of personal investment in European integration. Europe is more than the sum of its parts, more than all the late-night Brussels deals. There is a strong thread of solidarity that binds it all together.

Rafael Behr put it [neatly](#) in the *Guardian*:

*It is the refusal (of the Brexiteers) to see the European project on its own terms: not just a trading bloc but a strategic alliance founded with a moral purpose – a framework of law and economic integration that locks democracy in and tyranny out.*

The only point that Behr gets wrong is that it is not just the Brexiteers who see the European Union in this way. It is close on the entirety of the British political elite. How else do you explain Labour Party polity?

## **Stakeholders**

When it comes to buying that car, you are not alone. You have your family to consider and what they want. You want a reliable saloon that will take you safely down the motorway. Your husband/ wife/partner may want something that will run around town and is easy to park. Your eldest wants a car he/she can borrow.

The young ones want a car with tablets in the back so they can watch movies and play games on long trips. As for the dogs....

In other words, you have **stakeholders**, and you have to manage your stakeholders. This involves hard work to find a consensus position. Which is a lot easier said than done. And it is not a one-off. Once you have built a consensus, you have to work even harder to keep it intact.

Experienced negotiators will tell you that negotiating with your own side, your stakeholders, – intraorganisational bargaining in the textbooks – can be even harder than negotiation with the other party. But if you don't do it, then any deal you may strike will run into opposition and, even if it is signed off and implemented, can easily be sabotaged. Sabotage may be overt: *"It's not what we wanted so we are just not going to do it."* Or it may be covert, as when unexpected obstacles to implementation suddenly appear.

Constant attention to stakeholders in any negotiation is always critical.

Michel Barnier, the EU's lead negotiator worked tirelessly to keep all his multiple stakeholders in the loop. He criss-crossed Europe constantly. Not only did he talk to prime ministers, government ministers, leaders of the opposition, employers, and trade unions, but he also talked to people living on the Irish border, fishers in Denmark, customs officials in Antwerp, and the leaders of civil society in country after country.

Theresa May, UK Prime Minister for a great part of the Brexit process, wanted the negotiations to be shrouded in secrecy, kept under wraps until a deal was done. Only at the point of desperation did she agree to talk to the Opposition in

the UK parliament. There is nothing to show that she travelled throughout the UK talking to those who would be impacted by Brexit. Nor did any of her team. London knew best and one woman in London knew better than all the rest.

She could not even manage the stakeholders in her own party. According to Nick Timothy, May's long-time political advisor, she disliked her Chancellor, Philip Hammond intensely. In his book, *Remaking One Nation: The Future of Conservatism*, he writes:

*Theresa's relationships with other ministers were little better. She got on badly with Justine Greening, Sajid Javid, and Boris Johnson. Looking back, her relations with colleagues were often poor because she neither trusted them nor even knew them particularly well. She would often patronize Boris and put him down in front of his colleagues.*

It seems obvious that the fault did not lie with her "colleagues." But with May herself.

### ***Relationships***

When you buy a car what the salesperson thinks about you is generally of no relevance. Buying a car is a one-off transaction. More than likely, you will never see him or her again. How the sale of your car plays out for him or her, how it is seen by his bosses, is of no concern to you. You have no investment in their future.

Sure, you will have to bring the car back every so often for servicing, but it is not the salesperson you will be dealing with. So, with the salesperson you do not have to take into consideration how your current deal might affect future deals because there will not be any. Unless you plan to change your car every year with the same dealership. But most people do not do that.

More complex negotiations are generally not a "one-off" transaction. They are either part of an already on-going **relationship** or are the start of a new relationship. In such circumstances you must remember that there is a "tomorrow

as well as a today.” Which mean that you will have to work with the other party into the future to make the deal work. To work with one another you need to be able to trust one another.

You build trust by showing that you are prepared to take the concerns of the other party into consideration. You need to work with them to help them find solutions to their issues with their stakeholders. Which does not mean conceding to their demands because of what their stakeholders are insisting that they deliver. Finding solutions does not necessarily mean “compromising,” if by “compromising” is meant the sacrificing of your basic principles.

Nor does it mean letting them make their problem your problem. Throughout the Brexit negotiations, time and again the British said to the EU negotiators: here are our redlines, now find us solutions that fit within our redlines.

If you are to help the other side then, not only does the other side need to clearly articulate their problems and issues, but they also need to suggest possible solutions that work for them and that you can live with.

If it sounds complicated, that is because it is.

### ***Words***

I have always disliked the use of the word “compromise” when talking about negotiations. As I also dislike the use of words like “pragmatism” and “flexibility.” They are the currency of those who are uncertain about that they want. Even worse is the use of the word “ambitious” as in “we want an ambitious deal.” Who doesn’t want an “ambitious” deal? It is a redundant word.

Now if the other party turned up at the start of negotiations and said: “We want a below average deal” you would sit up and immediately take notice. Which is what happened when David Frost took over the Brexit negotiations after Boris Johnson became Prime Minister. He asked for little. He got little. UK business is suffering as a result.

Compromise carries undertones of “let’s meet in the middle.” But why should I meet you in the middle if your opening position is outrageous? Inflation is running at 2% and our business is doing very well. So, I am prepared to offer a 4% increase in wage negotiations. The union’s opening demand is 20%. Because I won’t “meet halfway” to find a “compromise” I am accused of a “refusal to negotiate.”

In my view, good negotiators do not “compromise,” as in “meeting in the middle.” They find “solutions.” Unfortunately, the word “compromise” is baked into the language of negotiations, and I understand why it is. But I have always found it to be an unhelpful word, with its “let’s split the difference” assumption.

There are some things you simply cannot “split in the middle.” The free movement of people between Member States is a fundamental EU principle. For Theresa May it was anathema. Her burning ambition was to put an end to EU citizens moving freely to the UK. This is an issue on which there was no “compromise” available. You cannot split freedom of movement 50/50.

Certainly, you can take steps to make sure that freedom of movement is not abused. Many EU countries use ID cards to manage aspects of their labour markets and public services, to know who is in the country. But that is managing freedom of movement. Not ending it. Nor compromising on it.

Likewise, the use of words such as “pragmatism” and “flexibility.” I am “pragmatic” and “flexible.” You are “rigid” and “unbending.” Writing in the *New European* ([here](#)) about David Frost, Johnson’s Brexit negotiator, Steve Richards notes:

*Frost’s use of language is far too clunky given his revolutionary approach to international affairs. In his statement calling for the renegotiation of the treaty he accused the EU of being too “purist” in its attitude.*

*In earlier articles, he suggested the EU was too “theological”. This would be hilarious if it were not so serious. Imagine bank robbers*

*arguing that the police were taking a too puritan or theological approach to the law.*

“Compromise,” “pragmatism,” and “flexibility” and other such words should have no place in the language of negotiations. Unfortunately, they do. Skilled negotiators should be wary of them.

### ***Interests and Positions***

It is in the fundamental **interest** of the European Union to defend the integrity of the Single Market and Customs Union. The Single Market provides for friction-free, internal trade between EU member states based on commonly agreed regulations, founded on the principles of the free movement of people, goods, services, and capital.

The Customs Union provides for a common external border with “third countries,” the EU’s term for countries outside the EU’s legal framework. Tariffs and quotas are applied uniformly at the external border to goods that can be imported into the EU, that is, goods that meets EU regulatory standards. The EU will not agree to anything that compromises the Single Market or the Customs Union. It is not in its interest to do so.

In negotiations with “third countries” the EU will take “**positions.**” For example, it may offer a 10% reduction in tariff levels and a quota of X for a particular category of goods. That is a “position” that does not undermine its “interest” of protecting its internal market. The EU can be flexible on the 10% and on the X quota. The EU will rightly demand quid-pro-quo for this offer.

But when it comes to defending the integrity of the Single Market the EU will be “purist” and “theological.” Brexiteers calls for it to be “pragmatic” and “flexible” were all too often disguised calls for it to sacrifice the integrity of the Single Market to accommodate British demands for access without obligations.



The Brexit negotiations were full of such UK calls, which really amounted to calls for the EU to sacrifice its principles so that the UK could live within its self-imposed red lines. “Give us what we want so Brexit can be successful!”

## ***People***

In *Getting to Yes*, Fisher and Ury suggest that when it comes to relationships, you “separate the people from the problem.” They suggest that the best approach is to be “hard on the problem, soft on the people.”

Of course, there are times when the people are the problem. Especially people who espouse the “madman” approach to negotiations, best summed up as “If you do not give me what I want I am going to shoot myself and you will be responsible for that.”

[Buzzfeed](#) reported on a dinner in London in June 2018, involving the then UK foreign secretary, later to be prime minister, Boris Johnson. as follows:

*Asked about Donald Trump, Johnson was positive about the US president and even joked that he wouldn't mind having him lead the Brexit negotiations.*

*“I am increasingly admiring of Donald Trump,” Johnson said. “I have become more and more convinced that there is method in his madness.”*

*“Imagine Trump doing Brexit,” Johnson said. “He'd go in bloody hard... There'd be all sorts of breakdowns, all sorts of chaos. Everyone would think he'd gone mad. But actually you might get somewhere. It's a very, very good thought.”*

Real negotiations are time-consuming, hard work, and can be emotionally exhausting. The madman theory is superficially attractive. “Let's go in there and knock over the table and see what happens. Then they'll know who they are dealing with. We will not be pushed around.”

We might also refer to this as the “great man” theory of negotiations. Put the right person in charge of the negotiations and they will sweep all before them.

They will bend opponents to their will with the force of their personality and the eloquence of their arguments. Even if they threaten chaos, they will do so with a winning smile.

Martin Howe, chair of the pro-Brexit Lawyers for Britain in an [article](#) in the *Telegraph* on November 4, 2019, wrote about Johnson's renegotiated Brexit agreement with the EU:

*My own preference would be for us all to get into a time machine and travel back to 2016, avoid the disastrous May premiership and instead have a competent and determined PM conduct the negotiations with the EU. The enormous strides which Boris Johnson has made in [changing a supposedly "unreopenable" deal](#) in a few short months demonstrate that we could have got a wholly different and much better deal<sup>5</sup>.*

Seductive. Just not true. No amount of charm and eloquence can change the fundamental facts of power and leverage that, in the end, are what count. Reality will always win through.

Of course, personal skills in negotiations, like in anything in life, matter and can make a difference. Someone who knows what they are doing is always going to be more successful than those who don't. Negotiations are always going to be easier if you have the ability to connect with people, make them feel they are being listened to and that their concerns count. Bullying and bluster and table banging never work with hardened and experienced opponents. Water off a duck's back for them.

### ***It's a Team Game***

Unlike our example of buying a car, negotiations are usually a team game. Each party is represented by more than one person. Getting the team structure right is critical. Roles must be defined, needed expertise identified. The necessary resources have to be allocated. While getting the team structure right is

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<sup>5</sup> These are the same people who are now complaining about what a rotten deal the Withdrawal Agreement turned out to be.

paramount, deciding on the people to fill the roles is vital. Team selection is all important.

As is continuity. Chopping and changing does not help.

In the Brexit negotiations, the EU got it right from the start, built a team, gave it a mandate, and allowed it to get on with the job. The same personnel occupied the same roles from the time the Withdrawal notice was served until the Withdrawal Agreement was done. Thereafter, for the trade negotiations there were some changes, but the proven structure and strategy stayed in place.

Compare that with the UK approach. Was there a defined team structure? Who was in charge? Who occupied what role? What were the reporting lines? As for personnel changes, it was difficult to keep count. Just how many players had their hour upon the stage?

### ***Place, Time, and Procedures.***

Where the negotiations take place and the physical setting in which they take place is important. The choice of location sends messages about the status of the negotiations.

Over the years, I have been involved in hundreds of European Works Council negotiations. Most of these negotiations took place in city centre meeting rooms, or else in non-descript airport hotels. Utilitarian and business-like. Coffee breaks in gloomy corridors. Meals in functional restaurants. And in the airport hotels, you are more or less trapped, no cafes or bars nearby to go for an off-the-record, informal chat, that can so often be important in finding ways forward.

Contrast these glum and functional meeting places with my favourite hotel, *The Estela*, in Sitges Barcelona. On the edge of the Mediterranean, with a terrace overlooking the sea, and within a couple of minutes' walk of the bars and restaurant of Port d'Aiguadolç. Bring people to The Estela and the mood changes. Mind you, both teams may decide that they need another meeting in the Estela to close the deal, but, for a good deal, a price well worth paying.

Locations send a message and help define the atmosphere in which the talks will take place. The “dynamics of location” is not to be underestimated.

Throughout the Brexit negotiations the EU insisted that all formal discussions be held in Brussels, while some on the UK side wanted every other meeting to be held in London. By insisting that meetings would take place in Brussels the EU made it clear that it was the UK that was doing the asking, the party that was demanding change. In the language of Brussels, the UK was the *demandeur*.

Think of the image. UK ministers constantly going to Brussels to discuss the UK leaving the EU. Not EU negotiators Eurostar-ing to London, though that did subsequently happen when the UK was out, during transition.

While place is important, time is of even more importance. The skilful use of time creates ticking clocks and deadlines, and missing deadlines can have consequences. If you are a *demandeur* who insists that a deal must be done by a certain date, then you put yourself in the position of having to accept whatever terms are on offer if you are to meet your own self-impose deadline. You have put a gun to your own head.

Setting a deadline when you are a *demandeur* and if you know exactly what it is you want is one thing. Maybe a game you can win. But doing so when all that is driving you is blind emotion, and you are unable to state clearly what it is you want is a sign of madness. We will see in the following chapters how Brexiteer miscalculations pushed the UK into serving notice to leave without a worked-out negotiating plan. It was to pay the price for so doing.

Procedures and process are never to be underestimated and good negotiators pay meticulous attention to how the negotiations are to be structured. How is the agenda to be set? In what order will items be discussed? Can agreement be reached on individual items or is “nothing is agreed until everything is agreed” to be the defining feature?

Who holds the pen? Who puts the first draft of the agreement on the table? In my view, the advantage lies with those who write the first draft because it is that

draft which structures the expectations of the other party, indicates to them the *ZOPA* that is available. The first draft anchors your position. Just like a boat is free to move around but only in so far as the anchor allows, your draft, your anchor, should allow for limited movement. Always control the pen!

Finally, when you do reach an agreement, agree what it is you have agreed. Too often, negotiators who want to get the deal “over the line” end up misunderstanding one another in the hot-house atmosphere of the final stretch. The next morning, in the cold light of day, they look at what they have agreed and say: “That can’t be right. That’s not what I understood. Something’s wrong here.”

Best to pause and write things down, even if only provisionally. “OK, let me summarise what we have agreed. Let me walk through the key points. Are we both agreed that this is what we have agreed? Are there questions? Does anyone have any issues? No, then we are agreed that this is what we have agreed. Let me run through it again.”

### ***To Summarise:***

- Have tightly defined objectives, be clear about what it is you want to achieve
- Do your preparation, know your alternatives, be conscious of your leverage. Have realistic expectations
- Build a competent team who know their subjects to the last detail
- Pay close attention to place, time, and procedure
- Build a consensus among all your stakeholders and constantly keep them informed and updated. There should be no surprises.
- Separate the people from the problem, focus on the issues, do not indulge in personal attacks.
- Always agree what has been agreed and keep proper records
- Be aware of the future as well as the present.

Denis MacShane, the former Labour minister, coined the word *Brexiternity* to describe the never-ending negotiations that will, from here on, be necessary between the UK and the EU. There will never come a day when the UK does not have to deal with the EU.

Brexiternity has only just begun. It will never end. Sisyphus had it easy in comparison.

## Chapter 3

### **“WITH” BUT NOT “IN” EUROPE**

The British never understood the drive towards integration that animated the continental Europeans. They never “got” the idea of “ever closer union.” Why, they asked, could “Europe” not just be a trading arrangement between independent, nation states?

Could we not have all the “trade stuff” without the “political stuff”? Should not everything be intergovernmental, with each country having a veto?

The UK tried everything it could to push things in this direction in the 1950s. To no avail. Even when it had the chance to get in on the ground-floor and shape events it refused to engage. More often than not, it found itself alone when it came to European economic integration. It was, in Stephen Wall’s words, a “Reluctant European.” To tell the truth, it never wanted to be European at all.

This thinking was evident during the Brexit talks. Could the EU not do the British a “special deal,” unlike any other deal the EU had done with other countries? Could the UK not have the bits of the internal market it liked, and reject the rest? Surely, that would be in everyone’s interest?

The Brexit negotiations is the story of the slow realisation that Brexit did really mean Brexit and that there would be no special deal for the UK.

## *After the war*

It begins with the Conservative (Tory) Party. It dominated government in the post-war era, holding office from 1951 to 1964. Then from 1970 to 1974. 1979 to 1997 and from 2010 onwards.

To the surprise of many, the Conservatives lost the 1945 general election to Labour. Churchill became leader of the Opposition. Having been a key leader during WWII, he believed, despite being out of government, that he had a responsibility for the post-war reconstruction of Europe.

In speeches in both Europe and America, he appeared to call for the creation of a United States of Europe. Many assumed that Churchill wanted the UK to be included in such a United Europe.

Nowadays, because of the internet, we can read the speeches of politicians within minutes of their delivery. We can examine the detail, parse the meaning, guess at the motivation.

But in the 1940s, the speeches of politicians were read by other politicians and by the public through newspaper headlines and what the journalists who wrote the articles believed they heard. As such, it was all too easy to believe that Churchill was calling for a United States of Europe, including Britain.

With the benefit of hindsight and the full text of the speeches, we know that this is far from being the case.

Churchill saw Britain as being “with” a United Europe but not “part” of such a Europe. He believed that Britain stood at the centre of three overlapping circles. First, and the most important, Britain was the still the beating heart of a global empire, even if it had lost the jewel from that crown with Indian independence. Second, Britain was also at the centre of a mystical union of the English-speaking peoples, including the United States. Finally, the UK was part of the European circle.



Given his view of the world, Churchill did not believe that it was the UK's destiny to be part of a United States of Europe. Were that so, it would have to abandon the other two circles of power and influence. In the early 1950s, that was never going to be the case such was the hold of the empire on the English mind. To this day, attachment to the empire and the "Anglosphere" continues to play a role in some strands of British thinking about its place in the world. "Global Britain," a phrase coined by Boris Johnson, has echoes of this.

That Britain should stand with, but apart from, Europe was Churchill's true intention is evidenced by the fact that when he returned to power in 1951, he made no moves to join the ECSC.

Churchill first brought European issues to the cabinet for discussion in a memo of November 19, 1951. Its language and direction of travel were very different from the language about Europe he had used in opposition.

Accepting that he had been responsible for bringing the European Movement into existence with his Zurich speech in 1946, he was now much more cautious. He noted that "As year by year the prospect advanced, the Federal Movement in many European countries ... became prominent." This, he claimed, was never part of his original conception, and he "never thought that Britain or the British Commonwealth should, either individually or collectively, become an integral part of a European Federation."

While he "welcomed the Schuman Coal and Steel Plan as a step in the reconciliation of France and Germany" he said that he had never intended "Britain joining in this plan on the same terms as Continental partners."

In general, when it came to Europe "We help, we dedicate, we play a part, but we are not merged and do not forfeit our insular or Commonwealth-wide character." The first priority of the British government was the "unity and the consolidation of the British Commonwealths [sic] and what is left of the former British Empire," followed by the "fraternal association" of the English-speaking world."

Only once these were assured could the government turn to a “united Europe,” to which we are a separate, closely-and-specially-related ally and friend.”

Churchill was writing in 1951. At that time, the Coal and Steel Community was still being constructed. The EEC was some five years into the future. UK thinking was that European economic cooperation should be organised through intergovernmental channels. Anything that looked like transnational governance was to be ruled out.

The British saw the Organization for European Economic Cooperation (OEEC<sup>6</sup>) as the appropriate vehicle, the forum through which European countries should work together. It was created in 1948 to run the Marshall Plan to reconstruct Europe. Its goal was to help European governments recognize their economic interdependence. Why create another organisation, the British asked?

The Europeans thought differently and pushed ahead without the British. “The Six,” as France, Germany, Italy, Luxembourg, Belgium, and the Netherlands came to be known, concluded that intergovernmental methods had their limits and that a degree of sovereignty surrender, better still, of sovereignty pooling, was necessary in the construction of “Europe.”

But the British continued to be wary of transnational governance and came to believe that it was inherently unstable and bound to fail. And certainly not in the interests of the UK and its Commonwealth.

In 1955, in Messina in Italy, the Benelux members of the ECSC presented a paper which argued that:

*... it is necessary to work for the establishment of a united Europe by the development of common institutions, the gradual fusion of national economies, the creation of a common market and the gradual harmonisation of ... social policies.*

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<sup>6</sup> Nowadays, the OECD

It was agreed by “The Six” to open negotiations for the creation of a common market and the British government was invited to join the subsequent discussions which were to be chaired by the Belgium minister, Paul Henri Spaak.

By this time, Churchill had retired and had been replaced as Prime Minister by Anthony Eden. Instead of sending a minister to the Spaak Committee, Eden sent Russell Bretherton, who was then a senior civil servant, as well as being an economist and an Oxford don.

Bretherton soon realised that the Spaak Committee was not just about trade but also had a highly political dimension. By November 1955 it had become clear to him that the UK could not be a part of what was being discussed and he quit the talks.

It was subsequently alleged by a member of the French delegation, J.F. Deniau, and frequently repeated over the years, that Bretherton, prior to leaving the meeting for the last time, declared:

*Gentleman, you are trying to negotiate something you will never be able to negotiate. But, if negotiated, it will not be ratified. And if ratified, it will not work. Au revoir et bonne chance.*

Whether or not, Bretherton ever made these remarks will never be known. His views of the work of the Spaak committee, as set out in a series of reports which are now to be found in the UK National Archives at Kew, are much more insightful. The key point, he wrote in August 1955, was:

*We have, in fact, the power to guide the conclusions of this conference in almost any direction we like, but beyond a certain point we cannot exercise that power without ourselves becoming, in some measure, responsible for the results.*

Furthermore, as he subsequently said to the broadcaster, Michael Charlton:

*If we had been able to say that we agreed in principle, we could have got whatever kind of Common Market we wanted. I have no doubt of that at all.*

Bretherton saw clearly that the European train was leaving the station. If the UK had been on board it could have helped determine the direction of travel. But it was not what the government wanted, and his mandate did not allow him to commit to anything.

His alleged words have echoed down the years because, whether he said them or not, they accurately capture the essence of the British approach, and not just of the Eden government in 1955. Subsequent UK governments more or less said the same thing about every major European project over the years, from the Schengen elimination of internal borders to the creation of the Euro. Each time the UK opted out.

Bretherton's alleged words sum up a key theme in Brexit thinking: Whatever the Europeans are discussing cannot work in principle, and if it does work will not work for long and will soon implode. And if we can stop them, we should. They will thank us for it later when they come to their senses.

Following the abortive Suez invasion in 1956, Anthony Eden was forced to resign as Prime Minister. He was replaced by Harold Macmillan. Over the next few years, Macmillan slowly concluded that Britain had no option but to join the EEC, whose economies were outstripping the UK in terms of growth. But how to do so and still protect its Commonwealth economic ties? Cutting those ties would be heart wrenching.

Eventually, the UK took the plunge and applied for membership in August 1961. It believed that it could negotiate terms that would protect its Commonwealth connections. But De Gaulle intervened and vetoed the application. He was not convinced that the UK could ever be a "good European." It was too attached to the Commonwealth and to America. It would be an "Anglo-Saxon" trojan horse, trying to change the EEC into something different. Did De Gaulle have a point?

In 1964, the Conservatives lost power to Labour. It was not until 1970, when Edward Heath replaced Wilson as Prime Minister, that the Conservatives, would again get the chance to seek EEC membership. This time, with De Gaulle gone, membership terms were agreed. The UK became an EU member on January 1, 1973.

## Chapter 4

### THE DURHAM MINERS DECIDE FOR LABOUR

In 1950, the French foreign minister, Robert Schuman, proposed the establishment of a European Coal and Steel Community (ECSC), an idea developed by his advisor, Jean Monnet. The plan was to bring together the coal and steel industries of Europe and govern them by a transnational authority outside direct national control. The pooling of coal and steel, the sinews of military might, would, Monnet believed, make war between European nations impossible in the future.

West Germany, Italy, Belgium, The Netherlands, and Luxembourg, took up Schuman's invitation and began negotiations on the ECSC treaty. The UK was asked to join.

On the day of the Schuman announcement, Herbert Morrison, the deputy prime minister in the Attlee Labour government, filling in for the foreign secretary Ernest Bevin who was terminally ill, was tracked down by his civil servants while having dinner at The Ivy restaurant in London. Asked if the UK should accept Schuman's invitation, Morrison responded with the now famous line: *"The Durham miners won't wear it."*

What Morrison meant was that the powerful trade unions, an integral part of the Labour movement and which had just seen the Labour government nationalise the mining industry, would be furiously opposed to handing control of the

industry to an unelected European body. Labour's hostility to European integration was born.

Had Bevin not been ill the response would have been no different. Bevin believed in European cooperation between governments but was opposed to any form of transnational governance. Further, like most of his colleagues across the political spectrum, Bevin believed that the maintenance of empire was crucial to Britain's place in the world.

In 1938 Bevin, then general secretary of the Transport and General Workers' Union (T&G) had written in the union's house journal:

*The great colonial powers of Europe should pool their colonial territories and link them up with a European Commonwealth, instead of being limited to British, French, Dutch or Belgian concessions as is now the case. Such a European Commonwealth, established on an economic foundation, would give us greater security than we get by trying to maintain the old balance of Power”.*

Or take the comments of Denis Healy, in 1950 the International Secretary of the Labour Party and, later, in the 60s and 70s, to be one of its dominant leaders. In a pamphlet, *European Unity*, he wrote:

*No Socialist Party with the purpose of forming a government could accept a system by which important fields of national policy were surrendered to a supranational European representative authority, since such an authority would have a permanent anti-Socialist majority and would arouse the suspicions of European workers.*

In 1962, Hugh Gaitskell, then leader of the Labour Party, gave a [speech](#) to the party's annual conference condemning the application by the Macmillan government to join the then “Common Market”. It became memorable for the following passage:

*We must be clear about this: it does mean, if this is the idea, the end of Britain as an independent European state. I make no apology for repeating it. It means the end of a thousand years of history. You may say ‘Let it end’ but, my goodness, it is a decision that needs a little care and thought. And it does mean the end of the Commonwealth. How can one really seriously suppose that if the mother country, the centre of the Commonwealth, is a province of Europe (which is what federation means) it could continue to exist as the mother country of a series of independent nations? It is sheer nonsense.*

A great part of the conference hall stood to applaud. Gaitskell, viscerally opposed to the Labour left which was ferociously anti-Europe (except for Russia), turned to his wife and said: “*That seemed to go down well.*” To which she replied: “*Dear, all the wrong people are applauding.*” The Labour right, to which Gaitskell belonged, was sitting on its hands.

Thankfully for Gaitskell, and Labour, General De Gaulle vetoed the UK application to join.

When the Labour Party’s Harold Wilson became Prime Minister in 1964, just like Macmillan previously, he was driven by economic necessity to apply to join the Common Market despite his previous hostility to doing so. Wilson only made the application after torturous discussions within the Cabinet between pro- and anti-factions. De Gaulle again said no, probably averting a major split in Labour.

De Gaulle resigned in 1969 after losing a referendum he had called in the wake of the 1968 Paris “student revolution”. He was succeeded by the more pragmatic George Pompidou. De Gaulle’s resignation removed the most significant obstacle to UK membership of the EEC.

When the Conservative government of Ted Heath did succeed in securing membership of the Common Market in 1973, Labour rejected the terms on offer and opposed them in Parliament. As also did a group of Eurosceptics in the Conservatives. The decision to join was only carried in the Commons when a sizable number of Labour MPs defied the party and voted in favour.



The UK, along with Ireland and Denmark, joined the EU on January 1, 1973. Ireland, on its own, would probably never have been able to join the EEC, so weak was its economy. It was accepted into membership because of its dependence on the UK. Ireland used its membership to cut loose from that dependency and to build its economy. Such was the success of this approach that Ireland refused to follow the UK out in 2016. “Irexit” was never on the agenda.

Unwisely, after a skirmish with the NUM, the miners’ union, Heath called a general election in 1974 and put the question to the British voters: “*Who Governs Britain?*”. During the general election campaign, Labour said that it would renegotiate the EEC entry terms if returned to office.

The electorate answered Heath’s question by voting him out. Whoever was going to govern Britain it said, it wasn’t going to be Heath. He was never to return to government office. Just a few years later he was ousted as Tory leader by Margaret Thatcher. He sulked on the backbenches for many years thereafter.

Wilson was back as Prime Minister. He told his EEC colleagues he needed a new deal. Negotiations were opened.

The renegotiation amounted to little in practice and Wilson decided that the best way to avoid a party split was by putting the revised terms to a referendum and allowing Cabinet members to take sides. The 1975 referendum was the first time any political decision in the UK was decided in this way. The “will of the people” as expressed through the referendum was to stay in the Common Market.

In 1979, Labour lost office to Margaret Thatcher. Labour, led by the left-winger, Michael Foot, soon reverted to a full-blooded anti-European position and had exploratory discussions with Brussels about how the UK might leave the European Community if Labour returned to power. However, Thatcher won the next election, and the one after that, decisively. Labour was out of office until 1997.

“Thatcherism,” with its policy of privatisation, deregulation, and the curbing of trade union power, shifted the view of the trade unions and Labour towards the

European Community. The turning point was [the speech](#) by the then Commission President, Jacques Delors, to the TUC annual meeting in 1988 at which he spoke about the European “social dimension”. Suddenly the unions, and Labour, saw the possibility of reversing, or at least curbing, Thatcherism through Europe. They had no choice. It was the only game in town.

But Delors’s speech infuriated Thatcher who responded with her now famous Bruges [speech](#), often regarded as the founding document of what ultimately became Brexit. A close reading of Thatcher’s speech suggests that she was not anti-European in the way later Brexiteers were to be. She was just set against the Europe of Delors.

Then again, history is always shrouded in myth and legend and so it is with Bruges. Bruges was the beginning of the Tories moving from being a pro-European party of business to becoming the British nationalist party that it is today. From the party of Harold Macmillan to the party of Boris Johnson.

Denis MacShane, a former Minister for Europe in Tony Blair’s government [wrote](#) in the London *Independent* in January, 2022 that among those guilty of causing Brexit were Tony Blair and his Chancellor, Gordon Brown, who was to briefly succeed Blair as Prime Minister. According to MacShane:

*Blair made endless pro-EU speeches on the continent but never in Britain. Brown’s associates briefed endlessly against the EU. The Treasury blocked nearly all EU directives that helped protect British workers.*

The most significant EU decision that the Blair government made was to open the UK labour market unconditionally to workers from the new Central and Eastern European Member States of the EU in 2004. They came in their hundreds of thousands, often causing resentment in working class communities. That resentment was to be a major factor in the Brexit vote.

Blair’s decision to hold the 1999 European Parliament elections on the basis of proportional representation was also significant. Proportional representation

opens the door to smaller parties. In 1999, UKIP, the United Kingdom Independence Party, which was committed to taking the UK out of the European Union, won its first seats in the Parliament. Among its newly elected MEPs was Nigel Farage who was to become one of the key Brexiteers in the years ahead.

## Chapter 5

### **BEST TO GET OUT BEFORE IT COLLAPSES**

Brexit is unique in post-WWII history. A major country, the UK, decided to leave one of the world's biggest trading blocs, the European Union (EU), to "take back control."

"Taking back control" involves the re-building of customs and regulatory checks and borders between the UK and the EU where none existed in recent years. In Brussels terminology, the UK decided to become a "third country."

As we noted earlier, in everyday life negotiations are mostly positive-sum games in which both parties are better off as a result of the agreement between them.

Rarely do you come across a negotiation that is a negative sum game, a negotiation in which both parties will end up worse off than they are now, especially when the negotiation is initiated by the weaker party, the party that will end up the worst of the two.

Why would any country embark on such an irrational course of action, a course of action that would make it poorer and considerably less well off than it could otherwise have been?

## ***Deep Roots***

As we have seen, both the Conservatives and Labour Parties, were always uneasy about European integration, an unease which stretches back to the creation of the original “Common Market” and before.

Hugo Young, in his brilliant history of the UK and the EU, *This Blessed Plot*, wrote that “Messina,” the negotiation between the original six that led to the establishment of the European Economic Community (EEC), was designated by the UK *“almost from the start and certainly by the end, for destruction with extreme prejudice.”*

Like General de Gaulle, who had a “certain image of France,” many members of the British political elite have a certain image of the UK, an image which sees it as a global power, better off eschewing European entanglements. The British always saw themselves as “exceptional,” an island race given to the open seas.

The “certain image” also drew heavily on Britain’s imagined role in WWII shaped, to a great extent, by movies and TV shows which described a plucky Britain, alone against the world but winning through, nonetheless. Many of those who summon up the “Dunkerque spirit” or talk about how the UK survived the hardships of the war were born after the war and only experience it through movies and daring-do comics, widely read in the 1950s.

When one such devotee of the cult of WWII wrote about how the UK could go back to self-sufficiency and growing its own vegetables in the event of a “trade war” with the EU, he was quickly answered with the retort: You can’t grow medicines on an allotment. Well, maybe you can if you are an aromatherapist. But there are limitations.

Others are better placed to explore how all of this feeds the Brexit dream. It is sufficient that we know it was, and is, hovering in the background. It is never wise to underestimate the power of nostalgia, emotions and imagined history.

I realise that our potted stories of the evolution of Conservative and Labour thinking about Europe stopped in the early 1990s, except for the reference to two subsequent Labour decisions around PR and the European Parliament elections in 1999, and the free movement of workers from Central and Eastern Europe in the 2004.

Between the early 1990s and 2006, when David Cameron became Conservative leader, Labour was in government for a lot of the time with a “light” European view. It was neither pro- nor anti-Europe. It was what we might call “EU tolerant.”

It was only with the election of Jeremy Corbyn as Labour leader in 2015 that Labour’s anti-Europeanism again became a force in the party. “Lexit,” a left-wing rationale for leaving the European Union was very much in favour with many in Corby’s close circle. But Lexit is not part of our story as Labour was not in government.

However, in the Tory Party anti-European sentiment was growing in strength. Distaste for Europe was hardening into a desire to leave. There was a vibrant “underground” movement of policy groups and think tanks exploring options, examining how the UK could be “with” Europe, but not “in” Europe.

It is fair to say that a lot of this thinking focused on the modalities of the UK staying in the Customs Union and the Single Market, while quitting the political, home affairs and justice dimensions of the EU.

It might be summed up as “Yes, to Market Europe;” “No to Political Europe.”

Had this been the UK position after the Brexit vote in June 2016, it might possibly have been a negotiable proposition. I have my doubts.

But, as in all revolutions, the extremists eventually drive the moderates from the field. This is what happened with Brexit.

## ***It's Doomed***

In the years immediately before the 2016 referendum, many Brexiteers were convinced that the EU was about to collapse. Do a search and you will find innumerable articles in the UK press which talk about the “corrupt, protectionist, EU racket” on the verge of disintegrating. There are many who still hold such views today, despite all that has happened since 2016.

Michael Gove, a leading Conservative Brexiteer articulated the “Europe will fall” vision in a speech in 2016 (*see later*). Brexit would trigger a domino effect. Other countries would follow the UK out. None did. But that did not stop David Frost restating the view in a 2020 speech in Brussels.

Now, if you are part of an organisation that you believe is about to collapse, better to get out before it does. Once out, you will be well placed to pick up the pieces afterwards.

But what happens if there is no collapse? What happens if, after you hand in your notice to leave, the organisation grows stronger? Instead of picking up the pieces you find yourself having to negotiate with a party that is six to seven times bigger than you? From a position of weakness, not strength. With the bitterness of your leaving hanging in the air.

From the moment the UK voted to leave, the EU very quickly got itself organised to manage Brexit, with targets, tactics, and teams in place within days.

There is an old Irish trade union adage: what we have, we hold. What the EU wanted to hold was the integrity of its internal legal and economic order. Even before Mrs May said that “Brexit meant Brexit” the EU had decided the same thing.

Brexit meant that the UK would be out, a third country. There would be no “cherry picking,” no “cake and eat it.” The UK could not have the benefits of EU membership without the obligations.

As we track the unfolding of the Brexit negotiations it is important to keep in mind that it was the UK that decided to leave the European Union. It wasn't asked to leave, nor was it expelled. If you resign from a job, then you generally have little bargaining power over the terms of your leaving.

After all, what leverage do you have? Your employer is under no obligation to offer you any sort of deal, beyond what may be required by your employment contract.

Brexiters often behaved as if the UK was being expelled from the EU. Many of their demands were pitched accordingly. In their comments there were often undertones of "The EU owes us."

A second point worth keeping in mind is that throughout 2015 and 2016, in the build-up to the Brexit referendum in June 2016, as we have already noted, many Leavers genuinely believed that the EU was about to implode.

As far back as 1994, Paul Johnson, once the editor of the left-wing *New Statesman*, but by then a convert to Thatcherism, wrote:

*There is a feeling throughout Europe that democracy is not working and that the gap between what people want and what they are allowed by their rulers is too wide. That means trouble, and exactly how and where it starts is less important than the speed and intensity with which it will spread. A European conflagration will bring the Channel (as opposed to The Chunnel) back into fashion ... as the continent slithers into anarchy – or worse – and we watch the exciting drama from our grandstand seats on the White Cliffs (Wake Up Britain, 1994).*

The Greek debt crisis had sent shivers down many a spine. Waves of migration from Africa and the Middle East saw stark divisions between EU Member States over how to deal with the influx.

Authoritarian regimes were emerging in Hungary and Poland, openly flouting EU requirements on constitutional order. Many thought that Marine Le Pen



would be the next French President. while Wilders looked like he could take control of the Dutch government.

A vote for Brexit would be the catalyst that would bring the EU crashing down. Other EU countries would quickly follow the UK out as they saw the benefits it would soon reap after it had left.

The mood of the Brexiteers was captured in a 2016 interview with Dr Liam Fox, an ardent Leaver and by then a UK Cabinet member with responsibility for international trade. According to a report in the *Express*<sup>7</sup> ([here](#))

*The International Trade Secretary...gave a scathing prediction for the future of the EU in an interview with The Spectator magazine, saying its “architecture is beginning to peel away... [the EU] is going to sacrifice at least one generation of young Europeans on the altar of the single currency, and you can only rip out the social fabric from so much of Europe before it starts imploding.*

*Dr Fox said Brexit has severely weakened the Union’s economic stability and Germany should be quaking in its boots at the prospect of being the concrete that attempts to glue the EU’s crumbling foundations together.*

David Davis, another leading Leaver and in late 2016 Secretary of State for Exiting the European Union, [told](#) an audience of bankers in London:

*... that EU member states such as France had ‘no faith’ in their economic models and ability to compete with an ‘Anglo-Saxon approach’*

It was at the same meeting that Davis said he was “not really interested” in a “transition arrangement” to cushion the British economy from the effects of

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<sup>7</sup> The *Express*, since 2016, has predicted at least once a week that the EU is on the point of collapse. The *Telegraph* is not far behind.

Brexit but that he would consider one only in order to “be kind” to the EU. Britain’s “sudden” departure could compromise the EU’s financial stability.

He said he would be “more in favour” if the EU asked Britain for a transition. In Davis, delusions about Brexit ran deep. Davis remarks prompted one senior EU official involved in Brexit preparations to express “astonishment” at the idea that it would be the EU playing the role of demandeur on transition, calling it “deluded.”

“There is a denial of reality in London,” the official said. Another EU representative who met Mr Davis said: “I’m fed up with British politicians . . . they have no clue.”

## Chapter 6

### GOVE AND THE END OF THE EU

But by far the most important intervention along these lines was that of Michael Gove in the speech we mentioned earlier.

In 2016, some months before the Brexit referendum, Michael Gove then, as now, a UK Cabinet minister made a [speech](#) setting out the case for Brexit. The speech was called: *The facts of life say leave*. But most people better remember it for one of its key lines:

*“The day after we vote to leave we hold all the cards and we can choose the path we want.”*

According to Gove, after a vote to leave the EU the UK government would take its time before triggering the Article 50 exit process. It would sound out the EU and individual European governments on the scope of a future deal. It would do nothing in haste. And, of course, he confidently predicted, just like David Davis had done, that German auto makers, Italian prosecco producers and French food growers would all immediately pressurise their governments to cut the UK a sweet deal.

But what really catches the attention about Gove’s speech are the last couple of pages. Because in those pages Gove calls for the disintegration of the EU. If the UK votes to leave, he claimed, other countries will soon follow and the EU as we

know it will give way to a new, looser arrangement of free-trading, sovereign nations. His words are worth quoting at length because today Gove is a senior government minister and his *souverainist* agenda has been extremely influential.

Gove's own words tell the story best.

*What will enrage, and disorientate, EU elites is the UK's success outside the Union. Regaining control over our laws, taxes and borders and forging new trade deals while also shedding unnecessary regulation will enhance our competitive advantage over other EU nations. Our superior growth rate, and better growth prospects, will only strengthen. Our attractiveness to inward investors and our influence on the world stage will only grow.*

Not only will the UK leave the EU, it will, in Gove's view, become a competitor to the EU, economically and politically outstripping the EU. Gove went on to argue that while the UK's "success" would provoke both angst and even resentment among EU elites, it would send a very different message to the EU's peoples.

*They will see that a different Europe is possible. It is possible to regain democratic control of your own country and currency, to trade and cooperate with other EU nations without surrendering fundamental sovereignty to a remote and unelected bureaucracy. And, by following that path, your people are richer, your influence for good greater, your future brighter.*

*So, yes there will be "contagion" if Britain leaves the EU. But what will be catching is democracy. There will be a new demand for more effective institutions to enable the more flexible kind of international cooperation we will need as technological and economic forces transform the world.*

In case anyone should be in any doubt about what he wanted, Gove spelt it out:

*But for Europe, Britain voting to leave will be the beginning of something potentially even more exciting – the democratic liberation of a whole Continent. If we vote to leave we will have – in the words of a former British Prime Minister – saved our country by our exertions and Europe by our example.*

Now, it will have come as a surprise to most Europeans to learn that they were in need of liberation from the European Union.

European countries have known real subjugation, either at the hands of the Nazis or the Soviets, or both. Which is why they built the European Union, to guard against such obscenities ever happening again. Ask Ukraine, or Georgia, or Moldova, which have just applied for accelerated membership because of Russia's brutal and barbaric invasion of Ukraine.

They were not about to indulge the “national liberation struggle” fantasies of an Oxbridge educated, London newspaper columnist turned politician. There was no sudden rush by young radicals across Europe to pin posters of Gove to their walls, the way the *soixantards* did with Guevara.

Gove's belief that Brexit would trigger a domino effect leading to the collapse of the European Union, or that it would be mortally wounded at the very least, goes a long way to explaining why the Brexiteers never had a plan for what was to happen after the UK left the EU. Why have a plan to deal with an organisation that in your heart of hearts you knew would shortly cease to exist? All the UK had to do was to leave, watch the EU crumble and then step in to build a new Europe in its own image.

[According](#) to Vote Leave

*We will build a new European institutional architecture that enables all countries, whether in or out of the EU or euro, to trade freely and cooperate in a friendly way.*

Which leaves you between a rock and a hard place when the fundamental premise on which your strategy is based not only turn out to be completely wrong but actually has the opposite effect of strengthening your perceived adversary.

But rather than rethink how to proceed and to develop a plan that would minimise the damage Brexit would do to the UK economy, the Brexiteers decided to double-down. If at first you don't succeed try, try again.

As we now know, the EU did not implode. Far from it. While it is still grappling with major problems, Brexit has actually acted as a unifying force. Brexit became an “external enemy” which helped to mask internal differences. If anything, it is the UK that may implode, with renewed pressure for Scottish independence, and Northern Ireland seemingly on a path that could lead to a United Ireland.

In planning for the referendum campaign Vote Leave, the main leave campaign group, took a decision that it would not define what Brexit meant. It had concluded that any attempt to do so could split the Leave coalition. Brexit always meant different things to different people. Anyone could vote Leave believing it would bring their own version of Brexit.

As Peter Foster noted in a [\*Financial Times\* article](#):

*At the heart of the greater Brexit narrative has always lurked a deep tension between the parochial and the global.*

*The vision of buccaneering “global Britain” competed in voters’ minds with the promise of “taking back control” — not just narrow political control from Brussels, but also from a more diffuse range of forces of globalisation from financial elites, Big Tech and the fallout from the gig economy and the fourth industrial revolution.*

There were also some broad themes to the Leave campaign that created unrealistic expectations about what Brexit could deliver. Brexit would be easy, it would be quick, the UK would hold all the cards, and a deal could be done which

would see the UK end up with all the benefits of EU membership with none of the costs.

Matthew Elliott, one of the leaders of the Vote Leave campaign, said that the plan was to win the referendum then to sit down and plan what it meant and how to deliver it. To put that another way: Let's sell the house first, and then we'll decide where we are going to live afterwards.

The commentator Roland Smith, himself an ex-Brexitteer, has categorised Brexit ideology, if that is not too strong a word, as “simplism,” a belief that leaving the EU would be simple. Simplism is a denial of the complexity of reality. “Take back control” catches the essence of simplism. All the UK had to do was to vote to leave the EU and control would fall to the UK from the “evil empire” like a ripe apple from a tree<sup>8</sup>.

When the complexity of reality derails the project, a “simplist” can only conclude that the derailment is the work of “saboteurs” and “enemies of the people.” Everything would have been easy, would have been simple, if it wasn't for the hidden dirty work of the saboteurs. A simplist is never at fault. There is always someone else to blame.

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<sup>8</sup> As I write this, the UK Home Secretary is pleading with France to step up efforts to stop migrants cross the Channel to see refuge in the UK. *France must do more to stop Channel crossings, says Priti Patel* [here](#) It would appear that the UK has not exactly taken back control.

## Chapter 7

### ONLY ONE WAY OUT

Brexiters thought they could negotiate the UK's exit from the EU in a way that best suited the UK's interests. They could bypass Article 50 of the Lisbon Treaty and leave through an ad-hoc process of inter-governmental negotiations. Britain would negotiate with Berlin, not Brussels

Article 50 of the Lisbon Treaty reads:

- *A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the [Treaty on the Functioning of the European Union](#). It shall be concluded on behalf of the Union by the Council of the European Union, acting by a qualified majority, after obtaining the consent of the European Parliament.*
- *The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*



As the EU interpreted Article 50 it provided for:

- *A two-year notice period.*
- *Once the notice was served the departing country would have two years in which to conclude a legally-binding “withdrawal agreement,” setting out the terms of its exit.*
- *The EU went on to further break down the negotiations of the withdrawal agreement into two stages, with sufficient progress needing to be made on the first stage before talks could move into the second stage.*
- *Stage one would cover the exit terms.*
- *Stage two was to sketch out for the departing country the “framework for its future relationship” with the EU.*
- *However, the granular detail of that future relationship could only be negotiated after the departing country had actually left. The departing country could be required to leave without any real certainty as to what future relationship it would have with the EU. This is what gave rise to the realisation that there needed to be a transition phase, a way that a departing country could be both in and out at the same time as future terms were negotiated.*

The EU insisted that the process had to be conducted sequentially. The withdrawal agreement had to be in place before talks could move onto the future framework. In effect, a four-phase process was put in place:

1. *Negotiate withdrawal terms*
2. *When withdrawal terms were agreed, negotiate the framework for the future relationship*
3. *When the departing country had actually left, negotiate the details of the future relationship with it as a third country*
4. *Put in place a transition period when the departing country would legally be a third country which would allow it to finalise details of its future relationship with the EU*

The time pressure this procedure placed on the departing country played to the EU. Clearly, a departing country would be well advised to know exactly what it wanted before pulling the trigger on the exit process. It should have a clear set of objectives and a roadmap to hand as to how it wanted to move forward. The UK had neither.

Vote Leave though it had the leverage to bypass this process. During the referendum campaign it said that

*...taking back control is a careful change, not a sudden step – we will negotiate the terms of a new deal before we start any legal process to leave.*

Aware of this, within days of the June 2016 referendum, the EU made it clear that there could be no negotiations without notification. No informal talks, no exploring of options. The UK would have to trigger the Article 50 process before negotiations of any sort, formal or informal, could begin. Straightaway, this blew a hole in the Vote Leave strategy. There would be no precooking of deals.

This was a logical position for the EU to adopt. Until it left, the UK would be a full member of the EU, entitled to have MEPs in the European Parliament, a European Commissioner, a judge on the Court of Justice of the European Union (CJEU) and a seat on all Council of Ministers decision making bodies.

The UK could easily use its position within the EU's decision-making structures to apply pressure to secure favourable terms. The longer "pre-negotiations" continued before the UK initiated the Article 50 process the more opportunities it would have to disrupt EU business to its own ends.

That this is not idle speculation was borne out in late 2019 when Boris Johnson became UK prime minister and the *Daily Telegraph* began publishing [articles](#) with headlines such as: *Boris Johnson to sabotage EU if forced to delay Brexit*

Vote Leave also underestimated the pressure there would be from victorious Brexiteers on the UK government to "just get on with it" and get Brexit done.

After all, had not Vote Leave told the electorate that it would be easy, and that the UK would hold all the cards. What was the problem, why the delay? In the end, the pressure proved too much, and the UK government formally triggered the Article 50 process on March 29<sup>th</sup>, 2017, meaning that UK was now scheduled to leave the EU on March 29<sup>th</sup>, 2019.

Vote Leave leaders were also under the impression that the exit negotiations would be conducted at a political level, with the British prime minister talking to his/her counterparts across Europe. Divide and conquer would be the order of the day. National political leaders would be under pressure to cut the UK a good deal from businesses which traded heavily with the UK. As David Davis put it in May 2016, a month before the referendum:

*Indeed, the first calling point of the UK's negotiator in the time immediately after Brexit will not be Brussels, it will be Berlin, to strike the deal: absolute access for German cars and industrial goods, in exchange for a sensible deal on everything else.*

*Similar deals would be reached with other key EU nations.*

*France would want to protect the £3bn of food and wine it exports to the UK. We have seen the sort of political pressure French farmers are willing to bring to bear when their livelihoods are threatened, and France will also be holding a general election in 2017.*

*Italy will deal to protect its billion-pound fashion exports. And Poland its multi-billion-pound manufacturing and electronics exports.*

With these remarks, Davis showed that he did not understand that the UK would have to negotiate with EU Member States collectively, not individually. Individual EU Member States do not do trade deals.

The EU draws its strength from negotiating as a bloc. Indeed, this approach insulates national leaders from the type of pressure David was relying on. German car makers were never going to dictate the EU's approach to Brexit.

What is most incredible about Davis's remarks is that, after forty years of membership, a leading proponent for the UK leaving the EU did not understand how the EU worked. Because he thought that Britain would be talking bilaterally to individual EU Member States, Davis insisted, when he became a Cabinet member, on use of the government jet to fly to all 27 Member States to talk to his "opposite number".

Not only did these "opposite numbers" not actually exist, but even if they did, they would have no role in the Brexit negotiations which would be run centrally out of Brussels. Like the queen in *Alice*, Davis often believed impossible things.

Looking back at the referendum campaign in 2016, what strikes me most about the Brexiteer arguments is what might be called their reductionism. The totality of the UK's relationship with the EU, they seemed to believe, could be reduced to trade in manufactured goods and membership could easily be replaced with a quickly negotiated agreement.

The services sector got little or no consideration. After voting to leave, the UK would hold all the cards and would be able to dictate terms. "Great" and "Britain" would soon be reunited.

Voices to the contrary suggesting that unpicking close on fifty years of deep integration would be incredibly difficult and would come at a severe economic price were dismissed as nothing more than "Project Fear."

"Know Nothingism," and wanting to know nothing, in many ways best describes the Leave campaign. There would be no downsides, only sunny uplands and everyone who said different soon became branded as "enemies of the people."

From the beginning, the European Union established the negotiating rules of the game. If the UK wanted to play, it had to play by these rules. Time and again the UK tried to find ways around the rules and to go directly to national leaders, such as Angela Merkel. Time and again these national leaders pointed the UK back to its appointed, Brussels negotiating team.

Within days of the referendum result the Vote Leave strategy of waiting to define Brexit until after it had won the referendum, then pre-negotiating the future deal before the Article 50 process was even triggered, bypassing the “Brussels bureaucracy” and dealing directly with national leaders, was holed beneath the waterline. Brussels was in charge, not London. London was always on the backfoot.

## Chapter 8

### THE MARSEILLES AMBUSH

2011. The countdown to Brexit began with the Marseilles ambush. Or rather, the ambush that was planned at Marseilles.

As we suggested earlier, the British political elite were never comfortable with the concept of “ever closer union.” The British were “exceptional.” They stood apart from the Continental mainland. As Theresa May was to say in her Lancaster House speech in January 2017:

*It's not simply because our history and culture is profoundly internationalist, important though that is. Many in Britain have always felt that the United Kingdom's place in the European Union came at the expense of our global ties, and of a bolder embrace of free trade with the wider world.*

Membership of the EU was cramping Britain's global style.

While writing this, the [Global Britain Commission](#), a body set up by the Brexiteer, Dr Liam Fox, released a report saying that “supercharging the UK's export market ... could boost the economy by £500 billion and create millions more well-paid jobs.”

The report noted that the “exports of goods and services in the UK in 2020 were around £8,597 per capita compared with £15,645 in Germany.” Which begs the

question. If Germany could achieve this level of per capita exports and remain a member of the EU, why could not the UK?

Perhaps it was not the EU that was cramping the UK's style? Maybe the EU was never the real problem?

### ***The Trigger***

This feeling of British exceptionalism, of Britain held back by the EU, might have lingered for years without it ever resulting in the UK leaving the European Union. There had to be a proximate cause, a trigger event that led to June 2016.

That trigger event was the Eurozone financial crisis. In 2011 the Zone was in deep trouble, caught in the backwash from the 2007 banking collapse. Ireland, Greece, Spain, and Portugal were faced with sovereign debt overloads. The Eurozone needed significant institutional changes to allow it to navigate its way through and protect the Euro.

The nature of the required changes need not concern us here. Suffice it to say that the Eurozone 17 needed the agreement of all EU Member States, including non-Eurozone states, to pass the necessary laws.

David Cameron, then UK Prime Minister, also wanted changes. He was concerned to safeguard the position of the City of London, Europe's largest financial centre, but located outside the Eurozone of which the UK was not a member.

Cameron was worried that, in future, acting as a bloc, the Eurozone countries could push through legislation to protect their interests, but at the expense of the non-Eurozone countries in general, and the UK in particular. This could become more and more the case as new countries joined the euro. The non-Eurozone could dwindle to just the UK. He did not want the UK to be isolated, out on its own. Ironic, because that is where it has ended up. The law of unintended consequences.

Cameron moved to take advantage of the Eurozone's need for institutional change to demand the protections he wanted. If the Eurozone countries wanted his support, there was a price to be paid.

He instructed Jon Cunliffe, then the UK's Permanent Representative to the EU, to draw up a Protocol to the Treaties addressing U.K. concerns. Cameron wanted the Protocol to be agreed as part of the December European Council package in 2011.

As Sir Ivan Rodgers, a successor to Cunliffe as UK Permanent Representative to the EU until he resigned in early 2017 because of disagreements with May's Brexit strategy, said in a lecture at Hertford College, Oxford:

*In retrospect, I would say the draft Protocol was a remarkable document. It covered precisely nothing outside the world of the financial sector. There had been discussion of other issues, primarily the age-old Tory bugbear of EU social legislation. But none made the cut. Cameron ultimately concluded he could only seek to address institutional questions connected to the management of the crisis.*

*There was a mixture of 3 areas in which the U.K. sought a return to unanimity from qualified majority voting to give ourselves a veto lock, and 3 other issues which, whilst important, were essentially second-order Finance Minister Council concerns. It was several pages of dense prose on Treasury, Bank of England, financial sector issues.*

Cameron never stood a chance. The cards had already been stacked at a meeting of the European People's Party in Marseilles. Rogers picks up the story:

*But the Cameron attempt to lever open the negotiation got nowhere. Berlin and Paris essentially went round him. A couple of days before the December European Council, Angela Merkel, and Nicolas Sarkozy, at a European People's Party Heads meeting at Marseilles decided to circumvent a potential British blockade of the amendment of the Treaties by doing the deal at 17 via a partly intergovernmental treaty process,*



*which would not require U.K. ratification. The resulting Fiscal Compact is now known as the Fiscal Stability Treaty.*

Why was Cameron, a centre-right political leader, not at the Marseilles meeting?

When he was running for the Conservative leadership in 2006, Cameron had thrown red meat to the anti-Europeans in his party by committing, if he won, to take the Tories out of the European People's Party (EPP), the largest party in the European Parliament. The EPP was seen by the Tory Brexiteers as being too "federal," wanting to create a "country called Europe," and that was a "country" they did not want the UK to become part of.

He did win and followed through on his commitment. But in doing so he cut himself out of the network of centre-right European leaders, a network within which political deals were done in advance of formal European Council meetings. The Social Democrats, of which Labour is a part, worked in the same way.

Asked by the thinktank, the *UK in a Changing Europe*, if Cameron pulling the Conservatives out of the EPP mattered, Denzil Davidson, a Conservative European advisor, said:

*So, that said, did it affect things? Yes, it did. He knew Merkel and Sarkozy much less well than he would have done otherwise, and various other centre-right leaders. Famously, he wasn't there for very important moments, like the EPP pre-Council Summit they had in the autumn of 2011, ahead of the December veto Council. It meant that ties grew weaker between the Conservative Party and sister parties of the centre right.*

*And if the Conservatives had been embedded in the EPP family through all those years, then communication would have been much deeper, understanding would have been much broader, there would have been much more willingness to help. The effect went on even into Brexit. If Theresa May had been an EPP member, and I think this was something*

*she was not entirely unconscious of, she'd have been in many more meetings, where they would have been on sister party terms.*

Cameron turned his December Brussels failure into a domestic political triumph when he told the Commons, to rousing cheers from his own side, that he had used the British veto to block EU Treaty changes. That he had not succeeded in derailing the changes went unnoticed.

Over the following Christmas parliamentary break Cameron decided that enough was enough. He would seek Treaty changes that copper fastened the UK's position. He would nail down the UK's place in the European Union with its opt-outs from monetary union (the euro), Schengen, and from justice and security policies.

The changes he would propose would also give him what he needed to protect the City of London, and the UK would no longer be committed to "ever closer union." The rest could move ahead at whatever speed they wanted. The UK would stay where it was. He would consolidate British "exceptionalism" within the European Union. There might one day be a "country called Europe" but the UK would never be a part of it.

Cameron outlined his thinking in his [Bloomberg speech](#) a year later in January 2013. He would renegotiate U.K. membership terms, and the result of his renegotiation would be put to the people in an in-out referendum.

Again, Denzil Davidson:

*The Bloomberg speech, which I was quite heavily involved in writing, set out, I think, the framework of the problem David Cameron wanted to deal with. And the problem was, basically, from memory, can you be in the EU and not be on a one-way track to a federal state? We wanted the answer to say, yes, you can carve out a place where you could be in the EU but you're not on a one-way track to United States of Europe, or whatever.*

*And, in David Cameron's mind, he was always attracted to the idea of British exceptionality. He was less interested in, or less persuaded of, the feasibility of a broader outer ring within EU membership and more persuaded that it would be easier to do it if it was just the UK. I didn't really agree with him on that, but he was the Prime Minister!*

In 2013, Cameron led a coalition government with the Liberal Democrats, who did not share his European views. It was widely expected that the Coalition would be returned to government in the general election to be held in 2015. The Liberal Democrats would block a referendum.

The general election was duly held on May 7, 2015. To the surprise of many, Cameron won a slight, overall majority of 12 seats. The Liberal Democrats were the big losers. The Labour leader, Ed Miliband, resigned, opening the door to the Corbyn leadership, which was distinctly lukewarm towards the European Union. The Brexit stars were aligning.

Cameron prepared to open negotiations with the EU.

Cameron's move to renegotiate the UK's terms of EU membership was primarily driven by his wish to protect the City of London from potentially unwelcome Eurozone-inspired regulations. But, as they say in horse racing, coming up fast on the outside rails was the issue of migration, pushed hard by populist politicians like Nigel Farage of UKIP.

As Cameron opened his renegotiation, TV screens were filled nightly with pictures of Middle Eastern and African refugees attempting to reach European shores across the Mediterranean and Adriatic seas. Many of those who made it travelled up through Europe to the French north coast, to try and cross The Channel to the UK.

When the EU expanded in 2004 to take in countries in Central and Eastern Europe, the then Blair government decided not to avail of the seven-year transition during which citizens of those countries could be blocked from coming to the UK. They saw the arrival of these new Europeans as key to boosting

economic growth. The then Governor of the Bank of England, Mervyn King, argued that the influx of such cheap labour was a way of holding down wages and containing inflation.

But, as Ivan Rodgers said in his Hertford lecture, the Blair government underestimated the number of new arrivals by a factor of 50. These numbers put pressure on public services such as schools, hospitals, and houses. Working class resentment grew, fuelled by the belief that jobs were being “stolen” and wages undercut. In truth, there was little evidence of either, but in politics, perceptions count.

The UK general public made no distinction between migration from outside Europe, the main concern of all mainland EU Member States, and internal EU free movement, a freedom built into the very fabric of the European Union, a freedom the Europeans were never going to curtail or give up. But to an island state, which is what the UK largely is, all arrivals from elsewhere are migrants.

Cameron pushed for a 14-year “brake” on free movement. He was never going to get it. Why would the EU Member States of Central and Eastern Europe agree to disadvantage their own citizens who had moved to the UK, benefitting from EU free movement? What he did get was the right to limit some social security payments.

It was a gross failure of expectation management, critical in any negotiation. In several speeches, Cameron had led the British public to believe that he was going to dramatically cut the number of EU citizens moving to the UK. That’s what they were expecting from his negotiation. A drawbridge to entry.

Instead, they got a technical fix which was difficult to capture in a campaign soundbite.

But he did secure what he wanted on the City of London. He came home with a [New Settlement for the United Kingdom within the European Union](#). It was to turn out to be a pyrrhic victory.

He called the referendum for June 23, 2016.

In his approach to this negotiation, it seems to me that Cameron made two fundamental mistakes. The first was to believe that the European Union would agree to very significant changes, including undermining the principle of free movement, to appease a minority of the Tory Party who were never going to rest content until the UK had left the EU and severed all ties with it.

“Europe” does not exist to help the transient leader of a political party in one country manage his or her internal party problems. But that is what Cameron sought to do. He is on record as telling Nick Clegg, the then leader of the Liberal Democrats, that his whole European strategy was a matter of “Conservative Party management.”

The second mistake was to believe that if he could “square” Merkel and Hollande, France and Germany, the rest would fall meekly in behind whatever they decided. It did not work out that way.

For example, the Visegrad Four, the Czech Republic, Poland, Hungary, and Slovakia, had their own interests which were not subservient to those of France and Germany. They took a very tough line on the cutting of benefits for their citizens in the UK.

There may have been a time when Germany and France determined EU policy, but those days are gone. The EU is now a complex polity that needs to accommodate multiple interests often expressed through shifting coalitions.

The “do a deal with Berlin” and the rest will follow misconception was also to dog the UK’s subsequent approach to Brexit.

Reading Tim Shipman’s book, *All Out War*, leaves the impression that some of Cameron’s European political advisors were either naïve about the working of the EU or had an ideological blind spot, or possibly a combination of both. In effect, they wanted Cameron to demand that the UK should have what amounted to a de facto opt-out from the EU Freedom of Movement principle and believed

that if the UK pushed hard enough the EU would fold. They thought that the EU would value British membership about one of its founding, constitutional principles. That was never going to happen.

When senior civil servants, who had many years of first-hand experience of negotiation with the EU, unlike the political advisors who had no such experience, pointed out the impossibility of what was being considered they were dismissed as defeatist and unambitious. Wisely, Cameron was guided by the civil servants and did not succumb to the wilder fantasies of his advisors.

Sadly, the same was to subsequently happen with Theresa May's advisors and the civil servants. May sided with her advisors and decided to ask for "impossible things."

## Chapter 9

### ENTER THERESA MAY

Unexpectedly, Theresa May found herself Prime Minister of the UK.

As soon as the results of the Brexit referendum were announced, the Prime Minister, David Cameron, said he was going to resign. His referendum gamble had failed. It was for others to now take Brexit forward.

Logically, his replacement as leader of the Tory Party and Prime Minister should have been a Leaver. Having campaigned for Brexit, they should now take responsibility for delivering it. Boris Johnson seemed to be heading for No 10 Downing Street.

That is, until he was stabbed in the back by his campaign manager, Michael Gove. In a dramatic statement hours before nominations in the leadership contest were due to close, Gove said:

*I respect and admire all the candidates running for the leadership. In particular, I wanted to help build a team behind Boris Johnson so that a politician who argued for leaving the European Union could lead us to a better future ... But I have come, reluctantly, to the conclusion that Boris cannot provide the leadership or build the team for the task ahead.*

Gove, a cabinet minister at the time, announced that instead of backing Johnson, he was going to run himself. Johnson decided to pull out of the race. But Gove

found that, in British politics, he who wields the knife and has blood on his hands, seldom gets to wear the crown.

In view of all that has happened since, Gove was not wrong in his assessment of Johnson's lack of leadership skills.

As the rest of the field fell by the wayside, May, who had been "lightly" on the remain side in the referendum, was the last person left standing. She was seen as an austere figure, humourless, lacking in social skills, secretive. But a "safe pair of hands," or so it was thought.

She had been Home Secretary since 2010, with little experience of economics. Her expertise was in security and justice issues, including the management of immigration. She believed deeply in the UK "union" of England, Scotland, Wales, and Northern Ireland. Her unionism was to play an important role in shaping her thinking about Brexit. But not at first. The danger that Brexit posed to the Union dawned slowly.

So, a Remainer, even if a "light" Remainer," became charged with delivering Brexit. In the short years of her premiership May was forever haunted by the tag "Theresa the Remainer." True Brexiteers believed that only a true Brexiteer could deliver true Brexit. Whatever that was.

But what was she expected to deliver? How do you define Brexit? As she struggled to answer that question, she hit on the formula, "Brexit means Brexit" as a stopgap answer.

It is almost an iron law of politics that where there is doubt and uncertainty extremists will be only too willing to claim that they, and they alone, have the answers. The pendulum of politics will swing in their direction. This is what was to happen with Brexit.



## ***The year of not knowing***

When May became Prime Minister, she had some room to manoeuvre on defining the meaning of Brexit. Writing in the [\*Observer\*](#) on March 31<sup>st</sup>, 2019, Andrew Rawnsley, referring to the days after Mrs May had moved into Downing Street, said:

*In that largely forgotten period when she appeared to be monarch of all she surveyed, and the cabinet was terrified of her, she was variously compared to Boudicca and Elizabeth I.*

But there was no Brexit plan for her to work to, no roadmap to a new relationship with the EU. So, “Brexit means Brexit” became her holding mantra while she tried to work out what to do. She soon discovered that this was a next to impossible task for the simple reason that there was no agreement among Brexiteers as to what Brexit meant.

Nor was there any government planning for Brexit, no preparation on how to proceed if Leave won. Cameron had stopped the civil service doing such work less it signal that Leave might actually win. As one civil servant subsequently dryly noted “our contingency for Leave winning was to ensure that Leave did not win.”

For his part, David Davis, who had become Secretary of State for Exiting the European Union (DExEU) was clear from the start that Brexit meant leaving the Single Market, the Customs Union, and the jurisdiction of the European Court.

Boris Johnson, newly installed as Foreign Secretary, saw Brexit in terms of sovereignty and the ability of the UK to diverge from EU regulations. Liam Fox, Secretary of State for International Trade, insisted that nothing should stand in his way of negotiating, signing, and implementing trade deals.

Given the momentousness of the decision, May could have tried to forge a cross-party consensus and to open a dialogue with the Opposition. She chose not to,

deciding that the Conservatives would “own” Brexit and reap the political benefits of so doing.

Jonathan Faull, himself British but in 2016 working for the European Commission in a very senior role, commented:

*So, yes, things could've been done differently. You could have had parallel track negotiations on the future relationship, you could've delayed Article 50 until the UK had done what Theresa May said she would do when she became Prime Minister, which was to consult widely among the nations of the kingdom and the Opposition parties. You could've had royal commissions. You could've had a national debate about the future relationship, which we have sort of had in a typically British way through two election campaigns but never had in a very satisfactory way. (UK in a Changing Europe interview)*

When she was Home Secretary, May was obsessed with trying to cut immigration from both EU and non-EU countries. She carried that obsession with her into No 10 Downing Street when she became Prime Minister.

So, for her, if Brexit meant anything it meant ending freedom of movement. Europeans would no longer have an automatic right to come and live and work in the UK. Which inevitably meant that the UK would have to quit the Single Market, as freedom of movement is the bedrock on which the market is built: a freedom of movement of people, goods, capital, and services. There could be no cherry-picking among them. They were indivisible.

The first real clue as to how May saw Brexit came at the Conservative Party conference in October 2016.

She told a meeting on the Sunday before the conference proper:

*“We are not leaving the European Union only to give up control of immigration all over again ... And we are not leaving only to return to the jurisdiction of the European Court of Justice. That's not going to*

*happen. We are leaving to become, once more, a fully sovereign and independent country.”*

To rousing cheers, she said that she would send the notification to Brussels of the UK's intention to leave the European Union before the end of March 2017. This meant that the UK would leave the EU no later than the end of March 2019, unless the end date was extended by mutual agreement between the UK and the EU.

It appears that May's speech, which set hard Brexit in stone, was largely drafted by her advisor, Nick Timothy, without any meaningful consultation with government colleagues or cabinet ministers. In his book *Remaking One Nation: The Future of Conservatism*, Timothy denies this charge but many in the Conservative Party believe otherwise.

In *Fall Out*, an account of May's first year in office, Tim Shipman, a political writer with the *Sunday Times*, says of May's speech: Nick Timothy had defined British policy on Brexit.

Senior members of government were shocked at the extremism of the position she outlined. As the then Chancellor of the Exchequer, Philip Hammond, told *UK in a Changing Europe*:

*Look, what happened, I was completely stunned by the speech that she made at the Conservative Party Conference in October 2016. I hadn't seen the relevant part of it in advance. I'd had no input to the speech. Nick Timothy kept me completely away from it. I did see some text on the economy the day before, but I had no idea that she was going to describe Brexit in the hardest possible terms.*

*I was absolutely horrified by what I was hearing. I was completely and utterly horrified by what I felt was almost a coup: a definition of Brexit without any proper Cabinet consultation at all.*

*My assessment of Theresa May's Prime Ministership, in terms of Brexit, is that she dug a 20-foot-deep hole in October 2016 in making that speech and, from that moment onwards, cupful by cupful of earth at a time, was trying to fill it in a bit so that she wasn't in such a deep mess. ... Every time we moved on this, it was to move backwards from the brink. That was why she never dominated this agenda: because she was always on the back foot, retreating, fighting rear-guard actions, rather than being on the front foot with her campaign.*

Ivan Richards put it to one of his colleagues as follows:

*You just have no idea how bad this is. This is a disaster in Brussels and around capitals. What she's done is a fatal error and she's now put herself in an incredibly weak negotiating position, both with the guarantee by a date certain of invocation of Article 50 and then with these red lines, which are unobtainable, and which she is going to end up bitterly regretting having put it in such blunt terms.*

It seems that May did not understand the full implications of what she had just said. Shortly after her conference speech she met with Rodgers. "You've made a decision" he said. "This gives me clarity. I can work with this. We're leaving the Customs Union." The Prime Minister's response? "I have agreed to *no such thing*."

There appears to have been no attempt by May to build any stakeholder consensus on her own side, not even in the Conservative Party, much less across the political divide. A cardinal error in any negotiation, and one that was to come back and haunt her repeatedly.

My colleague, Rick Warters, a seasoned US labour negotiator, recently retired after 35 years in the business, having read an early draft of this book, commented:

*You will never satisfy everyone on your side of the table all of the time. The negotiator has to assign priorities in order to get the most (s)he can get for the good of the whole team.*

*The problem is that (s)he needs something to fall back on to make the tough decisions. If you haven't done the work up front and you haven't agreed on the principles, you risk entering into a deal that could cost your constituents dearly (and it may cost you your job).*

*The internal negotiations are the toughest AND they have to be completed before negotiations begin. You may go in with a "wish list", but the mandate (the "must haves") are your guideposts.*

*May had no clear "wish list" and a jumble of "guideposts". Imagine trying to drive down a road with lane markers placed haphazardly. Not only wouldn't you get where you were going (because you didn't know where you were going), but you wouldn't get anywhere (except in a wreck) because of the unclear and contradictory signage.*

Rick's comments are an accurate summary of where the UK was starting from as it was about to begin the most complex constitutional and economic negotiation since it had decided to join the EU in 1973.

## Chapter 10

### OVER IN BRUSSELS

“Brussels” was shocked at the British decision to leave. But not so shocked that it was unable to react. And it had already done some considerable homework in anticipation.

On the afternoon of June 24, Jean-Claude Juncker, Donald Tusk, Martin Schulz, and Mark Rutte, President of the EU Commission, President of the EU Council, President of the European Parliament, and the Prime Minister of the Netherlands and current chair of the EU Council respectively, issued a holding statement:

*"In a free and democratic process, the British people have expressed their wish to leave the European Union. We regret this decision but respect it....*

*This is an unprecedented situation, but we are united in our response. We will stand strong and uphold the EU's core values of promoting peace and the well-being of its peoples. The Union of 27 Member States will continue. ...*

*We now expect the United Kingdom government to give effect to this decision of the British people as soon as possible, however painful that process may be. Any delay would unnecessarily prolong uncertainty.*

*We have rules to deal with this in an orderly way. Article 50 of the Treaty on European Union sets out the procedure to be followed if a*

*Member State decides to leave the European Union. We stand ready to launch negotiations swiftly with the United Kingdom regarding the terms and conditions of its withdrawal from the European Union ...*

*As agreed, the “[New Settlement for the United Kingdom within the European Union](#)”, reached at the European Council on 18-19 February 2016, will now not take effect and ceases to exist. There will be no renegotiation.*

*As regards the United Kingdom, we hope to have it as a close partner of the European Union in the future. We expect the United Kingdom to formulate its proposals in this respect. Any agreement, which will be concluded with the United Kingdom as a third country, will have to reflect the interests of both sides and be balanced in terms of rights and obligations.”*

Following an informal meeting of the Heads of State or Government of 27 Member States (EU27) on June 29, 2016, Council President Donald Tusk said: "There will be no negotiations of any kind until the UK formally notifies its intention to withdraw."

A statement issued after the meeting said:

*We, the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, deeply regret the outcome of the referendum in the UK but we respect the will expressed by a majority of the British people.*

*Until the UK leaves the EU, EU law continues to apply to and within the UK, both when it comes to rights and obligations.*

*There is a need to organise the withdrawal of the UK from the EU in an orderly fashion.*

*Article 50 TEU provides the legal basis for this process. It is up to the British government to notify the European Council of the UK's intention to withdraw from the Union. This should be done as quickly as possible.*

*There can be no negotiations of any kind before this notification has taken place.*

*Once the notification has been received, the European Council will adopt guidelines for the negotiations of an agreement with the UK. In the further process the European Commission and the European Parliament will play their full role in accordance with the Treaties.*

*In the future, we hope to have the UK as a close partner of the EU and we look forward to the UK stating its intentions in this respect. Any agreement, which will be concluded with the UK as a third country, will have to be based on a balance of rights and obligations. Access to the Single Market requires acceptance of all four freedoms.*

Despite the shock of the referendum result, within days Brussels had established a clear Brexit position:

- *There would be no renegotiation of the Cameron “package.” It was dead.*
- *There could be no negotiations with the UK over Brexit until the UK formally notified the EU of its intention to leave in accordance with Article 50 of the Treaty. “No negotiations without notification.” No informal discussions, no exploring of options. To use a phrase beloved of British diplomats, “no rolling the pitch.”*
- *The Withdrawal negotiations would be conducted in accordance with the terms of Article 50 of the Lisbon Treaty. There would be no other way to negotiate Brexit.*
- *Any future trade agreement, as distinct from the Withdrawal Agreement, would be negotiated with the UK as a “third country” and could only be concluded after the UK had left the EU.*
- *If the UK wanted future involvement in the Single Market, then that would require acceptance of all “Four Freedoms.” The UK could not have free movement of goods, capital, and services without the free movement of people.*



The European Commission would be responsible for the conduct of the withdrawal negotiations, on the basis of a mandate to be decided by the European Council of EU leaders once the UK had officially served notification of its intention to leave.

The Commission appointed the highly experienced French politician, Michel Barnier, to be its negotiator. Barnier quickly assembled an “A Team” of Commission officials to handle the granular details of the negotiations. While Barnier was the “face” of the negotiations, it was his team that did the heavy lifting. It was a clever mix of political acumen and deep technical expertise.

From the outset, Barnier was aware that he needed to keep all his stakeholders fully informed and on board. His definition of “stakeholders” was expansive. Not just the Commission and the Council, but national parliaments, social partners, civil society, and interest groups who would be particularly affected by Brexit.

His “little black book” of European political contacts, put together over years in national and European governmental positions, was to prove invaluable. Compare Barnier’s contact list to Cameron’s self-imposed exile from the European Peoples Party. In any negotiation, you need contacts you can call at critical moments.

Compare the speed with which the “slow and lumbering” EU got itself organised to deal with Brexit, with the missteps and mistakes of the supposedly “agile and nimble” UK. As I finalise this in early March 2022, it is clear that Brexit saw the rebirth of European unity and purpose.

### ***Interpreting Article 50***

Article 50 of the EU Treaty reads:

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
- 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an*

*agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

3. *The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
4. *For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*

*A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.*

Once triggered by the departing Member States, Article 50 allows up to two years for negotiations to be concluded between the EU and the departing state. That two years can be extended by mutual agreement between the parties. The two-year deadline was to play an important role in what was to come.

The critical sentence in Article 50 reads:

*In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.*

You do not have to be that fictional British barrister, Rumpole of the Bailey, to quickly work out that these words are open to several interpretations. For example, if in setting out the “arrangements for ... withdrawal” of a member state you are required to take into account the “framework for its future

relationship with the Union” should you not determine what that future relationship is going to be before you decide on the withdrawal arrangements? Should the withdrawal arrangements and the future relationship not be negotiated as a package? Or at least in parallel?

A “one packet negotiation” is certainly what the UK wanted. Everything to be on the table at once. That way it could maximise its leverage, trade off outstanding financial obligations in return for future benefits.

In his 2016 [speech](#), Michael Gove, who we have already met, set out how he thought the process would unfold:

*The day after we vote to leave we hold all the cards and we can choose the path we want.*

*Logically, in the days after a Vote to Leave the Prime Minister would discuss the way ahead with the Cabinet and consult Parliament before taking any significant step.*

*Preliminary, informal, conversations would take place with the EU to explore how best to proceed.*

*It would not be in any nation’s interest artificially to accelerate the process and no responsible government would hit the start button on a two-year legal process without preparing appropriately.*

*Nor would it be in anyone’s interest to hurry parliamentary processes.*

*We can set the pace.*

When Mike Tyson was asked by a reporter whether he was worried about Evander Holyfield and his fight plan he answered, “Everyone has a plan until they get punched in the mouth.”

Gove’s Brexit plan quickly got punched in the mouth. Brussels decided that there would be no “informal conversations” with the UK to “explore how best to

proceed.” And Brexiteer and tabloid pressure in the UK was to push the government into triggering the Article 50 process “without preparing appropriately.”

Whose interpretation of Article 50 was right? The UK with its demand for a “one packet negotiation”? Or the EU with its sequenced approach? There can be no answer to this question. It is not a matter that any court can rule on. What decided it was power and leverage. The EU27 is six to seven times bigger than the UK. The UK is very much more economically dependent on the EU than the other way around.

When faced with the EU’s insistence on a sequenced approach the UK had a choice, and a bitter choice at that. Accept and, thereafter, the process would be run on the EU’s terms. Reject and leave with no deal when the clock hit two years.

The UK might have had some leverage before it served the Article 50 notice. It could have held the notice like the Sword of Damocles over the EU’s head, played on the uncertainty created. But it didn’t. May and her team made a mistake in failing to take Ivan Rodgers’s advice. She triggered Article 50 with no plan. She made the UK a hostage to the clock.

## **Chapter 11**

### **LANCASTER HOUSE**

All Brussels could do was sit and wait.

It might have been ready to negotiate, but until the UK sent the A50 notification there could be no discussions.

In the UK, May kept her thoughts to herself and made it clear that there would be no “running commentary” on the Brexit discussions. It was reported that she suggested to EU Commission president, Jean-Claude Juncker, that the Withdrawal negotiations be conducted in total secrecy, with no announcements until the final agreement was ready.

Juncker declined because the EU had decided that the negotiations be conducted as transparently as possible, with all relevant documents being posted on the Commission website. There was no other way to keep the EU’s multiple stakeholders united.

On January 17, 2017, May delivered a speech at Lancaster House, an historic London conference centre managed by the Foreign and Commonwealth Office. The purpose of the speech was to set out the UK’s proposed approach to the Brexit negotiations.

Or, more accurately, her approach as there again appears to have been little, if any, consultation with Cabinet colleagues about the matter.

This time she made it clear beyond doubt that Brexit meant that not only would the UK be leaving the political institutions of the European Union, but it would also be leaving the Single Market and the Customs Union. The writ of the Court of Justice of the European Union (CJEU) would cease to run in the UK.

*Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold onto bits of membership as we leave.*

The UK would end the free movement of people to “get control of the number of people coming to Britain” from the EU. As the free movement of people was an integral part of the Single Market, ending it amounted to rejecting Single Market membership.

The UK would also leave the Customs Union. “I do not want Britain to be part of the Common Commercial Policy and I do not want to be bound by the Common External Tariff.”

What was left was little more than the possibility of a free trade agreement between the UK and the EU. But it would be a free trade agreement that would, to use a phrase that would become a constant during the Brexit process, allow the UK to “cherry pick” aspects of the Single Market.

May would like any agreement between the UK and the EU to take in “elements of the current single market arrangements in certain areas – on the export of cars and lorries, for example, or the freedom to provide financial services across national borders.”

She wanted the UK to be able to “hold onto bits of membership” that it liked, despite having said exactly the contrary a couple of minutes earlier.

From her speech it is clear she anticipated one, overarching negotiation, with everything being wrapped up in two years, with the UK free to leave in March 2019.

Michael Barnier, the EU's Brexit negotiator, watching the speech from an office in Strasbourg, was taken aback. "I am astonished," he noted in his diary, "by the sheer number of doors she is closing here, one after another, by enumerating all these points..."

*Have the consequences of each of these decisions been fully thought through, assessed and discussed? Does she realize that, in doing this, she is excluding almost all the models of cooperation we have managed to construct up until now with our partners, even the closest among them? Can we be sure that the referendum vote gave the British government carte blanche for such a total break?*

As for May's suggested "cherry picking," Barnier was scathingly dismissive.

*... how could one possibly think that the EU would agree to such demands, clearly designed to benefit the City in return for concessions to German exporters?*

When May was Home Secretary the UK exercised its power to opt out of all of the EU measures on policing and criminal law adopted before the Treaty of Lisbon ('pre-Lisbon third pillar measures'), but subsequently sought to opt-back into a number of these measures, to which the EU agreed.

Having left the EU completely, she probably thought she could do the same and opt-back in to those parts of the EU that suited British interests. In the words of the Luxemburg prime minister, Xavier Bettel, the "UK had been in with a lot of opt-outs. Now it wanted to be out with a lot of opt-ins."

If that was the strategy, it was doomed from the start.

Re-reading the speech five years later in 2022, what is striking is the tone of sunny optimism that runs through it. Yes, May said, we will be leaving the EU, and it will be a clean, hard break. No half-measures. But in leaving the EU we are relaunching ourselves out into the world. Becoming Global Britain.

Reclaiming our rightful place, no longer held back by European ties. Of course, in leaving the EU we will do a deal with it, because it is in our interests to do so. It will not be difficult to do this deal because, you can almost hear her say, they need us more than we need them. And we can wrap it all up quickly. It will be done in the two years allowed by Article 50.

What is also striking about the speech is that it is almost exclusively focused on the future relationship between the UK and the EU. It has little to say about the actual terms of withdrawal. For example, on Ireland, it simply talks about maintaining the Common Travel Area between Ireland and the UK.

The Irish border, which was to become a central issue in the Withdrawal negotiations, was disposed of curtly with “Nobody wants to return to the borders of the past, so we will make it a priority to deliver a practical solution as soon as we can.”

May assumed that there would be one negotiation which would cover the future relationship between the UK and the EU and well as setting out the terms of departure. From subsequent comments made by Brexiteers it was clear that what they had in mind was a “package deal.”

The UK would trade withdrawal terms for future benefits. If money was owed, then that money would only be paid when the EU gave the UK the trade terms it wanted. There were mutterings that the rights of EU citizens in the UK could also be held hostage, used as “bargaining chips.”

Lancaster House also saw May coin a phrase that was to haunt her throughout the negotiations. Having suggested that there were those in the European Union who wanted to “punish” Britain for leaving the Union by offering only a “punitive deal” that would discourage “other countries from taking the same path” she said that if this were to be the case then “no deal for Britain is better than a bad deal for Britain.”

This quickly became the mantra of the Ultra Brexiteers. For them, any deal with the EU was a bad deal so best to leave with no deal. They quickly convinced



themselves that Article XXIV of the World Trade Organisation (WTO) Treaty would ensure that trade between the UK and the EU would remain frictionless for up to ten years while an agreement was being negotiated.

May went on to threaten the EU and its Member States with dire consequences if the UK wasn't offered the terms it wanted. It almost read as if the EU was leaving the UK and not the other way around. But then Brexit was always built on assumptions about UK strengths and EU weaknesses that had little connection with the world as it really was and not as Brexiteers wished it to be.

Shortly after the Lancaster House speech, the UK government published a White Paper on leaving the EU which said little beyond what May had said in her speech.

Red lines were drawn, doors closed, margins of manoeuvre eliminated, procedural assumptions made, key problems missed, leverage overestimated, and time scales underestimated, and all before the EU had even set out its own negotiating position.

After Lancaster House May was in a deep hole. The story of the next two-and-a-half years is her dawning realisation that she was in a hole and her increasingly desperate attempts to climb out of it. But every time she did try to climb out, the Brexit Ultras stamped on her fingers and pushed her back down again.

In 1998, another politician had given a European speech in Lancaster House. Part of that speech reads:

*Just think for a moment what a prospect that is. A single market without barriers—visible or invisible—giving you direct and unhindered access to the purchasing power of over 300 million of the world's wealthiest and most prosperous people.*

*Bigger than Japan. Bigger than the United States. On your doorstep. And with the Channel Tunnel to give you direct access to it.*

*It's not a dream. It's not a vision. It's not some bureaucrat's plan. It's for real. And it's only five years away.*

That speech was given before the EU became even bigger with the Central and Eastern Europe enlargement.

Who was the politician who spoke these words in 1998?

It was Margaret Thatcher.

## **Chapter 12**

### **THE EU PUTS A STAKE IN THE GROUND**

On March 29<sup>th</sup>, 2017, the Brexit clock began to tick. The withdrawal letter was delivered but only after a last-minute glitch in London where there was an argument over whether the letter should be signed with a blue pen or a black pen.

More seriously, it again appears that the letter was mostly written by May's advisor, Nick Timothy, with Cabinet ministers not seeing it until hours before it was due to be sent.

Ironic how much of the detail of UK Brexit policy was being decided by an “unelected bureaucrat.”

The letter meant that the UK would leave the EU on March 29, 2019, unless both parties agreed to extend the deadline.

Up until now the UK had been in control of timing. Having taken the decision to leave in the referendum of June 26, it was under no legal or moral obligation to “get on with it”. The longer it went before serving the withdrawal notice, the more uncomfortable the EU would have become.

Would the EU “no negotiations without notification” stratagem really have held if the UK had delayed and delayed? How would the EU have reacted if the UK had said that it would not serve the A50 notice until there was agreement on the negotiating procedure to be followed? The UK was a continuing member of the

EU. What initiatives could it have blocked as leverage to force the EU's hand? Did the UK even take time to think this through?

However, if there was potential leverage in delay, the UK threw it away with the letter of March 29<sup>th</sup>. From the morning of June 24<sup>th</sup>, 2016, the day after the Brexit referendum, there had been voices calling for the A50 process to be activated, among them Jeremy Corbyn, then leader of the Labour Party.

Leaving the EU could not come soon enough for Brexiteers. There was no reason to delay. Send the letter.

After all, had Michael Gove not said before the referendum than on the morning after the UK voted Leave it would hold all the cards? Had other Brexiteers not said that the EU needed the UK more than the UK needed the EU and that the deal would be one of the easiest in history? In fact, there was every chance that the EU would disintegrate faced with Brexit. Other countries would follow the UK out.

Once the letter of intention to withdraw had been delivered, time was now against the UK. The clock started ticking down. Given the complexity of unravelling forty-five years of deep integration and agreeing a framework for a future relationship, two years was a mere blink of the eye. The pressure was now on the UK.

Certainly, it could leave without a deal. But the realists in government and Parliament knew, despite the braggadocio of the Ultras, that a no-deal Brexit would be disastrous for the UK economy, with supermarket shelves taking an immediate hit as import/export traffic snarled because of new border barriers which the UK would not be ready to manage.

As if matters were not already complicated enough, suddenly, on April 18<sup>th</sup>, just weeks after the delivery of the A50 withdrawal letter, Theresa May called a general election for June 8<sup>th</sup>. At a stroke, two months of the two years was wiped from the schedule.

In response to the UK's A50 letter, on April 29<sup>th</sup>, the EU published "...*guidelines for Brexit negotiations ... following the United Kingdom's notification under Article 50 TEU*". The contrast with the UK's position as set out in the Lancaster House speech was stark. The EU saw both the substance of the talks and the process to be followed very differently from Theresa May.

While the guidelines made it clear that the EU wanted an agreement with the UK, it would not be at any price and EU leaders were "prepared for failure" in the talks. To underline the importance of the issue the EU leaders said they would remain "permanently seized of the matter." It was not something to be delegated and forgotten about. It would be front and centre of their future agenda.

Any deal would have to be based on a balance of rights and obligations and ensure a level playing field. There could be no undercutting of standards by the British. Further, there could be no sector-by-sector involvement in the Single Market. You were in or out, and if you were in you had to accept the Four Freedoms. Theresa May was not going to get a sweetheart deal on cars and bankers. There could be no cherry-picking.

The Withdrawal Agreement had to be negotiated as a package and nothing was agreed until everything was agreed. No item-by-item mini-deals. However, the "nothing agreed" formula did not extend to the future deal. That was a separate, distinct negotiation. The Withdrawal Agreement was stand alone.

EU members would only negotiate with the UK as a bloc. There would be no bilateral discussion.

At Lancaster House Theresa May had called for an omnibus negotiation, with the future relationship between the UK and the EU at the forefront. Withdrawal terms would be discussed as part of that omnibus package. The British wanted to trade current liabilities for future benefits.

The Council guidelines made it clear that the EU was not going to buy that approach. There would be no "big bang" negotiation. It would be phased and sequential.

First, withdrawal terms would have to be agreed. If “sufficient progress” was made in talks on these terms, then the discussions could move on to the “framework” for the future EU-UK relationship. But there could be no detailed negotiations on the substance of that relationship until the UK had left the EU and become a “third country.”

The UK would not be leaving the EU with a signed free trade agreement, ready to roll out the day after exit. The best it could hope for was a declaration that such an agreement would be negotiated in the future, with the broad contours of the deal set out in the declaration.

The EU was prepared to offer a “transition” period to smooth over the time between exit and the coming into force of a new deal. Such a transition would be based on the status quo of EU laws and regulations and would provide time and space to negotiate the details of the new deal as the UK would be a “third country” during transition.

The guidelines then went on to spell out the issues that would need to be addressed in the Withdrawal Agreement. Three were given priority.

The first was the rights of EU citizens who had taken advantage of free movement to go and live and work in the UK, and UK citizens who had moved to Europe. The ending of free movement threatened them with legal and economic insecurity. Their future rights needed to be secured.

Second, the UK had to settle its accounts. As an EU member it had committed to certain financial obligations. Not just its contribution to the EU budget – the infamous £350m a week on the side of the red bus – but commitments to long-term projects, some of which involved potential, contingent liabilities.

Then there was the future pension entitlement of all those British citizens who had worked for, or still worked for, the EU. They needed to be funded. There could be some offsetting entitlements but when all the numbers were added up there would be a bill to be settled. How it was to be calculated and how it was to be settled would be critical to concluding the Withdrawal Agreement.

It was the third priority that was really to prove the most difficult. The decision by the EU that Brexit should not result in the return of a hard border on the island of Ireland, something that May had committed to at Lancaster House.

Even before the Brexit referendum was held, Irish government officials had understood that Brexit had the potential to undermine the Good Friday Agreement, the fragile basis for the uneasy peace in Northern Ireland that had brought thirty years of violence to an end.

The six counties of Northern Ireland were partitioned from the rest of the island of Ireland in the early 1920s as Ireland was fighting to become an independent country, free from the UK. The border between Northern Ireland and Ireland was drawn to ensure a permanent Protestant/Unionist majority in Northern Ireland. That majority built a state which actively discriminated against the Catholic/Nationalist minority. Discontent was ruthlessly suppressed. The Westminster parliament turned a blind eye to what was happening in the province.

Inspired by the US civil rights movement, the Catholic/Nationalist minority began a wave of protests in the 1960s. The Northern Ireland authorities reacted with the usual methods of suppression. This time there were television cameras to record what was happening. No more repression in the shadows. Peaceful protests came to be replaced with more violent actions. And although this campaign of violence and terror never had the support of the great majority of nationalists, it was to continue for close on thirty years.

There always was a border between Ireland and Northern Ireland. Some of that border was visible, such as customs and security checks. A great part of it was invisible, with different tax and social security regimes on either side, different constitutional arrangements, different laws, different money.

In 1973, both the UK and Ireland joined the then European Economic Community. The two parts of the island of Ireland were now inside the same customs union. But that did not do away with the physical border. As the

violence intensified, that visible border became more and more visible as layer after layer of security installations were added to the customs border.

It was the 1992 Single Market Act that changed things dramatically. The disappearance of regulatory borders within the European Union meant that there was no longer any need for a physical, economic border between Ireland and Northern Ireland. Customs posts could be done away with.

Since the 1920 there had been a Common Travel Area between Ireland, Northern Ireland and the UK which allowed for passport-free travel between the three. With the disappearance of the economic border, now the only physical border left was the security one. The 1998 Good Friday Agreements resulted in that border disappearing as well. Though, of course, the invisible constitutional border still remained.

All physical borders on the island had disappeared. For those who lived in the borderlands, daily life became so much easier. Economic interaction between the two parts of the island also grew.

The announcement at Lancaster House by Theresa May that Brexit meant the UK leaving the Single Market and the Customs Union signalled that the return of a hard, economic border between Ireland and Northern Ireland beckoned. The divide between Ireland and Northern Ireland would be the EU's only land border with the UK.

Of course, a trade deal between the UK and the EU might obviate the need for a hard border but that was always unlikely. Only membership of the Customs Unions and the Single Market could ensure that. And May had said that they were out.

Warnings before the 2016 referendum by former UK prime ministers, Tony Blair, and John Major, that Brexit would result in the return of a hard border on the island were dismissed as scaremongering by the Brexiteers. Which again demonstrated that they had no real understanding of the economic consequences



of what they were proposing. Either that, or they were so convinced that the EU would be so weakened by Brexit that it would readily agree to UK terms.

For Brexiteers, Ireland was an afterthought, if it was even a thought. To this day, Brexiteers are convinced that the Irish border issues was contrived by the EU to “wreck” Brexit.

From the time the Brexit negotiations got under way, the “Irish Question” was never very far from centre stage. The early spot by Irish officials of the border damage that Brexit would do and their diplomatic efforts to convince their EU colleagues that it needed to be dealt with in the Withdrawal Agreement saw to that.

The British were blindsided by the Irish border issue. They thought that the matter could be solved through direct talks between Britain and “little” Ireland, in which “big” Britain would beat up “little” Ireland. They miscalculated. After some initial missteps, Ireland said no to bilateral talks and firmly anchored itself with the EU27. “The border? Don’t talk to us. Talk to Barnier.” (see *Defeated by Brexit* - Chris Cook)

As the UK general election got under way the Brexit negotiations had to wait. Nonetheless, the opening position of the two parties stood in stark contrast. The British wanted an omnibus negotiation focused on the future, that would deliver all the benefits of the Customs Union and the Single Market as far as trade in goods was concerned but with none of the costs and obligations of Single Market membership, and no free movement of people.

They also wanted to cherry-pick on services. And they wanted to leave after two years with the future deal signed and ready to implement. They wanted what Churchill had wanted. For Britain to be “with” Europe but not “in” Europe. If that deal was not on offer in the 1950s it certainly was not going to be on offer now.

For the EU, there could be no cherry-picking, no Single Market benefits without the full suite of Single Market obligations, including free movement. Withdrawal

terms would have to be agreed first and only the outline of a future deal could be sketched out while the UK was still an EU member.

Given the two positions, it was difficult to see a ZOPA, a *zone of possible agreement*, on process, never mind substance. One side or other was going to have to fold. Otherwise, the talks would be over before they had even begun.

## Chapter 13

### DIMINISHED

Theresa May was left reeling. She was in shock.

*My phone rang. It was Theresa. “They’re saying it’s a hung parliament, she said, barely audible. I could hear the disappointment and hurt and anger in her voice. There was terror, too, I had seen or heard her cry on a few occasions before, but this was different. She was sobbing.*

(Nick Timothy: Remaking One Nation).

Her 20-point poll lead had disappeared and instead of coming back with an increased majority, she would be left dependent of the 10 votes of the Northern Ireland Democratic Unionist Party (DUP) to sustain her premiership.

The DUP is a Protestant, fundamentalist party whose one and only priority is the maintenance of the position of Northern Ireland in the United Kingdom and the maintenance of the DUP as the largest party in Northern Ireland to deliver on that priority.

Had Northern Ireland’s Sinn Féin taken the 7 seats which it won, then May’s majority would have been almost wiped out. But Sinn Féin had a policy of abstentionism from Westminster, so the seats were left vacant.

The tiny DUP unexpectedly found itself in a unique position of power.

When it came to Brexit, May's cobbled-together majority was more theoretical than real. Both major parties, the Tories and Labour, were split.

Labour's left-wing leader, Jeremy Corbyn, fully accepted Brexit. Corbyn had, after all, been a lifelong anti-European who voted against every EU Treaty in the Commons. However, the vast majority of Labour Party members favoured a close, economic relationship with the EU, one that protected jobs and workers' rights.

There were really two Tory Parties when it came to Brexit. On the one side, you had the economic pragmatists who would have been happy for the UK to stay in a customs union with the EU, and probable in the Single Market as well. On the other side, was the right-wing Ultra Brexiteers, marshalled by the European Research Group (ERG), a "party within a party" who wanted a clean, hard break with the EU so that the UK could become "Singapore-upon-Thames," imagined as a small-state, low-tax, entrepreneurial economy.

There was no agreement within the Conservative Party on which road to travel. Gavin Barwell's book, *Chief of Staff*, makes that clear. Barwell became Theresa May's *chef du cabinet* after the disastrous election. Until the election, he had been an MP and minister. He lost his seat to Labour.

Brexit was to become a fight to the bitter end for the soul of the Conservative party. Brexiteers saw leaving the EU as allowing the completion of the Thatcher revolution. But a great many others were unconvinced that a return to the dogmas of the 1980s was the way forward.

That battle continues to this day. After Boris Johnson replaced Theresa May as Prime Minister in 2019, David Frost was tapped to lead the Brexit negotiations on behalf of the UK in their final stages. Frost was then a political advisor to Johnson. In 2021 he was given a seat in the House of Lords, became Lord Frost, and was made a member of the cabinet with responsibility for relations with the EU.

A week before Christmas 2021, he resigned from government. His stated reason was that he was unhappy with the political direction of travel and believed that the “benefits of Brexit” would only be captured if the UK became “Singapore-upon-Thames.” He left government because he thought Johnson was taking it in the opposite direction. But this is to jump ahead of our story.

The political arithmetic of the House of Commons was to make May’s task of delivering Brexit, any Brexit, impossible.

While there were majorities against everything, there was no majority for anything. Some would have been happy to leave the EU with no deal, to jump out into the dark and see what happened. Others wanted full details of the future relationship to be agreed before the UK left, even though it was impossible for the EU to cut such a deal with a Member State, even if that Member State was on the way out. The UK had to be out, had to be a third country, before it could negotiate a future trade deal with the EU.

Not only were there no easy options, but there were also very few difficult ones.

As the days passed, it became clearer and clearer to May that leaving the Customs Union and the Single Market would inevitably lead to the return of a hard border on the island of Ireland. That had to be avoided to sustain the Northern Ireland peace process.

But how was that to be done without putting the unity of the UK at risk? The “precious union,” as May termed it, was of deep importance to her. She was a genuine unionist, even if many in her party would gladly have sacrificed Northern Ireland in the cause of Brexit.

The story of the remaining two years of May’s premiership is, as Philip Hammond, said, the story of her trying to dig herself out of the hole she dug in 2016 and 2017 with her Nick Timothy-inspired speeches to the Conservative Party conference and at Lancaster House. But at every turn, she was caught by the red lines she had painted in 2016 and 2017, and by the arithmetic of the House of Commons.

If she was a prisoner, then she had built the prison for herself with her obsession with ending free movement and her complete mishandling of the 2017 general election.

This book is about negotiations. May called the 2017 election believing she would come back with an increased majority which would strengthen her hand with both the House of Commons and with the European Union. She came back with her political authority much diminished.

Why was she not removed as Tory leader and Prime Minister? Why was a deeply wounded Prime Minister allowed to continue to take responsibility for the most important negotiation that the UK was engaged in since the early 1970s? Surely it must have been obvious to everyone that in her weakened state she was in no position to forge consensus on her own side, never mind having the strength to deal with the EU.

Would any business have allowed a chief executive who gambled and lost in such a dramatic way to continue to take the lead in a “bet the company” demerger negotiation?

It is a reasonable question to ask. Read the *Financial Times* or the *Wall Street Journal* any day for the answer.

## Chapter 14

### THE ROW OF THE SUMMER

The election over, negotiations between the EU and the UK could finally get under way. By June 2017, the UK still did not know what it wanted. On the eve of talks it had not defined precise negotiating objectives.

As Gavin Barwell puts it in an interview with *UK in a Changing Europe*:

*It was definitely a work in progress. I would say we didn't have a clear agenda for what we were trying to achieve until we adopted Chequers, if you're talking about across the whole board about what our negotiating position was. It wasn't until the Chequers white paper that we had absolute clarity on that.*

(Note: “Chequers” was not adopted until June 2018, a year after the talks began).

Raoul Ruparel, a former director of the thinktank, *Open Europe*, and subsequently an advisor to the Brexit Secretary, David Davis, confirms Barwell's view of the state of UK preparations:

*Going into it, it was all just a bit of a shambles to be honest, trying to get ready for the first round of negotiations. In the end, there wasn't a lot of substance there. We still didn't have a particularly clear policy on anything. It was just a lot of making the same remarks, not saying an*

*awful lot, and starting to think about exactly how this was all going to work. It was basically straight into the deep end without having a whole lot of preparation, at least from my perspective. (UK in a Changing Europe)*

If Ruparel, the advisor to the Brexit Secretary and a person who knew a great deal about the European Union from his days at *Open Europe*, did not know what their negotiating objectives were, then it can be safely assumed that no one else did.

Many years previously, and in a different context, the Labour politician, Aneurin Bevan, had talked about the UK “walking naked into the conference chamber.” As it walked into the Brussels negotiations with the EU the UK may not have been exactly naked, but it wasn’t wearing very much to hide its blushes.

It was no way to begin a negotiation.

At Lancaster House Theresa May had said that the UK wanted a “one package” process, with the main focus on the future relationship. In response, the EU had made it clear that there would be at least two negotiations, and that they would be run sequentially and not in parallel.

The first would focus on the Withdrawal terms. The second, which could only be completed after the UK had left the EU, on the future deal. Further, the Withdrawal talks would be phased, and unless sufficient progress was reached in the first phase on the three priorities, then they would not proceed to the second phase, in which the broad contours of the future deal could be sketched out.

The EU probably did the UK a favour by insisting on the sequenced approach. If the EU had said that it would negotiate the Withdrawal Agreement and the Future Relationship in parallel, what would the UK have asked for in terms of a future deal? Back in London, there was complete disagreement on this issue in the Cabinet and a weakened May was in no position to impose her will, assuming she knew what it was.



Part of the price May had to pay to retain the premiership after the election disaster was to dump Timothy as one of her advisors. He had been her Brexit rock, whose advice she followed. Even if he was completely wrong about how to manage the process. Now he was gone. She was on her own.

David Davis set off for Brussels to open the first round of talks with the EU. Davis was never short of self-confidence. All would be well. All he had to do was bang the table, tell the EU what he wanted and then wait for it to fold.

Before leaving, he told journalists that he intended to have the “row of the summer” with Michel Barnier over the structure of the talks. There was no way he was accepting the phasing proposed by the EU. Everything had to be on the table at once. Though what exactly his options were if the EU refused to budge were never made clear. What leverage did he have that would force the EU to change positions? Threats without credible leverage are just words.

The talks opened and by lunchtime Davis appeared to have conceded and accepted that the negotiations would move ahead on the basis set out by the EU. What happened to cause his retreat?

According to Ruparel:

*It became clear, very quickly, that a lot of the structure and format of the negotiations had been agreed already. Obviously, this whole debate about sequencing had been settled while the election was going on without DD (David Davis) really being involved in it. I would presume the PM, at the time, had signed it off.*

Asked about it by *UK in a Changing Europe*, Davis said:

*I found out about giving away sequencing when I arrived in Brussels, to the first post. I was sitting there – I’m not kidding – that evening, thinking ‘Do I fly straight back to London and have a row?’ I was trying to work out which was better for our negotiating position. As a massively visible difference of opinion between the DExEU Minister and the Prime*

*Minister, which would make the headline because we were due to have the final (sic) round in the next day, yes? There's no way you could stop that being a headline, right? Or go with it and try to work around it.*

*I thought about it for hours and I think I went to bed at about half two that morning, just sitting there trying to think, 'How the f\*\*k do we get out of this particular hole?' because it was so predictable. I mean, the consequences were so predictable.*

*Anyway, I decided in the end, 'Right, we'll have to do it the other way,' and the decision was, 'We're going to end up with a whole load of bloody difficult demands from the European Union, treating us, really, as clients rather than as an equal negotiator. I'm going to have to find a way of psychologically dealing with that.'*

In truth, despite Davis's seeming retreat, the UK never really accepted the EU's sequential approach and kept trying to push back against it. At every turn, it asked EU to move to the future relationship discussions while the withdrawal issues were still on the table. To no avail.

Davis's remark about the UK being treated as "clients rather than as an equal negotiator" offers an interesting insight into Brexiteer thinking. They saw the UK as "equal" to the EU. Clearly it wasn't. It was never a negotiation of equals. Comparative size alone made the EU and the UK very unequal. As did the extent of the UK's trade dependency on the EU. But for Brexiteers to admit any of that to themselves would call into question why the UK was leaving at all. Why be isolated in your own neighbourhood?

In drawing negotiating lessons from Brexit, what is striking about this episode is the lack of communication between May and Davis. May clearly cut a deal on process with the EU behind Davis's back, didn't tell him, and let him go off to Brussels ignorant about developments, to have the "row of the summer." If he was about to walk naked into the conference chamber, it was May who had stolen his clothes.

If Davis had not found out the night before his meeting with Barnier what had been done, how would the meeting the next day have unfolded? David demanding the EU drop its sequential approach only for Barnier to tell him that it had already been agreed with his prime minister? “Don’t you guys talk to one another?,” Barnier might have added.

Barnier never made the mistake of cutting his own stakeholders out of the loop. At all times, the EU and its Member States moved together in lockstep.

There is also a second point to be made. Even before the UK had voted to leave, the EU had started to plan for leave negotiations. Needless to say, as in every large organisation, there were “turf wars” over who was to take charge of the process between the Council and the Commission.

However, it was soon decided that the Council would be responsible for the overall strategy, with the Commission doing the actual negotiations. Michel Barnier was appointed as the lead negotiator and quickly assembled a top-quality team. Once the organisation was in place, it stayed in place. Reporting lines were clear and unambiguous. There was little or no turnover of personnel.

On the other side, during the years that May was prime minister, the UK team lacked a coherent structure, and key personnel were often at loggerheads. Team players came and went.

After she became prime minister in 2016, Theresa May appointed three leading Brexiteers to her cabinet. Boris Johnson became Foreign Secretary. David Davis and Liam Fox were appointed to head two new departments, the Depart for Exiting the EU, and the Department of International Trade, respectively. However, May made it clear that she would be responsible for the overall conduct of the Brexit negotiations.

Olly Robbins was made Permanent Secretary of the Department for Exiting the EU. He was also to be May’s “Sherpa,” her point man on the Brexit negotiations, which meant he would lead the cross-table Brexit discussions with the EU. He

was asked to serve two masters. Given that there were many points of friction between May and Davis over Brexit, he was put in an impossible position.

If May as Prime Minister was responsible for the overall control of Brexit strategy and negotiations, and Robbins was to be the negotiator, what precisely was Davis's role? If he was not the strategist and if he was not the negotiator, what was he supposed to be doing when it came to dealing with Brussels? Secretary of State for Causing Brexit Confusion?

Confusion, cross-purposes, and ambiguity surrounded the UK's negotiating team from the start. Which might possibly have been manageable if the UK knew exactly what it wanted and had clear negotiating objectives. But it didn't. It had a disorganised team which did not know where it was going.

*... the Secretary of State she appointed, David Davis, was never in charge of the negotiations. Brexit policy was discussed by the Cabinet and at regular meetings of a Cabinet sub-committee dedicated to leaving the EU. But the negotiating strategy was discussed in much smaller meetings between Theresa and her senior civil servants and political advisers. Olly Robbins, Theresa's Brussels "Sherpa" was asked to lead the negotiations, not David Davis.*

(Nick Timothy: Remaking One Nation).

While May was Prime Minister, she had three Brexit Secretaries. First, there was Davis, who resigned in 2019 over Chequers. He was replaced by Dominic Raab, who in turn resigned over the Withdrawal Agreement that May finally negotiated.

When Raab went, Steve Barclay was appointed to replace him and stayed in place in Boris Johnson's first administration, though David Frost took over the negotiating role.

As we said above, compare the solidity and permanence of the EU team with the constantly changing UK team.

Getting your team structure right from the beginning is critical to the conduct of any negotiation. But even the best structure is useless if you do not have the right people in the right roles, with the necessary level of expertise.

## **Chapter 15**

### **INCHING FORWARD**

Over the summer months, the negotiators made progress on the financial settlement and citizens' rights. In the jargon, they could see "landing zones" for both. At this point, the "Irish question" began to take centre stage.

But before we come to that, we need to touch on one other issue. Transition.

As we have already discussed, the British anticipated a "package deal" negotiation, with both withdrawal and future trade issues being tied up at the same time. A completely worked-through trade agreement would be ready to sign at one minute past midnight, the day after the UK left the EU.

As the UK planned to leave on March 29, 2019, the new deal would be signed at 00:01 on March 30<sup>th</sup>. The move from EU member to third country status would be seamless. Business would experience just one change of regime. But could it make such a change overnight? Would it not need to be phased-in?

The EU saw things differently and made it clear to the UK that there would be no new trade deal in place to sign at one minute past midnight. At best, there would be a framework setting out what an agreement would look like, but such a framework would be a long way from an operational text. That text could only be negotiated and finalised once the UK had left the EU and become a third country.

If there was to be no agreement in place on the day the UK left the EU, then what terms of trade would business be working under at that time? The same question applied to every aspect of EU/UK interconnectedness.

For example, what rules would govern road, sea, rail, and air transport? What about data transfers from the EU to the UK? Would UK travellers to the EU need visas, or work permits if they were travelling for work? Would the necessary human resources and physical infrastructure be in place to make the new border between the UK and the EU work?

To resolve these difficulties a transition arrangement would be necessary. Such an arrangement could provide a bridge between EU membership and third-country status, whatever the terms of that status were to be.

But how was such a transition to be constructed? What laws would apply to the UK during transition? What financial obligations would be involved?

Even if the need for a transition arrangement was obvious, the EU could not impose such an arrangement on the UK. The UK would have to ask for it. How long should it last? What would happen if the EU and the UK failed to reach an agreement before the end of transition?

As the idea of transition entered the public domain, Brexiteers voiced suspicions. Could it be a trap on the part of the EU to keep the UK locked into its regulatory orbit? Was it an excuse to delay getting on with the negotiations? The EU was just making the negotiations complicated.

Reasonable politicians, anxious to avoid businesses failing over a cliff-edge, saw the logic of a transition period as a way of smoothing the UK's exit from the EU.

But the UK needed to ask for it. That call rested with Theresa May. She might have hinted at it in previous statement, but she would need to make the request explicit. In negotiations, if you do not ask, you do not get.

## ***The “Irish Question”***

The “Irish Question” can be stated as follows.

The “border” between Ireland and Northern Ireland would be the EU’s only land border with the UK. Otherwise, the UK was separated from the EU by the sea. If Brexit meant that the UK was leaving the EU’s Customs Union and Single Market, then how was a hard border to be avoided on the island of Ireland? Both the UK and the EU said they were committed to the avoidance of such a border to avoid undermining the delicate political balance that the Good Friday Agreement had established in Northern Ireland.

However, a border between two different customs and regulatory territories cannot simply be left open and unsupervised. Unsupervised borders are an invitation to smugglers and organised criminal gangs.

Trying to answer this almost unanswerable question was to dominate the negotiations from here on in.

Did no one on the British side see it coming? The Irish certainly did, as is well documented in Tony Connelly’s book, *Brexit, and Ireland*.

At first, the Irish got it wrong.

The EU was well used to managing an accession process, the procedures to be followed when a new country wanted to join. The negotiations, if they can be called that, were handled by the Commission. The “negotiations,” for the most part, consisted of deciding how long the new Member State would be given to fully apply the Union rule book. The rule book itself was never for negotiation. Nor did individual, existing Member States engage in bilateral negotiation with the potential new member.

No one had any experience of how to manage the leave process because it had never happened before. Yes, Greenland had left in 1985, but Greenland had a



population of around 20,000 and its only industry was fishing. Hardly comparable to a country the size of the UK.

How was the leave process to be managed? Who was to represent the EU in the talks? Could individual Member States engage in bilateral discussions with the UK, especially if they had close economic ties with it?

Ultimately, the answers to these questions became clear. The European Council was responsible for the management of the negotiations with the UK, with the EU Commission doing the actual negotiations. Individual Member States could not do side-deal. There would only be one EU voice in the negotiations and only one channel of negotiations.

In the immediate aftermath of the June 23, 2016, referendum result, there were bilateral contacts between Ireland and the UK. Not surprising, given the closeness of the relationship between the two countries and their common concern with Northern Ireland.

The Irish immediately identified the Ireland/Northern Ireland border as the key issue, especially if the rebuilding of a hard border was to negatively impact the agri-food industry. Irish officials began to try and work out technical solutions to keep the border open if the UK left the Single Market and the Customs Union.

In the UK, the House of Lords set up a committee to examine the “Irish Question.” It reported in December 2016 and called for the Irish and UK governments to negotiate a bilateral agreement in parallel with the A50 negotiations between the EU and the UK. Such an agreement would “guarantee open land borders and sea boundaries, support cross-border trade, and preserve EU funding for cross-border projects.”

The report was quickly rejected by the Irish Finance Minister, Michael Noonan, who said Ireland and Britain could not do “deals on the side.” The Taoiseach, Enda Kenny, while at a meeting in Brussels, said that a bilateral deal was “not available in the context of Ireland being a member of the European Union negotiating team.”

The Lords were disappointed with the response. Lord Jay said: “They have to negotiate, discuss things with us... it makes a huge amount of sense for those two governments, taking into account the views from Belfast, to decide among themselves what is the best way of responding to Brexit.”

However, Irish voices in Brussels were impressing on the government that it was putting too much faith in the Irish/UK relationship. In an op-ed in the *Irish Times* in January 2017, Phil Hogan, the Irish member of the EU Commission, made it clear that the Brexit negotiations would not involve talks between Dublin and London. They would be conducted by Brussels on behalf of all EU Members. Barnier also made it clear to Dublin that there would only be one negotiating table.

The messages sank home and Dublin disengaged from direct talks with London.

The reaction of the Lords underscored that there were many in the British political elite who had not yet grasped that Brexit meant that the future would not be like the past. Britain was outside the club. There could be no more friendly, bilateral chats over a drink in the corner of the bar.

Well, there could be. But Brexit could not be a topic of conversation.

## Chapter 16

### NEGOTIATING BOXES

Over the summer months the negotiations moved ahead, slowly. Progress was made on the financial settlement and on citizens' rights.

In any negotiation, most issues generally fall into one of two "boxes." They are what I call the "dollar box" and the "decision box."

By the dollar box I mean issues that cost money. A pay increase; the price of a car; a membership fee; an invoice for goods or services. I would put "rights" into this box as well. The right to holidays; to a safe working environment; to a harassment-free workplace; to the protection of personal data, etc.

By the decision box I mean issues of power and control. Who gets to decide matters? Who has the final decision? Do proposed procedures give one party or other a veto?

The "dollar box" is the easier to negotiate. Money can be added to; subtracted from; multiplied; divided; backdated; phased; diced and sliced. To a great extent, rights are quantifiable as well, though there are many who would disagree with such a statement.

Negotiations around the "dollar box" rarely concern issues of principle. They touch on what is affordable and doable.

“Decision box” issues are of an entirely different order. They involve power and control. To put it bluntly, no one ever cedes power or control willingly. No one ever voluntarily hands power to another party that will allow that party to make your life difficult. When the balance of power and control changes, it is because the balance of leverage has changed.

In our European social market economy, it is management that decides on entrepreneurial issues. What products to make. What markets to enter or exit. What customers or clients to do business with. Where to locate facilities. Which facilities to close. How many people to employ. How many to let go.

Where trade unions exist and if they are strong enough, they can force management to negotiate or face economic sanctions. This is mostly true on people issues. It is rarely true of core entrepreneurial decisions, such as those around the business the company is in.

In some countries, the law gives workers’ representatives blocking or veto powers. In such systems there is an element of co-decision. But rarely did the employers give these powers to employees’ representatives. They were given to them through politics, by political parties sympathetic to workers, generally left-of-centre parties. Right-of-centre parties have been known to curtail these powers. The Thatcher years in the UK quickly come to mind.

Of course, the distinction between the “dollar box” and the “decision box” is not necessarily neat and clear-cut. But it is a useful way of roughly categorising issues.

In the Brexit Withdrawal negotiations, the financial settlement and citizens’ rights fall mainly into the “dollar box.” The “Irish Question” is firmly in the “decision box.”

From the start, the EU was clear that the UK had financial accounts to settle on its way out. Estimates ran from €20bn to €100bn. The issues were complex, made all the more so because some of the potential liabilities were contingent and stretched far into the future. For example, what happened if loans made by

the EU or one of its agencies to third countries were to be defaulted on? What would happen if there were significant cost overruns on agreed projects? Could figures be identified precisely, or could a methodology be developed which would allow what was owed by the UK to be quantified as events unfolded and time went by?

Initially, the UK refused to accept that it had any financial obligations. At a dinner in 10 Downing Street in April 2017, between Theresa May and David Davis on the one hand, and Jean-Claude Juncker and Michel Barnier on the other, Theresa May said that the UK believed that it had no legal obligation to pay the EU anything on leaving. Mind you, this was the same dinner at which May asked Juncker and Barnier to work with the UK to make Brexit a success! Juncker politely told her that the EU had no interest in doing so.

Needless to say, Juncker and Barnier disagreed with the UK's view on its financial obligations. In subsequent meetings, EU and UK negotiators traded legal and financial arguments. Disagreements over such an issue are generally regarded as “conflicts of interest” which are settled by the *rapport des forces*, the balance of power and leverage.

The EU position was simple. The UK did have a financial bill to settle. If it refused to settle it, then the negotiations would come to an end and the UK could leave the EU with no deal.

It was evident to many observers that the UK accepted it had a bill to settle but hoped it could use payment to buy future benefits. It could double dip. Pay what it owed but link it to the future deal. As David Davis told *UK in a Changing Europe*:

*Anyway, so I then called in Robbins and I talked to him about the financial negotiations and I said, ‘You can go up to £40 billion but slowly, please, by the end of the summer, and tie it to what comes next.’ I thought, well, maybe we can get round the non-sequencing by linking it. They threw that away too, eventually, but not initially. They tried. Barnier got very angry several times, saying, ‘You cannot use our money*

*to buy our compliance.’ We said, ‘It’s not your money, Michel. We will decide whose money it is.’ And, to be fair to them, the Treasury did a good job on the haggling on that over the course of summer.*

The attempt at linkage did not work, as Davis ruefully admits. It was never going to unless the UK was ready to walk away without a deal. Davis says he would have but he never got to make that decision. Remember, he was constantly telling everyone that the EU would only “blink” at a minute to midnight on March 29<sup>th</sup> 2019. That was the way it always did business.

Yes, it was when the business in question was internally, between EU members. Not when it was dealing with a third country. When, today, you look at the terms of the Withdrawal Agreement and the Trade and Cooperation Agreement, it is clear that the EU never blinked. Maybe it rubbed its eyes one or twice, but that was about it.

Who was right about the money? The UK or the EU? Just as with the sequencing of the talks, there is no answer because it is a question that cannot be answered and there is no court or judge that can decide between the parties.

At the end of the day, it was a “dollar issue” on which the parties came to a mutually acceptable solution. The solution was on EU terms because it had the leverage. As we said earlier, might is not necessarily always right, but it generally decides the outcome.

## Chapter 17

### BACK TO THE “IRISH QUESTION”

In autumn 2017, Barwell recalls that Downing Street was “*looking ahead to thinking about what kind of future relationship we wanted*”. Deputy Chief of Staff, JoJo Penn, recollects a conversation in which she said:

*“Look, we’re nearly there on the money and the governance. We’ve had these big rows and I think we’ve got to a place where we can sell it. All we have is Northern Ireland, but that will be fine.”* (UK in a Changing Europe)

Except it wasn’t “*fine*.”

The “Irish Question” was never in the “dollar box.” It was always in the “decision box,” which is what made it so difficult to resolve. As I started to write this in January 2022, it was still not fixed. By March, as I finish this, it has become even more complicated.

Previously, we touched on the history of the Irish border and how the common Irish and UK membership of the EU’s Custom Union and Single Market made the visible economic border disappear. The decision of the UK to quit both the Single Market and the Customs Union would make that border reappear because it was not just an Ireland/Northern Ireland border, but the only EU/UK land border.

If two touching territories are not in the same customs and regulatory space, then an economic border between them is inevitable. Borders are the default position throughout the world. The EU is the only place on the planet in which there is no hard economic border between sovereign states. The UK was now about to leave that place.

Northern Ireland is a highly contested political entity. Originally carved out to guarantee a Protestant/Unionist majority in perpetuity, demographic trends are ineluctably turning that majority into a minority. Census results due to be published this year could confirm this.

Catholics/Nationalists may outnumber Protestants/Unionists in the not-too-distant future, while the biggest single group may be “other”, those who identify as from neither background, nor neither community. The possibility of a referendum on a United Ireland is openly being talked about. But there is no inevitability about this. Politics is always a matter of choices.

The Good Friday Agreement, which some Unionists tend to refer to as the Belfast Agreement, underpins a delicate constitutional balance in Northern Ireland between the two major communities. Not only is the balance delicate. It is also fragile.

The Unionist community, particularly its political leaders, are hyper-sensitive to any developments that could be seen as weakening their place within the United Kingdom. In Northern Irish politics, everything is a zero-sum game. A win for one side is always seen as a loss for the other.

In the referendum, the voters of Northern Ireland backed remain by 56/44. The ultra-Unionist DUP backed Brexit from the start, even though it was clearly not in Northern Ireland’s economic interest. For the DUP, if Brexit put political distance between Ireland and Northern Ireland, all to the good.

At Lancaster House, Theresa May said that there should be no return in Ireland to the borders of the past. The Northern Ireland Nationalist community wholeheartedly agreed. As did the Irish government. But if the UK left the



Customs Union and the Single Market, how was this to be done? There had to be an “Irish/EU” border between the UK and the EU. If not on the island of Ireland, then where? In the Irish Sea between the UK and Northern Ireland?

Borders are about decisions over who and what can cross them and under what terms. Which is why the “Irish Question” was, and is, in the “decision box.”

Back in 2016, before the UK had served the A50 notice, Irish officials were running various scenarios to see if a hard border could be avoided if the UK left the Customs Union and Single Market.

RTE’s correspondent in Brussels, Tony Connelly, published *Brexit and Ireland* in 2017 when the final shape of Brexit was still very much an “unknown, unknown”. Tony describes one idea to avoid an Irish border that was being looked at as a possible option:

*Another idea was that there would somehow be a separate trading situation on the island of Ireland. The island would become a single customs entity, with no barrier along the land border, so that trade could flow back and forth from the North to the South. It would require Northern Ireland to remain in the EU’s customs union while the rest of the UK departed from it.*

Tony quotes a senior Irish government official as saying:

*The idea has been mentioned, but I have to say, these things always come up against the problem that you’re either in the internal market or not, you’re either in the customs union or you’re not. If Northern Ireland is in the customs union, then the customs border is in the Irish Sea [as Great Britain would be out of the customs union]. That may be a possibility. It may be the sensible thing. But there are political difficulties with that.”*

The “political difficulties” being that neither the DUP nor the Tory government would accept Northern Ireland being on a different customs footing from the rest of the UK. It touched on the unity of the UK, on its constitutional integrity.

While there were plenty of differences between Northern Ireland and the rest of the UK, these differences were “invisible” and did not need a physical border. A physical, sea border, with checks at Northern Ireland ports, would be a symbol of separation. Such a border would wound Unionists deeply.

If you think that the “2017 speculation” looks remarkably like the Northern Ireland Protocol that Boris Johnson eventually agreed in 2019 as part of his Withdrawal Agreement to “Get Brexit Done” then you would not be wrong. But back in 2016/17 the Irish rejected the idea of a sea border because they thought it “wouldn’t fly”.

Always be wary of “negotiating with yourself.” By this I mean rejecting an idea before you even suggest it to the other side because you convince yourself that they will never go for it. They may reject what you suggest, but never assume that they will.

Second, timing is everything. Even if you think an idea or proposal has merit, that it could be the answer to the problem, maybe the time is not yet right to float it. Maybe everything else has to be discussed first and be found to be unworkable before the time for your idea comes around. This is a judgement call. Making the right call comes with experience.

As the Irish border issue began to haunt the Brexit talks, the UK needed to find a way to ensure the continuation of an invisible border while staying out of the EU’s Custom Union and Single Market so it could chase trade deals with countries around the world.

The belief had taken deep hold among Brexiteers that the UK could forego the benefits of European trade because those benefits could easily be replaced by deals which would boost trade, particularly with countries in the Pacific region. With President Trump in office in the US, a UK/US deal might also be there for the asking.

Plans to build a new royal yacht to sail around the world promoting such deals were drawn up.

What made the Ireland/Northern Ireland border conundrum even more complex is that the DUP appeared to be the only Northern Ireland voice listened to on Brexit. Sinn Féin refused to take its seats in the House of Commons leaving that stage to the DUP.

In January 2017, the then deputy First Minister, Sinn Féin's Martin McGuinness, resigned in protest over the Renewable Heat Incentive scandal, widely referred to as "[Cash for Ash](#)" and the Northern Ireland Executive consequently collapsed. Northern Ireland was without a devolved government until January 2020 when an agreement to reconstitute the Executive was signed between the parties. For a great part of the Brexit process, there was no Northern Ireland government to speak on Brexit.

In January 2022, the Executive again collapsed, this time over DUP objections to the Northern Ireland Protocol, part of the Withdrawal Agreement.

### *A Hail Mary Pass*

In August 2017 the UK published a [paper](#) on future customs arrangements with the EU. Two options were offered: the streamlining of customs procedures between the UK and the EU as much as possible using new and untried technology, or a customs partnership in which there would be no need for a customs border because the UK would mirror the EU's import requirement for goods whose final destination is the EU.

The paper called for "a continued close association with the EU customs union for a time-limited period after the UK has left the EU" in March 2019. In other words, a transition period in which the UK would effectively stay in the EU's Customs Union while the new arrangements were being put in place. To use an American phrase, the proposals were a "Hail Mary pass," a wild throw of the ball down the field to see if someone could catch it and score a winning touchdown.

When it came to the tech "maximum-facilitation (max-fac)" option, the UK had to admit that there were no examples of such an approach working anywhere in the world and that much of the required software and systems were yet to be

developed. In other words, the UK was asking the EU to agree to something that simply did not exist. But might someday.

The “customs partnership” would see the EU “outsourcing” customs enforcement and revenue collection to the UK. For goods coming into the UK, the UK customs authorities would check to see if they were ultimately destined for the EU. If so, importers would be charged the relevant EU tariffs and the money remitted to the EU. For goods destined to remain in the UK, UK tariffs would be charged.

But what about goods that might be destined for the UK where they would be worked on and then exported to the EU? How would goods be tracked? How would the UK know that if an importer said that goods would remain the UK they would? Again, the UK could not point to anywhere in the world where such an “outsourced” arrangement existed.

The British ideas went nowhere. Unfortunately, thereafter Brexiteers became convinced that there were “magic technological bullets” that would solve the Irish border problem. They spent many hours trying to prove it. As far as they were concerned, the EU was blocking the idea because it was using the “manufactured” Irish border issue to undermine Brexit.

As Fintan O’Toole put it in an [article](#) in the *Observer*:

*Many of the Brexiters still see those consequences not as the inevitable results of their own choices, but as some kind of Irish conspiracy to thwart them. There is a corner of their minds in which Brexit would have been a rip-roaring triumph by now if the damned Irish hadn’t spoiled it with their backstops and protocols.*

Nonetheless, it was worth putting them on the table. Never negotiate against yourself. Never rule out options because you think they might not be acceptable to the other side. But if you are going to float experimental proposals, make sure you have fully thought them through. Clever ideas that do not stand up to scrutiny and fall at the first examination quickly damage your credibility.

Experienced negotiators will rarely say no outright to any proposal. In negotiations, the word no should be used sparingly. What a skilled negotiator will do is to ask questions, explore the details of your proposals. “Explain to me how this might work in practice. Walk me through what you see happening. How would you handle this issue? Do you have the ability and resources to deliver on this?” The use of questions as a negotiating technique is very much underestimated.

Nor is there is ever anything to be gained by being rude and aggressive, especially if you are dealing with people on the other side of the table whose assistance you are going to need to make whatever deal you reach work.

David Davis again.

*“I made a point through all of this process, there’s no point making enemies or hating people. They’re doing what they think is right. They may be wrong, but they’re doing what they think is right. So you have to treat people with the respect due to that. They might make my job impossible, but it doesn’t matter in terms of how you treat them.” (UK in a Changing Europe)*

## Chapter 18

### FLORENCE

Theresa May desperately wanted the European Council meeting in October to record “sufficient progress” in the Withdrawal talks so that they could move on to discussing the framework for the future relationship.

The British had always wanted a “package” which would allow them to tell their voters that payments to the EU had secured the future terms they wanted. Getting everything on the table would allow them to do that. It is just that the EU were never going to go there. There had to be an agreement on Withdrawal terms before the EU would move on. The ticking, two-year clock and the sequencing of talks had handed additional leverage to the EU, on top of the natural leverage of size.

May decided to make a speech somewhere in Europe, other than Brussels, to try and move things forward. She settled on Florence, the home of the European Renaissance, to drive home her point that while the UK was “leaving the European Union, it was not leaving Europe.” The audience for the speech mostly consisted of UK politicians and journalists who had been flown out specially for it. It was a high-end “rent a crowd” event.

There wasn’t much of “Florence” about the speech. In truth, it could have been delivered anywhere. But the politicians and journalists got a day out. What’s not to like about Firenze?

May repeated that the UK wanted a “deep and special” bespoke relationship with the EU. EEA membership, like Norway, was out because it would require the UK to accept freedom of movement and it would have to implement Single Market rules over which it would have no say.

The Canadian free trade agreement, good and all as it was, was not good enough, compared to the terms the UK now had as an EU member.

May repeated her pitch for a trade agreement which came close to Customs Union and Single Market membership but without the obligations.

She made a number of concessions to move the talks forward.

First, she repeated her commitment to no border infrastructure in Ireland, but without explaining how this was to be done and how the integrity of the EU Single Market was to be protected.

Second, she accepted that EU citizens could rely on the Withdrawal Agreement to protect their rights before the British courts and that those courts could refer questions of interpretation of European law to the CJEU, the European Court.

Third, she said that “our (European) partners (should not) fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave.” The UK would meet its obligations under the EU’s multiannual financial framework. Further, the UK “will honour commitments we have made during the period of our membership,” covering participation in EU projects, programs, and initiatives.

Finally, May formally asked for a “transition period,” or “implementation period” as she insisted on calling it. Such a period would allow businesses both in the UK and the EU the time necessary to adjust to whatever new regime was agreed. It would be based on existing EU rules and regulations and would be time-limited, two years at the most.

During this period, the UK would be a *de facto* EU member but would have no seat at the table, no MEPs, no EU Commissioner. As a third country, however, it could finalise the terms of a future trade agreement with the EU. One Brexiteer, the MP Jacob Rees-Mogg, said that the proposed transition arrangement would turn the UK into a “vassal state.”

May was to be disappointed. While Florence was seen by the EU as helpful, Barnier was unable to report “sufficient progress” to the European Council. The talks continued. May’s signals on the possible involvement of the CJEU in protecting citizens’ rights, financial obligations, and a transition period, opened the way to a Withdrawal Agreement, even if there were still some twists and turns in the road to a deal that had to be navigated.

### ***The “Irish Question” Again***

In early December, 2017, the two sides let it be known that they had reached a consensus on a [Joint Report](#) recording agreement on the three withdrawal priorities, as well as on the subsidiary issues.

On Ireland, Barnier, in his *Brexit Diary*, writes that Article 48 of the report set out three possible scenarios:

- 1. The future relationship between the EU and the UK would protect North-South cooperation and avoid a physical border. This is the UK’s intention*
- 2. Should this not be possible, the UK will propose specific solutions to address the unique circumstances of the island of Ireland.*
- 3. In the absence of any agreement on such solutions, the UK will maintain full alignment in Northern Ireland under the rules of the Single Market and Customs Union which, now and in the future, are able to sustain North-South cooperation, the economy of the whole island and the protection of the Good Friday (Belfast) Agreement.*

Point 3 introduced the concept of “backstop”, what would happen if the future EU/UK trade deal did not obviate the need for a hard border between the EU and



the UK, and the British were unable to identify any workable “solutions” to otherwise avoid a border on the island of Ireland.

Theresa May went to Brussels on December 4 to sign off on the joint report, which would allow Barnier to report “sufficient progress” to the European Council and so allow the talks to move on to what the British desperately wanted, discussion on the framework for the future relationship.

Midway through a meeting between May, Davis, and Olly Robbins on the one side, and Juncker and Barnier and some of their negotiating team on the other, the British began to receive a stream of messages. The DUP were objecting to the “backstop” which they saw as potentially divorcing Northern Ireland from the rest of the UK. May told the Europeans that she needed to get back to London to talk with the DUP.

After several days of intense discussions, Article 48 became Article 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.*

To satisfy the DUP, a new Article 50 was added:

*In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and*

*Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.*

May came back to Brussels on the Friday to sign off on the revised Joint Report. David Davis told *Britain in a Changing Europe* that on the Thursday night as he was about to get into bed May rang him:

*So, she rings me up. I'm literally getting into bed. She rings me up and says, 'The DUP are refusing this, this and this, and this.' And I think I just said to her, 'Prime Minister, you are the Prime Minister, you are doing the negotiation, you have to make the call. And if they won't accept it, tell them you're going to do it anyway.' And she did. And they folded.*

When you lead a negotiation there will come moments when you must make a judgement. You may have to make that judgement in the knowledge that not all your stakeholders are happy, no matter how much work you have done to try and keep everyone on board. But that's the job. There is always heat in a kitchen.

While the week ended with May getting the “sufficient progress” call by Barnier that she needed to allow the talks to move on, the events of the week showed how weak her position was with one of her key stakeholders, the DUP. Remember, she had put herself in that position with her ill-fated handling of the 2017 general election.

The Joint Report also clearly highlighted that the “Irish Question” was far from settled. This was immediately made clear when, on the following Sunday, Davis told a TV interviewer that the Joint Report was not “legally binding.” While he was technically correct about the Joint Report *per se* it was the basis of what would be the legally binding Withdrawal Agreement. Davis's comment created suspicion on the part of the EU about UK's real intentions and was instrumental in what the EU did next.

What Davis's TV remarks highlights is that negotiators should be clear on what they have agreed before they get up from the table. "OK, let's run over this one more time. What we have agreed...." Better to find out before you leave the room if people see things differently so that there is a chance to fix matters than to have the differences emerge subsequently in such a way that the deal unravels.

Second, it is difficult to maintain discipline if different team members all start talking to the media or putting Tweets out there. There should be internal agreement about who is to be the spokesperson.

There was a time when what happened in a negotiating session was communicated by press releases, either a joint release or separate releases from both parties. Those simple days are gone. Negotiations now take place in the social media fishbowl. You need a communications strategy that takes social media, and the instantaneousness of social media, into account.

Third, and the most important point, at the end of every stage of a negotiation it is essential to do an audit of what has been achieved against your declared objectives.

All too often in any negotiation we can end up wandering off on tangents, obsessing about minor points, getting wound up over matters of no importance. We also need to be on our guard lest personal dislikes cloud our judgement.

Reading Barnier's *Brexit Diary* you can see how easily it is to get distracted, to get blown off course under the pressure of events.

If we did an audit on this phase of the Brexit negotiations, then we would conclude that the EU came out very substantially ahead.

*The EU wanted sequential, phased negotiations. That's what happened.  
The EU wanted an agreement on three priority issues in Phase 1. It got that agreement.*

*It got a deal on finance when the UK started off denying it had any liabilities*

*It got the agreement it wanted on citizens' rights with the involvement of the CJEU*

*It got the "backstop" on Ireland.*

*Negotiations only moved to Phase 2 when Barnier was satisfied he could report "sufficient progress"*

*The EU saw the need for a "transition period". The UK asked for one.*

What did the UK get? Agreement to move to the next phase of the talks. Not much else that moved Brexit forward. Maybe it could argue that it bargained the EU down on the money and limited the role of the European Court in supervising citizens' rights. But these are technical details, important and all as they are. Not game changers.

When you don't know where you are going, you are lucky to end up anywhere.

## Chapter 19

### PUBLISH AND BE DAMNED

*“Mr Barnier, after Brexit the EU will no longer exist,” was Farage’s parting remark to Michel Barnier at the end of a Brussels meeting in January 2018.*

During the meeting Farage did not have much to say. No doubt, he just wanted to be able to go across the road to the Old Hack pub and tell waiting journalists that he had met with Barnier and given him “both barrels.” Towards the end of their conversation Barnier asked Farage how he saw the relationship between the UK and the EU after Brexit had happened? Farage did not hesitate in replying. The EU would soon no longer exist.

Farage was not alone in thinking that Brexit would lead to the implosion of the EU. Gove had said the same in 2016. Frost was to repeat it in 2020. Hardly a week goes by without the *Daily Telegraph* carrying an “EU to collapse” article, while for the *Daily Express* the EU is already on life-support.

As I finish writing this, the EU’s response to the Russian invasion of Ukraine shows that the EU, far from collapsing, is moving to become a political and security superpower, even if that will take time to achieve.

As suggested earlier, a belief in the impending collapse of the EU is, in some ways, the only intellectual justification for leaving your biggest market and

putting significant barriers to trade with it in place. Best to get out of the building before it burns down. But if you do get out and the building does not burn, then what do you do?

As the events of 2018/19 unfolded, eventually forcing Theresa May to resign as Prime Minister, it is worth keeping in mind that many Brexit Ultras simply never wanted a deal of any sort with the EU so convinced were they of its impending collapse. “Let’s Go WTO” became a chant at many a pro-Brexit meeting, meaning let’s leave the EU without an agreement and simply trade on World Trade Organisation terms. Such a move would have meant immediate tariff and other barriers between the UK and the EU.

### ***Put it in writing***

David Davis’s remarks on TV on the Sunday after the Joint Report was agreed had set lights flashing red in Brussels.

His suggestion that the Joint Report was aspirational and not legally binding led the EU to question the intent and good faith of the British. Did they just sign off on the Joint Report to get the talks to where they wanted them to be, focused on the future relationship?

Would they stick by the commitments they had made? Would they go back to trying to use the financial settlement as a bargaining chip for future benefits in the trade deal? Were they really serious about coming up with solutions to the Irish border question?

Stefaan De Rynck was a key member of Barnier’s team. Speaking to *UK in a Changing Europe* he outlined the EU’s reaction to Davis’s TV remarks:

*On the EU side, our patience was wearing somewhat thin with the failure of the UK to come up with proposals, in spite of us having understood that that was what would happen in January or February. So, we were confronted with that. A second very important element in this whole discussion was the immediate backsliding after the Joint Report had been*

*published and endorsed, notably by David Davis on The Andrew Marr Show, and by others. That then led to the European Council in December taking a much stronger and tougher line on the UK than had initially been envisaged. It also led to us then saying, 'We need to pin down the UK on what we have agreed, and therefore, we are going to publish a full text of the Withdrawal Agreement'.*

All of which led the EU to decide to put a legal text of the Withdrawal Agreement on the table, based on the Joint Report. Technically, the Joint Report itself may not have been legally binding so best to turn it into a document that would be. It did so in February 2018.

The draft text spelt out in unambiguous language the realities of the Irish backstop. Should a future EU/UK trade agreement not deal with the matter, and should the UK be unable to identify “specific solutions” as a workable alternative, then Northern Ireland would remain in the EU’s Single Market and Customs Union for manufactured goods and agri-industry produce. This would mean a border in the Irish Sea, with checks on goods moving from the GB to NI because they would be moving into the EU’s Single Market.

The draft agreement made explicit what had been implicit in the Joint Report.

When the British saw the text they went nuclear. Theresa May immediately declared that “no UK Prime Minister could ever agree” to such a sea border as it would endanger the “constitutional integrity” of the UK.

This, however, is precisely what she had agreed, though she may have convinced herself otherwise. If it wasn’t what she had agreed, then what had she agreed? This was one of those “in the cold light of morning” moments, when a negotiator realises the full import of what they have accepted in order to get an agreement across the finishing line.

The only other explanation is that May genuinely believed that she could strike a future deal with Brussels on trade that would be equivalent to Single Market and Customs Union membership. But if she believed that then she was deaf to

everything the EU had been saying since 2016 that no country outside the EU could have the same or a better deal than membership provided.

Denzil Davidson, who was now one of May's EU advisors, when asked by *UK in a Changing Europe* if the UK had its own text and, if so, why it did not put it on the table to counter the EU responded:

*No, there wasn't, and I suggested at the time that we should work on one. But I think a number of officials felt that our politics would not have allowed us to put forward one that was even remotely realistic, and so it was better for the EU to lead the process, even if that was a bit embarrassing, because our politics was as it was at that stage and precluded us doing something more constructive. Which is an understandable argument, but I'm still not sure I agree with it.*

What Davidson was saying is that the UK could not put an alternative text on the table because there was deep disagreement among the various actors in the process on what to say. Halfway through the biggest constitutional and economic negotiation since WWII, which it had initiated, the UK could still not say what it wanted.

Any labour relations executive who approached a major negotiation in this way would soon find themselves updating their CV on LinkedIn as they searched for "new opportunities."

Imagine the scene:

**CEO:** Update me

**You:** We have opened negotiations with the Teamsters and told them we are activating the cancellation clause in the contract. It will end in three months' time.

**CEO:** What are we looking for?

**You:** To be honest, we don't know. We haven't decided yet. We can't make up our minds on what we want. We just decided to cancel the



contract and take it from there. As we see it, the Teamsters need us more than we need them.

**CEO:** Are you kidding me? Are you for real? We are running the risk of a major strike with the Teamsters because you guys thought it was a good idea to cancel the contract without a negotiating plan. What planet are you on?

Publishing the legal text was not an easy decision for the EU to make. As De Rynck explains:

*I would say it's both, in a way. It was a good result in terms of the negotiation dynamics, to bring the two parties to an understanding that if all fails, there is the backstop. Even though the text may be read as a fudge, I think in the discussions around that text, it was very clear what the EU understood, and what paragraph 49 meant. In that sense, it was a good result, because we could build on that later.*

*Then in terms of the other side of your question, even though we had had good results on the idea of 49(b), the specific solution, what then became alternative arrangements, or what different types of solutions could work, we had said to the UK, 'You need to give us your ideas.'*

*They never came forward in January or February, which then led us to publish a Withdrawal Agreement with the text of the protocol as we saw it, in terms of what article 49(c) of the Joint Report meant.*

*That was not an easy decision, but it was the right decision, because we had to confront the UK with the internal contradictions, in terms of the negotiation dynamics. I believe that we had to put a text out, and we discussed this also on the EU side, to make sure that people would see in black and white what 49(c) meant, and to speed finding a solution together with the UK for the Northern Irish/Irish border.*

The realisation in the UK that the backstop meant an Irish sea border between GB and NI sparked a hunt for alternatives. Some suggested solutions were

fantastical, such as the idea that GATT Article XXIV would oblige the EU to trade on current terms with the UK for up to ten years while a future trade deal was being negotiated.

This, of course, was nonsense as GATT XXIV said no such thing. But it was also ironic that the Brexiteers, who had campaigned for the UK to leave the EU because the transnational law-making capacity of the EU was an affront to British sovereignty, were now demanding that another transnational body, the World Trade Organisation (WTO), instruct the EU to give the UK what it was demanding. The WTO had neither the competency nor the capacity to do any such thing.

The hunt for alternatives to the backstop was to lead to “Chequers” a complex set of proposals from Theresa May that were to crash land on take-off.

## Chapter 20

# FIRST THE MANSION HOUSE, THEN CHEQUERS

May had foreshadowed the Brexit negotiations with her Lancaster House speech. She had pushed forward the Withdrawal Agreement discussions with her concessions in Florence. Now she tried to frame the future relationship talks with a third set-piece speech, this time at London's Mansion House.

She had already set out her thinking on security cooperation some weeks previously at a conference in Munich<sup>9</sup>.

In her Mansion House speech, May again rejected the “Norway” European Economic Area (EEA) option as requiring the UK to implement Single Market rules over which it would have no say. Furthermore, it would mean continuing to accept Freedom of Movement. Ending Freedom of Movement was the reddest of red lines. For her, it was the essence of Brexit. Everything else was negotiable. But not the ending of Freedom of Movement. It was totemic.

It worth recalling that in August 2015, when David Cameron was preparing to renegotiate the terms of UK membership with the EU, May published an article which called for the ending of Freedom of Movement and questioned the existence of the Schengen passport-free zone. She wanted Freedom of Movement

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<sup>9</sup> The reason the security talks does not appear in our story is that Johnson/Frost dropped it from the agenda in 2020. There is no UK/EU agreement at this time on the issue.

cut back to simply allowing an EU citizen to move to another country to take up a job offer. Moving to look for a job should be stopped. Detestation of Freedom of Movement ran deep with May.

“Canada” was also out as it was too “thin” compared to the current trading terms the UK had with the EU. Throughout the Brexit process, there was an inability of the part of many in the UK to understand and accept that any deal with the EU *from the outside* would be vastly inferior to what was available as a member.

The refusal of the EU to offer the UK the benefits it had enjoyed as a member was constantly described as the “EU punishing the UK” for daring to leave. As touched on earlier, when talking about a future trade deal between the UK and the EU, the British side constantly confused EU “interests” with EU “obligations.” Certainly, it was in the EU “interests” to negotiate a robust trade deal with the UK, but the EU was under no “obligation” to do so and was certainly under no obligation to negotiate a deal on terms demanded by the UK.

Even today, many in the UK continue to think that the application of standard EU rules for non-EU countries to the UK constitutes “punishment.”

Two simple examples. Schengen regulations limit stays in the zone by non-EU residents to 90 days in 180. Many retired British people have holiday homes and apartments in Spain where they spend the winter months. Move down in October, come back at the end of March. Clearly, more than 90 days. They can no longer do this. As soon as the UK finally left the EU, British citizens were no longer regarded as EU citizens and fell under the non-EU resident rule. The British tabloids cried “punishment.”

Of course, it wasn’t “punishment.” It was simply the application of existing rules to the citizens of a country that had decided to leave the EU. Now, you can argue whether this rule makes good economic sense for the Spanish tourist industry. There may well be a strong case that it doesn’t. But that is not the point. The EU and its Member States are entitled to say who has the right to cross their borders and reside in their territories. It is called taking back control.

But Brexiteers only ever wanted border controls to apply in one direction. To keep people out of the UK. Not to keep UK citizens out of the EU. Borders, however, imply two-way control. They are not a “one-way street.”

The second example concerns lorry queues at Dover. Since early February 2022, long tailbacks of trucks, often running to ten miles or more, began to build up at Dover, the major UK/EU port. The reason for the backup was the gradual introduction of controls and checks on UK/EU exports made necessary by the new UK/EU border, a border which the UK had asked for.

In the House of Commons, the MP for Dover complained about traffic being blocked by these tailbacks. She said the tailbacks were not caused by Brexit. They were caused by “EU bureaucracy” and regulations. But before Brexit there were no such tailbacks, other than in very exceptional circumstances. But for the Dover MP, they were an example of the EU “punishing” the UK because it had left.

Not content with “Norway” or “Canada” May wanted a deal that would be unique to the UK. Such a deal would cover trade in goods, agri-goods, seafoods, services, data, the (controlled) movement of people, and continued UK involvement in a range of EU agencies and institutions.

For example, she wanted the Information Commissioner’s Office (ICO) to continue to play a role in the European Data Protection Board. This would allow UK-based companies to benefit from the EU’s “one-stop-shop” approach to data protection through the ICO, rather than having to register in an EU Member State.

She wanted more than a data “adequacy” decision from the EU because an adequacy decision can be withdrawn by the EU at any time. She wanted UK data access rights locked into a legally binding treaty which would give the UK a say in EU data rules.

Taken as a whole, what May was looking for was close to Customs Union/Single Market membership. A deal that would give the UK all the benefits it wanted

from the Single Market and the Customs Union, minus the obligations and constraints. She wanted terms that would allow the UK to do trade deals with non-EU countries. She wanted the best of all possible worlds.

No harm in aiming high and asking for the moon. The UK was not just asking for the moon. It also wanted a free trip there.

But, as Barnier noted in his *Diary*, such a deal was never going to be on offer. There could be no EU benefits without the attendant obligations.

In her Mansion House speech May said that the UK and the EU were engaged in a negotiation and both sides would have to “compromise.” As discussed earlier in this book, “compromise” with its “let’s meet in the middle” undertones is one of those words that haunts negotiations. If you refuse to “compromise” you are being “inflexible” and “dogmatic.”

Which begs the question: on what was the EU expected to compromise?

Give the UK complete Single Market access without freedom of movement? Allow UK involvement in multiple EU bodies and agencies without acceptance of the jurisdiction of the European Court? Drop demands for a “level playing field” when it came to social and environmental standards?

Chris Grey in *Brexit Unfolded* suggests that throughout her conduct of the Brexit process, May’s approach was to tell the EU what she wanted, what her red lines were, and then wait for the EU to come up with solutions that solved her problems for her. She constantly tried to make Brexit a “joint problem” that both the EU and the UK had a shared and equal responsibility to resolve.

At Davos in 2018, Angela Merkel is reputed to have told a story which well captures May’s method. Merkel asked May what she wanted out of Brexit. “Make me an offer”, replied May. “But you are the one who is leaving, we don’t have to make you an offer. Come on, what do you want?” “Make me an offer,” was all May would say. In other words, May was telling Merkel that the EU had

an “obligation” to offer the UK a deal. Merkel was making it clear that it had no such obligation.

May could never really say what she wanted because the internal politics of the Conservative Party would not allow her to. It stretched back to pre-referendum days when Vote Leave refused to define Brexit less it crack its voter coalition. Brexit always meant vastly different things to different people.

When, with “Chequers,” she finally did put something on the table, senior ministers resigned in protest and her plan proved unacceptable to the EU. Chequers is the name of the UK Prime Minister’s country house. The meeting at which the package was agreed was held there with the result that it was simply referred to as “Chequers.”

“Chequers” was meant to solve the riddle: How to prevent a hard border in Ireland, let the UK leave the Single Market and the Customs Union, and, at the same time, avoid a sea border between Great Britain and Northern Ireland?

May proposed a “facilitated customs arrangement.” The UK would operate two border systems. Its own, based on its own regulations and tariffs for trade with non-EU countries. Trade with the EU would be on the basis of EU/UK tariff schedule.

A second system which would mirror the EU’s regulations and tariffs and the UK would collect payments due on goods being imported into the UK but destined for the EU. In other words, the UK would act as a customs agent on behalf of the EU. Now why the EU could be expected to trust the UK to do this was never made clear, never mind how it could actually be made to work in practice.

The UK would also, in effect, stay in the EU’s Single Market for goods by way of a “common rule book,” a roundabout way of saying Single Market regulations, though the UK would have a great deal of freedom to diverge where it saw fit.

If an agreement on future trade arrangements had not been reached by the time the transition period ended, then the whole of the UK would continue with the

“facilitated customs arrangement” until such time as a future deal was reached. In other words, an “all UK backstop.” The UK was offering to stay in the EU’s Customs Union until such time as an alternative deal was negotiated. This would go a long way to avoid a GB/NI border.

Barnier reacted cautiously, tweeting that he looked forward to the White Paper in which these ideas would be fleshed out. The EU would wait for the detail, wait to see how the ideas could be operationalised, and if they were compatible with EU Council guidelines.

Privately, he took the view, as recorded in his *Diary*, that:

*Cornered by her hard-line Brexiteer ministers, she needs to square the circle. She is trying to preserve her red lines while asking Europe to change its own rules and accept an a la carte Single Market for goods and a customs union in which the UK would enjoy the benefits of the Customs Union while retaining freedom of commercial negotiation.*

It again looked like the UK wanted to be out of the EU but able to “opt-in” to all the bits it liked and that worked for the UK economy.

In his book, *Fall Out: A Year of Political Mayhem*, the journalist Tim Shipman neatly sums up May’s approach to the Brexit discussions, one that we have touched on already:

*The prime minister ... saw the process as similar to negotiations she had carried out as home secretary in October 2012 when she opted out of 130 EU directives on justice and home affairs and then negotiated re-entry into thirty-five of them, including the European Arrest Warrant, several months later. “We have already done what was in effect an EU negotiation”, a source close to May said, “We know how it works, we know what levers to pull and we know how to get what we want out of a negotiation.*



There was one major, and obvious, flaw in this argument, though it appears to be one that May and her team never saw, and if they did see it never fully understood its real importance. In 2012, May did her hokey-cokey negotiation from *inside* the EU, as a Member State.

Now the UK was *outside* the EU, a very, very different place as Ivan Richards noted. To use the words of Luxembourg's Bettel, May never got the difference between in with a lot of opt-outs, and being out and wanting a lot of opt-ins. She was not alone in that. It is what many on the British side wanted. As Chris Grey has put it, they wanted the UK to be out of the EU but, at the same time, for nothing to have really changed.

May managed to sell her proposals to her cabinet at a meeting in Chequers.

However, within days, David Davis, and Boris Johnson both resigned in protest. "Chequers" was not "true Brexit." It was a "betrayal" of all who had voted to leave the EU. Opposition within the Conservative Party was hardening.

Nevertheless, May pushed ahead. What choice did she have?

Part of the British strategy at this time was to try to drive a wedge between major EU countries, such as France and Germany, and the Commission, with Barnier particularly targeted as being "inflexible." For instance, in an [interview](#) given in Paris, Jeremy Hunt who had replaced Boris Johnson as Foreign Secretary. said:

*France and Germany have to send a strong signal to the Commission that we need to negotiate a pragmatic and sensible outcome that protects jobs on both sides of the Channel because for every job lost in the UK, there will be jobs lost in Europe as well if Brexit goes wrong.*

Since the founding of the original Common Market back in the 1950s, it had been a constant British refrain that if only the Community would change its ways and its founding principles to accommodate the British, all would be well. If the European Economic Community was not the European Economic Community and was some other organisation the British would be more comfortable.

“Chequers” was the same ask. Could the European Union not abandon some of its Customs Union and Single Market principles so that Britain could live within its red lines? So that Britain could be out but with all those opt-ins?

The British have always got it wrong about the relationship between the Member States and the Commission. They thought that the hardliners were in the Commission and that national politicians would be more flexible. As Ivan Rodgers pointed out more than once, it was actually the other way around. It was the Member States that were the keepers of the “sacred flame” of European integration, of “ever closer union.”

They were about to call it wrong again about “Chequers.”

The European Council was scheduled to meet in Salzburg. Based on prior conversations with the Dutch and the Germans, the British thought the European Council would instruct Barnier to “negotiate” Chequers. But come Salzburg in September, the Council firmly rejected Chequers as a basis for negotiations. There was no attempt to soften the language of rejection. The European Union would not bend its principles so the British could keep their red lines.

It seems that Olly Robbins had advised May beforehand that her proposals would be rejected but that the language would be diplomatic. But the French President, Emmanuel Macron, and the Council President, Donald Tusk, do not appear to have received the memo and were blunt in their comments. Tusk even posted a photo of May being offered some cake with the line “but no cherry.”

May was incensed. The European Union was treating the UK with gross disrespect. If Chequers was not acceptable, then it was up to the Union to explain why it was unacceptable and to put forward alternatives. Even though Britain had caused the problem with its approach to Brexit, it was for others to find solutions so that May could deliver her “red lines” to the Brexit Ultras.

It never appeared to occur to UK politicians that other countries have “politics” too, and that not everything revolved around the UK in general, and the demands of Brexiteers in particular.

## **Chapter 21**

# **THE FINISHING LINE (OR SO IT APPEARED)**

Despite the dark shadows cast by Salzburg, negotiations continued and by November a deal had been crafted. Until we have access to papers or those involved write about it, we cannot know what dynamics got the deal across the finishing line. Or what all involved at the time thought was the finishing line.

If Brexit was a triathlon, then the swimming was done, the cycling was complete, but there was still a long run ahead. It was just that those doing the negotiations did not realise it was a triathlon.

The deal came in two parts, three if you prefer. The first part was the legally binding Withdrawal Agreement, covering what Michael Dougan called the “separation issues,” including the three priority ones of citizens’ rights, the financial settlement, and the Irish border. (Dougan: *The UK’s Withdrawal from the EU – A Legal Analysis*)

Second, was a Political Declaration, setting out the broad direction of travel for a future EU/UK trade agreement.

Finally, there was agreement on a “transition period” to fill the vacuum between the time the UK left the EU and the time the new arrangement foreshadowed in the Political Declaration came into force.

The text on citizens' rights and the financial settlement had evolved little since the Joint Report of December 2017. What was set out in the Joint Report mostly stayed in place. As we said earlier, both of these issues fell into the “dollar box” so a deal was always doable.

The transition period was to run from March 29, 2019, the date the UK was scheduled to leave the EU, until December 31, 2020. A relatively short period of time in which to negotiate a complex, future trade deal. The deal with Canada had taken seven years.

The Political Declaration pointed to a broad and “ambitious” trade agreement, though it is fair to say that both sides probably interpreted “ambitious” in wildly different ways. Because of how events subsequently unfolded, we will never know how far apart the sides would have been when negotiations got under way.

There was still a hankering after “Chequers” in British hearts, still a hope that a great many Customs Union and Single Market benefits could be had without crossing their deep, red lines.

Unsurprisingly, it was the Irish border issue that saw the greatest movement. A new “backstop” was negotiated which would see the whole of the UK remaining in what was, in effect, the EU's Customs Union until such time as a permanent, future deal was agreed. In addition, Northern Ireland would continue to follow a range of Single Market regulations to facilitate all-island trade.

The “backstop” could only come into force if by the time the transition period came to an end the future deal had not been agreed. The presumption was that the future deal would make the backstop unnecessary. But the Irish and the EU were never going to take that chance. The backstop was an insurance policy.

Both parties committed to doing all they could to get the future deal done by the end of transition so that the backstop would not actually come into play. But there can never be any guarantee that a negotiation will result in an agreement. A commitment to negotiate in “good faith” cannot be taken as a commitment to

reach an agreement. Sometimes, what the parties want is just so far apart that it is impossible to cut a deal.

There were some on the EU side, especially among the Member States, who were unhappy with the package. They felt it gave the UK too much. The way they saw it, the UK would have tariff- and quota-free access to the EU market for goods, without any of the Single Market obligations, even if there was a commitment to “level-playing field” provisions.

Would there not be an incentive for the UK to block agreement to continue to take advantage of this position? Would it not give the UK leverage to prise open other aspects of the Single Market which it cared about, like financial services?

Nonetheless, the weight of opinion on the EU side was that it was something the EU could live with. The priority “separation issues” had been delivered. The UK would have to leave and become a third country before a future deal could be finalised and signed. There would be no Single Market “cherry-picking” in any future deal.

Contrary to what Farage and others wanted, and Gove had predicted, the EU had not imploded as a result of Brexit. If anything, it had emerged stronger.

The UK would not be leading a “new Europe,” fashioned in the wake of an EU collapse. It was on its own.

Never mind all the small print. On the big issues what had the UK achieved?

Not a lot, in reality. Despite Boris Johnson while he was Foreign Secretary telling the EU it could “go whistle” if it thought the UK would agree a financial settlement, a methodology had been agreed that would see the UK pay the EU north of €40bn. It will be years before the final figure is ever known.

The European Court would have a continuing role for a significant time-limited period in safeguarding EU citizens’ rights in the UK, despite the UK wanting to end such involvement completely as soon as Brexit finally came into force.

The Irish border issue would be solved through a “backstop” and not through magic, technological bullets that didn’t yet exist, or through some dual custom systems that could have handed the UK a major competitive advantage.

In the UK, the agreement ran into a wall of opposition. On the one side, were “Remainers” who were calling for a second referendum to cancel Brexit. There were “soft-Brexiteers” who wanted the UK to remain permanently in the Customs Union and Single Market. There were also many who wanted full details of the future EU/UK deal to be spelt out before the UK left on March 29<sup>th</sup> 2019, even though the EU had made it clear on many occasions that this simply would not happen.

Ranged against them on the other side were the Brexit Ultras, for whom any deal with the EU would be a betrayal of “True Brexit.” The transition period was nothing more than “vassalage,” leaving the UK as a “colony” of the EU.

Moreover, for them the backstop was like a dagger to the heart. They were convinced that it was a cunning move by the EU to keep the UK trapped in its regulatory embrace. The EU would never agree a future trade deal. The UK would be locked in the backstop customs prison for ever. It would be BRINO, Brexit in Name Only.

Brexiteers demanded that the backstop be renegotiated so that it was strictly time-limited and would come to an end after a certain date, no matter what the circumstances. Alternatively, the UK should have the right to unilaterally quit the backstop at any time of its choosing.

The EU was not going to agree to either demand for to do so would undercut the very *raison d’etre* of the backstop, which was to have a mechanism in place to prevent the emergence of a hard border on the island of Ireland no matter how future EU/UK negotiations unfolded. A time-limit or unilateral exit mechanism would mean that the backstop was no longer a backstop.

May simple could not get the agreement through the House of Commons. It was voted down repeatedly. In the end, she was forced to resign.

She had run out of road, there was nowhere left for her to go... Except to go.

Her earlier failure to try and build a “Brexit consensus” was now coming back to haunt her. She wanted the Conservative Party, and the Conservative Party alone, to “own” Brexit. Well, now it did, even if it was at war with itself over what Brexit meant.

Her negotiating mistakes had shut down her room for manoeuvre. Those mistakes started with her “red lines” over leaving the Customs Union, the Single Market, the European Court, and the ending of Freedom of Movement. As Barnier noted at the time, she closed door after door. To put it another way, she burned bridge after bridge leaving her with no way of retreating to safe ground. In the Chinese phrase, she did not have a golden bridge over which to withdraw.

She defined Brexit rigidly before negotiations with the EU had even opened. Now, it could be argued that by insisting on “no negotiations without notification” the EU shut off valuable opportunities for informally exploring options.

Labour relations negotiators know the importance of such informal discussions, couched always in provisional and conditional language. “What do you think your people would say if we were to...” or “I can tell you now, that if what we are hearing on the grapevine is the situation, it is a non-runner. No chance.”

Could exploratory, off-the-record discussions have helped in the Brexit process? I have my doubts, for a number of reasons.

First, as we have seen, in June 2016, in the immediate aftermath of the referendum, the UK government had no real idea what Brexit was supposed to mean in practice. It is difficult to explore options with someone who does not know what they want.

Second, the difficulty was compounded by having May as Prime Minister. I don’t just mean, in Ken Clarke’s phrase, that she was a “bloody, difficult woman,” true and all as that was. It is that she was a “Remainer.” As such, she had to show her

restless Brexiteers that she would not be “soft” with the EU. She had no margin for manoeuvre to pre-cook a deal. She had to earn her Brexit stripes by being more “Brexity” than the Brexiteers themselves.

Third, the EU itself had limited room for manoeuvre. Any suggestion that the UK could have had anything approaching Single Market/Customs Union benefits from the outside, especially in the absence of Freedom of Movement, would have caused widespread, internal dissension with the EU.

No possible deal with the British was worth that dissension. Remember, as a Member State, the UK had a reputation for “divide and conquer” to further its interests. Few doubted that it would try the same game from the outside.

So, no. Pre-notification, informal discussions probably would not have been useful.

May’s second negotiating mistake was to imagine that she could reprise her 2012 tactic of opting-out and then opting back in again. Opt-out *en bloc* and then opt-in for the bits you liked. She simply failed to realise that being out, being a non-member, was fundamentally different from being a member.

At one point, she complained to Juncker that the EU was “siding” with a small country like Ireland against a big and important country like the UK. Juncker had to remind her that Ireland was a member, and that the UK wasn’t, and that the EU would always side with a member against a non-member. British “exceptionalism” gave rise to a sense of entitlement, that the UK was entitled to a deal from the EU and that the EU had an obligation to offer the UK a deal.

It is also clear that May was neither a team player nor a team leader. She very nearly let David Davis walk into a meeting not knowing that an agreement had been reached on the sequencing of negotiations behind his back. She cut people out of the loop. She was secretive, non-communicative. There was little or no trust between the players on the British side. It is clear that there was no common agenda shared by key British actors.



Finally, by triggering Article 50 in March 2017, she put all the time pressure on the UK. For the EU, Brexit meant that one country was leaving. Yes, that would cause disruption, the reworking of budgets, the need to move agencies out of the UK, the building of a border, and putting contingencies in place.

But it did not mean having to develop policies, processes, procedures and building infrastructure from scratch. These were already in place. As Pascal Lamy said, it was just a matter of damage limitation.

For the UK, it meant a whole new beginning. It was quitting the status quo of the European Union. It was walking out of everything. No matter how driven, no matter how organised, no matter how talented your people, no matter how organised you are, you don't unwind forty-five years of ever-deepening integration overnight, or even over two years. And the UK was very far from being driven, organised and united.

Be careful of imposing deadlines because they are the popular thing to do. Popularity is a fleeting thing.

## Chapter 22

### **BORIS BOUNCES ONTO CENTRE STAGE**

His real name is Alexander Boris de Pfeiffer Johnson. His family call him Al. Boris is a “stage name” for an invented character, the mopped-haired, unkempt politician, a joker, a “chancer.” The contrast with the introverted, secretive, humourless May could not be greater. Nor could the sense of integrity and moral commitment. May had both.

When May developed her “Chequers” proposals Johnson resigned from Cabinet and demanded that the government “Chuck Chequers.” When the UK and the EU finalised the Withdrawal Agreement in late 2018 Johnson was to the fore in leading the opposition. This time he wanted the government to “Bin the Backstop.”

May struggled through the first six months of 2019 and through successive Parliamentary defeats, before finally deciding to bring her political misery to an end. Johnson became Prime Minister in late July.

Johnson may be the reason Brexit happened. With polls showing Remain with a slight lead, he famously wrote two articles for the *Daily Telegraph*, one supporting Remain, the other Leave. He filed the Leave article. His leadership of the Brexit campaign may have been sufficient to push it over the line.

He should have become Prime Minister when Cameron resigned. But, as we saw, he was betrayed by his colleague and ally, Michael Gove.

It will remain one of the great, unanswerable questions of history how Brexit might have played out if Johnson had become PM in 2016. It is worth remembering that he said, on more than one occasion, that Brexit did not mean leaving the Single Market. In 2016, Brexit was still “unformed” and Johnson as Prime Minister might have gone down a different road to May. We will never know.

Then again, as his onetime political advisor, Dominic Cummings, said on his blog, Johnson never really understood the economics of Brexit and well into the transition period he was taken aback when it was explained to him what being out of the Customs Union would mean in practice.

But if Johnson, a notorious pragmatic, and unprincipled politician, had become Prime Minister in 2016, and with all the political capital as leader of the Leave campaign in the bank, he probably could have taken the county in whatever direction he wanted. All the division and bitterness of the May years lay ahead at that time.

Maybe, maybe, maybe things could have been different.

But in all likelihood, they would not have been. Brexit was always a binary choice, despite May’s repeated attempts to claim that it wasn’t. You were either a member of the EU (or possible, like Norway, the European Economic Area) or you were not. If you were out, then the deal on offer would always be worse than the terms available if you were in. No matter who was UK Prime Minister that reality was not going to change.

Where Johnson could have made a difference was that, as a Leaver, he might have forced the Ultras to recognise that reality in a way that May could not. But I suspect, as soon Johnson had got to that point he would have been denounced as not really a “true” Leaver. Revolutions have a habit of eating their own.

Now, with May gone, Johnson's time had come around at last.

Johnson inherited the Parliament May left behind. He had no more luck in imposing his will on it than May had, despite trying to shut it down illegally so he could push Brexit through in its absence. The courts blocked him from doing so.

Talks between the UK and the EU continued. David Frost, a former diplomat, and CEO of the Scottish Whiskey Association, replaced Robbins as the UK's negotiator.

As Prime Minister, Johnson continued to demand that the EU "Bin the Backstop." The UK would leave without a deal if the EU refused to bend.

The EU refused to bend. There could be no hard border on the island of Ireland. In the absence of a credible alternative the backstop stayed. At first, the new Johnson government went through the "alternative arrangements" gamut, including "decentralising" customs checks across the island. To no avail.

In October 2019, Johnson and the Irish Taoiseach, Leo Varadkar, met in Liverpool. Following their discussions it was announced that a "pathway" to a solution might have been found.

Out went the backstop. In came the "front stop."

The "front stop" would see Northern Ireland remain in the EU's Customs Union and in the Single Market for goods. This arrangement would come into force at the end of the transition period if by then there was no agreement on a wider trade arrangement that made any form of UK/EU border unnecessary. For there to be no borders of any sort would require the UK to stay in the Customs Union and the Single Market. Johnson made it clear that this was not going to happen. The UK would be out of both.

But Northern Ireland would remain in both. There would be an Irish Sea border between the UK and Northern Ireland, something May said no UK Prime

Minister could ever agree to. Johnson did. He agreed to leave Northern Ireland in the Customs Union and Single Market to deliver Brexit for the UK.

What was claimed to be the game-changer was the inclusion in the “front stop” of a Northern Ireland consent mechanism. The Northern Ireland Assembly would have to give its consent to the front stop after four years, and every four years thereafter unless there was a supermajority in support in which case the consent vote would be every eight years.

While the possibility of a consent mechanism had previously been discussed that consent would have been required before the backstop came into force. With the front stop it was consent after the event.

Stefaan De Rynck:

*I think we need to distinguish a bit. We had no qualms or reservations around the principle of consent. For someone like Barnier, it was quite normal to think that if ever the Northern Irish Assembly would vote against it, then it was no longer something which was implementable or operational. What we had reservations with was the first proposals on consent which came to us, which I believe were put forward in August or September, where there was consent before the Withdrawal Agreement entered into force.*

*So the Parliament would ratify, and then before the backstop or the solution for Northern Ireland would start on January 21, some kind of consent would again be needed, which was defeating the whole purpose of the ratification for us.*

*There were various forms of consent that we could not accept, but the one that Varadkar and the Prime Minister discussed, rightly so as co-granters of the Good Friday Agreement, was one that was desirable even in terms of its permanent nature.*

*I think people underestimate the big change we had from the logic of a backstop to a permanent solution. We were no longer following the logic of ‘unless or until we find alternative arrangements.’ I think the advocates of alternative arrangements in London were somewhat surprised perhaps by that, and by the fact that that all fell by the wayside suddenly, because this was the solution, full stop. And if it was the solution, it needed democratic support in Northern Ireland by the different parties.*

The consent mechanism was the “golden bridge” over which Johnson was able to retreat.

At the same time, the Johnson team rewrote the Political Declaration to lower the UK’s future aspirations to little more than a very thin trade agreement covering goods and little else. The agreement the UK now wanted would eliminate tariffs and quotas, but not regulatory checks related to production standards and “rules of origin,” the need to be able to show that the goods being exported were substantially manufactured in the UK.

Such an agreement would not eliminate the need for the Northern Ireland “front stop.” But “Brexit for England” was what really drove Johnson. He lacked May’s visceral unionism. Which is what allowed him to agree to the “front stop.” Northern Ireland was expendable for him in a way that it never could be for the unionist May.

Not only was it back to what the EU had originally offered in its draft Withdrawal Agreement of February 2018, but it was even more beneficial for the EU because of the time it would come into force and, as De Rynck said, be a permanent and not a temporary solution.

With the “front stop” replacing the “backstop” in the Withdrawal Agreement and with the “lighter” Political Declaration, Johnson renewed his push for a fresh general election. Because of the Fixed Parliament Act, he needed the agreement of the opposition to call an election. Instead of letting him twist in the howling

winds of the Commons as then constituted, the opposition inexplicable agreed to give him his election.

Johnson's team ran a campaign based around the slogan "Get Brexit Done." He told the electorate he had negotiated an "Oven Ready Deal" with the EU. It just needed to be popped into the political microwave, which he would be able to do, if he was given a majority.

Whether the electorate distinguished between the "Oven Ready" Withdrawal Agreement and the future trade deal, which still had to be negotiated, is doubtful. Most probable the electorate thought: "That's it. Brexit is done. We are out. Thank God it is all over."

He came back with an 80-seat majority. He was now the indisputable political power in the land. Brexit would now get done.

The conclusion of the Withdrawal Agreement, including the Northern Ireland Protocol, brought the first phase of Brexit to a conclusion. The UK left the EU on January 31, 2020. The transition period was to run to December 31, 2020, during which the UK would be a *de facto* EU member but with no say in its governance systems.

During 2020, nothing would change. The eleven months would be used to negotiate the details of the future trading arrangement. The transition period could be extended if both parties agreed. The UK set its face against doing so.

If we stop to take stock of what had been agreed, then it has to be said that the deal was agreed almost exclusively on EU terms. Go back to 2016/17. Look at the EU's agenda:

- *No negotiations without notification. There were none.*
- *No bilateral negotiations between Member States and the UK. There were none.*
- *Sequential and phased negotiations. That's the way the process unfolded.*

- *Three priority demands:*
  - *That the UK “pay its bills.” Agreement reached*
  - *That the rights of EU/UK citizens be safeguarded. Done*
  - *That there would be no return to a hard border on the island of Ireland. Agreed and done.*
- *That the UK could only negotiate a future trade agreement after it had left and become a third country. This is what happened.*

These were the essential EU “interests” as the negotiations opened. Of course, the EU took a number of “positions” on all the issues that made up these “interests” and moved on its opening positions. But it safeguarded all its core “interests” throughout the discussions.

On the other side, in one sense Johnson delivered on the UK’s core “interest.” He got Brexit done. The UK left the EU. But Vote Leave had promised that in leaving the EU the UK could secure terms that would leave it as well off as when it was a member, if not substantially better off and that everything would be in place on the day the UK left. Johnson singularly failed to achieve any of this.

So, as the UK left the EU on January 31, 2020, Vote Leave, and the Johnson government, had delivered on what was promised. But at what price?

Could a deal be done during the transition period which would turn things around?



## Chapter 23

### AFTERMATH

*There are unfortunately many misunderstandings in this [@darrenpJones](#) [@times](#) piece, but the biggest is that government policy under [@borisjohnson](#) is to seek a "special relationship" with the EU. That was never the policy. Nor should it be.*

...

*Our policy was (and I believe still is) one of a "friendly relationship between sovereign equals".*

*That is the correct policy for a country like ours with global interests.*

*So it is entirely reasonable for both sides to treat each other as close neighbours but as 3rd countries.*

*([David Frost Tweets](#), February 17, 2022)*

When trade talks opened in February 2021, David Frost made clear to his EU opposite numbers that the UK was no longer interested in negotiating any type of Security Agreement with the EU. It would work through NATO and would talk to individual EU Member States bilaterally. All that was now on the agenda was an economic deal.

In line with the Political Declaration, the UK was asking for nothing more than a minimalist trade agreement on goods that would give the UK tariff-free and

quota-free access to the EU market. Frost put a new word front and centre of the negotiations: sovereignty.

The UK would not agree to any deal with the EU that limited its sovereignty in any way. For Johnson and Frost, Brexit meant the sovereign right of the UK to pass its own laws and set its own regulations as it saw fit. It had to be free to diverge from EU rules whenever it believed it was in its interests to do so. If this meant a very thin trade deal, so be it.

To borrow Luuk van Middlelaar's phrase, there were "alarums and excursions" around the Brexit trade negotiations throughout 2020. They focused, in particular, on the "level playing field" provisions and on fisheries. "Level playing field" refers to the demand from the EU that a balance be maintained between itself and the UK on product, environmental, labour, and social standards so that there could be no competitive undercutting on these issues by either side.

Finally, on Christmas Eve 2020 a deal was done.

The negotiations had been "on and off" throughout the year as Covid struck, key players were infected, and the talks had to go virtual for part of the time. Conducting complex negotiations by Zoom is not ideal.

On December 31, 2020, the transition period ended. As and from January 1, 2021, the UK was completely outside the EU's political and legal framework. It was now a third country.

Frost had told the EU that under Johnson, the UK did not want much. It didn't get much.

The essence of the deal was tariff-free and quota-free access for UK and EU goods to each other's markets. As the EU had a large surplus in the trade of goods with the UK, this was all to the EU's advantage. But tariff-free and quota-free access did not mean frictionless trade, despite claims by Johnson to the contrary. The UK trade expert, David Henig, has commented that by comparison

with other trade deals, the EU/UK deal is fairly advanced. But compared to what the UK had as an EU member, it is a very poor thing.

For UK goods to access the EU market they had to meet EU standards. Demonstrating this meant paperwork. Further, complex regulations around “rules of origin” also came into play. For UK goods to have tariff-free access to the EU market they needed to have at least 50% UK-originated inputs. Otherwise, they were subject to tariffs. Of course, the same applied in reverse but it is a lot easier for EU goods to meet rules-of-origin with 27 countries to draw from, than for the UK to do so.

It has been estimated that the new border rules meant that around 300 million additional forms had to be completed in 2021 as compared to previously, while industry needed to find 50,000 customs experts to manage the new processes. This 50,000 does not include the extra government border agents required to staff the new control points.

As Michael Gove said, a benefit of Brexit was to grow employment in the customs sector. The MP for Dover, who we quoted previously, told the BBC that her constituency had benefitted from Brexit as 500 plus new jobs were created to deal with the new Brexit red tape!

I am reminded of the story of the economist Milton Friedman visiting China. He saw thousands of people digging a new railway line with shovels. He asked why they were not using earthmoving equipment. He was told that it was a job creation scheme as well as the building of a new railway line. In that case, he asked, why are they using shovels and not spoons?

If the purpose of Brexit was job creation, why not make things even more complicated?

The Trade and Cooperation Agreement (TCA) as the EU/UK deal was named, had precious little to say about the export of services from the UK to the EU, a business sector in which the UK generated a significant surplus.

The ability of British artists to tour Europe was also greatly curtailed, as new visa requirements kicked in. Ironically, in February 2022, the UK Department of Transport was advising trucking companies involved in transporting equipment and stage sets for the music and theatre businesses to set up European subsidiaries to get around Brexit regulations. British winter sports trainers have found it increasingly difficult to get [employment](#).

The sale of high-value services, such as architecture, accountancy, finance, design, and advertising, generally depend on the ability to turn up in person and deal face-to-face with the potential client.

In 2020 and 2021, Covid travel restrictions masked how the TCA might restrict business travel or, at the very least, make it increasingly more difficult. As those restrictions lift in 2022, the impact of the TCA on the services sector may become more apparent.

One thing we do know already. The EU will move, slowly, over the coming years to force banks and other financial institutions to move what it regards as critical functions from London to locations within the EU.

To use Lord Frost's words, why would any "sovereign" leave such key functions outside its borders, in a country that may come to regard itself as a competitor and that could use its financial power as leverage in future disputes?

The UK took back control over aspects of its fishing industry and its coastal waters, but what it achieved was a long way off from what the fishing industry was promised in the referendum campaign. As soon as the agreements came into force in January 2021, shell fishers quickly found that third country status posed new and significant barriers to exporting into the EU.

On the EU side, access for EU boats, particularly French boats, to UK waters, as provided for in the TCA, was a significant issue throughout 2021, something that is not yet finally resolved.

If you don't ask for much, you don't get much. Johnson and Frost wanted to take back "sovereignty." They weren't that concerned about business benefits. The theoretical ability of the UK to break free from EU rules and regulations was more important.

As I write in February 2022, the newly appointed Minister for Brexit Opportunities, Jacob Rees-Mogg, is asking readers of the *Sun* newspaper to suggest EU regulations that were carried over into UK law that he might scrap. He says he will be guided by the "wisdom of crowds." Others might see it as a cry of desperation.

### ***Focus on the Front stop***

Early in 2021, Frost began demanding that the Northern Ireland front stop be renegotiated. He said it was because the way the EU was working the Protocol was causing unnecessary difficulties for the movement of goods between the UK and Northern Ireland. Certainly, there were practical issues that needed to be addressed, which is what the EU offered to do. But many doubted that this was the real reason for the demand.

In an [article](#) in the *Daily Telegraph* on February, 19, 2022, Frost, now resigned from government, wrote:

*A country with self-respect cannot have its laws set by others. We must therefore finish the business of re-establishing our sovereignty in Northern Ireland – step by step, if necessary, but with no doubt about the final goal.*

This makes it clear that it is not the operation of the Protocol that concerns Frost and those who think like him. It is the very existence of the Protocol itself, seen as an encroachment of British sovereignty. This is also the view of a vocal section of the Northern Ireland Unionist community.

But, as we have seen, Northern Ireland is not a “normal” part of the UK, however much Frost and Unionists might protest that it is. It is highly contested political territory. It is not susceptible to normal “sovereignty” solutions.

If Frost see things in the way described in his *Telegraph* article, then it begs the question: why did the UK sign the Protocol in the first place? What brings a party to a negotiation to a position where it is demanding the renegotiation of a key part of an agreement before the ink is barely dry on the signature page? Before implementation had even begun.

There is one reason offered by Johnson and Frost that can be discounted straight away. The “Remainer Parliament made us do it. We had no choice. Our hand was forced by May’s disastrous conduct of the negotiations. We were boxed in.”

None of this is true.

Johnson did not sign the Withdrawal Agreement until after he had won the 2019 general election and came back with an 80-seat majority. His selling point in the campaign was that he had an “oven ready” deal primed to go. Certainly, the DUP expressed their total opposition to the “fronts top,” but Johnson and his team brushed that criticism aside. At least in public.

Safely back in No 10 Downing Street, and with a compliant House of Commons, Johnson could have turned to the EU and said that things had changed, that the political arithmetic in the UK was now different. He could no longer live with the Withdrawal Agreement as it stood. He needed to pause matters and reassess. If the EU would not agree to a pause, he would be forced to take the UK out without either a Withdrawal Agreement or a Trade Agreement. It was the EU’s decision.

He had a chance to reset. He didn’t take it.

He didn’t. Because he wanted to “Get Brexit Done.” Being “out” was more important than the terms on which he was “out.” If being out meant sacrificing the Unionists in Northern Ireland, so be it.

This leaves two possibilities. One, at the time he negotiated the Withdrawal Agreement, including the Irish front stop, he did not fully understand that it meant a border in the Irish Sea between the UK and Northern Ireland.

Two, he fully understood what it meant but went ahead anyway intending to renege on the agreement as soon as he could do so. Getting Brexit done for his English voters was what counted. All the rest was collateral damage.

Johnson is no fool. He may play the fool, but that does not make him one. When the Withdrawal Agreement was negotiated with Brussels in late 2019, but before the general election, there can be little doubt that civil servants would have advised exactly what the agreement would mean in practice, particularly for trade between the UK and Northern Ireland.

There were people outside government who certainly knew. Look at some of the comments from the Institute for Government, or experts like Sam Lowe and David Henig.

There is a story that when Johnson was Foreign Secretary whenever his officials brought him bad news he would stick his fingers in his ears and start singing Rule Britannia to block out what he was hearing. “Don’t tell me what I don’t want to know.”

It is difficult, therefore, to conclude that Johnson, and Frost, did not know what they were agreeing to with the front stop in the Withdrawal Agreement.

Which leaves us with the conclusion that he fully understood what he was doing and knew exactly what it meant in terms of a border between the UK and Northern Ireland. He went ahead, nonetheless, in order to “Get Brexit Done,” fully intending to renege afterwards.

There are two versions of this “renege” argument which we need to consider. The first is the simple version, that Johnson signed the agreement to get it over the line and fully intended to renege on it afterwards. He did what he thought needed to be done in the moment.

The second version is somewhat more complicated. The British never wanted the Irish issue to be included in the Withdrawal negotiations. They always thought that it should be part of the future deal discussions. They took the view that only when the EU/UK trade relationship was known could the Irish border issue be settled.

The Irish, and the Europeans realised, however, that the British would try to take Ireland hostage in future talks and use it as leverage to secure the deal they wanted. Ireland could not be left on its own. It needed to be part of a wider package.

Johnson, and Frost, signed the Withdrawal Agreement fully intending to circle back and try and isolate Ireland. They would make it a “stand-alone” issue, to be dealt with on its own, without cross-cutting trade-offs. The thinking may have been that the EU, whatever about protecting Ireland in the overall negotiations, would not sacrifice the wider EU/UK relationship for the sake of Ireland if the border issue was isolated.

I write this in early March 2022. The Protocol is still a live issue. It is not resolved. Ultra-voices in the Tory Party [call](#) for it to be scrapped immediately, even if that risks a trade war with the EU. Johnson is beholden to the Ultras, so he may listen to them.

But U.S. President, Joe Biden, has put Johnson on notice that any hostile moves by the UK towards the EU over Northern Ireland would go down extremely badly in Washington. Biden is proud of his Irish roots.

As we said earlier, the Brexiteers were blindsided by Ireland. They are still rubbing their eyes in disbelief.

Brexiteers, and the DUP, are also aghast that the Protocol is driving up trade between Northern and Ireland. As the blogger, Nick Tyrone, [notes](#):

*... trade between Northern Ireland and Ireland increased massively in 2021. Exports from Northern Ireland to their southern neighbours were*



*up 65%, or €3.9 billion since Brexit got “done” at the end of 2020. Exports from Ireland to Northern Ireland were up 54%, or an historic high of €3.7 billion.*

Business will always search out the most efficient way to route trade.

### ***Finally***

As was said in the preface, this is less a book about Brexit and more a book about negotiations.

The success or failure of a negotiation should be judged on the outcomes. Did the parties achieve what they set out to achieve? Did they deliver on their objectives?

We quoted Pascal Lamy, the former EU Commissioner, earlier as saying that the EU’s major objective was damage limitation from Brexit. The EU was concerned to protect its internal market and legal order and to make certain that Brexit did not trigger a domino effect, that other countries did not follow the UK out.

The EU’s future relationship with the UK was very much a second order consideration. Needless to say, the EU also wanted to make sure that it did not jeopardise its substantial surplus in the trade in goods and agri-products with the UK. In the longer term, the EU also wanted to break free from its reliance on London financial markets.

Brexit is now not much talked about in the EU. It is done. Finished, save for the unfinished business of the Irish Protocol. There is little about it in the European newspapers. There is no sense that European countries are grieving over the departure of the UK. It is regretted, but life moves on.

There are some who see the UK’s departure as a good thing. As this book has sought to show, the UK political elite were never comfortable with the European journey to “ever closer union.” At all times, and under governments of the left and right, the UK acted as a brake on the drive to integration. That brake is now gone. It will take some time to see what the UK’s departure will mean for the

dynamics of integration. Would, for instance, the EU's €800bn Covid recovery fund have ever got off the ground if the UK was at the table? Or its move towards a "defence union" as a result of the Ukraine invasion given stated British hostility to such a development?

I think it is fair to say that the EU has been successful in limiting the damage from Brexit. Yes, Brexit was a negative sum game, but the damage to the EU has been minimal. Did the EU meet its negotiating objectives? For the most part, it did.

Did the Brexiteers in the UK achieve what they wanted to achieve? Undoubtedly, yes. They wanted the UK to leave the EU. It did, with the partial exception of Northern Ireland. Boris Johnson "got Brexit done" with the 2019 Withdrawal Agreement. The UK is, in its own words, "once again, a sovereign, independent, costal state."

So, if the question is: did the parties deliver on their objectives, the answer has to be yes. The UK left the EU. The EU limited the damage the UK's departure caused.

Whether or not the UK is better off out of the EU is another question. Brexiteers promised the UK electorate that if they voted to leave the EU then it would be possible to negotiate a trade deal that would be as good as EU membership, if not even better. There would be no downsides, only upsides.

It is worth quoting at length from an [article](#) written by Boris Johnson on June 26, 2016, just days after the referendum. Johnson wrote:

*I cannot stress too much that Britain is part of Europe, and always will be. There will still be intense and intensifying European cooperation and partnership in a huge number of fields: the arts, the sciences, the universities, and on improving the environment. EU citizens living in this country will have their rights fully protected, and the same goes for British citizens living in the EU.*

*British people will still be able to go and work in the EU; to live; to travel; to study; to buy homes and to settle down. As the German equivalent of the CBI – the BDI – has very sensibly reminded us, there will continue to be free trade, and access to the single market. Britain is and always will be a great European power, offering top-table opinions and giving leadership on everything from foreign policy to defence to counter-terrorism and intelligence-sharing – all the things we need to do together to make our world safer.*

*The only change – and it will not come in any great rush – is that the UK will extricate itself from the EU's extraordinary and opaque system of legislation: [the vast and growing corpus of law enacted by a European Court of Justice](#) from which there can be no appeal. This will bring not threats, but golden opportunities for this country – to pass laws and set taxes according to the needs of the UK.*

The first thing to note is that contrary to his assertion that Brexit “*will not come in any great rush,*” it did because Brexiteers wanted to “*get Brexit done.*” As this book shows, they rushed at it with great enthusiasm but with no plan and no organisation.

Yes, as Johnson said there would be, there is “free trade and access to the single market” but at what price and on what terms? The wording in the Johnson article is intended to leave the impression that nothing will change, that trading after Brexit will continue as before Brexit.

How else are the words in the third paragraph above “The only change...” to be construed? The clear implication is that the UK will “extricate” itself from the web of European law, but not from the web of European trade. Has that happened?

In a [report](#) published in February 2022, the all-party House of Commons Public Accounts Committee said that since the end of the transition period on 31 December 2020, UK trade volumes been suppressed by the impact of COVID-19 and wider global pressures “but it is clear that EU exit (Brexit) has had an

impact, and that new border arrangements have added costs to business”. The PAC has “repeatedly raised concerns about the impact of changes to trading arrangements on businesses of all sizes and we remain concerned.”

It further says that if “cross border passenger volumes, that have been at a fraction of normal levels because of COVID-19, recover as may be expected during 2022 ‘there is potential for disruption at the border’, exacerbated by ‘further checks at ports as part of the EU’s new Entry and Exit system’ and especially at ports like Dover where EU officials carry out border checks on the UK side.”

The report notes that the EU introduced full import controls at the end of the transition period. It goes on to say:

*The UK government originally intended to do the same but has delayed three times over the last year and officials could not give a “complete assurance that it would not do so again.” Much remains to be done to introduce import controls, and in particular to ensure that traders and hauliers across the 27 EU member states are ready as the controls are phased in.*

Dame Meg Hillier MP, Chair of the Public Accounts Committee, said:

*One of the great promises of Brexit was freeing British businesses to give them the headroom to maximise their productivity and contribution to the economy – even more desperately needed now on the long road to recovery from the pandemic.*

*Yet the only detectable impact so far is increased costs, paperwork, and border delays.*

There is a disconnect with what Johnson promised in his 2016 article and what he delivered in the 2020 Trade and Cooperation Agreement. The “thinness” of that agreement was a political choice by Johnson, and Frost, to prioritise

“sovereignty” over trade considerations. Many of the current difficulties that British businesses are experiencing in trade with Europe flow from that choice.

The Public Accounts Committee is not alone in its views. As Claudius says in Hamlet: "When troubles come, they come not single spies but in battalions."

The British Chamber of Commerce [reports](#) that in a February 2022 survey of member companies it found:

- 71% of exporters say EU trade deal is not enabling them to grow or increase sales
- Only 1 in 8 exporters think it is helping them grow or increase sales
- Majority think it has pushed up costs, increased paperwork, and delays, and put the UK at a competitive disadvantage.

Issues identified include:

- *Export health certificates cost too much and take up too much time for smaller food exporters.*
- *Some companies are being asked to register in multiple EU states for VAT in order to sell online to customers there.*
- *As things stand CE marked industrial and electrical products will not be permitted for sale on the market in Great Britain from January 2023. The same is true for components and spares.*
- *UK firms facing limitations on business travel and work activities in the EU.*

The *Guardian* [reports](#) Minette Batters, the President of the National Farmers Union as believing that:

*The government has shown a “total lack of understanding of how food production works,” introduced “completely contradictory policies” on farming, and risks “repeatedly running into crises” through the lack of a post-Brexit plan for UK farming.*

According to [estimates from John Springford](#), at the Centre for European Reform, British goods trade in September 2021 was 11.2 per cent, or £8.5 billion, lower than it would have been had the United Kingdom stayed in the EU's single market and customs union.

The Office for Budget Responsibility has [estimated](#) the aggregate medium-term impact on British GDP to be a reduction of four per cent, while *UK in a Changing Europe*, working with the London School of Economics' Centre for Economic Performance, put the impact at somewhere between 5.8 and 7.0 per cent.

Peter Kellner, a long-time pollster, and commentator on UK politics notes in a [comment](#) for Carnegie Europe:

*Today, the UK makes up just 3 percent of [the world economy](#)—a far cry from the EU's [21 percent](#) when the UK was a member. When it comes to global negotiations on such issues as trade, banking, taxation, product standards, and legal regulations, the UK is now a rule taker, with little say in what happens.*

To resolve all these issues, and more, would require further negotiations with the EU. But, as of now, the UK government seems more interested in negotiating membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) than in talking trade with the EU. UK government policy might be described as ABE – Anywhere but Europe.

Has the UK managed to “extricate itself from the EU's extraordinary and opaque system of legislation?” [Writing](#) in the *Financial Times*, Martin Wolff notes:

*Modern economies are regulated for powerful reasons: externalities, systemic risks, asymmetric information, and inequalities of power are pervasive. Moreover, the UK is embedded in international agreements and global relations that businesses and government cannot ignore. If, to take one example, British data protection standards diverge from those*

*in the EU, UK-based business will find itself at a significant disadvantage.*

The chances of the UK departing radically from EU regulations without damaging business are minimal. Which is not to say that there are not opportunities. But the idea that the UK can live in a very different regulatory environment from the EU is questionable.

Finally, Johnson said in his 2016 article that:

*British people will still be able to go and work in the EU; to live; to travel; to study; to buy homes and to settle down.*

Of course, this is true. British people can still do all of these things. They are just not as easy to do as when the UK was an EU member. They are very much more difficult.

We mentioned earlier in this book about the problems now being experienced by British residents who own homes in the EU where previously they spent the winter but are now limited to 90 days. Many of these people are voters from so-called “Red Wall” seats who used their savings, or redundancy payments, to buy modest apartments on the Costas. It is not a “metropolitan elite” issue.

You can still buy a house or an apartment in France or Spain, but you will need to be able to show that you have the financial resources, including private medical insurance, to be able to live in these countries without being a burden on the state.

The government decided to pull the UK out of Erasmus, the highly successful EU program which funds students to mainly study in EU countries.

British people are finding it increasingly difficult to secure winter or summer employment in the tourist industries in the Alps or on the coasts.

As Covid travel restriction lift we will begin to see what visa and work permit restrictions will hit business travellers.

So, if we measure the 2022 realities against the promises in Johnson's 2016 article, we find that what was promised was not delivered.

If you regard Brexit as simply being the UK leaving the EU then Brexit has been achieved. It has been a success.

However, if as the Brexiteers promised, Brexit is to be understood as the UK not just leaving the EU but being no worse off as a result of doing so and being immeasurable better off, then it is difficult to say that it has been a success.

But maybe, as Jacob Rees-Mogg once said, we need to give it fifty years to know for certain.

Which means that, I for one, will never know.

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Tom been involved in industrial relations since 1972, first as a trade union official and then as a personnel director. In 1983, he began to work as an industrial relations and training consultant. In the early 1990s, the scope of the consultancy was expanded to take in European issues.

Tom has been deeply involved with European Works Councils since the early 1990s. He assisted in the negotiation of EWC agreements in a large number of major international companies and continues to support management in the effective operation of these EWCs.

He advises a large number of transnational corporations on European employee relations strategy. Tom has a B.A. from University College Dublin in History and Politics. He lectured for several years on European industrial relations in the National College of Industrial Relations in Dublin and has been a guest lecturer in University College, Dublin, Galway University, Nottingham Trent University and Leicester University.

Born and reared in Dublin, Tom, and his wife Celeste, moved to live, and work in Brussels in 1998. They now live in a quiet town on the North coast of France.

This book is self-published by Tom Hayes.

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