

How the Brexit negotiations can end without war being declared

*How the Brexit negotiations can end without war being declared, asks **Denis MacShane**? What's needed is a compromise, which used to be a British speciality, he argues.*

Pacta sunt servanda – treaties must be observed – is an ancient rule of relations between states. Britain has been busy for centuries signing Treaties governing its relations with other states or multi-state entities as well as international organisations like the UN, the WTO, or the EU. Until Brexit the UK's relationship in most areas with other European sovereign nation states has been fixed by various treaties such as the Treaties of Maastricht, Nice, Lisbon, or the Single European Act treaty negotiated by Margaret Thatcher introducing the Single Market.

Last autumn Boris Johnson, the new prime minister, ordered his chief Brexit civil servant, David Frost, a former UK ambassador to Denmark and director of the Scotch Whisky Federation, to reverse existing UK policy and accept proposals from the EU formulated by Michel Barnier, to write into a new Treaty, the Withdrawal Agreement, guarantees that there would be no border checks in the north of Ireland between the six counties in the UK and the rest of the Republic of Ireland.

Lost in the justified applause at Johnson's repudiation of both May's negotiating position and his dismissal of extreme Ulster protestant MPs' refusal to accept the only way the Good Friday peace agreement could be maintained was by putting all of the island of Ireland under EU rules for trade was the dramatic change in the status of the six counties following the new Withdrawal Treaty accepted by Johnson. The rest of Britain was not much concerned and glad that the Brexit blockage associated with the Theresa May years in Downing Street were over and gave Johnson a handsome majority in the December 2019 election.

Good diplomacy and a good treaty led to a good political outcome for the Tory Party and for Boris Johnson. But he had to tell David Frost to reverse his position and showed that political leadership was what mattered. The DUP were eliminated as a force in Westminster politics and the big increase in Tory MPs gave Johnson an unassailable political base.

Johnson has spent most of his life as a journalist. He was famed for late delivery of copy and never getting down to write his columns until the deadline was nearly past. It is hard not to see the same modus operandi in his management of Britain since the election. The COVID-19 crisis has been plagued by endless confusion and policies that were swiftly reversed or altered. Johnson still looks tired and erratic which given the after-effects of the COVID illness on an overweight man, heading to his 60s, with a brand new baby and girlfriend, is not surprising. But just as Johnson would chop and change his copy to the last moment so too he slaloms through policy decisions always looking for tomorrow's headline that shows him commanding the ship of state without any real sense where it should be heading.

The Labour Party is still licking its wounds after the unhappy Corbyn years which were also marked by endless confusion and mixed messaging on Europe and Brexit reflected in TV and radio interviews by shadow cabinet members where they regularly contradicted one another. Sir Keir Starmer has adopted a policy of "Say No Brexit. See No Brexit. Hear No Brexit". This has the merit of shutting down Labour divisions and also making clear Brexit is 100 per cent the responsibility of the prime minister.



Waterloo, Belgium. Image bby alannascanlon (pixabay.com)

Enemies and dangers abound

In 2015, David Frost, wrote that Brexit negotiations should be led by a senior minister and done on a bi-partisan basis. This just demonstrated the naivety of many a mid-rank FCO diplomat who know their trade well but are amateurs in politics.

Brexit is the most intensely partisan issue in internal Tory politics since the Irish question of the 19th and early 20th century. Johnson has very little interest in the content of any Brexit deal as long as it keeps his party reasonably united behind him. Hence all the headlines and briefings to the newspapers read by Tory MPs and party activists – usually the *Daily Mail* and *Telegraph* with the odd bone thrown to the *Sun* with its fast-declining circulation.

Johnson has two major and one minor political fears. He is now realising that a hard or crash-out Brexit – usually referred to as a WTO, or Australian or Canada style Brexit – will play into the hands of Nicola Sturgeon and lead to a massive increase in the vote for the SNP and a new referendum on independence at the elections to the Scottish Parliament in Holyrood, Edinburgh next May.

He also knows that chaos at the border ports of England like Dover in January 2021 with huge queues of trucks on Kent motorways will play in Labour's hand as Sir Keir Starmer and many business leaders and road hauliers will berate Downing Street for sheer incompetence.

He also has to keep an eye on ageing hardliners in the Tory party like Sir John Redwood, David Davis or Iain Duncan Smith. But most Tory MPs will hail any deal with the EU if Johnson uses his demagogic style to say it is what Britain and the Tory party want.

In June 2016 just after the referendum, Johnson wrote that trade with the EU could continue as normal, access to the Single Market would continue and British citizens could work, and settle in Europe as was the case under EU membership. All of this will be exposed as nonsense if a hard Brexit happens. Australia and Canada do not send 10,000 lorries a day into England carrying 85 per cent of the nation's fresh vegetable and fruit, along with 60 per cent of the bacon, sausages and ham we eat.

Johnson's latest line about rejecting the treaty obligations under the Withdrawal Agreement produced a furious reaction as Britain was seen to be threatening to dishonour its word as a nation when the WA Treaty was signed. The EU Commission president, the mild-mannered Ursula Von Der Leyen tweeted:

I trust the British government to implement the Withdrawal Agreement, an obligation under international law & prerequisite for any future partnership. Protocol on Ireland/Northern Ireland is essential to protect peace and stability on the island & integrity of the single market.

— Ursula von der Leyen (@vonderleyen) [September 7, 2020](#)

Von Der Leyen is Angela Merkel's closest associate in German politics since 2005 and it is safe to assume that her attack on Johnson had the blessing of Berlin. The Irish foreign minister and other senior serving EU ministers have all said it is inconceivable that Britain would so dishonour its word.

In Washington, Nancy Pelosi, who controls the House of Representatives, said there was no question of Congress voting a US-UK free trade agreement if Johnson repudiated the Withdrawal Agreement and a hard border was imposed in Northern Ireland for the normal legal checks between the EU and a third country.

Is there a way out?

No 10 has made a great deal of fuss about the need for the UK to be allowed to increase state aid outside EU norms. Clearly no country can easily accept open trade with a neighbour who massively subsidises its firms to trade at low prices and dump goods or service on the markets of its neighbours.

But EU state aid is very flexible. At the moment the UK is in the lowest quartile for state financing of economic actors. It would increase state aid four-fold to £61 billion about twice the size of the defence budget and still be within EU rules.

The EU rules do not prevent Member State governments from focusing aid on their own legitimate policy objectives including regional development which could help the so-called "red wall" seats in de-industrialised regions of the north and Midlands.

As it is the EU has increased state aid to €2.9 trillion to be spent on 288 programmes in response to the COVID pandemic's hit on the economy. It is surely possible for Barnier and Frost to find words that allow the UK far more leeway in increasing state aid in response to COVID to meet Johnson's and Tory MPs' demands and he can then proclaim this as a victory for his tough line and bring back a bit of paper to declare he has won the Battle of Brexit with Europe.

The same is true for fishing. A crude extension of UK territorial waters to 200 nautical miles around the UK coast won't work. Most British fishing boats are owned by foreign firms and 30 per cent of on-board fishing workers are EU citizens. In any event 60 per cent of all the UK catch is sold to Europe so there is little point in having a fishing war with the EU if UK based trawlers cannot sell their catch.

For centuries British, French, Belgian, Dutch, Danish, German and Spanish fishing communities have co-existed even with some friction at the edges. The need to preserve fish stocks which is what the EU commons fisheries policy now mainly does is an important to British fishing communities and 12,000 men and women who work in fishing as any other country. Again, it should be possible to set up a new regime based on quotas and regular reviews that can satisfy most fishing communities. If Barnier and Frost can agree this, Johnson can bring this home as a victory.

For the rest and there is a lot of “rest” in terms of financial services, professional services, education and creative industries and trade in goods, notably cars made in the UK, as well as the rights of up to 2 million Brits who live, work or have a base on the continent this is what General de Gaulle *l'intendance* – logistics which can be discussed and ironed out in negotiations that go into the 2020s.

Some in Brussels, and many in the Tory Party, want a big bang Brexit but that is not in Johnson's political interests. It will be awkward for the EU and new agreements may be needed to open the door to continuing discussions after January 2021. It is not in Europe's interests to have a major crisis on its borders with Britain nor can Johnson want endless TV reports of “Brovid” economic dislocations as he face the problem of Scottish secession, and a Labour Party back in business.

It is the Brexit Johnson promised in 2016 – one that takes the UK out of the Treaty – but does not worsen the economic future of the UK or reduce the rights of British and EU citizens to live harmoniously. It is called a compromise which used to be a British, especially a Tory British, speciality.

Might it happen? If it does it will be at the very last possible moment like everything Johnson does.

This article gives the views of the author, not the position of LSE Brexit, or the London School of Economics.