

European Disintegration(?)

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Introduction

European Research Day / Europaforskardagen

This publication is the printed version of an annual seminar where researchers associated with CERGU at the University of Gothenburg debate a current question with relevance for research on Europe. The seminar is multi-disciplinary and the speakers are invited from a mix of researchers based at the University of Gothenburg and invited guest speakers.

The seminar took place on 27 March 2018 at The School of Business, Economics and Law at the University of Gothenburg. The invited speakers were Lisbeth Aggestam, Karolina Enquist Källgren, Mats Hellström, Katarzyna Jezierska, Andreas Moberg, Joakim Nergelius and Andreas Önnersfors.

Topic: European Disintegration(?)

Is the “process of creating an ever closer union among the peoples of Europe” still on track, or has it perhaps entered yet another new phase? Contemporary European politics may be seen to suggest that European integration needs to take a step back in order to move forward. Does this mean, then, that the Union is disintegrating? Or is this just evidence of the non-linearity of the integration process?

In this seminar, several presentations discuss and debate the overall theme. There are two panels. The first panel, called “Ideological disintegration?” seeks to cover the tension created by the fact that the general idea of foundational values for European cooperation seems to be challenged more and more, both by elected politicians and civil society. Recent events in Poland – which have caused several of the EU’s institutions to issue sharp criticism directed at the Polish government – is a clear example of this as it represents a case of potential disintegration from within, whereby the “whole” is challenged through a refusal of commonly agreed shared values. The second panel is called “Structural disintegration?” and this panel deals with the fact that there are states and regions expressing a clear desire to “leave”. “Leave” does not only mean to leave the EU, but also federal EU member states. The Brexit-case is an illustration of structural disintegration whereby one of the parts of the Union is separated from the whole.

Presentation of authors

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Lisbeth Aggestam is associate professor at the Department of Political Science, University of Gothenburg. She works in the field of comparative foreign policy and her current research project focuses on leadership in EU foreign policy. Aggestam teaches on the International Relations of the European Union and Foreign Policy Analysis.

Karolina Enquist Källgren

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Mats Hellström

Mats Hellström has been Minister of Foreign Trade, EU-and Nordic Affairs and Minister of Agriculture in various Social Democratic Governments in Sweden as well as Sweden's Ambassador to Germany and Governor of the Province of Stockholm. Currently he works with International Trade policy, European Affairs and Urban Agriculture.

Andreas Moberg

Andreas Moberg is associate professor of International Law at the Department of Law at the University of Gothenburg. He teaches EU and European Law as well as Public International Law. His research is currently focused on questions of EU Constitutional law and the Court of Justice of the EU.

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Andreas Önnerfors

Andreas Önnerfors is Associate Professor in the History of Sciences and Ideas at the University of Gothenburg. Specializing in the intellectual history of the enlightenment, he has over the last years analysed discourses in the European New Right (ENR), in particular the German 'right-wing movement of indignation' PEGIDA. He currently is involved in research about conspiracy theories in and on Europe.

Panel 1: “Ideological disintegration?”

The first panel of the seminar consisted of Katarzyna Jezierska, Andreas Moberg and Andreas Önnarfors. The presentations of Moberg and Önnarfors are reproduced below.

Article 7 and Poland

Andreas Moberg

What’s going on in Poland? It is a pretty rude question, I know, but when reading the Commission’s reasoned proposal for a Council decision on the determination of a serious breach by the Republic of Poland of the rule of law, the question, quite honestly, is completely adequate. In this presentation, I will start by reminding everyone here about article 2 in the Treaty on the European Union, and its companion, article 7. Then I will explain how the Commission has dealt with the situation in Poland. Finally, I will share a reflection, from a legal perspective, based on how this situation has been handled.

The two treaty articles were introduced in the treaty, and entered into force, in 2009 following the changes brought about by the Lisbon treaty. Criticism of the mechanism, mainly because of the fact that it had proven difficult to use and apply, eventually – in 2014 – led to the Commission adopting the Framework to strengthen the Rule of Law.¹

Now, I will go through the procedure of article 7 TEU, using the current Polish case as an example. First of all, there is a choice between a normal Infringement procedure for violation of EU Law, and the Rule of law framework. This to some extent, highlights the distinction between the legal arena and the political arena. In the present case, it was the actions taken by the Sejm, the Polish lower house of parliament, in November 2015 that caught the Commission’s attention. Following the general elections of 25 October, the new parliament came into power on 12 November and immediately (19/11) amended the law on the Constitutional Tribunal. The possibility to annul judicial nominations made by the previous legislature was introduced. The Sejm then, on 25 November, annulled the five nominations by the previous legislature to the Constitutional Tribunal and on 2 December nominated five new judges. The Constitutional Tribunal was seized of the matter, and ruled, basically, that the Sejm did not have the legal authority to adopt these decisions. The decisions have not, to this day, been published by the government, which is a formal requirement for the cases to become binding under the constitution.

These events made the Commission launch a dialogue with the Polish government on 13

¹ COM(2014) 158, 19/3/2014, Communication from the Commission to the European Parliament and the Council, A new EU Framework to strengthen the Rule of Law.

January 2016. This is where the Commission's assessment starts. On 1 June 2016, the Commission adopted an "Opinion concerning the Rule of Law in Poland". The Opinion is based on the meetings and exchanges between the Polish government and the Commission between January and June 2016. On 27 July, the Commission issued a "Rule of Law recommendation" to the Polish government, where it found that there was a systemic threat to the rule of law in Poland. The Polish government was given three months to solve the problems indicated in the recommendation. On 27 October, the Polish government sent a reply to the Commission where it disagreed on all points raised in the recommendation.

During the following year, this process was repeated on 21 December 2016 and on 26 July 2017, and on both occasions the Polish government replies that it does not agree with the Commission's assessment. On 20 December 2017, the Commission sent a fourth complementary recommendation regarding the rule of law in Poland, to the Polish government. At the same time, the Commission sent a Reasoned proposal regarding the Rule of law in Poland to the Council, proposing that the Council adopt a decision that there is a clear risk of a serious breach by the Republic of Poland of the Rule of Law. The Commission also proposes that the Council should, as part of the decision, recommend Poland to take a number of actions within three months.

The main reasons stated by the Commission are that Poland now, due to the actions taken by the Sejm and the government, now *lack an independent and legitimate constitutional review*, and that there are *threats to the independence of the ordinary judiciary*. These grounds are developed over ca 20 pages in the reasoned proposal. In the Commission's recommendations, we also find an interesting "lifeline" being thrown to Poland. The Commission stands ready to reconsider the reasoned proposal in case Poland addresses the recommendations. This is an interesting arrangement, and I will get back to this in my comment. The three month time limit expired on 19 March (last Monday). I am not aware of any answer sent from the Polish government to the Commission.

Article 7 TEU, as mentioned earlier, provides two mechanisms. The tabled proposal regards the one called the "preventive" mechanism in article 7.1 TEU. It is about determining that there is a clear risk of a serious breach of the values referred to in Article 2 TEU. The Council adopts such a decision by 4/5 majority (22 votes), and the consent of the European parliament (simple majority). The European Parliament adopted a resolution welcoming the Commission's proposal and calling on the Council to take swift action under article 7 (1) TEU on 1 March 2018, although it is important to underline that this resolution does not constitute the formal consent required by article 7 TEU.

So, we are at a very interesting junction in time. The Rule of Law Framework has been used, *for the first time*. Furthermore, article 7 TEU has been triggered, by the Commission, *for the first time*. It may have taken almost two years of dialogue, and five versions of recommendations, but the reasoned proposal has been submitted to the Council.

As I understand the situation there are only two possible outcomes at this stage. One is that there will be a vote on whether or not to declare that there is a clear risk of a serious breach by Poland of the rule of law. The effects of such a decision are not clear, to say the least. The other option is that the Polish government decides to take the “lifeline” thrown to them by the Commission, before the Council votes, which means that the Commission may withdraw its reasoned proposal.

Now, a short reflection from a legal perspective. I am not sure that this “Article 7-business” is a good idea. The way the Commission’s Framework is designed, it seems likely that only the Commission will ever be able to go through the process all the way to the Reasoned proposal. Adding to this: the Commission’s framework for the RoL procedure turns the Commission into an investigative body, almost a prosecutor, which is there to build a case against the MS. This is similar to what the Commission does in infringement proceedings, and it is a clear juridification of Article 7, which in essence is a political option. The image that comes out is a difficult mix of a very sensitive political issue, where the process is becoming more and more juridified. In my view, this is a very tricky way to go. The juridification of high politics may work out well in a single case, but one aspect of choosing a legal framework is that general legal principles come into play. This means expectations that e.g. the principle of comparative justice must apply, which requires that like cases must be treated alike. It also means that there will be increasingly high demands on transparency and foreseeability, especially from the perspective of the accused state. There will be lawyers looking at the Commission’s stated reasons, especially the next time the Commission launches an investigation and adopts an opinion under the RoL Framework. I do not know how many times the Commission has been asked to do so already, but I recently noticed that the ALDE group of MEP’s on 31 January 2018 issued a question to the Commission stating that there are serious challenges for the Rule of Law in Malta.

So, a juridified process for Article 7 may seem attractive in a short perspective, as it definitely makes it easier to get this first case over the finishing line. However, this lawyer is very sceptical of how well this move will turn out, since it does not change the fact that in the end, the decision to sanction the state is down to the heads of states and governments forming the European Council, it is not the decision of a Court of Law.

Manichaeic Manipulation – Europe between Apocalypse and Redemption in the Imaginary of the Radical Right

Andreas Önnersfors

An eternal fight between Good and Evil fuels the imaginaries of the European Radical Right (ERR) in a psychology of continuous panic-mongering. Is Europe the bulwark and pinnacle of Western civilization, the safe haven of Christianity, tradition and family values or has it turned into a dystopian oppressive dictatorship of 'globalist' Eurocracy? The imminent end of European civilization as we know it has received many names in the ERR such as the 'breaking point' in UKIP-rhetoric, 'systemkollaps' in Swedish (the 'breakdown of the system') or 'Asylflut' in German (the 'refugee deluge' – a biblical trope of scourge).

Contemporary discourse on Europe is infused by a powerful figure of Manichaeic manipulation, a dualistic political cosmology, where light and darkness are engaged in a seemingly endless battle for dominance. But can the Continent be rescued from its final Armageddon? In ERR discourse, at least, it is seen as a matter of choice by 'the people' between 'Us' and 'Them'.



Woodcarving (1475) from Augustine's 'City of God'

Witnessing the collapse of the West Roman Empire, Augustine of Hippo (354-430 AD) wrote down a key interpretation of Christian doctrine, "The City of God Against the Pagans" (*De*

civitate Dei contra paganos, 426 AD). Augustine’s major aim was to free Christianity from any accusations of having furthered the fall of Rome, sacked by the Visigoths in 410 AD. In “The City of God” Augustine launches a powerful image in which the City of Man and the City of God are placed in an eternal conflict, destined to end in victory for the latter. However, human prospects to make a free (and informed) choice between good and evil are very dim in Augustine’s theology, the above mediaeval wood carving illustrated the cities as potential destinations for pilgrims. The City of God (Zion) is inhabited by peaceful angels, its gate is wide open towards nature and life, prospering outside. A shepherd represents Abel, who with his blood laid the foundations of the angelic city. He is opposed by a rough man with a pickaxe in front of a steep, downward pointing, stony road. He symbolizes Cain, the founder of the sealed “Seat of Satan” (Babylon) surrounded by barren nature, where demons, wicked and horned creatures, half-women, half-animals throw rocks, poke their tongues and open fire on untroubled angels pointing to heaven.



Image disseminated in social media during the Czech presidential election campaign 2017-2018

In the apocalyptically charged atmosphere of contemporary political discourse, the return of Augustine’s Manichaean dualism does not surprise. In its most blatant form it was employed during the Czech presidential campaign in early 2018 where the candidates Drahos and Zeman were opposed as candidates of Good and Evil. In the above image, the liberal candidate Drahos is displayed against a disparate array of images: Stars and Stripes, a nuclear explosion, the US army, ISIS, Death in general, Taliban fighters, a capitalist Uncle Sam, an invasion of gawking refugees of African origin, Lucifer/Baphomet, all-engulfing fire and a soldier in combat. The far-

right populist Zeman stands for the Czech national crest, a piece of nature flying in the sky (a flat earth? Paradise lost? Or a reference to the green meadows in the Czech national anthem?), a white dove (or seagull?), two heart-shaped and interlaced clouds, a happy and healthy nuclear family, delicious fruits, a toddler sleeping quietly together with a dog, an abundance of four-leaved clovers and bees (!). In the middle of the scenery we find a bald man dressed in a suit, pictured from behind beneath the motto (coloured in red to the left and blue to the right) “Vyber si cestu” – or “Choose your direction”. His choice is either to walk on a paved, dark and blood-stained road to the left or on a bright and shiny road to the right. Of course, we do not know what effect this image had for the tiny victory of Zeman (with 51.8% of the vote in a second round runoff against Drahos), but it is representative for the rhetoric haunting the political climate in the Visegrád-countries in general.

Slovensko, ktorou cestou sa vyberieš?

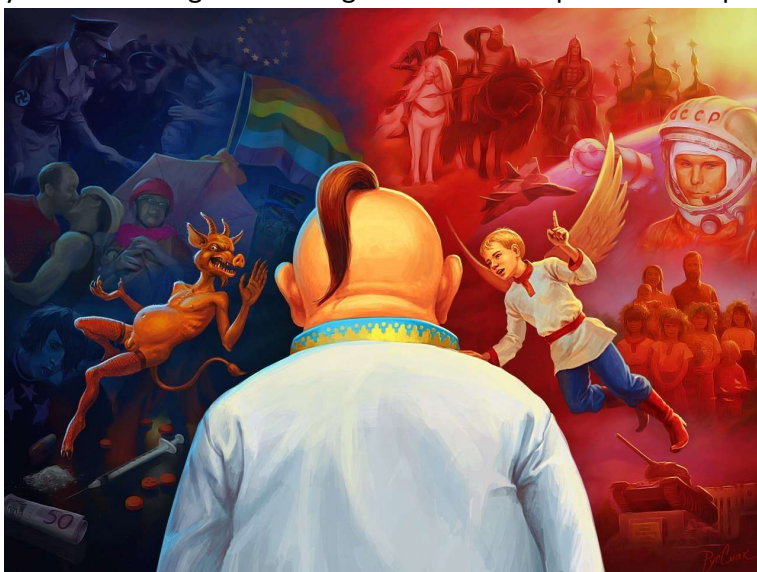


Slovak image circulated in social media in connection with the hashtag ‘#AntiSoros’

Only shortly after the Czech presidential election, a similar image surfaced in Slovakia. Under the heading “Slovensko, ktorou cestou sa vyberieš?” – “Slovak – which direction do you choose?” we find an equally Manichaean representation, however with a more profound anti-EU edge. What are the choices of the Slovak (non-bald) man, likewise dressed in a dark suite and placed above the hashtag “#AntiSoros”? Should he turn to the left, he would encounter a world behind a fence guarded by CCTV and immersed in industrial pollution, represented by the image of the Tower of Babel. A gallery of six evil men is displayed, from the top left German social democrat (former President of the EU-parliament) Schulz, Robert Fico and Mikulas Dzurinda (PMs of Slovakia) and beneath them George Soros, Andrej Kiska (philanthropist and

Slovak president since 2014) and Vaclav Havel, first president of Czechoslovakia. The lower part of the imaginary displays war, the refugee crisis, a kissing gay couple, a queer emo boy and batches of banknotes (USD?). A banner on the fence displays the slogan “Nato = legal terrorism” and beneath the colours of the EU, the Nazi flag is revealed. Turning to the right, the Slovak man would without limitations reach the Carpathian Mountains and get inspired by a line-up of Slovak military, religious and political leaders, all male: Ludovit Stur (creator of the Slovak language), Alexander Dubcek (a Czechoslovakian politician from the communist era), Vladimir Meciar (PM of Slovakia with autocratic tendencies), Andrej Hlinka (priest and Slovak nationalist leader – the infamous ‘Hlinka guards’ from the Nazi era are named after him), Milan Ratislav Stefanik (a Czechoslovakian military leader). Furthermore, the Slovak man would get his electricity from renewable energy (wind power), be rewarded with a Slovak gold crown and dance traditional folk dances. He would also enjoy the fruits from the hands of a hard-working farmer and encounter a healthy and happy nuclear family, for some reason identical with the Czech family (only mirror inverted).

In the Czech case the satanic anti-American imagery is predominant and explicit and appears in general (in parallel to diverging stances on Israel) as one of the ideological dividing lines in the ERR. The Slovak imagery is more complex. It attacks at the same time ecological pollution, human pride, manipulative politicians and lobbyists, war and terror (orchestrated by the NATO), the refugee crisis and LGBTQ, paired with a critique of profiteering, a fenced-off surveillance society and the EU as an evil Nazi dictatorship. At the core of the visual narrative is a campaign directed against George Soros (the Slovak image is to be found on the Facebook-page of “#AntiSoros” and thus linked to the prevalence of anti-Soros conspiracy theories in the entire macro-region). The positive imagery in both cases is charged with references to a clean and prosperous nature, family values, culture, history, harvest and harmony. Somewhat odd is the Slovak preference for wind-energy and the Czech statement in favour of bees (which traditionally stand for industriousness). Both images are ripe with religious overtones which in yet a third image circulating in Eastern Europe reaches a pinnacle.



A Ukrainian placed within the existential choice between the ‘West’ and the Slavonic ‘East’ – image

widely spread in Russian and Ukrainian social media

Presumably of Ukrainian origin (hinted at by the traditional haircut 'chupryna' and shirt 'vyshyvanka'), the choice is here between a dystopian world covered in blue and ruled by the devil or a shiny red world of radiant visions of the past. The devil, with a fat belly, openly displays genitalia and is dressed in stay-ups, invites to his blue realm in which Adolf Hitler is placed next to the European and Pride flags, a middle section with queer people, a kissing gay couple and a lower section with drugs and possibly some Euros. To the right, a Slavic angel points the seeker towards a bizarre imagery uniting Slavic ancestors, the Orthodox church, the Soviet space program and Air Force, a nuclear family with three times the number of children as in the Czech and Slovak cases and finally a typical Soviet tank monument.

Perhaps all of these three images are interrelated, perhaps not, however they all communicate a worldview of existential division within Europe and the geopolitical 'West' more widely. The Ukrainian and Slovak images make use of the idea of a satanic 'Gayropa', European queer depravity, underscored by the blue colour in the Ukrainian case – and underpinned by the Eurasian writings of Putin's court philosopher Dugin. Gayropa is symbolised by the Pride flag, kissing gay couples and apparently emasculated emo boys. Furthermore, both make the statement about the similarity between Nazi Germany and the EU. The devil appears also as a clear signature of Drahos. Whereas there are no negative references to war and terror in the Ukrainian image, the Czech and Slovak visual representations are obvious: the USA brings about death and destruction and, following a popular conspiracy theory, it can also be read into the image that ISIS is an American creation and that the refugee crisis likewise is orchestrated by the 'globalists' to bring down the European nation states. In the Slovak case, the NATO in general is pointed out as representing 'legal terrorism'. The Czech image has only a slight reference to culture and historical past through the national crest, in the Slovak case, both folklore and a gallery of national leaders connect to history. The Ukrainian nostalgic gaze incorporates a stunning mix of space age and sacred references and a positive connotation of military force with references to WWII. Here an angel also points to heaven and space – reifying the technological and the spiritual. Religious references are more hidden in the other cases, apart from the Tower of Babel. When it comes to the environment, both the Czech and Slovak images idealise nature and harmony. What stands out is the weird piece of land flying in Czech air space and Slovak references to pollution and clean energy. All images hail the heteronormative nuclear family with between two and six children.

As bizarre as these images might appear, they all relate to central ideas in the ERR repository of rhetorical tropes. Facing the immanent collapse of the 'West', European people are placed in the position of existential and Manichean choice where one path obviously will lead to Augustine's City of Man (i.e. decadence, death and destruction) and the other a City of God that promises restoration, redemption and reintegration. Once this apocalyptic dividing line is established, the wider political mythology can be assembled accordingly – creating its own form of order between 'good' Christians and 'bad' Muslims, the 'pure people' and 'corrupt elites', and, finally, the ERR *bête noir*, native in-groups and foreign out-groups.

The ERR is anxious to align itself to a narrative in which the USA is blamed for satanic death, chaos and destruction caused by aggressive militarization of world politics for which NATO is a tool, unfettered industrial globalization of Babylonian proportions, uninhibited materialism and incarcerating surveillance. European nation states are threatened by internal and external enemies, the (violent) 'refugee deluge', Muslim terrorism and the weakening of masculinity through the acceptance of homosexuality. Society is furthermore undermined by drug abuse and veneration of capitalism. It is obvious that European space as organized by the European Union under the oppressive Pride-flag is likened with national socialist dictatorship (in which presumably the nation states are subjected and suffocated). It appears also as obvious that the development is orchestrated by a conspiracy of pro-EU and pro-Western politicians and the archetypal symbol of what Hofstadter called a 'paranoid style of politics', the 'globalist' (a code-word for outright anti-Semitism) George Soros. Instead, the opposite populist imagery appeals to promises of redemption, reintegration into a peaceful and positive state of uncorrupted nature, environmental sustainability, health and pro-life, traditional family values, homogeneous national culture and a 'retrotopian' nostalgic longing for the glorious national past as a vision for the future (Bauman). In general, modernity is rejected short of certain parts of a merely technological progress, in the most extreme case even endorsing space travel. Thus, a form of meta-political vision is formulated in which harmony is restored and the true state of human liberty is realised within the national community opposed to the divisive chaos outside.

Credit: I would like to thank Peter Larsson and Hynek Pallas, who made me observant of the Czech and Slovak images and discussed their content with me.

The pictures reproduced have all previously been made publicly accessible on <https://www.radicalrightanalysis.com> .

(This is an extended and modified version of a text published online on <https://www.radicalrightanalysis.com/2018/05/15/manichaeon-manipulation-europe-between-apocalypse-and-redemption-in-the-imaginary-of-the-radical-right/>)

Panel 2: Structural Disintegration?

The second panel at the seminar consisted of Lisbeth Aggestam, Karolina Enquist Källgren, Mats Hellström and Joakim Nergelius.

Exit, voice or loyalty? Prospects for EU foreign policy cooperation post-Brexit

Lisbeth Aggestam

The field of foreign and security policy is not much talked about in the debate about Brexit, even though the impact in this field – with Britain being one of the heavy weights in the Common Foreign and Security Policy - will be significant.

We should remember that the pace of integration in EU foreign policy over the last two decades has been quite extraordinary, if we consider that this is a policy field where matters of sovereignty and the identity of Member States is highly charged and symbolic.

Since the first steps were taken in the Maastricht Treaty, the ambitions in foreign policy has steadily increased, not just in the diplomatic field, but also in terms of the EU as a security and defense actor. The Lisbon Treaty that came into effect in 2009 contained some significant reforms in terms of the European foreign policy machinery with the creation of a new diplomatic service, the European External Action Service (EEAS) and the empowering of the post as EU High Representative for Foreign Affairs and Security Policy. As a scholar in the field of Foreign Policy Analysis and International Relations, this represent some new and interesting developments because in the field of international politics, academic studies tend to stress the very constrained role that international executives have in the field of foreign policy – not to mention security and defence policy. To be sure, the EU's Common Foreign and Security Policy remains intergovernmental given that decision-making ultimately resides with the Member States. Nonetheless, it is a significant development that the formal leadership functions in EU foreign policy, in terms of agenda-setting, coordination, and policy-formulation have been delegated to Brussels and no longer involve the rotating EU Presidency to the same degree as before.

So the questions I will seek to address in this short talk today are what might happen in this field of foreign and security policy when the United Kingdom – one of the Union's biggest and most important member states, in terms of its diplomatic capacity around the world, its military power, with a permanent seat on the UN Security Council and global outlook – will leave the Union? Where does this leave the European Union as a serious foreign policy actor to be reckoned with? Will the process of Europeanization of foreign policy come to a halt and will we see increasing fragmentation and the start of a process of de-Europeanization in the aftermath of Brexit?

In trying to answer these questions, I take inspiration from the classic work by Albert Hirschman – *Exit, Voice and Loyalty* – published in 1972, to describe different responses members of an organization may have when there is dissatisfaction with the organization. While exit means that a member leaves the organization, other options are to opt for ‘voice’ and argue for change ‘from within’ or to simply stay ‘loyal’ and not rock the boat?

These kinds of questions have been brought into the lime light with the Brexit debates about the benefits and costs of EU membership.

Of course, Brexit at the current stage of negotiations, has so far inevitably been characterized by disputes over money, borders, citizens and a future trading relationship. But this should not overshadow the fact that the UK is leaving the EU foreign policy machinery at a very critical time when the principles and foundations of European order are severely challenged – as we saw in the Ukraine crisis and the serious deterioration in relations with Russia, but also in the sharp downturn in transatlantic relations under the American President Donald Trump .

What will happen in terms of future cooperation and integration in EU foreign policy when the UK leaves the European Union and all the institutions where foreign policy is discussed in Brussels?

To begin with, it is worth remembering that the UK has certainly been an ‘awkward partner,’ in many respects, when we think of its membership of the EU. Britain has never been a fan of the idea of an ‘ever closer Union’ with a European army, but this should not overshadow the fact that consecutive British governments have over many decades embraced, and even been enthusiastic participants of, the EU acting more coherently in foreign affairs. Many of the early initiatives in European Political Cooperation, what used to be called the EPC, were taken by the UK. Moreover, the initiative to develop an EU Common Security and Defence Policy (CSDP) was initially taken by the UK and French governments back in 1998. So in the field of foreign and security policy, it could be argued that the UK in fact has at times taken a leadership role in shaping the structures and policies, because the added benefits have clearly been seen to outweigh the costs of cooperation in this field.

And this is precisely why the UK government, and in particular, the Prime Minister, Theresa May has been stressing her desire for the UK and the EU entering a new treaty that cements cooperation on foreign security and security policy after Britain leaves the Union.

In a speech that Theresa May delivered in Florence on 22 September 2017, she made clear that her government’s objective is to replace the UK’s EU membership with “with a deep and special partnership with the European Union.” A considerable proportion of the Florence speech was devoted to ‘a new relationship on security’ alongside a new economic relationship. This security relationship, May argued, should be underpinned by a treaty between the UK and the EU.

More detailed UK government ambitions for a broader foreign, security and defence policy

relationship have been set out in other so-called 'future partnership' papers. These papers put great emphasis on the extent to which the UK and EU share values, objectives and threat perceptions and that the UK has much to lose in being more detached from the EU.

However, the UK will be exiting as an EU member. As long as no cementation of relations take place in a treaty, Britain will undoubtedly seek more bilateral cooperation with individual EU member states, from which we may see the emergence of new forms of 'minilateralism' in Europe – that is, smaller clusters of countries who work closely together on specific issues. For smaller countries, like Sweden, these informal groupings are never particularly desirable because they tend to focus mainly on the biggest players on the European stage. I would not argue that this development of minilateralism would necessarily represent European disintegration – because I still think that most countries in Europe will seek to embed their foreign policies in multilateral diplomatic frameworks – but there is a risk that the EU will be sidelined and a process of de-Europeanization will take place.

What speaks against this gloomy scenario is the fact that there is widespread agreement among most European countries that they in fact share many interests, threats and challenges at the current time. Even the biggest EU states – including the United Kingdom – are fully aware that they cannot manage these problems on their own. This is why the UK government keeps emphasizing the importance that a new treaty-based relationship between the UK and the EU is established that ensures continued cooperation on foreign policy and security.

Thus, the UK government is not advocating anything like a hard Brexit on foreign affairs and security. Indeed, if you carefully read Theresa May's speech in Florence, she states that far from a hard Brexit, she envisages something rather different: "it is vital", she said, "that we work together to design new, dynamic arrangements that go beyond the existing arrangements that the EU has in this area". In short, it seems like her government seeks a high degree of integration with the EU in this field.

The response by the EU to these British ideas and ambitions of a treaty has been lukewarm. So far in the process, the EU has not wanted to focus on these issues before the exit agreement has been completed.

In contrast, what we hear from the EU on foreign affairs and security policy is mostly focused on expressing a sense of loyalty and voice towards the idea of beefing up the EU as a global security actor. The prospect of Brexit has made this task more urgent. If you read any of the speeches by the EU High Representative, Federica Moghereni, or even the French President Emmanuel Macron, their sights seem to be set with very high ambitions for the EU as a global actor. Indeed, the EU Global Strategy that was presented the day after the UK referendum has been used as a springboard to relaunch the process of European integration.

What is noticeable is how little the British overtures of a new foreign and security relationship has elicited a response from the EU. The EU27 position is aimed at maintaining focus on the

Article 50 process, interpreted in a chronological way, with discussions on a future relationship conditional on the delivery of the mandate currently being pursued by the European Commission negotiator, Michel Barnier.

While I can see why the EU is focused on maintaining cohesion among the remaining 27 and trying to provide a unifying narrative of the EU as a global security actor at a critical juncture, I sincerely hope that we don't see – yet again – a return to a situation that the Cambridge Professor Christopher Hill once coined the 'expectation-capability' gap in EU foreign policy. In other words, that the rhetoric from the EU sets high expectations at a time when the EU capabilities will be severely hampered by one of its most powerful members exiting the European Union.

Legalization of political conflict, disintegration and erosion of democracy

Karolina Enquist Källgren

I am sure all of you are familiar with the recent development in Catalunya, now and during the past autumn. The faulty referendum on independence, the bracketed declaration of independence, the suspension of the autonomy through the application of article 155 in the Spanish constitution, the incarceration of several of the political and civil leaders of the independence movement, the flight of some of them into exile – most prominently former Catalan president Carles Puigdemont – in Switzerland, Belgium and Scotland, the new election which gave new majority to the independence coalition, the failure to form a new government, and the very recent capture and incarceration of several of the independence leaders and parliamentarians in the Catalan parliament, most symbolic of this the capture of Carles Puigdemont on the border between Germany and Denmark, and of Jordi Turull, both proposed candidates for new president in Catalunya. You are also familiar with the degree of violence during the days of the referendum, and the allegations directed against the Catalan leaders, among others embezzlement of public funds, incitement to rebellion and revolt against the state. The latter is the most serious charge, and can give up to 30 years in prison. It has to my knowledge only been used once during the transition to democracy, and then against the generals that organized the failed coup d'état in the Spanish parliament in 1981. On that occasion militaries irrupted in the Spanish parliament and suspended its powers, as well as putting the city of Valencia under direct military rule, and proclaiming a state of exception.

What is going on in Spain right now is certainly serious, but I will argue that it is not because Catalunya wants to become independent that this is a case of European disintegration. If Catalunya was to become an independent state, and consequently leave the European Union, we would have reason to treat it as a case of European disintegration, but this has not yet happened, and dare I suggest, will not happen in a foreseeable future. And even then, the new formed Catalan state would be eager to be part of the European community, it is in fact one of the arguments used in support for independence, that Catalunya would still remain within the EU. I think it is highly implausible that they would, but not because they do not want to, rather because EU is still based on member nation states, with no interest of letting the EU become a platform for regions seeking independence. But I say this to emphasize that unlike in the case of Brexit for example, there is no will on the part of the independence coalition to quit the European *community*, only the Spanish national *community*. Instead, the European *community* is being used as an argument in favor of independence.

I will argue that what is going on in Spain right now is the disintegration of democracy, symptomatic of the disintegration of democratic structures in different parts of the EU. In the case of Spain and the Catalan independence movement, what is happening is the pitting of two radical ways of understanding democracy against each other, so as to actually suspend or erode democracy. We have to begin with understanding that contemporary Catalan nationalism is as old as Spanish nationalism, growing out of the loss of the last remains of the Spanish empire in the late 19th Century. Catalan nationalism has historically been connected to middle-class

merchants and their ideas about economic progress, and it is not until fairly late, and connected to the resistance to Franco, that left-wing parties has begun promoting independence. The recent strong independence politics is due to the success of centre-Christian democrat parties joining forces with socialist and radical left-wing parties for independence. This means that in the current strive for Catalan independence all other questions are subordinated to the question of independence, simply because the parties in the coalition do not agree on almost anything else. Parallel with the independence process, is an economic politics that since at least 2008 has focused mainly on cutting taxes and well-fare services, as well as deteriorating worker's rights for example. This is the case even though the socialist party ERC is the second largest party in Catalunya. At the same time we should note that there has been a firm support for Catalan independence ranging between 38-48% during the last 18 years. There is thus a large group in Catalunya who wants independence, even if it is not a majority.

In the last year's process there has been an explicit drive on the part of the Catalan independence movement to put democratic pressure on the Spanish state strong enough to force it to agree to a binding referendum, or to accept a unilateral declaration of independence. Such pressure has been built mainly by rallying civic support – such as parents organizations in schools – but also by constructing parallel institutions, such as a parallel ministry of economy for example, and by drawing support from local municipalities. There is currently an organization of around 800 municipalities for independence who refuse to transfer local taxes to the Spanish state, and who instead has sent them to the parallel Catalan ministry of economy during the last seven years or so. There is thus a clear intention in the independence movement to bypass the democratic institutions in Spain through which constitutional issues can be discussed, and they have intentionally aimed at forcing a declaration of independence, by adhering to a democratic conception based in the will of the people, that is, in the right of a people to sovereignty over its territory and to decide over its political organization.

The response to this from the Spanish state is very interesting. They have all along based their defense on the argument that they are interested in negotiating democratically with the independence movement leaders, if only they would comply with the institutional requirements for democratic debate. When the Catalan laws of transition and of the referendum has been passed, the Spanish government has turned to the Constitutional Courts to annul those laws, and they have defended the violence in Barcelona perpetrated by the Guardia Civil, as the legitimate right of the Spanish state to inhibit an unlawful referendum. It is clear that the Spanish courts are being used as a tactics on part of the Spanish government – the Spanish court system has recently been condemned by both Human Rights Watch and Amnesty International, and a few days ago the UN council for human rights opened up an investigation into the Spanish jailing of the Catalan parliamentarians – not to have to discuss the political question, and the courts are being used precisely in the name of a democracy basing its legitimacy on the independence of the legal system and the state institutions. Against a notion of democracy understood as the right to self-determination and the expression of the people's will, stands thus a conception of democracy as the upholding of the legality of the institutions of the nation state.

Paradoxically, this emphasis of upholding democracy in the name of the people and in the name of legal functioning of the democratic institutions, effectively inhibits democratic political debate. When the Spanish state argues that they are willing to debate independence if only the independence movement would 'return to legality', as the Spanish president Mariano Rajoy has repeatedly stated, they are well aware that outside of Catalunya there is absolutely no support for Catalan independence and it would be impossible to get enough support to change the Spanish constitution through the Spanish parliament. And, likewise, when Puigdemont, the Catalan independence leader, argues that he is willing to deliberate on the road towards independence, if only Catalunya is recognized as an equal and sovereign partner to the Spanish state, he is well aware that this is impossible, because if Catalunya was accepted as such, there would no longer be anything to discuss.

This has produced a situation in which there are no political alternatives, neither in the question of independence for Catalunya, nor in any other political issue in Spain or in Catalunya. In fact, it is very difficult to have representation in any other question in Spain at the moment, and this is creating, I believe an ever higher degree of mistrust and delegitimization of the democratic institutions and political establishment. And not only on the level of the Spanish state, but also as against the European community in its failure to react. This is, I believe, a real sign of European disintegration: the erosion of democratic practices in the name of a democracy that because it legitimizes itself in all too formalistic ways – either through the people or through the institutions – fails to produce democratically deliberated political solutions. The only one that gains are populist and chauvinist parties, and an economical predatory elite that has something to win from the dismantling of state control.

Brexit as the proof of disintegration, or as the exception to the rule of integration?

Mats Hellström

Brexit is an expression of a democratic weakness. It was not possible to govern the UK with its fragmented, fractionized and poisoned political climate. So a referendum was the solution with in my view dismal and perhaps even catastrophic effects for UK. Now many people ask including today's organizer if there are also other tendencies to dissolve the European Union. Catalonia comes up – but here the ambition was to leave Spain, not Europe. There is an irony here. When the modern European project started, encouraging a Europe of regions was seen as a way to glue Europe together. When Michel Barnier, then EU-Commissioner visited Sweden, he wanted to meet with Swedish regions *on his own*. The Swedish Government at the time was not entirely amused.

Brexit represents an inability in the parliamentary system to achieve efficiency and results – too much like the Tea-party with a parallel weakness in the US which has produced Trump.

Parliamentary efficiency is lacking in many countries. Sweden has a minority government which has difficulties to get solutions with the opposition bloc. On some long-term issues though, it has been possible to reach common commitments over the bloc-limits, with pensions and energy. Germany has waited for half a year to get a Government in place. But once it is now formed the Groko coalition has a very pro-European agenda backed by two thirds of the SPD membership in a referendum. And in France, Macron has been elected on a strong European platform.

The policies of Poland and Hungary are certainly problematic for EU, But I think we should study the Bulgarian philosopher Ivan Krastev first before drawing conclusions. He is stressing the fact that many of the East European nations were formed in the 19th Century in a weak Hapsburg Empire, with a bouquet of ethnical and language groups that had to work together with great difficulties. And after the Communist rule not much time has elapsed to form stability at home. So I am not sure that the hostility that we can see now is an expression of anti-European tendencies to dissolve the Union.

Certainly there are other strong divisions in the Union. Just now we can see disagreements between North and South on the question of risk-sharing and risk-reduction in the financial system, but these divergencies stem from the common wish to achieve *stronger integration* through a banking union.

So I see no general trend of European disintegration. But the weakening of parliamentary democratic systems and the rise of populism certainly is something to worry about and take very seriously.

The solutions however do not lie in more of nationalism. I myself have, I guess, earlier belonged

to those who have a “muddle through” attitude to the work in the EU. But I am today convinced that part of the bad parliamentary performance lies in a lack of grasping how to deal with issues where we have given over sovereignty to the European Union - in good will - as results could not be achieved in nationalist isolation in a globalized World.

So I am now more and more convinced that we have to move in a more federalist direction to vitalize the democratic participation and with more transparency than today. “Federal “ is an ambiguous word. In Sweden it often stands for centralization - far away from you - while for the Germans federal means a local and regional democratic participation which it applies in many fields. Pooling of resources in the top is only one element in a federal system.

What about Europe’s reaction to the current drama? The member states have stood well together in their reaction to Trumps vitriolic verbal attacks on European cooperation. The US is now withdrawing from their responsibility as guardian of the trading system – where Obama wanted to “lead from behind” Trump is now “retreating from the front” and Xi’s China is “moving closer to centre stage” rather than Deng’s “Hide your strength and bide your time” to use some famous quotes.

In this situation the European Commission tries to take a leading role with new trade agreements with Japan, Vietnam, South Korea and Canada and Mercosur in Latin America and hopefully also in WTO itself with more of multilateral solutions.

The US is shooting itself in the foot. Withdrawing from an agreement of 40% of World trade in Trans Pacific TPP means of course giving China more leeway. 40 % of Mexico’s export to the US has its origin in production in the US. A full trade war would in cautious estimates mean a loss of 5% of US GDP and a 10 % increase of obstacle to trade would mean a loss of National Income with 4% in the OECD-area.

The concern is not only about President Trump’s erratic protectionist moves however, Trade conflicts also *divert the attention* from clearing the way for *all the new features* of global exchange that are now changing our lives – not least for Europe. Technical development with robotization is part of reality. But as has been said in Sweden; we are not afraid of competition from China. We have long since made industry efficient with robotization and we have in a Nordic way taken care of those who have lost jobs in the process. Now many other countries have to deal with competing in this dimension

Trade in services is now as important as trade in goods. But services change character. Is it finally a product to lay a tariff on? Or software in the head or hand of the workmanship? Does it then concern intellectual property instead? And what about producing at home with global design – so called 3D-scanning – or instead producing relevant parts in a supply chain?

In EU we have to try to help – and not hinder – new forms of services, like e-commerce including dealing with Big Data that have doubled in a few years’ time, where it has not been

possible to get global rules to cope with Big Data diffusion and protection.

So back to European cooperation. All these issues need the kind of trans-border cooperation from which the US is withdrawing. And Russia has always looked for bilateral deals – perhaps a heritage from Tsarist times. China’s real role in multilateralism is still unclear. The future needs a Europe that holds closely together if we are to meet new global challenges in a competent way.

Macron’s France and the new Government in Germany understand this. And so does Northern Europe with our traditional Nordic model. And in the south now Spain and Portugal have joined the free-trade oriented. I see Brexit with its “Alleingang” as an exception. And even the entrenched Tory-government is now desperately seeking new international alliances and is glancing at forms of multilateralism – crucial to a stable World order – and hopefully the UK will meet the European Union as a leading actor there.

The Brexit crisis

Joakim Nergelius

The decision of former British PM David Cameron to call a referendum on future British membership of the EU was announced already in February 2013, i.e. more than three years before the referendum actually took place (on 23 June 2016). It was by no means a constitutional necessity; the reason for organizing a referendum was purely political and must be described as an attempt to maintain unity within the Tory party, that has for a long time been deeply divided on the issue of European integration and the position of the UK within that process.

As we know, in the referendum the Brexit (i.e. leave the EU) side won, with 51,9 % of the votes.² The result as such was thus clear, but what is more striking from a legal and constitutional perspective, when discussing and analyzing today's situation, is that the consequences, effects and results of Brexit were never discussed or clarified during the referendum campaign. What would Brexit really mean for the UK in political, economic and legal terms? In which future form of relation with the EU would the UK find itself after leaving the union? These crucial or even fundamental issues were, oddly enough, never really discussed and definitely not clarified before the referendum. Voters in favour of Brexit had many different reasons to vote in favor of leaving the EU and obviously also very different visions of the future UK-EU relation, ranging from globalism and universal visions via a somehow revived British Commonwealth to hard-core nationalism. This lack of clarity concerning the effects of a certain, definitely possible and not in any way unrealistic outcome of the campaign is one of the many and perhaps the single most surprising feature(s) of this in many ways quite bizarre referendum.

Against that background, the immediate decision in July 2016 of the new PM Theresa May to state that Brexit may mean many things but definitely not an EEA situation, such as e.g. the one of Norway, with open borders not only for goods, services and capital but also for individuals and workers, must be seen as too hasty. It might quite simply also be described as a mistake, not least since it was made almost nine months before the UK did formally request to leave the EU, by activating the exit procedure prescribed in Article 50 TEU.³ Furthermore, it violates the free movement of persons, one of the basic Four Freedoms and thus also one of the EU's key values as described above, in a situation where it was neither necessary nor desirable.

The reasons for taking that particular position, and thus immediately eliminating what could be seen as the most comfortable option from future negotiations, can of course be discussed; it could be seen as a logical interpretation of the referendum result, since it may be assumed that a huge part of the Brexit voters were primarily concerned with and afraid of extensive migration to the UK, or it may have its roots in Theresa May's background as Home Secretary, with a profile as being tough on migration.⁴ Regardless of which, the fact that neither the EEA option

² The exact figures were 17.410.742 votes in favour of Brexit (51,89 %) and 16.141.241 against it (48,11 %).

³ That request was formally made on 29 March 2017.

⁴ This point of view has gained more, recent attention in the spring of 2018, due to the so-called Windrush affair, where it became known that a number of lawful immigrants had lost their social and civil rights without legal

or even a Customs Union have been on the agenda has definitely made the Brexit negotiations between the EU and the UK more difficult and legally complicated than they might otherwise have been.⁵

But having that in mind, which are then the big, remaining difficulties in the negotiations – and which issues have actually been solved, in the spring of 2018?

In order to answer the second question first, and with reference to the so-called Joint report from the EU and UK Brexit negotiators of December 2017⁶, the parties may be said to have reached a kind of agreement on Citizens' rights (i.e. the future situation for EU citizens living in the UK and UK citizens in the EU) and the so-called Financial settlement, concerning how much money the UK needs to pay to the EU when leaving, due to previous obligations. In a subsequent Draft Agreement on the UK Withdrawal of March 2018⁷, agreement has also been reached on a transition period that is to last for 21 months from the date when Brexit will formally be a fact (i.e. 30 March 2019) or, in other words, until 31 December 2020. During that transition period, EU law will still apply in the UK and, economically, the UK will still be an EU Member State, but without the right to vote in the Council of Ministers and without representation in other EU institutions such as the Commission, Parliament and CJEU. The four freedoms of goods, persons, services and capital will still be in force, which is supposed to make life easier for British companies and for the whole economy.

At the domestic front, the British Parliament enacted a so-called European Union (Withdrawal) Act in early 2018. According to that law, a huge number of EU legal acts will continue to be British law after Brexit, though their content may later be changed by the Parliament (and sometimes also by the Government, which is controversial).

Thus, at least some significant progress has obviously been made in some very crucial areas. But if we look at the hitherto unresolved issues, the picture is definitely bleaker.

First, then, we may note that even in one of the areas which is supposed to be resolved, namely the Citizens' rights, there is still disagreement on the future role of CJEU in relation to future disputes that may arise (above all, of course, concerning the situation of EU citizens living in the UK). The rules laid down in these two agreements mentioned above seem to be fairly general

ground, in the time (2010-2016) when she was Home Secretary.

5 From certain points of view, a comparison between Norway and UK is here of interest. EU citizens who look for work may go to Norway to try their luck, since Norway is an EEA country (and a rich one, too). Still, surprisingly few persons seem inclined to do so. The UK, on the other hand, has for a long time been immensely popular for guest-workers from all over Europe. The decision of the UK not to accept free movement of persons (and thus free entry for European guest-workers) anymore, despite the fact that the CJEU clarified in the Dano judgment of 2014 (C-333/13, Dano v Jobcenter Leipzig, EU:C:2014:341) that any EU citizen with a right to stay in another Member State who cannot support himself economically has no automatic right to welfare and social protection, can thus be seen as a statement from the UK that for the future, it simply does not wish to be so attractive to foreigners anymore.

6 Joint report from the Negotiators of the European Union and United Kingdom Government on Progress during Phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal of the European Union, 8 December 2017 (TF 50 (2017) 19 – Commission to EU 27).

7 Draft Agreement on the Withdrawal of the United Kingdom and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made in the negotiation round with the UK of 16-19 March 2018 (TF 50 (2018) 35 – Commission to EU 27).

and definitely of the kind that may give rise to legal disputes and different interpretations of the meaning of applicable rules, not least within EU law. From the point of view of EU (law), it is unlikely or in fact impossible to even imagine that any other body than the CJEU should have the last word in such matters, while the UK simply wants the CJEU out of its legal system(s).

Still, such procedural issues may after all be possible to solve, perhaps through the invention of new legal bodies, where both British and EU judges may be present. There are, however, two other issues that simply, at the moment of writing, in June 2018, seem quite impossible to solve. And that is even more so given the very tight time limit; if the UK is really to leave the EU at the end of March 2019, as formally and legally expected, the negotiations must in reality be finished well before Christmas 2018, given that 28 national parliaments as well as the EU Parliament must approve the conditions for withdrawal.⁸

One big difficulty, then, is which kind of agreement, governing its future relations with the EU, that the UK really wishes and will finally get. Legally, this second agreement will be concluded as a traditional international agreement between the EU and a third party, in line with art. 218 TFEU. Politically (and economically), once again, the British decision immediately to eliminate any kind of customs union or EEA solution from the discussions does matter here. When both these, apparently rather favorable options are out of discussion, which other institutional models are at hand? It seems clear that at least some institutional framework is required, harboring minor agreements on a number of different commercial, legal or social issues, but the inability of the UK government to decide or propose which kind of institutional arrangement that it really wishes, more precisely elaborated and described than just a general “agreement on free trade”, is somewhat alarming. In the general European political debate, UK is often accused of so-called “cherry picking” or, in other words, just wishing to keep the advantages of EU membership while getting rid of the negative aspects, but its lack of will and ability to embrace any kind of existing (or possibly new) institutional model for its future relationship with the EU, when no longer being a Member State, may in fact be a bigger problem.⁹ This is surprising, to say the least.

On top of all that, then, the problem of Northern Ireland and, in particular, the future border between Northern Ireland and the Republic of Ireland is to be found. As concerns the control of the border between Ireland and Northern Ireland (which, as we know, is a part of the UK), since neither the UK nor Ireland (or the EU, for that matter) wish to reintroduce the physical border controls that were abolished in 1998, as part of the successful Good Friday Agreement leading to peace in Northern Ireland after almost thirty years of unrest and severe tensions between Protestants and Catholics, a possible solution may of course be to give Northern Ireland a

⁸ According to art. 50 TEU, consent from the national parliaments is formally not necessary, but it is unlikely that the Council would decide on such an agreement without such consent from the Member States’ elected parliamentary assemblies.

⁹ Among the existing models here, except for EEA, we find free-trade agreements with different degrees of economic and legal integration with e.g. Switzerland, Turkey and so-called associated states, notably in Africa and the Middle East. However, so far no serious political discussion concerning such different models seems to take place in the UK.

special kind of EEA status. However, so far the UK government has argued passionately against such a model, for a number of reasons. First of all, the government wishes to maintain legal unity between different parts of the UK as far as possible (although there are in fact already significant legal differences between England and Wales, Scotland and Northern Ireland). Secondly, the government may feel that if any such division should occur, it should be a British decision and not a condition imposed by the EU, as a pre-requisite for the UK leaving the Union. Furthermore, DUP, the protestant party in Northern Ireland upon whose votes in the Parliament the majority of the Tory government depends since May 2017 is vehemently against it and, finally, it is very likely that should Northern Ireland come to enjoy such a special status, Scotland would then almost immediately ask for a similar status, which would complicate things even further for the UK government.¹⁰

Thus, the situation here is, quite simply, extremely complicated. It is impossible to imagine that the EU would accept that the UK leaves the Union without solving this problem, since the border between Ireland and Northern Ireland will, after Brexit, be an external border of the EU. For obvious and legally recognised reasons, free trade zones are allowed and expected to have tight physical borders with its neighbours. No government directly concerned, neither in London nor Dublin (or Belfast, for that matter) wishes to introduce a hard, physical border between the two territories, since that may entail a return to hostile conditions in Northern Ireland, with riots, terrorism, huge British troops in Northern Ireland and even, in the worst case, outright civil war. So, once again the British resistance to an EEA-inspired solution or a customs union, even in a small part of the country, makes things more difficult than they would in fact need to be. It is also worth observing that while the Joint report from the EU and UK Brexit negotiators of December 2017 is reasonably clear in terms of Citizens' Rights and the Financial Settlement, the – quite long – section devoted to Ireland and Northern Ireland totally lacks legal precision or even content. Here, a lot of words are simply used in order to cover or hide a basic, profound disagreement between the parties, or inability to find a common way forward, in a way that is actually – and fortunately - quite unusual in international agreements of this kind.

So, what will these basic, profound and serious difficulties bring about, then? If we rule out the possibility that the UK would revoke its decision to leave the EU, before the end of March 2019 – which is legally possible under art. 50 TEU but politically very unlikely - one real possibility, that does actually follow from Art. 50 TEU, is of course that UK will simply have to leave the EU, without any agreement at all, on 31 March, 2019. The lack of time to deal with and solve those two huge and pre-dominantly important topics, not to mention the many hundred more or less complicated issues that have to be dealt with on top of that, once the two big issues of the Irish border and the future relations, after Brexit, between UK and the EU may eventually be solved, does of course point in that direction. However, since that is probably not in the political or economic interest of any of the parties, an alternative solution may simply be to prolong the period of transition mentioned above to a date long after the end of 2020, in order to give negotiators more time to sort out all the details. It is also possible that in the end, the British

¹⁰ The question whether Scotland may, once Brexit has occurred, legislate itself in some of the areas that are now regulated by EU law is, already now, subject to contested legal disputes.

Parliament will claim its right to maintain the last word on whether to accept the conditions for Brexit or not – and then it may of course not happen at all. Here, the future does indeed look very open.