

## JOHN KERR

Member of the House of Lords, former British Ambassador to the United States and the EU

Thank you Thierry.

Being asked to talk about Brexit, or asking me to talk about Brexit, reminds me of the story of the slightly tactless person who came up to Mrs Lincoln after the assassination in the theatre and said, 'Apart from that, Mrs Lincoln, how did you enjoy the play?'

I did not enjoy the referendum; I did not enjoy the outcome. Is it irrevocable? Is it irreversible? Well, you must assume that, whatever the outcome in the Supreme Court, the government will have a majority in both houses of Parliament for triggering the Article 50 procedure. The case in the Supreme Court is an interesting one in domestic constitutional law, over the powers of the executive in relation to the powers of Parliament. I predict the government will lose it. Even if they win it, they will still pass a motion. If they lose it, they will pass a bill through both houses of Parliament and there is a majority there for triggering the article.

Why? The government largely consists of people who did not want to leave the European Union. There is a majority in the House of Commons for not leaving the European Union. There is a huge majority in the House of Lords, where I sit, for not leaving the European Union. However, since you French invented this appalling idea of referenda, since we have allowed it to creep into our constitution which ran on Burkean principles of parliamentary representative democracy, since we have let it creep in, we cannot ignore it.

The people said, by 52% to 48%, that they wanted us to leave. We cannot say 'Well, we heard you and we are going to ignore you'. Therefore we will trigger the procedure. Is that triggering irrevocable? No. Legally, it is not irrevocable. Legally, it would be perfectly possible for the British to say in 18 months' time, 'The more we think about it and the more we understand the terms that our partners would be prepared to offer us, the less we like the idea of leaving; maybe think again'. We could withdraw the notification under Article 50.

Whether the 27 would agree to its withdrawal would be a political issue, and there might be a political price to pay. In my view, there would be a political price to pay but, legally, it would be perfectly possible, and I believe in practice an agreement would be found politically.

It would be possible but I think you must assume that the central case is that the United Kingdom will leave the European Union, greatly to my regret, but the die will not be cast irrevocably when, by March, the government triggers the withdrawal proceedings.

### **Thierry de MONTBRIAL**

Thank you for this clear answer. The next obvious question is do you have a clear idea of how the negotiation of Brexit can work? Are the people who are working on this converging on even a method to deal with the problem, and do you think it is possible to conclude within the timespan of two years, which is supposed to be the relevant one?

**John KERR**

One has to think about a sequence here, and one has to think about a number of negotiations. This, in my view, is a very unpleasant thing to contemplate, but I think it goes like this.

The Article 50 negotiation is a divorce negotiation. It is about the terms of departure; it is about the division of the property; it is about the acquired rights from either side of the citizens of the 27 and the citizens of the UK. It is about money; it is about the budget; it is about when contribution is stopped and when payment is stopped. It will be very nasty; all money negotiations are. It will be, in my view, quite short. I think it is not very difficult to see that coming to a conclusion within the two year timespan.

The more difficult element in the negotiation arises from a requirement in the text of the article which I know quite well, because as it happens I wrote it when I was working for Valery Giscard d'Estaing. A requirement, to take account during the divorce talks, of 'The framework for the future relationship between the EU and the country that has left'. Now, do not ask me what exactly that framework means; I only wrote the article; I have no idea what it means.

It is necessary, it is clearly necessary, for one to have a view to the future. That makes sense if you are thinking about the money, for example. If the United Kingdom were to want to stay inside European research programmes, as I am confident it will, and if the EU as a whole would like to retain the UK within European research programmes, as I believe it would because I think links to UK universities are welcomed by continental universities, then it would obviously be necessary for the United Kingdom to go on putting some money in, and you could not settle the budget cliff edge without deciding whether anything would go to carry on in the future.

The framework which I imagine would have a number of pillars, like close cooperation on security matters, interior matters, justice matters, fights against drug-running, terrorism, crime. There would possibly be quite close relations – I hope so – on foreign policy; conceivably, close relations on environmental policy and energy policy. These are relations from outside the room; how far away is the United Kingdom? Is it in the room next door? Is it further down the corridor? Or not there at all?

I think that framework negotiation will be more difficult, and it will be legally necessary to have taken account of something which can be presented as the framework before the Article 50 negotiations conclude. Then the difficult bit starts. I do not believe that the future trade relationship between the EU and the UK could be negotiated in parallel with the Article 50 negotiations. I think it will come next, and I think that process takes us two years plus at least three years, five years out into the future.

Only then will it be possible for the UK to trigger its full voting membership in WTO, and only then its schedule will have to be accepted unanimously by 168 members of the WTO. Only then will the UK be able to make new trade agreements with third countries. I am afraid I see – it sounds rather gloomy but this is realistic, I think – a decade of uncertainty stretching ahead. I think this is extremely worrying for my country but, on the Article 50 process itself, I think it is perfectly possible even though there is the complication to legally agree the framework, to see that done in two years.

I would be ashamed if I did not think that was possible because the two-year period was written into the treaty in the article which I drafted.

**Thierry de MONTBRIAL**

Thank you very much again; this is again a very clear answer.

The third obvious question is: let us suppose that the whole process takes a decade, as you say, or at least six or seven years; I have met no one who believes the whole process, including renegotiating trade agreements and so forth and so on, could be less than six years altogether. You say a decade but during that time can the UK be proactive, or even active, in other foreign policy areas?

**John KERR**

Yes, I think so. I mean, there is a difficult period going on at the moment where the government is trying to decide what it wants. The government is a curious coalition; the majority of members of the government did not want us to leave the European Union. The minority were divided amongst themselves about what they saw as our future outside the European Union. A minority of the minority saw us as a Singapore, a low-tax, low-welfare, free-trade, free movement of persons, challenge offshore of the European Union.

A larger group probably agrees with Mrs May that welfare in the UK needs to grow, not shrink, that the left behind need to be better looked after, and that the closest possible relationship with the EU from outside is what would be best.

It is not clear yet whether the United Kingdom believes that it can leave the European Union and remain a member of the single market, or whether it can leave the European Union and remain a member of the single market and the customs union. Mrs May's own speeches rather suggest that, for her, the most important lesson to be drawn from the referendum is the need to control immigration; the free movement of persons may be the most difficult thing for her to accept.

If she does not accept free movement of persons, and, more seriously, I think, if she does not accept the jurisdiction of the European Court of Justice and the right of Brussels to make regulations for the whole of the EEA, then it seems to me that it will not be possible to leave the European Union and remain a member of the single market or the customs union.

I must say I think that is an unlikely scenario anyway. It seems to me that you are either in the club or you are not, and I am very much afraid that Mr Tusk was right when he said it is either a hard Brexit or no Brexit. I do not really believe that soft Brexits are workable but I speak only as an observer; I do not know what is going on inside the British government, and I am not privy to what is going on in Brussels either.

**Thierry de MONTBRIAL**

Last question before we launch the debate. Do you think that there could be another referendum on Scotland?

**John KERR**

There could. I would think that there will not be, Thierry.

The Scots have a genuine grievance; the Scots voted by a large majority to remain in the European Union, as did London and Northern Ireland. It was the English countryside and smaller English towns which voted to leave.

This is quite paradoxical in a way because the Prime Minister seems to believe that immigration was the core of the grievance of those who wanted to leave, that control of our frontiers was the most important thing to them. However, the areas which voted most strongly to leave were in fact the areas with fewest immigrants, areas like the North East, which was the area which voted most strongly to leave, and is the area which has the fewest immigrants. London, on the other hand, was the area of England which voted most strongly to remain and London is, of course, the place with by far the largest proportion of immigrants.

It is quite complex, but in Scotland they voted by a large majority to remain. There is a devolved government in Scotland headed by a nationalist government, a government that in 2014 secured a referendum for independence in Scotland, a referendum that they did not win but which was quite close – 55% to 45%.

This new grievance, the reluctance to be dragged against their will out of the European Union, propels enthusiasts in that party to argue for another referendum which would result in the breakup of the United Kingdom.

I myself think this is very unlikely in the short term. The price of oil being where it is, and the Scottish economy still being quite considerably North Sea dependent, there is a huge hole in the Scottish budget which is much bigger than it was at the time of the 2014 referendum. I believe that the First Minister of Scotland, who is a very clever lady, will successfully manage the task of having a grievance without bringing it to a head until the polls show that she could win a referendum. The polls at present show that she would not win one.