HOUSE OF LORDS DEBATE ON THE QUEEN'S SPEECH
WEDNESDAY 28 JUNE 2017

Lord Owen (Ind SD) My Lords, the situation following the election is serious; it would be foolish to deny that. We are now in an international negotiation. Fortunately, we have been there before and have procedures for this. We have procedures whereby, in an international negotiation, the Government consult the Official Opposition. We have been doing that for 50 years, and it would be utter folly if we did not pursue that policy with ever greater attention now, facing the situation that we do politically. It concentrates the mind that the Official Opposition—who, incidentally, in their manifesto made it very clear that they wanted to support Brexit—may well win an election and face those negotiations, so it is not an abstract issue, and I think it was a very sensible suggestion by the Secretary of State for Brexit that his opposite number, Keir Starmer, although he is certainly used to having secrets, be made a privy counsellor and should be part of that tradition of international negotiations held in some degree of secrecy, so that the Official Opposition should know and would, in effect, have the right to call out some solutions as unacceptable. The Government can ignore that, but they would be very foolish to do so. This negotiation will go on for longer than we thought—some always predicted this. It is not going to be a two-year negotiation. We are already into that two years and, quite understandably, Monsieur Barnier has made it clear that he has to come to some form of solution to put through all the different procedures by the autumn of 2018. Everybody accepts now—the term is "implementation period"—that, when we leave the EU, there will have to be a vehicle by which we continue the negotiations. It cannot be Article 50. I believe, and have made clear my view to the Government privately for many months, that the existing machinery that we could most easily adopt is to remain a contracting party to the European Economic Area agreement, as a non-EU contributing member. That is a framework which they and we know—we have been in that same framework ourselves. I do not need to speak about it any further, because, fortunately, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, former president of the Supreme Court, summarised much of the factual background of the EEA agreement. We can leave the EEA on a year's notice. It has a court procedure. I am happy to agree with the noble Baroness, Lady Kennedy, that there is necessity for courts in international arrangements. Interestingly, the European Union has already shown some flexibility when it discussed this issue with Switzerland. It said to Switzerland at one stage, "Why don't you dock with the EFTA Court?". It is really the court for non-EU members of the EEA. That operates, and

it would be perfectly possible, if we enter, to have a judge of our own as part of that court and use that procedure. “Ah”, someone might say, “but if you then leave to go to the free trading model, what would happen to those residual agreements?”. We would then dock back into the court procedure. There may be other ways. There may be bespoke agreements which people can produce, but there is no time for such negotiation. We have to seize an existing vehicle, operate within it and try to formulate solutions. As the noble Baroness, Lady Armstrong of Hill Top, said, who is no longer in her place, who was an experienced negotiator when she was involved in the EU, there will be compromises. There will be some very difficult and unpleasant compromises along this route—there always were, but they are not discussed enough. The political parties have got out of the habit of acknowledging the honourable nature of compromise. That is part of the political structure that we have had in this country for decades—centuries—and we have built it up slowly. These procedures matter. Perhaps there is a better procedure, but this one has the flexibility that we will need as we approach this issue. Then people want fixed timings. There is now discussion of why we need to be in a trade arrangement, restricting trade. What would happen if we were able to get a NAFTA mark 2 with Canada and the United States? That is not at all impossible. That would make it easier for us to leave the transitional arrangements of the EEA. It might not be the determining factor, but it would certainly change the position. Let us not tie ourselves in knots or give ourselves too many deadlines. If you want flexibility, it is there within these different international bodies, and the European Economic Area agreement is the best. Finally, I would say that we must not use Article 127 and leave the agreement. We are there as of right as a contracting party. What happened when countries in EFTA joined the EU? We made a few minor technical arrangements and they transited from being members of the EEA to being EU members of the EEA. That can be done, but if they do not want to let us do it, we have to be prepared to go to the Vienna court—an international body, which is actually superior to the ECJ—to argue our case as to why we wish to stay in that agreement. I am absolutely sure that the common sense application of international law would be that we should be allowed to stay. I hope that we do not have to go through that and that the EU negotiators will see the value of the country and the world knowing, as soon as humanly possible, where we will be for the next four to five years—first in the Article 50 process and then in the EEA. That at least provides a structure to weld together our disagreements and agreements in the interests of Article 8. We should remember that there is not just Article 50; there is Article 8 in the treaties, which is about good neighbourliness.