

**SPEECH BY THE RT HON LORD OWEN IN THE HOUSE OF LORDS DEBATE FOR PURPOSES OF SECTION 13 OF THE EUROPEAN UNION (WITHDRAWAL) ACT 2018, 29 JANUARY 2019**

My Lords, the French have a saying that for all the ifs in the world, you could put Paris in a bottle. We have spent a lot of time on ifs in this debate. The issues will now be settled not here but in the House of Commons, and the House of Commons is pretty close to doing something which we need to be very careful about, which is to reject an international treaty that has been agreed by 27 other countries and our Government.

There was no question in the referendum that the House of Commons was to negotiate with the EU 27. There was no question but that this was to be left to Mr Cameron's Government, because he had promised that he, his Chancellor of the Exchequer and others would stay to carry this thing through. Many mistakes have been made, and many differences that could perhaps have been addressed have not been, but we face the situation now. How do we help the House of Commons to come in the next few weeks to a better solution than it has at the moment? If there is anybody here who has come out of this with some honour and distinction, it is the Attorney-General. I think his letter to the Cabinet was noble. He was a Brexiteer, but he made it quite clear that he was extremely worried. His words were,

*“the current drafting of the Protocol, including Article 19, does not provide for a mechanism that is likely to enable the UK lawfully to exit the UK wide customs union without a subsequent agreement”.*

He has not changed his mind as a result of the clarification letter that came from the two Presidents, the President of the Council and the President of the Commission.

He also wrote, near the conclusion of his letter to the Cabinet, three lines that are worth repeating:

“Finally, in considering any international agreement, it is important also to take into account the changing political context in which it is to operate and that the solution to any essentially political question is rarely wholly or even predominantly legal”.

He voted, therefore, for the Government's negotiation, warts and all. I believe and hope that the House of Commons will think very carefully before not doing the same.

The question is: how can we help? One piece of guidance to have come out of this debate—though I doubt the Members of the Commons even read our Hansard, frankly—which would be a wise decision, would be not to emphasise being able to change the

withdrawal agreement too much. That is very difficult to do. The noble Lord who spoke earlier on this point is not in his place, but has experience of the European Parliament. We have to remember that that withdrawal agreement has to go back and be accepted by the European Parliament. Because the European Parliament is changing and because there are to be elections, the room for postponement—though it is undoubtedly there; let nobody be under any illusion about that, and the European Union will be helpful on this—is nowhere near as large as most people think. I think it is a matter of weeks. We want this European Parliament to make a decision over what changes may or may not be made.

Another piece of wisdom that has come out of our debate, which may help Members of Parliament, is that the political declaration is much easier to amend, so we should look at that. First, we should record the fact that all aspects of the transitional agreement are extremely helpful to this country. Not just trading questions, but City of London questions and issues that are of real importance but rarely discussed, are left open during this transitional period. The problem is that most of us are worried that we will not get a free trade area agreement by 31 December 2020, when the transitional period comes to an end. It can be extended, but remember that this transitional period is very odd. We are not actually involved in any of the issues. We are given the appearance of still being members of the EU, but without any powers. We are paying what we would broadly be paying if we were staying in the EU—which we are, during that period—and that which we owe to the community. That is what I would call a good agreement. During that transitional period the EU gets money, which is very helpful to it with its budgetary constraints and difficulties at the moment; and we get an open agenda. It is a proper status quo—although as far as we are concerned it is also political limbo, and we will have very little impact. To extend that would be difficult. Here, I come to the one suggestion that I hope the Government will think carefully about. I have given it to them and do not know what they might do with it, but Members of Parliament might consider it.

There is a good deal of interest in the European Economic Area. It is no secret to anybody that I always thought that we would come out through the European Economic Area and use the Norway model. I was never tempted by a customs union; indeed, neither was Norway. I believe that we need the single market, which, if it continues after 31 December—if we have not reached an agreement—is a huge help to Ireland. I agree with a lot of what has been said. However tempting it may be, let us not take it out on the Irish. The 26 other nations have put them in this position, particularly—and very unwisely, in my view—the President of the Council, Donald Tusk. At one stage, he said, “What Ireland wants, Ireland gets”. You cannot have a proper negotiation on that basis. The EU has put itself on to the most sensitive border in the world with a dangerous declamatory

process. It is difficult for this country to accept that we cannot at some stage pull out of this endless customs union.

Like many others, I know that we are already in the EEA and have never given notice to come out of it. There is a respectable case for that but, again, that is an “if” of history. We are here now. I suggest that in the political declaration, we ask that if on 31 December 2020, the UK wishes, as a non-EU contracting party, to be a member of the European Economic Area, it would not stand in our way but would allow it to go through. Of course, we would also have to convince the three EFTA countries. This would lead to a number of different things. We would start to have some influence on trading matters; like Norway, Iceland and Lichtenstein, we would have a voice.

Secondly, we would be able to stand by our pledge to the fishing community to introduce UK management of fishing in our waters, although we would still have to consider environmental issues, for example, and negotiate. This would not necessarily have to be done, as is obviously the wish of some countries, through a free trade area agreement, which would not be appropriate. It would also give some sustenance to those people in the peripheral parts of this country who are, by and large, overwhelmingly in favour of Britain leaving. We must not do what Ted Heath did in the most disgraceful manner and completely sell out the fishing industry. I for one am not prepared to see that happen through a free trade area agreement.

That is one advantage. This idea would also put us into an organisation where, if we wanted, we could apply to continue being in the customs union. Non-EU members are not excluded from being in it; the three EFTA countries have just decided not to. It would be for the Government of the day, in the days approaching December 2020, to make a judgment on whether they wanted to enter the EEA and whether they then wanted to negotiate with the EU on being part of a customs union. That is difficult, but it can be done. This would change the atmosphere and show that the Government were listening to the people, not least in the Labour Party, who believe that the European Economic Area has merit and would be perfectly prepared to see that as our way of coming out. The Labour Party’s position is honourable: the party leader has made it clear that he would come out under the EEA and the single market, then try to negotiate a preferential deal on a customs union—the party is very optimistic about what it could get out of it—although that is not obligatory.

Those are my few suggestions. I speak as one who has had to be responsible for international treaties. At the end of the day, you must go into this with the belief that you will carry your country with you. I say to the people who advocate thrusting this aside as

if it is a matter of no consequence: it is a matter of huge consequence if we do not live up to our commitments, not just to our electorate and the people who voted in the referendum and the 2017 election, but to those people from 27 countries with whom we went into negotiations. We cannot just shred the agreement and throw it away; it would be very hard to replace. We must face up to that withdrawal agreement over the next few weeks—and the sooner, the better.