

Arctic Implications of a No-Deal Brexit

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The United Kingdom (UK) has left the European Union (EU) on 31 January 2020.¹ Although the UK and the EU concluded a Withdrawal Agreement² (WA), to this date (early October 2020), no new agreement has been concluded which would allow the UK access to Europe's single market, the European Economic Area (EEA), of which also Norway and Iceland are members.³ Between the end of the UK's EU membership and the end of the transition period on 31 December 2020, the United Kingdom is a non-EU member of the EEA as the EEA Agreement⁴ applies to the UK by virtue of Article 129 paragraph 1 WA,⁵ according to which, "during the transition period, the United Kingdom shall be bound by the obligations stemming from the international

agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly".⁶ Although the current construction provides the UK with single market access, the UK government has already announced that it does not intend to continue EEA membership beyond 31 December 2020. At this time, it looks increasingly likely that the current UK government is going to let the transition period run out without securing an agreement with the European Union. The withdrawal agreement between the EU and the UK only outlined the process towards an agreement concerning the future relationship between the EU and the UK. Allowing only eleven months for the creation of such an agreement seemed ambitious at best and it appears questionable whether the UK government ever had the intention of actually using the transition period for the negotiation of a new agreement. The UK's Internal Market Bill is in express

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¹ European Commission (2020). Brexit - How to get ready for the end of the transition period, https://ec.europa.eu/taxation_customs/uk_withdrawal_en.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Official Journal 2019/C 384 I/01, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2019:384I:FULL&from=EN>.

³ EFTA (no year). EEA Agreement, <https://www.efta.int/eea/eea-agreement>.

⁴ Agreement on the European Economic Area, Official Journal 1994 L 1/3, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21994A0103\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21994A0103(01)&from=EN).

⁵ EFTA (2020). Frequently asked questions on EFTA, the EEA, EFTA membership and Brexit, <https://www.efta.int/About-EFTA/Frequently-asked-questions-EFTA-EEA-EFTA-membership-and-Brexit-328676>.

⁶ Article 129 para. 1 WA.

violation of the withdrawal agreement and places UK law over international law, a stunning move away from the classical position at least in English law⁷ that “the law of nations is *per se* part of the law of the land”,⁸ an idea which is still reflected in the American legal system,⁹ for example in Article VI sentence 2 of the constitution of the United States of America.¹⁰ The EU has already reacted to the flagrant violation of international law by the UK which the Internal Market Bill poses and it appears likely that this will remain a source of tension for the foreseeable future. At least for the timing being, it appears as if the current British government has not only decided to in favour of a hard Brexit and to not use the transition period, but that it has also abandoned respect for international law, including its *prime maxime, pacta sunt servanda*. This makes it significantly more difficult for other states to muster the trust necessary for *bona fide* trade negotiations.

The Arctic, especially the European Arctic, has close economic connections

with the European Union. Sweden and Finland are full members, Greenland and Faroyar, although not EU members, are part of the Danish realm and closely connected to the mainland, which is an EU member, Norway and Iceland are, as mentioned, members of the EEA, and Canada has concluded a free trade agreement with the European Union, the Comprehensive Economic and Trade Agreement¹¹ (CETA), which is at least in part provisionally in force.¹² While a free trade agreement between the EU and the United States of America might become a possibility depending on the outcome of the elections in the United States in November 2020, the economic relations between the EU and the Russian Federation are currently put on ice due to the ongoing war Russia is waging against Ukraine, which has led to sanctions and counter-sanctions between the West, including the EU, and the Russian Federation. This has direct implications for cross-border commerce, for example between the Finnish region of Lapland and Russia’s Murmask

⁷ See Lauterpacht, H. (1939). “Is International Law a Part of the Law of England?”, 25 Transactions of the Grotius Society, pp. 51-88.

⁸ Ibid, p. 51.

⁹ Dickinson, Edwin D. (1952). “Law of Nations as Part of the National Law of the United States”, 101 University of Pennsylvania Law Review, pp. 26-56, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7912&context=penn_law_review.

¹⁰ Available online at https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf.

¹¹ Comprehensive Economic and Trade Agreement, Official Journal 2017 L 11/23, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0114\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0114(01)&from=EN).

¹² CETA has not yet completely entered into force because some member states refused to ratify CETA as needed. Only the parts for which the EU has the sole competence have entered into force, but so far only preliminarily.

oblast. For many people living in the European high north, the EU's outer border between Norway and Sweden / Finland, on the other hand, has been virtually non-existent for generations. While different regulatory systems impact daily life across Sápmi, the personal and cultural connections across borders are often as important or even more important than those within a country. For a long time, European integration had the practical effect that borders became less and less relevant, following the model of integration between the Nordic countries. With Brexit, not only the threat of a hard border on the island of Ireland (which would be in violation of the Good Friday Agreement¹³) but also borders between Britain and the countries of the (European) Arctic would return.

With regard to trade negotiations with Arctic nations, the disregard for international law exhibited by the current British government will provide a significant obstacle. Yet, close connections to the Arctic are not insignificant for the UK. The United

Kingdom has a long history of engaging with the Arctic, ranging from exploration of the icy top of the world and the exploitation of living marine resources to scientific research and modern-day tourism which brings large numbers of British tourists to the European Arctic during the winter months. The economic connections between the United Kingdom and especially nearby nations such as Iceland, Norway and Faroyar are significant, yet so far the UK only has managed to conclude a free trade deal with the latter, or, more precisely, with Denmark, which is reflected in the title of the agreement, the Agreement establishing a Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands.¹⁴ An agreement had been concluded with Norway and Iceland,¹⁵ but it never entered into force as it was seen only as a fallback in the event of a no deal-Brexit.¹⁶ With the entry into force of the UK-EU Withdrawal Agreement, that agreement became moot.¹⁷ What was not envisaged in the agreement with

¹³ Available online at

<https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>.

¹⁴ Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777022/continuing-the-uks-trade-relationship-with-the-faroe-islands.pdf.

¹⁵ UK Government (2020). Agreement on trade in goods between Iceland, Norway and the UK,

<https://www.gov.uk/government/collections/agreement-on-trade-in-goods-between-iceland-norway-and-the-uk>.

¹⁶ Ibid.

¹⁷ Ibid.

Norway and Iceland was that a British government would conclude a withdrawal agreement with the European Union and then fail to honor it. A truly hard Brexit will have negative economic consequences for both the UK and the member states of the EEA. It looks ever more likely that international trade law rules under the World Trade Organization (WTO) system will become relevant between the UK and Arctic nations.

While short stays, e.g. for touristic purposes, will likely be possible visa free after 31 December 2020, the practical realities of travel to Europe for UK citizens will change significantly after the that date¹⁸ (in addition to, of course, the impact of the ongoing COVID-19 pandemic on international travel). Even though the UK was not a party to the Schengen Agreement,¹⁹ travel between the continent and the UK was relatively easy pre-Brexit. While the impact on tourism might still be limited, although the travel experience is unlikely to be as smooth as in the past, the lack of a clear legal regime is likely to impact scientific

and economic cooperation, to name just two examples.

With regard to the Arctic, Britain's disregard for international law raises questions in how far the United Kingdom remains a reliable partner for cooperation because international cooperation in the Arctic relies heavily on the use of international law. Non-Arctic states which wish to cooperate with Arctic nations will have to find their place within the international legal framework in order to facilitate such an engagement - for example through the United Nations Convention on the Law of the Sea,²⁰ by seeking observer status at the Arctic Council²¹ or through bilateral agreements, such as the recent fisheries agreement between Norway and the UK.²² Abandoning respect for international law as a matter of principle essentially closes the door to international cooperation. Even serious political differences have been overcome to facilitate cooperation in the Arctic, but always on the basis of international law, even if the norms created under the

¹⁸ See UK Government (2020). Visit Europe from 1 January 2021, <https://www.gov.uk/visit-europe-1-january-2021>.

¹⁹ The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal 2000 L 239/13, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922(01)&from=EN).

²⁰ United Nations Convention on the Law of the Sea, 1833 United Nations Treaty Series 3.

²¹ The United Kingdom was one of the first states which gained observer status, together with Germany, the Netherlands and Poland, in 1998.

²² See UK Government (2020). UK and Norway sign historic fisheries agreement, <https://www.gov.uk/government/news/uk-and-norway-sign-historic-fisheries-agreement>.

auspices of, for example, the Arctic Council, are of a limited material scope.

A hard Brexit will impact the relationship between the United Kingdom in many ways. It will be detrimental to the economic relationship between the UK and Arctic nations, although the free trade agreement between the UK and Faroyar and the fisheries agreement between the UK and Norway might be indicators of how future developments could look like. This, however, requires that other states,

and especially the European Union, are willing to conclude agreements with the United Kingdom. Unless the UK government is able to counteract the impression that it has no regard for international law, a key tool for international cooperation in the Arctic, it risks that Britain is no longer perceived as a reliable partner. In the long run, this lack of trust might impact British-Arctic relations more than the absence of free trade agreements and the need to fall back on WTO rules.

