

## BADÍA MARTÍ, Ana María y HUICI SANCHO, Laura (dirs.)

### *El Brexit y sus consecuencias*

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*El Brexit y sus consecuencias* (Madrid: Marcial Pons 2022) presents a brave new collection of essays on the single most important development for International Law in recent years, that is, the withdrawal of the United Kingdom (UK) from the European Union (EU), known to all as Brexit. Under the careful, lucid editorship of Professor Ana M Badia Martí and Dr Laura Huici Sancho of the University of Barcelona, the volume brings together some of the most authoritative commentators on the EU both from a private as well as from a public law perspective. It is an attractive project with the further appeal, the reassurance that comes from the support that the Jean Monnet Chair in European Private Law at the University of Barcelona has given to it.

The collection is welcomingly varied, with eight very different essays. Bilingual in design, the book presents a unique selection of Spanish and English language commentaries that, together, elevate the study of Brexit from the conventional to the exceptional. And that is because each essay identifies moves within the strategy game that the Brexit process has become and which the editors intelligently equate to a game of chess. Indeed, the illustration on the book cover of two pawns bearing the colours of the UK and the EU flags respectively is a vibrant analogy of the themes of the collection, entirely in point.

The book seamlessly weaves together insider and outsider narratives on Brexit. It starts off with a cogent essay by Professor Badia Martí on the paradoxical interrelationship, through Brexit, between the doctrine of state sovereignty and the principle of state consent. The doctrine of state sovereignty proposes that the legal framework of social

and political norms that structures a state provides it with the final authority over its territory and the people within it. As an extension of that doctrine is the principle of state consent. And that principle embodies the idea that a state can choose to consent to membership of an international organisation and, correspondingly, withdraw from it. A state retains its sovereignty and, as sovereign, it retains the right to choose, the strategic choice between compliance and violation, and, more fundamentally, between membership and non-membership ('un acto voluntario' [p 20]). The UK was, as Professor Badia Martí elegantly concludes, free to join the EU and, equally, free to leave it.

And yet the EU legal system has its own quality, as Dr Huici Sancho reminds us in the second essay. Offering an excellent, rigorous study of the withdrawal clause under Article 50 of the Treaty on European Union, the essay celebrates the quality of certainty ('seguridad jurídica' (p 42)) with which the Brexit process has been able to unfold thanks to the foresight of the EU's framers. The EU is the world's largest intergovernmental and interdependent political and economic region. It is intergovernmental because the various Member State governments work together with and through the EU. And it is interdependent because it has created a dynamic of mutual dependency: the Member States need each other and so, in that respect, the formation of the EU has allowed for that classical idea of International Relations, the notion of interdependence, mutual dependence, communities, markets needing each other for different resources, and with that mutual need, the avoidance of conflict and the prospect of peace and prosperity. It is precisely in reac-

tion to that dynamic of interdependency that the framers developed a mechanism of withdrawal, as Dr Huici Sancho wisely remarks, to manage what, inevitably, follow, multiple implications for multiple stakeholders.

Multiple too are the implications and stakeholders within the UK. In the third essay of the collection, Dr Mel Kenny and Dr Antonio Cardesa-Salzmänn of the University of Strathclyde address the constitutional challenges that Brexit signifies for the UK. They pertinently conclude that the UK's '«unwritten» constitution is open to abuse by the unscrupulous populist to whom the path to an elective dictatorship is opened' (p 61), now, after Brexit, more than ever. The irony, it seems, is that Brexit could finally disunite an increasingly disunited kingdom.

In a kind of serendipitous trilogy, the book presents three essays-cum-case studies of the very different consequences that Brexit has on distinct but, nonetheless, interconnected areas in and out of the EU. First in the trilogy is an essay by Professor Christian Twigg-Flesner of the University of Warwick, one of Europe's leading authorities on consumer and commercial law. It expertly reviews the state of UK consumer law after Brexit and celebrates 'the greater regulatory freedom' (p 79) that the UK's consumer protection regime now has, as a consequence of Brexit, to further enhance consumer rights. Second in the trilogy is an essay by Dr Claudia Manrique Carpio of the University of Barcelona on the consequences of Brexit for the UK's all-important creative industries as a representative subset of the service sector. Modern economies are knowledge economies, economies that rely primarily on services. Yet Brexit further complicates trade in what is an already complicated sector for trade, complicated because of its protectionist leanings. The EU's famed internal market relies on the four economic freedoms: 'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital

is ensured in accordance with the provisions of the Treaties.' (Article 26(2), Treaty on the Functioning of the European Union (TFEU)). More particularly, nationals of one Member State are free to provide and receive services temporarily in another Member State (Articles 56-62 TFEU). Through her case study, Dr Manrique Carpio relevantly observes that 'la complejidad técnica... hace que el movimiento de personas con fines de empresariales en el ACC [the EU-UK Trade and Cooperation Agreement] sea de difícil alcance y esté muy lejos de la libre circulación de personas dentro de la UE' (p 103). Third in the trilogy is an essay by Dr Ana Sánchez Cobaleda of the University of Barcelona on the impact of Brexit on strategic trade and export control and, in particular, dual-use technology. The EU seeks to reinforce the applicable export control regime – notable is the recent entry into force of EU Regulation 2021/821 – while the UK potentially seeks to do the opposite, that is, to relax the export control regime as it negotiates ever more liberal terms of trade with its partners. Dr Sánchez Cobaleda astutely points to the prospect of policy divergence between the EU and the UK in the long term and, rightly, calls for 'la transparencia, el intercambio de información y la cooperación' (p 122) as the only effective measures to bridge the inevitable Brexit gap.

Ending the collection are two essays which lend the volume a much welcomed International Relations feel, appropriately so. Dr Leire Moure of the University of the Basque Country writes about the role of the EU as a global actor after Brexit. The author observes the generally positive effect that the withdrawal from the EU of a historically problematic Member State as the UK has had on efforts to unify an actorial narrative in external relations. Nevertheless, that narrative remains very much in development and so Dr Moure persuasively calls for 'unidad, autonomía, profundidad e inmediatez de respuesta para reconocerse y ser reconocido

como el tercer polo de poder en igualdad de condiciones en el sistema internacional actual' (p 143). The final essay in the collection is by Dr Maria Mut-Bosque of the Universitat Internacional de Catalunya who writes about the uniquely informal, *sui generis*, nature of the Commonwealth as an international organisation without legal personality, and the opportunities that may come to it from Brexit. The populist hopes that surrounded the UK's Brexit referendum for a revival of a kind of Imperial Preference system for the Commonwealth are dashed by this study, which lucidly establishes the unreadiness of the Commonwealth, in its present constitutional form, to facilitate any attempt to broker a preferential trade area for member customs territories. Dr Mut-Bosque accurately concludes, 'la propia naturaleza *sui generis* y normativa de *soft law* de la *Commonwealth* hacen que, hoy por hoy, la tarea de establecer un área comercial común sea inviable' (p 169).

The eight essays that make up *El Brexit y sus consecuencias* are, jointly and severally, illuminating. They shed light on the near and far implications of the withdrawal of the UK from the EU, implications which are, in the main, still too premature to call with any reasonable precision, paradoxically, because of the uncertainty that this ever open process continues to generate. As the editors intelligently comment, 'El Brexit... es una larga partida de ajedrez que seguimos jugando...' (back cover blurb). This collection is an essential reference to understand EU-UK gamesmanship in the perennially uncertain post-Brexit world. For the scholarly foresight with which they curated this worthy collection, Professor Badia Martí and Dr Huici Sancho merit thanks and praise.

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