Fisheries and the complexities of international treaty law

On 29th March, Mrs May invoked Article 50 of the Lisbon Treaty. Article 50 is very clear:- after two years, the treaties (and regulations} cease to apply – at least as far as the departing member state is concerned. The treaties will still apply to the remaining 27 members but not to the UK. However, the "withdrawal agreement" specified under Article 30 section 4b will be applicable to all.

As far as Article 50 is concerned, there are no grounds for any legal challenge, because the UK was only following the treaty obligation by invoking article 50, to which every other member has agreed twice – once when the Lisbon Treaty came into force and once when Croatia joined the EU.

The problem arises because of the need for a "withdrawal agreement" and the Westminster Parliament's plan to take the EU *acquis* across into domestic legislation. If no exceptions are made, as far as fisheries are concerned we would have left the CFP through article 50 only for our Parliament to all intents and purposes to subjugate us into what is in effect the CFP in all but name, especially by bringing regulation 1380/2013, (which contains the percentage share-out – otherwise known as Relative Stability – and historic rights) across into domestic legislation as part of the "agreement".

When the negotiations are finished and the "agreement" done, it will have to be presented in some legal form or other – a treaty or something similar, as the EU is under a treaty obligation to secure a "withdrawal agreement".

By coming out of the EU legally through Article 50 and then

basically going back to what we have just left through the "agreement", then according to the Vienna Convention on Treaties we could have problems at a later date. as the UK has on its own accord secured the other 27 EU Members' continuity rights to fish in its waters. These would be very difficult to remove at a later date, even though invoking Article 50 will make the EU treaties and regulations cease to apply to the UK.

It is possible HMG is unaware of this dangerous situation, but we can be certain French EU negotiator Michel Barnier will know, therefore it is imperative regulation 1380/2013 is not repatriated into domestic legislation, but will cease to apply on Brexit, as per the treaty obligations within Article 50.

Given we will hopefully see the removal of historic right in the 6 to 12 nautical mile zone by terminating the London 1964 Fisheries Convention, it would be tragic if our Westminster Parliament reinstates the present rights enjoyed by EU fishermen to take 59% of our UK resource and thus accelerate the demise of our coastal communities.

In connection with the "withdrawal agreement" the following Articles of the Vienna Convention apply:-

Article 30. APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT-MATTER

1. ***Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.***
2. ***When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.***
3. ***When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not***

terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. *When the parties to the later treaty do not include all the parties to the earlier one:*

(a) As between States parties to both treaties the same rule applies as in paragraph 3;

(b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. *Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.*

Article 4L AGREEMENTS TO MODIFY MULTILATERAL TREATIES BETWEEN CERTAIN OF THE PARTIES ONLY

1. *Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:*

(a) The possibility of such a modification is provided for by the treaty; or

(b) The modification in question is not prohibited by the treaty and:

(i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. ***Unless in a case falling under paragraph l(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.***

My reading of these articles suggests that we would be back to square one, making the share out and rights a treaty obligation once again.

Article 14. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY RATIFICATION, ACCEPTANCE OR APPROVAL

1. ***The consent of a State to be bound by a treaty is expressed by ratification when:***

(«) The treaty provides for such consent to be expressed by means of ratification;

(b) It is otherwise established that the negotiating States were agreed that ratification should be required;

(c) The representative of the State has signed the treaty subject to ratification; or

(d) The intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. ***The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.***

I think Article 14 section 2 is dangerous, because we would be bringing the *acquis* across and turning it into a treaty.

Likewise Article 30 section 4b which would mean that the UK has re-established mutual rights and obligations.

Article 59. TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY IMPLIED BY CONCLUSION OF A LATER TREATY

1. ***A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:***

(a) It appears from the later treaty or is otherwise established that the parties in tended that the matter should be governed by that treaty; or

(b) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. ***The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.***

Comparing moving the *acquis* across into domestic legislation with the independence of Ireland and India is of only limited help as both these events predate the Vienna convention.

We are entering uncharted waters in dealing with the EU is untested, as we are not dealing with a sovereign nation but a group of 28 member states, where only one is leaving. It is HMG's desire to bring the *acquis* across, the thinking being it will create a smooth transition, which in many cases it will. As far as fisheries is concerned, however, all it will do is re-establish a right for EU vessels to continue to take UK resource on the same excessive scale. .

The only way resource should be allowed to EU vessels over and above equal reciprocal arrangements is through Article 62 of UNCLOS3. Unless HMG is prepared to start with a clean sheet

with a policy policy designed for our mixed fishery, fisheries Brexit will never be achieved.