

# Where our negotiators are going wrong- Part 2

Article 50 of the Lisbon Treaty – or, to quote its proper name, the treaty of European Union (TEU) – is clear and precise with the added advantage that 27 Member States agreed its terms and all 28 current Members reconfirmed these provisions through the Accession Treaty of Croatia. So there can be no legal comeback when the Treaties cease to apply to the UK at 23.01 on 29th March 2019, and competency (control) of our Fisheries Exclusive Economic Zone (EEZ) of 200 nautical miles or median line becomes the responsibility of every single Member of Parliament in Westminster.

We will see the UK leave the Common Fisheries Policy, (CFP) and our EEZ will be operated under the guidance of international Law – UNCLOS3 – well, that is the theory.

Things do get more complicated, however, as Our Westminster Parliament is proposing to bring all the EU legislation in force up to 29th March 2019 (the *Acquis*), into domestic legislation, and this will include the CFP. This means that, having left the CFP legally and with the full support of all EU member states, our Parliament will then endorse what we have left through the European Union (Withdrawal) Bill. It will not be the CFP in name, but a carbon copy of the CFP, giving exactly the same rights to EU vessels in our EEZ as they currently enjoy.

It is a pretty poor outcome for our negotiators: All 27 EU member states have returned the competency back to Westminster and Westminster then passes a law giving those rights back.

The Government claims that it will also introduce a Fisheries Bill. At the moment, however, we have no idea of its contents or whether it will be robust enough to ensure UK control of

our EEZ enabling us to introduce a UK system of fisheries management during the next stage of the Brexit plan – the two year transitional period also known as implementation period.

The Government does not wish to apply for an extension of the two years stipulated by Article 50, because it is concerned that the 17 plus million voters who supported Brexit will turn against them. Taking nearly three years to leave the EU is just about acceptable but five years would not be tolerated. The Government would be punished at the general election.

So the date of 29th March 2019 will remain as the date of leaving, and at 23.01 of that day we will no longer be a member of the EU and will become a “third country”. This means that all EU treaties cease to apply within the UK, **including Article 50 of the Lisbon Treaty**, so while the transitional period will be **negotiated** under Article 50, the actual **implementation** of that period will have operate under a different legal basis – a new treaty.

Both the European Commission and the European Parliament (which has a final say on any agreement), have made it very clear that no non member can have the same terms and conditions as a member, which is rather obvious otherwise there would be no point being a member.

One issue of which we can be sure is that, irrespective of the Fisheries Bill, the EU will demand that any implementation treaty must include the Fisheries *Acquis* and being a treaty, we could find ourselves falling foul of the Vienna Convention on Treaties, especially article 30 and 70, if the EU, a single member state or individual challenges the rights if our own Parliament rescinds what they established. We could end up in a lengthy legal process.

This transitional/implementation period will be under the full authority of the EU institutions, including the ECJ, but there will be no UK representation at all. Even though the Secretary

of State for Exiting the EU stated at a select committee session on 25 October 2017 that no new EU law will be acceptable post Brexit because it will be sorted before Brexit, no cherry picking will be allowed, so we would have to accept any new legislation during that period.

For the past 30 years, successive governments and main political parties have claimed that we hold a considerable degree of influence within the EU, but from April 2019 to March 2021 (perhaps 2022 as the European Parliament would allow up to three years), we would in effect be governed by the EU, as a third country, with no input whatsoever.

The Prime Minister and Ministers have made it very clear during this period that would adhere to International Law on fisheries. It is absurd that over the years, many UK political leaders have condemned the Common Fisheries Policy and yet our own Parliament could end up unilaterally implementing the very policy they condemn. Furthermore, this would not comply in any form to the requirements of International law, UNCLOS 3, especially Article 61 (Conservation of the living resource), Article 62 (Utilization of the living resource), Article 63 (Straddling stocks) and Article 64 (Highly migratory species).

Fishing for Leave has produced a management plan/**model**, designed by those with practical experience, for the UK's fishing EEZ that ticks all the boxes. It is environmentally sustainable, follows International law, creates harmony between fishermen, scientists and fishery officers, while at the same time it will engender a revival of our coastal communities. This plan is based on the Faeroe Islands' "days at sea" principle, but it has learnt from the Faeroese' mistakes and is an improvement on the original crude "days at sea" model. The Faeroese Government is impressed and is now extremely interested in the FfL model. By contrast, the alternative, which we could yet end up with, is a carbon copy of the present CFP. It will be a complete failure – socially, environmentally, and economically – and could end up giving

the Nation's resource away permanently.

There are those that appear to think that as far as fisheries is concerned, the UK will still be subservient to the EU after Brexit. With our mixed fisheries, which requires its own plan, we should be the world leader. We will never get another opportunity to do this and it is down to political will. The buck stops with every Member of Parliament in Westminster; the potential is there to make Brexit either a huge success, or a catastrophic failure. Failure will bring with it a very heavy price, because although the responsibility rests with every MP, the electorate will see it as the Government's fault.