

The United Kingdom as a third country

Some people are confused about the meaning of this term with regard to our extrication from the EU and have become needlessly indignant. It does not mean “third rate” or “Third World”. In the EU situation in international law, the phrase means more or less what “third party” does in an ordinary insurance policy or other legal document – but it refers to a country or state which, in this case, is not a member of the EU or its associated organisations such as the European Economic Area (EEA).

Background

This non-membership is exactly what Mrs. May demanded in her Lancaster House speech of January 2017. She wishes to replace our EU membership with a completely new but unspecified “deep and special” relationship which can only come into being after we have left the EU. The EU does not “give” us third country status.

We acquire it automatically through leaving at our own request. Yet this seems to have come as a bit of a surprise to David Davis.

I started to take the *Daily Express* when it was the first national paper to advocate leaving the EU, so I was rather surprised to read this article in its edition of Wednesday 10th January which suggests either that Mr. Davis is ill-informed or that the reporter misunderstood him.

“Row over EU giving UK 3rd country status

David Davis has attacked a Brussels threat to punish British business ahead of Brexit trade talks.

The Brexit Secretary has written to Theresa May raising concerns about EU planning for a “no deal” giving Britain “third country status” in what appears to be an act of bad faith.

Mr. Davis told the Prime Minister he would urge the EU to drop the measures which would require UK firms to relocate to Europe or risk contracts being terminated in the event of no deal.

He said he had sought legal advice but the chances of a successful challenge were “low” and could be “high risk politically and financially”

But he said he would urge the European Commission’s Brexit task force to withdraw the statements in light of the deal reached last month to start trade talks. Mr. Davis said that EU agencies have issued guidance to businesses stating the UK will become a “third country” after March 2019 with no reference to a future Trade deal.

The guidance says “compliance activity” such as quality control of goods “ would need to be based in the EU or European Economic Area.

Other statements on legal services and the transport industry do not take into account a transition period or trade deal, he said.

Mr. Davis called the moves “potential breaches of the UK’s rights as (an EU) member state” and insisted “we cannot let these actions go unchallenged “. John Longworth of *Leave Means Leave* added that the EU’s negotiating team is increasingly out of step with the mood of many of the EU27 national governments who recognise the importance for their own economies that a free trade deal is reached with the UK....”

Meaning of Third Country Status

The Department for Exiting the EU employs some 400 highly paid specialists and the expertise of the Foreign Office and our Representation in Brussels are claimed to be world class, so it is surprising that nobody took the trouble to look up some elementary rules of international law on the internet and tell Mr. Davis.

[oxfordindex.oup.com/view/10.0903/01/authority](https://www.oxfordindex.oup.com/view/10.0903/01/authority)

Pacta tertiis nec nocunt nec prosunt – Treaties neither harm nor benefit third parties. A maxim meaning that non-parties to a treaty cannot claim benefits under it... And, once we are out of the EU, we are no longer a party to any of its treaties.

https://en.oxforddictionaries.com/definition/res_inter-alios-acta

***Res inter alios acta* – a thing done between others – to which a given person or entity was not (or is no longer) party .**

From “Third Parties and the law of treaties – Max Planck UNYB 6 (2002)”

“Basic Classical Rules

The relationship between third parties and treaties is defined by a general formula ***pacta tertiis nec nocunt nec prosunt*** (see above). This principle has been recognised in states’ practice as fundamental and its existence has never been questioned.. For states non-parties to the treaty, the treaty is ***res inter alios acta*** (see above). It has been reflected in numerous cases before the World Court. For example in the *German Interests in Polish Silesia* case the PCIJ *observed that “ (a) treaty only creates law as between states which are party to it; in case of doubt no rights can be deduced from it in favour of third states.

Lord McNair, in the Law of Treaties (1961, 309 Harvard

Research Article 18) (a) a treaty may not impose obligations upon a state which is no longer party thereto...."

***Permanent Court of international Justice**

The UK as a Vassal State

By demanding a "Hard Brexit" from March 29 2019, the government has placed itself in the position of a supplicant to the EU for a "transition" or "implementation" period so that Mrs. May's unspecified "deep and special" relationship may be agreed without disruption of trade.

If what we have been told is correct, all existing EU laws will continue to apply during this period and new ones could be sprung on us without our having any say at all – complete vassal status.

Conclusion

There are strong economic reasons for both sides to come to a mutually beneficial agreement.

However there is no good reason to suppose that the EU will abolish its external frontier procedures with a newly independent UK. If it did that, not only would it breach its own principal trading rules, but also the World Trade Organisation would be overwhelmed with complaints from other third country states. Every other country in the world would be demanding that the EU did the same for them.