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Larik, J.E.

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# Writing for ‘Brexiternity’? Reflections on Legal Scholarship on a Moving Target

Joris LARIK<sup>\*</sup>

*The United Kingdom’s relationship with the European Union was supposed to be definitively settled several times during the past decade – yet it was not. The 2016 referendum brought about a surge in interest in legal questions, especially of EU law and international economic law. This presented scholars with a questionable gift: on the one hand, countless new opportunities for research, publications, and public visibility; on the other, the curse of chasing a rapidly and at times erratically moving target. Therefore, this essay reflects on the continued relevance of Brexit scholarship and different strategies for extending its shelf-life. It argues that the relevance of this scholarship may indeed extend into the future when foresighted and innovative approaches are being put forward. Looking ahead, the essay observes that the Windsor Framework to overhaul the Northern Ireland Protocol likely marks the end point of the frenzied and fraught EU-UK relationship between 2016 and 2023. The essay concludes that, while disagreements will continue, the EU-UK relationship as a topic is entering a period of normalization. Rigorous legal and innovative interdisciplinary scholarship will remain necessary both to develop EU-UK relations as a sub-topic of its own and to embed it into wider discourses of EU and international law.*

**Keywords:** Brexit, EU–UK Relations, Legal Scholarship, Northern Ireland, Trade and Cooperation Agreement, Withdrawal Agreement

## 1 INTRODUCTION: ONCE AND FOR ALL?

The question of the United Kingdom’s (UK) relationship with the European Union (EU) was supposed to be definitively settled several times during the past decade – yet it was not. Prime Minister David Cameron’s in/out referendum of June 2016 about the UK’s continued EU membership was supposed to provide ‘a once-and-for-all resolution of an issue that had divided his Conservative Party for a generation’.<sup>1</sup> Boris Johnson’s slogan for the 2019 UK general election was to ‘get

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<sup>\*</sup> Assistant Professor of Comparative, EU and International Law at the Europa Institute and Leiden University College The Hague, Leiden University.  
E-mail: j.e.larik@luc.leidenuniv.nl.

<sup>1</sup> Dan Balz & Karla Adam, *For David Cameron, a Quick Departure After a Stunning Defeat*, The Washington Post (24 Jun. 2016), [https://www.washingtonpost.com/politics/for-david-cameron-a-quick-departure-after-a-stunning-defeat/2016/06/24/8d5ff592-3a04-11e6-9ccd-d6005beac8b3\\_story.html](https://www.washingtonpost.com/politics/for-david-cameron-a-quick-departure-after-a-stunning-defeat/2016/06/24/8d5ff592-3a04-11e6-9ccd-d6005beac8b3_story.html) (accessed 29 Mar. 2023).

Brexit done’.<sup>2</sup> With the Withdrawal Agreement already in place,<sup>3</sup> when both sides reached a breakthrough in their negotiations about the future relationship right before the expiry of the transition period, European Commission President Ursula von der Leyen announced that ‘[i]t is time to leave Brexit behind’.<sup>4</sup> Nevertheless, for the next three years, tensions and disagreements persisted, in particular concerning the Protocol on Ireland/Northern Ireland. Thus, in February 2023, a new compromise, entitled ‘Windsor Framework’, was announced. It consists in the first place of a Joint Committee Decision to amend the Withdrawal Agreement.<sup>5</sup> Moreover, it consists of ‘a mix of unilateral or joint measures which are mainly non-binding “soft law”’.<sup>6</sup> According to the British Prime Minister who negotiated it, Rishi Sunak, it would finally ‘end the uncertainty and challenge for the people of Northern Ireland’.<sup>7</sup>

While the Windsor Framework provides some pragmatic solutions to complex and sensitive issues, it is highly unlikely that this is the end of the Brexit saga. While the framework remains to be implemented, contentious issues under the Trade and Cooperation Agreement (TCA), such as fishing quotas, will periodically return to the agenda, and certain areas, such as security and defence cooperation, are currently not governed at all by the post-Brexit EU-UK legal arrangements.<sup>8</sup> As aptly put by Denis MacShane, rather than ever being ‘done’, we live in an age of ‘Brexiternity’.<sup>9</sup>

While Brexit has provided journalists and pundits with a conveyor belt of opportunities for ‘hot takes’ on the latest developments, it has presented legal scholars with a more questionable gift. On the one hand, there is increased public attention for traditionally more arcane issues such as trade agreements and regulatory alignment,

<sup>2</sup> Don Henley, *Boris Johnson Wins Huge Majority on Promise to ‘Get Brexit Done’*, *The Guardian* (13 Dec. 2019), <https://www.theguardian.com/politics/2019/dec/13/bombastic-boris-johnson-wins-huge-majority-on-promise-to-get-brexit-done> (accessed 29 Mar. 2023).

<sup>3</sup> Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2020] OJ L 29/7 (hereinafter: Withdrawal Agreement).

<sup>4</sup> European Commission, *Remarks by President Ursula von der Leyen at the Press Conference on the Outcome of the EU-UK Negotiations*, Brussels (24 Dec. 2020), [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_20\\_2534](https://ec.europa.eu/commission/presscorner/detail/en/speech_20_2534) (accessed 29 Mar. 2023).

<sup>5</sup> Decision No 1/2023 laying down arrangements relating to the Windsor Framework (24 Mar. 2023), [https://commission.europa.eu/document/download/51f427af-dc36-4e06-83bc-d93750bc9d\\_en?filename=Joint%20Committee%20Decision%20No%201-2023.pdf](https://commission.europa.eu/document/download/51f427af-dc36-4e06-83bc-d93750bc9d_en?filename=Joint%20Committee%20Decision%20No%201-2023.pdf) (accessed 31 Mar. 2023). The legal basis for this type of amendment is Art. 164(5)(d) of the Withdrawal Agreement, which authorizes the Joint Committee to adopt decisions amending the agreement under certain conditions.

<sup>6</sup> Steve Peers, *The Windsor Framework: Limiting the Scope of EU Law in Northern Ireland in Practice, Though Not in Theory*, *EU Law Analysis* (4 Mar. 2023), <http://eulawanalysis.blogspot.com/2023/03/the-windsor-framework-limiting-scope-of.html> (accessed 29 Mar. 2023).

<sup>7</sup> UK Prime Minister’s Office, *PM Speech on the Windsor Framework: February 2023* (Windsor, 27 Feb. 2023), <https://www.gov.uk/government/speeches/pm-speech-on-the-windsor-framework-february-2023> (accessed 29 Mar. 2023).

<sup>8</sup> The UK has followed, however, a bilateral approach with various Member States, see HM Government, *Integrated Review Refresh 2023: Responding to a More Contested and Volatile World*, CP 811, 20–22 (Mar. 2023).

<sup>9</sup> Denis MacShane, *Brexiternity* (I. B. Tauris 2019).

plus a wealth of new legal materials to analyse. On the other, Brexit has been a moving target, which poses a significant challenge for legal scholarship that is supposed to provide lasting insights. In other words, journalists could use Brexit as a fertile resource to plough '[a]cres of newsprint'.<sup>10</sup> Legal scholars, by contrast, may have seemed indeed condemned to producing an 'interminable flow of hastily written drivel of monographs and (non) edited books which, like the Brexit saga itself, seems never to end'.<sup>11</sup>

This essay reflects on the continued relevance of legal Brexit scholarship and strategies for extending its shelf-life. It argues that the relevance of this scholarship may reach far into the future when foresighted and innovative approaches are being put forward. Looking ahead, the essay concludes that, while the EU-UK relationship as a topic for academic enquiry may be experiencing a process of normalization, the need for continued rigorous legal and innovative interdisciplinary research has not diminished.

## 2 POST-BREXIT LAW AND STRATEGIES TO KEEP RESEARCH RELEVANT

While the UK ended its forty-seven-year EU membership, intense trade continues between the two sides. People continue to move between the two. Fish continues to be caught in the waters between the two. At the same time, world history has marched on regardless of what is going on between the two sides.

Seven years have passed since the fateful – though not legally binding – referendum of June 2016. Since 1 February 2020, the UK is no longer a Member State of the EU, as this was the day the Withdrawal Agreement, which includes the contentious Protocol on Ireland/Northern Ireland, entered into force. After a short transition period, the finalization of the TCA was announced, which entered into force on 1 May 2021, after having first been provisionally applied following the expiry of the transition period.<sup>12</sup> This emergent framework of 'Post-Brexit Law',<sup>13</sup> which received a significant adjustment in the Windsor Framework of March 2023, consists chiefly of the Withdrawal Agreement and the TCA plus a number of sectoral agreements. The consolidation of this new body of law marks a turning point for scholarship on EU-UK relations, which moved from a pre- to a post-Brexit era.

<sup>10</sup> Timothy Garton Ash, *As an English European, This Is the Biggest Defeat of My Political Life*, *The Guardian* (24 Jun. 2016), <https://www.theguardian.com/politics/commentisfree/2016/jun/24/lifelong-english-european-the-biggest-defeat-of-my-political-life-timothy-garton-ash-brexit> (accessed 29 Mar. 2023).

<sup>11</sup> Joseph H. H. Weiler, *Editorial*, 17 I-CON 1025 (2019), at 1039.

<sup>12</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2021] OJ L 149/10 (hereinafter: TCA).

<sup>13</sup> Joris Larik & Ramses Wessel, *The EU-UK Trade and Cooperation Agreement: Forging Partnership or Managing Rivalry?*, in *Research Handbook on Legal Aspects of Brexit* 122–147, at 125 (Adam Łazowski & Adam Cygan eds, Edward Elgar 2022).

Starting with the referendum, Brexit had already prompted an avalanche of publications on topics ranging from market freedoms, customs unions, regulatory alignment, supranational jurisdiction, citizens' rights, and indeed fishing quotas. The prospect of the UK leaving, moreover, gave a boost in current relevance and public interest to these topics.

Seeing, however, that Brexit was a moving target with an unclear outcome during this time, with several moments of intense uncertainty and looming 'cliff edges', the scholarship produced during this period often had to remain abstract and speculative. This raises the question of the longer-term relevance of this scholarship – in other words, its shelf-life.

In Brexit scholarship, there are different strategies to extend the shelf-life of publications. These include problem and scenario flagging, compartmentalized analysis, updating, and providing innovative approaches. First, legal scholarship was certainly useful throughout Brexit to point out wider consequences and the incompatibility of certain options, which can serve as a sobering antidote against populist promises of 'having your cake and eat it'.<sup>14</sup> For example, to scholars of economic integration and international trade law, it was clear early on that if the UK intended to leave the internal market and customs union, as announced by Prime Minister May in her Lancaster House speech of January 2017,<sup>15</sup> this would immediately raise the question of a customs border between the EU and UK.<sup>16</sup> That the creation of such a border would pose particular difficulties for the island of Ireland was caught and analysed early on as well.<sup>17</sup> Another example concerns the UK's trade agreements with the rest of the world. Scholars of EU external relations law, who closely follow the EU's active treaty-making practice, cautioned that Brexit would entail that the international agreements concluded by the EU with third countries would no longer apply to the UK.<sup>18</sup> One of the first priorities for 'Global Britain' as a 'buccaneering'<sup>19</sup> free trade champion would thus be finding replacements for trade deals already struck by the EU.

<sup>14</sup> Paul Dallison, *A Brief History of Having Cake and Eating It*, Politico (31 Aug. 2017), <https://www.politico.eu/article/a-brief-history-of-having-cake-and-eating-it/> (accessed 29 Mar. 2023).

<sup>15</sup> UK Prime Minister's Office, *The Government's Negotiating Objectives for Exiting the EU: PM Speech* (Lancaster House, London, 17 Jan. 2017), <https://www.gov.uk/government/speeches/the-government-negotiating-objectives-for-exiting-the-eu-pm-speech> (accessed 29 Mar. 2023).

<sup>16</sup> See Giorgio Sacerdoti, *The United Kingdom's Post-Brexit Trade Regime With the European Union and the Rest of the World: Perspectives and Constraints*, 20 J. of Int'l Econ. L. 905 (2017), doi: 10.1093/jiel/jgx040.

<sup>17</sup> See e.g., John Doyle & Eileen Connolly, *Brexit and the Northern Ireland Question*, in *The Law & Politics of Brexit* 139 (Federico Fabbrini ed., OUP 2017).

<sup>18</sup> See Eleftheria Neframi, *Brexit et les accords mixtes de l'Union Européenne*, 62 *Annuaire Français de Droit International* 360 (2016); Christoph Herrmann, *Brexit, WTO und EU-Handelspolitik*, 28 *Europäische Zeitschrift für Wirtschaftsrecht* 961 (2017); and Ramses Wessel, *Consequences of Brexit for International Agreements Concluded by the EU and Its Member States*, 55 *Common Mkt. L. Rev.* 101 (2018), <https://doi.org/10.54648/cola2018061>.

<sup>19</sup> James Blitz, *Boris's Vision of Buccaneering Britain*, Financial Times (20 Sep. 2017), <https://www.ft.com/content/3de0d68a-9df9-11e7-8cd4-932067fbf946> (accessed 30 Mar. 2023).

Second, regarding compartmentalization, legal scholars also focused on particular time-periods and their legal developments therein. Here the legal scholars’ approach overlaps to a large extent with (and may in the future be taken over by) that of scholars of contemporary history. An example would be focusing on Prime Minister May’s term in office or – though not an analysis of Brexit but delimited by Brexit – on the contributions of British Advocates General to EU law.<sup>20</sup>

Third, in terms of updating, one could imagine subsequent editions of the detailed commentaries and handbooks that have appeared,<sup>21</sup> which will integrate intervening amendments, case law, and practice. In this sense, Brexit and its aftermath is not categorically different from other living areas of law where subsequent developments need to be taken into account.

Fourth, certain scholarship will remain relevant due to its prescience, innovative approaches, and long-term views, which can point the way to future research on Brexit and related topics. A good example for the latter category is the volume *Brexit: Legal and Economic Aspects of a Political Divorce*, edited by Jörn A. Kämmerer and Hans-Bernd Schäfer, on which the following sections focus as a case study.

### 3 PRESCIENCE, INNOVATION, AND LONG-TERM VISION

*Brexit: Legal and Economic Aspects of a Political Divorce* can be called a product of the late pre-Brexit era. It is the result of a ‘collaborative project started in June 2019 in Hamburg and was last updated as of summer/autumn 2020’.<sup>22</sup> In a note from March 2021, the editors acknowledge the ‘metamorphic nature of Brexit’ as a challenge.<sup>23</sup> Importantly, the TCA was only agreed upon after the volume had gone into print. It contains eight chapters, with an emphasis on law and economics. Among these, the two most original chapters are arguably those on a game-theoretic approach to Brexit by Roland Kirstein and a populism studies perspective by Ejan Mackaay.

<sup>20</sup> See respectively, Federico Fabbrini, *The Brexit Negotiations and the May Government*, 11 Special Issue Eur. J. Legal Stud. 1 (Oct. 2019); and *Shaping EU Law the British Way: UK Advocates General at the Court of Justice of the European Union* (Graham Butler & Adam Lazowski eds, Hart Publishing 2022).

<sup>21</sup> *The UK-EU Withdrawal Agreement: A Commentary* (Thomas Liefänder, Manuel Kellerbauer & Eugenia Dumitriu-Segnana eds, Oxford University Press 2021); *Research Handbook on Legal Aspects of Brexit* (Adam Lazowski & Adam Cygan eds, Edward Elgar 2022); *The Routledge Handbook on the International Dimension of Brexit* (Juan Santos Vara & Ramses Wessel eds, Routledge 2021). It could also be hoped that Steve Peers will consolidate his detailed analyses of the Withdrawal Agreement and TCA into a commentary one day, see Steve Peers, *The End – or a New Beginning? The EU/UK Withdrawal Agreement*, 39 Y.B. Eur. L. 122 (2020), doi: 10.1093/yel/yeaa010; and Steve Peers, *So Close, Yet So Far: The EU/UK Trade and Cooperation Agreement*, 59 Common Mkt. L. Rev. 49 (2022), doi: 10.54648/COLA2022004.

<sup>22</sup> Jörn A. Kämmerer & Hans-Bernd Schäfer, *Preface*, in *Brexit: Legal and Economic Aspects of a Political Divorce*, vii (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>23</sup> Jörn A. Kämmerer & Hans-Bernd Schäfer, *Editors’ Note*, in *Brexit: Legal and Economic Aspects of a Political Divorce*, viii–x, viii (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

The editors posit in their note that the subsequent adoption of the TCA ‘does not invalidate the findings of this book’ and does not herald the ‘end of the Brexit story’.<sup>24</sup> Revisiting the volume from today’s perspective, writing in early 2023, confirms this assessment. In the following subsections, the essay elaborates on the reasons for the continued relevance of Brexit research for post-Brexit EU-UK relations and EU and international law more widely. In addition to the fact that the authors’ predictions have largely been vindicated, the volume contains innovative, interdisciplinary approaches from which scholars can continue to draw inspiration. It often takes a longer-term view on EU-UK relations that goes beyond the many vagaries and speculations of the pre-Brexit era. Where similar reasons for continued relevance can be seen in other works on Brexit, they too should continue to be consulted.

### 3.1 VINDICATED BY HISTORY (MOST OF THE TIME)

Regarding the first reason, there are many examples of where the authors in *Brexit: Legal and Economic Aspects of a Political Divorce* got it right, some of which are highlighted here. For instance, Mathias Hanten premised his analysis on third country market access for credit institutions on a ‘hard Brexit scenario’.<sup>25</sup> According to EU chief negotiator Barnier’s (in)famous ‘Brexit staircase’, next to the rock bottom of falling back onto World Trade Organization (WTO) rules, a trade agreement in the style of the Comprehensive Economic and Trade Agreement (CETA) with Canada was portrayed as the second-hardest scenario.<sup>26</sup> Seeing that the TCA, struck during the final days of the transition period, was a ‘comprehensive Canada style’<sup>27</sup> agreement confirms that Brexit turned out rather ‘hard’ in the end.

Schäfer and Kämmerer highlight, moreover, the inherent contradiction between different camps of Brexit supporters, i.e., those that aspire to a ‘Global Britain’ that makes ‘its own best choice of trade agreements’ and others adhering to ‘nationalist and populist thinking and a rather nostalgic desire for the good and

<sup>24</sup> *Ibid.*

<sup>25</sup> Mathias Hanten, *Third-Country Market Access Under Brexit: New Wine in Old Bottles*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 181–194, at 181 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>26</sup> Waugh, Paul, *Hard Brexit Explained in One ‘Killer Graphic’ – How the EU Ridiculed Theresa May’s ‘Red Lines’*, HuffPost (20 Dec. 2017), [https://www.huffingtonpost.co.uk/entry/michel-barnier-killer-graphic-brexit-theresa-mays-red-lines-on-bespoke-model\\_uk\\_5a39497ce4b0fc99878f2058](https://www.huffingtonpost.co.uk/entry/michel-barnier-killer-graphic-brexit-theresa-mays-red-lines-on-bespoke-model_uk_5a39497ce4b0fc99878f2058) (accessed 11 Feb. 2023). See in detail on the ‘WTO option’ also Freya Baetens, ‘No Deal Is Better Than a Bad Deal?’ *The Fallacy of the WTO Fall-Back Option as a Post-Brexit Safety Net*, 55 *Common Mkt. L. Rev.* 133 (2018), doi: 10.54648/COLA2018062.

<sup>27</sup> UK Prime Minister’s Office, *Prime Minister’s Statement on EU Negotiations: 24 December 2020* (24 Dec. 2020), <https://www.gov.uk/government/speeches/prime-ministers-statement-on-eu-negotiations-24-december-2020> (accessed 11 Feb. 2023).

glorious old times'.<sup>28</sup> This contradiction can now be seen to play out as the UK gives shape to its post-Brexit autonomous trade policy. While the government hails advances in trade deals with Australia and New Zealand and the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as successes, some British farmers are concerned about additional competition from these external markets.<sup>29</sup>

Related to this, the authors rightly point to the 'theory of gravity', which explains a significant share of the trade between two countries (and between a country and the EU) by their gross domestic product (GDP) '(positive relationship) and geographical distance (negative relationship)'.<sup>30</sup> In 2021, the EU accounted for 43% of the UK's total trade.<sup>31</sup> Given that the UK and EU are large markets that are very close to each other, Brexit cannot be, by necessity, the end of cooperation but rather 'the beginning of a long period of ... negotiations for new forms of cooperation'.<sup>32</sup> As these new forms are taking shape, subsequent research by economists has shown the significance of the costs of the new barriers the UK is experiencing with its largest trading partner.<sup>33</sup>

The EU's and UK's economic intertwinement is particularly visible in the area of services, which accounts by far for the majority of GDP in both, as Kainer reminds us in his chapter on market access and standards in the services domain.<sup>34</sup> After outlining different scenarios for future EU-UK relations in this area, he makes detailed proposals for a model of voluntary regulatory equivalence in an effort to respect both sides' red lines. His recommendation, rather than a prediction, was followed in the TCA in some important respects.

In his chapter, Kainer proposes a 'Regulatory Cooperation Office' (RCO). This proposal can be seen to have been realized in the Trade Specialised Committee on

<sup>28</sup> Jörn A. Kämmerer & Hans-Bernd Schäfer, *At Brexit Crossroads: Autonomy and Gains from Trade as Alternatives? Introduction and Overview*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 1–33, at 4 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>29</sup> Nic Fildes, *UK Trade Minister Says Anxieties Over Australia and New Zealand Deals 'Misplaced'*, *Financial Times* (31 Aug. 2022), <https://www.ft.com/content/2fb5996e-32fd-423b-9f21-142e7f956ebf> (accessed 9 Feb. 2023); and Grahahm Lanktree, *Britain's Joining CPTPP. So What the Hell Is It?*, *Politico* (30 Mar. 2023), <https://www.politico.eu/article/britain-join-asia-pacific-trade-bloc-cptpp/> (accessed 4 Apr. 2023).

<sup>30</sup> Kämmerer & Schäfer, *supra* n. 28, at 7. See also with some critical remarks on gravity models Gabriel Siles-Brügge, *Bound by Gravity or Living in a 'Post Geography Trading World'? Expert Knowledge and Affective Spatial Imaginaries in the Construction of the UK's Post-Brexit Trade Policy*, 24 *New Pol. Econ.* 422 (2019), doi: 10.1080/13563467.2018.1484722.

<sup>31</sup> Matthew Bard, *Statistics on UK-EU Trade*, UK House of Commons Library, CBP 7851, 4 (21 Dec. 2022).

<sup>32</sup> *Ibid.*, at 5.

<sup>33</sup> Jun Du, Emine Beyza Satoglu & Oleksandr Shepotylo, *How Did Brexit Affect UK Trade?*, *Contemporary Social Science* (early online access; Mar. 2023), <https://doi.org/10.1080/21582041.2023.2192043>.

<sup>34</sup> Friedemann Kainer, *Services: Market Access and Standards in Future EU-UK Relations*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 113–144, at 113 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

Regulatory Cooperation under the TCA, which operates on a voluntary and consensual basis.<sup>35</sup> However, while Kainer recommends that such a committee should supervise regulatory alignment and that parties should have the option to go to arbitration in case a dispute cannot be resolved diplomatically, the TCA follows a somewhat different approach. It allows parties to adopt rebalancing measures as a direct response to significant divergence,<sup>36</sup> which the other party can challenge subsequently through arbitration.<sup>37</sup> While Kainer suggests an ‘adjustment procedure that aims to explore the possibilities for joint action to remedy the divergence’,<sup>38</sup> the TCA gives more space to unilateral action to limit regulatory divergence by leveraging market access. In this sense, the TCA is still a form of voluntary cooperation, but one that exists more clearly in the shadow of the EU’s ‘market power’,<sup>39</sup> as the EU with its significantly larger GDP has more economic leverage to bring to bear in exercising these unilateral measures.

The volume also addresses financial services in particular, which of course play an important role for the UK, with the City of London as a preeminent global financial centre. With the benefit of hindsight, we see today that the TCA contains rather thin provisions on services and did not grant UK financial services providers any of the passporting rights to which they were accustomed pre-Brexit.<sup>40</sup> Hanten was therefore right on the money when he predicted that a comprehensive equivalence regime for the financial sector was ‘unlikely’.<sup>41</sup> By contrast, a ‘special deal’ on financial services, as predicted by Ringe in his chapter on capital markets as the most likely scenario, did not materialize to date. Instead, both sides have made some unilateral equivalence decisions, which echo what Ringe calls ‘Plan B’.<sup>42</sup> In addition, Ringe’s prediction of ‘subsidiarization’ has materialized to some extent, as ‘44% (97 out of 222) of the largest UK

<sup>35</sup> Art. 352 TCA. See also Art. 351(1) TCA: ‘[P]arties may engage in regulatory cooperation activities on a voluntary basis, without prejudice to the autonomy of their own decision-making and their respective legal orders. A Party may refuse to engage in or it may withdraw from regulatory cooperation activities’.

<sup>36</sup> Though Kainer suggests that in case divergence ‘touches on a more fundamental aspect of economic and social order’, it should still be possible to close markets, Kainer, *supra* n. 34, at 132.

<sup>37</sup> Art. 411 TCA. However, Art. 411(3)(b) TCA suggests that if the request for arbitration is made within five days of being notified by the party adopting the rebalancing measures, the rebalancing measures cannot be adopted until deemed acceptable by the arbitral tribunal. Such a ‘suspensive effect’ is excluded, by contrast, with regard to unilaterally adopted remedial measures in the area of subsidies, Art. 374(9)(2) TCA.

<sup>38</sup> Kainer, *supra* n. 34, at 131.

<sup>39</sup> Larik & Wessel, *supra* n. 13, at 145, on the concept of market power Chad Damro, *Market Power Europe*, 19 J. Eur. Pub. Pol’y 682 (2012), doi: 10.1080/13501763.2011.646779.

<sup>40</sup> TCA, Title II, Ch. 3; see also Yohannes Ayele et al., *Not So Frictionless After All: Trade in Goods and Services in the EU-UK Trade and Cooperation Agreement*, in *Research Handbook on Legal Aspects of Brexit* 148–174, at 168–171 (Adam Łazowski & Adam Cygan eds, Edward Elgar 2022); and with a focus on financial services Emil Næstegard, *Equivalence Decisions in the EU and UK Financial Services Sectors Post-Brexit*, 33 Eur. Bus. L. Rev. 463 (2022).

<sup>41</sup> Hanten, *supra* n. 25, at 193.

<sup>42</sup> Wolf-Georg Ringe, *Brexit and How It Affects Capital Markets (Regulation)*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 145–180, at 171 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

financial services firms have announced plans to move some UK operations and/or staff to the EU’.<sup>43</sup>

Another important point of contention during the negotiations was the post-Brexit role, if any, of the Court of Justice of the EU (CJEU). While Kainer suggested that arbitral tribunals should be able to refer questions to the CJEU on matters of interpretation of EU law, the TCA makes it rather clear that domestic courts, which includes the CJEU, are to be kept out: ‘the courts of each Party shall have no jurisdiction in the resolution of disputes between the Parties under this Agreement’.<sup>44</sup> As far as the TCA is concerned, the Brexiteers’ red line of excluding the CJEU’s jurisdiction as regards the future relationship between the EU and UK has been successfully defended.

However, it should not be forgotten that the CJEU retains jurisdiction under the Withdrawal Agreement, as also pointed out by Terhechte,<sup>45</sup> even though this jurisdiction is in some cases time-limited.<sup>46</sup> A case apart is the CJEU jurisdiction under the Northern Ireland Protocol, which applies for as long as the Protocol stays in force. The Protocol will stay in operation unless the Northern Ireland Assembly revokes its approval under the ‘democratic consent procedure’.<sup>47</sup> Ever since the end of the transition period, the UK government had been pushing for reducing the role of the CJEU with regard to the Northern Ireland Protocol. However, in the Windsor Framework of March 2023, the role of the CJEU under the Protocol remains intact.<sup>48</sup>

In sum, while the authors showed an impressive degree of foresight in their analyses, in the few instances where they got it wrong, it was for being a bit too optimistic. Overall, Brexit turned out even harder than widely expected, including by the authors in this volume.

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<sup>43</sup> Sarah Graham, *EY Financial Services Brexit Tracker: Movement Within UK Financial Services Sector Stabilises Five Years on from Article 50 Trigger* (Ernst & Young, press release 29 Mar. 2022), [https://www.ey.com/en\\_uk/news/2022/03/ey-financial-services-brexit-tracker-movement-within-uk-financial-services-sector-stabilises-five-years-on-from-article-50-trigger](https://www.ey.com/en_uk/news/2022/03/ey-financial-services-brexit-tracker-movement-within-uk-financial-services-sector-stabilises-five-years-on-from-article-50-trigger) (accessed 11 Feb. 2023).

<sup>44</sup> Art. 754(5) TCA. At the same time, ‘[n]o finding made by the arbitration tribunal when ruling on a dispute between the Parties shall bind the domestic courts or tribunals of either Party as to the meaning to be given to the domestic law of that Party’, Art. 754(4) TCA.

<sup>45</sup> Jörg Philipp Terhechte, *Dead End or Pathway to New Relations? Structure and Problems of the EU-UK Withdrawal Agreement*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 94–112, at 106–108 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>46</sup> For example, for cases concerning citizens’ rights under the Withdrawal Agreement, the CJEU’s jurisdiction to provide preliminary rulings will expire eight years after the end of the transition period, Art. 158(1) Withdrawal Agreement. See further Joris Larik, *Decision-Making and Dispute Settlement*, in *The Law & Politics of Brexit – Volume II: The Withdrawal Agreement* 191–210 (Federico Fabbrini ed., Oxford University Press 2020).

<sup>47</sup> Withdrawal Agreement, *Protocol on Ireland/Northern Ireland*, Art. 18. See further, Brendan O’Leary, *Consent*, in *The Law & Politics of Brexit – Volume IV: The Protocol on Ireland / Northern Ireland* 231–251 (Federico Fabbrini ed., OUP 2022).

<sup>48</sup> Peers, *supra* n. 6.

## 3.2 ORIGINAL APPROACHES

The interdisciplinary outlook of some of the chapters in *Brexit: Legal and Economic Aspects of a Political Divorce* is innovative and will continue to serve as inspiration for future research on post-Brexit EU-UK relations and beyond. Roland Kirstein's game-theoretical approach stands out in this respect while also noteworthy are Ejan Mackaay's chapter bringing in populist studies and Gisela Rühl's chapter on the settlement of commercial disputes post-Brexit.

Introducing game theory, first in general terms to make it accessible to legal scholars, Kirstein then uses it to present insights into Brexit negotiations and outcomes. For instance, he contrasts the binary in/out choice of the referendum with the division of British public opinion into three camps – 'Brexit without a deal, Brexit with a deal, or remain'<sup>49</sup> – which casts doubts on whether the 'hard' Brexit approach pursued by the UK government really represented the will of the British people. This finding should be kept in mind also for any future referendums, either in other Member States considering leaving,<sup>50</sup> or for a potential referendum in the UK about re-joining. In the latter case, the binary return/stay out choice could be recast as staying out, staying out but with closer alignment to the EU (European Economic Area (EEA) or customs union), and re-joining.

Even more interestingly, Kirstein extends the use of game theory for Brexit negotiations with the EU. He visualizes and quantifies different tactics and trade-offs, such as choosing a representative that plays 'hardball' rather than representing the preferences of the people (Boris Johnson) or for the EU to offer a 'bad deal' in the hopes of making it more likely for the UK to stay after all.

Mackaay's chapter provides a different kind of useful interdisciplinary perspective, putting Brexit into the wider perspective of the rise of populism as a delayed reaction to the 2008 financial crisis, and the interplay between economic crises and 'populist shocks' more generally.<sup>51</sup> Mackaay convincingly points out that rather than 'a fit of ill temper or an unfortunate accident', we should consider Brexit 'as a populist reaction to the bursting of the speculative bubble in 2008–9 and the economic mayhem which followed'.<sup>52</sup> This, too, is worth remembering, as the

<sup>49</sup> Roland Kirstein, *Some Game-Theoretic Aspects of Brexit*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 34–78, at 41 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>50</sup> Though other in/out referendums seem currently less likely seeing rising support for the EU across Member States in opinion polls, see Moira Fagan & Sneha Gubbala, *Positive Views of European Union Reach New Highs in Many Countries*, Pew Research Center (13 Oct. 2022), <https://www.pewresearch.org/fact-tank/2022/10/13/positive-views-of-european-union-reach-new-highs-in-many-countries/> (accessed 10 Feb. 2023).

<sup>51</sup> Ejan Mackaay, *Brexit: Populist Reaction to the 2008 Speculative Bubble Bursting?*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 79–93, at 85 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>52</sup> *Ibid.*, at 91.

emergence of the next financial or economic crisis is not a question of if, but rather when.

While not strictly interdisciplinary but with a very practical outlook, Rühl's chapter is a necessary reminder of the continued importance of domestic courts in EU-UK economic relations, and global economic relations more broadly. The extensive clamour about the role of the CJEU in the negotiations and the media certainly has served to unjustly marginalize the importance of commercial courts in the discussions on the post-Brexit relationship. As she observes, Brexit 'severed London's access to and integration into the European Judicial Area'.<sup>53</sup> Now, the 'European market for international commercial litigation is on the move',<sup>54</sup> with several cities, egged on by Brexit and the fact that the TCA does not cover judicial cooperation in civil matters, vying to become more popular venues for such disputes.

However, progress in the EU on this front is slow. As Rühl points out, several Member States in the EU have taken steps to make some of their domestic courts more accessible for the resolution of international commercial disputes. However, in the Netherlands, the new commercial courts 'remain embedded in national structures',<sup>55</sup> being staffed with national judges and requiring representation by Dutch lawyers, which ultimately limits the attractiveness for international commercial litigation.

Rühl furthermore advocates the establishment of a European Commercial Court to 'complement the courts of the Member States' and provide a European forum for commercial litigants.<sup>56</sup> Since this is an intra-EU endeavour, she explains how a European Commercial Court could be designed in such a way as to be compatible with the CJEU prerogatives, learning from the challenges experienced in the process of setting up the European Unified Patent Court (UPC).<sup>57</sup> For the time being, however, the proposal seems to have lost traction. While the European Parliament supports this proposal, the European Commission did not take it up.<sup>58</sup>

<sup>53</sup> Gisela Rühl, *Settlement of International Commercial Disputes Post-Brexit, or: United We Stand Taller*, in *Brexit: Legal and Economic Aspects of a Political Divorce* 195–212, at 202 (Jörn A. Kämmerer & Hans-Bernd Schäfer eds, Edward Elgar Publishing 2021).

<sup>54</sup> *Ibid.*, at 197. Rühl clarifies that the same does not apply to commercial arbitration, whose regulatory framework is not affected by Brexit, *ibid.*, at 198.

<sup>55</sup> *Ibid.*, at 205.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, at 210–211; Opinion, 1/09 (*European and Community Patents Court*), ECLI:EU:C:2011:123. However, see on the continuing challenges faced by the UPC, Anna Wszolek, *Still Unifying? The Future of the Unified Patent Court*, 52 *IIC – International Review of Intellectual Property and Competition Law* 1143 (2021).

<sup>58</sup> Rafał Mańko, *Expedited Settlement of Commercial Disputes*, European Parliament, Legislative train schedule, last updated (20 Jan. 2023), <https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-expedited-settlement-of-commercial-disputes> (accessed 13 Feb. 2023).

The insights and approaches from these chapters, and others that are similarly innovative, will remain relevant for future research. They provide an important benchmark when tracking ongoing developments. Furthermore, they may serve as blueprints and inspiration for studies on other emerging issues in the post-Brexit context.

### 3.3 TAKING THE LONGER-TERM VIEW

Beyond the frenzies of the years of Brexit negotiations, *Brexit: Legal and Economic Aspects of a Political Divorce* is also a praiseworthy example of scholarship that retains its relevance because it takes a longer-term view of EU-UK relations. Moreover, some of its findings prove relevant when researching the EU's relations with other third countries such as Switzerland and Canada.<sup>59</sup> As aptly put by Hanten, the Brexit experience indeed serves as a 'magnifying glass for all questions dealing with third-country access to the European market'.<sup>60</sup>

Pointing to the longer-term relevance of the Withdrawal Agreement, Terhechte rightly notes that it 'at times points far into the future',<sup>61</sup> which also means that the jurisdiction of the CJEU will continue to apply for many years to come to the UK in specific fields such as citizens' rights.<sup>62</sup> Therefore, rather than finalizing the UK's exit from the EU, the Withdrawal Agreement will continue to guide and shape EU-UK relations for the foreseeable future, not least due to the Northern Ireland Protocol, which is *a priori* of indefinite duration until it loses the 'democratic consent' in the Northern Ireland Assembly. Hence, scholarship on the Withdrawal Agreement, by Terhechte and others, will remain a relevant resource for scholar and practitioners.<sup>63</sup>

<sup>59</sup> The ramifications and lessons from Brexit for relations with other countries have already spawned new lines of scholarship, see e.g., *Switzerland-EU Relations Lessons for the UK After Brexit?* (Paolo Dardanelli & Oscar Mazzoleni eds, Routledge 2021); and *The Comprehensive Economic Trade Agreement and Other Relations of Canada With the European Union: Lessons in Times of Brexit* (Amy Verdun & Nanette Neuwahl eds, Routledge, forthcoming late 2023).

<sup>60</sup> Hanten, *supra* n. 25, at 182.

<sup>61</sup> Terhechte, *supra* n. 45, at 108.

<sup>62</sup> An inspiring example of empirical-legal research on Brexit and citizens' right scan be found in Catherine Barnard, Sarah Fraser Butlin & Fiona Costello, *The Changing Status of European Union Nationals in the United Kingdom Following Brexit: The Lived Experience of the European Union Settlement Scheme*, 31 Soc. & Legal Stud. 365 (2022).

<sup>63</sup> Terhechte's chapter and its footnotes also serve as a useful overview of the rich German-language experts and scholarship on this topic. Other recent commentaries on the Withdrawal Agreement and the Northern Ireland Protocol include *The Law and Practice of the Ireland-Northern Ireland Protocol* (Christopher McCrudden ed., CUP 2022); *The Law & Politics of Brexit – Volume IV: The Protocol on Ireland / Northern Ireland* (Federico Fabbrini ed., OUP 2022); and *The UK-EU Withdrawal Agreement: A Commentary* (Thomas Liefänder, Manuel Kellerbauer & Eugenia Dumitriu-Segnana eds, OUP 2021).

Just as the UK has not been able to fully free itself from the CJEU’s jurisdiction, it remains bound to the EU internal market’s abovementioned ‘gravitational pull’ as the UK’s most important trading partner. This is an economic reality with which the newly autonomous UK trade policy must contend. As Schäfer and Kämmerer point out, distant markets ‘cannot easily replace the EU as a trading and business partner’.<sup>64</sup>

On the topic of external trade, several authors express their doubts about the UK’s ability to negotiate trade agreements with other third countries – doubts which the UK has been able to refute to some extent. According to Schäfer and Kämmerer, ‘nothing at all supports the view that a United Kingdom that negotiates international trade rules bilaterally ... will be more successful by itself’ than as part of the EU,<sup>65</sup> while Terhechte observes that the UK’s efforts to negotiate trade agreements on its own had ‘so far not been very successful’.<sup>66</sup> This scepticism was also present in other commentators’ analyses of the late pre-Brexit era.<sup>67</sup>

However, the UK’s trade continuity programme, by which it replicated the EU’s trade agreements with third countries from which it was already benefitting as an EU member, can be considered as somewhat a success. By autumn of 2021, the UK had ‘rolled over’ most of the EU’s agreements, including with significant trading partners such as Japan, South Korea, and Canada.<sup>68</sup> While this replication is not strictly a sign of being ‘more successful’ than the EU, the UK nonetheless has managed to get largely the same deals as the EU, even though it is a much smaller market and had to conduct many negotiations at the same time. In other words, it could have been worse, given the circumstances. How the UK’s economic dependency on the EU will shape the future EU-UK relationship and its legal framework, including in the regulatory sphere, and how both the EU and UK will perform in their now separate trade policies, will remain important questions for future research.

#### 4 CONCLUSION AND OUTLOOK: SCHOLARSHIP BEYOND WINDSOR

With the main parts of the new legal framework of EU-UK relations now in place, Brexit as an academic topic has entered a new phase. It will remain a moving target

<sup>64</sup> Kämmerer & Schäfer, *supra* n. 28, at 7.

<sup>65</sup> *Ibid.*, at 11.

<sup>66</sup> Terhechte, *supra* n. 45, at 104.

<sup>67</sup> Adam Lazowski, *Copy-Pasting or Negotiating? Post-Brexit Trade Agreements Between the UK and Non-EU Countries*, in *The Routledge Handbook on the International Dimension of Brexit* 117–132, at 118 (Juan Santos Vara & Ramses Wessel eds, Routledge 2021); Richard Partington, *Brexit: UK Has Rolled Over Just £16bn Out of £117bn Trade Deals*, *The Guardian* (13 Feb. 2019), <https://www.theguardian.com/business/2019/feb/13/brexit-uk-trade-deals-eu> (accessed 30 Mar. 2023).

<sup>68</sup> See UK Department for Business and Trade and Department for International Trade, *UK Trade Agreements in Effect*, last updated 3 Feb. 2023, <https://www.gov.uk/guidance/uk-trade-agreements-in-effect> (accessed 18 Feb. 2023).

for scholars, but arguably moving more slowly and with less uncertainty compared to the frenzied period of 2016–2021 – or rather 2016–2023, if we include the Windsor Framework as the final important adjustment to the new legal setup.

As the editors of *Brexit: Legal and Economic Aspects of a Political Divorce* rightly predicted, due to the EU's and UK's common values such as democracy and the market economy, and due to their geographical proximity and economic entanglement, politicians were indeed 'drawn back to the negotiating table'.<sup>69</sup> The Windsor Framework that resulted from these negotiations definitely has the potential for defusing what was arguably the most contentious issue of Brexit. Importantly, it shows that both sides have softened their stances. According to Steve Peers, it simplifies 'somewhat the movement of products between Great Britain and Northern Ireland' and leads to a situation where in many instances EU law 'will no longer apply de facto, even if it applies de jure'.<sup>70</sup> Moreover, a so-called 'Stormont Brake' will make it possible for the UK to block the application of new EU law to Northern Ireland. The Stormont Brake can only be employed under strict conditions,<sup>71</sup> including being 'predicated on the restoration of the democratic institutions in Northern Ireland'.<sup>72</sup> The EU, thus, seems to have become less militant and more pragmatic in its approach to the application of EU law to Northern Ireland. The UK, at the same time, seems to have accepted that some role for the CJEU is necessary in the context of Northern Ireland, thereby moving away from its earlier, more dogmatic position of seeking to end the CJEU's jurisdiction altogether.<sup>73</sup>

Rather than grand standoffs and the prospect of the proverbial cliff edges, EU–UK relations will henceforth be characterized by the progressive implementation of the new legal framework through the institutional machineries it has created. The Windsor Framework seems to have avoided a legal showdown for now. According to a joint political declaration, the UK will retract its controversial Northern Ireland Bill while the EU will drop its infringement proceedings against the UK before the

<sup>69</sup> Kämmerer & Schäfer, *supra* n. 28, at 33.

<sup>70</sup> Peers, *supra* n. 6.

<sup>71</sup> Steve Peers, *Just Say No? The New 'Stormont Brake' in the Windsor Framework*, EU Law Analysis (5 Mar. 2023), <http://eulawanalysis.blogspot.com/2023/03/just-say-no-new-stormont-brake-in.html> (accessed 29 Mar. 2023).

<sup>72</sup> Alexander Horne, *The Windsor Framework: A New Hope or a Great Betrayal?*, UK in a Changing Europe (2 Mar. 2023), <https://ukandeu.ac.uk/the-windsor-framework-a-new-hope-or-a-great-betrayal/> (accessed 30 Mar. 2023).

<sup>73</sup> See HM Government, *Northern Ireland Protocol: The Way Forward*, CP 502, Jul. 2021, point 67: 'It is highly unusual in international affairs for one party to a treaty to subject itself to the jurisdiction of the institutions of the other, all the more so when the arrangements concerned are designed to mediate the sui generis relationship between the EU and its Member States. The UK refused to accept this in the negotiations on the Trade and Cooperation Agreement, and only agreed to it in the Protocol because of the very specific circumstances of that negotiation'.

CJEU on this matter.<sup>74</sup> Future disagreements and even litigation are likely, for instance about fishing quotas, regulatory issues, and Northern Ireland's particular situation. However, rather than moments of existential crisis, these may appear rather as normal and recurring features of an intense but overall amicable relationship. Western solidarity in light of the Russian war of aggression against Ukraine has certainly put the EU-UK relationship and its various contested issues in perspective.<sup>75</sup> Thus, even though the post-Brexit legal setup does not contain a framework for cooperation in security and defence matters (yet), *ad hoc* cooperation on sanctions and joint participation of the EU and UK in the new European Political Community testify to this *rapprochement*.<sup>76</sup>

What does this mean, then for the *acquis* of legal Brexit scholarship that has been compiled to date? Some of this scholarship will indeed lose its relevance fast, other than as historical sources, especially when it concerns particular snapshots of situations overtaken by subsequent events. Nevertheless, the scholars having provided such scholarship can draw on their accumulated expertise to keep following and writing about post-Windsor EU-UK relations in the future. Equally, that expertise can feed into comparative analyses of the EU's external partnerships, which may yield more lasting insights. Some scholarship will remain relevant if it is updated in light of intervening events, so that we may come to better understand the 'sophisticated legal structure'<sup>77</sup> that has arisen out of the ashes of the UK's membership as living and practised law. Finally, some scholarship, though it might be the minority, will remain relevant due to its foresightedness, innovativeness, and broader perspective.

Looking to the future, EU-UK relations as a research topic is in a process of normalization. It will remain a moving target, but so are virtually all other areas of law. It will become, on the one hand, its own niche area worthy of study. This is due to the unique circumstances of the UK being the first Member State to have left the EU and the continued operation of 'retained EU law' in the UK's legal order.<sup>78</sup> The UK will likely remain the only withdrawn Member State for the time being, seeing the surge in

<sup>74</sup> HM Government, *Political Declaration by the European Commission and the Government of the United Kingdom* 4 (27 Feb. 2003).

<sup>75</sup> As noted also by Prime Minister Sunak in his remarks on the Windsor Agreement: 'The United Kingdom and the European Union may have had our differences in the past, but we are allies, trading partners, and friends ... something that we've seen clearly in the past year as we joined with others, to support Ukraine'. UK Prime Minister's Office, *supra* n. 7.

<sup>76</sup> Mujtaba Rahman, *The European Political Community Is a Big Deal – for EU-UK Relations*, Politico (5 Oct. 2022), <https://www.politico.eu/article/european-political-community-eu-uk-relations/> (accessed 19 Feb. 2023).

<sup>77</sup> Peter Van Elsuwege, *A New Legal Framework for EU-UK Relations: Some Reflections from the Perspective of EU External Relations Law*, 6 *European Papers* 785, at 787 (2021), <https://doi.org/10.15166/2499-8249/461>.

<sup>78</sup> See Asif Hameed, *UK Withdrawal from the EU: Supremacy, Indirect Effect and Retained EU Law*, 85 *Mod. L. Rev.* 726 (2022), doi: 10.1111/1468-2230.12719.

support for the EU in recent times,<sup>79</sup> as well as mounting ‘Bregret’<sup>80</sup> in the UK. On the other hand, and predominantly, the study of EU-UK relations will be absorbed in the study of the EU’s external relations as one among many case studies.<sup>81</sup>

Researching the evolution of EU-UK relations at its now more leisurely and less erratic pace, and contextualizing them in a more challenging geopolitical environment, will keep legal scholars busy for many years to come. The need for ‘legal creativity’,<sup>82</sup> critical legal scrutiny, and interdisciplinary approaches to deepen our understanding further has anything but diminished. The EU-UK relationship, though its place in public discourse will wax and wane, is a topic on which the sun will never set.

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<sup>79</sup> Fagan & Gubbala, *supra* n. 50. <https://www.pewresearch.org/fact-tank/2022/10/13/positive-views-of-european-union-reach-new-highs-in-many-countries/>.

<sup>80</sup> *Three Years After Brexit, Time for ‘Bregret’*, Le Monde (6 Feb. 2023), [https://www.lemonde.fr/en/opinion/article/2023/02/06/three-years-after-brexite-time-for-bregret\\_6014609\\_23.html](https://www.lemonde.fr/en/opinion/article/2023/02/06/three-years-after-brexite-time-for-bregret_6014609_23.html) (accessed 18 Feb. 2023).

<sup>81</sup> Joris Larik, *EU External Relations Law and Brexit: ‘When Pluto Was a Planet’*, 4 Eur. & World L. Rev. 1 (2020), <https://doi.org/10.14324/111.444.ewlj.2020.21>.

<sup>82</sup> Ringe, *supra* n. 42, at 179.