

Hilary Benn

Chair of the Select Committee on Exiting the European Union/ the Future Relationship with the European Union October 2016 – January 2021

Shadow Secretary of State for Foreign and Commonwealth Affairs May 2015 – June 2016

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Secretary of State for Environment, Food and Rural Affairs June 2007 – May 2010

EU membership and the referendum

UK in a Changing Europe (UKICE): I want to kick off just with a question going back to the Department for Environment, Food and Rural Affairs (DEFRA).

I wondered whether your experiences of dealing with the EU from DEFRA made you at least slightly sympathetic to some of the Eurosceptic critique of the EU's shortcomings?

Hilary Benn (HB): Well, I think the best example of that was the row over the vote on blue fin tuna. We are members of the Convention on International Trade in Endangered Species (CITES) as an individual country, not withstanding our membership of the European Union. There was going to be a vote on banning trade in bluefin tuna. The EU had a common position, and I said to the officials, 'We are going to vote for the EU common position, but if it

goes down the pan then we are going to vote as an individual country to say we want to ban it'.

This caused the most almighty kerfuffle. Number 10 came back, and said, 'You can't possibly allow your Secretary of State to do this. Duty of sincere cooperation and all that'. I said, 'I'm going to cooperate sincerely, because we are going to vote for the EU position, but if that fails we are voting for a ban.' It went back and forth and they were really worried and it was escalated to a very senior level. In the end I said, 'Well, I've given the instructions to the delegation. That is what we are going to do'. That's how we voted.

After the event, because this was just before the election in 2010, the Commission apparently wrote and said, 'We are going to fine the United Kingdom for its behaviour'. In the end my former Principal Private Secretary said that a lot of humble pie was eaten, and no doubt my name was taken in vain as a wayward Secretary of State who had now departed. On bended knee, apologies apparently warded this off.

Now, my reaction to hearing that story was, it's an absolute outrage that some official in the Commission thinks he or she can tell an elected Member of Parliament, who happens to be the Secretary of State of a member state, how they can vote as an individual member of an international body, after they have loyally supported the common EU position. I think I said during the referendum, 'I'm not campaigning to remain in the European Union because I think it's perfect. It isn't'.

The referendum in the end tilted on the balance between control and self-determination, and international cooperation, and 52% thought the balance wasn't quite right, and they wanted more control back. There was a lot of complex stuff behind that. In due course, I think the EU ought to reflect on that really, because if it is going to prosper in the future, which I want it to do, then I think it should acknowledge that different member states are up for different levels of cooperation. I'm a concentric circles man. I think it was Macron who used the phrase in his Sorbonne lecture.

The other example would be the definition of waste, if you really ask, because under the EU regulations, if you came to my house and I said, 'I've bought a lot of things and I've got some cardboard boxes and I want to take them to the

tip'. And you said to me, 'Don't worry Hilary. I am going to the tip myself', and I gave them to you, under the interpretation of the EU rules that the DEFRA officials gave me, you would require a waste carrier license to convey the cardboard boxes from my house to wherever your local tip is.

There are two examples of irritation with the EU, and don't get me started on the Rural Payments Agency because that's a whole other story. There you are. You did ask.

UKICE: When David Cameron promised a referendum and then won his majority, what did you make of that process? Did you think it was inevitable that Cameron was going to do that? Where did you think Labour should be?

HB: I thought, in the end, he came to the view that he didn't have any alternative because of what UKIP was doing to the Conservative vote. He decided to deal with that political problem using the same method that Harold Wilson used in 1974, to deal with the divisions in the Labour Party over membership of the Common Market. Because remember, at that time, the Labour Party and the trade union movement opposed remaining members of the Common Market. Wilson said, 'We'll have a renegotiation and a referendum', and after that the Government then recommended that we should stay in. He won with two-thirds of the vote.

Cameron thought, 'I'll probably be able to do the same'. Once he'd won the election with the commitment to a referendum, there was some debate about whether Labour should support the referendum legislation or not. I was of the view that we should, because there was really no point arguing about it – after all he had a majority. It was going to happen anyway, and we should turn our attention to trying to win it. But that was not a view shared by everyone.

There is an argument that the great unasked question in the referendum, 'If we vote to leave, what kind of leave do you mean?', was not part of that process, and that then bedevilled the whole of the subsequent political argument and turmoil right up until Boris Johnson won his General Election victory.

UKICE: Were you surprised by how little discussion there was of the EU in the Labour leadership campaign of 2015, given what a big issue it became?

HB: I think everyone knew that Jeremy was a Eurosceptic, but the vast majority of party members were in favour of remaining members of the European Union. Now, whether everyone had thought through during the campaign how those two things were going to be reconciled, I don't know, but Jeremy's victory was about something else. It was not to do with our attitude to EU membership.

UKICE: When you agreed to be Shadow Foreign Secretary in Jeremy Corbyn's first Shadow Cabinet, did you negotiate any preconditions about how Labour would position itself in the referendum?

HB: He rang me up to say, 'Would you like to serve?', and I said I would be willing to do so. We talked about the EU. We talked about Syria and one or two other things. Then he appointed me, and very quickly it became apparent that Labour needed to have an answer to this question, 'Are you going to be campaigning to remain in the European Union?' because our position was in a state of terrible confusion.

On the 16 September 2015, a meeting was convened at which Jeremy Corbyn, John McDonnell, me and Angela Eagle were in attendance. It was that meeting that determined that we would be campaigning to remain in the EU first, and that secondly, we would be campaigning to remain in the EU notwithstanding the outcome of David Cameron's renegotiation.

That second bit was really important, because there were some who were arguing, 'Well, we should just hold off on that and keep our position ambiguous'. I thought that was completely incredible. Our position became that we were campaigning to remain, come what may.

UKICE: Were you surprised that David Cameron didn't make more of the renegotiation during the campaign?

HB: I don't think the campaign was really about the renegotiation one way or the other. If he had got something on free movement then the outcome, I am quite clear in my mind, would have been different.

UKICE: If you then move on to the campaign itself, what did you do and what is your view of how it was run?

HB: It was a very difficult and a very unhappy experience, although, for much of it, I thought we might just squeak it. Indeed, when I had a conversation with David Cameron about a week and a bit before, he said to me, ‘Well, our polling shows we are still just in the lead’.

The final result came as a, not a complete shock, because you could see where the polls had been going.

Alan Johnson led the Labour campaign but Jeremy’s past Euroscepticism meant that he couldn’t hide his lack of enthusiasm. But in fairness to him he said, ‘I’m campaigning to remain’, but he wasn’t particularly vigorous in the way in which he did that. But I think that was him being true to what his position had been for 40 plus years, frankly.

UKICE: Were you picking up complaints from the Remain campaign about the lack of cooperation from the leader’s office? The way it is told, they seemed to be quite frustrated.

HB: Yes. That was indeed the case. But I think the most important thing to understand about that referendum result is that loads of people, and I think of my constituency where the turnout in general elections is not very high, loads of people who had never, ever voted before came out and voted on that day. They saw before them a chance to vote for something that would result in a change. For many of them who are not entirely persuaded that voting changes anything, even though it does, they came out and voted. I think that was an important part of the victory.

Secondly, if you live in communities where you feel that you have lost out as a result of the changes you have seen in your life – what’s happened to the old industries, wage rates and so on – and someone comes along and says, ‘Do you think you have any control over what’s happening?’. You say, ‘No I don’t’. Then they say, ‘Well, would you like to have some more control?’, don’t be entirely surprised if people say ‘Let’s give it a go’. That’s why the phrase, ‘Take Back Control’ was, I think, the defining phrase of the referendum.

UKICE: Do you think anything could have been done to get some of the Labour voters who ultimately voted Leave to vote Remain? Were the

arguments that could have been made? Were there people who could have been campaigning who would have changed their minds?

HB: Well, don't forget, a clear majority of Labour supporters and voters did indeed vote Remain. It's important to understand that because, in the retelling of the story, some people suggest that that was not the case. It was.

I think it's hard to see what argument there would have been because this was a reaction to the change for the worse, as people perceived it, that they had seen over many, many years. Of course, there is the contrast between the impression in the UK given by newspapers and others, the drip-drip-drip, year after year, that every time we went to Europe we were done over. Whereas after the referendum my European former ministerial and European Parliament colleagues said, 'I really don't understand it Hilary, because you in the UK were so good at getting your way'. Most of the time we were good at forming alliances to achieve our objectives.

Could it have been different? I don't know. If there hadn't been Qualified Majority Voting, perhaps, but principally, I think it was about freedom of movement. If David Cameron had got something on that then we could well have won. Now it is true that we operated the most laissez faire form of free movement, which is why we had no idea how many European Union citizens there were living in the country until we started the settled status process. That scheme has actually worked pretty well, although they interviewed a woman on the telly the other day who said, 'I've been here working as a care worker. I had no idea I needed to apply to stay'. But anyway.

To come back to your question, I'm not sure that there was a magic argument or case that wasn't put that could have swung it. Clearly, Boris Johnson's tactical decision to publish the second of the two articles did have an impact. There is no question about it. But he never expected the result to be the way it turned out, in my view.

UKICE: What was your thinking in that period, when the result comes through the morning of the 24 June? A couple of days later you resign from the Shadow Cabinet-

HB: I was sacked.

Just to be absolutely clear and precise. It was the early hours of the morning, but I was sacked, because I had expressed no confidence in the leader of the Labour Party. I fully expected him to sack me, which he duly did, and he was absolutely entitled to. But just for the record, that's all.

UKICE: On the referendum itself, where did you get the result, and what was your immediate reaction to it?

HB: I'd agreed to do a shift at the BBC referendum results studio in Elstree. I arrived and John Curtice was there and I had a chat with him, and the early results had come out. It was during the course of my spell on the set that it became quite clear that we had lost and we were leaving. Then I had to get in a car and be driven all the way home. It was not an enjoyable early morning at all.

UKICE: Jeremy Corbyn had sacked you. You had no confidence in him. Did you actually think that his leadership was going to come to an end, that there was going to be a realistic challenge?

HB: The reason why I did what I did, as I set out on the Marr programme a few hours after I had been dismissed, was as I described it. I said that I thought he was a good and a decent man but he wasn't a leader and there wasn't confidence in the Parliamentary Labour Party that we could win an election under his leadership.

I didn't do it because I was planning to seek to take his job, because I wasn't and I didn't. I didn't do it because I expected there to be a leadership challenge at that moment. When I got sacked, I wasn't entirely clear how many members of the Shadow Cabinet would then decide that they were going to leave.

But it was a culmination of, I suppose, frustration at the referendum result and what was perceived as having not been a very energetic effort on his part during the campaign, where we were in the polls and the fact that while Jeremy (Corbyn) has many qualities leading the main opposition party was not one of them.

UKICE: In parallel, we had the Conservative leadership. What did you make of

their reaction to the referendum result? David Cameron's resignation, the final emergence of Theresa May after a truncated leadership contest? Did you think that determined where Brexit was going?

HB: I think I said on that BBC results programme that David Cameron would have to go, because I didn't see how he could possibly stay on. It was such a blow to his authority as Prime Minister, and that's what he promptly did.

UKICE: Did you think the Conservatives would then elect an out-and-out Brexiteer?

HB: It wasn't entirely clear what the outcome would be, but eventually Theresa May won by being the last candidate standing after Andrea Leadsom had to pull out. Now obviously, it must have been quite difficult for Theresa May because she had been a Remainer, albeit an extremely quiet one. I think she made the one speech during the referendum campaign. She was leading a predominately pro-Brexit party. I suppose we thought, 'How is she going to manage that?'

Subsequent events demonstrated the approach that she took, but in the end it wasn't successful. I do think she made a very big mistake when she announced, 'we are leaving the Single Market and the customs union'. Whether she had fully understood what that set in train I don't know, because she then sought to recreate the conditions of being members of the Single Market and the customs union through the Chequers proposals, which were very imaginative and very innovative. I think they showed where she wanted to be, but that didn't work either, not least because of the resignations it provoked.

UKICE: During that period where David Cameron had stood down and Oliver Letwin was in charge of preparations for the incoming Conservative leader, did anyone from the Government or the Conservatives reach out cross-party at all?

HB: No, not at that stage. There was obviously a great deal of reaching out and conversation later on in the process, with people who became my new best friends on the specific issue of, 'How do we stop a no deal Brexit?' But I will come to that.

Scrutinising the Brexit negotiations

UK in a Changing Europe (UKICE): In October, you decided to stand for the chair of the newly created select committee set up to scrutinise Brexit. What did you think you might be able to achieve chairing what was always going to be quite a polarised committee?

Hilary Benn (HB): Well, when it was first suggested I might put myself forward my reaction was, “Oh crumbs. Why would I want to do that?” But having given it a bit more thought, somebody had to do it, so I decided I would put myself forward. I saw the task as to scrutinise the process, fundamentally, and that’s what I sought to do. But it was quite difficult because, unlike just about every other select committee where there is, of course, a strong ethos that you proceed by consensus, it became clear to me pretty early on that if we did that, we would produce reports of the lowest common denominator that would say nothing of any interest.

What transpired was the committee divided on a number of propositions on a number of reports, and you can read all of that in glorious technicolor in the minutes, where you can see who voted which way.

It was quite difficult. I think I was accused at one point of trying to ram things through. In my defence, I would point out that the longest we took trying to agree a report by consensus, because like all select committees you have informal consideration of all of the amendments before going on to the formal votes, was eight hours. Now, if that’s your idea of ramming stuff through then you must have a very fast watch.

UKICE: At this stage, you were set up to scrutinise primarily the Department for Exiting the EU. Various people have said they think establishing a freestanding Department for Exiting the EU was a mistake. Did you think from your hearings and interactions with them that they actually had a near impossible task?

HB: Of course the task was impossible, because you had a Secretary of State who opined that we were going to get a deal with the exact same benefits, which wasn’t true then and certainly isn’t true now, so how were you going to

deliver this while getting us out of the European Union?

I mean, look, the civil servants were, as always, incredibly committed. People came in and worked extraordinarily hard. But it must have been so difficult for them given the politics going on above and around them. Because where was the policy going? The arguments over the approach that should be taken, what does this all mean? What are our marching orders? How do we turn 'Brexit means Brexit' into a policy? I think it must have been very difficult, never mind all of the practical consequences that flow from this.

But as a committee, we did our best to try and understand the approach the Government was taking. Theresa May would make speeches from time to time and they were very interesting. All the debate about divergence was about the freedom to diverge, and she got up and said, 'Well, the more we diverge, the more of a problem we've got in achieving frictionless trade and limiting the economic damage'. She made the point, I think very skilfully, that with divergence comes an economic price.

The trouble is we ended up with Boris Johnson, who put the purity of sovereignty above the economic interests of the country. The economic damage this has caused is now becoming clear for all to see. I suppose that's partly the answer to your question about the referendum, because I met people who said, 'I don't care what the economic hit is. My sovereignty is more important'. It's very difficult to argue on that basis.

UKICE: Did chairing a committee with a large Conservative membership help you to see the difficulties that Theresa May might encounter in getting any deal through in Parliament?

HB: Well, I think that difficulty was evident inside the select committee, where different Conservative MP took different stances, and all over the newspapers. Incidentally, it proved to be a very good basis on which to move out of the select committee and into the Cabinet, because we had Jacob Rees-Mogg who was a member, and Michael Gove and Dominic Raab. I did joke that it was nice to see there was a future after serving on the select committee.

UKICE: Were you surprised that the Government contested the Miller case?

HB: Not really, given that Theresa May had said that triggering Article 50 was a decision for the Government. Having said that, if someone comes along to try and prove that it isn't, if the Government doesn't contest the case it meant that she was wrong. So no, I wasn't.

UKICE: But putting it back to Parliament ended up meaning that Theresa May could point to a thumping majority of people who voted to trigger Article 50, including you. Did you have any reservations at that stage about voting to invoke Article 50?

HB: No, for this very simple reason: if Parliament had voted not to trigger Article 50 then Parliament would have been saying to the 52%, 'It doesn't matter how you voted in the referendum. It doesn't count. Go away'. That, in my view, was not a credible position. The starting point for all of us who campaigned for Remain is that we lost. We lost the referendum.

Those who argued that it's not legally binding completely missed the point. Yes, if you are a lawyer, you could argue it's not legally binding. But that's not what it was about. It was politically binding, in the same way as the 1974 referendum result was politically binding on Harold Wilson. Now, the margin was larger, and that of course is one of the other difficulties. It had been quite tight, but 52 to 48 is still a win. No, I didn't. It was quite clear to me that that's how we needed to vote.

Now, there were other Labour members who didn't, and their argument was, 'My constituency voted heavily to Remain and I'm going to keep faith with them'. I absolutely respect why they held to that view. But it struck me it would not be credible to say we were just throwing the referendum result in the bin.

UKICE: The House of Lords sent the Bill back with a couple of amendments, on citizens' rights and an early outing for something that looked like a meaningful vote. Do you think that an opportunity was missed by Parliament in trying to impose any conditions on its role when a deal came back?

HB: I don't think it was the time, and I don't think that was the mood. The Bill was for a particular purpose, because if you were persuaded that it had to be

triggered to honour the referendum result, then the political process would sort out the rest of it. Since you refer to a meaningful vote, it was illogical to try and argue that Parliament might not have a vote on the final deal, which was Theresa May's position the first time she came to the Liaison Committee. I asked her, 'Is Parliament going to have a vote?' She refused to say that we would.

Now, that position didn't last terribly long because it was absurd to suggest that Parliament would not have a vote on the outcome of the negotiations, completely absurd. Political pressure achieved the outcome that you could have attached to the Article 50 legislation. But we didn't attach it then because the mood was: this is a necessary step now that the courts have told us that Parliament has to get to vote on it. Let's take the necessary step, and get on with everything else.

UKICE: Throughout this period, you are trying to scrutinise the Government. But they seemed relatively reluctant to come and give evidence, or provide you or Parliament with that much information about what they were trying to achieve. The EU makes quite a lot of the contrast of how much Michel Barnier was engaging with the European Parliament. What did you think of their handling of parliamentary scrutiny?

HB: The contrast between the two was stark. The Government absolutely did not go out of its way to consult with Parliament or to consult with the select committee at all. I don't think it was always a very pleasant experience for whoever happened to be the Secretary of State for Exiting the European Union at the time to come before the select committee.

The main points of tension with the Government were over their complete unwillingness to do any impact assessments of what any particular policy in respect to Brexit was going to mean, which is, when you think about it, extraordinary.

This is another example of the point I made a moment ago about the politics triumphing over the economics, because they didn't want to ask. I reflected back on my ministerial experience, reading impact assessments attached to legislation, which were pages and pages and pages. All legislation is important, but for Bills that were not contentious and were not really huge in terms of

impact we had pages of it, but for the biggest decision we had taken as a country in two generations there was basically nothing.

There was that famous exchange with David Davis when I asked him, 'Have you done an impact assessment on this and that?' When I asked it the third time he realised there was a long list coming and he said, 'I think the answer would be no to all of them'.

We did have the one economic impact assessment of the overall affect of no deal, and an in-between type deal compared to what was then our current trading and economic relationship with the EU. That was very clear in saying, 'It will provide a hit to GDP in years to come, so it's going to have an adverse impact'. Michael Gove said, 'I don't really have a lot of time for this. People don't always get it right'. So I think that was the main point of tension.

We had the various uses of the humble address, a wonderful device that was dusted down from the dim and distant past, which got the Government into some difficulty over whether there had been impact assessments on different sectors of the economy. The reason I think there was a delay in producing them, once Parliament said you must produce them, was I always suspected because they weren't actually in a form that was complete, so they needed to spend a bit of time writing them before they could publish them.

When they did publish them, frankly you could have set that as a task to students, and said, 'Could you come back with an assessment of how these industries work and I'll mark it?' Because there was nothing in there that anybody didn't know already.

UKICE: What did you make of the way in which the Government was approaching different interests? You took evidence from a lot of business groups. You took evidence from citizens' rights groups. You went to Northern Ireland. You went over to the EU to talk to people there, and went around the UK.

HB: Which was really useful and interesting. We went first to Aberdeen, at Michael Gove's suggestion, and that really gave us both a regional perspective, as well as looking at particular sectors.

Talking to many, many businesses and business leaders formally and informally over the period, they would say 'We've had a chance to express our views and explain the things that we want to the civil servants in our sponsoring department. We think they understand. But how it all then gets considered when it goes into the melting pot of the politics is completely a different matter'. Since the politics of sovereignty won out in the end over the economics, you can see why they had cause to be anxious.

I think the financial services industry, for example, very early on recognised that passporting wasn't going to survive. Financial services were slightly different, because there were parts of it that really didn't like EU regulation and were quite looking forward to being free of that. Secondly, they got themselves organised early on to open offices and move capital and staff to prepare for all eventualities.

That's why you didn't really hear a lot of shouting from financial services as the process unwound because they knew what was coming and they got organised for it.

UKICE: Moving on to the Chequers, what did you make of the Chequers plan and of the subsequent Withdrawal Agreement that Mrs May negotiated?

HB: Well, I thought it was a very clever and skilful attempt to square a circle.

UKICE: Did you ever look at it and think, given Labour is still officially supporting Brexit, that this gives us quite good access with no freedom of movement, and we ought to support Theresa May on the deal's merits?

HB: Just to be clear, Labour never supported Brexit. Labour supported Remain, but we lost and we realised that Brexit was going to happen, and we had to decide how we were going to approach that. But it is not the case that we were saying, 'We are now a Brexit party'. That never was never Labour's position. That then played out in the arguments over the 2019 General Election result and the contrast between 2017 and 2019.

You've put your finger on a question that I've thought a great deal about. At the start of the process of exiting, if Theresa May had come to the House of Commons and said, in Stephen Kinnock's famous phrase, 'We are moving

out of the house but we are going to live in the same neighbourhood, and we are going to stay in the customs union and a form of the Single Market' then I think the House of Commons would have voted for it, including Labour.

But what happened was that the prospect of a second referendum hove into view. This is my analysis. The moment the prospect of a second referendum appeared, colleagues on the Labour benches who previously had said, 'Single Market and a customs union, that's what we want, we'll vote for it', then discarded that because they thought there might be a possibility of the British people changing their minds.

That was the perspective through which everything was subsequently viewed. Things might be different if that hadn't been the case, but that's the way it turned out.

Speaking personally, I came quite late to support a confirmatory referendum because I thought we had an obligation to try and give effect to the first. But Parliament was absolutely stuck over what form that Brexit should take. One must understand, after Theresa May called her general election and lost her majority, everything changed. That extraordinary period of two and a half years was one in which the Government had no confidence it could win any vote on anything.

UKICE: To press you slightly on this, substantively, there doesn't seem to be anything particularly offensive to those Labour MPs who thought we should leave and honour the referendum result in the May deal, particularly given the fact that it opened the door to negotiations over closer alignment with rules, membership of EU agencies and so on.

It was a starting point rather than an end point. But was there anything substantively in that about which Labour would say, 'In principle, that's not the sort of Brexit we want'?

HB: Well, at that point, Labour's argument was we should stay in the customs union. Now, the Chequers deal didn't say that, but it tried to reconstruct that through a complicated mechanism. It's not the case that what Theresa May was offering through that deal was what Labour was then calling for. Secondly, practically, there had been a lot of Labour MPs who would never vote for it

anyway. And, thirdly, she was in terrible difficulty with the ERG who inflicted the famous three defeats.

I always thought it was somewhat unfair that we got so much criticism for supposedly blocking Brexit. We were opposed to Brexit, that is true, and remained so, but the reason why Brexit was being blocked was because of the votes of people who were passionately in favour of Brexit. As we finally discovered, when they decided that they would all vote for something that enabled the UK to leave the European Union, low and behold Brexit happened.

UKICE: At this stage you had DUP members on your select committee, and you had been to Northern Ireland quite a few times. Were you surprised that Theresa May's Northern Ireland backstop proved such a sticking point there? Had you thought from early on Northern Ireland was going to be the real problem that this deal was going to confront?

HB: Oh, it was very clear from the beginning there was a problem, once leaving the customs union and the Single Market became the Government's policy.

The irony in all of this is that the one thing in the Brexit negotiations that every single party on both sides of the channel agreed on was that, under no circumstances, could there be the return to a hard border between Northern Ireland and the Republic. The problem was, how on earth do you achieve that given that we are leaving the Single Market and the customs union?

We identified that in the select committee reasonably early on. There were two ways you could do it. You could have a border in the Irish Sea, or you could leave the whole of the UK, in effect, in the Single Market, and that's what Theresa May sought to do with the Chequers proposal.

The DUP campaigned to leave but the majority of voters in Northern Ireland were not in favour of leaving, and since then the DUP, I think it's fair to say, have been struggling with the consequences of their own choice. It is always handy in those circumstances to try and blame somebody else for the problems that are arising.

UKICE: You have taken quite a lot of evidence over preparedness for no deal,

as DExEU was in charge of overseeing some of those preparations. Did you actually think, as Theresa May struggled to get her deal through Parliament, that no deal was actually really going to happen? That the Government would be prepared to go for it, having taken evidence on the potential consequences?

HB: When push came to shove, I never thought that Theresa May would. I was not confident about Boris Johnson.

UKICE: You never thought he was bluffing?

HB: I didn't know for certain. Now, there is no doubt he played it for all its worth as a negotiating tactic. But throughout the whole of last year I always said 'I think there will be a deal, because why would either side not have one? Why would you want to impose no deal, particularly in the middle of the worst economic crisis for 300 years?'. So it proved. He did not go for no deal – so in that sense we won that battle – but up until the last minute no-one could be sure what he was going to do.

Looking for a route through the Brexit impasse

UK in a Changing Europe (UKICE): To go to the spring of 2019, select committee chairs became increasingly prominent players in that period where the Government was struggling with Parliament. Did you ever think that Parliament would be able to come together and indicate a way forward, perhaps through indicative votes, rather than just veto no deal?

Hilary Benn (HB): There were lots of conversations and the select committee produced a report calling for indicative votes which others had been proposing. It arose very simply because Parliament had demonstrated quite clearly what it was not in favour of, so wouldn't it be a good idea to see whether we can establish what Parliament might be in favour of? That was the thinking behind indicative votes. But as ever, the way in which MPs voted on the different range of options showed the glory of politics working in its subtle and mysterious ways.

UKICE: Were you worried when you tried to take control of the order paper?

HB: I know this is the common parlance but at no time did we ever do

that. 'Take control of the order paper' has this connotation of MPs behaving improperly. If MPs are not going to determine what Parliament discusses and how it votes, then we are sunk. I always pointed out that the Cooper Bill and the Benn Bill, as they became known, were simply private members bills taken not on a Friday.

Now it is true, to be fair, that the business motions which enabled the bills to be considered were a work of art. You had to construct a business motion that would allow us to bring a private members bill not on a Friday, and we had to repel all procedural boarders.

Oliver Letwin will tell you that the clerks of the House of Commons were utterly magnificent. He went to them and said, 'How can we do this?' and they advised us how it could be done, as they would for any MP. They were not in any way partisan; they were professional and did their job.

UKICE: What did you therefore think when your legitimate attempt to determine the course of business in Parliament failed, when John Bercow cast the deciding vote? Were you then genuinely worried that would mean that we might end up with no deal?

HB: That decision on indicative votes was obviously a blow, but on other occasions John Bercow bravely ruled in favour of allowing the Commons to vote on proposals, much to the Government's anger. Those were really important moments.

More generally, I would say tomorrow is another day, given how volatile things were. People would not vote for something when they thought there was still another opportunity to vote for it later. But when it came to the moment when people realised 'This is it', that's when you found that they were prepared to vote for stuff that they wouldn't vote for before. This was politically difficult, especially for Conservatives, because they were members of a party that is overwhelming Eurosceptic and supportive of Brexit, and they were perceived as not doing what the party wanted. It's a bit like the Republicans in the United States of America at the moment. It's exactly the same dilemma.

UKICE: After Theresa May gets her two extensions, she also initiates cross-party talks with the Labour frontbench. I wonder whether you had any input into

those talks, and whether you thought they were likely to yield anything?

HB: No. I didn't think that they would. If I were Theresa May, I'd have started the whole process by having cross party talks, right at the beginning. But she chose not to do that.

That I think plays back to the question you asked about the Chequers deal and what was on offer, because it might have been different if that's what she had done. But she chose not to do so, and so it was very late in the day. I think Keir (Starmmer) and Jeremy (Corbyn) went into those talks in good faith, but I didn't think that there was going to be an agreement come out of it the other side. No, I didn't.

UKICE: You said you were a relatively late supporter of the People's Vote campaign. What persuaded you?

HB: I think my reasoning follows the confirmatory referendum argument, because you couldn't argue to the electorate, 'I'm terribly sorry. You reached the wrong decision. Could you please go and cast your vote again?' That was not a credible position to adopt. But to say, 'Look, it's clear we are leaving. Unfortunately, the referendum itself offered no guide, view or opinion on what kind of future relationship we are going to have with the European Union. What's on the table currently could be argued to be quite some distance away from what was promised by the Leave campaign during the referendum' so can we check you are happy with it?

Therefore, at that stage and afterwards, I would have voted to pass a withdrawal agreement subject to a confirmatory referendum, and that referendum would enable the country to say, 'Yes, that's what we had in mind' or 'That is not what we had in mind, and in the circumstances we've had a rethink and we ought to stay'.

I suppose at the heart of that latter argument is this question. Does the electorate have the right to change its mind? Now, there was a General Election in 2015 and there was a General Election two years later in 2017, and the electorate demonstrated not only did it have the right to change its mind, it indeed did so, and then it did so again in 2019.

I would always say to those who were very angry about it, Leavers who were very angry about the idea of a confirmatory referendum because they felt their vote was being disrespected, 'This is not telling you that you have to vote to change your mind. You want to leave you just confirm your vote and off you go'. I suppose they were not entirely convinced that Parliament would then do what was required since Parliament, as they felt, hadn't implemented the first referendum result.

That was the thought process behind my change of mind, and the more the drama went on, the more we were heading for really quite a difficult outcome. Now, the idea came with all sorts of problems. How many options on the ballot paper? Do you have a two-part referendum? All of those would have had to be argued about if we'd got to the point that there was a majority in the House of Commons for a confirmatory referendum. But without a change of government or a temporary government, that was never going to happen.

UKICE: One of the things I never understood about a confirmatory vote was what question would actually be asked in a referendum?

Or does it have to wait until the second stage negotiation, so voters can see the whole package, like the Trade Cooperation Agreement, and then decide whether they prefer that to remaining in the EU?

What exactly would people be asked to vote for?

HB: I think the proposition at the time was to vote on the Withdrawal Agreement and the political declaration. But you are right, you could have argued that it should take place once the final negotiation is complete.

Although, how the EU would then have approached it if there were another referendum hanging over the whole process I don't know. I think if there had been a confirmatory referendum on the basis of a political declaration being drawn up, it would have been a lot harder for the Government of the day to then say, 'Right, we are now marching in a completely different direction'.

UKICE: Was the fact that you were a select committee chair part of the reason why you were maybe slightly slower to join the People's Vote campaign compared to some Labour colleagues? Because you were looking for a

consensual path through Parliament, and because your voice had a lot of weight in Parliament?

HB: Clearly, my position as a select committee chair meant not that I had to be more cautious, but I found it, to be honest I found it quite hard, because I'd be interviewed and people would be asking me questions as chair of the select committee, and then they'd be asking me questions about Labour's policy, on which occasions I'd point out that I wasn't a member of the Shadow Cabinet. Then they'd be asking me what my own view was, and I'd express my view.

Yes, there were occasions when I thought, 'I just need to choose my words with particular care here'. But then it became very apparent that other members of the select committee were not constrained at all by the fact that they were members of the select committee, and we hadn't yet reached a decision on things.

I would deal with that by saying, 'Well, the view of the select committee in the report we have just published is as follows, but if you ask me what I think'. Then I would say what I thought. Yes, that's how I tried to deal with it.

The Johnson Government

UK in a Changing Europe (UKICE): If we come onto the autumn, Boris Johnson becomes Prime Minister in July, then moves at the end of August to prorogue Parliament, and you are a critical player in that dramatic first week when Parliament returns. What was your view of where the Government was headed?

Hilary Benn (HB): Well, let's start with prorogation, because it was absolutely crystal clear what the Prime Minister was trying to do with the five-week prorogation. He was trying to get Parliament out of the way, because he really didn't like the way the votes were stacking up in the House of Commons. I must confess, I did not think that the Supreme Court would want to go there. Bill of Rights, 1689. You won't stick your nose into our business and we won't stick our nose into yours.

But I sat in the café inside the Brighton Conference Centre to listen to Lady Hale deliver the judgement on my iPhone with my earpiece in, and it was

absolutely riveting. Their argument was, I thought, beautifully put. You want to prorogue, you can have a week. That's what normally happens. But the fact you've chosen five means you are doing it for other reasons, and that is not lawful. That was a very, very big moment.

I think that was one example, and there were many others, where the nature of the British constitution, which is not written and is made up of lots of different elements, including tradition and precedence, was shown to be being put under enormous strain. Because if you get people in positions in power who don't choose to follow that, then it can result in all sorts of consequences. Now that doesn't persuade me that we should have a written constitution, because you end up with the judges making all sorts of really quite fundamental political decisions.

We came back after the summer recess, with a real fear that Boris Johnson would proceed with a no deal Brexit. There were lots of different groups that were meeting throughout the whole of this period on a party and a cross party basis. But it brought together a particular group, including a number of Conservatives, and people had very different views on how the story should end, and it's important to understand this. There were people in those meetings who would say, 'The moment any deal comes into view, I am going to vote for it'.

But what bound us together was opposition to a no deal Brexit. That was what made the second Act possible, which forced the Prime Minister to do what he really, really didn't want to do, which was to apply for a second extension, and that's how it passed through the House of Commons, much to his anger and disgruntlement.

UKICE: What did you think when you saw the reaction of the Conservative leadership and whips to those rebels, and those high profile expulsions of people for voting for your Bill?

HB: Yes, I was a bit surprised. Partly because so many people have rebelled on so many things over Brexit thus far, and then suddenly new management comes in and says, 'there is a price to pay here'. With an election looming, if you've had the whip taken away, you are not going to be a Conservative Party candidate.

I think history really must applaud the sheer courage of those Conservatives, because in the whole of this debate about Brexit, people who were very angry and expressing abuse would say 'You are just putting your own personal interests above those of the country'. Yet here were MPs who were doing the absolute opposite. They were putting what they thought was the interests of the country above their own career prospects, because having the whip taken away at that point was parliamentary career-ending.

To do it to Kenneth Clarke, given his history as Father of the House and all of that, showed they had decided that a brutal approach was required to suppress dissent.

UKICE: The Government then said that when Parliament came back post prorogation, they might not bother to comply with your Act, notwithstanding the fact that it was on the statute book. Did you believe them?

HB: I never believed that they wouldn't, because there were lawyers lined up to go to court if they were ever to do that. I didn't think they would do that. It was a bit churlish not to sign the letter on the part of the Prime Minister, and I did joke at one of the rallies in Parliament Square, 'as you are leaving to go past Downing Street, can you hand in any First Class stamps you've got to help him to put them on the letter so that he can make sure it arrives at the Commission headquarters'. No, I didn't think they wouldn't. That really was a lot of bluster and bluff.

UKICE: Do you think it was your Act that forced the Prime Minister to get a deal? Do you think it changed the way they were thinking?

HB: I wouldn't claim that. My name happened to be number one on that particular version of the legislation, but this was a team effort. I know people have to describe it in a certain way, but it was absolutely a team effort by MPs from lots of different parties who met in my room because it happened to be closest to the Chamber of Commons. That's an accident of geography.

To get back to the question, he had to get some agreement with the EU and of course he paved the way for that by doing what he'd sworn he would never do, which was putting a border in the Irish Sea. I also think that Parliament's determination not to allow departure without an agreement made the ERG

realise that they needed to back a form of Brexit because they began to worry that if they didn't they might end up with no Brexit at all.

UKICE: There was some talk of the potential of this cross party alliance, that had led to the presage of this Bill, getting together and forming some sort of temporary Government of National Unity to actually oversee the end of the Brexit process, and make up for the stagnation in Parliament. Did you ever think that was going to get anywhere?

HB: There was certainly a discussion about it. But it would only have happened if the Labour Party had been prepared to support it with a Prime Minister who wasn't then leader of the Labour Party. It was quite clear that was never going to happen. If the national government had been formed with Jeremy as the potential Prime Minister, then there wouldn't have been sufficient votes in the House of Commons for that government to win a vote of confidence.

UKICE: Once Boris Johnson had brought a deal back, albeit with a border in the Irish Sea, did you then think 'We can't hold out against a General Election now?' He got his Bill passed at the second reading, failed at the programme motion. Do you think then a general election became absolutely inevitable?

HB: Well, Boris Johnson certainly wanted one. The SNP certainly wanted one, because they could see the polls in Scotland. The Lib Dems in the end decided that they wanted one. It was not a prospect that a lot of us relished. Given that he had got the deal through and then lost on the programme motion, he could have come back and offered another programme motion that would probably have passed. But that's not really what it was about.

He saw this as the perfect opportunity to get a great big majority, and what he wanted then was an election rather than getting the deal through. I am sure he could have got the deal through, now he was in a position where all Conservative MPs who were in favour of Brexit were now prepared to vote for something, which had not been the case on the three previous occasions when the deal had gone down, albeit with diminishing majorities.

As for the outcome of the 2019 General Election, I think the biggest differences were these.

In 2017 the voters thought 'Brexit is sorted'. Therefore, if you were someone who had been a Labour voter before changing to UKIP, you were able to say to yourself, 'Right, we have got what we want on Brexit. Now, am I more a Labour voter or a Conservative voter?' Some of them voted Labour. That's the first thing.

Secondly, I think there were a lot of very, very angry Remainers who voted Labour in 2017, not thinking that Labour would win the election. And Labour didn't win the election. Our share of the vote was up very, very considerably, and that was an extraordinary result and an achievement for Jeremy, but the Tories got 55 more seats than we did. It's not like we almost won.

Then there was the argument that 'Labour would have won if only we hadn't had the turmoil in the Labour Party'. But I don't think that was the case.

Whereas, in 2019, Brexit was of course one of the factors, and it was an important factor for people, particularly in what has become known as the 'Red Wall' seats and among some of those Remainers who had voted Labour in 2017 but didn't vote Labour again.

But it was also the number of times I knocked on doors and people said to me, 'I've always voted Labour, but...' I had more of those conversations in the pouring rain of November and December 2019 than I've had in my life before. That was to do with the leadership of the Labour Party.

And I think our manifesto was so full of promises that we'd failed Nye Bevan's test when he said, 'Socialism is the language of priorities'. As someone remarked after the election, it looked like we had walked into the sweetshop, couldn't make up our minds and said, 'We'll buy the lot'. I would put those three things together to account for the disastrous result we had in December.

UKICE: Boris Johnson comes back with a majority and puts his Bill through, cutting out quite a lot of provisions that would have given Parliament a significant say over the course of the future relationship negotiations. Your committee morphs into the Future Relationship with the European Union Committee, and continue chairing it. Did you feel you got any traction with how the UK was approaching the negotiations?

HB: Any traction? No, because the Prime Minister was determined on a course of action. I don't think he was interested in what the Future Relationship Select Committee had to say.

I should point out that the reason why the two committees were different – again, it's not giving anything away from the sanctity of the committee deliberations – was that there were Conservative Members of Parliament on that committee in the 2016 to 2019 session who were prepared to vote for propositions that were not shared by all of the Conservative members on the select committee. You can see that by just looking at the names of who voted which way, which lead to the reports that we published, whereas with the new committee, that was not the case.

Nevertheless, we did reasonably well in agreeing reports – for example on citizens' rights – and I hope we had some impact. But no, the Government wasn't interested in what the select committee had to say. It was all about the tactics of the negotiations with the European Union and what could be achieved. They decided to move to basically the hardest Brexit of all, and having determined that they would avoid any possibility of the EU saying 'If you want that you'll have to be subject to these rules and controls' they stripped all of that out. Even to the absurdity of saying, 'We can't be a member of the European Aviation Safety Authority [EASA] because it is theoretically subject to the jurisdiction to the European Court'. When I last checked, there had been one ruling in the last ten years, and aircraft safety is not really a hot topic for the ECJ. But all of that really was thrown out of the window.

UKICE: Was it a completely thankless task chairing the committee through this period?

HB: It wasn't a thankless task. I mean the select committee team, the staff, were just fantastic. I can't praise them highly enough. We continued to take evidence from lots of people who told it as it was. I think that's what we were doing – our job. Now, it may not have been popular with everyone, and some people might have said, 'Well, where are all the business people who think that Brexit is going to be fantastic?' Well, there are not many of them, and certainly none of them, with one or two exceptions, wanted to come and give evidence to the Select Committee.

The other thing I would say, and it's true throughout the whole of the period of time, it was always quite difficult for individual businesses to put their head above the parapet and say, 'This is really not a good idea'. The trade bodies and the trade associations were extremely important in speaking on behalf of the different sectors, although there were particularly companies, one can think of Nissan, Ford and others, who were prepared to tell it as it was about the consequences.

The central issue was, 'Are we going to end up with tariffs or not?' which would have been very, very difficult for lots of sectors, such as farming, aerospace and motor vehicles. However, the failure to get a trilateral cumulation on rules of origin has led to all sorts of consequences, which we can now see, And leaving the transition period has imposed a whole load of cost, paperwork and red tape on businesses who export to the EU.

Reflections, 2016-2019

UK in a Changing Europe (UKICE): What difference do you think your committee made, if any, to the Brexit process from 2016 to 2020?

Hilary Benn (HB): I think we did our job and we put a lot of evidence into the public domain about what the issues were and what the problems might be, and in time, people will judge for themselves whether that was an accurate reflection of what was likely to happen or not. We certainly pressed ministers on impact assessments. We highlighted the practical problems of keeping an open border between Northern Ireland and the Republic and we did a lot of work on citizens' rights, both for EU citizens here in the UK and British citizens in the rest of the European Union. I think it was very important that we had the select committee. In our final report we said, 'There will be a continuing need for scrutiny'. It's not yet clear what form that might take, but that conclusion was unanimous.

What we then said about how that might be taken forward was the subject of votes at the final meeting, which you can see in the minutes. But I think we approached the task with diligence. But ultimately, it's the Government and the majority in Parliament that determine what happens.

UKICE: Did you ever feel that the appearances of the Prime Minister in front of

the Liaison Committee made any impact on the Prime Minister? Or were they just really for show?

HB: Well, returning to Theresa May's appearance when I pressed her on whether Parliament would get a vote on any agreement reached with the EU, and she wouldn't give an answer, it would have been interesting to be a fly on the wall in any subsequent discussion about that, when someone might have said to her, 'Prime Minister, that isn't really going to hold as a position, is it?'. The position changed not long after that. I'm not claiming it was that particular exchange, I'm not saying that one bit, but it was not a credible stance to take.

There are occasions, of course, where scrutiny of the Prime Minister, whether it's at PMQs or in front of the Liaison Committee, is going to have an impact. Because the Prime Minister goes back and either says, 'We've got to sort this out', or, 'We've got to change the policy in some way'. That's what happens.

Boris Johnson's appearances, well that's something else again. I'm still waiting for a reply to my letter about musicians and performers following our final exchange last month.

UKICE: He said 90 days.

HB: He did, and I wrote to him afterwards and said, 'I'm afraid this does rather conflict with what our understanding of the position is, so would you be so kind as to clarify exactly what it was you meant?'. Since then, well the whole of that industry, they are waging a great campaign.

When I came across the news yesterday that the National Theatre has announced that the 'Curious Incident of the Dog in the Night' tour, which they had been planning when conditions allow, will not now take place because Brexit means it's not viable, I thought 'what an achievement to do that to one of our most successful industries. That really takes some doing'. But that's what Brexit has done.

UKICE: If you reflect back on this entire five-year period and the role Parliament has played, we have seen that voters became very frustrated with Parliament appearing to not want to carry out the instructions they were sent in the referendum. We have seen MPs refusing to amend the Trade Bill to give

them more detailed power of scrutiny on trade agreements. I just wonder whether it had given you any cause to reflect on Parliament's role in holding governments to account?

HB: Well, the first thing I'd say is that it seemed at times as if everyone wanted something different. I think that's important to understand because, yes, we were leaving the institution, but there was a range of possible outcomes. If you take the divorce analogy from, 'We'll sit down rationally, divide up possessions. We'll care for the kids on a joint basis. I'll move into the house next door. We'll continue to communicate on a friendly and amicable basis' at one end of the spectrum, to running out the house, slamming the door and saying, 'I never, ever want to speak to you again'.

Now, those are the two ends of the spectrum. There is going to be a change in the relationship so what is the new relationship going to look like? It was easy for some to criticise Parliament, but it wasn't clear what Parliament was meant to be doing, because everyone had a different view. That's the first point.

The second is, that Parliament has been too content for too long to let government push treaties through with minimal scrutiny. If you compare the House of Commons to say the European Parliament or Congress, you can see that very clearly. Obviously, it suits the government of the day but it's not very good for parliamentary scrutiny.

Thirdly, Parliament clearly did have an impact on the process at various points after Theresa May lost her majority. At that point, the Government had to take Parliament seriously, however irritating it was not to be in control. I think the biggest single impact was Parliament's role, ultimately, in preventing no deal. As I say, I'm not confident about what Boris Johnson would have done, but I don't think Theresa May would have left with no deal, because she well understood what those consequences of a no deal would have been. But it has been an extraordinary five years.

I suppose the final lesson is, if you are going to have a referendum on something like this, you really need to think much more carefully about what the proposition is, or whether you have a two phase process. I was always struck by the analogy that you put an offer on a house, you have the survey, but you can change your mind afterwards. Now that's quite a big decision for

individuals to make, the most expensive thing they'll ever buy if they are in a position to do so.

But we didn't apply that approach to the most important economic and political decision we have made in decades. Maybe it should have been a two-parter, 'We'll go away and negotiate and come back and say, 'How does this look to you?'' That process would have been much more sensible, because a lot of things that we have been discussing today might not then have come to pass.