



Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence: Brexit: the proposed UK-EU security treaty

Wednesday 21 March 2018

10.30 am

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Members present: Lord Jay of Ewelme (Chairman); Baroness Browning; Baroness Janke; Lord Kirkhope of Harrogate; Baroness Massey of Darwen; Baroness Pinnock; Lord Ribeiro; Lord Ricketts; Lord Soley; Lord Watts.

Evidence Session No. 2

Heard in Public

Questions 10 - 19

Witnesses

I: Professor Anthony Glees MA M Phil D Phil (Oxon), Director, Centre for Security and Intelligence Studies (BUCSIS), the University of Buckingham; Dr Helena Farrand-Carrapico, Senior Lecturer in Politics and International Relations, Aston University; Professor Tim Wilson, FCSFS, Professor of Criminal Justice Policy, Northumbria University Centre for Evidence and Criminal Justice Studies.

Examination of witnesses

Professor Anthony Glees, Dr Helena Farrand-Carrapico and Professor Tim Wilson.

Q10 **The Chairman:** Good morning to you all. Thank you very much indeed for coming and giving evidence to us. We have been looking forward to this session, and we are very grateful to you for being here.

We are in the early stages of hearings for our inquiry into the proposed UK-EU security treaty. We are looking at what it might cover, what it would be, what a treaty would mean and what implications that would have for our negotiations with Brussels. As I say, we are very grateful indeed to you all for coming and giving evidence to us. We are looking very specifically, because that is the remit of this Committee, at internal security and home affairs matters rather than at foreign affairs and defence, which are the responsibility of another sub-committee here. That is the focus of our inquiry.

What, in an ideal world, is your vision of the “closest possible co-operation”, which is what the Government have said, I think, on security co-operation between the UK and the EU 27 after Brexit, and what that would mean? Perhaps in answering that question you could also say a little about yourselves and your institutions, if you would like to, so it is clearly on the record.

Dr Helena Farrand-Carrapico: Thank you, Lord Chairman and members of the Committee, for the opportunity to address this very important topic today. I am a senior lecturer at Aston University in politics and international relations at Aston University and a co-director of the Aston Centre for Europe at the same university. The Aston Centre for Europe focuses on European affairs—Europe as a geographical region rather than the European Union. We have different members looking at different policy areas in Europe.

My area focuses specifically on EU justice and home affairs. I look at forms of governance within EU justice and home affairs, at how this area is being governed and by whom. I also have an interest in future UK-EU relationships in the area of internal security: namely, what will happen to the UK’s influence over this area?

To address your question directly, the closest possible co-operation, in my view, would be the maintenance of the status quo, for two reasons. The main reason is that I believe that the status quo would continue to benefit both the UK and the EU in providing the most efficient answers to transnational problems such as organised crime and terrorism. Nowadays, the only way to address these issues efficiently is through the exchange of information. The current co-operation provides for the exchange of personal and strategic data between the UK and the EU, which feeds into police investigations. I see this as the best way forward.

The second reason for maintaining the status quo is that so far it has enabled the UK to maintain quite a lot of influence over the way the instruments of internal security are shaped and the direction of the area

of freedom, security and justice. The mechanism of the status quo could enable the UK to continue to exert a similar level of influence.

The Chairman: Thank you. We might come back to one of those points in a moment.

Professor Anthony Glees: Like my distinguished colleague, I am extremely grateful to you for your invitation. I am a professor at the University of Buckingham and direct its Centre for Security and Intelligence Studies. I have a particular interest in intelligence-led activity, so my comments will be about that.

The threats that we need to be aware of are those from Islamism, political extremism, serious organised crime and Russia, because there is a domestic dimension to that which we have to take account of. I remain a remainer, but I am also, I hope, a good democrat, and I accept the decision that was taken. It seems to me that the task is to make the best of where we are.

On your question, the Prime Minister's speech this February in Munich, which of course is not always associated with positive things in British history, was excellent in many respects and will form the basis of the continuation of much of what my colleague here on my left talked about, particularly her important statement that although the new system, whatever it is, must be respectful of the sovereignty of the United Kingdom, it must also be respectful of the EU's legal order, and that while participating in EU agencies the UK will respect the remit of the European Court of Justice. That is very important. It is my view that that is the key to a future relationship that will allow all the things that the Prime Minister pointed to as continuing.

It might be worth making it clear on how many levels currently the good working relationships that have been established with the EU 27 will affect us. Had we refused to accept the regulatory authority of the European Court of Justice, we would have to have left the intelligence-sharing centre in Brussels, the open source division, the EU situation room and the consular crisis management division as well as the counterterrorism group in The Hague. We would have to have left the satellite centre SatCen, Galileo, the open source research groups et cetera. The working relationships that have been established over, say, the past decade would have come to an end. People such as Lord Kirkhope, who sits on this Committee, have done a great deal of work to maintain them.

However, given what the Prime Minister said in Munich, it is my clear view that things will continue. It is in nobody's interest that they should not continue. The format in which they will continue—this is my final point about this—is likely to be bilateral, indeed trilateral, relations when it comes to intelligence-led activity. There should be a treaty with the EU 27, but in terms of the actual business that we have to do, there should also be treaties on a bilateral and trilateral basis with France and the Federal Republic of Germany.

I can see a vast number of important advantages to that. It would allow countries to concentrate on particular areas of threats from extremism, Russia and so on. It could be split up. The Germans, for example, never wound down their interest in Russia after the end of the Cold War, but, as everybody knows, this country did so, and it is vital that the flow should continue.

Professor Tim Wilson: Thank you for the invitation. It is very much appreciated. Most of my research has been in areas such as the exchange of fingerprint information and forensic DNA. We are now working on a research project dealing with crime on the dark web. Unlike most of my colleagues, I am concerned with more everyday crime, the kind of crime that may occur even on your own laptop.

I take a very broad view of future criminal justice co-operation. I am slightly concerned about the definition problem. There is a lot of reference to terrorism, organised crime and other threats to security. It is very much a matter of trying to ensure the protection and safety of people in this country and reciprocal arrangements for citizens elsewhere in the European Union. The focus that I hope to see will be on criminal justice co-operation generally, so that one does not, for example, ignore threats to the environment, health and safety, food, and building safety.

We need to look at this quite broadly. The new arrangements need to be about how our criminal justice system dovetails effectively with the criminal justice systems of other member states, our former partners, as it very much does under the existing European Union arrangements; there is not a great deal of substantive EU law.

We need to look at this very broadly and on issues such as avoiding discriminatory punitiveness. If someone has committed a fairly minor offence when on holiday, it would be absurd if they had to serve a custodial sentence in the country where they committed their offence because we have lost the arrangements that enabled them to serve a sentence or undertake community service or probation supervision in this country.

We also need to see how wide this would go. The exchange of information about criminal records is not directly relevant just to criminal proceedings. In safeguarding, for example—the post-Soham agenda—the exchange of conviction information is very important in order that children are safe in schools and people are safe in institutions, and similarly when British people are going abroad for employment opportunities.

This may mean that instead of facing one narrow criminal law element of other European states we need to continue to engage over a very wide range of legal activity—health and safety and employment law perhaps—and there may indeed be a role for the family courts in these arrangements.

Thinking about family courts, if, for example, a family court makes a non-molestation order, enforcement is through the criminal courts, if necessary. In order to protect people from domestic violence, given how many people have homes or connections in two countries, it may be necessary for family court decisions to be enforceable in other jurisdictions within Europe.

Finally, I was thinking of a non-molestation order as an order made by an English court. I do not know what the equivalent is in Scotland, but there may be particular issues to do with Scottish legislation, the criminal justice system and the family law system, for example, that need to be taken into account.

This is potentially a very broad and, I hope, continuing engagement with our near neighbours. I think that is underlined by the scale of the number of people from EU member states currently living in this country who will have residency rights, as we can see from the current withdrawal agreement, and the number of people from this country who will have residency rights in the remaining EU member states.

The Chairman: Thank you. You have all raised a number of points that we will pick up during the rest of the hearing. There are certainly one or two points that I want to come back on.

Q11 **Lord Kirkhope of Harrogate:** Thank you for that introduction. Welcome, everybody. I will go back to the point that you raised about the status quo being the ideal situation. Of course, we are heading not towards the status quo but to something that obviously we hope will protect and preserve the best bits of the relationship, so I will ask you about that.

In doing so, may I have clarification on something? If we are talking about the status quo, we are talking about all the paraphernalia and the attaching constitutional issues that we have managed to deal with until now. Professor Wilson referred to equivalence. There is concern that there is no equivalence among the 27 nation states, particularly in relation to their priorities about what threats are most important. The only way in which this matter is currently dealt with, as I understand it, is through the EU acting as a sort of clearing house via its mechanisms and so.

I only have to refer to the German Constitutional Court—I think Professor Glee knows my interest in this—as an example of a body that has a lot to say about what is given by Germany in relation to exchanging information and so on and to the internal rules of the intelligence agencies themselves, such as the BND in Germany, and elsewhere. They are all different, so we have a negotiation not with just one entity.

For these bilateral and trilateral agreements, there are 27 different entities that have to be negotiated with, theoretically. In that context, in this relationship, which we obviously look at from an EU perspective, what can we maintain, assuming that we are going in the direction which the Government are pursuing now?

Professor Anthony Glees: Do you want us all to answer that?

The Chairman: You do not all have to answer every question, just the questions that you think are most appropriate to your interests. Certainly there is no need to repeat something that you think somebody else has said.

Dr Helena Farrand-Carrapico: This is a request for clarification. What elements we can keep and what elements should we keep? You specifically referred to “can”.

Lord Kirkhope of Harrogate: Should.

Dr Helena Farrand-Carrapico: I can answer that very briefly. I see four elements that are very important in our current relationship. When I referred to the status quo, I was referring to the 35 measures that we opted back into after the 2014 mass opt-out plus the opt-ins since Lisbon.

The first element that is very important is access to information systems and databases: the Schengen Information System II, ECRIS, the Europol information system, SIENA and Prüm. Quite a lot of them benefit the UK.

The second element is the access to networks and bodies that give us more information besides the information that is in databases and that allow us to have operational assistance. Obviously those are well-known agencies such as Europol and Eurojust but also well-known bodies such as J-CAT—the Joint Cybercrime Action Taskforce—or the computer security incident response team network, which came out of the NIS directive.

The third element is maintaining regulatory alignment in relation to legal instruments in the area of security but also beyond. This is important, because the UK’s access to these instruments will probably depend on how close its regulatory framework is to the EU’s one. I said “beyond” security, because obviously a great deal of instruments depend on other areas of regulation: namely, data protection and privacy.

The fourth element is to try to maintain as much as possible our current levels of influence and leadership in the area of security, which means trying to find alternative ways of maintaining our influence.

Professor Anthony Glees: Referring again to the Prime Minister’s Munich speech, she highlighted: first, her historical readiness to opt out and then opt in again in the interests of national security; secondly, the importance of the European arrest warrant; and, thirdly, the significance of being part of the Schengen Information System II. Indeed, it was part of her original support for remaining in the European Union. She pointed out that the Schengen information database system was used 540 million times in 2016. That is a very real thing, and I believe on the basis of what she said about accepting the regulatory capacity of the European Court of Justice that that will continue.

Things become much more complicated where third or fourth parties are involved, which is why I talked about bilateral and tripartite intelligence and security relationships. The German public have a different attitude not only to intelligence-led activity but to whether that intelligence is shared with the United States of America. The working relationships that have grown up appear on a day to day basis to have smoothed over those issues. The moment you leave what exists and create something new—Lord Kirkhope is absolutely right that the status quo is not on offer—these will be very difficult areas.

I detect that the will is there, because it is in the national interest of every European country that there is the widest possible exchange of strategic information, and in negotiating with them one clearly has to prioritise because there is not enough time. We have been doing this for 20 years, so priorities are important. The basis is there, but there are obstacles.

Professor Tim Wilson: From my perspective of extended criminal justice cases, I would say that Brexit will make less difference than people might think. International criminal justice in relation to individual cases can be very difficult. There may be questions about how one country gathers evidence, maybe seeking the co-operation of another country gathering that evidence, but different rules apply that have to be observed by the people gathering the evidence on behalf of the other state.

Similarly, when we are exchanging information, the European Union structure tends to subject the actual application of what is lawful to exchange to the law of the country that is holding the information. It is very much a system of joining together what are often, as you say, quite different criminal systems. Sometimes that works quite efficiently, but quite often it is quite expensive and time consuming. People have been struggling with these issues for 40 years.

There is a huge amount of jurisprudence at the European Court of Human Rights at Strasbourg. Luxembourg is beginning to develop its own jurisprudence, but there are some general principles to be found in ECHR and the Charter of Fundamental Rights that give some ballast to this process and some general principles for bringing the systems together.

The great advantage from what the European Union has been able to achieve is institutional links through organisations such as Eurojust and placements such as resident magistrates, who try to make sure that this co-operation takes place effectively. It is hard now, it is complicated now, and it is not going to get any easier. I would say the same thing even if we were not leaving the European Union, because crime is changing so fast, and adapting to developments in cybercrime, which affect most people most days of the week, requires huge flexibility in the way our criminal justice systems and agencies work together. It certainly requires a huge effort in trying to ensure that the process is transparent to parliaments, to the media and to the press and is appropriately supervised by the courts.

The Chairman: Thank you. That is very helpful.

Q12 **Baroness Massey of Darwen:** Thank you for coming. We have touched on various issues raised by my question. Do you think it will be possible for the UK to continue to have access in some way to EU structures for the police and judicial co-operation, such as Europol?

I will throw in a supplementary question on human rights, which you mentioned. Supposing we were to opt out of the European Charter of Fundamental Rights, for example, which is on the cards. Would that affect things for us?

Professor Tim Wilson: It is not an area where I have huge expertise. I would defer to a fairly recent report by the Joint Committee on Human Rights, which very accurately said that we may need to incorporate the charter or elements of the charter into English law in order that data may be exchanged. That was picked up in the House of Commons report on security co-operation post Brexit that was published today.

Our ability to find a way forward with this proposed new treaty will require some reconsideration of what some people have seen as red lines, but we need to put it into perspective; most of the charter is what any decent society would wish to see. I do not think it is a threat. It is rather like the ECHR: people underestimate the contribution that British jurists made to drafting that important instrument, and it is of great regret to this country that we waited so long for the Human Rights Act.

Baroness Massey of Darwen: Indeed. And on the first part of the question?

Dr Helena Farrand-Carrapico: I will respond to that, if I may. As you know, there are instruments where co-operation is accessible to third countries and instruments where there is no co-operation with third countries, such as the computer security incident response team networks or ECRIS. For the moment, third-country access to EU instruments is dependent on agreements to adopt certain parts of EU legislation or, in certain cases, regulatory alignment.

So my view is that it is less about whether the UK will be able to access those instruments or not and more about how much of those instruments it will be able to access. I do not think that the UK will be able to enjoy the instruments to the full extent that it currently enjoys. For example, the UK will still be able to ask Europol for data via Europol's operational centre, but it will not be able to access the Europol Information System directly.

There is also the risk of good will disappearing during negotiations. There might even be a spillover between the trade negotiations and the security negotiations, and the loss of good will could impact the security negotiations. All that could impact on the UK's ability to access instruments.

The other practical issue that we have to take into consideration is how long it will take the UK to negotiate an instrument such as this. We have to take into consideration the fact that Norway's and Iceland's access to the European arrest warrant took 15 years to negotiate. That is very different from the 21-month transition that we have.

There is also the option of trying to bypass these EU instruments and to go through bilateral agreements. We could always rely on the 1959 Council of Europe mutual legal assistance convention or the 1957 Council of Europe extradition convention, but they do not give us the same access to operational support or the same level of co-operation, and not all countries have signed up to the 1959 convention. Not all countries are willing to extradite their nationals. My country of origin, Portugal, does not extradite its nationals. There was a case not long ago in 2011 where the United States asked Portugal to extradite a Portuguese national who was part of the black panthers. Portugal refused to extradite because the person had had nationality for 30 years.

Professor Anthony Glees: I very much agree with what Dr Farrand-Carrapico said about the need for a transition period in security matters. The issue of human rights is extremely important. As I said, in what the Prime Minister said in Munich, she kind of built in a theoretical fail-safe system, but it would have to be worked out. It is not just that the other EU 27 security and intelligence agencies would not wish to work with a United Kingdom that did not uphold these values or that the peoples of those countries, to whom the agencies are ultimately responsible, would not wish to deal with a United Kingdom that did not uphold these values. From everything that outsiders such as me pick up from our UK secret agencies, there would be wide discontent among our own intelligence and security community if we were not signed up to some kind of European-wide convention on human rights. After all, the reason why this is so important and why intelligence-led activity is so important is because it is about securing the core values of free European nations.

It is one of the great fallacies that somehow, as in economic terms, America would be there. Given that the President of the United States has said that he believes in torture, the new head of the CIA has said that he too believes in torture, and his deputy appears to have been personally involved in the supervision of torture, I can see enormous problems for our intelligence community in not continuing to operate as before.

Professor Tim Wilson: It is constitutionally very difficult. I think that is clear from the report today. The UK is trying to strike a deal that has never been done before. I have two observations. With the common travel area, we will have a mini-Schengen, and the road to progress in our negotiations may actually be through Dublin because we have so much in common and so many common interests. The involvement of a member state in the mini-Schengen of the common travel area may make a difference.

Similarly, when you look at the number of people with residual rights, if they were the population of a country they would be about the 20th largest EU member state. When we begin to look at the notable relationships of this country with Ireland and the significance of people who will have residual rights after Brexit, these are elements that I hope will be taken into account in negotiations over new security arrangements.

The Chairman: Thank you. We will come on to Ireland and the relationship with Ireland later. I know there is a lot of interest in the Committee on those questions.

Lord Soley: Before I ask the formal question, Professor Glees, could you clarify something that you said? You put great importance on respecting the remit of the European Court of Justice. I do not understand what that means. We have no option. We have to respect what it decides and it has to respect what the Supreme Court in Britain decides.

The problem for the Government is that they have said that they do not want to have anyone overriding British laws or imposing British laws. When you say "respect the remit" of the European court, what do you actually mean?

Professor Anthony Glees: As I understand it, this will work because we are already in a situation where we respect the remit of the European Court of Justice, so it would be the sovereign wish of the British people to continue to accept the remit of the European Court of Justice. It would be portrayed not as a decision to join something that we do not want to join, or to be part of something that we do not want to be part of, but as continuing to respect something that we have already been respecting.

I read the Prime Minister's speech as meaning that that red line has not been maintained by the Prime Minister, and rightly so. Many people will say "Munich—appeasement, betrayal", but actually it is the only way of ensuring all the other things that she wants to do. There has been a lot of misinformation. My colleague talked about Europol. During the referendum debate, I repeatedly heard people such as the former head of counterterrorism at the Met, Richard Walton, saying that Europol had nothing to do with the European Union and that it was perfectly safe to Brexit and remain part of the Europol. That is completely untrue.

We have to deal with the fact that there is a lot of false information about. Once it is clarified, I do not think it will be a problem. That is my answer. The Prime Minister makes a distinction between opting out and then exercising your sovereign will to re-enter. She does not see us with our noses pressed against the glass of the window from the outside; she sees us knocking on the door and being allowed in. I think that is perfectly reasonable, but we will be allowed in only if we continue to say that we respect the fundamental values that make us European.

Lord Soley: Would not the reverse apply to the British Supreme Court?

Professor Anthony Gleees: It is not my place to say.

Lord Soley: You put so much emphasis on that, and I understand that and the argument generally about that, but it seems to me that this is why we need an international treaty of some sort: because there will be a need for the European Union to respect the British court. That goes without saying, does it not?

Professor Anthony Gleees: I think that is right. You cannot unpick the logic that led to the situation that we are in now and still have the same benefits more or less. However, the benefits are so vital that no British Government will be able to tell the British people that they are going to be less secure. You can tell people that they are going to be poorer and that they are going to have to take an economic hit, but you cannot say, "You're going to be less safe".

Q13 **Lord Soley:** Briefly, could all three of you now list what you think are the most important aspects of the present situation which the Government need to retain?

Professor Anthony Gleees: It is the massive, widest possible exchange of strategic information about the states, groups and parties that represent a threat to our liberal, democratic way of life.

Professor Tim Wilson: I will follow up on that question and the point about the court. I worry that we may be in a situation where the UK, including the Supreme Court, has to follow the European Court of Justice, rather like the EFTA Court. I think it is vital, given the way international criminal justice issues change so rapidly, that there is some form of judicial dialogue. I hope that the new arrangements will allow for some kind of preliminary reference from our courts to Luxembourg so that that dialogue can be maintained.

On other areas of convergence, something that is often overlooked is scientific and technological research. The UK did very well through its involvement in European Union scientific research when it came to upgrading the basis for forensic DNA. It had pole position in the European Union for directing research, so it interlocked very effectively with American publicly funded research through the FBI and the National Institute of Science and Technology.

The Chinese were watching all this, not directly, so we now have DNA multiplexes, which are more or less standardised in the way the elements of the human genome selected for this process overlap. That is a very powerful tool for getting accurate forensic identification from all the big databases, whether they are in the USA, China or any European Union country.

We did that because we were part of and influential in the European Union science and technology research programme. On our own, we have nothing like that, particularly since the closure of the Forensic Science Service. We need to remedy that situation.

Dr Helena Farrand-Carrapico: I have already mentioned the four elements that we should stay in.

I have a very brief comment on the red line of keeping ECJ jurisdiction. We need to make a distinction between being under the direct jurisdiction of the ECJ and respecting its decisions and understanding that the ECJ will be indirectly involved, independently of what kind of Brexit the UK goes for.

In recent cases, such as the case of the EU-Canada PNR, the ECJ said that there was a clear violation of data protection rules and the treaty could not go ahead. Canada does not consider itself to be under the jurisdiction of the ECJ. However, it will have to respect the decision of the ECJ that there will be no treaty unless there are changes in future. It is the same for the EU-US safe harbour agreement. The US is not under the direct jurisdiction of the European Court of Justice, but still there was no treaty. It had to be reformed into a different treaty.

Lord Watts: May I take you back to the European Court of Justice issue? It seems to me that people watching this evidence session will think that the Government's position is dancing on a pin. You seem to be suggesting that we will no longer accept the European Court of Justice rules and regulations, but we will decide to agree to them anyway, so although we are dropping out of them we are opting into them and in effect there will be no change from that, other than we will have no involvement in the rulings and the rules and regulations. It seems to me that if we opt out we will be in a worse position than if we did not opt out.

Professor Anthony Glee: I believe that to be the case, but, as everybody says, we are where we are. I can see how a Government could say that knocking on the door and asking to opt in is a sovereign decision of the British people, and it could be explained to them that we may be doing the same thing but that we are doing it in a different way and that doing it in a different way is—

Lord Watts: Why would you opt out of it in the first place?

Professor Anthony Glee: It is a consequence of the Brexit vote. In the work that I do, I have a particular interest in Germany. I fly to Germany to do a TV programme on these issues later this evening. Germans who are interested in the United Kingdom, and that is by no means a majority of Germans, think we have decided that that is what we are doing. They find it hard to understand, but that is the reality with which they need to deal. When we are out and we knock on the door asking to come in, they will consider it, and that is all.

On the threats that we face—the ongoing threat from home-grown terrorism, the increasing threat from right-wing and neo-Nazi extremism, and the Russian threat, particularly strongly seen in the UK but widely shared among the EU 27—we cannot afford not to do the things that we need to do to keep each individual nation safe. The Lisbon treaty says that national security is a nation-state matter. We understand that, but

we are dealing with people who traipse around Europe and follow each other around Europe. There is such a huge common interest in dealing with that that you would be a pretty poor politician if you could not sell it to the British people.

The Chairman: Thank you for that. I think we should move on.

Q14 **Lord Soley:** Are there any existing models, either within the EU or elsewhere in the world, that could be an example of a future UK/EU security relationship? Let me prompt you slightly by saying: what about the relationship between the US and Canada?

Dr Helena Farrand-Carrapico: I cannot answer in relation to the US-Canada relationship, but I can try to answer the previous question.

No agreements are as comprehensive as the one outlined by the Prime Minister in her Munich speech. They do not exist, so far, but they might exist in future. For the moment, the only way to achieve all the elements that the Prime Minister listed, including data-driven law enforcement, practical assistance in operations and multilateral co-operation through agencies, is EU membership, but obviously that is off the table.

There are agreements that partially cover what the Prime Minister outlined, such as the Europol agreement that Denmark signed and the Norway and Iceland extradition agreement. Obviously the main issue with this is that the UK will not be a member of the EU and will not be part of Schengen, so those kinds of instruments might not be possible.

There are agreements that were signed with non-EU and non-Schengen countries, such as the Europol agreement with Canada and the Europol agreement with the US, which are usually based on the recognition that they have a high level of data protection and privacy. The problem is that these countries have very different data access. As I mentioned previously, they have to ask the Europol operational centre for the data rather than access the information system directly.

I usually tell my students that it is a bit like being houseguest: you are invited to join the host at the table and in the living room, but you cannot use the kitchen as you please. For the moment, there is no model that includes everything, only those that work partially and to a very limited extent, so a lot of work needs to be done.

Lord Soley: I asked about the US-Canada example, because that is a very long, unguarded border. There has been terrorism on both sides of it and there is certainly big-time crime on both sides, so they must have structures for the exchange of information and ways of tracking down people and getting their hands on them in one country or the other. I have asked this question of other people, but I never seem to get an answer to why there is no working model there.

Professor Tim Wilson: I think there are some lessons from history and from English legal history in the sense that the European arrest warrant gets a great deal of attention and criticism, as does the whole principle of

mutual legal recognition, taking in the European investigation order that has now come into force. Actually, the Petty Sessions (Ireland) Act 1851 has exactly the same arrangements. People could be extradited from anywhere in the isle of Great Britain to Ireland. That legislation continued in force well into the 1960s until it was brought to a halt by the Troubles. Then the issue was resolved by the European arrest warrant and the Good Friday agreement.

As for accepting other jurisdictions, with my colleagues I have recently been looking at a New Zealand case that reached the Privy Council. There was a conviction in 2001, which was rejected on appeal in New Zealand with an increased term. The case reached the Privy Council in 2013 and the New Zealand system received a real mauling for the poor way in which the evidence had been handled by the New Zealand courts. There is plenty of precedent for Privy Council relationships with countries with which this country has many former connections. I think those countries see it as extremely useful to engage in such dialogue, although it may sometimes be embarrassing for them. That is a lesson from history.

Another point to take into account at this juncture perhaps is that, generally, relationships between the European Union and its near neighbours in the European Economic Area and Switzerland are not seen as very effective. I know from my Norwegian colleagues that they are very frustrated that they cannot get the European arrest warrant equivalent to work. The UK might wish to consider some kind of approach that says that we are not looking for an exceptional arrangement from outside the EU with criminal justice arrangements just for the UK.

Is there not a case for building on this to see whether there is an opportunity to engage constructively with the Scandinavian countries and Switzerland, with which we have a great deal in common? It might even help the Danes, who seemed to be trying to opt into organisations such as Europol and then had a referendum that vetoed it.

The Chairman: Can you say a bit more about why the Norwegians have such problems?

Professor Tim Wilson: It is very difficult to get to the bottom of it. There are possibly two bars that do not affect the European arrest warrant in quite the same way. There is a recurrent problem with the nationality bar. As the report published today explained, the constitutions of many countries do not permit one of their citizens to be extradited to face criminal charges in another country.

That, indeed, is now the position of the Irish Republic. If we were to seek extradition other than through a European arrest warrant, Dublin would say, no, it did not have statutory powers to agree to that, but it would offer us the opportunity to have the case tried in Dublin instead. Germany, Poland and Slovakia are in a similar position. For effective extradition, it really will be the EAW or nothing. That is very clear in the report.

Another possibility that may be a problem between the Scandinavian countries and the rest of the European Union is the question of extradition for political offences. We had a lot of experience of that in the 1970s, and I feel that this is an area where the UK Government may need to talk to the Government of the Republic of Ireland in order to ensure a better understanding and a way forward in these consultations.

Professor Anthony Glees: The Prime Minister, in her Munich speech, highlighted in particular the importance of the European arrest warrant. She has given her political authority to ensuring that in some way it carries on.

When it comes to extradition, people who are not lawyers, as I am not, find it remarkable that in the recent case of Lauri Love, the person who hacked into the US Defense Department and other places, there was a considerable amount of public opinion, magnified perhaps by some of our newspapers, that he should not be extradited to the United States of America. Indeed, he was not. Some of us even heard Nigel Farage saying that we should not extradite anybody anywhere, including to the United States of America.

The moment the British public have explained to them the implications of leaving the European arrest warrant, the case will be easier to make than one might assume. People my age grew up with the Costa del Crime and so on. It is true that not everything that was done when we were in the European Union was well done. Particularly in family law, a lot of resentment was caused by Germans not agreeing to the same kind of things that we agreed to here. It was not perfect, but it will be total chaos unless there are these arrangements.

Professor Tim Wilson: I will follow up that point very briefly. Mutual recognition agreements mean that the law in one state usually observes and acts upon a warrant or an order made by a court in another state. You do not have the diplomatic element that you get in standard extradition, but automaticity in such arrangements is not automatic. In a great deal of Strasbourg case law, our courts extradited people only when they had been satisfied about the nature of the prison conditions in which those people would be detained.

A very important case in Dublin at the moment is going to be referred to Luxembourg for opinion because of concerns about the rule of law in Poland. I think it is called Celmer. The High Court has said that it wants guidance from Luxembourg about the extent to which it continues to be safe to extradite people to Poland, given the way in which the rule of law and the democratic order are being subverted by the current Polish Government.

Lord Kirkhope of Harrogate: The 27 countries have different internal systems, which have been brought together under the umbrella of the European Union. The big differentiation, surely, is the reference to third countries. That term "third country", however we wrap up any future relationship, would apply to us. Are not the constitutional positions in

many of the countries completely averse to providing any kind of co-operation arrangements of the kind we want to third countries? Is that not the tricky bit?

Professor Anthony Glees: Yes.

Lord Kirkhope of Harrogate: Thank you.

Professor Tim Wilson: It will be extremely difficult and time consuming to negotiate this treaty.

Q15 **Baroness Pinnock:** We have covered a lot of ground about the red line and the European Court of Justice. I love your rational approach to this: that it will be resolved, because logically it should be resolved. However, much about Brexit has been a politically emotional response rather than a rational, logical response.

I am going to ask the "what if" question. What if the emotional argument about the red line that the Government originally laid down about having our own laws in our own country, which means goodbye to the rule of the European Court of Justice, supersedes the rational, logical one that you are providing?

Professor Anthony Glees: That would be a very dangerous day for Britain and for British people. I think there are many people like me who declare themselves to be remainers but accept the Brexit decision and want to make it work. I do not think that people can continually be told that in June 2016 they voted for all sorts of things about which they understood nothing and were informed extremely badly. I do not believe that people voted for a country that would become fundamentally irrational.

I do not think that, but it is possible. That would be very dangerous, and there are countries that are our adversaries, and perhaps now our enemies, that have every interest in seeing us divided and acting irrationally, because they themselves are acting irrationally, and we cannot automatically look to our good friend across the Atlantic for examples of rational behaviour or of predictability and consistency, particularly in the areas of intelligence and security that I am paid to worry about.

I was born in 1948 and I grew up at a time when politics was about the rational explanation of rational evidence-based attitudes. It is frightening for me sometimes to see the growth of emotionalism and irrationalism in this country. Those of us who study Islamism are used to seeing it in a certain section of our community, but we are seeing it spread and filter more widely.

This is not just a UK problem. It is also a German problem, a French problem and so on. The silver lining in the cloud may be that as all Governments share this problem it is in the interests of none to fail to work to contain the problem. It is a task for all of us. In higher education, we are meant to be selling rational solutions, but—

Professor Tim Wilson: At this point, I say in response to the very well-honed question that I am glad that I am an academic and not a politician. I am afraid this is for your Lordships. All I can say is that we need to try to get and maintain a degree of proportion. European criminal justice co-operation is universally agreed by the people who study it and discuss it to be very important. It has a quite small impact on our substantive law.

There is no crime wave from European Union citizens living in this country. The data shows that the level of offending is far lower than you would expect to find. Nevertheless, it is important to find the few people in the generally law-abiding and tax-paying crowd who raise a significant risk. The UK has more to lose in this than the European Union. As the figures for the number of people surrendered under the European arrest warrant show, it has taken a lot more people off the streets of this country than it has brought offenders to this country to face trial or to serve their sentence. So in many respects it is not a bad bargain, but I am perhaps being over-rational.

Baroness Pinnock: Unfortunately, the emotional argument around it is that free movement allowed a crime wave to come with it. I hear exactly what you say. This is the issue that all of us have to address.

Professor Tim Wilson: That will not change with Brexit. We are not going forward to the past. When this country joined the Common Market—I was around at the time—if you look at the number of movements across the British border, ignoring the common travel area, the number of people was about one-third of the size of the resident population.

Today, the number of movements across our border—obviously not all from the EU—is something like three or four times the size of our resident population. We are spending far less on public services than we did in the 1970s, certainly on border services, which are increasingly privatised and rely increasingly on data transfers from private companies.

It is very important that we continue to maintain these links, because Brexit will not change the number of people coming in and out of this country. Indeed, it may increase the risk of crime, because immigration enforcement will be largely by employers and landlords and by access to public services, and there is a great danger of a situation arising whereby people come in ostensibly for other reasons, remain and become part of an exploited black economy. This is a perfect storm for creating a much more significant crime wave by European subjects, but it will be a situation that we will have created.

The Chairman: I think we should press on with the questions.

Q16 **Lord Ricketts:** You have all been very eloquent on the need to maintain as much of what we now have as possible. Indeed, the lists cover more or less everything that we have, in one way or the other.

I want to explore further what is feasible in order to achieve that. Do you think that an overarching EU-UK security treaty is the way to do that?

Would that simply add up all the different ways of being associated, such as the models of association with Europol and association with SIS and so on, which third countries already have?

Is it right to be going for something more ambitious than that—a completely unprecedented set of close associations? If so, what are the ratification implications? Are we looking at something that would need to be ratified not just by the European Parliament but by all 27 member states? How long might that take?

Dr Helena Farrand-Carrapico: There are three points to make. The first is whether this is the right format for the treaty. The second is whether there could be potential delays. The third is the consequences of potential delays.

On the question of the treaty, a comprehensive treaty would probably be the best solution and would definitely be better than bilateral agreements between the UK and individual member states or even larger UK-EU agreements on specific instruments. I believe this is because a comprehensive treaty would show political commitment to the relationship between the UK and the EU and because the EU will probably not be open to replicating the opt-outs in separate sectoral agreements. The EU has already said that it is not open to the model of the bilateral agreements that Switzerland has.

On the potential delays, international negotiations take a long, long time. If we look beyond the security aspects, CETA took seven years and the EU-Mercosur agreement is now in its 32nd round of negotiations, eight years after it started. It depends on a lot of internal and external elements to the agreement.

On the internal elements, does the agreement comply with EU legislation and the Charter of Fundamental Rights? If it does not, the ECJ will probably say that the agreement cannot go ahead. Would it be challenged by the European Parliament? If we think about more specific areas, Article 7 of the draft withdrawal agreement focuses on what will happen to EU data that the UK currently has, and there has been no agreement about that. That is a very important aspect of whether we will be able to achieve an EU-UK security agreement. What will happen to the data that both sides currently hold?

An external agreement would probably have to be accepted by unanimity, by every single member state. It could be like the CETA agreement, which Belgium blocked for a while. It could also be that a specific member state might want to use that agreement for other kinds of grievances that it might have.

On what the consequences could be, it really depends on the withdrawal agreement and whether we can get a larger negotiation, transition and implementation phase. At the moment, Article 7 of the withdrawal agreement states that after December 2020 there will no longer be access to information systems and databases on the basis of Union law.

That means that there is clearly a risk of operational disruption. It is very clear from the agreement.

More worryingly, the agreement does not foresee a mechanism for extending the transition, so if there is no agreement within those 21 months we could fall off a cliff edge. I was much more optimistic before I saw the draft agreement. Now, I am seriously more pessimistic.

Lord Ricketts: You are putting your finger on a very dangerous area. We are wanting a very ambitious, bespoke, full-scale treaty, and unless we get it by December 2020 we will have the operational gap that the Prime Minister talked about.

Professor Anthony Grees: If I may say so, that is the key point. That is why I think that the right thing for the Government to do would be to talk about a comprehensive treaty, and indeed to negotiate one, but to start with bilateral and tripartite agreements, because not only will they be much quicker to achieve, but clearly any agreement between 27 partners and one will be a lowest common denominator agreement. That is self-evident.

If one believes that we should not leave this country vulnerable through the destruction and disruption of co-operation, this risk is very real. If we do not want this country to be vulnerable and if we are mindful of the fact that there may be people in this country and beyond who would like us to be vulnerable, we have to ensure that what is done that needs to be done is also done quickly with the most important partners.

I can also see a certain danger for the Government, when talking about this unique comprehensive treaty, in some of our own politicians saying, "Oh, this is joining the European Union by the back door. We already had this comprehensive deal. People have voted not to have a comprehensive deal, and now through the back door you are saying, 'Let's have a comprehensive deal'".

As I think we all agree, we are where we are. It seems to me that if the aim is security, bilateral and trilateral deals should be made as quickly as possible while a more fundamental treaty is brewing. That is how I would do it.

Professor Tim Wilson: I must respectfully disagree. I think we need to freeze the arrangements that we have now for as long as it takes. I remember suggesting to a Committee of the other House last January that we ought to have transition agreements, not a transition agreement. Once the single market/customs union issues have been resolved—and, I hope, the Irish border issue—it needs to take as long as it needs to take so that we have an arrangement that will be practical and flexible.

By all means please freeze what we have now and try to ensure that we will have a system that will work and that will be flexible enough to respond to new challenges as they emerge that we do not yet understand.

Dr Helena Farrand-Carrapico: In relation to bilateral agreements, I am afraid that I have respectfully to disagree, simply because there will be a challenge in trying to negotiate bilateral agreements with as many member states as possible to compensate. That is an operational challenge. We will have to develop channels for information exchange for all those different bilateral agreements. That will take an enormous amount of time.

Professor Anthony Glee: I was talking about the relationship between our security and intelligence community in the United Kingdom and those of our most important neighbours who have a very strong interest in making sure this is done quickly. That is why. A transition agreement on security would also be good, but I do not want to see the Prime Minister get into such difficult waters that she cannot do it.

The Chairman: Lord Soley is going to bring all this together.

Lord Soley: A lot of us recognise that a treaty is going to be necessary, but a treaty on its own is not enough, and I think you are acknowledging that. Do we not also need an institution of some kind? What that institution is and how it relates to others is up for grabs, in a sense, but it is the institutional bit I am interested in. After all, if you are worried about intelligence, with the agreement on Five Eyes you have a very sophisticated institutional structure for the exchange of information and the use of intelligence. Should we not be looking for an institutional bit to link into any treaty? Is that right?

Professor Tim Wilson: With no disrespect, it is extremely difficult to get legislation right. Criminal justice legislation is being changed almost year by year. If it is going to be successfully delivered, we need the kind of working arrangements that allow for high-level legislation and groups of professionals able to ensure that it works.

We can see the difference in some European Union co-operation measures, such as the EAW, and I fear the European investigation order may be the same. There is no comitological process to manage the implementation of the legislation. We run into problems with having only proportionality tests applied by issuing states rather than keeping within some general agreement about the level of co-operation. In the real world, that can be provided.

That is the approach that was adopted in the Prüm system for fingerprint exchanges. It takes so much IT capacity to search fingerprints that you have to ration the amount of co-operation. That requires states' assistance to think rationally about their key priorities. That is achieved through having working parties of experts, and you need that kind of structure in addition to a treaty and perhaps in addition to formal judicial dialogue.

Q17 **Baroness Browning:** The Prime Minister in her Munich speech and in evidence given to this Committee in the past has flagged up that the UK has played a very important role in shaping the practical and legal

arrangements.

Do you feel that the 27 counties appreciate and attach a value to that in the approach that they might take to the type of negotiations that we have been talking about this morning? I assume you have looked at how the other side of the negotiation is proceeding and the sort of the attitudes and comments coming forward.

Do you feel that the leadership role that the UK has played is recognised and is valued enough for them to want to keep it in some form?

Professor Tim Wilson: I am not sure that I would talk about a leadership role, although I agree that much of what we see today has reflected UK initiatives, particularly mutual legal recognition as opposed to any kind of horizontal integration of the criminal justice system.

The people I talk to appreciate British common sense and problem-solving abilities. I talk to people who say that they will miss that after Brexit. That is something that we need to maintain by keeping as close as possible. We may be able to achieve some of that by making part of the package extended involvement in international training of police officers, prosecutors and judges.

I mentioned scientific research. That again would give us some standing. We might think about specific funding. There was a dreadful murder by a Latvian in London. The Metropolitan Police had arrested the guy about two years before, but they could not discover his criminal backstory. The European Union is funding the digitisation of the criminal records in Latvia that on arrest might have enabled the Metropolitan Police, through access through the Europol SIENA system, to say, "This is a serious guy. We need to investigate him", and that might have prevented a dreadful tragedy.

In addition to the treaty, the institutions and individual content being maintained, the UK needs to be prepared to put in some resources. After Brexit, we will be less wealthy than we would have been without it, but we will still be a comparative wealthy country compared with countries such as Latvia and Bulgaria.

Baroness Browning: In the example that you have given, do you see in very practical terms a role for secondments for people to work and advise, even in a consultancy role?

Professor Tim Wilson: Yes. That is very important. This is a tremendous way of energising people's careers. During the Mandela presidency, I once sent one of my staff to work in South Africa on prison reform. That sort of thing adds something for both countries. It brings in experience from a slightly wealthier country where resources are not such a problem and where the rule of law has been more effective, and it makes people appreciate the challenges faced by their colleagues in other parts of the world. So, yes, I see a role for secondment.

Professor Anthony Glee: I take a different view. I think we are seen as having opened the gates to nationalism and irrationalism and that we

are not liked for it. I do not think we were particularly liked before and I think we were right about certain things—the problem of immigration, for example, with vast numbers of people from Arab north Africa and elsewhere coming in. We saw it earlier on, and people should have listened to us, but they jolly well did not listen to us, and it was difficult for those of us who were remainers to see that we were not listened to.

Now, people will listen to us even less. They do not understand the decision that we have taken, and we find ourselves on the back foot. That worries me, because in an incremental sense you can see how that can fuel further nationalism. The position of colleagues who contribute vastly to the life of our higher education system, for example, but who are not British is going to become much more complicated as a result. It is fanned perhaps by the media, but the point about nationalism is that it is a very easy way of looking at the world and it is very easy to turn on people because they come from somewhere else. I would love to think that what Professor Wilson says will happen and all that, but I fear it will not.

Baroness Browning: Surely, just from what you have said, that may well be the approach in the Commission, but individual politicians in national Governments throughout Europe—this is where the politics comes in, and you said that we should have flagged this up earlier—are recognising that what has happened in the UK through our referendum is reflected at the ballot box, sometimes in very worrying terms.

Without doubt, Mrs Merkel has paid the price at the ballot box, and nothing concentrates a politician's mind more, particularly at the top of government, when it comes to what is happening to their country. Might there perhaps be a different view—the view that you have just expressed—in the Commission, which does not answer at the ballot box to anyone, and on the part of heads of national government, who would almost certainly want to have a say in how these negotiations proceed?

Professor Anthony Glees: Respectfully, I disagree with you. When David Cameron pulled the Conservative Party out of the EPP, that was the point when I thought Brexit was likely to happen. It was seen as hurtful and incomprehensible. People whispered in a very quiet voice in Mr Cameron's ear on two occasions. I thought it was not just foolish but fateful that we burnt those relationships, certainly on the centre right.

It may well be a different conversation when it comes to the Labour Party, but speaking about the centre right it would be wrong for us to ignore the hurt and the damage that we have done to good relationships. It is a bit like a divorce: if a divorce is not handled well, the bitterness can extend over decades.

Baroness Browning: I will not come back on that. We could have a very interesting conversation.

The Chairman: That was a good introduction to Dr Helena Farrand-Carrapico's point.

Dr Helena Farrand-Carrapico: I think Professor Glees has a point, but we have to make a distinction between the area of internal security and the rest of the policies. In the area of internal security, the UK has always been seen as a bit of an awkward partner, more than in other areas. It has always been seen as a little bit in and a little bit out, but despite that position it has always been able to have a leadership position and shape instruments in EU counterterrorism and cybersecurity, just to mention two.

It is possible to continue having a great amount of influence by doing what the UK has done until now, which is to provide solutions when problems arise. The EU will continue to have problems in the area of security, so if the UK, even outside, recommends solutions and is ahead of the EU, it would be a sound strategy to try to influence the EU, even from outside, and to engage from the outside.

The Chairman: Thank you. That was a very helpful intervention.

Baroness Janke: I will ask you in a minute whether you think there are advantages to your area of work through Brexit and what opportunities and advantages it opens. You may like to think about that.

You talked about rational arguments. Although there has been this rather pernicious dialogue about not needing any more experts, I have been surprised at the lack of a solid coming together of the academic world, the business world or whatever to produce arguments of substance and rational arguments to counter some of the things that you have mentioned, such as the misinformation and the untruths.

Is it just that I have not seen those works of art, as most of what I see is press reporting? We have heard from lots of academics, lots of people from the security world and a lot of people who are practically involved telling us of the huge problems associated with Brexit, but somehow that does not enter the rational arguments that you were referring to which my colleagues raised before.

Do you feel that all that could be done has been done or that there are still opportunities to make people realise the importance of what is actually happening?

Professor Anthony Glees: That is a very profound question and one that troubles me, my family, and most but not all of my students. I think that what has happened touches not only on what universities say, because in a way we have been ivory towers over Europe. Vast parts of it are totally incomprehensible, even to those who study it. We have kind of understood, we have co-operated, we have realised where there is benefit—we have benefited hugely from colleagues coming from other EU countries and teaching our students and all that—and we kind of took our eye off the ball.

I think that, mostly, academics did not think that people would do what most academics thought would be completely irrational. The academic

voices that took a different view seem to be harking after an imperial past that we know is gone. We could not afford it. If we still had the empire, we could afford it, but we cannot now. That is the end of it. However, during the referendum debate, which I have to say was handled extremely badly by the then Prime Minister and the media—

Baroness Janke: I do not want to go back over that, but since then, as the things that we have seen here have emerged, do you feel that you have done enough to make people understand?

Professor Anthony Gleys: I think that our public service broadcaster in particular, the BBC, must be criticised for the way it dealt with these issues during the campaign and continues to do so. People would be forgiven for thinking that in the field of economics, for example, there was a 50:50 split—that 50% of people agreed with my colleague Professor Patrick Minford, for example, and 50% disagreed. Actually, it is not at all like that. There is a tiny minority, but that is not reflected in the way in which our public service broadcasters—

Baroness Janke: No, but you produce articles for the specialist press.

Professor Anthony Gleys: We do our best.

Q18 **Baroness Janke:** I would just contest that a lot more could have been done by people who are more practically involved.

I come to the question. Do you see opportunities and advantages coming from Brexit in the security area? If so, what are they?

Professor Tim Wilson: I would hope that we will reverse some of the opt-outs. Legal aid is very important for making the system work better. There are huge risks for individuals in certain circumstances if they do not receive adequate legal aid, but that is a bigger problem for the criminal justice system as a whole.

The opt-outs relating to probation enforcement in this country is another thing that needs to be corrected; likewise, financial penalties and making the prisoner transfer scheme work so that people, when they are in custody, are closer to their home.

I see it as an opportunity to reverse a kind of tokenism towards European Union criminal justice co-operation, because it was a way of keeping the ultranationalists at bay and trying to keep them quiet.

I do not think we in academia are the only guilty parties, so I would hope that the new arrangement will involve a broader range of engagement.

Professor Anthony Gleys: I am afraid that I am very pessimistic about this. There were things that the EU 28 should have done and did not do, and things that MEPs should have done and did not do, although they were staring them in the face. Now we are out of it, I see even less chance.

I can see only one advantage of Brexit politically, I am afraid, which is that it might end this 40-year argument in British politics. As far as security is concerned, if what the Prime Minister says she wants is done, Brexit will not happen in security terms. That is the kind of hidden goal here: if it happens, it will not happen. That sounds illogical.

Baroness Pinnock: That is absolutely right.

Q19 **Lord Watts:** Can I take you to the specific problem of the border in Ireland? Traditionally, the border has been the centre for terrorism, fraudsters and tax avoiders. There is an argument about soft and hard borders—I do not actually understand what a soft border is—but from a security point of view can you give us your thoughts about the implications of a hard or soft border and what problems may arise with either of those options?

Professor Anthony Glee: The idea of a seamless border is a contradiction in terms and it should not be used. Borders are borders and automatically hard. Again, this issue has been badly reported and badly explained. Those of us who know a little about security understand the importance of borders as gate-keepers of security policy, but in the case of Northern Ireland, of course, you have a gate-keeper between two different economic systems.

Once we have left the common agricultural policy, and once we are out of the single market, there will have to be a border if Northern Ireland continues to be part of the UK system and the Republic of Ireland continues to be part of the customs union. We cannot let a non-existent border with Northern Ireland become a gateway through which terrorists could come and people trafficking could occur, let alone the sort of smuggling that went on before the Good Friday agreement and the 1990s.

Politicians have to come clean, and I notice that voices saying that the Republic of Ireland should be encouraged to leave the customs union and the single market if it is serious about not wanting a border seem to be louder. In security terms, the implications are horrendous, because we would appear to be wanting to bully the Republic of Ireland into doing something. I think everybody understands how dangerous nationalism is.

Finally, there are big questions to be asked about the foreign funding of political movements in the United Kingdom that have supported the Brexit vote. The situation is very unclear, but the possibility that some non-British, non-UK funding has supported some of the things that are being said in Northern Ireland, which will exacerbate the risk of violence there, need to be taken very seriously and should be investigated.

Dr Helena Farrand-Carrapico: I see a short-term challenge and a medium-term challenge. In the short-term, the recreation of the border, independent of what type of border it is, will create some confusion with new rules coming in and the new norms. Businesses and individuals will have to become aware of those norms and adapt to them. That means

that there will be a lot of criminality taking advantage of the confusion. Organised crime will definitely take advantage of the confusion in the transition period. In the short term, the UK and the EU will have to invest quite a lot in co-operating and securing that new border.

On the medium-term challenges, the creation of a border always implies co-ordinating a large number of services, particularly if we are talking about the creation of an EU external border there. We are talking not just about customs and immigration but about health and environment services, which all have to be integrated.

We could obviously facilitate crossing by creating what Norway and Sweden, for instance, have, which is an integrated smart border. It is probably one of the most technologically advanced borders in the world, but the problem, as Professor Glees has mentioned, is that it would still be a border. Psychologically, it is a border. More than technologically or politically, psychologically it is a problem that could lead to further security problems.

I also see some indirect consequences, which are not always mentioned. Currently, Northern Ireland receives funding from the EU for certain security-related issues, namely for reconciliation purposes such as peace funding. With Brexit, Northern Ireland will lose access to that kind of funding, which means that further down the line further security problems could arise.

Professor Tim Wilson: I have not been to Belfast this century, but I was talking to an expert, Dr Katy Hayward from Queen's Belfast, about the situation, and she made the point, if I am quoting her correctly, that the Good Friday agreement is tremendous, but it only contains the tensions and the problems between the two communities; it has not resolved them.

I think there is an enormous risk that if we are not very careful we may go backwards to all the mayhem, which many of us can remember, that will spill across the border into Ireland and could well affect mainland Britain. Trying somehow to get the right arrangements for customs and markets within the island of Ireland is an absolute priority.

Going forward, perhaps the time has come to stop relaxing and thinking that the Good Friday agreement is sufficient. We need to see more progress in Ireland in building up robust and flexible institutions for the island and the two political communities within it. That is why I see our ability to work constructively with Dublin as an important part of this puzzle of getting the security treaty right.

Professor Anthony Glees: I think the European Commission was wrong to reject what had been the position of the British Government on this, which was to say, "Let's deal with the border problem once we come to an economic agreement with each other".

The European Commission did it the wrong way round. It painted in much starker relief something that may have made the border issue less tense, had we in certain areas continued to abide by existing arrangements—not the common agricultural policy but the single market. The fundamental problem is Brexit, and you have to have a border. I cannot see any way around that.

The Chairman: On that last point, it was the Irish Government who wanted to keep it up in lights through the negotiations. One can understand why.

Lord Ribeiro: The border is either in the sea between the two or across the land. Professor Wilson made the point that part of his interest is biomedical and other types of security. Anybody coming from Europe now goes through passport control and has an iris check and so forth, yet there will be a situation where there will be vehicles and things going across the border. What sort of surveillance and security mechanisms could be put in that do not give a frictionless border but are effective?

Professor Tim Wilson: Most of these things work only in optimal conditions. Iris scans have been removed from British airports. Automatic passport gates always have people there to make sure that you can get through. An airport is a very easy place in which to manage a border. In the countryside of Ireland, there is no solution other than barbed wire and lots of people on either side, or basically the situation that we have today.

If you move to technological solutions—I have come across reports on screening elsewhere on the EU border—even when you are screening and you have the information so that you know which vehicles to screen rather than holding up entire miles of traffic, it still takes a team of five about 10 minutes to screen a single vehicle. Technological solutions are a long way away.

Most IT projects fail or do not deliver their benefits. It took the UK a long time to get e-Borders up and running, and that was relatively straightforward because basically the UK took information from airline companies et cetera and so dealt with a limited pool of data in optimal conditions. Out there in the countryside, I am afraid that talking about blue-sky thinking on the Irish border as the solution is delusional.

Lord Ribeiro: This is the message that has been given: that technology will see this through. However, it is a bit like at the US-Canada border; you can do road checks on the way through, but there is a huge amount of land space in between. It is the same in Ireland.

Professor Tim Wilson: In North America, the border is extremely porous, hence the infamous wall. Most borders are actually extremely porous. We think of the channel, and we think of the UK as an island in the silvery sea, but in fact the channel has always been a highway for interchange and commerce.

Today, where is the border? The border may be in your laptop where people are trying to extract your money. We do not know where they are or which jurisdiction they are operating in. In the modern world, the border begins to recede in significance. We know where jurisdictional boundaries are planted, and the real challenge is to make jurisdictions engage with each other when crime is operating across those jurisdictional boundaries.

Dr Helena Farrand-Carrapico: I have a quick comment about borders and the function of borders. A border nowadays is a technological device in itself. Thinking about what Professor Wilson just said, this goes back to the importance of being part of as many databases as possible, as a border is only as effective as the information it contains. The more information we receive from EU countries and the EU itself, the more efficient that border will be.

Lord Ribeiro: Unless we maintain our connections with the EU on the security front, the Irish border will never be secure. That is a very clear message.

Professor Tim Wilson: Yes.

Lord Soley: Going back to the security issue, I am very conscious, as everyone is, of the political and economic implications of the border. They are profoundly important. The reality is that British and Irish security forces worked extremely closely together, particularly during the Second World War and afterwards. It all broke down when the Troubles started, and it was slowly built up again after the Anglo-Irish agreement.

We should not assume, therefore—this is my point—that the security bit will fail because we are struggling with the border. It will certainly make it more difficult, and it will certainly give people a political agenda, but the security co-operation is fantastically good and it has been getting exceptionally good since the early 1990s.

Professor Anthony Glees: The problem is that we could be seen, through our Brexit vote, to be stoking the fires of nationalism, and what is sauce for the goose is sauce for the gander.

Lord Soley: I understand that.

Lord Ricketts: I think Lord Soley's point is that the co-operation between London and Dublin on security has got a lot better, but am I right in thinking that that is partly because we are able to exchange data under EU instruments and rules? Therefore, we come back to the problem that unless we can get something sorted out quickly, much of the basis for that good co-operation will not exist.

Professor Anthony Glees: That is key, and that is an additional reason for having bilateral and trilateral arrangements to get the thing going as quickly as possible.

The Chairman: Thank you very much indeed. We are extremely grateful

to you. We have ranged sometimes rather more widely than the subject matter of the inquiry, but that has been extremely worth while. On these Committees, we are sometimes accused of having witnesses who are all of one mind, but that cannot be said to have been the case today. We are glad that we have had discussions among you as well as with us. We are very grateful to you all for coming and giving evidence to us. Thank you very much indeed.