



Select Committee on the European Union

Home Affairs Sub-Committee

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

Wednesday 2 May 2018

10.45 am

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

Evidence Session No. 6

Heard in Public

Questions 57 - 70

Witnesses

I: Richard Martin, Deputy Assistant Commissioner, Metropolitan Police; Steve Smart, Director of Intelligence, National Crime Agency.

Examination of witnesses

Richard Martin and Steve Smart.

Q57 **The Chairman:** Good morning and welcome. Thank you very much indeed for coming to give evidence to us. We are very grateful to you and have been looking forward to this session. One or two members of the Committee I know are on their way but have not got here yet, and may join us as we go through the session.

We are looking at the Government's proposal to negotiate a treaty between the UK and the EU that would provide a legal basis for continued co-operation on security. We are looking in particular at internal security, police matters, rather than external security under the umbrella of foreign policy co-operation. We have had one or two very useful and rather important sessions on the theory, and we have been looking forward to having a good session with you on what it means in practice.

Welcome to both of you. Perhaps I could ask you both in turn to introduce yourselves, the organisations you represent and their geographical coverage. We have found with this subject that what the United Kingdom means, and which bits of it are covered by whom, becomes increasingly important.

Richard Martin: Good morning. I am from the Metropolitan Police, so the geographic area we cover is inside the M25, apart from the Square Mile, which the City of London takes care of. I am here in my national police chief guise. As I am sure members are aware, we tend to take national portfolios for different areas. I run a portfolio called the international criminality portfolio. That has a number of strands.

On the one hand, we have what we call the European instruments, so we look at policy, procedure and best practice around things such as European arrest warrants, European investigation orders, joint investigation teams and mutual legal assistant treaties. That is at the policy end. I also have the lead for foreign national offenders—the way in which we deal with those from overseas who commit offences in this country. The final piece is Brexit. I am responsible for the national police chief's lead around how we are preparing for Brexit and what it might mean for us in the future. I have just had borders bolted on to me, which is a new area.

The Chairman: Borders?

Richard Martin: Yes. It is not taking anything away from the borders and immigration piece. It is more about how policing responds to borders post Brexit, and whether we are dealing with best practice. That is the part-time job, and the Metropolitan Police is the full-time job.

The Chairman: In the part-time job, when you say "national", that means the United Kingdom, including Northern Ireland.

Richard Martin: Yes. The National Police Chiefs' Council is really England and Wales, but we have PSNI and Police Scotland represented as well. We tend to work together. Traditionally, it is England and Wales, but we try to promulgate best practice across the entire United Kingdom.

The Chairman: You are able to talk about Scotland and Northern Ireland on their behalf, as it were, if we come to that.

Richard Martin: Yes, probably not as officially as they could have done themselves, but we were in contact with them before we came here, so we can give you probably more of a high-level view than a detailed view, if that makes sense.

Steve Smart: Good morning. I am the director of intelligence for the National Crime Agency. As I am sure you are aware, the National Crime Agency is the UK's lead agency for countering the threat from serious and organised crime. We are represented across the UK. We have a slightly different relationship in Scotland and Northern Ireland with the forces there, but we are a truly national agency.

I am here this morning as the director of intelligence. One of my responsibilities is the NCA's international footprint. We have a significant international footprint. We are represented in over 50 countries. We have officers stationed in over 50 countries. It is one of the specialist capabilities that we provide to widen our enforcement into policing. Included in that international footprint is the UK liaison bureau in Europol. I am sure we will come on to Europol in a little bit. Also included in the international work that we oversee is the United Kingdom International Crime Bureau, the UKICB, which more or less operationalises the work that comes from Interpol and Europol on behalf of UK law enforcement.

Q58 **The Chairman:** Thank you very much. That is very helpful and it seems to me that you complement each other well. It should be a good session. Could I ask you, in an ideal world, what your vision would be of "as close as possible" co-operation on security between the United Kingdom and the EU 27 after we have left? Who would like to go first on that?

Richard Martin: I am happy to, from a policing point of view. In essence, the best summary I can give you is that we would be able to continue to operate as we do now, with all the tools we have at our disposal, from European arrest warrants through to our interaction in Europol and all the other instruments that we have. We would of course have a future focus as well, so the ability to grow with the EU, to respond to future threats, some of which we know and some of which we do not, because crime by its very nature is extremely global. There are not really any borders; most of these things are borderless.

Our ability to interact with the tools we have now, the processes and systems we have now, the influence we have in places such as Europol, and the really critical relationships we have with partners, from a law enforcement point of view, when I am looking to ensure my communities are as safe as they can be, are the things that I really need.

The Chairman: We will develop a number of those points as we go through the session, I am sure.

Steve Smart: To underline what Richard has said, the simple answer to your question is that we would like the status quo plus. The law enforcement community in the UK has worked very hard with our European partners to reach the position we have reached. We have helped design some of the tools. We have driven some of that work.

My area, serious and organised crime, almost by definition has an international footprint. We have to be able to work internationally. We have to be able to work in partnership. No one particular agency or one country can defeat the threat by itself. We will shortly be releasing our national strategic assessment for 2017 and 2018. Particularly for the UK, it is very clear that our relationships with our near-Europe partners are absolutely central to us being able to counter the threat from serious and organised crime.

The Chairman: I should say that, no matter how we on this Committee voted in the referendum, we are working on the assumption that we are going to leave, so things are going to change. Although we might want things to stay the same, they are going to be different. We want to probe a little how they might be different and what that difference would involve for us. That is the basis on which we are carrying out our inquiry.

Q59 **Lord Soley:** I wonder if you could tell us how much the current EU framework for the exchange of data—SIS, Prüm and so on—is used by UK police forces and other agencies. Do you have any statistics on how often that data is used? Obviously it is very important, but you might want to say something about the importance of it.

Steve Smart: Data is absolutely central to law enforcement in general in the 21st century, if we are to keep up with what is a very rapidly changing threat. The threat we face is growing in terms of volume and complexity. Better use of data is one of the key tools for us in being able to counter that. As a law enforcement community, we make extensive use of the datasets that are part of the European community and currently sit in Europol, such as SIS II. We have a whole range of statistics. We can give you some now, or it may be easier if we write to you and provide the statistics.

The Chairman: It would be very helpful if you could write to us, but if you have one or two pieces of information or statistics that you think would help the argument now, those would be helpful too.

Steve Smart: I might say something about SIS II, and I will let Richard talk about some of the other data.

Lord Soley: I would like to know if some of that is in the public domain, because one thing that is not recognised throughout the country is just how crucial this is. Sorry to interrupt you, but that puts it in context.

Steve Smart: Absolutely, and I know the Data Protection Bill is sitting before Parliament at the moment. The wider debate about data and law enforcement's use of data is an absolutely key one, which needs to be in the public domain. In terms of Europe, if we look at the Schengen Information System II, SIS II, which is one of the priority tools we have identified that we would desperately like to keep some access to, as of the end of 2017 there were 765 million alerts in relation to people and objects sitting on that dataset. It is a very big dataset and very important to us. There were 1.2 million alerts in circulation that had been put on there from the UK. In 2017, as a community, we had 5,000 hits on UK alerts.

It is a dataset in which our European partners are seeing information that we are putting on. It is allowing us to be put back in touch with them and to build the picture. The key issue for us in the serious and organised crime space is to be able to understand that picture. If we do not have that data coming in, it is a real problem.

Richard Martin: One of the other things around is ECRIS, which is the European criminal records piece. On average, we contact our European colleagues around that 600 times a day. That is data flow between us checking people's criminal records here, checking with our European partners and vice versa. That has led to some really crucial arrests and even things such as sex offenders being put on sex offender registers. The ability to exchange that information at the moment, which is automated, means that with a good relationship and a good system we can check people while they are in custody, which is really important.

Steve has just mentioned the Schengen Information System. Last year alone we checked that database 539 million times.

The Chairman: Over what period?

Richard Martin: Over a year. That is because the system is automated. We can take it to a more granular level, moving down to an officer on the street. At the moment, if an officer checks a car or person on the street, the system automatically checks both the police national criminal database and SIS II. There is no double-checking, no double-keying; it is automated. While that person, vehicle or piece of property is in front of us, it is essential that we have the ability to do that. The officers do not have to double-think. They do not have to check two databases.

The systems we have now, all of which we use—we would be more than happy to provide you with the statistics, because they are quite large—mean we have the information at our fingertips in a timely fashion and can get a wider picture. That is absolutely essential, both for Steve's focus on serious and organised crime, and for my wider one around general policing.

Lord Soley: I know they are very powerful statistics. Do you have any information on whether we are using the system far more than any of the other nation states that are signed up to it, particularly SIS? Is it about

the same for all the major countries? Obviously there are differences in the size of countries and the sophistication of the police and security forces, but I wonder how we compare, particularly with France, Germany and places such as that.

Richard Martin: If you take ECRIS, which is the criminal records piece I talked to you about, we are the third-highest user of all member states. We use it quite a lot. There are other information systems and messaging services. On the SIENA messaging service, which is between member state countries, 40% of all the messages in Europe involve the UK in the address line, us sending them in the first place or us being referred to. There is quite a lot of use of that. On SIS II, it is probably for you, Steve.

Steve Smart: I am not sure I can provide the statistic in terms of ranking between European countries, but we will provide that for you.

The Chairman: That would be helpful.

Lord Soley: Am I right in thinking that Germany and France were the other two big users? I would also guess Holland. Is that right?

Steve Smart: Yes, I would imagine that is right.

Richard Martin: We can clarify that, but you are probably right. The other thing is the interlinking between SIS II, for instance, and the European arrest warrant. When you check SIS II and somebody is wanted in front of you, all our European arrest warrants are on that system. If one of my officers checks somebody and they are wanted, we can arrest them there and then, and take them away. You cannot do that with extradition and the old 1957 convention. Again, it is about having that at your fingertips and being able to do that, because otherwise it would become much more complicated.

As for the European arrest warrant, pre 2004, before we had the legislation, we extradited 60 people a year on average under the old convention. From 2004 to now, we have extradited over 10,000 people into Europe.

Lord Soley: From both your perspectives, you would regard it as vital that we stay deeply involved with these systems. Is that right?

Steve Smart: Yes.

Richard Martin: Yes. As an overall point on policing, if we are to know what is going on, intelligence is absolutely key, as I am sure you all understand. To be able to operate and keep people safe, we need the information to be rapid, as joined up as it possibly can be, and to interact with partners as widely as we possibly can, to get a true, rich picture.

The Chairman: Would you go a little further than that and say it is important for our continuing security, or the security of our people, that we have this sort of contact?

Richard Martin: Absolutely. There is a two-way importance. I know we are focusing internally on the UK, but it is as important for our partners as it is for us. As we said before, crime does not have borders. It is global in nature. Whether that is internet crime that is committed somewhere else, organised crime groups or human trafficking, the world is a smaller place, so it is absolutely vital that we have the best picture we can.

Steve Smart: That is a really important point: it is two-way. It is vital for us that we can access the data in those systems, but it is also vital for our European partners that they can continue to access our data through those systems.

Q60 **Lord Watts:** Can I just ask, following that question, if you were going to look at the numbers, whether you could give us some indication of what is driving those numbers? If there is a big difference between one country and another, it would be interesting to know why that is. What is driving those numbers? If you could do that, that would be helpful.

The Chairman: Do you want to comment on that point now? Are you happy to write about it?

Steve Smart: It is something we can write about. It will be partly down to the threats faced by particular countries and the maturity of the agencies that are working in this space.

Lord Watts: What should be the scope of any proposed UK-EU security treaty after Brexit? Are there likely to be gaps in any such treaty that you can identify now?

Steve Smart: That takes us back to the first question. To give a simple answer, from my perspective, the scope of the treaty ought to be that it has sufficient breadth and flexibility to enable us to keep as much access to tools as we currently have, and to access and help drive and shape future tools, as we go forward.

I made the point earlier on that the crime threat is changing. It is changing fairly rapidly. It is getting more complex. In order to keep up with that, we will have to change how we operate; we will have to change our tools. It is much better if we do that with partners and continue to have the option to help shape what partners are doing, but also to take part in what they are doing.

Richard Martin: I absolutely concur with Steve. We want to continue to influence in the same way that we do at the moment, whether that is in Europol or the making of new instruments. In the EU, and certainly through Europol, things have evolved. Things have moved on substantially over the last 10 to 15 years, and they will continue to do so. We will see more joined-up databases, more joined-up legislation, and we need to be part of them.

Lord Watts: You are basically saying you would like as near as possible to what you have now. Have you identified any areas where you think that is going to be a problem, because of technical differences or legal

differences?

Richard Martin: At the moment, no. We are very much embedded with the key instruments that we use. We are very much a part of that. We are very much part of Europol. As things progress and develop, we are part of that influencing.

As you know, Rob Wainwright, up until a month or six weeks ago, was the director of Europol, so we had a really good footprint in there. Steve's liaison bureau is in Europol. We are very much at the heart of that organisation, which is really useful. Moving forward, that is why we think it is so key. As things develop and new legislation comes online that the European Parliament thinks is useful for fighting crime, we need to be part of that. At the moment, we are in a really good place and it is about continuing that status quo, with the plus element that Steve has talked about.

Steve Smart: To your question, in the law enforcement community there is general agreement that the UK should try to keep the access it has now and its ability to take part and help shape. It is not just something we feel; it is what our European partners feel. We were both at Europol a couple of weeks ago. I know that Europol as an agency, when we talked to officials there, feels exactly the same way. In our bilateral engagements, people are really keen that we continue to be involved.

From the security and law enforcement perspective, we need to come up with a treaty that is win-win for both sides. There are difficulties and complications, because this is not just about a security treaty; it is very much an issue for government and the negotiating teams.

The Chairman: When you are talking to your counterparts in Europol and elsewhere, do you have a sense that they want things to continue too, but are worried about how the negotiations as a whole might pan out and whether in fact you cannot both get what you want? Is that sense there?

Richard Martin: That is a very accurate overview. If you talk to practitioners and our partners—Steve's team is closer in there—they would very much like to continue operating in the way we do. We have shared priorities. If you look at the key crime types and the strategic assessment that was developed by Europol, we all have an interest in the same types of crime, whether it is firearms or traffic in human beings.

We have a common agenda about keeping our communities safe. We all recognise that crime moves and is borderless, from the practitioner point of view, as you have said. From there, it is down to the negotiations as to what we can, cannot or do have.

Lord Watts: I am interested because, on extradition, for example, Germany has an agreement with us, but the constitution says that it cannot extradite its citizens. It makes an exception for Europe. Is that not an area where there is likely to be a problem?

Steve Smart: That is an area of concern that we, the CPS and the negotiation teams are engaged with. Again, it is something we can cover when we write. Germany is a particular issue. It had to change its constitution to be able to extradite its own nationals to the European community. Over the last few years, we have had three own nationals extradited from Germany to the UK. These are not a huge numbers, but it is one of the issues that the negotiating team will have to work through.

Richard Martin: It is a bit wider, as Steve is saying, looking across the 27 member states. The European arrest warrant allows people to extradite their own nationals. If you lose that, somewhere around 22 countries would potentially not want to extradite their own nationals because you are not part of a European arrest warrant system. There are some challenges there for the negotiating team. I was answering your question from the point of view of keeping everything we currently have and having our own EAW. But you are absolutely right; there are limitations with falling back on to the 1957 convention.

Q61 **Lord Soley:** We will not be at the top table any more. From talking to people in the European Union, as is implied by what you have just been saying, notwithstanding the treaty, that we will need some form of institution or structure whereby you can have a close working relationship with these organisations. Would you agree with that and have you thought at all about the nature of any institutions that we might need?

Steve Smart: One answer is that there is an institution that brings those countries together to work in that space, which is Europol. To the previous question about whether our colleagues in Europol feel the same way about this as we do, they absolutely want to keep us as much in the tent as we can be, but they see some of the issues. That comes through in every conversation we have with them.

As a nation we put an awful lot into Europol. We have a UK liaison bureau, which has 21 officers. It is led by the NCA; we have 14 officers in there, but it is across UK law enforcement. The Met, HMRC and Border Force have people in there. We put an awful lot of data into Europol. A really helpful and powerful thing for us is that we help drive Europol's strategic priorities. It has a thing called EMPACT, with 13 strategic priorities. We drive a number of them.

The Chairman: When you say "we drive", the United Kingdom drives.

Steve Smart: The United Kingdom law enforcement community, yes. That is really important to us because, as we face the changing threats, to be able to help shape the joint response is key. It is recognised by our partners that, in many of these areas, we are a net contributor. In the EAW space, while it is really important for us, it is really important for them as well. We are net exporters of extradition, rather than importers. We can write and give you the figures on that, but I think it is a 1:8 ratio.

Q62 **Baroness Pinnock:** You have touched on some of the responses to the

question I am going to pose, but it would be good to hear them in response to this particular question. It is very unlikely that we are going to get a security treaty by whatever the time will be, 2020 or 2021. First, what contingency planning is going on for the transition period? Secondly, what thought has been given to the post-transition period, if the treaty has not been signed? Given that one of the red lines of the Government is about the oversight that the European Court of Justice provides to all this, how will that be overcome to achieve what you have said, which is about status quo or status quo plus? There are three elements there. If you could respond, that would be excellent.

Richard Martin: I am happy to take the first one. From a contingency planning point of view, we have a joint NCA and national police chiefs team. At the moment, it is also working with the European directorate in the Home Office. We are doing our own contingency planning. Steve and I chair a joint board, which involves a range of partners from Police Scotland, PSNI, HMRC and the people you would expect to see in that space. The team we have working for us is now working out and mapping out what those contingencies look like. We have picked the top five things as we see them: European arrest warrants, European investigation orders, Europol and other top elements. We are working through what it means for us if we fall back on those contingencies.

For instance, if we lost the Schengen Information System, one of the areas that the Government are working on is whether we would use a thing called I-24/7, the Interpol database, which is slightly different. It is suboptimal compared to what we have now, but it is a database. If we lost the European arrest warrant, we would have to fall back on the 1957 convention, which we have already said has some limitations. They all have limitations compared to what we currently have, but we are mapping through all those processes. What does that look like when it is a bit slower? How does that work for the officers on the street, and the NCA officers, when they are doing their roles? We are mapping all that out at the moment.

The transition period will hopefully be ratified when we get the decision proper in October or November this year. If that happens, we have that period in which to work these up, as the negotiations go through. If there was a cliff edge scenario, as people have called it, next year, we would have these fallbacks ready to use. They would be clunky and they would be slower, but we would still be able to operate in a way around all that. That is all the work.

The Chairman: There would not be a sudden gap where we leave; we would not have an agreement and then nothing. You would have something to put in place at that moment.

Richard Martin: There would be something. We would be very much dependent on the old legislation. It would not be as good as we have now, but there would be something, yes.

Steve Smart: To build on what Richard says, we are looking at contingencies across the spectrum of potential outcomes from what we currently have plus—I am always an optimist—right the way through to no treaty. From a security perspective, given our view and partners' views, it is unlikely that we will not reach some form of treaty. It may not be everything we want, but we have to, because it is so important to both our citizens and the citizens of Europe that we get one.

As Richard says, we are doing a lot of contingency work. We are identifying the highest priority tools for us and then looking at, where there are fallbacks, what those fallbacks are. In some areas there are not many that jump out. As Richard says, it will make us less dynamic and less effective. We will not be able to work at the speed we work now, assuming all things remain the same. There will be a resourcing issue, both for national policing and for the NCA, if we end up with a treaty that does not give us a lot of what we currently have. In order to do what we need to do, we would have to look at doing things in a different way.

We have really important and very strong bilateral relationships with most of our EU partners. We are already working on strengthening those, partly because the nature of the threat that we face at the moment means we have to be working very closely. We work bilaterally and multilaterally, both within and outside Europol. We would need to continue doing that. We would need to continue investing in that. By far the best answer is to get a treaty that gives us as much of what we have now as we can get.

Baroness Pinnock: How is the European Court of Justice featuring in your planning?

Steve Smart: It is not really in our planning; it is more planning for the Home Office and the more legislative end of the police. From our point of view, at the policing end, that is probably not something we would be involved in.

Richard Martin: As for the data adequacy issues, we are working on the basis that the Data Protection Bill, which is going through now, will leave us at a point where we have the same protections around data that our European partners have. It should enable the continued sharing of data.

The Chairman: That takes us nicely on to Lady Massey's question.

Q63 **Baroness Massey of Darwen:** It does indeed. It is all very interesting. Thank you for the statistics you gave earlier, which I found very useful. What impact would you expect if we, the UK, no longer had direct access to databases after Brexit? To what extent would it be possible to develop alternatives to compensate for this? What particular risks do you see? There are a number, but I am thinking of things such as trafficking and the drug trade. What in particular strikes you as being vulnerable?

Richard Martin: As you can imagine, and as we have alluded to through this session, the access to data is critical. It is so important to have access to as much data as we can: to track people, to track property, to

understand where the threat is. If we lose access to that database, in summary, that means we do not have as clear a picture as we have now. We will not have it at the same speed as we do now. We have talked a lot about SIS II, which is a really important part of our work. It is automated. Whether you are doing serious and organised crime or you are a bobby on the beat, you can do a check and it checks all the stats that I talked to you about.

If that goes, you cannot build an international database overnight. We would probably have to rely on the I-24/7 system, which is in Interpol. A lot of European partners do not use that. That would slow us down fundamentally. It is a different system. It is not automated. The officer on the beat would have to do two checks. As you can imagine, my officers are very busy. We would not always remember to do two checks. We would have to double up: double-key, triple-key or quadruple-key. It would make it very slow.

SIS II is directly linked to the European arrest warrant. The two go hand in hand. If we lost SIS II, we would probably have to use Europol notices. Red notices, as you may be aware, are "arrest notices", but we do not arrest on them because they are not as case ready as European arrest warrants are. We would start losing access to all the numbers that Steve talked to you about before. We would not do 539 million checks on the I-24/7. We would probably do very few, because it would mean double-checking and a lot of people do not input that information. That is just one example.

If we did not have access to the ECRIS database that we currently use, we would not be doing 600 checks a day. We would probably have to ring people up independently on a multilateral or bilateral basis. It would all be done by hand. I can imagine that, if we were trying to check on somebody in custody, we might get the response back about three months down the line, when they were no longer in custody, which would mean that we had no opportunity to stop them. You lose the bigger picture. We switch off overnight some of the really critical points that we do.

The lion's share of the analysis we do in Europol is from our data. They will not have access to our data either, if we switch these databases off. Compared to all those big numbers and the wider piece we do, we will get a poorer picture, a lot more slowly than we do now, which will affect our operational capability.

Baroness Massey of Darwen: How do you cope with that?

Richard Martin: If it is switched off, that is going to be very difficult. Government will have to negotiate with the European Union about what access we have and what systems we will be left with. There is no real alternative if we lose SIS II, other than I-24/7, because there is nothing else that people input into, even though they input in a very limited way. We would have to rely on partners if we lost all the European tools. We

could be part of joint investigation teams only if we were invited in by two other member states. We would not have direct access to them.

Wider than the databases is the influence. If you take Europol as an entity and the influence we talked about earlier on, one of the key priorities in the strategic assessment this year in Europol was firearms. It was not going to be in there until we influenced that and said, "It is very, very important to the UK". We would not have that influence. Those are some of the issues. We would have to fall back on these other elements, because there is nothing else.

Steve Smart: At a tactical level, the impact of losing access to those datasets is that more bad people will get into the UK, and it will be harder for us to find and deal with them. At a more strategic level, as I said at the outset, the data is really important to us and to law enforcement going forward. As an organisation, we are looking to build, on behalf of wider law enforcement, a national data exploitation capability over the next three years. Not being able to link that to the data that our European partners hold, the data that sits at Europol and on the Schengen information system, would undoubtedly have a negative impact on what we can do with the data we already have.

From an NCA perspective, we are looking to be able to identify those organised crime groups, those people, whether they are involved in trafficking, child sexual exploitation or moving illegal commodities across our borders. We want to identify who the key organised crime groups are. Many of them are transnational. Many of them sit in the UK; many of them sit elsewhere and just make their money from the UK. If we cannot access that data, we cannot identify that. We cannot paint that picture, identify the people and then, working with Richard and wider policing, disrupt them.

Q64 **Baroness Browning:** Although our focus is very much on the EU security treaty, in the context of what you have just been discussing with Baroness Massey, we are all hopeful that a treaty will come forward. In the worst-case scenario or if the agreement that came forward was not as good as we would like, we have arrangements for sharing information with other countries outside the EU. What sort of impact would that have on those arrangements, particularly with America? Would there be a knock-on effect if we were unable to have the system we have now, on the way in which we dealt with those third countries?

Steve Smart: Our relationship with those third countries is really important to us as well. We talk about the Five Eyes relationship. It may be best to focus on that. The Five Eyes partners are in Europol with a different relationship from the one we currently have as members. They look to us to help take forward their point of view in the discussions at Europol. When I talk about helping to shape how Europe responds to the threats, we do that on our behalf and on behalf of our Five Eyes partners. If we were to lose our access in Europol, it would negatively impact them as well.

I do not think it would impact our relationship with them, because our relationship with them is really important across the board, for lots of reasons. There are not just the European angles; they will be keen for us to keep as close as we can to the position we currently have.

The Chairman: Did you say that our Five Eyes colleagues are in some way in Europol? Could you just explain what that means?

Steve Smart: They have liaison officers at Europol. They are not member states, so they do not have the access or ability to influence that we do, but the Americans across the board provide a lot of intelligence in the serious crime space. They provide that into Europol. They have one of the largest groups. They are more or less on a par with us on numbers. I cannot remember exactly what their numbers are, but I can provide those to you.

The Chairman: If we were outside and we had the same sort of relationship as they have, how would that affect the way in which things are now done?

Steve Smart: If we had the same relationship as they had, we would not be able to take the leadership role that we currently take in Europol. We would not be allowed into the same groupings that we are automatically allowed into now. We would have to work a lot harder to get our point of view across and be able to shape. This is the way that I look at it. As we negotiate as a nation for the best possible deal for us from a security perspective, there are opportunities for our Five Eyes partners to be saying to Europol, "That is the relationship that we would like as well". We are having some conversations with our Five Eyes partners about that.

Q65 Lord Kirkhope of Harrogate: Gentlemen, thank you very much for coming. I was very interested to hear you mention JITs a moment ago because I was the MEP responsible for bringing in joint investigation teams. I was also responsible for the EU PNR more recently. My question is, in a way, unfinished business. Although JITs were introduced 10 years ago at least, there is unfinished business in the utilisation of those, and some disappointment in how often or otherwise they have been used or whether they have been used sufficiently effectively.

As far as PNR is concerned, that is also unfinished business because, as you know, it is being developed right now. Although Britain was very much at the forefront, with France and one or two others, we have not got that sorted. Here we have coming along the railway the whole Brexit business. As these things are developing, instead of just talking about something we would desire to keep as it is, which you had already said in answer to certain questions, to what extent does Brexit produce a problem or problems with the things that we are currently working on developing and implementing? How do you see yourselves sorting that out with your colleagues in Europe?

Steve Smart: It comes back to the plus bit of the relationship that we would like to have going forward. It will come down to the treaty, how broad the treaty is and what impact it gives us. We have to develop our operational relationship with European partners, on a multilateral basis and a bilateral basis. Whatever happens, we cannot stop that process. You made the point yourself that we were central to pushing the PNR idea. We were central in the EAW. A lot of the tools that we want to remain part of are things that we drove the instigation of in the first place. As the threat continues to change, we will need new tools. I do not know what those will be yet. I do not know where the threat is going to be. We have to maintain the ability to drive that discussion.

Lord Kirkhope of Harrogate: We have been talking quite a lot about this security treaty. I have never known a treaty that has been adequately negotiated, implemented and able to deal with all these aspects in the timeframes we are talking about here. You have talked about transition periods and so on. Are we setting too much store by the security treaty and assuming it is going to tie up everything we need to get tied up in a way that suits us?

Richard Martin: To be fair, that is probably a question for the Home Office, which is doing the treaty and the negotiations.

Lord Kirkhope of Harrogate: I used to be in the Home Office and the Home Office gets all the trouble, as we well know from recently. Could you keep it to your bits?

Richard Martin: It is interesting. Our bits, from an operational point of view, are the tools that we are left with. For instance, passenger records are absolutely critical. As we know, there are some major successes with some of that work. What does that look like in the future, when we move past Brexit? If we lose these things, it is very hard to say to you, "This is what we will fall back on". Unless there is a legislative element to fall back on, we cannot do it. Will we still be a relevant authority for passenger records when we come out of Brexit? We do not know. If we are not, that makes it tricky. Can we negotiate that on a bilateral basis? It is about planning as best we can for what is currently there and working with the Home Office to identify that. I am not sure what else I can add, to be honest.

Steve Smart: It is the contingency bit of the previous question. We are looking at what to do if we do not get that. There are no easy answers to any of that at the moment. There is work ongoing as to how we would do it. To underline what Richard says, on the PNR stuff, that data is really powerful. It is really helpful across law enforcement. From a UK perspective, there are some things we could do in terms of who is coming into the country and what we ask to see beforehand, but it will all get far more complicated.

Lord Kirkhope of Harrogate: Are you satisfied that you have a cunning plan in place to cover all these contingencies?

Richard Martin: No.

Steve Smart: No. We are working on a cunning plan.

Richard Martin: At the moment, from a law enforcement point of view, our contingency planning has to be based around legislation that is currently here or legislation that is developed through the Home Office and its negotiation team. This is why we have an NCA officer and a police officer in there, to identify where those gaps are and to see what government can do to plug them. As law enforcement officers, we cannot legislate.

Q66 **Baroness Browning:** I was going to ask you about Europol, but you have been very clear throughout your conversation this morning about how important it is. That is entirely consistent with the evidence we took from Rob Wainwright, who was very clear that we needed to preserve as much operational co-operation as possible. We have heard from witnesses over a period of time about how the UK presence in organisations within the EU, including Europol, has been the driver and the leader, using the best practice developed here and taking it into the heart of Europe.

If we end up with just—I say “just”, but it would be very good—an operational relationship, and therefore all is going well, it seems unlikely that we would have a leadership role within Europol. Given what you know about Europol, would that give you cause for concern if the UK had to step back from its leadership role and leave it to others? Are there still things that need to be done within Europol—I guess there are—where you cannot quite see who would step up to the plate?

Richard Martin: The influence piece would worry me. The example we gave earlier about being able to get something that is really critical for us around firearms on to their agenda and make it part of their priorities was really important. That was done because we had that leadership role.

Baroness Browning: Could you just explain the context when you refer to firearms? Do you mean the carrying of firearms, the licensing of firearms or what?

Richard Martin: I mean getting firearms criminality as a whole on to their list of priorities, which allows them to collect intelligence against that, allows them to develop products, and gets it on to some of the work groups that we need to have. It was our influence that got it on. It was not originally on. Areas such as that would concern me. These things are as important for this country as they are for others, and we would seek to have that influence in there.

As for the wider piece, currently, if we are not part of Europe, we cannot be employed by Europol. Not only do you lose a leadership role, but you could, depending on the negotiation, lose the ability to put staff in there. Both the leadership role and the expertise would be impacted. Would we be negotiating to second people there, such as subject matter experts? I

would be worried about the influence from that point of view. Steve is probably closer to the Europol piece than I am.

Steve Smart: Absolutely. The influence is really important to us. We would have to work a lot harder to have the same level of influence if we had a very different relationship from the one that we have now. Some of this we do bilaterally, particularly with our close European partners in near Europe. We face the same threats, so we have those conversations. They are represented at Europol. Being able to talk as a Five Eyes community, when we are talking with Europol, will help us. Influencing and shaping will be a lot harder if we have a radically different relationship from the one that we have now.

Baroness Browning: Would secondments be the answer, with appropriate job titles?

Steve Smart: Currently, we have five UK national experts who are seconded to Europol to lead and help work on particular threat areas. As things currently stand, that will not be possible when we are not part of the community because they will not be EU citizens. That needs to be part of the scope of the treaty. As I say, I am always an optimist and I try to look for the positives in things. The position of Europol in this is very similar to our own. We are not working against each other. We are working in the same direction. Obviously, there is a much wider set of negotiations going on.

Q67 **Lord Soley:** You have already answered part of this question, because you have expressed very clearly your concern about how the UK and EU will continue to co-operate after Brexit. Perhaps I could move it on a little from there and incorporate the following question as well as this one. What else can we do? By the nature of crime, as you have well described, when it gets too hot in one place it moves next door. Next door in the European Union context means north Africa, Turkey and, concerning corruption, Russia as well. You have it spreading out.

In this context, can you think of ways in which we can have structures that interrelate with the EU and the UK to attempt to maintain the good information we get from the current system? In saying that, you might want to develop the issue you raised, Mr Smart, about the Five Eyes, because that one interests me particularly. That will have a view about crime in these other areas as well. Other organisations of that nature probably will, including the United Nations. Do you have any views about that? It is about moving it forward from where we are.

Steve Smart: Your question is around the importance of Europe and Europol for us, in terms of our relationships elsewhere as well. I agree with the point you make about crime and moving across borders. With the advances in technology that we have seen over recent years, the nature of crime is changing. It is possible to commit a crime anywhere in the world from the UK, and to commit a crime in the UK from anywhere in the world. Borders are becoming less relevant in that space.

Europe is a really important area for us. Africa is a really important area for us. It is for our European partners. It is for our Five Eyes partners. There are structures being developed. I am not an expert on this, but we can provide further details. There is now Afripol, which is based on Europol. That will be an organisation that we can link into and deal with to cover some of that. Interpol has good representation around the continent of Africa and has a number of regional centres there. We need to keep looking at our relationship with Interpol, how we work it and what else we can get out of it.

We have a very close relationship with the Five Eyes across our crime and security space. We face the same issues and the same threats. We tend to leverage each other's positions and responsibilities, and I think that will continue, but we will not be in a position to leverage on their behalf as much as we have been, if it does not go in the direction we need it to.

Richard Martin: From a tactical point of view, I know the NCA is doing this at the moment, but it is about looking at our overseas footprint, our liaison network across the world, whether people are in the right place to develop those bilateral agreements for either police-to-police co-operation or law enforcement co-operation. They are all absolutely essential parts of that.

You alluded to Africa. Notwithstanding that a lot of the debate currently is very public, criminal groups are not daft. They may already be thinking that, if certain powers do not exist, there are opportunities for them to either operate here, knowing it is far harder to be extradited from the country, especially if they are a foreign national, or vice versa. That is why it is ever more essential that we have that network and the bilateral ability to do that.

Steve Smart: To use an example, one of our highest-priority threats at the moment is the threat emanating from groups linked to the western Balkans in terms of moving people, illegal immigration, trafficking, drugs, guns, and bringing commodities into the UK. It is a real threat for us. Increasingly, our European partners have recognised that threat as well. I was in discussions a couple of weeks ago with some of our American partners, who were beginning to see that. It is a real focus for us. It is pan-national.

The Chairman: It would be very helpful, Mr Martin, if you could let us have a paper setting out some of the other agencies. It is important for us to try to put this into a global perspective, rather than seeing it as just the UK and Europe. That would be helpful.

Q68 **Lord Crisp:** My apologies for turning up late to the session, but I find it fascinating. You have been very clear about the potential impact operationally and, indeed, the loss of influence that is going on here. One of the implications is that, if you are slightly outside the system, you will have to work even harder to influence. Are there resource implications here and have you quantified those at all?

Richard Martin: There are resource implications. When we work through our contingency planning, there are three different scenarios. One is that we get the deal plus; one is that we get some; one is that we get nothing. You plan for the worst and hope for the best, as one would expect. Part of that contingency planning is about working out what that means for us. I will give you an example. Let us say the European arrest warrant is no longer available to us and we go back to the 1957 convention. If that is the case, it is much slower and there are a lot more manual linkages. It means that we have to get a warrant for certain things. That means there is an impact on the CPS.

We are now trying to quantify what that means at ground level for local policing and what each organisation will need in order to process things in a different way at a slower rate. That is a lot of the work we are doing at the moment. Other things include, as we have alluded to, what our overseas liaison network looks like. What might our footprint in Europol look like as a third country? How many people do we need? Do we need greater influence? Does that equal more people or are there key countries that we need to be better represented in? That is the work we are currently doing to ascertain what that would look like.

Steve Smart: I agree. It will need more resources, and there is some work going on to quantify it, but we cannot really say exactly.

Lord Crisp: You will be trying to replicate the relationships, the trust and everything else that goes with it.

Richard Martin: Relationships are absolutely fundamental, as you have alluded to.

Lord Crisp: That includes at the personal level.

Richard Martin: Yes, totally.

The Chairman: Do you get a sense that there is a recognition in the Home Office and elsewhere that extra resources will be needed to maintain the sort of relationships you have now, or is that for further down the road?

Richard Martin: There is a recognition. Nobody has quantified it yet. They know we are working through that. At the meetings we have been to with the Home Office, we have been very much engaged. They recognise that. We are trying to work out what that means, because at the moment all you can do is guesstimate, which is not helpful for anybody. That is the reason we are working through it and why we have people embedded. They know it is coming and they are working with us. Hopefully at some point we will know exactly what that looks like.

Q69 Lord Watts: What are the potential hurdles to post-Brexit security co-operation between Northern Ireland and the Republic of Ireland? This is an area where there has traditionally been a border problem, whether it be diesel or cows moving across. Is it likely to become a bigger problem after Brexit?

Steve Smart: By definition, everything we have said about our relationship with the European Union applies to the relationship with the Republic as it does to the other states. The tools that we want to keep access to, the sharing of data and the European arrest warrant are all as important in terms of the relationship with the Republic as they are with the rest of Europe. In many ways, it is more important for the PSNI and the Garda in particular to have a strong operational working relationship. This is central to the work that goes on out there, both the work that we do and the work that the PSNI does. There has to be a relationship with the Republic, and particularly between the operational agencies and the Garda. It does not necessarily create a separate set of negotiations for us in terms of the relationship with Europe. There are the same things that we would like to keep access to. If we do not get access to them, we will have to do something different bilaterally, because it is so important to us.

Lord Watts: Is it not the case that, because that border is so long and there are differences in tax rates and other things, it will be a real challenge, and at the same time the criminal element will see it as an opportunity? We are not going to be dealing just with the levels of crime that we are seeing now. We will see criminals taking advantage of what they see as opportunities. What are your thoughts on preparing for that sort of change?

Steve Smart: Some of that is an issue at the moment, in terms of the common travel area and the opportunities that it provides for crime. It needs to be a key focus of the negotiation and the treaty. There is not much more we can add to it. Was there anything you wanted to say?

Richard Martin: No, not really. Northern Ireland is not within the ambit of England and Wales. From talking to colleagues, it is a bit like Steve is saying. There is a lot of talk going on between the PSNI and the Garda, thinking about the problems and the criminal opportunities you were talking about. The feedback from our colleagues over there is that, like us, they would like to have what they have now, plus the ability to respond to threats, as you would imagine. It is similar, in a way. I absolutely get the complexity of it. There is a lot of talk going on between those two. I am afraid I am not that involved in those discussions so I cannot really add anything. I apologise.

Q70 **The Chairman:** We try to look on the bright side here. Much of today's discussion has been about the difficulties that might arise from Brexit. Are there any opportunities that you see? Suddenly you say, "At last, we can do this", or somehow it will make life easier or better for you in some aspect.

Richard Martin: We both like to see the glass half full, too—although you might not think it from our testimony. That is the worst-case scenario. Post Brexit, not knowing what configuration we get, there is an opportunity to have stronger borders and to have more intervention at borders if we are not in the EU. We know that our borders are challenging. We talk about the main ones that we know about, at airports

and that kind of place. That depends on the information systems we have at the border and on passenger information.

There are opportunities to put more focus there, to look at people who are coming in and out and at the foreign national offending piece. There are some opportunities there to tighten that slightly, as long as we have good access to information. It is a difficult question to answer in some ways, because you do not know which ones we will keep or not keep. It is a bit difficult. The only one I would see at the moment is around borders.

Steve Smart: There are pluses and minuses as well. I also am on the optimistic side of life. We will end up with something that we can work with, because we will have to. Whatever we end up with, we will have to keep pushing the co-operation, because we cannot counter the threats that we need to counter alone. Whatever the treaty is, and wherever we sit, we have to have partnerships and work with our European partners and other partners.

Richard Martin: Partners see us as an effective country to be in partnership with around law enforcement. We have delivered some really good relationships over the years, not just with Europol but across the world. UK Policing plc—for want of a better word—is still seen as a very strong operator in this environment, from the point of view of intelligence, the way we police and the capacity building that we have done over the years. Those relationships will become ever more important, and we will need to make sure that they are strong and maintained, and that we co-operate as best as we can within whatever that new environment is.

Baroness Massey of Darwen: I am trying to be optimistic, but in Ireland would the strong border not create more problems than it would solve?

Richard Martin: Yes, forgive me; I am talking about borders in England and Wales and not the Irish border, which I understand is a very complex area. A lot of deliberations are going on around what that looks like. In answer to your question, yes, I am sure it would.

The Chairman: We are very grateful to you. Thank you very much indeed. We were looking forward to the session, and it has more than lived up to our expectations. We have learned a lot and it has been quite gritty at times. Thank you very much for sparing the time to come and see us. We are very grateful.