



HOUSE OF LORDS

Select Committee on the European Union

Home Affairs Sub-Committee

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

Wednesday 16 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 Ribeiro; Lord Ricketts; Lord Watts.

Evidence Session No. 9

Heard in Public

Questions 93 - 101

Witnesses

I: Lord Jonathan Evans of Weardale; Mr Robert Hannigan CMG, Former Director, GCHQ.

Examination of witnesses

Lord Jonathan Evans of Weardale and Robert Hannigan.

Q93 **The Chairman:** Thank you very much for coming and giving evidence to us. We are extremely grateful to you. We have been looking forward to this session, which comes as we near the end of our evidence sessions on our report on the proposed UK-EU security treaty. As you know, this is a public session, and we will let you have the transcripts soon afterwards to correct and send back to us. We are looking at the internal police and security co-operation rather than the external defence and foreign policy co-operation aspects of the security treaties. It has been a fruitful hearing. We have had rather good evidence from a number of people, including Rob Wainwright, who gave us extremely good evidence about Europol. However, we have been very keen to get a UK perspective, if I can put it that way, and we are very grateful to both of you for coming and talking to us today. I was going to ask you to introduce yourselves but I am not sure that we need you to. We have an hour; we are starting a tiny bit early but we want to keep the hearing to an hour so we will be fairly brisk in our questions, if we may. Is there anything you would like to say by way of introduction either of yourselves or of the subject, or shall we go into questions?

Lord Evans of Weardale: I am very pleased to be giving evidence to the Committee today but I would note that I have not actually been in the Security Service for the last five years so there may be a slight gap between my knowledge and the current situation, but I try to keep up to date.

Robert Hannigan: Thank you for inviting me. I am happy to go straight to questions.

Q94 **The Chairman:** I wonder if you could give us some sense, based on your experience, of the extent to which national security agencies such as MI5 and GCHQ rely on or engage with the EU-based agencies for security co-operation. One of the things that we are trying to do is become increasingly dynamic, if I can put it that way, and look not just at what will happen on 29 March but at what is likely to happen thereafter. If you could give us some sense of how things have developed over the last five to 10 years and how you think they might develop over the next five to 10 years, that would give us a good sense of the issues before us.

Lord Evans of Weardale: It is important to say that engagement with European partners on national security matters is extremely important. Certainly during my time as director-general it was an important part of our collaboration internationally, for the obvious reasons that we are neighbours and in many ways we face very similar threats. Most of that co-operation was not through EU institutions and did not use formal EU measures. That is not to belittle it at all; in some ways that suited us quite well. In fact there was quite a strong policy push to ensure that national security co-operation did not go into the EU space and retained its status as a member state responsibility, and of course the Lisbon

treaty enshrined that. That was a clear policy aim of the Government in those days and of the agencies. So the majority of the co-operation either took place directly bilaterally with other countries, and that happened very extensively, or it happened under the broad aegis of the Club of Berne, which is a collaborative organisation that is not an EU body but is of long standing and brings together the heads of the security services of Europe and immediate neighbours, Switzerland and Norway, as well as through the counterterrorism group that was set up by the Club of Berne, which was set up after the 9/11 attacks in order to facilitate communication and dialogue with the EU institutions from the security services of Europe. So those were the main multilateral bodies that we engaged with. Having said that, the CTG communicated with the intelligence centre at the EU and provided information on terrorism issues and so on, and therefore provided an input to EU consideration on national security threats. It is important, certainly from MI5's point of view, that you cannot understand the counterterrorism work of MI5 in isolation from the law enforcement and policing work because we have an extremely interrelated model between the intelligence agencies and the police. The dependence of the law enforcement community on Europol, the European arrest warrants, law enforcement co-operation and so on was therefore extremely important to the overall efforts that we made collectively, although MI5 was not itself a member of Europol because we are not a law enforcement agency.

Robert Hannigan: Not to repeat anything but, with the exception of the law enforcement relationship where obviously MI5 is much closer than it is with signals intelligence or the cyber agency, the picture is very similar. Over the last five years there has been an extraordinary change in the quality and quantity of sharing with European counterparts, driven partly by terrorism but also by other threats, cyber in particular and Russia. In general, the co-operation is better than ever. One of the things that all the agency heads did after the referendum was to reassure each other that that would continue. The legal basis, as Jonathan said, is bilateral in most cases. It does not touch on EU structures. Where it is multilateral in signal intelligence and cyber, it is done through a series of bilateral legal frameworks that exist between the SIGINT agencies of the Five Eyes and a number of European countries both inside and outside the EU. It is parallel to the Club of Berne, although less public.

The Chairman: You said that reassurance was given by heads of agencies after the referendum. On what basis was that? Did they all just get together and say, "Look, we really need to continue to co-operate and we are going to?"

Robert Hannigan: This is not new; it was publicly stated at the time. There was nervousness that people would be pulling back, and it was important, and Ministers were keen, that we reassured our counterparts that co-operation would be as strong as ever and indeed stronger in future.

The Chairman: Could you say a little more about the Club of Berne,

which you both mentioned? We heard about it yesterday as well in evidence that we had from Nick Hurd. Could you say a bit more, in so far as you can, about how it operates—how often it meets and how important it is?

Lord Evans of Weardale: The Club of Berne is effectively a club for the directors of European security services. It is of long standing; I do not know exactly when it was established but it certainly goes back to the 1970s. It was initially a considerably smaller group but has expanded over the years. There is no automatic right for the head of an EU security service to be a member of the Club of Berne, although in practice all of them are now, the constraint there being that the club requires certain undertakings with regard to the capabilities, political independence and the human rights approach of individual services, so you do not have an automatic right of membership. That is helpful to both sides because it ensures that the club retains a degree of internal trust. It also places a certain amount of pressure, or did historically, on some services to continue with their reform in order to bring themselves up to a standard that the Club of Berne would be willing to accept. It is not, or at least in my time it was not, a large bureaucracy. It did not have full-time staff but at any one time you would have a troika: the current year's chairman from a particular service, the previous year's chairman and the chairman of the year to come, who would work together to provide the leadership of the group. It met twice a year during my time for plenary meetings, and then there were a variety of working groups and working parties that spun off from it. It provided effectively a sort of umbrella within which co-operation could take place with confidence between the European services. It was relatively light-touch. From my point of view, one of the real benefits was that it provided an opportunity to get to know your opposite numbers in other countries. That is not difficult if it is France because we have a lot of bilateral business, but obviously you would not necessarily have all that much immediate business with a smaller country further away, and therefore having that opportunity to share information, compare notes and talk about issues worked well. It was an initiative of the Club of Berne to set up the counterterrorism group, as I mentioned, which is a slightly more formal grouping focusing specifically on counterterrorism matters and which has visibility to the EU and acts as a channel to the EU on terrorism-related matters, but which is not itself an EU institution.

The Chairman: Thank you. That is very helpful. I have a question for Robert Hannigan. I think you said there had been a lot of change over the last five years. Other things being equal, how would you judge that things would develop in the future? Would you see a continuing process of closer contact or integration simply because external forces make that necessary, regardless at the moment of the institutional mechanisms within which you are operating?

Robert Hannigan: Yes. Leaving aside the mechanisms and any changes, there is a growing impetus to share data, particularly on cyber because cyber threats do not respect borders. That is a major driver. There is also

terrorism, of course, and there are very capable agencies in Europe that have a lot of data that the UK needs to protect itself against and of course vice versa.

- Q95 **Baroness Massey of Darwen:** You have answered at least part of my question but perhaps you could encapsulate it a bit more. In an ideal world, what would your vision of the closest possible security co-operation be between the UK and the EU post Brexit?

Robert Hannigan: In the signals intelligence and cyber area, it means rapid real-time sharing of data on a large scale, particularly for cyber, because it is pretty much useless if you do not do it in real time. That is critical to meeting the cyber threat right across Europe. The same is true to some extent of terrorism, which, as I say, has grown over the last few years. More of that is what everyone wants.

Lord Evans of Weardale: There has been a lot of work over the last several years, particularly since the spate of terrorist attacks across Europe over the last three years, to optimise security co-operation, and that needs to be preserved. It is accurate to say that the levels of operational co-operation in Europe are much higher than they were during my time as director-general. There is a more formal and permanent co-operative structure on counterterrorism matters, which is hosted by one of the European states, and I think we want to maintain that. However, it needs also to be sustained by parallel co-operation on law enforcement, which seems to me is probably the area where there is a bigger challenge because, as we have explained, most of the co-operation on the intelligence side is not through EU institutions. Although broadly speaking there is no reason why it should not continue, obviously law enforcement co-operation and judicial co-operation is mediated through EU agencies. If there is an area of vulnerability, I would see it as being in that space, which, as I have said, is extremely important for security co-operation because obviously law enforcement and security issues are very much mutually supportive.

- Q96 **Lord Kirkhope of Harrogate:** I was interested a moment ago in Mr Hannigan's remarks regarding the real-time issue. My question is more about the proposed treaty but I was the lucky person who shepherded through the EU PNR operation in Europe, which took us eight years. There was an example of real-time development, which of course is so significant. In that context, I am going to ask you about the proposals for a new treaty. Lord Evans, you wrote an article back in May 2016 in the *Sunday Times*—we all wrote a lot of things in those days before the referendum—in which you made it clear that membership of the EU was significant in relation to the exchange of information and how we dealt with relationships, so even if we work independently in security we still have to rely on these other elements. My question is: how does a security treaty fit into all this? What components would be in a security treaty as far as you are concerned, bearing in mind the remarks that you have already made? The Prime Minister said there were no operational or indeed legal reasons why we could not reach a settlement, including internal security, within the security treaty. How do you see this treaty?

How would it fit into the other operational arrangements—the bilaterals, the multilaterals and so on—and how useful is that security treaty going to be? In what timeframe might it be produced?

Lord Evans of Weardale: I am not a lawyer, so I will leave that aside. There are three areas that seem to be worth making observations on. The first is that obviously the EU has been quite active in legislating on data-sharing issues. While that is not directly relevant to national security collaboration at the agency level, it is of course important on issues like passenger name records, and therefore we need to ensure that in leaving the EU we do not leave ourselves exposed to problems as a result of data-sharing legislation in Europe that means we cannot partake in it.

The facilitation of data sharing for legitimate purposes needs to be underpinned. I imagine that that is something where, because of its legal status, it would probably need some form of force beyond a political statement, and the treaty might be the right area for that. Rob Wainwright will have given you more detail on arrangements for the continued involvement of the UK in law enforcement co-operation—Europol and so on. Obviously the status of the UK will change significantly when we are no longer a member and, while there are various other non-EU countries that have a form of relationship and presence in Europol, they are not part of the core group. Therefore, as far as we are able to replicate the ability that we currently have to benefit from Europol, I would have thought that that was something where treaty arrangements might be required in order to provide the legal underpinning for it.

It is also important to recognise—particularly given one or two of the bits of commentary that have come out from the European side about matching rights and responsibilities—that the UK is a net contributor in most of these areas. To portray this as the UK seeking to maintain its access to Europol because we will be isolated without it is not entirely unfair, but the EU will probably be a significant victim of our withdrawal as well. So this is something where there is mutual benefit, and we are not coming with nothing to add. In fact, I would think that we add considerably more than we get from a number of areas of co-operation in Europe on national security.

The Chairman: When you say “net contributor”, do you mean in influencing the way in which institutions have developed, rather than financially?

Lord Evans of Weardale: I was meaning in terms of the information flows and the expertise that is put in. The UK is very good at security because of our unfortunate requirements for security, for political reasons. We have been investing in terms of money, legal powers and capabilities for a long time, and that means we are able to contribute heavily to the security of our European friends. We benefit from that as well but we contribute a great deal—probably, I would say, the biggest contribution of any of the countries in the EU.

Robert Hannigan: To expand on the point about the data treaty, although obviously national security is outside the remit of the EU, the data-sharing treaty, which is crucial for the wider economy, does actually engage national security. Since the Schrems judgment, as you know, the Commission has to take into account how a state—in our case, a third party in future—deals with data. This was the cause of renegotiating the US-EU treaty—Privacy Shield, as it now is—which was not straightforward. The US had to offer a number of concessions on the way in which it handles national security data in order to get the treaty, and I imagine that we will have to go through a similar process. The key issue will be the Investigatory Powers Act and the collection of bulk data, which is one of the fantastic capabilities that Lord Evans was just describing, built up over many decades. It may be that we can reassure the EU that the safeguards put in place by Parliament, particularly judicial oversight, are adequate, but we cannot take that for granted and no doubt it will be a difficult negotiation. In future there will certainly be more litigation around this; there always is. It is a moving target. You asked at the beginning about future trends, Chairman. Adequacy, if we achieve it, is annually reviewed. It is quite fluid and is constantly capable of being challenged. I think that will be the story of the next five or 10 years.

Lord Kirkhope of Harrogate: Can I come back on that point? You are quite right to say that the issues with the US were difficult because obviously there is an issue of compatibility, but similarly, within a new security treaty for Europe, as a third country we will come up against the problems of some other European countries that have constitutional problems in securing any kind of treaty with a third country. There are limitations. You mentioned data, and I am sure we will be dealing with that in further questions. I put it to you that the whole question of approximation, of getting something that is acceptable and provides us with the same free flow of information—whatever we need—and communication, is a very difficult concept for a treaty. Do you accept that?

Robert Hannigan: I am not a lawyer either but I imagine that is true because all treaties to do with data are difficult. I do not myself think that for the intelligence community or for cyber sharing—outside law enforcement and Europol, which is incredibly important—the security treaty will have a major data component. The data issue will be, quite properly, in the EU-UK data agreement, which is much bigger than security and will be quite difficult to negotiate.

Q97 **Lord Ribeiro:** We have touched on data already. On data sharing, I was staggered to hear that police enforcement officers' requests for information from the Schengen system ran into millions: 539 million hits in one year, which is a staggering amount. To what extent do the UK's national security agencies use EU instruments for the exchange of information and intelligence with member states? Can you say something about that?

Lord Evans of Weardale: So far as I am aware, it is not done using those instruments. We have separate arrangements that are not

channelled through the EU institutions. Certainly in the time when I was involved, the use of EU instruments for data sharing was not a major component.

Robert Hannigan: The same is true in the world of signals intelligence. Cyber is even further removed because we do not deal directly with law enforcement, but to my knowledge they did not engage any of the EU instruments.

Lord Ribeiro: What other instruments outside the scope of the EU arrangements are you able to tell us about in this Committee? How easily could they replace the instruments that we have talked about before?

Robert Hannigan: Certainly in my area the Five Eyes agreement, which goes back to 1946 and has been updated on a number of occasions, is critically important to its members. The agreement itself has third parties. The relationships with countries such as France are governed by bilateral legal arrangements, which I am sure the Intelligence and Security Committee has looked at or can look at; they are consistent with both UK law and the law of whichever country it is. I do not see a security treaty really having much effect on that; it really ought to continue untrammelled, except that the way in which we in the UK as an external party deal with national security will now become a factor in the judgment of adequacy for the much bigger data-sharing treaty.

Lord Ribeiro: You said earlier that the security forces work closely with the law enforcement agencies, and they are reliant on information from Schengen and so on. Is that not going to create problems for you?

Lord Evans of Weardale: I think it could. From the Security Service point of view, one of the main ways in which we seek to reduce the risk of harm is by getting criminals locked up who are involved in planning terrorism or whatever. For that, we have to rely on law enforcement agencies because the Security Service has no law-enforcement powers. From that point of view, a very important part of the overall counterterrorism efforts in the country is dependent on law enforcement, which in turn is reliant upon international co-operation.

So it is absolutely the case that effecting law enforcement co-operation is a vital part of our overall national security defences, even though intelligence co-operation operates in parallel. The totality will be impacted through this. I can recall the great difficulties of extraditing individuals from or indeed to the UK on terrorist charges in the days before the European arrest warrant, including the notorious Rashid Ramda case, which continued for over a decade as we attempted to get this guy moved between countries. All that effort and laborious process was cut through by the European arrest warrant, and it would be very regrettable if we went back to that cumbersome and politically difficult process instead of the relatively straightforward processes that come about through the EAW.

The Chairman: Presumably there are cases when exchanges on law

enforcement, but not involving you, nonetheless provide information that is relevant to security agencies of one sort or another. Does that cause you to have any direct contact with the EU agencies or do you rely on your contacts in, say, our police force and so on to get the sort of information that you need?

Lord Evans of Weardale: From my recollection, the principal relationship between us and the UK agencies is that there is an information-sharing facility on counterterrorism via Europol. The service put information through that and could get information out of it, but it was effectively managed through law enforcement. It would not have been seen as being a major element in the overall information flows.

Robert Hannigan: The same is true for us, except that even at one remove from MI5 on terrorism we would then relate to law enforcement agencies here or we would deal with a UK agency. On cyber, it will be different in future because there are lots of ways of sharing cyber data. There will be cybercrime data being shared by Europol. There will be large-scale cyber data being shared by government civilian cyber agencies. There will be cyber data being shared by intelligence agencies in the member states and the UK. Most importantly, there will be private sector industry cyber data being shared across borders, particularly in financial services.

The Chairman: I think Baroness Browning has a question.

Baroness Browning: I think my supplementary has been answered, thank you.

The Chairman: Really? Then we shall move on to Lord Crisp.

Q98 **Lord Crisp:** I suspect that my question has also probably been answered to an extent. Is there anything distinctive about the relationship that we have with the EU countries? Leaving aside the Schengen arrangement and Europol, in terms of the relationship that we have in data sharing with countries generally, is there anything that we are going to lose?

Lord Evans of Weardale: All international liaison relationships are sui generis. Within Europe we operate at two levels: we have the multilateral relationship through the Club of Berne with 27 other heads of service, but it would not be accurate to say that the bilateral relationships between us and all the services were the same. We have a very close relationship with the French service, partly for historical reasons: we share many of the threats and we are neighbours. So we are very close to the French bilaterally as well as within the multilateral fora. We have very close relationships with the Germans, the Dutch and the Scandinavians, perhaps closer than we would have had with some smaller countries further away. That is in the nature of where the business needs to be done. So we have a nuanced set of relationships within Europe, and of course we have a variety of other relationships.

The Five Eyes relationships are extremely important within a different, though not wholly different, kind of political and organisational construct.

For the SIGINT agencies that is governed by the Five Eyes agreement, but the wider Five Eyes community is important for all the intelligence agencies. Indeed, our engagement as a country with Five Eyes is helpful in the European context because we have information from the Five Eyes partners that borders on some of the European issues. Equally, some of the relationships between some of the European partners and some of the Five Eyes countries were nothing like as close as ours, so sometimes we could act—without trying to overplay it—as a bit of a bridge between some of the Five Eyes issues and the European issues because we had the status of both. Then of course there are a whole variety of other relationships with other countries, some of which are very important but all of which are dependent upon both the nature of the security relationship and the legal context. From the UK point of view, our intelligence relationship with Pakistan at certain stages was extremely important for national security reasons but there were also considerable complexities in that, for legal reasons and to do with human rights and so on.

Robert Hannigan: It is a similar picture with signals intelligence. Many of the relationships with European countries go back to the Second World War. Some of those countries are third parties to Five Eyes so there are deep historical ties, while others have grown strongly over the past few years, partly driven by the threat. As Lord Evans says, there are partners outside Europe that are also very important but, as we have seen over the past 15 years, there are legal constraints on how much we are able to do with them. So it is a patchwork. Certain things have driven us closer together. The Afghanistan campaign, in the case of signals intelligence, with a fusion of a number of EU nations under Five Eyes, was very powerful as a model for what can be done outside a conflict. Then of course there is terrorism, cyber and, more recently, Russia.

Q99 **Lord Ricketts:** This all sounds very familiar to me as well. To follow up on the point from Lord Ribeiro, because our intelligence exchanges with EU countries happen outside the EU framework, presumably our role as a bridge between that exchange, and Five Eyes and other external countries, can continue into the post-EU era because our intelligence exchanges will not have been affected. I would be interested to know if that is actually the case. The emphasis that you put on the junction between the intelligence exchanges and the action on implementing them, which falls on the law enforcement community, is important. There is only a limited value to intelligence exchanges if you cannot then follow through with law enforcement action to prevent threats arising, disrupt plots and so on. Is that right? Is it more in the junction that the problem lies than in continuing that sort of bridging role between Europeans and the wider Five Eyes outside the EU?

Robert Hannigan: This is not my area because we did not do a law enforcement contact on terrorism, but that is my impression, yes—that is where there is the greatest risk to operational work. Lord Evans would know much more about that. On your first point, it is hard to predict. For cultural reasons, we will still be able to be a bridge. As you will

remember, after the Snowden controversy we played a very useful role in trying to keep the transatlantic relationship strong. However, there is no question that removing ourselves from one of those groups is going to have an impact as we become another member of the Five Eyes that is outside the EU. In fact all of them are outside the EU now, so I guess it will have some impact but it is very hard to say what it will be.

Lord Evans of Weardale: I agree with that. Yes, in principle, that bridge role, as it were, is still open to us, while the law enforcement one is a very important element of our overall national security posture. As a matter of policy, we see the appropriate response to things like terrorism as being through the criminal justice system rather than through other means, and therefore making sure that that is available and works is critically important, operationally and in policy terms. One of my concerns in this area, which I think I reflected in the article in the *Sunday Times*, is that the UK has been an active participant in the political discussions of the EU and the formation of policy.

The fact that we will not be in the Council or represented in the European Parliament and so on means that a well-informed and relatively influential voice on issues of national security, or the inadvertent impact of policy initiatives on national security, will not be there. From my point of view, that is one of the things that would most worry me. Through our diplomatic influence, we have been able to steer the EU away from one or two national security traps and to help it actively to take steps that facilitate national security benefits. We will not be there in the same way in future. It was always noticeable that when the Club of Berne would brief the permanent representatives in Europe, which we did periodically, at a quasi-political level, they were always keen to have the British there, because we tended to be better connected in some of those areas and more familiar with some of the policies than some of the smaller countries perhaps were. We were able to be a helpful voice, which will be more difficult going forward. That is an area of vulnerability for us.

Robert Hannigan: That is an important point on data, in particular. After the referendum, one of the concerns that I picked up from counterparts in Europe was that the strongest voice at one end of the spectrum on balancing privacy and security and getting a sensible UK-style balance would be gone. There is a wide spectrum among the member states. Some are at the extreme other end. I know that some of our colleagues worry a lot about the absence of that voice.

Lord Watts: We have talked about how we build a positive system after we leave the European Union. Some people will say that the change gives an opportunity to terror groups and unfriendly states such as Russia. What keeps you awake at night? What sort of key issues are you concerned about that Russia, other states like Russia or terrorist groups will seek to exploit?

Lord Evans of Weardale: We have touched on the difficulties on the law enforcement side. How will that affect the threat of terrorism? I suspect that people who are driving their cars over Westminster Bridge or into

Christmas markets in Berlin are not factoring in European co-operation and its impact on restricting them. I suspect that the threat of that will not change but, from a government point of view, Russia will no doubt wish to get up to mischief where it can. One of my wider concerns on this is that the overall political project of Europe, whatever one thinks of it from a UK perspective, has been extremely influential in binding together countries across Europe, particularly those countries that were previously behind the Iron Curtain, in a liberal democratic institution. I know that bits of that are fraying, but that is a separate issue.

My wider concern was and is that anything that tends to destabilise Europe is going to be an opportunity for those who would like to extend their influence, particularly Russia. We have seen that happening in the meddling in elections in Europe and just outside the EU in Ukraine. We have similar risks in the Baltics, and so on. Anything that tends to weaken the ties between European states is unhelpful in that regard. In that sense, Brexit may contribute to that weakening of the institutions, which I think is unhelpful. That is a long-term issue. It is not as though the whole thing will collapse when we leave—I am sure that that will not be the case—but this is not a helpful way of reinforcing them. From my perspective, our voice has been helpful in ensuring that the EU takes into consideration its security interests as well as other important interests. Again, that is a vulnerability in my view.

Robert Hannigan: I agree. From the perspective of the current Russian regime, anything that makes it harder for the EU to reach a common policy on sanctions in relation to Ukraine, for example, is a win. It is already harder and will be harder in the future. It will be easier to sow dissent in Europe.

The Chairman: I will come to Baroness Massey's question in a moment, but could I ask you to speak up a little, because the acoustics in the room are not brilliant.

Baroness Massey of Darwen: You said earlier that we will not be there in the same way. That interests me. In what way can we be there? We will be relying on our reputation. How long can a reputation last? Will we just dwindle away?

Lord Evans of Weardale: There are a number of distinguished former diplomats around the table who would be experts on how Britain's influence could be extended. The UK will, obviously, seek to ensure that our voice is heard when Europe is considering its policies in the same way that the British voice is heard when America is considering its policies. But providing advice and influence is very different from being at the table with a vote. Clearly, we will do everything that we can to influence European policies and laws in directions that we think are good for us and for Europe, but at the end of the day they will go into the room and we will not be there.

The Chairman: Could I ask a couple of questions that follow on from that? First, if we are not able to retain all the co-operation that we now

have with the EU and EU institutions, do you have a sense of what it would be a priority for us to be able to retain, or is that too simple a question? Secondly, you have talked quite a lot about the Five Eyes arrangement, as have a number of people who have given evidence to us. Do you see that becoming stronger after we have left the EU? Do you think that some in the EU might think that it will get stronger and therefore in a way rather hanker after being a part of it?

Robert Hannigan: On the first, I will defer to Lord Evans, although I think that the Government's list of law enforcement co-operation mechanisms, in particular, is right—those are the things that really matter, for the reason that Lord Ricketts pointed out. The Five Eyes arrangement is strong anyway. It is a collection of countries largely by an accident of history or culture, which all play slightly different roles, including geographically and in size, so the organisation is not completely uniform. I do not think that it needs to grow stronger. The trend in the Five Eyes over the past 15 years has been to have far more relationships outside the Five Eyes. It is increasingly important that we have strong bilateral and Five Eyes relationships with a whole range of other countries which reflect the way the threat is spreading around the world, particularly on terrorism but on other things, too. The Five Eyes arrangement grows, but it does so in its relationships with third countries.

Lord Evans of Weardale: Law enforcement co-operation through Europol seems to me, from a national security perspective, the top of the list. On the Five Eyes side, I agree with what Mr Hannigan says. Funnily enough, I would say that Five Eyes has become more important over the last 20 years, which is maybe counterintuitive. That is partly because of shared global threats and partly because, in a number of areas, geography does not particularly matter—when you are talking about cyberthreats, for example, it does not matter where those are geographically and, therefore, friends co-operating closely can make a real difference to one another. You might have thought 20 years ago that Five Eyes was a relic of history, but it has turned out to be quite the opposite. Will others want to join? Without going into great detail, I know that there was at least some lobbying by one other European country, which said, "We want to be part of this interesting group, too".

While that did not take place, it led to a lot of discussions about further increasing co-operation. You should not see Five Eyes as an exclusive club where either you are a member or you are not, because all the five Eyes countries have very important relationships with others who are friends at a variety of levels—at the SIGINT level, at the domestic security level and so on. It is an open network, not a closed one.

Lord Kirkhope of Harrogate: To turn that around, I asked you a question earlier about the security treaty. Is it not arguable that having a security treaty is going to play badly in terms of our future relationships—that is, the bilaterals? You say that the security services have not relied entirely on institutions. I was in the European Parliament where we did a

lot of work in relation to data issues and so on. Do you not think that a treaty here might possibly prevent the sort of expansion of the things that you will need post Brexit rather than enhance them?

Lord Evans of Weardale: That would depend on what was in the treaty. If we envisage, which I do not imagine that we do, a treaty that included intelligence co-operation on everything, that would probably be counterproductive because at the moment it is successful and dynamic without having that kind of formal legal underpinning. I do not think it would be helpful, and the idea of negotiating an intelligence-sharing treaty with the EU and getting it endorsed by the European Parliament would probably defy belief. It would be a terrible idea, as far as I can see. On the other hand, there are legal instruments and organisations like Europol where probably it will not work unless we get a treaty.

Robert Hannigan: I strongly agree with that. I do not think data sharing needs to be part of this treaty; it is happening anyway. I know that the bits that will be most difficult are outside this Committee's investigation, such as the defence sector and access to research and development. The Galileo story does not bode well, for example. So where money and trade are engaged it is going to be really difficult to do, but on intelligence it ought to be straightforward because it ought not to interfere with what is already working.

Q100 **Baroness Pinnock:** My questions, assuming that we leave the EU, are about the loss of influence and possible opportunities. You have already given evidence about the loss of influence through involvement in the EU institutions and that sort of thing. I wondered whether there were any other areas where we may lose influence if and when we leave. Secondly, could you think about potential opportunities via bilaterals, which you have already responded to Lord Kirkhope on? Which countries would they be? How easy would it be to do that?

Robert Hannigan: An immediate response is that something that we need to watch closely because it is still developing in Europe is cyber security. Through the GDPR, which is not primarily about cyber security but has an impact, and more importantly through the network information systems directive, the EU has effectively published its first bit of cyber security legislation with standards. That will develop in the coming years and we need to make sure that we are part of that conversation. We need to make sure that we do not lose influence. We are a big player in cyber, and we can have a huge influence on the way that the EU is more and more rolling out its standards, not just in Europe but across the world GDPR is becoming a kind of global standard. We need to be part of that

Baroness Pinnock: How can we be?

Robert Hannigan: That is for negotiation. I know that on the data-sharing agreements, the Government want to have what they are describing as adequacy-plus: that is, to have the Information Commissioner present on the board of commissioners and various other

things that they would like. The more that we can be part of those EU standards bodies, such as ENISA, which does a lot of the key technical standards, the better.

Lord Evans of Weardale: I agree with all that. In terms of bilaterals, I would be surprised if there were any benefit in looking at formal bilateral treaties or something in any of these areas because the issue relates to EU competences, so I would not have thought you could get around any EU difficulties by going for bilateral treaties in the areas that we are concerned about, particularly law enforcement. In terms of the countries that really matter to us in national security terms, it almost writes itself: it is the big players, particularly the ones that are closer to us. France, Germany, the Netherlands and Scandinavia have traditionally been the countries with which we have had very close and mutually beneficial relationships, and I am sure the same will be the case in future for political and threat-related reasons. Ireland is the other issue that is potentially relevant.

Lord Ricketts: I have a follow-up question to that. Clearly it is right that these legal instruments work only at EU level. I have been worried about the risk of a cliff edge at the end of the transition period if a big EU-UK security treaty has not been negotiated and enforced by then, which is aptly not very far away, given the experience with the DNR and so on. What happens then? Presumably we will need bilateral arrangements on the most pressing issues. I am thinking of France with the Le Touquet treaty and the vast flow of people, criminals and goods and everything else that law enforcement know about between Britain and France—and presumably Belgium as well, which is one that you did not mention but there are very close links there. Surely we would have to have some sort of interim arrangements to keep the Le Touquet process working and the law enforcement that goes with that, even if there was an EU-UK treaty coming down the line but still several years away.

Lord Evans of Weardale: I would not disagree.

Robert Hannigan: Nor would I.

Q101 **Baroness Browning:** Do you think the changes in the UK-EU security arrangements that we are talking about now will affect security co-operation between Northern Ireland and the Irish Republic? If so, how?

Lord Evans of Weardale: The Republic of Ireland is a member of the Club of Berne, so at the intelligence level we would anticipate continued co-operation as at present. There is of course a very long history of north/south intelligence co-operation of various sorts, going well back beyond the time when the Irish joined the Club of Berne. So this is very long established. It has its own political context and complexities, but obviously it has been of great mutual value. I would be very surprised if it did not continue, and there is no reason why it should not. The complexity will again be in the context of EU legal instruments, and I am sure that there would be a positive will from both parties to co-operate effectively on law enforcement, but obviously there are legal constraints.

It really highlights the same issues that you would have with the rest of the EU, but in a much more acute sense because of the history and security context as well as the geographical direct border that we have with the Irish Republic.

Robert Hannigan: On the SIGINT and cyber side, the relationship between the cyber agencies in the two countries is good and has grown over the last few years. On the border itself, certainly in my time in Northern Ireland, the relationship between the Garda, the PSNI and MI5 is very strong and growing all the time. The bigger worry for me is what happens with the border itself. It is hard to see any of the current solutions not resulting in more smuggling, and anyone who has worked there knows that smuggling and crime on the border are corrosive to the peace process because the money tends to go to paramilitary groups, or the rump of paramilitary groups. That is a worry. It is the threat and the criminality that might be affected rather than the co-operation. I do not see any reason for this to affect the quality of co-operation, but they may have more to do.

The Chairman: Presumably, if criminality increases, that is going to affect the nature of the co-operation and the way in which the security authorities would have to respond to.

Robert Hannigan: I think they will be busier. Smuggling has always gone on along the border, and it reached a peak during the Troubles. It is hard not to see criminal groups not seeing a huge opportunity here.

Baroness Browning: In the light of the Government's recent announcement to reopen investigations into historic cases in Northern Ireland, and given that we are assuming there will be an EU border there, however it is manifested when that decision is made, do you envisage that causing any additional problems?

Lord Evans of Weardale: I do not know. I have never thought about that. I can see the question of whether it makes it harder to undertake those sorts of—

Baroness Browning: I am thinking particularly of extradition.

Lord Evans of Weardale: Extradition between Britain and Ireland has always been a difficult and highly politically charged issue, and I am sure it will not be any easier if we are not working within the same legal framework provided by the EU. It is well known that the development of the EU was quite an important backdrop to the development of the political process, although of course Robert was much closer to that than I was. So I do not know the answer to the question but I can see that it is relevant.

Robert Hannigan: I assume, as Jonathan says, that the answer will depend on what kind of replacement or substitution for the EAW is negotiated as part of the agreement.

Lord Watts: You mentioned that difficulties might increase on the border

once we leave Europe. What about the fact that you will have a soft border into the Republic of Ireland? Will there be any encouragement by people to use that as an entry point into the UK?

Lord Evans of Weardale: Or the other direction, I suppose. I would have thought so. On the other hand, it is not very difficult to get across EU borders.

Robert Hannigan: That is not a new problem. The common travel area has always been seen as a soft way in for hostile states, terrorists or anyone who wants to get in. So I do not think that that in itself is any issue.

Lord Watts: What about illegal immigration?

Lord Evans of Weardale: If you have a permeable border, obviously illegal immigration can take place across it. However, we have had a common travel area since the foundation of the Irish Free State in 1921 or whatever, so it has always been there as an issue.

The Chairman: Thank you very much. That has been extremely helpful and we have learnt a lot from it. We have finished one minute ahead of time. Thank you for coming to give evidence to us; it will help us a lot in drafting the report.