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Avoiding a Hard Brexit in Foreign Policy

The current public image of Brexit is of a British Government grappling internally, while wrestling with an Article 50 negotiation process that is making little headway. It is perhaps inevitable that disputes over money, borders, the status of citizens and a future trading relationship should overshadow issues in which the EU and UK could more obviously develop an effective post-Brexit partnership. Foreign, security and defence policy are areas where a departure from the existing intertwined relationship between the UK, EU and the 27 other member states would have mutually detrimental effects.

The joint Merkel-Macron-May statement on 13 October was a timely reminder of the shared security interests of the EU's member states and the UK. In response to President Trump's declaration that he would not seek Congressional recertification of Iran's compliance with the Joint Comprehensive Plan of Action (JCPOA), the leaders of the EU's three largest member states together asserted that preserving nuclear diplomacy with Iran was a shared national security interest.

However, despite the shared interests and decades-long experience of EU-UK diplomatic cooperation, defence and security could be jeopardised by inflexibility in the design of the structures of the post-Brexit relationship.

May's mission

Theresa May has made clear in both her Lancaster House and Florence speeches that her Government's objective is to replace the UK's EU membership with a 'deep and special partnership with the European Union.' A considerable proportion of the Florence speech was devoted to 'a new relationship on security' alongside a new economic relationship. The Prime Minister's proposal, set out in the Florence speech, was that the security relationship would be underpinned by a treaty between the UK and the EU.

More detailed UK Government ambitions for broader foreign policy, security and defence policy relationship have been set out in two 'future partnership' papers on *Foreign policy, defence and development* and *Security, law enforcement and criminal justice*. Both papers stress the degree of shared values, objectives and threat perception between the UK and the EU. The thrust of the papers is that the UK has much to lose from being more detached from the EU.

Neither of these documents, nor the Prime Minister's proposal for a security treaty, have triggered detailed EU responses. The EU27 position has been to maintain a focus on the Article 50 process, interpreted in a sequenced fashion, with discussions on a future relationship conditional on the delivery of the narrowly drawn mandate currently being pursued by the European Commission negotiator Mr Barnier.

The UK government's aspiration to agree a treaty-based relationship on security is a serious declaration of intent. But the complex distribution of EU security policy - operating on the basis of different degrees of integration between the member states, pursued across different institutions (with differing roles for the European Commission, other EU agencies and member states) and based upon different EU treaty articles - throws up similar complexities as negotiating a future trade relationship. For the UK to seek the closest possible relationship with the EU and its member states on internal security, and especially on issues of crime, terrorism and borders, will mean particularly acute negotiating challenges if the UK is outside the EU's institutions, legal order and jurisdiction of the European Court of Justice (ECJ). Moreover, because additional elements of the UK's external relations such as the environment, food security, energy and development policy - all of which contain security dimensions - are all currently intertwined with EU policies, the scope of an EU-UK security treaty could be impressively broad.

Foreign and defence policy appear to present less formidable institutional and legal barriers than other areas of future EU-UK security collaboration. The EU's member states retain the preeminent role in foreign and defence cooperation. But the recent evolution of Brussels-based decision-making and implementation structures of the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) present a 'docking problem' for a non-member state. Only member states are members of the EU's key foreign, security and defence decision-making bodies such as the Foreign Affairs Council and the Political and Security Committee.

Non-member states have been granted a range of formats to share views and to facilitate collaboration on foreign policy issues and security missions outside of these decision-making bodies. But none of these existing arrangements are likely to prove sufficiently attractive to the UK as they do not allow for sufficient influence on EU policy formation (via direct participation in key institutions). They only allow for signing up to EU foreign policy positions and security and defence operations after decisions on content, scope and action have already been determined. This is essentially participation and partnership on a 'take it or leave it' basis.

The position set out by Theresa May in her Florence speech envisages something rather different: "...it is vital that we work together to design new, dynamic arrangements that go beyond the existing arrangements that the EU has in this area - and draw on the legal models the EU has previously used to structure co-operation with external partners in other fields such as trade." In short, her government appears to seek a higher degree of integration with the EU than has been realised with other states to date.

Achieving such an ambitious goal depends on two key conditions. First, whether the EU's member states share the scale of ambition for a security agreement. Second, and more crucially, whether the UK and the EU are able to reach the exit agreement envisioned by Article 50 covering the UK's exit from the EU and terms for the negotiation of a post-membership relationship.

The security treaty proposal is detached from any wider process of reflection on the objectives for the UK's foreign, security and defence post-Brexit. The phrase 'Global Britain'

is being used by government ministers as shorthand for post-Brexit foreign policy but with little articulation of proposals for its ambition or the degree it diverges from current policy. Agreeing a security treaty with the EU would be a major foreign and security policy commitment. As Brexit was not anticipated, it is not currently reflected in the UK's current National Security Strategy (NSS) or in the last Strategic Defence and Security of Review (SDSR) completed in 2015. The scope and scale of the security commitments made to the EU via the security treaty, if as ambitious as the Prime Minister's Florence speech suggests, would need to be reflected in a future SDRS and NSS. The current national security capability review, which looks at the existing UK policy and the plans to support implementation of the current NSS, is a recognition of the consequences of Brexit for UK foreign and security policy. But the UK needs to conduct a broader evaluation of the ambition for its post-Brexit foreign and security policy, especially in the European neighbourhood where the EU is a significant payer and player. And evaluate how does the UK see itself fitting with existing EU policies? Does it seek a division of labour with the EU and/or outsourcing the delivery of policy objectives by aligning with existing EU policies? Are there other venues, such as the G7, the UN and NATO, where the UK could have more effective impact on EU policies than within an EU-UK structure? And how does the UK envision its future relationship with the EU if the remaining 26 member states seek closer security and defence policy integration - something that the UK has previously resisted?

Transitioning security

One of the most recent Brexit controversies is the question of a transition ('adjustment' in the Prime Minister's language) phase between the UK's formal departure from the EU under the terms of Article 50 on 31st March 2019 and the entry into force of a post-membership agreement to cover EU-UK relations. Beyond exiting the EU's institutions the extent of the other characteristics of transition are vague, although for most commentators the assumption is that the UK would remain within the EU's Customs Union and, by implication, important aspects of the EU's external relations. By extension, transition arrangements would be in place covering foreign, security and defence policy. In this case the EU would need to make a determination as to the degree to which it wished to see the UK continue to participate in EU policies as a 'privileged partner' and to provide the necessary legal and political arrangements in anticipation of 'final status' EU-UK agreement. Such an arrangement can be dubbed as a 'reverse Denmark': Denmark has an opt-out from the EU's Common Security and Defence Policy (alongside that of single currency membership) but otherwise participates as a normal EU member state.

An alternative for the EU could be to 'lock out' the UK and to treat it as non-privileged, non-member state associated with EU security, foreign and defence policies on similar terms as Norway (on foreign policy and defence). However, unlike Norway, the UK is a non-Schengen state, and the relationship with the EU on internal security issues would be most conditional on what form of Europol and information sharing collaboration is agreed to cover the transitional period. An operational agreement (allowing for personal data sharing) is already in place with non-member state third countries who are not members of the Schengen area.

The alternative to reaching an agreement on a transition period is a 'cliff edge' or 'hard Brexit' with the UK exiting the EU at the end of March 2019 and leaving all EU institutions and policies. The implications for the UK differ for foreign, security and defence policy.

The greatest immediate dislocating effect of a hard Brexit would be for the UK to be abruptly outside the EU's institutional and information sharing arrangements facilitating cross border security. Notable would be the loss of information sharing via the termination of access to data systems such as Schengen Information System (SIS) II and Prüm, together with the termination of access to the use of the European Arrest Warrant (EAW).

For foreign policy there will be a departure from the formal structures of policy making and loss of direct access to information sharing between the EU member states. With no formal structures of foreign policy consultation in place between the EU and the UK, the fallback would be on informal information gathering in Brussels and seeking influence via member state capitals, for which the UK would likely to need a greater investment of time and personnel. Sanctions as a foreign policy instrument, where currently conducted through the EU, would present a legal and operational challenge.

On defence, the UK's contributions to the CSDP would likely cease as the legal and political basis for their continuation would have ended. The degree to which this would impact on the EU would depend on the provisions that the UK is making to the CSDP in Spring 2019. UK personnel would likely be removed from CSDP operations in third countries, and from Brussels institutions such as the military committee. The Operational Headquarters (OHQ) would no longer operate as a facility available to the EU and the UK would leave the roster of EU Battle Groups. The UK would, however, remain connected to the CSDP through the EU-NATO Strategic Partnership and operational collaboration.

More generally, a hard Brexit would, of course, have implications for the UK's wider bilateral and trilateral relationships with the remaining EU member states, other European states and outside Europe.

Conclusion

Theresa May's ambition is for an EU-UK security treaty which positions UK's foreign, security and defence policy as separate but not separable from the EU. Such a wide-ranging security agreement is, however, a formidable undertaking, and will be conditional on agreement on the future economic relationship.

A less ambitious, but more attainable goal, may be to separate out the various strands of the security, foreign policy and defence policy into separate agreements. This could be under the umbrella of a more widely drawn strategic partnership. Consideration also needs to be given to the possibility of a hard Brexit, and the implications of dislocation replacing the existing embeddedness of the UK in the EU's foreign, security and defence policy.

The foreign, security and defence policy of the EU of 27 member states without the UK has been given no serious attention in Brussels or national capitals. With the tight mandate and rigid negotiating approach currently being pursued in Brussels, it cannot be assumed that the current shared foreign, security and defence policy interests between the EU and the UK will be saved from the shadow of the broader dislocation that results from Brexit.

