Whither Internal and External Security in Europe? EU Foreign and Security Policy at the

Crossroads after Brexit

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Abstract

What impact will Brexit have on European Union (EU) foreign and security policy cooperation? What will this mean for cooperation in different but linked areas of internal and external security? The paper will begin with a review of explanations in the literature of UK-EU security relations, particularly since 9/11. It will then review the impact of Brexit on EU foreign and defence policy and in internal security. Finally, the paper will conclude with an overall assessment of the impact of Brexit on EU foreign and security policy, the links between the two, and what this tells us about UK's impending divorce from the EU. The paper concludes that the relationship between the UK and EU will eventually settle down to differentiated forms of integration, association or semi-detachment depending on the policy area.

Introduction

The British vote to leave the European Union (EU) held on 23 June 2016 will doubtless go down as a key political date in British and European post-war history. The vote was characterised by febrile political manoeuvring, copious amounts of misinformation and division. The end result was one of political and economic uncertainty for the United Kingdom (UK) and to a lesser degree the EU and its member states. Given the immediate political and economic vacuum in Britain and continental Europe, the task of the UK's post-referendum government was made all the more challenging by the legal certainties of the EU's legal order around the four freedoms – the free movement of goods, services, capital and people – and Britain's political decision to reject incoming EU migration. The possibility of London accepting free movement in return for access to the Single Market is at the nub of the crux of EU-UK post-referendum relations. Brexit will undoubtedly impact on the UK, EU, the of the security wider European order but mostly on the UK (Oliver, 2016). Brexit is also a threat to intra-EU decision-making and relations between the EU's member states

(Kroll and Leufen, 2016). Some claim that Brexit is a threat to cohesion in the West more generally (Jones, 2016). A more likely scenario is that the UK relationship with the EU will eventually settle down to differentiated forms of integration, association or semi-detachment (Whitman, 2016b) depending on the policy area. The following analysis seeks to focus on the likely problems and possibilities with regard to the post-referendum UK-EU relationship considering key areas of interest between the EU and UK in the main areas of external policy in the following order: (a) foreign and security policy after Brexit, and (b) justice and home affairs (JHA).

The UK has traditionally seen itself as a leading member of key international institutions and as a leading actor in European foreign policy. London has traditionally pursued what Hill terms a "convenient schizophrenia in its relationship with the EU emphasising the intergovernmental nature of foreign policy cooperation as being suited to the pragmatic British policy-making style (Hill, 1983), whilst eschewing grand supranational plans for political and economic union. The EU saw the UK as an "awkward partner" that had never got over losing an Empire and was using Europe as a vehicle for its intergovernmental policies and national interest (George, 2001). As such the UK has traditionally seen itself as a leading player in EU foreign and security policy whilst paradoxically maintaining strong transatlantic commitments to the Atlantic Alliance and the United States (Young, 1993). As such, the UK developed a pragmatic almost Janus faced reputation in the EU institutions as being a reliable yet eccentric partner. At all times the domestic political discourse in the UK has been predicated on the contested notion of Parliamentary Sovereignty which places Parliament at the centre of national political life. Traditionally, the British press and public opinion have had a lukewarm attitude to European integration, but paradoxically still foresaw the UK playing a leading role in European foreign policy using the EU as a multiplier for British national interests in the wider world. The UK offered up meaningful capabilities in defence, intelligence and diplomacy which was backed

up by a world class military, intelligence services and diplomatic corps. When periodic crises erupted the UK was usually to be seen at the side of the US and the Atlantic Alliance eschewing the EU to a greater than a lesser degree. This continued into the early part of the new century and beyond when the UK was faced by crises involving military threats such as Iraq and Afghanistan.

The events of 11 September 2001 altered the nature of internal security relationships between the EU partners and the UK played a leading role particularly in policing initiatives. It was less active in other areas. After the Treaty of Lisbon passed into law in December 2009, the UK sought to opt-out of key justice and home affairs policies and acquis. The Cameron coalition government from 2010 onwards gradually opted-out of internal security initiatives for domestic political reasons and then decided belatedly to opt-back in 2014. This created disquiet from the EU partners. Yet the UK was in some way always engaged in internal security (Adam, et al, 2016) due to the threat of terrorism and also in advancing police cooperation in the EU. In foreign and defence policy the Cameron government decided to pursue bilateralism with France – over EU multilateral cooperation – on the basis that the EU's two leading military powers "could get things done". The UK government also started to gradually withdraw from CSDP as soon as it was elected in 2010 and this had a chilling effect on EU crisis management. This also made the UK unpopular in other EU member states. The upshot is that even before Brexit happened in 2016 the EU was moving away from the EU in foreign and security policy terms for at least the previous five years (Rasmussen, 2016).

The Brexit conundrum for the UK government is negotiating a good exit deal. However, the legal basis of the EU means that the Brexit negotiations will be hugely complex and potentially fraught with difficulty. The United Kingdom Independence Party (UKIP) and the out campaign in the referendum retorted to "take back control" of British parliamentary

sovereignty. The key issue in the campaign in this regard was migration, relating to the three million EU citizens who are resident in the UK and future possible migrants from the EU. The out campaign promised to halt migration from Europe and beyond into the UK and opinion polls highlight that this was the key issue for out voters in the referendum (UK Polling Report, 2017). Voters who voted for Brexit will undoubtedly expect the government to halt or at least control migration flows, which is incompatible with the free movement of people principle in EU law. This poses a dilemma to the UK government. First, EU migrants bring in revenue to the UK exchequer. Second, the free movement of people is sacrosanct in the EU treaties and if the UK fails to accept this it will have to leave the single market and customs union. This would be extremely risky economically speaking for London given that nearly half of all UK exports go to the EU. Much will depend on what the EU offers the UK but also on the degree to which the UK is willing to accept the Four Freedoms (Dunt, 2016a). In a speech at Lancaster House in London on 17 January 2017 the British Prime Minister Theresa May reported that the UK will leave the single market and will seek a redefined relationship with the customs union whilst also making clear that the UK will take back control of and restrict EU migration in the future (May, 2017). Market access and migration are inextricably linked and form the nub of the issues which will dominate Brexit discussions between the UK and EU. Nevertheless, this relationship also has profound implications for the future of UK-EU foreign and security policy cooperation and also for the future development of EU foreign policy itself.

Foreign and Security Policy Cooperation after Brexit: UK and EU Perspectives

Given the uncertainty surrounding the position of international trade between the EU and UK after Brexit, the UK's approach to how it repositions its international strategy in the world becomes even more critical. How the UK relates to EU foreign and security policy will be a

significant factor in influencing how London interacts with the outside world post-Brexit (Chalmers, 2017). Traditionally, the UK has enjoyed a comparative advantage in foreign policy with its UN permanent seat, with its world class diplomats, a world class military, a global approach to trade, its independent nuclear deterrent, its leading role in NATO, and lastly its leading role in EU foreign policy. On the surface, the UK is less entangled in foreign policy terms with the EU given that sovereign states control the agenda, however, Brexit will challenge the very premises of UK and EU foreign policy in the coming years. The recent history of UK attachment to the EU since 2010 has been one of distance (Rasmussen, 2016). However, the UK cannot escape its geography and proximity continental Europe. A divorce from the EU's institutions does not mean that the UK will be shielded from Europe's problems. (Heisbourg, 2016, 22). Hence it is advisable for the UK to maintain a close foreign and security relationship with the EU (Chalmers, 2017).

Traditionally, the UK was viewed as being semi-detached from European integration. A late joiner, it always saw itself as being separate from its continental partners. Churchill's traditional three circles view of British foreign policy saw the UK as having American, Commonwealth and European spheres of influence in its foreign affairs (Dijkstra, 2016). On joining the EC in 1973, London could play a leading role in EU foreign policy and has been a founder member of European Political Cooperation (EPC) which brought together the foreign ministries of the EU member states. For the UK, the EC/EU was another avenue to pursue its foreign policy agenda. Christopher Hill stated that the UK policy style was suited to EPC (and its successor CFSP) given that it is intergovernmental and does not involve formally ceding sovereignty to EU foreign policy institutions (Hill, 1983). EPC/CFSP also suited the UK as developments tended to be more pragmatic and based on softer forms of cooperation rather than being subject to the hard law of the European Court of Justice.

It is against this backdrop that the referendum result should be analysed. The areas of foreign (and particularly defence policy) are inherently political and go to the very nature of national identity. The UK was keen to keep its national sovereignty intact from Brussels and this has traditionally informed its decision-making towards foreign and defence policy and will certainly continue to do so post-Brexit. However, in practice the UK has engaged in valuable foreign and security policy cooperation since it joined the then EC some four decades ago. Indeed, a coordination reflex in EU foreign policy has been operative for decades given the Europeanisation of national foreign policies over time (Smith, 2004, p.94). Indeed, it has been in London's (as well as the EU's interests) to work within a European foreign policy framework. British diplomatic staff, foresee, the UK, as being deeply immersed in EU foreign policy and being a leading light in that regard. Ambassadors meet regularly and diplomats meet daily in an EU context in a series of permanent structures and committees (Dijkstra, 2016).

EU member state diplomats and ministers coordinate their policies in international forums such as the UN, OECD, IMF and so forth. The point is that there is a great deal of socialisation and policy interactions between European diplomats at all levels. These types of interactions in EU and non-EU forums have become the norm for UK and EU foreign policy-makers. Brexit threatens to potentially unravel the decades of UK foreign policy engagement with the EU. This is a risk for both sides if the UK leaves CFSP. Given that the UK has one of the best diplomatic services and militaries in the world this would be a great loss to the EU. Likewise, London would suffer from not fully coordinating its foreign and security policies with Berlin, Paris, Rome, Madrid, Warsaw and the EU machinery. This all adds value to UK and EU foreign policy alike. Brexit will likely damage the UK's relationship with EU common positions and joint-actions, as well as attenuating UK influence in international negotiations that are led by the High Representative for EU Foreign and Security policy. This seems absurd given London's global reach and diplomatic contacts (Dijkstra, 2016). Brexit will also undermine the

HR/VP as s/he will have less credibility in the world without UK backing. However, Brexit will change the dynamic of UK-EU foreign policy relations and will increase calls on the continent for the EU to move towards even greater foreign and security policy integration without Britain (Dijkstra, 2016). However, it is interesting to note that the majority of EU member states are keen to cede their defence policies to NATO and have not, for example, pursued permanent structured cooperation (PESCO) with greater vigour (Biscop, 2016, pp.86-87). There are also calls for Britain to lose its Deputy Supreme Allied Commander (SACEUR) post in NATO in favour of a French military commander, which would also place the UK's special position in the Atlantic Alliance in question in some way (Chalmers, 2017). Brexit cannot be ignored as if it has not happened, but this does not need to lead to UK withdrawal from all EU foreign and security policy cooperation, especially given that cooperation tends to be looser, and has more national inputs which should suit the UK.

The British Foreign Secretary could still regularly attend the EU Foreign Affairs Council as does the US Secretary of State from time to time. Another option is for the UK to become an associated member of CFSP with UK diplomats attending meetings as necessary. The UK might also continue to second diplomats to the European External Action Service (Dijkstra, 2016). Additionally, the UK might continue to contribute to EU crisis management operations and missions through the Common Security and Defence Policy (CSDP), but this is militated by the fact that non-EU member states cannot command operations/missions and cannot be involved the setting of their mandate (Dijkstra, 2016). This also means that the EU will potentially lose access to the UK military headquarters in Northwood for planning purposes. Other models of UK-EU interaction might be in the Political and Security Committee at ambassadorial level, but again the UK and EU would need to confirm the presence of a UK presence post-Brexit (Dijkstra, 2016). Overall, given the UK's presence at the top table of international politics, Brexit will be a loss to EU foreign policy as well as to the UK using the

EU as another venue to have international influence (Whitman, 2016a). Whilst the UK has traditionally enjoyed a degree of leadership in EU foreign policy, it has been less committed to the area of JHA apart from in the policing field. This semi-detachment has resulted in a number of UK op-outs over the years from various areas of internal security in the EU. Nevertheless, this has attenuated UK influence in internal security policy in the EU and has also at times deprived the EU of UK expertise legal, intelligence and law enforcement expertise. This trend will be exacerbated by Brexit and will result in even further distant JHA relations between the UK and EU.

**JHA: Implications of Brexit for UK-EU Cooperation**

According to Carrera et al, (2016) `The UK's cooperation with EU policies in the 'Area of Freedom, Security and Justice' (AFSJ) – also denominated as 'Justice and Home Affairs' – has followed an arduous and rocky path' (Carrera et al, 2016). Britain has never been a full member of the JHA and has secured a number of opt-outs over the years. This is due to the UK wanting to retain control of its borders, immigration, asylum and criminal justice matters related to its homeland security. To Carrera et al: `The AFSJ consists of a number of constituent elements, the most important of which are Schengen and the abolition of intra-member state border controls, immigration of third-country nationals, the Common European Asylum System (CEAS) and finally criminal justice and police cooperation' (Carerra et al, 2016). The UK's pick and mix approach to JHA has undoubtedly complicated the nature and forms of cooperation in the area of AFSJ and has arguably attenuated progress towards further integration at the EU level. Hence there are those in the Brussels institutions and elsewhere who will be glad to see the back of the UK.

The UK has maintained control of its own borders since the Schengen Agreement was signed in 1985, and secured opt-out from Schengen-related measures in 1999. The UK has also opted

out of Frontex, the EU body that is responsible for the Union's external borders. The impact of Brexit in this area of cooperation will be minimal legally and administratively. Nevertheless, the UK did opt into the first round of the Common European Asylum System (CEAS) in 2004, but did not opt into further tranches of the agreement. The UK has not traditionally received large numbers of asylum seekers compared to its EU neighbours. Indeed, `In 2015, according to Eurostat statistics, the UK received around 38,800 asylum applications out of the total of 1,321,600 applications in the entire EU. As shown in Figure 1, the UK's share corresponded to 2.9%, which sharply contrasts with the 36% received by Germany (476,510 applications), 13% by Hungary (177,135), 12% by Sweden (162,450), 6.6% by Austria (88,160), 6.3% by Italy (84,085) and 6% by France (75,750 applications)'. (Carrera et al, 2016).

[See figure 1 below]

Figure 1. Asylum and first-time asylum applicants by EU member state (in thousands)
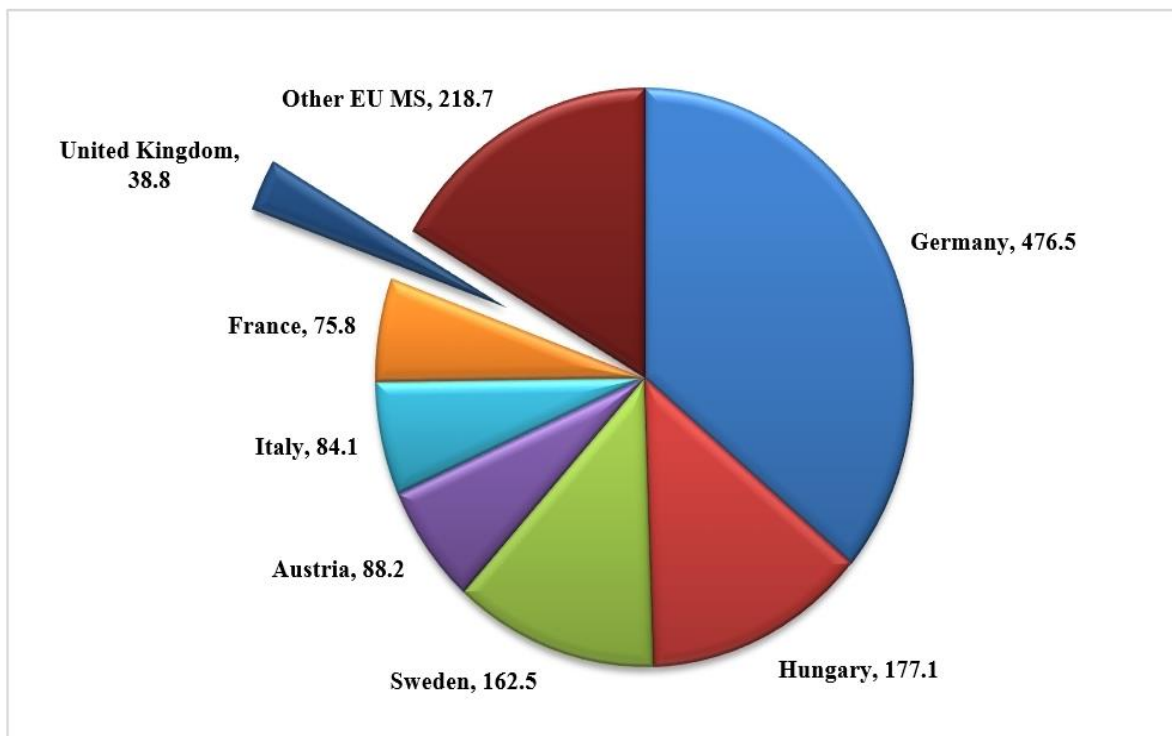
Source: Authors' own elaboration, based on Eurostat data.

Source: Carrera, et al, 2016. [accessed 21 December 2016]

With regards to cooperation in matters of criminal justice the UK opted out of this area formally on 1 December 2014, only subsequently to opt back into the old pillar three JHA acquis related to criminal justice. It then 'opted back into' the most important set of criminal justice mutual recognition measures that were part of the old Third Pillar *acquis*. The UK's departure from the EU will see it also leave the European Arrest Warrant (EAW) system, which will make the whole extradition process between the UK and EU much more complex and lengthy on both sides (Carrera et al, 2016).

With regards to counter-terrorism cooperation in the EU, the UK is a lynchpin of intra-European liaison, especially as it relates to intelligence and law enforcement. The terrorism threat is heightened at present due to a series of attacks in Paris, Nice, Brussels and Berlin as well as threats to targets in London and the wider UK. The UK leaving the EU will not dissipate the threat of terrorism, but will make law enforcement and intelligence collaboration and liaison between London and its EU neighbours more complex. As in defence this will perhaps encourage the EU's member states to develop their own intelligence and counter-terrorism cooperation structures without UK participation. Such structures without the UK will be weakened and would also potentially weaken UK national security (Inkster, 2016, 30).

Unlike other areas of JHA, the UK has played an active part in police cooperation in the EU. London also favours access to EU data for law enforcement purposes and has access to SIS information related to police and criminal justice matters (Carrera et al, 2016). The UK `...also participates in the Prüm Decisions, under which EU police forces can automatically share DNA, fingerprint and vehicle registration data. The UK has 'opted into' the recently adopted EU Passenger Name Record (PNR), which allows for a large systematic collection, use and retention of PNR data on air passengers. The UK is also a member of several EU Agencies, including Europol, thereby providing it with access to the Europol Information System, and Eurojust. Brexit means that the UK will lose access to all these information tools for law

enforcement purposes and the support and cooperation in the context of EU JHA agencies' activities' (Carrera et al, 2016). Indeed, when the UK leaves the EU, all UK citizens living in other EU member states will become third-country nationals for the purposes of EU law and vice versa. This will affect around 1.2 million UK citizens who live in other EU member states and around 3 million EU citizens who live in the UK. As is stated above, in the trade sections of this analysis, participation in the internal market is dependent on the UK continuing to apply the four freedoms, including the free movement of people. If the situation progresses into a hard Brexit (meaning the UK wanting to control its own borders thereby excluding free movement of people from EU member states in the UK) then the position of UK nationals in EU member states (and vice versa) could become controversial (Carrera et al, 2016). Nevertheless, there will be those nationals of both sides who have acquired 'acquired residence rights' through long periods of residence in the other country. Some may even qualify for UK citizenship through residency and, likewise, vice versa for UK nationals residing in other EU member states. In her Lancaster House speech on 17 January 2017, British Prime Minister Theresa May committed the UK to controlling EU migration into Britain, thereby making the position of UK nationals in the EU (and vice versa) far more complex.

Conclusion

The UK government is currently unable or unwilling to set out a fully coherent platform for Brexit to its EU neighbours, despite the Lancaster House speech of January 2017, a Government White Paper on Brexit and a general election. The EU27 are united in their determination not to undermine the premises of the EU such as the four freedoms. The UK debate seems to be somewhat removed from reality and Britain has been accused by some as living on a "Fantasy Island" seemingly unwilling or unaware of what might happen to the country after it leaves the EU (UK in a Changing Europe, 2016). The most likely scenario is that the EU will force the UK to accept its terms in any negotiation, although Theresa May

has said that she would rather have no Brexit deal with the EU than a bad deal from her perspective (May, 2017). That means free movement of people in exchange for access to the single market. If the UK decides to impose migration controls on EU citizens – as Prime Minister May stated in her 17 January 2017 Lancaster House speech – it will be shut out of tariff free access to the single market (which it would have to pay for anyway) and the UK will need to revert to WTO rules in its trade policy. This will leave the UK economically vulnerable and likely will see its position diminish in the wider world in the longer-term both economically and politically. Indeed, `A state leaving [the EU] unilaterally would, beyond any doubt, find itself in a legal calamity greatly affecting its economy and citizens' (Lazowski, 2016, 1301).

In fact, none of the options available to the UK post-Brexit are what might be described as positive. The opposite is true; the post-Brexit options available to London are just different versions of something that is inherently bad for the UK's position in Europe and the wider world. Furthermore, in terms of foreign and security policy the omens for European order are somewhat dissipated by Brexit: `There are many reasons why the European order is under strain, and could be entering a more chaotic and dangerous phase. Brexit would add to the possibility of a contagious fragmentation' (Friedman, 2016, 12). Brexit will also disrupt transatlantic relations, at least temporarily (Oliver and Williams, 2016) as will the election of President Trump in the United States. It looks like "Brexit is Brexit" but at what cost and to whom? To coin a phrase, `...the Brexit saga is far from over' (Menon and Salter, 2016, 1318) and will run for a long time to come.

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