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Plugging in the British EU foreign policy

By Ian Bond



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- ★ The main focus of negotiations on the UK's withdrawal from the EU has so far been on trade. But foreign and defence policy and law enforcement co-operation are also important. Plugging the UK into EU co-operation in these areas may not be straightforward. In particular, the EU and the UK both want to preserve their decision-making autonomy after Brexit.
- ★ The EU has close relations with like-minded countries, including Canada, Norway and the US. These relationships offer various models for the UK/EU relationship. The EU's Association Agreement with Ukraine also covers foreign and defence policy co-operation, but leaves Ukraine as a junior partner – not a status the UK would willingly accept.
- ★ The EU's Common Foreign and Security Policy (CFSP) is largely inter-governmental; the European Parliament and the European Court of Justice (ECJ) have limited roles. That creates more flexibility to accommodate non-member states – but there will still be limits to the privileges the UK can expect.
- ★ EU development funding structures are complex. There is scope for third countries to contribute to and even take part in the governance of some funds.
- ★ The UK's overall aim appears to be to keep as much as possible of the existing foreign and development policy co-operation intact. But it is vague about how it should do this.
- ★ The EU is also open to co-operating with the UK, but it is reluctant to offer the UK more influence in decision-making than other third countries have, partly for fear that others could ask for the same status as the UK.
- ★ There is no single recipe for co-ordinating policy. Norway has almost no formal structures for foreign policy co-operation, while Canada has a legally binding treaty and the US a politically binding declaration. All formal structures are backed up by extensive informal contacts with the EU and the member-states.
- ★ The UK and the EU both have an interest in co-ordinating future sanctions regimes: the UK provides much of the intelligence for current sanctions listings. But the experience of the US and others shows that it takes hard work to keep sanctions lists harmonised.
- ★ The UK cannot expect a veto in EU discussions of foreign policy. But it should seek a treaty, like Canada's, to ensure that its voice is always heard; and it should maintain formal and informal channels of communication to the EU institutions and the member-states. Both the EU and the UK seem to think that foreign policy co-operation could form part of an agreement separate from any future trade agreement, and that the new arrangements could enter into force during the transition period.
- ★ The British government has judged that EU development spending matches UK priorities and is well-managed, so it should look for ways to contribute to EU-run aid programmes.

- ★ In the transition period, the EU has said that the UK might have special arrangements for consultation on CFSP on a case by case basis. The UK wants a guarantee of consultation before the EU takes foreign policy decisions, including on sanctions. The UK will need to decide whether to seek maximum autonomy from the EU or maximum influence on it; it cannot have both.
- ★ Whatever model the UK chooses, it will need to resource its foreign and development policy relationship with the EU properly, in Brussels and other EU capitals, including through ministerial involvement.

As Britain and the EU have wrangled over Britain's departure from the EU and its future relations with the Union, the main focus has been on trade and economic relations. That makes sense: the EU is by far the UK's largest trading partner; and after Brexit, the UK is likely to be the EU's second largest trading partner. But there has been far less discussion of the other areas in which EU member-states work together, and how the UK might be able to co-operate with them in future.

In the trade and economic area, the UK will be both an important market for some member-states and a competitor with them in third countries. In non-economic areas, however, there are likely to be many areas in which both sides will want to preserve as much as possible of the existing patterns of co-operation. If law enforcement co-operation breaks down, the only people to benefit will be criminals. If defence co-operation fails, the EU will lose access to the resources of Europe's strongest military power. If UK and EU foreign policies diverge, both will find they have less influence over events. The European Council's April 2017 negotiating guidelines for the withdrawal process implicitly reflect the assumption that co-operation will be easier on issues other than trade: in 28 paragraphs, there is only one short paragraph containing a brief reference to possible partnerships in "the fight against terrorism and international crime, as well as security, defence and foreign policy".¹

Despite their common interests, however, in practice the EU and UK will not find it easy to maintain the current level of integration and co-operation after Brexit. The EU is a rules-based institution; and the rules are designed with the interests of member-states in mind, not those of third countries. For the UK, the most important Brexit slogan was 'Take back control!'. Even if UK foreign policy objectives almost always correspond with those of the rest of the EU, and will still do so after Brexit, the UK will not want simply to accept policies decided by the EU-27. At the same time, in its negotiating guidelines the EU listed "autonomy as regards its decision-making" as a core principle: the UK will not get a veto over decisions relating to foreign policy, defence or security issues, any more than it will over internal market decisions.

With this in mind, the Centre for European Reform and the Konrad Adenauer Stiftung began work in 2017 on a series of workshops and publications to explore existing models of co-operation between the EU and like-minded non-members such as Canada, Norway and the United States in three areas: foreign and development policy; defence co-operation and defence industry; and law enforcement and counter-terrorism. The aim was to see what the advantages and disadvantages of each model were for each side, and what lessons the UK might learn from the experience of others.

This first policy brief looks at co-operation on foreign policy and on development policy. It starts by assessing the legal framework of the EU's Common Foreign and Security Policy and development co-operation policy. It examines what the British government has said about its future relations with the EU in these areas, in particular in one of a series of papers on options for its future partnership with the EU-27.² It analyses what the EU is saying, publicly and privately, about the sort of future foreign policy relationship it wants with the UK. It looks at the legal and political frameworks of relations between the EU and other partner countries, and what those countries think about the advantages and disadvantages of the different approaches that they have adopted. And it tries to draw some conclusions about realistic aims for the UK, including during any transition period.

If all goes according to plan, the EU and UK will finalise the withdrawal agreement by around October 2018; in parallel with this process they will agree on the framework for their future relationship. Once the UK formally leaves the EU on March 29th 2019, there will be a

1: 'European Council (Art 50) guidelines following the United Kingdom's notification under Article 50 TEU'; European Council press release 220/17, April 29th 2017.

2: 'Foreign policy, defence and development: A future partnership paper', Department for Exiting the European Union, September 12th 2017.

transition period of 21 months (unless the parties agree to extend it), during which the details of the long-term EU-UK relationship are supposed to be negotiated and ideally ratified. It should be possible for the foreign policy aspects of the future relationship to be pinned down

more quickly, however, in a separate EU-UK agreement. Both the EU and the UK have provided for a separate agreement on foreign policy in the draft transitional arrangements that each has proposed.³

Common Foreign and Security Policy: The treaty provisions

Title V of the Treaty on European Union (TEU) sets out the framework of the Common Foreign and Security Policy (CFSP). It lists principles to guide the EU's international action, including democracy, the rule of law, and respect for international law and the principles of the United Nations Charter. The UK should have no difficulty endorsing the EU's principles.

“The UK has been the leader among EU member-states in providing legally watertight sanctions listings.”

But after Brexit, the UK will no longer be a member of the EU bodies where these principles are turned into actions. There is no explicit provision in the treaty for a third country to have a voice, let alone a veto. And once member-states have agreed to do something, they are supposed to “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations” – hard for a non-member to sign up to.⁴

Unlike other areas of EU activity, which are supervised by the Committee of Permanent Representatives (COREPER), CFSP is the responsibility of a separate Political and Security Committee (PSC), made up of ambassador-level officials from the member-states, which “contribute[s] to the definition of policies by delivering opinions to the Council at the request of the Council or of the High

Representative of the Union for Foreign Affairs and Security Policy or on its own initiative”⁵. The PSC takes decisions by unanimity.

On the positive side (from a UK point of view), CFSP is a largely inter-governmental area of EU activity. A good deal of CFSP is declaratory rather than practical: the EU issues an enormous number of statements on conflicts, human rights issues and other international events, but relatively few of them lead to concrete EU actions. The Commission does not have the sole right of initiative; and, with very few exceptions, CFSP decisions do not involve the European Parliament and are not subject to challenge before the ECJ.

The European Parliament's main lever over CFSP is its right to amend the CFSP budget.⁶ But the CFSP budget as such (€328 million for 2018, or 0.2 per cent of the overall EU budget) is only a small part of spending on EU external activity. Some CFSP activity (in particular Common Security and Defence Policy military operations) is paid for by the states that take part in it, or according to a separate budgetary system tied to gross domestic product.

The ECJ's role in CFSP is important only in relation to sanctions: individuals or entities who think that they have been wrongly targeted by restrictive measures can appeal to the court. The UK has been the leader among EU member-states in providing sanctions listings and ensuring that they are legally watertight; the Commission and other member-states acknowledge that after Brexit it will be hard to fill this role.⁷

Development assistance: Legal framework

Development assistance does not form part of CFSP, and competence in the area of development co-operation and humanitarian assistance is shared between the EU and its member-states. But the EU and the states must co-ordinate their policies and consult each other on their aid programmes.⁸ The OECD's Development Assistance

Committee (DAC) reported that the EU institutions spent \$15.7 billion (€14.8 billion) on official development assistance (ODA) in 2016; the Commission calculated that in total the institutions and the member-states spent €75.5 billion.⁹

3: European Commission, Article 50 Task Force, ‘Position paper “Transitional arrangements in the withdrawal agreement”’, February 7th 2018; HM Government, ‘Draft text for discussion: Implementation period’, February 21st 2018.

4: Article 24.3 TEU.

5: Article 38 TEU.

6: Roland Blomeyer, Sebastian Paulo and Elsa Perreau, ‘The budgetary tools for financing the EU external policy’, study for the European Parliament's Directorate General for Internal Policies, January 18th 2017.

7: Alex Barker, ‘EU and UK seek speedy Brexit deal on defence and security’, *Financial Times*, February 4th 2018.

8: Articles 4.4 and 210, ‘Treaty on the functioning of the European Union’.

9: European Commission fact sheet, ‘Publication of figures on 2016 Official Development Assistance’, April 11th 2017.

Development spending by the institutions is divided between a number of programmes within the EU budget, and the European Development Fund (EDF), which is outside the EU budget. The EDF is made up of assessed national contributions from member-states, and disbursed just under €3 billion in ODA in 2016. The EDF is designed to support the Cotonou Agreement of 2000, between the EU member-states and 78 countries of the African, Caribbean and Pacific Group of States (known as the ACP countries). The agreement expires in 2020, and will have to be renegotiated.

The EU also operates a number of trust funds, made up of existing funding from the EU budget or the European

Development Fund, additional money from member-states and contributions from non-EU donors such as Norway. Non-EU donors may sit on the strategic boards and operational committees of the funds (which may be useful to the UK after Brexit). The Commission, however, has a veto on the decisions of the strategic boards. The EU also allows third countries to contribute to 'joint programming' of aid at the country level. The primary purpose of joint programming is to increase the coherence of member-state and EU assistance, but it makes sense for this co-ordination to extend to non-EU donors. So far, Switzerland is the most active development partner, taking part in joint programming in more than 20 countries.¹⁰

What does Britain want?

To judge from the British government's most detailed statement of its aspirations, 'Foreign policy, defence and development: A future partnership paper', a flippant answer might be: 'To keep everything as it is'. The UK will be "an indefatigable advocate" for the values it shares with the EU, which are "historic and deep-rooted in our societies"; and it supports a "strong, secure and successful EU with global reach and influence".

“British officials suggest that the UK aspires to have more of a voice than other partners have.”

The paper gives a number of examples of areas in which the UK wants to continue to work with its European partners: continued co-operation through NATO and CSDP missions and operations; tackling serious and organised crime; challenging state-based threats and upholding the rules-based international order through aligning sanctions regimes. In return, it offers "a deep and special partnership that will make available UK assets, capabilities and influence to the EU and European partners". In commenting on the paper, British officials suggest that the UK aspires to have more of a voice in EU decision-making than other partners have.

The paper is vague, however, about the institutional arrangements it wants. In the foreign policy area, the UK seeks "regular close consultations on foreign and security policy issues, with the option to agree joint positions on foreign policy issues. This could include co-operation on sanctions listings, including by sharing information and aligning policy where appropriate". It suggests that the UK might continue to contribute to EU election observation

missions and participate in the EU's 'Conflict Early Warning System' (though it is worth noting that the system has not been very effective so far, and that it evaluates the risk of conflict in all non-members, including countries like Norway and the United States – and presumably after Brexit, the UK). Finally, the UK wants to continue to work with the EU on counter-terrorism and countering violent extremism globally.

In evidence to the House of Commons Foreign Affairs Committee, the foreign secretary, Boris Johnson, admitted that the government had not decided what status the UK should ask for in relation to foreign policy co-ordination, and said that it might be in the room as an observer or "outside the room in some sort of Antici group" – though the Antici group prepares meetings of the Committee of Permanent Representatives (COREPER) and has little to do with CFSP.¹¹ The FCO's permanent under-secretary, Sir Simon McDonald, told the Foreign Affairs Committee that the government's objective was "to secure continuous, transparent and automatic access to CFSP and CSDP decision-making mechanisms", without proposing how.

In the development area, the UK's objectives are even vaguer, but it seems open to working with the EU and its member-states on a case-by-case basis to align development policy and programming. It wants to work with the EU on development aspects of early warning, conflict prevention and stabilisation. Institutionally, the future partnership paper suggests that collaboration could be "underlined and enhanced" by exchanges of development and humanitarian experts. But there is no reference to the UK's possible role in relation to the successor to the Cotonou Agreement – even though the current agreement offers significant aid and trade benefits to Commonwealth ACP states.

10: capacity4dev.eu, Joint Programming Tracker, accessed January 26th 2018.

11: House of Commons Foreign Affairs Committee, 'The future of British diplomacy in Europe', January 23rd 2018.

The British government's paper acknowledges that the UK will need an agreement on exchanging classified information; and will want to learn from the experience

and expertise of the EU (including through reciprocal personnel exchanges).

What will the EU offer?

The EU has said little about its post-Brexit foreign policy co-operation with the UK. The foreign ministers of the EU-27, however, issued a statement for the minutes after the General Affairs Council discussion of Brexit on January 29th 2018, reiterating the EU's readiness to establish partnerships with the UK in the areas of security, defence and foreign policy as well as the fight against terrorism and international crime, and proposing that "specific arrangements with the UK in these areas could also be considered during the transition period, taking into account the framework for the future relationship".¹²

“There is caution about offering the UK influence in EU decision-making that other partners might ask for.”

The Commission is in principle willing to accept that foreign policy should be subject to rules in the transition period that differ from those applied to the trade and economic areas. In the latter case, the EU will insist on the status quo, but with the UK having no vote in EU bodies, and only very limited access to meetings when issues affecting the UK directly are under discussion. The Commission and the member-states discussed the future foreign policy relationship on January 23rd 2018; in briefing notes published afterwards, the Commission suggested that after the transition period the UK would have no obligation to stay aligned with EU positions; during the transition period after March 2019, however, it

would be bound by CFSP decisions. The EU has proposed the possibility of consultation on a case-by-case basis in relation to sanctions and some other issues, but certainly falling short of a veto. In the transition period, the UK would still have to contribute to external relations budgets.¹³ The Commission also argued that the EU's interests lay in co-operating with the UK as a significant foreign, security and defence player; and in working with the UK to promote policies in other third countries and international organisations – though that presupposes that the EU and UK will continue to have similar policies and objectives.

There is caution, however, about offering the UK influence in EU decision-making that other partners might then also ask for. Letting Norway or Canada into the room in some circumstances might not be so difficult; Turkey or the US would raise much larger problems. In a speech devoted to future defence and security co-operation, the Commission's Brexit negotiator, Michel Barnier, said categorically in November 2017 that the UK would no longer take part in ministerial meetings, or have an ambassador in the PSC. But he also stressed the UK's assets as major power, and called for an "ambitious partnership in the interests of the Union" – while warning that the EU-UK relationship should not discriminate against other third countries.¹⁴ Overall, while the EU's position on the long-term relationship is still unclear, it seems to be willing to think creatively about giving the UK more of a voice than in other areas, in return for access to UK intelligence, diplomatic and defence assets.

Other third countries and their co-operation with the EU

The EU discusses foreign policy issues with a wide range of countries, some more like-minded than others. The degree of institutionalisation of relations also varies. This at least gives the UK a variety of models to look at and build on. The EU's relations with three non-EU NATO countries are particularly relevant to the UK, which will be in a similar position to them after March 2019; these are Canada, Norway and the United States – all of which have

close relations with the Union, but with very different legal and institutional underpinnings. It is also worth looking at the EU-Ukraine Association Agreement, which has been cited as a possible model for the UK's future trade relationship with the EU.¹⁵ The agreement includes legally binding provisions on political dialogue, including on foreign and security policy, though most of it is devoted to trade and economic issues.

12: General Secretariat of the Council, 'Council Decision supplementing the Council Decision of May 22nd 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the EU', document XT 21012/18 BXT 13, January 29th 2018.

13: European Commission, 'Internal EU-27 preparatory discussions on the framework for the future relationship: "Security, defence and foreign policy"', January 24th 2018.

14: European Commission, 'Speech by Michel Barnier at the Berlin Security Conference', November 29th 2017.

15: See, for example, Joe Owen, Alex Stojanovic and Jill Rutter, 'Trade after Brexit: Options for the UK's relationship with the EU', Institute for Government, December 2017.

Canada

Canada and the EU have co-operated on foreign policy issues for many years. Much goes on informally, in meetings on the margins of international conferences or at international organisations. But there is also more formal co-operation, starting from a 'Declaration on transatlantic relations' agreed by the (then) European Community and Canada in 1990. It set out a number of thematic areas for co-operation, including supporting democracy, the rule of law and human rights; promoting international security; strengthening the multilateral trading system; improving development assistance; combating terrorism, drugs-trafficking and weapons proliferation; protecting the environment; and dealing with large-scale migration.

“The JCC recommends priority areas for co-operation and keeps an eye on the development of EU-Canada relations.”

The declaration also set out the institutional arrangements to take forward this co-operation:

- ★ regular meetings in Canada and in Europe between the prime minister of Canada, the president of the European Council and the president of the Commission;
- ★ bi-annual meetings between the foreign minister of the member-state holding the rotating EC Presidency, with the Commission, and the Canadian foreign minister;
- ★ annual consultations between the Commission and the Canadian Government;
- ★ briefings by the Presidency to Canadian representatives following EC foreign ministers' meetings.

Over time, contacts developed further, until around 20 EU CFSP working groups on regional and thematic foreign policy issues met their Canadian counterparts once in each six-month rotating Presidency. These were often analytical rather than operational exchanges, but there were also less formal contacts on urgent issues, such as conflict resolution in the former Yugoslavia. The 'Canada-EU Partnership Agenda' of 2004 subsequently created an EU-Canada 'Co-ordination Group' to prepare and decisions taken at ministerial and summit meetings and ensure their implementation.

The culmination of the foreign policy partnership between the EU and Canada is the 'Strategic Partnership Agreement' (SPA), signed in 2016 and awaiting ratification by most EU member-states. This is a legally-binding

international treaty, unlike its predecessors. It goes well beyond foreign policy co-operation, covering trade and justice and home affairs co-operation, among other topics.

In the foreign policy area, it contains a mixture of agreed policy goals (such as promoting universal accession to the statute of the International Criminal Court) and consultation mechanisms on issues including human rights, non-proliferation and disarmament, and counter-terrorism (“with a view to promoting effective joint counter-terrorism operational efforts ... regular exchanges on terrorist listings, countering violent extremism strategies and approaches to emerging counter-terrorism issues”).

In addition, the SPA establishes two bodies with an over-arching responsibility for guiding the EU/Canada relationship. These are a Joint Co-operation Committee (JCC) and a Joint Ministerial Committee (JMC).

The JCC is co-chaired by one senior official from each party. It recommends priority areas for co-operation and keeps an eye on the development of the EU-Canada relationship and the implementation of the SPA. It can ask existing EU-Canada bodies to report to it on their work, and can establish sub-committees to deal with new issues. It recommends ways in which the parties can work together more efficiently and effectively. And it is the first stage in resolving any disputes “in areas of co-operation not governed by a specific agreement” – that is, areas other than trade and investment. The annual meetings of the JCC alternate between the EU and Canada, though special meetings of the JCC can be held at the request of either party.

The JCC reports to the JMC annually on the state of the relationship and can recommend new areas for future co-operation, as well as possible solutions to any disputes over implementation of the agreement. The JCC report is designed for publication. The JMC is co-chaired by the Canadian foreign minister and the EU High Representative for CFSP. Like the JCC, it meets at least annually (and can meet more often by mutual agreement). Any decisions it takes need the approval of both parties.

Though the SPA is still pending ratification, the JCC and JMC have held their first meetings, in June and December 2017 respectively. The JCC discussed a wide range of issues arising from working-level meetings, including on defence and security, human rights, the Middle East and North Africa and Sub-Saharan Africa.

The JMC also had a very broad agenda, including security and defence co-operation; co-operation in third countries

in Latin America, the Caribbean and Africa (including co-ordination of development aid); and current international crises including Ukraine, North Korea, Venezuela and Myanmar. One practical step to facilitate future co-operation (including Canadian participation in EU CSDP missions) was an agreement on the exchange of classified

information. The committee highlighted various areas in which the EU and Canada could do more together, such as countering hybrid warfare and cyber threats. The two agreed to exchange information on their post-conflict stabilisation and security sector reform activities in Iraq.

The United States

Like Canada, the US has an elaborate structure of regular meetings and forums for discussion with the EU, evolved over time, as well as frequent less formal contacts, including at the highest levels. The multilateral relationship is backed up by strong bilateral ties between the US and most EU member-states. Formal foreign policy co-operation started, as in the case of Canada, with a Transatlantic Declaration in November 1990. The themes are very similar: in the foreign policy arena, the parties aim to support democracy, the rule of law and respect for human rights and individual liberty, and to promote prosperity and social progress world-wide; to safeguard

“The US has an elaborate structure of regular meetings with the EU, evolved over time, and frequent less formal contacts.”

peace and promote international security, including by reinforcing the role of the UN; to help developing countries towards political and economic reforms; and to support the countries of Eastern and Central Europe in their transition.

The institutional arrangements envisage a higher tempo of meetings than those for the relationship with Canada:

- ★ Bi-annual consultations between the US president and the presidents of the European Commission and the European Council (a ‘Senior Level Group’ of EC and US officials became a sort of secretariat for these summits, responsible also for keeping an eye on the overall relationship).

- ★ Bi-annual consultations between EC foreign ministers and the US secretary of state.

- ★ Ad hoc consultations between the US secretary of state and the Presidency foreign minister or the Troika (at that time the Troika consisted of the past, present and future holders of the rotating presidency of the Council, plus the Commission).

- ★ Bi-annual consultations between the Commission and the US government at ministerial level.

- ★ Briefings given to the US by the Presidency after each EC ministerial meeting on foreign policy.

The declaration was superseded in 1995 by the ‘New Transatlantic Agenda’, which dealt both with foreign and development policy, and with trade and economic links. A detailed ‘Joint Action Plan’, with around 150 ‘actions’, accompanied the agenda. The top priority in the agenda and action plan, agreed a month after the Dayton peace conference ended the war in Bosnia-Herzegovina, was support for recovery in the former Yugoslavia. The documents also focused on support for the accession of the Central and Eastern European countries to the EU and NATO, and strengthening the OSCE’s role in conflict prevention. There were few explicit institutional innovations (the parties established a ‘High Level Consultative Group’ to co-ordinate development and humanitarian assistance activities). But other contacts developed, so that by 2005, when the Commission invited a group of independent experts to review EU-US relations, they found that (as with Canada) about 20 working groups took part in regular dialogues with the US, normally once in each six-month EU presidency.¹⁶ In addition, by the late 2000s there were regular video-conferences between the US State Department and the European External Action Service (EEAS) and Commission.

One problem with the EU-US relationship, however, identified by the 2005 review, was a lack of coherence. Some important issues in which both the EU and US had a stake were discussed outside any of the formal frameworks: Western co-ordination on Iran’s nuclear programme and the agreement that eventually constrained it took place between the US on one side and France, Germany, the UK and the External Action Service on the other. The Commission considered in 2005 whether to work with the US on a more binding partnership agreement covering all aspects of the transatlantic relationship, but in the end focused only on trade and economic issues, in what ultimately evolved into the negotiations on the Transatlantic Trade and Investment Partnership (TTIP).¹⁷ Separately, the EU and

16: John Peterson and others, ‘Review of the framework for relations between the European Union and the United States: An independent study’, European Commission, April 2005.

17: Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, ‘A stronger EU-US Partnership and a more open market for the 21st century’, May 18th 2005.

US negotiated a number of legally binding agreements on data protection, data privacy and access to financial information relevant to terrorism. The foreign policy relationship, however, was left as a more informal set

of close, regular but non-binding arrangements, as it remains now. The only exception is a short legally binding agreement on the security of classified information, which entered into force in 2007.

Norway

By contrast with Canada and the US, the EU's foreign policy relationship with Norway does not have a great deal of institutional underpinning. As the Norwegian government website says, "Norway has no formalised agreements with the EU on co-operation in the field of foreign policy. Nevertheless, we enjoy close and constructive co-operation". Norway relies for formal machinery largely on the provisions of the European Economic Area Agreement of 1994, to which it is a party (together with Iceland and Liechtenstein). In a declaration attached to the treaty, both sides agreed to strengthen political dialogue on foreign policy. There are informal exchanges of view at ministerial level at the annual meetings of the EEA Council, prepared as necessary by meetings at political directors' level. The EEA countries also meet collectively with a number of CFSP working groups. Given the disparity in foreign policy resources between the three EEA countries, Norway is inevitably the main interlocutor for the EU in these meetings.

“The EU's foreign policy relationship with Norway does not have a great deal of institutional underpinning.”

Norway supplements these multilateral meetings with active bilateral contacts with the EU in Brussels and at

international organisations such as the Organisation for Security and Co-operation in Europe. It has formal bilateral discussions with the EU high representative every six months, focusing on topical international issues, and a mixture of regular and ad hoc contacts with EEAS officials at senior and working levels on topics including the Middle East and the Western Balkans. Norwegian peace negotiators involved in trying to solve regional conflicts in the Middle East and elsewhere are periodically invited to the Political and Security Committee. Norway also second national experts to the EEAS, where they can contribute their regional or thematic expertise. They do not have full access to EU classified information, however. It is not clear whether this gives Norway any additional direct influence over policy; but the EEAS values the knowledge that the secondees bring. Though other countries including the US may have one or two seconded staff in the EEAS for a year at a time, Norway has two or three, on secondment for three to four years.

For Norway, one of the world's most generous development aid donors, co-ordination with the EU on assistance programmes is also important. There is a good deal of informal consultation in addition to formal joint programming. There is particularly close co-ordination over assistance to the Palestinian people: Norway chairs the Ad Hoc Liaison Committee of donors, with EU and US support.

Ukraine

Ukraine offers a final model for a foreign policy partnership. Its Association Agreement with the EU, signed in 2014, takes a comprehensive approach to the relationship with the Union. Though the vast majority of the treaty deals with the Deep and Comprehensive Free Trade Agreement (the most comprehensive FTA the EU currently has, and therefore a possible model for any future UK-EU agreement), the agreement also provides for a close relationship between the EU and Ukraine in foreign policy.

Even though Ukraine's aim in its overall relationship with the EU is to converge with the Union wherever possible, while the UK's is to diverge where desirable, some of the basic aims and institutional arrangements in the association agreement may still be applicable. The UK would probably agree that its future foreign and security policy co-operation with the EU should

promote international stability and security; strengthen co-operation on international security and crisis management; and foster practical co-operation for achieving peace, security and stability on the European continent.

Institutionally, the association agreement foresees regular summits; ministerial meetings (in the annual Association Council or separately); meetings of foreign ministry political directors; meetings with the EU Political and Security Committee; and expert level meetings on specific regions and issues. These include regional stability in the European neighbourhood; conflict prevention, crisis management and military-technological co-operation (extending to close contacts between Ukraine and the European Defence Agency); non-proliferation and export controls (including regular political dialogue on this issue – probably with a view to bringing Ukraine into line with

EU export control standards); and counter-terrorism. One aim of all this dialogue is “joint policy planning”. There should also be EU/Ukraine meetings in third countries and at the UN and other international organisations.

The EU’s aim in the association agreement is to bring Ukraine into closer alignment with it. Ukraine is willing

to accept the status of a junior partner in the hope that the EU will come to see it as worthy of having a prospect of eventual EU membership. It is too early to tell whether these arrangements will nonetheless allow Ukraine to influence EU decision-making, or result in more co-ordinated policy.

Assessment of the existing models and relationships

Despite the differences of detail between the various models, the consensus view of the EU and its partners seems to be that the formal dialogues are a necessary but not sufficient basis for practical co-operation. The EU position has to be agreed in advance by member-states, leaving little room for manoeuvre or negotiation. Third countries find it frustrating to be presented with *faits accomplis*. Summits seem particularly unpopular. There is constant pressure to come up with ‘deliverables’ for leaders to announce, though often there is no follow-up to the announcements. Meanwhile more substantial but less eye-catching international problems may be neglected, or relegated to declarations that are long on rhetoric but short on concrete action. The EU-Canada SPA may turn out to be a partial exception to these criticisms: perhaps because it is a legally binding agreement, Canada has found that the EU pays more attention to what it says on foreign policy since the SPA was signed. Even so, Canada has mixed feelings about the loss of flexibility inherent in having such an agreement.

“Third countries need networks in Brussels that stretch beyond the EEAS, even for foreign policy problems.”

On the other hand, the formal dialogues are valuable in several ways. First, they give the EU’s institutions a justification for talking to third countries without seeking permission from the member-states on each occasion. Second, the timetable of high-level meetings gives officials an incentive to find agreement by a deadline, rather than postponing difficult issues. And third, they create a network of officials in Brussels and the third country capitals that know each other and remain in contact between face-to-face meetings. That in turn gives third countries the opportunity to influence the thinking of member-states and the EEAS at an early stage in the decision-making process. The EEAS welcomes input from third countries that may have information that the EU itself does not, though it is careful to make sure that it keeps member-states informed about its contacts with third countries. Partner countries find it easier to talk bilaterally and informally to the EEAS than to a formal Troika forced to stick within the parameters of an agreed EU position.

Even without a seat in the room, countries like the US are able to work with influential EU member-states and the EU institutions to agree on goals, and then to co-ordinate the steps needed to pursue them. But there is no single recipe for achieving this convergence, and third countries have to adapt to the way that the EU chooses to achieve its objectives. One UK official describes the EU as “an ecosystem, not a machine”.

In the US case, sometimes the US State Department and the Commission have co-ordinated directly, for example on policy in the Western Balkans, ensuring that EU programmes to support eventual EU membership for the countries in the region and US assistance are mutually supportive. Successive US Secretaries of State have developed good relations with EU High Representatives. But High Representatives may not always be able to get other commissioners to fall into line even when the US and EU agree to do something: the EU still does not have an answer to Henry Kissinger’s question about who to call to speak to ‘Europe’.

Third countries need networks in Brussels that stretch beyond the EEAS, even for foreign policy problems. They need strong teams in their EU representations, able to talk to the Commission at an expert level; and sectoral ministries in capitals, which focus primarily on domestic policy issues, should be willing to engage also with the EU. Norway and the US can both contribute to the EU’s debates on energy security and reducing gas dependency on Russia; good bilateral relations between their energy ministers on one side, and Commissioners Maroš Šefčovič and Miguel Arias Cañete on the other, facilitate policy co-ordination. Strong EU delegations in third countries can also be a useful channel for the EU and its partners to share analysis and co-ordinate responses to problems.

In other cases, the main interlocutors may be among member-states: because the EU sub-contracted lead responsibility for resolving the conflict in Ukraine to France and Germany, the US and Canada dealt primarily with them rather than the EEAS. When it came to sanctions, France and Germany sometimes made use of the US to ‘whip’ reluctant member-states, to ensure that they did not block renewal of the EU’s restrictive measures against Russia. Third countries, including the US, also played an important role in ensuring that countries that depended on Iran for energy supplies did

not block EU sanctions as part of the process that led to the deal to restrain Iran's nuclear weapons programme.

A good deal of co-ordination between the EU and its partners takes place in other countries. Canada, with a large Ukrainian diaspora, has been heavily involved in supporting Ukraine since the overthrow of Yanukovich in 2014; the EU has been Ukraine's most generous financial donor. Norway, with its extensive aid programmes, also stresses the value of in-country donor co-ordination with the EU (and other donors). The EU's 'Consensus on Development' of 2017 foresees joint implementation of aid programmes with like-minded governments and

“The EU's willingness to keep doors open to the UK will be influenced by developments elsewhere in the relationship.”

international organisations on a case-by-case basis.¹⁸ But EU tenders for development contracts are generally not open to non-EU donors, with the exception of EEA countries. In general, the more a third country brings to

the table (whether in expertise or cash), the more chance it has of influencing EU policy – either to promote good ideas, or head off bad ones.

The increased use of sanctions as a tool of EU foreign policy has posed challenges to both formal and informal co-operation between the EU and its partners. Modern sanctions tend to be targeted at individuals or specific legal entities such as private companies or government agencies, rather than a whole national economy. Asset freezes or bans on doing business have to be supported by evidence that will stand up in court; and sensitive intelligence cannot be used in court. It is therefore difficult if not impossible for the EU and partners to adopt identical restrictions. It has taken an enormous effort to get EU and US sanctions against Russia aligned as closely as they now are – but there are still some names that appear on one list but not another. Norway has come closest to following EU sanctions against Russia and others *en masse*: it has used secondary legislation to transpose more than 90 per cent of EU restrictive measures into Norwegian law, though it has retained the freedom not to adopt those that it disagrees with on policy grounds, or those relating to peace processes in which Norway is a mediator.

What sort of foreign policy relationship should the UK try to get?

The UK may say that it wants a closer relationship in the foreign policy area than any of the EU's existing partners has. But despite the close identity of views on many issues, this may take more effort to achieve than the UK supposes, for a number of reasons.

First, the UK thinks of itself as being more special than any of the other like-minded countries, because it is a departing member-state and therefore intimately involved in EU policy formation and implementation at present. But the EU wants to minimise any perception of unjustified discrimination in favour of the UK and against other like-minded countries. The extent to which the UK continues to have values and policy goals in common with the EU, and is prepared to compromise its own policy autonomy in order to continue to enjoy some of the benefits of being part of an EU-led foreign policy consensus, is likely to determine how close the foreign policy partnership can be. The EU knows that there is a mutual interest in co-operation with the UK in foreign and security policy; but it will stand firmly on the principle of autonomy in decision-making. And the more the EU believes that the UK's position on foreign policy issues might diverge from its own, the more likely it is that the EU will try to keep the UK at arm's length from the decision-making process.

Second, the EU's willingness to keep doors open to the UK is likely to be influenced by developments elsewhere in the relationship, as well as pure foreign policy considerations. The more difficult EU-UK negotiations on future trade and economic relations are, the harder it is to imagine the EU creating a novel position for the UK in the foreign policy sphere (or, indeed, in other areas such as justice and home affairs). It is also hard to imagine in those circumstances that the UK would wish to be so closely tied to the EU in other areas.

At the same time, the British government must make a political judgement of how much fuss the most extreme supporters of Brexit would make about continued alignment between EU and UK foreign policy – a subject that got very little attention during the referendum campaign in 2016, and has been an afterthought throughout the negotiations so far. If the government decides that it can stand up to the anti-EU fundamentalists in this area, it should try to design a system to preserve as much common action as possible, in pursuit of shared objectives.

Based on the lessons of the EU's other partners, the system could have the following elements:

¹⁸: Joint statement by the Council and the Representatives of the governments of the member-states meeting within the Council, the European Parliament and the Commission, 'The new European consensus on development: Our world, our dignity, our future', June 30th 2017.

★ **A treaty or a political declaration.** Prime Minister Theresa May's preference seems to be for a treaty. In her speech in Florence in September 2017 she spoke of "a bold new strategic agreement that provides a comprehensive framework for future security, law enforcement and criminal justice co-operation: a treaty between the UK and the EU".¹⁹

Like Canada, the UK could use a treaty to ensure that the EU paid attention to its views, and held consultations with London according to whatever schedule was laid down in the treaty. A treaty could also create a legal base for British staff to be seconded to the EEAS or the Commission in foreign and development policy related jobs, and for staff to be seconded from the European institutions to UK departments. And it could guarantee consultations on sanctions, ensuring that the EU could draw on UK intelligence insights to impose well-targeted sanctions. At the same time, it could prevent the EU imposing measures with extra-territorial effects on the UK. In return, the British government could promise the EU that the City of London would continue to follow the EU's lead on sanctions. The UK might agree that where an EU position already existed or was subsequently adopted, it would not circumvent it; but in cases where there was no agreed EU position, the UK would reserve the right to act autonomously.

“The EEAS might hold meetings with senior British officials before each Foreign Affairs Council or European Council.”

A political declaration might be easier to negotiate than a treaty, so could be a fall-back. A treaty, even if limited to CFSP issues and excluding development and other shared competences, would require ratification by all member-states; if it went beyond CFSP (and there is an argument that sanctions policy affects the internal market), the European Parliament would also have to approve it (as it did with the EU-Canada SPA).

A political declaration would be less binding on both sides, giving the UK more freedom to diverge from EU positions, but at the expense of not being able to insist on a regular schedule of meetings and not having a binding commitment to try to reach common positions. Unless the British government has concrete areas in which it plans to pursue a significantly different foreign policy from the EU-27, a foreign policy based only on political declaration looks less attractive than having a treaty.

19: Theresa May, 'A new era of co-operation and partnership between the UK and the EU', speech in Florence, September 22nd 2017.

20: Heather Evennett, 'Brexit: Overseas development assistance', House of Lords Library Briefing, February 6th 2018.

★ **Formal machinery.** Regular, programmed meetings of foreign and development ministers, senior officials and geographical and thematic experts would provide a focus for decisions on co-operation. The EEAS might hold meetings with senior British officials before each Foreign Affairs Council or European Council, to enable the UK to comment on the main issues on the agenda. The aim would be for the UK to contribute information or policy ideas to the EU's decision-making process, and where possible to associate itself with the outcome of EU discussions. The UK would have to resist the temptation to measure success by the length of the list of deliverables, however.

★ **Informal machinery.** The EU goes into formal meetings with its positions already agreed; it is very difficult to move a consensus of 27 states. The UK will therefore need intensive consultations with member-states, the EEAS and the Commission (and with its fellow like-minded states) if it is to shape decisions before they are taken. Again, the aim should be for the UK to be able to associate itself with EU statements or other decisions, or take steps of its own in parallel with the EU, in the way that other like-minded countries already do. It might also be possible for EU heads of mission in third countries to include the UK in their meetings and their démarches to host governments on a case-by-case basis, especially in countries where the UK plays an important role (for instance in Commonwealth countries, or places where there is a large UK aid programme).

In the development sphere also, the UK is likely to face a choice between autonomy and influence. It could:

★ Continue to channel some assistance via the EU, and get involved in formal joint programming; and contribute to EU trust funds and take part in their management (but subject to the Commission's veto on projects);

★ or operate independently, co-ordinating with the EU ad hoc in some or all countries of operation.

In 2016, the UK's contribution to development instruments in the EU budget was about £1 billion, with an additional £473 million going to the EDF, so the sums at stake are significant.²⁰

In December 2016, when the Department for International Development last reviewed multilateral aid agencies to which the UK contributes, it judged that the EU's Development Co-operation Instrument and the European Development Fund had a "very good" match with UK priorities, and had "good" organisational strengths.²¹ A good deal of UK aid is already spent

21: The Department for International Development, 'Raising the standard: The Multilateral Development Review 2016', MDR one page assessment summary for the European Commission Development Co-operation Instrument and European Development Fund, www.gov.uk, December 1st 2016.

via multilateral agencies such as the World Bank and UNICEF; it would seem sensible, therefore, to continue to spend a significant part of it via EU-managed programmes, since DFID rated the EU near the top of the league table of agencies. The UK could also seek a formal consultation mechanism on development issues, to parallel that suggested above, to discuss foreign policy before meetings of EU ministers or the European Council.

The transition period

In some ways, the transition period may prove to be more of a problem in the CFSP area than the long-term relationship will be. After 2021, or earlier if there is an agreement between the UK and the EU on their future relationship, the UK should have at least formal foreign policy autonomy, even if it voluntarily limited it in some areas, as suggested above. But from March 2019 till the end of the transition period, the UK will continue to be bound by the EU *acquis*, which includes CFSP measures.

“It would be a mistake for the UK simply to announce that it would ignore CFSP decisions that it disagreed with.”

The UK clearly thinks it would be unreasonable for the EU to insist that the UK should be bound by CFSP decisions taken without its participation. The EU, on the other hand, regards the *acquis* as an indissoluble whole, to which the UK will remain bound until the transition period ends or until an agreement on CFSP and CSDP enters into force. But – unlike other parts of the *acquis* – a member-state’s refusal to accept a CFSP decision cannot be referred to the ECJ; there is no enforcement mechanism. Even so, it would be a mistake for the UK simply to announce that it would ignore CFSP decisions that it disagreed with. It needs to lobby member-states to support the idea of a ‘specific consultation mechanism’, and to flesh out how it might work. And indeed, the UK accepts that it will still have a general obligation not to do anything “likely to be prejudicial to the Union’s interests” in any international setting.²²

The two sides differ on whether the UK should have a guarantee that it will be consulted on certain issues during the transition period, or whether it should be a matter for the EU to decide case-by-case. Provided that it is clear that the UK is not seeking an implicit veto on EU decisions, the EU should accept that consultation, at least on sanctions decisions, should be routine.

Again, the more the UK chooses to go along with the consensus of the EU-27 once reached, the more likely it

22: European Commission, Article 50 Task Force, ‘Position paper “Transitional arrangements in the withdrawal agreement”’, February 7th 2018.

One complication in establishing future co-operation between the UK and the EU in the development area is that the Commission and the European Parliament would like to bring the European Development Fund inside the normal EU budget system as part of the renegotiation of the Cotonou Agreement, which would potentially make it harder for the UK to contribute financially to EU programmes.

is to get a hearing as policies are being formulated. In ascending order of autonomy:

★ The UK could have the right to object to a decision before it is taken; the EU could then decide not to approve the proposal, or to delay approval pending further discussions with the UK; but if it decided to proceed anyway, then the UK would have to implement the decision.

★ The UK might have the right not to implement a decision, but not to undercut it either (so it might not impose a formal arms embargo on a country embargoed by the EU; but it would not actively market arms there, or licence the sale of an item that the EU had previously refused to export).

★ The UK might have the right to consult the EU if it objected to a sanctions decision, with the right to ignore the decision if no compromise could be found. If many such cases arose, however, trust between the EU and the UK would be quickly eroded, affecting both transition arrangements and the prospects for long-term foreign policy co-operation: member-states would not want to see the UK taking business from EU firms prevented by sanctions from working with particular countries.

It would be easy for the UK to commit itself to respect existing sanctions regimes, adopted with UK participation in the decision, but much harder if a fresh international crisis led to new sanctions in the design of which the UK had not taken part. It is likely that a number of British politicians would object if Britain followed the Norwegian example, copying EU sanctions into UK law without having been consulted. The UK’s best option may be to try to negotiate a right to be listened to when new sanctions regimes are under consideration, but without any right to veto steps agreed by the 27. The assumption would be that once the decision was taken the UK would respect it. Such a system could be coupled with intense bilateral contacts with the EEAS and member-states to explain and seek protection for UK interests.

Conclusion

The UK has long seen itself as a country that ‘punches above its weight’ internationally. But it has often underestimated how much the extra power came from its EU membership, and the UK’s success in persuading other EU member-states to follow the UK lead in areas where few except Britain had any interests. At the same time, the EU has consistently failed to turn its economic power into foreign policy influence, and has relied on activist powers like the UK and France to increase the Union’s effectiveness as a foreign policy actor. Brexit has the potential to make things worse for both sides: the UK will be more autonomous but less influential; the EU will be more united but less active.

This is a bad time for Europe’s foreign policy strength to be reduced. It faces problems in its eastern and southern neighbourhoods. US president Donald Trump has challenged Europeans who assumed that in a crisis the US would support Europe unconditionally, with his criticism of both the EU and NATO and his unhealthy admiration for authoritarian leaders in Russia, Turkey and elsewhere. China is rising and flexing its foreign policy muscles.

Most foreign policy experts in the EU and the UK see the value in the closest possible foreign policy co-operation continuing after Brexit. But in the UK at least there is a risk that the ‘clean break’ faction of pro-Brexit politicians will so damage mutual trust in the negotiations on the future economic and trade relationship that it becomes hard to maintain good relations in other spheres. If the UK means what it says about support for a strong, secure and successful EU in the world, then it should move quickly to make a generous proposal, accepting limits on its freedom of action internationally in order to maximise its continued influence on EU decision-making. The UK stands to lose more in terms of its national security if the EU becomes a weaker and less active international player than it can gain by pursuing an independent foreign policy with different goals from those of the EU: UK national foreign policy priorities are already reflected in EU priorities.

Equally, while the EU has every right to assert its need for autonomy in decision-making, it should show some flexibility to allow the UK to continue to contribute to an effective European foreign policy. It should not offer the UK a veto, but it should allow it a voice. In particular,

it should look for a framework in which the UK and EU impose sanctions in co-ordination wherever possible. Given the size of the financial services sector in the UK, any financial measures imposed by the EU will be ineffective if they do not cover the City; but the UK is bound to push back against EU measures that have extra-territorial effect. Even when its closest ally, the US, has tried to impose such measures, the UK has rejected them, for example in relation to US sanctions on companies doing business with Cuba.

Finally, both sides should resource their future foreign policy co-operation properly. The EU delegation in London will inevitably have most of its staff dealing with trade and economic issues, and with the City of London; it will also need foreign, defence, development and security policy experts able to work with their British counterparts. The Foreign Office will need to rebuild political sections in British embassies in member-states that it has run down in the last decade, and both it and the Department for International Development must maintain a strong team in Brussels to work with the Commission and the EEAS. The government is already shifting resources from Asia and elsewhere to meet the new needs.

If the UK wants to maximise its influence on EU foreign policy decisions, it will also need more ministerial engagement. If ministers can no longer lobby their counterparts over coffee in the margins of meetings in Brussels, they will have to reconcile themselves to spending more time travelling to European capitals and hosting their European counterparts in London. Whatever the prime minister’s rhetoric of “Global Britain”, the UK’s first priority will have to be reconnecting all the loose wiring left in Europe after Brexit.

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