

Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy

Submission by the Senior European Experts Group

Background

The Senior European Experts group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the European Union (EU), a former Secretary-General of the European Commission and other former senior officials of the institutions of the EU. A list of members of the group with brief biographical details appears in the Annex.

SEE has no party political affiliation. As an independent group, it makes briefing papers on contemporary European and EU topics available to a number of organisations interested in European issues, drawing on the extensive knowledge and experience of its members.

Several members of the group have particular expertise on foreign policy issues having worked for or as the UK Representative to the EU, or in the EU institutions dealing with these issues.

General Points

Benefits of Membership

The Foreign Secretary has set out the Government's objectives for British foreign policy in the Foreign Office & Commonwealth Office's (FCO) business plan:

“My vision is of a distinctive British foreign policy promoting our enlightened national interest while standing up for freedom, fairness and responsibility. It should extend our global reach and influence and be agile and energetic in a networked world. We will use our diplomacy to secure our prosperity; build significantly strengthened bilateral and multilateral relations for Britain; and harness the appeal of our culture and heritage to promote our values, including human rights. We must make the most of the abundant opportunities of the 21st century”.

In order to meet these objectives, the FCO has been focused on three overarching priorities: “safeguarding Britain's national security, building Britain's prosperity and supporting British nationals around the world through modern and efficient consular services”. How does EU membership meet those goals?

We regard the foreign policy and external relations work of the EU as being of great benefit to UK and crucial to achieving the Government's foreign policy objectives. A country the size of the United Kingdom, which in population terms is ranked 22nd in the world today and in economic terms seventh, would not have the same degree of influence outside the EU as it does as a member.¹ “Influence” in these terms means our ability to

¹ Population ranking CIA World Factbook; UK's economic ranking, Centre for Economics & Business

protect our own people and economy from external threats, to maximise the economic and other opportunities available to us and our ability to persuade other countries (and organisations, such as the EU, UN or NATO) to adopt policies or do things that we think that they should do.

Whether a country has influence or not changes over time. At the beginning of the last century the UK was the world's most influential power; today it is the USA; by the end of this century it could be China. In order to maintain its influence a country must build alliances and networks; in former times they were primarily military alliances but now they are more often based on ties of an economic, political and cultural nature. Without strong relationships of this kind, a country with a population of 63 million people like the UK will face inevitably diminishing influence in the world.

The argument that the UK is the seventh largest economy in the world flatters to deceive; in terms of exports we are 11th in the world, in terms of GDP per capita we are 32nd and in terms of total investment as a percentage of GDP we are 139th globally.² And while we can lay claim to having the second largest stock of foreign direct investment in the UK, we also have the world's third largest external debt.³ Nor should we forget that the UK's economy is in long-term decline relative to the rest of the world as emerging economies grow at a far faster rate than we have been able to achieve and whose larger populations (in most cases) give them an advantage. The UK needs to stand tall in a world where there are 1.3 billion Chinese and over one billion Indians but we have a population of 63 million.

A key argument in the 1960s and 1970s for Britain for joining the (then) European Communities was the political and foreign policy benefits that would come from membership. As the then Foreign Secretary, Sir Alec Douglas-Home put it in 1971, "It was only for the briefest period in our island's story that we could afford to stand alone in the world and not to bother about other people's support; it is only as a part of a strong and determined Europe that Britain's own character, personality and individuality can thrive".⁴

Membership of the EU strengthens our ability to influence those whom we most need to influence; we would not, for example, be able on our own to negotiate free trade agreements with far larger countries as easily as the EU for example. The same is true in other areas of foreign policy and external relations that really matter to the UK – the proliferation of nuclear weapons or combating piracy in the Indian Ocean to take two obvious examples. The EU is the key vehicle through which the UK is able to maximise its influence in the world today. That's not to ignore our single most important bilateral relationship with another country - that with the United States - but that relationship would in truth be weakened if the UK were outside the EU.

Research. UK was overtaken as sixth largest economy by Brazil, March 2012.

² Figures, CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html>

³ Ibid; it is important to note that these kind of economic statistics do fluctuate over time.

⁴ In *Our European Destiny*, Conservative Group for Europe, 1971.

Britain still exerts its influence in the world through its membership of the UN Security Council, as of other important organisations, notably the G8, the G20 and NATO. The influence Britain exerts in these organisations is in no sense inhibited by its membership of the EU; it is enhanced by it whenever it can persuade the other Member States of the EU to share its views. And the UK can still on occasion act effectively on its own, for example in Sierra Leone, but such interventions are rare. Although the UK retains its permanent Security Council seat, we have not used the veto it gives us since 1989 and alone not for 40 years.⁵ The Commonwealth is an influential network of countries who share a common language and similar heritage but it is not a trading or political block in the way that the EU is and it is unlikely to evolve into one.

In reaching a common position at the EU level, it may be necessary for the UK to compromise but as the influence of individual European countries and of Europe generally declines in relative terms with the rise of other powers, so the UK's interest is to strengthen, lead and then exploit in pursuit of its own priorities the EU's ability to act together in the political aspects of international relations as well as in trade and economic matters.

In general, areas where EU Member States disagree with one another over foreign policy have markedly declined since we joined. This may reflect a greater sense of realism about the influence individual Member States can have on their own.

Competence: Law versus Reality

The background paper's Annex sets out the legal position with regards to the EU's competence in the Common Foreign & Security Policy (CFSP) and the Common Security & Defence Policy (CSDP) but perhaps fails to make clear the difference between competence as spelt out in the treaties and the political reality. EU competence is in practice very limited in these areas because no policy can be adopted without unanimous agreement amongst Member States and this is difficult to achieve in contentious areas, as we have seen in recent years with regard to Libya and to EU-Russia relations. The Council of Ministers makes CFSP and CSDP decisions, the European Parliament's role is limited and the Court of Justice has no role in foreign policy decisions.⁶ The role of the European Commission is also very limited in this area; it is the European External Action Service (EEAS) which is responsible to the Council for the CFSP and the CSDP.

Member States remain, as the Declaration attached to the Treaties clearly states, in charge of their own foreign policies and the larger Member States (including Britain) in particular continue to advance their own foreign policies in line with their assessment of their own interests.

The EU is at its most effective in foreign policy when the Member States identify a common interest in working together and can use the various instruments of the EU to

⁵ Cited at: http://news.bbc.co.uk/1/hi/world/middle_east/2828985.stm

⁶ It can, under Art. 275 of the Treaty on the Functioning of the European Union, hear cases concerning EU sanctions against individuals or companies.

promote a policy they jointly support. In that way the different competences of the EU can be mobilised to achieve a common purpose.

In the areas of external relations which come under the Treaty on the Functioning of the European Union (TFEU) (e.g. trade, energy, development and the environment), decision-making is by what used to be called the “Community method”, that is, proposals by the Commission, decisions by QMV in the Council of Ministers with the agreement in most cases of the European Parliament and with the jurisdiction of the European Court of Justice. A negotiating mandate for the Commission in international trade negotiations is, for example, proposed by the Commission and adopted by the Council by QMV before it can be used, or for that matter modified. The role of the EU in international trade has been notably beneficial to the UK, for example in the major multilateral trade rounds such as the Kennedy, Tokyo and Uruguay Rounds.

As academic studies have shown, even where QMV applies in the Council contested votes are relatively rare as there is an overwhelming desire in the Council to achieve consensus, and this factor is perhaps stronger in external relations than in other areas of policy (e.g. the internal market) because there is potentially more at stake for individual Member States.⁷

Questions

1. *In what areas of global affairs does the EU add value or deliver impact or not on behalf of the UK?*

CFSP/CSDP

CFSP was the subject of much criticism prior to the Lisbon Treaty. Its management by successive Member State presidencies rotating twice a year and, the institutional divide between the Commission responsible for external relations instruments like aid and trade and the Presidency responsible for managing CFSP, led to frictions and inefficiencies. The reforms in the Lisbon Treaty were designed to address these defects and are now in the process of implementation. They are still very much work in progress and the Council will be reviewing them as part of its consideration of the report on the first two years of the EEAS which the High Representative (HR) (Catherine Ashton) is mandated to produce. Their eventual success will depend on a combination of the effectiveness of the HR and EEAS on the one hand and, on the other, the willingness of Member States, perhaps most of all the UK, to exploit the potential for conducting foreign policy through the EU, while of course not excluding other fora where they are more appropriate, notably NATO or bilateral co-operation with like-minded states.

Common policies in CFSP are not possible where there is no agreement and when therefore each Member State acts for itself outside the EU. When this happens over major issues (Iraq, Libya), it is often seen as a failure of CFSP, even if CFSP was not designed to deal with issues with substantial US involvement, leadership or resources, notably military, making NATO the more appropriate forum for action.

⁷ For example, *Transparency Versus Accountability? The Case of the EU Council of Ministers*, Dr Stephanie Novak, Hertie School of Governance, Berlin, Utrecht 8 June 2012.

The CFSP has since its inception in the Maastricht Treaty nonetheless had successes as well as disappointments. After initial failure in the Balkans, where US leadership proved to be necessary, EU foreign policy has since been successful in many ways in that region. For example, by contributing its active support (with model co-operation between the then High Representative Javier Solana and Commissioner Chris Patten) for the Serbian opposition parties to the defeat of Milosevic; by effective conflict prevention to support the stabilisation of Macedonia; in various ways to support the normalisation of Bosnia (e.g. the EU Police Mission in 2003 and EUFOR's take over from NATO's SFOR in 2004), to the establishment of the rule of law in Kosovo and the prevention of a complete breakdown between Kosovo and Serbia over the status of Kosovo.

In Georgia, on which the French Presidency (indeed the French President), led the Western approach after the Russian invasion, in Aceh through an EU mission which did much to stabilize the island, and most notably through the High Representative leading the nuclear negotiations with Iran on behalf of the EU, the US, UK, France, Germany Russia and China, the EU has made (and is making) a distinctive and useful contribution. EU leadership, including EU-imposed sanctions, on Burma has contributed to the new situation in that country and EU sanctions, along with those of the US and others, are making an important contribution to resolving the Iran nuclear issue peacefully. The EU has made important contributions inter alia to dealing with a number of crises in Africa, ranging from the Congo, Sudan/Darfur, and Sahel to Somalia, off which the EU provides a naval task force against piracy.

The EU's actions do not always achieve all their objectives but those are the normal hazards of foreign policy from which even the US is hardly immune. They are all examples both of where the EU has been more effective than the UK alone could possibly have been, and where the UK has played a leading role in arriving at common EU positions.

As we explain in answer to these questions, the CFSP/CSDP can be highly effective in advancing the UK's interests at low cost; as such it has become an essential foreign policy tool for the United Kingdom and it is hard to see how the same goals could be achieved without it.

Trade

The EU's role in trade policy is pivotal because it negotiates on behalf of 27 Member States over access to the Single Market of 500 million people. Gaining preferential access to that market is a highly desirable for third countries, giving the EU weight in negotiating terms equal to that of the US. The UK simply does not have the same weight in such negotiations on its own.

The recent EU-South Korea trade agreement is a vivid demonstration of the potential benefits to the UK economy which can derive from an EU-led trade negotiation. Tariff-free exports to Korea will save EU exporters €1.6 billion annually; that will mean, for example, that the €176 million of whisky exports to Korea (mostly from the UK) will be

relieved of millions of euros in customs duties every year. UK trade exports to South Korea rose 65 per cent in the year after the trade agreement was signed.⁸

Development

The EU and its Member States provide over half of all development aid worldwide and the EU alone is the world's largest provider of humanitarian aid. Through the funds allocated under the EU budget, and the further resources made available by Member States through the European Development Fund, the EU is an essential partner in many developing countries. The EU has the ability to combine various development instruments with other EU foreign policy instruments (see below under Q.3) which increases its influence but the scale of its programmes has sometimes led to questions about their effectiveness and value for money. While the UK could deliver more of its aid bilaterally (a quarter is channeled through the EU at present), rather than through the EU (and UN agencies), the Department for International Development argues that,

“Over the past decade, the European Commission has gone through major changes and its aid programmes and policies have improved significantly, making the Commission a key player on the international development scene”.⁹

There are economies of scale through working together and the ability to achieve policy changes in recipient countries (i.e. improvements to governance, the rule of law, more open markets, measures to combat corruption) which makes EU development aid potentially more effective than smaller bilateral programmes.

In addition, emergency humanitarian aid can often be delivered more quickly by going through one agency because it is easier for the receiving country to deal with the EU's humanitarian agency (ECHO) than those of each Member State making donations.

2. What are the comparative advantages/disadvantages of working through the EU in the area you wish to comment on, rather than the UK working independently?

Human rights & the rule of law

In a world in which the UK has seen a relative decline in its power and influence, it is a major UK interest and foreign policy objective to bind especially the rising powers into the rules and human rights based approach in which the UK with the US led the way in the institutions set up after WWII. The EU publishes an annual report on human rights as a result of British initiative and the UK also argued that the EU should adopt its present policy of adding a human rights conditionality clause to its agreements with third countries.

Part of the value of the EU in foreign policy terms lies in its moral authority as a group of democracies jointly speaking out on human rights and the rule of law in the world. The continuous pressure of the EU for a rules-based approach to the settling of international disputes has been an important contributor to changing the culture of international relations since the end of the Cold War.

⁸ Cited in 'Trade gap hits record £28bn as exports dive,' *The Times*, 07.12.12, p.48.

⁹ <http://www.dfid.gov.uk/What-we-do/Who-we-work-with/The-European-Union/>

The UK can act on its own, but the weight of the EU has added immeasurably to the effectiveness of a UK working within, and often leading, EU initiatives and policies. Action by the EU is more likely to deter retaliation than action by one country alone.

The Helsinki Final Act (1975) in which the UK led the effort of the then European Community to bring human rights into pan-European arrangements played an important part in the end of the Cold War. More recently campaigns against the death penalty bear increasing fruit, sanctions against Burma have contributed to producing radical change there, now showing very promising results. In Zimbabwe, UK sanctions alone would have been unlikely to have changed the mind of its government but once the EU instituted travels bans, exports bans and other sanctions, policy changes did follow. Of course the UK sought the assistance of other countries and organisations, including the Commonwealth and the United States, in this instance but the EU's intervention was notably powerful and effective.

Neighbourhood Policy

The single biggest lever enabling the EU to influence its neighbourhood is the prospect of membership. The attraction of the EU for its neighbours, and the membership criteria that it has developed, have been a powerful driver of change, encouraging former authoritarian states to practise democracy, the rule of law and the market economy in their countries in order to be accepted by the EU. The conditionality of the EU's enlargement policy has enabled it to exercise 'soft power' in a remarkably successful way. Since Britain joined, 18 other countries have become members, and a further nine countries are actual or potential candidates. The allure of membership remains high despite the difficulties of the eurozone.

The UK, as a prime mover within the EU for its enlargement, has had far-reaching influence in securing stability, democracy and prosperity in Central and Eastern Europe since the end of the Cold War, and in the countries of the Western Balkans and Turkey. The UK on its own, outside the EU, could not have implemented policies that would have given us anything like the same level of influence in attaining these objectives in, for example, the former Warsaw Pact countries.

The EU's European Neighbourhood Policy applies to a further 16 countries in Eastern Europe (Azerbaijan, Armenia, Georgia, Moldova, Ukraine and Belarus) on the Mediterranean's Southern shore (Morocco, Algeria, Tunisia, Libya and Egypt) and on its Eastern shore (Jordan, Israel, Palestinian Authority, Lebanon and Syria). The object of the policy is to promote democracy, human rights, stability and prosperity in these countries, encouraging their economic links by the adoption of European standards and rules with the aid of EU financial support and conditionality. Important factors influencing neighbourhood policy in these countries include visa policy, energy policy and trade policy; in these fields the EU largely holds the cards as most of the neighbourhood countries want association agreements for liberalisation of their exports to the EU, and visa-free travel for their citizens in the Schengen countries. Although the neighbourhood policy has been less effective than the enlargement policy, its resources

and comprehensive set of instruments provide levers of influence that could not be matched by the UK acting alone.

Environment & Climate Change

Mentioned only as a global issue in the FCO background paper for this review, climate change is a significant area of EU activity which bridges foreign, energy and environment policies. It is an example of where an individual Member State could not expect to achieve much of significance in the international negotiations on measures to combat climate change but where the EU is a global leader. It is also a clear example of how the combined weight of the EU in global carbon emissions has made it an essential player in a way that none of its individual Member States could be.

3. How effective is the EU at combining its foreign, defence, economic and civil protection policy instruments to deliver best effect in foreign policy? What, if anything, should it do differently?

An important and not always understood aspect of the CFSP/CSDP is the ability to combine a series of different policy instruments towards one goal; these can be positive and/or negative. For example, the EU can use its trade instruments to reward or punish a third country for its actions. The EU, through CSDP, is able to bring together military and civilian capabilities, providing troops, police and missions to promote the rule of law and good governance generally in conflict-prevention and post conflict situations. NATO does not have this capability, which is one which the Americans for example value. A large proportion of the 20 ESDP/CSDP missions launched since ESDP became operational have been civilian or part civilian, starting with the first one, the EU Police Mission to Bosnia in 2003.

Support for civic reform, including justice and policing, can also be provided with the development programmes of the EU addressing other economic and social issues. The can move at greater speed and more effectively, particularly in its own neighbourhood or near neighbourhood (e.g. Africa) than some other organisations, such as the UN.

This approach enables the EU to combine elements of hard and soft power to achieve agreed policy objectives. And its influence stretches beyond its own borders as its actions often influence those of third countries. For example, the current ban on the import of Iranian oil has influenced the behaviour of non-EU countries.

4. How effective are the EU's delivery mechanisms? Would any changes make them more effective, and if so, which ones and why?

As we stated earlier, the Lisbon Treaty sought to simplify and make more effective the EU's foreign policy arrangements and the effects of these reforms have yet to be fully realised. But it is already clear that the EU is not always as effective as it might be in foreign policy matters. Resources are limited, there is an absence of intelligence sometimes but above all organisational barriers in the Commission and EEAS need to be broken down by giving greater authority to the HR/VP. The European Commission has no over-arching policy co-ordinating framework like that provided by the Cabinet Office

in the UK and this is badly needed to overcome, in particular, the autonomy with which Directorate-General Development operates. The HR/VP also badly needs one or more deputies at a political level as the burden placed on one person is excessive.

5. Would a different division of EU and Member State competence in a particular area produce more effective policies? If so, how and why?

The issue of the division of competences does not arise in the CFSP or CSDP fields: they are firmly and indisputably in the competence of Member States and agreement is only possible by consensus. Nor generally does it arise in fields of clearly TFEU competence. However, competence issues can and do arise over CFSP decisions relying on the use of economic instruments, mainly trade and aid, which are within Community competence.

The aim of obtaining a better combination of foreign policy objectives with TFEU instruments was what lay behind the reforms in the Lisbon Treaty, but difficulties have arisen partly as a result. Some in the Commission have fought back against what they have seen as the 'inter-governmentalisation' of Commission-managed instruments. The UK has objected strongly to the HR speaking for the EU, rather than the EU and its Member States, when addressing issues of mixed EU and Member State competence. And in mixed agreements, e.g. trade, there has often been difficulty over what is in EU and what in Member State competence and what form the agreement should therefore take.

The UK has been particularly concerned about and firm against what it but no other Member State chooses to call competence creep from Member States' to Community competence. This concern has extended to "representation creep", where the UK has been keen to prevent the Commission or EEAS representing Member States' (as opposed to EU) interests in international forums. This has sometimes been complicated in areas of "mixed competence". Such disputes can only be sorted out by argument; it will be important to approach the issues pragmatically, not least to ensure that, in arguing its points on representation, the UK does not sacrifice its primary policy objective in the international negotiation (where it will normally be fully supportive of the EU position). Fears of CFSP issues being decided by TFEU procedures, e.g. by QMV, are groundless: by definition UK agreement is necessary to CFSP decisions and, given its leadership role in CFSP, it often provides the leadership to arrive at them.

6. How might the national interest be served by action being taken in this field at a different level e.g. regional, national, UN, NATO, OECD, G20 – either in addition or as an alternative to action at EU level?

There is no other forum that provides an alternative to the EU in which the UK could exercise a similar, or greater, degree of influence. The UK needs to remain an active member of other supra-national and pan-national bodies but none of those yet created combine the benefit of the exceptional economic and political opportunities offered by EU membership. This is no doubt why countries not yet in the EU are still seeking to join despite the undoubted damage to the EU's image and status caused by the on-going crisis in the eurozone.

The UK could best advance its national interest further by making greater use of its EU membership to pursue its foreign policy goals, offering the clear leadership on issues of common concern that the EU often lacks.

11.02.13

Annex: Members of the Senior European Experts group

Sir Michael Arthur

Director-General Europe, FCO, 2001-3; British High Commissioner to India 2003-07; British Ambassador to Germany 2007-10.

Graham Avery

Director, European Commission, 1987–2006.

Sir Colin Budd

Chairman of the Joint Intelligence Committee 1996/97. British Ambassador the Netherlands, 2001-05.

Sir Michael Butler

British Permanent Representative to the European Communities, 1979-85.

Lord Butler of Brockwell

Secretary to the Cabinet and Head of the Home Civil Service, 1988-98.

John Cooke

Member of the UK Permanent Representation to the EC 1969-73 and 1976-77. Under-Secretary, International Trade Policy Division, DTI, 1992-96. Chairman, OECD Trade Committee 1996-97

Sir Brian Crowe

Director-General (External & Politico-Military Affairs) Council of the European Union, 1994-2002. Previously Deputy Under-Secretary for Economic Affairs, FCO.

Sir David Elliott

UK Deputy Permanent Representative to the EU 1982-91. Director-General (Internal Market), Council of the European Union, 1991-95.

Sir Michael Franklin

Deputy Director-General (Agriculture) European Commission 1973-77; Permanent Secretary, Ministry of Agriculture, Fisheries & Food, 1983-87.

Lord Hannay

UK Permanent Representative to the European Communities 1985-90 and to the United Nations, 1990-95.

Lord Jay of Ewelme

Permanent Under-Secretary of State, Foreign & Commonwealth Office, 2002-06.

Lord Kerr of Kinlochard

UK Permanent Representative to EU 1990-1995; Permanent Under-Secretary of State, Foreign & Commonwealth Office, 1997-2002.

Andy Lebrecht

UK Deputy Permanent Representative to the EU, 2008 – 2012.

Sir Emyr Jones Parry

UK Permanent Representative to NATO, 2001-03 and to the UN, New York 2003-07. Political Director and previously EU Under-Secretary at FCO. Now President of Aberystwyth University.

Sir Nigel Sheinwald

UK Permanent Representative to EU 2000-03. Prime Minister's Foreign Policy & Defence Adviser, 2003-07. British Ambassador to the United States, 2007-12.

Sir Stephen Wall

UK Permanent Representative to EU 1995-2000. Head, European Secretariat, Cabinet Office, 2000-04.

Michael Welsh

Member of the European Parliament for Central Lancashire, 1979-94.

Lord Williamson of Horton

Deputy Director-General (Agriculture) European Commission 1977-83. Cabinet Office 1983-87. Secretary-General, European Commission, 1987-97.

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