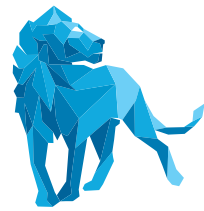


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**THE UK AND THE EU
SECURITY, JUSTICE AND
DEFENCE AFTER BREXIT**

JOHN BARON & ALEX CHALK

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John Baron

John Baron* is the Member of Parliament for Basildon and Billericay and has been in the House of Commons since 2001. He was a member of the Foreign Affairs Select Committee from 2010-17. He writes and speaks on foreign and defence policy having opposed UK interventions since 2003, including in Syria, for which he was the BBC's 'Parliamentarian of the Year'. Before entering parliament he served in the Royal Regiment of Fusiliers, and was posted in Northern Ireland, Cyprus and Berlin.



Alex Chalk

Alex Chalk is the Member of Parliament for Cheltenham and a former member of the House of Commons Justice Select Committee. He is a barrister by background, specialising in counter-terrorism, homicide and serious fraud cases.

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*The author is most grateful to Benjamin Yates for his help with this text.



Part I

DEFENCE AND FOREIGN POLICY AFTER BREXIT

by John Baron

1.1

INTRODUCTION A NEW CENTURY, A NEW DIRECTION ?

In the first decades of the 21st Century, and partly as a result of a loss of insight and capability, the West has indulged in misguided 'wars of choice'. These have reduced the UK materially, psychologically and morally, and led to a host of undesirable outcomes. These expensive interventions have not only abandoned the traditional pragmatism which has characterised the UK's foreign and defence policy, they have also served to distract from greater dangers including the rise of potentially hostile nation states. It has, as a result, become increasingly clear that defence and foreign policy need to be rethought and that better informed analysis is needed.

Since the collapse of the Soviet Union and the victory at the end of the Cold War, the West has been too eager to rest on its laurels on the international stage, using the so-called 'peace dividend' to boost funding on other priorities. UK governments no longer saw the value of maintaining well-resourced military, diplomatic and analytical capabilities on the same scale as before. The FCO budget – presently standing at just 0.18 per cent of total Government spending¹ – has been steadily reduced, its famed analysts thinned out and increasingly side-lined, whilst the armed forces continue to be run down to a fraction of their size of even a few decades ago. Spending on diplomacy and defence are at near historic lows, as a proportion of GDP and in terms of the Government's overall spending cake.

The focus on our interventions has somewhat blinded those involved to greater dangers. No-one can deny that President Putin caught the West napping when he annexed the Crimea and sent

his forces into eastern Ukraine, whilst the Chinese Government has been steadily building up a sizeable military presence in the South China Sea. Western distractions in the Middle East, South Asia and North Africa, and our consequent loss of confidence in legitimately using the military instrument, have not gone unnoticed.

Furthermore, on a larger scale, and whilst accepting each generation faces its own challenges, the international community today faces a number of serious geopolitical and socio-economic uncertainties for which the required diplomatic foresight and flexibility is in short supply. It appears the US is unwilling to continue in its role as global arbitrator, the eurozone is still on the brink until it at least resolves how to compensate the losers within the currency union, events in Saudi Arabia suggest a period of turbulence in the Middle East, whilst China and Russia are both rearming and becoming more assertive.

Socio-economic issues are no less challenging. We are just at the beginning of a migration crisis courtesy of Africa's booming population whilst other concerns include growing levels of inequality, problems posed by corruption and organised crime, the potential for the global spread of disease, and the challenges posed by countries' foreign policies being increasingly driven by resource scarcity.

There is still time to address many of these issues, but all nations will have to be prepared to rise to them – and sooner, rather than later. In Britain's case this will require both 'soft' and 'hard' power, and plenty of both.

¹ According to the House of Commons Library, current annual spending on the FCO is £1.4 billion, accounting for 0.18% of total government spending plans in 2017-2018. By contrast, annual defence spending is £41.4 billion; healthcare spending is £150.8 billion; and work and pensions spending is £181 billion.

In particular, the unexpected vote to leave the European Union will open the way for change in Britain's foreign policy and leave a lasting impression on Britain. In terms of the UK's relationship with the EU, the received wisdom of the last four decades has been overthrown, with friends, competitors and even we ourselves unsure as to what its future relationship with the EU will look like. Likewise, the equally unexpected election of Donald Trump indicates a fundamental shift in our closest ally's economic and security policy, with important implications for our place in the world. Yet these are opportunities as much as challenges, and this country must be ready and able to seize these chances.

Despite the many challenges, there have been disproportionate cuts to the defence budgets. Real-terms reductions in recent years have brought UK defence spending to hover just above the symbolic 2% minimum NATO threshold, which in itself is largely meaningless if it is divorced from strategic requirements.

These shortcomings need to be addressed and the defence and Foreign and Commonwealth Office (FCO) budgets increased. The marginal extra burden on the public finances would be dwarfed by the future savings arising from a successful foreign policy which avoids costly and unnecessary interventions. In a system where the decision-making process is relatively narrow when compared to other countries, it is important that those inside are firing on all cylinders.

Of course, such a change in approach would still have its limitations. However a more confident, better equipped and respected FCO would be better equipped to anticipate and advise the prime minister and government of the day, and if necessary counter ill thought-out proposals which run counter to national interest, providing a more effective counterweight to the prevailing view for the common

good – robust analysis should always be welcomed. It would also lead more generally to more informed and better judged decisions.

It might for instance, have highlighted the deficiencies of the plans, and could have done much to prevent, the interventions in Iraq, Helmand and Libya. Only concerted efforts from parliamentarians – no longer prepared after these interventions blindly to accept the government's case – prevented the government from making yet another grave error in Syria by, in effect, siding with the rebels, not realising therein lay the greater danger to the West.

Informed decisions usually make for better outcomes. In trying to ensure conflict should be a last resort, foreign policy needs to be well-informed and resourced to best explore the alternatives. There must be a major step-change in the approach to foreign and defence policy, its funding and its framing, if the errors of the past two decades are to be avoided and if we are to ensure we are best ready to meet the unexpected. Being well-informed is a prerequisite to being prepared, and this should include being prepared to effect significant change to the staffing and promotion requirements of the FCO.

This paper considers developments in foreign and defence policy since 2001 (when I entered parliament). It considers (II) the change in foreign policy in recent decades as UK governments moved to a novel policy of 'liberal', interventionism, with its dire consequences in Afghanistan, Iraq, Libya and Syria; with the consequences we know today; the failure to equip the foreign office adequately for its task (III), a failure exacerbated by the self-inflicted wounds of the FCO internally; the underlying strengths of Britain (IV-V) and the challenges of the coming decades (VI). The analysis concludes (VII-VIII) with a series of proposals to meet the changes in approach and direction for the UK's future success.

NATO Membership (Timeline)

1949 Belgium
Canada
Denmark
France
Iceland
Italy
Luxembourg
Netherlands
Norway
Portugal
United Kingdom
United States

1952 Greece
Turkey

1955 West Germany

1982 Spain

1999 Czech Republic
Hungary
Poland

2004 Bulgaria
Estonia
Latvia
Lithuania
Romania
Slovakia
Slovenia

2009 Albania
Croatia

2017 Montenegro

1.2

MISGUIDED INTERVENTIONS: A WRONG TURN FOR FOREIGN POLICY

Although there were failures during the 1990s (in Rwanda, Somalia and Srebrenica), military interventions then tended to have positive outcomes. After a long period in the Cold War 'deep freeze', the UN Security Council could function much more as the framers of the UN Charter had originally envisaged. Freed from the certainty of the superpowers' veto, international action through the UN became more possible, as Saddam Hussein found to his cost in the First Gulf War.

The broadly successful British military interventions in Kosovo and Sierra Leone strengthened the case for 'liberal interventionism', using military power not just for national security and waging war, but also to serve humanitarian purposes.² The latter in particular showed how a small force, when properly used and deployed, could have a powerful and positive effect, whilst avoiding an indefinite commitment.

Afghanistan

First, the US-led invasion of Afghanistan was the immediate consequence of the attacks on New York and Washington, with the understandable and laudable aim of removing international terrorists from the country. In this, the initial 'light footprint' deployment was successful – those in al-Qaeda who stood and fought were destroyed within the first few months by an effective marriage of friendly Afghans and 21st Century western special forces and military technology. The remainder slipped over the border into Pakistan.

These successes, early in the premiership of Tony Blair, set the scene for subsequent interventions. The attacks of 11th September 2001 on the World Trade Centre in New York and the Pentagon in Washington, meant that foreign policy decisions came to be seen through the prism of the 'War on Terror'. Interventions in Afghanistan, Iraq, and Libya followed, with Syria on the horizon until Parliament intervened. In the course of these interventions, some NATO and non-NATO allies joined some interventions according to national policy, commitments and approach, in Iraq, the initial attack was led by the US but subsequently extended to include a range of others. But this analysis is concerned with the UK.

The 'War on Terror' was far more ambitious in scale and scope than anything in recent memory, often with a focus on 'nation-building', and entered into in haste. We are still living through the ramifications of these decisions, some now taken nearly 20 years ago.

Evidence submitted to the Foreign Affairs Select Committee in 2011 suggested that al-Qaeda had largely been eradicated from Afghanistan, that there was a slim chance it would return, and that the local Afghans were themselves resentful of al-Qaeda members, whom they saw as foreigners who had abused their traditions of hospitality. The evidence also suggested that Pakistan presented the greater threat to UK and international security, and that in fighting Afghans in Afghanistan, NATO forces were fighting the wrong enemy in the wrong country.³

² For a fuller definition of 'liberal interventionism', see Stewart, R. and Knaus, G. *Can Intervention Work?* (New York, 2011) pp 99-102.

³ *Fourth Report of Session 2010-11, The UK's Foreign Policy approach to Afghanistan and Pakistan* (HC 514), (London, 2011) paras 181-

International involvement - recent interventions

Afghanistan: the countries involved in the initial phase (2001) were (of Nato members) United States, United Kingdom, Canada and Germany and (of non-Nato members) Australia.

During the Nato-led ISAF (International Security Assistance Force) phase (2001-14), the countries involved were (of Nato members) Italy, Turkey, Bulgaria, Poland, Romania, Spain, Czech Republic, Denmark, France, Croatia, Hungary, Norway, Lithuania, Belgium, Portugal, Slovakia, Netherlands, Montenegro, Latvia, Albania, Greece, Iceland, Estonia, Slovenia, (of non-Nato members) Georgia, Jordan, Macedonia, Armenia, Azerbaijan, Finland, Mongolia, United Arab Emirates, Sweden, Ukraine, Bosnia and Herzegovina, Ireland, Malaysia, Austria, Bahrain, El Salvador, Luxembourg, New Zealand, South Korea, Tonga, Pakistan, Singapore and Switzerland.

The RS (Resolute Support) phase (2015-) involved: (of Nato members) United States, Italy, Germany, Turkey, Romania, United Kingdom, Czech Republic, Poland, Netherlands, Denmark, Croatia, Bulgaria, Hungary, Albania, Belgium, Norway, Slovakia, Latvia, Lithuania, Montenegro, Portugal, Spain, Slovenia, Estonia, Iceland, Luxembourg and Greece; (of non-Nato members) Georgia, Australia, Armenia, Mongolia, Azerbaijan, Bosnia-Herzegovina, Macedonia, Finland, Sweden, Austria, New Zealand and Ukraine.

Iraq: the countries involved in the 'invasion phase' (2003) were (of Nato members) United States, United Kingdom, Poland, Canada and Netherlands and (of non-Nato members) Australia.

During the 'post-invasion phase' (2003-11), the countries involved were United States, United Kingdom and the MNF-I (Multi-National Force - Iraq). The countries composing the MNF-I were (of Nato members) Romania, Estonia, Bulgaria, Denmark, Czech Republic, Croatia, Latvia, Poland, Slovakia, Lithuania, Italy, Norway, Hungary, Netherlands, Portugal, Spain, Iceland; (of non-Nato members) Australia, Azerbaijan, Kuwait, El Salvador, Moldova, Albania, Ukraine, South Korea, Singapore, Bosnia and Herzegovina, Macedonia, Kazakhstan, Mongolia, Georgia, Nicaragua, Dominican Republic, Honduras, Philippines, Thailand, New Zealand, Armenia, Japan and Tonga.

Libya: The Nato members involved in the 2011 military intervention were Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, Netherlands, Norway, Romania, Spain, United Kingdom and United States. (Of non-Nato members) Jordan, Qatar, United Arab Emirates and Sweden also intervened.

Syria: support was lent to opposition forces by (of Nato members) United States, United Kingdom, France, Turkey and (of non-Nato members) Qatar, Jordan and Saudi Arabia.

This highlighted a significant problem for the British Government, since the stated reason for the UK's Afghan deployment, in which a large number of troops were being killed or injured, was 'national security'. However, rather than wind up the mission once its initial goal had been completed, the Government, together with NATO and other allies, (see Appendix) greatly expanded the scope of the mission to include wholesale reform of Afghanistan and Afghan society, in pursuit of such goals as human rights, western-style democracy and the rule of law.

The mission drifted into one of nation-building, and in confusing the mission, it also became confused as to who was the enemy. The Taliban, though brutal in their dealings, had not been enemies of the West - it was al-Qaeda, not the Taliban, who had attacked on 11th September. Trying to secure control of the whole country was impossible given the scant resources allocated to the NATO-led campaign. In Helmand, a province twice the size of Northern Ireland and Wales combined, UK forces never numbered more than about half the deployment to Northern Ireland during the height of the Troubles.

The international troop deployment, (see Appendix) never sufficient to hold the entire country, nor seal its porous borders. Indeed, the West never achieved the essential prerequisites for a successful counter-insurgency campaign, such as were forged in Malaya in the 1950s when defeating the Communists, a point I mentioned in parliament at the time. As such, the latter mission in Afghanistan was doomed to failure.

Meanwhile, the international community, led by the United States, also undermined any diplomatic negotiations with unrealistic and impossible preconditions. Sticking rigidly to the line that no talks were possible until the Taliban laid down their arms, until it acknowledged defeat and accepted that the post-2001 Afghan constitution meant that no substantive progress was possible.⁴ In any case, the waning international will to fight in Afghanistan meant

184 [https://goo.gl/vrXBKs]. See also Cowper-Coles, C. *Cables from Kabul* (London, 2011) p. 58.

4 'We forget now how few people understood back in 2007 that the only sensible solution was some sort of negotiated settlement that would...involve talking to the Taliban. Although a senior FCO official had told me, *sotto voce*, that in the end the only solution would be talks of some kind, this notion was still toxic to the Bush Administration, and to the military on both sides of the Atlantic.', Cowper-Coles, C. *Cables from Kabul* (London, 2011), pp 115-116.

that the Taliban knew they could afford to sit it out - 'the West may have the clocks, but we have the time'.⁵

All in all, whilst the initial mission to eliminate international terrorists from Afghanistan can be judged a success, the same can not be said of the 'second' mission of nation-building, despite the loss of life, injuries and the immense sums spent by Western

Iraq

The experience of the Second Gulf War (2003-2011) offers similar examples of the over-confidence of those in our defence, foreign affairs and international aid ministries. Once again, the challenges of securing an entire country with only a small number of western troops - and practically no local forces (a terrible forced error, following the deliberate disbandment of the Iraqi security forces) - proved insurmountable. The British force was never really in full control of Basrah, and in the end was ignominiously chased out of the city by a combination of terrorists and Iranian-backed militias. The intervention ushered in a predictable period of extreme instability and civil war,⁹ the aftermath of which we are still coming to terms with.

Whilst the Afghan deployment originated from the understandable and justifiable desire to rid the country of international terrorists, the case for intervening in Iraq was built on sand - we went to war on a false premise. By the time of the US and British invasion, Saddam Hussein did not possess weapons of mass destruction and there were no strong links between his régime and al-Qaeda.¹⁰ These are areas the Iraq Inquiry went over in great detail, and to great effect.

This Iraq Inquiry concluded that the Blair Government greatly inflated the threat posed by the Iraqi leader, skating over the caveats to the intelligence which nuanced

nations - adjusted for inflation, the US alone has spent more on Afghanistan's reconstruction than on the post-WWII Marshall Plan.⁶ In Helmand, where the bulk of the British operations took place post 2006, the Taliban are now in effective control of over 80% of the province.⁷ In March 2017, they overran the town of Sangin, where over 100 of the 456 British war dead from the Afghan conflict were killed.⁸

and interpreted the information. In this there must also be criticism of the intelligence services, who did not seem prepared - or willing - to act internally to advise Blair and his ministers as they made public statements to justify the forthcoming invasion. My inquiries as an MP before the Iraq Inquiry were drawn upon by Sir John Chilcot in the course of his deliberations, came to similar conclusions, especially about the powerful role of 'spin doctors' - as opposed to intelligence professionals - to compile the documentation, including the so-called 'Dodgy Dossier',¹¹ which supposedly buttressed the Government's case for war.

It should be noted that the Iraq Inquiry also judged that peaceful options had remained in the diplomatic armoury at the time of the invasion, and that 'military action at that time was not at any rate a last resort',¹² further noting that,

...when [Security Council] resolution 1441 was adopted, there was unanimous support for a rigorous inspections and monitoring régime backed by the threat of military force as the means to disarm Iraq, there was no such consensus in the Security Council in March 2003. If the matter had been left to the Security Council to decide, military action might have been postponed and, possibly, avoided.¹³

5 Coughlin, C. *Afghanistan: the clock is ticking for Obama as the Taliban bides its time*, *Daily Telegraph*, 4th December 2009 [https://goo.gl/IK8Oet].

6 *Special Inspector-General for Afghanistan Reconstruction*, 30 July 2014 [https://goo.gl/ZpzQwE].

7 Rowlett, J. 'What will Trump do about Afghanistan?' *BBC News*, 25 January 2017 [https://goo.gl/2dgbt4].

8 Azami, D. 'Why Sangin's fall to the Taliban matters', *BBC News*, 23rd March 2017, [https://goo.gl/e6lyCT].

9 See *The Report of The Iraq Inquiry, Executive Summary*, July 2016 para 626, p. 83.

10 'The Joint Intelligence Committee continued to judge that cooperation between Iraq and Al Qaida was "unlikely", and that there was no "credible evidence of Iraqi transfers of WMD-related technology and expertise to terrorist groups".' *Ibid*, para 504, p. 70.

11 *Iraq - its infrastructure of concealment, deception and intimidation*, February 2003 [https://goo.gl/nh0mit].

12 *The Iraq Inquiry, Executive Summary*, p. 6.

13 *Ibid*, para 438, p. 63.

The decision to abandon the UN route, coupled with the failure to find any weapons of mass destruction, caused reputational damage to the UK and United States, which was to be further tainted by the abuses at Abu Ghraib.

The Inquiry panel further highlighted the slapdash way in which the Cabinet was treated, and the 'perfunctory' process used to decide the legality of the war – for which it seems no minutes were taken,¹⁴ along with an early undertaking in the build-up to war by Tony Blair to President

Libya

The decision to intervene in Libya in 2011 suggested that the lessons of Iraq and Afghanistan had not been heeded. Whilst there were improvements in the machinery of decision-making – through the establishment of the National Security Council – there was again a fundamental hole in the evidence used to justify the intervention.

No-one doubted that Colonel Qadhafi was a distasteful dictator, but the British and French governments had little intelligence of what was happening on the ground. Accordingly, they seemed to take at face value his threats to murder scores of civilians in Benghazi, discounting the fact that his previous pattern of behaviour suggested that he would not commit such atrocities,¹⁶ that he had appeared to confine his threats to the 'bearded ones', and that his difficulty in taking the much-smaller town of Misrata in the West suggested rhetoric outweighed capability.

Although the Government claimed that the intervention aimed to prevent a massacre in Benghazi, what followed was a programme of régime change. Despite the initial British plans factoring in a pause

Bush suggesting that the UK '...will be with you, whatever'.¹⁵ These comments reflected the prime minister's view, but had not been agreed by Cabinet. We will likely never know precisely why Mr Blair took this view, given the uncertain and incomplete intelligence. Perhaps he took a strategic decision to support the special relationship – perhaps forgetting Harold Wilson had refused US requests to send troops to Vietnam which did no lasting harm to the UK-US relationship.

after the danger of a massacre had been averted,¹⁷ NATO air support provided top cover for Libyan rebels marching on Tripoli, ending in the toppling of the régime and Qadhafi's ignominious end outside Sirte.

Why the British plans to pause the intervention at that early stage were either ignored or overruled is unclear, but it led to a significantly-different outcome. Just as in Iraq and Afghanistan after the removal of their authorities, Libya found itself in a deepening state of anarchy as the rebels fragmented into fractious militias, with this instability spilling over its borders into neighbouring countries and permitting the rise of hazardous seaborne migration northwards into Europe.

Meanwhile, ineffectual elections were held at an early stage, at the international community's behest, but without any significant efforts to develop a political culture.¹⁸ Again, our knowledge of events on the ground was found wanting – one example of our naivety being our misplaced faith in so-called 'independent' politicians. Since the 2011 revolution, Libya has seen competing governments based in the east and west, with warlords, powerful militias and

Daesh also vying for control in different areas. The British Government, and other governments which participated in the 2011 intervention (see Appendix), did not follow through – as they should have factored into their original plans, if they were going to

Syria

Like most Western governments, the UK was initially unsure about how it should react to the so-called 'Arab Spring'. Caught between supporting the incumbent strong leaders, some of whom had been dependable allies for decades, and disparate groups of pro-democracy activists, the West opted for the latter. This was despite the previous examples of both Iraq and Afghanistan that the overnight removal of effective governments was a sure recipe for anarchy, insecurity and chaos – in fact, creating the vacuum and the set of circumstances that terrorists most desired.

Nowhere was this truer than with Syria. President al-Assad was a problematic ally, especially when it came to human rights abuses, but could usually be depended upon to play his part on the counter-terrorism front. Overall, he was a source of stability, despite the terrorism, civil war and occasional near-anarchy of neighbouring Iraq after Saddam.

When President al-Assad began to use violence to clear pro-democracy activists off the streets, the UK Government joined calls for him to step down, and some raised the prospect for direct military intervention as in Libya. This was unlikely, partly because there was little appetite for more such intervention in western capitals,¹⁹ but also because some members of the UN Security Council – Russia, China and South Africa – felt, and with some justification, that the spirit of the Security Council Resolution authorising military action in Libya had been abused by western nations to effect régime change.²⁰ The result was deadlock at the UN, with Russia and China using their veto on resolutions critical of the Syrian Government.

intervene. Once one of the richer African countries, average Libyan incomes have plummeted, and as a result of intervention Libya is not far off becoming a totally failed state, with the extent of civilian casualties being the worst consequence.

However, Western nations, including Britain, (see Appendix), were giving serious consideration to arming those elements of the rebellion whom they found palatable, even though there was no way in which the groups who actually got hold of the arms once they arrived in theatre could be controlled or even merely 'tracked and traced'. However, unlike on previous occasions, many parliamentarians were concerned with these developments, seriously questioning the logic of getting involved in a conflict tragically spinning out of control and broadening all the time.

By a vigorous and well-organised campaign throughout the spring and summer of 2013, sceptical MPs managed to ensure that senior ministers were brought to the point that they undertook to seek express parliamentary authorisation for any lethal support provided to any groups in Syria.²¹ In August 2013, the House of Commons voted down the Government's motion to authorise air strikes following President al-Assad's usage of chemical weapons.

This was a defining moment for parliament, as MPs from all sides questioned the facts of the Government's case and declined to join a gadarene rush into action.²² That the United States subsequently also withheld its decision to strike underlines the wisdom of the House of Commons. Claims that the 'Special Relationship' would be ruined by the Commons proved to be wide of the mark, especially as the conflict worsened and radical Daesh extremists, seizing the advantage of the instability, were already in the ascendant across vast swathes of Syria and northern Iraq.

¹⁴ Ibid, para 436, p.63.

¹⁵ Ibid, para 94, p. 15.

¹⁶ *Third Report of Session 2016-17, Libya: Examination of intervention and collapse and the UK's future policy options*, (HC 119), 6th September 2016, paras 25-38 [https://goo.gl/3MrqVL].

¹⁷ *Libya: Examination of intervention and collapse and the UK's future policy options*, Oral Evidence to the Foreign Affairs Committee, 19th January 2016, (HC528) qq 319-322 [https://goo.gl/9zyYrj].

¹⁸ '...it was all done so quickly. The Libyans themselves were complaining, "Why have elections been foisted on us?" This is a country with no political culture, no experience of politics, not even any experience of civil society or any kind of political activism. Elections happened very quickly [in 2012]. I think that political parties had about 18 days to campaign, in a society totally unfamiliar with that political system. It was a joke.' Alison Pargeter (a North Africa and Middle East expert, and Senior Research Associate at the Royal United Services Institute), Oral Evidence to the Foreign Affairs Select Committee, 13th October 2015, q.44 [https://goo.gl/qJ0vPV]. See also *Can Intervention Work?* (Stewart, R., and Knaus, G., New York, 2011), p. xxii.

¹⁹ The uprising against Qadhafi having taken longer and cost more than expected.

²⁰ Kulish, N. and MacFarquhar, N., 'Putin fears civil war but rejects intervention in Syria', *New York Times*, 1st June 2012 [https://goo.gl/1psEvw].

²¹ See the House of Commons exchanges on 18th June 2013 [Hansard, https://goo.gl/5j3BIL], the foreign secretary's statement on 10th July 2013 [Hansard, https://goo.gl/9Ad5tD] and the Back Bench Debate on 11th July 2013 [Hansard, https://goo.gl/oquMbO].

²² 'Obama was also unsettled by a surprise visit...from James Clapper, his director of national intelligence, who interrupted the President's Daily Brief...to make clear that the intelligence on Syria's use of sarin gas, while robust, was not a "slam dunk".' *The Obama Doctrine*, The Atlantic, April 2016 [https://goo.gl/l6lFjh].

The House of Commons did vote in 2014 and 2015 to target Daesh militarily in Iraq and Syria respectively.²³ This was arguably a reversal of the Government's 2013 policy, as we were then intervening on the same side as President al-Assad. The Russians wrong-footed many when they decided to intervene on al-Assad's side in 2015, and whilst they have demonstrated few moral scruples in their methods, they placed their backing firmly behind the person they considered best-placed to keep a lid on extremism, which also concerns them. It is the type of clarity which has eluded our policymakers. However, as ground was slowly taken off the extremists, and as the rebellion against the Syrian Government lost momentum, it is revealing that the government did not appear to be changing tack on President al-Assad's future. Asked by the House of Lords International Relations Committee, the foreign secretary indicated in January 2017 a government acceptance that he could be a viable candidate in a future election.²⁴ This is possibly the closest the Government will ever come to acknowledging that our Syria policy has come full circle. Today, Assad remains in power as the autumn campaign continues against the final rebel fastnesses.

The interventions outlined above are all individual cases. However, four overarching themes emerge from the UK's practice of the past 14 years – the common thread being our poor understanding of events on the ground:

- that we intervene precipitously, and without proper knowledge of the facts;
- that we intervene before firmly establishing our goals or desired outcomes;
- that we intervene before fully understanding the implications of our actions;
- that once we intervene, we vastly overestimate our ability to control what happens next, especially in terms of security and political stability.

The shortcomings of our 'liberal interventionist' approach, which in itself has been partly driven by undervaluing the direction of travel regarding a country's progress relative to its pace, have become clear in our disastrous military interventions, while the limits of 'nation building' have been revealed in Iraq and Afghanistan. Far from advancing the national interest, these concepts – in part guided by New Labour's 'ethical foreign policy'²⁵ – have instead created instability where before there was little, have cost dearly in blood and money, have emboldened our international competitors, and have tarnished the image of the West in the world's eyes.

There are signs the British Government is perhaps slowly learning the lessons. In recognition of the controversy over invading Iraq, the Government ensured the passage of a UN Security Council Resolution before intervening in Libya. In addition, the Government gave pledges to parliament not to intervene without its authorisation in Syria – reflecting the reality that MPs are now much less inclined to give governments a 'blank cheque' on foreign policy. Furthermore, the prime minister's Philadelphia speech, in which she stated that 'the days of Britain and America intervening in sovereign countries in an attempt to remake the world in our own image are over', suggests that she at least has absorbed these lessons.²⁶

However, aspirations of resuming an 'ethical foreign policy' have not gone away,²⁷ and a serious consideration of what really represents the British national interest – rather than 'virtue signalling' by means of following liberal interventionist policies – must urgently be undertaken to avoid future foreign policy errors. This should not exclude the possibility of limited operations to avoid, for example, another Srebrenica. But the hard-headed assessment that used to, in large part, characterise our foreign policy must be re-established, and should include at its core well-informed assessments of both the situation and desired objectives relative to available resources.

²³ I voted against military action on both counts, as I believed – and continue to believe – that the government had not thought through all necessary implications.

²⁴ Evidence to Lords International Relations Committee, 26th January 2017 [<https://goo.gl/f5WcQ5>, p. 20].

²⁵ 'Robin Cook's speech on the government's ethical foreign policy', *The Guardian*, [<https://goo.gl/UQTQQi>].

²⁶ Theresa May: UK and US can not return to "failed" interventions', *BBC News*, [<https://goo.gl/Jhz4p7>].

²⁷ Elgot, J. 'Labour pledges return to Robin Cook's ethical foreign policy', *The Guardian*, [<https://goo.gl/X37kR8>].

1.3

INTERNAL UK ACTIONS

Traditionally the Foreign and Commonwealth Office (FCO), the government department charged with handling and maintaining our relationships with the outside world, has been well-resourced, both in terms of budget and manpower. Its main building on Whitehall, completed in 1868 as an expression of high Victorian confidence, was designed by Sir George Gilbert Scott to be impressive (even intimidating) for foreign visitors. The post of foreign secretary has long been regarded as one of the four great offices of state, and as the high point of aspiration for many parliamentarians.

Historically the FCO has had a privileged position in the British Government as the sole department responsible for developing and enacting our foreign policy and for giving advice and recommendations to the prime minister and the government more broadly. In this sense it has had a 'monopoly' on foreign policy, always being able to rely upon its deep overseas connexions, strong institutional memory and in-house country experts to maintain its special status above other departments. Other countries approach the formulation of foreign policy in different ways.

In the United States, for example, the creation of foreign policy is much more collegiate, with multiple organisations being commissioned for their advice in addition to the Department of State, especially think tanks and academics. Indeed, there is much greater fluidity with regard to the makeup of State Department officials, with a broad mixture of professional career diplomats serving alongside others seconded from outside the State Department's Washington headquarters in Foggy Bottom, often from the worlds of business and

academia or from former members of the Armed Forces. In the modern era, the US Ambassador to the United Kingdom has never been a career diplomat.²⁸

In recent decades, the UK's foreign office budget has been under unremitting constraint. This has arguably curtailed the success of British foreign policy by forcing retrenchment where investment in the future would have been more advisable. It has for example become more difficult for junior diplomats to secure foreign postings early in their careers, and therefore pick up invaluable experience for the future careers, as the FCO seeks to save money by employing more locally-engaged staff. A reduction in the importance of language-learning, typified by the closure of the FCO's in-house language school and by the sidelining of language skills in the promotional framework, has had predictable consequences in terms of language ability and resources. The emergence of the Department for International Development as a rival centre of foreign policy – and a vastly better-funded one – has also complicated the policymaking process and confused the hierarchy.

As a result of these weaknesses, falling budgets, diluted expertise and the additional responsibilities of other Departments, the Foreign and Commonwealth Office is losing both heft and confidence, and struggles to make itself heard in modern-day Whitehall.²⁹ More seriously, a Government ill-informed by an underperforming foreign ministry will tend to be more likely to make foreign policy mistakes, unless it radically tackles the problems and weaknesses in the FCO.

²⁸ With one exception – Raymond Seitz served as Ambassador to London from 1991-1994.

²⁹ '[On becoming foreign secretary] if there has been a surprise, it is that it requires something of a cultural change...I think that the habits of years, or even decades...have induced something of a sense of institutional timidity...The Foreign Office has not been as used as I would like it to be to being prepared to lead on all occasions within Government and to say, "Here are the ideas. This is the expertise. This is the knowledge that is necessary to frame foreign policy. Here we can confidently set out what it is going to be..." William Hague, Oral Evidence to the Foreign Affairs Select Committee, 8th September 2010, q. 1 [https://goo.gl/rfd55l].

Foreign and Commonwealth Spending (UK) - Budget Allocation 2017-18

Source: FCO Annual Report & Accounts, 2017-18, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722730/FCO1119_FCO_Annual_Report_2018_-_ONLINE.PDF

Area	Amount ('000s)
Grants	£1,175,733
Staff	£448,912
Non-cash	£251,839
Estates, security & capital related costs	£241,066
Subscriptions to International Organisations	£142,380
Property rentals and finance costs	£102,721
IT and communications	£100,427
Transport & equipment	£52,667
Contractor and consultancy service	£50,043
Reimbursement of duties to other governments	£39,985
Hire of plant & machinery	£22,698
Recruitment & training	£15,712
Representation, consular and business hospitality	£14,550
Medical	£10,939
Information and consular services	£7,030
Grant in Aid to ALBs	£6,220
Total	£2,681,190,000

Moreover, lost expertise must be built up again, even though it may take years to re-acquire, and traditional diplomatic skills must return to the fore when appointing and promoting officials. Even though communications develop at great speed, there will always be a need for the right people, in the right place, at the right time.

In order to maximise the potential of these people, the FCO should focus its resources on its staff. A great deal of damage to the quality of policymaking has been done in recent years as Departments across Whitehall have shed their

most expensive staff, who invariably also tend to be their longest serving and most experienced, in order to cut costs.

A large proportion of the FCO's budget should be directed to recruiting, training, developing and retaining a cadre of highly-skilled and specialised diplomats, and ensuring they receive extensive overseas experience at all stages of their careers. This will require an increased FCO budget, but increased spending on our diplomatic service could pay for itself many times over, particularly if and when avoiding costly and unnecessary conflicts.

1.4

NEW CHALLENGES

A hallmark of the UK's interventionist approach since 2001 is that the reduced capacity and knowledge in foreign affairs has been expended on the wrong priorities. Our misguided interventions in Iraq, Afghanistan, Libya and Syria have occupied the UK's full 'bandwidth' – military, diplomatic and intelligence – almost to the exclusion of everything else. This has blinkered policymaking and has left those who make it largely blind to other, more important, developments. Incidentally, this is as true for the media as for the government, who have let their in-depth foreign affairs coverage slide for much of the same reasons as outlined above.³⁰

Whilst the UK has myopically focused on unproductive military interventions, it has not paid nearly enough attention to the rise of potentially hostile nation states – the Cold War threat that, in truth, never went away. Whilst Britain and other western nations have steadily reduced their military spending since the collapse of the Soviet Union – the so-called 'Peace Dividend' – countries increasingly in competition with the west have plotted an opposite course.

In 2015-2016, Asian economies spent nearly \$100 billion more on defence than NATO's European members – with India's defence budget eclipsing that of France. Over a third of the increase in global defence spending was accounted for by Russia and China alone.³¹ This included a double-digit real increase in the Russian defence budget, bringing

Moscow's share of spending on defence to more than 5% of its GDP, as well as a continuation of the year-on-year double-digit increases in the Chinese defence budget since 2000.³²

Moreover, the recent pattern of behaviour of these two countries has not been encouraging. In addition to staking claims to vast swathes of the Arctic, including the North Pole,³³ and illegally annexing the Crimea, the Russians are widely acknowledged to be extensively involved in the conflict in eastern Ukraine, and for at least supplying the BUK missile system which shot down Malaysia Airlines Flight 17.³⁴ The Chinese have been expanding their navy, developing anti-satellite missile technology,³⁵ as well as antagonising their neighbours, Australia and the United States, by building a network of militarised island bases in the South China Sea.

Meanwhile, western defence spending has been in retreat, with combined European defence budgets falling by around 20% over the last decade.³⁶ In an era when the realities of politics are increasingly defined by the challenges of looking after ageing populations, over-stretched health and welfare systems and ballooning budget deficits, spending on defence – as on foreign ministries – has to a growing extent been seen as discretionary.

In recent years this approach, in particular from European NATO members, has led to the Belgian military being characterised as an 'unusually well-

³⁰ See *Are Foreign Correspondents Redundant? The Changing Face of International News*, Reuters Institute for the Study of Journalism, December 2010 [<https://goo.gl/kbXfQt>].

³¹ Rajendran, G., 'Russia and China drive global defence-spending increases in 2015', *IJSS* [<https://goo.gl/zlFeCF>]. See also, *2 Superpowers were responsible for a big chunk of last year's increase in military spending*, UK Business Insider, [<https://goo.gl/8bxpoY>].

³² Ibid. With the exception of 2010.

³³ 'Russia plants flag under N Pole', *BBC News*, 2nd August 2007 [<https://goo.gl/sX7tn>].

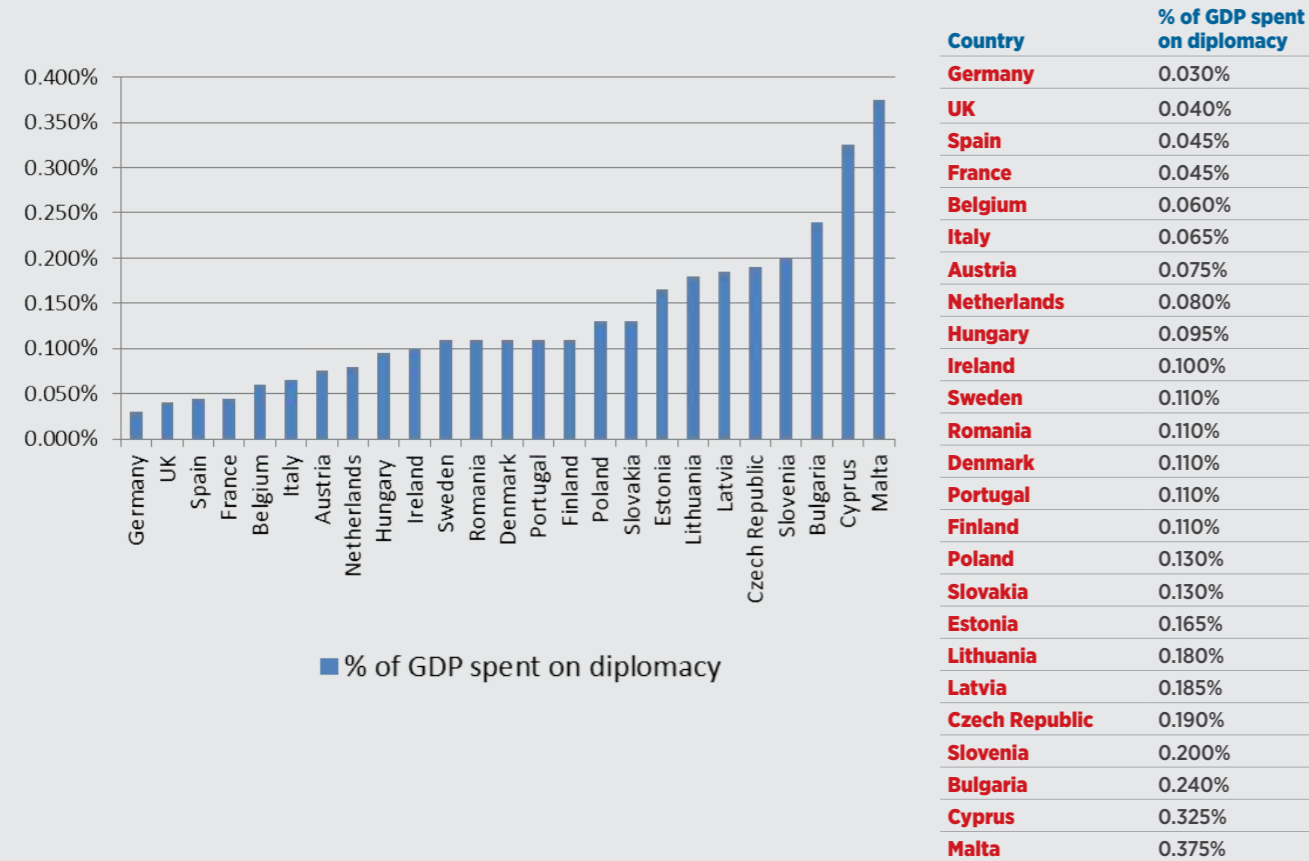
³⁴ 'MH17 missile "came from Russia", Dutch-led investigators say', *BBC News*, 28th September 2016 [<https://goo.gl/LOqBnJ>].

³⁵ Goldenberg, S., 'China hails satellite killer - and stuns its rivals in space', *The Guardian*, [<https://goo.gl/GwG8Sf>].

³⁶ 'Disarmed Europe will face the world alone', *Financial Times*, [<https://goo.gl/Jsg7LH>].

EU Member States' Spending - Diplomacy

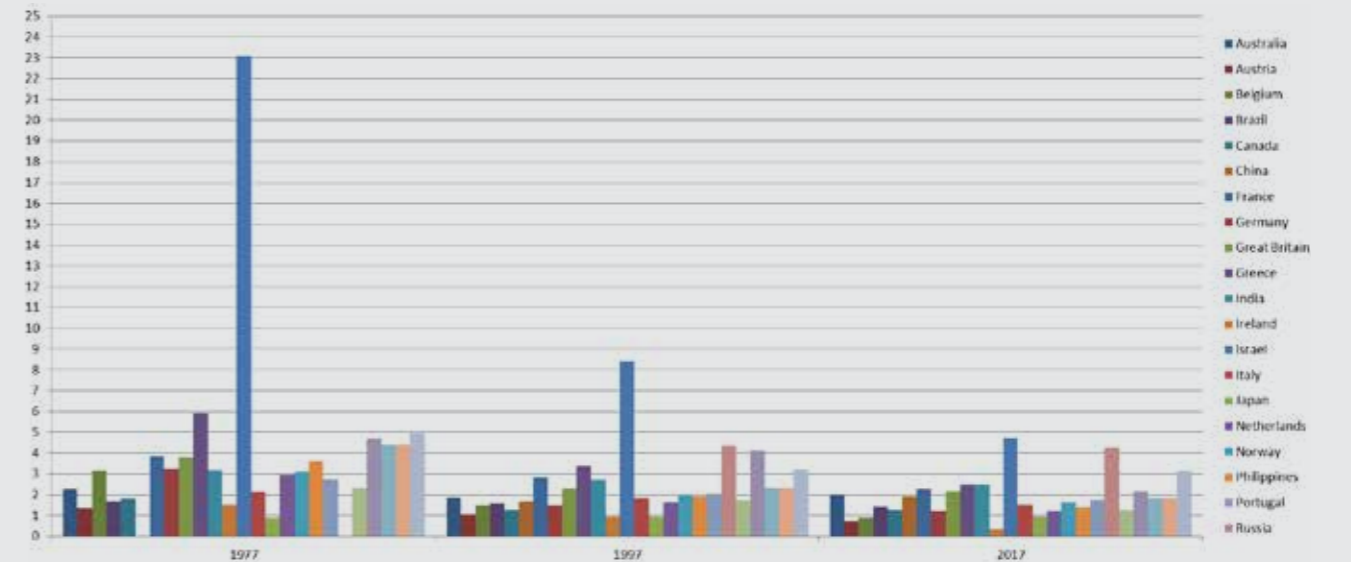
Source: Jacques Delors Institut, Berlin, <https://institutdelors.eu/wp-content/uploads/2017/11/theeuasa3dpower-koenighaas-jdib-sept17.pdf>



Defence Spending (percentage of GDP)

Source: World Bank

Country	1977	1997	2017
Australia	2.247202	1.867334	1.989293
Austria	1.345952	1.046434	0.729355
Belgium	3.143249	1.476976	0.909485
Brazil	1.687726	1.577688	1.410026
Canada	1.805764	1.246243	1.25396
China		1.674802	1.908845
France	3.847219	2.827952	2.255229
Germany	3.227763	1.497186	1.220136
Great Britain	3.79482	2.307583	2.177492
Greece	5.918536	3.365869	2.506157
India	3.162772	2.726157	2.493046
Ireland	1.525177	0.924066	0.356781
Israel	23.08721	8.408528	4.725543
Italy	2.131689	1.833926	1.522313
Japan	0.890681	0.920438	0.93496
Netherlands	2.954458	1.659273	1.225072
Norway	3.098177	2.01608	1.643376
Philippines	3.621309	1.914461	1.390559
Portugal	2.74124	2.040703	1.733643
Russia		4.340721	4.262469
Spain	2.314233	1.722816	1.242562
Turkey	4.713623	4.103672	2.17814
United Kingdom	4.403047	2.321072	1.834837
United States	4.971381	3.209909	3.149222



armed pension fund',³⁷ the German Armed Forces barely being able to field useable equipment and aircraft,³⁸ and the Royal Navy unable to put any attack submarines to sea.³⁹ There have also been operational shortfalls – during the Libyan intervention, the RAF came perilously close to exhausting stocks of its Brimstone missiles,⁴⁰ and the lack of a maritime patrol aircraft means that the Royal Navy has at times resorted to requesting French and Canadian Air Force cover when our Trident submarines put to sea.⁴¹

These are short-term embarrassments. However, in the longer term, eroding the military instrument is deeply damaging. Even well-resourced and careful diplomacy requires the heft and buttress of a capable

and credible Armed Forces to be effective – not least because it sends out a clear signal as to how you see the world. Rightly or wrongly, cutting back on defence and diplomatic spending sends the message that you are retreating from the international stage, and your views are valued less by other actors as a result. This invariably has the effect of emboldening the competition.

The 'hollowing out' of Britain's Armed Forces is not in this country's long-term interests, even if there are short-term cost savings. High-value items, such as the *Queen Elizabeth* class aircraft carriers, are of no use if there is not the manpower available to crew them. An impotent deterrent is no deterrent at all –

such Potemkin defences are quickly found out – and merely emboldens competitors whilst still presenting substantial financial obligations.

A well-resourced and capable military conveys the message that a country is serious about its

foreign policy, and gives governments of the day extra options should diplomacy fail. Indeed, in an increasingly unpredictable world a margin of reserve is important. Very often this latent 'hard power' capability is enough to drive diplomatic success – and the opposite is equally true.⁴²

37 Ibid. '75% of Belgian military spending now goes on personnel'.

38 'Germany's Disarmed Forces: Ramshackle Military at Odds with Global Aspirations', *Spiegel Online*, 30th September 2014 [<https://goo.gl/aZHTqm>].

39 Badshah, N. 'Navy's Attack Submarine Fleet out of Action', *The Times*, 10th February 2017 [<https://goo.gl/SnzHbC>].

40 *Accidental Heroes: Britain, France and the Libya Operation*, RUSI Campaign Report (September 2011), p. 6.

41 Farmer, B. 'Britain forced to ask Nato to track "Russian submarine" in Scottish waters', *Daily Telegraph*, 9th December 2014 [<https://goo.gl/ygvusF>]. See also Farmer, B. 'Britain calls in French to hunt Russian sub lurking off Scotland', *Daily Telegraph*, 22nd November 2015 [<https://goo.gl/XpVs6m>].

42 'Influence can also rest on the hard power of threats and payments.' *Public Diplomacy and Soft Power* (Nye, J., *The Annals of the American Academy of Political and Social Science*, vol 616, March 2008, p. 95).

1.5

SOFT POWER

With his 1990 work, *Soft Power*, the political theorist Joseph Nye coined the term of the same name to describe the art of attracting and co-opting others to 'want what you want'.⁴³ Despite being abstract and intangible as a concept, Nye noted three primary sources of soft power: culture, political values and foreign policy.⁴⁴ Culture in the sense of how much a country's cultural output is valued by other countries; political values in the sense of how well a country's government and institutions uphold such desirable values as justice, probity and personal freedom; and whether other countries approve or disapprove of a country's foreign policy – put bluntly, whether it is perceived as a force for good, or not.⁴⁵

Soft power is a healthy complement to conventional 'hard power', and gives a country the ability to inform opinions and to shape or frame the debate on important issues. When wielded correctly, it can subtly nudge consensus opinion in one direction or another. However, it is not a resource that can be 'used' or 'deployed' in the conventional sense, and it can be at its most effective when set at a distance from governments. In general terms, when leaders try to use soft power, it tends to transmogrify into hard power.

Nevertheless, governments have a strong role in creating the environments for soft power to flourish. At the

other end of the scale, the wrong policies can destroy it in equal measure, and in short order. For example, the 2003 invasion of Iraq dealt heavy and lasting blows to our country's international standing, even if the royal wedding in 2011 and the 2012 London Olympic Games were widely considered soft power triumphs.⁴⁶

There is growing appreciation in the world's foreign ministries that a country's international reputation matters, and that a bad reputation can actively act as a brake on a country's policy priorities.⁴⁷ Britain has the good fortune of unusually deep reserves of soft power to draw upon, built up over many centuries. Academic studies conducted in 2010, 2011 and 2013 rank the UK first and second in soft power, ahead of similar countries such as France, Canada, the United States and Norway.⁴⁸

Much of Britain's soft power strength is rooted in its strong civil society. Arguably much of this is derived from our long history of stable government, which has successfully combined the positive attributes of a monarchy with one of the world's most enduring examples of parliamentary democracy.

Other factors in Britain's favour include over 300 years of a free press; a large, open and mature economy; dependable property rights and predictable rule of law; low tolerance of corruption and hypocrisy; high

⁴³ 'This...aspect of power – which occurs when one country gets other countries to *want* what it wants – might be called co-optive or soft power in contrast with the hard of command power of *ordering* others to do what it wants.' *Soft Power* (Nye, J., *Foreign Policy* No 80 (Autumn, 1990), p. 166.

⁴⁴ *Public Diplomacy and Soft Power* (Nye, J., *The Annals of the American Academy of Political and Social Science*, vol 616, March 2008, p. 96).

⁴⁵ *The New Persuaders* (McClory, J., *Institute for Government*, 2013, p. 6).

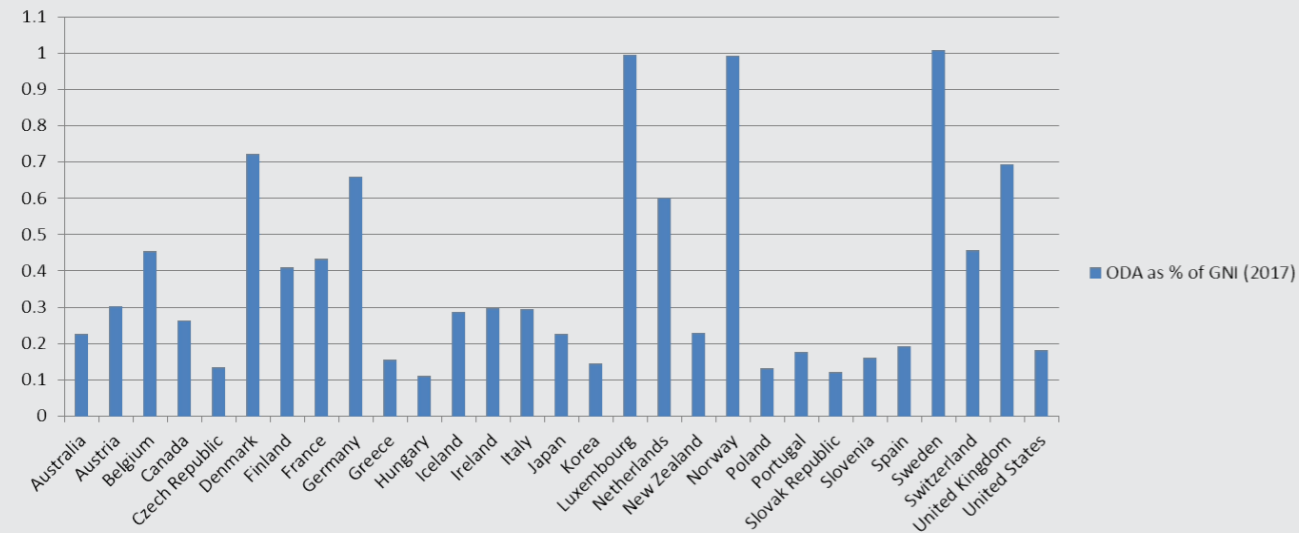
⁴⁶ 'In fact, many states routinely undermine their own soft power with poorly-conceived policies, short-sighted spending decisions, domestic actions, of clumsy messaging', *ibid*, p. 5. See also, 'China's air pollution undermines its soft power: it is widely seen as evidence of a callous government that cares more about making the country richer than the health of its people or the planet...Mr Xi's eagerness to join the fight against global warming is partly driven by a desire to regain the soft power China has lost owing to its environmental horrors.', 'China is spending billions to make the world love it', *The Economist*, 23rd March 2017, [<https://goo.gl/VF3utU>].

⁴⁷ "The influx of foreign investment [into Russia] is not on par with the potential and the causes for underinvestment are related to image and reputational losses that we bear. These problems should not be simplified. They exist and we must admit that part of the problem lies in ourselves," Medvedev said. *Medvedev: Russia's image hinders investments in it*, *Russia Beyond the Headlines*, [<https://goo.gl/kPg110>].

⁴⁸ *The New Persuaders* (McClory, J., *Institute for Government*, 2010 [<https://goo.gl/nZYKmd>], 2011 [<https://goo.gl/mfyNIW>] and 2013 [<https://goo.gl/JscAya>].

UK Overseas Development Spending (% GNI)

Source: OECD, <http://www.oecd.org/development/financing-sustainable-development/development-finance-data/ODA-2017-complete-data-tables.pdf>



levels of religious and social tolerance and a sustained commitment to personal liberty and human rights.

There is also no doubt that the near-universal usage of the English language as the medium of international commerce, culture, diplomacy and education also works greatly to Britain's advantage. Spoken by 372m native speakers, and a further 612m as a second language, it is a true global lingua franca.⁴⁹ Widespread English usage easily enables Britain to explain and 'market' its culture and values to an enormous global audience in a readily accessible way – it is estimated, for example, that half the world's schoolchildren study Shakespeare.⁵⁰

This is perhaps one reason why Britain's higher education sector is a strong source of soft power, as students learn about its culture, values, and how its people see the world, and hopefully return to their countries with positive memories of their time in the UK. Hundreds of thousands of foreign students come to Britain each year to study in our world-class universities, and the evidence is that 55 world leaders

were educated in UK higher education establishments, as research in 2015 revealed.⁵¹ Other countries are not slow to see the potential of improving links between their education systems – China has been offering scholarships for nationals from the Pacific islands to study at its universities.⁵²

Outside these 'informal' sources of soft power, Britain also has a venerable number of highly respected institutions world wide which serve to explain and market our values to a global audience. First and foremost in this is the FCO, which represents the UK as members of a large and diverse number of international organisations, from the Commonwealth to the UN. Moreover, our diplomats' quiet negotiation skills, especially when operating behind the scenes, have often proved a useful tool in Britain's armoury. This was clearly shown in the period 1990-2011, when the UK uniquely retained full diplomatic relations with Tehran despite being cast by Iran as one of its three stated 'enemies'.⁵³

The British Council acts as Britain's preeminent cultural relations institution, and as such is a powerful

source of our soft power. Working with over 100 countries, each year it interacts face-to-face with over 20 million people, and with more than 500 million online. Founded in 1934 – the oldest of any country's cultural institute – with a mandate to foster better knowledge and understanding between the people of the UK and other countries, the British Council promulgates British culture and values, encourages links with the UK and runs English language classes.⁵⁴

It is impossible to calculate the value the British Council has provided to Britain over the decades. This is one of soft power's perennial problems, that its reach is difficult, if not impossible, to quantify. However, its great value can be measured by the wholesale adoption of the British Council's concept by other countries, who have enthusiastically founded their own versions. These include the Goethe Institute, the Instituto Cervantes and the Russkiy Mir Foundation. In particular, in an obvious attempt to counter negative global perceptions, the Chinese Government has been spending enormous sums on rolling out a network of Confucius Institutes, as part of its \$10 billion annual soft power budget. Implying the traditions of pre-Communist China, these institutes have been springing up at breakneck speed, with over 500 established in 140 countries since 2004 alone, and with an intention to found 1,000 by 2020.⁵⁵ China's lavish and ambitious plans, which are mirrored by the expansion of Russian Centres of the Russkiy Mir Foundation, are a clear vote of confidence in the work of institutes like the British Council.

However, this is an arena in which the British footprint is decreasing as the British Council's annual Government grant for non-ODA countries (itself a part of the FCO's falling budget) is due to reduce to zero.⁵⁶ After years of downward pressure on its

resources, the scope for efficiencies has already been explored and implemented, and there is only so much cutting before overall performance is adversely affected.

This is already beginning to happen: the New York office is being closed, and a substantial number of staff in Brazil are being made redundant. In addition, the British Council is looking at closing some of the smaller country offices, and cutting programmes across larger developed countries. The latter could entail cuts to 50% of the Council's network in the developed world, with additional cuts of 50% to its work in countries such as Germany, Russia and the United States.⁵⁷

Some of the shortfall can be made up by increasing commercial activity, such as English language teaching, though over-commercialisation carries the danger of damaging the Council's hard-won international reputation.⁵⁸ Moreover, any pound lost in grant money must be made up by a pound in profit. When grant reductions are in the millions, the profit required to fill the hole is considerable.

These pressures are mirrored across other soft power institutions, such as the BBC World Service. One of the jewels in our nation's crown, and reaching an estimated 246 million people each week,⁵⁹ the World Service has broadcast continually across multiple languages since its foundation in 1932.

Its excellent reputation means it is the premier outlet for global audiences when they need accurate and impartial information, as confirmed by the record surge in BBC Arabic listeners during both the Arab Spring⁶⁰ and by the trebling of regular audiences for BBC Ukrainian over the conflict in Crimea and eastern

49 <https://www.ethnologue.com/language/eng>.

50 *World Shakespeare Festival*, British Council, [<https://goo.gl/ZNSqsq>]. See also, Aaronovitch, D. 'Shakespeare belongs to Africa too', *The Times*, 19th March 2017 [<https://goo.gl/riWvc9>].

51 *Now that's what we call soft power: 55 world leaders educated in the UK*, Higher Education Policy Institute, 2015, [<https://goo.gl/MH3iS5>].

52 *France dives back into the South Pacific*, Chatham House, 7th March 2017, [<https://goo.gl/OU8jBb>].

53 Alongside the United States and Israel.

54 Each year, the British Council helps attract 350,000 international students to the UK (UKCISA (2016) International student statistics: UK higher education [<https://goo.gl/SJqscw>]).

55 'China is spending billions to make the world love it', *The Economist*, 23rd March 2017, [<https://goo.gl/VF3utU>]. Also, *Confucius Institutes expanding rapidly to meet demand for Chinese language skills*, ICFE Monitor, [<https://goo.gl/LNFp1g>].

56 By 2019-20 (British Council Corporate Plan 2016-2020, [<https://goo.gl/f5CPC6>]).

57 Author's own information.

58 'If the [Spending] Review has led the [British] Council to become a more business-savvy body and a more diligent custodian and investor of public money, this is, of course, a good thing. However, we have been concerned that the Council's changed financial situation, and its focus on generating more commercial income, might lead it into making decisions inconsistent with its long-term interests, or with those of the UK. For instance, it might feel compelled to abandon schemes and programmes that produced no direct financial return but generated more intangible benefits—not least a very positive image of the UK. It might employ fewer staff overseas who have a strong connection with the UK. Or it might focus too much on income-generation, for instance by charging for previously complimentary events or services, and in so doing putting at risk the goodwill of the foreign investors or opinion-formers that it was seeking to reach.' *Fifth Report of the Foreign Affairs Committee, FCO Performance and Finances 2011-12* (HC 690, 19th March 2013), para 96, p. 43.

59 BBC World Service, National Audit Office, 14th June 2016 [<https://goo.gl/yO74hC>], p. 6.

60 <https://goo.gl/I9YEIE>.

Ukraine.⁶¹ It is for these reasons that Kofi Annan, the former UN Secretary-General, described the World Service as 'Britain's greatest gift to the world in the 20th Century'.⁶²

Once again, the importance countries attach to broadcasting their own information or interpretations is shown by the growing number of such channels, many of which are broadcast outside their own native language – and particularly in English. This century has seen the establishment of Russia's *Russia Today*, Iran's *Press TV* and France's *France 24*, amongst many others. China is unsurprisingly at the forefront of this trend, opening 40 new foreign bureaux for Xinhua, and aiming to establish 200 by 2020, in addition to the English-language *China Global Television Network*.⁶³

As other nations pour resources in attempting to reach a fraction of the BBC World Service's audience, it itself has also been affected by downward pressure on its budget. Badly affected by the Comprehensive Spending Review after the 2010 General Election, it was only pressure from the Foreign Affairs Select Committee, and other parliamentarians, which took the edge off these cuts and prevented some damaging closures, including to the BBC's shortwave Hindi service, which reaches an audience of 10 million each week.⁶⁴

One lasting consequence of these changes is that responsibility for funding the World Service moved from the FCO to the BBC. Whilst in 2014 the Foreign Affairs Select Committee sought assurances from the BBC that the World Service budget would be maintained, there is the concern that commercial

pressures might be felt by the service. Historically many language services have not been expected to make money, serving instead a higher national purpose; it remains to be seen if in the long run the BBC shares this view. There are also concerns that the World Service may struggle to make its opinions heard at the top echelons of the BBC, now that the World Service has no direct voice on either the BBC's Executive Board or its Management Board.⁶⁵

However, there are at least some encouraging signs that the Government is belatedly beginning to realise the value of the World Service, and the risk to Britain's soft power if cuts continue. Although it reduced the World Service's core budget by around 8% in the four years to 2014-15,⁶⁶ it announced investment of £34 million in 2016-17, with £85 million annually thereafter until 2020.⁶⁷ This enabled the World Service to herald its 'biggest expansion since the 1940s', opening new services in 11 languages in 2017.⁶⁸ These are small steps in the right direction, and ones which need replicating in other areas of Britain's soft power armoury.

No one element of foreign policy can be taken in isolation, and this is as true for soft power as any other component. Whilst western nations take a more complacent view of soft power – often relying on culture (like Hollywood films or *The Beatles*) to generate goodwill and interest – other nations are being proactive in this field, and unafraid to spend vast sums to achieve their aims. Soft power is already being highly contested and, as Nye foresaw, with countries less keen to use conventional militaries than before, contests move to new arenas.⁶⁹

61 <https://goo.gl/G9MceU>.

62 *Marking 70 years of the BBC World Service*, FCO, 2nd March 2012, [<https://goo.gl/O6iVz6>].

63 'China is spending billions to make the world love it', *The Economist*, 23rd March 2017, [<https://goo.gl/VF3utU>].

64 *The Implications of cuts to the BBC World Service*, HC 849, 13th April 2011, [<https://goo.gl/50vD9L>], p. 21.

65 *The Future of the BBC World Service*, HC 1045, 31st March 2014, [<https://goo.gl/j2IDLQ>].

66 *BBC World Service*, National Audit Office, 14th June 2016 [<https://goo.gl/yO74hC>], p. 5.

67 'BBC World Service gets funding boost from Government', *BBC News*, 23rd November 2015, [<https://goo.gl/QTyYdd>].

68 'BBC World Service announces biggest expansion "since the 1940s"', *BBC News*, 16th November 2016, [<https://goo.gl/xcXUpy>].

69 'The great powers of today are less able to use their traditional power resources to achieve their purposes than in the past. On many issues, private actors and small states have become more powerful.' *Soft Power* (Nye, J., *Foreign Policy* No 80 (Autumn, 1990), p 160.

1.6

INTERNATIONAL CHALLENGES



So far this piece has focused on the United Kingdom, and the challenges it faces from a foreign policy perspective. However, there is a wider context of problems which challenge all governments, rich or poor, and all countries, whether developed or developing. These challenges tend to be broad-brush and transnational in scope, and will require much greater global cooperation if we are to rise to them. Nevertheless, a more capable and better-resourced British foreign office could build on the current situation and play

a wider role in addressing these global problems for the common good.

There is already great pressure on global food supplies, with one in eight people currently suffering from chronic hunger,⁷⁰ and with global food demand projected to increase 70% by 2050.⁷¹ These pressures are compounded by global shifts towards western-style diets, with a higher intake of resource-intensive foodstuffs such as meat, dairy and fruits.⁷²

Water is equally in short supply, with one billion people currently unable to access sufficient safe water. By 2025, it is estimated that over half of all countries will face water shortages;⁷³ as water demand will not be sated by surface resources, slow to renew aquifers, and unrenovable fossil water sources, will have to be exploited.⁷⁴

Quite apart from the obvious dangers of food and water shortages, there are strong political and security concerns resulting from such scarcity. In 2008 bread shortages caused riots in Egypt, which some saw as an early reflex of the so-called 'Arab Spring' several years later,⁷⁵ whilst 'water wars' between Egypt, Sudan and Ethiopia over the use of Nile water show little sign of abating.⁷⁶ Indeed, more than 200 river systems are shared by two or more countries, and many of these countries also share a history of conflict.⁷⁷

These pressures will be intensified by the ever growing global population, which is estimated to swell from the current 7.7 billion to 9.6 billion by 2050.⁷⁸ The fastest population growth will occur in developing countries, with the potential to cause significant change. For example, whilst in 1950 Europe's population was around 2.5 times the size of Africa's, by 2050 Africa's population will be more than three times that of Europe's.⁷⁹

Furthermore, as the world shrinks and becomes ever more connected, people become more mobile. In contrast to people suffering from violence and suffering in the closing decades of the 20th Century, in the early decades of the 21st Century people are prepared to move *en masse* across entire continents

to seek a better life. This has been the experience of European nations in the wake of the Libyan and Syrian civil wars, and how to cope with this influx is a touchstone issue across Europe.⁸⁰

Some of these migrations are driven by simple economics, rather than by violence or shortages. As societies become better-educated and middle classes expand, frustrations with corruption, incompetence and lack of opportunities boil over – according to the World Bank, these feelings were, at least in part, also a motivating factor behind the Arab Spring.⁸¹ Moreover, problems of wealth inequality, and the issues these give rise to, are not limited to within particular countries – they are a worldwide phenomenon. 'Globally between 1988 and 2005, the share of household income for the richest 5% increased by 8%. For the poorest 25%, this share has decreased by 32%'.⁸²

Resolving these types of problems is beyond one country alone, regardless of how much money they may be able to offer. Our international organisations are full of capable and dedicated people, but some of these are creaking at the seams, mired in bureaucracy, and ineffectual.⁸³ I suggest the EU is such an example – an organisation whose own auditors have not signed off on its accounts for over 20 years, which presides over a continuing financial crisis and high unemployment rates, and which has well-founded concerns over its democratic legitimacy and accountability.

Even the World Health Organisation, once lauded for such achievements as its successful smallpox

⁷³ *Food and Water Security: Our Global Challenge* (Future Directors International, 2014, [https://goo.gl/Ze5dhG]), p.25).

⁷⁴ Siddiqi, Y. 'Empty reservoirs, dry rivers, thirsty cities – and our water reserves are running out', *The Guardian*, 27th March 2017, [https://goo.gl/fMM0Kp].

⁷⁵ 'Egyptians riot over bread crisis', *Daily Telegraph*, 8th April 2008, [https://goo.gl/z7sWv].

⁷⁶ 'Sharing the Nile', *The Economist*, 16th January 2016, [https://goo.gl/suDQV8].

⁷⁷ *Shared Rivers; Conflict and Cooperation*, Peace Research Institute Oslo, January 2005 [https://goo.gl/QgRqjF].

⁷⁸ *Food and Water Security: Our Global Challenge* (Future Directors International, 2014, [https://goo.gl/Ze5dhG]), p. 15.

⁷⁹ Mancini, F., Unpublished seminar documents from the International Peace Institute, October 2013.

⁸⁰ 'Why is the EU struggling with migrants and asylum?', *BBC News*, 3rd March 2016, [https://goo.gl/CdtE00].

⁸¹ '[The study's] findings conclude that growing and broadly shared dissatisfaction with the quality of life...were the main reasons for the uprisings. Ordinary people, and especially those from the middle class, were frustrated by their deteriorating standards of living due to a lack of job opportunities in the formal sector, poor quality public services, and the lack of government accountability. The old social contract of redistribution without voice had stopped working. In the Arab world, the middle class wanted a say and more opportunities.' *Middle-class frustration fuelled the Arab Spring*, World Bank, 21st October 2015, [https://goo.gl/4HICgX].

⁸² Mancini, F., Unpublished seminar documents from the International Peace Institute, October 2013.

⁸³ 'Six years ago, I became an assistant secretary general [at the UN], posted to the headquarters in New York. I was no stranger to red tape, but I was unprepared for the blur of Orwellian admonitions and Carrollian logic that govern the place. If you locked a team of evil geniuses in a laboratory, they could not design a bureaucracy so maddeningly complex, requiring so much effort but in the end incapable of delivering the intended result. The system is a black hole into which disappear countless tax dollars and human aspirations, never to be seen again.' Banbury, A., 'I love the UN, but it is failing', *New York Times*, 18th March 2016, [https://goo.gl/oSeFRl].

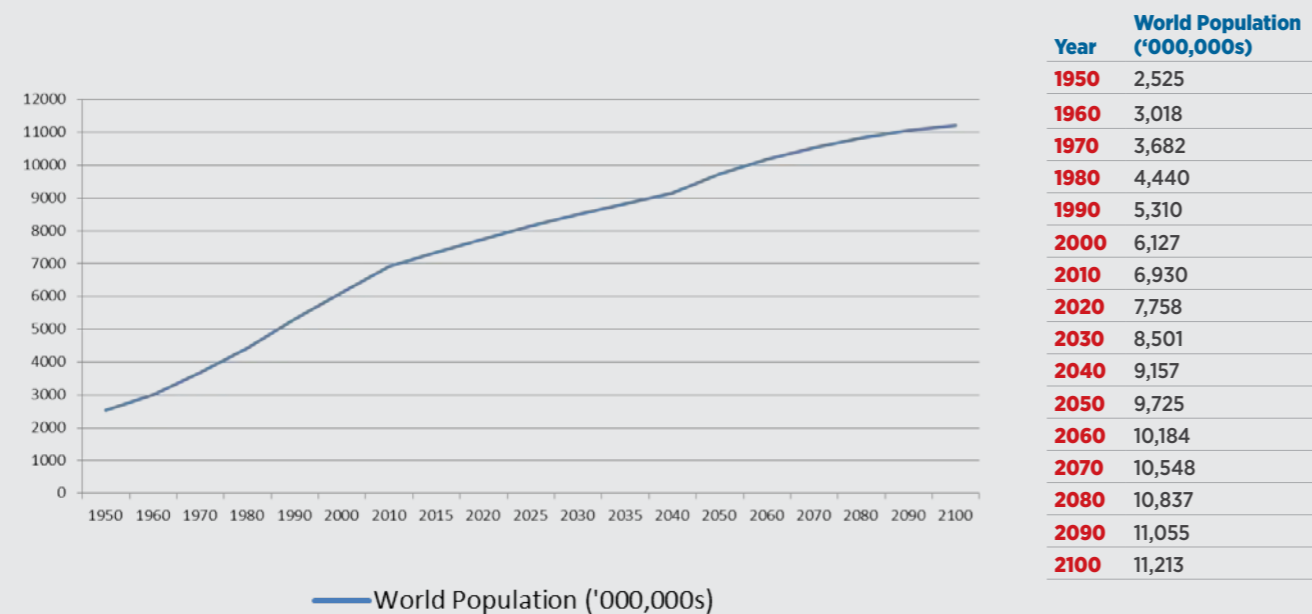
⁷⁰ *Food and Water Security: Our Global Challenge* (Future Directors International, 2014, [https://goo.gl/Ze5dhG]), p. 15.

⁷¹ *How to Feed the World*, Food and Agriculture Organisation of the United Nations, October 2009, [https://goo.gl/eGCT5] p. 5.

⁷² *Ibid*, p.15.

World Population (1950-2010; projected 2019- 2100)

Source: The World Bank, <https://blogs.worldbank.org/opendata/future-world-s-population-4-charts>



eradication programme, has come under severe criticism for its handling of the recent West African Ebola crisis,⁸⁴ and has yet to achieve the eradication of polio 30 years after the launch of the global programme.⁸⁵ Fundamental reform and renewal of these organisations is needed for them to function effectively, though the amount of international goodwill this would require is scarcely imaginable.

Challenges in the 21st Century will not become more parochial, and are another reason why Britain's foreign policy apparatus needs serious attention. Unless this country invests properly in its Armed and Diplomatic Services, as well as its soft power, Britain will find it difficult to play its role alongside other countries in the struggle against these transnational challenges.

However, the UK is well-placed to make a constructive contribution. As a founder member of many international organisations, including the United Nations, and as an outwardly-facing country with a well-respected diplomatic corps, Britain can offer expertise and leadership on many matters: its early adoption of the UN's recommended spending of 0.7% of its Gross National Income on international aid is a case in point. Nevertheless, I suggest our decision to leave the EU sends a strong message that organisations can not rest on their laurels if they are corrupt and dysfunctional. Above all, it can pass on a centuries-long experience of foreign affairs – and the certainty that, in this field, there are never easy answers to difficult problems.

⁸⁴ 'The West African Ebola epidemic...exposed deep inadequacies in the national and international institutions responsible for protecting the public from the far-reaching human, social, economic and political consequences of infectious disease outbreaks.' Moon, S. et al., *Will Ebola change the game? Ten essential reforms before the next pandemic. The report of the Harvard-LSHTM Independent Panel on the Global Response to Ebola*, *The Lancet*, vol. 386, no. 10009, 28th November 2015, p. 2204.

⁸⁵ *Last steps in Polio eradication prove challenging*, Centre for Infectious Disease Research and Policy, University of Minnesota, 27th September 2016 [<https://goo.gl/KNqilr>].

1.7

CONCLUSION

When serving in the Army during the 1980s, we were constantly reminded that ‘time spent in reconnaissance was seldom wasted’. The logic was that informed decisions do usually make for better outcomes. And yet Britain’s policies towards Iraq, Afghanistan, Libya and Syria have revealed the extent to which ill-informed and short term analyses have partly resulted from a deficit of pragmatic and strategic insight.

In recent decades the objectives of No 10 have also played a part in these policy failures. There has always been a traditional tension between the prime minister and the FCO when it comes to foreign policy, and quite rightly the head of government’s view can take precedence when these two centres of authority disagree. However, prime ministers ought to recognise that any decision on such matters should be based on detailed specialist advice, carefully scrutinised by them and others with knowledge of the background, before pressing ahead against such recommendations. They should recognise that ignoring it could increase the risk of bad outcomes – a lesson MPs have clearly learned as they become more questioning of foreign policy. A more confident FCO would have greater chance of advising the government and prime minister and when necessary standing up to misguided inclinations. It would also stand a better chance of winning over sceptical parliamentarians.

A properly equipped foreign ministry can reward the taxpayer many times over by helping to avoid unnecessary and costly conflict and by making best use of available capabilities – the use of satellites and technology should be complemented with focused investment in specialised and skilled personnel with detailed local knowledge. This will certainly involve an increase in the FCO’s budget but, given the current budget is a tiny proportion of Government spending, the returns from the investment could be very great indeed compared to the initial outlay.

Overall, Britain needs serious recalibration of its foreign policy to align it properly with the national interest. This will require us to be more hard-headed, and even occasionally seemingly dispassionate in our decisions – always however being cognisant of the need to consider the merits of limited intervention should another Srebrenica be in prospect. Despite our good intentions, our intervention in Libya did not lead to a peaceful resolution, and has sowed the seeds for instability which now threatens us at home. What is seen as the change in foreign policy to ‘Liberal interventionism’ has not necessarily served our national interests well – the prime minister certainly appears to have distanced herself from this approach in her Philadelphia speech.

When the options for policy are better informed they become better understood. The pragmatism that used to be the hallmark of Britain’s foreign policy may then be rediscovered. Meanwhile, the lack of strategic insight and our interventions have distracted us from the greater danger of potentially hostile nation states both rearming and becoming more assertive. The response to increased geopolitical uncertainty over recent decades has been to under-resource both soft and hard power capabilities.

In this information age, winning the narrative will be just as important as winning the battle. Yet key components, including the British Council and the BBC World Service, have lacked adequate funds at a time when others have invested in theirs. Likewise, a strong military can repay taxpayers many times over by deterring aggressors and avoiding costly conflict, whilst also conveying the right message to allies and ensuring we participate in key decisions which affect our interests.

A better-informed and resourced foreign policy can not only better prepare the UK for future opportunities and challenges, particularly during these pivotal times as we leave the EU and best

adjust to a less predictable US foreign policy, but it can also help to repair an international system which is largely unfit for purpose in many policy areas.

In the face of growing socio-economic and geopolitical challenges, policy makers need to raise their game. The international community has failed to produce the coordinated responses on the scale needed on a range of issues including poverty, food and water scarcity, mass migration, international terrorism, organised crime, disease and inequalities. Its underfunding of the Syrian refugee camps and the decision to cut the food coupon system in 2013 leading directly to the mass exodus, are but two examples.

Some organisations need to be more transparent and accountable and there should be greater questioning of corrupt practices which often result in poorer outcomes for those whom these organisations claim to serve. The IMF's calamitous treatment of Greece, driven by its politicised efforts to shield the euro, is one example. Society in general is certainly becoming more intolerant of such practices.

The truism that the British seldom read the writing on the wall until their backs are against it should be regarded as less an occupational hazard and more a lesson from history. Especially with the added challenges – and opportunities – of Brexit looming in the coming years, there has never been a greater need for a foreign policy apparatus up to the task.

1.8

CHANGING COURSE: NEXT STEPS FOR THE UK

This analysis proposes the following change of course:

Direction There should be a return to the pragmatism of our past foreign policy, with a clear-sighted assessment of what is in the national interest when it comes to foreign relations – and what is not. ‘Liberal interventionism’ has not served our country well, nor has it much helped those countries in which we have intervened.

The FCO: Internal Reform A much greater emphasis should be given to recruiting, training, promoting and retaining able and skilled diplomats, and diplomats at all stages of their careers should be able to undertake foreign postings in order to develop their skills. The purpose would be to get a better understanding of the facts and events on the ground. To supplement this, the FCO should also be unafraid to seek outside expertise where necessary.

- At entry level the FCO should itself encourage the most able graduates to apply (with the best degrees in demanding subjects) and with an expectation of the necessary language skills. This should be via its own dedicated recruitment scheme and not as part of a central civil service process. Our diplomats should be of the highest calibre, recruited from the most able candidates and not merely be appointed on the basis of unproven and dubious criteria from an era of questionable managerialism.
- For promotions ‘traditional’ diplomatic skills including an excellent knowledge of the countries to which they are posted, its history, economy, strategic interests and culture, and languages, should be the criteria.

Budget The FCO budget should be increased. This would enable better-informed foreign policy, and also lead to a more confident foreign ministry better able to hold its own against No 10. This budget increase would pay for itself many times over by avoiding future misguided and expensive military interventions. It could also help to anticipate some developments internationally which otherwise could have implications for front line policy and greater spending at home.

The defence budget should also be increased, both to ensure that Britain can and does play its role and continues to influence events, and also to act as a bulwark to our foreign policy. Furthermore, a well-resourced and capable military gives the British Government additional options when diplomacy fails.

Soft Power To ensure a full-spectrum approach to foreign policy, our soft power should be supported in order to reach its maximum potential. Immediate attention should be focussed on the changes needed in policy across the spectrum – from broadcasting to the ability of our universities to educate the world’s future leaders. Other countries are alive to the importance of soft power, and Britain needs to ensure it retains its favourable position in the global marketplace of ideas.

Britain’s Global Role Britain must continue to play its role to alleviate growing international challenges such as water shortages and disease prevention. When necessary, the Government must be prepared to argue for reforms to international organisations to ensure they retain – or regain – their effectiveness, as well as to highlight when these organisations are failing.



Self-service passport control
EU passports

Part II

JUSTICE, CRIME PREVENTION AND NATIONAL SECURITY AFTER BREXIT

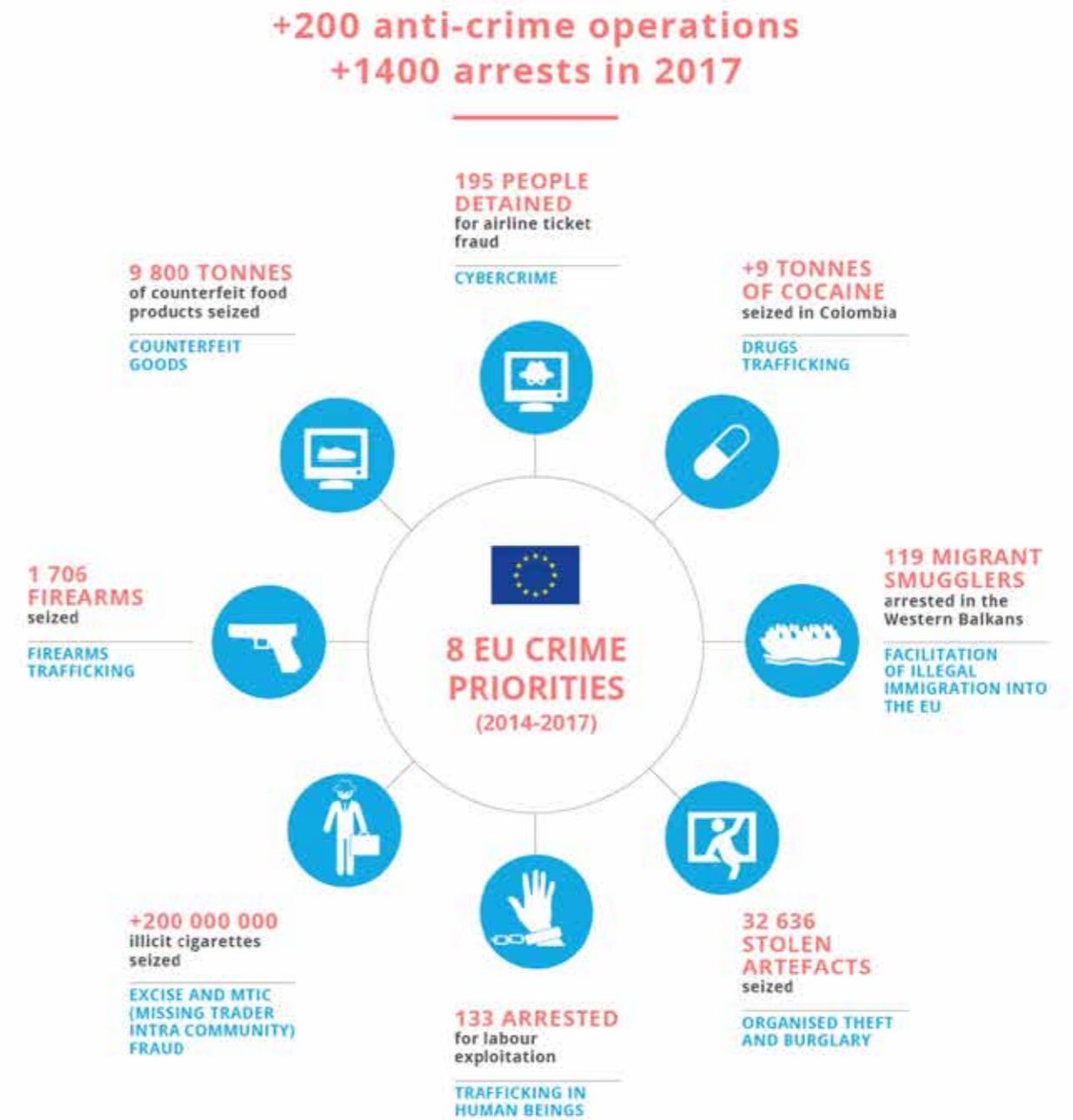
by Alex Chalk

EU fight against organised crime



Abstract: What arrangements should be put in place vis-à-vis measures such as the EAW, ECRIS and the EIO? Can the UK courts be sovereign whilst maintaining close cooperation with our European neighbours on matters of crime and terrorism?

EU fight against organised crime: highlights of 2017



2.1

EU CRIME AND POLICING MEASURES

Much of the discussion and commentary on the future relationship between the UK and the EU has tended to focus on the various political, economic and diplomatic implications. This paper looks instead at security.

Should the UK be seeking to carry over existing arrangements enabling cooperation on crime and policing after our exit from the European Union?

Or is there another, better, way which keeps our people safer? This paper examines the key elements of existing arrangements and proposes a way forward.

2.2

INTRODUCTION

The question of whether it is time to leave EU crime and policing measures behind is, in one way, straightforward to answer. That is because there is no choice in the matter: these measures derive from our membership of the EU. They will lapse automatically when we leave.

The more difficult question is whether it is in the UK's national interest to seek to replicate them. There is good evidence that it is. Put another way, reverting

to the pre-1972 position would leave the UK with weakened crime and security arrangements – in effect, analogue measures in a digital age.

Replicating existing crime and policing arrangements would necessarily carry with it some pooling of sovereignty. Every treaty arrangement has that effect. However, the evidence of the last fifteen years is that sensible and proportionate crime and policing cooperation has served the UK's national interest; it is likely it would continue to do so.

Why do these measures matter?

In 2014 the British Government exercised its right (secured at Lisbon in 2007) to leave and then re-join selected justice and home affairs measures (35 in total). At the time, the then Home Secretary Theresa May justified her

position stating that losing access to these tools would “risk harmful individuals walking free and escaping justice, and would seriously harm the capability of our law enforcement agencies to keep the public safe.”

THE KEY MEASURES?

EAW – European Arrest Warrant

- The EAW has been a broadly successful criminal justice tool, replacing the 1957 European Convention on Extradition – generally recognised to be cumbersome, awkward and slow. Hussain Osman (later convicted of the July 2005 bombings) for example was promptly arrested and extradited from Italy on the order of an English court, instead of requiring the involvement of the executive.
- Such shortcomings as have been exposed are not to be dismissed. Andrew Symeou was held in pre-trial detention for eleven months in Greece before his acquittal on the strength of evidence which had been improperly obtained; Polish courts arguably issue them too readily, for example. There is a general consensus, however, that in the main the EAW has operated broadly as intended.
- The National Crime Agency (NCA) has said that “leaving the EAW would ... pose a huge public protection risk to the UK”. Amber Rudd, then Home Secretary, stated in a debate on 6 March 2017 “It is a priority for us to ensure that we remain part of the EAW and I can reassure members in all parts of the House that our European partners want to achieve that as well.”

ECRIS – European Criminal Records Information System

- Through ECRIS the UK exchanges tens of thousands of pieces of information about criminal convictions each year (NCA).
- SIS II (the second generation Schengen Information System) gives the UK real-time access to all EAWs and other alerts (eg on missing persons).
- The NCA say “loss of access to SIS II would seriously inhibit the UK’s ability to identify and arrest people who pose a threat to public safety ...” Prüm, a regime for exchanging biometric info and vehicle registration data will reduce the time taken to find matches from tens of days currently to fifteen minutes according to the NCA¹.

EIO – European Investigation Order

- In July 2010 the then Home Secretary, Theresa May, spoke approvingly about the European Investigation Order, stating that the existing process was:

“fragmented and confusing for the police and prosecutors, and it is too often too slow ... The European investigation order is intended to address those problems by simplifying the system, through a standardised request form and by providing formal deadlines for the recognition and execution of requests.”

¹ The UK is not currently a party to the convention. On 22 January 2016 the UK notified the EU of its desire to resume participating in the Prüm Decisions, which was approved by the Commission on 20 May 2016

- Theresa May addressed concerns about the sovereignty argument in the House (July 2010) stating “We will seek to maintain the draft directive’s requirement that evidence should be obtained by coercive means, for example through searching a premises, only where the dual criminality requirement is satisfied. Requests for evidence from foreign authorities will still require completion of the same processes as in similar domestic cases. In order to search a house, for example, police officers will still need to obtain a warrant. The execution of the EIO must be compatible with the European convention on human rights. That means that there must be a clear link between the alleged criminality and the assistance requested, otherwise complying with the request would be in breach of article 8 of the ECHR, on private and family life.”

- When Bill Cash MP protested, she responded with uncharacteristic bluntness, stating that he was “wrong”. And when Jacob Rees-Mogg MP invoked Margaret Thatcher, exclaiming “No, No, No”, she responded:

“...is my hon. Friend really saying that he wants us to hamper the efforts of our police to bring people to justice and fight crime? I sincerely hope not. This measure will help the police to ensure that justice is done and crime beaten.”

- At the time we opted in ACPO approved, stating “it offers practical help for the British police and prosecutors ... We wrote to every Association of Chief Police Officers force about the EIO, and not one said that we should not opt in.”

Other Measures

It is worth recalling that EU cooperation on crime and policing goes beyond merely the EAW, ECRIS and EIO:

- **EU Prisoner Transfer Framework Decision:** allows Member States to deport prisoners to serve their sentence in their country of nationality or residence. The UK has transferred 154 prisoners this way
- **Europol:** provides analytical and operational support to national law enforcement authorities. Allows access to Europol Intelligence System (EIS). NCA ranks it top of priorities to include in Brexit negotiations (Rob Wainwright, the former head of Europol, said that Brexit would mean the UK losing influence on cross-border policing and security work)

A number of non-EU countries have operational arrangements with Europol, including the USA, Canada and Serbia. They are allowed to participate in Europol analysis projects but only with agreement of member states. They do not have access to Europol’s database²

- **Eurojust** (EU’s judicial cooperation unit): helps coordinate investigation and prosecution of serious crime
- **Passenger Name Records** (PNR): comprises information collated by air carriers as part of the travel booking process and may include details of how travel was booked and for whom, contact details

² Denmark is not a member of Europol as it negotiated a Lisbon dispensation (like the UK) but without the option of opting back in. Denmark is therefore a third country – and yet it is has observer status at Europol’s management board (normally third countries like USA, Canada and Serbia are not invited). However, Denmark’s agreement was predicated on continued EU membership and an obligation to fully implement into Danish law the relevant EU directive on data protection and on its agreement to the application of the jurisdiction of the CJEU and the competence of the European Data Protection Supervisor. It is unclear what privileges the UK will enjoy.

2.4

THE UK GOVERNMENT’S CURRENT STANCE

The desire of the British Government to replicate these arrangements so far as possible is clear.

- In her Lancaster House speech (January 2017), the Prime Minister stated:

Co-operation in the fight against crime and terrorism

And a Global Britain will continue to co-operate with its European partners in important areas such as crime, terrorism and foreign affairs. All of us in Europe face the challenge of cross-border crime, a deadly terrorist threat, and the dangers presented by hostile states. All of us share interests and values in common, values we want to see projected around the world ... threats to our common security becoming more serious, our response cannot be to co-operate with one another less, but to work together more. I therefore want our future relationship with the European Union to include practical arrangements on matters of law enforcement and the sharing of intelligence material with our EU allies.
[emphasis added]

- In her Florence speech (Sept 2017) the Prime Minister stated that she wanted a “bold new strategic agreement that provides a comprehensive framework for future security, law enforcement and criminal justice cooperation”.
- At the Munich Security Conference speech earlier in February 2018 the Prime Minister stated she wanted to draw up new relationships which ministers have been quoted (<http://www.bbc.co.uk/news/uk-politics-43088246>) as stating they want to be “as close to the status quo as possible”.
- In Brussels in June 2018, Mrs May praised the ability to “share information through key databases and agencies, such as SIS II, and ECRIS, and Prüm”, and reinforced the view that the UK – and Europe – would be more secure if the existing security paradigm were to be maintained to the fullest extent possible.

How Best Can this be Achieved?

- In September 2017 the British Government published a document setting out its vision of the UK-EU cooperation on security, law enforcement and criminal justice after the UK has left the EU. The Government expressed its desire to secure close cooperation in the form of a treaty – concluded with the EU directly, rather than via a complex and unwieldy series of bilateral treaties.
- However, the fact is that there is no precedent for access by non-EU (ECRIS) or non-Schengen (SIS II) countries. No doubt that lies behind the assessment by the House of Lords EU Committee that a cut-and-paste arrangement is “particularly ambitious”.

Replication or Amendment?

- Seeking to amend the operation of the measures would likely lead to delays. An arrangement on extradition has been agreed between Norway and Iceland, neither of which is a member of the EU, and the EU. These negotiations began in 2001 and were concluded in 2014, but they are not yet in force. The provisions are largely the same as the EAW, however it includes the option for both parties to refuse to extradite their own nationals. But that experience presents a salutary lesson; if the British Government seeks to 'perfect' the existing arrangement, it seems highly likely that agreement will not be reached in the short term.
- That no doubt is why the UK Withdrawal Agreement proposed a similar arrangement between the UK and EU, for a post-Brexit transitional period, albeit the Agreement was rejected in the Commons in January 2019. The arrangement would have allowed the UK to remain part of the European Arrest Warrant during the transition, but would have permitted both the UK and EU Member States to refuse to extradite their own nationals, given the UK would be a non-member state.³

Dispute resolution – ECJ/ADR?

- A treaty would have to be supported by a dispute resolution mechanism. Giving evidence to the Home Affairs Select Committee, Emeritus Prof of European Law Sir Alan Dashwood argued that it would be possible to negotiate an agreement replicating the EAW. Valsamis Mitsilegas argued however that such a close relationship would necessitate a role for the ECJ, stating "If you have an arrangement in the way Sir Alan has proposed then you have to comply 100% with the case law of the ECJ. I see no other way..."
- No detail on how this can be squared has been provided in the September 2017 future partnership paper. But in evidence given to the Home Affairs Select Committee, the Government indicated that it would not accept the direct jurisdiction of the ECJ.
- The effect is that it seems likely that some form of ADR system will have to be put in place.

Data Sharing – the 'Adequacy' route?

- One consequence of being a third country is that it is likely to be necessary to show compliance with EU data protection standards as a pre-condition for exchanging data for law enforcement purposes.
- The Government ought probably to seek an 'adequacy decision' from the EU – namely a ruling by the EU that a third country offers an adequate level of data protection and therefore personal data can flow from the EU without the need for further safeguards.
- However, it is important to note that these do not last in perpetuity. They are renewed every four years. In effect, therefore, if the Government is to proceed on the basis of an 'adequacy decision' it is worth remembering that the issue of UK-EU cooperation on law enforcement matters may well resurface at regular intervals in the future.

³ Home Affairs Committee Report October 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1632/1632.pdf>

2.5

THE GDPR COMPLEXITY

- The stated aim of the EU-derived General Data Protection Regulation 2016 is primarily to "give control back to citizens and residents over their personal data and to simplify the regulatory environment for international business by unifying the regulation within the EU."
- This complexity is that this regulation will inevitably be engaged in the transfer of data for law enforcement purposes. And although the EU can now adopt adequacy decisions for the law enforcement sector, these can take a long time to negotiate.
- Crucially, these could involve examination of GCHQ's powers to access the personal data of EU citizens once they reach British shores. It was because the US NSA refused to allow sufficient access that the 'adequacy agreement' with the US foundered. Will the EU seek such access once we leave the EU? If it does, that issue alone has the capacity to cause key elements of any proposed UK-EU crime and policing cooperation to founder.





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