THE CASE FOR A NEW WEU

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A NEW WEU

Executive summary

Brexit means the EU is losing one of its main military powers. At the same time it has allowed the EU to proceed further with defence integration than was possible while the UK was a member. Nevertheless, the UK and EU share important defence interests.

At present neither the EU nor the UK can agree on the terms of such cooperation. While the EU is willing for the UK to be involved in CFSP/CSDP as a “third country” (like Norway is, for example), the UK believes the scale of its contribution to European security and defence means it should be able to take part in shaping common European defence policy and has repeatedly proposed as much in the Brexit negotiations, in addition to UK operational work with military partners (e.g. France and Poland) established under bilateral security treaties. The EU however considers that such a proposal would give a non-EU member state too much say over EU defence and security policy.

To break this impasse, this paper develops the idea, I mentioned in my 2017 report *Brexit: The security dimension*, to revive the Western European Union (WEU). It assesses it against a background of advances in European defence integration and the state of the Brexit negotiations, and compares it to alternative ways of managing the EU-UK defence relationship: including as an element of a comprehensive EU-UK partnership, an Article 217 Association Agreement like Ukraine’s and through a European Pillar within NATO.

The WEU

Established in 1948 by the Brussels Treaty, and expanded to admit Italy and West Germany in 1954, the Western European Union functioned as a problem-solving European military organisation whose low profile relative to NATO and the European Communities enabled it to be used to overcome political obstacles and strengthen the Western alliance.
Following the expansion of the EU’s CFSP and CSDP it became surplus to requirements and its functions were incorporated into the EU through the Lisbon Treaty and the organisation was wound down in 2011.

**Brexit and European military integration**

The British decision to withdraw from the European Union removed one of the strongest opponents of defence integration and enabled the EU to take three important steps in building its military capability.

- The activation of Permanent Structured Cooperation (PESCO).
- The establishment of an EU Defence Fund.
- A path towards integrating the European defence industry (in particular the Commission’s proposed regulation establishing a European Defence Industrial Programme).

Though hardly the EU army feared by the more excitable British newspapers, these measures nonetheless represent a shift in focus by the EU, begin to change the strategic environment within which the
UK operates, and propose new ground rules for European defence and industrial development with the potential to be interpreted in an undesirably protectionist manner and which could conceivably limit the ability of EU member states to obtain British defence equipment on non-discriminatory terms.

At the same time, Brexit deprives the EU of one of its most capable and experienced military powers (while also reducing UK resources available for defence — immediately because of currency depreciation, and over the medium term through lower than expected economic growth), and causes the mutual defence obligation between the UK and its fellow member states under Art. 42.7 TEU to lapse, meaning the UK would lack a legal obligation to come to the aid of non-NATO EU member states.

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<th>Defence Expenditure Comparisons (Source: SIPRI)</th>
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The new WEU

Functions

I see this “New WEU” (NWEU) having as its members those EU member states signed up to PESCO; the EU itself (through the High Representative on Foreign Affairs and Security Policy); and non-EU European democracies (e.g. the UK, Norway, perhaps Ukraine). It does not seem likely that Turkey will meet the democracy and human rights standards required for membership. The NWEU would have three main, and two fall-back, functions.

Main functions

• Structured coordination and planning between its non-EU members and the EU.
• Interface with the EDA and EU Defence Funds.
• Governance of a “Shared Defence Market”.

Fall-back functions
• Mutual Defence Guarantee (to replace Art 42.7 TEU if the EU and UK don’t agree on one in Brexit talks, or if relevant bilateral defence treaties are not concluded in time.
• Shadow Berlin Plus coordination (in the event that a mechanism for coordinating with NATO members that does not involve Turkey is required.)

Structure
The NWEU would emulate as far as possible the WEU’s structure. Adapting it to take contemporary circumstances and the oversight of a shared defence market into account, this starting point would suggest it have the following arrangements:
• Decisions would be taken by a Council, acting by unanimity, consisting of PESCO member states, the EU High Representative and the non-EU members of the NWEU.
• The council would be overseen by a consultative assembly of member state national and European parliamentarians (i.e. MEPs).
• Operational planning would be carried out either at the evolving European military headquarters or the headquarters of its other members, principally the UK’s Permanent Joint HQ at Northwood. No further HQ would be needed.
• The shared defence market would be overseen by a dispute-resolution mechanism modelled on that of the EFTA Court and EFTA surveillance authority. Half of their members would be appointed by PESCO, with the agreement of the High Representative, the other half by non-EU members of the Institution. Each non-EU member would be able to appoint one to each of the Court and the Authority. The Court would not have the power to fine member states or EU
institutions. Enforcement would be via proportionate safeguard measures.

Alternatives
Reviving the WEU is not the only way of attempting to address this issue. The UK government, in its security and foreign affairs position papers, proposes a deep partnership covering internal security, defence, foreign policy, and development cooperation that the Prime Minister reiterated at her recent speech at the 2018 Munich Security conference. Others have suggested creating a “European Pillar” within NATO, concluding an Association Agreement like that Ukraine has with the EU, and building on existing bilateral relationships between other European military powers and the UK to ensure cooperation continues after Brexit. I consider these to have certain advantages, but other disadvantages compared to a revived WEU.

Some alternatives to a New WEU

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<tr>
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<th>NWEU</th>
<th>Bilateral Defence Treaty</th>
<th>European Pillar of NATO</th>
<th>Association Agreement (like Ukraine)</th>
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<td>Shared Defence Market</td>
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<td>Avoids Cherry Picking</td>
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<td>Evades Turkish Non-cooperation</td>
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<td>Extendable to non-NATO members</td>
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It is no secret that I voted to Remain in Britain’s 2016 referendum. I think leaving the European Union is an historic mistake, the result of a dishonest campaign led by hardliners who refuse to take responsibility for the economic and geopolitical damage they are bringing upon the UK. In short I see Brexit as a selfish and destructive act against a global peace, security and prosperity project.

The vote to leave has already alarmed businesses, brought anxiety to European Union citizens living in the UK, as well as British citizens living in the EU, and dismayed our closest friends and allies in Europe and across the world, including
those in the Commonwealth and so called “Anglosphere”. They were supposed to have been ready to welcome the leadership of a UK unshackled from the “rotting corpse” of the EU, and in particular the Eurozone, by entering into a close economic and political relationship with Britain after Brexit. Every one of the hardliners’ claims in this respect has been found wanting! The verdict of the currency markets — the pound significantly lower against the euro — and of foreign students and professionals— whose numbers applying to study or work in the UK have been sharply reduced — is clear. According to the British government’s own Office for Budget Responsibility, recent growth and productivity forecasts for the UK are well below those for the Eurozone. Worse, for the first time in decades net non-financial Foreign Direct Investment is negative. That is, investors, considered in the round, see the UK not as somewhere to put their money but as somewhere to remove their funds from while fund managers are disinvesting from the UK to avoid the risks of a hard Brexit. Bizarrely, even the arch Brexiter politician John Redwood MP has cynically recommended his clients take such a course of action.

But this is also, for me, a deeply personal blow. I have Irish as well as British heritage. It is painful to see both parts of my heritage split apart by undermining the Anglo-Irish Good Friday Agreement. My wife is an EU citizen. I do not want my children to grow up trying to reconcile identities that will come to have been constructed in opposition and being fought over as though the issue is part of an acrimonious divorce. I still hope a way can be found to arrange a softer and kinder type of Brexit, perhaps one modelled on a combination of Norway’s single market membership and Turkey’s customs union relationship, where economic
disruption can be kept to a minimum and with the UK parked just outside the EU, but the official UK government position at the start of phase 2 of the negotiations disappointingly rules out explicitly UK membership of the EU Single Market or Customs Union beyond the end of the transition or implementation period scheduled to end in December 2020. I still hope that demographic changes, together with increased political awareness among the young, will eventually yield a pro-European majority desiring to rejoin in the future, possibly aided by future EU reforms allowing for a more variable geometry accommodating the UK’s persistent sense of exceptionalism.

Yet, it is increasingly likely that this may not be possible, and that the prospect of rejoining may not materialize for a generation — long after I will have retired from politics.

Notwithstanding the welcome progress made towards dealing with EU citizens’ rights, UK budget contributions, and the Northern Irish border, which was reflected in the EU negotiating team’s recommendation to the European Council that “sufficient progress” has been made to begin discussions on a possible transition period, Brexit negotiations are not going well at the time of writing with serious divisions in the UK government on the exact shape of long term relations with the EU. Indeed they are following the acrimonious template predicted by the “war game” organised by the eurosceptic Open Europe think tank in the run up to the referendum itself. A rational discussion about how to minimise disruption and losses has been superseded by the development of strong and incompatible political imperatives. British fears that the EU is trying to punish them clash with the growing feeling among the EU27 that the UK’s
aim is to impose as many of the costs of Brexit on the EU, and pay as little of them as possible itself. These emotions heighten genuine differences of opinion, that the agreement over “sufficient progress” only partially reduces, between Brexit supporters on the one hand, and member states and EU institutions on the other. Four of these stand out:

The first and starkest difference is over EU citizens’ rights to live and work in the EU. For at least a decade, the political debate concerning these people has, in the UK, focused on them as migrants, whose rights should, in some way, be granted at the discretion of the British, rather than as liberties owed to them as citizens of the European Union by all EU governments, just as they are owed to British citizens residing in all other Member States (and who are often described as “expats” in the British media – a term that contrasts with its use of “migrants” to depict EU citizens coming to the UK).

Secondly, for historical and linguistic reasons Britain has a very transactional goods oriented idea of trade. The word itself calls to the imagination tea-chests on eighteenth century sailing ships deposited on a distant shore in exchange for other physical produce. But modern trade agreements are more about setting the rules for commerce including non-tariff barriers, and require agreement on shared legal jurisdiction and binding multilateral dispute resolution mechanisms. That is how they reduce the differences between countries and therefore the ability with legal certainty to connect supply chains and offer services across borders. This has led many of my fellow-nationals to greatly underestimate the value of the EU’s internal market and imagine it can simply be replicated by bilaterally dropping tariffs.
Thirdly we have also — and falsely in my opinion — allowed it to become the conventional wisdom that EU legal institutions are somehow foreign and “imposed” on the UK, rather than being bodies in which the UK has a full and equal say and co-ownership. EU law was our law, just as much as it was French or Swedish or Portuguese. Indeed, we benefited from appointing a permanent judge to the CJEU (European Court of Justice, ECJ).

Fourthly we failed to recognise that decisions the EU takes emerge from a collective process in which all its members participate. Too often we’ve seen these decisions either as purely British successes, such as the single market, or in other areas, as British failures to prevent “Brussels” imposing its will on us. The reality was rather different: we had Council votes, and MEPs, in proportion to our population; a Commissioner (and two in the past); and significant influence through our excellent officials in the institutions and at the UK Permanent Representation. All these contributed to shaping an institution, together with our partners, over the four decades we were a member. We did not give up sovereignty, but shared it for a common and greater cause, from which the UK gained synergistic benefits.

But despite these areas of deep and real disagreement and sometimes mutual incomprehension, there is one area, particularly important to me throughout my MEP career, where we all whether Leavers or Remainers broadly see eye to eye: questions of foreign affairs, defence and security. Here the threats we face together, whether the challenge of Russian expansionism to the East, international Islamist terrorism, and the challenges of weak states in the Middle East and North Africa, the quest for nuclear weapons by authoritarian regimes like Iran or North Korea (DPRK), to large
scale migration stimulated by wars and economic hardship and in future climate change, are threats and challenges that affect us all on the European continent, together and in largely the same way. I believe the values we profess in defending ourselves and meeting these challenges are shared, Western, indeed European values.

In this respect I am still at one with the Prime Minister who is at pains to point out that leaving the EU does not mean “leaving Europe” in a broader cultural and normative sense. It is now clear that threats to leave the Council of Europe and its Human Rights Convention have been quietly shelved at least for now as a step too far alongside Brexit. After it leaves the EU, the UK will also still be a leading member of NATO, major contributor to international development, active participant in multilateral security initiatives, such as the Joint Comprehensive Plan of Action on Iran and a strong supporter of global initiatives including the Paris climate change accord. The UK will remain a permanent member of the UN Security Council P5 and continue to actively take part in a host of international organisations from the OECD to the Commonwealth and OSCE, the last of particular interest as it does useful work by binding North America, Europe and the former USSR region, including Russia and Central Asia in a loose security organisation that stops short of a military alliance.

I believe therefore that it is especially important that whatever the difficulties in negotiating a withdrawal agreement under Article 50, and however long it takes to produce a settled new commercial and trading relationship, the UK, and the EU must continue to act closely together in the field of international security.
But at the same time, the British withdrawal from EU institutions means that the rest of the EU will develop those common defence and security policies in a slightly different way, giving weight to somewhat different political priorities and strategic imperatives than they would have done had Britain stayed in the club. It is in defence policy in particular that we are already seeing important steps being taken. These include the inception of Permanent Structured Cooperation (PESCO) under Art 42.6 TEU, which will include at least 25 of the 27 member states. I am very pleased to see Poland, heirs to one of Europe’s proudest military traditions among them, in spite of its relatively Eurosceptic government, and delighted that Ireland, notwithstanding its important tradition of neutrality, and Portugal have also decided to join. Simultaneously the Commission is establishing a new European defence fund to encourage multinational defence procurement, stimulate research and development in military technology and take advantage of the economies of scale a massive internal defence market can provide.

Both Commission President Jean-Claude Juncker and President Emanuel Macron of France have proposed significant visions for further European integration, each indicating defence as an area of priority. Junker called for “a fully-fledged European Defence Union by 2025”, while Macron argued that Europe needs autonomous defence operating capabilities, and “deep-rooted change” to create a common strategic culture. I welcome these initiatives, as well as Macron’s European Intervention Initiative which are, if anything, overdue. I would have preferred them, of course, to have proceeded with British participation. Europe’s capability would be so much greater if it could count on both
its preeminent military powers. The much publicised advance taken by EU CSDP in forming EU Battle Groups under rotating national leadership devised in 2007 and described as the nearest thing to an “EU standing army” under the direct control of the EU Council are yet to be deployed in military combat.

Now, all of us who wish Britain and the EU well, and who share the belief in common security institutions and values, need to think about how the post-Brexit security damage can be limited and consider what the best way forward should be. As I said in my previous report Brexit: The Security Dimension published in February 2017, Britain is a democracy that shares and cherishes its common values with the EU. As such, and as the Prime Minister has argued most recently at the Munich Security Conference on 17 February 2018, we should work together to promote this positive agenda globally and promote enduring peace, stability and the more prosperous world that a rules based international order provides.

The future foreign policy defence and security relationship will be a large task that far exceeds what can be focused on in a single report. In Brexit: The Security Dimension, I made ten key recommendations, and the shape of the UK’s foreign affairs and security position papers in the negotiations does, I think, owe a little to them.

But in this paper I want to focus just on the defence relationship. While foreign policy, internal security and counterterrorism are also important within the EU debate, the defence sector has a number of important characteristics: the arrangements for European defence are undergoing
change more rapid than has been seen since the 1990s; it is an area in which Britain’s involvement, through NATO, as well as bilaterally and multilaterally, is particularly extensive; and European defence policy has until now been conducted almost exclusively by intergovernmental means. Because supranational legal jurisdiction has not so far applied significantly in this area, it evades the debate, highly controversial in the UK Brexit process, about the role of EU CJEU (ECJ) and Commission jurisdiction in British law.

Yet, in purely political terms, almost all Conservative British eurosceptics are committed, as a matter of principle, to UK involvement in the defence of Europe, remaining a pillar of the Western alliance, and maintaining a strong British defence industry. They believe European political integration has gone too far in the EU structures, but they do not, with minor exceptions, take the neutralist anti-NATO position to which much of the British far-left has been prone.

The election of a UK Labour Government under Jeremy Corbyn as Prime Minister would however bring to power fresh Labour Ministers overtly hostile to a U.S. led NATO alliance and suspicious of relying on it as the prime pillar of UK’s international defence partnerships. I also believe that other configurations, which do not include the U.S. and involve principally European military alliances, would prove less controversial for the rising left wing of the British Labour party and so protect British involvement in European defence from this ideologically motivated attack.

Therefore the specific approach I recommend here, as a contribution to the debate over the future structure of defence in Europe that involves the UK post Brexit is to revive and update the “Western European Union”. This, which
predated NATO’s 1949 North Atlantic Treaty and the EU’s 1957 Treaty of Rome, was established by the 1948 Treaty of Brussels, first as the Western Union Defence Organisation (WUDO) and eventually emerged in 1954 as a specifically European military institution, whose members undertook to come to each other’s mutual defence if attacked. The WEU possessed embryonic planning capabilities, which on occasion were used to allow autonomous European operation for missions when NATO could not or wished not to be engaged. Though it appeared in the 1990s that it might develop a greater role, it was overshadowed by the EU’s development of a Common Foreign and Security Policy and Common Security and Defence Policy (CFSP and CSDP) and so its functions were finally folded in 2011 into the Lisbon Treaty which took over the WEU mutual defence clause in TEU 42.7 and, perhaps ironically, the WEU was abolished at the suggestion of the much more pro-European British Labour Government under Tony Blair.

Had the WEU continued in being, it is highly unlikely that the UK would have sought to leave it as part of the Brexit negotiations. While the concept needs updating — the word “Western” in the title dates the organisation to the Cold War — it is I suggest to be preferred to the mooted alternative ways of achieving European strategic defence autonomy with close British involvement. Current favourites include the UK government’s call for a specific and comprehensive bilateral UK-EU partnership Treaty that includes defence and security both internal and external and to be concluded as soon as possible and even prior to departure from the EU; associating directly with PESCO as a third country; concluding a broad Association Agreement including defence issues under Art 217 TFEU like Ukraine has, and lastly the development of an
autonomous European pillar within NATO. Most notably with reference to the first idea, there are significant advantages in separating defence from the other more fraught areas of the Brexit negotiations, not least that it avoids holding the security relationship hostage to progress in other economic and policy areas. Direct association with PESCO as a third country is unlikely to give the UK involvement in the decision shaping process proportionate to the contribution the UK is able to make.

In contrast maintaining UK structured involvement through a revived and updated new WEU (which would limit its membership to democratic states) can avoid the difficulties that have bedevilled the Berlin Plus EU-NATO cooperation process following the accession of Cyprus in 2004 and so skirts the challenge posed by Turkey under its increasingly authoritarian government. A new WEU has the bonus that it can also reach out to non-EU and non-NATO countries like Georgia, Ukraine and Israel.

I believe keeping UK foreign and defence policy closely bound to our neighbours via membership of a new lightweight WEU style structure is very much in the EU 27’s, the USA’s and British interests and I hope this document will foster such debate.

The European Parliament on 14 March 2018 proposed that the political declaration annexed to the withdrawal agreement on the “Framework of the future of the UK-EU Relationship” be in four pillars, the second of which “foreign policy, security cooperation and development cooperation” this report seeks to address.
1. MODELS OF DEFENCE COOPERATION

1.1 The Brexit dilemma

The adversarial tack that Brexit negotiations have taken has begun to pose problems for future defence cooperation between EU and non-EU countries. Domestic politics within the UK, the EU27 and the interests of the EU institutions are making it difficult to achieve progress. Nevertheless, the long-term security interests of the EU27 and the United Kingdom are sufficiently similar that efforts should be made to bridge the gap.
Brexit itself creates a dilemma for European defence. It necessarily means that EU institutions will no longer have strong British capabilities at their institutional disposal. Though the EU is willing to extend cooperation in its efforts whether CFSP/CSDP or the new PESCO, to the UK as a “third country” (in the way it extends it to the US and Canada, for example), this basis is not one the UK could reasonably accept because the defence of Europe is an existential matter for the UK for geographical reasons that do not apply to more distant transatlantic members of the Western alliance. British political sensitivities sharpen this problem further: if the UK is to commit resources to common missions, it needs to demonstrate that it has influence proportionate to its input.

British capacity is significant. Its defence budget is around one fifth of that of the rest of the EU, and it is the only nation other than France to possess full-spectrum capability, including nuclear deterrence, an aircraft carrier, high end special forces including an amphibious assault capacity, and world class military planning facilities. Crucially, like France, the UK has significant recent combat experience.

Before Brexit, London was able to approach European defence and foreign policy as one of its leading powers. The UK was present as decisions were being made and, frequently able to exploit its strong links with the United States and from time to time, strong personal relationships between the UK Prime Minister and US President. As a full member, it was able to deploy its resources, attention and diplomatic skill throughout all stages of the policy process, from decision shaping to execution.
But it is becoming clear that while the UK will continue to be involved at all stages of the NATO planning and operations process as a founding member, it will increasingly be faced with an EU that will have made its own decisions and present them to the UK if not quite as a fait accompli, at least as something that the UK would have little or no ability to influence. This arrangement, which treats the UK as another third country, may be adequate for certain missions, where the UK is only involved in a relatively peripheral way, but would not make the best use of British capabilities in missions to which the UK would be a major contributor.

The task is this: how to enable the EU to have strategic autonomy in areas where it wishes, while ensuring the UK, the EU, and NATO can all contribute to the common defence of Europe and the upholding of the international rules based security system in ways that make the best use of their military and diplomatic as well as nation building and soft power capability and which secures the political legitimacy needed to ensure the effort can be sustained.

This needs to be distinguished from clumsy attempts to use what has on occasion been termed the “British security surplus” to exercise undue influence over either the Brexit negotiations (most controversially in the UK’s letter invoking Article 50), or even, consequent ambitions to shape the EU’s (as distinct from broader European) defence policy afterwards: the failed (and somewhat futile given Brexit) attempt by the former British Defence Secretary, Michael Fallon to block the creation of PESCO, is one example. It does not come as a surprise that this hostility to CSDP evolution have not been received positively by the EU27. But while back-seat driving should, rightly, be ruled out,
collective “co-decision” about joint missions, capability
development and even defence procurement that the EU, UK
together with other non-EU members such as Norway and
Ukraine, or indeed, further potentially associated nations,
perhaps including Israel, has the potential to improve our
security and the efficiency with which it is provided.

Several models have so far been suggested to achieve this:
an agreement modelled on Ukraine’s Association Agreement
with the EU under Article 217 TFEU; strengthening and
relying on a European pillar within NATO and annexing a
political declaration on security to the withdrawal agreement
on the framework of the future EU-UK relationship which the
British government seem to think will evolve into a bilateral
stand-alone defence and security treaty. Each however,
suffers from problems. Ukraine’s, most obviously, is for a
country trying to join the EU, not attempting to leave it. A
European pillar within NATO, does not address the strategic
question of how to be involved when the United States is not
interested, and when existing NATO cooperation is stymied
by the Turkey-Cyprus issue. Meanwhile a comprehensive
UK-EU partnership is unlikely to be agreed if the Brexit
negotiations for a “deep and special relationship” to borrow
Mrs May’s phrase do not work out. The future defence of
our continent should not be left hostage to such a fraught
process.

1.2 Ukraine-Style Association Agreement

While the CSDP liaises closely with non-EU NATO states both
in Europe and North America under “Framework Participation
Agreements” (FPAs), and also invites participation from
non-NATO EU candidate countries in some extended PSC meetings, there is a precedent for close cooperation with a large European state applying to join neither NATO nor the EU for now: Ukraine. Though its western leaning leadership aspires in the longer term to both. On 1st September 2017, the EU-Ukraine Association Agreement under Article 217 TFEU finally entered into full force. In addition to the detailed clauses on a Deep and Comprehensive Free Trade Agreement (DCFTA), the agreement devotes significant space to outlining the security relationship between the two parties.

The preamble to the agreement expresses the wish for “ever-closer convergence of positions on bilateral, regional and international issues of mutual interest”, with explicit reference to the CFSP and CSDP, while Article 4 specifies “gradual convergence on foreign and security matters with the aim of Ukraine’s ever-deeper involvement in the European security area”. The wording in both sections is significant. In the pre-amble, the phrase “ever-closer” evokes the EU’s own defining commitment to “ever-closer union”; and Article 4’s reference to “gradual convergence” highlights the slow and long-term nature of such an endeavour. The EU and Ukraine may ultimately come close to a common foreign and security policy, but such an ambition will carry no deadlines, and failure will incur no sanctions.

The text of the agreement reveals closer insight into the focuses of cooperation. Specifically, these centre on conflict prevention, crisis management, regional stability, and shared resources and intelligence to combat terrorism. The idea of multilateralism remains key. Ukraine and the EU share not only a neighbourhood and this is part of the EU’s Eastern
Partnership within the wider European Neighbourhood Policy but wider global interests, and may benefit (despite the differentials in size, power and resources) from cooperating and, where appropriate, harmonising. The agreement calls for regular political dialogue at Ministerial level to deepen (and monitor) this convergence and its effectiveness - and also to strengthen respect for human rights and key shared values.

Aside from dialogue, the agreement specifies some of the concrete cooperation that might take place between the parties. Article 10 establishes the aim of “increasing the participation of Ukraine in EU-led civilian and military crisis management operations as well as relevant exercises and training activities, including those carried out in the framework of the CSDP”. There is also talk of military-technological cooperation: the agreement foresees that “Ukraine and the European Defence Agency (EDA) shall establish close contacts to discuss military capability improvement, including technological issues”.

Again, this is a significant opportunity for Kiev to broaden the framework of its CSDP participation, and obviously demonstrates an opportunity for Ukraine to expand its military (and civilian) engagement beyond its traditional geographical (and geopolitical) purview. It does not, however, grant meaningful potential to shape the objectives or executions of CSDP missions. Despite Ukraine’s already existing agreement with the EDA, there are limits to the extent of possible EDA cooperation.

We can thus summarise the EU-Ukraine security and defence elements as comprehensive in scope, but shallow
in depth. While the agreement covers multiple subjects and possibilities for cooperation, and heralds “ever-growing convergence”, the hope of meaningful (let alone full) integration seems a distant - and perhaps even undesired - ambition. Clearly, the ongoing hostilities in the east of Ukraine and the annexation of Crimea as well as incomplete implementation of the Minsk agreements and its turbulent relations with Russia make such matters complicated for the EU.

As a model for future UK-EU engagement, then, the Ukraine association agreement suffers from two important flaws. It is designed for a European country with an aspiration of applying one day as envisaged by article 49 TEU to join the EU but it is not yet even given formal potential candidate status, and which seeks eventual convergence with the bloc. Though it may take some time to achieve — not only because of the conflict with Russia, but also because of Ukraine’s weak economy and still significantly unreformed institutions — it approaches things from a different direction than does the UK. On the other side of the ledger, it denies Britain the kind of voice it would require in order to justify contributing to the extent its resources and expertise allow. Indeed, the model proposed here, could, were it extended to Ukraine allow Kiev to take greater part in shaping the strategy of a revived new WEU-style institution, than the Association Agreement allows it to affect CFSP and CSDP where its role is very much solely that of a third country ally. The benefits of greater participation in common projects that would accrue to the UK could also be extended to Ukraine.
1.3 European pillar within NATO

A further alternative is the establishment of a European pillar within NATO, capable of acting independently. This had been suggested long before the establishment of EU defence and security capabilities, as a means of securing the European strategic autonomy long sought by Paris. While this certainly has advantages, not least avoiding the need to establish a further institution and therefore to create both a new bureaucracy and also the need to establish channels of inter institutional communication and coordination, it is not without significant risks. NATO champions from the eurosceptic wing of the Conservative Party have always felt the CSDP should be abolished in favour of solely this as a replacement.

The most immediate problem is posed by Turkey. Disagreements between Turkey and Cyprus have prevented the Berlin Plus process of NATO EU cooperation working since Cyprus joined the EU in 2004. It is now clear that the Turkish government is evolving in an increasingly and indeed challenging authoritarian direction. Moreover, Ankara is no longer showing that its alignment with NATO and the Western Alliance more broadly is likely to persist. Particularly worrying are its plans to purchase the Russian S-400 air defence system. It is difficult to see how this can be considered consistent with the democratic values and strategic orientation of NATO membership. An additional problem involves the recent unprovoked Turkish military offensive in Afrin, Syria where it is bombing Kurdish YPG forces who are themselves with US troops on the ground fighting ISIS making relations within NATO allies and Turkey
tense. Turkey regards Kurdish YPG (allied to the recognised terrorist group PKK in Turkey) a more immediate threat than ISIS.

Nevertheless, while Turkey is a member, these attitudes and policies pose severe and perhaps insuperable problems for the development of a European pillar within NATO. It is difficult to see how operational coordination and the information and intelligence sharing necessary to operate effectively could be developed while adhering to the democratic values that the European Union is committed to uphold. In contrast, just as a new European stand-alone institution could provide a nucleus for the creation of structured coalitions of democratic EU and non EU states on occasions that the United States is unable or unwilling to take part, it could equally serve as a vehicle for defence operations and cooperation under conditions where Turkish participation is impossible or undesirable, without incurring the diplomatic and strategic penalty of changing Turkey’s status within NATO.

Secondly, while a European pillar within NATO could be understood as an alternative to European Union led European defence integration, it would struggle to avoid duplicating the efforts of both the EU and the “full NATO” given that European defence integration is now proceeding with a degree of political backing not previously evident. It may be ironic that the UK might have been better served had it channelled European defence autonomy through NATO, an institution with which it was comfortable, and therefore which it could have been in a position to influence from the inside, than the EU, with which it could not reconcile itself, and in whose collective position it will have to acquiesce. But
an entire European pillar of NATO would be an unnecessarily “heavy” way of addressing the problems Brexit has caused, and would not be able to enhance burden sharing with the six EU members not in NATO – a category that includes states with significant military capability such as Sweden.

1.4 A UK-EU bilateral partnership

In its recent position paper, the United Kingdom government itself suggested including defence, security, foreign policy and development activities in the “deep and comprehensive partnership agreement” (possibly based on a stand-alone defence and security treaty) which British Prime Minister Theresa May has stated as a major objective in Brexit negotiations. While there are advantages to this approach — notably avoiding the need to create or recreate a separate institution — it is unlikely that this approach will be successful.

At a minimum the proposals were received in Brussels and in Member State capitals with a degree of bemusement: why, it was asked, are you leaving if you want to be back into all these institutions? This proposal, while well-intentioned, betrays London’s misunderstanding of what the EU is, and how it works. Though Britain has managed to secure opt-outs from elements of integration it did not feel ready to join, most obviously the Euro currency and Schengen border free travel area, that is quite different from leaving the entire project, but then asking to return to all of it except the free movement of people and the direct effect jurisdiction of the European Court of Justice, both of which date from before British accession in 1973. Theresa May’s successful limited
opting-in as UK Home Secretary (Interior Minister) to certain, particular, Justice and Home Affairs measures (after the UK had exercised a initial general opt-out from numerous Justice and Home Affairs (JHA) instruments) is not a device that can reasonably be expected to apply to the European project as a whole once the UK has ceased to be an EU member. The government seems still to believe that it will be possible to repeat these *ad hoc* arrangements as a third country for internal security and it still seems keen to participate in the European Arrest Warrant (EAW) and Europol, according to the Prime Minister’s speech in Munich in February 2018. But this would pose huge problems given the UK’s continued opposition to ECJ oversight of the UK, and the strict requirement on EU members to accept such oversight in the articles governing these JHA instruments. The EAW itself is hated by hard Brexiteers as giving extraterritorial rights to EU “foreign” judges that could be used against British citizens, even though law enforcement agencies consider it invaluable. As the EU Parliament resolution on 14 March states “The EU does not grant privileged access to third countries to its databases, instruments or agencies.”

A narrower agreement that confined itself to intergovernmental matters and therefore avoided difficult questions of ECJ authority could be imagined. It would include the UK paying into the EU Defence Fund, the EDA and the EU Overseas Development Aid programmes. However would it give the UK the influence it felt compatible with its contribution, and the EU the reassurance that a non-member state would not try to determine policy from outside?
In reality the positions of the parties, and in particular the domestic politics of the UK, as well as the internal politics of the Conservative Party mean that it may be too difficult to conclude a comprehensive agreement at all by the March 2019 deadline. Though in reality, the transition (or implementation) phase which ends in December 2020, may allow progress to be made here.

The main sticking points on the subject at hand are two: the EU’s fear that the UK is engaged in cherry-picking and the UK’s objective of retaining as much involvement in those EU structures it approves of without being subject to supranational judicial authority. The first arises from joining the defence and security and economic elements of the negotiation in a single long term deep and special partnership agreement. Despite the UK’s insistence that its commitment to EU security is unconditional, EU institutions and member states suspect this is merely a more subtle way of the UK attempting to use its “security surplus” to secure concessions elsewhere. Nor do they see why a non-EU member state, as the UK will become, should be involved in shaping EU defence and security policy at all. Indeed, the accusation that this was an attempt by the UK to engage in “back seat driving” of EU policy has surfaced repeatedly in research interviews conducted for writing this report.

The second issue is the UK’s aim of leaving the jurisdiction of European law, or at least European law with direct effect in domestic law, and which provides for mandatory fines to be levied against non-complying governments that are within the CJEU’s jurisdiction. The UK has so far conceded, that at least for a short transition period full CJEU supervision will be allowed, and possibly longer term, in a future trade
agreement, an EEA-lite model similar to that used by the EFTA Court and EFTA Surveillance Authority to ensure Norwegian authorities' compliance with the EEA Agreement, could be acceptable.

While this could in principle be viable for ordinary commercial business, the UK’s lack of written constitutional entrenchment raises questions about enforcement post Brexit in the more politically sensitive areas of data protection, counterterrorism, human rights and immigration law. These areas of Justice and Home Affairs on internal security (which are Communautaire, and co-decision regulated) are ones where an agreement will be especially difficult to reach.

Defence and foreign policy, in contrast has, not least due to decades of energetic British diplomacy, but also because of the more widely held concerns about national autonomy and sovereignty that apply in other member states, largely occurred through intergovernmental structures. This is reflected in a lack of British opposition to continuing with as much of the status quo as possible. But doing so, even in this area, as part of a specific partnership with the UK runs the risk of appearing to grant Britain rather too many of the benefits of membership without incurring its financial or faithful duty of solidarity obligations enshrined in the Treaties.

1.5 Seven reasons for a specialised institution

I recognise that a new, specialised institution may appear to be an unnecessarily radical step. Given that NATO and EU structures both exist, why construct another body that risks duplicating functions, increasing administrative costs, and
creating further problems of coordination rather than solving them?

There are seven reasons for proposing this radical idea.

- First is the limited effectiveness of and resources allocated to the Berlin Plus process and NATO-EU coordination.
- Second the problems caused by an increasingly authoritarian and erratic Turkey together with the impasse between Turkey and Cyprus.
- Third, the opportunities to expand the association to include states that will not or cannot for the foreseeable future join NATO.
- Fourth the political context of fractious Brexit negotiations during which a complete breakdown in talks cannot be ruled out.
- Fifth the advantages of maintaining a shared European strategic defence culture of which Britain is a part.
- Sixth to limit the fragmentation of the European defence industry that Brexit may cause.
- Seventh, offering an alternative vehicle for British participation in the Western Alliance, protecting it from a potential far-left anti-NATO British government, which might emerge in the UK under a Prime Minister Corbyn.

First, the NATO-EU coordination process is currently too lightweight to bear the load that a productive EU-UK defence relationship would require. The Berlin Plus process had great potential when it was set up, but there have only been two Berlin Plus missions and while the steps taken to implement the NATO-EU Joint Declaration are welcome, they are, with the possible exception of the agreement to undertake joint military exercises, mostly confined to the mutual provision of information about each others’ activities.
As the EU increases the extent of its military integration, the UK will find that its bilateral links, in particular with France and Germany, which had once been particularly developed examples of this sort cooperation, will become relatively weaker when compared to those developed within the deepening European institutions. The UK will increasingly find itself on the outside of a more cohesive European military bloc than it has been used to. The big risk to the EU 27 is that the UK sees a more integrated CFSP and CSDP as competition and not complementary and globally seeks other spheres of operation or even new alliances.

This is to a great extent the direct result of Brexit, which doesn’t only, and obviously, place Britain outside the European decision making processes. It also removes from those processes a power which, much to my regret, saw fit to limit the speed with which European defence integration proceeded. Mere membership of NATO, and the use of its attenuated coordination mechanisms, won’t necessarily be enough to prevent undesirable divergence between the British defence establishment and its emerging European counterpart.

Secondly, I do not propose that this organisation be opened to Turkey for the foreseeable future. While recognising the importance of the long term security alliance with Ankara through NATO, Turkey does not and is not likely in the future to have the kind of democratic institutions and checks and balances that would make the kind of defence cooperation the institution would provide, possible or legitimate. This however provides a notable benefit: this institution would not be hamstrung by the conflict in Cyprus which has limited the ability of NATO and the EU to coordinate activity since Cyprus’s accession in 2004.
Furthermore, should Turkey continue to behave erratically in ways that endanger the Alliance (for instance by ordering Russian air defence-systems) this institution can be an alternative conduit for coordination of activity.

Third, there are certain unambiguously European countries, such as Ukraine and Georgia, for whom NATO membership would be difficult if not strategically impossible in the near future. However reasonable it is to treat Russia’s characterisation of NATO enlargement as anti-Russian expansionism with a healthy degree of scepticism, it remains the case that full NATO membership for these former Soviet states would represent, for understandable symbolic reasons a challenge to Russia’s self-image and strategic doctrine. It would be seen in Moscow as a failure that could not go unanswered. Nevertheless, Ukrainians, Georgians and Moldovans deserve greater focus and attention upon their security than current institutions can provide. It is even possible Russia would see a defence organisation that did not include the United States as less hostile than NATO particularly if it includes more Russia-friendly EU states in a more prominent role than they have in NATO.

Fourth, as I discussed above the Brexit negotiations have been fractious and difficult. There is a significant risk that security cooperation adequate to the EU’s and UK’s needs may not be possible in the short time period available to complete them.

Fifth, this new institution can help reduce a divergence of strategic cultures that might possibly emerge as initiatives, such as those suggested by President Macron, gather steam. Were the UK to find itself outside such an institution the
resultant divergence would make operational cooperation more difficult when it is required. Other methods to address this problem can certainly be thought of - including continued UK participation in the European defence college, but the new institution could provide a rubric under which this cooperation can be conducted sustainably.

Sixth, a new institution could address some of the potential fragmentation of the European defence industry that Brexit may cause because (as discussed above) of the interaction of Brexit and increased efforts to coordinate the defence procurement market. The limits on third country access to research collaboration and assessments of suitability of suppliers based on national origin suggested in the member states letter of notification to the Council of the activation of PESCO, and in the Commission’s EDIDP proposals, while important to ensure that Europe’s defence industrial base is not sacrificed to hostile takeovers by hostile foreign powers, could have unintended consequences given the extent to which Europe’s defence industry has grown to be international by acquisition (a process that has maintained the politically useful appearance that suppliers are national to the country where the tender is issued, while being in fact foreign owned).

Finally, political risk in the UK comes from the left as well as the right. There is a distinct possibility that the United Kingdom could, after the next election, be led by Jeremy Corbyn. Mr Corbyn is a long-standing opponent of NATO and the British nuclear deterrent. Though he would likely attempt some compromise with the traditionally pro-defence industry trade unions, and military-to-military institutional links between a Corbyn-led UK and NATO members would remain strong, political direction would be weak. It is
conceivable that this new institution could provide a means to provide a face-saving option for a Corbyn government to maintain military involvement in the Western alliance while publicly cooling on NATO. This would moreover help many Labour MPs, most of whom are still, after Brexit, instinctively pro-European to justify the change in emphasis.

A new (or revived) institution, modelled on the lightweight organisation of the former Western European Union avoids these complications. It can proceed independently of the success or failure of the parties to the Brexit talks being able to negotiate the kind of deep and special partnership, involving security and defence cooperation, that the UK currently seeks. Because it would be open to other states (certainly Norway and Iceland, but perhaps also Ukraine and Georgia, and, even, in principle, a state such as Israel) it would not amount to granting Britain a special deal, but instead be a general framework for the EU and friendly neighbouring democratic European states with whom it shared values to cooperate militarily. In addition, by separating defence policy and procurement from other more fraught areas of negotiation, it eliminates the risk that this initiative could be seen as “cherry picking”. Negotiation in each area can then proceed on its own merits, without being polluted by progress (or lack thereof) in the others.

It would be greatly damaging to European and, of course, even narrowly-conceived British security if the need for military and defence cooperation were to be sacrificed to a Brexit divorce negotiation that went sour. Attempting, as some perhaps wrongly interpreted the Article 50 trigger letter from Prime Minister May, to tie security and defence offers of future cooperation to the outcome of those talks,
while appearing tidy is too large a risk as subsequent UK governments statements have made abundantly clear that British security and defence is unconditional. This includes the policy I first suggested in my February 2017 paper Brexit—the Security Dimension of continuing the Article 222 TFEU and 42.7 TEU mutual assistance clauses to the EU 27 outside NATO de facto even if Brexit formally has ended them. The government position paper suggests my policy proposal has been adopted. Not only does a new WEU-style institution have other advantages, but the relatively small cost involved in setting up its lightweight secretariat is a small price to pay for avoiding this increasingly likely risk.
2. SCOPING A NEW INSTITUTION

2.1 The WEU

The Western European Union emerged from the flurry of activity involved in rebuilding the European democracies after the Second World War. Initially established by the 1948 Brussels Treaty, originally as the Western Union Defence Organisation (WUDO) and it was designed to include elements of economic and cultural cooperation as well as military defence and arms control. Indeed in some senses its original framers already understood the need for Western European soft power as well as hard power to be coordinated. Its cultural aspects were fairly quickly superseded by those of the Council of Europe however,
leaving the WEU as a military association comprising Belgium, France, Luxembourg, the Netherlands and the UK, focused at least in part on preparing for collective defence against the possibility of a revived Germany (the Federal Republic of Germany would not be created until the following year, and the former enemy's territory was still divided into American, Soviet, British and French occupation zones).

This Treaty provided for the creation of a continuous political council of its member states (then described as powers) and an uncompromising mutual defence guarantee.

As the Cold War began to dominate the military balance of the continent, it would achieve its final form with the “Modified Brussels Treaty” of 1954, which admitted the former Axis powers, West Germany and Italy and dropped references in the 1948 treaty to taking “such steps as may be necessary in the event of a renewal by Germany of a policy of aggression” while adding explicit acknowledgement of NATO’s primacy as a military alliance, and committing the UK to deploy four divisions of troops to Western Europe, preventing Germany from acquiring nuclear weapons, and subjecting the disposition of nuclear armaments and materials across Europe to a decision of the WEU’s council, and a specific arms control agency. How things have changed — the concern now being that Europeans arms manufacturing sector is at risk of becoming too small.

Though, or perhaps because, it has always been overshadowed by the institutions that owe their origins to the Treaty of Rome in economic matters, and NATO in military, the Western European Union nevertheless played a vital facilitating role in European and Western defence
and security during the sixty or so years of its existence. As Sally Rohan of the UK’s Defence Academy writes in her authoritative account of the organisation’s history its relative obscurity allowed it to overcome obstacles, many arising from domestic or international politics that might otherwise have been insuperable. It provided, through the Modified Brussels Treaty, the vehicle through which West Germany was able to normalise its relationship with its former European enemies and overcome domestic institutional restraints on unilateral accession to military alliances and therefore assume its place in NATO as such a vital part of the Western military alliance. In 1967, after De Gaulle pulled France out of the NATO military command structure, it was used to reassure allies about France’s commitment to the European democracies’ side in the Cold War. As Europeans became uneasy with US President Ronald Reagan’s replacement of détente with a more confrontational approach the WEU helped reduce friction among allies, and came to Washington’s aid when it transpired that Europeans’ maritime mine countermeasures capability vastly exceeded the American. When then Iraqi President Saddam Hussein invaded Kuwait, it was under WEU auspices that 45 European warships were deployed to keep Persian Gulf shipping lanes open. And during the crises emerging from the collapse of the former Yugoslavia, the WEU made itself available to operate joint deployment of peacekeeping forces (though differences between European powers prevented decisive action being taken without American involvement).

Nevertheless, the European Community’s (later the European Union’s) development of common foreign, security and defence policies throughout the 1990s and into the 2000s called the WEU’s purpose into question. It appeared to
triplicate, rather than merely duplicate, the efforts of both NATO and the European Union. Accordingly, as the EU developed its external action “pillar” and formalised it in the Lisbon Treaty the decision was taken, at the insistence ironically of the Blair UK government, to fold its functions into the EU CSDP. This did not seem unreasonable at the time — the live issue in the British politics of European integration was not Brexit, which was then inconceivable, but whether Britain should join the Euro.

Now however, it looks like we will soon be without a specifically European forum in which Europe’s two pre-eminent military powers can take part on equal terms. PESCO (discussed above), while an important initiative, and one with which the United Kingdom ought to collaborate, is not structured in a way to allow this. The FPA by which it might admit the United Kingdom as a third country cannot be made compatible with PESCO’s institutional EU membership requirements and the UK’s own political environment. The EU cannot legally grant such privileged access to a non-member, while London cannot, rightly, allow itself to take the subordinate or relatively peripheral role that EU structures would allow it.

A revived Western European Union, could however be just the forum for structured cooperation and streamlined defence procurement between PESCO, the UK, and perhaps other non-EU member states such as Norway, Georgia and Ukraine. The UK would not be demanding privileged access to an institution of which it is not a member. Nor would Britain be required to accept a subordinate role: it would rather be an equal partner in an intergovernmental institution, though reviving its parliamentary assembly would also be
highly desirable. And to the tabloid charge that PESCO is a Trojan horse for an EU army with which the UK should have no truck, it can provide the commensurate response that the NEWU is not an EU institution, and the organisation by which it is inspired well predates the Treaty of Rome and even the Atlantic treaty of NATO.

2.2 Design of a new institution

The WEU proved itself useful by being a lightweight, intergovernmental, organisation that adapted to an environment set by NATO and the European Communities (later the European Union). The new institution ought to be set up in its image.

I propose it have three principal, and two fall-back functions.

<table>
<thead>
<tr>
<th>PRINCIPAL FUNCTIONS</th>
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<tr>
<td>Structured coordination and planning between its non-EU members and PESCO</td>
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<tr>
<td>Interface with the EDA and EU Defence Fund</td>
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<tr>
<td>Governance of a Shared Defence Market</td>
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<tr>
<th>FALL-BACK FUNCTIONS</th>
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<tr>
<td>Mutual Defence Guarantee (in event of UK and EU not agreeing on one)</td>
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<tr>
<td>Shadow Berlin Plus coordination (in event that a mechanism for coordinating with NATO members that does not involve Turkey is required)</td>
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Decisions should be taken by a Ministerial Council, acting by unanimity (unless its members decide, by unanimity to
use a more permissive procedure for operational matters) and ideally overseen to provide democratic scrutiny by a consultative assembly of member state national and European parliamentarians. This serves as useful debating forum and makes it an attractive proposition for Eurosceptic parliamentarians interested in European defence alternatives to PESCO. The Council’s membership would consist of Defence or if appropriate alternatively Foreign Ministers from members of PESCO, the EU’s High Representative or his or her named substitute such as the Defence or Foreign Minister from the EU rotating 6 monthly Presidency and the new institution’s other member states.

Operational planning should be carried out either at the evolving European Military Planning and Conduct Capability or headquarters’ of its other members, (principally the UK’s Permanent Joint HQ at Northwood), which has served so well
for EUNAVFOR Atalanta. No further HQ would be needed.

The shared defence market would be subject to dispute settlements by an arbitration court modelled on that of the relationship between the EFTA Court and the EFTA Surveillance Authority. 50% of the members of the judicial body would be appointed by PESCO members, the remaining 50% by non-EU members to provide safeguards against caucusing by EU member states against non-EU member and this proposed system is similar to that in use in the European Banking Authority between Eurozone and non Eurozone member states.
2.3 Structured relationship with PESCO

The activation of PESCO significantly changes the politics of European military activity. Though it is far from the standing “EU Army” of British newspapers’ imaginations, it represents an important evolution of the EU’s defence instruments, and supplies a process to drive consolidation and modernisation of European military capability through the EU Defence Fund and in addition the Commission’s proposals on defence procurement.

I see this as a positive development and would have preferred the UK to have been leading this transformation from within the EU, which is in our common security interests and to which we, with our extremely capable and experienced armed forces would have been well placed to continue. Unfortunately, British politics has not made this possible. As a non-member of the EU it is I think inevitable that PESCO members would not extend to the UK a role in the “decision shaping” phase of PESCO operations. Nevertheless, leaving the UK “bolted-on” to a PESCO structure as a third country through an FPA would not allow the UK to make its full contribution to our common continental security, even if eurosceptics’ domestic political sensibilities about participating in EU military programmes could be overcome. As the experience of the operation in Libya demonstrated, ad hoc coordination is neither efficient nor effective.

A structured relationship between the EU’s PESCO, the UK and other non-EU states such as Norway, Ukraine (and, perhaps, non-EU states such as Israel) resolves these political and practical problems. The EU would not be conceding
privileged access to its own processes to a non-member. The UK would not be participating in a second-class manner in an EU institution. Unsatisfactory ad hoc arrangements wouldn’t have to be rushed into in order to meet urgent operational needs. A new WEU style institution could provide such a relationship, always, of course, coordinating with NATO to ensure that missions and training undertaken under its auspices did not duplicate or distract from NATO obligations.

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<tr>
<th>Organ</th>
<th>Description</th>
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<tr>
<td>Council</td>
<td>The ministerial Council should meet at least every six months, at defence/foreign minister and High Representative level, with observers to be invited as necessary.</td>
</tr>
<tr>
<td></td>
<td>Regular business could be conducted at PSC ambassador level for the PESCO states. Other institution members could appoint someone of Ambassadorial rank from one their appropriate Brussels representation (either their third country missions to the EU or permanent NATO representation as required).</td>
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<tr>
<td></td>
<td>The Council would take decisions relevant to the institution’s operations, and not interfere in the independence either of PESCO or of its non-EU member states.</td>
</tr>
<tr>
<td>Parliamentary Assembly</td>
<td>The parliamentary assembly would provide some democratic scrutiny and oversight of the Council’s actions but have only a formal consultative role and be composed of delegations from national parliaments and the European parliament.</td>
</tr>
<tr>
<td>SDM Court</td>
<td>Oversee the Shared Defence Market (see below for details)</td>
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The parliamentary assembly would provide some democratic oversight and scrutinise the Council’s actions, but have only a consultative formal role. It would be composed of delegations from national parliaments and the European parliament.

2.4 Oversight of a shared defence market

The Shared Defence Market I propose is much less ambitious than a true single market for defence. It merely aims to ensure that Brexit doesn’t impose any additional obstacles to an efficient all-Europe defence market other than those entailed by the terms of the new trade relationship between the UK and EU.

There are growing concerns that combinations of Brexit, and measures proposed (e.g. in the EUDF and EDIDP) could accidentally damage the European defence industry by having protectionist effect against the UK at a time when it is necessary to consolidate European defence equipment to take advantage of necessary economies of scale and improve interoperability among allied forces.

That the EU and UK will negotiate a new economic relationship is a necessary outcome of Brexit. Each side brings its own principles and preferences to these negotiations (which are likely to continue after Brexit day itself) and these matters lie outside the scope of this report. But a general idea will become clear from the political declaration attached to the withdrawal agreement as the “Framework of the future of EU-UK relations” and the European Parliament has suggested four pillars: (a) trade
and economic relations (b) foreign policy, security, and development cooperation, (c) internal security, and (d) thematic cooperation. Notwithstanding this, there is I believe an overriding need to ensure that Brexit does not further fragment the European defence market, an area in which, attempts to develop the EU’s internal market have not been especially successful. For instance, a study released by the Directorate-General for External Policies in 2015 already described in the paper on the impact of the “defence package”, concluded that in cases where the name and address of the successful bid was provided, 84% of contracts were still domestically awarded, though the common practice of defence firms’ expanding into foreign markets by acquisition means that quite a few of these “domestically” awarded contracts are in fact awarded to suppliers whose parent company is foreign.

It would be unfortunate if the EU were not to benefit from finding a way of including the UK’s defence industry within the scope of measures designed to stimulate Europe’s defence industry. Its significant defence market is currently served by UK and European-owned firms to the benefit of all.

I recognise that this argument has not proved convincing to the UK with respect to other industries. Brexit is being pursued despite the damage to every sector of the British economy. Nevertheless, there is a significant proportion of British Eurosceptics who are fully committed to a Western alliance and the collective defence of European democracies from external aggression. The need to use resources with maximum efficiency given the security threats our societies face could I think persuade them to contemplate levels of defence economic integration they would not contemplate
elsewhere, as they accept, for instance, the deployment of British troops under American or French command in NATO. It would likewise be self-defeating for the EU to deploy measures rightly contemplated to prevent external subversion of the EU defence industry and the equipment it produces against a long-standing ally, the UK, with whom it shares almost identical security interests and which is unconditionally committed to supporting European security, for the obvious and unchangeable reason that it is a European country and faces the same threats as its European partners.

It would not therefore be correct to consider a shared defence market “cherry-picking”. It is rather a means by which the harm to European security that Brexit will cause can be minimised. It is different from, for instance, suggestions that the City of London be allowed special access to the financial services aspects of single market because that was proposed without the UK accepting the integrity of the four freedoms although arguably the City provides an EU wide cheap source of reliable rules based finance unlikely to be matched if its global primus inter pares status is undermined by a hard Brexit. And rather than establishing privileged UK “access to” an institution of which it was not a member, it would be a new, larger area to which EU member states and non-members would be part of on equal terms. The correct analogy is not to cherry-picking but to a specialised, trade agreement for the defence industry that PESCO members, the UK, Norway, Ukraine and perhaps others could join, and from which EU member states that chose not to join PESCO (Malta and Denmark), or opted out of the EDA entirely (such as Denmark), would be excluded.
Defence procurement, and the defence equipment market more generally would be governed by the following principles:

- A presumption in favour of non-discrimination between firms and nationals of its member states. Exemptions on the grounds of national security would need to be justified and shown to be proportionate.
- Any restrictions on ownership (such as those proposed in the letter of 14 November 2017 from member states notifying the Council of their intention to establish PESCO) would be taken to apply on non-discriminatory terms to EU and non-EU members of the new institution, and the NWEU would institute equivalent rules for non-EU territory.
Brexit occurred at a critical juncture in the politics of the West. Long term trends in the United States, including changes in the composition of its population, are taking its gaze away from Europe and at a time of tilt towards the Asia-Pacific. Barack Obama, born in Hawaii, was described as America’s first “Pacific” president. At the same time rising Chinese economic and military power compels the United States to devote attention and resources to managing the expansion of its new Asian rival. The election of Donald Trump as President accelerates this trend of American withdrawal from Europe, but did not start it. It may also herald a period of internal tension in the United States that will limit the attention it
can devote to upholding the rules based international order it has done so much to create and extend. It does so when Europe continues to face major security challenges that have arisen to its East and South following a period of relative stability after the end of the Cold War. I hope that despite Brexit, and the miscalculations as to the degree of the EU27’s cohesion committed by the British government so far during the negotiations, it will be possible to keep Britain involved in the defence and security of our shared continent in a way that deploys all our resources to maximum effect. This proposal, to revive the WEU, will I hope stimulate the debate that circumstances require.

### 3.1 US Tilt towards the Asia-Pacific region

The somewhat surprise election of U.S. President Donald Trump was followed by predictions of a collapse in the transatlantic relationship. President Trump, whose view of the world is highly transactional, had campaigned on a platform hostile both to NATO and even the general concept of long-term alliances. During the campaign, allegations were made of Russian interference.

This is part of what has become a pattern of subversion of Western democratic processes which I discuss below, but in its American guise has already strengthened American nationalists who, though part of the American scene since Ross Perot’s Presidential run in 1992 were until Trump’s election contained by an influential group of Republican supporters of the transatlantic relationship. Despite resistance by the U.S. Congress (and in particular the Senate), the military, the former National Security Adviser, General HR
McMaster, and Defence Secretary, General James Mattis, U.S. foreign policy under Trump has swung in a direction that has weakened the Atlantic alliance. Not only do U.S. allies in Europe have to decode mixed signals, where the President’s tweets and settled US policy appear to differ, but there are indications that the Administration is making it difficult for that settled policy to be executed, by failing to fill senior posts in the State Department and closing down or refusing to fund important aspects of the US public policy machinery, including the public diplomacy department and the US Sanctions office — the latter a direct and presumably deliberate attempt to subvert Congress, which stripped the President of the authority to suspend sanctions on his own.

The recent dismissal of Rex Tillerson as US Secretary of State (replaced by Mike Pompeo) and HR McMaster as National Security Adviser (by John Bolton), suggests a return of unilateralist hawks to the Administration, restoring the fears of a strong “discontinuity” in US policy. Above all the European Union and the current American administration have profoundly different views of how to engage with the rest of the world. Activity that in the private sector would be considered at best “sharp practice” is being partly institutionalised in government. His apparent belief that NATO member states owe money for US protection is consistent with this extractive view of American power, which includes his threats to renegotiate NAFTA, downgrade, if not entirely abandon the Paris climate change accord, withdraw the U.S. from TPP, abandon TTIP altogether, and possibly renege on the Iran nuclear deal (Joint Comprehensive Plan of Action, JCPOA).
The danger of this attitude is threefold. First, it heightens EU distrust of the United States and weakens the position of those of us who support the transatlantic relationship in a continent that has, despite evident closeness in democratic values and interests, never had an entirely smooth relationship with Washington. Second, it diverts Europe’s diplomatic energy, and the efforts of reasonable American officials and institutions towards containing the potential damage from new policies initiated by the President, and away from developing constructive solutions to the increasing number of challenges we share. Third, because these measures are not even in the United States’s own interest, they risk permanently weakening the U.S. itself, and the web of alliances and friendly networks it has led in constructing to preserve international security.

This decline in transatlantic relations is occurring at the same time as the U.S.’s need to focus on China is growing. PRC President Xi Jinping is confident that he has consolidated power at home, and increasingly willing to project Chinese power abroad. The decline in American reputation has even enabled him to play a role as a defender of the rules based international order rather than the power seeking to subvert the post-cold-war order, at least in Asia, that China really is (while there will indeed be in the coming decades occasions on which it is sensible, indeed desirable to “do business” with China, these should not lead us to conclude that they share our European democratic values: it is quite clear that Beijing does not). In the coming decades, Washington’s interests in the Pacific will require it to devote significantly more attention towards Asia, and events in Asia will likely demand more of Washington’s attention in return.
In Asia in particular China, as a growing power seeks regional dominance, if not global rivalry with the United States, and in which security institutions are much weaker than in Europe. It is also a region whose youthful populations are, if experience elsewhere is any guide, likely to tilt political systems towards, rather than away from, conflict. East Asia is returning to the position of global influence it had before eighteenth century Europe’s population explosion and industrial take-off. Together this means the time when the United States could devote the preponderance of its resources to the security of the European democracies is coming to an end, if it has not done so already. For the rest of the century, it will be China, not Russia, that US strategy planning documents will diplomatically refer to as the “peer competitor” to the United States. For now India remains a sleeping giant that is yet to extend its role on the global stage beyond South Asia but there is evidence of increasing Sino-Indian rivalry in the Indo-Pacific region, and this is likely to grow further in future. India shares many common values with the United States (and the EU!) not least its democratic system and opposition to international terrorism. Ensuring its integration into the democratic world’s security and political alliances can be expected to occupy a significant proportion of US attention in the decades to come. There is some emerging evidence of the US alliance shifting away from Pakistan to India as Islamabad shows signs of increased engagement with China through the One Belt One Road Policy but this is still in its infancy.

Russian willingness to become a global military player again, though currently a major problem for Europe including the probable recent use of a nerve agent against the Skripals in Salisbury, England, ought to be one that Europe, with
its much bigger economy and population, can address on its own in sheer military-industrial terms. Our deficiency is in lack of will and organisation. But in the longer term it is reasonable for Europe to aspire, which is most immediately threatened by Russian expansionism if it territorially goes beyond the annexation of Crimea, to take the lead in containing current expansionism and, in the long run, seeking its reform and eventual integration into the community of nations as a responsible and constructive Eurasian state. The recent solidarity with the UK shown by EU member states over the nerve agent attack in Salisbury shows the EU’s determination not to let Brexit get in the way of a strong response to presumed Russian aggression. I hope this will continue post Brexit.

Meanwhile changes in patterns of energy use away from fossil fuels to a more decarbonised economy, in particular the decline in demand for oil for vehicles as eventually most of the global economy becomes electrified, and thus capable of being supplied by nuclear and renewable (and, crucially non-Middle-Eastern) sources of energy will reduce the US need to pay attention to security in the Middle East, including its need to support its allies in the Gulf against a resurgent but hopefully non-nuclear Iran. Europe in contrast is physically close to the region and still depends on access to the Suez Canal for its maritime trade with Asia. The effects of instability in the Levant and the southern side of the Mediterranean can be expected to continue to impinge upon Europe and its politics for the foreseeable future, whether directly through people fleeing war zones and atrocities in places such as Syria and Yemen, the inability of weak states to control migration through their territory, most particularly in Libya, and indeed indirectly, when weak or hostile states
act as hosts for extremist organisations and terrorist groups. The defeat of ISIS is of course welcome, but has driven the organisation to regroup beyond Syria and Iraq to destinations as far flung as the Sinai, Sahel and Somalia and thus pose additional problems to Europe in a wider range of already unstable regions.

In this context much is made of the extent of U.S. military spending ($611 billion) compared to a mere $264 billion annually for Europe excluding Russia. While this indeed shows that Europe could comfortably expand its defence budget without placing undue pressure on its economies, the more effective use even of existing sums alone could provide Europe with significant military capability for use in Europe’s defence and its immediate neighbourhood. The US’s expenditure is in contrast spread across the globe. Though expansion of European military expenditure to match that of the United States is unlikely to be necessary or politically realistic, obtaining the resources needed to autonomously provide for European security needs both in area, and in nearby out-of-area theatres including the Middle East and North Africa, should be eminently feasible. Were European countries (excluding Russia and Turkey) to meet their aim of spending 2% of GDP on defence, they would, have had a substantially increased precept of more than $350 billion to allocate.

The crude comparison of total US and European budgets deserves criticism. Europeans have not neglected their defence and security as much as is sometimes claimed. There remains room however for a significant closely coordinated expansion of European defence capability, and in the current political environment of mounting insecurity there are good reasons this should be undertaken and continued.
3.2 Brexit

The Brexit referendum did not come at a quiet moment for European security. Britain voted to leave the European Union with Russia in occupation of Crimea, and supporting a proxy secessionist war in eastern Ukraine; and at a time when a change of fortune in Syria for the Assad regime swelled the westward flow of refugees from government reoccupied territories, and chaos and instability in Libya contributed to further migration with jihadist militant groups being financed by people trafficking from Africa across the Mediterranean.

Brexit did not just happen in an atmosphere of instability: the instability promoted Brexit. For instance, the Leave campaign sought to conflate the fear of uncontrolled migration from the Middle-East with EU membership even though the UK was never part of the EU Common Asylum and Immigration policy or in the Schengen zone, and compounded it by making implausible claims that Turkey was close to being admitted to the EU, and would stimulate large migrations to wealthier EU states and particularly the UK.

As this instability itself shows, because of its geography, shared culture and values, history and deep commercial ties, Britain’s security is inextricably linked with that of continental Europe. It has always been so. What is different now is that a unified Europe is not a threat or rival to a post Brexit Britain but needs to be a partner and an entity that Britain can and should have a close relationship. The EU and Britain are both threatened by an expansionist Russia if its expansionist policy were ever extended into EU member states such as those in the Baltic Region and also increasingly by state failure and jihadist terrorism in the Middle East and Africa, particularly North Africa, the Sahel and the Horn.
Despite British reluctance to participate in supranational defence structures, over the past 50 years a surprisingly integrated defence equipment market has evolved (Franco-British involvement is particularly extensive). It is in neither the UK’s nor the EU’s interest for that market to be disrupted. Steps need to be taken to ensure that a larger market develops in which both defence sectors can participate.

Furthermore, Brexit, particularly the hard one envisaged by the UK government in which Britain leaves the Single Market and Customs Union for a mere third-country FTA like Canada’s will put significant stress on the British economy. In those circumstances it is difficult to see how the government can avoid continued restraint in defence spending, particularly given its ageing population and flat-lining productivity. The need to share capability in areas where interests are common will only become more financially acute.

Notwithstanding this, British Eurosceptics often ask whether this could not all be done through NATO? British Eurosceptics often argue that NATO should have “primacy” in matters of European defence and assert it alone was responsible for keeping the peace in Western Europe after World War II. They rightly warn against duplication of effort that would result from the creation of separate EU institutions, as well as decoupling from our North American allies. While widespread duplication would indeed be a mistake, the ability of the EU to act in a unified and independent fashion does not harm American interests, but as every US Administration (with the exception of the White House under Trump) has known, a strong Europe complements American security. Nor is it reasonable of anti-Europeans to argue
that such mechanisms that have been established, such as Permanent Structured Cooperation (PESCO) under Art 42.6 TEU or the European Defence Agency (EDA) under Art 42.3 TEU, have not yet amounted to much: one of the reasons they have not has been British discomfort with the level of European integration that a well-developed EU defence policy would require. Now that Britain is leaving it need not have such discomfort as it will not be required to participate in such institutions. Instead, the UK can cooperate with them in a structured fashion, from the outside. Such British opposition to European defence integration that remains can then be exposed for what it is: outdated British exceptionalist thinking apparently motivated more by obsolete fears that Napoleon’s anti-British “Continental System” would be re-established than any realistic assessment of the contemporary political and security environment.

In many ways as a result of Brexit, we are now seeing considerable progress towards further EU defence integration. PESCO is now being taken forward with seriousness. There will be an EU Defence Fund. The possibility of a Commission role in defence procurement, if not defence policy, under its own Directorate-General is also being mooted. EU battle Groups so far never used in combat since inception in 2007 may finally see the light of day.

The United Kingdom ought to welcome these developments including President Macron’s European Intervention Initiative and find ways in which it can contribute constructively to it, and overcome the at times current adversarial zero sum rather than win-win spirit in which the earlier Brexit negotiations were conducted.
3.3 UK government mistakes in negotiating Brexit

While the agreement in the Joint Report of the UK and EU 27 on 8 December 2017 to proceed to Phase 2 of the negotiations is welcome, it has been clear for some time that the Brexit talks are not, to put it mildly, going as well as they could. Nonetheless, the adversarial atmosphere surrounding the earlier negotiations or Phase 1 was far from inevitable. Successive mistakes and miscalculations by the UK government’s negotiating team have rendered the atmosphere less constructive than it could have been. They erred in trying to evade the established Article 50 negotiating process and attempted to negotiate directly and openly with large member states through bilateral meetings in the national capitals. They overlooked the fact that English is the EU’s lingua franca, so statements prepared for domestic consumption, such as the Foreign Secretary’s lamentable statement that the EU could “go whistle“ for Britain’s outstanding budget contributions, were readily available for their negotiating partners, and perhaps more importantly, their voters, to hear. The refusal to unilaterally guarantee EU citizens’ rights, and in particular International Trade Secretary Liam Fox’s distress-causing suggestion to the more than 3 million EU citizens living in the UK that EU citizens could be “bargaining chips” were not conducive to a more friendly atmosphere. It was particularly unhelpful to include in the letter invoking Article 50 of the UK’s intention to exit the EU, ambiguous language that was rightly or wrongly interpreted as a threat not to cooperate on security matters if an agreement was not reached:
“In security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened.”

Though this confrontational posture was rightly eventually changed as the reality dawned on the hard Brexiteers in the cabinet that their hostile approach was counterproductive, and the UK Prime minister sought to reset the atmosphere by adopting a more emollient tone in her speeches in Florence on 22nd September 2017, and at London’s Mansion House on 2 March 2018, sadly much of the damage had already been done. The persistent use of the term “Brexit war cabinet” by the UK media sends precisely the wrong signals to the EU 27. The attitude of the UK to the negotiating process itself has and unnecessarily undermined trust. The UK reluctantly accepted the sequencing of negotiations — that “sufficient progress” had to be achieved on EU Citizens’ Rights, the Irish Border and existing liabilities for the financial settlement or divorce bill — but then still proceeded to dispute their substance and even regularly still questioning the lack of parallel negotiations on the long term trading relations of the UK with the EU 27. The deal to achieve sufficient progress over the Northern Ireland border question, and so move to talks about the future relationship was eventually made, but questions about the UK government’s ability to deliver, as it appears it is beholden to the DUP ten MPs and their hard line sectarian views, remain. The issue of sufficient regulatory alignment to ensure an open border (as agreed by the 1998 Good Friday or Belfast Agreement) between the UK’s Northern Ireland and a Republic of Ireland still in the EU, and preventing a border between Northern Ireland and the rest of the UK while at the same time fulfilling the British government’s objective of the UK leaving as a whole from the EU Single Market and Customs Union seems
to be very hard for all the parties to resolve. The letter of the Prime Minister Theresa May to the European Council President Donald Tusk of 19 March 2018 made it clear that all options are being investigated. But it accepted that the Joint Report’s backstop of full regulatory alignment with Dublin is still required for the withdrawal agreement to be concluded. Nevertheless at the time of writing in the draft withdrawal agreement text published by the European Commission on 28 February 2018 the Irish question was still an unsettled issue.
The significant time elapsed since the Brexit referendum has seen considerable evolution in the EU defence and foreign affairs posture, in part driven by a desire to define itself against the “revolts” against what had been hitherto considered the settled international order of the free world in the UK and the United States.

These include the announcement in June 2016 of the EU’s Global Strategy and explicit presentation of Europe as an active defender of the rules based international order. This applies not only in traditional EU areas of trade and climate
change policy, but extends to measures to take advantage of Brexit to proceed with European defence policy and industry integration.

4.1 EU global posture

**CFSP/CSDP up to 2016**

The tendency in both the CFSP and CSDP in recent years has been to enhance foreign and security policy at an EU level. The EU has shown itself to be an increasingly enthusiastic actor on the world stage, in both its civilian and military missions, and the British government has been broadly supportive of those ambitions, though generally reluctant to contribute to their military substance. With occasional exceptions such the anti-piracy EUNAVFOR Atalanta operation, the UK has balked at devoting significant military assets to CSDP operations.

If the UK has been more enthusiastic in its support of intergovernmentally agreed and targeted sanctions programmes, such as those directed against Iran to contain its nuclear ambitions or against Russian annexation of Crimea, as well as some of the civilian CSDP missions such as the rule of law one EULEX Kosovo, it has not nevertheless used its experience and leadership to institutionalise CFSP/CSDP engagement which, (along with much of its funding) has remained ah-hoc, voluntary, subject to unilateral veto, and not fully woven into the EU’s fabric.

In the years since the 2009 Lisbon Treaty, and the setting up of the European External Action Service (EEAS) under then High Representative for Foreign and Security Policy, the
British politician Baroness Ashton, both the CFSP and CSDP have been defined by expanding global engagement. The EEAS has become a respected up and running diplomatic service, and the European Parliament, and in particular the Foreign Affairs Committee I sit on welcomes foreign leaders to discuss external engagement far more frequently than its British counterpart. Baroness Ashton, in particular, was credited for masterminding a breakthrough normalisation agreement between Serbia and Kosovo, and then brokering the highly significant P5+1 Iran nuclear deal. The EU supported strongly by the UK, also led the way in imposing sanctions on Russia after its illegal annexation of Crimea in 2014, and incursion into eastern Ukraine, through the “Normandy format” set-up to address the conflict mainly involving France, Germany, Russia and Ukraine with only occasional British and Italian participation.

In terms of the CSDP, the EU has stepped up its civilian and military engagements, achieving notable successes in the EU NAVFOR Atalanta mission off the Horn of Africa (its current operation headquartered at Northwood in London though post Brexit probably moving to Spain), which has drastically curbed pirate attacks, and in the anti-people-smuggling Operation Sophia EU Mediterranean naval mission, which has saved tens of thousands of lives in the Mediterranean. Though Britain has frequently declined to contribute to certain missions (as in the Central African Republic), it has contributed resources to others, most notably EUFOR Althea in Bosnia-Herzegovina.

As of November 2017, there were ten civilian CSDP deployments and six military ongoing - the majority of them non-combative training missions. In a sign of continued
commitment to the CSDP, Britain endorsed the establishment of the first post-Brexit Referendum mission, EUAM Iraq, at the October 2017 Foreign Affairs Council.

4.2 EU’s Global Strategy

Since the Common Foreign and Security Policy pillar was established by the Maastricht Treaty Member states have contributed unevenly to the EU’s foreign engagement, and have often limited their consideration and interest to their own traditional historical mainly post imperial ties, rather than broader relationships and contributions at an EU level. The deficiencies of the CSDP, meanwhile, have centred on the difficulty of coordinating security and defensive capabilities. The EU’s Global Strategy, released a few days after the June 2016 referendum, proposes a detailed template for remedying some of these problems. Global engagement, while still remaining nation-state government led, will become central to the EU’s supranational endeavours, with greater harmonisation occurring in the realms of security and defence, as well as foreign affairs.

Chief among the EU’s ambitions is “strategic autonomy”, while taking a more comprehensive approach to global conflicts and crises. According to the Strategy, the EU should involve itself at “all stages of the conflict cycle”, addressing prevention, response and peacekeeping; it should also commit to “global governance” and responsive diplomacy. In response to crises and emerging threats, it proposes four integrated approaches: “multi-dimensional”, “multi-phased”, “multi-level” and “multi-lateral”. The strategy places particular emphasis on building regional cohesion and
stability in the EU’s eastern and southern neighbourhoods, where the “more for more” policy of granting better EU trade and aid advantages goes hand in hand with better governance, the rule of law and democracy in those neighbourhood countries.

Defence cooperation is key to the endeavour, with an emphasis on building a coordinated European defence industry “critical for Europe’s autonomy of decision and action”.¹⁰ This is intended to enable deeper capability and interoperability; much like the EU itself, “pooling and sharing” of resources is designed to boost efficiency, effectiveness and clout for all parties, and resolves the inefficiency of multiple partners continually re-inventing the wheel. Crucially, the strategy is also designed to build general cohesion and trust among the (remaining) 27 member states. Trust which will be still more important as the EU begins to contemplate expansion to as many as 33 EU states in the next decade by admitting most if not all of the Western Balkans; and to further develop a very close relationship with the eastern partner countries like Ukraine and Georgia through the Eastern Partnership Plus (EaP+) programme.

Essentially, the Global Strategy concerns itself with joining up foreign and security policy within the EU’s broader structures, and at the same time joining up the EU’s internal and external dimensions. It thus requires both that the EU enhance its cooperation with global partners and also tighten its internal integration. The implications of this for the UK are uncertain; Britain will remain a key security partner for the EU, but in the arenas of internal security, external defence and global engagement, the EU’s Global Strategy fundamentally requires an EU-centred response led exclusively and only by its 27 or
more member states. Despite its intentions and resources, Britain will be forced to mount a vigorous campaign to secure any meaningful involvement.

The Global Strategy is undoubtedly ambitious, but there are some problems it cannot wish away. Security and defence cooperation must remain voluntary; some member states are either too small, too politically (or constitutionally) hamstrung to participate meaningfully, or - particularly in the case of the Visegrad 4 countries, but also states such as Denmark - concerned with the scope of EU ambition and the pace and depth of its integration. This will remain the case with or without Brexit. Nevertheless it must be recognized the EU has the unique ability to combine soft, (through trade, aid and nation building capabilities) and hard power (through the CSDP and now PESCO).

4.3 EU-NATO relationship post-referendum

The Global Strategy’s publication was shortly followed by the July 2016 NATO summit in Warsaw, which resulted in a joint declaration by the EU and NATO’s leaders. 21 EU member states post Brexit will still also be in NATO leaving out only Sweden, Austria, Cyprus, Finland, Ireland and Malta. NATO is itself only 29 mainly European member states besides USA and Canada, and includes also EU candidate countries like Albania, Montenegro, and Turkey. The declaration highlighted the shared nature of security challenges, as well as the hybrid threats emerging which would require the involvement of both bodies. The idea, once again, is that the EU and NATO can and should reinforce one another, not, as some fear, compete. Not even high-profile EU federalists, or the six non-NATO EU member states, are calling for the EU to
duplicate NATO’s structures, or to fulfil (yet) any meaningful form of collective defence. On the contrary: the stronger that NATO’s EU member states become defensively under the EU umbrella, the more useful they can be to NATO. In December 2016, the EU and NATO jointly published a detailed series of goals, focusing on bolstering resilience, building lines of strategic communication, developing cooperation between their respective missions, pooling capabilities, technology and research, and building greater reciprocity and mutual assistance on exercises and capacity-building.\(^{11}\) There is an identifiable need for closer cooperation in particularly cyber defence, in hybrid warfare and also in civilian support to NATO military activities. However, as a recent report demonstrates, EU-NATO cooperation is hamstrung by lack of military expertise in the Commission, lack of comprehensive formal dialogue, and, most intractably, by the constraints of the EU treaties and the Cyprus issue.\(^{12}\) Cyprus (EU only) and Turkey (NATO only) have both proven obstructive when discussing or permitting the sharing of resources, access and information. It, of course, also remains the case that countries such as Austria and Ireland take their formal neutrality seriously, while Malta is too small and militarily unengaged to join NATO or participate meaningfully within its structures. The UK government has declared a strong interest in deepening EU-NATO cooperation, and wishes to play a strong role in doing so after Brexit, even without its current dual membership.
4.4 Global Strategy implementation, CFSP/CSDP post-referendum and the impact of Brexit

Since the Global Strategy’s publication, the EU has been presiding over its steady implementation. The EEAS’s review of the first year remarks that, in security and defence, “more has been achieved in the last ten months than the last ten years”. Specifically, member states have agreed upon a Military Planning and Conduct Capabilities (MPCC) Unit, intended to streamline CSDP operations in Africa, and also green-lit the voluntary Permanent Structured Cooperation (PESCO) system (see later in the chapter). The Council has in addition approved the European Defence Action Plan, focused on enhanced cooperation on research and technology, and a Joint Support Coordination Cell to “strengthen synergies” between the civilian and military components of the CSDP. The Coordinated Annual Review of Defence (CARD), meanwhile, will facilitate information-sharing about defence planning and budgeting. At the same time, the Foreign Affairs Council has continued to publish assertive statements on EU engagements, with the backing of the British government. As an example, the July and October 2017 Foreign Affairs Council meetings resulted, inter alia, in new sanctions on Libya, Syria and North Korea, committed to the Iran deal in the face of US opposition, and approved crisis exercises under the CFSP as well as targeted sanctions against the Maduro regime in Venezuela.

It is unclear how much Brexit has impacted upon the EU’s stated ambitions. London’s concerns have traditionally been to limit the centralisation of the EU’s security and defence
capabilities, specifically in preventing the setting up of any Operational Headquarters and (of course) also any putative EU army. However, as seen above, the EU has in fact been able to press ahead with far-reaching drives towards security and defence integration with little protest from London. One British roadblock came in the form of the MPCC unit, when the UK vetoed its formal creation in May 2017 over the inclusion of the words “operational headquarters”, but this was resolved after subtle changes of nomenclature. Britain also finally enabled PESCO to proceed, and somewhat surprisingly it remains the UK government’s wish to participate in PESCO through its proposed “deep and special partnership” after it leaves the EU.

We can perhaps surmise that, since the referendum, Britain has been subtly altering its policy responses in Brussels. Either it has decided to enable policies which will not directly affect it, or it has in fact softened its stance to security and defence integration. Certainly, vetoes would not assist goodwill, and it is true that Britain’s long-established security red lines have at least technically not been breached.

Mindful that neither security nor foreign policy (barring the spurious talk of an EU army) played any great role in the Brexit referendum, the UK government has not given any indication that it wishes to decrease levels of cooperation in these fields. Indeed, as analysis later on in this chapter will demonstrate, the government's September 2017 EU position papers more or less propose maintaining the status quo through different means. government ministers have even spoken (somewhat over optimistically) of “enhanced” cooperation in certain fields.
4.5 Funding, rationalising and coordinating European Defence

4.5.1 European Defence Agency

The main forum for developing European defence research and capabilities is the European Defence Agency (EDA), founded in 2004 and based in Brussels. All EU member states apart from Denmark participate (thanks to a 1992 opt-out, now regretted by many Danish officials), and four non-EU states (Norway, Switzerland, Serbia and Ukraine) have association agreements. Its general budget is a modest €31m per year, to which the UK contributes just over £3.3m, roughly in line with the UK’s share of the EU population.\(^\text{15}\)

The EDA does not deal in high-level conflict planning, but rather, alongside the Capability Development Plan, projects to develop capacity and capability in pursuit of its stated policy priorities namely the improvement of military airworthiness, helicopter training, maritime surveillance and cyber defence. As with the Global Strategy, an over-arching ambition of the EDA is to promote “pooling and sharing” of resources for mutual benefit, but with a small budget and focus on middle-tier capabilities, it has been granted limited potential to influence European defence on a high level, or contribute to enhanced EU cohesion.

The 2016 EU Global Strategy foresees the EDA as the interface between member states and the Commission in developing capability, and implementing the Strategy’s political aims. The Strategy describes the EDA as encouraging “positive peer pressure” among the member
states, by producing regular updates about progress and targets.\textsuperscript{16} The EDA could become the vehicle for some of the new funding architecture being proposed by the Commission (see below), but this will still need to be comprehensively addressed. There are concerns that the EDA is not the right vehicle to implement the European Defence Fund.

In its EU 12 September 2017 position paper on security and defence, the UK government proposes contributing to future EDA projects - but does not specify the extent or status, or, of course, propose how much money might be involved. Critics have commented that the UK government's 2017 position papers on foreign, security and defence policies post Brexit were largely aspirational and contained few detailed proposals.

4.5.2 European Defence Fund

The European Defence Fund (EUDF, to distinguish it from EDF, the European Development Fund) was launched in June 2017, under the umbrella of the EU’s Defence Action Plan, and represents one of the EU’s most significant initiatives since the UK’s EU referendum. The instrument aims to address what the Commission deems “current limitations to the common financing of EU military aspects”.\textsuperscript{17} Its origin was a Franco-German drive to improve defence capability and cooperation at an EU level via obvious synergies, economies of scale at a time of national budgetary pressures everywhere in defence spending; leaders recognised that funding is too often rooted in member states, which results in unnecessary duplication of effort and fragmentation, and that outcomes can be improved across the board by taking a holistic and synergistic approach to defence and defence funding.
The key aims are to strengthen and integrate the European defence industry, improve interoperability of EU member states different forces particularly relevant to former Warsaw Pact countries in eastern Europe, allow member states to develop projects and technologies that could not feasibly be achieved independently, boost the standardisation and interoperability of equipment, enable smaller producers to compete, and also develop economies of scale - which has the added advantage of boosting individual states’ investments and offering a better return for taxpayers. (The Commission points out that member states’ failure to collaborate in defence research and investment could be costing up to €100bn per year, with perhaps 30% of member-state defence budgets saved by pooling acquisition.)

Ultimately, in the words of one EU Commissioner, the EUDF will turn the EU into a security provider.

The EUDF has two key arms: research, and development and procurement. The Commission has already started to fund collaborative research into innovative technologies such as robotics, metamaterials and drones, direct from the EU budget. The 2017 figure of €25m will rise to €90m, with the aim of allotting €500m per year specifically to defence in the new Multiannual Financial Framework - the first time defence will have had a dedicated funding stream in the EU’s principal budget. (As Sophia Besch of the Centre for European Reform points out, this will make the EU the fourth largest European funder of defence after the UK, France and Germany.) The European Investment Bank will also play a role in funding joint efforts in different member states, particularly involving smaller companies and industrial projects. The second arm involves co-financing joint acquisition of military hardware (particularly bulk-buying, in which members and not the
EU will own the equipment), and joint research. Individual member states will have to collaborate cross-border in order to secure this funding, which foresees the EU matching and topping up initial national investments: this could produce a total figure of €5bn in annual investment after 2020.  

Experts have expressed reservations about the execution of the EUDF. Some fear that the Commission may be more focused on industrial than strategic interests, but a solution may be to focus the EUDF through the EDA (see above). Others do not think that the EDA could cope with the vast injection of resources, and do not want to tie the Commission’s hands by restricting their use to the EDA’s comparatively narrow existing framework.

The UK government has pointed out that the research component of the EUDF, the Preparatory Action for Defence Research, is open to Norway, a non-EU member state, and in its recent position paper declared that it “could... consider options and models for participation.” The EU will of course welcome British money and expertise, but as with the rest of the Brexit process, Britain cannot be seen to cherry-pick benefits - and as Besch points out, the UK has not always been cooperative over the EDA budget in particular and threatened withdrawal in 2010 under the newly elected coalition Conservative government pending review but never actually did so. Regardless, it is in Britain’s interests that a new model resembles full membership of the EUDF as closely as the EU will permit. At the time of writing, there is concern in the UK that Britain, as a third country, will not have ready access to the EU’s Galileo Public Regulated Service for precise satellite military positioning, illustrating the challenges that lie ahead.
4.5.3 European Defence Industrial Development Programme

In June 2017, the Commission published proposals for a new regulation to establish a European Defence Industrial Development Programme (EDIDP), to sit alongside the EUDF, and to cover the calendar years 2019 and 2020. This focuses on the “competitiveness and innovation” of Europe’s defence industry. By focusing on the development stage, the EU intends the programme to cover the gaps between research and production, while also reining in excessive spending and risk; it, for example, proposes investing in no more than 20% of the cost of prototyping new apparatus. The EDIDP also intends to support, and provide a vehicle for, SME cooperation. To qualify - and to foster this cooperation - at least three companies in two member states must participate in each project. The SME component allows different levels of the economy to engage, and facilitates the participation of newcomers by lowering the barriers to entry to the frequently monopolised defence market.

We can perhaps hope to finally see defence, previously excluded and partly exempted from EU state aid and competition rules (Art. 346 TFEU) and thus become part of the EU’s broader ambition of widening, deepening and ultimately “completing” the single market. Key to the EUDF and EDIDP is a concept of harmonising, boosting competitiveness (and competition), and reducing protectionism. The Global Strategy stressed that a “solid European defence, technological and industrial base needs a fair, functioning and transparent internal market” and “security of supply”, both of which are motifs for the single market’s other sectors. This, too, will greatly interest the
British government - but it remains to be seen how closely a UK government could participate in the defence element of the single market, but not the rest of it. Clearly the stated intention for the UK (perhaps with the exception of Northern Ireland) to leave the Customs Union and Single Market flies in the face of meaningful participation in an embryonic EU single defence market. I discussed a way to address this using a “shared defence market“ above.

4.5.4 European Defence Union

Since the publication of the 2016 Global Strategy, another key idea has gathered momentum in the EU: the European Defence Union (EDU), to be operational perhaps by 2025. The idea of it pre-dates Brexit, but no doubt the thought of “obstructionist” Britain being outside the bloc after 2019 is focusing minds. Prior to Jean-Claude Juncker’s September 2017 speech (see later in the chapter), High Representative Federica Mogherini proposed in a reflection paper that an EDU would respond dynamically and energetically to emerging threats, boost “financial solidarity”, and reduce gaps, ill-preparedness and duplication amongst member states’ individual militaries. She has initially proposed three scenarios, ranging from enhanced cooperation on the current ad-hoc model, to a far deeper level of cooperation, whereby member-state troops could be placed at the rapid disposal of the EU, mutual assistance and comprehensive defence cooperation would become the rule rather than exception, and the EU would, effectively, shoulder some of NATO’s current responsibility for collective defence and evaluation of external threat. In theory at least Art 222 TEU and 42.7 TEU provides a legal basis for this and the EU
Battle Groups could be the military component, but these have not been deployed yet and France has been the only state to date to invoke Article 42.7 TEU (in November 2015 after the Paris terror attacks.) In any of the three scenarios described it is envisaged that the member states would take more responsibility for their own security and defence. One priority area is work with NATO on military mobility (also known as a “Defence Schengen”) as the rules governing the free movement of troops across national borders remain complicated and EU funds could be mobilized to assist in the upgrade of key infrastructure such as bridges and roads where large scale troop movements might be envisaged during a crisis. On 28 March 2018 the EU published its “Action Plan on military mobility” to address this issue, and put in place an essential component of Junker’s plan for an EU Defence Union by 2025.

4.5.5 PESCO

Permanent Structured Cooperation (PESCO) is closely linked to the EUDF and EDIDP, in that it centres on deepening defence coordination institutionally at an EU level, and increasing not only member states’ participation, but also commitment. It thus functions as the “political” centre of an EU decision making process also involving the Coordinated Annual Review of Defence (CARD) and the EUDF; the Commission believes that the instruments will be “mutually reinforcing”. It is frequently called “the Schengen of defence” or “defence eurozone” because it is not compulsory - but it is designed to offer concrete benefits to EU member states who choose to participate (currently all but Malta and Denmark); tasks will be allocated to smaller groups.
Although the Lisbon Treaty provided for PESCO the EU did not take the process seriously until the 2016 Global Strategy. While the CFSP and CSDP, and security cooperation in general, has frequently been piecemeal and ad-hoc, with national sovereignty always taking precedence over collective decision-making, PESCO attempts to ask for binding commitments of its members - while ensuring that participation in individual projects remains voluntary.

PESCO will function as a hub and umbrella to develop and manage projects falling under the Global Strategy and identified by the EU CARD process. The EEAS sums up the ultimate objective thus: “PESCO, once activated, would run like a silver thread between the EU’s operational capacities, capability development initiatives and defence industrial and technological support – thus bringing European security and defence to a higher level.”

PESCO will function by its member-states agreeing a series of commitments, contributions, timetable, assessment mechanisms and defined projects. The EU promises that the instrument will, for example, help reduce the number of different operating weapons systems in Europe, thus facilitating interoperability, and deepen EU capacities while still permitting member states to continue acting unilaterally and independently in the foreign and security area. Participants will also gain a 10% bonus in EU co-financing through the EUDF research and acquisition investments. The EU will not own the systems and capacities produced under PESCO, which, importantly, means that member states are free to use them in other contexts including NATO missions. Projects could include training for EU missions, and a coordinated crisis-response unit, but the precise details
remain under discussion. Some EDA projects could “migrate” and expand under PESCO.
Experts have identified numerous problems with PESCO. The specific projects that PESCO might facilitate and oversee remain vague; so, indeed, do the systems and rules governing it, and specifically its over-arching theme. It is commonly suggested that PESCO represents a contest between France’s external vision and projection of power, and Germany’s EU “identity-building” and cohesion.28 This conflict between “ambition” and “inclusivity” has been initially resolved by focusing on the process, and immediate development of new capabilities, rather than the final destination of the instrument. The German government in particular was initially concerned that making PESCO an exclusive club for states with highly capable and asset-rich militaries would prove too divisive, and thus PESCO has become a kind of “pledging” mechanism, becoming not only a “framework” but a “process”.29 A linked problem is navigating the political impetus with military input; PESCO has been devised by diplomats but will need to be implemented, in large part, by soldiers.

There is also dispute about how, precisely, the assessments should take place, whether they should be merged into the CARD process, and what compliance measures - or non-compliance sanctions - PESCO could ever enforce. Further concern centres on how “inclusive” the projects will be for Europe’s non-conglomerate defence companies.

Initially, just seven countries were linked to PESCO - France, Germany, Italy, Spain, Belgium, Czechia, Finland and the Netherlands, but now all member states bar Denmark and Malta have now decided to join. Some countries, such as
Poland, fear that PESCO could divert from a focus on NATO – which in the current climate feels more pressing (or even existential) – but nevertheless have agreed to participate.

4.6 Brexit and European Defence Industry regulation

Compared to other countries, the United Kingdom has tended to shy away from heavy regulation on defence procurement. In more recent years, however, unsurprisingly there has been a tendency to promote greater competition and transparency given pressure on defence budgets within the sector, in Brussels and in London. While procurement processes were subject to EU Directives, Member States sought to avoid applying them to the defence sector, by appealing to Article 346 TFEU which provides a broad national interest exception to normal procurement regulation:

“any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war.”

Moreover, on the matter of transfer of defence related products across the EU, Member States were guided by national policy and national law, treating defence related transfers within the EU as they would exports to third-countries outside it. As Martin Trubys and Luke Butler argue

“For many years, the Commission has sought to prioritize intra-Union transfers as part of the development of a more competitive EU defence market. However, there had been no general EU-wide regime for the intra-Union transfer of defence-related products. Member States instituted their own national laws and policies, which formally treated
From the 1990s onwards, the European Commission took active interest in further integration of the European defence market. In 2004, the Commission circulated a Green Paper on defence procurement, asking Member States their opinion on the possibility of establishing a separate Directive specifically for this purpose. Countries like France and the United Kingdom, both among the largest defence exporters in the European community, applauded the initiative, and yet, argued in favour of alternate intergovernmental solutions not involving the EU Commission and EU Parliament. Strikwerda has argued that Member States that initially disapproved of the introduction of a defence Directive, only changed their attitude towards having a supranational framework after receiving confirmation that the Commission did indeed have “legal competence in the field of defence and security procurement”. In 2009 the EU adopted Directives on defence procurement and intra-EU transfers of defence-related products, also known as the “defence package”. The transposition deadline was set for August 2011, however, full transposition was not reached until May 2013. A study released by the Directorate-General for External Policies in 2015 on the impact of the “defence package”, revealed that in cases where the name and address of the successful bid was provided, 84% of contracts were still domestically awarded, with numbers reaching 98% for Germany, 97% for France, 96% for Italy, 96% for Poland and 92% for the United Kingdom.

Nevertheless, this has to be put in the context of the cross-border shareholdings and joint ventures that are common in the defence industry to make firms appear more “domestic”
than their beneficial ownership would suggest. The EU Commission released a further report on the transposition of Directive 2009/81/EC (procurement) in late 2016. The report pointed to some positive developments, amongst others that there has been an above twofold surge in the value of contracts that are published across the EU since the Directive’s transposition. Nonetheless, the Commission also pointed to the uneven application of the Directive across Member States, that SMEs have been less successful in winning bids under the defence procurement Directive than they are under other EU public procurement Directives, and that the use of the Directive has been limited when concerning procurement of “high-value, strategic complex defence contracts”. In its report to the European Parliament, the Commission stated it found it “likely” that the procurement Directive has generated savings:

“As regards the cost-benefit analysis, the Directive would be likely to generate savings of roughly EUR 770 million, if a conservative assumption of 2.5% savings was used, based on the 2011 evaluation of the civil procurement Directives. Therefore the savings generated by the Directive are likely to exceed, by nearly a factor of nine, the costs of the procedures for public authorities and firms.”

While this may suggest little optimism is warranted for quick and substantial integration in the European defence community on the matter of procurement, two things are important to bear in mind. First, as EU-wide transposition of the Directives was only achieved in 2013, adding to this that it usually takes years for the civilian sector in Member States to apply and adhere to EU policy; it is unlikely that it will take any less time for the defence sector to conform. Given the sector’s intrinsic ties to the vital national security interests
of each Member State, which in turn may be conflicting to those of other EU-states, we may find that coherence in the implementation of these Directives can be slower than usual. Second, and as is often pointed out, the Directives should be seen as initial steps towards promoting greater transparency, competition and equal opportunities across the EU on defence procurement. While the Commission did not see any reason to amend the procurement Directive in light of its 2016 report, but rather focus on its “effective implementation”, it stated that it would, among other things, issue guidance on the language of the Directive, the application of some provisions, publish statistics on Member State compliance and undertake infringement procedures in cases where a Member State was in clear breach with the Directive. As such, we can only infer that the European Union intends to take a more active role in trying to weave together the currently fragmented European defence market in the future. In summary it is a modest start in a very delicate policy area which touches on national security and sovereignty.

4.6.1 Potential implications of Brexit for the UK defence industry

The EU supranational 2009 “defence package” is currently part of the legal regulatory framework that controls UK defence procurement, but whether this will remain the case, and, if so to what extent, is hard to tell before a deal is signed between the UK and the EU. Furthermore this part of the EU acquis is yet to be legislated for in the UK’s “EU Withdrawal Bill” currently before the UK parliament. However given the UK government’s request for a two year post Brexit
implementation or transition period of full alignment with the EU Single Market, it is hard to see how such Directives could be excluded from UK domestic law between April 2019 and December 2020 at least. The UK currently has the option to leave the European Defence Agency (EDA), but it could also choose to pay a fee for continued influence, seek an agreement along the lines of what Norway, Serbia and Ukraine currently enjoys or attempt to negotiate a deal of its own that guarantees continued membership. Alternate frameworks for continued collaboration that have been suggested include the “Organisation for Joint Armament Cooperation (OCCAR) or the six-nation Letter of Intent (LoI)”.

A RAND paper published in 2017 suggested that Brexit could enable the UK to seek more flexible procurement processes; however, it also outlined the issues that may arise should the deal concluded leave the UK with little to no access to the single market, and resources such as for instance skilled labour. Owing to the size of the UK’s military, its budget and contributions to NATO, the UK will undoubtedly remain a key actor in the defence of Europe. The current UK government has expressed its intention to uphold the NATO two per cent goal, and spend £178 billion over 10 years on new military equipment, with a 1 per cent yearly rise in the procurement budget. Whether it will be able to do so, will to a large extent not only be determined by the deal signed with the European Union, but also by national election results, the state of the UK economy which may well shrink in a possible no deal post Brexit scenario, and whether it becomes necessary to cut the defence budget.

However, it is worth noting that in the particular field of defence procurement, the European market is still to a large extent dominated by protectionism and opacity resulting
from understandable national security considerations and traditions. The “defence package”, though still in its infancy, has yielded limited results thus far on changing that trend. As highlighted in both the DG External Policies study and the report from the Commission to the European Parliament, the “security package” is rarely applied to contracts of high value, and the practice of utilising Article 346, has continued after the transposition of the regulatory framework. According to numbers released by the UK Ministry of Defence in 2014, for instance, around 45% of total UK procurement came from so-called single source (i.e. non-competitive) procurement.46 There exists an inherent tension between Article 36 TFEU (free movement of goods), and Article 346 TFEU as the latter exempts Member States from Common Market regulations in instances where the EU regulatory framework would harm the “essential” security interests of the state. At the current moment, the scope of the “measures” Member States can take under Article 346 does not seem clearly defined, but ECJ case law will likely with time help define the scope of the provision.

4.7 European Defence reform proposals: Juncker, Macron and the UK government

In September 2017 both the EU Commission President Jean Claude Juncker and French President Emanuel Macron laid out their visions for reform of the European Union in which security and defence featured prominently. Though the more cynical observers might attribute this enthusiasm to the fact that the EU is much more divided on Eurozone reform and the question of refugees than on defence and security, it is also true that this is an area on which significant progress
could be made, and in which progress might have become considerably easier following the British decision to leave.

4.7.1 Juncker and European Commission

Jean-Claude Juncker’s State of the Union address on 13 September 2017 offered bold initiatives in the field of security, specifically in the proposals for a European intelligence unit and reinforcing ENISA in Athens (EU Agency for Network and Information Security; founded in 2004 as a cybersecurity agency). For defence, he reiterated the developments of the EUDF and PESCO, and eye-catchingly, called for a “fully-fledged European Defence Union” (EDU) by 2025, declaring that “we need it” and “NATO wants it”. Controversially - and perhaps over-ambitiously - he also called for qualified majority voting (QMV) in CFSP decisions (although not, as the accompanying annotated version makes clear, those decisions directly involving the military or defence). In spite of claims during the Brexit Referendum the EU is building a “country called Europe” in the most fundamental questions of national sovereignty on defence unanimity (i.e. a national veto) will still be the norm for the foreseeable future.

The Commission notes that the move to QMV, and the EDU, are both permitted (and in the latter case foreseen) by Articles 31 and 42 TEU respectively. The UK would certainly object to QMV as an intolerable loss of sovereignty over foreign affairs decisions, and given the need for unanimity, it is doubtful whether the EU27 would all agree to it after Brexit either. The EDU is much more in tune with President Macron’s proposals, but neither Juncker nor the Commission has been clear as to what it precisely entails - except for the fact that obligations and relationships with NATO will be unaffected.
While the EDU could streamline security and military coordination within a permanent EU military headquarters, it would certainly not involve deployments of troops, say, against the wishes of member states, or impinge upon NATO’s fundamental tenet of territorial defence (despite the voices of some Swedish and Finnish diplomats who, while not wishing to break their countries’ formal neutrality and join NATO, are concerned about their capacity to counter emerging threats in a multilateral environment). Bluntly: it will not be an EU standing army even if Juncker and some other big member states such as Italy may wish it could be.

While a Britain outside the EU would certainly not contemplate joining any EDU, the government could well profit from lateral thinking about how it might intersect with the post-Brexit security agreement. If the EDU were to overlap with elements of the former Western European Union, substantive engagement could deliver concrete benefits, as well as British influence.

4.7.2 Macron and the French government

On 26 September 2017, President Macron delivered a wide-ranging speech at the Sorbonne on the future of Europe. In the area of security, he set out how, faced with American “disengagement”, France - and Europe - could effectively plug the gap. He stressed that the EU should go further than the enhanced commitments of PESCO, and funding structure of the EDF, and build a “common strategic culture”. His most striking proposal was as follows:

*I thus propose to our partners that we host in our national*
armed forces – and I am opening this initiative in the French forces – service members from all European countries desiring to participate, as far upstream as possible, in our operational anticipation, intelligence, planning and support. At the beginning of the next decade, Europe needs to establish a common intervention force, a common defence budget and a common doctrine for action.⁴⁹

Macron’s proposal builds on ideas of a “eurozone of defence” by discussing not just harmonised resources but strategies - breaking down the barriers between French and EU defence. It also advances instruments which have long existed in the CSDP without ever doing what their names suggest: battlegroups and rapid reaction forces. In a sense, Macron is proposing that national armies should be seen as akin to a “single market”, but without competition, and with full sovereignty: not a matter of rivalry, but common interests that also further the ambition and need for deeper EU cohesion across the board. Once again, it is not at least for now an “EU army” with centralised command. In Macron’s calculus, France’s armed forces must be fully European and open to non French EU recruits, and aligned with EU interests, but also fully French. The French Foreign legion has shown France knows how to manage such multinational soldiers albeit when the officers are all French nationals. France also hosts the little known European Corps (Eurocorps) in Strasbourg, following on from the Franco-German Brigade set up in 1987. It is an intergovernmental force from five member states and other associates, not under the command of any military organisation, and comprises around 1000 soldiers.

France’s 2017 Strategic Review of Defence and National
Security anchors itself within a turbulent and unpredictable array of global circumstances - from Islamist terror to cyber warfare to the re-emergence of authoritarian regimes, against a backdrop of weakened multilateralism. (US President Donald Trump is ever present but never specifically named.) In France’s own backyard, the paper discusses the added threats and uncertainties of the refugee crisis and Brexit. To this extent, the French government intends to strengthen both its independence and multilateralism. Specifically, the review demands a twin reinforcement both of NATO and the EU’s security apparatus.

In military terms, Brexit presents France with both opportunity and burden. Britain’s departure makes it the EU’s sole major military power and only EU permanent member of the UN Security Council (P5). Although the UK is not leaving NATO, France will inevitably feel itself shouldering more of the responsibilities of Europe’s security needs. The government’s dual ambition it thus clear: “to preserve its strategic autonomy and to build a more robust Europe, in order to tackle the proliferation of common challenges”.

While the bilateral relationship with Britain remains key, Germany inevitably becomes more militarily important. France and the EU are, in a sense, co-dependent. Just as Britain has used the CFSP and CSDP to amplify its strategic interests, boosting their reach and effectiveness, in a way that smaller countries without the fundamental base capacity could not, France now finds itself as the military leader of a club that may yet fulfil its potential. To this extent, it is instructive that France triggered Article 42.7 TEU mutual defence clause after the Paris attacks of November 2015. The solidarity implicit in the EU’s principles has been gradually
extending to security and defence for some time, and the EU's cohesion is profoundly in France's interests. Importantly for Britain, the French government is determined to retain its unique bilateral mainly nuclear research ties with the country, and to retain Britain within the purview of EU security. Like Britain, France also intends to use a range of military instruments, within the EU, NATO, independently, and in an array of bilateral and multilateral formations. The key here is dynamism and flexibility. Again, France does not wish to compete with Britain (or the rest of the EU), but maintain its interests and use its alliances both to assert them, and strengthen regional cohesion and cooperation. Although the French paper does not specify in detail the roles which Britain might play in EU security after Brexit, this openness could, in the right circumstances, find itself receptive to innovative British ideas about new structures of cooperation including through Macron’s intergovernmental European Intervention Initiative.

4.8 The UK government

The future relationship between Britain and the EU, while hotly contested, centres around what the British side, in particular, deems a “deep and special partnership”. While the discourse surrounding this partnership normally focuses on trade, the UK government has made much of its plans for a new internal and external security agreement, most recently on the occasion of the Prime Minister’s speech to the Munich Security Conference on 17 February 2018. While the precise legal form of this remains unclear, it would at the very least in the expressed wish of the UK government form part of the political declaration of the EU 27 annexed to the withdrawal
agreement scheduled as the framework of the future EU-UK relationship to be published in October 2018, and potentially subsequently become an enhanced, comprehensive security and defence bilateral treaty in the transition period after Brexit along with a separate long term EU-UK treaty on free trade. This would most likely be under the framework of an Association Agreement under Article 217 TFEU.

The UK government published two position papers, entitled “Foreign Policy, Defence and Development” and “Security, law enforcement and justice”, on 12 September 2017. Both focus largely on praising the current arrangements across internal and external security. Indeed, the papers stress the benefits of existing cooperation to such an extent that many commentators have likened them more to aspirational applications to join the EU than proposals to leave it!

The defence paper makes much of supporting a “strong” EU’s “global reach and influence”. It intends that the UK should develop bilateral relationships and make use of existing multilateral cooperation (both within the EU and beyond it), and suggests as yet unspecified new UK-EU structures. The paper naturally also focuses on the prime minister’s stated aim of a “global Britain”, with a network of security engagement that transcends the EU, although which shares the EU’s core interests and democratic values. NATO of course remains central to the UK’s strategic interests, and the paper emphasises that “a stronger NATO and stronger EU are mutually reinforcing”.

The UK government proposes that a future partnership should be “unprecedented in its breadth, taking in cooperation on foreign policy, defence and security, and
development, and in the degree of engagement that we envisage”. Indeed, given the current global instability on numerous fronts, and rapidly changing (and increasing) nature of common threats, the paper expects the UK and EU to “look forward to areas where we need to do more together”. 53 Specifically, the government suggests a level of cooperation whereby it could not only participate in CSDP missions, but somewhat over optimistically actively shape “mandate development and deep operational planning”, and spearhead deeper NATO-EU coordination. The paper also specifically mentions participation in the EDA and other instruments such as the European Defence Fund.

The UK position paper on internal security stresses the key but as yet unanswered point that existing arrangements to include third countries will be insufficient to address the level of integration that already exists between Britain and the rest of the EU. 54 Again, a new model must be sought which not only preserves the current, mutually advantageous arrangements, but grants mechanisms permitting further integration in the future. As pointed out in the European Parliament’s resolution of March 14 2018, ways for a third country, such as the UK, to exchange security-relevant data and engage in participation and cooperation with bodies such as Europol and Eurojust will have to be found.

Both the position papers were universally welcomed, in the sense that EU Leavers, Remainers and the EU27 all have an interest in maintaining security, defence and general foreign policy cooperation. The key problems will be in the implementation, and the political difficulty of “having one’s cake and eating it”. Cooperation of this kind is, as the government acknowledges, unprecedented with a third
country, and will require reserves of goodwill that have not so far been in evidence through the Brexit negotiations process. The simple fact of the UK’s “outside” position may cause legal complications impossible to remedy under the existing Treaties regardless of goodwill; the UK’s desire to drive forward EU-NATO cooperation may prove impossible when it is not a member of both bodies, while a country such as France remains a member of both, and also a permanent member of the UN Security Council and military nuclear power. The paper also makes little contribution to the challenges of the EU’s proposed post Brexit integration agenda highlighted above: if the UK wishes largely (or essentially) to replicate existing relationships, that could become impossible as the EU is determined to deepen and more closely harmonise its defensive strategies and infrastructure.

Other problems arising from the paper are problems of the Brexit divorce writ large. Given the need to create entirely new structures (and means of oversight), and potentially to alter the legal framework of many of the EU bodies to permit third-party membership, associate status or partial integration, the new agreement or treaty may take several years to negotiate - which is, incidentally, another reason to request the extension of Article 50 as opposed to the requested transition or as the UK calls it an implementation period post Brexit. A further issue is money. If the UK wishes to have any deal at all, it will have to pay its short term obligations in full, a proposition it accepted in the Joint Report of 8 December 2017. The UK making substantial long term EU contributions of course negates a Leave campaign promise of a Brexit financial dividend but the UK may have no choice but to accept the EU’s demand for significant sums to
participate in specific mechanisms.

While Brussels is united in its ambition for an ongoing partnership in the field of security, defence and foreign policy, the political problems on its side are also manifold. The EU Commission has produced a draft withdrawal agreement, and the European Parliament has gone further, adopting a resolution on the long term framework of future EU-UK relations on 14 March 2018. But both bodies have made clear the limitations of a future partnership. For example, while former Foreign Secretary Lord Hague and the House of Commons Foreign Affairs Committee have called for the measure initially recommended by my February 2017 report Brexit, the Security Dimension of giving the UK “permanent observer status” in the Political and Security Committee (PSC), EU officials have suggested in my research into that option that such a move would be highly unfeasible. Certainly, for political if not strategic reasons, the UK cannot be seen to be cherry-picking what it wants from EU integration, and abandoning the elements it dislikes. Regardless of its valued resources, capabilities and expertise, senior EU diplomats have expressed the view that in the PSC, if nothing else, the UK could not be treated substantively differently from such non-EU players as Turkey, or even Montenegro, whom the PSC periodically allows symbolically to attend occasionally as non-voting observers.

This is not to say that the EU will not desire, or even seek, British involvement in CSDP missions. This may even extend to the peripheries of an evolving CSDP itself. But, the UK’s practical capacity to shape, still less determine, EU defence policy will be grossly curtailed by Brexit. The status quo cannot be an option. The European Parliament on its
resolution of 14 March 2018 through its pillar on foreign policy, security and development cooperation, and a further pillar on internal security, broadly welcomes third country cooperation with the UK post Brexit, but emphasises the hurdles both legal and political to the ambitious proposals made by Prime Minister in her keynote Munich speech 17 February 2018.
CONCLUSION: SPECIAL NATURE OF DEFENCE POLICY

Defence policy is an area where even ardent Eurosceptics acknowledge the importance of Britain’s role in participating in European security. While they oppose the application of supranational legal institutions to the United Kingdom, they are genuinely committed to the UK participating in the protection of European territorial and maritime security. While, quite rightly, a significant amount of this activity can be done through NATO, provided it does not impede NATO’s ability to respond to crises, most do not object to close collaboration with European institutions that operate, as the British Prime Minister Theresa May said in her speech...
in Florence on 22 September 2017 “side by side” with the UK. Indeed, British public opinion, on this issue, is in favour of greater defence integration: in April 2017 67% of British respondents answered “for” to Eurobarometer’s question: are you for or against “a common defence and security policy among EU member states.” Though British people are divided roughly 50:50 about whether they should be in the EU, paradoxically a solid majority thinks the EU should integrate militarily.

Nevertheless there is a significant risk that negotiations over Brexit do not reach a satisfactory conclusion. There are significant, and perhaps unbridgeable differences between the two sides, and divisions within Britain’s Conservative party could make the “deep and comprehensive partnership” that the UK seeks impossible to conclude on terms that the EU 27 would be able to accept.

It would however be regrettable if a defence partnership, which both sides would prefer to conclude were to fall victim to inability to agree a deal on other issues. One reason for this has to do with a suspicion, on the EU side, that the UK is seeking to “cherry-pick” — that is remain as close as possible to the EU in areas it wants, without accepting a single legal jurisdiction or free movement of people.

The establishment of a new separate treaty organisation, modelled on the Western European Union, but updated to deal with the contemporary defence and security environment can, I believe separate, these issues. It will ensure the separation of defence policy from wider economic and political union, on which there is broad agreement from overall UK-EU negotiations.
This does, it must be admitted, prevent the UK using what has been called its “security surplus” in negotiation. But as I argued in Brexit: the security dimension, this security surplus is largely illusory — and indeed the UK has now taken the position I recommended in February 2017 in my earlier paper and made an unconditional commitment to Europe’s defence.

The new WEU, or whatever its name becomes, would be a separate organisation, breaking the link between defence cooperation and the Brexit negotiations, and, by being open to other non-EU countries, such as Norway, Georgia, Ukraine and Moldova allows security links to be maintained and enhanced regardless of the progress (or lack of it) in the Brexit talks. And by doing so, can provide reassurance that the UK is not seeking to cherry-pick the elements of its European relationships that it prefers. It is, indeed, the best way to ensure that defence arrangements are made on their own merits, in the common interest of the UK, EU and other potential allied states.
REFERENCES


[5] This allows the Court to expand to include non-EU members as necessary, while also preserving the independence and representation of each. Thus, if the institution were to have Norway and the UK as members, the court and surveillance authority would have four judges. If, for instance, Ukraine were to join, it would expand to six members.


[8] In 2016, the most recent year for which figures are available. World Bank, GDP Current US$, 2017.


References


[16] Global Strategy, p. 49


[20] ibid


[23] ibid, p20


[27] ibid, p. 23


[34] Johanna Strikwerda, 2017, p. 29


[40] Report from the Commission to the European Parliament and the Council, 2016, pp. 3-7

[41] Ibid p. 8


[43] James Black, Alexandra Hall, Kate Cox, Marta Kepe and Erik Silfversten, 2017, p. 10

[44] James Black, Alexandra Hall, Kate Cox, Marta Kepe and Erik Silfversten, 2017, p. 10

[52] ibid, p4
[53] ibid, p18