

Intelligence: safeguarding future cooperation

Björn Fägersten

Intelligence cooperation is not only a field of cooperation in its own right, but also a necessary contribution to areas of joint action such as crisis management, counter-terrorism and strategic planning. Both the US and the UK are strong intelligence actors and have been influential in shaping European intelligence cooperation. How does the current transatlantic turbulence of President Trump's foreign policy and Brexit effect on this cooperation and its future development?

Importance of intelligence for European security

Access to correct and sometimes exclusive information is considered a force multiplier for any security actor. Information power helps create more targeted policy and efficient operations. For a collective actor

made up of autonomous members, commonly shared information lays the ground for joint action. The push towards 'strategic autonomy' in EU doctrine, in this sense, depends on production of and/or access to autonomous European intelligence. Apart from the need for common intelligence in Brussels, EU member states are in need of shared intelligence in order to fulfil their national security responsibilities. Organised crime, terrorists and foreign agents of influence are transboundary actors and can only be stopped with transboundary intelligence work. Current events thus suggest a strong and growing need for tighter European intelligence cooperation. And if history offers any pointers, similar needs for intelligence have in the past translated into deeper cooperation. The abandonment of internal borders in the EU prompted German Chancellor Helmut Kohl to push



for what later became the Europol agency. The perceived threat of Islamic terrorism – and the need to be able to produce an independent picture of this threat – called for tighter security service cooperation in the Counter-Terrorism Group format following the 9/11 attacks. And increasing levels of foreign policy ambition on behalf of the EU motivated the build-up of what is today the EU Intelligence and Situation Centre (IntCen). Hence, intelligence is already important for the EU, and all the factors that earlier have strengthened cooperation – the level of threat, internal policy development and the relation to other intelligence players – remain valid today, which suggests further deepening of cooperation. But how can and will this play out in an era of transatlantic turbulence? As will be discussed below, because both the US and the UK have been instrumental in shaping European intelligence cooperation, current political processes in both countries will most likely affect the development of future cooperation.

The role of UK and US in development of European intelligence cooperation

In the areas of foreign and security intelligence – the work of international-oriented intelligence agencies and domestic security services respectively – the US has played an important role as an instigator of intra-European cooperation. The anxiety over the relative intelligence dominance of the US over Europe that was showcased in the First Gulf War and the Balkan Wars catalysed early moves towards intra-European intelligence cooperation. Following the terror attacks of 9/11 in 2001, the US put considerable pressure on Europe to deliver in the field of counter-terrorism,

which accelerated intelligence cooperation among European security services – both as a way to be a more relevant partner to the US and as way to produce a more independent assessment of the terrorist threat. Hence, the idea that Europe is only able to exercise a common as well as somewhat autonomous foreign and security policy only if it has access to its own threat analysis and intelligence has been an important driver for cooperation. Instances where US intelligence activities have been seen as running counter to European interests – painfully illustrated by NSAs tapping Angela Merkel’s phone – have further highlighted this perceived need for more potent European intelligence capacities.

The UK has also played a key role in the development of European intelligence, although from the inside of the EU. When the first High Representative of EU foreign policy – Javier Solana – informally queried the member states for intelligence analysis in order to make progress on his new post, it was the UK that took the lead in the development and management of intelligence sharing. In the area of criminal intelligence – shared within Europol – the UK has over the years become a main contributor. The agency is also currently managed by a British person. According to a recent estimate, around 40% of data traffic through Europol comes from the UK or concerns the country and the UK police carry out 250,000 searches of Europol databases each year.¹ The UK has also been vital in shaping the overall approach in the EU’s Justice and Home Affairs field by pushing for the method of intelligence-led policing.²

In sum, both the US and the UK have been central in shaping the development of European intelligence cooperation. Considering the range of current security problems in and around Europe such cooperation will be essential for the Europeans when developing their security policy. How can the transatlantic turbulence of Brexit and the Trump presidency impact such cooperation and what can be done to mediate the effects of these geopolitical developments?

Trump, trust and transatlantic intelligence cooperation

A central element in any exchange of secrets is trust. Trust can be conceptualised as the willingness to let your guard down even when this entails a risk – a trusting relationship is one where Actor A trusts Actor B to manage her interests and expects Actor B to “do the right thing”.³ The most obvious risk to transatlantic intelligence cooperation is the breach of trust among partners. On the most overarching level, such lack of trust can be the cause of general political divergence. Trump has shown little interest in the rules-based, egalitarian international system facilitated by multilateral institutions – known as the liberal world order. If Trump’s lack of goodwill towards this system is also a symptom of America’s increasing disdain for it, then allies will, over time, cease to trust the US to “do the right thing”. The recent Canadian decision to spend more on defence in order to compensate for faltering US global leadership is an indication of such logic.⁴ From an intelligence perspective, this would gradually hollow out important alliances from the top down. While this is a distant, and highly uncertain

prospect, other trust-related issues have more direct consequences.

One is President Trump’s carelessness with secret information, and his disdain for US and allied intelligence services. During a May 10 meeting with Russian Foreign Minister Sergei Lavrov and Russian Ambassador Sergey Kislyak, the President Trump disclosed intelligence about the Islamic State which the US had received from Israel. The incident provoked the Israelis to adjust their intelligence sharing protocol, which might impact the level of cooperation between the partners.⁵ Earlier in 2017, the Trump administration had given voice to the idea that the British signals intelligence agency GCHQ – the Government Communications Headquarter – had spied on President-elect Trump on behalf of the then President Obama. This provoked a rare public reaction where British intelligence stated that these accusations were “utterly ridiculous and should be ignored”.⁶ To this one must add President Trump’s own conflicts with various US intelligence agencies over their management of the lingering issue of Russian involvement in the US election. The net effect of this is that US intelligence allies – in Europe and elsewhere – cannot assume that their secrets are safe with the US President and that their US partner agencies may not have enough influence to discipline President Trump on intelligence modus operandi such as the third party rule.⁷ The relationship between the Trump administration and Russia currently under scrutiny aggravates this risk, especially for US allies that have intelligence activities directed towards Russia.

From a European perspective, this lack of trust is most likely to have an effect on high level bilateral intelligence sharing. Firstly, because of the sensitive nature of the intelligence that is shared in these formats, high level bilateral intelligence sharing is more dependent on a trusting relationship. Secondly, bilateral intelligence sharing relations are managed closer to the respective administrations and so are more exposed to political decisions and moods. This is in contrast to multilateral sharing, such as within NATO or between the US and the EU via Europol, which is less sensitive and takes place in far more institutionalized settings with several layers of bureaucracy adding distance to politically-elected parts of national administrations. In sum, eroded levels of trust as well as policy divergences on issues such as Russia and the Middle East risk raising the threshold for what intelligence is shared in the transatlantic relation with sensitive bilateral relations being more at risk than data shared through multilateral venues.

A knock-on effect of President Trump's foreign policy agenda is the prospect for tighter intra-European cooperation that it might trigger. This could happen in a direct and an indirect fashion. As a direct effect, European nations could choose to increase intelligence sharing in order to compensate for a more strained transatlantic intelligence-sharing climate. This seems unlikely as intelligence relations between European countries and the US have not yet degenerated substantially, and Europeans would be hard pressed to compensate for the intelligence the US offers. In an indirect way it is more likely to see an effect. As has happened before in times of transatlantic

divergence, the Europeans are likely to respond to President Trump's foreign policy by stepping up their own foreign and security policy cooperation.⁸ This trend is accelerated by the British choice to leave, which means both that a brake on integration has been lifted and that the remaining EU member will want to show that the integration project still has momentum. The recent push towards Permanent Structured Cooperation (PESCO), the development of a planning facility for military training missions, and the establishment of a new defence fund for research and acquisition are a few examples of this development with further steps having been promised. While there are several other causes to this, there is no doubt a "Trump"-factor driving development at the moment.⁹ Internal policy development within the EU has been one of the main drivers of previous efforts to strengthen European intelligence cooperation and there is no reason to assume that this should not be the case also this time. Indeed, the confluence of current trends – budget needs, increasing threat levels, internal EU strategy development, the need and possibility to showcase momentum in the face of Brexit, as well as worries over American commitments to European security – make security policy development with increased intelligence requirements very likely.

Brexit and the future of Anglo-European intelligence cooperation

Security cooperation in general, and intelligence cooperation in particular, have been suggested as one of the UK's strongest hands in the Brexit-negotiations. It was also explicitly mentioned in Theresa May's

notification of Brexit to the European Council where she hinted that ‘a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened’ which in some quarters was interpreted as blackmail.¹⁰ Whatever her intentions, this interpretation is not unreasonable, considering the involvement of the UK in several EU venues for intelligence cooperation and the way this cooperation could be affected by Brexit. The UK is one of the top three contributors to Europol where intelligence is shared among national police forces and joint analysis is conducted.¹¹ The UK has been a driving actor in establishing a pragmatic intelligence exchange in support of the Common Foreign and Security Policy which takes place within the EU Intelligence Analysis Centre (EUINTCEN). It also participates in the security service cooperation CTG (the Counter Terrorism Group – which functions outside of the EU but feeds analysis into the Union and supports its decision) and policy-making. Compared to other areas affected by Brexit that might be more of a zero sum game – such as budget contributions and financing of joint projects – intelligence cooperation in the forums above are more akin to a positive-sum game.¹² Europol Director Rob Wainwright argues that cybercrime, people smuggling, trafficking in human beings, drug trafficking are areas where the UK would struggle to maintain the current operational efficacy if it left the agency.¹³ Even with a partner arrangement with Europol similar to those established by US and even Denmark, the UK would lose the capacity to do direct searches in Europol’s databases, which would severely hamper the speed of police work. Likewise, the

EU27 would lose out in several areas if cut off from UK intelligence and analytical expertise. The same can be said about intelligence work within the EU INTCEN. This is obviously an area where the EU27 benefits from the UK’s global intelligence presence and resources. However, it is also a way for the UK to gain access to niche analytical competences of partner countries, as well as an effective means to influence European policy making.¹⁴ This discussion only relates to the multilateral bodies for cooperation that would suffer from Brexit. In a darker scenario, where Brexit leaves the UK and continental Europe on different and diverging geopolitical tracks the consequences would be worse and would also impinge on bilateral intelligence cooperation. If, as an example, the UK would side with the US administration on policy in the Middle East and actively try to work against common European positions, that would obstruct intelligence cooperation top down, according to the same logic discussed above in the US case. Another effect that goes beyond the functioning of current cooperation arrangements is that a more independent UK cut loose from EU supervision might develop an even more relaxed view on the work and mandates of its intelligence agencies. A recent ECJ preliminary ruling on the legality of the GCHQ’s bulk interception of phone call records and online messages illustrates the role hitherto played by the EU.¹⁵

The fact that a “hard Brexit” in the intelligence field would be a clear negative for everybody involved and that thoughts of protecting its reputation means that the UK is unlikely to use security as a bargaining chip means that pragmatism, instead of emotional desires to inflict repercussions on

either side, will hopefully drive future developments in this field. The different fields of intelligence cooperation explained above come with different challenges when it comes to post-Brexit cooperation.

In the case of Europol, the main hurdles are likely the role of the European Court of Justice and budget contributions.¹⁶ While budget contributions to future cooperative ventures can be managed in a variety of ways and thus are easier to manage, the role of the ECJ is difficult to work around. The ECJ has an oversight role over data protection rules – for example, it invalidated the EU-US Safe Harbour agreement due to concerns over the quality of US measures to protect the personal data of Europeans.¹⁷ It is also the mechanism of arbitration between partners, for example when using the European arrest warrant. Here, the EU27 and the UK will either have to find alternative legal ways to safeguard data routines and compliance or the UK will have to accept a limited role for the ECJ. Whatever path is chosen, agreement is made easier by the fact other sectors as well – such as future trade with the EU27 – will demand high levels of data protection rules in the UK. It should also be mentioned that the UK already has chosen to opt-in twice in Europol so it clearly sees benefits of current cooperation.¹⁸ As long as these budgetary and legal aspects will find a solution, the EU27 would be well-advised to incorporate managers and analysts from the UK and to find a bespoke arrangement allowing them direct access to each other's databases in order to maintain current levels of interaction.

In the case of intelligence in support of foreign and security policy, a similar

solution is to allow the UK to keep staff within the IntCen, who could then feed intelligence into the system and take part of the joint analytical products is possible. This arrangement might be easier since the IntCen have a history of both informality (it was originally a private office of EU High Representative) and hierarchy (not all member states was invited to participate at the start).¹⁹ The risk here is that the push for tighter intelligence cooperation will over time result in a more formal “agency-like” function in which it will be more difficult to design a bespoke UK presence. In light of this, further development of intra-European strategic intelligence cooperation should rather be designed in a PESCO-like cooperation among devoted member states that wish to take cooperation to a new level, rather than a heavily institutionalized federal structure that might not deliver obvious cooperative gains. That would allow for British cooperation not only at the current level of integration but also participation in its future development.

Finally, the counter-terrorism intelligence cooperation within the CTG will be largely unaffected by Brexit. Indeed, the CTG (and the more general cooperation framework of the Club de Berne²⁰) offer a beneficial framework for post-Brexit intelligence cooperation. It is decentralised (and thus less sensitive to changing political moods) and does not function under any supranational control function such as the ECJ. However, it still influences European policy and strategy making by several links into the EU system. From the UK's perspective, this offers continuity as its membership will not be affected by Brexit while it will allow a back door through which to influence the EU on matters such

as counter-terrorism. Two possible effects will be important to consider in relation to this. First, the European Commission has repeatedly tried to integrate the work of security services into the EU.²¹ Their lack of success in doing so is now a benefit of this cooperation but member states should be wary that these ambitions might resurface in times of intensified European security cooperation. Keeping the CTG out of formal EU structures makes it easier to keep the UK in these European counter-terrorism efforts. Second, the effort to establish Europol as the main actor within European counter-terrorism efforts have been obstructed by the fact that much of the intelligence need for this task is in the hands of security services, not in those of the police agencies cooperating within Europol. Much has been done to increase cooperation between these professions with some success, although legal as well as cultural barriers still impede cooperation. The combination of the UK becoming less involved in Europol while simultaneously focusing more on the work within the CTG carries the risk of increasing fragmentation in the European counter-terrorism field. Such a development would be harmful as successful cooperation between security services and police agencies are essential for successful counter-terrorism measures. The solution here is to align the UK closely to the work of Europol to preserve also

¹ Boffey, Daniel. "Brexit: UK may have to recognise ECJ court rulings to keep security cooperation." *The Guardian*. Guardian News and Media, 30 Apr. 2017. Web. 12 June 2017 and Black, James, Alexandra Hall, Kate Cox, Marta Kepe and Erik Silfversten. *Defence and security after Brexit: Understanding the possible*

cross-sectoral cooperation among security services and police forces.

Conclusion

This analysis has shown that different forms of intelligence cooperation play an important role in European security, and that both the US and the UK have been influential in the development of intelligence cooperation. The agenda and actions of President Trump risk undermining common interests and erode the level of trust that underlies intelligence cooperation. Even though strong and common interests suggest that cooperation will be continued, the UK's departure from the EU will threaten cooperation on a number of intelligence areas. Both President Trump's actions and Brexit have given momentum to the strengthening of European security cooperation which will likely also spill over into stronger intra-European intelligence cooperation. In such a case, it is important that future intelligence cooperation in Europe is designed in order to allow for UK participation without risking fragmentation of such cooperation.

Björn Fägersten is Senior Research Fellow and Director of the Europe Program at the Swedish Institute of International Affairs (UI).

implications of the UK's decision to leave the EU — Overview report. Santa Monica, CA: RAND Corporation, 2017. Page 17

² See Gruszczak, Artur. "EU intelligence-led policing: The case of counter-terrorism cooperation." (2013) and UK House of Parliament

³ Elster, Jon (2007), *Explaining Social Behavior More Nuts and Bolts for the Social Sciences*. New York: Cambridge.

⁴ Freeman, Alan. "Minister: Canada will build up its military as the U.S. pulls back from world stage." *The Washington Post*. WP Company, 06 June 2017. Web. 12 June 2017.

⁵ Gramer, Robbie. "Israel Changed Intelligence Sharing With U.S. After Trump Comments to Russians." *Foreign Policy*. N.p., 24 May 2017. Web. 12 June 2017.

⁶ Weaver, Courtney. "White House reassures UK it will not repeat Trump spying claim." *Financial Times*. 17 May 2017. Web. 12 June 2017.

⁷ Implying that it is up to the originator of shared information to decide on dissemination to third parties.

⁸ Strömviik, Maria (2005) *To act as a Union. Explaining the development of the EU's collective foreign policy*. Lund University Press.

⁹ For an example, see Tcherneva, Mark Leonard & Vessela. "How Trump will save Europe." *ECFR*. N.p., 07 Feb. 1970. Web. 13 June 2017.

¹⁰ Asthana, Anushka, Daniel Boffey, Heather Stewart, and Peter Walker. "Don't blackmail us over security, EU warns May." *The Guardian*. *Guardian News and Media*, 30 Mar. 2017. Web. 12 June 2017.

¹¹ Home Affairs Committee Oral evidence: EU policing and security issues, HC 806 Tuesday 7 March 2017.

¹² Other areas of intelligence cooperation are clearly more transactional, where information is offered in a quid pro quo fashion, but such intelligence trading is mostly reserved for bilateral, not multilateral, relations.

¹³ Q 178 in Home Affairs Committee Oral evidence: EU policing and security issues, HC 806 Tuesday 7 March 2017.

¹⁴ Fägersten, Björn. *Intelligence and decision-making within the Common Foreign and Security Policy (2015:22epa)*

¹⁵ Lain, Sarah, and Veerle Nouwens. "The consequences of Brexit for European security and defence." *Proc. of Friedrich Ebert Stiftung: Talking Brexit, Berlin*. N.p.: n.p., n.d. N. pag. Print.

¹⁶ For a good overview, see Camino Mortera-Martinez 2017 "Good cop, bad cop: How to keep Britain inside Europol" CER, London

¹⁷ "EU Commission and United States agree on new framework for transatlantic data flows: EU-US Privacy Shield." *European Commission - Press release*. 12 June 2017.

¹⁸ In 2014 and 2016, see "Statewatch analysis - The UK opt in to pre-Lisbon EU criminal law by Steve Peers, Professor of EU Law and Human Rights Law, University of Essex Introduction" for background

¹⁹ Fägersten 2015.

²⁰ The Club de Berne is a long-standing cooperation arrangement between European security services with a broad agenda covering issues such as counter-intelligence and internal security. The CTG is a spin-off that brings together a similar clientele for joint work on Islamism terrorism.

²¹ For an early attempt at this, see European Commission (2004) 'Paper on Terrorism to the Council Providing Input for the European Council'. 18 March. Document SEC(2004)348.



U**brief**



WOULD YOU LIKE TO KNOW MORE ABOUT UI?

The Swedish Institute of International Affairs (UI) is an independent platform for research and information on foreign affairs and international relations.

The institute's experts include researchers and analysts specialized in the field of international affairs. While maintaining a broad perspective, research at UI focuses on unbiased scientific analysis of foreign and security policy issues of special relevance to Sweden. UI as an organization does not take a stand on policy issues.

UI Briefs are short commentaries on international issues, events or trends related to UI's focus areas. They are written by UI staff, UI visiting researchers, or other experts associated with UI. UI Briefs do not require adherence to strict academic conventions. While the author is responsible for the text, the relevant programme director and one additional researcher have reviewed each manuscript.

For more information visit our website: www.ui.se, where you will find up-to-date information on activities at the Swedish Institute of International Affairs (UI). Here you can book seminar tickets, become a member, buy copies of our magazines, and access research publications. You can get in touch with us through email: **info@ui.se or +46-8-511 768 05**

Also, follow us on Twitter @UISweden or like us on Facebook!



SWEDISH INSTITUTE OF INTERNATIONAL AFFAIRS

Visiting Address: Drottning Kristinas väg 37, Stockholm

Postal Address: Box 27 035, 102 51 Stockholm

Phone: +46 8 511 768 05 Fax: + 46 8 511 768 99

Homepage: www.ui.se