CERI Working group
« Diplomacy, the military and the spy »

Seminar held on October 6, 2020:
« The Effect of Brexit on UK Intelligence Cooperation in Europe », with Sir David Omand, Visiting Professor at King's College, London, former UK Intelligence and Security Coordinator and former Director of the GCHQ

On October 6, 2020, the CERI working group on diplomacy, military and intelligence studies, supported by the Centre d'Analyse, de Prévision et de Stratégie (CAPS) of the French Ministry of Foreign, met to discuss the effect of Brexit on UK Intelligence Cooperation with Europe. Sir David Omand (hereafter Professor Omand), Visiting Professor at the Department of War Studies, King's College London participated as the keynote speaker to this meeting.

Having served as the first UK Intelligence and Security Coordinator, Professor Omand was Permanent Secretary of the Home Office from 1997 to 2000, in addition to three years with NATO Brussels in the capacity of the UK Defence Counsellor. With his latest work, How Spies Think: Ten Lessons in Intelligence' *due to be released later in October 2020, Professor Omand drew on his wide experience at the heart of British intelligence to inform his comments today. All observations have been made in a personal capacity.*

I. Professor Omand's address

Recalling his role as a visiting professor at King's College since 2005-06 and teaching a course at Sciences Po for the past six years, Professor Omand structured his comments in two sections, theory and practice, a model this report shall reproduce subsequently. First, he presented a model of intelligence outputs that could be shared, dubbed the 'SEES' model (situational awareness, explanation, estimation and strategic notice), before considering how the four elements of the model are likely to be affected by Brexit.

A. The SEES model

According to the speaker, the primary purpose of intelligence is to 'improve the quality (and timeliness) of decisions made by Presidents, Prime Ministers, policy makers, military commanders and police chiefs.' This is chiefly done through measures aimed at reducing the ignorance of such actors of the situations that they face.

Such a reduction of ignorance, in the opinion of Professor Omand, is carried out via an interplay of four outputs from intelligence analysis, jointly dubbed the 'SEES' model, consisting of **situational awareness, explanation, estimation and strategic notice**. The model has been covered more exhaustively in Professor Omand's forthcoming work, *How Spies Think*, and was briefly covered within the talk, reproduced below.

Situational awareness

Situational awareness refers to information gathering about events happening on the ground (or in cyberspace), to form a foundation for later policy choices regarding reactions to intelligence threats, or to inform the design for subsequent defence equipment. It is a priority for the British intelligence community to improve their situational awareness of malign actors such as terrorists, hostile autocrats, narco-traffickers, or people involved in cyber-crime and child abuse.

Such priorities require any intelligence apparatus to have access to secret intelligence sources, composed both of human sources such as agents, and technical sources, with an increasing role for biometric identity, location, movements and financing data[1]. At the same time, there is an ethical obligation to protect secret sources since the smallest disclosure can prove fatal. Since such an obligation weighs particularly heavily in the case of human sources such as agents, there is an incentive to keep the number of people who know the details about a sensitive source to an absolute minimum. This explains why strong European intelligence gathering relationships have always remained bilateral, such as that between Britain's MI6 and the French DGSE.

To further illustrate the delicate nature of such bilateral relationships, particularly when cultivating spies, Professor Omand cited the example of Colonel Oleg Gordievsky, who was jointly cultivated as an undercover KGB agent by MI6 and the Danish intelligence service, the PET. When the KGB was subsequently tipped off by a spy in the CIA Russia unit, Gordievsky was ordered back to Moscow and interrogated. MI6 was eventually able to covertly extract Gordievsky from Moscow in a daring operation, but the incident clearly illustrated the difficulty of running human agents against very hard targets. To Professor Omand, such concerns lie behind the scepticism among intelligence veterans regarding a possible European Intelligence Agency as a secret intelligence gathering body in future.

With reference to day-to-day conduct of security cooperation, Professor Omand noted that EU-wide information-sharing is today much less delicate and much more data-driven, and noted that most countries can already share relevant data on terrorists, criminal suspects and cyber-attacks under the appropriate data protection safeguards, wherever necessary and proportionate. However, data points by themselves require interpretation and cannot inform

[1]David Omand, *Securing the State*, London: Hurst, 2010, Ch.1.

policymaking in a vacuum, given that they provide little information on the motivations of a suspect, or the context of an incident.

Thus, the data points harvested within the context of situational awareness must be interpreted and contextualised to be of any utility. This is where the next step comes in.

Explanation

Explanation, the second element of the SEES model, is needed to support good decisions. To Professor Omand, it essentially involves answering two questions, 'who?' and 'why?' behind any incident or situation.

Explanation, and thus providing context to harvested data points, is hard. It requires an extensive degree of background knowledge on the analyst's part, often requiring relevant knowledge in history, geography, or foreign languages, as noted by the speaker. Explanation also involves assessing motivation, and Professor Omand gave the example of trying to explain the use of Novichok as a Russian murder weapon, given that its use points directly to the Kremlin.

Explanation essentially involves testing alternative hypotheses against the available data, including such data that may have been obtained from sensitive sources. The objective, according to the speaker, remains to find the hypothesis with the least evidence against it, which may not necessarily be the one which has most in its favour. The rationale, as Professor Omand explained, is that some evidence can always be found to support any theory, as seen in the run-up to the 2003 invasion of Iraq. But such explanations would only take one piece of strong contrary evidence to be knocked down.

Once a suitable explanation is found, analysts may progress to the next stage, which involves the estimation of how events may unfold, including the modelling of adversaries' behaviour.

Estimation

This element of the SEES model is needed to choose courses of action, such as hacking back or imposing sanctions. But more importantly, it also involves modelling the response of the other actor in the case of a given course of action.

The accuracy and usability of the models and scenarios thus evolved depends heavily on the adequacy of situational awareness, as well as the soundness of the explanation chosen in the previous stage. Yet, Professor Omand cautions that a third element is also involved in the process of modelling, namely the assumptions involved in creating our models, which may or may not necessarily emerge from the data or explanations used in the previous two stages. To that end, the accuracy of an estimate can be affected, and it must be kept in mind.

With regards to the usage and dissemination of intelligence estimates, Professor Omand observed that intelligence estimates may be written and shared in manners that disguise the original sources. Such dissemination is also common when publishing intelligence summaries for public consumption, as happened with estimates of the return to Europe of former Islamic State (IS) supporters, after the IS collapsed.

Strategic Notice

The final element of the SEES model, Strategic Notice refers to trying to identify major future challenges that a given state may potentially face. It helps answer questions on how to prepare for such challenges, or even guide the design of preventive policies so that such challenges do not come to pass. Professor Omand noted that information relevant to strategic notice is most often gained from open sources, although sometimes backed up by secret intelligence.

In transitioning to the next aspect of his address, Professor Omand duly observed that intelligence sharing for strategic notice, such as that needed for long-term planning within NATO, will remain unaffected by Brexit.

B. Challenges of Brexit to Intelligence Sharing

Professor Omand cited at the outset Article 4 (2) of the Treaty of the European Union, underlining that national security remains the prerogative of the Member States. He went on to observe that in interpreting the term national security, British courts do accept that intrusive measures such as accessing data in bulk, can be justified in the pursuit of national security objectives such as counterterrorism. British legislation governing the intelligence agencies also allows bulk data access, under human rights privacy safeguards, for the purposes of detecting preventing serious crime and thus allows British intelligence agencies to provide relevant data to law enforcement in a more efficient manner.

The speaker used this above example towards highlighting the first possible issue raised by Brexit to intelligence sharing. He noted that competing interpretations of 'national security' may clash, limiting the scope of what other European intelligence agencies may be at liberty to share. Considerations of bulk data access and sharing would also by affected by the degree to which such counterpart intelligence agencies are legally authorised to aid law enforcement in tackling major threats.

Professor Omand noted that most British data covered under the SEES model can be safely shared with friendly countries post-Brexit. He reaffirmed the commitment of Britain to European security objectives and outlined that sharing post-Brexit would occur at three levels: strategic, operational, and tactical.

The strategic level would see British involvement with the NATO and the IntCen in Brussels, to help the NATO and European Councils understand British positions. This is particularly pertinent if Britain were to be invited to participate in European collective actions. At the

operational level, elements such as advice to travellers by the British Foreign Office remain highly relevant, while tactical level sharing would encompass immediate access to databases and information provided by partners. Professor Omand cautioned that it was at the tactical level of accessing data held in information systems that most UK/EU sharing concerns would arise, particularly affecting data protection relevant to the domains of terrorism, cybersecurity, and counter-narcotics.

His concerns with intelligence-sharing post-Brexit chiefly concern the implications for law enforcement of post-Brexit restrictions in data sharing rather than in sharing of analysis and assessments.

Terrorism

Professor Omand began by reassuring that operational cooperation on counterterrorism, which happens within the Berne group outside the EU structures should remain unaffected, allowing practical evolutions such as the Counter-Terrorism Group within the Berne group to continue unaffected. This means that in structural terms, British cooperation within the Berne group, including the involvement of the MI5 should carry on as usual.

The speaker then considered the Schengen Information System (SIS) and Europol, where British contributions have up to now been significant. The British contribution on strengthening real-time data sharing within the SIS was noted. Professor Omand also observed that the UK has driven a pan-EU approach to processing passenger data, allowing the identification of trafficking victims as well as those vulnerable to radicalisation. Assuring the continued provision of such information, along with the reserves of data and expertise provided by Britain to the Europol remains a British priority. The speaker observed that British intelligence. And law enforcement also benefits significantly from such arrangements, including information provided.by some European intelligence agencies that have access to expertise in parts of the Islamic world which Britain does not. Relevant data sharing needed to continue and remain a priority post-Brexit, but would require new arrangements allow the UK to participate to the greatest extent possible in the Schengen and other EU information systems.

Cybersecurity

Even though the UK enjoys excellent bilateral intelligence cooperation with most European countries, difficulties could arise with ECJ decisions affecting the EU partner end of this linkage according to Professor Omand. A salient example is the application of future GDPR-type regulations. The UK has committed to continue applying GDPR post-Brexit, thus assuaging short-term concerns (providing that adequacy arrangements continue) but future developments in data protection may cause difficulties. It has also confirmed continued application of the European Council Network and Security Information Directive (NISD), assuring its participation in the information sharing group for cybersecurity, namely the NISD cooperation group. Noting however that the enforcement of cybersecurity laws and policy is a national matter, the speaker hinted that any potential issues in the long-term may have to be addressed through bilateral agreements between the UK and the relevant Member State.

An area of great concern in the speaker's opinion was continuing UK-Europol cooperation in fighting cybercrime. Noting that 40% of the Europol's case load has a British focus and that most successful investigations usually involve the Scotland Yard, National Crime Agency, or the GCHQ, Professor Omand observed that the withdrawal of British specialist officers post-Brexit would cause big gaps in a subject area where Europe already faces skill shortages. He further opined that forcing the UK into a liaison role would be insufficient to plug the gap, calling upon the relevant authority, namely the European Commission, to work towards a solution in this regard. Similar concerns were echoed about British access to information sharing platforms such as the ECRIS and Mutual Legal Assistance, without which the fight against cybercrime would suffer.

Counter-narcotics

Professor Omand highlighted that counter-narcotics was an especially important priority for British intelligence, given the rapid rise of synthetic drugs, and a burgeoning cocaine market in the EU. Narcotics trafficking is an international problem and he highlighted the extremely fruitful partnership of British authorities with European bodies such as the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), Reitox and Europol. He underlined his belief that the UK still had much to gain from the EU's early warning systems in this area.

The Way Forward

The speaker argued that the assessment of Brexit's impact on intelligence-sharing depended on the interpretation of what was meant by 'intelligence sharing'. If one were to consider intelligence-sharing from a traditionalist sense of collaboration between intelligence agencies, existing bilateral links and arrangements such as the Berne group outside the EU framework would lead one to believe that not much if anything would change. However, if as Professor Omand suggested, one considered the scope of modern national security as much wider to cover major threats to public security and safety including cyber crime and the smuggling of narcotics then then Brexit created a real problem in data sharing that would have to be tackled. That called for a wider interpretation of intelligence-sharing to include law enforcement needs and all the arrangements currently operating including Schengen, Prums and ECRIS . Without new arrangements post-Brexit to facilitate data sharing, he argued that Brexit was likely to leave the security of both the UK and EU worse off.

He observed that commentators had suggested that Brexit might be viewed by some Euro-enthusiasts with a sense of relief, allowing renewed discussions about setting up a European Intelligence Agency to resume in earnest. However, he reiterated the concerns that professional on both sides of the Channel had about the fragility of sources and the need for accountability. In conclusion, Professor Omand emphasised that the British intelligence and policing communities had no intention to turn away from Europe. The opposite was true and at present they were active trying to deepen cooperation, and were insistent in advising

government that new post-Brexit arrangements were essential to allow vital information sharing systems to continue.

In speculating on the shape of a future relationship, Professor Omand cited François Heisbourg, who proposed that UK would become to Europe was Australia was to Asia. A close ally of the US, enjoying a high measure of security while living in semi-detachment to the continent next door. Effectively, the UK could become slightly less influential to Europe, but its deep commonality of interests with France, jointly with their respective places on the UN Security Council should ensure that the UK should not fade into irrelevance.

II. Discussion with the audience

In response to the questions raised by the audience, particularly those on diverging threat priorities between the UK and certain member states, as well as the impact of the EU's fragmented intelligence structure on intelligence cooperation, Professor Omand stressed the need to better define what was meant by intelligence sharing. He reminded the audience that despite the fragmentation of much of European security into vertical silos of intelligence and law enforcement, intelligence sharing worked well at the strategic and operational levels and this could continue after Brexit. The key challenge ahead, the speaker stressed, was to allow data sharing to continue so that there would be fast and efficient action on threats to security. He noted that the British model of close cooperation between MI5 and Scotland Yard was often hard to replicate in certain European member states, and refining effectiveness and cooperation in these regards was still a work in progress.

Regarding priority divergences, such as disagreements between European states on threat assessments of terrorism, Russia and other subject areas, Professor Omand argued that these divergences were unavoidable since each state has its own distinct notion of 'national interest' driven by geography and historical experience. He argued that better sharing of strategic and operational assessments would minimise such divergences to an extent, but that it is not realistic to expect such different perspectives to disappear.

Asked about the differences between pursuing intelligence studies as an academic and as a practitioner, the speaker praised the benefit of academic freedom afforded to researchers, particularly with regards to exploring new ideas and publishing findings that broke new ground. He noted that such freedom was absent from the practice of intelligence for obvious reasons, and that in the end there had to be a disciplined choice of what intelligence judgments were to be presented to senior decision makers. Despite such differences, he observed that the day-to-day nature of research was not so different from that carried out by analysts. He noted approvingly that intelligence practitioners have increasingly sought to benefit from the expertise of academics. This rapprochement has been particularly notable in technical areas such as the field of cyber security and with academics who had experience of living in and teaching in countries of interest.

The speaker was then asked about an apparent dichotomy in British intelligence's approach to Europe, wherein bilateral relationships are prioritised in conjunction with the use of multilateral structures such as the SIS. In response, Professor Omand recalled his remarks about different interpretations of what was meant by intelligence sharing. Sensitive operational cooperation was a key priority for the national intelligence agencies, and that was mostly bilateral or trilateral. But multilateral data access and sharing for law enforcement was also a key priority for the UK. They wer enot alternatives; both were important. He observed that a proposal for a UK-EU Security Treaty had been floated by the UK early on but brushed aside in the negotiations. The UK had suggested reaching a separate agreement on security, leaving the major differences in areas like fisheries and trade to be worked on separately, but this had not been taken up by the EU. He observed that the status quo of largely bilateral cooperation on traditional intelligence activity for national security did not need a new legal structure underpinning it, and thus should carry on as usual. In saying so, he did flag up the need for agreement on an arbitrating body to mediate when necessary between the UK and the EU on data sharing issues since the UK was refusing ECJ jurisdiction. Nonetheless, he expressed optimism that such a mechanism would be worked out, observing that there was sufficient pressure on both sides to work towards such an agreement.

Asked if Brexit would cause the UK to diverge further from European security priorities, the speaker noted the UK's close bilateral relationship with France on security matters, citing the 1995 statement by Prime Ministers John Major and Jacques Chirac on nuclear matters as an example. He noted that the statement served to deepen Anglo-French cooperation on the subject, for example paving the way for joint research facilities. He reassured listeners that it was understood that UK security would still depend strongly on that of continental Europe, while stressing on the need for fresh frameworks to structure cooperation where required.

The speaker was then asked if the 'questionable' negotiating tactics pursued by the UK during the Brexit negotiations would spill over to intelligence cooperation. He responded that that was unlikely, noting that intelligence agencies on both sides were well aware that much behaviour in negotiation is about tactics not substance. He stressed that intelligence practitioners on both sides shared a common understanding of the fragility of intelligence sources. That, coupled with the need to defend citizens from harm, provides sufficient incentive to assure cooperation beyond Brexit, opined Professor Omand.

Asked on how the UK and EU could reduce friction in their cooperation beyond Brexit, Professor Omand noted that the drivers for cooperation in the domain of law enforcement remained the same and he hoped that if necessary there would be interim arrangements to continue present cooperation whilst a new UK/EU framework was established. He noted that agreements would certainly be required to govern the implementation of extradition post-Brexit and to govern cooperation in the domain of serious cyber and counter-narcotics criminality. Keeping in mind the centrality of the two subject areas, he reassured the audience that neither side has enough reasons to break off cooperation, and that it is thus likely to continue.

Lastly, asked if a no-deal scenario would affect intelligence cooperation, Professor Omand was reassuring that such a scenario was unlikely. He argued that given the national security and law enforcement imperatives, both sides have sufficient incentive to work towards a deal of some kind at the end of the negotiations.