Brexit, Crime and Security: What does the future look like for UK law enforcement?





As the Government's assessment of its future security partnership with the EU is published, Peter Joyce, Visiting Professor in Criminology at the University of Glynd r and Dr Wendy Laverick, Senior Lecturer in Criminology at Manchester Metropolitan University, examine new crime trends, current EU crime-fighting tools and how Brexit impacts our ability to fight these new crime forms. The nature of police work in the UK has undergone significant changes in recent years. New forms of criminality have entered onto the crime-fighting agenda, much of which is organised and transnational in nature. This article briefly discusses the new forms of criminality that law enforcement agencies now have to combat and in particular discusses the contribution made by agencies associated with the EU. It then considers the impact that Brexit may exert on public safety and security in the UK.

New forms of criminality

This section briefly discusses the new forms of criminality that have assumed increased importance in the UK in recent years. Much of this constitutes organised crime which refers to crime carried out by a group of people operating within some kind of formal network.

Organised crime is principally responsible for providing products or services for which there is a demand but which are not available legally – such as drugs or pornography and is responsible for some of the actions referred to below such as people trafficking or drug smuggling. The inter-relationship between various aspects of new criminality is referred to as the 'cross fertilisation of issues'. Money laundering is an action that is especially associated with organised crime which may also entail a connection with activities that include terrorism.

Cyber crime

Cyber crime assumes two main forms – computer-assisted crime (in which pre-existing crimes are conducted via a computer – such as fraud, extortion and theft) and computer-focused crime (in which computers have facilitated the development of new forms of criminality such as hacking or virus dissemination).

Although much crime of this nature occurs within an organisational setting (and thus may be classified as white collar crime), some is conducted externally, including by hostile intelligence agencies of foreign powers or organisations working at their behest. Other new forms of criminality that are discussed below are frequently conducted online: the 'dark web' is of international significance and poses a particular problem for mounting police operations against them.

Terrorism

Terrorism embraces the use – or threat to use – violence to further a political cause. It is not a new phenomenon, although academics often distinguish between 'old' and 'new' terrorism. 'New' terrorism is generally associated with actions undertaken by organisations linked with Islamist fundamentalism (principally al-Qaeda and ISIS) that conduct extreme acts of violence which is frequently depicted as nihilistic in character (that is, that life is viewed as meaningless).

'New' terrorism has been associated with a number of attacks in the UK in recent years. These have included the London bombings (July 2005) which killed 52 persons and injured 700, the attack at the House of Commons in March 2017 in which 4 people (including a police officer) were killed and over 20 were injured, the Manchester Arena bombing in May 2017 (in which 22 people were killed and over 800 received physical or psychological injuries), the London Bridge / Borough Market attack in June 2017 (in which 7 people were killed and dozens were injured) and the Parsons Green tube attack in September 2017 in which more than 50 people were injured by a partially exploded bomb.

'New' terrorism has become associated with loosely-knit structures and organisations. Many attacks are performed by 'lone wolf' terrorists – typically persons who are dissatisfied with their life or life prospects and who latch onto a cause such as Islamist fundamentalism which provides them with a purpose in life. Their radicalisation is often attributed to them having access to online material, much of which emanates from outside of the UK.

Extremism

According to the Government's 2015 *Counter-Extremism Strategy*, extremism constitutes 'the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs'. Calls for the death of members of the UK armed forces are also regarded as extremist rhetoric.

Contemporary government policy recognises the need to tackle the Far Right as an important aspect of its approach to countering extremism. The 2015 *Counter-Extremism Strategy* argued that 'the rhetoric used by extreme right-wing groups and speakers is often characterised by violent language. Groups speak of the existence of a 'race war' and the need to 'smash' their opponents, and even of 'white jihad'. Their propaganda often uses the imagery of contemporary and historic terrorist and paramilitary groups' and it underpins hate crime. The Far Right has become an important political force in many countries, sometimes embracing neo-Nazi views. This justifies a transnational approach to monitoring their activities, especially when it is conducted by new and emerging groups such as Pegida and the youth movement the Identitarians, both of which operate internationally. Rather than rely on formally-constituted political parties, the contemporary Far Right in the UK and Europe makes considerable use of the internet and social media to propagate its views. The use of the internet enables Far Right views to be disseminated globally, one important example of which is the American National Socialist Movement.

Human trafficking

According to the organisation <u>Antislavery</u>, human trafficking involves the recruitment, harbouring or transporting of people into a situation of *exploitation* through the use of violence, deception or coercion and forced to work against their will. It is thus a process of enslaving people, coercing them into a situation with no way out, and exploiting them.

People can be trafficked for many different forms of exploitation such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage and forced organ removal. Human trafficking may be international in scope but also occurs at a national level, or even within one community.

People smuggling

People smuggling is not the same as human trafficking. It entails the illegal movement of people across international borders for a fee, and is thus transnational in character. On arrival, the smuggled person is free.

This problem has been aggravated by international problems that include the civil war in Syria that has been waged since 2011. It has been estimated that in 2015, 60 million people across the world had been displaced from their homes.

A key issue is the migrants' safety and well-being: migrants are treated as goods and over 3,000 were estimated to have lost their lives in the Mediterranean Sea in 2014, according to the International Organisation for Migration (IOM). Around 1,700 were thought to have drowned in the first four months of 2015. It is also a lucrative trade – as was revealed by one incident involving the cargo vessel *Ezadeen* intercepted on 1 January 2015 as part of the military

Operation Triton. The ship contained 360 migrants and the smugglers were believed to have earned 2.5 million Euros.

The use of social media has played an important role in increasing both the volume and the effectiveness of smuggling operations and has made it overall more difficult for individual nations to investigate and prosecute such crimes. This emphasises the important of global action to combat this problem.

Drug trafficking

The United Nations define <u>drug trafficking</u> as 'a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws'. The trade is highly organised and transnational in character.

The United Nations state that the Balkan and northern routes are the main heroin trafficking corridors that link Afghanistan to the markets of the Russian Federation and Western Europe. This route traverses the Islamic Republic of Iran (often via Pakistan), Turkey, Greece and Bulgaria across South-East Europe to the Western European market and has an estimated annual market value of some \$20 billion. The northern route runs principally through Tajikistan and Kyrgyzstan (or Uzbekistan or Turkmenistan) to Kazakhstan and the Russian Federation. The size of that market is estimated to total \$13 billion per year.

Child sexual abuse

According to the World Health Organisation, <u>child sexual abuse</u> is defined as 'the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society.

It entails an activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power and the activity being intended to gratify or satisfy the needs of the other person. The forms of child sexual abuse include the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of child in prostitution or other unlawful sexual practices or the exploitative use of children in pornographic performances and materials. The contact does not have to be physical and can take place online. Although crime of this nature are often perpetrated by persons outside of the Country whose children are targeted, it can also occur within a country. Examples of this include 'grooming gangs' such as Rochdale 2012 and Huddersfield 2018. Between 2005 and 2017, there were 264 convictions of grooming gang members in the UK.

National responses to new forms of criminality

The kinds of activities referred to above constitute what the National Intelligence Model defined as Level 3 criminality – actions which traverse police force boundaries and which are frequently transnational in structure / organisation.

The UK possesses a number of agencies that deliver a response to crimes of this nature. These include the National Crime Agency (which replaced SOCA in 2013), counter terrorism units (CTUs) whose work absorbs Police Force Special Branches, the Security Service (MI5 that originally had a remit to deal with 'subversion' but now deals with both serious crime and terrorism and the Government Communication Headquarters (GCHQ) whose remit entails monitoring activities conducted abroad that pose a threat to the UK's national security.

If UK agencies are required to operate in a more independent manner when the UK leaves the EU, the country's response to new forms of criminality may be weakened. Although it is difficult to estimate the future efficiency of UK agencies if compelled to work in this manner, there are known deficiencies in the way in which they have tackled new criminality previously.

In 2018, the Home Affairs Committee report, *Future of Policing* pointed out that police forces were ill-equipped to police the digital age. It pointed out that in the year ending March 2018 there were 3.2 fraud offences (of which 1.7 million were online fraud) and the cost to the UK economy was £190 billion per year. But the number investigated by the police were 'shockingly low'. The Committee also observed that Child Sexual Abuse (including online sexual abuse) was 'reaching epidemic proportions' but the police response was 'nowhere near the scale needed'. In connection with the response to terrorism, a report by Parliament's Intelligence and Security in 2018 in November 2018 stated that counter-terrorism police and MI5 missed opportunities to thwart the actions of Salman Abedi who detonated the Manchester Arena Bomb in May 2017.

The EU and new criminality

The following discusses the mechanisms associated with the EU that enable a transnational response to be fashioned to combat the new forms of criminality that have been discussed above.

New criminality European Union Law

EU law takes various forms, but in connection with new crime, two sources – Regulations and Directives – are especially important.

Regulations automatically apply to all EU Countries as soon as they are enter into force.

Directives require Member States to achieve a particular result but they have freedom as to how this is achieved. Their compliance with Directives is obtained via each Member State's domestic law. A similar purpose was served by Framework Decisions – which applied only to justice and home affairs – but these were ended by the 2009 Treaty of Lisbon.

Obligations may also be imposed on EU Member States by decisions (which are binding) and recommendations (which are not binding). Action plans may also provide the framework for a range of subsequent EU initiatives to tackle a specific area of concern. Additionally, the Council of the EU negotiates and adopts documents such as conclusions, resolutions and statements. These are not intended to have legal effects but are used to express a political position on a topic related to the EU's areas of activity. These types of documents set up political commitments or positions and are not legally binding.

The topics embraced by EU law have included a series of Anti-Money Laundering Directives (commencing in 1990 – then directed at the proceeds of drug crime): the most recent of which, the fifth Money Laundering and Terrorist Financing Directive, was approved by the Council in May 2018.

Specific EU responses to terrorism have also been put forward in a number of actions that include the Anti-terrorism Road Map (2001) [that emanated from a series of conclusions reached by the Justice and Home Affairs Council in 2001], the EU Plan of Action on Combating Terrorism (approved after the Madrid Bombings in 2004), one consequence of which was the appointment of an EU Anti-terrorism Coordinator, and the Counter-terrorism Strategy that was adopted by the Council of the EU in 2005 and embraced the 4 pillars – Prevent, Protect, Pursue and Respond. In March 2017, the Council adopted a further directive on

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combating terrorism. The new rules strengthened the EU's legal framework to prevent terrorist attacks and addressed the phenomenon of foreign terrorist fighters.

In connection with migrant smuggling, in May 2015, the European Commission published the EU Action Plan Against Migrant Smuggling which set out a series of steps to tackle this problem between 2015 and 2020.

Tackling hate crime has also been a key EU objective, a key action being Article 4 of Council Framework Decision [2008/913/JHA] on *Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*. This required member states to 'ensure that racist and xenophobic motivation is considered an aggravating circumstance or, alternatively that such motivation may be taken into consideration by the courts in the determination of penalties'.

Although opponents of the EU will cite EU law as an intrusion into the UK's sovereignty, the examples referred to above, by coordinating an EU-wide response to new criminality, have facilitated a more effective response than one nation acting alone could be expected to deliver.

EU mechanisms to combat new criminality

The EU possesses several agencies that seek to combat new forms of crime. Many of these are not well-known to the general public and thus the following section briefly refers to their role and operations in dealing with forms of criminality that have been discussed above.

Europol

Europol became operational in 1999. Its remit is to combat various forms of organised crime that included unlawful drug trafficking, illegal immigrant smuggling and crimes committed in the course of terrorist activities in instances where these affect two or more Member States. Europol's work is conducted by Europol Liaison Officers who are seconded from the police organisations of member countries. It also has data-sharing arrangements with non-EU countries that include America and Australia.

Europol did not initially mount criminal investigations but acted as a central organisation to analyse and facilitate the exchange of information among Member State policing organisations. Information was stored on the Europol Information Service (EIS) which enables information on

suspected and convicted criminals and terrorists to be pooled across the EU.

Subsequently, Joint Investigation Teams (JITs) (whose establishment was provided for by the The Convention on Mutual Assistance in Criminal Matters that was adopted in May 2000) have been set up (operated by Europol and funded by itself and Eurojust) to provide Europol with a limited operational role.

JITs have been defined as 'an international cooperation tool based on an agreement between competent authorities (that includes judicial and law enforcement bodies) in two or more states. They are established for a limited duration and a specific purpose in order to conduct criminal investigations in one or more of the involved states.

Within Europol, specialist agencies have been created to aid its work in connection with new criminality. In 2013, a European Cyber Centre (EC3) was set up to coordinate cross-border law enforcement activities against computer crime and serves as a centre of technical expertise on the matter. In 2016, the European Counter-terrorism Centre was set up within Europol whose remit extended to combating online terrorist propaganda and extremism.

A further aspect through which Europol's work is conducted is the Secure Information Exchange Network Application (SIENA) and constitutes a platform which enables the exchange of operational and strategic crime-related information among Europol Liaison Officers and the Member States. It aims to make Europol the EU information hub on crime. This was launched in 2009 but has since been extended to embrace asset recovery work (entailing exchanging information regarding assets to be seized, frozen or confiscated in EU countries) and counterterrorism whereby counter-terrorism units can exchange information and intelligence on people and groups who pose a threat to European security.

Eurojust

The work performed by Europol is very much linked to the operations of a further EU agency, Eurojust, which was set up in 2002. Its remit (cited in House of Commons Briefing Paper, *Brexit: Implications for Policing and Criminal Justice Cooperation*, 2017) is 'to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member It is composed of prosecutors, judges or police officers of the Member States whose activities may include providing advice on the requirements of different legal systems, supporting the workings of mutual legal assistance arrangements, facilitating the execution of arrest warrants, coordinating the work of national authorities to agree strategy in specific cases, and providing legal, technical and financial support to Joint Investigation Teams (JITs).

Schengen II

The UK was never part of the border aspects of the Schengen Agreement (1985) and Convention (1990). However, it was given permission in 2000 to participate in those aspects of Schengen (referred to as the Schengen Information System or SIS) that related to criminal law and policing and in particular to access the EU-wide data base for the collection and exchange of information relating to immigration, policing and criminal law for the purposes of law enforcement and immigration control. It did not, however, join until 2015 when a new system – SIS II – was operational: the new system stores biometric data such as photographs, fingerprints, DNA profiles and retina scans.

Currently Schengen II contains around 70 million entries (termed 'alerts') on people or objects that are likely to be of interest to border control and law enforcement agencies. Alerts may be entered by any EU Member State and are immediately accessible to all those with access to it. This includes a warning list of suspected terrorists, one of whom carried out the London Bridge attack in June 2017. It also facilitates tracking foreign fighters as they return to Europe from Syria and Iraq.

The information stored on Schengen can be supplemented by access to supplementary information stored by individual countries on a separate data base, SIRENE, (Supplementary Information Request at the National Entry) relating to a suspected person. Each member state has a SIRENE Bureau which serves as a link between its police force and the SIS.

An article in the *Independent* Newspaper on 23 July 2018 stated that British law enforcement officers checked SIS II on 539 million occasions in 2017. These searches are conducted simultaneously on the UK's the National Crime Database (a facility that was launched in 2011).

The European Arrest Warrant (EAW)

This was introduced in 2004 and its role is to speed up the extradition of sentenced or suspected persons between EU Member States – as opposed to having to rely on bilateral extradition procedures. The EAW is based on the principle of mutual recognition of Member States' national criminal laws and procedures and its operations are overseen by the European Court of Justice. In 2017, 16,837 requests were made to the UK which resulted in 1,510 arrests and 1,164 surrenders. In the same period, the UK made 278 requests to EU countries, which resulted in 201 persons being arrested and 183 surrendering.

The present government recognised the importance of the EAW, the former Home Secretary, Amber Rudd describing it as an 'effective tool that is essential to the delivery of effective judgment on ... murderers, rapists and paedophiles', and stressed that 'it is a priority for [the Government] to ensure that we remain part of the arrangement' (Rudd, cited in House of Lords European Union Committee Report *Brexit: Judicial Oversight of the European Arrest Warrant*, 2017). The EAW has been responsible for bringing high-profile criminals back to the UK, such as the fugitive bomber, Hussain Osman, who, along with accomplices, carried out a terror attack in London on 21 July 2005 and had subsequently fled to Italy.

In 2018, the House of Commons Home Affairs Select Committee (in its report, *UK-EU Security Cooperation After Brexit: Follow-Up Report*) argued that 'being forced to fall back on the 1957 Convention on Extradition, in the absence of agreeing a new extradition arrangement with the EU, would be a catastrophic outcome'.

The EU Intelligence and Situation Centre (EU INTCEN)

This body originated in the European Security and Defence Policy, 1999. Since 2011 it has been the intelligence Agency of the EU External Action Service (the EU's diplomatic service and its foreign and defence ministry)

Its role is to provide intelligence analysis, early warning and situational awareness to the High Representative of the EU for Foreign Affairs and Security Policy and also to the European External Action Service, the various EU decision making bodies that deal with Common Security and Foreign Policy, Common Security and Defence Policy and Counter-Terrorism, as well as to the EU Member States. It also acts as a single entry point in the EU for classified information coming from Member States' civilian intelligence and security services.

European Criminal Records Information System (ECRIS)

ECRIS was created in April 2012 to improve the exchange of information on criminal records throughout the EU. It ensures that information on convictions in any EU country is available to all of them and in particular makes it impossible for offenders to escape conviction by moving from one EU country to another.

Agencies to combat hate crime

Hate crime is often underpinned by political extremism and the EU has performed an important role in combating extremism and its related consequences such as hate crime and discrimination that is conducted through a number of agencies.

Within the structure of the EU, a lead role is performed by the European Union Agency for Fundamental Human Rights (FRA). This documents failures in combating hate crime by member states (such as the way in which data is collected concerning hate crime), seeks to assess prejudice against groups that include Roma, LGBT, Muslims and migrant communities and makes suggestions as to how the situation could be improved.

Additionally, The European Network against Racism (ENAR) is an NGO that provides for a network of NGOs in all EU member states (and Iceland). It seeks to combat racism and discrimination and advocates equality for all European citizens.

Brexit

A referendum in June 2016 indicated that a majority of people in England and Wales (but not Scotland or Northern Ireland) wished to leave the EU (51.89% : 48.11%). The UK is due to leave the EU on 29 March 2019 with a transition ('implementation') period lasting until 31 December 2020. An agreement between the EU and the UK was formally concluded in November 2018 (whose title is Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018) which set out the terms and conditions of the UK's withdrawal.

The referendum campaign was dominated by the issue of immigration. Subsequent discussions that related to the terms of the UK leaving the EU have been dominated by future trade relationships with the EU, a future customs union and the Irish border. Spanish interests in

Gibraltar also entered into these debates. However, crime and security issues were scarcely articulated in either the referendum campaign or subsequent deliberations.

Crime and security after Brexit

Although the agreement between the EU and UK on the terms and conditions of the UK's withdrawal from the EU avoided a 'no-deal Brexit', it cannot be taken for granted that the government's proposals will secure the support of Parliament. In such a scenario a 'no deal' will then become one possible course of action which would almost certainly terminate the UKs involvement in all forms of EU-wide cooperation on crime and security matters.

If the agreement was ratified by Parliament it would only provide limited UK access to some of the major EU institutions that respond to new forms of criminality. Joint Investigation Teams are one aspect of this response. The UK will also be allowed to continue participation in any team in which they were involved before the end of the transition period. Access to SIENA will be granted for no longer than one year after the end of the transition period (on a 'pay as you access basis').

There will be limited access to Schengen II's communications infrastructure (which links the central SIS II system to national systems) for three months following the end of the transition period. However, access is only to be granted for the purposes of exchanging supplementary information on ongoing matters that had been initiated before the end of the transition period. As with SIENA, the UK would be required to undertake a 'pay as you go' system of financial reimbursement to the EU for the use of this service.

There is a danger that after the UK leaves the EU, the UK will be denied long-term association with EU bodies that respond to new and emerging forms of criminality. It is possible that informal relationships can be constructed based on existing working arrangements, but these may not be sustained in the long term as personnel move on.

It is also conceivable that bespoke arrangements could be constructed to accommodate continued longer-term UK-EU cooperation on crime and security matters, an inducement being that the UK has historically made a considerable contribution to the work of these bodies. Also, there is precedent relating to the conclusion of arrangements between the EU and non-Member countries such as bilateral extradition agreements between the EU and Norway and Iceland and agreements regarding Switzerland's access to Schengen, Europol and Eurojust. However, these

are likely to provide only limited access and involvement in the work of such organisations with the UK having no ability to direct, control or influence their operations or to set their agendas.

Further, there are major obstacles to courses of action of this nature should they entail continued involvement in UK crime and security matters by the European Court of Justice. This would constitute a course of action that Brexiteers would find totally unacceptable. Brexiteers would also object to any situation of continued involvement in EU institutions if they required the UK to be subject to EU Data Protection Law. These concerns significantly impact on the nature of post-Brexit UK-EU relationships in the areas of crime and security.

There is a further danger that anti-UK feelings arising from Brexit (whatever form it takes) may jeopardise *ad hoc* bi-multilateral forms of cooperation with EU countries or limit future support for the UK in the manner that it was given in connection with the Salisbury nerve agent attack.

Conclusion

In the event of limited (or no) future access to EU mechanisms that seek to combat crime and threats to security, the UK will still be involved in forms of international cooperation that are not associated with the EU.

These include Interpol (established in 1923 to foster collaboration and provide assistance in police work across nations) and the United Nations (which in particular has sought to coordinate the global response to terrorism and drug trafficking, the latter through the UN Office on Drugs and Crime). The Council of Europe has also performed an important role in combating extremism, hate crime and other forms of discrimination through the European Commission Against Racism and Intolerance (ECRI) which publishes reports on progress in tackling these issues by its member countries. A key body associated with the Council of Europe is the European Court of Human Rights whose jurisdiction would continue to apply to the UK as this body has no connection with the EU.

Additionally, the UK will retain participation in the 'Five Eyes', an alliance comprising Australia, Canada, New Zealand, the USA and the UK that provides for joint cooperation in signals, military and human intelligence. This alliance is associated with the ECHELON system that targets international satellite traffic. The UK may continue to collaborate with the American National Security Agency whose global intelligence-gathering activities included the Prism programme whose operations were leaked by the whistle-blower, Edward Snowden. The UK can also construct various forms of *ad hoc* bi-or multi-lateral cooperation, a recent example of which was the cooperation between the UK and Dutch security agencies in thwarting a plot by four Russians in October 2018 to hack the Organisation for the Prohibition of Chemical Weapons (OPCW), which had been probing the chemical attack in Salisbury in 2018.

However, it is undeniable that the EU has developed a number of key mechanisms that provide for a high level of cooperation with which to combat new forms of criminality and safeguard national security. The exclusion from, or limited participation in, these will result in serious deficiencies that threaten to transform the UK into a land of crime and insecurity.

In addition to forms of crime that have been discussed above, threats are posed to the UK's national security by actions undertaken by foreign nations.

In an interview with the *Daily Telegraph* on 24 November 2018, the head of the British army, General Mark Carleton-Smith, said Britain 'cannot be complacent about the threat Russia poses'. Recent hostile actions associated with Russia include its alleged involvement in the Salisbury poisoning (using Novichok) in March 2018 that was directed at former Russian spy Sergei Skripal – who had sold secrets to MI6 – and his daughter. Russia has also been blamed for a number of cyber attacks conducted across the globe, including one on a small TV network in Britain. Current tensions between Russia and Ukraine in the Kerch Strait also highlight the need for Western Nations to act in concert to respond to them as they cannot do so acting in isolation.

The UK's withdrawal from the EU not only threatens to undermine the nation's capacity to combat new forms of crime but also potentially places it in a weaker position with which to defend itself against foreign incursions, whatever form they take, and adds further weight to the desirability of strengthening rather than weakening ties with our neighbouring countries.

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