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Witnesses: Yves Pascouau, Professor Peter van Krieken and Dr Roderick Parkes

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Members present

Lord Hannay of Chiswick (Chairman)
Lord Faulkner of Worcester
Lord Sharkey

Examination of Witnesses

Yves Pascouau, Senior Policy Analyst, European Policy Centre, **Professor Peter van Krieken**, Professor of International Law, Human Rights, Refugees and Migration, Hague University and Webster, and **Dr Roderick Parkes**, European Union Programme Co-ordinator, Polish Institute of International Affairs

Q122 The Chairman: Welcome and thank you for coming along to this session of the sub-committee of the House of Lords EU Select Committee. I am sorry that we are somewhat diminished in numbers but two of our members had to go back yesterday evening to a vote today. The EU Sub-Committee on Home Affairs, Health and Education, which I chair, is conducting an inquiry into the future justice and home affairs programme, which is likely, I understand now, not to be called the Rome Programme at all but to become miraculously the Athens Programme, because it is likely to be adopted by the European Council in June. This is my understanding. The purpose of our inquiry is to get as many views as possible from Governments, from parliaments—we are seeing the European Parliament later today—from NGOs and practitioners, and so on, on what they think should be in this. A wider point that we are pursuing is an attempt to get our national Parliament more involved upstream of European decisions: that is to say, to have our views out there to be seen, as you have put your views out there to be seen, before the process is set in concrete, which it tends to be once the Member States have firmed up their positions and the Commission has made its position very clear. It is a general tendency, certainly in the House of Lords, to try to move more upstream, which is of course what the Commission has been

inciting people to do. It has been saying that you can influence European legislation much more if you intervene upstream than if you wait until it is all set in concrete. That is the background to this.

We have taken a lot of evidence in the last two months or so and we are getting very close to the end of our evidence-taking. Next week will be our last session with British Ministers. We will then produce our report hopefully by about the end of March. It will then be published at that point and, we would hope, will have some influence on the position of the British Government, to which we principally address, but we would hope will also be some use to other Member States, other national parliaments, and so on. That is what we are pursuing. With your help we would like to go over the ground this morning.

If you would like to introduce yourselves and say briefly what your main focus and expertise is within the justice and home affairs sector, it would be very helpful to us. If you any of you would like to make an opening statement, that would be fine, but if you prefer just to move straight into questions and answers, that will be fine too. It is your choice. Can I give the floor to whichever of you would like to start?

Yves Pascouau: Good morning. Thank you for the invitation. I am Yves Pascouau from the European Policy Centre. I am in charge of the migration and diversity programme, which means that we are closely following EU policies in the fields of migration, asylum and integration, which means that we are more focused on migration-related issues rather than justice or internal security, which are part of the big project on freedom, security and justice. I would rather give the floor to my colleagues, because if I start my statement I will not stop for 25 minutes.

Professor van Krieken: Thanks, Yves. Thank you for inviting us. My name is Peter van Krieken. I am from the Netherlands. I just retired from my job as an adviser to the Minister for Migration and Asylum. I have a background with the UNHCR and the UNDP. I spent

about 20 years there. I also have a background in academia and as a neo-pensionado I am now active in projects in Malawi, where I was last week; in Kiev, where I will be going shortly; in Morocco, Georgia, Moldova; and I am doing a lot of lecturing at universities. So life is beautiful.

Dr Parkes: I am Roderick Parkes. I am from the Isle of Man but I am based at the moment in Warsaw working for a think tank that is closely aligned with the Polish foreign ministry. Before that I was based in Berlin doing something similar for a German think tank and then set up the Brussels office for them, and I still have a foot with them in Berlin.

My original expertise, I suppose, is in migration and the old first pillar, if you like, but at the moment it has spread to EU affairs generally, so I have been involved in other strategic processes going on in the EU.

Q123 The Chairman: I should have stated at the outset, but I failed to do so, that this is all on the record, that a transcript will be taken of it, and that you will get a copy of the transcript. If you could correct that rapidly, that would help, but it will already be up on our website. An amended version will come later on. If there is any written material you would like to give to us in addition to what you are saying, that would be very welcome. We have that report now and we will be able to make use of it, and will make use of it, in our own report. Shall we move on to some questions if we do not want your 25 minutes? I am sure it would be fascinating but time is a little of the essence on all that.

Let us start, if you do not mind, with an extremely general question about what in your view the strategic priorities to the next justice and home affairs programme should be. I am taking it as the background, of course, that the Lisbon Treaty introduced for the first time this concept of the European Council and the Heads of State and Government giving strategic guidance to the Commission—indeed, to all the European institutions in a way, although that is not specified; I imagine Parliament would not take kindly to being given strategic guidance,

and the Commission perhaps not all that kindly either. But the Treaty is clear that it is for the European Council to give the Union strategic guidance on justice and home affairs, and that is a first because that legal base has not existed hitherto. It does now, and it will be applied this summer for the first time.

Given that background, could you give us your thoughts about the main strategic priorities, by which I mean the priorities to be established by the Heads of State and Government?

Yves Pascouau: I think answering your question asks us to go back a little and to come back on this famous provision, Article 68. There is one clear discussion to be had about its meaning, considering that it has already been included in the Stockholm Programme. It was included in the second programme for circumstantial reasons, because the Stockholm Programme was adopted just after the Lisbon Treaty entered into force, so it was decided at the last minute to include a reference to Article 68. That means that a lot of people will say, “Article 68 has already been used, so we should continue what we have already done”, which I think is not the case: first, because the Stockholm Programme has never been negotiated with Article 68 in mind; secondly, because Article 68 provides for a fundamentally new landscape.

As we have written in our report, we think that Article 68 entrusts the European Council with defining strategy guidelines, and we have to add to that legislative and operational planning, which means that it is clear to us from this provision that strategy guidance will set the lines for the implementation programme that will be adopted by the European Commission, creating a division of tasks between the European Council and the European Commission, being interested to define the planning of the measures to be adopted in the next five to seven years. It will depend on whether they want to continue the five-year planning or whether they want to extend it up until 2020, which is the end of the financial

framework, which by the way is going also to frame to a certain extent the margins of manoeuvres of the European Commission.

On this basis, what should the strategy guidelines be looking at? From our point of view, priorities should be the ones that are related to what the future of freedom, security and justice should be in the next 10 to 20 years. It is a long period of time, but if you look at the temporary conclusions you can clearly see that some of the objectives that were identified as temporary are still valid today. So there is no fear in saying that we can look forward 10 to 20 years, and we have to think ahead in a world that is in a tremendously changing mode. Population, economies, social problems, demography, values, the rise of middle class, urbanisation, and the ever increasing digitalisation of the world are issues that are going to have a major impact on how justice and home affairs policies will be driven and will look like in the next couple of years.

So our thoughts on the priorities that have to be defined by the European Council are that the Heads of State and Governments, plus the President of the European Council, plus the President of the European Commission will have to take into account where we are going in this very different world tomorrow, as that will have an impact on these policies and on citizens' everyday lives. I must say that it is quite difficult today to say bluntly what the main priorities are because it requires us to have in mind what needs to be reflected on.

Professor van Krieken: On the strategic priorities, I published probably half a year ago an article in a leading Dutch newspaper on related issues, in which I coined the term “dehumanrightisation”. Of course that is quite a provocative statement. What I meant is that much of what we are discussing is based on, dictated by and dominated by people with a legal background, not to mention a human rights background. What I would plead for, and that would be my strategic priority, would be to look upon the issues concerned from a broader context of pragmatism, the economy, sociology, political science, you name it—

words that are often forgotten among Europeans. The order is freedom, security and justice, and we should probably stick to that order: freedom, security and justice. Too often we tend to look upon these issues from a legal approach. Having a legal background myself I may or may not be entitled to make a statement like that.

In other words, when we look towards the Europe of tomorrow—and I do not want to go into the institutional political aspects here—we need to be prepared for a 2025 Europe where we are able to provide what we feel like providing to our fellow citizens of Europe. Stockholm, Rome, Athens, whatever programme it would be, should have as a starting point the well-being of Europe. The big question is posed in the Mahbubani approach, the Singaporean diplomat who in one of his books on the demise of Europe poses the question what Europe would look like after having stated that China is very much a closed society with open minds and India an open society with closed minds. The question we have to ask ourselves is: do we want to have a Europe with a closed society and closed minds or Europe with an open society and open minds? I would rather go for the latter, and the big question is: how can we reach that point in 2025 in the best of manners? That would be my strategic programme.

The Chairman: I have to say that my dealings with Kishore Mahbubani always left me with the view that I do not know whether he exaggerated more the decline of Europe or the rise of Asia.

Dr Parkes: I will pick up a little on that discussion. I have my Polish hat on, so maybe I can give you a flavour of the debate there, particularly in light of the spat between the UK and Poland over the last couple of weeks. The first thing, I think, is a greater emphasis on sending countries when it comes to migration. That means an awareness of population and demography in the context of losing population and a revisiting of some of the more

progressive western European policies such as immigrant integration, dual citizenship, *et cetera*, in the sense of, “The west is taking our population. We need to rethink that”.

We should also look at migration more in terms of brain drain, the need for return migration, and trapped populations—i.e. immobile populations within the EU but also in other countries that are left to deal with national problems as more mobile people leave. Also, perhaps, we need a re-look at western-style European and global institutions and the question of how they can be reformed so that they take better account of what is happening in sending countries. That is something that we are discussing quite hard in Warsaw.

Another thing is that rather in the wake of what has been happening in Ukraine, we need to emphasise EU values, particularly when it comes to justice, but we also need to shift the debate about borders and migration from, “We need strong borders in order to keep people out”, to, “We need strong border capacities in order to allow people in in order to have cross-border mobility”, *et cetera*. I think there will be a shift there if the debate in Poland and eastern Europe is anything to go by.

In terms of how that plays out in the UK, I think there is a bit of frustration in central Europe and Poland in the sense that British and Polish agendas on this are relatively congruent. When it comes to migration I think the UK would also say that it is important to think about return migration and mobility *et cetera*, and that we want a reform of these institutions. For that reason I think there has been frustration at the way the Government have perhaps tried to line up coalitions of European receiving countries rather than talking to sending countries like Poland.

Equally, I think there is congruence on this emphasis on the EU’s values and on rights and so on. The UK and Poland are deeply aware of the EU’s need to compete, but again there is a difference in nuance in the British idea of a global race, where material wealth is the key goal, it seems, and in the wake of NSA spying and fly-bys and so on where people think, “Are we

letting down our values to pursue material wealth?”, and a Polish idea of a global war of succession between western incumbents and rising powers. We put the emphasis on those values, not just on material wealth. So, again, there is a tension there that may pop up.

Very quickly on the style of the thing, I concur with what has been said about the sense that this programme needs to be more political than it was before, and that they should take the opportunity to break with the previous three programmes and say, “This is not about Treaty implementation, this is about a new phase”.

I would also say that this is not about the area of freedom, security and justice *per se*, this is about picking out key political messages and not having a comprehensive programme. Perhaps we should also recognise the lesson from Stockholm, which is not to make this programme do everything. We have other strategic discussions. We have other tools for communication and for planning, so let us concentrate on a core problem.

Q124 The Chairman: Thank you. I will just respond to one point you made about the area of freedom, security and justice in order of priority. One of the fields that we have had dealings with in the last two or three years is the PNR Directive, and the question is not only whether there should be a PNR Directive in the European Union but whether it should also involve intra-flights as well as flights from outside. The European Parliament objected to that and at the moment it is stuck there. Hopefully it will come unstuck in some way or another after the elections and will resume negotiation. Looked at from the House of Lords’ point of view, we have supported the British Government’s position on this, which we do not always do, from the beginning. Indeed, we have supported the need for intra-PNR as well. It seems to us in that context that what are called the Syrian jihadists are a real threat to Europe over the years ahead, and anyone who denies that is probably going to end up wiser and sadder.

We have therefore in that context to give a lot of importance to the security dimension—not total or exclusive importance, but a lot. It seems fairly obvious to us that you are going to need a system by which all 28 of our Governments are able to know whether any of these people are coming back into our countries, and if they get into one of them if they are moving into another one under the free movement provisions and so on, which they will be able to do. You could have a development like the big surge in Syrian jihadists, which after all has been fairly recent and is obviously going to continue, because there is not going to be a solution and it is going to get worse—for a bit, at any rate. An event or a series of events like that comes along and you are then forced to give a lot of emphasis to the security side if you are not to be derelict in your duty, while not forgetting that you are invading people's personal rights and so on, in order to achieve that security.

I just give you that example because it strikes me that as always, when you deal in generalities, Harold Macmillan's, "Events, dear boy, events", overtakes you and something happens that puts everything into a slightly different focus.

Professor van Krieken: I agree with you.

The Chairman: I just mention that because we are obviously actively engaged in scrutinising the PNR Directive and will continue to be so. We think that the European Parliament took a wrong turning when it simply blocked the whole thing, and that it will have to come to a different view—I hope it will. Its action happened, of course, before the issue of Syrian jihadists have come into sharp focus. There are plenty of other issues of course, but that one is peculiarly sharp, I think, and it is not rocket science to work out that it is going to give us all a lot of headaches. Does anybody else have any questions?

Q125 Lord Sharkey: For the sake of clarification, Mr Pascouau and Professor van Krieken, were you saying that you think it is undesirable at present for the Council to give guidance on a future JHA programme?

Yves Pascouau: No. We are saying that the letter of the Treaty is clear. The European Council has the task of adopting guidelines, and we are convinced that this is the letter of the Treaty. We are saying that we think that guidelines should not be adopted in June 2014, but they should be adopted in June 2015 to allow clear, wide and deep debate. These issues have been put under high pressure because the October European Council decided to define the guidelines in June 2014, which has put enormous pressure on the European Parliament. It has also put tremendous pressure on the European Commission, and as a result—I have experienced it myself—the question has never been framed and the answers have never been appropriately given, to put it very simply, which is not nice. I attended a series of meetings organised by DG Home in order to gather some information to see what should be put into the next step. Lots of NGOs that participated in these consultations were highly interesting in their content, but it was pretty much, “My shoulder is sore. Will the strategy guidelines fix my shoulder?”. That is not the issue. For us the issue is what the directions are that we should take.

Coming back to what you said, it is pretty clear that once the European Council is able to define those guidelines it should not avoid any question, be it related to security, justice or mobility, which are the three bases—the three pillars—of our understanding with regard to freedom, security and justice. It will have to address them. We are saying that for the time being, you are perhaps one of the only parliamentary assemblies in Europe clearly scrutinising this issue. So far I have heard nothing of that kind in France. Are French MPs inquiring into that? I am not sure, and I think that the time is now. Because the Treaty does not set any timing for the adoption of strategic guidelines, you could adopt them in December 2014 or June 2015. There are no legal constraints regarding this, so give decision-makers, politicians, but also civilian society time to take part in this debate within the

framework of a set question: what are the main strategies that we have to take on board for the next 10 to 20 years in this changing world?

On that basis, we argue that the European Council, which is entrusted by the Treaty to adopt those guidelines, will be able to adopt guidelines on the basis of information and well-informed debate and take the political decision, which for us is extremely sensitive. We are dealing with issues that have a direct impact on the everyday life of our citizens. Migration, security, divorce, child custody—all those issues are important to our citizens, so we have to take a clear and highly political decision and to give the European Council the possibility to do it on the basis of this debate, which is not taking place today.

Lord Sharkey: Again, for clarification, the Commission is, however, running consultations, is it not, on these areas in preparation for a new programme? Does that not do some of what you are talking about?

Yves Pascouau: Yes and no. Yes, because it is organising some consultations, but those consultations are organised in a really fast manner and under pressure and without setting the framework. Unfortunately we are on the record, so I will not be able to say what I would love to say, but the problem is who is entitled to attend these meetings. It is mainly organisations, institutions and people around the “Brussels bubble”, let us say—the people who know what is happening in the European process. Outside of Brussels very few people know what is happening with this so-called post-Stockholm phase.

The Chairman: Perhaps we had better move on because we want to get a little bit more specific.

Q126 Lord Sharkey: You may have answered to an extent, but I was wondering to what extent the Stockholm Programme governed the Commission’s approach to the areas of freedom, security and justice? Did the Stockholm Programme determine or influence what the Commission did?

Yves Pascouau: I am going to answer this very quickly. First, one of the Commission's first Communications adopted after the adoption of the Stockholm Programme to a certain extent did not follow the Stockholm Programme, so from the very beginning the Commission clearly said, "We are not bound by this". Secondly, we are still waiting for the half-term evaluation which the European Council requested from the Commission and the Commission never delivered. So to a certain extent I do not know whether the Commission feels that it is bound by the Stockholm Programme, and I wish anyone good luck who tries to see which among the huge number of measures that have been listed in the Stockholm Programme have been adopted, implemented or even discussed.

The Chairman: Any other views on that one?

Professor van Krieken: We live in Brussels and not in Moscow, but with five or 10-year programmes I always get this Moscow feeling: what do they really mean and can we not be flexible? To me these kind of programmes are not written in stone, yet the idea, the guidelines style of attitude, the direction we are going in, and at the same time being pragmatic is admirable and something we should do. I agree with Yves that we are still waiting for a proper evaluation. Nothing has come. There was a kind of mid-term review but it was not up to standard, as far as I am concerned. So the first thing to do, well before we go for an essence of Rome follow-up, is indeed a proper evaluation. That is definitely missing. As a whole, I believe that it has governed the Commission's approach and the interaction between the Council and the Commission, so to me most probably at the end of the day I dare say it has added value.

Dr Parkes: If I may, I will use that question to pick up on some of the other questions that have been asked. First, in general the Stockholm Programme was a weak document and that has badly damaged its effect subsequently. One of the problems was that it was overconsulted on and not steered by the Commission, so a lot of voices came in. Something

like 80% of the responses came from just one Member State as well, so the way that consultation process worked was poor. That then fed into a sense that this was a damage limitation exercise, so this was not about setting strategic guidelines, this was about different institutions trying to get the upper hand or to prevent each other from getting the upper hand. When it was presented it was dealt with as, "Okay, we have got that out of the way. That is just another dossier that we have completed, that is the basis for the next five years' work".

Finally, there are structural problems that you pick up on when you talk about the relationship between freedom, security and justice. The creation of an area of freedom, the creation of an area of justice, is different from dealing with security, which tends to be rather reactive and pop up as time goes on. So when putting those three elements into a strategic document you have that imbalance. When it comes to implementation it is difficult then to point back to a programme and say, "We are doing it on this basis". That is just to pick up on some of the things that have been mentioned.

Q127 The Chairman: Presumably this institutional tension, which will continue to exist I am sure, ought to be better organised by now having an *ab initio* base in the Treaty article and the involvement of both the Parliament and the Commission in the formative stages. I am not being starry-eyed about it: I am sure that will not stop the tension running on through the programme, but it should at least be better organised tension than it was in the case of Stockholm. Is that not right?

Professor van Krieken: I agree in the sense that there is a paradox. Point number one is that the lobbies and academia tend to focus in the Stockholm Programme on asylum and migration, and such things. There is much more, but in the debate the elements are borders, illegality, whatever, and I think that will be one of the main issues at the forthcoming elections. I would like to refer to the Brighton declaration when it comes to the relationship

between the capitals and Strasbourg, and the issue of subsidiarity and so on. The paradoxes are that on the one hand we tend to take some issues back to our respective capitals but not when we talk about asylum, migration and integration. Maybe those are the very subjects we should bring to Brussels. Asylum we have agreed. Migration is still very much our own prerogative—as is integration, remarkably. I am interested in how the Italians do it. After five years the foreigners are allowed to get out of Italy and join my force, so to speak.

So there is a paradox, and that is the paradox you were referring to: the tension between the Council, the Commission and of course the Parliament itself. I do not have an answer there.

Yves Pascouau: If I may just add something, coming back to the issue of defining the guidelines in June 2014 I think there is a risk of creating more frustrations and tensions because the European Council will be defining guidelines that will bind the incoming European Commission and Parliament without those two institutions having been able to take part or even to provide some thought about that. The problem is that the European Commission will adopt two communications in March 2014, but this is the Commission in the form of Mrs Reding and Mrs Malmström. What will be the appetite of the new Commissioners? Will the new European Commission be organised the way it is? Will the new Commission, if we have a new President of the Commission who is very forward looking and creates, for instance, a DG mobility that takes into account freedom of movement of citizens, intra-mobility of third country nationals, admission of third country nationals? The picture might be radically and fundamentally different.

The guidelines that will be adopted in June 2014 will set the framework for institutions, and the Commission and the European Parliament will be fully responsible in those fields without being able to contribute to the debate, and there is a source of tension. So the idea of postponing again is the idea of enabling those new institutions to reflect on those things and

by the beginning of 2015, for instance, to contribute to the debate in order perhaps to decrease potential tensions.

The Chairman: I have to say to you with a slight air of cynicism bred of long experience of this great organisation—the European Union—that I do not think the June 2014 decision-taking rendezvous is likely to be reopened.

Yves Pascouau: I think there is less than a 1% chance.

The Chairman: Quite. Basically, while respecting your views—and it is very useful to have that view—I think we need to focus as much as we can in the work we are doing, given all the imperfections of the timetable, which you have outlined extremely eloquently, on what the programme adopted in June 2014 should do and say. Frankly, there is a huge amount of flexibility, as we have seen before, and it is illusory to suppose that the European Council can literally tie the Parliament and the Commission hand and foot. That is not what Article 68 says anyway, but I think we are going to have to live with that.

Q128 Lord Faulkner of Worcester: Just staying with the Stockholm Programme once more, what aspects of it led to action and what areas require further action to achieve the programme's goals? I think, Professor van Krieken, that you have answered that to some extent, but maybe you could just elaborate a little bit on that.

Professor van Krieken: Thank you. First of all, I repeat what I said: that we tend to forget that we start to talk about migrants and so on only in Chapter 5 of the Stockholm Programme. First, we talk about an open Europe and the freedom, security and justice aspects for our own citizens. I am not well versed in those issues, but when it comes to the migration, asylum and integration aspects I think that some action has been taken. We have set up some EASOs on the asylum issues, we have FRONTEX, we have Europol, and things are coming to it.

The problem again is that we create something, such as institutions' line of thinking and directives that could in principle be pragmatic and make a difference, but at the end of the day the hurdles are enormous. We are stuck by a number of directives and an attitude that basically make effective policy impossible. Maybe I should put it even more strongly and call it mission impossible.

We basically have open borders. The Hirsi case from Strasbourg is a big party for all the smugglers. We cannot stop. We are unable to think outside of and live up to the external dimension of the Stockholm Programme. We are unable to follow up what Blair once did and think of external processing. We are unable to implement the return and readmission agreements that we have signed with neighbouring countries. Most fortunately the court in Luxemburg just the other day said that the individual has no right to determine where his application shall be dealt with, and we have to rethink this asylum migration aspect in a more pragmatic and global environment. The way we do it now is by dealing with the nitty-gritty per square millimetre, and that will not enable us to run a proper asylum, migration and integration policy.

Q129 The Chairman: I see the force of that argument, but one of the problems surely about the European Union invariably is that people set up organisations like FRONTEX or the asylum office in Malta, and then they either expect them to be instantly operational and effective within about half an hour, or alternatively, and much worse, they just set them up and then forget about them. In my view, not enough effort is put into saying, "Right, we now have FRONTEX, we now have the asylum office, we have Europol. How can we make them more effective to achieve the broad strategic objectives, which the Council is going to set out in June?". We have the machinery to operate it. It may need adjustment, it may need more resources and so on, but we do not need a lot more decisions. I have not heard a single person say that FRONTEX is a bad idea, that the asylum office in Malta is a bad idea,

Europol is a bad idea. Quite the contrary. Everyone comes along and says that these are the essence of finding a decent policy, but not nearly enough emphasis, I would suggest, is put on making these institutions less imperfect and more able to do their job. Is that a sensible view or not?

Professor van Krieken: I fully agree with you, but most unfortunately there is a tendency to turn them into lame ducks.

Dr Parkes: May I suggest a little British guilt on that in the sense that I think successive British Governments have been good at using the strategic process as a sort of displacement exercise, shifting the emphasis from the difficult internal regulation of sensitive policy areas first by putting the emphasis on the external dimension, not as a good *per se* but rather to say, "Let us change the subject. Let us look at not the asylum system but the external dimension."? Secondly, there is then the question of implementation and effectiveness, again to get away from regulation. Although Britain has championed these things and as champion setting up EASO, FRONTEX, *et cetera*, as a means of shifting the emphasis on to implementation, it has done so not because it believes it is necessary but rather because it is avoiding a worse evil, which is more interference from Brussels. In a sense, it is a British shift that needs to happen.

The Chairman: Possibly. I see what you are saying and I think it is always probably a little unwise to peer too deeply into a Government's motivation for doing certain things. The question is whether what they are doing is sensible, reasonable and effective. Take an example: presumably you would think that the work that FRONTEX has done to help the Greeks handle the Greek/Turkish border was absolutely necessary because what was going on prior to that being undertaken was unconscionable, really, both in scale and in the way people were treated when they got across the frontier. You had to have a more effective FRONTEX, and no doubt everyone has learnt quite a bit from that experience. FRONTEX

seems itself to have come through it in a quite respectable way. I have not heard lots of accusations that it has behaved appallingly or fallen down on the job.

Now, we have just initialled, or signed, a Readmission Agreement with Turkey, which is going to be extremely important—far more important, I imagine, than any of the other readmission agreements that the European Union has signed up to now, and it has still not entered into force, although it will do. It comes back to this point that I have made, which I think you partially agree with at least, that a lot of the effort in the next few years is going to be to make these things work and work better. That is not just a British view of wanting to avoid the internal ones. It is because if you do not have some of these external factors properly under control, the internal debate will become completely unmanageable. So you cannot separate out the two. I agree that the British have a tendency to separate it out in the wrong way and say, “You do not need anything internally if you do that”, which is of course wrong.

I still think that grappling with these external manifestations is important, and to some extent in 10 years' time we may look back and say, “Well, yes, actually FRONTEX came of age with this problem on the Greek/Turkish border”. The readmission agreement showed that you can work with a country, which is a transient country for huge numbers of refugees, so I do not know.

Dr Parkes: If I can put in a Polish perspective again, I would say that that is what we expect from the UK, or rather we expect two things, I think. First, we would probably like to hear in Poland an emphasis on how the area of freedom, security and justice could boost the internal market, *et cetera*. The trouble with that is that was picked up by Barroso, it has been picked up by Reding, and that seems a little bit closed. Nevertheless, that is what we expect. The other thing is precisely that we should focus on implementation and effectiveness, and above all revisit old decisions that were taken and old strategies and saying, “How do we re-

use instruments that are there”, such as the directive on temporary influxes. Also, why do we not write off certain things such as external processing, reasonable protection or things that did not quite fly? Do they now make sense? Let us revisit old things. Again, there is frustration in Poland that that too may be closed off because of the opt-out decision, because of question marks over whether Britain is still on board and whether it can make that case. That is what we would like to hear, I think.

Q130 The Chairman: The British are systematically opting in to a large number of post-Lisbon decisions. I think it was 49 at the last count. It is going to opt-in, for example, to the readmission agreement with Turkey. That is quite clear. The Government stated that they are going to do that. They are going to continue supporting FRONTEX. So I doubt whether it is a black or white situation. It is different shades of grey probably.

Perhaps we had better move on to the next question. It has, I think, been covered by a bit of this discussion, but you may have additional points to make on it. What lessons from the application of previous programmes could or should be reflected in the strategic objectives that are now being laid down, probably in June?

Yves Pascouau: On the lessons learnt, I think that one clear lesson is to avoid lengthy documents such as the Stockholm Programme, which is a complete failure in the sense that it was aimed at citizens but no citizens have been aware of what has been done. One clear example is that it is pretty striking when you discuss DG Justice with people around and from the European Commission that European Union civil servants are spending their days trying to make EU citizens’ lives better, but no one knows that. So avoid lengthy programmes that we usually call “Christmas tree” programmes, and be clear, short and forward looking.

The Tampere conclusions are a good example of that. This is a political document. Where are we going, how and what for? Full stop. There is no need to have an 80-page document,

because no one is going to read it. Those policies have an impact and are a concern to all our citizens, and they need to know where we are going in those fields. So, be clear, short and forward looking.

The Chairman: Insofar as words can do it, you are expressing what seems to be a very broad consensus. Everybody we take evidence from—the Commission, some of the justice and home affairs national representatives who we met yesterday, and so on—are all saying precisely that: get away from the Christmas tree approach, no long laundry lists of new legislative measures, give a sense of strategic direction and above all this should be a period of consolidation and implementation and making things more effective. It sounds to me as if your message is getting across.

Yves Pascouau: I must also be clear about one thing: the report that we have written is a result of a series of meetings that we have had with several stakeholders here in Brussels—Member State representatives, European Parliament representatives, Commission representatives, so on and so forth. So we have been able to get the temperature from a long list of people who kindly attended our meeting and provided some discussion. There was clearly a general consensus that the next step should be far different from the previous one.

Q131 Lord Sharkey: If this guidance that comes out in June turns out to be short, clear and strategic, Member States will probably still have specific items that they would like to be included in all this. How do you think that tension should be managed, and how should a balance be reached between those two apparently opposing objectives?

The Chairman: Indeed, are there any specific items that you think should be given priority despite your general remarks that on the whole this should be more strategic?

Yves Pascouau: First, you have to concentrate on the scope of the area of freedom, security and justice, which means that issues related to the freedom of movement of EU

citizens, based on Article 21 of the Treaty, are out of scope. So let us focus on those elements. With respect to strategy and content, implementation clearly has to be emphasised first. We now have 15 years of active policy-making in these fields. There is a huge amount of regulation and directive, and there is now time to implement those elements, which relates to what you said: how do you co-ordinate the EU bodies in charge of implementing policies, such as FRONTEX, EASO and Europol?

The Chairman: And the European External Action Service.

Yves Pascouau: I will come to that, because we also have to think about the implementation of the three main pillars, the first of which is migration. You have to think of at least three things with respect to migration. The demographic impact of the migration issue will increase, which means that we now have to start thinking about how we organise at EU level a legal challenge of admission, which has not been addressed so far.

The second related issue is what is happening in Syria. How do we manage to grant proper international protection? We have a common European asylum system, which is set up but relates only to the applicable rules once an asylum seeker is in the European Union. The main problem regarding international protection does not appear at the EU's physical borders but beyond. The situation in Syria is pretty much telling. More than 2.3 million Syrian people in December 2013 left Syria; 97% of them were protected in the five neighbouring countries; 55,000 were in the European Union. It is absolutely clear that the question of international protection is not an internal question. It is how we think about the role of the European Union outside its borders in order to grant protection as soon as possible to people fleeing for their lives. This is also role for the EEAS: to see how we can use the EEAS as an extraordinarily strong asset to get information, to give back information and to help in practice.

Integration-related issues have to be thought about in the long term because unfortunately—or fortunately—the Treaty is clear: there is no harmonisation power to the European Union in the field of integration, which means that we will continue co-ordinating national policies but that this will have to be dealt with within the meaning, and bearing in mind that there is a question of value, which is at stake. What are the values the European Union wants to keep to, with different people coming in from different parts of the world: Asia, the Middle East and elsewhere? This part of migration is broad.

Then there are the internal security issues. The question is clearly how the European Union will be able to plan and to forecast fresh new policies in an even more digitalised world? How will the European Union be able to co-ordinate its efforts with the action we want? How will the European Union be able to sign agreements with different countries in the world given the question of data protection, for instance? These are mainly issues that have to be dealt with within the internal security field, which already has plenty of legislation.

Then there is justice, which is related to how we grant access to justice to our citizens, but how also justice can be used, as it has already been said, as a source of protection and economic growth, because this is also important and is also coming up more and more in the debate. All those issues have to be dealt with, bearing in mind that there are some transversal issues.

How do we manage external action along with human rights? Like it or not, this is a value of the European Union and something which the European Union has to stay strong on. How do you deal with data protection and how do you evaluate policies—this also relates to the question of implementation—once they are decided and implemented? Are they appropriate or should they be changed or reoriented? You also have to include in those mindsets different mechanisms in order to evaluate and re-evaluate policies.

Professor van Krieken: Allow me, for the sake of argument, to disagree with my dear friend. I find this a very 20th century approach. We are now living in the 21st century. For the last 20, 25 years we have had 500,000 people coming to Europe either as migrants, with all the stay-overs, or asylum seekers, who, whether we recognise them as refugees or not, we did not send home. The population of Europe has increased, if I am not mistaken, from 380 million to 420 million over the last 20 years, and 85% of the difference of 22 million was due to migration, which may be a good thing or a bad thing.

We have to go back to the basics, to demographics, to the economic reality, to our economic future, to education, to unemployment and so on. Before we start talking about migrants, asylum seekers and refugees, we have to realise what we want Europe to look like in 2025 and 2050, and only then can we start talking about the migration policy and how to help the people in world. Of course I fully agree that we should assist Syrian asylum seekers, and they will come in droves. There will be 100,000 next year, and 250,000 in the year 2015. Are we ready for it? We are not. All we know, even if we apply the temporary protection directive, is that they will stay put. Can we handle it? Do we want to handle it? If not, what do we do? When we have talked about it, we have been perfectly incompetent and not able to deal with it. The directives are in place and we all talk legislation, but we forget to talk about the most important thing: procedures.

When we started with the European Convention on Human Rights, there was no right to appeal for an alien, a foreigner, whenever he wanted to continue his stay or enter the European Union. We only did that much, much later. By now, if you put the various directives together, an alien can have seven, 12 different appeals, not to mention Strasbourg, the committees in Geneva or the rapporteurs who would like to play a role in all this. We made the whole policy beautiful but the implementation impossible. My urge would be: let us not talk legislation, let us talk procedures and combine the procedures and the legislation,

and link them up to our long-term policy on what kind of Europe we want, where newcomers may be needed and may be welcome, or may not be needed or are not welcome. That is the context in which we have to think: the 21st century.

Yves Pascouau: We will have a beer afterwards.

Q132 Lord Sharkey: I think again that Professor van Krieken has rather answered the question I am about to ask, because my question is about what the strategic priorities in the next programme should be. You are saying procedures?

Professor van Krieken: Yes, absolutely.

Lord Sharkey: Perhaps I can ask your two colleagues what they think.

Dr Parkes: Can I use you as an excuse to pick up on that question and maybe link them? I would get away from procedures. I think the UK would be well served by a political programme if it can exploit the sort of creative ambiguity that is usual in political programmes. If you start dealing with procedures or listing safeguards, I think the UK or British Government would trigger a lot of the negative trends that we have seen in the last programmes that have caused problems, such as weasel words that voters pick up on more than they, funnily enough, pick up on grand strategic things.

Lord Sharkey: This is British voters you are talking about—

Dr Parkes: I think so.

Lord Sharkey: —or European voters?

Dr Parkes: Both, but I have my British hat on. If the UK Government start asking for a listing of measures and safeguards in this programme, British voters will pick up more on the weasel words that we sometimes get from Brussels than on the grander strategic ideas. You may disagree. You are looking sceptical.

Lord Sharkey: No, I am not at all. I am just interested in that point.

Dr Parkes: I think that is the case. I also think you would end with the sort of Christmas tree programme that Yves talked about, which I do not think is in anybody's interests. It also slightly perverts what the European Council ought to be doing, and what from a British perspective it ought to be doing. It is an intergovernmental body where Heads of State and Government come together, have dinner, chat and be friends. That is useful for Britain. If it becomes this legislative negotiating body à la crisis management eurozone, that is not what we want.

Governments do not understand one another any more. They come to Brussels, have a late night, adrenalin-fuelled sessions, dislike each other and go home. I think that undoes the whole sort of intergovernmental idea of the EU that Britain has been promoting. I would say: go with the flow and maybe exploit the creative ambiguity in a political programme, rather than going into this with an idea of, "What safeguards can we win? How can we prevent this getting out of control?". It is slightly counterintuitive.

Q133 The Chairman: Let us get back to this issue of reviews, evaluations and so on, which I think you spoke about earlier on and which I think we are all agreed every bit of evidence we have heard agrees that it has not been done very well up to now. One case that we came across in our work that was pretty ghastly was the evaluation of the drugs action programme. The Commission did not wait for the evaluation to come in before proposing a lot of other measures. It totally discredits any process of evaluation, it seems to me, if you do not even wait for them, let alone whether you pay any attention to them. It has not been very well done up until now.

One of you mentioned the complete failure of the Stockholm Programme mid-term evaluation, with the Commission simply saying that it was too busy to do it and the Council doing probably what was rather a box-ticking exercise.

Professor van Krieken: Allow me to say that in June the Council published a fourth annual report on immigration and asylum. I read that as partly as an evaluation, so at least that is one useful document. Sorry to interrupt.

The Chairman: Yes, but I think we would like to hear from you how you think the June 2014—if it is to be June 2014—strategic direction should deal with the issue of evaluation and mid-term review and so on. We heard yesterday from the Commission that it thought that the already accepted requirement to review the funds in the middle of the MFF period might be a useful focus, although not obviously a complete one, because you would have to take in the non-spending aspects, and the justice side does not have much spending in anyway. How do you think that should be handled, given the inadequacy of the European Union's ability to grasp the nettle of evaluation and mid-term review up to now?

Yves Pascouau: I think that at least three types of evaluation could be taken on board, although this is not an exhaustive list. First, the old idea that existed in the temporary programme and was abandoned afterwards was that of a scoreboard with orientations to know who is in charge. Did the European Commission table the proposals? Did the European Parliament and the Council adopt the text, and has it been adopted? This is the legislative evaluation that proved at the very beginning of the policy in 1999 to be very useful for observers, and put some pressure on institutional players here. This is for the legislative level.

With respect to the implementation, we have a provision, Article 70 of the Treaty, which allows the Council to set up an appropriate mechanism in order to evaluate the implementation of policies. It has been a huge drama between the Council of the EU, the European Parliament and the Schengen evaluation system, but these instruments exist today and could be extended to other policies. After that there is the political evaluation. One idea is that instead of having a mid-term review we could have a kind of political evaluation of

what has been done, where we are standing and whether we should revise our orientations or not.

One interesting idea, which was discussed during the task force meetings, was to have an evaluation after each three-year Presidency and ask, “Are we on track, given unexpected events”—various crises, the Arab Spring, the 9/11 bombings are all unexpected events that have had a tremendous impact on policies—“or do we need to change direction politically immediately?” at the level of the European Council. Every 18 months you could have a kind of cycle of evaluation, which helps the Heads of State and Governments to say, “We are on track” or, “We should perhaps add one element or go in another direction”. These are three elements that we could have with respect to evaluation.

Dr Parkes: May I disagree only slightly? Two things worry me perhaps. The first is that by taking that path we are making evaluation separate and slightly synthetic. It is something that we deal with every two and a half years or something which the Commission will do at this stage via that tool. I think we need to concentrate on finding organic ways within the political process to deal with evaluation and to deal with it naturally. It may be that we deal with it at the highest level, or it may be simply that we make sure that immigrants and EU citizens are able to exercise their rights, have recourse to have things changed and so on, that we have a sort of bottom-up process of making sure that what we have promised is being properly implemented. But it may also mean that we have a constant conversation at the level of Heads of State and Government and this is not something that we deal with once every blue moon but something that we are always aware of. I think that is the first thing. I would worry about making this a synthetic process and put the emphasis on something more organic.

The second point is that the trouble with some of the mechanisms that we have in place at the moment is that they repeat the mistake of the actual programming process as an inter-

institutional battle, so the programming process but also the implementation process becomes about the European Council trying to gain control of what the Commission is doing and the Commission fighting back, ignoring what has been set out and so on. We need to focus on that initial birth defect rather than prolonging it with new mechanisms that do not—

The Chairman: But presumably you would all agree that the Stockholm Programme approach, in which the Commission did not do any mid-term evaluation at all, cannot work. The Commission is there and is both a proposer of policy and an implementer of policy. If it is to be a useful evaluation, the Commission must be directly involved, surely.

Professor van Krieken: Allow me to put forward the following, and I do consider this annual report on immigration as amounting to some sort of evaluation when it comes to the two or three chapters of the Stockholm Programme. To me, there is no need to go into the nitty-gritty as the Commission has done in its annual report, but when we talk evaluation, of true evaluation, we have to get out of the JHA parameters. It is not about justice and home affairs as such. At the end of the day, these issues are about education, the economy, social cohesion and suchlike. To me, the evaluation would be about getting the views of people from other disciplines and looking into the dynamism and what has been achieved and not achieved from that economic, educational, social cohesion type of thing. That ought to be the case.

Q134 The Chairman: One weakness in evaluation that we discovered when we looked at the general GAMB was mobility partnerships. We found that the Commission had virtually no idea how to evaluate whether the mobility partnership of Moldova or Armenia—or whatever it was—was delivering the objectives it was set up to deliver, and there was no rigorous process of evaluation. I think the 2015 onwards programme that is going to be adopted is going to have to say something about this. We are trying to gather thoughts as to

what it could best say about this. Of course it does not mean that it will happen, but it makes it slightly more likely that it will happen if the Heads of Government say that it should. It will at least give a sense of direction, so are there any other thoughts on that before we move to our last question?

Dr Parkes: I will very briefly pick up on a difficulty within the mobility partnership approach, which, if we sat down and evaluated it, we would have to pretend was about increasing mobility, about remittances, about return migration—that sort of thing. In reality it is about the EU trying to make a breakthrough in legal migration, trying to bring the Member States together in a more constructive approach. It is about increasing the EU's leverage over Moldova or whatever country it may be, but we cannot put that into the evaluation process, because that would be to admit slightly that it is about something else.

Lord Sharkey: Is that not a way of saying that you cannot evaluate anything? It seems to me that if you look at programmes in the commercial world, every good programme that I have ever encountered has written into it a robust method of evaluation from the start, acknowledging what the true objectives are of the programme. I see no reason—but I invite your contribution—why that should not be the case for programmes under the JHA.

Professor van Krieken: In everything I am involved in for EU deliberation in key differences or other programmes, there are always the objectives, the deliverables, and that is wrong.

Lord Sharkey: Yes, but how are you going to measure it, and who measures it, because having the Commission mark its own homework is not always entirely satisfactory?

The Chairman: You are going to get now, very soon hopefully, some quite big mobility partnerships in countries of much greater significance than Moldova—countries like Tunisia and Morocco. It is surely going to be essential that they are properly evaluated in two or three years' time.

Professor van Krieken: But the danger is that those mobility partnerships are to a great extent symbolic. It is a ritual.

The Chairman: Yes, but the evaluation may have to recognise that. It does not mean to say that they are not worth having at all.

Professor van Krieken: They are worth it, yes.

The Chairman: But it does mean that they are not as important an answer to the problem of mobility and migration as they were billed to be, but if we cannot face up to these things it seems to me that the European Union's policies will get more and more discredited.

Yves Pascouau: Just on this, I think that there is a legal and political problem. The legal problem is that mobility partnerships are instruments that involve the EU Member States and third countries. The legal part of mobility partnerships remains in the remit of national competence, so I think there is a legal problem here that gives the European Commission the power to evaluate what Member States are doing. Does the European Commission want to engage in this evaluation at the moment, when Member States are seeing this as their own competence and then on a political point of view the Commission says, "Okay, this is your competence, so you have to evaluate it."?

The Chairman: Surely what they would evaluate is how effective their attempts to co-ordinate Member States' individual policies have been, not challenge whether Member States should be handing the competence over to the Commission, because that is not in their remit. I have heard Manservisi, for example, giving quite frank accounts of successes and failures in helping to co-ordinate. It would surely be valuable to have a view on that without trespassing into the increased competence area.

Yves Pascouau: I do not deny that there is a need for evaluation in this regard, but I think there is a problem too. This is perhaps a question that you have to raise again with Stefano Manservisi.

Lord Sharkey: It does raise the issue, going back to strategic priorities, of whether or not we should concern ourselves with programmes that we cannot evaluate. It would be hard justify running a programme that you could never evaluate or not evaluate.

The Chairman: They do cost money, these programmes.

Yves Pascouau: Of course. Are these programmes programmes that we cannot evaluate or programmes that we do not want to evaluate?

Lord Sharkey: I would have the same objection to either.

The Chairman: I think we have to be a bit more honest, do we not, a bit more transparent?

Professor van Krieken: Yes and no. I spent some time in Moldova and these are the kind of things that are intangible, and yet they have added value and have more value on the political level than on the ground, saying, "This has truly happened".

The Chairman: No, but an evaluation can take into account intangible advantages as well as tangible ones. After all, a company dealing with this could take into account the reputational value of a particular approach that cannot be quantified, but it would have to find words to express why it thinks that improving its reputation is likely to improve its performance as a company. It is not rocket science. It is highly sensitive.

Professor van Krieken: Very sensitive.

Lord Faulkner of Worcester: You need to be sure of the integrity of the people who are doing the evaluation.

The Chairman: Yes, that is right, and that is the question: do you hand it over to somebody outside or to some part of the institution inside and some cases to the court auditors or someone like that or what? It just seems to me that up to now it is not being done very effectively and that it could be one of the elements of a new programme: to do it a bit more effectively.

Could we move on, Lord Sharkey, to the last question, because we are just running out of time.

Q135 Lord Sharkey: The last question was about the Stockholm review and the failure, or inadequacy, of any kind of review of the Stockholm Programme. Talking about review mechanisms, as we were a moment ago, in your view realistically what should be in place to make an assessment of the Rome Programme or the Athens Programme or whatever it turns out to be? What should we do so that there is a real chance of having a realistic assessment of what progress we are making in the new programme?

Professor van Krieken: I am repeating myself, but we are getting out of the justice and home affairs parameters. At the end of the day, it is about education, it is about unemployment, it is about social cohesion. We do not often dare to link it up. We talk human rights, we talk about rights, we talk about well-being, but we are hesitant, if not reluctant, to touch upon the truly sensitive issues: the inner cities, the things happening in Stockholm last summer. These are the issues.

This is not about ageing. I see some healthy 50-pluses here. We have to think along these lines and think about Europe 2050 and the fact that we are lacking a migration policy that is based on sociology, political science, demography, economy, economy and economy.

Lord Sharkey: In that, would you prioritise, for example, the contribution these things make to economic growth?

Professor van Krieken: We should dare at least to ask ourselves that question. We should dare to think and carefully study Martin Gross, who has a book on some of the questions involved, and Paul Collier, who has a book, *Exodus*, the review of which I read in *The Economist*. We should dare to ask not necessarily existential questions but whether Europe has an open mind, an open society, and what forum it would get. Let us get out from the nitty-gritty of rights and wrongs, acceptance, entry, sojourn and return, which is basically a

non-issue, because we failed bitterly when it comes to it, and lift it up to the general European 2050 issue.

The Chairman: But asking the European Council to be very adventurous in this matter one month after anti-immigration parties are likely to have had an extremely successful day out at the European elections is a little bit unlikely, is it not? It can set perhaps a sense of direction that will lead to some of these longer-term problems being examined, but to ask it to be very adventurous in June would, I would have thought, be extremely unlikely. Realistically, what I imagine all our Governments are doing at the moment, if they are sensible, is trying to hold the line against this upsurge of anti-immigrant rhetoric and so on rather than advancing very far down a road to better policies.

Professor van Krieken: No. I recall *The Economist's* cover of two or three weeks ago with most unfortunately one of my countrymen featuring. I think we should be ahead of it. We should not wait, we should be proactive. I put this line of thinking on the agenda. When and where—that is a political issue and that is what I leave to you. I am not into politics.

Dr Parkes: There are two things perhaps. The first, if we are talking about evaluation, is that we are still stuck in the mindset of these Christmas tree programmes, rather than qualitative political programmes. If we are not dealing with quantitative things but rather qualitative goals, there may be greater willingness on the part of the Commission to evaluate and say, “This is what we have proposed”, but it may also make it simply less of a box-ticking exercise and more qualitative. But that may shift.

The second thing is that when we think of 2025 we might automatically be thinking in terms of ageing populations, the need for more immigration and so on. I think the financial crisis has shifted the way we think about migration. You mentioned *Exodus*. I mention the perception of sending countries that is coming back or coming in, and if we embrace that, we should not talk in the old terms that antagonise voters such as, “We need immigration

for this or that”, but should have a more subtle approach that is in line with voters’ concerns in some ways. That may shift this time around, but we need to take that step, I think.

The Chairman: Thank you very much, all of you, for coming along. We have had a very useful and interesting discussion of these various affairs, and I hope that you will feel when our report comes out that we have listened and taken into account some of the things you have said, and I hope that the report will be a contribution to a debate that is clearly not going to end in June 2014. Thanks very much.