



HOUSE OF LORDS

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Home Affairs, Health and Education (Sub-Committee F)

Inquiry on

EU'S GLOBAL APPROACH TO MIGRATION AND MOBILITY

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Witness: Rt Hon Charles Clarke

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Members present

Lord Hannay of Chiswick (Chairman)
Lord Avebury
Viscount Bridgeman
Lord Judd
Lord MacKenzie of Framwellgate
Baroness Prashar
Lord Richard
Lord Sharkey
Lord Tomlinson

Examination of Witness

Rt Hon Charles Clarke, former Home Secretary and Visiting Professor in Politics at the University of East Anglia.

Q138 The Chairman: Good morning, and thank you very much indeed for coming along to give evidence as part of our inquiry on the EU's Global Approach to Migration and Mobility and any related matters. As you and I discussed outside, you have expressed a willingness to say a bit about the subject of our next inquiry, which is Protocol 36 of the Lisbon Treaty, so we will take anything you have to say on that at the end of these questions. It would be very valuable to us to have your views on that point because it would be part of the evidence base for our own inquiry, which will start around the end of the year and is due to be completed in very good time to enable it to feed into the parliamentary process that has to take place on Protocol 36 following the Home Secretary's confirmation that there will be votes in both Houses on that subject in due course.

Going back to migration and mobility, as you know this session is open to the public and a webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website. I also understand that it will feature on BBC Parliament, perhaps helped by the fact that the other place is not sitting at the moment, so it may actually get one or two viewers—who knows? A verbatim transcript will be taken of your

evidence and this will be put on the parliamentary website. A few days after this evidence session you will be sent a copy of the transcript to check it for accuracy and we would be grateful if you could advise us of any corrections as quickly as possible. If after this session you wish to clarify or amplify any points made during your evidence or have any additional points to make, you are welcome to submit supplementary evidence to us.

Now perhaps you could just briefly introduce yourself. If you want to make some opening remarks, that would be entirely acceptable to the Committee. If on the other hand you want to move straight to questions then that would be equally acceptable.

Charles Clarke: Lord Hannay, first let me introduce myself. My name is Charles Clarke. Between 1997 and 2010, I was a Member of Parliament for Norwich South, and I served as a Minister for Policing in the Home Office from 1999 to 2001 and then as Home Secretary from 2004 to 2006. As a result of those periods of service, I have taken a great interest in these matters and a great interest in the matter of migration as a whole, which is obviously a very hot political question. I am delighted that you have asked me to give evidence. Thank you very much for doing so, and I greatly appreciate it.

I do not think that I have a great deal to say in terms of an initial statement, except to remark that I think that almost all opinion formers in the United Kingdom tend to see immigration and migration strictly in the UK context. I think that the right way to look at it is in the European Union context as a whole, which is why I wrote the pamphlet that I circulated before this meeting. However, I think to get that kind of way of thinking established requires a real sea-change. When I was Home Secretary, in my capacity as president of the Council of the European Union, I addressed the European Parliament at Strasbourg and I said that the era when Britain could rely upon the white cliffs of Dover to repel all aliens is a long time passed and we need to accept that we are part of the European

Union, albeit not in Schengen. We therefore need to look at policies that take that into account, and that is how I think migration policy should be addressed.

Q139 The Chairman: Yes, this Committee in an earlier report that we did on the European Union's internal security strategy—which of course includes a whole range of issues much wider than illegal migration—did observe that Britain's national security neither begins nor ends at the water's edge, which I hope reasonably succinctly expresses the view that you have just stated. But I would just like to ask you one question on the quite interesting figures that just came out in the last two days from the census about British demography and the level of migration into Britain, which does seem to be of a rather different order of magnitude from that of other European countries. Does that affect the judgment that you described just now and, if so, in what way?

Charles Clarke: I would not say that the figures affect the judgment that I have given. Obviously we have only seen the first stage of the census, though as you say the first figures produced earlier this week are extremely interesting. However, my bottom line on this is that the numbers way of looking at this is not the correct way of looking at the migration question. The idea that there is simply an appropriate size of the population of the UK that lasts for ever, I do not think is right. I think a much more profound question is: to what extent can every citizen or every person who lives in the UK—sorry, not every citizen but every person who lives in the UK—is able to fulfil themselves and play a positive role in the economy and society of this country? That is the core question rather than the number of people who are physically in this country at any given time. There are obviously other countries in the EU that have a far higher density of population than we do and I do not believe myself that there is some arbitrary level at which you can say, "Well, that's it".

The concern that I think is very deep amongst the British people is about the sense of anarchy, of not knowing who is coming to the country, not knowing who is entitled to be

there and not being certain who is really here and on what basis. So I say that the issue is to address the governance of migration and to ensure that it is clear and transparent and well operated, which it has not been. That is the way to deal with the concerns that people have, rather than taken any number, and saying that there is a number and then we are full up.

The Chairman: Lord Richard, I think that this is precisely the question that you were going to ask as a supplementary question to question 4. I wonder whether you would like to come in now and just follow that point up.

Q140 Lord Richard: I was reading your Centre for European Reform pamphlet. On page 4, under “What is to be done?” you say: “The fact of migration is not in itself the problem. It is the illegality and the ineffective systems of governance and control that accompany it – which exist across much of Europe – that create the real difficulties.” Taking that as the text, so to speak, of what you were just saying, could you expand on that for us?

Charles Clarke: When I was Home Secretary, there were regular incidents of people who ought not to have been in this country doing things that people found appalling, such as in the most extreme case the terrible murder of a police officer, but there was a wide range of other areas as well. I thought that what outraged people was not that the people were in the country but these were people who simply should not have been here. If they had been here properly and properly part of our procedures and processes, people would have accepted that. But as I said earlier, what they felt was a quasi-anarchic sense that people were getting into the country with no basis of doing so; being smuggled into the country without any long term commitment to the country and not putting anything back into the society. They felt that was destabilising to the way they saw society. It was not an issue of race—I do not think that the British people are massively racist right across the whole range, for example, in simply saying, “We do not want blacks here” or whatever—nor, in my view, was it an issue of numbers. It was an issue, as I say, of a sense of a lack of confidence that the Government

of the day and society had got the situation of migration under control. That is why I focus in this pamphlet on the governance question because I think that is the core instability that people have.

I do think there are serious issues about this. At the beginning of the Labour Government, a lot of people came into the country as a result of our relaxation of the primary purpose rule and we did not employ enough people in our Border Agency and so on to really manage the system, so you ended up having rooms this big full of files about people who were here illegally, which had not been looked at for three or four years. It was absolutely terrible, and we had to address that—it is in fact now addressed and, I think, resolved. But it was a massive, massive problem. That sense that we were out of control and did not know what we were doing is what I think gives rise to the concern, rather than the simple sense that there are too many people here or something like that.

Q141 Lord Richard: I am not quite sure what you mean by “governance”. I always have difficulty with that word, actually.

Charles Clarke: A former Prime Minister of your acquaintance, Harold Wilson, wrote a book called *The Governance of Britain*.

Lord Richard: I did not understand it then either.

Charles Clarke: I am not sure that he did either. What I mean by governance is, firstly, are there clear rules? In this case, are there clear rules for who can come into the country and on what basis? Are they transparent so that everybody understands what they are? Thirdly, are they implemented—that is, operated—in a way that people can have confidence: if that is a rule then the rule will be applied? I would say that combination of clarity of rules, the transparency of those rules and the enforcement of the rules is what I would call governance in this sense.

Q142 The Chairman: “Governance” has another sense also, in my understanding, which is when one is talking about international rules, whether at the European level or at the global level, where we are all quite clear that there is not a European government nor a world government. “Governance” tends to be the word that one uses for the set of rules that apply amongst a group of governments but which are not in the hands of a single government. I have always thought myself that that is another use of “governance” which is a legitimate one and which sums up the things you are saying as well.

Charles Clarke: I agree with your description, but I think that it begs a number of quite serious questions in this journey between governance in the way that you have just described it and government. Indeed, the EU itself is part of that journey from governance to government. I think that we are living in a world where there is a whole enormous range of laws which are established—UN conventions and so on—which govern our behaviour in a very significant way, but without taking it to the extent that we can actually govern, in the way that I used the word in answer to Lord Richard, the issues in a clear way. I think that gives rise to quite a lot of concerns. If you take the most obvious current example, the European Convention on Human Rights, there are many people who are very exercised about the application of that law or rule because they think that it is not being applied in a way that takes account of the consequences of that decision, and that is a problem. I think that your description, Lord Hannay, is spot on, but the question that it then generates is “How do you move from governance to government?” In the European context, obviously that is an issue about the EU and its powers.

Q143 Lord Avebury: Moving from the theoretical to the practical, I expect that you saw that the chief inspector of the UK Border Agency found that 150,000 people who had been given short-term leave to enter the United Kingdom had been lost in the system. Do you

think that Europe as a whole should have systems for monitoring the departure of people who come here for short-term reasons?

Charles Clarke: I do. I think that the fundamental issue of enforcing visa regulations is very important, and that is why we went towards the e-borders system. There was a glitch in that process but I believe that in a number of categories today, as far as the UK is concerned, the e-borders system is able to look at people leaving in the way that you described—not yet universally but in a number of categories. If you then ask whether that should be extended to the EU as a whole, I would definitely say yes. The whole basis of the argument that I make in this pamphlet is that the EU external border needs to be absolutely strong, and one meaning of the EU external border being strong is that you are able to know who is coming into the EU and who is leaving the EU, which requires some means of looking at it.

The advantage of modern technology, though it is controversial in many areas, is that it is relatively easy to do that. For example, the biometrically based identity card system of the kind that I could produce out of my pocket, which was legal until this Government made it illegal, is a very easy means of checking people's movements in that way. It is relatively easy to do that. I suppose that my core point is that people will not have confidence in the way in which migration is controlled and governed unless they believe that there are proper controls in these areas. In my opinion, without that we will not be able to make progress in any area.

Q144 The Chairman: We must get on with the questions, but that is a very interesting start to our discussion. As Home Secretary during the UK presidency in 2005, when the Global Approach that we are writing a report on now—although of course this is the second iteration we are writing our report on—was first proposed, could you explain what the Government's objectives were at that time? How well do you think they have been realised in the period since 2005 and the present time?

Charles Clarke: The origins of this, in my own case, were that when I became Home Secretary in 2004 we were looking at a general election in May 2005. I felt it was absolutely critical that we establish clarity as to what the UK Government's approach was to migration, so I immersed myself in that issue for the first month or so of my Home Secretaryship. We produced our White Paper in January 2005, which set out the basis of the points system and other approaches to try and deal with it. We went through the general election without immigration being a massively controversial issue, which is what I had feared but did not in fact take place. So when we took up the presidency of the European Union on 1 July 2005—immediately after our general election—I felt that it was important to push migration up the EU agenda for the reasons we alluded to earlier.

I suggested to my fellow Immigration and Home Affairs Ministers that we should really make it our affair to put migration right at the centre of the political agenda of the home affairs area. I thought that was more important than some of the things that the Justice and Home Affairs Council was looking at at the time. I hosted specific sessions on that at the informal Council that was held in Durham that year and we got, for example, the UN High Commissioner for Refugees to come to the Council and discuss the issue. I believe that that was the first time that the issue had been addressed in the round at the EU level and eventually we got to a state of affairs where in the Hampton Court declaration—the heads of state or government Council statement at the end of the year—migration was one of the key issues on the agenda, which was the first time that it had been so.

Our ambition was to say that the EU would try to take steps to address the issues around migration rather than simply saying it was nothing to do with them. The position before that was that the JHA was not really dealing with it very much at all—there was some aspects of it in the Dublin agreement and so on—but it was not really there. So our idea was to push the issue up the agenda and we thought that the idea of a global approach was the right way

to look at it, so that we could look at the various issues in the round. That was what we were trying to achieve.

As far as where we have got to is concerned, I think that we have got a statement that is useful but in my view it does not sufficiently prioritise and strategise. I saw the Home Secretary's evidence to this Committee and on this question I agreed with quite a lot of what she said about the absence of priority and strategy in this. I think you need a much bigger sense of priority and strategy. However, I thought that the statement that came out of this April's JHA Council—the *EU Action on Migratory Pressure* strategic statement—under the Danish presidency really took us a long way forward. When I went through that it seemed like we really were moving towards a sense of trying to get hold of it. In 2005, which is the time that you asked about, we simply made an effort to get this up the agenda and gradually as we were getting it up the agenda, we had institutions such as Frontex being created as a consequence of that—and in my opinion a positive consequence of that—but it has taken a long time to get on to a more strategic approach. I would say that the first time we have seen anything—as I said, I may have missed documents on it because I am not actively engaged in this area so much now—was the statement from the Danish presidency of the Council in April, which was a real significant step forward in trying to get sharpness and focus. And that is what is needed: sharpness and focus.

The Chairman: Yes, that core statement is one of the building blocks of the Commission's document that we are looking at now.

Charles Clarke: Yes indeed.

The Chairman: Does anybody want to follow that question up? If not, we will move on to Lord Richard's question.

Q145 Lord Richard: I want to take it on to your view of the Commission's recent communication on the Global Approach. Do you think that those proposals will improve the effectiveness of the Global Approach? What are the main obstacles to be surmounted?

Charles Clarke: If you take the four pillars that have been set out by the Commission, they are fine as pillars, but I would give them a slightly different ordering. They call them four equally important pillars, whereas I do not think that they are equally important. I think that the second pillar mentioned, which is "preventing and reducing irregular migration and trafficking in human beings", is more important than any of the other three because it is the area which gives rise, in the context of the conversation we were having earlier, to the greatest doubts and uncertainties in the population about where we stand. Remember, many people in the population see the EU as the threat on this migration question rather than the potential solution in these areas. The idea of the pillars is good but, as I said a moment ago, I do not think it is sufficiently prioritised and I think the prevention and reduction of irregular migration, the second pillar, needs to go right up the agenda.

The third pillar, "promoting international protection and enhancing the external dimension of asylum policy", I would make the second most important aspect of those pillars. The other two, "organising and facilitating legal migration and mobility" and "maximising the development impact of migration and mobility", are both lower priorities than the other two I have mentioned. I do not think there is yet that sense, in the Commission's approach, of a need to prioritise in particular ways, obviously because the issues I have mentioned are the most politically difficult.

Q146 Lord Richard: Is it the protection side of the thing that you think should be at the top?

Charles Clarke: Yes. We have to say that the EU is helping by proper government, by proper regulation of migration, the member countries of the EU to handle this issue in a

positive way that respects human rights and so on but deals with it in an effective way. I do not think that is clear enough.

Lord Richard: Unless you can deal with the protection point then you cannot really get out the others.

Charles Clarke: I do not think that you can get the confidence from the population to be able to do that. People think that if you want to promote migration—“organising and facilitating legal migration and mobility”, to use the phrase in the communication—if you are not keeping people out who ought to be out, then why should we have confidence in you?

I think there is another intellectual problem in this. When writing this pamphlet, I started by thinking that one could get to more harmonisation on migration and work and things like people who were migrating to work—obviously, the blue card system is an effort to try to achieve that—but, actually, I do not think that is right. I think that you have not got a single labour market in the European Union; you have a wide variety of different labour markets. I myself am pretty unsympathetic to any migration into the EU in the medium term to do any work. I think that we have enough people who live in the EU to do the work at the level we need in different areas. I think that we should be trying to really develop a proper labour market policy to ensure that the massive number of excluded people and unemployed people are able over a period of time—obviously, it is something that you have to do over time—to contribute to society more widely. That is where my focus would be.

I do not think that that is really accepted in the EU leadership at the moment. I think that they think that we are going to continue always to need people—whether it is seasonal workers or high-quality IT workers or whatever it may be—from outside the EU. I am doubtful that is true five years from now.

The Chairman: We had a lot of evidence from the Swedish Minister for migration in this inquiry who takes very much the contrary view and believes very strongly in a national policy of migration to work. Lord Judd.

Q147 Lord Judd: You do of course deal a lot in your interesting pamphlet with the need for this to be tackled in the European context. You also refer to the importance of aid and foreign policy being part of the approach. Do you think we begin to do enough, domestically and within Europe, to forecast what is going to happen globally in terms of the pressures for migration?

Charles Clarke: Not at all. Lord Judd, you have an extremely distinguished record in this field, over the whole of your life, both in Parliament and outside and you know about the subject better than I, but my own perception is that we need to have a much more integrated approach on a country-by-country basis going through the aid policies, the trade policies, the investment policies, the migration policies and the foreign policy issues. Indeed, I achieved, when I was Home Secretary, a two-page sheet that was made available to all Ministers who were having bilaterals with Ministers in other countries which went through all these points as to what we were trying to achieve. I believe that generally speaking these were all kept in separate silos and separate baskets and people do not talk about them together in coherent way. Part of the reason is the Home Office-type issues are always rather unpleasant because you are talking about keeping people out. It is not as nice a subject to talk about as some of the other areas but I think you have to deal with it in the round. You have to say, "We want a very strong and positive relationship with European country X and we want to do it in a way that recognises all the relationships between our countries."

Q148 Lord Judd: That is very important, but it was not actually my question. My question was about predicting what future pressures are going to develop and being ready for them rather than reacting to them.

Charles Clarke: I completely agree. The main pressures that come actually at the moment are as a result of events elsewhere—the Arab spring being an obvious recent example—or a conflict in some place which provokes, quite understandably, massive movements of refugees and migrants. That is what causes the issues. The reason I emphasised partnership in what I was saying is that I think the stronger the partnership between the UK—I would say the EU, actually—and the countries we are talking about, the easier it is to predict exactly what you say and to see what is going to happen, so we do not all say, “Oh gosh, it suddenly happened like this,” because we have had a set of processes. I suppose I was responding a bit against your question in a sense, as I am not sure that simply investing more resource in a group of academic researchers predicting what people movement was going to be will necessarily solve this problem. I think it is about practical partnerships. When I met the current chief executive of Frontex in Warsaw to talk about this, he was very clear that if you could have a strong partnership, for example between Spain and north Africa, or if there could have been a strong partnership between Greece and Turkey, for example—you may say impossible—then the people movements at the borders, which were massive, would become much easier to deal with. In fact there have been significant reductions where there have been strong partnerships, but the partnerships should be positive on both sides, and that is where the aid comes in and that is where the good trade relations and the agricultural produce and so on all come into a different situation. My belief is that there is insufficient discussion of this and therefore insufficient capacity, in answer to your question, to predict what the movement is going to be.

The Chairman: Did you ask for the floor, Lord Tomlinson?

Q149 Lord Tomlinson: Yes, just very briefly, Lord Chairman. I was quite interested in what you were saying, that you were largely out of sympathy with continued large-scale immigration for employment purposes. Would you make some exceptions to that where there clearly are national needs? For example, if you listen to the universities today, we would have no teachers in any of the STEM subjects were we not bringing in migrants as students and then continuing to employ them to keep those sorts of areas continuing.

Charles Clarke: I definitely think that there are exceptions, and very important exceptions. When we established our immigration White Paper in January 2005, a key element for the UK was an ability to assess what the skills shortages were and to understand what was happening in our economy and where we needed people in the ways that I am describing. Yes, there will be exceptions, and there should be exceptions. For example, in the case of universities, it is completely ridiculous that students are inside the migration statistics; they should be taken completely out of them, in my view, because the restraint on the vital national UK interest of expanding our universities internationally is far too sharp. So I completely agree with that.

At a time when you have very high levels of unemployment in many countries in the EU, to say we can solve our economic problems simply by having people migrate in and forgetting about those people who are unemployed in Spain, for example, is a very poor way of proceeding. We have to think much harder about how we engage those people who are currently socially excluded in countries throughout the EU. Sometimes migration becomes the easy answer, certainly for many employers: just getting the people in from somewhere else rather than focusing on the problem we have in our own country. So, in answer to your question, I completely agree that there should be exceptions. There need to be proper skills audits and proper assessments of need.

We should also be thinking all the time—and I acknowledge that it is a long-term issue—about how we can improve the capacity of people who live within the EU to do the work that needs to be done within the EU. It is a pretty bad state of affairs if 15% of the population of the EU are essentially not thought to be capable of doing key jobs in the EU. In his report, Felipe González predicted that there would be a deficit of 50 million people by 2050, for exactly the reason you give: the ageing population and so on. But all those assumptions are based on a set of views about how the social model will continue: will people always continue to retire at 65 or 60, or whatever it is, or not? As we live longer, will people actually work longer? There is a whole set of issues here that are much more complicated than some of the reports such as his suggest.

The Chairman: Lord Sharkey, then I think that we must move on.

Q150 Lord Sharkey: You talked about partnerships. A core instrument of the general approach is the mobility partnership, which you characterise in your paper as modest in form. So far there have been only four of them. Why do you think there are so few? Does it point to a fundamental defect in the nature of mobility partnerships?

Charles Clarke: I fear that it does. I am in favour of mobility partnerships. They are positive things, a strong idea. But fundamentally what you are talking about is the countries concerned doing a large amount of bureaucratic work for not much outcome in terms of numbers of people. If you are looking at the movement of people, you are really talking about quite small numbers. I do not know the details of the particular countries that you mentioned, but it must be a very small number of people in terms of the overall migratory issues that, for example, the UK or any of the other major EU countries is trying to address. So you are putting a lot of effort into that basket for not much bang for the buck in terms of having an impact on your overall migration position. That is why I think people ask whether it is really worth it.

This sounds terrible, but my experience is that people think it is a good idea, we should do it, it is all okay, but there is no real enthusiasm for it because people do not see it as really cracking the big issues that people feel they have to deal with in migration in their countries. I do not wish to damn them by saying that—which I probably have done—but actually you have to make a much more substantive arrangement that can work properly. For example, if you talk about Ukrainians going to work in Poland for seasonal employment, that is an important part of the Polish economy; it appears to work well, nobody has any complaints about it and nobody is worried about the people coming through. I think that is probably true in Spain with some of the people coming from north Africa in the same kind of way. These are not really seen as mobility partnerships. A mobility partnership is seen as something that makes those movements relatively bureaucratic rather than working in the way that migration normally does.

The Chairman: Yes, well, on the issue of seasonal migration, this Committee took the view that it was a subsidiarity issue that was really much better left to individual countries to determine.

Charles Clarke: As you will see in my pamphlet, I argue that in the whole migration to work area subsidiarity is the right way to go. There may be some exceptions at the top levels in IT and so on, but fundamentally the idea of an EU migration to work policy or points-based system for the whole of the EU is pie in the sky. You cannot get that at the moment.

Q151 Lord Mackenzie of Framwellgate: Good morning, Mr Clarke. You mentioned earlier that immigration is a political hot potato throughout Europe, and I think we would all agree. Given that, what scope is there for more harmonisation of migration policies within the European Union?

Charles Clarke: First, it is important to realise, as I did not before I started on this pamphlet, that migration is not an equally hot political issue across the EU. It is a massive

issue in northern Europe, Scandinavia and the Benelux countries, and it is a big issue in Italy. On the other hand, in Poland and Germany there is much less preoccupation with it. That raises an interesting political question about the nature of the debate about migration in those countries and the extent to which society has an overall shared approach. That said, I think that there are a number of areas where the EU should be increasing its work, first in the area of migration to reunite families, in particular the rules according to which people can be reunited with their families: what is a spouse, what is the age of a spouse, which grandparents can come, how extended is the family and so on. These are very different in the different countries of the EU, and there is a strong case for a harmonised approach at the EU level.

Secondly, I turn to the asylum policy. There has been an effort over many years to establish a common asylum policy for the EU. I think that that is the correct thing to do, and it would be an enhanced form of work to which I know the commissioner is already committed. Thirdly, on returns and readmissions, I argue generally that this should be a much more significant part of EU foreign policy than it is. The success of the European Commission with regard to returns agreements and readmissions agreements with other countries has been extremely patchy, to put it at its most generous. A large number of criticisms have been made of the way in which even those agreements that do exist have been operated.

I would identify those three areas—migration and family reunification, a common asylum policy, and returns and readmissions—as areas where a much more coherent EU approach would make a massive difference. I would add to that a set of other issues such as, for example, developing a visa policy on a common basis, and I would argue for the UK to be part of that approach. It would be an important thing to do. I would also say, going back to the question put by Lord Judd, that the EU in all its dealings, not particularly with its neighbouring countries but more widely, ought to bring the migration issue forward to sit

side by side with aid and trade and other key foreign policy issues to be discussed. In short, there are quite a number of issues where a much higher profile could be taken.

Q152 Lord Mackenzie of Framwellgate: Further to Lord Richard's point, I just want to pick up quickly on your argument that the problem is not the fact of migration but its governance and so on and that the numbers are not important. If there is pressure on hospitals, housing and all the social services that are provided, does that not fire the perception that it is about numbers? Of course this is generally fuelled by the tabloid press.

Charles Clarke: I am very sceptical about this. As a constituency Member of Parliament, I do not believe it is a fact that, for example, pressure on housing in a city like Norwich is very substantial as a result of migration. There are issues around giving children priority. My children went to a very multicultural primary school in Hackney. It was a tremendous school despite the large number of first languages that were spoken there. I do not think most of the people at the school thought it was a pressure in that way. To be quite honest, there has been a set of discussions about this which have been extremely ill-informed and for which Government has to take some responsibility. Some pressure groups have built an argument on the question of pressure on public services that is not based on fact. In saying this, I may be accused of putting my head in the sand, but I do not believe that the core problems of our health service, our schools system or whatever are the result of the pressure of migrants coming into this country.

Q153 Lord Mackenzie of Framwellgate: But would you agree that there is this perception in some areas?

Charles Clarke: Of course. The perception has been established and, I think, in a very negative way. For example, the argument was made by a former colleague of mine, John Denham, the MP for Southampton, that in Southampton the Polish plumbers had put massive pressure on the working situation there. All I will say is that I have not seen that shared in

other places; I do not think that it is generally the case. The much deeper issue is one that I referred to when answering Lord Tomlinson, which is that there is a significant group of people in this country who believe that they are entitled to work and see their inability to get work as being excluded as a result of people coming from abroad—the perception that you describe. Actually, in the case of many of those, we in government and society have not been able to equip those people with the skills they need in the modern area: work habits and so on. That is the core problem, not the migration itself.

Q154 Lord Avebury: Can I just go back to family unification, which you said was a candidate for a better European agreement? Do you think that in the light of recent restrictions on family reunification in this country, with harsher requirements on the use of the English language and financial hurdles which spouses and dependents have to overcome, that that is really practicable? Should there be an intermediate stage, where at least there is a clearing house within the European Community for exchanging views on the rules that are adopted in individual Member States on family reunification, so that you can begin to see what the spread is of different policies in individual states?

Charles Clarke: I certainly believe that there is a need for the sort of clearing house that you describe. That is one of the virtues of having a policy discussion about it, so that people can understand what the policies actually are, and what the meaning of those policies is in terms of the numbers of people who are being admitted and so on. I agree with you that that is a useful thing to do on its own terms. But I would also say that there is no particularly good reason why the definition of who is or is not a spouse—their age and whether they are a spouse in common law or whatever—should vary across the EU. The reason you need to have a tighter position on it is because of the issue that Lord Mackenzie has been raising about the perception that people have. It goes back to what I was saying about governance. There is a sense that this is very loosely dealt with. That may or may not be true; I think that

it is perhaps truer than it should be. But if you take Geert Wilder's party and look at its programme that went into the coalition agreement with the Conservatives in Holland, it is absolutely full, in that context, of the family reunification issues for migrants to Holland in that position. It is an important area on which to get clarity about what the rule is, so that people understand exactly what it is.

I understand what you are saying about the financial requirement that is there, and so on. My point is not about that. My point is about defining who the family is and who is entitled to come.

Q155 Baroness Prashar: Can I come back to the question of integrating migration along with police security aid into the foreign policy? You have touched on that twice. Do you think that it is realistic and, if it is, how can it be done? I agree with you but, on the other hand, in my mind there is a question mark as to whether it is realistic and possible.

Charles Clarke: I think that it is realistic. The key issue of illegal migration is the people traffickers—these illegal, very wealthy syndicates with tremendous power. The question is how you break them. You can break them only through proper police co-operation with Governments in those areas. There has been some success. Frontex has had some success on the Greece/Turkey border in attacking the criminal syndicates there, and has been able to make a number of different arrests. But what is required is co-operation and intelligence. Can you get co-operation? You asked me whether that was an over-ambitious hope. I think that you can get co-operation provided we are ready to provide resources to help make that go. Those resources, by the way, are very well spent. At the end of the day, if we succeed in keeping out the people from criminal trafficking organisations, that saves us a great deal of resource in our own terms.

Can you share intelligence in these situations? That is more difficult, because sharing intelligence is entirely a question of trust. A lot of people are not ready to trust others. For

example, in the western Balkans there are a lot of issues of trust as to whether you can in fact trust the police and security forces in some of those countries, or whether they have already been infiltrated and taken over by the organisations I am describing. So it is a hard process. You cannot just click your fingers and do it but, with a serious and strategic approach, you can make a good deal of progress. If you look at the latest Europol strategic assessment of crime, it identifies five centres across the EU which it thinks are the big five areas where people trafficking is coming through in very large quantities. You need the police in those areas to work together to attack that and to give no space to the criminal organisations. Can that be achieved? I think that it can.

I think that there is a big question about resources. The example I remember very well was Operation Reflex, which I visited in Bulgaria and Romania. It was a tremendous operation which was succeeding in stopping whole lorry loads of people being shipped from beyond Turkey and ending up in Northampton, via a police intelligence-led operation which was working extremely well. But that money was only able to fund it in Bulgaria and Romania at that time because they were not yet in the EU. Within the EU, doing it in Greece, there were no funds available and we could not make it happen. The EU as a whole should also be raising its overall level of resources into these issues. The EU spends a trivial amount on all of those compared with the need. This is a common complaint of course, but compared with the common agricultural policy or whatever this is much more central to the actual capacity of the EU than any other area. First, national Governments, police and security have to collaborate. Secondly, nationally we have to allocate more resources. Thirdly, the EU has to allocate more resources. The problem is that it works in reverse. When you are in a time of spending cuts, as we are at the moment—Lord Mackenzie could probably say this more articulately than I could—police services tend to retrench themselves to their domestic role and see what is being done internationally as a bit marginal. That is a wrong view, but that is

what is happening. I do not think that this is whistling in the wind. Police themselves, at senior levels, understand the need for international co-operation and are ready to work to make that happen.

Q156 Baroness Prashar: That requires a massive change in mindset, cultural change and so on. What levers would you use to bring that about?

Charles Clarke: One of the levers is the resources themselves, so the EU should provide resources for particular programmes. The problem with that is that sometimes they are just extra resources, rather than allocating the existing resources. However, it is simply a question of telling the story about crime. The biggest threats from criminality in this country are drugs, people trafficking—serious and organised crime—and terrorism. It used to be the case—I do not know whether it still is—that 80% of the heroin in Britain travelled up through Kosovo. If we can stop it there, we can prevent it reaching us, but we did not work in that way to do it. You just have to make this argument. I do not want to trespass on what Lord Hannay said at the beginning but that is one of the reasons why I strongly believe that the UK should remain a key part of all the EU protocols and arrangements to promote police co-operation.

Q157 Baroness Prashar: You have talked predominantly about police and security co-operation but what about trade and aid?

Charles Clarke: Again, I think the same. One of the problems is that the EU is quite an unwieldy group. In the area of home affairs we had something called the G6, which were the six biggest countries: Italy, Spain, France, Germany, the UK and, when I was Home Secretary, Poland was added to turn it from the G5 into the G6. We had exceptionally interesting meetings to discuss precisely how to do this, including those on trade and aid, with Home Secretaries. This was a level at which numbers were small enough to be able to discuss it in quite a material way. However, the big EU Council meetings are, as you know, very

formalistic gatherings. Even in the informal sessions, it is quite difficult to get a really sharp conversation going. I can see Lord Richard going to sleep immediately just thinking about the meetings that he attended as a commissioner. The fact is that you can have that conversation but it has to be very targeted and must include trade and aid.

The Chairman: To be fair to your former department, when we took evidence on the EU's drugs strategy, which was the subject of our previous inquiry and on which we published a report, the Home Office and SOCA were absolutely clear that the reduction in the resources available nationally made them more interested in what was being done by Europol than they had been before. They relied on it to a greater extent than they had done when national resources were a bit more plentiful.

Charles Clarke: I am very encouraged to hear that.

The Chairman: I was very struck by that evidence. If that is indeed the view of the Government and Ministers, it is a healthy one and it chimes exactly with what you were saying.

Charles Clarke: I am sorry that I missed that evidence. I had not noticed it but I am encouraged by what you say. I suppose I was going further back in time to when this was all seen as a bit marginal, which was a problem.

The Chairman: Yes, I think that something known in the jargon as "cultural change" may have taken place. Let us hope so.

Q158 Lord Avebury: May we turn to the common European asylum system? How do you think disagreements between northern and southern Member States over so-called burden sharing can be reconciled or overcome?

Charles Clarke: I think that the only way to deal with the burden-sharing argument in the EU as a whole is for the wealthier north to provide more resources to the south to help it in the management of its extended border and asylum. I do not think that the proposition

that the Dublin process should be reversed is right. I do not believe that there should be some kind of allocation of people so that those who come into Sicily are then transported to Sweden. That is not the way to deal with burden sharing. The way to deal with burden sharing is to say that we—the whole EU, including those members outside Schengen, such as the UK and Ireland—recognise that this is a much bigger problem on the land and sea border in the south than it is in the north, and that we are ready to provide resources and help.

If you take the Greek situation, for example, I think I am right in saying that the Greek provision of asylum accommodation was found to violate the European Convention on Human Rights. Therefore, people could not be removed to Greece in those circumstances. The obvious solution is for countries such as ours to give resources to Greece, either through the EU or directly, to help it solve the problem. My fundamental answer on burden sharing is not to say, “Shift the migrants to somewhere else in the EU”, but to shift the resources to those places where the pressure is greatest, which are mainly in the south.

Q159 Lord Avebury: Does that mean that Europol will be given responsibility for helping the Greeks to police their borders?

Charles Clarke: Frontex does that already, and co-ordinates it. UK police and others, including, I think, the military, have been part of some Frontex operations in southern Europe. That is only a slowly growing process, which has to happen much faster. Specifically on asylum, the European Asylum Support Office is ready to work in that area and there is a case for its doing so.

Q160 Lord Avebury: I know you have argued that the Commission will have to show more willingness to take Member States to the European Court of Justice if they fail to implement common asylum rules, but can you see any prospect that this will happen?

Charles Clarke: I thought not. A year or two ago I said no, but I think that Cecilia Malmström is an excellent Commissioner and that she has done a very good job in this area. Going by her statements, she is trying to move this issue up the agenda the whole time. I can imagine a situation in the next two or three years where states will work much harder to enforce the existing agreements. The problem with most of the agreements is that in the past they have been not quite dead letters—that is an exaggeration—but they have not necessarily been enforced as rigorously as they need to be. I am arguing that there needs to be rigour in these areas, and that is why I think that there is a case for taking people to the European Court of Justice. I would say that it is more likely now than it was a couple of years ago, and in three or four years it will be more likely still.

Q161 Lord Tomlinson: Earlier you touched on e-borders and the problems and imperatives involved in the system of securing external borders. Do you believe that the EU can secure its external border while, at the same time, respecting the human rights of migrants? Here, I am thinking particularly of where you get mixed flows of both asylum seekers and economic migrants and where it is very difficult for the authorities to determine which is which.

Charles Clarke: I think it can. As far as the external border is concerned, I think I am right in saying that a year or so ago more than 90% of the people coming illegally through the Schengen external border came by the Ebro River between Greece and Turkey. The big flows that there had been from west Africa to Spain and from north Africa to Italy and Malta were reduced to a very small flow as a result of agreements and partnerships between the countries concerned. The Arab spring put a bit more pressure on that and there are still some issues at the moment, but I think it is possible to deal with it.

On the human rights aspect, the core issue is the right of an asylum seeker to have their case for asylum judged quickly and effectively, taking full account of the circumstances of

both themselves and their country. The biggest failure of most Governments in this area, including our own, was that we did not make that judgment either accurately or quickly over a long period of time—for example, in the UK too many judgments being made by the Home Office and the Border Agency were being overturned by the courts because they had not been considered in the right way. So I would say that the central right for the asylum seeker is to have their case dealt with properly, and that is largely about having a good bureaucratic system that, as you say, takes the different cases of the mixed flows of people and assesses their individual circumstances. It is massively difficult for Governments to do that properly but there is no way round it. You simply have to do it.

I think that the more shocking abuse of human rights is the death of many asylum seekers at sea or in whatever circumstances. When I was a junior Minister there was a terrible case of 50 Chinese people being trafficked and dying in a container crossing the channel. It was an appalling situation. I went to see the container shortly afterwards and it was shocking. People losing their lives as a result of incorrectly policed borders is a much more serious abuse than some of the abuses that others are concerned about.

Q162 Lord Tomlinson: In terms of a proper bureaucratic system for determining asylum cases, would you hypothesise a time limit that should be placed on this?

Charles Clarke: I would not put a time limit on it at this stage but you are right to suggest that. I think it is reasonable for there to be a time limit during which people's cases are heard. The real problem is that the systems in many countries are not capable of dealing with that and therefore a time limit would be completely arbitrary. Actually, I think that a goal of policy ought to be—and this is one of the cases for a European common asylum policy—that applications for asylum are heard in a defined period and are properly heard. It is very important that they are properly heard—that is, that the genuine issues of the asylum seeker are understood by the agency in a proper way, and that is obviously a highly skilled

and technical job. It is no good putting in an arbitrary time limit. I think that there is a case for what in the jargon might be called a key performance indicator, where you try to move towards a situation within a certain timescale. However, I come back to the point that that requires investment. Going back to Lord Avebury's question about burden sharing, that is exactly the kind of area where we could really look to the northern countries doing more to help the southern countries, where the pressure is the greatest.

Q163 The Chairman: I think there is going to be a new case when Croatia enters the European Union. As a result of that, the European Union will acquire an extremely long border with Bosnia-Herzegovina—800 kilometres—which will be very difficult for the Croatians to handle. I think that that is very much what you are talking about—that the sensible thing to do is for the northern and western Member States to provide some resource to help these countries to handle it, rather than to try to have a system for spreading the asylum seekers around.

Charles Clarke: There are two things. First, a couple of months ago I had an interesting conversation with the head of the regional office of the Migration Policy Institute in Brussels, who had just been to Greece to see the situation. I think that the IOM, if properly resourced, would be ready to help in Greece to ensure that it could operate more effectively, and I think that you could find other non-governmental organisations ready to help to make that go.

Secondly, the Croatia example is the reason why I argue that we should move as rapidly as we can to all the western Balkans acceding to the European Union, because I think that our border would be far more defensible. I applaud the process that took place in the visa negotiations between Schengen and most of the western Balkan states, which led to western Balkan visas being accepted within Schengen, because the other side of it was the massive reform that those countries—Bosnia-Herzegovina, for example—had to go through in order

to be able to do that. They had to reform their systems, establish them properly and all the rest of it, and that was a massive process for them. The UK of course has stayed completely outside that approach and we have not been prepared to do what Schengen has done in relation to visas from the western Balkans. I think that the best way to defend the Croatian border would be for the other western Balkan states in that region to have good systems themselves and to operate effectively. We should be doing what we can to help that, and I would say that accelerating their membership process to the EU would be a good way of doing it.

Q164 Lord Judd: You argue that the European Court of Human Rights and the UN refugee convention were created and designed for different times but that times have changed and that perhaps the form these take needs to be re-examined. Could you spell out what you mean by this?

Charles Clarke: I have to confess that I found it very difficult. I observe that things have changed greatly since the late 1940s/early 1950s, when these agreements were made. I hear lots of discussions about what the entitlement for asylum should be. Should, for example, a homosexual from Belarus be entitled to asylum in the UK? Is that something that would have been envisaged in the past or is it something that is now being envisaged because of the standards that we now have concerning what is oppressive and what exists in these circumstances? It is worth having a debate about that.

If you asked me about the specifics, I would find that difficult to answer. I simply think that there should be a tighter definition of the things against which asylum is needed, if I can put it like that. The virtue of getting to that position is that people in this country would accept it more than they do currently. Obviously conflict and war are things from which asylum is entirely justified, as are torture and oppression, but as you define slightly more widely the basis upon which you can get asylum, that weakens the process. So I would have a

widespread discussion about it, but I have to confess, Lord Judd, that I do not have in my back pocket, as it were, a new draft charter. However, going back to Lady Prashar's point about my optimism in relation to this, I think that the chance of this happening is zero, and the chance of getting international agreement to a change in this area is almost irrelevant.

I was glad that the British Government in their chairmanship of the Council of Europe raised some issues and got some reform at the meeting in Brighton earlier this year but I think they got a pretty marginal change. It was mainly about the process rather than about reforms and definitions. So I put this in as a point for discussion, as it were, rather than as a charter for action.

Q165 Lord Judd: But some of the other nations seem to show a good deal more exasperation. We use terms such as the "silliness" of some of the messages coming from European institutions, and you have talked about the questions surrounding the way in which the 1996 Chahal judgment was used. Since you have come away from the heat of office, how far do you feel that this may be historically a rather fundamental challenge in terms of what human rights and political pressures really are?

Charles Clarke: This is a massively difficult area. Obviously the Chahal judgment was in the context of terrorism, and there was the question of whether a number of contemporary people could be deported back to north African countries, in particular. I was not really trying to cover that in this area because the questions that we are talking about now concern terrorists rather than the more general issues that arise. However, I negotiated with a number of north African countries memoranda of understanding, which were controversial. I went down that course because I was very influenced by a discussion at the Cabinet in which a number of my colleagues thought that we had to pull out of the ECHR. The then Leader of the Opposition, Michael Howard, argued that we should be pulling out of the ECHR. I was completely against doing so because I think that it is an absolutely

fundamental bulwark of our freedoms, but I felt that we needed to find a way of addressing the problems that were there, and that is why I went through the process of trying to get memoranda of understanding, which, with the exception of Libya, are in place today. I think that that is what you have to do.

It is ridiculous that the ECHR has currently become almost a term of abuse in politics. That is profoundly dangerous. We have to try to find some mechanism for defining it and explaining it better than we currently do. The current European Court is not that impressive a body at a variety of different levels. I was at a private academic seminar in the last year with a number of members of the Supreme Court and senior politicians. A number of the people there, who were much more legally qualified than I am, think that it is inevitable that we will leave the ECHR because the tensions are so great. The point that I was making, on which you asked a question, was that this is something that we have to try to get hold of and talk about seriously. Because these things seem to be frozen in aspic, we cannot talk about them, but the danger is that we will end up moving out of it altogether.

Q166 Lord Judd: But you would say that in that examination it would be necessary to point out repeatedly in capital letters that this is about making it more effective and not about reducing the moral and ethical demands of justice.

Charles Clarke: The answer to your question is yes. We absolutely have to maintain the principles at its core, but we have to discuss more to what extent we are saying that certain things mean that you can generally seek asylum from another country.

Q167 Lord Judd: Then it is not part of a xenophobic approach—that we do not like bloody foreigners telling us what to do.

Charles Clarke: No. I think that the reverse is true. I think that the xenophobic approach says that we have reached a Utopian society in Britain which we have all worked for over the years, and the north Africans or whoever can never attain our Utopian society and

therefore you can never get a fair trial there or whatever. The most terrible case when I was Home Secretary was with France. We could not extradite to France somebody who was alleged to have committed a terrorist attack because the courts here said that you could not get a fair trial in France. They required the French Government to come and give evidence about how their system worked. I have talked to Sarkozy about it—he was the Interior Minister at the time. I said, “I’m sorry. You’ve got to send somebody to the court to say that you do get fair trials in France”. He said, “We can’t do that. The pride of France is at stake. The idea of us going to a foreign court”—and I understood his position. However, finally he agreed. They did it and the guy was extradited and tried properly in France. That happened because of our belief that only in Britain do you have a fair system and all the other systems do not work. I am sorry; I am on my high horse about it. I shall get off it.

Q168 The Chairman: If I remember that case rightly, it could not now occur because of the European arrest warrant.

Charles Clarke: You are right but it was not just the arrest question. I think that the arrest warrant would probably have solved it but this was particularly an extradition case. I think you are right that if that person had been arrested with a European arrest warrant at the outset, that case would not have arisen.

Q169 Viscount Bridgeman: Mr Clarke, I think it is appropriate that this is the last question. Do you believe that the UK can continue to contribute constructively and effectively to the EU’s migration policy when it has not opted into many of the legislative measures underpinning that policy? Do you believe that the UK should at some stage become a full member of the Schengen area? Greece has a very bad press in your pamphlet. Do you think that that situation—where you have one clearly weak link in comparison with the generality of the rest of the Schengen area—should affect the timing of our entry?

Charles Clarke: Two points. First, it is disgraceful for us to go on about how the rest of Europe should govern itself if we are not prepared to participate fully in the process. I argue that in the economic area, although that is not for this Committee, but I also argue it here. We try to get the benefits of co-operation without being ready to fully put in, if I can put it like that. So I believe that we should opt into the range of justice and home affairs measures—about 130 of them—fully and be full participants as much as we can. I think that we would be much stronger if we did so, as well as more secure.

My position on Schengen has gradually evolved. I used to hold the view that we ought to join Schengen when two conditions were met. Condition 1 was a genuinely strong and secure external EU border, and condition 2 was the establishment of ID cards in this country, which I thought would help in controlling the situation. Condition 2 I have dropped because the Government have dropped it for me. Condition 1 remains, and it is exactly your point about Greece. If we are not confident about the security of the external border of the EU, then we should not join Schengen. However, once we become confident of the strength of the external border of the EU, then I think that we should join Schengen, and a large number of benefits to our security would arise if we did so. I think that the most profound weakness in the EU external border at the moment is the Greece/Turkey border and not any of the others. There are always issues on the other borders, so I suppose that feeling confident that that had been properly resolved would fulfil that condition. However, my fundamental view is that we should join Schengen and seek the conditions to make that happen.

Q170 Viscount Bridgeman: Can I just ask a supplementary question? It was the Greece/Turkey border that I was talking about. I think that you referred to the possibility of a trade-off or carrot—that Turkey should have a rather easier visa entry into the EU and that we would therefore have influence in Turkey. Is that a step in the right direction?

Charles Clarke: I think it is. A trade-off on a lot of the visa issues is that we will allow visas provided that the countries from which the people come have proper systems themselves, with proper records and operating systems. That was the trade-off with the western Balkan states and I think that it has massively improved the administration of these issues in those countries. I think that there is a great desire on the part of Turkey to be able to work in that way, and we have a desire—for example, on readmission agreements and things like that—to have a much better relationship. If you had full negotiation around all these issues, you could get a package that was beneficial to the UK. Unfortunately, in the case of Turkey, first, there is a problem with Greece. Both Greece and Cyprus make it very difficult for the EU to deal with Turkey in an effective way on this matter, but Turkey's sense that the EU is messing it about is, I think, making it very difficult to engage in the way that is necessary. That has become worse over the past three or four years. In a way, I do not blame the Turks for this. I think they are trying to establish their own position and develop their own economy, and we, the EU, are not making it easy.

Q171 The Chairman: I think there is some hope that the readmission agreement with Turkey will now go through. Some very good work was put in by the Danish presidency just before the end of June, and I think that the processes are now turning for that, which would be a step forward. I would only add in relation to your two conditions for joining Schengen that of course the coalition Government have now introduced a third, which is a requirement for a referendum.

Charles Clarke: I was against the euro pact of 2011, or whatever it was. I thought that it was an appalling piece of legislation and very damaging in many ways. I do not know whether you are going to have a special evidence session on referenda on EU matters but I would be more than happy to contribute at some point if you do.

Q172 The Chairman: Absolutely. Could we now, as a kind of tailpiece, move to Protocol 36? Thank you very much, by the way, for all the answers that you have given on the other questions, which will help us a great deal in our inquiry.

Protocol 36 is of course looming in the sense that it is ticking away. By May 2014 the British Government have to declare whether or not they will accept the European Court of Justice's jurisdiction on all those pieces of legislation which were adopted before the Lisbon treaty came into force. That is the 133, which I think you referred to in one of your earlier answers. It does not of course affect legislation introduced since the Lisbon treaty came into force, where, if we opt in, we are ipso facto accepting the European Court of Justice's jurisdiction as from, I think, November 2014. But it is those 133 pre-Lisbon legal instruments covered by Protocol 36 on which we will be writing a report to help the House of Lords, at least, take the decision that the Government have decided to put some time between now and May 2014. Having set the scene a bit, it would be helpful if you could say what thoughts you have on this subject.

Charles Clarke: I suppose that my thoughts come in two or three categories. The first is that I regret that the opt-out in these areas was agreed by the British Government—the Labour Government—at the time. I do not think that the so-called red line on this was necessary either in public opinion terms or in terms of the overall political situation. It reflected the opinion of many of my colleagues in government but, personally, I regret it. Secondly, that having been done, I hope that this Government will decide that they do not want to opt out of any of these measures and that they simply agree to the authority of the European Court of Justice. Why do I believe that? I think that it partly relates to the answers that I gave earlier to Lady Prashar. I believe that co-operation with other European police and security agencies and with other Governments in these areas is an absolutely central part of our capacity to police and make secure our country—the national interests of the

UK—against the various threats that come from international criminality. To weaken that capacity would be very serious and problematic. To opt out of these requirements would explicitly weaken that capacity.

Some say that we could opt out and then opt back in. As Open Europe—a not particularly pro-European think tank—says in the House of Commons note on this, you cannot assume that the others will immediately allow us to opt back in in areas that we want to opt back into. They probably would because they would see an interest in the whole situation, but they would not necessarily do so, and we would be engendering a massive process of uncertainty and turmoil at precisely the wrong time. So I absolutely and strongly hope that they will decide not to take that course of action.

Unfortunately—and I make a political point here—there are parts of the Conservative Party in the House of Commons who are the tail that is wagging the dog on these questions, up to and including the Prime Minister. So the question of where the national interest is in this matter is chucked out of the window by comparison with the real national interest in proper security and policing.

In fact—I said this earlier in an answer on Schengen—I wish that we would engage much more in these areas. I think that the approach that has been suggested will be very damaging.

Q173 The Chairman: Thank you for that evidence, which we will put on one side and which will become available to us when we do our next report, which is going to be on that particular subject. If, when we issue the call for evidence, you felt able to give us some written evidence on the particular individual issues where you think the national interest is directly involved among the 133, some of which of course may have been overtaken by then because there may be subsequent post-Lisbon instruments—for example, on Europol—that would be very welcome. We believe that the Commission is going to make proposals which will include post-Lisbonising—if we can use that terrible phrase—at Europol, as well as

introducing a cybercrime centre, which this Committee and the British Government strongly support, in Europol. That is one example of something that might disappear from the list. However, if when we issue our call for evidence at the end of this year, you felt able to contribute on the detail and to identify the bits of national interest which you believe would be put at risk if we opted out, that would be very welcome. You are of course quite right in saying that the British Government cannot assume that, if they opt out, they will automatically be able to opt back into the bits that they like. That would require unanimity and would contain certain risks. I think that it would be the only time in recorded history when any Government willingly gave themselves a worse negotiating hand than they had at the beginning, but there we are.

Charles Clarke: I will certainly take up your offer when the time comes. Thank you very much, Lord Hannay. But perhaps I may make two remarks. The first is that the Irish situation should be thought about very carefully. I presented this pamphlet to a seminar in Ireland and we had this discussion. They—the big leadership in Ireland in the police and security field—absolutely do not want to opt out of these various agreements but, because of the common arrangement with the UK and Ireland, they find themselves in a very difficult situation. It would be very important to see what Ireland did, because it would be in a very difficult situation at the moment and it would damage our relationship with them, which would also be very serious for us.

The only other point that I was going to make—and Lord Richard has much more experience of this than I have—is that, for the first time, in the last year I have begun to feel that across the rest of the European Union, where previously all the leaderships have wanted the UK to be involved and have been hoping that we will sort it out and so on, suddenly and quite sharply, and I felt this very much in Berlin earlier this year, they are thinking, “Oh, we just can’t be bothered”. That is a change which is really tangible. So when

the question of the opt-in comes back after we have opted out in this hypothesis, I think that a lot of people in the big European Union countries will say, “We can’t be bothered with this. If they’re out, they’re out, and we’ll just let them get on with it”.

The Chairman: I think that we may have to consider that to be outside the scope of our inquiry, probably in the interests of self-preservation. Nevertheless, thank you very much for what you have said on Protocol 36. As I said, we will store that away and use it, and we will make sure that you get the call for evidence when we issue it in due course. Meanwhile, thank you very much for a really valuable amount of evidence, which we have greatly enjoyed.