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PARLIAMENTARY DEBATES  
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# HOUSE OF LORDS

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<b>Abbreviation</b>	<b>Party/Group</b>
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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# House of Lords

Wednesday 15 June 2016

11 am

Prayers—read by the Lord Bishop of Sheffield.

## Planning: Retrospective Applications Question

11.06 am

Asked by **Baroness Gardner of Parkes**

To ask Her Majesty's Government whether they will include in the draft regulations flowing from the Housing and Planning Act 2016 measures to deal with retrospective planning applications and variable fees for higher cost developments.

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con):** My Lords, I understand the frustration that breaches of planning control can cause. National planning policy was strengthened on 31 August 2015 to make intentional unauthorised development a material consideration in the determination of planning applications. We do not intend to impose higher fees for retrospective applications, but it is right that larger developments attract a higher planning fee. Fees already vary depending on the application type and the type and size of development proposed.

**Baroness Gardner of Parkes (Con):** I thank the Minister for that Answer, but I remind her, although she may not need any reminding, that on the first day of consideration of the then Housing and Planning Bill, the subject was raised of the need for draft regulations and the scant detail that came to this House in that Bill. Can she confirm that we will definitely have draft regulations now that it is an Act, and that there will be adequate time for this House to consider this very important detail?

**Baroness Williams of Trafford:** My Lords, I do not need reminding; I shall never forget the first day of the Housing and Planning Bill. It has not become a recurring nightmare yet, but I certainly heard the feeling of the House loud and clear. I totally concur with my noble friend's point that regulations should be in draft and ready on time for proper consideration by this House.

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, at a time when local authority budgets are stretched and planning departments are often underfunded, does the Minister agree that it is time for the setting of planning fees to be delegated to local authorities, alongside the ability to impose heavy fines with enforcement action for those who knowingly flout planning regulations?

**Baroness Williams of Trafford:** My Lords, the noble Baroness makes a very valid point. We certainly want to balance the imposition of too high fees and encourage people to bring forward applications, but in terms of budgets local authorities have certainly played their part in contributing to reducing the deficit. They have performed that service very well indeed. We need to strike that balance between having fees that do not encourage efficiency and enabling local planning authorities to carry out their role.

**Lord Beecham (Lab):** My Lords, the Minister was candid enough to acknowledge the frustration felt by those of us who were involved for so long with the Housing and Planning Bill, but is there not a larger issue here? The House has repeatedly received reports from the delegated legislation committee and other committees expressing their concern about the increasing reliance on secondary legislation and the inadequate scrutiny that ensues from that, both in this House and in the other House, where it is probably even worse. Is it not time to have discussion between the two Houses, and within this House, as to the proper role of secondary legislation and how the House can exercise proper scrutiny over it in advance of the completion of legislation?

**Baroness Williams of Trafford:** My Lords, we have had many debates on the subject of when secondary legislation should be used and its appropriateness. I hope that some of the pressure which this House, and indeed I, have brought to bear has ensured that we have had better information about secondary legislation. Certainly, where we have a framework Bill, that necessitates quite a lot of secondary legislation, but I think that the House has made its view very clear going forward in this Parliament.

**Lord Forsyth of Drumlean (Con):** My Lords, given that the Treasury's own projections show that the population will increase by some 3 million over the next decade, mainly as a result of immigration, will not planning departments surely need considerably more resources to deal with the housing needs of that group?

**Baroness Williams of Trafford (Con):** My noble friend makes a valid point. The whole point of the Housing and Planning Act is not only to get more houses built but to ensure that the planning system is more efficient to enable that.

**Lord Campbell-Savours (Lab):** My Lords, if the Government had been listening to concerns about the use of secondary legislation, why was it that my noble friend Lord Watson of Invergowrie had to introduce the amendment that he did to yesterday's legislation? Surely the Government are not listening.

**Baroness Williams of Trafford:** I understand that the Minister replied to that yesterday. I apologise to the noble Lord because I was not here for that debate, but I can reply to him in writing.

**Lord Young of Cookham (Con):** My Lords, can my noble friend tell the House what percentage of planning applications are dealt with within the statutory period by local authorities?

**Baroness Williams of Trafford:** My noble friend sends a question to try me. I will have to write to him on that.

**Baroness Gardner of Parkes (Con):** My Lords, is it not a fact that the statutory instruments brought to us are unamendable and that, following the comments we have heard today in the Chamber, there may be a need to look at that again? Opinion is divided and some say that there is no reason why they have to be unamendable—it would be a question of legal decision and a procedural matter. In a case such as this, where my noble friend has assured us that we will have the right to go into the detail, we will be satisfied, but there are many cases where the statutory instrument comes up, such as the one concerning the leasehold valuation tribunal, and it has to be either abolished or accepted—there is no choice of any halfway house.

**Baroness Williams of Trafford:** I think my noble friend made her point very clearly in her supplementary question about draft regulations being ready on time for proper consideration. I am not a constitutional expert and I do not want to go into that area, but giving noble Lords sufficient time to consider regulations is certainly important.

**Baroness Farrington of Ribbleton (Lab):** My Lords, I declare an interest as someone approaching the age of 76. Many of the people who come to this country referred to by the noble Lord will work in services to support those of us who are older, in caring, nursing and medical support. Does the Minister agree that, without them, our services would be the weaker and the poorer?

**Baroness Williams of Trafford:** I am sure the noble Baroness makes a very valid point. On the question of planning, it is important that the types of housing that people need, both in London and elsewhere but particularly in London, meet the needs of those people—hence why the Government have doubled the housing budget to £20 billion over this Parliament.

## Careers Education

### Question

11.14 am

Asked by **Lord Storey**

To ask Her Majesty's Government what plans they have to develop careers education.

**The Lord Privy Seal (Baroness Stowell of Beeston) (Con):** My Lords, later this year the Department for Education will publish the Government's strategy for improved careers education and guidance for young people. This will set out a clear vision of the progress

that we want to achieve by 2020. We are investing £90 million into careers policy over this Parliament. This includes £20 million to increase the number of mentors from the world of work, supporting young people who are at risk of underachieving.

**Lord Storey (LD):** I am delighted to hear that the Government are producing this strategy. Would the noble Baroness not agree that careers education is hugely important to young people, particularly those from low-income backgrounds and from certain ethnic groups, who may not have the informal social networks that provide the equivalent advice and opportunity? She must also be concerned that the last Ofsted inspection found that only one in five schools was offering effective careers education.

**Baroness Stowell of Beeston:** Of course I am concerned if careers advice is not properly provided to students in all schools. It is vital that people have access to good careers advice and that through careers advice they can see clear opportunities for them when they leave school that go beyond just the academic route. That is why the Government have invested £90 million into careers policy this Parliament and will continue to place great emphasis and importance on careers guidance.

**Baroness Corston (Lab):** As the chair of the Social Mobility Committee of your Lordships' House, I would like to tell the Minister that we found that careers advice and education in this country is in a parlous state. The committee recommended that there should be: independent careers advice and guidance, supported by a robust evidence base and drawing on existing expertise, which should not involve schools and colleges; independent face-to-face careers advice which provides good-quality, informed advice on more than just academic routes; a single access point; and, finally, improved career education in schools.

**Baroness Stowell of Beeston:** The committee that the noble Baroness chaired on social mobility was incredibly important. It covered a topic close to my heart and to that of all noble Lords in this House in ensuring that people from all backgrounds have the opportunity to fulfil their potential and have great awareness and understanding of the various routes available to them in achieving their potential. That is why we as a Government are doing so much to try to improve the careers guidance, not just in schools but, as the noble Baroness says, to strengthen the dialogue and connection between schools and local employment and businesses in school areas.

**Lord Leigh of Hurley (Con):** Could my noble friend tell the House what role she sees for employers in inspiring young people in careers? I declare an interest as an employer.

**Baroness Stowell of Beeston:** Employers should play a big part in inspiring young people and see that as an important part of their responsibility. That is why we have invested so much in creating opportunities for apprenticeships and how we want to see employers

playing their part not just in providing those apprenticeships but in making sure that, in schools, students and pupils understand what is needed for them to be successful in the world of work.

**Lord Aberdare (CB):** My Lords, I meet a lot of apprentices, hardly any of whom appear to have been directed towards their apprenticeship by their schools or careers adviser. How will the government strategy ensure that students, teachers and parents are more aware of vocational career opportunities, such as apprenticeships?

**Baroness Stowell of Beeston:** I hope very much that this is part of the responsibility of the Careers & Enterprise Company—and I am sure that it is—which we funded to inspire young people and help them to prepare for the world of work. But I accept and understand the point that the noble Lord makes about ensuring that families and young people understand the range of opportunities open to them. In my maiden speech in your Lordships' House, I talked about how it is important and vital that people understand that there are a range of routes to success, and it is not just about going through to university—as important as that is, and as important as it is that we make that available to as wide a group of people as we can. For me personally, this is a mission that I feel very strongly about.

**Lord Watson of Invergowrie:** My Lords, I thank the noble Baroness the Leader of House and hope she will assume this role at some time in the future, given the clarity of the answers that we have had from her thus far. The Social Mobility Committee of your Lordships' House said in April that the quality of vocational education in schools is sadly lacking and that not enough emphasis is placed on that. Its report made a recommendation to the effect that a new 14 to 19 transition stage should be established to delineate clearly between technical and academic lines. I understand that the noble Baroness will not be familiar with this but, when she has time, will she speak to the noble Lord, Lord Nash, and ask him whether he intends to accept that recommendation to demonstrate clearly to schoolchildren that post-school life involves much more than university?

**Baroness Stowell of Beeston:** On the noble Lord's first point about vocational education, when the coalition Government in the previous Parliament were first elected we took significant steps to improve the quality of vocational education. It is something that we continue to give priority to, because it is important that vocational education has great status for it to be of value to people when they are in the world of work. I point out to the noble Lord that one of the new measures that have been introduced in the school regime in recent years is UTCs, which were championed by my noble friend Lord Baker as well as by the noble Lord, Lord Adonis. I feel strongly that all young people who are ambitious and want to get on should be clear in their teens that there are more routes to success than just through university. I hope very much that they feel very inspired to succeed through other routes because

there are many people who have been able to go through a vocational route and have made it to places which they might not have thought they were able to get to when they started off in life.

## NHS: Unsafe Hospital Discharges

### Question

11.22 am

Asked by **Baroness Walmsley**

To ask Her Majesty's Government what action they are taking, in the light of the report of the Parliamentary and Health Service Ombudsman, to prevent unsafe discharges of frail and elderly people from hospital.

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, unsafe discharge of frail elderly patients is unacceptable. Discharge can be very complex, and the integration of health and social care is vital for safe, joined-up care. We are using sustainability and transformation plans to promote integration, supported by the better care fund, creating a seven-day NHS and supporting local systems to develop integrated discharge systems and new models of care.

**Baroness Walmsley (LD):** I thank the Minister for his reply, but is he aware that the ombudsman reports patients being discharged before they are clinically ready, without being assessed or consulted and without a care plan or their family being told that they are coming? Does he know why this is still happening 12 months after Healthwatch England's report on the same issue? Does he agree that this not only puts an enormous financial burden on the NHS but is an appalling way to treat vulnerable people?

**Lord Prior of Brampton:** My Lords, there are millions of interactions between patients and consultants and doctors every day of the year, and there will be some mistakes. We cannot draw conclusions from one or two desperate situations. In so far as they reveal systemic problems, it is valid to draw attention to individual cases of this kind, and there are some systemic issues lying behind the PHSO's report. In particular, it states:

"We are aware that structural and systemic barriers to effective discharge planning are long standing and cannot be fixed overnight ... health and social care ... have historically operated in silos".

That is the issue on which we should be focusing.

**Baroness Pitkeathley (Lab):** My Lords, I ask often in this House and elsewhere about co-operation between health and social care. Does the Minister agree that one thing we lack is a cohort of people, be they nurses or paid professional carers, who can work across health and social care in hospital and follow patients into the community? Will the Minister update the House on what is happening to encourage that kind of cohort?

**Lord Prior of Brampton:** The noble Baroness is right. Most well-run hospitals will have integrated discharge teams comprising people who work in the community, social care workers and people who work in the hospital. However, the fact is that over the last 20 years, with the benefit of hindsight, too much resource has gone into acute hospitals and not enough into primary care and community care. You cannot wish into being lots of district nurses overnight. There are some parts of the country—I will pick on Northumbria and Salford, for example—where serious integration is now going on, with hospitals also managing adult social care, GPs and community care.

**Baroness Butler-Sloss (CB):** May I pick the Minister up on one point? He said that there were one or two examples, but my understanding is that this is right across the country.

**Lord Prior of Brampton:** The noble and learned Baroness is right, up to a point. I said one or two because the PSHO report focuses on nine individual cases. In so far as they are representative of behaviour across the country, they are important, but I want to put on record that the vast majority of hospitals the vast majority of the time are getting their discharge procedures right and are doing an outstanding job.

**Lord Hunt of Kings Heath (Lab):** My Lords, the Minister has readily identified the problem of unsafe discharges. Why is there no explicit reference to this issue in the NHS mandate to NHS England for 2016-17?

**Lord Prior of Brampton:** I cannot give the noble Lord a reason off the cuff. It is very much a part of the better care fund. There is a CQUIN for 2016-17 that is focused on delayed discharges. One of the fundamental purposes underlying the STPs and the vanguards, which are a critical part of taking the *Five Year Forward View* into a serious plan, is to reduce delayed discharges and improve the relationship between acute care and social care.

**Lord Rennard (LD):** My Lords, given that those nine cases were considered to be representative of the problem, does the Minister agree that it might be cost-effective to make greater use of voluntary sector organisations such as Age UK in better preparing people who are frail, elderly and on their own for going into hospital, and then looking after them when they are leaving, to avoid unnecessary, expensive and painful readmissions to hospital?

**Lord Prior of Brampton:** The third and voluntary sectors have a potentially huge role to play. I was talking this week to the chairman of the Chelsea and Westminster Hospital about the plans he had for involving the voluntary sector far more in discharge planning, particularly for frail and elderly people. I agree entirely with the noble Lord's sentiments.

**Baroness Wall of New Barnet (Lab):** My Lords, the Minister has referred to the STP, the sustainable transformation plan. Could he accelerate the way in

which that plan is now going? We are into phase one, and some of the shocking things in the report that the noble Baroness, Lady Walmsley, has referred to could be remedied by using the STP properly. I wonder if we should look further and quicker at how we can achieve that.

**Lord Prior of Brampton:** My Lords, this is a difficult issue. You can lead a horse to water but you cannot make it drink. To some extent you have to rely on local people working together, and it is behaviour and culture that determine long-term sustainable improvement. If we try to force the pace beyond that at which local people are prepared to go, in the long run we may not make as much progress. In the first instance we hope that the STP process, involving all local people and giving them a framework for working together, will deliver the results we need. If it does not, we will have to revisit it.

**Baroness Watkins of Tavistock (CB):** My Lords, could the Minister ask why the NHS has not considered funding nursing home places for people who are ready to be discharged for two or three weeks, so that they can have 24-hour care funded by the NHS while they prepare to move back home? People who live alone, in particular, are just waiting for financial assessments while reducing other people's access to acute hospital beds, including young people who are routinely having standard operations cancelled.

**Lord Prior of Brampton:** My Lords, looking back over 20 years, the reduction in the number of what you might call step-down facilities—community hospitals and the like—has been a huge mistake. We lack step-down facilities. In America they are called skilled nursing units. The fact is that an acute hospital is not a good place to be for anyone once they are medically fit to be discharged; all the evidence suggests that it is more expensive but, more importantly, less good for the patient. I agree entirely with the noble Baroness that we need to explore avenues of discharging people earlier to nursing homes, community hospitals or, better still, back home with the right community support.

## Electoral Status: Online Access Question

11.29 am

Asked by **Lord Rennard**

To ask Her Majesty's Government, in the light of the recent technical difficulties regarding online applications to register to vote, what plans they have to enable all eligible electors to check their electoral status electronically.

**The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con):** My Lords, we are conducting an investigation into what went wrong with the website last week. In the light of the findings, we will carefully consider the potential benefits of an online registration checking tool, but there may be other, possibly better, answers, such as filtering out duplicates with electoral management software, to consider as well.

**Lord Rennard (LD):** My Lords, after the 2015 general election the Electoral Commission reported that there should be a system whereby people can check online whether they are already registered. Will the Government endeavour to make sure that such a system is in place by the May 2017 elections? In the meantime, will greater efforts be made to ensure that young people who are perhaps still at school are registered in the same way across Great Britain as they are in Northern Ireland, and that students are registered as part of the enrolment process at university, as successfully piloted in places such as Sheffield this year?

**Lord Bridges of Headley:** The noble Lord makes some very good points. My answer is yes to the second two regarding encouraging enrolment. As regards the first, I would like to wait for the findings of the investigation before I commit to a timeframe. Clearly, however, there is a need to look at the issue of duplicates, as raised by the Electoral Commission and as the Government have made clear on many occasions. I thank the noble Lord for his constructive comments to me privately about this.

**Baroness Deech (CB):** My Lords, will the Minister spare a thought for the approximately 16% of the population who have no access to the internet, many of whom are probably elderly and not so well off, and people who have conditions that prevent them using it? For the next few years, foreseeably, there needs to be parallel provision.

**Lord Bridges of Headley:** The noble Baroness makes an extremely good point and it is one that I have raised with officials. Electoral registration officers are able to accept applications in person or on the phone, and Electoral Commission guidance encourages them to offer this service to those unable to make an online or paper application for any reason in order to meet their equalities obligations. As I said, the noble Baroness makes an extremely good point and it is one that I am convinced the Electoral Commission will heed.

**Lord Kennedy of Southwark (Lab):** My Lords, I refer noble Lords to my declaration of interests: I am an elected councillor for the London Borough of Lewisham. What plans do the Government have to ask organisations such as the Post Office, the Department for Work and Pensions, the DVLA and HM Passport Office to help people to get on to the electoral register by asking the people they come into contact with whether they are registered to vote and pointing out the benefits, such as an improved credit rating, with information on their forms and a link to the site to register to vote?

**Lord Bridges of Headley:** The noble Lord makes a good, practical point. I have had conversations with other agencies across government about precisely that, and we are actively considering how we can use the regular communications that government undertakes with individuals. However, I am told that, where this has been piloted in the past, there has been a problem with mixed messages—in other words, a call to action

to do one thing can be confused with a call to action to do another. But the noble Lord is absolutely right and it is a matter that I continue to look at.

**Lord Cormack (Con):** My Lords, I return yet again to the subject of compulsory registration. There are penalties for not registering. What conceivable logic is there in not having compulsory registration? It is not the same as compulsory voting, even though some of us might think that there is merit in that. Can we please look at this again?

**Lord Bridges of Headley:** I am sure that we will continue to discuss and debate this matter, but the Government believe that active engagement on registering to vote is preferable. The success of the new individual electoral registration system shows that it is making it easier to register to vote. Between the unfortunate downtime at 10 pm last Tuesday and the close of the registration period on Thursday night, for example, there were more than 453,000 applications.

**Lord Grocott (Lab):** My Lords, it is of course welcome that substantially increased numbers of people have registered to vote in recent weeks, but does that not have clear implications for the work of the parliamentary Boundary Commission? It is due to report in September but is now likely to report on the basis of substantially out-of-date electoral registration figures. If the Government can bring in emergency legislation to extend the period during which people can register, surely they must commit themselves—I ask the Minister to do this—to ensuring that any redrawing of constituency boundaries by the Boundary Commission is based on a totally up-to-date electoral register.

**Lord Bridges of Headley:** I am sorry to disappoint your Lordships, but I am not going to commit the Government to that. Without the implementation of these boundary reforms, MPs would, by 2020, end up representing constituencies that are drawn up on data that are over 15 years old for all of the UK.

**Lord Tyler (LD):** My Lords, will the Minister please take very seriously the issue raised by the noble Lord, Lord Cormack? There is a financial penalty, but it is not widely advertised. Would the Minister also accept our offer to work with him—he has been very generous in saying that he wishes to work on a cross-party basis—to examine the lessons of the last few weeks? This is a matter that concerns all Members of your Lordships' House, and indeed the other place. In so doing, can we look at the particular issue of the potential discrepancy that the Electoral Commission anticipates between the 1 December register and the register next Thursday?

**Lord Bridges of Headley:** I am more than happy to work with the noble Lord and others on the practical consequences of the problems that we faced last week with the website and the lessons that can be learned as

[LORD BRIDGES OF HEADLEY] regards duplicates. As for the issue of automatic registration, I am sorry, but I have made the position clear.

**Lord Campbell-Savours (Lab):** How can the Minister ignore the question of my noble friend Lord Grocott? We have now perhaps as many as a million new people on the register arising out of what has happened with the referendum. Surely, people on those registers should now be taken into account in the setting of boundaries; otherwise, the boundaries will be false boundaries and not relevant. Is it not a fact that if the Government do not do this, they will be showing political bias?

**Lord Bridges of Headley:** I refute the final point that the noble Lord makes. Without defined data and a set of registers to assess, it is impossible to run a review. Registers for a boundary review are necessarily a snapshot. As regards the number of applications, it is the case that reviews have always been conducted like this. I say further that we need to wait for these registers to be compiled to see how many of those who have applied to register to vote are duplicates or not.

## Carbon Emission Reductions Bill [HL]

### *First Reading*

11.36 am

*A Bill to amend the target for reducing net carbon emissions in the UK to 100% by 2050.*

*The Bill was introduced by Baroness Featherstone, read a first time and ordered to be printed.*

## EU Referendum and EU Reform (EUC Report)

### *Motion to Take Note*

11.37 am

*Moved by Lord Boswell of Aynho*

That this House takes note of the Report from the European Union Committee *The EU referendum and EU reform* (9th Report, Session 2015–16, HL Paper 122).

**Lord Boswell of Aynho (Non-Aff):** My Lords, alongside *The EU referendum and EU reform* report, the House will also be debating my committee's report, *The Process of Withdrawing from the European Union*, and the report from the Science and Technology Committee on *EU Membership and UK Science*, to which the noble Earl, Lord Selborne, will speak. Our committees have a history of harmonious collaboration on European matters, and I had the privilege, a generation ago, of serving on a research council under the noble Earl's chairmanship. I look forward to his contribution with anticipation. I record on behalf of the committee our thanks to its impeccable staff and to all our many correspondents and contributors.

I am delighted that we have the opportunity to debate these reports before 23 June—referendum day. The process that has led up to that momentous decision has, of course, been a continuing preoccupation of the EU Committee. At the end of the previous Parliament, we reported on the coalition Government's balance of competences review, highlighting in particular the Government's failure to provide an overarching summary of their findings; a summary that might have driven, or at least influenced, proposals for EU reform. Then, last July, we published a short report warning the incoming Government of the need to approach their negotiations inclusively, and in particular to have regard to the importance of parliamentary scrutiny. The problems we explored in these two reports were never fully tackled and have played into the end game on which we now report.

Before I delve further, I should emphasise, or re-emphasise, our committee's settled view that it is not for us to take a view on whether the UK should remain in or leave the EU. That critical decision is for the British people next week. Our remit is to scrutinise Her Majesty's Government and to interrogate the approach which—in distinction from that of the political campaigners on both sides of the campaign—they are adopting in presenting their official case for remaining in the EU.

That is the basis for our current report on EU reform in which we analyse the process whereby the Government decided on their four negotiating “baskets” of sovereignty, fairness for the eurozone's ins and outs, migration and competitiveness. These negotiating objectives were not confirmed for several months following the publication of our report in July 2015. Perhaps it was only pressure from Europe that crystallised them in the form of a letter from the Prime Minister to President Tusk last November.

Chapters 2 and 3 of our report dissect the rather opaque process that led to the publication of this letter. It is history now, and I shall not dwell further on it. It was the so-called “new settlement for the United Kingdom”, agreed by the European Council last February, that in effect fired the starting gun for the referendum campaign. Chapter 4 of our report analyses in some detail this new settlement, in which the Government sought to achieve their reform objectives.

In broad terms, we found that some concrete progress had been made, reflecting perhaps a welcome degree of realism in the approach of all parties. The new settlement takes the form of an international law decision. Given the known difficulties of treaty change, and the explicit buy-in of all member states and the European institutions to this process, we accept this as a realistic and viable approach to delivering commitments to reform.

If the UK votes to remain, we will need to pursue further our detailed scrutiny of these provisions; if we opt to leave, the deal automatically falls away. The assurances received on the UK opt-out from the commitment in the treaty to ever closer union, whatever their intrinsic merits, appear to signal conclusively an end to any ratchet process leading towards greater centralisation. We concurred with the Foreign Secretary,

who told us in evidence that we have “reached the high-water mark” and the intense involvement in our national life which,

“irritates so many people in this country, is a thing of the past”.

Under the same sovereignty heading, the new settlement also sets out an enhanced role for national parliaments by means of a so-called red card—that is, power for a 55% majority of national parliaments, acting collectively, to stop an unwelcome proposal. We have no objection in principle to this, but I remind noble Lords that my committee has also consistently argued for what I have called a “forward gear”, involving positive upstream engagement with European policymaking, whether it is better regulation, simplification of laws or more widely. Hence, in conjunction with a number of other national parliament chambers, we as a committee pioneered last year the first European green card on food waste.

On the crucial but legally and technically complex issue of fairness between eurozone and non-euro states, we see the terms of the new settlement as providing welcome clarity and assurance that the interests of both groups will be safeguarded. We are also not alone among member states in wanting a more competitive Europe, and we have the European Commission as allies in this. We welcome the agreement to press for better regulation, including an annual progress report, and the intention to reduce administrative burdens, particularly on SMEs, as well as to press forward an active and ambitious trade policy. We have of course heard similar aspirations in the past and we shall have to hold the European institutions to account for them.

The final main “basket” of the negotiations relates to migration, or free movement. Self-evidently, this is the one with the greatest political salience. The analysis in the report speaks for itself, and, in light of more recent controversy, I do not intend to rehearse it now.

I turn to our short report on the process of withdrawing from the EU. This was based primarily on evidence provided by two experienced and expert lawyers, Sir David Edward and Derek Wyatt QC, supplemented by our excellent internal committee legal advisers. The report is largely self-explanatory, but if I may summarise, our key finding is that Article 50 of the Lisbon treaty provides the only means of withdrawal consistent with EU and international law. Withdrawal is final only once a withdrawal agreement enters into force, so a member state that had given a notification under Article 50 would be legally empowered to reverse that decision before this stage.

**Lord Lawson of Blaby (Con):** I was slightly puzzled when the noble Lord said that Article 50 was the only means. Is he saying that the 1975 referendum, when the Lisbon treaty and Article 50 did not exist, was a complete fraud because we could not have left anyway?

**Lord Boswell of Aynho:** My Lords, provisions in the Vienna convention on treaties would enable a member state to withdraw from any international obligation by consent of the parties involved. As the noble Lord rightly said, the Lisbon treaty followed long after the 1975 referendum, in which we probably both participated. In order to be consistent with European and international

law—which, of course, are obligations for Ministers as well—the treaty confines any action to the terms of Article 50, under which it would have to be carried out. I hope that that is helpful to the House.

Notwithstanding this legal argument, which I have some diffidence in opining, it has not escaped us that there would of course be political consequences on both sides of the argument in doing so. On the practicalities, the process of negotiating withdrawal would be complex, involving, among others, vital issues of trade policy and complex issues of rights acquired by individuals, as well as the need to review our existing body of law. It can be done, but it will take time—probably several years—to complete.

**Lord Spicer (Con):** On Article 50, surely force majeure will come into play. Is it realistic to suggest that a nation state could be forbidden from leaving the European Union if it wished to do so?

**Lord Boswell of Aynho:** My Lords, the question is not whether a nation state would be inhibited from doing so, because the Lisbon treaty specifically empowers and provides a process for it. The question for the noble Lord and this House as a House of law and proper procedure is how we may meet our international obligations if the nation decides to initiate that process—no more, no less.

I am conscious—although it is beginning to seem that the note I had marked may be a little obsolete in the circumstances—that I have yet to address the more overtly “political” issues which loom large in all our minds as we approach the referendum. Reverting to our report on EU reform, perhaps the key question is: what happened to the new settlement? A little like the dog that did not bark in the night, its almost complete absence from the current debate on EU membership is telling. This was the agreement on which, we were told, the Government’s support for EU membership depended, yet it has had almost no influence at all on the referendum campaign.

This takes us back to our starting point: the Government’s failure initially to provide an overarching assessment of the findings of the balance of competences review; the failure to offer a considered, evidence-based diagnosis of what, if anything, is wrong with the EU; and what the real costs and benefits are to the UK, so that we can understand what needs to be fixed for the UK to remain a member. If the British people need anything over the next eight days, it is real, objective evidence, on the basis of which they can make an informed decision.

This brings me to my final point. As a committee, we have tried our best to fulfil our duty in tackling complex technical issues around the process leading to the referendum, and we have done that in our traditionally non-partisan style. Yet we also stressed that the Government’s case for EU membership needed to be an inclusive one, crossing party-political lines and speaking to all the peoples of the United Kingdom. We suggested that it needed to be based on a positive vision of the UK’s role within a reformed EU, and we warned that a campaign based on narrow national economic self-interest, alongside mere fear of the

[LORD BOSWELL OF AYNHO]

alternatives to membership, might be insufficient. Noble Lords may wish to reflect on whether our plea has been listened to, or whether our warning has become a reality.

The decision in eight days' time will be as much of the heart as of the head. If the Government are to persuade the people to endorse their recommendation to remain in the EU, they need to focus on facts, but also appeal to the feelings and ideals of the voting public. It is not too late, but in that somewhat sober context, I beg to move.

11.51 am

**The Earl of Selborne (Con):** My Lords, it is a great privilege to follow the noble Lord, Lord Boswell. It is most appropriate that the report of the Science and Technology Committee on EU membership and UK science should be debated with these two reports from the European Committee. I thank our specialist adviser, Professor Graeme Reid, our clerk, Chris Clarke, and our policy analyst, Dr Cat Ball, for their contributions to this report. As I am introducing the third Motion of this debate, I understand that I might be allowed a little longer than the advisory time of six minutes.

Once the date of the referendum on the United Kingdom's continued membership of the European Union had been announced, the committee decided that it would be important to conduct an inquiry to help understand the wide-ranging influences, for better or worse, that the EU has on UK science and research. Science is, after all, a major component of the UK's membership of the European Union, with nearly one-fifth of EU funding to the UK spent on research and development. Our inquiry aimed to understand and characterise the principal linkages between EU membership and UK science, and this proved rather more complicated than expected. In order to inform our investigations, we sought a diagrammatic representation of the main ways that the EU supports science and research. We could not find such a diagram so we have attempted, in figure 2 on page 28 of our report, to draw up such a representation ourselves.

The EU supports science and research through five main mechanisms: namely, the Horizon 2020 programme, formerly the series of framework programmes 1 to 7; the European structural and investment funds; sectoral research and development programmes; other connected programmes; and, lastly, partnerships. I will refer just to the Horizon 2020 programme and the structural and investment funds for reasons of time.

Horizon 2020 is the EU's flagship programme for science and innovation. It replaces the seven successive framework programmes and will run from 2014 to 2020, with a budget of €74.8 billion. Funding is mostly allocated competitively through calls for proposals to which researchers and organisations can apply. However, criteria for allocating funds vary and also include scientific excellence, alignment with a number of strategic objectives, geographical and disciplinary diversity and potential for commercialisation.

The exception to this is the European Research Council funding, as its funds are awarded solely on the basis of scientific excellence. Its grants have neither

thematic priorities nor geographical quotas. The United Kingdom is the top performer across member states in terms of securing European Research Council funding. This reflects the quality of UK science. We heard from universities that this funding is equivalent to having another research council. Framework programme 7, which ran from 2007 to 2013, provided 3% of the total UK expenditure on research and development. The evidence we received from national academies, professional bodies, universities and research institutes was overwhelmingly enthusiastic for EU membership.

The university sector was our largest recipient of the framework programme 7 funds. However, it is not the university sector which undertakes the majority of research and development in this country. Sixty-four per cent of UK research and development is conducted by business, yet businesses attracted just 18% of the total funds awarded to the United Kingdom through framework programme 7. Participation of UK businesses in framework programme 7 was below that of Germany and France. Indeed, it was below the EU average. However, this low participation was not uniform across the spectrum of United Kingdom businesses. Small and medium-sized enterprises attracted more funding than French SMEs and a similar amount to German SMEs. It appears that it is large businesses that are particularly underrepresented in the United Kingdom's EU-funded research and innovation portfolio.

We formed the conclusion that while it was clearly for businesses to decide for themselves whether they wish to engage in EU funding schemes, there is a need for the United Kingdom Government to assess whether their support for businesses which seek to engage in EU funding schemes is as effective as that of other member states. In this respect, the support formerly provided by regional development agencies might have deteriorated with the absence of local enterprise partnerships.

The purposes of the competitive framework programme funds and structural funds for research and innovation are different. By designating a portion of structural funds for research and innovation, the European Commission aims to boost scientific capacity across member states and increase the success rate from regions with weaker economies. It is not surprising, therefore, that the UK does not benefit greatly from structural funds for research. However, we were concerned by the apparent lack of evidence as to whether this spending has actually raised the scientific competitiveness of recipients, and we suggest that the evidence should be assembled by the European Commission.

It was repeatedly put to us that one of the most significant aspects of the UK's EU membership is provision of opportunities to collaborate. A number of EU schemes enable researcher and student mobility across Europe, including the Marie Skłodowska-Curie actions and the Erasmus+ schemes. Many would maintain that the provision of collaborative opportunities is perhaps the most significant benefit that EU membership affords science and research in the United Kingdom. These collaborative opportunities are not just between member states but can extend to non-EU and non-European countries.

Although witnesses highlighted several grievances with the EU regulatory environment, the majority of evidence suggested that the regulatory harmonisation brought about by the EU was of benefit to the UK. Such harmonisation can provide a strong platform for collaboration and commercialisation in science and research. The increasingly global nature of science and business means that international harmonisation is becoming ever more relevant. However, those EU regulations highlighted to us as inappropriate or defective included: the protection of animals used for scientific purposes directive, the protection of personal data directive, the deliberate release of genetically modified organisms directive, and the clinical trials directive. On the latter directive, a new clinical trials directive has now been developed and is expected to come into effect in 2017. The Academy of Medical Sciences stated that the United Kingdom health and research community has played an important role in influencing the improvement of this regulation.

We found that the UK plays a leading and valued role in the development of EU policies and decision-making processes that relate to science and research. UK scientists in various European Union committees and organisations act to ensure that the UK's voice is clearly heard and that the EU remains aligned with the advancement of UK science. The long-term prosperity of this country will be highly dependent on attracting inward investment into the new technologies that will provide jobs in the next decades. All scientific collaboration, whether with our European neighbours or elsewhere around the world, must be fostered, and the European Union should be credited for having advanced this cause.

Noon

**Lord Liddle (Lab):** My Lords, I declare an interest as a member of the EU Select Committee and say what a pleasure it is to serve on that committee under the wise chairmanship of the noble Lord, Lord Boswell. I should like to address my remarks to the shorter of our reports, which attempts to answer the question: a vote to leave is a vote to leave, but what happens then? I will express some personal views on this subject. The leave campaign tells us that it is all very simple, and it has launched something today to that effect. Parliament would legislate to do such things as end the jurisdiction of the European Court of Justice over the UK, end the free movement rights of European citizens, stop EU budget contributions and so on, and we would negotiate a free trade deal with our EU partners by 2020.

With respect, the campaigners have obviously not taken the trouble to read your Lordships' report. Their plans would pitch Britain into a limbo, a state of ill-defined economic and legal uncertainty that would be the most serious self-inflicted damage to the UK economy since the three-day week, which I remember being imposed in December 1973. This economic and legal uncertainty runs a very significant risk of weakening private investment, particularly overseas investment, including overseas purchasing of UK assets, over the next few years. We have needed that overseas investment to continue funding our very substantial trade deficit,

which has been in place for a generation. That would be put at risk. It would create an environment in which firms that are able to move their activities to the legal certainties of the single market would do so because otherwise their boards would be failing in their duty to their shareholders to minimise risk. The logic of a Brexit is that any British-based company whose business is mainly with the European single market would, in the event of a leave vote, substantially reduce its risks by relocating its activities within that market. That is what I believe companies will do.

Why do I talk about limbo rather than a quick and clean exit? In my judgment, this would be a painful and protracted state of limbo before—I am not sure I have the theology right—we reach the permanent purgatory of Brexit. It is clear to me how our EU partners would react to a leave vote and the Brexiteers' plans. They do not want us to leave the EU and there will be a lot of real sadness at our parting, but I do not think there will be any special favours for Britain. Their granting Britain special favours would only encourage the populist forces in their own countries. Like our Brexiteers, they are wrongly and unscrupulously seeking to blame the European Union for difficulties in European societies, in the rest of Europe as well as in Britain, in finding an adequate economic and social response to the structural tensions and injustices of globalisation. That, essentially, is the problem.

Instead, the EU will decide that it will negotiate with Britain in a civilised way, but only within the terms of the treaties that we have signed and that this sovereign Parliament has agreed. The EU would say that Article 50 provides the path and that it will not talk to us unless we follow it. The EU 27 would instruct the Commission to draw up a negotiating mandate for British withdrawal that the European Council must then endorse, without of course Britain being present.

This mandate will make clear that there can be no continued access for Britain to the single market unless we meet existing obligations on free movement and contributions to the EU budget. On this point, the EU will never yield. I expect this mandate to be agreed relatively quickly later in 2016, but there will then be a pause for the French and German elections, so we will not get around to anything serious until the end of next year. After that I anticipate a lengthy stand-off, with a new British Government under a new Prime Minister, and probably after a general election in which the Brexiteers will have sought a mandate to pursue their demands.

However, the Brexiteers are fundamentally divided and inconsistent on one central point, which is their attitude to the single market. On one hand, they say that Britain will no longer be part of the single market and will be free to take back control. On the other, they say that a free-trade agreement will be dead easy to negotiate because we currently meet the regulatory requirements of the single market. Under their plan, they say that they will not accept free movement and contributions to the budget.

As for the regulatory obligations, they use these at one point to argue that we could easily have a free-trade agreement, while also saying that they want to scrap

[LORD LITTLE]

all these regulations because they think it will mean a huge boost to British enterprise. The truth is that the proposition that a free-trade deal will be easy to negotiate depends on an essential fallacy: that we will stick to the single-market rules that the Brexiteers have no intention of sticking to.

Is their aim a better deal, on the Norway model, or is it for Britain to pursue a wholly different economic course? They cannot agree among themselves and it is unlikely that they will get a majority in either House of Parliament for a credible leave option. Vote leave has no practical alternative to British membership of the EU. As Nye Bevan memorably said of unilateral nuclear disarmament, it is an emotional spasm. We should brace ourselves for a long period of limbo that could do incalculable damage to the British economy and Britain's working people. I pray that it will not happen.

12.09 pm

**Baroness Falkner of Margravine (LD):** My Lords, I should declare that I am a co-owner of a property in the eurozone area and that I am married to a citizen from another EU member country whose right to remain in the UK could theoretically be affected by Britain leaving the European Union.

It has been a pleasure to work under the chairmanship of the noble Lord, Lord Boswell, and the committee has been extremely well served by its chairman and its secretariat through the inquiries and its scrutiny work. For my part, as chairman of the sub-committee responsible for economic and financial affairs, I will confine my remarks to those areas where additional safeguards have been obtained in economic governance.

I turn to the new settlement for the UK. It is an extraordinary settlement when viewed from other EU capitals. One has only to talk to the delegations from the 27 other countries to see how special this new status the UK has secured is in their eyes. We are not in the eurozone or in Schengen. We have chosen our opt-outs in justice and home affairs and we now have safeguards on the impact of eurozone integration, on welfare, on sovereignty and on further integration. The other EU countries are rather envious that we can dine à la carte while they are stuck with the set menu.

This renegotiation has also been dismissed for lacking legal force, as our chairman pointed out. In the committee's view, the terms of the new settlement have the same legal force as any other intergovernmental treaty under international law, so those who rubbish the legal status of the renegotiation need to explain to the public why any other treaty has legal force if they believe that this one does not. Why should the public believe that our international obligations under the UN charter hold, or indeed under the WTO, in which the Brexiteers have such faith as the basis of a new trading relationship—oblivious, of course, to the fact that the WTO does not cover services or financial services trade? That is such an important and vital aspect of the UK's relationship with the EU and the rest of the world. So the question they need to answer is why their new trade deal would have any legal basis if this renegotiation does not. Moreover, the renegotiation specifically states at Article 7 of the section on economic

governance that the provisions under Section A will be incorporated into EU law the next time treaty change takes place.

On the details of economic governance, the UK and my committee had concerns that eurozone integration would disadvantage sterling. In Section A of the new settlement the UK has ensured that there can be no discrimination against those who do not use the euro and that our interests are protected. There was concern that eurozone caucusing might leave us outside the room, so to speak, when decisions are taken by the eurogroup. That, too, has been addressed and we have secured safeguards not only for ourselves but for the other eight countries currently outside the eurozone. We also have the additional safeguard mechanism whereby, if we feel that Section A has not been upheld, we can escalate our concern to the European Council, which, if our argument has merit, is required to,

“do all in its power to reach ... a satisfactory solution”, within a “reasonable time”.

I have been bemused by Vote Leave's obsession with the *Five Presidents' Report*. This, for the uninitiated in the Chamber, is a paper published last year by the leaders of the five EU institutions. The sub-committee I chair has conducted an inquiry into this and we published our report only last month. We say, in terms, that the ambitions of the five presidents apply mainly to the eurozone. Where they do not, such as recommending national competitiveness boards, they are voluntary. The *Five Presidents' Report* is actually notable for saying so little. We commented on that in our report. We criticised it on the institutional direction and political structures needed for the eurozone to proceed to be successful. It is a very thin statement of good intentions. The conspiracy theorists in Vote Leave need to be pressed as to where they find all that they claim indicates the direction of European monetary integration—it is pure fiction.

I turn to the process of withdrawal, as the framework proposed by Vote Leave today sets out, and on which the noble Lord, Lord Little, has commented. We are led to believe from what one is tempted to call the presumptive Government—pace the Republican nominee; both have rather similar traits—that they will not need to use Article 50. Presumably they will take their time until 2020 to finalise the exit, including their new trade deal.

As noble Lords have heard, the legal experts consulted by the committee told us that Article 50 provided the only means of withdrawing that was consistent with the UK's obligations under international law. If the UK unilaterally decided to start putting Bills through Parliament to disentangle ourselves—and, of course, this assumes that Parliament would be prepared to break its own treaty obligations in a very significant way, demonstrating to the world that it does not live by its word—the same UK, assuming Parliament were prepared to do this, would then seek to sign a whole lot of other treaties with the rest of the world, including the 27 other EU states, having spectacularly broken its word. What a non-display of bona fides this would represent.

So those who seek to disregard law while they sit in a law-making body need to bear one thought in mind. Trust is at such a low ebb in British political life, but the British public still expect their country to uphold the rule of law. That is the foundation of our democracy. This is a nation that values integrity, and if it finds that it has sleepwalked into a self-made disaster it will be a very long time indeed before it will permit itself to be led in that way again by that group of individuals.

12.16 pm

**Lord Jay of Ewelme (CB):** My Lords, I speak as a member of the EU Committee and draw attention to my interests in the register.

My own view is that remaining in the European Union and playing a full and constructive role in its policy and development at a crucial time for Europe is firmly in the United Kingdom's economic and political interest, all the more so after the Prime Minister's renegotiations. As the noble Lord, Lord Boswell, said, that is seldom mentioned now by either side, but the measures to protect the single market of 28 against a more closely integrating eurozone, in particular, seems to me of great importance, not just for us but for other non-eurozone members, notably Denmark and Sweden.

The report on the process of leaving the European Union makes clear that it would be uncertain and lengthy. In the immediate aftermath of a no vote, I suspect that not a great deal would happen, although the Prime Minister's renegotiations would immediately fall. I leave aside any effect on the currency markets, or any effect on the domestic political scene, which I think is not for a Cross-Bencher to comment on, but looking further ahead I cannot see how, in order to respect our international legal obligations, we can do other than invoke Article 50 of the Lisbon treaty, leading to fraught and difficult negotiations with our 27 EU partners. Even if we did not invoke Article 50, it seems to me that we would still have to have the difficult, fraught and lengthy negotiations. I think that that is an important point.

As our report says, there would need to be two separate negotiations. What would be our relationship to the European Union? Would we be in the single market or not? What would be the implications for EU citizens in Britain and British citizens in the European Union? There would need to be a second negotiation on the process and timing of leaving. The articulation of those two negotiations is unclear, but it is clear that the outcome of those negotiations will be immensely important for the United Kingdom.

Those will be immensely important, too, for the rest of the European Union, but the context there will be entirely different. There will be a powerful desire to ensure that British exit does not stoke demands for other countries to exit or to seek a new relationship with the European Union. There will be other questions, too. What will be the relationship between France and Germany? What will be their relationship with the United States? And so on. We would not be immune from some of those concerns ourselves. We are already seeing the French start contingency plans for enticing London-based banks and bankers to Paris—I am sure Frankfurt will follow.

At the same time, the European Union will need to continue to confront the huge challenges that it now faces: terrorism, migration, and the need for closer integration within the eurozone. Dealing with those issues will not be made any easier by the need to hold complex and difficult talks with the United Kingdom—indeed, quite the contrary. The idea that these negotiations will somehow be straightforward and constructive, and that it will be in the European Union's interests to give us more or less whatever we decide to ask for, seems implausible to say the least.

We will not just be negotiating with a bloc or with the Commission; we will effectively be dealing with 27 member states with 27 sets of vested interests, which they will want to see reflected in the negotiating mandate that is given to the Commission to negotiate with us. The German Finance Minister is upping the ante already by saying that membership of the single market will not be on offer to us after a vote to leave. I was in Paris when the French tried to prolong the ban on British beef following the BSE affair, after the Commission had declared it safe. With the Commission's support, we saw them off. I mention in passing that British beef is not accepted into the United States. The chances that the French and other member states will not seek to further their own interests during their negotiations with us seems to me to be exactly zero.

Here is the irony: a vote to leave the European Union will lead to two, five, or up to 10 years of fraught negotiations with the other 27—us against them, with the Commission on their side—which will make the present relationship with the European Union look like sweetness and light. The tougher the negotiations—and they will be tough—and the greater the dissension and the greater the uncertainty, the greater will be the disincentive to invest in this country and the greater will be the consequences for jobs.

All this leaves aside the consequences of Brexit for the cohesion of the United Kingdom and, in some ways most worrying of all, the implications for the external border of the European Union running between Northern Ireland and the Republic, on which my noble friend Lady O'Neill spoke eloquently in the debate on the Queen's Speech. My guess is that it would not be long after a vote to leave before there was an agonising cry of "How on earth did we get ourselves into this mess?". It is my earnest hope that we do not take that risk.

12.22 pm

**Lord Pearson of Rannoch (UKIP):** My Lords, I cannot help mentioning that, of the 34 speakers in this debate, I can see perhaps only two who think that we should leave the European Union. I remind your Lordships, and anyone who may read this debate—and indeed the one that follows, where I cannot see a single Brexiteer on the Order Paper—that your Lordships' House is a very Europhile place, well-stocked with former government Ministers, Members of Parliament and servants of the EU, who between them have been responsible over long, and what they no doubt regard as successful, lives for bringing this country to its present state of subservience to the corrupt octopus in Brussels. It must be disappointing for them to see so

[LORD PEARSON OF RANNOCH]

much ingratitude and anger boiling up among the British people against the project in which they have invested so much and in which they so fervently believe.

That is why, during this referendum campaign, we have seen Project Octopus turning into Project Fear—we are told to be fearful of leaving the clutch of its tentacles. This morning we have Project Panic as the Chancellor threatens us with all manner of taxes and pestilence if, as the world's fifth-largest economy, we dare to take our own place outside the failing project of European integration and simply join the 160 other countries in the world that have not made the mistake of joining it.

At the heart of this threat of economic disaster if we vote to leave next Thursday lies a wholly improbable scare: that somehow we would lose our present free trade with the single market and have to pay job-destroying tariffs to export into it. I propose to spend the rest of these few minutes examining that central fallacy in the remain position.

Government figures suggest that around 10% of our GDP goes in trade with clients in the EU—supporting some 3 million British jobs; another 10% goes to the rest of the world; and 80% stays in our domestic economy. But EU overregulation strangles all 100% of our economy, so 90% of it would be set free from Brussels overkill if we leave the EU. Of course, we would have to meet single market requirements for the 10% that we export to it, just as we do for what we export to the foreign markets outside the EU.

**Lord Hannay of Chiswick (CB):** The noble Lord says that EU regulation strangles our economy. Can he explain why the OECD found that we were the second-least regulated economy in the OECD—that is, we were less regulated than its non-EU members—and that the only country less regulated than us was another EU member, the Netherlands? Perhaps he could give a little thought to that before he makes foolish remarks such as the ones he has just made.

**Lord Pearson of Rannoch:** My Lords, I do not see that anything the noble Lord has said alters what I said. The Dutch Prime Minister recently went so far as to say that he thought a large proportion of the Dutch economy was afflicted by EU regulations. The noble Lord will simply have to wait until we are out of the European Union and then he will see how we set ourselves free.

As I was saying, we would go on exporting to the rest of the world as we do now. We would meet the conditions required by the rest of the world, just as it pays to put the steering wheel on the left if you are selling a car to the United States.

The Government's ONS Pink Book reveals that our growing trade deficit with the single market reached £85 billion in 2015. This means that manufacturers in the EU sold us £85 billion-worth more in goods than we sell them. If we accept the Government's suggestion that some 3 million jobs support the 10% of our GDP which exports to the single market, this means that there are around 5.5 million jobs in the EU which support exporting to us. So if the politicians in Brussels

try to impose tariffs on our trade together, that would hit 2.5 million more jobs in the single market than it would here and would not be tolerated by EU manufacturers.

Let us take the specific example of our car trade, which the Prime Minister and other Europhiles pretend would suffer a 10% tariff on its exports to the single market if we leave the political construct of the EU, with consequent job losses here. That must be nonsense, because we import twice as many cars from the EU as we export to it—1.7 million cars in and 700,000 cars out—while EU manufacturers also enjoy having 64% of our domestic car market. So those powerful manufacturers, with their suppliers and employees, will simply not tolerate a tariff which would damage them so much more than us, however much Herr Juncker and Herr Schäuble and sundry other mischief in Brussels might wish to punish us for leaving the rest of the EU.

**Baroness Armstrong of Hill Top (Lab):** I wonder if the noble Lord will reconsider what he has just said. Nissan in the north-east exported 800,000 cars in 2014, largely to the EU and all of them through EU agreements. It exports one in three of the cars exported from this country, so he has his numbers wrong somewhere. Nissan may well be thinking, given that its major owner is actually Renault, that if we in the UK are not in the EU, it might as well move to France.

**Lord Pearson of Rannoch:** My Lords, I do not, with all due respect to the noble Baroness, withdraw a word of what I said. The fact is that 1.7 million cars come into this country from EU manufacturers—they have 64% of our market. I was about to say that anyone who wants to read the detail of what I have just said should consult the [globalbritain.org](http://globalbritain.org) briefing notes, particularly Nos. 114 and 118, which give the detail which is supported by the Society of Motor Manufacturers and Traders.

Time moves on, but the noble Lord, Lord Lamont, made another good point in yesterday's *Daily Telegraph*. The tariff which we might suffer on our goods going into the single market would be around 3%, if the Brussels politicians get their vindictive way, but the net £10 billion we pay to Brussels every year is equivalent to a tariff of around 8%. Whichever way you look at it, tariffs will not be imposed to our detriment, so the whole economic scare story falls away.

In conclusion, I am often asked what happens if we vote to leave the EU next Thursday. The answer is: nothing much in a hurry. For a start, it will take the Conservative Party until its conference in September to elect a new Prime Minister, who would start withdrawal talks, so there will be plenty of time for the Eurocrats—

**Lord Lea of Crondall (Lab):** On the thought about nothing happening next Thursday if the vote was for Brexit, until recently we were told that the idea of economic effects was scaremongering. Does not the noble Lord observe that the pound has been falling, and would he say that nothing will happen to the pound in this scenario?

**Lord Pearson of Rannoch:** My Lords, a falling pound is not a disaster; it helps our exports, for instance. It has been falling, but not as fast as some other currencies. We will have to see what happens, but there is no disaster here: the pound goes up, the pound goes down. A far more important influence on trade is the interest rate and the exchange rate, so I really do not accept that point. The noble Lord is clutching at straws to make it look as though we will be in terrible trouble next Friday if we have voted to come out of the EU; we will not.

As I was just mentioning, the new Prime Minister will emerge next September and it is he who will start withdrawal talks, so there will be plenty of time for the Eurocrats and noble Lords to cool down and face the reality of the strength of our negotiating position. For instance, we do not have to trigger Article 50 immediately. We do not have to trigger it until we have pretty much agreed the terms of our departure. We have other strong cards to play in the meantime. For instance, we could offer to reduce our net £10 billion over a period of years. We could say that we will not impose tariffs on our trade together if they do not try to mess around with the City of London. We could withdraw from the supremacy of the Luxembourg court and take control of our borders in a way that causes them least inconvenience, and so on.

After all, we wish them well. We are not their enemies. We want to continue in friendly collaboration with them, but we want to get off their “Titanic” while we can.

12.33 pm

**Lord Howell of Guildford (Con):** My Lords, the noble Lord, Lord Pearson of Rannoch, has certainly raised the temperature of the debate. I would say on his behalf that he is a reminder in the calm Chamber and calm wisdom of your Lordships’ House that outside, the temperature on this issue is rising—certainly at the more excitable end of the media—to boiling point. It is also worth commenting that so far in this debate—indeed, in the very facts that the noble Lord, Lord Boswell, set before us—there is now an assumption that Brexit, or leave, is a possibility. Indeed, the report addressed itself to how that possibility would unfold.

I was not in the excellent and learned team of the noble Lord, Lord Boswell. He has produced a very interesting report, which makes one think a great deal about these different possibilities, although there is one omission from the report, which I shall come to in a moment. I am not really surprised that, outside this House, in the wider world, the stay campaign is now on something of a back foot. You would have to be completely deaf not to hear the dismay and grumbles from many people—I suspect the majority in this country—who feel that this is the wrong debate about the wrong issues altogether. They believe that the renegotiation, which was attempted but has been somewhat forgotten, as the noble Lord, Lord Boswell, reminded us, was on the wrong basis and assumptions.

On the generality, although the big markets of the future are most probably in Asia, Africa and the Commonwealth, geography and history nevertheless keep us firmly in Europe. Every attempt to stand on

the sidelines or wash our hands of continental European development has always ended in disaster, as the Prime Minister pointed out. In Britain, we have always, in the end, been drawn in. So for us, the sidelines, as we should long ago have discovered and as we have discovered, just do not exist. Incidentally, we keep being told that countries such as Canada and Japan have a perfectly good access to the single market without being members of the European Union. I have looked in the history books and I cannot find any time when Canada or Japan were in Europe—we are, and that is the basic difference.

The referendum project and the negotiation project started from the right point. The first sentences of the Prime Minister’s Bloomberg speech of 23 January 2013 made it clear that the task was to be about the reform and future of the European Union to meet 21st century conditions, not just the reform of UK relations within it on a bilateral basis. But then something went wrong, and the debate lost its way. Experts crowded in to insist that all should be reduced to a sort of shopping list of British demands, and that was what the negotiations had to be about, and that the fundamentals—the pillar principles of EU architecture—should on no account be touched, because they were the ark of the covenant. So what should have been from the outset to be a European question—I believe the Prime Minister wanted it to be that way—became a British question, and an increasingly narrow one at that. For example, reputable think tanks such as the Centre for European Reform advised loudly that on no account should the Prime Minister even try to address or look at fundamental changes in the Union. Yet far from not touching on the fundamentals of the European model, it was always those basic features and principles that needed addressing and opening up. Why? Because the EU is a 20th century construct, rooted in and founded on 20th century concerns, which it addressed to great effect. But it is trying now to operate in a totally transformed world environment where big data and new platforms have completely revolutionised markets, business models and trade patterns, and are about to change much more—and, of course, where huge migrant flows have become a permanent feature, and will get much worse.

The digital and big data age invalidates all past precepts. There is simply no need for the doctrines of centralisation, integration and control in Europe; nor is this any longer the path to efficiency and innovation in our respective economies. With not only trade but actual production processes being globalised, the very concept of a single, tariff-protected goods market, as was designed in the 1970s, 1980s and 1990s, begins to melt away. Instead, the technologies cascading out from digitalisation permit and demand decentralisation, flexibility, differentiation and localisation. Those are the underpinnings of what should be the vision that the report has been looking at. The age of platform technology not only alters radically the relations between consumers and producers but places individuals—voters or the grass roots, call them what you like—in a completely different relationship to the governing authorities. The ground beneath the feet of the ruling

[LORD HOWELL OF GUILDFORD]

caste who created the EU hierarchy is being visibly washed away. We should be aware of that and should not shut our eyes to it.

My one criticism of the report is that it does not come to grips with this vital aspect of what is happening as opposed to what we think, from our various standpoints, ought to happen. Common sense, when it is allowed into the debate, confirms that neither of the extreme campaigning poles—the leavers’ nirvana of pure sovereignty and control snatched back from some embryo superstate, along with a magical insulation from migrant flows, versus the remainers’ happy and overcomplacent idyll of staying in the EU in its present form—is remotely available in the real and changing world or will ever be. The centrifugal powers of the information age, the ever-stronger restraining interdependence of all modern states, the absolutely unavoidable need for massive and continuous reciprocity and the spaghetti bowl of new types of trade and supply chains across the planet, which are now mostly in data and information form, will put paid to both those dreams. Big changes are certainly coming, but not the ones that either camp predicts, and we should surely be warned about that.

Whatever happens on 23 June, the time has come to analyse coolly the very fast-changing international order of things and put deep and serious intellectual effort into redesigning and preparing the European region—our region, whether we like it or not—for the torrent of changes from the wider world and the storms to come. Some, like the migrant flood, have already arrived. The global repositioning of Britain should be a central part of this story. Our relations not just with a changing EU but with America and the whole gigantic Commonwealth need revisiting. They are all relevant to the renegotiation approach. Meanwhile, we are being asked to travel on a wrong and fruitless route with the possibility of some very nasty shocks along the way immediately ahead. A still, small voice should be reminding us that as a nation we are making fools of ourselves instead of offering the best of ourselves, which could be very good indeed, when confronting the real issues and threats.

The debate now should be a negotiation—if that is the right word—about how Britain can help lead the European Union out of the trough and the time warp in which it has become entrapped. On the morning of 24 June, whether in or out has won, we will still find ourselves enveloped of necessity in a common purpose: to help reform and equip the European region in which we live for its survival in a totally transformed international milieu. It will be a context in which, with skilled statesmanship, bridges can be rebuilt between the bitter antagonists in this debate. Why? Because in today’s hyperconnected world all the countries of Europe, including Britain, are functionally inseparable. That is the reality that has to be faced or, to put it in more homely terms, the egg that cannot be unscrambled, Brexit or no Brexit. The EU today, troubled though it may be, is our village and our neighbourhood, but it is not our destiny. We should remain good neighbours but lift our vision to much higher challenges ahead.

12.43 pm

**Baroness Smith of Newnham (LD):** My Lords, I welcome the suite of reports that came from your Lordships’ European Union Committee and, in particular, the fact that finally we have some documents contributing to the debate on the UK’s future in the European Union that are based on fact and evidence and, as *The Process for Withdrawing from the European Union* states, conclusions that are as far as possible neutral statements of fact. That has been very rare in the debate that we have seen in the country in recent weeks and months. We have seen fear, mendacity, hyperbole and hysteria on both sides of the argument, and that includes some of the actions of Her Majesty’s Government; they cannot be exonerated either. We have heard from both sides arguments based on fear, myth and fantasy. But it may not surprise noble Lords, particularly the noble Lord, Lord Pearson of Rannoch, that I intend to focus particularly on the issue of what we might be withdrawing from and where we might be going to.

As the noble Lord, Lord Liddle, pointed out, there is an issue about why we are leaving and what the leavers think we are doing. First, though, I suggest that those who would have us leave, having already left the Chamber for today, have no agreed position on what it is they think they are leaving. If we are in the realms of fantasy and fairy stories, I thought I might give noble Lords a modern fairy story based on *Goldilocks and the Three Bears*. I suggest that at least three different visions of what the European Union currently is are being put forward by the leavers. The first, the Daddy Bear scenario, is that the EU is a dangerous place that has entrapped and ensnared us. As the noble Lord, Lord Forsyth of Drumlean, put it very graphically, we are caught in a bear trap, bleeding to death. One notes that this poor bear is looking at a £10 note, wondering how he got it when it used to be a £20 note, thanking God that it is not a euro note but still being extremely puzzled by how he ended up in an enterprise that he never thought he had agreed to be in.

Mummy Bear, meanwhile, is represented by my Cambridge colleague Dr Christopher Bickerton, who says that actually both sides of the debate have got it wrong and that the European Union is not overbearing, it is not a very strong edifice, it is not powerful and, although it is not particularly democratic, it is actually a mirage. The closer you get to Brussels, the more you see that the EU does not really exist. So Mummy Bear disappears as a mirage.

Meanwhile, Goldilocks goes and talks to Baby Bear, thinking, “Surely this third member of the family will have a better understanding of the European Union”. But she walks in and finds him with the godfather, Daniel Hannan, reading him a goodnight story: not *Why Vote Leave* but his elegant essay *A Doomed Marriage: Britain and Europe*—not necessarily something you would think was suitable for small bears or children, but nevertheless something that explains why the UK and the EU are fated to be separate and not to be together.

So we have three very different visions of what the European Union currently is, and the leavers cannot even agree on what it is they think they want to leave. Now they are trying to persuade us that we should

vote to leave and negotiate some new arrangement. Of the three scenarios, the idea of a marriage breaking up is probably the best and most relevant. With regard to how we would get out of this European marriage, there is now a legal mechanism, thanks to Article 50, and your Lordships' European Union Committee report makes it very clear how that would work legally. However, we do not have any practical experience of how this European divorce would work in practice because it would be the first time that Article 50 had ever been triggered. But one of the things that we know about divorce in the real world is that it is usually expensive and very often acrimonious. Even if a couple think they will be happier apart than together, it is very rare to have a divorce that does not include lawyers—who benefit probably more than anybody else—and that does not end up being costly. Then you leave behind the rest of the family.

The parallels with the United Kingdom leaving the European Union are surely clear. There is a legal process that is as yet untried, but the reality is one that is human, emotional and economic. The 27 other states that we are leaving behind, just like leaving members of a family, are not going to say, "That's fine, off you go. We're happy to see you go but we'll carry on trading with you just like before". Inevitably, those whom we leave behind will have a sense of hurt and betrayal, particularly given the amount of time that the other 27 states, plus the European Commission, spent on trying to create a deal that would work for the UK and keep us in the EU.

The leavers are not just saying, "Let's have a divorce" but suggesting that they want another relationship altogether. Perhaps they want to go back to EFTA, which is what Daniel Hannan suggested recently—like a girlfriend they left behind years ago, trading her in for the European Economic Community because they thought that was the better offer. Like a long-term spouse, the EEC may have changed—but it is still your long-term spouse of over 40 years. Do you really want to give that up and walk away at considerable cost, trading it in for the mistress—the European Economic Area? Eventually you will find that being with a mistress is quite similar to being with a wife, except that your original family are a little unhappy, to say the least. They still have loyalty to the wife—the European Union. You have probably ended up with a slightly inferior relationship and have begun to wonder why you did it. Was it all worth taking the risk? I suggest not. The United Kingdom should not head towards an Article 50 type of divorce.

I hope that this will all turn out to have been just a fairy story, with Baby Bear waking up and finding that he has chased away the demons of Uncle Dan. I very much hope that citizens of the United Kingdom will do likewise on Thursday of next week; otherwise, they will only have bought into a cruel deceit and an unhelpful fantasy.

12.50 pm

**The Earl of Caithness (Con):** My Lords, I feel that I am rather in the position of Willie at the "Wet Review" as the person out of step. I am going to talk about the Motion on the Order Paper, but I shall at least be in step with the noble Lord, Lord Boswell.

It is strange to debate reports that your Lordships have produced—I was honoured to serve on the committee that produced the two reports under the chairmanship of the noble Lord, Lord Boswell—when we do not have a reply from the Government. However, that may be just as well, as we would not have had the debate if we had had to wait for the Government's reply. First of all, I thank all those who helped us on the committee. I pay special tribute to the work of our clerks and our legal adviser, and I thank them for the help that they gave us.

I want to turn to what is called the "new settlement", which was very much the subject of our first report. As the noble Baroness, Lady Falkner of Margravine, said, this is an important document, although it may well never see the light of day. From the evidence that we got, we came to some very strong conclusions about that new agreement and they are well worth studying.

We have talked in economic terms—I declare my interest as having just served on the EU Financial Affairs Sub-Committee, chaired by the noble Baroness, Lady Falkner—and we have been very concerned about competitiveness, which is addressed in the new agreement. It is one of the major issues that has been taken forward. Indeed, we say in Recommendation 27 that, "the competitiveness element of the new settlement is a significant achievement".

It is important to remember that.

Another point that I would like to highlight is the wording of the "new settlement". It is completely wrong to have called it "A new settlement for the United Kingdom" because much of it relates to how the EU works. As we say in Recommendation 44, it is, "a misnomer: as our analysis demonstrates, many aspects of the 'new settlement' reflect the views of most if not all Member States. If the 'new settlement' is in due course implemented, it will have far-reaching effects",

on how the EU works as a whole. It is sad that the new settlement has played no part in the discussion in the European referendum campaign.

Turning to the campaign, I think that the important thing to remember as part of the background is highlighted in paragraph 5 in our conclusions and recommendations. This refers to the UK being less knowledgeable about the EU than any other member state. I do not think that that position will have improved at the end of this campaign, and that, to me, is a real tragedy.

In paragraph 2 of our conclusions and recommendations, we say:

"The debate leading up to the referendum should be of a quality and breadth proportionate to the importance of the decision. It should be wide-ranging and inclusive, based on accurate information".

Given that we know so little about the EU, the campaign has been darkness itself.

The noble Lord, Lord Boswell, is right to say that we are here to hold the Government to account, but at this point I want to widen my remarks. I am very angry and saddened by the campaign. I say to the noble Lord, Lord Pearson, that the leave campaign and the remain campaign have done this country no favours at all. To tell a lie often enough and to persuade

[THE EARL OF CAITHNESS]

the public to believe it, and to recklessly disregard history, is a fatal flaw. I am fearful that senior politicians are entering into the no-truth zone. That has huge implications for government in general. It is a serious worry.

There has been no attempt by either side to look at a way forward that could work for Britain and the continent. No effort has been made to project how the future might be or to realise that the eastern part of the EU and the countries adjoining it are in a state of almost anarchy in some cases and heading close to war in others. This is a supremely important time in Europe's history and both campaigns are looking away and facing inward. That is a real sadness. Perhaps the campaigns have been burnished and become light only on the egos of those involved.

The press have not helped either. It is sad to see but one person in the press box today. Perhaps when we reform this House we might get rid of the press box altogether; it would make no difference to how things are reported.

I turn to the process of leaving. The EU is a highly legal structure. The noble Lord, Lord Jay, made that point, and I want to strengthen it. If Brexit wins the day, we will have to have two agreements: a withdrawal agreement and a new agreement for continuing ongoing business. However, because of the legal structure, if those agreements are what is called "mixed"—that is, they include member state and EU competences—they will have to be agreed by the EU Council, the EU Parliament, 27 member states individually, the UK Parliament and our three devolved Governments, because European law is involved. That is going to be hugely complicated.

One talks about the timescale in which this can be achieved. It is worth remembering, as is pointed out in our report, how little time was given to the renegotiation or "new settlement". With Britain coming out of the EU, how much less time will the EU give to our problem of trying to negotiate a withdrawal and a new agreement, particularly when there are French and German elections? There is a two-year period—the legal advice is quite clear on this—and because the European Union is a legal structure, we are duty-bound as a country to obey international law. If we do not, we are providing new meaning to "perfidious Albion".

I have come to the conclusion that referendums are divisive and very distracting. The result of this referendum will not end the problem or the debate on Europe. It is merely a stepping stone in the long history of how Britain and the continent have made an arrangement to live. If we look back over the past 1,000 years, we see that it has been a turbulent arrangement. No doubt that will continue.

12.58 pm

**Baroness Armstrong of Hill Top (Lab):** My Lords, this is a very timely debate. As a fairly new member of the European Union Committee, I thank the chair, the noble Lord, Lord Boswell. He makes sure that we approach these things in a measured way and has been incredibly inclusive and supportive of all members, particularly the new members. I thank him for that.

I will concentrate on the short report on the process of withdrawing from the EU. There is a lot of other business in the House today, and I am very tempted by more general matters, but I am going to confine myself to that. As the report makes clear, the only mechanism for withdrawal in all the treaties and the international agreements is Article 50. The process of withdrawal, therefore—as is made very clear in the report and in Article 50—will not be determined by the minds of the Brexiteers. No one group will have the whole say in how things are developed and progressed.

That is very important. I was a bit astounded to hear one of the Cabinet Ministers this morning speaking about the Bills that would be brought in immediately. As the noble Baroness said, there is—as in a divorce—more than one party involved. What Britain decides will have an effect on the rest of Europe; it has the right to have a say, and we have to acknowledge that. One side cannot determine both the terms of the negotiation and the end point of the negotiation.

The Commission, as the report makes clear, will be responsible for the day-to-day negotiation, but it will be the EU member states, all of them, through the Council, that will have control over the terms of the negotiation. The European Parliament also has to give its consent. The idea that we can be totally in control of that is, to put it mildly, somewhat naive. Those giving evidence to us said that, as far as the negotiating terms were concerned, they thought that there would have to be near unanimity in the UK Parliament about these terms. I agree with previous speakers today that the debate externally has been horrendous and has shown the worst of Britain and its politicians and everyone else. It is certainly not the right way to enter a referendum debate or to enter negotiation should a particular outcome occur.

We can therefore only be relatively pessimistic, and I do not like being pessimistic because I want to see the best of this country and not what I think is the worst. The debate has revealed incredibly strong divisions and differences which are not just about European Union membership, yet of course what the report demonstrates clearly is that there will have to be good, firm relationships which demonstrate trust. At the moment, that is quite difficult to see, not just here but between this country and the other members of the European Union as well as the other institutions.

The agreements will also need the support of individual parliaments in the European Union. If we are not going to work in a more positive way, how on earth are we going to improve those relationships? It is only through good relationships that we will get a good outcome. Governments will have to work well together, as all the key decisions will continue to be taken by the Council.

The other thing that our inquiry made so clear to me was that the UK Parliament will be trapped in unpicking legislation and in deciding which piece of legislation we might want to keep and which piece we have to unravel in order to uphold a decision to leave the Union. My great fear is that the real anxieties of the British people during this time will be squeezed because we will be so busy unpicking the relationship with the European Union that we will not understand

what the vote was about. I know that the vote is ending up being about whether we remain a member of the Union, but actually it reflects a deep fear and uncertainty about the experience of globalisation and how different people in our country are being greatly affected in different ways.

I spoke last week about my own region, and I am not going to repeat that. We would be the greatest sufferers because of our dependence on European trade. Through that dependence, we bring a balance of trade surplus to the region; we are the only region to do so. The people out there really feel that, whatever we are doing, we are not reflecting their needs and their ambitions. In that way, I agree with the noble Lord, Lord Howell, that there can be no ending of the debate on the referendum and that we have to rediscover the ambition to reconfigure things in this country and in our relationship with the world if we are to make sure that everybody in this country is able to benefit from the effects of globalisation.

The battle for Britain's future, as it is being played out, should not be seen as the end point, whatever the result next week. It should be seen as a staging post for that new phase of globalisation that the noble Lord, Lord Howell, was talking about, one that offers hope to those who feel disenfranchised by the changes of recent years and a sense of purpose to every part of the country. Whatever the outcome, that is our challenge; but we know from this report that, if the outcome is that we leave, there will be a very painful and difficult negotiation. We will have to up our game in a way that, quite honestly, we have not done over the period of the referendum to date.

1.07pm

**Lord MacLennan of Rogart (LD):** My Lords, this has been a very good, and timely, debate. I declare an interest, in that I am a beneficiary of the common agricultural policy. I would prefer to focus not on the short term, as I think most people have, but on the longer term.

We have lived in a peaceful Europe for more than 70 years. That is part of the outcome of bringing together the member countries in Europe into a community, and has been one of the most important aspects. In the 20th century, millions of people were killed because the European Union did not exist and member countries of Europe fell out with each other. That goes back a very long way. We have seen countries such as Germany and France, western European countries, falling out with each other over a long period of history. This has not been sufficiently focused on during the referendum campaign; the Prime Minister spoke of that on one occasion.

We should recognise this as a benefit of our membership. The economic benefits for this country are considerable—46% of our exports go to Europe; rather fewer of the exports from other European countries come to us—but a whole tendency towards disintegration could be started by Britain. That is a great risk that we take. The Union is to some extent not as close as it was, and some Nordic countries might consider following our lead if we go for Brexit. We have also noticed in eastern Europe the coming

together of member countries. Hungary has a very poor Government at the moment, but it is none the less a beneficiary of the European Union and I think that it wants to stay a member of it. Let us consider what the greater impact might be of our withdrawal from the Union. I fear that it could be the stimulus to the Union falling apart.

The connections we have made are very important. I served on the Convention on the Future of Europe in 2002-03. That seems to me a more favourable circumstance in which to negotiate agreements. On that occasion, the members of the European Union found it possible to reach consensus. Afterwards, France and the Netherlands rejected the outcome in referenda, but they did so not on the substance of the agreements—which they finally came to accept—but because they wanted to vote against their Governments, and the Governments of both came to grief shortly thereafter.

We need unanimity about the objectives of the Union and should recognise that we can lead in this negotiation and this debate. We should help in that. "Lead not leave" is the message I want to put across.

1.14 pm

**Lord Hastings of Scarisbrick (CB):** My Lords, these reports and this debate give us an opportunity to look away from some of the more myopic aspects of the referendum discussions so far. So much of the conversation to date has focused on what the UK may get back, how much richer we might become or how much poorer we might become. One of the great institutions of the European Union, one of the great roles it does well, is to focus and co-ordinate international aid and humanitarian work. That is an important dimension of the EU's work which, ironically, is not mentioned in these reports but deserves our attention. After the United States, being the largest cash provider of aid but one of the worst percentage providers by GDP, the European Union comes next, and then comes the United Kingdom, followed by a series of smaller nations. We are proud of our 0.7% of GNI contribution to international aid assistance, and of everything that DfID and the UK do, but, in contributing some 20% to EU aid budgets, the UK also punches well above its own capacity. We do more for fragile states, we do more to support the development of democracy, and we do more to respond to the challenges of climate change and continuing desperation in our world.

While we have had politically insensitive conversations about what it means to separate from other rich parts of the world, almost nothing has been said about what that separation would mean for the poorest people in the world. The European institutions created to facilitate collective aid had a good purpose in mind: if we could have more effective co-ordination, greater focus, a clearer line of sight, we could achieve those development objectives which raise the collective boat of wealth around the world, empower markets to work better for our exports and, importantly, prevent some of the tragedies of migration and trafficking that we are now witnessing.

We have to remember that, although the effort focused on the problems of migration from Middle Eastern countries, particularly Syria, across to Turkey

[LORD HASTINGS OF SCARISBRICK]

and Greece has been the subject of media attention, an equivalent number of people are coming across the Mediterranean from poorer African countries where development aid is fundamental to addressing some of the most desperate conditions created by climate change, poor harvests and inadequate agricultural production methods. The European Union has a massive amount of investment to give in not only technology but techniques, and it improves the UK's position as a supporter of development in the world to have the European Union acting in concert.

An article in the *Economist* last week reflected on the disparate problems of fractured aid:

"In one big way ... the proliferation of donors harms poor countries. Aid now comes from ever more directions"—

it might be welcome that more money is coming from countries which never gave money in the first place, particularly China and, in some cases, India—

"in ever smaller packages: according to AidData, the average project was worth \$1.9m in 2013, down from \$5.3m in 2000. Mozambique has 27 substantial donors in the field of health alone, not counting most non-Western or private givers. Belgium, France, Italy, Japan and Sweden each supplied less than \$1m. Such fragmentation strains poor countries, both because of the endless report-writing and because civil servants are hired away to manage donors' projects."

The noble Lord, Lord Howell, referred to Africa as one of the most important next-level markets for our goods and services, and he is right: the 54 countries of the continent could provide phenomenal opportunities for the United Kingdom, let alone the other countries of the EU. But it will not be so if we undermine and destroy the impact of our collective aid investment, if we reduce our capacity for aid because we wreck our economy by foolishly pulling out of the European Union without foresight to the poor, and if we continue to lose sight of our collective responsibility to stand up for those who are more desperate than even this argument around the referendum has been.

1.19 pm

**Lord Hunt of Chesterton (Lab):** My Lords, I refer back to the debate introduced by the noble Earl, Lord Selborne, on the Science and Technology Committee report, while acknowledging the important remarks of the noble Lord, Lord Hastings.

The result of the referendum may have a great and potentially adverse effect on UK science, particularly the relationship of science to industry. One of the vice-chancellors speaking in the House last week commented that their university might lose up to £100 million a year through the loss of research grants, so these are big effects. I declare my own interest and experience as a scientist. I have worked in university research with universities across Europe and helped set up a small company that works with the European Commission. I was head of the Met Office, a government agency that worked very closely with all the agencies across Europe. One other interesting feature of being a scientist in Europe over the past 30 years has been the development of very effective networks. One that we set up for aviation and the motor industry carries on very well, and the European Commission helps it.

The question is, what will happen? In my experience and that of many of my colleagues, European officials and European committees have considerable experience and vision and they have encouraged these networks across Europe. The capacity for the same thing in the UK is, I am afraid, not present. Of course, UK science takes a leading role in some of the greatest pure science projects across Europe—in astronomy, fundamental particle physics, bio and pharma—and the evidence to our committee was that Europe takes a leading role and co-ordinates very effectively. There are controversies in terms of working with the European Parliament, which often takes a particular view, but nevertheless the European science scene is very strong and at the top internationally.

An important aspect of collaborating across Europe, which was perhaps not so strongly written into the report, comes from the collaboration of the governmental agencies and laboratories—the Met Office is one, but there are many others that are important. These institutions will continue, as will the collaboration between them if the UK makes the unfortunate decision to leave the EU. The way these agencies programmes work means that they will involve countries in Europe that are not part of the EU, but the primary decision-making co-ordination comes from the EU component in those programmes. We would see the UK take a secondary position. Given the experience and brilliance of all the UK contributions, it would be very galling for us to be in the second tier of advising on these projects. Some noble Lords have been dismissive in previous debates about the European Commission, but all I can say is that our programmes benefit from its advice.

The chairman of our Science and Technology Committee at the House of Lords, the noble Earl, Lord Selborne, explained that UK industry does not make the best use of EU funds. That was strongly expressed in one session of the committee by the director of Rolls-Royce speaking on behalf of his company and the Royal Academy of Engineering. He said that SMEs did not have enough support from the UK Government to learn best how to collaborate across Europe and make best use of European funds. Given that we may now leave the EU, how will HMG provide funding at a higher level for UK SMEs to compensate for the loss of EC funds? The companies that I am talking about are vital for our economy and employment in the UK in the future.

Of course, there will have to be continued collaboration with all the European countries on the key issues of the environment, natural resources, energy and fishing—as we are hearing from the noises beyond—but it will be much more effective if the UK remains in the European Union. I can see no benefits from Brexit.

1.24 pm

**Lord Browne of Madingley (CB):** My Lords, I welcome this thorough report on the referendum and EU reform. In particular, I wish to comment on its conclusion that the Government should set out a positive, inclusive vision of the UK's role in a reformed EU. As a businessman, I have long been convinced of the economic benefits of being part of the EU's single market. In

leaving the EU, we deny ourselves not only access to the European market, its consumers and its ideas, but a very important gateway to most of the world. We would create barriers for those who would contribute to our economy. It would be a backward step towards self-imposed exclusion.

My personal perspective on the European Union has been heavily influenced by my family's experiences. I was born to a father who served in the British Army and to a mother who survived the horrors of Auschwitz. The link that they made, as the continent was being rebuilt, transformed their lives. They demonstrated that, although the EU's origins may have been economic in nature, its core purpose was to promote peace and prosperity in Europe and to help dampen the ever present and damaging trend towards nationalism. Its relevance in this regard is not diminished.

A vote to leave would be to reject the economic benefits and political security that we enjoy as part of Europe. As an optimist, I am sure that this country will not sever its ties with the European Union, but just staying part of the EU is not enough. It will shape our future, for better or worse. We need to engage more deeply with the process of government in Europe and I want to make one point about that and about reform.

As the Government's lead non-executive director from 2010 to 2015, I worked closely on this country's Civil Service reform programme. I was always impressed with our civil servants. We pride ourselves on their analytical rigour, independence and skill at navigating government, and the creation of policy to its very important implementation. It is still one of the most coveted employers among graduates. It is a body that is ultimately responsible for the functioning of government in this country. We should use the experience of building an exemplary Civil Service to our advantage in Europe.

We currently have just over 1,000 officials in the EU. That is less than 4% of the total number of officials and roughly the same as the Romanians and the Greeks. The French have almost three times this number; the Italians almost four times as many. It also stands in stark contrast to our contribution to the EU economy, where we account for roughly 16% of total output. We complain about underrepresentation given our economic clout. The solution is not to withdraw altogether from Europe. In my experience, giving up your seat at the table is a surefire way to lose control. Instead, we must continue to work with Europe, as part of the EU.

Europe's laws and regulations are largely made through technocratic processes. We must attract, train and send more of our best technocrats to work in Brussels for our mutual interests. In the pursuit of both practicality and excellence in Europe, we must remove the prohibitive and probably outdated requirement for British candidates to prove their proficiency in French or German. English is now the world's working language and might well be enough. We must inspire the next generation of our most gifted public servants with a vision of what Europe can and should be, not just for business but for peace and security as well. Then we must motivate them to help us shape it.

1.29 pm

**Lord Cormack (Con):** My Lords, it is a great pleasure to follow the noble Lord, Lord Browne of Madingley. I wish that we heard him more often because he brings with him a wealth of business experience whenever he speaks in your Lordships' House. Having heard every single word of this debate, it is quite clear that one thread is running through it and that is a degree of real disappointment in the tone, quality and content of the debate. Although I believe that more criticism can correctly be levelled at the Brexiteers, I do not believe that the Government's case has been made as effectively as it should have been. The report which the noble Lord, Lord Boswell, introduced extremely moderately and persuasively, is itself a moderate and persuasive document that does great credit to the European Union Committee of your Lordships' House. I want to quote just one paragraph towards the very end, paragraph 258:

"Finally, the EU has always been driven by values as well as pragmatism. We urge the Government, in putting forward its vision for the UK's place in a reformed EU, also to affirm the shared identity and heritage of the peoples of Europe".

Would that more attention had been paid to that particular paragraph. It is a great pity that so little vision has infused the speeches made on all sides of the debate. We do have a shared heritage and we need only to look around Westminster to remind ourselves of that. Go across to Westminster Abbey to the glorious chapel of Henry VII, to the monument for the King and Queen, made by an Italian, Pietro Torrigiano, to Westminster Hall, where we owe that wonderful hammerbeam roof, one of the glories of European civilisation, to the master carpenter Henry Yevele.

I would also like to endorse most strongly the words of my noble friend Lord Howell of Guildford, who made a very fine speech. We are, whether we like it or not, part of the European continent. One of the most ill-advised speeches of the campaign was made by Mr Johnson—Boris, not the other one—when he talked about the domination of Europe. He cited everyone from Julius Caesar to Adolf Hitler and he suggested that there was now a great conspiracy within the EU for another dominant dictator. I have never heard a more grotesque misreading of history. All your Lordships need do is step a few yards from this Chamber and look at the marvellously recreated Armada tapestries in the Prince's Chamber, or go into the Royal Gallery and see the great Maclise paintings of Trafalgar and Waterloo, currently being restored, and you discover the real nature of Britain's European involvement in preventing any one power having hegemony in Europe and bringing balance by its own participation.

Is now the moment for our great country to turn its back on its history and its destiny? The lesson of life—we all know this—is that no man is an island and no family or community can function sufficiently of itself; every country needs allies and partners. That is the lesson of history. On 23 June, the British people have a dramatic choice to make. Do they remain with their European allies and partners and seek to strengthen an imperfect but very remarkable Union of 28 nations, or do they come out and seek new and different partnerships and arrangements, knowing that every

[LORD CORMACK]

agreement this country enters into always involves the pooling, sharing and indeed sacrificing of a degree of sovereignty? Do we forsake what we have, rather than seek to improve it, not knowing what we will get? The noble Lord, Lord Jay, touched on that issue in his admirable speech and we would be well advised to read, mark, learn and digest his words and those of my noble friend Lord Howell of Guildford, because we do not know how successful we would be.

First of all, in talking to 27 nations who would have every reason to feel aggrieved, we do not know whether we would be able to forge trade agreements and other alliances. As for this talk of emulating Canada or Norway—or, if you please, tiny Iceland—where do these people get their facts and logic from? It is absurd to suggest that this country can become another Norway, as wonderful as that country is; Norway itself has obligations to the European Union, without any of the reciprocal advantages that we enjoy.

I hope the message from this debate and from the more coherent and visionary exponents of the values of the European Union will begin to resonate with the British people over the next seven days, and that they will remember the one achievement of the former mayor, noticeable to all of us who live in London: gridlock. Rhetoric is no substitute for vision, and neither Mr Johnson nor indeed many of his colleagues have really articulated a vision of a Europe that we should be a proud part of. I believe we would be doing our nation a disservice and blemishing its history if on 23 June we voted to sever our ties. The noble Lord, Lord MacLennan, said that he hoped the moral of his speech would be that it is our function to lead and not to leave. I wholly endorse that. As I sit down, I look up at these windows above me, which I see every day, and there are three heraldic mottos there: *mindful*; *Agincourt*; *que sera, sera*. Let us draw some inspiration from each of them.

1.40 pm

**Lord Lea of Crondall (Lab):** My Lords, I thought that I was going to be late for the start of the debate because I spent part of this morning trying to get hold of a Polish plumber. He was going to ring me back, perhaps from Gdansk, I do not know. This was after I had tried a Cockney plumber who eventually called me back and said, “Sorry, mate. I am in Barcelona”. At least he is not causing mayhem in Lille. I shall come back to this because freedom of movement is one of the four freedoms, and it would be true in EFTA as well, so we ought to think about the reciprocal side of all of that.

I want to cover three points. The first touches on the malaise of voters, many working-class voters in particular, about the referendum. The second point looks at the tendentiousness of the slogan, “Take Back Control”. I would ask this: is it from Brussels that they want to take back control, is it from globalisation or is it from some other force? That is a different question entirely and it raises the twin question of the credibility or otherwise of unilaterally imposed regulation at the national level. The third point is the notion that there are no economic costs to Brexit when in fact they

far outweigh the savings. There is indeed no such thing as a free lunch. Boris Johnson, Michael Gove, Iain Duncan Smith and all the rest of them are telling us a big lie about which someone in history would have been very proud.

On the first point, I am a convinced European. I have not been so all my life, but since I wrote in 1975 the TUC pamphlet saying vote no—an instruction I agreed with—I have been heavily engaged in the EU and have seen the inevitability and indeed the benefits and desirability of co-operation, of doing things together so that Europe is to some degree a more social-democratic part of the world than it would otherwise be. In terms of the present position in Britain, I do not think that “one nation” rings a bell in much of our industrial heartland. In terms of people’s identity, they certainly do not like being preached at about what they should like or not like, and coming from their experience we have to listen and understand that. In terms of our standard of living, our grandparents would have found the four freedoms—the freedom to travel, to work, to live as individuals and, of course, as businesses within the European Economic Area—almost unbelievably beneficial. There is a malaise about the type of work experience and the inequality we have.

I turn now to the second point about taking back control. In 2008-09 the crash of Lehman Brothers created a huge fall in the trend of the world economy and certainly in Britain as compared with the previous trend. It cost us a fall of many percentage points in national income, caused a flatlining of people’s living standards, and encouraged the growth of insecurity through things like zero-hours contracts. Whether they are called that in Gateshead, they are part of the malaise. Take back control, yes, but we can do that only on the basis of a degree of co-operation. Brussels is not the enemy when it comes to protecting us. Brussels is our ally. The *Sun*, the *Daily Mail* and the *Daily Express* are all telling people a big lie about their interests and it is clear that we have not done enough to put across our own explanation. However, I think that we are doing better as of now.

The third point is about the free lunch—the idea that we can get all the benefits and pay none of the costs. The noble Baroness, Lady Smith of Newnham, drew the analogy of marriage and divorce as if the experience of a divorce is that you get all the benefits but pay none of the costs. Surely the experience of most people, when looking at it from the outside, is that divorce is precisely the opposite. You have all the costs and none of the benefits. That is what would be true in this case, and I am glad that the European Union Committee has started to paint for us a picture of the leave scenario that exposes many of the fallacies which so far have not been adequately tested in the television studios and elsewhere.

There is a constituency that can be characterised as, “Stop the world—I want to get off”, but that is because in some respects we have ground to a halt on social-democratic workers rights reforms after a very good period inspired by Jacques Delors in 1988 which introduced many of the things that improved the quality of contracts of employment. Perhaps I may just underline the fact that reform has to be made at

the level of Brussels because it would not be done by employers in Britain. They could be undercut and they were explicit in what they said: “We cannot do this on our own in Britain”. Even now, a lot of people do not understand that. It can be done only at the European level. Twenty-eight countries represents a big GDP. The GDP of the European Economic Area is larger than that of either China or the United States. We have to make sure that the positive picture is put across. I am quite sure that the big corporations of the world can live with a proper system of taxation and not take up the chicanery of McKinsey as reported last week by Gillian Tett in the *Financial Times*.

Finally, I shall put the actual numbers on the record. The Institute for Fiscal Studies has never hitherto been accused of being partisan. It has pointed out that the net figure for the so-called extra £350 million a week that has been promised is some £8 billion rather than £18 billion a year. When we look at the Norwegian and Swiss deals, the net saving on that basis would be £4 billion. That is to be compared with a hit to the public finances, leaving aside devaluation, of some £20 billion to £40 billion per annum against trend by 2019-20. Translate that into living standards.

The noble Lord, Lord Pearson, is not in his place. Some of us were accused of scaremongering when we—along with the Bank of England and others—said that the value of the pound would fall significantly. I suspect that not many noble Lords would disagree if I said that that has now become obvious to everyone. It is not scaremongering, it is the frightening scenario that Brexit would open up.

1.49 pm

**Baroness Sharp of Guildford (LD):** My Lords, I will speak mainly about the report from the Science and Technology Committee on European Union membership and science. Before doing so, I would like to say how much I agreed with the noble Lord, Lord Cormack, and the noble Earl, Lord Caithness, when they said how important it was that we should not throw away the lessons of history. I was born just before the Second World War. My parents experienced both world wars across Europe. Like them, I believed strongly that it was necessary to create a kind of united states of Europe, as Churchill put it—a confederation that would stop European nations constantly warring with one another. The project of my lifetime has in many senses been the construction of the European Union. It is a huge achievement. It would be very sad and retrograde if we were to throw that achievement away. As my noble friend Lord MacLennan suggested, that might happen if we exit the European Union.

I was not a member of the Science and Technology Committee. I was in the past, but I came off it at this time last year, and I have therefore not played a part in putting together the report on EU membership and science. My claim to speak in the debate on the subject is in having authored two books, in the 1980s and 1990s, on the early development of these European Union programmes.

It is interesting to note that in those early days when the programmes were being forged, first by the late Lord Dahrendorf when he was a European

commissioner—and who until about 10 years ago was a member of this House—and subsequently and more decisively by Vicomte Davignon, in the early 1980s, they were to a considerable extent shunned by the British Government and British academia. The general feeling was that if the members of the then European Community wished to get together and collaborate over science, that was fine, but it had at that point very little to offer us. Our links were primarily with the United States and other English-speaking countries, such as Australia and Canada. The feeling was that the more profitable links were likely to remain that way.

In fact, measured by collaborations, in terms of publications, by the end of the 1980s UK collaborations with our European partners overtook our collaborations with our US partners, and it has remained that way ever since. As the evidence taken by the Science and Technology Committee demonstrated, these collaborations are now very highly valued. I was amused to compare the conclusion of the committee:

“It was repeatedly put to us that one of the most significant aspects of the UK’s EU membership is the provision of opportunities to collaborate”,

with the conclusion of the 1998 volume authored by me and John Peterson:

“What is striking about these programmes is the very high value placed by their participants on collaboration per se, as opposed to public funding per se, or the effects on competitiveness”.

Again, the Science and Technology Committee report states:

“We view the EU to have three main influences: the provision of collaborative funding schemes and programmes; ensuring researcher mobility; and facilitating and fostering participation in shared pan-European research infrastructures”.

The 1990s evaluation of what the UK gained from the framework programme, written by Luke Georghiou of Manchester University—now Vice-President for Research and Innovation there—identified four key benefits: access to funds for collaborations; enhanced skills training; access to improved and new processes; and commercial links.

It is important to remember that the most effective way to transfer knowledge is through people. Collaborations and working together with other scientists and researchers in other countries, especially when accompanied—as many of these European Union programmes are—by exchanges of doctoral and post-doctoral researchers, involve learning about new and different approaches, ideas and processes. It is this interaction that has proved so valuable, especially for our younger researchers and for those countries in the European Union that are relatively new to research activities. The great benefit for the so-called cohesion countries of southern and eastern Europe was the opportunity for their researchers to work alongside scientists at institutions such as Imperial College or University College, London—or for that matter at the Institut Pasteur or the Max Planck institutes in Germany.

I have two further points in relation to the report. The first is on downsides. The report raises two issues, bureaucracy and low participation by industry. On bureaucracy there have been endless promises of simplification but very little seems to have been achieved. One can have some sympathy with the Commission,

[BARONESS SHARP OF GUILDFORD]

which is constantly being accused of being too lax with its money and of not having a proper audit trail. The science and technology field is one of the few areas where it has responsibility for disbursing resources. Agricultural and structural funds rely on national Governments, where it is often difficult to keep track of precisely who is spending what, and where. However, where it does have control the Commission rather overcompensates.

The issue of poor industrial participation has been around since the start of the programmes. It arises partly because the programmes aim at pre-competitive R&D. Originally the focus was on early-stage R&D. The development of the European Research Council has tipped the balance more towards blue-sky, pure research. Governments in continental Europe have been more sympathetic than UK Governments of all complexions to getting involved with applied research and helping companies bridge what is here called the “valley of death”. The Catapult programme was developed under the coalition to respond to this. But, as the committee notes, greater discretion given to regional governments in other European countries, combined with stronger regional banking systems, has often provided a better framework for industrial participation, frequently alongside university partners.

Finally, I would like to say a brief word about the role played by Britain in European decision-taking. There is a tendency to talk a lot about unelected bureaucrats in Brussels taking decisions. In this area the decisions are in fact taken by myriad advisory committees of one sort or another, with only the really contentious issues going to co-decision between the Council and Parliament. The key decision-makers are to be found in the nexus of these committees, which is effectively a complex and somewhat incestuous system of advisory committees and peer review. Many smaller countries do not have the experts or the capabilities to play a significant part in this process—but it is one in which many British experts have played a substantial role.

I will take the example of Horizon 2020. As the committee points out in its report, 46 experts have played a key role in advisory groups, developing the Horizon 2020 programme. The UK CEO of Syngenta, giving evidence to the committee, said that,

“if Britain went its own way in Europe, we would lose the most powerful, most influential, significant voice pushing for a rational, science-based regulatory system governing our technologies”.

There is no doubt that the British voice in science and technology is heard in Brussels. Its loss will be a loss not just to Britain but to the whole of the European Union.

1.59 pm

**Lord Bilimoria (CB):** My Lords, there is a great deal I do not like about the European Union. No one knows who their MEP is. MEPs have no connection with the people they represent and are not accountable or representative. The EU Parliament moving from Brussels to Strasbourg every month for a week is a ridiculous waste of time and money. The euro is a complete failure—one size will never fit all. It is surviving

only because it is more difficult to dismantle than keep together. I used to think we lost out on tourism and business visitors by not being in Schengen; now we are fortunate, given the migration crisis and security concerns, not to be in Schengen. I am a true Eurosceptic.

However, given a choice, I have no hesitation in saying that we should remain in the EU. I thank the noble Lord, Lord Boswell, and his committee for producing their reports. I came to this country from India as a 19 year-old student and I have seen the immense change in this country from the time I arrived in the early 1980s, when it was the sick man of Europe, to today being the envy of Europe. The transformation is remarkable. Back in the 1980s, this country had a glass ceiling. Today it is a country of aspiration and opportunity where anyone can get to the top, regardless of race, religion or background. We have seen the highest cumulative GDP growth rate in the European Union since the single market began in 1993. For the United Kingdom it is 62% versus Germany, for example, at 35%. On this point alone, the well-known economist David Smith said in the *Sunday Times*:

“Britain succeeds in the EU: we’d be daft to leave it”.

This country, with its flexible labour market and open economy, has given me the opportunity to build Cobra Beer from scratch. When we first exported Cobra we chose European Union countries to export to because it was so easy. Now we have exported to more than 40 countries.

I cannot believe that Vote Leave could put out a TV advertisement that states the UK pays £350 million into Europe every week, and then states the purported health spending that this could result in. This is complete nonsense. It should have been taken down by the Advertising Standards Authority. The Vote Leave campaign cannot even get its sums right. We get a rebate from Europe that brings it down to about £150 million a week. If we leave, our current growth rate of 2% a year might flatline or even go into recession. That would be a drop of well over £30 billion—four times our net contribution to the EU.

This country has to wake up and smell the coffee. The Vote Leave campaign is based on a number of bogus claims. Brexit bogus claim number one is about loss of sovereignty. What loss of sovereignty? We are in the EU, but not in the euro; we are in the EU, but not part of Schengen; we are in the EU, but we drink our beer in pints not litres; we are in the EU, but measure our roads in miles not kilometres. No one can tell this country what to do. We have total sovereignty.

Brexit bogus claim number two concerns the lack of democracy. There are elected Members of the EU Parliament. The EU Commission is appointed by elected representatives from each country. We are having a referendum on EU membership right now and we can pull out of the EU whenever we want. Where is the lack of democracy?

Brexit bogus claim number three: Vote Leave says EU regulations cost British businesses £600 million a week. Where has this figure come from? It is completely subjective to try to quantify the impact of red tape. The claims are made by people who have never run a business in their life. Of course there are unpopular regulations, but there are good regulations that protect

workers' rights. I can assure noble Lords that when you run a global business, as I have, you do not think about EU red tape, you just get on with it. The biggest barriers to business are the UK's own overly complex, vast and continually increasing taxation, housing and planning laws. These are self-inflicted by the Government of the day and are nothing to do with the European Union whatever.

Brexit bogus claim number four concerns migration. Immigration has benefited this country over the decades. EU immigration has been continually demeaned and vilified by Brexiteers. There are 3 million EU migrants working in the UK. This has built up over a number of years and we know how hard-working they are. For example, surveys show that the Polish community is respected and appreciated by the British public and seen as contributing to our country. We have one of the highest levels of employment on record. We have one of the lowest unemployment levels ever seen—in fact, in practical terms we have full employment, despite 3 million EU migrants. Where is the problem? There are a few bad apples trying to take advantage of our welfare state, but, on the whole, EU migrants have helped us to become the fastest growing country in the EU and they contribute to this economy five times more than they take out.

People talk about a drain on public services. If we need 3 million people to boost our economy, our Government have failed if they have not been able to provide the necessary accompanying public services. In fact, our public services would collapse without the contribution of those 3 million people. Our country needs migration due to our ageing population. Misleading nonsense is proliferating from the Vote Leave campaign about immigration, which states that if we leave the EU we will be able to take in immigrants from elsewhere. Michael Gove has said that he wants to bring net migration down to the tens of thousands. We have net migration of 330,000 now, of which half—about 180,000—is from outside the EU. Even if EU immigration stops dead on Brexit, we still have well over the tens of thousands. Their argument is illogical and the public should not fall for it.

Brexit bogus claim number five is that we could negotiate more trade deals with other countries and we would be in control of our destiny if we left the EU—that we could engage in trade deals with India and America. We are the second-largest recipient of inward investment in Europe. Some 60% of companies operating in the EU have their headquarters in the UK. Would they continue to if we leave? Of course not. Our inward investment would dry up and London would no longer be the number one financial centre in the world. Other countries see the UK as the gateway to Europe. As a professor from the Harvard Business School, of which I am an alumnus, said, we would be mad to leave the EU. If we were to have a deal like those of Switzerland or Norway, we would still have to agree to free movement of people and we would still have to contribute—maybe not £8 billion, but maybe £4 billion.

The Brexiteers tell us that those advising against leaving the EU should not be listened to: "Who are they to tell us? They've been wrong in the past". We do

not live in a vacuum. We are an integrated member of the global economy. We are not a superpower, but a global power—we sit at the top table of the world: the UN Security Council, the G7, G8, G20, NATO and the EU. If we leave, we jeopardise our standing in the world and our future investment. I did not think I would ever quote the Prime Minister's wife, but she said:

"I want my children growing up with the advantage of starting their careers in a country that is a big fish in a big pond, leading the way in Europe".

If we leave the EU we will be a tiddler in an ocean.

Brexit bogus claim number six is that the EU is in a mess and our share of trade with it has been falling. That is quite obvious because we are trading more with emerging markets, but the EU still accounts for 44% of our exports and 55% of our imports. It is too big to jeopardise.

Brexit bogus claim number seven is that there will be further integration, leading to a superstate, and we will be dragged into EU bailouts. There will never be a united states of Europe. I come from India, a country that is a true federal state. Europe will never look like that. The Prime Minister's negotiations have ensured that we are not committed to further unification and bailouts in the future.

Brexit bogus claim number eight is that there will be an EU army that will subsume the British Army. This is complete fantasy. This will never ever happen. It is also claimed that peace in Europe has been brought about by NATO. It has been brought about by NATO and the European Union.

Brexit bogus claim number nine is that Turkey will become a member of the EU and we will not be able to stop 75 million people coming here. Turkey is light years away from joining the European Union—this is scaremongering.

Lastly, Brexit bogus claim number 10 is that the EU is an economic mess, with youth unemployment up to 50% in countries such as Spain, Italy and France. These countries have been in a mess since 2008-09, when the financial crisis began. We, on the other hand, because of our flexibility and control of our destiny, have thrived. The fate of these EU countries has not prevented us succeeding and getting our economy back on track. Even if the economies of Europe absolutely implode and Europe breaks up, I would rather we were at that table trying to help out and knowing what is going on. As has been said, I do not want to jeopardise our own United Kingdom in a Brexit situation, where Scotland might want to leave. Then there is the huge number of years it has taken to get to the present Northern Ireland situation, which would be jeopardised.

Brexiteers try to say that they are the ones who are proud of Britain. I am proud of Britain—a country that has given me everything, that is not isolationist, selfish or blinkered. What speaks more about a country than anything else is its spirit and values. British people are respected around the world for their values. If we Brexit, we will be sleep-walking over the cliffs of Dover into huge uncertainty and instability. Even Brexiteers are saying that it will take years to renegotiate our position with Europe. A protracted period of

[LORD BILIMORIA]

negotiations, a possible recession, the loss of jobs—we have a fragile recovery and huge debt. We have a current account deficit and a budget deficit. Why risk all this when we do not have to? It is far wiser and far more productive for us to try to reform the EU from within. Why destroy the growth we have achieved? Why risk our standing as the fifth largest economy, with the highest growth rate in the EU and the largest amount of investment in the EU?

There is an African proverb: “If you want to go fast, go alone; if you want to go far, go together”. We are in control of our destiny and we have our sovereignty. I conclude with a very short poem—my favourite poem—written by the Indian Nobel laureate Rabindranath Tagore, which is so pertinent to what we are speaking about:

“Where the mind is without fear and the head is held high  
Where knowledge is free  
Where the world has not been broken up into fragments  
By narrow domestic walls  
Where words come out from the depth of truth  
Where tireless striving stretches its arms towards perfection  
Where the clear stream of reason has not lost its way  
Into the dreary desert sand of dead habit  
Where the mind is led forward by thee  
Into ever-widening thought and action  
Into that heaven of freedom, my Father, let my country  
awake”.

2.10 pm

**Lord Parekh (Lab):** My Lords, I have been in this country for more than 50 years and I cannot recall an equivalent occasion when it was likely to take such a momentous decision as to whether we should remain in or leave the European Union, on the basis of a rather shallow and polarised debate conducted in a mood of panic created or exploited by a motley crowd of politicians who are prepared to change their convictions as often as they change their underwear. I want to argue as forcefully as I can why it would be unwise of us to leave the European Union; or rather, more positively, why it is crucial that we stay.

First, as several speakers have pointed out, there is no clear alternative. There is all this brave talk about our being able to do this, that or the other, negotiating like Canada or Norway, but it is all based on fantasies. The European Union will not view us as kindly, and therefore will be less disposed to accommodate us. Other countries will not be able to deal with us because they have been dealing with us on the basis of our membership of the European Union and, once that is taken away, the assumption based on the fact that they will continue to co-operate with us does not hold. I therefore think that it would be absolutely mad to move in a direction about which we know so little rather than build on what we have achieved so far. The Prime Minister has brought back a settlement. In 2017 we have the unique opportunity to be president. There are all these possibilities whereby we can use our good offices to set our own agenda and take the European Union in the direction we want to take it.

The second reason that we ought to stay in the European Union has to do with the idea of sovereignty. We are constantly told that we should take back control over our affairs. Well, we already have control over our affairs, because our MEPs sit there and our

commissioners take decisions. Getting out does not give us any greater control, because the forces we deal with are global and they require a global response. Sovereignty is ultimately about power and power is not gained in isolation, because isolation is impotence. Power is gained when we share with others in jointly collaborating and organising our affairs. The choice is therefore between insisting on being sovereign, going it alone and becoming impotent or being part of a larger unit and working together with it.

The third reason I think membership of the European Union is crucial to us has to do with the fact that Europe has been a constant point of reference and has provided standards of comparison. In all matters having to do with social and other affairs—for example, survival rates for patients after cancer, unmarried mothers, teenage pregnancies—there are comparative figures for other European countries and for our own. These hurt us when they show that we are not doing as well as other countries, because all European countries, more or less, are at the same stage of development. These comparisons inspire us, they shame us, they make us proud when we do better and they lead to important changes.

It is also very striking that membership of the European Union has been a force for great good for us. I can remember those occasions when people had to take matters to the European Court. In matters having to do with human rights, equal pay, paid holidays, maternity and paternity leave and health and safety standards, Europe has been a champion of social democracy and has helped us maintain a certain standard of decency in our country which otherwise might not have obtained.

My fourth reason has to do with the fact that our membership of the European Union has helped us create a stable and peaceful Europe. This is partly because of our great role in the Second World War and the policies we have followed since. If we leave, there are two possibilities. Either other countries may try to emulate us and the European Union may break up into a conglomeration of small nation states, or the process of unification may go further, resulting in a continental state. A powerful continental state can never be in our interest. It is striking that our foreign policy has always been based on a balance of power in Europe.

The other reason this is important has to do with the fact that nation states are becoming ever less important. All countries are forming alliances and it is only those countries that are part of stable alliances which are able to make an impact. The United States matters not just because it is large and independent but because it is able to work through international institutions such as the IMF and World Bank or its control over Latin America. Likewise, China matters because it has all manner of alliances with neighbouring countries. The EU is another example. Through it we are able to shape the global agenda. Outside it, we would not have any of the influence we currently have.

I readily agree that the EU has its economic and political problems, but these can be tackled by remaining within the EU. The Prime Minister’s proposal as to the kinds of changes he has been able to secure tells us

how those changes can be brought about, and I therefore suggest that we should not only stay within the EU but show a greater degree of commitment and enthusiasm than we have done so far, rather than appearing to be sulky and constantly threatening to go home with our marbles if we do not get our way. That is not the way a great nation should behave.

2.17 pm

**Lord Hennessy of Nympsfield (CB):** My Lords, I declare my membership of your Lordships' Science and Technology Committee and my fellowship of the British Academy.

In the grand sweep of the wider history of our islands the science and technology element of our debate today is a tad strange, because the life of the mind should have little or nothing to do with customs unions, and that is what the European Union, in its various forms since 1952, has been and will remain. Free trade comes no freer than the global intellectual trade in ideas and research. A free trade of the mind is something we can all sign up to, wherever we stand on the great European debate. The United Kingdom was a very considerable player in the world when it came to research, science, technology and the arts and humanities before we joined the European Economic Community in 1973, and it will remain so whatever happens on 23 June.

The reasons for our global prowess in the little grey cells department, if I can call it that—our cultural World Service, as the noble Lord, Lord Bragg, of Wigton, likes to put it very well—are multiple. I am pleased to say that the British Academy will soon be mounting a study of its vectors and ingredients, with the encouragement of your Lordships' Science and Technology Committee. All that said, research needs fructifying institutions and funding streams to irrigate the life of the mind at both the national and international levels, and it is my belief that our 43-year membership of the European community has, on balance, been a positive aid to this end. From the evidence sessions of your Lordships' committee on today's theme I acquired an impression that had not dawned on me before that this aspect of our relationship with Europe has been the least jagged and raw of all the other linkages which, taken together, have produced a very substantial emotional deficit with the European Union on the part of the people of our country, or many of them. This, I fear, will endure even if the country votes to remain.

I have often pondered the roots of this emotional deficit. It has occurred to me more than once that it is a tragedy that we did not invent the community. The European Coal and Steel Community came out of the minds of clever, Catholic, left-wing, French bureaucrats. Most Brits have a problem with three of those five. I have not, as it happens, but most have. If only we had invented it, it would be a very small secretariat in an area of high unemployment, sending perhaps two or three letters a year to the member countries: "Would you mind doing a little more on free trade here, here and here—but only if you've got time?". We are not a directives people. The emotional deficit is very powerful. Of course I am being facetious in the way that I am regarding it—it is very deep and complicated.

Science and technology, plus funding for the arts and humanities, are, as the committee's report puts it,

"a major component of the UK's membership of the EU. Nearly one fifth (18.3%) of EU funding to the UK is spent on research and development".

There would, I believe, be a real loss to the UK on this front if we leave. It was put to the committee, as our chairman, the noble Earl, Lord Selborne, said earlier in the debate, that the funding streams we acquire from the EU—more than we put in—are the equivalent, at least, of an extra research council for the UK. We might also lose part of the human flow in and out of our labs that the free movement of people within the EU permits—in an era where, ever more, the prizes go to the international and the collaborative. It is crucial for our country to think heavier than our weight in the world, as we have done since at least the 17th century. I am convinced that our membership of the EU enhances our ability to do this.

Switzerland, another country that prides itself on thinking heavier than its weight in the world, is not a happy example for those who wish to leave, even though Switzerland has associated country status in its relationship with the EU. The committee received eloquent testimony on this from Professor Philippe Moreillon, vice-rector for research and international relations at the University of Lausanne. He said that when Switzerland,

"became an associate, it was much, much easier, of course, but we are still not sitting at the decision table or on the consultative committees where the decisions are made. We have a number of ways to interact, such as through university associations. We are still in the corridor, but at least we are part of the whole programme".

The implication of this evidence is that if the UK leaves it will, in terms of European R&D funding, become a corridor nation, which is a condition not to be wished for.

Remainers, of whom I am one, have to recognise, however, that there are unsatisfactory elements within the existing scientific relationship, which the Select Committee inquiry illuminated. Harmonisation and EU regulations can bite into that prime principle of intellectual free trade. For example, the committee concluded that, in the area of genetic modification and clinical trials, UK business and research were placed at a disadvantage compared to non-EU competitors because of EU regulations.

This leads to my concluding thought. If we remain, how refreshing it would be if the Prime Minister quickly turned up in Brussels with a positive, constructive plan for a wider reform of the European Union. I was greatly impressed by what the noble Lord, Lord Howell of Guildford, said earlier in our debate about wider reform—a wider reform of which a greater slice of funding and trimming of bureaucracy for R&D could be a shining element. Not only would this be an inherently good thing, but just think of the shock value. To adapt that great expert on national identity, PG Wodehouse: for a very long time now in Brussels, it has always been easy to distinguish between a ray of sunshine and a British Prime Minister bearing a grievance.

2.23 pm

**The Duke of Montrose (Con):** My Lords, I also declare my membership of the Science and Technology Committee and express my thanks to the chairman and the clerk who led us so well on all these issues. The topics chosen in my time on the committee were the nearest thing one is likely to get in politics to a crystal ball, whereby we try to determine some of the future. Whether we have been able to determine anything meaningful in our report is probably up to others to judge, but I certainly hear some approval from around the House.

The United Kingdom has a reputation for invention but often these inventions are not exploited by us but are taken up by others and turned into successes. We learned in the evidence how manufacturing companies in Germany are heavily integrated with government research. As my noble friend Lord Selborne mentioned, the committee was left wondering whether it was just a coincidence that no British manufacturing company offered to come and give us its views. Does this indicate where the lack of communication begins between science and the practical side of manufacturing?

We heard the views of various European-based companies about what our role has been in Europe. As the noble Baroness, Lady Sharp, reminded us, the representative from Syngenta told us that,

“if Britain went its own way ... we would lose the most powerful, most influential, significant voice pushing for a rational, science-based regulatory system governing our technologies”.

That is very important. We heard a lot of statistics about the success of our research base in sourcing funds from Europe. When it comes to that most demanding element, the seventh framework programme, we are at the top of the league with Germany, gaining just under €7 billion. We heard from a variety of scientists who have had success in securing these funds. My noble friend Lord Selborne outlined the frustrations caused by certain EU prohibitions on research—the noble Lord, Lord Hennessy, also mentioned it—such as work on stem cells or with animals. However, our own politicians have supported several such causes, in both the EU and the UK; we cannot always say that it is because of EU regulation.

As a Scot, I found it particularly interesting to hear evidence of the experiences of Switzerland and its unconventional relationship with Europe, because there are certain parallels. In European terms we can see ourselves as small nations and inevitably, because we are both mountainous, we have historically been poor in natural resources. The Scots thought that they had escaped this element but it has now been re-established rather unexpectedly. In Scotland we have certainly had to survive on our brains and our brawn, and we have developed a culture of care and co-operation. We have had an emphasis on education and a readiness for invention. But there is one big contrast, in that Switzerland is geographically at the centre of Europe while we are on the periphery, so it is that much harder to make a success of our trading relationships. Switzerland wished to participate at most levels in Europe but did not wish to be a member of the EU or of the European Economic Area so, as your Lordships know, it has had associated country status but with a bilateral agreement to ensure

free movement of people. This has allowed it to participate at many levels, particularly in the EU framework programme funding scheme, but the minute it implemented any participation, it had to apply all the rules we have heard about in those spheres. Even more significantly, when, as a result of a national referendum, it decided to rule out all immigration and free movement, it was immediately barred from all participation and co-operation within Europe and is now having to renegotiate its way back in.

From what I can see, there is a very clear divide with Europe—you are either in or you are out. Thoughts of some cosy compromise do not really have that much to offer. This is the choice we will be asking the people of this country to make next week. I hope that we will continue to participate in Europe.

2.28 pm

**Lord Howarth of Newport (Lab):** My Lords, I add my thanks to noble Lords for the sober analysis of the processes of change provided in these reports. Tragically, however, the European Union is not capable of the reforms that could justify Britain remaining. The dreams of the Prime Minister in his Bloomberg speech have been all too comprehensively dashed. The EU is failing both economically and politically and its member states are incapable of achieving agreement on the reforms that might save it. There is very little willingness even to contemplate the radical redesign that the noble Lord, Lord Howell of Guildford, called for in his thoughtful speech. The noble Lord, Lord Boswell, deprecated the failure of the Government to explain—as I think he put it—what, if anything, is wrong with the European Union. Perhaps I might therefore venture to assist.

Britain joined the EEC in the early 1970s at a low point in our national self-confidence, and just when the economic miracle that had brought the original six to new heights of prosperity was faltering. Self-inflicted wounds followed: the Maastricht criteria condemned Europe to weak growth, and the ultimate hubris, the disastrous turning point, was the formation of the eurozone. Without political consent to create a federal “United States of Europe”, the single currency project could not work. The Germans have enjoyed an undervalued currency but even in Germany wages have stagnated. The Mediterranean countries have suffered grievously from an overvalued currency. There has been little redistributive fiscal relief across the EU. Membership of the euro encouraged reckless borrowing and creditors have ruthlessly ensured that there is no debt relief. Across swathes of the eurozone, unemployment, particularly among young people, has been running at catastrophic levels.

The eurozone countries are incapable of extricating themselves from their predicament, either by advancing or by retreating. Britain is infected by Europe’s economic stagnation and chronic financial instability. The UK should continue to reorientate its exports and strategically disengage itself from our debilitating entanglement with the European economy.

Of course I acknowledge the ideal of peace, about which the noble Lord, Lord Browne of Madingley, and the noble Baroness, Lady Sharp of Guildford, spoke so feelingly. I do not belittle that at all but it is

not our membership of the European Union that prevents the French and the Germans going to war in 2016. Europe's economic failure now begets political division and crisis. For all the invocation of ever-closer union, the gulf between Europe's haves and have-nots has grown ever wider. Market forces, to which EU orthodoxy is dogmatically committed, have concentrated wealth in certain regions of the north and west of Europe: Baden-Württemberg, the Rhône-Alpes and Lombardy. Your Lordships should note that these areas of prosperity are regions, not countries, and that one of the effects of the EU is to fracture the old nation states. Meanwhile, the south and the periphery struggle and everywhere the less-educated and less-skilled, the industrial helots, the culturally alien and the urban underclass are frustrated and angry. Migration, both into Europe and across Europe, intensifies resentment and generates extremism.

The democratic deficit and the governing structures of the EU threaten to be as disastrous as the euro. The system is an aggregation of democracies but it is not itself democratic. It was never intended to be so by its authors, rational public servants who were horrified at what they had seen weak democracies and populist fascism do. Policy initiative continues to rest with the unelected Commission. The Council of Ministers as such has no accountability. The inner eurogroup—of which, of course, we are not members but which commands the majority and has no regard for our interests—takes the major economic decisions. It has no status in European law and its proceedings are opaque. The European Parliament and national parliaments remain marginal. This is not a system of government that should be acceptable to the British people, who take pride still in a unique history of parliamentary democracy.

**Baroness Smith of Newnham:** Does the noble Lord not agree, however, that there is a directly elected European Parliament and that it has the right of co-legislation in EU decision-making?

**Lord Howarth of Newport:** It has indeed gained some powers but I would still contend that its influence is marginal. I certainly do not see that the European Parliament has any worthwhile accountability to the peoples of Europe.

Yanis Varoufakis has described how, equipped with a democratic mandate from the Greek people, he sought to renegotiate the terms of Greek debt and, Germany's finance minister, Wolfgang Schäuble, told him:

"Elections cannot be allowed to change an economic programme of a member state".

With rule by technocrats, troikas and creditors, the gulf between governors and the governed is increasingly offensive to the peoples of Europe.

Across the European Union, parties of the far right are gaining support: PEGIDA, Law and Justice, Jobbik, the Front National and Golden Dawn. There is the SNS and its rival, People's Party—Our Slovakia, whose leader Marian Kotleba takes to the stage wearing the uniform of the wartime Slovak fascists. The two neofascist Slovak parties already have almost 20% of the seats in parliament. The Freedom Party of Austria came within an ace of winning the Austrian presidency.

It is complacent to suppose that we are immune from this pathology. If in Britain our metropolitan political elite continues to display contempt for people who do not share its enthusiasm for membership of the EU and for globalisation, the disturbing problem we already have of disaffection from mainstream politics will grow worse. People who loathe the EU will seek recourse in the nation and if their nationalism is not to turn ugly, they must be listened to and treated with respect. If reputable politicians will not stand up for the losers, disreputable ones will. Remain campaigners, I suggest, would be wise to stop giving the impression that they regard supporters of leave, who decline to be instructed by experts as to what they should believe or how they should vote, as ignorant, stupid and bigoted. Remain MPs who threaten to use a majority in the House of Commons to thwart the will of the people in the referendum seem bent on destroying our citizens' trust in politics.

I hope that the British people will have the confidence to leave the EU. We should not doubt that we have the enterprise, skills and resilience to cope with the transition. Our businessmen will know how to seize their opportunities across the world. Our excellent scientists will flourish in the global academic community—the free trade of the mind of which the noble Lord, Lord Hennessy, just spoke. We will forge new relationships with the peoples of Europe, with whom we have always engaged and always will. It will be open to us to become more, not less, internationalist. We will be able to handle the issue of migration decently on our own authority.

The process of withdrawal should open exhilarating vistas. After reclaiming rights to take our own decisions and before activating Article 50, we should engage our people in an extensive national debate of new quality—and we will find that the people of Britain do not want workers to be stripped of their rights, or science to be stripped of its funding. We should seek to reach national consensus on our objectives in negotiations, tough as they will be, with the EU and other global institutions and powers. There will indeed be a great programme of legislation. In all this lies the opportunity to renew our parliamentary democracy.

2.38 pm

**Lord Taverne (LD):** My Lords, the last speaker was correct in telling us that there are some very unpleasant elements inside Europe in some of the parties. What the noble Lord did not mention is that all our friends—our allies, members of the Commonwealth, the democracies of the world—are desperate that we should stay a member, while the voices which are keenest that Europe should break up are those of Mr Donald Trump and Mr Vladimir Putin.

This has been an excellent debate and I have learned a lot from it. I had not appreciated fully, until I heard the speech of the noble Lord, Lord Boswell, and the very effective speeches from the noble Lords, Lord Liddle and Lord Jay, quite how huge the problems are of extracting ourselves from the European Union and how serious the consequences would be of the prolonged process which would have to take place.

[LORD TAVERNE]

I want to refer to a more particular issue: science and the European Union. A recent survey in *Nature* showed that 83% of scientists want Britain to stay in the Union because being in the European Union is good for British science. Sir Paul Nurse, for example, an ex-president of the Royal Society and a Nobel prize winner has written:

“Permeability of ideas and people is crucially important to science, and it flourishes in environments that pool intelligence, minimise barriers, and are open to exchange and collaboration”—a point which has been made by many people in this debate. The European Union, he wrote, “helps provide such an environment, and scientists value it”.

Then there were the 150 fellows of the Royal Society who wrote in March to the *Times* warning that Brexit could be “a disaster for science”. The reaction of the leave campaign was, as usual, to trot out someone from the small minority who contradicts those views. That is its normal reaction to the majority views of experts who seek to destroy its arguments.

When the IMF, the OECD, the Bank of England, every international economic authority and 90% of British economists concluded that Brexit will reduce our growth rate and adversely affect wages and jobs, their views were contemptuously dismissed. When the universally respected IFS, whose objectivity has never before been questioned, confirmed the Treasury’s detailed forecast of the harm Brexit would cause, we were told that the IFS was a lobby for the European Commission. Here I should declare an interest, because a long time ago, in 1971, as a recent Financial Secretary, I was asked by the founders of the IFS to become its first director, was responsible for its launch and helped it take some of its early steps. I am rather proud of having been the midwife at the birth of this baby, which has grown into such a formidable adult.

This excellent and most informative report from the Science and Technology Committee illustrates many of the reasons why scientists are so strongly pro-EU. They want to be part of a body that promotes big science, that is, science that is now performed on an increasingly large scale. The report quotes Professor Cowley, head of the UK Atomic Energy Authority:

“In the years since the early 1980s, Europe has become the world leader in big science. More and more science is progressing towards big science”.

One could cite many examples, but perhaps the paragraphs that sum it up most comprehensively, and which have been referred to by the noble Earl, Lord Selborne, and others, including my noble friend Lady Sharp, are paragraphs 157 and 158. Paragraph 157 states:

“It was repeatedly put to us that one of the most significant aspects of the UK’s EU membership is the provision of opportunities to collaborate. We view the EU to have three main influences: the provision of collaborative funding schemes and programmes; ensuring researcher mobility; and facilitating and fostering participation in shared pan-European research infrastructures”.

The next paragraph continues:

“Many would maintain that the provision of collaborative opportunities is perhaps the most significant benefit that EU membership affords science and research in the UK. These collaborative opportunities are not just between Member States but can extend to non-EU and non-European countries”.

What are the arguments against? Several have been referred to, but the main culprit, as usual, is bureaucracy.

As the noble Lord, Lord Hennessy, pointed out, there is an urgent need for reform of some of the regulations, but I quote Sir Paul Nurse again. He says:

“The UK can be very bureaucratic. At the Francis Crick Institute, where I work, we recruit the best in the world, wherever they come from, so we plough through the paperwork. But it costs us effort that would otherwise be spent on biomedical science. In contrast, when we recruit scientists from within the EU, the bureaucracy is much less”.

Our excellence in science is one of our greatest national assets, and so is that of our universities. The effect of Brexit on science and our universities has seldom featured in media reports of the referendum debates, but let me once more cite the views of people who are not generally politically partisan but who know what they are talking about: Universities UK and the vice-chancellors of the Russell Group. They are unanimous in expressing their deep concern about the serious damage Brexit will do to both those precious assets. For example, Sir Leszek Borysiewicz, the eminent vice-chancellor of Cambridge, has warned that Brexit could mean that Cambridge could no longer expect to maintain its status as one of the very top universities in the world.

Brexit would harm science and diminish our universities.

2.45 pm

**Lord Hannay of Chiswick (CB):** My Lords, every one of the three reports we are debating today is relevant to the event that will take place a week tomorrow and is given a great deal of added topicality by that event. Each one, as is invariably the case with such reports of our EU Select Committee and the Select Committee on Science and Technology, is a small part of the complicated jigsaw that makes up our EU membership—one which is so poorly understood, alas, by the electorate and one which, also alas, is so badly explained by politicians. There is plenty of blame to go around for that lamentable state of affairs, but none of it, I suggest, is attributable to your Lordships’ committees or to the admirable chair of the EU Select Committee, the noble Lord, Lord Boswell, who introduced this debate with such lucidity.

No one who has read Article 50 of the EU treaty even once—I fear that there may be some at least in this room who have not done that—can possibly doubt what a cat’s cradle we will enmesh ourselves in if next week we vote to leave. No one also can, or at least should, doubt that we will be at a negotiating disadvantage if we decide to go down that path of withdrawal—a negotiation in which we will inevitably be cast in an adversarial position from the outset.

Let me just make this point. Up to now, the other 27 member states have unanimously made clear—and they really mean it—that they want the 28-member European Union to continue. That is an entirely valid position, from their point of view and an admirable one from mine. But do not doubt: the day we vote to leave, that will change. Then, the 27 other member states will know that we are no longer to be a member of the European Union, and they will look after their national interests in that context. That will not take account of our national interest.

We would thus, under the Article 50 arrangements, lose control over the content and timing. That is all

the more so, of course, given that the views expressed sometimes in this Chamber and by Vote Leave seem to indicate a desire not to trigger Article 50 too soon—that is, in plain speech, to prolong the agony and uncertainty, which is likely to have an extremely damaging effect on investment in this country for even longer than would be the case if it was triggered straightaway. Indeed, it looks to me as if most of the two years provided for in Article 50 could well be taken up with the supporters of leave working out which of the future trading options with the EU we want to aspire to, because they certainly are not making a great deal of sense out of it yet.

On what basis do the supporters of Brexit base their sunny optimism as to the outcome of those negotiations? It is certainly not on any contact with the leaders of the 27 other member states who will be on the opposite side of the table from us—as far as I can see, none of them has had any contact with them at all. Meanwhile, the leaders of the leave campaign miss no opportunity to insult the other member states, and proclaim that they want to destroy the European Union or even, with supreme arrogance, that they want to give them a lesson and a wake-up call. Is that likely to encourage them to give us a good deal? I rather doubt it, even if they are not likely to be heavily preoccupied with the risk of contagion to their own protest movements if they are too generous to us. It is honestly no good saying that the Germans will still want to sell us BMWs and the French will still want to sell us wine. That is the politics of the saloon bar, not of the negotiating table.

The second report, on EU membership and UK science, on which I welcomed the introduction from the noble Earl, is equally sobering, as is the virtually unanimous view of our universities and research establishments that withdrawal would be seriously damaging to them. We have heard plenty of evidence of that. It is not just a matter of EU funding, of which, of course, we get a disproportionately large share—although, given the steady reduction in the Government's own contribution to our scientific budget in recent years, it is a little hard to believe that they will leap forward and substitute for it with great alacrity. But there is also the important issue of collaboration, to which many noble Lords, including the noble Lord, Lord Taverne, referred. The studies done by Universities UK showed, if I understood rightly, that every pound, dollar or euro put into research in this country was worth 1.4 times as much if done within a collaborative European programme as if it was done in a purely national programme. That is not to be discounted. The scientific effort being made here and elsewhere in Europe is a crucial part of our national capacity to compete effectively in the decades ahead. It should not be subjected to a game of Russian roulette by politicians who have devoted a good deal more of their time to the humanities than they have to the sciences. I confess that I am one of those.

The noble Lord, Lord Boswell, was quite right to say that the three reports are not partisan, but I am sorry if I offend him by saying that all three are basically building blocks in the remain argument. They all represent compelling arguments why remain is in the national interests. When we meet next in this

House, the die will have been cast. If, as I hope, the majority vote to remain, it will be important for the Government to set out and implement an agenda that enables us to play a leading role in a reformed European Union, to which we are committed as a wholehearted and constructive member. If the result goes the other way, some of us may be accused—I expect I shall be—of being bad losers. I would not accept that deploring an outcome that will, irretrievably and in a lasting manner, damage our economy, weaken our security and diminish our role in the world, is worthy of that characterisation.

2.53 pm

**Baroness Neville-Jones (Con):** My Lords, I contribute to this debate as a member of the Science and Technology Committee, which reported on EU membership and UK science. I declare an interest as a member of the Engineering and Physical Sciences Research Council. I take this opportunity to thank our chairman, the noble Earl, Lord Selborne, for the excellence of his chairmanship, and also thank our committee clerk and advisers for the support that they gave us, which was of the highest quality. As our chairman said, it was not our aim to pronounce on the merits of UK membership from the point of view of UK science—rather, our approach was forensic. Our chairman has laid out our conclusions clearly and cogently, and I am not going to repeat what he has said, or repeat the points of other members of the committee. Instead, I shall try to make a few additional and separate points.

There are many contributors to the debate today and I shall be brief. Before I make a few points that struck me in the course of the committee's work, I want to say how dismayed and alarmed I am by the way in which the pied pipers of leave are attempting to lead the people of this country into a dark mountain from which we can only emerge reduced and poorer. Pace the noble Lord, Lord Howarth, I see no exhilarating distance in front of us, on that route.

My noble friend Lord Howell made some very pertinent points about how the world is going, and he is quite right about that. He is also quite right to suggest that the change and reform agenda in Europe has a long way to go. But the conclusion that I draw is that we are more likely to see that come about in a form that suits us, and sooner, if we are active from inside the political heart of Europe.

I turn to our report. Hardly surprisingly, we found that the overall picture was not one of unmitigated benefit. As our chairman has said, the biggest complaint was about regulation—not the principle of regulatory harmonisation, which was accepted as being necessary and valuable, but some of the EU regulatory regimes, which have been politically driven, with highly negative results for important things such as genomic science and clinical trials. However, we should not delude ourselves into thinking that we do not contribute sometimes to those outcomes—we do. A credible mechanism for the injection of scientific advice into policy-making in the Commission has at last come about, and that will be a very salutary safeguard, provided that it works well; we have yet to see how effective the scientific advice will be. The European Union is ahead of many member states in doing

[BARONESS NEVILLE-JONES]

this—not the UK but many others—and I hope that it will contribute to preventing lobby-driven law-making, particularly in the European Parliament.

The overwhelming weight of witness opinion before us was in support of the value of EU membership to UK science. This positive verdict has, in the last few days, been strongly endorsed by British Nobel Prizewinners. First, the funding coming from EU sources was very highly valued. As other noble Lords have commented, the UK does disproportionately well in getting hold of EU money, and I might add that engineering does particularly well. This country has a history of neglecting engineering—to our cost, I might say—and nearly half the increase in engineering funding has come recently from EU sources. EU funding might not be so important were the UK to put the level of funding into science that our comparators spend. Most countries are increasing their spending on scientific research, but we in the UK are cutting back. We consistently underfund by relevant international standards, so EU money helps to make up a gap that would otherwise be bigger. I would like to see those trends reversed but, in the present state of affairs, it matters to us a great deal that EU money is forthcoming. I do not believe that, were the UK to decide to leave the EU, that gap would be made up by national funding, let alone exceeded. No one before the committee gave any suggestion that EU scientific programmes were in any way misdirected. On the contrary, the general feeling was that they were extremely relevant to the future of big science.

Secondly, the enthusiasm for the scientific network built up and the work done in UK universities as the result of the free flow of scientists from other European countries was very marked. Enriching was the word used. There are many reasons for this, including the fact that the base is the Erasmus programme and students coming to this country for first degrees then stay and do advanced work. Twenty-eight per cent of academic staff in UK universities are non-UK nationals, of whom 16% come from other EU countries, often bringing salary funding with them, which helps our universities, and 60% of the UK's internationally co-authored papers are with EU partners. That is not an insignificant intellectual and other contribution. Given the high reputation of UK science, it cannot be argued that EU quantity is at the expense of British quality. Something very precious to science in the UK has been built up which has helped to consolidate the leadership we hold. Collaboration is the key to that. I should hate to see it undermined by a sapping of the flow of students and researchers coming from our European neighbours.

Thirdly, our weakness in translational activity and the links between science and business which are so important to innovation showed up in the European story. British business did not respond to the call for evidence and, as our chairman has said, while SMEs evidently value European funding and apply for it, larger British companies do not. Our witness from Siemens commented on this and clearly thought the UK was missing a trick. He is right, so it is doubly important that the Government, in their forthcoming extensive

restructuring of UK publicly-funded research and innovation do not mess up the role of Innovate UK. That, however, is a debate for another day.

3.01 pm

**Lord Judd (Lab):** My Lords, like others, I thank most warmly the members of the committees whose reports we are discussing. I particularly thank the leadership of those committees. The noble Lord, Lord Boswell, made a fine, outstanding, balanced and telling introduction to this debate. I have been privileged to serve on a Select Committee under the chairmanship of the noble Earl, Lord Selborne. I remember and treasure that experience because he was a particularly effective chair, not least because of his open-mindedness and his firm views about where the committee should be going.

Those of us who come down in favour of remaining, as I heavily do, must not run away from the realities that surround us in society as a whole. There are real anxieties, however well or ill-founded, among the people of Britain. I shall pick two which in our future in the Union, which I hope we will have, we must take very seriously. The first is not so often expressed, but I am certain it is there. It is resentment at what people see as elitism in the working of the community, an arrogant bureaucracy which is, for many people, underlined by its very expertise. They do not feel involved in that expertise or relate to it, and therefore it can come across, however unfortunately and however far it may not be true, as a kind of institutional arrogance. What is more, those of us who have been caught up—and I was a Minister working on European affairs way back in the 1970s—become part of that in club. We will have to tackle that issue resolutely in our future in the Union. It is unfortunate that we ever moved away from indirectly elected assemblies, as they then were, because with the large impersonal Parliament we have, there is a tendency for it to be remote from the people, not to have to take as seriously as it should the real issues and anxieties being debated in member countries and their Parliaments and to breed national Parliaments that do not have a feeling of responsibility for European success. From that standpoint, it was sad that we did not remain with an indirectly elected assembly.

The other big issue has hardly been mentioned in today's debate. It is immigration. I live in Cumbria. All the social surveys done in Cumbria find that it is one of, if not the, counties with the smallest amount of immigration. They also find that it is one of the counties with the highest rate of anxiety and prejudice about immigration. That is interesting. National Parliaments and Governments have been responsible for greatly neglecting the realities of how immigration works. We have not been giving priority to the housing, schools, hospitals and infrastructure of the areas in which the majority of immigrants settle, and therefore existing issues of deprivation, the unequal provision of services and the rest become underlined. We should also help with positive social policies on integration and on how people can be helped with language and, let us face it, behaviour to become part of the traditions and realities of the society in which they are living.

If we are speaking of immigration, the point that must be made very firmly is that anything we are

encountering and the pressures we see today are small compared to what is going to happen. It is certain that with climate change and the other issues, not least the associated political problems that will arise from them, we will see the issue of immigration growing all the time. Let us remember that countries such as Lebanon and Jordan already have migrant populations that almost equal the size of the population of the country concerned. We will have challenges ahead.

I have said before in this House that I am not ashamed of putting this as a father and grandfather, although I think it is true for our generation too. The overriding reality is that whether we like it or not or may wish it were not the case—I happen to enjoy it—we are part of a totally interdependent world. That cannot be escaped. It is true economically, in terms of security and increasingly in terms of health and in almost every dimension of life that one can think of. The challenge to us as politicians in various countries is to find a way of meeting that challenge of interdependence and a means of governance that can make a success of an interdependent community rather than turning into a frightened, paralysed international society. What worries me is that within so much of the Brexit debate there are—I am sorry to put this bluntly—all the manifestations of insecurity and inadequacy.

Do we want a Britain that is self-confident, outward-looking, sees and accepts the challenges and says, “It’s exciting and fulfilling to meet those challenges”, or do we want an introspective society frightened of the world and becoming, in its language and in other ways, increasingly aggressive in its defensiveness—a kind of raft floating out into the Atlantic, almost sinking under the weight of the missiles, defence systems and bureaucracies that will then become necessary? I want to belong, and I want my children to be able to belong, to a self-confident, outward-looking Britain that sees itself as part of the world, sees its challenges and says, “We are determined to play our full part in meeting those”. Of course Europe is not the total solution—after all, the size of the issues we face is global—but it is a very good starting point for playing a full part, together in Europe, in the wider world.

3.11 pm

**Lord Watson of Richmond (LD):** My Lords, I declare an interest as high steward of Cambridge University. In that context, I was particularly delighted by the remarks of my noble friend Lord Taverne. I endorse the harsh reality that the pre-eminence of our science, and the pre-eminence of Cambridge University in particular in science, would certainly be damaged by exit from the EU. It is simply a fact.

With every day that passes in this European referendum, I am seized by the folly of the enterprise. It has been born of divisions within the Conservative Party, and its outcome, whatever it may be, will certainly not resolve them. Thus far the referendum has in fact exacerbated them. It started before the last general election, essentially as a tactic to outmanoeuvre UKIP and Eurosceptic activists in Tory constituencies. As such, it was rendered pointless by the outcome of that election—but the die was cast, the commitment

was made and the outcome can deliver one of only two verdicts on the Prime Minister: he will go down in history either as the Prime Minister who took us out of Europe by accident and miscalculation or as a kind of Houdini who, as with the Scottish referendum, at the last moment escaped fate with a final flourish.

Is “folly” the appropriate description of this enterprise? I believe so. It is hard to describe it as anything else when Boris Johnson, the most conspicuous contender for the hollow crown, thinks that the prize justifies questioning the motives of President Obama’s interventions on the grounds of his part-Kenyan ancestry, or feels persuaded to claim that the European Union is an attempt to impose Hitlerian unity on Europe by other means. These are surely the cadences of folly.

If the genesis of this referendum lies in the long-festering blue-on-blue clash within the Conservative Party, it has now enveloped all parties, all parts of the United Kingdom, all the nations of the European Union and the transatlantic relationship itself. The principal consequence of the referendum is division—indeed, a welter of different divisions that collectively and cumulatively jeopardise to a real extent the unity of the people and indeed of our society. These divisions pull us apart, as an authoritative analysis published by the *Financial Times* on 2 June demonstrated all too painfully.

There is the evident division between majority and minority attitudes in London, and between London and many other parts of England. Then there is the division between sentiment in Scotland and England and, possibly, between opinion in England and Wales. Within the framework of devolution and the evolution of separate parliaments, there is the promise of further serious trouble ahead. Then there are the divergences between young and old, between better educated and those less fortunate, and between those more prosperous and those less so. Above all there is a psychological divide, as has been referred to in the debate, between optimism and pessimism.

Both sides can and do claim self-belief, and I believe that both share patriotism. But the prominence of immigration in this referendum shines a harsh and revealing light on the whole enterprise. The division here is more than a row about statistics; it is a thermometer taking the temperature of who we think we are. Of course, this is not unique to us: the Americans are torn by the issue of immigration and it lies at the heart of Europe’s crisis. However, is our reaction to reject international interdependence, build walls and draw up drawbridges? If it is, we are indeed at risk.

There is of course nothing wrong in facing up to fundamental issues, even if so often they are deeply divisive and painful. It is the process of democracy. But we should remain increasingly vigilant that referenda are not allowed to replace the power and responsibility of Parliament. Here again, folly lurks in the wings. The public have been encouraged by both sides to see the referendum as decisive, and historically it may prove to be so. But if decisiveness is assumed to deliver instant or even rapid change, the public will have been misled and indeed deceived. The excellent and worrying

[LORD WATSON OF RICHMOND]  
report of the European Union Committee on the process of withdrawing from the EU contains judgments that make a mockery of the expectations engendered by the referendum. First, as paragraph 15 says:

“There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations”.

Secondly, paragraphs 31 and 34 of the report state that if a majority on 23 June is for Brexit, the United Kingdom will need to negotiate two treaties, one for withdrawal and, in parallel, one to establish our future relationship with the European Union, including terms of access to the single market. Given that the single market is where half our exports go and that it is vital for attracting inward investment from countries such as the States, India and South Korea, the second, parallel negotiation is vital to whatever Government negotiate on our behalf. The parallel negotiation will be tortuous and tense. As one witness to the committee said, the United Kingdom will be presented with “almost unimaginable ... long-term ghastliness”, given the legal complications involved.

I shall cut to the point. The parallel negotiations, let alone those involving EU legislation embedded in Scottish legislation, may well outlast the life of this Parliament and indeed of this Government. Instant resolution is a myth; it is not going to happen, and to appear to offer it is folly. One matter is clear: this perilous and hugely demanding series of negotiations that Brexit must involve requires a Government who are united and command a majority in Parliament. For this to be achieved may require, whatever the constitutional difficulties, a further general election.

I have spent a large part of the last two years writing a book about Winston Churchill in 1946. During that period he made two very famous speeches. One was at Fulton, Missouri, where he revealed to the American public that Joe Stalin was not good old Uncle Joe at all but a tyrant determined to extend his control over the rest of Europe, and he appealed to the Americans to come to Europe’s defence—which, thank God, they subsequently did. If we ever wonder whether Mr Obama has a right to offer his opinion, surely what the Americans did then and in the post-war period justifies it.

Churchill made the second speech six months later in Zurich—the so-called “let Europe arise!” speech. In it, he said to his audience, “I am going to startle you”—and he did, because what he proposed was a kind of united states of Europe which would be led by a partnership between France and Germany. He did not propose that we should join it—it was not there—but he said that we should unequivocally support it, and he was absolutely right. That second speech had as much impact as the first. The first, arguably, kicked off the process that led eventually to NATO and the defence of Berlin. The second definitely kicked off the process that led to Marshall aid and eventually to the European Coal and Steel Community.

I have been asked by many people—it has been discussed in the media a great deal—what Churchill’s view would have been. Of course, we do not know, but there is something that we should remember. Churchill

advocated and supported Franco-German unity and a kind of united states of Europe because he believed that Britain’s place in the world turned decisively on being at the centre of three great circles of influence: the English-speaking world outside the United States, the Commonwealth; the United States; and Europe. He also believed that if we allowed ourselves to be pushed out, or took ourselves out, of any one of those three circles, we would be critically damaged and diminished in the remaining two. If we do that now with Brexit, I believe that that will again be the case.

3.22 pm

**Lord Low of Dalston (CB):** My Lords, as I listened to the wonderful speeches of the noble Lords, Lord Jay, Lord Cormack and Lord Bilimoria—picking just three out of what could have been a much larger number; I could certainly have included the speech from the noble Lord, Lord Watson, which we have just heard—I found myself lamenting with a sinking feeling the fact that we did not hear more of them on the airwaves than Messrs Johnson and Gove and the other mendacious purveyors of snake oil, to whom we are so relentlessly subjected.

We should be grateful to the noble Lord, Lord Boswell, and his committee for making clear, particularly in their report on the process of withdrawing from the EU, a number of things that will be of pressing concern if the British people vote to leave the European Union. However, while the noble Lord’s committee has done us a signal service in helping to get to the bottom of these questions, I hope that they will remain purely academic, because I hope that the British people will not vote to withdraw from the European Union.

I say that as a disabled person because it is clear to me that disabled people will get a much better deal by remaining within the European Union. I therefore propose to come at this from a slightly different—I hope not too self-regarding—angle. In so far as it is self-regarding, I declare my interest as a disabled person, but I venture to think that what I say about the situation of disabled people could be said, *mutatis mutandis*, about numerous other specialised constituencies.

As president of the European Blind Union between 2003 and 2011, I was involved in advocating for disabled people’s rights at a European level. On the basis of that experience, I would argue that we were able to achieve a great deal for disabled people using EU mechanisms that we could not achieve at a national level. I said something about this in the debate on the humble Address three weeks ago, but I am even clearer about it now, having attended a seminar last week where disabled people considered whether they would be better off in or out of the EU. They were in no doubt that they would be better off in.

I could illustrate that by reference to a number of areas where the EU has competence to legislate, but I will limit myself to the single market, where disabled people probably have most to gain from remaining within the EU, and will take as examples just three pieces of legislation or proposed legislation.

In 2014, disabled people successfully influenced the revision of the EU’s public procurement directive. Accessibility is now a mandatory criterion for all

public tenders above a certain financial threshold. According to the European Commission, public procurement accounts for 14% of the EU's GDP. At home, according to a 2015 House of Commons briefing paper, in 2013-14 the UK public sector spent a total of £242 billion on the procurement of goods and services—33% of public sector spending. In sectors such as energy, transport, waste management, social protection and the provision of health and education services, public authorities are the main buyers, so public procurement regulations offer a substantial lever to improve accessibility and bring about change, just as they did in the United States many years ago.

Turning to accessibility of the world wide web, despite initial strong resistance from national Governments, we are now on course to have a European directive that will ensure the accessibility of all public sector bodies' websites. It will cover their mobile applications and include an enforcement mechanism. This will ensure that disabled citizens can access e-government services right across Europe. In conjunction with the previously mentioned new rules on public procurement, this directive should ultimately ensure that industry delivers digital solutions that are accessible to all. We already have European standards for accessible information and communications technology—ICT—but technology is moving very fast in this area and it is good to have this new legislation to ensure that disabled people are able to keep up.

Finally, on accessibility of goods and services, the European Commission has now tabled a proposal for a directive that would harmonise accessibility requirements across the EU on a wide range of goods and services, including smartphones, computers, ticket machines, ATMs, retailers' websites, banking, e-books and associated hardware, such as Amazon's Kindle, as well as audio-visual media services and related equipment. Travel-related information is also included. Items not complying with the standards will not be able to be brought to market.

In the UK, neither the Disability Discrimination Act nor the Equality Act applies to manufacturers and manufactured goods. At first sight this is unfortunate, because that is where many accessibility barriers are built into the things that we need to use to live independently, to keep in touch with friends and family and generally to be part of the world in the same way as everybody else. But what initially looks like a major defect in disability legislation may ultimately be for the best. A harmonised market of 500 million EU consumers is far more attractive to industry than the much smaller UK market, and a common set of accessibility standards will drive innovation and encourage investment. This proposal does not include everything that one would want—it does not include white goods such as washing machines or microwaves—but it does provide a very good basis for legislative change.

Disabled people in the UK and across Europe have much to gain from the proposal for a European Accessibility Act, which is probably the most important piece of disability legislation yet to come out of Europe. In the debate on the humble Address, I spoke of one's general philosophical orientation being more important than what the noble Baroness, Lady Ludford, who will

be speaking after me, more aptly termed "bean counting". What I omitted to say was that, whereas the UK is often spoken of as punching above its weight, I have absolutely no doubt that, if we were to withdraw from the European Union, we would soon find ourselves punching well below our weight.

3.29 pm

**Baroness Ludford (LD):** My Lords, as a fully signed-up member of the Boswell fan club, I was very impressed not only by the report but by its introduction today from the noble Lord, Lord Boswell. It has been very useful to have the three reports melded into one debate. I was a little uncertain about that originally, but I have been proved wrong, not least because of the reform and withdrawal elements being brought together but also because we have had a very strong contribution on the scientific work that is supported by the European Union. I agree with the noble Lord, Lord Hannay, that, as an arts person, the more I learn about science, the better.

It has been amply demonstrated that the leave campaign has no feasible post-Brexit plan: it would be a leap in the dark, as the noble Lord, Lord Liddle, said. Others have also emphasised the dangers of a chaotic withdrawal in the context of a lack of trust, as my noble friends Lady Falkner and Lady Smith said. The noble Lord, Lord Jay, reminded us that the negotiations would be of a hardball nature, with up to 10 years of fraught discussions. The noble Lord, Lord Howell, recalled that we are not Canada or Japan. We are in Europe, and so we cannot use those models to guide us.

To the noble Lord, Lord Pearson, I say that what the remain campaign and most people in this debate are talking about is Project Reality, not Project Fear. It is about what will happen if, due to what I and others would regard as a very bad decision, this country was to decide on Thursday next week to leave the European Union and follow the Pied Pipers of the leave campaign—a phrase which I have pinched, and will probably use again, from the noble Baroness, Lady Neville-Jones.

I was impressed by the recent entry of former Prime Minister Gordon Brown into the heat of the campaign. He has not traditionally been associated with passion but more with post-neoclassical endogenous growth theory. However, he has come up trumps—not Trump, I hasten to add—with his video filmed in the ruins of Coventry Cathedral. I saw one reference to that video having had 2 million views, and that was a day or so ago.

The Select Committee's report noted how the Government's approach had downplayed any visionary or emotional element in their proposals for the future of the EU, focusing almost exclusively on pragmatic and transactional arguments—although that has improved in recent months. Of course, pragmatic arguments are essential, but a dose of what the noble Lord, Lord Boswell, called "feelings and ideals" has the advantage of putting everything in context, set against the past and looking ahead to the future. The noble Lord, Lord Browne, referred to his family history to illustrate the inspiration for the EU. That resonates, and is something that has not come out enough in the

[BARONESS LUDFORD]  
referendum campaign. I was at a meeting last night, and the biggest applause of the evening was when I got a bit emotional about the 70 years of peace that we have had.

It is not just vision and emotion that need to be taken into account; we need also to look at the factors beyond the economic, important as those are. The geopolitical and strategic implications of the UK's exit from the EU are considerable, as is touched on in the EU Committee's report, and would mean a hit to our security through the loss of key EU co-operation instruments and a loss of diplomatic and political influence.

Following a short break earlier, I came back to the Chamber in the middle of the speech by the noble Lord, Lord Howarth. He enumerated the very unpleasant political forces that are abroad on the continent. We are pretty disputatious as a nation, but we are largely free from the nastiest of the political elements. The injection of our history and stability is much needed in Europe. A couple of days ago, the *Financial Times* commentator Wolfgang Münchau said that,

“whatever the referendum's outcome, the chances of the UK playing an active role in shaping Europe's future are minimal”.

I hope that we will be able to prove him wrong.

I also hope that, in just over a year's time, the UK will be about to assume the presidency of the EU as a leading, not a leaving, member—in the words of my noble friend Lord MacLennan, echoed by the noble Lord, Lord Hannay. I hope that we will be able to commit to making the EU more streamlined, more effective and possessing of greater legitimacy. I believe that the EU is democratic, with directly elected MEPs and elected Ministers in the Council. However, what we have is a legitimacy deficit. As the noble Lord, Lord Judd, mentioned, we can bring confidence and our outward-looking approach to improve the European Union.

The remain side is not complacent about the current state of the EU, which the noble Lord, Lord Howell suggested. However, he is absolutely right that we have to prepare the EU for the storms to come. It must lift its eyes to the horizon and not be introverted. We can contribute so much to making the EU stronger in addressing the many challenges that there are. For example, we can contribute to making Europe more competitive, with a growing economy, and more ambitious in trade deals. We can also contribute to a Europe that distributes more fairly the gains from globalisation, as the noble Baroness, Lady Armstrong, remarked.

The noble Lord, Lord Low, spoke very interestingly about the contribution of the EU to accessibility criteria for goods and services. That is essential. We all know what we need to compete in a single market, and there are digital, energy and financial services dimensions.

I absolutely agree with the noble Lord, Lord Boswell, that we have wasted the enormous asset that was the balance of competences review. No other member state has done anything so comprehensive. So please, after next Thursday, when, as I sincerely hope, we vote to remain, let us use the information and contributions in that review. It is disrespectful to everyone who did

so much work in contributing to and writing up the report not to draw on that exercise. It would help the EU get smart regulation. Let us build the quality, not the width.

The noble Earl, Lord Selborne, strongly emphasised the importance of a strong regulatory framework in the EU as providing a good basis for scientific collaboration. He also highlighted the things that had not worked so well. However, I am glad that, for example, in the clinical trials directive, the Brussels machine did listen and improve that.

My noble friend Lady Sharp made interesting remarks on the bureaucracy around grants. There is a bit of a “cannot win” dilemma for the European Commission. With the Court of Auditors breathing down its neck, maybe 30-page forms are necessary to be able to audit and track the funds. What I would like to see is Finance Ministers and our own Chancellor sign declarations to say that all money spent in their member states is properly spent. Funnily enough, they never want to do that, because they quite like Brussels being blamed.

So many speakers—too many for me to name them all—emphasised how Brexit would severely hit our universities and scientific collaboration, which has been such a success story. That feeds into the reform of the European budget. Big progress has been made, but more needs to be done with the continued switch to innovation, research and infrastructure. We can do that only if we are in there arguing for those changes.

Also, of course, we are very aware of our unique contribution in security and counterterrorism. The UK is a crucial partner. Having the current director of Europol and the former president of Eurojust, the network of prosecutors, is, I think, a tribute to our first-tier legal and policing status. On defence, foreign policy and the European neighbourhood, we need to capitalise on what my noble friend Lord Watson called our “three circles of engagement”—Europe, the Commonwealth and the transatlantic relationship. There is no country in the world that has the networking assets that we have. We are a sort of *Tatler* of the diplomatic and political world.

I shall say a word on migration, which is an important part of this campaign—and not only external migration, where we must work with the rest of the EU to get a credible policy of migration management, whose challenge is only going to grow, coupled with development aid, as the noble Lord, Lord Hastings, said. On intra-EU free movement, we have had very helpful judgments from the European Court of Justice, including one just yesterday about the payment of child benefit, which have confirmed that free movement is the right to move for a job. It always was, but there has been clarification and firming up of the rules, including through the Prime Minister's renegotiation. We need to do two tough things. One is making sure that public resources are targeted at areas in this country which are under migration pressure, and being more nimble in switching the money. The other is the investment in training and skills for our own young people so that employers do not automatically put advertisements in Polish newspapers.

Lastly, I shall say a word about our engagement with the EU institutions. It will not come as a surprise, perhaps, to the noble Lord, Lord Judd, that I, as a former Member of the European Parliament, do not agree with his regret regarding a directly elected European Parliament. We certainly need much better partnership between the European Parliament and national parliaments. Perhaps one little step that we could help achieve would be to give MEPs a pass for the Palace of Westminster. It is absurd that we regard MEPs as some kind of foreign body that should not be allowed on the premises. The stress in the reform report on allowing national parliaments a positive and proactive role—a green-card role, not just a reactive and negative red-card role—is very important.

Many remarks have been made, including by the noble Lord, Lord Browne, about the importance of having British officials in European institutions. I think that there are two things the Government could do. They could revive and beef up the fast-stream program in the Civil Service to prepare people for the “concoors”, or competition. Also, as far as I know, they have not reversed the much-regretted decision of some years ago to cease funding scholarships at the College of Europe in Bruges—you could call it the Eton of Brussels—which helps provide a channel into the EU institutions.

We need to be careful what we wish for in a “flexible, multi-layered, diverse Europe”. That is fine, as long as it does not become a pick ‘n’ mix, where we end up losing out. Therefore, I end on the warning from Manfred Weber, the present leader of the EPP group, the biggest group in the European Parliament, who sounded a note of caution about British exceptionalism. We are not in the euro; we are not in Schengen; and I wish we had not been half-hearted about justice and home affairs co-operation—and thank you to everybody in this Chamber who worked so hard to get us opted back into the 35 measures. We need to be very careful that we do not undermine the voice of British Members of the European Parliament in getting senior positions, such as chair of the Committee on Economic and Monetary Affairs, which my colleague Sharon Bowles got in 2009. We should not undermine either the chance of that being repeated for the chair of the Committee on Civil Liberties, Justice and Home Affairs or our weight in the Council. I would say yes, perhaps, to a kind of special arrangement for the UK, because if that goes too far we will actually lose the leading voice that many of us here want.

3.44 pm

**Lord Collins of Highbury (Lab):** My Lords, I, too, thank your Lordships’ EU Committee for its excellent reports, and the noble Lord, Lord Boswell. The reports have focused on key issues arising from the Government’s negotiations and have addressed that vital question of plan B. Since their publication, events have overtaken us. With just seven days left, the shape of the campaign has been pretty well determined. As the committee demanded of the Government, I shall today focus on a positive vision for a reformed EU. However, there is no disguising what the committee highlighted and has been confirmed by the IMF, the OECD, the Bank of England and many economists a vote leave will lead to

a lengthy period of uncertainty while any future relationship with the EU is concluded, causing a serious shock to the UK economy.

The Brexit campaign cannot sweep away the effects of this period of limbo, as my noble friend Lord Liddle called it, nor can it dodge any longer the questions about what alternatives to membership may look like. Boris Johnson and Nigel Farage will take us back to a future reminiscent of the 1980s, when unemployment was said to be a “price worth paying” and things such as paid leave, health and safety and equality rights were considered red tape holding back progress.

However, as we have heard in this debate, the EU is not just about economic security; it is about a vision of a continent where co-operation overcomes conflict. As a nation, we have a moral and practical interest in preventing conflict, stopping terrorism, supporting the poorest in the world and halting climate change. Britain leads in Europe on these issues and, in turn, Europe helps to lead the world. Those who advocate that Britain should turn its back on the European Union have a very heavy responsibility to prove their case.

As the committee reminded us, the Government were clear throughout the negotiations that their support for continuing EU membership would depend on reaching a successful outcome. Yet the referendum question makes no reference to the “new settlement”. The simple truth is that this is not a referendum on David Cameron’s reforms; it is on weighing up the benefits of membership of the EU overall.

Nor is reform just about what Britain asks for now, as we have heard in this debate; it is a constant process of trying to make Europe more effective in generating jobs, investment, growth and security, and our influence in the world. Labour has an alternative agenda for progressive change in the EU: to strengthen workers’ rights in a real social Europe; to put jobs and sustainable growth at the heart of European economic policy; to democratise EU institutions; and to halt the pressure to privatise public services. It is a vision of a real social Europe, one which protects the “going rate” for skilled workers, prevents the undercutting of wages and directs EU funding to places where the pressures are greatest.

As Jeremy Corbyn has argued, the only way to secure these changes will be to remain in the EU. I am confident that the public will trust the Labour movement to stand up for working people rather than the likes of Nigel Farage or Boris Johnson. As we have read in the reports and heard in the debate, what progress we have made on reform will be lost if we vote to leave. Instead, we will be left with just two years in which to negotiate not only a new trading relationship with the European Union but also with the 53 other countries with which we currently have trade agreements because we are members of the European Union. We would be entering a negotiating process where EU member states would retain significant control despite the Commission having responsibility for its conduct. As the committee pointed out, there is the potential for some countries vetoing certain elements of the agreement to secure better deals on others. That is what negotiation is about, and if you think that can be conducted

[LORD COLLINS OF HIGHBURY]

quickly, you are living on a different planet from me. In effect, nothing would be agreed until everything was agreed.

One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the 2 million or so UK citizens living in other member states and, equally, of EU citizens living in the UK. As my noble friend Lord Judd said, for many people, immigration is the issue in this referendum. They feel that our country has become too crowded, that our services are under pressure, that we are losing our identity and that leaving the European Union would restore control over these things. We have an obligation to be honest with one another about the nature of the world in which we live and the changes that have happened—and will happen whichever way people vote on 23 June. Immigration into Britain will continue whether we stay or go, as the leave campaign has now admitted. Immigration brings challenges to the UK, which is why Jeremy Corbyn and Andy Burnham said last week that we want to see EU protections for people's wages and a special fund to help the most affected communities. But being in Europe helps Britain to control immigration so that it works for us. For example, it helped us to persuade France to move Britain's border from Dover to Calais. Leaving would put that at risk.

Anyone who thinks that voting leave will solve problems—such as the shortage of housing and the crisis in the NHS—in time will be bitterly disappointed. As we have heard in this debate, failure to prioritise those issues is the fault of government, not Europe.

What is plan B if the UK votes to leave? Will the Minister address how the Government plan to deal with the fundamental issues raised by the committee? What alternative arrangements are considered for the UK's Council presidency in the second half of 2017? What oversight will the UK Parliament have over the negotiations on withdrawal and the new relationship beyond existing ratification procedures? What is the Minister's assessment of the timeframe to disentangle EU law from domestic law and how this may impact on the devolved nations? Does the Minister agree that it may be necessary in the national interest to maintain a significant amount of EU law in force in national law?

As we heard from the noble Earl, Lord Selborne, the excellent report by our Science and Technology Committee makes a number of interesting points about the situation facing UK science if there were to be a Brexit. For example, it stresses that the UK is one of the world's leading scientific nations, in terms of both fundamental and applied research, and that we have retained this leading position in the face of growing competition from around the world. It also says that the overwhelming balance of opinion made known to the committee from the UK science community valued greatly the UK's membership of the European Union.

That point was made effectively by Sir Paul Nurse in his article in the current *New Statesman* edited by Gordon Brown—I strongly recommend that issue to all noble Lords. Sir Paul highlighted the recent survey in the science journal *Nature*, which showed that 83% of

UK scientists want Britain to stay in the EU—a much higher proportion than in the general population. That is because science flourishes in environments that pool intelligence, minimise barriers and are open to exchange and collaboration. The EU helps to provide such an environment, and scientists value it. There is no doubt that some will see no problems if the UK leaves the EU, but as Sir Paul says,

“the great majority of scientists”, support remain. He goes on:

“In contrast, hardly any accomplished scientists are arguing that leaving the EU would be good for UK science”.

Does the Minister agree with Sir Paul when he says that superb science is one of the UK's biggest assets, one that makes all our lives better? Over recent decades, the EU has played a critical role in helping UK science. What is good for science is good for the UK, and what is good for UK science is staying in the European Union.

In conclusion, I turn to my noble friend Lord Howarth and quote what I read in yesterday's *FT*, which summed up the position in which we now find ourselves. It states that,

“the continent's present troubles should serve as a reminder of its capacity for self-harm. The rise of populism, drawing from the well of economic and social discontent, carries disturbing echoes of the 1930s. A confident Britain would see this as a moment to lead rather than leave”.

**Lord Pearson of Rannoch:** Will the noble Lord explain the difference between populism and democracy?

**Lord Collins of Highbury:** Democracy is David Cameron and populism is Boris—what is his name?—Johnson.

3.57 pm

**The Minister of State, Ministry of Justice (Lord Faulks) (Con):** My Lords, this has been a fascinating debate. It has covered an enormous amount of ground and the House has displayed great expertise and, indeed, passion. I do not exclude from that observation, despite the fact that they were very much in the minority, the noble Lords, Lord Howarth and Lord Pearson.

I must say that I had no expectation of a reference in the debate to PG Wodehouse, which was provided by the noble Lord, Lord Hennessy, in his pertinent and witty speech. I am a little concerned that the great man might have supported Brexit, however. We even had an excursion into fairy tales. I got a little lost between the second bowl of porridge and the disadvantages of having a mistress, but, broadly speaking, I agreed with the noble Baroness.

I would particularly like to congratulate the noble Lord, Lord Boswell, chair of the EU Select Committee, and my noble friend Lord Selborne on their chairmanship of the committees which have produced the three reports before us today, and to record the Government's appreciation of the work of the respective committees. Naturally, I understand that the committees wished to have their reports debated before the date of the referendum, notwithstanding the fact that the government response will not be available until after 23 June. I do

not want to pre-empt the detailed response that will be provided. However, on this final day of business, I would like to take this opportunity to set out the Government's position on the referendum.

First, I want to restate what my right honourable friend the Prime Minister achieved in his renegotiation. This is also set out in the government paper *The Best of Both Worlds: the United Kingdom's Special Status in a Reformed European Union*. Last year, the Prime Minister set out to address four key areas in the EU where the UK wanted to see reform, and at February's European Council he reached a deal that delivered on all those areas. The noble Lords, Lord Boswell and Lord Jay, and the noble Baroness, Lady Falkner, suggested that insufficient attention had been paid to the settlement. I think they were right. On economic governance, he obtained permanent protection for the pound and our right to keep it, as well as guarantees that UK taxpayers will never be required to bail out the eurozone. We have protected the UK's rights as a country within the single market, but outside the eurozone, to keep our economy and financial systems secure and protect UK businesses from unfair discrimination.

On competitiveness, my right honourable friend secured from the EU and all member states commitments to reform the EU in line with the vision for a more globally competitive Europe which we and others share. The EU recognised the need to act to,

"promote a climate of entrepreneurship and job creation, invest and equip our economies for the future, facilitate international trade, and make the Union a more attractive partner".

The Prime Minister also secured a clear commitment to,

"doing more to reduce the overall burden of EU regulation, especially on SMEs and micro enterprises",

which account for 95% of all UK firms. There will be a new focus on further extending the single market to help bring down the remaining barriers to trade within the EU, particularly in key areas such as services, energy and digital.

Our new settlement has secured a clear commitment that the EU will pursue an active and ambitious trade policy with the world's most dynamic economies, prioritising the US, Japan and other important partners in the Asia-Pacific region and Latin America to reduce or eliminate the tariff and regulatory barriers faced by UK companies in large and growing non-EU markets.

The UK benefits from the EU's greater economic leverage, which has allowed it to negotiate advantageous free trade agreements with more than 50 other countries—agreements with terms that are far more favourable than any we could have negotiated on our own because of the combined negotiating muscle of a marketplace that is five times greater than our own. Concluding all the trade deals already under way could ultimately be worth in total more than £20 billion a year to the United Kingdom's GDP. Once these deals are completed, around three-quarters of UK exports to non-EU countries will be covered by EU-negotiated free trade agreements.

On sovereignty, the Prime Minister secured formal agreement that the UK will not be part of ever-closer union, that it is not committed to further political integration, and that the treaties will be changed to

that effect. We will also have new powers to block or remove unwanted European laws. Until now, there were insufficient means of stopping the EU from passing laws that should be left to individual countries. There was no way of introducing a "downward ratchet" to EU lawmaking, as the Foreign Secretary and others have long demanded. This has led to unnecessary regulation and interference. However, under the new settlement, the European Commission has committed to,

"establish a mechanism to review the body of existing EU legislation for its compliance with the principle of subsidiarity and proportionality".

This mechanism will ensure that the EU acts only where it really needs to do so. The European Commission will report its findings to the Council of Ministers every year. If Ministers decide that the EU has gone further than necessary, they will be able to ask the European Commission to withdraw or amend the legislation in question.

Finally, on welfare and migration, the deal secured new powers to tackle the abuse of free movement and reduce the draw of our benefits system. This will help to meet our aim of reducing immigration, by making sure that new arrivals from the EU cannot claim full benefits for up to four years.

The decision of the Heads of State or Government agreed at the February European Council is legally binding and irreversible. It has been registered with the United Nations as an international treaty. The February European Council conclusions and the texts of the deal agreed at that Council clearly set out the legally binding nature of the deal. This was briefly an argument mounted by the supporters of Brexit, that it was not binding, but I think that their argument has largely evaporated. It was in any event supported by the legal opinions of both the Council Legal Service and Sir Alan Dashwood QC. The deal is irreversible because it can be amended or revoked only if all member states, including the United Kingdom, agree unanimously.

The Prime Minister has, however, made it clear that more reform is needed; Europe needs to improve. The task of reforming the European Union does not end with this agreement, a point made in his characteristically thoughtful way by my noble friend Lord Howell. But as I have set out, our new settlement will give the United Kingdom a special status within the EU that no arrangement outside the EU could match. As the Government have previously stated, the UK's national interest will be best served by our country remaining part of a reformed EU. Membership of this reformed EU offers opportunity and security for jobs, investment and doing business, as well as for tackling crime and dealing with global issues such as climate change and terrorism. We also heard from the noble Lord, Lord Low, about the advantages to those who are disabled. It offers us certainty compared with years of disruption and the uncertainty of leaving for an unknown destination outside.

Ultimately it is of course for the British people to decide. The Government have a democratic duty to give effect to the electorate's decision. Should the majority vote to leave the EU, we would start the Article 50 process. As set out in the Government's own

[LORD FAULKES]

analysis, *The Process for Withdrawing from the European Union*, the EU treaties would continue to apply to the UK until the Article 50 agreement had entered into force, or for two years if no agreement had been reached and no extension to the two-year period had been granted. A request for an extension could be granted only with the unanimous agreement of the remaining member states, a point that is either ignored or not sufficiently understood by those who want us to leave. Perhaps I may refer noble Lords to Chapter 3 of the document, which makes this point:

“An extension request would provide opportunities for any Member State to try to extract a concession from the UK”,

which is hardly a strong negotiating position. Article 50 does not specify how much the withdrawal agreement itself should say about the future relationship between the EU and the departing member state. Any sort of detailed relationship would have to be negotiated separately from the withdrawal agreement using the detailed processes set out in the EU treaties. Article 50 does not specify whether these negotiations should be simultaneous or consecutive. This would be a matter for negotiation.

The use of Article 50 is unprecedented. Consequently, there is a great deal of uncertainty about how it would work. It would be a complex negotiation requiring the involvement of all 27 remaining EU member states and the European Commission. What is certain is that the UK's withdrawal from the EU would mean unravelling all the rights and obligations that the UK has acquired since accession, a veritable cat's cradle, as referred to by the noble Lord, Lord Hannay, ranging from free access to the single market, to structural funds for poorer regions of the United Kingdom, to joint action on sanctions. My noble friend Lord Caithness emphasised the complexity of the process and he was right to do so. Sir David Edward QC, a distinguished lawyer, said in evidence to the European Union Committee:

“The long-term ghastliness of the legal complications is almost unimaginable”.

The noble Lord, Lord Watson, also referred to that.

We would also need to negotiate a new relationship with Europe outside the EU. The Government have previously set out their view that leaving the EU would begin a process that could lead to a decade or more of uncertainty for Britain and for the economy. But what about the alternatives: what would this new relationship look like? The Government looked at a number of options in the paper entitled *Alternatives to Membership: Possible Models for the UK*. These included Norway, Canada, Turkey and a World Trade Organisation-only relationship. The paper summarises that:

“These models offer different balances in terms of advantages, obligations and influence ... the precedents clearly indicate that we would need to make a number of trade-offs”.

In return for full access to the EU's free trade single market in key UK industries, we would have to accept the free movement of people. Access to the single market would require us to implement its rules, but the UK would no longer have a vote on those rules. There is also no guarantee that we could fully replicate our existing co-operation in other areas such as cross-border action against criminals.

**Lord Pearson of Rannoch:** Before the noble Lord leaves the trade aspects, is he going to answer the points I put to him? For instance, they have two and a half million more jobs selling things to us than we do to them. Taking as I did the specific example of our motor trade, given that they send us 2.4 cars for every car we send them, and they have 64% of our market, are the noble Lord and the Government really saying that the eurocrats in Brussels would actually try to impose a tariff on that? Is it not perfectly obvious to anyone used to international trade that all this would continue as it does now?

**Lord Faulks:** The noble Lord is very confident about the future. I do not share his confidence. Of course trade will continue in one guise or another, but how can we be certain that the trade arrangements will be exactly as he would want them, given all the uncertainty that exists?

**Lord Pearson of Rannoch:** I am merely saying that they would continue as they are.

**Lord Faulks:** I do not think there is any guarantee of that. I will make some progress, if I may.

Full access to the single market would require us to continue to contribute to the EU's programmes and budget. An approach based on a free trade agreement would not come with the same level of obligations, but would mean that UK companies had reduced access to the single market in key sectors such as services—almost 80% of the United Kingdom economy—and would face higher costs. We would lose our preferential access to 53 markets outside the EU with which the EU has free trade agreements. This would take years to renegotiate, with no guarantee that the UK would obtain terms as good as those we enjoy today. In order to maintain the rights of UK citizens living, working and travelling in other EU countries, we would almost certainly have to accept reciprocal arrangements for their citizens in the United Kingdom.

As the paper also sets out:

“Whatever alternative to membership the UK seeks following a decision to leave the EU, we will lose influence over EU decisions that will still directly affect us. We need to weigh the benefits of access to the EU and global markets against the obligations and costs incurred in return. It is the assessment of the UK Government that no existing model outside the EU comes close to providing the same balance of advantages and influence that we get from the UK's current special status inside the EU”.

As to science and technology, we have seen both sides make their case for and against EU membership over the past few months. I am pleased that today, we have heard from members of the Science and Technology Committee, who bring another important angle to this debate, and to whose inquiry the Government have provided evidence. The UK plays a leading role in many aspects of EU research and science programmes. These provide access to opportunities of a different scale and scope from those that are possible nationally.

The UK received over £7 billion in EU funding for science and research between 2007 and 2013, second only to Germany. However, there is still scope for improvement, both in how the EU manages science funding and in simplifying the bureaucracy and

transparency of funding instruments. The Government are keen to ensure that EU decision-making is based on the best scientific evidence. The UK has robust systems in place for providing science advice to government. Similar systems at EU level are currently being reformed.

Universities and science Minister Jo Johnson gave evidence to the inquiry earlier this year, saying:

“Britain’s success as a science powerhouse hinges on our ability to collaborate with the best minds from across Europe and the world. This report is further evidence that the UK’s influential position would be diminished if we cut ourselves off from the rich sources of EU funding, the access to valuable shared research facilities and the flow of talented researchers that provide so many opportunities to our world-leading institutions”.

I will conclude by once again welcoming these reports. The noble Baroness, Lady Smith, rightly described them—perhaps rather rare in this debate—as showing objectivity. The Government will respond in due course, but I am grateful for all the contributions noble Lords have made to the debate today.

I have described the reforms that the Prime Minister secured in the UK’s settlement with the EU. There is of course more work to be done in reforming the EU, but the settlement shows the commitment of the European Commission and all 27 other countries in the EU to taking action. *The Best of Both Worlds: the United Kingdom’s special status in a reformed European Union* sets out the Government’s view that the UK’s national interest is best served by remaining in a reformed EU.

I have explained that the process of withdrawing from the EU is untested. The UK and the 27 other member states, along with EU institutions, would need to negotiate the UK’s new relationship with the EU. There would be difficult trade-offs, and this would lead to a considerable period of uncertainty, as we set out in the government paper.

On EU membership and its relationship to UK science, I have taken note of the committee’s report and restated the Government’s position that they believe the UK’s influential position in this field would be diminished if we cut ourselves off from EU funding, shared facilities and talented researchers.

As my right honourable friend the Prime Minister has said, this will be a once-in-a-generation vote. The Government’s position is clear. Our new settlement resets the balance in our relationship with the EU. It reinforces the clear economic and security benefits of EU membership, while making it clear that we cannot be required to take part in any further political integration. It creates a mechanism for reviewing existing EU laws and ensuring that decisions are taken at the national level whenever possible. It is in our national interest to remain in that reformed EU.

My noble friend Lord Cormack rightly referred to paragraph 258 of the committee’s report on the EU referendum and reform, with its emphasis on values as well as pragmatism. What unites the 28 member states is much greater than what divides them. I hope noble Lords will forgive me one personal observation, just as the noble Lord, Lord Browne, provided one. My grandfather fought at the Somme. My father fought in a number of theatres of war between 1939 and 1945.

My generation has been spared that. We should not take peace for granted. For all its imperfection, the EU has helped to provide peace. It represents values that endure. Let us remain within it.

4.16 pm

**Lord Boswell of Aynho:** My Lords, the House will be grateful to the noble Lord, Lord Faulks, for his generous response to our three committee reports collectively, and for the tone in which he explained the Government’s position. I was rather moved by his final remarks, although that will not shake our formal position of independence on this issue.

As the noble Lord said, this has been a very remarkable, extended and unusually balanced debate. The epithets I will attach to it are “rich” and “reflective”, because it has gone through a very wide area. As I indicated at the beginning, I have welcomed the contribution on science, which has added to the debate. We have ranged widely and properly through subjects such as, from the noble Lord, Lord Hastings, the position of the poorest countries of this world in relation to this, which we so often forget, and, from the noble Lord, Lord Low, disabled people. This matter touches us all.

Inevitably, I will concentrate more on the political, diplomatic and legal matters. There will not be time to comment on everyone’s contribution. If I may single out without invidiousness the noble Lord, Lord Howell, who often takes the House to another stage of perception towards the future, he chided us a little bit—and rightly so—for perhaps not giving a full flavour of that vision, although we said that the Government needed to do that. We certainly do have a contribution to make in this House and through our committees in taking the argument further, whether we stay in or move out. One of our sub-committees has very recently reported on digital platforms—one of the subjects that the noble Lord specifically mentioned. As it happens, its last report was on the control of pilotless drones, so we are keeping up with this. In fact, we took some of that sub-committee’s observations to an international meeting only this week, where we shared them with colleagues. So we will not mess about with that; we will do our wider duties as well as the more particularly political ones.

I will turn to two areas that I think have not had quite enough attention in this debate but which reflect, in a sense, the remit of our committee. Of course, we report to this House, but one area which is certainly not our direct responsibility but which we should bear in mind—some noble Lords referred to it—is the question of our colleagues, the other 27 members of the European Union. Occasionally, some of the public comment here suggests that we operate on our own without reference to them, but I will pick up, on this occasion entirely with approval, the remarks of the noble Lord, Lord Pearson of Rannoch, who said that we are not their enemies. Of course we are not their enemies. Indeed, we do not want to make them our enemies; we want to have a good relationship.

If I may refer again to the international conference I have just attended on behalf of the House with the noble Baronesses, Lady Falkner and Lady Armstrong,

[LORD BOSWELL OF AYNHO]

who both contributed so thoughtfully to this debate, we had all the other 27 member states represented, in one form or another. Though they did not make large, pro-forma pronouncements, the number of them who came up to us in the margins and said, “What is going on? We are concerned about this. We are concerned for ourselves as well as for you”, was quite remarkable.

The second constituency I am conscious of—and while I do not expect people to read every word of our report I hope that some of the messages will distil—is the wider constituency of the electorate who have to make this decision next week. We have a lot of people who yearn for clarity, objectivity and a degree of sensible, sober presentation, and, as a number of noble Lords have said, they do not feel that they have entirely had it yet. I would like, in concluding this debate, to draw out two areas.

The first is the complexity side of all this, perhaps best expressed in our short report on withdrawal. In looking at that, I would say to people who have not read it, “Just read the appended Article 50”. If that is too long—and the number is just a coincidence—just read Sir David Edward’s evidence at paragraphs 49 and 50, the latter of which has been referred to by a number of noble Lords, including the Minister. This is a very complicated process. It involves us all. We do not always remember that it involves us all. I have declared, although I did not mention it this afternoon, that I am in receipt of payments under the common agricultural policy. In that case, there does not appear to be a conflict, because in fact the leave campaign has undertaken to restore those payments. I will leave that one for contemplation.

Let me be a little more down to earth. I do not often bring out a visual aid, but here is a European health insurance card. I recently renewed this. It was done with huge efficiency online and came back virtually by return from the Department of Health. It tells me that I am covered until 18 April 2021. Well, I do not know whether I am or not. I do not know whether I would be told if I was not, or whether the UK Government would pay for me to be even if it were not part of a European scheme. I just mention that because it is a small, hands-on example of the complexity of this.

I can understand, in a sense, that that is adding to people’s difficulty in making their decision. We have had some indications of passion and vision from a number of noble Lords, including the Minister. There comes a time when you move from the tabloid headline or the saloon-bar comment, or the fact that you wrote to TripAdvisor after you had had a bad night. That is one area of how we live our lives and we do it perhaps too often, but you then move to the other decision, where you think, you reflect, you count twice and then you decide at the ballot box. That is the moment when it really matters. It is not the duty of this House to tell people how to do it, but it is our duty to tell them that we will help them to think seriously about it. It is a serious decision that we want them to take and we will then respect it. I beg to move.

*Motion agreed.*

## The Process of Withdrawing from the European Union (EUC Report)

*Motion to Take Note*

4.24 pm

*Moved by Lord Boswell of Aynho*

That this House takes note of the Report from the European Union Committee *The process of withdrawing from the European Union* (11th Report, Session 2015-16, HL Paper 138).

*Motion agreed.*

## EU Membership and UK Science (S&T Committee Report)

*Motion to Take Note*

4.25 pm

*Moved by The Earl of Selborne*

That this House takes note of the Report from the Science and Technology Committee *EU Membership and UK Science* (2nd Report, Session 2015-16, HL Paper 127).

*Motion agreed.*

## EU Action Plan Against Migrant Smuggling (EUC Report)

*Motion to Take Note*

4.25 pm

*Moved by Baroness Prashar*

That this House takes note of the Report from the European Union Committee *The EU Action Plan against migrant smuggling* (4th Report, Session 2015-16, HL Paper 46).

**Baroness Prashar (CB):** My Lords, as chairman of the EU Home Affairs Sub-Committee, I thank the members of the committee, as well as the clerk, Theo Pembroke, and policy analyst, Lena Donner, for their assistance with the inquiry and preparation of this report.

The current refugee crisis is the greatest humanitarian problem to have faced the European Union since its foundation. Last year, more than a million people entered the EU irregularly. In the process, thousands died en route to or through Europe, and more continue to do so. According to the International Organization for Migration, at least 2,500 migrants died in the Mediterranean in the first five months of this year. Migrant smugglers are very often the cause of these deaths. According to Europol, more than 90% of irregular migrants arriving in Europe used facilitation services at some point in their journey and, in most cases, these services were provided by migrant smuggling networks. We have witnessed how migrant smugglers force desperate people on to unseaworthy vessels and refrigerated lorries. Accounts of fatalities among those embarking on these perilous journeys have sadly become a regular feature of daily news, while testimonies of inhuman and degrading treatment have multiplied.

Migrant smuggling is a crime against the state. Dealing with migrant smuggling, managing refugee crises and migration and protecting the fundamental rights of those in need of international protection have become pressing priorities. But there are no quick fixes. Preventing and fighting against migrant smuggling is very complex and affected by long-lasting political crises, endemic civil wars, economic and social disparities, difficult co-operation with source and transit countries, and limited legal and safe migration channels to the EU. The weaknesses of the Libyan state is a case in point. A comprehensive approach is required, which addresses the root causes and brings together policies on migration, security and external affairs, and greater co-operation with third countries.

The EU and its member states initially vacillated in taking responsibility for dealing with the crisis. The response has been inadequate and, in some cases, regressive. In May 2015, the Commission adopted a wide-ranging agenda on migration, with a view in part to address this crisis. Shortly afterwards, the Commission presented the *EU Action Plan against Migrant Smuggling*, one of the agenda's many immediate measures. In July last year, the EU Home Affairs Sub-Committee decided to investigate that action plan and to examine its four priorities: to reinforce investigation and prosecution of smugglers; improve information gathering, sharing and analysis; better prevent smuggling and improve assistance to vulnerable migrants; and improve co-operation with third countries. The purpose of our inquiry was to investigate the efficacy of the action plan with a view in part to feed into the Commission's proposed review of the legislation in this area, which will be published later this year. Since the report was published in November 2015, the situation has continued to change. We have had responses from the Government and the Commission. The Commission launched a consultation on EU legislation against migrant smuggling in January 2016 and the EU Council published its conclusions in March, encouraging further interagency and intra-member state co-operation, in line with our recommendations. It also includes references to the protection of humanitarian groups. There have been other developments—for example, the EU-Turkey agreement—but there are of course concerns about conditions in Turkey.

Let me turn to the main conclusions and recommendations of our report. We concluded that the Commission has rightly sought to place an action plan within the context of a broader approach to migration and welcomed its attempt to bring together policies on migration, security and external affairs, and its emphasis on co-operation with third countries—as long as this can be achieved by respecting the human rights of vulnerable migrants. The action plan includes several measures intended to enhance co-operation with third countries. Because the inquiry was conducted by the EU Home Affairs Sub-Committee, we focused on migration, law enforcement, policing and the internal security aspects of the action plan rather than on the broader questions of EU external relations, which I am sure the noble Lord, Lord Tugendhat, will touch upon in speaking to his Motion.

The evidence available to us about where the migrants are coming from suggested that a majority of those

entering the EU as irregular migrants are “prima facie refugees”, as defined by the United Nations High Commissioner for Refugees. The most recent figures available from FRONTEX show that from January to April this year, more than 100,000 of those detected making irregular border crossings were from Syria and Iraq—two countries ravaged by war. Based on that evidence we concluded that this is essentially a refugee crisis and that, in response, equal emphasis should be placed on its humanitarian aspects and on law enforcement.

Protecting the fundamental rights of irregular migrants requires differentiating between smugglers and those providing humanitarian assistance to those who are smuggled. Migrant smuggling is a complex phenomenon, which can involve organised criminal gangs at one end of the spectrum, and local groups, including groups of migrants who may have humanitarian motives, at the other. This complexity needs to be recognised in any effort to tackle migrant smuggling and any policy responses.

Rightly, the director of Europol was concerned by the possible connection with terrorism. Although Europol had not actually witnessed this, he felt that smuggling networks might be exploited by extremists and that Europol was very sensitive to this. We support and welcome the priority which Europol is giving to this issue. Our report was, however, published before the Paris attacks on 13 November. Since then, more information has come to light regarding the nexus between terrorism and migrant smuggling. The need for consistent vigilance and thorough checking is therefore self-evident.

We also support the objective of tackling migrant smuggling through enhanced law enforcement, which is a necessary and fundamental objective, but given the scale and nature of the problem this alone is not sufficient. A multipronged approach is needed. To make a meaningful impact, greater priority should be given to the creation of safe and legal routes for refugees to enter the EU. The Commission recognises this in the action plan but does not set out any details. While we recognise that initiatives such as the Khartoum process, regional development programmes and aid will have impacts, law enforcement and the creation of safe and legal routes should be seen as part of this multipronged approach.

We welcome the interdisciplinary approach taken by the action plan but emphasised that this comprehensive set of actions should be conducted in a balanced way and with due regard to the safety and rights of the individual concerned. In this context, the EU protocol is relevant. The action plan refers to the UN protocol, but there is no explicit connection between EU and UN action and no common definition of migrant smuggling. We recommended that there should be greater synergy between the EU and other international organisations and that as a first step towards this, the inclusion of internationally accepted definitions of key terms in EU policy documentation and legislation.

In the action plan, the Commission raised the prospect of further legislative action. We looked at the facilitators' package and recommended that the Commission should propose an EU framework that

[BARONESS PRASHAR]

builds on the humanitarian aspects of the UN protocol by criminalising only those acts committed for financial gain and adding clauses to avoid the criminalisation of individuals or organisations for their action for humanitarian purposes. We also said that we would welcome the addition of inhuman and degrading treatment as an aggravating factor in the sentencing of convicted smugglers. I am pleased that in response to our report the Commission said that it is taking into account the need fully to reflect the spirit of the UN protocol on migrant smuggling.

The responsibility for much of the implementation of the action plan has been given to EU agencies such as Europol, Eurojust, the EU's judicial co-operation unit and FRONTEX, the EU's external borders agency. In some cases, extension of the mandates of the agencies is proposed. Enhanced responsibilities of these agencies will test their mandates, resources, modes of communication, intelligence gathering and operational co-operation.

Our concern is that such enhanced responsibilities may encourage member states, which under international law are required to protect refugees and asylum seekers, to distance themselves from those obligations. We therefore argue for greater accountability and transparency in the way these agencies operate. We drew particular attention to the extension of FRONTEX's mandate, and recommended that the suggested changes should be monitored by the Fundamental Rights Agency.

Since our report was published, the Commission has proposed legislation to transform FRONTEX into a European border and coastguard. This reformed body will have greater powers to conduct return operations and to operate outside the EU. We remain concerned that insufficient consideration has been given to how law enforcement and protection of fundamental rights will be balanced. I therefore repeat our recommendation that the Commission should undertake its planned evaluation of the returns directive within at least six months of the reform of FRONTEX becoming operational, rather than in 2017.

The Commission must ensure that the agencies are adequately resourced to perform their tasks, and that the funds are allocated transparently and based on clear criteria. The action plan's call for greater co-operation, co-ordination and information sharing between agencies and member states is essential, as is the concept of hotspots, and progress on these fronts should be monitored and evaluated.

The networks, practices and routes used by migrant smugglers are constantly changing. The fluidity of the situation presents significant challenge to law enforcement. Urgent work therefore needs to be undertaken at EU level to ensure that information collected and shared is of high quality, and that gaps are identified and remedied. The necessary focus on gathering information on migrant smuggling in the Mediterranean must not result in the neglect of migrant smuggling operations elsewhere, including within the EU borders.

We recommended that a single agency, ideally Europol, should be responsible for collating and sharing information and intelligence. I am therefore pleased that, since our report, Europol has established a European Migrant Smuggling Centre to help member states and agencies

to share information and act as an intelligence hub. We also recommended that funding should be made available for academic and field research to address the lack of comprehensive understanding of migrant smuggling. There is a critical need to collect and share information on the modus operandi, routes and economic models of smuggling networks to understand the business models and design adequate responses.

Whatever the outcome next Thursday, the migrant crisis is not going to disappear, so it is important that urgent action is taken at EU level and by member states. This is a wake-up call. I beg to move.

4.40 pm

**Lord Tugendhat (Con):** My Lords, this is the second time in two weeks that I have the pleasure of introducing our report by the EU External Affairs Sub-Committee of the European Select Committee. As on the last occasion, I begin by thanking our staff for the outstanding service that they have provided to us, and also my colleagues for their constructiveness and hard work during the course of the preparation of this short report. It is appropriate that the report should be taken in conjunction with the one that has just been spoken to by the noble Baroness, Lady Prashar, because we are dealing with two sides of the same problem.

Our report about Operation Sophia had three basic findings. The first was on the impossibility of the challenge facing it. The second was that, despite that, the mandate of the operation should be renewed in the hope of, and to be ready for, more propitious circumstances, which would enable the operation to work more effectively. The third was the very important work that the operation has conducted in saving lives. It was not what it was set up to do; it was set up to disrupt and deter the smuggling networks. But saving lives is very important, and I commend the men and women serving on the naval vessels for the work they have done in that respect.

In the light of our recommendations, I am pleased that, since we reported, the European Union's Political and Security Committee has agreed to extend the mandate. I am pleased, too, that the high representative, Federica Mogherini, has called for a UN Security Council resolution to authorise Operation Sophia to expand by enforcing the UN arms embargo on the high seas off the coast of Libya. I am glad that the EU wants to help to train and share information with the Libyan coastguard and navy. These are all positive steps—and they come since we concluded the report. I am delighted to welcome them, and they make the challenge facing Operation Sophia somewhat less impossible. However, it will still be beyond its power to disrupt and deter people-smuggling until a great many more changes occur.

In the long run, the operation can succeed in its primary task only if there is a much greater degree of co-operation with a viable and stable Government in Libya. Of course, we are some distance from seeing such a Government established. Therefore, the European Union must do whatever it can, however limited, to help bring about that desirable eventuality. In that connection, I welcome the Foreign Secretary's recent visit to Libya and wish the British Government, along

with their partners in the EU, well in their efforts to bring about change in Libya, while not expecting any immediate results.

The other leg of a long-term policy, as we point out in the report, must be to address the root causes of mass migration of mainly young men from African countries to Europe. This phenomenon has to be seen in the context of similar moves from south to north America, from central Africa to South Africa and within the Asia Pacific area. It is a simple matter of people living in poor countries with limited opportunities wanting to seek better lives and more opportunities in richer countries, but if the problem is simple to define it is extremely difficult to do anything about. We must help the countries from which the migrants come to establish more effective governance, combat corruption and improve their economic performance and opportunities, but this is a very difficult task. When one considers that one of the countries from which migrants come in very large numbers is Nigeria, which is one of the two largest economies in Africa, an oil-producing country and a country with many very rich people and many successful businesses, one can see that the issue is not simply a question of money, but of good government and a willingness of civil society to take up its responsibilities. None the less, we must do whatever we can to help and we must not be deterred by the scale of the challenge, nor expect speedy results, nor be deterred by their failure to materialise as quickly as we would wish.

We must also work out with these Governments a workable system of repatriation, building on the precedent of the EU-Turkey agreement. Of course, where people are refugees from war and persecution, the European Union has obligations that it must observe, but many of the people we are talking about are not refugees in such a situation, and we must consider the repatriation aspect of the problem as well as other aspects.

The drivers behind the mass movement of people come from the countries from which they originate, but another aspect of the solution is to seek the support of the countries through which the migrants are passing. The more the borders of these countries can be strengthened and the more the flow of migrants can be tackled before they reach the Mediterranean, the better it would be. Once they have got to the Mediterranean, there is not only the difficulty of handling the very large numbers but the fact that many of those people face the prospect of a watery death. It is important to prevent that at the outset.

I have one final point. While the Governments of the European Union must fulfil their obligations to refugees and victims of persecution, it must be clear beyond doubt that the European Union cannot and will not accept all who wish to come here. The citizens of receiving countries have rights that must be respected, just as refugees and migrants have rights that must be respected. Immigration is a highly sensitive issue in all our countries, as all of us in this country have particular reason to understand at present. It brings benefits as well as problems, and it is a great pity that Governments in this country and elsewhere have not done more to bring home to public opinion the benefits that immigration has brought and continues to bring and why we will continue to need immigrants in this country. While

more needs to be done to draw attention to the benefits, Governments must also take full account of the public's legitimate concerns, as I think the most reverend Primate the Archbishop of Canterbury pointed out some time ago. If public opinion is given good grounds for believing that Governments are not looking after their best interests, there will, I am afraid, be hell to pay.

4.49 pm

**Baroness Suttie (LD):** My Lords, it is a pleasure to follow two such distinguished speakers. This debate also provides me with a second opportunity to say what an excellent chair of our committee the noble Lord, Lord Tugendhat, has been. Today really is his final debate in his role as chairman, and I think all noble Lords would agree that his speech today was a thought-provoking and powerful way to finish in that role.

We are facing the movement of people on an unprecedented scale. The reasons are multiple and complex, including civil war, population growth and economic and environmental pressures. We have also witnessed the emergence of a new kind of ruthless people smuggler. These people smugglers now use smart technology to relay information through social media on the best routes into Europe and the current price lists for the various routes available. There are people so desperate to come to Europe that they are willing to pay several thousand dollars to risk their lives and those of their families, travelling in rubber dinghies across the Mediterranean or in containers that are unfit for human transportation.

The report on Operation Sophia concentrates on the central Mediterranean route from Libya to Italy. At the time of drafting the report, the Turkish deal was in the process of being agreed. We asked several witnesses whether they thought there would be a resulting shift from the eastern Turkish route to the central Mediterranean one if the Turkish deal was successfully concluded. The predictions that this would happen have proved tragically accurate. As the noble Baroness, Lady Prashar, said earlier, over 2,500 people have died trying to cross the Mediterranean this year already. The middle route is the longest and most dangerous, particularly if carried out in a rubber dinghy.

As the report states, we believe that Operation Sophia is carrying out a successful role in providing a search and rescue function, but is doing little to destroy the people-smugglers' business model—at times, indeed, quite the reverse. The lack of a stable regime in Libya is further hampering the situation and makes it exceptionally difficult for international organisations to control and monitor the situation on the ground.

We need to be able to differentiate more clearly between refugees and economic migrants, as the noble Lord, Lord Tugendhat, has said, although I accept that there is a lot of grey space between the two: abuse by people smugglers of young and vulnerable migrants, particularly women and children, often leads one to become the other. According to the United Nations, over 15 million people could move from the desertified areas of sub-Saharan Africa towards north Africa and Europe by 2020. Missions such as Operation Sophia are just too small to be genuinely effective in dealing with the scale of people movement we are facing. We need to have a comprehensive and overarching

[BARONESS SUTTIE]

strategy that tackles issues such as legally recognised official routes, provides even greater support for reception centres and delivers an ambitious economic and investment plan to provide support for the countries in the MENA region. We need to find new and effective ways to penalise the people smugglers, perhaps even by using the mechanisms of the International Criminal Court. We also need to be creative and ambitious in coming up with long-term solutions to the economic and environmental problems that are forcing so many people to travel northwards from sub-Saharan Africa.

In the last year I have been working once a month on a project in Jordan, assisting with the political reform programme there. I refer noble Lords to the register of members' interests. Last month I spent a day with UNHCR visiting refugees in Amman. Jordan currently has over 600,000 Syrian refugees registered with UNHCR, and is having to cope with over 1.5 million Syrian refugees in total. Although the media have, understandably, mainly concentrated on the camps, over 80% of the refugees in Jordan are living in towns and cities in rented accommodation, attics and basements and wherever basic accommodation can be found. The stories of two families I met on that day stick in my mind.

The first was a Syrian family living in a small flat in Ashrafiya in central Amman. Before the conflict, Raslan, a father of five, had been working as an engineer for a Canadian oil company in Syria. He had previously been earning \$2,000 dollars a month. Their home town had been blown to pieces and is now controlled half by ISIL and half by the Syrian Government. He managed to flee legally to Jordan with his passport, and the majority of his family then followed. Their accommodation was basic but damp, and the whole family were sleeping in one room. They had a living room with a simple kitchen and bathroom. The UNHCR field officer who was with me that day said it was one of the better examples of refugee accommodation that she had seen. During the interview, Raslan emotionally showed us a school photograph of a young boy. He was their eldest son, whom they had not seen for four years as he was currently fighting with the Syrian Government army and had been forced to stay on at the end of his conscription. Their middle son had not received any education whatever since arriving from Syria two years earlier because all the local schools were full. It was clear that his family wanted to return to Syria as soon as it was safe to do so.

The second refugee family we met was a Sudanese family living in very primitive accommodation. Their kitchen was a gas camping stove on two breeze blocks and the toilet was a hole in the ground. The husband had fled by plane to Jordan on a medical visa after two of his brothers had been murdered in Darfur. He was suffering from migraines and blackouts and, being unable to work, had accumulated considerable debts, mostly in rent arrears. His wife was due to give birth to their second child that day. Their first child was quite badly malnourished, as they were trying to survive on one meal a day of bread, water and occasional vegetables. I am pleased to say that I have since been told by UNHCR that this family will be resettled in the United States.

I share those two stories with your Lordships because, in this fevered atmosphere of headlines in the media saying that hundreds of thousands of migrants are going to flood our shores, I believe it is our human duty to remember that behind each of these statistics lies a personal and often tragic story.

On the other side of 23 June, I sincerely hope that the British Government can again help to take the lead on these issues within the EU and in the international community. The London donors conference was a positive initiative, but less than half the money pledged has actually arrived. Despite the current populist rhetoric to the contrary, this is a challenge to which there are no quick-fix solutions, and we in Britain cannot solve the migrant crisis on our own. We will have to work with our European partners, as well as with the wider international community, to find long-term solutions, whatever the outcome of the EU referendum.

4.56 pm

**Lord Horam (Con):** My Lords, I think that all of us in the Chamber agree that international migration, wherever in the world it is, on the present scale is a huge problem. It is bad for the countries that originate it. For example, I learned recently that Jamaica loses over 80% of its graduates every year. Imagine trying to subsidiate sensible systems of government if you are losing four-fifths of your graduates every year. How can you possibly do that? No wonder Jamaica has huge drug and crime problems.

A few years ago I was in Botswana, which has a severe AIDS problem. It has a drug programme to try to control it, but I found that the problem was getting worse because the drugs were not available. That was because they were not being administered as there were not enough nurses. I asked why there were not enough nurses and the answer was that they were all in Britain helping the NHS. I was made to feel very guilty, understandably. That is the sort of detailed problem that we somehow forget when we talk about international migration. En passant, that makes me suspicious of the rather glib solution of the Australian points system that the Brexit people have come out with recently. How is it right for us to take the people we need and totally ignore the requirements of the originating country? That cannot be morally correct.

Apart from the problems in the originating countries, there are problems in the transit countries. The strain on facilities in Lebanon, Turkey, Jordan, Greece, Libya and so forth at the moment is huge—it is far greater than we are experiencing in this country. There are also problems for the receiving countries, and I very much echo what my noble friend Lord Tugendhat said in his opening remarks: we must consider those extremely carefully. People are understandably alarmed at the thought of more than 300,000 people a year coming to the UK. How will they fit into this small island? They are also concerned that we have no control over the EU portion of immigration. People expect their Governments to have control over these issues—and so they should.

I was delighted to serve on the committee under the chairmanship of my colleague and noble friend Lord Tugendhat. In looking at Operation Sophia, we discovered

that this early stab at trying to control immigration through Libya, across the Mediterranean to Sicily and Italy was not working at all well and that a much broader approach was required, as the noble Baroness, Lady Prashar, said in her remarks.

We need a two-pronged approach. We need development aid to tackle the originating problems in the countries of north Africa. As the noble Baroness, Lady Suttie, said, 50 million people may emigrate from those countries over the next five or six years if we do not tackle these problems. That needs to be coupled with a proper programme of deterrence.

I will deal with the deterrence issue first. As has been said, the problem with Libya is that there is no coherent Government at the moment. However, a unity Government is being established—an embryonic Government. They will need our help, and they are getting our help in some respects. As I understand, we are giving some military, financial and logistical help. I am also delighted that the Foreign Secretary was out there to co-ordinate that and give some diplomatic support. They need, for example, help with their coastguard service. The coastguards are patrolling a huge area of coastline and, inevitably, cannot deal with all the smugglers who are trying to get their poor immigrants across to Italy. We need permission to go inside the territorial waters to help their coastguards be more effective, to give them more resources and to stop it being simply a save and rescue operation, as it is at the moment, and to deal with the problem in a systematic way. The deterrence, as we all agreed, is well short of what is required.

We also need help for the countries of origin. I am delighted, therefore, that on 7 June the European Commission issued a communication talking about a new external investment fund totalling, I hope, €62 billion, which will be invested over a period of years into the countries of north Africa.

Again, quite clearly there are huge problems. As my noble friend Lord Tugendhat said, there are problems in Nigeria, where very rich people are making quite a lot of money. There are problems in Niger, where already the politicians have demanded £1 billion, almost in blackmail. There is corruption, there are dictatorships and there are human rights abuses. These are all problems in that part of the world and they mean that we have to conduct our affairs in helping them in a far more businesslike and efficient way than perhaps we have done hitherto.

Development aid and deterrence are required, working together. In that way, we may be able to manage down to a level that people can accept the migrant flows that are appearing. It is a huge challenge for the European Union, but it must be met with competence and realism, as well as humanity.

5.03 pm

**Lord Anderson of Swansea (Lab):** My Lords, I congratulate the noble Baroness, Lady Prashar. I also congratulate the noble Lord, Lord Tugendhat, on what is yet another final appearance on behalf of his committee. The two reports make sensible recommendations, including the case for co-operation of the EU agencies, the sharing of information and so on.

Migration, as we all well know from the Brexit debate, is what the Americans would call a “neuralgic issue”. For as far ahead as we can see, the affluent, secure, stable Europe will remain a magnet for the huddled masses, the persecuted and the ambitious of the third world. There are heart-rending stories of individuals, some of whom I have met, and which the noble Baroness, Lady Suttie, set out so well. We in this House made the right response to the issue of unaccompanied children, which the Government now appear to accept. However, we have to accept that, overall, demand is unlimited. We cannot accept all those migrants who would like to come. However difficult, we must strive for an ordered and managed policy.

The present migration crisis illustrates well that the European Union is not a superstate. The Commission proposes; member states dispose. If walls will not solve the problem, we need, nevertheless, to control our EU borders.

As the noble Baroness, Lady Prashar, acknowledged, the reports have already been partially overtaken. There is now, for example, clear evidence, after the revelations of the Paris bombing, that terrorists have used migrant routes to enter Europe. The EU announced a new policy on 7 June which aims to stem the flow of migrants, building on the template of the EU-Turkey deal. There are concerns about the new scheme, the raiding of development funds and the likely deals with African dictators. What is the Government’s view on this? Is the new policy likely to achieve its aim? Is there any prospect, for example, of countries receiving back—repatriating their migrants? All the reports, and the noble Baroness, Lady Prashar, and the noble Lord, Lord Tugendhat, referred to tackling the root causes, as set out in paragraphs 107 to 109: sectarian conflicts, poverty, economic inequalities and so on. This is all very well, but there is surely a reason behind the reason.

There is a curious reluctance on the part of the drafters of the report—and, indeed, so far in this debate—to mention the population boom in Africa. According to the UN World Population Prospects, published last year, there are more than 1 billion people in Africa. The UN projects a figure of almost 2.5 billion by 2050. Since 1975 the population of Egypt has doubled, to more than 80 million. Nigeria has been mentioned. In 1960 Nigeria had 50 million people; now, there are more than 180 million. By 2050, according to the UN prospectus, there will be more than 400 million, surpassing the United States and making Nigeria the third most populous country in the world.

We have to ask ourselves: where are all these young people going? Will they find jobs in their country of Nigeria? Will they find food? Will they find water? The scale of the problem is enormous. The Population Institute report of June 2015 contained case studies of the most demographically vulnerable countries. I mention Niger, as did the June EU report, as it is the worst case. It is the poorest country in the world, with the fastest-growing population. Among the demographic indicators are that women have an average of 7.6 births; that is a projected population growth to 2050 of almost 300%. Only 8% of married women use modern contraceptive methods. Economic drought could add to the chronic food

[LORD ANDERSON OF SWANSEA]  
insecurity. Severe poverty and hunger and climate change would make matters worse. It has the second-highest score in the world on the Gender Inequality Index. It is so important that women be educated in family spacing.

A high percentage of young people in these African countries see little prospect of advancing themselves at home. There are demographic pressures, obviously, from conflict, and the danger is not only Libya but Algeria next door, with its high population, environmental degradation, felling of trees, desertification, and increasing conflict for resources, including water. These are further reasons for exodus. All these factors feed on themselves. I ask the Government: are DfID's responses adequate? Should it invest more in reproductive health and family planning? Or is it too sensitive a subject—or deemed to be, as experts parrot the word “culture” to excuse inaction?

There are no easy solutions. The Sophia report is entitled *an impossible challenge*, but it is necessary to recognise and meet the problem. Short-term solutions, of course, include a government in Libya who can govern, helping to stabilise Algeria, and open legal channels for migrants, but such numbers are likely to be limited and may deprive Africa of its professional elite. Some say that the 1951 refugee convention should be revisited to provide temporary shelter until conflicts are eased.

As the noble Lord, Lord Tugendhat, asked, what are the rights of receiving countries faced with these problems of culture? In the longer term, we need to work closely with African countries, as shown by the partnership framework. Last November's Valletta summit, between EU and African countries, was unproductive. What incentives are there for African countries to co-operate with us? What chance is there of being able to accept returned migrants? We need to lubricate the deal financially, as Spain has done with west Africa, to protect the Canary Islands. Yes, we need carrots and sticks, trade deals, investments and enforcement in Europe of laws dealing with employers and landlords. The message must surely get through that non-convention migrants will be returned, or at least many of them, to their country of origin. Even then, we are likely to fall far short of the demographic challenge I have outlined. It is no wonder that the Sophia report is entitled *an impossible challenge*—one that we have not yet fully recognised in our policy response.

5.11 pm

**Lord Jay of Ewelme (CB):** My Lords, I speak as a member of the Home Affairs Committee and as a former member of the External Affairs Committee. Migration is a huge global problem, but it is particularly acute in Europe, whose stability and economic success act as a magnet for people from poorer and less stable parts of the world. It is particularly acute now, with the crisis in Syria creating the worst humanitarian disaster since the end of World War II, compounded by civil war and strife in Iraq, Afghanistan, Eritrea, Sudan and Libya. The EU is right to try to formulate a new, comprehensive and coherent response to this crisis, not least because its existing policies and structures were designed for a different era and are no longer fit

for purpose. Hence the descent into national responses that we have seen—noble as far as Angela Merkel's is concerned and less noble, if understandable, as far as other countries' were concerned.

The bold and, at least for me, unexpected EU decision to send migrants back from Greece to Turkey in return for settling Syrian refugees in the EU has had a marked effect on the level of migration from Turkey to Greece, but it has not had any effect on migration across the Mediterranean—indeed, there may have been some diversion from the Aegean to the Mediterranean. As the report makes clear, smugglers are ruthless, entrepreneurial and flexible, seeking out the weakest and most profitable routes irrespective of the consequences for the people whom they smuggle.

Against that background, Operation Sophia was never on its own going to deter the smugglers. Indeed, the prospect of rescue may have been an incentive to send people out to sea on fragile boats in the hope that they would be somehow picked up. However, to say that Operation Sophia is only, or even primarily, a humanitarian mission is not in any way to belittle it—that is a crucial task and a task in which the Royal Navy is rightly involved; I speak as the son and grandson of naval officers who used to sing in church every morning “Eternal Father, Strong To Save” with the lines:

“Oh, hear us when we cry to Thee,  
For those in peril on the sea!”

It does not matter how people get into peril; what matters is that they are saved.

What for the longer term—for this is a longer-term, perhaps a generational, issue? There are no easy solutions, but it seems to me that the aim should be to work with EU partners and others for stability in the Middle East and north Africa and for economic development in sub-Saharan Africa, difficult though that is, not least for the reasons that have just been explained. A second aim should be to support those countries, notably Lebanon and Jordan, which are bearing the brunt of the refugee crisis, as the noble Baroness, Lady Suttie, said. Thirdly, we should try to establish safe havens or camps for refugees in north Africa, too, ideally under UN auspices, whenever political stability makes that possible. Fourthly, we must try to distinguish—because it is extraordinarily difficult—between economic migrants and those fleeing from war or civil strife, and to work to return economic migrants to their home countries and establish legal routes for genuine refugees, thereby reducing demand for smugglers. Finally, we must ensure that genuine refugees are properly settled within the EU, including within the UK. That is a long-term, imperfect and difficult agenda, but I find it hard to see a better way forward.

5.15 pm

**The Lord Bishop of Sheffield:** My Lords, I welcome the two reports before us in all their complexity and I thank the members of the European Union Committee for their expertise, which is already evident in this debate. I particularly welcome the committee's recommendation in paragraph 8 that the mandate of Operation Sophia is reviewed and renewed, along with the EU's subsequent decisions. Clearly, this operation alone cannot be the

complete answer to the challenges that we face. However, the European Union must not return to the position that it held before the Lampedusa tragedy of apparent indifference to those who seek to cross the Mediterranean in danger of their lives. Nor can we neglect the spread of people-smuggling on and across our borders.

I focus my remarks on two areas. The first is the complex emerging ecology of care for refugees and migrants across Europe, which is a sign of hope. Lines of help and support connect our towns and cities in Britain with the supply and delivery of aid—a counterweight to the emerging networks of people-smugglers. The responses that have emerged over recent years form a complex ecology of care; a partnership between national and local government, aid agencies, faith communities and individual charity.

The Church of England is engaged through its networks right across its Diocese in Europe and the wider Anglican communion in responding to the refugee and migration crisis and is working with the DfID to get the aid committed by the UK Government to those in most need. The Anglican communion is assisting those who remain in the camps with health, hygiene kits, shelter and education. Those who have decided to leave the region and have arrived in Europe are being supported with spiritual, psychological, health and clothing support as they cross Europe by the Anglican Church in Athens and the Anglican churches in southern Italy. These churches are themselves working in partnership with Roman Catholic and Orthodox Christian communities.

Throughout Britain, churches and faith communities are working in similar partnerships to build this ecology of care for refugees here and across Europe. Sheffield is the original city of sanctuary and the ideas have spread to many other places. The Sanctuary Movement works with local charities and local authorities to welcome and support those who need a place of safety. The Muslim community in Sheffield, led by the Islamic Society of Britain, has been particularly active in collecting and transporting aid to the camps in Syria and to the refugee centres in Greece. Listening to the stories of Muslim friends who have visited these camps is heartbreaking, as are the stories that we have heard this afternoon. The crisis in its many different forms represents an impossible mission, but one which demands the best from every part of our society.

My second point concerns the scale of the present crisis. There is a sense in the reports that this is acknowledged, but not yet fully comprehended. This is not surprising, as we are clearly dealing with a situation without precedent in modern times. As we have heard, the global migration of peoples is not simply the consequence of terrible conflict in a small number of countries. As the most reverend Primate the Archbishop of Canterbury said in his recent evidence to the Home Affairs Select Committee, there are millions and millions of displaced people across the world. The causes of migration are more extensive than war or persecution. Global warming plays its part as livelihoods disappear. A rising inequality between nations is part of the deeper narrative. Populations are rising. The dominance of a single, western and materialistic culture in the urban centres of the world makes its contribution. Global communications play their part.

The crisis we face in Europe and in the Mediterranean must be understood against this deeper and broader picture. There is a pressing need to keep in focus the United Nations vision for a more just and sustainable world, and to hold in our minds our commitment to the recently agreed sustainable development goals. There is need for more comprehensive study and further debate on the root global causes of migration and what can be done to respond to this great movement of people globally, as well as locally, strategically and tactically.

I warmly welcome these reports and plead for still deeper analysis and an ever richer ecology of care.

5.21 pm

**Lord Patten (Con):** My Lords, the first time that I can recall ever hearing the term “economic migrant” was when it was used in the other place by the then Home Secretary Douglas Hurd. His phrase neatly encapsulated a growing issue then for the UK and our European neighbours, but it was rather more of a challenge than a crisis. It was something new and it seemed to be in manageable numbers at the time. Fast-forward from the later 1980s, when I heard my noble friend Lord Hurd of Westwell, as he now is, use that phrase, to 2016, and just as the new economic normal for western Europe has become ever-low everything—low inflation, low interest rates and therefore low economic growth—the migrant issue has mutated from a border issue to a supposed economic and social existential event, in parallel with that low economic growth and therefore relatively low European capacity to deal with some of these issues because the money is not being produced by a growing economy.

The events that are now being played out in the Mediterranean Sea, with its never-ending toll of death and tragedy, appal us all. Operation Sophia, under a mandate now to be renewed, has done its best with some planes, some helicopters and some other military borrowed assets and a few ships to do a lot to save often economic migrants from death in its search and rescue tasks, which my noble friend Lord Horam referred to in his speech, as the pressure grows. I certainly do not decry that search and rescue effort; it is a vital humanitarian issue. But its law and order, border patrol activities have caught few of the organised criminals behind the sickening people-smuggling scams that we see. Why is this? It is because the intelligence needed to manage the task of dealing with them is highly underdeveloped. The European writ large has neither the people on the ground nor the writ to control the supply of this great and growing surge of people from states in economic difficulty down through Africa.

They are coming up through the very often ineffective and imperfect, if not sometimes in danger of failing, state of Libya—or, to me, what now seems to be the two almost separate blocs that reflect the way Libya is divided today between east and west, as it was back in the time of the Roman Empire with Cyrenaica to the east, centred on what is modern Benghazi, and Tripolitania to the west, centred on Tripoli. I hope I have that right. I am no classical scholar, but I see the noble Earl, Lord Oxford and Asquith, in his place and he can doubtless correct me if I have my historical geography of the

[LORD PATTEN]

later Roman Empire a bit wrong. But whatever, there are flows from the east and to the west where those Roman provinces once reached deeply down into Africa. Today the flows of migrants from Sudan, Ethiopia and Eritrea are funnelled up towards Benghazi while those further to the west from Niger, Mali or indeed Nigeria flow towards Tripoli.

The intelligence-gathering efforts that should inform a renewed Operation Sophia mandate are in their infancy, and we must be straightforward about that. There are certainly a lot of action plans along with a blizzard of acronyms and a welter of “contact groups”, “policy cycles”, “hot spot approaches”, “thematic groups” and much more of what to me is the impenetrable language of the action plan, but not enough people there on the ground. With great respect, I sometimes see more acronyms than there are actual feet on the ground. What is needed is a much greater effort to target more aid and to anchor more people with the foundations of hope to stay at home, which most want to do, whether in Ethiopia, Sudan or Chad. I am very proud of what the UK has done in this context and I am a strong supporter of my right honourable friend the Prime Minister in the way in which he has increased our overseas aid effort and targeted it better, whether that be in Syria or in some areas down in Africa. I only wish, not to beat about the diplomatic bush too much because that is not my way, that other countries such as Germany and France, which could afford to spend more, would do so. They are not spending anything like as much as the United Kingdom and they should get on with it.

What is also needed—perhaps being even less diplomatic—is to deal with Libya itself. It is a fulcrum of instability as well as a funnel of migration of the most desperate sort, helping to damage global stability. There have been UN-type mandates within Europe in the Balkans in the past few decades and there are others presently in sub-Saharan Africa. There may soon need to be some sort of mandate offered to the Libyan coast in order to create a less penetrable land barrier with the Mediterranean to stem the flow in a way that we have not yet managed to do. There may need to be helpful European shoes in greater numbers on the ground in Libya than there are now helping to stop migrants from reaching the sea and to support the hard-working Italian and British ships in their Operation Sophia tasks, which otherwise will be with us for decades. Let us hope that the good Libyan people will soon ask for that help. My noble friend the Minister will probably not be able to answer me today—why should he when I have not given him any notice?—but have they ever asked for that kind of help? Perhaps he could write to let me know if they have and what our response has been.

As the Sophia or its successor mandate is renewed, and important though ships and other borrowed military assets are, the real challenge is for the countries of Europe, members of the EU or not, to develop not just the projection of soft power into Africa but its actual use quite deep in Africa as well as in the Middle East, to develop and sustain those intelligence-gathering activities on the sources of migration, and to develop

the ability to help more people in those countries to stay put for a better life at home rather than ending up on, or more tragically in, the Mediterranean.

5.27 pm

**The Earl of Oxford and Asquith (LD):** My Lords, I shall confine myself to Operation Sophia, but first I should like to offer my own words of tribute to the excellent chairmanship of the committee of the noble Lord, Lord Tugendhat. Operation Sophia has done some very creditable work in its search and rescue role, but as we have heard and as the report concludes, it is unable to perform its mission of preventing illegal migration, at least not until it is able to operate in Libyan waters much closer to the launch point of the trafficking. Since that is the case, we shall need to reconsider in due course what will be required in practice to stem the flow of migration across the central Mediterranean route, always assuming—it is a very big assumption—that we have the political support of the Libyan Government.

Most member states of the EU have a good understanding of what is involved in migrant trafficking, and for obvious reasons much of that knowledge is related to the operations of traffickers within the destination countries themselves—how they exploit the people under their control. But the problem we are facing in the Mediterranean and the central and western routes is of course a different one. How do we deter the flow of migration coming from the supplying states of north Africa and well beyond: Mali, Nigeria, Guinea, Eritrea, Somalia and so on? It is a long chain, as the noble Lord, Lord Patten, has said, and seems inexhaustible in its volume.

Our experience of trafficking in Europe has led us to understand how the market works, and how these people are exploited in prostitution, the construction industry and debt bondage. As Sophia has shown, those who are conducting the trafficking closest to our borders are seldom the ones who play a determining role. Often the people who steer the boats are migrants themselves. The beneficiaries and organisers of the trade can be stretched across great distances, far removed from the Mediterranean coast, and they perform diverse functions.

The trade is conducted by merciless criminals, to be sure, but their facilitators can take the form of corrupt border guards, police, embassies and politicians. We know that tribal communities and settled municipalities alike conspire to earn money along the line, exploiting in their own economies the trafficked migrants who are effectively temporarily enslaved before they are moved on to another destination in the line. Certainly there will be benefits, most of all in saved human lives, if the EU were able to interdict the traffic off the Libyan coast, but the evidence indicates that this will simply bottle up the problem in Libya and Morocco.

On deterrence, we can see that there is a much more complex process that will have to be addressed within a conceptual framework. Clearly for the success of their business the traffickers have to move their victims into a country. There has to be transport, an entrance point, the providing of identities and false documents, housing, which is often illegal, and work places, and financial mechanisms for foreign accounts, bribes and

money-laundering. At every stage in these networks identifiable operational facilities are required by the traffickers, which act like choke points, against which some counteraction can be conducted. Indeed, some countries promote admirable educational programmes in the supply states themselves in an effort to inform potential victims of the dangers they face. In other words, there is an enormous process to be undertaken, a comprehensive migration policy, as the report concludes and as the noble Baroness, Lady Prashar, also concluded.

The question in my mind is really this: clearly, phase 2B of Sophia, operating in Libyan waters, requires naval capabilities. There must be some doubt, however, as to whether it is really practicable to designate phase 3, even now, as a security and defence mission, something that will be seen throughout the region as a military mission. Unless it is to be purely ephemeral, going ashore and establishing a presence on Libyan territory in the foreseeable future carries some obvious risks—physical risks, certainly, but several political risks too, not least the one of acceptability.

To achieve any significant success in stemming the trafficking trade there will have to be close co-operation with the Libyan and other neighbouring Governments at all levels, including coverage of the domestic issues embedded deep within the culture and structures of Libyan society. We are not at the moment close to implementing phase 3, but I am not yet convinced that we should continue addressing that possible step in the context of extending Sophia's remit under a quasi-military endorsement. The objectives, status and planning of onshore preventive activity will prove to be a large departure from what we have been doing so far, and it seems more appropriate to prepare for such a contingency within the framework of a civil programme.

5.34 pm

**Baroness Coussins (CB):** My Lords, I too had the privilege of serving on the EU External Affairs Sub-Committee and would like in this debate to draw attention to the evidence that we heard from the NGOs, Médecins Sans Frontières and Amnesty International, and to pay tribute to the important work that they do in the context of Operation Sophia. Other NGOs, including Save the Children and the Red Cross, are also involved, but Amnesty and MSF were invited to give evidence to our inquiry.

Amnesty's report of a dramatic increase in deaths as a result of shipwrecks was instrumental in prompting the EU emergency summit that resulted in the reinstatement of a search-and-rescue operation. MSF told us that when 1,305 deaths were recorded in April 2015—a massive increase compared with the same month only a year before—it took the unprecedented step of launching its own rescue boats, and has to date rescued nearly 24,000 people. Both these organisations supported our conclusion that, although search and rescue was essential, the objective of targeting and disrupting the networks of traffickers and smugglers was an impossible challenge. Indeed, Amnesty has received accounts that many of those intercepted and believed to be smugglers were probably just refugees who had been nominated the person in charge of the boat. Amnesty said that those at the top of the smuggling chain are,

“no doubt making huge profits and probably go nowhere near anyone they are smuggling”.

Both Amnesty and MSF confirmed that closing down certain routes was no deterrent to smugglers, who quickly find alternative routes. These were usually even more dangerous and more costly to the refugees than the previous routes.

Amnesty also impressed on us the scale of the migration challenge and put it into perspective with the specific challenge for Europe. The level of migration into what we have called the “magnet” of western Europe is unprecedented, but it is not disproportionate when looked at globally. As we have heard, at the end of 2013 there were 10.5 million refugees globally and by mid-2015—less than two years later—this had gone up to 15 million. We were reminded that these figures leave out the 5 million Palestinian refugees. These numbers are difficult enough to grasp as statistics, never mind as real people trying to stay alive and doing the best for their families. But despite the magnet of Europe, the vast majority of the world's refugees—86% according to Amnesty—are being hosted not by European countries but in the developing world.

MSF gave evidence about the desperate situation of refugees as they wait in Libya for the chance to board a boat to Europe. Conditions are dehumanising. Refugees may wait for weeks or months, and many are subject to violence and abuse, including forced prostitution. Both MSF and Amnesty viewed with grave concern the suggestion by the Prime Minister in March that Operation Sophia might return boats and refugees back to Libya. The NGOs said that this would merely return severely abused people to the hands of their abusers and would just present the smugglers with a further opportunity to exploit the same people for even more money. Only yesterday, Amnesty published a report with an even graver warning: the EU's plans to co-operate with Libya's transitional Government on migration policy is harming refugees and is very likely to result in further shocking human rights violations.

We were also made aware of some degree of tension between NGOs operating in the area covered by Operation Sophia and the military authorities. The director-general of the EU military staff told us that one NGO was advising migrants against giving information to military officials about the smuggling networks. MSF told us that it had never come across this, but our witness from Amnesty said that there had been reports of volunteers and NGOs feeling intimidated in their work by the authorities. This tension is clearly undesirable and ultimately unhelpful for the refugees. In the light of the committee's conclusions on the importance of intelligence gathering and sharing, I hope that relations between the military authorities and the NGOs can be improved and tensions resolved.

Finally, the NGOs stressed to us the importance of creating safe and legal routes as the only means to prevent the market for smugglers continuing to grow. Amnesty proposed three options: first, a resettlement programme; secondly, an increase in family reunion; and thirdly, a system of humanitarian visas to people to come and claim asylum—a strategy it said had been used so far by only Brazil and France.

We are very grateful to the NGOs which took the time to contribute to our inquiry and, of course, for

[BARONESS COUSSINS]

the committed humanitarian work they undertake every day. Like the committee, they took the view that the challenge of migration and the plight of refugees cannot be resolved until and unless the root causes of the problem are addressed. This is, as others have said, a massive and massively urgent challenge for all EU member states.

5.40 pm

**Lord Risby (Con):** My Lords, it is a great pleasure to follow the noble Baroness, Lady Coussins, who will be greatly missed on our committee. I know I speak for all members of the committee when I pay tribute to the excellent chairmanship of my noble friend Lord Tugendhat. I thank him for so superbly chairing our proceedings and for so effectively summarising our report on Operation Sophia. I also applaud the work of the committee of the noble Baroness, Lady Prashar.

Every day, tragically, our television screens are filled with dramatic pictures of anxious people arriving in Italy from Libya. There are horrific reports of people drowning, seduced by criminal gangs into travelling in flimsy vessels, often having parted with their life savings. We have heard of the inadequacy of the remit of Operation Sophia and the inadequate resources to deal with the flow of migrants, but at least lives have certainly been saved.

There are 7 billion people living on our planet and there are millions who are on the move, who would like to be on the move or who plan to be on the move, either internally or externally. What is clear is that there is a very limited overall framework to deal with this phenomenon, even regionally in Europe. Public opinion all over the world is divided as to how, in practice, to deal with this, the phenomenon of our age, ranging from the compassionate to the violently antagonistic.

Of course, determining in principle and in practice how to distinguish between genuine refugees from war, violence and persecution and those simply seeking a better life, in order to react appropriately, is hugely difficult. Mercifully, we in this country do not have an extreme right wing but even perfectly legal migration to this country is clearly dramatically affecting public opinion. It is infecting public discourse in the United States and creating fissures in the European Union, and is something democratically elected politicians will not ignore. I mention this because what Operation Sophia has shown and the refugee influx has provoked is a need for a much more broadly based and coherent response from Europe.

In April 2014, working with the African Union, the EU agreed an action plan which focused on trafficking in human beings and all that flows from it. In part, the object of the exercise was to find a balance that would enable defined migrants who make it to Europe to be integrated successfully, and to deal with the issue of remittances, while looking towards the root cause of the migratory flows. This was taken further later that year with the Khartoum process, aimed at enhancing existing co-operation and specifically addressing the issue of people trafficking and smuggling. I therefore welcome the orientation of the EU Regional Development and Protection Programmes towards north Africa, the Horn of Africa and Nigeria, as recently proposed by

the European Commission. A pilot project in Niger will encourage local protection and resettlement opportunities and offer assisted voluntary return options. Under the common security and defence policy, a key meeting this autumn with the African Union will try jointly to further address irregular migration, with all its ramifications.

Of course, greater political stability in Libya is the key to the more immediate resolution of the cross-Mediterranean flows. Sadly, there are very limited grounds for optimism at this time. However, I note that yesterday the United Nations Security Council unanimously authorised a crackdown on arms smuggling on the high seas of Libya, allowing the inspection of vessels to seize and dispose of illicit weapons, which are undoubtedly the source of terrorist activity in Libya by extreme radical groups. All this is important in both reassuring European public opinion and trying to bring about some acceptable governance to the chaotic situation in Libya.

What I have described are simply parts of what our report made clear: that the EU must with urgency develop a strategy that tries to tackle mass, irregular migration at source. Last week the European Commission proposed a new partnership framework with third countries, based upon the European agenda on migration. The aim is a good one: to deliver coherent EU engagement to encourage member states to combine their respective instruments and tools, and to agree to a collective compact with third countries in order better to manage migration, giving direct encouragement to those third countries to co-operate in migration management. A substantial sum of money has been envisaged for this purpose.

Clearly, and ultimately, this phenomenon of our time, mass migration, will require something even more comprehensive and a fresh architecture. In 1990, the UN agreed the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Of course, many countries today are extremely sensitive to what they perceive as unwarranted interference by regional or international organisations. However, building on what is now emerging in Europe, it would be useful and important for a more international process to be considered, by trying to bring together existing protocols and by examining the responses and practices of different countries.

If this is seen as something far into the realms of impossibility and impracticality, it is worth noting that in the last few years we have acted internationally in considering the consequences of the environmental degradation of our planet and the destruction of forests and wildlife. But the human, worldwide migratory challenge is now centre stage, and we ignore it at our peril. Operation Sophia has simply highlighted one facet of the enormous difficulties surrounding international migratory flows, but I hope that, through this report, it has added something to the necessary and inevitable debate about how to deal with the greatest human and social challenge of our age.

5.47 pm

**The Earl of Sandwich (CB):** My Lords, the scope of these two reports extends almost beyond our imagination, over new horizons. As we approach the referendum,

despairing Eurosceptics are playing on the Napoleonic fears of some of our citizens that we are going to be overrun by migrants and refugees and that, after Brexit, they must presumably rebuild pillboxes and checkpoints along our sea frontier. These absurd fears have not exactly surfaced in this debate, but they are present and are nevertheless real ones that we must address.

I can say from limited experience what while we may as world citizens be facing mass migration, this is not occurring or likely to occur in the United Kingdom, where we receive relatively small numbers, most of whom—as we have heard—are essential to our economy and our welfare. In my lifetime we have dealt with large-scale migration before, starting with the effects of the aftermath of war in Europe, then the migration from Communism, the Vietnamese boat people and, more recently, the vast numbers of migrants, refugees and those displaced in Africa. Let us not forget those who cannot cross frontiers: internally displaced people. There are 40.8 million displaced by conflict worldwide and, on top of that, 19.2 million were displaced by disasters last year alone. These figures come from the May issue of the excellent *Forced Migration Review* from Oxford.

It is often said in the media that the relief agencies cannot cope; the most recent example is the chaos along the Macedonian border. Of course, to begin with, nobody can cope, because of the unexpectedly large numbers. But host countries have to cope, and the United Nations agencies have been dealing with these emergencies for years. The scene will be messy and inadequate, especially in terms of sanitation but, in the end, the situation will stabilise and people will just about survive, although there are always serious deprivations, inequalities and grave breaches of human rights. A Greek farmer has apparently even fired on the Bangladeshi strawberry pickers whom he had himself recruited. Resettlement is desirable but an option only for the very few.

What is new to us is the surge of numbers across the Aegean and the Mediterranean. The refugees from Syria, we can expect, will be largely cared for in time. Refugees from north Africa have not had such a warm reception, and we are going to see more of them, but economic migrants from Africa pose a different problem. We in Europe will have to expect that, so long as our economies improve or remain stable and while their own countries are in turmoil, people will continue to come in search of freedom and prosperity; it is only natural.

Most of this pressure is hitting the UN agencies head on, especially the UNHCR and WFP. I have had a huge respect for the work of UNHCR ever since I visited refugee camps in various countries in the 1980s on behalf of Christian Aid. The staff are always highly committed, often performing remarkable tasks of improvisation to meet humanitarian need, yet they are always short of funds and never given the necessary resources by UN member Governments.

Appendix 6 of the report on the action plan is a letter from UNHCR to my noble friend Lady Prashar, saying that we need to,

“expand legal avenues for seeking protection”,  
and have,

“enhanced resettlement, family reunification ... and ‘refugee-friendly’ student and labour migration”,

visa schemes. Safe and legal routes for refugees are fully dealt with on pages 18 to 20 of the report, which, as my noble friend Lady Coussins mentioned, comes out with recommendations on the use of humanitarian visas and on resettlement and relocation schemes for migrants. However, it concludes that the EU is not doing nearly enough.

A lot has of course happened since the report was published in November, notably the Government’s own gateway resettlement scheme, which I am sure the Minister will mention, and the temporary fix of the EU’s exchange deal with Turkey, which I hope he will comment on. Both reports confirm the accepted view that the EU, while it has useful instruments such as Europol and FRONTEX, is not very good at resisting migration or even refugee movements. The muddles at Calais and in the Balkans seem to provide evidence of this. I think that it is because Schengen is failing the European Union and the nation states are, not surprisingly, reasserting themselves. My humble advice to the EU Commission would be to stick close to the United Nations and not create too many new initiatives. The EU also needs to proceed cautiously when it comes to stemming migration in Africa and the Middle East. As a Union, it has no particular mandate except in humanitarian situations, where its excellent agency, ECHO, has been active in many parts of the world.

Last week, we debated similar issues and I mentioned the relatively new Khartoum process by which the EU co-operates with north African countries. Under the Khartoum process, as I am sure the Minister knows, we have decided to get closer to authoritarian regimes such as the ones in Sudan and Egypt, as well as the more unstable ones such as in Libya. The idea is that we will help them to tackle smuggling and improve their policing methods at checkpoints and frontiers. That sounds good on a fine day but, remembering Somalia in particular, one wonders what will actually happen to the money invested and whether the EU can possibly exercise any control in such remote, divided and corrupt parts of the world. The noble Earl, Lord Oxford and Asquith, mentioned that, too.

The report on Operation Sophia provides a sober assessment: as long as there is need for asylum and demand from migrants, smuggling will continue to exist. It says in paragraph 136:

“The EU needs governments ... that it can work with. Therefore, building the resilience of these countries is critical”.

As the noble Lord, Lord Tugendhat, said, that is a very tall order, although an admirable aim. Most of us hold the view that international development has to be the ultimate insurance against conflict and emergency, but we are also aware that the conditions have to be right. For me, that implies good governance and the involvement of civil society throughout any project. We have many examples of eventual success through the EU, even in countries such as Somalia, but root causes are tackled not just by development aid and investment but by a range of policies, including diplomacy, foreign affairs, international trade and security.

Education is one fairly reliable route to good development. To conclude briefly on student visas in relation to migration—it is an old chestnut, I fear—the Minister will know that many of us cannot accept that students should be treated as immigrants. Three years

[THE EARL OF SANDWICH]

ago, the PM made a reassuring statement to Indian students in Bombay, which was widely reported, yet the successful clampdown on bogus students also hit genuine colleges that had taken on some of those students and should not have been abruptly closed. The number of Asian students here has fallen drastically. Our universities have suffered because parents can no longer afford the high fees, even if they acquire temporary visas. Many students who would and should have come here have gone to alternative universities abroad. I expect and hope that this policy will be debated again and again in this House.

5.56 pm

**Lord Selsdon (Con):** My Lords, I have no locus standi in this at all and therefore may be an ungifted amateur intervening on other people's activities, but at the time of national service, I wanted to go into the Navy, which was quite a difficult thing to do. Somehow, I managed to get down to Portsmouth and asked if they would take me, and they said I had to go through the normal procedures but there was a little bit of a crisis coming up. Before I knew it, I was taken on and told that if I wanted to get ahead, I had better take a few exams and they were looking for new officers, but I was totally unqualified.

They put me on a crash course and somehow I managed to pass. Before I knew it, I was going out effectually to the Mediterranean, to Cyprus and Suez, to find myself as a junior officer on board a coastal minesweeper called HMS "Floriston", which was to be a patrol vessel for illegal activities in the whole of the Mediterranean.

It was a great experience for me, because the whole Suez situation was just coming on and there were a lot of illegal activities of smuggling and aggression. We would do night patrols, which meant that I as the most junior officer was the one who was up all night and then had to get up early in the morning. We used to board vessels with an outboard and a rubber dinghy, because the main barge did not work. We found that a surprising amount of illegal trade was going on—but it was not illegal in any way other than people trying to avoid taxation. In our stop and search for things, we found an amazing pattern of movement of people and of smuggling of people, even in those days, which it is hard to understand now.

Later, I found myself involved in the banking world. I was dealing with trade and became chairman of the Committee for Middle East Trade, which had responsibility for trade development for the whole of north Africa and anywhere to do with the Middle East. I learned a lot from our Arab friends, all of whom are traders by nature and many of whom were great seamen, but it was the business of stop and search for illegal activities in the Navy that taught me. We have found that there is an awful lot of this going on right across the Mediterranean today.

I found that I had got hooked, and something I had longed to do was the travels of St Paul. So I went out and bought myself a sailing boat—not a particularly great one—and spoke to a bishop or two, got the route and sailed around the Mediterranean following St Paul.

I then found to my surprise that the boat was quite acceptable for other people to charter, so I did that activity for 10 years. But in the back of my mind was the movement—the migration—of people. I used to study the maps and look at where they were and where they came from.

Even today, I find it a difficult world to work and live in. I am not sure what we can do about it, but I believe that greater co-operation with the Middle East might be helpful, because it is difficult to stop and search in many places. I would be quite like to be back in the Navy—but anything that I can do to help the committee I would willingly do.

5.59 pm

**Lord Soley (Lab):** My Lords, I start by congratulating the noble Baroness, Lady Prashar, on the way in which she chaired our committee—not only her efficiency but the obvious compassion that she felt on the subject that we were dealing with. It is very important in debates such as this to remember the very real people who have been referred to in this debate, whom we have seen on our television sets and in newspapers.

I will also mention in passing that the reports that we are debating today are a good example of how much impact we can have on the European Union. In fact, it has already picked up on some of the suggestions that we have made. One thing that I heard from evidence given at the time was that our reports are well received in the European Union. It is a simple message: if we are in the European Union, we can, if we want, lead. If we just sit on the fence, we cannot lead. That is perhaps the most important message underlying the political discussions on the European Union at the moment.

On the issue of migrant smuggling, it is a very depressing picture. One recommendation that we made, recommendation 79, is about trying to get the language right and co-ordinating this with other international bodies and organisations. Migrant smuggling is a title that is not strictly accurate. This is also a refugee crisis, and it is very important to say that. Obviously, a lot of the people are migrants for economic reasons, given some of the countries that they are coming from. But it is equally obvious that a vast number, particularly in relation to Syria, are refugees. Within that, you have other groups that are very difficult to recognise as having separate needs, most obviously the trafficked people, particularly women, trafficked for sexual purposes, or children, for both sexual purposes and others. Trafficked migrants or refugees—whatever label you wish to put on them—require another way of dealing with people. That is why we rely so much on the various agencies, both public and private, which are trying to help people in these conditions.

There is a much wider debate here, which people have been touching on, about how we deal with the crisis around the world in migration and refugees. A country such as Jordan is dealing with it incredibly well, but one reason why it can deal with the problem better than others can, and with much larger numbers than we have dreamed of—in the millions, or certainly much more than a million—is that the country has a good, stable Government with the rule of law. It is not

as perfect as one would like—it never will be—but it is a lot better than others. If we are going to talk about aid in this respect, one thing that I was told many years ago is that, frankly, any help that we can give to achieve the rule of law and stable government is more important than almost anything else. If we can get that, a lot of these troubles will go away.

Underneath that issue, there is the problem of the United Nations Security Council. If it was operating as it should have done, and was not so divided, frankly, we would have put up holding centres in Libya. There is no reason why you could not cater for very large numbers of refugees in that area, preventing the abuses that are already happening to refugees. But you have to have boots on the ground. Ideally, they would be United Nations ones with a camp—but we are nowhere near that at the moment, so we have to pick up the pieces by having Royal Navy, Italian navy and French navy ships in the Mediterranean, trying to stop people crossing.

The other problem, which the report addresses, is with the criminal activity of smuggling. There is absolutely no doubt in my mind that a large number of gangs and individuals go in for criminal smuggling to make large amounts of money out of it, but I am also aware that a lot of the smuggling is done by small people with boats who are making them available for a sum of money. I often wonder what would happen in a court case if you tried to charge one of them with smuggling and they said, “Yes, I felt sorry for them—I took them across but I charged them some money”. I am not sure whether that would count as smuggling or as assistance. None of that solves the problem. We have to have some sort of external force on the European borders; we have to face up to that.

One of the most impressive bits of evidence given, written and verbal, was by Rob Wainwright, the director of Europol. Again, Europol, and his particular role in it, is highly regarded among the other EU states. He was saying that unless we get better co-operation between the various forces there, we cannot have a common approach to what are in effect the borders of Europe. I think that such an approach is emerging—and the sooner it does, frankly, the better.

The other thing that comes out as very important in what Rob Wainwright is doing is intelligence gathering. It is no good just trying to stop ships in the water; you also need intelligence about what is happening on the ground in areas such as Libya and who is organising this—when we are dealing with criminal charges—so we can try to stop them. I noticed that a man was arrested a few days ago in Italy, with co-operation between the British and Italian police. Whether that will lead to a conviction I know not, but it is an indication that that sort of work is going ahead.

My final point is that if we are to have at least a temporary solution on this, we also have to be clear about our returns policy. I think it is pretty clear to most people that we cannot return someone to Syria, but it is different when it comes to Nigeria, which is a very large country. There is one problem area in it where, if you were returned to it, your life expectancy would be short or grim, but large parts of Nigeria are stable. We need the co-operation of the Nigerian

Government to ensure that if we return a person there, we do not return them to an area controlled by Boko Haram. There are similar examples that I would give but time is against me. I will say simply that there is a whole package of measures here.

When historians look back on this, I do not think that the European Union, our Government or the rest of the world will come out of it very well. But I acknowledge, as I think we all must, that it is an incredibly difficult problem for which there are no quick fixes. We have to start building up these procedures and improving them, and I hope that our report, along with those that we have heard about today and the others that I know are in the making, will have some impact on that—but it is a slow and painful process.

6.07 pm

**Baroness Janke (LD):** My Lords, as a relatively new member of the Home Affairs Sub-Committee, I too pay tribute to the noble Baroness, Lady Prashar, for her chairing of the committee and for the succinct and wise nature of the recommendations in the report. I welcome also the fact that the report on the EU’s action plan on migrant smuggling is being considered by your Lordships’ House.

I know we have all been deeply moved by the terrible sights we have seen of desperate migrants clinging to woefully inadequate crafts in the Mediterranean, of destitute and forlorn groups of survivors, and of the deeply shocking scenes of those who have drowned, some of them tiny children. The illegal practice of people smuggling is one that preoccupies us all when we see the abject misery of those who have been exploited and exposed to mortal danger. In highlighting some of the issues that are not always considered by the media, the report makes clear in its evaluation of the EU action plan that the issue is a complex one with, as many people have said, no easy answers.

We heard evidence that large and powerful criminal networks are involved as well as smaller, more opportunistic operators. The committee supports the high levels of collaboration and information sharing that currently exist, and urges the commission to continue to co-ordinate the collection of intelligence by member state authorities. We also urge that proper resources must continue to be made available to ensure that levels of policing are maintained.

One of the key issues raised by witnesses to the sub-committee was the fact that these migrants, as others have said, are refugees fleeing from war and violence, not, as has been suggested, economic migrants seeking a better life. The report provides evidence from a variety of sources that this is the case. It is therefore appropriate to refer to a refugee crisis, and we would support the EU action plan being amended to reflect the fact that victims of smuggling may be refugees—vulnerable people with complex needs. It is also crucial that the humanitarian needs of refugees are provided for and that proper services are provided for the many who have suffered intense trauma and violence, in addition to the needs for basic food and shelter, as was so well described by the right reverend Prelate the Bishop of Sheffield.

[BARONESS JANKE]

Paragraph 56 of the report urges the Government to participate fully in the Commission's discussions regarding possible measures for dealing with the root causes of migrant smuggling. The UNHCR and others who gave evidence highlighted the importance of safe and legal routes. Currently those fleeing from war and violence have very few means of entering the EU legally. The UNHCR suggests a number of admission programmes, including the admission of relatives, humanitarian visas, community-based private sponsorship, medical evacuation, academic scholarships and resettlement schemes. Our report makes the point that these too need to be considered.

Many of our witnesses, including the Refugee Council and Amnesty International, urged the Government to participate in the EU measures for the relocation of migrants and criticised the action plan for not giving this objective sufficient priority. The action plan, rightly, distinguishes between human trafficking and people smuggling. I very much support the recommendation that the 2004 directive, requiring member states to provide residence permits to victims of human trafficking, should be extended to smuggled migrants who have assisted in criminal proceedings against people smugglers.

As the noble Baroness, Lady Prashar, said, we are confronting the greatest humanitarian crisis to have faced the European Union since its foundation. It is clear that the enormous number of refugees seeking to come to Europe is unlikely to reduce in the near future. For many of these people, the prospect of being killed on the high seas is not a deterrent. Fleeing from desperate circumstances, likely death or torture, most will feel that they have little choice.

It is only through collaboration and shared responsibility that the means of answering the needs of so many can be found. The recommendations in the committee's report welcome the action plan and make some key additional proposals. However, it will be vital that member states, including the UK, collaborate and show responsibility and leadership if there is to be any progress in addressing this crisis and providing basic safety for so many people in need.

The prospect of generations of children being abandoned in barely adequate refugee camps or being left to the mercies of human traffickers and organised crime is chilling, and it is fertile territory for those who practise terrorism. I very much support the recommendations in the report and hope that the UK Government will play their part in working with other member states to address the current crisis and seek long-term solutions, as many noble Lords have suggested today, to the immense challenges of global migration.

6.13 pm

**Lord Marlesford (Con):** My Lords, we read every day that immigration has become the central issue in the referendum, and perhaps it will determine the outcome of the vote. This is hardly surprising because it is probably the biggest and most urgent challenge to the West. I think that the British people have little confidence that anybody has a grip on it, and the two reports that we are debating indicate that they are right to feel that way.

Of course, the problem is huge. Conflict has displaced 12.5 million people in Syria alone. The present situation in Greece, Italy, France and probably Germany, which now has a backlog of 460,000 asylum cases, is already unsustainable. The UNHCR expects a further 1.2 million in 2017. The migration challenge is an issue that EU policymakers, which means the EU Commission, have failed to meet.

First, the EU did not recognise that it is a global challenge and not primarily a European one. Command and control should be in the hands of the UN, as the noble Lord, Lord Soley, has indicated.

Secondly, the EU has failed to make, let alone implement, practical but crucial distinctions between asylum seekers, refugees and economic migrants. Nor has it produced reliable methods of identifying Islamist jihadists who have been infiltrating the present crisis.

Thirdly, the EU Commission has been focusing on the symptoms: the people smugglers who have caused so many deaths with unscrupulous methods by both land and sea. As we now know from my noble friend Lord Tugendhat's report, although the EU's Operation Sophia has, wonderfully, been saving 1,000 lives a day, it has failed to reduce illegal migration or deter the criminals who facilitate it. In practice, it has, from the start, merely offered a safe passage to destination for those in peril on the sea. Therefore, it is, in itself, a huge incentive to take the risks. Indeed, for the coming summer surge of migrants across the English Channel, it would probably be cheaper and more humane to issue them with Eurostar train tickets if, when intercepted, they cannot be returned directly to the country from which they set sail.

Fourthly, the EU Commission has laid down for each Schengen state unenforceable and unenforced quotas for the number of immigrants to be received. These quotas have, quite predictably, been ignored.

Fifthly, the Turkish deal is collapsing. In part, that is because the Turks are demanding visa-free entry into Europe, which EU Governments will not grant; added to which they have also been given the prospect of EU membership. However, both sides on the referendum campaign have made it absolutely clear that that will not happen for decades, and the Turks rightly recognise it to be a bogus offer. Also, from last week, the repatriation of migrants to Turkey is being challenged in the European Court of Justice on multiple human rights grounds, ironically by two Pakistanis being held on the Greek island of Lesbos. This strikes at the heart of the legal architecture of the Turkish deal.

In place of conscience-salving tokenism, surely it is better to face up to the horrors of reality. There has always been pressure for economic migration, but it is now magnified a thousand times by the spread of knowledge of world conditions through social media and by the current military conflicts. In practice, economic migrants will not be deterred until the standard of living in the countries to which they wish to move is only marginally higher than what they have at home. This is not a social issue: it is simply the operation of market forces. It can be controlled only through economic assessment by the recipient Governments of the numbers

they need. Ultimately, that is a national political judgment—it is certainly not one for the EU Commission to make.

Last week, the EU Commission proposed a €62 billion investment fund, mainly for Africa, as an inducement to co-operate in curbing migration. I am afraid that in most African countries, a lot of that will end up in the bank accounts of the “big man” and his cronies. I am not sure that that is a clever use of EU funds.

I hope very much that the migration partnership framework, which the EU Commission announced one week ago, and which I gather could include a UN-led global resettlement scheme, may mean that it is at last moving towards what I proposed in this House a year ago. I return, therefore, for the third time, to my proposal for a holding area, probably in Libya, to which migrants would be transferred. Libya is huge—it is three times the size of France, and with only 6 million people, it is sparsely populated. It is in a state of chaos with an expanding ISIS presence, for which the international community bears quite a bit of responsibility, and where military intervention, probably by the West, will soon become necessary.

I have no time to repeat all the details, except to say that it envisages using solar power for desalination of the sea, thus making the desert bloom, and the use of NATO forces in blue helmets under UN mandate to establish, administer, protect and guard the holding area to which all migrants can be taken. There they would be sustained, cared for and processed, with some going where they want, and others returning home, with perhaps the eventual establishment of a permanent population in a new state, which I have called Refugia.

6.20 pm

**Baroness Kidron (CB):** Many noble Lords will recall the last weekend in May, when more than 700 refugees drowned in quick succession. It is in their memory that I wish to call on this Government to open up further safe and legal routes of migration as requested in this excellent report.

Desperate people do not make rational decisions. They take to unstable dinghies, put their families at risk and entrust their future to the hands of the unqualified, who may well have pure motives, or the unscrupulous, who do not. In either case, neither offers very good odds. The report we are debating expresses regret at the refusal of the UK Government to participate in EU relocation strategies, and it urges, both at UK and EU level, that more emphasis be put on establishing safe and legal routes of migration. Many noble Lords have called for community-based private sponsorship, medical evacuation, humanitarian visas, family reunion, academic scholarships and labour mobility schemes. Any one of these offers an orderly and controlled form of migration. Collectively they describe a minimum human response to desperate neighbours.

The arguments against such mechanisms were also captured in the report. It is suggested that the number of beneficiaries would be so few in relation to potential refugees that it is not worth it. There is a fear that these routes would expose us to terrorist threat, and that establishing such routes would act as a pull factor.

These are poor arguments. The fact that we can do little is a wholly inadequate reason for refusing to do what we can. In spite of intelligence from Europol, it is simply the case that people are coming in in this way, those intent on doing harm will do so by any means, and they do not need the sanction of formal status to do so. The bloodshed in Syria and the conflict in failed states within the Middle East and north Africa are driving millions to flee. They are not being pulled. They are being pushed. Even those in the relative security of refugee camps face decades in limbo, in circumstances that do not offer a life with prospects or dignity.

All this is not just about what is right for those fleeing. This is about what is right for us. This is the country that gave refuge to my parents, Michael and Nina, the children of Samuel, Ruchel, Solomon and Maternal, who themselves had been given serial refuge both as children and as adults—five countries in just three generations, three generations that survived and prospered, unlike so many of their friends and family because they were given repeatedly safe and legal routes of migration until my siblings and I were born in the safety and security of the United Kingdom.

The philosopher Peter Singer famously asks: “If you had just bought a beautiful pair of shoes and saw a child drowning in a shallow pond, would you save your shoes or save the child?”. Unanimously, people answer, “Save the child”. He goes on: “If there are others present, would you still save the child?”. Invariably, the answer is yes. People recognise that their obligations belong to them, irrespective of the obligations of others. Finally, he asks: “What if the child were far away, perhaps in another country, but it remains equally within your means to save them at no great danger to yourself?”. Virtually all agree that distance and nationality make no difference to one’s obligations.

Her Majesty’s Government talk of solving the problem “upstream”, yet upstream we have problems of great magnitude, poetically described by the right reverend Prelate—proxy wars, climate change, unequal distribution of global wealth, food scarcity, conflicts, failed states and terror. And we have no expectation that those problems will be resolved very soon. That leaves us, I am afraid, with Peter Singer’s challenge: do we let people drown because they are out of our sight?

The safe and legal routes proposed describe an achievable lifeline for a human being in desperate need. They undermine smugglers, give hope and choice in the intractable lives of those forcibly on the move, and allow us the privilege of not standing by, dehumanised by our inaction.

I had hoped to say the names of the dead, just as we do for those who perished in 9/11, 7/7 and Hillsborough, and just as we do for fallen soldiers or indeed Members of your Lordships’ House when they pass away—we name our dead to honour their memory—but in spite of considerable effort, no one could provide me with names. The final indignity of the desperate is that they are a number, not a name. But I can remind the House of three year-old Alan Kurdi, who washed up on a beach last year, and the outpouring of compassion that accompanied that young child’s death. It is in his name that I ask Her Majesty’s Government to reflect

[BARONESS KIDRON]

the long-standing values, compassion and leadership that my family benefited from and open up new, safe and legal routes to the UK and, in doing so, offer safety to the few—too few perhaps—but dignity to us all.

6.27 pm

**Lord Balfie (Con):** My Lords, I thank the chairs of our two reports, the noble Baroness, Lady Prashar, and the noble Lord, Lord Tugendhat—under whom I had the privilege of serving on this committee. I do not want it to sound like Tony Blair if I keep wishing him goodbye, but I hope he will not go too far away.

I found that it was not until the speech, relatively late in the debate, of my noble friend Lord Marlesford that we really got round to gripping the problem here. The subtitle of the report of the committee on which I sat, *An Impossible Challenge*, is really what we should address. In a democratic state such as we are in, we have to realise that this impossible challenge must be met. The current problems and perception in Britain have to be faced head on.

I have risen in this House previously to point to the many legal migrants in this country, particularly from the EU but also from elsewhere, and the huge contribution they make, but I am afraid that in the way this debate is often handled people conflate illegal and legal migration, not recognising that the vast number of people in Britain who were not born here are here legally and are contributing enormously to the community. This is one reason why we have to tackle the problem and come up with a solution. Frankly, whatever the rights or wrongs may be, Europe will not accept unlimited numbers of refugees, as Chancellor Merkel is currently finding out.

We are also in a situation where, as our Prime Minister said, many,

“are not asylum seekers, but people seeking a better life”.—[*Official Report*, Commons, 3/6/15; col. 583.]

Seeking a better life is not wrong. Most of the legal migrants in Britain are here seeking and finding better lives. But we have to look at ways in which we can deal with the problem of illegal migrants. Sophia is part of it but only a small part. The noble Lord, Lord Soley, outlined a way forward. There are other ways forward, but they will probably involve some sort of haven in north Africa. One problem at the moment is that if you are rescued at sea, you have effectively won the jackpot. All you have to do is get on a boat and be rescued, as opposed to sink, and you are okay. That is a very lottery-based approach.

A long time ago, a great Conservative politician, Robert Peel, drew the distinction between legitimate public expenditure and other public expenditure. I believe that one mistake this Government have made has been in cutting back public expenditure on both the coastguard service and Border Force. Why do we not look at the lorries as they get on boats to come to Britain? Because we have cut the number of people working for Border Force. Dedicated civil servants were doing an extremely good job and we decided to cut back the numbers employed. We decided not to put the latest technology on the docks in Calais and other places to X-ray and look through the sides of

lorries to see whether human, breathing life was inside. One thing we must face up to is the need to reverse those cuts and not to continually tell civil servants and union members that they are useless. If we want to control borders, let us start by taking the legitimate steps within our own hands to control our own borders.

We also need a slightly less sentimental attitude towards some of the illegal migrants who are here. I was interested to see last Sunday—I am looking at the right reverend Prelate, because this is largely about his profession—Reverend Pete Wilcox, Dean of Liverpool, who has baptised 200 asylum seekers in the past four years. He said:

“Mixed motives are not unheard of”.

Later he admitted that,

“there was no similar rush to convert to Christianity from Muslims who already had British citizenship”.

It would appear that that is a fairly open loophole. The reverend prelate also said:

“I can’t think of a single example of somebody who already had British citizenship converting here with us from Islam to Christianity”.

That is clearly an abuse of process, and there is a lot more in this article and elsewhere. We need to toughen up a little because it is not fair to the legal migrants who are here if we behave in that way.

All migrants in Britain should be treated properly and should be given an honoured place in society because they work very hard when they are here. I also believe, however, that our current migration policy is not fit for purpose, so I challenge the Government to follow the advice of the great John Maynard Keynes:

“When the facts change, I change my mind”.

I believe that the facts have changed over recent years and I invite the Government to have a fundamental rethink about how they approach the problem.

6.34 pm

**Lord Rosser (Lab):** My Lords, I add my thanks to those already expressed to the noble Baroness, Lady Prashar, and the noble Lord, Lord Tugendhat, and their committees for their respective reports on subjects of more than usual interest at the present time.

Operation Sophia has been running since the middle of last year. Its purpose is to disrupt people smuggling in the southern central Mediterranean through gathering information and intelligence and by destroying boats used by people smugglers. The committee’s report indicates that the operation has not been an outstanding success to date, with no arrests of key figures in the smuggling networks, no effective disruption of the networks since the operation acts only on the high seas, and an inability so far to even operate in Libyan waters, let alone onshore, with the weakness of the Libyan state being a key cause of the rise in smugglers using that route through the Mediterranean. The report concludes that Operation Sophia does not and cannot deliver its mandate. It goes on to state that there is an urgent need to address the root causes of irregular migration to Europe and calls on the European Union to build resilience in the countries of origin, target the profits of the smugglers, provide support in-country and inform and engage the public on the phenomenon of the mass movement of people.

If there is to be a coherent and sustainable solution to the irregular migrant crisis, there must be a crackdown on those who seek to take advantage of people in their time of need, and that means dismantling and putting out of action, by bringing to justice, the ruthless criminal networks that organise the precarious and dangerous journeys of large numbers of migrants who are desperate to reach Europe.

The second EU committee report we are discussing, which is on the EU action plan against migrant smuggling, considers the broader strategic challenges of migration policy and recognises that migration to Europe is part of a much larger phenomenon of the mass movement of people globally from the developing to the developed world, with the countries of western Europe, whether in the EU or not, acting as a magnet to those in the Middle East and Africa.

The purpose of the committee's report was to look at the 2015 EU action plan against migrant smuggling ahead of the European Commission's own review of the legislation on migrant smuggling which is due to be published this year along with proposed reforms. The action plan, which is one aspect of the European Commission's 2015 European Agenda on Migration, sets out four priorities: enhanced police and judicial response; improved gathering and sharing of information; enhanced prevention of smuggling and assistance to vulnerable migrants and stronger co-operation with third-world countries.

The aims of the committee's inquiry were to assess how the action plan against migrant smuggling contributes to the stated objectives of the EU's agenda on migration; to establish whether or not its four objectives and the actions set out are the right ones to achieve the EU's stated goal of rendering migrant smuggling a "high risk, low return" undertaking; to identify whether the action plan strikes the right balance between security considerations and the protection of migrants' human rights; and to identify gaps and deficiencies in the current EU response to migrant smuggling in order to make recommendations for planned legislative reform.

The committee's report reached a number of conclusions and made a number of recommendations; they appear overall to have been rather more enthusiastically received by the European Commission than they have by the Government, judging by the tenor and content of the respective responses. Its recommendations for creating safe and legal routes for refugees to enter the EU, and its regret that the Government have declined to participate in the EU measures for the relocation of migrants—allied to their urging that the Commission and all member states should make greater efforts to reach consensus on EU proposals on relocation and resettlement—did not go down well with the Home Office. The Home Office Minister for Immigration reiterated the government line on providing support to those countries facing particular pressures, with the focus on helping the most vulnerable who remain in the region which migrants arriving in Europe have left. The best way of reducing irregular migration flows, and with it migration smuggling, is of course to address the issues that have led to people fleeing or otherwise simply deciding to leave their own country or region. Conflicts in whatever

part of the world lead to spikes in mass migration as people living in fear of atrocities and persecution flee for their lives in the hope of finding a safe, secure and peaceful environment elsewhere for themselves and their families.

Conflicts have adverse economic consequences as well. The loss of a home, employment and the prospect of any reasonable life ahead leads to migration flows. Climate change can have a similar impact. My noble friend Lord Anderson of Swansea drew attention to the impact of the population explosion, particularly in Africa. But achieving lasting peace in areas of conflict and addressing the tyranny of oppressive dictatorships and corruption, as well as appalling levels of poverty, as a means of eliminating the root causes of mass migration is neither a smooth nor a quick process. It involves nations, particularly those in the developed world, working together to deliver agreed common objectives and being prepared to put in the resources, both financial and human, to achieve those objectives. It involves a recognition that international development activity and the associated necessary resource provision in its various forms has very considerable benefits for the nations providing those resources as well as for the nations receiving them.

However, we are a long way from being in that position, and in the meantime the issue and impact of mass migration, and with it migration smuggling, will continue to have to be faced up to by many countries around the world, including in Europe and including ourselves acting both jointly and collectively, and individually. In this country we had our own migration impacts fund to provide a resource to expand essential public services in areas where such services were coming under pressure as a result of an increase in population arising from migration. It was abolished by the incoming Government in 2010, which was not exactly a far-sighted or enlightened move.

The response to the committee's report from the European Commission refers to the EU Asylum, Migration and Integration Fund, which was set up to promote the efficient management of migration flows and the implementation, strengthening and development of a common EU approach to asylum and immigration, as well as to regulate specifically when emergency assistance could be activated. The EU Commission allocated emergency assistance funding to France last August to set up a site offering humanitarian assistance to around 1,500 irregular migrants and to support the transport of asylum seekers from Calais to other locations in France. Can the noble and learned Lord say what, if anything, has been our involvement with this fund, including as a beneficiary or potential beneficiary? The Commission's response also refers to the setting up this year by Europol of a fully operational European migrant smuggling centre as part of the creation of a hub for sharing information on migrant smuggling in the EU. What is our involvement with and input into this newly-established centre, including the sharing of information? Perhaps the Minister could tell us when he responds.

The European Commission has also said that the recent EU-Turkey statement and co-operation with Turkey have been fundamental in tackling the exploitation of vulnerable people seeking to cross the Aegean Sea.

[LORD ROSSER]

It has, it says, ensured greater humanitarian assistance in Turkey in parallel with opening up new legal channels to the EU, and that credible action inside the EU to discourage smuggling and irregular entry while showing that legal pathways to Europe exist is critically important. Can the Minister say whether the Government agree with that view?

The European Commission has recently set out plans for a new results-orientated partnership framework to mobilise and focus EU action and resources in its external work on managing migration. The EU's intention is to seek tailor-made partnerships with key third countries of origin and transit to achieve results with the priorities being saving lives at sea, increasing returns, enabling migrants and refugees to stay closer to home and, in the long term, helping third countries' development in order to address the root causes of irregular migration. Some €8 billion will apparently be provided over the next five years.

The Commission says that partnerships with third countries will take the form of tailored compacts that will reflect whether they are a country of origin or transit, or one hosting many displaced persons, and that in the short term the EU will deliver compacts with Jordan and Lebanon, and take steps to agree further cuts with Niger, Nigeria, Senegal, Mali and Ethiopia. The EU also intends to increase its engagement with Tunisia and Libya.

The Commission goes on to say that member states' contributions in these partnerships—diplomatic, technical and financial—will be of fundamental importance in delivering results. Can the noble and learned Lord say what our contribution will be to these partnerships? In their response to the committee's report the Government say that they are participating fully in the EU's discussions regarding all possible measures for dealing with the root causes of migrant smuggling at ministerial and working levels through playing a leading role in the implementation of the actions agreed by the EU and African partners at the Valletta summit last November. Can the Minister say what "playing a leading role" means in terms of specific actions that we have taken or have committed to take?

Also in response to the committee's report, the Government say that they are working to assist in building greater judicial and law enforcement capacity from source and transit countries for the migration crisis as part of the Organised Crime Taskforce by exploiting every opportunity at source, in transit countries and Europe, to destroy the operating model of organised crime groups involved in organised immigration crime. Can the noble and learned Lord say how long this task force has existed, and what specific improvements have been achieved as a result of its endeavours?

I thank once again the noble Baroness, Lady Prashar, and the noble Lord, Lord Tugendhat, and their colleagues for their respective reports, with their conclusions and recommendations on these increasingly important, high-impact and challenging issues that we have been able to discuss and consider today, and to which we now await the Government's response.

6.47 pm

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, I would like to thank the European Union Committee for producing its report on the EU action plan against migrant smuggling and its report on Operation Sophia, and to thank all those who have spoken in this debate.

I would like to touch on some of those contributions for a moment. The noble Baroness, Lady Pashar, alluded to various proposals in the committee's report. In order to see these in context, it is important to remember that as a nation we must maintain border security. We must maintain a coherent immigration policy. As has been acknowledged, public opinion, if nothing else, would demand that we maintain such a coherent policy.

A number of your Lordships observed that the European Union cannot accommodate all those who wish to come. That is clearly a truism. The Government's opinion is that there is little evidence to support the proposition that providing opportunities for a small number of migrants to travel legally from source countries will have any significant impact on the very large numbers of migrants who are prepared to travel illegally into the European Union. As the Government recognise, there will of course be some vulnerable people in Syria and the region who can be effectively supported only in countries such as the United Kingdom. That is why the Prime Minister announced the major expansion of the Syrian vulnerable persons relocation scheme, under which we will provide refuge for vulnerable people.

I turn to the contribution of my noble friend Lord Tugendhat. I congratulate him on his chairmanship of the committee, which is now coming to an end. I hope he will accept that what is impossible today may become possible tomorrow. As many of your Lordships observed, this is a complex problem for which there are only long-term solutions. There are no simple immediate answers, although I note that the noble Lord, Lord Rosser, has asked me for some. I will come on to that in a moment. Looking forward, we have to see changes in areas such as Libya, with stability of government there, before we can reach any kind of effective result in the Mediterranean.

The noble Baroness, Lady Suttie, referred to the crime of people smuggling. It is an immense problem, considered to be the fastest-growing crime in Europe at present. Indeed, the sums involved have been estimated at anything between €3 billion and €6 billion. She mentioned the shift from the Aegean to the middle of the Mediterranean. On that, the Turkey agreement appears to be succeeding. The numbers crossing the Aegean up until the beginning of June are about 10% of what they were a year ago. We have not seen an entire shift of those numbers into the middle Mediterranean. Indeed, the most recent numbers from the middle Mediterranean were slightly lower than they were a year ago. But we will all accept that these smugglers are ruthless criminals. They will find another route, and we have to be prepared to address that as it emerges. Indeed, we have to be prepared to seek the intelligence that will allow us to pre-empt these criminals when they seek these alternative routes.

The noble Baroness also made the point that it is important to distinguish between refugees and economic migrants. That is an important part of the issue. Indeed, we find that so many of those who present themselves as refugees, as asylum seekers, are in reality economic migrants. That is often not an easy issue to resolve. One has to acknowledge that the more economic migrants come forward to claim that they are asylum seekers, the greater the pressure on our resources and therefore the more difficult it is to process those who are genuinely refugees. Indeed, I note in passing that more than 90% of the asylum claims in the United Kingdom are made by persons already here, and who have therefore arrived illegally or under a visa and overstayed their visit. That is the extent of the problem.

Again, as the noble Baroness, Lady Suttie, acknowledged, long-term solutions are needed. Those will be found at source more than anywhere else. My noble friend Lord Horam pointed out that the problem lies at source. That is what drives people away from these countries in sub-Saharan Africa. He also mentioned Jamaica. He made a further important point. As these countries lose their best, their youngest, their best-trained and best-educated, it exacerbates the problem at the source. They lose their doctors, nurses and engineers; they lose a viable economic future. That is why it is important not only to stop this economic migration but to have an effective and viable returns policy. That is welcomed by some of these countries, which want to see their best-educated return to their own country.

The noble Lord, Lord Anderson, alluded to the fact that we cannot accept all who wish to come here. That is absolutely clear. It is therefore necessary to invest our resources in dealing with the problem at source, whether it be health, economic or otherwise. Indeed, we ought to try to maintain a system whereby we give temporary shelter to genuine asylum seekers so they can return in due course. That is why we have encouraged and sought to support those countries that are doing so much in the vicinity of Syria, such as Lebanon and Jordan. They are maintaining facilities for many refugees who want to remain in the Middle East and want the opportunity to return to their own country in due course. We acknowledge the importance of that.

The right reverend Prelate the Bishop of Sheffield alluded to what we need to do when people actually arrive here. Of course, we cannot ignore the need for sanctuary of those who arrive, and I do not believe that any of us would wish to do so.

My noble friend Lord Patten raised the question of what we are doing on the ground, and when we might do something on the ground in Libya. Of course, part 3 of Operation Sophia deals with moving into territorial waters and on to the coast to try to address people smuggling. That cannot be done until we have a stable Government in Libya and appropriate approval from the United Nations. It remains part of our medium or long-term proposal for that project. I am not aware of any request from the present Libyan Government for us to put people on the ground in Libya. If it transpires that there has been such a request, I will write to the noble Lord, but I believe it is widely understood that we cannot take that step into territorial waters or into the territory of Libya until there is a stable Government.

In that context, I have a further observation on a point raised by one of your Lordships about returns to Libya. Let us be clear: there is no question of persons being returned to Libya unless and until it is a safe place for their return, whether they have been picked up in the Mediterranean or elsewhere. When my right honourable friend the Prime Minister alluded to the possibility of returns to Libya, it was in the context that it would occur only when it was safe for such persons to be returned.

I appreciate that I have not mentioned the contributions of all noble Lords expressly, but I hope it will be appreciated that I have taken all of them into account and wish to consider them. The noble Lord, Lord Rosser, raised a number of specific questions about policies that have yet to be implemented and decisions that have yet to be made in the context of certain proposals. In particular, he referred to our contribution to the proposed EU partnerships. I am not aware of any decision having been made on that, but I will inquire and write to the noble Lord on that point. On specific improvements arising from the implementation of the task force, I suspect that it is too early to say that there are improvements we can isolate and report on, but, again, if there are, I undertake to include that in my letter.

We have to remember that the EU action plan against migrant smuggling is intended to shape the EU's law enforcement response to immigration crime. It sets out concrete actions to counter and prevent organised immigration crime. The Government share the view expressed in the action plan that there should be a focus on an enhanced police and judicial response, improved gathering and sharing of information, and stronger co-operation with third countries. The UK's response to the migration crisis must be comprehensive, utilising expertise and resources from across government and law enforcement. In order to be successful it must include a humanitarian response, law enforcement activity and capacity building in source countries.

Of course, some of those making the dangerous journey to Europe are fleeing conflict but others are economic migrants. That is why we are leading the argument in Europe about the importance of breaking the link between these journeys and achieving settlement in Europe for those who are not refugees. We are playing a leading role in tackling organised immigration crime. We have established a multiagency Organised Immigration Crime Taskforce, which brings together officers from the National Crime Agency, Border Force, Immigration Enforcement and the Crown Prosecution Service. Its purpose is to exploit every opportunity to identify and tackle people smugglers.

The Organised Immigration Crime Taskforce is working in 17 countries, giving UK law enforcement unprecedented reach in source and transit countries. The task force is achieving success, both on land and at sea. Land enforcement agencies have had some notable successes. Between 1 April 2015 and 31 March 2016, immigration enforcement achieved 175 disruptions against criminals involved in organised immigration crime. The recent interception at sea of the MV "Haddad", which was detained by Greek authorities en route to Libya, is another notable success. There were weapons, ammunition and smuggled cigarettes on board and,

[LORD KEEN OF ELIE]

had the vessel reached Libya, there is strong evidence that it would have made the return journey with migrants on board.

The task force is also working to enrich the intelligence picture. Officers have been deployed to the existing Frontex debriefing centres in Italy and Greece. There, they are assisting other agencies to gather intelligence from migrants arriving at external EU borders. This information is passed to the host member state for it to disseminate to law enforcement agencies.

The UK also engages closely with the European Migrant Smuggling Centre—which was mentioned by the noble Lord, Lord Rosser, and I think by the noble Baroness, Lady Prashar—which leads for Europol on organised immigration crime. The UK is a key contributor and we are working to improve the overall intelligence picture by encouraging countries to share information effectively with the centre.

In addition to our relationships at a European level, we are also engaging with our closest neighbours to create a strong joint response to migration. We are working closely with the French, Dutch and Belgians to increase the security of ports with links to the United Kingdom and increase co-operation against organised immigration crime. Such work has so far seen improvements in joint work on security measures at ports, intelligence sharing and returns. Activity will continue to determine what additional operational, technological and infrastructure assistance could be provided at relevant ports.

As well as pursuing the criminal gangs involved in immigration crime, the UK is also working with source countries to address the root causes of migration. Through our aid programme around the world we are growing economies and creating jobs. This in turn helps to build more effective states and societies, reducing some of the pressures to migrate. It also helps undermine the business model of organised crime groups. We are also at the forefront of the response to the crisis in Syria, where the United Kingdom has committed over £2.3 billion—our largest ever humanitarian response. The UK's support is helping refugees to remain in host countries in the region and supporting host countries to accommodate them.

In Libya, the UK is supporting the Government of National Accord to regain control of Libyan borders and tackle the organised crime groups. Operation Sophia, the EU's naval operation in the central Mediterranean, has already seen some success. Since its inception last summer, Operation Sophia has destroyed more than 120 smuggling boats on the high seas, apprehended more than 70 suspects and saved more than 15,000 lives. This is good progress on which we can build.

The UK survey ship HMS "Enterprise" has been participating in the operation. To add support during a surge of assets in October and November, we also contributed HMS "Richmond". But the smugglers are of course adept at changing their tactics, so we must be aware of that and be prepared to respond. That is why we have agreed with EU partners to expand Operation Sophia's scope to include activity to build the capacity of the Libyan coastguard and to prevent

the trafficking of illegal arms into Libya. We remain committed to moving to the later phases of Operation Sophia, to prevent smugglers putting to sea, once the right conditions are in place. With a new Government in Libya, we have an opportunity to take this forward—and, therefore, what has seemed impossible may in the medium to long term become possible.

In May of this year, the Prime Minister announced that four military planners had deployed to the Operation Sophia headquarters in addition to the UK personnel already present. They are working on options to build the capacity of the Libyan coastguard and, in due course, we expect to support the delivery of this with a UK training team. This activity will help secure the coast of Libya and harden the operating environment for people smugglers.

The Prime Minister also announced that we will seek to commit a second ship to Operation Sophia to tackle arms smuggling to Libya. The UK has worked hard to secure a UN Security Council resolution authorising member states to take action to support the embargo. This was agreed unanimously last night. The arms that are illegally supplied from the Mediterranean reinforce violent armed groups, and Daesh in particular. Countering the flow of weapons and military equipment will support the wider effort to promote stability in Libya and a stable Libyan Government.

The work of Operation Sophia is just one element of wider UK efforts to support the humanitarian needs of migrants. The United Kingdom is providing £70 million to the Mediterranean migration crisis response. Some £60 million of this is allocated to Europe to provide lifesaving aid to migrants and refugees, as well as support to Governments to build their capacity to manage arrivals. At the EU-Africa Valletta summit, the Prime Minister announced a further £200 million in bilateral aid to Africa to deal with the root causes of migration and a €3 million contribution to the EU trust fund for Africa. I say that in response to the observations of the noble Lord, Lord Rosser.

In the Horn of Africa we are supporting the Khartoum process that was mentioned by the noble Earl, Lord Sandwich, which focuses on combating organised immigration crime and human trafficking in the region. The goal of the process is to encourage member countries to work in a co-operative manner to tackle the shared challenge of organised immigration crime. It aims to achieve an improved understanding of this threat and to establish ways to strengthen capabilities in the region. It is not easy and requires us to engage with certain regimes when we might otherwise not wish to do so.

The law enforcement approach outlined in the EU action plan against migrant smuggling is one element of the EU's response to the migration crisis. This is complemented by the United Kingdom's law enforcement, as well as wider activity such as Operation Sophia to meet the humanitarian needs of migrants, tackle the root causes of migration and respond to the ever-developing challenge posed by criminal people smugglers—and in that we maintain our intent. I thank noble Lords for their attention.

7.06 pm

**Baroness Prashar:** My Lords, I thank all the Members of the House who have participated in this debate and the Minister for his response. This has been a very thoughtful and compassionate debate and some very good suggestions have been put forward. It is encouraging that we can discuss an issue of this nature with humanity and with some constructive thoughts. I underline my thanks to all the Members but, at this time of the evening, I do not wish to respond to each point that was made but to say that I beg to move.

*Motion agreed.*

## **EU: Operation Sophia (EUC Report)**

*Motion to Take Note*

7.06 pm

*Moved by Lord Tugendhat*

That this House takes note of the Report from the European Union Committee *Operation Sophia, the EU's naval mission in the Mediterranean: an impossible challenge* (14th Report, Session 2015–16, HL Paper 144).

*Motion agreed.*

*House adjourned at 7.07 pm.*



## Second Reading Committee

Wednesday 15 June 2016

### Arrangement of Business Announcement

Noon

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** My Lords, before the Minister moves that the Bill be considered, I remind noble Lords that the Motion before the Committee will be that the Committee do consider the Bill. I should perhaps make it clear that the Motion to give the Bill a Second Reading will be moved in the Chamber in the usual way, with the expectation that it will be taken formally.

### Intellectual Property (Unjustified Threats) Bill [HL]

*Motion to Consider*

Moved by **Baroness Neville-Rolfe**

That the Committee do consider the Bill.

Noon

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con):** My Lords, it is pleasing that a number of technical and uncontroversial reforms have in recent times gone through the special procedure before this House which is reserved for Bills arising from the great work of the Law Commission. The most recent example was the Insurance Act 2015, which this House scrutinised towards the end of the last Parliament.

The Bill before your Lordships' House today is similarly concerned with a complex and specialist area of law. It concerns a particular aspect of our intellectual property framework, and I am very grateful to the Law Commission and to legal, IP and judicial stakeholders who have worked together so effectively to produce these reforms. I hope my explanations today will help noble Lords to appreciate their efforts.

In my two years as the Minister for Intellectual Property, I have come to appreciate how important IP is to this country. The UK's investment in intangible assets protected by IP rights has been estimated at more than £60 billion, equivalent to approximately 4.2% of total UK GDP. IP-intensive industries have been estimated to generate 37% of UK GDP. This Government also understand that a well-functioning IP regime is a vital foundation for economic growth. This is reflected in our manifesto commitment to make the UK the best place in Europe to innovate, to patent new ideas and to set up and expand a business.

To be successful, our intellectual property system needs to strike a balance. On the one hand, the law must reward innovators and ensure that their IP rights can be enforced. On the other, it is crucial that threats to sue for infringement are not abused, stifling new ideas and distorting competition. This concern is a real one, and the Bill before us today is designed to

counter these risks. The costs of IP litigation are such that many businesses, understandably, wish to avoid it at all costs. The consequence is that the mere threat of proceedings for IP infringement is capable of driving customers away and causing significant commercial damage, especially if the threat is issued by someone with deep pockets and the other party is less favourably placed.

A threat to sue where there has been no infringement, or where the IP right in question is actually invalid, is known as an unjustified threat. Such threats are, I regret to say, not a new phenomenon. As long ago as the 1880s, unjustified threats were misused to damage trade rivals. In an early example, threats of patent infringement were made to the customers of a steam engine manufacturer by one of its competitors. The intention was simply to drive those customers away, and it worked. Parliament intervened in 1883 and provided a remedy for the person abused. Since then, similar statutory remedies have also been introduced in respect of trademarks and registered and unregistered design rights. These "threats provisions" offer much needed protection and provide remedies to those whose commercial interests have been affected by an unjustified threat.

But time moves on and new difficulties arise. Business and IP professionals have told us that the existing provisions do not work as well as they should, partly because they are overly complex. Experts can exploit loopholes in the law, while the unwary can find themselves unintentionally caught up in litigation. In addition, the provisions have developed in a piecemeal fashion across the different IP rights. Consequently, there are plenty of inconsistencies to further muddy an already complex area of law. This is particularly problematic for small businesses, which are disproportionately affected by the cost of any legal advice they require. They are a particular concern to this Government and to me personally.

A further problem arises over who should be approached when a question of infringement arises. Not all infringers are the same. Some, such as manufacturers and importers of infringing products, do more commercial damage than others and are better placed to determine whether a threat of infringement proceedings is justified. The threats provisions must differentiate between different types of infringement. This encourages rights holders to approach the most appropriate person or business, while protecting others, such as retailers, from unfair approaches and unreasonable threats.

In 2012, against this background, we asked the Law Commission to review the existing law of unjustified threats. The Law Commission consulted extensively in 2013 and made detailed recommendations for reform in 2014 and 2015. The Bill reflects those recommendations. The provisions in the Bill are essentially the same for patents, trademarks and designs—both registered and unregistered. For each right there are five main parts which deal, first, with the test for what constitutes a threat; secondly, with which threats are actionable; thirdly, with the safe harbour of permitted communications; fourthly, with the remedies and defences; and, finally, with exemptions for professional advisers.

[BARONESS NEVILLE-ROLFE]

It may be helpful to noble Lords if I briefly set out what each of those parts aim to do. The first is the definition of a threat. There are three elements to the test, which are to be understood from the perspective of a “reasonable person” receiving a communication such as a letter or email. Would a reasonable person, knowing what the recipient knows, understand from that communication that an IP right exists, that a person intends to bring proceedings for infringement of that right, and that the alleged infringement relates to an act done—or to be done—in the UK? If the answer is yes to all three aspects, then the communication can be said to contain a threat to sue for IP infringement. The test is taken from existing case law, with one change that provides the necessary link between the threat and the UK market. It also allows the provisions to apply to the forthcoming Europe-wide unitary patent, but not to apply outside the UK.

The second part sets out which types of threats trigger the threats provisions and which do not. The provisions set out that threats may be made freely to manufacturers or importers and their equivalents and they will not trigger the provisions. This allows rights holders to approach the trade source of a potential infringement, which could cause the most commercial damage. Manufacturers and importers are likely to be able to assess whether a threat to sue is justified and, having invested in the product in question, will be more willing to challenge the threat if it is not justified. In contrast, retailers, stockists and customers are unlikely to be able to make an informed decision about whether a threat to sue is justified. They are likely to be risk averse and want to avoid being taken to court and, as a result, they will probably simply stop stocking or buying the product in question without investigating further. Clearly, this is potentially unfair and damaging to a legitimate business. For that reason, threats made to businesses and people such as these are generally not allowed. Of course a rights holder may legitimately need to speak to such businesses, so the third part of the provisions gives guidance on what can safely be said to retailers or customers, and for what purpose. It clarifies the existing law by introducing the concept of “permitted communications”.

The fourth part of the Bill sets out remedies available in the case of a successful threats claim and the defences available to a defendant—the person who made the threat. The range of remedies available will be unchanged by the Bill. Damages may be awarded for commercial damage done by the threat and the claimant may seek an injunction to stop the threats, as well as a declaration that the threats were unjustified. I should stress that the threats provisions are not intended to stop rights holders being able to protect their assets, but to prevent the unscrupulous use of unjustified threats to manipulate the marketplace and prevent fair competition. Consequently, the ability to prove that the threat was in fact justified because an infringement occurred will remain a defence. An additional defence was introduced by the 2004 patents reforms. A person making a threat to a retailer or the like would have a defence if their efforts to find the trade source of the infringing patented goods were unsuccessful. This Bill will extend that limited but useful defence to trademarks

and designs. The provisions also clarify that the person making the threat must use “all reasonable steps” to find the importer or manufacturer of the product in question before they are safe to approach the retailer.

The fifth part of the Bill prevents threats claims being brought against regulated professional advisers acting on instructions from their client. Currently, liability for making threats is not limited to the rights holder; any person who issues a threat will risk a threats action being brought against them. This means that professional legal advisers, such as solicitors and registered patent or trademark attorneys, may be held personally responsible for making threats even though acting on client instructions. This disadvantages rights holders as well as the legal advisers themselves. Threats actions can be used as a tactic to disrupt relations between adviser and client and may result in advisers asking for indemnities or telling clients that they can no longer act for them. The Bill therefore provides an exemption for professional advisers in relevant situations, but the instructing client will still remain liable for making the threat.

I hope that this explanation of the Bill’s provisions has been of assistance. I very much look forward to hearing what noble Lords have to say and to taking the Bill through the special procedure before the Committee, which I have not had the pleasure of using before and to which it is very well suited. These are worthy and important reforms, which will make a real difference to UK innovators, inventors and designers. I beg to move.

12.11 pm

**Baroness Bowles of Berkhamsted (LD):** I thank the Minister for that explanation. I declare my interests in the register as a retired UK and European patent attorney and a former fellow of the Chartered Institute of Patent Attorneys. As a consequence of that interest I have experience of the issues behind this legislation, stretching back to practice under the Patents Act 1949 as well as the Trade Marks Act 1938 and others.

I am afraid that I confess to being underwhelmed by the Bill because there are missed opportunities. But the Bill is here, so I can agree with making good on the 2004 promise to align the threats provisions in other IP rights with those of patents and to add some clarity to what can be communicated, to reduce likelihood of threats actions and to allow more permitted communications. However, not enough has been done to ensure that the Civil Procedure Rules or alternative dispute resolution are followed or to ensure that a recipient understands their full position and that such procedures should be followed. This should apply to exempted threats and, where relevant, to permitted communications.

The Bill does not capture the kinds of abuses that can and do happen nor even all the loopholes mentioned in paragraph 34 of the original consultation document. The first loophole was issuing proceedings merely as a negotiating tactic; that can still be done, and done repeatedly. The second was careful drafting around threats; drafting may be easier but wider exemptions will no doubt open new loopholes. The third was threatening on related matters such as passing off—that

is still available, with no need to be comprehensive about all rights—and finally, forum shopping remains, apart from any commensurate reduction with any reduction in actionable threats.

The Bill also relieves regulated legal advisers of the risk of being liable as a threatener. Paragraph 7.65 of the original consultation suggests that smaller, non-specialist lawyers are at risk even though it is also acknowledged that threats actions against lawyers are very rare. My own experience is that, although actions may be rare, aggressive threats are alive and well. And just as highly qualified advisers have a hand in other walks of life to dream up aggressive and even egregious strategies, so too have some IP specialists. Overaggressive strategies should not be exempt and I will come back to that.

There is also the issue of not having fulsome compliance with the Paris convention. I seem to recall that one of the section heading quotations in *Blanco White*—a popular tome for practical advice, at least when I first qualified—was:

“Agree to the resolution and say that British Law already conforms”.

The fact is that the more we have allowed exceptions from the original threats provisions, no matter how logical, the further away we are from compliance, and the tapestry of available other torts does not fill the gap, as has been elaborated in the consultation and background documents.

The current law, and the proposed revisions, continue with the presumption that a manufacturer does not need any protection against unjustified threats of proceedings for infringement, that the attitude of the rights holder is irrelevant and no good faith or belief in validity requirement applies, even though it does—or, at least, something called truth does—to the new permitted communications. Experience shows that this presumption leaves small manufacturers, and “start-ups” in particular, open to oppressive behaviour by larger entities. I will turn to some anonymised real life examples.

US corporation X threatened small British manufacturer M with proceedings for infringement of a British patent. The products made by M were within the scope of the claims of the patent. However, investigation showed that all the claims of the patent were clearly invalid in view of a document of which corporation X had demonstrably been aware for at least seven years, it having been cited in proceedings for amendment of X’s United States patent. There was no intention to litigate because of the vulnerability in the US legal position and the motive behind the threat was apparently to produce adverse publicity for M, and consequentially depression of its share price, making M cheaper for X to purchase.

Nothing in the new law would help the manufacturer M in what was a threat under an invalid patent. If aggressively repeated and publicised, the only remedy is still an action for revocation and even if successful there are merely costs and not damages. In similar situations where the patent is valid but there is not infringement, a threatened manufacturer might need instead to seek a declaration of non-infringement, which is even worse protection with merely costs and a declaration and no damages nor an injunction against future threats under the continuing patent.

SMEs cannot be going back to court asking for additional injunctions, even if that is the lesson of *Apple v Samsung*. In the absence of being able to claim an unjustified threat, the rights holder gets away with it. Here I point out that the purpose of legislation is not just about what happens in the small number of cases that get to court; it is about the deterrent to bad behaviour. It is about the speed limit, not just the speeding fine.

A second example: patentee A threatened small British manufacturer B with infringement proceedings. B commissioned an independent report which demonstrated beyond doubt that A’s patent was not infringed and offered to share that report with A. A refused to consider the report, but each year for four years—always just before a trade fair—A used a different lawyer to repeat the threat and publicised it. Using trade fairs in this way is a common ploy mentioned among the consultation documents. The Bill does not provide a defence for a manufacturer, so it is back to the non-infringement declaration, again with no injunction to stop future and repeated threats and publicity. In this case, A’s fourth solicitor then proceeded to threaten one of B’s distributors, C, on the alleged basis that C was an importer. Since the solicitor was already aware that the products were made by B in the UK, because of their own previous correspondence to the manufacturer and the replies, the threat to the distributor was plainly oppressive.

In subsequent correspondence the solicitor, somewhat smugly, said that a threats action was not applicable because the letter referred only to making and importation, which do not allow proceedings to be brought. That of course was simplistic, and a demonstrable ruse that it would have been interesting to see being explained to a judge. This was a circumstance when I consider it would be appropriate to pursue the solicitor in a threats action for the seemingly deliberate strategy of a deceitful letter in which they must have been complicit, and potentially the deviser. This was not a non-specialist firm.

What can we do? Other countries take the tone and circumstances into account when looking at the issue of liability. Paragraph 6.27 in the consultation says that the law in the Netherlands provides that,

“even a ‘justified’ threat may be unlawful if it is unnecessarily offensive or unnecessarily public”.

That comes from a tort which a senior Dutch colleague described to me as,

“violation of what has to be regarded as proper social conduct”.

The wording in the consultation document would be a useful addition to the Bill, not as a separate tort but as both a general requirement and one applicable to lawyers or advisers. It would enable bringing back lawyer or adviser liability for egregious behaviour without damaging the more general exemption and deal with the “copy and distribute to customers” tactic at trade fairs.

The wording could be extended for the purpose of other abuses—for example, along the lines of the Paris convention that any exempted or permitted threat becomes unlawful if it is contrary to honest practices in industrial or commercial matters; after all, that is what we are meant to comply with. Alternatively, to

[BARONESS BOWLES OF BERKHAMSTED]  
 make a more homegrown version, one could use the tests from the *Broxton* abuse of process case, which refers to conduct of proceedings,  
 “designed to cause the defendant problems of expense, harassment, commercial prejudice”,  
 or for “collateral” reasons.

It is most unfortunate that the Bill only helps rights holders and does nothing for the threatened party, when a significant part of the consultation was about abuses by rights holders. However, infringing manufacturers can be sneaky too and seek a new source, or there may be a commissioning party as the economic actor. I would be interested to cover those situations by allowing wider undertakings to be sought from manufacturers that cover selling from any other unlicensed source and more generally treating those commission acts as primary actors.

I will not elaborate in detail now, but I flag up concerns over new Section 70C(3) and possible ambiguity in the burden of proof for validity, and over whether the position of notice and takedown notices under Article 14 of the electronic commerce directive should be referenced. We could greatly improve the Bill, and I hope I have whetted appetites to help all SMEs with the anti-abuse measures that I have outlined.

12.24 pm

**Lord Hope of Craighead (CB):** My Lords, I add my words of welcome for this Bill and for the use of the special procedure, which will enable detailed scrutiny to be conducted in a more appropriate setting for a Bill of this kind than on the Floor of the House. Considerable thanks are due to the Law Commission for the care it has taken in the formulation of the proposals, and to the Government for initiating the process in the first place and agreeing to take the legislation forward in this way.

By way of background, though it may be an obvious point, intellectual property is a highly specialised area of the law. The problems that it gives rise to are often complex and difficult to resolve. In the case of patents, for example, which I had some experience of in practice when I was at the Bar—though nothing like the distinguished practice that the noble Baroness, Lady Bowles of Berkhamsted, has had—I found that construing and understanding the patent specification in itself can be a time-consuming and difficult exercise. One must understand the subject matter of the patent as well. What may appear at first sight a fairly simple matter will very often turn out to be far from simple once you get down to the detail of the design or the process that is protected. Specialist advice is almost always needed both as to the law and the technology. Advice of that kind tends to be expensive because the intellectual effort required is so demanding and so time-consuming. Anyone who is drawn into legal proceedings in this area of law has to face up to that fact, and that is why threats are so compelling in this field. For the same reason, those who have taken the trouble to register their rights will usually have had to spend quite a lot of money in taking that step.

As the Minister has properly recognised, it is essential that those who go to the length of registering their patents, trademarks or design rights should be able to

enforce the rights that registration gives to them. The law must allow those rights to be enforced. Those whom the law in this area regards as the primary actors—those who make things or affix signs to their goods or packaging, for example—must accept that there may be others who do such things who have taken steps to protect themselves against infringement of their rights and have a legitimate commercial interest in doing so. They must take the risk of proceedings against them if they do not do their homework first to see whether there are any relevant intellectual property rights that must be respected. Registration is designed to give notice to those who need to know, because they are primary actors, that these rights exist. In that respect, as I understand it, the system across all these IP rights works well.

But—and this is the area we are really concerned with here—there are others, as the noble Baroness has explained, whom the overzealous or unscrupulous may see as competitors, and they are not in that category. These are the secondary actors, whom the law has long sought to protect against misuse of the right that has been protected. The noble and learned Lord, Lord Mackay of Clashfern, told me yesterday about a case which he had when he was at the Bar in which his client was unashamedly seeking to drive his competitors out of the market by making threats of infringement proceedings against them. The competitors were simply using, not making, equipment of the same kind—it happened to be cranes—as that over which his client had a patent. He told me that his client was one of those people who would not take no for an answer—I suspect that the noble and learned Lord was the person saying no—and he was not to be put off what he was doing. As the impact assessment for this Bill puts it, people such as users, retailers, wholesalers and customers ought not to be and, under the law as far as it is, cannot legitimately be threatened with proceedings of this kind. I think that the noble and learned Lord was rather relieved when at the end of the day the overzealous patentee, when taken to court under the previous legislation—that is before the 1977 Act—lost his case. Situations of this kind are not confined to that one experience. They are, as has been explained, not uncommon, and that is what this Bill is all about.

Two questions need to be answered at this stage. The first is whether the protection provided by the existing law is sufficient and proper and needs to be reformed at all. The second is whether the reform proposed here is the right kind of reform. As to the first, it seems that there are ample grounds for believing that reform is needed. I do not think that the noble Baroness, Lady Bowles, disputed that point. Section 60 of the Patents Act 1977, which Clause 1 of the Bill will replace in relation to patents, looks relatively simple and satisfactory at first sight. However, we will have to see how it works in practice. The provisions in this Bill are longer and more elaborate. One might wonder whether it was wise to depart from the simple approach. However, the present approach in the statute suffers from major defects, among which are a failure to distinguish clearly between those threats that may be made legitimately and those that may not. The defences which may be advanced if proceedings are

taken need to be clarified. The existing law fails to set out clearly what communications will not amount to an unjustified threat and, as has been pointed out, says nothing either about the position of professional advisers acting on the instructions of someone else. The result is a situation that, despite its apparent simplicity, has been shown to be unduly complex as the boundaries between what is permissible and what is not are unclear, resulting in unnecessary costs.

As the Minister explained, the arguments for reform were fully explored by the Law Commission in an impressive series of studies in its report of April 2014 in the light of the responses received to its consultation paper of the previous year, and in its further report of October 2015 in response to the Government's request for a draft Bill. For my own part, I think that the arguments advanced for reform are compelling, and it seems to me that a strong case has been made out. I was particularly struck by an observation by the Scottish Law Commission in the course of its examination of the same issue. It made the point that a Scottish rights holder may prefer to issue proceedings for infringement in Scotland against a potential infringer rather than simply write a letter because it risks ending up in the High Court in London, which is the last place that a Scots infringer would wish to be taken, facing an action for groundless threats. This is the "sue first, write later" culture which seems to exist under the present law and which the Bill seeks as far as possible to eliminate. As the Law Commission put it in its October 2015 report, the current law tends to drive cases to court.

As for the question of whether this is the right reform, the Law Commission acknowledged in its report of October last year that one of those who responded to its consultation paper, Professor Sir Robin Jacob, a former judge with much experience in this field, said that the solution which had been adopted here was not the right solution and that it should be scrapped. The paper does not elaborate in great detail on Sir Robin's points but it looks from what we are told that his complaint was that the Bill is excessively elaborate and complicated—I do not think he was making quite the same points as the noble Baroness has made—and that there is no hurry and therefore one should take more time to devise a more satisfactory reform. However, so far as the people who responded to the Law Commission are concerned, he seemed to be out on his own. Those who have taken a different view include a variety of professional bodies, including the Law Society of England and Wales, the intellectual working party of that society and the City of London Law Society Intellectual Property Law Committee. They also include the Law Society of Scotland, which in a communication I received earlier this week said that it welcomes and is supportive of the Bill.

It looks as though there was a clear choice whether to create an entirely new remedy to deal with the problem, such as something based on tort, or to build on the existing structure instead. The advantage of the latter, which was chosen, is that it makes use of a system with which those who work in this field are fairly familiar. That seems to be an advantage. The defects in the system are known, have been identified and can be addressed now without the need for further

research and consultation, which a redesign would certainly need. Yes, Sir Robin is right, the Bill's provisions are more elaborate and complicated than the legislation that exists at present but that is the price that has to be paid for clarification. If a more fundamental solution is needed, it can wait until later.

Detailed scrutiny is for the next stage, of course, but I will mention one point in passing, which I simply picked up when comparing the draft Bill, which the Law Commission set out in appendix C to its October 2015 report, and the Bill before us. The Bill before us is almost exactly the same as what was drafted by the Law Commission. There seem to be only two differences apart from a change to the headnote of Clause 3. One is the very proper addition to Clause 1 of provisions to ensure that protection against unjustified threats will be available in the unified patent court—which I think will become a reality next year—as well as in the UK courts. That does not require any explanation other than that one might observe that issues of infringement and the validity of a unitary patent, which might be raised by a defence of justification by a patentee to a threats action, will be in the exclusive jurisdiction of that court and cannot be brought to the UK court.

The other point that struck me as requiring some explanation is the omission in regard to each kind of intellectual property of the provision in the Law Commission's draft. It seems designed to clarify what is meant by the references in those clauses to infringement in relation to proceedings for an order for delivery up or disposal. It may be that, on further consideration, clarification was thought not to be necessary. If that is so, then that is a perfectly good explanation. I am not searching for an answer now but, if one is available, I would be interested to know why that bit was taken out.

On the issues of principle, I fully support this Bill. I believe it to be uncontroversial, on the whole, and I agree that it should receive a Second Reading in the terms of the Motion.

12.37 pm

**Lord Hodgson of Astley Abbotts (Con):** My Lords, I am a lay man. As a lay man, seeing this rather daunting title, and glancing through the Explanatory Notes and the Law Commission's background paper—number 360—underlines the technical nature of much of what is proposed. Furthermore, I see that my fellow speakers include two distinguished noble and learned Lords and, now I understand, an equally distinguished retired patent attorney who has made a very incisive speech. I have the sense that the ice may crack beneath my feet at any moment, but I want to persevere because the safeguarding of the proper use of intellectual property provides an important element in the future prosperity of this country. In doing this, I pray in aid my career in helping, advising and financing small and medium-sized enterprises.

Before I go any further, I will briefly divert to add to the remarks of the noble and learned Lord, Lord Hope, and give a word of thanks to the Law Commission for its work. I had the pleasure of working with the commission quite a lot, following the review I carried out for the Government on the Charities Act. A

[LORD HODGSON OF ASTLEY ABBOTTS]  
 further Law Commission Bill is on the stocks, updating some of the more technical aspects of charity law. I will not say that I always agree with all of the Commission's conclusions, as that would be going too far. However, one cannot but admire the intellectual rigour with which it takes issues apart, and it often does so in a way that brings clarity to pretty dense topics. The Bill before us today is no exception.

One of my regrets is that a lot of the Commission's excellent work is dissipated because Bills get stuck somewhere at an early stage of drafting. Since we are discussing a Law Commission Bill, I wonder if, in due course, my noble friend could write to the noble Lords who participated in the debate today to give us all a progress report into where the various Law Commission Bills are—whether they are in draft form or still in consultation. I know, for example, that there is an extremely important consultation finishing on electoral law, which is an area of considerable interest. It would be good to know where the Government have got to in their thinking on the various proposals before the Law Commission so that the terrific work in what it does is not wasted because time passes.

I turn to the Bill itself and its policy background. My noble friend on the Front Bench will have heard me on this issue before, but whatever the outcome of the referendum, for the next quarter or half a century this country will have to watch an irreversible shift of relative wealth from the West to the East. One way to mitigate the impact of this trend will be for us to be smarter and more innovative—not just to make the discovery but above all to develop and exploit it successfully. A vital part of that process will be an appropriate legal framework for intellectual property.

Noble Lords may be aware of the new use of the name “unicorns”. A unicorn in modern financial speak is a start-up company now valued at more than \$1 billion. Last year, 11 unicorns were created in Europe—over half of them in the UK. Before we become complacent, I should say that the US created 22 unicorns in the same period. These larger early-stage companies represent competitive threats to many established players, who can react violently to the threat. This is where I am interested in exploring how the Bill could be of assistance.

Not just unicorns need protection and support; in many ways they are reasonably resourced to deal with the litigious, the unruly or the obsessive. Small and medium-sized companies are more vulnerable to unreasonable behaviour. In part this is because they may lack access to expert legal advice—not for them the expertise and the associated invoice of the magic circle firms. I am pleased to see that in paragraphs 1.32 and 1.42 the Law Commission placed special stress on the importance of and the vulnerability of small business rights holders. It will therefore be important in due course to publicise these new provisions—of course through legal channels so that smaller firms of solicitors away from London can advise their clients in confidence, but also through trade bodies, chambers of commerce, and so on.

For example, if the safe harbour protection afforded by the “reasonably regarded” test—an important development, as I read it—is to have a real commercial

effect, it will need a commercial interpretation and approach as well as a legal one. Matters which seem so open and shut in the calm deliberation of a court-room, often with the added advantage of several years of hindsight, do not always seem so clear in the hurly-burly and time pressures of day-to-day commercial life.

Just in passing, on the power of the court to add to the list of permitted purposes in proposed new Section 70B(2), is this a normal conventional power? It seems to be a legal Henry VIII power, but I may be wrong, and no doubt I shall be put firmly in my place shortly. I rang a solicitor to ask him and he told me that he had not come across it anywhere else, but I will be interested to hear what my noble friend has to say about that.

I will follow the noble Baroness, Lady Bowles of Berkhamsted, on forum shopping. I have an interest in extradition—I am a trustee of Fair Trials International—and in extradition cases there have been attempts by one side or the other to manoeuvre the case into the courts seen as most likely to reach a favourable answer. This issue is addressed in 3.12 of the Law Commission paper, but could it happen in IP cases under the provisions of the Bill? As I read it, I think not, but perhaps my noble friend will give some further clarity in due course.

Sadly, however, the Bill does not—perhaps cannot—address one of the major causes of inequity in IP cases: the time it can take to get cases to court and to a decision. It is not so much the time it can take as the ability of one side, particularly a large company, to obfuscate and delay so that the smaller company runs out of cash and/or energy to prosecute or defend its case. The Law Commission is clearly aware of this, because it says at paragraph 1.19:

“Sometimes, the risk of facing costly litigation may prevent a small enterprise from asserting its intellectual property rights where these have been infringed by a larger competitor with greater resources”.

That addresses the issue of money but not the issue of time passing and its associated costs—not just financial but, for a small company, the diversion of inevitably scarce senior management time and expertise.

The noble and learned Lord, Lord Hope of Craighead, referred to the issue of the approach that has been taken in drafting the Bill. I find it slightly strange that, at paragraph 4.4, the Law Commission reached the conclusion that a,

“standalone measure could easily go unnoticed by this group”, and instead decided in its drafting to amend three existing Acts of Parliament. I would have thought that a stand-alone provision was less likely to be overlooked than amendments to existing pieces of legislation, but I leave that to more experienced and wiser heads than mine.

I conclude with a sad, real-life example of why this Bill is necessary but also why I fear it cannot provide a complete answer. A company with which I was involved developed a new chiller cabinet, familiar to Members of your Lordships' House from every supermarket and grocery store. Imagine the company's delight when a major supermarket chain bought six of the new models. Imagine its dismay when, a few months later, a whistleblower who had left the supermarket on bad terms revealed that the six chiller cabinets had not

been purchased to be used, but to be taken to pieces and re-engineered to get round the IP and the patent. It proved exceptionally difficult for the smaller company to discover what was going on. The supermarket chain was not intending to sell any of the new-style cabinets, merely to use them internally.

In due course, enough evidence was found to build a case against the larger company. It naturally denied any patent infringement. More importantly, it took the opportunity to tell the smaller company that its legal advice was that, given the time needed to obtain technical advice and so forth, it would take at least two years for this case to get to court and that, before it started, it should be prepared to allow for that time lapse and build it into its cash flow. In a “just so you know” add-on—the chilling phrase used in the box on page 10 of the papers before us—the supermarket gave the smaller firm notice through its solicitors that it would inevitably wish to consider launching a counter-claim to protect its position.

There is only one winner in such circumstances. If the provisions of this Bill can do anything to reduce the inequality of arms in these sorts of cases, it will be well worth while. I therefore very much support it.

12.48 pm

**Lord Brown of Eaton-under-Heywood (CB):** My Lords, it was with some considerable diffidence that yesterday I put my name down to speak in this Second Reading debate. I would not have done so had not my noble and learned friend Lord Walker of Gestingthorpe been tied up as chairman of the HS2 Bill Committee and unable to take part today. He is a great expert in this field, and I certainly am not. Realistically, I am virtually as much of a layman as the noble Lord, Lord Hodgson, who has just spoken.

As it happens, my only direct experience in this particular area of the law was sitting with my noble and learned friend, Lord Walker of Gestingthorpe—Lord Justice Robert Walker, as he then was—in the Court of Appeal in 1999 in a reported case called *Unilever v Procter & Gamble*, which concerned more particularly the interrelationship between the jurisprudence on intellectual property threats and the without prejudice rule. My noble and learned friend Lord Walker gave the lead judgment, while I gave an altogether shorter concurring judgment, which I began thus:

“Coming as a stranger to this arcane world of patent infringement threats actions, I am struck by the initial difficulty in understanding just what is the policy underlying section 70 of the Patents Act 1977”.

I then turned to examine some of the preceding and subsequent law, continuing:

“I must say that I find the position today”—  
this of course was 1999—

“most curious and unsatisfactory. Although, essentially, I take the policy to be ... that rival manufacturers may threaten each other but should not threaten each other’s customers with the objective of inducing them to cease dealing with their rivals ... it cannot be pretended that the legislation is this narrowly confined”.

In that context, I then referred to the *Cavity Trays* case, which is one of those discussed in the Law Commission’s 2015 report and which, in 2004, led to an earlier change in our law.

However, as recorded in paragraph 1.23 of the Law Commission’s report, that change has not yet been

extended—as it certainly seems to need to be—from patent law to the law of trademark and design. I confess at once that in truth I remain a stranger in this arcane world of unjustified threats in intellectual property cases, but I read the Law Commission’s report with considerable interest and no little admiration. It has certainly persuaded me that changes in the law are now required and that the Law Commission’s own proposed Bill is indeed the right way of seeking to achieve these changes and reforming this undoubtedly problematic area of our law.

I do not intend at this stage to comment in detail on the present problems and their proposed solution. I recognise of course, as another noble Lord did, that Professor Sir Robin Jacob—another great expert in intellectual property law, with whom, again, I used to sit in the Court of Appeal—fundamentally opposes the evolutionary model of reform which is now advanced. One only has to look at paragraphs 1.44 to 1.48 of the report to see his quarrel with that. However, I find the Law Commission’s response to this view, which is backed by the great majority of consultees, to be convincing. By all means let further work be done hereafter on the possibility of substituting for the existing, somewhat elaborate and complicated statutory scheme a new general tort of false allegations. But in the meantime let us deal with the identified, specific problems, which require an altogether more immediate solution.

I am struck not only by the quality and cogency of the report but by paragraphs 4.8 and 4.9, under the heading, “Stakeholder comments on the Bill”. They indicate that it commands the substantial support of a host of experts, including not least two Lord Justices—both specialists in this field—a High Court patent judge, others to whom the noble and learned Lord, Lord Hope, referred, the Law Society, the IP committee, the Chartered Institute of Patent Attorneys, the Intellectual Property Office and of course in Scotland that most distinguished academic, Professor Hector MacQueen of the Scottish Law Commission.

Above all, I make the point that, as we all know, this is a Law Commission Bill and as such I suggest that it deserves to be supported unless compelling arguments are raised against it. We often complain—in my view, rightly—that generally speaking there is not enough pre-legislative scrutiny in our parliamentary process. But Law Commission Bills par excellence have manifestly enjoyed pre-legislative scrutiny. Plainly, there has been here an exhaustive process of progressive consultation and analysis. The Law Commission itself is an admirable body which I strongly support. Only the very best lawyers serve upon it and presently they serve under the expert guidance and chairmanship of that most estimable member of the Court of Appeal, Lord Justice Bean. I echo what my noble and learned friend Lord Hope of Craighead and, indeed, the noble Lord, Lord Hodgson, have just said about this topic generally and Law Commission Bills. With them, I welcome the Government’s response to this report.

I, too, therefore wish the Bill a smooth and swift passage, with or without the sort of tweaking which the noble Baroness, Lady Bowles, suggests. I support the Motion to give it a Second Reading.

12.56 pm

**Lord Lucas (Con):** My Lords, I am not going to differ from anyone who has spoken before in welcoming this Bill. It seeks to deal with an acknowledged mischief of unjustified threats and, to my mind, follows related improvements that we made to the law of defamation a couple of years ago. I hope—as I think the noble Baroness, Lady Bowles, does—that this is a direction in which the Government will continue. There are clearly other opportunities for improving our national life in this direction. It is therefore a puzzle to me that the Government appear to be going in the opposite direction on copyright.

The repeal of Section 52 of the Copyright, Designs and Patents Act 1988 opens up any and every photographer and reproducer of photographs of interior or exterior views to threats of legal action from the copyright holders of any designed object depicted in those photographs. All the defences that exist now are to be swept away. There was no need for the Government to do this. There is nothing in the underlying EU legislation or court judgments that requires this. It appears to have been done for ease and tidiness. However, we will find ourselves in a position where if you publish a photograph of a London street scene, you will be actionably infringing the rights of the manufacturers of cars, clothes, traffic lights, lamp-posts—anything designed that can be identified in them, except for sculptures, which alone are exempted under Section 62. The threat applies to historic images, too, so any reproduction of any image taken some while ago is actionable in the same way. Because we do not have in this country an artistic merit restriction on copyright, the ability to take action does not apply just to the designers of an object but to anyone making a design drawing preliminary to the object. Do the Government really believe that in a world flowing with lawyers and collection societies no one will buy up the rights of some former designer of everyday objects, say Douglas Scott who designed the Routemaster bus, and start suing anyone who depicts them? The world is sadly full of people who like to play a junior version of the game that this Bill addresses.

A few years ago, I had a small role in the demise of ACS Solicitors, which were thankfully sacked by the Law Society after some long delays. They were shaking down internet users for allegedly infringing copyright on pornography and other low-grade media. Their evidence was extremely suspect but was never tested in court. ACS made its money from the threats and never took anyone to court, although it used the courts to target its victims via Norwich Pharmacal orders. Now some careless person has dropped blood on to the ashes of ACS and the same scam is alive again with the same thin evidence. The relevant body has an IP address. It has not revealed how it got it. But, given that IP address, it is going through the same old pharmacal procedure, but this time, to avoid the vulnerability that ACS experienced, the solicitor involved—Wagner & Co—withdraws after obtaining the Norwich Pharmacal order, so it is not involved in the threat processes, which are undertaken by shell companies. There does not seem to be any redress for people threatened or for ISPs which are asked to comply with Norwich Pharmacal orders.

If anybody comes across the names of Hatton and Berkeley, Ranger Bay, Golden Eye International, Mircom International, TCYK—all of them well known in the correspondence about what is going on—I urge them to put this thing in the bin. The current scammers are not pursuing anyone: they are just after threats and extortion and shaking people down. If you really feel you need to talk to a solicitor, there is a firm called Lawdit which has hundreds of these cases on its books and is consolidating them.

I applaud the Government for helping our businesses avoid unjustified threats but I would like to know what they intend to do to help the granny in the Clapham nursing home who is being threatened by their smaller, nastier cousins with allegations that she has been downloading pornography illegally. Surely it is not acceptable to the Government that that should continue. These villains are laughing at and abusing the system, just as ACS did until it was closed down, just as the people that the Bill addresses are doing. Could we not, for instance, allow citizens and those acting for them to send a sue or desist letter and then make any further threats short of action liable to penalty, as is done in the Bill? Would that not be a good right for citizens who are being threatened in any circumstances? Also, what do the Government intend to do to mitigate the mischiefs that they are unleashing by the abolition of Section 52? Could they not, for instance, extend the protection given to sculpture in Section 62 to all objects incidental to a 2D or virtual production? That would be very similar to the protection which exists at present.

The Bill shows an admirable intention to protect businesses and citizens from the parasites who live by making unjustified threats against them and from those who seek to use very important and well-meaning legislation, intended to protect those who create in this economy, to unjustified advantage. I hope that the Government will look at their own actions and at what is happening at a lower level and consider going further than they have in the Bill.

1.03 pm

**Baroness Wilcox (Con):** My Lords, I am delighted today to be speaking under the guidance of my Minister here: after all, she has had experience of large companies and food companies, mine being a tiny one and hers being a very large one. She was a very senior civil servant when I first worked with her. She was working in No. 10 and we were trying to sort out how to write complaints systems for all sorts of other businesses. It is very nice to be talking with a Minister who knows what it is to be a Minister, to be a civil servant and to work in business. I feel that I will be very well led by her on this.

I have also had experience of large companies and trademarks. My own company was getting ready to put together a whole new range of foods. We had had our own experience of trademark registration: we had just started doing this registration when suddenly, one day, I got a telephone call from a very large company saying that it thought I had made a mistake, that I was attempting to put something through, that it had not gone through and that I should stand back, because

this company had gone ahead and decided on its new product. It had got all the paperwork, packaging and everything done. I was very fortunate to be able to phone the civil servants who had been guiding me that far and who had told me that, once I had started to make this registration for what was then a trademark, I was safe and that I should tell them to go somewhere else. The answer was, “Oh dear, we have made a terrible mistake. We would like to give you lots of money to not go forward with what you are doing”. As it happened, we had not even started properly and were looking to build a new factory. The outcome was that the company paid us enough money to build it. I encourage any small company that gets threatened by anybody else to immediately assume that it is in the right and not, as most small companies do, automatically assume that it might have got it wrong.

I will move forward to other people who have spoken. My noble friend Lord Hodgson talked about unicorns—the larger, earlier-stage companies—and I was very interested in what he had to say. The Law Commission emphasises how vulnerable SMEs are, and I am only too delighted to support this here today. I will not say much more, as there will be plenty of other times for us to do that as we go forward, but I will just say thank you very much indeed for bringing forward something which is going to be such a help to small and medium-sized businesses. Whether we vote to stay in or vote to stay out, our patents are our patents.

1.06 pm

**Lord Stevenson of Balmacara (Lab):** My Lords, unlike the noble Lord sitting on my left who admitted he got into this with only 24 hours’ notice, or slightly more, I have seen this coming for some time. However, that did not help ease my nerves or concerns, particularly when I saw the notable list of those who are speaking, including—I am able to say this for the first time—my noble kinsman, the noble and learned Lord, Lord Hope. It is a very distant relationship but it is very nice to be able to say that. The noble Baroness, Lady Bowles, speaks from detailed experience, and my nerves did not settle as I listened to the debate. However, fortune favours the brave and we must make progress on this important issue before us. I want to make it absolutely clear from the start that Her Majesty’s Opposition do not wish to oppose the Bill in any sense, although we might wish to see it improved. My main point will be that there is a wider context, and I hope some of the points that have been made today might be brought forward, in particular as we have evidence sessions—a point I will come back to.

I thank the Minister for her very good introduction to the Bill, which covered all the ground needed to get us into the debate. I also thank her for the helpful pre-meeting which we had with the Law Commission and the official Bill team, which certainly helped to set us up for this. As the Minister said, we are in a relatively new process, which is being used for only the second time here. As I have already hinted, the key to the way forward on this—because it does not apply to many Bills that we see in your Lordships’ House—is that we will have an opportunity to ask for evidence to

be presented to us before we get into the detailed scrutiny. Given that we are not opposing the Bill, my points today will therefore be largely about suggesting areas where we might receive some additional information which will help us as we move forward.

The first point is one that has been picked up in a couple of speeches today, and appears every time we have an intellectual property Bill in your Lordships’ House. It may be that we do not have enough intellectual property Bills, which therefore feeds this desire for a wider and broader discussion—I can see the Minister quailing slightly at that, but I think that is broadly a good thing. After all, she started her work in this House with a robust defence of an issue, I think with the Enterprise and Regulatory Reform Bill—I forget, as it was two years ago when she first joined us. That was a bit of a baptism of fire, but she survived that and is now able to bring Bills before us with great confidence and skill.

However, I do not think we have ever really had the chance to debate the assertion made in some of the documents we have seen today, which I think was picked up by the noble Lord, Lord Hodgson, in his remarks. The reason for having an IP regime is precisely because it encourages a flow of wealth, employment and rewards based on the ability of those who have innovation at the heart of their work to develop that and bring to the market material, objects and things that can be sold for reward.

I wonder whether the links between the incentive needed to encourage innovation and the rewards are slightly out of sync, particularly looking across the range of rights. The design right regime is still being changed slightly. Today we are mostly talking about registered design rather than the huge amount of unregistered designs, which I believe are orphans in our discussions about IP rights. Patents and copyright are moving in slightly different directions, particularly in relation to the timescale in the licensing arrangements following the granting of such rights, and the way in which competition can be encouraged. This is not the occasion to do this but, as a context for the debates we are having today, it would be interesting to get a broader discussion. Maybe the evidence sessions could do that.

My second point was raised by the noble Baroness, Lady Bowles. It is an important point and I hope that we do not lose it. At a time when, as a country—or perhaps more in terms of the broader thrust of consumer rights—we are moving to an alternative dispute resolution system, it seems a little strange that we do not see much of that in the Bill. I therefore wonder whether it would be interesting to get more context for how Civil Procedure Rules and the rest would apply if there was a more vigorous and appropriate ADR system. I think that would be a helpful and useful part of what we are doing.

We owe a great debt of gratitude to the Law Commission for its work on this. I have read right through its reports and appreciate the considerable amount of work that was involved in getting us to this stage. The main reason for changing the law is that the present arrangements are complex and inconsistent. We are responding to that, and the Bill clearly takes a

[LORD STEVENSON OF BALMACARA]

line on this, which the Law Commission calls “an evolutionary approach”. Part of its argument for that approach is that there is less cost and uncertainty, which is a point that I think was picked up by the noble Lord, Lord Hodgson. I agree with that in the sense that it is a sensible path through and we can do it. However, as we have heard—a number of noble Lords mentioned this—there is another much more radical approach that would bring the UK into line with how threats are dealt with in mainland Europe. As we heard, most countries deal with groundless or unfair threats as an aspect of the general law on competition, in particular by producing a tort which would reflect that. Where there is a specific tort, this brings us back to the Paris Convention for the Protection of Industrial Property, where signatory states are required to offer effective protection against unfair competition and specific acts are prohibited. It also goes much wider in relation to false allegations in the course of trade and some of the points that we have heard about needing to bring back a sense of the proprieties of business practice, which seem to have come a bit detached from the rather technical approach that we are taking in this Bill. Therefore, I would like to hear evidence in Committee around where this debate might go. Assuming it goes through in broadly the same form in which it is before us, is there a horizon that we can look to over which will come a cavalry charge bringing in the new tort that might bring a broader and better solution to the issues we face today?

Fourthly in my list is the question of client and professional adviser relationships, which has been touched on, in particular in the comments by the retired judge, Sir Robin Jacob, who thought that this was a rather bad idea. I think his words were that there were too many cowboys out there. He would argue that the provision that is now in the Bill appears to be in response to special pleading by solicitors to avoid liability and get more work while writing more letters to scare SMEs. That may be an extreme position. Indeed, the number of responses has already been quoted in respect of the general support that there appears to be for the Bill as presently drafted. However, it seems to me that, by taking a step down this route, the Government may be attacking the whole basic common-law position on the liability of agents acting on the instructions of their principals. We should perhaps hear a bit more about this before we take this step because, once it has happened here, it may have an impact somewhere else. Why is it, for example, that we are choosing to cover US lawyers and others, not those based in the UK, on this matter? Are there not other ways in which those who might be threatened by this could take cover within either their own professional organisations or through insurance? I do not have any expertise in this area at all but I have received representations on it, and we should have a bit more understanding before we go into it.

That is an agenda for how Committee might be prefaced by an information stage. This is a small and important Bill, which we can get through relatively quickly, but the processes and procedures are important. It should be borne in mind that when embarking on this process, we in your Lordships’ House are largely

taking the responsibility for ensuring that the material that goes forward to the other place has been properly looked at and explored, and obviously we need to have the sort of scrutiny that would give credence to that approach. But having said that, I am happy to support the Bill, and I wish it well.

1.16 pm

**Baroness Neville-Rolfe:** My Lords, I am very glad to hear such a welcome for the provisions in the Bill. It is based on careful and detailed recommendations from the Law Commission, which worked very closely with stakeholders to develop the proposed approach and the Bill itself. However, as I said in my opening remarks, this is a very complex area—“highly specialised”, in words of the noble and learned Lord, Lord Hope of Craighead. I therefore welcome the expertise in the Room and the experts we have in this discussion. That will be helpful when we come to Committee. I am especially grateful to the noble Baroness, Lady Bowles of Berkhamsted, for bringing her enormous experience to this area and for illustrating her comments with telling examples, which I am sure we will come back to when we come to the next stage of proceedings.

I also agree with the noble and learned Lord, Lord Hope, and my noble friend Lord Hodgson of Astley Abbots, that we should thank and congratulate the Law Commission for and on its work. The debate shows what tough and specialist judgments it has to make all the time in the work it does. I agree with the noble and learned Lord that the Law Commission gives us ample reasons for supporting this reform—it seems to be of the right kind. I am obviously very aware of Sir Robin Jacob’s views, which do not, as he said, tally with those of most stakeholders, and I was glad to hear from the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and was pleased that he was struck by the quality of the Law Commission report. I also take this opportunity to thank my noble friend Lord Hodgson for the work he has done with the Law Commission, which I know it values. On his comments on the dissemination of better information on the Law Commission’s wider work, we will see how we can progress that, and if it would be helpful I will write to noble Lords.

**Lord Hodgson of Astley Abbots:** It is not so much the dissemination of the Law Commission’s work but the question of where the individual reports have got to. It is not that nobody knows it is happening—its electoral law report is excellent—but it needs to be followed through, and if it is not, we need to be told why. Frankly, asking about this was a way to put pressure on the Government to make sure that this very good work is not dissipated. I understand that what the commission does may not always be acceptable—that is fine—but let us make sure that we either bring it forward and use it or kill it off and say that we do not want it. That is why I hope that the Minister will be able to tell us—not now; I quite understood that she could not do that, but perhaps she could write to those of us who have interests in this—the situation with regard to the tremendous work that the Law Commission has been doing on individual projects, not just this one.

**Baroness Neville-Rolfe:** I think I have already said I will write. In his inimitable way, my noble friend has pressed me on details. I am delighted to say that I will look into his points and write.

We can encourage the Government to do more to take up the Law Commission's good work and progress it into Bills, if this Bill has a smooth passage. We need to resist the temptation to make it too much of a Christmas tree. I think that others have said the same thing. As the noble and learned Lord, Lord Brown, said, the Law Commission is a model of pre-legislative scrutiny, and we obviously should have proper regard to that.

As noble Lords have said, getting the IP framework right is key to supporting business, especially small business, entrepreneurs and the economy and society. I was so glad to hear from my noble friend Lady Wilcox from her own experience of pressing ahead and having success in defending her own inventions—a role model, if I might say.

We also need to prevent the misuse of threats to sue for IP infringement as a way to distort competition, so getting the IP threats provisions right is important for supporting our creators, innovators and businesses large and small.

The noble Baroness, Lady Bowles, had a number of questions on the Bill which I will seek to address. I suppose there is a flavour of being underwhelmed. I would say that the Law Commission made 18 detailed recommendations across the whole area to tackle the problems that stakeholders had identified. The Government have accepted all these recommendations, and so have brought forward changes across the whole scope of the Law Commission's work. I think the noble Baroness felt that there might have been a missed opportunity to change the Civil Procedure Rules. The Law Commission has at all times been mindful of fitting the new provisions into the framework of negotiation and settlement set out in the Civil Procedure Rules. That was a good point to make.

The noble Baroness also asked about compliance with the Paris convention, which I am sure we shall hear some more about. This was a complex point which the Law Commission discussed in its report. However, I do not accept that the Law Commission would, after its careful work, put forward reforms which were somehow non-compliant with international obligations. That is not the case.

The noble Baroness and the noble Lord, Lord Stevenson, looked forward to a more dramatic reform—a new tort. Of course, the Law Commission's wide public consultation received responses from lots of different stakeholders. It ranged from rights holders and industry bodies to IP professionals and members of the judiciary, and explored the possibility of a wider new tort. But it has to be said that, by a large majority, the consultees—not just the legal stakeholders who you might expect but also organisations like the BBC and Qualcomm—preferred the model which this Bill will implement. Furthermore, as has been said, the introduction of the long-awaited Unitary Patent and Unified Patent Court means that change is needed. I think that makes it more urgent. Without question, protection against unjustified threats should apply to unitary patents.

However, that is not going to be possible under the existing framework that we have. If we do not make the reforms that we are proposing today, we will, I fear, leave a loophole which might allow threats to be made freely regarding the unitary patent infringement.

As the noble Lord, Lord Stevenson, said, there are some wider issues here. I am keen to keep on the straight and narrow to progress this Bill but I am sure that there will be wider debates on these subjects here and, indeed, on other occasions.

The noble Baroness, Lady Bowles, also said that the Bill did nothing for threatened parties. Our businesses tell us that the problem is not that the existing threats provisions are too weak but that they are unclear, inconsistent and do not allow proper pre-litigation talks. Therefore, the measures in this Bill make it easier for all parties involved in a dispute over IP infringement to negotiate a settlement and avoid litigation. They provide a much clearer framework within which innovative businesses and third parties can operate, giving more certainty over what approaches can be made legitimately to potential infringers. I was especially interested in her US example because, in about 10 years of being head of legal affairs at a major retailer, the only time I experienced disturbing threats from an attorney was when I was engaged in an antitrust case in the United States. You cannot believe—or perhaps you can—the aggressive nature of the call I took, not that it changed my position. The noble Baroness also said that under the legal adviser exemption you should still be able to pursue extreme or abusive behaviour. I understand her sentiment, but malpractice will remain an issue for professional regulatory bodies. The exemption applies to regulated professionals. Lawyers who go beyond their instructions will still be personally liable, so I am not convinced that a complex exception to the new legal adviser exemption is right.

I should take this opportunity to respond to the point that the noble Lord, Lord Stevenson, made at the end of his contribution when he questioned whether there was a case for an exemption for legal advisers. There are two problems. One is that suing the adviser is used simply as a tactic to play games and disrupt negotiations. That also means that the clients have to indemnify their legal adviser to cover any damages or legal costs that the adviser may face when pursuing potential infringement, which means that the client ends up paying, rather than the adviser. Industry figures say that this is a worry for small businesses and makes them reluctant to tackle alleged infringers which, as we know from my noble friend's experience, is right for them to do. The new exemption deals with this and will therefore benefit rights holders as well as professional advisers. It exempts only advisers who are acting on their clients' instructions in a professional capacity and are regulated in the provision of the services they provide. Where the adviser is exempt the instructing client will remain liable for making the threat, as they are now. Therefore, as we see it, no loophole is created.

The noble Baroness, Lady Bowles, also said that she felt the remedies were not sufficient. I was interested to hear her remarks, but I do not believe that there was evidence in the Law Commission's extensive consultation

[BARONESS NEVILLE-ROLFE]

—the working group discussions—for extending the remedies, which we believe are effective, clear and well understood.

My noble friend Lord Hodgson, in a wide-ranging intervention, reminded us of the problem of Henry VIII powers and asked about the situation in the Bill. Stakeholders were keen that law on permitted purposes could evolve, so it is not a wide power. The courts must have regard to the exemptions that already exist, and the Bill sets out limits regarding what may not be a “permitted purpose”. He was also concerned that it addresses bullying of small firms by big business and the provisions provide a much clearer framework within which businesses and third parties can operate. We believe that this clarity helps SMEs to navigate the law. Less complicated provisions also mean that less complicated legal advice is required, so there is a proportionately bigger saving for SMEs. The new provisions are clear that the rights holders must be sure that the right is valid before making threats. They cannot just bully people, and the threats provisions exist to ensure that threats of infringement action are not misused. ADR was also mentioned by a couple of noble Lords, and I am sure that people will want to understand the context with regard to ADR at the next stage.

I was glad that my noble friend Lord Lucas joined the discussion today. He added the issue of copyright to our debate, and I am very grateful to him for sharing his own experience in such detail. It is of course outside the scope of the Bill, but it might be helpful if I make a few observations. We needed to repeal Section 52 of the CDPA to give the full term of copyright to artistic works, whether industrially manufactured or created as one-offs, and to meet legal obligations, which have been made very clear. Guidance has been published for effective businesses and this is a living document, which we can refine to explain terms such as works of artistic craftsmanship, as the need arises.

We cannot speculate as to what individual companies will do in terms of threats of legal action, but I do not agree that all defences have been swept away by this appeal, as he perhaps suggested. A range of copyright exceptions still apply—indeed they were the subject that we debated on my first day as Minister. Photographers can rely on Section 62 if their work of artistic craftsmanship is in a public place, so that is not restricted to sculptures. It is also not the case that a photograph of a painting of a street scene will now infringe the rights of creators in all cases bar sculptures.

We have put transitional provisions in place for those who had pre-existing contracts, so they have a little more time to adjust, but I am of course happy to provide further clarification if my noble friend would find that helpful.

My noble friend asked what we are doing about aggressive invoicing. I am aware that there are some firms of solicitors who are still in the habit of contacting alleged copyright infringers with a financial offer to settle out of court. We must remember that when carried out properly this approach is legal. The Solicitors Regulation Authority has shown itself able to act effectively where firms repeatedly step over the line and we support their efforts in that regard. The IPO has published guidance on what its users should do if they receive a notice alleging that infringement has taken place using their internet connection. The Government remain a great supporter of the Get it Right from a Genuine Site campaign, which sends out notifications which never ask for money but instead educates the internet user about the consequences of infringement and where they can access content legitimately. This work is very important in upholding respect for IP and ensuring that our creators get the return on their inventions.

My noble friend Lord Hodgson asked about guidance on the changes. There will of course be extensive guidance on them. He suggested that perhaps this should be a standalone measure, but the Law Commission has decided to include the provisions in the relevant parent Acts. I suppose this is, again, a point about good regulation. Not only is it less likely that changes are missed that way but it ensures that the parent Acts remain a one-stop shop for relevant law on each right. I hope I have understood correctly what my noble friend was asking.

I believe that reform of the threats provisions is long overdue and I am delighted that we have been able to find some parliamentary time to progress this important Law Commission Bill. It will deliver the changes desired by stakeholders. It will help business negotiate fairly over IP disputes, while protecting those businesses which can be most harmed by unjustified threats. It will provide clarity and bring much-needed consistency across a complex area of IP law. As a result, the reforms in the Bill will help us, in some measure, to deliver our manifesto commitment to make the UK the best place in Europe to innovate, to patent new ideas and to set up and expand a business.

As the noble Lord, Lord Stevenson, said, the provisions of the Bill will be subject to a special procedure—a new one for me—and I very much look forward to taking advantage of your Lordships’ considerable expertise in carrying forward the debate. I look forward to constructive and helpful scrutiny in this interesting area, of the kind which I know, from working with your Lordships previously, we can certainly expect. I commend the Bill.

*Motion agreed.*

*Committee adjourned at 1.34 pm.*



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