



House of Commons  
Foreign Affairs Committee

---

**Foreign policy  
considerations for the  
UK and Scotland in the  
event of Scotland  
becoming an  
independent country**

---

**Sixth Report of Session 2012–13**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by the House of Commons  
to be printed 23 April 2013*

**HC 643**  
Published on 1 May 2013  
by authority of the House of Commons  
London: The Stationery Office Limited  
£20.00

## The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated agencies.

### Current membership

Richard Ottaway (*Conservative, Croydon South*) (*Chair*)  
Rt Hon Bob Ainsworth (*Labour, Coventry North East*)  
Mr John Baron (*Conservative, Basildon and Billericay*)  
Rt Hon Sir Menzies Campbell (*Liberal Democrat, North East Fife*)  
Rt Hon Ann Clwyd (*Labour, Cynon Valley*)  
Mike Gapes (*Labour/Co-op, Ilford South*)  
Mark Hendrick (*Labour/Co-op, Preston*)  
Andrew Rosindell (*Conservative, Romford*)  
Mr Frank Roy (*Labour, Motherwell and Wishaw*)  
Rt Hon Sir John Stanley (*Conservative, Tonbridge and Malling*)  
Rory Stewart (*Conservative, Penrith and The Border*)

The following Members were also members of the Committee during the parliament:

Emma Reynolds (*Labour, Wolverhampton North East*)  
Mr Dave Watts (*Labour, St Helens North*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including news items) are on the internet at [www.parliament.uk/facom](http://www.parliament.uk/facom). A list of Reports of the Committee in the present Parliament is at the front of this volume.

### Committee staff

The current staff of the Committee are Kenneth Fox (Clerk), Peter McGrath (Second Clerk), Adèle Brown (Senior Committee Specialist), Dr Brigid Fowler (Committee Specialist), Zoe Oliver-Watts (Senior Committee Specialist), Louise Glen (Senior Committee Assistant), Vanessa Hallinan (Committee Assistant), and Alex Paterson (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Foreign Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6105; the Committee's email address is [FAC@parliament.uk](mailto:FAC@parliament.uk)

# Contents

---

<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>Conclusions and recommendations</b>	<b>5</b>
<b>1 Introduction</b>	<b>9</b>
<b>2 Scotland and the RUK: who would inherit what and who would decide?</b>	<b>11</b>
Why does it matter?	11
Multilateral and bilateral treaties	11
Conceptualising the break-up	12
Scottish and UK Government views on state succession	13
Succession disputes: the importance of international practice and precedent	15
What scenario would the international community support?	15
Membership of key international organisations	17
The United Nations	17
Russia: a relevant Security Council precedent?	18
NATO	19
Scotland and the EU	21
Would Scotland retain the UK's opt-outs and at what cost?	26
<b>3 International influence in the event of independence: more or less?</b>	<b>29</b>
The RUK	29
'Hard' power attributes	29
The impact on the UK's international standing	30
RUK's diplomatic service	32
In the EU: a reduced RUK influence?	33
Scotland	35
Would independence enhance Scotland's global role?	35
Starting afresh: creating diplomatic clout	37
An industry perspective on the FCO's support	37
In the EU: does a direct voice equate to influence?	41
<b>4 Characterising a future RUK-Scotland bilateral relationship</b>	<b>44</b>
The foreign policy posture of the RUK's closest neighbour	44
Co-operation or competition?	44
Nuclear weapons	47
Dependency	50
Security and intelligence	50
Continuity and constraints	56
<b>5 Concluding remarks and observations</b>	<b>58</b>
<b>Annex: Timeline of key referendum dates</b>	<b>59</b>

<b>Formal Minutes</b>	<b>61</b>
<b>Witnesses</b>	<b>62</b>
<b>List of printed written evidence</b>	<b>63</b>

## Summary

---

On 18 September 2014, the people of Scotland will decide whether they wish to leave the UK and create an independent country. The foreign policy implications for the UK in the event of a 'Yes' vote in the referendum are potentially wide-ranging.

Initially, much would depend upon which entity, Scotland or the remainder of the UK (the RUK), would inherit particular treaty rights, obligations and membership of key international organisations. It is not in the gift of either Scottish or UK politicians to determine this unilaterally. In the absence of an agreement between the RUK and Scotland on this matter, precedent, practice and the views of the international community would influence the outcome. A process which afforded both the RUK and Scotland co-equal status (which is favoured by the Scottish Government) may appear to have the benefit of equity, but evidence suggests that in practice a number of adverse political and technical consequences could arise under the 'separation' model and it would lead to a degree of legal uncertainty that the international community would not tolerate. Witnesses were strongly of the view that precedent and principle would favour the RUK as the continuing state as had happened in previous, similar situations. As a result, the RUK would inherit the vast majority of international treaty rights and obligations and would be likely to retain its position of power in key international organisations such as the United Nations, European Union and NATO.

In contrast, Scotland would start anew at an international level, losing many of the benefits that derive from being part of the UK. Evidence suggests that the Scottish Government is largely alone in arguing that Scotland's accession would automatically take place from within the EU. It is for the EU itself to determine in accordance with its regulations whether and how Scotland would become a member. There may be pragmatic reasons for supporting some form of fast track process for Scotland's EU accession but this does not mean that it would be straightforward and Scotland may have to make trade-offs to secure the unanimous support that it would require. Although the Scottish Government maintains that an independent Scotland, negotiating membership terms from within the EU, would inherit the opt-outs and special status that the UK enjoys on the EU budget, Schengen and the Euro, it has acknowledged that it does not have legal advice to support this view. If Scotland continued to try to secure opt-outs and special treatment, it could find its path to membership more difficult.

Although the RUK would retain a strong claim on the UK's international positions of power, any compromise of its nuclear capabilities as a result of Scotland becoming independent could lead to changes in its key bilateral relationships as well as questions being raised about the RUK's role in key international political and security organisations, including the UN Security Council. There is also reason to believe that the RUK would suffer reputational damage as a result of Scotland becoming independent, although it is difficult to measure the impact this would have on the Foreign and Commonwealth Office (FCO), or more generally the UK's ability to project soft power.

In the event of Scotland becoming an independent country, its voice on the international stage would be more distinct but this would not necessarily translate into a greater ability

to shape the international or EU agenda to Scotland's needs, particularly in light of the external constraints that Scotland, as a small state, would face. Significant costs would also be incurred by Scotland in attempting to replicate the quality of the diplomatic and consular support currently provided by the FCO and UKTI.

Although the Scottish Government is keen to forge ahead with a different type of foreign policy, a position most clearly exemplified by its stance on nuclear weapons, evidence suggests that in many other respects, the foreign policies of Scotland and the RUK would converge. In some key areas, notably in the field of security and intelligence, there is a strong likelihood that Scotland would remain dependent upon the RUK for support, effectively constraining its foreign policy choices. While bilateral co-operation between the RUK and Scotland would be the norm on many issues, competition could overtake this aspiration in a number of key foreign policy areas, and like any bilateral relationship between sovereign states, co-operation could not be taken for granted, particularly where competing interests or priorities emerged.

More generally, in terms of the overall debate, we are concerned that seemingly unfounded assertions and initial negotiating positions are being presented as incontrovertible facts and that legal positions are being advocated without the benefit of official legal advice. There is a need for more clarity and more candour about what Scots would lose and what the Scottish Government could realistically deliver in foreign policy terms with the resources available to it. As the Edinburgh Agreement makes clear, Scots will hold their destiny in their own hands in September 2014. It is Scotland's decision to make, nobody else's. The Scottish people do, however, have a right to have the full facts, not just aspirational policies, at their disposal before they make that decision.

# Conclusions and recommendations

---

## Who would inherit what?

1. Despite some proclamations to the contrary, it is not in the gift of either Scottish or UK politicians to determine unilaterally which state would inherit particular international rights and obligations in the event of Scottish independence. A process which afforded both the RUK and Scotland co-equal status may at first glance seem to have the benefit of equity, but evidence suggests that in practice it would be likely to lead to a degree of legal uncertainty that the international community would not tolerate. (Paragraph 25)
2. There is an overwhelming body of evidence that endorses the UK Government's view that the RUK would be considered by the international community to be the continuing state and that it would inherit the vast majority of the UK's treaty obligations, while Scotland would essentially start afresh at an international level. (Paragraph 26)
3. We conclude that the RUK would retain the UK's permanent seat in the UN Security Council. If an independent Scotland supported the RUK's position as the continuing state, Scotland's application for UN membership would in all likelihood be swift and unproblematic. (Paragraph 35)
4. The idea that Scotland would inherit automatically NATO membership in the event of independence, with access to its collective security umbrella, is an overly optimistic assertion which does not fully take account of international law or NATO's membership rules. We conclude that while the RUK would continue to be a member of NATO, Scotland could expect to face robust negotiations and would not necessarily be in a position unilaterally to shape its membership terms in line with its domestic political commitments on nuclear weapons. (Paragraph 38)

## EU Membership

5. There may be pragmatic reasons for supporting some form of fast track process for Scotland's accession but this does not mean that it would be straightforward or indeed automatically conducted from within the EU, and Scotland may have to make trade-offs to secure the unanimous support that it would require. The impression given by the Scottish Government that treaty change would be a mere technicality seems to us to misjudge the issue and underestimate the unease that exists within the EU Member States and EU institutions about Scottish independence. We do not doubt that Scotland, as an independent country could play a valuable role in Europe, but it is not enough for the Scottish Government to hope, assume and assert that its arguments for a fast-track accession will find unanimous favour. It must also acknowledge that irrespective of the substantive merits of its membership claim, Scotland could still find itself competing against a variety of European political agendas that would make its path to the EU far from straightforward or automatic. (Paragraph 57)

6. The Scottish Government argues that in the interests of continuity, Scotland should retain the UK's EU opt-outs, and that new ones could be added, if it becomes an independent EU member. However, it is one thing arguing for a position and another securing it. The fact that the Scottish Government has confidently done the first does not mean it will be able to do the latter, given the existence of strong forces in whose interests it would be to reject such a claim. If it continues to pursue this policy approach, there is a likelihood that the Scottish Government will undercut its attempts to position itself as a constructive and helpful European partner and therefore may not receive the unanimous support of EU Member States it would require. (Paragraph 64)

### International influence

7. Assuming that the RUK could largely maintain its hard power capabilities following Scottish independence, there is no reason to suggest that its influence in international organisations and institutions would change, at least in the short term. However, any resulting nuclear disarmament of the RUK would lead to obvious hard power losses which would have a profound impact on the RUK's future foreign policy posture. (Paragraph 73)
8. It is difficult to measure the impact on the RUK's international standing and influence in the event of Scotland becoming an independent country but we conclude that some degree of reputational damage is inevitable. We recommend that ahead of the referendum, the FCO does more, when appropriate, to engage with international partners in order to highlight the UK's commitment to a consensual and broad-based engagement on the Scottish referendum, with a view to minimising the risk of damage to the UK's reputation. (Paragraph 74)
9. We are concerned that any budgetary cuts imposed by the Treasury on the RUK's diplomatic service as a result of independence would cut into the bone of existing FCO operations. This would be magnified by the costs involved in setting up a new representation in Scotland which would inevitably divert already scarce FCO resources away from existing commitments. (Paragraph 77)
10. There is a danger that the RUK's influence within the EU could decline in the event of Scotland becoming an independent country although it is currently impossible to predict the extent of the damage that may arise, not least because this could also be affected by the consequences of the ongoing debate over the UK's future relationship with the EU. (Paragraph 83)
11. There is no reason in principle why Scotland could not set up a fully functioning and successful diplomatic service if it became an independent country but, in the absence of a coherent and costed diplomatic vision, Scottish voters should be under no illusion about the significant resources that would be required to fulfil the Scottish Government's aim of replicating the quality of the business and consular support currently provided by the FCO and UKTI. (Paragraph 98)
12. It takes more than good will and soft power to seal deals internationally and Scotland would be starting from scratch in this regard, a fact that would not be lost on the



many Scottish businesses that currently benefit from the FCO's support and the many Scottish nationals who use the FCO's consular services. (Paragraph 98)

13. As far as the EU is concerned, a direct Scottish voice would not necessarily equate to more influence; influence is an upshot of many state attributes, not an automatic by-product of sovereignty. While an independent Scotland could have a more distinct voice than it does now, that does not mean that it would be able to alter unilaterally the content of policies to its own ends. It could be more effective for the Scottish Government to seek to re-visit existing arrangements on foreign policy in order to explore whether, working within the parameters of the current devolution settlement, Scottish interests could be given a more direct voice on certain issues. We recommend that in its response to this report the FCO outlines its views on this matter. (Paragraph 105)

### The RUK-Scotland bilateral relationship

14. The Scottish Government's commitment to removing the UK's nuclear deterrent from Scotland would, if delivered, have far-reaching bilateral, foreign, security and budgetary consequences for both states. It is also likely to have a significant effect on the willingness of the UK to co-operate on other issues upon which Scotland may need assistance, as well as influencing its overall position on the independence settlement. Any resulting disarmament by the RUK would be received badly by the UK's key allies and could create problems for Scotland with other NATO and EU Members as it forged a path as a new state. While the Scottish Government's commitment to removing nuclear weapons is not in question, international factors may constrain its ability to realise its goal and could mean that Scotland might not be nuclear-free for another generation. (Paragraph 121)
15. It remains unclear how much support the RUK might be willing or indeed able to give in the field of intelligence and security and what impact this might have on its other foreign policy priorities, budgets and resources. (Paragraph 134)
16. By the Scottish Government's own assessment, in the event of independence Scotland would need both internal and external security and intelligence capabilities to deal with the many diverse potential threats it believes it could face. Yet Scotland has no external intelligence infrastructure to build upon. With just over a year to go before the referendum takes place, it is not at all clear that the Scottish Government has a costed and coherent vision of the security and intelligence infrastructure it needs to put in place to protect Scottish citizens, businesses and economic interests. (Paragraph 137)
17. There appears to be a working presumption on the part of the Scottish Government that the RUK would fill the intelligence shortfall that would emerge at least in the short term, but possibly over a longer time frame too. The basis for this position is not at all clear. Scotland would undoubtedly remain of strategic interest to the RUK and in the vast majority of cases it is likely that it would be in the RUK's interests to assist Scotland. However, it is crucial that Scots are aware that the RUK's intelligence and security help would be discretionary, based on self-interest and could not be

taken for granted, particularly where the RUK faced competing interests or priorities.  
(Paragraph 137)

18. With the information currently available to us, Scotland's foreign policy would in many key, practical respects, be very similar to that currently pursued by the UK but without access to the many benefits that derive from being part of it.  
(Paragraph 140)

# 1 Introduction

---

1. On 18 September 2014, people in Scotland will decide whether they wish Scotland to be an independent country. Such a move, if it comes to pass, would have wide-ranging international consequences not just for Scotland but for the UK too. Although vibrant public and political debate has taken place on many facets of independence, foreign policy issues have received less attention, and those discussions which have taken place have tended to focus heavily on Scotland's potential relationship with the European Union. While there is no doubting the importance of the EU issue, other foreign affairs questions also merit scrutiny. With this in mind, we launched our inquiry in July 2012 and invited evidence on whether, and in what ways, Scotland becoming independent could affect both Scotland and the UK's future international standing, influence and foreign policy priorities; their membership of, and standing in, key international bodies; their relations with key allies; and the likely shape of Scotland's future foreign policy.<sup>1</sup>

2. As a Westminster-based Committee our aim was to help inform the foreign policy debate on both sides of the border, to approach with an open mind the issues under consideration, to listen carefully to the Scottish Government's views, and to work, in the best select committee tradition, on a non-partisan basis. Two of our members represent Scottish constituencies, while another covers the border area abutting Scotland.

3. In addition to receiving a wide range of written evidence from individuals and organisations, we took oral testimony from legal and constitutional experts, academics, and former senior diplomats. We were also pleased that Ministers from both the UK and Scottish Governments agreed to give oral evidence to us in Edinburgh. A full list of those we heard from can be found at the end of this Report. We would like to place on record our thanks to all those who have contributed to this inquiry and helped to inform it by offering their views either orally or in writing.

4. Our work has also been informed by the wide range of select committee inquiries which are taking place in both the House of Commons and House of Lords on related aspects of Scottish independence. These include inquiries by the Defence Committee, the Scottish Affairs Committee, the House of Lords Economic Affairs Committee, and the House of Lords EU Committee. Where it has been pertinent, we have drawn upon evidence provided to these Committees whilst also seeking to avoid duplicating their work.

5. This report is split into three main chapters, plus one concluding section containing some general observations and remarks, and covers the main topics outlined in our terms of reference. We have focused on subjects that appeared, on the basis of the evidence we received, to be most pertinent. This is necessarily selective, not just because the foreign policy implications for both Scotland and the UK are so numerous, but also because many international implications would be dependent on the wider negotiating process that would take place in the event of independence, and would involve subjects and policy areas that extend well beyond our remit.<sup>2</sup> We were also constrained by a lack of published detail

---

1 The full terms of reference can be found at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/news/scotland-tor/>

2 For example, the issue of the allocation of public assets, debts and liabilities.

about the Scottish Government's proposed foreign policy, which has made it difficult to discern its policy positions on a number of issues. While we are grateful to the Scottish Deputy First Minister for providing oral evidence on certain topics, we nevertheless look forward to the publication of its detailed views on the foreign policy implications of independence in the coming months. We hope this will allow additional scrutiny of a much wider range of relevant international issues.

### *A note on terminology*

6. Originally, the title of this inquiry was 'Foreign policy implications of, and for, a separate Scotland'. However, in the period since we announced our terms of reference, official agreement was reached on the wording of the 2014 referendum question. As such, the title of our report has been changed to reflect this agreed form of words. Also throughout this Report and for the sake of convenience we use 'RUK' as a shorthand way of referring to the 'Rest of the UK', the state which, in the event of Scottish independence, would comprise the UK *minus* Scotland (England, Wales and Northern Ireland).

## 2 Scotland and the RUK: who would inherit what and who would decide?

---

### *Why does it matter?*

7. In the months since we launched our inquiry, the international legal aspects of Scottish independence have come to the fore. Ongoing discussions about Scotland's EU membership as well as the UK Government's publication of an independent legal opinion on international aspects of independence have propelled legal issues further up the independence agenda.<sup>3</sup> Although these matters can appear technical and abstract, in reality they raise important practical consequences for individuals, businesses and affected Governments alike. Professor Matthew Craven, Professor of International Law and Dean of the Faculty of Law and Social Sciences, SOAS, explained that the range of issues that come into play include not only relations with other countries, but also membership of international institutions, title to ownership of public property both at home and abroad (including consulates and embassies and currency deposits), liability for the national debt (to both public and private agencies), the survival of public contracts (such as rail franchises), and questions of nationality. He added that:

much of what might look like a matter of purely local political or economic negotiation – for example whether an independent Scotland might acquire responsibility for armed forces installations in Scotland or for fulfilment of the terms of concession agreements with oil producers - is likely to have international implications in the sense that it is liable to affect the rights and obligations of other states in the international community.<sup>4</sup>

It follows that in the event of a 'yes' vote in the 2014 referendum, clarity would be required as to which international rights, treaty obligations and membership of international organisations the RUK and Scotland might inherit, gain or even lose. It would be a complex process, as we discuss below.

### **Multilateral and bilateral treaties**

8. The UK is currently party to nearly 14,000 treaties (approximately 10,000 of these are bilateral while the remainder are multilateral).<sup>5</sup> They cover subjects from the critical to the mundane, and as diverse as extradition, double taxation arrangements, investment, trade, defence, fishing, navigation, air transport, enforcement of judgments, carriage of goods, trademarks, broadcasting and even postal delivery.

9. In the event of Scottish independence, in a limited number of cases either the facts of the agreement or simple geography might be enough to determine whether it would fall to

---

3 See Scotland Office, 'Scotland analysis: Devolution and the implications of Scottish independence', Cm 8554, February 2013 and in particular Annex A: Opinion: Referendum on the Independence of Scotland – International Law Aspects. (Professor James Crawford SC and Professor Alan Boyle), [www.gov.uk](http://www.gov.uk)

4 Ev 87

5 Ev 75; Ev 87

Scotland or the RUK to take on (or retain) a particular international obligation or treaty commitment. For instance, the treaty between the UK and France concerning the Channel Tunnel would engage the RUK not Scotland whereas an existing treaty obligation in relation to foreign shipping off the north coast of Scotland would more sensibly fall to Scotland. Other similarly geographically or thematically narrow treaties or matters may be assigned clearly to one state or the other. There would also be agreements which would cover only bilateral issues between Scotland and the RUK and which, in theory, could be settled by the agreement of the parties without any reference to international law.

10. Inevitably, however, occasions would arise where there was a lack of bilateral agreement or where third party interests were involved; where this occurred, a way of managing changes to the complex international legal and political environment within which the United Kingdom is currently enmeshed would need to be found.<sup>6</sup> In the course of our inquiry we explored three different scenarios for dealing with the consequences of Scotland becoming an independent country, each of which would give rise to different international outcomes for Scotland and the RUK in terms of their treaty commitments. These are summarised and discussed below.

### ***Conceptualising the break-up***

11. There are three ways that the constitutional and consensual break-up of the UK could be regarded internationally.

#### **Continuation and secession**

- The existing state (UK) would break into separate entities – “Scotland” and “the RUK”. The larger, more populous entity (RUK) would become the ‘continuing’ state. The smaller entity (Scotland) that wished to leave would secede and become a new state and would (somewhat confusingly) be known as a ‘successor’ state. The continuing state (the RUK) would inherit the vast majority of the rights and obligations of the UK whereas the successor state (Scotland) would essentially start anew internationally.

#### **Separation**

- The existing entity (the UK) would break into two states (the RUK and Scotland) and each would resume their pre-1707 Union status. This would involve a ‘disaggregation’ or ‘splitting’ of pooled sovereignty so that Scotland and RUK would each maintain all existing legal relationships as far as was possible given the changed situation.<sup>7</sup> This is sometimes also referred as ‘the co-equal states’ scenario.

#### **Dissolution**

- The existing entity (the UK) would dissolve and become extinct. Two new states would come into being (the RUK and Scotland) but neither new state would lay

---

6 Ev 87

7 Ev 88 [Professor Craven]

claim to the legal personality of the UK which would have ceased to exist. It would essentially amount to a clean international slate for both states.

### **Scottish and UK Government views on state succession**

12. Of the three scenarios outlined above, only the first two (the continuation and separation models, respectively) have been relied upon by the UK and Scottish Governments. The third option, dissolution, was not considered to be relevant to the situation under consideration by either witnesses to the inquiry or by other legal experts.<sup>8</sup>

13. The UK Government argues that the continuation and secession model would apply in the event of independence, a stance which the FCO states is based on a combination of official legal advice, international law, international precedent and evidence submitted to our inquiry,<sup>9</sup> and which it believes is reinforced by practical considerations such as the existence of an unchanged form of government and continued possession of the majority of the territory and population of the old state. The position is also in line with the generally recognised principle of international law that the principal part of a state is generally considered to be the ‘continuing state’ of the larger state that has split.<sup>10</sup> Essentially, in the event of a ‘yes’ vote, it would mean that the RUK would inherit the vast majority of the UK’s treaty rights and obligations, while Scotland would become a new state.

14. This view has not found favour with the Scottish Government. Indeed, the idea that the UK would be considered to be the continuing state in the event of a break-up was described by the Deputy First Minister of Scotland, Nicola Sturgeon MSP, as “an incredibly arrogant attitude for the UK Government to take [...] somehow they keep all the rights of the UK and Scotland gets nothing”. Ms Sturgeon added that “this rather shatters the suggestion that Scotland is an equal partner within the UK at the moment”.<sup>11</sup>

15. The Scottish Government has not issued a definitive view on this issue and indeed the Deputy First Minister confirmed in oral evidence that it had not sought official legal advice as to what position Scotland might find itself in.<sup>12</sup> Yet, given the many official Scottish Government statements which state that Scotland would ‘inherit’ various international rights and obligations, most observers conclude that the Scottish Government would seek to argue that Scotland is a co-equal successor state, as per the ‘separation’ model outlined above.<sup>13</sup> The Deputy First Minister told us that the idea that Scotland would inherit various treaty obligations is “a reasonable position to articulate”.<sup>14</sup>

16. Professor Craven explained that:

---

8 Qq1-3; Ev 97 [Dr Murkens & Professor Hazell]; Ev 89 [Professor Craven]; Crawford and Boyle, *Referendum on the Independence of Scotland – International Law Aspects*

9 Q 329

10 H.G. Schermers and N.M. Blokker, *International Institutional Law*, 5th ed., 2011, p91, quoted by Professor White in Ev 106.

11 Nicola Sturgeon MSP, *Today Programme*, BBC Radio 4, 11 February 2013

12 Q 241

13 See, for example, “Scotland and rUK in EU: co-equal successor states”, *SNP Press Release*, 19 January 2013

14 Q 227

Being a 'successor state' does not automatically entitle the party concerned to continue existing arrangements by way of 'inheritance' (and hence the terminology is deeply misleading). In fact the initial assumption is generally the opposite - that no legal rights and obligations continue unless, and to the extent, one can reach for a rule that specifies their continuance.<sup>15</sup>

With the exception of the Scottish Government, all our witnesses concluded that the RUK would be the continuing state while Scotland would start afresh internationally. The evidence they provided can be read in full at the end of this Report, but by way of example, Professor Hazell, Director, Constitution Unit, University College London, typified the views of many witnesses when he said that he found it “hard to conceive of circumstances other than those in which the rest of the UK would assert quite strongly that it was the continuing state” and that “the rest of the international community would readily acknowledge that the rest of the UK was a continuing state because that would create much greater political stability and in general make their lives easier.”<sup>16</sup>

17. Not only did witnesses concur with the UK Government’s reasoning that this was a position supported by international law and practice, they also explained why, in practice, separation into two co-equal states was not a realistic option. Essentially although it would provide a sense of equity for Scotland, it was put to us by legal and constitutional specialists that “after 300 years the status quo ante could no longer be restored” and that “the repeal of the Acts of Union 1707 would not (contrary to what is sometimes assumed) see the re-emergence of the old Kingdoms of England and Scotland” on a co-equal basis.<sup>17</sup>

18. From an international legal perspective, we were told that a number of adverse political, technical and legal consequences could arise under the ‘separation’ model. For instance, Professor Craven argued that thousands of the UK’s bilateral agreements could “scarcely be continued” by both an independent Scotland and the RUK without the consent of the other parties and as a result, treaties on a vast range of issues could require re-negotiation.<sup>18</sup> Also, where the UK was construed to have ‘disappeared’, this could have profound implications for key multilateral treaty regimes, such as the Nuclear Non Proliferation Treaty (NPT), the cornerstone of arms control law, under which the UK is a designated nuclear weapons state. Alternatively, the RUK might be forced to forgo possession of nuclear weapons and adhere to the NPT as a non-nuclear weapons state.<sup>19</sup> Such a development would amount to a fundamental and involuntary recalibration of the UK’s foreign policy posture and could have international implications as well as an impact on the UK’s overall negotiating position on independence.

19. Professor Craven anticipated that the extent of legal uncertainty that would be caused if the separation model was adhered to could have a “significant dampening effect upon international commerce until such a time in which the legal landscape was clarified” and that the “the scale of potential economic and political disruption that might ensue should

---

15 Ev 110 [Professor Craven]

16 Q 2

17 Ev 97 [Dr Murkens & Professor Hazell]

18 Ev 88

19 Ev 110 [Professor Craven]



not be underestimated”.<sup>20</sup> There would also be implications within international organisations, as we discuss below (see the discussion starting at Paragraph 27).

### ***Succession disputes: the importance of international practice and precedent***

20. In the event that the RUK and Scotland continued to disagree over who would inherit what, there are on the face of it only a few formal codified rules of international law that govern such events. The two multilateral agreements that formally address the question of state succession have limited international support and in any event, the UK is not a party to, and is therefore not bound by, either.<sup>21</sup> In the absence of relevant treaty law the Deputy First Minister told us that “these things [would be] settled not by reference to law but by reference to political discussion and negotiation”, bilaterally with the RUK.<sup>22</sup> This assessment, according to the evidence we received, is only correct to a point. Witnesses told us that the views of the international community would also play a crucial role in determining the ultimate outcome. As Dr Jo Murkens of the London School of Economics noted, statehood “needs not only to be claimed, it also needs to be recognised”. Under international law “it is not enough simply to assert a position; it also has to be accepted by the other constituent parts and by the international community”.<sup>23</sup> Likewise, Professor Craven stated that “these are not things that may be determined by Scotland and the RUK alone. At best, the negotiating parties can propose a set of solutions to other members of the international community”.<sup>24</sup>

### ***What scenario would the international community support?***

21. According to the evidence we received, the primary concern for the international community would be to ensure that the division of the UK did not become a problem for the wider international community or lead to significant legal uncertainty, in the way that separation processes in other parts of the world have done in the past.<sup>25</sup> We were also told that the best way of anticipating how states would react was to look at their past practice given that precedent would amount to a significant factor in their calculations.

22. With the exception of the Scottish Government, witnesses were strongly of the view that precedent and principle would favour the RUK as the continuing state as it had done in the past in other similar situations. In particular, witnesses referred repeatedly to parallels between the RUK and Russia, which became the continuing state after the break-up of the USSR, and inherited many of its treaty rights and obligations. Witnesses also justified their views in part by referring to the case of the separation of the Irish Free State from the United Kingdom in 1922 which did not affect the status of the UK under general international law, though the state was reduced in territory and population, and changed

---

20 Ev 88

21 The Vienna Convention on State Succession in Respect of Treaties (1978), and the Vienna Convention on State Succession in Respect of Property, Archives and Debt (1983). See also Ev 87.

22 Q 227

23 Ev 111 [Dr Murkens]

24 Ev 109 [Professor Craven]

25 Ev 85 [Professor Chalmers]

formally from the United Kingdom of Great Britain and Ireland to the United Kingdom of Great Britain and Northern Ireland.<sup>26</sup> Dr Murkens and Professor Hazell's written evidence noted that "if Ireland's secession did not dissolve the United Kingdom, why would an independent Scotland have that effect?"<sup>27</sup>

23. In contrast, the Deputy First Minister argued that "precedent would lead you in different directions".<sup>28</sup> She reasoned that Czechoslovakia's break-up showed that there was precedent for the international community to support the idea of co-equal states. However, other witnesses were sceptical that the dissolution of Czechoslovakia amounted to a precedent that was relevant to the RUK/ Scotland situation. Dr Murkens noted that:

the dissolution of [Czechoslovakia] followed attempts to save the federation. When that position became untenable and the decision was taken to dissolve the federation, a number of agreements had to be concluded to govern future relations between the two states. They included agreements to protect equally the rights of the other's citizens and to permit the free movement of people; to coordinate foreign policies and embassies; to form a customs union (since neither state was a member of the EU at the time); and to continue a joint defence system.

I would stress two issues. First, these were not federal agreements that linked the two states, but treaties governed by international law that applied on an interstate basis. Second, they were the outcome of consensual negotiations that led to the 'velvet divorce'. Applied to Scotland, I would ask: is it conceivable that 'reasonable and consensual negotiation with the rest of the UK ... would resolve these matters' [...] Would RUK agree [...] to a dissolution? (If it is not a consensual dissolution, then how exactly would the demise of the UK be brought about?)<sup>29</sup>

24. Support for the applicability of the 'continuation and secession' scenario was not confined to our witnesses. It was also the conclusion of Professors James Crawford and Alan Boyle, who authored an authoritative legal opinion on the international legal aspects of the referendum on the independence of Scotland, which was published by the UK Government shortly after the conclusion of our evidence-taking.<sup>30</sup>

**25. Despite some proclamations to the contrary, it is not in the gift of either Scottish or UK politicians to determine unilaterally which state would inherit particular international rights and obligations in the event of Scottish independence.** Where agreement could be found between Scotland and the RUK or where third parties raised no objections, there would be no need for recourse to international law. However, in the absence of such agreement, international law in the form of precedent, practice and the views of the international community would ultimately determine which state inherited which treaty obligations. **A process which afforded both the RUK and Scotland co-equal status may at first glance seem to have the benefit of equity, but evidence suggests that**

---

26 Q329 [David Lidington]; Ev 97 [Dr Murkens & Professor Hazell]; Ev 106 [Professor White]

27 Ev 97

28 Q 226

29 Ev 111

30 Crawford & Boyle, *Referendum on the Independence of Scotland – International Law Aspects*

in practice it would be likely to lead to a degree of legal uncertainty that the international community would not tolerate.

26. There is an overwhelming body of evidence that endorses the UK Government's view that the RUK would be considered by the international community to be the continuing state and that it would inherit the vast majority of the UK's treaty obligations, while Scotland would essentially start afresh at an international level.

## Membership of key international organisations

27. In addition to the thousands of subject-based treaties the UK is party to, it is also a member of several hundred international organisations. While Scotland may not necessarily wish to seek membership of all of them, there are a number of bodies which Scotland would almost certainly want to join, for instance, the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), the World Trade Organisation (WTO), the Commonwealth and Interpol, to name but a handful.

28. The rules of state succession to treaties generally do not apply to membership of international organisations; instead, membership depends on the particular rules and practices of the organisation.<sup>31</sup> Below, we consider the membership prospects for both the RUK and Scotland in respect of the United Nations, NATO and the EU.

### *The United Nations*

29. Membership of the United Nations would be vital for both the RUK and Scotland. For the RUK, it would allow it to continue to pursue a wide range of foreign policy goals, in particular through permanent membership of the Security Council. For Scotland, it would provide access to the wider trappings of statehood and open the way for it to join a number of UN bodies and organisations that enable states to operate internationally not just on matters of high politics but in more mundane areas, too. For example, membership of the International Telecommunication Union (ITU) would allow Scotland to obtain its own telephone dialling code while membership of the Universal Postal Union (UPU) would allow Scotland to cooperate with other postal sectors.<sup>32</sup>

30. Professor Nigel White, Professor of Public International Law and a specialist in UN Law at the University of Nottingham, explained that there is consistent and accepted practice, amounting to a rule of international law<sup>33</sup> to suggest that within the UN “when a relatively smaller part of an existing state breaks off and claims statehood, the remaining state (whose governmental organisation, remaining territory and population, are otherwise

---

31 Crawford & Boyle, *Referendum on the Independence of Scotland – International Law Aspects*

32 Ev 95 [Dr Ker-Lindsay]

33 Under UN law there are no provisions that deal with issues of state succession and membership and so it is necessary to look to what is known as customary international law formed within the UN which involves looking for “consistent patterns of practice accompanied by evidence that member states are conforming out of a sense of obligation”. See Ev 106-107 [Professor White].

*Russia: a relevant Security Council precedent?*

After the dissolution of the USSR, Russia continued to represent the other republics (with their consent) in the UN.

Its inheritance of the Security Council seat was due to a number of factors, part objective and part subjective in nature.

Objectively, Russia was substantially bigger than any of the other successor states of the USSR and in terms of landmass and population, it remains one of the largest states in the world.

Subjectively, it was recognised by other states as the continuation of the former Soviet Union because of states' desire to preserve the stability of the world order and to guarantee the continuity of the Soviet Union's treaty obligations. The other permanent members of the Security Council did not seek to question its permanent membership.

*Source: Murkens, Jo and Jones, Peter and Keating, Michael (2002) Scottish independence: a practical guide, (Edinburgh, Edinburgh University Press)*

largely unaffected) is entitled to continue the old state's membership, whereas the seceding state has to apply for membership". Professor White reasoned that:

This line of practice would support the continuation in UN membership from the old UK (including Scotland) to the new UK (absent Scotland). This line can be distinguished from other precedents such as the consensual break up of Czechoslovakia in December 1992, where that state ceased to exist legally and factually, and the two newly emergent Czech and Slovak Republics applied afresh for UN membership.<sup>34</sup>

31. Dr James Ker-Lindsay, Senior Research Fellow, London School of Economics and Political Science, stated that "one would assume" that Scotland would be willing to relinquish any and all claims to the UK's Security Council seat as part of a negotiated separation.<sup>35</sup> If it also supported the RUK's claim to be the continuing state, its application as a new state would only require a short resolution of the General Assembly on the recommendation of the Security Council.<sup>36</sup> However, in the event that the Scottish Government continued to assert that Scotland was a co-equal state, significant consequences for the RUK and for the broader international community could arise. According to Professor Craven, there would need to be an immediate wholesale review of Security Council membership with no guarantee that either Scotland or RUK would be one of the permanent members. There could also be "consequences for the UN as a whole as well as for international policing operations undertaken under the [UN] Charter".<sup>37</sup>

32. While witnesses were clear that the legal case for continued RUK membership of the UN appears strong, some evidence suggested certain states could seek to use Scottish independence to open up the vexed issue of permanent UN Security Council (UNSC) reform, in the process raising questions about the RUK's claim on the UK's permanent seat. Professor White suggested that countries such as India, Brazil, Nigeria, South Africa and Egypt (all aspiring to permanent membership along with Germany and Japan) might regard the RUK's attempt to retain the UK's permanent seat as a "step too far to preserve an outdated status quo", triggering a

34 Ev 106

35 Ev 94

36 Ev 74 [FCO]

37 Arrangements would have to be made for re-accession to the IMF & World Bank and renegotiation of the existing voting weights. Ev 110

“groundswell within the UN membership [...] for wider UN reform”.<sup>38</sup> Professor Chalmers made a similar point when he told us that if a diminished UK retained its permanent membership of the UNSC, along with France, “in the long run it increases the perception that this is not a representative body and needs change”.<sup>39</sup> Professor White argued that it would be “very difficult for the UK to resist change if it were to be isolated with the vast majority of member states pushing for a change to the permanent membership”.<sup>40</sup> Such a development would have a significant impact on the RUK’s foreign policy goals and the influence it could bring to bear in pursuing them.

33. The FCO does not regard the loss of its ‘P5’ status as a realistic possibility in the short term. It argued that Article 23 of the UN Charter, which lists the five permanent members of the UNSC (including the UK), could only be altered with its agreement.<sup>41</sup> Practically speaking, it would also be able to take on the UK’s obligations under the Nuclear Non Proliferation Treaty, providing a degree of arms control continuity that would be much valued by the international community and other P5 members.<sup>42</sup>

34. It is also likely that support would be forthcoming from key allies, including France and the USA, which would have a strong interest in continuing RUK participation.<sup>43</sup> Managing the situation politically and diplomatically would be, according to Professor White, the RUK’s main challenge. This would involve securing the support of Scotland, other permanent members, key reform-minded states and, to some extent, expected adversaries who might otherwise seek to exploit the opportunity to pursue wider reform or cause trouble for the RUK.<sup>44</sup>

**35. We conclude that the RUK would retain the UK’s permanent seat in the UN Security Council. If an independent Scotland supported the RUK’s position as the continuing state, Scotland’s application for UN membership would in all likelihood be swift and unproblematic.**

## NATO

36. The FCO’s claim that the RUK would inherit the UK’s seat in NATO was not questioned in evidence we received. Some witnesses did, however, dispute the Scottish Government’s claims that Scotland would inherit its treaty obligations with NATO, that membership would be automatic and that Scotland would be in a position unilaterally to shape the terms of its membership, particularly in relation to nuclear weapons. As a multilateral organisation and alliance, NATO membership is determined according to the provisions contained within its founding treaty.<sup>45</sup> In line with this, Sir Jeremy Greenstock, former British Ambassador to the UN, observed that “[Scotland] would be a new entity as

---

38 Ev 107

39 Q 93

40 Ev 106

41 Ev 74

42 Q 71

43 Ev 85

44 Q 77

45 The North Atlantic Treaty, 4 April 1949

far as NATO was concerned, and there would have to be discussion and probably a treaty arrangement for it to remain, as Scotland, a member of NATO”.<sup>46</sup> Equally, Professor Malcolm Chalmers, Director of Research, the Royal United Services Institute, noted that “the issue of inheriting membership of NATO is the same sort of question as inheriting membership of the EU, the UN or any other international organisation. [...] A new member state of NATO could not come into being without the agreement of the existing members of that alliance”.<sup>47</sup>

37. As part of this process, Scotland would be obliged to meet certain requirements and complete a multi-step process involving political dialogue, military integration and ultimately a positive decision in favour of membership by the North Atlantic Council, which would include the RUK.<sup>48</sup> There was a general consensus among witnesses that it would be in the RUK’s bilateral and strategic interests to support Scotland’s NATO membership aspirations and that it would be a less onerous application process for Scotland than that for the EU. However, Lord Jay of Ewelme, former Permanent Under Secretary at the FCO, reflected the views of several witnesses when he cautioned that “there would be some very tough negotiations”<sup>49</sup> not least because of Scotland’s intention to prohibit nuclear weapons on Scottish territory. There are those who argue that countries like Norway (which also strongly opposes nuclear weapons) show that NATO can and would accommodate Scotland’s non-nuclear stance, but there are others who suggest that such a foreign policy posture could have an impact on the longer term cohesion of the Alliance.<sup>50</sup> Professor William Walker, Professor of International Relations, University of St Andrews, told us that “there are all sorts of divisions of opinion within NATO”. He added that:

My surmise would be that NATO would want Scotland to be part of it, in due course, but, of course, not on any terms. There would obviously be consultation and debate, and there are consensus rules to be considered. It would probably take a bit of time before the position of Scotland and its exact terms of engagement with NATO were settled.<sup>51</sup>

Likewise, Lord Jay agreed that Scotland would most likely gain membership but questioned “whether or not these negotiations can be concluded between the date of a referendum and the end of a transition period”. He stated that “whether that would then call into question the date of full independence, I don’t know”.<sup>52</sup>

**38. The idea that Scotland would inherit automatically NATO membership in the event of independence, with access to its collective security umbrella, is an overly optimistic assertion which does not fully take account of international law or NATO’s membership rules. We conclude that while the RUK would continue to be a member of**

---

46 Q 77

47 Q 99

48 Ev 83

49 Q 209

50 Ev 82 [BASIC]

51 Q 100

52 Q 209 [Lord Jay]

**NATO, Scotland could expect to face robust negotiations and would not necessarily be in a position unilaterally to shape its membership terms in line with its domestic political commitments on nuclear weapons.**

## Scotland and the EU

39. As with the other international organisations we have discussed above, witnesses agreed that, in the event of independence, the RUK would assume the UK's place in the EU. (Whether it would retain the same degree of influence is an issue we discuss below at Paragraph 78.) As for Scotland's relationship with the EU, evidence suggested the situation would be more uncertain, as we discuss below.

40. To date, Scotland's membership of the EU has been one of the most keenly contested aspects of the foreign policy debate on independence. There is no debate *in principle* about Scotland's entitlement to be an EU member; it would be a resource-rich state and it would also instantly meet the Copenhagen criteria<sup>53</sup> for membership. Compared to the eight states that are candidates or potential candidates for EU membership, Scotland rates more highly than seven in terms of commitment to democracy, GDP per capita, population and avoidance of corruption.<sup>54</sup> In addition, as part of the UK, it has applied the EU's body of law and standards, the *acquis*, in full for decades. Instead, the more contentious debate is about *process*: would Scotland automatically become a member? If so, what form would that process take and to what extent could it dictate terms? If not, what are the necessary steps to become a member? Would a full application be required or would some form of expedited application be considered, and if so what form would that take?

### *Automatic or negotiated membership: what rules apply?*

41. It is for the EU itself to determine in accordance with its regulations whether and how Scotland would become a member. There are no specific EU treaty provisions applicable to Scotland's situation nor any direct historical precedents upon which interested parties can draw.

42. The Scottish Government's position on EU membership has evolved over recent years but its most recent stance is that Scotland would *continue* to be a member of the European Union during the period between a yes vote and independence and that as a result, there would be no break in Scotland's membership of the EU.<sup>55</sup> Although the Scottish Government has recently refrained from stating explicitly that membership would be 'automatic', this point remains implicit in its statements on this issue in the form of a new focus on 'continuity'. The Deputy First Minister told us that Scotland would not have to negotiate the terms of its membership as a new state and that instead negotiations would be conducted from within the European Union.<sup>56</sup>

---

53 Namely, democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.

54 Ev 102 [Professor Rose]. See also Richard Rose, (2013), *Representing Europeans: A Pragmatic Approach*, (Oxford University Press)

55 Q 248

56 Q 247

43. It is an unsurprising position for the Scottish Government to take given the many advantages it would bring. For instance, a paper published by the European Policy Centre noted that gaining independence under the “protective umbrella of the European Union” would enable Scotland to increase its autonomy without losing the benefits of EU membership, including cohesion funds, participation in the Single Market, free movement of people and a voice in international (trade) negotiations. Furthermore, the Scottish Government argues that Scotland would be able to appoint its own commissioner and gain weight in the European Parliament and European Council.<sup>57</sup> The Scottish Government is, however, largely alone in arguing that Scotland’s accession would automatically take place from within the EU.

44. Specific guidance on what rules would apply to the Scottish situation has been difficult to extract from European Union institutions given their reluctance to become embroiled in what is currently perceived to be a domestic political controversy. The European Commission has stated that it would only be willing to respond to a specific request about a specific situation from an existing Member State and that so far, no such request has been forthcoming.<sup>58</sup> When pressed, the Commission has restricted itself to re-stating the formal position under EU law: that the EU is founded on the Treaties which apply only to the Member States who have agreed and ratified them. If part of the territory of a Member State ceases to be part of that state because it becomes a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory.<sup>59</sup> In 2012, the President of the European Commission, José Manuel Barroso said that “a new state, if it wants to join the EU has to apply to become a member of the EU, like any state”.<sup>60</sup> It is clear from these statements that there is no formal, automatic right to Scottish membership of the EU.

### *A fast-track accession?*

45. A full accession process would have a considerable impact on both Scotland and the RUK. It would require complicated temporary arrangements for a new relationship between the EU (including the rest of the UK) and Scotland (outside the EU), including the possibility of controls at the frontier with England.<sup>61</sup> The status of Scottish nationals and companies throughout Europe would come under scrutiny and review, and every policy area that the EU touches upon would be affected to some degree or another, ranging from the single market, taxation and citizenship rights to defence, fisheries regulation and external trade tariffs to name but a few. Professor Craven believed “it would lead to a level of legal insecurity which I think most people would want to avoid. So if it is going to happen, the concern for the most part is to make sure that it happens seamlessly; that there

---

57 Arno Engel and Roderick Parkes, “Accommodating an independent Scotland: how a British-style constitution for the EU could secure Scotland’s future”, *European Policy Centre*, 24 October 2012

58 Answer given by Mr Barroso on behalf of the Commission, E-008133/2012, 17 September 2012

59 Joint answer given by Mr Barroso on behalf of the European Commission, Written questions: E-010762/12, E-011159/12, E-010044/12, E-011632/12, 1 February 2013

60 *The Scotsman*, 13 September 2012

61 Ev 77



is a seamless accession and a seamless separation”.<sup>62</sup> Many witnesses believed that it would be in neither the interests of Scotland nor the RUK to create such uncertainty. Given this, there could be an imperative for a pragmatic solution that enabled Scotland to avoid undertaking a full accession process. Professor Hazell told us that:

The formal legal position [...] is that Scotland would not automatically remain a member of the European Union. In our strong view, Scotland would have to reapply. But, depending on the political context, that application would almost certainly be fast-tracked. [...].<sup>63</sup>

46. Indeed, in spite of the formal constraints outlined above, the EU has a well-established capacity to accommodate difference and has been responsive to unusual territorial changes in the past,<sup>64</sup> leading many analysts and the majority of our witnesses to conclude that politics and the views of Member States and the EU institutions would be as important as formal EU law when determining how Scotland’s membership aspirations should be handled.

47. Written evidence from Graham Avery, an Honorary Director-General of the European Commission, suggested that a streamlined, fast-track process could be created, far swifter and less onerous on Scotland than that applied to new Member States. He argued that negotiations on the terms of Scottish membership could take place in the period between the referendum and the planned date of independence, and that the main parties would be the Member States (28 members after Croatia’s accession in 2013) and the Scottish Government (as constituted under pre-independence arrangements), and that proposals, once agreed by all parties, would come into force on the date of Scottish independence.<sup>65</sup>

### *The need for treaty change*

48. However, even if there was agreement among Member States that Scotland’s application could in some way be fast-tracked, Scotland’s addition as a new Member State would have institutional and financial repercussions for the operation of the EU treaties which would necessitate, as Dr Murkens explained, “a treaty amendment and that requires unanimity by all [...] Member States.” He added that “there is nothing automatic about that process”.<sup>66</sup> The Minister of State, FCO, David Lidington MP, also stressed the importance of unanimity, arguing that to do something as “straightforward as insert Scotland into [the] list of Member States in the EU Treaties requires a treaty change”. He added, “that requires unanimity, it also requires national ratifications in each Member State, and unanimity will only be agreed once every detail of the terms of Scotland’s accession is settled”.<sup>67</sup>

49. The Deputy First Minister told us that the Scottish Government had not sought legal advice on whether treaty change would be required. She acknowledged that “it is possible,

---

62 Q 25

63 Q 18

64 “Scotland, independence and the EU”, *House of Commons Library Standard Note*, SN/IA/6110, 8 November 2011

65 Ev 76

66 Q 11

67 Q 362

but I think it would be technical because our argument would be that Scotland should continue in membership on the same basis that we are members just now. We are not arguing, we would not be arguing for any change in Scotland's current relationship with Europe".<sup>68</sup>

### *Would Member States and EU Institutions unanimously support Scottish membership?*

50. Although the Scottish Government argues that Scotland's accession would not result in changes for Scotland, some witnesses told us that the same could not be said for the impact on other states. Given that the number of MEPs is capped under the Lisbon Treaty, the RUK, for instance, would most likely need to agree to a decrease in its MEP representation to enable Scotland to have an increase. Ms Sturgeon suggested that "these are matters that [...] would be subject to discussion, and I am sure constructive and friendly discussion, between ourselves and the rest of the UK".<sup>69</sup> Dr Fabian Zuleeg of the European Policy Centre, contended that it is

difficult to envisage that the RUK would actively attempt to hinder Scotland at the European level, after accepting independence as the settled will of the Scottish people. [...] Nevertheless, there is potential for conflict here, as Scottish independence also potentially implies changes to the UK's position in the EU3, for example with regard to the number of MEPs and votes in the Council of Ministers or with regard to budget contributions and receipts.<sup>70</sup>

51. Dr Murkens told us that, "if the UK Government strongly urges its fellow Member States to give a favourable response to a Scottish application and to fast-track it, I think it is very likely that it would be fast-tracked".<sup>71</sup> However, when we asked the Minister, Mr Lidington, whether the RUK would support an expedited membership process for Scotland, he told us that that was "uncertain" because it "takes us into the content and outcome of negotiations to which the UK would be a party". He also said that "if we look at, for example, fisheries, or if we look at whether an independent Scotland, should join the Schengen Agreement, there are UK interests in the outcome of both those decisions, and remaining UK Ministers would be looking to the interests of England, Scotland and Wales in judging its position both about the pace as well as the desired outcome of such negotiations".<sup>72</sup>

52. The Scottish Government is confident that it could secure unanimous support among Member States for its application, whatever form that may take, although the Deputy First Minister told us that EU Member States had not officially indicated whether they would support Scotland's future membership aspirations. She did, however, ask: "is anybody

---

68 Q 24

69 Q 267

70 Ev 108

71 Q 18

72 Q 367

really credibly arguing that other parts of the European Union would not welcome Scotland with all the assets and resources and perhaps relative enthusiasm?”<sup>73</sup>

53. Dr Zuleeg stated that there would be states that would be sympathetic to Scottish membership based on historic and cultural ties or shared policy priorities. Equally, there would be those concerned about secessionist movements within their own country who would not welcome the prospect of a Scottish succession.<sup>74</sup> Evidence from Dr Ker-Lindsay, Professor Richard Rose and Professor Walker suggested that these states would not necessarily stymie Scotland’s aspirations but there was a possibility, as Lord Jay also noted, that they “could cause difficulties or at least spin things out”.<sup>75</sup> There would also be a third group of countries, which Dr Zuleeg described as “broadly neutral” towards Scottish membership, whose reaction would depend on their current domestic situation, the nature of the Scottish-RUK divorce and the extent to which Scotland is seen to be a constructive partner in European policy implementation (a posture that Scottish Government ministers have been keen to promote).<sup>76</sup>

54. According to the Brussels-based think tank, the European Policy Centre (EPC), it is not only states with breakaway regions but also members like Germany, at the forefront of EU integration, “which find the prospect of Scottish independence particularly worrying”. The EPC argues that this is borne out of a concern that a successful Scottish application could trigger further fragmentation within EU Member States or prompt requests for an ‘a la carte’ relationship with the EU from other countries. The EPC also suggested that these concerns might be replicated in the European Commission.<sup>77</sup> We heard similar views during recent fact-finding visits to EU Member States.

55. Many of our witnesses believed, and other experts agreed, that Scotland would join the European Union and that Member States would agree to it, but, as Lord Jay put it to us, “there would have to be some sort of concessions and I think there would be a more difficult—it would not be automatic—negotiation than perhaps some are suggesting at the moment”.<sup>78</sup>

56. It should also not go without mention that the Scottish Government’s predicted negotiating timeframe would most likely run in parallel with the accelerating debate over the UK’s future relationship with Europe. Writing in *The Spectator*, Lord Kerr of Kinlochard, a former UK Permanent Representative in Brussels, pointed out that

the ratification processes [for Scotland], like the prior negotiations, could become protracted were they to coincide with an attempt by the London government to secure a wider revision of the EU treaty, or, after a referendum in the residual UK, to

---

73 Q 251

74 Ev 108

75 Q 208

76 Ev 108. See also Nicola Sturgeon MSP, ‘Speech to European Policy Centre’, Brussels, 26 February 2013

77 Engel and Parkes, “Accommodating an independent Scotland”

78 Q 208

initiate the procedure for withdrawal from the EU. Other countries might wish to consider a request from Alex Salmond together with any from David Cameron.<sup>79</sup>

**57. There may be pragmatic reasons for supporting some form of fast track process for Scotland's accession but this does not mean that it would be straightforward or indeed automatically conducted from within the EU, and Scotland may have to make trade-offs to secure the unanimous support that it would require. The impression given by the Scottish Government that treaty change would be a mere technicality seems to us to misjudge the issue and underestimate the unease that exists within the EU Member States and EU institutions about Scottish independence. We do not doubt that Scotland, as an independent country could play a valuable role in Europe, but it is not enough for the Scottish Government to hope, assume and assert that its arguments for a fast-track accession will find unanimous favour. It must also acknowledge that irrespective of the substantive merits of its membership claim, Scotland could still find itself competing against a variety of European political agendas that would make its path to the EU far from straightforward or automatic.**

### ***Would Scotland retain the UK's opt-outs and at what cost?***

58. Although the Scottish Government maintains that an independent Scotland, negotiating membership terms from within the EU, would inherit the opt-outs and special status that the UK enjoys on the EU budget, Schengen and the Euro, it has acknowledged that it does not have legal advice to support this view. The formal position under the EU Treaties is that if Scotland became a new EU Member State it would be obliged to adopt the *acquis communautaire*, the body of EU law and Court of Justice case law. While opt-outs on specific issues can be negotiated (and have been in the past), candidate states that are not willing to sign up to basic, fundamental EU policies are more likely to encounter problems affecting their membership aspirations. The terms of entry of a new state, including any opt-outs, would have to be set out in an accession treaty and agreed unanimously by all parties (existing Member States and the applicant state) and ratified according to their respective constitutional requirements.<sup>80</sup>

59. The Deputy First Minister said that the Scottish Government “would be arguing that [the] status quo should continue as we went from being a member of the European Union as part of the UK to being a member of the European Union as an independent country. [...] I am not sure what other countries would find to object to that”.<sup>81</sup>

60. According to the European Policy Centre “this is quite an assumption to make, and would hardly be in the EU's interests”. It added that the EU is “wary of the Scottish move for independence [because of] the threat of Scotland demanding further opt-outs and exceptional positions within a European Union that is already breaking up into two-tiered membership [...]”.<sup>82</sup> It continued: “[T]his status as a ‘new old’ member state, with the same privileged arrangements negotiated by past British Governments [...] could itself prove an

---

79 John Kerr, “Don't Count on it”, *Prospect Magazine*, 23 January 2013

80 “Scotland, independence and the EU”, *House of Commons Library Standard Note*, SN/IA/6110, 8 November 2011

81 Q 259

82 Engel and Parkes, “Accommodating an independent Scotland”

attractive model for other would-be breakaway regions in Europe, whilst providing a considerable source of annoyance for prospective members”.<sup>83</sup>

61. Mr Lidington claimed that the Scottish Government’s “confidence is not based upon anything written into the treaties or anything that has been said by the European Commission or any other Member State”, reasoning that in all recent accessions there has been a presumption that opt-outs or special treatments will not be granted.<sup>84</sup> Scotland could make the case to other Member States for a continuation of the status quo, but any such agreement would have to be unanimous. Mr Lidington said that “the way it is always presented to me in my conversations in Brussels is, ‘Look, you have an opt-out from this, but the default position is that EU members ought to be part of Schengen’”.<sup>85</sup>

62. If Scotland continues to try to secure opt-outs and special treatment, it could find its path to membership more difficult. Foreign affairs consultant Catarina Tully said that “it would be very much expected—this will be part of the whole admission process—to go with the trend of the *acquis*, whether in foreign or domestic policy areas”. She added that “attempts to re-define or re-negotiate key policies such as those on fisheries or change the status quo could hinder Scotland’s chances of securing a swift entry to the EU”.<sup>86</sup> Likewise, Professor Chalmers told us that “the more that Scotland says, “[...] we want to have an opt-out from fisheries policy,” or, “We want to have a special clause on Faslane,” the more the prospect of a smooth transition might be called into question”.<sup>87</sup> Dr Zuleeg stated that “if Scotland were to seek special treatment in relation to membership conditions and the implementation of EU policies, it would make it far easier politically to block Scottish aspirations on such grounds, as they are more justifiable than apprehensions or concerns about setting an independence precedent”.<sup>88</sup> Likewise, Dr Murkens argued that “a lot depends on the attitude that Scotland brings to the table”:

If the Scots say, “Sure, we want to be a member of the European Union and we will adopt the euro and Schengen”, and they do not raise an issue about tax rebate or structural funds, I think that Scottish membership would be fast-tracked. But if Scotland uses its newly found sovereignty and independence to pick and choose and to say, “We want to be a member of the European Union but we do not want the euro or to be part of Schengen and we would like a better deal on fisheries and the structural funds [...] then it may take longer, because the European countries have something to say about this and may not be too pleased about Scotland’s negotiating position.”<sup>89</sup>

63. Even if Scotland succeeded in securing or negotiating a retention of the UK’s opt-outs, it has been suggested by the European Policy Centre (EPC) that these would be

---

83 Engel and Parkes, “Accommodating an independent Scotland”

84 Q 370

85 Q 370

86 Q 161

87 Q 99

88 Ev 109

89 Q 20

transitional, “gradually falling away as Scotland adapted to its new position as an EU Member State”.<sup>90</sup> The EPC warned that there could be domestic consequences, too:

Scotland, as a some-time beneficiary of EU budgetary munificence and a historical bastion of opposition to Thatcherism, will struggle to justify the retention of the budget rebate deal won by the previous Conservative government in the 1980s. On an informal level, if the Scottish government continues to base its arguments for independence on the perceived benefits of being a small country, and that it will be joining a class of nimble European states such as Norway and Finland, then it must live with the costs as well.<sup>91</sup>

**64. The Scottish Government argues that in the interests of continuity, Scotland should retain the UK’s EU opt-outs, and that new ones could be added, if it becomes an independent EU member. However, it is one thing arguing for a position and another securing it. The fact that the Scottish Government has confidently done the first does not mean it will be able to do the latter, given the existence of strong forces in whose interests it would be to reject such a claim. If it continues to pursue this policy approach, there is a likelihood that the Scottish Government will undercut its attempts to position itself as a constructive and helpful European partner and therefore may not receive the unanimous support of EU Member States it would require.**

---

90 Engel and Parkes, “Accommodating an independent Scotland”

91 *Ibid.*

## 3 International influence in the event of independence: more or less?

---

### The RUK

#### *'Hard' power attributes*

65. As part of our inquiry, we sought to understand the extent to which independence could affect the FCO's ability to discharge its foreign policy goals. In terms of certain key indicators, the RUK would retain many of its current attributes. For instance its population would only reduce from approximately 63 million to 58 million, making it the world's 23<sup>rd</sup> largest country (down from 21<sup>st</sup> now), and although it would lose just under a tenth of the UK's total GDP, it would remain the world's eighth largest economy.<sup>92</sup> Within international institutions the FCO maintained that, as the continuing state, the emergence of Scotland as an independent country would not affect the RUK's "strong network of alliances and relationships" and its "leading position in the major international institutions and organisations", even allowing for necessary adjustments to its institutional position consequent to its reduced population.<sup>93</sup> Professor Chalmers has stated that the RUK would most likely retain a defence budget comparable to that of France, and an aid budget amongst the largest in the world. He concluded that "if measured purely in such material terms, therefore, Scottish independence would have no more impact on the UK's ability to operate internationally than did the 2010 Spending Review's decision to cut the defence budget by 8 per cent over the four years to 2014/15. As with that review, the impact would be uncomfortable and serious; but it would not be catastrophic".<sup>94</sup> Professor Chalmers told us that provided that the RUK could secure agreement on Trident basing and post separation budgets, "it could credibly argue that the RUK had military 'hard power' that was almost comparable to what the UK would have had in the event of the maintenance of the Union".<sup>95</sup>

66. The UK Government has adopted a firm position that the emergence of Scotland as an independent country would not result in the unilateral nuclear disarmament of the UK.<sup>96</sup> The Minister of State told us that the "strategic nuclear deterrent would be maintained" with the RUK taking "whatever measures [...] were necessary in order to do that".<sup>97</sup> The Scottish Government, however, has been clear that it would not allow permanent Trident basing. Ms Sturgeon said that:

---

92 As at 27 March 2011 the UK's population was 63,181,775, comprising: England - 53,012,456 (83.9%); Wales - 3,063,456 (4.8%); Scotland - 5,295,000 (8.4%); Northern Ireland - 1,810,863 (2.9%)<sup>1</sup>, ONS Statistical Bulletin 2011 Census: Population Estimates for the United Kingdom, 27 March 2011, dated 17 December 2012; See also Ev 97.

93 Ev 75 [FCO]

94 Malcolm Chalmers, "Kingdom's End?", *The RUSI Journal*, 157:3, 2012, 6-11

95 Ev 86

96 Q 339 [David Lidington]

97 Q 338

the position that we would want Trident to be removed from Scotland is not negotiable. [...] We have clearly said, because we would be a responsible Government and a responsible partner, that that has to be done in the speediest safe way possible.<sup>98</sup>

Other witnesses did not share the UK Government's confidence. They were clear that it would be prohibitively difficult and costly to find any other site for Trident outside Scotland. This would call into question the UK's nuclear defences. Professor Omand stated that, "my fear, and it is a genuine fear, is that that would precipitate the UK out of the nuclear business".<sup>99</sup> The consequences of such a hard power loss from a defence perspective are being examined by the Defence Committee.

67. From a foreign policy perspective, witnesses did not think that it would necessarily affect the RUK's short-term ability to retain key international positions such as a permanent seat on the Security Council.<sup>100</sup> Sir Jeremy Greenstock observed that the RUK would still be "a really quite powerful and capable state working in the international institutions and in bilateral relations". He added that it "will not look terribly good that we have lost bits and pieces of our federation. [...] But there would be very real capabilities left, and London, as a capital city, has a huge cosmopolitan power and reputation [...]".<sup>101</sup> Written evidence from Dr Daniel Kenealy, Lecturer in Politics and International Relations, University of Edinburgh, stated that in the short term "it is hard to envision why Scotland's independence would play any causal role" in changes to the RUK's foreign policy. He added that the "RUK would, in essence, be slightly smaller, slightly less populous, and with a smaller GDP than the former UK".<sup>102</sup>

68. The situation may differ over the longer term, if the RUK did not maintain, in Lord Jay's words, the "strong foreign policy and armed forces that enabled us to work with others".<sup>103</sup> There would also be a greater chance that the RUK's relationship with its key allies and traditional defence partners, including its privileged relationship with the US, which is at least partly sustained by nuclear and security co-operation, would come under scrutiny and review if it did not retain its nuclear deterrent, which of itself could serve to fuel the views of some states that the RUK was a power in irreversible decline.

### ***The impact on the UK's international standing***

69. Important though hard power and its trappings undoubtedly are, there is recognition within government and beyond that the UK's international standing and soft power influence derives not simply from its material wealth, its diplomatic service or even its willingness to spend money in pursuit of foreign policy objectives.<sup>104</sup> For many analysts, the UK's weight on the world stage is also rooted in how others view its political stability

---

98 Q 293

99 Q 144

100 Q 74 [Sir Jeremy Greenstock]

101 Q 62

102 Ev 91

103 Q 205

104 Malcolm Chalmers, 'Kingdom's End?', *The RUSI Journal*, (2012), 157:3, 6-11



and its long experience of continuous and constitutional government. The FCO itself places a great emphasis on the importance of soft power and public diplomacy and has prioritised the use of ‘soft power’ to promote British values, advance development and prevent conflict.<sup>105</sup> Speaking in 2011, the then FCO Minister Lord Howell, argued that the UK’s “attractiveness rests on offering a positive domestic constitutional model that appears to work”.<sup>106</sup> Catarina Tully stated that the RUK is seen as a rule-maintainer, not a rule-setter, and that the UK’s “experienced broker role is respected externally and considered to add significant value in terms of making global governance work better, particularly in international institutions”.<sup>107</sup>

70. Most witnesses agreed that the RUK would inevitably suffer some reputational damage and Sir Jeremy Greenstock noted that “there are members of the United Nations who are sometimes reasonably content to see the UK in trouble or struggling”.<sup>108</sup> Other witnesses claimed that the emergence of Scotland as an independent country could give rise to perceptions overseas that the UK’s weight and influence is in decline. For instance, Professor Whitman and Dr Blick argued that the “prestige of the UK as a successful multinational state would be compromised by the loss of a major territory within it”.<sup>109</sup> Catarina Tully stated that:

if soft power is about the power of attraction towards your world-view, it is at first glance difficult to see fragmentation as anything other than a negative judgment on the UK. [...] Nothing speaks louder than citizens voting with their feet. This phenomenon – in the absence of clear explanations – may well open up questions about what was wrong with the political construct formerly known as the United Kingdom. This is quite aside from the to-be-expected response of countries like Venezuela, Iran and Argentina who have interest in putting into question the UK’s authority and legitimacy.<sup>110</sup>

71. While there was agreement among witnesses that reputational damage would arise, there was less clarity about how this might manifest itself or what impact it could have on the RUK’s ability to project its foreign policy goals. The FCO acknowledged that there could be a “short-term risk of opponents of the UK’s foreign policy seeking to exploit any uncertainty or distraction that could follow a vote in favour of separation for Scotland” and that “traditional allies may seek reassurance that the UK would retain the ability to project influence and military capability in support of joint objectives”.<sup>111</sup>

72. Witnesses did however agree that the way in which the RUK handled “the business of the break-up” would significantly influence how much reputational damage and loss of prestige the RUK suffered internationally.<sup>112</sup> We heard from a number of witnesses that

---

105 Foreign and Commonwealth Office, *Business Plan 2011-2015*, May 2011

106 Rt Hon Lord Howell of Guildford, HL Deb, 28 April 2011, col 307

107 Ev 112

108 Q 58

109 Ev 79

110 Ev 112

111 Ev 75

112 Q 61

proactive political and diplomatic management of the situation would be required to prevent objections arising from key states.<sup>113</sup> Thus far, it is not clear that the UK is doing this, partly because it has chosen to state, as a policy position, that it is confident Scots will vote to stay as part of the UK. The problem with this strategy from an international perspective, as Catarina Tully observed, is that “countries are finding it difficult to assess their own response to independence since they are not getting much response from Whitehall”:

They are uncertain about what the Scottish Referendum means and what Scottish independence might mean. Herein lies an opportunity for the UK and Scotland both to engage and reassure partners’ concerns while balancing their own quite separate respective agendas and build their respective soft power credibilities – whatever the outcome of the referendum.<sup>114</sup>

**73. Assuming that the RUK could largely maintain its hard power capabilities following Scottish independence, there is no reason to suggest that its influence in international organisations and institutions would change, at least in the short term. However, any resulting nuclear disarmament of the RUK would lead to obvious hard power losses which would have a profound impact on the RUK’s future foreign policy posture.**

**74. It is difficult to measure the impact on the RUK’s international standing and influence in the event of Scotland becoming an independent country but we conclude that some degree of reputational damage is inevitable. *We recommend that ahead of the referendum, the FCO does more, when appropriate, to engage with international partners in order to highlight the UK’s commitment to a consensual and broad-based engagement on the Scottish referendum, with a view to minimising the risk of damage to the UK’s reputation.***

### ***RUK’s diplomatic service***

75. As we concluded in our Report into *The Role of the FCO in UK Government*, the FCO is among the world’s most accomplished diplomatic operations.<sup>115</sup> Catarina Tully stated that “British international influence in no small part comes not from its size but from the persuasiveness and forcefulness of its diplomatic service [...], its pragmatic approach, role of honest broker [and] the coherence and effectiveness of its diplomacy”.<sup>116</sup> During this inquiry we explored whether Scotland’s emergence as an independent country would have an impact on this. The ex-diplomats we heard from did not think that the RUK’s daily diplomatic business would be unduly affected by independence, and Sir Jeremy Greenstock felt that “most members of the United Nations, whether or not they enjoyed a bit of schadenfreude, would get on with the business of not wanting to cause fuss over somebody else’s internal business”.<sup>117</sup> However, Professor Chalmers contended that “there will be a

113 Q 91

114 Ev 112

115 Foreign Affairs Committee, *The Role of the FCO in UK Government*, Seventh Report of Session 2010–12, HC 665, 12 May 2011, para 21

116 Ev 112

117 Q 59

loss” and that “is bound to lead to some loss of self-confidence among our elite [...] I don’t know what the psychological impact of that on the individuals concerned will be but it should not be underestimated”.<sup>118</sup>

76. The greatest impact on the diplomatic service could arise from budget cuts as part of the Government spending round that would follow Scottish becoming an independent country. Lord Jay told us that the Treasury might argue that with GDP 8% lower and the number of people that the UK represents overseas reduced by approximately the same amount, there should be a corresponding cut in the FCO’s budget. He stated that:

Further significant cuts in the FCO’s budget would make it difficult for the Foreign Office to continue to carry out the sorts of services that it carries out with the range of posts that it now has across the world. [...] How do you maintain with a smaller budget a spread of posts with the quality and the number of people that you need to do the job that needs to be done, with the security that you need to have in order to be able to do that? I think that that would be very difficult.<sup>119</sup>

77. The FCO would also need to set up a new representative office in Scotland (with associated costs) at a time when it is under pressure to cut back on other parts of the overseas network. Its diplomats, too, would have a role to play in the independence negotiations and in developing an appropriate RUK approach to its new neighbour. There could also be a loss of staff and expertise through voluntary moves to a new Scottish diplomatic service. Inevitably, any of these scenarios would divert already scarce resources away from existing FCO programmes, although it is impossible to predict with any degree of accuracy at this stage what impact this may have. **We are concerned that any budgetary cuts imposed by the Treasury on the RUK’s diplomatic service as a result of independence would cut into the bone of existing FCO operations. This would be magnified by the costs involved in setting up a new representation in Scotland which would inevitably divert already scarce FCO resources away from existing commitments.**

### ***In the EU: a reduced RUK influence?***

78. If Scotland were to vote ‘yes’ in the independence referendum, the transitional period before 2016 would coincide with a process of radical constitutional reform within the EU as well as a possible (R)UK referendum campaign on whether, and on what terms, it should remain part of the EU. We have examined these issues in detail as part of our inquiry and Report into *The Future of the European Union: UK Government Policy*, which will be published later this year.<sup>120</sup>

79. On paper, because the RUK’s population would not diminish significantly, it is likely that voting weights in the European Council would remain unchanged and there would be no formal decrease in the RUK’s power or weight.<sup>121</sup> However, the same may not apply in

---

118 Q 91

119 Q 185

120 Evidence submitted to the inquiry can be found on the Committee’s website: [www.parliament.uk/facom](http://www.parliament.uk/facom)

121 Q 11 [Dr Murkens]

the European Parliament. As Dr Murkens told us, “the problem is that the number of MEPs is capped at 750 plus the president, so any increase in Scottish representation would lead to a necessary reduction in RUK’s 73 [MEPs]. Would the rest of the United Kingdom be happy to see such a dramatic reduction in its representation? I leave that question open”.<sup>122</sup>

80. There could be a greater informal impact on the RUK’s influence. Dr Andrew Blick, University of Kent, and Professor Richard Whitman, Associate Member of Chatham House, argued that in this respect, the implications for the RUK’s role in Europe would be “profound and irreversible”.<sup>123</sup> Professor Whitman claimed that, “accompanied by the rump UK’s likely continuation of its position outside the Euro zone, and the possible transition of monetary union into a deepened fiscal and political union, a status as a European diplomatic Lilliputian is one credible scenario”.<sup>124</sup> He argued the UK would cease to be one of the EU’s ‘big three’ Member States alongside France and Germany and could face a diminished capacity for influence bilaterally and within the EU institutions. This in turn could lead to a reduced influence with the United States if its capacity to exercise influence on EU policy-making is diminished”.<sup>125</sup>

81. It was also suggested that other EU countries could exploit separation to pressurise the RUK to re-negotiate the terms of its membership in particular policy areas (for example the Euro, Schengen or the budget rebate) particularly if this came at a time when the RUK was seen to be blocking or delaying key initiatives of importance to other Member States.<sup>126</sup> Dr Blick told us:

It adds in a whole new tier of negotiations and footwork that has to go on. If we then try to run that alongside trying to negotiate something for Scotland as well, it could become hideously complex and issues which become difficult could pop up that we cannot foresee.<sup>127</sup>

82. However, Catarina Tully told us that in terms of the debate about [RUK] influence in Europe, the name of the game [...] is not really independence but the UK’s attitude to the EU. That trumps all concerns about the UK reducing in size by 8% of its population, 30% of its land mass, and between 8% and 10% of its GDP”.<sup>128</sup> From a diplomatic perspective, Sir Jeremy Greenstock stated the RUK would retain “considerable energy”.<sup>129</sup>

**83. There is a danger that the RUK’s influence within the EU could decline in the event of Scotland becoming an independent country although it is currently impossible to predict the extent of the damage that may arise, not least because this could also be**

---

122 Q 12. Currently Scotland has 6 MEPs, There are 73 UK MEPs. 72 were elected in the European Parliament elections on 4 June 2009. The UK gained an additional seat in the West Midlands region on 1 December 2011, As a result of the entry into force of the Lisbon Treaty.

123 Ev 78

124 Ev 79

125 Ev 79. See also Ev 90 [Dr Kenealy].

126 Ev 91 [Dr Kenealy]; Ev 108 [Dr Zuleeg]

127 Q 56

128 Q160

129 Q 60

affected by the consequences of the ongoing debate over the UK's future relationship with the EU.

## Scotland

84. Foreign affairs are a reserved matter under current devolution arrangements with the practical arrangements for handling foreign affairs contained in a Memorandum of Understanding between HMG and the Scottish Government which includes a Concordat on the co-ordination of European Union Policy issues.<sup>130</sup> In essence, this provides for the UK to take the policy and political lead on foreign affairs with input from Scottish Ministers, as appropriate, where there are particular Scottish interests at stake. Within these parameters, the Scottish Government has successfully engaged on a wide range of international issues, developing strategic international objectives and engagement plans with key countries (including the USA, Canada, China and more generally South Asia) focusing on business, trade, education, culture, science and tourism.<sup>131</sup> It is also seeking an enhanced role for Scotland in Europe, including through the Scotland Europa Office in Brussels. According to the European Policy Centre, its presence has ensured that Scottish interests have international recognition, a voice in the European arena and an ability to cultivate relations with other institutions.<sup>132</sup>

85. In addition to a network of Scottish Development International (SDI) Offices (which focus on inward investment and international trade) the Scottish Government also has staff working within the FCO overseas network on matters of particular Scottish interest and has capitalised upon the large Scottish diaspora through initiatives such as 'GlobalScot', enabling it to create business opportunities and project Scottish soft power. Indeed, the 2012 Anholt-GFK Roper Nation Brands Index Report for Scotland suggests that Scotland's reputation abroad is strong and is scored and ranked similarly and in some cases ahead of the other smaller, high income, liberal democracies on the index (e.g. Denmark, Finland, Ireland, and New Zealand). Scotland's governance and tourism are seen as Scotland's strongest points while exports are perceived as its weakest point. Across all dimensions, with the exception of exports, Scotland is ranked within the Top 20 countries.<sup>133</sup>

### *Would independence enhance Scotland's global role?*

86. It is clear from the points illustrated above, that Scotland already projects a strong Scottish voice at an international level. Yet, the Scottish Government argues that this is not sufficient for Scotland's needs. It states that:

independence will give us a voice on the world stage. As a member of the European Union and United Nations, we will be a fully-fledged partner in the international

---

<sup>130</sup> This also includes a Joint Ministerial Committee (Europe) responsible for resolving possible disagreements over EU affairs between devolved administrations and the UK Government

<sup>131</sup> See for example, 'Scotland's International Framework', *Scottish Government*, October 2012

<sup>132</sup> Engel and Parkes, "Accommodating an independent Scotland"

<sup>133</sup> 'The Anholt - GFK Roper Nation Brands Index(SM): 2012 Report for Scotland', *Scottish Government*, 7 December 2012, [www.scotland.gov.uk](http://www.scotland.gov.uk)

community. This will allow us to promote and protect our interests and provide an input into global issues and challenges.<sup>134</sup>

It adds that:

as an equal partner at these top tables [international organisations], we will have a real say in fostering global co-operation and solving conflict – in big-ticket issues such as peace and war, reconciliation, breaking down barriers and action on saving the planet.<sup>135</sup>

87. We asked witnesses whether having a direct voice would allow Scotland to play the type of global role the Scottish Government aspires to. Dr Kaarbo told us that as a small and newly independent country, Scotland would lose “the objective material powers”<sup>136</sup> that currently enable the UK to play a global role in geopolitics, global security and international human rights through its influence in, for instance, the Security Council and the other main international groupings of the most influential and economically significant countries, such as the G8 or G20.<sup>137</sup> The FCO maintained that Scotland would also lose out in the international financial institutions, including the World Bank and the International Monetary Fund (IMF), where its voting shares and influence would be reduced from its current position as part of the UK and where “the expectation must be that an independent Scotland would not be represented by its own single seat”.<sup>138</sup>

88. So too, it might lose the benefits that come from the UK’s ability to project soft power which, according to a ‘Global Soft Power’ survey published in November 2012, places the UK at the top of the list, ahead of the US, Germany, France and Sweden. The survey concluded that no other country comes close to Britain’s influence around the world. Similarly, in the 2012 Anholt-GfK Roper Nation Brands Index, the UK’s was ranked 3rd out of 50 in countries in terms of overall reputation.<sup>139</sup> Catarina Tully reasoned that:

the SNP appear to have made an implicit calculation that there is a net foreign policy gain to independence for Scotland. This is despite moving from being part of the 3rd largest economy in Europe to the joint 17th. The implicit calculation may be that what Scotland loses in scale and hard power, it gains by: over a billion pound saving on defence; being able to focus on a narrower set of national objectives; using foreign policy capabilities more efficiently; using soft power more effectively; and - implicitly - stronger regional relationships. This is a typical small power diplomatic strategy: narrowly focused on specific interests and bound closely to its regional allies.<sup>140</sup>

89. Witnesses told us that that as a small “resource-dependent, resource-small country”<sup>141</sup> intent on playing a global role it would be crucial for Scotland to pursue its foreign policy

134 ‘Your Scotland, Your Future’ *Scottish National Party*, December 2011

135 *Ibid.*

136 Q 170

137 Ev 74 [FCO]

138 Ev 74 [FCO]. Not all independent states have a single seat. Some form alliances and are represented by a single state.

139 Anholt-GfK Roper Nation Brands Index 2012, 23 October 2012

140 Ev 114

141 Q 170 [Dr Kaarbo]

### **An industry perspective on the FCO's support**

Evidence from the Scotch Whisky Association referred to the “generally high quality level of support received over many years” from the FCO. It stated that “working together, the industry and government can point to numerous trade barriers that have been removed, supporting the competitiveness of the sector”. It added,

“Whilst it is the EU which leads on relevant issues, the UK Mission in Geneva, which is well staffed and well respected, plays an important role in relation to trade negotiations and World Trade Organisation issues (including technical barriers to trade and trade policy reviews), as well as the World Health Organisation.

“Such representation assists in securing a high profile for UK industry priorities in the on-going free trade agreement negotiations between the EU and major developing trading partners such as India, ASEAN and Mercosur.

“The global footprint of the British Embassy network, with its excellent local connections and knowledge, as well as commercial diplomacy expertise, supports the industry’s market access agenda. The Embassy network does important work in ensuring a co-ordinated response in-market, through the local EU market access teams, to trade issues that arise”.

goals through the use of soft power if it was to succeed in punching above its weight internationally. Here, Scotland already performs well and if it could improve upon this by, for instance, providing innovative leadership, developing an economic niche or by highlighting its strategic importance, it could carve out a global role. However, Dr Kaarbo warned that “it is a crowded field out there” and that it would take a long time “and it would have to build up that credibility” especially since the policy areas that the Scottish Government appears to wish to influence (like climate justice) are already championed by other states with greater resources, influence and experience.<sup>142</sup> Professor Rose, Centre for the Study of Public Policy, University of Strathclyde, Glasgow, concluded that “while Scotland has the advantage of being an internationally known brand that may help to open doors abroad, this is insufficient to seal deals”.<sup>143</sup>

90. It would also be more difficult for Scotland to exercise influence across the wide range of issues that the Scottish Government appears to wish to champion. As Professor Richard Rose stated in his written evidence, “the lack of the hard power of military force and a large gross domestic product forces small states to rely on ‘smart’ power, that is, a conscious strategy of engaging with other countries in order to call attention to common interests that may be pursued for common advantage”.<sup>144</sup> However, as Catarina Tully noted, although small states tend to choose one or two issues on which they show global leadership, “everywhere else they have to go with the consensus of the international organisation”.<sup>145</sup> Put another way, a small state has to be “an environment taker, not an environment shaper” with “its room for manoeuvre in terms of its choices [...] shaped a lot more by its alliances”.<sup>146</sup>

### **Starting afresh: creating diplomatic clout**

91. Diplomatic excellence undoubtedly helps states to exercise influence internationally. Currently, Scots and Scottish businesses have access to the support and expertise provided by the FCO’s overseas network which comprises

142 Q 173 [Ms Tully]

143 Ev 102

144 Ev 102

145 Q 169

146 Q 157

around 270 diplomatic posts in 170 countries and 14,000 staff. As part of the UK, Scottish Development International's own offices in 13 countries are complemented by the UKTI network of 162 offices in 96 countries, and can draw on the UK's diplomatic representation in the rest of the world.<sup>147</sup> In addition, the Scottish Government has, under the auspices of the Scottish Affairs Office, four staff at the UK's Washington embassy and a further two in the British Consulate in Toronto. In Beijing there are two accredited staff. There are also 12 staff working under the umbrella of the UKREP in Brussels.<sup>148</sup>

92. The FCO states that its overseas network enables the UK to “deliver a distinctive foreign policy that extends its global reach and influence on bilateral and multilateral issues such as climate change, human rights and global security, as well as assisting UK nationals overseas”, all areas that the Scottish Government states it would seek to exercise influence upon.<sup>149</sup> According to the FCO, in 2011-12:

- 172 grants were provided to Scottish firms through support under the UKTI's Tradeshow Access programme;
- 310 reports were commissioned on behalf of Scottish firms through overseas posts under UKTI's Overseas Market Introduction Services;
- Three research projects were offered to Scottish firms under UKTI's Export Marketing Research scheme;
- Four Scottish missions to India, Brazil, Qatar and China (a total of 34 companies) were supported under UKTI's Market Visit Support programme.<sup>150</sup>

93. In spite of this, and the current Government's commitment to place commerce at the heart of foreign policy, Scottish Ministers have argued that “too much of UK overseas representation is based on status and power and that's not what Scotland needs” and that “a Scottish embassy and consular network will focus more on jobs and trade and promoting Scotland internationally, with benefits for our economy”.<sup>151</sup> The Deputy First Minister stated that “it is not necessarily a criticism of the FCO; it is just saying that [...]we would very much have that focus on trade as a key driver of our diplomatic representation abroad”.<sup>152</sup> To achieve this, Scottish Ministers want to create a new Scottish overseas network using its existing network of 22 SDI offices located in large commercial centres as a basis for its diplomatic estate. This would allow, according to the Deputy First Minister, “a strong priority [...] on the key markets, the emerging markets, where it was important for us to be in order to support and protect our key economic interests”.<sup>153</sup> The Deputy First Minister was not able to provide estimates for the costs involved in setting up a Scottish overseas diplomatic presence. Ms Sturgeon stated that in terms of running costs,

---

147 Ev 76

148 HL Deb 27 Feb 2012, col WA206

149 Ev 75

150 HC Deb, 5 Nov 2012, col 3MC

151 *BBC News Online*, 25 June 2012

152 Q 292

153 Q 292



other similar, small states like Norway or Denmark spent “in about the region of £100 million to £200 million”.<sup>154</sup> She told us that “it would certainly be the objective of an independent Scottish Government to replicate the quality of the representation that is provided [by the FCO], not necessarily doing it in exactly the same way with exactly the same property footprint”.<sup>155</sup>

94. We asked witnesses whether the diplomatic infrastructure outlined above would deliver the added impact and influence the Scottish Government aspires to. The FCO told us that the UK’s privileged relationships and diplomatic, consular and UKTI network delivers benefits to Scottish people and businesses at home and overseas.<sup>156</sup> It reasons that it is “difficult to see how those relationships would be more productive for Scotland than those privileged relationships the UK currently enjoys with the rest of the world, and particularly the other major international powers, including the emerging economies”.<sup>157</sup> We also asked Lord Jay for his response to the Scottish Government’s claim that too much of UK representation is based on status and power as distinct to “what Scotland needs”. He reasoned that:

You don’t want status and power for its own sake. You want status and power because that enables you to exert the influence you need to exert to bring about the policies you want to have executed. They do not stand on their own. You can call it what you like, but what you want is to have the impact in a country which enables you to go and talk to the people who really count and say, “This is what we need,” and get a receptive response. You do not necessarily need to have a traditional embassy structure to do that, but it very often helps.<sup>158</sup>

### *Scale and costs*

95. Replicating the FCO’s quality of representation would involve, according to the FCO itself “change of considerable magnitude”.<sup>159</sup> Professor Rose wrote that it would involve “creating almost from scratch the full panoply of representation currently provided by the UK Government”.<sup>160</sup> Although there is no fixed rule about how many embassies and ambassadors a state should have, by way of comparison Finland has 93 posts (although they are due to be cut because of budgetary pressures), Austria has 82 and Ireland 73.<sup>161</sup> The Scottish Government has not detailed how many embassies in total it would seek to have. Scotland would also need to establish representations to key international organisations such as the UN, Commonwealth and NATO and many of the other key international agencies based in New York, Geneva and Vienna. In terms of the EU, Professor Rose expected that Scotland would need to establish and staff major embassies in up to two dozen national capitals. He also anticipated that its permanent representation

---

154 Q 319

155 Q 290

156 Ev 75

157 Ev 74

158 Q 201

159 Ev 76

160 Ev 101

161 Q 359 [David Lidington]. See also Ev 102 [Professor Rose].

office in Brussels would need to be eight to ten times larger than its existing mission.<sup>162</sup> He added that:

It is a diplomatic truism that to represent a country it is necessary to be present, whether or not the EU committee meeting is one in which a country has an interest. It is necessary to monitor Commission preparations of proposals; the reaction of home departments affected by a specific Commission proposal; and the position that other countries are likely to take on an issue that makes them suitable partners in an alliance based on common interests. All of this takes time and skilled staff.<sup>163</sup>

96. As Lord Jay noted, this would amount to the creation of “a reasonably sized diplomatic service just to do what would need to be done”.<sup>164</sup> Resources could be optimised through the European External Action Service or by working diplomatically with other states. However, Lord Jay warned this would still have significant cost and security implications.<sup>165</sup> Scotland would also need to recruit specialist staff including linguists.<sup>166</sup> Witnesses raised the possibility that some FCO staff may wish to leave and join a new Scottish diplomatic service<sup>167</sup> but the FCO was clear that its personnel could not be compelled to join a new service.<sup>168</sup>

97. Witnesses agreed that it was possible to create a different model of overseas representation but cautioned that in addition to annual running costs there would need to be substantial capital investment. Unlike states such as Denmark which have built up their overseas networks over centuries, an independent Scotland would incur significant one-off costs if it was to acquire from scratch comparable properties, equipment and staff. All of this would also need to be achieved as a matter of urgency, concurrently with creating new ministries in Edinburgh.<sup>169</sup> Although the Scottish Government could reduce some costs through its plans to use its existing 22 SDI offices, Lord Jay noted that these are not all in capital cities and are therefore not always best suited to non-commercial activity.<sup>170</sup>

**98. There is no reason in principle why Scotland could not set up a fully functioning and successful diplomatic service if it became an independent country but, in the absence of a coherent and costed diplomatic vision, Scottish voters should be under no illusion about the significant resources that would be required to fulfil the Scottish Government’s aim of replicating the quality of the business and consular support currently provided by the FCO and UKTI.** Seasoned and experienced diplomats who can influence agendas through longstanding cultural, linguistic political awareness are the product of many years of training which cannot be replicated cheaply or quickly, as the FCO knows only too well. Independence may provide Scotland with an opportunity to

162 Ev 101

163 Ev 102

164 Q193

165 Q 193

166 Q 194

167 Ev 92 [Dr Kenealy]

168 Ev 76

169 Ev 102 [Professor Rose]

170 Q 193

pursue more innovative forms of diplomatic representation, but there would inevitably be trade-offs. **It takes more than good will and soft power to seal deals internationally and Scotland would be starting from scratch in this regard, a fact that would not be lost on the many Scottish businesses that currently benefit from the FCO's support and the many Scottish nationals who use the FCO's consular services.**

### ***In the EU: does a direct voice equate to influence?***

99. The Scottish Government has asserted that Scottish interests would be better represented by an independent Scottish presence in the EU rather than as part of the UK. Speaking in January 2013, the Deputy First Minister, Nicola Sturgeon, argued that “it is only a Yes vote for an independent Scotland at the referendum next year that will ensure Scotland’s voice is always heard at the top tables of Europe”.<sup>171</sup> Giving oral evidence to us, Ms Sturgeon referred to research that suggests that small states in Europe have been more successful in negotiating legislation than some of the larger states, in order to reinforce her view that “states can be influential in Europe notwithstanding the relative smallness of their territory or population”.<sup>172</sup> She also told us that:

The starting point of Scotland right now is as a country as part of the UK that has significant responsibilities in devolved areas where it is often in our interest and would be in our interest to argue a case directly before the European Union, in the Council for example, where our ability to do so is heavily restricted. Our Fisheries Minister [...] cannot articulate and represent the Scottish interests without reference to the UK Government and does not have the ability to depart from a UK Government line even if that was in the interests of Scotland.<sup>173</sup>

100. In its written evidence, the FCO defended the status quo and argued that as one of the largest Member States in the EU, the UK has a considerable say over policies that have a particular impact in Scotland such as regulation of the financial services industry, health and safety regulation affecting the offshore oil industry and reform of the Common Agricultural Policy and Common Fisheries Policy.<sup>174</sup> Mr Lidington also argued that the influence of small Member States in the EU is variable and heavily dependent on alliances and support from large Member States.<sup>175</sup>

101. The FCO did acknowledge that in the Council of the European Union, the main forum for decisions amongst the Member States, smaller countries have tended to have a higher voting weight proportional to their population than the larger ones. However, it also noted that this is set to change in 2014 with the introduction of the new voting system agreed under the Lisbon Treaty. Under this arrangement, legislative proposals will in general need to be backed by over 55% of the Member States and by countries together representing over 65% of the EU’s population. The FCO and a number of witnesses argued that this would tend to increase the voting weight of the larger Member States, including

---

171 “Scotland and rUK in EU: co-equal successor states”, *SNP Press Release*, 19 January 2013

172 Q 287

173 Q 288

174 Ev 74

175 Q 347

the UK, relative to the current position, and would diminish the voting weight of smaller Member States.<sup>176</sup> Yet Ms Sturgeon told us that “whether it is under the current voting arrangements or under the double majority arrangements that Europe will move to from 2014 onwards, we will have significantly more influence than we do just now”.<sup>177</sup>

102. Witnesses were not convinced that a direct voice would necessarily equate to a greater influence or an ability to shape particular policy areas. Professor Rose stated that the pressure for consensus in EU decision-making and rules for super-majorities “mean that individual countries, whatever their size, must form alliances on an issue by issue basis in order to have their positions incorporated in an EU decision”.<sup>178</sup> Mr Lidington observed that even if Scotland was to find a place within a coalition of small states, “in raw political terms it is the leaders of the big Member States who tend to count for most [...]. Frankly, if you get something where France, Germany and the UK, or France, Germany, the UK and Poland all line up together, it is very difficult, even for a coalition of small Member States, to resist that”.<sup>179</sup>

103. Other witnesses argued that even if Scotland gained a direct voice after independence, on some issues it would still have “a lot less room to manoeuvre” than a large state.<sup>180</sup> Equally, although the number of Scottish MEPs would increase substantially, Professor Rose stated that “the extent to which Scottish voices would be strengthened [...] depends less on the number of Scots in a European Parliament of 751 MEPs than it does on the abilities of the individuals whom parties nominate and Scots elect”.<sup>181</sup> Finally, the European Policy Centre observed that:

the UK’s voice is heard even on issues such as EU economic and financial governance, where it has exercised its opt-out. This occurs not out of politeness but because it is a big state. Except for those matters where the consent of all members is required, smaller Scotland could expect no such treatment.<sup>182</sup>

### *An industry perspective on the EU*

104. In written evidence, the trade body representing one of Scotland’s key industries, appeared content with the support it currently receives from the FCO. The Scotch Whisky Association stated that “effective and influential representation” by the UK on the EU Trade Policy Committee and Market Access Advisory Committee has been key to tackling market access problems. It added that “ensuring the UK’s trade voice is heard within the EU is vital given the lead role of the European Commission and the EU’s overseas delegations on trade issues” and that the support received from UK departments and the UK Permanent Representation in Brussels on EU internal market issues is “invaluable”. In

---

176 Ev 74

177 Q 287

178 Ev 102

179 Q 365

180 Q 157 [Catarina Tully]

181 Ev 102

182 Engel and Parkes, “Accommodating an independent Scotland”

particular, it praised FCO support in relation to the complex issues surrounding product labelling and matters relating to EU accession countries.<sup>183</sup>

**105. As far as the EU is concerned, a direct Scottish voice would not necessarily equate to more influence; influence is an upshot of many state attributes, not an automatic by-product of sovereignty. While an independent Scotland could have a more distinct voice than it does now, that does not mean that it would be able to alter unilaterally the content of policies to its own ends. It could be more effective for the Scottish Government to seek to re-visit existing arrangements on foreign policy in order to explore whether, working within the parameters of the current devolution settlement, Scottish interests could be given a more direct voice on certain issues. *We recommend that in its response to this report the FCO outlines its views on this matter.***

## 4 Characterising a future RUK-Scotland bilateral relationship

---

### The foreign policy posture of the RUK's closest neighbour

106. Dr Kaarbo told us that she anticipated that Scotland would be “a liberal, open-trading state, embracing interdependence [...] that would be very similar to UK foreign policy now”.<sup>184</sup> Catarina Tully told us Scotland would engage in “typical small-state diplomacy”, with a foreign policy that is narrowly focused on soft power, economic intentions and national strategic interests.<sup>185</sup> As a result, the RUK would share many common interests resulting in a high degree of convergence in their foreign policies.<sup>186</sup>

107. While more information about aspects of Scotland's future foreign policy have gradually begun to emerge in recent months, its totality remains unclear and information on a range of key foreign policy issues remains unknown. What is now clear is that Scotland would want to: endorse NATO membership (albeit as a non-nuclear state and one which reserves the right to refuse to not engage in ‘out of area’ operations); that it would emphasise the ‘High North’ and relations with Nordic and Scandinavian countries; that it would allocate £2.5 billion to security and defence; and that its foreign policy priorities would be “to advance Scotland's economic interests, to protect its citizens and assets and to play a responsible role as a good global citizen, contributing to peace across the world”.<sup>187</sup> More information has also been published on an independent Scotland's defence posture (a subject the Defence Committee is scrutinising) which goes hand in hand with Scotland's foreign policy choices and priorities. As the RUK's closest would-be neighbour, the decisions that Scotland would take in respect of its foreign policy would have an important impact on the overall nature of the bilateral relationship and on the FCO's work.

### Co-operation or competition?

108. One of the strongest themes present in Scottish Government statements on Scotland's future foreign policy is the notion that the Scotland-RUK bilateral relationship would be a close and constructive one, that it would be a “partnership of equals”,<sup>188</sup> and that “where now decisions are taken in London alone, with independence we will be able to take them together”.<sup>189</sup> From a security and defence perspective, the Scottish Government wants to pursue joint procurement as well as shared conventional basing, training and logistics arrangements.<sup>190</sup> The Deputy First Minister also told us that Scotland would work “closely

---

184 Q 158

185 Q 158

186 Q 158 [Dr Kaarbo]

187 Q 224

188 Q 224

189 ‘Your Scotland, Your Future’, *Scottish National Party*, December 2011, p29

190 Corrected transcript of evidence taken before the Defence Committee, 3 July 2012, HC 483-i, Q 105 [Professor Malcolm Chalmers]

with the FCO network”<sup>191</sup> and referred to the “increasing tendency towards co-operation” in terms of consular activity, shared premises and shared services.<sup>192</sup> She added that “we contribute to [...] the current FCO network and would be entitled to a share of assets. We would look to share premises with not just the rest of the UK but other countries”.<sup>193</sup>

109. What is not clear, however, is the extent to which the RUK may be willing or indeed able to co-operate with an independent Scotland or how much this might cost the Scottish Government. For instance, in terms of requests for diplomatic and consular co-operation, the Minister of State, David Lidington, told us that “British Ministers faced with that decision would say, ‘where do the interests of people and companies in the remaining United Kingdom lie’”. He added that there would most likely be a cost for securing some services.<sup>194</sup> Under existing arrangements, and assuming that Scotland became a member of the Commonwealth or EU, the UK could provide some first-line consular assistance to Scottish citizens where Scotland had no diplomatic presence. However, the FCO cautioned that these arrangements would not extend to particularly challenging or sensitive cases or ones where there was an expectation that assistance would be provided directly by the country concerned. The FCO argued that this could have a significant impact on Scottish citizens involved in overseas crises involving child abduction, forced marriage or criminal cases.<sup>195</sup>

110. Similarly, while bilateral co-operation in the field of trade may be the aspiration, witnesses told us that in practice, because Scotland and the RUK were likely to focus on similar overseas markets, competition could overtake co-operation as a key feature of the bilateral relationship. The FCO stated that burden-sharing arrangements for business services do not exist at an inter-state level and that an independent Scotland would not have access to UKTI networks and resources. It added that “independence would mean that Scottish companies and potential foreign investors in Scotland would lose access to that global network, and risk missing out on investment in the form of jobs, skills, capital and tax revenue from all over the world”.<sup>196</sup> Mr Lidington told us that he was concerned that Scottish Ministers “are keen to give the impression that the current arrangements for trade promotion and investment promotion will just continue as normal when they are in no position to give such a guarantee, having failed to spell out the model that they imagine happening”.<sup>197</sup> The Minister of State said:

I am very far from clear at the moment how the Scottish Government expects that an independent Scotland would provide the diplomatic network and diplomatic heft to promote the Scotch whisky industry, to promote Scottish financial services, to promote defence sales from Scotland, particularly given their stance on defence

---

191 Q 291

192 Q 290

193 Q 320

194 Q 357

195 Ev 75

196 Ev 76

197 Q 359

policy. It seems to me that is a gap in their own public preparations that is for them to fill.<sup>198</sup>

111. In written evidence, Dr Kenealy suggested that “an independent Scotland could emerge as a key competitor of the RUK in the contest for inward investment, and that the FCO (along with UKTI) would have to strategise and respond accordingly”. He added that “with full powers over tax policy, Scotland could lower corporation tax in an effort to make itself a more attractive investment climate”.<sup>199</sup> There is a risk, according to the European Policy Centre, that ultimately both Scotland and the RUK would suffer adverse consequences:

There is no guarantee of course that the Scottish economy would flourish on its own. In case of independence, the border between Scotland and the RUK would gain in importance, and significant asymmetries would emerge thanks to the different regulatory regimes, subsidies, labour markets and levels of taxation. The new border could even lead some companies to refrain from investing anywhere on the island at all, for fear that it would become a more fragmented and less predictable market.<sup>200</sup>

## Divergence

112. In spite of the many likely foreign policy similarities outlined above, the idea that Scotland’s foreign policy would be different to that of the UK has become something of a leitmotif for the Scottish Government. Professor Chalmers noted that the Scottish Government seeks sovereignty not “because they want to launch a twenty-first century Darien adventure, but because they want Scotland to have the right of refusal in future British military adventures, of which the most controversial recent example was the invasion of Iraq in 2003”.<sup>201</sup> He added that “this rejection of key aspects of UK defence policy is given added force by the widespread opposition within Scotland to the basing of nuclear-armed Trident submarines at Faslane”.<sup>202</sup> Professor Walker told us that:

This is about looking out at the world in a rather different way, and not thinking about big expeditionary forces and not playing this major global power role that the UK has tried to play for a very long time. I think that they imagine, rightly or wrongly, that they just do not need so much to defend themselves and that, in fact, perhaps the UK exaggerates the amount of expenditure, resources and capability that it needs to defend itself.<sup>203</sup>

---

198 Q 358

199 Ev 90

200 Engel and Parkes, “Accommodating an independent Scotland”

201 The Darien scheme of 1698 was an attempt by the Kingdom of Scotland to establish a Scots trading colony in Panama. It ended in tragedy after the plan foundered. Many hundreds of Scots died from disease and starvation and Scotland found itself facing bankruptcy.

202 Professor Malcolm Chalmers, “End of an Auld Sang”, *Royal United Services Institute*, April 2012

203 Q 97



Although Catarina Tully told us that the key difference would be “one of style and the vision of itself”, she also suggested that Scotland may choose to pursue substantively different policies in respect of energy, trade and fisheries.<sup>204</sup>

113. We also received evidence about a potential for divergence on the issue of migration and border control. On the face of it, there would be little scope for disagreement: the Scottish Government has stated that for practical and geographical reasons it would seek an opt-out from Schengen Agreement to enable it to continue existing arrangements for visa-free travel within the British Isles and the Republic of Ireland under the Common Travel Area. The idea was supported by a number of witnesses who warned that to do otherwise would lead to “the nonsense of 20-mile tailbacks of trucks on the M74” with “border posts and biometric checking along Hadrian’s Wall”.<sup>205</sup> However, witnesses noted that in practice, there was a high probability that Scotland would pursue a less restrictive immigration policy than the RUK<sup>206</sup> and, in these circumstances, or in the event that Scotland could not secure an opt-out to Schengen, the RUK may seek to impose some form of border check.<sup>207</sup> Professor Whitman told us that “it is probably an area in which the UK would be sensible to think through what kind of relationship it wants to have to the Schengen zone in the future and how it would cope with having a state as a neighbour that was in the Schengen zone, and having that sort of border arising”.<sup>208</sup>

### **Nuclear weapons**

114. Earlier in this report we discussed the possible international implications for the RUK of the Scottish Government’s stance on nuclear weapons (see above at Paragraph 66). Nuclear policy would also be a key issue in bilateral relations and would be one of the most striking areas of foreign policy divergence between the RUK and Scotland. For the UK, maintaining its nuclear status is critical to its current foreign policy posture whereas the Scottish Government is committed to removing the UK’s nuclear weapons from Scotland. In 2012, the SNP pledged to introduce a constitutional provision in the event of independence making it illegal to have nuclear weapons on Scottish territory or in Scottish waters. Giving evidence to us, Ms Sturgeon said that the Scottish Government would be “a responsible Government and a responsible partner” on this matter to ensure that the UK’s nuclear deterrent was removed “in the speediest safe way possible”.<sup>209</sup>

115. The Scottish Affairs Committee took evidence on what the “speediest safe transition” could mean in practice and concluded that it would be possible to deactivate Trident within a matter of days, and for the nuclear warheads, missiles and submarines to be removed from Scotland within twenty four months, assuming that there was full co-operation between the Scottish and UK Governments.<sup>210</sup> Faced with this prospect, the RUK

---

204 Q 158

205 Q 140; Q191 [ Lord Jay]

206 Ev 80; Q324

207 Q 46 [Professor Whitman]

208 Q 53

209 Q 293

210 Scottish Affairs Committee, *The Referendum on Separation for Scotland: Terminating Trident-Days or Decades?*, HC 676, Session 2012-13, 25 October 2012

would need to make decisions on the future of its deterrent and consider the international implications of the renewal and relocation of the Trident nuclear system.<sup>211</sup>

116. The current Government, however, states that voluntarily relinquishing its nuclear status is not an option. Two other options are routinely mooted. The first option would be for the two parties to enter in an agreement to enable the RUK nuclear force to remain in Scotland, temporarily, until a timescale for relocation could be agreed. In practice this could involve significant difficulties. It would require continuing liaison between RUK and Scottish military and security forces based in Scotland, together with a clear agreement on submarine and warhead movement in Scottish waters and on Scottish roads.<sup>212</sup> This arrangement would, however, be far from ideal; even assuming goodwill on both sides, Scotland would be hosting nuclear weapons contrary to the SNP's stated policy to remove them, and the RUK would have its entire nuclear deterrent based in another sovereign state, raising crucial issues over command, control and sovereignty.<sup>213</sup> Professor Chalmers said:

As part of the condition for Irish independence, they agreed to treaty ports for the Royal Navy, and the Royal Navy stayed in Ireland until 1938. [...] When we came to 1938, when the Royal Navy was facing its biggest challenge, that was precisely the moment at which the Irish said, "No, we want to maintain neutrality in the coming war. These ships have to go." The relevance of that for today is that I think there would be ways found, in this scenario, to manage this issue in the short term, because Scotland would not want to be seen to be pushing the much bigger power on which it would rely. But would the RUK want to continue to base its only nuclear deterrent in a foreign country on which it might not be able to rely in times of intensified threat? After all, the nuclear deterrent, if it is ever to be relevant, will be in times of existential crisis, not in the sort of period we are talking about now.<sup>214</sup>

117. The second option is the relocation of the RUK's nuclear capabilities south of the border. The technical challenges implicit in this have been considered in detail by both the Scottish Affairs and Defence Committees and in other publications, and we do not intend to repeat them in detail here. In short, it would present huge logistical, planning and political challenges for the RUK, involving controversial and significant infrastructure investment, population movement and the construction of new facilities, which in turn would considerably increase the current capital cost estimates for the renewal project "by £10 billion [...] and possibly a great deal more if the problems faced became significant".<sup>215</sup>

118. Professor Chalmers told us that:

It is not by any means clear [...] with the information that I have, that an alternative location could be found [...] but even if you believed such a location could exist, it

---

211 Ev 81 [BASIC]

212 Ev 86 [Professor Chalmers]

213 Ev 84 [BASIC]; Ev 86 [Professor Chalmers]

214 Q 122

215 Ev 81 [BASIC]

would take a period of certainly more than a decade and perhaps significantly longer for relocation to take place.<sup>216</sup>

Given these circumstances, Professor Sir David Omand told the Committee that he thought the issue of Trident's re-location could be "a deal-breaker":

I do not see a feasible alternative site at reasonable cost. The cost would presumably fall on the Scottish Government as part of the overall settlement, which in itself would have to be made clear to the Scottish people before the referendum—that a big bill would be attached to that particular part of the policy.<sup>217</sup>

119. The RUK could also find its negotiating position and bilateral relations with Scotland constrained and affected by its need to reassure the international community that it was not placing undue pressure on its newly independent neighbour to continue to host RUK nuclear weapons against Scottish will.<sup>218</sup> There could be international consequences for Scotland, too. Written evidence from the London-based think tank, the British American Security Information Council, stated that "unless Scotland is willing to be seen as an outlier within the Alliance its new government would need to be cautious in moving too quickly to force expulsion of nuclear weapons from its territory. This would make enemies very quickly, and it's not clear how the rest of the UK could comply".<sup>219</sup> Likewise, Professor Walker stated that he could not imagine Scotland, a small state in NATO, being allowed to coerce the UK into giving up its nuclear deterrent. Professor Chalmers told us that there would be little international sympathy, at least amongst the UK's traditional allies, if Scotland was to insist that the UK's nuclear deterrent leave on a timescale that did not allow the RUK to construct alternative bases. Such a policy could "throw a big spanner in the post-referendum negotiations" and induce a robust response from the RUK and its traditional allies, "perhaps even a questioning of whether it could support Scotland's NATO and EU aspirations".<sup>220</sup> Professor Omand stated that the reaction from NATO allies to this scenario, in particular the US and France, would be "hostile" and that this "creates exactly the wrong kind of environment for an independent Scotland to try to establish itself in the international community, NATO and the European Union".<sup>221</sup>

120. In contrast, if Scotland was willing to accommodate RUK concerns on this issue, it would place it in a strong position to expect RUK support on other issues.<sup>222</sup> However, the extent to which the Scottish Government would have room to manoeuvre politically given its commitment to ensure a speedy expulsion of Trident is unclear.

**121. The Scottish Government's commitment to removing the UK's nuclear deterrent from Scotland would, if delivered, have far-reaching bilateral, foreign, security and budgetary consequences for both states. It is also likely to have a significant effect on**

---

216 Q 119

217 Q 144

218 Q 122 [Professor Walker]

219 Ev 83

220 Ev 85

221 Q 144

222 Ev 85 [Professor Chalmers]; Q 120

the willingness of the UK to co-operate on other issues upon which Scotland may need assistance, as well as influencing its overall position on the independence settlement. Any resulting disarmament by the RUK would be received badly by the UK's key allies and could create problems for Scotland with other NATO and EU Members as it forged a path as a new state. While the Scottish Government's commitment to removing nuclear weapons is not in question, international factors may constrain its ability to realise its goal and could mean that Scotland might not be nuclear-free for another generation.

## Dependency

122. The Scottish Government argues that independence would provide Scotland with the freedom to make its own choices and forge its own foreign policy path, unbound by the constraints of the Union. The evidence we received suggests that in practice, Scotland's foreign policy would be heavily influenced by the position of its larger, more powerful neighbour, the RUK. In bilateral trade terms alone, Scotland would remain heavily tied to the RUK if trade patterns continue as they are at present. England is Scotland's main trading partner: in 2011, the value of Scottish exports (excluding oil and gas) was estimated at £69.4 billion. Of this, exports to the rest of the UK accounted for an estimated £45.5 billion (an increase of £1.9 billion since 2010).<sup>223</sup>

123. It would not be wholly one-sided: Scotland would remain strategically important to the UK, particularly as a NATO ally with valuable naval and air facilities, access to the Atlantic and North Seas and under-sea and offshore oil and gas reserves. Interdependency in terms of electricity, telecommunications, finance and banking information systems and air defence would also speak to enduring links and continuing interdependency.<sup>224</sup> In one area in particular, however, Scotland's needs may far exceed those of the RUK, as we discuss below.

## Security and intelligence

124. Every year, in excess of £2 billion is allocated to the UK's security and intelligence agencies to combat threats to national security and critical infrastructure ranging from those judged to be the most serious (including cybercrime, international terrorism, a foreign crisis drawing in Britain, natural hazards such as severe coastal flooding or an influenza pandemic) to lesser threats including organised crime and satellite disruption.<sup>225</sup> Developed over many decades, this vast cross-governmental network, which provides law enforcement agencies in every part of the UK with relevant information and intelligence, derives partly from the UK's externally focused security agencies, specifically the Secret Intelligence Service (SIS) and Government Communications Headquarters (GCHQ), both of which work closely with the FCO and for which the Foreign Secretary has ministerial responsibility.

---

223 'Global Connections Survey 2011', *Scottish Government*, 23 January 2013, [www.scotland.gov.uk](http://www.scotland.gov.uk)

224 Q 141; Q 98

225 The Single Intelligence Account provided £2 billion in funding for 2010-11. This increased to £2.1 billion in 2011-12 and continues at that level through to 2014-15. See HM Treasury, *Government Spending Review 2010*, Cm 7942, page 10-11, Tables 1 and 2.

125. In the event of independence, it is likely that the RUK would argue strenuously that it would retain the intelligence and security capacities and infrastructure outlined above. If this was the case, it would be, according to Professor Sir David Omand, the former UK Security and Intelligence Co-ordinator and head of GCHQ, “perfectly capable of looking after itself”.<sup>226</sup> In contrast, unless it succeeded in negotiating otherwise, Scotland, its Government, and its law enforcement agencies would be cut out of the intelligence loop upon independence. Support would become discretionary on the part of the RUK and other international partners. In such a situation, Professor Omand warned that “problems could arise in respect of counter-terrorism or cyber security where a lack of appropriate investment resulted in Scotland becoming “a weak link”. He added “if that is the easy way into the United Kingdom, you have a net loss of security on both sides of the border”.<sup>227</sup>

### *What resources does Scotland have and need?*

126. Professor Omand told us that the security aim for the period after independence “should be to so arrange matters that security on both sides of the border is not diminished”.<sup>228</sup> Witnesses were in agreement that an independent Scotland could not (for reasons of cost) and need not (given its relatively more limited foreign policy aspirations) replicate the security and intelligence structure that currently exists in the UK. Yet, it would still need a significant security and intelligence infrastructure to deal with the strategic security threats that the Deputy First Minister told us Scotland would face, namely: cyber threat; international terrorism; the threat from global instability and the possibility of failed states; and serious international organised crime.<sup>229</sup> The Scottish National Party has also committed itself to creating “a cyber security and intelligence infrastructure to deal with new threats and protect key national economic and social infrastructure”.<sup>230</sup> This would need to include, but would not be limited to, the North Sea oil and gas platforms which currently provide up to £12 billion a year in revenues, and future oil fields west of Shetland on the Atlantic frontier, as well as offshore wind and marine energy plants, and Scotland’s substantial fishing grounds.<sup>231</sup>

127. According to witnesses, having the capacity to tackle such threats would require both internal and external intelligence capabilities. The Scottish Government would have certain, albeit limited, existing resources at its disposal. For instance, in forming a domestic service, it could draw upon its existing law enforcement agencies which have experience in domestic intelligence gathering for law enforcement purposes. However, these agencies do not currently have any formal overseas intelligence-gathering infrastructure in place upon which to build in the event of independence. Instead they use UK assets, funded by the UK Government, which would revert to the UK upon independence.

128. If Scotland became a member of NATO, it could access some security and intelligence support in the same way that other small NATO nations with limited capabilities do.

---

226 Q 154

227 Q 154

228 Q 140

229 Q 309

230 Scottish National Party Conference Resolution, 26 October 2012

231 Severin Carrell, *The Guardian*, 1 March 2012

However, the intelligence specialists who testified before us were clear that much more than NATO support would be needed if Scotland was not to be left exposed in security terms. In terms of cryptography, as Professor Omand noted, Scotland has “excellent computer science departments” and “very advanced companies [...] which no doubt could be harnessed” to develop Scotland’s security and intelligence cryptography. However, on the issue of cryptography alone, creating appropriate structures within the two year period between a ‘yes’ vote and independence that is envisaged by Scottish Ministers would be enormously problematic. Professor Omand cautioned that “it would take years to build up the capability. I have some doubts as to whether it would be feasible to do it to the requisite standard”.<sup>232</sup> Sir Richard Mottram, former chair of the Joint Intelligence Committee, told us that quite apart from technical capabilities, “people networks” were vital and “you cannot create that overnight”. He added that:

It might be that the Scottish Government could persuade some people with significant UK Government experience to work for it. [...] But one has to be cautious about how quickly you can create an organisation of this kind which is very complicated and has all these international links.<sup>233</sup>

129. It would also be extremely costly. The costs of setting up a new security and intelligence infrastructure afresh which would command the confidence of Scotland’s allies would be, according to Mr Lidington, “enormous”.<sup>234</sup> Sir Richard Mottram calculated that if the Scottish Government chose to spend between 8 and 10 per cent of the roughly £2 billion that the UK currently spends on the security and intelligence agencies a year (this would amount to approximately £160-200 million which would put it on par with other small states) some form of Scottish external intelligence agency could be created. However, he cautioned that it would have a “fairly narrow range of functions” and would “not bear any relationship to the scale of the network that is currently operated by SIS and the range of information that it derives”.<sup>235</sup> On cyber security alone, the UK Government has committed an additional £650 million to its strategy between 2011 and 2015. Professor Omand told us that “the highest standards of cyber-security will be necessary for economic reasons. I cannot imagine a Government in Edinburgh would want to take a different view, [which] means you then have to have access to technical capability linked to some serious intelligence capability”.<sup>236</sup> Professor Omand concluded that overall, “it is not self-evident to me that that goal can be met, or that it can be met at reasonable cost”.<sup>237</sup>

130. Sir Richard Mottram told us that as a minimum, Scotland would need a policy capability at the centre of the Scottish Government, “which would not be difficult to achieve” and “more importantly, a capacity to understand the problem and to tackle it [...]”. They would need a mini-GCHQ to both protect their information and consider other things that go with this”.<sup>238</sup> Witnesses were clear that without appropriate infrastructure,

---

232 Q 132

233 Q 132

234 Q 342

235 Q 150

236 Q 131

237 Q 140

238 Q 130

information exchange regimes, and suitably qualified and vetted personnel to guarantee the security of information received from international partners, those same states would simply not engage fully with Scotland on foreign intelligence issues.<sup>239</sup> In addition, given the hard-headed, reciprocal basis to international intelligence sharing, Scotland would need to be in a position to offer something of value to its partners.<sup>240</sup> Professor Omand stated that:

[Perhaps] Washington would ask what role this new nation is playing in the NATO enterprise. [...] the new nation might say that its foreign policy would make it difficult to join in certain NATO enterprises. All those things connect together. [...] That would be the worst possible start to an independent Scotland, and of course it could then prejudice the arrangements for entry into NATO. I point that out to reinforce my view that you cannot just assume good will and that everything will work. You have to have nailed things down in advance.<sup>241</sup>

131. The extent to which the Scottish Government has up until now engaged with these issues is unclear. The Scottish National Party has provisionally allocated £2.5 billion for “defence and security” provision. However, it is not clear whether this figure includes set-up costs, intelligence gathering and dissemination, and related infrastructure, both domestic and foreign. The Deputy First Minister did tell us that she envisaged Scotland having an “independent domestic intelligence machinery [...] sitting alongside our police service”.<sup>242</sup> However, when we asked whether an external intelligence service would be created to provide information to help tackle the threats from cybercrime, international terrorism, failed states and organised crime, Ms Sturgeon was unable to provide a response. She told us that the Scottish Government was currently undertaking a “substantial piece of work” examining how Scotland would address external threats in the event of independence.<sup>243</sup> In an article for *Scotland on Sunday*, Baroness Meta Ramsay, a former senior SIS officer, maintained that it is “not clear from [the Deputy First Minister’s] answer that she does realise the magnitude of the tasks of providing Scotland with a domestic security service, setting aside altogether the question of an external intelligence service”.<sup>244</sup> Sir Richard Mottram noted:

The interesting question would then be: is the capability that they created capable of underpinning the vision of the Scottish Government about Scotland’s place in the world? [...] There is a sort of paradox here. You could imagine a cheap and cheerful system that sustained a cheap and cheerful country, with very limited international ambition and very limited focus on the rest of the world, but that is not really Scotland’s history.<sup>245</sup>

---

239 Q 130

240 Q 196 [Lord Jay]

241 Q 135

242 Q 310

243 Q 313

244 Meta Ramsay, “Security Service can take nothing for granted”, *Scotland on Sunday*, 17 February 2013

245 Q 153

132. There was a general consensus among witnesses and other experts that if Scotland was “not to face being left out in the cold” and find itself at “a distinct intelligence disadvantage”<sup>246</sup> it would need to request some form of access to the RUK’s security and intelligence resources. The Deputy First Minister also appeared to believe that the RUK would provide Scotland with assistance. She argued that “it would be not just in Scotland’s interests for there to be very close intelligence sharing arrangements with the rest of the UK. It would clearly be in the interests of the rest of the UK for that to happen as well”. Ms Sturgeon declined, however, to “get into the specifics of how that would work because that is dependent both on our own work and discussions that I would want us to have with the rest of the UK”.<sup>247</sup>

133. Providing bilateral security and intelligence support to Scotland could well be in the RUK’s interests given that it would continue to share the same landmass, face similar security threats and articulate mostly complementary foreign policy goals. Nor would such a situation be without precedent; the UK already co-operates with the Republic of Ireland on security matters particularly in the field of counter-terrorism. In practice, support from the RUK could take a number of forms. It could, for instance, involve assisting the Scottish authorities in the transitional period following a ‘yes’ vote, offering advice and expertise on Scotland’s new intelligence infrastructure or, over the longer term, loaning personnel as it has done with other states with whom it has close relationships.

134. However, **it remains unclear how much support the RUK might be willing or indeed able to give in the field of intelligence and security and what impact this might have on its other foreign policy priorities, budgets and resources.** Sir Richard Mottram told us that the RUK would take a selective approach to assistance<sup>248</sup> while Professor Chalmers noted that although there would be a strong incentive to co-operate, it “would not be taken for granted”.<sup>249</sup> Other witnesses suggested that the extent of RUK support might depend upon the degree to which Scotland’s foreign policy diverged from that of the RUK. If it created difficulties with the US, for instance, Sir Richard could not “think why the [RUK] Government would facilitate such a process and underpin it”. He added that the RUK Government would have “a very narrow definition of what they would want to do. Where they had a direct interest in things such as counter-terrorism, yes, they would do something, because that was in their interests. Otherwise, they would probably be quite awkward”.<sup>250</sup> Baroness Ramsay stated that the Deputy First Minister

[seems to think] Scotland can rely on the umbrella of GCHQ, MI6 and MI5. I believe she needs to think again. She told the [the Foreign Affairs Committee] and obviously believed, that there would be continued shared arrangements with the rest of the UK regardless of Scotland’s independent capability. I do not think so and more importantly for Scotland she does not know.<sup>251</sup>

---

246 Stewart Crawford and Richard Marsh, “A’ the Blue Bonnets. Defending an Independent Scotland”, *RUSI Whitehall Report*, October 2012, p 22

247 Q 315

248 Q 153

249 Q 94

250 Q 151

251 *Scotland on Sunday*, 17 February 2013



135. Even if the RUK was willing to help Scotland, there is no guarantee that it could act unless it secured the consent of relevant international partners. Witnesses drew attention to the example of New Zealand which in 1985 adopted a strong anti-nuclear stance, as the Scottish Government intends to do. As a result, US warships were no longer able to visit New Zealand and the US cut off the putative US-Australia-New Zealand arrangements for military co-operation, ended all intelligence relationships and prevented the signing of a bilateral free trade agreement. According to Professor Omand, the impasse, which held until 2011, caused “real difficulties for the UK” in maintaining an intelligence relationship with New Zealand. The US “played hardball” and “in that intervening period, New Zealanders were in the cold”.<sup>252</sup> To be cut out of the privileged Five Eyes intelligence sharing arrangement (involving the US, UK, Canada, Australia and New Zealand), would not seem to be in an independent Scotland’s interests. Nor would it be in the RUK’s interests to see its own security compromised because of weaknesses in Scotland’s intelligence and security provision.<sup>253</sup>

136. In the case of Scotland, the decision to share US intelligence held by the RUK would be a decision for the US, not the RUK and would depend on whether they felt that they could trust the future Scottish Government’s safeguard systems with that information and whether it would be to their overall advantage.<sup>254</sup> It remains unclear whether this privileged access could or would be extended to Scotland once its intelligence agencies were fully operational. Sir Richard Mottram told us that the UK receives information from partners like the US “on which the present UK Government operates a wide range of its policies” because the UK in turn gives them “things of scale and value”. He stated that “a Scottish Government, under any circumstance, will not be capable of doing that.” He added that:

You will get into a very interesting question about the rules of the game [...] If the UK Government discovers a terrorist threat in, hypothetically, Estonia or wherever, it passes on information, but we do not share with Estonia loads of other information that we have in our possession on which we draw in reaching policy decisions. The challenge for Scotland will be that there will always be gaps, because it will be on a different scale from the present UK Government in relation to all of these security matters. There is no way round that in my view.<sup>255</sup>

Summarising the position Scotland could find itself in after independence, Professor Malcolm Chalmers noted that:

[There are] other small European countries that have much more limited capability in this area, which get by. They get by partly by partnership with others, being friendly with others, heeding the wishes of bigger powers with more capabilities, and sometimes by having some degree of specialism so they have something particular to offer. Immediately after independence, Scotland might have very limited capability in this area, but it might build up a particular specialism that it can offer to the rest of

---

252 Q 135

253 Stewart Crawford and Richard Marsh, A’ the Blue Bonnets. Defending an Independent Scotland, RUSI Whitehall Report 3-12, October 2012, p 22

254 Q 343 [David Lidington]

255 Q 135

the UK and say, “We can do this, but in return we want that”. [...]. That degree of interdependence in security capabilities will constrain the ability of a Scottish Government to pursue a radically different foreign and security policy agenda, because that could have consequences for the willingness of the rest of the UK to continue with it.<sup>256</sup>

**137. By the Scottish Government’s own assessment, in the event of independence Scotland would need both internal and external security and intelligence capabilities to deal with the many diverse potential threats it believes it could face. Yet Scotland has no external intelligence infrastructure to build upon. With just over a year to go before the referendum takes place, it is not at all clear that the Scottish Government has a costed and coherent vision of the security and intelligence infrastructure it needs to put in place to protect Scottish citizens, businesses and economic interests. Much more than just NATO support would be needed. Creating a Scottish domestic intelligence service would be possible, but establishing an external service from a standing start would be expensive, and neither could be created overnight. It would take years before the necessary systems were in place to enable allies to trust Scotland with information relevant to its needs. In the meantime, there appears to be a working presumption on the part of the Scottish Government that the RUK would fill the intelligence shortfall that would emerge at least in the short term, but possibly over a longer time frame too. The basis for this position is not at all clear. Scotland would undoubtedly remain of strategic interest to the RUK and in the vast majority of cases it is likely that it would be in the RUK’s interests to assist Scotland. However, it is crucial that Scots are aware that the RUK’s intelligence and security help would be discretionary, based on self-interest and could not be taken for granted, particularly where the RUK faced competing interests or priorities.**

### Continuity and constraints

138. Notwithstanding some of key differences and areas of divergence outlined above, the evidence we received suggested that in many respects Scotland’s foreign policy would be similar to that currently pursued by the UK through the FCO, not least because Scotland’s ability unilaterally to shape its goals is constrained by the same external forces that apply to and restrict the UK’s choices. Scotland’s strategic priorities, including economic advancement, protection of its citizens and assets and its desire to act as a good global citizen, map almost exactly onto the Foreign Secretary’s policies for the UK, which are to safeguard British national security; build Britain’s prosperity by increasing exports and investment, opening markets, ensuring access to resources and promoting sustainable global growth; and support British nationals around the world through modern and efficient global services.<sup>257</sup> Scotland’s foreign policy may differ in style but, based on current information, it will in many respects ape the UK, albeit on a smaller scale. With co-operation envisaged by the Scottish Government on a range of foreign policy and bilateral issues and the likelihood of some degree of Scottish dependency on the RUK for security

---

<sup>256</sup> Uncorrected transcript of evidence taken before the Scottish Affairs Committee on 23 January 2013, to be published as HC 139-xvi, Q 2168

<sup>257</sup> Foreign Affairs Committee, *The Role of the FCO in UK Government*, p 29

and intelligence support, it is difficult not to conclude that the notion of a truly independent Scottish foreign policy is in many ways a misnomer.

139. Even on the greatest potential area of divergence, that of nuclear weapons, Scotland's ability to forge its own foreign policy path would arguably also be constrained by the RUK. While witnesses did not doubt the Scottish Government's commitment to delivering this key political pledge, they did allude to the international factors which may constrain the Scottish Government's ability to realise their commitment. Professor Chalmers told us that in spite of the Scottish Government's commitment to remove nuclear weapons from Scottish soil as swiftly as possible, it could be "some time in the 2030s, but possibly later"<sup>258</sup> before this took place. Professor Walker suggested that "my view is that it would happen in conjunction with the UK giving up nuclear weapons, if it happens at all. The key decision is down [...] in London, not up in Edinburgh".<sup>259</sup>

**140. This leads us to conclude that, with the information currently available to us, Scotland's foreign policy would in many key, practical respects, be very similar to that currently pursued by the UK but without access to the many benefits that derive from being part of it.**

---

258 Q 126

259 Q 126

## 5 Concluding remarks and observations

---

141. The issue of Scottish independence is one that rightly excites passions in people of all political persuasions. As we noted in our introduction, we were pleased that the Scottish Government agreed to engage with our inquiry and to assist us in our deliberations, with a view to helping us better understand more about what foreign policy the RUK's nearest new neighbour would follow in the event of a Yes vote in the referendum on independence to be held in September 2014.

142. Over the course of our inquiry it became evident that little over a year before the referendum, much detail and clarity on key aspects of a future Scottish foreign policy remains absent. For instance, the Scottish Government has not produced estimates for the costs involved in setting up a Scottish overseas diplomatic presence or detailed how many embassies it would seek to have and in what countries. On the crucial issue of security and intelligence provision, there is a lack of information about the infrastructure that would be put in place and how start up costs might be funded.

143. Much more needs to be done to articulate Scotland's future foreign policy as well as the risks involved, particularly when it comes to security and intelligence provision, and more generally, what Scotland could realistically expect from the RUK in terms of co-operation on a wide range of issues.

144. We also have concerns about the extent to which seemingly unfounded assertions and what are essentially initial negotiating positions are being presented as incontrovertible facts and conclusions. For instance, on the specific issues of state succession, opt-outs to the EU Treaties and whether EU Treaty change would be required to facilitate Scotland's EU membership, we are concerned that the Scottish Government is strenuously advocating legal positions without the benefit of official legal advice from its law officers. Indeed, we are perplexed that legal advice has not been sought at all on these issues.

145. A number of policies also seem to be underpinned by a belief that where problems emerge, goodwill for Scotland will trump difficulties. However, this will not always be the case. There is a pressing need for more clarity and more candour about what Scots would lose and what the Scottish Government could realistically deliver in foreign policy terms with the resources available to it. None of what we have concluded should be construed as an anti-independence viewpoint. As the Edinburgh Agreement makes clear, Scots will hold their destiny in their own hands in September 2014. It is Scotland's decision to make, no one else's. The Scottish people do, however, have a right to have the full facts, not just aspirational policies, at their disposal before they make that decision. So far these facts have not been presented by the Scottish Government.

## Annex: Timeline of key referendum dates

---

*(Source: BBC News Online)*

### 2007

- May SNP form minority government
- Aug Launch of Scotland's National Conversation, which discusses Scotland's constitutional future.

### 2009

- Jun Findings of the Calman Commission (reviewing 10 years of devolution) are published.

### 2010

- Feb SNP government publishes draft Referendum Bill on proposed independence referendum. It says voters will have the option of voting for either new powers for the Scottish Parliament or full independence from the UK.

### 2011

- May SNP win majority government at Holyrood.
- Oct SNP officially launches its drive for independence.
- Nov Liberal Democrats set up Home Rule Commission.

### 2012

- Jan First Minister Alex Salmond announces intention to hold a referendum for autumn 2014.  
SNP sets out its proposed referendum question wording in a White Paper.
- Feb Talks between First Minister Alex Salmond and Scottish Secretary Michael Moore continue over mechanics of referendum.
- May UK government publishes consultation responses to its independence referendum consultation. Ministers say that the responses show strong levels of support for a single, clear question on independence.  
The Yes Scotland campaign for independence is launched with the aim of encouraging one million Scots to sign a declaration of support by the time of the referendum in the autumn of 2014.
- Jun The Better Together campaign to keep the Union is launched with former Chancellor Alistair Darling.

Oct Referendum deal (The **Edinburgh Agreement**) is signed by Prime Minister David Cameron and First Minister Alex Salmond which paves the way for a vote in autumn 2014.

The government in Scotland publishes analysis of more than 26,000 responses to its public consultation on the planned referendum on Scottish independence.

Nov The Scottish Government confirms the wording of the question it plans to put to the people of Scotland in the independence referendum: "Do you agree that Scotland should be an independent country?"

**2013**

Jan The House of Lords unanimously approves the legal transfer of powers to the Scottish Parliament to allow it to hold the independence referendum.

The Scottish government agrees to change the wording of the referendum question to ask the yes/no question: "Should Scotland be an independent country?" The government also agrees to make changes to campaign spending limits.

Feb The UK government publishes the first in a series of papers, which cites legal opinion stating an independent Scotland would be seen as a separate state under international law.

Mar The Scottish Independence Referendum (Franchise) Bill is proposed to the Scottish Parliament. It would allow 16 and 17-year-olds vote in the referendum.

It is announced that the Scottish independence referendum will take place on 18 September 2014.

# Formal Minutes

---

**Tuesday 23 April 2013**

Members present:

Richard Ottaway, in the Chair

Mr John Baron  
Sir Menzies Campbell  
Mike Gapes  
Mark Hendrick

Andrew Rosindell  
Mr Frank Roy  
Sir John Stanley

Draft Report (*Foreign policy considerations for the UK and Scotland in the event of Scotland becoming an independent country*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 65 read and agreed to.

Paragraph 66 read, amended and agreed to.

Paragraphs 67 to 145 read and agreed to.

Summary read and agreed to.

Annex read and agreed to.

*Resolved*, That the Report, as amended, be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 16 October 2012.

[Adjourned till Wednesday 8 May at 4.30 pm.]

## Witnesses

---

### Tuesday 16 October 2012

Page

**Professor Matthew Craven**, Professor of International Law and Dean of the Faculty of Law and Social Sciences, School of Oriental and African Studies, **Professor Robert Hazell**, Director, Constitution Unit, University College, London, and **Dr Jo Eric Murkens**, Senior Lecturer, Law School, London School of Economics

Ev 1

**Dr Andrew Blick**, University of Kent and Senior Research Fellow at the Centre for Political and Constitutional Studies, King's College London, and **Professor Richard Whitman**, University of Kent and Associate Fellow, Chatham House

Ev 6

**Sir Jeremy Greenstock GCMG**, Former Ambassador, Director of the UK UN Association, and **Professor Nigel White**, Professor of Public International Law, University of Nottingham

Ev 10

### Tuesday 4 December 2012

**Professor Malcolm Chalmers**, Research Director, Royal United Services Institute, and **Professor William Walker**, Professor of International Relations, University of St. Andrews

Ev 16

**Sir Richard Mottram GCB**, Visiting Professor, Department of Government, London School of Economics and Political Science, and **Professor Sir David Omand GCB**, Visiting Professor, Department of War Studies, King's College, London

Ev 25

### Tuesday 15 January 2013

**Dr Juliet Kaarbo**, Senior Lecturer in International Relations, University of Edinburgh, and **Catarina Tully**, Director, FromOverHere

Ev 32

**Rt Hon the Lord Jay of Ewelme GCMG**, former Permanent Under Secretary, Foreign and Commonwealth Office

Ev 38

**Sir James Craig GCMG** and **Anthony Layden CMG**

Ev 43

### Monday 28 January 2013

**Nicola Sturgeon MSP**, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities

Ev 48

**Rt Hon David Lidington MP**, Minister for Europe, and **Simon Manley**, Director, Europe, Foreign and Commonwealth Office

Ev 64



## List of printed written evidence

---

1	Foreign and Commonwealth Office	Ev 73
2	Graham Avery, Senior Member of St. Antony's College, Oxford University, Senior Adviser at the European Policy Centre, Brussels, and Honorary Director-General of the European Commission	Ev 76
3	Dr Andrew Blick, University of Kent and Senior Research Fellow at the Centre for Political and Constitutional Studies, King's College London and Professor G Whitman, University of Kent and Associate Fellow, Chatham House	Ev 78
4	Dr Andrew Blick, University of Kent and Centre for Political and Constitutional Studies, King's College London	Ev 80
5	British American Security Information Council (BASIC)	Ev 81
6	Professor Malcolm Chalmers, Research Director, UK Defence Policy, Royal United Services Institute	Ev 84
7	Sir James Craig GCMG	Ev 86
8	Professor Matthew Craven, Professor of International Law and Dean of the Faculty of Law and Social Sciences, School of Oriental and African Studies	Ev 87; Ev 109
9	Dr Daniel Kenealy, Lecturer in Politics and International Relations and Deputy Director of the Scottish Graduate School of Social Science, University of Edinburgh	Ev 90
10	Dr James Ker-Lindsay, Senior Research Fellow, Politics of South East Europe European Institute, London School of Economics and Political Science	Ev 94
11	Dr Jo Eric Khushal Murkens, London School of Economics and Political Science, Department of Law and Professor Robert Hazell, Director Constitution Unit School of Public Policy	Ev 96; Ev 111
12	Dr Phillips O'Brien, Director of the Scottish Centre for War Studies, University of Glasgow	Ev 98
13	Professor Richard Rose, Director, Centre for the Study of Public Policy, University of Strathclyde, Glasgow	Ev 101
14	The Scotch Whisky Association	Ev 103
15	Dr Fabian Zuleeg, Chief Economist, European Policy Centre	Ev 108
16	Catarina Tully, Director, FromOverHere	Ev 111



# Oral evidence

---

## Taken before the Foreign Affairs Committee

on Tuesday 16 October 2012

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Mr John Baron  
Sir Menzies Campbell  
Mike Gapes  
Mark Hendrick

Andrew Rosindell  
Mr Frank Roy  
Sir John Stanley  
Rory Stewart

---

### Examination of Witnesses

*Witnesses:* **Professor Matthew Craven**, Professor of International Law and Dean of the Faculty of Law and Social Sciences, School of Oriental and African Studies, **Professor Robert Hazell**, Director, Constitution Unit, University College, London, and **Dr Jo Eric Murkens**, Senior Lecturer, Law School, London School of Economics gave evidence.

**Q1 Chair:** I welcome members of the public to this first evidence session of the Committee's inquiry into the foreign policy implications of and for a separate Scotland.

The first panel of witnesses is made up of Professor Hazell, Director of the Constitution Unit at University College, London; Dr Jo Eric Murkens, Senior Lecturer at the Law School, London School of Economics; and Professor Matthew Craven, Professor of International Law and Dean of the Faculty of Law and Social Sciences at the School of Oriental and African Studies. A warm welcome to you all; I thank you very much for coming along.

I start with a warning: I have been told that there may be a vote soon. A hazard of giving evidence while the House is sitting is that you may be interrupted by votes. What happens is that we adjourn for 12 to 15 minutes while we go and vote. I am sorry, but that does happen here in the afternoons.

I start with a question to Dr Murkens and Professor Hazell. In your written submission, you write that dissolution is not a realistic option. It is important for us to understand these legal points as we set off on our voyage. Why did you reach that conclusion?

**Dr Murkens:** The person to ask about dissolution would be Professor Craven, although I do not want to pass the buck. Let me have a first stab.

**Chair:** I was going to ask him whether he agreed with what you said, actually.

**Dr Murkens:** As I said in my written evidence, the first problem with dissolution is the idea that we would be reverting back to the status quo ante, prior to 1707. The legal entities that existed at the time exist no more, and no one is seriously suggesting that we could go back to 1707. Even if we did, we would effectively be creating a new English state, which is not a realistic option because of Wales and Northern Ireland. Because of the existence of the United Kingdom, we are talking about a different scenario. Scotland would secede and the rest of the United Kingdom would effectively continue as the United Kingdom, so there would be no change south of the border.

My final point is that dissolution does not correspond to international practice. When we look at the relevant precedent cases—I am thinking in particular of the break-up of the Soviet Union in 1990–91—we see that it was clear that the international community wanted Russia to continue as the continuing state.

A main factor in that case was the existence of nuclear weapons. The international community wanted Russia to take control because the weapons were scattered around other states of the Soviet Union and it was clear that we did not want smaller states with nuclear ability. There is an exact parallel with the United Kingdom: the international community would want the United Kingdom to continue and Scotland to start afresh. For those three reasons, dissolution is not a realistic option.

**Q2 Chair:** Do you agree with that, Professor Hazell?

**Professor Hazell:** I certainly do. I find it hard to conceive of circumstances other than those in which the rest of the UK would assert quite strongly that it was the continuing state, with all the continuing rights and obligations under international treaties, membership of international organisations and so on, that pertained to the former United Kingdom.

For all the reasons that Jo Murkens has given, I think the rest of the international community would readily acknowledge that the rest of the UK was a continuing state because that would create much greater political stability and in general make their lives easier.

**Q3 Chair:** Do you share that view, Professor Craven?

**Professor Craven:** I am not going to disagree with anything that has been said. The only example from history in which there has been a dissolution of that kind—when states have recreated the entities that preceded a union—was in the case of the United Arab Republic, which lasted for only three years between 1958 and 1961. That was a very exceptional situation. In all other cases, one would be thinking about either the Union breaking apart and creating two entirely new states or a scenario in which one part of the state

---

16 October 2012 Professor Matthew Craven, Professor Robert Hazell and Dr Jo Eric Murkens

---

continued as the predecessor state, as has just been outlined.

**Q4 Chair:** Dr Murkens alluded to a repeal of the Act of Union 1707, and that is what they base their arguments on—that it is separation. What do you think the international response would be if we separated and effectively became two separate states with no rights at all, both of them having to renegotiate everything?

**Professor Craven:** For many other states, that would be unappealing. One scenario makes that clear. It would be unappealing for the United Nations, given that the United Kingdom is a member of the Security Council, which has exceptional powers under the UN charter.

If the United Kingdom were to break up and England were then to say, “Well, we are now a new state and seek admission as such”, that would mean that the delicate political balance that had gone into the construction of the UN charter would be unravelled. That would open up the question of who might be a new candidate for membership of the Security Council, a debate that has been bubbling under the political surface for many years. I think there would be significant opposition to that idea—[*Interruption.*]

**Chair:** As I warned you, we have a vote. I apologise, but you have a few minutes to catch your breath.

*Sitting suspended for a Division in the House.*

*On resuming—*

**Q5 Chair:** I forget who had the floor. Professor Craven, had you finished answering my question?

**Professor Craven:** I had.

**Q6 Chair:** Just remind me what the question was. It was on the 1707 Act of Union and what the international implications would be if that argument were to succeed.

**Professor Hazell:** Very briefly, I think the rest of the international community would react with dismay, because if the UK Government and/or the Scottish Government seriously put forward that proposition, we would be creating a much more unstable situation and, for the rest of the world, a much more complicated situation. They would not welcome either of those things.

**Q7 Chair:** Do you agree with that?

**Dr Murkens:** Yes, I do.

**Q8 Mr Baron:** We have talked a little bit about dissolution and separation. Can I press you a little bit on continuation and secession, which, for some, is the more favoured option of the three? As we know, this is when the existing entity, country or kingdom separates into two entities and there is the more powerful, larger entity, which is the continuing state, and there is the smaller successor state, which probably would not then inherit all the rights and international treaty obligations. Let us paint a scenario that there is a disagreement between the component parts of the United Kingdom on what model of state secession is adopted. How and by whom would that be resolved?

**Dr Murkens:** Can I just pick you up on something you said? You said that the successor state would inherit the rights and obligations—

**Mr Baron:** No, I said that the successor state would not. They would, in a way, have a clean slate. Let me be absolutely clear about that. What happens if there is that disagreement?

**Dr Murkens:** Disagreement between?

**Mr Baron:** Between the component parts on what model of state secession should be adopted. How and by whom would that be resolved?

**Dr Murkens:** I am not entirely sure if I understand your question. By component parts, do you mean the component parts of the rest of the United Kingdom?

**Mr Baron:** Yes.

**Dr Murkens:** I am not sure if there is room for dispute. I am sure that there is, but I cannot envisage the lines of that dispute unless Wales and Northern Ireland wanted to get a better deal out of the Union for themselves. My assumption is that rUK—the rest of the United Kingdom—would step into the shoes of the current United Kingdom. I have to say that I have not given any thought to domestic repercussions and domestic rebalancing.

**Q9 Mr Baron:** What about the component parts in the sense of the remainder of the United Kingdom and Scotland as to how exactly it would play out?

**Dr Murkens:** I do have a view on that and I would like to talk about that in the context of the European Union, because it very much depends on the terms of Scotland’s membership in the European Union, and that will have repercussions in, say, the context of the euro and Schengen on its relationship with the United Kingdom.

**Mr Baron:** Do you want to flesh that out now?

**Dr Murkens:** I am happy to.

**Chair:** We have a series of questions coming on the EU from Frank.

**Professor Hazell:** It is pretty unlikely that the Scottish Government would seek to advance a radically different view from the UK Government, because it would not be in their long-term interest to do so. If Scotland is the successor state and so is starting with a blank sheet, it needs friends. The UK Government will be the Government best placed to ensure that it has friends, particularly in relation to an application to remain or rejoin, or whatever words we choose, the European Union. It would be very strongly in the interests of Scotland to remain inside with the UK.

**Q10 Mr Roy:** In relation to the European Union, there is a great debate in Scotland about what would happen if Scotland did become independent. Would we, for example, automatically become a member of the European Union? If so, what are the implications for Scotland and for the rest of the United Kingdom of that decision?

**Dr Murkens:** I am happy to answer that question. Let me say right away that there is no doubt in my mind that, from a formal perspective, Scotland would qualify as a new member state with the European Union. It has been a part of the EU—

**Q11 Mr Roy:** Automatically?

---

16 October 2012 Professor Matthew Craven, Professor Robert Hazell and Dr Jo Eric Murkens

---

**Dr Murkens:** No. My only issue is with the word “automatically”. Independence would be adding a new member state to the European Union. That has repercussions for the operation of the treaty and, in particular, the institutional and financial provisions of the treaty. It would need to be updated. Voting rights in the Council would need to be recalculated and a number of MEPs would need to be reallocated. That requires a treaty amendment and that requires unanimity by all 27—next year it will be 28 plus—member states. There is nothing automatic about that process.

I am happy to talk about voting rights in the Council and the MEPs if you would like, because you do see significant differences there. Voting rights, as we know, are weighted. Currently, the United Kingdom has 29. If Scotland left and withdrew from the Union, I think the United Kingdom—the rest of the United Kingdom—would continue to have 29 votes.

The next two countries are Spain and Poland. Their population sizes are much smaller than the United Kingdom’s, even without Scotland, and they have 27. Italy, Germany and France have 29. So I think there is an argument to be made that nothing would change in relation to the voting rights.

**Q12 Mr Roy:** What would Scotland have?

**Dr Murkens:** If we look at the comparator countries—Denmark, Finland and Slovakia, which are roughly an equal size—Scotland would have seven votes in the Council. That is largely uncontroversial. It becomes much more interesting when we look at MEPs. Scotland currently has six MEPs, but the comparator countries, Denmark and Slovakia, have 13. So if the SNP insist on automatic membership—in other words, we just wave Scotland through—Scotland would continue to have six MEPs, whereas if Scotland negotiated properly and said, “But Denmark and Slovakia have 13”, Scotland could more than double its representation in the European Parliament.

The problem is that the number of MEPs is capped at 750 plus the president, so any increase in Scottish representation would lead to a necessary reduction in rUK, so it would come out of the 72. Would the rest of the United Kingdom be happy to see such a dramatic reduction in its representation? I leave that question open.

**Q13 Mr Roy:** Still on Europe and particularly opt-outs, if Scotland became independent and separated away, would my constituents in Motherwell and Wishaw still have the same opt-out rights as the Chairman’s in Croydon?

**Dr Murkens:** No. By opt-outs I assume you are referring to the euro and Schengen. It is a condition of membership for all new applicant countries that they join the euro and join Schengen. No exceptions have been made. Exceptions have been requested, but none have been granted. The only two countries that have opt-outs from the euro are Denmark and the United Kingdom. Those opt-outs were secured in the Maastricht treaty negotiations in 1992. That offer has not been extended to any new applicant state. To put it differently, all current states, even if they do not

have the euro as a currency—I am thinking of Sweden in particular and the Czech Republic—all member states are legally obliged to adopt the euro, and it would be the same for Scotland.

**Q14 Mr Roy:** So my constituents would not automatically be entitled to opt-outs. Would the Chairman’s constituents in Croydon be entitled to keep their opt-outs?

**Dr Murkens:** Yes.

**Q15 Mr Roy:** Even though it was the United Kingdom that negotiated the opt-outs?

**Dr Murkens:** Yes. The opt-outs would continue for the rest of the United Kingdom.

**Q16 Chair:** Can you amplify and say why?

**Dr Murkens:** As I explained in my first answer, the rest of the United Kingdom would assert itself as the continuing state and would also be recognised by the international community and by the European Union as the continuing state of the current United Kingdom. As I have just illustrated—looking at the numbers—from the European perspective, formally nothing much would really change in relation to the United Kingdom. There are significant changes of course in relation to Scotland. It is Scotland that needs to be accommodated, not the United Kingdom.

The other area to consider, because it is an exact parallel, is the Schengen common travel area. It is also an obligation for every new state to join Schengen. That means that a German or a French national travelling from the continent could fly into Scotland without showing a passport, but if that person then wanted to travel to England, they would have to go through border control and associated immigration control, so there would have to be an internal border between Scotland and the rest of the United Kingdom, because the opt-out for rUK continues.

**Q17 Mr Roy:** I come back to the point made about how it is not automatic that Scotland would become a member of the European Union. If it is not automatic, would there be a fast-track avenue open to the Scots for membership? Would there be some sort of temporary agreement that would allow a fast track? What are the repercussions for the cost? Who would pay those costs for any temporary agreement?

**Professor Hazell:** May I come in briefly here? These are uncharted waters. There is no precedent for what we are discussing.

**Q18 Mr Roy:** My constituents would like to know before they vote.

**Professor Hazell:** I am sorry that we cannot give them more confident or certain answers. Essentially, our answers are of two kinds. We are trying to explain the formal, legal position in international law and under the treaties and other rules of the European Union. Then, coming on to your question, we have to put a very important gloss on that, which is the likely political realities.

The formal legal position, as Jo has said, is that Scotland would not automatically remain a member of the European Union. In our strong view, Scotland

would have to reapply. But, depending on the political context, that application would almost certainly be fast-tracked, in particular if the independence referendum had gone smoothly, the UK recognised the vote of the people of Scotland and said—as the Prime Minister has continued to say—“If the people of Scotland vote for independence, we the UK Government would not stand in their way.” The UK Government would then be morally obliged to facilitate an independent Scotland in becoming an independent state and joining the international community in all its different forms. This is a possible political context where, especially if the UK Government strongly urges its fellow member states to give a favourable response to a Scottish application and to fast-track it, I think it is very likely that it would be fast-tracked. One of your subsequent witnesses, Graham Avery, has put in a submission all about this, and you might want to ask him about it too.

**Q19 Mr Roy:** Can I just press you? I do not know if you are all agreed, but if it is not automatic and if there is a fast track, there must be a cost to that fast track. Who would pay it? Would the people of Scotland pay to be fast-tracked, or the rest of the European Union or, indeed, the rest of the United Kingdom?

**Dr Murkens:** I have no idea who pays for the application process. Are you talking a financial cost?

**Q20 Mr Roy:** Absolutely.

**Dr Murkens:** I do not know. If I could add to what Robert Hazell was just saying, he was pointing to the domestic context and said that if negotiations domestically went well then the United Kingdom would support Scotland. To that I would only add that there would have to be a parallel negotiation process with our European partners, because this would be the creation of a new independent state not only in a British context but in a European context, and they would be monitoring this very closely. A lot depends on how Scotland negotiates with our European partners. So if the Scots say, “Sure, we want to be a member of the European Union and we will adopt the euro and Schengen”, and they do not raise an issue about tax rebate or structural funds, I think that Scottish membership would be fast-tracked. But if Scotland uses its newly found sovereignty and independence to pick and choose and to say, “We want to be a member of the European Union but we do not want the euro or to be part of Schengen and we would like a better deal on fisheries and the structural funds”—those are the main issues relating to the European context, I think—then it may take longer, because the European countries have something to say about this and may not be too pleased about Scotland’s negotiating position. A lot depends on the attitude that Scotland brings to the table.

**Q21 Mr Roy:** Do you have anything to add, Professor Craven?

**Professor Craven:** No, I am happy to defer to my colleagues on this issue.

**Q22 Mark Hendrick:** From what has been said, on votes in the Council, for instance, the remainder of the UK, as you say, would keep 29 votes. I forget how many votes you said that Scotland would get.

**Dr Murkens:** Seven.

**Q23 Mark Hendrick:** Because there is no diminution of the UK votes, those seven would effectively give us a slightly smaller percentage to the other 27, the effect being that the other members of the European Union would see it as a slight dilution. On MEPs, you say that because there is a cap, Scotland could possibly double the number of MEPs at the expense of the remainder of the UK, which seems strange. On the question of the euro and Schengen, the fact that border controls could be forced on the Scots would mean that effectively a new border—the first since Hadrian’s wall—would have to be constructed across the UK to bring those border controls in.

If it is an SNP Government playing hardball with the European Union, is there not a grave danger that Scotland could be caught between two stools, in that it is leaving the United Kingdom, but finding the negotiating conditions for what it wants in the European Union—if what it wants is similar to what the UK has at the moment—virtually impossible to get? Obviously, they will be playing hardball in a way that makes negotiations very difficult, and if the remainder of the UK decided that it did not want this, it could simply throw the spanner in and veto any new treaty. Let’s presume a new treaty does arise. Although it probably would not be, can I ask whether a referendum would then be required in this country for Scotland to accede to the European Union?

**Dr Murkens:** I would like to say that we are definitely now entering the realm of speculation, if we hadn’t already, and I’d like to repeat what Robert said: we are making educated guesses here. It is very difficult to get any information out of European Union officials, because they do not want to talk about speculative cases, but you do hear word that there is a lot of good will towards Scotland. Especially if it is a consensual divorce, we would not be talking about a country emerging from a war-torn zone or anything like that. There is a lot of good will towards Scotland and we can work on that assumption. It is for the SNP not to make that good will disappear.

**Q24 Sir Menzies Campbell:** I hope this is not speculative: fast-tracked or slow-tracked, this eventually has to be ratified in the form of a treaty, and treaties require unanimity.

**Dr Murkens:** Yes.

**Q25 Sir Menzies Campbell:** Can I just remind you of the position in relation to Cyprus, when objection was taken to Cyprus’s application for what were reasons wholly unconnected to its merits, but related to the dispute between two other countries? Is there not a risk that, however well designed or received by some a Scottish application might be, countries seeking to make another political point could take a veto position? I was interested in your reference to fishing. For example, if Scotland says, “Well, all our

---

16 October 2012 Professor Matthew Craven, Professor Robert Hazell and Dr Jo Eric Murkens

---

shores, coasts and 200 miles out are totally barred to anyone but Scottish fisherman and fishing boats”, that could well provoke a reaction from Spain.

**Dr Murkens:** The Spanish position has already attracted a lot of press attention, and I think that is key.

**Sir Menzies Campbell:** In Spain?

**Dr Murkens:** Yes, in Spain, and the creation of a newly independent Scotland would clearly create a precedent within the European Union. The Spanish would not be happy about that. They are not saying anything because for them, it is not a domestic concern.

**Sir Menzies Campbell:** They have other things on their mind.

**Dr Murkens:** Yes, but of course it is a matter that they are concerned with, which is why I said that there is a European dimension to the independence debate as well, which should not be ignored. The common fisheries policy is something that Scotland needs to conform to and it cannot go it alone and say, “You cannot fish in our waters.” That would be contrary to European treaties and the European spirit. So, yes, there is a sensitive European context to bear in mind and you are absolutely right that accession requires unanimity. Every state—including the United Kingdom or Spain—would have a veto and would have something to say.

**Professor Craven:** The example of fishing is quite a good one. One of the things it points out is that the idea of a disjunction or a temporal gap between the separation of Scotland and England, and the subsequent process of accession to the EU, would be extremely problematic. It opens up the possibility of what you do in the meantime with the regulation of trawling vessels in the North Sea. That applies not only to fishing vessels, but to the status of Scottish nationals dotted around Europe and Scottish companies. It would lead to a level of legal insecurity which I think most people would want to avoid. So if it is going to happen, the concern for the most part is to make sure that it happens seamlessly; that there is a seamless accession and a seamless separation.

**Q26 Sir Menzies Campbell:** Can I follow up on that? You cannot go from one situation to another in a day. There is bound to be a gap of the kind you described.

**Professor Craven:** You would obviously then have to plan what happens in the interregnum as part of the negotiation process.

**Q27 Mike Gapes:** When countries apply to join the European Union, they have to go through a process of signing up to the *acquis* and there are various chapters opened and closed. We know from the experience of the dispute between Slovenia and Croatia that there can be delays, which are not to do with the EU *per se*, but with some territorial issues. We also know from the dispute over Cyprus and Turkey in NATO that it therefore causes a problem with Turkish accession to the EU. Turkey has been negotiating for many years to come into the EU. How optimistic can

we be that something of that kind might not arise and that it might not take years for Scotland actually to sign up, even if there was no fundamental problem with it joining the EU?

**Dr Murkens:** As I said earlier, I do not think there is any problem with the *acquis*. When it comes to the implementation of European laws, the United Kingdom is a model member of the European Union. EU law is fully applied in Scotland as well as elsewhere in the United Kingdom. To that extent, they are not concerned that Scotland does not meet the formal conditions of membership. It does.

**Q28 Mike Gapes:** You or your colleague referred to Spain. If I am in Spain and I worry about the Basque country or Catalonia and I see potential precedents that might cause difficulty for me internally, I might then be problematic—not necessarily for anything relating to the successor states to the UK—but for wider issues.

**Dr Murkens:** As I said, these are politically sensitive issues that need to be handled with care at the negotiation process. I really do not think that it is in the interest of the European Union for Scotland to be left outside. We know that the EU is about enlargement and bringing as many countries as possible under its umbrella. From that perspective, Scotland is clearly an easy candidate. EU law already fully applies and I do not think it would be left outside the EU for very long. With Spain and Catalunya, you refer to a sensitive issue that has an international dimension, but we will have to wait for the Spanish response. We do not know.

**Q29 Chair:** Professor Craven, you alluded in your remarks just now to North Sea oil and you touched on it in your written evidence to us. Does international law give us a clear answer to how boundaries are drawn when it comes to issues like North Sea oil? Is there a clear explanation of how it is carved up?

**Professor Craven:** As far as the UN convention is concerned, it stipulates that, in the case of the continental shelf and fishing zones, they should be agreed on by the relevant parties. So that is the starting point, that there should be an agreement.

There are then principles that have been used, having been applied historically to delineate these maritime zones. The principal one that has been used for maritime zones is the equidistant principle, which is the idea of drawing a line outwards from the coast, at right angles to the course of the coast. Of course, it is difficult to apply both in concave and convex coastlines and there are several cases in which it has not been applied. However, I think that the starting point in most maritime delimitations is this idea of equidistance, supplemented if necessary by a principle of equity—so, trying to give either party their fair share depending on the course of the coastline.

That does not provide you with a ruler-sharp delineation of what the line is likely to be, but it gives you a fairly close idea. If you were to draw a line down the eastern coastline of the UK and then draw a line out at right angles to that line, you would have a pretty close idea.

---

16 October 2012 Professor Matthew Craven, Professor Robert Hazell and Dr Jo Eric Murkens

---

**Q30 Chair:** Correct me if I am wrong, but there is an international convention on—

**Professor Craven:** This is the UN convention on the law of the sea.

**Q31 Chair:** What happens if we cannot get an agreement? Who is the arbiter?

**Professor Craven:** There are provisions. Of course, this is usually dependent upon having two independent states, so trying to decide it before you have got an independent state is somewhat more complicated. But if there were two independent states, you could go to arbitration or you could take the matter to the international court.

**Q32 Chair:** But who would be the arbitrators?

**Professor Craven:** It would depend upon the particular provision—

**Q33 Chair:** The parties would appoint arbitrators?

**Professor Craven:** Yes. You can go to arbitration under various different agreements. Under the UN convention itself, there is provision for arbitration.

**Q34 Chair:** So there is a legal basis.

Time is almost up and these are the questions on our minds. Are there any points that any of you would like to make before closing?

**Professor Hazell:** Briefly. There was one question that remained unanswered, I think. If a Scottish application were accepted by the other member states of the EU and that required a treaty change through a new accession treaty, the question was, “Would that trigger a referendum in the rest of the UK?” I think that we can offer a slightly more confident answer to that question, because Parliament last year enacted the European Union Act 2011, which specified in great

detail the many different circumstances in which a referendum would be triggered. But my recollection of that Act is that most of those circumstances, and perhaps all of them, were circumstances where the treaty change involved—putting it in layman’s language—the surrender of more powers to Brussels. And I think it is correct that a simple accession treaty, for example the accession treaty for Croatia becoming a new member state next year, will not require a referendum. So I think that we can fairly confidently say that an accession treaty, of its own, will not require a referendum in the UK.

**Dr Murkens:** That is correct. The accession of new applicant states is expressly exempt from the referendum requirement under the European Union Act 2011.

**Q35 Mark Hendrick:** Can you tell us about the transfer of competencies as well? Competencies will be transferred, not to Brussels but obviously to the new Government in Edinburgh.

**Professor Hazell:** But that is not caught.

**Dr Murkens:** You are right. There is also a transfer of competencies to the European Union, or rather the balance changes the more members join, but that is maybe an inherent contradiction within the Act, or an inconsistency. None the less, it is an express exemption.

**Q36 Chair:** Professor Craven, any final words or thoughts?

**Professor Craven:** No.

**Q37 Chair:** I thank you all very much indeed. It really is appreciated. You are the experts and we are very much the laymen, and so your guidance is particularly helpful. Thank you.

---

### Examination of Witnesses

**Witnesses:** **Dr Andrew Blick**, University of Kent and Senior Research Fellow at the Centre for Political and Constitutional Studies, King’s College London, and **Professor Richard Whitman**, University of Kent and Associate Fellow, Chatham House, gave evidence.

**Chair:** Our witnesses for the second session are Dr Andrew Blick from the University of Kent, a senior research fellow at the Centre for Political and Constitutional Studies at King’s College London, and Professor Richard Whitman from the University of Kent, an associate fellow at Chatham House. I thank you both very much indeed for coming. It is appreciated that you have spared the time. Apologies for running late, but that is the way democracy goes. I will hand the first questions over to Mark Hendrick.

**Q38 Mark Hendrick:** It states in your paper that the implications for a reduced UK role in Europe in the event of Scottish independence would be “profound and irreversible”. How much do you feel that a reduced UK role in Europe would be affected, not only in terms of representation in Council or in the European Parliament, but in the weight that the UK throws about more generally?

**Professor Whitman:** Thank you for the question, because it gets to the heart of the thrust of what we wanted to say, which was that the situation alters for the UK in the sense that it moves out of the very top tier of EU member states. It would no longer be one of the big three, if you like. There are certainly questions that would arise about some more general influence that being in the big three gives, which is considerable. I can elaborate on that in a moment, if you like.

In terms of population of the constituent member states, it puts the UK into fourth place. If there is Turkish accession, the UK would obviously slip further down the list. If you combine that with the current relationship that the UK has with the European Union, the questions that are being raised about what the nature of the relationship should be in the future and our decision to remain outside the single currency and Schengen and so on, it creates a situation in which the UK’s European Union policy, or its influence



---

16 October 2012 Dr Andrew Blick and Professor Richard Whitman

---

within the European Union, goes backwards rather than forwards.

**Q39 Mark Hendrick:** Would you see that reduced influence being a help or a hindrance to the Eurosceptics in this country who would like to pull Britain—the UK—out of the European Union?

**Professor Whitman:** That is not something that we considered in our submission, but I think that it has some bearing on the debate about whether the UK can get the best out of the European Union. Our view is that, as the situation stands at the moment, the UK has lost influence within the European Union as a consequence of its decision to remain outside the single currency and Schengen. A process of, let us call it deunification of the UK, which would diminish the UK in terms of its formal representation within the EU institutions, would diminish its power and influence.

What we have here is an interesting combination. The European Union is clearly going to move on as a project—fiscal union and all that. At the same time, that will be parallel with the debate that we are going to have about Scottish independence and with the possible move towards Scottish independence.

What is very difficult for us to judge is the European Union that Scotland might accede to and the UK would find itself in at the moment of deunification. The one thing that we can be certain of is that the UK would have a lower level of influence. Whether you view that as a good thing for the UK in terms of a Eurosceptic position, or whether you feel that it provides an opportunity in terms of giving the UK a comfort zone in the relationship it should have with the European Union, is worth further consideration.

**Q40 Mark Hendrick:** The previous witnesses who gave evidence said that even with Scotland gaining independence, we would still have 29 votes in the Council of Ministers. Do you think that retention of those 29 votes means that we can continue to punch with the same weight as at the moment?

**Professor Whitman:** That system changes, of course, because under the Lisbon treaty the voting system changes within the European Union, so from 2014 the qualified majority voting system will be replaced with a system based on a majority of member states and member state populations. Obviously, the UK will have a smaller population in voting terms, so it will have a reduced voting weight even under the new system.

What is interesting is that between 2014 and 2017 there is provision to call a vote on the old system of qualified majority voting, so it may matter what votes transition to the UK. However, it is probably for academics and train spotters to ponder what situation we may find ourselves in.

Formally, there is obviously the reduction in the total number of votes, which moves the UK out of the zone of the biggest member states, and the unknown is how that is read by other states in the European Union, and how they will think about the UK's power and influence, its capacity for agenda setting and so on, and coalition-building in the EU.

**Q41 Mark Hendrick:** Finally, on the reduction in the number of MEPs with the number of Scottish MEPs doubling at the expense of English, Welsh and Northern Irish MEPs, we have seen successive enlargements reduce the number of our MEPs—I speak as an English MP and a former MEP. What is the relevance of that? Does it mean that the European Parliament is less relevant to the lives of people in this country because we do not have the representation we had, or does it not matter?

**Professor Whitman:** The issue of having fewer Members of the European Parliament does matter, but probably what mattered more in terms of influence and the capacity for people to understand their relationship with their MEP was the move towards multi-member constituencies, which is separate from what happens to the UK if there is Scottish independence.

There will obviously have to be a recalibration of how many MEPs are apportioned to each constituency and each region in European Parliament elections. It will be interesting to see how that plays itself out with a reduction in the total number. There will be consequences for the dynamics of European Parliament elections. Obviously, if the number of Members in a constituency is diminished, there will be a potential for some parties not to be represented in multi-member constituencies. That could be profound.

**Q42 Mr Ainsworth:** What about the remainder of the UK's opt-outs and special arrangements negotiated by this Government, that Government and the other over a period? How will our new status and our reduced status affect that and our ability to maintain them? I am talking not about an independent Scotland, but about the remainder of the United Kingdom.

**Dr Blick:** I would like to make two points on that question. First, there was an interesting discussion earlier about the exact nature of Scotland leaving and how that is interpreted legally. In my view, there is a legal case for saying that the UK is dissolved, and that there are two successor states.

**Q43 Mr Ainsworth:** This is very important. You disagree with the previous panel.

**Dr Blick:** I am saying there is scope for argument, because London is clearly acquiescing in what is going on. There is no unilateral declaration of independence. We are saying to Scotland, "If you want to go, you can go." We are agreeing to that in advance, and it is important to emphasise that it is extremely unusual, if not unique, in international law for a country to agree that part of it can just go.

Contrast that with Catalonia, which has been told by Madrid that it cannot have a referendum. That is the more standard position in international law. It is unusual for a state to have a position where there is a clear understanding that bits of it can go. That began really from the very particular circumstances we have had in Northern Ireland for some decades, dating back to the 1940s. It is a clear position that Northern Ireland can go if it wants to, but that has now been extended to Scotland. I would add that it would now be very difficult to deny it to Wales if they wanted it, and even to England.

---

 16 October 2012 Dr Andrew Blick and Professor Richard Whitman
 

---

**Q44 Mr Ainsworth:** But how unusual is that? The same situation pertains in Canada. The same situation pertained in the former Soviet Union.

**Dr Blick:** Not an identical position in the former Soviet Union. If you look in the legal text books, they struggle to find as clear an example where, particularly in the case of Northern Ireland, we have a clear undertaking both in the Good Friday or Belfast agreement and in the Northern Ireland Act 1998 that the sovereignty of the UK is subordinate to the self-determination of the population of Northern Ireland. That is a highly unusual arrangement.

Quite a lot of legal work has been done on this that shows that that is virtually unique. The point I am making is that this is all very unusual and it is very difficult to say precisely what the legal position is and therefore very difficult to make assumptions about who can claim what once this has happened, if it does happen. It also surprises me to read that the Foreign Office is not planning in any way for this to happen, but that is another matter.

This is a very unusual position. If we are talking about the ways in which the UK can wield power, there is a second unusual position here, and this will affect our ability to wield power within the European Union, and that is the issue of soft power, which goes beyond all these issues about how many votes you have on the different bodies and what are your material resources. This goes to things such as your actual aura on the international stage, which are difficult to quantify. Things such as your prestige on the international stage and your cultural status would be severely impacted if Scotland went. Part of our ability to wield power is dependent on our being seen as a successful multinational state. With Scotland gone, that takes a real knock.

There will be some real changes if Scotland were to go. It will have a real cultural impact on what the UK looked like and its ability to wield soft power. I would like to put those things into the debate. I am talking about how the UK will actually get things done within these institutions and on the international stage in general, and about the legal uncertainty of all this.

**Q45 Mike Gapes:** Can I take you to the issue about Schengen referred to earlier? What was said was quite emphatic. If Scotland were to join the European Union, it would do so on the basis that it would have to at some point implement Schengen, and that would then mean that there would have to be some kind of border position put in place.

As I understand it, the position of the Scottish Government, the SNP, has been that after independence there will not be any borders; crossing the border will be just as quick and easy as it is now. Are they assuming that the remainder of the UK will also join Schengen, or are they assuming that Schengen will not apply and that there will be some kind of opt-out? Is there provision for an opt-out from Schengen from new states that join the EU?

**Professor Whitman:** If I could take the last point first because that is the clearest. As was said very clearly in the previous session, the opt-outs on single currency membership, on Schengen, and also for the Danes on

the defence aspects of the European Union were granted as part of and post-Maastricht negotiations.

**Mike Gapes:** To the UK and to Denmark.

**Professor Whitman:** Absolutely, yes. So all the states that have acceded to the European Union subsequently have had to accept that single currency membership is an obligation and that Schengen membership is an obligation.

In the case of a new state acceding to the European Union, as happened for the Croatians, those are obligations, but they do not happen straight away. There are transition processes until that state can meet the requirements. One of the requirements in Schengen, quite practically, is that you have configure airports so that you can separate out your air travellers from those who are travelling within Schengen and those who are not.

The position on new member states is very clear. These are areas where a state cannot seek to negotiate. What you can negotiate on—this is where things like fisheries are relevant—is transition arrangements that exist in the period from when you accede until points in the future in which you fully comply with the *acquis*. We saw that, for example, on the environmental policy in the past for states in central and eastern Europe. That is really where the negotiations are. Otherwise you are just accepting the *acquis*, as you suggested earlier. It is a screening process.

**Q46 Mike Gapes:** You referred to airports. I am interested in the land border. Is the implication of Schengen—the border between a Schengen state and a non-Schengen state within the EU—that there will have to be border posts and passport checks for anyone coming from Scotland to England, driving through Berwick-upon-Tweed or wherever? What would the implications of that be?

At the moment, we have a United Kingdom and a different relationship with the Irish Republic. Could a relationship be worked out between the UK rump and Scotland that was different from the requirements of Schengen? How would that apply to German, French or Italian EU citizens who happened to fly into Scotland from the Schengen area?

**Professor Whitman:** I think there are significant implications for the rump UK. Where we would be under pressure in not joining Schengen is that we would have to make sure that our own border controls for people who are entering the UK from outside Schengen are, shall we say, sufficiently robust so that we do not create problems for the Schengen zone.

It is pretty unusual that there would be a requirement to impose a stronger land border between ourselves and Scotland, partly because we are an island and also because the points of entry to the UK are more controllable than for those states that have long land borders with non-Schengen zone countries. At the same time it raises questions for the Irish Republic as to whether they would feel comfortable remaining outside Schengen once an Administration in Scotland had taken the decision to join Schengen. The Irish Republic decided to stay outside because of the passport union with the UK. There is a whole range of issues—

---

16 October 2012 Dr Andrew Blick and Professor Richard Whitman

---

**Q47 Mike Gapes:** And implications for Northern Ireland as well.

**Professor Whitman:** Absolutely. The single currency is one issue and there are obviously things to sort out around that. But Schengen, practically, is one of those things that would require the most working through on the part of other member states, Scotland and the UK, to make it work in a way that does not lead to absurdity.

**Q48 Mike Gapes:** But there would be potential costs if you have to bring in some kind of passport check regime between Scotland and Northern Ireland, or Scotland and England. That would involve expenditure both in the Scottish budget and the rest of the UK budget.

**Professor Whitman:** I am sure it would for Scotland. To pick up a point that was made earlier about who pays the costs in terms of accession, it would fall for the most part in Scotland in terms of preparing for membership. It would have to create the infrastructure to negotiate and to prepare for membership and in addition, obviously, whatever implementing measures were needed. From the EU side, the Commission would be the prime actor and negotiator in all those areas to screen Scotland's case for membership to make sure that it complied with all the obligations of membership.

**Q49 Mike Gapes:** Can I move on to the question of the euro? It was said earlier that there would also be an obligation on a new member state to join the euro at some point. We know that Poland and Sweden are not signed up to the euro at this stage, although they have this obligation. Would there be any timetable under which a country would have to join the euro?

**Professor Whitman:** It would have to comply with the criteria for accession to the euro, in terms of the criteria for government debt, convergence of its exchange rate and so on, but, of course, if you are in a monetary union with the rump UK, which Scotland would be, it raises questions for the UK as to what we feel about our relationship with the single currency. On the point about the time period, it is really when you can satisfy Brussels, basically, that you can comply.

**Q50 Mike Gapes:** As I understand it, the current position of the Scottish Government is that they wish to keep the pound sterling; they do not wish to join the euro. If that is the case, will that cause problems for their potential membership of the European Union?

**Professor Whitman:** It would be an interesting point for discussion. It does create a problem.

**Q51 Mike Gapes:** It does? Because there is an obligation to join the euro?

**Professor Whitman:** Yes.

**Q52 Mr Roy:** Will you clarify something that was said about border control? If a post-independence Scotland was in the Schengen area and the rest of the United Kingdom was not, on the motorway—the M74 between Glasgow and Carlisle—am I correct in saying

that there could possibly be a border control set up on the United Kingdom side regardless of what I say, as someone who lives in Scotland?

**Professor Whitman:** If you travel around the European Union, you discover that member states often set up temporary border controls between themselves for policing purposes. Where we would see extra complexity is if the UK remained outside most of the provisions on justice and home affairs and Scotland was in. That is an extra complicating dimension to the reasons states often have borders; to be able to police such things.

**Q53 Mr Roy:** Therefore, if the rest of the United Kingdom decided to put a border patrol on that motorway that crosses the border just south of Gretna Green, before you get to Carlisle, the rest of the United Kingdom would be perfectly prepared to do so, because of Scotland's decision to have a free movement of people and labour that maybe the rest of the United Kingdom does not have?

**Professor Whitman:** It is not something I have studied closely, but it is possible for any member state to put temporary border controls up. Obviously, the logic of the European integration process has been to eliminate such borders, because of the inefficiencies that arise as a consequence of having to do checks at borders. So it would go against the grain of the logic of free movement and, obviously, it would have a disruptive effect on business and so on. It is probably an area in which the UK would be sensible to think through what kind of relationship it wants to have to the Schengen zone in the future and how it would cope with having a state as a neighbour that was in the Schengen zone, and having that sort of border arising.

**Q54 Sir Menzies Campbell:** It goes against the grain at the moment, does it not, that the United Kingdom chooses to stay out of Schengen? That is based, as I think we all know, on some pretty strong views, especially in England, about immigration and asylum. Is not the answer to my colleague's question clearly in the affirmative? If you have the rest of the United Kingdom, which is not in Schengen and has anxiety about immigration and asylum, and to the north of that, an independent Scotland, which does not share these anxieties, there is nothing to stop the rest of the United Kingdom—in this case, England—establishing controls in order to prevent access from the country to its north.

**Dr Blick:** Yes, I think it is quite plausible that Scotland may wish to pursue a more liberal immigration policy than the one we have. It is hard to imagine a less liberal one being pursued, so I can imagine that scenario developing, yes.

**Q55 Sir Menzies Campbell:** Well, it is a matter of public record that Scotland is interested—I put it as neutrally as I can—in having a more liberal approach. Indeed, it could have that more liberal approach whether it was in the European Union and part of Schengen, or outside the European Union.

**Dr Blick:** Yes, irrespective of that, and given issues such as the geography of Scotland, the amount of space there relative to the rest of the UK, it would

---

16 October 2012 Dr Andrew Blick and Professor Richard Whitman

---

seem a logical policy to pursue. Also, given the existence of a Scottish diaspora around the world that they might wish to encourage to return home, as it might be presented, why not? That could lead to certain political issues within the rump UK that may lead to the scenario you are talking about. I am not an expert in that area, but I don't think there would be much that could be done to stop the rump UK from attempting to impose that sort of control.

**Sir Menzies Campbell:** It would be some trick to manage the border between Carlisle and Berwick-upon-Tweed, but I suppose it is theoretically possible.

**Q56 Rory Stewart:** As the only Member of Parliament who has got "Border" in the name of my constituency, this has generally been seen as more of a romantic idea than a real one. What are the implications for my constituents—what are the implications for people who are running businesses? What I am taking from this is that there is a degree of uncertainty here. If I were a businessman in Carlisle—and 55% of the telephone calls we make from Carlisle are into Scotland, and an enormous amount of the business we do from Carlisle is sent to Scotland, and vice versa—is this not a recipe for uncertainty in what is already an economically deprived area of northern England?

**Professor Whitman:** To come back to the discussion in the previous evidence session, it is clear that you need to have the choreography. So the uncertainty as to what Scotland's relationship is to the European Union happens as closely as possible in sequence with independence. Clearly, there are folk in Brussels who will look very closely at what is happening in the opinion polls when it comes to the lead-up to the referendum vote itself, and who will have prepared for the contingency that you have to sit down and negotiate with representatives of Scotland on their relationship to the European Union. As others have already suggested, Scotland is an easy accession candidate, but we should not rule out the possibility that there will be areas of difficulty for the reasons that have been suggested: that it has to be a unanimous agreement on the part of all the existing member states and that there are possibilities for trip-ups. The example has been given of the Croatian accession, that has been used to deal with some bilateral differences between Slovenia and Croatia in the end stage. There is uncertainty for anybody who deals with these European Union issues, with the negotiating process. We know what the process is like in terms of opening

and closing chapters, which will be straightforward for Scotland, but there are issues, because of the relationship that the UK has to the European Union, that make life much more difficult for Scotland in seeking to accede to the European Union.

**Dr Blick:** I would add to that that it seems to be getting more complicated still, given that when we consider all this, we must be clear that we don't know exactly where the EU will be in two years' time and how that will be developed. This complicates things further. Also, if we believe what we read, it looks as though the UK will not accept the full jurisdiction of the European Court of Justice, which creates all kinds of complications in the relationship between the UK and the EU in the area of justice and home affairs. This will be very complex for the UK regardless of whether Scotland votes yes to independence or not. It adds in a whole new tier of negotiations and footwork that has to go on. If we then try to run that alongside trying to negotiate something for Scotland as well, it could become hideously complex and issues which become difficult could pop up that we cannot foresee.

**Q57 Mark Hendrick:** If the Scots are not forced to implement Schengen area border control between England and Scotland, does that not make England a de facto member of Schengen, in that people can obviously move easily into Scotland from other parts of the European Union and then quickly slip into the UK? Our own policy in dealing with immigration and the threats of terrorism took place because we were an island nation and it was easy to implement. If Scotland becomes a sort of back door, such that Schengen is effectively implemented, is that not going to cause us problems?

**Professor Whitman:** The London Government would be very interested in following very closely the way that Scotland operates its border controls. Clearly, we would want to have confidence that people were screened effectively at borders, because there would be that possibility of onward movement into England. The more you look at this area, the more you think that this is irresolvable, frankly, unless the rump UK joins Schengen as well. That would be the easiest thing to happen, but politically it is also clearly very unlikely. One finds oneself engaging in these acts of contortion to see how you can make that work.

**Chair:** Thank you very much. I am sorry that that half an hour raced away. We appreciate your coming along and helping us on this.

### Examination of Witnesses

**Witnesses:** **Sir Jeremy Greenstock GCMG**, Former Ambassador, Director of the UK UN Association, and **Professor Nigel White**, Professor of Public International Law, University of Nottingham, gave evidence.

**Chair:** The third and final session of the afternoon looks at the impact on the remainder of the UK internationally. I am delighted to welcome Sir Jeremy Greenstock, a former ambassador with tremendous diplomatic experience and currently director of UNA-UK; and Professor Nigel White, Professor of Public International Law, University of Nottingham.

Gentlemen, a warm welcome to both of you. I will hand the questioning over to Rory Stewart to kick off.

**Q58 Rory Stewart:** This is really for Sir Jeremy. One of the most challenging things is for us to try to think through how other countries would perceive the UK after Scotland left. I understand that is a very

---

16 October 2012 Sir Jeremy Greenstock GCMG and Professor Nigel White

---

hypothetical question. Can you give us some of your instincts on the basis of your experience of what a country such as China, Russia or Brazil would make of the UK without Scotland? Would it affect in some intangible way our international reputation?

**Sir Jeremy Greenstock:** I think the most important element of an answer to that is that most other countries would not see the UK in its rump status—in its 55 million population status—as being much different from the UK they knew and were used to. There would be some elements of slight reputational damage. We would, after all, be a federation that had lost part of its body. There would be a lot of publicity about the actual nature of the split between Scotland and the rest of the UK. There are members of the United Nations who are sometimes reasonably content to see the UK in trouble or struggling, because they have memories of colonial times, or they have prejudices over things such as the Falkland Islands. I think it is relevant to this debate that Northern Ireland is part of our history and will continue to be whatever happens to the future of Northern Ireland and the Republic of Ireland. However, diplomats would not really notice that much difference in their daily dealings with the rest of the world in the international institutions and in our bilateral relationships. On the whole, most members of the United Nations, whether or not they enjoyed a bit of *schadenfreude*, would get on with the business of not wanting to cause fuss over somebody else's internal business. The United Nations is very clear about the responsibilities of member states for their own domestic business. A United Kingdom of 55 million would not be much different in most respects—there would be some details to sort out—from a United Kingdom of 60 million-plus.

**Q59 Rory Stewart:** In terms of our intangible soft power reputation and the way we might be perceived in Iran, the Middle East or countries that have had a longer, more traditional relationship with Britain, is that going to be affected? There is currently a tendency for people to overestimate our power in certain regions of the world, based on historical experience. Might this contribute to a recalibration of the way that somebody on the Arab street thinks about Britain?

**Sir Jeremy Greenstock:** I rather doubt it. If you look at the long sweep of history, we have, after all, given up quite a large proportion of our sovereign's territories over the decades. The United Kingdom has received and continues to receive a certain amount of credit for the way in which it has decolonised and allowed other people self-determination. If the people of Scotland, in the eyes of members of the UN, have gone through a process of self-determination, the United Kingdom has managed that in a sensible and consensual way and there is a good relationship between Scotland and the rump UK, I do not think that intrudes that much on the UK's reputation in terms of its daily capacity to do business.

The influence of the UK in the international institutions is made up of its material contribution in finance or in other ways—in forces, perhaps, or in kind—its diplomatic energy, policy making and

relationships and the quality of its personnel. I do not see why any of those three areas would be so significantly affected by a Scottish decision to go independent as to make the conduct of British diplomatic business internationally seem that much different.

**Q60 Rory Stewart:** Are you concerned by the idea, to which the previous witnesses referred, that Britain would no longer be one of the big three in the European Union and that that might also affect the way in which people perceive us?

**Sir Jeremy Greenstock:** That is possible, but we would have some considerable energy left in what is called the rump UK. It is quite a large rump and would be the third-largest member of the European Union in population terms. It would still have the same number of votes in the Council of Ministers. It remains noticeable that the two countries of the European Union that are most at ease in dealing with global business are France and the United Kingdom because of the accumulation of experience from their history. I do not see why that should not continue to be the case.

**Q61 Rory Stewart:** Finally, Sir Jeremy, are there particular strategies that the Government should pursue and that the Foreign Office needs to think about in order to anticipate this, whether it is thinking about lobbying for the number of members we retain in the European Parliament or about addressing potential anxieties from countries such as China? Are there any things we can do to reassure the world in the case of Scottish independence that it is business as usual, so that the broadly optimistic picture that you have portrayed—that people are not going to see this as a significant diminution—proves to be correct? Are there any things that one would be doing as the Foreign Secretary to make sure that is the case?

**Sir Jeremy Greenstock:** One important thing to remember is that if the business of the break-up is handled sensibly and consensually, if Scotland and the rump UK are saying the same things and supporting each other internationally, and if they are clearly allies and partners in the institutions that they work in internationally, that will minimise the reputational and practical effect on what we are able to do diplomatically around the world. So it does depend whether crises occur and whether arguments blow out from our domestic affairs into other parts of our international business. But if it is handled well, I would have thought that, if we continue to be energetic in our diplomatic activities under the Foreign Secretary, then we will not notice that much difference.

**Q62 Mark Hendrick:** Sir Jeremy, you made the point that a reduction in the UK population from probably 60 million to around 55 million will have an impact. To follow on from that then, presumably, if the Welsh left, at 3.5 million, and the Northern Irish left, at another 1.5 million, we would be down to about 50 million and still probably in the same position with just England. Are you effectively saying that, really, the United Kingdom could afford to break up totally and, for the most part, England could

---

16 October 2012 Sir Jeremy Greenstock GCMG and Professor Nigel White

---

represent rump UK in the same way that Russia does for the Soviet Union? In fact, if you go to China, they do not have a particular word for the United Kingdom, they tend to call it Yingguo, which is “England”, and if you go to America they very often refer just to London and rarely say the United Kingdom. Effectively, are you saying that the United Kingdom could afford to break up and it not make a great deal of bother to anyone internationally?

**Sir Jeremy Greenstock:** If you look at it the other way around, if you see that there is a country with the capability, the history, the qualities of personnel and the adaptability to international life that England would still retain, you would have a really quite powerful and capable state working in the international institutions and in bilateral relations. Obviously, if you have got a machine and bits drop off it, there is more than an aesthetic consequence. It will not look terribly good that we have lost bits and pieces of our federation. It means that peoples have not wanted to stay with the English, as the dominant part of the United Kingdom. But there would be very real capabilities left, and London, as a capital city, has a huge cosmopolitan power and reputation, which sometimes—we could discuss this in another context—is underplayed and underused by the United Kingdom. The Olympics brought that out, perhaps, to a great extent.

We have considerable qualities that would be left with a rump UK, even if the Welsh and Northern Irish, as well as the Scottish, decided to leave us. But I am not denying that there are degrees to this and if this process went on—if even Cornwall decided that it might follow the same example—it would not look as good as if we stayed together. It is much preferable to stay together, and I see it as being in the interests of everyone in the United Kingdom that we should stay together as a federation.

**Q63 Mark Hendrick:** Would you call England and Wales together “Britain”?

**Sir Jeremy Greenstock:** I don’t have a view on that.

**Q64 Mark Hendrick:** Would someone still be British even though Scotland had left?

**Sir Jeremy Greenstock:** “Britain” tends to refer, at least as a minimum, to one island, as the “British isles” refers to a collection of islands. I think that would have to be decided by negotiation at the point of break-up.

**Q65 Mr Roy:** Can you outline the process that Scotland would have to go through to become a fully fledged member of the international community? In relation to the legal and political factors, what are the most important to gain that recognition from the international community?

**Chair:** I think that is one for you, Professor White.

**Professor White:** For membership of the United Nations, as I said in my paper, all the practice indicates that Scotland would be treated as a new state and would have to apply for admission, and that would require support from both the Security Council and the General Assembly under article 4 of the UN Charter, but that can be done relatively quickly, in the

space of a few months, unless there are any serious objections, particularly in the Security Council, and I cannot see that happening. So that would be the quickest way to get international recognition as a state. Traditionally, it would also require other states to come out and recognise it; but again, in the case of Scotland, I do not think that that would be problematic. Those states would readily recognise Scotland as an independent state. It would not have any of the problems that, say, Kosovo or Taiwan has as a state.

**Q66 Mr Roy:** So the normal democratic set-up or make-up of the Scots would be—

**Professor White:** With a settled Government, territory and population, and no disputes, I cannot see it being a problem for it to be quickly accepted in the international community. I think that within the UN that would be the case, and within international law as well.

**Q67 Mr Roy:** So once that happens and we are in the UN and we talk specifically about the Security Council, what is the likelihood of states using Scottish independence to block the rump UK continuing permanent membership of the Security Council?

**Sir Jeremy Greenstock:** In the context of this particular item—permanent membership—and reform of the UN Security Council, it is worth remembering that more than 20 years have gone by of quite continuous debate about how UN reform and reform of the Security Council should proceed. As far as membership of the Security Council is concerned, absolutely nothing has happened. I think that the reasons for that, which perhaps we do not need to go into in detail now, are much greater and have much greater weight and continuity than would be disturbed by the arrival of Scotland as a member of the United Nations and the need for the UK to explain, or airily not to explain, that it was the continuing state.

Russia, which I think is the nearest example, although it is not similar in every respect, following taking the position of the USSR on the Security Council, has not really lost its diplomatic power as a big player because it divided into 15 states. I do not see the UK, if other things were equal, and I do not think UN reform is going to burst into a flower of life over the next five years—

**Q68 Mr Roy:** Sorry, but is that the point that the rest of the United Kingdom would be making in relation to ensuring that there is not a debate? Would it be pointing towards what happened with Russia and the USSR?

**Sir Jeremy Greenstock:** What I am saying is that the decision of the Scottish people to go independent and the arrangement of the division would not be something that would of itself open up a new energetic line of Security Council reform.

**Q69 Mike Gapes:** I understand from Professor White’s paper that under article 23 of the UN charter, the members of the Security Council are still referred to as the “Republic of China” and “USSR”, even though it is the People’s Republic of China and

---

16 October 2012 Sir Jeremy Greenstock GCMG and Professor Nigel White

---

Russia. Is it possible that if there were difficulties for the rest of the UK we could throw that spanner in the works and then quickly get support from the other Security Council members?

**Professor White:** In the UN Charter the names have not changed, but obviously in meetings with the Security Council it is the Russian Federation.

**Q70 Mike Gapes:** I understand that, but it is a tactic that we could use if necessary to ensure that things move more quickly.

**Professor White:** The permanent membership has survived those two issues: the credentials moving from the Republic of China to the People's Republic and Russia continuing the Soviet Union. They were both huge events within the United Nations—major changes, potentially—and the permanent membership survived and the Security Council survived. I would agree with Sir Jeremy that that is the likely scenario, although I must say that I am a supporter of Security Council reform. I probably have to say that to cover myself. I do not think that this event is likely to trigger it, unless political factors come together to make that happen, but the other permanent members will not be in favour of it, so without them moving, the chances of change are limited.

**Sir Jeremy Greenstock:** There is another small precedent, which is that there is an implicit reference to Germany and Japan as enemy states in the UN charter and they have wanted to get that excised, but the wish of most member states is to not open up the charter, unless various things are brought together in a collection and reformed. That is one of the main reasons why there has been no reform of the charter, and that shows that it still applies.

**Q71 Mr Roy:** What happens if one of the things that are put on the table is that the rest of the United Kingdom effectively has unilateral nuclear disarmament foisted on it by the Scottish Government and an independent Scotland? How would that affect the membership prospects of Scotland and the rest of the United Kingdom?

**Sir Jeremy Greenstock:** There is only an implicit assumption that the nuclear status of the permanent members was a factor in them being permanent members. It was much more relevant at the time of the UN's creation that the states who demanded and won permanent membership were the victors of the second world war, with or without nuclear weapons. There is an assumption that nuclear weapons confer status on the states that hold them, but it has not made the claim of India, which is recognised as a valid claimant of a permanent seat if there was reform, any more powerful. It has not made the case for Pakistan, which opposes reform of the Security Council, any more powerful. I would make the assumption in the formal questions that you are looking at that, in this area, the nuclear weapon status of the UK and the non-nuclear weapons status of Scotland will not be relevant to the things that we are talking about.

**Mike Gapes:** But the UK is a very important state within the non-proliferation treaty and is one of the countries that are explicitly given a special status within the non-proliferation treaty. What would the

implications be, following up on Frank's question, for the position of the membership of the non-proliferation treaty of a rump UK or of an independent Scotland, both at the time of that decision and, presumably, when the arrangements for Trident were being worked out? The Trident submarines may be retained in a non-nuclear weapons state while belonging to another state, moved somewhere else, or scrapped. I am interested in the implication of the NPT and the memberships of the NPT.

**Sir Jeremy Greenstock:** I do not know whether Professor White agrees, but the continuing status of the UK as the holder of the permanent member seat in the Security Council and in all of its other presences in UN bodies would be a continuing status as the state that committed itself to those obligations under the NPT. Scotland would be a new entity, without the status of anything that the UK had in that respect. I do not think you would see any difference, nor would other member states of the United Nations see any difference, in the continuing obligation on the rump UK in respect of the NPT.

**Professor White:** If you see the break-off of Scotland from the UK as secession—I would definitely see it as a secession; a consensual one, but a secession—then the rump UK would continue its obligations under the NPT.

**Q72 Mike Gapes:** And would be a signatory of the NPT without having to reapply. Scotland would have to apply as a non-nuclear weapon state.

**Professor White:** As a non-nuclear weapon state. Where the nuclear weapons are, then that is your problem, basically. Again, that would be a transitional issue between the two Governments.

**Q73 Mike Gapes:** Is that the same as the position with regard to when Ukraine hosted the Soviet nuclear weapons and then they were taken out?

**Professor White:** Yes.

**Q74 Sir Menzies Campbell:** I was thinking of a supplementary to what Sir Jeremy said a moment or two ago. The fact that India has nuclear weapons has made, as it were, no difference to its case for membership of the Security Council. Likewise, on the other side, the fact that Brazil does not have nuclear weapons has had no effect on its case for membership of the Security Council. I suppose that Japan, too, falls into the same category. It is not that nuclear weapons are irrelevant. They are never irrelevant, but on this particular issue of membership of the Security Council, they may not have the kind of popular salience that is often attributed to them.

**Sir Jeremy Greenstock:** I think that is correct. As the decades pile up since 1945, the nuclear element of what we are talking about gently continues to fade. It is the other qualities of these states that matter almost exclusively.

**Q75 Sir Menzies Campbell:** And in the case of what we can call the United Kingdom, at least for the moment, our commitment right across the spectrum—to peacekeeping, economic aid, children, and health. As the United Kingdom, we have been very good

---

16 October 2012 Sir Jeremy Greenstock GCMG and Professor Nigel White

---

members of the United Nations. We pay our dues. We do not hold it back because we do not like the Secretary-General, or do other things that have happened in the past. That is what people would assess in any question as to whether or not what one might loosely call England was truly the successor to the United Kingdom.

**Sir Jeremy Greenstock:** Yes. It is what I referred to earlier as “material contribution”. I have not yet seen, I think, anything written in this debate about development assistance, and what remaining obligations either a rump UK or Scotland would have, in terms of providing development assistance, as a moral and political obligation, to the developing world. I would have thought that the United Kingdom would continue to want to be a major player in the development field, and that Scotland would want to play a proportionate part, and that together we would be doing about the same thing as we are doing now as a single UK, but that is something that might be brought into the equation.

**Sir Menzies Campbell:** The question that—

**Chair:** Sorry to interrupt, but I did promise Sir Jeremy, when he agreed to give evidence, that he would get away at about half-past 4, and he has agreed to stay till 10 minutes to 5. Professor White is happy to stay.

**Q76 Sir Menzies Campbell:** I can help him, Mr Chairman. I think you have already answered the questions that I was going to ask. I was going to ask you whether there would be any consequences for the United States’ relationship with either Scotland or what remained of the United Kingdom. I deduce from your earlier answers that you would not now address this specifically, but that you would not anticipate any difficulties.

**Sir Jeremy Greenstock:** No. Most friendly states within the European Union and the NATO alliance would say, “That is the business of the peoples of those islands. We will try to retain good relationships with whatever entities emerge.”

**Chair:** Sir Jeremy, if you want to go, please feel free. Professor White, I hope you can stay. I have a couple of questions for you, anyway.

**Q77 Mike Gapes:** Jeremy referred to NATO. The position of the Scottish National party at this moment—it may change this weekend—is to leave NATO. If it changed its position and wanted to stay in NATO, would it automatically become a member of NATO, or would it have to apply to join?

**Sir Jeremy Greenstock:** I can give only a political answer; Professor White might want to give a legal answer. It would be a new entity as far as NATO was concerned, and there would have to be discussion and probably a treaty arrangement for it to remain, as Scotland, a member of NATO.

**Q78 Mike Gapes:** In terms of overflights, basing, issues to do with intelligence co-operation, and use by the United States of facilities that happen to be located in Scotland, these things would have to be negotiated from new, would they?

**Sir Jeremy Greenstock:** May I just say that, as I see it, Scotland becomes a new entity in the international field in almost every respect, and therefore whether they were treaty arrangements or not, arrangements with other states would have to be made by Scotland, or with Scotland?

**Q79 Mike Gapes:** What I am trying to get at is that at the moment we have things like status of forces agreements with the US—

**Sir Jeremy Greenstock:** All of that.

**Q80 Mike Gapes:** That would not be automatically continued; it would have to be negotiated from the beginning.

**Sir Jeremy Greenstock:** The larger rump would carry the right of continuation.

**Q81 Mike Gapes:** But that “larger rump” refers to facilities that exist in Scotland, as well as in England and elsewhere.

**Professor White:** The Vienna Convention is there on the succession of states to treaty obligations. It suggests that in the case of certain treaty obligations, the state breaking off would be bound by them, but the normal principle is that the seceding state—the newly independent state—would start with a clean slate. It would obviously be in everyone’s interests to agree those bilateral agreements and SOFAs very quickly, but that would be the principle if you see Scotland breaking off as a secession, with the creation of a new state and the rump UK continuing as the successor state to the old UK.

**Q82 Chair:** Professor White, I do not think you were here when Dr Blick was giving evidence. He spoke about the possibility that the dissolution approach may be preferred by some over continuation and secession. Do you have any views on this particular point?

**Professor White:** I looked at it in relation to UN practice, and UN practice is very clear that most of these cases are treated as cases of continuation and secession, with the continuation of the larger part. The larger remaining state continues the rights and duties of the predecessor state, and the state breaking off becomes a new state and has to start afresh.

The line of precedent is pretty strong in the UN, and I have traced back some legal memos from the case of Indian partition in 1947 that support that, which I will probably have to add to my written submission. There is more legal evidence than I managed to put together. The latest example is Sudan. It is probably not a good example to refer to in some ways, but with its independence, South Sudan was treated as a new state that had to apply for membership, and the existing Sudan just continued its obligations. That line of thinking has continued to 2011 in the case of the independence of South Sudan, so I cannot see the case for dissolution. I do not really see the point about it being voluntary. Some of these are voluntary examples that I am pointing to in my written evidence. Serbia and Montenegro in 2006 was a consensual process.

**Chair:** It is certainly not voluntary in Croydon, that’s for sure.



---

16 October 2012 Sir Jeremy Greenstock GCMG and Professor Nigel White

---

**Q83 Mr Roy:** On a totally different point that intrigues me, if Scotland did become independent, would there be an entitlement to say to the rest of the United Kingdom, “We now have a quarter of the flag, and therefore the Union flag, especially the blue part of it, has nothing to do with you, and we want you to take it off”? Would Scotland be entitled to do that, or say that?

**Professor White:** Many wars have been, and could be, fought over flags, but I think that the United Kingdom as such, with the Union of Scotland and England at its heart, would cease to exist. So there have to be those sorts of consequences, with negotiation of precisely what the emblems of the rump UK and Scotland will have.

**Q84 Mr Roy:** Would the rest of the United Kingdom have to ask this new Scottish independent country if it could continue to use Scotland’s part of the flag of the Union?

**Professor White:** I do not think that is a legal question. Formally and legally speaking, if you see it as a case of continuation, which I do, then it would not. Legally speaking, it would not, but politically and practically speaking, these things need to be negotiated. You do not want to end up like Greece and Macedonia, for instance, forever arguing about the flag.

**Q85 Chair:** On that point, another non-legal question: can you see any circumstances in which embassies would be shared?

**Professor White:** There is that possibility, again, of negotiating with other countries. I believe we have done that recently with Canada in some instances, to share premises, so yes, it is entirely possible to negotiate that.

**Q86 Rory Stewart:** Are there any examples of rump states retaining all the emblems? As far as I am aware, Russia, Serbia, etc., changed their flags and emblems when they broke up. The rump of England would be very unusual if it tried to keep the Union Jack, which included a Scottish emblem on it, after Scotland left, wouldn’t it?

**Professor White:** Yes. It is an interesting question, and now that you have asked it, I will have to go away and check.

**Q87 Rory Stewart:** Presumably, every emblem on our embassies, every emblem on the uniforms of our soldiers, which have the royal coat of arms, would be difficult—

**Professor White:** In the examples that you have given, yes, the continuing state did adopt a new flag. I would have to look at all the other examples to make sure that this is always the case. Again, I think it is a question of politics rather than law.

**Q88 Mike Gapes:** As I understand it, the Scottish Government position is that the Queen would remain the Head of State, and they would remain in the Commonwealth. Would that mean that the stamps would still have the Queen’s head on?

**Professor White:** Probably.

**Q89 Chair:** To be resolved. As you can see, Professor White, just engaging in this dialogue poses more questions than we have answered. However, it has been a fascinating afternoon for us. Thank you very much indeed for coming along. If any of you have any further thoughts—you mentioned some things you might think about—please do not hesitate to write to us. We value your input.

---

---

**Tuesday 4 December 2012**

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Mr John Baron  
Sir Menzies Campbell  
Mike Gapes

Mr Frank Roy  
Sir John Stanley  
Rory Stewart

---

**Examination of Witnesses**

*Witnesses:* **Professor Malcolm Chalmers**, Research Director, Royal United Services Institute, and **Professor William Walker**, Professor of International Relations, St Andrew's University, gave evidence.

**Q90 Chair:** I welcome members of the public to this afternoon's sitting. This is the second of four evidence sessions for the inquiry by the Committee into the foreign policy implications of and for a separate Scotland. The session aims to cover security and intelligence aspects of Scottish independence that could affect the remainder of the United Kingdom. There will be three panels of witnesses.

Our first witnesses are Professor Malcolm Chalmers, the research director of the Royal United Services Institute, better known as RUSI, and Professor William Walker, the professor of international relations at St Andrew's university. Gentlemen, welcome, and thank you very much for coming along this afternoon.

May I start with a fairly general question? The Foreign Office's written submission to us states that Scottish independence could give rise to security and strategic implications for the whole of the United Kingdom. What is your interpretation of that statement?

**Professor Chalmers:** It is a very general statement. I think that the security implications of Scotland's separation from the United Kingdom would depend on both the process by which separation was achieved and the nature of the state that the two successor states wish to achieve. On the first, on the process, what is happening in 2014 is a referendum but, even in the event of a yes vote, there is no indication when the separation would be achieved and under what circumstances. We would be in a very different scenario if there was a mutually agreed process between London and Edinburgh—between the UK and Scottish Governments—which successfully negotiated the nature of separation before, and told other states what that was, rather than a scenario in which there was division and conflict, with separation and the process of trying to get there taking place in an acrimonious fashion. That is important because, on issues such as EU and NATO membership, not only the fact of whether both states are EU and NATO members but the sort of members that they are will depend critically on whether London and Edinburgh in this scenario can resolve all their many differences, to which I am sure we will come in discussion.

That is the process, but as to where you might end up after the two states came into existence—Scotland as a new state, and the RUK succeeding the UK—much would depend on what the foreign and security policy of the two states was. My expectation would be that

the political leaders in the RUK would wish to preserve their foreign and security policy as close as possible to that of the larger UK, which they succeeded. That cannot be taken for granted, but that is likely. The greatest complications in that regard might take place in relation to the relationship with the EU, because there is some uncertainty about the UK's future in relation to the EU.

On Scotland there is maybe more uncertainty about where a Scottish government would go. We should not make the mistake of thinking that a future Scotland will adopt policies that are exactly the same as those of the SNP today. We don't know what its policies will be, but certainly it is plausible that an independent Scotland would want to pursue defence and foreign policies not dissimilar to those of countries like Norway, Denmark, Ireland, and other north European countries of comparable size.

In that scenario—the UK more or less wanting to stay as something quite similar to what it is now, and Scotland wanting something like a north European country, whether in NATO or outside but probably inside—I suspect the interests of other countries, certainly those naturally sympathetic to the UK, our European allies, the United States in particular, would be in stability; in having a smooth transition which preserved what they already had in terms of EU and NATO coverage and ensuring it didn't rock the boat given all the other problems they have. They wouldn't want a situation where Scotland was seen as a source of instability, which would be the case if Scotland was left outside, or chose to leave itself outside organisations like the EU and NATO, and might form alliances and relationships with others who have not been the UK's traditional friends. There is a lot of uncertainty—there would be a significant period of uncertainty in this process—but I think that is the broad direction in which the process would probably go.

**Professor Walker:** I would not disagree with Malcolm. I think everyone can imagine security and strategic issues being raised, and I am sure down in London there is some anxiety about it, but my expectation is, come a yes vote, the interest in both Edinburgh and London in co-operation would be great. The international interest would be in the two settling any differences, and as Malcolm says, maintaining stability.

In the last couple of months I have been talking to quite a lot of foreign Governments, both their

## 4 December 2012 Professor Malcolm Chalmers and Professor William Walker

representatives in Edinburgh and also in London and elsewhere, about the international reaction to this, and the reaction does vary. There is anxiety in some places, particularly about the secession issue and Spain and Catalonia and all that. I think that the great interest is maintaining stability. If a co-operative relationship can be established between the rest of the UK and Scotland, it does not need to be destabilising. There are going to be some very difficult issues, but there is an interest in maintaining the status quo, maintaining the special relationship if you are the United States, and maintaining NATO commitments in the North Atlantic and so on. Which is not to say there are not some very difficult issues; Trident is one of them, which we will probably come to in this discussion. Overall, I would be quite optimistic that things can be worked out between the two Governments.

**Q91 Chair:** Professor Chalmers, picking up on the theme of Professor Walker, do you think that the rest of the United Kingdom's international standing will be affected by Scotland leaving us?

**Professor Chalmers:** It would be bound to be affected to some degree. The more acrimonious the process of separation, the greater the damage would be. There would be a perception that the UK was distracted from its wider international role by having to deal with constitutional issues back home. The longer the process of separation and arguing about issues continues, the greater that damage would be. An important element of the UK's soft power is its period of continuous constitutional rule going back a long time. If that were brought into question that would again be damaging. On the other hand, the more the UK shows itself capable of handling the issue in a mature and relatively unemotional way, the more that is to the UK's credit.

I think we already see a contrast between the way we are handling this issue within our country and the way it is being handled in Spain. Nobody in the UK talks about military coups or Scotland not having the right to self-determination if the Scottish people wish it. We are now going through, I suspect, a couple of years in which this issue is going to be analysed extensively from every single direction, and quite rightly, too. That is to this country's credit and may to some extent ameliorate the damage.

There will be a loss. Scotland has been at the heart of the UK for a very long period indeed and it is bound to lead to some reputational damage externally. I think it is bound to lead to some loss of self-confidence among our elite where Scots and others have been intertwined in a joint enterprise internationally and domestically, which will have to be disentangled. I don't know what the psychological impact of that on the individuals concerned will be but it should not be underestimated.

**Q92 Chair:** Professor Walker, do you agree with the soft power point?

**Professor Walker:** Yes, I suppose so.

**Q93 Rory Stewart:** To follow up on that again. A lot of the countries that we are focused on over the

coming years, such as China, Russia, India and even some of the countries in the Middle East, have very strong views on the question of allowing bits of their territory to separate. The remaining prestige of Britain is partly connected with the idea of a particular conception of British power. Do you think that there is a risk that if you were Chinese or Russian or Indian looking at a Britain that had lost Scotland that you would feel that something had been diminished, beyond the mere loss of a few million people and territory; that somehow you were dealing with a smaller, less important country that was losing its way?

**Professor Chalmers:** There may be a risk but if you look at the UK's position in the recent past in relation to other processes of separation—you could look at Sudan, Yugoslavia or others—the UK has not had a record of opposing separation in all circumstances. We have had a rather pragmatic record of recognising in some cases that it is better for international stability if states split up. If you are Chinese with, perhaps for understandable reasons, more absolute commitment to the maintenance of existing borders, of course this is yet another example, this time in a pretty secure and stable state, of states breaking up. That is obviously something that there would be a concern about. I am not so convinced that the UK's reputation would be significantly diminished as a result of that.

**Professor Walker:** To add to that, I think you are correct in your instinct that it will be diminished somewhat in their eyes. It links a bit to the issue of the UN Security Council. In my view, it would be most likely that the rest of the UK would be recognised as a successor state, including in the UN Security Council. However, in the medium and long term it would increase the perception of states around the world that this is not a representative body. If you have a diminished UK still with a position of permanent membership of the UN Security Council along with France, in the short run there will be an adjustment to the rest of the UK taking up the seat but in the long run it increases the perception that this is not a representative body and needs change.

**Professor Chalmers:** May I add one point? For a country like China or India it would be part of a wider perception of where Europe is going. If a division of the UK was accompanied by an increased risk of separatism succeeding in Belgium, Spain, Italy or elsewhere, it would perhaps add to the perception that Europe's relative power was declining.

**Q94 Sir Menzies Campbell:** You talked about uncertainty, and I was just thinking about the sorts of things that might constitute that uncertainty. You mentioned the European Union. Supposing, for example, that there is a very narrow majority in favour and then there is a legal challenge. Interesting questions would arise as to whether that should go all the way to the Supreme Court, which is based in London but is a United Kingdom court. Supposing there was a threat generally to national security, like an increased threat from al-Qaeda or something of the kind, or supposing there was an economic chill and there was a substantial run on the pound, which after all is expected to be the currency north of the border

as well as south of it. That simply emphasises not only the problem of uncertainty but the range of uncertainties that could make a contribution to what you already describe. Would you agree?

**Professor Chalmers:** I think that is right. Once separation had taken place, the Government in London would no longer have responsibility for Scotland in relation to any of the issues you have mentioned—economic uncertainty or, indeed, security uncertainty. There would be a continuing and strong incentive for co-operation, just as there is between the UK and France or the United States and the UK, but it would not be taken for granted.

In terms of legal challenges, if we got into a situation in which the result of the referendum was not seen as clear by everybody concerned, that would clearly be a major source of uncertainty and there would be very strong interests in resolving that uncertainty one way or another rather quickly. If it was not, I think it would become such an all-consuming focus for the UK in not knowing where it was going.

**Professor Walker:** To add to that, small states, above all else—more than major states—require stable frameworks. Scotland would be vulnerable, becoming a new state in a very, very turbulent world. I suppose the most important stable framework for it would be the rest of the UK, in the first instance, and I am sure it is not lost on the Scottish Government that it needs a stable, confident rest of the UK for Scotland to thrive in future, and beyond that the European Union, NATO and other kinds of institutional frameworks.

**Q95 Mr Baron:** May I ask you gentlemen to focus for a moment on the extent to which a separate Scotland might rely on co-operation with the rest of the UK in pursuing its foreign policy, particularly its defence policy? The SNP has not been too forthcoming on plans, although I know that they are going to make further details available prior to the referendum. We have got some bare bones to pick at, however. I think it is a £2.5 billion budget, with 15,000 regular troops and 5,000 reservists.

Just looking at those plans, if you compare a separate Scotland with a country such as New Zealand, those defence forces are significantly more than what New Zealand has, which is a useful starting point. Then look at the fact that the 4th and 5th Battalions of the Royal Regiment of Scotland are 20% under-recruited and recruit a lot from Commonwealth countries. I know it is very early days, but given those comparisons and those facts, how feasible are the SNP's plans at the moment? What implications are there in their stated wish to have some sort of co-operation agreements with the remainder of the UK when it comes to their foreign and defence policy?

**Professor Chalmers:** The geopolitical situation an independent Scotland would be in would be quite different from that of New Zealand. The SNP at its recent conference—very narrowly, admittedly—agreed that in their view Scotland should be a member of NATO. That reflects the fact, which also applies to non-NATO countries in Europe, that security for countries in Europe today depends to a very large extent on co-operation with others. A paradox of modern Europe is that it is precisely because of that

independence that small states can go off on their own, as it were, as they can rely on others to an extent that they could not in the 18th and 19th centuries.

What does that mean in practice? I think it means that, like other small NATO member states, an independent Scotland would have some unique national security and defence responsibilities—things that other countries could not do for it, which it would have to do for itself, albeit in co-operation with others—but there would be many other areas in which there would be pressure on it to contribute to multinational operations. For example, in Afghanistan today, just about every NATO and non-NATO European country is represented at some level, so one imagines that a similar width of operation would also apply to Scotland in the future. You can construct from that the sort of choices that an independent Scotland would have to take in terms of its armed forces.

If Scotland were to be a member of NATO and the issue of Trident-basing in Scotland was resolved for some significant period of time—we will come to that later—my instinct is that an independent Scotland might find that it also wants to maintain for some long transition period significant UK conventional forces. The transition to producing independent Scottish air forces, for example, would be quite lengthy, because that is a costly and difficult process. For things such as maritime patrol and air patrol, there would be some advantage in co-operating with others, which in the case of Scotland primarily means co-operating with the rest of the UK. That would not necessarily be an easy process and lots of things would have to be sorted out.

On the £2.5 billion budgetary figure that the SNP has produced, once you allow for the inclusion of security spending—it is not defence spending, but defence and security spending—the figure is more or less comparable with the sorts of budgets that Norway and Denmark have as a proportion of GDP, which is about 1.4%. That is more or less what other NATO countries of a similar size and national income spend, so that level of spending is pretty realistic. I am rather more sceptical about whether you can produce the range of forces that the SNP talks about from that money. I think they would have to make some much harder choices than they have been prepared to make between the different parts of those forces.

**Q96 Mr Baron:** Before Professor Walker comes in, can I just sharpen the question? I suppose I was getting at this: can you envisage a gap between what the remainder of the UK would be willing to co-operate on by way of maintaining security, and what Scotland could afford by way of doing that? On patrolling and being able adequately to defend its airspace, which is a very costly business at the end of the day, do you envisage that there could be a gap between what we would be willing to co-operate on and what the Scottish economy could afford? I look at some of the figures and I think they are very ambitious in what they are hoping to achieve for the money they are willing to put down.

**Professor Chalmers:** I think that that is an excellent question, but there is not a definite answer. Part of the answer lies in what Scotland is prepared to pay and

## 4 December 2012 Professor Malcolm Chalmers and Professor William Walker

how it decides to use the money, but part of the answer depends on what the rump of the UK is prepared to continue to devote to the defence of Scotland, recognising that there is a common interest in patrolling the air and sea around these islands.

When you talk to Norwegians and Danes with an interest in what is happening in Scotland, one of the things they say is that when things are going well, co-operation seems seamless and we can rely on others to come to our defence, but when things go badly and there is a shortage of resources, countries inevitably prioritise their own needs.

**Q97 Mr Baron:** With respect—and I want to bring in Professor Walker—you are sort of ducking the question a little bit. I am asking for your best guess. Can you envisage gaps or not? Is there a possibility there? If Scotland was to become separate, the rest of the UK would still be roughly the eighth largest economy in the world. It would have a defence budget that is the equivalent of France's, for example—without Scotland.

**Professor Chalmers:** Yes.

**Mr Baron:** So I think we have the capability, within certain parameters, to defend our airspace. The question I pose to you is: if a separate Scotland decides to go its own way, could there be a gap between what we would be willing to put in to Scottish defence, so to speak—because of the mutual benefit—and what the Scots could afford? Is there a possibility of gaps?

**Professor Chalmers:** My answer to your question is yes. That was why I drew the parallel with Norway and Denmark, who are very well aware that there may well be circumstances in which the UK, the US or others are not prepared to come to their defence as expeditiously as they would like.

**Professor Walker:** I would just like to add that one can see that the Scottish Government are working towards the idea of having a different kind of foreign policy from what has been the practice down in London. This is about looking out at the world in a rather different way, and not thinking about big expeditionary forces and not playing this major global power role that the UK has tried to play for a very long time. I think that they imagine, rightly or wrongly, that they just do not need so much to defend themselves and that, in fact, perhaps the UK exaggerates the amount of expenditure, resources and capability that it needs to defend itself.

There is a desire, I think—again, it may not be realisable—to put foreign policy first, and to try to allow the new defence posture of a UK to be driven by its foreign policy interests, in the way that it re-imagines Scotland as a small state in alliance with Nordic countries and others who are looking out towards the north Atlantic. Where I think that they have not really worked things out is in terms of exactly what the NATO expectation is, and also about the north Atlantic—I think that they have a fairly benign view of the north Atlantic—and exactly what the United States would expect of Scotland, in co-operation with all these countries.

This is an evolution, and I would say that it is fairly remarkable how far they have come in the last year—

or the past two or three—in terms of adjusting their posture on defence, and beginning to think more about themselves co-operating with others, having to make concessions and working it out in due course. You have to accept the statements that the SNP made recently as being work in progress. They are trying to identify a posture for themselves that seems to serve their vision of what a Scotland might be in the world and that is also compatible with what UK and NATO interests might be. I think it is evolving in that direction. Internally, within Scotland, that is of course very difficult for them, because there are a number of difficult topics for them in Scottish politics.

**Q98 Mike Gapes:** To follow up John's question, may I press you on the issue of airspace? At present, some NATO countries—and, in fact, non-NATO countries—protect Iceland's airspace. Some NATO countries—Estonia, Latvia and Lithuania—also have their airspace protected by other NATO states. Is the expectation that the UK, the US, Norway or someone else will somehow protect Scotland's airspace to some extent?

**Professor Chalmers:** Shall I answer that?

**Professor Walker:** Yes, you answer that—[Laughter.]

**Professor Chalmers:** William gives me all the easy questions.

I do not think that there is one fixed expectation. The SNP is attempting, in very rough terms, to draw up some ideas in advance of a referendum of what things might look like. Of course, the answer to your question would depend not only on Scotland, but on whether others were prepared to help in that regard. It is also the case that there is some expectation of mutual assistance between members of NATO.

My expectation is that, in the scenario we are talking about, there would be some role for a Scottish air force, but the more expensive the assets and capabilities involved in that, the more there would be pressure for Scotland to look to the British Royal Air Force—the UK Royal Air Force—to play a role. You could envisage the co-location of Scottish and UK forces at Lossiemouth, for example, for an extended period working together rather than entirely separately. That is a benign scenario and, as Mr Baron quite rightly suggested, the more difficult the crisis, the more of a question mark there might be about how automatic that mutual assistance would be.

**Q99 Mike Gapes:** In that context, when the SNP voted by 426 to 332 to change its position on NATO, I understand that the resolution said that Scotland would “inherit” its treaty obligations with NATO. Does that mean that the assumption is that Scotland would automatically continue as a successor state within NATO, or would it have to apply to stay in NATO? In that context, I understand that that also said that it would be subject to agreement that Scotland would not host nuclear weapons. Is it both assuming an assumption that it will stay in NATO while, at the same, negotiating a new relationship with NATO? Can you clarify what it means?

**Professor Chalmers:** I think you will have to ask members of the SNP what their statements mean, but perhaps I can comment on the substantive issue. The

issue of inheriting membership of NATO is the same sort of question as inheriting membership of the EU, the UN or any other international organisation. You already have had people much more versed in international law than me giving evidence to you, but my understanding is that, in every one of those cases, it would be subject to the political agreement of the other states concerned. A new member state of NATO could not come into being without the agreement of the existing members of that alliance.

To come back to something I said earlier, I also think that there would be a period of time—perhaps an extended period of time—between a yes vote in a referendum in 2014 and the two states coming into existence. That could be in 2016 or 2020—we do not know when. One of the items on the agenda during that period would be a situation in which membership was created. However, of course, for Scotland to become a member of NATO, as the SNP statement seems to suggest, there would need to have been negotiation about the terms of that agreement. In both NATO and the EU, other member states are in most cases likely to buy into the argument that they want to maintain things as they are, as much as they can. The more that Scotland says, “Ah, but we want to have an opt-out from fisheries policy,” or, “We want to have a special clause on Faslane,” the more the prospect of a smooth transition might be called into question.

**Q100 Mike Gapes:** Professor Walker, do you agree?

**Professor Walker:** NATO does not speak with a single voice. There are all sorts of divisions of opinion within NATO. My surmise would be that NATO would want Scotland to be part of it, in due course, but, of course, not on any terms. There would obviously be consultation and debate, and there are consensus rules to be considered. It would probably take a bit of time before the position of Scotland and its exact terms of engagement with NATO were settled.

**Q101 Mike Gapes:** Would that mean that Scotland would be out of NATO for a period, or would it mean that Scotland would be in NATO, yet would still have nuclear weapons on its territory while the negotiation continued for however many years?

**Professor Walker:** I am not quite sure what the legal position would be. I guess that there would be an expectation that Scotland would carry on behaving as if it were part of the community, but it probably would not have a separate seat within NATO for a time. It would have to be settled. There would be negotiations around this and, in due course, some settlement would be reached. I imagine that the neighbouring countries—Norway and so on—the other European countries and the United States would want Scotland to be part of NATO. It would have to negotiate the terms, however, and the issue of nuclear weapons would be an important one, but not the only thing.

**Q102 Mike Gapes:** The remainder of the UK would have, in effect, a veto. Every member state would have a veto, because it has to be a unanimous consensus position.

**Professor Walker:** Assuming that the rest of the UK was regarded as the successor state, which I am sure that it would be, that would be the case.

**Professor Chalmers:** I think that that is a plausible scenario, but another—and I think rather more plausible—scenario is that there would be a significant period of time between the referendum and the actual separation to separate states. That period of time would be used by the Governments in London and Edinburgh to negotiate a settlement on all the main issues between them, and one of those issues would be membership of the EU and NATO.

In that context, it is quite feasible to envisage a situation in which the separation into two states would coincide with both states being members of the UN, NATO and other organisations. That is entirely plausible, and one of the reasons why it is plausible is because I do not think that other member states in the EU and NATO would want to leave a vacuum in which, for some period of time, the rest of the UK continued in the EU and NATO, but Scotland did not. Given that Scottish territory is, right now, part of those organisations, I do not think that they would see that as being in their interest.

**Q103 Mike Gapes:** May I ask one final question about the implications of a non-nuclear Scotland—presumably with no RUK nuclear weapons based on its territory—for the standing and status of the rest of UK within NATO?

**Professor Walker:** I will have to unpack that question, as there are a whole lot of other questions under that heading. Are we coming on to the issue of nuclear weapons?

**Mike Gapes:** We will move on to that later. This question is specifically about the implications for the status of the rest of the UK within NATO.

**Chair:** This section is just on NATO. We will come on to nuclear weapons.

**Professor Walker:** But are you saying that the rest of the UK keeps its nuclear weapons, but has them somewhere else—

**Q104 Mike Gapes:** My assumption is that the rest of the UK is the successor state. That includes the successor state’s weapons and all the rest of it. What does that mean within NATO for the standing of the rest of the UK?

**Professor Walker:** Forgive me, Chair, but I am still not very clear about the question. Do you imagine that the UK takes back the nuclear weapons?

**Q105 Mike Gapes:** I imagine that they are the UK’s nuclear weapons, and that if Scotland wishes not to have them on its territory, they will remain RUK nuclear weapons that will be based somewhere, but not in Scotland.

**Professor Chalmers:** Perhaps we will come on to the timing of relocation because, as I am sure you understand, it will be a difficult and lengthy process. I think that a situation in which separation resulted in the UK no longer being able to maintain its current nuclear capability—

**Mike Gapes:** No, that is not my question.

**Professor Chalmers:** I understand that.

---

4 December 2012 Professor Malcolm Chalmers and Professor William Walker

---

**Q106 Mike Gapes:** My question is simply about the status and standing of the rest of the UK within NATO and the North Atlantic Council, as a nuclear weapon state in Europe, and the implications of Scotland's separation for that for the rest of the UK.

**Professor Chalmers:** Providing that it can maintain its existing nuclear capability, I do not think that it would be substantial. The question is whether it could.

**Q107 Mike Gapes:** And you doubt that it could.

**Professor Chalmers:** Of course.

**Chair:** I want Frank to finish on NATO, and then we have a couple of supplementaries.

**Q108 Mr Roy:** Can I just ask a question in relation to navy shipbuilding capability? I ask specifically with regard to Govan, Scotstoun and Rosyth where, at the moment, we are building aircraft carriers. Many of my constituents are employed on that contract. If Scotland were separated from the rest of the United Kingdom, how would it affect that navy ship-building capability?

**Professor Chalmers:** I think that the order base for naval ships from the Scottish navy will be of a much smaller magnitude than that from the UK currently. Therefore, while it no doubt could maintain some jobs, certainly the capability that exists right now in Scotland is far more than would be necessary to service a Scottish navy. One of the main questions would be how far projected orders for the Royal Navy of RUK could maintain some of that capability. We do not know but, clearly, particularly in relation to new orders—there may be some contractual issues in relation to inherited orders—there would be a strong disposition politically, I suspect, given the nature of the politics of shipbuilding right now in the UK, for future orders to be placed in the rest of the UK, if that was possible.

**Q109 Mr Roy:** So what if there was an extra order for another aircraft carrier in an independent Scotland, for example?

**Professor Chalmers:** I suspect that we are not going to be building a third aircraft carrier in any case—

**Q110 Mr Roy:** Well, a first one for an independent Scotland.

**Professor Chalmers:** I think it is pretty clear that Scotland could not afford an aircraft carrier of its own—it is hard for the UK to afford two aircraft carriers. I think there will be an issue in relation to Type 26 orders. If there are not already contracts placed with Scottish shipyards, the chances of future, post-independence contracts going to Scotland for that particular ship will be much diminished.

**Q111 Mr Roy:** Okay. Sorry, I went off at a tangent, so can I come back to Scotland's place in NATO? As a NATO member, what sort of role would we—Scotland—be expected to play in NATO, and how would it compare with that of the rest of the United Kingdom? If Scotland was independent and a member, what sort of role would it have, and how would it compare with the present role of the United Kingdom?

**Professor Walker:** I think Scotland will see itself as helping NATO to protect the northern waters and also the maritime frontiers. It would presumably want to help NATO maintain whatever facilities it has in that connection, and would be providing capabilities to allow NATO members to do their job. It would also imagine itself as contributing some troops to foreign activities, as long as the Scottish Government and people thought that that was worthwhile and justified, but not as participating in the nuclear contribution to NATO. As an adjustment, probably the key thing here is the Scottish Government's claim that they would be making decisions as to whether troops in the Scottish forces would be sent abroad—it would not be decided here.

**Q112 Mr Roy:** You said earlier that Scotland would more or less have responsibility for northern waters, but how would that balance itself out? If the Scottish Government said, "We are a nuclear-free zone," that presumably would also include Scottish waters, so what happens with a big aircraft carrier from the United States that might well have nuclear capability on it? How would that balance out? If the Scottish Government are saying, "We are in, but the absolute is that we are a non-nuclear area," how do they square that circle?

**Professor Walker:** I do not think they do. There is a serious issue there, because Scotland would find itself in the position of New Zealand. The position of the United States is that it will not declare when there are nuclear weapons on its ships. Scotland might be welcoming American—

**Q113 Mr Roy:** On the other hand, that is presumably the same for Norway as well.

**Professor Walker:** I do not think they have a ban on American ships visiting their ports.

**Mr Roy:** They do have a ban on nuclear weapons.

**Q114 Sir Menzies Campbell:** I think you have put your finger on the lack of logic of saying, "We want to opt out of nuclear weapons", but of joining an alliance that has in its strategic concept the statement that deterrence is based on both conventional and nuclear means. No doubt there may be other questions, but that is a question that I have been asking the SNP and to which I have not yet got an answer.

In all the discussion about NATO, have you found any reference to article 5? Article 5 provides that an attack on one is regarded as an attack on all. Have you found anything in the expressions of opinion or apparent policy conclusions of the SNP that suggests that they recognise article 5 and its implications?

**Professor Chalmers:** We are not the best people to talk to as interpreters of SNP policy, but—

**Sir Menzies Campbell:** Even a passing reference.

**Professor Chalmers:** I will do my best. The SNP's defence policy statement, a copy of which I have here, says, "On independence Scotland will inherit its treaty obligations with NATO." Putting to one side what we said earlier about whether they will inherit automatically, nevertheless, that is a reference to treaty obligations, and, of course, the mutual security

guarantee is at the heart of NATO. So yes, of course, if Scotland were to be a member of NATO it would have to be committed to coming to the defence of others. I think that that is absolutely clear, and vice versa. However, as we also know, how that is interpreted in practice can vary, and no member state in NATO bases its security on the idea that that is entirely automatic. Without any question it is something that countries have got to work for. That is why they contribute to NATO—to reinforce that guarantee so that they are seen as doing things even when it is not in their immediate interest.

**Q115 Sir John Stanley:** Professor Chalmers, you rightly said that the issue of Scotland's admission into NATO as an independent state would be a matter for the existing NATO member states. As you know, they act by consensus, which is of course a euphemism for unanimity. Do you consider that, among the existing NATO member states, there may be one or more that would actually veto, and say no to Scottish NATO membership? For example, Spain, as we know, has deep concerns about any forms of international recognition from breakaway countries, and for example has refused to give any international recognition to Kosovo. Could the Scottish wish to become a NATO member state effectively not be realised as a result of the position taken by countries such as Spain?

**Professor Chalmers:** I think it is possible. I do not think it is likely, providing the scenario we were talking about was one in which London and Edinburgh had agreed all the issues between them and were not raising the possibility of NATO, or indeed the EU, importing problems into their ranks. I think that countries in Europe are well aware of the problems that Cypriot membership of the EU raised, because problems were brought into the organisation without the Cypriot political issues being resolved. I think that the Kosovo issue actually comes more into that category than the category in which I would put Scotland-UK or indeed Czech-Slovak relations. I confess my ignorance on the issue, but it would be interesting to ask whether Spain raised any objections to South Sudanese separation from Sudan, where there was agreement from both parties to that happening.

**Chair:** I think you have got us there.

**Professor Chalmers:** That is something I would have to give you a note on. The issue for Spain in relation to Kosovo, as I understand it, was partly because Belgrade did not consent to the recognition. There was a dispute, and in that case the Spanish took the decision, as have several other EU states, that they should not properly recognise the seceding party. Of course, if we ever got to a situation in which Scotland sought to separate without London's permission, absolutely, I think that Scotland would not have any chance whatever of joining NATO.

**Professor Walker:** May I just add to that? I do not think a comparison with Kosovo is terribly helpful. They are very different circumstances. In my view, if, through impeccable democratic processes, the Scottish people voted for independence and London conceded to that, I cannot imagine the Spaniards vetoing an application to join the European Union. They may

make life awkward, and insist on the country going to the back of the queue or something, in order to send their own signals, but I cannot imagine that in reality they would stand in the way and take that kind of strong line.

**Q116 Sir John Stanley:** You said the European Union. Did you mean the European Union, or did you mean NATO?

**Professor Walker:** I meant the European Union, because I think that that is actually the primary issue here, in relation to Spain. It is not NATO.

**Q117 Sir Menzies Campbell:** Not even after the events of this week?

**Professor Walker:** I do not think so, no. I think that in advance of the referendum they will want to send strong signals that they will make life very awkward. However, I cannot imagine that in the event, if there really was that referendum—this is my own personal opinion—and it was impeccable processes and all the rest of it, they could stand up and say, "You cannot join." I cannot imagine that.

**Chair:** Professors Chalmers and Walker, I am warned that there will be a vote in the House in a second. We will keep going, but I have one eye on the clock.

**Q118 Mr Ainsworth:** Let us come to Trident in the context of, first, the rest of the United Kingdom. There would be a lower population, a lower tax base to carry the costs, and the costs of relocation would be billions, we are told. The time scale for relocation will potentially be many years or even decades. In practice, the rest of the United Kingdom could be forced to become a non-nuclear power, could it not?

**Professor Chalmers:** This is one of the most difficult security issues in relation to Scottish separation and it would have to be resolved at least in broad outline before you could have a wider agreement to move forward. Having said that, if there were to be agreement on this issue, it would open the way for agreement on many others. The issue is substantial and very important. It would take many years at least for relocation to successfully take place, not only because of the cost issues, but because of the considerable safety and security issues that would have to be resolved at any new base. William and I have written about that in the past and looked at previous decisions and why it ended up in Scotland historically.

**Q119 Mr Ainsworth:** And that was because of geographical location and configuration—water depths and all that stuff.

**Professor Chalmers:** And, indeed, the need not to be too close to population centres in relation to missile warhead storage facilities. It is not by any means clear sitting here right now, with the information that I have, that an alternative location could be found, but it is possible that it could be found. It is unlikely that you would know that in the immediate aftermath of a referendum, but even if you believed such a location could exist, it would take a period of certainly more than a decade and perhaps significantly longer for relocation to take place.



---

4 December 2012 Professor Malcolm Chalmers and Professor William Walker

---

There are two possible times at which you might think of relocation. One would be when the submarines were replaced in the early 2030s and the other might be when the missiles are due to be replaced in the early 2040s. I think that is the sort of time scale that you might be talking about for that to happen. Were an independent Scotland, or indeed a Scottish negotiating team post-referendum, to say, “No, it has to be out within two, three or four years”, that would not give time for relocation to take place, so it would not be possible unless the RUK managed to find some arrangement with France or the US to base outside the UK altogether, but there are many difficulties with those options too. Without that, the UK would no longer be able to operate a submarine-based deterrent and it would have to consider other options, such as aircraft basing, for example, to maintain an operational nuclear arsenal.

**Q120 Mr Ainsworth:** And those alternatives were looked at in the White Paper in 2006 and were ruled to be pretty impractical for a nation of this size.

**Professor Chalmers:** They were ruled to be less preferable than the existing option. There is more of a question mark over whether the UK would, in a scenario in which the SSBN option was ruled out altogether for the reasons that we discussed, seek to invest in air launch capability, rather than becoming a non-nuclear state. It is quite possible that it would go for another option in that scenario.

My basic point is that a scenario in which Scotland asked for these weapons to go very quickly—within the order of two or three years—would throw a big spanner in the post-referendum negotiations. Whether RUK would then veto membership in NATO and the EU, I do not know. They may not go that far, but it would certainly raise a lot of questions among Scotland’s other allies—our prospective allies—as to what the nature of its foreign security policy was.

**Professor Walker:** I, personally, do not regard the Trident decision of 2007 as terribly stable, anyway. It seems to me that, come 2015–16, serious questions will have to be asked about affordability, even without the Scottish—

**Q121 Mr Ainsworth:** Even where we are now?

**Professor Walker:** Even where we are now. The Liberal Democrat-led investigation in the Cabinet Office into alternatives—it seems to me that there is already a debate going on within Government about alternatives, even though the Conservative party may not back it very strongly. So I think, as a background, I do not regard the Trident decision as necessarily being very stable, but, of course, the timing of all this is out of kilter, because it probably would not come back into public debate until after the general election in 2015.

The difficulty seems to me to be that, come 2014, if you do have a yes vote, and then you have to have a negotiation between the two sides on some kind of framework agreement on basic principles, there will be an expectation of having a decision on the future of Trident at that stage. And at that stage, it seems to me that the SNP and the Scottish Government could not concede to indefinite basing of Trident in

Scotland. Politically, it would be impossible within Scotland for it to get away with that, without damaging itself enormously. So the position it would arrive at would be looking to some kind of phase-out and the debate would be over the length of time.

In due course, it would not surprise me if the Scottish Government and the Scottish people actually acclimatised themselves to it staying there much longer, because to some extent it is just a symbolic issue and has been, really, a symbolic issue for quite a long time. Mind you, it is for the UK, too, in some ways symbolic.

There is an issue to do with timing and what actually is negotiable in the immediate aftermath of the referendum.

**Q122 Mr Ainsworth:** Let us assume for a moment that there was a problem with one or other of them—insurmountable costs, location or timing—and the two countries fall out with each other. Let us reflect on the impact on the rest of the UK’s standing and position in the P5, with Scotland trying to join international communities at the same time as the UK’s standing within those international communities was being brought into question. The impact of that would be considerable, would it not?

**Professor Walker:** Yes, I would agree with that. You are absolutely right. For Scotland, a small state, to be coercing the UK into giving up its nuclear deterrent, when that was part of a NATO—I cannot imagine it being able to do that. At the same time, internationally, may I say, for the rest of the UK to be trying to coerce Scotland into providing a permanent home for a nuclear deterrent, that too, internationally, would not go down very well, I don’t think. When so much of the debate internationally—NPT context, and so on—is upon disarmament, to have a nuclear-weapon state coercing a non-nuclear-weapon state into hosting its nuclear weapons for ever would not go down very well, either.

**Professor Chalmers:** May I add something to what William said, with which I agree? The Irish Precedent is often brought into play here. As part of the condition for Irish independence, they agreed to treaty ports for the Royal Navy, and the Royal Navy stayed in Ireland until 1938. But the 1938 decision is also significant in this. When we came to 1938, when the Royal Navy was facing its biggest challenge, that was precisely the moment at which the Irish said, “No, we want to maintain neutrality in the coming war. These ships have to go.” The relevance of that for today is that I think there would be ways found, in this scenario, to manage this issue in the short term, because Scotland would not want to be seen to be pushing the much bigger power on which it would rely. But would the RUK want to continue to base its only nuclear deterrent in a foreign country on which it might not be able to rely in times of intensified threat? After all, the nuclear deterrent, if it is ever to be relevant, will be in times of existential crisis, not in the sort of period we are talking about now.

**Q123 Mr Ainsworth:** I want to bring one other aspect into these problems, which is the United States of America. They are the leading player in NATO and

the ultimate guarantor of our security in extreme circumstances. What would their attitude be if Scotland were to say, "Wait a minute. Another country's nuclear weapons staying in our country for decades? We are not having that." Surely considerable pressure would come to bear on the new Scotland in that scenario.

**Professor Walker:** It depends on who you mean by "they" when you refer to the United States. I am sure that the Pentagon and some aspects of the military community would be very unhappy with that situation. However, I am not sure how much the United States overall would mind, particularly when it is reshaping its defence policy and reducing its nuclear deterrent right down.

One aspect is that the United States itself is behind the UK in terms of Trident replacement. The nuclear community in the United States would be pretty unhappy with the UK delaying Trident replacement or going to another system because to some extent it is looking to the UK to keep certain capabilities alive in the United States and show the way in terms of replacing the old systems. Generally, I am sure that the United States would be looking to Scotland to be pretty flexible on this. At the same time, I think that, given its international standing and worries about the NPT, it will be looking to the UK to be flexible as well. It will be looking for flexibility all round. It basically comes back to what Malcolm and I have been saying. There will be a lot of pressure on both countries to come to agreements on these kinds of things; it will not be easy, but at least to come to some kind of agreement on it.

**Chair:** Our time is virtually up for this session. I have one more group of questions and a couple of supplementaries. I would be grateful if you could keep your answers brief.

**Q124 Rory Stewart:** Very briefly, just on some technical issues. The existing international commitments under the nuclear non-proliferation treaty appear to suggest that there may be problems with continual basing. Could you reflect very quickly on that?

**Professor Walker:** Under article I of the NPT, a nuclear weapons state is legally entitled to locate its capability on another state's territory, provided that the capability is kept under its control, so that is not a difficulty. There may be some other issues. It would be unprecedented for a nuclear weapons state to place all its capabilities in a non-nuclear weapons state under the NPT, but legally it is still conceivable.

**Q125 Rory Stewart:** Articles I and II of the treaty prohibit the transfer of nuclear weapons to non-nuclear weapons states. Is that a problem with re-supplying or maintaining those nuclear weapons?

**Professor Walker:** I don't think so, no.

**Q126 Rory Stewart:** Finally, this is a very vague question but when do you think Scotland might become nuclear-free post-independence, assuming an independent Scotland? What is your best guess?

**Professor Chalmers:** That is a very tempting question. My instinct is that it would most likely be some time in the 2030s, but possibly later.

**Professor Walker:** My view is that it would happen in conjunction with the UK giving up nuclear weapons, if it happens at all. The key decision is down here in London, not up in Edinburgh.

**Q127 Sir John Stanley:** Going back to the beginning of our SSBN programme with Polaris, Faslane was chosen for compelling reasons, which made it superior to any other location in the British Isles. There were reasons of profound importance about the land security environment and, perhaps more importantly, relating to the SSBN operational requirements. Looking around the whole of the coastline of England, could you tell us whether there is any other location that comes anywhere near matching the land security requirements and, most particularly, the SSBN operational requirements, which are currently met at Faslane?

**Professor Chalmers:** I think the simple answer to that, in relation to England and Wales, is probably not.

**Mr Ainsworth:** And Northern Ireland.

**Q128 Sir John Stanley:** I specifically couched my question in terms of England.

**Professor Chalmers:** In relation to England, the alternatives that have been talked about—they were talked about at the time and were highest up the short list—were Devonport and Falmouth. There are problems in relation to both. I think the strong preference of the Royal Navy in the scenario we are talking about would be to remain at Faslane and Coulport for as long as possible, or indefinitely, if that is achievable. If that were not possible, the question would be whether you could meet minimal requirements in relation to operations and site security at some combination of Devonport and Falmouth. I do not know the answer to that question. You might have to have significant population relocation, for example. There would be an issue about how seriously you treat any possible ASW threats from potentially hostile nations. You may think they are less serious now than in the past, but could you guarantee that in 20 years' time? There are a whole range of issues. The initial premise of your question is absolutely right. The current location, even putting aside issues of cost, would be preferable for the Royal Navy.

**Q129 Mike Gapes:** I have one quick question. Given that they are in Scotland, isn't the most sensible thing, if the rest of the UK wishes to keep nuclear weapons, that they are based in France?

**Sir Menzies Campbell:** In the Seine or something?

**Mike Gapes:** France has got nuclear weapons. We could share the base.

**Professor Chalmers:** One of the criticisms of the current UK-French nuclear arrangement is that it already introduces a degree of asymmetry into that relationship because the new facility is being built in France, and nothing comparable is being built in the UK. That would introduce a much higher degree of asymmetry into the UK-French nuclear relationship, which I am sure that many in France would welcome

---

4 December 2012 Professor Malcolm Chalmers and Professor William Walker

---

but I think the UK would find increasingly uncomfortable. *Sitting suspended for a Division in the House.*

**Chair:** Thank you very much, Professor Chalmers and Professor Walker.

### Examination of Witnesses

*Witnesses:* **Sir Richard Mottram**, Visiting Professor, Department of Government, London School of Economics and Political Science, and **Professor Sir David Omand**, Visiting Professor, Department of War Studies, King's College, London, gave evidence.

**Q130 Chair:** The next session is now slightly different than billed. We were going to have our two witnesses separately. The combination of Sir Richard Mottram arriving a few minutes early and the vote interrupting us means that we can have you both together. That is a double bonus for us. So our two guests are Sir Richard Mottram, Visiting Professor, Department of Government, London School of Economics and Political Science. But more to the point, he has had a distinguished career as a civil servant in the Government for many decades. Professor Sir David Omand, Visiting Professor, Department of War Studies, King's College, London, also has a lifetime of public service. Gentlemen, a warm welcome to you both.

I will start with a general question about security and cybercrime. As you know, or you may not be aware, the Government made an announcement about this on Monday. If an independent Scotland is going to be able to protect its own interests and tackle cybercrime, what is the minimum security and intelligence infrastructure that would be needed, and how would that compare to the level of support that they currently get up there?

**Sir Richard Mottram:** As a minimum they would need to create two sets of things: a policy capability at the centre of the Scottish Government, which would not be difficult to achieve; and then, more importantly, a capacity to understand the problem and to tackle it, which, in the context of the UK Government at the moment, involves a number of agencies, including—principally, obviously—GCHQ, of which David used to be the director. They would need a mini-GCHQ to both protect their information and consider other things that go with this. There is an issue for them, which we will keep coming back to. These things can be done because we can think of other countries that do this that are of a similar scale to Scotland in terms of population and economy. Obviously you are creating all the time small-scale things out of something that at the moment is much bigger and can reap economies of scale.

**Q131 Chair:** Sir David, you wanted to make an opening statement. You can wrap it into your answer.

**Professor Sir David Omand:** Let me just declare an interest as I am a Scot, born and schooled in Scotland, but with a lifetime of service in the United Kingdom.

**Sir Richard Mottram:** I am English, so we balance each other.

**Professor Sir David Omand:** I agree with what Richard has said. It depends what level of security in the cyber-domain a Scottish Government would feel

it appropriate to aspire to. The United Kingdom Government in its cyber-strategy has said that we will be a leading player. The highest standards of cyber-security will be necessary for economic reasons. I cannot imagine a Government in Edinburgh would want to take a different view. As Richard says, that means you then have to have access to technical capability linked to some serious intelligence capability. The smaller nations in NATO can access some of this through the NATO arrangements which the Americans are underpinning. There is some NATO research capability. To get to the sort of level that I would think appropriate, much more than that would be needed. It would be expensive and the overall value you would get from two centres rather than one would be less.

The statement yesterday by the Cabinet Office Minister emphasised the importance of GCHQ in providing that deep technical assessment. Whether an independent Scotland would benefit from that and from the American underpinning of it is a bigger question about the relationship in the whole intelligence sphere between an independent Scotland and the rest of the United Kingdom and, indeed, the United States.

**Q132 Chair:** Would it take a long time to set up the level of security and infrastructure that we think we need?

**Professor Sir David Omand:** The Scottish universities have excellent computer science departments. There are very advanced companies north of the border—SELEX Galileo is one—which no doubt could be harnessed. But it would take years to build up the capability. I have some doubts as to whether it would be feasible to do it to the requisite standard. A much more sensible way would be to try to construct a relationship of sharing with the rest of the United Kingdom.

**Sir Richard Mottram:** I absolutely agree with that but the Scottish Government as a minimum would need to have its own cryptographic capability and so on if it is going to keep its own secrets. One always has to be a little bit cautious about how long it takes to create successful new organisations. Organisations have a long history. They have a huge amount of tacit knowledge. They have a culture which they draw on. If you took GCHQ as an example, it reflects this huge history and all the networks it is engaged with. I don't mean technical networks; I mean people networks and so on. You cannot create that overnight. It might be that the Scottish Government could persuade some people with significant UK Government experience to

work for it. I don't know. I have not looked at the composition of the organisation and whether that is feasible. But one has to be cautious about how quickly you can create an organisation of this kind which is very complicated and has all these international links.

**Professor Sir David Omand:** It is part of our history that we helped both Australia and Canada develop significant capability over a period of very many years, lending them staff and in some cases providing even the director of their communications security and communications intelligence organisations until they were able to stand on their own feet, which they do now. That is an enterprise which the United States stood fully behind. Again, it comes back to what is the context within which this work is being done.

**Q133 Chair:** On that very point, are you able to say—if it is classified, obviously not—how long it took to reach that level of performance?

**Professor Sir David Omand:** I think you would be better off asking the authorities.

**Q134 Chair:** From what you are saying, you are suggesting that in the early days of independence, there will be a bit of a lacuna here. If the rest of the UK received information about an imminent threat or a cyber-attack, who are they going to pass that information to?

**Professor Sir David Omand:** May I make a general point before I answer the specific question? When you do a security assessment, it is important not just to concentrate on the most likely outcome, but to look at what might go wrong and then how you might operate and manage the risk, and then de-risk if possible some of the lower-probability but necessarily higher-impact scenarios.

The most likely thing would of course be that the rest of the United Kingdom and Scotland would have arrived at a sensible set of arrangements. The Strathclyde police today have a very effective special branch that is used to working very closely with MI5. Arrangements could no doubt be evolved. I do not think, however, that it is right and responsible to rely just on hope. You would need a degree of certainty that the capacity was there in an independent Scotland to manage serious risks of that kind, for example from terrorism.

I just need to remind you perhaps of Dr Bilal Abdullah, the doctor in Paisley, who, with his colleague, loaded up a Jeep Cherokee with propane gas and crashed it into Glasgow airport. The gang had previously failed to murder a large number of young people by putting two car bombs down the road in Haymarket. That investigation was conducted as a joint operation, with the full support of the police north of border, a national security service that was able to operate across as a national capability, supported by the national capabilities of the other British intelligence agencies and the data provided by partners and allies. You have to work that through as to how on earth that would work with an independent Scotland if they had not built themselves a security service, a capacity for co-ordinating intelligence and the right kind of intelligence-sharing arrangements. In my view, all of that would be necessary.

**Sir Richard Mottram:** Briefly, to emphasise David's last point, if they are going to exercise the prerogatives of being a separate country, then at the heart of being a separate country are the security considerations, so one would expect that they would create, in advance of becoming a separate country, some intelligence capability plus the assessment capability plus the capacity to persuade other countries that they could have confidence in giving them very sensitive information. If all that is in place, then you can do that. I actually dealt with the event that David talked about, and there was marvellous co-operation between people in London, the police and the political authorities in Scotland.

As long as you have mutual confidence, you can deal with these things, but if you do not have mutual confidence, those sorts of incidents would become very difficult. For instance, there was very close co-operation and flexibility between the Metropolitan police and the Strathclyde police. You would have to put all that in place, and people would have to be confident. If they were confident, then, within limits that we can discuss, information would be passed on.

**Chair:** That is very helpful; thank you.

**Q135 Mr Baron:** With regard to the previous witnesses, the Committee asked the question as to whether there would be gaps, when it came to the defence of a separate Scotland, between what the rest of the United Kingdom would be prepared to commit to by way of co-operation and what Scotland could afford. There was a feeling that there were gaps there that needed to be discussed, although we do not know the full policy that is evolving from the SNP itself. Air defence is one example of that. When it comes to security, notwithstanding the fact that there is a lot of sharing of information for the mutual benefit of the countries involved, do you envisage, or can you identify at this very early stage, whether there would be any gaps between what London would be prepared to share and what Scotland can afford to put in place by way of the infrastructure necessary for what we think we could reasonably expect a Scottish intelligence system to look like?

**Professor Sir David Omand:** This is of course all hypothetical, and dependent on a yes vote in a referendum.

**Mr Baron:** We are peering into the future, I know.

**Professor Sir David Omand:** There would, of course, initially be a large number of gaps. Part of the negotiation that I would imagine would take place would be London saying very firmly to Edinburgh, "Here's part of the deal: for our security as well as your own, you are going to have to make certain arrangements." That would cover the ability to detect and deal with serious crime and organised crime that is cross-border; it would obviously have to deal with terrorism; there would also be broader issues, such as biometric passports, and all of that. All of that would have to be nailed down before independence.

What I think would be very difficult would be to envisage an independent Scotland that had gone to the United Nations General Assembly and said, "We are now an independent state," without these sorts of things being nailed down. The only way your earlier

---

 4 December 2012 Sir Richard Mottram and Professor Sir David Omand
 

---

points can be satisfactorily answered would be if an agreed position—agreed between the United Kingdom and the putative Scottish Government—were presented to the European Union, to NATO, to the Commonwealth, to the International Telecommunication Union so that Scots can make international phone calls, and to many other international institutions. That position would have to be agreed. If it is not agreed, the risk of something going quite seriously wrong in those organisations increases very markedly.

So, yes, there will be those gaps. They will have to be identified. What cannot be allowed is that they persist after the point at which, say, a proposition is put to NATO. I think that the NATO integrated military structure and the Supreme Allied Commander, who has a responsibility for defending that airspace, will look at what the arrangements are and how it is going to work, and who is going to fly the planes that will ensure the integrity of the airspace for which he is responsible.

**Sir Richard Mottram:** Unfortunately, I did not hear the earlier evidence, but I would just make two brief points. One is that, in relation to defence capabilities, even at the present UK level, you can see really serious problems in the cost of military equipment and its operation: that road to absurdity that, in our previous life, David and I used to worry about, which is that you get smaller and smaller capability costing more and more and more, and very small numbers of units. If you put that in a Scottish context—this is perhaps what was being discussed earlier—it becomes very difficult to see how a Government with a GDP of that size could maintain a credible range of these capabilities, unless they are going to be of a very significantly different character. If they are of a significantly different character, where are they going to be sourced from and on what basis are they going to be obtained, and so on? That is one set of problems, which are really just matters of problems of scale.

When we come to things like intelligence co-operation, as long as a UK Government, or a rest of UK Government or whatever we call it, was satisfied, as I am sure it would be, that information could be passed securely, there would not be a problem in supplying terrorist-related information to the unified Scottish police force. That, of course, would be done through the channel of a newly created, mini Scottish security service of some kind that we can talk about.

What is more difficult, when one comes to thinking about gaps, is the fact that the present UK Government has very, very close relationships with a number of countries, including the United States, through which lots of information, on which the present UK Government operates a wide range of its policies, is passed to the UK Government because we are a privileged partner with those countries, because we in turn give them things of scale and value. That is essentially the deal. A Scottish Government, under any circumstance, will not be capable of doing that.

You will get into a very interesting question about the rules of the game, but not in relation to these very tight operational matters. If the UK Government discovers a terrorist threat in, hypothetically, Estonia or wherever, it passes on information, but we do not

share with Estonia loads of other information that we have in our possession on which we draw in reaching policy decisions. The challenge for Scotland will be that there will always be gaps, because it will be on a different scale from the present UK Government in relation to all of these security matters. There is no way round that in my view.

**Professor Sir David Omand:** But that brings us back to an earlier part of the evidence you heard this afternoon. Getting the right relationship between an independent Scotland, the rest of the UK and the rest of the UK's close allies in the intelligence field requires good will all round and assurances about the security of the information, how it might be used and so on.

The precedent of New Zealand has already been mentioned this afternoon. In 1985, New Zealand took a strong anti-nuclear stance. US warships were no longer able to visit New Zealand. The US cut off the putative US-Australia-New Zealand ANZUS arrangements for military co-operation. They cut off all intelligence relationships which, in turn, caused difficulties for us, in maintaining an intelligence relationship with New Zealand. The US held up the signing of a free trade agreement between the US and New Zealand. They played hardball. It was only resolved two years ago by Hillary Clinton. In that intervening period, New Zealanders were in the cold. That would be the worst possible start to an independent Scotland, and of course it could then prejudice the arrangements for entry into NATO. I point that out to reinforce my view that you cannot just assume good will and that everything will work. You have to have nailed things down in advance.

**Sir Richard Mottram:** These arrangements are not just based on good will. They are based on interests of various kinds.

**Q136 Sir Menzies Campbell:** I think that you have answered the questions I was going to ask, with the—if I may say so—encyclopaedic answers you have given. I shall tease a couple of things out, if I may. From what you say, the effective basis of the intelligence relationships is confidence, familiarity and reciprocity. If you can offer all of those things to a partner, that partner will be willing to be a true partner.

In relation to confidence, the control principle has been a matter of some considerable controversy in recent times. I think that most people know, but for those who do not, the control principle is that if we are given particular intelligence, we do not use it in a way that causes its source, or anything of that kind, to be identified. That came up in the Binyam Mohamed case. I am asking you to draw on your experience, but I would guess that that kind of confidence arises only after a long period of fair dealing and understanding. If there was any question of the control principle not being observed, that is bound to have an impact not only on the nature of the intelligence, but, more significantly in the long term, the quality of the relationship. Have I made a proper assessment?

**Sir Richard Mottram:** I have previously appeared before Select Committees and nodded my head in agreement with a questioner, and then somebody has

pointed out that nodding your head does not do. The answer is, yes, that is a proper assessment. Yes, the control principle, in particular, is very, very important for the US, so it will absolutely want to be satisfied and will place an expectation on the rest of the UK—UK-minus, a horrible phrase—that it will absolutely fulfil its obligations on US-derived information. The rest of the UK would indeed have to do that. The issue is whether the Scottish Government could put in place arrangements—some of this is about people, and there are already plenty of people in the Scottish Government in whom Americans and others would have absolute confidence when dealing with them—that enabled that to happen, but over time it would be tested.

**Professor Sir David Omand:** It goes beyond the control principle, which is necessary but not sufficient for deep intelligence co-operation. Without it, no country will trust you with their secrets, but what we have with our close intelligence allies is a long-standing relationship of working on a joint enterprise in which it is not just the end product that is shared—joint operations are mounted and joint technology is exploited. Would the United States be prepared to move from Five Eyes to Six Eyes? Probably.

**Q137 Sir Menzies Campbell:** But only after a passage of time.

**Professor Sir David Omand:** Only after a passage of time, and perhaps Washington would ask what role this new nation is playing in the NATO enterprise. As you heard from Professor Walker, the new nation might say that its foreign policy would make it difficult to join in certain NATO enterprises. All those things connect together.

**Sir Richard Mottram:** At that point, I think Six Eyes would not be on the table.

**Q138 Sir Menzies Campbell:** The geographical relationship of an independent Scotland with the rest of the United Kingdom is inseparable, not to put too fine a point on it. If you were a potential terrorist, it would not matter to you whether you carried out a terrorist act in Middlesbrough rather than Perth. Our fine legal justification for separation would not matter very much. It would be an identification of what was, in theory at least, once Great Britain. That being so, it argues for the notion that you really must have some kind of relationship between the rest of the United Kingdom and Scotland if each is to be properly protected.

One of the issues, as you know, that was raised during the Commonwealth games was the risk of displacement. London is crawling with security, so what do you do? You go off somewhere else where, to coin a phrase, there is a soft underbelly. If there is any suggestion that one part of the association—I am using a neutral word—is weaker than another, it is ripe for exploitation, is it not?

**Sir Richard Mottram:** It is, yes, but I have been assuming, subject to the point that David made earlier about how you have to think about things going wrong, as well as things going well, that an independent Scottish Government would have to put in place a domestic security service, probably

modelled on the one that we currently have in the UK. Then there would be issues about how they organise the rest of their intelligence capability and so on. They would build on police co-operation, but that is not a great issue because there is deep-seated co-operation between police forces in England and Wales, and in Scotland. It will change a bit with a unified police service, but I am sure that that can be made to work. That would be a requirement. The difficult issue arises over the border.

**Q139 Sir Menzies Campbell:** A permeable border. There are many ways of getting from Scotland to England, as Sir David knows, being a Scotsman. Some were used to drive rustled cattle 200 years ago.  
**Sir Richard Mottram:** In someone's constituency.

**Q140 Sir Menzies Campbell:** There really has to be some sort of system for monitoring, at the very least.

**Professor Sir David Omand:** The answer is that the only sensible thing would be for Scotland to have an opt-out of Schengen. We know that new members of the European Union are expected to take on the acquis. That includes the euro and Schengen, although as Sweden has shown in respect of the euro, you can say yes but not necessarily implement it very quickly. Again, this comes back to my point. It depends on the level of agreement that has been achieved between Scotland and the United Kingdom, so an agreed position can be presented to the EU. Without an opt-out from Schengen, you would have the nonsense of 20-mile tailbacks of trucks on the M74. You would have border posts and biometric checking along Hadrian's wall. It does not make any sense, so the two parts of the island really have to have a common border system.

**Sir Richard Mottram:** Just to add one point, we can think of another version of this, which is the relationship between the United States and Canada over counter-terrorism. Over the years, it has been a very sensitive subject in both Canada and the United States because of concerns that Canada would be the soft underbelly, to use a cliché, for people coming into the United States. Just as the United States cannot be indifferent to how Canada goes about its business, including its counter-terrorism and its intelligence capabilities, both of which are significant—this has caused a lot of trouble over the border in various ways because of this concern—a rest of the UK Government or a UK-minus Government would absolutely have to have confidence in the way in which Scotland was ensuring that it was not a soft way into England, Wales and Northern Ireland.

**Professor Sir David Omand:** The United States has a very strong interest in this. If Scotland wanted to continue a visa waiver system, the United States would insist that it be biometrically defined, and the watch lists at the Scottish ports would have to be equivalent to those at today's British ports. Otherwise, you would very quickly get into a feeling that Scottish security was not as high. If I might offer the Committee this observation, the security aim for the period after independence, were that to come about, should be to so arrange matters that security on both

---

4 December 2012 Sir Richard Mottram and Professor Sir David Omand

---

sides of the border is not diminished. It is not self-evident to me that that goal can be met, or that it can be met at reasonable cost.

**Sir Menzies Campbell:** Thank you.

**Chair:** That is particularly helpful, thank you.

**Q141 Mr Ainsworth:** Turning to critical national infrastructure, looking at things from the point of view of the risk of the United Kingdom, how bound together are we? How much would the rest of the UK have to worry about what was going on in Scotland in terms of that?

**Professor Sir David Omand:** I have never seen that modelled.

**Sir Richard Mottram:** I just thought, “gulp”. It is a very interesting question. What are the dependencies of the rest of the UK on Scottish-provided resources of various kinds? I am not sure that I know the answer to that question, but it is a very good question.

**Q142 Mr Ainsworth:** But we would have to ask it post an independence referendum.

**Sir Richard Mottram:** Yes. It is also true to say, as you know from your time in government, that we were a bit slow in thinking about this for the UK as whole, so that is also an issue. But yes, my understanding is that the Government are increasingly focused on these issues, and you would need to map those dependencies.

**Professor Sir David Omand:** The three areas that I would look at would be electricity, telecommunications and finance, in terms of the information systems that the banks use and how easy it would be to separate these out.

**Q143 Sir Menzies Campbell:** And oil pipelines.

**Sir Richard Mottram:** Yes. I do not know the answer to your question, but it is a very important point.

**Q144 Mr Ainsworth:** I think you were both in for the earlier conversation about Trident. It would seem that Trident would have to stay, if it is going to stay, for around a decade while an alternative is found—if an alternative can be found. Obviously, that would involve security considerations. How profound would they be for the rest of the United Kingdom?

**Professor Sir David Omand:** My hunch is that that is a deal breaker. I do not see a feasible alternative site at reasonable cost. The cost would presumably fall on the Scottish Government as part of the overall settlement, which in itself would have to be made clear to the Scottish people before the referendum—that a big bill would be attached to that particular part of the policy.

My fear, and it is a genuine fear, is that that would precipitate the UK out of the nuclear business. The reaction from our NATO allies, from the United States and from France would be hostile. Again, that creates exactly the wrong kind of environment for an independent Scotland to try to establish itself in the international community, NATO and the European Union. I may be taking too pessimistic a view, but that is my fear.

**Q145 Mr Ainsworth:** If we tried to get round that, despite the political problems with the Scottish Government—

**Professor Sir David Omand:** If I were in Edinburgh, I would start drawing up a 99-year lease.

**Q146 Mr Ainsworth:** What if we tried to get round the huge costs of the alternatives and everything else, with the Scottish Government, despite the political problems, saying, “Well, keep it here then”?

**Professor Sir David Omand:** It that was all that stood in the way of successful Scottish independence, perhaps we might see a lease being offered.

**Q147 Mr Ainsworth:** And the security considerations of the UK’s deterrent being in a foreign country.

**Sir Richard Mottram:** In the earlier discussion, you covered all the things about international law, the NPT and all of that, so we needn’t go back over that. The consideration that we ought to have in mind is that, if the Scottish Government wished to create a rather hostile environment in all sorts of ways, they could. This is why I think it is a very difficult problem to get one’s mind around: if you were the rest of the UK Government—the UK-minus Government—you would be concerned that over time, even though you had an agreement, they could make life difficult in the way in which the system was operated, for the personnel, and so on. It is difficult to judge how realistic that is, but I do not think the local Scottish population—

**Q148 Mr Ainsworth:** It is not sustainable, is it?

**Sir Richard Mottram:** It is very difficult to see how it is sustainable. The point I was going to make—I do not wish to cast aspersions on the local Scottish population, as I am sure they would not get engaged in this—is that there are all sorts of pressure groups of various kinds, and you could see the Scottish Government being in a position in which they say, “Well, we tried to live up to our obligations, but it is just very difficult,” et cetera. It is difficult to see how it is sustainable. Equally, I agree with David—I have no inside information of any kind on this—that it is not at all obvious that there is an alternative site for a deterrent of the current kind.

**Professor Sir David Omand:** You have to add in geology, as well as the deep water and all the considerations of safety zones, and so on, that went into the choice of Coulport for weapons storage.

**Q149 Rory Stewart:** Bringing us on to a conventional example, since 2008 there has been a plan to close all the defence munitions sites in England, with the exception of Kineton of Warwickshire, and instead spread our risk by having our alternative defence munitions sites in Scotland. We were talking about risks, and given the possibility of Scottish independence, what would be your professional advice on whether it remains sensible for the British Government to push ahead with a plan to close defence munitions sites in England and assume that they will be able to spread their risk by having one site in Warwickshire and other sites in Scotland?

**Sir Richard Mottram:** I was not aware of that, but if I were still in the British Government, I would go a bit slow on that plan.

**Q150 Rory Stewart:** We have not touched on human intelligence and the problems of creating a Scottish external intelligence service—a Scottish equivalent of SIS. On a budget, presumably approximately 8% of that currently available to the British Government, is it really feasible to assume that the Scottish Government would be able to set up the full infrastructure for human intelligence gathering, for the training of their officers, for the running of their agents, for the operations of overseas stations, and for cryptography, to reinforce this?

**Sir Richard Mottram:** No, obviously not. There is a second question then, which is could they do anything? And the answer to that is yes, they could, because we can think of sister intelligence agencies—like, for example, in New Zealand—which are now part of Five Eyes, as David said, and which have a fairly narrow range of functions. I certainly do not wish to be disobliging about them in any way. They operate on quite a limited budget, and probably less than an assumption of 10% or 8% of the roughly £2 billion that we currently spend in the UK.

So yes, you can have something. It obviously will not bear any relationship to the scale of the network that is currently operated by SIS and the range of information that it derives.

**Professor Sir David Omand:** The smaller NATO allies—Norway and Denmark, for example—mostly maintain an external service and security services. They organise them in slightly different ways. As Richard says, they would not say that they are global services in the way in which SIS is.

**Q151 Rory Stewart:** We tend to assume that, for reasons of self-interest, the British Government would invest heavily in developing the capacity of the Scottish Government for these functions. We have largely assumed that on the basis of the way in which we treated Australia and Canada. Is it not possible that that history is to do with the history of the cold war and our particular Commonwealth or imperial relationships with those countries? If Scotland were to leave the realm of the United Kingdom in a more unpleasant way—the implication politically to Britain is not that this is some great ally to whom we have imperial obligations in the context of the cold war, but instead a country setting itself up self-consciously with different attitudes towards the United States and towards nuclear weapons, and setting itself up, as it were, as a form of Norway—is it not possible that there might not be the political will to devote the resources, time and energy to developing a Scottish intelligence security service?

**Sir Richard Mottram:** Well, I think if it was setting itself up as a form of Norway, the answer is that we would co-operate, because the UK Government has a very deep relationship with Norway that goes back a long time, including in all areas of defence and intelligence co-operation. So if it is Norway, fine.

**Professor Sir David Omand:** Norway spends a large proportion of its national income on defence.

**Sir Richard Mottram:** Your question was more about if it is not really like Norway. So if it set itself up, as it would have every right to do, with a different international orientation, which potentially created very significant difficulty in relation to the United States, then, as David said, I cannot think why the UK Government would facilitate such a process and underpin it. I would think that the UK Government would have a very narrow definition of what they would want to do. Where they had a direct interest in things such as counter-terrorism, yes, they would do something, because that was in their interests. Otherwise, they would probably be quite awkward.

**Q152 Rory Stewart:** Is it possible that setting up an independent security intelligence service is more difficult and more costly today than it was in the past? Is it that, in a sense, Norway, Canada and Australia had the advantage of setting up their institutions at a time when the costs were slightly more limited? The costs of technology and the expectations mean that the start-up costs—not the running costs—might be much more considerable than they would have been 50 or 60 years ago, meaning that they could pose a real barrier.

**Professor Sir David Omand:** I agree with that observation. The overheads would, of course, be high relative to the expenditure, as it were, on the front line—higher than they would be today in the case of the overall United Kingdom. So efficiency, as it were, would go down.

**Sir Richard Mottram:** This is partly because although we have an idea in relation to human intelligence and the domestic security services that they are people-based organisations, they are actually now massively information systems-based organisations. In a way, the key skill is information handling, and they have converged rather with the GCHQs of this world. Of course, the cost of the underlying technology in relation to something like GCHQ—I used to negotiate its budget—is somewhat eye-watering. This is the problem. It is not easy to put together something that is credible on the basis of just having a few people.

**Q153 Rory Stewart:** To conclude, so even if it were possible for the Scottish Government to afford the annual running costs of a reduced version, the potential costs of setting up from scratch a Scottish equivalent of GCHQ, SIS or the Security Service—without any real certainty of how much support and investment they would get from the United Kingdom or the United States to help them—could run into billions of pounds and have serious implications for the first months of that organisation.

**Sir Richard Mottram:** I would be cautious about that, because they would not do that, would they? Essentially, they would establish a very basic system, with a very limited set of aims which, for the reasons of economies of scale that we have discussed, would not be very efficient, and they would muddle through. The Government in the rest of the UK would focus on the things that had to be absolutely right. The interesting question would then be: is the capability that they created capable of underpinning the vision of the Scottish Government about Scotland's place in the world? We have not talked about that, but there is



---

4 December 2012 Sir Richard Mottram and Professor Sir David Omand

---

a sort of paradox here. You could imagine a cheap and cheerful system that sustained a cheap and cheerful country, with very limited international ambition and very limited focus on the rest of the world, but that is not really Scotland's history.

**Professor Sir David Omand:** But, that is exactly my fear—that a Scottish Government might decide that they did not want to make these investments, so overall security, on both sides of the border, as it were, would then diminish.

**Q154 Sir John Stanley:** If you were both individually charged with advising the British Government on the security risks to the UK of Scotland becoming an independent state, what would be the top risks that you would highlight?

**Sir Richard Mottram:** If one thinks about the current national security strategy and the tier 1 risks, the one to which we would potentially be much more vulnerable is in relation to counter-terrorism. Then there is a set of issues that is really about the capacity of the rest of the UK entity to sustain its contribution in international conflicts.

The issue for Ministers would really be: “You now have quite an awkward choice, because you’ve lost potentially up to 8% or 10% of your population, GDP or whatever. What are you going to do? Are you going to downscale your other capabilities?” Logically, if one believed that they were optimised—I do not

necessarily do so, but leave that to one side—by downscaling them, you are increasing your vulnerability in relation to other risks in the national security strategy, including your capacity to contribute to dealing successfully with international conflict of various kinds.

**Professor Sir David Omand:** I agree with that. An independent Scotland would reduce the United Kingdom's population back to where it was in about 1971. The United Kingdom would still be perfectly capable of looking after itself. The problem comes if Scotland becomes a weak link. Both in counter-terrorism and, I would say, in cyber-security. If that is the easy way into the United Kingdom, you have a net loss of security on both sides of the border. That would be my fear.

May I make a final point, which is to draw attention to the distinction between nationhood and statehood? We have been discussing an independent state for Scotland, but you could have an independent nation within a federated United Kingdom and avoid all the problems that we have been discussing this afternoon.

**Chair:** If you want to elaborate on that point in a letter, Sir David, we would be very interested to have it. Thank you both very much indeed. I am only sorry that the Division bell has curtailed proceedings. I think that we have finished the session, however, so I will not ask you to come back. On behalf of the Committee, thank you very much.

---

**Tuesday 15 January 2013**

Members present:

Mike Gapes (Chair)

Mr Bob Ainsworth  
Mr John Baron  
Sir Menzies Campbell  
Mark Hendrick

Andrew Rosindell  
Mr Frank Roy  
Sir John Stanley  
Rory Stewart

In the absence of the Chair, Mike Gapes was called to the Chair.

---

**Examination of Witnesses**

*Witnesses:* **Dr Juliet Kaarbo**, Senior Lecturer in International Relations, University of Edinburgh, and **Catarina Tully**, Director, FromOverHere, gave evidence.

**Q155 Chair:** Good afternoon and welcome to the third of our public evidence sessions in our inquiry on the foreign policy implications of and for a separate Scotland. This afternoon we have three panels of witnesses, and I am pleased to welcome the first: Dr Juliet Kaarbo and Catarina Tully. May I ask you briefly to introduce yourselves for the record?

**Dr Kaarbo:** I am Juliet Kaarbo, a senior lecturer at the University of Edinburgh. My areas of specialty are foreign policy decision making and what explains the foreign policy of big and small states.

**Catarina Tully:** Good afternoon. My name is Cat Tully. I used to be strategy project director in the Foreign Office strategy unit, and now I am an independent consultant working on national strategy and foreign policy with various different countries around the world.

**Q156 Chair:** Thank you very much.

May I begin by asking you to assess how the Scottish Government—the SNP—are developing their foreign policy? Would you say that they have yet got a coherent foreign policy for an independent Scotland? How much detail do you think there will be on that before the referendum takes place next year?

**Catarina Tully:** I think it is relatively well developed for a small-state foreign policy. Something that is important to identify is that they have indicated that they are going to have a clear small-state foreign policy focusing on economic intentions and using soft power. They are quite clear about the allies they are going to focus on: the close partners they have got at the moment within the EU, south Asia, China, India and the US and Canada. Then they are going to focus, perhaps, slightly more on the BRICs, Australia and the Gulf states, they say for economic purposes, and then there is a set of alliances they will focus on around the Nordic region.

In terms of displaying the typical characteristics of a small-state foreign policy, that is quite clearly laid out. Potential challenges could be made against how realistic they are being around three areas. First, there is the EU membership issue, in particular regarding process, Schengen and the euro—the opt-outs. I think that you have gone through that a lot. From what I have discussed with colleagues on the continent, there is good cause to say that automaticity is not the case

and it will probably take a period of three to perhaps five years for membership to occur.

The second area where more exploration needs to be done is around the security nexus of Trident, intelligence co-operation, defence and border issues. The third big issue, of course, is around the transition costs, because what the SNP has laid out can be seen as a plausible steady-state foreign policy, but getting there is difficult. I say it is plausible because models that can be compared effectively with Scotland are Finland and Ireland. Both of them have more or less the same GDP and population. A comparison with Austria and Sweden is pushing it a bit because, although they have the same GDP per capita, they have twice the population and scale really matters in foreign policy budgets—there are a lot of economies of scale. Norway and Denmark are not comparators because of their much larger economies.

**Dr Kaarbo:** I guess I think that the SNP's foreign policy programme at this point is as coherent as I would expect it to be. It is not a state yet, so it has not had to make some of the hard choices that states have to make. It is also in a political campaign, and political actors often are not specific so that they do not lose votes on specific issues. If the Scottish public pushes the SNP and says, "We need to know more before we vote in the referendum," that will be when the SNP will be more likely to get more specific.

I am also not surprised by the vagueness, in some ways, of the programme, because lots of states' goals are vague. Almost all states want peace, prosperity and the pursuit of some kinds of principles. When that becomes coherent and specific is when they have to choose and commit resources in pursuit of those.

**Q157 Chair:** You referred, Ms Tully, to the small-state policy. What constraints does a small state face that a larger state does not when formulating a policy?

**Catarina Tully:** I divide constraints conceptually into three: external-environmental; to do with assets and resources; and to do with agency and sovereignty. I think that a small state has got its environment set for it a lot of the time. It has to be an environment taker, not an environment shaper. Its resources are very obviously much smaller than a large state, and its room for manoeuvre in terms of its choices—the third category—is shaped a lot more by its alliances. For example, when Scotland takes on the acquis—I am

---

15 January 2013 Dr Juliet Kaarbo and Catarina Tully

---

talking about the European foreign policy acquis—it will have a lot less room to manoeuvre against some of those lines than if it was a larger state. However, I guess that the SNP is saying that, certainly within that third category of agency and capability, independence gives it much more manoeuvre than what it has now.

**Dr Kaarbo:** I agree with all those constraints. Small states, by definition, have a resource disadvantage—they have fewer economic resources, military resources and information resources. There are internal constraints, as the public, Parliament and the bureaucracy provide constraints on small states just as much as big states. There are things that small states do fairly routinely—not all of them to success—to try to punch above their weight, so to speak. I will be happy to talk about that, if you want.

**Q158 Chair:** Perhaps we can come on to that.

Before I bring my colleagues in, can I ask you a further question? From the rhetorical statements and the official statements, it would appear that the intention is to have a very different type of foreign policy from that of the UK today. What will that entail in reality? Is this just rhetoric? In practice, given that Scotland intends to remain within the European Union, and will be involved in various international organisations, will the policy be very different in reality, or is this just a rhetorical position as part of the positioning now?

**Dr Kaarbo:** I think rhetoric is important, and I think as long as the SNP would be in control of an independent Scotland, especially in the early times, there would need to be a divergence, for political reasons, from the rest of the UK to justify independence—to justify why they went through this vote. That said, there are a lot of common interests that Scotland and the rest of the UK would share, so there would be some convergence of their foreign policies as well.

From what the SNP has said, I think they are going to remain in NATO, but of course they desire to be a non-nuclear state and possibly a nuclear-free zone—there is a case of divergence if that develops that way. There are implications that if Scotland had been free in 2003, it might not have joined in the coalition of the willing and supported the US in Iraq. That is hindsight—we don't know—but there might be a difference in terms of engagement and participating in certain interventions. I think it would be a liberal, open-trading state, embracing interdependence, and that would be very similar to UK foreign policy now.

**Catarina Tully:** I think that there would be two differences compared with the UK: one of style and the vision of itself; and a second in terms of particular policy areas. Scotland would be very different in that it would not be a global policeman—it would not be investing in global goods nor acting as a global keeper of the commons, which is what the UK does. It would have typical small-state diplomacy, which is very narrowly focused on national strategic interests.

Where those national strategic interests may be different on a foreign policy level from those of the UK will possibly be with nuclear, although that one really has to be thought through carefully because of the intel side of things, as well as with migration and

education, and potentially some bits on trade. Relationships with the energy markets are going to be entirely different, and then there is fisheries. Those are probably areas where this is going to be different from the UK, but I would say that it is going to face some limiting factors, not just because it is probably going to have to engage in working arrangements with the UK, which might constrain its choices, but also because of the foreign policy EU acquis.

Finally, if it is so heavily focused on economic diplomacy, which it says it is, its potential for pushing an ethical foreign policy is, potentially, going to be significantly compromised. Smaller states find it more difficult than big countries to balance trade against the ethical foreign policy side.

**Q159 Sir John Stanley:** Could you both highlight for us points in the SNP's current foreign policy that are in conflict with the European Union's common foreign and security policy, and the common positions taken up under the CFSP?

**Catarina Tully:** I am not sighted on this particular issue—nothing springs to mind. I would, again, question issues around the extent to which Scotland is prepared to pay its own way on defence and security issues. That would be the area I would focus on. Is it going to be a free rider, or is it actually going to be a fair contributor to military operations, NATO and so on? I don't know if there is anything else.

**Dr Kaarbo:** I don't have a specific answer on that either—it is beyond my expertise. I guess that the only way I would tackle it would be to say that the SNP talks a lot about following the Nordic model of foreign policy, and by that I think it means a pro-European, pro-common foreign policy—as much as it can—kind of model. I would question all the aspects of applying a Nordic model to Scotland, but if we take them at that word, I would think that there would not be much conflict.

**Q160 Mr Ainsworth:** I was quite struck by a phrase that Catarina used that I had not heard before: that small states have to be environment takers not shapers. Surely that would apply to all international institutions to a degree, and it would apply to Scotland and the rest of the United Kingdom to a degree. If we take the European Union as an example, we are both going to be diminished in terms of our ability to shape European policy, are we not? The rest of the United Kingdom would struggle to stay at the top table, even if it wanted to, and Scotland certainly would not be there at all.

**Catarina Tully:** Could you just clarify that point, Mr Ainsworth?

**Mr Ainsworth:** European policy is shaped overwhelmingly by the large states. Yes, the smaller states have their say, but this is led by Germany and France. Britain could play a far bigger role if she chose to. However, post-separation, the rest of the United Kingdom would struggle to stay in that same relationship, if she chose to, with France and Germany, and Scotland simply would have very little influence at all, would she not?

**Catarina Tully:** In terms of questions and debates about UK influence, or rump UK influence, in Europe,

---

 15 January 2013 Dr Juliet Kaarbo and Catarina Tully
 

---

the name of the game, and of the debate—listening to my colleagues internationally and in other EU member states—is not really independence but the UK's attitude to the EU. That trumps all concerns about the UK reducing in size by 8% of its population, 30% of its land mass, and between 8% and 10% of its GDP. Remember, depending on how you calculate how much Scotland gets, that would bring the UK down only to around the Italian level—it would be slightly lower in terms of population figures, and more or less the same size in terms of GDP.

**Q161 Mr Ainsworth:** And what about Scotland's ability to shape?

**Catarina Tully:** It would be able to work with partners to be a constructive operator in Europe, but it would be very much expected—this will be part of the whole admission process—to go with the trend of the *acquis*, whether in foreign or domestic policy areas.

**Q162 Mr Roy:** Can I take you back, Dr Kaarbo, to something you said earlier in relation to specifics about foreign policy in an independent Scotland? Is it not the case that before I and my constituents in Motherwell and Wishaw cast our votes in the referendum, we will be entitled to know the specifics of an independent Scotland's foreign policy?

**Dr Kaarbo:** I think you will be, which was why I said that the SNP will be more likely to respond to calls for specifics from voters and constituents—particularly their own constituents, or the middle-of-the-road undecideds on independence—than from the rest of the UK or someone else in the international community. I was trying to portray it as a natural political process to be vague at first, especially since it has not had to make the decisions. It should, in a democratic process, be responsive to those requests.

**Q163 Mr Roy:** Would an independent Scotland and her foreign policy be dependent on her larger neighbour—the rest of the UK?

**Dr Kaarbo:** Absolutely. There are things that sovereignty gives you. There are things that Scotland would be able to do as an independent country that it cannot do now: it could vote in international organisations if it belonged to them—I assume it would—and it could decide which treaties to support and which ones not to. There is a whole range of things it could do, but all those decisions would be made subject to the constraints that we were talking about earlier. One of the big constraints is a next-door neighbour that is bigger and with which you are interdependent economically. Scotland would certainly have to take care and judge how rest of UK-Scotland relationships would affect those choices.

**Q164 Mr Roy:** Are you saying that the choices would be limited depending on the posture of the rest of the UK?

**Dr Kaarbo:** Absolutely. It does not mean that those could be determined by the rest of the UK. Small states often try to change those constraints or work around them, or sometimes they ignore them at their own peril, but that would certainly influence those choices.

**Q165 Mr Roy:** On trade links between Scotland and the rest of the UK, would an independent Scotland's foreign policy ever be truly independent, given that trading?

**Dr Kaarbo:** I do not think any state's foreign policy is truly independent in an interdependent globalised world. Are small states more constrained than big states? Absolutely. But there are lots of small states within the EU that are highly interdependent—not only economically, but in terms of security and institutionally within the EU framework—and you would not deny that they have a foreign policy and that they make choices.

**Q166 Mr Roy:** And therefore an independent Scotland, in constructing a foreign policy, would need very much to bear in mind that relationship with the rest of the United Kingdom. It means that it is not a truly independent foreign policy, if you have to look at a big shadow beside you.

**Dr Kaarbo:** That is true but, again, I would say that no foreign policy is truly independent. All states have to consider their interdependent connections when they make decisions.

**Q167 Mr Roy:** Given that Scotland would, according to the Scottish Government, seek to have a very different type of foreign policy from that of the rest of the United Kingdom, would that pose any problems for the rest of the United Kingdom? In other words, would our foreign policy in Scotland pose a problem for the rest of my colleagues?

**Catarina Tully:** It depends on the response of the UK. In particular, independence will result in all sorts of questions being asked by our allies. Will the rest of the UK turn inwardly, rather than showing the global role and leadership that it has? In particular, how will defence, especially in relation to conventional and nuclear posture, be affected in the region? Those are the two major preoccupations of the United States in how independence may affect the UK. Thirdly, how will independence affect the dynamics of the EU?

**Q168 Mark Hendrick:** When it comes to representation in international organisations, how can a potentially small state such as Scotland make its voice heard and have any influence on allies in the EU or NATO, for example, to achieve its goals? If Scotland has goals, what would they be?

**Dr Kaarbo:** Let me put aside what those goals would be, because I think we touched on that earlier. I am happy to come back to that, but let me focus on how small states try to realise their goals. Again, they are more constrained, because they are at a resource disadvantage, but they can sometimes have disproportionate influence in international relations. There are several ways that they can do that. Being part of international organisations is key for small states because it gives them information networks, a place to co-ordinate collective action and a diplomatic space. That is key.

More and more small states are partnering non-governmental organisations to help them to gather information and intelligence, and to advocate policies. Small states, if they are lucky enough to establish an

---

15 January 2013 Dr Juliet Kaarbo and Catarina Tully

---

economic niche, can use that to their advantage. Even though they are a small economy, if they are high technology, that gives them more influence.

Small states also usually practise niche diplomacy, so they specialise and do not try to cover the range of global issues that large states do—they concentrate their fewer resources on specific areas. They can also do things that are innovative in terms of leadership and institutions. At one time, the Netherlands had a Foreign Ministry and a separate Ministry for Developmental Affairs, and someone asked the Prime Minister, “Why does a small state like the Netherlands essentially have two Foreign Ministries?” The Prime Minister answered, “Because we are so small and the world is so big; we have to do extra to cover all of it.” Soft power is one way that small states punch above their weight within or outside international organisations. The way small states use soft power is often different from the way large states use it. They try to capitalise on their weakness and their fewer resources. They will use the fact that they are not a threat or that they are seen as not having as many hidden agendas as big states. They often play the role of mediators to raise the profile of their state. Norway in the Arab-Israeli conflict, and Costa Rica in the Central American conflicts of the ’80s, did that. They go for big leadership positions in international organisations: Ghana and South Korea in the UN have been recent leadership positions. Because they are seen as more credible or legitimate, they can house international organisations. The Hague, Brussels or Geneva can house these international organisations because their states are not seen as big.

Then there are their moral appeals when they try to frame issues in terms of fundamental values. Big states do that, too, but they are often not believed when they do so. Small states have a little more effectiveness when they use moral appeals in their application of soft power.

**Q169 Mark Hendrick:** So are you saying that small states are more effective than larger states when it comes to international organisations.

**Dr Kaarbo:** No; they can be. They have tools, and some of the tools work for them better than for large states. Ask any small state and it will tell you that large states still tend to rule the day in international relations.

**Catarina Tully:** In terms of soft power and helping a country punch above its weight, this is really the case in economic diplomacy and foreign policy. When it comes to international organisations, there are certainly ways in which smaller states can play it. Playing the role of honest broker is one of them, although let us remember that this is becoming a crowded field. On balance, in perspective, they basically choose one or two issues on which they show this global leadership, and everywhere else they have to go with the consensus of the international organisation.

As you said, Juliet, Costa Rica is a great example with the arms trade treaty. Costa Rica, Finland and Ireland are the three comparators that we should be looking at for Scotland. On the whole, it does not make up for your loss of hard power. Apart from taking over the

presidency of some international organisations, which can also be a benefit, I would not overplay this one too much.

**Q170 Mark Hendrick:** Is not that reliance on soft power an acceptance that Scotland would have lost a lot of power by leaving the UK?

**Dr Kaarbo:** It would have lost—it depends on how you think of it—the objective material powers that it had as part of the UK. It would be a small resource-dependent, resource-small country. In terms of soft power, it depends on how it plays that—that is yet to be seen. As Cat mentioned, it is a crowded field out there, so it has to get in the queue to be leader of the UN. It would take a long time and it would have to build up that credibility, but a clever small state can sometimes get there.

**Q171 Mark Hendrick:** In terms of soft power projection, we think about the UK’s projection through the BBC, for example, or the British Council. Are we going to see a Scottish Council or a separate Scotland BBC? I know there is a region at the moment, but will it genuinely be a Scottish BBC?

**Dr Kaarbo:** I cannot answer the BBC question, but I think there would be a soft power element, because in some ways that is a cheaper way to project your soft power.

**Q172 Mark Hendrick:** But how would it differ from the remainder of the UK?

**Dr Kaarbo:** It depends on what it chooses to focus on. It might focus on moral, compassionate development assistance. Scotland’s role in promoting development assistance seems to be something that the SNP is saying. I don’t know what it would be.

**Q173 Mark Hendrick:** If you look at the British Council, it does a lot on English language teaching and teaches a lot about English culture. What is there to differentiate it internationally from what is on offer from the British Council?

**Catarina Tully:** From what I can understand, the four soft power arms that the SNP discusses, which are around culture, history, education and something else that I cannot remember—I don’t think it is sports—are very much driven by and focused on economic outcomes. I would expect the messages to be different. They would be very much about, “Come and invest in and visit Scotland. This is what Scotland’s about.” I asked a couple of brand experts a week ago what they would suggest Scotland could do in terms of a strategic soft power approach, and that was pretty much what it is doing at the moment: investing all its money in institutions such as SDI to get out, “This is what Scotland’s about. This is our history; this is our culture.” The other thing is choosing one or two global issues where you show that you are a good global citizen, and it seems to have done climate justice fairly successfully. My colleague said to me that climate change is also a crowded field, so perhaps it should have gone for something else, but it seems to have done quite well on that so far.

---

 15 January 2013 Dr Juliet Kaarbo and Catarina Tully
 

---

**Q174 Mark Hendrick:** Do you think that Scotland's independence would detract from the UK's soft powers?

**Dr Kaarbo:** No, I do not think so. I think that the soft power of the UK has a long historical base and record. It depends on how the UK plays it, I think. If the process of separation is co-operative, and if Scotland and the UK take care of that business and the world sees that they are doing that and moving on, I do not see a zero-sum game in terms of Scotland and the rest of the UK on soft power.

**Q175 Mr Roy:** May I take you back to comparisons on soft power? Costa Rica is one of the models, but is it not the case that Costa Rica does not have an army? By definition, if we use that as a model for an independent Scotland, we should get rid of the Scottish army so that we have a direct comparison with Costa Rica.

**Dr Kaarbo:** The lack of an army for Costa Rica is a classic example of turning a weakness into an advantage—it is seen as safer—but the decision to ban the army in Costa Rica was more about internal politics and preventing coups at the time. It has marketed it later internationally as soft power, but I do not see the comparison.

**Catarina Tully:** For the record, I did not suggest that Scotland should follow that model in the security and defence area. I meant more in the area of soft power. Apologies for not making that clear.

**Q176 Mr Baron:** I, for one, subscribe to the view that winning the story is going to be as important as winning the conflict. I believe that soft power is going to become increasingly important.

Looking at Scotland's influence as a hard power issue, it could be that it is very much forced into the soft power arrangement. Let's take the EU, for example. Traditionally, voting within the EU has probably favoured the smaller states, but changes in legislation in 2014 will mean that decisions will be passed once the countries voting can manage to collect two thirds of the population, which is going to shift things quite significantly towards larger states. Do you have a strong view on that? Has the SNP referred to that change in the voting structure within the EU in a couple of years' time? It will coincide with the referendum itself. Certainly the FCO thinks it is reasonably significant.

**Catarina Tully:** I would say that all matters to do with EU membership are significant: issues to do with the length of the negotiation and membership processes, and the timeline. I do believe—again hearing from colleagues from the EU—that the euro and Schengen opt-outs will not be possible. What will the timelines be to go into Schengen or adopt the euro? Those issues are probably even more existential and the SNP needs to address them more than issues around representation, although those are also extremely important.

**Q177 Mr Baron:** Can I come back to you on that? It is important that this is taken on board by the SNP and that there is a full and frank debate, because it is quite a significant change. Suddenly, to get a decision

passed, you need two thirds of the population as well as 55% of the member states. That is a significant change. For example, the Scotch Whisky Association has argued that "Effective and influential representation on the EU Trade Policy Committee and Market Access Advisory Committee, for example, is key to progressing market access problems confronting Scotch Whisky." Is it not going to become more difficult if it is outside the UK, assuming it gains membership of the EU, of course, when punching for its cause as a much smaller state?

**Dr Kaarbo:** I am not an expert in EU voting matters. The work that I do know on small states in the EU shows that influence is not necessarily in the exact vote; it is the chairing of the Committees and the leadership positions that small states can take. It is the negotiation and the networking. As the rules change, that might influence the ability of a small state such as Scotland to pursue its goals in the EU. However, some in Scotland may see that their goals are more met within that larger EU anyway, not within the UK. They would have a voice and representation there, rather than through the UK, and that is the choice.

**Q178 Mr Baron:** I might be wrong, but I am certainly picking up from the Scotch Whisky Association—no doubt it will write to me if I am wrong—that it is happy with the representation within the UK at the moment. It is almost saying that we are achieving our goals at the moment. The inference from its written submissions is that it is somewhat concerned that if Scotland goes its separate way, it might lose a powerful voice at the top table. Is that an unfair interpretation?

**Dr Kaarbo:** That is the association's interpretation, so it is fair, and I am sure that it has looked at the issues.

**Q179 Mr Baron:** But do you agree with it?

**Dr Kaarbo:** There may be winners and losers in Scotland. Some may be represented better in an independent Scotland, and some may lose out.

**Q180 Mr Baron:** Okay. If I may, I want to ask a quick final question. I am trying to draw you out, but I am not getting much. I would like your opinion on the evidence before us, and I am trying to put that evidence to you. Let me put it another way. Can you think of a small country within the EU that has a particular specialism, or that draws particular prosperity from an industry, and that punches above its weight in promoting that industry's interests to the benefit of that small country?

**Dr Kaarbo:** I do not know its conclusions, but I know there is a piece of research that looks at the vodka industry in Poland. That may be a comparison with whisky—

**Chair:** That is not a small country, though

**Mr Baron:** That is slightly different; I would not classify Poland as a small country.

**Dr Kaarbo:** It used that case to show—

**Q181 Mr Baron:** Do you see the point I am trying to make? I have tried to draw you out, but perhaps we should move on. I will leave it there.

---

 15 January 2013 Dr Juliet Kaarbo and Catarina Tully
 

---

**Catarina Tully:** May I come in on that? This is an interesting conversation, because it is not just about Scotland and the UK; it is about global trends in the wider world. Our concept of the single sovereign state is being deconstructed, power is going up and down, and identity is becoming more important for citizens with multiple identities, and they are becoming more frustrated with the ineffectiveness of nation states in addressing some of the problems facing them. This is a broad context, so when we are looking at what is happening here, it is not just about the UK and Scotland; it is also about what is happening in Spain and Germany. Perhaps we need to re-evaluate what being an independent state and having state craft in an interdependent 21st century is all about. Perhaps we need to ask what is the role of the nation state and, instead of keeping foreign policy at that national level, ask what it means to devolve that to other non-state actors at a community and regional level. We can look at examples such as Switzerland and other countries, the German Länder, and Quebec and its cultural diplomacy, to see how that can be done. In terms of addressing your issues of how smaller countries get representation at Brussels, the Länder—for example, Bavaria and Baden Wurttemberg in Germany—have quite large representations in Brussels, with 20, 30 or 40 people. It is interesting, and I see some solution sets there.

**Mr Baron:** Yes, I take your point about Bavaria and BMW and all the rest of it, but they are part of Germany. The German political machine bangs the table and we know that the Germans are listened to regarding the car industry, just as the French are regarding agriculture, and we hope that the Brits are regarding our industries, including the financial services sector. That does not take away the fact that small countries seem to struggle in pushing the industries that they are strong in within the bureaucracy of the EU, and the Scotch Whisky Association seems to confirm that. I was just interested in your views.

**Q182 Chair:** I know that this is not the main focus of this discussion, but we have inevitably got on to it. Ms Tully, you referred to Schengen in one of your answers, and I would like to explore your views—we have heard about this from other witnesses. The assumption from what both of you have said is that, after a certain period, Scotland within the EU would have to join Schengen and the euro, because they are the applicable aspects of the *acquis* now and the

previous opt-out arrangements that the UK and Denmark have, and the Irish Republic has with regard to Schengen, would not be applicable. Clearly, if Scotland joins Schengen, it has enormous implications in relation to the rest of the UK—people travelling to London via Glasgow, for example—and all kinds of implications for the Irish Republic as well. Is there any real consideration of what those implications are? Has anybody thought through what that means?

**Dr Kaarbo:** I do not have an answer on the last part. I think there would be considerable implications and they should be thought through. Scotland's position with Schengen would be in a bundle of different things that need to be negotiated. Although I have heard some of the same things coming from Europe about there being no opt-outs or special conditions for Scotland, it is all up to the local negotiation that would go forward. I don't think we know at this point if Scotland would be in Schengen. That would be part of a big bundle that will be negotiated between the rest of the UK, Scotland and the EU, if there is an independent Scotland.

**Q183 Chair:** Are you saying that it would be possible—I find it quite remarkable—that an independent Scotland would be in a common travel area with the Irish Republic and the rest of the United Kingdom, but not with the rest of the European Union?

**Dr Kaarbo:** I don't know the chances of one or the other. I can't help you on that.

**Q184 Chair:** That is interesting. Ms Tully, do you have anything to add?

**Catarina Tully:** Your previous witnesses, David Omand and Richard Mottram, given their experience, explored this issue far better than I ever can. From the signals that we are getting, I would say that unless the UK exports a domestic problem internationally, EU member states will neither veto nor stop Scotland, and nor will they give Scotland preferential treatment because of their own domestic issues. That is a very important issue. I cannot see how having a timeline—no matter how far that timeline may go into the future—for joining the euro or Schengen will not be an absolutely core part of membership.

**Chair:** Thank you to you both for coming. It has been a very valuable session. We will take a three-minute break before we hear from our next witness.

---

### Examination of Witness

*Witness: Rt Hon the Lord Jay of Ewelme*, former Permanent Under Secretary, Foreign and Commonwealth Office, gave evidence.

**Q185 Chair:** May I welcome Lord Jay? You have been before our Committee many times in the past. I can remember very well when I was the Chairman of the Committee and you were the permanent secretary. It is good to see you back before the Foreign Affairs Committee again.

*Lord Jay of Ewelme:* Thank you, Chair. I remember it well, too.

**Q186 Chair:** You heard the end of the previous session; I think we will go straight into this next session.

May I focus on the implications of Scottish separatism for the Foreign and Commonwealth Office? As you are well aware, we have had a series of quite difficult budget settlements for the FCO over recent years, both under the previous Government and under this Government. We know that in the previous Parliament, we were, in the words of the Select Committee, down to the bones—we did not have much flesh left. If there was Scottish independence and that led to cuts in the total budget available to the Foreign and Commonwealth Office, what kind of impact would you expect that to have? Where would it be most acutely felt?

*Lord Jay of Ewelme:* The first thing is to go back one step. I assume that between now and the referendum, and in the couple of years or so after a referendum—during the transition period to full independence—the burden on the Foreign Office will increase rather than decrease. There will be a lot of discussion in London, Edinburgh and Brussels, in NATO and in the EU and in other countries, about the implications of independence. I think that that would show an increase rather than a decrease. We are probably talking about 2016 onwards.

In the spending round in the middle of the next Parliament, I can see the Treasury saying, “The GDP has gone down by 8% and the number of people whom you represent overseas has gone down by 7%, so we should have a further 7% or 8% cut in the budget.” That, of course, would have to be set off against whatever else was going on in the world, so it would not just be that issue before the Treasury and the Foreign Office.

Further significant cuts in the FCO’s budget would make it difficult for the Foreign Office to continue to carry out the sorts of services that it carries out with the range of posts that it now has across the world. That seems to be the most difficult issue. How do you maintain with a smaller budget a spread of posts with the quality and the number of people that you need to do the job that needs to be done, with the security that you need to have in order to be able to do that? I think that that would be very difficult.

**Q187 Mr Baron:** May I pursue the line of questioning that I was using with our previous guests? It is what I call the Scottish whisky question. We talk about hard power in the EU. The Scottish whisky industry is obviously very important, with something like £4 billion-worth of exports—80% of Scotland’s

food and drinks exports. We are not talking about a small business here; it is terribly important to Scotland.

The Scotch Whisky Association seems to be satisfied with FCO support, but voting changes on the continent, in the EU, will give greater emphasis to the larger countries. From 2014, votes will be passed provided that you have countries representing 65% of the population; 55% of the member states but two-thirds of the population. I sense concern from the Scotch Whisky Association over that, but what is your take? Is this an issue that needs to be addressed openly and frankly as part of the debate as we head into a referendum?

*Lord Jay of Ewelme:* Any purely Scottish question, such as the future of the Scotch Whisky Association or issues that arise over Scotch whisky, is, at the moment, represented by the United Kingdom with its votes in the European Union. That is a more effective way of representing those interests of Scotland than would be the case if it were done by an independent Scotland with an inevitably much smaller proportion of votes. That seems to be the case.

If I were the owner of Bushmills, I would be quite keen on the prospect of Scottish independence, because it would mean that a large number of British embassies around the world would switch their tipples from Scotch whisky to Bushmills. Ever since I can remember, having been a commercial counsellor in the 1980s, the promotion of British goods in the widest sense has been a hugely important part of diplomatic life and of an embassy’s life, and that benefits all parts of the United Kingdom.

**Q188 Mr Baron:** Can I drill down a bit further? Where there is a very prosperous industry or business in a smaller state—perhaps disproportionate to its economy, but certainly disproportionately large compared with larger member states—can you think of any other example of a small state within the EU punching above its weight with regard to the particular industry that is very important to it? The best that our two previous guests could come up with was vodka and Poland, but Poland is not a small country.

*Lord Jay of Ewelme:* The Portuguese were pretty vociferous in their defence of port during the entry negotiations and since then. I do not know whether you would call that a smaller state—it is smaller than Poland—but I think that I would regard that as one. That is one that comes immediately to mind.

**Q189 Mr Baron:** What is your assessment of the Scotch Whisky Association’s perhaps inferred concern about Scotland going independent? Is it a valid concern as far as you are concerned?

*Lord Jay of Ewelme:* What I cannot say, obviously, is how an independent Scotland would promote and defend the Scotch whisky industry—I imagine that it would be a hugely important part of its job—but I think that the Scotch Whisky Association gets a real impetus behind what British diplomacy in Brussels



---

15 January 2013 Rt Hon the Lord Jay of Ewelme

---

and around the world does on its behalf. If I were it, I would be a bit worried about losing all of that, to be honest.

**Q190 Sir Menzies Campbell:** To go rather more domestically, what sort of diplomatic presence, if any, would the Government of the rest of the United Kingdom feel necessary to have in Edinburgh if Scotland were to be independent?

**Lord Jay of Ewelme:** I imagine that there would need to be British representation in Edinburgh. Again, in the transitional period, I imagine that there would be some sort of British representative office. I would have thought that after independence there would be a high commission there—assuming that Scotland joins the Commonwealth—that would be able to deal day to day with the sort of things that need to be dealt with day to day and can be dealt with more easily than over the telephone.

I would not have thought that you needed the sort of full-blown embassy that you need elsewhere, because communications by telephone and in other ways are so strong, but I imagine that there would be a British high commission in Edinburgh and a Scottish high commission in London.

**Q191 Sir Menzies Campbell:** Would there be consular services in Edinburgh for those who wanted to go to London if, for example, Scotland was part of Schengen and they required additional authority, as it were, to cross the border?

**Lord Jay of Ewelme:** I personally find it very difficult to see circumstances in which the EU would so operate that a Schengen border was erected between Scotland and England. I just think that that seems so complicated and difficult that some sort of arrangement would be found to prevent that from happening, but I do not know exactly what that would be.

**Q192 Sir Menzies Campbell:** Maybe I can put it this way, Lord Jay—it is a matter of some doubt as to precisely what that arrangement might be.

**Lord Jay of Ewelme:** Yes, it is. I do not know whether there would need to be a British consular presence in parts of Scotland. The presumption would be that if a British citizen got into trouble in the northern islands, he would need to go to—it seems slightly far fetched somehow.

**Q193 Sir Menzies Campbell:** He would go to the RUK high commission and ask for assistance. Maybe that is one of the most powerful arguments against separation that we have heard.

What about the number of posts, for example, that an independent Scotland would, first, need, and then, want to have? One can see, for example, that in countries with a substantial Scottish diaspora—such as the United States, Canada and perhaps Hong Kong—Scotland would want to have representation at a particular level. If we go to Austria, or, off the top of my head, Costa Rica, which we have been discussing, obviously different considerations would apply.

**Lord Jay of Ewelme:** Yes, they would. As I understand it, Scotland now has 20 or so SDI offices

and some of those could be upgraded, although they are not all in places where you might want to do things other than promote trade.

One immediate question would be whether Scotland would feel that it needed to have an office in every EU country. I would think probably not, at least not to start with, although it would clearly need to have them in the major ones. It would need to have offices in the United States, where there is a diaspora and where there are Scottish interests. It already has, of course, an office in Brussels; there is a Scottish office in the old UKRep building.

Scotland has not got any representation to NATO. It would need to have representation to NATO; it would need to have representation in Geneva; it would need to have representation to the UN organisations in Vienna; and it would need to have representation in New York for the United Nations. You are quite soon building up a reasonably sized diplomatic service just to do what would need to be done if Scotland is a member of the Commonwealth, the United Nations and the European Union.

There are other ways in which Scotland could be represented. It could make use of the European External Action Service as that gets going. It could join up with others, as Britain and Germany do in Iceland, so you could have Scotland plus one or two other member states together. I would have thought that Scotland would want to think about “How should we be represented in the places we need to be represented?” rather than thinking “We need to replicate embassies all around the world.” Even so, it is going to amount to a reasonable network of Scottish posts overseas, which are going to be expensive and are going to raise other sorts of issues such as security issues.

**Q194 Sir Menzies Campbell:** And quality of staffing and experience of staff.

**Lord Jay of Ewelme:** Yes. If you were starting from scratch, you would need staff who were trained and you would need staff who were linguists. You have got at the moment, of course, quite a lot of staff who are good at the commercial work, and you would need to expand that a bit.

I am assuming that it would be open to Scottish members of the diplomatic service to join a Scottish diplomatic service, and I assume that some probably would and some probably would not. So you would probably get some expertise coming from the diplomatic service to help set up a Scottish diplomatic service, but I would not have thought that would be enough for the purposes that would be required.

**Q195 Sir Menzies Campbell:** Could you see any circumstances in which there would be a kind of barter about some embassies or some high commissions? Or would your view be that RUK—the rest of the United Kingdom—would simply say, “We want to hold on to all the posts that we have”?

**Lord Jay of Ewelme:** I start from the position that Scotland voluntarily leaves the United Kingdom and the rest of the United Kingdom becomes the successor state, so the embassies will remain the property of the rest of the United Kingdom.

15 January 2013 Rt Hon the Lord Jay of Ewelme

I cannot actually see an easy negotiation in which the United Kingdom says, “We will let you have this number of embassies in this number of countries.” What I think is possible is that there might be a negotiation over Scotland continuing to sit in some embassies where there is space. There would be a negotiation over, “How much would that cost? How much would Scotland pay?” There would no doubt be some difficult discussions about whose flag was flown where and when, and so on, but I can see that happening. Then it is a question for Scotland as to whether it wants to be part of a United Kingdom mission or not.

**Q196 Sir Menzies Campbell:** Let me ask you this question. You mentioned security, and we know that there is a particularly intimate relationship in relation to intelligence among what is called “the five eyes”—the United Kingdom, the United States, Australia, Canada and New Zealand. That is a relationship that, essentially, involves the three national agencies in this country. Is that a relationship, do you think, that could easily be transferred, or even diverted in part, to an independent Scotland?

**Lord Jay of Ewelme:** I do not think that it would happen automatically. Each of the other countries is offering something to be part of an intelligence-sharing operation, as I understand it. The question would be, therefore, will Scotland then have its own intelligence operation and be sharing intelligence, or would it in effect be asking the rest of the United Kingdom whether it could continue to have the same sort of privileged access as we have had in the past? I would have thought that the answer to that will probably be no. Some special arrangements would need to be reached—I do not think that it would be automatic.

**Q197 Mr Roy:** I have just two points. First, I am definitely with you in relation to the expectations of the Scottish people on having an embassy or whatever in a European Union country. My constituents, in an independent Scotland, would expect embassy facilities in all those countries. I am absolutely certain that they would expect a consulate service in places where hundreds of thousands of them go on holiday.

**Sir Menzies Campbell:** Like Benidorm.

**Mr Roy:** Like the Benidorms, the Majorcas or the Cypruses—whether we like it or not, they are extremely busy with holidaymakers and their problems, so I can tell you that my constituents would absolutely not settle for not having the representation that they have now.

Secondly, you mentioned Schengen and border posts earlier, and I am in absolutely no doubt that, if Scotland were in Schengen, the rest of the United Kingdom would rightly ask for some sort of border restrictions, because I do not think for one second that the people of England and Wales would want a free movement of people coming from Europe to Scotland and then through without any border posts. If there were border posts, my question to you would be, as there would need to be border posts because Scotland was in Schengen, whose responsibility would it be to erect and pay for those border posts?

**Lord Jay of Ewelme:** I have not thought of that question before. I do not know the answer to that, but it might well be the rest of the United Kingdom that would have to put them up. I would have thought that there would be an obligation on both sides to make certain that there was a border that was not as porous as it otherwise might have been.

On the first question, of course Benidorm and so on—I was not thinking about the larger countries—but whether Scotland, immediately upon independence, would want to have separate embassies in the Baltic states and so on seems to me to be less important than having them where there are real and immediate Scottish consular or other interests, such as in Spain, France or countries where there are large numbers of Scottish tourists.

**Q198 Chair:** May I take you back to the answer you gave to Menzies Campbell about UK embassies? What you are saying is that this is not like the break-up of Yugoslavia, whereby, for example, Bosnia and Herzegovina got the embassy in London, which is far too large for them, because that was the former Yugoslav embassy, while all the other states, such as Slovenia and the rest, then had to find other premises. Occasionally, they do joint events at Christmas—I have been at one—and they come together in the former Yugoslav embassy, doing things together. We would not be in a position, say, given your Paris experience, that Scotland would put in a bid to get Paris, Stockholm or maybe Washington, and we then basically do a deal with them that 8% of the embassies around the world are apportioned out, so then the rest of the UK has to find an alternative embassy—perhaps even in Paris, but who knows?

**Lord Jay of Ewelme:** I would not see it happening quite like that. I do not think that this kind of secession is the same as, say, Czechoslovakia breaking up voluntarily into two parts, or Yugoslavia breaking up. What I would not rule out would be the rest of the United Kingdom, perhaps under pressure from Parliament, deciding that it needed to give up one or two embassies somewhere and therefore having a building which is free which the Scots could take over.

What I don’t see is a discussion in which we say 8% of our embassies will be available for Scotland and then have a discussion about which those would be. But I do think there is a genuine question about whether there are some embassies, or possibly some consulates, where it would be sensible for both sides to have an agreement to allow Scotland to take part in that.

**Q199 Rory Stewart:** Lord Jay, as you are aware, the current core budget of the Foreign Office, excluding the World Service and the British Council is about £1 billion. So Scotland would presumably at the moment be spending about £80 million a year on its Foreign Office. But the Scottish Government and the SNP’s “Scotland Forward” document say: “Scotland’s taxpayers contribute more money to fund UK embassies than many smaller independent nations fund their embassies with.” So the implication is clear

---

15 January 2013 Rt Hon the Lord Jay of Ewelme

---

that the Scottish Government intend to spend less than £80 million a year on its diplomatic network.

Two questions come out of that. First, is that enough to fund the running costs of the serious diplomatic network, bearing in mind that Scotland and the SNP have already committed to having very strong relationships with Nordic and Baltic countries? In a sense, one of your points, which is a reasonable point from a pure size point of view, is that they would be unlikely to keep those representations going. In fact, a lot of our foreign policy seems to be directed precisely towards those foreign countries.

The second point, perhaps more fundamental, is about the start-up costs. It is all very well having in place £70 million a year to run your embassies once you have them, but what are the start-up costs of securing the buildings in the first place, setting up in the modern world a complete communications and IT system, given that we appear to be able to spend on the NHS alone £7 billion just to set up an IT system? How do you do confidential communications? All that becomes very relevant if they want to have any participation whatever in any intelligence and security co-operation with the United States.

**Lord Jay of Ewelme:** First of all, I can understand the Scots' argument that they are paying a higher proportion than they would ideally like to pay because they are paying for a proportion of very high security costs, for example, which would probably be less necessary if Scotland was independent. So I can understand that part of the argument. But I don't think you can then transfer that part of the argument to saying that that means that for £80 million we can have the sort of diplomatic service that we would like to have. Start-up costs would be very considerable.

Take Paris, Berlin or the sort of place where Scotland would clearly need to be represented, finding the sort of premises that it would need would be extremely expensive. Training people to work in those places would be extremely expensive. Setting up the necessary communications systems would be extremely expensive. I have not costed any of that, but the figure of £80 million seems an extremely small figure for the sort of expenses that you would need to set up a diplomatic service in the kind of countries where I imagine Scotland would want to.

It really would be necessary for an independent Scottish Government to think very imaginatively about how you get yourself represented these days when you are starting from scratch. Do you need to think in terms of very expensive buildings around the place? Are there other ways of doing that? Can you do more directly from Edinburgh than we would do with our histories and our traditions? I think they would have to do that because otherwise the costs would become very expensive indeed.

**Q200 Rory Stewart:** Just to clarify, you seem to be saying that the message to a Scottish taxpayer is that if you expect to be able to set up a serious diplomatic network from scratch on a traditional model you will find yourself paying much more than you currently pay a year. Those start-up costs will be considerably more than the current projected annual running costs of £80 million getting off the ground. If Scotland

voted for independence, they would have to anticipate that if they were going to set it up on a traditional model, they would face very significant costs in the first few years for funding and setting up the network. Secondly, if they do not want to do that, they would have to fall back on something which would fall very far short of the traditional diplomatic footprint or presence that Scotland has been used to in the past. They would have to imagine something very different.

**Lord Jay of Ewelme:** Yes, I think they would. I would not disagree with any of that. I do not think it is impossible to come up with a different model for representing yourself overseas than the one that has developed over the last couple of hundred years; in some ways, it would be rather an exciting exercise to be involved in. But I think if the aim is in any way to replicate what is now regarded as a traditional diplomatic presence overseas, it is going to cost a great deal more than that.

**Q201 Rory Stewart:** In its document, the SNP said: "Too much of UK overseas representation is based on status and power and that's not what Scotland needs." Can you give us a sense—credibly, if you will—of what a Scottish version of that means: having a diplomatic presence that is not interested in status and power?

**Lord Jay of Ewelme:** Well, you don't want status and power for its own sake. You want status and power because that enables you to exert the influence you need to exert to bring about the policies you want to have executed. They do not stand on their own. You can call it what you like, but what you want is to have the impact in a country which enables you to go and talk to the people who really count and say, "This is what we need," and get a receptive response. You do not necessarily need to have a traditional embassy structure to do that, but it very often helps.

**Q202 Rory Stewart:** Finally, would a smaller Scottish embassies network—similar to that in Norway, Finland or Denmark, for example—be able to achieve more for Scotland than the current system, in which Scotland has its own representatives but with FCO back-up?

**Lord Jay of Ewelme:** It partly depends on what it is that Scotland wants to achieve. If Scotland has certain aspects of foreign policy, say, or commercial, economic, European or defence policy, which are different from that of the United Kingdom, then clearly it will be able to achieve those objectives better than as part of the United Kingdom. It rather depends on what its policies are.

**Q203 Rory Stewart:** Taking that as read, to clarify that question, we currently have a situation where Scotland has some overseas offices, but it is also able to participate in being a permanent member of the Security Council. It has serious weight at NATO through its membership of the United Kingdom. In other words, it is able to benefit from this broader £1 billion-a-year infrastructure based on 400 years' worth of British embassies' policy. What do you see as the gains and losses of departing from that overall infrastructure?

15 January 2013 Rt Hon the Lord Jay of Ewelme

**Lord Jay of Ewelme:** Before Mr Baron went, we talked a little bit about commercial diplomacy. I think that as presently constituted, the British diplomatic presence is extremely effective for promoting Scottish products, as it is for Welsh or Northern Irish or those from the regions from England. That has always been part of any ambassador's job.

If the policies of the Scottish Government are different from those of the British Government, it would have to have its own means of promoting those policies, it seems to me. In those circumstances, it would need its own diplomatic network, or its own ability to influence other Governments, NATO, the United Nations, the European Union and the countries that matter to it. If that is the position that Scotland finds itself in, it will have to have a separate diplomatic presence somehow.

**Q204 Chair:** A final question on that section, and then I will bring in my colleagues. Some people would argue that a smaller country could be diplomatically more effective and nimble than a larger country. What is your view on that?

**Lord Jay of Ewelme:** It depends on the people you have got doing the job. You can get some very effective representatives of a small country who know everybody, speak the language well, have been there quite a long time and are well plugged into their own countries as well, and they can have a big impact.

You can also have some large countries that are lumbering presences that do not have the sort of impact their presence should bring. I am sure that I, Anthony Layden and James Craig will be able to give you examples of both. So yes, you certainly could, and there is no reason at all why you should not have an independent Scotland with a small diplomatic service that operated very effectively.

**Q205 Mr Ainsworth:** Let us think ahead and say that Scotland has gone its own way. It has managed to get over all these problems that you have been kicking around with Rory and has set up its diplomatic service and all the organisations that it wishes to in the world. The rest of the UK has managed to get continuity of statehood, and has sought to carry on. Yes, of course, our desires and policies change over time, but there has been continuity.

**Lord Jay of Ewelme:** Continuity of policy?

**Mr Ainsworth:** Yes. How would you see things in a few years' time, in terms of the standing of the rest of the United Kingdom and its ability to shape and influence organisations such as the UN and NATO? How will that have been impacted on? After all these transitional issues have been dealt with, will our standing have been diminished? Will our influence and ability to protect our interests in organisations such as the United Nations have been impacted on? Even with good diplomats, what possible standing and influence will the new independent Scotland have?

**Lord Jay of Ewelme:** On the first point regarding the rest of the United Kingdom, I do not think there need necessarily be a falling off in the influence that we would be able to exert. Assuming that we maintained our position in the UN Security Council—I think we would—and that we maintained a strong foreign

policy and armed forces that enabled us to work with others, as with the French in Libya and now in Mali, I think that that is how we would be judged. What are we doing with others to project our power and influence abroad, I do not think need necessarily change; I would have thought that it could well be much the same.

It would not be completely the same, because, for example, in the European Union there would be a shift in the voting weights and a shift in the number of Members of the European Parliament. On some of those sorts of indicators, we would come down in comparison with our major partners.

I do not know whether in the IMF and World Bank our quotas would be changed so that we would have less impact on economic diplomacy than is the case now—I would need to look into that. There would be an effect in some aspects, particularly of international diplomacy, but our ability to project our influence abroad would depend as much on the extent to which we were prepared to put our effort and money behind effective military activity and effective foreign policy as it would on having lost Scotland.

That is what I would say to the first part of the question. Honestly, I find the second part of the question difficult to answer, because it depends on what an independent Scotland is trying to achieve. I cannot believe that you would have an independent Scotland following a foreign policy identical to that of the United Kingdom. How effective would it be in executing its own foreign policy? It could do so very effectively as a small state, as small states do and as small states can, but it would not be the same as though Scottish interests were being promoted by the United Kingdom as part of the United Kingdom's foreign policy.

**Q206 Mr Ainsworth:** I have one follow-up to that. You have kind of indicated, as have others done in some evidence that we have received, that the rest of the United Kingdom would not be dramatically impacted on, but you have suggested some things that we would have to do in order to maintain that influence—the armed forces and the like.

However, our ability to continue to hold a UN Security Council position in the long term would be impacted, particularly if we did not have the nuclear deterrent. Scotland is saying, "Get rid of it." Get rid of it to where? That could have a dramatic impact on our standing and the influence of the rest of the United Kingdom.

**Lord Jay of Ewelme:** If we were to cease to be a nuclear power, that would have an impact on our ability to maintain our seat in the UN Security Council whenever, if ever, those negotiations become real. I have no doubt that some people or some member states would try to use an independent Scotland to argue in this way or that that we are smaller and less impressive than we were and therefore use that against us. However, if we remain a nuclear power, I would not have thought that there would be arguments to be used against Britain maintaining its independent seat. To be honest, if there is a really serious renegotiation of the structure of the UN Security Council, this is not going to be the only thing that is taken into account.

---

15 January 2013 Rt Hon the Lord Jay of Ewelme

---

Will Britain and France, even with both as nuclear powers, remain? Who is going to be added in? What is the UN Security Council going to look like? There will be issues other than an independent Scotland that would influence that debate.

**Q207 Sir John Stanley:** As we know, entry into the EU is by unanimity and a number of EU member states have an aversion to granting recognition to what they regard as separatist states. Spain is one example. Could you give us your assessment as to the degree of risk that Scotland seeking EU membership might find that she is unable to achieve unanimity of support for her membership of the EU?

**Lord Jay of Ewelme:** My guess would be that, after negotiations that are slightly more difficult than Scotland now thinks, it would become a member of the European Union. However, it would be in the interests of other countries that fear the same thing happening to part of their country, such as Spain with Catalonia, to make life pretty difficult for Scotland in order to make it clear to their own citizens that it is not an absolute shoo-in if they were to become independent.

**Q208 Sir John Stanley:** In what specific ways do you think that Spain might, in your words, make life more difficult for Scotland as far as her EU membership application is concerned?

**Lord Jay of Ewelme:** There would be different aspects of the accession negotiations over budgetary or fisheries matters, for example, over which member states, if they wanted to, could cause difficulties or at least spin things out. I think Scotland would join the European Union and others would agree to it, but there would have to be some sort of concessions and I think there would be a more difficult—it would not be automatic—negotiation than perhaps some are suggesting at the moment. That would be my guess.

**Q209 Sir John Stanley:** NATO moves by consensus, which is a type of unanimity. Do you consider that

the SNP's posture on nuclear weapons may make it impossible for an independent Scotland to achieve NATO membership if she so wished to do?

**Lord Jay of Ewelme:** I do not think that it would make it impossible, but, again, I think that there would be some very tough negotiations. A lot would depend on what happens about Scotland's nuclear posture and what happens in negotiations with Britain over the nuclear submarines at Faslane and so on. I would have thought that it probably would be able to join, but those negotiations could be quite tricky. Whether or not these negotiations can be concluded between the date of a referendum and the end of a transition period, I am not sure. And whether that would then call into question the date of full independence, I do not know. There could be some quite difficult issues there.

**Q210 Sir John Stanley:** With your very long experience in defence and security matters, would you like to comment on what you think the implications might be if Scotland gains independence and, therefore, creates a substantial area of non-NATO airspace, maritime space and, indeed, land space outside of the NATO area until such time as she eventually becomes a NATO member if that is achieved?

**Lord Jay of Ewelme:** I haven't got an immediate answer to that question. If there is a vacuum there, it would have to be filled, and that would be part of the negotiations. I imagine that there will be tripartite negotiations. In the case of the EU, England has got the rest of the UK, Scotland and the EU; in the case of NATO, probably the US, Scotland and the EU. I think that these are going to be quite difficult negotiations.

**Chair:** Lord Jay, thank you very much for coming along and for giving your answers. We are very grateful to you.

---

### Examination of Witnesses

*Witnesses:* **Sir James Craig GCMG** and **Anthony Layden CMG**, former ambassadors, gave evidence.

**Q211 Chair:** We now start our third session of the afternoon and the witnesses are Sir James Craig and Anthony Layden. Both are former ambassadors. You listened to Lord Jay, so you will have a flavour of where we were then. You both have extensive expertise, including of the Middle East. Therefore, we may touch on that expertise in the questions.

May I begin by asking about the impact of the separatism of Scotland and the break-up of the UK on the international standing of the rest of the UK? Given that one of the conventional views is that the stability of the UK and its long history—at least for several centuries—of not having civil wars and revolutions is part of the image of our country, would the departure of Scotland significantly change that international reputation?

**Sir James Craig:** No, I don't think it would. There would be a slight feeling of—someone else used the word in earlier evidence—*schadenfreude*: “At last Britain is having some difficulty, which we have all had in the past.” But on the whole, the Arab countries regard London and England as the place that they have to deal with. Given my own Scottish background, it wasn't something I liked, but they always talked about the “Ingliss”—the English. And I wanted to say, “Don't forget the Scottish,” but there was no point.

They never raised the question of Scottish independence—Scottish secession—with me, so I don't think that they would take much notice of anything that was going on, unless there were to be some big row over one point or another. And I can't really believe that there is going to be any big row.

---

15 January 2013 Sir James Craig GCMG and Anthony Layden CMG

---

**Anthony Layden:** Like Sir James, I used to get pretty annoyed when everyone called us “the English embassy” in the Arab world. It was not only there, but in Rome, where I served for nearly five years in the ’70s. Every Italian called us the “ambasciata inglese”, however often we tried to correct them. One just had to get used to it.

When I was appointed as ambassador to Morocco, I presented my credentials in February 1999 to the late King Hassan and the invitation to court said that I could wear court dress or national dress. So, of course, I got dressed up in my kilt and plaid, and everything. As it happened, the two members of staff accompanying me were Colonel Mike Argue of the Parachute Regiment, who had formerly commanded the Scottish Territorial Battalion, or 15 Para, which I myself had been an officer in, and my consul, a very nice lady called Liz Dow, who had served in Jerusalem. She is from Strachur in Argyll. So, all three of us addressed the King in Arabic with a strong Scottish accent. This was such a striking event that it was relayed several times on that evening’s television, so wherever I went thereafter in Morocco people would say, “Ah, you’re the British ambassador who wears a kilt and speaks Arabic.” So, both the UK and Scotland got a lot of free publicity out of that.

Arabs would look slightly sideways at the UK if we got involved in a division, because they set great store by a ruler being able to keep his own house in order. That is why they get so cross when we have dissidents in the UK who badmouth them; even if the dissidents are not doing any practical harm, they feel very cross about it.

On the other hand, we have survived the end of empire; we have survived many years of serious trouble in Northern Ireland; and Britain, or the rest of the UK, would survive this also.

**Q212 Mr Ainsworth:** The new independent Scotland would have to set its priorities very carefully—it would not have the resources of Great Britain—and one of its priorities, we are told, is going to be the Gulf states, for economic purposes in any case. What clout and ability would the new independent Scotland have to protect its interests and project them in the Arab world, having said that that is one of its priorities? Do you really think that, when trade in that part of the world is Government to Government, as well as company to company, and the two tie up, there would be no impact on the rest of the United Kingdom?

**Sir James Craig:** First of all, I am assuming that there would not be a Scottish embassy in every Arab country. There are 26 or 25 Arab countries in the Arab League, and it would cost a lot of money, more than Scotland could afford, to have somebody in every one. I suppose that Scotland would carry little weight unless in some particular place they had someone with a nice personality who speaks excellent Arabic, and so on.

On the whole, I do not think Scotland is going to pull much weight as an independent country, any more than Ireland does. Ireland had an embassy in Saudi Arabia with only half a dozen people. They used to send invitations to official embassy functions

bilingually in Arabic and French—in French because they were not going to descend to use the imperialist language of English—but the Saudis did not understand French, so it did not matter very much. Scotland could not use Gaelic, because only a very small percentage of people in Scotland can speak or understand it, so it would have to be English.

I do not think the independence of Scotland will have much impact on the Arab world. You probably saw what the former Saudi ambassador said to me: “My personal view is that, where we in the GCC”—the organisation that unites the Arab countries of the Gulf—“are seeking to come closer, Europeans are breaking apart. Witness the Czechs and the Slovaks, the Catalans and the Spanish, the Flemings and the Walloons, not to mention the break-up of Yugoslavia. Maybe the Scots want to rule Scotland, but why that is preferable to ruling England as well, I do not know.” Well, the Arabs are not growing closer together; they are not even getting closer to democracy. They are edging away, in some cases running away, from union, democracy and so on. They have plenty of problems of their own to worry about, and they won’t have much attention left for our comparatively small problems.

**Anthony Layden:** My last post as an ambassador was in Libya from 2002 until 2006, and it happened that while I was there we had a new and productive relationship with the Libyans—they listened to what we had to say. From 1998, when we began talking to the Libyans about the terms on which we might resume relations after the Yvonne Fletcher case, until after I left in 2006, we persuaded the Libyans to do a whole lot of things that Colonel Gaddafi found politically very difficult, but all of which he agreed to and which he scrupulously carried out.

We did not have an Irish embassy, a Norwegian embassy, a Danish embassy or a Finnish embassy; we had an Austrian, a Czech and a Polish. Most of the countries that were there were there because they had people working in the oil industry. It was very noticeable that the representatives of small countries could achieve almost nothing in Libya. I remember my Swiss colleague telling me that it had taken him all year to get an appointment with the head of the European department at the Foreign Ministry whom I was seeing twice or three times a week, as well as the Foreign Minister and the head of intelligence and so on.

Just expanding that argument slightly to that of the ability of a small country to look after its citizens overseas or, indeed, look after its own interests when trouble occurs, in the nearly four years that I was in Libya, the dreadful sons of Colonel Gaddafi went around the world causing dreadful problems.

Hannibal, Mutassim, Khamis and Saadi were a bunch of serial rapists and murderers who just went around causing mayhem. Denmark, Austria and Switzerland all had problems lasting many months because they had done something about the behaviour of these awful young men in their countries. Visas were cut off, contracts were cancelled. A huge amount of mayhem was caused in those countries.

It has never become public, but Mutassim Gaddafi got into a similar problem in London in 2004. He arrived

---

15 January 2013 Sir James Craig GCMG and Anthony Layden CMG

---

on the Eurostar from Brussels with a bunch of disreputable people, many of whom were under the influence of drugs. A small amount of drugs were found on their party, and they were stopped and interviewed by the police at Waterloo. The first I heard of that was a summons to see the head of the European department, Ramadan Baraq, who said that the British were making some trouble for a son of the leader in London and bad things would happen to Britain unless I put an immediate stop to it. I went back to the embassy and found an e-mail from the police who told me what had happened.

Simultaneously, I got a telephone call from the British Airways manager who said that his daily flight had just arrived in Tripoli and all the passengers were being detained for questioning. I put in two telephone calls, one to the Foreign Minister, Abdel Rahman Shalgam, and the other to the head of intelligence, Musa Kusa. I said, "I want you to pass a message to your leader—if he thinks this is a good time to be making difficulties for British citizens at Tripoli international airport, he is making a mistake."

I got two calls back from these gentlemen 15 minutes later, saying that the problem at Tripoli airport had stopped and "You should not assume that our leader knew anything about this". I later found out that one of Mutassim's disreputable entourage had phoned immigration at Tripoli and told them, "You will be doing a favour for Mutassim Gaddafi if you make trouble for any Brits arriving for the next few days." That was solved in about 15 minutes, whereas the other countries had to work away for months.

There was a dreadful case going on when I arrived in Libya involving some Bulgarian nurses, who had been accused of the most ridiculous plot to deliberately massacre Libyan children, following an HIV outbreak in a children's hospital in Benghazi.

I went to the trial of these poor people who had been tortured into admitting that there was a plot involving Mossad, MI6 and the CIA. I reported to the Foreign Office that this trial was a cruel and sickening farce. They were duly condemned and sentenced to death. I made strenuous efforts through my contacts around the leader to get a solution to this problem and, indeed, after about a year and a half of serious negotiation, the nurses were all released.

The Bulgarians had been working on this for eight years, throwing everything they could at the problem. They had appointed as ambassador to Tripoli a Minister who had had very good relations with Colonel Gaddafi in the past. They had got absolutely nowhere, and they would have failed however long they had taken simply because they did not have the clout. The outlook for British citizens in the wilder and woollier part of the world, if Scotland became independent, would be singularly bleak. Sorry to bang on.

**Chair:** Thank you. That is really fascinating and very valuable. It gives us an insight, which may help us in some other inquiries that we look at. Can I now go to Frank Roy?

**Q213 Mr Roy:** It has come across that obviously the Arab world would not react in any strong way to an independent Scotland one way or the other. Can I ask

about the commonality of oil and gas? Would that help in relations at all, or is it just not there?

**Sir James Craig:** I am not sure what you mean. You mean if the Arabs created problems for Scotland?

**Q214 Mr Roy:** Scotland has been a producer of North Sea oil and gas, and some of the Arab states are obviously far, far larger. Is there a commonality there that would help an independent Scotland?

**Sir James Craig:** I don't think so. The Arabs have their own OAPEC, which consists of Arab countries only. Scotland is not a member and I really cannot imagine that they would find much in common with each other. It is possible, but so far there has been no contact between Scottish interests and Arab interests in the field of oil.

**Anthony Layden:** I have nothing to add.

**Q215 Rory Stewart:** Sir James, you believe that the international reputation of the rest of the UK—England, Wales and Northern Ireland—would not be affected in the Middle East, but let's turn this round and look at it from Scotland's point of view. Would it be good for Scotland? Would you recommend to a Scottish voter or citizen that they would be better off going independent? Would their diplomats or foreign policy do better if they were independent than if they remained part of the United Kingdom?

**Sir James Craig:** I consider myself a Scotsman and I would like Scotland to be independent, but when I consider the implications, the cost and the trouble, it seems to me to be a washout. I have read some of the evidence from former sessions of this Committee, and I am quite dismayed at the costs of joining the EU and NATO and of setting up a diplomatic effort. All of that is terrible, so I cannot imagine that it would do Scotland good in the long run.

**Q216 Rory Stewart:** Mr Layden, what would be your advice to a Scottish citizen? Would being independent be better in terms of their foreign policy?

**Anthony Layden:** It has always been clear to me that both Scotland and the rest of the UK can look after their interests in the world far better together than they could separately.

**Q217 Mark Hendrick:** Can I ask, both in your experience and from your instincts, how you feel that the break-up of the UK might be perceived in some of the big capitals around the world? Would they see a weaker Britain diminished, or would they say, "It does not make a lot of difference"?

**Sir James Craig:** Not a lot different. I would very much regret the diminution of our reputation through the loss of any part of the United Kingdom, but I do not think that it would in true fact make very much difference.

I have not served in countries outside the Middle East, apart from one year in Malaysia. I have visited but have never served in the United States and I have never served in Europe, so I am not familiar with the answer there, but I do not feel that it will make any substantial difference in the parts that I do know.

**Anthony Layden:** There would be a feeling for a while, as there was when there was an imminent

---

 15 January 2013 Sir James Craig GCMG and Anthony Layden CMG
 

---

possibility of Quebec seceding from Canada, that the country concerned would have its attention too much on internal affairs and could not devote its attention properly to things outside, but that would be a temporary phenomenon. Like Sir James, I think that, in the longer term, the rest of the UK's position vis-à-vis the rest of the world would not be badly affected. Scotland, on the other hand, would go from being part of a very influential country to being negligible, sadly.

**Q218 Mark Hendrick:** Countries such as China, Russia and India take a very strong view on secession. Given the role that they are playing in the world in the 21st century, do you not feel that they would look upon us rather differently from maybe some of the international institutions such as the EU or the IMF?

**Sir James Craig:** I am not really understanding your question. You are saying that what has happened to Russia is more or less the same as what would happen to us, and that its position has not been affected. I would say that its position has been affected. No one now takes Russia quite as seriously as we used to before 1989–90. What happens if Scotland becomes independent is a great deal smaller and less important than what happened with the break-up of the whole Soviet Federation.

**Anthony Layden:** I have not served in any of those countries and I cannot think that it would seem a particularly important matter. Certainly, under the present regime, the Russian Government are against secession. They rather wish they were still in their former glory. They might be glad that the UK has become slightly less powerful and influential, but I do not think it would be a very important perception.

**Q219 Mark Hendrick:** From what you are saying, the remainder of the UK would not have any particular reputational problems, having lost Scotland, but if there is a reputation problem, where in the world do you think it might be, if anywhere?

**Anthony Layden:** The United States would certainly regret it. They have come to regard us as their most reliable friend and ally, and anything that diminished British influence—in the world generally and in Europe—would be a matter of regret to them. Beyond that, I cannot think of anyone to whom it would be hugely important.

**Q220 Chair:** Apart from the implications to which you have just referred, would there be any new challenges that the rest of the UK's diplomats would face as a result of the existence of an independent Scotland? Would it mean that we would have to spend our time dealing with explaining that Scotland has a different position and, in a sense, neutralising that in terms of debates in the European Union, the Commonwealth or the UN, or even in NATO? Would it actually be a distraction and a diversion of the energies of the rest of the UK if, rather than dealing with the substantive issues, we had to spend time explaining, justifying and—if you like—countering what has been said by the former part of the UK that is trying to assert itself as an independent state against us?

**Sir James Craig:** The only thing that occurs to me, as a slightly frivolous consideration, is that British embassies are well known as centres of enthusiastic Scottish dancing. When I first worked for the diplomatic service, I was not a member, but I became the principal instructor in the Foreign Office's school of Arabic in a Lebanese mountain village. The head of the school—the director, who was a former British ambassador—insisted that, once a week, we had to have a session of Scottish dancing on stone floors. I was the number two, and if I did not turn up, I was interrogated the next day, so I learned that I had to have a good excuse. Some people were very keen, particularly when you were in a big capital, and it made a night out to go to the embassy, where you got some drink—particularly in Saudi Arabia. But most people were not as enthusiastic as the ambassadors were, and all excuse for Scottish dancing would be evaporated.

**Anthony Layden:** I can think of one country where there might be some confusion and that is the Sultanate of Oman, where I served as deputy head of mission in the late 1980s and early 1990s. The Sultan was an officer in the Cameronians for a number of years after he finished his education in the UK. He took a fancy to things Scottish and he has four pipes and drums bands in his armed forces—I think it's the air force, army, navy, police, and royal guard, so there are five. I was chieftain of the Caledonian Society of Oman while I was there, and the Sultan used to lend us a pipes and drums band for St Andrew's night and Burn's night. He would be pretty confused if it was a different country that had this role in Oman from now on.

**Sir James Craig:** Similarly, the Saudi air force had a pipe band, and I can remember when one of the Conservative Government's Ministers of Defence—I think there were four Ministers of Defence in the just under five years that I served there—was leaving, and the Saudi Minister of Defence had ordained that he should be given a good send off by the Saudi air force pipe band. I think I was the only person in hearing who knew what it was playing. It was "Kate Dalrymple had a pimple" and all kinds of rude words followed on from that.

The traditions of Scotland, in so far as they are prevalent in the Arab world, are mostly cultural or semi-cultural ones—the whisky, the music and the dancing.

**Q221 Rory Stewart:** Scotland has talked a lot about having a very different policy, particularly towards the North Sea. There has been talk of opening up new routes through for China and Russia, negotiations with Iceland and future movements of oil to do with the melting of the ice caps. There is a whole vision of a possible Scottish future where they would be creating new connections, and some prominent people in Edinburgh are saying, "We don't really need England anymore because we can be friends with China and Russia, and we're going to be part of this much bigger thing." Could you give your view on that strategy and whether you think it makes sense for Scotland?

**Sir James Craig:** No, I am completely ignorant about what arrangements have been reached between



---

15 January 2013 Sir James Craig GCMG and Anthony Layden CMG

---

England and Wales and Scotland about the ownership of North Sea oil. Has a line been drawn and we can say north of this is Scottish oil and south of it is English oil? None of it is Welsh oil. Has that been achieved?

**Q222 Rory Stewart:** Just to clarify a little bit more, this would be a policy about saying that Scotland's biggest alliances will, in future, be Scandinavian countries, and countries like China and Russia. Scotland will move into a world where a lot of its strategy will be directed north-east towards things happening around the polar ice cap. Do you think this is a sensible vision on which to build a country?

**Sir James Craig:** Whether Scotland can build this alliance depends on the allocation of the ownership of the North Sea oil. I imagine that would lead to a great deal of argument in the negotiations. Do you know anything more about this, Anthony?

**Anthony Layden:** I do know that we do not have a continental shelf boundary, as of present, between Scotland and England. I was involved in negotiating the continental shelf boundary with the Faroe Islands for many years, where it would have helped if we had been a smaller country, because the Danes very

cunningly devolved to the Faroese Administration responsibility for continental shelf matters. We found ourselves going to the Løgting in Tórshavn, which is wooden hut with a grass roof about half the size of this room, which was their Parliament. The Faroese simply would not negotiate with the British. They said, "It's got to be a median line, it's got to be a median line." We negotiated very badly and we finished up, after about seven years of talks, agreeing to a median line.

On the question of a new trade route to the north, it is a very attractive idea and there are undoubtedly possibilities for expansion in that direction. Having been involved with container ports in various parts of the world, I know that the key issue is how much throughput a container port is going to have. We would be in strong competition with Rotterdam, among other places with established lines of communication from below. I would also observe that, after all these years of independence, the Republic of Ireland's largest trading partner is still, by far, the UK.

**Chair:** Thank you very much, gentlemen. It has been very useful and quite an entertaining session, which I appreciated very much. Thank you for coming.

**Monday 28 January 2013**

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Mr John Baron  
Sir Menzies Campbell

Mr Frank Roy  
Sir John Stanley  
Rory Stewart

---

**Examination of Witness**

*Witness:* **Nicola Sturgeon MSP**, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, gave evidence.

**Q223 Chair:** I welcome members of the public to this sitting of the Foreign Affairs Committee and extend a very warm welcome to our hearings being held here in the very fine surroundings of the Royal College of Physicians in Edinburgh.

Today we will hear from two Ministers, one from the Scottish Government and one from the UK Government, on the foreign policy implications of Scottish independence. This is our fourth and final oral evidence session on this topic, and in the coming months we will scrutinise all the evidence we have received and then produce a report to inform the public and politicians on both sides of the border. Independence is rightly a subject that people of all political persuasions feel passionate about, but we are not here today to score party political points. We are here to gather facts and to listen to opinions and hopefully in the process we might contribute to the vibrant public debate in this area.

Our second witness, later this afternoon, will be David Lidington, the Minister of State in the Foreign and Commonwealth Office. Before we hear from him, we are delighted that the Deputy First Minister, Nicola Sturgeon MSP, was able to accept our invitation to give evidence and is here to join us today. Deputy First Minister, thank you very much for coming. Is there anything you would like to say by way of an opening statement?

*Nicola Sturgeon:* No, I am happy to go straight into discussions. I would echo your opening remarks that independence is something that many people feel very strongly about. I agree with you that we want an open and very informed debate and I hope our discussions this afternoon contribute to that. I am very much looking forward to our discussions.

**Q224 Chair:** Hopefully we can continue in that tone. Let me open the batting then. We have heard in evidence it is likely that Scotland would seek to pursue a very different type of foreign policy to that of the UK. Is that an accurate assessment?

*Nicola Sturgeon:* Scotland's foreign policy objectives would be to advance our economic interests, to protect our citizens and our assets and, thirdly, we would want to play a responsible role as a good global citizen, contributing to peace across the world. There are issues, I am sure, where we would take a different view to not just the Government of the rest of the UK but other Governments across the world. If you cast your mind back the last few years, while it is impossible to be certain about these things in

retrospect, I think there is a fair view—and certainly if my own party had been in government in Scotland and Scotland had been independent at that time—that we would have taken a very different view over the war in Iraq. But that is to emphasise the differences. I think that Scotland and the rest of the UK would have a very close and constructive relationship. On many issues of foreign policy we would probably have very similar views and interests and could work together to advance those.

**Q225 Chair:** Thank you. Can we explore the legal status of the rump UK and Scotland in the event of Scottish independence? As I understand it, you have asserted that Scotland would be a co-equal state to the RUK in the event of independence. Have you had legal advice on that particular point and, if so, what is the legal advice?

*Nicola Sturgeon:* Firstly, the position of the Scottish Government is that we think there is a strong argument in favour of the principle of state succession. It was a view that I know was put to the Committee by at least one of the witnesses that gave oral evidence to the Committee, Dr Blick.

**Chair:** Several of them.

*Nicola Sturgeon:* There were other witnesses in both oral and written evidence who articulated a similar view. To quote Dr Blick, "There is a legal case for saying the UK is dissolved and there are two successor states". The Vienna Convention, although not ratified by the UK, clearly sets out some legal principles that would back up that position. Interestingly, the UK Government, at least implicitly and I would put it no more strongly than that, would seem to think there is some kind of principle of succession when they talk about the apportioning of liabilities to an independent Scotland. But in reality my very strong view is that these are not matters that will be determined by law. If you take the EU, for example, even if they were to be determined by law they would be determined by reference to European law and by reference to European treaties rather than general principles of public international law. But in reality these are matters that will be settled by politics, by negotiation, by realpolitik, by common sense, by mutual interest, and I think that is the position that would pertain.

**Q226 Chair:** What will be the status of the RUK and what would be the status of Scotland?

---

28 January 2013 Nicola Sturgeon MSP

---

**Nicola Sturgeon:** I have said and I accept that there is ambiguity in terms of international law. Just as I have articulated a position in favour of the principle of state succession, I appreciate that there are witnesses who have given evidence to you and there are experts in international law who would take a different view. If you look at precedent, in the case of the dissolution of Czechoslovakia we had the Czech Republic and Slovakia as two co-equal successor states. In the case of the dissolution of the Soviet Union, we had a very different situation where the Russian Federation became the continuing state. So, precedent would lead you in different directions. I have said that there is a strong case to be made for the principle of successor state but I have also said that in reality, and precedent would bear this out, particularly when you consider that in light of the Edinburgh Agreement, what we are engaged in in Scotland is an agreed consensual—at least in terms of the process if not in terms of the outcome—and constitutional process, I think these matters would be determined by a mature and sensible discussion between Scotland, in the event of a yes vote, and the rest of the UK.

**Q227 Chair:** When you say you think you would be a successor state, what exactly do you mean by that?

**Nicola Sturgeon:** For example, just as we would inherit the liabilities, a share of the liabilities of the UK, and I have never heard—

**Chair:** In foreign policy terms?

**Nicola Sturgeon:** Well, if you let me complete my answer. I have never heard anybody in the UK Government suggest that we would not have to take a share of those liabilities, and so too would we inherit treaty obligations and so on. That is a reasonable position to articulate. What I am saying is that, as has been the case in other cases, particularly as in our case when you have a very agreed consensual, constitutional process for Scotland becoming independent laid down by way of the Edinburgh Agreement, we would have these things settled not by reference to law but by reference to political discussion and negotiation.

**Q228 Chair:** Are you aware of any other states that support you in that?

**Nicola Sturgeon:** I have cited the position of Czechoslovakia. I am not suggesting—

**Q229 Chair:** Has the Czech Republic either rung you up or written to you and said, “We are with on you this”?

**Nicola Sturgeon:** No. You will appreciate, I am sure, that other states across the world are not particularly keen to involve themselves in the domestic debate within Scotland and the UK. I have cited a precedent that would say that where there is agreement between two particular states that is a perfectly reasonable way to proceed. I understand that on the day the Czech Republic and Slovakia became independent the UK wrote to both of them saying that treaties, for example, that had been between the UK and Czechoslovakia were now between the UK and the Czech Republic and the UK and Slovakia. What I am

saying is that that is a perfectly reasonable way of proceeding. There is precedent for it. But we are engaged in a democratic process. Any discussions that follow a yes vote—and for the purposes of these discussions I suppose we are assuming the vote will be in favour of Scottish independence—would be against the backdrop of Scotland having democratically decided to vote for its independence. I think we would have a reasonable and consensual negotiation with the rest of the UK that would resolve these matters.

**Q230 Chair:** You are aware that the RUK would argue that they are the continuing state and you would be the succeeding state. What is your reaction to that?

**Nicola Sturgeon:** I am aware that is their argument.

**Q231 Chair:** Do you think they are wrong?

**Nicola Sturgeon:** I conceded, and I made the point a couple of answers ago, that international law—I would be interested to hear anybody argue that the position in international law was absolutely unambiguous and settled on this issue. That is their opinion; I take a different opinion. But the point I am making is that I do not think these matters ultimately are settled by reference to law. They would be settled by a process of discussion and negotiation. That is what has happened in other examples in not too distant history.

**Q232 Chair:** By saying that these can be settled by good men and true sitting down and having a mature conversation—

**Nicola Sturgeon:** There might be a couple of women involved as well, you never know.

**Chair:**—and women as well, of course, in a way you are not committing yourself to any particular course of action here. You are just saying, “We will sit down and talk about it.”

**Nicola Sturgeon:** I am saying very clearly that I think—you started by asking me what my view was on the legal position and I have answered that.

**Q233 Chair:** I am just clarifying that that is how it is.

**Nicola Sturgeon:** I have accepted that others will take a different view on the legal position, and I have said that in the event of Scotland voting yes there would be a process of negotiation with the rest of the UK that would not only be in the clear interests of Scotland but in the interests of the rest of the UK.

Remember we are engaged here in a democratic process. The process of the referendum has been set out in the Edinburgh Agreement, an agreement between the Scottish Government and the UK Government that, if we cast our minds back to this time last year, many people would have said could never have been achieved between two Governments that were at polar opposites in terms of their view of the independence question. We did achieve that, because we recognised that, notwithstanding our political differences, we had an obligation to settle these matters in the interests of the people we represent. If Scotland votes yes in the referendum, I am pretty sure that is the spirit and approach that would be taken to the negotiations that will allow

28 January 2013 Nicola Sturgeon MSP

Scotland to make the transition to being an independent country.

**Q234 Chair:** If that was to happen and you became a co-equal on this, would you be prepared to take on some of the RUK's international obligations?

**Nicola Sturgeon:** If I am arguing the position of co-equal states, either in legal terms or in practice—you would have to be specific if you wanted me to answer that question specifically—it follows from the position I am taking that we would inherit not just rights but obligations as well.

**Q235 Chair:** Are you aware how many treaties the UK has at the moment?

**Nicola Sturgeon:** Yes. There are several thousand treaties.

**Chair:** 14,000.

**Nicola Sturgeon:** I have given you a precedent of the case of Czechoslovakia, which I am not arguing is an absolute parallel or analogy but a situation where one country became two countries. I have given you the example of how the UK treated the position of treaties and I am sure other countries did similarly. I am simply saying that where there is a democratic expression of the public will, which if people vote yes in 2014 will be the case, these things can be managed in an orderly process.

**Q236 Chair:** I hear what you say about Czechoslovakia. As I said, we have not come here to argue with you, just to hear your point of view and to hear what your approach would be in the event of a yes vote. I am trying to get some clarity as to what your approach is to international organisations. Would you believe that you have the same rights under all international treaties and fulfil all international obligations?

**Nicola Sturgeon:** If you flow from the principle of state succession, the conclusion you reach is that we would inherit the treaty rights and obligations of the UK. The EU is governed by a body of law that is a body of law in its own right and the position there is different. I am sure we will come on to the EU in detail later on.

**Q237 Sir Menzies Campbell:** The Chairman began by asking you if you had taken legal advice on any of these matters. Can I ask you, in view of the controversy that has surrounded the question of legal advice in recent months, whether the Government formally took legal advice from the Law Officers or from any independent legal source?

**Nicola Sturgeon:** You know the position in terms of the Ministerial Code with not confirming the fact or content of advice from Law Officers. I understand that is the position at Westminster as it is in the Scottish Parliament. I got the permission of the Lord Advocate in relation specifically to Scotland's continuing membership of the European Union and told the Scottish Parliament back in October last year that we had, at that point, decided to seek legal advice on that particular point. Separate to that, there is a weight of legal opinion, as I said to the Chairman earlier on, in both directions over the issue of state succession or

whether you have a continuing state and a new state. That is publicly available for members of this Committee as it is for others.

**Q238 Sir Menzies Campbell:** I was not seeking to invite you to breach the Ministerial Code, otherwise you might find yourself the victim of one of these investigations that appear to take place in the Scottish Parliament from time to time. I am merely asking, as a question of fact, whether legal advice has been taken from any source other than the Scottish Law Officers?

**Nicola Sturgeon:** We ask for legal advice on these matters from our own Scottish Government Legal Directorate from time to time. We have had a discussion, in the context of European legal advice, about the process that we go through with major documents in terms of that process and, separately to that, there is a wealth of publicly available legal opinion.

**Q239 Sir Menzies Campbell:** So is the answer to my question, no, you have not taken—

**Nicola Sturgeon:** We take advice from our Scottish Government Legal Directorate on a range of issues, including the issues under discussion today.

**Q240 Sir Menzies Campbell:** Is the answer to my question as to whether you have taken independent legal advice on these matters, no?

**Nicola Sturgeon:** What is your definition of independent legal advice?

**Sir Menzies Campbell:** Other than the Scottish Law Officers.

**Nicola Sturgeon:** I have already covered the Ministerial Code point on that. I do not have—

**Q241 Sir Menzies Campbell:** It is not what the advice would be, Ms Sturgeon.

**Nicola Sturgeon:** If you put the Law Officers to one side, because I have made the point about the Ministerial Code, I do not have an independent legal opinion sought by the Scottish Government on this specific issue. I do have, as you do, as every member of the public who is interested does, access to the opinions that have been given to this Committee and more widely on these issues.

**Q242 Sir Menzies Campbell:** So the answer to my question is, "No, the Government has not commissioned independent legal advice"?

**Nicola Sturgeon:** I think I have answered your question fairly clearly.

**Q243 Sir Menzies Campbell:** I am having some difficulty following. Is the answer to my question that, apart from the legal advice obtained from the Law Officers and from a general review of what other advice is around and about, the Government has not taken any legal advice on any—

**Nicola Sturgeon:** I do not have an independent—

**Sir Menzies Campbell:** It is helpful if you let me finish the question. The Government has not taken any legal advice from any other independent source? You have not commissioned legal advice from any other source?

---

28 January 2013 Nicola Sturgeon MSP

---

**Nicola Sturgeon:** I have not got an independent legal opinion.

**Sir Menzies Campbell:** Thank you.

**Nicola Sturgeon:** But I am not answering your question on Law Officers because the Ministerial Code does not permit me to do so.

**Q244 Sir Menzies Campbell:** I am not inviting you to breach the Ministerial Code.

**Nicola Sturgeon:** I think when you started you probably were, but we will agree to differ on that point.

**Sir Menzies Campbell:** Well, you must rely on my own understanding of my own intention.

**Q245 Mr Roy:** Deputy First Minister, you are on record in the Scottish Parliament as far back as December 2007 with the following quote, “It is the clear view of the Scottish National Party and the Government that Scotland would automatically be a member of the European Union upon independence. There is legal opinion to back that up and I do not think that the legal position is in any doubt.” What has changed your mind?

**Nicola Sturgeon:** There is a wealth of opinion from different experts, legal experts and experts on European Union matters, that would say that Scotland would continue to be a member of the European Union. So, in that respect, I have not changed my mind. I think Scotland would continue to be a member of the European Union.

**Q246 Mr Roy:** Would you be prepared to stand up in the Scottish Parliament tomorrow and say exactly what I have just read out, that it would be an automatic member of the European Union? Deputy First Minister, I am surprised you do not wish to accept that is absolutely not the case and, quite frankly, none of my constituents in Motherwell and Wishaw would believe a stance that thinks Scotland would automatically, without negotiation, become a member of the European Union. Surely, the First Minister has changed his mind as well.

**Nicola Sturgeon:** I set out very clearly the position of the Scottish Government in the statement I made to the Scottish Parliament on, I think, 12 December—I can’t remember the exact date—where I set out the position as being if Scotland votes yes at the end of next year in the independence referendum there will be a period between then and Scotland becoming independent in 2016, in time for the next Scottish elections, where we will be negotiating our independence with the UK Government. As I have said, in parallel to that, there will be a process of negotiation with the European Union around the terms of our continuing membership of the European Union.

**Q247 Mr Roy:** Is that not a case of political position? I am asking about legal position.

**Nicola Sturgeon:** We have covered my views in terms of the successor state. I am saying that I think that would be the position. I believe Scotland would continue to be a member of the European Union on a continuing basis. Between 2014 and 2016 we would still be within the UK, so—

**Q248 Mr Roy:** Is that a political belief or a legal belief?

**Nicola Sturgeon:** I think that is a legal and a political belief. In that period, we are still a member of the UK, so by definition, unless the UK’s exit from the European Union is coming forward into that period, which I do not believe to be the case, we would still be a member of the European Union. We would negotiate the terms of our continuing membership in that period. The point I am making is that that does not involve any break in Scotland’s membership. The treaties of the European Union provide absolutely nothing that would allow any member state or part of a member state, because it had exercised its democratic right to self-determination, to be somehow cast outside. I think it is article 50 of the Treaty of the European Union that deals with the position where a state wants to leave. That, in itself, is a very lengthy and complicated process.

So, our position is very clear. The terms of our continuing membership would be negotiated in that intervening period. By definition, we are still a member of the European Union during that and, therefore, there would be no break in our membership.

**Q249 Mr Roy:** Has any European Minister or Prime Minister or whatever given their word on what you just said, that the relationship to Scotland would continue? Has anyone come to you, Deputy First Minister, and said, for example, “We got in a shambles in Ireland over the last couple of days. Someone was saying one thing, the Minister was saying another.” This is your chance to go on the record. From which country did a Minister come and tell you that, yes, Scotland would continue to be a member of the European Union?

**Nicola Sturgeon:** I do not have the emails you wrote me on Saturday in front of me just now but it is in the public domain so you can check it yourself. I think the phrase used by the Irish Minister for European Affairs in the email she wrote me was she thought the position that I have just outlined to you sums up the position extremely well.

**Q250 Mr Roy:** She did use the words, “the need to apply”. Would you take that as being a need to apply?

**Nicola Sturgeon:** Scotland is not a country that would be, if we became independent, in the same position as Croatia is just now, for example, a country coming from outside the European Union and applying to be within the European Union. We have been members of the European Union for 40 years. Our citizens have been citizens of the European Union for 40 years. We have accrued rights and responsibilities in terms of European Union membership. Citizens of other member states have accrued rights and responsibilities vis-à-vis Scotland. There are many thousands—I am sure some of your constituents, Mr Roy—who come from other member states. Is anybody suggesting that they would overnight, because Scotland decided to vote for independence, lose those rights?

**Q251 Mr Roy:** They suggest that Scotland would not remain a part of the European Union without negotiating.

28 January 2013 Nicola Sturgeon MSP

*Nicola Sturgeon:* I am not quite sure who you are quoting there, and I have said that there would be negotiations—I said that a moment ago—but the point I am making is that Scotland would negotiate the terms of its continuing membership from within the European Union. I come back, not today because we have not discussed this, to a point I have made several times in other forums. We come back to a very real political, economic and social point. Is anybody really credibly arguing that other parts of the European Union would not welcome Scotland with all the assets and resources and perhaps relative enthusiasm?

**Q252 Mr Roy:** Have you spoken to them, because surely you cannot say that without—I am sorry but you cannot speak on behalf of 27 or 20 different nations.

*Nicola Sturgeon:* I am not speaking on behalf of other Governments.

**Mr Roy:** You have just told us you didn't speak to them so surely you are not able to speak for them.

*Nicola Sturgeon:* I am not speaking on behalf—I did not say I was speaking on behalf of other Governments.

**Mr Roy:** You made the supposition.

*Nicola Sturgeon:* I am asking whether the person in the street or anybody in other member states is anybody really suggesting that Scotland would not want—you are suggesting that we would have a bizarre situation where the rest of the UK, which has at least elements of its Government that seems desperate to put it on the path out of the European Union, would be fine to stay in but Scotland, where its current Government thinks that we have a big contribution to make and a lot to offer the European Union, would somehow be cast adrift. I do not think that is politically credible as an argument.

**Q253 Mr Roy:** Now we know that you have changed your mind in relation to when you said five years ago that no negotiations were necessary and you are now saying that there will be negotiations, can I take you to the legal advice and the independent advice that has been brought up? I understand that the Government has asked for legal advice because they have to make decisions, and I fully understand that. But in the case of the referendum on separation and independence for Scotland, it is the Scottish people that has to make the decision. Do you not think, therefore, that there is a case to make your legal advice or independent advice available to members of the public? Surely to ask people to make that decision by showing them the sort of advice that the Government has, so that they can make the proper decision, is the right way forward.

*Nicola Sturgeon:* Let me say three things in response to that, and I am genuinely trying to be helpful to you here. Firstly, I do not know if you are familiar with the Scottish Ministerial Code—you are undoubtedly more familiar with it—but you will know in the Scottish Ministerial Code that I could not make advice from Law Officers public without the permission of Law Officers. Secondly, though, and I think this probably is the more material and substantive—

**Q254 Mr Roy:** Would you be prepared to ask them?

*Nicola Sturgeon:* Can I just finish the points I am going to make? The second and more material point is that the First Minister has said in Parliament, and I am sure I have said on a number of occasions, that everything we say in the White Paper we publish will be consistent with the legal advice we have, not just on this issue but consistent with any legal advice that we have on any issue, because I think the central premise of your question is correct. People have a right to know that that White Paper is consistent with any legal advice.

The third point I would make goes more to your general point about the interests of an open and informed debate. I agree with you on that, which is why I have made very clear that on a range of issues that will fall to be determined should Scotland vote for independence, I would be very happy, indeed very keen, at this stage to sit down with colleagues in the UK Government, in the same spirit that we negotiated the Edinburgh Agreement, and look at what those issues are.

**Q255 Mr Roy:** That is not the question I asked you. The question I asked you, Deputy First Minister, is: would you be prepared to publish the advice given so that, in this case, it is not the Scottish Government that is making the decision, it is our constituents who will be making the decision on independence? Therefore, we should publish it.

*Nicola Sturgeon:* When I receive legal advice, these are considerations that we will make at the time, but it is a very long-established principle that legal advice from Law Officers is not published. That has been a position not just for the Scottish Government, but what I have said is that the position that we take in the White Paper on this and any other issue will be consistent with legal advice that we have. That is the position, again, that we have made clear on a number of occasions.

**Q256 Mr Roy:** In relation to when you were talking about the rest of the UK and the European Union, what happens, for example, if the rest of the United Kingdom vote to leave the European Union and we, in Scotland, have decided that we want to use sterling as the currency? Do you think, for example, an independent Scotland, within the European Union, would be allowed to use the currency of the rest of the United Kingdom who had just voted to go out? Do you think that that would be allowed?

*Nicola Sturgeon:* I don't see why not. I can't speculate and there are a number of assumptions and ifs in the proposition you have just put to me; the assumption that the Tories win the next election, they win it with a majority, they have a referendum, people vote to come out. There is a lot of speculation—

**Mr Roy:** You are making an assumption that people will vote for independence.

*Nicola Sturgeon:* But it is a bit closer. Anyway, I take that point. There is a lot of speculation you are asking me to do there. But the rest of the UK is not in the euro, and I am sure we will come on to this point. It is not the intention of the Scottish Government that Scotland would be in the euro, so we would both be

---

28 January 2013 Nicola Sturgeon MSP

---

in sterling and the currency position in my view would not be affected.

**Q257 Mr Roy:** What happens if one of those countries, the rest of the UK, was not in the European Union any more? Surely that would leave an independent Scotland high and dry within the European Union because surely they would not be allowed to use a currency from outwith the Union?

**Nicola Sturgeon:** I do not know what the basis of that assumption you are making is. We would be in a sterling currency zone and, given that the UK is not in the euro just now, many things would be affected by a decision of the UK to come out of Europe. I think it would be a mistaken decision in terms of the economic and trade interests of the rest of the UK, but one thing that would not be affected was its currency because it is not in the euro.

**Q258 Sir John Stanley:** Minister, do you accept that if Scotland becomes an independent state there is no existing legal provision in the EU treaties under which Scotland would have an automatic legal right to become an EU member state?

**Nicola Sturgeon:** What I do accept is the treaties do not expressly cover the point of part of a member state becoming independent. But the other point I would make is, you can pore over the treaties of the European Union endlessly and you won't find anything that allows part of a member state to be put outside the European Union because it votes for independence. In fact, as I said earlier on, the only treaty provision that deals with a member state leaving deals with a member state that decides to leave and the provisions make it quite a difficult and lengthy process to come out of the European Union.

The treaties are silent on this matter, which leads me to the point that this would be a matter of negotiation. It would be a matter of negotiation against the backdrop of a democratic vote in Scotland. For all the faults that people may accuse the European Union of, I do not think one of them is that it has not demonstrated respect for democracy and the rights of self-determination, the point being that Scotland is a valuable and valued member of the European Union. I am absolutely confident that Scotland would continue to be a member of the European Union, albeit that there would be a negotiation in terms of the specific terms, for example our voting strength and the number of members of the European Parliament that we might have.

**Q259 Sir John Stanley:** Thank you for confirming, entirely correctly in my view, that the treaties are silent on this key legal issue for an independent Scotland.

**Nicola Sturgeon:** In both directions.

**Sir John Stanley:** In both directions, yes. Can you also confirm that the treaties are not silent on another key issue, that the treaty would put an obligation on an independent Scotland, if she became an EU member state, to join the euro?

**Nicola Sturgeon:** Scotland would not be in the position of being a new member state in the sense that we would be like Croatia coming in from outside. We

are already in the European Union. The position that we would be arguing in terms of the euro, for example, would be a continuation of the status quo. Scotland is not currently in the euro and we would be arguing that that status quo should continue as we went from being a member of the European Union as part of the UK to being a member of the European Union as an independent country. We would be arguing for the continuation of the status quo and I am not sure what other countries would find to object to that.

My secondary point is to say that—notwithstanding anything in terms of treaty provisions that are real, live, living examples within the European Union right now today that make the point, and back up the point I am about to make—no country can be made to go into the euro against its will. Sweden is technically obliged but because some of the steps towards joining the euro—it is not an automatic process—such as membership of ERM II for example, are voluntary, Sweden has not, cannot and will not be forced into the euro against its will. So, there are no circumstances that I can see that would have Scotland ending up in the euro when the Scottish Government of the day did not want it to be in the euro.

**Q260 Sir John Stanley:** But you would accept that under the existing treaty, as far as new member states are concerned, which would be Scotland's position, she would have to accept a treaty obligation to join the euro at some future date?

**Nicola Sturgeon:** I do not accept that Scotland would be a new member state. We would be a continuing member state. We would go from being a member state as part of the UK to being an independent member state. I do not believe that puts us in the same position as an accession state coming in from outside. But that aside, the statement of fact I am making is that, notwithstanding the point you are putting to me about treaty obligations, Sweden is an incontrovertible example of the point I am making, that no country can be compelled to join the euro against its will. There is, at the very least, an implicit acceptance across the European Union that that is the case. David Cameron recently made the point that Europe can't compel countries to take part in particular parts or particular factors of European Union membership when they do not want to.

**Q261 Chair:** Minister, that pre-supposes that it is accepted that Scotland is a continuing state. If it is not accepted and you have to apply, then your argument on the euro falls down—a question mark.

**Nicola Sturgeon:** To be fair, I covered both scenarios. Yes, I made the point that I do not accept we would be a new state. What we would be arguing in terms of the euro was a continuation of the status quo. But I also made the point, to take Sir John's point about treaty obligations, that Sweden makes the argument that you cannot be compelled to join the euro. It is not an automatic thing that new countries, even if we were talking about a new country scenario, join the euro. There are conditions that have to be met and at least some of those conditions are voluntary on the part of member states.

28 January 2013 Nicola Sturgeon MSP

**Q262 Chair:** But you do accept the point I have just made, that if it is not accepted you are a continuing member—

**Nicola Sturgeon:** No.

**Chair:** You do not accept that?

**Nicola Sturgeon:** No, because that is when the Swedish example—

**Q263 Chair:** If you have to apply, then the EU can make it a condition of membership that you have to—

**Nicola Sturgeon:** I do not accept that, but for the purposes of the argument, if you are right, that is when the Swedish example comes to the fore. Notwithstanding treaty obligations, Sweden is the example that Scotland or any other country can't be forced to join the euro.

**Chair:** Yes I get it. I hear that, yes.

**Q264 Sir Menzies Campbell:** May I go back to the negotiating period after a favourable answer, so far as you are concerned, to the referendum, and negotiation, I think you said, for up to two years. Would you anticipate that that period of negotiation would necessarily be followed by a treaty change?

**Nicola Sturgeon:** It is possible, but I think it would be technical, because our argument would be that Scotland should continue in membership on the same basis that we are members just now. We are not arguing, we would not be arguing for any change in Scotland's current relationship with Europe. We would be arguing to continue the position on the euro, on Schengen, for example, but these are not changing Scotland's current relationships with Europe, they are simply continuing the status quo. As I think I said in response, I can't remember if it was to Mr Roy or Sir John, in terms of our representation in the European Parliament, I think it is reasonable to expect that Scotland's representation would increase and, therefore, that may result in technical changes.

**Q265 Sir Menzies Campbell:** So you accept that treaty change may be necessary?

**Nicola Sturgeon:** I think that is what I just said, but on technical matters, not on substantive. Not in the same way that you would have if there was an accession situation such as we have right now with Croatia.

**Q266 Sir Menzies Campbell:** You know, of course, that the membership of the Parliament is capped. If Scotland were to be given an enhanced number of MEPs, as you suggest, then that could only be at the expense of some other country.

**Nicola Sturgeon:** I would think Scotland and the rest of the UK would have a joint interest here in resolving this matter quickly. It is reasonable that, as the representation for Scotland might increase, you would see a reduction in the rest of the UK. But I am sure that is a matter we would discuss and negotiate and be one of the issues that was resolved in that way.

**Q267 Sir Menzies Campbell:** So you would expect the rest of the UK to agree to a decrease in its representation in order that Scotland should have an increase?

**Nicola Sturgeon:** If you look at other parts of Europe, countries of similar size to Scotland—and this is the basis on which I am saying there may be an increase in Scotland's representation—it would suggest that we would have higher representation than we do just now. But these are matters that, with other matters, would be subject to discussion, and I am sure constructive and friendly discussion, between ourselves and the rest of the UK.

**Q268 Sir Menzies Campbell:** On the matter of treaty change, you accept that such treaty change has to be unanimous within the union?

**Nicola Sturgeon:** Well, where political agreement is reached, then that aspect, I think, would follow. Again, I come back to the point—

**Q269 Sir Menzies Campbell:** It is a matter of law. I am asking you if you understand the legal position to be that treaty change is required to be unanimous.

**Nicola Sturgeon:** I do absolutely understand it. I am not arguing with the position you are taking, but I come back to the point that, is anybody seriously arguing that other countries would somehow want to block the position of a newly independent Scotland that had democratically voted to be independent from being a continuing member of the European Union when we bring the assets to Europe that we do, when the citizens of their countries enjoy rights in Scotland? I find that an incredible political notion.

**Q270 Sir Menzies Campbell:** You have talked, as indeed in your last answer, about all this being resolved by political good will, but politics may operate in the other direction. For example, Spain has some reservations about the idea of independence for some of its present provinces. Is it not at least possible that the Spanish Government or the Government of some other country, concerned about the possibility of secession, might block any effort to give effect to the negotiations you have described, for purely political reasons?

**Nicola Sturgeon:** I noted some time ago a comment by I think it was the Spanish Foreign Minister that made clear that as long as what happened in Scotland was the result of a constitutional democratic process, Spain would have—I think the quote was along the lines of—nothing to say about that. You can also put into the other part of the equation of what you have just said to me, the fact that Spain and other countries benefit from the resources that Scotland brings to the European table in terms of energy and fishing, for example. The point I am making to you is that I do not accept that Scotland would not be welcomed as a continuing member of the European Union by Spain or by any other country.

**Q271 Sir Menzies Campbell:** Any question of legality really has to be subordinate to that overall belief of yours?

**Nicola Sturgeon:** If I understood you correctly, Sir Menzies, I do not think you were making a legal point. I think you were making a political point that Spain would somehow want to block Scotland for political reasons.



---

28 January 2013 Nicola Sturgeon MSP

---

**Q272 Sir Menzies Campbell:** Using a legal mechanism for the purpose. The legal mechanism—

**Nicola Sturgeon:** Yes, but I am saying I do not envisage the circumstances in which they would want to do so for those reasons.

**Q273 Sir Menzies Campbell:** I see. Very well. Can I ask you one other point before moving on to the question of NATO? I understand your stance on the issue of Law Officers' advice and that, of course, applies to the Government. Once the referendum campaign begins it will no longer be the Government that is campaigning for a yes vote, it will be the Scottish National Party. In those circumstances, you would not expect the Scottish National Party to be bound by any question in relation to legal advice, would you?

**Nicola Sturgeon:** My answer on the legal advice was in relation to the White Paper when I said, and I will repeat, that everything in that White Paper will be consistent with any legal advice we have. That will be a Scottish Government document and informed by any legal advice that the Scottish Government has.

**Q274 Sir Menzies Campbell:** But I am asking you to look forward. After the publication of the White Paper and at a time no doubt yet to be fixed, the campaign for a yes vote will begin. At that point a number of issues will arise about the amount of money that can be spent, things of that kind. But it will be the Scottish National Party that will be campaigning for a yes vote. Is there any reason why the Scottish National Party should not make available any legal advice that it may have obtained?

**Nicola Sturgeon:** If the Scottish National Party, as opposed to the Scottish Government, has legal advice that is pertinent and wants to make it available, then you are absolutely right. But we were talking, as I understood it, in the context of Scottish Government legal advice.

**Q275 Sir Menzies Campbell:** I want to ask you some questions, if I may, about NATO. I wondered if you would mind if I read something to you for a moment. "Deterrence, based on an appropriate mix of nuclear and conventional capabilities, remains a core element of our overall strategy." Are you familiar with that statement?

**Nicola Sturgeon:** I believe it would probably come from the NATO Strategic Concept, similar to the statement that says, "NATO seeks its security at the lowest possible level of forces...We are resolved to seek a safer world for all and to create the conditions for a world without nuclear weapons". The Scottish Government's position on nuclear weapons is clear. The vast majority of NATO member states are not nuclear powers. The vast majority do not host nuclear weapons on their territory and Scotland would, therefore, be looking to be with the majority in that respect, not the minority.

**Q276 Sir Menzies Campbell:** But all of those who signed the Strategic Concept in Lisbon on 19 and 20 November 2010 subscribed to a Strategic Concept that

said "an appropriate mix of nuclear and conventional capabilities". Do you accept that?

**Nicola Sturgeon:** I accept you have read me out the NATO Strategic Concept. Similarly, I read you out other sections from the NATO Strategic Concept. I am making the point that it is absolutely—if what you are saying to me is you can't be a member of NATO—

**Sir Menzies Campbell:** No, I am not saying that at all but—

**Nicola Sturgeon:** Well, you don't know what I am about to say.

**Sir Menzies Campbell:** Please don't anticipate my questions.

**Nicola Sturgeon:** I was saying, if what you are putting to me is that it is inconsistent with NATO membership for Scotland, certainly for the position of the Scottish Government and the party that I represent that has strong anti-nuclear credentials—I understand there are some in your own party that have strong anti-nuclear credentials as well—then I am simply making the point that countries like Norway that are just as strongly anti-nuclear do not seem to take the same view.

**Q277 Sir Menzies Campbell:** But they signed the Strategic Concept in Lisbon in 2010.

**Nicola Sturgeon:** I do not think I denied that. I am just making the point that the vast majority of NATO member states are non-nuclear countries.

**Q278 Sir Menzies Campbell:** The fact they are non-nuclear does not necessarily mean that they do not subscribe to the core strategy, does it?

**Nicola Sturgeon:** I am not disputing the fact that they signed the Strategic Concept. I am simply making the point that it is arguably more normal than the other position to be non-nuclear in NATO than to be nuclear in NATO.

**Q279 Sir Menzies Campbell:** I understand your enthusiasm to get the qualification in before giving the answer, but can I just come back to the point, if I may, that this is an alliance based, in part, on nuclear deterrence. If you are correct that you are a continuing state then you have, by virtue of that continuance, subscribed to that core purpose.

**Nicola Sturgeon:** I am talking now of my party rather than the Scottish Government, and I am sure you all followed the debate on this matter—at least some of you probably followed the debate at our conference last year. We have made very clear that we want to continue to be a member of NATO but on the condition that we do not host nuclear weapons. I think that is our clear position. Why do we think that it is right to be in NATO on that basis? It is related to the geostrategic interest we have shared with our North Sea neighbours, the majority of whom are NATO members and the majority of whom, if not all of whom, are non-nuclear NATO members.

**Q280 Sir Menzies Campbell:** Are you familiar with article 5 of the North Atlantic Treaty?

**Nicola Sturgeon:** I am familiar with it. I am also familiar that it is invoked by unanimity.

28 January 2013 Nicola Sturgeon MSP

**Q281 Sir Menzies Campbell:** But are you familiar with the fact that the principle it lays down is, an attack on one is an attack on all?

**Nicola Sturgeon:** Yes. I think it has only been invoked in relation to the attack on the Twin Towers. It is invoked by unanimity. Even if it is invoked, as I understand it, it does not require any member states to take part in any particular action that flows from that, as is evidenced by some of the recent conflicts we have seen.

**Q282 Sir Menzies Campbell:** But do you accept the principle behind article 5, an attack on one is to be deemed as an attack on all?

**Nicola Sturgeon:** I accept and understand the point you are making about article 5, yes.

**Q283 Chair:** Does your opposition to nuclear weapons also extend to chemical and biological weapons?

**Nicola Sturgeon:** We are not in favour of chemical and biological weaponry generally speaking, yes.

**Q284 Chair:** But being kept in Scottish territory if you were independent?

**Nicola Sturgeon:** In terms of our NATO membership, the principle position we have taken is that we would be members of NATO on the condition that we did not host nuclear weapons but we—

**Chair:** To which my question was—

**Nicola Sturgeon:** No, I was trying to answer your question. The particular motion that I am referring to does not refer and does not have that same conditionality around chemical and biological weapons, but we would strongly want to be part of international efforts to rid the world of chemical and biological weapons as we would with nuclear weapons.

**Q285 Chair:** But if they were part of a military stock, would you agree to it being kept on Scottish territory?

**Nicola Sturgeon:** We would not be of the view that we would want to have that, no. But we have not made it—I am trying to answer your question.

**Q286 Chair:** So that is a, “No, you would not agree”?

**Nicola Sturgeon:** The point I am making is the conditionality we have attached to membership of NATO is to nuclear weapons and we have been very express about that.

**Q287 Mr Baron:** Deputy First Minister, the Foreign and Commonwealth Office would argue that Scotland’s interests are better represented within the United Kingdom because of the UK’s influence and extensive trade and diplomatic networks. We will have the opportunity for questioning the Europe Minister later on in the session to ask him to substantiate that point. But can I ask you, if I may, with regard to Scotland’s influence within the EU, what is your assessment of the changes to the legislative proposals when it comes to passing measures from 2014 onwards?

**Nicola Sturgeon:** You are referring to the double majority change?

**Mr Baron:** Yes.

**Nicola Sturgeon:** 55% of the states, 65% of the population? That is a change that has been determined and I accept that is the direction of travel within the European Union. I was reading some research over the weekend that has just recently been published—I certainly can make the link available to the Committee—that suggests that historically small states in Europe have been more successful in negotiating legislation, for example, than some of the larger states, which I think would support the contention that states can be influential in Europe notwithstanding the relative smallness of their territory or population. As we alluded to earlier on, I spent Friday in Dublin, a small independent country that is currently holding the presidency of the European Union. So, small states have an influence and it is an influence Scotland would look forward to exercising as well.

I think you are probably about to say to me the move to double majority reduces the influence of small states, and I think that is arguable, but you have to put it in the context of Scotland’s current position. Scotland’s current position, of course, is having extremely limited influence on many matters, virtually no influence right now as part of the UK, directly, in terms of the European Union. Scottish Government Ministers are not free to represent Scotland’s interests without reference to the UK and the Council of Ministers on issues like fishing that are extremely important to our national interest.

My argument is that if Scotland was independent, whether it is under the current voting arrangements or under the double majority arrangements that Europe will move to from 2014 onwards, we will have significantly more influence than we do just now.

**Q288 Mr Baron:** It is an interesting assertion. Of course nobody knows for sure how changes in 2014 are going to affect smaller countries, but there are a number of objective observations out there that suggest that because of the change, because you need now 55% of member states and two-thirds of the population, and whereas in the past the Council of the EU has tended to favour smaller countries with higher voting weight in proportion to their population, this is going to move things slightly the other way. That is subject to speculation but the evidence at the moment tends to suggest that it is going to make it more difficult for smaller countries to not just be heard but to have influence. You have speculated, quite understandably, that you think Scotland would have more say in matters that were important to Scotland as a country. What evidence do you have for that?

**Nicola Sturgeon:** Firstly, can I agree with you that the scenario you have painted here is very speculative and is open to argument and to debate, so we can accept that. These things are relative to your starting point, of course. The starting point of Scotland right now is as a country as part of the UK that has significant responsibilities in devolved areas where it is often in our interest and would be in our interest to argue a case directly before the European Union, in the

---

 28 January 2013 Nicola Sturgeon MSP
 

---

Council for example, where our ability to do so is heavily restricted. Our Fisheries Minister, who probably spends more time in Europe than perhaps all of our Ministers combined, I don't know, but spends a significant amount of his time in Europe, cannot articulate and represent the Scottish interests without reference to the UK Government and does not have the ability to depart from a UK Government line even if that was in the interests of Scotland. So, my strong argument is that regardless of which voting arrangements you are talking about, an independent Scotland will have more direct influence in the European Union than we do as part of the UK.

Of course there will be many issues. I have deliberately chosen the issue where often it can be said the interests of the UK and the interests of Scotland diverge. In those circumstances, I think it is far better for Scotland to be independently represented with the ability to articulate our own interests. There will be many other issues where the interests of Scotland and the rest of the UK do not diverge and are very closely related. In those cases we can come together as two independent countries and perhaps have a greater influence and a greater weight than the UK would have on its own. In my view, that is a win-win situation.

**Q289 Mr Baron:** I agree with you. We can all speculate with regard to how the changes will affect the influence of smaller countries. But logically, purely on the maths, because of the two-thirds population issue and the fact that the barrier or the high water mark has been changed, altered, it does move it away. Logic would suggest it moves it away from smaller countries. But can I just move us on, if I may, because logic suggests that but we shall have to see how it works out in practice?

The Scotch whisky industry is very important to Scotland, and I use this as an example because I think it is important that we all try to understand, in trying to assess the influence of small countries within the EU, how they can best defend—not just defend, but promote—industries that are disproportionately important to that one small country. Whisky would tend to be a good example of that. The Scotch Whisky Association has reported to us in glowing terms when it comes to the amount of support they have received from the Foreign and Commonwealth Office, words like, “Invaluable support”, “high quality level of support over many years”. They have listed a whole series of accomplishments, trade barriers broken down within the EU but not just within the EU, globally as well. Yet the SNP seems to take a different view on this. What evidence is there that the SNP would do a better job of representing our Scotch whisky industry within Europe or globally?

**Nicola Sturgeon:** The Scottish Government, if Scotland was independent, would represent and articulate the interests of our whisky industry and our other key industries and sectors as vigorously as and perhaps more so, who knows, than the current UK Government does. I know that SDI at the moment, if they want to promote Scotch whisky in some British embassies, have to pay the Foreign and Commonwealth Office for the privilege of doing so. I

am not sure we would want to see that continue. But a key focus of our representation overseas, our trade activity would be to ensure that we were maximising the impact of our key industries and sectors in key and emerging markets. We do that already through Scottish Development International which, with Scotland as a devolved country, has 22 offices across the world. Clearly as an independent country, we would build that presence.

But you have asked me what evidence. I do not know what evidence there is to suggest that an independent Scotland would not represent the interests of our industry and economic interests as vigorously as is done by the UK Government.

**Q290 Mr Baron:** What I would point to is the Scotch Whisky Association speaking in glowing terms about the FCO's methods on its behalf—very glowing terms. I talked about all sorts of trade agreements and trade barriers being broken down. I point to the fact that the FCO's overseas network comprises of about 270 diplomatic posts, 170 countries, 14,000 staff. It is very much geared towards promoting British exports including Scotch whisky and you know the importance of the industry to the country. It represents something like 80% of Scotland's food and drink exports. We are talking about a big issue here. I want to question, because I will be questioning the FCO on a similar line, the assertion the SNP seems to have that they could do a better job. They have pooh-poohed a little bit the idea that FCO support has been invaluable, has been high quality. You have not come up with anything concrete to suggest that the SNP or a Scottish Government would do a better job. This is a vitally important industry to Scotland.

**Nicola Sturgeon:** Firstly, I do not think anything I have said today has, to use your technical term, pooh-poohed the work of the Foreign and Commonwealth Office network across the world in many different issues. I am pretty sure I did not do that. You asked me what evidence was there that we could do a better job. I am saying what evidence is there that we were not going to be in the very direct interests of a Scottish Government with full economic responsibilities to make sure that our key industries and key sectors were performing well across the world. I would include the Scotch whisky industry in that. The FCO has a very large network of embassies across the world, to some extent but not entirely a legacy of empire that is focused not just on trade but on military objectives as well. It would certainly be the objective of an independent Scottish Government to replicate the quality of the representation that is provided, not necessarily doing it in exactly the same way with exactly the same property footprint. We would focus our international representation very much on, firstly, our economic interests, where Scots live or travel to. We would have an interest in developing countries as well. These days, as you well know, there is an increasing tendency towards co-operation in terms of consular activity. I think it was relatively recently that the UK signed a memorandum of understanding with Canada that talked about shared premises, shared services, the possibility of shared consular activity.

28 January 2013 Nicola Sturgeon MSP

That is the direction of travel these things are going in, but there is absolutely nothing that would suggest that the quality of representation that an independent Scottish Government would provide for key sectors like the whisky industry would be qualitatively different to that provided by the FCO. That is not a criticism of the FCO, incidentally.

**Q291 Mr Baron:** Minister, I do not doubt the quality of the effort. I am married to a Scot; I would not be allowed to doubt the quality of the effort. What I am asking you to at least toy with is the fact that an independent Scotland could not match the FCO's diplomatic and trade footprint. Having a presence on the ground is important, whatever anybody says, in promoting one's trade interests. There is evidence to suggest that an independent Scotland would find it hard to replicate the big trade effort put in by the FCO on behalf of the Scotch Whisky Association, something which, if you read the submissions from the SWA, they would tend to substantiate.

**Nicola Sturgeon:** If you look at other small countries—Finland, Denmark, Ireland—they do not replicate the footprint of the FCO but I do not think anybody suggests they do not rigorously and successfully protect and promote their trade interests and their economic interests across the globe. As a small country, clearly you would prioritise areas that were economically important, and that would be the position for Scotland. Other small countries adopt different approaches to foreign representation. Sweden, for example, has resident ambassadors in many countries. It has a situation where it has non-resident ambassadors, I think a system known as flying ambassadors where they have a network of people based in Stockholm that nevertheless have very regular interaction with other capitals. I am saying that the FCO model is one model. It has grown up and developed for particular reasons. I am not criticising it. I am saying that other countries, particularly smaller countries, choose to provide the quality of that representation and cover in different ways and those are the options that would be open to Scotland by still working closely with the FCO network that would exist.

**Q292 Mr Baron:** I am pleased to hear you say that you think the FCO has done an excellent job on behalf of the Scotch Whisky Association. That is good to hear. What I would also come back to you on, though, is that you have mentioned Ireland, you have mentioned Norway. The whisky industry is very important to Scotland, disproportionately so. I cannot think of many other industries as proportionately important to such a small country. In our last evidence session somebody mentioned port, but port only represents 1% of exports for Portugal and something like one-fifth of 1% of their GDP. The Scotch whisky industry is far more important than that. So we have to be very careful in our deliberations on this, but can I finally ask you this? The SNP has been critical of the FCO's emphasis on trade and its diplomatic network. How would a Scottish Government put that right? How would they improve things? For example, you have said that the FCO's or Britain's overseas

network is too much focused on perhaps status and power and influence and not enough on trade. What would be the sort of overseas operation that Scotland would operate?

**Nicola Sturgeon:** Firstly, I am not arguing that you are possibly quoting stuff there. I have been very deliberate today in not coming here to criticise the Foreign and Commonwealth Office. I am here to put forward the Scottish Government's view. I am sure there will be occasions where we think the FCO could do things differently or better and that is fine, but that is not the purpose of my evidence to you today.

I said earlier on that the large network, the 270 offices in 170 countries, is partly a legacy of empire. It is not entirely focused on trade, although a great deal of it is. There are some parts of that that will be more to do with Britain's previous presence in parts of the world. I think a Scottish focus would be very much on trade. Certainly, a strong priority of it would be on the key markets, the emerging markets, where it was important for us to be in order to support and protect our key economic interests. It is not necessarily a criticism of the FCO; it is just saying that, like many similar countries and how an independent Scotland would be, we would very much have that focus on trade as a key driver of our diplomatic representation abroad. Clearly, there are other purposes for diplomatic representation abroad. Many Scots seek consular assistance across the world every week and that would be a requirement as well. I am simply saying that the FCO is one model of doing this. There are other models and increasingly there are new models of doing this appearing. I am sure we would work as an independent country closely with the Foreign and Commonwealth Office network, just as it works closely and increasingly closely with Canada and other Commonwealth countries, for example, and co-operation would be very much a key part of what we wanted to achieve.

**Q293 Sir John Stanley:** Minister, can I come back to nuclear weapons in Scotland? Your party's position is, and I quote, "A long-standing national consensus has existed that Scotland should not host nuclear weapons and a sovereign SNP government will negotiate the speediest safe transition of the nuclear fleet from Faslane which will be replaced by conventional naval forces." Minister, is that position negotiable or non-negotiable?

**Nicola Sturgeon:** The position that we would want Trident to be removed from Scotland is not negotiable. That is a position of principle and I think it is a position of principle that even if people do not agree with I am sure they can respect. We have clearly said, because we would be a responsible Government and a responsible partner, that that has to be done in the speediest safe way possible. You will be familiar, I am sure, with the work done by CND, backed by some experts in this field, that Trident could be safely removed from Scotland in a period of about two years. As somebody who has a very strong opposition in principle to nuclear weapons, I would like to see Trident decommissioned. I would rather not see Trident simply relocated from the Clyde and put somewhere else, but whether it goes somewhere else

---

28 January 2013 Nicola Sturgeon MSP

---

would not be a decision for the Scottish Government. It would be a decision for the Government of the rest of the UK. I think there is some growing division within the UK Government about the future of Trident, but that would be a decision for them. But we do not want to have Trident nuclear weapons here in Scotland.

**Q294 Sir John Stanley:** The relocation to which you have referred would cost the UK Government a very large amount of money indeed. Are you saying to us that, regardless of the amount of money that future UK Governments might choose to offer the Government of an independent Scotland, your position is still non-negotiable?

**Nicola Sturgeon:** Nuclear weapons come with a cost, and any Government that wants to have a nuclear deterrent has to be prepared to pay that cost. Scotland right now contributes to the cost of Trident. We pay in the region of £160 million-odd a year for the running costs of the current Trident. We would pay millions, ten of millions, more for the replacement of Trident. We think that is money that would be far better spent on tackling poverty and improving the life of people here in Scotland. These are political choices you make. I am saying, though, that whether or not Trident was relocated to somewhere else would not be a decision for the Scottish Government. It would be a decision for the Government of the rest of the UK and they would have to, I suppose, weigh up the pros and cons of that decision.

You did not put a figure on it but I am struck just now by the fact that you get some UK Ministers that say, "This would not be possible," and, "It would only be possible at a particular cost," and then other UK Ministers say, "But we have never looked at it because we are not doing any contingency planning for independence." I would be very happy to sit down with the UK Government and talk through this and other issues that we are required to prepare for should Scotland vote yes, but fundamentally and ultimately the decision about relocation of Trident to another location would be one for the UK Government to take.

**Q295 Sir John Stanley:** Are you saying to us that regardless of how much a future UK Government might offer the Government of an independent Scotland in terms of a payment to lease the Clyde submarine base, regardless of the size of that lease payment, a future Scottish Government would say no?

**Nicola Sturgeon:** I can only speak for future Scottish Governments of my own party and we would not be in the position of accepting that kind of arrangement. We have a principle opposition to Trident nuclear weapons. Scotland has more than done its fair share in terms of the hosting of Trident over the last number of years. I think there would be majority opinion in Scotland that would back that. There is a majority in the Scottish Parliament that does not want to see Trident on the Clyde.

**Q296 Sir John Stanley:** Does your party have a final date by which you would wish to see the Clyde submarine base closed to nuclear capabilities?

**Nicola Sturgeon:** As already stated, the CND work says that Trident could be safely decommissioned and removed within a two-year period. We have said the speediest safe removal. As a responsible Minister in a responsible Government, I would not want to impose a time scale that was unsafe and we would not do that. We would have sensible discussions about that timescale with the UK Government but on the basis that it is about the speediest safe removal. As I have said earlier on, I would be and the Scottish Government would be perfectly willing to start that discussion. We are hypothetical until the vote on independence is taken but there is no reason on this or a range of other issues that we could not start at this stage having sensible discussions about what the options were and the decisions that would need to be taken should Scotland vote yes. The Scottish Government would be perfectly willing to have that discussion before the referendum, as I have made clear to UK Government Ministers.

**Q297 Mr Ainsworth:** Deputy First Minister, can we move on to Schengen? The overwhelming evidence that this Committee has received so far is that Scotland does not automatically inherit the Schengen opt-out that the United Kingdom has negotiated. Why then are you confident that you would not be obliged to join Schengen?

**Nicola Sturgeon:** I am assuming you do not want me to go back into the legal issue because we have talked about that at some length, although I am happy to do that if you want. Put that to one side, therefore. Basically, in the period of negotiating the terms of our continued membership that I spoke about to Mr Roy, we would be arguing in the case of Schengen, as in the case of the euro, a continuation of the status quo. We would not be asking for any change in our relationship with Europe in this respect. We are not in Schengen at the moment. We would simply be saying that we did not want to go into Schengen. Whether you take that as a legal position or as a political position of common sense, it would seem to me to be a fairly strong argument to be making.

I would go on from that, though, and say that, again notwithstanding that, it is a bit like the euro argument. Being a member of Schengen is not automatic for any member state. There are requirements that have to be met. Many of them are voluntary and there is no question of forcing countries to be part of Schengen against their will. Sometimes in these discussions, I am sure all of us—so this is not a criticism of the other side of the argument—talk about Europe as if it is some horrendously inflexible organisation. Europe has shown itself to be flexible. The argument we would be making in relation to Schengen, because we would want to continue to be part of the common travel area with the UK and Ireland, is an inherently sensible one, continuation of the status quo, and sensible given our geography, part of an island with England and Wales and within the common travel area with Ireland. I think that is a position that would prevail.

**Q298 Mr Ainsworth:** Except that you would either have to successfully be accepted as a continuing state

28 January 2013 Nicola Sturgeon MSP

or you would have to be able to negotiate a separate and new opt-out, and even then you would have to have unanimity in order to get agreement that you were not part of the Schengen arrangement. Do you accept that?

**Nicola Sturgeon:** I think what I was saying is that on any of these scenarios Scotland would not be part of Schengen unless a future Scottish Government wanted it to be.

**Q299 Mr Ainsworth:** But you do accept that those are what you would have to achieve in order to stay out of the Schengen area?

**Nicola Sturgeon:** One or other of these things, but what I am saying is I think all of these things would lead you to the same point. I know that others have given evidence to your Committee that have taken the same view. I am not saying they come at it from the same perspective as I do, but Professor Bernard Ryan—sorry, this was evidence to the Scottish Affairs Committee—said, “I don’t see any real prospect of Scotland joining Schengen unless the United Kingdom does it, and I don’t see any real prospect of that. Schengen is a little bit off the table. I would foresee that Scotland would continue to be part of the common travel area”. I think that is a common sense position.

**Q300 Mr Ainsworth:** I know that you can cite an individual but you surely do not deny what I said, that the overwhelming evidence that we have received is that Scotland does not automatically inherit the opt-out.

**Nicola Sturgeon:** I do not accept that but, even if for the purposes of this argument I do accept that, what I am saying is that the position with Schengen is not that countries are automatically in Schengen. A bit like the euro, there are requirements that have to be met and those requirements in many cases are voluntary requirements. I am also making the point that in negotiations about the terms of our continuing membership, if we were in Schengen right now and we were, as a country that had just voted to be independent, saying to the European Union, “As part of us continuing to be a member, we want to come out of Schengen,” there might be a different argument there. But we are arguing for the continuation of the status quo. It does not change Scotland’s relationship with the rest of the European Union one iota, and I am saying that there is a common sense argument there. That was the quotes I was giving you, quotes based on the common sense argument, flowing not least from Scotland’s geographic position that, as you will know, was the common sense position that was applied vis-à-vis Ireland’s non-participation in Schengen.

**Q301 Mr Ainsworth:** If the majority of the evidence that we have received is correct and you are not correct in this regard, what are the implications for the border?

**Nicola Sturgeon:** I am sorry to repeat myself but I was saying let’s put—

**Q302 Mr Ainsworth:** You do not accept you could be wrong and these people could be right?

**Nicola Sturgeon:** I started my evidence today by saying I accept international law is not unambiguous on the point of successor states. I have articulated the position I believe to be the case. Others will articulate the opposite position. Let’s just accept that you and I do not agree on that point. What I am saying is that does not then result in a situation where Scotland somehow finds itself automatically in Schengen. It is not automatic. There are conditions that would be voluntary. It is also the case that, as we have seen with Ireland, there is a common sense argument—perhaps more so than many other issues given our geography—related to Schengen that the sensible position for Scotland would be part of the common travel area with the rest of the UK and Ireland, not as part of Schengen.

**Q303 Mr Ainsworth:** But you have not so far been prepared to give any consideration to the potential that you are wrong and that you would not be able to engage in that opt-out or, equally, that you would not be able to get the same arrangements as the rest of the United Kingdom and Ireland has, and think about the implications? You have not done that?

**Nicola Sturgeon:** Scotland, as far as my party is concerned, would not go into Schengen and, a bit like the euro, the steps that are required to go into Schengen are to some extent voluntary. I think if I can try again, even if I accept you might be right and I might be wrong on the position of the successor state—

**Mr Ainsworth:** Just for a moment, yes.

**Nicola Sturgeon:** Well, I think I was prepared, for the purposes of the argument, to accept that. The point I am making is that that does not in and of itself mean that Scotland is in Schengen. I have set out a number of reasons why that would be the case.

**Q304 Mr Ainsworth:** You are absolutely 100% confident that one way or another you would not have to erect any barrier at the border?

**Nicola Sturgeon:** I am confident of that, yes.

**Mr Ainsworth:** Absolutely 100%? You are not prepared to contemplate—

**Nicola Sturgeon:** I am absolutely confident that it would not be the case that you would have that kind of situation between Scotland and the rest of the UK because we would be part of, and we would seek to be part of, the common travel area, which is the position that Ireland took, which meant that Ireland is not part of Schengen either.

**Q305 Mr Ainsworth:** May I ask you one separate question that arises from some evidence that we received, which struck me as being a pretty common sense view of the world? I am using my words, not the words of the people who gave the evidence here. That is that, in the environment of foreign affairs, powerful nations have the ability to shape the environment. Medium-sized nations have a degree of ability to shape them. Small nations, with a few very notable exceptions, have really no ability to shape the environment and effectively have to accept the foreign

---

28 January 2013 Nicola Sturgeon MSP

---

affairs environment as it is. Do you accept the common sense of that logic?

**Nicola Sturgeon:** I read the evidence that you are alluding to. I can't remember who it was that gave that evidence but I did read the piece that you are alluding to.

**Chair:** Lord Jay.

**Nicola Sturgeon:** I think it was Lord Jay, yes. I get the categorisation that he was making. Is that always how it is translated into the real world? I am not sure it is. I think you will find examples of large states that for reasons of policy or the demeanour they have on the international stage will actually have very limited influence. I think one of the big concerns about the UK's positioning on Europe just now is that it is almost voluntarily diminishing its own influence in the EU when, given its size, it should have a relatively big influence in the EU. Conversely, you will find many examples, I am sure, of small states that actually punch above their weight on the international stage. I referred earlier on to—again I can't immediately remember the name of this but I will provide it to you—Jonathan Golub, a reader in political science at Reading University. There was an article on the LSE website just a couple of weeks ago, I think, where he has done some work and it shows that in the European Union actually smaller states have a bigger influence on legislation than some of the larger states. I get the theoretical categorisation. I am not so sure it always translates that easily.

My final point would be similar to the point I made, I think to Mr Baron, that these things are relative to your starting position. At the moment, Scotland can't shape these things at all independently because we are part of the UK. In many cases we will support and agree with the position the UK is taking, but if we do not then we do not have any independent ability to separately shape these decisions. By definition of being independent, we would be getting more direct influence than we have at the moment.

**Q306 Mr Roy:** Deputy First Minister, you have cited the Republic of Ireland as a role model quite a few times today. When they were doing negotiations they had a referendum as to whether or not they joined the European Union. In an independent Scotland would the Scottish Government give the Scottish people the opportunity to have their say as to whether or not they want to become a member of the European Union through a referendum and, if not, would you then give a referendum after your negotiations on your negotiated stance on a yes or no?

**Nicola Sturgeon:** It would not be a question of becoming a member of the European Union. I do not want to repeat myself ad nauseam here, but we are a member of the European Union and we would continue to be a member of the European Union. To answer your question directly, we have said and—I know that you would not necessarily have seen this—the First Minister said very directly in First Minister's Questions last Thursday that the current Scottish Government and the SNP do not favour an in/out referendum. We believe that Scotland's best interests are served by being in the European Union and we would, as an independent member state of the

European Union, seek to build the alliances that we want.

**Q307 Mr Roy:** After negotiations, would you then have a referendum?

**Nicola Sturgeon:** We do not propose a referendum on in or out of the European Union. The point he went on to make, which I will make again today, is of course that is all presupposing, which I know we are for the purposes of this discussion, that there is a yes vote. It is also presupposing that the SNP win the 2016 election. Based on the opinion poll yesterday, that looks like a fairly safe bet at this stage, but who knows?

**Mr Roy:** Have the referendum first, Minister.

**Nicola Sturgeon:** We will have the referendum first, but the point about the next election is important because it will be for the first Government of an independent Scotland to make that decision. I can tell you what my position is.

**Mr Roy:** No referendums.

**Nicola Sturgeon:** We do not favour an in/out referendum on the European Union, which I understand is the same position as your party. That was the case yesterday; I am not so sure about today.

**Q308 Rory Stewart:** First Minister, thank you. We do not have much time, but could you begin, in thinking about Scotland's foreign policy, by suggesting what kind of strategic threats you think might face an independent Scotland?

**Nicola Sturgeon:** Strategic threats—I think most experts would agree with what I am about to say. I think that although you can never be complacent, the threat of a direct territorial attack on Scotland is something, as would be the case with the rest of the UK, that is seen to be a fairly low threat in terms of the medium term.

**Q309 Rory Stewart:** Sorry, because we are very short of time, not what threats you will not face, what threats you will face.

**Nicola Sturgeon:** I was coming on to what I think. In common again with many other countries, cyber threat, international terrorism, the threat that comes from global instability and the possibility of failed states, serious international organised crime. These would be the particular threats that Scotland, in common with many other countries, would see as the strategic threats they face.

**Q310 Rory Stewart:** What kind of infrastructure do you think you would need in order to deal with those kinds of threats?

**Nicola Sturgeon:** Not just in an independent Scotland but in any country, the initial response to most of those threats would be civilian, through the police force, and obviously the police is already entirely devolved in Scotland. There would be a military aspect to dealing with most of those threats as well. I know we are short of time. You may want to go into some of our thinking around the shape of independent Scottish defence forces. We have laid out some of our thinking on that and will do more in the White Paper. In terms of security and intelligence, I would envisage

28 January 2013 Nicola Sturgeon MSP

Scotland having independent domestic intelligence machinery in Scotland sitting alongside our police service but working very closely—given our sharing of an island with the rest of the UK—with the UK and making sure we are sharing intelligence and sharing our response to some of these threats.

**Q311 Rory Stewart:** Would you attempt to set up an external intelligence service?

**Nicola Sturgeon:** That is one option that is available to Scotland and, if you will forgive me, these are—

**Q312 Rory Stewart:** How much would it cost, Deputy First Minister?

**Nicola Sturgeon:** The cost for the UK in terms of its security and intelligence services just now is about £2 billion, so if you take a pro rata share of that in terms of running costs for that kind of service—

**Q313 Rory Stewart:** Deputy First Minister, with respect on that, the UK has inherited a great deal. It has inherited an enormous number of embassies. It has devoted billions over decades to developing a very sophisticated infrastructure for cyber security and for communications. It would not simply be a question of taking a percentage of the overall running costs. You would have to do a very considerable investment in set-up. How much do you think it would cost to set this up?

**Nicola Sturgeon:** I was about to say to you we are doing a substantial piece of work on some of this just now. I am not going to get into all of the detail of this today because this is work that we will publish in due course in the lead-up to and in the White Paper, but suffice to say it covers not just running costs but it covers the issues around set-up. It also will cover the issues around the areas where it would make sense for Scotland and the rest of the UK to co-operate and have shared arrangements on these matters.

**Q314 Rory Stewart:** Could you expand on that? What do you mean co-operate? Are you expecting to be able to read the rest of the UK's secret intelligence?

**Nicola Sturgeon:** There are arrangements with other countries and the UK just now in terms of sharing intelligence. What I am saying is we are doing substantial work on the options that would be available to Scotland.

**Q315 Rory Stewart:** Deputy First Minister, just summing up, to clarify, are you expecting to be able to read all of the rest of the UK's secret intelligence? At the moment, there is a very clear distinction between the situation that exists between the rest of the UK and the United States, a Five Eyes arrangement, and the kind of arrangement that exists, for example, between Norway or Sweden and the rest of the UK where they are not entitled to read secret intelligence acquired by the United States or the United Kingdom. Which of these two would you envisage?

**Nicola Sturgeon:** I think there would be a very close relationship between Scotland and the rest of the UK. I am not going to get into the specifics of how that would work because that is dependent both on our

own work and discussions that I would want us to have with the rest of the UK. But can I make a very fundamental point here? I know it can be tempting to see this as some kind of disputatious debate. Scotland and the rest of the UK share an island. It would be not just in Scotland's interests for there to be very close intelligence sharing arrangements with the rest of the UK. It would clearly be in the interests of the rest of the UK for that to happen as well. I think that is a very clear position.

**Q316 Rory Stewart:** Deputy First Minister, are you aware that to set up the infrastructure required in order to protect the identity of agents and protect liaison reporting from the United States would require probably billions of pounds of investment in setting up the appropriate communications and security infrastructure before your allies would be happy to share information on that kind of basis? Are you aware of that?

**Nicola Sturgeon:** There is a capability Scotland would seek to have from day one of independence. There would be capability that we would develop over time. There would be continued shared arrangements with the rest of the UK regardless of our independent capability because that makes sense based on our geography. It is not for me to invite myself back to the Committee—

**Chair:** You are very welcome.

**Nicola Sturgeon:**—but when we publish some of our detailed work on this I would be more than happy to come back to the Committee and discuss it in as much detail as you wanted.

**Q317 Rory Stewart:** To reassure the Committee a little bit that you have done some of the ballpark thinking—I agree that you can't possibly expect to have precise information on this but just so that you have a sense of the scale of what is involved in setting up an independent Scottish foreign policy—you have talked a lot about Sweden, Denmark and Norway. How many embassies do you think Norway has worldwide in ballpark terms off the top of your head?

**Nicola Sturgeon:** Finland, for example, I think has—

**Rory Stewart:** Just ballpark off the top of your head.

**Nicola Sturgeon:** I do not have the numbers—

**Rory Stewart:** Norway, what do you think? Norway?

**Nicola Sturgeon:** I think it has about 100 embassies across the world. I think Finland has 97 offices across 70-odd countries.

**Q318 Rory Stewart:** So you would expect Scotland, let's say for the sake of argument, to set up and fund perhaps 100 embassies worldwide?

**Nicola Sturgeon:** Firstly, we currently contribute to the UK network. I am not suggesting that these things are as simple as simply dividing physical assets into respective shares, but clearly there would be a share of the UK's assets that Scotland would have an entitlement to in order to contribute to the costs of running our own situation.

**Q319 Rory Stewart:** Ballpark costs of the total diplomatic estate of Sweden, Norway or Denmark? Just finally to give a sense—



---

28 January 2013 Nicola Sturgeon MSP

---

*Nicola Sturgeon:* They are in about the region of £100 million to £200 million in terms of running costs of small independent states, in about that region, if that is the comparison.

**Q320 Rory Stewart:** That is the running costs, not the set-up costs or the estate costs, in other words the physical property of their embassies and consulates. Sweden and Denmark at the moment, and presumably Scotland would follow that sort of model, have embassies in Ouagadougou, Cairo, Nairobi, Bamako, Rabat, Maputo, Dar es Salaam, Kampala, Lusaka, Pretoria. In fact, those are the only places where both of them have embassies. You would add another 12 countries to the list if you went through Africa alone. Presumably, Scotland would hope to have the sort of presence that Norway or Sweden or Denmark would have worldwide, not smaller.

*Nicola Sturgeon:* Our presence would be, in terms of physical presence on the ground, comparable to other small independent countries. We already have a network of, I think, 22 SDI offices across the world, so we are not starting from scratch. As I said earlier on, we contribute to—more than contribute to, some may argue—the current FCO network and would be entitled to a share of assets. We would look to share premises with not just the rest of the UK but other countries.

**Q321 Rory Stewart:** But no financial estimates on the set-up costs or the capital costs of the diplomatic estate?

*Nicola Sturgeon:* I am telling you that we are working through these matters because there are different options that Scotland could take. I do not think any of them are beyond the ability of Scotland to implement. I will happily come back and discuss the finer detail of them with the Committee if you wish to invite me at a later stage.

**Chair:** We may well take you up on that, Deputy First Minister.

*Nicola Sturgeon:* I will look forward to it.

**Q322 Chair:** We said we would let you go at 2.30. Do you have just three or four more minutes? I have a couple of loose ends I would like to tie up.

*Nicola Sturgeon:* Of course.

**Q323 Chair:** A lot of what you have been talking about today, particularly the answers to Rory's questions just now, you said are things we can negotiate. We have had one witness say to us that the obligation to move a nuclear base south would actually put Britain out of the nuclear business. Do you think that would have any effect on the UK's negotiating position and do you think—

*Nicola Sturgeon:* In what respect?

**Chair:** Well, we may find it rather difficult and expensive and if you are in negotiations there may be tradeoffs here. More to the point, how do you think Britain's close allies would react if they saw the UK losing its nuclear deterrent?

*Nicola Sturgeon:* The SNP and the Scottish Government take a principle position on nuclear weapons. Whether a UK Government wants to keep

its nuclear deterrent and what it would then have to do to do that if it was not based in Scotland is a matter for the UK Government and perhaps something that you will want to ask the Minister about. It is not the intention of the Scottish Government to diminish the status of the UK, and I think there are other factors at play than the position of the Scottish Government or the potential for Scotland being independent that cast questions over the UK's status. If you take the Security Council, for example, certainly the Scottish Government would have nothing to say about the UK keeping its seat on the Security Council. We would want it to do so. I think Brazil, India, the European Union are the factors there that probably open the question of future Security Council membership in the years to come. Similarly in Europe, I would argue it is the positioning of the UK Government on Europe that threatens its influence in Europe, nothing to do with the potential for Scotland becoming independent.

**Q324 Chair:** That spawns half a dozen more questions but I think I will pass on it for now. One other point, just going back to talking to Frank Roy about Schengen, would Scotland run the same immigration policy as England?

*Nicola Sturgeon:* Certainly at least on one occasion since Scotland has been devolved we have had a slightly different position. I am thinking of the Fresh Talent initiative where students studying in Scotland had a slightly different entitlement to stay after their study than the rest of the UK. We have always argued that we should have the ability to make sure that we have an immigration policy that suits principally our economic needs. It is possible that there would be differences around immigration between Scotland and England, but I think those differences would be very focused on people coming to do particular jobs in particular sectors of the economy.

**Q325 Chair:** Otherwise you would keep the same immigration policy?

*Nicola Sturgeon:* I am conscious here that I can't tie the hands of future Scottish Governments at all, to be fair. These are policy matters for future Scottish Governments. Speaking for my own Government and my own party, we have taken the view that we should have the ability to flex immigration policy to suit our economic needs, and clearly being independent would allow us to do that in a way that we can't do at the moment as part of the UK, with the one exception I talked about.

**Q326 Chair:** You are probably going to anticipate what I am going to say next. Unless they are identical immigration policies, someone could come into either the RUK or to Scotland and then go over a border with no frontiers.

*Nicola Sturgeon:* I did anticipate to some extent your next question because the point I was making about economic drivers for those differences is not an insignificant one. Often the differences would be because we have different demographics, we have different labour needs in different sectors. You would be talking about differences that were having people immigrate into Scotland in relation to particular jobs

---

28 January 2013 Nicola Sturgeon MSP

---

or particular employment opportunities, which I think would at the very least lessen the scenario you are talking about.

**Q327 Chair:** Minister, time is up. Thank you very much.

*Nicola Sturgeon:* Thank you.

**Chair:** We may well take you up on your offer to come and talk to us again. Indeed, would you mind,

if we realise we have not asked you specifically, if we write to you on questions?

*Nicola Sturgeon:* Of course.

**Chair:** On behalf of the Committee, thank you for what I like to think has been a very important occasion. Thank you very much indeed.

*Nicola Sturgeon:* Thank you. Enjoy the rest of your session.

---

### Examination of Witnesses

*Witnesses:* **Rt Hon David Lidington MP**, Minister for Europe, and **Simon Manley**, Director, Europe, Foreign and Commonwealth Office, gave evidence.

**Q328 Chair:** The next two witnesses are the Minister of State in the Foreign Office with the responsibility for this area, David Lidington—Minister, welcome—accompanied by Simon Manley, who is the Director for Europe. Mr Lidington, is there anything you want to say by way of an opening remark or shall we just go straight into the questions?

*Mr Lidington:* No, Chairman, I am happy to go straight into questions.

**Q329 Chair:** Thank you. Minister, you have given evidence to us in writing and you asserted in that evidence that if Scotland left the UK legally the RUK would be regarded as a continuing state. What do you base that on?

*Mr Lidington:* It is based partly, Chairman, on the legal advice given to the UK Government and I think also the weight so far of the evidence I have seen submitted to this Committee, but it is also very much based on what has happened in international politics and international law. If we look at analogous examples, when Ireland established the Irish Free State in 1922 the United Kingdom continued to exist. It was accepted as such. The Free State and subsequently the Irish Republic became new countries. The same applied when India, which as a dominion had been a founder member of the United Nations, separated from Pakistan. India was accepted as a continuing state; Pakistan was the new state and had to apply to join the international organisations. The same took place when Eritrea became independent from Ethiopia, when South Sudan became independent from Sudan, when Malaysia and Singapore separated. If you look at recent European history, it is very striking that at the time of German unification the Federal Republic of Germany continued to exist and was accepted as such and what happened in international law and in terms of membership of organisations was that new Länder from the former German Democratic Republic became part of that continuing Federal Republic of Germany.

**Q330 Chair:** Have you had legal advice on this?

*Mr Lidington:* The Government has had legal advice on this. The Advocate General is continuing to examine legal advice. I think his intention is to publish later this year an account of the legal advice that the Government has received.

**Q331 Chair:** I know it is still early days, but have you had a chance to discuss this with any of our allies?

*Mr Lidington:* I think that the position of other member states of the European Union, and for that matter of third countries, is that obviously they are wary about intervening in a matter that is of domestic political controversy within the United Kingdom and will be subject to a referendum in 2014, but certainly there are a number of other countries who have nationalist or secessionist movements in parts of their own territory who would be concerned at the possibility of not being the continuing state. I would be misleading you, Chairman, if I said we have been into this in detail in those conversations.

**Q332 Chair:** I presume the legal advice you have had confirms that the UK would be the continuing state.

*Mr Lidington:* Yes.

**Chair:** But as you know the Scottish Government dispute this. If there was a yes vote, how would the RUK respond to a Scottish challenge that disputed the RUK's claim to be the continuing state?

*Mr Lidington:* We are quite clear, Chairman, that in those circumstances—clearly, I hope they do not happen, I hope there is a vote in favour of the union—if that happened, then the Government of the United Kingdom would accept the democratic verdict of the people of Scotland, but from the day after the referendum the United Kingdom would assert that it was the continuing state to continue in existence and we believe that the weight of both precedent and of international law would mean that that position would be upheld by others. From that time on, the Government of the United Kingdom, in its relationship with the First Minister of the Government of Scotland, would be acting no longer on behalf of everybody in the United Kingdom, including the people of Scotland, but be acting on behalf of those living in the remaining United Kingdom. In negotiations about the detail of independence, it would be for the Scottish Government to act as the spokesman of the Scottish people and their interests.

**Q333 Sir Menzies Campbell:** I take it from what you have said, Minister, that so far as you are aware the British Government has no inhibition either about saying it has taken legal advice or, as you have

---

28 January 2013 Rt Hon David Lidington MP and Simon Manley

---

outlined, the Advocate General publishing that advice in due course?

**Mr Lidington:** I said the Advocate General will publish an account of the advice. We do intend to stand by the principle that all previous Governments have adopted that we will not publish the detailed legal advice.

**Q334 Sir Menzies Campbell:** But you will tell the world you have taken it and there will be an account of it from the Advocate General?

**Mr Lidington:** The intention is we are saying that we have taken legal advice and we intend to give an account of it.

**Q335 Chair:** Although a totally different subject area, you have the precedent of Libya on this where you published an account of the legal advice. Mr Manley is nodding. Is that right?

**Mr Lidington:** Yes. Europe covers many countries but not Libya.

**Chair:** My apologies.

**Q336 Sir John Stanley:** Minister, the Deputy First Minister for Scotland has just given oral evidence to this Committee in which she has confirmed that the policy position of an SNP Government of an independent Scotland, should that arise, that the UK nuclear deterrent could no longer remain in Scotland was non-negotiable. She went on to confirm that, regardless of how much the UK Government might be willing to offer the Government of Scotland financially to continue to lease the facilities at the Clyde submarine base, their position was still non-negotiable. Can you confirm or otherwise to the Committee that in such circumstances, if they were to arise, the position of the UK Government would be that the rest of the UK should continue to maintain an independent strategic nuclear deterrent and would, therefore, transfer the facilities at the Clyde submarine base elsewhere in the United Kingdom?

**Mr Lidington:** We have made clear as a Government that the continuous submarine base nuclear deterrent is the ultimate safeguard of the national security of the United Kingdom and we have a clear commitment to maintain that deterrent. We are not in the business, I think as the Committee knows, of pre-negotiating with the Scottish Government about how independence might work. We think it is for them to come forward and spell out the detail as they propose to put it to the people of Scotland. We are therefore not planning for Scottish independence or to move the strategic nuclear deterrent from the naval base at the Clyde. I would want to put on the record, in answer to Sir John, that that naval base in Clyde is the largest employment site anywhere in Scotland, with about 6,700 military and civilian jobs, projected to increase to about 8,200 by 2022. I frankly think it is for the Scottish Government to say how that quality and quantity of employment in the region would be matched if the enterprise did have to be relocated.

**Q337 Sir John Stanley:** Minister, that does not answer my question. As a matter of policy, I am asking you if those circumstances should arise, should

the Scottish people vote for independence and an SNP Government is elected as the Government of an independent Scotland, is it the policy of the present UK Government that there should be a continuing strategic nuclear deterrent and that, therefore, the existing deterrent would have to be located elsewhere in the United Kingdom?

**Mr Lidington:** It is the policy of the UK Government that there should continue to be a strategic nuclear deterrent. We are not making plans in this respect or any other as to what should happen in the event of a vote for independence in Scotland. Clearly, if there were to be a vote in favour of independence, from that point on negotiations would have to take place.

**Q338 Sir John Stanley:** I am not referring to negotiations. Is it the policy of the present British Government that in those circumstances the strategic nuclear deterrent would be transferred elsewhere in the United Kingdom?

**Mr Lidington:** The strategic nuclear deterrent would be maintained and we would take whatever measures we felt were necessary in order to do that.

**Q339 Chair:** Minister, I acknowledge the policy position you have set out, but if it did result in us having to decommission our nuclear deterrent because we could not relocate it and there was not room here, do you think that would have any impact on our position on the Security Council in the UN?

**Mr Lidington:** Our position on the Security Council is written into the United Nations Charter, from memory chapter 23 I think, so in that sense, no. I would emphasise that we do not believe that Scottish independence would require the unilateral nuclear disarmament of the United Kingdom and that policy is certainly not any part of the intention of the current Government of the United Kingdom. I think that were Scotland to secede from the United Kingdom I do not pretend that it would be anything other than a blow to the United Kingdom internationally and domestically. After all, that is why I argue strongly for the union to be maintained as in the interests of all people in the United Kingdom, including those in Scotland. But I do think that it would be something that would not diminish significantly the influence that the UK has. We would fall in terms of the league table on population from 21st to 23rd in global terms. We would continue to maintain both the military and intelligence capacity that we do now and the readiness and political willingness to take action, so I do not foresee that there would be a significant diminution in the United Kingdom's international weight.

**Q340 Chair:** How would we feel if we decided to put our nuclear deterrent in a foreign state?

**Mr Lidington:** I can understand why you are asking me the questions, Chairman, but as I have said, we have a clear Government position that the nuclear deterrent would be maintained. We are not going to speculate or to write plans in advance of a referendum outcome, which we hope and believe will be the reverse of independence but a confirmation of the union.

---

 28 January 2013 Rt Hon David Lidington MP and Simon Manley
 

---

**Q341 Rory Stewart:** Welcome, Minister. Just following on from the testimony of the Deputy First Minister, is it useful to the United Kingdom to have security and intelligence services?

**Mr Lidington:** Yes, I think they are invaluable. As Mr Stewart will understand, it is one of the frustrating things as a Minister that you cannot rightly talk about this but you do become, as a serving Minister, very aware of the significant role that the men and women of those services play in protecting the security of everybody in the UK.

**Q342 Rory Stewart:** Minister, if you were the Minister of a state that did not have any security and intelligence services and no equivalent of GCHQ and an embassy presence of only 20 properties worldwide, what impact would that have?

**Mr Lidington:** I think that this is a very serious question, which the Scottish Government has yet to answer. If we look at intelligence and security matters, we have three main agencies: the security service, the secret intelligence service, GCHQ. In addition to that, there are cross-governmental networks and ways of working, for example through the Centre for Protection of National Infrastructure, through the Joint Terrorism Analysis Centre, a £650 million national cyber security programme, all of which contribute to the security of everybody in every part of the United Kingdom. If Scotland were to be an independent state, Scotland would have to consider how she was going to substitute for those United Kingdom arrangements. The costs of doing so would be enormous, I think particularly to start up such agencies and networks from scratch, and in general terms smaller European countries do not have the security and intelligence apparatus on anything like the scale or professionalism we have in the UK.

**Q343 Rory Stewart:** Minister, just to end on this group, if Scotland were to separate and to, therefore, take over a situation where it did not have a full secure communications infrastructure, would you feel comfortable sharing United States intelligence information, for example, with such a state?

**Mr Lidington:** I can't pre-empt both a hypothetical situation and the outcome of then a hypothetical negotiation. At the end of the day, that will be a judgment not for the UK, that would be a matter for the Administration in the United States as to whether they felt that they could trust a putative Scottish independent Government with that information.

**Q344 Rory Stewart:** Russia's case for continued membership of the P5 was bolstered by having the consent of all the other states that have evolved from the former Soviet Union. In other words, they all agreed that it was going to be the successor state. Would the rest of the UK's case for continued membership of the P5 be damaged if Scotland insisted on co-equal status?

**Mr Lidington:** We believe that the international legal position, the precedent, not least the precedent set with Russia over its membership of the Security Council, means we do not foresee a difficulty there.

**Q345 Rory Stewart:** Russia's case was bolstered by its possession of nuclear weapons. Would Britain's ability to have a P5 seat be weakened if nuclear weapons were removed from Scotland before a replacement site had been found?

**Mr Lidington:** I think that, first of all, to change the status of our permanent membership of the Security Council would require a change to the United Nations Charter, so one is looking at quite a far-fetched contingency there. But, no, I think that the arguments for us to retain that seat would continue to be very strong. The debate about Security Council membership is not so much about whether one or more of the current permanent five should be moved out. It is whether the permanent membership should be enlarged to include some of the rising powers like India, like Brazil, like one of the African countries.

**Q346 Rory Stewart:** What would be the effect on Britain's position in Europe or the rest of the UK's position in Europe if Scotland were to separate in terms of the number of MEPs we might have, our population size in relation to Italy, the seriousness with which we would be treated by our European states?

**Mr Lidington:** There would be technical changes consequent upon Scotland leaving. The population of the United Kingdom would fall and that would mean that there would need to be an adjustment to the number of MEPs, but we would still be there as one of the big six within the European Union. We would still be in the position where English was de facto the lingua franca of a lot of European business. It is very striking actually the extent to which English is now used routinely at EU meetings, if only rarely by French representatives. Again, it would be a blow but I think a relatively minor blow. I think the bigger challenge would be for an independent Scotland to try to secure its membership of the EU and other international organisations to which the United Kingdom belongs, and would continue to belong in the event of Scottish independence, and to get the terms of membership of those organisations that provided equal benefits to those that Scotland get through the UK's membership.

**Q347 Rory Stewart:** Finally, Minister, just to develop that, could you give us a sense from your experience of what particular challenges Scotland might face or the kind of challenges that comparable countries have faced in the European Union? What difference would it make for Scotland no longer being part of the UK but instead being an independent member of the EU?

**Mr Lidington:** There are two challenges. First of all, let us say that Scotland has achieved what the SNP leaders say they wish to do, which is full membership of the European Union in their own right. They would be one of a significant number of small member states. My experience in the last two and three-quarter years as Europe Minister is that the small member states find it more difficult than large member states, are more dependent on alliances with others, on finding help from the big players within the EU in order to get their interests taken into account. To give a practical

---

28 January 2013 Rt Hon David Lidington MP and Simon Manley

---

example, when a UK Minister goes into a Finance Ministers' meeting at ECOFIN and argues the case on financial services he is speaking as much for financial services in Edinburgh as he is speaking for financial services in the City of London. If Scotland were independent, the UK Minister would not automatically have that same responsibility to act and speak on behalf of the particular interests of Scottish business. That is one illustration of where I think Scotland would lose compared with the present situation, but that is assuming Scotland succeeded in becoming a member. That takes you straight into all the questions about getting unanimous agreement from every other member state for that situation, tackling issues to do with euro membership, with Schengen, with justice and home affairs opt-outs, with budgetary rebates, fisheries and so on.

**Q348 Rory Stewart:** Finally to follow up, you made one reference to the fact that you think it would be a great pity for the rest of the UK as well as for Scotland.

*Mr Lidington:* Yes.

**Rory Stewart:** Could you expand on that a little bit? Obviously the rest of the UK's reputation partly depends on its soft power, on its status. If you are dealing with, let's say, Russia or China or India, can you give us some sense of how their view of the rest of the UK might be in some way affected by Scotland leaving?

*Mr Lidington:* As I say, I think that the impact would be relatively minor. I do not want to exaggerate it, but I think why the UK benefits from Scotland is that the UK is a living example of how you can construct and maintain a state entity that accommodates diversity within itself, that allows for different expressions of national identity—with the Six Nations starting next weekend we are going to see that in spades—that can accommodate different linguistic traditions, that can accommodate different legal systems within the one polity and do so against a background of mutual respect for each other's traditions and, above all, for the rule of law and for representative democracy.

**Q349 Sir Menzies Campbell:** Perhaps I should declare an interest and say I am a member of the Intelligence and Security Committee and like you, Minister, precluded from saying too much about it, but there is one recent event upon which I think there is a general understanding of the role of the security services. How would the Government characterise the performance of the security services in relation to the Olympic Games that we have just had in 2012?

*Mr Lidington:* Again, without, for obvious reasons, going into detail, I think that the role of the security and intelligence agencies was of vital significance in ensuring that competitors and spectators were protected against those who might have wished to do them harm.

**Q350 Sir Menzies Campbell:** Might one expect that at any similar international event a similar capability would be available if required?

*Mr Lidington:* Certainly at any such event in the United Kingdom, I would be very confident in the

capability of those agencies and I would be very glad of their existence, competence and expertise.

**Q351 Sir Menzies Campbell:** Including, for example, the 2014 Commonwealth Games to be held in Glasgow?

*Mr Lidington:* I would certainly expect not just the intelligence and securities agency but those cross-government arrangements like JTAC that exist in the United Kingdom Government to be working at full throttle to ensure the success and the security of those games taking place in Scotland. The same applies in terms of international response but also in terms of domestic crisis response with the COBRA system in Whitehall, which will be summoned into play in the case of a civil crisis in Scotland just as much as in a civil crisis in England, as it was in Glasgow when the terrorist outrage took place there.

**Sir Menzies Campbell:** At Glasgow airport?

*Mr Lidington:* Yes, Glasgow airport.

**Q352 Mr Roy:** Minister, to what extent has the Government, and specifically the Foreign Office, mapped out where it would be dependent on Scotland?

*Mr Lidington:* I don't think we have approached this in quite the way Mr Roy's question suggests. We have approached this issue in terms of the mutual benefits that the people of Scotland and the people in the rest of the United Kingdom derive from their common membership of the UK. I think that while there may be difficulties in certain areas, and we have talked about military facilities at the start of this meeting, the remaining United Kingdom, if forced to it, would be able to cope. I think that the burden on an independent Scotland to replace on its own everything that it gets from membership of the United Kingdom would be much greater. Where the UK does benefit is from what one might describe as the soft power of Scotland, Scottish culture. There is a tradition in Scotland of a global outlook that is respected around the world. Even someone like Andy Murray, who we have seen play this week, is very proudly Scottish but was a very proud part of Team GB when it came to the Olympics. So I think Scotland's contribution strengthens the contribution the UK as whole makes.

**Q353 Mr Roy:** Thinking in particular about the political infrastructure, how much would the rest of the UK's ties to Scotland and to Scotland's infrastructure have an effect on its bilateral foreign policy towards it?

*Mr Lidington:* I am not sure I quite follow. Is Mr Roy asking in the event of independence?

**Mr Roy:** Yes.

*Mr Lidington:* If the Scottish people were to vote for independence in 2014, the UK Government would respect the democratic outcome. It would be in the interests of the United Kingdom to have a friendly, mutually beneficial and prosperous relationship with our immediate neighbour north of the border, but what would be different immediately would be that Ministers sitting in the United Kingdom Government would from that point on have a responsibility to prioritise the interests of the people of England, Wales

---

 28 January 2013 Rt Hon David Lidington MP and Simon Manley
 

---

and Northern Ireland over the interests of the people of Scotland, both in the negotiations with the Scottish Government over the exact terms of separation but also over subsequent bilateral relations with an independent Scotland.

**Q354 Mr Roy:** But should the Scottish Government have something, for example, that the UK Government would want in relation to Scottish infrastructure and the political infrastructure we have just now, surely you would admit that is a negotiating and bargaining point for the Scottish Government?

**Mr Lidington:** That would be part of a negotiation that took place after 2014. We have consistently said we are not going to pre-empt that referendum decision because we are not neutral about the outcome that we prefer, but there would clearly have to be those discussions. I suppose what I am saying is that in those circumstances of Scottish independence, the nearest comparator would be the United Kingdom's relationship with countries like Ireland, Denmark or the Netherlands with which on the whole we have extremely cordial and close relations, but where from time to time an issue comes up where we differ and where we are on opposite sides, whether that is in the EU or whether it is in another forum.

**Q355 Mr Roy:** Just on the point of the Republic of Ireland, Minister, in relation to the type and scale of presence that the UK Government has in the Republic of Ireland, would you foresee that it would be exactly the same or very nearly the same in a separate Scotland?

**Mr Lidington:** These are questions that cannot be put even primarily to UK Ministers, because we do not yet know from those who advocate Scottish independence what kind of UK presence or sharing of facilities or agents with the UK the Government in Holyrood would wish to see established in 2014. We need to see, and the people of Scotland deserve to see, in more detail exactly what is the model of independence that is being proposed. From time to time one gets the impression that nothing is really going to change, that it will be just like devolution or enhanced devolution, with all the good bits about the union and none of the risks of leaving.

**Q356 Mr Roy:** But surely, Minister, we would not just be waiting until the Scottish Government decided something in the future. As we have heard this morning, you might wait an awful long time for a specific. Surely the Foreign Office and the UK Government has to take into cognisance what could happen and not just wait for something to come from Edinburgh?

**Mr Lidington:** The Government is carrying out an analysis across Departments of the benefits of Scotland's participation in the United Kingdom, for Scotland in particular, because the people of Scotland will be the ones taking the decision, but for the UK as a whole. We will be publishing the fruit of that during 2013, but what we are not doing is pre-empting the vote of the Scottish people. We will be working very hard indeed to persuade the people of Scotland

that their interests are best served by a decisive vote in favour of the union.

**Mr Roy:** I am not disputing that last point.

**Mr Lidington:** But we are not writing contingency plans as to what might happen. At the moment, where we are today, every Minister in the United Kingdom Government has a responsibility to think, act, speak, take decisions that take account of the interests of everybody in the United Kingdom, including the people of Scotland. I hope not but if there is a vote for Scottish independence that all changes and then Ministers in Westminster are in a different position where they are putting the interests of Wales, Northern Ireland and England first.

**Q357 Mr Roy:** Can you give any examples, Minister, of where in the Foreign Office in foreign policy terms would it be in the rest of the UK's interest to assist Scotland, if it so requested? Given their shared history, would it be likely to receive preferential treatment or be treated the same as any other—

**Mr Lidington:** Again, we have had no proposal from Scottish Ministers so far about the kind of assistance that they envisage. Let me cite an example. Mr Stewart talked about the extensive diplomatic network that we have, which is available both for political representation of the UK, but also for promotion of trade and investment on a global scale and to provide consular services to citizens of the United Kingdom. In the United Kingdom, we have a diplomatic network of 270 offices in about 170 countries with more than 14,000 staff. Clearly an independent Scotland could not replicate that sort of network. We do not know exactly what scale of network the champions of Scottish independence envisage having, but they have not come to us and said, "By the way, we would like to still make use of your consular services," or, "We would still like to make use of UK Trade & Investment to promote Scottish industry." I have to say that in those circumstances British Ministers faced with that decision would say, "Where do the interests of people and companies in the remaining United Kingdom lie?" Then there might be a question that if the Scottish Government wants certain services—we do at the moment charge people for them. The Canadians use some of our posts, co-location, and they pay us a fee.

**Q358 Mr Roy:** Would you envisage, for example, that the Scots, as the Canadians, would pay for services?

**Mr Lidington:** That is something that would have to be negotiated if there were a vote in favour of independence. It is something that the Scottish Government needs to take into account. I am very far from clear at the moment how the Scottish Government expects that an independent Scotland would provide the diplomatic network and diplomatic heft to promote the Scotch whisky industry, to promote Scottish financial services, to promote defence sales from Scotland, particularly given their stance on defence policy. It seems to me that is a gap in their own public preparations that is for them to fill.

---

28 January 2013 Rt Hon David Lidington MP and Simon Manley

---

**Q359 Mr Baron:** Can I develop that last point, if I may? We were talking about how Scottish interests would be best represented, whether inside the union or outside, and I tried to tease from the Deputy First Minister the extent to which they would take a different approach with regard to promoting their trade and economic interests. I focused on the Scottish Whisky Association's evidence to us, which claimed that they were very happy with the FCO's work. When putting to the Deputy First Minister the size of the diplomatic network that the UK has at the moment—as you have described it, 14,000 staff, 170 countries covered—I failed to tease out a comprehensive answer from her as to how they would approach things differently. Have you had any sort of communication on this with the Scottish Government as to their approach? Having failed to get an answer out of the Deputy First Minister, what would be your assessment of their chances in succeeding?

**Mr Lidington:** The second half of the question is much more difficult to answer because of the hypothetical circumstances involved.

The straight answer to Mr Baron's first question is no, and I do worry that Scottish Ministers are keen to give the impression that the current arrangements for trade promotion and investment promotion will just continue as normal when they are in no position to give such a guarantee, having failed to spell out the model that they imagine happening. Let's look at a country that is about the size of Scotland in terms of population, Finland. Finland has 93 posts overseas at the moment, compared with the United Kingdom's 270, and the Finns are going to have to cut theirs, I think, by nine because of budgetary pressures. Austria has 82, Ireland 73, so that gives one a feel. No doubt it would be for Scottish Ministers in a hypothetically independent Scotland to decide how many embassies or consular posts or trade posts they could afford.

What they would lose is the diplomatic weight of the United Kingdom, with our membership of G8, G20, our leading role in numerous other international organisations, behind us in promoting Scottish trade and in promoting inward investment into Scotland. At the moment, that all comes with the job for every British ambassador and every British high commissioner. If Scotland becomes independent, that drops away. It is then for the Scottish Government to come and either make their own arrangements or to come to us or somebody else and say, "Please can we come to an arrangement whereby you will look after us as well as your own people?" I really do think it is for the Scottish Government to come straight with people in Scotland about what that might entail.

**Mr Baron:** Preferably well in time before the referendum.

**Mr Lidington:** Well in time before. At the moment, for example, Scotch whisky is served as the digestif of choice by British heads of mission routinely; usually one or two lots are available to distinguished foreign guests to show the importance of the whisky industry and the quality of it. Our embassies and high commissions gladly host events promoting Scotch whisky or other aspects of Scottish trade.

**Q360 Sir John Stanley:** Minister, do you agree or not that in the event of Scotland becoming independent, under the existing EU treaty Scotland would not have any automatic, preordained legal entitlement to become an EU member state?

**Mr Lidington:** I agree. Everything to do with membership must be agreed unanimously and ratified by all existing member states.

**Q361 Sir John Stanley:** That is a slightly different answer. Do you agree that under the existing EU treaty, there is no automatic legal entitlement of an independent Scotland to become an EU member state?

**Mr Lidington:** Agreed.

**Q362 Sir John Stanley:** Thank you. Secondly, do you agree or not, with all your knowledge and experience of how the EU works, that an independent Scotland would have to follow exactly the same process for achieving EU membership as any other new applicant? In other words, it would have to comply chapter by chapter with the *acquis*, a process that could take some very considerable time and the outcome of which at this particular point cannot be said is certain of acceptance.

**Mr Lidington:** The precise case of Scotland becoming independent of an existing EU member state would be an unprecedented one, so the EU would have to grasp that. It seems to me that the key principle here is the requirement for unanimity and for a change to the text of the treaties. The United Kingdom is listed in the preamble to the treaty of the European Union and in the body of the text of the treaties as one of the members of the EU. Scotland is not named, so simply to do something as straightforward as insert Scotland into that list requires a treaty change. That requires unanimity, it also requires national ratifications in each member state, and unanimity will only be agreed once every detail of the terms of the Scotland's accession is settled.

It is difficult to speculate about the timeframes involved. Croatia and Spain each took about six years. I can see that in Scotland people would argue, "As part of the UK, we already comply with the *acquis* on things like phytosanitary standards. You don't need to go through all this again." My point is that you would need unanimity to agree to such a course. There are key issues, notably the various British exemptions, derogations and opt-outs from aspects of the EU *acquis*, that would have to be negotiated to the satisfaction of every other member state and ratified by every other member state before an independent Scotland could take its place in its own right as an EU member.

**Q363 Sir John Stanley:** Thank you. The last question I want to put to you on this is, do you agree that under the existing EU treaty an independent Scotland, seeking to achieve membership, would be required as a condition of becoming an EU member state to, at some future point, join the euro?

**Mr Lidington:** It would be required to do so unless it could persuade all other EU member states that it should be given the same treaty-based right to opt out

---

 28 January 2013 Rt Hon David Lidington MP and Simon Manley
 

---

of the euro that is given to the United Kingdom and Denmark.

**Q364 Mr Baron:** Minister, we have examined the fact that the UK's diplomatic footprint worldwide would be hard to replicate, hard to build and very costly. As I said, I was not sure that we got an answer out of the Deputy First Minister as to how the Scottish Government would approach that and fund it and so forth. Can I bring that point into our dealings with the EU? The line taken by the SNP seems to be that they would adopt a slightly different approach to the EU: it would be more based on trade; they feel that they could punch above their weight as a small country. Yet when the question was posed as to the change in the voting process and passing legislation with voting proposals from 2014, which maths would suggest, logic would suggest would make it harder, not easier, for small countries to be heard, let alone have influence, the answer I had was very much, "We would approach things differently," but we didn't get much detail. What is your assessment of those changes in 2014 when it comes to small countries?

**Mr Lidington:** I think all small countries argue hard for their own interests and they tend more than larger member states to look to the European Commission as their ally, so a lot depends on the extent to which they can persuade the Commission of their case, but they do find it very difficult if they are opposed by a couple of the big member states. What I find is the usual way of working is that smaller member states try to identify where they have common ground with one of the bigger players, whether it is with Germany, France or the UK, and on some issues it would be with Poland or perhaps Spain or Italy or with some of the Mediterranean small countries. They will try then to latch on to this internal coalition of view in arguing the case at the European Council or the Council of Ministers meeting. What is true is that from 2014 onwards, the voting system is recalibrated to the advantage of large and disadvantage of small member states.

**Q365 Mr Baron:** I put that directly to the Deputy First Minister and the answer was, there is no evidence to suggest that would be acting against the interests of smaller countries, when if you look at the maths it clearly stacks up against smaller countries. There is a shift away from smaller countries having a disproportionate say within the legislative process. The FCO's assessment is that the maths stands up for itself: 55% of member countries and 65% of voting populations have to be past that watermark, higher than it has been in the past. It has to be past before legislation can be passed. Can I come back to your assessment? The FCO has made the statement that it is going to be harder for smaller countries to be heard, let alone have an influence? Apart from the maths, do you have any other evidence of that?

**Mr Lidington:** It is partly anecdotal rather than scientific. My observation in the last two and three-quarters years of life at the Council is that you do sometimes find small member states are nervous about opposing the big member states in public, even if their own views differ. I think it is fair to say that on some

measures—and I am thinking of the enhanced co-operation on financial transfer tax example—there are some countries that have gritted their teeth before going along with this because they felt that their broader strategic interests were served by doing this to cement an alliance with a big member state that wanted it, rather than because the FTT was in their own interests as a country. So I see that at work. The creation of the European Council under Lisbon has injected an important new element of inter-governmentalism into the way in which the European Union operates and, although the European Council proceeds by consensus, in raw political terms it is the leaders of the big member states who tend to count for most when you get to that. Frankly, if you get something where France, Germany and the UK, or France, Germany, the UK and Poland all line up together, it is very difficult, even for a coalition of small member states, to resist that.

**Q366 Mr Baron:** You think the legislative changes next year are going to reinforce that?

**Mr Lidington:** Yes.

**Q367 Chair:** On the question of EU membership, if Scotland's application for membership could be fast-tracked, would the RUK support it?

**Mr Lidington:** The trouble with giving the straight answer I wish to give, Chairman, is that that takes us into the content and outcome of negotiations to which the UK would be a party in its new guise of three rather than four countries. If we look at, for example, fisheries, or if we look at whether an independent Scotland should join the Schengen agreement, there are UK interests in the outcome of both those decisions, and remaining UK Ministers would be looking to the interests of England, Scotland and Wales in judging its position both about the pace as well as the desired outcome of such negotiations.

**Q368 Chair:** So the answer really is, it depends?

**Mr Lidington:** It all depends, yes. It is uncertain

**Q369 Chair:** Do you think other EU members see it the same way, as they wouldn't be involved in negotiations? You spend a lot of time talking to your counterparts and other members. Do you think they would be much clearer about this?

**Mr Lidington:** I think it will depend which member state you talk to. I think they have been at pains not to get drawn into an internal political debate within the United Kingdom. Formally, of course, there is no such thing as a fast-track process and there is nothing in the treaty that describes a fast-track process. There is a process for accession and it all depends on whether, at the end of the day, there is unanimous agreement on all the details of the terms, which depends in turn then on whether the Government in Scotland is prepared to accede quickly to what others might demand, and so the solution has to command the support of all. It is not enough to say 26. The Spanish Prime Minister has said publicly, "If Scotland separates from the UK, it has to go to the back of the queue." Every country is different—Spain has its own constitution—so I don't want to draw direct



---

28 January 2013 Rt Hon David Lidington MP and Simon Manley

---

comparisons, but it indicates there are EU members who are worried about the precedent that an secession might set. That might influence their approach. If we look at Turkish accession or Macedonia's progress, one country on its own is enough to block accession even when everybody else is signed up and wants to go ahead.

**Q370 Mr Ainsworth:** Let's come on to the issue of the Schengen arrangement and free movement of people. I asked the Deputy First Minister, and she is absolutely confident that, by one means or another, whether it has been accepted as a continuing state or by negotiation, they would be able to get the opt-out and that there would be absolutely no conceivable scenario where there would be a need for border controls between the rest of the United Kingdom and Scotland. What is your view of that situation and whether or not there would be any problems with an independent Scotland?

**Mr Lidington:** Her confidence is not based upon anything written into the treaties or anything that has been said by the European Commission or any other member state. The way that this is provided for in the treaties is that there is a Schengen protocol. The UK and Ireland have an explicit opt-out from that with the right to join if we wish to do so, and there are countries outside the EU—Switzerland and Norway—that have chosen to be part of Schengen. But you go back to the point about unanimity. The way that all recent accessions, including Croatia, have been treated is that their accession treaty presumes that they will enter the Schengen zone and will not have an opt-out, but that they have to have the further agreement of Schengen members that they can come into Schengen post their EU accession once they have met the criteria to enter Schengen in terms of strong internal and third country immigration controls of their own. So again we are back to the question of unanimity, that if Scotland votes for independence, the Scottish Government could then go to all the other member states and say, "Look, we are on this island. It makes practical common sense for us to have, as part of the terms of the EU membership we are seeking, the same exemption from Schengen as the UK and Ireland," but it is up to the others, all of them unanimously, to decide whether that should be granted. For the others, it would mean breaking with the precedent of other recent accessions and sort of establishing a principle that a new member state doesn't have to be on the path to Schengen, whereas the way it is always presented to me in my conversations in Brussels is, "Look, you have an opt-out from this, but the default position is that EU members ought to be part of Schengen."

**Q371 Mr Ainsworth:** Let's put aside for a moment those treaty difficulties, negotiating difficulties with regard to Schengen. What is the scope for two countries to operate a different immigration policy and be able to avoid any border controls?

**Mr Lidington:** If Scotland became independent, it would seem to me that, first of all, they would have to take the decision whether to seek to join or not to join Schengen. If they sought to stay out of Schengen

and were successful then presumably part of the package would be that they would remain within the common travel area shared between the United Kingdom and Ireland. In those circumstances such arrangements would continue as we have now, but any other approach—and Schengen is incompatible with the common travel area—means that they would be expected to maintain controls at the Schengen border. That would have somewhat mind-blowing implications for the Anglo-Scottish border, but also implications in Stranraer with the ferry link to Northern Ireland, and at airports.

**Q372 Mr Ainsworth:** Can I ask you one question on this intelligence issue? We are part of an international intelligence-sharing community called Five Eyes in which many of our allies are not included. How difficult or otherwise, easy, might it be for a newly created independent Scotland to get the degree of confidence that might be necessary in order to become part of that arrangement?

**Mr Lidington:** It would require all the members of that community to be satisfied that it was to their overall advantage in terms of intelligence gathering and sharing for Scotland, once independent, to be part of that arrangement and, crucially, for them to have confidence in the quality of an independent Scotland's own systems for safeguarding such secret information.

**Q373 Mr Baron:** One final question, Minister. There has been a little bit of lack of detail from the Deputy First Minister—in fact, I would suggest more than just a little bit—with regard to how a Scottish diplomatic service would be developed and funded, how a Scottish trade policy would be developed, representation on the ground promoting trade and business interests and so forth. Is the British Government going to do all it can to make sure that the SNP fill in the details, fill in the blanks in their policy well in time for the referendum next year on behalf of the Scottish people?

**Mr Lidington:** It is not for the British Government to fill in the manifest gaps in the SNP's policy, but I believe that as we develop our own arguments about the benefit that the people in Scotland and Scottish business derives from membership of the United Kingdom there will be greater pressure on the nationalists to reveal what their proposals are in more detail. I think that as we come to publish our analysis later this year of what membership of the United Kingdom gives to families and businesses in Scotland, more and more people in Scotland will start to demand answers to those questions. If we go back to trade, SDI has 22 overseas offices at the moment and seven of those are co-locations with United Kingdom posts. Fine, that is great, but they also have, as part of the UK, access to and representation by those 270 posts around the world that the Department where I serve operates. When Scottish Ministers are travelling to drum up investment or trade or to talk about devolved matters we support them and help them from the UK Government, but they have the knowledge that when the UK Prime Minister goes into a G8 or G20 summit that he is representing and speaking up for the interests of people in Scotland as well as the rest of

---

28 January 2013 Rt Hon David Lidington MP and Simon Manley

---

the UK. When the Secretary of State for Business or the Minister for Trade go into meetings with their counterparts around the world, they will have Scotch whisky, Scottish financial services on their agenda too. If we look at a live dispute at the moment, when the UK Fisheries Minister, speaking on behalf of one of the big countries in Europe, goes into a meeting, either on a North Sea, North-East Atlantic basis or EU basis, to talk about mackerel and the row with Iceland and the Faroes, it is the whole of the UK's Government apparatus and weight that is being put behind and deployed in support of Scottish interests. If Scotland

leaves the UK, it will be Scottish Ministers and whatever network of support they are able to afford that will have those responsibilities and not UK Ministers.

**Chair:** Minister, thank you very much indeed. Thank you on behalf of the Committee for joining us on this unique occasion. I think it is right and proper that the people of Scotland have a chance and opportunity to see how we address these matters, and it is a matter that has a profound impact upon them, so many thanks to you and to Mr Manley for joining us.

---

# Written evidence

---

## Written evidence from the Foreign and Commonwealth Office

1. Thank you for the opportunity to submit a memorandum of evidence for your inquiry into the foreign policy implications of and for a separate Scotland. The evidence below addresses the main areas of interest identified by the Committee in announcing the terms of reference on 18 July 2012.

2. Following the Scottish Parliament elections in May last year, the Scottish Government has made clear its intention to hold a referendum on independence. The question of Scotland's constitutional future is for people in Scotland to answer, and, recognising the Scottish National Party majority in the Scottish Parliament, the UK Government is committed to facilitating a fair, legal and decisive referendum as soon as possible, to provide clarity about how this will be decided.

3. The UK Government's position is clear: Scotland benefits from being part of the UK and the UK benefits from having Scotland within the UK. The UK Government is confident that the people of Scotland will choose to remain part of the UK, and is not planning for any other outcome.

4. The UK Government will, of course, provide evidence and analysis to inform the decision facing the people of Scotland. As announced by the Secretary of State for Scotland on 20 June 2012, the Benefits of the UK work programme will assess the benefits of Scotland being part of the UK and address many of the key questions facing the people of Scotland. The analysis will provide clarity and fact in the run-up to the referendum, with the work focusing across a number of themes, including:

- The UK's position in the world—currency and monetary policy; financial services; and membership of the European Union and international institutions;
- the protection of the UK's citizens—defence capability and the way we secure our borders; and
- the economic benefits of the UK—economic performance; public services; the welfare system and shared energy sector.

5. It is for those advocating independence to explain the nature and implications of an independent Scotland; it is the policy of the UK Government to maintain the integrity of the existing UK, and it is supporting that position with evidence and analysis. The UK is one of the most successful and long-standing political, social and economic unions in history, with a record of shared achievements across all regions and countries that make up the UK. The close ties and shared history mean the UK can project significant influence in the world and face global challenges and risks by pooling our talents and resources.

The extent to which Scottish separation might have an impact, if at all, both in the short term and long term, on the UK's and Scotland's future:

- (a) International standing, influence and foreign policy priorities.
- (b) Membership of and standing in key international bodies.
- (c) Relations with key bilateral allies.

6. As the UK Government has said before, it is for those advocating independence to explain what this means and to set out the potential impact. Without such clarity from the Scottish Government, it is difficult to come to any other conclusion than that the impact on Scotland of separation on its place in the world would be significant.

7. To date, the Scottish Government has made a number of claims about the status of an independent Scotland, including its membership of international bodies. Notably, it has asserted that Scotland would continue to be a member of the EU in the event of independence, and would not have to negotiate the terms of its membership as a new Member State. It is not clear on what basis this assertion has been made and no evidence has yet been supplied to support this claim. It is, however, evident that this issue is not straightforward, and that the Scottish Government cannot take for granted the idea that Scotland would secede from the UK but automatically stay in the EU. Decisions about EU membership need the unanimous agreement of all Member States.

8. On this and other critical issues relating to an independent Scotland's international standing, the Scottish Government needs to be clear on the facts of what independence actually means in practice and provide evidence to support its statements, which takes account of expert opinion and international precedent.

9. The overwhelming weight of international precedent suggests that, in the event of Scottish independence, the remainder of the UK would continue to exercise the existing UK's international rights and obligations, and that an independent Scotland would be a new state. The UK Government judges that this situation would be recognised by the wider international community.

10. It therefore follows that an independent Scotland would be likely to have to apply for membership of whichever international organisations (including the United Nations, European Union, Commonwealth and NATO) it wished to join, and treaties (such as the European Convention on Human Rights or other international human rights treaties) to which it wished to accede. It would then have to sustain all the related costs and administration of membership. As part of its work on the Benefits of the UK, the UK Government is carrying

out further detailed analysis on the benefits of the UK's international position and its membership of the EU and other international institutions, and these important issues of international law, including with the assistance of external experts. These findings will be published in due course.

11. The question of an independent Scotland's membership of the EU is of fundamental importance because this would involve detailed negotiation with the remainder of the UK and other existing Member States on the terms of Scotland's membership, including complex areas such as fisheries quotas and Scotland's financial contributions. Such negotiations would have far-reaching implications for Scotland and the rest of the UK as they would also need to address Scotland's position in relation to the European single currency and the Schengen free movement area, which every new Member State since 2004 has committed to joining when they meet the criteria. The impact of an independent Scotland joining Schengen, were it to wish or be obliged to do so, would be significant, creating a UK land border with the Schengen area for the first time (the Republic of Ireland is not a member of Schengen).

12. The UK is one of largest Member States in the EU, which gives us a considerable say over decision-making in support of our policy objectives. However, the influence of small Member States in the EU is variable. In institutional terms, each Member State, whatever its size, provides a member of the European Commission, and a judge in each chamber of the Court of Justice of the EU. The size of an independent Scottish delegation in the European Parliament is difficult to predict. In the Council of the European Union, the main forum for decisions amongst the Member States, smaller countries have tended to have a higher voting weight proportional to their population than the larger ones. This will change in 2014, however, with the introduction of the new voting system agreed under the Lisbon Treaty: legislative proposals will in general need to be backed by over 55% of the Member States, and by countries together representing over 65% of the EU's population. This will tend to increase the voting weight of the larger Member States, including the UK, relative to the current position, and diminish the voting weight of smaller Member States. Scotland's place within one of the largest Member States is therefore beneficial in terms of support for economic priorities, such as trade policy, and enhanced influence in areas with particular impact in Scotland, such as regulation of the financial services industry, health and safety regulation affecting the offshore oil industry and reforms of the Common Agricultural Policy and Common Fisheries Policy, amongst others.

13. As a new state Scotland would be entitled to apply for membership of the UN. The accession process would be likely to be quicker and less complicated than that of accession to the EU; the process of joining the UN requires only a short resolution of the General Assembly on the recommendation of the Security Council. However, there would be assessed costs and administrative burdens for Scotland associated with membership of the UN and its Specialised Agencies. An independent Scotland would not be a permanent member of the Security Council; the five permanent members, including the UK, are fixed by Article 23 of the UN Charter. (The USSR is also named in Article 23; the international community recognised Russia as continuing the USSR's membership in 1991.) Scotland would therefore be less able to play a global role than the UK does in geopolitics, global security and international human rights. An independent Scotland would also not belong to, or be invited to join, the other main international groupings of the most influential and economically significant countries, such as the G8 or G20.

14. Although the Scottish National Party is due to re-consider its policy on NATO membership in the autumn, both its and the Scottish Government's current policy is to commit to the Partnership for Peace programme. This allows for co-operation between NATO Allies and other countries in the Euro-Atlantic area and many Partners make significant contributions to NATO operations. But it is not the same as full NATO membership. It does not provide a voice in NATO's senior decision making bodies, nor, because the Washington Treaty does not apply, does it bring with it NATO's Article 5 collective defence guarantee where an attack against one of the Allies shall be considered an attack against all, if all NATO members agree. The UK Government believes that Scotland is certainly stronger in defence terms as part of the UK within NATO. These questions, and related issues of international defence and security, will be considered more fully in evidence being submitted to the Defence Committee by the Ministry of Defence. It is relevant to note that membership of NATO is also not automatic as this is a matter for the North Atlantic Council to determine.

15. Scotland would have to apply for membership of the International Financial Institutions, including the World Bank and the International Monetary Fund (IMF). There is precedent for a region of an existing member of the IMF declaring independence and applying to become a member in its own right. In Scotland's case, its voting shares and influence in these Institutions would be reduced from its current position as part of the UK. For example, the UK holds a single seat on the IMF's 24 member Executive Board, as one of the fifth largest quota holders. Many other IMF members are represented by Executive Directors representing a group of members, and thus the expectation must be that an independent Scotland would not be represented by its own single seat.

16. It is for the Scottish Government to set out how it would go about developing a new network of bilateral relationships, and setting up and financing the diplomatic network it would presumably need to service them. It is difficult to see how those relationships would be more productive for Scotland than those privileged relationships the UK currently enjoys with the rest of the world, and particularly the other major international powers, including the emerging economies.

17. An independent Scotland would, however, face some immediate and complex bilateral issues. One would be the need to agree maritime boundaries and continental shelf questions between Scotland, on the one hand, and the remainder of the UK, Ireland, Iceland and Denmark and the Faeroe Islands. Another would be the status of the nearly 14,000 treaties, multilateral and bilateral, the UK is currently involved in, covering everything from transport and telecommunications to taxation and investment protection.

18. In formal terms, international precedent suggests that the impact of Scottish independence on the international standing and policy of the remainder of the UK would be less significant, as the remainder of the UK would maintain its leading position in the major international institutions and organisations. Thus the remainder of the UK would continue in membership of NATO and the EU—albeit with some necessary adjustments to its institutional position consequent to its reduced population—and retain its permanent membership of the UN Security Council. It would remain one of the largest contributors, in political, policy, capability and financial terms, to all of those organisations.

19. Similarly, the remainder of the UK would maintain its strong network of alliances and relationships, and its global foreign policy role. It would retain 55 million of its current population of 60 million, making it the 23rd largest country in the world (down from 21st now). It is more difficult to say, however, what the effect on the UK's international influence would be. Traditional allies may seek reassurance that the UK would retain the ability to project influence and military capability in support of joint objectives and there could be a short-term risk of opponents of the UK's foreign policy seeking to exploit any uncertainty or distraction that could follow a vote in favour of separation for Scotland. But any material impact or longer term trends are harder to predict, and would depend on the policy pursued by the Government at the time.

Whether Scottish separation could affect the operations and organisation of the Foreign and Commonwealth Office (and its associated bodies) and in particular its diplomatic infrastructure and representation:

- (a) The ability to discharge foreign policy aspects of the NSS.
- (b) Efforts to promote UK business abroad.
- (c) The provision of consular support to British nationals abroad.

20. The UK Government is not making plans for independence as it is confident that people in Scotland will continue to support Scotland remaining in the UK in any referendum.

21. There would appear to be no reason why Scottish separation should have any effect on the FCO's ability to deliver its foreign policy objectives or its public services, such as consular and commercial services. The UK's diplomatic, consular and UKTI network—one of the largest and most respected in the world—would remain intact and continue actively to promote and protect the interests of the remainder UK, its citizens and businesses. The Scottish National Party in 2009 made clear its intention to establish a diplomatic service and network, should Scottish independence be achieved, on the basis of an existing network of 22 Scottish Development International offices in large commercial centres globally (which are not always capital cities). By contrast, the FCO maintains a global network of around 270 diplomatic posts in 170 countries, employing 14,000 staff. An independent Scotland would have to sustain the relevant costs and administrative burden, and no proposals have been put forward by the Scottish Government to clarify its view on how a Scottish diplomatic and consular service could realistically be funded or staffed. It is clear that no staff could be compelled to join a new service from within the UK Foreign and Commonwealth Office.

22. It is not clear what citizenship rules might apply in an independent Scotland. The number of people in Scotland who would choose to renounce their UK citizenship could impact on UK consular services, which are funded from the consular premium on UK passports.

23. The FCO's global diplomatic network of around 270 posts is the essential infrastructure for our foreign policy and our influence overseas. This enables the UK to deliver a distinctive foreign policy that extends its global reach and influence on bilateral and multilateral issues such as climate change, human rights and global security, as well as assisting UK nationals overseas. Consular assistance overseas remains a very high priority—during 2010–11, there were over 55 million trips overseas by British nationals and over 43,400 British nationals need some form of consular assistance. During various national disasters and political unrest in early 2011, the FCO helped over 6,300 people with assisted departures or evacuations. Similarly, UKTI assists thousands of businesses to exploit trade opportunities annually, helping them to deliver billions of pounds of additional profit, and supporting hundreds of high value inward investment projects.

24. The loss of coverage from UK consular and trade and investment promotion networks would therefore have a significant impact on Scottish citizens travelling and working overseas. If Scotland was a member of the Commonwealth or EU, the UK, under existing arrangements, could provide some first-line consular assistance to Scottish citizens where Scotland had no diplomatic presence. These arrangements would not extend to those cases that are particularly challenging or sensitive, however, where there is an expectation that assistance would be provided directly by the country concerned. This could have an important impact on Scottish citizens involved in situations such as child abduction, forced marriage or criminal cases in much of the world. An independent Scotland would need to develop its own consular policies to define what services their citizens could expect when overseas to allow the UK (and other EU Member States and Commonwealth

countries) to provide consular services on behalf of unrepresented Scottish nationals, and to develop the capacity to provide hands-on consular support in the most difficult cases.

25. There are no such burden-sharing arrangements for business services. An independent Scotland would not have access to UK Trade and Investment networks and resources. As part of the UK, SDI's own offices in 13 countries are complemented by the extensive UKTI network of 162 offices in 96 countries, and can draw on the UK's diplomatic representation in the rest of the world. Independence would mean that Scottish companies and potential foreign investors in Scotland would lose access to that global network, and risk missing out on investment in the form of jobs, skills, capital and tax revenue from all over the world. Helping companies increase their exports and attracting foreign investment is, of course, an essential element of achieving growth in the economy, and closing off Scottish companies' access to this global network could only harm the Scottish economy.

In relation to Scotland, views are invited on the key factors that could influence the basic shape and scope of a separate Scottish foreign policy.

26. It is for the Scottish Government to explain its position on what an independent Scotland's international relationships would look like. Scotland currently benefits from and contributes to the UK's global presence which helps to offer stability and influence in an increasingly competitive, globalised world. It is clear that an independent Scotland could not exist in a vacuum, immune from these external forces, and a move to separate Scotland from the rest of the UK's pooled resources would require change of considerable magnitude. The Scottish Government will want to consider carefully the political, social, defence, security and economic implications of such a dramatic change and to put forward credible information on how such a fundamental shift could be managed adequately.

24 September 2012

---

**Written evidence from Graham Avery, Senior Member of St. Antony's College, Oxford University, Senior Adviser at the European Policy Centre, Brussels, and Honorary Director-General of the European Commission**

1. The object of this note is to clarify the procedure by which, following a referendum in which the Scottish people vote in favour of independence, Scotland could become a member of the European Union. Although the note touches on wider issues such as the terms of Scotland's membership and the attitude of the EU member states and institutions, it focuses on the question of the procedure for Scotland's accession.

2. In the debate on Scottish independence it is natural that opponents tend to exaggerate the difficulties of EU membership, while proponents tend to minimise them. This note tries to address the subject as objectively as possible. In summary it argues that:

- Arrangements for Scotland's EU membership would need to be in place simultaneously with independence.
- Scotland's five million people, having been members of the EU for 40 years; have acquired rights as European citizens.
- For practical and political reasons they could not be asked to leave the EU and apply for readmission.
- Negotiations on the terms of membership would take place in the period between the referendum and the planned date of independence.
- The EU would adopt a simplified procedure for the negotiations, not the traditional procedure followed for the accession of non-member countries.

3. The author a Senior Member of St. Antony's College, Oxford, Senior Adviser at the European Policy Centre, Brussels, and Honorary Director-General of the European Commission. He worked for 40 years as a senior official in Whitehall and Brussels, and took part in successive negotiations for EU enlargement (see biographical note at end).

4. The EU has no historical precedent for dealing with Scottish independence. The following cases are relevant, but hardly constitute precedents:

- Greenland joined the EU in 1973 as part of Denmark. Later it obtained home rule and voted to leave the EU. This led to a decision of the EU in 1989 removing Greenland from the EU's customs territory and legal framework.
- In March 1990 the German Democratic Republic elected a new government committed to reunification; in October 1990, when it joined the German Federal Republic, its 16 million people became members of the EU.
- As a result of Czechoslovakia's "velvet divorce" the Czech Republic and Slovakia became independent states in 1993. Slovakia applied for EU membership in 1995, the Czech Republic in 1996, and they both became members in 2004.

5. German reunification represents in some ways the opposite of Scottish independence: it was enlargement without accession, whereas Scottish independence would be accession without enlargement. Nevertheless it is pertinent for the Scottish case from the point of view of procedure. Under pressure of the date for reunification, the EU adopted a simplified procedure for negotiation under which the Commission explored with Bonn and Berlin the changes needed in EU legislation, and its proposals were approved rapidly by the Council of Ministers and European Parliament. No EU intergovernmental conference was necessary because there was no modification of the EU Treaties.

6. However, for Scotland a modification of the EU Treaties would be necessary, if only to provide for Scottish representation in the EU institutions (number of members of European Parliament, number of votes in Council of Ministers, etc).

7. At this point we need to consider the timing and procedure for such Treaty changes. Scotland's EU membership would need to be in place simultaneously with Scottish independence. For practical and political reasons the idea of Scotland leaving the EU, and subsequently applying to join it, is not feasible. From the practical point of view, it would require complicated temporary arrangements for a new relationship between the EU (including the rest of the UK) and Scotland (outside the EU) including the possibility of controls at the frontier with England. Neither the EU (including the rest of the UK) nor Scotland would have an interest in creating such an anomaly.

8. From the political point of view, Scotland has been in the EU for 40 years; and its people have acquired rights as European citizens. If they wish to remain in the EU, they could hardly be asked to leave and then reapply for membership in the same way as the people of a non-member country such as Turkey. The point can be illustrated by considering another example: if a break-up of Belgium were agreed between Wallonia and Flanders, it is inconceivable that other EU members would require 11 million people to leave the EU and then reapply for membership.

9. It follows that negotiations on the terms of Scottish membership would take place in the period between the referendum and the planned date of independence. We do not know at this stage how long that period would be; complicated negotiations between Edinburgh and London would have to take place; but we may guess that not more than one or two years be needed.

10. The main parties in negotiations for Scottish accession to the EU would be the member states (28 members after Croatia's accession in 2013) and the Scottish government (as constituted under pre-independence arrangements). It may be noted that in this situation the government of Scotland—not yet an independent state—could not in fact submit an application for EU membership under Article 49 of the Treaty. But it could indicate its wish for Scotland to remain in the EU, and this would lead to negotiations in an appropriate framework to prepare the necessary modification of the Treaties. Proposals would be submitted for approval to the EU institutions and the Parliaments of 28 member states and of Scotland, and would come into force on the date of Scottish independence.

11. As in the case of German reunification, the EU would adopt a simplified procedure under which the Commission would be asked to conduct exploratory talks with Edinburgh, London and other capitals, and submit proposals. Although an intergovernmental conference would be needed, it would not be of the kind that handles accession negotiations with non-member countries. A protracted accession procedure of that type, with detailed scrutiny of 35 chapters of the EU's *acquis*, would not be necessary in the case of Scotland, which has applied the EU's policies and legislation for 40 years.

12. Let us return to the question of the changes in EU legislation necessary for Scottish membership. We need to distinguish here between changes in the EU Treaties (primary legislation) and changes in EU regulations, directives, decisions etc. (secondary legislation). The changes in the basic Treaties for institutional reasons should not be problematic: for Scotland they could easily be calculated by reference to member states of comparable size (Denmark, Finland & Slovakia have populations of five to six million). The number of votes in the Council for the remainder of the United Kingdom would not need to be adjusted (with 60 million it would still be comparable to France & Italy) although its members of Parliament might need to be reduced in number in order to respect the Parliament's limit of members.

13. In accession negotiations with non-member countries the EU has always strongly resisted other changes or opt-outs from the basic Treaties; at this stage it remains to be seen what might be requested by Scottish representatives concerning the euro or the Schengen area of free movement of persons. Without embarking here on a discussion of the implications for Scotland of these policies, we may note that although new member states are required to accept them in principle, they do not become members of the eurozone or Schengen immediately on accession, and are not permitted to do so. Joining the euro or Schengen depends on a series of criteria that are examined in the years following accession.

14. Let us turn now to the secondary legislation. Although a large number of technical adaptations would be needed in order for Scotland to implement EU law, the vast majority of these would be uncontroversial since they would be based on the existing situation. In respect of EU policies and legislation, Scotland's citizens have a legitimate expectation of the maintenance of the *status quo* in terms of economic and social conditions. There should be no need, for example, to re-negotiate Scotland's application of European policies in fields such as environment; transport, agriculture, etc: it would suffice to transpose *mutatis mutandis* the situation

that already exists for Scotland within the U.K. Since the rest of the U.K. could be affected, that process would require discussion and clarification with London, but it would have little interest for other member states who would be content to consider the question of secondary legislation on the basis of a report and proposals from the Commission.

15. Here again, it remains to be seen whether Scottish representatives would request changes in the application of EU rules and policies, for example the fisheries policy or payments into the EU budget. In general one would expect these matters to be solved on a temporary basis by means of a roll-over *mutatis mutandis* of existing arrangements for the U.K. until the relevant EU rules come up for revision, for example the renegotiation of fishing quotas, or the multi-annual budgetary framework. Such solutions would, in fact, be in Scotland's interest since it could expect to obtain a better deal as a member state with a full voice and vote in the EU than in the pre-independence period. However, the adaptation of the British budgetary rebate could require difficult negotiations between Edinburgh and London as well as with Brussels.

#### BIOGRAPHICAL NOTE

Graham Avery is Senior Member of St. Antony's College, Oxford University, Senior Adviser at the European Policy Centre, Brussels, and Honorary Director-General of the European Commission. He has given evidence on a number of occasions to Committees of the House of Commons and the House of Lords.

In the Ministry of Agriculture, Fisheries and Food in London (1965–72) he headed the unit responsible for negotiations for accession to the EC, and later (1976) served as Private Secretary to two Ministers. In the European Commission in Brussels (1973–2006) he worked in agricultural policy, foreign affairs, and the cabinets of the President and other Commissioners, and took part in successive negotiations that enlarged the EU to 27 members. His last post was as Director for Strategy, Coordination and Analysis in the Directorate General for External Relations.

He has been Fellow at the Center for International Affairs, Harvard University, Fellow at the Robert Schuman Centre for Advanced Studies of the European University Institute, Florence, Visiting Professor at the College of Europe, and Secretary General of the Trans European Policy Studies Association.

In the Queen's New Year Honours 2012 he was appointed Companion of the Order of St. Michael and St. George (CMG) for services to European affairs.

24 September 2012

---

#### **Written evidence from Dr Andrew Blick, University of Kent and Senior Research Fellow at the Centre for Political and Constitutional Studies, King's College London and Professor G Whitman, University of Kent and Associate Fellow, Chatham House**

#### ABOUT THE AUTHORS

The submitters of this evidence are working on a joint University of Kent/Federal Trust project investigating the bilateral foreign policy of the European Union. Dr Blick's recent publications include, with Prof. Peter Hennessy, *The Hidden Wiring Emerges: the Cabinet Manual and the working of the British constitution* (ippr, 2011). Professor Whitman is an academic and commentator working on the EU's foreign, security and defence policy and has previously presented written and oral evidence to the *Foreign Affairs Committee* on EU matters.

#### SUMMARY OF EVIDENCE

The evidence submission focuses on the implications of UK EU policy if Scotland secedes from the United Kingdom. It argues that the impact for the UK would be profound and irreversible and lead to a significantly diminished role for the UK within the European Union.

#### EVIDENCE

##### *The impact of Scotland's independence for a rump UK*

1. Under devolution a wide range of domestic policy powers have been handed to the Scottish Parliament and Government, and more responsibilities still might be shifted to Edinburgh if Scotland does not secede. But it is only under independence that Scotland could determine its own foreign and European policies. In this area, therefore, it is possible to identify some of the real differences that would be made by the separation of Scotland from the UK. Consequently the decision of the Committee to investigate this previously under-considered aspect of the Scottish independence debate is sound.

2. In the following evidence we focus primarily on the European implications of secession, as well as the overall diplomatic standing of the UK, certain other policy areas, and give brief attention to the foreign policy options available to an independent Scotland.

3. The implications for the rump UK's role in Europe and the EU post-Scotland independence would be profound and irreversible. Accompanied by the rump UK's likely continuation of its position outside the



Eurozone, and the possible transition of monetary union into a deepened fiscal and political union, a status as a European diplomatic Lilliputian is one credible scenario.

#### *Reduced influence for a rump UK*

4. The impact for a reduced-size UK would be five-fold:

5. First, diminished material resources for the conduct of foreign, security and defence policy. It can be anticipated that the terms of any Scottish independence settlement would require diminished public expenditure to a level commensurate with the UK's reduced population. The UK's diplomatic, security and defence infrastructure could be expected to shrink and with difficult choices to be faced on areas of priority for expenditure. The rump UK would be faced with a diminished capacity to give effect to its foreign policy ambitions.

6. Second, diminished perceptions of the UK's diplomatic weight and influence as a direct consequence of the reduction in the UK's population size, economy, cultural and public diplomacy and shrinking of military capabilities. The UK would slip from being a super-charged global middle power to a middle-player in Europe.

7. Third, the UK would face external pressure for its representation within regional and international organisations to be renegotiated and might experience difficulties in sustaining its seat on the United Nations Security Council (UNSC). The UNSC issue would be partly contingent upon how the status of the UK nuclear deterrent and its reliance upon Scottish territorial resources was determined. But a substantial reduction in the UK role in regional and international organisations outside the EU would reduce the authority of the UK inside the EU's Common Foreign and Security Policy (CFSP).

8. Fourth, there is a soft power dimension. The cultural reach of the rump UK would be lessened as its contacts with the Scottish Diaspora were severed. Furthermore the prestige of the UK as a successful multinational state would be compromised by the loss of a major territory within it; and uncertainty would be generated about whether further secessions might follow, serving to question the status of the rump UK on the international stage.

9. Fifth, various complex legal issues could arise. The most obvious involves the legal terms of membership of the EU of both Scotland and the rump UK. But there are other matters as well. The existence of the UK as a state has a complicated position in international law. It is founded in a treaty between England (incorporating Wales) and Scotland, which created Great Britain; followed by Acts of Union between Great Britain and Ireland. The constitutional status of Northern Ireland is also subject to an international agreement, the Belfast Agreement of 1998.

10. An independent Scotland might raise questions on the level of international law about how far the complex structure of the UK had been unpicked (for instance, if Great Britain—which is England and Scotland—did not exist, what would be the implications for the UK, as a union between Great Britain and Northern Ireland?), These issues would not necessarily ultimately prove to be problems in practice, but might create an aura of uncertainty around the UK state.

#### *A reduction of influence within the EU*

11. Each of these impacts would have significant implications for the UK's EU and European policies.

12. The UK would cease to be one of the EU's "big three" member states alongside France and Germany and may face a diminished capacity for influence within EU institutions and in its bilateral relationships with EU member states. One impact may be to experience diminished opportunities for leadership and coalition building within the EU on issues of UK national interest. Further, the claim on significant leadership positions within the EU institutions (such as President of the European Council, President of the European Commission and the expectation of weighty Commissioner portfolios) may be retarded.

13. Further, the UK may experience a loss of influence with the United States if its capacity to exercise influence on EU policy-making is diminished.

14. Of key concern would be the UK's capacity to exercise its current level of influence on the direction of the European Union's defence policy. A rump UK with a reduced military, and capabilities subordinate to those of France, would lose its position as an EU defence policy agenda-setter.

15. The rump UK could be assumed to face a reduction in its vote allocation under Qualified Majority Voting (QMV) and a reduction in seats in the European Parliament. The moderating effect of the UK on processes of EU legislation may diminish.

#### *Determining UK positions in the EU*

16. Within the Scottish independence movement, the ability of Scotland to take its own positions over EU business, including in the Council of Ministers, is perceived as a major benefit that could be obtained for Scotland through secession from the UK. At present, though there are mechanisms for the devolved administrations to be consulted over European business, there can be only one UK position within the EU.

17. On the one hand, there might be some gains for the rump UK. The UK government at present faces difficulties when seeking to represent UK interests at EU level in policy areas which are devolved. Distinguishing its status as a UK government from that of an “English” government can be complicated and it can be criticised for failing to do so satisfactorily. Equally the devolved areas may feel that they do not have sufficient input in these areas. This problem might be lessened if there was no longer a Scottish position to take into account in areas such as fisheries. But the UK government would still have to take into account the different needs of Northern Ireland and Wales, both of which territories might become more assertive regarding their interests following Scottish secession.

18. On the other hand, the rump UK would also be faced in Scotland with a new neighbour which was able to pursue its own interests independently and take at EU level its own positions on matters affecting the rump UK, which might sometimes contradict the interests of the rump UK.

*Immigration policy as cause of bilateral foreign policy dispute*

19. If Scotland were to pursue an immigration policy which differed substantially from that of the rump UK, difficulties would arise, given the likely porous nature of the border and the probable existence of a passport union. A less liberal policy than the rump UK on the part of Scotland (an unlikely proposition) would pose problems for Scotland; while a more liberal policy by Scotland, perhaps involving the encouragement of inward migration from within the Scottish Diaspora, would create difficulties for the rump UK. Full Scottish accession to the Schengen area, if sought, would raise similar issues.

*Impacts for an independent Scotland*

20. It should be noted that Scottish secession would make a substantial difference to Scotland in the field of foreign and European policy. While at present many aspects of domestic policy are already devolved to the Scottish Parliament and Government, external policy including foreign affairs and intelligence and security remains reserved, and would continue to do so even were some form of devo-max or devo-plus introduced. Therefore, independence would make a key difference in this area. For this reason, it should be discussed fully in the debate leading up to the independence referendum, both within Scotland and the UK.

21. As we have suggested, one important change for Scotland would be its ability to take its own positions in the EU. Other issues also merit attention when the external policy of an independent Scotland is considered. For instance, might Scotland move away from the conduct of diplomacy being carried out largely under the Royal Prerogative, as it is in the UK, and introduce a stronger dimension of parliamentary oversight of foreign and European policy?

22. The Scottish Parliament might be provided with the ability to mandate ministers before they attend international and European negotiations. This practice is followed in some of the Nordic states to which proponents of independence often compare Scotland. Indeed the Nordic model might be more widely applicable, since Scotland, like some Nordic states, could well become a power which seeks to wield its international influence acting as a part of the EU, rather than attempting to achieve independent global reach. The rump UK might do well to consider this stance also.

1 October 2012

---

**Supplementary written evidence from Dr Andrew Blick, University of Kent and Centre for Political and Constitutional Studies, King’s College London**

1. Further to the written evidence from Prof. Richard Whitman and myself, and our subsequent oral evidence session on 16 October, I would like to submit the follow brief note. It deals with certain issues which arose during the session, associated with the constitutional status of the UK and Scotland within it.

2. The way in which the UK has been constructed raises questions about what sort of state it is and the implications for it of Scottish independence.

3. The union of England (incorporating Wales) and Scotland into Great Britain, dating from 1707, lies at the centre of the UK. The basis for the state created in this way is held by some not to be entirely clear under international law. Elizabeth Wicks writes: “there are various roots of title established under international law including conquest, occupation, prescription, cession, accretion and avulsion. The union of England and Scotland in 1707 does not, however, fit easily into any of these categories”. She concludes that cession is the closest fit, but subject to unusual or even unique reservations (E Wicks, “A New Constitution for a New State? The 1707 Union of England and Scotland”, *Law Quarterly Review*, 2001, 117, Jan, pp.109–26).

4. The terms of the Union specifically provide for it to last in perpetuity and do not contain an amendment procedure. If Scotland were to leave the Union, the implication might be that the exact constitutional nature of the “Great Britain” part of the “United Kingdom of Great Britain and Northern Ireland” was called into question. In the words of Wicks “independence for Scotland...would not only breach Article 1 of the Acts and Treaty of Union but would also undermine the entirety of the modern British constitution” (E Wicks, *The Evolution of a Constitution*, Oxford: Hart, 2006, p.41).

5. Another issue involves the extent and manner in which self-determination is recognised within the UK constitution. The Belfast or Good Friday Agreement of 1998 has been depicted as breaking new ground in that, under its terms, a decision about the secession of Northern Ireland does not involve agreement by the ceding state (nor indeed the acquiring state, the Republic of Ireland). Instead the power to decide is vested in the people of the territory (C Campbell, F Ni Aolain and C Harvey, “The Frontiers of Legal Analysis: Reframing the Transition in Northern Ireland”, *The Modern Law Review*, May 2003, 66: 3, p.329). A secession under the Agreement could therefore be regarded as of a different kind to previous secessions. This part of the Belfast Agreement can be traced to a principle given statutory enshrinement under UK law as far back as the 1940s. It might now seem the principle of self-determination as overriding state sovereignty has been extended in practice to Scotland (and might by implication be difficult to deny to other parts of the UK, such as Wales and perhaps even England). In contrast the ability of a territory such as Quebec to secede from Canada subject only to support expressed in a referendum in the Province of Quebec has not been accepted in Canada as being as clear-cut (see: Reference re Secession of Quebec, [1998] 2 S. C. R. 217).

6. None of these issues in themselves need mean that, in the event of Scottish independence, problems would be raised for the rump UK—which would clearly keep the overwhelming majority of its previous population—in retaining its present status within international and regional organisations. But peculiar qualities in the makeup of the UK described above should be noted. The literature on the subject suggests that Scottish independence might create some theoretical uncertainties about the status of the UK as a whole; and the degree and nature of the willingness of the UK state to accede to self-determination marks it apart.

7. Finally, there was interest amongst committee members in whether, in becoming independent, Scotland might experience complications regarding its membership of the European Union. A different perspective involves the possibility that the UK might leave the EU at some point in the future, an outcome that is not out of the question. In such circumstances, rather than being a *threat* to Scottish membership, independence from the UK might be the only means of *preserving* the position of Scotland within the EU.

1 November 2012

---

### Written evidence from British American Security Information Council (BASIC)

#### 1. SUMMARY

1.1 This submission addresses the influence of Scottish separation from the UK on allies, with a special focus on NATO, and the impact that decisions regarding the Trident nuclear weapon system will have on relations with the rest of the UK and its allies, specifically the United States. Whilst NATO is an explicitly nuclear alliance and will appear likely to remain so for the indefinite future, some of its members have been able to pursue a mixed policy, one that supports Alliance nuclear policy whilst at the same time remaining distant from any direct involvement. It may therefore be possible for a newly independent Scotland to become a member of NATO, whilst also itself becoming nuclear free, though this posture may cause some unease with some NATO members.

1.2 If the newly-elected independent Scottish government were to insist on the removal of nuclear facilities at Faslane and Coulport, as seems likely, London will need to make decisions on the future of its deterrent, and consider the international implications of the renewal and relocation of the Trident nuclear system. This will be affected by a detailed assessment of the alternatives, one that has not yet been completed in recent times as far as we know.<sup>1</sup> However it seems clear that such a transfer of facilities would be highly costly, adding of the order of an additional £10 billion to the capital costs of the Trident renewal programme, and possibly a great deal more if the problems faced became significant. It may seem prudent to factor these issues into choices currently facing the government.

#### 2. BASIC

2.1 The authors of this submission are BASIC’s Executive Director (since 2007, and prior to that a staff member since 2002) and Programme Support Officer (since 2011). BASIC is the only peace and security non-governmental organization that is British-American in composition and focus. We operate with offices in London and Washington, a small but committed staff, and an active network of influential board members and advisers, and patrons on both sides of the Atlantic. We work to encourage sustainable transatlantic security policies and to develop the strategies that can achieve them. We partner with other international NGOs that share our goals and we promote public understanding of the danger of growing nuclear arsenals. We have charitable status in the United Kingdom and in the United States.

2.2 BASIC has been conducting a research project these last three years into NATO’s nuclear weapons posture, involving roundtables with officials and stakeholders in NATO capitals throughout Europe. BASIC launched in February 2011 the BASIC Trident Commission here in London, which will report in mid-2013. It should be noted that this submission is entirely unconnected with the BASIC Trident Commission, and does

<sup>1</sup> A review on location options was conducted in 1963 for the Polaris nuclear system, and various options were considered between 1979 and 1982 when the UK acquired the Trident D5 system from the Americans. There has been independent analysis conducted on relocation options since.

not reflect any discussions being held within that forum, and certainly not the opinions of any of the Commissioners.

### 3. SCOTTISH SEPARATION: INFLUENCE ON RELATIONS WITH ALLIES

3.1 In the event of Scotland breaking away from the rest of the United Kingdom, its new government would need to decide its relationship to various international bodies, such as the the European Union and NATO. This last is particularly controversial, as the SNP currently has a policy of withdrawal.<sup>2</sup>

3.2 While clearly attractive as a collective security Alliance, NATO has been searching for a role ever since the end of the Cold War. There is no question that its traditional article 5 facility that enables its members to collectively protect the territory of all its members is core to its reason for existence, but most members do not see any imminent strategic threat to the Alliance and see it more as a vehicle for addressing global security responsibilities. This is more than just a matter of resource prioritisation; it goes to the heart of the nature of the Alliance and the sense of threat it faces today. Some countries closer to Russia, and with a history of occupation, see the country as the principal threat that needs active containment, and deterrence as the principal purpose of the Alliance. Others further to the west, led by Germany, tend to see Russia as a strategic partner, if not ally, as well as an important energy source, and believe that engagement will be better in the long run than isolation. This difference goes to the heart of the challenges facing the Alliance today, challenges that have not been resolved by recent summits, or the agreement of the new strategic concept. Also at the heart of the Alliance is the nuclear component of its defence strategy, with the nuclear security guarantee being provided by the U.S., UK and French nuclear weapon arsenals. This is at the heart of many Scots' objection to NATO membership.

3.3 Based upon BASIC's extensive communications with officials across NATO in the last three years, we would conclude that while the November 2010 summit successfully concluded with an agreed strategic concept, followed in May 2012 with an agreed text for the deterrence and defence posture review, the deep rifts between NATO partners will continue. Principally this is because the world looks very different from the perspective of the Baltic states when compared with, say, Edinburgh. And whilst the Scandinavian countries are in some respects vulnerable strategically to the high North—principally a threat from Russian submarines and bombers—their response is generally one of engagement rather than containment.

3.4 Whilst opinion in Scotland towards NATO may currently be heavily influenced by the domestic perception of the relationship with London, foreign adventures in Iraq and Afghanistan, and perceptions that the Alliance is still caught up in Cold War nuclear legacies, in future such opinion may be more influenced by how the Alliance can facilitate Scotland's role in the world and its relationship with its near neighbours, much as its closest Scandinavian neighbour Norway does. This reconsideration may also be affected by the perception that should Scotland remove itself from this "European mainstream", as Professor Malcolm Chalmers phrases it, which could affect the chances for future cooperation with the UK's armed forces—with whom the SNP has clearly expressed they would like to maintain close ties in the event of separation. Furthermore, if Scotland wishes to collaborate with Norway and Denmark on security in the North Atlantic, which appears to be a fundamental part of ongoing considerations in the plans for a Scottish Defence Force, NATO membership may be essential.

3.5 Norway appears comfortable to sign up to Alliance policy that supports the continued relevance of nuclear deterrence and play a full and loyal role on the nuclear planning group, whilst at the same time playing a leading role as a non-nuclear weapon state within the NPT that questions the future for nuclear weapons in the international system, and bans the deployment and transit of nuclear weapons within its territory in peace time. NATO's own Secretary General appeared to acknowledge this reality when visiting explicitly nuclear-free New Zealand in June, saying, "actually, we have quite a number of NATO Allies that are also nuclear free... they have exactly the same experience [as New Zealand]...". What may seem to some as contradictory or ambiguous outcomes may be accommodated by the Alliance.

3.6 The Scandinavian approach of a focus on strong defensive defence capabilities with modest defence budgets, and internationalist engagement through development aid and mediation, may come to be seen as popular in Scotland as an alternative to the current defence relationships within the UK context. Scotland may look to its relationship with Scandinavia as an alternative. If this were the direction that Scotland went, it is likely that NATO membership, on a different basis to that experienced today through London, could be seen as facilitating this transition.

3.7 Of course, such an explicit approach, whereby Scotland seeks to balance NATO membership with becoming nuclear free will not be welcomed by many other members, and could have an impact on the longer

<sup>2</sup> SNP leader in the UK House of Commons, Angus Robertson, has recently proposed a change to the SNP policy on NATO. The proposed change in policy suggests that an independent Scotland would be a member of NATO, but only participate in missions approved by the UN. So far, indications are that this proposed change in policy, which is to be discussed at the October SNP conference, will be opposed—if for no other reason than to save from creating a deep division within the party. It has received criticism amongst party members and an internal party opposition group has tabled an amendment to the SNP conference to maintain the party's original policy. The fear amongst many party members and public supporters is that NATO membership would allow nuclear weapons to stay in Scotland. However, in a recent YouGov poll conducted on Scottish Attitudes on Defence in May of this year, 75% of respondents for an independent Scotland to remain in NATO. What is more, the same poll showed 52% of support for this decision among SNP members with 22% opposed.

term cohesion of the Alliance. There is already some concern that key members of NATO are moving away from a commitment to nuclear deterrence, while others remain strongly of the opinion that it is essential. The governments of Belgium, Germany and the Netherlands have been pressing for the removal of tactical nuclear weapons from their soil, and may welcome a nuclear free Scotland to NATO with open arms as a progressive step for a move towards a change in NATO policy.

3.8 However, unless Scotland is willing to be seen as an outlier within the Alliance its new government would need to be cautious in moving too quickly to force expulsion of nuclear weapons from its territory. This would make enemies very quickly, and it's not clear how the rest of the UK could comply.

3.9 It is still not determined whether or not Scotland would easily inherit membership to NATO if it became independent of the UK. NATO requires aspiring members to meet certain criteria and complete a multi-step political and military dialogue and integration process before they become members.

3.10 It also remains unclear whether Scotland would be placed on a fast track to accession to the European Union and permitted to negotiate as a *de facto* member, or whether the country would need to go through a normal accession procedure. There are significant transition challenges to the latter, given Scotland's current membership of European law and procedures as part of the UK.

#### 4. HOW IMPORTANT IS THE ISSUE OF TRIDENT?

4.1 Trident is likely to feature prominently in the referendum campaign, not least because the Yes campaign will seek to use it to illustrate their case that Scotland exists under a defence and foreign policy that its population disagrees with, hosting nuclear weapons they do not want. Opinion in Scotland has been more clearly opposed to maintaining the nuclear deterrent since the early 1960's, and in particular, keeping it in Scotland.<sup>3</sup> It's basing location could yet prove harmful to the cohesion of the Union.

4.2 Those supporting independence will also be seeking to strengthen their negotiating hand in the event of a vote in their favour. It would be a strong card to play in general negotiations for an independent Scotland, one that it would be difficult to drop in the face of public opinion if it is made a significant issue in the referendum.

4.3 Obligations to international treaties, specifically the Nuclear Non-Proliferation Treaty (NPT), will need to be recognised in this process. The Scottish Government has voiced its wish to become party to the Treaty as a non-nuclear weapon state. If the rUK and an independent Scotland want to be States Parties to this Treaty, they will need to abide by Articles I and II which prohibit the transfer of nuclear weapons to non-nuclear weapon states. Whilst there is nothing that explicitly prevents a nuclear weapon state (all assume the rUK will inherit the status the current UK has a nuclear weapon state under the definition of the NPT) basing its weapon systems on the territory of a non-nuclear weapon state, there is no precedence for all their weapons to be based abroad, and only one country (the United States) bases any abroad today, and this is becoming increasingly controversial. It has been suggested that the arrangement of having US nuclear weapons in "non-nuclear weapon states" in Europe continues to undermine the credibility and trustworthiness of the countries involved in the arrangement. There would be an indefinite question over the practice of transporting warheads on Scottish roads, and issues of sovereignty over the sea approaches to the base, as well as over the base itself. It would seem that any such arrangements would be temporary in nature.

4.4 Reputation and credibility within disarmament and non-proliferation forums, such as the Conference on Disarmament (CD) and the NPT, will remain important to both the rUK and an independent Scotland in the decision on if and how long deployment of the Trident nuclear weapons will remain in Scotland. It would not be seen as reasonable by many NPT members for rUK as a nuclear weapon state to place undue pressure on their newly independent neighbour to continue to host rUK nuclear weapons against Scottish will.

#### 5. OPTIONS AROUND RELOCATION

5.1 Of course, a new Scottish government may not have an SNP majority. But this is hardly cause for comfort in London. The principal reason why the Scottish Labour Party has not itself come out against the continued basing of Trident in Scotland is because of its internal relationship with the rest of the Labour Party. It seems likely this dynamic would change with independence, and the makeup of a new Scottish government may simply influence just how strongly it would negotiate on this matter.

5.2 The principal focus of negotiations around the location of the nuclear bases will therefore likely be on a timetable for relocation out of Scotland, somewhere a period we estimate likely to be between two and 20 years. London would of course seek through negotiation to delay such a move, and would bring into play other issues on which they have a stronger hand for leverage. They would certainly want a delay long enough to survey, get agreement and construct alternative facilities south of the border, with sufficient leeway for contingencies and unforeseen challenges, assuming a decision is taken to continue with the project.

5.3 Relocation of the nuclear system will require time and effort, and may best be undertaken by a government study, not dissimilar to the current government review on alternatives to the Trident system. In

<sup>3</sup> 64% of Scots in a 2007 ICM poll stated their opposition to the maintenance of nuclear weapons there for the next 50 years, which has been followed with consistent results from polls, including, more recently, one conducted by YouGov in 2010 that showed almost 70% opposed Trident replacement.

fact, it would be prudent of this review on nuclear alternatives to consider relocation in its examination in anticipation of the impact of this issue, as relocation could conceivably influence the choice of delivery system. Even if the referendum were to return a no vote, this issue is likely to remain a cogent for the foreseeable future, rendering long-term investment at those bases more risky.

5.4 Nick Harvey, when Minister of State for the Armed Forces, in evidence to the Scottish Affairs Committee in June, confirmed that finding alternative sites south of the border for the facilities currently at Faslane and Coulport would be challenging and extremely costly.

5.5 The principal alternative port to Faslane would need accessible facilities and deep water to enable the submarine easily to slip into the ocean without detection, but it is finding a site for the warhead storage and loading facilities at Coulport that would present particular challenges. Prof Malcolm Chalmers of RUSI concludes that the most likely viable site is Falmouth, Cornwall, which has deep water access, but this would require moving a significant number of civilians and the construction of new bunkers and handling facilities, both of which would require complex decision-making and consultation processes, as well as some significant expense, running into several £billions, increasing the current capital cost estimates for the renewal project considerably. Having accounted for this we believe a reasonable estimate would be in of order of £10 billion, or an additional 50%, though the total figure could easily end up being more if significant obstacles arise that involve major compensation or lengthy inquiries.

5.6 There is a possibility that London would need to consider transitional arrangements. It has been suggested that the MoD may even approach France or the United States for basing, though the logistics involved in the transport of warheads and other supplies, not to mention the political implications of dependence on another nuclear weapon state, could prevent consideration of this option.

24 September 2012

---

**Written evidence from Malcolm Chalmers, Research Director, UK Defence Policy,  
Royal United Services**

This paper focuses on the implications for UK foreign policy (and subsequently for that of the “UK”) of a “yes” vote in the Scottish independence referendum that is due to take place in 2014. It complements a previous article, published by RUSI.<sup>4</sup> Its purpose is to discuss some of the foreign policy issues that could arise as a result of a transition to Scottish independence.

#### THE PROCESS

The Government of the UK has made clear that it would accept the result of the referendum, and that it would act in good faith to carry out the decision of the people of Scotland. In the aftermath of a “yes” vote, therefore, it can be assumed that negotiations would begin in order to establish how to carry out the process of separation. The central parties would be the legally-constituted governments of the UK and Scotland. Both sides could choose to bring other political parties into the process, especially given the imminence of scheduled general elections in both the UK (in 2015) and in Scotland (in 2016). The monarchy would also have a role, especially in relation to those aspects of constitutional reform that impacted on its position in the two post-separation states.

Once the principle of separation was agreed, some issues could be resolved in a relatively straight-forward fashion. But others would be the subject of tough negotiations between the two governments. The most difficult, and consequential, would include division of UK assets and liabilities, future currency arrangements, and provisions for future monetary and fiscal policy coordination. But hard choices would also have to be made on defence and security, most notably on the future of the UK nuclear force, currently based on the Clyde.

SNP leaders have made clear their hope that the next election to the Scottish Parliament, due in May 2016, would be for the parliament of an independent state. The timetable for independence would, however, depend on the consent of both Governments. Until agreement is reached on the main substantive points of potential disagreement, it cannot be assumed that separation could occur by any particular date. There would be considerable pressure, both from concerned members of the public and from financial markets, to resolve uncertainties as quickly as possible. But both parties would also want to ensure that their vital interests—their “red lines”—were protected as far as possible. The UK, as the status quo power, might have some bargaining advantage in this regard.

#### THE INTERNATIONAL RESPONSE

The attitude of the UK’s main international partners and allies—especially the US and the UK’s main European partners—would be critical in determining how much long-term damage was done to the rUK’s political standing as a consequence of Scotland’s separation.

Emotional attachment to the Union (and regret for its passing) would play little role in shaping the policy responses from the UK’s partners and allies. Their main concern would be to avoid a situation in which the

<sup>4</sup> Malcolm Chalmers, “Kingdom’s End”, *RUSI Journal*, June/July 2012, 157, 3, pp. 6–11.

division of the UK becomes a problem for the wider international community, as separation processes in other parts of the world have done in the past. Their main message to the two governments, therefore, would be likely to be: sort out your differences between yourselves, and then come to us with a joint proposal for how Scotland and the rUK would take their places within the broader community of states.

There may be some countries, especially amongst those who have been less than friendly to the UK in the past, who would take comfort from the troubles of an old antagonist. But the UK's traditional allies in NATO and the EU would have a strong interest in ensuring that both successor states remain responsible partners in, and contributors to, shared institutions and policies. Particularly at a time of wider uncertainty in Europe, they would want to avoid a prolonged period of acrimony and uncertainty in relations between Scotland and the rUK, not least because of the opportunities this could provide for others to take advantage of intra-UK discord.

This would be the wider political context in which debates on Scotland's membership of the EU and NATO would have to be seen. While there may not be a consensus amongst legal analysts, past practice suggests that Scotland would not automatically inherit the membership of international organisations such as the UN. It has also been suggested, more controversially, that rUK might also have to apply anew for recognition as a member state, as the Federal Republic of Yugoslavia had to do after the dissolution of Yugoslavia.

In practice, however, it is probable that the members of the UN Security Council—and subsequently other global organisations, such as the IMF and WTO—would vote to recognise the rUK as the legitimate successor of the UK, in the same way that Russia was recognised as the legal successor of the Soviet Union. Some questions might be raised in relation to the UK's permanent UN Security Council seat. If either Russia or China were to do so, however, they would gain no support from the US or France, who would both have a strong interest in continuing rUK participation. And they would risk undermining the viability of an institution—the Security Council—from whose current rules both still derive considerable leverage and influence.

Scotland's primary interest would be to obtain the status and privileges that would accrue to it as a full member of the EU and (probably) NATO. Despite the current view of the SNP, it should not be assumed that Scotland would automatically “inherit” membership of these organisations. But nor is it credible to believe that Scotland would be asked to “go to the back of the queue” of aspirant members, behind Serbia and Albania.

A much more likely path is that other EU and NATO member states would urge the post-referendum negotiating parties to reach a bilateral agreement between them on the terms for separation. They would not want to import unresolved bilateral problems into their organisations, as many believe was the result of allowing Cyprus to join the EU without a resolution of its internal dispute.

If there is a clear and comprehensive bilateral settlement, however, other members of the EU and NATO may be sympathetic to a request that both states, on the date of their separation, would continue the membership status that they had previously enjoyed together. This transition, in the case of the EU, would be more straightforward if both states were to take on the current opt-out status of the UK in relation to the Schengen area and the Eurozone, together with other exceptional provisions (such as the UK rebate). But some differences in status might be acceptable, if proposed jointly by the two governments.

Yet it cannot be taken for granted that the separation negotiations would result in easy agreement on all outstanding issues, for example in relation to fiscal policy coordination, sharing of the national debt, border control or citizenship rights.

Scotland's transition period of 2014–16, moreover, could coincide with a process of radical constitutional reform within the EU, as a result of which there could be a debate on whether, and in what sense, the UK would still remain an EU member. Should the rUK commit itself to a 2017–18 referendum on whether to endorse government terms for remaining in the EU, for example, there would be a strong logic for Scotland also holding such a vote, but some question as to when it should be. And, by 2016, such a debate might well colour the discussion amongst other EU states as to the terms on which Scotland and the rUK could be confirmed as members when they become two separate states.

#### THE NUCLEAR QUESTION

The most important security issue that the two governments would have to resolve before separation took place would be the future of the UK's Trident-equipped nuclear force, currently based in Scotland.

There would be little international sympathy, at least amongst the UK's traditional allies, were Scotland to insist that the UK's nuclear-armed submarines leave its territory on a timescale that did not allow the rUK to construct alternative bases in England or Wales. Such a policy could encourage a robust response from the rUK, perhaps even a questioning of whether it could support Scotland's NATO and EU aspirations. By contrast, were Scotland to be willing to accommodate rUK concerns on this issue, it would place it in a strong position to expect rUK support on other issues.

In this scenario, the two parties would come to some sort of binding agreement that the rUK nuclear force would remain in place in Scotland, at least until a timescale for relocation could be agreed. Some principles for determining this timescale could also be established—for example relating to SSBN replacement in the early 2030s or missile replacement in the early 2040s. This would give Scotland the assurance that, within a

period of 15–25 years, it could become free of nuclear weapons if it still wished to be so. But it would also allow the rUK to make a decision of its own as to whether it continued to be prepared to incur the costs (including, for example, the need to overcome local opposition to a new Falmouth base) that remaining a nuclear weapon state involves.

#### FURTHER IMPLICATIONS FOR DEFENCE AND SECURITY

A further advantage of a settlement of this issue would be that it would encourage close and continuing cooperation between the conventional forces of Scotland and the rUK. Protection of the rUK nuclear force at Faslane would require continuing liaison between rUK and Scottish military and security forces, based in Scotland, together with a clear agreement on submarine transit through the Firth of Clyde and surrounding waters.

In addition to capabilities that have an SSBN-protection role (such as SSN's and, in future, possible new maritime patrol aircraft), the rUK would also have an interest in maintaining conventional military assets in Scotland for other purposes, for example RAF aircraft based in Lossiemouth for purposes of air defence. There would be a parallel set of issues in relation to security and intelligence services, where the rUK would have a strong interest in helping to develop capable Scottish counterpart services, with whom they could cooperate, for example, on counter-terrorism.

Scotland's separation from the UK would involve some reduction in the tax base from which the UK's defence budget is funded.<sup>5</sup> Yet the starting point for a new rUK defence policy would probably be a desire to maintain capabilities that are as close as possible to those of the UK, so as to minimise the reputational damage that post-separation defence cuts could incur. In this context, the rUK might be prepared to accept a modest rise in the proportion of national income it devotes to defence (of the order of 0.2% of GDP), compared to its rather larger predecessor.

Provided that the rUK MoD could secure agreement on the two issues of Trident basing and post-separation budgets, it could credibly argue that the rUK had military "hard power" that was almost comparable to what the UK would have had in the event of the maintenance of the Union. It would be much harder to avoid the significant damage to the UK's reputation as a stable power that Scotland's independence would be likely to involve.

9 October 2012

---

#### Written evidence from Sir James Craig, former Ambassador

1. During the whole of my career the question of Scottish independence never came up at all. Since I was invited to appear before the Committee I have talked to various Arab friends. They say:

- (a) there are many Scotsmen in the Arab world. They are usually well liked but are not regarded as a separate entity; and
- (b) Arab States are used to dealing with London, both politically and socially. They have never been accustomed to regard Scotland as a separate political identity. They do not expect the independence of Scotland to make much difference.

2. I put the question indirectly to an Arab prince who was formerly the Ambassador of Saudi Arabia to the UK. He has replied in writing as follows:

"My personal view is that where we in the GCC are seeking to come closer, Europeans are breaking apart, witness the Czechs and the Slovaks, the Catalans and the Spanish, the Flemings and the Walloons, not to mention the break-up of Yugoslavia. Maybe the Scots want to rule Scotland but why that is preferable to ruling England as well, I don't know. Many British Prime Ministers, Ministers, Generals, Chiefs of Industry were Scottish. I have also just read that Barroso has ruled out automatic inclusion in the EU for an independent Scotland".

3. I conclude that for most Arabs the separation of Scotland from the UK is not an important question. There are one or two who have investments in Scotland (eg Highland Spring bottled water is owned by a man from Dubai). They will watch the negotiations with interest but don't expect much difficulty for their holdings.

14 January 2012

---

<sup>5</sup> Estimates of spending and revenue produced by the Government of Scotland notionally allocate non-geographically-identifiable spending between Scotland and the rest of the UK. Around 60% of spending in this category is in defence. On this basis, £3.3 billion was Scotland's 2010–11 contribution to the funding of total UK defence spending, allocated in proportion to population share. *Government Expenditure and Revenue Scotland 2010–11*, Scottish Government, March 2012. The rUK share was £35 billion. A similar calculation could be made for the DFID and FCO budgets.



**Written evidence from Professor Matthew Craven, Professor of International Law and Dean of the Faculty of Law and Social Sciences, SOAS**

The process of managing Scotland's passage to independence—assuming it is to happen—will be not merely one of negotiating a local solution to the political economic and social disruption that is likely to occur, but also one of managing adjustments to the complex international legal and political environment within which the United Kingdom is currently enmeshed. The range of issues that come into play, here, include not only the survival of existing treaty relations with other countries (which the FCO's treaty database cites as including up to 2,900 multilateral treaties and 10,000 bilateral treaties), but questions of membership in international institutions (both regional and universal), title to ownership of public property both at home and abroad (consulates and embassies, currency deposits etc), liability for the national debt (to both public and private agencies), the survival of public contracts (such as rail franchises), and questions of nationality. Much of what might look like a matter of purely local political or economic negotiation—for example whether an independent Scotland might acquire responsibility for armed forces installations in Scotland or for fulfilment of the terms of concession agreements with oil producers—is likely to have international implications in the sense that it is liable to affect the rights and obligations of other states in the international community.

On the face of it, it may seem that there are few rules of international law that govern such events. There are only two multilateral agreements that formally address the question of “state succession”—the Vienna Convention on State Succession in Respect of Treaties (1978), and the Vienna Convention on State Succession in Respect of Property, Archives and Debt (1983)—neither of which has been ratified by a significant number of states. The former entered into force in 1996 and currently has 22 parties, the latter has yet to be signed by sufficient number of states to enter into force. The United Kingdom is party to neither agreement. That being said, just because the agreements are not in force in their entirety is not to suppose that the UK has an entirely free hand in determining the arrangements governing the separation. Other states are liable to have particular views on the issue—particularly where their political, economic interests might seem to be at stake—and the UK will have to expect to engage in extensive negotiations with other parties.

#### I. FRAMING THE ISSUE

The starting point of any analysis of the legal consequences of territorial change tends to be through a determination of whether or not the legal personality of the state is taken to continue, and if so, in what guise. If the predecessor state does continue, then it would follow that all legal relations will remain unaltered save only those that become impossible to perform as a consequence of the territorial change (eg obligations in relation to foreign shipping off the maritime coast of a portion of the territory that has separated from it). If, by contrast, the predecessor does not continue, then the starting point is obviously the inverse—that no legal relations will continue save those that somehow adhere in the territory (eg executed agreements, boundary agreements, those agreements by which the state would otherwise be unjustly enriched).

Whilst deciding whether or not the state continues or not is clearly of importance, it is also problematic for two main reasons. In the first case, it is clear that questions of continuity are frequently matters of acute political sensitivity, and subject also to rival interpretations. The collapse of Yugoslavia, for example, was variously viewed by participants as either the secession of various Republics from the Socialist Federal Republic leaving behind a Serbian “rump” state (the view of Serbia), or the as the dissolution of a loose Federation in which all component Republics emerged as “new” states (the view of Bosnia, Croatia, Slovenia and Macedonia). Similar questions surrounded the break up of the Soviet Union (in which Russia was eventually regarded as the “continuation” of the USSR but a palpable shift in emphasis was apparent between the two key conferences at Minsk and Alma Ata), and in the merging of East and West Germany (in which Chancellor Kohl's initial plan for the creation of a federal union was later given different shape in the incorporation of the GDR into the FRG). Whilst constitutional history may have its role in affirming or otherwise such determinations, it is relatively clear that the influence of external factors is often considerable. One may surmise, for example, that the modality chosen for German Unification was informed, in part at least, by its desire to maintain its position within the European Union (EU), just as that of Russia was informed by a desire to maintain its political authority within institutions such as the United Nations (UN). In each case, other states saw reason to support such assertions, just as they denied (for a range of reasons) Serbia's claim to continue the personality of the former Socialist Federal Republic of Yugoslavia (SFRY).

In the second place, even if a consistent picture is developed as to the question of continuity, rarely will this be entirely determinative of the legal consequences that might ensue. In the first place, as has been remarked above, adjustments will still have to be made to the legal environment to take account of the change. In case of German unification, for example, not only was the FRG faced with the problem of what to do about the treaty relations of the GDR, but also had to re-negotiate the arms control agreements that formerly applied only to West Germany. In case of Russia, delicate negotiations had to be undertaken to secure Russian control of nuclear weapons in order to bring it into line with the terms of the Non-Proliferation Treaty, but also to determine ownership of the Black Sea Fleet. In case of secession, furthermore, the rubric of continuity often has to be displaced to determine equitable ownership of movable assets at home and abroad and in the partitioning of the national debt.

---

## II. SEPARATION, SECESSION OR DISSOLUTION?

If one is to start with the rubric of continuity, however, there are clearly at least three different ways in which the separation of Scotland from the remainder of the United Kingdom might be conceptualised—and these, for sake of convenience (rather than analytical accuracy) may be referred to as the theories of “Separation”, “Secession” and “Dissolution”. The key to the distinctions offered being the question whether one or more of the component parts of the “Union” may be said to continue the legal personality of the United Kingdom—in case of separation it being both, secession merely one, and dissolution none.

### (A) *Separation*

One popular view is that, following the abrogation of the Treaty of Union of 1707, Scotland and the remainder of the Union would part company “resuming” their pre-union identities. Of course, what is meant is not “resumption” per se, understood in terms of a return to the pre-1707 situation (whatever that might have been), but a “disaggregation” or a “splitting” of a pooled sovereignty such that each component part would maintain in force all existing legal relationships so far as consonant with the changed situation. Whilst there are several historical examples of unions being dissolved in this way (Iceland and Denmark in 1940; Austria-Hungary in 1919; Norway and Sweden in 1905) the most proximate is the separation of Egypt and Syria following the dissolution of the short-lived United Arab Republic in 1960.

A perceived advantage, here, is not merely the sense of “equality” that would accompany the parting of ways, but also that, in principle at least, legal continuity would be maintained and that relations with other parties would be minimally disrupted. Scottish membership within the EU and other international organisations would (in theory at least) continue alongside that of the remainder of the UK, it would remain party to all multilateral agreements, be responsible for its own portion of the national debt and entitled to its share of state property (both at home and overseas).

Whilst undoubtedly attractive, the “splitting” of legal rights and obligations in this manner is not without its difficulties. Of the various problems—both technical and political—that might ensue, the following are merely exemplary:

- (i) The bilateral agreements to which the UK is presently party (the number of which certainly rises into the thousands) could scarcely be “continued” by both an independent Scotland and a rump United Kingdom without the active consent of the other parties. If there was no standing assumption that either party could be regarded as the sole continuation of the existent United Kingdom, it may well follow that both parties would have to seek the continuation (or re-negotiation) of all such agreements. Bearing in mind that these will include a wide range of issues from extradition, investment, trade, defence, fishing, navigation and air transport, to matters of enforcement of judgments, carriage of goods, trademarks and broadcasting, the scale of potential economic and political disruption that might ensue should not be underestimated. Some such agreements, furthermore, will clearly only be applicable in relation to one or other portion of the United Kingdom, so no general “catch-all” process of re-negotiation/renewal will be possible. In practice the simplest solution would likely be for both parts of the United Kingdom to seek to exchange treaty lists with partner states, stating the preferred view as to the status of those agreements—ie, whether they are to continue or fall. This, however, will take considerable time to plan and operationalise.
- (ii) In case of multilateral agreements, continuity would present fewer problems insofar as many such agreements are designed to maximise membership and registrars have frequently been very flexible on the possibility of succession. That being said, the registries of such treaties (of which the UK is one) may not be willing to simply add an additional name to the roster of states parties (the number of parties occasionally having legal significance), and may insist that one or both states have to be recorded as having “succeeded” to the agreement.
- (iii) As regards membership in international organisations (including, but not limited to the EU) much would depend upon the political organs of those institutions as to whether they would accept the idea of “splitting” the UK membership. In some cases a continuation of the UK’s membership by both parties might be tolerable, or actually convenient. Particular problems might be encountered, however, in cases in which membership is associated with a particular balance of interests (UN), or where it is dependent upon subscription (IMF, IBRD) and hence will affect voting rights. In case of the UN, it would be unlikely that other member states would admit the possibility of the two component parts of the United Kingdom “splitting” the existing membership if it were to entail a change in the composition of the Security Council (a re-negotiation of the UN Charter would be necessary). In case of the IMF and IBRD, whilst the question of admission might not itself be overly problematic, it would mean that the UK subscription (and hence voting weight) would have to be shared by both parties and its overall influence considerably moderated.

*(B) Secession*

The main alternative to the “separation” thesis would be to view the process as one in which Scotland effectively “secedes” from the United Kingdom, establishing itself as an entirely new state, allowing the rump United Kingdom to act as the effective continuation of the United Kingdom. The United Kingdom would continue to enjoy all existing international privileges, and remain subject to its obligations; Scotland for its part would have to forge its own international relations entirely afresh. The most proximate example of such an approach would be that of the USSR in which Russia was held to be the “continuing” state for most effective purposes, whilst all other states within the Union (with the limited exception of Belarus and Ukraine) were treated as “new states”.

There are certain clear advantages, in case of the United Kingdom, for such an approach to be taken. In the first place it would minimise the legal disruption consequent to the change—making clear, for example, that prime responsibility for the existing national debt or for treaty obligations would remain with the United Kingdom. It would also produce an element of certainty in questions of membership within international organisations. Once again, however, this is not without its difficulties:

- (i) Scotland would have to establish its legal position in relation to other states almost entirely afresh. There would be no standing assumption that existing bilateral agreements would continue in relation to Scotland, nor could it guarantee membership in international organisations (whether that be NATO, the EU, UN, WTO, Council of Europe, IMF, IBRD etc). This may produce a number of problems for such organisations—to assume, for example, that Scottish nationals were no longer EU nationals until a decision over admission had been made would not only counter the clear ethos of the EU, but would immediately make those resident in other parts of the EU legally and politically vulnerable. Some political accommodation would clearly have to be sought.
- (ii) Whilst Scotland might plausibly be able to rely upon existing agreements with third parties in relation to the delimitation of the continental shelf and exclusive economic zones, no longer being able to rely upon the UK’s bilateral agreements with other countries as regards overflight agreements, investment, extradition, enforcement of contracts etc might produce a range of deleterious political and economic effects that might otherwise be avoided.
- (iii) It would generate an assumption that the United Kingdom would retain ownership of public property held abroad (including consulates and embassies) which might otherwise be the subject of political negotiation in conditions of equality. Conversely the United Kingdom would—in theory again—remain responsible for the national debt with the exception only of those parts of it that were in Scotland. Once again, the starting point may not be propitious for the reaching of agreement.

*(C) Dissolution*

A third alternative, albeit one that has not been given much credence, might be to regard the process as one which results in the dissolution of the Union in its entirety, and in which none of its elements could claim to continue the personality of the existing United Kingdom. The models for this kind of rupture would be those of the Socialist Federal Republic of Yugoslavia and Czechoslovakia, in which none of the component parts was treated as being entitled to continue the legal personality of the predecessor state (and in case of Czechoslovakia none claimed to be able to do so). In both cases, each state had to secure its membership of both bilateral and multilateral agreements afresh, submit applications for admission to membership in international organisations and secure, by agreement with foreign partners, a partition of public property and debt.

The only advantages to this particular approach would be that each component part of the Union would be that much less would depend upon agreement with foreign partners, and that each element of the Union would have the freedom to determine the range and extent of overseas commitments afresh. It would, however, have significant effects upon the position of the United Kingdom internationally, both influencing the structure of the EU, UN and other organisations such as the IMF and World Bank. As a consequence it is fairly easy to predict that this option would be strongly opposed by other states.

**III. MISCELLANEOUS ISSUES**

Apart from the choice as to how to approach the questions of legal succession outlined above, there are a number of miscellaneous legal issues of some importance that will have some bearing upon future negotiations for independence (assuming that they move forward). I will leave aside, here, the broader question of EU membership, or that of the subrogation or assignment of public contracts.

*(A) Delimitation of Maritime Zones & North Sea Oil Fields*

The current most comprehensive agreement relating to the delimitation of maritime zones is the UN Convention on the Law of the Sea (1982) to which the UK is a party. Article 15 of that Convention stipulates that in the determination of the boundary of the territorial sea between adjacent states will occur through the application of the “equidistance” principle (ie, that it should run out at 90° from the course of the coastline). The provisions governing the exclusive economic zone and continental shelf (articles 74 and 83) merely insist

that delimitation should be by agreement with a view to achieving an “equitable solution”. There are clearly various different possibilities for how such delimitation might take place but the most frequent starting point is the principle of equidistance—which may then be displaced by other considerations if “equity” so demands it. In such a scenario, it is likely that most of the oil-fields with presumptively “begin” in Scottish waters. Nevertheless, if the process of delimitation will be a key determinant of the future financial viability of an independent Scotland, it is likely to only pre-figure a set of negotiations in which questions of historic production and investment are likely to figure.

(B) *Nationality*

One issue that is often overlooked at moments of territorial change is the problem of nationality. Whilst the continued possession of EU citizenship would significantly reduce the range or scale of problems here, and whilst an attempt is usually made to balance individual choice with some external determination of “belongingness”, it is clear that some attention will nevertheless have to be given to the following:

- The extent to which arrangements might be such as to encourage migration flows two or from Scotland as a consequence of disparities of the regulatory regimes in place (benefits, services, tax etc), and the consequential economic, social and political disruption that might come in its wake.
- The extent to which a lack of coordination between respective nationality laws may serve to produce a condition of statelessness for certain sectors of the population.
- The extent to which immigrant communities seeking rights of residence on grounds of their connections with one or other part of the UK might be disadvantaged through the application of criteria the fulfilment of which becomes impossible as a consequence of the change.

7 October 2012

---

**Written evidence from Dr Daniel Kenealy, Lecturer in Politics and International Relations and Deputy Director of the Scottish Graduate School of Social Science, University of Edinburgh**

SUMMARY

- The starting premise of this evidence submission is that, should it become an independent state, Scotland would be classed as a seceding state and the rest-of-the-UK (RUK) would be classed as a continuing state. The evidence argues that the main thrust of RUK foreign policy, RUK’s standing in the international community, and RUK’s influence would not be altered in any fundamental way.
- There are several concrete implications of an independent Scotland, however, that ought to be considered. First, RUK would have to establish and develop a new bilateral relationship with Scotland, a relationship that would likely be institutionally dense and very close. Second, Scottish independence has the *potential* to complicate RUK’s position within the EU. Third, given the homeland security and intelligence-sharing implications of a shared island space, RUK’s bilateral relationship with the US—particularly concerning intelligence cooperation—might be affected.
- The work of the Foreign and Commonwealth Office (FCO) would be largely unaltered although it would almost certainly have to establish appropriate diplomatic and formal institutional channels between London and Edinburgh. An independent Scotland could emerge as a key competitor of RUK in the contest for inward investment and the FCO (along with UKTI) would have to strategise and respond accordingly.
- The evidence concludes by identifying some key factors that could influence the basic shape and scope of a Scottish foreign policy. Specifically, Scotland would have a national interest in an open global trade system, a competitive and investment-oriented foreign policy, and a may take on the role of a “Small Power” in military and strategic terms.

EVIDENCE

1. The first issue that I wish to deal with is the “particularly complex one” of state succession in international law.<sup>i</sup> Questions relating to continuity and succession are often of great difficulty in international law. While some argue that Scottish independence would lead to the dissolution of the UK, and thus the emergence of two new states (such as happened when the Czech and Slovak Federal Republic was dissolved in 1992), this is to misstate “both the legal effects of the Acts of Union and their status in United Kingdom constitutional law”.<sup>ii</sup> The starting assumption of this evidence is that, following independence, Scotland would be deemed a seceding state with RUK deemed a continuing state.<sup>iii</sup>

2. It follows from paragraph 1 that, in formal legal terms the membership and standing of RUK in key international organisations would remain unaltered. If one considers, for example, membership of the UN it seems most likely that RUK would not only continue the membership of the UK but would also retain the UK’s veto in the Security Council. Scotland would, following the assumptions of this evidence, have to apply for membership of the UN.<sup>iv</sup> Other international organisations “tend to follow the lead of the UN when making determinations whether any particular instance of a State breaking up is one of secession from a continuing

State or of dissolution”.<sup>v</sup> It is thus assumed that Scotland would apply for membership of the international organisations that it wished to join. The outcome would be the result of the specific rules of the international organisations in question, the underlying interests of existing member states, and the extent to which the rules of the organisation empowered member states to impede the accession of new members.

3. When assessing issues of state succession international law is imprecise. However, what is clear is that the perception of other states and international institutions is important.<sup>vi</sup> It seems highly probable that RUK would make a claim to be the continuing state of the predecessor state (ie the UK) and then, the question becomes, are other states and international institutions likely to challenge this claim, or accept it? While no definitive answer can be given it seems most likely that RUK’s standing as a continuing state would be broadly accepted on pragmatic grounds if no other.

4. If RUK’s position as the continuing state of the UK were accepted then the international standing, influence, and foreign policy priorities of RUK would remain largely unaffected as a result of Scottish independence. To be clear, RUK’s foreign policy preferences may well change in future years but it is hard to envision why Scotland’s independence would play any causal role in such change. RUK would, in essence, be slightly smaller, slightly less populous, and with a smaller GDP than the former UK, but the broad outlines of its foreign policy need not change as a result.

5. Of course, there remains an existential issue concerning the impact of Scottish independence on nationalist sentiment throughout RUK. Should Scottish independence bolster similar pro-independence or secessionist movements elsewhere then RUK could find itself in a situation where an inward focus on managing a fracturing state would consume a tremendous amount of its attention, and possibly its resources.<sup>vii</sup> Although the space limitations of this evidence submission prevent a thorough consideration of this issue, it remains a fairly distant prospect.

6. There are, however, several specific areas in which Scottish independence either would or could have an affect on RUK foreign policy. The first area is a given, namely that of RUK-Scotland bilateral relations. Given the shared island territory and a likely very porous border between RUK and Scotland, independence would create a new and very important bilateral relationship. Thankfully there are currently inter-governmental and inter-institutional mechanisms upon which such a relationship could be constructed. The first of these would be the British-Irish Council (BIC), in which Scotland already has membership as a devolved administration. Scotland’s membership of the BIC would be amended to equal status with RUK and the Republic of Ireland. There are some specific issues—the threat of cyber-crime, counter-terrorism, and serious organised crime—where close RUK-Scotland cooperation would be desirable. Information-sharing and even burden-sharing arrangements between the two states would be a sensible way of proceeding. Such dynamics only serve to underline the vital importance that any post-referendum negotiations are conducted in a politically amicable and productive manner.<sup>viii</sup> I would encourage the Foreign Affairs Committee to discuss these issues with relevant police officers, civil servants, and ministers in the Republic of Ireland to develop a comparative perspective on how RUK-Scotland cooperation might develop.

7. The second area concerns RUK’s relationship to the EU. The impact of independence on RUK-EU relations is contentious and, given the existence of parallel hearings at the Scottish Affairs Committee, I will not dwell on it at great length. There is a line of argument, advanced by Patrick Layden<sup>ix</sup> amongst others, that sees independence as raising the prospect of the UK’s relationship to the EU, including its various opt-outs and budget rebate, being placed on the diplomatic negotiating table in Brussels. I do not share this view and find it far more likely that RUK would simply continue the UK’s membership of the EU, with Scotland’s membership also continuing but as a new Member State as opposed to sub-national authority within a Member State.<sup>x</sup> Indeed one could argue that Scottish independence would be a positive given that the interests of Scotland and RUK, on most issues arising in Brussels, would be in alignment. However, the possibility of RUK’s relationship to the EU being called into question cannot be ruled out.

8. The third area of concern is how independence might impact RUK’s relationship with the US. While the special relationship with the US is often oversold and mislabelled, this is not the case in the realm of intelligence cooperation.<sup>xi</sup> RUK and Scotland would need to establish a close relationship in terms of intelligence sharing and, where necessary, joint operations in counter-terrorism, serious organised crime, cyber-crime, and homeland security more broadly. There are several models that might be employed to foster such cooperation. The Foreign Affairs Committee should urge the FCO and the UK Intelligence Services to begin discussions with their US partners about how Washington, DC would react to Scottish independence. The operating assumption, one would assume, is that the US would want to ensure that the security of the British Isles remained as robust as possible. What remains unclear is the extent to which intelligence sharing arrangements between the UK/US/Canada/Australia/New Zealand would have to be revisited as a result of Scottish independence. This is not an area where discussions should be left until 2014. Forward planning is essential.

9. Given the space limitations of this evidence submission, and a parallel inquiry by the Scottish Affairs Committee, I will refrain from commenting on the impact of independence on defence affairs and the existing UK military structure. It would be the responsibility of the UK government, in negotiations with Scotland during 2014–16, to ensure that any transfer of kit and equipment to Scotland was done in a way that did not create gaps in RUK’s defence capabilities.

10. Moving on from the specific issues of foreign policy that an independent Scotland might raise, the committee has posed questions about *the impact of independence on the operations and organisation of the FCO*. The first issue to be tackled is how the UK diplomatic service would be apportioned in the event of independence. The buildings and estates of the FCO are public/state property. However, it seems highly improbable that the UK government, during 2014–16, would agree to the breakup of the diplomatic service and the selling off of certain FCO properties so that assets could be literally apportioned between RUK and Scotland. More likely is that the UK diplomatic service remains intact and at the service of RUK. Of course, there may be members of the FCO who wish to leave and join the ranks of a new Scottish diplomatic service. But it seems highly probable that Scottish claims on a portion of the FCO will form part of a broader financial settlement to be negotiated over 2014–16. It is thus anticipated that the provision of consular support to British nationals abroad would remain largely unaffected as a direct result of independence. Citizens of a new Scottish state would, assuming Scotland as an EU Member State, continue to benefit from the UK's diplomatic network through their right, as EU citizens, to receive assistance abroad from the consulate or embassy of any other EU member.

11. The promotion of RUK business abroad by the FCO/UKTI would inevitably be complicated. An independent Scotland would be a competitor for foreign direct investment and, with full powers over tax policy, Scotland could lower corporation tax in an effort to make itself a more attractive investment climate. The FCO and UKTI would simply have to adapt to this new reality and, in a sense, Scotland would represent just one more competitor, no more and no less. The possibility remains, however, that in exchange for the continued use of the pound sterling, Scotland and RUK enter into some form of concordat on relative rates of corporation tax in their respective jurisdictions. Either way, Scotland would be a competitor for inward investment but not in a way that would cause irresolvable problems for the FCO and/or UKTI.

12. With respect to the National Security Strategy (NSS) the impact of an independent Scotland would most likely be felt in terms of the content of part 3 of the NSS (“Risks to our Security”).<sup>xii</sup> Among the key threats identified were, in tier one: international terrorism, cyber-attacks, major accidents/natural disasters, and an international military crisis that draws in the UK. In tier two: an attack on the UK using chemical/biological/radiological/nuclear weapons, a significant increase in organised crime, and severe disruption to satellite information. And in tier three: a large-scale conventional attack on the UK, a significant increase in terrorists/organised criminals/illegal immigrants/illicit goods trying to cross the UK border, disruption to oil or gas supplies, a major release of radioactive material from a civil nuclear site, a conventional attack on a NATO or EU partner, an attack on a UK overseas territory, and short-to-medium run disruptions to international supplies of resources.

13. Not all of these potential threats are significantly complicated or impacted by Scottish independence, but some are. Once again the issues of counter-terrorism, cyber-attacks, serious organised crime, and immigration will require close institutional cooperation between RUK and Scotland, if the priorities of the NSS are to be pursued effectively. Put simply, should RUK and Scotland retain an open and porous border then the only way for RUK to confidently ensure the security of its sovereign territory is to have absolute confidence in Scotland's ability to secure its sovereign territory. A range of institutional mechanisms might be considered in these areas. Some form of joint training and joint operational practice in counter-terrorism, policing, and cyber-security ought also to be considered given the priorities identified in the NSS, namely “to protect operational counter-terrorist capabilities in intelligence and policing, and the necessary technologies to secure them ... [and to] develop a transformative programme for cyber security”. Furthermore, the NSS commitment to “focus cross-government effort on natural hazards ... [and to] focus and integrate diplomatic, intelligence, defence and other capabilities on preventing the threat of international military crises”<sup>xiii</sup> might be pursued in close cooperation with Scotland. Finally, some form of joint regulatory structure and joint crisis management mechanism might be developed in the civil nuclear power arena. RUK may well take an interest in ensuring the safety of, and effective crisis management mechanisms at, Hunterston B and Torness.

14. The Foreign Affairs Committee should do all it can to persuade the National Security Adviser to begin serious consideration of the type of institutional mechanisms that would be required to manage the RUK-Scotland bilateral in such a way as to ensure that the priorities of the NSS can be pursued effectively and robustly. The failure of the NSS to make any reference to the challenge/risk posed by Scottish independence represents a worrying sign that must be corrected.

15. The committee has also called for *views ... on the key factors that could influence the basic shape and scope of a separate Scottish foreign policy*. This is a particularly important question as Scotland begins to seriously debate what independence might actually mean. This is the foundational question that, in many respects, must logically precede any discussion of the size and shape of a putative Scottish armed force. I will refrain from any in-depth consideration of the force structure of a potential Scottish armed force as this is subject to other Parliamentary inquiries.

16. Given that Scotland would be a relatively small and open economy it seems reasonable to suggest that it would share the broad interest of RUK in a liberal and open global trade system as the first plank of its foreign policy. A second plank of Scottish foreign policy would almost certainly be its membership of the EU. A third plank of Scottish foreign policy would likely be a targeted international development programme, building on its existing efforts in Sub-Saharan Africa, Southeast Asia, and the Middle East.

17. Beyond the commercial, EU, and development aspects of foreign policy Scotland would have several options in the defence and military realm. Within International Relations scholarship the concept of a “Small Power” may be of some use in identifying the broad contours of a Scottish foreign policy.<sup>xiv</sup> Small Powers “carve out a niche by displaying a narrow and specific range of foreign policy behavioural patterns. Small powers are actors that mobilize their military, diplomatic and economic resources in the service of their security, autonomy, wealth and prestige”.<sup>xv</sup> According to this literature we might expect Scotland: to recognise that its security would rely on a network of alliances and seek to cultivate and preserve such alliances; to be forced to adopt a set of clear and limited priorities that it would seek to externalise and champion; to engage in concerted efforts to pursue shared interests through formal international institutions and/or international law; and to approach the world in a relatively risk-averse manner.

18. An alternative possibility, in the defence and military realm, remains that Scotland would adopt an outlook akin to Ireland’s neutrality with some contribution to UN peacekeeping operations. Much will hinge on political decisions about the size of the Scottish defence budget. A defence budget at the high-end of NATO proportional spending (ie 2.2–2.5% of GDP) could support a foreign and security policy that a defence budget at the low-end (ie 1% of GDP) simply could not. Given that Scotland will have to develop its military capabilities in the face of significant initial costs and challenges it might be reasonable to expect, in the short-to-medium term, a Scotland focused on building its military and countering homeland security threats. Such a focus could give way in the medium-to-long term to a foreign policy committed to contributing to EU/NATO missions focused on post-conflict reconstruction, peacekeeping, and/or humanitarian interventions (under responsibility to protect).

19. The activity described above would require some form of diplomatic service. While not wishing to enter into discussion of what that diplomatic service might look like, and how it might be staffed, it would require the training of a first generation of Scottish diplomats and the establishment of a network of missions and embassies abroad. Given the UK’s willingness to share embassies with Canada in an attempt to rationalise and cost-save<sup>xvi</sup> it seems reasonable to suggest that, at least in the interim, Scottish diplomatic teams in key capitals might share space with their RUK counterparts.

#### CONCLUDING REMARKS

20. Scottish independence need not represent an existential crisis for RUK foreign policy. The strong likelihood is that a smaller RUK retains the international standing, memberships, rights, and priorities of the UK, with Scotland free to develop a distinctive foreign policy of its own. It will be crucial, however, that RUK-Scotland relations are carefully managed, with appropriately robust institutional coordination mechanisms, and that a climate of political trust is fostered between London and Edinburgh. The security of the British Isles rests on the ability of civil servants and politicians north and south of the border to carefully manage this potentially complex development.

26 September 2012

#### REFERENCES

<sup>i</sup> M Shaw, *International Law* 6th ed. (Cambridge: Cambridge University Press, 2008), p. 958; M Craven, “The Problem of State Succession and the Identity of States under International Law”, *European Journal of International Law* 9 (1998).

<sup>ii</sup> M Happold, “Independence: in or out of Europe? An Independent Scotland and the European Union”, *International and Comparative Law Quarterly* 49 (2000), p. 17.

<sup>iii</sup> *Ibid.*

<sup>iv</sup> For example, India was considered the continuation of British India, with Pakistan regarded as a new state and having to apply for admission. See Shaw, *International Law*, p. 985. Such a scenario can be contrasted with dissolution, in which the new states that emerge all have to apply for membership as happened with the Czech Republic and Slovakia.

<sup>v</sup> Happold, “Independence”, p. 28.

<sup>vi</sup> For example, the Federal Republic of Yugoslavia claimed to be the continuation of the Socialist Federal Republic of Yugoslavia (SFRY) but this was rejected both by the other states that emerged from the SFRY and the international community. This can be contrasted with the claim of the Russian Federation to be the continuation of the USSR. If we run a thought experiment for a moment and imagine the reaction of the international community should Scotland try to claim its right as a continuing state, it is not fanciful to suggest that such a move would be greeted with deep scepticism.

<sup>vii</sup> It has been argued that nationalist groups can learn from each other and feed on each others successes. See I. Sanchez-Cuenca, “The Dynamics of Nationalist Terrorism: ETA and the IRA”, *Terrorism and Political Violence*, 19 (2007), pp. 289–306.

<sup>viii</sup> There would be a shared interest on the part of RUK and Scotland that no weakness emerged in the security architecture of their shared island. One can already begin to see how issue linkages would be possible during the 2014–16 negotiation period during which the details of independence would be agreed.

<sup>ix</sup> Patrick Layden, Oral evidence to the House of Commons Select Committee on Scottish Affairs, 16 May 2012. Available at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cm Scotaf/139/120516.htm>.

<sup>x</sup> While not wishing to dwell on this rather complex issue here, my view on RUK's and Scotland's status within the EU rests on the primacy of EU citizenship and the reality that any political decision taken by the other EU Member States would be in "the shadow" of the Court of Justice of the European Union, a body that has taken most opportunities presented to it to expand the nature and scope of EU citizenship law.

<sup>xi</sup> The most recent of a long body of literature on this aspect of the special relationship is A Svendsen, *Intelligence Cooperation and the War on Terror: Anglo-American Security Relations after 9/11* (London: Routledge, 2009).

<sup>xii</sup> HM Government, *A Strong Britain in an Age of Uncertainty: the National Security Strategy*, Cm. 7953 (London: HMSO, 2010), pp. 24–31.

<sup>xiii</sup> *Ibid.*, p. 34.

<sup>xiv</sup> See, for example, A Toje, "The European Union as a Small Power", *Journal of Common Market Studies* 49 (2011).

<sup>xv</sup> *Ibid.*, pp. 46–7.

<sup>xvi</sup> "UK to share embassy premises with 'first cousins' Canada", *The Guardian*, 24 September 2012. Available at <http://www.guardian.co.uk/global/2012/sep/24/diplomacy-embassy-buildings-uk-canada?intcmp=239>.

---

#### Written evidence from Dr James Ker-Lindsay, Senior Research Fellow, Politics of South East Europe European Institute, London School of Economics and Political Science

Dr James Ker-Lindsay is Eurobank EFG Senior Research Fellow on the Politics of South East Europe at the European Institute, London School of Economics and Political Science. He has worked extensively on secessionist conflicts, in particular Cyprus and Kosovo. He is the author of, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford University Press, 2012), which examines the ways in which states can prevent territories that have unilaterally seceded from gaining recognition from other states and obtaining membership of international organisations.

#### SUMMARY

- In the event that Scotland declares independence from the United Kingdom with the consent of the British government, there is little reason to believe that Scotland will face any serious impediments in its attempts to join the UN and other major international organisations. In fact, it could become a member of the UN within a matter of days following a declaration of independence. Following on from this, one would expect it to become fully integrated into the international community remarkably quickly—most probably within a matter of a few months.
- However, on the question of EU membership the picture is less clear. There are certainly crucial legal questions that need to be examined. What can be said with more confidence is that claims that its membership would be blocked by Spain and the other countries that have refused to recognise Kosovo seem completely unfounded. Again, assuming that the process leading to independence is mutually agreed between Scotland the rest of the United Kingdom, there is very little reason to believe that Scotland would face any opposition to its statehood from its European partners.

#### MEMBERSHIP OF THE UNITED NATIONS

1. Any consideration of Scotland's place in the world must start with the assumption that independence will only occur following a negotiated process with the British Government resulting in a mutually agreed decision to separate and followed by a formal declaration of independence. Assuming that Scotland's independence is not contested by the British Government, there is no reason to suggest that Scotland would face any serious hurdles in terms of joining key international organisations.

2. The first task for an independent Scotland will be to join the United Nations. Although the United Nations cannot confer recognition on a state itself, membership is generally considered to be evidence that a state's position within the international system is effectively accepted and not seriously contested. (Having said this, there are a number of UN members that are not universally recognised by the other members. Israel is perhaps the most notable example. Others include Cyprus and China.)

3. In Scotland's case, the question of UN membership could possibly be complicated by the United Kingdom's position as a permanent member of the Security Council. However, one would assume that a separate Scotland would be willing to relinquish any and all claims to this seat as part of a negotiated separation from the rest of the United Kingdom.



4. As the recent independence of South Sudan highlighted, where a separation is mutually agreed the process of membership of the United Nations can be remarkably swift. In the case of South Sudan, the process of submitting an application, having it approved by the Security Council and then securing a positive vote from the General Assembly took less than a week. Scotland's membership could be equally swift. With British consent for Scotland's independence, there is little reason to believe that the recommendation for UN membership would be withheld by the Security Council or that a vote in the General Assembly would go against Scotland. Like South Sudan, Scotland could become a member of the United Nations within days of a formal, mutually agreed, declaration of independence.

5. Formal membership of the United Nations would immediately open the way for Scotland to join a number of other UN bodies and organisations. In some cases, these bodies are vital in terms of ensuring that Scotland obtains the key trappings of independent statehood. For example, membership of the International Telecommunication Union (ITU) would allow Scotland to obtain its own telephone dialling code. Membership of the Universal Postal Union (UPU) would allow Scotland to cooperate with other postal sectors. The process would undoubtedly be swift given that one would expect a lot of the groundwork to have been laid during the process of negotiation prior to the declaration of independence.

6. Scotland would also need to secure membership of other key UN bodies. Perhaps the most crucial are the World Bank and International Monetary Fund (IMF). Following UN membership, one would expect that Scotland would gain membership of both bodies rapidly and with relatively little trouble. Membership of the bodies is based on a weighted voting mechanism, which gives considerable strength to key economic actors, such as the United States and Germany. Therefore, even if Scotland were to face opposition from certain EU member states, which is unlikely (as will be discussed below), they would not have the ability to block Scottish membership in the event that it secures the support of most other members. Furthermore, there is evidence to suggest that some members of the two organisations appear to be willing to take a softer line of membership of the IMF and the World Bank than on full UN membership. For example, Kosovo has joined both organisations, with the support of some states that have not yet recognised it, such as Greece, even though it is not a full member of the UN. In view of this, it would seem highly unlikely that Scotland would face any serious opposition.

7. Finally, Scotland would also be able to join the wider UN institutions and agencies, such as UN Educational, Scientific and Cultural Organisation (UNESCO), World Health Organisation (WHO), Food and Agriculture Organisation (FAO), International Civil Aviation (Organisation), the International Maritime Organisation (IMO), International Atomic Energy Agency (IAEA), etc. Although membership of many of these bodies may require a separate vote by their membership, it would seem to be more than likely that such votes will be mere formalities once Scotland has obtained general UN membership.

8. All things considered, it would not be unreasonable to expect that Scotland would be a full, and fully functioning, member of the UN system within just a few months of declaring independence and have obtained all the wider trappings and symbols of full statehood arising from membership of key UN bodies.

#### MEMBERSHIP OF OTHER INTERNATIONAL AND REGIONAL ORGANISATIONS

9. Membership of the United Nations would also ensure Scotland's participation in a number of other economic, political, cultural and sporting organisations. Rather than be caught up in political disputes over sovereignty and recognition (as has been seen in the case of Kosovo), a number of international organisations now use UN membership as key criteria for admittance. For example, a Scottish National Olympic Committee could expect to be admitted rapidly into the International Olympic Committee. In the case of football, the significance of which should not be underestimated as a potent symbol of statehood on the international stage, the situation is not entirely clear. However, given Scotland's current membership of UEFA and FIFA, and its likely membership of the UN following a declaration of independence, it seems likely that it would continue to be a member of both organisations without the need for a new membership application. Meanwhile, membership of the ITU would open the way for Scotland to join the European Broadcasting Union, which would open the way for Scotland to participate in the Eurovision Song Contest. Membership of these organisations, and participation in their events, is vital inasmuch as they confer wider legitimacy as a member of the international community. (Having said this, membership is not evidence of statehood. In some cases, such as the IOC and FIFA, a number of territories that are not fully independent are members—albeit with the express consent of their parent state.)

10. In addition to the United Nations and various sporting and cultural organisations, one would expect that Scotland would quickly be admitted as an independent member of most of the major international political and economic institutions that the United Kingdom has already joined. On this note, there are a couple of organisations that would be especially important, either symbolically or practically, for Scotland to join. The first is the Commonwealth. One would expect that Scotland would wish to become a member, especially if it retains the Queen as head of state, and that its application would encounter no serious objections, either from the United Kingdom or from other members, such as Canada. The second is the World Trade Organisation (WTO). WTO membership could potentially run into difficulties given that it relies on a consensus vote by all current members and may be held up over specific trade issues. As a result, this is an area that the Committee may wish to explore in further detail. However, at a political level, there is no reason to suppose that Scotland would face any concerted opposition if it is a UN member.

11. In terms of regional organisations, there is also little reason to believe that Scotland would face any major, let alone insurmountable, problems. To this extent, there would seem to be little reason why Scotland could not join the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe, to name just two prominent examples. As for NATO, this is a rather more complex issue as it is not clear whether Scotland would wish to remain, or become, a member should it separate from the rest of the United Kingdom. However, should it wish to remain/join, there would be little reason why it could not do so.

12. All things considered, and again stressing the importance of Britain's consent in this process, and the significance of early UN membership, it seems likely that Scotland would be able to join many, if not most, of the key international organisations within a matter of a few months following a declaration of independence.

#### MEMBERSHIP OF THE EUROPEAN UNION

13. However, membership of all international bodies cannot be assured. Questions have been raised about whether Scotland would be able to join the European Union. While there are certainly complex legal questions that need to be answered on this matter, it is important to stress that there is absolutely no evidence to support the assertion that Scotland would be prevented from joining the European Union by the five countries—Cyprus, Greece, Romania, Slovakia and Spain—that have not recognised Kosovo (*The Independent*, 22 January 2012; *Financial Times*, 26 February 2012). Indeed, a claim made in early 2012 by an unnamed British government minister that Spain would seek to block an independent Scotland from joining the EU was strongly denied by the Spanish foreign minister. In the case of Kosovo, the key problem relates to the unilateral declaration of independence by Pristina. It is not so much the act of separation that has been a source of concern as the way in which it was done without the consent of the Serbian Government.

14. Again, the strongest evidence to support this view is the reaction of these five countries to the independence of South Sudan. Within hours of the declaration of independence, the European Union issued a joint statement congratulating the new state on its independence. There was not a murmur of dissent from any of the five countries to this act of collective recognition. It is also worth noting that all five countries have recognised Croatia, Slovenia, Bosnia, Montenegro, Macedonia, Slovakia, Moldova and the Czech Republic, to name just a few of the new states that have emerged since 1990s. To repeat, their problem with Kosovo's independence relates to its unilateral nature. With British consent, there seems little evidence to support the argument that any of them would block Scotland's membership of the European Union if Scotland were to declare independence.

#### CONCLUDING REMARKS

15. Although it is possible that some states may wish to oppose Scotland's independence, even if accepted by the United Kingdom, unless one of these states is a permanent member of the UN Security Council, it is extremely unlikely that there would be a high enough degree of opposition to prevent Scotland from obtaining membership of the UN and various other international organisations. Again, the element of consent is crucial. Without the consent of the British Government, it seems likely that Scotland would face a difficult path towards full membership of the international community. However, as has been shown, with the necessary consent of the British Government, an independent Scotland can expect to be a full and equal member of the international community within a very short period of time.

26 September 2012

---

#### **Written evidence from Dr Jo Eric Khushal Murkens, London School of Economics and Political Science, Department of Law and Professor Robert Hazell, Director Constitution Unit School of Public Policy**

[1] The following comments address two assumptions that underlie the Scottish National Party's position on Scottish independence. The first assumption is that an independent Scotland would inherit all the UK's international rights and obligations as a successor state. The second assumption is that an independent Scotland would continue to be a member state of the European Union and inherit the current treaty opt-outs (eg on the single currency and on the Schengen Agreement). These points will be addressed in turn.

#### STATE SUCCESSION UNDER PUBLIC INTERNATIONAL LAW

[2] There are three distinct forms of state succession in public international law.

- (a) Continuation: if Scotland broke away from the United Kingdom and became an independent state, the remainder of the United Kingdom, ie England, Wales, and Northern Ireland (rUK) would be referred to as the continuing state. The rUK would retain the rights and obligation of the United Kingdom. Scotland would be referred to as the successor state.
- (b) Separation: in a separation, the United Kingdom would dissolve into two independent states (rUK and an independent Scotland). Both states would be referred to as successor states and would resume their respective pre-union state personalities, rights and obligations (as well as some of the rights and obligations of the United Kingdom).

- (c) Dissolution: in this case, the United Kingdom would dissolve into two independent states of which none would be considered a continuing state. Both rUK and Scotland would be successor states and treated equally in respect of the rights and obligations of the United Kingdom.

[3] Separation (b), whereby the rUK and Scotland assume their pre-Union status, is not a viable option. After more than 300 years the *status quo ante* could no longer be restored, and the repeal of the Acts of Union 1707 would not (contrary to what is sometimes assumed<sup>6</sup>) see the re-emergence of the old kingdoms of England and Scotland.

[4] Dissolution (c) is favoured by some nationalist Scots as it would place all constituent parts of the Union on an equal footing as far as EU and public international law rights and obligations are concerned. Both the rUK and an independent Scotland would be regarded as “successor states” in international law. There are three problems with this view. The first issue relates to precedent. Ireland joined the Union in 1801 and seceded in 1922 without, however, dissolving the United Kingdom. If Ireland’s secession did not dissolve the United Kingdom, why would an independent Scotland have that effect? The second problem is constitutional: it is easier to bring about an independent Scottish state than it is to create an English state (with or without Wales and Northern Ireland). The United Kingdom is a union state with a central and supreme Parliament in Westminster. An independent Scotland would not have the power to destroy the United Kingdom as a legal entity.

[5] The third concern is that dissolution simply is not a realistic option. Were Scotland to become independent, the rUK would assert itself (and be recognised by the international community) as the continuing state (a) with identical international legal personality as the current United Kingdom (albeit with a territory reduced by one-third and a population reduced by 5.2 million). All international treaties (other than those referring solely or mainly to Scottish matters) would maintain their legal force as between the rUK and the other contracting parties. The rUK would also continue to be represented in those international organisations of which it is currently a member, such as the United Nations, the European Union, NATO, and the International Monetary Fund.

[6] Support for this position stems from the dissolution of the Soviet Union in 1991. The Russian Federation asserted itself as the continuing state which was accepted by the international community. As in the case of rUK succeeding the United Kingdom, the nuclear issue was a key determining factor. Russia not only held most of the nuclear assets of the former USSR, it also wanted to remain a nuclear power and keep its seat and its veto power in the UN Security Council.

[7] In order to maintain international stability, the international community would be likely to recognise the rUK as the continuing state of the United Kingdom.

#### THE REQUEST FOR ACCESSION TO EU MEMBER STATE UNDER THE EU TREATIES

[8] The SNP’s position is that an independent Scotland would continue to be a member state of the European Union, and that it would inherit the UK’s opt-out from the Euro and keep sterling as its currency.

[9] The clarity of the SNP’s position is based on the assumption that an independent Scotland would be in full command of a defining characteristic of a sovereign state: policy choice in two key areas. Its leadership sometimes argues that an independent Scotland would automatically continue to be an EU member. At other times, somewhat confusingly, it claims that it has *a choice whether to join the EU or EFTA* (or neither, one presumes). It also claims freedom of choice over the currency and that it will choose sterling unless and until the Scottish people decide to adopt the Euro in a referendum (Jason Allardyce, Scots “must use euro” if union ends, *Sunday Times*, 30 October 2011).

[10] These claims will be addressed in turn. There is no automatic right to membership of the European Union. Continued membership would only be possible with the approval of all 27+ Member States. The process of accession is laid out in Article 49 TEU and requires an application to the Council which, having consulted the Commission, must act unanimously. An absolute majority in the European Parliament must also agree to the new accession. But it is the second paragraph of Article 49 TEC that causes much difficulty and confusion. According to this sub-clause:

“The conditions of admission and the adjustments to the treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member-States and the applicant state. This shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements”.

[11] An independent Scotland would have to join the EU as a new accession state, a process that could take many years. Obviously, there is no problem with Scotland meeting the formal criteria for membership: the Scots have enjoyed EU rights and obligations for almost four decades. But since unanimity is required, a single state, such as Spain, could block an independent Scotland’s accession to the EU (*The Independent, Spain could wield veto over Scotland’s EU membership*, 22 January 2012).

[12] The loss of membership status following separation naturally impacts on the UK’s derogation from the single currency. An independent Scotland would not inherit the opt-out the UK negotiated for the Treaty of

<sup>6</sup> See eg, Dr M J Williams, “Defence Implications of possible Scottish independence”, HC 483, July 2012.

Maastricht. Of course, the politics of the Euro might have changed dramatically by the time Scotland becomes independent. But, currently, the formal position is as follows. All (old and new) Member States (except UK and Denmark, who secured opt-outs in the Maastricht Treaty) are expected eventually to join the Mechanism and to adopt the Euro. All the new MS (after 2004) are legally obliged to adopt the Euro at some future point (with no opt-out clauses).

[13] Formal EU law can at times appear unduly rigid: under the terms of the EU's Treaties, Greece, for instance, would have to leave the EU if it chose to leave the Eurozone—a result that defies the “spirit” of the Treaties. Even if there suddenly was room for manoeuvre for an independent Scotland on the currency, the Euro would become another factor in the raft of negotiations (following a positive independence referendum outcome in Scotland) with the Commission and the 27+ Member States, meaning that Scotland would have to negotiate a formal opt-out (which no other new Member State has secured).

[14] None of the above suggests a true policy choice for the SNP. An independent Scotland will not automatically join the European Union, but will have to apply. EEA/EFTA membership is neither attractive nor realistic: its members have to adopt and implement EU law, but without the participation rights, and no one believes that the framework is open to new members.<sup>7</sup> Both EU membership and the issue of the Euro will not be decided by the SNP or by the people of Scotland, but will be regulated (in principle) by the EU Treaties and (on the detail) by the Commission and the other Member States in negotiations with an independent Scotland.

[15] Finally, it should be appreciated that Scottish independence is not a purely internal affair for the United Kingdom, but would also involve parallel negotiations with and the consent of the European partners. On the one hand, Germany, France, Italy, and Spain can have no interest in witnessing the diminution of the United Kingdom and in setting a precedent for other European secessionist movements. Moreover, experience shows that the international community as a whole shows an interest in the activities of states especially in cases of break-ups. On the other hand, if Scottish independence is the expression of the democratic will of the people and if the United Kingdom resolves the matter in a procedurally fair and transparent manner, the attitude of the Commission and the other Member States may be positively influenced and Scotland's application could be fast-tracked. The UK's attitude may in turn depend on how Scotland has behaved during the independence negotiations, and whether they have been conducted smoothly and amicably, or the reverse.

24 September 2012

---

**Written evidence from Dr Phillips O'Brien, Director of the Scottish Centre for War Studies,  
University of Glasgow**

Dr Phillips O'Brien has been Director of the Scottish Centre for War Studies at the University of Glasgow since 2001. He has written extensively on Anglo-American relations in the 20th century with a particular stress on diplomacy and strategic policy. In the last few years he has played a growing role in the discussion of the defence and international implications of Scottish Independence. He has appeared before the Scottish Affairs Committee of Parliament testifying about the different defence models that could be pursued by an Independent Scotland. He has also discussed the question of independence on BBC Newsnight, STV's Scotland Tonight and written about the subject for *The Scotsman*.

**SUMMARY BULLET POINTS**

- (1) If Scotland were to become independent the ramifications for the rest of the UK are potentially transformative, affecting the UK's international standing, place within the EU and NATO and the shape of its UN Security Council membership.
- (2) In purely rational terms, Germany could see some real advantages from a break-up of the United Kingdom. These include a raised likelihood of a permanent seat on the UN Security Council and the ability to push EU policy in a more integrationist direction. On the other hand, German defence policy is potentially endangered by a weaker UK, especially if Scotland decides to follow a non-NATO policy.
- (3) France, meanwhile, would potentially have much to lose by the break-up of the UK. French defence policy has become increasingly more centred on cooperation with the UK and much of this would have to be completely reconfigured. Moreover, though France publicly supports UN Security Council reform, on the surface it stands to gain little from an increase of members of the Security Council with veto powers. In terms of EU policy, a diminished UK could actually limit French freedom of action.
- (4) The United States would seemingly have nothing to gain by Scottish independence and indeed might have a great deal to lose. The UK has been consistently the USA's most reliable international partner so its diminution both politically and militarily would be regretted in America. Moreover, if an independent Scotland adopted a strongly-defined non-Nuclear, non-NATO policy it would undermine

---

<sup>7</sup> See generally, D Buchan, “Outsiders on the inside: Swiss and Norwegian lessons for the UK”, Centre for European Reform, 24 September 2012.

many American assumptions about European defence and might lessen the USA's commitment to Europe as a whole.

#### SOME INTERNATIONAL IMPLICATIONS OF SCOTTISH INDEPENDENCE

So far the debate over an independent Scotland has overwhelmingly focussed on the future policy of the new state itself. This needs to be corrected. If Scotland were to leave the United Kingdom it could have a transformative affect on the rest of the UK, and through this on such international organizations as the United Nations, the European Union and NATO. This impact is widely acknowledged though, not surprisingly, diplomatic, government and military officials will not go on the record when discussing the question. Therefore we are left with many more questions than answers. This paper is written to try and crystallize some of the questions that are now being asked internationally while providing a number of different answers. It will mainly look at the possible behaviour towards the UN, EU and NATO by the rest of the United Kingdom, the United States, Germany and France if Scotland were to leave the United Kingdom—though reference would also be made to other nations.

#### UNITED KINGDOM DECISIONS

If Scotland were to leave the United Kingdom the remaining elements of the union would be faced with a number of crucial international and strategic choices. The first would be whether the UK should spend the effort to remain a nuclear armed “great” power with one of only five permanent seats on the United Nations Security Council. Since the end of the Second World War the UK has regularly spent more per capita on defence than most other European states and has maintained a force that is capable of playing an international role. The UK decision on the future of Trident would be the first indicator of whether the rest of the union would want to maintain a relatively expensive and high capacity military. The decision will have to be made relatively soon as to whether the Trident Submarine force, which is entirely based in Scotland, should be rebased, at considerable expense, somewhere within the borders of the remaining parts of the United Kingdom. The outcome of this debate is extremely uncertain.

If the UK decides to de-emphasize the nuclear element of its strategic defence policy, it would make the moves towards UN Security Council reform much harder to delay. The present position of the UK, restated just this year, is that it is in favour of the expansion of the UN Security Council to include the Group of 4.<sup>i</sup> However the Security Council as a whole has moved extremely slowly on the issue of reform and one of widely held assumptions is that its members, the UK included, have no real desire to see membership expanded thus diluting their special position in the world order. The break-up of the UK would make such delaying action more difficult to maintain.

The rest of the UK would also have to decide whether to adjust its present policies towards the European Union. At present the UK is sometimes seen as a consistent force resisting moves to further European integration. Most recently its actions in opposition to the enactment of a European-wide financial transaction tax caused great resentment in parts of the EU. A reduced UK might either be less able to resist pressure from the whole of the EU or could conceivably decide to reconfigure its entire membership of the EU to a trading relationship more similar to that of Norway.

Though there are a huge amount of uncertainties within these questions it would be useful to see how different nations might react to the international fall-out of Scottish Independence.

#### GERMANY

In pure terms of realpolitik, Germany would have the most to gain from Scottish independence and a less powerful United Kingdom. For a number of years Germany has campaigned for permanent membership of an expanded UN Security Council. This position, as part of the G4 with India, Japan and Brazil, was reiterated on 26 September 2012.<sup>ii</sup> As the third largest contributor the United Nations budget and with the largest economy in Europe, the German claim for a seat would be one of the strongest if permanent membership was reformed due to the diminution of the UK. Already the USA, France and the UK have supported the concept of German permanent membership.

In regards to the EU, a reduction of UK influence, a more pro-EU integration policy by the UK, or even a withdrawal of the UK from full membership would increase German influence. In the last few years Germany has clashed with the UK a number of times over the creation of European wide initiatives such as the transaction tax.<sup>iii</sup> Certainly Germany is anchored fully in the European Union in a manner that the UK has so far resisted.<sup>iv</sup> It is likely that Germany would be able to more fully shape European institutions if the United Kingdom's influence were reduced.

One area of German policy that would not seem to benefit by the break-up of the United Kingdom would be defence policy. Germany remains committed to NATO as the cornerstone of its national defence. Its commitment to the maintenance of the Atlantic Alliance have lead some to accuse Germany of silently renegeing on its stated policy of removing all nuclear weapons from it soil. It certainly seems now that remaining American nuclear weapons still in Germany will not be removed any time soon.<sup>v</sup> A weakened UK would mean a weakened European voice within NATO and this could be seen as problematic for Germany. Potentially even

more worrying is the prospect that an independent Scotland would adopt a non-NATO policy as part of an overall non-nuclear position. Such a position could help further weaken American faith in the Atlantic Alliance at a time when many are wondering whether the United States will start neglecting Europe to focus on its strategic interests in Asia. As Germany seems committed to keeping the United States firmly anchored into the defence of Europe a non-NATO Scotland would be a worrying development.

#### FRANCE

Even though much has been made of the Franco-German partnership during the last few decades, France would almost certainly view the prospect of Scottish independence with considerable trepidation. Again, speaking from a point of view of pure *realpolitik*, the French state would have much to lose through the break-up of the United Kingdom. It is true that publicly France has recently reiterated that it supports UN Security Council expansion including a permanent seat for Germany.<sup>vi</sup> However it certainly would be plausible to assume that France, like the UK, enjoys its present position as one of only five permanent members especially as neither its present population, economic size, nor international influence could be said to merit such a special status. Maintaining the UK as it is presently would seem to further delay any reform of the Security Council and this could be said to be in French interest.

In defence terms France has moved increasingly closer to the UK in the last few years. After flirting for a while with the notion of closer EU integration of defence forces, France has started signing concrete agreements with the UK, including the 2010 UK-France Defence Cooperation Treaty.<sup>vii</sup> There have been wide-ranging discussions between the UK and France about maritime security, naval construction and combined expeditionary force planning (amongst others). The aircraft carrier programmes being undertaken in both countries seem based on the assumption of continuing and ever-closer cooperation in this area. An independent Scotland is therefore potentially disruptive to French defence planning across the board. The maritime element of Anglo-French defence cooperation, for one, would have to be completely reconfigured. The diminution of the UK as a military partner could also produce a re-evaluation of France's whole defence posture. At present France sees itself along with the UK as Europe's only two nations with real military force. It would be loathe to shoulder the burden as Europe's sole large militarily-capable nation.

In terms of the EU it could be said that a break-up of the United Kingdom would produce a situation in France similar to that of Germany. However it would also make it more likely that France would take an oppositional position to German plans. In many ways the existence of the UK has allowed France to be closer to Germany than it would be naturally. However, though many in France might welcome the push to greater integration that would follow from a reduced United Kingdom, they might also miss the UK's counter-weight to a powerful Germany. Presently the UK is often seen as the obstructive power, which allows France to play a conciliatory role. However, without the UK, France's freedom of choice within the EU might actually be reduced.

#### THE UNITED STATES

It is hard to see any advantage for the United States in the break-up of the United Kingdom and the creation of an independent Scotland. Indeed, such a development could be seen as very much against American interest. Though the "special relationship" is often as much myth as reality, the UK has been the United States most reliable international partner for the past 60 years. In both the UN and international operations such as the two invasions of Iraq and the ongoing intervention in Afghanistan the UK has provided the United States consistent political support both diplomatically and in terms of real military commitment. Therefore on a *prima facie* level, the United States would want the United Kingdom to continue very much as is.

The great worry for the United States would be that an independent Scotland takes a strong anti-nuclear, non-NATO position. Already there are growing pressures in some European countries to push for a complete withdrawal of American nuclear weapons from Europe. When New Zealand actually took the step of banning all vessels with nuclear weapons from entering its territorial waters in the 1980s, the US reacted by removing New Zealand from its operational defence umbrella. If such a sentiment spread across Europe, aided by a new Scotland which took a strong non-nuclear stance, it could reinforce some present American notions that Europeans are not serious about national defence and should be left to their own devices.

A non-NATO Scotland would also undermine the United States' present defence policies in Northern Europe. One of the only possible areas of state conflict in Europe today would be a dispute between Russia and Norway over possession of the oil fields of the Arctic—many of which are now in Norwegian hands but are in territories claimed by Russia. Because of this possible conflict, Norway has become one of the staunchest supporters of the NATO alliance and in particular in the US role within it. American military plans for the defence of northern Europe are based on access to Scottish bases. Denial of access by a non-NATO Scotland would therefore be a huge problem that is difficult to see overcome. (This is also the reason that Norway itself would be very much opposed to a non-NATO Scotland. Anything that would threaten American commitment to NATO would be extremely worrying to Norway).

When it comes to the specific question of the Security Council of the United Nations, while the US actually seems in no hurry to reform the institution, it has publicly supported permanent membership for Japan and India. It would not welcome with enthusiasm a reform process brought on by the UK's break-up.

27 September 2012

#### REFERENCES

<sup>i</sup> See Statement from the UK delegation to the United Nations, 26 January 2012. <http://ukun.fco.gov.uk/en/news/?id=721692882&view=PressS>

<sup>ii</sup> <http://www.rttnews.com/1972199/g-4-nations-call-for-unsc-expansion-stake-claim-for-permanent-membership.aspx?type=gn&Node=B1>

<sup>iii</sup> See: "Germany Rebukes UK over Tobin Tax Opposition", *Financial Times*, 15 November 2011. <http://www.ft.com/cms/s/0/25ef197c-0f90-11e1-88cc-00144feabdc0.html#axzz27f9tZSM3>

<sup>iv</sup> See: Stefan Lehne, "The Big Three in EU Foreign Policy", Carnegie Endowment for International Peace, July 2012. <http://carnegieendowment.org/2012/07/05/big-three-in-eu-foreign-policy/ck4c>

<sup>v</sup> See Tobias Hecht, "Germany and its American Nukes", *American Institute for Contemporary German Studies*, 12 September 2012, <http://www.aicgs.org/2012/09/germany-and-its-american-nukes/>

<sup>vi</sup> See Statement from the French delegation to the United Nations, 27 August 2012. <http://www.franceonu.org/france-at-the-united-nations/thematic-files/UN-Reform/security-council-reform/france-at-the-united-nations/thematic-files/UN-Reform/security-council-reform/article/security-council-reform>

<sup>vii</sup> See MOD (uk) "UK-France Defence Cooperation Treaty Announced", 2 November 2010. <http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/UkfranceDefenceCooperationTreatyAnnounced.htm>

#### **Written evidence from Professor Richard Rose, Director, Centre for the Study of Public Policy, University of Strathclyde, Glasgow**

1.0 The important questions that the Committee raises are a mixture of known knowns such as the UK's right to a seat in the UN Security Council, and known unknowns, such as specific terms of separation, how amicable or acrimonious negotiations about separation are, and assessments in Brussels and Washington of the consequences of separation.

1.1 The number of unknowns underscores the importance of a diplomatic rather than adversarial handling of any negotiations about the transition to separation. In today's world, the interdependence of policies—what one country does depends on what another does—means that independent states are continuously engaged with many states about policies of mutual interest. Whereas control of services already on the ground in Scotland would merely have to be transferred, independence would require Scotland creating almost from scratch the full panoply of representation currently provided by the UK government.

2.0 SCOTLAND's resources match those of many EU or UN member states with one major exception: as a devolved region it does not have the representation abroad that is normal for a 21st century independent state. To confirm its independence, as a matter of urgency it would need to:

2.1 Establish and staff major embassies in up to two dozen national capitals, plus representation at the IMF, UN, etc.

2.2 Assuming admission to the European Union, establish and staff an Office of Permanent Representative in Brussels eight to 10 times larger than its existing mission.

2.3 Political parties will need to recruit candidates to meet the likely increase in European Parliament seats from six to 12.

3.1 For the UNITED KINGDOM, the separation of Scotland would have no effect on its legal status and leave membership of international bodies unaltered.

Its international standing would only be affected if negotiations for separation were badly handled.

3.2 The UK's already complicated relation with the European Union would be further complicated if it chose to raise detailed objections to an application for EU membership from the Scottish government.

3.3 UK intelligence relations with the US should not be affected.

3.4 A Scottish government demand for the removal of Trident submarines from Scotland would have a significant fall out for UK defence policy overall.

4.0 Political negotiations for the departure of Scotland from the United Kingdom must be bilateral. However, the unusual character of negotiated independence in today's world and the international visibility of both the UK and Scotland would attract a large international audience. Diplomatic spectators would not have a prior

commitment to one side or the other. Countries would wish to be on good relations with the new Scottish state as well as with the UK. It would be in the UK's interest to take into account relevant third-party reactions as negotiations evolve.

4.1 As for the EU, the UK government's current policy is to distance itself from further or existing EU commitments, while the Scottish government takes the opposite position, common to small states, of seeing the EU as offering equal legal status with large states.

4.2 EU policy favours enlargement. Compared to the eight states that are candidates or potential candidates for EU membership, Scotland rates more highly than seven in terms of commitment to democracy, GDP per capita, population and avoidance of corruption. Thus, Brussels would likely view a Scottish application for membership favourably. Given such unprecedented circumstances as EU laws already applying in Scotland, Scotland might seek and receive exceptional treatment. The process adopted for considering Scottish membership would be a political decision made collectively by EU institutions. It would be predisposed to accept recommendations agreed jointly by the UK government and Scotland during the negotiation of separation.

4.3 In EU law the UK could veto Scotland becoming a member state, but this would not be to its diplomatic advantage at a time when it is seeking allies in placing curbs on the EU's expansion of its political and economic powers. The UK's position would be weakened if the government was simultaneously seeking to repatriate powers from Brussels to Britain as a result of the current FCO review of the effects of EU membership on the UK.

4.4 The UK's nuclear defence policy would be called into question by Scotland becoming independent. Negotiations about transitional arrangements for the redeployment of UK nuclear submarines to an English base would re-open the question of what type of military capability Britain requires in future and what military capability it can afford. Insofar as UK military installations in Scotland are of value to NATO, then the United States would take an interest in the outcome of negotiations and would be free to engage in bilateral negotiations between Washington and Edinburgh as well as with London.

5.0 If Scotland became independent, it would immediately need to establish its own diplomatic representation abroad, since the UK government would no longer provide representation.

5.1 There is no fixed rule about how many embassies and Ambassadors are enough and countries the size of Scotland do not try to have representation in the majority of UN member states. Nordic states such as Denmark and Finland have several dozen embassies abroad and some form of representation or consular service in up to two dozen or more countries. By starting from scratch, Scotland could attempt innovative forms of representation. Nonetheless, whatever was done would require a substantial capital investment, recruitment and training of staff, and involve significant recurrent costs. It would have to be done as a matter of urgency concurrently with creating new ministries in Edinburgh to take over responsibilities for powers that are currently not devolved.

5.2 The pressure for consensus in European Union decision-making and rules for super-majorities when votes are counted mean that individual countries, whatever their size, must form alliances on an issue by issue basis in order to have their positions incorporated in an EU decision.

5.3 The lack of the "hard" power of military force and a large Gross Domestic Product forces small states to rely on "smart" power, that is, a conscious strategy of engaging with other countries in order to call attention to common interests that may be pursued for common advantage. While Scotland has the advantage of being an internationally known "brand" that may help to open doors abroad, this is insufficient to seal deals.

5.3 In order to create understanding of its position as an independent state and to establish working relationships on issues of mutual concern, Scotland would need representation in all or almost all of its 26 other member states; it would want representation in Commonwealth countries where the Scottish diaspora can be found; in important oil producing countries; and in major trading partners or potential trading partners, such as China.

5.4 It is a diplomatic truism that to represent a country it is necessary to be present, whether or not the EU committee meeting is one in which a country has an interest. It is necessary to monitor Commission preparations of proposals; the reaction of home departments affected by a specific Commission proposal; and the position that other countries are likely to take on an issue that makes them suitable partners in an alliance based on common interests. All of this takes time and skilled staff.

5.5 The allocation of seats in the European Parliament disproportionately favours small states; thus, Scotland's MEPs would double in number. However, the work of the Parliament is organised by multi-national Party Groups. At present, Scotland's six MEPs belong to four different Groups and doubling the number would not necessarily change this. The extent to which Scottish voices would be strengthened with more MEPs depends less on the number of Scots in a European Parliament of 751 MEPs than it does on the abilities of the individuals whom parties nominate and Scots elect.

6.0 The above is based on my decades of research in the UK, the EU and Washington on changing institutions of government and the relation of domestic and international politics. Immediately, the memorandum draws on an ESRC-funded study to be published by Oxford U. Press next spring, *Representing Europeans: a Pragmatic*



*Approach*, and research on the role of Small States in the European Union, organised by the European University Institute, Florence and funded by the Fundacao Francisco dos Santos, Lisbon. The views expressed herein are solely those of the author.

19 September 2012

---

### Written evidence from The Scotch Whisky Association

#### 1. INTRODUCTION

1.1 The Scotch Whisky Association (SWA) is the industry's representative body, with a remit to protect and promote Scotch Whisky worldwide. Its 51 member companies—Scotch Whisky distillers, blenders and bottlers—account for over 90% of the industry.

1.2 Scotch Whisky is Scotland's leading single product export and the UK's largest FMCG export. Annual shipments in excess of £4.2 billion at Customs valuation represent almost a quarter of total UK food & drink exports and 80% of Scotland's food and drink exports.

1.3 The SWA works closely with a range of UK Government departments on international trade policy and market access issues, as well as EU Single Market matters.

1.4 The Association takes no position on constitutional arrangements within the UK. We do, however, have a particular interest in the impact of potential change to the UK constitutional framework on efforts to promote British business abroad, as well as membership of and standing in international bodies, as we made clear in our submission to the UK Government and Scottish Government consultations on a referendum (attached). Our comments are confined to these two aspects of the current inquiry.

#### 2. INTERNATIONAL PRIORITIES

2.1 The Scotch Whisky industry is export-oriented, with nine out of every ten bottles sold overseas. International growth and optimism about future export potential has supported in excess of £1 billion of new capital investment over the last five years. A further £1.5 billion is in the pipeline over the next five years.

2.2 The industry's international priorities include improved and fair access to Brazil, China, Colombia, India, Mexico, the Russian Federation, South Korea, Thailand, and Turkey. We seek to ensure there is an appropriate regulatory environment within the EU's Single Market, as well as the accession countries. Negotiations within the WTO and EU free trade agreement framework are also important priorities.

2.3 Scotch Whisky exports are negatively impacted by tariff and non-tariff barriers to trade. An SWA analysis (2010) identified around 660 separate barriers to the trade in Scotch Whisky in 186 markets. Issues include high import tariffs and discriminatory taxes, as well as restrictive certification, labelling and licensing rules. Inadequate intellectual property protection can also undermine potential growth.

2.4 These international priorities are pursued with and through the UK Government whose influence with the European Union institutions ensures that they are handled to best effect on an international level with the countries concerned.

#### 3. UK FRAMEWORK

3.1 Efforts to improve the export environment, and to promote fair market access, are of the highest priority to the industry. The SWA and its member companies are proactive in seeking to remove trade barriers, as well as supporting trade liberalisation that promotes Scotch Whisky.

3.2 The industry works closely with the UK Government on such issues, including with FCO, BIS, UKTI, DEFRA, and the British Embassy network. The generally high quality level of support received over many years supports the industry's market access ambitions. Working together, the industry and government can point to numerous trade barriers that have been removed, supporting the competitiveness of the sector.

3.3 Within the EU, UK participation in a number of fora is important. Effective and influential representation on the EU Trade Policy Committee and Market Access Advisory Committee, for example, is key to progressing market access problems confronting Scotch Whisky. Ensuring the UK's trade voice is heard within the EU is vital given the lead role of the European Commission and the EU's overseas delegations on trade issues.

3.4 Such representation assists in securing a high profile for UK industry priorities in the on-going free trade agreement negotiations between the EU and major developing trading partners such as India, ASEAN and Mercosur.

3.5 The global footprint of the British Embassy network, with its excellent local connections and knowledge, as well as commercial diplomacy expertise, supports the industry's market access agenda. The Embassy network does important work in ensuring a co-ordinated response in-market, through the local EU market access teams, to trade issues that arise.

3.6 The support received from UK departments and the UK Permanent Representation in Brussels on EU internal market issues is invaluable, for example in relation to complex dossiers regarding product labelling. Assistance on EU accession candidate issues has been welcome.

3.7 Whilst it is the EU which leads on relevant issues, the UK Mission in Geneva, which is well staffed and well respected, plays an important role in relation to trade negotiations and World Trade Organisation issues (including technical barriers to trade and trade policy reviews), as well as the World Health Organisation.

#### 4. SCOTTISH FRAMEWORK

4.1 The Association aims to keep the Scottish Government and public agencies updated on industry trade policy priorities. At present, there is limited involvement in pursuing such issues, reflecting where responsibilities for external trade lie under the devolution settlement. There is some co-operation on trade promotion activities with Scottish Development International when SDI are represented in third country markets.

#### 5. CONCLUSION

5.1 In responses to both the Scottish Government and Scotland Office consultations on a future independence referendum, the SWA has underlined a need for clarity on various issues arising from potential constitutional change. We have sought to point out the sort of areas touching on our members' business environment that would need to be considered.

5.2 Given the Scotch Whisky industry's economic contribution to the trade balance and its position as an immediately recognisable UK export, we believe that areas which should be considered include the geographic spread of future overseas representation, the influence and impact on trade policy and market access expertise, membership of the EU and the level of engagement with its trade policy mechanisms, as well as the capacity for broader interaction with bodies such as the WTO and WHO.

5.3 The Association believes there would be an onus on the UK and Scottish Governments to ensure that any future change to constitutional arrangements does not impact on export-oriented sectors, such as Scotch Whisky, that rely on effective trade policy mechanisms and overseas representation.

*September 2012*

### SCOTCH WHISKY ASSOCIATION'S RESPONSE TO THE SCOTLAND OFFICE CONSULTATION MARCH 2012

#### SCOTLAND'S CONSTITUTIONAL FUTURE: CONSULTATION

The Scotch Whisky Association is happy to respond to the UK Government's consultation on Scotland's constitutional future. We do so to underline the urgency for clarity, as seen from a business perspective, on the many issues arising from a referendum on Scotland's constitutional future. This response addresses the issue of independence and not the wider issue of further devolution of powers to Scotland.

The Scotch Whisky industry is a major business in the UK; it is embedded in Scotland, providing employment for around 35,000 people and contributing massively to the prosperity of the United Kingdom and Scotland. Its operations and jobs are at the heart of many communities across Scotland.

In planning for future success, industry needs political and economic stability, the prospect of sustainability and certainty about the future business environment. There is an urgent need for both the UK and Scottish Governments to set out unequivocally what independence, if that was the choice of the electorate, would mean for Scotland and companies doing business there. These include the timing of the referendum on independence, the structures of government and financial/economic administration, Scotland's overseas representation, membership of the European Union and the World Trade Organisation, all of which are critical to the Scotch Whisky industry in its overseas markets. The sustainability of the industry matters to Scotland's prosperity and to the success of the companies and the jobs they generate in Scotland.

The Scotch Whisky industry urges both the UK and Scottish Governments to address the issues that relate to doing business in Scotland, so that an informed debate can take place, where legitimate questions can be advanced without being characterised as taking a particular position and where political considerations are clearly delineated from matters of fact.

We look forward to engaging with both the UK and Scottish Governments on the important issue of Scotland's constitutional future which is critical to the Scotch Whisky Association and its member companies, whose employees depend on a successful and growing industry for their livelihood.

SCOTCH WHISKY ASSOCIATION'S RESPONSE TO THE SCOTTISH GOVERNMENT'S  
CONSULTATION  
MARCH 2012

SCOTTISH GOVERNMENT CONSULTATION: YOUR SCOTLAND, YOUR REFERENDUM

The Scotch Whisky Association is happy to respond to the Scottish Government's consultation. We do so to underline the urgency for clarity, as seen from a business perspective, on the many issues arising from a referendum on Scotland's constitutional future. This response addresses the issue of independence and not the wider issue of further devolution of powers to Scotland.

The Scotch Whisky industry is a major business in the UK; it is embedded in Scotland, providing employment for around 35,000 people and contributing massively to the prosperity of the United Kingdom and Scotland. Its operations and jobs are at the heart of many communities across Scotland.

In planning for future success, industry needs political and economic stability, the prospect of sustainability and certainty about the future business environment. There is an urgent need for both the Scottish and UK Governments to set out unequivocally what independence, if that was the choice of the electorate, would mean for Scotland and companies doing business there. These include the timing of the referendum on independence, the structures of government and financial/economic administration, Scotland's overseas representation, membership of the European Union and the World Trade Organisation, all of which are critical to the Scotch Whisky industry in its overseas markets. The sustainability of the industry matters to Scotland's prosperity and to the success of the companies and the jobs they generate in Scotland.

The Scotch Whisky industry urges both the Scottish and UK Governments to address the issues that relate to doing business in Scotland, so that an informed debate can take place, where legitimate questions can be advanced without being characterised as taking a particular position and where political considerations are clearly delineated from matters of fact.

We look forward to engaging with both the Scottish and UK Governments on the important issue of Scotland's constitutional future which is critical to the Scotch Whisky Association and its member companies, whose employees depend on a successful and growing industry for their livelihood.

*21 September 2012*

---

**Written evidence submitted by Professor Nigel White, School of Law, University of Nottingham**

SUMMARY

The evidence, reviewed below, indicates that under general international law and UN law the UK's position should be one of continuation in terms of UN membership, including permanent membership of the UN Security Council (UNSC). As a new state, Scotland would have to apply for UN membership, which should be straightforward. The (new) UK's position would be that of successor state to the (old) UK's entitling it to continue UN membership, and there are a number of precedents in UN practice to support this. However, international law on succession of states is limited and contested and, while UN precedents on membership in such situations provide some clarity, the law in this area is a product of practice and, in any such unstructured legal system, new precedents may well emerge as the political context changes.

While legally the UK's case for continued UN membership (including permanent membership) is relatively strong, the danger is that politically, unless the situation is managed (so that the other permanent members and key states raise no objections), Scottish independence could potentially be used by the non-permanent members of the UNSC and the rest of the UN membership (especially those states pushing to become new permanent members), to revisit the issue of permanent membership and wider UNSC reform (a debate that has been rumbling since the early 1990s). It is noticeable that at the recent annual session of the UN General Assembly, a number of heads of state and government spoke about the need for UN reform, particularly of the UNSC.

Although not a direct precedent, the UK government would be well-advised to look at the transition from the Soviet Union to Russia within the UN in 1991–92 as an example of managing the situation so as to ensure the UK's continued occupation of the permanent seat. Furthermore, it would support the UK's continuation of its UN seat (including its permanent membership) to have the support of the new Scottish government.

In summary, though the relevant law is in support of the UK retaining its position in the UN, diplomatic efforts would still be necessary to ensure that the occasion of the independence of Scotland is not used as a trigger for reform of the UNSC, which might lead to the UK losing its permanent membership. This assumes, of course, that the UK wishes to retain this status, for although it gives the UK tremendous influence and prestige it comes with onerous responsibilities. Furthermore, there are very strong arguments that the UNSC is overdue serious reform, with an increase in size to 20–25 member states to widen representation, the expansion of a more representative permanent membership with a restriction on veto rights (for example by requiring two or possibly three negative votes from the permanent membership for any decision to be blocked). The review below, however, assumes that the UK government would wish to retain its current status within the UN.

---

## SUCCESSION OF STATES IN GENERAL INTERNATIONAL LAW

If a state splits into two or more parts there is an issue of succession to the rights and obligations of the predecessor state by the new states, including membership of international organisations. Issues of succession in respect of treaty obligations are partially (and somewhat unsatisfactorily) covered by the Vienna Convention on Succession of States in Respect of Treaties 1978, adopted in the context of the large number of newly decolonized states. For this reason the Treaty does not cover situations where a state breaks up and one of the constituent state purports to take over the identity of the old state on dissolution, though it recognises that this could happen (Article 34). The Treaty's concern is the position of the newly independent and separating states, not with whether the predecessor state is continued by any of the successor states. Furthermore, the Treaty does not prejudice the rules of an international organisation on the acquisition of membership or other relevant rules of the organisation (Article 4(a)), and so the law discussed in the next section prevails.

The secession (which can be forceful or consensual) of part of a state does not automatically mean that the state ceases to exist. There are a number of precedents in international law and in UN law that strongly indicate that in the event of the partial break-up of the UK, with the independence of Scotland, the remaining state could legitimately claim to be successor to the UK and therefore entitled to continue its membership and status in the UN. This aspect of succession is supported by general international law. As stated by Schermers and Blokker, when a state splits into parts, the "principal part is generally recognized as the successor of the larger state" (H G Schermers and N M Blokker, *International Institutional Law*, 5th ed., 2011, 91). For example, the separation of the Irish Free State from the United Kingdom in 1922, did not affect the status of the UK under general international law, though the state was reduced in territory and population, and changed formally from the United Kingdom of Great Britain and Ireland to the United Kingdom of Great Britain and Northern Ireland.

## UN PRACTICE AND LAW

Under UN law there is no provision in the UN Charter that deals with issues of state succession and membership of the UN; the relevant provisions stating that the membership of the UN shall consist of those original signatories to the Charter (Article 3), and shall be "open to all other peace-loving states which accept the obligations contained in the present Charter" (Article 4). It is worth noting that the UK, as one of the powers that shaped the Charter, a founding member and a permanent member, is in a position of strength, especially when considering that any formal change to the Charter can only be undertaken with the agreement of all the permanent members (Article 108). However, it would be very difficult for the UK to resist change if it were to be isolated with the vast majority of member states pushing for a change to the permanent membership. The inability of the UNSC to take any effective measures in the face of crimes against humanity being committed in Syria has once again re-opened the debate about reforming the UNSC to make it both more effective and more representative. It is therefore politically a difficult time to manage a smooth transition in UK membership within the UN in the event of Scottish independence, although it unlikely that there will ever be a good time.

In order to determine issues of succession in the case of UN membership it is necessary to look to customary international law formed within the UN—that is to look for consistent patterns of practice accompanied by evidence that member states are conforming out of a sense of obligation. According to Conforti there is a generally recognised principle of customary international law that the "mere loss or breaking off of part of the territory or of the population residing there does not determine the extinction of a State". He states further that the "breaking off, by not involving the extinction of the State, has no effect on membership of the United Nations .... The standing as a member of the United Nations, held by the State which suffers the breaking off, remains unchanged", while the territory that has broken off will have to apply for UN membership and more widely seek recognition of its statehood by other states (B. Conforti, *The Law and Practice of the United Nations*, 3rd ed., 2005, 44–5).

The example given in the manuals is the separation of Pakistan from India in 1947, when India kept its membership of the UN, which it had held since 1945, while Pakistan applied and gained membership as a new member under the procedure for membership application in Article 4 of the UN Charter. There are other similar precedents in terms of UN membership (Egypt continuing the membership of the UAR upon the secession of Syria in 1961; the current Malaysia continuing the membership of former Malaysia upon the secession of Singapore in 1969; the current Pakistan continuing the membership of the old Pakistan with the independence of Bangladesh in 1971; Serbia continuing the membership of Serbia and Montenegro with the independence of Montenegro in 2006). This consistent and accepted practice suggests that when a relatively smaller part of an existing state breaks off and claims statehood, the remaining state (whose governmental organisation, remaining territory and population, are otherwise largely unaffected) is seen as the successor of the old state and entitled to continue the membership of the old state. Furthermore, the seceding state has to apply for membership as a new state. This line of practice would support the continuation in UN membership from the old UK (including Scotland) to the new UK (absent Scotland). This line can be distinguished from other precedents such as the consensual break up of Czechoslovakia in December 1992, where that state ceased to exist legally and factually, and the two newly emergent Czech and Slovak Republics applied afresh for UN membership. However, none of the above instances involved a permanent member.

Of the five permanent members (P5), there have been membership issues involving two of them—China and Russia, but only the Russian case can be seen as relevant to the UK. The issue with China was that, from

1945–71, the UN only accepted the credentials of the Nationalist government in Taiwan as representatives of China, over the representatives of the People's Republic of China. From 1971, as a result of a change in US policy towards China, the permanent Chinese seat has been taken by the representatives of the People's Republic of China. In essence this reflected the (continuing) dispute about which regime represented China, with both regimes claiming to be the legitimate government of one China. With no attempted claim to independence by Taiwan, thereby purporting to secede from China, the situation is not directly relevant to the UK's position at the UN in the event of Scottish independence.

It is worth noting that Article 23 of the UN Charter still lists the permanent members of the UN as “the Republic of China” and not “the People's Republic of China”. It also still lists “the Union of Soviet Socialist Republics” and not the “Russian Federation”, as well as “the United Kingdom of Great Britain and Northern Ireland”, “France” and the “United States of America”. The principal reason why China and Russia have not insisted on a formal name change in Article 23 is the danger of opening up debates about permanent membership since such changes would require formal amendment of the Charter (Articles 108–109).

A transition from the current UK to a smaller UK following Scottish independence might not involve a significant name change as a state, a relatively minor issue, but one that might be relevant. The new UK could not claim to be the “United Kingdom of Great Britain and Northern Ireland”, since the Kingdom of Great Britain was created by the Union of England (and Wales) and Scotland. However, the new UK could legitimately claim to be a successor to that state, and could reinforce that claim by pointing to factors such as an unchanged form of government, the majority of the territory and population of the old state, and that it remained a United Kingdom of England, Wales and Northern Ireland. In all likelihood the name would not be changed in the UN Charter, but this has not been an issue in relation to China and Russia. The UK's position, along with the other permanent members of the UNSC, as a recognised nuclear weapon state under the Nuclear Non Proliferation Treaty of 1968 (the cornerstone of arms control law), would further support its continuation of permanent membership in the UNSC, given that the new UK would succeed to the old UK's rights and obligations under the 1968 Treaty.

The succession of Russia to the Soviet Union's permanent seat in 1992 is, on the one hand, not a direct precedent for the UK because it was arguably the case that Russia, after the dismemberment of the Soviet Union, was legally and factually so different from the USSR that it should not have been treated automatically as the successor state but, on the other hand, is relevant because it involved succession within the P5. Critics of Russian succession to Soviet membership within the UN also point to the way in which the Federal Republic of Yugoslavia (FRY or Serbia and Montenegro) was not treated as successor to the Socialist Federal Republic of Yugoslavia (SFRY) later in 1992, including within the UN where the FRY was required to apply for UN membership. However, the case of Yugoslavia should be distinguished from that of the Soviet Union for two reasons: firstly, the largely consensual nature of the break-up of the Soviet Union, which included support by the former Soviet Republics for Russian succession to UN membership including permanent membership, in contrast to the violent dissolution of Yugoslavia; and, secondly, the treatment of the SFRY/FRY was part of the UN's response to the situation in the former Yugoslavia as a threat to international peace and security. This still leaves the problem of the Soviet Union being in reality a different state to Russia, but those difficulties were overcome by the UN member states accepting Russia as successor to the Soviet Union and, therefore, as entitled to continue to occupy the permanent seat in the UNSC. This was achieved by creating a diplomatic window in which President Boris Yeltsin formally informed the UN, in a letter of 24 December 1991 to the UN Secretary General, that the “membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council and other organs and organizations of the United Nations system, is being continued by the Russian Federation ... with the support of the countries of the Commonwealth of Independent States ...”. This was followed in January 1992 by President Yeltsin attending a Special Summit of the Security Council at the level of Heads of State and Government, which simply accepted the presence of the President and the Russian Federation. Any question marks over Russian were left unanswered because a challenge to continued Russian membership would have caused a constitutional crisis at the UN involving a reconsideration of the pact at the heart of the UN Charter.

## CONCLUSION

Although a new UK would have a much stronger legal claim to be a successor to the old UK than Russia did to the Soviet Union, it should learn from that episode by securing support for its continued occupation of the permanent seat in the UNSC, not only from Scotland but also from the remainder of the permanent membership (who have no real interest in upsetting their position), and other key states (for instance Germany and Japan). This would help prevent any groundswell within the UN membership for changes to the UK to be the trigger for wider UN reform. Just as the Commonwealth of Independent States supported the Russian position so the European Union might be persuaded to support the UK. A danger is that countries such as India, Brazil, Nigeria, South Africa and Egypt (all aspiring to permanent membership along with Germany and Japan) might see any such attempt as a step too far to preserve an outdated status quo within the UN.

### Written evidence from Fabian Zuleeg, Chief Economist, European Policy Centre

*About the person: Fabian Zuleeg is specialised in the analysis of European Political Economy issues. He holds a PhD on EU accession from Edinburgh University and currently works for the European Policy Centre, an independent Brussels-based think-tank.*

*How would an independent Scotland be seen by the other EU Member States and the EU institutions?*

Summary:

How other EU Member States and the EU institutions would see an independent Scotland will be crucially dependent on the nature of the separation, whether it is seen as setting a precedent for other independence movements across Europe and the Scottish attitude to the implementation of EU policies; the more “exceptionalism” an independent Scotland insisted upon, the more negative the attitude of other EU Member States and the institutions is likely to be.

1. There is much uncertainty and debate over the relationship an independent Scotland would have with the EU, including, for example, the question of the process of membership negotiations and whether there would be a requirement to commit to eventually joining the Eurozone.

2. In my view, these are not purely legal matters but political questions, which would require negotiations at EU level, crucially involving all other Member States (including presumably the remainder of the UK (RUK) unless the UK leaves the EU<sup>8</sup>) and the European Parliament, as well as the Commission.<sup>9</sup> It thus matters how other EU Member States and the EU institutions would see an independent Scotland.

3. The relationship of an independent Scotland with the remainder of the UK would be settled domestically. It is, however, difficult to envisage that the RUK would actively attempt to hinder Scotland at the European level, after accepting independence as the settled will of the Scottish people. Never-the-less, there is potential for conflict here, as Scottish independence also potentially implies changes to the UK’s position in the EU,<sup>10</sup> for example with regard to the number of MEPs and votes in the Council of Ministers or with regard to budget contributions and receipts. The UK would have to accept these changes at EU level so if these were contentious it might well block Scottish aspirations.

4. More generally, how both Scotland and the RUK will be perceived by the EU Member States will be greatly influenced by the state of the then current relationship between the UK and the EU. It remains to be seen in how far Scotland is successful in distancing itself from the increasingly negative approach of the UK government to the EU in more recent times.

5. With regard to the views of the other EU Member States on an independent Scotland there are broadly three groups:

- Those with a sympathetic view of Scottish membership, based on historic and cultural ties or shared policy priorities;
- Those concerned about secessionist movements within their own country; and
- The remaining countries, which could broadly be seen as “neutral”.

6. In terms of countries sympathetic to an independent Scotland, this could include some of the smaller countries with whom Scotland has sought to build close relationships in recent years, such as the Republic of Ireland or Denmark. To a certain extent, for the latter there might also be shared policy interests here in relation to membership of the Eurozone. Scotland’s historic ties with France might also be of importance, especially if France sees Scotland as potentially a more constructive European partner than the RUK.<sup>11</sup> Other countries which might have sympathy with the Scottish cause, given their own history, might include the Baltic States and Slovenia, as well as Croatia which is virtually certain to be a Member State when the question arises.

7. A number of Member States would be concerned that Scottish independence could set a precedent for secessionist/independence movements in their own countries -the Basques and Catalans in Spain, the Flemish in Belgium or the Hungarians in Slovakia and Romania. Cyprus (supported as usual by Greece) would be concerned about the implications for international recognition of the Turkish Republic of Northern Cyprus, which has already declared independence but is recognised only by Turkey. It may be noted that this group of EU member states has—for similar reasons—refused to recognise the independence of Kosovo.

8. The reaction of these countries to the Scottish case would depend on their current domestic situation, as well as the nature of the Scottish-RUK divorce. An amicable, mutually agreed separation would raise far fewer concerns, while an acrimonious and unilateral split would raise fears of similar developments back home. Even

---

<sup>8</sup> Given the current relationship between the UK and the EU, there is a possible scenario that a UK referendum leads to an exit of the UK from the EU. Depending on timing and process, this could profoundly change how an independent Scotland is seen by the other Member States and the institutions.

<sup>9</sup> While in my view this question will predominantly be decided by political negotiation, international law will influence the procedure for an independent Scotland’s membership bid, for example depending on whether the RUK would be the sole legal successor to the UK.

<sup>10</sup> With some even arguing that there might be a requirement for the RUK to renegotiate membership.

<sup>11</sup> However, France might also be influenced more negatively by independence aspirations in Corsica. Countries thus do not fall neatly into one category or another, but these categories serve to illustrate what considerations might influence a country’s final position.

if the process for Scotland is smooth, they could still have doubts if it offered clear additional benefits for an independent Scotland, such as increased participation at EU level resulting in tangible policy changes in Scotland's interest.

9. It will also depend on whether an independent Scotland presents itself as a constructive partner in European policy implementation. If Scotland were to seek special treatment in relation to membership conditions and the implementation of EU policies, it would make it far easier politically to block Scottish aspirations on such grounds, as they are more justifiable than apprehensions or concerns about setting an independence precedent—ie “blocking” Scotland on policy/accession matters might serve to mask deeper concerns concerning the spread of “divorce” to other Member States.

10. Other member states would tend to be “neutral” towards Scottish independence, but for them also the nature of Scotland's approach to EU policies would have an influence; they are unlikely to be welcoming to an awkward partner, seeking exceptions and opt-outs, as currently present in the relationship of the UK with the EU. However, if Scotland shows itself to be a “good European” it might convince the rest of the EU that Scotland is a partner worth having, especially in light of a potentially increasingly awkward relationship with the RUK.

11. The European Parliament and the Commission are also likely to take such considerations into account: they are unlikely to be predisposed to opt-outs and special treatment, given that they consistently argue against such arrangements for existing Member States.

12. In addition, even if not directly involved in the negotiations, other stakeholders can also have an influence. For example, a number of regions, especially those who have a particular interest in this question, can lobby and influence at both MS and EU level either for or against Scotland's future role in the EU.

13. To summarise, the attitude other EU Member States and the EU institutions would take to an independent Scotland is far from certain, being influenced by history and the current domestic situation in the different Member States. It is, however, likely that a consensual divorce and a constructive Scottish attitude to the implementation of EU policies would help to prepare the ground. Conversely, the more “exceptionalism” an independent Scotland insisted upon, the more negative would be the attitude of other EU Member States and the institutions.

*September 2012*

---

**Supplementary written evidence from Professor Matthew Craven, Professor of International Law and Dean of the Faculty of Law and Social Sciences, School of Oriental and African Studies**

It is impossible to disagree with the contention of the Deputy First Minister that the conditions surrounding Scottish independence will have to be negotiated, and that a complex politics will undoubtedly inform what happens. I have, however, two comments on that: first, the politics in question will clearly not just be that of two negotiating parties, but will necessarily be a multi-party politics informed by matters as diverse as the role of the UN security council in the “war on terror” and the Spanish government's concerns to dampen any local secessionist claims. In the second place, it is entirely wrong to assume that the question is one of determining whether politics is to preside over law or vice versa. That starts from the erroneous assumption that the role of law, here, is to determine a specific set of outcomes rather than (and more realistically) to provide the framework within which those outcomes may themselves be negotiated.

The main confusion here stems from the fact that the Deputy First Minister assumes that public international law seeks to determine who is, or is not, a successor state. It does not do this, and has never really done so. What international law certainly does, is to elaborate a set of principles that govern what happens as a consequence of one kind of change or another. And the real complexity of the situation can only be grasped if one realises that it is the relative predictability (not indeterminacy or ambiguity!) of the legal consequences of one kind of claim or another that really drives the whole process. So, in a simple way, whilst the choice might seem to be between whether one prefers a Czechoslovak style “divorce” or a Soviet style secession, in reality this is likely to emerge as a conclusion to a process of negotiation, the grounds of which will be determined by a set of legal principles governing matters such as membership in international organisations, participation in treaties, claims to ownership of overseas possessions and international liabilities etc. These, furthermore, as Jo Murkens has already suggested, are not things that may be determined by Scotland and the rUK alone. At best, the negotiating parties can “propose” a set of solutions to other members of the international community.

As far as the relevance of the Czechoslovak “precedent” is concerned (“experience” would probably be a better description), one would have to highlight the following:

- In case of the 800 multilateral agreements to which Czechoslovakia was party, the two Republics notified the depositaries of their succession to the agreements, and they were recorded as having succeeded from the date of separation.

- In case of the 2000 bilateral agreements, the expectation was that the Republics would enter into consultation with partner states, in some cases agreeing to continue those treaties, in others to terminate. Of the 17 treaties with the PRC for example, 11 were confirmed as remaining in force in respect of the Czech Republic and six “terminated”. The EU notably insisted upon re-negotiation of the existing EC accession agreement with Czechoslovakia.
- In case of membership in international organisations, the principle laid down in article 4 of the Vienna Convention of 1978 was routinely followed—with the organisations themselves determining whether membership might continue or not. In the vast majority of cases this meant there was no automatic succession to membership and the Czech and Slovak Republics were required to apply for admission (eg UN, ILO, UNESCO, World Bank, UNDP). An attempt by the Republics to distribute between themselves, membership in key committees in the UN system, was rebuffed.

If this was taken to be the model for Scottish independence, it would have the following risks:

- (a) That there would have to be an immediate wholesale review of Security Council membership and no guarantee that either Scotland or rUK would be one of the permanent members. The effect this may have on UN as a whole, and international policing operations undertaken under the Charter, can only be guessed at.
- (b) There would no guarantee that either rUK or Scotland would be regarded as continuing members in the EU, and the conditions of re-admission would clearly not automatically include the existing opt-outs.
- (c) Arrangements would have to be made for re-accession to the IMF & World Bank and renegotiation of the existing drawing rights/voting weight.
- (d) A re-negotiation of the nuclear non-proliferation treaty might have to ensue if the dissolution of the UK was construed as the apparent “disappearance” of one of the designated nuclear weapon states.

Alternatively, the rUK might have to forgo possession of nuclear weapons and adhere as a non-nuclear weapons state.

- (d) The need for re-negotiation of all bilateral agreements (including, for example, agreements relating to overflight, foreign investment, extradition, commercial arbitration, recognition of judgments to name but a few) would potentially have a significant dampening effect upon international commerce until such a time in which the legal landscape was clarified.

I am not sure these are the consequences that the Deputy First Minister is envisaging. From what I can infer, the one historical example that gets closest to her desired position, it is that of the dissolution of the United Arab Republic in 1961.

Specific further points of misunderstanding might be mentioned here:

- (a) Being a “successor state” does not automatically entitle the party concerned to continue existing arrangements by way of “inheritance” (and hence the terminology is deeply misleading). In fact the initial assumption is generally the opposite—that no legal rights and obligations continue unless, and to the extent, one can reach for a rule that specifies their continuance.
- (b) An apportionment of liabilities would have to occur even in case in which the rUK was deemed to continue as the predecessor state, just as there would have to be an apportionment of property. Most obviously this would be the case in respect of liabilities associated with matters that would subsequently fall within Scottish jurisdiction (eg public liability to private companies for the construction of roads or hospitals in Scotland).
- (c) The position in respect of the EU is not an exception to the general principles governing state succession in international law. It is an international organisation, and as such, has its own rules of membership.
- (d) There is a palpable difference—marked itself in the 1978 Vienna Convention—between the principles governing succession to treaties (whether multilateral or bilateral) and those governing succession to constituent instruments of international organisations (which, whilst being treaties themselves, are also quasi-constitutional instruments).



---

**Supplementary written evidence from Dr Jo Eric Murkens, Senior Lecturer, Law School, London School of Economics**

The DFM is perfectly welcome to argue the case for dissolution. I included it in my witness statement as a theoretical possibility that, however, does not seem to be supported by either international law or practice. The DFM says correctly that “in reality these are matters that will be settled by politics, by negotiation, by realpolitik, by common sense, by mutual interest” (Q223), but she also needs to concede that those negotiations might not go the SNP’s way, especially since statehood needs not only to be claimed, it also needs to be recognised.

Czechoslovakia is not the only example of dissolution. Serbia/Montenegro claimed to be the continuing state of Yugoslavia (in the same way that Russia claimed continuity from the USSR), but it was not recognised as such by the other successor states, nor by the USA, the EU, and the UN who all took the view that Yugoslavia had dissolved. By way of contrast, the same international community immediately recognised the Czech Republic and Slovakia as the successor states in 1993. In sum, it is not enough simply to assert a position; it also has to be accepted by the other constituent parts and by the international community.

Returning to Czechoslovakia for a minute, the dissolution of the state followed attempts to save the federation. When that position became untenable and the decision was taken to dissolve the federation, a number of agreements had to be concluded to govern future relations between the two states. They included agreements to protect equally the rights of the other’s citizens and to permit the free movement of people; to coordinate foreign policies and embassies; to form a customs union (since neither state was a member of the EU at the time); and to continue a joint defence system.

I would stress two issues. First, these were not federal agreements that linked the two states, but treaties governed by international law that applied on an interstate basis. Second, they were the outcome of consensual negotiations that led to the “velvet divorce”. Applied to Scotland, I would ask: is it conceivable that “reasonable and consensual negotiation with the rest of the UK [...] would resolve these matters” (Q227)? Would rUK agree (!) to a dissolution? (If it is not a consensual dissolution, then how exactly would the demise of the UK be brought about?)

The SNP’s position is a very formalistic one, an option on paper, but one that comes under pressure when the differences territorial area, population size, wealth etc are taken into account. This does not mention the international community which, for reasons mentioned in my witness statement, citing Russia as the key precedent and mentioning the UK’s nuclear capacity as a further reason, would have the ultimate say-so and would almost certainly ask rUK to be the continuing state. In the case of Serbia/Montenegro, the international position was determinative. I see no reason why it would not be the same here.

*March 2013*

---

**Supplementary written evidence from Catarina Tully, Director FromOverHere**

Cat Tully is Director of FromOverHere, a consultancy providing strategy and foreign policy advice. Its mission is to support organisations—particularly governments—navigate a complex world. She was formerly Strategy Project Director at the Foreign and Commonwealth Office until August 2010. She is co-founder of the School of International Futures and an Honorary Fellow of the Strategy and Security Institute at Exeter University.

1. Further to my oral evidence to the Committee on 15 January, I would like to elaborate two points of relevance to the Committee’s inquiry. First, the implications of Scottish independence for UK’s influence, status and soft power. Second, how a newly independent small nation-state, like an independent Scotland, might go about building its foreign policy capabilities. The main reason for this written intervention is to emphasise that there are real soft power advantages to both sides in being seen to explore innovative solutions around sub-national involvement in foreign policymaking. In particular, the UK’s approach to engaging in the dialogue around independence is an asset that could be made more of.

**R-UK INFLUENCE, STATUS AND SOFT POWER**

2. In the case of Scottish independence, the UK would lose approximately: 5m people (8%) population; 8–10% of the economy in GDP terms (depending on how much of the oil reserves are accrued to Scotland); 30% landmass; the vast majority of its oil and gas reserves (excluding new energy sources that may become available through eg fracking); and a proportion of tax revenues into the public purse. Despite this, there are persuasive reasons for saying that the UK’s influence and status would not be significantly affected:

- 2.1 The UK doesn’t really drop in global top ranking (reflecting GDP, military spend, global leadership and diplomatic reach, soft power, though it does possibly drop from 7th to 8th largest economy). It is very likely—for the reasons of stasis and succession discussed in other submissions—that there would be little impact on Remainder of the UK (R-UK) membership of International Organisations nor would there be any impact on UN Security Council membership in the short-term.

- 2.2 British international influence in no small part comes not from its size but from the persuasiveness and forcefulness of its diplomatic service. The UK has international influence because of its pragmatic approach, role of honest broker, and is respected in the EU, UN and other multilateral or regional bodies due to the coherence and effectiveness of its diplomacy.
- 2.3 This assessment is dependent on R-UK maintaining spend/commitments on foreign/defence/security policy capabilities at current levels. Anything other than doing so *would* cause major disruptions for the R-UK, Scotland and the region. There would be two good reasons to keep this spending level despite the drop in GDP: the R-UK may face potential competition from Scotland in certain areas (on economic investment and areas of policy difference eg energy and immigration). And the R-UK would do well to reassure external allies that its role/capabilities have not changed as a result of Scottish independence.<sup>12</sup>

3. However, there are certain conditions which might result in a significant impact on R-UK influence and power, in particular if certain conditions and scenarios play out:

- 3.1 If the atmospherics of wider EU-UK relationship turn sour, how will Scottish independence be framed within this context? Or, if there is anything less than an amicable separation between R-UK and Scotland, will the R-UK's standing with wider Europe, the US and emerging economies be affected? Given the timings of a potential EU referendum in 2017, some rather "wicked" scenarios are plausible—with R-UK committed to leaving or loosening its relationship with the EU, and Scotland to staying in.<sup>13</sup>
- 3.2 If other countries see this as the beginning of a process, with uncertainty about where the unraveling of the former United Kingdom will stop, including Northern Ireland and Wales.
- 3.3 If the R-UK turns "inwards", with an associated and evident drop-off in international leadership at international institutions.
- 3.4 If the UK/R-UK is seen to be exporting a domestic problem internationally, embedding conflict at the heart of NATO or the EU.

4. There are similar dynamics at work more specifically on the impact on the R-UK's Soft Power. Soft power is the ability to attract other actors to your rules, view of the world and approach to global policy issues. The GfK/Anholt branding survey shows that the UK has one of the very few powerful, well-rounded global reputations. It is seen as a rule-maintainer not setter. The UK's experienced broker role is respected externally and considered to add significant value in terms of making global governance work better, particularly in international institutions. The Monocle Soft Power audit supports this view—placing the UK at the top of this year's scale. Soft power is resilient and relatively slow to change. The resonance of the different bonds, images, symbols and characteristics that make up the UK as an immediately recognisable entity are thick enough to withstand an independent Scotland appropriating some of the concepts. There is no reason to think that competition between the R-UK and Scotland would be a zero-sum game on soft power—and in fact there could be returns to cooperation (eg use of English, culture, tourism).

5. However: if soft power is about the power of attraction towards your world-view, it is at first glance difficult to see fragmentation as anything other than a negative judgement on the UK. Outsiders will ask whether there was good reason for Scots not wanting to be part of the Union? Nothing speaks louder than citizens voting with their feet. This phenomenon—in the absence of clear explanations—may well open up questions about what was wrong with the political construct formerly known as the United Kingdom. This is quite aside from the to-be-expected response of countries like Venezuela, Iran and Argentina who have interest in putting into question the UK's authority and legitimacy.

6. In summary, the implications of Scottish independence on the gamut of R-UK hard/soft/smart power are heavily mediated by the perceptions of other member-states and their citizens. Personal anecdotal evidence from across North America and Europe indicates that other countries are finding it difficult to assess their own response to independence since they are not getting much response from Whitehall. They are uncertain about what the Scottish Referendum means and what Scottish independence might mean. Herein lies an *opportunity for the UK and Scotland both to engage and reassure partners' concerns while balancing their own quite separate respective agendas and build their respective soft power credibilities—whatever the outcome of the referendum:*

- 6.1 The Scottish government specifically could further share its case for independence, why they propose it and what they want to get out of it. Given that foreign policy is in large part about identity, it would be helpful to hear more information from the SNP about proposed alliances and relations with other countries, eg whether an independent Scotland's posture would be

<sup>12</sup> There is good reason to wonder whether this is sustainable in the long-run: effectively committing to a % increase in GDP spent on foreign and defence policy at times of straitened economic conditions. This is only one driver, however, of a multitude of drivers that are arguably requiring a fundamental rethink of the UK's national strategy, posture, capabilities and role in the world. Given the magnitude of the economic, technological and social trends that the UK needs to square (including cost of nuclear power, development/cost of military technology, changing shape of warfare, social media, cyberthreats), this is one issue among many.

<sup>13</sup> These scenarios may be worth fleshing out: a strong signal over the next 18 months from London (from both the press and political elite) that the UK is moving on a direct path out of Europe may be the one signal that balances out current Scottish nervousness about the uncertainties around the shape of Scottish EU membership post-independence.

principally Atlanticist, Scandinavian, Continental, or a combination of the above. More clarity may be helpful around the intended future defence posture—in particular around reassuring burden-sharing commitments around NATO and EU security capabilities. And specifically for European partners, any major departures from (or interests in leading) the EU Foreign policy aquis.<sup>14</sup>

- 6.2 The UK could reassure allies about future levels of R-UK defence and foreign policy spending or at least capability.
- 6.3 But the real win here—admittedly unorthodox and untraditional, as befits this rather historically and politically exceptional glidepath to potential state independence—is for the *UK and SNP governments to work together now to preempt external allies' concerns about the uncertainty that would arise should Scottish-R-UK cooperation break down*. This requires some reassurance that the UK and Scottish Governments and civil servants are committed to maintaining a cooperative stance throughout the process of negotiation—working together, planning together, filtering out unexpected surprises. The United Kingdom has found itself in a rather unique position constitutionally and politically—and chosen to be so. Therefore this is the time for sensible—if out of the ordinary—responses. For example, a joint delegation from both the UK/Scottish Governments could visit EU member states before the start of the campaign. This would give the clear message that although each party has a very different posture and assessment of the probability of independence—they have a common interest in as smooth a process as possible.

7. There is a second opportunity—directly for the UK government. There are good reasons for the UK Government's current strong line that it will not do contingency planning, prepare for independence or pre-negotiate before the referendum. But it may be valuable to have wiggle room on this posture:

- 7.1 It would be *helpful for an arms-length institutions—like a thinktank—to assess the facts and figures in the foreign and development sphere*, including identifying Scotland's current contributions to UK foreign policy apparatus and the likely claw-back under an independent scenario. Then within this envelope, outline possible scenarios, cost-effective options and implications, similar to the RUSI paper on Defence.<sup>15</sup>
- 7.2 It is sensible to *manage proactively the risk inherent in the very different policy-making cultures between the Scottish government and the UK government*. The FCO is both responsive and excellent at delivery, yet operates in a highly tactical and last-minute mode. Moreover, the foreign policy apparatus within Whitehall is heavily silo-ed and relatively uncoordinated despite the increased pressure for coordination from the National Security Council. The SNP government comparatively is more strategic, focused on the longer-term, with a coherent logical-framework—and domestic policy—shaped experience.<sup>16</sup> This difference raises the stakes and increases the probability of miscommunications/signaling during critical negotiating times. This lack of understanding could be addressed through a well-established mechanism. A modified equivalent of standard processes during *purdah* could be used. Eg, could a small team from the FCO be seconded during the campaign to the Scottish government to support and build capability and knowledge of the Whitehall apparatus on foreign policy? Again, regardless of the referendum outcome, this exchange would be a positive move.
- 7.3 Finally, there is a *soft power premium to the UK in proactively framing the debate about the referendum with external partners*. This promises a beneficial return to the UK irrespective of the results of the actual vote:
- 7.3.1 As discussed at the evidence session, Scottish independence movement can be set within a wider context—drivers such as demography, values, economy, technology, interconnectedness, and complex resource systems, are leading to a sense of disillusionment with traditional forms of governance in both democracies and authoritarian regimes. Citizens of the 21st century, with multiple identities including sub-national ones, are calling for more democracy and local autonomy. The absolute and indivisible nature of the sovereignty of the nation-state is being challenged. This trend is likely to increase and is a feature nation-states need to increasingly engage and negotiate new solutions with their citizens (see Switzerland, Portugal, Quebec, Belgium, the European Union, etc). The Scottish independence debate can be seen not as a *sui generis* case, but instead, a phenomenon of an international trend that will increasingly be the norm. This has two implications. First, in the situation of a “no” vote, the Scottish independence debate will continue. It will not be the end, but the continuation of an ongoing dialogue between the UK government in Whitehall and part of its citizenry. This is likely to result in more Scottish influence in some form or other over parts of UK foreign, defence, security and development policy. This is why it is in Whitehall's interest to play a long game and build capability, relationships and knowledge in Scotland.

<sup>14</sup> While recognising there are domestic and campaigning constraints to sharing information on these issues.

<sup>15</sup> “‘A’ the Blue Bonnets: Defending an Independent Scotland” RUSI, 2012.

<sup>16</sup> Comes from both experience, preference and resource constraints (see para 11.2.1).

Second: The Edinburgh Agreement surprised other countries in its pragmatic, sensible and cooperative approach to these pressures for fragmentation: “a typically English gentleman’s agreement” is the kind of comment I have picked up.<sup>17</sup> This is not necessarily a message these countries (facing their own internal independence or secession pressures) want to hear. But there is a democratic logic to the UK’s open approach, and the UK should take the credit for taking such a response. Its response can be positioned as a positive example of how nation-state central governments can constructively engage with different regional claims within their borders in a positive way. It shows an alternative approach to engagement instead of being threatened, and responding and engaging with alternative voices and claims, instead of repressing debate. The UK can claim to be a standard-setter of good governance in the face of these 21st century challenges to the nation-state.

- 7.3.2 The very process of imagining the process of separation forces an explicit exposition and evaluation of the benefits of interdependency between the UK and Scotland. This can positively reinforce the perceived value of those ties among current UK citizens. One concern is to ensure that the analysis done by Whitehall about the “Benefits of the UK” actually land and become part of the conversation among citizens instead of remaining an intellectual and elite exercise at the centre. The ensuing social and political debate could be a positive one that reflects well on the UK internationally.
- 7.3.3 In summary, if managed well, there is an overall beneficial outcome to the UK and Scotland irrespective of the actual referendum result. The brainpower deployed and opening up of policy discussions can be a positive contribution to an updated view of the UK’s place in the world. New ideas can be fomented about what 21st century statecraft in an interdependent world looks like as well, as what is preferable and possible in terms of connecting citizens to foreign policy goals and objectives. But also internally within Whitehall, it is an opportunity to rethink and innovate around foreign policy apparatus, structures and purpose.

#### ESTABLISHING FOREIGN POLICY CAPABILITIES FROM SCRATCH

8. The SNP appear to have made an implicit calculation that there is a net foreign policy gain to independence for Scotland. This is despite moving from being part of the 3rd largest economy in Europe to the joint 17th. The implicit calculation maybe that what Scotland loses in scale and hard power, it gains by: over a billion pound saving on defence; being able to focus on a narrower set of national objectives; using foreign policy capabilities more efficiently; using soft power more effectively; and—implicitly—stronger regional relationships. This is a typical small power diplomatic strategy: narrowly focused on specific interests and bound closely to its regional allies.

9. In the context of few resources which do not benefit from many economies of scale, Scottish foreign policy capability must be highly targeted, strategic and very effective. I imagine that the Scottish Government would perform well on this score given its past history in developing an effective and strategic approach to domestic policy.

10. The steps taken to establish a foreign policy capability from scratch could be as follows:

- 10.1 Decide Scotland’s desired foreign policy objectives. What are the key national interests, priorities and outcomes? What is the national view of the world, the role of the country in it, reflecting its national values and theory of change? Choose only a few issues internationally that are global in scope.
- 10.2 Identify the key capabilities Scotland possesses and the key alliances it needs.
- 10.2.1 At this stage—identify where Scotland accepts the European foreign policy acquis on global or regional issues; on what issues does it decide to delegate negotiations at UN conventions to a partner; in which countries does it need an embassy or consular presence and where can consular/trade requirements be met through others, eg formal cooperation with the R-UK/External Action Service/shared premises agreement/etc? This will give a steer for where a specific Scottish presence is needed, what skills are needed and how much the Scottish diplomatic capability will be reliant on the R-UK.
- 10.2.2 On the basis of this assessment of required footprint/capabilities, negotiate the division of resources and future mutual arrangements with the FCO.
- 10.3 Identify the nature and shape of the Scottish structures needed to deliver the Scottish foreign policy agenda. Finally, clarify the role of government in this, including the architecture—shape of ministries, type of diplomatic service, etc.
- 10.4 Attract a core of excellent negotiators and knowledgeable diplomats as soon as possible—ie from now on.

<sup>17</sup> Perhaps reflecting international views of British attributes like fair play—as well as eccentricity.

---

11. Some further points:

- 11.1 A mini-FCO replicated in Scotland would almost certainly not be the best structure. I have argued elsewhere that there is a minimalist and maximalist functions of a foreign ministry. The minimalist version is an agency/platform to act as the government abroad. The maximalist version to drive the strategic relationship with other countries/international organisations and to pull together the strategic overview of a country's place in the world. The span of these functions should be delivered and owned by the machinery that is most appropriate for Scotland.
- 11.2 There are advantages in apparent disadvantages of a lack of scale and experience:
- 11.2.1 A lack of scale will drive a holistic and coherent approach that joins up foreign and domestic concerns—the lack of machinery and headcount means silos don't arise, facilitating policy trade-offs and prioritisation. In the Scottish Government's case, this is reinforced by what appears to be an explicit and conscious cultural preference for strategy and a focus on holistic, analytical and future-focused approaches to government outcomes.<sup>18</sup>
- 11.2.2 The lack of experience means there are less legacy issues, both structural and intellectual. Being free from inherited perceptions and structures can be very valuable in a changing world. This can translate into huge gains in efficiencies and impact.
- 11.3 All this could well mean that a new independent Scottish Government finds it easier than the UK to develop and pursue a clear national strategy and strategic narrative. The supporting government capabilities and apparatus can promote Scotland's place in the world by making full and coherent use of the range of national assets including investment, education, culture, infrastructure and energy, as well as military and diplomatic capabilities.

March 2013

---

---

<sup>18</sup> As shown in the policy papers "Scotland Performs" and the "Economic strategy".

ISBN 978-0-215-05723-5



9 780215 057235

