



Public Administration and Constitutional Affairs Committee

Oral evidence: [The scrutiny of international treaties and other international agreements in the 21st century, HC 214](#)

Tuesday 22 November 2022

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Members present: Ronnie Cowan; John McDonnell; Lloyd Russell-Moyle; Karin Smyth; John Stevenson; Beth Winter.

In the absence of the Chair, John Stevenson took the Chair

Questions 208 - 260

Witnesses

I: Rt Hon Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government; Mick Antoniw MS, Counsel General and Minister for the Constitution, Welsh Government.

II: Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee, Scottish Parliament; Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Senedd Cymru/Welsh Parliament.

Written evidence from witnesses:

- [HM Government](#)
- [The Scottish Parliament](#)
- [The Welsh Parliament](#)
- [The Welsh Parliament](#)

Examination of witnesses

Witnesses: Angus Robertson MSP and Mick Antoniw MS.

Q208 **Chair:** Good morning. Welcome to this hybrid public meeting of the Public Administration and Constitutional Affairs Committee. I am taking the Chair this morning in the absence of our usual Chair, William Wragg, who is unavailable.

Today's evidence session is a continuation of the Committee's inquiry into the scrutiny of international treaties and other international agreements in the 21st century. This session will focus on the role the devolved Administrations and devolved legislatures play in the treaty process, from mandate setting, through the negotiation process, and at the ratification and implementation stages. Our witnesses today are spread across two panels this morning and are attending remotely. The Committee is very grateful to all witnesses who have taken their time today.

To start us off, could I ask the first panel to introduce themselves by stating their names and roles?

Mick Antoniw: My name is Mick Antoniw. I am the Counsel General for Wales and Minister for the Constitution.

Angus Robertson: Very good morning. My name is Angus Robertson. I am the Scottish Government Cabinet Secretary for the Constitution, External Affairs and Culture.

Q209 **Chair:** I will start the questioning and then we will go around the other members of the Committee. Mr Antoniw, how are devolved Governments involved when the UK conducts international negotiations that touch upon areas of devolved competence?

Mick Antoniw: Thank you for the question. There is engagement. In particular, there is reasonably developing engagement around issues of trade, but of course international agreements cover a wide range of areas. By and large, nearly all of them embrace devolved Government responsibilities in one way or another.

The concordat was the arrangement for engagement on international matters with the EU in particular. Since we have left the EU, there has been nothing to replace that. There is really no strategic structure or framework overall for the way in which international agreements are engaged with by devolved Governments.

That does not mean there is not good practice or good engagement at official level and ministerial level. I mention trade because a lot of that engagement takes place in the Inter-ministerial Group for Trade. But there is a need for an updated, modernised and post-EU process of international engagement that sets out clear principles and responsibilities and the way those arrangements need to be conducted for the future.



Angus Robertson: I agree with everything that Mick Antoniw has just outlined for the Welsh Government. There is a significant gap between the theory and the practice of intergovernmental relations, between that which is aspired to and indeed that which is agreed. Perhaps we will come back to discuss the concordat, which still stands post EU exit.

I would just underline the point that, despite bearing responsibility for implementing devolved aspects of any completed treaty, devolved Governments rarely have any say in the formulation of the negotiating line that determines the content of the treaty. What should be the negotiating line for the UK as a whole is practically merely the UK Government's negotiating line and has not taken on board any of the needs, interests, concerns and expectations of the devolved Governments and the views of the legislatures.

In my 18 months as Cabinet Secretary with responsibility for this area, I have not had one single meeting with a UK Government Minister to discuss treaty or other agreement negotiations and the Scottish Government's priorities. That comes despite, among other things, the UK holding both the G7 and COP26 presidencies last year. I could go on. That kind of experience runs right through the experience of the Scottish Government.

Q210 **Chair:** Following on from that, then, Mr Robertson—I suspect I know the answer—what kind of advance notice are you given in relation to international agreements at the various stages? Have you been given any advance notice?

Angus Robertson: There is not a blanket response to that because there are some areas where there is more interaction—a little bit more than none. As Mick Antoniw has said, trade is an area where there is some interaction, but there are others where there is literally none.

I could cite concrete examples such as the UK-Australia free trade agreement. The involvement of the Scottish Government in that was extremely limited. Yes, Scottish Government officials were in contact with officials from the UK Government's Department for International Trade and Department for Environment, Food and Rural Affairs, trying to represent Scottish interests and hear progress updates. However, the level of engagement fell far short of what we need. There is an example of something that is current where things are profoundly sub-optimal.

I could draw your attention to something else that I would have thought was important to everybody at the present time. Negotiations are under way for a pandemic preparedness treaty in relation to the World Health Organisation. Health is devolved, and as far as I am aware there has been absolutely no involvement of the Scottish Government in relation to that treaty.

There seems to be different custom and practice in different UK Government Departments. To be frank, if I were to characterise the



position of the UK Government as a whole, it would be, "We have no interest in what the position of the Scottish Government might be." There might be some Government Departments, trade and rural affairs being two, where there is an awareness that there has to be some interaction because issues are significantly devolved. The interaction itself, however, is often quite limited.

Mick Antoniw: I agree with those comments. One of the key issues is formulation. Pre leaving the EU, in Wales we had sub-national status. The very nature of engagement meant there had to be participation, and from a very early stage. As I understand it, although I was not in my current position at that stage, those engagements took place because they had to. A policy or an agreement that was being initiated had to be implemented, so the sub-national role, which is one that is very well established within the EU, gave a particular status and role that had to be embraced.

Since leaving the EU, there has been no strategic framework. The reason the formulation stage is so important is that, if there is to be any engagement and scrutiny from a devolved Government, it has to be at that stage rather than as an add-on. It cannot be saying, "This is what we are doing. What do you think about it?" when effectively all the core decisions have been taken.

The Australia and New Zealand trade agreements are examples of that. There are things in those agreements that would never have been embraced had there been that early engagement, and of course UK Government Ministers would not have had to come forward and say how bad those parts are. Certainly in the Welsh respect, they have very adverse consequences for Wales.

Q211 **Lloyd Russell-Moyle:** Mr Robertson, you said earlier that you have not met once with Ministers in the UK about international arrangements, and you cited COP. I want to be clear: are you saying that you and no other Scottish Minister has had those discussions in person and it has only ever been at official level, or are you saying that it is just yourself who has not met UK Ministers?

Angus Robertson: In general, the co-operation that takes place, where it exists, is at official level. That is the way Government do business. I am not complaining about the fact there is, at times, co-operation between UK Government Departments and Scottish Government officials. That does exist.

Last week I was in London and I met with James Cleverly, the new Foreign Secretary. The institutional memory in the Scottish Government is that that was the first ever meeting between the Scottish Government External Affairs Secretary and the UK's Foreign Secretary in the period of devolution. That is since 1999.



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I could go on and say that we have tried to have meetings about other things and we do not even have our requests answered. I could illustrate all of that. It is really important to understand that things are really not working very well. It is not for a lack of interest in being involved or a lack of things to suggest.

I do not know to what extent you are looking back historically, but while the UK was in the European Union it was custom and practice, because it had to be, that, for example, fisheries negotiations as part of the common fisheries policy required the involvement of Scottish Government fisheries officials. Why? Because much of the fisheries waters and experience was managed by and the responsibility of the Scottish Government.

That was an example showing that things can work. I do not want to give the impression that they have never worked, but I would say that at the present time, certainly post Brexit, things are really not working as they should.

Q212 **Beth Winter:** Thank you for giving us your time this morning. You have both answered this question briefly already, but I am going to ask you to expand. How were the devolved nations involved in discussions while the UK was a member of the European Union? Like I said, you both touched on this. Can you give a bit more detail, please? I will ask Mick Antoniw first, please.

Mick Antoniw: I mentioned this point about sub-national status. There was a very specific role for the devolved Parliaments because there was a recognition that the implementation of any agreement would be carried out by devolved Governments and that there would be devolved responsibilities.

Although the UK Government would be the lead state within that, there would be that engagement with the devolved Governments and there would also be the capacity for direct input into some of the discussions that were taking place, particularly where regional interests were concerned. That gave a particular status. Since we have left the European Union, it is almost as though the devolved Government role is that of ad hoc observer to a process that is initiated from Westminster. On occasion, it is almost as though it has been forgotten that Wales exists within that process.

It is true that there is good practice and bad practice, but the crux of the matter is that the concordat, which used to exist, is now out of date and does not really have that relevance anymore. There is no strategic structure in place to enable the proper input of devolved Governments within international agreements.

It is fundamental because, as has been recognised by the Supreme Court and as is recognised in our constitution, the implementation of international agreements is a devolved responsibility, so it is vital that



that input takes place. That is what has happened. There has been a shift. There is less of that focus, and the specific function and roles that there should be constitutionally for devolved Governments have almost been pushed into the sidelines.

Q213 Beth Winter: While we were a member of the EU, was there sufficient engagement at every stage in comparison to now? I am interested in understanding why it has changed. Why do you feel it has changed?

Angus Robertson: I suspect that working in an EU context, because of the way the European Union works, probably helped condition the UK to be a little bit more thoughtful about how it managed its interrelationship with the European Union.

Since then, having "taken back control" from Brussels, one is now also wanting to take control back from Edinburgh and Cardiff. On the interrelationship between the UK Government and the Welsh and Scottish Governments in particular over recent years, I am aware, because I have given evidence to this Committee before, that you have an institutional understanding of many of these shortcomings.

In brief answer to your question, I suspect it is probably largely related to the qualitative difference that was necessitated by being a member state of the European Union. For the benefit of the Committee and anybody who is following this with interest, it is important to understand that there are still existing rules, or at least guidelines, in terms of how we should be working together. Mick Antoniw has drawn attention to those.

Just very briefly, with the indulgence of the acting Convener, I am going to read two sentences from the existing concordat between the UK Government and the devolved Administrations. The first is as follows: "However, the UK Government recognises that the devolved Administrations will have an interest in international and European policymaking in relation to devolved matters, notably where implementing action by the devolved Administrations may be required."

The second quote is: "The UK Government will involve the devolved Administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters." That is still the existing commitment of the United Kingdom Government to working with devolved Administrations. It simply does not work like that at all.

Q214 Beth Winter: Are the arrangements in the concordat sufficient?

Angus Robertson: They would be if they were acted on. This is where it is really important to separate an understanding of the formal position from the actual reality. The United Kingdom Government no doubt will avow the fact that they do their best to maintain good relations with devolved Administrations, that they consult and that they listen to what devolved Administrations have to say. There is no commitment to act on that.



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In terms of informally understanding how things are supposed to work, it is only recognised in the breach. The existing arrangements—they do still exist, and they have been updated through the intergovernmental relations refresh, as it has been billed—on paper would have you believe that there is very significant interaction, that there is formal consultation, that it is at an appropriate stage and that they listen to what devolved Administrations have to say.

We are all grown-ups. We know that we will have different views and priorities. I appreciate that, but I am just talking about the processes. The processes themselves largely do not work. They do not even follow the undertakings that have been given.

Mick Antoniw: I agree with that. It is because the post-EU situation is now dysfunctional. Departments do not have any overarching strategic structure within which they could work. There is not really a formalised structure. What used to exist has fallen by the wayside. Where there is good practice, it is the result of particular relations, circumstances or individuals, or from the inter-ministerial groups and so on. There is no clear overarching umbrella in terms of how it is operating, and there is no monitoring.

For example, there has been a request, certainly from Wales and I think from Scotland as well, that there should be an inter-ministerial group on international agreements. That would at least enable the monitoring of the overall structure. The UK Government have refused because they say it would embrace a whole series of other ministerial portfolios. At the crux of that is a derecognition of the need for an overarching structure and the need for that to be observed in practice as opposed to in theory.

Q215 **Lloyd Russell-Moyle:** Mick, you mentioned that you had put a formal request in for an IMG on international agreements. There is no IMG on foreign affairs. When did you put that request in? Did you receive a formal reply or an informal response?

Mick Antoniw: It was one of the issues that was raised during the discussions between the various Governments on the establishment of the new intergovernmental review, the new structure we have in place that effectively came into operation in January this year. As part of that discussion, there has been a whole series of inter-ministerial groups and so on. One of those that has been pressed, certainly by the devolved Governments, is that there should be one on international agreements. That is one that has been specifically rejected.

Certainly from the Welsh Government's side, we do not completely understand the reasoning behind that or why that should be the case. We think there is a specific benefit to there being one, but that is where we are. The fact there is not exposes a structural dysfunction in international agreements that exists at the moment.



Angus Robertson: Can I briefly add to that? By way of clarification, the proposal supported by both the Scottish Government and the Welsh Government was that there should be an inter-ministerial group on international relations, which would have allowed the likes of trade negotiations to be discussed in the way Mick Antoniw has mentioned.

Notwithstanding the different constitutional views we have on the future of Scotland, Wales and so on, everybody understands, under the Scotland Act or the Wales Act, where devolved and reserved responsibilities lie. Formally, international relations rests with the UK Government, but everybody understands that a significant part of what is understood to be international relations is directly the responsibility of the Scottish and Welsh Governments because it relates to devolved matters.

That is the disconnect that we are addressing today. It is quite right that we could see circumstances in which an inter-ministerial group did this work as part of this newly refreshed approach, which is or is not working in the way that everybody would like. Mick Antoniw's point about the strategic oversight of how things are progressing is very important. How many treaty negotiations are currently under way? At what stage are they? Who has been involved? To what extent have they been involved?

Chair: We will come to further questions, so I will just move us along.

Q216 **Karin Smyth:** We want to move now to look at the processes in your institutions. When a devolved Government are notified of a new international obligation, how are these obligations incorporated in the areas of devolved competence? For example, the Government could choose to bring forward their own implementation legislation. With that in mind, when would it be most useful for you to have that discussed at UK Parliament level?

Mick Antoniw: The important bit is that the devolved Governments are involved at the initiation of a potential area of international agreement. The reason that is important is that we all accept, both at UK parliamentary level and in the devolved Parliaments, that there has to be a process of scrutiny; there has to be a process of engagement; there has to be a process of holding to account Ministers who may have been involved in participating and inputting into that.

There is agreement that it should be as early as possible. It is just that in practice that tends not to happen. What happens at the moment undermines the parliamentary scrutiny process that should be taking place. Once those agreements have got to a stage where they have been signed and so on, and have to be translated into legislation, there are certain principles that need to kick in there. The implementation of those agreements legally, in respect of devolved areas, should be a matter for the devolved Governments to implement by means of their own legislation.

Q217 **Karin Smyth:** If I may press you, would you see those as parallel



processes through the UK Parliament and devolved institutions?

Mick Antoniw: Yes, I think they have to be occurring at the same time. If we are saying as early as possible, it means that while there are discussions taking place in the UK Parliament they should also be taking place at the early stage in the devolved Parliaments. Otherwise, you are just reacting to what is being decided centrally as opposed to being able to participate in the formulation of the agreement, particularly in respect of the interests we would have with the devolved responsibilities.

Angus Robertson: I agree with that. There is no reason why one could not see concurrent processes taking place in the UK Parliament and the devolved Parliaments.

Q218 **Karin Smyth:** You have broadly answered my next question. You would say that the engagement you have with your legislatures is not sufficient at this stage.

Mick Antoniw: The answer is yes. We do the best we can in the circumstances that we are in. Quite often it is after much of the decision has already been taken, so it is attempting to scrutinise a process that has almost been concluded. That is very different from what should be happening, which is ab initio engagement in the formulation and subsequent scrutiny of the input of, say, Welsh Government Ministers and the contribution they have made to the formulation of that.

The next stage after that, of course, is how it is converted into legislation. That in itself creates a whole series of particular issues. We have seen, for example, with the Trade (Australia and New Zealand) Bill the desire of the UK Government to use concurrent powers as opposed to recognising and accepting that these are matters that should be the responsibility of the devolved Governments to legislate on.

I put it in that context because one of the arguments put by the UK Government is that concurrent-plus powers, where the consent of the devolved Government would have to be acquired before there could be legislation in those areas, are somehow some sort of veto. They are not. If you are operating from a position of trust and respect, that is not the case.

It is worth drawing your attention to the fact that Secretaries of State have powers of intervention. It is never the case that there is a veto, as it is sometimes described by the UK Government. That is an area where the legislation also falls flat in terms of respecting the devolved Parliaments and the devolved legislative processes.

Q219 **Karin Smyth:** Mr Robertson, we all acknowledge that the international relations aspect is reserved, but in terms of legal expertise to perform that function in the Scottish Government, what are you looking for, or what is needed?



Angus Robertson: We need a functioning process. How can we inform the Scottish Parliament on what is happening if we have not been informed about what is going on in the first place by the UK Government? We cannot. Members of the Scottish Parliament cannot discharge their responsibilities in ensuring that those responsible for devolved matters can be held to account. Scottish and Welsh Members of the Westminster Parliament are also unaware of the extent to which the devolved institutions have been involved in this whole process.

A minor footnote, perhaps, might involve the learnings from the European Scrutiny Committee of the House of Commons, on which I served for a decade. Custom and practice was changed to ensure that every single document that went through the Committee had to indicate whether devolved Administrations had been informed about how things were proceeding through Parliament. That meant colleagues in the Scottish Parliament would be able to say, "We now know the Scottish Government have been informed about the European regulation on widgets", or whatever, and they would then be able to ask Ministers about how it was proceeding and to what extent people had been involved. There was a reporting mechanism in place. That served a purpose: to allow oversight.

We currently do not have any mechanisms like that in place whatsoever. If I, as a Government Minister, or colleagues were, for example, presenting to the Scottish Parliament a statutory instrument related to something that was reflected in an international treaty, we would have to inform parliamentarian colleagues through a policy note—that is our equivalent of an explanatory memorandum at Westminster—that that was the case. There are mechanisms for doing this, and there have been established custom and practice even in the Westminster Parliament so that one can improve some of this. They might be just on the margins, but one could make some improvements along the way. It would be a mistake to forget the lessons of those improvements of the past.

Q220 **Karin Smyth:** That is helpful. Do you feel there is sufficient expertise and resource within the Scottish Parliament for parliamentarians to discharge that function?

Angus Robertson: To be honest, that is really for Clare Adamson, who is giving evidence to you later as the Chair of the Committee and an MSP. As a Minister, I do not feel that I receive enough information from the UK Government. Because of that, I am not in a position to inform the Scottish Parliament—

Q221 **Karin Smyth:** As a Minister, do you feel your colleagues are able to hold you sufficiently to account? Do you want to leave that to them?

Angus Robertson: On the basis that I have not been provided with information about what the UK Government are doing, I am not in a position to report to the Scottish Parliament how things are proceeding. Where does the responsibility lie in that context? It is not for a lack of



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interest in wanting to report to the Scottish Parliament. I and my MSP colleagues are not informed about what the UK Government is doing in relation to devolved areas. We have a breakdown in the way government should work.

Q222 Karin Smyth: Do you agree in principle that, in the same way that in the UK Parliament we would want more knowledge, information and expertise to scrutinise the UK Government, Scottish colleagues should have the same or a sufficient level of resource to advise and empower them to scrutinise the actions of the Scottish Government? As a Minister, would you think that was a good thing to have?

Angus Robertson: I would draw attention to the fact that there is a Scottish Parliament Library, as there is at Westminster, and there are Clerks supporting the Committees. In terms of mechanisms that help advise MSPs to discharge their responsibilities as constituency MSPs or Committee members, yes, the expertise is there.

Yes, the resources are there to help explain the circumstances as best understood. The information is not passed on by the UK Government in the first place. You can have the best advice in the world, but, if there is no information about what is going on, it is going to be difficult to discharge your duties. I would draw your attention to Clare Adamson's views and the views of her fellow Committee members.

Q223 Karin Smyth: Thank you. We will come to her shortly. Mr Antoniwi, do you want to add anything? We are interested in the processes and procedures the devolved Administrations may want to see and the resources necessary for wider scrutiny at devolved level.

Mick Antoniwi: The point I would make is that we have the expertise. We operate as a Parliament. We have our own legislative functions, our own legislative structures and our own committee scrutiny structures. They are there to operate.

One of the worst wastes of resources and time is having to work out retrospectively what is happening and then pull together in order to engage on trying to repair positions or correct misunderstandings of positions and so on. That applies not just in respect of international agreements, but particularly in terms of the UK Government's legislative programme. Heaven forbid—I do not want to go off tangent too much—the Retained EU Law Bill actually proceeds. If it does, it is going to logjam not only the devolved Governments and devolved Parliaments but Westminster as well.

Q224 Ronnie Cowan: The new intergovernmental relations arrangements were jointly agreed at the beginning of this year. Mr Antoniwi, in your experience, how much of a change have they made to relations in practice?

Mick Antoniwi: Again, it is relatively new, although we are almost a year in. It started off reasonably well, with a lot of optimism, and of course



there were inter-ministerial standing committees taking place and inter-ministerial groups beginning to meet. Of course, not all of them have met yet. Justice, for example, which I am interested in, has not yet been established.

That was quite good, but we then had a period of what I would perhaps describe as instability at UK Government level, which has meant that not very much has happened at all. Some inter-ministerial standing committee meetings that were meant to take place in September have not taken place. They have been pushed back. Again, there was the difficulty with the fact that the then Prime Minister, Liz Truss, would not meet with the First Ministers of Wales or Scotland. That held up the whole programme of intergovernmental meetings and so on.

I remain optimistic that it is a much better system. It is yet to be properly implemented. There is a new Prime Minister now, and there have been positive engagements at that stage. The proof of the pudding, of course, is in the eating. We wait to see now whether the review will be properly respected, whether Sewel will be properly respected and whether it will really be put on a proper footing and operated. I live with an ambition of optimism, but there has been a lot of wasted time along the way.

Q225 Ronnie Cowan: What is the timescale before you could be convinced that this is going to work or going to be improved?

Mick Antoniw: It is not so much the timescale; it is going to be the way in which the meetings take place, what they discuss, how they operate and the way in which they are planned ahead. That will be the early indication that intergovernmental arrangements are now being taken seriously.

Certainly, we will be reviewing this early in the new year to see the progress, but it is an ongoing process. There is not a stage that you reach where you say, "This is working wonderfully" and so on. There is a learning process for all Governments as well. We have not yet worked out precisely how the disputes process might operate. There is the issue of staffing as well, which is being put in place at the moment. It is early days, but certainly early in the new year we will be reviewing what progress we are making. That will be an ongoing review process.

Angus Robertson: I hope it will work. I have been the Cabinet Secretary with responsibility for external affairs and culture since the first half of last year, and I have yet to meet my opposite number, the UK Culture Secretary. I understand there is an inter-ministerial group for that. I have not attended it and I have not met my Culture Secretary opposite number, though not for lack of trying. Again, I draw attention to the fact that we have formal arrangements in place. I suppose the next question is how long we have to give it before we say that things are really not working. This was supposed to be the refresh of the last iteration that was not really working.



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One thing that might be very helpful is to have a full reporting mechanism of what has been set up, what has not been set up, what is met, what is not met, and how many requests for meetings about things there have been. It is not that long ago that my colleagues who were dealing with a whole series of matters had to ask 13 times to meet anybody from the Home Office, notwithstanding the fact that dealing with issues such as refugees is devolved in terms of health, housing, education and so on.

I am just trying to draw attention to the difference between the formal structures and the reality of how things do and do not work. Maybe it is the case that some of these inter-ministerial groups are early adopters and others just have not yet functioned, but I am definitely aware of some that are not functioning.

Q226 **Ronnie Cowan:** Specifically, there is no inter-ministerial group for international relations. Why is that?

Angus Robertson: I think that relates to the UK Government taking the view that international relations are reserved and not devolved, and therefore there is no direct role for the devolved Administrations to play in that, notwithstanding the fact that there is a whole range of things that relate directly and indirectly to international relations that are. I suspect that is the UK Government's position. No doubt when you speak to a UK Government Minister, they will be able to explain their position on it to you.

As Mick Antoniw has already pointed out and as I have underscored, there are a wide range of things that relate to international relations that are fully devolved. Even if it is just in the development of a negotiating position, hearing the expertise from within Governments in Wales, Scotland and—let us not forget—Northern Ireland would improve governance.

Mick Antoniw: The point that Angus Robertson has made is really important. The fact there is not an inter-ministerial group for international agreements betrays a misunderstanding of the devolution process and consequently the need for early engagement in participation and formulation.

It suggests that, as it is a reserved matter, the role of devolved Government is almost to comment on what has been done at a reserved level. The problem is that by the time you get to that stage—that is quite often what does happen—you have not been able to engage in the formulation to identify what the devolved aspects are, what the particular issues might be around that and how that could be represented subsequently in legislation, and consequently you end up with bad agreements. You end up with agreements like the Australia and New Zealand agreements, which clearly have elements to them that are dysfunctional. Had there been that early input, I suspect they might well have been very different agreements.



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There is a real need to understand that devolution is a partnership process from an early stage, not only in the formulation of the policy but in the initiation of the agreement. These agreements are going to affect all sorts of common areas and devolved responsibilities. They have to be made to work in the best and mutual interest of all Governments. That is a political or cultural mindset that is quite common in some of the engagements that we have. We certainly see that in the legislative process.

Q227 Ronnie Cowan: While there is no IMG, are international relations, international negotiations and treaty implementation discussed through the new IGR structures?

Mick Antoniw: In terms of my particular responsibilities, I observe what other Ministers are involved in in terms of their portfolios. There are some of those discussions that take place, but, as I say, they are predominantly reactive to processes that are already under way. It is quite variable.

As I mentioned, the feedback I get on the trade one is that it has been quite good. There has been very early engagement. There has been good engagement with officials, and formulation, though it sometimes breaks down when it is converted into the legislative process.

Angus Robertson: I agree with what Mick Antoniw has to say on that point.

Q228 Ronnie Cowan: Would the new dispute resolution process be utilised if there were a dispute over international relations or international agreements even though there is not a specific IMG for international relations?

Angus Robertson: It is a really good question, Mr Cowan. There are four criteria that have to be met for a disagreement to qualify as a dispute. First, has the disagreement been discussed extensively at senior civil servant level? Secondly, was a solution proposed during the senior civil servants' discussion? Thirdly, has the disagreement been discussed extensively by the relevant portfolio? Fourthly, does the disagreement have implications beyond its policy area impacting the wider relationships between the parties involved?

We have not reached that stage yet, but—who knows?—if things continue not to function, I suspect we probably will.

Mick Antoniw: I have very little doubt that it is going to be tested at some stage. In many ways, the disputes process is one of the most important parts of the review because one of the biggest difficulties we have had up till now has been the fact that the UK Government have not only written the rulebook but control the referee as well. Where a dispute arises, the response is sometimes, "There is no dispute because we do not agree that there is a dispute."



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At the end of the day, it is really important to have a mechanism where that can be resolved satisfactorily, to a degree independently, and with knowledge of all the partners that it will happen. At the moment it remains untested. Whatever does happen, the first issues that go to the dispute process will probably be indicative of the extent to which the whole intergovernmental review is going to operate in the longer term.

Q229 Ronnie Cowan: We know devolved Governments cannot negotiate or reach binding international agreements, but it is possible for your Administrations to conduct discussions and reach political and non-binding agreements. Have your Governments reached any non-binding agreements with other countries or sub-national Governments?

Angus Robertson: The Scottish Government have strong relationships with partners around the world. We have conducted a number of non-binding agreements with both national and sub-national Governments. Those include Denmark, Norway and Malawi. I signed an agreement with California in relation to environmental measures.

Across the piece, they cover a range of devolved subjects: climate change, decarbonisation, horizontal co-operation agreements and agricultural co-operation. They cover a wide range of subjects. We are seeing quite a lot of work, in particular, in relation to the German Bundesländer at the present time because of the opportunities that present themselves with renewable energy in Scotland and the potential production of hydrogen, which is of great interest to friends in Germany.

We play a leading role in initiating such agreements. The Edinburgh Process, which has brought together regions and stateless nations around the world dealing with climate change and climate action, is an example of that. That is all totally in accord with the concordat on such agreements that "do not purport to bind the UK in international law, affect the conduct of international relations or prejudice UK interests". We do that fully within the devolved settlement and we do it with great ambition.

Mick Antoniw: We do the same thing in Wales. Non-binding agreements can last different periods of time. Some will fall into disrepair, depending upon the subject matter. We have five particularly active ones at the moment. One is with Brittany, another is with Quebec, and we have them with the Basque Country, Ireland and Oita, Japan.

The one with Brittany relates very much to issues around cyber-security; the agreement with Quebec is particularly around issues of stem cell technology. We have others in respect of education, research and culture. The one with Oita is around tourism and food. They are non-legally binding, but they are an important way in which devolved responsibilities are promoted internationally.

There is no obligation on either Wales or Scotland to inform the UK Government of any such non-binding agreements. Equally, that applies to



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the UK Government. The UK Government have these non-binding agreements as well, I understand. They are processing a number with American states individually as well. There are issues of co-ordination, knowledge, monitoring and the exchange of information around those. That may be well worth exploring, but that is certainly the current position as regards Wales.

Q230 Ronnie Cowan: When you negotiate these non-binding agreements, what notifications and discussions do you have with the UK Government about them?

Mick Antoniw: We do not. There is no requirement to do so. Our engagements take place directly with those individual areas where we have specific relationships and common interests. The same applies to the UK Government in terms of their own non-binding agreements.

Angus Robertson: It is exactly the same position in the Scottish Government.

Q231 Ronnie Cowan: I just want to clarify something you touched on there, Mr Antoniw. The memorandum of understanding in the concordat on international relations sets out that, when the UK reaches a non-binding agreement on an area that could affect an area of devolved competence, you will be formally notified. Does this happen?

Mick Antoniw: I am probably not the best person to say. I would have to come back with further information on that. I am not aware that there is any formal engagement other than the engagement that is taking place generally. On the basis that those may relate to trade issues and so on, there may be official exchanges on that. I am not really in a position to give good information on that.

Angus Robertson: I am in the same position. It is a very good question, and I will ask my officials to go away and review what information has been forwarded to us in relation to non-binding agreements relating to devolved areas of responsibility to help you as part of your deliberations.

Q232 Ronnie Cowan: To nudge that slightly further forward, do you have a record of all the MoUs the UK has reached with impacts on areas of devolved competence?

Angus Robertson: I have not seen such a thing, but I will inquire as to the status of how we are informed about MoUs that impact on devolved areas, the extent to which they are logged so we have oversight of them, and in what kind of state of repair or disrepair that might be.

Mick Antoniw: I am very much in the same position on that. The answer is that I do not know. It is a useful area to explore. We can provide that additional information. I am not aware of that, but it does not mean there are no exchanges at some levels. I could not tell you what they are, the extent to which we are aware of what the details are, or what the extent or quality of the engagement might be on that.



Q233 **Ronnie Cowan:** I have one last question for Mr Robertson. I was just reading the concordat on international relations with Scotland. I was disappointed to see that it is two sheets of A4 paper. I was expecting something a little more substantive. Paragraph D1.6 points to something you mentioned earlier. It says, "The Secretary of State for Foreign and Commonwealth Affairs and the First Minister or their nominees will meet annually or at the request of either party to review co-operation in regard to international relations." That does not seem to be the experience either of you is having.

Angus Robertson: It has not been until recently. As I mentioned, I met James Cleverly when I was in London last week. Maybe the clock has been reset and it is the beginning of a more routine rhythm of meeting. To be fair to Mr Cleverly, he said he would welcome a regular dialogue. I was able to point out to him a number of international developments in recent months where there was a devolved aspect, which I know my Government take very seriously. It would be good if the UK Government were to reflect on the Scottish Government's positions on those.

I would be happy to update the Committee and let you know whether that improved direct dialogue continues. I very much hope that it does. To your point, has that been the custom and practice until last week? No, it has not.

Q234 **John McDonnell:** You will be pleased to know that we are moving towards our final questions. You have covered a lot of this ground, but could you summarise for us how the arrangements for how the UK and devolved Governments interact in relation to international agreements could be changed?

Mick Antoniw: We set this out in a document we produced called "Reforming our Union: Shared Governance in the UK". That was published in June 2021. In fact, it was a second edition. If you bear with me, I will very quickly read out the two paragraphs that summarise the Welsh Government's position.

It says: "Ministers and officials of the devolved Governments should be engaged and involved through formal intergovernmental machinery in discussion with the UK Government about the formulation of the UK's policy position, negotiating positions and implementation arrangements on matters which may be the subject of international agreements." It goes on to say: "The UK Government should not proceed with UK positions on devolved matters without seeking the devolved Governments' agreement." That summarises our position. Those are the core principles, and there is no reason why they cannot be implemented.

I just reiterate the point I made right at the beginning. The absence of a strategic structure and process, which can then be monitored, enforced and so on, is what has been missing since leaving the European Union.



Angus Robertson: I agree entirely that another future is possible, even within the UK. I would prefer a situation where Scottish Ministers were responsible for all of the decision making of a normal country and then answerable to parliamentarians in our Parliament. We are working towards that, as you know.

In the interim, is it beyond the wit of decision makers in the UK to have a structure, as Mick Antoniw has quite rightly underlined a number of times, that makes sure UK Government Ministers and Departments formally and regularly inform devolved Administrations elsewhere in the UK about their work? That seems entirely manageable.

We then need to see the early involvement of devolved Governments in relation to international agreements. Again, that should not be a difficult thing to do. It makes me think that those of us who have an interest in improving this should promote the likes of your own inquiries, so that colleagues, whether at the Westminster Parliament or in the devolved legislatures, are holding Governments better to account right across the piece to make sure all of this works.

I will say it again: objectively, it is not working properly at the moment. It could work. I wish it would work a lot better, and we are more than happy to play our part in making it do so.

Q235 **John McDonnell:** We will get a view from the next panel on the next question, but I would like your views about what relationship you have with your legislature in regard to international agreements.

Angus Robertson: As Clare Adamson would confirm to you, I am very regularly in front of my departmental Committee in the Scottish Parliament. They can ask questions about whatever they like.

Going back to the earlier point I was making, Mr McDonnell, if colleagues in the Scottish Parliament are unaware of what the UK Government are negotiating on their devolved behalf, how can they hold me and, by extension, UK Government Ministers to account? How can, in particular but not exclusively, Welsh and Scottish Members on your Committee and in the Westminster Parliament hold UK Ministers to account when they are not informing Parliaments—plural—on the processes and how they are involving devolved Administrations and taking their views into account?

The system could work if people wanted to make it work. There has been an absence of ambition to make it work, but maybe, with a bit more oversight, pressure and interest, that might change.

John McDonnell: We will get on to known unknowns in a minute.

Mick Antoniw: That latter point, of course, is about the scrutiny process. How we can scrutinise in, for example, the Welsh Parliament is partly dependent on the quality of scrutiny that is taking place at UK Government level. It is as much an issue there if there is limited scrutiny.



From what I can see, the Constitutional Reform and Governance Act is really failing to provide the level of scrutiny that should be taking place, which equally gets reflected within the Welsh Parliament as well.

We engage with Committees. We have Committees that do their best to scrutinise what is happening, but it is a scrutiny that is reactive to things rather than engaged at an early stage in the process. It is a limited type of scrutiny. Often the Welsh Government are quite rightly criticised by those Committees, and on the Floor of Parliament, for the extent to which they are able to show that there has been proper engagement within these processes.

All around there is a constitutional lacuna and constitutional dysfunction in terms of the way in which our respective Parliaments are able to operate. It comes down, ultimately, to the fact that international agreements all come out of the operation of the royal prerogative and there is no proper scrutinising constitutional framework that is effective to enable that to happen.

Q236 **Lloyd Russell-Moyle:** Mick, you have talked about how the Welsh Senedd does scrutiny of international agreements that are agreed by the UK Government, and the lack of it and the frustrations that you have in being able to report to them, and so on. Angus has reported similarly. You outline that you yourselves engage in a number of MoUs with other countries. What process do you go through when those MoUs are being debated? Do you go to Parliament before the MoU has been discussed, to get an outline of your negotiating mandate on that MoU? It would be interesting to know what process you do internally.

Mick Antoniw: You have to understand that the MoUs that we are engaged in are very much focused on very specific devolved areas where the Welsh Government are engaged with other countries. Of course, we have specific Committees that scrutinise the work in those specific areas. If it is health, there is regular ministerial attendance and Ministers will report on those discussions that are taking place and on those memoranda. Those memoranda will be scrutinised on those Committees. The fact they relate entirely to devolved arrangements and agreements probably makes that work quite effectively.

Q237 **Lloyd Russell-Moyle:** I get that, and you could say that similarly of the UK Parliament, but what I am trying to say is that MoUs are non-binding but they are still international agreements that require a set-up of what you are going in to negotiate. Health is a good example that you give. Would your Ministers routinely go to the Health Committee and say, "We are looking at setting up an MoU with another area—a country, region or nation—around the world. Do you want to input into it?" or do Ministers come back saying, "We have the prerogative to negotiate this. This is what we have negotiated. Now scrutinise us"? I am just trying to work out how your system works, if you have developed a better system than we have here for when your Ministers are working on devolved matters alone.



Mick Antoniw: The memorandum of understanding will be the product of a certain amount of policy work that has gone on, which will also have been scrutinised. There will then be a ministerial statement saying that there are discussions that have taken place. Those will be scrutinised by the Committee itself and eventually, hopefully, there will be an agreement. The outcome of that agreement will then be reported in the Senedd and there will be questions to the Ministers. Each of the Ministers attends regularly to take questions on their portfolio and so on, and they regularly make statements on all the processes that are under way. With memoranda of understanding, there will be statements on the Floor of the Chamber, there will then be debate as to what the implications are and what the meaning of them is, and there will subsequently be scrutiny of how they actually operate.

Q238 **Lloyd Russell-Moyle:** Would the Senedd get an up-or-down vote on whether they liked it or not, or once it is agreed is it treated as, "This is the MoU. You can question it, but you cannot"—

Mick Antoniw: Because these are non-binding agreements and do not have a legal status, they are really decisions of Government. The scrutiny process is part of the scrutiny of the way in which Government operates. There would not be particular votes on whether we should have this memorandum of understanding, because a memorandum of understanding is basically an agreement to work together in a particular area, to share certain things and so on. Those are the functions of Government itself, but Government is then scrutinised by the Parliament.

Q239 **Lloyd Russell-Moyle:** I assume, Angus, that it is similar in Scotland—yes.

I would like to ask you both what role you think the UK Parliament, in particular the House of Commons, should play in scrutinising international agreements. Also, what role should the devolved legislatures play in scrutinising the UK Government agreeing international agreements? What role should we be playing, and should the devolved legislatures play a direct role in that too?

Angus Robertson: As we have learned from the until recently serving UK rural affairs Minister and his reflections on the trade agreement with Australia, it would probably be a good idea for everybody to have more scrutiny going through the process of things. This area has traditionally been viewed as the responsibility of state Government, and it is not for anybody to take a view on until it reaches Parliament and then no doubt gets whipped through with the minimum amount of oversight. I do not think that makes for good agreements and it does not make for good outcomes.

As somebody who served in the Westminster Parliament for 16 years, I have a bit of insight into this. I would have a lot of sympathy for more debate on the Floor of the House and more oversight in Committees such as yours, because I think that would make for better agreements. By



extension, if it is right there, it should definitely take place in the Scottish Parliament as well. There is no reason why it could not or should not.

I would just underline the point that Mick Antoniw is making about the functioning of the Scottish Parliament and the Welsh Senedd. The devolved institutions we have got have, in some respects, significant advantages over the older ways in which Westminster works. For example, the regularity with which we give evidence to Committees is absolutely incomparable with that of our UK ministerial colleagues, who are much less regularly held to account by the likes of yourselves. The opportunity is given for very regular questioning, and it is not for Government Ministers to say what people like MSPs, or indeed MPs like yourselves, are asking in question sessions like this.

Q240 Lloyd Russell-Moyle: Should the devolved legislatures have a role in being able to directly question UK Ministers on these matters?

Angus Robertson: If UK Ministers are holding negotiations on issues that are devolved, they should most certainly be answering questions. If they knew they were going to have to appear before Committees of the Scottish Parliament to explain what they were doing on their behalf, perhaps they might better include an understanding of the needs, interests, concerns and expectations of the Scottish Government and Parliament in their processes. That would definitely be a step forward. Our experience of UK Ministers allowing themselves to face questions in the Scottish Parliament, though, is quite limited.

Mick Antoniw: We have some experience. Some UK Ministers have given evidence to Senedd Committees, and that has been a surprisingly productive and useful exercise. The point I think you are getting to is that, in those discussions, the current arrangements whereby international agreements take place and then those agreements are laid under the Constitutional Reform and Governance Act and you have the 21 days and so on, is really a post-event form of scrutiny that is not really adequate.

If we are saying at a devolved parliamentary level there should be early engagement to enable scrutiny, that should apply at the same time in the Westminster Parliament as well. It seems to me that that should almost be happening in parallel, at the same time, and the same papers should be being laid. We should have the opportunity to scrutinise that, because that is the only way you actually engage in a process that is participatory and ensures that the proper inputs take place in the actual negotiation.

I think all Governments should be involved in the actual negotiating process. I know the UK Government do not agree with that, but if that did happen it would change the nature of that and would solve many of these problems. Certainly, early scrutiny requires that, at Scottish parliamentary level, Welsh Parliamentary level and in Northern Ireland, but also at UK Government level, there is early scrutiny of what is



intended and what is to be there, and we all share the same information to be able to ensure that we can participate properly and equally.

Q241 **Lloyd Russell-Moyle:** Does all of that need to happen in public, or do some of those discussions with Committees, parliamentarians and yourselves need to be done in confidence?

Mick Antoniw: As much as possible can be done in public, in terms of the general principles and objectives. Clearly, though, there are details in international agreement discussions that are confidential, and of course there is already provision for that confidentiality to be respected and applied in respect of the concordat. I do not think there have been breaches of that—that has always been respected—but that is on the detail of those agreements. In terms of the general principles and objectives, and where there will be inputs needed from devolved Governments, as long as it does not prejudice the nature of those discussions, they should be in public and people should see what is being discussed so that all the Members of the respective Parliaments are able to observe and to input into the scrutiny.

Chair: Thank you. That concludes the first panel for today. Can I thank you both for your participation and your time today? You both indicated you would pass on some additional information to the Committee, and I would be very grateful if you could write to the Committee with that in a timely manner. On behalf of the Committee, thank you for your time this morning.

Examination of witnesses

Witnesses: Clare Adamson MSP and Huw Irranca-Davies MS.

Q242 **Chair:** We will now move on to our second panel of witnesses today. Will you introduce yourselves and say what your roles are?

Clare Adamson: Good morning. I am Clare Adamson. I am the Convener of the Constitution, Europe, External Affairs and Culture Committee at the Scottish Parliament.

Huw Irranca-Davies: Bore da o Gaerdydd—welcome from Cardiff, here in the Senedd. I am Huw Irranca-Davies. I am the Chairman of the Legislation, Justice and Constitution Committee.

Q243 **Chair:** Thank you. I will kick off the questions. Clare, what scrutiny arrangements have been established in your legislature to look at international agreements?

Clare Adamson: It is a very difficult situation for us because the Scottish Parliament has no role in scrutinising international treaties. We have a role to scrutinise the work of the Scottish Ministers but no role to scrutinise the work of the UK Ministers.



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That being said, the implementation of some of the legislation will fall to the scrutiny of the Scottish Parliament. That might involve legislative consent of secondary legislation in the Parliament. It could involve looking at secondary legislation being brought by the Scottish Government in order to implement the treaties at UK level. The implementation and operation is an issue. We can reasonably expect that a Scottish Parliament Minister will come and give evidence on issues if required—in this case, that it is more likely to be at one of our subject Committees—but we cannot compel a UK Minister to come and explain how the negotiations have happened.

Indeed, in terms of the TCA, our Committee has recommended that there needs to be a formal parliamentary process, and this would inform us of binding decisions both at the Partnership Council and at the specialised committees, which the Parliament as yet does not receive updates on from either Government.

Huw Irranca-Davies: We have put in place arrangements, as they have done in Scotland, to make up for the lack of a formal role. We have considered agreements laid under the CRaG Act 2010, but following the 2021 Senedd elections we agreed and put in place a process between Committees here. At our LJC Committee, which I chair, we scrutinise non-trade agreements, and our Economy, Trade and Rural Affairs Committee, a separate Committee, scrutinises trade agreements. Where needed, we do take further action to ask for information from the Welsh Government. Our Committee also draws the attention of other Committees to agreements that are coming forward, where they fall within their remit.

The other interesting thing to note, in terms of what we have put in place, is that we regularly report back to the Senedd, and we also share our reports with the House of Lords International Agreements Committee, because we recognise in this evolving space the necessity of interparliamentary work. As Clare rightly said, that does not make up for a more formal set-up here. We are trying to swim upstream a little bit and adapt to the new challenges.

Q244 **Chair:** How much information do you receive directly from your own Government with regard to international agreements and the impact they will have on devolved competences?

Huw Irranca-Davies: We have a very strong, close relationship with the Government. I saw the end of the previous session, and it was being stressed, from both a Scottish and a Welsh perspective, how accessible Ministers are. They are, and they make their officials very available too, as appropriate. We can get information on request, but the Welsh Government do not proactively send information to the Senedd on international agreements as a matter of routine. This means that the Senedd is often unable to share its view with the UK Parliament during the CRaG 21-day scrutiny window. We simply cannot do it, because we do not know what is happening; it is not routinely informed. We do not



get, as has just been picked up in your previous session, routine information on it.

The information provided by the Welsh Government, including when we have requested it, has been very useful and very forthcoming. I have to say that the Welsh Government have told us that they are not always aware of every agreement concluded by the UK Government. It feels a little bit like a mushrooms in the dark situation sometimes, although I have to say the Welsh Government are very forthcoming.

Clare Adamson: There is an agreement between the Scottish Government and the Scottish Parliament where practical notice is given with a view to at least a month of scheduled meetings, agenda items and the broad discussions of these meetings. However, we do not have a regular update. I would concur with Huw in that we do not often receive information because the Scottish Government often do not know what is happening in these negotiations either.

It is a matter of some concern to the Committee, and we have recommended that there needs to be further work done on this. Indeed, Scottish Government officials and Parliament officials are trying to develop a set of proposals that would offer more transparency, ministerial accountability and an indication of the role and scope of Scottish Ministers within each of these negotiations.

Huw Irranca-Davies: Chair, one thing I might add—I think it may be the same for Clare with the Scottish Government—is that the Welsh Government proactively give us statements on upcoming trade negotiations, which is very welcome.

Q245 **Karin Smyth:** To clarify that point, we want to be clear whether your Committees are informed when your Governments are considering feeding into international agreements—so the other way around, if you like. What is the Government's view that they would want to take to international agreements? We have heard and we understand the asymmetry of information coming back down. I think, Mr Irranca-Davies, you were saying that the Welsh Government were informing you, but are they informing you of their own intentions, what they would like to see and what they would be feeding in?

Huw Irranca-Davies: It is a work in progress. I mentioned that the Welsh Government proactively give us statements on upcoming trade negotiations. In terms of consultation, we are not routinely formally consulted on non-trade agreements, although we have actually had some discussion of trade agreements in plenary sessions. It is not a routine, formal one. It is not something either our Committees or the Senedd have a good enough grip on yet. We are trying to grasp our way towards what the ideal situation would be.

Clare Adamson: I would concur that we do not have that formal process at the moment. However, the Committee has expressed on a number of



occasions its desire that policy should be inclusive and involve consultation with stakeholders and the wider civic Scotland. We are about to undertake an inquiry into how we can engage civic Scotland in some of these issues so that policy, before it is made, is actually informed.

Q246 Karin Smyth: Like the UK Parliament, the 21-day statutory period under the CRaG Act applies. Can we talk a bit about that? Do you feel that is sufficient to conduct scrutiny and consideration?

Clare Adamson: Obviously it would be dependent on the issue at hand, but I would say no. It has been expressed by some of my subject Committee Conveners in the forums available to the Parliament, when we have been discussing this, that it is not enough time to scrutinise in any way or to actively engage with stakeholders.

Huw Irranca-Davies: My simple answer would be no, it is not always routinely sufficient time. That is for a number of reasons. Our scrutiny, once we know what is coming down the line, may involve taking further action, such as exchanging correspondence with the Welsh Government, seeking further information, or even going to a sister Committee to draw it to its attention and ask it to consider it within its policy area. There is that aspect.

Let me draw your attention to one particular occasion, which relates to the convention on the International Organisation for Marine Aids to Navigation. The House of Lords International Agreements Committee wrote to the Foreign, Commonwealth and Development Office to seek further clarifications based on our findings. The reason I mention that is that our devolved legislatures—our Senedd, the Scottish Parliament and so on—have a role in helping with some of the scrutiny if we have enough time. It is not always possible, for those reasons, to complete scrutiny within the 21-day period, and because of that, the implications are that we cannot share often relevant information to inform the conclusions.

I have one final point on that. The Welsh Government have been very frank with us and told us that they themselves are not always consulted early enough in the process, so it is difficult for them to conduct their early engagement or seek information. Is 21 days always appropriate and does it work? No, I am sorry, it is not.

Q247 Karin Smyth: It depends when the clock starts ticking on the 21 days. We might come back to that. We accept that ratification is a matter for the UK Parliament and UK Government. How would you feed into the UK Parliament's considerations ahead of ratification? What processes would you like to see?

Clare Adamson: There are a number of ways forward. We have not considered that as a Committee, although on a recent visit to Brussels we did look at the Canada model and how the provinces are involved. There is full engagement with the Government at the negotiation stage, in the discussions around treaties. Although the Canadian Government will



make the final treaty arrangement with whichever other organisation or country is involved, the provinces have a full role in that. That is an example of how it could be done differently.

I would echo what the Cabinet Secretary was saying. It is not working at the moment and we feel there is a gap in scrutiny and engagement from, in some respects, both Governments, just because of the situation with the Scottish Government not being fully informed of what is happening.

Karin Smyth: Thank you for your correspondence on that.

Huw Irranca-Davies: We have two main ways that we feed in. From our Committee's perspective and from the Senedd's perspective, on non-trade international agreements, I mentioned that we share reports with the House of Lords International Agreements Committee. For trade agreements, it is our sister Committee, the Economy Committee, that writes to counterpart Committees within the UK Parliament. Again, we have established a way of doing this.

Q248 **Beth Winter:** Bore da, both. Given the gaps and the shortcomings that currently exist—you have already touched on those—how would you consider implementing legislation introduced into your devolved Parliaments?

Clare Adamson: This is a difficult issue, as I said. If it is done by secondary legislation laid by the Scottish Government, there is an opportunity to look at those issues there. That quite often happens very late in the day, given the timescales involved. Again, the opportunity for a subject Committee to pick up a particular area of interest is non-existent at the moment. We would be responsible for the implementation there, so there is the opportunity in significant areas. The legislative consent process, the Sewel convention, might come into play at that time.

We have concerns that although, before Brexit, the Sewel convention was respected in many ways and seemed to work well, it has now been tested post Brexit and there is a sense that it is under strain. The Committee has said that there is strain in these mechanisms. Everything is so fast-moving at the moment that there is a constitutional strain and it is not working for us as well as it could.

As I said, if something is done by a UK Government Minister in a devolved area we have no role to scrutinise or call in the Minister to give evidence.

Huw Irranca-Davies: Beth, bore da i ti hefyd. There are two aspects. First, in terms of subordinate legislation, our LJC Committee's role is to consider all aspects of those relating to Bills, so delegation of power to Welsh Ministers and a Bill's quality and effectiveness in delivering its stated objectives. We do that routinely, but we also consider the Welsh Government's legislative consent memoranda—LCMs—concerning any UK Bills that legislate in devolved areas, and notifications from the Welsh



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Government where they consent to UK Government SIs seeking to legislate as well.

One interesting aspect for you to consider is back in 2021, during scrutiny of one of those LCMs on the UK Government's Professional Qualifications Bill, we managed to secure a commitment from the Welsh Government to make it clear when UK Bills subject to Senedd consent intersect with international obligations and then to provide more information on that. Our Committee is keeping an eye on that, but that was a helpful step forward. Again, we are putting in place these things as we go along. These are things that, by the way—we might come to this—were there in one form or another before.

Q249 **Beth Winter:** Are you ever concerned that implementing legislation may be introduced at a UK level in order to avoid scrutiny at a devolved level?

Huw Irranca-Davies: We do not think that is being done deliberately. We have no evidence to suggest that Ministers are using that route to avoid scrutiny of international obligations, but it is something our Committee has remarked upon consistently and repeatedly, to the chagrin of Welsh Government Ministers as well as UK Ministers. We are concerned at the increasing use of UK legislation to make legislation and to take power. That is a real concern. I am a professional Back Bencher; for me, it is all about scrutiny and the power of Back Benchers to hold Governments to account. We are seeing that slightly diminished, but it is an ongoing conversation we have with the Welsh Government as well as the UK Government.

Q250 **Beth Winter:** Before I go on to Clare, do you feel that the legislative consent motion is a sufficient opportunity for scrutiny? If not, how could things be done differently?

Huw Irranca-Davies: It could be done differently because UK primary legislation using LCMs is just one way of doing legislation. Let me say this; let me balance it: it depends on the extent to which a UK Bill is reaching into legislating in devolved areas. When a UK Bill is really reaching into those areas—we see it quite often—it is really frustrating from a Senedd perspective and a Back-Bench perspective that we cannot influence it to the degree we could if we were considering it in full on the Floor of the Welsh Parliament, Senedd Cymru. It simply is not any replacement for that. I think that frustration is shared by some Ministers as well.

This view is shared, by the way, on a cross-party basis across my Committee. There is not a dissenting voice on this from any party. We have warned repeatedly over the use of secondary legislation to implement whole categories of future international agreements. We are worried about this. Just as a matter of interest, the Health and Care Bill LCM was originally drafted so that the Senedd would be bypassed in considering secondary implementing legislation related to the international healthcare agreements, but amendments were subsequently



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made that mean that the Senedd now retains oversight of this type of implementing legislation.

What should we do better? The default position should be respect for devolution, that the Senedd retains oversight of legislation in devolved areas and amendments are not needed to secure the progress we have seen. Secondly, there should be earlier involvement there, so that decisions on the form that implementation should take can be made properly, with proper consideration. Those are two real steps forward we could urge.

Q251 **Beth Winter:** Clare, I note that both devolved Parliaments have withheld legislative consent on a number of UK pieces of legislation, including an international treaty.

Clare Adamson: Yes. I echo Huw's points. We have expressed concerns that, in principle, the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence. That is a principle that is under threat at the moment, and it is also the ad hoc nature of how that happens. There is no consistency to what mechanisms are used by the UK Government.

In terms of legislative consent, we recently produced a recent report in which we covered the Sewel convention in detail. Professor Katy Hayward expressed that while the Sewel convention was untested it worked well, but now it is under extreme strain, it has proven not to be an effective mechanism to ensure that consent is obtained from both the Scottish Government and the Welsh Government.

It is an important principle that the initial intent of Sewel was that the UK Government would not normally legislate in devolved areas, but now we are in the position of trying to define "not normally". The objective of obtaining consent seems to have changed to consultation. What actually happens when consent is not given is completely unclear, and that needs to be more formally addressed, urgently. I think it was the Hansard Society that said, when giving evidence to our Committee, that this could lead to a constitutional crisis.

Q252 **Ronnie Cowan:** Clare, we mentioned earlier a letter that was sent to the Committee about the involvement of the Canadian provinces at various stages of the EU-Canada Comprehensive Economic and Trade Agreement. You proposed that this could form the basis of a model for inclusion of devolved institutions in UK international agreements. You touched on it earlier, but would you like to expand on that?

Clare Adamson: It was just one example. There are many examples of how Governments involved in federated areas and other areas do it, but the principle that the devolved Governments, when it is an area that is the sole responsibility of the Senedd or Holyrood, are there at all the negotiating points and are able to feed into that is really important. While the final decision is still made at the Executive level of the UK



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Government, there will have been an involvement and a reporting mechanism back to the Parliaments throughout that process, which gives greater transparency and the opportunity to influence policy. That is really important from the point of view of civic society and stakeholders.

Q253 Ronnie Cowan: It is not just about them being at the table and at discussions; it is about them having some sort of input at different stages of the process.

Clare Adamson: I believe so. I am sure Angus has given you his views on that.

Ronnie Cowan: He said to talk to you.

Clare Adamson: As Huw said earlier, there is real expertise in some of these areas and some of them are very technical and specific to Scotland and to Wales. To ignore that body of knowledge and to not have that inform policymaking can lead to problems down the road. It is much better that the policy is well developed and that the negotiations reflect the needs of Scotland and the citizens we are here to represent.

Q254 Lloyd Russell-Moyle: Currently the UK Parliament is only consulted before the ratification stage on international agreements. At what stage do you think your legislatures should be involved in international agreements, and what kind of involvement do you envisage?

Huw Irranca-Davies: I should say at the outset that we have not considered this in detail as a Committee, but I am going to draw on some of the work that our predecessor Committee did in the fifth Senedd period. They looked at these matters and reported back in December 2019. They outlined a role for the Senedd, looking ahead to this situation, and they prioritised things such as access to the negotiation documents—this was picked up in earlier evidence—and consideration of the views of the Senedd prior to ratification. The Committee called for more formal involvement and a greater role.

If I can surmise where our Committee is, based on what we have seen so far, we would definitely welcome some really practical improvements. I can give you some tangible ways we could do that. First of all, as has been picked up by you in previous evidence, we need to be notified of upcoming agreements in a timely manner, at the same time. Secondly, there needs to be notification of when it is laid, at the same time. We need a window in which we can actually share our views. As Clare said, we have useful information from the devolved legislatures to input into the process that would be helpful from a UK perspective.

Finally—this is perhaps equally important as any of those other practical ways forward—our view needs to contribute to the conclusions. That is not to say the devolved legislatures should be listened to on every single thing, but we should know that our views are taken into account and responded to in one way or another. Those are some really practical ways in which we could make this work better.



Q255 **Lloyd Russell-Moyle:** On MoUs, is that how things happen at the moment?

Huw Irranca-Davies: On MoUs, the Senedd is not notified.

Lloyd Russell-Moyle: I meant MoUs that the Welsh Government negotiate.

Huw Irranca-Davies: Yes.

Lloyd Russell-Moyle: I do not mean those that the UK Government negotiate. On MoUs that the Welsh Government negotiate, is that the process that happens at the moment? Why have the Senedd and the Welsh Government not implemented their own recommendations in their own work?

Huw Irranca-Davies: With MoUs, we have a commitment from the First Minister to regularly update the Senedd, but that actually goes through another Senedd Committee. It is the Culture, Communications, Welsh Language, Sport and International Relations Committee; it falls within their remit. The Welsh Government provide an updated list of the MoUs, the Senedd publishes those on its website, and that Committee then follows those up.

Q256 **Lloyd Russell-Moyle:** You talked about, in international agreements, wanting to be informed beforehand when the negotiations start, have a role in inputting into it, be told when it has been laid, and have a process where your views are clearly taken into account. Would you say all of those steps are followed when the Welsh Government do MoUs?

Huw Irranca-Davies: It is evolving. I have to say the Welsh Government try their best to inform the Senedd. The challenges here are not simply the Welsh Government informing the Senedd, but the Welsh Government being able to do that in a timely way, knowing themselves the details of when they are being laid, and then informing the Senedd. We certainly do not have that window of opportunity, as a Senedd, to feed that into Welsh Government Ministers and back up the chain to the UK Government as well.

Q257 **Lloyd Russell-Moyle:** Clare, at what stage do you think the Scottish Parliament should be involved in international agreements? What direct involvement do you envisage having yourselves?

Clare Adamson: It is important that principles are applied and it is consistent, so that we reduce the ad hoc nature of this, so that the Scottish and Welsh Governments can be assured that they will be involved when there is a devolved competency in the initial planning, at the negotiation stages and in the final discussions before policy is made at UK level.

In terms of the memoranda, I was listening to Huw's answer. Prior to Brexit, from a Scottish Parliament perspective—this has not been



discussed by the Committee—we were constrained by the EU in terms of the limits on what we could do internationally. That would have applied to the Scottish Government in terms of memoranda of understanding as well. Now, following exit from the EU, the emphasis and the implications for international treaties are much larger for subject Committees, in that they may affect food standards, farming issues and all those other areas that are devolved in Scotland. The emphasis has changed.

To look just at what has happened previously is ignoring the bigger picture of how we go forward and get all these issues lined up so that we can be assured that there is confidence in the process going forward, that it is transparent and that Scottish Parliament Committees—the subject Committees or my own Committee—are in a position to be able to look at it and scrutinise the decision making.

Q258 Lloyd Russell-Moyle: What would be the most effective way of you feeding into the UK Parliament's work? Is it via reports? Is it via joint sessions? Is it via you having UK Ministers coming and giving evidence directly? Or is it a combination of all of the above? How should you relate to us and our work?

Clare Adamson: It is all of the above. I echo what Huw said. The Committees' work and the subject Committee reports are shared with the UK Government Ministers. We seek comment from them, as well as from our own Scottish Government Ministers, when we publish the report. That is in place already.

It is about moving forward collectively and ensuring that we have much better intergovernmental relationships as well. The Interparliamentary Forum is a good example where we have come together with the House of Lords and the devolved nations and discussed the concerns we all have around post-Brexit changes, implementation and some of the proposals at Westminster for the Bills that are passing through, such as, currently, the Retained EU Law Bill or the Northern Ireland Protocol Bill. The Interparliamentary Forum is a good basis for that and it should be something that is taken forward so we are working collectively across the four nations to guarantee we all have our voice heard at the appropriate times.

Q259 Lloyd Russell-Moyle: Huw, in general, do you think legislators in the UK—all of us—have sufficient powers to engage the Governments when it comes to international agreements? If not, should we have more formal powers, including the ability to prevent a deal?

Huw Irranca-Davies: No and yes, in that order. You had a third question there, which I will come to in a moment, about whether we should have a formal power to object or block. I think probably. We have not considered this in detail as a Committee. My personal feeling would be yes, because I would be, by intuition, one that said that Parliaments need to be able to express their opinion and have it taken into account.



This is a work in progress. Down here in the Senedd, we are fairly satisfied with what we are putting in place step by step, but there are better things we could do on an interparliamentary basis. Clare is right. Clare and I have been at a number of events, including with members of your Committee and other Committees from the Commons, the Lords and other devolved legislatures, where we have talked about the potential for developing something more formal on an interparliamentary basis.

Let me suggest some other things. That interparliamentary part of the working is one thing. It would be great if the Senedd Committees and Scottish Parliament Committees could have the same information at the same time as Select Committees received it. That would really help because we could get our teeth into it and get our clerking teams and our researchers on to it at the same time and exchange that information back and forth. We are not having that at the moment. Our predecessor Committee noted this as well, and in fact, in the prior set-up, Committees in Westminster notified Senedd Committees of EU explanatory memoranda, and the Senedd Committee responded formally if there were any issues to raise. It might be that is one thing we could look at as well.

It might be that we have to look at CRaG. We talked about the 21-day process. The question for me is clear: can we make that work better with more timely sharing of information and so on, not just at a governmental level but an interparliamentary level? If not, are there other non-legislative procedures that would formalise our role and make sure that our views can be heard?

Clare Adamson: It would be really helpful if the explanatory memorandum accompanying a treaty for ratification could do a breakdown of the role and scope of devolved Governments.

Lloyd Russell-Moyle: That is a good concrete suggestion. Thank you very much.

Q260 **John McDonnell:** Both of you have covered most of this, but do you want to give us your final summary comments on how you think the arrangements for how the UK and devolved Governments interact in relation to international treaties could be changed? Do you have any final remarks on that?

Clare Adamson: I would just reiterate that it needs to be transparent, to allow the devolved Parliaments to scrutinise when there is an interest in devolved areas. We have the Inter-ministerial Group for Trade, but as yet there has been no update to Committees in the Scottish Parliament from either the UK or the Scottish Government. Firming up some of these proposals and making it more formal in terms of the engagement to inform the Parliaments is the way forward.

Huw Irranca-Davies: John, I entirely agree with the point about more transparency and evidence that our voices are being heard within the UK parliamentary set-up.



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It would be wrong to finish this evidence session without flagging up a couple of issues of real concern, which highlight the reason we need to change this. Our Committee has turned the spotlight—I know they have done this in Scotland as well—on a few examples where the Welsh Government have not shared the negotiation objectives of the UK Government. The classic is that, during the Brexit negotiations, continued UK access to the EU single market and EU programmes such as Erasmus was simply not obtained by the Welsh Government so that we could do any scrutiny or express a view.

Let me point to one that is not directly to do with that. We received evidence from our Minister for Social Justice of opposing views from the Welsh Government and UK Government on the Council of Europe's convention on preventing and combating violence against women and domestic violence. We are in an important week where we highlight those issues right now. The Minister for Social Justice told us how she had called on the UK Government multiple times to ratify the convention, raised several policy concerns with the UK Ministers and expressed disappointment with the short timescales offered for Welsh Government consideration, and said that the overall approach of the UK Government was at odds with the Welsh Government refugee policy. What can we do about that? What can we do when the Welsh Government, let alone the Senedd and the legislature, are not getting the engagement?

Those examples are really concerning, particularly when we are not even getting the evidence made available to us. We still have concerns. It is a work in progress, but your Committee's deliberations might really help us in finding some tangible ways forward.

Chair: Thank you very much to both our witnesses on the second panel, and indeed to all our witnesses this morning. I appreciate your time. Thank you for that. Thank you to colleagues, staff and particularly the broadcasting staff for continuing with the hybrid proceedings.