

Public Administration and Constitutional Affairs Committee

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

Wednesday 14 June 2023

Ordered by the House of Commons to be published on 14 June 2023.

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jo Gideon; Mr David Jones; John McDonnell; Damien Moore; Tom Randall; Lloyd Russell-Moyle; John Stevenson.

Questions 365 - 447

Witnesses

I: David Rutley MP, Parliamentary Under-Secretary of State (Americas and Caribbean), Foreign, Commonwealth & Development Office; Paul Berman, Legal Director, Foreign, Commonwealth & Development Office; Nigel Huddleston MP, Minister of State, Department for Business and Trade; and Leonie Lambert, Deputy Director, Parliamentary Policy & Strategy, Department for Business and Trade.

Examination of witnesses

Witnesses: David Rutley, Paul Berman, Nigel Huddleston and Leonie Lambert.

Q365 **Chair:** Good morning, and welcome to the Public Administration and Constitutional Affairs Committee. Today the Committee is continuing our inquiry into the scrutiny of international treaties in the 21st century.

This morning we are joined by Ministers and officials from the Foreign, Commonwealth and Development Office and the Department for Business and Trade. We are putting questions to them on the Government's evidence on our inquiry, as well as raising key issues that have come up in the evidence we have collected so far. I am going to ask them all to introduce themselves for the record, please.

Nigel Huddleston: Good morning, Chairman. Good morning, Committee. I am Nigel Huddleston. I am the Minister for International Trade at the Department for Business and Trade.



HOUSE OF COMMONS

Leonie Lambert: I am Leonie Lambert. I am a deputy director in the Department for Business and Trade, responsible for parliamentary affairs.

David Rutley: David Rutley. I am the Minister for the Americas and the Caribbean, but I also have ministerial oversight of the legal directorate.

Paul Berman: Paul Berman, legal director in the Foreign, Commonwealth and Development Office.

Q366 **Chair:** Thank you very much. The Government conduct international relations and negotiate and reach international agreements based on the exercise of the royal prerogative. Could Ministers give their views on where the authority for the Government to exercise these prerogative powers derives from?

David Rutley: They derive from powers that historically came from the Crown, but over the years their exercise has gradually passed to the Government. This is simply the exercise of Executive power as we know it. It is entirely standard practice across the world that, in the areas of international relations and treaty making, these powers vest in the Executive branch of Government. That ensures we have one single voice at the international level and are able to respond flexibly and effectively to developments in what is a fast-changing world, and we have seen that particularly over the last few years.

Q367 **Chair:** Would you say prerogative powers are exercised by the Government on the basis that they command a majority in the House of Commons?

David Rutley: Yes.

Q368 **Chair:** With that in mind, when the Government exercise that prerogative power how do they ascertain whether they are operating with the confidence of the House?

David Rutley: As Ministers—and I know others on the Committee have served as Ministers—we continue to work very closely to understand the views and will of Parliament. That is part of our job through ongoing discussions, through debates and through PQs. I think we are close to the view of Parliament. Parliament makes its views very clear through those instruments and mechanisms, and also through Select Committees, through their reports and holding us to account in these sessions.

Nigel Huddleston: It is what you were alluding to a minute ago, in terms of the Government's responsibilities, I would say the Executive powers sit there through historical precedent and common sense; it works. The Executive branch negotiates the deals, but it is obviously in many cases subject to the scrutiny of Parliament, and that makes sense.

The underlying principle is that we do not negotiate treaties or agreements that are not in the UK's interests. Therefore, there should always be a hope and expectation that when the Executive is negotiating a deal, and therefore presenting a deal to Parliament, it should transparently be in the UK's interest and, therefore, the expectation is



HOUSE OF COMMONS

that it should command support from Parliament. We should not be conducting treaties if we are not confident they command the support of Parliament. As long as we are confident they are in the best interest of the UK, we should always be in a comfortable position.

Q369 **Chair:** That confidence has no formal mechanisms, as Mr Rutley was outlining. There are a variety of ways in which Ministers engage with the legislature, but there is no formal means for that confidence to be assured, is there?

Nigel Huddleston: I would hope most MPs are here to work for their constituents and to work in the interests of the people they represent. Therefore, if there is a treaty in front of them that is in the interests of the UK, I would hope that could command support as well.

Q370 **Chair:** At the beginning of any process of negotiation there is no such mechanism, is there?

Nigel Huddleston: I am sure we will come on to this, but of course there is, certainly when it comes to trade agreements and so on through the CRAG process, because anything that is subject to approval by Parliament can obviously be suspended indefinitely before entering into force. There is a mechanism there, so there are safeguards. However, the fundamental principle that the Government, the Executive, should only be doing things that are in the interests of the UK economy may seem obvious, but it is a really important underlying principle.

Q371 **Chair:** How would you characterise and describe the nature and scope of the international agreements the UK Government are currently making?

David Rutley: They are wide-ranging, no question, and they always have been. They ebb and flow, and treaties come and go. They number has declined over recent decades, but it has increased a little with FTAs. However, the process remains the same, and we think it is effective. No doubt we will debate that. That is all I can say on that point.

Q372 **Chair:** Have they remained consistent? Over the past 100 years or so, surely the nature and scope of international treaties has changed considerably.

David Rutley: As I said, there are ebbs and flows. After the Second World War there were more multilateral treaties, which is understandable. Over more recent decades there have been fewer treaties. When we left the EU there were continuation agreements. As has been well articulated, Government policy is now to seek to address the need and desire to create FTAs. The approach and the process remain the same, but there are different types of treaties. Again, there is a whole variety of different treaties that come through at any given point in time.

Q373 **Chair:** One of the themes we will raise throughout the morning is that there has been considerable change in the nature of treaties and their effects, particularly with regard to domestic matters, yet the fundamental process of scrutiny is unchanged in 100 years or so. We will come back to that in due course.



HOUSE OF COMMONS

I wonder if I could carry on with the theme that accepting the changed nature of international agreements means there is increasing concern about the effect on domestic matters. Given this, do you think the arrangements for scrutiny are still appropriate and should the approval of international agreements change to reflect that?

David Rutley: We would argue it is appropriate. It is not just us saying that. The Lords Constitution Committee—which put its report forward in 2019—felt it was appropriate as well. The other important thing to note is that, under CRAG, Parliament has the power to resolve against a treaty. That has never been used. Therefore, there are mechanisms in place that have not been activated. Obviously, as we see the landscape of more FTAs, there are other mechanisms that have been put in place by DBT for those specific types of treaty, which we will come on to in a moment.

Paul Berman: We would question whether the nature of treaties has fundamentally changed. If one looks at the huge expanse of treaty-making after the Second World War, you had treaties that were very significant and had a significant domestic impact as well. We had the setting up of the United Nations, the adoption of the European Convention on Human Rights—which of course had an important impact internally as well—and we had GATT in the economic sphere.

While it is certainly true that the number of treaties the UK has engaged in has increased since Brexit—particularly FTAs—treaties agreed since the Second World War have always had an important and fundamental impact across all areas of policymaking. Therefore, we do not take the position that the nature of treaties has fundamentally changed. There are areas that have been covered by new treaty-making throughout the decades since the Second World War. However, we would suggest that the importance and significance of treaties has remained consistent since 1945.

Q374 **John McDonnell:** I want to talk about the development of the negotiation mandate and strategy overall. So that you are aware, the background to the question is that we have received evidence across the piece from former Ministers, diplomats, civil servants, academics and lobbying groups such as the Trade Justice Movement and others. The concern is that Parliament only gets brought in to play a role at the end of the negotiating period when agreement has virtually been reached and, therefore, there is just a ratification process.

There is a strong view that we should be looking at how other legislatures operate and have a greater influence in the early stages of the development of negotiations. In some ways there is a strong argument that this strengthens the hand of negotiators as well.

I have a very basic question. From a ministerial perspective, what is the process of deciding to open negotiations? How does that process start?

Nigel Huddleston: Certainly from the perspective of trade agreements, the premise is that we should be looking at agreements that add economic value to the UK and are in our strategic interest— perhaps



HOUSE OF COMMONS

including national security and other interests—particularly looking at supply chains and also deliverability. Can we practically make progress and achieve the deals we want? Those are the core underpinnings. If it is a no to any of those, or serious doubts, they will probably be deprioritised or not pursued.

I should say thank you for all the work that you and the Committee have done. We are very aware of all the work you have done and the very interesting comments from everybody who has come to the hearings. We will be paying close attention to that and are very keen to see your views and opinions coming out of this.

I would respectfully disagree that we are out of kilter with other countries. When it comes to FTAs, the overall process, we stack up quite well in terms of parliamentary scrutiny, engagement and involvement compared with other countries. When it comes to the early stages of agreements, we have consultations. We open up to the public and business engagement. We outline our negotiating objectives and provide high-level economic impact assessments. That is before negotiations have even started. Not every country does that, so we set ourselves up quite well in terms of openness.

In terms of ongoing scrutiny throughout the whole process—if you do not have it, we are happy to show you a process flowchart that is useful in terms of what happens when—there is ongoing engagement and involvement in particular with key stakeholders, key stakeholder groups, other Government Departments, as well as devolved Administrations and others throughout the process. While I know there are constant demands for more engagement and more stages of approval, I think what we have works quite well. The challenge is always getting that balance between transparency and giving so much away that you undermine your negotiating position, or indeed giving away information that we are not allowed to give away, because we also have to respect the privacy and confidentiality of some of the information we share from other partners. On balance, I think we have it right but I respect that other people have different views.

David Rutley: It is interesting, when you look across the range of treaties, with some there are more clear-cut ways in which they are defined and move forward, like the FTAs Nigel has discussed. However, often in negotiation it is not even clear at the start of a conversation that there is going to be a treaty evolving from it. There are often circumstances where it is not clear that a treaty is going to be required, but as the negotiation moves forward, as a dialogue takes place, during the course of a conversation it becomes clear that a treaty is required. In other spaces it is a much more nebulous approach and much more ambiguous.

Once the negotiation becomes clearer, an approval will obviously be required from the Minister involved in the lead Department. The relevant Cabinet Committee would probably need to be involved as well and



HOUSE OF COMMONS

possibly, and often, the Cabinet. If it requires legislation, it would go in front of the secretariat of the PBL, so there is a process.

Q375 John McDonnell: I would welcome sight of the flowchart. To be frank, the evidence we have received contradicts what you have both said. I will give an example. You are negotiating a trade agreement with the Gulf Cooperation Council. You have published your UK strategic approach. The Chairs of the IAC and ITC were asked what consultation had been with their Committees with regard to the negotiating mandates and strategy. The answer was none.

Then the IAC's second working practices report highlighted that the Government had fallen short of their commitments to consult with parliamentary Committees ahead of setting negotiations. That was their comment on it. Again, the ITC's response was, "Despite the Government's prior commitment to do so, Parliament has not been 'consulted' before or during FTA negotiations—rather, Parliament has merely been informed of decisions and outcomes after the fact".

I am glad you are looking at the submissions we have received. The submissions so far demonstrate there is virtually no engagement at that early stage of the negotiating mandate, which could be quite significant in the development of your thinking as you negotiate and, as I say, could strengthen your hand in those negotiations. There is a view that the US legislature handles this in a different way.

Can I ask the civil servants—if I can start with you, Ms Lambert—from an official's perspective, what is the process when the Government have decided to enter into negotiations towards an international agreement? What process happens after the Government have said, "We are going for one"?

Leonie Lambert: Once Ministers have decided there is a deal to pursue, we would go about setting a cross-Government mandate, working with our officials in other Government Departments with an interest in negotiations. As the Minister said, we will launch a public consultation. One important point to note is that, since the IAC reported on its working practices and since we have had some of the evidence from the International Trade Committee, we have further reflected on Parliament's involvement in the mandate-setting phase.

Last year we made a clear commitment that we would offer private briefings for the Select Committees with the negotiating teams prior to mandates being set. That offer has subsequently been made on the FTAs we have launched, which is the Maldives, South Korea and—

Q376 John McDonnell: Has it happened?

Leonie Lambert: We have not been taken up on that offer to date, but the offer is open. I think that the Maldives only launched last week.

John McDonnell: Fair enough.



HOUSE OF COMMONS

Leonie Lambert: We did offer a private briefing to the IAC and the ITC on this, and I think last year on the Gulf Cooperation Council.

Q377 **John McDonnell:** They are informal discussions?

Leonie Lambert: Yes, they are confidential discussions. Once we have secured a mandate that has been agreed cross-Government and signed off at Cabinet level, we will set up a negotiating team. There will be a core negotiating team based in the Department for Business and Trade and they will work with dozens of chapter or policy-focused teams that are drawn from across Government, for example DEFRA where there are agricultural or environmental impacts.

The chief negotiators will chair frequent cross-Government meetings to bring all those together, to ensure that we have a consistent approach and that Departments are able to feed in at a senior level. Our director general for trade negotiations also chairs a very senior cross-Government forum to take a view across the negotiations programme as a whole.

Paul Berman: That obviously relates to very significant agreements such as FTAs. Looking across the whole of Government policy, practices are very flexible and very varied, because agreements are very varied and range from things like mutual recognition of driving licences or exchange of information in relation to the AUKUS agreement and so on. They cover a huge range.

Therefore the procedures, like other areas of policymaking, are also very flexible and adapted to a particular area. In some cases it may only concern one Department or a couple of Departments. Depending on the agreement, it might either be a couple of Departments with their Ministers co-ordinating and agreeing. If it is important or significant, it may go up to Cabinet level, as the Minister said. Thereafter, in terms of process, there may not necessarily be something that is a formal mandate. It may be that Ministers agree on certain red lines or certain objectives. Sometimes these negotiations develop, and the UK will want to be on board with the negotiations in order to be constructive but will not necessarily have any specific objectives beyond particular red lines in the negotiation.

In terms of process, there may be groups convened by officials to consult and to co-ordinate on the negotiation thereafter. It will always be very much adapted to the particular agreement, the range of departmental interests and its overall policy importance.

Q378 **John McDonnell:** It would be good if we could have a note on the process you have engaged in, particularly how decisions of significance are made and how issues are then escalated.

Can I go back to the Ministers? Why do the Government not currently formally consult Parliament on setting negotiation mandates? If Parliament were to vote on a mandate, do you not think that would strengthen the position of the negotiating team, or do you think it would weaken it?



HOUSE OF COMMONS

David Rutley: I think overall it would weaken it. Again, there have been a number of reports now on treaties. We have been co-operating actively, and we know Parliament is interested in this area. However, in 2019, the Constitution Committee of the House of Lords said a vote like this would impinge inappropriately on the Government's prerogative power and limit the Government's flexibility in negotiations. That is the issue. I can see where the Committee is coming from.

There are certain types of treaty, for example with FTAs, where we are working incredibly hard to engage and receive feedback. There are other situations, like NATO accession protocols for Sweden and Finland, where the situation is very fast and very urgent and the Government have to use their Executive powers, noting what they perceive to be Parliament's will and, in that situation, the will of the country. I think we all recognise they were quite unique circumstances where we had to work very fast. We cannot predict those situations. I know, John, you will have had to do that in many previous roles. It is very difficult to predict the exact circumstances all the time.

John McDonnell: I could say that, with this Government, I cannot predict one hour to the next, but never mind.

Nigel Huddleston: The short answer to your question is that I think it would be negative. For anybody involved in any negotiation, in the private sector or at Government level, if you reveal your complete hand you are removing any flexibility and undermining any ability on negotiation. Where Governments sometimes seek approval for a mandate, it means there is no flexibility on the agreement going forward, and no possibility of amending it. These are real challenges even for the US, which cannot amend a mandate once it has been approved.

Also, in terms of revealing the overall goals, there is a subtle but important difference. We have consultations and we outline the negotiating objectives, for example in high-level trade agreements to gain access for services or for cheese and beef markets, and so on. That is different from the detailed mandate, Department by Department, subsector by subsector, on what our offensive goals are and what our defensive goals are in terms of what we are willing to give, what we are willing to take, what the tariff would be, what the tariff rate quota would be. You can imagine, if we reveal all of that information in advance, we are giving everything away to the other side and it would be an absolute nightmare.

We have some of these conversations in private, but you cannot reveal all of that information while conducting a negotiation as it would completely undermine the chief negotiator's role.

Q379 **John McDonnell:** I can understand the argument around detail. As you cite the House of Lords, it is interesting that Baroness Hayter, with others, emphasised that having clear guidance from legislatures aided the hand of a negotiating team and made red lines clear. That was the overall strategy, rather than detail.



HOUSE OF COMMONS

David Rutley: It also reveals our hand, which does not help the negotiation.

Q380 **Chair:** If you have all these pesky Members of Parliament who occasionally exercise their own judgment and who would perhaps provide a block—who have their own red lines, their own constituency interests—you would be able to go into the room and say, “There is no way I could get this through the House of Commons. Look what they have said. You are going to have to give way on that”.

Nigel Huddleston: We outline some red lines in the objectives. For example, there is a very clear red line on the NHS. We often have conversations about procurement. We will put into the objectives, “We seek opportunities for procurement and services opportunities, but hands off the NHS.” That is a red line, so there are some very clear points even in the objectives.

You are right that, when it comes to trade agreements, it is literally a trade-off. I think some people would love it if we could do trade agreements around the world and get 100% access to everything in every other country and block anything ever being imported. That does not make sense but some people would love that. This is the point; it is a negotiation. In any negotiation there is give and take. If you reveal absolutely everything, what is the point of the negotiation?

David Rutley: Talking of independently minded Members of Parliament making their views heard, and having been the Whip to a couple of members of this Committee, I know they are very adept at doing that. I will not name names. We do have an adaptable approach.

Chair: In the interests of transparency, Mr Rutley was my Whip on two occasions.

David Rutley: It is an important point that we all know, and we will provide the process flows for which John asked. They are invaluable for colleagues to have. We need to do that, and we can do a better job of making those available. We have a very robust parliamentary democracy and colleagues make their views known. There is no question about that.

Q381 **John McDonnell:** What we are straining at is trying to get the balance right between the negotiating mandate overall, setting some of its parameters in a democratic forum and, at the same time, not getting involved in the detail upon which it will be negotiated. Setting that balance is what we are aiming at.

What consideration do officials give to the views of Parliament when discussing setting those mandates with Ministers? Again, how are those views parliamentary views obtained?

Leonie Lambert: The views of Parliament are a very key consideration for us in all our policymaking, not just our trade agreements, but obviously we focus quite heavily on it when thinking about launching trade negotiations.



HOUSE OF COMMONS

We gather information from a number of sources. We have now been doing this for a few years. We have had several parliamentary debates. We have had parliamentary inquiries into some of our agreements. We also look at written questions, oral questions and correspondence from Ministers.

The key for us is engagement with the Select Committees. Like I said earlier, we have made an offer to engage more closely with Select Committees during the mandate-setting phase to hear their views and to set out a bit more information than we can put in the call for public consultation, so we can give a bit more detail in a confidential setting.

Q382 John McDonnell: Will that be standard practice from here on in?

Leonie Lambert: As of last year, it is standard practice for new free trade agreements that we will make that offer to the Select Committees.

We obviously know that the Business and Trade Committee will be launching an inquiry into its scrutiny of free trade agreements, which we will engage with closely. We are open to discussing with them any further ways they would like to engage on that.

The call for input also gives us a very good sense of what the public are interested in. I think it is fair to say we can then extrapolate that to areas that Parliament might be interested in, as it is your constituents who are answering the call for input. We will then go through all that to get a good sense of where the key issues are likely to be. We have made a further offer—a change of practice with the Select Committees—that once our public objectives are in the public domain, if they call for a debate on those we would seek to accommodate it subject to parliamentary time. I think in the Lords there has been one on the India objectives. In the Commons we have not had that request yet.

These are all a means of gathering information that we then collate, and we would put that in any advice that goes to Ministers. We would discuss that with them and, of course, they have their own views on what Parliament might think about these deals.

Paul Berman: Very much as Leonie has said, if you look at treaty-making across the board, any policymaking officials will take account of the parliamentary implications in submitting to Ministers. We will draw on the sources Leonie has mentioned to make sure that, if they are thinking of entering into negotiations, Ministers are aware of any issues or concerns that have been raised in Parliament.

Ministers are constantly reminding us, as negotiators, of what will and will not fly in Parliament. We sometimes say in negotiations, "You need to be aware this is not going to fly in Parliament." Going back to your point, Mr Chairman, this is a point we deploy in negotiations.

Q383 John McDonnell: When the UK strategic approach for negotiations with the Gulf Cooperation Council was produced, why was Parliament not even informally consulted?



HOUSE OF COMMONS

Nigel Huddleston: As I say, my understanding is that under normal circumstances we would like to do that. The specific commitment that a previous Secretary of State made and the new Secretary of State has now outlined will be going forward in terms of that being the case. I think the GCC's initial objectives were produced just before that commitment was made. It is certainly my intention, and I know it is the Secretary of State's intention—we have written to the Select Committees to outline this—to work on new ways of working going forward.

Q384 **John McDonnell:** Is there a particular reason why Parliament was not informed? Is there something special about the strategic approach, or is it just that no one thought of us?

Leonie Lambert: We followed the same strategic approach for the GCC as we had for the previous FTAs, so I am not sure what—

Q385 **John McDonnell:** It was a principle of ignoring Parliament, was it?

Leonie Lambert: No, we—

John McDonnell: It is not for you to answer that, it is for the Minister.

Nigel Huddleston: There is absolutely no principle as you suggest; in fact, quite the opposite. The reality is that the vast majority of trade agreements, or MOUs, in terms of the next likely countries, there is no big secret there. It is talked about and debated in Parliament. Colleagues are constantly standing up and saying, "Can we have an FTA with X, Y and Z country?" and we try to give indication as to what may be on the list. I would be amazed if we enter a world where, all of a sudden, an FTA comes out that was not on the radar of Parliament or others. We want to be transparent and open.

I cannot give complete answers on what happened previously. What I can say is that, going forward, we wish to abide by and stick to the commitments made in the Secretary of State's letter.

Q386 **Jo Gideon:** In the EU and US, negotiating teams report back to the European Parliament or US Congress during trade negotiations, often giving full access to information and providing reports on negotiation rounds. Why do the UK Government not currently do something similar?

David Rutley: Government retain ultimate discretion over the amount of detail shared with Parliament. As I hope has been demonstrated in the answers to previous questions, we want to provide transparency where we can and also have positive engagement. However, that needs to be done on a case-by-case basis.

We have talked about the range of different types of treaties. There is one example with the BBNJ, the Biodiversity Beyond National Jurisdiction treaty. During those negotiations, Lord Goldsmith of the FCDO met with the All-Party Parliamentary Group for the Ocean and offered to brief them as well. What we are saying is there are different ways in which we can engage with different types of treaties, and we do. However, ultimately



HOUSE OF COMMONS

there needs to be discretion from Government Ministers as to how and when that will take place.

Nigel Huddleston: I should add that a lot of engagement genuinely goes on. We can see it. It is transparent. After each negotiation round on an FTA, for example, we write to the Select Committees and release information to Parliament on what was covered. We reveal a lot.

We have a very clear CRAG process in terms of the statutory underpinnings, but there is a lot that goes on, on top of that, as well. The reality is that our Parliament often operates by convention. Not everything we do here, which we all consider very dear to our hearts, is enshrined in every piece of legislation. I know there is an argument that maybe it should be, but sometimes that flexibility can be beneficial and enables us to give more information than perhaps we would if it was all enshrined in legislation, because we have that need to co-operate and that wish to co-operate.

At the end of the day, if we do not have FTAs that get the support of Parliament, they can be indefinitely suspended by the House of Commons and implementing legislation can be voted down. Therefore, it is not in our interest to suddenly reveal everything at the end. It is important that we give progress updates, and we do.

Q387 **Jo Gideon:** From what I am hearing, you think Parliament has an important role to play during the negotiations. Do you think any arrangements should be set up to make the consultation with Parliament during treaty negotiations better?

Nigel Huddleston: I am comfortable with the position of the processes we have in place, particularly since the letter we just discussed from the Secretary of State to the Select Committee outlining further information that will be shared—some of it, out of necessity, will be in private.

I am comfortable with that process in terms of the level of scrutiny—that will not surprise you, as I am a Government Minister—but I think it is important that we are very clear it is still the Executive's responsibility to negotiate trade agreements. We constantly keep in mind the likely response of both Houses, because there is the potential for them not to get through.

David Rutley: I do not think there is much I can add. We can think about other reports that have been produced. In the Lords, for example, the Constitution Committee has said it believes the degree of scrutiny already in place is appropriate. When you look at what is going on—particularly on free trade agreements, for example, although Nigel and Leonie have more experience there than us—and compare the scrutiny arrangements and the process with other Commonwealth countries, we stand in a very good place. I share the same confidence as Nigel.

Q388 **Jo Gideon:** Without a formal requirement, what guarantee is there that Parliament will have a role to play and that Government will consult Parliament in a meaningful and timely manner?



HOUSE OF COMMONS

David Rutley: As we look at what is going on, particularly with free trade agreements, it is clear we have set out very clearly that Parliament has a role. The degree of engagement I see with Nigel and his team on these matters has moved these things on. Often that involves providing confidential information, as appropriate. Nigel is best placed to comment on that.

Nigel Huddleston: Again, we are more than happy to share the whole set of processes. There are all sorts of interactions there. It might be useful for the Committee to have sight of that letter, which outlines the whole series of activities that are supplemental to the core legal process. For example, I am having an informal meeting with Members of the House of Lords and the House of Commons next month to go through where we are with FTAs. Again that will be in private, but that is an opportunity for colleagues to ask pretty much any question they wish, and I will reveal as much as I reasonably can in those conversations.

We might well get on to this, but the engagement and involvement of the DAs is important as well. It goes beyond just Parliament. We are respectful and we have very constructive engagement with the devolved Administrations when we are proceeding with trade discussions. That goes for upfront on the objectives, but also during the process.

Q389 **Jo Gideon:** My next question is to the officials. How are international agreement negotiations co-ordinated across Government when they touch on several areas of Government policy?

Leonie Lambert: I think I covered some of this in one of my earlier answers. For us, negotiations are generally a cross-Government effort. Negotiating teams will have a core negotiating team headed by a chief negotiator, who is based in the Department for Business and Trade, but will then have dozens—depending on the scale of the agreement—of chapter or policy-specific teams that are drawn from across Government.

For example, we will have DEFRA on the agricultural chapters and things like that. Treasury will be involved on financial services. The core team in DBT provides the overall leadership and the overall responsibility for delivering the agreement as a whole, but those teams will be working on delivering the individual chapters.

We then have formal structures for governance across the agreement. Generally these take the form of the chief negotiator chairing cross-Government forums to check on the progress of the deal as a whole. Other Departments with an interest will be involved there. Then the director general for negotiations will chair a cross-Government forum for very senior officials.

Paul Berman: Coming back to the process for opening negotiations, it is very ad hoc. It depends on the remit concerned. Where it straddles several Departments, you will have consultation between officials, there may be meetings, Ministers may be involved and there may be correspondence between Ministers to agree a common line. There may be



HOUSE OF COMMONS

contact during negotiations by email. Things move very quickly. If things are significant and agreement cannot be reached, there are always the Cabinet Office mechanisms to come in to provide co-ordination.

On the ground in negotiations, it is also very common to have delegations made up of representatives of different Departments. Indeed, I would say that is more often the norm than not. For example, if you are negotiating something that includes criminal penalties, you would expect Home Office or Ministry of Justice officials to be involved in those negotiations as well.

There is a horizontal role for the Foreign Office. The Foreign Secretary has overall responsibility for treaty-making. We have a consulting role, to make sure the formal procedures for treaty-making are followed. We have guidance for Departments, which is public online guidance on practices and procedures. That sets out very clearly the approaches that must be followed in terms of treaty negotiation and drafting.

There is also a cross-cutting role for the Foreign Secretary because only he, together with the head of State and head of Government, is authorised to sign treaties. He must also therefore authorise any other Minister who wishes to sign. When it comes to ratification, those instruments will come to the Foreign Secretary to sign as well. He will act, at the end of the day, as a kind of clearing house when it comes to concluding treaties.

Q390 Jo Gideon: Are you confident that a consistent approach is followed? Obviously in cross-departmental negotiations and within Departments there are lots of different challenges.

Paul Berman: We are confident. We would not want to impose a one-size-fits-all because we think that would not be in the interests of the UK or the flexibility we have in negotiating. We have a cross-Whitehall group of officials and lawyers who meet to consult on horizontal treaty issues. That is the opportunity for us to make sure the procedures and practices are being properly followed.

Q391 Jo Gideon: The International Trade Committee has called for Government to produce a single strategy document for the negotiation of FTAs. Why do the Government not have a single strategy document for the negotiation of FTAs and, beyond that, international agreements more widely?

Paul Berman: I will turn to DBT colleagues on the latter. On more widely, I come back to the point they are very different creatures and, therefore, something that is common to them all would not be helpful in terms of flexibility and us being effective at the international level.

Nigel Huddleston: Very briefly, because each FTA is different, the nature of the economies we are trading with are different. Some are very heavy on goods, others are very heavy on services. Sometimes we have an existing agreement that needs an upgrade or a change. For example, the Swiss agreement has nothing on data or digital; it is only on goods. It



HOUSE OF COMMONS

does not cover services at all. Each one is different in terms of where we would go.

Also, we are sometimes dealing with different groups of countries. Sometimes it is a bilateral direct agreement, other times it is multi-country. For example, we already have FTAs with some CPTPP members and we have new FTAs with others. Some of them we are negotiating upgrades to FTAs at the same time as they are part of CPTPP. It can be very complex. If you set intimate detail in overall guidelines, it would be the wrong thing to do.

That said, we have a very clear strategy in the overall goals of the Department. The integrated review refresh has also set pretty clear guidelines in terms of broad overall global objectives. There is a combination of things that I think, together, pretty effectively sum up to a clear strategy.

David Rutley: Despite what was said earlier by a certain member of the Committee, the integrated review refresh and the export strategy are well worth a read.

Q392 **Damien Moore:** Considering we were a member of the EU until relatively recently, Mr Berman, could you explain to us the difference between the way they scrutinise treaties and the way we scrutinise treaties?

Paul Berman: These comparisons are not straightforward because, of course, the UK and the EU are very different. We are a sovereign state. We have inherent treaty-making powers. We cover areas where we have to move very quickly, often of great national security significance. We have arrangements that have evolved over centuries. The EU is an international organisation. It can only exercise powers conferred on it by its member states. Therefore, its powers are very precisely defined and its procedures and practices are very precisely defined as well.

Turning to how the EU system operates, the European Parliament has only very limited powers when it comes to the making of treaties. It has no role in deciding on opening negotiations or on signing provisional applications. When it comes to ratification, it has the right of consent for certain defined categories of remit, some of which are important. However, in that sense, it is important to remember the EU is a monist system. In other words, a system where once you ratify a treaty it automatically becomes part of EU law and takes precedence over other EU legislation.

In that sense, by ratifying a treaty, you are getting into the role of law making. That is why a lot of monist countries have a consent mechanism for ratification. Of course, the UK is very different. We are a dualist system. Nothing that can be done via treaty making can affect the law of the land, which is a matter for Parliament.

In terms of scrutiny for the European Parliament, it is true in the last years of our membership there was introduced a new provision that said the European Parliament should be kept fully and immediately informed



HOUSE OF COMMONS

at every stage of treaty-making. That has proved somewhat contentious in the way it has bedded down. There has been litigation about it, differences between the institutions. However, the upshot has been that the European Parliament is kept informed by the Commission in terms of documentation and briefings at every stage of the treaty-making process.

Again, it comes back to my original point that the relationship between the European Parliament on the one part and the Commission as the negotiator and the Council on the other is very different from the relationship between the British Government and the British Parliament. There it is an arm's length relationship. There is no sense of accountability in the way we would understand it here. Therefore, it is understandable that there has been a drive for the European Parliament to have formal mechanisms to be kept informed of treaty negotiations. Here there is a much stronger relationship between British Ministers and Parliament, they are directly accountable. There is a range of mechanisms whereby Ministers engage with Parliament.

Perhaps one fundamental point is that, in this country, we are talking about negotiations done by British Ministers and British officials on behalf of the UK. In the EU it is a much more complex arrangement where you have institutions at one remove negotiating on interests across a range of member states. To come back to my first point, I think the comparisons are very difficult to make given the very different nature of the UK and the European Union.

Q393 Damien Moore: Ministers, in response to the Lords International Agreements Committee "Working Practices Report", the Government make several references to the UK's constitutional settlement. Could you explain what is meant by this?

David Rutley: This is about the constitutional relationship between Parliament and the Government when it comes to treaty-making. The UK's constitutional settlement is reflected in treaty-making being Executive responsibility conducted under royal prerogative—which I mentioned at the start but somewhat clumsily, for which I apologise—with Parliament being responsible for passing legislation and holding the Government to account. That is the treaty process we are talking about, and that is the constitutional settlement that is being referred to there.

Q394 Mr David Jones: Mr Huddleston, you referred to CRAG in previous responses today. In response to the IAC report, the Government set out that they considered the CRAG framework is, "appropriate and provides sufficient flexibility to permit Parliament to undertake effective treaty scrutiny prior to ratification." How did the Government arrive at that assessment, and what criteria did they apply in doing so?

Nigel Huddleston: As I think most people know, the CRAG process was established under the last Labour Government. It was one of the last pieces of legislation to be enacted by the Brown Government back in 2010. It has been the established basis for the review of treaties, and it therefore also applies to FTAs.



HOUSE OF COMMONS

The formal requirement of CRAG is for review and certification, or review on a 21-day period. By the way, that stacks up quite well with, for example, Canada, Australia and New Zealand. Either the House of Lords could vote against it or, indeed, the House of Commons could vote against it. If the House of Commons votes against CRAG, it can do so again and again. Therefore, there is effectively a veto on ratification in the House of Commons. By virtue of the fact there is a procedural possibility of a veto, it means it is a very powerful tool, or could be a very powerful tool. In terms of timelines and what wraps around CRAG—and other things with that, including section 32 NTAC reports—it is a good system.

Q395 **Mr David Jones:** You mention international comparisons. Were they one of the criteria applied in making that assessment?

Nigel Huddleston: Yes. As you can imagine, we constantly review what systems and processes other countries use in ratification. It is important in our own ratification and procedures, when we are looking at trade agreements, because we need to know what the processes are in other countries. We cannot fully ratify these agreements and get them all signed and entered into force until both sides have implemented and gone through their formal processes through their own Parliament. Some are very similar to ours and some very different. We are constantly looking at what happens in other Parliaments. Sometimes there are difficulties we see with other Parliaments, for a whole variety of reasons, that are perhaps processes we do not want to replicate, but other times we see things that we like.

David Rutley: Nigel is making an important point. We do look at different comparators. From the evidence we have given over the last half an hour or so, you can see that there have been adaptations to respond to the weight of FTAs. At the same time—I have quoted this example before but I will do so again—the speed at which we were able to move on NATO accession for Finland and Sweden is really important. In and of itself it was important, and the speed at which we were able to move sent a very clear signal to other countries that this was important.

We have to keep that balance right. We believe we have. However, your job on the Select Committee, and our job when we go back to Select Committees, is to be asking these questions to sense-check whether that balance is accurate or not.

Q396 **Mr David Jones:** Under the current arrangements, the Government can decide whether scrutiny should take place before the whole House. Do you think it is right that should be in the Government's gift?

David Rutley: I think it is important that the Government have a decision on the treaty as a whole, royal prerogative. In terms of the consultation and the engagement, there will be different forms. Obviously there will be situations where Parliament decides it wants to have a discussion or a debate on a particular subject, and we know all the



HOUSE OF COMMONS

mechanisms by which it can do that so it is important to have that flexibility.

Q397 Mr David Jones: Mr Huddleston, you mentioned the 21-day period. How long, in physical terms, are the Australia and New Zealand free trade agreements? How many pages?

Nigel Huddleston: There are hundreds of pages in the agreement, and then additional side points, so they can be long.

Mr David Jones: I think you are anticipating my question.

Nigel Huddleston: I am.

Q398 Mr David Jones: Are 21 days sufficient?

Nigel Huddleston: It is not just the 21 days. There were months—more than six months in the case of Australia—between the signing of the agreement and the transparency of the agreement being available. There is plenty of time to scrutinise. I should also say it is 21 sitting days as well, so this is quite a long period of time. Canada is the same. Australia is either 15 or 20 and New Zealand is 15. Again, we stack up well compared with other parliamentary democracies.

We have also made additional commitments, recognising exactly what you are saying about whether there is enough time between signing and CRAG. We said that we would like at least three months. With the other reports on the environment and so on—the section 32 reports and so on—we want to make sure there is at least 10 days. We are conscious of the requirement and the reasonable expectation that parliamentarians have time to digest what can be quite complex material.

I think we have a reasonable timeframe. Sometimes we may need to move very, very quickly on some agreements. Therefore, having a point of principle of extending it, we would be doing that for the sake of extending it and then we would lose our flexibility.

We have also said we would consider extending CRAG if there was not a parliamentary debate and Parliament expressed a will for there to be a debate. I think on both sides that sense of reasonableness can end up in what we would both like to achieve.

Q399 John Stevenson: When all is said and done, do you not think it would be right that Parliament has a straightforward vote on any treaty? We are a parliamentary democracy, and Parliament is meant to be supreme and can ultimately override Ministers. Shouldn't Parliament have a vote?

Nigel Huddleston: In terms of the free trade agreements, CRAG does enable a vote.

Q400 John Stevenson: That is a different sort of vote. Straightforward, do we agree with it or do we not agree with it? Do you not think Parliament should have that—



HOUSE OF COMMONS

Nigel Huddleston: Effectively that is what CRAG does because they can stop ratification. If Parliament does not agree with an agreement, the process—

Q401 **John Stevenson:** Do you think yourself that Parliament should have a vote? One up or down vote, yes or no?

Nigel Huddleston: An up or down vote, no. I think the process we have at the moment is appropriate. Also most trade agreements, and many other agreements, require implementing legislation, on which Parliament does have an up or down vote.

Q402 **John Stevenson:** That is an entirely separate issue. I am just looking at the question of a vote on the treaties. You are saying that is fine.

Nigel Huddleston: The process is fine.

David Rutley: I agree as well, because I think the important thing is that, in our approach, we have very clear lines as to where the royal prerogative lies and the ability to exercise Executive power. The Government are held to account and—I know it is a separate question from the point you want to pose—Parliament has the power to resolve against ratification and also, as the Minister said, the ability to pass the implementing legislation.

Q403 **John Stevenson:** This seems to go against an awful lot of other jurisdictions in terms of what they do. The evidence we have had from overseas experts would be to the contrary.

Nigel Huddleston: Different countries have different constitutional make-ups and a different balance between Executive and legislature. I think history proves that ours stacks up quite well and quite effectively.

John Stevenson: I would argue that it may be out of date.

David Rutley: It is also important—in terms of context, John—to recognise the difference between dualist and monist approaches to treaty making.

Q404 **John Stevenson:** Yes, but ironically it would make it easier in a dualist approach. If you have a vote on the treaty at the outset, everybody would accept that you made the in-principle decision for a treaty and then the stuff that follows is just implementing that.

David Rutley: As we have highlighted, I can see the argument but we need flexibility as well.

Nigel Huddleston: I know lots of people keep referencing the US. In the US, because they vote in advance, there is no flexibility to amend. Congress cannot amend the treaty. We can. Again, there are always checks and balances in the system, but I think what we have works quite well.

Q405 **John Stevenson:** We are a dualist state, you are absolutely right. Don't you think that, if we are to do that, we should have a separate debate on



HOUSE OF COMMONS

the treaty first, before dealing with the legislation?

Nigel Huddleston: When it comes to free trade agreements, as we have outlined, there are lots of opportunities for Parliament to have its say, and particularly the Committees.

Q406 **John Stevenson:** A formal procedure, that is what we seem to lack in this country. Should there be a straightforward procedure? First the treaty is agreed, we debate it in Parliament and then we go to the implementing legislation.

Nigel Huddleston: There is usually a debate on the FTAs. I think you are asking for a formal process for debate during the course of the negotiations.

John Stevenson: No, at the end.

Nigel Huddleston: Again, there is usually a debate. We would certainly encourage and make time for a debate so we can have that discussion. That has been the case with recent FTAs.

David Rutley: Under CRAG we seek to accommodate a debate, if requested by Parliament. I know it is subject to parliamentary time, but often those debates are not sought by Parliament.

Q407 **John Stevenson:** I could be wrong here, but did we have a debate on the UK-Australia FTA during the statutory period?

Nigel Huddleston: We had a combined debate on Australia and New Zealand in November last year. There was not one on Australia specifically.

Q408 **John Stevenson:** We did not do it in the statutory period, did we?

Nigel Huddleston: There was a combined debate on Australia and New Zealand.

Q409 **John Stevenson:** But it was not in the statutory period.

Nigel Huddleston: I would like there to be, going forward, individual debates.

Q410 **John Stevenson:** My point is we are trying to get rules in place so we have proper debates following proper procedures, but the Government have clearly avoided that particular debate in the statutory period. That is not very good for Parliament.

Nigel Huddleston: That is precisely why, in the agreement outlined in the Secretary of State's letter to the Committees, she has outlined that we will improve on that and endeavour to make sure there is. Again, I recognise the point you make. I personally accept that was not ideal. Going forward, we would like to correct that. It is important that Parliament feels it does, and actually does, have the opportunity to scrutinise.

Q411 **John Stevenson:** The whole point of our inquiry is parliamentary



HOUSE OF COMMONS

scrutiny and the lack of it.

Nigel Huddleston: Precisely.

John Stevenson: If you have procedures in place that are ignored, it makes us sceptical that they will be implemented in the future.

David Rutley: Understood, but it is also important—I want to make this point again—that Parliament does not always exercise the opportunity to have a debate.

John Stevenson: That should be up to the discretion of Parliament.

David Rutley: Of course, but what I am trying to say is that designing an approach that requires Parliament to have a debate on every treaty is probably not what Parliament would want, because some of them are non-controversial. As you consider this in a very thoughtful way, it is important to bear that in mind as well.

Q412 **John Stevenson:** Yes, but it could be at the discretion of a Committee, for example, whether or not to recommend it.

For certain treaties it is quite straightforward that there has to be full-on legislation, but there are other treaties that could be implemented with little or no scrutiny. It could be secondary legislation, for example. Should that be looked at by a Committee, to make a decision on whether or not there should be a debate?

David Rutley: Again, we believe the approach we have is achieving the right balance. Where there is implementing legislation, we have debates on that implementing legislation, as appropriate. I think we have the balance broadly right.

Q413 **Tom Randall:** International agreements are subject to change or modification. What are the Government's current criteria for determining whether Parliament should be notified of changes made to an international agreement?

David Rutley: Can I ask Paul to come in on that one?

Paul Berman: It is the Government's policy to publish all treaty amendments as Command Papers in the treaty series. They are laid before the House. They are also made available on the Foreign Office's online database, Treaties Online, and circulated in something called the *Treaty Action Bulletin*, which we send out to subscribers, including some officials here in Parliament. All amendments are intended to be published under the Government's policy.

In addition, where an amendment is subject to ratification, CRAG would kick in. Therefore, it would be laid beforehand in the country or miscellaneous series and then it is subject to scrutiny under CRAG. The Government have previously indicated that they would expect the majority of important amendments to be subject to ratification and, therefore, subject to CRAG, but we cannot unilaterally agree that because



HOUSE OF COMMONS

whether something is subject to ratification is determined in the treaty and is, therefore, a matter for negotiation with other state parties.

- Q414 **Tom Randall:** I understand that the Government have said, in relation to concerns raised by the International Agreements Committee, that they publish changes to treaties in the treaty series. Is that sufficient? Is there scope for changes to be tracked in a more public-facing database in the way that, for example, legislation is available on legislation.gov.uk?

Paul Berman: I think our position would be that it is sufficient in as much as they are laid in Parliament as Command Papers and then the amendments are published online and made available. On publishing consolidated versions of treaties—as is the case for legislation which is an important and valuable tool—for the most complex multilateral treaties, there is usually an international organisational body that will produce definitive, consolidated versions. We would be duplicating what is a resource-intensive effort if we were to do exactly the same thing. We would also draw a distinction between treaties and legislation, because for legislation it is important that individuals, companies and others know the law that applies to them. When it comes to treaties, it is for the UK as a state to make sure it is compliant with those treaties. We would draw a distinction between what is necessary information for the public if we were to enter into what would be a resource-intensive exercise of not only publishing the amendments and making them available online, but then consolidating all the changes to treaties as well.

- Q415 **Tom Randall:** Section 25(2) of CRAG says “but ‘treaty’ does not include a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces a treaty (in whole or in part))”. That has been described to this Committee as open to a number of interpretations. What do you think section 25(2) means?

Paul Berman: I am just checking the provision, if I may.

- Q416 **Tom Randall:** Perhaps in the meantime, Nigel, you want to come in on my previous questions.

Nigel Huddleston: As a point of principle, I would say that anything meaningful and significant in an amendment should come back to review and would be subject to CRAG. I definitely understand the sensitivity around how we define what is a significant amendment versus what would be considered not a significant amendment. However, I think where we have brought back amendments, it would be recognised by consensus that we did the right thing and brought them back into CRAG because they were recognised as significant amendments.

I suspect, in the evolution of Parliament, if there is a consistent pattern of Governments not bringing back things that Parliament believes are significant, that would be looked at very carefully and, I suspect, would be subject to all sorts of scrutiny in Parliament with potential changes in legislation. I am a bit surprised that we have got to the detail of section 25(2) of CRAG, but it shows that you have done your homework as a Committee, I have to say.



HOUSE OF COMMONS

David Rutley: We expect nothing else from Tom, that is for sure.

Nigel Huddleston: Absolutely.

Paul Berman: I am ready to come back. Thank you for the time to look at the provision. For us, the provision is clear, as you would expect in legislation that has been drafted by parliamentary counsel and passed through this House. It refers to cases where an international agreement has set up a body. It might be a Joint Committee in the case of a trade agreement or the Security Council in the case of the UN, and there are other organisations that have such organs within them.

The original treaty will sometimes give them the power to make decisions or rules that may be binding or non-binding. What CRAG makes clear is that those things are not treaties and, therefore, are not covered by CRAG, which as a matter of international law is absolutely right because these are not agreements between states. These are delegated decisions made under the organs of the organisation. If we did not have this, CRAG would cover things such as all Security Council resolutions or all decisions of Joint Committees.

There is an important exception in CRAG. It then says, "But where one of these decisions amends the treaty"—and some of these do have the power to amend the treaty—"then that is subject to CRAG". CRAG is being careful to make sure that by excluding these things, which is absolutely right from a legal point of view, it does not leave a loophole where amendments could go through without being subject to CRAG. Our position on these is that they should be subject to CRAG, be laid in the CRAG process and otherwise be laid in the treaty series.

Q417 **Lloyd Russell-Moyle:** Thank you to the witnesses. When do the Government think Parliament should be notified and consulted on non-legally binding agreements, memorandums of understanding and other forms of Executive agreement? If the Government are seeking to make international political commitments—I suspect like we saw with Rwanda—why is parliamentary approval in the CRAG process not sought?

David Rutley: The key thing to bear in mind is that NBIs or MOUs are non-legally binding instruments and are distinct from treaties. They are not binding in international law and they have a different status as a result. They are not a formal or distinct category. The important thing to bear in mind is that they vary from joint press releases right through to much more complex documents. Because of that, they are not subject to part 2 of CRAG.

There has never been a convention in the UK, although we may come on to this. I don't know. Somebody might want to discuss Ponsonby in more detail, but there has never been a convention in the UK that NBIs are routinely submitted to parliamentary scrutiny, nor are we aware of any other state or international organisation that handles NBIs in the same way as treaties. They are a very different instrument.

Lloyd Russell-Moyle: I will come on to the US, which does scrutinise



HOUSE OF COMMONS

them, in a second.

David Rutley: It is just starting to.

Q418 **Lloyd Russell-Moyle:** It is just starting to enhance its scrutiny, but its scrutiny of non-binding Executive agreements started in 1930. We have heard in evidence that, because many of these agreements are departmental-to-departmental agreements, there is no central database of these agreements. I am not talking about public—I will ask a question about public in a second—but within Government. Sometimes it is the case that these agreements are in the equivalent of filing cabinets that, if someone in the Department happens to remember them and they have the departmental knowledge, they get wheeled out. However, they are easily forgotten, particularly with machinery of government changes. Is it a satisfactory situation for the Government not to have a centralised place for all, even the most trivial ones: what time will the Minister come for tea? At least for them to be recorded so we know what we have agreed with other bodies.

David Rutley: It is down to Departments to record and maintain their database or their list of NBIs. We do not have a central oversight of NBIs. We think it will not be practical because they are often created and changed in fast-moving environments. It would not be cost-effective either. We also think it could detract from the flexibility we need in these instruments. I do not know if there is anything you want to add, Paul, about the detail of how they are held.

Paul Berman: Because they are so numerous and varied, and because they constitute political instruments rather than legal instruments, it would be very difficult from a practical point of view and, I think, from the Government's point of view. It would not be a proper use of resources to have all these spreadsheets. As you have indicated, they can include things such as, "Let's agree to meet for lunch." They can be wide-ranging and they are a flexible tool, which is their advantage.

Q419 **Lloyd Russell-Moyle:** White Papers are a political instrument, but the Government have a central place on their website and other places where they deposit these things. Political instruments being deposited is not unusual in our system. I am not yet talking about publicly, but why is it practically impossible for a Department to, say, email it to a depository that at least records—it does not comment, it does not even necessarily do anything other than that—what has been agreed, even if it is trivial?

Paul Berman: You would then get into issues about what falls into this category. Will you include the most trivial thing? Given the number and extent, it would be a large exercise. From the Government's point of view, these are political tools. In a sense, they are in the same category as making unilateral statements to other Governments and, therefore, handled as political tools.

From the Foreign Office point of view, we would expect that when a Government Department talks to another state, it would keep us and the relevant geographical office informed. Whether it is an informal note or a



HOUSE OF COMMONS

meeting, it would consult us. What we would not expect in the circumstances is for the Foreign Office and other Departments to act as a depository for all these tools of policymaking.

- Q420 Lloyd Russell-Moyle:** Maybe it has to be the Cabinet Office, but surely it would seem sensible that someone does. In the US, they have recently increased their scrutiny of these things. Since 1930, 1950 and 1972, at each stage Congress has beefed up its ability to request non-binding agreements. Now it has the ability to scrutinise. We do not even have the ability to request because the Government do not even know. It is a known unknown, almost. We know there are some out there but we do not know where they are, who is agreeing them and what is happening. The US has managed to find a cut-off level that does not include the trivial and that does have some central repository. Why do you think the US is more equipped at doing it than we are?

David Rutley: We do not believe we need to go down that route. As I said in answer to your earlier question, we need the flexibility. They are not legally binding. We will watch with interest to see how the latest developments that you have highlighted take effect in the US. That will involve considerable cost and could probably have some impact on flexibility. We will watch this space, no doubt along with the rest of the Committee.

- Q421 Lloyd Russell-Moyle:** The Iran nuclear deal was a non-binding agreement. The Rwanda deal, which includes spending and money commitments, is a non-binding agreement. These are all non-binding agreements, but they are of significant political consequence. Governments have traditionally come to the House to give a statement on some of these things, which is quite right. Equally, the Department for Business and Trade has lauded its non-binding agreements with US states, and that has been very positive.

Why should the public not expect—at least for political agreements—to be able to go on a website to see those agreements, rather than an ad hoc situation? They can do that with legislation, they can do it with White Papers and they can do it with treaties, but they cannot do it with these significant political international statements. Is it right that the public cannot see what Ministers are doing on their behalf?

David Rutley: I will let DBT come in on MOUs in the US, but the MOU with Rwanda was published and made fully transparent in April 2022 and there have been parliamentary debates. On bigger issues, as you say, there are often parliamentary engagements and oral statements, PQs, Committee hearings such as this. The Business and Trade Committee will no doubt have hearings on some of these bigger things.

Nigel Huddleston: I should say on the MOUs that, prior to signature, we go through the perfectly reasonable process of notifying the relevant Committees, and most of the goal—

- Q422 Lloyd Russell-Moyle:** We have just abolished one of the relevant committees.



HOUSE OF COMMONS

Nigel Huddleston: I am familiar with that, but we have the Business and Trade Committee now. Also, it is fairly transparent in what we have done and where we are going. I would go back to the point that, at least where it comes to the trade deals and MOUs with the US, they are not legally binding. They are political and economic statements, statements of co-operation, for example, to have more trade delegations going across, joint research on key areas and other things. Some involve the Government enabling the private sector to go off and do their thing.

I understand there is a slight difference between the MOUs that we are conducting and some of the other points you are making. I can say that, in the Departments I have worked in, officials have had a clear and good understanding of what MOUs existed, what has happened in the past and where we are. There is also a lot of gov.uk research, but I get the point you are making about a centralised database. I do not know whether it is necessary, given the other things, but I understand the point you are making.

Q423 **Lloyd Russell-Moyle:** You are saying that the Departments you have been in have a good understanding and recording system for these things, so it seems strange that it would cost more to do that centrally rather than ad hoc, Department by Department.

Nigel Huddleston: I would also say that, in this day and age, you can type "MOU" and the name of a Government Department and it will come up with a lot of them. Again, is there sufficient and easy access to understand what is there already versus going through the entire process of setting up another database? I understand the point you are making, but I would say that most of the information that I have come across when it comes to MOUs is easily accessible already.

Leonie Lambert: The accessibility of our MOU information to the public is important to us. We have a single, public-facing webpage that lists all of our US MOUs, from which you can link to the agreement, explainers and things like that. We have everything in one place on the US MOUs.

Lloyd Russell-Moyle: The US MOUs?

Leonie Lambert: I cannot speak for the central database.

Paul Berman: If I may say, your question is whether there should be a central database or whether it should be done departmentally. Our position is that these are things that Departments do. As I understand it, many of the instruments you mention are available on gov.uk, but you need to look at the departmental site in order to retrieve them. Our view would be that that is the place where you would go to look at what a Department is doing and what policies it is pursuing. That is the place to look at them because these fit within the political category.

It is not so much that Departments do not know what is going on. One would hope that every Department knows which policies it is pursuing, including with third countries. We would not take the position that it



HOUSE OF COMMONS

would necessarily be cost-effective to take this diverse range of political instruments and deal with them in the same way we deal with treaties.

- Q424 Lloyd Russell-Moyle:** It would worry me if I was making an agreement with a UK Government Department that I was making an agreement with only that Department and not the UK Government. I would assume that I am speaking with a UK Government representative, but I have no guarantee that the agreement will be shared cross-departmentally. If we think about climate change or human rights, these issues, on which MOUs have contained clauses, will be cross-cutting. There is no point agreeing something with one Government Department if it will be undermined by another Government Department. Does that not put the trust of the agreeing partner at risk if they are not secure that they are actually negotiating with the UK Government as a whole?

David Rutley: There is co-ordination across Departments. You rightly talk about the importance of these state-level MOUs. FCDO and DBT work incredibly closely on such instruments. They are joined at the hip and that is entirely appropriate. There is a lot of co-ordination that goes on. My experience—particularly on the trade dimension, and it is Nigel's lead—in my interactions across the US and other areas is that here are a lot of places that would want to do more deals with us.

The point you make is understandable, but it is not one that comes up in conversation. They are not worried about whether they are working with the UK Government. They know they are, and it is down to the Departments to co-ordinate with other Departments, which they do very well. I can assure you that, based on our experience, that joined-up, co-ordinated approach is in place.

- Q425 Lloyd Russell-Moyle:** You have told us these are political statements.

David Rutley: Not party political, though. That is important.

Lloyd Russell-Moyle: No, of course not party political, but political from the current Government and the current Administration of this country. With other political statements, such as White Papers, when a new Government come in, there is an expectation that they are no longer valid. Should our partners assume, because you are saying these are political and are not centrally agreed, that when a new Government or even a new Secretary of State come in, they are up for grabs for re-discussion?

Paul Berman: As the Minister said, they are not political in a party political sense.

Lloyd Russell-Moyle: Neither is a White Paper.

Paul Berman: There would be no assumption, either us in our dealing with another state or Department or them dealing with us, that these would necessarily lapse. There is nothing inherent in the notion of our conduct of international relations that any political statement will necessarily lapse the moment there is a change of Government. That can apply both to these informal instruments and to our general policy



HOUSE OF COMMONS

stances as well. It could be the case that, in certain circumstances, there is a change of political position and, therefore, one might revisit these political engagements, but it is not necessarily the case, any more than it would be with any other thing we do in pursuit of our international relations.

Q426 Lloyd Russell-Moyle: They have greater continuity than a White Paper, but they have less scrutiny in Parliament or in the public than a White Paper. They potentially put burdens and expectations on incoming Governments, but incoming Governments and Oppositions might not even know what those burdens and expectations are. Is that the right way to form a democracy?

David Rutley: The bigger issue, as we said, are discussed and made transparent to Parliament, and any incoming Government will have the opportunity to question the officials to understand what these documents are to inform their view. As I said, some of these will be on quite minor issues and there will not be any debate, but it is open to the Government to decide, given their relative priorities—and we all have limited time—whether it is appropriate or not to make changes to these NBIs.

Lloyd Russell-Moyle: You have to know whether they exist first.

Nigel Huddleston: I want to be clear that MOUs are not signed by one Department on behalf of another. There is extensive engagement between Government Departments. Believe me, no Minister can make a promise on behalf of another Minister without getting into trouble. There are clear processes at both ministerial level and, of course, in our high-calibre civil service to make sure there is co-operation and that, if we are making an agreement or promise on behalf of another Department, they are properly engaged.

Similarly, on your concern about continuity or knowing what a Department has promised, again, that is what the civil service is there for. When we have changes of Government, these things are very important. I have great confidence in the MOUs and in there being clarity in the understanding of the trade-related ones, particularly with the US. Also, I think they are so transparently beneficial that I would be extremely surprised if anybody put in their manifesto that they want to get rid of them, but that is a political decision.

Q427 Chair: A technical question, how would Parliament signal that it does not approve of a memorandum of understanding?

Nigel Huddleston: I can say from the trade side—I will let others comment here—there is frequently genuine support but also expressions of concern about detail and how we will assess the impact through a variety of channels, through Select Committees and questions, WPQs as well as oral questions. Letters also come to me frequently. I have had a large volume on US MOUs.

Chair: It was a slightly rhetorical question.

Q428 Lloyd Russell-Moyle: The recent abolition of the International Trade



HOUSE OF COMMONS

Committee, of which I was a member, following the machinery of government changes means that the Commons has lost the Committee carrying out its most focused scrutiny of international agreements. In fact, we know the Business and Trade Committee will not be scrutinising individual trade deals in the same manner that the International Trade Committee did because of its broader breadth and the requirement to deal with bigger issues. Would the Government support the creation of a dedicated cross-cutting Committee with overall responsibility for international agreement scrutiny, as there is in other legislatures?

David Rutley: I think we share the same view, as Nigel and I regularly talk about these things. We welcome scrutiny from this Committee and from the International Agreements Committee. When we say we welcome it, it is not always the easiest scrutiny that we get, but it is entirely appropriate for parliamentarians as well as Ministers. Ultimately, it is for Parliament to decide how to replicate any similar function in the Commons.

We think it would be better to engage with a single body. We already engage with the IAC in the Lords as a key body. Ultimately, it will be for Parliament to decide whether that is appropriate, and there are examples in Australia with the Joint Standing Committee on Treaties, for example. Again, I think that is something Select Committees will want to discuss themselves.

Nigel Huddleston: I am again in danger of answering a question that the Chair considers to be rhetorical. The very fact that we are having this discussion today proves that there are plenty of opportunities to scrutinise. I believe and understand that the Business and Trade Committee will have scrutiny of trade deals. It has a broader remit, absolutely, but I suspect it will still delve into the trade deals because they are quite high profile. That is for the Committee to decide. As David said, the structure of the Committees in Parliament is for Parliament to decide. We are open to ideas and suggestions, but it is not under the Government's control.

Q429 **Lloyd Russell-Moyle:** In principle, you have no objection to the idea of having a standalone Committee, a Sub-Committee or a Joint Committee with the other House to bring some scrutiny and clarity to international agreements?

David Rutley: That is again for Parliament to decide. I think what would be important is not to have a plethora. We are open to any scrutiny that we need but, if we want a responsive, transparent approach, I think it is better to have—

Q430 **Chair:** It is for the Government to bring forward a motion to set up Committees, so I think it has a lot to do with the Government.

David Rutley: As Ministers, what we are saying is that we would be open to that. Again, I think there would be quite a lot of debate between Select Committees, including between the Commons and the Lords. It is entirely appropriate for those Committees to have those conversations.



HOUSE OF COMMONS

Nigel Huddleston: If, for example, I was the Chair or a member of the Business and Trade Committee, I might have a very strong view about the idea of there being another Committee set up to review and investigate something that I considered my remit. Again, I would have great respect for the views and opinions of the Committee.

Q431 **Lloyd Russell-Moyle:** There are international treaties on climate change, and most trade treaties include large sections on agriculture—the EFRA Committee will quite rightly investigate the bits that are relevant to its thematic roles.

Someone who looks at the legality, the constitutional effects, the wider effects of binding Britain into a treaty, are you suggesting that is a role this Committee should do, or are you saying that Committees should pick it up on an ad hoc basis when they think something might be relevant? It is not a very co-ordinated approach, is it?

David Rutley: If I have it right, I think your initial question was whether there should be a Joint Committee. We are saying there are other countries that do that, and we would be open to exploring that idea.

Q432 **Lloyd Russell-Moyle:** If we put forward a suggestion in our report of either a cross-cutting Commons-only Committee or a Joint Committee with the Lords, and if that garnered broad support in the House, would the Government commit to bringing a motion forward? It is in your court.

David Rutley: I cannot speak for the whole Government, but I think I have said enough to indicate where it might head.

Q433 **Lloyd Russell-Moyle:** You think it is in our hands and we need to demonstrate our will to you?

David Rutley: I think you can demonstrate your will, and I am sure you will, because you already have in your questions. I think it is a broader conversation with other Committees, though, as Nigel highlighted. I think we have said enough, that we recognise this could even streamline the process, but this is part of a broader conversation.

Q434 **Lloyd Russell-Moyle:** In Australia, the centralised Committee will package bits out to ensure that the respective Committees get them.

Nigel Huddleston: We are open to ideas and suggestions.

Chair: A very wise answer at this juncture.

Q435 **Ronnie Cowan:** I have a question for the officials. What is the policy and the process for consulting with the devolved Administrations where international agreements involve or affect areas of devolved competence?

Leonie Lambert: On the trade side, we have established structures for engaging with the devolved Administrations at both ministerial and official level. At ministerial level, that takes the form of the Interministerial Group for Trade, which I think meets quarterly. It met most recently in May 2023, and I think it was chaired by the Minister sat next to me. That is supplemented by bilateral engagement on key



HOUSE OF COMMONS

moments. For example, when we announce that we have reached agreement to accede to CPTPP, there would be bilateral calls with the devolved Administrations specifically on that.

Ronnie Cowan: Between whom?

Leonie Lambert: Between Ministers and their counterparts.

Q436 **Ronnie Cowan:** Do you have a direct counterpart in the Scottish Government or the Welsh Government?

Leonie Lambert: Negotiating teams and trade teams have counterparts in the devolved Administrations.

Q437 **Ronnie Cowan:** Who is your counterpart in the Scottish Government?

Leonie Lambert: Mine? I am on the parliamentary side. I am not in a negotiating team. It would be for the negotiators to engage with their counterparts. The forum for official-level engagement is the Senior Officials Group. I think this meets every six to eight weeks. It has met about 30 times since it was established. That Senior Officials Group is a forum for discussing the breadth of trade policy and identifying where devolved interests lie.

Specifically on trade negotiations, we have around 20 policy forums or groups covering the different chapters and policy areas that are within a trade negotiation. They will meet roughly every four to eight weeks. They will discuss things like negotiator mandates and chapter texts as we go through negotiations, and that is the forum for the devolved Administrations to be consulted and to provide their views on those negotiating texts.

Q438 **Ronnie Cowan:** Are all the meetings happening within those timescales?

Leonie Lambert: I believe so, yes.

Paul Berman: Looking at practice and procedures across Government generally, the starting point is the International Relations Concordat, making clear that the UK Government must consult devolved Administrations about the formulation of the UK's position in international negotiations, both where they touch on devolved matters and where they touch on non-devolved matters impacting on devolved areas. We are very much aware that devolved Administrations are responsible for observing and implementing international obligations. That means devolved Administrations should be sent papers, invited to meetings and, where appropriate, included in negotiating teams.

That starting point is reinforced in the Foreign Office's guidance on practice and procedures. That has a section setting out the importance of consulting devolveds, and what we have done over recent years—following feedback from the IAC—is reinforce the provisions in the EM that deal with consultations with devolveds to make it clear that, when Departments are submitting treaties for scrutiny, they must set out very clearly and in detail whether it covers devolved matters or reserved



HOUSE OF COMMONS

matters with implications for devolved Administrations, or whether it has no devolved implications.

Again, talking generally across Government, at the end of negotiations the lead Department must notify the devolved Administrations of any new obligations that they have responsibility to implement. In practice, this is always the responsibility of the lead Department. They are the ones doing the negotiations and they are responsible for making sure the devolveds are consulted and involved as necessary. The Foreign Office is there to facilitate and support. There are meetings at ministerial level, of course, and also the Foreign Office holds quarterly senior official meetings with their devolved colleagues.

A couple of current examples might be helpful. We are currently negotiating, within the World Health Organisation, a pandemic preparedness treaty. There are meetings between the lead Departments, one of which is the Foreign Office and one of which is the DHSC, and devolved Administration officials before and after each negotiating body meeting to discuss progress and handling. They meet devolved Government officials to review successive drafts—those meetings have taken place—to look at what the treaty's impact might be on the feasibility for the respective health systems. Where devolved colleagues have not been able to attend, they have been invited to submit written feedback.

Q439 Ronnie Cowan: It all sounds very practical and laudable that all this has been considered, but is it actually happening in the real world? If you look at the 2021 Deloitte report, it was quite specific in saying that intergovernmental relationships were “not fit for purpose”. When you look at treaties—and I am now looking towards the Ministers—Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture in the Scottish Government, has said, “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”.

Mick Antoniw MS, Counsel General and Minister for the Constitution in the Welsh Government told us that, since leaving the EU, there have been no structures developed for engaging with devolved Governments. In particular, he highlighted that devolved Governments are often not involved at the formulation stage, so the voice in those areas of devolved competence is not heard until too late in the process. Those Government Ministers, who are at the heart of this, seem to be saying the exact opposite of what you just told me.

David Rutley: I was fortunate to meet Angus Robertson in Edinburgh a week ago. We were able to talk about a lot of different issues. I think it is fair to say that he believes—as I am sure you and most of the Committee



HOUSE OF COMMONS

believe—we have excellent officials in FCDO working very closely with the Scottish Government to promote Scottish interests. I was in front of the Scottish Affairs Committee on Monday, so I have been very close to what is happening in Scotland.

Q440 **Ronnie Cowan:** Do you think Angus has changed his mind?

David Rutley: No, not at all. Angus rarely changes his mind. I am sure he will fundamentally disagree. What I want to do is paint the context that there is a lot of engagement between FCDO—

Q441 **Ronnie Cowan:** Sorry, we are pushed for time. I want to cut across—

David Rutley: We are not that short of time. I was going to come on to say—

Ronnie Cowan: I have heard what the process is supposed to do. If you are telling me these meetings are taking place, that is fine.

David Rutley: We know there are intricate—

Ronnie Cowan: These are telling me it is not working.

Chair: If you could not speak across each other, it would be helpful.

Q442 **Ronnie Cowan:** Ministers are telling me, “This is not working.” Those are their words, not mine.

David Rutley: What I am trying to say is that there is engagement going on, there is a lot of activity. We have the Interministerial Standing Committee. We have also had the permanent secretary to the Scottish Government come to Abercrombie House to speak to FCDO officials to help them better understand the needs and desires of the Scottish Government, and he is also addressing our leadership group this week. There is a huge amount of engagement, and I am sure this issue will come up.

Another example that is worth mentioning is that Scottish Government officials spoke to the TCA Sanitary and Phytosanitary Committee to help get their views heard. There is a lot of engagement where Scottish Government views can be put into the system, but it is important to emphasise—as I did at SAC, too—that these are reserved matters. Treaties are reserved matters. There have to be mechanisms for these conversations to be had, and for the views of the Scottish Government to be put forward, but there are reserved and devolved matters, as we know, and they need to be respected.

Q443 **Ronnie Cowan:** If reserved matters have a direct effect on devolved countries, you would expect them to be at the table as part of the negotiation.

David Rutley: No. We would seek their input, but the negotiation is being done by the UK Government, which has the reserved powers. We have two Governments, with very clear responsibilities, working for the



HOUSE OF COMMONS

Scottish people. Sometimes individuals seek to blur those distinctions, but I am not one of them.

Q444 **Ronnie Cowan:** The Sewel convention, in the Scotland Act, says, "But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament." That still stands good when it comes to treaties.

David Rutley: The Sewel convention was important for devolved legislation, and that is about devolved matters. Treaties are not devolved.

Q445 **Ronnie Cowan:** If the treaty affects a devolved matter, you would expect that to happen, but if it does not directly affect a devolved matter, you would not.

David Rutley: Sorry, say that again one more time.

Ronnie Cowan: Are you saying that if it is a devolved matter, so if it affects education or transport, the Scottish Government would be at the negotiating table as part of that, but if it is not a devolved matter, they would not?

David Rutley: No, what I am saying is that it is important to hear the views of the Scottish Government, and there are mechanisms to hear those views, but negotiating treaties is a primary responsibility, as a reserved matter, for UK Government Ministers.

Q446 **Ronnie Cowan:** If you are negotiating a deal on whisky, would the Scottish Government be involved?

Nigel Huddleston: Maybe I can come in here. I think we are going to have to respectfully disagree on the current status of the constitutional settlement, because that is what you are getting at here. We are where we are. You disagree, we get that. However, on engagement and involvement when it comes to trade deals, there is extensive engagement and involvement. There are large numbers of people, including the civil service, whose job it is to focus on these things, and there is ongoing daily engagement as it relates to trade discussions.

I have personally had engagement with relevant Ministers in the DAs. We have the interministerial groups. Also, there is tonnes of ongoing engagement with officials. For example, for the Australia free trade deal alone, there were 25 interactions between the chief negotiator and the devolved Administrations during the discussions.

I respectfully disagree with the characterisation that there is no involvement and engagement. On the point about where the decisions are made, I understand the challenges you have, but that is the constitutional settlement we have at the moment. I recognise you are uncomfortable with it. Also, when it comes to things like whisky, I go back to the point I made at the very beginning: it is in our interest to sign deals that are in the economic interests of the UK.



HOUSE OF COMMONS

For example, Scottish whisky is a transparently obvious point where we are making huge strides, which is why I am disappointed to see that the Scottish Government have not supported the trade deals because, of course, they are beneficial to the Scottish economy and, particularly, Scottish whisky. It is important that we have this ongoing constructive engagement, but we are verging on the constitutional settlement and some political points here, rather than the nature of the scrutiny and co-operation that goes on between the devolved Administrations. Actually, it is far more extensive than you are characterising.

Chair: We always seek to avoid political points in this.

Q447 **Ronnie Cowan:** I am merely trying to investigate where this relationship goes. It is there in guidelines and in statute. I am not speaking out of turn, but what we have found on this Committee is that, very often, guidelines, conventions and memorandums of understanding are convenient when they suit people, but some particular individuals—certainly not our guests here—in the past have found it convenient to completely ignore guidelines, conventions and memorandums of understanding.

That is what these trade deals are wrapped up in, and you said it yourself in the round, Mr Huddleston, that it is nice to have that space to work in, and I absolutely get that, but if that space to work in is not adhered to by the right people, we can get ourselves into a situation where other devolved countries are being damaged by trade deals, and that is what the people I quoted, Angus Robertson and Mick Antoniw, are saying. They are saying that they do not feel they are being consulted early enough in the process to have an effect on the outcome of the treaty that they then have to implement in their countries.

Nigel Huddleston: I can assure you that there is extensive engagement with Vaughan in Wales and with Richard in Scotland. We have constructive, positive, friendly discussions because I want to seek their and their teams' engagement and involvement, and that is exactly what we are doing. On the economic impact, again, we sign deals that are in our interest. For example, the Australia, New Zealand and CPTPP deals are economically beneficial to every nation and region of the UK. That is one of the goals we seek.

Chair: On that note, I thank all our witnesses, particularly for co-ordinating their diaries to have Ministers and officials available at the same time. I am very grateful for that.