



HOUSE OF LORDS

Constitution Committee

Corrected oral evidence: The governance of the union: co-operation, consultation and legislative consent

Wednesday 28 February 2024

12 pm

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Baroness Finn; Lord Foulkes of Cumnock; Baroness Goldie; Lord Keen of Elie; Lord Strathclyde.

Evidence Session No. 1 Heard in Public Questions 1 - 10

Witness

[I](#): Professor Ciaran Martin, Professor of Practice in the Management of Public Organisations, Blavatnik School of Government, University of Oxford.

Examination of witness

Professor Ciaran Martin.

Q1 **The Chair:** Good morning. This morning the Constitution Committee is taking evidence from Professor Ciaran Martin in respect of its inquiry, "The governance of the union: consultation, co-operation and legislative consent". Good morning, Professor Martin. I am conscious you are joining us from Australia and we thank you very much for that. Welcome. We have a lot of questions we would like to put to you. I hope you have had some indication of the areas that we are interested in talking about. Before I launch into the first question, are there any opening comments that you would like to make?

Professor Ciaran Martin: Thank you for having me. Briefly, I very much welcome the committee's latest inquiry. Fundamentally, what I think about the current arrangements for managing intergovernmental relations is that an awful lot of it is about political tone and attitude.

I know that structures and processes will be of considerable interest to the committee—and those are essential—but I suspect we are in for a period where there is unlikely to be dramatic change in the workings of the devolution settlement either in the scope of its powers or in the way in which London relates to the devolved Administrations. In effect, it will be about what attitude both sides bring to those existing processes as well as some tweaks that might be made.

Q2 **The Chair:** In January 2022, we as a committee published our own report on the future of the union and respect and co-operation. More or less at the time that report was published, the new framework for intergovernmental relations was introduced, so we have not had time to evaluate the contribution from that new structure. That is what we are particularly, although not exclusively, interested in considering in this inquiry, which is going to be relatively short. It is likely to be an election year so one cannot drift too long in looking at issues.

We have had the opportunity of looking at your recent article for the Institute for Government. I noted the three competing models: the multinational, the muscular and the "muddle through". Our report probably landed us in the muddle-through regime. I am slightly conscious of that.

Perhaps I might open with this question: how effective are the new intergovernmental relations structures in maintaining and improving relationships between the UK Government and the Governments of the devolved nations? Within that, how effective are those structures as a mechanism for securing consultation and consent? Perhaps you could give us your views.

Professor Ciaran Martin: I will try to be brief. It is patchy. It is hard to know fully from the outside. I am a former practitioner so I used to know, albeit a decade out of date, how these things looked and felt from the inside.

You will have more reliable witnesses and those closer to the actual events, but I suspect and hear that, on day-to-day issues that do not always capture the media headlines, the new framework has had some modest and useful impact in a number of areas, but it has been rather overpowered by broader trends.

There are two. One is that there has always been an element of rhetorical contest and symbolic rivalry between some of the different devolved Administrations and the UK Government, but that has stepped up quite significantly. For example, the remarks made by the former Prime Minister, Mr Johnson, at the Covid inquiry about consciously not wanting to behave like a mini-EU is a very significant statement that, whatever you think of it, deserves serious debate. That is one thing.

Secondly, although this is not a conscious strategy on either side, we have seen the court case over the independence referendum, the Section 35 appeal by the Scottish Government over their gender reforms, and various other things. Political disagreements are being played out more in a very high-profile way in the courts. I am not sure that is a particularly positive development.

I am not saying it is wrong because ultimately that is what the courts are for, but the constitutional set-up, as elucidated by the various judgments, is pretty clear—I hesitate to say this, given the eminent experts on the committee—that whatever the political dynamics underpinning devolution, legally the Parliament in which you are sitting is supreme and sovereign, and everything else exists at its pleasure. Therefore, there is limited utility in referring all these things to court, because, in essence, they are political disagreements within what is a fairly clear legal framework.

To bring all that together, the review of intergovernmental relations and the reforms thereafter have had some useful and largely unseen administrative benefits, but, in terms of the wider health, for want of a better word, of the territorial constitution, they are perhaps overshadowed by larger trends of rhetorical and legal contestation.

The Chair: In effect, the efficacy of those new structures is going to be impacted by the wider debate and behaviours.

Professor Ciaran Martin: I think so. One theme that it would be interesting for me to explore and that it is worth reflecting on, if the committee is interested, is that there are huge aspects of state activity that are important but not particularly contentious. The frameworks can be useful for those.

If I think of my own previous work between 2014 and 2020 on cybersecurity, there could be huge devolved/reserved boundary issues there. It involves intelligence, which is clearly reserved; it involves policing, which is devolved in two of the devolved Administrations but fundamentally not in one other. These types of frameworks can help you

navigate things like that, away from some quite noisy politics. Overall, the politics have been quite noisy.

The Chair: In terms of your own experience or feeling on this—you may feel you do not want to go too far—and in terms of those participating in the intergovernmental structures and trying to a greater or lesser degree to make them work, when you say “patchy”, are there any particular areas of strength or weakness emerging in the design of those structures, notwithstanding the wider environment?

Professor Ciaran Martin: As I said in the paper, they are not designed to manage big UK-wide issues, which are reserved but have a massive UK-wide impact, such as immigration. In other areas, such as security, the arrangements tend to work well, although there are huge lessons from a prolonged crisis such as Covid about how they can be sustained over time. In some of the areas around funding, public service interfaces and so forth, they have been quite useful.

The Chair: Some people have commented that the structures are too complicated. Is that a fair observation or is that level of complication necessary?

Professor Ciaran Martin: I am reasonably agnostic about that. Certainly, shortcuts are possible and can be useful. There is not much risk of them not being complicated enough or detailed enough. They can be useful. Whatever the politics, this can act as a slight disincentive.

One of the minor contributory factors—but it is still a contributory factor—to this sense, which is common in these debates, that Whitehall public service departments do not get devolution is the fact that fulfilling some of the perceived obligations around consultation is not consistent with what normally happens in a ministerial department in Whitehall, which is the perceived need to move quickly.

Baroness Goldie: Professor Martin, good morning to you from London. I was very interested in the paper that you prepared for the Institute for Government. I did look at the three forms of unionism that you identified: multinational, muscular and muddling through. Was it the attraction of alliteration that you wanted three Ms?

Professor Ciaran Martin: There is a little bit of that. “Muddling through” has negative connotations, which perhaps it does not deserve. There is a certain virtue to the messiness of some of the arrangements and the organic way in which they have evolved over the last quarter of a century and indeed the way in which they evolved in the periods that gave rise to them. There was a certain stylistic temptation; I do concede that, yes.

Baroness Goldie: It might be kinder to look at it more from the perspective of pragmatism for both union and devolution.

Professor Ciaran Martin: Yes, I absolutely agree.

Baroness Goldie: These structures have been introduced. They are

embryonic. As you say, at the moment it is a little difficult to assess their efficacy. One option that swirls around is, if they do not work, would there be a case for placing these intergovernmental relations structures on a statutory footing? I wondered whether I could ask you to comment on how you would see that working. Would there be challenges? You referred earlier to resorting to the courts not necessarily being a positive development. If there were some form of statutory footing for these structures, could that create rigidity? Could it create delay? Would it cause an issue with enforcement?

Professor Ciaran Martin: Yes, broadly speaking. I start from quite a sceptical position on putting those arrangements into statute, for two broad reasons. You have more or less spelled out both of them in a similar way.

First, when you write something into statute, there is a lack of flexibility. We will miss something out. Bureaucracies make mistakes all the time; they do not foresee things. It is very hard to draft arrangements of that kind.

Secondly—this is my principal scepticism—what is the purpose of putting them into legislation? It is to give a greater requirement to comply. What is the mechanism for that? It is legal proceedings. Whether intentional or not, a primary consequence of putting it into statute is, inevitably, judicial contests between the Administrations. I am not sure that that would be particularly wise or beneficial.

As I said in my opening remarks, fundamentally there are legitimate political differences between the individual devolved Administrations—I am not saying they are a homogenous bloc—and the UK Government. There are tensions with the different approaches taken by the single-party Conservative Government in 2015. A future Government of a different party might do things differently. You are removing some of the flexibility and discretion from that.

Our system of public service and the discharge of public functions is very different from, say, the United States', where the explicit authority to do something needs to be cited at all times. We have the flexibility—this is where devolution has worked quite well—for people either at ministerial or senior official level to write a concordat on how to manage an emergency or do a terrorism response when an incident takes place in a devolved Administration, whatever it may be. There are good examples of that being done. Having a legal duty to comply might disincentivise that.

Lord Strathclyde: I very much agree with what you said about putting these things on a statutory footing exactly for the reasons that you gave. Earlier on, you talked about this being about political tone and attitude. You also said that these are very often political disagreements. You said that again most recently.

To guide the relationship between the devolved assemblies and the UK

Parliament and to make it work well, are you looking for more good will? In that respect, are the structures sufficiently robust to help make that good will work? If you always have a party—this is political—such as the SNP, which does not want devolution to work and wants independence, will it always try to find a way around it?

Professor Ciaran Martin: The last part of your question is extremely important. As an ex-UK Government practitioner, it was quite common to get criticism about London and the Whitehall machine not getting devolution.

When people talk about good will, particularly the London commentariat that took an interest in these matters, as I am sure you will remember well from your own time in office, it goes somewhat underreported that, by definition and perfectly legitimately in our system, the governing party in Scotland for the last nigh-on two decades has not wished for the outcome to be the successful operation of devolution. One of the two co-heads in Northern Ireland, now the Executive has been restored, is in a similar position, albeit with a very different background.

The fact that the exclusive leadership of one devolved Administration and the co-leadership of another are ultimately seeking, by democratic means, the end of the United Kingdom in its current form is quite a big bit of the backdrop here.

Setting that aside, difficult though that is, there is an aspect in which good will can make some of these arrangements work a bit better, but, as I said in the paper, most people would concede that the London Administration have not changed a great deal in response to devolution. It is understandable why that has happened, not least due to the lack of change of powers in England and so forth.

If you were looking at this very abstractly and theoretically, you might be looking for mechanisms where, in effect, the UK Government might on occasion make some quite significant compromises on UK-wide policy on the basis of some form of consultation with the devolved Administrations in a pretty systematic way. Our structures are not up to doing that.

Covid was one of the best illustrators of that. That is quite a significant leap. A lot of what we have been doing in looking at improving the structures has been pretty administrative and incremental. That is right because those have been the parameters. I would want to talk about quite a significant shift towards quite soft multinational unionism. Our current structures are not able to do that.

There are limits to how far good will will take you, for two reasons. The first is the one we started with, which is the ultimately separatist aspirations of some of the devolved leaderships. The other is a UK state that is geared up to have the final word.

The Chair: Let us move on to this issue of promoting collaboration and perhaps look at the experience from common frameworks.

Q3 Baroness Andrews: Good morning, Professor Martin. If the structures do not work and the good will is not there, I can see why you use the term “muddling through”, although it is usually presented as: “the British genius for muddling through”. There is something to be said for that and for making a virtue out of it.

Following on from the good will point, after the Dunlop review, which comes directly under your heading of “muddling through”, the UK Government and the devolved Administrations did commit themselves to promoting collaboration and the avoidance of disagreements. In your excellent paper, you talk about the Dunlop review promoting a climate of “generous, capable and respectful” approaches.

To what extent has that worked in relation to, in particular, the common frameworks and collaboration above and beyond that? You do not mention common frameworks in your paper. I would like to follow through with a supplementary on that. But in the first instance, has collaboration improved? Could you give us some instances of where the DAs may have taken the initiative successfully?

Professor Ciaran Martin: First of all, with both you and Baroness Goldie pulling me up on this “muddling through” term, I may have to revise the paper. Genuinely, it is a legitimate and probably the most likely course that the state will take for the next few years. I probably ought to rethink my terminology.

In terms of the deep mechanics of devolution, I am a little distant from them. You will have better-qualified witnesses to talk about how they are working. My suspicion, and what I see and hear from the outside, is that they have probably helped with a couple of things. First, they have defused some potential tensions or at least taken the sting out of some potentially quite serious disagreements between the devolved Administrations and London on things such as funding and so forth. In some areas of economic co-operation, such as the various city deals and their successors, they have helped reasonably well.

Lord Dunlop can, and will, speak for himself. The review and the measures that have come out of it, including the declaration of willingness to co-operate, are very much within the framework of the current devolution settlement. They are trying to tweak it at the margins to optimise it and make it work a little better.

Of course, the shock of the pandemic is probably something that we should look at closely as it recedes a little bit in the rearview mirror. The inquiry is looking into it a little bit. So much of the work that we are talking about preceded the pandemic.

Like all lessons from the pandemic, some of it you can set to one side as the sheer one-off nature of that crisis and its infrequency, but there are wider lessons about public service co-ordination, awareness, dispute resolution mechanisms, and so on, that are worth looking into. Covid was a huge external shock for the devolution system, just as it was for all

sorts of other facets of national life. It is worth having a look at those lessons and impacts as well.

Baroness Andrews: If I might push forward on the common frameworks, you could be forgiven for not knowing a great deal about them because they were highly technical although politically very high in importance. Ministers have assured us that they have assisted, or should assist, collaboration between Whitehall and the other legislatures. Do you have any evidence for that?

Professor Ciaran Martin: I do not, but that is not because I want to be seen as condemning it. I simply am not close enough to those outcomes. I am very sorry, Lady Andrews. I do not want to answer that in a way that would be waffly and misleading. You can get better answers from other witnesses. If you do not mind, respectfully, I will not answer. The fact I do not know off the top of my head may in itself be revealing, but that is for you to decide.

Baroness Andrews: I completely respect that position. You raised the issue of Whitehall not getting devolution. Of course, the common frameworks have been an exercise in forcing Whitehall to get devolution because they are such innovative mechanisms. There has been a high degree of official collaboration but not the ministerial leadership that we would have hoped for, so they have not fulfilled some of their potential. In the scheme of things it is important to reference that and for us to put that on the record, but I completely respect that it has not always been easy to follow the process.

Baroness Finn: Professor Martin, it is lovely to see you. I was just wondering about something, given your former background in cybersecurity. One observation has been that, on security issues, intergovernmental relations work rather well. That is a general observation that has come through. What is your perception of that?

Professor Ciaran Martin: I would concur. It is an understudied part of this set of arrangements, which does not rely hugely on formal frameworks but has arisen out of necessity.

I was in a position in the Cabinet Office in 2007, in the early days of both the Gordon Brown premiership and the SNP minority Administration of 2007-11. At that time we had the Glasgow Airport terrorist attack. That was within the first small number of weeks of both Administrations. To the surprise of many, the systems and relationships that could have gone haywire under those arrangements—given the devolution of policing, with national security policing being reserved, et cetera—did not. The good will, the collaboration, the maintaining and respecting of confidences and so forth worked as well as it would have if the attack had happened south of the border.

That was a period, sadly, when we were getting very used to managing all sorts of terrorist incidents and alerts. There were modest additional complexities because, first, this was in Scotland, and, secondly, for the

first time, given the history of devolution, the Scottish Government were not Labour-led and was therefore not the same as the party in power in London. It worked very smoothly.

How did that work? The security services were keen to brief Scottish Ministers as fully as they felt they could. Police leaders did not worry too much about what was reserved and what was devolved. They just stuck to the task at hand. There was a serious purpose about it.

In the perhaps less intense atmosphere of doing cybersecurity across the UK for six and a half years, I had a similar experience. If you take things such as the protection of critical infrastructure, there are parts of energy resilience that are very much reserved, but there are other parts, including some aspects of policing and so on, that are devolved.

You could spend a lot of time saying who did what, but, with the permission of UK Conservative Ministers, I and my team would go to the Sturgeon Administration, the power-sharing arrangement in Northern Ireland and the Labour Administration in Wales and have a fairly broad discussion about cyber threats to the nation as a whole, without dwelling too much on what was where in the devolved/reserved boundary. We sought to establish trust. We set up forums that had both the UK Government and the devolved Governments. Those programmes worked really rather well.

One of the luxuries of that position, as I said earlier, was that they were subjects of intense seriousness but tended not to divide on partisan lines. As I said, the pandemic is important to study in this respect. In the first weeks of the pandemic, we saw that type of collaboration and exchange, a unity of purpose across the different health systems and a desire for a four-nation approach. It took a while for that to unravel.

There are important lessons to learn from matters of national security, health, cyber and tech security, and counterterrorism, where, not completely divorced from some of the intergovernmental structures but not completely reliant on them either, there has been some very useful intergovernmental working.

Baroness Finn: I have one small question. When you say this was working very well, were the agreements mainly between civil servants in the Administrations or were they Minister-led?

Professor Ciaran Martin: They were a kind of hybrid. The way they worked was that national security agencies would have a direct relationship with devolved Ministers with the explicit permission of UK Ministers.

For example, I recall a conversation with a Conservative Home Secretary in the light of the very serious 2017 WannaCry cyberattack that affected the NHS very badly in England and Scotland but not Wales for coincidental reasons. In the recovery from and aftermath of that, we were improving the defences, learning lessons and all that standard and

useful post-crisis work. We were doing quite a lot with the NHS in England. That was uncontentious and worked in the normal ways.

I remember having explicit conversations with UK Ministers about this. Specifically, I remember saying to the Home Secretary, "We think we need to go to see the Scottish Cabinet". They chose not to field a Minister for those discussions, just because they did not think it would add any particular value, but they were very happy to give their blessing and explicit sponsorship.

As you know, the National Cyber Security Centre is part of GCHQ so everything it does is not devolved. But it was very happy for that direct relationship to be authorised and reported back to it. In a sense, we were giving direct support to the devolved Administrations from the national security part of the British state.

Lord Foulkes of Cumnock: Professor Martin, can I return to the point that Baroness Andrews raised about common frameworks? On that committee, we found one of the problems was that the UK Government had to both look after English interests and UK interests, which proved very difficult. At the same time, the Scottish Government tried to pretend that the UK Government were an English Government and in fact even a colonial Government. You do not mention either of these in your article. I wondered why.

Professor Ciaran Martin: On the common frameworks, it was partly because it was not the purpose of what I was writing and researching to delve into some of the deep detail of aspects of intergovernmental working.

This is made quite difficult—again, the pandemic brought this out—by the limitations of the, frankly, slightly awkward nature of the modern UK state. It has a whole series of UK-wide functions; another set of functions where its powers, largely but not exclusively, extend only to England; and a set of hybrid functions—the Home Office is a good example. Although we criticise bureaucracies, often they are acting rationally. It is really hard for UK ministries to act in those multiple different ways.

Lord Foulkes of Cumnock: That brings me to one point that you do raise in your article. You say, "England neither wants its own parliament nor wants to be divided up into regions". When I started out in politics, Scotland did not want its own Parliament; the Welsh were totally against it and did not even think about it. It was politicians who changed that because circumstances change.

With mayors such as Andy Burnham and a number of others, there is surely now a growing sense of desire for regional government in England. We should be working on that. That is something that we should be picking up and not just sitting back and saying, "It is not there".

Professor Ciaran Martin: Powerful and high-profile mayoralties have been established in London, Manchester, the West Midlands and plenty of

other places. This is a very political discussion; you will have your own views on this, and you may well strongly disagree with me. The debate on devolution within England is fundamentally about centralisation versus localisation of power, money, activity and all of that.

The debate over devolution in Scotland, Wales and Northern Ireland—Northern Ireland has its own set of issues, given the aspiration to join another state and the British state's acceptance of Northern Ireland's right to do that—has all of that debate and dispute about what should be centralised and what should be localised, but it also has a huge dollop of national identity that is not present in the English regional debate. They are two quite different sets of discussions.

Lord Foulkes of Cumnock: I have one last point. We could have a senate of the nations and regions, which would replace this anachronistic House in which I am sitting at the moment. That would help to keep the union together, would it not?

The Chair: That is not before us at the moment.

Professor Ciaran Martin: There will be so many different views on that.

The Chair: We have expressed views, as the Constitution Committee, about the constitutional settlement in England.

Professor Ciaran Martin: I am sure you have.

The Chair: That is very important, but it is not strictly before us today. Lord Anderson will take us to the issue of dispute resolution mechanisms within the intergovernmental relations structure.

Q4 **Lord Anderson of Ipswich:** Welcome, Professor Martin. I am afraid we are coming right back down to earth. You will be aware of the dispute resolution mechanism provided for in the new intergovernmental relations structure, described as a process of last resort. It allows disputes, as I understand it, to be referred to the IGR Secretariat, with possible escalation to the Interministerial Standing Committee. It might be chaired by a neutral Minister or by an independent third party and there might be the possibility of non-binding third-party advice or even mediation. Are you in a position to tell us anything about how that mechanism operates in practice and whether it is effective?

Professor Ciaran Martin: Honestly, no. It was not around in my time. To pose a question back to you, let us think through to what extent that type of very formal mechanism is ever going to cut it, given the intensity with which some of these things are contested.

We talked a little earlier about some of those areas of co-operation in public services and so on, where you need mechanisms and so forth. If you take some of the huge disputes that have occurred in this decade alone over independence referendum powers, gender recognition laws, aspects of the Covid pandemic and so forth, in one sense I have some sympathy with the argument that is common across all sorts of areas of

constitutional practice in the UK at the minute that politics has to be given space to take its course. You cannot overly systematise the resolution of major political disputes. I cannot think of any framework that would triumph over the sometimes great political contests that take place over these things.

It is moderately useful to have a formal process whereby, if something has gone badly wrong in the administration of intergovernmental affairs, people can look at it and be trusted to be impartial. That can be the dispute resolution mechanism.

I do not want to overload it with weight that it cannot bear. I do not think it can bear that weight. Fundamentally, these are huge political disputes between senior politicians leading serious organisations. You cannot just put that through a committee of civil servants.

Lord Anderson of Ipswich: You do not think that a process of this kind, which you might call quasi-legal in nature, could help produce the result, which you would consider desirable and so would I, of reducing the extent to which these issues are contested in real legal proceedings?

Professor Ciaran Martin: As I say, they can be useful for technical issues. I will give you an example from very early in my career at the Treasury. The UK Treasury—in fact, me personally—made some minor mistakes in calculations of various things and so forth. It led to quite a significant and very publicly visible dispute with the Northern Ireland Executive. Having some form of mutually trusted mechanism for establishing what really happened and where fairness lies and so forth would be quite useful for that sort of thing. But if you look at the big themes that have dominated the debates on devolution and the balance of power between London and Edinburgh, Cardiff and Belfast over the last five or 10 years, I do not think it could bear that weight, if I am honest.

The Chair: Can we turn to the Northern Ireland Executive? It has been largely absent during the period in which the intergovernmental structures have been working.

Q5 **Baroness Finn:** The absence of the Northern Ireland Executive has led to a lack of stability and greater uncertainty in intergovernmental relations. What will the implications of the restoration of the Northern Ireland Executive be? Will it be important in restoring stability?

Professor Ciaran Martin: Clearly, the event of restoration is hugely important in restoring stability to the constitutional settlement in Northern Ireland. Its impact on devolution and the matters we are discussing will very much depend on the political approach taken both in London and between the various parties in Belfast.

What implication does the restoration of devolution in Northern Ireland have on these processes and this issue? Formally, you could argue that it has none at all, or very little. The Assembly and the institutions have been suspended for nigh-on 40% of the time since they were brought into being. We have got used to operating a devolution settlement that is

asymmetric and involves frequent temporary suspension of the Northern Ireland institutions.

Quite frankly, at the risk of going beyond my technocratic core, as someone who grew up there, Northern Ireland, economically and in terms of public services, is in a pretty rough place right now. Most people who are familiar with the place would say that. There are plenty of good things going on, but it is in a tough spot.

If we keep things as they are, if we rub through and have ways of managing the odd tension and every so often there is a financial package and so forth, that will have an effect and some of that might be quite positive. In terms of the strategic challenge for Northern Ireland, to go back to the exchange with Lord Strathclyde, will there be good will, as per our exchange on, say, cybersecurity? Will there be a willingness to look beyond quite narrow disputes about devolved/reserved boundaries and so forth, knock some heads together and do some quite interesting joint initiatives and so on? I just do not know.

New Decade, New Approach was very promising, but the wider post-Brexit rows ended up with the collapse of the Executive. It is quite interesting. The UK Government had a serious strategy for Northern Ireland that involves collaboration with the Executive, but it has not yet been given a proper chance.

I would encourage whoever is in power after the election to think seriously about some form of quite ambitious joint programme with the Northern Ireland Executive because there are some really deep-seated problems that need to be tackled. It does not look like many people have confidence in the Executive's ability to tackle them alone.

Q6 Lord Beith: Let us leave Northern Ireland aside for a moment, for the reasons that you have just been elucidating. In relation to Scotland and Wales, what are the territorial departments for? What should they be doing more of or less of? What is the relative value of the territorial department being the route through which matters are discussed and departments simply talking to each other because they each deal with agriculture, public health or whatever, and have substantive issues on which they have expertise to compare between the devolved Administration and the UK Administration?

Professor Ciaran Martin: You are right to exclude Northern Ireland from this conversation, not just because of the unique political circumstances. The size of the department relative to Scotland Office and the Wales Office shows you what the comparator looks like. You have a considerably larger bureaucracy, which, not least because of the frequent suspension of the institutions, has been charged with having a strategic oversight and administrative oversight of everything for over 40% of the last two and a half decades.

For as long as we retain the Scotland Office and the Wales Office in their current sizes, their role and function will be very limited. I hesitate with a

former Scotland Secretary on the committee. There is something around voices in Cabinet; there is something around single points of contact for relations with the devolved Administrations.

So much of the action or activity takes place bilaterally between departments. The role of the Secretary of State for Scotland or the head of the Scotland Office, or a senior civil servant therein, is very tough to occupy because of those limitations. I would concur with that.

Lord Foulkes of Cumnock: I would not concur with that. Unfortunately, that does not account for the important diplomatic role. When I was Minister of State for Scotland, I spent day after day talking to Scottish Ministers. That kind of informal relationship, particularly when departments do not necessarily coincide, is surely important for keeping good personal relationships. Is it not the case, Professor, that sometimes personal relationships and personal contacts are much more important in politics than things written down on a piece of paper?

Professor Ciaran Martin: That is a completely fair challenge. You could augment what you have said in terms of the more strategic point.

As I said in the paper, one of my criticisms, which is also a self-criticism of my own time as a senior civil servant trying to assist Ministers in these matters, is that we did not step back and look strategically at what the state of play was in Scotland or in Wales. We did it in Northern Ireland, for all sorts of reasons. Where you were doing that, particularly because it is a fundamentally political question, you would want the Minister or Secretary of State to be doing that. That is really important.

We can be quite bad at carving out time to think about strategy, to think about the overall big-picture health of the relationship and so on. As I said in the paper, the currency of Whitehall and government is money and activity. We do not set up the territorial offices to play in that space, so there will be limitations.

There is an important role for personal relationships, as you say. I saw that in my own time in office. I would go beyond that and say that there is also an important role for making a strategic assessment of how the devolution settlement is working.

Lord Foulkes of Cumnock: Is it not also important to make sure that Scotland's voice and Wales's voice are heard at the Cabinet table, unencumbered by a particular portfolio, such as agriculture, defence or whatever?

Professor Ciaran Martin: Yes. That has been important in the last 14 years in particular. Historically, if you take the 300-plus years of the Anglo-Scottish union, we have had an unusual period since 2010 and particularly since the SNP landslide in 2015. Neither Front Bench is heavily populated with MPs sitting for Scottish constituencies. Of course, that makes a difference to the discourse.

I really should not be saying this because I am speaking in front of people who have held elected office in Scotland and elsewhere, but I joined the Civil Service in the mid-1990s, at the tail end of the Major Administration and the beginning of the Labour years. Ministers in all sorts of departments, even at the end of the Major Administration, were sitting in Scottish seats, and certainly in the Blair-Brown Administration. The removal of all that was a big change in the dynamic of our politics. It was always the case in Northern Ireland, at least in most of our lifetimes, but it has been a huge change in the dynamic vis-à-vis Scotland.

Baroness Goldie: Professor Martin, I am coming from somewhere near to where Lord Foulkes is, in that I do think there is a need for the territorial offices. Again, I want to exclude Northern Ireland from the remarks I am making and the questions I am going to ask.

I do not have elected office in Scotland, but I was an opposition politician in the Scottish Parliament for 17 years and I then had the privilege of being a Minister of State at the Ministry of Defence down in Westminster for over four years. It gave me quite an interesting cameo of how the territorial offices were approached and how they operated.

I immediately detected that the approach has differed with different incumbents, even if those incumbents are in the same party. This leads me to think that the role of the territorial offices has become rather opaque. There does not seem to be any consistency as to perhaps how they should be trying to discharge their responsibilities, although they are all individually doing their level best to do that in a responsible fashion.

I simply wonder whether the new structures for intergovernmental relations inadvertently are having an unintended consequence. By determining how Westminster departments should engage with devolved legislators, are we making life more opaque for the territorial offices?

Professor Ciaran Martin: There is something in that. To go back to the start of your question, one thing we have not explored in this discussion about the territorial offices—it goes back to Lord Strathclyde's point about good will on the devolved side—is the fact that, again setting aside Northern Ireland, in Scotland under SNP Administrations and even in Wales under unionist Administrations there is an incentive, almost, not to allow the relationship with the UK Government to be owned by the Secretary of State for Scotland or the Secretary of State for Wales.

You could argue that it would be convenient for the Prime Minister of the day in Downing Street to allow that to happen, but it is in the interests of the devolved Administrations for that not to be the case. That is partly why I said it was quite a tough job.

The period between 2011 and the September 2014 independence referendum was a pretty unusual and extraordinary period. Because of the literally existential nature of the challenge at that time, you could see that, in Downing Street, in the Cabinet Office and across the Cabinet table, the Government were looking to the Scotland Office for coherence and to try to establish relationships within the rest of the state, in terms

of the devolved functions, useful co-operation, and—I would be fascinated to hear more about your own experience in the Ministry of Defence, which is a reserved department with a significant presence in Scotland—the efficacy, power and contribution of UK-wide departments such as the Ministry of Defence or the Department for Work and Pensions.

I accept the premise of what you are saying. I am afraid I am struggling with a prescription for improving this. Again, this is why Boris Johnson’s remark about being a mini-EU is quite important. In our asymmetric system, for better or worse, the leaders of the devolved Administrations will be seeking their interaction at Head of Government level and then on specific transactions with the people controlling the purse strings of the policies; that is, departmental Secretaries of State. They will be incentivised to bypass the people that the British state has set up to try to own the relationship. That is a really knotty and difficult thing to work through.

I do not quite know how to do it, apart from, to go back to the phrase that we are all debating—muddling through.

Baroness Goldie: Pragmatic solutions, Professor.

Professor Ciaran Martin: Pragmatic solutions—thank you. I stand corrected again.

Q7 **The Chair:** Professor Martin, at one point in your paper you turn to the changes to the balance between reserved and devolved matters. We have a series of linked questions on this. Let me open—there are others who want to follow on—with a wider question.

To what extent are the devolved Administrations consulted prior to legislation being introduced in the UK Parliament that alters the executive competences of the devolved Ministers? In your view, what impact has this had on the executive competences of the devolved Ministers? We want to know about prior consultation and any impact on Ministers.

Professor Ciaran Martin: My own view—I am sure you will have heard different views—is that, when it directly impacts on competences, not least because it becomes publicly obvious, there is consultation and discussion. The courtesy and timeliness of that can vary quite significantly.

The issues and tensions have arisen because of the decisions taken, not fundamentally because of the processes that led to those decisions. Fundamentally, we are talking about EU withdrawal here. For better or worse, there was a reasonably stable system that had coped with various largely technical but also much more significant modifications of power, most notably the Section 30 order for the Scottish referendum in 2014.

The external shock of having a series of powers that were vested at EU-wide level in Brussels being repatriated, deciding where to put them and

the impact of that on the devolved/reserved competence balance was always going to lead to significant tensions, and so it proved.

Could the consultations have been better? I am sure they could have been in some cases, but it is more to do with the fact that decisions were taken that were not to the liking of the Administrations in Edinburgh and Cardiff than the process that led to them.

Q8 Lord Keen of Elie: Good day, Professor. There are various aspects of the Sewel convention that the committee has been concerned about. Has it been eroded? Can it be strengthened? Is it undermined by the extensive use of secondary legislation?

I would like to explore with you a more fundamental proposition, which is that the best thing to do with the Sewel convention would be to abolish it, remove it altogether and replace it with an express statutory provision that Westminster will not legislate in devolved areas.

You opened with the observation that Westminster is sovereign and, as you put it, has the final word. That is legality rather than reality, as we know from examples such as the Statute of Westminster 1931. You could have a mechanism such as the Human Rights Act mechanism whereby, if Westminster decided to depart from that provision, there could be a declaration of incompatibility with the devolved settlement.

What lies behind this, I suggest, is the need for Westminster to wake up to the idea that devolution exists and should be acknowledged properly, rather than to proceed on the basis of a Sewel convention that implies a lack of trust in the competence of the devolved Administrations. Could you express your views on that?

Professor Ciaran Martin: It is a question of the most fundamental importance. The way you have framed it is a fundamental reorganisation of the state and it therefore should be debated as such. It would not be the hardest form of quasi-federalism that the UK could come up with, but it would be a significant change.

Let me put it this way. I was very struck by your invocation of the Statute of Westminster. I am talking to you from Australia, which, in anybody's reasonable interpretation, is a fully sovereign country that shares a Head of State by voluntary arrangement, and that is about it.

First, if we are to have that, if that is the route that the UK wishes to go down, it needs to be a really fulsome, detailed, transparent and involved debate because it is a fundamental constitutional change. I would not have your expertise on how to frame such a statute that would have a Statute of Westminster-type impact, but, were one to be drafted and it succeeded, we would have fundamentally changed the nature of the devolution settlement. We have had guarantees that the Scottish Parliament can be ended only by further referendum and so forth.

We saw, with the unexpected result in 2016 in the Brexit referendum and the various travails that ensued, that some things that we thought were major constitutional conventions and procedures could be circumvented,

for want of a better word. They could be modified and adapted to deal with these types of situations. What you are proposing means that there would not be that flexibility. It would be a significant limitation of the practical sovereignty of the Westminster Parliament.

If we are going to do that, that is a big step towards what I call multinational unionism in the paper. If you want to make that argument, let us do it. I know I am waffling a bit, so I apologise, but my main point is that we should not present this as a minor technical modification. That is a big deal, and we should debate it fully, as such.

Lord Keen of Elie: You referred in your paper to multilateral nationalism. Do you consider that that would be a more stable model, going forward, than the present devolved settlement, subject to a Sewel convention?

Professor Ciaran Martin: I lean towards that. I keep coming back in this discussion to these huge political trends and core issues of national identity, and the fact that, when the modern British state was put together, it retained very strong national identities within the nation state of the United Kingdom.

Given that devolution is a fact but one that perhaps, as you are leaning towards, Westminster and Whitehall have not fully been forced to accept, it may be a way of stabilising it. However, from the point of view of the stability of the United Kingdom, the muscular unionist counter to that would be, "What is the point of the central British state?" That needs to be answered.

In terms of moving towards quasi-federal, the United States is the classic example. The United States is a federal society, not because it wished to decentralise power but because it wished to centralise it. It came from powerful states. The vision of having a federal structure was to make sure that there was something to bind the nation together and give it core functions and identity beyond the collection of states that made it up. From the point of view of the UK as a whole, what the point of the British state would then be really needs very careful consideration and strategic thinking, if you are going to go down that road.

Fundamentally, the population and economic imbalances of the UK make this a very hard problem to crack, but I do lean towards what we are talking about, yes.

Baroness Goldie: I am not up on my noble and learned friend Lord Keen's mountain. It is a bit breezy up there. I am nearer to ground level. On the Sewel motion procedure, Professor Martin, I had experience in the Scottish Parliament. I was double-checking this, because our clerk gave us some data. I was in it from 1999 to May 2016, and I see in that time that we had 153 Sewel Motions, only one of which was withheld.

It was my experience that these Motions were largely introduced because they offered mutual benefit. Again, it was about pragmatism. They said

to the Scottish Parliament, and to the Scottish Government, "Look, we are going to do something at Westminster. It slightly encroaches on your territory. Are you happy with that?" Universally, as we can see from the data, the Scottish Government and the Scottish Parliament said, "Yes, we are happy with that. It saves us doing individual legislation and it covers an area we think needs to be covered".

From then on, we had what I think we all understand as being extraordinary pressures from the Brexit process. Subsequently, that has led to legislation that has certainly provoked reaction from the Scottish Government in terms of how Sewel Motions are being deployed. Do you think it is the case that there is nothing inherently wrong with the structure? Where we get into the area of conflict is because we go back to raw politics and we have sharply diverging views as to what a Westminster Government think is appropriate, and equally diverging views as to, in the case of the Scottish Government, what they think is appropriate. Does that, therefore, point not so much to a change in mechanism but to the need to work on a much more intelligent and mutually respectful relationship between the two Governments?

Professor Ciaran Martin: I certainly agree with your analysis of the history of the way the convention has evolved and moved from being something that initially was seen to work very well to something that is now very contested.

Looking back on my own period dealing with constitutional affairs, I felt this very strongly. The Westminster system, and indeed the Administrations of Scotland, Wales and Northern Ireland, really wanted it to work, and it was working. There were fairly minor but important areas where there were fundamentally technocratic issues, and we said, "Something has changed"—it could be new technology, some market crisis or whatever—"In 1998, we did not think this through or plan for this, so we need to tweak it a bit".

Everybody was incentivised to produce the sorts of outcomes that you referred to, with the sole exception, which was a pretty extraordinary record. It was a fundamentally technocratic exercise, and then, of course, Brexit was a complete reordering of the state. Whether you like it or not, that is what it was. I just think it was not designed to cope with that sort of thing.

One of the things that you may not agree with—so far, I have agreed with everything you have said analytically, Lady Goldie—is, for example, the muscular unionist critique of this period that Westminster was very permissive and indulgent of the devolved Administrations. I might dispute that personally, but we were very keen in the pre-2016 period to make sure that we reached agreements and so forth. Devolution was going only in one direction. There were continuous extensions of powers and so forth. You then had Brexit, which, as we said, was not really designed for this.

Since then, you have had—I would not say a more concerted muscular approach from the Government—but certainly occasions, both rhetorically and practically, where the UK Government have said, “We are not going to let the devolved Administrations have every argument their own way. We are happy to confront them. We are happy to invoke Section 35 for the first time”, et cetera. I know that is not a Sewel issue. The underlying atmospherics have changed a little as well.

The reason I mention that is because it is important in terms of whether your recommendation holds, because if the Westminster Government are broadly comfortable with the way the devolution settlement is working, then your recommendation can work. If they are fundamentally uneasy about it, and perhaps think that devolution has gone a bit far or that, in the post-Brexit UK, we need to recalibrate this a little bit, then it is a tougher challenge. You may or may not agree with that.

The Chair: Just staying with that latter point, in your paper, you do not mince your words. You say that the United Kingdom Internal Market Act “laid waste” to the Sewel convention and changed the political discourse. Let us assume, for the moment, the Westminster political mood is to stay with the “muddle through” model. What would be the key initiatives or changes that could allow a retreat from that laid-to-waste position?

Professor Ciaran Martin: Although I am not particularly fond of the phrase, mechanisms for this so-called shared government, as opposed to co-ordinating different responsibilities, are quite interesting.

If our systems are just about, “What have you got the power to do? What have we got the power to do?” and so on, I understand why that has taken shape, why the original devolution settlement evolved as it did, and why, in the era of the SNP Government and Sinn Féin co-leadership of the Northern Ireland Executive, that is a model.

My last seven years in government were spent dealing with a subject on which, if you tried to work out what was devolved, what was reserved and how to co-ordinate it, it just would not work. You would spend all your time doing that, and you still would not agree.

Are there areas where you ask the devolved Governments to act like partners and in good faith, to show good will, and put in place mechanisms, whether it is security, managing some of the aspects of immigration or whatever it may be, that allow you to have some UK forums for serious issues? That is one of the areas in which you could defuse it.

National security involves taking a lot of contentious powers but using them very judiciously. This happens a lot in national security issues. In terms of UK Internal Market Act, the Government caused a huge ruckus by taking the power in the first place, but they have not overused it, in my view. If you take the devolution settlement as a whole, I do not object to the Section 35 power; nor do I object to its use. It is a design,

not a bug, of the system, but it has been used once in two and a half decades.

This comes back to the exchange with Baroness Finn about Northern Ireland. We should look at initiatives and at where there may be areas of fruitful collaboration, where you do not get too hung up on devolved/reserved boundaries, and then use the exceptional powers that have been taken somewhat judiciously. Those are the areas that could perhaps begin to shore up confidence. That is at the heart of what I have been talking about in this hearing.

I admit—and I apologise—that, in terms of a detailed analysis of the intricacies of the 2024 system of managing intergovernmental relations, I am not going to be the expert on that. I am four years out of the Civil Service and 10 years out of the constitution directorate. There are larger forces at play in that shared space and in terms of the overall constitutional balance, which are really important in determining how this pans out in the future.

Q9 Lord Anderson of Ipswich: My question is a rather mundane one. As you well know, the devolution guidance notes govern the working arrangements between the UK Government and the devolved Administrations, particularly in relation to consultation. My understanding is that some of those guidance notes have not been updated, probably since you were constitution director in the Cabinet Office. Do you think they need to be updated? If so, do you have any particular priorities for updating?

Professor Ciaran Martin: This goes back to our earlier exchange, Lord Anderson. Even when I was there, in terms of the prominence of these documents as living, breathing rules that people abided by, often these things look more important externally than they feel internally, if I am completely honest. They are written at particular times, when these new arrangements come into force. I would be interested to see, for example, if you were to survey a reliably compiled sample of Whitehall civil servants, how many of them would be aware of the existence and contents of these documents.

There is a question that I would be really interested in. I know this is not the way it works, but if we ever have wider conversations between me and individual members of the committee, the idea in the Brown report about a duty to co-operate is actually a really interesting one. It is implicit in lots of these things. Again, going back to my initial reticence about codifying some of this stuff in statute, I would be reluctant to put it into law so that it just becomes about whether you fulfil your statutory duty to co-operate.

Slightly to my surprise, I found that idea quite beguiling. It is hard to argue with intellectually. Particularly given the way in which Brexit has impacted on the devolution debate, it is hard for those who were on the remain side to take issue with that, given that it was quite deliberately lifted from some of the EU charters.

From a bureaucratic point of view, when I was sent the list of issues the committee wished to explore, I said, "Oh, yes, the devolution guidance. I vaguely remember that. I had better go and look that up". I am serious; that is the way it felt. The reason I find the duty to co-operate quite beguiling is that that is really easy for a bureaucrat to remember as a foundational principle. It is a bit like the Civil Service Code. You know you have to be honest, objective, act with integrity and be impartial. It is just drummed into you, and it is just the way it is.

If part of this is that you have a duty to co-operate with the devolved Administrations, you can say to Ministers, "You do realise we all have this duty to co-operate", and so forth. That is quite interesting. It is something the committee might want to ponder. When Lord Foulkes mentioned the senate of nations and regions and so forth, I could tell immediately that there were as many different views as there were committee members. There are all sorts of things in the Brown report that are highly disputed, but that is one idea in that report that is really quite interesting and could potentially have an impact, if adopted.

Lord Anderson of Ipswich: Of course, the duty to co-operate was the subject of a great deal of litigation before the EU court. We might have to hope for a better result.

Professor Ciaran Martin: Of course it was, because it was in treaties. We now have it in this country. After a century and a half, it is now codified by the Civil Service Code, where that can be justiciable, though I am very hesitant talking to you about that. It is more than just a justiciable phrase. It is something in the values of the way civil servants think about how they do their job, whereas devolution is not.

The Chair: Let us move on to delegated legislation and the Sewel convention now. Lord Beith.

Lord Beith: First, I will just ask a question following on from the previous discussion. Leaving aside grand plans for federalism at regional level and things such as that, is there a genuine problem that, in the present system, Ministers have a dual responsibility and no very explicit guidance on how to distinguish between acting for the United Kingdom and acting for England, when in negotiation with Scottish, Welsh and Northern Ireland Ministers?

Professor Ciaran Martin: Let me, for the first time, steal Baroness Goldie's phrase about pragmatism. Some Ministers, and indeed some public servants, are in a really tricky position if pragmatism does not exist. The most obvious person here—I hesitate to draw attention to this, but it is quite interesting—is the chief constable of the Police Service of Northern Ireland. If you look at the statute—I can see Lord Anderson nodding because he will know this situation very well—it has, quite properly and correctly, extensive national security duties reporting to UK Ministers, but then a whole series of very sensitive responsibilities to the devolved Executive and to building community trust in Northern Ireland.

There is no way you can solve that dilemma with legislation alone. There has to be pragmatism. When the Northern Ireland Executive has been functioning, there has been a tacit acceptance that the chief constable has different relationships and so forth, and at some points has to act at a UK level, independently of Northern Ireland Ministers, and so on. If it can work in that example—and it has, by and large—it can work in other areas, but it needs a healthy dollop of pragmatism.

There are areas in which you can take more care. I looked from an academic perspective because, by the end of the first lockdown, I had left the Civil Service. Again, I come back to the Covid experience being fascinating. If you look at legislation passed in March 2020 by both Houses, both Houses took a conscious decision to reinforce the devolved boundaries at the time of the pandemic. Maybe it did not feel like that because there was so much else going on and they were being asked to pass extraordinary extensions of state power in a really short space of time, but we decided to do that at a devolved level. We decided to entrust the state with much greater powers to control people's lives, but we decided that that would be done at a devolved level as well.

It became clear in subsequent weeks that quite large parts of the UK system, including the then 10 Downing Street, had not grasped what that meant, and talked interchangeably. They did not legislate interchangeably. It was quite clear that they did not have the power to extend lots of these regulations to Scotland and so forth, but they talked interchangeably about England and the UK. As people will remember very well, that was more than just consequential in terms of people such as you and me, who worry about and are interested in the devolved dynamics. That was confusing to people who were facing a global crisis.

There is something in your question, but it cannot be solved by procedures or legislative change alone. Given the balance of the devolution settlement, this has to have a huge dollop of pragmatism, regardless of what main constitutional arrangements we have.

Q10 Lord Beith: I turn to delegated legislation, which, as you will know, here in Westminster is very controversial as to the extent to which it is used in matters that have nothing to do with devolution. It is a regularly raised issue by committees in the House of Lords. The Sewel convention does not apply. Delegated legislation can be used in areas of devolved competence, with or without consultation or consent. It can extend to the use of Henry VIII powers to alter statutes of the devolved legislatures. Do you have any thoughts on that?

Professor Ciaran Martin: Altering powers of the devolved institutions via secondary legislation without consent is a bad idea. We should find ways of having a more consultative and deliberative process. For a start—this goes back to the premise of your overall question on the use of delegated legislation as a whole—modifying the powers of the devolved Administrations is an important issue. It should be fully exposed rather than sneaked through under delegated legislation.

If you take the probably absurd and extremist example of this, it is remarkable that the provision for the existential referendum on the continued existence of the United Kingdom was done under a Section 30 order. I doubt that was envisaged, particularly in the 1998 Act. The political leaders and civil servants in Edinburgh were coming to the same conclusion by different means. It was convenient but it just felt a bit odd. I remember the Commons and Lords debates. It felt a bit odd that we were putting this through under delegated legislation.

Lord Beith: Pages of *Hansard* are littered with assurances that such powers would not be used in such a drastic way.

Baroness Goldie: On that last point, Professor Martin, my recollection is, having been fairly prominent at the time when Alex Salmond won his overall majority, that I was in no doubt about his moral right to seek to form a Government. He had the majority of MSPs to do that. For me, that made refusing a referendum on independence pretty well impossible.

My recollection is that, in fact, that Section 30 power was welcomed by both the Prime Minister at Westminster and the First Minister in the Scottish Government because it delivered what both considered was going to be needed. It was a very convenient way of delivering that with minimal fuss.

Professor Ciaran Martin: That is absolutely right. That is why we took that route. There were primary legislative options that were available. I just think, with hindsight, it felt a bit weird. It was such an important issue, but it was absolutely the convenient option.

The British state, the UK Government, the Civil Service and ministerial capacity is now much better at this, but one of my reflections is that back then there was a very poor understanding of constitutional basics. It took quite a while to think, "Oh, we have this Section 30 thing. What does that do? Oh, it allows you to vary who has the power over trunk roads at the border and stuff like that. Can we use it for this? Oh, it turns out we can".

Some academics, going back to 2002 and so on, had floated this as an idea, but it was never seen as a serious use of Section 30. It then became clear that it was allowable, even if it was not the original purpose of the clause, and both sides agreed it was very convenient. Your recollection is exactly the same as mine in that respect.

Lord Foulkes of Cumnock: I have been thinking, Professor Martin, about your interesting reply to Lord Keen's very interesting question, where you said we need to think that sometimes there are wider consequences of doing something that seems to have a limited effect. That is a very important point.

You used to work at GCHQ. If the United Kingdom was to break up into four separate countries, would England continue, for example, to be eligible to be a member of the Five Eyes? Would it still have a permanent membership of the Security Council? There are a huge number of

unintended consequences, which may explain why the Russians are quite keen to see the break-up of the United Kingdom.

The Chair: That is stretching our remit, but it is the final question and Professor Martin does have a CV of speciality in cybersecurity.

Professor Ciaran Martin: Just on that whole question, there was a paper that the UK Government commissioned, which was part of the various analysis papers that the UK Government published before the referendum. It was the first one, and it is a legal opinion by the now, sadly, deceased Australian international law expert, Professor James Crawford, on the law of statehood and state succession. That is very interesting. I am not going to précis it because I do not want to abuse the patience of the committee, but it sets out a lot of that quite clearly. The most likely outcome would be that what was called, for the purposes of the argument, the remaining UK would inherit the UK's legal personality, permanent membership of the United Nations Security Council, and so forth.

Five Eyes specifically is a completely different thing. Five Eyes is a voluntary arrangement between signals intelligence organisations. It is basically up to the Americans as to whether they would continue to recognise it, but you do not apply to join Five Eyes in the way that you apply to join the EU, the United Nations and so forth.

That whole issue of how state succession and the UK, which is a core part of the post-1945 global order, is most likely to pan out is set out very fully there. As with any legal opinion on a hypothetical, as it was and remains, it can be hotly contested, but it is worth looking at in terms of the issue that you raise, Lord Foulkes.

The Chair: We are spot on 1.30 pm UK time—obviously not in Australia. Thank you very much. It was quite a tough call, getting you out and answering all our questions, which we appreciate. I am conscious that your article was providing a framework within which to consider issues of territorial policy and managing the devolution settlement, which is quite important. Thank you very much for answering all our questions. I hope you enjoy the rest of your day. I am never quite sure whether you are behind us or in front of us in terms of time.

Professor Ciaran Martin: It is technically Thursday now.

The Chair: You are way ahead of us in time.

Professor Ciaran Martin: Greetings from the future and goodbye from the future. Thank you to the committee for an excellent session.

The Chair: Thank you very much.