



HOUSE OF LORDS

International Agreements Committee

Corrected oral evidence: Review of treaty scrutiny

Tuesday 1 April 2025

3 pm

Watch the meeting

Members present: Lord Goldsmith (The Chair); Lord Anderson of Swansea; Lord Boateng; Lord Fox; Lord German; Lord Hannay of Chiswick; Lord Howell of Guildford; Baroness Lawlor; Lord Marland; Lord Stevenson of Balmacara.

Evidence Session No. 1

Heard in Public

Questions 1 – 9

Witnesses

[I](#): Alexander Horne, barrister, visiting professor at Durham University, and former senior parliamentary lawyer; Jill Barrett, associate member, 6 Pump Court, independent international law consultant, and former legal counsellor at the Foreign, Commonwealth and Development Office.

Examination of witnesses

Alexander Horne and Jill Barrett.

Q1 The Chair: Welcome to this evidence session of the International Agreements Committee of the House of Lords. Members will declare their interests when they speak for the first time during the session. This session is being broadcast live via the parliamentary website. As usual, a transcript will be made available to the witnesses after the session, for any corrections that they wish to make, and will be published on the committee's website.

I welcome our witnesses. I do not know whether they want to say a couple of words as to who they are, for those who are watching and listening, before we start.

Alexander Horne: I am a barrister and a visiting professor at Durham University, but I guess the main reason I am here today is because I worked for the International Agreements Committee and its predecessors conducting treaty scrutiny between about 2017 and 2022.

Jill Barrett: I am an associate member at Six Pump Court Chambers and an independent consultant on public international law. I was the legal counsellor at the Foreign and Commonwealth Office until 2010, having joined the FCO in 1989. While I was at the FCO, I negotiated, drafted and advised on numerous treaties and supervised treaty procedures. During my last three years there, between 2007 and 2010, I led the Government's work on Part 2 of the Constitutional Reform and Governance Act on the ratification of treaties; I imagine that that is probably the main reason I was invited today but, obviously, anything I say today about that is my personal view only.

The Chair: We therefore have the benefit of having here someone who works on looking at scrutiny and advising both this committee and others—indeed, Alex Horne is a well-known writer on these topics—as well as someone from inside government who is at the receiving end of our scrutiny process.

I want to start the questioning in this way. We were established as a committee in 2020; we were initially a sub-committee of the then European Union Committee. Part of the rationale for the creation of this committee was to consider the effectiveness of treaty scrutiny during that period. Do you have any reflections on how the scrutiny process has evolved over the past five years?

Alexander Horne: I am happy to kick off. Perhaps I could start in the period around 2019, when we were looking to establish this committee, because I was working for the European Union Committee at that point. We had just been involved in scrutinising the rollover trade agreements, which was a very big project—there were plenty of them, and the Government engaged with that project in a very detailed fashion.

When this committee was established, the general view—Lord Goldsmith should know this because he was the chair—was that we were looking for a degree of organic growth in the scrutiny process. It was about moving from that to looking at a much wider range of international agreements, not just trade agreements but all the treaties that were laid before Parliament. That happened, but the growth was not really linear. I would suggest that, in Parliament as a whole, there have been some setbacks in recent years, starting during the Brexit process. There was really good interaction with government, but there was also some leverage during the need for parliamentary buy-in to this rollover programme; that was particularly the case when the Government did not have a majority.

After the 2019 election, there was probably a bit less co-operation and engagement at official level. Part of that was probably caused by the Covid pandemic: in-person meetings were pushed online, senior civil servants were redeployed and it was harder to get answers to questions. The fact that the Government avoided the CRaG process in respect of the Trade and Co-operation Agreement with the EU highlighted the weakness of the current process; this can be contrasted with the position of the European Parliament, which insisted that agreement be provisionally applied, so that it could have proper time to scrutinise it.

Moving on, the agreement between Dianne Hayter and Gerry Grimstone, formalised in an exchange of letters in May 2022, was a very good step. However, I would argue that that should probably be renewed in this Parliament and turned into a concordat between Parliament and the Government. Ideally, those commitments made by the Government should be turned into formal constitutional conventions, which should not be resiled from.

Finally, I note that, in terms of this committee, relations between Parliament and the Government seem better in the Lords than in the Commons. Of course, the Lords do not have any significant powers over the treaty-making process. You might have a debate instigated by this committee, or a report that might cause some limited political embarrassment for the Government of the day, but there is very little real power. By contrast, we have seen very little progress in the Commons; in fact, the abolition of the International Trade Committee might suggest that the process has even gone backwards a bit.

Jill Barrett: My observations are very consistent with Alex's. The establishment of this committee is in itself a positive development because it is looking at treaties across the board, not just on a specific subject; it is looking at the constitutional issues of how Parliament can hold government to account.

There have been a lot of positives in the relationships that have been developed with government officials and, as has been mentioned, in the correspondence at ministerial level, with various commitments. I have seen some examples of things that seem to be working well; for example, most of the requests for Section 21 extensions of the CRaG laying period are being granted.

However, obviously, there are some things that have not worked so well or where there has perhaps been less progress. As Alex mentioned, there is no equivalent committee in the House of Commons, so its systematic scrutiny is taking place only in specific subject areas, such as the EU, trade and human rights treaties; there is none across the board. Consequently, there is either no or not very much direct collaboration across both Houses.

I also do not see that there has been any solution to the lack of parliamentary time for debates on treaties. That seems to me to be perhaps the number one issue; it has always been a problem, from when we were thinking about how to draft CRaG to now.

As for the dialogue with Government, yes, there have been a lot of positive things but I was struck, when I looked at this committee's *One Year On* report of 2021, that there were a number of very good ideas, but then I looked at the recent exchange of letters in the last month between this committee and the FCDO and realised how much work remains to be done on putting that 2021 report into action. The majority of your recommendations were about things that could be done now without amending CRaG—apart from the three suggestions at the end about possible CRaG amendments.

The Chair: Just identify what you particularly have in mind.

Jill Barrett: There are a number of things, but in particular the framework agreement idea, or concordat as Alex called it, was recommended by this committee in its 2021 report, with an outline draft appended to the report. A similar proposal or recommendation was made by the House of Commons Liaison Committee in 2019, when it looked at a set of principles for a framework agreement that had been prepared by Arabella Lang, who worked for Parliament on treaties for some time.¹ There does not seem to have been any progress on that, and it seems that every time there is a change of Administration, even of the same political colour, the committee is left in doubt as to whether new Ministers stand by the commitments made by previous Ministers. If it were set out in a framework agreement, you would hope that that would be taken as read, unless it has now been expressly changed: you would not have to keep going back and saying, "Do you still stand by the commitment" in this letter or that letter.

It also struck me that in its reply letter of a few days ago, FCDO was asking this committee for more specifics about what the committee would like to see more of, yet the committee said what it wanted in the 2021 report. Apparently there have been regular meetings, certainly at official level, between this committee and the Government ever since then. So in four years, I am wondering why the Government are still asking for specifics on what the committee would like. I hope that, now the

¹ House of Commons Liaison Committee, 'The effectiveness and influence of the select committee system', Fourth Report of Session 2017-19, 9 September 2019, paras 87-89 and n93.

committee is making a fresh start, you will put the specifics in writing and, if there is not enough progress, perhaps Ministers of the relevant departments will need to be engaged to get things moving.

Q2 Lord Boateng: The Constitutional Reform and Governance Act, CRaG, as you both well know, provides for a 21-day treaty scrutiny period. The committee's experience has been that this period is too short to allow for the effective scrutiny of significant, complex treaties. What is your view on extending the scrutiny period? By way of a follow-up question to any answer you might give, referring back to a point you both made about the paucity of opportunity in the House of Commons to examine these issues now, do you see a possible advantage in having a Joint Committee of Lords and Commons to look at international agreements?

Jill Barrett: To start at the end, a Joint Committee sounds like a great idea from an outsider's point of view: pool resources. There seems to be a lot of duplication at the moment: similar inquiries, similar reports, and then another committee does the same thing. However, when I have spoken to MPs about it—I have spoken to only a handful, so it is obviously not representative—some of them feel that it might not work very well: different paces and styles of work, plus perhaps difficulty in getting enough MPs to volunteer to be on a treaties committee, as opposed to a particular subject matter that they are interested in. I am not sure that I can offer any further insight into that, but I like the idea, personally.

On your other question about timing, 21 sitting days is rather longer than 21 days or 21 working days.² I understand that it is always at least five calendar weeks and can be several months if it falls over a recess. I also believe that 21 sitting days is a longer period than some other countries that have similar scrutiny systems use. I believe that Canada and Australia have a similar or shorter laying period.³ From what I have seen, I think it is agreed, even by the parliamentary committees, that that is a sufficient period for most treaties. The problem is with the minority of treaties where Parliament would like more time. I am not sure that it is a good idea to extend the laying period for all treaties, because you would then be extending it for lots of treaties that do not need extra time, and we all know that, bureaucratically, if there is more time, then more time will be taken and there will be pointless delay. The key is to find a mechanism for extending the period for those treaties identified by Parliament as requiring it.

Lord Boateng: What might that mechanism be?

² 'sitting day' is defined as 'a day on which both Houses of Parliament sit' by s20(9) of the Constitutional Reform and Governance Act 2010.

³ In the Parliament of Australia, the laying period is 20, 15 or 0 sitting days, according to the classification of the treaty:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Role_of_the_Former_Committee

In the Canadian Parliament the normal laying period is 21 sitting days:

<https://www.treaty-accord.gc.ca/procedures.aspx>

Jill Barrett: There is a good model in Australia, used by the Joint Standing Committee on Treaties, JSCOT, which is that the committee itself has devised criteria for prioritising treaties into Category 1, 2 or 3.⁴ The Government, when they lay a treaty, grade each one according to Parliament's criteria, but JSCOT retains the discretion to change the priority that has been assigned. Those assigned the higher priority would automatically be given more time. That is one way to go: automatic extension of a specified amount—for example, another 21 sitting days or perhaps a shorter time.

The question is whether the Government should have an ultimate power to override that in exceptional cases. I suppose that, coming from within government, I can see that there might occasionally be the need for that. There are all sorts of reasons why there might be urgency. Of course, if you make the default that there is an extension when Parliament requests one, then there is an onus on the Government to explain why not if they are not going to. Normally, one would expect an explanation on the record. Sometimes, however, it may be so sensitive that the Government would not want to put it on the record, and then one would hope that there will be some means of confidential communication with the committee.

I am sure we can imagine the sort of circumstances where, if there is a protracted period of public debate, it could be counterproductive and not in the national interest. The committee would understand that if it were explained, albeit through confidential channels.

Alexander Horne: I have a couple of thoughts on this. On the 21-sitting-day period, I broadly agree with most of what has just been said. There were certainly times when I was doing this when the Foreign Office could have been slightly more co-operative. For example, we would quite often ask for a schedule of what was likely to be signed and when it was going to be signed. There were discussions at one point about whether the committee could have the text of the signed agreement at that particular moment, and there were disagreements about whether that information could be made public. This was often quite interesting, because we would find that other countries that were negotiating with us would suddenly put things up on the websites of their equivalents of the Foreign Office, at which point the papers were made available.

There is sometimes a bit of a culture of secrecy in the Foreign Office—I do not know whether things have changed since I left—but I think a degree of notice as to what was coming down the track would have been quite useful in terms of this committee being able to prioritise its work. I really cannot see why privately, at official level, that type of information could not be made available, if it is still not being made available.

I tend to agree that 21 sitting days is probably quite adequate to deal with an awful lot of agreements. Obviously, the committee deals with the

⁴ https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess/Report_193/section?id=committees%2Freportjnt%2F024556%2F73815

big trade agreements at a much earlier stage, because there is a negotiating mandate and there are various opportunities to engage with the Government on those. I guess that is a model that one might want to look at for some other ambitious treaty negotiations on subjects that are clearly going to be politically contentious. Could the Government engage informally and privately with this committee at an earlier stage, when the negotiating mandates are being put together in government, at least about what might be under discussion?

The Chair: I am going to invite Lord German to ask his question in a moment, but I just want to put a point to both of you. Both of you have talked about the 21 days—sitting days; it is absolutely right to make that important qualification. But bear in mind that what the committee has to do is not just think about it for 21 sitting days: we have to get evidence, or at least we want to try and get evidence, because it is much better to have an evidence-based report. Does that affect your view as to how long we may need?

Alexander Horne: The point you make about evidence is very important. This committee cannot do its job properly unless it hears from stakeholders. When I was here, the staff was very good but it was also very small, and you cannot expect technical expertise about every possible imaginable treaty under the sun. It is really only when stakeholders engage that you are going to begin to notice where some of the issues lie.

The Chair: Or external experts.

Alexander Horne: Or external experts. I will just give you an example: you recently considered an AUKUS-related agreement relating, I think, to propulsion systems. If we look at the Australian approach, it seems to have been very successful at getting the public to interact with the Joint Standing Committee on Treaties. Before I came here, I had a look and the Australian committee received 259 submissions in respect of the latest part of the AUKUS agreement, whereas when I looked online at this committee's interaction, there is obviously a report but I could not see any published evidence on that agreement at all, which I assume means either that the committee did not receive very much evidence or it simply did not find that it was useful enough to publish.

Lord Boateng: But it is a joint standing committee, is it not? It includes both Houses.

Alexander Horne: On your point about a Joint Committee of both Houses, I was obviously here when this committee was set up and there were discussions. I think that there were concerns culturally. I will say very bluntly, having worked for Select Committees in both Houses, that the approach taken is very different and there is a level of expertise in this House that one does not necessarily find in the House of Commons.

Lord Boateng: The obvious parallel is the Joint Committee on the National Security Strategy, which has the chairs of the key relevant

committees in the Commons and some senior Members of the Lords. That is not a committee that is not riven by cultural differences. We all seem to work together remarkably well. I have been on it twice.

Alexander Horne: I have had two experiences of working on a Joint Committee, the Joint Committee on Human Rights and the Joint Committee that looked at the draft prisoner voting Bill. On both occasions, I would say that the members worked quite differently. I think that this is very much one of those technical committees that looks at the detail. You have already raised the question of whether you would get such interest in the Commons, and I tend to agree. One of the worst things you can end up with is a committee where you begin to have quorum problems because you get members not showing up and so on. But it is an open question. Obviously this is a new committee, and I leave it to members as to how they feel about the operation of Joint Committees.

The Chair: Thanks. I am going to move to Lord German and then let us move on, because there are some important points we want your views on.

Q3 **Lord German:** I would like to look at the breadth issue now—that the CRaG arrangements are, as you know, only for treaties which are subject to ratification. You might like to speculate as to why that narrowness was put in place at the beginning. But there are other things, of course. We have treaties which enter into force on signature, withdrawals from treaties, legally binding decisions and other matters as well. Do you feel that this committee should expand, or its breadth should be expanded, and, if so, which?

Jill Barrett: First, when we drafted CRaG, our stated aim was to put on to statute the Ponsonby rule, as it then was. Under the Ponsonby rule, treaties were laid before Parliament prior to ratification: if they entered into force immediately on signature, they were not laid under the Ponsonby rule. We were replicating the previous system and codifying it in statute. That is one reason, if you like.

The Chair: Was that a good reason, though, do you think?

Jill Barrett: We could have gone further. We could have had something more radical. In fact, at the beginning of the legislative process, we were even thinking about votes for all treaties. That was the first idea of Jack Straw, the then Secretary of State for Justice. But at the time, in 2009, there was very little parliamentary appetite for that, and within government, as you can imagine, various objections were put up by the parliamentary business managers—I mean the Ministers concerned, not just their officials. Parliamentary time was one.

The Chair: Sure, but in terms of the value, if Parliament is going to scrutinise an important treaty because it affects the people in this country, I can understand that it may be said, “Well, if you do it after the treaty has been entered into, it is too late, because you cannot do

anything about it". I can see that point but, apart from that, what is the benefit to the public of saying, "Parliament can scrutinise, but only at this point and not before an important agreement is actually made"?

Jill Barrett: I quite agree with what you say. For that reason, the arrangements have been made specifically on trade treaties, where it is known that there is a high parliamentary and public interest, and where the general format of what is going to be discussed is known in advance, so there can be some meaningful discussion on a mandate for the Government to negotiate.

I think the difficulty is in trying to create a one-size-fits-all rule about treaties under negotiation, because there are so many different kinds of treaties on so many different subjects, and negotiations happen in so many different ways. Some of them are carefully planned over a period of time; others evolve out of, say, bilateral talks that you might have with another Government about a whole range of co-operation. Out of that, a treaty might arise, but you might not be clear that it is going to be made in treaty form until fairly late on in your discussion. You might start out thinking, as an official, that you are going to negotiate a declaration or a memorandum of understanding. That is the difficulty: if it is not known until a late stage that it is going to be a treaty, then it would be quite difficult to consult Parliament in advance and give Parliament the same amount of time that it would have under CRAg. Also, again depending on the circumstances of what is being negotiated, there could be a very short time between agreeing the deal and signing it.

The Chair: I am going to ask Lord Fox to put his question, but I will put this to you before I do. Government can also change their mind, or can make a decision about whether something is going to be a treaty as opposed to some other form of declaration of intent because it suits them politically to do so, can they not? They might rather not have it scrutinised, so "Let's call it a memorandum of understanding", for example. Is that a feasible thing that happens? Or that could happen—I am not going to ask you what did happen.

Jill Barrett: There are a whole range of reasons Governments decide to make some agreements in the form of a treaty and others in a rather less formal manner. Of course, it is possible that avoiding parliamentary scrutiny could be one factor but, honestly, in my experience in the UK, it has not been. That is particularly because scrutiny here is fairly light touch; some other countries have much more onerous and lengthy parliamentary scrutiny under the constitution, and they are much more likely to want to avoid that. Therefore, it could be the other country that would rather have it informal.

The Chair: Was there a sort of disagreement there, Alex?

Alexander Horne: I take a slightly different view, influenced only on the basis of one of your former colleagues at the Foreign Office, who wrote a 2013 book on treaty formation—Anthony Aust, who was deputy legal adviser. That book acknowledged that memoranda of understanding,

even as long ago as 2013, were frequently being used for the purpose of convenience. How you define “convenience” is obviously a matter that could be subject to debate, but I certainly think that the problem with CRaG is that you have an arbitrary process in the sense that there are no criteria that say, “This has to be a treaty subject to ratification. This is a treaty that can take effect on signature. This can be done by way of a memorandum of understanding or what is known as a political agreement, rather than a legally binding agreement. This can be done by way of an amendment”. Take the introduction of the Windsor Framework in the previous Parliament: it was a new agreement, in essence, but it was done by way of an amendment to a previous agreement. Whether or not that was done properly is, again, subject to some debate, but the point is that it is arbitrary in terms of which process is used. Some processes allow you to skip the scrutiny stage and others do not; that is a problem.

The Chair: I know that you, Lord Hannay, wanted to come in on this point.

Q4 Lord Hannay of Chiswick: I am a little surprised that you are sustaining an argument that the 21 days are sufficient. I have not met anybody who has served on this committee who believes that, so it is a bit of a challenge. Moreover, it is not defended by the Foreign Office any longer because it has written a letter saying that the 21 days are in most cases sufficient. Perhaps my English is deficient but that leads me to the conclusion that, in some cases, they are not sufficient.

Alexander Horne: I am not sure that we disagreeing with you. What we are saying is simply that you do not—

Lord Hannay of Chiswick: I am in the middle of asking a question.

Alexander Horne: Sorry.

Lord Hannay of Chiswick: I am not sure that defending the 21 days up to the bitter end is very sensible since the Foreign Office has accepted that, in certain circumstances, they are not sufficient for this committee to do the work that it has to do.

I shall give you a recent example. We have just been looking at the agreement with Ukraine, which was published two days ago. We had the greatest difficulty in squeezing that into the 21 days; it is, after all, a very broad agreement on a very sensitive and important subject. With a lot of effort from our clerks, we managed to get only three people, other than the Minister, to come and give evidence. We held one session.

Now, that is nothing like what all the other committees of the House of Lords or the House of Commons give to writing a report, whether it is the Foreign Affairs Committee of the Commons or other ones. They take much longer, have more evidence sessions and so on. So I would like you to have another go at the 21 days, because there are ways of extending that period that do not involve primary legislation but would involve a certain degree of increased flexibility.

The Chair: Do you want to have another go, as Lord Hannay is inviting you to do?

Jill Barrett: I agree but I am not sure whether you are proposing that, because of this, all treaties should be given a longer period. I come back to what I suggested earlier: we all agree, I think, that the 21 sitting days are sufficient for most treaties but, where a committee wants to conduct an inquiry or recommend a debate and vote, there needs to be more time and a clearer mechanism for requesting that. Ideally, this would be set out in a framework agreement or concordat between the Government and Parliament. There ought to be an expectation that, when a committee requests that additional time, it will be granted unless the Government give a reason—in confidence, if that is necessary.

Lord Hannay of Chiswick: Thank you very much. You have come to earth on the proposal that I have already made to the committee.

Lord Fox: What I wrote down was, "Prioritise treaties with criteria. Higher priorities have more time". That was from your previous statement. Happily, we seem to have ended up back where we started.

Alexander Horne: Yes. I was just saying that I do not think any of us disagrees with your proposition; it is simply that most treaties can probably be dealt with in 21 days. We already have criteria on how to deal with international trade agreements, which are dealt with not in 21 days but, rather, under the exchange of letters; a longer time is given. It is merely a question of working out which other treaties fall within that sphere and might need greater consideration.

Going back to my earlier point, part of that would be this committee getting prior notice when the Government are planning to sign these sorts of agreements, so that those sorts of negotiations can happen.

The Chair: The other important thing, which goes to what Jill said, is that this committee's view as to whether it needs longer should be given particular—

Alexander Horne: Weight.

The Chair: It should be given particular authority unless there are some particularly good and pressing reasons from the Government—such as the sorts of things you have mentioned—that might prevent that. This is where you have come out at, I think: if this committee believes that it needs more time, generally, it should have it. Let us move slightly on.

Q5 **Lord Fox:** I have no relevant interests to declare. Before I get into the specially prescribed question, you dangled the process of mandate; I do not think that we have a subsequent question on that. Although debating a treaty that has already been signed is clearly suboptimal in many senses, I want to ask about the process of debating a mandate in some cases. You went on to say that, because some things evolve, it might therefore not be appropriate to debate a mandate. This seems to me to be a "lowest common denominator" approach in that, because some

things change, we do not ever debate a mandate; it seems like an unreasonable step. When you were formulating the process, what was it that stopped us, in a sense, having an opportunity to develop a process around debating mandates before treaties were negotiated?

Jill Barrett: It would be very difficult to require a mandate before every treaty negotiation.

Lord Fox: I took that; that is my “lowest common denominator” point. In some cases, again, it is about prioritising, but we never do it now.

Jill Barrett: Yes. Parliament started by saying, “Right. In terms of trade treaties, we want to discuss mandates”. The next step would be for Parliament to say, “There’s another category of treaties where we think we want to be involved in the mandate”. That is perhaps more likely to be a large global treaty under, for example, a UN process or an international process where you can predict what is coming up. An example of that is a climate change treaty: you know that it is coming up, you know when it is going to start and you know roughly when the UN sessions will be. It would be much more difficult to have advance mandates for subjects that come up, perhaps unexpectedly, in dialogue with other Governments.

Lord Fox: I might be wrong but we are not, I think, debating any of these mandates substantially in public. The idea that some of them are difficult means that we are debating none of them, which seems an absurd premise to me. Is the sole reason why we are not doing it because, in some cases, it would be too difficult to do, or was this shut down on the basis that the Government do not want to have their hands tied by a parliamentary mandate?

Jill Barrett: I am not aware that Parliament has ever asked to be involved in negotiating mandates for all treaties.

Alexander Horne: Not for all treaties, no. Obviously, there are things where you really would not expect Parliament to have to deal with the minutiae of everything that is going through. As I understand it, as things stand, this committee has already changed its terms of reference so that it does not have to report on every single treaty that goes through, because not all of the treaties that go through require reporting. So you would not expect all of them to require setting a mandate, either.

As Jill said, there are big things such as climate change and artificial intelligence—things of that sort—where one knows that the Government are probably talking about where they could engage with Parliament more. That would be rather helpful at the end of the process, when you are looking at the text, to know how we have got from A to B.

Lord Fox: That has probably done mandates. We have partially answered some of this but, as you both know very well, under CRAg, both Houses have the power to resolve against ratification. The House of Commons can delay but not block, and we in the Lords can be overridden completely. Do you think that those powers are adequate and sufficient?

In particular, do you think that some treaties should be subject to the affirmative approval of Parliament?

Jill Barrett: First of all, the House of Commons can block; it has the legal power to block by voting against the treaty. The problem is that Parliament has to find time to debate the treaty. That is what CRaG does not do; it does not make parliamentary time available for a debate.

The Chair: I might amend your statement slightly. It is not Parliament that has to make the time; generally, it is the Government who have to make the time. It is the Government's treaty, is it not?

Alexander Horne: It is a theoretical legal power on that basis. We have seen that every time that the Commons has tried to operate that power in practice, and it certainly did so in relation to one of the trade agreements—it may have been Australia. There was also some discussion in relation to Rwanda, I think. The time to have that type of debate is never found, because it is not convenient for the Government to do so. Given that the only way that the time could be found, if the Government oppose it—as I understand—is to use one of the opposition days to do so, and we do not know necessarily whether they would fall within the 21-sitting-day period, it is a theoretical power rather than a fundamental legal power.

The Chair: Did you want to finish? I rather interrupted your answer.

Jill Barrett: Yes, this is the problem. We knew it was a problem when we were doing CRaG, but we understood that devising mechanisms for Members to demand a debate and be granted one was a matter for parliamentary procedure. Parliamentary procedure has to be amended through standing orders—it is not something done in legislation. It has not been done. I do not have any particular insight as to how to get that done. The problem is always that there are higher priorities for parliamentary time, so that problem remains.

Then, on your question as to whether we should then have affirmative votes for certain treaties, I would say in principle: yes, why not? Then again, if you are going to have affirmative votes for those treaties, does that mean there should be a debate for all of those treaties? If there is not a debate, then what is the point of a vote? If you want to have a debate with a vote on those treaties, how are you going to find the time to programme it?

Lord Fox: There is an assumption in the question that you would have a debate, but it is taking the affirmative vote one step further than simply blocking, so it is a more extreme sanction.

Alexander Horne: The short answer to your question is that almost all the committees that have looked at this have said yes. This committee has looked at it, the Public Administration and Constitutional Affairs Committee in the Commons has looked at it, as has the International Trade Committee. I have sent this committee the text of a draft Bill that I

have put together on this subject, and I think this could be done reasonably easily.

The short answer is, yes, there should be an affirmative vote. The affirmative vote should take place in the Commons where a treaty has been determined to be significant. You could easily identify which treaty was significant in two ways. First, the Minister could certify that it was significant and put it through the process if he or she wanted to. Secondly, much in the way that we already have a process here, where treaties are drawn to the special attention of the House and put forward for debate, the relevant committee in either House could signify that they took the view that the treaty was significant, at which point it could be sifted into a process both for debate and an affirmative vote in the House of Commons.

It is also arguable, much in the same way you deal with legislation, that you could then say that this House—in particular because this House has the relevant committee in it—should then take the delaying power, which would also answer the question raised earlier about whether 21 days is sufficient. The Commons would then essentially have a veto power on new agreements and this House could delay new agreements by up to 21 days in the way that the legislation currently envisages in the Commons, which should be enough to deal with any political controversy over a treaty and allow people to come and give evidence, as you originally put forward.

That is a way in which you could deal with these problems. It would be politically inconvenient for the Government, but the truth of the matter is that in the vast majority of agreements, it would be fair to say that a short delay would not be the end of the world.

Q6 Lord Howell of Guildford: On this point, I should have thought it was very much horses for courses, really. The other day we were debating a treaty governing the relations between America and Britain on nuclear deterrent and how this all worked out. There was zero public interest in it—I do not think it got covered anywhere. That was the other day. If you put it into the pool today, it is turning out to be a major issue being discussed at enormous length, and a great many defence experts have been consulted on whether we can make our own bomb, and so on. So, times change, and some treaties appear to be of no significance and become so for political reasons, and for reason of current affairs and international undercurrents which may not have been there at the start. That is all I have got to say on that discussion; I do not think you can pin it down.

I have two questions. There are two directions to which we have been pointed in our discussions about this committee and its role. Everyone keeps making the point that we are considerably weaker than other parliaments. That is the case in all sorts of other areas as well. We allow the Government to dictate the legislative agenda and so on, and really allow the Government to dictate—or they have been pretty near dictating—the way in which we should look at treaties in the time allowed

for them. First, should we move with the times and recognise, in this more populist age, that the time has come for a stronger role by Parliament and its committees generally? Are you in favour of a little constitutional advance, a tiny bit of moving goalposts, as well as dealing with the present situation?

Secondly, we have been advised in this committee not to get stuck with the FCDO and to deal with other departments. In this hyperconnected world, every department has its own foreign policy issues—every single one, including on pensions and so on. Even things that sound domestic have roots and connections in the international scene and their own foreign policies. Should we face the FCDO with the fact that perhaps they can do the co-ordinating but we do not necessarily want all foreign policy to be run by the Foreign Office? So we will look to other departments. I have two opinions on that.

Thirdly, I did not know before I joined the committee that an agreement was reached to provide for the enhanced security of free trade agreements, which is what we are talking about now. This was meant to be for giving information at earlier stages and longer conduct of scrutiny. What do you think? I think that sounds all right as a question. Of course, if one was a negotiator, as I have been on treaties, the last thing you want is a parliamentary committee getting into a negotiation as well. It makes it absolutely impossible. How do we sort all that out? Do we put in a formal bid for longer scrutiny time because of the nature of it? Do we extend it to other trade agreements that are not sectoral trade agreements and that sort of thing? Do we extend it to non-trade treaties like the nuclear one that I mentioned earlier? All these are very much questions floating in a sea of uncertainty that is now prevailing in the entire world trade system.

The Chair: That was a big question.

Jill Barrett: Yes, I am not sure I can do justice to all of it but maybe I could just pick up a couple of points.

Lord Howell of Guildford: How tough should we be? How determined?

Jill Barrett: A lot of what you have said points to the need for a framework agreement between Government and Parliament, as we have discussed. You talked about the decentralisation of foreign policy, which is a fact. In all Governments, home departments now conduct their own foreign policy. They can do it by email. They do not have to do everything through embassies any more. That makes, in a sense, the 'policing' function of treaty procedures by the FCDO treaty office a lot more difficult than it used to be. For example, the explanatory memoranda are not all of sufficient quality, which is something that this committee has commented on a number of times. Those EMs are not informative enough. FCDO has made some efforts and introduced a template for these things, upgraded and improved it in various ways in response to suggestions. There is still room for improvement, particularly on the subject of amendments, by the way.

That aside, the other issue is policing that. I remember, from my own days as the legal adviser in the Foreign Office responsible for approving an EM from another government department, ringing up the official and saying, "Look, it is too short. It is one page. This is not enough. I think Parliament should have more explanation". The official said, "I think it is good enough. I do not think Parliament wants any more than one page". It was difficult to pull blood out of the stone when the official said they thought it good enough. So perhaps this committee may make it much clearer what it expects to see in an EM and comment publicly on when EMs are good enough or not. Back in my day, the House of Lords Secondary Legislation Scrutiny Committee did so; I presume it still does. It published a report in which it would call out EMs for statutory instruments that were inadequate. It was highly humiliating if you were the official that had drafted it and your Minister had to write a letter apologising. It was embarrassing. If you had that prominent view from this committee where it was embarrassing for the government department who had submitted that EM—

The Chair: We have definitely criticised EMs, but the point is well taken.

Alexander Horne: I will briefly expand on that, if I may. I was part of the original negotiation that had the EMs changed. There was an improvement. We saw a draft of what was going to be put into the template and agreed that at our end. But Jill is also right to say that lessons can be learned from the way in which secondary legislation is dealt with. The Joint Committee deals with that. I remember Daniel Greenberg doing a lot on this. The point was that, when things were not going right, the committee would put in a report guidance saying, "This is what we expect to see". The International Agreements Committee tried to do that in its two working practices reports and sometimes it may be necessary to expand on that—for example, how you are dealing with the devolved nations or what information the EMs are falling short on. Perhaps we should have that as a reference rather than just a letter. The letter to the Minister is useful because it prompts the Minister to do something, but it might also be useful to have some guidance to the departments about what we expect to see. The working practices stuff was useful when it came out but perhaps it might be time to think about doing that again.

The Chair: We need to cover other topics.

Q7 **Lord Anderson of Swansea:** I have a question on information. Knowledge is power and obviously the quality of scrutiny will depend on the information made available to the committee and, at each stage, the earlier the better. It comes in at the ground floor, just as we have the negotiators before us on free trade agreements. Do you have any suggestions for improving the flow of information that might ensure that the quality of questioning is improved?

Alexander Horne: You need some leverage, I am afraid. Last year, I put out a report with Holger Hestermeyer, who also acted as an adviser in the House of Lords (to the European Union Committee). We spoke to

probably a dozen or more people involved in processes, both in the UK and the EU. All of them said to us, "If you are looking for an example, see what the European Parliament did in terms of its information-seeking protocols". But those came about on the basis that they had a veto. So they had the leverage of saying, "If you do not tell us about this stuff, you still have to get it through the European Parliament". Unless you actually have some leverage in order to be able to say, "We need more information before we can actually give you the all-clear on this", you are always going to be struggling. It is only at the point where there is a hurdle to jump over that pressure can be put on the Government by saying, "You have not told us enough. The EM's not good enough. We want information about this before we will sign it off". Currently, you have the ability in this House to call a debate on something, but not a great deal more than that.

Lord Anderson of Swansea: What you are saying is that our armoury is so limited, including those points of pressure.

Alexander Horne: Until Parliament bites the bullet and says, "You do actually have to get the all-clear on at least some agreements from us, and one of the ways we are going to determine whether something is significant enough that we are going to ask for a debate and a vote on it is to do with whether you have provided us with all the information we have asked for on it", we will be in some difficulties.

Q8 **Lord Hannay of Chiswick:** This is on quite a different aspect, which is the involvement of members of the public in the process we are talking about, CRaG et cetera. There are national parliaments—for example, in Australia—where members of the public can comment as a matter of course on treaties that are under scrutiny. Do you think that the committee should encourage more public engagement with the treaty scrutiny process? Do you have any suggestions for that? We are of course aware, and you even more so, that we issue a request for evidence, so we are in a way involving the public, but we have to recognise that those requests are pretty frightening to ordinary people who are not actually much involved in the subject, so they do not tend to get much response except from people who might be described as the usual suspects. What do you think about that?

Jill Barrett: Well, of course I think more public engagement would be a good thing, but how do you go about achieving it and how much resource does this committee have to proactively engage with the public? That is the other question. I think things were probably better when you had the treaties hub and there was more information prominently on Parliament's website. You could find it on the homepage: I am not sure it is there now. Perhaps Alex can say more about that. It is quite difficult to find treaty information on the Parliament website, even if you know it is there. You tend to have to hunt around for it.

Alexander Horne: I can say a few things on this. The use of the term "the usual suspects" is interesting, because this is a committee where the engagement needs to be quite wide. You might have usual suspects on a

trade agreement—you will have the farmers writing in or the people selling whisky, whatever it might be—but if you are doing a prisoner transfer agreement with Albania, those are not the usual suspects. If you want to get information about that, you need to reach out to different people.

One of the difficulties that you have in Parliament as a whole is that you have a committee like this, which is looking at all treaties, and then you have the departmental Select Committees in the House of Commons, which will have a list of stakeholders in their own individual areas. What I suspect you really need to be doing in relation to some of these things is doing some outreach to those sorts of stakeholders who are not actually your usual suspects—not farmers complaining about tariffs or whatever it might be, but lists of folk who know about the subject at hand. If you are talking about an agreement with the Americans about launching space flights and IP, you probably need to speak to some IP lawyers and some other people involved in the IP process, not necessarily the people who will be on the mailing list you have dealt with in relation to something else.

I guess that is an internal issue. There will be databases among other committees: they will know who the relevant stakeholders are in any particular area, and it is just a question of co-ordination, probably even between Houses. You might get in touch with the Home Affairs Committee in relation to an agreement like Rwanda, or with the environment people on something about emissions, or whoever it might be, to get people to put stuff in.

The Chair: Or it might affect the time you need to look at the treaty.

Alexander Horne: Exactly.

Lord Boateng: Does that not bring us back precisely to the point that the chairman made: are 21 sitting days going to be enough for that?

Alexander Horne: Once upon a time when Gordon Brown was looking at reforming this, I am pretty certain that the Government said that they were meant to write to each Select Committee with an interest in the treaty itself. I think that that might have fallen by the wayside and is perhaps something that could be re-enabled. If you had that level of co-ordination, Commons committees might actually come to you and say, “We are really concerned about this”.

Q9 **Lord Stevenson of Balmacara:** I think mine will be a very short question, because we have covered the ground, and this is really back to CRaG. At the end of the day, the problem we have is that the fundamental constitutional arrangements under which we are operating do not fit the problem we are trying to solve. Realistically, and I know you have already said it is probably not possible, is there a way into a review of CRaG? Can you think of a line that we might develop in our report that might attract a Government who might have some time for legislative scrutiny towards the end of their first term?

Jill Barrett: It was pretty difficult to get it in the first place. CRaG only came about as a result of a huge project called constitutional renewal, which had 60 workstreams, of which ratification of treaties was only one. It slipped down the parliamentary timetable, and when we got to wash-up, we were not actually sure it was going to come through at all. It is pretty difficult to get it a high enough political priority. Because of Brexit, it rose up, and now trade treaties are something of great public interest. In Australia, by the way, it became a matter of public interest because of tensions between the federal powers and the state powers, and who had the treaty-making power in which case. That was why their Members of Parliament and public got interested. Finding the political hook to give it a high enough priority is quite difficult, but that is probably what has to be done.

The Chair: Thank you very much, both of you, for your time. We also have the benefit of the things you have written, which we have as part of our database. Thank you for those and I conclude the session.