



International Agreements Committee

Corrected oral evidence: Review of treaty scrutiny

Tuesday 10 June 2025

4 pm

Watch the meeting

Members present: Lord Goldsmith KC (The Chair); Lord Anderson of Swansea; Lord German; Lord Hannay of Chiswick; Lord Howell of Guildford; Lord Marland; Lord McDonald of Salford.

Evidence Session No. 5

Heard in Public

Questions 46 – 56

Witnesses

I: Catherine West MP, Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office; Naomi Davey, Legal Director, Foreign, Commonwealth and Development Office.

USE OF THE TRANSCRIPT

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Examination of witnesses

Catherine West and Naomi Davey.

Q46 The Chair: Welcome to this meeting of the International Agreements Committee. We are very pleased indeed to have with us Minister Catherine West MP, Parliamentary Under-Secretary of State at the FCDO. This is part of our inquiry into treaty scrutiny. We are very grateful for the contributions we have had so far, and we will be asking some further questions in relation to that inquiry. Different members of the committee will, as usual, pick up on different questions.

I will start by thanking you formally for the letter that you sent in response to mine to the Secretary of State. I want to pick up on a couple of points from that to start the discussion going. For the record, this is your letter of 25 March. In answer to the very first question, you state that "The Government values and welcomes the scrutiny of treaties by Parliament". That is very welcome and a very important position to start from. Then, when we ask about the amount of time that is available to us, referring to a letter that the Foreign Secretary sent on 19 December 2024, you stated that "the Government believes that 21 sitting days is sufficient for Parliament to scrutinise a treaty in most cases". That obviously implied that in some cases the Government accepted that it may not be sufficient. That is where I want to get to.

We welcome the recognition that, at least in some cases, longer may be needed. We are a bit disappointed that we do not have anything from you on the factors that you would then take into account in deciding whether more time would be available. Indeed, we got no extension on Chagos, for example. It is quite important, so can we do a bit better and identify what factors the Government will take into account? Of course, we recognise that every case will require to be looked at on its own facts, but can we do a bit better on what the factors are which the Government think should be taken into account in determining whether to give us extra time?

Catherine West: First, thank you very much for inviting me today. I really do appreciate the important work which the committee does, and that applies both to individual treaty scrutiny as well as wider policy questions. Having been in Parliament for 10 years on both the opposition side and now in the Executive, I think this is a very important conversation. We need our processes to work even better than they may have in the last few years. We have had quite a lot of tests, if you like, to our processes with various big things happening such as Brexit and so on. Ministers have to work hard to comply with scrutiny processes. As the Minister for this area, I am very keen to be quite practical when things come up.

Moving to your very specific question, time is very important, and I agree that it is important for the committee to have sufficient time to play its role. My hard-working officials have done research into other similar jurisdictions, where it is around 15 to 20 days, or in Canada's case 21, for

processes, which we think falls within our general approach. There might be exceptional cases where the committee will want more time. I believe the committee meets monthly and I am sure that Ministers will look very carefully at requests as they come up, at the correct point of the application because that is not unreasonable. Certainly, we will carefully consider arguments and evidence that the committee has in its eventual report of our process now so that, as you are having your deliberations—it being a new Parliament and so on—we will take a careful look at the reasoning behind requests for longer time.

The Chair: I am sure you can see this from our point of view. We get faced with a treaty being laid which we have to examine and, as I am sure you have been told and appreciate in any event, we will want to do some inquiries that may well involve getting internal or external evidence. We cannot carry all the material and expertise that we would like in this committee for all treaties, so we have to look for that and find people who are available to come. Then, if we need a debate, which under the treaty there has to be in certain circumstances, there is time for that.

So it would help us enormously to know what the likelihood is of the Government providing time, if we ask for it. To do that, we need to know what factors the Government will take into account. That is the purpose of my question: what are the factors that the Government will take into account? Otherwise, it is, “Suck it and see”, if I can put it colloquially, which is not going to help us decide whether this a case in which we should be applying for more time or not.

Catherine West: Given that there is such a multiplicity of treaties and arrangements that come under the purview of your committee, it is difficult to predict exactly the reason for feeling that 21 days are sufficient. But the way we work across both Houses is very much to have an understanding on a case-by-case basis. If there are specific reasons, I will certainly commit to trying very hard and to make the case to more senior-level Ministers than myself as to why it might be reasonable to have an extension. But it is very difficult to predict because there are such different things that we deal with.

The Chair: Thank you for that. I have lots of hands up already, but I am going to ask Lord Howell, who wanted to press on with the point I raised with you, and then I have to turn to Lord Marland, Lord Anderson and Lord Hannay as well.

Q47 **Lord Howell of Guildford:** Good afternoon, Minister. Thank you for those opening comments. I would like to press you a little further because, although I see you do not want to be pinned down, I understand that treaties are very different in very different circumstances. Some are so obviously significant and full of implications and complexities of a global nature as to how certain developments will affect us intimately, they are the kind of thing that people tend to ask about first in this Parliament.

Can you give us some guidance that, where there are global implications, which have long been discussed, and major security implications—of course I have the Chagos Islands in mind—there will be a disposition to grant our request for something more than 21 days? On this one we really need to search out views and attitudes across a very wide range of interests and it would seem reasonable to ask for more time. Is that going to be viewed as a reasonable request?

Catherine West: Any request from this committee is totally reasonable. You do not give up your free time just to come and sit here; you want proper replies and answers. I am very pleased that my colleague, Minister Doughty, will be coming next month to answer all your questions on the Chagos agreement. In terms of the correct moment for applying for further time, that is a test case. I agree that it is a significant moment in our discussions in the House and I believe that Stephen Doughty should come to the committee and go through any concerns you might have. I am very pleased that he is coming next month, I believe.

Lord Howell of Guildford: Let me press you one stage further. If there was a slightly more formal procedure for when this committee asks for more than 21 days—because we can see enormous implications, as can the Government—if that is then turned down for reasons that the Government are deeply involved in but are not in our purview or knowledge, could there be a procedure whereby the Government say they will not extend the time when requested? Could they come and set out the reasons why not? Could there be a bit more formality? Otherwise, we are left floundering.

Catherine West: We are very blessed in the Foreign Office with wonderful lawyers. If we use the test of reasonableness, we should not have a problem on either side. A lot of the way that we work in the House should be based on working together in partnership. Once we have the reasonableness test, I would be very surprised if extensions of time were not granted. Having looked at the precedents, there are cases where more time has been requested—for example, a Ukraine agreement where the committee appreciated and used the time and it worked well. We have that example to go by as a precedent. It obviously met the reasonableness test and clearly the legal advice to Ministers was, “That’s a reasonable request”, and an extension was provided. That was under a different Government, so I am not making a point about political party or Governments, but just about reasonableness. Sometimes Governments want to work quite quickly on things, and that is also within the tradition of our Executive.

The Chair: We are going to explore this a bit further. Can I start with Lord Marland, please?

Lord Marland: I have just one point: you said that we met monthly; we meet weekly and sometimes twice weekly, so we are very, “operationally sustainable”, to quote you from your letter of 25 March. The Chairman is tireless in his pursuit of detail. Cutting back to that letter, you say that it would not be operationally sustainable to extend the period, but now you

are suggesting that it is under certain criteria, if we put in that request. Is that fair?

Catherine West: This committee will make reasonable requests, and that test of reasonableness will be responded to by Ministers. That is probably the best way of describing it. There are certain things which Ministers will have views on. There will be different arrangements and agreements and so, from where we are now, it is difficult to predict what particular questions or reasons committee members might have for requesting an extension.

Q48 **Lord Anderson of Swansea:** The advantage of being a Minister who is also a parliamentarian is that you are able to put yourself in our shoes and understand the pressures on the time of parliamentarians. I ask myself to what extent the Government appreciate what has to be done to have effective scrutiny within the 21 days? We have to take evidence. It may be difficult to locate good experts, who may not be available at the time. They may be people outside the UK. Then a report has to be prepared. It all takes quite a lot of time, and there is pressure on parliamentarians' time. To what extent do you think there is appreciation in Government of those pressures?

Catherine West: It is not really for Ministers to tell committee members how to do their role; you are perfectly able to do that. It is down to the decision of your own good selves as to what you want to apply for by way of an extension if you feel that for some reason the 21 joint sitting days are not sufficient or are unreasonable. As I said earlier, the international comparators seem to be around that time, and I note that in the past Parliament has rarely asked for the scrutiny period provided by CRaG to be extended, but obviously any request will be properly considered. Right now the existing arrangements seem to be right, but if there are exceptional circumstances or it seems reasonable to yourselves to request that extension then I am very happy to go back, look into that and speak to our advisers as well about why that should not be the case.

The Chair: That is very helpful. On behalf of the committee, I have to say I do not believe we would ask for time unless we thought it was reasonable to do so and we did not believe we could do the job. I emphasise that the job will often involve getting information and evidence from outside the committee and our existing advisers. That is one of the reasons for it.

Lord Hannay of Chiswick: I get the feeling that we are actually very close on this and that we could move forward in a consensual way. I should say that some advice you have been given about comparators may be a bit short of accuracy. Certainly, the European Parliament has a much longer period than that, and those that you may have been shown in Australia and Canada, of course, merely copied ours. So it is a circular argument. But let us leave that to one side, as the Foreign Secretary has agreed that it does not apply in all cases.

Would it be possible to consider a way in which we could ask for only one

extension so there would be no question of a repeat extension beyond the first? I should say, incidentally, that Chagos is completely outside this because the debate is scheduled to take place on 30 June, and it will take place then, so it is not part of this discussion. If it was for one extension only, we would have to produce a reasoned opinion and if you wanted to turn it down, which of course you could, you would produce a reasoned opinion for doing so. Then it would just be that, as a general rule, you would accept one request for an additional 21 days, but not more. Could you perhaps think about those possibilities, because we are very close to something that could be made to work a bit better than the current system?

I have to tell you that dealing with a complex agreement such as Ukraine or even Chagos in 21 working days is pretty demanding and very short on proper scrutiny. That said, we have done it on a whole lot of occasions and we will continue to do so, I am sure, but it would be better if we had a slightly more flexibility built in. Could you comment on that?

Catherine West: Given that Parliament has rarely exercised the current arrangements, from what I can see, should that change and there be multiple requests for extensions, we would definitely consider that. You would have made the decision that you want those 21 days and we must respect that. Within the existing arrangements we have the right balance but sometimes it is about tone and we are very keen to work closely across the House. We are not even a year into the Parliament and we need to be able to get on in the best interests of everybody. For example, if there is anything more we could do to help the committee with its work around the sharing of signed treaty text with the relevant Select Committee or the IAC in advance of laying formally under CRaG, that might give that extra bit of time to manage the scrutiny workload.

Where appropriate, sharing text would ensure that the committee is aware of the key points that it may like to raise or focus on before the CRaG period starts. That would put a little more work on to us in having to talk to other departments, but that is part of our job in terms of "One HMG", as they say: to develop more efficient procedures so that the information and plans from across Government arrive earlier with the treaty unit and can be shared with IAC officials to aid their planning. There are all sorts of tweaks that we can do and, seeing as you meet weekly, you have plenty of opportunities to take a view on what is coming up.

The Chair: Thanks for that. Lord Hannay talked before about the time we need; I want to underline that by "we", we mean our advisers and the secretariat, because they are the ones who have to do a lot of the work. I know they work closely with your officials and that is important too. A commitment to consider sharing the texts of significant treaties is very valuable because it could get us up the learning curve. So this is important.

This was actually committed to as long ago as 2020 but has never been implemented. With your permission, Minister, I am going to take what

you have just said, and indeed what is in your letter, as a statement that the Government will now do that and will start sharing the wording of significant treaties with us in advance of the CRaG period so that we can get on with our work. Obviously, we can discuss whatever assurances of confidentiality are necessary, but that is what we need to do. Lord Howell, with his experience, wants to come in.

Lord Howell of Guildford: Could I return to one specific point? The briefing which our secretariat has wonderfully done includes the statement that this committee has recently submitted a request for a 21-day extension of the expected treaty on the sovereignty of the Chagos Archipelago. That raises vast global issues, which are changing all the time, but I do not think that the Government considered that a request they could grant. They said they do not see the reason for it on this occasion; but we see lots of reasons. You have just made some very helpful statements, but how does this present situation fit into those?

Catherine West: On the specific question of the Chagos, I will allow my colleague, the Minister who will be across the text of the treaty as well, to speak to your committee specifically on that point very shortly. But according to my letter where I talked about getting earlier advice to you and to the treaty unit, by establishing the commitment at our end to speed up the bits that are reasonable to give to the committee in advance, that would allow you to say, "Well, we don't really need to look at that". So there is almost a process of elimination. Then you can say, "This is the bit that we're really worried about".

Specifically on the Chagos, I will allow my ministerial colleague to go into the reasons he has decided against that. However, let me give you an example of a treaty that I led on: the GCAP, which is the trilateral military arrangements between Italy, Japan and the UK. That went to the House of Commons, as a statutory instrument, where we had a very good debate on it. On paper it looked like a very quick thing, but we ended up having a good 90 minutes hammer and tongs on defence policy, which was not all relevant to the laying of the treaty but it was good to have a discussion and so on. That is one where the committee did not ask for an extension of time. I am trying to give different examples of treaties where there will perhaps be more interest and others where it will be more straightforward.

The Chair: The world outside may not appreciate that Parliament, in both Houses, can spend a lot of time looking at the detail of legislation very closely, getting a lot of input from outside. Treaties have never been that way and that is why we are doing this inquiry into the scrutiny of them. The legislation which we are operating is still relatively new, so we are trying to make sure that this produces the scrutiny that is necessary, really, for the people.

Naomi Davey: I just wanted to make a point of clarification in relation to the Diego Garcia treaty, where the request for an extension of time was made some months before it was finalised and signed. In that case, the Government gave reasons for rejecting the request. In relation to the

questions about sharing the text of significant treaties before laying them, we have committed to considering this on a case-by-case basis because there may be reasons in any individual case where it is not appropriate.

The Chair: Forgive me, but this picks up part of the point we have just been raising. You say the request was rejected, but we were not given the reasons for it. This is one of the questions you were asked and it was picked up earlier: what about giving us the reasons? We may say, "I see that entirely. Maybe there's another way of dealing with it, or we can deal with a part of it". But if we do not know what factors are applied and the reasons for rejection, it makes it difficult for this committee and its advisers to operate in the way we would all like to do. Forgive me picking you up a little on that, but I do not believe there were any reasons.

Lord Anderson of Swansea: It may be the reason is confidential. We work on the basis of a reasonable committee and a reasonable Government. Where there is a confidentiality element, there may well be a case for someone from the Government to meet with our chairman and explain in a way which perhaps it would be difficult to do so in public. Do you accept that there could be informal arrangements if necessary to explain?

Catherine West: I know that your Lordship has had a lot of experience in foreign policy work before. I believe you chaired the Foreign Affairs Committee.

Lord Anderson of Swansea: I did indeed, as did Lord Howell.

Catherine West: There are some situations where national security is an element. It is also obviously an element in wanting to get something through. That does not necessarily apply to any particular treaty that I have in mind, but the committee is full of grown-ups and understands that the Government sometimes have to make fairly quick decisions. The inquiry is trying to get at having a culture where questions can be asked, answers are expected, but where it is safe to give those answers to a committee because sometimes national security precludes that.

The Chair: We understand national security; there are ways of dealing with it and we would be responsible about that. Let us take it one stage further, though. Let us look at multilateral treaties. Lord Hannay was going to pick up on that question.

Q49 **Lord Hannay of Chiswick:** I wonder if we could look at that, because we have recently had a very good example of admirable co-operation from a Government department, in this case the Department of Health and Social Care, which was responsible for negotiating the pandemic convention and the decision whether to make changes in the international health regulations. We have had several exchanges of correspondence, which have been admirably frank and full, and although it has not been CRaG-ed, we have been kept very closely informed. It is no secret that this committee strongly supports what the Government are trying to do.

But it is clear there is a bit of a gap here in multilateral agreements. Scrutiny would be greatly enhanced if the committee was informed when the Government commence negotiations for a multilateral treaty and when they sign it, but before it is CRaG-ed. We welcome your commitment to work with the committee to improve the information flow on multilateral treaties. Could you think a bit about specific proposals? I throw out to you that the very good performance by the Department of Health and Social Care could be socialised a bit around Whitehall. I am not totally convinced that every department does as it did. I thought it was the model of how things should be done and brought complete amity between the committee and the department.

Catherine West: As I said before, Lord Hannay, I am keen to improve the information flow to Parliament. Different departments do things differently, but I am very happy to go away and have officials look at how the health intervention was handled, what information went to the committee in advance and the nature of the debate. Did it change the outcome or was it more of an information point so that Members felt included in the decision-making process? We all recognise the wealth of experience in this room, and it seems a pity not to have advice and guidance from experienced parliamentarians on the way that we do our work. So I am very happy to go away and have a look at that example.

Lord Hannay of Chiswick: I should say that we had a briefing from top officials in the Department of Health, as well as several exchanges of correspondence, which were really admirable in their fullness. Since we were totally in agreement with what the Government were doing, and said so in our replies, that shows the way we could do better on multilateral matters. It would be tremendously helpful if you took the wider multilateral issue away to see if that model, or something like it, can be improved on.

Catherine West: It is always a positive thing to try to improve our culture of decision-making, so I will definitely take that away and perhaps also share that with other departments that appear before the committee as a best practice example.

The Chair: Thank you very much. There is one aspect of that which we want to ask a bit further about. You sent us an explanatory memorandum, but Lord Anderson is going to pick up with you the experience that we have seen from other countries.

Q50 **Lord Anderson of Swansea:** Minister, you may be aware that we took evidence from senior officials of the Australian Parliament, which has constitutional arrangements broadly similar to our own. We both have explanatory memoranda, but Australia has what is called a "National Interest Analysis", which explains why the Australian Government consider that ratifying the treaty is in their national interest. Do you agree it is important that Parliament understands the Government's rationale for a treaty?

Catherine West: I am very keen to aid the CRaG scrutiny process by providing high-quality information to the committee and more widely to Parliament. I agree that explanatory memoranda should be set out in a more positive, user-friendly way, so let us consult more on that. The treaty unit also had some comments from committee officials on EM guidance; we will continue to look at the specific examples in the Australian National Interest Analysis. It is important to explain not just to committee members but in general what we are doing here in Parliament. I would be all for using clearer language. Maybe it is to do with the quality or consistency, not necessarily specifically the template; perhaps it is around how much detail we give.

The Chair: I think it is a bit more than that, Minister; I think it is what the purpose of ratification is. Why is it in the interest of the United Kingdom that this particular treaty is ratified? It is not just playing around with the format of the memorandum; it is actually rather more basic than that and we would love you to work to get to that point.

Catherine West: It seems like a very sensible suggestion and we are very happy to take that back and look at it, because the guidance does say it should be written in plain English and be neutral in tone. Do you feel that having a bit of the rationale—

The Chair: Forgive me, Lord Anderson, but it is exactly right: we want to know why Government want to ratify this? What is in it for the country? Why is it a good idea? That is fundamental. That is one of the areas that Parliament should be involved in understanding and scrutinising, frankly.

Catherine West: We will take that away and see if we can improve it. We have regular training on treaties across government. We have a very good outfit in the law faculty of the International Academy, but it would be interesting for it to have your opinion as a committee to look at what we are doing already.

The Chair: Minister, I am afraid you are going to get that whether you like it or not. We are involved in an inquiry into the process under CRaG and if we are not happy with where it is we will report and make recommendations as to what should be done.

Lord Anderson of Swansea: Do you undertake to come back to the committee with an explanation of whether you will indeed take it forward as we suggest?

Catherine West: That will give me time to consult with others in the FCDO as well, so that sounds like a good timeline.

Q51 **Lord Hannay of Chiswick:** In your letter of 25 March, you said that the Government were not prepared to extend what have been called the Grimstone commitments in the argot. They provide for enhanced scrutiny arrangements for free trade areas, in a way that would also apply to sectoral trade agreements. The Government have just struck an outline trade deal with the US, which is said to be wide-ranging across various

sectors, and we were briefed on that by the chief negotiator last week. Yet we have been told by the Department for Business and Trade that the outcome of the negotiations with the United States is likely to be a series of sectoral agreements rather than a single FTA.

Do you not think that that means that your reply of 25 March leads to a scrutiny gap if Parliament can be denied enhanced scrutiny by the Government choosing to strike a free trade deal in this sectoral way and not have an overall one? It looks to us, frankly, like a carefully constructed loophole.

Catherine West: That you have already had a briefing from the chief negotiator is evidence to me—

Lord Hannay of Chiswick: It was very welcome.

Catherine West: It is evidence that your powers of scrutiny and calling witnesses are pretty strong. Of course, it is not my position to get into the processes of the exact trade arrangements, but I will say that the length and breadth of scope and complexity, as well as the impact, of FTAs definitely warrants the specific regime of engagement and information provision that the Government have already developed.

In the case of what is being proposed with the US, that is something on which we will have clearer guidance when we know more about it. The current international movements are quite rapid, and the fact that you have had the chief negotiator in here is pretty up to date. However, all in this room would recognise that there is a difference between an FTA with all its complexity, guidelines and rules, and sectoral understandings.

I have been assured that the DBT will continue to update Parliament on the deal and present any implementing legislation, which is another way of having things aired. The substance of what is agreed within the economic prosperity deal will, of course, have an impact on what legislation is needed in order to implement the deal. Obviously, whenever there is implementing legislation, the House of Lords will have that scrutiny role.

Lord Hannay of Chiswick: I would have to say, and you would recognise this, that if it is CRaG-ed it is perfectly clear what happens. We get it, we have 21 days—alternatively we have discussed an extension—we write a report and the House debates it. It is not clear to me that these sectoral agreements will be treated in that way, which does indeed, as you correctly just said, give this House a reasonable say in what has been agreed. That is not clear so perhaps you could, either now or after this meeting, clarify that point because otherwise a gap is clearly opening up in which the sectoral agreements would escape CRaG-ing and never come to the House at all.

Catherine West: Members will have the chance to scrutinise anything which comes before the House, but there are Written Ministerial Statements and there is of course the Select Committee, which is doing a pretty good job with the DBT at the moment. But let me take this away in

terms of the actual detail of where we are at with understanding what exact format that will take. I do appreciate that there is a difference between FTAs and sectoral agreements. If there is any further detail that we can provide we will make sure that we do. The fact that you have already had an off-the-record briefing with the chief negotiator is a really good sign around the culture.

Lord Hannay of Chiswick: Yes, it was very helpful.

The Chair: We appreciate those very much. As you rightly said, it was off the record so we cannot use it in evidence when we produce reports, but it was very helpful to have it and we were thankful for it.

Catherine West: Knowing that the seniority of this committee can command that level of seniority at the official level gives me some comfort that there is an element of scrutiny in practice. It is not necessarily written in, but that is the tradition of how we work: that we have such arrangements, and I am very pleased that in this particular case it worked for you.

The Chair: That is noted; as I say, we welcomed it.

Q52 **Lord German:** I want to go on to significant non-trade treaties. We welcome your commitment to enhanced scrutiny of such matters, but the experience that we have had is that it is rather a bumpy road. Some departments are receptive to giving us information and others are not. What can the FCDO do to promote greater engagement with those committees across Whitehall that are in the lower area, with bumps in the road, rather than the higher areas?

Catherine West: In my role as Minister for Treaty Policy I am happy to really improve the flow of information to Parliament. I am happy to ask my officials to work with IAC officials on embedding best practice and to do a bit of internal naming and shaming. We have already said that the health department has been good on a specific occasion; it sounds as though the DBT have been quite flexible, but we do want to embed the practice of asking departments to offer advanced briefing to the committee on treaties. Sometimes they do need a reminder because they are all busy people.

Ministers get very busy going to the Commons and that is obviously a level of scrutiny to which we feel very accountable, but we must not forget that there are other levels of scrutiny within the House. For example, where appropriate, those might include considering sharing a signed treaty text in advance of laying. They might include developing more efficient planning procedures so that information and plans from across government arrive earlier with the treaty unit, as I said before, and therefore the IAC officials will have sight of them earlier on. In terms of managing the business, particularly if you meet every week, that really does give an opportunity to manage that business into practice.

Lord German: Can I first thank you for setting up what I would call the high road, which is a standard that we would expect across government.

In your letter you say you would be happy to consider the committee's further suggestions on this subject. Given that you have given us some clues as to what the high road should be, what suggestions do you think we should put into our report which would help you in the process of ensuring that all government departments do as you have said?

Catherine West: To be clear about that difference between FTAs, which between 2019 and 2024 were very much the government policy, and sectoral agreements, each Parliament has a number of priorities and it might be that we are moving into a period where the trade picture moves very quickly. I have some reservations about rolling out the FTA arrangements on negotiations to all treaties because full FTAs are particularly complex and specific in their style, and they have a long, complex and predictable negotiation process.

But we are going to be seeing all sorts of other things so in trying to develop a way of working together where your report outlines some suggestions, we can take that away and try to work with the departments where you feel there is a gap. Maybe we can improve that timeliness—where appropriate—around laying text.

The Chair: We have discussed that and it is very important.

Lord Anderson of Swansea: Do you then accept the role of the FCDO as the hub within Whitehall for relating to this matter, and do other departments accept that role of the FCDO as the hub?

Catherine West: The FCDO is where the ministerial responsibility sits, so that is a good place to start. Obviously being one HMG I am very happy to go across the departments if members of this committee feel it would be useful to have evidence from other departments, as indeed the committee has done in the past, I am sure that will occur as it has already. Currently that is the arrangement; I do not know whether the committee has a view on that.

The Chair: I think what you are being asked is whether the FCDO would be willing to take on the role of making sure that other departments do what we are all agreeing is the best practice.

Lord Anderson of Swansea: It is monitoring.

The Chair: Monitoring is a polite way of putting it, absolutely.

Catherine West: We would be very happy to look at the monitoring role and what that might entail. Naomi, what do you think?

Naomi Davey: Yes, we are happy to consider that. It is fair to say that if you make suggestions in your report as to what the committee would find most useful in ways of advance information in order to enable you to make the most of the 21-day sitting day period, then that would enable us to explain it more clearly to other departments in terms of what is required from them.

Lord German: That is helpful. It is called greasing the elbow, I think.

Naomi Davey: I hope we have a constructive relationship with your officials and we can continue to take that forward and work on the guidance.

The Chair: I know you do, and I am grateful for that. Lord McDonald, please.

Q53 **Lord McDonald of Salford:** My question is about amendments. The committee has repeatedly called in its reports for major treaty amendments to be subject to CRaG. We understand that the process of adopting amendments is subject to negotiation with treaty partners, but the Government could make a commitment that they will always try to negotiate a process which brings major amendments within the scope of CRaG. So my question is, will the Government consider this?

Catherine West: It is important to allow the Government to act with agility, particularly in challenging times, but it is also very important that Parliament has its say. There are a range of ways in which the Government can be held to account. Even for treaty amendments that do not go through CRaG, there may still be a need for implementing legislation which immediately triggers parliamentary scrutiny. An example is the very frequent changes that are made to the schedules of multilateral environmental treaties such as adding new lists of protected species or hazardous substances. These amendments are not subject to CRaG, but there is implementing legislation which must go through Parliament. So in those cases there is usually a mechanism in the treaty allowing a reservation to be made if the legislation is not able to be made before the treaty enters into effect.

The Chair: Forgive me for pausing you in your narrative, but there are two points I want to make sure we are covering. First, the question—as I understood it from Lord McDonald—is not in relation to all amendments, it is in relation to significant amendments.

Lord McDonald of Salford: Exactly.

The Chair: It is a narrower requirement. Secondly, when we talk about parliamentary scrutiny, it is often raised that something may require parliamentary time in legislating and implementing some part of it. Now of course that is true, but we do not regard that as a substitute for the CRaG process of scrutiny of particular treaties, or in this case amendments, because it is a different way of dealing with it.

Forgive me for picking that up, but it is just so that you know that this committee does not regard the fact that there may be implementing legislation as a solution, in all cases, to the need for parliamentary scrutiny of treaties. And in this case, as Lord McDonald put it, significant amendments to treaties. That is what we are asking you to consider.

Catherine West: If there were a case that the committee came up with where it felt there was a lack of scrutiny to a particular amendment then,

as the committee meets so regularly and we can communicate with each other in this place, the test has to be on reasonableness.

The Chair: I am grateful for what you have said, Minister, but I actually think we can do better than that. We invite you to consider—we will be considering this as a committee—significant amendments to treaties that we think would require the same degree of parliamentary scrutiny, not legislative, as the major treaties themselves. We would like to see a commitment from Government to try to make that happen, and I think that is behind the question.

Catherine West: Hopefully the committee can define what is significant.

Lord Hannay of Chiswick: You will find that quite fresh in your files. You sent us the UK/US nuclear agreement and it was only being changed in one respect: it was becoming open-ended instead of for 10 years. But you CRaG-ed it, we reported on it and there was a debate. Minister Coaker responded to the debate and has subsequently given us some assurances about keeping us informed as each 10 year sequence is finished. So it can be done and has been done, but there is a lack of uniformity about the way it gets done.

I do not think that example shows you that we are at all unreasonable because we had no difficulty with the extension, sine die, of the nuclear agreement. But we thought that Parliament should be informed every 10 years of how it had gone in the last 10 years, and that is what Minister Coaker agreed to.

Catherine West: Was that within the committee or in the House?

Lord Hannay of Chiswick: Both.

Catherine West: Right.

Lord Hannay of Chiswick: It was in our report and then we had a debate in the House; Minister Coaker replied and then wrote to us afterwards.

Catherine West: It sounds as though it worked.

Lord Hannay of Chiswick: Yes, it did; so I am saying it can work and what we are asking you is, can it be made a little more general because we are prepared to co-operate? Renewing a very important nuclear treaty for 10 years and changing it to sine die was, after all, a major and substantial decision.

Catherine West: Inserting the reporting function sounds like a very positive development, but in a way you have proved the importance of the committee so I am not sure that it is lacking.

The Chair: I just want to raise one example. I know you are not here to talk about Chagos—we will be talking about Chagos and we look forward to seeing the Minister—but Article 16 of the treaty provides that

amendments will be made in a particular way that would make them subject to CRaG, but then it has the words, "Unless the parties agree otherwise". What we want to see is a commitment from Government not to use routes like that to take something outside of the scrutiny under CRaG. That is something I would really like you to consider as a commitment to parliamentary scrutiny, which we are all assuming is a very important part of the democratic process.

Catherine West: Is that a commentary on the quality of the drafting of the text?

The Chair: We have made the point and we will be considering it. As you say, we are working on this together and that is what we are trying to do.

Q54 **Lord Howell of Guildford:** We have talked about amendments, but the trend now seems to be for the world to avoid even formal treaties and formal amendments, and to rather go for non-binding agreements and different instruments of various kinds, such as the Economic Prosperity Bill, or whatever it is we are dealing with in the United States.

Has the department had a chance to see how the United States has moved over the last two or three decades to respond to this growth of non-binding instruments of all kinds? Have you followed the ideas of the so-called Case-Zablocki Act of 1972, which said that the Executive was going to try much harder to provide greater transparency for non-binding instruments and involve Congress much more in the processes leading up to treaties? It is the nature of agreements and treaties to change over time in the light of circumstances, which of course are always changing. This is a really big step forward from the practice we have now and in part it is a reflection of the modern world; the world outside may be better or worse informed, but it is certainly informed in some ways in great detail and is therefore much more demanding to see what is going on.

Catherine West: The FCDO is aware of the US legislation and it is, of course, an accommodation made to reflect the balance of constitutional powers there. We need to remember that non-binding instruments are by definition not legal instruments and do not belong to the international legal order, although they may interact with it. They do not create legally binding obligations like treaties. They are really political commitments.

The Chair: They often do a lot more than that. I think we all know that and the department knows that.

Catherine West: But by definition they are not equivalent to a treaty, so we must not confuse the two. It is important for the conduct of international relations that we have a clear legal demarcation between treaties and non-binding instruments.

The Chair: The point that is being made, Minister, is that by avoiding using language or structures which bring it within the definition of a treaty, CRaG can be avoided even though the instrument and what is being committed to, in reality, is as important as if it were embodied in a

treaty. That is what we are getting at; whether that should itself be subject to a degree of scrutiny.

Lord Marland: Yes. For example, an MOU is not binding and does not come in front of us. I was in Government, so I know about MOUs.

Lord Howell of Guildford: All this is a reflection of a changing world. You have just arrived in the Foreign Office and you have only been Minister for a little while. Is it your impression, in that great office of state, that there is an awareness that technology is transforming the relationship between the general public and complex areas of foreign policy and treaty and so on, and is now demanding a vastly greater amount of information and dialogue than in the past?

Do you feel that the switch has been pressed in the Foreign and Commonwealth Office, or there is a feeling such as Lord Salisbury expressed at the end of the 1890s, when he abhorred the fact that the population had any incident in foreign policy at all? He thought it was a dreadful thing.

Catherine West: Where non-binding instruments raise questions of public importance, of course the Government should be drawing that to the attention of Parliament, and of course Ministers have the duty to inform Parliament of significant policy announcements. We would be aware that it is not always a memorandum of understanding, it could be a written ministerial statement or a briefing to parliamentarians; but we feel that broadly, at the moment, our arrangements are about right.

The MOU form gives us the flexibility to set out a framework, as Lord Marland said, and it is a political commitment into which detail and legislation can be fitted into a longer time. I do not know whether the committee has taken a view on the UK-EU Security and Defence Pact.

The Chair: There are slightly separate arrangements in relation to the EU because of the arrangements with the committees within this House.

Catherine West: Of course. That is just one example—and a good example—of a political commitment that follows on from a political commitment during an election period.

The Chair: The particular point that is being raised is that, yes, there are technically non-binding instruments, but they have a significant policy impact. The real question is, will the Government notify this committee of those arrangements when they are entered into? What is done with them then is a different matter.

Lord Hannay of Chiswick: We had a very interesting session with two US constitutional lawyer experts about Case-Zablocki, and it became very clear from the evidence they gave that the Case-Zablocki Act had been invented to deal with the fact that it was now almost impossible to get Senate ratification of two thirds for anything. Therefore, a gap had opened up in which all sorts of other instruments, which did not require the two-thirds majority in the Senate, were being negotiated by different

departments and not having any congressional oversight at all; Case-Zablocki was designed to fill that gap.

We are really asking you whether there is not a risk of a gap here if too much use is made of non-binding instruments which are not CRaG-ed.

Catherine West: Where there is a significant policy impact, of course the committee will automatically want to take a view and the committee has taken a view, for example, on the EU-UK security partnership. But let me go back and reply in writing to give you a little more. Naomi, do you have more of a prepared answer?

Naomi Davey: Our position at the moment is to distinguish between treaties and MOUs on the basis of the form which they take. That is not to say that where there are significant policy commitments being made in a non-binding instrument, they should not of course be raised with Parliament in the normal way. But we would say that is separate from the scrutiny process that applies to treaties and should be done separately.

Similarly, in terms of the transparency point, in practice where the Government enter into non-binding instruments that have significant policy commitments, those are normally published on gov.uk. So there is that element of transparency, albeit it will not cover all non-binding instruments, which are necessarily a very wide range.

The Chair: They are not subject to the structured scrutiny process which CRaG is intended to provide, and there have been examples; there was one initially in relation to the Rwanda agreement, under a different Government of course.

Catherine West: I am sorry, I have to go and vote but I will be back. I do not know if you need to adjourn briefly or not; you can probably carry on.

The Chair: Please vote, that is very important. We will go into private session while you are voting in the Commons.

Sitting suspended.

Q55 **The Chair:** Welcome back, Minister, after a short interlude for parliamentary business. We are very grateful to you for the evidence that you have been giving. A couple of final questions, if we may, and we are very grateful to you for coming back to deal with them.

In the letter that I referred to before, your helpful letter of 25 March, one of the things that you wrote was that the Government continues to believe that CRaG is a "Flexible and proportionate framework" within which to scrutinise treaties. I wonder if it is possible to explain a little more what is meant by that?

In that context, a broader question which is really looking at the system of scrutiny overall: is it sufficient to hold Government to account in relation to treaties.

I particularly want to give you the opportunity of responding to one question which is raised by a number of people and commentators, which is why does Parliament not actually approve certain treaties and not just be involved in their scrutiny?

So two questions rolled up into one; the first is what you can tell us, please, about why you think it is a proportionate and flexible mechanism so we understand that better. Secondly, should there be a greater degree of accountability in relation to treaty making, including, should Parliament actually be involved in approving treaties?

Catherine West: With your permission, Chairman, I will answer the first bit of that question, but officials feel there was a little tweaking on the non-binding instruments. Could we come back and add that to your transcript at the end?

The Chair: Certainly, yes, whenever it is convenient.

Catherine West: We would be very grateful. First, on the need for proportionality, CRaG strikes the right balance between the Executive's responsibility for negotiating treaties under the royal prerogative and the need for Parliament to hold the Government to account. The respective roles of the Executive and the legislature are complementary. It is important that the Government can continue the important business of doing deals in the national interest while ensuring parliamentary accountability. This balance reflects centuries of constitutional practice and allows the UK Government to speak clearly and with a single voice on behalf of the UK.

Chair, you have mentioned flexibility; we think that CRaG provides a mechanism for the Government to extend the 21 sitting day period. As mentioned before, Parliament has rarely asked for the scrutiny period provided by CRaG to be extended, but any request for an extension is properly considered. Therefore, we do feel on paper that the existing legislation strikes the right balance, but I accept that there are occasions where, in practice, the committee feels it could be strengthened.

Section 22—which I do not think you have asked me about—also gives Ministers the power to bypass the default procedure in exceptional circumstances.

The Chair: That is a power for Government, yes.

Catherine West: What was the second part of that question, Naomi?

Naomi Davey: The second part was on the accountability to Parliament and about being able to have greater powers in relation to treaty scrutiny.

The Chair: Some people say that Parliament should actually be asked to approve not all treaties, but certain treaties; I would like to have on the record, please, the response of Government to that question, if that is possible.

Catherine West: Parliament can already resolve against the ratification of any treaty laid before it for scrutiny, and of course in the case of the House of Commons it can do so indefinitely.

The Chair: Yes.

Catherine West: Of course, the Commons has never actually used that power to resolve against a treaty, nor has it ever debated such a resolution. So it might be a bit odd to conclude that the existing voting system is insufficient if it has never been used.

The Chair: Forgive me, I am probably not making myself clear. The thing that other people are talking about is that CRaG might well provide a system for the scrutiny of treaties, but in some countries the legislature is actually asked to approve the treaty, and we do not do that.

Catherine West: Well to require a vote, whether under an affirmative or a negative procedure, would be to limit the royal prerogative of treaty making. It might limit the Government's flexibility to negotiate treaties, and that flexibility serves the interests of the UK.

Lord Anderson of Swansea: I have a query: is it enough to say that as it has not been done before it should not be done in future?

Catherine West: Well, there is always the issue around parliamentary time, of course; if we were to take a similar approach to that for statutory instruments then that would mean a considerable amount of time in committee debates. So it would be a big departure. But I am sure that in the report which will be drafted following this, some suggestions or novelties could be put forward, and we would be very happy to consider those.

The Chair: We will do that. Lord Hannay, please.

Q56 **Lord Hannay of Chiswick:** We are confronted with a fairly circular situation because if you, Minister, are saying that the Government are not prepared to contemplate primary legislation, which would have the effect that the Chairman has said, then it is not going to happen. Your answer is interesting though not very helpful from our point of view; but it is a fact. I do not think one can talk around that very much.

Catherine West: My view is that we have the arrangements that we have but that we need to develop closer working relationships and improve our culture so that if there are best practice examples—one was quoted around the department of health—we can improve the culture because that goes to the heart of how both Houses work together.

That also allows us to take into account the work of the select committees, which provide another version of scrutiny: written parliamentary questions, departmental questions, and all those other elements of our system which give scrutiny. It may be imperfect but it is there. I do not know a Minister who does not feel under the pressure of scrutiny. Of course, we have a vibrant press as well, which aids the

scrutiny process. But if there are specifics then please put them in your report. We will read it and be able to reply to it, which is the requirement.

The Chair: It is a requirement, indeed. Thank you; I am not going to press any further. We have made clear what our concerns and issues are. Naomi, please respond on non-binding instruments.

Naomi Davey: Thank you. I have three quick points to make. Before the interlude I was trying to explain the distinction we make between treaties as legally binding commitments and NBIs. The position we have taken to date, which I know is probably different from your view, is that regarding the policy commitments that are set out in non-binding instruments, other Ministers are accountable to Parliament for them in a variety of different ways. Other parliamentary committees will be very concerned to scrutinise those policy commitments but they are not for this committee, which has a particular role in relation to treaties. With treaties, there is a particular moment before a treaty can be ratified at which this committee has an important role. That does not exist in the same way with NBIs.

I do not know if there was a suggestion that NBIs are used as a way of evading scrutiny but my final point is that, in my experience, when a Government are looking at whether to enter into a non-binding instrument or a treaty, the important question is whether we need the commitments in the document to be legally binding and potentially enforceable. That is the test.

The Chair: You are not telling me that no one ever even asks the question, "And by the way, if we make it binding will it be subject to scrutiny"?

Naomi Davey: I have never heard it asked.

Lord Hannay of Chiswick: We still have not really got to the heart of what the Americans have had to do when faced with a similar problem. They passed an act which gives a degree of scrutiny to Congress without requiring the Senate's two-thirds majority. You have not told us whether you think something of that sort could be constructed without changing the powers because that does not change the fact that you need a two-thirds majority in the Senate. It just produces a procedure by which a degree of scrutiny that is greater than what would otherwise be achieved, can be achieved.

Naomi Davey: This takes us back to the point around the existing system being sufficient for parliamentary accountability and striking the right balance between the Executive's prerogative powers to negotiate treaties and accountability to Parliament. Our position, as we are setting out today, is that we think that balance has been struck in the right place.

Catherine West: Once the report comes back from the Lords, from yourselves, that will be another moment to think. I am very happy to speak to other departments on the culture point because that is

something I can easily undertake to do and take ministerial responsibility for across Government. We will work together closely and constructively to manage those relationships because in the end, as I said before, what is on paper is great, but what really matters in Parliament is to have good working relationships and as much openness as possible so that we can improve working relationships, improve the legislation, improve the treaty-making, improve the non-binding instruments and all the work that we do, so that it is of a high quality.

The Chair: We welcome the commitment you have just made in relation to other departments and looking at what we have done. Whether this goes far enough for us is another matter, but that you will discover when you read our report and the committee has reached its conclusions. Unless any member of the committee wants to raise any other matter with you—looking round I see nothing, including on the screen—I want to thank you again and your officials very much for the work you have put into this.

It is a very important topic precisely because, in this modern world, Governments make treaties which are every bit as important, sometimes more important, than much of the legislation that we spend a lot of time in this Parliament looking at. That is why the scrutiny by Parliament of commitments is such an important topic.

Thank you again very much indeed and thank you particularly for coming back.

Catherine West: Thank you very much, Chair.

The Chair: We look forward to continuing discussions and co-operation with you. Thank you.