

Scottish Affairs Committee

Oral evidence: [The relationship between the UK and Scottish Governments](#), HC 1586

Tuesday 15 January 2019

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Members present: Pete Wishart (Chair); Deidre Brock; Hugh Gaffney; Christine Jardine; Ged Killen; John Lamont; Tommy Sheppard; Ross Thomson.

Questions 49 - 127

Witnesses

[I](#): Dr Bettina Petersohn, Lecturer in Politics (specialising in Intergovernmental relations), Swansea University, Professor César Colino, Professor of Political Science (specialising in Spanish and comparative federalism) University of Distance Education (UNED)(Madrid) and Dr Sandra León, Senior Lecturer (specialising in comparative government and decentralisation of public finance), York University.

[II](#): Mr Jan Bayart, Deputy Head of Mission, Embassy of Belgium in the UK.

[III](#): George Anderson, former Deputy Minister of Intergovernmental Affairs, Privy Council Office, Canadian Government (via video link).

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Dr Bettina Petersohn, Professor César Colino, and Dr Sandra León.

Q49 **Chair:** We welcome our guests this morning to our second evidence session on intergovernmental relations across the United Kingdom. We are very grateful for your time this morning. We will be looking at international examples and we will be speaking directly to Belgium and Canada later on. To get things started, please state for the record who you are, who you represent and anything by way of a short introductory statement.

Dr León: Thank you very much for inviting me to this Committee. I am an academic. I am a senior lecturer at the University for York, and I am on a career break now. My topics of research have delved into the issue of devolution, with a focus particularly on the Spanish case. I have also explored the role of intergovernmental relations in the state of autonomies: what are the most important factors that account for good co-operation among regional Governments and between regional Governments and central Government. I have also explored issues about accountability: how we can control Governments when competencies are devolved to different administrations; how people cope with that complexity; how can people vote, knowing who is responsible for what service. Those are the sorts of issues I have been working on for the last few years.

Professor Colino: My name is César Colino. I am a professor of Political Science and Public Administration at the Spanish Open University. I specialise in comparative federalism, comparative devolution, particularly in the cases of Spain, Germany and Canada. I have also done some research specifically on Spanish intergovernmental relations in several policy sectors. I have dealt with finance relations and other kinds of comparative federalism issues around this topic. I have also published some guidance notes on joint decision-making and planning for the Spanish equivalent of the NAO to give some guidance on possible ways to improve or promote joint decision-making in Spanish intergovernmental relations.

Dr Petersohn: My name is Bettina Petersohn. I am a lecturer in politics at Swansea University. My background is also in comparative federalism. I have worked on constitutional reforms in Canada and Belgium and, since coming to the UK, looked more into intergovernmental relations between the UK Government and Scotland mostly, using my comparative knowledge from Germany or Switzerland to inform that debate. Based on that work, what I would say is that intergovernmental relations form as a consequence of, or in relation to, the way in which powers are distributed in those different countries. Intergovernmental relations also tend to reflect the political culture of those countries and the ways in which Governments deal with each other in general, for example their



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orientation towards co-operation already enshrined in the political culture.

Whenever we think about what lessons we can learn for the UK, I think it is important to keep in mind that maybe there are differences in political culture and differences in the way powers are distributed so whenever we think about incorporating or transferring those models, we need to keep in mind that what works in the UK might not be the same as what works in those other contexts.

Q50 Chair: I am grateful. Thank you for that. Our committee in the Scottish Parliament, the Devolution (Further Powers) Committee, had a look at this very issue of intergovernmental relations and identified six nations that should be of interest to the UK in how they conduct their intergovernmental relations: Belgium, Canada, the United States of America, Germany, Spain and Switzerland. I don't know if you would agree with the culprits in that particular list.

My first question to you is whether that is right. Are these the sorts of nations we should be looking at and what could we learn from the nations that have been listed in how they pursue their IGR? Do you have any particular views on the strengths and weaknesses of any or all of these nations? We will start with you, Dr Petersohn.

Dr Petersohn: When I think about Germany and Switzerland, and we look at intergovernmental relations, the main distinction I would say is that there is a long list of ministerial conferences in both cases. There is a lot of horizontal co-operation going on in both cases, where länder or cantons voluntarily decide to co-ordinate and share information about their positions and those serve different purposes. One purpose is information sharing, co-ordination among themselves. One other area is protecting their autonomy in relation to the federal Government to fend off any attempts to encroach into their länder or cantonal jurisdictions. What they do not do is basically legislate jointly. They draft resolutions, they agree on resolutions, but they are non-legally-binding, so it is voluntary co-operation.

The vast amount of intergovernmental relations is horizontal. There are also elements of vertical co-ordination, but they stem from the distribution of powers. The länder and cantons are responsible for implementing federal legislation. That gives the federal Government an interest, an incentive basically, to meet with the länder or cantonal Governments or the ministers of the different departments, to see what their position is, whether there are any problems, do the länder or cantons see any problems with those federal initiatives, because the federal Government has an interest in ensuring effective implementation of its own legislation.

It is important that those ministerial sectoral conferences or vertical conferences meet quite regularly. They have an agenda that is rolled over from one meeting to the next. They meet once, twice, or four times a



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year and they have working group structures that meet in between, so the work is continuous, basically. It is a formalised intergovernmental relations system, but it is voluntary.

When I look at that and I look at the UK, what strikes me is that the way powers are devolved in the UK, in a way asymmetrically, could be a stumbling block to that kind of vast amount of horizontal co-ordination. The fact that there is no devolution in England makes it more difficult to even distinguish what would be horizontal intergovernmental relations, what would be vertical. Whenever the UK Government or representatives of the UK Government are present, who do they speak for? Is it in some areas for England? Is it for England and Wales? Is it for the UK as a whole? That makes it very difficult to transfer what is in place in Germany and Switzerland to the UK. Do you see, as I do, that intergovernmental relations in the UK are ad hoc? They are informal. Relations are more bilateral too, because there is that question mark around who is representing England.

In the UK, there is a strong focus on major constitutional change when intergovernmental relations are basically used. Whenever there is a new draft devolution discussion, or now with relation to the UK's relationship with the EU, that is the moment where Governments perceived a need, or usefulness, for using intergovernmental relations or the machinery of joint ministerial conferences. What I have not seen yet is the kind of policy focus that we see in Germany and Switzerland, where there are intergovernmental conferences structured alongside departments. For example, you have conferences on agriculture, education, finance, and so on. There is something to be said about whether it could be developed—

Chair: Mr Sheppard has a question for you. I think you have caught his attention.

Q51 Tommy Sheppard: It may be unfair, but I wonder if you could make this concrete. From what you know of the Scottish devolution settlement, could you compare the constitutional authority of the Scottish Government with, say, the Bavarian Government? What are the principal differences?

Dr Petersohn: I would say that there is a distinction in that it is a bilateral agreement in the Scottish case. It is a Scotland Devolution Bill, whereas in Germany it is a constitutionally enshrined federal system where Bavaria does not have any different power from other länder. I don't know whether you are hinting at whether they have a distinct identity, but I would not say it is as strongly pronounced. The whole federal system in Germany is much more directed at administrative federalism. They do have their own competencies in police, in matters of the interior, education, and culture. There is a very strong level of competence. Apart from that, however, it is more that shared jurisdiction element and that cuts across all länder, not just Bavaria. We do not have that bilateral agreement situation and nor does Switzerland.



Q52 Chair: We are going to get into some of those issues, and I am grateful for that, but I want to come back to my original question to Dr Colino. Are the nations I listed, which I am sure you recollect, the ones that we should be looking at in the course of this inquiry? What can be learned from how they construct their intergovernmental relationships?

Professor Colino: I would say that the United Kingdom should look at cases that have a small number of units, because they would be better cases to derive some insights from. I am talking about Australia or Belgium or, in this case, Spain.

One of the unique characteristics of the UK intergovernmental system is the small number of units but also the asymmetric arrangements you have, which mean that there are some bilateral mechanisms which should co-exist with multilateral mechanisms. That means that maybe Germany is not that good a case, and the United States maybe does not give you all those insights or those possible models to look at. I would say given the dominance of the centre, considering that the centre here also represents England, and Wales in some cases, you should be looking maybe at the evolution of intergovernmental relations in Spain but also Belgium or Australia, which has six states. That would be a first possible suggestion of cases to look at.

You would also derive some insights from Australia given its parliamentary system, the Westminster system, and also from Canada, which has 10 provinces. Spain is also a parliamentary system and there are some features similar to the Westminster system.

Those are the cases I would think you should be looking at, Spain, and maybe the Belgian case, despite its uniqueness with the linguistic communities and so on. That would be my first approach.

Q53 John Lamont: I want to pursue the point about examples of other countries that the UK could learn from. Is it not true to say that most of those examples are based on federal structures, as opposed to the structure of the unitary state that we have here, so it is hard to draw direct comparisons?

Dr León: Yes, it is hard to draw direct comparisons because the type of federalism, or the type of territorial organisation, how they were formed, makes a difference to intergovernmental relations. Those tend to have less of a structure of intergovernmental relations. They also happen to be older, so from the very beginning federations were not conceiving intergovernmental relations as we are conceiving them now. They would have foreseen that to make that complex a structure work they would need a very well-greased system of institutional relationships between different levels of government.

It is difficult to say, therefore, that there are common paths among this very specific group of countries that had this specific form to access federalism but there are certain commonalities among them. The fact



that they were built bottom up, not top down as in the case of the UK or Spain, has an effect on how intergovernmental relations were conceived historically.

Q54 **John Lamont:** Do you both agree?

Dr Petersohn: Yes. I would say that there is a limit as to what can be done by institutional design in general. What you can learn from Switzerland and Germany, when you look at the question of effectiveness, is that intergovernmental relations are not without problems, but they tend to be effective when each Government sees a benefit in co-ordinating or coming together and sharing information about their policy positions or talking to each other. Whenever that perceived benefit is not there, there tends to be friction. On the question of where to start in the UK, if you can identify those areas where each Government sees a benefit, I would probably start there and work it from there. Then there is a question of the requirement for political trust. The machinery of intergovernmental relations requires the political will to keep it going. I would say there is a limit to what can be designed in that sense.

Dr León: I am going to refer to the very first question. There is an issue here about what we can expect from intergovernmental relations, what can be due to the system. We have to set our expectations right because in all the countries that have intergovernmental relations there are common trade-offs and they are unavoidable. There are trade-offs, for instance, between accountability and having a lot of actors, having a very integrated system in which actors collaborate in many different dimensions, like in the German case. If you have many actors collaborating and co-operating in different sectoral conferences, in a council of ministers and so on, decision-making becomes fragmented and that is a problem for clarity of responsibilities. That is a more difficult scenario for people to control who is deciding about what. This is one of the most important trade-offs that is common to all the cases.

A second trade-off is the one about whether we can find the right equilibrium between having a body with decision-making capacity and having a consultative body, based on just the willingness of actors to co-operate.

Q55 **Chair:** We will come on to that. This is another open question. A number of you mentioned asymmetry when it comes to the devolution status across the United Kingdom and we accept that that is very much the case. I think Dr Colino said that it is one of the issues that we have in the UK that makes us different, that sets us apart, the fact that within the asymmetry we have England, which has the vast part of the population of the United Kingdom, where there is no devolution at all. Are we specifically unique when it comes to our arrangements across the United Kingdom when it comes to devolution and what do you do about something like that?

I notice one other thing that you touched on briefly. There is always this



debate about where devolution ends, and federalism begins. Of course we know the examples you mentioned, Germany and Switzerland, which you can describe as federalism. Where does it begin and end? A lot of people are proposing federalism for the UK. How would federalism work in a multination state like the UK when we have the issue of England? I know these are big questions, but they are just the opening ones to get things started. I am going to ask you to be as brief as possible when you respond to that. We will see how Dr Petersohn gets on with that question.

Dr Petersohn: I would say that the UK is unique in the extent of the asymmetry. Asymmetries and multinational federalisms do exist, but I think that the extent of having a big chunk of the country and of the population that has no devolution is a unique characteristic. Can I imagine a federal UK? I think federalism in the UK is something that develops but in terms of political attitudes in England, I don't see a demand for it.

Q56 **Chair:** On the question of federalism across the United Kingdom, we are a multination state, a kingdom if you want, comprised of four nations. For federalism to work, would it have to be the model that would be the four nations of the UK or would there be a view that it would have to be broken down into English regions?

Dr Petersohn: If you think about cases where there are smaller nations and a bigger chunk, I think it would be difficult to use England as one region only because you have 85% of the population in one region. It can be quite difficult. I am not advocating breaking it up, but I would not know which lines to use or which borders to implement. I think it would be difficult to keep that asymmetry or then say every nation has only a single voice and be represented in the same way. I think it would be difficult with that demographic and geographic situation.

Q57 **Chair:** Thank you. Professor Colino, what are your views?

Professor Colino: Of course that is a very academic question, how you would distinguish—

Chair: You are all academics.

Professor Colino: I mean that I don't want to bore you with all the debates. I would say, however, that if one had to select one main criterion for a federation, that would be the constitutional guarantee of autonomy, and most federations, as we know, have a written constitution. That is one of the unique things about the United Kingdom in that respect.

The other thing would be that if we would constitute England as a unit of a British federation, it would be a very uneven one, a very unbalanced one. What we know from comparative federalism research is that federations in which one of the units is much bigger than the others are normally very unstable so I would not recommend a federation in which one of the units is 85% of the population. That more or less happens in



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Argentina, with the Buenos Aires province dominating all the rest, or has happened in the second German empire where Prussia was a big province, accounting for more than half of the population of the federation. That normally does not work. They are very unstable circumstances.

Q58 Chair: Maybe you can help me with this question. Where does devolution end and federalism begin?

Dr León: That is a highly debated question among academics. Regarding the Spanish case, for instance, people would not agree on the extent to which it is a federal country, a quasi-federal country or a devolved state. This is something that is still being debated.

A very important characteristic of federations is the protection of sovereignty, the fact that there is a constitutional warranty, as Dr Colino mentioned, that the central Government will not encroach upon the powers of the subnational units. That warranty is one of the essential characteristics of federations, the protection of their sovereignty.

When we talk about intergovernmental relations, they work better—I am trying to answer the second question—when there are no asymmetries, because that enhances co-operation among units and facilitates co-operation between subnational units and central Government. I would not agree that it is a good idea to think about the four nations, with England as a region, because that would deepen the problems that are associated with an asymmetrical design, particularly for intergovernmental co-operation.

Q59 Chair: Thank you for that. Briefly on this, we have the situation with Scottish devolution now where there are different Governments in power. Some of you have mentioned competition being some of the heart of intergovernmental relations and how business is conducted. Of course, we went through the experience in this country early on in the devolution, from 1999, where there was one party in power in Cardiff, in Edinburgh and here in Westminster, and there did not seem to be an issue. How much of a factor is having different parties in power in different devolved institutions in other nations across the world that you have observed? Maybe you could start with that question, Dr Colino. We want to get the most of you, so as briefly as possible, if you can.

Professor Colino: Normally most intergovernmental systems have to deal with party incongruence at the two levels. That is the normal situation. It would be rare that most of the regional levels and the national levels were always congruent; that is not the normal situation. The normal situation is divergence or incongruence between the two levels. That means that some of the intergovernmental relations are normally politicised and you have to deal with that. You have to live with it because that is the normal thing.



We have experienced that. We have also seen that where there is too much congruence between the two levels, sometimes intergovernmental relations become, let's say, diffused or they no longer work as formerly, as they normally work when there is divergence between the two levels.

There is also the question of different policy sectors. There are some policy sectors that are normally dominated by experts, let's say environmental issues or other more technical issues. For example, however, there are other sectors—education or the economy, taxation for example—in which politicisation or incongruence between the two levels makes a real difference because you would be seeing different coalitions building within the intergovernmental bodies. You could even see boycotting of central decisions by several of the units or you might see that those intergovernmental bodies no longer convene or no longer meet. We have seen that in Spain, for example.

Q60 **Chair:** Dr León, are you keen to come in on that question?

Dr León: Yes, absolutely. I always like to define the role of party politics within intergovernmental relations as a double-edged sword. On the one hand, political parties in a bipartisan context might help to grease the bargaining process because they can co-ordinate their own regions, the regions that are affiliated, that belong to the same political party. On the other hand, there is a scenario of political confrontation when bargaining intergovernmental bodies become a two-bloc opposition and confrontation scenario. It is a double-edged sword. That is why it is very important to support technical bodies in sectoral conferences and ministerial conferences because technical bodies have a less political profile and it is easier for bodies to come to an agreement and then maybe bring the agreement to the plenary session for it to be confirmed. When the core decisions, the more technical issues, are dealt with among people with a less political profile, co-operation is easier.

Let me just mention a third point that I think is important. Party politics are changing across Europe. Parliaments are becoming more fragmented. That has an impact on intergovernmental relations, although not necessarily a negative one. In Spain, for instance, we have transitioned from a bipartisan context to a more fragmented context. If there are coalition Governments, if there are Governments that have stayed for a long time, that might enhance co-operation because ideological congruence between the central Government and the regional Governments, and among regional Governments, might be enhanced by having more fragmented assemblies. That is a very important point, to think about for the future, about how systems are changing and how that might affect co-operation.

Chair: We might want to come back to that. That is a very good point.

Q61 **John Lamont:** I want to ask about the balance to be struck between formal intergovernmental relations and structures compared with informal relationships. Some countries have very formal relationships set



in statute as opposed to some of the more informal relations. I wonder where the sweet point is in getting the balance right.

Dr Petersohn: I would say that formalisation of those meetings ensures a certain continuity and might also help—as we just talked about—to moderate the party politics and remove intergovernmental relations from personal networks or personal relationships so that they do not break down if somebody moves on to a different position, for example.

The flexibility that informal meetings allows for—if you agree on a certain setting of saying let's have two meetings or one meeting per year of these kinds of ministers or heads of governments, there is that formalisation and that is enough. Let's say we have an agenda, it is published, we inform each other on a regular basis; it can work and still allow for flexibility. There are always, in the background, the informal meetings between senior civil servants and officials going on alongside that are not formalised, not written anywhere, and those conferences define their own working groups and how they deal with them themselves. I would say that there is an argument to be made for a certain formalisation, regularity, continuity, giving certain administrative support to organise these things, and leaving the rest within the definition of each of those intergovernmental bodies.

Professor Colino: I would subscribe to what my colleagues have said. We have had this discussion for ages in Spain, whether by formalising intergovernmental bodies, giving them statutory status, we would improve their functioning or effectiveness. We have discovered that it does not. We can have some of our intergovernmental bodies recognised on a statutory basis, but it does not mean they are going to meet or convene more than if you did not have them in law. The opposite can also happen. You can have very informal meetings and they could work very well in a sense because there are incentives.

It all depends on the contextual incentives that Governments have for pursuing those intergovernmental relations. We have both. We have very formalised, institutionalised, statutorily based intergovernmental bodies that do not work at all, for example, the conference of presidents, which now has some standing orders saying that it has to meet twice a year or whatever. People were insisting that we should put that in statute, but it does not mean that the president of the Government would call for this meeting. There is nothing you can do to force the Prime Minister to convoke these meetings.

Q62 **John Lamont:** Looking back to the 2014 referendum we had in Scotland and how the Scottish Government and the UK Government interacted and allowed that to happen, agreed for that to happen, compared with what happened in Spain with your own referendum, do you not think the UK Government made a very good example of how intergovernmental relations can work well compared with what happened in Spain?



Professor Colino: Of course those are constitutional matters that are different from normal everyday policies in intergovernmental relations. In Spain, for example, a referendum should be approved by the central parliament, as you might know. That means that even if there are bilateral agreements between Governments, they should be approved by the parliament. That is the difficulty. I am aware that some people have regarded those Edinburgh agreements as a good example of bilateral agreements in constitutional issues. Of course, we have a different situation there.

Dr León: I very much agree with what my colleagues have said. Basically, informal relationships nurture formal relationships, but it does not work the other way around. Formal institutions do not necessarily nurture informal relationships.

What Bettina said about regularity and continuity is very important. In Spain, political parties played that role of bolstering and channelling intergovernmental relations informally through party members. That is what I said—they have the nature of a double-edged sword.

In Spain, with the European Union, the fact that Governments have to decide about some European issues was a very important push for intergovernmental relations because people were forced to meet regularly to inform the Government about the position they had to defend in the Council of Ministers. The fact that they had to meet regularly and that they had to discuss certain issues with continuity helped to develop some informal relationships, which helped the specific sectoral conferences to work. That is an example of how when you have another level of institution pushing for an agenda, insisting on regularity and making you aware about the continuity, it helps to nurture intergovernmental relations.

Q63 **Tommy Sheppard:** In your experience, what are the pros and cons, the benefits and the limitations, of intergovernmental forums that have a decision-making function as opposed to a purely consultative function?

Dr Petersohn: What do you mean by decision-making? Do you mean legislating jointly? When I think of decision-making in the context of intergovernmental relations, it is that joint decision-making process. Is that what you have in mind?

Q64 **Tommy Sheppard:** I would have thought that in the main it would be about resource allocation, deciding how to divide up a pie.

Dr Petersohn: The moment you move intergovernmental relations towards those decision-making functions—I am tapping into what someone else said before—you have to raise those issues about transparency and accountability. If the intergovernmental body takes a decision, where does it leave parliaments and parliamentary scrutiny? Usually, it is executive-driven. If that body takes a decision that is legally binding to both Governments, I think there needs to be some thought put



into how the relations between executives and parliaments are organised around that, so that parliaments can perform the function of scrutiny.

What I know from the German and Swiss cases is that whatever resolution they agree on tends to be non-binding; it is a political commitment. The taxation system is differently organised in general. Germany has a joint taxation system. There it means that neither Government can change taxation on its own; they have to agree with each other. That is not the taxation system that is in place in the UK, however, so I do not want to advocate for that. What you do see happening, and that takes us more into the constitutional reform processes again, is we talk about equalisation, so changes to fiscal equalisation. That is a constitutional reform process and that requires a process where everybody agrees and can block each other.

In the Swiss case I would say that the finance ministers' conference actually helped to broker a deal that was acceptable to all cantons, or the majority of cantons—they moved to a majority vote—and the federal Government.

I guess I am dancing around the question a bit, but there is no quick-fix solution in that sense. It depends on the political decision: what do you want from intergovernmental relations, what purpose are they supposed to serve. Then it is about finding an agreement on what kind of decision-making rules you would apply. Is it unanimity? Can somebody overrule another? I would say you have to think about the relations with parliaments in that case.

- Q65 **Tommy Sheppard:** What I am trying to explore is if you say that an intergovernmental body can make decisions, but you also say that they have to be based on consensus and agreement, effectively one party can have a veto over the process, and that is why quite often in response to that the bodies are non-decision-making. They simply are talking shops. I am trying to explore if there is a middle ground where the intergovernmental body can have real teeth and make decisions but without necessarily a subnational Government or the main Government having the power of veto.

Dr Petersohn: I would argue against the idea of a mere talking shop. I do see intergovernmental relations with the purpose of an information chain, being a positive contribution to smoothing policymaking for both the territorial entities as well as the federal Governments. I don't think that this mere talking shop is such a negative thing to have.

Tommy Sheppard: Nothing wrong with talking.

Professor Colino: In most of the countries that we can look at, these intergovernmental bodies are normally consultative. I would say that the exceptions here would be Germany and the European Union, where intergovernmental bodies are more or less supposed to reach agreements and to reach joint decisions. The problem with that could be that some



minority can have veto possibilities, that package deals have to be made, and that lowest common-denominator decisions are normally reached in those bodies. That could be a typical shortcoming of those joint-decision bodies.

It is true that there are some bodies that are intermediate. For example, there are consultative bodies such as we have—for example, our Council of Finance Ministers, which under its standing orders has the possibility of majority voting. They never vote. They also try to reach consensus. For example, when we inform our funding arrangements, it is possible to vote, so you can have decisions in which the central Government has a specific weighted vote on the decision and you can reach decisions by voting, which is usually not used, like in the European Union. It is usual to try to reach consensus, to deliberate, to persuade the others, to bring them on board.

It is true that there is some tension, the democratic principle that a parliament has the last word in all those big constitutional decisions or institutional reform decisions. Of course, the parliament has to have the last word in those decisions unless you delegate this power to the intergovernmental body and accept that whatever is decided with this intergovernmental body, the parliament would make its own view, or just rubberstamp what the intergovernmental body has decided. That also happens in some cases, but of course there are some problems and the literature is full of debates about the joint-decision traps and lowest-denominator decisions, and blockage of decisions and so on, when you have very strict, compulsory, joint decision-making systems or bodies.

Dr León: Following up what Dr Colino said, Australia, for instance, has a finance committee. It is a technical body that decides about state financing, how the states will be financed. That raises issues about accountability and about who is represented. What is the representation and the role of representatives in parliament, in deciding about these issues? That committee was created to circumvent the political conflict in bodies that are characterised by having decision-making powers. Even though it might seem very appealing in terms of effectiveness to have a joint-decision body, in practice, due to veto powers and deadlocks, they might end up being less effective. That is something that needs to be taken into account. They might be highly biased in favour of the status quo, so if you want to preserve something, leave it to a committee where there is joint decision-making and then it would be very difficult for things to change.

- Q66 **Ross Thomson:** We know that conflict can arise, not just between Governments but in other walks of life, if there isn't engagement at an early stage. Can you talk to me about what formal processes other countries have in place specifically to facilitate intergovernmental dialogue and engagement at the earliest of stages when it comes to policy development? How effective do you think those processes have been?



Dr León: Let's be in the worst-case scenario, which is when there is a conflict and that conflict is of a jurisdictional nature. In Spain, but not only in Spain, you also have a body, if I remember correctly, the dispute resolution protocol. Spain and many other countries have ways to try to sort out conflicts, to prevent conflicts. In Spain, for instance, sectoral conferences have a role in trying to prevent some of the conflicts being brought before the constitutional court. In 2000 there was a reform enhancing the role of bilateral commissions in order to prevent regional Governments, or the central Government, bringing a case, fielding a case, before the constitutional court. In the worst-case scenario, you need a mechanism to prevent conflict, for the regions or the central Governments to develop a jurisdictional conflict case.

Professor Colino: Of course there is a lot of informal meetings when there is this conflict between a central Government and some of the regions and they belong to the same party. Normally conflicts are resolved informally by people within the parties, with telephone calls, and also officials play a big role in these conflict-prevention arrangements. Most of the officials of the same level normally are in contact with their peers or with their counterparts in other regions.

In cases of conflict, we also use visits of the Prime Minister with the regional presidents. Regional presidents would come to see the Prime Minister and that would help to ease some typical conflicts. Also, within the parties, for example, the parliamentarians from different regions would meet and co-ordinate their positions in different parliaments within the same party. Even before the ministers' council, so before the conferences, you would have meetings of people of the same party, so ministers belonging to one party would have dinner the night before and ministers belonging to the other party would have dinner the night before, and they would co-ordinate their positions for the next meeting of the ministers' council.

Q67 **Ross Thomson:** That is all very helpful. I am trying to get to the bottom of this. If you have two different colours of administrations and you want to avoid conflicts, you want to engage at the earliest possible opportunity. For example, if the UK Government are looking at a policy that involves BEIS or whatever that they know will touch on devolved competencies, how early in the process do you start discussing it with the devolved Administrations? I want to know if there are processes in other countries where there has been an early stage of development that helps the longer-term, smoother process.

Professor Colino: The Ministry of Public Administration and Territorial Issues has one thing they call letters of co-operation, which would be like an early warning system to avoid conflict at early stages. They have a sort of observatory of regional legislation. They can monitor legislation or regional bills brought into the regional parliaments and if they see some problems with some of those bills, they would be sending a letter of co-operation before initiating any formal procedure of sanction or any formal



conflict resolution. You can count the letters of co-operation with each of the regions and that would be an indicator of potential conflict between the central Government and different regional Governments. These letters of co-operation could be something you would like to have a look at.

Q68 **Ross Thomson:** It is usually informal at the very early stages?

Professor Colino: The letters of co-operation are formal. Central Government sends a letter saying they see a jurisdictional problem with this bill, for example.

Dr Petersohn: Can I add one thing, very briefly?

Chair: Very briefly, yes, because we only have 15 minutes left.

Dr Petersohn: What happens in Germany is that you first have a länder conference, which is purely horizontal—the federal Government would attend as guests, with no voting rights, for example—to get a feel for what the positions are. The second thing is the incentive of the federal Government to be part of it because the länder have to implement it, so they have an incentive to basically circulate the draft legislation, feel the pulse of the länder, to see the conflict at the early stage, before initiating it.

Q69 **Ged Killen:** What do you think examples from other countries tell us about the benefits and limitations of heads of government forums?

Dr Petersohn: It is a difficult one. I am not sure. In terms of prominence, it is more the political strategic forum. It is not policy oriented. It is more the general trajectory where political conflicts might erupt but also might not. I don't have a clear answer for the UK because looking again at Germany and Switzerland, it is the number of the units that make it a bit easier. If you have 16 länder or 26 cantonal heads of governments, it makes it easier, I would say. If you do not want to come to a unanimous decision, but it is more about where we go strategically, politically—what are the main issues, the topic or agenda—that probably makes it less conflictual than it would be in the UK case if you met with four Governments. What helps is what they do generally is rotate the role of the chair and have those meetings in different places to get a sense of equality of each participant in those conferences.

Professor Colino: I would say in principle, or potentially, they are beneficial, because they are at summit level and they indicate some policy directions for the big issues in the country, the big national issues. That means they give a sense of co-operation and a common approach to national problems. In principle, you would say that those are beneficial, but they also come with some risks attached.

The risk is that this Prime Ministers or head of governments might be what some may call media spectacles which attract a lot of media attention. That is bound to lead to grandstanding and political posturing



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and those sorts of thing. That means that everyone would be publicly defending the interests of their regions and that would be an obstacle to reaching some decisions. We have had that with the conference of presidents—some regional presidents go there to oppose, to do party opposition. They do not go there to come up with the big solutions that the country needs but use those kinds of media events that come up in the news and so on, for grandstanding and posturing normally. We have had these risks and we have experienced that problem.

Of course, it is true on the other hand that you can also use the forums as summit conferences giving mandates to different councils of ministers, to different ministerial committees. You can use them to give a mandate—for example to the environment conference or other conference—to do things or to agree and propose policies like climatic change or these kinds of big national issues that you need to solve in the country, and where you need to co-ordinate. You can use them in that way.

Dr León: I would add to that that it would not work unless there is a very dense institutional structure together with that conference of presidents. It would not work if it was in Spain for the sectoral conferences, the bilateral commissions. Intergovernmental relations need to be thought of as a pack in which there are bilateral commissions, multilateral forums and sectoral conferences and then the conference of presidents. Most of the time, those conferences, apart from the political risk, because they might become very confrontational, make visible the desire of central Government to co-operate. It is more like showing that there is willingness to co-operate, not so much about the specific content, because the contents will be the general guidance on policy actions that will have to be developed in sectoral and ministerial conferences, but it is more about showing that there is a political willingness, that the Government are supporting the system, that they are supporting intergovernmental action, more than the actual contents of the conference.

Q70 Hugh Gaffney: How effective have policy-focused intergovernmental forums proved in other countries? Are there particularly successful models the UK should consider adopting, like Brexit? How effective have they been? How effective have the IGR forums proved in other countries? You mentioned Australia and their take on the budget issues. Is that an example? Has it been effective in Australia?

Dr León: Sorry, I didn't—

Hugh Gaffney: The question is how effective have policy-focused intergovernmental forums proved in other countries? Have they proved to be effective? Are there any particularly successful models the UK could adopt?

Dr León: When I started my introduction I said that when we tried to think about intergovernmental relations, we had to set expectations right.



As academics, we have wondered whether intergovernmental mechanisms are effective and the answer is always not very convincing in a way because it depends. What are the factors that account for that variation? As I mentioned before, it depends on many factors. It depends on having very nurtured informal relationships, on having a certain level of institutionalisation. The bodies that are supported by a secretariat or technical bodies tend to work better. Bodies that deal with issues that are less political, or issues of a more technical nature, tend to work better than bodies that have a more political nature. For instance in Spain, education is a highly politicised issue so that intergovernmental body works less well than other bodies.

You really need to zoom in and see in which cases it does work and is effective. There is no one yes-no answer to this question. We have wondered about that ourselves and we have come up with answers that are very detailed about under what conditions—the ones that I just mentioned—co-operation seems to work more successfully.

Q71 Chair: Does anyone else want to pick up that one? You don't have to, as we do not have much time.

Dr Petersohn: In Germany and Switzerland they have proved to be very effective because the länder have the understanding that it is mutually beneficial to co-ordinate. As I said at the beginning, however, it is also that political culture of finding a consensus and achieving something like similar or uniform living standards that is the undercurrent of the federal system, basically. There is that understanding that there is a purpose for intergovernmental relations to do it in the first place. There is a culture of compromising.

The other thing is also that where we find them to be effective is where we have a multi-level distribution of policymaking that cuts across levels. You mentioned that the EU dimension is important. You look at environmental legislation, for example, or agriculture, and you look at the protocols of those agricultural ministerial conferences and see that they are very detailed in what the länder want the federal Government to take on to Brussels, what the länder want to achieve among themselves, and so on. There is that shared purpose and mutual benefit.

Q72 Christine Jardine: Something that has struck me about what you are saying is that there seems to be a confederalist thread running through all the discussions, in everything you have said. How different is the situation you are talking about of the federal structure in each of these countries from the situation we have in the United Kingdom where we have a devolved structure? How appropriate is it to perhaps try to follow that example too closely? Should we be looking at it as an example but recognise that there are important differences between federalism and devolution?

Dr Petersohn: I would not use the Germany and Switzerland example and transfer it one-on-one to the UK, absolutely not. I do think there are



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lessons to be learned from how they run. When we talk about effectiveness, I think you can learn but, as I said at the beginning, they really do depend on political culture and the way powers are distributed, and they model that in their countries, but they need to emerge, I would say. I think there is a limit to what you can design and what needs to emerge based on political will.

Dr León: There is something interesting to learn about the Spanish case, because Spain is also a devolved country. We emerged from a centralised context. In that sense, Spain corresponds very much to the type of development in the UK. Something important to learn from the Spanish case is about asymmetry and how the system has coped with asymmetry because that is something that characterises and is unique to the British case. For instance, now we have two different systems of regional financing, the one that applies to the Basque Country and Navarre, where there is full tax autonomy, and the one that applies to the remaining 15 regions. But we are dealing with those asymmetries and we dealt with asymmetries in the past because the regions did not access autonomy with the same level of competencies. It is a good case to learn from in how to cope with asymmetries. As Bettina said at the very beginning, asymmetries are important to understand how intergovernmental relations develop.

Something that struck me about the British case when I came to the UK was that there were no horizontal relations among regions. Regions had been developing their own agendas without collaborating with each other, despite being ruled by the same political parties. In those cases, political parties have not quite channelled relationships, and that is something that I think should be overcome. I think that they should work together. Now that they are reaching, in some cases, some competencies at the same level, they should work together more frequently.

Q73 Christine Jardine: We should be looking as much at the relationship between Holyrood and Wales and Holyrood and Stormont as Holyrood and Westminster?

Dr León: Exactly, because you have a very powerful central Government because of the imbalances in population, economic endowment and so on.

Chair: I am conscious that we have only a few minutes left, so I am grateful for that.

Q74 Deidre Brock: You have touched on this already, Dr León, but there was a UCL report that described the intergovernmental co-ordination in Spain as dysfunctional. Could you tell us a little bit more about that? Clearly there has been a massive breakdown of relations with Catalonia, so perhaps you would agree with that assessment. Could you tell us what intergovernmental relations reforms were proposed or suggested in the run-up to that situation that might have helped, that perhaps were not implemented and anything that could have been learnt in the run-up to



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that situation?

Dr León: I think we can both answer that question because both Dr Colino and I would challenge that intergovernmental relations have been dysfunctional in Spain. There is plenty of evidence that there are a lot of agreements signed up every year.

Professor Colino: I would say compared to what? In many countries you have those same criticisms of their own intergovernmental system. You would find that in Canada and Belgium. It all depends what you compare it to. I would not say those are dysfunctional. They fulfil a role. It is true that they are maybe not decision-making in character but that does not mean they do not play their own role for the purposes that they were established.

You should differentiate between different policy sectors. There are some sectors in which the distribution of powers gives the central power the capacity to co-ordinate economic and financial issues, debt issues and fiscal issues and so on, and other councils of ministers in which it is the autonomous communities who possess the powers but there is a need for cooperation. Still in others they may have jurisdiction, or executive powers, but the central Government may have framework legislation jurisdiction, for example. It all depends on the sector you are looking at and the purposes of the councils.

If you look at the problems we have between Catalonia and the central Government, that would distort a bit the image of intergovernmental relations. As I said before, those are constitutional issues that they normally do not go in the circuit of intergovernmental relations between executives because they pertain to the remit of a constitutional issue. But in terms of policy issues, I do not think Spain's IGR compares at all badly with other similar countries.

Chair: Dr León was keen to answer that too, now she is refreshed.

Dr León: Can I say something very briefly? Something important about the Spanish case is how it has developed over time. There was a time in which intergovernmental relations could be defined as ad hoc and very low institutionalised, but they have become more regular, they have become more highly supported by structure, by bodies that support organisation of the conferences, something that I think has been lacking so far.

In the sense it has been dysfunctional is the relationship among regional Governments. There are very few cases, although that has been improving over time as well, of intergovernmental co-operation among regional Governments without the participation of the central Government, in part because any attempt to have an agreement among regions has to be approved by central parliament. That makes the process very difficult. Horizontal relationships is something that we could improve on that has been dysfunctional.



Q75 **Chair:** We are out of time, but I would lastly like to ask for a very brief response. Of all the examples we have considered today—and we have considered quite a number of different models that are available—what would you suggest is the one thing that the UK could do to improve its intergovernmental relations? We will start with you, Dr Petersohn. They will have to be brief responses.

Dr Petersohn: Briefly, I have two. One is the regularity of meetings and to support it with administration, the JMC plenary, to allow them to have a continuous dialogue about topical issues, things that affect all Governments, that are relevant to all Governments, with that rotating chair changing locations.

The second thing is to think about whether intergovernmental relations can be moved beyond those constitutional issues: identifying a policy area, for example, where each Government would see a benefit in having more co-ordination, information sharing, and then seeing where that goes, building up that trust on an issue where each Government sees that there is a purpose in working together.

Professor Colino: I would suggest creating or establishing maybe some new ministerial councils or committees in financial and fiscal issues. I think that is something that could also work for co-operation in the future, and maybe also to formalise it, I would suggest, to give the JMC a more formal institutionalisation of some of the existing joint ministerial sub-committees.

Dr León: I would say two things. First, further institutionalisation for the committees that are already in place, particularly to enhance the joint ministerial committees that have not worked in the past. Secondly, as I said before when responding to Christine, to try to enhance the formal relationships among regions to know that they try to come back with certain interests that are common to them and that they can put forward before the central Government.

Q76 **Chair:** Thank you ever so much. That was a very lively session and we have managed to get through a whole raft of different issues. We are very grateful for your participation this morning. As usual with this Committee, if you have any further thoughts, please share them with us and we will be happy to accept any further evidence.

Dr León: Can we contact you if we have any further thoughts?

Chair: We have a team of clerks who will be in regular contact and will speak to you following this session.

Examination of witnesses

Witness: Mr Jan Bayart.

Q77 **Chair:** Thank you, Mr Bayart, for joining us this morning to help us out with our inquiry into intergovernmental relations. We are very keen to



explore some of the issues around Belgium. For our record please say who you are, who you represent and anything by way of a short introductory statement for the Committee.

Mr Bayart: You have my name. I am 49 years old. I joined the Belgium diplomatic service 23 years ago. I had my fair share of postings abroad and jobs at the Foreign Office back in Brussels and I have been serving as the Deputy to the Belgian Ambassador since September 2015. That is a short introduction.

Q78 Chair: Thank you for that very concise introductory statement. Could you start by telling us, in your view, how intergovernmental relationships work in Belgium and describe the forums that are available?

Mr Bayart: That is going right to the heart of the business. Generally you know we are a constitutional monarchy, a parliamentary democracy and a federal state, officially since 1997, but that has been brought about by a series of constitutional reforms in 1970, 1980, 1988 and 1993.

This federal state consists of three communities: Flemish, French-speaking and a small German-speaking community in the east, and three regions: Flanders, Brussels and Wallonia. Each of them has its own institutions as far as Government and parliament is concerned but not its own judiciary institutions. The overall national federal judiciary are called upon to apply the statutory law of all the entities. I will skip the historical introduction that explains the specific features. What is important to note is that each of these entities has exclusive competences and there is no hierarchy in the statutory laws of the federal state over the regional or community entities, hence a clear need for co-operative mechanisms.

The constitution is complemented by what we call, in free translation, the special law on institutional reform, which has existed since 1980. It is quite a large and intricate law that has been amended successively to keep abreast of all the constitutional reforms going towards more federalism. There are three dimensions for co-operation. There is consultative, there is arbitration of political conflict, or conflict of political objective, and there is arbitration on competences.

The special law on institutional reform installs what we call the consultation or consultative committee—it depends on how you want to translate the French and the Flemish—that deals with both the consultative part and the arbitration of conflicting policy objectives. This committee is chaired by the federal Prime Minister. It consists of 12 members: the federal Prime Minister and five other federal Ministers; the President of the Flemish Government, which deals with both regional and community competence because their community and region merged their institutions; the Minister President of the Walloon Regional Government; the Minister President of the French Community Government; the Minister President of the Brussels Government; and the Minister President of the German-speaking community. This is, as the word says, a consultative committee. It meets regularly—it all depends



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on the situation—for the authorities of the different entities to keep each other informed of what they wish to do on policy, and to listen to the reactions of how it could interact with the other policy levels.

Q79 **Chair:** Could I just stop you there? There is something you said that I would like to explore a bit further with you. You say that the forums in Belgium are hosted by the central Government. Do they also control the resources and the expertise that has helped to shape these forums?

Mr Bayart: Yes, I was made aware of your interest in the secretariat of the consultative committee. Indeed, the task of being the secretariat to the consultative committee is performed by people in the chancery of the federal Prime Minister.

Q80 **Chair:** Thank you. Do they also control the resources and the arrangements and the agendas of those meetings?

Mr Bayart: Yes, the Prime Minister chairs and the civil servants in his chancery act as secretariat to the consultative committee.

Q81 **Chair:** The Centre on Constitutional Change documents intergovernmental relations in Belgium as highly institutionalised. I do not know if that is a term that you would feel was appropriate or whether you would take issue or exception to it. In answering that, could you tell us what the pros and cons are of this type of institutional approach to intergovernmental relations for Belgium?

Mr Bayart: I think it would be fair to say that it is a highly institutionalised context. It is certainly a context that is being governed by a series of precise statutory law and co-operative agreements, which goes with the tradition of the country that has been based on a written constitution since 1831. It goes with the general administrative, legal, constitutional culture of the country. In that sense, yes, it is a fairly institutionalised context.

Q82 **Chair:** For us in the UK when we observe what is happening in Belgium and the different forums that you have, they do seem to be complex in the way that they work together and the whole arrangement. Is that something that you would recognise? Why do they seem to be so complex in their administration and workings?

Mr Bayart: Yes, there is a fair degree of complexity to it. That may appear as a burden, but I would give two remarks on that. First, different countries in different conditions all tend to develop fairly intricate complex context over the time. I have been spending some of my time as a Brexit watcher in this process. I have been following parliamentary debate in the House of Commons with great interest. I must say that, for instance, the standing orders and other procedural rules of the House of Commons are fascinating but very intricate to me. So, you see, complexity is all around us.



The advantage of such an institutionalised and indeed complex context is that it gives legal security, or sometimes the texts are not legally binding, but it gives some kind of security. In a context where federalism in Belgium came about to manage a number of tensions that existed between different communities for various historical reasons, this helps.

Q83 Chair: Would you characterise the development of the particular administrative regions as linguistic and cultural? How much does that end up in the way that you approach some of your intergovernmental relations and your administrative arrangements?

Mr Bayart: This is the point where I say perhaps it was not wise to skip the historical introduction, which explains why, and which tensions exist. Let's put it this way, to be short. After the Second World War the French-speaking Walloon region of the country developed a desire to have more autonomy on more economic policy. The reason for that was that in Wallonia in the 19th century—Belgium was the second country in the world after the UK to go through industrial revolution. It was very intensive. In one or two generations we did what took three or four here in the UK. That is always the case when copycats go through the moves. This industrialisation was much more intensive in the French-speaking south.

After the Second World War we went into the gradual demise of some of the heavy industry. Industrialisation in Wallonia had brought about a stress on socialist-inspired redistributive policies that was even stronger than in Flanders because of this historical context. Hence the desire for more regional autonomy to accompany this deindustrialisation that started—it is debated—after the Second World War.

The Flemish community living in the north of the country came out of the 19th century with its own experiences. When Belgium became independent as a modern state in 1830, it was a very centralised state in which, for historical reasons, the whole of the government and judiciary happened in French only, whereas the people in the north of the country spoke Flemish, except for their traditional and new leaders, the nobility, the bourgeoisie, which had adopted French as a home language, for other reasons, in a previous generation.

That led to growing resentment with that situation among the Flemish population throughout the 19th and 20th century, so after the Second World War there was a clear desire in the Flemish community that it wanted autonomy for everything that had to do with culture, education, broadcasting, those kinds of things.

Q84 Chair: Does that still influence the approach?

Mr Bayart: I would say it influences the perceptions of history and a number of sour points and sensitivities that may occur in public or other debate. But I would tend to say that the matters of linguistic and cultural things have now been largely dealt with.



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What is relevant for this federalisation thing is that the political mainstream in the north of the country is not exactly where the political mainstream of preferences are in the south of the country. Flanders tends to be a bit more centre-right, Wallonia tends to be a bit more centre-left. Hence also the desire for some governance space of their own.

Chair: We may get into how these tensions all work together in the course of the questions. Thank you for that.

Q85 **Ross Thomson:** Academics generally agree that intergovernmental relations have become more difficult since the early 2000s. Why is that the case?

Mr Bayart: It is a very relevant but also politically sensitive issue, so as a civil servant I will try to do this in a very sober and modest way. Like many countries in western Europe, Belgium undergoes the stresses of economic and other globalisation and is put to the challenge to adapt to these things. The fact of the matter is that as the mainstream of collective preference in the south goes rather to the left, whereas it goes rather to the right in the north, it is not always that easy to agree on what the policy should be in the competences that belong to the federal state. Hence a request, mostly in the north of the country, to go further in federalisation and to transfer more powers in the socioeconomic sphere towards the regions.

That encounters some reluctance in the south of the country because such transfers could also imply transfers of budgets or indeed fiscal policies that could limit the financial solidarity between the north of the country, which has become economically gradually wealthier after the Second World War, whereas Wallonia has struggled with this deindustrialisation. It is all a matter of graduality, but the fiscal basis is a bit more limited in Wallonia, by size of population but also wealth levels, than in the north.

There is a strong request from Wallonia that, for instance, the social security system remains a federal system so there is what is called direct interpersonal solidarity between all Belgians, which means that the wealthier Flemish part of the country base taxes and what we call social contributions are then used for medical insurance policy, unemployment, things like that. The north tends to be more favourably inclined towards limiting solidarity systems to increase the impulse to activate employable population and is more inclined to market-oriented economies and reforms going in that direction.

Q86 **Ged Killen:** I wanted to ask about the independence of the secretariat in Belgium, but you have already answered that. Is there anything you want to add about the potential benefits or disadvantages of that arrangement?

Mr Bayart: I hear the question that arises here is about independence. Let's put it this way. The fact of the matter is that in the Belgian federal context, the figure of the federal Prime Minister is anyhow seen as an



arbiter between various political forces. We have a strong tradition of coalition Governments, of parties that are always either Flemish or French speaking even if they belong to the same ideological current. There is no perceived necessity in the Belgian context to put the secretariat or the chairmanship of this consultation committee somewhere else than with the federal Prime Minister, as in the specific Belgian context he should be a figure of arbitration between political forces anyway.

Q87 Christine Jardine: It sounds as if the Belgian structure is very complicated and has developed to suit its own particular idiosyncrasies over a long period of time. Do you think the different levels of legislative competence create conflict or disagreement and how do you manage it constructively? It sounds as if it has developed in its own way and it has a specific way of coping, if that makes sense.

Mr Bayart: The short answer would be the following. There is certainly potential for conflict, hence the whole institutional context about consultation, political arbitration and indeed judiciary arbitration on competence. However, given the potential, there is not that much conflict, because of everything that exists. For instance, the special law on reform of institutions in some cases has stated that the transfer of competence from the federal state to the regions and community will only take effect after intergovernmental agreement has been reached. This is also quite an important complement to the constitution and the special law.

There are a series of these agreements between the federal state and the regions and communities, or between the regions and communities themselves. There are two kinds of them. I am inventing the English translation as we go along, which is not perhaps very scientific. There is what we call parliamentary supported agreements and non-parliamentary supported agreements. The special law says that such agreements have to be approved by the parliaments of the entities that engage in them if they deal with matters that require legislative acts, if they have budgetary implications or if they create legal obligations for third parties, which interlocks a little bit with the legislative thing. Those need parliamentary approval; the others can be agreed upon just by the Governments of the regions and communities.

These agreements are numerous. The most fundamental one is the one in which the Flemish community and the Flemish region have simply decided to merge their structures because of economies of scales, cost efficiency and so on. But it can go down to very intricate things like, as public transport is now a competence of the regions, there are now agreements that create a framework to agree that the bus stop of one public transport service of one region will stop very near the bus stop or at the same place as the bus stop of the other regional public transport, to make transport fluid across the country. These are the two extreme spectrums of what is dealt with.



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You could say that the very fact that there are so many of these agreements in a way adds to the complexity. In the other way, it also proves that it works, that co-operative federalism works. That is the agreements and the consultation.

We spoke about consultation among the entities. The same consultation committee makes arbitration. If one of the parliaments or Governments finds that a legislative initiative, a declared policy of another entity, could create tension with their own policies, the matter can be brought to the consultation committee. Then, on the judiciary front, we have a constitutional court that is also competent—that is more than arbiter—to pronounce verdicts on whether some entity has exceeded its competences under the constitution.

Q88 John Lamont: In the UK we have this distinction between reserved and devolved policy areas. I think most members of the public do not understand the distinction. Indeed, there are often disputes between the Scottish Government and the UK Government as to which Parliament is actually competent. Do you have the same misunderstanding by the general public in those sorts of tensions?

Mr Bayart: It is true that the public perhaps does not always understand the whole complexity of the system. What we have had for a while now in Belgium is a discussion on where what we call the residuary powers lie. As things stand now, the residuary powers—the powers that have not been explicitly allocated to one of the entities in the constitution—reside with the federal state.

A segment of Flemish political life would like to change that. There is article 35 of the constitution that says that this can be transferred to the regions and communities, but it will require another special law. What is so special about the special law is that it requires a two-thirds majority in the federal Parliament, with a majority in each of the linguistic groups of the MPs, the majority of the votes cast in each linguistic group, a majority of each of the linguistic groups being present. That is a three-level lock that makes sure that the special law is based on a very broad supportive base. Only when that kind of majority is reached to specifically allocate the powers of the federal state, will it be possible to move towards what some call a shift from federalism to confederalism. What is in a name?

Q89 Deidre Brock: In the linguistic groups that you mention that need a majority of members present, is the number of members equally balanced between those groups?

Mr Bayart: No. We have a bicameral system. There is a House of Commons—a House of Representatives—which has 150 members. The linguistic groups are not equal because the population is not equal, the Flemish and French-speaking population. I can give you the figures.

Deidre Brock: Perhaps we could get that from you later. That would be



very helpful.

Mr Bayart: Then we have a Senate. There is not an equal number of members either, but it is mitigated. It is not like the House of Representatives, which is elected on the basis of proportionality with a 5% threshold to gain access. The representation in the Senate is more mitigated. There are, I think, 25 Flemish Senators directly elected. There are 10 Senators appointed by the Flemish Parliament and there are a further six Senators, who are Flemish Senators co-opted by the elected Senators. On the Walloon side it is not 25 but 15 directly elected Senators and also 10 dispatched by the regional Parliament and another four co-opted. It is unequal, to reflect the proportions in the population, but it is mitigated.

Deidre Brock: In the Senate but not in the House of Representatives?

Mr Bayart: In the Senate, not in the House of Representatives.

Q90 **Chair:** According to Dr Wikipedia, the number of Flemish speakers is 55% as a first language, with French 36% as their first language. Would that be roughly it?

Mr Bayart: Yes. There a number of figures around. It all depends how you count. Everyone who chooses to live in Flanders is supposed to be Flemish. Everyone who chooses in Wallonia is supposed to be Walloon. It is only in Brussels where people of different cultural and linguistic affiliation live together in a place where their affiliation is being recorded on the basis of whether they choose to be registered in the civil registry as Dutch or as French.

Chair: I was just offering them to you.

Mr Bayart: Yes, it is between 55% and 57% and between 34% and 36%.

Q91 **Christine Jardine:** Do these mechanisms that you have described enable the regional, communal and central Governments to pursue divergent and very different policy objectives?

Mr Bayart: To a certain extent, yes. Of course, the fact of the matter is that many of the competences devolved to the regions are also competences devolved to the European Union. For instance, agriculture and fisheries are a regional competence. At the same time there is a broad framework that is European Union. But they can have their own policies on facilitated access to public transport, for instance, making it more or less expensive, free for certain categories of people.

To the extent allowed by the rules of the EU internal market, they can take some measures to pursue an economic policy of their own. They are competent for town planning, for land use, for the treatment of wastewater and things like that. Yes, they have a certain degree of autonomy in these matters. Of course, the spread of policy divergence remains limited. It is not as if the north of the country lives—it is delicate



to draw comparisons, but the one in Singapore and the other in Cuba. It is not such a caricature, of course.

Q92 Christine Jardine: From what you are saying and from the papers we have, Belgium appears unique in the amount of power the regions exercise at an international level. How is that managed by the federal Government, or is it managed by the federal Government?

Mr Bayart: Indeed, it is a very peculiar feature of Belgian federalism that article 67 of the constitution says that the King, so the federal Government, is competent for international relations. However, the communities and regions have the right to conclude international treaties in their allocated competences. They also have the right to send out diplomatic envoys.

This, however, is complemented by the special law on institutional reform and a series of intergovernmental agreements, which boil down to the fact that as far as concluding treaties is concerned, and indeed engaging in co-operation, which in some instances might be considered as development co-operation within their competences—education, for instance—they can insofar as they do not harm the overall objectives of the Belgian federal foreign policy and do not harm the coherence of the federal Belgian foreign policy.

Much of this policy is pursued in international organisations, some on a bilateral basis. For instance, what is clear is that it is still the federal state of Belgium—the King, as the constitution says—that is competent for recognising states, with the recognition of Kosovo 10 years ago; engaging or not in diplomatic relations, and those kinds of things; and opening embassies. To some degree that can limit the autonomy of the regions to engage in diplomatic representation or concluding international treaties. It could not be done with an entity that is not recognised as an independent state by Belgium.

Q93 Christine Jardine: In the UK, Scotland has a separate development arm for international co-operation. With the new Forth Bridge in my constituency, the Queensferry Crossing, deals for that were all done—we have development agencies for Scotland and a separate one for the Highlands. To what extent does that mirror what you have in Belgium, or do the Belgian regions have more authority over that sort of thing, if you can make a comparison?

Mr Bayart: Is it mirrored? Yes. On both sides there are agencies for export promotion, tourist promotion and attracting foreign investment, who send out trade attachés. On both sides there is an administration for international relations that co-ordinates and calls upon the expertise in various technical institutions—agriculture, education and others—for them to engage, for instance, in international co-operation with foreign countries. For instance, the Flemish region has a co-operation programme with South Africa. The French-speaking side of the country



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has such agreements with a number of African French-speaking countries.

Q94 **Chair:** Wallonia famously stopped the CETA arrangement because its parliament thought they had power to do that. That even reached the UK in terms of interest.

Mr Bayart: Indeed. Let's put it this way. You can distinguish three types of international treaties. You have treaties that are fully in the competence of the federal state. For instance, a treaty on fiscal matters—no, that has become a bit mixed. Let's take a simple, straightforward example: the North Atlantic Charter, NATO. That is defence and is purely federal. There are treaties that are envisagable, for instance a treaty between Flanders and South Africa on co-operation in matters of public education.

Q95 **Chair:** We do not have much longer, so if we can try to get through as much as we can. I asked that because we have been having an inquiry into international trade as we come to Brexit. We are arguing about whether Scottish Ministers could get to attend certain meetings, but Wallonia has the power to stop international treaties, which is almost unique. We are told that we are the most powerful devolved Parliament in the world. There is no way on earth we would be able to even come close to having that type of power or authority, but you have that within your structures in Belgium.

Mr Bayart: Indeed, because mixed treaties that touch on both federal and regional competences must be approved—mixed competences—by all the competent parliaments. That mixed competence is partly devolved or transferred to the European Union, which concludes its own treaties, notably with regard to trade and in some years also in investment framework and other matters, but many of these EU treaties concluded by the EU are mixed competences, both pure EU competence and national member state competence. In the specific case of Belgium, some of the national member states' competences are internally devolved so you get a bit of a cascade of necessary parliamentary approval.

Q96 **Christine Jardine:** If we could go back to what I was asking before the Chairman interrupted, I was talking about whether it mirrors. We have a situation in Scotland exactly as you have described. Is the difference that we are talking about devolved powers rather than federal powers? I am thinking specifically when we talk about trade and international agreements. I was in China last year with a UK delegation from the British Council. At the same time there was a Scottish delegation there talking specifically about trade. One of the agreements that has come out in the Scottish Government was—I referred to the bridge earlier—to buy Chinese steel to build a bridge in Edinburgh. To what extent does that already mirror what you have in Belgium and how much further do the powers go or do they not go any further at all?



Mr Bayart: It mirrors to a certain degree. If we go back to this right of sending trade missions, or export promotion, attracting investment and sending out trade commissioners, among the many co-operation agreements on international relations between the federal state and the regions, a distinction is made between representations to international organisations and those to foreign countries. The regions have the right to nominate their own envoys, but it is the federal state, the Belgian diplomatic service, the Belgian embassy, that has to require that these people be put on what is called the diplomatic list, the list of people who are recognised as having diplomatic status in the receiving country or indeed the receiving organisation. They have autonomy but the federal state should agree.

Then, of course, the most important agreement is the one of the receiving state or indeed the receiving organisation. They must agree too. This agreement also says—and it is not as peculiar as it may sound—that these regional envoys, which only deal with their own specific competences, are under what is called the diplomatic authority of the Belgian ambassador. He has the right to give some general directives on matters ranging from what is appropriate behaviour in a specific political context to—

Chair: It does seem a very efficient and properly co-ordinated approach to involvement in international arrangements. Thank you for that. We only have a few minutes. I know Deidre Brock has a last question.

Q97 **Deidre Brock:** I want to ask about the co-operation agreements and joint decrees in Belgian politics and how successful you feel those have been as a device for fostering effective intergovernmental relations. Do you think they have been of real use in addressing some of the tensions that you mentioned that inevitably arise from time to time?

Mr Bayart: It is difficult for me in my very specific situation to evaluate how efficient they have been in everything they have specifically dealt with. There again the answer is the fact that it is possible to come to these agreements. Joint or co-ordinated decrees of different regions show that co-operative federalism can work and can work well in Belgium.

Q98 **Deidre Brock:** The Chair mentioned Wallonia and the CETA treaty and the fact that Wallonia was able, for a short period of time, to make clear its objection to certain elements of it and that held things up, certainly to outrage from elements within this Parliament that that was possible. But clearly it is possible to have a mature relationship between the federal and devolved regions of Belgium and for those situations to be resolved, eventually, in a mature manner.

Mr Bayart: Indeed. Under this consultative committee chaired by the federal Prime Minister, there are about 19 what we call inter-ministerial conferences, one of them being the inter-ministerial conferences on international relations, which is chaired by the Belgian federal Minister of Foreign Affairs. Under that conference, which brings together Ministers,



you have a series of committees, of civil servants who come together specifically for the follow-up of quite a number of issues such as EU sanctions against whoever is sanctioned in whatever way, arms exports controls, because it is an economic and diplomatic competence, and so forth.

I would like to add something on my own initiative, because I know foreigners are always puzzled by the fact that the regions in Belgium have this right to conclude international treaties and send diplomatic envoys of their own, even if it is within a Belgian embassy under the authority of a Belgian ambassador. As a matter of fact, in my own 23 years of experience, it is not that unique.

In international relations I see in many countries, even strong and strongly centralised western countries, that technical departments engage in their own international agreements on international co-operation in the specific matter they are dealing with. In other countries it is not an international treaty as a kind of soft-law international agreement. But, frankly, the only difference with an international treaty is that in theory, if one of the parties thinks that the internationally binding treaty is being violated, you can go to the International Court of Justice in The Hague, attend a process and hope you get a verdict after a couple of years.

Chair: We are very grateful to you and we could listen to your views for much longer. You have been very helpful to the Committee today, explaining very clearly the arrangements that exist in Belgium. It has very much helped us in our ongoing inquiry. Again, if there is anything else that you feel you could usefully contribute, please get back in touch with us. The Committee will be grateful for any further correspondence. Thank you for your time today.

Examination of witnesses

Witness: George Anderson.

[This evidence was taken by video conference]

Q99 **Chair:** We are now joined by Mr Anderson, down the wire from Ottawa, who is going to help us out with some of the issues related to Canada. Mr Anderson, for our records, please say who you are, who you represent and anything by way of a helpful, short introductory statement.

George Anderson: Thank you very much, Mr Chairman, and good day to all of you. You are thinking of lunch, I am thinking of breakfast.

I am a former Deputy Minister in the federal Government of Canada. One of my assignments was as Deputy Minister for Intergovernmental Affairs, which is within the Cabinet Office. A Deputy Minister in Canada is a Permanent Secretary in your system. I was a career civil servant and I was involved for many years in many different ways in the issues of



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federal-provincial relations, including when I was in the Department of Finance and the Deputy Minister of National Resources.

Since I left government, it is worth mentioning that I have done work on comparative federalism around the world. I was the head of an organisation called the Forum of Federations, and I have done quite a bit of academic writing in the area of federalism and what that means. That is enough about me for the time being.

I was going to make a few comments about the nature of debates around federalism here and in the UK. The first thing—and this is really a stunning contrast to the United Kingdom—is that Canadian federalism is essentially symmetric. The constitutional powers of our provinces are all the same. There are some differences in language rights associated with different provinces and so on, but that does not affect their ability to legislate on the broader range of issues. The idea when the constitution was originally designed was that there would be relatively watertight compartments, with the federal Government doing some things and the provinces doing others. But this was done in 1867 and over time it has proven that there is a great deal of overlap and politically federal politicians wanted to get in on some of the things that were assigned to the provinces. We have a large measure of federal-provincial interaction because of the overlap between jurisdictions, and I will come back to that in a minute.

It is also a very decentralised federation by the standards of federations. The federal Government's direct spending after transfers to the provinces is only about 33% of government spending in Canada. The rest is done by the provinces and municipalities and the municipalities are creations of the provinces.

Over time, how the federation functions and the issue of intergovernmental relations have changed tremendously according to the context. If you go back to World War II there was a period of massive centralisation and after that the construction of the welfare state. We went through our existential debate about Quebec, which was a huge issue in the country. Periodically, partly depending on oil prices and so on, energy could be a big issue. Climate change has now become a very significant federal-provincial issue. Over time the central issues that are being discussed that affect intergovernmental relations have varied a great deal and they relate in different ways to different powers. The role of the federal Government and the role of the provinces will vary over time.

In terms of our institutions, as you know we inherited the Westminster system from the UK, so we have a parliamentary system. What this means is that our federal-provincial relations are done through what is called executive federalism. They are dominated by relations between the Executives, First Ministers and Ministers, with the legislative bodies,



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Parliament and the provincial legislatures, playing a very minor role in intergovernmental relations.

There is almost nothing in the constitution about intergovernmental relations, so what has developed over time is largely informal. We have vertical relations between the federal Government and the provinces. The provinces themselves have created their own organisations, some of which are national and also regional. Every Government has an office to manage intergovernmental relations. In the federal Government it is within the Cabinet Office. Depending again on the time and issues of the day, staff in these offices can be quite large. When I was head of Intergovernmental Affairs we had well over 100 staff, and it was about one-third of the Cabinet Office. Then during the Harper Government there was a period of quiescence on federal-provincial relations. There was not much of an active agenda and so the office shrank to about 20 people. It was up and down. There is also a secretariat that is available to and organise intergovernmental meetings, but it has no substantive role.

On the mechanisms of intergovernmental relations, there are relatively few formal decision-making rules, such as majority voting. The obvious exception is any amendment to the constitution. The rules affecting the amendment of the constitution, for most purposes, require seven provinces to approve and those seven provinces have to have over 50% of the population. Some amendments require unanimity of all of the provinces, as well as the federal parliament. There are one or two areas, pensions for example, where there is an area of joint jurisdiction by the federal and provincial governments and they have their own decision rules.

The spending power has been a very big mechanism for the federal Government to influence what the provinces are doing. What you will find in all federations is that the central governments typically raise more money than they need for their own purposes, and so you get transfers from the centre to the regional Governments. In Canada 25% of the federal Government's revenue goes to the provinces. The provinces raise about 83% of their own revenues, but that varies a good deal by province. The richest provinces raise almost all their own revenue and the poorest province much less, but on average about 83% is what provinces raise from their own sources, but then the transfers from the federal Government are significant as well.

Historically, particularly during the period of the 1950s, 1960s and 1970s, the focus was on establishing the welfare state. What the federal Government would do is come up with joint shared cost programmes. With Medicare, for example, the provinces would be told that they only have to pay half—

Q100 **Chair:** Can I just stop you there, Mr Anderson? Thank you. That is really helpful, and we are very grateful. We just want to make the best use of the time that we have available from you today and what you describe



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seems to be a very effective, understood and pretty much a consensual arrangement across Canada.

George Anderson: No, I would not describe it as that.

Q101 **Chair:** Okay, that is what I was going to ask you. I want to see where you see the major points of tension starting to develop between how the provinces administer themselves and their relationship with Ottawa and the federal Government.

George Anderson: Some of it is the nature of the political parties that are governing, the different jurisdictions. Our political party system over time has become fractured and the national parties are distinct from the provincial parties. There are parties that call themselves liberal federally and provincially and conservative federally and provincially, but the federal parties do not run the provincial parties, by any means.

Then you have some regional parties. Depending on what the agendas are of the federal Government or the provinces, you can have major tension. At the moment we are having quite a lot of tension around the issue of climate change, where the federal Government is determined to have a national, vigorous policy with it imposing a carbon tax if necessary right across the country unless they can come up with arrangements with individual provinces where they will have a programme to achieve the same result. Some of the provinces, Ontario under its previous Government, Quebec as well, came up with a regulatory regime as opposed to a tax regime to deal with the carbon issue and the federal Government accepted that. But now we have had a number of recent elections with provincial Governments that are very hostile on any real action on carbon.

Q102 **Chair:** I am interested in this point. When the Westminster Constitution Unit looked at the arrangements across Canada it said that party politics plays a minimal role in intergovernmental relations because of the regionalisation of the political structures that you described. Is that a fair comment? It is something that we are pretty much used to in Westminster, but you describe a system or a process where there may be federal arrangements for some parties but that does not apply to the regions. Does that help or hinder intergovernmental relations?

George Anderson: For example, we have just had a change of Government in Ontario. The previous Government was Liberal, and they were working very closely with the federal Government. The current Government are Conservative, and they are taking the federal Government to court on a number of issues and their relationship has deteriorated very badly.

Q103 **Chair:** It is something we are used to here, I have to say, in the course of the past few months and years with the process of Brexit.

George Anderson: It need not be. For a period, the federal Government was working very well with the NDP Governments. We have Liberals in



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Ottawa and NDP in Alberta and there was a period where they were working very well together. It has been quite strained recently because of the difficulty of getting approval of some of our big pipeline projects. The NDP Government in Alberta is getting fed up, and an election is approaching, so they have to reposition themselves for an election.

Q104 Chair: We will look forward to that particular contest. Lastly from me, before I share it around with my colleagues, there is a number of forums that arbitrate and deal with intergovernmental relations across Canada. Could you briefly talk us through some of the major ones and tell us how effective they have been as a place where some of these issues and some of these big themes could be discussed?

George Anderson: Yes. Really the only place where arbitration happens is in the Supreme Court. There can be constitutional issues about whether or not what the federal Government is trying to do, or a province is trying to do is in its jurisdiction and that issue can go to the Supreme Court. Not that long ago the Harper Government were trying to put in place a national securities regulator for in our financial communities across the country, and the Supreme Court said, "No, you can't do that, or at least you can't do it in the way you were proposing to do it". Ontario is currently challenging whether or not the federal Government can do a carbon tax. I would be very surprised if they win on that. The Supreme Court does arbitrate, but in terms of interpreting the constitution it is the role you would expect.

We do have federal-provincial conferences—the APEX conferences are First Ministers' conferences—and the use of these varies a lot according to the agenda of the day. When Mr Trudeau, the current Prime Minister, came in he undertook to have a First Ministers' conference once a year at least and he has respected that. His predecessor, Mr Harper, who tried to disentangle relations with the provinces, did not really have any significant programmes that he was trying to get co-operation from the provinces. In his 10 years in office he had only three First Ministers' conferences and one of them was nothing more than a dinner. There was really no substance to it.

When we had the big constitutional debates we had First Ministers' conferences that went on for days. They were on television and it was a huge deal. Every sector—agriculture, health, you can work your way through almost all the departments—has ministerial meetings and then also Deputy Ministers and officials can get together on a sectoral basis. That is all very informally done.

Q105 Ross Thomson: I want to follow up from the point that was asked by the convener, which was about the regionalisation of politics in Canada and how that plays into intergovernmental relationships. You mentioned that there are some parties that fight purely at a federal level and some that have a regional branch, some that only compete at a regional level. I would be interested if you could talk a little bit more about the challenges for parties that just compete at a regional level that maybe do not have



much of a relationship with the federal Government because they do not share the same party. In evidence here we have talked about when the same party is in power in the Scottish Government and is in power at Westminster sometimes issues can be dealt with in a party way, because they know each other, and they co-operate. I would be interested to find out what the challenges are when those parties are different, particularly when that regional party does not compete at a federal level, so maybe does not have the same relationships.

George Anderson: As I mentioned, the federal parties do not control the provincial parties even if they have the same name, but Liberals often have a close relationship with Liberal parties and Conservatives with Conservative parties, but not always. The Liberal Party in British Columbia is essentially a Conservative party as opposed to a Liberal party in the sense of the national party. All of our provincial parties are regional parties now, but you have some that are distinguished by coming out of a regional movement. Obviously Parti Québécois in Quebec was that type, so it was a regional party operating at the provincial level. They always resisted getting into federal politics and when eventually the separatists moved into federal politics it was because of a breakout from the Conservative party federally and the creation of the Bloc Québécois. The Bloc Québécois was in federal politics and the Parti Québécois provincial. The Bloc Québécois now has pretty much faded, it has only a handful of Members of Parliament. It is obviously more difficult for the federal Government if you have a separatist Government than if you have a federalist Government in Quebec.

We have had some other very regionally oriented Governments. Newfoundland, which was once an independent country, still has memories of that and every now and then can be very nationalistic in its approach to matters. Alberta, because of the oil issues, frequently finds that its interests are strongly opposed to the interests of other parts of the country, so we have had a lot of clashes between Alberta and the federal Government even when it has been Conservative Government federally and Conservative Government provincially.

Q106 **Ross Thomson:** Out of interest, and we will be taking more evidence on this when we speak to people who held positions in UK Government and Scottish Government, our understanding is that when there was a Labour Executive running the Scottish Executive and a Labour Blair Government in Westminster, a key figure was the Chancellor of the Exchequer at the time, Gordon Brown, who then became Prime Minister. If the Scottish Executive had any issues they could use him as a channel into the UK Government. Have there been any examples of something similar in Canada between the provinces and the federal Government?

George Anderson: You are touching on something for which there are big differences in Canadian and British politics. Scotland has this very special relationship and most MPs who are English are not so caught up in the issues of intergovernmental relations, whereas in Canada we do not have many issues where you would say it is just a pure Ottawa-Alberta



issue of no interest to the MPs from the rest of the country. The other provinces all have an interest in what is going on in Alberta one way or another. They may support what Alberta wants or they may oppose what Alberta wants. The dynamic is very different and there is a much broader engagement around our provincial issues than I think you have, particularly with your English MPs.

Q107 Christine Jardine: You have described the First Ministers' conferences and how Justin Trudeau does them far more regularly than his predecessor. The ad hoc nature depends really, from what you are saying, on who is in charge, whether or not they happen. What sort of impact does that have on relationships?

George Anderson: I think having First Ministers get together is important for them getting to know one another and particularly if they get together for two or three days you start to build a sense of shared vision. When Mr Chrétien was Prime Minister he would go on trade missions internationally and he would invite the Premiers to come with him. They would all be travelling together for a week on a trade mission and they got to know one another. It was a very good way of breaking down personal barriers.

With individual meetings, I know as a former Deputy Minister that when you had a First Ministers' meeting being planned there had to be a deliverable aim, "What are we going to get out of this meeting?" This provides a focus within the bureaucracy and provides an incentive for Ministers to reach a conclusion. I think what Prime Ministers found over time is that they did not want to go into the First Ministers' conference with a big issue on the agenda where they did not have a pretty good idea how things were going to come out. They did not want to be stuck at the First Ministers' conference having to negotiate a difficult issue. For the federal Government, the Prime Minister dealing with 10 Premiers can be very awkward. Typically the First Ministers' conferences provided the focus for coming to a deal, but you try to do the deal before you get there.

Q108 Christine Jardine: There have been calls, I am not sure from whom, for the UK's Joint Ministerial Committee to be more formalised and transparent. Have you thought about similar reforms in Canada or attempted to do something similar?

George Anderson: We created the Intergovernmental Secretariat, which is available to deal with all the logistics of the meetings and that has proven to be helpful. There are about 50 intergovernmental meetings a year—and again the numbers vary, it can be as high as 80—which are organised by the secretariat. To have the secretariat available to do all the logistics has proven helpful, but there has been a resistance to developing any kind of mechanism that does the substance of intergovernmental relations between Governments. Each Government tends to keep that within itself. As I mentioned, within the Cabinet Office of the federal Government you have a lot of people to deal with



intergovernmental relations and that is duplicated within the individual provinces.

There are one or two areas like the environment where there is a Canadian Council of Ministers of the Environment that has a small secretariat and that has done some things to help Ministers of the Environment. Recently, and this is more about implementation of policy, there are now some quite significant mechanisms in the health area to cooperate activities on things like pharmaceuticals and so on; these are quite large organisations, but they are not policy organisations. They implement.

Q109 Christine Jardine: Can you tell us how effectively policy focus sectoral conferences have co-ordinated policymaking? Have they helped avoid any policy or competency disputes? From what you are saying, the Departments of Government like to keep things very much to themselves, but have these sectoral conferences helped?

George Anderson: It depends on the circumstances. They can be very effective. For example, when I was involved we were preparing for a major conference on health issues, and the Deputy Minister of Health at the time held numerous meetings, often just conference calls with provincial deputies, to work through the. Federal officials might go to individual provinces to work through the issues. It was not an APEX meeting where you had the Ministers or the Prime Ministers sitting around together, which sorted things out. A lot of it was done, most of it was done, prior to getting to the meetings. Ministers could talk to one another on the telephone as well, but you really try to work your way through so that by the time you get to these meetings you have something useful. The constitution was a very different issue and we had some very dramatic meetings on the constitution, but that was very existential, a bit like what you are going through with Brexit at the moment.

Christine Jardine: But you survived, which is encouraging for us with Brexit. Thank you.

Q110 Deidre Brock: Good morning, Mr Anderson. Can I just ask about opting out in the context of Canadian intergovernmental relations and whether you think that is an effective way of managing any divergences in policy objectives between federal and provincial Governments?

George Anderson: It has been useful. There was a period where it was a way of dealing with very strong nationalist sentiment in Quebec, but the federal Government has become more resistant to opting out because it risks creating too much of a chequerboard for the structure of the country around some issues. Quebec, for example, has a very distinct arrangement with the federal Government on immigration. It is not exactly opting out, but it is a distinct arrangement that was negotiated. The opting out basically says when federal government sponsors a shared-cost programme, a province can opt out and receive the money.



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As you can imagine, the federal Government is not very keen on this. It is not a very strong way to enter into a negotiation with the provinces, to have them to be able to opt out. So what you are more likely to see is negotiations around what will be the conditions associated with the transfer and maybe you will get different conditions from one province to another. There can be conditions attached even when a province has "opted out" but we have not had complete opting out recently.

Q111 **Deidre Brock:** When was the last time it was used?

George Anderson: I cannot remember, to be honest. Opting out related to spending programmes. We have not had a major new spending programme where we had opting out for some time.

Q112 **Chair:** I have to say I find this concept of opting out quite intriguing and quite unusual in the constitutional arrangement setup. Was it mainly designed to facilitate Quebec? Is that why?

George Anderson: It was a purely informal thing. There was nothing in the constitution about it. It related to spending programmes where the federal Government would be going to the provinces and saying, "We want to create a national programme around some sort of welfare or health issue or whatever and we will pay half of the cost". Some provinces were saying, "We don't want to do that with the money. We would sooner do something else with the money so we will opt out. Just give us the money and we will do whatever we want with the money". You can see when I express it that way why the federal Government would want to avoid it.

Q113 **Chair:** Absolutely. I can understand fully why the federal Government would have particular issues, but I also see why it would be quite an attractive feature for a number of the provinces. We look at our constitutional arrangements here, and I know that some of my colleagues in the Scottish Government would give their right arm to be able to opt out of certain social programmes and taxation programmes. I am quite surprised that you say it has not been used very often, if it is a vehicle that exists as part of an arrangement. Why has it not been used more often?

George Anderson: You mention taxation. We have different arrangements on taxation. The federal Government has offered to collect provincial taxes and pays the cost of collecting provincial taxes if the provinces will structure their taxes on certain principles. That is working with nine provinces. They have not all integrated at the same level with the federal tax regime. In the case of Quebec they said, "No, we will not let you collect our taxes" and so we have the reverse, where the value added tax in Quebec is collected by the Quebec tax authorities and they give the money back to the federal Government. There is a case of a fairly strong asymmetry as to how these things are done between the federal Government across the country, but it is more done on a pragmatic basis and there is nothing in the constitution about it. You can



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delegate administrative responsibility, but you cannot delegate legislative responsibility.

Chair: Okay, that is helpful and clarifies it for me.

Q114 **Ged Killen:** We have started to cover a lot of what I was going to ask, Mr Anderson, but my question is about how differently Quebec is treated by the federal Government compared to other states, given the nationalist identity within the state. Do you think there are lessons that we could learn here about the relationship between Scotland and the UK about the relationship between the federal Government and Quebec?

George Anderson: The big difference is that Canada's general structure is a federation and so we never got into the major asymmetric devolution that you have in the UK. Scotland has very significant legislative powers, even Wales. The whole approach is very different between the UK and Canada.

In Canada we resisted asymmetric devolution of legislative powers, but that being said, Quebec is special and so if there was a particular reason for a special arrangement that might happen. For example—immigration is a very sensitive area in Canada, in Quebec. Quebec was concerned to preserve the character of the province, so a special deal was done with Quebec on immigration that the other provinces do not have. It does not give them different legislative powers but relates to how they administer immigration. Within the constitution, immigration is a joint responsibility, which is rare. That is one example.

I gave you the example of the tax arrangements, where that again is a pragmatic way. What the federal Government wanted to do was get a harmonised national value added tax. The only way to get that with Quebec was to agree to have Quebec collect the federal share of the tax and then pay it back to the federal Government. There are a few such pragmatic arrangements. Prior to Pierre Trudeau there had been quite a strong sense that maybe we should be giving Quebec special legislative powers, but ever since that has been resisted and you end up with special administrative arrangements but not with special legislative powers.

Q115 **Christine Jardine:** I want to pick up on something you said there, which probably is not directly related to specifics we are talking about today but has come up several times before in this Committee, and that is immigration. You just said that the provinces and the federal Government have a joint responsibility for immigration. Ontario, for example, does not have its own immigration policy, so it is not a case of there being a separate visa, or can you have a visa for Ontario without permission from the federal Government?

George Anderson: For a long time the English-speaking provinces paid no attention to immigration and even Quebec paid no attention to immigration even though it was always constitutionally a joint responsibility. Quebec started to pay a lot of attention to it but the issue



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for them was the selection of immigrants. We have different classes of immigrants and so the agreement with Quebec permits it to determine some of the criteria for selecting the main class of immigrants. Knowledge of the French language is one major criterion. Quebec has immigration officers around the world where they are trying to get people to apply and they can manage the process.

So Quebec has a big say in selecting which immigrants go to Quebec initially. However, once the immigrant arrives in Quebec, if they decide six months later it is not working out and they want to move to Toronto or Halifax they can move to Toronto or Halifax and there are no restrictions on internal movement. Similarly if someone came in as an immigrant to Vancouver and decides they want to move to Montreal once they are in Canada, having come through the other part of our system, they can move to Montreal. It has had the effect of Quebec being able to have a real influence on recruiting Francophone immigrants, but we do not have separate visas or anything like that.

Q116 Christine Jardine: Would it be fair to say that although Quebec can encourage people to come to Quebec they do not immigrate really to Quebec? They live in Quebec, but they immigrate to Canada.

George Anderson: That is correct, yes. They get citizenship; they are Canadian citizens. When they arrive in Quebec there are also programmes and if they do not have French they teach them French and there is quite a lot of programmes promoting integration. One of the things that we have done quite well in Canada in all our provinces is thinking about how to integrate people into the community and Quebec is very good at that.

Q117 Chair: While we are on Quebec, I know there are great differences between the United Kingdom and Canada when it comes to constitutional arrangements and intergovernmental relations, but the one feature we do have in common is that there is a very powerful, strong, independence movement within both our nations. In your experience, how much has the independence movement in Quebec been a driver of the intergovernmental relations and is that always the key feature in these types of issues or debate? What type of influence has that had on the whole debate?

George Anderson: I want to distinguish between Quebec nationalism and Quebec separatism. Quebec nationalism has been around for a very long time. During the 1940s and 1950s the Premier of Quebec was a man called Duplessis. He was not a separatist, but he was a very strong nationalist and he had very clearly developed views about the appropriate role of federal Government. For example, in the 1950s he was refusing to have the federal Government provide any funds directly to universities. Now we have a new Government in Quebec in which a number of former separatists are ministers, but they do not have an agenda to separate. It is a more nationalist Government compared to the Liberals before them, who were a strongly federalist Government.



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Quebec is very conscious of its prerogatives and even the federalist Governments in Quebec tend to be very conscious of their prerogatives and putting boundaries on what the federal Government can do. If the federal Government comes up with initiatives they often are pushed back by Quebec and may also be pushed back by the other provinces. At the moment the separatist movement is pretty much marginalised. There has been a big change. The millennial generation in Quebec these days is not separatist. Part of that perhaps reflects the changing nature of Quebec socially. They do not have some of the historic resentments that they used to have towards the English community because there has been a rebalancing of relations within Quebec, but Quebec remains quite nationalist.

Q118 Chair: I wonder how big a feature that is and how intergovernmental relationships are being framed given that there is this—

George Anderson: I think the strength in Quebec nationalism and the size of Quebec in the federation is one of the reasons why we have such a decentralised federation. If Quebec was an English-speaking province I think we would have had a much more centralised federation.

Q119 Deidre Brock: Mr Anderson, I want to ask about when differences of opinion occur over policy competencies. Could you give us examples of where that may have been satisfactorily resolved between the federal Government and a provincial Government and where things have broken down, to an extent?

George Anderson: We do not have that many cases where we end up in the courts on who is competent. I mentioned the Harper Government was taken to court by the provinces on the issue of securities regulation, and this has been a vexatious issue for many years. There is strong pressure in our financial community to nationalise our securities regulation, because we have quite a burdensome system now where we have duplicate processes in the 10 provinces. Some provinces resisted this very much. Since the Supreme Court said that the federal Government could not impose a national securities regulator, there has been an effort to come up with a co-operative approach. I am not up-to-date on exactly how that is working.

Another one is internal trade. We have a number of barriers to internal trade, many of which are regulatory. We do not have internal tariffs but internal trade in services and movement of people can be affected by all kinds of regulations. A constant issue within Canadian federalism is trying to address these issues of the internal market. Our mechanisms around the internal market are far less potent than they are within the European Community. The European Community can impose directives on member states that require conformity and break down barriers. We do not have a strong federal commerce in Canada. The United States has a strong commerce power, but we do not, so this has been an area where we constantly have to try to work towards consensus and it is very heavy lifting, frankly, and we still have many barriers.



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Q120 **Chair:** A couple of questions on your Canadian Intergovernmental Conference Secretariat. According to our notes, this was established in the 1970s and it has been set up as being—

George Anderson: It goes back a bit earlier than that. It was set up in the 1960s.

Q121 **Chair:** How useful would you describe it as being a means to resolving some of the tensions?

George Anderson: It is very useful. It is one of these things that it is a utility, really. It has no policy role whatsoever, but when there is going to be a meeting of the Ministers, federal, provincial, agricultural, all they have to do is say to the secretariat, "We would like to meet on such and such a date. Can you find us a facility? You provide all the interpretation, you provide all the logistics. Have people there to make sure we have coffee machines and whatever else we need". They just take care of all the logistics. That is their role. It is not a substantive role.

Q122 **Chair:** Would it be right to say that this allows First Ministers of Canadian provinces to get together to be engaged very early in some of the policy developments?

George Anderson: It is a lubricant to the system. It makes things easier. I think it was a way of avoiding waste and frustration. In the 1960s we started to have a lot of federal-provincial meetings and in each meeting there was the question of who is going to organise it and all this. It was just a way of getting that done very efficiently.

Q123 **Chair:** One of the things that I did discover about this forum was the involvement in the free trade arrangement with the European Union. This was used as a forum to gather and garner the views of the provinces. I see you are looking quizzical so maybe that is not particularly accurate.

George Anderson: It may be that every now and then the people working there are trying to stretch their wings a little bit, but they have never had a mandate to do anything in terms of policy.

Q124 **Chair:** Thank you for that. We are really grateful for your evidence this morning. It has really helped us get a sense of some of the intricate relationships in Canada. You are observing from afar. I do not know what you make of a particular constitutional arrangement, this strange form of asymmetric devolution that we have here in the United Kingdom. What are your views as you observe it? If there is one thing that we can maybe learn from Canada about how you do this business, what do you think we should look at and adopt? That is a small question for you.

George Anderson: I have studied the UK. My wife is English, and my ancestry is Scottish. I have a good sense of your country. Every country comes up with its own arrangements. If you look at federalism around the world, every country that is federal has peculiarities. There are a number of countries that have asymmetric structures, but typically the units that are given special autonomy are relatively small. What is



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distinct about the UK is that if you add up the independent regions it is 15% of the population; Scotland is about 8% of the population. That is a big number and, as you know, it affects the functioning of Westminster, whereas if special autonomy related to only 1% or 2% of the population, as in many countries, it is a whole other type of issue.

You still have this unresolved issue of the role of the Scottish MPs in Westminster, and I suppose for Northern Ireland and the Welsh MPs on certain questions too. This is a real issue and I can understand how you ended up where you have. What strikes me is the lack of interest that the English have in the issues going on with the three peripheral regions. That is very different from the Canadian arrangement where, because of the structure of the country but also the fact that all parts of the country are under the same constitutional system, everybody is interested in what everybody else is doing because it could affect them.

When you did devolve to Scotland what you took was an administrative structure, the old Scottish Office that used to administer certain things, and decided that the substance of those responsibilities was going to be transferred to a different legislature. The question was never really asked, "What is the national interest in these particular issues and what is the local interest?" On something like health or university education, I think some of this was done in a way where it was not really thought through. I think you have quite a challenging system to manage now in the UK. What is really striking for me on the outside is this strange political relationship that you have where the English are so different from the rest of the country.

Q125 **Chair:** What should we learn from Canada in the way that you do your intergovernmental relations?

George Anderson: You cannot force England. The problem is federalising England, but I do think a federal structure for the United Kingdom, from a Scottish perspective, would be a more functional structure than the one you have now, but you are where you are.

Q126 **Chair:** We are indeed. Mr Anderson, thank you ever so much. That was a really—

George Anderson: If I can make just one final point, a message to the staff of your Committee. I wrote an article with Jim Gallagher on intergovernmental relations in Canada and the UK. If you are interested in a deeper read on some of these issues, you could look at what Jim and I did.

Q127 **Chair:** Great. Jim Gallagher is a big friend of this Committee. We have had him in front of us giving evidence several times.

George Anderson: We are sort of old warriors. We tend to see these things the same way.

Chair: That was fascinating evidence and really interesting and we are



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very grateful for your time. I know it is very early in Canada, so we are grateful for you getting up.

George Anderson: Enjoy your lunch and I am off to breakfast.

Chair: Take it easy, Mr Anderson. Thank you very much for that.