

‘Stop the World, Scotland Wants to Get On’

Devolution, Foreign Policy and
the UK Constitution in Scotland

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Executive summary

The territorial division of power in the UK constitution is an ever-evolving phenomenon. Under devolution, Scotland has developed a considerable foreign policy footprint. This footprint, however, is not strictly in accordance with the legal foundations of the devolution settlement, representing a largely political development of successive Scottish governments placing increasing significance on external relations since 1999. In departing from the legal architecture of the devolution settlement, this political development creates an undesirable element of ambiguity with regard to Scotland’s international role. In the light of this, this report examines the development of Scotland’s foreign policy footprint, with reference to its historical background, focusing in particular on the impact of devolution. The report will also examine the current political and institutional environment surrounding Scotland’s international role, examining the existing foreign policy infrastructure in Scotland and the relationship between the Scottish and UK governments in this area. Three particular facts will become apparent: Scotland has a substantial foreign policy footprint; the UK’s constitutional arrangements as they are currently are ill suited to accommodating this footprint; and that this already flawed system has been severely strained due to poor intergovernmental relations – a situation which is likely to continue given the gulf in political consensus between the Scottish and UK political classes.

A central concern of this report is therefore examining whether constitutional reform in relation to Scotland’s foreign policy role might alleviate this territorial conflict between the Scottish and UK governments. As such, the report will recommend several options the UK could potentially adopt with regard to sub-state foreign policy. These recommendations will be based on a comparative analysis of other sub-state actors’ foreign policy capacities; these being Germany, Canada, Belgium, Spain and Denmark. These models will be compared to one another and to the particular Scottish situation in order to understand what features might be adopted in the UK.

Introduction

The impact that devolution has had on the territorial politics of the UK cannot be overstated. This is evident in each of the devolved nations. However, Scotland in particular, has seen a corresponding rise of constitutional nationalism since devolution was ushered in. Since 1999, Scots have had their own autonomous government and increasingly, divergent policies from Westminster. This divergence has encompassed policy areas such as education (as demonstrated by the absence of tuition fees for tertiary education) and healthcare (as illustrated by the provision of free period products for individuals who menstruate). The COVID-19 pandemic response heightened the visible differences between Scotland and England, with Scottish First Minister Nicola Sturgeon often taking a different approach to that of Prime Minister Boris Johnson, such as when to impose ‘lockdowns’.

This policy divergence has stretched to matters formally reserved to Westminster, notably foreign policy. Successive Scottish governments have taken several measures to increase Scotland’s involvement in international affairs and raise Scotland’s global profile as an autonomous entity. The twin phenomena of the Scottish independence movement and Brexit process have accelerated this trend toward a larger Scottish footprint on the globe. As the COP26 conference in Glasgow and accompanying threats from the British government to halt any involvement from the Scottish government have highlighted, it is critical that policymakers and academics understand this trend of increasing Scottish involvement in international affairs given the clearly increasing conflict between the Scottish and UK governments. Seeking ways to alleviate this conflict is a central concern of this report. Furthermore, the increasing salience of Scotland as an international actor demands that the devolution settlement be reviewed in the light of this.

This report will examine the origin, historical development and potential mechanisms of accommodation within the Union for an autonomous Scottish foreign policy through a comparative analysis of other democratic systems. Through this examination it will become clear what elements from these other systems it might be desirable to apply to the UK constitution in order to guard against and reduce the capacity for intergovernmental conflict over foreign policy.

Methodology

This report does not take any position regarding Scotland’s constitutional status and the independence debate. As of now, Scotland remains within the United Kingdom, with a significant autonomy and a major separatist movement. Recommendations will therefore be made with this present state of affairs in mind. This report’s findings will not be made with the intention of either strengthening or weakening the Union but solely on the basis of Scotland’s foreign policy footprint and the necessary constitutional accommodations that this footprint demands in order for the existing system of devolution in Scotland to function at an optimum level.

Historical background: Wars of Independence to 2000.c

Scottish involvement in international affairs has a long history, with Scotland playing a prominent role in international affairs, as both an independent country and as part of the Union. There are numerous historical examples of Scottish international engagement from the period in which it was an independent kingdom. Scotland maintained extensive diplomatic ties with England including through royal intermarriages, notably that of Margaret Tudor to James IV, King of the Scots.¹ This royal diplomacy extended to other major European neighbours of Scotland. Notable matches include the marriage of Margaret, Maid of Scotland to King Eric II of Norway in 1281.² More famously there was the short-lived marriage between Mary, Queen of Scots and King Francis II of France.³ The Kingdom of Scotland also maintained trading links with continental Europe. In their capacity as leaders of a rebel Scottish army, William Wallace and Andrew de Murray authored the famous ‘Letter of Lübeck’ in which they signalled to Scotland’s historic trading partners in the Hanseatic League that Scotland was open for business following Wallace’s victory against England at Stirling Bridge in 1297.⁴ Scotland continued to engage with other European powers throughout the Wars of Independence. Robert the Bruce appealed to the Pope through the Declaration of Arbroath in 1320, seeking to win Papal recognition for Scotland’s independence and his rule over the independent Kingdom.⁵ Despite these continental links however, Scotland’s relationship with England naturally dictated much of its foreign policy. Continental entanglements continued in the form of the Auld Alliance with France, a primarily military alliance that lasted from 1295 till roughly the mid-sixteenth century.⁶ This enduring military alliance found Scotland frequently at war with England during this period.

The two kingdoms grew closer in the late 16th century and it was Scotland’s previous royal diplomacy that eventually united the Scottish and English crowns in 1603 under James VI & I.⁷ Scotland’s international entanglements also began to stretch outside of Europe in the early modern period as Scots began to engage in efforts to construct a colonial empire. Scottish protestant settlers established plantations in Ulster Province in significant numbers.⁸ Scotland also engaged in the colonisation of North America, founding colonies in Nova Scotia in 1622, South Carolina in 1682 and Eastern New Jersey in 1685.⁹ The first two were surrendered to the French and the Spanish respectively whilst the New Jersey colony enjoyed a modicum of success owing to English co-operation.¹⁰ However, no territory remained under Scottish control for any extended period of time and Scottish colonisation efforts were overshadowed by the rapid growth of England’s colonial empire in the seventeenth century.

Lack of success did not deter Scots however. Poor economic conditions in the 1690s led Scotland

1 Michael Lynch, *Scotland: A New History*, (London: 1992), pp.159-160.

2 *Ibid.*, p.114.

3 *Ibid.*, p.208.

4 Andrew De Murray and William Wallace, *The Lübeck Letter 1297*, trans. Dr Alan Borthwick, available at: < <https://www.scottisharchivesforschools.org/WarsOfIndependence/LubeckLetter.asp> > last accessed on 03/11/21.

5 National Records of Scotland, ‘The Declaration of Arbroath’, *National Records of Scotland*, available at < <https://www.nrscotland.gov.uk/Declaration> > last accessed on 03/11/21.

6 Elizabeth Bonner, ‘Scotland’s ‘Auld Alliance’ with France, 1295-1560’, *History* 84.273 (1999), pp.5-6.

7 Lynch, *Scotland*, p.235.

8 R. F Foster, *Modern Ireland 1600-1972* (London: 1988), p.14.

9 Bryan Glass, *The Scottish Nation at Empire’s End* (Basingstoke: 2014), p.22

10 *Ibid.*

to seek colonial expansion once again as a remedial measure for their flailing economy.¹¹ In 1698, Scottish colonists arrived at the isthmus of Panama, establishing a colony there.¹² A hostile natural environment and combined opposition from England and Spain conspired to doom Scotland’s abortive colonisation of Panama.¹³ The failure of the Darien scheme exacerbated Scotland’s economic woes and Scotland was forced to seek union with England as a means to remedy its poor economic state.¹⁴ Nevertheless, throughout its existence as a sovereign kingdom, Scotland sought not isolation but frequently engaged in international actions ranging from forming diplomatic relations with other European powers to attempting to build its own colonial empire in the Americas.

The loss of sovereignty in 1707 severely constrained the ability of Scotland to engage autonomously in foreign policy. In the absence of a state, the autonomous organs of Scottish society served as means to conduct foreign affairs. The primary sphere in which these organs operated was within the British Empire. Organisations like the Church of Scotland became the primary means by which Scots engaged in imperialism. An excellent example is that of Nyasaland.¹⁵ Scottish missionaries and companies were influential in securing the extension of British rule over Nyasaland in the nineteenth century.¹⁶ This influence continued as the Empire declined with the Church of Scotland strongly opposing the incorporation of Nyasaland into a federation with the white supremacist ruled Southern Rhodesia in the 1950s.¹⁷ Scottish civic society and businesses also played an important role elsewhere in the Empire. The Glasgow based Burmah Oil Company is an excellent example as it held significant influence over imperial policy in the Middle East.¹⁸ Another significant example is the several Scottish missionary efforts in colonial Africa such as Mary Slessor in Nigeria.¹⁹ Overall, despite its capacity as an independent actor on the international stage being curtailed by the Anglo-Scottish Union, through its autonomous civic society Scotland engaged in international affairs, most commonly through the structures of the British Empire.

Outside of the Empire, civic organisations also engaged with several international organisations under separate Scottish membership in the nineteenth and twentieth centuries. For example, the Scottish Football Association (SFA) has held membership of FIFA and UEFA as a distinct body since 1910 and 1954 respectively.²⁰ Prior to this the SFA was also a founder member of the International Football Association Board in 1886.²¹ Additionally, the Church of Scotland was a founding member of the World

11 Bryan Glass, *The Scottish Nation at Empire’s End* (Basingstoke: 2014), p.23.

12 *Ibid.*

13 *Ibid.*

14 *Ibid.*, p.24.

15 Modern day Malawi.

16 Esther Breitenbach, ‘Scots Churches and Missions’ in John M. MacKenzie and Tom M. Devine (eds) *Scotland and the British Empire* (Oxford: 2011), p.213.

17 Philip A. Sinclair, ‘OVERWHELMING SUPPORT FOR REPORT ON AFRICA: Opposition heavily defeated in three-hour Assembly debate, THUNDEROUS APPLAUSE FOR DR GEORGE MACLEOD’, *The Scotsman*, Edinburgh, 26 May 1959, p.1.

18 Glass, *Scottish Nation at Empire’s End*, p.27

19 Esther Breitenbach, ‘The Making of a Missionary Icon: Mary Slessor as ‘Heroine of Empire’.’ *Journal of Scottish Historical Studies* 37.2 (2017).

20 ‘Scotland Football Association’, *UEFA*, available at: <<https://www.uefa.com/insideuefa/member-associations/sco/>>, last accessed on 25/10/2021.

21 *Ibid.*

Council of Churches.²² These separate memberships of international organisations represent distinctive Scottish engagement in the international community outside of the British Empire. Overall, as both the examples of Empire and several international organisations illustrate, possession of a distinct and autonomous civic society allowed a stateless Scotland to engage to some degree in autonomous international activity. The re-convening of Parliament in 1999 is therefore better understood not as the introduction of a Scottish capacity for foreign affairs but rather as building upon the civic society infrastructure that already existed under the Union.

²² ‘Member Churches’, *World Council of Churches*, available at: < https://www.oikoumene.org/member-churches?search_api_fulltext=&location_filter_2=1977&field_wcc_n_church_family_single=All&glossaryaz_title >, last accessed on 25/10/2021.

Para-diplomacy versus proto-diplomacy

Many might contend that as a sub-state entity, modern Scotland does not engage in any form of foreign policy as it lacks several of the key tools a fully independent state possesses (e.g., the power to declare war). Whilst several traditional foreign policy tools are certainly unavailable to the Scottish government, it does engage in international relations and does have an identifiable foreign policy. To understand Scotland’s foreign policy role, we must first define two key terms: para-diplomacy and proto-diplomacy. According to Cornago, the former should be understood as:

‘non-central governments’ involvement in international relations through the establishment of permanent or ad hoc contacts with foreign public or private entities, with the aim to promote socioeconomic or cultural issues, as well as any other foreign dimension or their constitutional competences.’²³

Para-diplomacy has been the subject of significant scholarly attention. As to the latter term, Cornago defines proto-diplomacy as a mutation of para-diplomacy, whereby it serves to express political wills for greater autonomy and perhaps secession.²⁴ Given the developments in Scotland’s international role over the two decades of devolution, it is arguable that due to the hegemony of independence supporting parties, Scottish foreign policy can now be categorised under the term proto-diplomacy. Scotland’s international role since 1999 will be key to understanding whether or not this categorisation applies. What is undeniable, however, is that Scotland at minimum engages in several acts of para-diplomacy, and therefore does possess a foreign policy as such, as will become clear in the following section.

23 Noé Cornago, ‘Diplomacy and paradiplomacy in the redefinition of international security: Dimensions of conflict and co-operation’, *Regional & Federal Studies* 9.1 (1999), p.40.

24 Noè Cornago, ‘Paradiplomacy and protodiplomacy’, *The encyclopedia of diplomacy* (2018), p.11.

‘A process, not an event’: devolution 1999-present

Ron Davies famously said of devolution that it is “a process, not an event”.²⁵ This is evident in Scotland. The re-convening of Parliament in 1999 is the landmark moment in modern Scottish history. Since then the Parliament has grown in both stature and legislative authority with further devolution of powers in 2012²⁶ and 2016.²⁷ The First Minister (FM) is widely regarded as the leader of Scotland and there appears little appetite to surrender autonomy, with a significant majority of Scots believing that the Scottish government should have the most influence over how Scotland is governed.²⁸ The history of devolution paints a clear picture of the Scottish government expanding its foreign policy footprint. Both Donald Dewar and Henry McLeish endeavoured to involve themselves in international affairs. Dewar opened a Scottish government office in Brussels.²⁹ McLeish had a more high-profile moment on the world stage when he flew to Washington D.C. to champion the Scottish tourism industry and met with then President George W. Bush.³⁰ McLeish was also involved in the implementation of Tartan Day.³¹ Both Dewar and McLeish, however, were prevented by tragedy and scandal respectively from foraying further into international affairs. Jack McConnell’s tenure would build on these initiatives and expand Scotland’s international footprint in new ways.

Jack McConnell’s six-year tenure as First Minister is the point at which Scotland began to grow in relative autonomy on the international stage. McConnell’s tenure as FM coincided with significant moments in British foreign policy, most notably the 2003 invasion of Iraq. McConnell robustly supported the war in the Scottish Parliament and urged Scotland to rally behind the British army.³² However, McConnell’s support for the leader of his party was nothing more than that, rather than constituting any autonomous or distinct action. Indeed, McConnell was largely committed to policy alignment with Westminster in devolved matters as well as defending Westminster’s action on reserved measures.³³ However, McConnell’s tenure remains significant in terms of the development of an autonomous Scottish foreign policy. McConnell continued to explore a joint bid for the Euros as McLeish had – but ultimately failed.³⁴ Also like McLeish, McConnell played a role in the implementation of Tartan day.³⁵

25 David Torrance, “‘A process, not an event’: Devolution in Wales, 1998-2020”, 06/04/20, available at: < <https://commonslibrary.parliament.uk/research-briefings/cbp-8318/> >, last accessed on 25/10/21.

26 Scotland Act 2012, available at: < <https://www.legislation.gov.uk/ukpga/2012/11/contents/enacted> > last accessed on 25/10/21.

27 Scotland Act 2016, available at: < <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted> > last accessed on 25/10/21.

28 ‘Scottish Social Attitudes 2019: attitudes to government and political engagement’, *Constitution and Cabinet Directorate*, 29/09/20, available at: < <https://www.gov.scot/publications/scottish-social-attitudes-2019-attitudes-government-political-engagement/pages/4/#Tab2.4> >, last accessed on 25/10/21.

29 Stephen Gethins, *Nation to Nation: Scotland’s Place in the World*, (Edinburgh: 2021), p.71.

30 Brian Ponsonby, ‘Henry goes to the White House’, *BBC*, 05/04/01, available at: < <http://news.bbc.co.uk/1/hi/scotland/1263153.stm> >, last accessed on 25/10/21.

31 Peter Lynch, ‘Governing Devolution: Understanding the Office of First Ministers in Scotland and Wales’, *Parliamentary Affairs* 59.3 (2006), p.428.

32 ‘Time to back troops - McConnell’, *BBC*, 20/03/03, available at: < <http://news.bbc.co.uk/1/hi/scotland/2868235.stm> > last accessed on 25/10/21.

33 Michael Keating, ‘Policy convergence and divergence in Scotland under devolution’, *Regional studies* 39.4 (2005), p.458.

34 ‘Euro 2008 bid Scotland & Ireland’, *Celtic Countries*, 26/09/08, available at: < <https://www.celticcountries.com/sports/26-euro-2008-bid-scotland-a-ireland> >, last accessed on 25/10/21.

35 Gethins, *Nation to Nation*, p.71.

McConnell also pursued new initiatives, playing a key role in the establishment of the Scotland-Malawi Partnership (SMP), a government organisation which oversaw Scottish aid to Malawi, a former British protectorate with extensive historical links to Scotland due to the prominent role Scottish missionaries and companies played in colonising Malawi. The SMP was a significant development in the field of an autonomous Scottish foreign policy. The Scottish government could have contributed to British international programmes but chose instead to press ahead with its own initiative. McConnell managed to do this via exploiting a clause in the 1998 Scotland Act that allowed the Scottish government to funnel money to aid UK projects.³⁶

Despite representing a significant evolution in Scotland’s foreign policy footprint, the programme was given the blessing of the then Secretary of State for International Development Hilary Benn.³⁷ This perhaps points to the potential for autonomous Scottish foreign policy within the Union, at least with reference to international aid. However, the fact Labour was in power in both Scotland and the UK as a whole perhaps influenced Benn’s warm reception of the SMP. Nevertheless, there was clearly no instinctive hostility from Westminster toward Scotland practising acts of para-diplomacy in the form of the SMP. This is noteworthy given that the Blair government had tended to oppose more assertive devolved administrations, with Blair, for example, personally opposing the selection of Rhodri Morgan as Welsh FM owing to his aversion to the New Labour project.³⁸ McLeish had clashed with Westminster over his pursuit of the policy of free personal care for the elderly.³⁹ Overall, the SMP represents a skilful utilisation of Scotland’s limited foreign policy infrastructure and illustrates that such para-diplomatic actions can be accommodated by the UK government.

In addition to the SMP, McConnell also played a role in the 2005 G8 summit, where he met international Heads of State and Government as they arrived at the Gleneagles meeting, affording him the symbolic status as the leader of Scotland in a diplomatic setting. Whilst only symbolic, this is still notable, particularly in the infancy of devolution. Having been bereft of a national leader for three centuries, here was Scotland’s elected FM standing alongside the leaders of geopolitical powers like the United States as a nominal equal and gracious host. The G8 was not the only international organisation McConnell was involved in. In 2003, McConnell held the Presidency of the Conference of European Regions with Legislative Power (REGLEG), an informal network of regional governments in EU countries.⁴⁰ In this position he played a formal role, as opposed to that of the host, as he had at Gleneagles.

Ultimately throughout the tenure of Labour’s three FMs, the genesis of an autonomous Scottish foreign policy can be clearly seen. Though Dewar and McLeish were not long in the office, their administrations still participated in para-diplomacy. McConnell’s longer tenure allowed him to continue with their initiatives and pursue new ones such as the SMP alongside participating in international organisations like REGLEG. From the very start, devolution allowed Scotland to engage in para-diplomacy.

36 Gethins, *Nation to Nation*, p.73.

37 Adjoa Anyimadu, *Scotland and Wales in Africa: Opportunities for a co-ordinated UK approach to development* (London: 2011), p.8.

38 David Broughton and Alan Storer, “The Welsh Assembly election of 2003: The Triumph of ‘welfarism’”, *Representation* 40.4 (2004), p.268.

39 Lynch, ‘Governing Devolution’, p.427.

40 Lynch ‘Governing Devolution’, p.428.

The 2007 election in Scotland was a quiet revolution. Decades of Labour dominance had eroded in just ten years of devolution. Not only had Scotland’s hegemonic party lost its dominant position but it was succeeded by Scotland’s principal nationalist party, the SNP.⁴¹ This quiet revolution was followed by an earth-shattering follow-up in the form of the SNP winning the first and thus far only Holyrood majority in 2011.⁴² This election naturally had consequences for Scotland’s budding foreign policy role. In an act of continuity, Salmond’s government opted to maintain McConnell’s SMP programme. Additionally, the release of the Lockerbie Bomber, Abdelbaset al-Megrahi, by Justice Secretary Kenny MacAskill stands out as a significant international event involving Scotland. MacAskill’s release of al-Megrahi on humanitarian grounds stemmed in part from a desire to illustrate to the international community Scotland’s ‘distinctive’ status.⁴³ Perhaps most notably, Salmond attended COP15 in Copenhagen as First Minister in an unofficial capacity, fresh off the heels of the passage of the Climate Change Act 2009 which saw Scotland recognised as a leader in tackling climate change.⁴⁴ Under Salmond, the SNP also shifted from opposition to NATO membership to supporting Scottish membership of the alliance.⁴⁵ This shift was meant to symbolise that an independent Scotland would cause minimal disruption to the existing international order.

Salmond’s second term coincided with the 2014 independence referendum campaign, which saw the Scottish government release a white paper detailing the outline of an independent Scotland’s foreign policy and international ambitions. The document is helpful in understanding the SNP’s views on foreign policy under Salmond and the future that the SNP envisioned for an independent Scotland. The white paper called for a foreign policy influenced by internationalism and a commitment to participation in the international community. The chapter also levels several criticisms against the foreign policy of Westminster, particularly relating to the EU and international conflicts.⁴⁶ The chapter laid out a clear framework for Scotland’s foreign, security and defence policy based around three principles:

- participation in the international community according to established rules to secure shared interests;
- protection of Scottish territory, resources and people; and
- promotion of sustainable economic growth.⁴⁷

Additionally, the chapter identifies three key spheres that would act as ‘cornerstones’ of Scotland’s foreign policy:

41 ‘Scottish elections 2007’, *BBC*, 06/05/07, available at: < http://news.bbc.co.uk/1/shared/vote2007/scottish_parliament/html/region_99999.stm >, last accessed on 20/10/21.

42 ‘Scotland elections’, *BBC*, 11/05/11, available at: < <https://www.bbc.co.uk/news/special/election2011/overview/html/scotland.stm> > last accessed on 20/10/21.

43 Daniel Kenealy, ‘Commercial Interests and Calculated Compassion: The Diplomacy and Paradiplomacy of Releasing the Lockerbie Bomber’, *Diplomacy & Statecraft* 23.3 (2012), pp.569-70.

44 Gethins, *Nation to Nation*, p.76.

45 ‘SNP members vote to ditch the party’s anti-NATO policy’, *BBC*, 19/10/12, available at: < <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-19993694> >, last accessed on 25/10/21.

46 ‘Scotland’s Future: Your Guide to an Independent Scotland’, *Scottish Government*, November 2013, available at: < <https://www.gov.scot/publications/scotlands-future/documents/> > last accessed on 15/10/21, p.209.

47 *Ibid.*, pp.208-09.

- partnership with other nations in the British Isles;
- a regional role as an EU country, with strong connections to the Nordic countries and the Arctic; and
- a global role within multilateral organisations such as NATO and the UN.⁴⁸

The running theme of this chapter has been the commitment of various Scottish governments to upholding the status quo. This approach was strong throughout the Yes Scotland campaign, with mainstream advocates for independence reassuring Scottish voters that after independence they would still possess major features of the Union of 1707, with Salmond going so far as to promise that Scotland and England would still share five other unions post-independence; the European Union, Union of Crowns, Defence Union (NATO), Currency Union and the informal social union.⁴⁹ In addition to reassuring voters, this document was also intended to reassure the international community that Scottish independence would not act as a major disruption to the order of things.

Salmond’s terms as First Minister eclipsed McConnell’s in length but did not radically alter the status quo when it came to foreign policy. Salmond continued to engage in para-diplomacy and showcased what the SNP envisioned an independent Scotland’s foreign policy would look like. The SNP’s goal of independence did influence their foreign policy in instances such as the release of the Lockerbie bomber, but on the whole Scotland’s foreign policy under Salmond can be considered as para-diplomatic in nature. Salmond’s administration opted for continuity with McConnell’s in the form of the SMP and continued to expand Scotland’s foreign policy footprint through engaging with the global community on issues such as climate change.

48 ‘Scotland’s Future: Your Guide to an Independent Scotland’, p.213.

49 ‘Alex Salmond: We must leave UK but maintain our other unions’, *The Herald*, 12/07/13, available at: < <https://www.heraldscotland.com/news/13113496.alex-salmond-must-leave-uk-maintain-unions/> > last accessed on 11/11/21.

Sturgeon and the current infrastructure: 2014-present

Salmond’s resignation in 2014 following the narrow victory of the Better Together campaign was a significant watershed for Scottish politics. His successor, Nicola Sturgeon was the first female FM and is, as of now, Scotland’s longest serving FM. Whereas Salmond’s leadership brought narrow victories and defeats, Sturgeon’s tenure has seen the SNP achieve unparalleled hegemony in Scottish politics. The rise of the SNP to this position has been accompanied by significant developments in Scotland’s foreign policy footprint. Examining the current administration’s approach and the existing institutional foreign policy apparatus will provide an understanding of these developments.

It would be a mistake to discuss the current policy without discussing the current FM. Nicola Sturgeon has combined her ascendancy in the domestic political environment with a considerable international profile. Sturgeon has not been shy about commenting on international affairs. In the 2016 U.S. Presidential election she publicly endorsed Hilary Clinton, breaking with established political norms.⁵⁰ This willingness to comment on external elections was present again during the controversial Catalan referendum, with the FM backing the Catalan’s government’s decision to hold a referendum despite opposition from the Spanish government.⁵¹ Furthermore, the First Minister has sought to raise her international standing. During a four-day tour of the United States to promote investment in Scotland, Sturgeon visited international organisations such as the International Monetary Fund and Council on Foreign Relations.⁵² Most notably, this trip also saw her appear on ‘The Daily Show with Jon Stewart’, a popular American satirical show that tackles politics and current affairs.⁵³ Sturgeon has therefore not shied away from engaging with international issues combatively and has sought the build a global profile whilst in office.

In terms of the current institutional set up, foreign affairs are reserved to Westminster under the 1998 Scotland Act.⁵⁴ Whilst expanding Scottish autonomy in other areas, the subsequent Scotland Acts of 2012 and 2016 did not alter the status quo with regard to foreign affairs. Since 1999, the governments of the UK, Scotland, Wales and Northern Ireland all participated in the Joint Ministerial Committee (JMC), a series of committees that consider non-devolved matters where they impact devolved competencies (and vice versa) and inter-governmental disputes, amongst other things.⁵⁵ A Memorandum of Understanding and supplementary agreements stated that:

50 Mark Aitken, ‘Nicola Sturgeon backs Hilary for President and says victory would be shared by women around the world’, *The Daily Record*, 06/11/16, available at: < <https://www.dailyrecord.co.uk/news/politics/nicola-sturgeon-backs-hillary-president-9204999> >, last accessed on 25/10/21.

51 ‘Nicola Sturgeon backs Catalan referendum calls’, *BBC*, 21/09/17, available at: < <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-41350999> > last accessed on 25/10/21.

52 Paul Vale, ‘Nicola Sturgeon Appears On ‘The Daily Show with Jon Stewart’ Asks American Not to Invade Scotland for its Oil’, *The Huffington Post*, 09/06/15, available at: < https://www.huffingtonpost.co.uk/2015/06/08/nicola-sturgeon-the-daily-show-with-jon-stewart_n_7540298.html >, last accessed on 25/10/21.

53 *Ibid.*

54 Scotland Act 1998, available at: < <https://www.legislation.gov.uk/ukpga/1998/46/contents> > last accessed on 14/10/21.

55 ‘Devolution: Joint Ministerial Committee’ *Institute for Government*, 01/07/20, available at: <https://www.instituteforgovernment.org.uk/explainers/devolution-joint-ministerial-committee>, last accessed on 01/11/21.

‘the JMC is a consultative body rather than an executive body and so will reach agreements rather than decisions.’⁵⁶

As will be illustrated, the non-executive status of the JMC afforded the UK government the ability to largely ignore the devolved administrations if it so chooses. The JMC has been criticised as ineffective and there are numerous suggestions for reforms. Former civil servant, Professor Jim Gallagher – who I spoke to for this report (see appendix b) – believes in the need for change, and suggested that a JMC sub-committee be established to achieve intergovernmental co-ordination on EU and EU successor issues.⁵⁷ Indeed, a report published by the House of Commons Scottish Affairs Select Committee (HoCSASC) declared in 2019 that relations between the UK and Scottish governments had been significantly strained by the Brexit process and that the system of intergovernmental relations between the two was unable to cope with the pressure.⁵⁸ To address the shortcomings of the JMC, the same report made the following recommendations.

- The Host and Chair of the JMC should be rotated between the four governments.
- Meetings should be scheduled and frequent.
- Agendas should be agreed in advance between all governments.
- Transparency should be improved.
- The dispute resolution process should be reformed to allow all governments the right to initiate dispute resolution proceedings.
- Implementing a third-party mediation system for intergovernmental disputes should be explored.
- An independent secretariat to support the JMC should be established.
- These reforms should be set out in statute.⁵⁹

The HoCSASC were not the only one exploring JMC reform. In the last days of Theresa May’s premiership, Lord Dunlop was commissioned to produce an independent report examining the UK government’s ‘Union capability’. The Dunlop report recommended the establishment of a new forum to replace the JMC, alongside a new Great Office of State to oversee intergovernmental relations.⁶⁰

56 ‘Memorandum of Understanding and Supplementary Agreements’, *UK Government*, 01/10/13, available at: < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf >, last accessed on 14/12/21.

57 Reuben Duffy, Interview with Jim Gallagher, 06/12/21, Manchester (Online).

58 ‘The relationship between the UK and Scottish Governments’, *House of Commons Scottish Affairs Committee*, 22/05/19, available at: < <https://publications.parliament.uk/pa/cm201719/cmselect/cmselect/1586/1586.pdf> > last accessed on 02/11/21, p.39.

59 *Ibid.*, pp.39-41.

60 Lord Dunlop, ‘Review of UK Government Union Capability’, *UK Government*, 01/11/19, available at: < <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability> >, last accessed on 12/12/21, p.9.

In January 2022, the UK government published the conclusions of its review of intergovernmental relations (IGR), conducted jointly with the devolved administrations. The IGR review sets out new structures and ways of working between the UK and devolved governments. In doing so, it implements many of the recommendations highlighted in this report, including by establishing a new forum named the ‘Prime Minister and Heads of Devolved Governments Council’.⁶¹ This new forum brings with it several new features, many of which were recommended by Lord Dunlop and the HoCSASC. The features of most interest here are those which deal with international relations. The review commits to establishing an Interministerial Standing Committee (IMSC) which will ‘consider cross-cutting and wider strategic international issues, with FCDO ministers invited as necessary’⁶² Furthermore, the review states that several Interministerial Groups (IMGs) will be set up. Two of these IMGs will be internationally focused, one being focused on trade and the other focusing specifically on the UK-EU Trade and Cooperation Agreement.⁶³ This is a significant reform to the structures underpinning intergovernmental affairs and goes some way to enshrining a more co-operative approach to international relations. However, the new leaders’ forum retains some of the features of the old JMC, such as the Prime Minister’s role as chair and host. Furthermore, as Nicola McEwen has pointed out, whilst machinery and processes matter, the culture and conduct of inter-governmental relations is of higher importance.⁶⁴ Michael Kenny and Jack Sheldon agree with this, stating that whilst it is an achievement in itself given the political context, the most important question is now whether the political actors involved treat the new process with respect and allow the structure to become embedded.⁶⁵ Whilst an improvement on the previous JMC, it is clear that the attitude of leading politicians in London, Edinburgh, Cardiff and Belfast will be paramount in ensuring the reforms laid out in the IGR review work effectively. With regard to the international role of the devolved nations, the effect these forums will have is yet to be seen, but given their expansive remit it is likely to be significant.

In terms of its own institutional foreign policy apparatus, Scotland at present possesses a significant one. At the head of this apparatus is the Cabinet Secretary for the Constitution, External Affairs and Culture a position held by Angus Robertson MSP.⁶⁶ The current responsibilities of this post are listed on the Scottish government website as follows.

- Independence
- Cross-government co-ordination of European and external relations
- Policy in relation to the UK’s exit from the EU

61 ‘Review of intergovernmental relations’, 13/01/22, available at: < <https://www.gov.uk/government/publications/the-review-of-intergovernmental-relations> >, last accessed on 14/01/22.

62 *Ibid.*

63 *Ibid.*

64 Nicola McEwen, ‘Worth the wait? Reforming Intergovernmental Relations’, *Centre on Constitutional Change*, 14/01/22, available at: < <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/worth-wait-reforming-intergovernmental-relations> >, last accessed on 14/01/22.

65 Michael Kenny and Jack Sheldon, ‘Green shoots for the Union? The review of intergovernmental relations’, *The Constitution Unit*, 19/01/22, available at: < <https://constitution-unit.com/2022/01/19/green-shoots-for-the-union-the-joint-review-of-intergovernmental-relations/> >, last accessed on 26/01/22.

66 ‘Cabinet Secretary for the Constitution, External Affairs and Culture’, available at: < <https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/cabinet-secretary-for-the-constitution-external-affairs-and-culture/> >, last accessed on 25/10/21.

- Post-Brexit relations
- Migration
- Scottish diaspora
- Global Affairs network
- Scottish Cities of Refuge
- National Records of Scotland
- New Scot strategy
- Culture policy⁶⁷

Additionally, there is the supporting junior ministerial role of Minister for Europe and International Development currently held by Neil Gray MSP.⁶⁸ The Cabinet Secretary is responsible for the Directorate-General for the Constitution, External Relations and Culture. Within this department there is a dedicated Director of External Affairs, currently Scott Wightman.⁶⁹ This director’s responsibilities include enhancing Scotland’s international relationships, promoting Scotland’s ambitions to be a good global citizen, promoting Scottish interests in Europe and influencing immigration policies to meet Scotland’s needs.⁷⁰ Alongside these ministers and officials, Scotland also possesses a network of international offices in key locations across the globe such as Brussels and Washington D.C..⁷¹ Whilst not official embassies or consulates, these hubs function as such in many ways, allowing Scottish representatives to engage in bilateral relations with foreign officials. In addition to these governmental structures, Scottish civic society also contains a significant institutional apparatus in terms of international relations, particularly in academia. Scotland’s universities are renowned for their international relations expertise. More recently, there has been a concentrated effort within civic society to establish a ‘Scottish Council on Global Affairs’ (SCGA) in order to facilitate independent research on foreign relations and establish Scotland as a hub of learning and understanding in this area.⁷² Thus, Scotland at present possesses a considerable autonomous foreign policy capacity through its governmental and civic institutions.

67 ‘Cabinet Secretary for the Constitution, External Affairs and Culture’, available at: < <https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/cabinet-secretary-for-the-constitution-external-affairs-and-culture/> >, last accessed on 25/10/21.

68 ‘Minister for Culture, Europe and international Development’, available at: < <https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/minister-for-culture-europe-and-international-development/> >, last accessed on 25/10/21.

69 ‘Scott Wightman’, available at: < <https://www.gov.scot/about/how-government-is-run/directorates/external-affairs-directorate/scott-wightman/> >, last accessed on 14/01/22.

70 *Ibid.*

71 Minister for Culture, Europe and International Development, ‘International Relations’, *Scottish Government*, available at: < <https://www.gov.scot/policies/international-relations/> >, last accessed on 25/10/21.

72 ‘Party Manifesto Support for a Scottish Council on Global Affairs’, *Centre on Constitutional Change*, 27/04/21, available at: < <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/party-manifesto-support-scottish-council-global-affairs> >, last accessed on 25/10/21.

A tale of two nationalisms: areas of conflict between Edinburgh and London

A central concern of this report is examining whether constitutional innovation in relation to Scotland’s foreign policy role might ease the territorial conflict between the UK and Scottish governments and what this might look like. In order to understand this, we must first examine the areas of conflict between the two governments, specifically the Brexit process. Any casual observer of UK politics can identify the two governments as polar opposite in their opinions regarding Brexit. The fashion in which the UK government handled the Brexit process stands out as a particularly aggravating factor in the relationship. The UK government paid little attention to Scottish protests. Whilst there was a poor political relationship between the governments, administrative concerns surrounding a no-deal Brexit compelled them to collaborate.⁷³ However, relations continued to deteriorate and the Brexit process clarified that Parliamentary sovereignty trumped devolved concerns as demonstrated by the practical impotence of the devolution settlement in the face of a majority in the House of Commons. The Sewel convention – the convention that Westminster will seek the consent of devolved administrations prior to legislating on non-reserved issues – was ultimately ignored by the UK government thanks to the Tory-DUP majority in the House of Commons during the passing of the European Union (Withdrawal) Act.⁷⁴ The UK government acted in this fashion throughout the Brexit process, with all major decisions regarding Brexit strategy taken by UK ministers practically unilaterally.⁷⁵

This did not deter the Sturgeon administration from seeking to engage with the UK government on Brexit. In 2018, the Scottish government published a paper examining Scotland’s future role in the development of post-Brexit trade deals. The paper recommended that it be a statutory requirement for trade deal agreements dealing with devolved matters to require the consent of the Scottish government and Scottish Parliament.⁷⁶ The paper also recommended the establishment of a new statutory intergovernmental international trade committee.⁷⁷ The Scottish government were not alone in their proposals. The House of Commons Scottish Affairs Committee (HoCSAC) differed slightly, recommending that a JMC sub-committee on international trade be created and that the devolved administrations be allowed to send representatives to UK trade negotiations where devolved competencies would be impacted.⁷⁸ The HoCSAC stated that it believed a model based on formal consent was less preferable than one based on co-operation and trust.⁷⁹ In its published response to this, the UK government stated

73 Michael Kenny, Philip Rycroft and Jack Sheldon, ‘Union at the Crossroads: Can the British state handle the challenges of devolution?’ *The Constitution Society*, 12/04/21, available at: < <https://consoc.org.uk/publications/union-at-the-crossroads-can-the-british-state-handle-the-challenges-of-devolution-by-michael-kenny-philip-rycroft-and-jack-sheldon/> >, last accessed on 11/12/21, p.28.

74 *Ibid*, p.30.

75 Akash Paun, Jess Sargeant, James Wilson and Joe Owen, ‘No Deal Brexit and the Union’, *Institute for Government*, 16/11/19, available at: < <https://www.instituteforgovernment.org.uk/publications/no-deal-brexit-union> > last accessed on 11/12/21, p.7.

76 ‘Scotland’s Role in the Development of Future UK Trade Arrangements: A Discussion Paper’, *Scottish Government*, August 2018, available at: < <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangements/documents/> > last accessed on 01/11/21, p.52.

77 *Ibid*, p.53.

78 ‘Scotland, Trade and Brexit’, *UK Parliament*, 10 March 2019, available at: < <https://publications.parliament.uk/pa/cm201719/cmselect/cmscotaf/903/90305.htm> > last accessed on 01/11/21.

79 *Ibid*.

that it agreed and was seeking to establish a new ministerial forum for international trade to allow the devolved administrations a voice in developing trade deals.⁸⁰ As mentioned previously, the Dunlop Report commissioned by the UK government recommended that a new UK Intergovernmental Council (UKIC) replace the JMC. Part of the purpose of the UKIC would be to create a space for informed consultation of the devolved administrations regarding reserved matters.⁸¹ This, accompanied by the purported greater transparency and parliamentary scrutiny, would encourage consensual decisions on reserved matters between the two governments.⁸² The UK government’s response to the HoCSAC’s report and the commissioning of the Dunlop report illustrates that it is not blindly opposed to reviewing and reforming the devolution settlement in some fashion. This is unsurprising given how much strain the Anglo-Scottish Union is currently under and the particular political importance of the Union to the current UK administration, given its avowedly unionist ideology. The recent announcement regarding the establishment of a new intergovernmental council also illustrates a lack of blind opposition. But the structures of the council, its lack of statutory footing and the position of the PM as chair still suggest a preference for the supremacy of the UK government in intergovernmental relations.

However, the Scottish government still lacks the formal powers regarding trade deals that it recommended in 2018. Additionally, the recently announced replacement for the JMC should not mask the fact that the fashion in which the UK government carried out Brexit strained governmental relations severely. This was in part due to lack of consultation with the devolved administrations. As McEwen, Kenny and Sheldon have argued, culture and conduct are paramount in the conduct of good intergovernmental relations. Giving oral evidence to the HoCSAC, Cabinet Secretary for External Relations and the Constitution, Mike Russell, revealed that the UK government had not shared the EU Withdrawal Bill with the Scottish government until two weeks prior to its publication.⁸³ The Scottish government also did not take kindly to the UK government referring the Scottish parliament’s European Union (Legal Continuity) (Scotland) Act to the UK Supreme Court.⁸⁴ The conflict between the two governments was exacerbated to the point that the Scottish government refused to put forward any Brexit legislation for Holyrood’s consent in response to the UK Parliament passing the EU Withdrawal Act in spite of the Scottish Parliament withholding consent.⁸⁵

Ultimately, the Brexit process illustrated that the UK government has no inclination to include the devolved administration in the formulation of policy in any significant fashion. Courtesy of parliamentary majorities, the May and Johnson administrations could ignore devolved concerns and press ahead with their versions of Brexit. The Lancaster House speech illustrates the paradoxical nature of this

80 ‘Scotland, Trade and Brexit: Government Response to the Committee’s Seventh Report’, *UK government*, 3 July 2019, available at: < <https://publications.parliament.uk/pa/cm201719/cmselect/cmselect/cmselect/2480/248002.htm> >, last accessed on 01/11/21.

81 Lord Dunlop, ‘Review of UK Government Union Capability’, p.10.

82 *Ibid.*, p.36.

83 Oral Evidence: The relationship between the UK and Scottish Governments, HC 1586-Q311, 12/03/19, available at: < <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/the-relationship-between-the-uk-and-scottish-governments/oral/98020.html> >, last accessed on 02/11/21.

84 Oral Evidence: The relationship between the UK and Scottish Governments, HC 1586-Q317, 12/03/19, available at: < <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/the-relationship-between-the-uk-and-scottish-governments/oral/98020.html> > last accessed on 02/11/21.

85 ‘Holyrood ‘won’t approve any Brexit bills’, *BBC*, 22/06/18, available at: < <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-44565070> >, last accessed on 05/11/21.

point, with May professing fidelity to the ‘precious union’ whilst pledging to remove the UK from the Single Market and Customs Union against the wishes of both the Scottish and Welsh governments.⁸⁶ Whilst it introduces several much-needed reforms, the new intergovernmental council will succeed or fail based on the attitude of the constituent governments towards one another. Given its past actions it is especially pertinent that the UK government re-adjusts its approach. To conclude, relations between the two governments have been particularly strained by the Brexit process, with the Scottish government feeling frustrated by the UK’s largely unilateral approach to exiting the EU. Changing this approach will prove vital in ensuring the success of the new structures of intergovernmental relations.

86 Kenny et al, ‘Union at the Crossroads’, p.25.

Current policy and case studies: Brexit and climate change

As to the current foreign policy priorities of the Scottish government, there are competing views as to what these are. Professor Stephen Gethins, Professor at University of St. Andrews, former SNP MP and member of the foreign affairs select committee, identified the following as foreign policy priorities of the Scottish government (see appendix a):

- jobs and investment;
- the climate emergency;
- cultural diplomacy;
- educational opportunities;
- peacebuilding;
- maintaining links with the European Union;
- maintaining links with Scotland’s neighbours in the Nordics; and
- engaging with the Scottish diaspora.⁸⁷

Professor Gallagher stated more simply that:

“the present Scottish government clearly uses foreign policy as a tool in a campaign to promote independence. That is what it does. That is what its priority is. Because it is its top priority.”⁸⁸

What are the priorities of the Scottish government then? The answers lie in the published international frameworks of the Scottish government and Programmes for Government, alongside the previous international actions of the Scottish government. In the most recent Programme for Government, the new SNP-Green administration announced its intention to establish an office in Copenhagen in order to increase Scottish links with the Nordic region as well as another new office in Warsaw.⁸⁹ Additionally, the existing Scottish government office in Brussels is due to be strengthened.⁹⁰ The government also stated its intention to support the establishment of the Scottish Council of Global Affairs (SCGA) in order to co-ordinate Scottish research regarding international affairs and their impact on Scotland.⁹¹ Thus, the new government is committed to continuing the expansion of Scotland’s capacity for para-diplomacy and reinforcing links with Europe and the Nordic region. According to the Scottish gov-

⁸⁷ Reuben Duffy, Interview with Stephen Gethins, 01/11/21, Manchester (Online).

⁸⁸ Reuben Duffy, Interview with Jim Gallagher, 06/12/21, Manchester (Online).

⁸⁹ ‘A Fairer, Greener Scotland, Programme for Government 2021-22’, *Scottish Government*, 07/09/21, available at: < <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/documents/> > last accessed on 10/15/21, p.110.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

ernment:

‘At a time of increasing insularity, Scotland’s strength will remain in its internationalism. We will continue to work with our friends and partners in Europe and beyond to reaffirm diplomatic ties, improve our global networks, enhance international communications activity, and unlock new economic and trading opportunities.’⁹²

Underneath this rhetoric is the implicit distance between the Scottish and UK governments. Whereas the UK government is fully committed to Brexit and the notion of a revitalized ‘Global Britain’, the Scottish government continues to value strong relationships with the EU, alongside a broader commitment to internationalism and multilateral relationships. This approach can be seen by studying two key components of the Scottish government’s foreign policy: Brexit and climate change. Furthermore, these case studies will illustrate whether Scotland’s present foreign policy approach should be classed as para-diplomacy or proto-diplomacy.

In the immediate aftermath of the EU referendum, Sturgeon held an emergency cabinet meeting to discuss the result.⁹³ As FM she also communicated to European leaders that she wished to explore protecting Scotland’s EU membership.⁹⁴ In December 2016, the Scottish Government published a proposal advocating Scottish access to the European Economic Area (EEA) via membership of the European Free Trade Association (EFTA).⁹⁵ The paper did not suggest independence as the means through which this would be achieved but rather with Scotland as a constituent country of the UK. Membership of EFTA or the ‘Norway solution’ would still entail leaving the EU but would significantly soften the economic fallout from Brexit by preserving Scottish access to the Single Market. However, article 56 of the EFTA’s convention restricts membership to sovereign states.⁹⁶ Additionally, the Icelandic Prime Minister ruled out individual Scottish membership whilst it remained in the UK.⁹⁷ Nevertheless, the Scottish government’s advocacy of closer relations with the EU, whilst unsuccessful in policy terms, has arguably delivered political success to the SNP and the wider independence movement. Brexit has driven up support for independence amongst No-Remainers – Scots who voted to remain in both the

92 ‘A Fairer, Greener Scotland, Programme for Government 2021-22’, *Scottish Government*, September 2021, available at: < <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/documents/> > last accessed on 10/15/21, p.110.

93 ‘Scottish Cabinet meeting to co-ordinate response to Brexit vote’, *The Courier*, 25/06/16, available at: < <https://www.thecourier.co.uk/fp/politics/scottish-politics/213329/scottish-cabinet-meeting-co-ordinate-response-brexit-vote/> >, last accessed on 02/10/21.

94 Matthew Weaver, ‘Nicola Sturgeon says Scottish referendum ‘highly likely’- as it happened’, *The Guardian*, 24/06/16, available at: < <https://www.theguardian.com/politics/live/2016/jun/23/eu-referendum-result-live-counting-leave-remain-brain-in-europe> >, accessed on 03/10/21.

95 ‘*Scotland’s Place in Europe*’, Scottish Government, 20/12/16, available at: < <https://www.gov.scot/publications/scotlands-place-europe/pages/4/> >, accessed on 15/10/21.

96 ‘Convention establishing European Free Trade Association’, *EFTA*, 01/07/13, available at: < <https://www.efta.int/sites/default/files/documents/legal-texts/efta-convention/Vaduz%20Convention%20Agreement.pdf> >, last accessed on 01/10/21, p.29.

97 Simon Johnson, ‘Iceland: Scotland could not start applying for EFTA until after independence’, *The Daily Telegraph*, 16/03/17, available at: < <https://www.telegraph.co.uk/news/2017/03/16/iceland-scotland-could-not-start-applying-efta-independence/> >, last accessed on 01/10/21.

UK and EU.⁹⁸ This has been accompanied by significant numbers of Yes-Leavers turning toward the Union which has dulled the post-Brexit effect.⁹⁹

However, the most important facet of this for our purposes is not electoral success. Rather, it is the marriage of a pro-European foreign policy with that of the aim for an independent Scotland. This has been facilitated in part by the UK government’s policy of ‘Global Britain’. The post-2016 anti-European turn in British politics has allowed the Scottish government to posit its own foreign policy as directly opposed to that of Westminster’s. In this sense, the Scottish government’s emphasis on a pro-European foreign policy is presently closely linked to the independence movement. This naturally increases the likelihood of conflict with the UK government, given its Brexiteer and Unionist credentials.

Despite politically benefiting from a pro-European foreign policy, in terms of concrete policy the Scottish government had limited impact on Brexit and, as illustrated previously, the UK government often acted with little concern for devolved input. Whilst Scotland can and indeed has engaged in para-diplomatic efforts in the last 20 years, the UK government can ultimately ignore the Scottish government. Overall, the Scottish government sought to maintain links to Europe, either through a differentiated Brexit deal or a softer UK-wide deal. However, the Scottish government’s efforts to influence Brexit were largely ignored by Westminster in part owing to a lack of formal powers over foreign policy. Brexit has opened up a gulf between the two governments in terms of their approach to foreign policy and allowed the Scottish government to emphasise their internationalist outlook through positing their pro-European foreign policy against an increasingly unilateral UK government. In the opinion of Professor Gethins, the UK government has a political incentive to behave in a more belligerent and unilateralist fashion in foreign relations as a result of Brexit, and as such is increasingly seen as an unreliable partner.¹⁰⁰ This in turn incentivises the Scottish government to maintain its links with Europe as the Foreign Office is no longer viewed as the most effective conduit for foreign policy.

The Scottish government has also used the climate crisis as a chance to burnish its internationalist credentials through committing to action on climate change and engaging with the global community. The list of reserved powers in the Scotland Act 1998, schedule 5 leaves out areas related to climate change and has thus afforded the Scottish government significant autonomy this area.¹⁰¹ Efforts to mitigate and tackle climate change efforts have been salient within Scotland’s foreign policy. This may appear odd given how central oil revenues were in the Yes Campaign’s case for independence, but this did not prevent Alex Salmond from visiting COP15 in Copenhagen in an unofficial capacity as FM, fresh off the heels of the passage of the Climate Change Act 2009 which saw Scotland recognised as a leader in tackling climate change.¹⁰² The Scottish government also centred climate change in its inter-

98 Chris Curtis, ‘Scottish independence: Yes leads as Remainers increasingly back splitting with UK’, *YouGov*, 30/01/20, available at: < <https://yougov.co.uk/topics/politics/articles-reports/2020/01/30/scottish-independence-yes-leads-remainers-increase> >, last accessed on 02/10/21.

99 *Ibid.*

100 Reuben Duffy, Interview with Stephen Gethins, 01/11/21, Manchester (Online).

101 Scotland Act 1998 s5, available at: < <https://www.legislation.gov.uk/ukpga/1998/46/schedule/5> >, accessed on 16/10/21.

102 Gethins, *Nation to Nation*, p.76.

national development policy.¹⁰³ Sturgeon’s tenure has seen this climate diplomacy continue with Scotland becoming a member of the Under2 Coalition, a community of regional and local governments committed to tackling climate change.¹⁰⁴ Sturgeon herself is the European co-chair of the group.¹⁰⁵ In September 2021, the Scottish government announced it was doubling its Climate Justice Fund to tackle the impact of climate change in the Global South.¹⁰⁶

More recently, the Scottish government has capitalised on COP26, seizing the opportunity to raise its international profile and network with global figures. The FM was photographed alongside influential figures including U.S. President Joe Biden, U.S Congresswoman Alexandria Ocasio-Cortez, Belgian Prime Minister Alexander De Croo and climate activist Greta Thunberg.¹⁰⁷ Furthermore, Angus Robertson hosted a reception for U.S. diplomats at Edinburgh Castle, praising the close relationship between the two countries and pledging to work together to stop climate change.¹⁰⁸ Thus, COP26 was an excellent opportunity for Scottish politicians and officials to meet with influential global figures. Perhaps for this reason, prior to the conference it had been suggested that the UK government would seek to block Scottish government involvement.¹⁰⁹ Given the gulf in popularity between the two administrations in Scotland, it is perhaps unsurprising that the UK government considered limiting Scottish government involvement, particularly given anxieties over independence. Alok Sharma, President of COP26 and Minister of State for the Cabinet Office later denied this allegation.¹¹⁰ Nevertheless, the episode was illustrative of the implicit discomfort some UK government figures had with regard to the Scottish government having an impact on the world stage.

Whilst the success of COP26 in delivering concrete action on the climate crisis has been contested, it has been a moderate success for the Scottish government in terms of building on its international profile and illustrates the success of the government’s climate diplomacy. The Scottish government’s approach to climate change and decarbonisation was praised by António Guterres, Secretary-General of the United Nations.¹¹¹ Scotland’s clean energy efforts were also recognised by U.S Secretary of the

103 ‘Coronavirus (COVID-19): international development review- principles’, *Scottish Government*, 03/03/21, available at: < <https://www.gov.scot/publications/coronavirus-covid-19-international-development-review-principles/> >, last accessed on 10/11/21.

104 ‘States and Regions’, *Under2 Coalition*, 01/07/2015, available at < <https://www.theclimategroup.org/our-work/states-and-regions-under2-coalition> >, last accessed on 10/11/21.

105 ‘Governance’, *Under2 Coalition*, available at: < <https://www.theclimategroup.org/governance> >, last accessed on 10/11/21.

106 ‘International Development’, *Scottish Government*, 10/11/21, available at: < <https://www.gov.scot/policies/international-development/climate-justice-fund/> >, last accessed on 10/11/21.

107 ‘Russell Findlay MSP’, *Twitter*, 11/11/21, available at: < <https://twitter.com/russellfindlay1/status/1458854805292597252?s=10> >, last accessed on 11/11/21.

108 ‘ScotGovInter’, *Twitter*, 08/11/21, available at: < <https://twitter.com/scotgovinter/status/1457643596035903492?s=10> >, last accessed on 08/11/21.

109 Anna Isaac, ‘No. 10 war-gaming to stop Nicola Sturgeon using Cop26 as ‘advert’ for Scottish independence’, *The Independent*, 04/09/21, available at: < <https://www.independent.co.uk/news/uk/politics/cop26-scotland-independence-indyref2-b1902613.html> >, last accessed on 04/09/21.

110 Louise Wilson, ‘Nicola Sturgeon will play ‘important part’ at COP26 says Alok Sharma’, *Holyrood Magazine*, 16/09/21, available at: < <https://www.holyrood.com/news/view/nicola-sturgeon-will-play-important-part-at-cop26-says-alok-sharma> >, last accessed on 16/09/21.

111 Richard Mason, ‘UN chief António Guterres praises Scotland’s efforts to tackle climate change’, *The National*, 02/11/21, available at: < <https://www.thenational.scot/news/19689918.un-chief-antonio-guterres-praises-scotlands-efforts-tackle-climate-change/> >, last accessed on 10/11/21.

Interior, Deb Haaland.¹¹² Perhaps most notably, Saleemul Huq, Director of the International Center for Climate Change and Development called the First Minister the only true leader to emerge from a developed nation at COP26.¹¹³ COP26 therefore arguably represents the dividend from the Scottish government’s efforts to centre climate change in its foreign policy. The Scottish government has also used COP26 as a means to pressure the UK government for more meaningful action on climate change, with the FM calling on the PM to remain in Glasgow until a settlement was reached.¹¹⁴ However, despite this success, it would be a mistake to categorise Scottish foreign policy as completely environmental. At COP26 the Scottish government also declined to join the Beyond Oil and Gas Coalition, a group of states and sub-states committed to accelerating the transition away from fossil fuels.¹¹⁵ And despite the FM’s rhetoric at COP26, the Cabinet Secretary for Net Zero, Energy and Transport Michael Matheson stated that an independent Scotland would continue to use oil and defended the prominent role oil occupied in the 2013 Independence White Paper.¹¹⁶ North Sea oil has long represented a contradiction in Scotland’s climate policies and appears embarrassing against the climate conscious foreign policy developed by the SNP. With the inclusion of the Scottish Green Party (SGP) in government there is the potential that this could change in the near future, given the opposition of the SGP to oil extraction.¹¹⁷ Thus far, the Scottish government has reaped the diplomatic benefits but it is unclear how long this can continue whilst the government attempts to have its cake and eat it.

These two case studies illustrate the Scottish government’s strong commitment to multilateralism. In both cases, the Scottish government has sought engagement with the international community and cultivated partnerships with neighbouring states. As to their classification, whether these two case studies should be seen as proto-diplomacy is unclear. Both instances appear to have little direct relevance in promoting Scottish independence. However, as has been illustrated, the fallout from Brexit has seen support for Scottish independence rise amongst Remainers with support for the Union rising amongst Leavers. This coupled with the substantial Remain majority in Scotland has created an incentive for the Scottish government to pursue a strongly pro-European foreign policy as this may drive support for independence higher still. Furthermore, building international support for a potential independent Scottish state is crucial, particularly given the Scottish government’s long-term ambition to re-join the EU as an independent state. Recently, the Minister-President of Flanders tweeted that he and Nicola Sturgeon discussed the Scottish government’s plans for a second independence referendum in 2023. This suggests that the Scottish government is keeping EU nations informed of their plans for an in-

112 ‘Secretary Deb Haaland’, *Twitter*, 03/11/21, available at: < <https://twitter.com/secdebhaaland/status/1455974087596072963?s=10> >, last accessed on 03/11/21.

113 ‘The SNP’, *Twitter*, 13/11/21, available at: < <https://twitter.com/thesnp/status/1459157796591702032?s=10> >, last accessed on 13/11/21.

114 ‘Kay Burley’, *Twitter*, 13/11/21, available at: < <https://twitter.com/kayburley/status/1459080608475496476?s=10> >. last accessed on 13/11/21.

115 ‘Friends of the Earth Scotland’, *Twitter*, 12/11/21, available at: < <https://twitter.com/foescot/status/1458786396743901188?s=10> >, last accessed on 12/11/21.

116 Conor Matchett, ‘Scottish independence: Independent Scotland would not stop drilling for oil and gas, says net zero secretary’, *The Scotsman*, 03/11/21, available at: < <https://www.scotsman.com/news/politics/scottish-independence-independent-scotland-would-not-stop-drilling-for-oil-and-gas-says-net-zero-secretary-3442558?amp> >, last accessed on 03/11/21.

117 Hannah Brown, ‘COP26: Patrick Harvie says ‘Greens don’t have same position’ on drilling oil and gas in independent Scotland’, *The Scotsman*, 04/11/21, available at: < <https://www.scotsman.com/news/environment/cop26-patrick-harvie-says-greens-dont-have-same-position-on-drilling-oil-and-gas-in-independent-scotland-3444941> >, last accessed on 04/11/21.

dependent Scotland, perhaps attempting to ensure greater levels of support for the breakup of the UK amongst the bloc. Maintaining and strengthening links with the EU is therefore crucial to the goal of independence and therefore the Scottish government’s commitment to doing so can be interpreted as proto-diplomatic in some fashion. This interpretation is bolstered by the fact that the Scottish government’s policy is in direct opposition to that of the UK government. Despite this, it would be wrong to wholly classify the Scottish government’s European policy as proto-diplomatic. It is still para-diplomatic in nature, with the aim of maintaining Scottish links to the EU taking precedence over pursuing independence, albeit with the latter still a priority.

What of the Scottish government’s action on climate change? The Scottish government has attempted to position itself as a world leader on this issue, with some success. One interpretation is that the Scottish government is utilising the issue of climate change to garner goodwill amongst the international community that will in turn potentially garner greater support for the notion of an independent Scotland. A more plausible interpretation is that successive Scottish governments have utilised the gap in the Scotland Act and positioned Scotland as a climate leader which has in turn enhanced Scottish soft power. The Scottish government’s action on climate change can therefore be seen as wholly para-diplomatic.

Politics: consensus and debates

The SNP are of course not the only political party in Scotland. Examining the positions of the other four parties represented in the Scottish Parliament will allow us to understand thinking on foreign policy across the political spectrum and establish if there is any political consensus.

Similar to the SNP, the Scottish Green Party (SGP) advocate a policy of independence in Europe.¹¹⁸ The EU is not the only multilateral organisation that the SGP supports Scottish membership of. The SGP is supportive of associate/observer membership for the World Health Organisation, the Nordic Council and the Arctic Council.¹¹⁹ Alongside this multilateralism, the SGP also advocates for a foreign policy based on liberation politics, anti-militarism and anti-imperialism. In its latest Holyrood manifesto the SGP pledged to utilise Scotland’s trade and foreign policy infrastructure to hold China to account regarding human rights violations in Hong Kong, Tibet and East Turkestan.¹²⁰ The SGP also propose recognising the State of Palestine and working toward a peaceful end to the Israeli occupation of Palestine, alongside a hard-line approach to the arms industry that would end all Scottish government support for the sector.¹²¹ Perhaps most notably, the SGP are opposed to NATO membership.¹²² It is perhaps fair to say that the SGP envision Ireland as a model for Scotland; a neutral state committed to the EU with a broadly internationalist approach overall. The recent SNP-SGP Programme for Government endorsed this approach, with its commitment to strengthening Scottish links with the EU. Thus, the position of the SGP may be summed up as multilateralism and internationalism influenced by radicalism. Despite the party’s radical leanings, however, the SGP is clearly aligned with the SNP regarding Scotland acting autonomously on the international stage.

The Scottish Labour Party’s 2021 manifesto devotes significantly less space to international affairs than either its Green or SNP counterparts. As has been demonstrated, Scottish Labour acted as the party responsible for the development of an autonomous Scottish foreign policy through programmes such as the SMP. In its 2021 manifesto Scottish Labour stresses that Scotland does not possess its own foreign policy.¹²³ However, in the same paragraph as this denial of a Scottish foreign policy, the party states its support for building up Scotland’s foreign policy infrastructure through the establishment of a Scottish Council on Global Affairs.¹²⁴ Nonetheless, it is also noteworthy that Scottish Labour only devotes one small paragraph at the end of a 100 plus page document to foreign affairs.¹²⁵ This ambiguity is perhaps to be expected from Scottish Labour – the territorialisation of British politics has been a difficult process for the party. The party advocates for further devolution for Scotland, alongside the establishment of a Council of Ministers and a Council of Parliaments as a step towards a more federal

118 ‘Our Place in the World: Independence and Scotland’s Future’, *Scottish Green Party*, available at: < <https://greens.scot/our-future/independence-and-scotland-s-future> >, last accessed on 01/10/21.

119 *Ibid.*

120 *Ibid.*

121 *Ibid.*

122 ‘Demand Climate Action! Scottish Greens Manifesto 2019’, *Scottish Green Party*, available at: < <https://greens.scot/sites/default/files/Scottish%20Greens%202019%20Manifesto.pdf> > last accessed on 01/11/21, p.26.

123 *Ibid.*

124 ‘Scottish Labour’s National Recovery Plan’, *Scottish Labour Party*, available at: < <https://scottishlabour.org.uk/where-we-stand/national-recovery-plan/> >, last accessed on 01/11/21, p.114.

125 *Ibid.*

UK.¹²⁶ Where foreign policy figures in this equation is unclear. There is support for more foreign policy powers within the party. Katy Clark, Labour MSP for West Scotland recently spoke in favour of a Scottish veto over foreign policy as part of a wider federalisation programme.¹²⁷ However, the official position of the party is unclear. Overall, Scottish Labour have played an important role in the development of an autonomous Scottish foreign policy. However, as Scotland’s capacity for carrying out this foreign policy has grown, Scottish Labour’s attitude with regard to this policy area has grown more ambivalent. This is representative of the wider difficulty that the Labour Party has faced in dealing with the development of territorial politics in the UK. To summarise, despite their support for an autonomous foreign policy, Scottish Labour has placed emphasis on the reserved nature of foreign policy alongside focusing more heavily on domestic policy issues such as transport or health.

The Scottish Liberal Democrat’s manifesto also contained support for some degree of autonomous Scottish foreign policy. Like Labour and the SNP, the Liberal Democrats support the establishment of a Scottish Council on Global Affairs.¹²⁸ The Liberal Democrat manifesto also contains a commitment to continue to deepen ties with Malawi.¹²⁹ As might be expected the Liberal Democrat manifesto also contains strong commitments to Europe. But it does not propose any concrete policy, let alone separate Scottish action, choosing instead to link the fallout from Brexit to an argument against independence on the basis that the latter would disrupt the economy in a similar fashion to the former.¹³⁰ Again much like Labour, the Liberal Democrats are supportive of constitutional reforms such as federalisation.¹³¹ However, their exact vision for powers regarding foreign policy is unclear, with their manifesto committing them to a Constitutional Convention rather than any specific programme of powers.¹³² Similarly to Labour, the party’s Scottish manifesto devotes little space to foreign policy, and more to domestic issues such as COVID recovery.¹³³ Despite this, it is clear that the Liberal Democrats are in favour of Scotland playing an international role. But to what extent is unclear and, like Scottish Labour, the party would prefer to focus on other policy issues.

Lastly there is the Scottish Conservative and Unionist party (SCUP). Despite being the second largest parliamentary grouping and the official opposition, the SCUP has had limited influence on policy under devolution outside of Salmond’s minority administration. The SCUP is also the only party currently represented in the Scottish Parliament that has not held ministerial office. This is striking considering that they are now the premier party within the unionist movement. The party’s rhetoric on foreign policy is reflective of its strong unionist ideology. Recently, Donald Cameron MSP, SCUP spokesperson for external affairs, decried describing Scotland’s international actions as foreign policy.¹³⁴ Jack-

126 ‘Scottish Labour’s National Recovery Plan’, *Scottish Labour Party*, available at: < <https://scottishlabour.org.uk/where-we-stand/national-recovery-plan/> > last accessed on 01/11/21, p.30.

127 ‘Katy Clark says Scots politicians should consent to ‘major defence decisions’, *The Herald*, 25/09/21, available at: < <https://www.heraldscotland.com/politics/19605320.katy-clark-says-scots-politicians-consent-major-defence-decisions/> > accessed on 26/0921.

128 ‘Put Recovery First’, *Scottish Liberal Democrats*, available at: < <https://www.scotlibdems.org.uk/manifesto> >, last accessed on 15/10/21, pp.51-52.

129 *Ibid.*, p.52.

130 *Ibid.*

131 *Ibid.*, p.43

132 *Ibid.*

133 *Ibid.*

134 ‘Scottish Government Debate: Scotland in the World - Championing Progressive Values - 6 October 2021’, *YouTube*, 06/10/2021, available at: < <https://www.youtube.com/watch?v=lqW7SxvzpWE> >, last accessed on 15/10/21.

son Carlaw MSP, in his capacity as SCUP Deputy Leader, also criticised any notion of a Scottish foreign policy in the Scottish Parliament.¹³⁵ Furthermore, some SCUP MSPs have challenged Scotland’s international presence via letters to the foreign office, claiming the Scottish government’s actions are in effect boosting the cause of independence.¹³⁶ Nevertheless, despite the rhetoric, the SCUP supports and has proposed policies that recognise and build upon Scotland’s capacity for an autonomous foreign policy. The 2021 SCUP manifesto devoted significantly less space than other parties to international affairs, choosing not to have a separate section focusing on foreign policy.¹³⁷ The SCUP focuses mainly on the field of investment and exports. The party proposes establishing a Scottish Exporting Institute and upgrading existing trading networks alongside utilising links to the vast Scottish diaspora to expand Scotland’s export capacity.¹³⁸ Additionally, the SCUP also supports the SMP.¹³⁹ Whilst the rhetoric of their MSPs may suggest otherwise, it appears clear that the SCUP accept that Scotland has the capacity to conduct an autonomous foreign policy. However, the SCUP have chosen to stray away from rigorous policy development in this area, devoting less attention to it than other parties. This combined with their rhetoric suggests that whilst the SCUP has accepted the notion of an autonomous Scottish foreign policy, it has done so begrudgingly and would prefer that the Scottish government did not expand its capacity in this area.

As ever, the issue of EU membership represents a dividing line between the Scottish and UK political classes. In the words of Professor Gethins the divergence in foreign policy between Edinburgh and London is not simply a product of the differing ideologies of the respective governments, but about two further facts. Firstly, Scotland’s different foreign policy priorities based on its geographic position. Scotland’s closer proximity to the Nordic states than the rest of the UK means that relationships with those states are of higher importance to Edinburgh than they are to London.¹⁴⁰ Secondly, the divergence is also about ‘where the political centre of gravity sits on foreign policy between the two’.¹⁴¹ There is some truth to this remark. Scotland’s political parties are notably more pro-European in contrast to the UK wide ones. As previously evidenced the SNP, SGP and Liberal Democrats are supportive of Scotland re-joining the EU, either as an independent state or as part of the UK. Scottish Labour’s leadership are also in favour of closer ties with the EU, with leader Anas Sarwar pledging to persuade UK Labour’s leadership to move towards a more pro-EU policy.¹⁴² Indeed, Scottish Labour’s sole remaining MP and Shadow Scottish Secretary Ian Murray has professed similar beliefs.¹⁴³

Whilst 75 per cent of the seats in Holyrood are presently held by pro-European parties with only the SCUP dissenting, in Westminster both leading parties are pro-Brexit and between them hold 86 per

135 ‘Debate: Scotland’s International Policy Framework and Priorities for 2018 - 16 January 2018’, *YouTube*, 16/01/2018, available at: < <https://www.youtube.com/watch?v=FEudgRSGLvU> > last accessed on 15/10/21.

136 ‘Stephen Kerr MSP’, *Twitter*, 26/05/21, available at: < <https://twitter.com/RealStephenKerr/status/1397474972784893957> > last accessed on 15/10/21.

137 ‘Rebuild Scotland’, *Scottish Conservative and Unionist Party*, available at: < <https://www.scottishconservatives.com/manifestos/2021-scottish-conservative-manifesto/> >, last accessed on 15/10/21, pp.51-52.

138 *Ibid.*, p.13.

139 *Ibid.*, p.51.

140 Reuben Duffy, Interview with Stephen Gethins, 01/11/21, Manchester (Online).

141 *Ibid.*

142 Severin Carrell, ‘Scottish Labour leader calls for UK to move closer to single market’, *The Guardian*, 01/03/21, available at: < <https://amp.theguardian.com/politics/2021/mar/01/scottish-labour-leader-calls-for-uk-to-move-closer-to-the-single-market> >, last accessed on 14/12/21.

143 ‘Ian Murray’, available at: < <https://www.ianmurraymp.com/european-union/> >, last accessed on 14/12/21.

cent of the seats in the House of Commons. Indeed, as though to further illustrate the divide in political consensus between Edinburgh and London, the largest block of pro-European MPs in the House of Commons is currently the SNP with 45 seats. Of the Scottish parliamentary contingent 53 out of 59 Scottish MPs were elected in 2019 on an explicit platform of Scotland re-joining the EU, be that as an independent country or as part of a wider UK re-joining effort. The gulf in political consensus between Scotland and the remainder of the UK was of course a significant driving factor in the campaign for a Scottish Parliament in the twentieth century: a means to allow centre-left voting Scotland to enact its desired policies even in the event that England’s numerical superiority resulted in a centre-right UK government. By the same logic, it would seem desirable that this autonomy be extended to the realm of foreign policy.

Overall, it appears clear that there is a general consensus amongst a majority of Scottish political parties represented in the Scottish Parliament in favour of autonomous Scottish action in international affairs. Such support exists on a continuum rather than a binary, with the pro-independence parties representing those most in favour of an autonomous Scottish foreign policy, listing specific actions that Scotland should take in international affairs despite lacking several formal powers over foreign policy. The two devolutionist unionist parties are broadly supportive of the notion of an autonomous Scottish foreign policy. However, they are vague on their vision regarding the extent of Holyrood’s power over foreign policy and have tended away from placing too much emphasis on Scottish forays into international affairs since leaving office in 2007. Finally, the SCUP, as the most militantly unionist party in Holyrood, has rhetorically neglected to emphasise any autonomous role that Scotland may play; but they have still dedicated some time to the formulation of policy, albeit significantly less than the other parties. Additionally, it appears there is a significant gulf between Scottish and English political representatives regarding the question of Europe. It is clear that Scotland’s political parties are significantly more pro-European than their UK counterparts.

Comparative analysis: Bavaria, Quebec, Wallonia and Flanders, Catalonia, the Faroe Islands

Throughout this report, three facts have been apparent. Firstly, Scotland has a considerable foreign policy footprint, cultivated by successive Scottish governments, both unionist and separatist. Secondly, the constitution of the UK and the existing devolution settlement is ill suited to this role, with Scotland’s exact capacity for foreign relations shrouded in ambiguity and contradiction. Finally, continued conflict between the Scottish and UK governments is straining the existing system further and is likely to continue given the several ways in which their approaches to foreign policy differ. It is clear that the UK constitution could be altered in some fashion to accommodate this foreign policy role and resolve some of these issues. Whilst formal recognition in the constitution of an autonomous Scottish foreign policy is evidently desirable, the exact constitutional model that might be most appropriate is at present unclear. Furthermore, considerations must be made with regard to the structures of devolution and the specific profile of Scotland itself. Professor Gallagher stated that any devolutionary foreign policy must be in agreement with the devolution settlement itself.¹⁴⁴ Understanding which model should be emulated by the UK will require studying other democratic sub-states who have a significant footprint in international relations. With all this in mind, at the heart of any suggested reforms must be three key principles.

- Compatibility with the existing devolution settlement and the flexibility to adapt to a situation where Scotland receives more devolved powers.
- Commitment to promoting co-operation between the UK and Scottish governments in matters of shared interest, such as trade negotiations.
- Allow for policy divergence to occur along the same lines as has already happened in other aspects of devolved policy, such as tuition fees, public ownership and pandemic guidance.

With these three principles in mind what follows is a comparative analysis of the constitutions of Germany, Canada, Belgium, Spain and Denmark with reference to powers over foreign policy and the sub-state administrations of Bavaria, Quebec, Wallonia and Flanders, Catalonia and the Faroe Islands, respectively. By analysing these systems, it is hoped that the best possible model for accommodating Scotland’s autonomous foreign policy will be determined. In addition to analysing the exact constitutional powers that these sub-states possess in relation to foreign policy, their respective political environments will also be considered in an effort to understand whether their models are viable in relation to Scotland. I turn first to Germany.

144 Reuben Duffy, Interview with Jim Gallagher, 06/12/21, Manchester (Online).

Germany

Article 32 of the German constitution details the division of power over foreign relations.

- (1) Relations with foreign states shall be conducted by the Federation
- (2) Before the conclusion of a treaty affecting the special circumstances of a *Land*, that *Land* shall be consulted in timely fashion
- (3) Insofar as the *Länder* have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government.¹⁴⁵

Thus, power over foreign relations is ultimately reserved to the Federal Government in Berlin, just as London retains the ultimate power over foreign policy under the 1998 Scotland Act. Similarly again, the German *Länder* are not distinctive members of international or supranational organisations and do not have or receive diplomatic or consular representatives.¹⁴⁶ However, the German constitution does enshrine the right of Bavaria and other German *Länder* to both be consulted regarding treaties that infringe on their jurisdictions, and also to conclude treaties with foreign powers in relation to their policy areas. This is markedly more autonomy than Scotland currently possesses. Additionally, co-operation and consultation between the two governments is constitutionally mandated; a significant departure from the more ambiguous UK model. Bavaria is an example of Germany’s system in action. Bavaria’s foreign policy capacity is structured around these constitutional powers. Similarly to Scotland, Bavaria possesses a Ministry for International Affairs and responsible Minister alongside a network of representative offices in foreign countries to assist with Bavarian economic activity abroad.¹⁴⁷ The Bavarian government has clashed with the federal government on issues occasionally, specifically on co-operation with Hungary and Austria on migration and on relations with the U.S..¹⁴⁸ In spite of these clashes, Bavaria has attempted to influence German foreign policy, particularly in reference to the EU, which it seeks to prevent turning into a federal union in order to preserve its autonomy.¹⁴⁹ The German system, therefore, does not seem overly restrictive, as Bavaria appears to have developed a considerable foreign policy footprint. Most laudable, however, is the German model’s constitutional enshrinement of both the right of the *Länder* to conclude international agreements and that of the principles of co-operation from both governments. Whilst relations between the Scottish and UK governments have been strained, such a constitutional mechanism would force closer co-operation and collaboration between the two, which might have avoided some of the conflict seen during the Brexit process through mandating intergovernmental consultation.

145 ‘Basic Law for the Federal Republic of Germany’, Translated by Christain Tomuschat et al., *Bundesamt für Justiz.*, available at: < https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0165 > last accessed on 20/10/21.

146 Klaus-Jürgen Nagel, ‘Foreign Policy: The case of German Länder’, in Ferran Requejo (ed) *Foreign policy of constituent units at the beginning of the 21st Century* (Barcelona: 2010), p.125.

147 ‘Staatsministerin Melanie Huml’, *Bayerische Staatsregierung*, available at: < <https://www.bayern.de/staatskanzlei/staatsministerin-melanie-huml/> >, last accessed on 20/10/21.

148 Kamil Frymark, *The Free State of Bavaria and its party: The CSU faces an electoral test*, (2018), p.7.

149 Jürgen-Nagel, *The case of German Länder*, p.133.

Canada

Canada too possesses a federal constitution and has done so since its inception in 1867. Unlike Germany however, Canada lacks a singular codified constitutional document and instead relies on legislation, case law and convention (much like the UK). To understand Canada’s constitutional division of foreign policy powers, Canada’s constitutional history must also be understood. Power over foreign relations is assigned to the Federal Government via the Constitution Act of 1867 s.91, which states that all powers not assigned exclusively to the provincial legislatures shall be within the power of the Federal Government – the so-called residuary powers.¹⁵⁰ But at the time of passing, Canada remained subordinate to the UK as a part of the British Empire. The nature of the relationship between the UK and Canada eventually changed, leading to the 1931 Statute of Westminster, which enacted the earlier proposals from the 1926 Balfour Declaration to effectively recognise Canada and the other Dominions of the Empire as equal to the UK, including internationally.¹⁵¹ However, in a 1937 case the Judicial Committee of the Privy Council ruled that treaty implementation was tied to sections 91 and 92 of the 1867 act.¹⁵² In essence, if a treaty dealt with matters under provincial jurisdiction then only the provincial legislatures could enact legislation related to such matters. Provincial authorities have subsequently pointed to this case as proof of their constitutional role in treaty making in respect of matters under their jurisdiction.¹⁵³ This obviously creates huge incentives for the Canadian government to involve the provinces in the formulation of treaties. However, this has not constitutionally guaranteed the provinces a role in foreign policy. All the provinces maintain a keen interest in international treaty negotiations but there exists no formal framework for provincial involvement in trade talks with the system being informal and inconsistent.¹⁵⁴ Furthermore, though any attempt to revise the situation in favour of the Canadian government is unlikely, Ottawa is unlikely to go further in formalising the international role of the provinces.¹⁵⁵ Thus, Canada’s territorial division of foreign affairs seems constitutionally contested and there is little more clarity than in the UK. Examining the case of Quebec will further illustrate this ambiguity given its substantial foreign policy footprint.

The province of Quebec is a significant player in international relations. Like Bavaria, Quebec possesses a foreign minister responsible for a Ministry of International Relations.¹⁵⁶ Alongside this, Quebec also maintains a sizeable network of Government Offices in other nations (33 in 18 countries at present).¹⁵⁷ These government offices are situated in significant international partners of Quebec, such

150 ‘The constitutional distribution of legislative powers- 4. Residuary Powers’, *Government of Canada*, available at: < <https://www.canada.ca/en/intergovernmental-affairs/services/federation/distribution-legislative-powers.html> >, last accessed on 20/10/21.

151 Andrew McIntosh and Norman Hillmer, ‘Statute of Westminster, 1931’, *The Canadian Encyclopaedia*, 07/02/20, available at: < <https://www.thecanadianencyclopedia.ca/en/article/statute-of-westminster> >, last accessed on 12/11/21.

152 André Lecours, ‘Canadian Federalism and Foreign Relations: Quebec and Alberta’ in Ferran Requejo (ed) *Foreign Policy of Constituent Units at the Beginning of the 21st Century* (Barcelona: 2010), p.31.

153 *Ibid*, p.32.

154 Stéphane Paquin et al., ‘Quebec, Scotland and substate governments’ roles in Canadian and British trade policy: Lessons to be learned’, *International Journal* 76.1 (2021), p.90.

155 Lecours, ‘Canadian Federalism and Foreign Relations’, p.35.

156 ‘Ministère des Relations internationales et de la Francophonie’, *Government of Quebec*, available at: < <https://www.quebec.ca/gouv/ministere/rerelations-internationales> >, last accessed on 12/10/21.

157 ‘Québec government offices abroad’, *Québec Général*, available at: < <https://www.international.gouv.qc.ca/en/general/representation-etranger> >, last accessed on 12/10/21.

as France, as well as important regional hubs such as Brussels.¹⁵⁸ Owing to its distinctive culture, Quebec holds a close relationship with the French-speaking world. Quebec is a full member of the International Organisation of La Francophonie in its own right alongside Canada and its neighbouring province New Brunswick.¹⁵⁹ Understanding Quebec’s international role will also require understanding Quebecois history. Much of Quebec’s considerable international footprint grew out of the Quiet Revolution. The Ministry for International Affairs was founded in 1967 and marks the first effort of the Quebecois government to achieve a coordinated and coherent foreign policy.¹⁶⁰ Quebec had previously opened its first offices in New York and Paris in 1940 and 1961 respectively.¹⁶¹ However, the establishment of a formal government department overseeing formal relations signifies intent, and at first it appears inescapable that Quebec’s considerable foreign policy apparatus is intrinsically linked with the rise of Quebecois secessionism in the 1960s, similar to Scotland in the 2010s. However, as James McHugh says, that is a limited view and whilst Quebec’s foreign policy has certainly influenced Canadian foreign policy, Quebec has not necessarily sought to outright challenge it.¹⁶²

Thus, like Scotland, Quebec possesses a significant foreign policy footprint and, again similar to Scotland, there exists some friction between Quebec and Canada with regard to foreign policy. According to Lecours, there are several bureaucratic links between the federal and Quebecois governments that ease foreign policy differences whilst political competition between the two governments exists.¹⁶³ The bureaucratic links are a marked difference from Scotland with the FCO pursuing a more centralist approach to foreign policy. In spite of this, as mentioned previously, there is little desire to formalise the international role of the provinces from the Canadian government nor is there a cry for the ‘re-symmetrisation’ of foreign policy.¹⁶⁴ The ambiguity in the Canadian system looks set to live on.

Looking at Quebec, it is accurate to say that the constitutional status of the territorial division of foreign policy is ambiguous in Canada. Similar to the UK, Canada possesses an uncodified constitution that was developed over time rather than at any seminal historical moment. This is particularly true for foreign relations. Whilst political competition does exist between the two governments, there is little desire to alter the status quo meaningfully in either direction. Overall, the current situation in Canada resembles the UK in many institutional respects given its ambiguity. To emulate the Canadian model would achieve little.

158 ‘Québec government offices abroad’, *Québec Général*, available at: < <https://www.international.gouv.qc.ca/en/general/representation-etranger> >, last accessed on 12/10/21.

159 ‘88 Etats et gouvernements’, *Organisation Internationale de la Francophonie*, available at: < <https://www.francophonie.org/88-etats-et-gouvernements-125> >, last accessed on 12/10/21.

160 ‘History’, *Quebec Ministry of international Relations*, 23/04/20, available at: < <http://www.mrif.gouv.qc.ca/en/ministere/historique/presentation> >, last accessed on 12/11/21.

161 *Ibid.*

162 James T. McHugh, ‘Paradiplomacy, protodiplomacy and the foreign policy aspirations of Quebec and other Canadian provinces’, *Canadian Foreign Policy Journal* 21.3 (2015), p.251.

163 Lecours, *Canadian Federalism and Foreign Relations*, pp.33-35.

164 *Ibid.*, p.35.

Belgium

To conclude with regard to the federal examples, there is the Kingdom of Belgium. Belgium has been described as the most successful failed state in the world due to its complex federal structures. The sub-state authorities of Belgium possess significant amounts of power in foreign relations, as demonstrated by Wallonia’s blocking of an EU-Canada trade deal.¹⁶⁵ Belgium has seven governments of equal standing. They consist of the federal Belgian government and a double federated level of the six governments of the communities and regions. The three communities are the French-speaking community, the Flemish-speaking Community and the German-speaking community; whereas the three regions are the Flemish region, Walloon region and the Brussels Capital region. Belgian federalism lacks a hierarchy between the governments and each constituent unit is empowered to conduct foreign policy with regard to the competencies within their jurisdiction.¹⁶⁶ The competencies of these governments are enshrined in the constitution, with sections I and II of Chapter IV listing them. It is important to note that these competencies are not divided by policy area e.g., education or health. Rather they are divided within these policy areas, with different governments being responsible for different aspects of these policy areas (and therefore empowered to conduct foreign policy in reference to these aspects). The extraordinary Belgian system only works if the foreign policies of the communities and regions do not threaten the coherence of Belgian foreign policy – co-operation and consultation is therefore key.¹⁶⁷ This co-operation is illustrated by the appointment of sub-state attachés to Belgian diplomatic missions.¹⁶⁸

Whilst Belgium’s linguistic communities and historic economic divides have shaped the form of federalism in the country, the principles of non-hierarchical governments and enshrining the right of constituent units to conduct foreign relations in respect of their enshrined competencies are worthy of consideration. The former point of non-hierarchy conflicts directly with the concept of parliamentary sovereignty and would represent a substantial breach with the existing UK constitution. The latter point, however, would create a formal constitutional framework for a Scottish foreign policy to exist within, whilst not altering the current constitutional arrangements too radically. What is key is that, again, there exists a great deal of co-operation between the sub-state governments and central governments with regard to foreign policy. It seems desirable then that the Scottish and UK governments be further incentivised to follow suit.

165 Maïa De La Baume, ‘Walloon parliament rejects CETA deal’, *Politico*, 14/10/16, available at: < <https://www.politico.eu/article/walloon-parliament-rejects-ceta-deal/> >, last accessed on 12/11/21.

166 Françoise Massart Piérard and Peter Bursens, ‘Belgian federalism and foreign relations: Between co-operation and pragmatism’, *Dialogues on foreign relations in federal countries* (2007), p.19.

167 David Crikmans, ‘The Foreign Policy and Diplomatic Representation of the Belgian Regions: Flanders and Wallonia Compared’ in Ferran Requejo (ed) *Foreign Policy of Constituent Units at the Beginning of the 21st Century* (Barcelona: 2010), p.50.

168 *Ibid.*, p.48.

Spain

In terms of the territorial constitution, Spain is arguably the most similar to the United Kingdom. Both are unitary, monarchical states with multiple autonomous sub-states within their borders. Like Scotland, Catalonia possesses significant levels of autonomy, with its own legislature and executive. Catalonia also possesses its own foreign policy apparatus with a Ministry of Foreign Affairs and Open Government.¹⁶⁹ The 2006 Statute of Autonomy established a legal framework for bilateral and multi-lateral relations conducted by the Catalan government. The statute defines that the Generalitat has the capacity to project Catalonia abroad whilst respecting the role of the Spanish state in foreign affairs.¹⁷⁰ The statute also declares that the Generalitat possesses the competence to conduct foreign affairs that derive directly from its powers.¹⁷¹ This is similar to the Belgian example (albeit significantly less complicated). The statute also outlines Catalonia’s international capacity in the areas of international offices, collaboration agreements and participation in international organisation amongst other areas.¹⁷² The statute was approved by 74 per cent of Catalan voters in a referendum, albeit with a turnout of only 49 per cent.¹⁷³ However, this statute was challenged by Spanish nationalists. A challenge was brought before the Constitutional Court of Spain on 31 July 2006 by 99 Deputies of the Popular Parliamentary Group, disputing the constitutionality of the 2006 law.¹⁷⁴ Four years later, the court declared several articles of the statute as unconstitutional but the articles pertaining to foreign relations were not among them.¹⁷⁵

Catalonia therefore lacks the constitutional ambiguity present in the cases of Scotland and Quebec. Its foreign policy powers are very clearly defined by the Spanish constitution via the 2006 Statute of Autonomy, in a similar fashion to Belgium’s communities and regions and Germany’s *Länder*. More specifically, it is similar to the Belgian case, given its empowerment of the Catalan government to conduct foreign policy with regard to areas under its jurisdiction. As with Belgium, were the Spanish model to be emulated in the UK it would not require major alterations to the constitution and merely provide a formal constitutional framework for Scotland to conduct foreign policy in relation to all powers devolved to the Scottish Parliament. However, relations between Catalonia and Spain are tense. The Spanish Constitutional Court recently curtailed Catalonia’s foreign policy plan as the court

169 ‘Ministry of Foreign Affairs and Open Government’, *Government of Catalonia*, available at: < <https://catalangovernment.eu/catalangovernment/government/executive-council/183/victoria-alsina-brugues> >, last accessed on 20/10/21.

170 ‘Title V. On the institutional relations of the Generalitat (articles 174-200) Chapter III. Foreign action of the Generalitat- Article 193’, *Government of Catalonia*, 19/07/06, available at: < https://web.gencat.cat/ca/generalitat/estatut/estatut2006/titol_5/ > last accessed on 20/10/21.

171 *Ibid.*

172 ‘Title V. On the institutional relations of the Generalitat (articles 174-200) Chapter III. Foreign action of the Generalitat’, *Government of Catalonia*, 19/07/06, available at: < https://web.gencat.cat/ca/generalitat/estatut/estatut2006/titol_5/ >, last accessed on 20/10/21.

173 ‘Catalonia endorses autonomy plan’, *BBC*, 19/06/06, available at: < <http://news.bbc.co.uk/1/hi/5091572.stm> >, last accessed on 14/01/22.

174 Sentencia 31/2010, de 28 de junio (BOE (Official State Gazette) number 172, of 16 July 2010), *Spanish Constitutional Court*, 28/06/10, available at: < <https://hj.tribunalconstitucional.es/HJ/en/Resolucion/Show/6670> >, last accessed on 16/10/21.

175 *Ibid.*

found that it undermined Spanish state powers.¹⁷⁶ This illustrates that despite a clear foreign policy framework for Catalonia, there still must be a good working relationship between the central and devolved governments.

Denmark

Finally, there is the example of the Faroe Islands within the Kingdom of Denmark. In comparison to the UK, it is revolutionary for the degree of autonomy granted to the Faroe Islands. Most strikingly, the Faroe Islands are not EU members, having refused to join the EEC in 1973. This is despite Denmark proper holding membership. The Faroe Islands also hold distinctive membership of several international organisations such as the Nordic Council of Ministers.¹⁷⁷ Furthermore, they maintain a network of representative offices in foreign nations. Indeed, the Faroe Islands are empowered to negotiate with foreign nations in their own capacity.¹⁷⁸ Faroese foreign policy is defined by the Foreign Relations Act of 2005. Section one of the 2005 Act grants the Faroe Islands the power to:

‘negotiate and conclude under international law with foreign states and international organisations.... which relate entirely to subject matters under the jurisdiction of the Authorities of the Faroes.’¹⁷⁹

Matters under Faroese jurisdiction include all bar the ‘constitution, citizenship, the supreme court, foreign security and defence policy, and monetary and currency matters’.¹⁸⁰ Thus the Faroe Islands have an enormous degree of autonomy in their foreign relations, significantly more than any other sub-state unit examined in this report. Furthermore, the Faroe Islands rank first amongst the examples analysed here in terms of having a divergent foreign policy from its respective central government. Its significant level of autonomy enables it to pursue alternate foreign policy goals from Copenhagen. Similar to Scotland in 2016, the Faroe Islands explored joining EFTA in 2005.¹⁸¹ This, however, did not come to pass, as Article 56 of the EFTA Convention states that members must be sovereign states. The Faroe Islands also have trade deals with the EU, Iceland, Norway, Turkey and Switzerland in their own right.¹⁸² The UK itself signed a trade deal with Denmark in respect of the Faroe Islands only last year.¹⁸³ Faroese relations with the EU therefore offer a possible reverse blueprint for Scotland were it to be granted similar autonomy and power over foreign relations. However, there are substantial dif-

176 ‘Catalonia’s foreign affairs plan curtailed for ‘undermining Spain’s authority’, *Catalan News*, 06/10/20, available at: < <https://www.catalannews.com/politics/item/catalonia-s-foreign-affairs-plan-curtailed-for-undermining-spain-s-authority> >, last accessed on 09/10/21.

177 ‘The Faroe Islands in the International Community’, *Government of the Faroe Islands*, available at: < <https://www.government.fo/en/foreign-relations/the-faroe-islands-in-the-international-community/> >, last accessed on 07/11/21.

178 ‘Foreign Policy Act of the Faroe Islands- Section 1 (1)’, *Government of the Faroe Islands*, 14/05/05, available at: < <https://www.government.fo/en/foreign-relations/constitutional-status/the-foreign-policy-act/> >, last accessed on 07/11/21.

179 *Ibid.*

180 ‘The Constitutional Status of the Faroe Islands’, *Government of the Faroe Islands*, available at: < <https://www.government.fo/en/foreign-relations/constitutional-status/> >, last accessed on 08/11/21.

181 Helena Spøngenberg, ‘Faroe Islands seek closer EU relations’, *Euobserver*, 08/12/07, available at: < <https://euobserver.com/foreign/24907> >, last accessed on 08/11/21.

182 ‘The Faroe Islands in the International Community’, *Government of the Faroe Islands*.

183 ‘UK/Denmark: Free Trade Agreement in respect of the Faroe Islands’, *Foreign & Commonwealth Office*, 06/02/21, available at: < <https://www.gov.uk/government/publications/cs-denmark-no12019-ukdenmark-free-trade-agreement-in-respect-of-the-faroe-islands> >, last accessed on 14/01/21.

ferences between Scotland and the Faroe Islands that bear consideration – primarily Scotland’s size and geographic position. First, Scotland is significantly larger than the Faroe Islands and therefore any divergent foreign policy would impact the UK significantly more than the Faroe Islands in respect of Denmark. Second, Scotland shares a considerable land border with England, its largest trading partner. Were Scotland to succeed in achieving a ‘reverse Faroe’ – joining the EU from within the Union whilst the rest of the UK remained outside – this would likely have a significant economic cost for Scotland and the other home nations of the UK, given the trading barriers that presently exist between the UK and the EU. In light of this, a ‘Reverse Faroe’ would also require a considerable degree of co-operation from both the UK government and the EU.

The Faroese model holds a lot of potential for Scotland and, if implemented fully, could provide much needed clarity with regards to Scotland’s foreign policy role whilst also massively expanding Scotland’s autonomy. Like the Belgian and Spanish models, devolving power to Scotland along these lines would not fundamentally impact the major principles of the existing UK constitution or devolution settlement whilst simultaneously providing a constitutional framework for Scottish foreign policy to exist within. A question of equal importance is how much, if any, additional powers should be devolved to Scotland. Of the models presented here, the Faroe Islands provides the maximalist example for this devolution whilst Catalonia and the Belgian regions and communities represent the minimalist approach. The political gulf between the Scottish and UK governments makes the principle of devolving to Scotland the capacity to conduct foreign policy in respect of all matters devolved worthy of emulation. This is because it would allow the Scottish government to pursue a differentiated policy from within the union and lessen instances where the UK government can ignore the wishes of the Scottish government. Such a reform would be in agreement with the aims of the devolution settlement.

Overall, it is clear that there are several models to look to in terms of addressing the conundrum of constitutionally recognising Scotland’s foreign policy role. However, given the several differences between Scotland and the UK and the other examples considered above it would be ill-advised to attempt to directly replicate the constitutional model of a different state. An important principle of this constitutional change must be that of compatibility with the existing devolution settlement and the foreign policy of the UK itself. As Professor Gallagher observed, it is eminently sensible that the Scottish government possess the power and capacity to engage with foreign actors provided that this role does not undermine the existing devolution settlement. The central problems posed by Scotland’s foreign policy role at present are:

- its ambiguity and
- this ambiguity’s capacity to feed territorial conflict.

It is therefore desirable that any constitutional reform both clarifies Scotland’s foreign policy capacity and encourages co-operation in place of conflict. The table below (table 1) summarises the models examined alongside Scotland against numerous features, including the three principles identified earlier in the report as desirable in any constitutional reform of this nature.

	Overall territorial constitutional structure	Sub-state capability to conclude international agreements?	Sub-state foreign policy role guaranteed by statute/constitution?	Model compatibility with the existing devolution settlement?	Constitutionally promoting co-operation between sub-state and national governments?	Allowance for foreign policy divergence?
Scotland/UK	Union state with asymmetric devolution	No	No	N/A	No	Informally
Bavaria/Germany	Federal state	Yes	Yes	Yes (with the exception of the federal elements)	Yes	To an extent
Quebec/Canada	Federal state	No	Ambiguous	Ambiguous	No	Provincial foreign policy role tolerated but contested
Wallonia and Flanders/Belgium	Federal state	Yes	Yes	Yes (with the exception of the principle of non-hierarchy and federal elements)	Yes	Yes
Catalonia/Spain	Unitary state with asymmetric devolution	Yes	Yes	Yes	No	Yes
Faroe Islands/Denmark	Union state with asymmetric devolution	Yes	Yes	Yes	No	Yes

Table 1.

In Canada there is a similar level of constitutional ambiguity regarding the foreign policy capacities of the provinces. Canadian provinces such as Quebec do conduct autonomous foreign policies but the exact constitutional nature of this is somewhat contested and therefore undesirable. The German constitution contains a principle worth emulating: that of the requirement for the both the *Länder* and the federal government to consult one another in the process of concluding treaties. The models present in Belgium, Catalonia and the Faroe Islands are worthy of consideration given their common theme of devolving the competency to conduct foreign policy to sub-state regions with regard to areas under their jurisdiction. It seems desirable that this competency alongside the German principle of constitutionally mandated co-operation and consultation when it comes to international treaties be implemented in the UK with regard to Scotland. This would represent both an expansion and clarification of Scotland’s foreign policy role.

With regard to the foreign policy of the UK, granting the Scottish government the right to conduct foreign policy relating to all devolved matters to it is not the same as Scotland acting as an independent state. The UK’s foreign policy clearly creates limitations on the scope of Scottish foreign policy. Whilst the case of the Faroe Islands offers an important example in terms of sub-state foreign policy, it is extremely unlikely that Scotland could pursue a ‘reverse Faroe’ with the EU. If the Scottish government were to pursue the goal of EU membership whilst remaining within the UK, there would be several obstacles. The two most formidable however, would be that of the related phenomena of the EU-UK trade deal and the Anglo-Scottish border. Were the Scottish government to somehow achieve the assent of both the UK and EU for Scotland to join the EU whilst remaining within the UK, it would be faced with the reality of regulatory barriers along the Anglo-Scottish border as exists between the UK and the EU presently. However, it is undeniable that these recommendations would enable the Scottish government to move closer to the EU in some fashions. Thus, it is important to understand that whilst Scotland’s autonomy would be greatly expanded by the enactment of the recommendations contained in this report, these changes would not be a blank cheque for the Scottish government to forge ahead and enact whatever foreign policy it pleases, regardless of the UK’s own foreign policy objectives.

Conclusions

We have seen in the course of this report that Scotland has developed a considerable foreign policy apparatus in spite of the limitations present. This process began prior to the SNP’s period in government, with the Labour-Liberal Democrat administrations pioneering para-diplomatic efforts such as the SMP and Tartan Day. Post-2007, the SNP continued this para-diplomacy and post-2016 the Scottish government’s policy toward Europe has mutated to be proto-diplomatic to some degree. The Brexit process has seen relations between the Scottish and UK governments become strained, with the UK government pressing ahead with little regard for the Scottish government’s recommendations. By constitutionally recognising Scotland’s international role, any ambiguity would be removed and Scotland would be granted a formal framework from within which to conduct foreign policy from within the Union. This in turn would allow the territorial tensions between the Scottish and UK governments to be relieved as the exact parameters of Scotland’s foreign policy capacity would be defined and the UK government would have to accept Edinburgh’s capacity to act autonomously on the international stage. Formal recognition would in turn encourage the two governments to co-operate on areas of shared interest.

In terms of emulation, the models examined in the previous section all contain various strengths. However, there is the question of compatibility with the current UK constitution. The Canadian model is similar to the present UK framework and would therefore engender little meaningful institutional change. In the case of Germany, the constitutional mandate for the *Länder* and the federal government to co-operate and consult with regard to international treaties is an excellent principle, worthy of consideration. The example of Belgium faces the difficulty of compatibility with the UK constitution, with the absence of a hierarchy between governments likely to conflict with the UK principle of parliamentary sovereignty. However, the right of sub-state units to conduct foreign policy in relation to all areas within their jurisdiction is another principle worth considering. The unitary states of Spain and Denmark are similar in this respect. In both countries the sub-states of Catalonia and the Faroe Islands enjoy significant autonomy in foreign affairs, courtesy of their right to conduct foreign policy with respect to matters under their jurisdiction. Devolving the power to Scotland to enact foreign policy in respect of all matters currently under its jurisdiction would not fundamentally alter the existing UK constitution, as the principle of parliamentary sovereignty would be preserved. Such reform would have to be crafted with careful reference to key pieces of legislation affecting UK-wide devolution arrangements.

But this alone would be insufficient. To effectively operate as both a constituent nation of the UK and an international actor, not only is it recommended that Scotland receive the power to conduct foreign policy in reference to all areas under its jurisdiction, but also that the current constitutional arrangements be significantly reformed to mandate that foreign policy decisions that significantly impact on devolved responsibilities be collectively discussed and agreed upon between UK and devolved ministers, as is the case in Germany with reference to international agreements. The UK government should also be constitutionally required to consult with the devolved administrations on reserved matters, albeit without a requirement that the UK government gain the consent of devolved administrations on reserved matters. The newly announced ‘Prime Minister and Heads of Devolved Governments Council’ offers some promise in this area but, at present, lacks a statutory footing. Even if placed on such

a footing, however, the attitude of the governments involved are key, particularly that of the UK government. If this new body is to succeed and, indeed, if any of the proposed reforms in this report are to succeed, then the prevailing centralising attitude and belief in Whitehall’s supremacy must end.

With these reforms, clarity regarding Scotland’s foreign policy capacity would prevail over two decades of ambiguity and allow for Scotland to operate more effectively as an international actor from within the Union. Crucially, this would reduce the strain on the current system. Moreover, it would be a continuation of the mission of devolution to allow for policy divergence where political difference exists between the constituent nations of the UK.

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Appendix a: Interview with Professor Stephen Gethins

Q. What are the current foreign policy priorities for the Scottish government?

SG: Jobs and investment, that’s always number one. The biggest driver in foreign policy in any government in the world is domestic politics. The domestic priority is recovering from the pandemic, getting those jobs, getting the investment. The Climate emergency is also a big foreign policy priority for the Scottish government. Alex Salmond was talking about climate justice well over a decade ago. He travelled to COP15 in Copenhagen and elsewhere. And that goes back to when the Scottish government’s climate legislation was winning plaudits internationally but during COP15 the First Minister was barred from being part of the UK delegation. Governments elsewhere will include their sub-state entities and politicians from the sub-state entities, not just officials. Cultural diplomacy is also really important if you look at the festivals. And foreign policy is not just pursued by the Scottish government. Our universities sector is exceptionally international. Our cultural institutions and festivals are exceptionally international. Jobs and investment, cultural diplomacy, climate emergency, educational opportunities. The whole range of any country. You also see niche areas for example providing peacebuilding. There are 1325 fellows, Women peacebuilders who come to Scotland which is funded by the Scottish government working with Beyond Borders Scotland, bringing in women from areas affected by conflict and recognising Scotland’s place as a potential peacebuilding hub which could be developed.

You also see the Scottish government trying to maintain as much proximity as it can to the European union. We should never forget that the Scottish government looks at its place in the world slightly differently than the UK as a whole. My old geography teacher used to say to me there is no right way to look at a globe. We often think of the UK’s neighbours as being France, Belgium Ireland. But who are Scotland’s neighbours? England, Wales, Ireland, France Belgium and the Netherlands. But we’ve also got an important relationship with the Nordic states. Norway, Denmark, Sweden, Iceland, the Faroe Islands. Historically these were really close relationships. The First Minister went up and spoke at the Arctic circle assembly recently. So those near neighbours are also a priority. But fundamentally maintaining links with our European partners is incredibly important because the long term aspiration of the current Scottish government is to re-join the European Union and if you’re an aspiring member state, you’re investing in those relationships. And diaspora engagement as well. If you look beyond Europe, Scotland’s got a huge asset in terms of its diaspora. The Irish and Scots have a similar sized diaspora, similar reach, political, economic and cultural clout. And of course the Scottish government can only ever be reasonably light touch with that because you don’t have the embassy networks that others do but its [diaspora engagement] still something that important to the Scottish government. Not just to this administration but something that was cultivated by Jack McConnell and Henry McLeish as well.

Q. Is it possible for Scotland to maintain an autonomous foreign policy under the current devolution settlement?

So the Scottish government’s foreign policy isn’t entirely autonomous. It can do a lot as a sub-state entity. But it is restricted both in terms of resources and diplomatic recognition than say the Flemish

Faroese or Quebecois. In the Faroes and Flanders, they have parity of esteem in terms of diplomatic recognition and work closely with their partner states. The German *Länder* develop also their own foreign policy. This is seen as beneficial. In the UK it is seen as a threat somehow, as something unusual where you still have this mind-set that only Westminster can set foreign policy which is not the case anywhere in the world. So I think Scotland can continue to develop in this regard but as a sub-state entity you are always necessarily restricted in what you can do. You have less resources, you are impacted by the centre’s foreign policy objectives. Nowhere is that more apparent than Brexit. No amount of foreign policy autonomy can really make up for the damage that’s been done by Brexit. If we look at the hit to supply chains and to many of our closest single market partners, you see the challenges for any Scottish administration. Scotland can and does have a distinctive brand, identity, foreign policy footprint. But outside independence that will always be restricted. If you believe in the Union, you know you have to believe that the union is one of distinctive entities. How can you ensure that Scotland can express a distinctive foreign policy whilst you are part of the UK. On the other hand, if you believe in independence, you got to think what would you do differently? What are your values? What are your priorities? Because you can’t do as much and what is the distinctive message that you want to express internationally?

Q. What, if any, constitutional alterations should be made to the United Kingdom to accommodate Scotland’s autonomous foreign policy?

There’s loads of things you can do. So first of all independence may be a short term objective we don’t know. But I think what is driving, if you look at Scottish opinion polls, what’s really interesting is that shift from no to yes since 2016. Every single opinion poll, every single study shows that Brexit has been the driving force for support for independence and the sort of destabilising factor in the relationship between the constituent parts so it’s being driven by foreign policy if you like. In terms of what can be done, there is so much. One of the biggest problems with devolution is that you don’t have that constitutional stability and certainty. There is no document that sets out the relationship between the devolved administrations and the central administration. So that can cause problems because we don’t have a proper dispute resolution mechanism. There is not a proper forum for disputes to be resolved, ministers don’t have that much certainty about what their capabilities. Westminster reigns supreme so if you do have initiatives in foreign policy they can be overridden. So first of all there is that, there is the structures around it you could formalise some of the structures. You could also give Scottish representatives more diplomatic recognition and parity of esteem as happens elsewhere. The foreign office could cooperate and collaborate, recognise that Scotland is part of the team. And it goes back to the comment from an official from another country asking me why the UK doesn’t play the whole team in terms of foreign policy. You don’t have to look that far to see other examples of where countries are working together much more effectively as in partnership. There are a range of things you can do. Diplomatic recognition, some rules that are set out, recognise that the Scottish government has a positive role to play in the field of international relations. This is something that wouldn’t even be a conversation in places like Copenhagen, Berlin, Brussels. Even to a certain extent in Madrid or Ottawa. Even in the United States you get states that pursue their own foreign policies.

Q. In the aftermath of the 2014 and 2016 referendums, what potential conflicts do you foresee between the Scottish and UK governments regarding foreign policy?

The UK government needs to pick fights with our European partners as a way to appealing to Brexiteers on its backbenches and to a certain extent in the electorate south of the border. Many have said that you will see an increase in the UK picking a fight as it doing with France over a small number of fishing boats with the European Union around the European protocols for Northern Ireland. The UK is more isolated than at any other period in almost living memory, people reference Suez but at least in Suez the British and the French were isolated together. In Washington D.C, Brussels and every European capital, the UK is seen as an increasingly unreliable partner. A tilt to the Indo-Pacific is seen by many as being unrealistic and trying to ignore geography means that the squabbles with the French and the rest of Europe will just become more commonplace because this is seen as politically advantageous for Boris Johnson’s government. The Scottish government will want to maintain its own links with its partners elsewhere because the FCO will not be seen as a reliable partner for Scotland in terms of providing a good place to be doing your foreign policy. That will increase the need for Scotland to do more. In fact, it should be doing more. It should be investing further in its foreign policy links and it was really interesting that the recent agreement between the Scottish government and the Green party had foreign policy as one of its top items with the opening of offices in Warsaw and Copenhagen, with climate justice and fairness for the developing world. With the divergence, with a Scottish government that sees its future as a multilateralist one with pooling and sharing of sovereignty in the EU and a UK government that seems increasingly unilateralist, that for me has now become one of the great cleavages between Holyrood and Westminster and how we see ourselves in the world. Actually, the cleavages go to the heart of politics in both parts. I am afraid to say that I think there is huge scope for political disagreement going forward. Edinburgh and Westminster have never been this far apart in terms of their foreign policy ambition, certainly not since 1707.

Q. Is there a specific country or countries that the Scottish government would like the UK emulate with regard to sub-state foreign policy?

Take your pick. Canada, Denmark, Belgium, Germany. A whole range of countries. The UK is a multinational state. There is a lack of recognition in the foreign office that they represent a multinational state and it’s a mistake that you wouldn’t get where there is much more sensitivity in the places I’ve referenced.

Q. Have debates around foreign policy in Scotland been polarised along constitutional lines?

To a certain extent they have. Let me talk about that positively first of all. When I talk about the divergence between Holyrood and Westminster I’m talking about political consensus. For example, the cut to international development, you know they’ve extended international development investment in Holyrood even though it’s not a competence of the Scottish Parliament. The immigration refugees welcome approach is again cross-party. During the EU referendum in the 2011-16 Parliament there was only one MSP that backed leaving the EU. One of the broadcasters complained that they were trying to get balance in the debate and they struggled in Scotland because there were so few Brexiteers. We see an enormous divergence but actually the divergence is not an SNP v Conservative one. There are huge elements of that but actually you are seeing a divergence between our political consensus on both sides of the border as well in a wide range of areas and that has been driven by Brexit, it has been embraced by the biggest parties at Westminster and rejected by the biggest parties at Holyrood. Also

in international development. It is not just divergence in terms of ruling administrations in Holyrood and Westminster but it is where the political centre of gravity sits on foreign policy is different between the two.

Appendix b: Interview with Professor Jim Gallagher

Q. What are the current foreign policy priorities for the Scottish government?

The present Scottish government clearly uses foreign policy as a tool in a campaign to promote independence. That is what it does. That is what its priority is. Cause it is its top priority.

Well there would be an alternative set of relationships that another government could pursue. That's not what the present government is pursuing. So for example, McConnell wisely or not and you may think it wise, decided that given Scotland's historic relationship with Malawi and given the strong balance of opinion in Scotland that more should be done in international aid, to run his own international aid programme. It's not actually a particularly good international aid programme but it is in principle I do disagree with that as a policy objective. Similarly. Let me tell you what I think the answer to your question is. The answer is yes of course Scotland can and should have the capacity to engage with states and sub-state entities outside the United Kingdom provided the powers are designed and the actions are undertaken in a way that doesn't undermine the devolution deal that it's got. And obviously this depends precisely what devolution deal Scotland's got. If you believe in independence of course you want to undermine the devolution deal. If you don't believe in independence you should design a set of international engagements, let's call them that, that are consistent with the relationship you have with the rest of the UK and doesn't contradict it. If you're designing a devolutionary foreign policy, if you want to call it that, you have to think what the devolution deal is.

Q. Is it possible for Scotland to maintain an autonomous foreign policy under the current devolution settlement?

If you're inside the UK, the interesting question at the moment, is the extent as which the, given there is difference of views in Scotland over Brexit whether there is any capacity, on the Belgian model to take your example, to have the capacity, to have a relationship with the EU. Obviously we can't oblige the EU to have that relationship that's up to them. But what we could do if we chose was also the foreign affairs reservation to permit that in relation to devolved matters, the Scottish government can have a relationship with the EU. That seems to me to be entirely sensible

Q. What, if any, constitutional alterations should be made to the United Kingdom to accommodate Scotland's autonomous foreign policy?

Well you could say, given the argument I've just made, you could say it's an emulation of Belgium. But what are they arguing? That the Belgian system, which is the capacity in relation to a topic, governs who runs the foreign affairs of that topic. I wouldn't go quite as far as that. Certainly allowing the Scottish government to enter into international agreement in respect to devolved matters provided that they do not undermine the basis of the devolution settlement, that seems to me to be unproblematic. So an example would be the Erasmus scheme. That would not cause a problem for the rest of the UK, it wouldn't do anything to undermine the internal market of the UK, it wouldn't do anything to undermine the educational arrangements of the UK which are relatively separate, it wouldn't do anything to undermine the social union of the UK, it wouldn't actually undermine the UK's capacity to enter into agreement itself so that's entirely unproblematic.

Q. In the aftermath of the 2014 and 2016 referendums, what potential conflicts do you foresee between the Scottish and UK governments regarding foreign policy?

These are not conflicts on the world stage. These are conflicts in the British press. That’s all that is. Structurally what we have is two nationalist governments. We have a nationalist government in London and a nationalist government in Edinburgh. Unsurprisingly, they conflict with one another. In terms of actual foreign policy. Europe aside. The Scottish government doesn’t really have a set of foreign policy priorities because it doesn’t have the capacity to have them. There’s certainly conflict for attention. That is not a foreign policy conflict. So Scottish government does not have a view on what we should do in Ukraine. No doubt if it thought there was some way of getting some political advantage it would invent one. The Scottish government has some views on climate change but that’s not actually a foreign policy matter, it’s a matter at which impacts both foreign and domestic policy.

Q. Have debates around foreign policy in Scotland been polarised along constitutional lines?

Probably yes. To the extent that there are purely Scottish debates about foreign policy. There are very limited things, they tend to be constitutional because that’s what makes them Scottish. Going back a bit further there was a very intense debate about the Iraq War, but that wasn’t purely Scottish it just happened to be in Scotland as much as anywhere else and here’s your quiz question of the day, did the Scottish parliament support the Iraq War?

It passed a motion supporting the invasion of Iraq, nobody talks about that now! To the extent that there are debates about foreign policy that are purely Scottish they have a constitutional air, what else do they have? Other foreign policy debates they are maybe have a slightly different balance in Scotland say on nuclear disarmament but there are not Scottish debates.

Q6. Do you think there is any merit to reforming the JMC to include international affairs within its scope?

The JMC are an area that do need reform. They are intended to be a place where the overlaps in government need sorted out. The interesting thing is that for a long time is that they didn’t do very much, partly because there weren’t very many overlaps around disputing devolved and reserved matters for many years. There are more overlaps now and there are more JMC

There is of course strong history, which everyone forgets about, of an extremely effective JMC on European matters which met throughout the period of devolution, including with the SNP to agree on the UK negotiating position for EU negotiations as it affected devolved matters, notably but only agriculture and fisheries This is well precedented. To the extent that those issues still need to be addressed and they probably do then some successor to that committee makes sense. A general foreign policy committee, shall we invade Iraq or not, does not I think make sense except as a political showground for either side, particularly for the SNP. But uh, particularly on EU issues or EU successor issues a degree of co-ordination inside the JMC process would make a lot of sense.

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