



Response of Liberation Scotland to the 2nd Report, 2026 (Session 6)
of the Constitution, Europe, External Affairs and Culture Committee
of the Scottish Parliament,

**‘Options for a legal mechanism for triggering any
independence referendum’**

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1. Response Scope, Context and Disclaimer

- 1.1. This document is the formal response of the Liberation Scotland Committee to the 2nd Report, 2026 (Session 6) of the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament Options for a legal mechanism for triggering any independence referendum’.
- 1.2. The respondents consider that the report acts against the public interest in two respects. In the first instance, it omits, obscuring or misrepresenting arguments and evidence relating to the right of self-determination for the people of Scotland.
- 1.3. Secondly, the unanimity of the expert witnesses on the single option available for any referendum on Scottish independence is achieved only by excluding the legal opinions of a significant number of international legal scholars and jurists of renown. The exclusion of dissenting, expert opinion constitutes misdirection by omission.
- 1.4. Liberation Scotland, (the Scottish liberation movement), is engaged in both a national, constitutional campaign through Salvo and, via the Liberation Scotland Committee, an international campaign to establish Scotland’s right of self-determination through United Nations’ recognition that Scotland is a Non-Self-Governing Territory with an inalienable right of external self-determination.
- 1.5. Although the report clearly and consciously undermines Liberation Scotland’s case in support of Scotland’s right to self-determination under international law, the primary objective of this response is not the defence of Liberation Scotland and its reputation. The respondents consider that a democratic and just process requires full and free public access to and engagement with the available information. This response, therefore, offers a critique of the structural framework of the report and of its principal arguments. It seeks to correct error, to present alternative arguments and evidence and to set out omitted but authentic avenues for achieving Scottish self-determination.
- 1.6. The arguments and evidence offered to the inquiry support, without exception, its central conclusion – that the sole realistic and lawful option for Scottish self-determination consists of obtaining Westminster’s permission for a referendum. Any alternative viewpoints are excluded creating a profound imbalance in the range and focus of the inquiry, an imbalance which functions as a form of narrative control and ‘management’ of public opinion. While this is self-evidently undemocratic and contrary to the public good, the critique provided in this response offers a measure of restorative balance.

2. Executive Summary

- 2.1 In this response, Liberation Scotland challenges the report's central conclusions, identifying fundamental errors of law, analytical evasion, structural conflicts of interest, and the systematic exclusion of the international legal framework most directly relevant to Scotland's constitutional situation.
- 2.2 It shows that the inquiry's conclusions were not the product of fresh and open inquiry but of a pre-existing intellectual network whose conclusions were established before the witnesses appeared. The twelve witnesses and four advisers assembled for the inquiry constitute a closed, interrelated academic circuit connected through the Centre on Constitutional Change, the Royal Society of Edinburgh, shared ESRC research funding, the UCL Constitution Unit, and co-authored publications. Every link in this circuit assumes the UK's claimed constitutional framework as the legitimate analytical baseline whereby the international law of decolonisation is irrelevant.
- 2.3 The response presents clear evidence that the report's central conclusion, that international law confers no right for Scotland to hold a referendum without Westminster's consent, rests on a series of false premises, misrepresentations of international law, and the deliberate conflation of two legally distinct concepts: secession, which requires negotiation with the parent state, and decolonisation, which is an inalienable right of a colonised people, (a people subject to a foreign sovereignty), unrelated to the wishes or interests of the colonial state.
- 2.4 On the report's legal errors, the response identifies the following specific failures:
- 2.4.1 The report conflates secession with decolonisation, treating them as legally equivalent when they are constitutionally and legally distinct.
- 2.4.2 It invokes the 1970 Friendly Relations Declaration's territorial integrity provision. The territorial integrity of the United Kingdom of Great Britain and Northern Ireland is a constitutional invention, an 'Anglo-British imaginary concept': "The tendency to conflate England with Britain and the UK, while downplaying forms of territorial differentiation¹. It is wholly refuted by Scotland's continuing territorial sovereignty, vested in the Scottish Crown, distinct from the English Crown in the rest of the 'United Kingdom', unextinguished by the Treaty of Union and conferring on Scotland the internationally recognised status of a sovereign territorial nation
- 2.4.3 It cites the Canadian Supreme Court's Quebec Secession Reference as authoritative international law without examining its origins as a strategic

¹ Wincott, D., Murray, C. R. G. and Davies, G. (2022) 'The Anglo-British imaginary and the rebuilding of the UK's territorial constitution after Brexit: unitary state or union state?', *Territory, Politics, Governance*, 10(5), pp. 696–713. doi: 10.1080/21622671.2021.1921613.

instrument of Canadian federal constitutional management, triggered by the federal government's political reaction to the uncomfortably close 1995 Quebec referendum result, as André Lecours' own submission to the same inquiry documents.

- 2.4.4 It reproduces Professor McHarg's false assertion that the UN has never applied non-self-governing territory status to anything other than overseas possessions; a claim refuted by the cases of Namibia, East Timor, and Western Sahara; without challenge.
- 2.4.5 It treats the UK Supreme Court's ruling that self-determination is "simply not in play" as the authoritative determination of Scotland's international legal status, when under Article 3 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the characterisation of a state act as internationally wrongful is governed by international law, not by the domestic law of the state whose authority is at issue.

2.5 On Scotland's legal status, this response notes that:

2.5.1 Scotland meets all three conditions of General Assembly Resolution 1541 (XV) for recognition as a Non-Self-Governing Territory: Scotland constitutes a distinct geographic territory; Scots are a distinct people with a separate historical, cultural, and geographic identity; Scotland lacks a full measure of self-government over fundamental political authority.

2.5.2 The UN also recognizes that self-determination is not restricted to independence. According to the Friendly Relations Declaration (Resolution 2625), so long as it is the express will of the people, this right can be fulfilled through:

- Establishment, or re-establishment, of a sovereign and independent State.
- Free association with an independent State, where the territory retains its internal constitution while another state handles specific responsibilities such as defence.
- Integration with an independent State based on equality and equal rights of citizenship.
- Emergence into any other political status freely determined by the people.

2.5.3 The Committee report assumes that Scotland falls within the third category, that of a nation freely integrated into a larger state. The 'incorporation' of Scotland into Great Britain through the 1707 Acts of Union, however, was prosecuted without free and genuine consent, through documented, economic coercion, military intimidation, and systematic bribery of the Scottish Parliament and by

means of a treaty, (on which the British government bases its claims to legitimacy and its rights over Scotland), which was ratified *but never given effect*. In consequence the constitutional identity of the state known as the United Kingdom of Great Britain and Northern Ireland cannot be described as a partnership nor is it based on a lawful and operative treaty.

2.5.4 Scotland is therefore:

- A distinct territory subject to a foreign sovereignty
- Entitled to recovery of a never ceded sovereignty
- Entitled to the right of external self-determination

2.5.5. Section 37 of the Scotland Act 1998, which purports to subordinate the Acts of Union to the Scotland Act, generates a constitutional self-negation: If the Acts of Union are the foundation of the UK Parliament's authority, that Parliament cannot subordinate them to its own later enactments; if they are not, the UK has no legitimate constitutional basis for its authority in Scotland.

2.5.6 The framework of the Articles on Responsibility of States for Internationally Wrongful Acts suggests that the Anglo-British administration of Scotland constitutes an ongoing, internationally wrongful act.

2.5.7 Under Article 32 of the ARSIWA, the state cannot rely on internal law, (the Scotland Act, English parliamentary sovereignty, or the Supreme Court's ruling), to justify a failure to comply with international obligations under Article 32. Under Article 14, the responsible state must cease the wrongful act and it must make full reparation under Articles 30 and 31, and that it.

2.5.8 Further, the right to self-determination is a *jus cogens* norm from which no derogation is permitted and its systematic denial to the Scottish people constitutes a serious breach generating obligations for all UN member states under Article 41.

2.6 Summary Conclusion

2.6.1 The response concludes that the report functions not as objective constitutional analysis but as a political instrument designed to confine Scotland's self-determination claim within the domestic framework of the Anglo-British state, foreclosing examination of the international legal routes that Scotland's condition most urgently requires.

2.6.2 The inquiry assembled a closed academic network, confined its terms of reference to the UK constitutional context, reproduced colonial disinformation without

challenge, and arrived at conclusions that serve the English colonial state's constitutional position over Scotland. The international legal framework; now formally engaged through United Nations Human Rights Council document A/HRC/61/NGO/210, submitted by the United Nations ECOSOC consultative status NGO International Pro Bono Legal Services Association (IPLSA) with Liberation Scotland and other international partners to the UN Human Rights Council's 61st session and received by the Secretary-General, contradicts the assumptions on which the report's conclusions rest.

3. Structural Framework – a Critique of the Methodology, Purpose and a Disconnect of the Report

3.1 Methodological Insularity - the Interrelated Network

- 3.1.1 The report consists of a summary of the briefings supplied by Committee advisers, Katy Hayward, Michael Keating, Tobias Lock and Chris McCorkindale also Angus Robertson, Cabinet Secretary for Constitution, External Affairs and Culture and Luke McBratney, Deputy Director, Elections and Constitutional Projects, Scottish Government.
- 3.1.2 Expert opinions are provided by: Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow; Professor Stephen Tierney, Professor of Constitutional Theory, University of Edinburgh; Professor Aileen McHarg, Professor of Public Law and Human Rights, Durham University; Professor Andrew Blick, Professor of Politics and Contemporary History, King's College London; Professor Alan Renwick, Professor of Democratic Politics, University College London; Professor Nicola McEwen, Professor of Public Policy and Governance, University of Glasgow; Dr Elisenda Casanas Adam, Senior Lecturer in Public Law and Human Rights, University of Edinburgh; Professor Aoife O'Donoghue, School of Law, Queen's University Belfast; Professor Nikos Skoutaris, Professor of European Constitutional Law, University of East Anglia; Dr Lea Raible, School of Law, University of Glasgow; Professor André Lecours, Professor of Political Studies, University of Ottawa; Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh.
- 3.1.3 A uniformity of argument and opinion among these experts tends towards establishing their conclusions as unassailable, representing the considered view of the legal establishment as a whole. In fact, the witnesses and advisers represent a narrow spectrum of academic opinion which has as its starting point the constitutional doctrine of the British government. None admits of any challenge to what is simply the British state's self-interested interpretation of the legal and political realities underpinning Scottish self-determination. The uniformity here, however, must be seen through the lens of a network of institutional affiliations between the witnesses and advisers to the Committee.
- 3.1.4 The four advisers, Katy Hayward, Michael Keating, Tobias Lock, and Chris McCorkindale, constitute a cross-institutional cluster embedded at the centre of the British constitutional academic establishment, whose connections to each other and to the witnesses are extensive and structurally revealing.

- 3.1.5 Michael Keating founded the Centre on Constitutional Change; the ESRC-funded body connecting Stephen Tierney, Nicola McEwen, and the broader British constitutional academic establishment. He is now General Secretary of the Royal Society of Edinburgh, which fellowships Tierney, McEwen, and Henderson; three witnesses whose submissions were designed to foreclose the decolonial analysis. Keating is a direct research collaborator with McEwen, publishing work with her on constitutional change across Britain and Ireland as recently as 2025. The adviser and the witness are academic partners. The questions were shaped by the same intellectual tradition that produced the answers.
- 3.1.6 Katy Hayward is a Senior Fellow at UK in a Changing Europe; the same ESRC-funded initiative at which McEwen serves. More significantly, she was a member of the UCL Working Group on Unification Referendums on the Island of Ireland, chaired by Alan Renwick; the same Renwick whose submission to this inquiry defended the colonial franchise and Westminster's gatekeeping role. Hayward and Renwick co-produced work on the Northern Ireland referendum framework through that working group. The framework they produced together was then deployed in the advisers' briefing as the primary comparative model for a Scottish referendum mechanism. The adviser and the witness had already co-authored the analytical framework before either appeared in their respective roles in this inquiry.
- 3.1.7 Chris McCorkindale has co-authored published work on constitutional pathways to a second independence referendum with Aileen McHarg; the Durham University professor whose submission to this inquiry contained the false claim about the UN decolonisation process as applying to overseas possessions only and who specifically named and dismissed Liberation Scotland's NSGT campaign. McCorkindale and McHarg had jointly published the conclusion that Westminster authorisation is necessary for any independence referendum before McHarg appeared as a witness to confirm that conclusion before a committee whose adviser had helped produce it.
- 3.1.8 Tobias Lock is a Fellow of the Centre on Constitutional Change; the same ESRC-funded body that Keating founded and that provides the connective tissue of the entire inquiry's academic ecosystem. He is a German national whose formation in German and British legal traditions produces scholarship that treats the UK constitutional order as the natural analytical container for Scotland's future. This is a closed, academic circuit connected mediated through:
- the Royal Society of Edinburgh
 - the Centre on Constitutional Change, and

- shared research funding from the ESRC
- collaborative working groups at the UCL Constitution Unit
- co-authored publications.

3.1.9 In summary: Every link in this circuit ensures that the inquiry is structurally, not accidentally, exclusive of challenge to the privilege or legality of the British state. Advisers and witnesses were drawn from an interrelated, academic ecosystem that has naturalised the British state's constitutional assumptions to the point where the possibility of a different analytical frame is never seriously examined. Their submissions, the basis of the report's conclusions, are the recycled products of a body of work whose common starting point assumes the UK's constitutional narrative as a given. The result is a highly path-dependent process whose findings were inevitably predetermined.

3.2 Purpose, Audience and Effect

- 3.2.1 The Committee sought to clarify the possible legal route to Scottish independence in the light of the 2022 Supreme Court ruling that the Scottish Administration at Holyrood lacks legal competence not only to hold a referendum on the question of independence but even to hold a referendum to determine the will of the Scottish electorate on whether such a referendum would be welcomed.
- 3.2.2 It also investigated how to move beyond ad hoc negotiations and find a regulated, legal mechanism for future referendums. It examined statutory and non-statutory routes – such as permanent transfers of power via a Section 30 order or aligning with the model used for Northern Ireland – to ensure a clear path for democratic consent.
- 3.2.3 Despite its extensive exploration of available options, it failed to establish any such mechanism, concluding that there is neither a right in international law nor any internal, legal route to self-determination for Scotland outwith the agreement and co-operation of the Westminster government.
- 3.2.4 It also concluded, however, that the UK Government “should negotiate a clear pathway to exercising Scotland’s democratic right to determine its constitutional future as a matter of urgency”. This assertion of a moral – but not legal – obligation by the UK government to recognise and honour a democratic right represents the Committee’s sole challenge to Westminster’s denial of the democratic right of Scots to self-determination.

3.2.5 The UK Government responded to that moral pressure, however, in advance of the report's conclusions in a one-page submission:

The UK Government welcomes the opportunity to submit evidence to the Constitution, Europe, External Affairs and Culture Committee's inquiry. As the Prime Minister has been clear, the UK Government is fully focused on tackling the issues that really matter to people in Scotland. **A referendum is not one of them...**

In 2014 people in Scotland voted decisively to remain part of the United Kingdom. In 2024 the manifesto on which this Government won a majority of seats in Scotland and across the UK was clear on this issue, stating that Labour does not support independence or another referendum. The people of Scotland want to see their governments working together to focus on the issues that matter to them, their families, and their communities – **they need, and deserve, governments that are relentlessly focused on delivering on their priorities, of which independence is not one.**²

3.2.6 A report whose conclusions are merely restatements of well-rehearsed arguments and opinions while offering no alternative to the proposition that Scots are powerless to determine their own future, is an exercise in futility. It is likely, however, that there are other purposes for the inquiry which may include:

- Creating another public record of the Scottish Parliament's (majority) view that the current constitutional arrangement is a "democratic anomaly" amounting to a serious democratic deficit
- Shifting the burden of justification for this deficit, as a political choice and not merely a matter of law, to the UK Government.

3.2.7 Troublingly, however, the inquiry and its report reaffirm, unchallenged, the legitimacy of Westminster absolutism, reinforcing a narrative that denies the existence of any international route to Scottish self-determination or, indeed, any assistance via international law. The report neither offers any real grounds for optimism nor does it do what it strenuously suggests it is attempting to do – ground public expectation in the 'realities' of Scotland's condition. The 'realities' it propounds appear to obtain only because:

- basic assumptions remain unchallenged despite clear and reasonable grounds for such challenge;
- obvious and fatal legal anomalies in the constitutional claims of the British Government are unexamined;

² See Appendix 1

- any evidence contradicting a UK narrative that denies Scots a right of self-determination is excluded;
- the epistemic closure of the inquiry, (whereby the twelve experts from different universities represented one particular viewpoint), is accepted as broadly representative of the expert opinion available.

3.2.8 The report is thus self-limiting in the scope of its inquiry, self-reinforcing in its conclusions and insulated from rebuttal by the exclusion of dissenting voices. It cannot, therefore, claim to manage the expectations of Scots in respect of the right of self-determination honestly or fairly and so it fails to serve the interests of either the Scottish people as a whole or their elected representatives in Holyrood.

3.3 Cui Bono?

3.3.1 No report is produced in a vacuum; there is always intended audience and effect. One intended effect can be inferred from the fact that, despite its many contributors, it presents a single sided argument. It is therefore constructed to convince the Parliament and the public of a particular position, its own position that the only legitimate or realistic route towards Scottish independence is through the agreement of the UK government either via a 'Section 30' order or through new legislation. This objective, however, must be understood in the context of current, political realities, trends and influences during the inquiry, prior to and at publication of the report. These include:

- a steady increase in support for Scottish independence, according to polls, coupled with a drop in support for the SNP so severe that it resulted in the catastrophic loss of 38 out of 47 Westminster seats in the 2024 general election;
- Liberation Scotland's constitutional arguments, (Salvo), and its international campaign, (Liberation Scotland Committee), both of which are specifically mentioned - though dismissed - by contributor Aileen McHarg;
- A dissatisfaction with the lack of progress towards Scottish independence and the growing calls for 'UDI' from many longtime, independence supporters;
- the electoral effect of this report on the potential for returning an SNP majority in the May 2026 elections.

3.3.2 Published less than two months before the May 2026 Holyrood election, the report's main recommendation, that the Scottish and UK governments negotiate a pathway "as a matter of urgency", is fortuitously timed to support First Minister John Swinney's voter incentive of a 2028 referendum:

John Swinney has said there could be an independence referendum in 2028 if the SNP wins a majority in next month's Holyrood elections, adding he would want to "press on" with such a vote "as quickly as possible"³

3.3.3 Further, it supports without objective challenge the SNP Administration's insistence that it is following the only legitimate or realistic route towards Scottish independence.

3.3.4 The report thus functions, not as an objective analysis for the better information of the Parliament and public but politically, as validation for the approach favoured by the current SNP administration in the face of an upcoming election.

3.4 The 'Disconnect' – Detachment from UK Intractability

3.4.1 A strong focus of the report is a democratic anomaly, the absence of any domestic mechanism by which the people of Scotland might hold a lawful referendum on the question of independence. There is extensive discussion of the desirability the UK government's agreeing to such a mechanism, what this might look like, government involvement and time frames. These speculations create an impression of something realistic and achievable, offsetting the otherwise disastrous verdict - that no route to Scottish independence is possible without Westminster agreement. This is a deliberate and false impression.

3.4.2 The Westminster government, however, has made it clear that there is no possibility of its legislating to allow Scottish self-determination. Indeed, it has dismissed the many mandates given to the pro-independence parties by the Scottish electorate, as well as consistent opinion polls, asserting that 'what is important' to the Scottish people is what *it* deems important - which does not include the right to decide their own future in a referendum⁴.

3.4.3 Obtaining agreement for such legislation therefore must depend on a new regime coming to power, one sympathetic to the right of self-determination for Scots, at the next General Election. This will probably take place in 2029. The likelihood of a sympathetic UK government, however, is not high. The opposition of successive UK governments to Scottish independence in the past is only liable to be increased in the future by the financial dependence of the UK on Scottish resources and the usefulness

³ 'John Swinney says he wants to 'press on' with independence referendum in 2028' 2028' [The National, 7th April 2026](#)

⁴ See Appendix 1

of a territory, suitable for hosting US nuclear submarines, the wind energy 'farms' which help to supply the 50 million or so homes in England and a fresh water supply capable of providing what is becoming an increasingly scarce resource in that country.

3.4.4 According to the report, however, this unlikely possibility, 'self-determination by agreement' is Scotland's only hope for independence.

3.4.5 Fortunately, and notwithstanding its panel of experts, the report is wrong. It is to be hoped this is through simple ignorance. Internationally recognised rights of self-determination do exist to be invoked despite the report's conclusion that they do not.

3.4.6 Returning to the question of who benefits from the staging of an inquiry that fails to inquire, it is not possible to do more than speculate. What is possible, however, is to address some of the most critical failures of this inquiry and, by doing so, raise public awareness of the facts and arguments which the inquiry, intentionally or otherwise, shuts down.

4. Terms, Definitions and Commentary

4.1. For a clear understanding of this report and its arguments it is necessary to define the terms used and their implications, especially in respect of international law. That the report fails to do so when so many of these terms are specialised, or only vaguely understood by the majority, even of politicians, is regrettable.

4.2. Colony/Dependency

4.2.1. This is the term given to a territory whose people do not possess full political independence or sovereignty, but remain under the jurisdiction, administration, or sovereignty of a separate "metropolitan state" (mother country). Such territories are entitled to decolonisation, which is achieved through a free, unrestricted and democratic expression of self-determination. This is a fundamental and inalienable human right.

4.2.2. Decolonisation does not necessarily create a new state ex nihilo. It may also restore a pre-existing legal personality. The principle of restoration, or recovery of sovereignty applies to Scotland if the Treaty of Union is void ab initio.

4.2.3. In international law a colony is usually referred to as a Non-Self-Governing Territory. UN Resolution 1541 (XV) establishes that a territory is considered non-self-governing, (lacks self-determination), if:

- it is geographically distinct from the administering Power - that is possessing clear and established territorial boundaries of its own,
- possesses a distinct ethnic, cultural, or linguistic identity,
- and lacks a full measure of self-government.

4.2.4. Scotland meets all these conditions. The UN also recognizes, however, that self-determination is not restricted to independence. According to the Friendly Relations Declaration (Resolution 2625), so long as it is the express will of the people, this right can be fulfilled through:

- Establishment or re-establishment, of a sovereign and independent State.
- Free association with an independent State, where the territory retains its internal constitution while another state handles specific responsibilities like defence.

4.2.5. The report assumes the position of the British state, that Scotland falls in the third category, that of a nation freely integrated into a larger state. It is assuming the premise, or *petitio principii*, and proceeds on the basis that Scotland is voluntarily integrated within a lawful, unitary state. Compelling evidence exists to the contrary:

4

- The 'merger' of Scotland with England to create the kingdom and state of Great Britain was prosecuted in Scotland without free and genuine consent. It is well documented that the 1707 Treaty and Acts of Union were forced through by threat of invasion, economic coercion, systematic bribery of the Scottish Parliament and against the will of 90% of the population.
- Above all, however, Scotland's incorporation into what is now known as the United Kingdom of Great Britain and Northern Ireland by means of a treaty which the British government loudly proclaims as the basis of its legitimacy and of its rights over Scotland, is a fraud. The treaty so opposed by the Scottish people was ratified but never given effect.
- Instead, the Scottish state was dismantled; the English state continued with Scotland as its dependency and now pretends to be a 'UK' that is something more than the England established in 1066 with Scotland added to its domains.

4.2.6. It is the position of Liberation Scotland, therefore, and to be tested in international law, that Scotland as an established, sovereign and independent European state unlawfully claimed by, occupied by and subjected to a foreign sovereignty under the pretext of an inoperative treaty - is entitled to recovery of its unceded sovereignty, to decolonisation and the inalienable right of self-determination. This is not the same thing as secession.

4.3. Secession

4.3.1. In international law, this is the withdrawal of a territory from a lawfully constituted sovereign state, where that territory had previously been integrated through legitimate means. Secession must always be accomplished through negotiation between the state and the seceding territory. As the report notes, there exist agreed, constitutional mechanisms for secession by territories within some states. No such mechanism exists for Scotland.

4.3.2. A territory not legitimately integrated into the larger state, however, is a dependency, a colony or a Non-Self-Governing Territory in the language of the United Nations. It cannot secede from a state by which it is annexed or occupied and not only because the occupying state will not allow it.

4.3.3. A colony or dependency is not part of the occupying state nor part of its lawful territory. It is occupied. It is impossible for an occupied territory to secede from a state of which it is not a part. Instead, its independence is a matter of decolonisation and the resumption of a never lawfully ceded sovereignty.

4.3.4. International law maintains a bright-line rule: secession is a constitutional exit from a lawful union; decolonisation is a remedial return of sovereignty to a people unlawfully subjugated. Decolonisation and secession are thus distinct concepts with different legal foundations, different thresholds for legitimacy, and different consequences for state succession.

4.3.5. However, because both processes result in a new state emerging, or in a restored state re-emerging from an old one, because the UN uses "self-determination" to describe both, and because the ICJ has declined to criminalise unilateral declarations of independence, the public and even some international jurists use the terms interchangeably. This persistent misuse of "secession" in official language is dangerous, however.

4.3.6. Colonising states invariably claim that the territories they have occupied now represent part of the territorial integrity of the state and assert the right in international law to maintain that integrity. Conflating secession with decolonisation reinforces this false claim. Moreover, implicit in the language of secession is the requirement for occupied territories to negotiate their independence with states to which they never ceded sovereignty in the first place.

4.3.7. Decolonisation is not secession; it is the inalienable right of unlawfully occupied territories to the exercise of external self-determination independent of the coloniser's wishes or constitutional position.

4.3.8. Why does the report focus entirely on 'secession'? It does so for two reasons. Firstly, because the use of the word has become 'normalised'. The UN and the ICJ generally take the domestic, constitutional arrangements of member states at face value to avoid interfering in "internal affairs." Because England/the UK presents Scotland as a constituent part of its metropolitan territory, the UN Secretariat and even the ICJ, in their procedural language, often refer to Scotland's potential exit as "secession" simply because they are mirroring the UK's own terminology.

4.3.9. This bureaucratic language, however, bleeds into international diplomacy. The UK government uses secessionist terminology to imply that Scots seeking independence are a rebellious part of a lawful state, rather than members of a dependent nation seeking to recover its sovereignty.

4.3.10. Secondly, as state spokespersons - consciously or otherwise - the contributors to this report use the language of "secession" or "dissolution of the Union" because the internal, UK narrative which functions as legal orthodoxy, requires them to view Scotland as lawfully within England's sovereign orbit. The possibility that the union is illegitimate and Scotland a dependency under the international definition is not admitted as worthy of discussion.

4.3.11. And yet, if the union is invalid and Scotland is, in reality, a dependency of an uninterrupted and continuing state of England, Scotland - as a dependent 'adjunct' - cannot secede from that state. It could secede if, and only if, the United Kingdom state exists as stipulated in the Treaty and Acts of Union, as it affirms to the present day and if Scotland is a partner nation which, with England co-created a unitary state⁵.

4.4. Competing Rights (and Implications)

4.4.1 The right to territorial integrity of states has always prevailed in the international forum over the claims of 'distinct peoples', as the report notes, 'outwith the context of decolonisation', where the territorial claims of a state are based on the international crime, or 'wrongful act of a state' that is colonisation.

4.4.2 This is because there is no conflict of rights between a state that claims a territory to which it is not entitled and the right to self-determination of a people subject to that state, whose status is that of a dependency (and, by implication, subject to a 'wrongful act of a state' in international law)⁶ The rights in this case lie wholly with the colonised territory and its people.

4.4.3 Many states, including the UK, have claimed that a foreign territory is integrated into their own territories, that its separation from the state represents a violation of the rights of states to territorial integrity under the UN Charter.

4.4.4 No such territorial integrity exists in respect of colonised territory however, and the claim has been rejected by the ICJ wherever the conditions of dependency clearly exist. There is, however, an overarching right of self-determination for a people made subject to a colonising state.

4.4.5 The importance of this lies in the fact that, once recognised as a people subject to the condition of a dependency or NSGT (colony), an exercise of self-determination - a democratic vote by Scots - resulting in a declaration of independence will also be recognised

⁵ The UK government officially describes the United Kingdom as a **unitary state**. This claim is contested by many legal scholars and political commentators, however on the basis that it consists of distinct nations with their own histories and identities. The academic consensus leans strongly toward the "union state" model.

⁶ See Appendix 5

internationally. And, once recognised as a people subject to the condition of a dependency, neither that vote nor the declaration of independence requires Westminster approval.

4.4.6 In other words, the entitlement of the British state to block Scottish independence by blocking any mechanism for independence is based on the claim that Scotland is not a colony but a voluntary partner in the union which underpins the state known as 'the United Kingdom of Great Britain and Northern Ireland'.

4.4.7 Based on this claim, the UK presents as a lawful, unitary state, entitled to defend its political and territorial integrity. If the claim is false, however, if Scotland is not a partner but an annexed, English dependency and if this were to be formally recognised internationally, then 'the UK' could no longer block the rights of Scots to self-determination or Scottish independence.

4.5 Scottish Independence

4.5.1 The report addresses the legal route, shape and potential design of a mechanism for triggering an independence referendum but is silent on what is meant by independence. It fails to explain, for example, that a majority pro-independence vote in a Scottish, constitutional referendum or plebiscite followed by a declaration of independence by a properly constituted body, cannot, of itself, confer independence.

4.5.2 This is because independence is defined by international recognition and relationship. An internationally recognised, independent state can negotiate treaties and agreements with other states. Without international recognition, however, any self-proclaimed independent state becomes merely a 'non-state actor', excluded from meaningful participation in international affairs. Thus, a newly created state, or a restored, wrongfully annexed, sovereign state, achieves independence only through recognition by the international community.

4.5.3 Any exercise of self-determination by the Scottish people must, therefore, satisfy the requirements of international law such that, in the event that the outcome leads to a declaration of independence, this will be internationally recognised. This is why international law underpins the questions of Scottish self-determination and independence. The authors of the report clearly understand this since the report gives considerable attention to the international dimension. They do not, however, provide the relatively simple but essential explanation of why this matters.

4.5.4 The report fails to address possible outcomes of an exercise in self-determination or to acknowledge the fact that calls for the right to self-determination arise entirely from the sector of the Scottish population seeking independence – the only context in which the question of a right to self-determination makes sense. There is no attempt to define independence – a word internationally associated with decolonisation – nor, despite the report's inclusion of multiple examples of existing, constitutional mechanisms for self-determination, any examples of the kinds of independent states to which Scots might aspire.

As a result, the report is disconnected from its own political context, from the demands of those Scots seeking the right of self-determination as the pathway to independence and from the possible expression of their aspirations in practical terms⁷.

4.5.5 With no suggestion in the report that a consideration of these questions might be necessary or even desirable, it is difficult to conclude that the report is written with any real expectation of a referendum, any other democratic expression of self-determination or of Scottish independence coming to pass. Rather, it displays a consciousness of the need to provide a convincing rationale for confining and reducing all routes to independence to just one, secession with the permission of the British state and through a British state-controlled referendum.

4.6 Legal Identity of a State

4.6.1 A state's legal identity is established when it objectively meets the criteria of statehood under international law (Montevideo Convention, 1933). It is dependent however on not having been gained by military force, annexation or occupation.

4.6.2 What is the legal identity of the UK? Dismantling the smaller state's institutions, parliament, legal system, and symbols is the classic act of annexation. The treaty agreement between England Scotland can be shown to be inoperative and void. The purported merger, or Union, is simply the conquest and absorption of one state by another prohibited by the UN Charter (Art. 2(4)) and customary international law. The annexed kingdom of Scotland remains occupied territory, and the annexation itself is a legal nullity.

4.7 Self-Determination

4.7.1 This is the right of distinct peoples to freely determine their own future, (whether as an independent nation-state or through integration into or federation with a larger, existing state), and to decide on its own political, economic, and social system without external pressure or interference. There are recognised rights to two different forms of self-determination:

4.7.1.1 **The right to external self-determination** is the right of a colonised people, (that is a people subject to a foreign sovereignty):

- to choose to form a separate state

- to voluntarily integrate with the colonising state, (so legitimising the relationship), or

- to join in a federal relationship with that state.

⁷ This is, therefore, addressed in Appendix 2

This is an absolute and inalienable right and, unlike that of internal self-determination, is not dependent on the cooperation of the governing state. It has not always been upheld but this does not alter its force in international law.⁸ It is unconnected to secession.

- 4.7.1.2 **The right to internal self-determination** means that no foreign state nor, (where a distinct people and territory are incorporated into a larger state), the larger state should seek to prevent a distinct people within its territory from freely selecting its own political, economic, and social system. This is an internationally recognised right. For an incorporated territory, however, it depends on the cooperation of the state as it is unenforceable in practice.

4.8 A Free and Fair Constitutional Referendum (Adhering to International Standards)

4.8.1 The report centres on the mechanism for an independence referendum without addressing the question of what such a referendum should look like or whether the 2014 vote conformed to minimum, internationally recognised standards for a constitutional referendum.

4.8.2 In fact, that exercise fell so far short of those standards that it cannot be considered as having provided the people of Scotland with the exercise in self-determination, which it is claimed to represent. As it was also advisory, non-binding, it should properly be considered an opinion poll, not a referendum and very far from being a legitimate expression of 'the settled will of the Scottish people'.

4.8.3 A true, constitutional referendum on the future of a nation cannot be conducted as an opinion poll in which temporary residents, second home-owners or very recent arrivals have as much say as those with a personal stake in that future and where vested interests are permitted to bring heavy influence to bear on the voting outcome.

To qualify as a true, constitutional referendum any future referendum on the future of Scotland must be characterised by:

4.8.3.1 A Universal and Reasonable Franchise

The right to vote must be universal, equal, and based on reasonable criteria directly related to the political community in question. The legal framework must be stable avoiding ad-hoc changes that could be used to manipulate the outcome. (i.e. No new government promises could be made, such as the last-minute offer of

⁸ See [Judge Sebutinde's separate opinion in the Chagos advisory opinion \(2019\)](#). She emphasized that the right to self-determination in the decolonisation context has attained jus cogens (peremptory) status, "whereby no derogation therefrom is permitted" and, "As a direct corollary of that right is the erga omnes obligation to respect that right."

additional powers for the devolved administration in return for a vote to stay in the Union.)

4.8.3.2 Clear rules on voter eligibility and accurate electoral registers

These are essential. Anyone without a genuine, settled connection and demonstrated, long term commitment to the territory or political community in question must be excluded. This typically means:

- Short-term or temporary residents (e.g., tourists, military posted from elsewhere, students on a brief stay, second homeowners and recent arrivals)
- Citizens living abroad who have no ongoing ties or intention to return
- People who do not have permanent residency

4.8.3.3 Impartial Media Coverage and a Level Playing Field

The campaign environment must guarantee equal opportunities for all sides. Public authorities must not influence the outcome through one-sided campaigning or misuse of state resources. The media - particularly public broadcasters - must provide impartial and balanced information.

4.8.3.4 Safe and Peaceful Environment

The referendum must be held in a peaceful environment where civil and political rights are effectively protected. Voters, campaigners, and observers must be free from intimidation, violence, or undue interference by security forces.

4.8.3.5 International Observation

International observers must be granted access to all stages of the process, including polling, counting, and tabulation. Their presence enhances transparency and public confidence. Observer missions must be able to operate without hindrance, and their findings should be reported transparently.

4.8.3.6 Strict Prohibition of Government Interference

Government and public officials must not use their office to advocate for a particular outcome. The use of public funds for campaigning must be prohibited, and public resources must not be misused to favour one side. A clear separation between the state and political actors is required to ensure a genuinely free choice.

4.8.4 Apart from the safe and peaceful environment, none of the above applied to the 2014 Scottish independence opinion poll. As if these are an irrelevance, the report ignores the question of international standards, the necessity of adhering to them or the possibility that the 2014 vote failed to meet a minimum level of constitutional legitimacy. Instead, it strongly represents the 2014 event as a template for any future referendum ignoring or dismissing the principles that should govern any free and fair, constitutional referendum.

5. On Postulated Legal Routes

- 5.1. In its treatment of legal routes the report's conclusions⁹ contain errors, omissions, ambiguities and inconsistencies in three distinct areas, set out in detail below. First, it conflates secession with external self-determination, obscuring the distinct legal status that applies to Scotland. Second, it treats the UK's domestic constitutional characterisation of Scotland as legally conclusive, despite international law, not domestic law, being the relevant yardstick. Third, it fails to address the evidence that the Treaty of Union was never given legal effect, a question fundamental to whether Scotland's route lies in secession or in decolonisation.

5.2 Ambiguity and Error - Internal Incoherence

5.2.1 The report concludes:

That international law confers no legal right for Scotland unilaterally to secede from the United Kingdom nor unilaterally to hold a referendum on the question of Scottish independence;

Therefore, that the question of Scottish independence must be answered in accordance with the United Kingdom's constitutional arrangements;

5.2.2 It draws this conclusion on the basis of an inquiry in the form of 'question and answer' as follows:

... there is a question mark over whether international law provides for pathways towards a second independence referendum (and ultimately towards independence). That question is typically discussed under the broad heading of whether a territory that currently forms part of a larger state has a right to secession. Such a right would be based on the right to self-determination.

The briefing explains that a question regarding whether a territory which forms part of a larger state has the unilateral right to secede would be based on the right in international law to self-determination. It highlights Article 1(2) of the UN Charter which states that one of the UN's purposes is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

⁹ See Appendix 2 - Report Conclusions, included for ease of reference.

- 5.2.3 The question represented in the report as central, “whether a territory that currently forms part of a larger state has a right to secession” is inherently contradictory and ambiguous.
- 5.2.4 Firstly, there is more than one status for any territory which forms part of a larger state. It may be an integrated part of a lawful, unitary state. It may remain territorially distinct in law while forming part of a federal union. Or it may be unlawfully occupied, annexed or colonised and now claimed by the larger state as part of its territory. Thus, the phrase ‘a territory that currently forms part of a larger state’ does not establish what rights do or do not apply to that territory in international law.
- 5.2.5 The report does not define the kind of ‘territory within a larger state’ which Scotland represents. Instead, it simply glosses over the possible relationships encompassed by the descriptor, obscuring the distinctions which exist in international law and suggesting that the secession rather than decolonisation is the internationally recognised route to independence.
- 5.2.6 The result is that it identifies a category into which Scotland undoubtedly falls, ‘a territory which forms part of a larger state’ in a manner which obscures the existence of a sub-category into which Scotland may fall, and for which compelling evidence exists that it does fall. That is the category of a Non-Self-Governing Territory which forms part of a larger state only through unlawful occupation and whose rights in international law are specific, fundamental and unconnected to secession.
- 5.2.7 It then ties this ‘one size fits all’ category of territories within larger states to the right of self-determination which it conflates with a ‘right’ to secede. There is no internationally recognised right to secession. Asking whether a territory has an automatic right to secession based on the right to self-determination, is a contradiction in terms. Secession by a territory that legitimately forms part of a larger state must be negotiated with the larger state.
- 5.2.8 There does exist a doctrine of remedial secession, a last resort for a group facing extreme persecution, human rights violations, or denial of meaningful internal self-determination but this is contested and has never been successfully invoked.

5.2.9 A territory which forms part of a larger state but which has been wrongfully occupied or annexed by that state does not 'secede'. It has an inalienable right of external self-determination. It is no more possible for an occupied or annexed territory to secede from the occupying state than it is for someone to obtain a divorce where there was no marriage. External self-determination in such an instance is the right of a people to determine their own future without interference by the occupying power.

5.2.10 The report's failure to distinguish between territories for which negotiated secession would be the legal route to independence and territories for whom external self-determination is a fundamental right is significant. It assists in a conflation of a 'right of secession', which does not actually exist, with the right of self-determination of peoples - which is inalienable.

5.2.11 This is largely accomplished through a 'question and an answer' which could not possibly be "typically discussed" as the report suggests and so is entirely misleading:

Q: Does *any* territory that currently forms part of a larger state have a right to unilateral secession.

A: No/only former colonies.

Correct answer: No territory has a right to unilateral secession because secession presupposes a lawful and unitary state from which a territory may wish to secede and where there is a lawful and unitary state, then the territory *must* negotiate secession.

Q: Such a right would be based on the right to self-determination so does the right to self-determination provide for unilateral secession?

A: No.

Correct answer: There is no such right to secession. External self-determination is not secession and arises where a territory is unlawfully controlled by another state.

- 5.2.12 The report then, concludes, “that international law confers no legal right for Scotland unilaterally to secede from the United Kingdom nor unilaterally to hold a referendum on the question of Scottish independence”. The latter statement, however, is untrue.
- 5.2.13 The question of Scottish independence rests on the constitutional foundation of an international treaty, the Treaty of Union 1707, and on whether Scotland is legitimately integrated into the state which claims it as part of its territory¹⁰. The report notes, correctly, that unilateral secession by Scotland would not, (under the present circumstances), result in international recognition, i.e. independence. This is because Scotland is represented as a partner in a unitary and legitimate state by the British establishment and is, therefore, so perceived by the international community.
- 5.2.14 If this is untrue, however, and Scotland is not a partner but a dependency, then the inalienable right of self-determination as part of a process of decolonisation, (the right to unilaterally hold a referendum on independence, for example), not only applies to Scotland but binds all states to ensure that it does so.
- 5.2.15 An evidenced claim exists that the Treaty of Union was never given legal effect and that, instead, the sovereign, independent, European state of Scotland was captured and occupied by the English state. This claim is fundamental to any appraisal of legal mechanisms with respect to the question of Scottish independence¹¹. If the Treaty of Union is inoperative such that no new, state of Great Britain was formed but, rather, the English state dismantled the state of Scotland and continued unaltered in all but name, then the Scottish state never legally transferred its sovereignty. England, trading as the UK, never lawfully acquired that sovereignty, or any right of government, in Scotland and Scotland is an English dependency.
- 5.2.16 This argument relocates the question of Scottish self-determination from negotiated secession to the provisions in international law for decolonisation and restoration which apply where the sovereignty of an existing state has been usurped and its continuity interrupted by an occupying power. If this claim is proven and recognised, then the UK's role in Scottish independence would be that of an occupying power withdrawing¹².

¹⁰ The state makes this claim while simultaneously acknowledging the unique relationship between the Crown of Scotland and the territory of Scotland, one of the key contradictions of the British Constitution.

5.2.17 Secession in these circumstances is inapplicable. It is legally and conceptually incompatible with a claim to the right of restoration. A state cannot secede from an occupying power to which it never consented to belong; a nation cannot "secede" from another nation nor receive from a colonising nation a sovereignty over its territory it has never, lawfully, possessed. Instead, the right to external self-determination, decolonisation and not secession, now applies as a fundamental principle of international law.

5.3 Scotland in the UK and the Application of Internal Jurisdiction to a Question of International Law

5.3.1 International law governs the right of peoples to self-determination. Where that right exists, it is something known as 'jus cogens' a paramount and absolute rule of international law.

5.3.2 The denial of that right is defined as a wrongful act of a state and so serious that it imposes an 'erga omnes' obligation - that is an obligation on all states to take action. It is not subject to the jurisdiction of any domestic court and a domestic court ruling is legally powerless, 'incompetent', to erase or bypass it.

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law, (Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) Article 3)

5.3.3 The British state claims that Scotland is not under the sovereignty of a separate "metropolitan state" but was integrated, voluntarily, into a larger state, created by treaty in 1707. Scotland's status, and its right to self-determination, hangs on the assertion that:

Scotland is a nation and voluntarily entered into union with England as a partner and not as a dependency (Royal Commission on Scottish Affairs, 1954).

5.3.4 By this official definition, Scotland is a partner and not a dependency. It is a partner, however, only if the 'partnership agreement' by which it defines Scotland's status (and by implication its own), was actualised. In other words, Scotland's legal status and identity depend entirely on the determinative criterion provided by the UK state. It is either a legitimate part of a unitary state by virtue of a voluntary

¹¹ Notably, neither the form of a referendum nor any other mechanisms for Scottish independence - such as a plebiscite - are considered in this Scottish Parliamentary paper.

¹² This would also mean that there could be no treaty-based negotiations and that both Scotland's (still recognised) boundaries and the rights to its own territorial resources would pertain wholly and exclusively to Scotland.

partnership, (Treaty of Union), or, failing the realisation of that partnership, it is an English dependency, (colony).

- 5.3.5 If the union described in the 1707 treaty never came into being, (as argued under the evidence published by Liberation Scotland¹³), then no partnership exists. If Scotland was not integrated into a new state of Great Britain as a partner with England, then however different it may be from the archetypal colony with which history is most familiar, it can only be a colony or, as the British state has described it 'a dependency'.
- 5.3.6 Scotland, then, cannot secede from a continuing state of England. Rather the 'interrupted' sovereign state of Scotland awaits restoration to its former place among the other sovereign states of the international community. It is entitled to the inalienable and fundamental right to the exercise of external self-determination under international law.
- 5.3.7 This counter claim to the British partnership narrative is now being made at the United Nations by Liberation Scotland. It asserts that a right of external self-determination for Scots exists based on the absence of any voluntary partnership and the reality that Scotland was captured, held by force and subjected to foreign sovereignty - made into an English dependency - in which condition it has continued from 1707 to the present in spite of several intervening wars of independence.
- 5.3.8 The report notably fails to examine or mention any of the evidence for this counter claim but proceeds from the assumption that the British state narrative is legally correct. It cites the Supreme Court ruling of 2022:
- "There are insuperable obstacles in the path of the intervener's argument based on self-determination... the principle of self-determination is simply not in play here."
- 5.3.9 This ruling does not withstand the application of scrutiny through the lens of international law:
- 5.3.10 If the principle of self-determination is not in play, the Supreme Court has effectively ruled that Scotland is not a dependency or colony. The question of whether the right to self-determination is "in play", however, depends on the true constitutional foundation of the United Kingdom and on whether or not Scotland is a partner in a union, as the British state claims, or a dependency. And that determination is not for any domestic court to make. It is a matter of international law.

¹³ See Appendix 4

5.3.11 In fact, the UK government declares in its submission to this inquiry¹⁴, that this foundation is the Treaty of Union, an international agreement subject to international, not domestic law, and its ratifying Acts. Since the UK Supreme Court has no jurisdiction to determine a matter of international law, the report cannot, therefore, rely on its finding on a question which is beyond its legal competence to determine.

5.3.12 While the question of Scotland's legal identity and status within the state known as the United Kingdom of Great Britain and Northern Ireland has yet to be adjudicated in the appropriate forum - that of international law - the report must be considered as misrepresenting the reach and authority of the UK Supreme Court.

5.3.13 A related and important matter is that, not only is the question of Scotland's right to self-determination incapable of being established on the say so of the British state, that is in any domestic forum, but there is a question of culpability under international law.

5.3.14 The finding that 'the principle of self-determination is simply not in play' therefore represents a significant overreach by the United Kingdom supreme Court:

5.3.12.1 Deciding the limits of an international question, that of a possible right to external self-determination sits beyond the competence of even the Supreme Court.

5.3.12.2 This finding functions as an *ultra vires* exoneration of the British state, an exoneration implicit in the dismissal of any right to self-determination as this also dismisses any possibility that there exists a colonial situation, an 'internationally wrongful act' for which the remedy in law is an absolute and inalienable right to self-determination.

5.3.12.3 Because the Supreme Court is fundamentally an organ of the UK state, the state has effectively acted as judge in its own cause, executing a self-exoneration from what is, potentially, an internationally wrongful act:

*The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, **judicial** or any other functions...* (Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) Article 3)

¹⁴ See Appendix 1

5.3.15 Thus the state clears itself of the crime of colonisation - through its own judicial organ, its Supreme Court. The state cannot, however, act as "judge in its own cause" using its own Supreme Court to decide a question of international law.

5.3.16 The witnesses submitting testimony to Committee Inquiry, for the guidance of the Scottish Parliament and the information of the Scottish public, have failed in their duty to point out that the state cannot proceed through its own court as its own judge.

5.4 Imaginary Obstacles

5.4.1 Imaginary Obstacle No 1 - The 1970 Friendly Relations Declaration: The Conditionality the Report Quotes but Does Not Apply

5.4.1.2 A tension exists in international law between the rights of a people to self-determination and the rights of an existing state to territorial integrity. The report notes:

5.4.1.3 The Committee advisers' briefing notes a friction between the right to self-determination and territorial integrity of states, another "paramount principle" of international law. The briefing highlights that, outwith the context of decolonisation, international law is reluctant to allow for interference with territorial integrity.

5.4.1.4 For example, after setting out the substance of self-determination, the UN General Assembly's 1970 Friendly Relations Declaration states that, "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

5.4.1.5 The report invokes the territorial integrity provision of the 1970 Friendly Relations Declaration as a constraint on Scotland's self-determination claim quoting the relevant supporting passages in full. Despite its heavy reliance on the Declaration as supporting evidence, however, it inexplicably fails to include the conditions under which the right of state integrity applies.

- 5.4.1.6 In fact, the Declaration explicitly makes the right of territorial integrity contingent on the "sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." In other words, invoking the Declaration as an obstacle to a Scottish right of self-determination under international law begs certain questions.
- 5.4.1.7 First, the United Kingdom is not a single, unified territory in law. It consists of two legally distinct territories, each under the separate territorial jurisdiction of its own Crown. The territory of Scotland falls under the territorial jurisdiction of the Scottish Crown. That Crown, as discussed later, is not defunct. It is dormant, in abeyance but fully extant and it is constitutionally indispensable, because it is the institutional vehicle of the sovereign Community of the Realm (as established by the Claim of Right of 1689).
- 5.4.1.8 Consequently, an immediate question arises: on what legal basis can any claim to a single, legally coherent "territory of the United Kingdom" be made?
- 5.4.1.9 Second, Scots have a right of self-determination if the United Kingdom is not the voluntary partnership it claims. If the UK state is in violation of that right, then any territorial integrity protection that might be claimed to exist would no longer apply.
- 5.4.1.10 Third, this conditionality of Friendly Relations Declaration is the legal mechanism that distinguishes legitimate state integrity from colonial domination disguised as territorial integrity.
- 5.4.1.11 A state that overrides a people's democratic majorities, extracts their natural resources for the metropolitan centre, intercepts their trade, destroys their ports, airports and logistics, imposes nuclear weapons on their territory against their democratic will, curtails their Parliament's legislative competence without consent, refuses to permit any lawful process towards independence does not "represent the whole people belonging to the territory without distinction."

- 5.4.1.12 The territorial integrity protection that this Friendly Relations Declaration provides therefore does not apply to the UK's claim over Scotland.
- 5.4.1.13 The report cited the Declaration. It quoted the conditionality. It then made its assertions as though the conditionality did not exist. This is not an oversight. It is analytical evasion; the moment at which the legal shield of the colonial state's position could have been dismantled by the report's own cited instrument but was not.

5.4.2 Imaginary Obstacle No 2 - A non-existent barrier to Scotland's status as a colony

- 5.4.2.1 Is Scotland a colony? The question is not determined by geography, physical distance, or resemblance to a supposedly "classic" model of an overseas colony. Neither the UN Charter nor any formal doctrine of international law defines colonial status according to whether a territory lies across an ocean, has a tropical climate, or conforms to 19th century imperial imagery.
- 5.4.2.2 The definition of a colony or dependency or, in the language of the United Nations, a Non-Self-Governing Territory, (NSGT), is legal and political. It depends on the relationship between a state and the territory of a distinct people. A territory is deemed non-self-governing if:
- It is geographically separate from the administering Power.
 - It possesses distinct ethnic, cultural, or linguistic characteristics.
 - It lacks a *full measure* of self-government, (and has not freely exercised the right of self-determination to enter into association with or integration with a larger state).
- 5.4.2.3 A territory is not considered to be a NSGT if the relationship between the territory of a distinct people and the larger state which claims it conforms to the principles of self-determination, sovereign equality, and freely expressed consent as recognised by international law.
- 5.4.2.4 The question is not determined by the state concerned, nor by any ruling of its domestic courts but by the independent standards of international law. Situations involving annexation following aggression, prolonged domination, or treaties alleged to have been

procured through fraud or coercion may give rise to claims that a people has been subjected to foreign sovereignty without the full exercise of its right to self-determination.

- 5.4.2.5 A surprising error in the submission of Professor McHarg is her assertion that, "the UN has never applied the category of non-self-governing territory to anything other than overseas possessions". This error is allowed to pass, unchallenged, into the Report although the claim would come as something of a surprise to Namibia, East Timor and Western Sahara.
- 5.4.2.6 Namibia was formerly a part of South Africa, is geographically connected to South Africa and was annexed in a similar way to Scotland.
- 5.4.2.7 East Timor, a former Portuguese, then Indonesian colony still shares a boundary with an Indonesian province. The United Nations explicitly rejected Indonesia's constitutional integration of East Timor as its 27th province, maintaining it as a Non-Self-Governing Territory pending genuine self-determination and eventually supervising the independence referendum that produced Timorese independence in 2002.
- 5.4.2.8 Western Sahara, a former Spanish colony now largely under Moroccan control, is also listed as a NSGT and also sits beside the administering Power. The UN continues to treat Western Sahara as a non-self-governing territory despite Morocco's insistence that it is an integral part of the Moroccan state.
- 5.4.2.9 The word "overseas" does not appear in Article 73 of the UN Charter. The words "seas" and water do not appear in Resolution 1541 (XV). Geographically separate means only that there is a clear and distinct border or separation between the territories. The "salt-water doctrine", a purely political argument that colonies should only include territories that are 'overseas', was proposed by colonial powers seeking to exempt their own, colonial dominions from the decolonisation framework. It was not and is not accepted under international law.
- 5.4.2.10 In fact, Scotland meets all the criteria established in United Nations General Assembly Resolution 1541 (XV) (1960), by which a territory is deemed non-self-governing.

- 5.4.2.11 Scotland is a distinct geopolitical entity, its historical and legal distinctiveness as a separate jurisdiction, acknowledged even within the United Kingdom's constitutional framework. Although within the same landmass as England, Scotland is geographically separate. The distinct border between the two countries has existed since 1237, reflecting the territorial jurisdictions of the English and the, (dormant but extant), Scottish Crowns.
- 5.4.2.12 Scotland's Crown remains intact as a constitutional instrument so that its status as a kingdom (the territorial jurisdiction of a crown) continues and it remains a sovereign territorial nation whose territorial boundaries are internationally and domestically recognized to this day.
- 5.4.2.13 The Scots are recognised internally and internationally as a distinct people and a separate and distinct nation.
- 5.4.2.14 Scots have not experienced a full measure of self-determination for over three centuries Scottish devolved powers are a long way from the requirements of full self-determination. The devolved Scottish Parliament was established in 1999 by no more than ordinary UK statute, does not exercise a full measure of self-government and remains politically subordinate to Westminster. The UK Parliament retains ultimate legislative supremacy over Scotland, with the power to override or unilaterally revoke or alter devolved powers at any time, illustrating the truth that power devolved is power retained.
- 5.4.2.15 Professor McHarg's misrepresentation of the criteria for Scotland's decolonisation may be understood in its strategic context. If Scotland's case is examined under the decolonisation framework, and if Scotland is then formally recognised by the United Nations as a Non-Self-Governing Territory, the architecture of the report collapses. In particular, the McCorkindale/McHarg position on the mechanisms by which the Scottish Parliament might negotiate with Westminster to trigger a UK state managed referendum, the same position submitted by Professor McHarg to the inquiry, becomes redundant. It is replaced by an international, legal mechanism which removes the need for the kinds of negotiation which the McCorkindale/McHarg position - and this report - describes and which critically restricts British state authority over Scottish affairs.
- 5.4.2.16 The respondents note the following sequence precisely: Liberation Scotland's international campaign to have Scotland recognised as a

NSGT was identified within a Scottish parliamentary inquiry and dismissed, in part on the basis of a misrepresentation of UN practice. The misrepresentation is included, unchallenged in the published evidence supporting the inquiry's report and whose publication by the Scottish Parliament accords it authoritative status. Thus, error operates to undermine the credibility of a decolonisation route, the Liberation Scotland campaign and the experts who support it.

5.5 The Precedent Within the 'UK's Constitutional Arrangements

5.5.2 Strong international pressures can be brought to bear on the UK government to remedy a democratic deficit which is the one point of agreement across most of the Scottish, political, legal and academic establishment. The inquiry and its contributors, however, appears to be unaware of or unwilling to explore this option although these rights, and international pressure on the UK government to uphold them, are what finally obtained a devolved parliament for Scotland. These rights did not cease to apply with devolution and were not replaced by the establishment of a devolved parliament.

5.5.3 Contrary to the repeated assertions of the report, an arguable, legal right to self-determination and, therefore, to a Scottish constitutional referendum, (conforming to international standards) has been established both by statements from state representatives and by constitutional precedent.

5.5.4 What do statements have to do with international law? The conduct of a person or entity empowered to exercise elements of governmental authority is considered an act of the State under international law¹⁵.

- UK Government paper 2013: "Successive UK Governments have said that, should a majority of people in any part of the multi-national UK express a clear desire to leave it through a fair and democratic process, the UK Government would not seek to prevent that happening."¹⁶
- John Major, UK Prime Minister, 1993: "... no nation could be held irrevocably in a Union against its will ..."¹⁷
- Theresa May, UK Prime Minister, 2019: "our Union rests on and is defined by the support of its people [...] It will endure as long as people want it to—for as long as

¹⁵ ARSIWA Article 4

¹⁶ UK Government (2013) Scotland analysis: devolution and the implications of Scottish independence, HMSO, 2013 (Cmnd. 8554)

¹⁷ UK Government (1993) Scotland in the Union: a partnership for good HMSO, 1993 (Cmnd. 2225)

it enjoys the popular support of the people of Scotland and Wales, England and Northern Ireland.”¹⁸

5.5.5 A constitutional principle is thereby established. It was underpinned by precedent. when the UK government enabled the 2014 referendum, (though without applying the protocols that ensure fairness in a constitutional referendum), acknowledging the right of Scots to this exercise in self-determination

5.5.6 The precedent was articulated in 2021 by Professor Marc Weller, Cambridge University Chair of International Law and International Constitutional Studies, a former Director and a Fellow of the Lauterpacht Centre for International Law who has served as United Nations Senior Mediation Expert:

In the case of Scotland, the right to leave is established informally in UK constitutional practice. International law recognises such a constitutional grant of authority, whether made express in the constitution or implied in constitutional practice. *This internal, constitutional entitlement is then reflected in the international law doctrine of constitutional self-determination.*¹⁹

5.5.7 Therefore, the UK Government, (whether or not it has lawful authority in Scotland), has affirmed in principle and established by precedent the right of Scots to self-determination as this applies under international, not domestic law.

5.5.8 This was also explained at the Liberation Scotland Event held at the Palais des Nations, Geneva, during the 60th Session of the Human Rights Council, September, 2025 in a keynote address by the UN’s Independent Expert on international order, George Katrougalos²⁰:

Moreover, constitutional practice in the UK is not defined solely by legal form but also by constitutional conventions. The 2012 Edinburgh Agreement, the legal framework for the 2014 Scottish independence referendum, has shaped such a constitutional convention, establishing a precedent for the future, fully reconciling the competing claims, stemming from sovereignty and right to determination. The people of Scotland has, thus, a constitutional right to determine its political future.

The indivisibility of rights teaches us that self-determination is not only a political claim but a human right. A democratic and equitable international order cannot exist where

¹⁸ UK Government, Prime Minister Theresa May speech on the Union: 4 July 2019

¹⁹ [Could Scotland stage an independence referendum without UK approval?](#) What the law says, Marc Weller, The Scotsman Published 25th Jan 2021

²⁰ Professor Katrougalos is former foreign minister of Greece, professor of public law at Democritus University of Thrace, Vice-President of the International Association of Constitutional Law (IACL), with expertise on Human Rights, Comparative Constitutional Law, Democracy, Social Rights and Social Policy. [The full address can be downloaded here](#)

peoples are prevented from determining their future, controlling their resources, or participating equally in global decision-making

5.5.9 While the UK government continues, explicitly, to close down any possibility of an agreement with the Scottish Administration for a path to Scottish self-determination, the door is open to a legal challenge under international law.

5.5.10 The right of self-determination is universally recognized as a peremptory norm of international law, meaning that a serious breach of it, such as blocking or prohibiting it, constitutes a wrongful act of a state. (Articles on Responsibility of States for Internationally Wrongful Acts – ARSIWA, 2001.)

Article 40: Defines a "serious breach" as a gross or systematic failure to fulfil an obligation arising under a peremptory norm (*jus cogens*).

Article 41: Outlines the consequences of such a breach, requiring all states to cooperate to end the breach and prohibiting them from recognizing as lawful any situation created

5.5.11 While it is true that international law confers no legal right for Scotland unilaterally to secede from the United Kingdom, it does hold out the possibility that it can unilaterally hold a referendum on the question of Scottish independence should it meet the conditions of a colony or NSGT and suffer a denial of the right to self-determination.

5.6 Summary Conclusions:

5.6.2 The conflation of secession and decolonisation in the report is misleading. While no inalienable right to secession exists, an inalienable right to external self-determination does exist where an unlawful annexation, occupation and subjugation of a sovereign territory has occurred. That this is the case in fact and in law in respect of Scotland is a question the report dismisses without consideration of the evidence or arguments.

5.6.3 The barriers to Scotland's claim to the right of external self-determination which are proposed by the report are superficial, based either on unproven assumptions or on false premises.

5.6.4 The report refers to the United Kingdom's constitutional arrangements without consideration of any binding conditions which may apply to those arrangements.

5.6.5 As any binding conditions which may apply are constitutive of the basis of the British claim to a statehood in which the nation of Scotland is lawfully incorporated and as these conditions are located in an international treaty between two sovereign and independent European states, the legal standing and operant condition of these arrangements are both fundamental to the rights of Scotland to self-determination and a matter of international and not of domestic law.

5.6.6 The questions of whether the British state, for example, claims the rights and benefits of a treaty while repudiating any ratified obligations or responsibilities and the incompetence of that state to determine this question speaks is entirely ignored by the report.

5.6.7 According to international legal experts, the United Kingdom's constitutional arrangements include a right by precedent to self-determination while the denial of that right constitutes a breach of international law.

5.6.8 **Unsound Conclusions** - The following conclusions of the report are, therefore, unsound:

The Committee notes the broad consensus expressed by witnesses and by its advisers as to the current legal position in relation to any future independence referendum²¹ :

- That international law confers no legal right for Scotland unilaterally to secede from the United Kingdom nor unilaterally to hold a referendum on the question of Scottish independence;
- Therefore, that the question of Scottish independence must be answered in accordance with the United Kingdom's constitutional arrangements;

(Note: the conclusion implies that it is for the United Kingdom to determine what its constitutional arrangements consist of, including its international obligations, and either ignores - or its panel of expert witnesses is unaware of - the principle in international law by which the UK has established Scotland's right to self-determination. It also ignores the fact that denial of this right, once established, is a wrongful act of a state.

21 These conclusions (paragraphs 102-109) were agreed by division (For 4 (Clare Adamson MSP, George Adam MSP, Keith Brown MSP; Patrick Harvie MSP); Against 3 (Jamie Halcro Johnston MSP, Stephen Kerr MSP; Neil Bibby MSP); Abstentions 0)

6 Beyond the UK and Canadian Supreme Courts

6.1 Colonies, Former Colonies and the Canadian Supreme Court

6.1.2 The Supreme Court of Canada ruled that "the international law right to self-determination only generates, at best, a right to external self-determination in situations of *former colonies*. This is a contradiction in terms, however, since a "former" colony is, by definition, a territory that has already exercised its right to self-determination.

6.1.3 The Canadian ruling was not a neutral interpretation of international law. It is widely criticised as a political attempt to close the door on decolonisation claims, particularly in the context of Quebec. The court's use of "former" rather than "existing" colonies was a strategic redefinition of the right of self-determination to make it conform with a politically desirable interpretation, that colonisation is a "closed chapter", decolonisation is almost complete and self-determination is limited to that historical chapter. Once accepted, this premise closes all discussion of the conditions of oppression suffered by existing colonies and frees their colonisers from the accusation, and repercussions, of a 'wrongful act of a state'²² for which immediate rectification is required under international law with reparations thereafter.

6.1.5 The argument that colonialism is historic and that any remaining colonies are thus former colonies is not explicitly made by the report. Rather, both McHarg and Raible, whose submissions to the SP Paper 1030 inquiry accept without examination the Canadian ruling's framework, represent the Canadian Supreme Court ruling as definitive rather than strategic. This implies that it defines the condition of all colonies - which are to be understood as former colonies - and their relationship with international law.

6.1.6 Lecours' submission to the same inquiry, which includes a comparative analysis of Quebec's referendum experience, documents that the Supreme Court reference was triggered by the federal government's political reaction to the uncomfortably close 1995 result rather than by any legal necessity thus confirming the ruling's strategic rather than neutral character, a dimension neither McHarg nor Raible acknowledges.

6.1.7 It is true that there have been repeated attempts by administering Powers (colonising states), to declare the era of decolonisation over, to limit the right of self-determination to currently recognised colonies and to describe even these as 'former colonies'. They were unsuccessful.

²² See Appendix

6.1.8 In 2015 the members of the Special Committee on Decolonization, delegates to the Caribbean Regional Seminar, lamented the fact that “even more territories and peoples around the world endure conditions of occupation or colonization, though not inscribed as Non-Self-Governing Territories.” Today, any hope of declaring the era of decolonisation over has been overthrown by a return of aggressive colonialism

6.2 The Legal Identities of the UK and Scotland

6.2.1 The question of the constitutional legitimacy of the UK, indeed of its legal identity - and what this means in international law - is both urgent and overdue for consideration. The existence of a verifiable, documented, constitutional partnership underpins Scotland’s legal identity and situates it as a territory within a lawful, unitary state. Without this it is a colony. These are no other possible legal identities.

6.2.2 ‘Is Scotland a territory within a lawful, unitary state?’, is a question which Liberation Scotland has addressed. The overwhelming evidence is that it is *not* a territory within a lawful, unitary state by any measure of international or, (excepting the right of an English Parliament to re-invent the law at will), domestic law. Ironically, testimony to this truth is offered within the report itself where it quotes the submission of the UK Government to the inquiry.

6.3 Constitutional Incoherence

6.3.1 The report notes the following:

29. The UK Government’s written submission to the Committee notes that the UK’s constitutional arrangements are founded on the 1706 Treaty of Union, enacted through the 1707 Acts of Union. It highlights that the Scotland Act “expressly reserves” the Union to the UK Parliament.

30. In evidence, Professor Tierney explained that section 37 of the Scotland Act makes clear that the Acts of Union have effects “subject to the provisions of the Scotland Act” and that, as such, the “Acts of Union have therefore tended to pass out of discussion in a debate that is now really about the Parliament’s competence within the Scotland Act 1998.”

6.3.2 The report thus assumes the UK government’s position as its starting point and yet that position is both internally contradictory and *legally untenable*. The claim to be able to unilaterally legislate away the terms of its founding treaty is a *logical contradiction and a legal impossibility*. That is, it is untenable beyond the confines of British internal and post-imperial constitutional authority according to which no international treaty or law is binding:

It is an established principle of international law that a state is obliged to discharge its treaty obligations in good faith. This is, and will remain, the key principle in informing the UK's approach to international relations. However... it is important to remember the fundamental principle of Parliamentary sovereignty. Parliament is sovereign as a matter of domestic law and can pass legislation which is in breach of the UK's Treaty obligations.²³

6.3.3 Pointing out what international jurists might consider 'the obvious', however, Professor Mark Elliot observed of the UK Government's position that:

...this assertion is mundane as a matter of domestic law but quite irrelevant as a matter of international law, resting as it does on the apparent assumption that the concept of parliamentary sovereignty is somehow capable of transcending its necessarily domestic context so as to impinge upon the UK's legal position as a State in international law.²⁴

6.4.4 Returning to the report, we find an unquestioning acceptance of this domestic doctrine, (in fact a pre-Union, English doctrine), by which the UK Parliament may 'make or unmake any law whatever',²⁵ and according to which the state may use internal law to override its international obligations.

6.4.5 There is no basis for this position under international law. The claims of the British state to the contrary are, as Elliott observes, "irrelevant". It is not within its authority, therefore, for the UK to overturn international agreements or to redefine the limits of its own authority such that it is entitled to claim the benefits of an international agreement while disowning the obligations which that agreement entails. The UK's submission to the inquiry, (as well as a multitude of other official statements, rulings and statutes elsewhere), does precisely this.

6.4.6 Moreover, it expresses fundamental principles so irreconcilable that the UK government extinguishes either its own constitutional legitimacy, (the basis for its authority, and that of its statutes in Scotland), or that of the Scotland Act 1998, the Act pivotal to this report. Here is the fatal contradiction:

Assertion One: The Treaty and Acts of Union 1706/1707 are characterised by the British state as the foundational instruments of the United Kingdom. (These are said to have created the new, kingdom state of Great Britain, its Parliament, and the legal order within which all subsequent statutes operate). In other words, it is from this constitutional 'arrangement', from the foundational instruments that are the Treaty

²³ [Her Majesty's Government Legal Position: United kingdom Internal Market Bill and Northern Ireland Protocol](#) 2020

²⁴ Professor Mark Weller, 10th October 2020, 'Legal kryptonite? [Parliamentary sovereignty, international law and the Internal Market Bill, Public Law for Everyone](#)

²⁵ A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (8th edn. 1915)

and Acts of Union, that the UK derives its authority in Scotland. It is important to note that this is a formal and official assertion by the UK state.

6.4.7 Under international law, such statements by a government are binding as expressions of legal fact. It is equally important to note that the legitimacy of the 'UK' as a politically 'unitary' state, (rather than as an unlawful, annexing state and its dependency), as well as its authority in respect of Scotland, can only derive from the Treaty and Acts of Union 1706/1707. No other instrument exists from which either its asserted identity or its authority over Scotland can be derived.

6.4.8 Moreover, the UK Government, through its representative organs and authorities, asserts that the original contracting parties, the kingdoms of England and Scotland, were extinguished by the Union and have no continuing legal personality. If this assertion holds good, then no party remains with any authority to alter the Treaty's terms and, therefore, no authority exists that can alter the hierarchical supremacy of the founding treaty.

6.4.9 If, therefore, the Treaty and Acts of Union were the true, foundational instruments of the United Kingdom, then the UK Parliament, as a creature of those instruments, could not override, subordinate, or make "subject to" its own, later enactments the 'parent' instrument that brought it into being. The creature cannot take precedence over, cannot reshape its creator. That is a logical and legal impossibility.

6.4.10 Section 37 of the Scotland Act, 1998, however, provides that the Acts of Union have effect "subject to the provisions of the Scotland Act 1998".

Assertion Two: The Act purports to effect precisely this subordination of the creator, the Treaty and Acts of Union, to the creature, the Parliament created by them. The Parliament at Westminster here openly assumes the right to alter the terms of its own creation. This is the equivalent of a child claiming the right to modify its own birth certificate. The fact that this claim has continued unchallenged since 1998 diminishes neither its constitutive incoherence nor its gravity.

Legal Nullity: The assertion that the UK Parliament can subordinate the Treaty of Union suffers from a fatal, vicious circle (circular reasoning).

Premise A: The Treaty of Union is the source of authority that legally created the Parliament of Great Britain (and later the UK Parliament).

Premise B: The UK Parliament possesses an authority to unilaterally alter or subordinate the Treaty of Union, an authority which somehow exists independently of, and superior to, the very document that created it.

6.4.11 For Premise B to be true, the Parliament would have to possess a form of "original" or "inherent" sovereignty that predates 1707. Because the Parliament did

not exist prior to 1707, it cannot logically inherit or generate authority superior to its own blueprint. It cannot lift itself up by its own bootstraps.

6.4.12 Conclusion: The pre-eminence of the Treaty and Acts of Union cannot be altered by Westminster unless they do not in fact, provide, define or limit its authority in any way. If they do *not* provide it with its constitutional authority, however, then there no constitutional basis for that authority, nor any lawful 'union' to exist. Accordingly, a consistent and lawful constitutional position dictates that either:

- the Scotland Act 1998 - to the extent that it conflicts with or subordinates the Acts of Union - is *ultra vires* and *void ab initio*;
or
- the UK must articulate a new, coherent legal basis for its jurisdiction in Scotland. No such basis, however, exists.

6.4.13 The UK government's position is untenable. It cannot derive its authority from a treaty and ratifying acts while maintaining that its parliament is entitled to alter their terms at will. The Scotland Act 1998, therefore, detaches the UK state from the Treaty and Acts of Union such that its claim to be the creation of a voluntary partnership falls.

6.4.14 The state must be seen, instead, as a kind of self-constituting, self-licensing entity without any fixed constitutional foundation. Its jurisdiction over Scotland no longer rests on a claim of original consent, treaty obligation or partnership agreement but becomes purely a matter of continued, de facto possession, something associated with conquest or occupation, not partnership or law.

6.4.15 The Scotland Act may purport to define the competence of the Scottish Parliament to determine matters of Scottish policy *but it simultaneously removes the basis for its own legal competence*: it purports to subordinate the Acts of Union to itself, a mere statute, when it is from these that its own legitimacy - derives. In doing so, it cancels itself. No valid process of self-determination in Scotland can possibly occur on this basis.

6.4.16 The real basis of discussion is the question of the reach and legitimacy of UK authority in Scotland, as affirmed by the UK Government on the basis of a claimed constitutional foundation. This foundation is an international agreement, (treaty), between states and it falls, therefore, within the orbit of international law no matter what de facto arrangements may have come into play since the 18th century.

6.4.17 It is a requirement in international law, both of treaty law and of the law of self-determination of peoples, that the UK maintains a constitutionally sound authority for claiming Scotland as part of its jurisdiction and, therefore, a constitutionally sound authority to exercise the right to grant or refuse a democratic vote on the question of independence.

6.4.18 If it cannot do so, if the very Act defining the powers of the Scottish Parliament and reserving the right of Scottish self-determination to Westminster is a self-cancelling statute, (otherwise the United Kingdom Government is a self-constituting and self-licensing entity without a fixed constitutional foundation, i.e. without a treaty conferring legitimate authority), then it lacks any constitutionally sound basis for 'reserving' to itself the question of Scottish independence.

6.4.19 That it holds to the Scotland Act despite its incompetence as the statute of a treaty-dependent parliament testifies to the truth; no such 'union' parliament exists. Westminster is an English Parliament unaltered by the Treaty it whose parentage it pretends to. Scotland is a dependency at the mercy of the absolutism of a foreign state.

6.4.20 This is a question of international law. No domestic court, not even the Supreme Court of the UK can determine whether or not Scotland is, in reality, an English colony that is, whether or not the right of self-determination is in play here.

6.4.21 The idea may be distasteful to some. The concomitant right of the Scottish people, however, to exercise self-determination without interference or permission from Westminster, should be both clearly understood by the Scottish Parliament and clearly explained as an alternative especially where the 'democratic deficit' operates as an insurmountable barrier to self-determination and offers prima facie evidence of colonial status.

6.4.22 The failure by the inquiry to acknowledge, let alone address, a self-evident and immensely significant, constitutional issue reflects - both within the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament and among the contributors - the insular perspective of a British state which imposed English 'parliamentary sovereignty', ('the right to make or unmake any law whatever' as Dicey wrote²⁶), over its former empire until the 1960's which continues to be asserted even over contemporary international law²⁷. It does *not* reflect a legal reality.

6.4.24 And the Committee, apparently constrained to operate without regard to the legal coherence of the UK state's position or to any treaty/partnership rights of the Scottish people, is reduced to the status of a puppet, permitted to observe the existence of a profound, democratic deficit for Scots but not to address the cause or the real remedy.

²⁶ Dicey, *ibid*, p. 3-4) ²⁶

7 The Case Advanced by the Liberation Scotland Committee and Its Advisers

7.1 The right to self-determination for Scotland, an internationally recognised nation with a distinct and historic people, is established in both domestic and international law through three separate instruments. In order of hierarchy, from lowest to highest, these are:

7.1.2 **Modern, Customary International Law:** a right in established by statements from British state representatives and in practice by constitutional precedent:

In the case of Scotland, the right to leave is established informally in UK constitutional practice. International law recognises such a constitutional grant of authority, whether made express in the constitution or implied in constitutional practice. *This internal, constitutional entitlement is then reflected in the international law doctrine of constitutional self-determination.*²⁸

And

Constitutional practice in the UK is not defined solely by legal form but also by constitutional conventions. The 2012 Edinburgh Agreement setting out the terms of the 2014 referendum has shaped such a constitutional convention, establishing a precedent for the future, fully reconciling the competing claims stemming from sovereignty and the right to self-determination. The people of Scotland has, thus, a constitutional right to determine its political future.

"The indivisibility of rights teaches us that self-determination is not only a political claim but a human right. A democratic and equitable international order cannot exist where peoples are prevented from determining their future, controlling their resources, or participating equally in global decision-making."²⁹

7.1.3 Declarations by the state or state representatives affirming that Scots are entitled to leave the UK if they so choose include:

- UK Government paper 2013: "Successive UK Governments have said that, should a majority of people in any part of the multi-national UK express a clear desire to leave it through a fair and democratic process, the UK Government would not seek to prevent that happening."³⁰

1 28 'Could Scotland stage an independence referendum without UK approval? What the law says', Professor Marc Weller, The Scotsman Published 25th Jan 2021

29 Professor George Katrougalis, Independent Expert on the promotion of a democratic and equitable international order, speaking at the side event, 'Scotland's Right to Self-Determination under International Law', Palais des Nations, Geneva, Switzerland, 18th September 2025

³⁰ UK Government (2013) [Scotland analysis: devolution and the implications of Scottish independence](#), HMSO, 2013 (Cmnd. 8554)

- John Major, Prime Minister, 1993: "... no nation could be held irrevocably in a Union against its will ..." ³¹
- Theresa May, Prime Minister, 2019: "our Union rests on and is defined by the support of its people [...] It will endure as long as people want it to - for as long as it enjoys the popular support of the people of Scotland and Wales, England and Northern Ireland." ³²
- "Power lies with the Scottish people and we believe it is for the Scottish people to decide how we are governed." ³³

7.1.4 The conduct of a person or entity empowered to exercise elements of governmental authority is considered an act of the State under international law. ³⁴ Thus the principle of a right for Scotland to 'leave' the union is established by UK government papers and by the statements of "successive UK governments" and prime ministers.

7.1.5 The constitutional principle became established in practice in 2014 through a non-binding, consultative vote, an opinion poll, styled a 'referendum' on Scottish independence, enabled by the British government.

7.2 Contemporary, Customary International Law: Rights guaranteed as a condition precedent of the Treaty of Union, 1707 and of the creation of a state of 'Great Britain'

7.2.1 The United Kingdom of Great Britain and Northern Ireland differs from most states which came into being 'de facto' in that it asserts its origins as 'de jure', accomplished through a transformative, constitutional event - the 1707 Treaty and ratifying Acts of Union.

"The United Kingdom's constitutional arrangements are founded on the Treaty of Union, agreed in 1706 and enacted through the Acts of Union in 1707. These historic agreements established the Parliament of Great Britain, now the Parliament of the United Kingdom." ³⁵

³¹ UK Government (1993) [Scotland in the Union: a partnership for good](#) HMSO, 1993 (Cmnd. 2225)

³² UK Government, Prime Minister Theresa May speech on the Union: 4 July 2019

³³ Davidson, R, Lamont, J and Rennie, W, (leaders of the Scottish Conservatives, Scottish Labour Party, and Scottish Liberal Democrats), Joint statement on more devolution for UK, June 2014 (Centre on Constitutional Change)

³⁴ ARSIWA Article 4, Article 4: Conduct of organs of a State:1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions...

³⁵ [Submission of the UK Government](#) to the Inquiry of the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament into 'Options for a legal mechanism for triggering any independence', submitted November 2025.

7.3.2 These “constitutional arrangements” mean that the resulting union was subject to a precedent and permanent condition - the ratification and permanent force of a 1706, Scottish Protestant Religion and Presbyterian Church Act, specifying the continuation of the Claim of Right Act, 1689³⁶. This Act is much less a religious than it is a constitutional statute, establishing the sovereignty and rights of the people and the limits of lawful government in Scotland.

7.3.4 It functions within the Treaty of Union, as a continuous, suspensive-resolutive condition on which the creation, the legal identity, the authority of Westminster and the persistence of the Union depend, tying the merger of Scotland and England to the survival and ongoing active enforcement of that legislation.

7.3.5 Although the British state now insists that the right of Scots to repudiate the union depends purely on its own, 30-year-old, (and constitutionally incoherent³⁷), devolution settlement, the Scotland Act 1998, its own claim to legitimacy decrees that it turns on the much older compact, the Treaty of Union with its stipulated terms and conditions.

7.3.6 There is a tendency to argue that centuries-old treaties are irrelevant or inapplicable in a hugely altered modern world. The insistence of the British state on the Treaty of Union as its own originator precludes that argument.

7.3.7 A popular misconception is that international law is a purely modern phenomenon. The foundational principles of *bona fides* (good faith) and *pacta sunt servanda*, (agreements must be kept), are at the heart of modern international law, specifically codified in Article 26 of the Vienna Convention on the Law of Treaties (1969). They were first, systematically articulated in 1625 by Hugo Grotius in his work, '*On the Law of War and Peace*.'

7.3.8 These were considered binding rules governing the conduct of sovereigns and states and as they were expected to apply then, so they must be expected to apply now. Thus Article 26, the cornerstone provision of the Vienna Convention applies to the UK today exactly as its principles were expected to apply in 1707: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

³⁶ The Claim of Right Act establishes the sovereignty of the people by its own assumption of sovereignty over the monarch and with the monarch the parliament which must be called by that monarch as well as the highest Court of the land, the Court of Session. Specifically it characterises the claim of a right to 'cass anull and disable the lawes', (the English principle of parliamentary sovereignty which permits its parliament to 'make or unmake any law whatever' as a fundamental violation of the Scottish constitution.

³⁷ It is constitutionally incoherent because Section 37 of the 1998 Scotland Act, providing for devolution and stating that the Acts of Union ratifying the Treaty of Union have effect "subject to the provisions of the Scotland Act 1998", purports to effect precisely the subordination of the creator, the Treaty and Acts of Union, to the creature, the Parliament created by them.

7.3.9 The Claim of Right Act is specified as a condition of the Treaty and Acts of Union. The juridical bond, (legal union), subsists *dum conditio servatur*³⁸; repudiation of its condition precedent and continua extinguishes the agreement or treaty. The Union may continue to exist *so long as the Claim of Right Act continues to be upheld in Scotland*. If it is upheld, however:

- The sovereignty of the Scots over parliament, crown, court or government, collapses UK parliamentary sovereignty in Scotland.
- It makes many UK laws 'ultra vires' in Scotland including any which violate the fundamental rights of the people or the limits these place on any government.
- The Crown of Scotland is protected and no 'British'/English monarchy is lawful in Scotland.
- The territorial sovereignty of the extant Scottish Crown, the legal identity of the Community of the Realm or people, means that Scotland's territorial resources cannot be alienated, (taken or disposed of), by the UK government
- The sovereignty of the Scots together with the explicit right to remove any government which violates that sovereignty or which violates their fundamental rights guarantees the right of the people repudiate the UK government and to determine their own form of government independent of Westminster and not subject to its agreement.

7.3.10 This is the conditionality of the union, a constitutional prescription which takes precedence over all subsequent statutes or determinations of a state produced by the Treaty and Acts - which is what the United Kingdom claims to be. In other words, under the terms of the agreement asserted by the British government as its authorising instrument, Scots are entitled to remove and replace that government. *They are legally entitled to declare independence, at will*. If they are not so entitled, no legitimate union or unitary 'UK' state can be said to exist.

7.3 The Inalienable Right of Self-Determination of Non-Self-Governing Territories as Established by Scotland's Occupation and Control by a Foreign Power via an Inoperative Treaty

7.4.1. The United Kingdom of Great Britain and Northern Ireland represents itself as a lawful unitary state based on a voluntary partnership (Treaty):

"Scotland is a nation and voluntarily entered into union with England as a partner and not as a dependency." Royal Commission on Scottish Affairs 1952 – 1954.)

³⁸ So long as the condition is preserved/upheld'

7.4.2 It claims, unambiguously, to be the product of a single, transformative constitutional and legal event:

Treaty and Acts of Union Article I - That the two Kingdoms of (fn. 1) Scotland and England, shall, upon the first Day of May next ensuing the Date hereof, and for ever after, be united into one Kingdom by the Name of Great-Britain

7.4.2 The two former parliaments of England and Scotland were to be united into one, new Parliament of Great Britain:

Treaty and Acts of Union Article III - That the United Kingdom of Great Britain be Represented by one and the same Parliament, to be styled the Parliament of Great Britain.

7.4.3 Together, this merger is represented as the foundation of a unitary kingdom state formerly known as Great Britain and today known as the United Kingdom of Great Britain.

The Kingdoms of Scotland and England ceased to exist following the Union and were replaced by the Kingdom of Great Britain.³⁹

7.4.5 A kingdom, however, is no more or less than the territorial jurisdiction of a crown. Thus, if the two Kingdoms of Scotland and England were replaced by the Kingdom of Great Britain a new, joint crown would have to have been created. It was not. Instead, the English Coronation Oath 'was extended to Scotland', another way of saying that Scotland was added to the English Crown like every other British/English colony.

7.4.6 A new state required:

- A new constitution
- A new crown and a new coronation
- A new parliament
- A break in legal continuity
- A renegotiation of all treaties

7.4.7 None of these occurred⁴⁰.

- No new kingdom was established
- No new parliament was established. No new parliamentary elections were held and the parliamentary session of the English parliament continued in

³⁹ Scottish Lord Advocate's oral submission to the Supreme Court of the UK, October 2022 [as reported by Craig Murray](#)

⁴⁰ <https://liberation.scot/coms/June18-2025/For-England-Nothing-Changed-Professor-R.Black-KC.pdf>

unbroken succession prior to and following the dissolution by royal decree of the Scottish Parliament.

- The legal and constitutional event described by the Treaty and Acts of Union and by British constitutional lawyers has never taken place

7.4.8 The treaty was never given effect. Instead, like some 200 other, Anglo-British treaties, it was a pretext for the annexation and occupation of Scotland. The state as described by treaty and according to British legal orthodoxy does not exist. It was and remains, legally, constitutionally and operationally the same English state that existed prior to the Treaty of Union with a changed name and expanded territory while the historic, sovereign and independent state of Scotland was extinguished

7.4.9 The British state narrative of a mutual extinction of the kingdoms of England and Scotland is a fiction invented to provide an appearance of legitimacy and to deflect international attention from the reality of Scotland's colonial subordination. As 'Great Britain' and now 'the United Kingdom', England extended and has continued to extend its rule over Scotland. There is no partnership nor any lawful, unitary state; the true relationship between Scotland and England as Great Britain or the UK is that of a dependency and an administering power

7.4 Restoration and Reparation

Because the Crown of Scotland was never replaced by a joint Crown, two crowns and so two kingdoms remain in law. The Scottish Crown, (which is the legal identity of the people, the Community of the Realm), retains title to its territorial jurisdiction and assets under domestic, constitutional law and the international law of self-determination. These are 'Common Good Assets', the exclusive property of the Scottish people. Scotland is 'administered', however, and its assets exploited through the English, styling itself 'British', Crown. This is territorial alienation. Control and benefit of their territorial assets must be restored to the Scottish people along with reparations.

7.5 International Implications

The UK is not only guilty of a continuing Wrongful International Act – something which can be stopped and repaired. It *is*, in and of itself, a 'wrongful' state composed of the continuing English state, (1066 – 2026), and an annexed kingdom, formerly a sovereign and independent state. The identity it claims is false and masks the unlawful extinction and occupation of a sovereign, independent state. It asserts the legal authority and benefit of a treaty that was never implemented and whose condition precedent is violated. When the very identity of a member of

the United Nations Permanent Security Council stands in opposition to the fundamental principles of international law and of the UN Charter, where is its moral authority to wield any veto, procedural or substantive, in matters of international security and law?

7.6 Summary of Scotland's Claims

After three centuries of suffering, Scotland deserves recognition of its real status and its rights to external self-determination:

The right in customary international law to exit the so-called Union, the United Kingdom, as publicly declared and published by the British state through its officers and organs and the 2014 'referendum' precedent.

A right to hold the English state to its own claims of lawful foundation. Scots are entitled to the long-withheld treaty rights of a union into which the Scottish Parliament was forced, bribed and threatened and to the terms of a treaty - albeit constitutionally unlawful in Scots law and, as records show, opposed by 90% of the population. Above all, this means the right to invoke the condition precedent - the conditionality of the union through the Claim of Right Act by which Scots retain sovereignty over their governments. This sovereignty includes the right, (first established by the Declaration of Arbroath in 1320), to remove any government and choose another.

Therefore, with or without recognition and inscription as a NSGT, Scots are entitled in domestic and international treaty law to choose independence *that entitlement established as a condition precedent and continua of the existence of a United Kingdom or, absent a lawful union, as entrenched and protected Scots law.*

The fundamental and inalienable rights of a people subject to a foreign sovereignty without a lawful mechanism or of free association or integration into the larger state.

8 Appendices

Appendix 1: Submission from the UK Government to the Scottish Parliament's Constitution, Europe, External Affairs, and Culture Committee Inquiry into options for a legal mechanism for triggering any independence referendum.

Introduction

The UK Government welcomes the opportunity to submit evidence to the Constitution, Europe, External Affairs and Culture Committee's inquiry. As the Prime Minister has been clear, the UK Government is fully focused on tackling the issues that really matter to people in Scotland. A referendum is not one of them. We are working to grow the economy, improve public services, and put more money into people's pockets.

The Constitutional Position

The United Kingdom's constitutional arrangements are founded on the Treaty of Union, agreed in 1706 and enacted through the Acts of Union in 1707. These historic agreements established the Parliament of Great Britain, now the Parliament of the United Kingdom. The sovereignty of the UK Parliament remains the cornerstone of our constitution.

The Scotland Act 1998, which established the current devolution settlement, expressly reserves to the UK Parliament a number of aspects of the constitution, including the Union of the Kingdoms of Scotland and England and the United Kingdom Parliament itself.

The legal mechanism used for the 2014 independence referendum was a specific, time-limited transfer of power under section 30 of the Scotland Act 1998, mutually agreed upon by the UK and Scottish Governments (the Edinburgh Agreement) and passed by both Parliaments. This process temporarily devolved the necessary powers to the Scottish Parliament so as to legislate for a referendum. While it was (and remains) lawfully a matter for the UK Parliament to legislate for a referendum on Scottish independence, the agreement was made that the Scottish Parliament should be the body to pass legislation to provide for the details of the referendum, and so the schedule of reservations in the Scotland Act 1998 was temporarily amended through the order to enable this.

The argument that the Scottish Parliament can legislate for an independence referendum itself, without such a conferral of power by the UK Parliament, was tested and unanimously rejected by the UK Supreme Court in its 2022 judgment. The Court confirmed that legislation making provision for a poll on Scottish independence relates to the reserved matters of the Union of the Kingdoms of Scotland and England and the Parliament of the United Kingdom. It therefore remains a matter for the UK Parliament.

The UK Government's Position

In 2014 people in Scotland voted decisively to remain part of the United Kingdom. In 2024 the manifesto on which this Government won a majority of seats in Scotland and across the UK was clear on this issue, stating that Labour does not support independence or another

referendum. The people of Scotland want to see their governments working together to focus on the issues that matter to them, their families, and their communities - they need, and deserve, governments that are relentlessly focused on delivering on their priorities, of which independence is not one.

Appendix 2: What Kind of Independence?

For the overwhelming majority of countries which achieved decolonisation, independence has meant the creation of an entirely new state. There exist colonies, however, which were previously states or sovereign nations whose distinct cultural, political and constitutional identities must be restored and not extinguished by the invention of a new identity by replacing the old, finalising their destruction by colonialism.

Without realising it, Scotland's pro-independence, political establishment, and most of the Scottish independence movement, has embraced one common feature of international decolonisation, a future as a new state created at independence and with no previous identity or history as a state in its own right. At the same time, however, the evidence that Scotland is also a colony continues to be either denied or ignored.

Ironically, Scotland was a fully developed, sovereign and independent European state prior to the 'Union' with England. It had almost 900 years of development as nation and then a state behind it when it was dismantled by the English state in 1707 – close to a millennium of social, cultural, political, constitutional and legal development. It is a crowning achievement of British colonialism that today, the average Scot has little knowledge of this past or sense of this national identity.

But induced national amnesia notwithstanding, the fact that Scotland existed as a nation for three times as long and was a recognised state according to the modern definition of states for twice as long as it has been subsumed into Great Britain, is legally important. It means that it has a distinct identity, including a unique constitution, distinct constitutional principles, civil rights provisions and a body of law, to restore and reclaim.

This reclamation is known as 'constitutional resumption' a process of restoring a legal system and identity that were suppressed rather than extinguished. It normally, (though not exclusively), follows a reversion to sovereignty, meaning a finding in international law that a state was made subject to an unlawful annexation. This typically includes three key steps:

A Declaration of Continuity: for instance, asserting that the Scottish Crown and constitutional law (such as the Claim of Right 1689) remain the underlying "*grundnorm*" (fundamental law) of the territory, despite the period of UK administration.

Repudiation of Ultra Vires Acts: Viewing laws or treaties passed by the "incorporating" parliament as ultra vires (beyond its legal power) insofar as they affected Scotland without a valid constitutional basis.

Institutional Reclamation: The immediate re-assertion of the domestic court system and political institutions as the sole sources of authority.

Unlike the vague, emotive imaginings which are generally invoked as independence (along with its undoubted and much more specific benefits), constitutional resumption' is a clear and distinct vision of independence and one based on an unarguable rationale. It also provides a clear and distinct and well-founded identity for a liberated Scottish state.

This is not merely a 'desirable option'. A clear sense of identity drives demand for independence. Without the first, the second does not happen. The stronger the sense of a British, (this means English), identity and the weaker the sense of a distinct Scots identity, the further is Scotland from independence

.

Appendix 3: **Conclusions of the Report for Quick Reference**

The report conclusions (by majority decision), are as follows:

102. The Committee notes the broad consensus expressed by witnesses and by its advisers as to the current legal position in relation to any future independence referendum:

That international law confers no legal right for Scotland unilaterally to secede from the United Kingdom nor unilaterally to hold a referendum on the question of Scottish independence;

Therefore, that the question of Scottish independence must be answered in accordance with the United Kingdom's constitutional arrangements;

That the multi-national character of the United Kingdom's constitution is reflected in the Acts of Union that created a new state, Great Britain, while preserving distinct Scottish national institutions in law, education, local government and religion;

That while the Scottish constitutional tradition of the sovereignty of the people is widely accepted, the UK's constitutional arrangements vest legal sovereignty (i.e. the highest law-making authority) in the UK Parliament;

Therefore, the primary route for Scotland to become independent is an Act of (the UK) Parliament providing directly for Scottish independence or enabling the Scottish Parliament to declare independence;

That this is so notwithstanding that the Acts of Union make no provision for their dissolution and declare that the union between Scotland and England is to last "forever", nor the common perception that a voluntary Union entered into by two parties could reasonably and commonly be understood to imply a process for its dissolution;

That the Scotland Act 1998 reserves both "the union of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom" to the United Kingdom Parliament and makes the Acts of Union subject to that Act;

That the Supreme Court has determined that legislation authorising a referendum on Scottish independence would "relate to" these reserved matters and therefore would be outside of the Scottish Parliament's legislative competence;

Therefore, that in order for the Scottish Parliament to legislate for an independence referendum this would require a transfer of legislative competence either by a section 30 order or by primary legislation made by the UK Parliament;

That the 2014 referendum was legislated for by the Scottish Parliament on the basis of an agreement between the Scottish and UK Governments and a section 30 order that was approved by both the Scottish and UK Parliaments;

That this section 30 order established a time-limited power to provide for that specific referendum and was not intended to establish a legal precedent.

103. The Committee recognises that within the context of both international law and the UK constitution, Scotland has no legal right to unilaterally secede nor to unilaterally hold a referendum on the question of independence. But of equal importance, the people of Scotland have a democratic right to determine Scotland's constitutional future. Indeed, this is central to the Scottish constitutional principle of the sovereignty of the people. It is also implicit in the findings of the Smith Commission which stated that "nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose". As Professor Renwick told us, "there is widespread agreement that the Union is voluntary and that, should the people of Scotland wish it, Scotland is entitled to independence."

104. The Committee also recognises that, where the UK Government agrees, there is a pathway for the people of Scotland to exercise their democratic right to determine Scotland's constitutional future; but that in the absence of that agreement there is no such pathway for the people of Scotland to exercise this right. Within the UK constitution this right is dependent on the agreement of Westminster. Whether or not that agreement would be forthcoming is essentially a political decision and therefore theoretically dependent on the levels of political support as expressed in a variety of ways. For example, through elections, parliamentary votes and public debate. Unlike the position in Northern Ireland, there is no legal mechanism by which a Scottish independence referendum can be triggered if that is what the people of Scotland so choose.

105. Within the United Kingdom's constitutional arrangements, formal democratic mandates have historically been established through elections and legislative processes. It is problematic that no established mechanism exists for ensuring that, in appropriate circumstances, the wishes of the people of Scotland can be expressed, and as we heard from Professor Renwick, this can be said to represent a democratic "disjuncture" whereby the "democratic mechanism may not work. As he also points out, "it is the UK electorate that chooses those with the power to trigger a referendum, whereas the electorate whose wishes are to be respected is that of Scotland."

106. The Committee's view is that this creates a democratic anomaly.

107. The Committee recommends, therefore, that steps should be taken to address this democratic anomaly. This should include the agreement, regardless of the UK's political priorities, of a trigger mechanism which would allow the people of Scotland to exercise their democratic right to determine Scotland's constitutional future if they so wish.

108. During its inquiry the Committee considered a range of statutory and non- statutory options from comparative constitutional practice, these included:

An amendment to the Scotland Act that would give to the Scottish Parliament powers to legislate directly for a referendum if certain criteria are met (such as the referendum provisions in St Kitts and Nevis or in Liechtenstein) or that confers such a power more broadly (such as in the Turks and Caicos Islands);

An amendment to the Scotland Act that would place a duty and/or confer a discretionary power to hold a referendum on the UK Government (or to transfer such a power to the Scottish Parliament) if certain criteria are met (such as the referendum provisions contained in the Northern Ireland Act or in the constitution of Ethiopia);

Binding political agreement between the Scottish and UK Governments as to what measures - votes in devolved and/or UK elections; votes in the devolved legislature; quantitative and qualitative opinion polls; other forms of civic engagement such as citizens' assemblies – should determine the clear will of the people of Scotland to be asked and to answer the question of Scottish independence.

109. The Committee believes that the Scottish Government and the UK Government should negotiate a clear pathway to exercising Scotland's democratic right to determine its constitutional future as a matter of urgency. This should include consideration of the statutory and non-statutory options discussed in this report.

Appendix 4: Scotland's True Constitutional Status

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Scotland's Constitutional Status Revealed as Legal Fiction: Experts Confirm Basis for UN Decolonisation | Pressat



Scotland's Constitutional Status Revealed as Legal Fiction: Experts Confirm Basis for UN Decolonisation

News provided by **SalvoScot Ltd.** on Sunday 1st Jun 2025

DUNFERMLINE, SCOTLAND – A distinguished panel of legal experts and scholars gathered at the landmark “Next Steps for Scottish Sovereignty” conference in Dunfermline (16–18 May 2025), unveiling significant constitutional findings: the historical union of 1707 between Scotland and England, forming the legal foundation of the United Kingdom, is effectively inoperative. This revelation provides compelling legal grounds for Scotland’s international recognition as a Non-Self-Governing Territory (NSGT) – in other words, a colony – under the United Nations decolonisation framework.

The experts confirmed Scotland clearly meets all UN criteria for Non-Self-Governing Territories.

The panel—comprising Sharof Azizov, Executive Director of the Geneva-based human rights NGO Justice pour Tous International; Professor Robert Black KC FRSE, Emeritus Professor of Scots Law at Edinburgh University; Professor Alf Baird, scholar and author specialising in colonial studies; Craig Murray, former British diplomat and ambassador; and Sara Salyers, Director of the civil society organisation Salvo—presented rigorous legal arguments and historical documentation demonstrating that the constitutional arrangement underpinning the United Kingdom may never have been lawfully established.

Core Findings Presented:

The panel concluded that:

- The 1707 Treaty of Union and its ratifying Acts were never effectively implemented; Scotland did not become a partner within a new, unified British state; rather, it was annexed into an unchanged English constitutional framework, concealed by the symbolic renaming of England as the “Kingdom of Great Britain.”
- Consequently, Scotland was territorially subsumed, its sovereignty extinguished, and its institutions dissolved or subordinated. This has led to enduring consequences, including cultural suppression, economic underdevelopment, demographic distortion, and constitutional subordination.
- The ‘union’ between Scotland and England is a legal fiction.

Professor Robert Black KC FRSE, renowned for his pivotal role in the Lockerbie trial, made a groundbreaking statement challenging established legal narratives:

“No conscientious and impartial lawyer reviewing the events surrounding the 1707 arrangements could reasonably conclude that Scotland and England created a new, united sovereign state. The objective evidence indicates that Scotland ceased to exist as a sovereign state in international law and was annexed into an extant England, merely cosmetically renamed. Scotland’s contemporary status, therefore, is not that of a partner in a union, but rather a territory absorbed and governed externally—subject to exploitation by the larger power for its own purposes.”

Sara Salyers, Director of Salvo, clarified the legal implications:

“Negotiating withdrawal from a treaty and union that never legally existed is impossible. It is not Scotland that must withdraw—it is England, as the administering power, that must withdraw from Scotland. This crucial distinction highlights that the only viable legal pathway to Scottish independence is through a formal decolonisation process supervised by the international community.”

Professor Alf Baird, referencing extensive research documented in his book “Down Hauls,” provided compelling evidence of Scotland’s colonial condition through persistent indicators including economic subjugation, cultural marginalisation, demographic engineering, and psychological suppression.

Published By



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"The forensic evidence overwhelmingly supports Scotland's classification not as a willing partner, but as a colonised nation - precisely matching the United Nations' established definitions and criteria for Non-Self-Governing Territories."

Craig Murray, former British diplomat and ambassador, reinforced the case by highlighting Scotland's distinct international identity and diplomatic history, underscoring the legitimacy of its claims under international law. Drawing from extensive personal diplomatic experience, Mr. Murray affirmed that Scotland's quest for decolonisation aligns entirely with established international legal precedents and practices. He called upon the international community to acknowledge Scotland's right to self-determination, emphasising that recognition of its colonial status is not only legally justified but morally imperative, ensuring Scotland's voice is heard clearly at the United Nations.

Sharof Azizov, Executive Director of Justice pour Tous Internationale, outlined the legal criteria and procedural steps currently pursued through the UN Special Committee on Decolonization (C-24):

"Decolonisation is not an act of protest - it is an act of justice. It affirms that no people shall be denied the right to determine their political status or pursue their economic, social, and cultural development free from external domination. Scotland has waited long enough. It is time to follow the legal path to freedom."

Legal Basis Under International Law:

The experts confirmed Scotland meets all conditions established by UN General Assembly Resolutions 1514 (XV) and 1541 (XV), clearly outlining the right to self-determination and criteria for Non-Self-Governing Territories:

- Geographic distinctness from the administering power (England);
- Cultural and linguistic uniqueness, including the indigenous Scots and Gaelic languages;
- Absence of full self-government, evidenced by Scotland's lack of sovereign control over foreign policy, defence, and monetary affairs.

These facts conclusively establish Scotland's position not as a voluntary partner in a union, but as a territory administered externally, warranting formal recognition and protection under international law. The United Kingdom, as the administering power, has clear obligations under the UN Charter - obligations it has historically neglected.

Justice pour Tous Internationale, along with Liberation Scotland, Salvo, and international allies, will now advocate vigorously for Scotland's formal classification as a Non-Self-Governing Territory within the United Nations framework, ensuring the UK government adheres to its international obligations and supports an internationally supervised decolonisation process.

Press release distributed by Pressat on behalf of SalvoScot Ltd., on Sunday 1 June, 2025. For more information subscribe (<https://pressat.co.uk/subscribe/>) and follow (<https://pressat.co.uk/>)

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Appendix 5: **Applicable Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)**

Drafted by the International Law Commission (ILC) in 2001 and adopted by the UN General Assembly, these are widely recognized as the authoritative statement of customary international law on state responsibility.

Whether Scotland is a "colony" (a Non-Self-Governing Territory) so that the right to external self-determination applies, is a question governed by international law, specifically the UN Charter, General Assembly Resolutions 1514 and 1541, and customary international law.

If Scotland is an English dependency and not a partner in the UK as the 'UK' continues to claim, then England is responsible for a 'wrongful act of a state' of such gravity that it imposes an erga omnes obligation on all states to remedy that wrongdoing.

The question has not yet been tested under international law. It cannot be decided and should not be attempted by a domestic court. The ruling of the Supreme Court, however, on the right of self-determination for Scotland, (i.e. that Scotland is not an English colony), has no bearing on the question.

Article 3 of ARSIWA states:

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Article 4: Conduct of organs of a State

*1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, **judicial** or any other functions...*

The UK Supreme Court's judgment is an act of a State organ under Article 4 of ARSIWA. Its pronouncement that "Scotland is not a colony" is a characterisation under *internal* (UK) law. Article 3 establishes that, for the purposes of international responsibility and the determination of rights under international law, a domestic characterisation is legally irrelevant.

The International Court of Justice upheld this legal principle when it ruled, in its 2019 Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, that the United Kingdom could not define its own decolonisation obligations through domestic legal instruments or rely on internal characterisations of sovereignty to extinguish the international rights of a people whose self-determination had not been freely and genuinely exercised; a principle whose

application to Scotland's condition is direct and whose force is not diminished by the fact that the UK's domestic courts have declined to apply it.

The UK cannot, therefore, hide behind its domestic judiciary to replace international scrutiny with an internal ruling or avoid responsibility for violating the right to self-determination.

Furthermore, if the UK Supreme Court's judgment is part of a broader pattern of conduct by the UK that denies a people their right to self-determination - a peremptory norm (*jus cogens*) - then the judgment is attributable to the UK as a "State act." The broader pattern is indisputable confirming that the UK is internationally responsible for the act of its Supreme Court whose ruling has the effect of obstructing the exercise of self-determination by the Scottish people. It thus constitutes a breach of its international obligations (under UN Charter Art. 73 and customary international law).

Time does not normalise an ongoing, wrongful act of a state. Article 17 of the ARSIWA (Direction and control of another State) discusses older dependency relationships like protectorates, noting that the "protecting State" was held responsible internationally because it controlled the territory's international relations. The commentary clarifies:

...the principal concern in the arbitration was to ensure that... international responsibility for wrongful acts committed by the protected State was not erased to the detriment of third States injured by the wrongful conduct.

This principle applies *a fortiori* to a "voluntary partnership" narrative. If Scotland meets the international legal criteria of a Non-Self-Governing Territory (distinct national identity, external control over foreign policy, defence, and sovereignty), and if no legal agreement exists for the transfer of that sovereignty to a foreign state, then the UK cannot unilaterally erase its international responsibility by having its domestic courts label the arrangement a "partnership."

Other relevant ARSIWA articles:

Article 14 - Extension in time of the breach of an international obligation

1. 2. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation

Article 30 - Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31 - Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Article 32 - Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.