

EXPERT OPINION MEMORANDUM: SCOTLAND AND NEW CALEDONIA

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Subject: Comparative Legal Assessment: Scotland and New Caledonia under the United Nations Decolonization Framework

I. Executive Summary

This memorandum provides a comparative legal and constitutional analysis of the situations of Scotland and New Caledonia, with a view to establishing Scotland's eligibility for inclusion on the United Nations list of Non-Self-Governing Territories (NSGTs), pursuant to the decolonization framework enshrined in the UN Charter and General Assembly Resolutions 1514 (XV) and 1541 (XV). It draws on the substantive precedents and institutional practices of the Special Committee on Decolonization (C-24), including its sustained engagement with New Caledonia over several decades.

New Caledonia was re-inscribed on the list of NSGTs in 1986, following UN recognition that its integration into the French Republic lacked the necessary attributes of self-determination. Despite the internal autonomy provided by the Nouméa Accord (1998) and subsequent referenda on independence (2018, 2020, and 2021), New Caledonia remains under French sovereignty and subject to the retention of key sovereign powers by the administering Power. These include control over defense, foreign affairs, currency, immigration, and constitutional interpretation.

Scotland, though often portrayed as a devolved nation within the United Kingdom, displays strikingly similar characteristics of political dependency and constitutional subordination. It lacks sovereign status, cannot conduct international relations, and remains legally bound by the doctrine of Parliamentary supremacy, which permits the United

Kingdom Government to override or rescind Scottish self-government unilaterally. The UK Supreme Court's ruling in 2022, which confirmed that the Scottish Parliament does not have the authority to hold an independence referendum without Westminster's consent, epitomizes the absence of a viable legal route to self-determination.

Both territories illustrate the structural conditions identified by General Assembly Resolution 1541 (XV), Principle IX, under which internal autonomy or delegated governance does not disqualify a territory from being considered non-self-governing when the essential powers of sovereignty remain external and where the will of the people has not been freely and authentically expressed through internationally supervised processes.

This memorandum concludes that Scotland's legal and political status mirrors that of New Caledonia in all material respects. Accordingly, it recommends that the United Nations apply a consistent legal standard and consider Scotland for inclusion in the list of Non-Self-Governing Territories. Doing so would bring Scotland into alignment with established decolonization procedures and allow its people to pursue a binding process of self-determination under UN auspices.

II. Legal Criteria under UN General Assembly Resolutions 1514 and 1541

The legal framework governing the right to self-determination and the identification of territories entitled to decolonization is anchored in two foundational resolutions of the United Nations General Assembly: Resolution 1514 (XV), adopted on 14 December 1960, and Resolution 1541 (XV), adopted on 15 December 1960.

1. Resolution 1514 (XV) – Declaration on the Granting of Independence to Colonial Countries and Peoples

This resolution, often referred to as the "Magna Carta of Decolonization", unequivocally affirms that:

“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

It declares that “subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” and is contrary to the Charter of the United Nations. It mandates the speedy and unconditional end to colonialism in all its forms and manifestations, regardless of the constitutional disguise under which it may be administered.

The resolution further asserts that any attempt to dismember or partially disrupt the national unity and territorial integrity of a country or nation already free is incompatible

with the purposes of the Charter. However, this provision does not apply to peoples who have not yet achieved a full measure of self-government, for whom the right to independence or other freely chosen political status remains operative.

2. Resolution 1541 (XV) – Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit Information Under Article 73(e) of the Charter

Resolution 1541 provides the technical criteria for determining whether a territory is deemed non-self-governing, and therefore subject to the obligations of the administering Power to report to the United Nations under Article 73(e) of the UN Charter. In particular, Principle VI defines the three legitimate paths by which a territory may be said to have achieved a full measure of self-government:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State, following an informed and democratic act of self-determination;
- (c) Integration with an independent State, likewise on the basis of informed popular consent through democratic processes and international scrutiny.

Importantly, Principle IX stipulates that where a territory has not attained one of these three outcomes in a manner consistent with the free and genuine expression of the will of the people, it remains a Non-Self-Governing Territory, regardless of its degree of internal autonomy.

3. Application to Scotland and New Caledonia

Both Scotland and New Caledonia fall outside the scope of the three modalities of self-government described in Resolution 1541 (XV):

- Scotland has neither emerged as a sovereign independent state nor been integrated into or associated with the United Kingdom through a demonstrably free act of self-determination. The 1707 Treaty of Union was concluded under conditions of political coercion, bribery, and the threat of military force, with no popular referendum or democratic mechanism. Following its ratification, the treaty's primary provisions—namely, the creation of a new, joint kingdom (Crown) and Parliament—were discarded in favour of English annexation and the administration of Scotland under English constitutional law. No part of the union described by the Treaty of Union was ever fully formed; none of the agreed conditions or terms of the treaty were honoured; and no element of the treaty remains operative today beyond the symbolic use of “Great Britain” in the name of the United Kingdom of Great Britain and Northern Ireland. Since 1707, the Scottish people have not been

afforded a legally binding, internationally recognised opportunity to determine their political status. The 2014 independence referendum was consultative in nature and conditional upon the approval of the UK Parliament. No binding act of self-determination has been permitted since.

- New Caledonia remains under the sovereignty of France and has not achieved independence. Although the Nouméa Accord established a framework for phased autonomy and facilitated three referenda between 2018 and 2021, the territory continues to be listed as a Non-Self-Governing Territory (NSGT) under the supervision of the United Nations. Despite significant internal autonomy, France retains control over key sovereign functions, including defence, currency, foreign affairs, and the judiciary. This confirms that autonomy alone does not constitute the full measure of self-government required under Resolution 1541.

Accordingly, both territories fall within the scope of Principle IX of Resolution 1541: they have not exercised the right to self-determination through any of the required modalities and therefore remain subject to the United Nations' decolonisation mandate.

4. Contemporary Interpretations by the United Nations

The General Assembly and the Special Committee on Decolonization have consistently held that:

- Internal self-government or autonomous status within a metropolitan state does not preclude a territory from being considered non-self-governing.
- Democratic processes lacking legal force or international oversight do not satisfy the threshold for determining the genuine will of the people under international law.
- Absence of consent from the administering Power (e.g., France in the case of French Polynesia) is not a bar to re-inscription or recognition, if the General Assembly finds that the conditions of dependency persist. For example, Resolution 67/265 (17 May 2013) was adopted by a recorded vote of 116 in favour, 6 against, and 51 abstentions – demonstrating the Assembly's authority to re-inscribe a territory without the administering Power's consent.

These principles, cumulatively applied, support the proposition that Scotland, like New Caledonia, remains a candidate for recognition as a Non-Self-Governing Territory and merits evaluation under the UN decolonization framework.

III. Comparative Constitutional and Political Analysis

This section evaluates the respective constitutional structures, political arrangements, and legal status of Scotland and New Caledonia to determine their comparability under international law. Although administered by two distinct metropolitan powers—the United Kingdom and France, respectively—both territories demonstrate substantive parallels in the limitations placed on their internal self-governance and their lack of full political autonomy in violation of United Nations General Assembly Resolutions 1514 (XV) and 1541 (XV).

1. Constitutional Status and Governance Structure

New Caledonia remains an overseas collectivity of the French Republic. Although it has acquired a unique degree of autonomy under the Nouméa Accord (1998)—including its own Congress, Government, and Customary Senate—France retains sovereign control over defense, foreign affairs, justice, public order, and currency. New Caledonia has no international legal personality independent of France, and the French Constitutional Council has held that it remains, in legal terms, an inseparable part of the French Republic.

Scotland, while possessing a devolved government under the Scotland Act 1998, also remains constitutionally subordinate to the UK Parliament at Westminster. The devolution settlement does not confer sovereignty upon Scotland, and its legislative powers can be legally modified, revoked, or overridden by Westminster at any time. Notably, the UK Supreme Court ruled in October 2022 that the Scottish Parliament does not have the competence to unilaterally legislate for a referendum on independence, underscoring the lack of constitutional self-determination.

2. Political Decision-Making and Subordination

In New Caledonia, although consultative referenda on independence were held in 2018, 2020, and 2021, the final determination of the territory's political status remains under the authority of the French National Assembly. Moreover, France's continued control over natural resource policy, immigration regulation, and electoral eligibility has led to accusations of demographic manipulation and the marginalisation of the Indigenous Kanak people.

In Scotland, despite clear democratic mandates expressed through the Scottish Parliament for holding a second independence referendum—most notably in the aftermath of the 2016 Brexit referendum, in which 62% of Scottish voters chose to remain in the European Union—the UK Government has consistently refused to grant a Section 30 order or otherwise authorize a binding plebiscite. This unilateral denial of a democratic mechanism for self-determination mirrors the dependency dynamic observed in New

Caledonia, where referenda are permitted only within the parameters unilaterally determined by the metropolitan power.

Recent polling underscores this continued democratic demand: a Survation/Diffley poll conducted in April 2025 found that 44% of respondents would vote for Scottish independence, compared to 46% against. A separate Find Out Now/National poll from the same month showed 52% in favour and 41% opposed, while a June 2024 Ipsos MORI poll recorded 51% support versus 49% opposition.

3. Domestic Legal Incoherence and Doctrinal Control

The United Kingdom lacks a codified constitution, and its constitutional order is governed by the doctrine of parliamentary supremacy. This doctrine was developed unilaterally by the English Parliament in 1689—eighteen years prior to the Treaty of Union—and is fundamentally at odds with the Scottish constitutional tradition, which holds that sovereignty resides with the people. The application of this doctrine has overridden key conditions of the 1707 Treaty of Union, including the continued legal force of the *Claim of Right Act*, which affirms the sovereignty of the Scottish people.

Although Scotland retains a separate legal system in form, it no longer exercises constitutional sovereignty. All effective constitutional authority flows from the UK Parliament—referred to as the “British Parliament,” though it is structurally and doctrinally continuous with the pre-Union English Parliament. This dynamic negates any recognition of Scotland as a co-equal or sovereign constitutional partner within the United Kingdom.

In comparison, while the French constitutional model is more formalised, it remains similarly centralised. Despite references to “autonomous” governance, French law does not recognise the right of any territorial collectivity to secede. Consequently, even under conditions of high autonomy, the will of the people in both Scotland and New Caledonia remains ultimately subordinate to the unitary authority of the metropolitan state.

4. International Legal Status

New Caledonia has been continuously recognized by the United Nations as a Non-Self-Governing Territory under French administration since 1986, with the consent of France following the Matignon and Nouméa accords. The UN Special Committee on Decolonization (C-24) regularly reviews its status and has conducted visiting missions and received periodic reports from the French Government.

Scotland, by contrast, is not currently on the list of NSGTs. However, this absence is not dispositive. The precedent of French Polynesia, re-inscribed on the list in 2013 without the consent of France, establishes that the UN General Assembly has authority to determine whether a territory qualifies as dependent, based on legal substance rather than

formal designation. The criteria applied to New Caledonia, particularly concerning the retention of sovereign powers and the restriction of international agency, apply *mutatis mutandis* to Scotland.

IV. Substantive Parallels in Governance and Dependency

This section outlines the core material similarities between Scotland and New Caledonia in terms of governance, dependency structures, and the enduring imprint of colonial administration. While the legal instruments that formalized their respective constitutional positions differ, both territories exhibit essential features of dependency as articulated in General Assembly Resolutions 1514 (XV) and 1541 (XV). These features include a lack of sovereign control over critical functions, economic reliance on the administering Power, suppression of national identity, and limitations on autonomous participation in international affairs.

1. Sovereign Powers Retained by the Administering State

In both territories, the ultimate control over sovereign matters remains with the administering Power.

In New Caledonia, the French Government retains jurisdiction over:

- Defense and security
- Currency and monetary policy
- Foreign affairs and international representation
- Immigration and border control
- Judicial supervision through the French Constitutional Council and Conseil d'État

These constraints are replicated in Scotland, where the United Kingdom Parliament retains final authority over:

- International relations, including the ability to enter into or withdraw from treaties (e.g. Brexit, which occurred despite Scotland's rejection in the 2016 referendum)
- National security, intelligence, and defense policy
- Currency (GBP) and central banking (Bank of England)
- Constitutional and electoral matters, including the decision to permit or block referenda

These retained powers reflect the defining asymmetry in legal and political authority, which is characteristic of colonial governance and wholly incompatible with the concept of full self-government under UN doctrine.

2. Economic Dependency and Unequal Resource Control

Both territories experience significant economic subordination, whereby wealth extraction or macroeconomic policy is controlled externally, limiting the ability to chart an independent development path.

In New Caledonia, France exercises dominant influence over the exploitation of natural resources, particularly in the nickel mining industry, which constitutes a substantial share of the territory's GDP. The strategic regulation of this sector remains under Paris, including international trade agreements and environmental oversight.

Similarly, in Scotland, the UK Government controls:

- North Sea oil and gas reserves, generating billions annually, with limited fiscal return to the Scottish Government.
- Macro-fiscal policy, including borrowing powers and monetary regulation.
- International trade policy, including decisions affecting sectors like whisky exports, fisheries, and renewables.

The inability to exert independent control over these vital resources results in fiscal asymmetries and a dependency cycle, exacerbated by Scotland's lack of borrowing powers and direct access to sovereign capital markets.

3. Cultural Assimilation and Linguistic Marginalization

Both Scotland and New Caledonia exhibit enduring patterns of cultural suppression and linguistic marginalization rooted in their histories of colonial subjugation. These patterns are not merely incidental but form an essential component of the systemic denial of self-determination and national identity, as recognized under international law and postcolonial theory.

In New Caledonia, the Indigenous Kanak population has historically been subjected to cultural repression, particularly under French colonial administration. The French language dominates education, government, and media, while Kanak languages and customs, though nominally protected under recent reforms, remain marginalized. Structural underrepresentation of Kanak peoples in national decision-making and public institutions persists. Despite the recognition of customary institutions and certain cultural rights, the dominant legal and educational systems reflect continued Francophone centralization and cultural dominance.

In Scotland, the process of cultural assimilation has historically affected not only the Gaelic language, predominantly spoken in the Highlands and Islands, but also the Scots language, spoken widely across Lowland Scotland and the north-east. British state policy during and after the Highland Clearances in the 18th and 19th centuries aggressively dismantled Gaelic-speaking communities, educational systems, and cultural expression. Although Gaelic receives limited support today, its use remains peripheral to public life and state institutions. Meanwhile, the Scots language, still spoken by a significant portion of the population, is excluded from formal education and state recognition, despite its historical role in shaping Scottish national consciousness. The UK Government has systematically refused to provide educational instruction in Scots or to recognize it across administrative, legal, and media platforms.

This dual marginalization—of both Gaelic and Scots—undermines Scotland’s ability to maintain and transmit its national identity, particularly as public broadcasting, curriculum content, and cultural funding are centralized and controlled in London. The failure to afford either indigenous language genuine institutional support or equal status constitutes a breach of cultural rights under international law, including under Article 1 of the International Covenant on Economic, Social and Cultural Rights, which protects the right of peoples to freely pursue their cultural development.

In light of postcolonial legal theory, linguistic repression is among the most salient markers of colonial domination, as it not only erodes national identity but also obstructs the formation of political consciousness and civic agency. The patterns seen in Scotland and New Caledonia are thus indicative of structural dependency and a denial of the right to cultural self-determination as protected under UN General Assembly Resolutions 1514 (XV) and 1541 (XV).

4. Lack of International Legal Personality and Representation

Neither Scotland nor New Caledonia possesses the capacity to act as a sovereign subject under international law.

- New Caledonia cannot sign treaties, establish embassies, or participate independently in international organizations without French authorization. While it has been permitted limited regional representation (e.g., in the Pacific region), all formal international acts are filtered through Paris.
- Scotland faces identical restrictions. It is not recognized as a state or a separate legal entity in international law, cannot ratify or oppose treaties independently, and is not permitted to negotiate bilateral or multilateral agreements. Its interests abroad are represented exclusively by UK embassies.

This denial of international legal agency—despite the existence of distinct legal, cultural, and political systems—constitutes one of the most salient markers of dependency under the UN’s decolonization criteria.

V. Legal Conclusion and Recommendation

In view of the foregoing analysis, it is the considered opinion of Justice pour Tous Internationale (JPTi) that Scotland satisfies the substantive and procedural conditions for recognition as a Non-Self-Governing Territory (NSGT) under the criteria set forth in General Assembly Resolutions 1514 (XV) and 1541 (XV), as interpreted by the United Nations Special Committee on Decolonization (C-24) and the General Assembly in analogous cases.

The comparison with New Caledonia reveals a pattern of constitutional subordination, lack of international legal personality, economic dependency, and suppression of cultural and political expression that are functionally identical in scope and effect. Despite distinct historical trajectories, both territories remain under the ultimate authority of a metropolitan power and are denied the capacity to determine their political future through binding acts of self-determination.

The case of New Caledonia affirms the principle that internal autonomy or limited devolution does not equate to the attainment of a full measure of self-government. It further establishes that inclusion on the UN list of Non-Self-Governing Territories may be warranted even where referenda are held, if the structural subordination and retention of sovereign powers by the administering State persist.

In the case of Scotland, the following conclusions are most relevant:

- The 1707 Treaty of Union did not represent a free and democratic act of self-determination by the Scottish people.
- The doctrine of Parliamentary sovereignty, as enforced in UK constitutional practice, nullifies any notion of Scotland as a co-sovereign partner.
- The repeated denial of referenda and blocking of domestic legal recourse demonstrate the exhaustion of internal mechanisms.
- Scotland's subordination in international relations, defense, currency, and trade reflects the retention of key sovereign functions by the United Kingdom Government.
- Scotland's linguistic and cultural marginalization, coupled with its economic dependency and fiscal asymmetry, further illustrate the criteria of "colonial-type" subjugation as defined by the United Nations.

Accordingly, JPTi submits that Scotland should be reviewed by the Special Committee on Decolonization and that the General Assembly should recognize it as a Non-

Self-Governing Territory eligible for decolonization procedures under the supervision of the United Nations.

JPTi further recommends the following immediate steps:

1. That Scotland be included on the agenda of the C-24's Substantive Session in June 2025;
2. That expert submissions such as the present memorandum be accepted into the Committee's record;
3. That the Committee recommend the preparation of a formal UN working paper on Scotland by the Secretariat;
4. That Member States sympathetic to the right of peoples to self-determination consider sponsoring a draft resolution on Scotland's inclusion in the list of NSGTs, consistent with the General Assembly's practice in the case of French Polynesia (Resolution 67/265).

The principles of the United Nations Charter demand that no people be left behind in the global mission to eradicate colonialism. The structural and enduring nature of Scotland's dependency, when measured against established precedents, compels the international community to act with urgency and principle.