



## **After Exhaustion of the Democratic and Legal Domestic Routes, What Route to Self-determination for the Scottish People?**

### **Section 1**

**Since the first days of the derogation of the Treaty and conditions of Union in 1708, when English treason law was unlawfully imposed on Scotland, and 1713, when four 'proxy votes' defeated the parliamentary motion to annul the union, all democratic and legal domestic routes to self-determination for Scotland have failed.**

**They were and are always bound to fail where one nation has been annexed for the advantage of another. Decolonization via UN C24 is now Scotland's only realistic route to self-determination.**

#### **Rights of a Colonized People**

The upcoming Liberation Scotland petition for the listing of Scotland among the colonized territories requiring decolonization now represents the only available option for the people of Scotland to achieve self-determination.

#### **Misrepresentation for the Purpose of Suppressing and Withholding the Rights of a Colonized Nation**

Since the first wave of decolonization which followed the establishment of the United Nations Charter, successive UK governments have consistently committed to the defence of a fraudulent position in relation to Scotland, publishing that defence and continuing to assert it today through ministerial and prime ministerial statements that,

“Scotland is a nation and voluntarily entered in union with England as a partner and not as a dependency.”<sup>1</sup>

This statement, accepted internationally as well as by many in the Scottish legal, political and academic establishments, is false. It is a representation originally crafted to deter international inquiry into Scotland’s status as an English Crown dependency, a nation annexed and under English administration to this day, despite being signatory to a ‘partnership’ agreement, an international treaty.

That treaty, the partnership agreement which provides ‘proof’ of a voluntary union, is inoperative having been derogated in 1707.<sup>2</sup>

### **Contradiction and Control – Scotland the ‘Voluntary Colony’**

The most current argument, as published by HM Government in 2012<sup>3</sup>, represents Scotland thus:

- I. Scotland was extinguished as a state in 1707 and therefore no ‘Scottish party’ to the Treaty exists with the legal competence to withdraw from the Treaty under the principle in international law of jus cogens<sup>4</sup>:

‘If a new peremptory norm of general international law (jus cogens) emerges, any existing treaty which conflicts with that norm becomes void and terminates. The parties to such a treaty are released from any obligation further to perform the treaty.’<sup>5</sup>

- II. Scotland has neither agency nor rights either as a territory or a nation.
- III. Scotland’s people have none of the rights defined in international law as applying to distinct peoples.
- IV. Scotland as a voluntary partner has no partnership agreement that sounds in law and never, or only briefly, has had.

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<sup>1</sup> UK Royal Commission on Scottish Affairs 1952–1954, Ch1, 13(ii), p.12

<sup>2</sup> See ‘Scotland - A Dependency by Definition’, attached

<sup>3</sup> Crawford, James and Boyle, Alan. “Annex A Opinion: Referendum on the Independence of Scotland – International Law Aspects.” *Scotland Analysis: Devolution and the Implications of Scottish Independence*, UK Government, February 2013, Cm 8554. Cl.37, p. 75

<sup>4</sup> International Law Commission Report 2019, Chapter V, Peremptory norms of general international law (jus cogens) <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>

<sup>5</sup> Ibid., Conclusion 10.2 p144

This document, (intended to establish England's right to assume the identity of the 'continuator state' in the unlikely event of Scottish independence), demonstrates beyond doubt that UK governments and their devolved Scottish administrations:

1. deny the people of our nation their inalienable right to self-determination.
2. prevent the proper international examination of our colonial status.
3. give an erroneous representation of Scotland's true status which has become accepted internationally through custom and over time and which prevents consideration of Scotland as a Non-Self-Governing Territory. This relegates Scotland to the status of a former state voluntarily absorbed as the very junior partner into the larger composite state known as the United Kingdom, but which, in reality, is and always has been simply England.
4. At the same time that this fiction identifies Scotland as a partner in the state known as the UK, making the nation an apparent 'accomplice' in the crimes of the British/English Empire, the reality for Scotland is an English administration in which the Scottish people had no say whatever for almost three centuries and have no real and constructive say at present.

The good will of the English state, known as the United Kingdom, determines the rights of a people which it represents as beneficiaries in a partnership while it has derogated the partnership agreement, (treaty) and simultaneously denies both any of the terms and conditions of that partnership agreement and the rights of a colonized nation to the exercise of self-determination. This is a democratic prison.

The following illustrate some of Scotland's recent struggles for its political rights and for economic, social and cultural development and which have been undermined, opposed and blocked by the governments of the United Kingdom.

### **The Scotland UN Committee (1979 – 2007)**

A submission by the Scotland UN Committee (SUNC) was made to the UN Secretariat in New York in 1979, together with most of the third of a million signatures collected in a petition that authorised SUNC to make diplomatic representations on Scotland's behalf on the issue of self-determination. A delegation from SUNC visited the United Nations Commission on Human Rights at UN Geneva in the autumn of 1980, when a major document was presented setting out the Scottish case for self-determination. Thereafter, the still open file in Geneva attained substantial proportions with documentation of every violation committed against Scotland in subsequent years.

In June 1980 the UK Government (PM: M. Thatcher 1979-1990) tried to obtain international approval in the Council of Europe of its assertion that there was no demand for devolution within the UK.

A petition to the UK Head of State, HM the Queen, on this matter remains unanswered to this day.

## **Scotland's Devolved Administration (1998 – to date)**

### **Failure to challenge the Scotland Act 1998**

The Scotland Act 1998 was a significant piece of UK legislation that devolved some powers to Scotland which made changes to the government of Scotland and outlined the law-making process. It defined what the devolved matters on which laws can be made and the limits of the legislative competence of the Scottish administration.

During the UK legislative process, Members of Parliament representing the people of Scotland were involved in putting forward amendments to ensure that devolved powers were appropriately defined. Outnumbered by a ratio of 10:1 by English, Welsh and N Irish, they could not prevent the exclusion of all constitutional matters, as well as matters like defence and foreign policy, from the authority of the devolved administration. The UK government applied the principle of Westminster parliamentary sovereignty, enshrining it within the Scotland Act with which it claimed to replace the Treaty and Acts of Union. (Yet it pretends to have been created by the Treaty and Acts of Union.)

The principle of English Parliamentary sovereignty ensures absolute control of Scotland by Westminster but overrides the stipulated condition of both the (inoperative) Treaty and the Union, arguably voiding both and dissolving the 'UK'. This condition is the continuation in Scotland of the Claim of Right Act, 1689 which upholds the sovereignty of the people of Scotland over their governments.

The Scotland Act and the imposition of English parliamentary sovereignty on the Scottish people illustrates the cul de sac into which the Scottish people have been driven: an appearance of democracy, a given identity as a 'partner', yet without a single agreed right or a single avenue of recourse for claiming the most basic of democratic rights and remedies.

## **Scottish Independence Referendum 2014 – Validity**

The 2014 Scottish Independence Referendum was a referendum on the constitution, and not a vote on domestic issues.

The franchise used, however, was the same as it was for the Devolution Referendum of 1997 which was mainly based on residency in Scotland. The inclusion of a wide range of people with temporary residence or very loose ties to Scotland in a vote on the future of Scotland and its constitutional arrangement with the rest of the UK did not provide a true picture of the desire for Scottish independence among the indigenous Scots and those with a proven commitment to Scotland. Such a wide franchise is acceptable for domestic affairs but not for constitutional matters as they must be reserved for Scots and those with a proven commitment to Scotland and its people as is customary in many other countries for votes on constitutional matters.

Without touching on media bias on the part of the state broadcaster and of the 100% pro-union press, owned by non-Scots, the breaching of the campaigning “purdah” period and the many voting irregularities documented during the referendum, this was clearly a ‘performative’ exercise to mask a substantive and comprehensive denial of the democratic right of the Scots to self-determination.

In simulating a democratic expression of self-determination however, the 2014 independence referendum convinced the international community of the deception, that Scotland is indeed a voluntary partner in a union, a nation ‘integrated’ into a larger state.

## **BREXIT Referendum (2016)**

In the 2016 UK referendum on membership of the European Union, 62% of the electorate in Scotland voted to remain with a 67% voter turnout. A majority of voters in all Scottish regions voted in favour of continued membership of the EU.

In holding the referendum, the UK government did not acknowledge the sovereignty of Scotland and the other UK nations. It did not ensure the final result would be based on the result in each of the UK nations rather than on the overall UK national total of votes. If the UK had indeed been a union of equal nations then a unanimous vote of all 4 nations should have been the mandate required to endorse either a “leave” or “remain” vote. England and Wales voted to leave the EU. Scotland and Northern Ireland voted remain. In an equal union the result would have been 2:2. Instead because England’s population is around 90% of the UK total, the entire country was dragged out of the EU.

In the years since, opinion polls have shown an even higher level of support for EU membership in Scotland. An August 2022 poll found the largest gap between remain and leave support so far recorded, 40 percentage points.

Scotland was removed from membership of the European Single Market and the Customs Union by the UK government against its democratic will. There is no legal avenue within the UK to challenge this denial of democracy.

### **UK Supreme Court Case (October 2022)**

The Lord Advocate of Scotland is the principal legal advisor of Scotland's devolved administration, and acting on its behalf brought a case before the UK Supreme Court rather than to Scotland's highest court, the Court of Session, seeking a decision on Scotland's constitutional future and its inalienable right to self-determination: Whether it would be possible to hold an independence referendum on the authority of Scotland's devolved parliament.

The UK Supreme Court ruled that the proposal to hold such a referendum would "be a political event with important political consequences" and that "the Scottish Parliament does not have the power to legislate for a referendum on Scottish independence". There is no legal avenue within the UK to challenge this ruling.

### **Scotland (Self-Determination) Bill**

In 2022, The Scotland (Self-Determination) Bill was introduced in the House of Commons by MP Neale Hanvey in an attempt obtain parity with Northern Ireland for Scotland of the right to self-determination. This would have been achieved by Westminster granting the Scottish Parliament the authority to legislate for an independence referendum when there was demonstrable public support and not sooner than seven years after any previous referendum, so aligning Scotland's position with Northern Ireland's provisions for border polls.

The Bill was first presented in the House of Commons on February 1, 2023, under the Ten-Minute Rule. At its second reading on January 16, 2024, MPs voted against the motion by 228 against and 48 in favour, an opposing majority of 180. The Bill was therefore 'killed', demonstrating that neither the right to self-determination under international law nor the disparity of Scotland's rights with those of Northern Ireland are in any way a consideration for an Administering Power determined to retain Scotland, its assets and resources for the benefit of the metropole.

### **The Stirling Directive (July 2023)**

The distinction between the locus of political and legal sovereignty in each of the two nations of the Union, the Parliament in England and the Community of the Realm,

that is the People, in Scotland, is secured by the ratification of the Scottish Claim of Right Act of 1689 as a binding and permanent condition of the 1707 Treaty of Union.

The Stirling Directive, organised by Salvo, the campaign arm of Liberation Scotland, petitioned the devolved Scottish Government which was elected by the people of Scotland on no less than 7 occasions on the mandate of holding an independence referendum to:-

- Remember that while the Scottish Parliament and Government (Administration) are answerable to Westminster under the Scotland Act, Westminster itself is answerable to the people of Scotland who remain sovereign over their governments.
- Inform the UK government, therefore, that its asserted sovereignty in Scotland is unlawful under the conditions of the Union, and all supporting interpretations, rulings and statutes are null and void.
- Honour the clear expression of the will of the Scottish people who remain the sovereign authority of Scotland, under the terms of the Union, by announcing a referendum on Scottish Independence or taking immediate steps for a plebiscitary election on independence with a National Convention on the basis their governments under the pre-condition of the Treaty and Union.

The Scottish Government failed to respond to the directive or to honour the law of Scotland and the democratic settlement agreed as condition of the union.

## **Conclusion**

All attempts by the people of Scotland to obtain redress, at a UK domestic level, for the denial of the rights of self-determination, have failed. The conclusion that Scotland, and the rest of the world, is entitled to draw is that the UK is not a voluntary union of different nations as has been represented to the world, but that Scotland is held in the UK union not by consent but by force of UK/English law and no matter the wishes of the Scottish people.

Scotland will continue to be held without consent unless its condition is recognised by the international community for what it is: the condition of a dependency, a Non-Self-Governing Territory subject to the domination of a foreign sovereignty and entitled to the restoration of the sovereign and human rights of the people of Scotland under international law. This is now the only remaining avenue which can lead to justice and self-determination for the Scottish people.

