

DEVOLUTION IN THE UNITED KINGDOM: THE EFFECTIVENESS OF SCOTTISH NON-CENTRAL GOVERNMENT REPRESENTATION IN INTERNATIONAL AFFAIRS

DEVOLUTION IN THE UNITED KINGDOM: THE EFFECTIVENESS OF SCOTTISH NON-CENTRAL GOVERNMENT REPRESENTATION IN INTERNATIONAL AFFAIRS

By

JAMES ALEXANDER IRVINE, M.A.

A thesis

Submitted to the School of Graduate Studies

in Partial Fulfilment of the Requirements

for the Degree

Masters of Arts

McMaster University

© Copyright by James Alexander Irvine, August 2000

MASTER OF ARTS (2000)
(Political Science)

McMaster University
Hamilton, Ontario

TITLE: Devolution in the United Kingdom: The Effectiveness of Scottish Non-Central
Government Representation in International Affairs

AUTHOR: James Alexander Irvine, M.A. (St. Andrews University)

SUPERVISOR: Professor Kim Richard Nossal

NUMBER OF PAGES: vi, 142

ABSTRACT

This thesis explores how Scottish devolution has affected the representation of Scottish interests in the UK foreign policy process and in international affairs. The literature on non-central governments in foreign policy is used to indicate the specific motivations, methods and conditions which contribute to effective representation of NCGs' interests in external affairs. This is complemented by the literature on European integration which describes the most prominent international arena for Scottish international activity and the conditions conducive to NCG activity in it. The argument of the thesis is that the institutional arrangements for Scottish activity in the UK foreign policy and international affairs, while defining a clear role for Scotland, do not fulfil the conditions which the literature suggests will result in the effective representation of Scottish interests. This will be demonstrated through an exploration of the institutional arrangements for Scottish international activity - most clearly defined by the *Memorandum of Understanding and supplementary agreements* - and the likely impact of these arrangements on the conduct of Scottish representation in the UK foreign policy process and in international affairs.

ACKNOWLEDGEMENTS

I am greatly indebted to a number of people who assisted me throughout the research and writing stages of this thesis. Indeed the list is too lengthy and the potential to overlook people is too great, to name them specifically. However, to all who have assisted me in providing information, in suggesting changes, in editing and in general sanity providing activities, thank-you. In particular I would like to thank the faculty, staff and graduate students in the political science department at McMaster who create a community that has been a pleasure to work and learn in.

Several people do require specific mention. Dr. Kim Richard Nossal, has provided considerable assistance at all stages of both my course and thesis work. I have learned a lot, and enjoyed it. I owe him considerable gratitude for preparing me for the next stage of my career. I would also like to thank Dr. Robert O'Brien and Dr. Tony Porter, the other members of my thesis committee.

In addition to these people I am also greatly indebted to my family for their considerable support in this process. Amongst this group of people is the individual to whom I have the greatest debts to pay: my wife Sarah. From trans-Atlantic moves to missed weekends and late night stresses she has give up much and provided unimaginable amounts of support, without which I would not have been able to begin, let alone complete my work. Thank-you does not say enough.

TABLE OF CONTENTS

TITLE PAGE	i
DESCRIPTIVE NOTE	ii
ABSTRACT	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
ABBREVIATIONS	vi
Chapters	
1. Scottish Devolution: A New Non-Central Government in the European and International System	1
2. Non-Central Government Activity in External Affairs	9
3. Pre-Devolution Scotland: Limits of Representation	36
4. The Devolution Settlement: Implications for Scottish Government Representation in European and International Affairs	71
5. Scottish Devolution: Motivations, Methods and Potential Outcomes of Scottish NCG Activities in International Affairs	107
BIBLIOGRAPHY	134

ABBREVIATIONS

CoR	Committee of the Regions
EC	European Community
EEC	European Economic Community
EMU	European Monetary Union
ERDF	European Regional Development Fund
EU	European Union
FCO	Foreign and Commonwealth Office
JMC	Joint Ministerial Committee
NCG	Non-Central Government
MEP	Member of the European Parliament
MLG	Multi-Level Governance
MoU	Memorandum of Understanding
MP	Member of Parliament
MSP	Member of the Scottish Parliament
SDA	Scottish Development Agency
SNP	Scottish National Party
UK	United Kingdom
UKRep	United Kingdom Permanent Representative to the European Union

Chapter 1

Scottish Devolution: A New Non-Central Government in the European and International System

The division between the international and domestic realms of politics has become difficult to sustain in the modern international context. The internationalisation of domestic politics has opened the international arena to a multiplicity of actors with vested interests. One form of actor which has become increasingly involved in international affairs is government below the nation-state level. Municipal, provincial, state and local governments have increasingly entered the international political system both independently and within nation-states foreign policies. While a number of examples of the activities of non-central governments (NCG) in the international realm exist, devolution in Scotland has created a new case which has not yet received much attention. The extent to which a Scottish level of government might become involved in international affairs and how effective that representation will be, provides an additional and new case of non-central government in international affairs.

On 6 May 1999, a Scottish Parliament took power in Edinburgh for the first time since 1707. In the intervening 292 years Scotland was governed as an integral part of the United Kingdom. The Scottish Parliament was created in response to a lengthy period of constitutional unrest in Scotland, highlighted most clearly by the 18 years of unpopular Conservative rule at Westminster from 1979 to 1997.

The process of devolution has had a considerable impact upon all aspects of politics in the United Kingdom. However, the focus of this study is on the effects of devolution on the representation of Scottish interest in international relations, through both the official foreign

policy of the United Kingdom and through independent Scottish international activity. It is evident that devolution will increase Scotland's role in international affairs. There are two reasons for this. Firstly, devolution has created a non-central government actor which did not exist in the pre-devolution period. As a result, there now exists a tier of government which can, and will need to, become involved in international affairs. Secondly, Scotland is likely to become involved in international affairs because the devolution arrangements have specified a role for Scotland in the foreign policy of the United Kingdom and in independent international activity. The architects of devolution were attuned to the fact that Scotland would need to become involved in foreign affairs and the devolution settlement reflects this.

Scotland, as a newly created non-central government actor, will become involved in international affairs and the UK foreign policy process. The argument of this thesis is that due to the institutional arrangements and constitutional setting of Scotland within the UK, Scottish international activity will be limited and ineffective resulting in only minor impact upon decision-making in the UK foreign policy process and subsequently in international affairs.

The most important determinant of the level of effectiveness of Scottish activity in the UK foreign policy process and in external affairs is the institutional framework governing Scottish participation in international affairs, established by the devolution settlement. This framework is highly defined and preserves maximum control within the UK central government. As a result it limits the effectiveness of Scottish activity in foreign policy and external affairs. While the devolved arrangement establishes a role for Scotland in all stages of the foreign policy process, that role is limited. Furthermore, the arrangements for Scottish activity are likely to establish particular methods of Scottish representation which will further limit the effectiveness of Scottish activity. The arrangements for Scottish involvement in the foreign policy process, as well as the

context of Scotland within the UK, create conditions in which Scotland as a NCG may seek to act independently of, and potentially in opposition to, the UK central government. Where conflict between the Scottish and UK levels of governments occurs, the UK central government, under the institutional framework, has the power to censure Scottish international activity, thereby limiting its effectiveness. As a result the Scottish government will most likely attempt to co-operate with the UK central government in the foreign policy process. However, in an environment of co-operation Scottish activity will also be limited by the institutional arrangements which ensure that the UK central government's interest prevail in the policy formulation stage. As a result Scottish activity is likely to have limited effect on the outcomes of decision-making in the UK foreign policy process and subsequently in international affairs.

In chapter two of this thesis the potential for Scottish activity in international affairs is placed within the context of the literature on non-central governments in foreign policy. This literature is useful in explaining the motivations and methods by which non-central governments become involved in international activity and the constitutional and institutional contexts which are most conducive to that activity. In addition to this, the literature addresses the ramifications of NCG activities for central governments and how these activities might be managed. The conditions examined in the literature vary upon context and are contributing factors to the level and effectiveness of NCG activity in external affairs. An understanding of these factors is the basis for explaining the level to which Scotland will be involved in international affairs and to what extent that involvement will impact upon UK and international decision-making.

Chapter two also addresses the theories of European integration. In seeking to understand the potential level of Scottish international activity, the literature on non-central governments in international affairs is complemented by the intergovernmental and multi-level governance (MLG)

theories of European integration and how they address the role of NCGs in the European system. The system addressed by these approaches is important because Scottish interests are most likely to be affected by, and need representation in, the European arena. While the domestic context of Scotland in both the pre- and post-devolution periods is the most significant factor in determining the degree to which Scotland will become active in European affairs, how conducive the European system is to non-central governments is also important. Chapter three will demonstrate that parts of Europe reflect a multi-level governance approach to the European system, which include an effective role for non-central governments in European affairs and decision-making. However, in the pre-devolution period it will be demonstrated that the UK government's resistance to Europe, and NCG activities in it, reflected an intergovernmental approach where member-states dominate European decision-making.

The literature on both non-central governments in foreign policy and European integration provide an understanding of the conditions which contribute to the level of NCG activities in external affairs. They are used to assess the regime created by devolution, the specific international context it is likely to be active in and to indicate the likely level of effectiveness in representing Scottish interest in the UK foreign policy process and external affairs.

The third chapter of this thesis addresses how Scottish interests, both domestic and international, were represented within the UK central government during the pre-devolution period. The purpose of this is to provide both the historical context for the development of Scottish representation in foreign policy and international affairs, as well as a comparison for Scottish post-devolution representation in external affairs. This chapter will demonstrate that, during the pre-devolution period the UK central government was a highly centralised, unitary state. Representation of Scottish interests was confined to territorial arrangements within the

central government. In the functioning of the UK governments from 1979 to 1997, representation of Scottish interests was further limited by the dominance of the Conservative Party which did not possess a majority of support in Scotland. The chapter will also demonstrate that the representation of Scottish interests in the UK foreign policy process was restricted. Where the Scottish Office was active overseas, in the promotion of Scottish economic interest, its activities were limited to complementing the work of the UK government. This was also the case for Scottish local governments. Although not a substitute for a Scottish tier of government, local governments did represent the only form of non-central government in international affairs in the pre-devolution period.

The final part of chapter three examines the development of conditions within Europe which have increased the potential level of non-central government actors' involvement in European decision-making. In addition to this, the UK government's resistance to these processes in the pre-devolution period is also outlined. Building on the literature on European integration, it is demonstrated that within parts of Europe there existed an increasingly multi-level system of governance which was conducive to increased NCG activity in the system. However, there were parts of the European system, as represented by the attitude of the pre-devolution United Kingdom, which resisted these trends and reflected a system described by the intergovernmental approach to European integration. This section is important for two reasons. Firstly, it further highlights the restrictions on Scottish representation in international relations in the pre-devolution period. These are restrictions which may be maintained after devolution. Secondly, the extent to which other NCG governments have become active in European affairs is useful for understanding the potential level of Scottish activity in Europe established by the devolution arrangements for Scottish international activity.

Chapter four addresses the process of Scottish devolution and the institutional changes which have implications for the level and effectiveness of Scottish international activity. From the onset of the devolution process the UK central government has been aware that the Scottish Parliament would need to be involved in international affairs, despite the fact that, under the devolved settlement, foreign policy remained a reserved function of Westminster. The way in which the Scottish government can become involved in international affairs is outlined most clearly in the *Memorandum of Understanding and supplementary agreements*¹ drawn-up by the UK central government and the devolved administrations. The *Agreements* provide a framework for inter-administration co-operation in the areas of foreign and European policy. They outline the method for the Scottish government's participation in all stages of the UK foreign policy process as well as in independent international activity. In addition to this, the *Agreements* establish the means by which the UK central government can control Scottish activities in international affairs. The chapter demonstrates that the devolution arrangements have clearly articulated a role for Scotland in the foreign policy process. However, this role remains highly restricted by the UK government which remains dominant in the foreign policy process and maintains the means through which Scottish international activities can be severely censured.

Chapter five will draw together the conclusions of the thesis. It will begin by demonstrating how the devolution arrangements have affected Scottish representation in the UK foreign policy process and in external affairs. The creation of a Scottish tier of government has increased the motivations for Scottish activity in international affairs. Indeed, issues of international affairs are likely to be regular topics of discussion in the Scottish Parliament despite

¹Hereafter the *Memorandum of Understanding and supplementary agreements* will be referred to in full or as the *Agreements*.

the fact they remain reserved matters. Furthermore, the Scottish Parliament will be able to speak on issues with a legitimacy that was absent in the pre-devolution period. In addition to increased motivations it will be shown that the devolution arrangements provide increased methods for Scottish activity in the foreign policy process. One of the most significant means of Scottish representation will be through the aggregation and agenda setting roles of the Parliament. Despite the increased motivation and method for Scottish activity, the conclusion of chapter four will be reiterated, demonstrating that due to institutional constraints, Scottish representation in the UK foreign policy process and external affairs remains limited.

The chapter will also examine the possibility that Scottish activity in international affairs may cause conflict between levels of administration. Although there are many potential sources for conflict, the most regular and likely source will come from the activities of the Scottish National Party who will endeavour to use issues of foreign policy to further moves toward independence. Regardless of its source, conflict over issues of foreign policy is likely to limit the effectiveness of Scottish representation in the UK foreign policy process. The devolved arrangements make it clear that, in the event of conflict with the UK government position, the activities of the Scottish government can be censured. As a result it will be demonstrated that, under the current arrangements, Scotland will receive the most effective representation in international affairs through co-operation with the UK government. However, co-operation in the foreign policy process further limits Scottish representation as the institutional arrangements ensure that the UK government's interests prevail.

The conclusion of the thesis finds that the devolved arrangements have created a clearly defined framework for Scottish activity in the UK foreign policy process and in external affairs. However, the framework is highly restrictive of this activity and ensures that the UK

government's power over activities in the international realm is maintained. As a result, under the current arrangements the effectiveness of the Scottish government representation in the UK foreign policy process and subsequently in international affairs, is likely to be limited and ineffective.

Chapter 2

Non-Central Government Activity in External Affairs

The process of devolution in the United Kingdom has created a Scottish tier of government which has the potential to become involved in international, and in particular European, affairs. Constituent governments' international activity is not a new or unusual process in international relations. Indeed, there is a considerable body of literature which addresses the issue of NCGs in foreign policy. This literature examines the motivations, methods and conditions for non-central government activity in international relations. In addition, it explores the concerns of central governments caused by non-central governments' international activities and offers potential processes by which these activities can be managed. These factors vary from case to case and are determinants of the level and effectiveness of NCG involvement in central government's foreign policy process and in international affairs. Therefore they are important for assessing the potential effectiveness of Scottish international activity in the post-devolution period.

The literature on non-central governments in foreign policy is complemented by the literature on European integration. The most likely place for Scotland to act beyond the borders of the United Kingdom is within the European Union. In addressing the potential for Scottish activity in Europe this chapter will also look at the literature on European integration, explaining specifically the intergovernmental and multi-level governance approaches (MLG). The MLG approach reflects much of the discussion on the type of international environment conducive to NCG activity in international relations which is described by the literature on non-central

governments in foreign policy.¹ However, it addresses in more detail the specific European context and the role of NCGs in it. Furthermore, the MLG approach suggests that the European system has become increasingly receptive to NCG activity since the mid-1980s - a point demonstrated in chapter three. As a result of this the international environment which Scotland is entering as a newly created NCG actor is likely to encourage a higher and more effective level of Scottish activity. However, the approach also suggests that the effectiveness of NCG activity is dependent upon the institutional context of NCGs in individual member-states. Alternatively, the intergovernmentalist approach presents a European system in which NCGs have a very limited and ineffective role and, therefore, offers an opposite perspective to both the MLG approach and that of the literature on NCGs. In chapter three the intergovernmentalist approach is used to describe the UK's attitude towards European integration prior to devolution while the multi-level governance approach is used to describe other parts of Europe, to indicate the potential for Scottish activity as a newly created NCG in Europe.

Non-Central Governments in International Affairs

The literature on non-central government covers a broad range of actors in international affairs. Indeed, what constitutes a non-central government varies considerably. NCGs are

¹The term non-central government actor is not frequently used in the European integration literature. More commonly, but inaccurately used, are the terms "subnational" or "regional". The inappropriateness of these terms is evident in the case of Scotland which, as a constituency, is neither a *sub*-nation nor a region. Indeed, institutions of the EU such as the Committee of the Regions, use the term region as a blanket description to describe entities as diverse as British local governments to German *Länder*. Where possible, the term non-central government will be used.

governmental bodies or “polities”² which can vary in form and size from Canadian provinces or German *Länder* to municipal or individual city councils.³ Because they are government actors they are endowed with authority beyond other transnational actors in international affairs.⁴ However, in international politics they are not equal to the sovereign authority of nation-states.⁵

Although many forms of nation-state may support NCG international activities, federal systems provide a considerable amount of focus in the literature.⁶ Federal systems are based on the division of sovereignty between central and non-central governments, with NCGs having constitutionally guaranteed powers over certain policy areas. As a result, federated units provide well established and experienced independent actors which, due to the shifting international arena, increasingly need to act internationally to fulfil their obligations to their constituencies.

In this study it is important to note that the United Kingdom cannot be defined as a federal system of government, in either the pre- or post-devolution period. In fact, in the pre-devolution period, there did not exist a Scottish level of non-central government. Instead, the

²Brian Hocking, “Regional governments and international affairs: foreign policy problems or deviant behaviour?” *International Journal* XLI, no.3 (Summer 1986): 485.

³Ivo Duchacek uses the example of United States cities’ action against South Africa in the 1980s: Ivo D. Duchacek, “Perforated Sovereignties: Towards a Typology of New Actors in International Relations,” in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 8.

⁴Brian Hocking, *Localizing Foreign Policy: Non-central Governments and Multilayered Diplomacy* (New York: St.Martin's Press, 1993), 19, 45.

⁵Hocking classifies NCGs as hybrid actors “possessing some of the qualities associated with nation-states as well as non-state actors”: Hocking, *Localizing Foreign Policy*, 46.

⁶Duchacek argues that the changes in the international realm have affected all types of states. However, the effect on federal systems has been singled out as being particularly evident: Duchacek, “Perforated Sovereignties,” 2-5.

Scottish Office was the territorial component of the UK government in Scotland.⁷ Despite this, the literature on NCGs in foreign policy is useful for understanding how Scottish interests were represented in the international arena prior to devolution. During this period the highly centralized UK government created the conditions opposite to those most conducive to effective non-central government activity in foreign policy. After devolution the establishment of the Scottish Parliament has created a non-central government which is applicable to the discussion of NCG activity in international affairs. However, the Scottish Parliament's existence is not constitutionally guaranteed and therefore devolution has not created a federal system of government.

Non-central governments have different motivations and methods for becoming active in international affairs. These activities are called para-diplomacy, defined as: "direct and indirect entries of non-central governments into the field of international relations," motivated by primarily technical and economical goals, although occasionally pursuing political objectives.⁸ Most frequently NCGs become involved in activities which further their economic interest, including the promotion of trade and inward investment.⁹ However, NCGs have also been active in areas such as the environment, nuclear weapons, human rights and in the pursuit of independence. The following section will explore the motivations and methods of non-central governments' activities in international politics. Furthermore, the impact of NCGs international activity on central governments will be examined, as well as the means of managing NCG activity

⁷In Scotland during this period, local governments fit the description of non-central governments and were active in the international realm. Further discussion of these actors will be raised in chapter three.

⁸Duchacek, "Perforated Sovereignities," 15-16.

⁹Hocking, *Localizing Foreign Policy*, 34.

in the international realm. The conditions and methods of NCG activity and the attempts of central governments to control these, will also be considered in terms of their impact upon the level and effectiveness of NCG activity in foreign policy processes and in the international arena.

The change in the international environment and NCG reaction to this has been seen as an underlying cause of increased NCG activity in international affairs. The literature on non-central government actors in international affairs is premised on the understanding that the international system is increasingly interconnected and interdependent. Furthermore, states are not unitary actors nor are they the only actors in the system. Instead, both transgovernmental and transnational interaction between a variety of actors is a reality of the system which is furthered by the understanding that there exists “an expanding range of international linkages, economic interdependence and demands of policy issues which can no longer be managed within the framework of individual political systems.”¹⁰ As a result, the division between the realms of international and domestic politics are viewed as neither distinct nor exclusive.¹¹ Rather, there are a multitude of links between domestic and international politics and these links are made by a variety of actors. Brian Hocking has described this as “a continuum of policy types which blend together differing elements of the domestic and international located in various political arenas, whether subnational, national or international.”¹²

¹⁰Hocking, *Localizing Foreign Policy*, 10.

¹¹This is described by some as the “domestication of international politics” or “internationalising politics”: Hocking, *Localizing Foreign Policy*, 34, 12-15. In the case of the European Union, considerable discussion has been centred around the Europeanisation of member-states domestic policy and the belief that member-states European policy no longer constitutes foreign policy.

¹²Hocking, *Localizing Foreign Policy*, 34. Hocking uses the term “multilevel political arena” to describe this system and the term “multilevel diplomacy” to describe the interaction between levels of government. These terms complement the discussions of multi-level governance in the literature on European integration which will be elaborated upon later in this chapter.

The increased interdependence in the international system has been seen as a primary motivation for NCGs' activity in international affairs. Ivo Duchacek argued that it is the growing realisation of the impact these changes in the international arena are having on NCGs that has resulted in their increasing activity in foreign policy. Duchacek has stated that

[t]he awareness of subnational vulnerability to extranational, distant events has now, as it were, trickled from beyond the borders down to subnational elected officials and their staff responsible for the progress and well-being of their respective subnational territorial communities - and for their own political survival in them.¹³

As areas of non-central government jurisdiction have become increasingly affected by events in the international realm, NCGs have sought greater and more efficient access to policy-making in foreign affairs.

Beyond the fact that NCGs realize that they need to become more involved in international affairs, there are particular conditions which have provoked these activities. Panayotis Soldatos has outlined a number of these motivations. They include a growth in the capabilities of NCGs which motivates them to expand their roles into the international arena. Alternatively, NCGs may be motivated by a sense of what Soldatos refers to as "me-tooism" where they see the international activities of other constituent governments and seek to gain similar access to the international realm. Furthermore, NCGs may need to be involved in international decision-making to maintain control over areas within their constitutional jurisdiction. In addition to this, poor representation of NCGs' interests in central government

¹³Ivo D. Duchacek, "Perforated Sovereignities," 6; This point is also made by Brian Hocking: Hocking, *Localizing Foreign Policy*, 9-10; It should be noted that the activities of NCGs in international affairs, although increasing in frequency, are not new to international politics. As early as 1882 the Quebec government established a general agent in Paris to address the needs created by increased trade between Quebec and Europe: Panayotis Soldatos, "An Explanatory Framework for the Study of Federated States as Foreign-policy Actors," in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 34

foreign policy-making, due to a lack of NCG representation in central government or simply central government inability to meet the needs of constituent units, may also motivate NCGs to act in the international realm.¹⁴

Nationalism provides a further motivation for non-central governments to act internationally. In its extreme, nationalism provokes NCGs to undertake international activities in an attempt to fulfil the goals of separation or independence. International action on the part of NCGs which pursue these goals has been referred to as protodiplomacy. Duchacek defines protodiplomacy as “those initiatives and activities of a non-central government abroad that graft a more or less separatist message on to its economic, social, and cultural links with foreign nations.”¹⁵ In these cases, the international activity of a NCG may add international legitimacy to calls for independence or act as a reassurance to both the domestic and international communities that independence and state status for the NCG will be accompanied by a respectable international actor. Quebec's international activity under separatist governments, especially with regards to its relationship with the United States and France, is a clear example of this.¹⁶

Nationalism does not only provoke NCG international activity in pursuit of the goal of independence. NCG activity may be used in attempts to project a national identity, into the international arena without pursuing the objective of independence. For example, non-separatist governments in Quebec, since the Quiet revolution, have sought to project Quebec's distinctiveness into the international realm. Kim Richard Nossal argues that this has not simply

¹⁴Soldatos, “An Explanatory Framework,” 41-49.

¹⁵Duchacek, “Perforated Sovereignities,” 27.

¹⁶For further information see Kim Richard Nossal, *The Politics of Canadian Foreign Policy*, 3d ed., (Scarborough: Prentice-Hall Canada Inc., 1997), 315-331.

been a response to nationalist demands, but rather “political leaders in Quebec recognized that the international activity was one means of legitimizing their roles as the champion of special status for Quebec and Québécois, with the putative electoral reward associated with such a role.”¹⁷

Although considerable motivation exist for non-central governments activity in the international arena, the level of that activity and its effectiveness is to a large extent determined by the relationship between NCGs and their respective central governments.¹⁸ For instance, non-central governments in highly centralised states may find fewer opportunities to act independently in the international realm. Alternatively, the centralized nature of these forms of states may motivate non-central government action as a result of their need to circumvent state structures which they perceive as not addressing their specific requirements.¹⁹ The first regional representation in Brussels, established by Bavaria in 1986, came about as a result of conflicts between the Bavarian and federal governments in Germany over EU-related issues.²⁰ In Britain this can be illustrated by the co-operation between the European Commission and local governments in the Commission’s dispute with the UK central government over regional funding

¹⁷*Ibid.*, 318. For a discussion of NCG activities used to promote national identity in Quebec see *ibid.*, 316-318; Elliot J. Feldman and Lily Gardner Feldman, “Canada,” in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 182. Michelmann indicates there are a number of examples of paradiplomacy which are culturally and ethnically motivated including NCG actors in Belgium, Switzerland, Germany, Italy and Austria: Michelmann, “Conclusion,” in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 304-305.

¹⁸Hocking, *Localizing Foreign Policy*, 47-53; See also Hans J. Michelmann, “Conclusion,” 309-312; Elizabeth Bomberg and John Peterson, “European Union Decision Making: the role of Sub-national Authorities,” *Political Studies* XLVI, (1998); Liesbet Hooghe, “Subnational Mobilisation in The European Union,” *West European Politics* 18 (1995): 14.

¹⁹Soldatos, “An Explanatory Framework,” 41.

²⁰James Goodman, “The European Union: reconstituting democracy beyond the nation-state,” in *The Transformation of Democracy?*, ed. Anthony McGrew (Milton Keynes: Polity Press, 1997), 187.

in the late 1980s and early 1990s. In this case, a period of animosity between local government and central government in the UK encouraged local governments to deal with the European Commission which appeared more sympathetic to the needs of local government.²¹

Within federated states, institutional and constitutional differences - such as provisions for intergovernmental consultation, or constitutional support, or restriction, of international activities of NCGs - have considerable effects on the nature and impact of NCG activity in the international realm.²² Hans Michelmann illustrates the differences in the methods of NCG activity by presenting Canada and Germany as occupying two opposite ends of a continuum. In the case of Canada, he argues that there are a number of factors which contribute to the motivation for some Canadian provinces to be independently active in the international arena. Michelmann argues that in provincial-federal relations there is no clear elaboration of the extent, or limit, to which provincial actors may become involved in international relations. As a result, a level of ambiguity lies over the rules of international activity and while not explicitly encouraging such activity, does not specifically deny it.²³ In addition to this, Michelmann argues that Canadian institutions offer

²¹Peter John, "Europeanization in a Centralizing State: Multi-Level Governance in the UK," in *The Regional Dimension of the European Union: Towards a Third Level in Europe?*, ed. Charles Jeffery (London: Frank Cass, 1997), 135-136; This will be discussed further in chapter three.

²²For further information see Hocking, *Localizing Foreign Policy*, 47-53; Hocking argues that the "federal culture" of a system as well as the "formal and informal rules" of the centre-region linkages are important in determining the nature and extent of NCG activity in the international arena. See also Duchacek, "Perforated Sovereignties," 4.

²³Hans J. Michelmann, "Conclusion," in *Federalism and International Relations. The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 309-310; This argument is furthered by Kim Richard Nossal when addressing the means by which post-1997 Hong Kong might remain an active participant in the international system. Nossal argues that "drawing on the lessons from the experiences of other non-central governments, notably Canada, I suggest that the way to ensure that Hong Kong continues to be enmeshed in the international system is to maintain a high degree of ambiguity about the political components of the HKSAR's [Hong Kong Special Administrative Region] international relations": Kim Richard Nossal, "A high degree of ambiguity: Hong Kong as an international actor after 1997," *Pacific Review* 10, no.1 (1997): 88; As will be shown in chapter four, the devolution

no official process by which provinces are involved in official foreign policy-making.²⁴

In the case of Germany, Michelmann argues that, there is less motivation for the *Länder* themselves to become active in the international arena. This is due to the fact that there exists clearer constitutional definition of the role of the *Länder* in international affairs. Furthermore, the institutional framework in Germany provides for effective *Länder* participation in the official foreign-policy process. This is achieved through the Bundesrat and formalized arrangements such as the Lindau Convention which provides a framework for *Länder* and federal government interaction on issues of international relations.²⁵ In the case of Europe, the role of the *Länder* has also been formalized.²⁶

The methods by which NCGs become active in the international realm is varied and specific to context. An initial division of these forms of activity can be made between those which are within the established policy process of the central government, referred to as “mediating” activities, and those which constitute independent NCG foreign policy referred to as

arrangements are unambiguous in outlining the role of Scotland in external affairs.

²⁴Michelmann, “Conclusion,” 310.

²⁵For a discussion of the Lindau Convention see Hans J. Michelmann, “The Federal Republic of Germany,” in *Federalism and International Relations. The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 219-222.

²⁶Michelmann, “Conclusion,” 310-311; For an elaboration of the comparisons between Canada and Germany see Hans J. Michelmann, “Federalism and international relations in Canada and the Federal Republic of Germany,” *International Journal* XLI, no.3 (Summer 1986); It should be noted that the powers of the German *Länder* have changed since the publications of Michelmann’s comparisons between Canada and Germany. Although the powers of the Germany *Länder* remain clearly defined both constitutionally and institutionally these powers *vis-a-vis* the German federal government has grown since 1986. For analysis of the current constitutional powers of the *Länder* in Germany compared to the pre-devolution United Kingdom see Bomberg and Peterson, “European Union Decision Making: the role of Sub-national Authorities,” 221-223; This is discussed further in chapter three.

“primary” activities.²⁷ Mediating activities may involve non-central government participation in the official foreign policy process at the policy forming stage through “agenda setting” and “aggregating and articulating regional interest,” and at the negotiation or implementation stages.²⁸ This may be achieved through central government consultation of NCG, the representation of NCG actors at the central government level, or by the inclusion of NCG members in international negotiations. Primary activities involve direct contact with foreign or international actors through channels such as the overseas offices of NCGs.

The level of influence of NCGs in the formulation, negotiation and implementation stages of foreign policy varies²⁹ and is again influenced by the constitutional and institutional arrangements of states. For instance, in Canada in 1937 a Privy Council decision on the Labour Conventions case established the exclusive right of provinces to implement legislation in areas within their jurisdiction, including legislation necessary to meet international commitments made by the federal government. The result was that, although Canadian provinces had no formal consultation powers in foreign policy, it became necessary for the federal government to ensure that the provinces would agree to implement legislation. This has not been the case in Australia where the federal government reserves the right to implement legislation necessary to meet

²⁷Hocking refers to these as “primary actors” pursuing independent action and “mediating actors” working within the central government foreign policy process. A NCG can be both a primary and mediating actor: Hocking, “Regional governments and international affairs,” 484-486; Hocking, *Localizing Foreign Policy*, 45; Panayotis Soldatos makes a similar distinction between “co-operative” and “parallel” activities: Soldatos, “An Explanatory Framework,” 38.

²⁸Hocking, *Localizing Foreign Policy*, 37, 36-44.

²⁹*Ibid.*, 34.

Australia's international commitments.³⁰

The level of non-central government's primary activities may also be limited. NCG primary activity may be dependent on the permissiveness of the constitutional and institutional regime which may determine what types of activities may be undertaken, such as the establishment of overseas offices or the level of contact with overseas representatives. Furthermore, primary activities may be restricted by central governments. For instance, although Canadian provinces have been permitted to maintain overseas offices, the federal government has prevented the establishment of provincial offices in Washington. A further consideration in determining the level and effectiveness of NCG primary activity is the amount of resources which can be committed to such endeavours.³¹ For instance, the number and scale of NCGs' overseas offices have varied as a result of the economic resources available to maintain them.³²

The activities of NCG in international affairs can be divided further into those which create conflict with central governments and those which complement them. Considerable attention has been paid to the potential for non-central government activities in international affairs to cut across the interest of central governments. Indeed, the argument has been made that NCGs are often encouraged to become primary actors in international affairs when central governments have been deficient in meeting NCG needs in the international arena.³³ As a result,

³⁰*Ibid.*, 49-50. For details of the build-up to, and implications for the Canadian case see Nossal, *Politics of Canadian Foreign Policy*, 296-298.

³¹Hocking, *Localizing Foreign Policy*, 55-57; See also Michelmann, "Conclusion," 306-308; Hooghe, "Subnational Mobilisation," 192.

³²The fluctuation of the overseas offices of Canadian provinces is a primary example of this: Nossal, *The Politics of Canadian Foreign Policy*, 303-305.

³³Soldatos, "An Explanatory Framework," 41.

NCGs feel that it is necessary to act independently and often in contradiction to central governments in international affairs.

The potential for conflict caused by the activities of NCGs in international affairs raises concerns for central governments over their ability to manage foreign policy. The activities of NCGs themselves threaten the exclusive rights of central governments to control external relations. NCG activity in foreign policy also increases the number of government actors in international relations. As a result, central government may fear fragmentation, conflict, “institutional untidiness”, and a lack of efficiency in the foreign policy process.³⁴ Furthermore, the increased activity of NCGs in the foreign policy process raises the potential that they may be used by international actors as alternative channels through which states’ domestic affairs can be accessed. Finally, central governments may fear that NCG international activity, in pursuit of specific NCG interests, will override the interests of the state as a whole. Protodiplomatic activity is the most extreme example of NCG interests overriding the interest of the state.³⁵

Despite these concerns, non-central government activity in international relations can be complementary to central governments’ goals in foreign policy. Non-central governments’ overseas activities may be used to support central government foreign policy.³⁶ For instance, NCGs’ promotion of trade overseas benefits not only the specific NCG, but the entire state. In international negotiations, central governments can use the uncertainty of NCGs’ implementation of a treaty as leverage to modify other actors’ positions.³⁷ Furthermore, as the number of issues

³⁴Duchacek, “Perforated Sovereignities,” 27-30.

³⁵*Ibid.*, 28.

³⁶Hocking, “Regional governments and international affairs,” 486.

³⁷Hocking, *Localizing Foreign Policy*, 42.

that have foreign policy implications increase, central governments may seek to download non-controversial foreign policy activities to constituent governments to offset the burden of an expanding work load.³⁸ Even the conflict caused by NCGs' international activities has been highlighted as having a positive effect on central government foreign policy. In the case of federations, conflict is a normal feature of the system with the ability to mediate conflict between various levels of government seen as a positive feature. It has been argued that the extension of similar conflict to the international realm, if successfully managed, will result in a complicated but more positive formulation of foreign policy.³⁹

The method central governments use to attempt to manage the activities of NCGs in foreign policy is important for the success of both levels of government in the foreign policy process. It would seem obvious that the goal would be to manage conflict through processes of co-operation within the central government's foreign policy process, thereby limiting the need of NCG to undertake conflictual primary activities. The initial stage would be a process whereby NCGs' positions on foreign policy issues are discerned and included as early as possible within the foreign policy process.⁴⁰ In this manner NCGs may be effectively involved in the foreign policy process. In addition to this, the input of NCG in this process should be seen to have an

³⁸*Ibid.*, 39-40.

³⁹John Kincaid, "Constituent Diplomacy," in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990), 72-74; Kincaid argues that the exception to this may be the NCG whose goal is separation. See also Soldatos, "An Explanatory Framework," 42 and Duchacek, "Perforated Sovereignities," 30; Douglas Brown, *Project on Global and Regional Integration and Canadian Federalism: A Baseline Study of International Relations and the Federal System in Canada* (Queen's University : Institute of Intergovernmental Relations, Revised Draft December 1999), 61-62; The problem for Scotland and the United Kingdom may be that there is no federal experience of managing conflict between central and non-central governments that could be applied to the foreign policy process.

⁴⁰Hocking, *Localizing Foreign Policy*, 42.

effect on the policy outcome. Alternatively, central government could seek to control NCG activity by limiting it. However, over-regulation and restriction of NCG input into the process is likely to aggravate conflicts between central and non-central governments and work against the state.⁴¹ As has been argued, NCGs, which often perceive central governments as inadequately representing their interests, will attempt to circumnavigate central governments in accessing the international arena.

Whether NCG activity is in co-operation or in conflict with central governments also has impact on the effectiveness of NCG international activity. If the relationship between administrations is regularly in conflict, central governments may attempt to limit the level of effectiveness of non-central governments' activity. In contrast, co-operation may result in better consideration of NCG interest in the foreign policy process. However, how effective NCGs are in representing their interest in the official foreign policy process is again determined by the institutional context of NCGs *vis-a-vis* central governments. If non-central governments have limited powers in policy formulation it is likely that co-operation will be on the terms of central governments. For instance in the case of Australia, the federal government's power over implementation limits the Australian states' threats of non-co-operation in the policy formulation stage of the foreign policy process.

It can be concluded from this that the international activities of non-central governments are a regular feature of contemporary world politics. From the perspective of many NCGs, involvement in international affairs has become a necessity. Whether NCGs become primary or mediating actors and whether their international activities augment or conflict with central

⁴¹John Kincaid has argued that the "regulation or suppression of constitute diplomacy can endanger the political, cultural, economic and democratic vitality of a nation-state: Kincaid, "Constituent Diplomacy," 56.

governments is dependent on their motivations for such activity and their relationship with their central governments. Of further importance is the way in which central governments attempt to manage the international activities of non-central governments.

The discussion of non-central government activity is important for an understanding of the potential level of Scottish activity in international affairs. Devolution has created a Scottish NCG which, like other non-central governments, will be motivated to act in international affairs, especially in the context of a highly integrated Europe. Indeed, the architects of the devolution settlement were fully aware of this and have attempted to create a system through which Scottish involvement in international affairs can be successfully managed. The literature on NCGs in foreign policy provides indications of the conditions under which Scottish activity in the UK foreign policy process and in international affairs might be effective.

European Integration: The Role of NCGs in Europe

In explaining the potential level of Scottish international activity, the discussion of NCGs in foreign policy is complemented by the literature on European integration. Including a discussion on European integration will provide an understanding of the specific European context which tends not to have been addressed by the literature on NCGs in foreign policy. The European Union provides a unique international environment for the activities of its member-states' non-central government actors. The broadening and deepening of the integration of Western Europe, from the European Coal and Steel Community of the 1950s to the present European Union, has been a long and multi-stage evolution. The way European integration is viewed, and the type of international system into which Europe has evolved, dictates the perspective that is taken on the

actual and potential role of non-central government actors in the European arena. Although there are several approaches to the understanding of European integration, the two which are most useful in explaining the role of NCGs in the European system are the intergovernmental and multi-level governance approaches.⁴² If the state-centric description of European integration provided by the intergovernmentalist approach is accurate, then NCG contribution to, and effectiveness in, decision-making in Europe is very limited. Alternatively, if the multi-level governance approach is accurate, then NCGs are important and effective players in the European system. A comprehensive review of these approaches to integration is too extensive to address here. However, their implications for non-central government actors in the European arena will be

⁴²Functionalism offers another approach to European integration traditionally opposed to intergovernmentalism. Carolyn Rhodes and Sonia Mazey describe functionalism as a “tradition [which] assumes that cooperative outcomes are products of private and public interest forming incremental, transnational linkages, which spill from issue to issue, causing cooperation to breed cooperation and integration to spur integration, with supranational institutional development a logical consequence”: Carolyn Rhodes and Sonia Mazey, “Introduction: Integration in Theoretical Perspective,” in *The State of the European Union: Building a European Polity?* vol.3 (Harlow, Essex: Longman Group, 1995), 8.

The notion of an increasingly supranational Europe driven by functionalist spill-over does have significant implications for the regions of Europe. Most importantly, it allows for NCG activity in the integration process. Those who advocate the further transfers of power to a European polity in opposition to the control of member-states may support the increased role of the NCGs in an European system, due to their closer proximity to their constituents. Indeed it may be argued that NCGs are in fact more legitimate actors in the European system. Alternatively, the ultimate culmination of the functionalist polity-building exercise in the form of European government, and indeed any steps towards this, may have a negative impact on NCGs. A European polity with highly centralized powers may remove NCGs further from power than is currently the case. In the case of Scotland, the question may be asked: why encourage the transfer of power over certain issues from London to an more distant centre of power in Brussels? It could be argued that sub-state and supranational co-operation, in opposition to member-states, may prove to be only a marriage of convenience. In the long run it is feasible that in Brussels, where the number of interest are exponentially greater than in London, power over decision-making for smaller constituencies such as Scotland may be less than the *status quo* provides.

Functionalism and neo-functionalism, after a lengthy period of unpopularity, saw a renaissance in the mid-1980s due to developments in Europe which were viewed as supporting this approach: Jeppe Tranholm-Mikkelsen, “Neo-functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC,” *Millennium* 20, no.1 (Spring 1991); Despite this, evidence of supranational polity building in Europe remains weak. If supranational polity building is occurring it is in its early stages of development. The current European system, and the activities of NCGs in it is more accurately described by the MLG system. As a result the functionalist explanation of the European system has few explanatory powers and been omitted from this study.

considered more fully.

The evolution of the European Union has been, for the most part, a lengthy and incremental process. However, significant change which has affected NCGs has occurred since the mid-1980s. The signing of the Single European Act, the introduction of the notion of a Europe of Regions, the principle of subsidiarity, the reform of regional policy, as well as the establishment of institutions such as the Committee of the Regions (CoR), have all created the potential for increased NCG participation in the EU.⁴³ Coinciding with these changes has been the increase in the number of actual institutionalised NCGs in the European system. In this period the German *Länder* has been joined by NCGs from newly decentralized Belgium and Spain as well as Austrian *Länder* after the ascension of Austria to the EU.⁴⁴ Decentralization in the United Kingdom can be considered further evidence of this trend.⁴⁵ The increase, in both the role of NCGs in European decision-making and the number of decentralized member-states in the system, has resulted in a stage of the European integration process where regional issues have become significant.

The following section will introduce the intergovernmental and multi-level governance approaches to European integration, focussing primarily on their implications for NCGs in the system. In chapter three these approaches will be used to make the argument that neither the intergovernmental nor multi-level governance position describes the European system entirely. Instead, it is argued that each approach can describe different parts of the European Union at

⁴³This trend will be considered more fully in chapter three.

⁴⁴Charles Jeffery, "Farewell the Third Level? The German *Länder* and the European Policy Process," in *The Regional of the European Union: Towards a Third Level in Europe?* (Frank Cass: London, 1997), 64.

⁴⁵Whether decentralization in EU member-states is a direct result of European integration is an interesting question which merits further exploration.

different stages in the integration process. It will be shown that the intergovernmental approach to Europe has been reflected in the pre-devolution UK attitudes to European integration. Juxtaposed with this is a system of MLG which accurately describes the level of integration of other member-states in the European system at the same time. For Scotland, the existence of a system of MLG in other parts of Europe provides examples of the potential for Scottish contribution in European decision-making. Furthermore, if devolution has created conditions which shift the description of the UK central government's approach to Europe from one of intergovernmentalism to that of MLG, the effectiveness of the Scottish government in European decision-making is likely to be greater.

Intergovernmentalism

Within the intergovernmentalist literature there are a variety of perspectives on European integration.⁴⁶ However, underlying all of the intergovernmental approaches is the understanding that European integration has been a state-centric process conducted solely at the discretion of its member-states.⁴⁷ Intergovernmentalism refutes the argument that member-states have suffered a loss of sovereignty, or that member-states' powers over specific areas of traditional national policy-making have been transferred to supranational institutions of the EU. They argue that sovereignty is being "pooled", not in a higher supranational authority, but in a state-centric

⁴⁶For a discussion of a variety of intergovernmentalist approaches see Rhodes and Mazey, "Introduction," 9-15; Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies* 31, no.4 (December 1993).

⁴⁷Liberal intergovernmentalism takes account of the domestic sphere but continues to argue that in the international arena, states are the primary representatives of domestic interest.

institution in which the state remains the only significant actor.⁴⁸ Collective decision-making between member-states may limit these states on specific issues. However, influence over the affairs of other member-states involved in the negotiations may also be gained.

Alan Milward has indicated that European integration, through actions such as the transfer of more troublesome aspects of member-state domestic policy to the European level, has in fact “rescued” the nation-state.⁴⁹ It has been argued that difficult decisions for member-states have been transferred to the EU level of decision-making, where they have a less destabilizing effect.⁵⁰ Evidence of this can be seen in the controversy over the export of British calves to the continent for veal, where the United Kingdom government was able to claim that it was not responsible and that protest should be redirected toward Brussels.⁵¹ In this manner, pressure for unpopular decision-making is moved away from member-state governments to Brussels.

Greater gains than those of the potential public relations benefits may be achieved by the transfer of difficult domestic issues to the European level. Instead of member-states losing power over domestic issues which are transferred to the European level, the intergovernmental approach suggests that there are substantial increases in the actual decision-making capacity of member-

⁴⁸Robert Keohane and Stanley Hoffmann, “Institutional Change in Europe in the 1980s,” in *The New European Community: Decisionmaking and Institutional Change*, ed. Robert Keohane and Stanley Hoffmann (Boulder: Westview Press, 1991), 13.

⁴⁹Alan S. Milward, *The European Rescue of the Nation-State*, (Berkeley: University of California Press, 1992).

⁵⁰Thomas Risse-Kappen, “Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union,” *Journal of Common Market Studies* 34, no.1 (March 1996), 55; James A. Caporaso and John T.S. Keeler, “The European Union and Regional Integration Theory,” in *The State of the European Union*, ed. Carolyn Rhodes and Sonia Mazey (Harlow: Longman, 1995), 9-10.

⁵¹Gary Marks, Liesbet Hooghe and Kermit Blank, “European Integration from the 1980s: State-Centric v. Multi-level Governance,” *Journal of Common Market Studies* 34, no.3 (September 1996): 349.

state governments. These increases in central government control are acknowledged by Thomas

Risse-Kappen:

[t]he intergovernmentalist argument that the European integration strengthens the state hinges on the assumption that transferring issues from the domestic to the foreign policy sphere moves them into the '*domaine reservee*' of executive control.⁵²

Risse-Kappen criticises this position by arguing that the distinction made between high and low politics is false. He argues that issues which enter the jurisdiction of foreign policy and, therefore, the executive, are not removed from the influences of domestic politics.⁵³ Evidence of this can be seen in the case of Germany where the *Länder* has gained specific concessions from the federal government. The *Länder* sought these concessions to prevent a transfer of power to the federal government as a result of policy decision-making - which was traditionally in *Länder* jurisdiction - being handed up to the European level.⁵⁴

If this reasoning is applied to the process of devolution in Scotland, it can be argued that shifts in decision-making over domestic policy areas from the UK government to the European Union undermined the power of the Scottish Parliament before it had even begun. If the Scottish Parliament's jurisdiction is over policy areas which are increasingly dealt with at the European level, and therefore within the realm of foreign policy and the *domaine reservee* of the central

⁵²Risse-Kappen, "Exploring the Nature of the Beast," 56-57; Michael Keating and Lisbet Hooghe have argued that the importance of the Council of Ministers in European decision-making has allowed member-state governments to re-enter policy areas which had been passed to NCGs' jurisdiction: Keating and Hooghe, "By-passing the nation state? Regions and the EU policy process," in *European Union Power and Policy-Making*, ed. Jeremy Richardson (London and New York: Routledge, 1996), 218.

⁵³Risse-Kappen, "Exploring the Nature of the Beast," 57; These arguments are supported by the NCG understanding of the international system.

⁵⁴The *Länders'* motivation is an example of Soldatos' argument that NCGs are encouraged into the international arena in an attempt to protect their decision-making powers over policy areas within their jurisdiction. This example is elaborated on in chapter three.

government executive, then the Parliament will become primarily administrative and dependent upon central government decision-making within Europe.

From this, the intergovernmental perspective on the role of NCGs in the European system would conclude that these actors have little or no influence in the European decision-making process. Indeed, as has been suggested above, the integration of Europe is understood by the intergovernmentalist to be a rehabilitation of the power and influence of the nation-state. The member-state remains the “gatekeeper” to the international arena.⁵⁵ Even evidence of increased institutional representation of NCGs in European decision-making is not accepted as providing any challenge to the intergovernmentalist perspective. The intergovernmental approach would argue that these institutions are not significant in the European system nor do they detract from the influence of the member-states.

The lack of influence attributed to NCGs in European affairs may suggest that the intergovernmental approach provides little assistance in seeking to understand the specific position of Scotland in the European environment. However, the approach is useful because it provides an alternative understanding to the description of the international system provided by the literature on NCG in foreign policy and the multi-level governance approach, which is more conducive to NCG activity in international affairs. Furthermore, the argument is made in chapter three that the pre-devolution UK government’s approach to Europe and the role of NCG in it reflected an intergovernmentalist position. If this approach is unchanged by devolution then it is likely that the

⁵⁵Ian Bache uses the term “gatekeeper” in reference to the role of member-states. He looks specifically at the United Kingdom's role in the regional policy of the European Community/Union. This is particularly significant because non-central government participation in regional policy decision-making is often used as evidence for alternatives to the intergovernmental approach. Bache concludes that even in regional policy the UK government acts as an “extended gatekeeper” to the European arena: Ian Bache, “The extended gatekeeper: central government and the implementation of EC regional policy in the UK,” *Journal of European Public Policy* 6, no.1 (March 1999).

role of Scotland will be limited.

Multi-Level Governance

An alternative to the intergovernmentalist interpretation of European integration is provided by the multi-level governance explanation of the European system. The MLG approach acknowledges that European integration has created an integrated European system in which NCGs play an active part, while also accepting that state level executives remain essential, although they no longer monopolize this system.⁵⁶ Marks *et al* argue that multi-level governance does not deny the importance of the member-state in the European system, nor that they may be the most important arena for policy-making in the EU.⁵⁷ However, within the multi-level governance approach non-central governments do play an active role in policy-making in the European system.

Marks *et al* consider three aspects of the MLG approach which have significance for the location of decision-making in European system. Firstly, decision-making in European policy-making is no longer the preserve of the member-state but is instead shared amongst various levels of government. Secondly, decision-making in a system of multi-level governance results in a “loss of control for individual state executives.”⁵⁸ Finally, the multi-level model recognises the interconnectedness of the political systems in the European Union and rejects their separation. Key to this is the belief that the division of domestic and international used by the state-centric

⁵⁶Hooghe, “Subnational Mobilisation,” 176.

⁵⁷Marks *et al* , “European Integration,” 346.

⁵⁸*Ibid.*, 346.

approach is false. Marks *et al* state that “[t]he separation between domestic and international politics, which lies at the heart of the state-centric model, is rejected by the multi-level governance model.”⁵⁹ This is supported by the argument that the European policy of member-states is not foreign policy but is instead European domestic policy.⁶⁰ The result of the combination of these three aspects is what Hooghe describes as a “multi-layered polity, where there is no centre of accumulated authority, but where changing combinations of supranational, national and subnational governments engage in collaboration.”⁶¹ As a result, sub-state activity is a central component of the MLG approach.

The dispersion of decision-making in the multi-level governance model has specific implications for how sub-state government actors participate in the European system. Marks *et al* have argued that

[w]hile national arenas remain important for the formation of state executive preferences, the multi-level model rejects the view that subnational actors are nested exclusively within them. Instead, subnational actors operate in both national and supranational arenas, creating transnational associations in the process. States do not monopolize links between domestic and European actors, but are one among a variety of actors contesting decisions that are made at a variety of levels.⁶²

In the MLG approach NCGs are not only likely to become active participants in the European

⁵⁹*Ibid.*, 346-347.

⁶⁰Jeffery, “Farewell the Third Level,” 56.

⁶¹Hooghe, “Subnational Mobilisation,” 176; Michael Keating, while addressing the evolution of the European system, argues that “[r]ather than a new territorial hierarchy, with clearly delineated tiers, this may eventually produce a mosaic, with overlapping and underlapping spheres of authority more reminiscent of pre-modern Europe than the nineteenth century nation-state”: Michael Keating, *Nations Against the State: The New Politics of Nationalism in Quebec, Catalonia and Scotland*, (New York: St. Martin's Press, 1996), 1; Hedley Bull describes a similar system of international governance which he referred to as neo-medievalism: Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, (London: Macmillan, 1977), 254 -255.

⁶²Marks *et al* , “European Integration,” 346.

environment, they are also likely to step outside of the member-state parameters and become independent actors. Indeed, the position of NCGs in the European Union is an important test for the applicability of the multi-level or intergovernmentalist approach.⁶³

A multi-level governance approach to European integration includes a prominent role for NCGs in Europe. Although the MLG approach cannot be used to describe all of Europe, there is evidence that in parts of Europe steps towards this system have been taken. This will be elaborated upon in chapter three. For the purposes of this thesis, the multi-level governance approach provides an example of how Scotland as a NCG could become involved in European decision-making in the post-devolution period.

Conclusion

The literature discussed in this chapter provides an understanding of the conditions which contribute to the level and effectiveness of non-central governments in international and European affairs. These conditions can act as indicators of the potential level of Scottish activity in the UK foreign policy process and in external affairs. The literature suggests that NCGs are likely to be more involved in international affairs if they have a high level of motivation for such activity. While motivation is a contributing factor, it will not necessarily determine the effectiveness of that representation. The institutional and constitutional settings of NCGs are primary determinants of the efficiency of NCG international activity. The literature suggests that there may be a high level of non-central government international activity in a constitutional environment which is ambiguous about the role of NCGs, as seen in the case of Canada. Alternatively, NCGs which

⁶³*Ibid.*, 356.

exist in highly defined constitutional settings with powers *vis-a-vis* the central government, as in the case of the *Länder* in Germany, may also contribute to a high and efficient level of NCG international activity. The institutional powers of NCGs, *vis-a-vis* central governments, in the policy formulation, negotiation and implementation stages of the foreign policy process are important factors contributing to the effectiveness of NCG international activities. In contrast to this, institutional environments which have clearly defined but restrictive roles for NCGs activities in external affairs will limit the level and effectiveness of those activities.

The literature also indicates that the method by which non-central governments become involved in the foreign policy process and whether that involvement is in co-operation or conflict with central governments, may also contribute to the level and effectiveness of NCG representation. However, it has been suggested that this is again dependent upon the constitutional arrangements and the power of NCG *vis-a-vis* their central governments. If Scottish NCG activity is likely to cause conflict with the central government the means by which the UK central government can manage that activity is an important indicator of how effective Scottish international activity may be. If the devolved arrangements allow the UK central government to easily limit Scottish activity then Scottish representation is likely to be ineffective. Alternatively, if Scottish international activity is likely to be in co-operation with the UK central government, Scottish powers in the foreign policy process are important for determining the level of effectiveness of its representation. If devolution creates a system in which power favours the UK central government, then it is likely that Scottish co-operation in the foreign policy process will be on the UK central government's terms. Alternatively, if devolution has given Scotland powers in the foreign policy process, it is likely that its representation will be more efficient.

The intergovernmental and multi-level governance approaches to European integration are

also useful for understanding the potential level of Scottish activity in international affairs. According to the literature on European integration, non-central governments will have a more effective role in a European system described by the multi-level governance approach. Chapter three demonstrates that the European system has developed a role for NCG actors. However, non-central governments' ability to become involved remains determined by member-states' attitudes towards the role of NCGs in European decision-making. The argument is also made in chapter three that the pre-devolution UK attitudes towards NCG activity in the European Union reflected an intergovernmental approach to the European system, where decision-making was state-centric. The question which arises is whether devolution has altered the UK governments approach? If this is the case, the literature suggests that there will be a decline in the role of the UK central government in European decision-making, coupled with a weakening of the distinction between domestic and European politics. If this has happened as a result of devolution, then the role of Scotland may be greater than if the UK position remained unchanged from the pre-devolution period.

Chapter 3

Pre-Devolution Scotland: Limits of Representation

The theoretical literature has shown that the domestic context of non-central governments contributes to their capacity to act in the international arena. This chapter will explore Scotland's constitutional and institutional settings in the United Kingdom and the impact of these on Scotland's international and European representation in the period before devolution.¹ The purpose of addressing the position of Scotland within the United Kingdom in the pre-devolution period is to provide a historical background to, and a comparison for, the post-devolution framework for Scottish activity in international affairs. The chapter will focus on both the constitutional nature of the United Kingdom as a unitary state and the specific institutional arrangements governing Scottish representation within the UK. It will be argued that in this period Scottish interest, although receiving increasing access to central government from the 1880s onward, had limited access to the decision-making processes of the UK central government due to constitutional and institutional constraints.

Further to this, it will be argued that in the period from 1979 to 1997, Scottish access to UK central government decision-making was, in practice, restricted by the position of the Conservative Party in Scotland. During this period, the Conservatives, while successfully forming four consecutive governments in Westminster, experienced steady electoral decline in Scotland,

¹For the purposes of this paper 1997 will be regarded as the dividing-point between the pre- and post-devolution periods. The processes of decision-making did not fully alter until the election and first sitting of the Scottish Parliament in 1999. However, the passing of the White Paper on devolution in the summer of 1997 and the 'Yes, Yes' vote of the Referendum on 11 September 1997 set in motion the processes of devolution. From that point decision-making has been affected by the knowledge that devolution would take place in 1999.

contributed to poor representation of Scottish interest in the decision-making process.

Restricted access to central government decision-making in the pre-devolution period limited the possibility of Scottish representation in domestic policy-making. Subsequently, Scottish representation in formal UK foreign policy-making, which at the time had been characterised by a high level of centralisation and elitism, and in international affairs was limited. However, aspects of international activities were addressed within Scotland. The Scottish Office, responsible for Scottish representation in the central government, did engage in overseas representation in the pursuit of Scottish economic development. Outside of the Scottish Office, the international activities of Scottish local governments will be examined. Scottish local governments are the only actors which accurately fit the description of Scotland as a non-central government in the pre-devolution period. Finally, the European context, with its increasing means for NCG participation, and the UK government's resistance to this will be examined.

Scotland and the United Kingdom: Scottish Representation in the UK Central Government.

Scotland's constitutional position within the United Kingdom had its origins in the seventeenth century. In the Union of the Crowns in 1603 James VI of Scotland ascended to the English throne uniting the monarchies of Scotland, England and Wales.² Despite the Union of the Crowns there remained two separate parliaments, one for the kingdom of Scotland and one for the kingdoms of England and Wales. In 1707, under the *Act of Union*, these two parliaments were abolished and replaced by a new parliament in Westminster.

²James packed his bags and headed for London, returning to Scotland only once in the remaining twenty-two years of his reign: Lynch, *Modern Scotland*, 239.

Although the *Act of Union* of 1707 created a unified state, not all of the institutions of the two kingdoms were joined. Scotland maintained a separate and distinct Church and education system, a separate system of government for royal burghs and a separate legal system. The preservation of these institutions contributed to the maintenance of a distinct Scottish identity which has been a platform for the renewal of Scottish nationalism. Without these, it has been argued, that Scottish assimilation into the United Kingdom may have been accomplished in the period after 1707.³ Furthermore, the preservation of these Scottish institutions necessitated their separate treatment in the processes of government at Westminster. For example, a separate legal system in Scotland required specific and separate attention to the Scottish features of legislation and, at times, necessitated separate Scottish legislation.⁴

Scottish satisfaction with the Union and Scotland's position in it has gone through various stages since 1707.⁵ According to Gordon Donaldson, the most recent period of dissatisfaction began in the 1850s.⁶ At that time the position of Scotland within the Union and the representation

³Keating, "Scotland in the UK: a Dissolving Union?" *Nationalism & Ethnic Politics* 2, no.2 (Summer 1996): 233-235. Keating and Jones have argued that "[i]n Scotland, identity has been preserved by a strong civil society and a set of governmental institutions which, while lacking real authority, focus debate on Scottish themes.": Michael Keating and Barry Jones, "Scotland and Wales: Peripheral Assertion and European Integration," *Parliamentary Affairs: A Journal of Comparative Politics* 44, no.3 (July 1991): 311.

⁴According to Kellas, "the existence of separate Scottish legislation is important in strengthening the autonomy of Scottish politics.": James Kellas, *The Scottish Political System*, 4th ed. (Cambridge: Cambridge University Press, 1989), 25.

⁵The initial acceptance of the terms of the Union agreement was questioned as a result of the nature of the bargaining, conducted under the accusations of bribery and secret diplomacy in the period in the lead up to 1707: Kellas, *Scottish Political System*, 20; Lynch, *Modern Scotland*, 312, 314-315; Further adversity toward the Union can be seen in the Jacobite uprisings in 1715 and 1745 in which supporters of the catholic Stewart pretenders sought to both place their "rightful" King on the Scottish throne and remove Scotland from the Union.

⁶Gordon Donaldson outlines three periods of varying Scottish reaction to the arrangements of the Union. In addition to a period of dissatisfaction after 1850, Donaldson argues that there was a initial period of

of Scottish interest at Westminster became subjects of renewed concern. Evidence of this was seen in the formation in 1853 of the National Association for the Vindication of Scottish Rights which called for the creation of a Secretary for Scotland and an increase in the number of Scottish MPs in Westminster.⁷ In the 1880s calls for Home Rule for Scotland, echoing similar Irish demands, and the establishment of the Scottish Home Rule Association added to the pressures for better terms for Scotland within the Union.⁸

It was in response to Scottish discontent with the Union that initial steps to improve Scottish representation in the UK government began. The first evidence for this can be seen in 1885 with the creation of the Scottish Office and the re-establishment of the Secretary for Scotland, the position having been dissolved in 1746. In 1892 the Secretary for Scotland became a permanent position within the Cabinet.⁹ From this time increasing measures were taken to improve Scotland's position and representation within the Union. Within Parliament, increased means to discuss Scottish business and legislation were created, the areas of responsibility of the Secretary for Scotland and the Scottish Office were increased and the bureaucratic administration of government was moved to Scotland.¹⁰

discontent with the Union from 1707 to 1750 followed by a period from 1750 to 1850 in which the Union remained, for the most part unquestioned by Scots: Gordon Donaldson, *Scotland: The Shaping of a Nation*, (Nairn: David St. John Thomas Publisher, 1993), 113.

⁷*Ibid.*, 122, 125.

⁸*Ibid.*, 126.

⁹In 1926 the Secretary of Scotland was raised to Secretary of State.

¹⁰Kellas provides a detailed chronology of what he has described as "a vast increase in the functions of the Scottish Office.": Kellas, *Scottish Political System*, 31-40; Despite the development by the early 1970s of what Kellas has labelled a Scottish system of government, considerable discontent with the Union remained. Evidence for this can be seen in the success of the SNP in the October 1974 general election, where its popularity peaked with 30.4 percent of the electorate: *ibid.*, 135. Further support was evident in the

By the 1980s Scotland possessed a number of means of representation in the UK central government. In Westminster, Scotland was represented by seventy-two Scottish Members of Parliament, a disproportionately large number of MPs compared to the rest of the United Kingdom. These MPs represented Scottish interests on the floor of the House of Commons, in specific Scottish Committees and through the practice of placing Scottish MPs on UK-wide committees where a particular Scottish interest existed. Specifically, there were two Scottish standing committees to address bills, deemed to be exclusive to Scottish interests, at the committee stage of bills in the House of Commons. These committees consisted of between sixteen and fifty MPs reflecting the party composition of the House of Commons. Scottish representation in Westminster was also facilitated by a Scottish Grand Committee which addressed bills at the second and third readings and at the reporting stage. The Grand Committee was comprised of all Members of Parliament from Scotland and, therefore, did not necessarily reflect the majority of the governing party. As a result of this, only non-controversial bills were put before the Grand Committee. There also existed a select committee on Scottish Affairs, established in 1979 to monitor the functioning of the Scottish Office. Like the Scottish standing committees, the make up of this committee reflected the party composition of the House of Commons.¹¹ In terms of actual legislation these Scottish representatives were required to address between five and ten exclusively Scottish bills, in addition to over seventy Acts which were

considerable support for constitutional change in the 1979 referendum on devolution. 51.6 percent of those that turned out to vote supported devolution. However, the referendum was unsuccessful as the 40 percent minimum threshold of the entire electorate in support of devolution was not met: *ibid.*, 153, 158.

¹¹Bogdanor, *Devolution in the United Kingdom* (Oxford: Oxford University Press, 1999), 115-116; For a more in depth discussion of these offices see Kellas, *Scottish Political System*, 85-95.

applicable to Scotland, in each parliamentary session.¹²

While Scottish MPs were effective in representing specific Scottish interests at Westminster, their attentiveness to Scottish issues limited their ability to focus on wider UK issues such as foreign policy. These wider UK issues may have been less directly related to Scotland, but they contained elements which affected Scottish interests. Michael Keating's study of Scottish MPs from 1945 to 1970 suggests that the majority of these MPs focussed on Scottish issues at Westminster, with only a minority of Scottish MPs interested in a specifically UK role.¹³ The commitment of Scottish MPs to Scottish issues has been further recognised by Kellas who has argued that Scottish MPs were "among the most hard-working MPs in terms of [Scottish] committee attendance."¹⁴ However, the consequences, according to Kellas, of Scottish MPs' focus on specific Scottish issues was decreased attendance on UK-wide committees. Despite this, Scottish MPs regularly held prominent positions in the UK government which were not specific to Scottish interest, including the position of Secretary of State for Foreign Affairs. However, the desire of these MPs to represent Scottish interests in these positions was likely to be secondary to representing the UK as a whole.

One of the most influential means of representing Scotland in the UK central government was through the Secretary of State for Scotland. Since 1892 Scotland has had its interests represented in the highest level of government through the guaranteed inclusion of the Secretary of Scotland, and after 1926 the Secretary of State for Scotland, in the Cabinet. The function of the

¹²Kellas, *Scottish Political System*, 25.

¹³Keating, "Scotland in the UK," 241.

¹⁴Kellas, *Scottish Political System*, 91.

Secretary of State for Scotland was to fulfil the dual roles of both the spokesperson for Scotland in Parliament and Cabinet, and the representative of Government in Scotland. In the immediate pre-devolution period, the Secretary of State for Scotland and the Scottish Office were responsible for addressing a number of policy areas.¹⁵ Those policy areas were divided into five separate departments: the Agriculture, Environment and Fisheries Department; the Development Department; the Education and Industry Department; the Department of Health; and the Home Department.¹⁶ In addition to addressing these specific areas, the Secretary of State for Scotland was responsible for actively pursuing Scotland's interest in all other aspects of government business.

In these areas of policy Michael Keating and Arthur Midwinter have outlined three identifiable tasks of the Scottish Office. Firstly, its role was to implement legislature and programmes established by the central government with appropriate alterations to fit the Scottish context. Secondly, it was responsible for influencing the creation of policy so that it reflected the particular needs of Scotland. Finally, the Scottish Office was responsible for pursuing further resources for Scotland.¹⁷ Andrew Scott *et al* have argued that the Scottish Office had considerable powers over the adaptation of UK central government powers. However, they argue that the

¹⁵The Secretary of State for Scotland's department was the Scottish Office. The Scottish Office is comprised of a number of ministers and junior ministers responsible for specific policy areas within the Scottish Office's jurisdiction. These ministers are in turn supported by a Scottish bureaucracy based at New St. Andrews House in Edinburgh, with a liaison office at Dover House in Whitehall. For further information see Kellas, *Scottish Political System*, 27-61. After devolution the Scottish Office changed its name to the Scotland Office.

¹⁶Bogdanor, *Devolution in the United Kingdom*, 111.

¹⁷Michael Keating and Arthur Midwinter, *The Government of Scotland* (Edinburgh: Mainstream Publishing, 1983), 13.

Scottish Office's lead role in policy formulation has been increasingly limited.¹⁸

Prior to 1999 the Scottish Office was criticised both for being too small and too large.¹⁹ The Scottish Office was considered too small in terms of its power over policy areas in shared jurisdiction with other Whitehall departments that were functionally based. In contrast, it was too large given that the limited resources available to it made it under equipped to give the necessary attention to all aspects under its remit.²⁰ Ultimately the Secretary of State for Scotland was constitutionally responsible for all of the areas of policy outlined above, a task which, outside of Scotland, was shared by several Ministers.²¹ Indeed, at various times, the five departments of the Scottish Office covered the policy fields which were distributed between as many as eleven departments in Whitehall.²² As a form of regional administration of the UK central government, the Scottish Office was unmatched by any other in the United Kingdom, a fact reflected in its operating size. In 1995, the total operating staff for regional government offices in England was 2800 while the Scottish Office personnel was 5600.²³

The accumulation of means of Scottish representation in the UK central government has

¹⁸Scott *et al*, "Subsidiarity," 53; Writing in the early 1980s Keating and Midwinter indicated that the Scottish Office had considerable autonomy in policy formulation that fell within its jurisdiction: Keating and Midwinter, *Government of Scotland*, 19-20; The difference between the role of the Scottish Office in policy formation described by Keating and Midwinter in the early 1980s and Scott *et al* in the mid 1990s reflects increased centralization under the Conservative government of this period, discussed later in this chapter.

¹⁹Kellas, *Scottish Political System*, 50.

²⁰Sonia Mazey and James Mitchell, "Europe of the Regions? Territorial Interest and European Integration: The Scottish Experience," in *Lobbying in the European Community*, ed. Sonia Mazey and Jeremy Richardson, (Oxford: Oxford University Press, 1993), 109.

²¹Kellas, *Scottish Political System*, 50.

²²Mazey and Mitchell, "Europe of the Regions," 108.

²³Brian W. Hogwood, "The Machinery of Government, 1979-97," *Political Studies* XLV (1997): 710.

led James Kellas to describe the existence of a distinct Scottish political system. Although it is clear that there existed a separate Scottish system it cannot be argued that it was independent of the UK central government. How restrictive the central government could be over the Scottish system was displayed very clearly in the period of Conservative government from 1979 to 1997.

Decline of the Conservatives in Scotland

From 1979 to 1997 it was the Conservative Party which dictated the representation of Scotland within the UK government. This party's electoral success in Westminster and decline in Scotland was a significant factor in limiting Scottish representation in the UK government and important in highlighting the need for constitutional change. In the General Election in 1955 the Conservative Party polled 50.1 per cent of the Scottish vote, a post-Second World War peak after which the Party's success began to decline.²⁴ On four occasions from 1979 to 1997 the UK General Elections fulfilled what has been termed the "doomsday scenario" - in which Conservative governments were formed at Westminster without a majority of popular support in Scotland.²⁵ In the election of 1997 the Conservative Party managed only eighteen percent of the

²⁴Stephen Kendrick and David McCrone, "Politics in a Cold Climate: The Conservative Decline in Scotland," *Political Studies* XXXVII (1989): 590.

²⁵Robert McLean, "Chapter Two: A Brief History of Scottish Home Rule," *A Guide to the Scottish Parliament: The Shape of Things to Come*, ed. Gerry Hassan (Edinburgh: The Stationery Office/Centre for Scottish Public Policy, 1999): In the period from 1900 to 1979 there had only been ten years in which the government in Westminster did not also hold a majority of Scottish seats: Keating, "Scotland in the UK," 246: The lack of a mandate in different regions of the UK has not just been a problem for Scotland and the Conservative party. Roger Levy raises the point that on three occasions from 1964 and 1979, the Labour party governed England without a majority of seats there: Roger Levy, *Scottish Nationalism at the Crossroads* (Edinburgh: Scottish Academic Press, 1990), 141.

vote in Scotland, resulting in no Conservative held seats representing Scotland in Westminster.²⁶

As a result, for eighteen years Scotland was ruled by a government which was increasingly out of favour in Scotland and not the choice of the majority of the Scottish electorate.

The failure of the Conservative Party in Scotland undermined the system's ability to legitimately represent Scottish interests in the UK government. This was seen most clearly in the failure of the institutions which were established to facilitate this representation. During this period the Secretary of State for Scotland was criticised for representing a Conservative government which did not have the backing of the Scottish people. Vernon Bogdanor described the office as being "in reality, more like the ambassador of a hostile power than Scotland's spokesman in Cabinet".²⁷ In 1995 James Mitchell argued that "[t]he Scottish Office may have governmental authority but it lacks democratic legitimacy and is widely seen in Scotland as misrepresenting or only partially representing Scottish interest."²⁸ Furthermore, the actual lack of Scottish Conservative MPs made it difficult to successfully fulfill positions within the Scottish Office. This became particularly difficult after the 1987 General Election when only eleven Conservative MPs were elected in Scotland. In order to fill the positions within the Scottish Office the Conservative government was forced to appoint two ministers who had been defeated in the General Election to the House of Lords and reinstate a previously fired minister so that they could then serve in the Scottish Office.²⁹

²⁶"The State of Scotland." *The Economist*, (1 May 1999): 54.

²⁷Bogdanor, *Devolution in the United Kingdom*, 114.

²⁸James Mitchell, "Lobbying 'Brussels': The case of Scotland Europa," *European Urban and Regional Studies* 2, no.4, (1995): 290.

²⁹Keating, "Scotland in the UK," 243.

The failure of the system under Conservative rule was also seen in the alterations or discontinued use of the Scottish Standing and Select Committees during the period of Conservative government. Again in 1987 the Conservative government was forced to alter the criteria of membership of the Scottish Standing Committees to allow English Conservative MPs to attend in order to make up the government majority.³⁰ After the 1987 General Election the Scottish Select Committee fell into disuse until 1992 when it became necessary to include MPs from outside of Scotland to form the government majority.³¹ While it can be argued that these committees had little influence in actual policy-making, it can be assumed that their failure furthered the perception that an English Conservative government was governing Scotland against its will and was a contributing factor to the increased calls for constitutional change.³²

³⁰Bogdanor, *Devolution in the United Kingdom*, 115.

³¹*Ibid.*, 115-116.

³²Consecutive Conservative governments from 1979 onward were unwilling to seriously address constitutional change for Scotland despite evidence that there was considerable support for this: Keating, *Nations Against the State*, 186; In the 1979 referendum on devolution the Conservatives campaigned on a "no" vote arguing that they would provide Scotland with a better deal after the next General Election: Paul H Scott, *Towards Independence: Essays on Scotland*, (Edinburgh: Polygon, 1991), 195. This did not materialize with the victory of the Conservative government in 1979. Under the new leadership of Margaret Thatcher the issue of a devolved Scottish Parliament was dropped. Despite serious activity in Scottish civil society and amongst other parties in Scotland in this period the Conservative government continued to avoid altering the status quo. By the time John Major attempted to address the issue of Scotland within the Union in March 1993 with the establishment of the inquiry *Scotland and the Union*, confidence in the ability of the Conservative party to seriously address the issue of Scotland's position within the United Kingdom had been lost. Even in the devolution campaign in the summer of 1997 the Conservatives persisted in resisting constitutional reform by campaigning against a devolved Scottish Parliament. For further information concerning the Conservative party's management of Scotland within the Union during this period see Keating, "Scotland in the UK," 251-253.

A Unitary State

The type of state into which the United Kingdom developed affected the potential for Scottish activity in international relations in the pre-devolution period. The outcome of the *Act of Union* was the creation of a unitary state with no independent representation of Scotland outside of Westminster.³³ Stein Rokkan and Derek Urwin have defined the unitary state as being

built up around one unambiguous political centre which enjoys economic dominance and pursues a more or less undeviated policy of administrative standardisation. All areas of the state are treated alike, and all institutions are directly under control of the centre.³⁴

Several characteristics of the UK system of governance have justified its description as a unitary state. The most significant feature was that of the principle of parliamentary sovereignty in which the indivisible authority of the United Kingdom resides at Westminster, representing an “unambiguous political centre.” Scottish interests were to be represented only within the confines

³³Bogdanor has argued that the creation of a unitary state was to be expected as there was no precedent for an alternative system of government in which sovereignty might be shared between Westminster and a Scottish government. The first federal system of government was not established until the 1776 American Constitution: Bogdanor, *Devolution in the United Kingdom*, 11.

³⁴Bogdanor, *Devolution in the United Kingdom*, 15; In opposition to this it has been argued that the United Kingdom is a union, not a unitary, state. Rokkan and Urwin describe the “union state” as resulting from an “[i]ntegration [which] is less than perfect. While administrative standardisation prevails over most of the territory, the consequences of personal union entail survival of pre-union rights and institutional infrastructures which preserve some degree of regional autonomy”: Bogdanor, *Devolution in the United Kingdom*, 15. In Scotland there did exist both separate institutions and means within central government to represent Scottish interest. In addition to this, there existed a system of administrative devolution which adapted policy and its implementation to meet Scottish needs. Kellas goes so far as to argue that within Scotland there existed a distinct Scottish political system. In response to the argument that Scotland is not a state Kellas argues that “the reply ... is that it is nevertheless a political system. There are features of statehood in that system such as separate laws, administration, church, and education. Through these, the system allocates the values which maintain its identity”: Kellas, *Scottish Political System*, 261; Despite these arguments, the period of Conservative government has shown that the existence of a Scottish system was highly limited within the confines of the UK central government.

of a single sovereign parliament in which there was an English majority.³⁵ Furthermore, Michael Keating and Arthur Midwinter have argued that the lack of substantive policy differentiation for Scotland is a result of the pressure for uniform policy in a unitary system.³⁶ The most convincing evidence for the description of the United Kingdom as a unitary system comes from the period of Conservative government from 1979-1997 in which it was clear that the operation of this system was still primarily conducted within the confines of the governing party in Westminster.³⁷ Within such a state the opportunity for Scottish activity in international affairs was limited. Indeed, in the pre-devolution period there did not exist a Scottish NCG to represent Scotland in foreign policy or international affairs. Despite this, Scottish interest in international affairs existed and was, to some extent, accommodated within the increasing representation of Scottish interests in central government.

UK Foreign Policy and the Scottish Office: The Representation of Pre-Devolution Scotland in European and International Affairs.

Scotland's position within the United Kingdom also affects the potential for

³⁵Bogdanor, *Devolution in the United Kingdom*, 11-15; The principle of parliamentary sovereignty had not been recognised in Scotland in the period before 1707. This has been of considerable importance for some in Scotland where the emphasis on the contractual nature of the *Act of Union*, instead of the sovereignty of Westminster, has been seen to provide the basis for negotiations of a new constitutional arrangement: Keating, "Scotland in the UK", 234, 251; It is feasible to predict that the debate over parliamentary sovereignty may contribute to the conflict over the ultimate sovereignty of Westminster in the jurisdiction of the Scottish Executive.

³⁶Keating and Midwinter, *The Government of Scotland*, 25.

³⁷However, the constitutional changes which resulted from the failure of this system to address Scottish interests can be seen as evidence that a more centralized or unitary form of government was incompatible with the functioning of UK governance.

representation of Scottish interest in international affairs. As has been argued, the United Kingdom has maintained a highly centralised form of government, especially in the period of Conservative rule from 1979 to 1997. Despite this, Scottish interest did receive representation in international affairs through the UK system of governance. This was accomplished through channels such as Scottish MPs, Ministers, the Secretary of State for Scotland and the Scottish Office. Scottish representation also came in the form of direct links between the European Union and Scotland, such as Committee of Regions representatives from Scotland and Scottish Members of the European Parliament (MEPs).

Despite the existence of channels of representation, the input of Scottish interest in the actual UK foreign policy process was limited. Foreign policy-making in the United Kingdom in the pre-devolution period was characterized as highly centralized with domestic interest receiving limited access to the process. Michael Clarke has argued that in the UK's foreign policy the "most obvious unchanging reality which persists over the years is the fact of executive dominance in the foreign policy process."³⁸ This executive dominance was furthered by the secondary position of the legislature in foreign policy decision-making and the low priority of foreign affairs in public debate.³⁹ As a result, the most effective means of representing Scottish interest in international and

³⁸Michael Clarke, "The Policy-Making Process" in *British Foreign Policy Tradition, Change & Transformation*, ed. Michael Smith, Steve Smith and Brian White (London: Unwin Hyman, 1988), 72.

³⁹Clarke, "The Policy-Making Process", 74-77; Christopher Farrands, "State, Society, Culture and British Foreign Policy" in *British Foreign Policy Tradition, Change & Transformation*, ed. Michael Smith, Steve Smith and Brian White (London: Unwin Hyman, 1988), 51; Laurance Martin and John Garnett, *British Foreign Policy Challenges and Choices for the Twenty-first Century* (London: The Royal Institute of International Affairs, Cassell Imprint, 1997), 75. While acknowledging executive dominance in foreign policy, Christopher Farrand also raises the importance of the domestic context. He has argued that traditional emphasis on elite approaches to foreign policy overlooked this, assuming that there existed domestic stability and consensus which were easily discerned by the foreign policy elite who fell under limited public scrutiny. However, he argues that increased diversity and discontent in the UK, including growth in "Celtic Nationalism", have undermined these assumptions. While Farrand recognizes that the

European affairs was through the Secretary of State for Scotland in Cabinet.⁴⁰

Clarke argues that, while being dominated by the executive, the process of foreign policy decision-making was not strictly formalized. Instead it was adaptive, altering to fit specific circumstances.⁴¹ At its highest level the system centred around the Prime Minister and the informal process of foreign policy decision-making in the cabinet. In Margaret Thatcher's governments from 1979 to 1990, control over foreign policy was centralized around the Prime Minister. In the period from 1979 to 1987 Prime Minister Thatcher oversaw the dismissal or resignations of two foreign secretaries, two defence ministers, a Lord Privy Seal, two ministers of

foreign policy process remains dominated by a small elite group, diversity within the UK domestic context has raised a number of questions including, on whose behalf is foreign policy being made? and; the legitimacy of those policies?: Farrands, "State, Society, Culture and British Foreign Policy"; Keating and Jones argue that the lack of democratic support for the Secretary of State for Scotland during the Conservative governments, drew into question their right to speak for Scotland, resulting in declining influence in European affairs: Michael Keating and Barry Jones, "Nations, Regions, and Europe: The UK Experience," in *The European Union and the Regions*, (Oxford: Clarendon Press, 1995), 101; Keith Robbins supports this, arguing that internal divisions within the UK and the decline of Britishness has affected the conduct of a British foreign policy. In the post-devolution period Robbins argues that "[s]peaking for 'Britain' is likely to become much more complicated": Keith Robbins, "Britishness and British Foreign Policy," Foreign and Commonwealth Office Historians Occasional Papers No.14: Lecture by the Vice-Chancellor of the University of Wales, Lampeter, Professor Keith Robbins, at the 1997 FCO Annual Lecture, Foreign and Commonwealth Office, London, Wednesday (14 May 1997), [http://www.fco.gov.uk.text_only/news/speechtext.asp?1445](http://www.fco.gov.uk/text_only/news/speechtext.asp?1445),

Many of these issues have been acknowledged in the foreign policy process of the Labour government formed in 1997. According to Nicholas J. Wheeler and Tim Dunne the foreign policy process of the Blair administration in the first eighteen months has been noted for being more accessible. This has been seen in the greater access to information concerning the Foreign and Commonwealth Office as well as the inclusion of NGOs' input into foreign policy decision-making and implementation. Indeed, Wheeler and Dunne argued that Labour's announcement of a "global foreign policy" shortly after coming to power in 1997 represented the first "public articulation of a conceptual framework for understanding the means and ends of foreign policy" in fifty years: Nicholas J. Wheeler and Tim Dunne "Good international citizenship: a third way for British foreign policy," *International Affairs*, 74,4, (1998): 853, 847.

⁴⁰Mitchell and Mazey argue that in European politics, where the Council of Ministers is of central importance, it is the Secretary of State for Scotland in cabinet who is best equipped to represent the interest of Scotland in EU issues: Mazey and Mitchell, "Europe of the Regions," 109: See also Keating and Hooghe, "By-passing the nation state?" 220.

⁴¹Clarke, "The Policy-Making Process," 72.

state and an industry minister, all on issues of foreign affairs and defence.⁴² How well Scottish interests were represented in Cabinet is difficult to determine due to the confidentiality of those discussions. However, the argument has been made that Prime Minister Thatcher was not overly receptive to specifically “Scottish” interests, domestically or in her promotion of a “British” foreign policy.⁴³ The influence of the Secretary of State for Scotland in Cabinet was further limited by the fact that not all decisions concerning foreign policy were taken in full meetings of the Cabinet. Instead, decisions were frequently taken by the Cabinet Foreign Policy Committee in which the Secretary of State for Scotland was often not included.⁴⁴

The Secretary of State for Scotland and the Scottish Office did have other means of accessing decisions on issues of foreign policy. Not all issues were restricted to the confines of the Cabinet Foreign Policy Committee or the Foreign Office. Many aspects of foreign policy, especially European policy, raised issues for a number of Whitehall departments beyond the Foreign Office. Laurance Martin and John Garnett have argued that “[t]he Foreign and Commonwealth Office may be at the heart of foreign policy decision making, but the Ministry of Defence, the Department of Trade and Industry, the Treasury, the Home Office, the Ministry of Agriculture, the Department of the Environment and others all have an input into the process.”⁴⁵

⁴²Clarke, “The Policy-Making Process,” 74.

⁴³Keith Robbins states that Thatcher “had set her face against the ‘balkanization of Britain’ and jettisoned an earlier Conservative willingness to complement some form of Scottish devolution.” Robbins goes on to argue that [i]t was no accident that hostility to devolution was paralleled by a foreign policy which had as its underlying motto the assertion of ‘Britishness’ globally and in particular with reference to Europe.” Keith Robbins, “Devolution and ‘British’ foreign policy,” *International Affairs* 74, no.1 (January 1998): 111-112. For a general discussion of the hostility between Scotland and Margaret Thatcher see T. M. Devine, *The Scottish Nation 1700-2000*, (London: Penguin, 1999), 601-613.

⁴⁴Kellas, *Scottish Political System*, 46.

⁴⁵Martin and Garnett, *British Foreign Policy*, 66, 65-68.

As a result, the Secretary of State for Scotland, his ministers and the Scottish Office were able to influence the process through a variety of access points. In European issues this task was undertaken by the European Affairs division within the Scottish Office whose remit was to be “co-ordinator and facilitator within the Offices and in relations with Whitehall; and as administrator of EC structural funds.”⁴⁶ The Scottish Office was successful in influencing European issues in areas where it possessed either expert knowledge, on topics such as fisheries or hill farming, or where the political salience of issues was low.⁴⁷ However, Keating and Jones argue that the impact of Scottish lobbying was to only alter or modify policy, not to significantly change it from the UK line.⁴⁸

Beyond influencing the foreign policy process within the UK central government, the Secretary of State for Scotland and the Scottish Office had only limited involvement in direct international activity. Scottish representatives were involved in UK missions abroad, but only in a restricted capacity. For example, between 1986 to 1988 representatives of the Scottish Office attended only 5 out of 151 Council of Ministers meetings. On the occasions that Scottish Office representatives did attend it was only in a junior capacity, despite the fact that the subject of the meetings - fisheries - was of considerable importance to Scotland.⁴⁹

⁴⁶Keating and Jones, “Nations, Regions, and Europe,” 100-101.

⁴⁷*Ibid.* For instance, in the late 1970s the Scottish Office had played a more substantial role in UK discussions with the European Community on issues of fisheries. This was in response to the success of the nationalist in Scotland, most specifically in constituencies which had fishing communities: Mazey and Mitchell, “Europe of the Regions?” 109.

⁴⁸Keating and Jones, “Nations, Regions, and Europe,” 100-101; Scott *et al* have argued that “the Scottish Offices’ capacity for policy *leadership* is strictly limited. Increasingly, it has become an agent for ensuring that centrally-determined policy goals are not altered or challenged at the local level”: Scott *et al*, “Subsidiarity,” 53.

⁴⁹Mazey and Mitchell, “Europe of the Regions,” 109.

The Scottish Office was also involved overseas and in Europe in the promotion of Scottish economic interests through Locate in Scotland, the Scottish Development Agency (SDA) and Scottish Europa. These organizations were loosely connected to the Scottish Office and, as a result, were forced to work within the UK framework. When their international activity did threaten to aggravate other UK departments, as in the case of the Scottish Development Agency, their activities were curtailed.

In Scotland the first government sponsored promotion of inward investment fell under the remit of the Scottish Development Agency which was established in 1975.⁵⁰ The SDA, as a quasi-autonomous non-governmental organization was loosely linked to the Scottish Office through the Scottish Economic Planning Department, but not under direct government control. By the early 1980s the SDA's promotion of inward investment had raised a number of concerns for the UK government. These included the Foreign and Commonwealth Office's (FCO) resentment of the operation of SDA overseas offices, poor communications between the SDA and the UK-wide investment agency Invest in Britain Bureau, and issues of competition in inward investment between Scotland and other parts of the UK. By 1980 these concerns raised calls from within the new Conservative government for the Invest in Britain Bureau to take over all inward investment. Although this did not happen, the SDA's responsibility for the promotion of inward investment was ended and taken over by Locate in Scotland, a more restricted inward investment agency. The creation of Locate in Scotland ensured the existence of a Scottish investment agency, under the auspice of the SDA, but with a Scottish Office official in charge. As a result the Scottish Office and central government control was asserted, decreasing the potential of Locate in Scotland

⁵⁰Prior to this the Scottish Council did pursue inward investment but this was a privately sponsored function: Keating and Midwinter, *Government of Scotland*, 172, 174. Inward investment across all of the United Kingdom was managed by the Invest in Britain Bureau.

cutting across any of the UK departments.⁵¹

Similar concerns over maintaining UK government control were raised in the establishment of the Scotland Europa offices in Brussels. In the early 1990s the increase in Scottish regional and local actors at the European level encouraged the Scottish Office to establish, through Scottish Enterprise, the SDA's predecessor, a public limited company called Scotland Europa to provide services to Scottish economic interests in Brussels.⁵² The purpose of the office was to influence European policy, gather and exchange information, lobby for European funds and provide a forum for making contact with other regional actors.⁵³ The office was organized around two levels of membership of public, semi-public and private sector bodies. These members were divided into two groups. The first were residential members who were permanently based in the Scottish Europa office. The second group of members used the Europa office on a consultancy basis through which they were regularly informed of developments in Brussels and on whose behalf Scottish Europa officials undertook specific tasks.

The potential advantages created by, and concerns over, the establishment of such an office received much attention within the Scottish Office. The advantages were outlined as: creating a stronger, more focussed lobby for Scottish economic and business interests; raising the Scottish profile in Europe; improving the exchange of information; and allowing Scottish Enterprise to have a more active role in European issues. The concern of Scottish Office officials at the time was that Scottish Europa would fall under the influence of interests other than the UK

⁵¹Keating and Midwinter, *Government of Scotland*, 174-176.

⁵²For further information see Mazey and Mitchell, "Europe of the Regions," 114-118; Keating and Jones, "Nations, Regions, and Europe," 106-108; Scottish Enterprise replaced the Scottish Development Agency in 1991.

⁵³Mazey and Mitchell, "Europe of the Regions," 117.

government such as Scottish Trade Unions or local governments, resulting in activity which did not support UK government policy. Because of this, concerns were also expressed that the office may be opposed by other British departments such as UKRep, the Treasury or the FCO.⁵⁴ James Mitchell has argued that the fears of the Scottish Office had not materialized in Scotland Europa's initial operation. Instead, its activities complemented the goals of the UK government in Europe.⁵⁵ However, at an early stage of its operation, Scottish Europa was criticised by local government and the Scottish Trade Union Congress for having limited functions.⁵⁶ The fact that the work of Scottish Europa complemented the UK's activities in Europe was most likely due to what Mitchell has argued was the main weakness of the Office, its inability "to fulfil an aggregative and proactive function," a weakness he attributed to Scotland's constitutional status.⁵⁷

Two specific weaknesses of the Secretary of State for Scotland and the Scottish Office's capacity to represent Scottish interests in foreign policy during this period can be raised.⁵⁸ Both reflect earlier criticisms of Scotland's representation in central government in general. Firstly, as has been demonstrated, the Secretary of State for Scotland and the Scottish Office were fairly small in relation to their remit and had a relatively weak position within the UK government.⁵⁹

⁵⁴These advantages and concerns were made public through leaked documents outlining the debates within the Scottish Office: Mitchell, "Lobbying 'Brussels'," 292.

⁵⁵Mitchell, "Lobbying 'Brussels'," 297.

⁵⁶Keating and Jones, "Nations, Regions and Europe," 107.

⁵⁷Mitchell, "Lobbying 'Brussels'," 297.

⁵⁸Keating, "Nations against the State," 205.

⁵⁹Keating and Hooghe, "By-Passing the Nation State?" 220; see also Mazey and Mitchell, "Europe of the Regions," 109; Elizabeth Bomberg and John Peterson agree with this assessment. However, they note that English regions are even more restricted as they do not have the privileged access to central government, and therefore "Brussels", which is provided by the territorial offices in Scotland, Wales and

Furthermore, the Secretary of State for Scotland and the Scottish Office had no specifically defined powers for representing Scottish interests in foreign or European affairs. Where the Scottish Office had been active in policy process it was primarily in policy adaption not formation. Furthermore, Scottish Office international activity, both in official UK overseas missions and in independent representation of economic interests in Europe, was very restricted by the UK central government. These weaknesses were reinforced by the lack of political will to address Scottish interest separately from the UK's, especially during Conservative rule from 1979-97.⁶⁰ As has been seen in the case of the representation of Scottish interests in central government as a whole, it is how the institutions were used, or not, by the Conservative party, not just their institutional weakness, which determined the level of Scottish representation.

Secondly, the lack of democratic legitimacy, especially in the period of Conservative government from 1979 to 1997, drew into question the right of the Scottish Office to speak for Scotland. It has been argued that during this time, as a representative of the UK Conservative government's interests, the Scottish Office was more inclined to work within UK policies rather than be representative of Scottish interests.⁶¹ The question of possessing a legitimate right to speak for Scotland had particular implications for European affairs. James Kellas argued that the absence of a regional level of government in the UK forced the EC, when looking for distinct regional representatives such as the Lander in Germany, to consult the territorial representatives of

Northern Ireland: Bomberg and Peterson, "European Union Decision Making," 227; see also Keating and Jones, "Nations, Regions, and Europe," 106, 113.

⁶⁰It is interesting to note that John Redwood, the Conservative Secretary of State for Wales, was opposed to flying the Welsh flag at the Welsh European Centre in Brussels which performing a function similar to Scottish Europa: John, "Europeanization in a Centralizing State," 140.

⁶¹Keating and Hooghe, "By-Passing the Nation State?" 220.

the *UK central government*, not specific regional representatives.⁶² As has been argued in chapter two, one of the means in which NCGs can influence central governments' foreign policy has been in aggregating and articulating the interest of NCG constituencies. In Scotland in the pre-devolution period the lack of a truly representative body to both determine and express Scottish interest limited its representation in Europe.

Scottish Local Government: NCG International Activity in Pre-Devolution Scotland.

In the pre-devolution period Scottish local governments were active players in European Affairs. Although they could not substitute for representation of a Scottish tier of government, they did represent the only real form of non-central government international activity in this period. Furthermore, it has been suggested that as Scotland's only form of directly elected government, local governments may have had a more legitimate expression of Scottish interests than the Scottish Office.⁶³ Local government motivation for activity in the European realm was a result of the increased impact of the European system on them, and their realisation of this. In a 1991 Audit Commission report the effects of the EC on Local Authorities were reported as:

- i. Euro-regulation imposes unavoidable obligations to implement, enforce and monitor EC legislation;
- ii. European economic integration creates new opportunities for (and pressures on) the local economic base; and
- iii. Euro-funds offer potential support for the local economy and for a range of

⁶²James G. Kellas, "European Integration and the Regions," *Parliamentary Affairs: A Journal of Comparative Politics* 44, no.2 (April 1991): 230.

⁶³James Mitchell, "Lobbying 'Brussels'," 290-91.

local authority projects.⁶⁴

Peter John argues that local governments in the UK underwent a process of Europeanization resulting from a “greater awareness of European legislation, growing willingness to search for European finance, networking with other European local authorities and experts, direct lobbying of Brussels institutions, and the influence of EU ideas on sub-national policy making”.⁶⁵

Local government activity in European affairs was most overtly noticeable in the operation of local government offices in Brussels to exchange information and lobby for their interest in Europe. By 1995, twenty-nine local governments and territorial representatives from the UK had representative offices in Brussels, the most of any member-state in the European Union.⁶⁶ Due to poor funding most of these offices were small, staffed by only one to three people and as a result had a generalist focus.⁶⁷ The offices’ primary goal was to ascertain regional funding.⁶⁸ The fact that the UK, one of the most centralized European states in this period, had the greatest number of local government representatives in Brussels could be seen as a reflection of the lack of alternative means of access to EU decision-making for British local governments. Elizabeth Bomberg and John Peterson have argued that UK local governments, such as Strathclyde Regional Council, were in fact better at using Brussels’ lobbying offices to gain access to EU decision-

⁶⁴ Audit Commission (1991), *A Rough Guide to Europe: Local Authorities and the EC*, (HMSO, December 1991), 7, para.9 cited in Mazey and Mitchell, “Europe of the Regions,” 112.

⁶⁵ Peter John, “Europeanization in a Centralizing State,” 133.

⁶⁶ The existence of this form of offices began in 1985 with two offices in Brussels by 1995 there were over 140 office: Charles Jeffery, “Regional Information Offices in Brussels and Multi-level Governance in the EU,” in *The Regional Dimension of the European Union: Towards a Third Level in Europe?* (London: Frank Cass, 1997), 183.

⁶⁷ *Ibid.*, 191.

⁶⁸ *Ibid.*, 194.

making than the German *Länder* which were larger and more powerful NCG actors. Bomberg and Peterson argue that the greater effectiveness of the UK local governments' Brussel's offices was due to the fact that this was their primary method for lobbying the European institutions. As will be shown later, the German *Länder* had more effective means of accessing the EU decision-making process through other, more direct channels.⁶⁹

Local government activity in Europe did come into conflict with the UK government. One of the clearest cases of this was seen in the dispute over the principle of additionality in structural funding from the European Union. John has defined additionality as "the principle that funds should have an economic impact in addition to national spending."⁷⁰ In 1991 conflict arose between the Commission, supported by UK local governments, and the UK government over whether structural funds granted to the UK were in fact being used as an addition to, or a replacement for, UK funding of regions. The conflict climaxed in 1991 when Bruce Millar, the Commissioner responsible for structural funding, stopped the transfer of the Commission administrated Rechar funds to the UK in response to the UK's failure to address additionality.⁷¹ For the UK government the interference of the Commission represented a challenge to its claim of sovereignty over decisions about UK public expenditure.⁷²

⁶⁹Bomberg and Peterson, "European Union Decision Making," 231-232; John, "Europeanization in a Centralizing State," 135.

⁷⁰Peter John "Centralization, Decentralization and the European Union: The Dynamics of Triadic Relationships," *Public Administration* 74 (Summer 1996): 302; Rechar funds were designated for the regeneration of former coal-mining areas: Hooghe and Keating, "By-Passing the Nation State?" 383.

⁷¹It is interesting to note that the Bruce Millar, the Commissioner who took this action was a former Labour Secretary of State for Scotland.

⁷²Bomberg and Peterson, "European Union Decision Making," 221.

The dispute over additionality, and the co-operation of the European Union Commission and local government, did not undermine the power of the UK central government in control over structural funding. Ian Bache argues that additionality could be limited so that in actual policy outcomes the power of central governments was unchallenged.⁷³ This is supported by Peter John who also contends that the UK central government maintained control over its internal funding policy. John argued that the withholding of Rechar funds demonstrated that the Commission's power was limited to funds it administered itself. The Commission was unable to withhold the larger European Regional Development Funds (ERDF), which fell under member-state management. Furthermore, the UK central government maintained the ability to alter its regional funding prior to receiving ERDF funding which made it difficult to determine whether the UK was actually meeting the principle of additionality.⁷⁴

Despite the conflict over additionality, the relationship between local and central governments in Europe was primarily co-operative.⁷⁵ Co-operation between local and central governments was a reflection of common interest where securing regional funding was mutually beneficial.⁷⁶ This was supported by the fact that the UKRep in Europe looked favourably upon the activities of the UK local government offices in Brussels, believing that they furthered UK

⁷³Bache, "The Extended Gatekeeper"

⁷⁴For further information see John, "Centralization, Decentralization and the European Union," 302-303; John, "Europeanization in a Centralizing State," 133-141.

⁷⁵Mazey and Mitchell argue that in the 1980s co-operation in the European affairs was one of the only areas where the deteriorating central-local government relationship was constructive: Mazey and Mitchell, "Europe of the Regions," 114; John, "Centralization, Decentralization and the European Union," 302-303; John, "Europeanization in a Centralizing State," 140-142.

⁷⁶Hooghe and Keating, "The Politics of European Union Regional Policy," *Journal of European Public Policy* 1, no.3 (1994): 384; Mazey and Mitchell, "Europe of the Regions?" 114.

interests in securing regional funding. This does not necessarily mean that the UK government was responsive to local government needs, but was a reflection of the reality that, without co-operation, the UK central government could restrict local government access to European funding. Indeed, as the sizes of the structural funding became larger and politically more salient, there was an increase in the UK government's control over the funding process.⁷⁷

Local government activity in Europe reflected much of the literature on NCG actors in foreign policy. The motivations for local governments to act included an increasingly interdependent international system with a corresponding growth in the effects of that system on these governments. Local governments needed to become involved in the European system especially to fulfil their economic interest. In the case of the dispute over the principle of additionality, local governments were motivated to act out of a necessity to circumnavigate a central government which they perceived to be in opposition to their interest. This opposition also benefited from the assistance of the European Commission, an external actor who sought to use NCG actors against the UK central government. Despite the fact that conflict did exist between local and central governments, co-operation was a primary feature of the relationship. UK local governments need to work with the UK central government to secure their interests in the European funding process. Alternatively, the UK central government benefited from the activities of local government lobbying in Brussels. The power of the UK central government over the activities of local governments in European affairs demonstrated that the UK remained the gatekeeper to the international arena.

⁷⁷Keating and Hooghe, "By-passing the nation state?" 225; Bomberg and Peterson have argued that "as structural funds have become a more important source of public investment in the UK, the central role of Whitehall and its lead agency, the Department of Trade and Industry has become virtually unassailable. EU-funded programmes must respect Whitehall and treasury guidelines, leaving only limited possibilities for local variation.": Bomberg and Peterson, "European Union Decision-Making,"227.

UK Centralization in a Decentralizing Europe

As demonstrated by the Scottish Office activity in foreign policy and overseas economic representation, as well as the activities of local government, there was limited opportunity for non-central government representation in international affairs in the pre-devolution United Kingdom. In the period before devolution, the UK was one of the most highly centralised systems of government with the one of the most limited means of representing sub-state interests in European affairs. The UK was described as vying with Ireland and Greece for having the poorest levels of resources available to, and weakest competences of, regional levels of governments in the EU.⁷⁸ Indeed, it has been argued that the UK government was increasing its centralization of control.⁷⁹ This centralization of power in the UK countered the trend within European integration to increase the opportunity for local and regional representation in European affairs. The European Union as a whole and individual states within it have undertaken reforms to better accommodate regional actors in European affairs.⁸⁰

⁷⁸ Jeffery, "Regional Information Offices in Brussels and Multi-level Governance in the EU," 184.

⁷⁹ Mazey and Mitchell argue that reform of local government in the early 1990s resulted in a weakening of that tier of government. Evidence for this can also be seen in the tightening of UK central government control over structural funding: Mazey and Mitchell "Europe of the Regions," 97; Scott *et al*, "Subsidiarity," 53; Keating and Jones, "Scotland and Wales," 318; John, "Europeanization in a Centralizing State," 135; Furthermore, Keating and Jones have argued that within UK central government there has been a decline in the influence of the territorial offices over the 1980s: Keating and Jones, "Nations, Regions, and Europe," 101.

⁸⁰ Mazey and Mitchell "Europe of the Regions," 97; Charles Jeffery has argued that within European states, the process of decentralization started in the 1970s. Although he suggests that the source of this may not be European integration alone, he is clear about its effects. He states that "[t]he point is ... that whatever the source of decentralization, the growing practice of decentralized government has helped to provide the wherewithal - in the form of a firm institutional base - for growing sub-national input into European

Lisbet Hooghe has outlined a number of means of institutional representation for non-central governments in the European arena.⁸¹ These include: provisions under Article 146 of the Maastricht Treaty of 1993 which allows NCGs to represent member-states at Council of Minister meetings; regional representation through the Committee of Regions also established by the Maastricht Treaty; requirements for co-operation with NCGs in planning structural fund applications under “partnership rules”; and elected representation through Members of the European Parliament. The creation and increase in influence of these institutions have supported the argument that regions play an increasingly important role in European decision-making. The European Parliament, originally established in 1979, has become more representative of its constituencies through direct elections and has gained increased significance through the process of co-decision-making. Co-decision-making required the Commission and Council of Ministers to ascertain the agreement of the European Parliament in a number of policy areas. Article 146 of the Maastricht Treaty established the right of NCGs to participate in Council of Ministers meetings, albeit only in a capacity to speak for the entire member-state, not specific non-central governments. The Maastricht Treaty also established the Committee of Regions, to replace the weaker Consultative Council of Regional and Local Authorities established by the Commission in 1988.⁸² The CoR has little influence in European decision-making, and is limited by the fact that its 222 members are appointed by member-states. However, it is a forum which has the capacity to issue statements on EU policy.

decision-making.”: Jeffery, “Regional Information Offices in Brussels and Multi-Level Governance in the EU,” 185-186; See also Hooghe and Keating, “The Politics of European Union Regional Policy,” 375-376; Hooghe and Keating, “By-passing the nation state?” 216-219.

⁸¹Hooghe, “Subnational Mobilisation,” 179-184.

⁸²Hooghe and Keating, “By-Passing the Nation State,” 223.

As has been seen in the additionality dispute, EU structural funding has been a source of contention between NCG activity in European affairs and member-states. Prior to the 1988 reforms of European structural funding, the process of administering these funds was dominated by intergovernmental decision-making.⁸³ In the 1988 reforms, additionality was clarified and the partnership principle was introduced in an attempt to increase the role of other actors in the process. The partnership principle required structural fund development programmes to be planned and implemented in partnership between the Commission, member-states, NCGs and relevant social actors. The response of central governments to these reforms fluctuated. Hooghe has argued that in some cases the participation of member-states was negligible, as in Belgium where NCG worked directly with the Commission on regional funding. Alternatively, as seen in the case of the United Kingdom, the process remained dominated by central government.⁸⁴ European Union structural funding has also demonstrated the propensity of the Commission to encourage non-central governments to become involved in European decision-making.⁸⁵ Andrew Scott *et al* have argued that

[t]he Commission has supported the idea of representing regional interest in EC policy-making ... mostly because subnational governments counter the power of national governments and are often more sympathetic to the Commission's vision of the EC's 'common good'⁸⁶

⁸³Bache, "The extended gatekeeper," 31.

⁸⁴Hooghe, "Subnational Mobilisation," 182; Keating and Hooghe have argued that as structural funds increased in size and became more politicized, the UK central government increased its control over them: Keating and Hooghe, "By-Passing the Nation State?" 225.

⁸⁵Hooghe and Keating, "The Politics of European Union Regional Policy," 378, 383-384.

⁸⁶Scott *et al*, "Subsidiarity: A 'Europe of the Regions' v. the British Constitution?" 60; For further information see Hooghe, "Subnational Mobilisation," 191-194; Bache, "The Extended Gatekeeper," 35; Marks *et al* have stated that "[t]he Commission has virtually a free hand in creating new networks, and in a way is able to reach out to new constituencies, including a variety of subnational groups.": Marks *et al*,

The principle of subsidiarity, used to determine at what level decision-making should be undertaken in the EU, has also provided support for increased NCG activity in European affairs. The principle was introduced in the Single European Act of 1985 and formally adopted in Article 3b of the Maastricht Treaty.⁸⁷ Throughout this period and beyond, a precise definition of the term has been elusive. Indeed, it has generally been accepted that the principle has been supported and incorporated into the framework of the European Union due to the fact that all parties can interpret it to address their particular needs. Michael Baun has described subsidiarity as “the principle that policy decisions should be made as close to the people as possible and that the EC should act only when measures cannot be more effectively taken at the national or local levels.”⁸⁸ While Baun accurately addresses a broad understanding of the principle, whether in fact it is applicable to both the national (member-state) and local levels depends on the perspective taken. Indeed, Article 3b stipulates the community will only act if the “proposed action cannot be

“European Integration from the 1980s,” 359.

⁸⁷Article 3b states that

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty:

Treaty on European Union, signed February 7, 1992, 13-14.

⁸⁸Michael J. Baun, *An Imperfect Union: The Maastricht Treaty and the New Politics of European Integration* (Boulder: Westview Press, 1996), 115.

sufficiently achieved by the Member State.”⁸⁹ At no point does the article make reference to a lower level of government than the member-state.

However, NCGs’ application of the subsidiarity principle has reflected Baun’s interpretation. The argument has been made by NCGs that subsidiarity justifies decision-making at that level and not at the level of the member-state.⁹⁰ Indeed, it was in this context that subsidiarity was introduced to the European Union in the late 1980s. At that time the German *Länder*, especially Bavaria, recognized the possibility that, as powers were shifted from the member-state level to the European Community institutions, the *Länder* could suffer a loss in decision-making capabilities over issues within their jurisdiction. For the *Länder*, the principle of subsidiarity provided one potential solution.⁹¹ The NCGs understanding of the principle of subsidiarity is shared by the Committee of Regions which states that

[f]rom the COR’s point of view, subsidiarity means that EU decision-making should not only be between the European Union and the Member States. These decisions must be considered at the regional and local level, in every case where this is useful and feasible.⁹²

Juxtaposed with the NCG interpretation of subsidiarity, certain member-states argued that the principle supported their claim to decision-making in Europe. In the Maastricht Treaty of 1992, subsidiarity became a favoured principle of member-states, such as the United Kingdom and

⁸⁹*Treaty on European Union*, 13-14.

⁹⁰Van Kersbergen and Verbeek argue that this is one of four possible consequences of subsidiarity for European integration: Van Kersbergen and Verbeek, “The Politics of Subsidiarity,” 227

⁹¹*Ibid.*, 219.

⁹²Committee of Regions webpage “What exactly is subsidiarity?”
<http://www.cor.eu.int/Blair/SubSumEng.html>

Denmark, who sought to protect their sovereignty in relation to European institutions.⁹³ Certainly, from the perspective of the United Kingdom, the principle was seen as being a buttress against the “creeping federalism” of the EU institutions, especially the Commission, and justification for decision-making at the member-state level barring exceptional circumstances.⁹⁴

Within the United Kingdom, the Scottish National Party made use of the principle of subsidiarity. The SNP argued that the Westminster government was hypocritical in its application of the policy of subsidiarity, which it applied in the European arena but not in the domestic one. This argument is supported by Andrew Scott, John Peterson and David Millar who argue that in the period before devolution, subsidiarity had direct effects on the constitutional arrangements of the United Kingdom lending support to those who sought constitutional change. At the time they argued that it may be the case that “the UK’s prevailing constitutional settlement will act as a barrier to a general rebalancing of power between national and subnational tiers of government throughout the EC”⁹⁵ and that “[t]he EC-wide debate about subsidiarity has emerged at an opportune time for those who argue that the UK’s constitutional settlement is out of date and in need of fundamental reform”.⁹⁶

In addition to increased representation in European institutions and the existence of

⁹³Baun, *An Imperfect Union*, 115.

⁹⁴Van Kersbergen and Verbeek, “The Politics of Subsidiarity,” 226. The UK government’s own interpretation is that the Maastricht Treaty “embodies the principle of subsidiarity, under which action is taken at the European level only if its objectives cannot be achieved by member-states acting alone”: *Britain 1996: An Official Handbook*, (London: Central Office of Information, HMSO, 1995), 119.

⁹⁵Scott *et al*, “Subsidiarity,” 61.

⁹⁶*Ibid.*, 68; Van Kersbergen and Verbeek have made the argument that subsidiarity will further the process of regionalisation instead of protecting the member-states, stating that “[p]aradoxically, the instrument that is to protect national authority from supranational meddling may be a cause of its very erosion”: Van Kersbergen and Verbeek, “Politics of Subsidiarity,” 228.

European principles which encourage NCG involvement, NCGs in some member-states within the European Union have gained considerable power *vis-a-vis* their central governments. The German *Länder's* powers in EU decision-making provides a clear example of a highly developed role for NCGs in EU member-states. In Germany the *Länder* has direct access to central government decision-making through the Bundesrat, the German upper house. In the early 1990s the Maastricht Treaty raised fears amongst the *Länder* governments that the central government would transfer decision-making over policy areas which fell within the *Länder* competence to the EU. For the *Länder*, this raised two concerns. Firstly, they would lose direct control over policies previously under their jurisdiction. Secondly, their access to EU decision-making would not compensate for this. Under the threat of a Bundesrat veto of the treaty the federal government conceded considerable concessions to the *Länder*. Amendments to the German Basic Law prevented the German federal government from transferring any area of *Länder* jurisdiction to the EU without a two-thirds majority by both houses of the German government. In addition to this, any further transfer of power to the EU required the explicit approval of the *Länder*. The amendment also included the provision that a *Länder* representative was to represent Germany at the Council of Ministers when any policy area specific to *Länder* jurisdiction was being discussed.⁹⁷ These forms of representation far exceeded the input of the Scottish Office into the United Kingdom decision-making process prior to devolution.

In the pre-devolution period, a system of multi-level governance was evident in parts of

⁹⁷Bomberg and Peterson, "European Union Decision Making", 222-223; Bomberg and Peterson also argue that the German *Länder* were primary motivators behind the development of institutional representation for NCGs in the Maastricht Treaty, such as Article 146 and the CoR. For additional information see Jeffery, "Regional Information Offices in Brussels"; Jeffery, "Farewell the Third Level?" In the pre-devolution United Kingdom, the absence of an elected tier of government made it impossible for anyone but the UK central government to speak in the Council of Ministers, regardless of Article 146.

the European Union, where there was an increased participation of non-central governments in decision-making. This increase has emerged as a result of the development of institutional channels for the representation of NCG interest, as well as the introduction of European principles such as subsidiarity. Whether NCGs take advantage of these channels is in a large part determined by the individual attitudes of member-states and the constitutional arrangements for NCGs in them. John has argued that “just as there are 15 different constitutional frameworks and political constraints, so there are 15 MLGs.”⁹⁸ As has been described, the United Kingdom’s, constitutional framework for, and political constraints on, NCGs has limited their representation in Europe. This has led to the conclusion that the MLG approach did not accurately describe the UK in the pre-devolution period.⁹⁹ Instead, the centralisation of decision-making in Westminster, and its resistance to NCG representation in external affairs, suggests that the UK reflected an intergovernmental approach to Europe. Significant for Scotland in the pre-devolution period was the fact that the potential channels for representation in the European Union did exist and the UK government chose not to use them.

Conclusion

In the pre-devolution period, the United Kingdom was a unitary state within which Scottish representation was limited. This was especially evident in the period of Conservative governments from 1979 to 1997. The restriction on Scottish representation in Westminster

⁹⁸John, “Europeanization in a Centralizing State,” 131; Keating and Hooghe, “By-Passing the Nation State?” 220, 226-227; Bomberg and Peterson, “European Union Decision making,” 234.

⁹⁹Jeffery, “Regional Information Offices in Brussels,” 201.

extended to its representation in the UK foreign policy process and independently in the international realm. The position of Scotland was clearly summed up by Ian Lang, the Secretary of State for Scotland, at the opening of Scotland Europa in 1992, when he stated that the office in Brussels was not to represent Scotland in Europe, arguing that, “[a]fter all we’re not Bavaria. We are a part of a unitary state.”¹⁰⁰

It is against this background that Scottish devolution has emerged. In 1997 the newly elected Labour government did not hesitate to put the proposal for Scottish devolution on the agenda. Within that proposal it was recognised that a Scottish Parliament would need to be active in external affairs. This chapter’s exploration of Scotland’s pre-devolution position in external affairs - and the approach of the UK central government to NCG activity in Europe, which reflects an intergovernmental position - is useful for understanding the level of change in the post-devolution period. Whether Scotland’s interests are likely to be better represented as a result of devolution will be addressed in the following two chapters.

¹⁰⁰Keating and Jones, “Nations, Regions, and Europe,” 107.

Chapter 4

The Devolution Settlement: Implications for Scottish Government Representation in European and International Affairs

In the 1997 General Election, the Conservative Party suffered a substantial defeat across the United Kingdom. In Scotland, not a single Conservative candidate was elected. The issue of UK-wide constitutional change and, specifically, devolution for Scotland, was quickly addressed by the newly-elected Labour government. The process began in the summer of 1997 with the submission of a White Paper on devolution to the House of Commons. This was followed, on 11 September 1997, by a referendum which asked whether a Scottish Parliament should be created and if it should have the ability to vary the basic rate of income tax by three pence on the pound. All of the major parties in Scotland, with the exception of the Conservative Party, supported the “Yes, Yes” campaign in the lead up to the referendum. The referendum results showed strong support for constitutional change within Scotland. 60.1 per cent of the Scottish population voted in the referendum with 74.3 per cent favouring the creation of a devolved Parliament and 63.5 per cent supporting it possessing tax varying powers. On 6 May 1999 the first elections to the Scottish Parliament were held, electing 129 members by the Additional Member System, seventy-three members from specific constituencies and fifty-six additional members from lists in eight regions. The Labour Party returned the largest number of candidates to the Parliament, winning fifty-six seats. Unable to form a majority government, Labour entered into a coalition government with the seventeen members elected from the Liberal Democratic Party. The Scottish National Party, after mounting a strong challenge to Labour in the election campaign, entered the Parliament as the

official opposition with thirty-five members.¹ The opening ceremony of the Parliament took place on 1 July 1999.

Although a Scottish level of government has been established, devolution did not create a federal state. Under the *Scotland Act* (1998) there was no division of powers between levels of government and Westminster's parliamentary sovereignty was preserved.² Despite this, the jurisdiction of the new Parliament in Scottish domestic affairs is far reaching.³ The *Scotland Act* (1998) does not detail each specific area of jurisdiction. Instead, it outlines those powers which do not fall into the *vires* of the Scottish Parliament.⁴ Under Schedule 5 of the *Scotland Act* (1998) areas reserved to the UK central government include defence, foreign affairs, central economic planning, social security and immigration. Most other areas of government, with the exception of specific exemptions, fall under the jurisdiction of the Scottish Parliament.⁵

¹For further details of the election results see: Foreign and Commonwealth Webpage Spotlight Britain, "Devolution in the United Kingdom," (February 2000), <http://files.gov.uk/info/spotlight/ukdevolution.pdf>.³

²Parliamentary sovereignty has been cited as being incompatible with the division of power between Westminster and either sub-state governments or supranational authorities: Keating and Jones, "Nations, Regions, and Europe," 89.

³As has been argued the issues of parliamentary sovereignty has long been disputed in Scotland. How successful Westminster would be in re-asserting power over areas of jurisdiction devolved to the Scottish Parliament is highly questionable should the Scottish Parliament maintain the support of the majority of the Scottish population.

⁴The *Scotland Act* (1978) attempted to outline all powers which were devolved to Scotland, assuming that those powers left unmentioned would remain under the jurisdiction of Westminster. It has been suggested that due to the approach used by the *Scotland Act* (1998), the Scottish Parliament has greater reach, assuming that all areas unmentioned or unclearly defined by the Act, would fall under Scotland's control: Andrew Burns, "The Powers of the Parliament," *Guide to the Scottish Parliament*, ed. Gerry Hassan (Edinburgh: Centre for Scottish Public Policy / The Stationery Office, 1999), 43: The extent to which the UK central government would accept this arrangement in situations where its interests are threatened is questionable.

⁵Burns, "The Power of the Parliament," 43-48; The White Paper does attempt to provide the public with a basic outline of the policy areas over which the Parliament will have jurisdiction. Refer to chapter two, "What the Scottish Parliament Can Do," and chapter three, "Scotland Within the United Kingdom": Scottish

While these changes have had impacts upon the nature of UK politics in general, there have also been implications for the representation of Scottish interests in European and international affairs.⁶ Indeed, the devolution arrangements specifically addressed the issues of Scottish activity in external affairs as early as the White Paper on devolution and extensively in the *Memorandum of Understanding and supplementary agreements*. This chapter will examine the contents of the *Agreements* and the other changes caused by devolution. It has been argued in chapter two that the constitutional and institutional context of NCGs are key determinants of how active these actors are in the international realm. In this chapter the argument of the thesis will be furthered by demonstrating that the devolved arrangements governing Scottish activity in the external affairs are likely to limit the level of Scottish involvement in the UK foreign policy process and in independent international activity. To accomplish this, the chapter will first look at the substance of the *Agreements*, with specific attention being given to their implication for European and international policy. Secondly, the role of Scotland, the power of the UK government and the dispute resolution mechanism of the Joint Ministerial Committee will be examined. The initial context and debates surrounding the introduction of these *Agreements* will then be explored. Finally, other institutional changes will be addressed and their impact on Scottish representation in external affairs considered.

The argument of this chapter is that while the devolution arrangements, and most clearly

Office White Paper Cm3658, *Scotland's Parliament*, (Her Majesty's Stationery Office, July 1997) 2.1-2.12, 3.1-3.4.

⁶According to Keith Robbins, little academic attention has been paid to the potential impact of the process of devolution on foreign policy issues in the United Kingdom. Keith Robbins "Devolution and 'British' foreign policy"; For a brief consideration after the devolution debate in the 1970s see Bernard Burrows and Geoffrey Denton, *Devolution or Federalism? Options for a United Kingdom* (London and Basing Stoke: MacMillan Press Ltd., 1980), 58-73.

the framework established by the *Agreements*, do provide Scotland with a more clearly defined role in European and international affairs in relation to pre-devolution regime, Scottish influence in external affairs remains limited. The devolution settlement has provided the UK central government with considerable powers to manage the role of NCGs in the foreign policy process and to limit their independent international activity. As a result, in the conduct of its international affairs, the UK central government has lost no power *vis-a-vis* the newly created Scottish Parliament as a result of devolution.

Scottish Activities in International Affairs: The Expectations of the Labour Party

The architects of the devolution settlement unambiguously anticipated that the Scottish Parliament would be affected by the international and European realm. This is evident in the White Paper on devolution, in which considerable attention was paid to the issue of Scottish activities in international affairs and the European Union.⁷ In June 1998, Henry McLeish, while Scottish Devolution Minister, addressed these issues, stating that

[t]he impact of European integration on all regions of the EU has been considerable. The “Europeanisation” of policy-making means that regions both can and must take more responsibility for their social and economic destiny. The Government’s devolution proposals bring Scotland firmly into the European mainstream. The United Kingdom has been one of the more centralised Member States of the EU. Other Governments in Europe have increasingly seen the advantage of devolving powers to regional and local governments. More and more these have been seen as a natural and advantageous part of the process of

⁷Section 4.18 to 4.20 addresses the issues of international relations while chapter five addresses the issue of interaction with the European Union: Scottish Office White Paper, *Scotland’s Parliament*, 4.18-4.20, 5.1-5.12.

good government.⁸

Throughout the devolution process the Labour government has been keen to emphasise a strong role for Scottish representatives in international affairs⁹. This has been most evident in European policy-making. In 1998, Calum McDonald, the Scottish European Affairs Minister, stated that “[u]nder Devolution Scotland will have a much greater input into European matters” and that there was a desire for “a distinctive Scottish voice in Brussels.”¹⁰ In addition to this, the activities of Scottish Office officials in Europe, both at the ministerial and bureaucratic levels, were paraded as examples of the UK government’s willingness to accommodate Scottish participation in the foreign policy process. In March 1998, Calum MacDonald drew attention to the fact that he was the first Scottish Minister to represent “the UK Presidency of the Council of the European Union during a series of key meetings with EU counterparts,” regarding this as “exceptional...and demonstrat[ing] our commitment to European involvement as we approach the

⁸Given in a speech at the Rostrum 2000 Conference in St. Andrews Scotland. Scottish Office News Release, 1216/98, “Parliament Will Place Scotland at the Heart of Europe - Henry McLeish,” (12 June 1998), http://www.scotland.gov.uk/news/release98_1/pr1216.htm; This sentiment was also expressed by representatives of the Foreign and Commonwealth Office. Ms Joyce Quin Foreign and Commonwealth Minister of State, in addressing the Northern Ireland Assembly in February 1999, stated that

[t]here is a fit between our goals at-home and our objectives in Europe. The UK has for too long been too centralised. Devolution will ensure that many decisions that affect the day to day lives of people will be taken locally - taking into account local needs, conditions and history. The idea of a centralized Europe is also discredited. The goals of 'subsidiarity' and 'devolution' are the same.

Foreign and Commonwealth Office, Speech given by FCO Minister of State, Ms Joyce Quin, to the Northern Ireland Assembly, Belfast, Friday 26 February, 1999, “Devolution and Foreign Affairs,” http://www.fco.gov.uk/text_only/news/speechtext.asp?2063&printVersion=yes

⁹The White Paper on devolution drew attention to the fact that even before devolution the new Labour government was improving the representation of the Scottish Office in European matters: Scottish Office White Paper, *Scotland’s Parliament*, 5.2.

¹⁰Scottish Office News Release, 1262/98, “Scotland’s New Voice in Europe,” (18 June 1998), http://www.scotland.gov.uk/news/release98_1/pr1262.htm

Scottish Parliament.”¹¹ Additional Scottish Office ministerial activity in Europe including representation of the UK, visits to other EU members-states and regional governments, and involvement in UK-European negotiations, have all been noted for laying the ground work for strong links between Scotland and Europe.¹² Furthermore, bureaucratic exchanges with Europe have also been couched in terms of Scottish Office advancement of links with Europe in the lead up to devolution.¹³ However, the UK government was also quick to state how Scottish representation in international relations is best served as part of the UK.¹⁴

The method by which the Scottish government is to be involved in international policy-making in the post-devolution period was clearly articulated by Donald Dewar in February 1998, while he was still Secretary of State for Scotland. Based upon discussions with other decentralized

¹¹Scottish Office News Release, 0482/98, “Scottish Role in Europe a Taste of Things to Come - Calum MacDonald,” (12 March 1998), <http://www.scotland.gov.uk/news/release98/pr0482.htm>.

¹² Scottish Office News Release, 1235/98, “Representing Scotland - MacDonald's Week in Europe,” (15 June 1998), http://www.scotland.gov.uk/news/release98_1/pr1235.htm

¹³*Ibid.*

¹⁴Scottish Office News Release, 1262/98, “Scotland's New Voice in Europe,” (18 June 1998), http://www.scotland.gov.uk/news/release98_1/pr1262.htm, June 3, 1999; Foreign and Commonwealth Office, Speech given by FCO Minister of State, Ms Joyce Quin, to the Northern Ireland Assembly, Belfast, Friday 26 February, 1999, “Devolution and Foreign Affairs,” http://www.fco.gov.uk/text_only/news/spechtext.asp?2063&printVersion=yes; Robin Cook the Foreign Secretary, stated in June of 1999 before the release of the *MoU and supplementary agreements* that the Scottish Parliament and the Welsh Assembly would have a “strong voice in the world through the UK”: Benedict Brogan, “Scotland's new voice in the world,” *The Glasgow Herald*, online edition, (3 June 1999), <http://www.theherald.co.uk/election99/archive/4-6-1999-21-5-38.html>; In the 1999 Scottish election campaign Robin Cook addressed the limited role that an independent Scottish foreign policy would have. During the Kosova crisis Cook argued that an independent Scotland would not play a significant role. He also stated that outside of NATO and the United Nations Security Council Scotland would lose considerable impact. Furthermore, he made available figures which he argued showed the considerable cost that Scotland would incur for even a limited number of overseas embassies. Those figures showed that the UK's 221 overseas consulates and embassies were run at a cost to £13.47 per person. In contrast he produced figures which showed that Finland, a country of comparable sizes to Scotland, could only operate 32 overseas embassies at a cost of £42.39 per person: Benedict Brogan, “Cook launches attack on SNP,” *The Glasgow Herald*, online edition, (30 April 1999), <http://www.theherald.co.uk/30-4-1999-23-7-22.html>

states in Europe, Dewar argued that the co-operative nature of relationships between non-central and central governments in other EU member-states worked out of necessity. Without successfully reaching agreement on external relations the interests of both levels of government were adversely affected. Dewar also outlined the need for good information flow between the levels of governments to facilitate speedy response and to aid in a complementary relationship. Furthermore, Dewar argued that the greatest means of Scottish Representation in the EU, as in other European member-states, was through early input into the policy formation at the member-state level, not at the final stages of intergovernmental bargaining. It will be Scotland's contribution to the development of the European policy of a strong EU member-state that will provide it with the greatest input to European decision-making.¹⁵

It is from this perspective that the Labour government's devolution policy incorporated institutional changes which addressed Scotland's representation in international relations. Included within this were arrangements for scrutiny of European issues by the Scottish Parliament, direct representation of the Scottish Executive in Brussels and the inclusion of Scottish representation within the UK foreign policy process. The devolution arrangements for Scottish representation in external affairs are most clearly outlined in the *Memorandum of Understanding and supplementary agreements*, the focus of the next part of this chapter.

¹⁵Scottish Office News Release, 1900/97, "Scotland Can Help Shape a New Europe - Donald Dewar", (1 December 1997), <http://www.scotland.gov.uk/news/releas97/pr1900.htm>; Scottish Office News Release, 0313/98, "Dewar: Scotland can be a new type of European Region," (20 February 1998) <http://www.scotland.gov.uk/news/release98/pr01313.htm>

The Memorandum of Understanding and supplementary agreements: A UK Blueprint for inter-Administration Co-operation in European and International Affairs

From the onset of the devolution process it was recognized that, due to the interconnected nature of devolved and reserved policy areas, a level of policy coordination would be needed between Westminster and Holyrood.¹⁶ This recognition was initially articulated in the White Paper on Scottish devolution, published in July 1997.¹⁷ On 1 October 1999, the governments of the United Kingdom, Scotland and Wales introduced their expectations of how this coordination should take place in the *Memorandum of Understanding and supplementary agreements between the United Kingdom government Scottish Ministers and the National Assembly for Wales*.¹⁸ This document contained a *Memorandum of Understanding (MoU)* outlining “the principles that will underlie relations between” the United Kingdom government and the devolved administrations,¹⁹ a supplementary agreement establishing the Joint Ministerial Committee (JMC) and four overarching concordats establishing norms of co-operation across all departments in the areas of European Union policy issues, financial assistance to industry, international relations and statistics. In relation to European and international policy issues these *Agreements* lay out a clearly

¹⁶The new building for the Scottish Parliament is to be built beside Holyrood Palace in Edinburgh. As a result of this, the term Holyrood has entered usage as a synonym for the Scottish Parliament.

¹⁷Scottish Parliament Information Centre, *Scottish Parliamentary Research Paper 99/12* (6 October 1999), 8: For the original source consult the Scottish Office White Paper, *Scotland's Parliament*, 4.12, 4.13, 4.14; In the case of International Relations refer to 4.18, 4.19.

¹⁸ The title was amended to read “the Cabinet of the National Assembly for Wales” instead of “National Assembly for Wales”: Scottish Parliament, *Official Report 2*, no.12, “Memorandum of Understanding and Concordats,” (7 October 1999), Col 1100. 2.

¹⁹Scottish Executive, *Memorandum of Understanding and supplementary agreements between the United Kingdom government Scottish Ministers and the National Assembly for Wales*, SE/99/36, (October 1999), para 1.

articulated blueprint for inter-administration relations. Specifically, the *Agreements* outline the newly developed, post-devolution, framework within which Scottish representation in international and European affairs and policy issues will take place.

The *Agreements* have been presented as over arching guidelines for inter-administration co-operation, not firm rules regulating interaction. Throughout the documents it is emphasised that the *Agreements* are non-legally binding. The introduction to the Memorandum of Understanding states that “[t]his memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It is intended to be binding in honour only.”²⁰ Furthermore the *Agreements* are to be kept under regular review, including provisions for an annual review, by the Joint Ministerial Committee under which the *Agreements* are subject to change if it is considered necessary.²¹

The actual weight that these *Agreements* will exert upon the administrations has not yet been determined. The fact that they are non-legally binding suggests that their importance, in terms of creating obligations between the administrations, is limited. However, it has been argued that the *Agreements* will create norms of practice and “legitimate expectations.”²² In addition it has been suggested that the *Agreements* could be subject to judicial review²³ under which the

²⁰Scottish Executive, *Memorandum of Understanding*, para. 2. See also B1.2, B2.2, C4, D1.2, D2.2, E1.

²¹*Ibid.*, paras. 28-30.

²²The notion of “legitimate expectation” argues that a person may develop a legitimate expectation of how a government should act when laid out or suggested in a concordat. “Legitimate expectation” is recognized in both English administrative law and the in Scottish courts: Scottish Parliament Information Centre, *Research Paper 99/12*, “Concordats,” http://www.scottish.parliament.uk/whats_happening/research/pdf_researchpapers?9912%20Concordats%20int.pdf, 2.

²³*Ibid.*, 12.

measure of the administrations' obligations, created by these expectations, could be judged. Under these circumstances, the impact of the *Agreements* may be greater than is implied in the actual documents.

While the impact of the *Memorandum of Understanding and supplementary agreements*, may be called into question, they do provide an accurate reflection of the current Labour administrations' vision of inter-administration co-operation. According to Dewar the *Agreements*

provide a valuable and well-reasoned framework for managing our inter-Administration relationships within the UK. They contain soundly reasoned proposals for co-operation and mutual support and they fully meet the purpose for which they were designed - no more, no less.²⁴

International Affairs and European Policy: Scottish Opportunity and Responsibility.

Scotland's interest in European and international affairs, and the role that Scotland might play, is addressed by the *Memorandum of Understanding* and, more specifically, by the *Concordat on co-ordination of European Union Policy Issues* and the *Concordat on International Relations* contained within the supplementary agreements. Part I(17) of the *MoU* outlines clearly the limitations of Scotland in these affairs, but also the potential role it might play, stating that

[a]s a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom government and the UK Parliament. However, the UK government recognises that the devolved administrations will have an interest in international and European policy making in relation to devolved matters, notably where implementing action by the devolved administration may be required. They will have a particular interest in those many aspects of European Union business which affect devolved areas, and

²⁴Scottish Parliament, *Official Report*, "Memorandum of Understanding and Concordats," Col.1111.

a significant role to play in them.²⁵

The *Agreements* rely on the principles of good communication, co-operation, co-ordination and confidentiality for the effective management of inter-administration relations. These principles are important in external affairs where a specific UK line must be established within a domestic context and then presented in the international realm. The alternative is policy fragmentation which has been highlighted, in the literature on NCGs in foreign policy, as a fear of central governments. The interconnectedness of external relations and domestic politics increases the importance of these principles in the attempt to manage issues which cross both the external-domestic and non-central - central administrations divides. In the case of European matters the *Concordat on co-ordination of European Policy Issues* outlines three goals that should be met by the co-ordination mechanisms established by the *Agreements*

they should provide for full and continuing involvement of Ministers and officials of the Scottish Executives in the process of policy formulation, negotiation and implementation, for issues which touch on devolved matters; they should ensure that the UK can negotiate effectively, in pursuit of a single UK policy line, but with the flexibility that fast-moving negotiations require; and they should ensure EU obligations are implemented with consistency of effect and where appropriate of timing.²⁶

The *Agreements* recognise the need for good communication between the devolved administrations and the UK government in the areas of European policy and international affairs. In order to establish this communication each administration has accepted certain responsibilities under the *Agreements*. The UK government has agreed to keep the Scottish Executive informed of any relevant information, businesses or meetings with the EU that might affect the jurisdiction of

²⁵Scottish Executive, *Memorandum of Understanding*, para. 17.

²⁶*Ibid.*, B1.4.

the Scottish Executive²⁷ or the establishment of new EU obligations that the Scottish Parliament may need to implement.²⁸ The UK government is also expected to keep the Scottish Executive informed of international developments beyond the EU.²⁹

Alternatively the Scottish Executive is required to inform the UK government of Scottish actions which may affect international obligations.³⁰ For instance the *Concordat on International Relations* specifies that in areas of Scottish jurisdiction where action is being taken against the UK under the European Convention on Human Rights, the Scottish Executive is required to provide details of the factors contributing to such action.³¹ In regard to day-to-day activities, the Scottish Executive and Legislature must keep the UK government informed of actions that may affect the UK's EU or international obligations. A decision by the Scottish Executive to tailor the implementation of EU or international obligations to meet the needs of the Scottish environment must be preceded by informing the relevant department of the UK government so that it can ensure that external obligations are being met and that there is the necessary consistency across the UK in meeting these obligations.³²

The *Agreements* also outline the necessity for co-operation between the devolved administrations and the UK government in establishing a joint UK line in external relations. According to the *Agreements*, it is through joint policy formulation and consensus that the level of

²⁷*Ibid.*, B3.2, B3.9.

²⁸*Ibid.*, B3.16.

²⁹*Ibid.*, D3.3.

³⁰*Ibid.*, D3.4.

³¹*Ibid.*, D3.13.

³²*Ibid.*, B3.17.

co-operation necessary to maintain the UK line in EU and foreign policy will be achieved. In cases where a Scottish Minister may participate in international negotiations it is argued that their role will be “to support and advance the single UK negotiating line *which they will have played a part in developing*.”³³ Furthermore, the assumption is made in the *Agreements* that beyond joint policy development there would in fact be agreement on policies. In addressing the prospect of Scottish Ministers attending EU Council of Ministers meetings, the *Agreements* state that “the policy position advanced will have been *agreed* among the UK interests.”³⁴ Despite this, the *Agreements* recognize the potential for a lack of consensus, stating that the arrangements “assume maximum co-operation on both sides, although they will also need to work effectively when such co-operation is not forthcoming.”³⁵ Further acknowledgement of the potential for disagreement is recognized in the establishment of the Joint Ministerial Committee where disputes are to be mediated.

Confidentiality of discussions in the joint policy-making process is emphasised throughout the text of the *Agreements*.³⁶ In the case of negotiations with the EU, confidentiality is seen to be an important negotiating tool and necessary for “developing tactical responses.”³⁷ While confidentiality is applicable to all participants in the policy-making process, it can be interpreted as a means to censor dissension in these discussions. As a form of discipline the

³³Emphasis added. *Ibid.*, D3.8; This is also the case for Scottish representatives in European negotiations. Refer to *ibid.*, B3.14-B3.15.

³⁴Emphasis added. *Ibid.*, B3.14.

³⁵*Ibid.*, B3.4.

³⁶*Ibid.*, para 19, B1.4., B3.3., D3.5; Where disputes are resolved in the JMC this is also the case. Refer to *ibid.*, A1.11, A1.13.

³⁷*Ibid.*, B3.3.

Agreements state that the arrangements would be unworkable if this confidentiality was breached.³⁸ Therefore, there is an implicit threat within the condition of confidentiality that vocalizing of dissent within the joint policy-making process is unacceptable and will result in alternative arrangements. The threat is most likely to affect the devolved administrations whose influence in the joint policy-making process is secondary to that of the UK central government.

A particular difficulty in the need for confidentiality in joint-policy formulation may arise for Scottish Executives when they are from the same political party as their UK counterparts. If they agree to decisions which are unpopular in Scotland these Ministers will be seen either as being inept at delivering Scotland's needs or as towing the UK government's line rather than representing Scotland's interests. It is expected that the SNP will be successful in exploiting this angle. The effectiveness of government spin doctors will play an important role in the management of these conflicts.

Despite the fact that foreign policy and international activity is the preserve of the UK government, the *Agreements* have articulated a role for representatives of the Scottish government. As has been shown, the *Agreements* outline an understanding that Scotland will be included "as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters."³⁹ In addition to being involved in policy formulation, the *Agreements* allow for Scottish government representatives to be actively involved in international meetings. B3.12 through B3.15 outlines the potential for Scottish representatives to participate in UK missions to meetings of the EU Council of Ministers and related meetings with the potential of speaking for the UK. Scottish participation in UK delegations is not limited

³⁸*Ibid.*, B1.4.

³⁹*Ibid.*, para. 20.

to the European Union, but is extended to international representation as well.⁴⁰ The attendance and role of the Scottish representatives at meetings related to devolved matters is at the discretion of the lead UK Minister who is to determine the composition of the group representing the UK and the role that each participant might play. The participation of the Scottish representatives at such meetings, including speaking on behalf of the United Kingdom, is dependent upon their commitment to articulating the UK line.⁴¹ As a result, these arrangements make no provision for a separate Scottish voice in European or international foreign policy.

The *Concordat on co-ordination of European Policy Issues* also makes provision for the nomination of Scottish representatives to European institutions where adherence to the UK line is not necessary. For example, in the case of Scottish representatives to the Committee of Regions and the Economic and Social Committee, the Scottish government will be permitted to nominate potential Scottish candidates. However, the final decisions over appointments are to be made by the Foreign Secretary with the agreement of the Prime Minister. It is interesting to note that these appointments, although envisioned by the CoR itself to be representatives of the regions, are referred to by the agreement as “UK appointments.”⁴² Scotland is to be notified of further relevant appointments to European institutions.⁴³

The *Agreements* have also laid out other opportunities for representatives of the Scottish government to act internationally when fulfilling devolved responsibilities. Within the European Union it is expected that “less formal discussions” will take place with various actors including

⁴⁰*Ibid.*, D3.8.

⁴¹*Ibid.*, B3.14-B3.15.

⁴²*Ibid.*, B3.29.

⁴³*Ibid.*, B3.30.

EU institutions, member-states and other regional governments.⁴⁴ The *Concordat on International Relations* allows for Scotland to be involved in “working-level discussions” and, with the co-operation of the Foreign and Commonwealth Office, to establish “arrangements or agreements with foreign national or sub-national governments or appropriate counterparts in international organisations.”⁴⁵ These arrangements are subject to the condition that the UK line is not compromised and that the United Kingdom is not in any way bound in international law.⁴⁶ To ensure that these conditions are met, the FCO is to be consulted both in the establishing of these arrangements and in any aspect of their conduct which might affect international relations.⁴⁷

International contacts will be facilitated in part by the provision within the *Agreements* to establish Scottish overseas offices. In the case of the European Union, the *Agreements* build on the White Paper on Scottish devolution of 1997, allowing for the possibility of establishing an office in Brussels.⁴⁸ However, the *Concordat on co-ordination of European Union Policy Issues* outlines the conditions of this office stating that its role would be

to assist direct relationships with other regional governments and with the institutions of the European Communities, so far as this serves the exercise of their powers and the performance of their functions as laid down in the devolved legislation and so far as it is consistent with the responsibility of the UK

⁴⁴*Ibid.*, B3.27.

⁴⁵*Ibid.*, D3.7.

⁴⁶*Ibid.*

⁴⁷*Ibid.*

⁴⁸The Scottish Office, *Scotland's Parliament*, 5.10; The White Paper saw the establishment of an Executive Office in Brussels for Scotland in keeping with other regional governments who already had Brussels offices' in place. According to the White Paper, the role of this office would be to “assist Scotland’s direct relationship with regional governments and with institutions in Brussels ... complement rather than cut across the work of the UKREP ... and provide an effective channel of communication with the Scottish Executive”.

government for relations with the EU.⁴⁹

By the time of the release of the *Agreements* an office had already been established in Brussels fulfilling four roles; to provide European actors in Brussels direct access to the Scottish Administration; to have Scottish Executive representatives in Brussels attended relevant meetings; to gather intelligence, and; to support Scottish Executives' visits to Brussels.⁵⁰ According to Donald Dewar, the most important role of this office was to gather information relevant to Scotland and ensure that it was passed to the appropriate people within the Scottish Executive.⁵¹ While this office has placed Scottish political representatives in Brussels, an initiative that was actively avoided in the pre-devolution period, its preliminary role seems to be quite limited. This is in part due to the purpose of the Executive office to add to, and not duplicate, the role of either the UKRep or other parts of the Scottish Executive who are successfully working with counterparts in Brussels.⁵² Scotland House is to facilitate the Executive's role in Europe, not to take the policy lead.⁵³ It can be assumed that Scottish Ministers and their offices, who are already in direct contact with their counterparts in Brussels, should not be inhibited by the requirement that they go through the Executive office in Scotland House. Indeed, the expertise of these Ministers in

⁴⁹Scottish Executive, *Memorandum of Understanding*, B3.27.

⁵⁰Owen Kelly of the Executive Secretariat of the Scottish Executive, in a presentation on the establishment and operation of Scotland House in Brussels: Scottish Parliament, *European Committee Official Report* 1, no.2, (18 August 1999), Col 46 - Col 47, http://www.scottish.parliament.uk/official_report/cttee/europe99-00/eu081804.htm; Kelly is the head of the division of the bureaucracy which deals with the external relations of the Executive.

⁵¹Scottish Office News Release, "Scotland Can Help Shape a New Europe - Donald Dewar."

⁵²Scottish Parliament, *European Committee Official Report* 1, no.2, Col 46 - Col 47; Kelly highlights the already existent European expertise of the Scottish Ministers dealing with structural funding, agriculture, fisheries and the environment.

⁵³*Ibid.*, Col 47.

European affairs in part undermines the role of the Executive office in Brussels by providing better access to Europe for their specific policy fields.⁵⁴

The establishment of overseas representation by the Scottish Office has not been limited to the European Union. The *Concordat on International Relations* sets out the opportunity for the Scottish Executive to open overseas offices beyond the EU if they are considered useful in fulfilling certain functions in relation to devolved matters.⁵⁵ Such functions include “the provision of information on devolved matters to the public, regional governments and institutions, and promotion of trade and inward investment.”⁵⁶ The *Concordat* suggests that Scottish overseas offices may want to attach themselves to UK Diplomatic or Consular Missions to benefit from the use of the UK's diplomatic privileges. The cost of such an arrangement would be recovered from the Scottish administration by the Foreign and Commonwealth Office.⁵⁷ The *Agreements* do outline the conditions for the establishment of both the Scottish Executive's Brussels office and potential overseas offices. These offices are to recognize the role of the UKRep and the FCO in their exclusive capacity to represent the United Kingdom overseas. In addition, they are not permitted to depart from the United Kingdom line. To ensure that these conditions are met these offices must act in consultation with the FCO and the UKRep.⁵⁸

The *Agreements* also establish a role for the Scottish Parliament in European and

⁵⁴*Ibid.*, Col 49; for instance Kelly argues that the best access to information on these on specific issues will be from the offices of the Ministers directly.

⁵⁵Scottish Executive, *Memorandum of Understanding*, D3.16.

⁵⁶*Ibid.*, D3.16.

⁵⁷*Ibid.*

⁵⁸*Ibid.*, B3.27, D3.16.

international affairs that may result in a forum for dissension from the established UK line in external affairs. The *Agreements* lay out the right of the Scottish Parliament to debate non-devolved matters including European and international affairs.⁵⁹ The *Agreements* do state that in such situations the Scottish Executive should remind the Scottish Parliament of the jurisdiction of the UK government in these matters.⁶⁰ However, the Scottish Parliament has the potential to be a forum in which Scottish interest may openly question the UK line in European and international affairs.⁶¹ Furthermore, under the *Concordat on co-ordination of European Union Policy Issues* it is recognised that the Scottish Parliament may want to establish a mechanism for examining EU issues to ensure that Scottish interests are being properly addressed.⁶² By the time the *Agreements* had been released this had been fulfilled by the creation of the European Committee as one of the eight statutory committees of the new Legislature. In addition to establishing the mechanism for Parliamentary scrutiny of European affairs, the *Concordat* states that the Scottish Executive is obligated to inform Whitehall departments of the views of the Scottish Parliament as soon as they are known. “Where timing allows” the UK government will “take account of” these views in the process of formulating the UK line in European affairs.⁶³

The inclusion of a European Committee among the eight statutory committees of the

⁵⁹*Ibid.*, para. 15.

⁶⁰*Ibid.*

⁶¹Disputes over the legitimacy of the Scottish Parliament’s involvement in reserved matters has already arisen, and will be examined in chapter five.

⁶²*Ibid.*, B3.31.

⁶³*Ibid.*, B3.33.

Scottish Parliament reflects the importance of European issues to Scotland.⁶⁴ The European Committee's remit fulfilled Section 5.7 of the White Paper, which first suggested the establishment of a system through which the Scottish Parliament could scrutinize EU legislation and express opinions on European matters which could then be entered into the UK government's policy-making. The committee's make-up reflects the party division in the Scottish Parliament and possesses powers which are limited to scrutiny and expression of opinions as well as proposals for legislation. In regards to international activity there is no particular restriction placed on the Committee by the devolution agreements. It has been suggested that the Committee would have powers to invite external actors, such as European officials, to appear before it.⁶⁵ Indeed in November 1999, the European Committee was to "make a small piece of history" by being "the first committee to have an overseas delegation of politicians participate in its proceedings." The Committee was to be visited by members from the regional parliament of Sachsen-Anhalt, Germany.⁶⁶

The remit and expectations of the European Committee were discussed at its first meeting on 23 June 1999. These included the acknowledgement that the committee would "be a powerful

⁶⁴The eight committees are: Procedures Committee; Standards Committee; Finance Committee; Audit Committee; European Committee; Public Petitions Committee; Equal Opportunities Committee; and Subordinate Legislation Committee. Other committees, for specific subjects, may be formed by the Parliament. All committees reflect the party composition of the entire Parliament. The Subordinate Legislation Committee is also important for international and European affairs. Its role is to consider the adaptation and implication of legislation from Westminster which might affect Scotland on areas of reserved matters which included issues of foreign affairs. The importance of European matters to other committees has also been recognized by the European Committee who expects to work closely with them on European issues: Scottish Parliament, *European Committee Official Report 1*, (23 June 1999), http://www.scottish.parliament.uk/official_report/cttee99-00/europe99-00/euc01003.htm

⁶⁵Scottish Office News Release, "Dewar: Scotland can be new type of European Region,"

⁶⁶Scottish Parliament Committee News Release, CEU0010/1999, "European Committee to meet on Tuesday 9th of November," (5 November 1999) http://www.scottish.parliament.uk/whats_happening/news99_00/ceur0010.htm

voice for Scotland in Europe”⁶⁷; it would scrutinise European legislation with the Committee’s view being incorporated within Westminster policy; it would scrutinize and hold the Scottish Executive to account; and, it would pursue links with European Union institutions and other European actors.⁶⁸ In fulfilling these tasks the Committee envisioned itself acting within the established UK channels and directly with the European Union. Hugh Henry, a Labour MSP and Convener of the European Committee, stated that the Committee “[s]hould reflect European policy and seek to influence it, both directly and through the United Kingdom channels in which we operate.”⁶⁹

In addition to the opportunities for Scottish international activity the *Agreements* detail certain responsibilities of the Scottish Administration. The Scottish Executive is obligated to implement European and international agreements which relate to devolved matters.⁷⁰ There are a number of options available in the implementation process such as the use of UK-wide legislation or separate Scottish legislation. All options require the Scottish Administration to consult the FCO in the implementation process.⁷¹ In the case of the *Concordat on co-ordination of European Policy Issues* the Scottish Administration, in consultation with the UK government, will establish methods for the enforcement of EU obligations.⁷² Where the Scottish Administration is held responsible for the failure to meet international obligations, penalties resulting from these

⁶⁷Scottish Parliament, *European Committee Official Report* 1, Col.7.

⁶⁸*Ibid.*

⁶⁹*Ibid.*, Col.3.

⁷⁰Scottish Executive, *Memorandum of Understanding*, B3.16, D3.9.

⁷¹*Ibid.*, B3.17, B3.19, D3.11.

⁷²*Ibid.*, B.21.

infractions will be met by the Scottish Administration.⁷³

International Affairs and European Policy: The Power of the UK Government.

The *Agreements* make clear that international and EU policies are the exclusive responsibility of the United Kingdom government. This is set out in D1.3 of the *Concordat on International Relations* which states that

[u]nder the devolved settlement, the United Kingdom government is responsible for international relations. The Secretary of State for Foreign and Commonwealth Affairs is responsible for the foreign policy of the United Kingdom, and has overall responsibility for concluding treaties and other international agreements on behalf of the United Kingdom, ensuring compliance with the United Kingdom's EU and other international obligations, conducting international litigation on behalf of the United Kingdom, nominations to international bodies, and ensuring consistency between foreign policy and the full range of policies of the United Kingdom government, Northern Ireland Executive Committee, Scottish Ministers, and the Assembly.⁷⁴

The *Agreements* are clear that in both European and foreign policy the UK government is the most significant international actor. The UK government is the only actor who can bind the United Kingdom in international agreements.⁷⁵ As demonstrated earlier, where Scotland and the other devolved administrations are permitted to act overseas, it is only with the approval of the UK government and within the established UK line. As a part of UK missions overseas, it is the lead UK Minister who decides who is involved in these missions and the role that each participant will

⁷³*Ibid.*, B3.25, D3.15.

⁷⁴*Ibid.*, D1.3.

⁷⁵*Ibid.*, D3.6.

have while the Scottish representatives must defer to them.⁷⁶

The effects of the UK monopoly in the area of the European Union and international policy-making extend into devolved matters and the jurisdiction of the Scottish Administration. The ultimate sovereignty of the UK Parliament has been outlined by the UK government through both the devolved legislation and the *Agreements*. The *MoU* Part I (14) outlines the UK Parliament's "*absolute right* to debate, enquire into or make representation about devolved matters."⁷⁷ Under the devolved legislation, the UK government, through the Secretary of State for Scotland, can intervene in devolved matters should it be necessary.⁷⁸ The *Agreements* state that this will be used only as a last resort with attempts being made to solve disputes through discussion.⁷⁹ However, in the case of international and European obligations that impact upon devolved matters, the UK government, under the devolved legislation and reiterated under the *MoU and supplementary agreements*, retains the right to legislate on devolved matters in order to ensure their implementation.⁸⁰ In international negotiation it is necessary for the United Kingdom government to be in a position to implement and enforce the agreements it signs. As a result, under the *Scotland Act* (1998) powers are granted to the UK government to both implement any international agreements it signs and to be able to intervene in the business of its devolved

⁷⁶*Ibid.*, B3.13-B3.14, D3.8.

⁷⁷Emphasis added: *Ibid.*, para. 14

⁷⁸*Ibid.*, D3.9 footnote 6.

⁷⁹*Ibid.* para. 26.

⁸⁰*Ibid.*, para. 20. Refer also to para. 13, B3.8, D3.9 footnote 6.

administrations when international obligations are being broken.⁸¹

Furthermore, in meeting international obligations the UK government may divide international quotas amongst its constituent parts.⁸² In the cases of both EU and international obligations, the *Agreements* state that the Scottish administration will be consulted about such arrangements and that the UK government would “use its best endeavours to reach agreement with them” on the division of quotas.⁸³ The need for the UK government to legislate across the UK is also justified by expediency in international negotiations. The *Agreements* outline that in certain cases, such as the passing of UN Security Council Resolutions, Orders in Council procedures will be used.⁸⁴

The power of central governments to implement international obligations in the jurisdiction of non-central governments has affects beyond the obvious application of forcing NCG to comply with central government’s decisions in the international realm. The power of implementation also affects how attentive central governments need to be to the views of NCG in the policy formulation stage. In chapter two it has been demonstrated that in cases where central governments cannot implement in NCG jurisdiction, such as the federal government in Canada, they are required to give greater consideration to the views of NCGs in the formulation of negotiating positions in order to ensure implementation. Since the devolution arrangements grant

⁸¹Under Section 58 of the *Scotland Act* (1998) the UK government can order Scotland not to take a proposed action if it is deemed to break an international obligation or force Scotland to take certain actions to comply those international obligations. Under section 35 of the *Scotland Act* (1998), the Secretary of State for Scotland can stop Bills being submitted to the Scottish Parliament if they are deemed to be in breach of international obligations: *Ibid.*, D3.9 footnote 6.

⁸²*Ibid.*, B3.20, D3.10.

⁸³*Ibid.*, D3.12.

⁸⁴*Ibid.*, D3.12.

the UK government powers to implement international legislation in the jurisdiction of the Scottish Parliament, it has ensured that it will be able to implement all international agreements it negotiates. Therefore, the UK government will be less constrained by the views of the Scottish Administration in the process of formulating policy than if it required Scottish approval in the implementation stages.

The European Union and international relations present particular problems for the management of relations between Scotland and the UK government. The contents of the *Agreements* display an understanding of the fact that, in the European context, the activity of the UK central government in foreign affairs has direct impact upon the devolved administrations while the domestic activities of the devolved administrations affect the UK government's international obligations. In response, the *Agreements* have clearly established the sovereignty of the UK government in international relations. The UK government, under these *Agreements*, controls policy formation, overseas representation, international negotiations and the implementation of international obligations. In the dispute resolution mechanism of the Joint Ministerial Committee, the UK government's control is reiterated.

In keeping with the intergovernmentalist argument of the European rescue of the nation-state, it may even be concluded that the UK government has actually increased its control over areas of Scottish interest as a result of the *Agreements'* attempts to address the processes of the internationalisation or Europeanisation of domestic policies. As the areas of domestic policy that have been devolved to Scotland "Europeanise," the final responsibility for these issues falls into the jurisdiction of the UK government, which acts as the gatekeeper to international policy-making that affects Scotland's domestic policy. As the *Agreements* make clear, the responsibility of the UK government is to promote a UK-wide interest, not a Scottish interest in European and

international affairs.

Joint Ministerial Committee

The establishment of the Joint Ministerial Committee (JMC) is outlined in Part II Section A of the *MoU and supplementary agreements*. The purpose of the JMC is to monitor interaction between the UK government and the devolved administrations and to provide a forum where issues which concern two or more of the administrations may be addressed and disputes can be resolved. This is outlined in Part II A1.2 of the *Agreements* which states that

[t]he terms of reference of the Joint Ministerial Committee are: a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; b. where the UK government and the devolved administration so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom; c. to keep the arrangements for liaison between the UK government and the devolved administration under review; and d. to consider disputes between the administrations.⁸⁵

The *Agreements* reflect the belief of their authors that day-to-day issues of government will be addressed between the devolved administration and the appropriate UK Ministries, without the need for the JMC's involvement.⁸⁶ This interaction will be organized in specific departmental concordats which will contain within them a "triggering" device that will indicate the necessity of the JMC involvement in particular issues.⁸⁷

The form of the JMC is fluid and will vary depending upon the purpose of its meeting and

⁸⁵*Ibid.*, A1.2.

⁸⁶*Ibid.*, para. 22.

⁸⁷*Ibid.*, A1.7.

the issue it is to address. Similarly, the initiation and timing of meetings will also vary. In its basic formation, the JMC

will consist of the Prime Minister (or his representative), who will take the chair, and the Deputy Prime Minister, the Scottish First Minister and one of his Ministerial colleagues, the Welsh First Secretary and another Assembly Secretary, [the Northern Ireland First Minister and Deputy First Minister], and the Secretaries of State for Scotland, Wales and Northern Ireland.⁸⁸

The full JMC will meet annually for plenary meetings and to review the arrangements for inter-administration co-operation. The JMC may also take a “functional” form in which Ministers responsible for specific policy areas may attend. For example, a JMC of Fisheries Ministers may meet, in which the UK government and devolved administrations would address relevant issues.⁸⁹ The purpose behind these “functional” JMCs may be either to address specific issues or to provide a review of the various inter-administration concordats.⁹⁰ Finally, the JMC may also meet with the purpose of addressing specific disputes between the UK government and a single devolved administration. In this case the Committee would comprise Ministers from only the administrations concerned.⁹¹

The issue of international affairs, unlike any other specific policy area, is given separate attention in the supplementary agreement on the JMC under Part II, A1.9. This section states that a JMC chaired by the Foreign Secretary “will also operate as one of the principal mechanisms for

⁸⁸*Ibid.*, A1.3.

⁸⁹*Ibid.*, A1.4.

⁹⁰*Ibid.*, A1.6.

⁹¹*Ibid.*, A1.5.

consultation on UK positions on EU issues which affect devolved matters.”⁹² The need for such a mechanism is due to the rapid nature of decision-making and the UK “Government's own wish to involve the devolved administrations as fully as possible in discussions on the formulation of UK policy positions.”⁹³ The fact that a JMC for foreign affairs is mentioned separately in the agreement may indicate that there is an expectation that many of the issues to be dealt with by the JMC, either due to sheer volume or the level of difficulty, will originate from issues of international affairs and more specifically the European Union.

As a dispute resolution mechanism, the *MoU and supplementary agreements* envision the JMC to be used as a last resort only “[w]here a dispute cannot be resolved bilaterally or through the good offices of the relevant Secretary of State.”⁹⁴ Within all meetings of the JMC the chair is to be taken by the “appropriate senior UK Minister.”⁹⁵ The proceedings of the JMC are to be confidential although the Committee may wish to make public statements.⁹⁶ Like the *Agreements* themselves, the weight of any JMC decision is drawn into question by its non-statutory status. The *Agreement* states that the JMC is a consultative, not executive body. As a result the JMC is limited to reaching agreements which are not binding on any administration. However, the *Agreements* do expect “that participating administrations will support the position that the JMC has agreed.”⁹⁷

⁹²*Ibid.*, A1.9.

⁹³*Ibid.*

⁹⁴*Ibid.*, A1.7.

⁹⁵*Ibid.*, A1.4-A1.5.

⁹⁶*Ibid.*, A1.11.

⁹⁷*Ibid.*, A1.10.

The Introduction of the Agreements

The introduction of the *Agreements* in October 1999 was surrounded by considerable debate. Three specific concerns have been raised over the creation of the *Agreements*. The first concern addressed the time taken to produce the *Agreements*, the second raised issues of how they had been negotiated while the third concern, spurred on by the *Agreements*' introduction, has acknowledged their actual contents. The proposal for coordination, as outlined in the *Agreements*, was first introduced in the White Paper on Scottish devolution in July 1997, more than two years before the actual arrangements were established in formal agreements.⁹⁸ Donald Dewar, the Secretary of State for Scotland and, after May 1999, the Scottish First Minister, has justified the length of time taken to release the *Agreements*. He has argued that prior to the Scottish general election, no devolved administration existed with which the United Kingdom government could negotiate the *Agreements*. However, during this period, and especially at the time of the Scottish Election in May of 1999, significant speculation was made about the nature of the *Agreements* and the means of coordination that were being established. The Scottish National Party placed considerable weight upon the impact of these *Agreements* for dictating the role that the UK government would have in the conduct of Scottish government business. In the run up to the European election in June 1999, the SNP argued that the Labour Party was strategically withholding the *Agreements*' publication until after the elections, in fear that their contents would hurt Labour's results.⁹⁹

The means by which the *Agreements* were negotiated has also raised considerable debate

⁹⁸Scottish Parliament Information Centre, *Research Paper 99/12*, 8.

⁹⁹Benedict Brogan, "Scotland's new voice in the world."

centred around criticisms that they were drafted in secrecy and without Scottish Parliament input. In the period before the Scottish general election in May 1999, preliminary discussions on the nature of the *Agreements* were being worked out between the Secretaries of State for Scotland and Wales and their Whitehall counterparts within the UK government. After the elections in Scotland, Dewar, then the newly elected Scottish First Minister, and the new Scottish Executive were joined by John Reid, the new Secretary of State for Scotland, in the drafting of the *Agreements*.¹⁰⁰ The Scottish Parliament was given no opportunity to debate the *Agreements* during the drafting nor was there any possibility of amending them. According to the criticisms of the SNP, the Scottish Parliament had not had access to the *Agreements* prior to their introduction in Glasgow at a joint press meeting between John Reid and Donald Dewar.¹⁰¹ In the opening debate on the Scottish Parliament motion to accept the *Agreements* Alex Neil of the SNP stated that,

[m]y first concern is how the Scottish Executive has treated - or to be more accurate, maltreated - the Parliament in the way in which the concordats have been drawn up. There is no doubt that the concordats have been drafted in London and in secrecy. At no time has the Parliament been given the opportunity to input its ideas on the agreements, nor have we been consulted on their content. Indeed, until Friday, we had not even been informed about the subject areas that the concordats would cover.¹⁰²

In conclusion Neil referred to the concordats as “more akin to diktats than to genuine concordats.”¹⁰³

The contents of the *Agreements* have also raised considerable criticism in the period after

¹⁰⁰Scottish Parliament, *Official Report*, “Memorandum of Understanding and Concordats,” (October 7, 1999), Cols. 1105-1106.

¹⁰¹*Ibid.*, Cols. 1113-1114.

¹⁰²These comments were made by Alex Neil in the opening debates in the Scottish Parliament on the motion to endorse the *Memorandum of Understanding and supplementary agreements: Ibid.*, Col. 1113.

¹⁰³*Ibid.*, Col. 1117.

their release. Again, the SNP has been at the forefront, arguing that the *Agreements* have provided too much power over the affairs of Scotland, even in areas of devolved interest, to a UK government in London. Dewar responded to this criticism stating that the *Agreements* have been misunderstood and misrepresented by the SNP. He has stated that the *Agreements* are not rules of procedure for two nation-states but are arrangements for devolution - the constitutional settlement for which the Scottish people have voted.¹⁰⁴ However, in the months immediately after their release, the SNP continued to attack the contents and implications of the *Agreements*.

Evidence of the SNP's concerns over the power of the UK central government granted by the *Agreements* has been seen in the initial stages of the *Agreement's* operation. As early as November 1999 the SNP had raised questions of whether Scotland would be adequately represented in Europe and who should speak for Scotland in European affairs? During a debate in the Scottish Parliament on 10 November 1999, Alex Salmond presented evidence which showed that, of the thirty meetings of the Council of Ministers since the Parliament's establishment, only one had been attended by a member of the Scottish Executive. This was in spite of the fact that many of the issues on the Council of Ministers' agenda dealt with reserved matters.¹⁰⁵ These questions were raised again in December 1999 over the negotiations of EU fisheries quotas. The SNP argued that it was a UK Minister who negotiated for Scotland, not the Scottish Fisheries Minister who was "responsible for seventy per cent of the UK's fishing entitlement."¹⁰⁶ In addition

¹⁰⁴*Ibid.*, Col. 1106.

¹⁰⁵Scottish National Party News Release, "SNP Reveal Executive Non-Attendance in Europe: 'Attended One Meeting in 30'," (10 November 1999), <http://www.snp.org.uk/press/news/archives/pr1110f.htm>

¹⁰⁶Scottish National Party News Release, "Home Robertson Must Lead in Europe to Protect Scottish Fish Quota," (15 December 1999) <http://www.snp.org.uk/press/news/archive/pr91215f.htm>; Scottish National Party News Release, "SNP Attacks Fisheries Minister's Bare Faced Cheek Over Fisheries Negotiation 'Annual Quota System Must be Changed'," (17 December 1999)

to arguing that the *Agreements* have failed Scotland, the SNP has also claimed that in other situations the UK government has, in practice, failed to abide by them. In December 1999, it was revealed that the UK government failed to pass on information concerning an offer from the French government in October 1999 to lift a ban on beef from grass feed herds in Scotland.¹⁰⁷ This action, which clearly affected an area of devolved competence, would have significantly benefited the Scottish agricultural industry. According to Alasdair Morgan, the SNP's shadow Rural Affairs Minister, "these Concordats are exposed as a one-way street - designed to put checks on the Scottish Parliament, while London Ministers run roughshod over the whole concept of devolution, by failing even to pass on information."¹⁰⁸

UK Dominance in International Affairs and European Policy

The United Kingdom government's control over international and European Union policy is explicitly laid out in the *Agreements*. The protection by the UK government of its exclusive control over international affairs is to be expected. While the *Agreements* do allow for a measure

<http://www.snp.org.uk/press/news/archives/pr91217b.htm>

¹⁰⁷A ban imposed on British beef resulting from the discovery in British herds of BSE, an animal variant of CJD. Scottish agricultural interest have argued that Scottish beef, like Northern Ireland beef, should have been exempted from the ban.

¹⁰⁸Alasdair Morgan was referring to both the overarching *Agreements* as well as the specific Agriculture concordat between the Scottish Executive and the UK Ministry of Agriculture, Fisheries and Food: Scottish National Party News Release, "French Offer on Scottish Beef. 'Failure to tell Executive Broke Concordats'," (17 December 1999) www.snp.org.uk/press/news/archive/pr912117a.htm See also Scottish National Party News Release, "French Beef Offer, 'London Kept Scottish Executive in the Dark'," (14 December 1999) www.snp.org.uk/press/news/archive/pr91214c.htm; Scottish National Party News Release, "London Vetoed Lifting of Scots Beef Ban 'SNP Call for Emergency Statement from the Executive'," (14 December 1999) www.snp.org.uk/press/news/archive/pr91214a.htm.

of Scottish access to the foreign policy process, most effectively at the policy formulation stage, all areas covered by the *Agreements*, including policy formulation, negotiation, and implementation, give the UK government ultimate control. In the case of making European and international contacts, Scotland is again restricted by the necessity to maintain the UK line, and work under the supervision of the UKRep and the FCO. UK government control extends even to the point of approving Scottish nominations for Scottish representatives to the Committee of the Regions, where regional, not UK-wide interests are to be represented. The regime established by the *Agreements* may suffer from the over-regulation of NCG outlined in chapter two. If the *Agreements* are to work successfully, Scotland needs to perceive them to be working in its interest. If it is the case that the *Agreements* regularly serve UK wide or English interest¹⁰⁹ over the interest of Scotland they will be perceived by Scots to have failed.

Changes at Westminster

The creation of the Scottish Parliament has increased the number of channels through which Scottish interest can influence the UK foreign policy process. However, devolution may also cause changes at Westminster which have the potential of affecting Scottish representation in international affairs. Considerable attention has been given to the prospective powers of the new Scottish Parliament, including in matters of international relations. However, as has been demonstrated, devolution has not altered where power over foreign policy-making lies; with the

¹⁰⁹One of the SNP's criticism of the *Agreements* has been that in all mechanisms of inter-administration co-ordination, the UK government speaks both for itself and for England. Therefore, the UK government serves two, possibly conflicting, roles: Scottish Parliament, *Official Report*, "Memorandum of Understanding and Concordats," Col.1115-1116.

United Kingdom government. As a result, the most important means of influencing foreign policy remains Scottish representation in Westminster. Potential changes in Scotland's representation in Westminster may affect Scotland's ability to influence reserved matters including issues of international and European affairs.

The devolution process has transferred a considerable amount of Scottish MPs' workload to the Scottish Parliament. As a result, Scottish MPs' will have a greater amount of time to address reserved matters at Westminster, leading to the argument that devolution has improved Westminster MPs' ability to address reserved matters.¹¹⁰ However, as powers are relocated to the Scottish Parliament, the justification for the current level of Scottish representation in Westminster is lessened. Indeed, a decrease in the number of Scottish representatives in Westminster has been considered and the potential for such a change has been made possible by provisions within the Scotland Act (1998).¹¹¹

Other potential changes at Westminster include the removal of the Secretary of State for Scotland from the Cabinet. While this may be unlikely, it has been suggested by prominent UK politicians such as Charles Kennedy, the leader of the Liberal Democrat Party. Kennedy has stated that "[o]ur view always was that if you take a meaningful view of power devolved to the Scottish Parliament, the post of Secretary of State for Scotland is not an essential post."¹¹² Despite the

¹¹⁰Robbins, "Britain in Europe," 113-114.

¹¹¹Under the *Scotland Act* (1998), Section 5, 86, the requirement that Scotland should have no less than 71 constituencies, under the *Parliamentary Constituency Act* (1986), was omitted. Concerns about too many Scottish MPs in Westminster after devolution were originally raised during the 1970s devolution debate by Tam Deyall, Labour MP for West Lothian, Scotland. As a result this debate has become known as the West Lothian question.

¹¹²Robert Tait, "Devolution will end Scottish Secretary post, says Kennedy", *The Scotsman*, online edition, (16 September 1999) <http://www.scotsman.com>.

potential of these changes to alter Scotland's representation in foreign policy decision-making, little attention has been paid to the possibility of decreased Scottish influence in Westminster.¹¹³ This is likely due to the fact that the Scottish National Party is not in the habit of arguing for increased powers in Westminster. The SNP does not see the Secretary of State for Scotland as the best means for increasing Scottish representation in reserved matters.¹¹⁴

Conclusion

Devolution has clearly affected the representation of Scotland in the foreign policy process. This was both anticipated and addressed by the architects of devolution settlement. The *Memorandum of Understanding and supplementary agreements* establish a framework within which Scottish representation in international affairs is to take place. This framework facilitates Scottish government international activity as both a primary actor, with independent representation in Europe and overseas, and as a mediating actor, participating in the UK foreign policy process at the formulation, negotiation and implementation stages. While the Scottish role is more clearly articulated than in the pre-devolution period, it is the conclusion of this chapter that in the established framework the United Kingdom has maintained control over the activities of its NCG in external affairs. Indeed, the highly restrictive nature of the *Agreements* could be criticised for over-regulating NCG activities in external affairs. Beyond the specific arrangements which have

¹¹³For a brief consideration see George Brock, "Labour piper charms Scottish ears with a popular but sentimental air," *The London Times*, (27 January 1997): 15a.

¹¹⁴Indeed, in the debate in the Scottish Parliament over the Home Secretary's decision to grant a entry visa to Mike Tyson, the SNP were criticised for not addressing reserved matters in Scotland rather than in Westminster, the more appropriate venue: Scottish Parliament, *Official Report* 6, no.9 (24 May 2000), http://www.scottishparliament.uk/official_report/session-00/or060901.htm, Col 915 - Col 959,

been set up to address Scotland's international activities, changes at Westminster may further reduce Scottish representation in international affairs.

Chapter 5

Scottish Devolution: Motivations, Methods and Potential Outcomes of Scottish NCG Activities in International Affairs

The arrangements which have been established for Scottish representation in external affairs have been extensively outlined in the *Memorandum of Understanding and supplementary agreements*. As has been demonstrated in chapter four, the *Agreements* give considerable weight to the UK central government in matters of European and foreign affairs, reflecting the devolved settlement which establishes these areas of policy as matters reserved in Westminster. Despite this the *Agreements* have outlined a role for Scottish participation, both as a primary actor in the international realm and a mediating actor within the UK foreign policy process. This chapter will examine the methods and conditions under which Scottish activity in the UK foreign policy process and in international affairs may be most effective. However, the argument of this thesis will be supported by demonstrating that even where there is a level of effectiveness in Scottish representation it has been limited by the institutional arrangements governing Scottish international activity.

This chapter will begin by outlining the potential motivations for Scottish government activities in European and international affairs. It will then suggest that the most effective method of Scottish representation, under the arrangements established by devolution, is through the existence of a Scottish tier of government which has the powers to aggregate Scottish interests and place these on the UK foreign policy agenda. The chapter will then focus on the increased influence of the Scottish National Party as a result of devolution and its commitment to addressing international issues in a protodiplomatic manner to further its goal of independence. How

successful the SNP is in the Scottish Parliament will be an important determinant of the level to which issues of foreign affairs are addressed. The chapter will then address the potential outcomes of Scottish NCG activities in international affairs. The potential for both conflict and co-operation, and their impact upon the effectiveness of Scottish international activity will be examined in this section of the chapter. Finally the chapter will conclude that the devolved arrangements have created some methods and conditions under which Scottish Parliament activity in the UK foreign policy process and in international relations will have some effect. However, it will be shown that, due to the institutional arrangements of the devolution settlement, Scottish activity will be limited. These arrangements have reinforced a system in which the powers of the UK central government are maintained.

Motivation for Scottish Activity in European and International Affairs.

The literature on NCGs in foreign policy outlines several motivations for NCG activity in external affairs. One of the primary motivators is the international realm itself, which has increasingly undermined the distinction between domestic and foreign policy. In the European system specifically, the MLG approach to European integration suggests that member-states' domestic politics are undergoing a process of Europeanisation. As has been demonstrated, Scottish interests in the pre-devolution period were regularly affected by international, and in particular European, decision-making - a trend which can be expected to continue after devolution. Devolution has created a level of Scottish government which will be required to attempt to influence international and European policy-making in order to maintain control over policy areas within its jurisdiction. Indeed, as has been demonstrated, the Labour government has

recognized this and has, since 1997, been keen to be seen to include Scottish representatives in the foreign policy process both before and after devolution.¹

Beyond the nature of the international system there are likely to be more specific motivations for Scottish government activity in external affairs. The literature has indicated that NCGs may be encouraged into the international realm by other actors. For the Scottish government, both European actors and the UK central government may encourage its activity in external affairs. In the pre-devolution period, precedent for both of these types of activities was established. In the dispute over additionality, the European Commission encouraged UK local governments into the international realm in an attempt to counter the UK central government. In the post-devolution period there has already been an increase in European activity in Edinburgh by the European Commission Office, in recognition of the increased role that the Scottish Parliament is expected to play in Europe. Elizabeth Holt, head of the European Commission's office in Edinburgh has stated that, "[i]n the past, the office's main function was very much press and information. That will continue. But there will now be an increase in its role as the Commission's representative on Scotland ... the arrival of the Scottish Parliament will be a major factor in its work."² Furthermore, chapter three argued that the parts of the European system defined by the MLG approach acted as examples of the potential of higher levels of Scottish activity in Europe. It is possible that the existence of a European system which offers the Scottish government the potential of a voice in decision-making - such as through the representation of NCGs in meetings

¹ Despite the recognition of the importance of European issues to the daily operations of the Scottish Parliament, the devolution arrangements have maintained the definition of European issues in terms of foreign, not domestic policy.

² Quoted in: Rory Watson, "Woman with a Euro message for Scots," *The Glasgow Herald*, online edition, (21 June 1999), <http://www.theherald.co.uk/news/archives/21-6-1999-23-6-8.html>

of the Council of Ministers - may encourage the Parliament to seek access to it.³

The UK central government may also motivate the Scottish government into the international realm in order to complement UK interests there. In the pre-devolution period the UK government was, in general, supportive of local government and Scottish Europa lobbying in Brussels which was seen to further UK interests. In the post-devolution period this will likely continue. In this period, the arrangements for Scottish activity in the foreign policy process and in independent international activity have been established to complement the goals of the UK government. If the Scottish government's overseas activities achieve this, it can be expected that the UK government will continue to support and encourage it.

Furthermore, issues of international and reserved matters will regularly and unpredictably enter debates in Scottish politics and it is unlikely that the Scottish Executive will be able to avoid addressing them, despite the fact that they fall within the *vires* of Westminster. This has been the case as early as the May 1999 Scottish election campaign where reserved matters were regularly addressed by both of the main parties vying for power. These consisted of issues of defence and foreign policy, including Labour's Trident policy, the creation of a Scottish army after independence,⁴ as well as the SNP's position on the Kosovo crisis.⁵ Since 6 May 1999,

³ Motivations cause be the examples of other NCGs' international activities can be described by what Soldatos' has referred to as "me-tooism," outlined in chapter two.

⁴ Defence Secretary George Robertson attacked the SNP Defence Policy, arguing that an independent Scottish army would be very weak with no international projection. He stated that "[o]ur armed forces epitomise all that is best about the United Kingdom - destroy the Union and you weaken them. When it comes to defending people we are stronger together and weaker apart." Alison Hardie, "Labour blasts SNP over defence," *The Scotsman*, online edition, (1 February 1999), <http://www.scotsman.com/news/ne03blas990201.1.html>. The Trident nuclear submarine issue was also raised in the election. The SNP campaigned against Trident, which was particularly relevant because all four submarines were based in Scotland. Anti-Trident sentiment was also evident amongst Scottish Labour, who have voted consistently against Tridents existence despite Westminster's stand on the issue. Ian Bell, "Labour impaled on Trident," *The Scotsman*, online edition, (3 February 1999), <http://www.scotsman.com/opinion/op1bell1990203.1.html>; Murray Ritchie, "SNP waits with torpedo as

international issues have continued to be raised in the Scottish Parliament, as can be seen in the case of the French offer to lift the ban on Scottish beef and the negotiations of EU fishing quotas in December 1999.

Scottish nationalism may also provide motivation for Scottish international activity, regardless of political orientation, through an attempt to address international issues from a “Scottish” perspective. The theoretical literature has shown that nationalism may motivate leaders of NCGs to attempt to frame issues of international affairs in terms of national identity. Although the primary and most likely use of nationalism may come from the Scottish National Party, whose protodiplomatic activities are outlined below, the attempt to overlay a “Scottishness” onto issues of international relations is not limited to the SNP. As demonstrated in chapter four, the Labour government has attempted to place Scotland within the UK foreign policy process, presenting this in terms of the articulation of “a distinctive Scottish voice.”⁶ A strong motivation for this is the existence of a population in Scotland whose members for the most part perceive themselves as “Scottish,” clearly distinct from England but also distinct from the United Kingdom. In September 1991, an ICM Poll for the *Scotsman* found that 40 per cent of Scots felt themselves to be

Trident heads for Clyde”, *The Glasgow Herald*, online edition, (30 April 1999), <http://www.theherald.co.uk/news/archives/30-4-1999-23-9-9.html>; “On the Defensive: Scottish devolution was not meant to have implications for the defence of England or Scotland. Think again,” *The Economist*, (6 February 1999):

⁵ Brogan, “Cook launches attack on SNP,”; Joy Copley, “Cook to step up Kosovo attack on Salmond”, *The Scotsman*, online edition, (30 April 1999), <http://www.scotsman.com/cgi-bin/t3-2.cgi/...7& UserReference=C767E30183EEB15B3729F53F>; For the SNP’s position on the UK bombings in Kosovo see: Scottish National Party News Release, “Alex Salmond’s Statement on Kosovo,” (29 March 1999), <http://www.snp.org.uk/press/news/pr90329d.htm>.

⁶ Scottish Office News Release, “Scotland’s Voice in Europe”

“Scottish, not British” and 29 per cent “more Scottish than British.”⁷ The existence of a Scottish nation has forced political leaders to address issues, including those of foreign policy from a Scottish perspective - a trend which is likely to continue in the future.

Methods of Representation: The Importance of Aggregation and Agenda Setting

While the argument of this thesis is that institutional constraints of the devolution settlement have limited Scottish representation, devolution has created methods of representation which have the potential of being effective. Most fundamentally, devolution has created a tier of government which will facilitate the articulation of an exclusively Scottish perspective and increase the need of the UK central government to take that perspective into consideration when making foreign policy.⁸ On issues which have been transferred to the Scottish Parliament under the devolution settlement, the question of who can legitimately speak for Scotland, raised in the pre-devolution period, is no longer in dispute. Although, ultimately, parliamentary sovereignty continues to reside in Westminster, it can be assumed that it will be unlikely that the Scottish Parliament’s control will be challenged on issues within its *vires*. Therefore, on matters within the Scottish Parliament’s jurisdiction it is the government in Holyrood which legitimately speaks for Scotland.

⁷ Keating, “Nations against the State,” 175. A similar poll in the *Glasgow Herald* from the same period found the results to be even higher amongst young people. The survey found that “90 per cent of young people declined to describe themselves as ‘British’; Brock, “Labour charms Scottish ears,” 15a.

⁸ Brain Hocking states that “[b]ecause there exist an intervening level of legitimate authority between the Central Government and geographically diffuse regional interest, capable of focusing and mediating those interests, more permutations of subnational, national and international interaction become possible”: Hocking, *Localizing Foreign Policy*, 40.

The legitimacy of the Scottish Parliament to speak for Scotland is likely to extend to issues of foreign and European affairs, despite the fact that under the devolution legislation these matters remain under the control of the UK government. Although the UK central government continues to have the right to speak for Scotland in international affairs and the Secretary of State for Scotland represents Scotland in the process, the creation of a Scottish government has produced a means by which Scottish opinion on foreign affairs can be consolidated and expressed. Indeed, it is the expectation of the devolution settlement, outlined in the *Memorandum of Understanding and supplementary agreements*, that the Scottish government would aggregate and articulate the Scottish Parliament's opinion on international issues and that they should be incorporated into the UK government's foreign policy process.

When power is held by the same party in Westminster and Holyrood, as is currently the case for Labour, the executives of these governments may attempt to skirt international issues which are likely to cause inter-administration conflict. However, these issues are still likely to be raised in Scotland. The Scottish Parliament itself will have the means of addressing issues of foreign affairs, especially in relation to Europe. As has been shown in chapter four, the *Agreements* allow the Scottish Parliament to address any issues it considers necessary. In the case of European matters, specific mechanisms have been incorporated into the Scottish Parliament, through the European Committee, to scrutinize European legislation proposals and to develop a Scottish position on European issues which the UK central government is to take into considerations in the policy formulation process. Furthermore, as has been demonstrated in the case of confidentiality in policy formulation, if the Scottish Executive is not seen to be delivering what has been established as being in Scottish interest, it could be subject to accusations of towing the UK central government line.

Despite the potential role of the Scottish Parliament in aggregation and agenda setting, its effectiveness in the policy formulation stage of foreign policy remains limited. In the current context it is unlikely that the Labour government in Scotland will allow itself to come into too great or too regular a conflict with the Labour government in London, even if a Scottish position in opposition to Westminster is clearly articulated.⁹ As a result, it is likely that the Scottish Labour administration will attempt to focus on Scottish interests which are complementary to those of UK government, whilst avoiding issues which have the potential for conflict. On technical matters, the *Agreements* outline that in order to be included in the UK foreign policy process they need to be delivered in a timely fashion. The success of this is, in part, determined by the success of the arrangements for the gathering of information on international and European issues which are of significance to Scotland. As has been seen in the SNP's criticism of the UK central government's failure to pass on information about the French offer to lift the ban on Scottish beef, channels of communications have not been entirely successful. Furthermore, the *Agreements* clearly outline a framework where Scottish representation in policy formulation, international negotiation and implementation is limited. For example, as has been argued in chapter four, under the framework established by the *Agreements*, the UK central government, with its powers over implementation, is not forced to deliver Scottish interests in the foreign policy process even if they have been included in the policy formulation stage. Indeed, the institutional arrangements, although allowing a Scottish role in the process, have ensured that the UK central government has maintained its exclusive control over external affairs.

⁹ Evidence for this can be seen in the dispute over Mike Tyson's entry into the UK discussed below.

The Scottish National Party: The Potential for Protodiplomacy

In the pre-devolution period the Scottish National Party was described as the largest separatist party in Western Europe.¹⁰ Prior to devolution, the SNP's popularity peaked in October 1974 with 30.4 per cent of the vote in Scotland and 11 seats at Westminster. Devolution and the creation of a Scottish Parliament has provided the Scottish National Party with a forum in which to expand and consolidate at the Scottish level. After the May 1999 election the SNP, which had been a marginal Westminster party with 6 MPs, became a party of 41 elected members at Westminster and Holyrood, with an expanded party apparatus to support its size. In Scotland, the SNP's 35 MSPs form the official opposition in Holyrood and are the primary challengers to Labour's dominance.

The existence and activities of the Scottish National Party have the potential to influence the effectiveness of Scottish NCG activity in international affairs. The SNP is likely to regularly place issues of international relations on the agenda of the Scottish Parliament. Furthermore, the SNP is likely to use these issues in an attempt to create conflict between the Scottish and UK governments in the process of arguing for greater powers for the Scottish Parliament. The Scottish National Party possesses an extensive international and European policy with many of its positions on these issues being of a protodiplomatic nature. In this section the SNP's policies are outlined, demonstrating the protodiplomatic nature of its position and how this might influence the effectiveness of Scottish government representation in the UK foreign policy process and in external affairs.

¹⁰ Michael Keating, *The Politics of Modern Europe: The State and Political Authority in Major Democracies*. (Brookfield, Vermont: Edward Elgar, 1993), 110.

The European Union has been a prominent feature of the SNP's campaign for independence. In the 1970s, the Scottish National Party was anti-Europe and campaigned against the United Kingdom's entrance into the European Economic Community (EEC), fearing a loss of sovereignty to the EEC, a centre of power even more distant than Westminster. However, after the initial resistance to Scotland's position in the European Economic Community, the SNP developed a policy in support of the Community/Union, arguing that it would provide the means through which independence could be achieved.¹¹

In 1987 the SNP adopted the policy of "independence in Europe," arguing that a Scottish state should have member-state status in the European Community (EC). Other nations such as Ireland and Denmark, while no greater in size than Scotland, already had full member status. Based on comparisons with these states, the SNP argued that Scotland would receive better representation as a full player in the EC. In the case of Denmark, a state equal in size to Scotland, member-state status translated into a seat at the Council of Ministers, sixteen seats in the European Parliament, and six month periods holding the EU presidency. Scotland, as a part of the United Kingdom, had no direct and exclusive representation at the Council of Ministers and only eight seats in the European Parliament.¹²

An important part of the "independence in Europe" policy was the assumption that the

¹¹ Scotland's position within the European Community / Union has raised difficulties for the Scottish National Party. For further details see Isobel Lindsay, "The SNP and the Lure of Europe," in *Nationalism in the Nineties*, ed. Tom Gallagher (Edinburgh: Polygon 1991)

¹² In the early 1990s Scotland with a population of five million was represented by eight MEPs, the Republic of Ireland with three million had fifteen MEPs: Michael Keating and Barry Jones, "Scotland and Wales: Peripheral Assertion and European Integration," *Parliamentary Affairs* 44, no.3 (July 1991): 320. Winnie Ewing has also used Luxemburg as an example of a state, with half of the population of Edinburgh, being "inside the the room where vital decisions are made.": Winifred Ewing, "1998 Conference Address by Dr. Winifred Ewing MEP", (25 September, 1998): 2, <http://www.snp.org.uk/conf98/winnie.html>

European Community/Union had made independence more easily attainable for Scotland. In 1998, George Reid, then the SNP's constitutional critic, argued that due to the modern international system "[y]ou can slip into independence without noticing it."¹³ The SNP have argued that traditional fears of an isolated post-independent Scotland shut out by its neighbours were lessened by the existence of the European Union. The European system and the Europeanization of member-states' domestic policy, encourages free movement of people and labour and EU-wide standardization within a borderless Europe. As a result, a Scotland in or out of the UK could maintain its positive links to its southern neighbour because of their EU membership.¹⁴ The SNP speculated in its 1997 UK general election manifesto that independence would not see the imposition of borders for the movement of people or goods between Scotland and England.¹⁵ In addressing this specific concern Alex Salmond, the leader of the SNP, has stated that

[t]he idea that you have to be a part of the same state with another nation to trade with it is an original concept in economics, and would come as a surprise to Canada trading with the USA or Austria trading with Germany. In fact, these

¹³ Alan Freeman, "Scottish nationalist start down separatist path," *The Globe and Mail*, (5 December 1998): A28; See also Keating and Hooghe, "By-passing the nation state?" 218; The SNP's support for the European Union reflects the attitude of most nationalist groups who look favourably upon the EU as a means to achieve the goal of independence.

¹⁴ Michael Keating, writing in 1996, has argued that the social and economic union between Scotland and the UK may be maintained despite political separation, in a "highly integrated Europe." However, he argues that the current levels of integration in the European Union would not prevent considerable disruption in these areas if political separation was pursued in the present period: Keating, "Scotland in the UK", 253; Whether Scotland would automatically become a full member of the European Union after achieving independence is disputed. Precedent for automatic membership has been set by Greenland which, when separating from Denmark, had to be negotiated out of Europe. For the position of the SNP on post-independence and EU membership see Levy, *Scottish Nationalism at the Crossroads*, 143-145; For an alternative view see Matthew Happold, *Scotland Europa: independence in Europe?* (London: Centre for European Reform working paper, April 1999).

¹⁵ *The Manifesto of the Scottish National Party for the 1997 General Election*, <http://www.snp.org.uk/library/GElibrary/manif97.txt>, 4.

commercial flows would continue unaffected as part of the wider European single market. ... We will still visit each other, intermarry, move from one country to another to work, and we will still buy and sell each other[s] goods, and watch each other's television.¹⁶

The SNP's policy of independence within the context of Europe had considerable support in Scotland. As early as 1989 the support in Scotland for "independence in Europe" as opposed to the current constitutional arrangement was high. According to a Glasgow Herald/BBC Systems Three opinion poll, published on 14 April 1989, 61 percent felt that "if given the choice between the status quo and 'independence in Europe'... Scotland would be better off with '(a)n independent Scottish government which was a separate member of the E.C."¹⁷

The SNP's goal of independence also addresses other issues of international affairs beyond the European Union. Under the SNP, an independent Scotland would be an active participant in international affairs, maintaining its membership in most international organisations.¹⁸ A notable exception to this is the SNP's commitment to withdrawal from the North Atlantic Treaty Organization; an alliance based upon nuclear power and therefore unacceptable to the non-nuclear stance of the party.¹⁹ In addition to this, the SNP advocates a number of other changes to foreign policy which include: an increase in international aid; a decrease in diplomatic spending, so not "to emulate the imperial pretensions of the United

¹⁶ Scottish National Party News Release, "Salmond Addresses London School of Economics: 'Millennium Grants for Community Projects'," (25 February 1999), <http://www.snp.org.uk/press/news/pr90225a.htm>

¹⁷ Roger Levy, *Scottish Nationalism at the Crossroads*, 139.

¹⁸ In the United Nations this is a "seat between Senegal and Saudi Arabia": Ewing, "1998 Conference Address by Dr. Winifred Ewing MEP," 2.

¹⁹ Despite this the SNP would seek to be a part of the NATO sponsored Partnership for Peace: *The Manifesto of the Scottish National Party for the 1997 General Election*, 25.

Kingdom”²⁰; increased focus on the promotion of Scottish tourism and Scottish trade and economic development; as well as the establishment of a peacekeeping college “to place Scotland in the forefront of international peacekeeping efforts.”²¹

The SNP’s Manifesto for the 1999 Scottish general election built on many of its earlier policies on international and European affairs. However, the SNP’s primary focus in this election was not on Scottish international activity after independence, but on the changes the party would make within the UK system of devolution. This is important because it indicates, in part, the SNP’s position on the expected role of the new Parliament in external affairs.²² The SNP promised a Minister for External Affairs in the new Parliament and a corresponding parliamentary committee. In relations with developing countries the SNP proposed the creation of a voluntary secretariat called *Aid from Scotland*, as well as the establishment of a “strategy of sustainable development and poverty reduction targeted towards the worlds most vulnerable.”²³ In managing relations with Europe the SNP planned the establishment of a Scottish-European Assembly where Scottish MSPs, MEPs and CoR representatives could meet to discuss European affairs.

The SNP also intended that the new Scottish Parliament would create “a network of commercial embassies ... selling Scotland abroad for tourism, exports and inward investment.”²⁴

²⁰ *Ibid.*, 23.

²¹ *Ibid.*, 25.

²² During the 1999 election campaign, a SNP news release of an upcoming speech by George Reid, at the time the SNP’s External Affairs spokesperson, stated “that the SNP will work within the Scottish Parliament in order to develop ‘a distinct Scottish voice’ on international issue”: Scottish National Party News Release, “A distinctive Scottish voice on international issues: SNP in the mainstream of European Social Democracy,” (8 January 1999), <http://www.snp.org.uk/press/news/pr90108a.htm>

²³ *The Manifesto of the Scottish National Party for the 1999 Scottish Parliament Elections*, <http://www.snp.org/manifesto.shtml>, 19-20.

²⁴ *Ibid.*, 6.

In the areas of fisheries the SNP proposed the establishment of a Scottish Ministry within the Executive and would “seek to negotiate the transfer of EU fisheries negotiations from Whitehall to the Scottish Executive in recognition of Scotland’s dominant position within the UK industry.”²⁵

The Scottish Parliament has provided the SNP with a venue to bring issues of international and European affairs more regularly to the forefront of debate. The 1999 general election allowed the SNP to campaign on a manifesto which, if elected, had clearly defined proposals for Scottish Parliament activity in international affairs. Furthermore, the campaign provided the forum for addressing current international issues as they entered the political debate. The UK bombings of Kosovo was one of the most prominent international events which received the attention of the SNP. Alex Salmond’s criticism of the UK’s bombings in Kosovo garnered a direct response from Robin Cook, the Secretary of State for Foreign Affairs.²⁶ The SNP’s position on defence, including its criticism of the UK’s possession of Trident and more importantly the fact that they were stationed in Scotland, was also raised in the election campaign and was responded to directly by George Robertson, at the time Secretary of State for Defence. Other international issues addressed by the SNP in the election campaign included the effects of EU-United States trade wars on Scotland and the issue of the UK’s entrance into the European Monetary Union.²⁷

²⁵ *Ibid.*, 11.

²⁶ Benedict Brogan, “Cook launches attack on SNP,”; Joy Copley, “Cook to step up Kosovo attack on Salmond.”

²⁷ Scottish National Party News Release, “SNP Count cost of being kept out of Euro; ‘London-based policies mean double Euro interest rates’,” (3 January 1999), <http://www.snp.org.uk/press/news/pr90103a>; Scottish National Party Press Release, “Scottish economy in slowdown; ‘Paying high price for exclusion from Euro’,” (3 February 1999), <http://www.snp.org.uk/press/news/pr90203e.htm>; The SNP have argued that English Euro-skepticism has led to the Labour Party’s position on the Euro, despite the fact that the support for the acceptance of the Euro is considerably higher in Scotland: Scottish National Party News Release, “SNP welcomes

After devolution the SNP's position at Holyrood has given it the opportunity to highlight its position on international affairs and use this to further its goal of increased powers for Scotland. This has been clearly demonstrated by the SNP's May 1999 Scottish election campaign, its criticism, in December 1999, of the British lead in the negotiation of EU fishing quotas and the failure of the UK government to inform the Scottish Executive of the French offer to lift the ban on Scottish beef. The fact that issues may be reserved in Westminster, as seen in the case of the granting of an entry visa to Mike Tyson discussed below, has not limited the SNP's willingness to address them in the Scottish Parliament.²⁸

The activities of the Scottish National Party have the potential to influence the levels of Scottish government activities and their effectiveness in the representation of Scottish interest in international affairs both currently and in the future. For the time being the SNP will continue, on a day-to-day basis, to raise issues of international and European affairs in an effort to have them addressed by the Scottish Parliament. Indeed, issues of external affairs are likely to feature prominently, due specifically to the fact that the Scottish Parliament does not have power over them; a reality which the SNP will seek to highlight. As a result the SNP is likely to force the discussion of issues of external affairs which would not have been raised had they not been present in Parliament. In the future the Scottish National Party also presents the possibility of

Scotsman/ICM 'Euro' poll; New Labour's indecision is costing Scotland dear," (13 January 1999), <http://www.snp.org.uk/press/news/pr90113a.htm>; Scottish National Party News Release, "SNP welcomes Herald/Systems Three 'Euro' poll; 'Referendum could be won in Scotland'," (19 January 1999), <http://www.snp.org.uk/press/news/pr90119a.htm>; The SNP's resentment to being described as separatist is in part due to the fact that they argue that it has been the Westminster governments who have been the separatists in terms of the wider European community, a community in which the SNP envisions Scotland as an independent actor to be a full and active member.

²⁸ For the SNP's position on addressing reserved matters in the Scottish Parliament see; Scottish National Party News Release, "A distinctive Scottish voice on international issues: SNP in the mainstream of European Social Democracy," (8 January 1999), <http://www.snp.org.uk/press/news/pr90108a.htm>

causing more significant conflict with Westminster over issues of external affairs, if it were to form the government at Holyrood; a possibility which should not be ruled out. If this were to occur it can be speculated that the instruments of representation of Scottish interest in external affairs, established by the devolution arrangements, would be used to further the SNP's goal of independence and would constitute protodiplomacy. If the activities of the UK government were disrupted by SNP protodiplomacy, the devolved arrangements give Westminster the ability to limit Scottish activity in the UK foreign policy process and in independent international representation.

Implications of Scottish Participation in European and International Affairs: Conflict or Complement?

As has been discussed in chapter two, the activities of non-central government in international affairs raise concerns for central governments. NCGs have the potential of fragmenting the foreign policy process, working against central government interests or using international activities as tools to further NCG independence. All of these concerns could be raised by the UK central government in relation to the activities of the Scottish government in external affairs. Many of the sources of these concerns have been addressed by the *Agreements* which have ensured that the UK government has the ability to successfully contain the negative aspects of Scottish activity in international affairs. As a result, when inter-administration conflict arises due to Scottish activity in international affairs, a potential outcome is for the UK central government to limit that activity.

It is clear that the activities of the Scottish National Party will create conflict over issues of Scottish representation in international affairs. Due to its position as official opposition, the

conflict caused by the SNP will be limited to the confines of debates within the Scottish Parliament. However, in the future a SNP government may be able to extend this conflict to relations with the UK central government. Indeed, any change of the party in power, at either level of government, is likely to increase the potential for conflict. This has been recognized by the Select Committee on Scottish Affairs which, in considering European issues, has stated that

[t]here is considerable and legitimate potential scope for disagreement between states and sub-state (and even between sub-states) even where both administrations are of the same political complexion, but any disagreements will be exacerbated when they are not. And inevitably, even if the political control in the UK and in Scotland start off the same there will come a time when they differ...this makes the possibility of reaching common ground for a delegation to Brussels...more difficult to achieve.²⁹

Another potential source of conflict may be the operation of the *Agreements* themselves. Conflict may arise in situations where the opinion of the Scottish Parliament is expressed but, in later stages of foreign policy formulation, the interests of the Scottish government are not met. The aggregation and agenda setting roles allow Scottish interests to be established and expressed. However, the devolved arrangements do not give the Scottish government the power to ensure that Scottish interests are achieved. Under this system it may be the case that the Scottish Parliament will establish what is in the "Scottish interest" in external affairs, to have it regularly overruled by a "British" or "national" interest. This will re-raise the question of which government legitimately speaks for Scotland in international affairs. Despite the devolution settlement, actors such as the SNP will argue that the Scottish Parliament is the legitimate voice of Scotland in all policies and should possess powers over reserved matters. The debate over this is likely to cause conflict and, if

²⁹ Scottish Affairs Select Committee, *The Operation of Multi-Layer Democracy*, HC 460-ii, (London: Stationery Office, 1998), para. 60, cited in Noreen Burrows, "Relations with the European Union," in *Guide to the Scottish Parliament*, ed. Gerry Hassan (Edinburgh: Centre for Scottish Public Policy/The Stationery Office, 1999), 130.

the SNP is convincing enough, draw into question the devolved arrangements for Scottish activities in international affairs.

A clear example of the potential for conflict over reserved matters can be seen in the recent decision to grant an entry visa to the boxer Mike Tyson. On 18 May 2000 Jack Straw, the UK Home Secretary, granted Tyson a visa to fight in Glasgow despite Tyson's violent criminal record. This action was not unprecedented as Tyson had been allowed entry into the UK in January 1999, to fight in Manchester. However, Tyson's second entry became of particular interest to the Scottish Parliament due to the fact that the venue for the fight was in Scotland, where there had been considerable protest against Tyson.³⁰ The Parliament, including members of the Labour Party, raised objections to the granting of Tyson's visa. Hugh Henry, a Labour MSP, tabled two motions in the Scottish Parliament, one condemning Jack Straw's decision to grant the visa and the other condemning the Scottish Football Association whose facilities were to act as the host venue of the fight in Glasgow. Over half of the MSPs signed two motions calling for the fight to be stopped.³¹ The position of the Scottish Parliament was then conveyed to Jack Straw's office through the Deputy First Minister and the Presiding Officer. Interestingly, Jack Straw was himself unavailable to talk with the representatives of the Scottish Parliament.

The SNP were quick to capitalize on the conflict between London and Westminster. Alex Salmond stated that "[t]he Home Secretary has overruled majority opinion in Scotland, the clear view of the Parliament and even the Scottish Executive. He has ignored the Scottish Parliament

³⁰ There had been protest against the fight in Manchester, but it had been unsuccessful in stopping the fight.

³¹ Stuart Millar, "Rumble in the bungle," *The Observer*, (21 May 2000): 19.

and government - an act which will be deeply resented.”³² While some members of the SNP used the conflict to highlight the argument for Scottish Parliament control over reserved matters, others attempted to demonstrate how the decision affected areas within the Scottish Parliament’s jurisdiction. Roseanna Cunningham of the SNP contended that the Tyson decision affected matters of justice and education for which the Scottish Parliament was responsible.³³ In the debate on the issue in Parliament the SNP proposed a motion which expressed concerns over Jack Straw’s decision to allow Tyson entry, particularly without consulting the Scottish Parliament, and requested that the Scottish Executive take whatever measures necessary, including a judicial review of Straw’s decision, in order to prevent the fight from happening.³⁴

While the Labour Party in Scotland disapproved of the decision to allow Tyson entry to the UK, they were resigned to the fact that the decision was not theirs to take.³⁵ Labour accused the SNP of attempting to achieve political mileage and wreck the devolution settlement while ignoring the important issues of violence against women raised by the Tyson debate. In the debate in Parliament Angus MacKay, Deputy Minister for Justice, argued that the SNP “are less interested in excluding Tyson from Scotland tha[n] they are in excluding Scotland from Britain - as they are in every debate.”³⁶ The Labour Party also criticised the fact that the SNP had not raised

³² *Ibid.*, 19.

³³ Scottish Parliament *Official Report*, “Mike Tyson,” Col. 918.

³⁴ *Ibid.*, Col. 920-921.

³⁵ Stuart Millar, “Rumble in the bungle,” 19

³⁶ Scottish Parliament *Official Report*, “Mike Tyson,” Col. 928; While this statement does not reflect the genuine concerns for issues of violence against women raised by the SNP in this debate, MacKay was correct in highlighting the SNP’s use of the issues. The SNP did utilize the debate to advance their belief that the best way to deal with issues such as these was to give the Scottish Parliament power over reserved matters.

their concerns at Westminster, the more appropriate venue for addressing these issues.³⁷ The debate over the issues ended with the passing of a motion which noted the concerns of the Parliament over Tyson's entry but supported the constitutional settlement which placed the decision in the hands of the Home Secretary. In addition, the motion expressed regret over the SNP's use of the issues in an attempt to upset the operation of the Parliament and suggested that in future the Parliament utilizes its time more profitably by discussing issues within its jurisdiction.³⁸

The Tyson dispute demonstrated that the Scottish government has created a forum in which even reserved matters will be addressed. Furthermore, it clearly shows how conflict may arise when the Scottish position on issues are clearly voiced but are perceived to have not been included in the UK central government's decision-making. The position of the SNP on the UK government's ability to override the opinion of the Scottish Parliament, even in reserved matters, is to be expected and is an accurate indicator of the likely position of the SNP in future conflicts. The response of the Scottish Labour government illustrates the current commitment to co-operation between Scottish and British administrations. However, the dispute can also be used to suggest that in other circumstances, where the nature of the dispute was the same but there were different parties in power in Edinburgh and London, it is likely that conflict over the issues would have been greater.

Conflict in the system may, in the longer term, undermine the operation of the arrangements for Scottish involvement in international affairs established by the devolution

³⁷ *Ibid.*, Col. 918, 928-929, 940-941; David McLetchie, a Conservative MSP, argued that it was wrong for the Deputy First Minister to contact the Home Office about the issue because it was the job of the seventy-two MPs in Westminster: *Ibid.*, Col.923.

³⁸ Scottish Parliament *Official Report* 6, no.9, "Decision Time," (24 May 2000): Col. 1044.

settlement. Indeed, these arrangements have been created and currently operate in a context in which the levels of co-operation are likely to be at their highest. The original proposal for the creation of the *Agreements*, before the election of the devolved administrations, was undertaken in a period in which the Labour Party was in government in Westminster as well as occupying the majority of Scottish seats. The negotiation of the *Agreements* took place between the UK government and a Scottish Secretary who, part way through the negotiation, became the first leader of the Scottish Parliament. In the final stages of the drafting of the *Agreements*, and at the time of their introduction, Labour governments were in power in Cardiff and Westminster, as well as leading a coalition government in Scotland.³⁹ As a result of these factors there has been a higher level of co-operation than could have been expected had there been party differences between administrations. The current success in inter-administration relations on issues of reserved matters, as seen in the case of the Tyson issue, is a result of the environment of co-operation within which the *Agreements* were created. In a less congenial environment the *Agreements* may fail due to a lack of co-operation. Notwithstanding this, Donald Dewar has assumed that there will continue to be considerable co-operation. In describing the nature of inter-administrative co-operation Dewar has stated that “[n]o provision is required or made in the Scotland Bill, because relations will evolve and build on good working relationships between Whitehall and the Scottish Office.”⁴⁰

Future co-operation may not be as forthcoming as Dewar has suggested. Reasonable co-operation between the Scotland Office and Whitehall, in both the past and in the future, is to be

³⁹ The dominance of the Labour Party in this coalition has been relatively unchallenged by the Liberal-Democrat Party.

⁴⁰ House of Commons Hansard, 12 January 1998, Col.29; Cited in Michelle Mitchell, “Relations with Westminster,” in *A Guide to the Scottish Parliament The Shape of Things to Come*, ed. Gerry Hassan (Edinburgh: Centre for Scottish Public Policy / The Stationery Office, 1999), 120.

expected as both are part of the same UK government. Future difficulty lies in the potential conflict between the Scottish Executive and a UK government represented by the Scotland Office and Whitehall departments, including the Foreign and Commonwealth Office. Indeed, the Labour Party had spent considerable effort by the autumn of 1999 to quell rumours of a “turf war” between John Reid, the Secretary of State for Scotland and Donald Dewar, the Scottish First Minister.

For the UK central government, as in many cases of NCG activity in external affairs, there exists the potential for conflict. However, there is a strong case to suggest that, in the near future, co-operation will be the normal feature of inter-administration relations on issues of foreign and European affairs. The literature on NCGs in foreign policy indicates that the interests of NCGs in external affairs are often achieved in an environment of co-operation between levels of government. This has been supported in the case of Scotland in the pre-devolution period, where the activity of Scottish local governments and overseas representatives of the Scottish Office in promotion of economic interests achieve their goals in co-operation with the UK central government. In part this was due to the fact that local governments and the Scottish Office could not achieve their goals without central government assistance. These conditions are unchanged by devolution.

As has been argued in chapter four, conflict in the foreign policy process caused by Scottish NCG activity, is likely to result in UK central government censoring of that activity. Indeed, the *Agreements* demonstrate that even in the JMC, where disputes are to be mediated, the UK has a built in advantage. The Scottish Parliament needs the UK central government’s co-operation to achieve its goals in the international realm. Indeed, the arrangements for Scottish participation in the foreign policy process and in independent overseas activities are expected to

add to, not cut across the goals of, the UK central government.

Evidence from other NCGs also suggests that co-operation is a likely feature of a successful system of NCG representation in external affairs. As Donald Dewar has argued, in other European states arrangements between central and non-central governments work through co-operation. Even where the potential for protodiplomacy to cause conflict has existed, as in the case of Quebec, the level of conflict has decreased over time. Brown suggests that, in the 1990s, Canada-Quebec conflicts over issues of Quebec's external activities have been kept in moderation and have been relatively uncontroversial.⁴¹

Co-operation between the UK central government and Scotland on issues of external affairs is likely to provide a more effective means through which Scottish interests are represented, than in a relationship dominated by conflict. However, for Scotland, co-operation does limit its representation due to the fact that the devolution arrangements clearly establish that this co-operation will be on the UK central government's terms. Within the institutional arrangements there is no provision under which Scottish interest might win out over the UK government's position. For other NCG actors, such as German *Länder*, co-operation with the German central government may be effective. However, the nature of the institutional arrangements in Germany provide the *Länder* with powers *vis-a-vis* the federal government which result in the *Länder* having bargaining power in the foreign policy process. In Scotland no such power exists.

⁴¹ Brown, *Project on Global and Regional Integration and Canadian Federalism*, 17.

Conclusion: The Effectiveness of Scottish Activity in Foreign Policy and International Affairs

This chapter has demonstrated that, as a result of the devolution arrangements, there are methods and conditions in which Scottish government activity in the UK foreign policy process and in international affairs may be effective. It has been argued that the most effective activities of the Scottish Parliament will be through its capacity to aggregate Scottish interests and place these interests on the agenda of the UK foreign policy process. However, in these roles the Scottish Parliament is limited by the fact that the institutional arrangements do not provide power for the Scottish Parliament to ensure that its interests are met. Furthermore, it has been shown that under the arrangements established by devolution, Scottish co-operation with the UK central government in issues of international affairs is likely to be more effective than activity which creates conflict. Where conflict is the outcome, under the institutional arrangements of devolution, the UK central government can censure Scottish activity. Therefore, Scottish activity will have the greatest effect when in co-operation with the UK central government. However, co-operation also limits the level of Scottish participation because the institutional arrangements ensures that co-operation in the foreign policy process is on the UK central government's terms.

In chapter two the theoretical literature outlined several indicators of conditions which were likely to create effective levels of non-central government activity in international affairs. Emphasis was placed on the institutional context of NCGs within their state as a determinant of the level and effectiveness of NCG international activity. It was suggested that NCGs which have unclearly defined positions and powers within their states may be able to create an effective role in international affairs. Alternatively, NCGs with highly defined roles must have powers *vis-a-vis* central governments in order to be effective. Those powers may be in primary activities, such as

the ability to enter into agreements with international actors or to establish independent overseas representative offices. Alternatively, in mediating activities, NCGs may have powers in the foreign policy process, such as control over implementation. Chapters four and five have demonstrated that the institutional arrangements for Scottish representation in the UK foreign policy process and in international affairs are indeed well defined. However, in terms of power in stages of foreign policy formation or in international activity, the framework for activity is highly restrictive. Although the actual operation of the framework is only in its early stages, the literature would suggest that under these institutional arrangements the effectiveness of Scottish activity in international politics will be limited.

The literature also suggests that there are other factors which contribute to higher levels of NCG activity. It indicates that where there is strong motivation for NCG to enter the international arena, there is the potential for higher levels of NCG international activity. This chapter has demonstrated that there are strong motivations for Scottish international activity, and as a result it is likely that the Scottish Parliament will seek access to the UK foreign policy process and international decision-making. However the institutional constraints on that access remain. The level of resources available to NCGs to undertake representation in international affairs may also contribute to the efficiency of NCG activity. In the case of Scotland there is little evidence to suggest that there will be high levels of resources available for its international activity. It has been indicated that Scotland House in Brussels will be only a small operation with limited resources available to it. Furthermore, the *Agreements* have clearly emphasised that all Scottish overseas activities will be taken at its own expense. However, in the Scottish case the level of funding for Scottish overseas activity is secondary to the fact that activity, however well funded, would be limited by the restraints placed on its activities as laid out in the *Agreements*.

With reference to the literature on European integration, it can be concluded that devolution has not transformed the UK's approach to Europe from the pre-devolution period, which could be described as intergovernmental, to one of multi-level governance. This is despite the fact that chapter three has demonstrated that the European system has created an international system which is conducive to effective NCG activity. The *Agreements* clearly define the role of the Scottish level of government in Europe as secondary to that of the UK central government. In Europe, Scottish representatives cannot speak separately from the UK central government on issues within their jurisdiction, as is the case for the German *Länder*. Even Scottish participation in the Committee of Regions, a European institution designed to represent NCGs' interests, has been limited by the role of the UK government in the selection of "British" representatives. Furthermore, the divide between foreign and domestic policy is maintained by the devolution arrangements, with European issues remaining the preserve of the central government. The devolution arrangements have not removed the UK central government from the position of "gatekeeper" to European decision-making, thereby maintaining the centrality of the member-state in the decision-making process. As a result the effectiveness of Scottish activity in its most immediate international environment is likely to remain limited.

Devolution has created a Scottish tier of government which has strong motivations to become involved in international affairs, both directly and through the UK foreign policy process. This was anticipated by the architects of the devolution settlement and has resulted in arrangements which have established a clear role for the Scottish government in external affairs. However, this thesis has demonstrated that the devolved arrangements for Scottish activity in external affairs outlined in the *Memorandum of Understanding and supplementary agreements*, although clearly defined, are highly restrictive of Scottish activities and weighted in favour of the

UK central government. Indeed, the *Agreements* leave little question that in the policy formulation, international negotiation and the implementation stages of the UK foreign policy process, and in the independent activities of the Scottish government, the UK central government has maintained its control.

BIBLIOGRAPHY

Books and Monographs

- Baun, Michael J. *An Imperfect Union: The Maastricht Treaty and the New Politics of European Integration*. (Boulder, Colorado: Westview Press, 1996)
- Bogdanor, Vernon. *Devolution in the United Kingdom*. (Oxford: Oxford University Press, 1999).
- Devine, T. M. *The Scottish Nation 1700-2000*. (London: Penguin, 1999)
- Douglas Brown, *Project on Global and Regional Integration and Canadian Federalism: A Baseline Study of International Relations and the Federal System in Canada*. Revised Draft. (Queen's University : Institute of Intergovernmental Relations, December 1999)
- Burns, Andrew. "The Powers of the Parliament," in *Guide to the Scottish Parliament*. ed Gerry Hassan. (Edinburgh: Centre for Scottish Public Policy / The Stationary Office, 1999)
- Burrows, Noreen. "Relations with the European Union," in *Guide to the Scottish Parliament*. ed Gerry Hassan. (Edinburgh: Centre for Scottish Public Policy / The Stationary Office, 1999)
- Burrows, Bernard and Denton, Geoffrey. *Devolution or Federalism? Options for a United Kingdom*. (London and Basing Stoke: MacMillan Press, 1980)
- Bull, Hedley. *The Anarchical Society: A Study of Order in World Politics*. (London: MacMillan Publishers, 1977)
- Caporaso, James A. and Keeler, John T. S. "The European Union and Regional Integration Theory," in *The State of the European Union. Vol.3 Building a European Polity?* ed Carolyn Rhodes and Sonia Mazey. (Boulder: Lynne Rienner Publishers: 1995)
- Clarke, Michael. "The Policy-Making Process," in *British Foreign Policy Tradition, Change & Transformation*. ed Michael Smith, Steve Smith and Brian White. (London: Unwin Hyman, 1988).
- Donaldson, Gordon. *Scotland: The Shaping of a Nation*. (Nairn: David St. John Thomas Publisher, 1993)
- Duchacek, Ivo D. "Perforated Sovereignities: Towards a Typology of New Actors in International Relations," in *Federalism and International Relations. The Role of Subnational Units*. ed Hans J. Michelmann and Panayotis Soldatos. (Oxford: Clarendon Press, 1990)
- Farrands, Christopher. "State, Society, Culture and British Foreign Policy," in *British Foreign Policy Tradition, Change & Transformation*. ed Michael Smith, Steve Smith and Brian White. (London: Unwin Hyman, 1988).
- Feldman, Elliot J. and Feldman, Lily Gardner. "Canada," in *Federalism and International Relations: The Role of Subnational Units*, ed. Hans J. Michelmann and Panayotis Soldatos (Oxford: Clarendon Press, 1990)

- Goodman, James. "The European Union: reconstituting democracy beyond the nation-state," in *The Transformation of Democracy?* ed Anthony McGrew. (Milton Keynes: Polity Press, 1997)
- Happold, Matthew. *Scotland Europa: independence in Europe?* (London: Centre for European Reform working paper, April, 1999).
- Hocking, Brian. *Localizing Foreign Policy: Non-Central Governments and Multilayered Diplomacy.* (New York: St. Martin's Press, 1993)
- Hoffmann, Stanley. *The European Sisyphus (Essays on Europe 1964-1994).* (Boulder, Colorado: Westview Press, 1995)
- Jeffery, Charles. "Farewell the Third Level? The German Lander and the European Policy Process," in *The Regional Dimension of the European Union: Towards a Third Level in Europe?* (London: Frank Cass, 1997)
- Jeffery, Charles. "Regional Information Offices in Brussels and Multi-level Governance in the EU," in *The Regional Dimension of the European Union: Towards a Third Level in Europe?* (London: Frank Cass, 1997)
- John, Peter. "Europeanization in a Centralizing State: Multilevel Governance in the UK," in *The Regional Dimension of the European Union: Towards a Third Level in Europe?* ed Charles Jeffery. (London: Frank Cass, 1997)
- Keating, Michael. *States and Regional Nationalism: Territorial Politics and the Regional State.* (Hertfordshire: Harvester Wheatsheaf, 1988)
- Keating, Michael. *The Politics of Modern Europe: The State and Political Authority in Major Democracies.* (Brookfield, Vermont: Edward Elgar, 1993).
- Keating, Michael. *Nations Against the State: The New Politics of Nationalism in Quebec, Catalonia and Scotland.* (New York: St. Martin's Press, 1996)
- Keating, Michael and Jones, Barry. "Nations, Regions and Europe: The UK Experience" in *The European Union and the Regions.* (Oxford: Clarendon Press, 1995)
- Keating, Michael and Hooghe, Liesbet. "By-passing the nation state? Regions and the EU policy process," in *European Union Power and Policy-Making.* ed Jeremy Richardson. (New York: Routledge, 1996)
- Keating, Michael and Midwinter, Arthur. *The Government of Scotland* (Edinburgh: Mainstream Publishing, 1983).
- Kellas, James. *The Scottish Political System* 4th ed, (Cambridge: Cambridge University Press, 1989)
- Keohane, Robert O. and Hoffmann, Stanley ed. *The New European Community: Decisionmaking and Institutional Change.* (Boulder, Colorado: Westview Press, 1991)
- Kincaid, John. "Constituent Diplomacy in Federal Politics and the Nation-state: Conflict and Cooperation," in *Federalism and International Relations. The Role of Subnational Units.* ed Hans J. Michelmann and Panayotis Soldatos. (Oxford: Clarendon Press, 1990)

- Levy, Roger. *Scottish Nationalism at the Crossroads*, (Edinburgh: Scottish Academic Press, 1990)
- Lindsay, Isobel. "The SNP and the Lure of Europe," in *Nationalism in the Nineties*. ed Tom Gallagher (Edinburgh: Polygon, 1991)
- Loughlin, John "Representing Region in Europe: The Committee of the Regions," in *The Regional Dimension of the European Union: Towards a Third Level in Europe?* ed Charles Jeffery. (London: Frank Cass, 1997)
- Lynch, Michael. *Scotland A New History*. (London: Pimlico, 1992)
- Martin, Laurance, and Garnett, John. *British Foreign Policy Challenges and Choices for the Twenty-first Century* (London: The Royal Institute of International Affairs, Cassell Imprint, 1997)
- Mazey, S and Mitchell, J. "Europe of the Regions? Territorial Interest and European Integration: The Scottish Experience," in *Lobbying in the European Community*. ed S. Mazey and J. Richardson. (Oxford: Oxford University Press, 1993)
- McLean, Robert. "Chapter Two: A Brief History of Scottish Home Rule," in *Guide to the Scottish Parliament*. ed Gerry Hassan. (Edinburgh: Centre for Scottish Public Policy / The Stationary Office, 1999)
- Michelmann, Hans, J. "The Federal Republic of Germany," in *Federalism and International Relations. The Role of Subnational Units*. ed Hans J. Michelmann and Panayotis Soldatos. (Oxford: Clarendon Press, 1990)
- Michelmann, Hans J. "Conclusion," in *Federalism and International Relations. The Role of Subnational Units*. ed Hans J. Michelmann and Panayotis Soldatos. (Oxford: Clarendon Press, 1990)
- Milward, Alan. *The Rescue of the Nation-State*. (Los Angeles: University of California Press, 1992)
- Mitchell, Michelle. "Relations with Westminster" in *Guide to the Scottish Parliament*. ed Gerry Hassan. (Edinburgh: Centre for Scottish Public Policy / The Stationary Office, 1999)
- Nossal, Kim Richard. *The Politics of Canadian Foreign Policy*. (Scarborough, Ontario: Prentice-Hall Canada, 1997)
- Rhodes, Carolyn and Mazey, Sonia. "Introduction: Integration in Theoretical Perspective," in *The State of the European Union. Vol. 3 Building a European Polity?* (Harlow, Essex: Longman Group, 1995)
- Scott, Paul H. *Towards Independence: Essays on Scotland*. (Edinburgh: Polygon, 1991)
- Soldatos, Panayotis. "An Explanatory Framework for the Study of Federated States and Foreign-policy Actors," in *Federalism and International Relations. The Role of Subnational Units*. ed Hans J. Michelmann and Panayotis Soldatos. (Oxford: Clarendon Press, 1990)

Journal Articles

- Bache, Ian. "The extended gatekeeper: central government and the implementation of EC regional policy in the UK," *Journal of European Public Policy* 6, no.1. (March 1999)
- Benz, Arthur and Burkard Eberlein. "The Europeanization of regional policies: patterns of multi-level governance," *Journal of European Public Policy* 6 no.2. (June 1999)
- Bomberg, Elizabeth and Peterson, John. "European Union Decision Making: the Role of Sub-national Authorities," *Political Studies* XLVI, (1998)
- Hocking, Brian. "Regional Government and International Affairs. Foreign Policy Problems of Deviant Behaviours?" *International Journal* 41, (Summer 1986)
- Hogwood, Brian W. "The Machinery of Government, 1979-97," *Political Studies* XLV. (1997)
- Hooghe, Liesbet. "Subnational Mobilisation in the European Union," *West European Politics* 18. (1995)
- Hooghe, Lisbet and Keating, Michael. "The politics of European Union regional policy," *Journal of European Public Policy* 1 no.3. (1994)
- John, Peter. "Centralization, Decentralization and the European Union: The Dynamics of Triadic Relationships," *Public Administration* 74 (Summer 1996)
- Keating, Michael. "Scotland in the UK: a Dissolving Union?" *Nationalism & Ethnic Politics* 2, no.2. (Summer 1996)
- Keating, Micheal and Jones, Barry. "Scotland and Wales: Peripheral Assertion and European Integration," *Parliamentary Affairs* 44, no.3. (July 1991)
- Kellas, James G. "European Integration and the Regions," *Parliamentary Affairs* 44, no.2. (April 1991)
- Kendrick, Stephen and McCrone, David. "Politics in a Cold Climate: The Conservative Decline in Scotland," *Political Studies* XXXVII. (1989)
- Marks, Gary, Hooghe, Liesbet and Blank, Kermit. "European Integration from the 1980s: State-Centric v. Multi-level Governance," *Journal of Common Market Studies* 34, no.3. (September 1996)
- Michelmann, Hans, J. "Federalism and international relations in Canada and the Federal Republic of Germany," *International Journal* XLI, no.3 (Summer 1986)
- Mitchell, James. "Lobbying 'Brussels': The case of Scotland Europa," *European Urban and Regional Studies* 2, no.4. (1995)
- Moravcsik, Andrew. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies* 31, no.4, (December 1993)
- Nossal, Kim Richard. "A high degree of ambiguity: Hong Kong as an international actor after 1997," *Pacific Review* 10, no.1 (1997)

- Risse-Kappen, Thomas. "Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union," *Journal of Common Market Studies* 34, no.1. (March 1996)
- Robbins, Keith. "Britishness and British Foreign Policy," FCO Historians Occasional Papers No.14: Lecture by the Vice-Chancellor of the University of Wales, Lampeter, Professor Keith Robbins, at the 1997 FCO Annual Lecture. Foreign and Commonwealth Office, London. (14 May 1997). [http://www.fco.gov.uk.text_only/news/spechtext.asp?1445](http://www.fco.gov.uk/text_only/news/spechtext.asp?1445), June 12, 2000.
- Robbins, Keith. "Britain and Europe: devolution and foreign policy," *International Affairs* 74, no.1. (1998)
- Scott, Andrew, Peterson, John and Millar, David. "Subsidiarity: A 'Europe of the Regions' v. the British Constitution?" *Journal of Common Market Studies* 32, no.1. (March 1994)
- Schmidt, Viven A. "European integration and democracy: the differences among member states," *Journal of European Public Policy* 4, no.1. (March 1997)
- Tranholm-Mikkelsen, Jeppe. "Neo-functionalism: Obstinate or Obsolete? A Reappraisal in the light of New Dynamism of the EC," *Millennium* 20, no.1. (Spring 1991)
- Van Kersbergen, Kees and Verbeek, Bertjan. "The Politics of Subsidiarity in the European Union," *Journal of Common Market Studies* 32, no.2. (June 1994)
- Wheeler, Nicholas J. and Dunne, Tim in "Good international citizenship: a third way for British foreign policy," *International Affairs* 74 no.4. (1998)

Newspapers and Magazines

- George Brock. "Labour piper charms Scottish ears with a popular but sentimental air," *The London Times*. (27 January 1997)
- Freeman, Alan. "Scottish nationalist start down separatist path," *The Globe and Mail*. (5 December 1998)
- Harvie, Christopher, "The Auld Alliance: Why the SNP's "independence in Europe" strategy is worth voting for.", *New Statesmen and Society* 1, no.2, (4 November 1988).
- Millar, Stuart. "Rumble in the bungle." *The Observer* (21 May 2000)
- "On the Defensive: Scottish devolution was not meant to have implications for the defence of England or Scotland. Think again." *The Economist*. (6 February 1999)
- "The State of Scotland." *The Economist*. (1 May 1999).

Electronic Articles

- Bell, Ian. "Labour impaled on Trident," *The Scotsman*, online edition. (3 February 1999). [http://www.scotsman.com/opinion/op\)1bell990203.1.html](http://www.scotsman.com/opinion/op)1bell990203.1.html)
- Brogan, Benedict. "Cook launches attack on SNP," *The Glasgow Herald*, online edition. (30 April 1999). <http://www.theherald.co.../30-4-1999-23-7-22.html>
- Brogan, Benedict. "Scotland's new voice in the world," *The Glasgow Herald*, online edition. (3 June 1999). <http://www.theherald.co.uk/election99/archive/4-6-1999-21-5-38.html>
- Carrell, Severin and Hardie, Alison. "Victory for Dewar in turf war over sleaze: Reid backs down as First Minister defends integrity of Scottish executive," *The Scotsman*, online edition. (28 September 1999). <http://www.scotsman.com/cgi-bin/t3-2.cgi/...1& UserReference=B619F0EA4836BD0437F10E0A>
- Copley, Joy. "Cook to step up Kosovo attack on Salmond," *The Scotsman*, online edition. (30 April 1999). <http://www.scotsman.com/cgi-bin/t3-2.cgi/...7& UserReference=C767E30183EEB15B3729F53F>
- Hardie, Alison. "Labour blasts SNP over defence," *The Scotsman*, online edition. (1 February 1999). <http://www.scotsman.com/news/ne03blas990201.1.html>
- Ritchie, Murry. "SNP waits with torpedo as Trident heads for Clyde," *The Glasgow Herald*, online edition. (30 April 1999). <http://www.theherald.co.uk/news/archives/30-4-199-23-9-9.html>
- Tait, Robert. "Devolution will end Scottish Secretary post, says Kennedy," *The Scotsman*, online edition. (16 September 1999). <http://www.scotsman.com>
- Watson, Rory. "Woman with a Euro message for Scots," *The Glasgow Herald*, online edition. (21 June 1999). <http://www.theherald.co.uk/news/archives/21-6-1999-23-6-8.html>

Government Documents

- Britain 1996: An Official Handbook*, (London: Central Office of Information, HMSO, 1995)
- Foreign and Commonwealth Office. Speech given by FCO Minister of State, Ms Joyce Quin, to the Northern Ireland Assembly, Belfast. "Devolution and Foreign Affairs". (26 February, 1999) http://www.fco.gov.uk/text_only/news/speechtext.asp?2063&printVersion=yes
- Foreign and Commonwealth Office. Webpage Spotlight Britain. "Devolution in the United Kingdom." (February 2000). <http://files.gov.uk/info/spotlight/ukdevolution.pdf>
- Scotland Act (1998)*
- Scottish Executive, *Memorandum of Understanding and supplementary agreements between the United Kingdom Government Scottish Ministers and the National Assembly for Wales*. SE/99/36. October 1999.

- Scottish Office News Release, 1900/97, "Scotland Can Help Shape a New Europe - Donald Dewar", (1 December 1997), <http://www.scotland.gov.uk/news/releas97/pr1900.htm>
- Scottish Office News Release. 0313/98. "Dewar: Scotland can be a new type of European Region." (20 February 1998). <http://www.scotland.gov.uk/news/release98/pr01313.htm>
- Scottish Office News Release. 0482/98. "Scottish Role in Europe a taste of things to come - Calum MacDonald." (12 March 1998). <http://www.scotland.gov.uk/news/release98/pr0482.htm>
- Scottish Office News Release. 1216/98, "Parliament will Place Scotland at the Heart of Europe - Henry McLeish." (12 June 1998). http://www.scotland.gov.uk/news/release98_1/pr1216.htm
- Scottish Office News Release. 1235/98. "Representing Scotland - MacDonald's Week in Europe." (15 June 1998). http://www.scotland.gov.uk/news/release98_1/pr1235.htm
- Scottish Office News Release. 1262/98. "Scotland's New Voice in Europe." (18 June 1998) http://www.scotland.gov.uk/news/release98_1/pr1262.htm
- Scottish Office White Paper. *Scotland's Parliament*. Cm 3658, (Her Majesty's Stationary Office, July 1997)
- Scottish Parliament Committee News Release. CEU0010/1999. "European Committee to meet on Tuesday 9th of November." (5 November 1999). http://www.scottish.parliament.uk/whats_happening/news99_00/ceur0010.htm
- Scottish Parliament Information Centre. *Research Paper 99/12*. "Concordats." (6 October 1999). http://www.scottish.parliament.uk/whats-happening/research/pdf_res_papers/9912%20Concordates%20int.pdf
- Scottish Parliament, *European Committee Official Report 1 no.1*. (23 June 1999). http://www.scottish.parliament.uk/official_report/cttee99-00/europe99-00/euc01003.htm
- Scottish Parliament. *European Committee Official Report 2 no.1*. (18 August 1999). http://www.scottish.parliament.uk/official_report/cttee/europe99-00/eu081804.htm
- Scottish Parliament *Official Report 2*, no.12. "Memorandum of Understanding and Concordats." (7 October 1999). http://www.scottish.parliament.uk/official_report/session99-00/or021202.htm
- Scottish Parliament *Official Report 6*, no.9 "Mike Tyson." (24 May 2000). http://www.scottish.parliament.uk/official_report/session-00/or060901.htm
- Scottish Parliament *Official Report 6*, no.9, "Decision Time," (24 May 2000). http://www.scottish.parliament.uk/official_report/session-00/or060901.htm

International Agreements and Documents

Council of the European Communities, Commission of the European Communities. *Treaty on European Union*. (1992)

Committee of Regions. Webpage. "What exactly is subsidiarity?"
<http://www.cor.eu.int/Blair/SubSumEng.html>

Scottish National Party Documents

Ewing, Winifred. "1998 Conference Address by Dr. Winifred Ewing MEP." (25 September 1998). <http://www.snp.org.uk/conf98/winnie.html>

The Manifesto of the Scottish Nationalist Party for the 1997 General Election.
<http://www.snp.org.uk/library/GElibrary/manif97.txt>

The Manifesto of the Scottish National Party for the 1999 Scottish Parliament Elections.
<http://www.snp.org.uk/manifesto.shtml>

Scottish National Party News Release. "SNP Count cost of being kept out of Euro; 'London-based policies mean double Euro interest rates'." (3 January 1999).
<http://www.snp.org.uk/press/news/pr90103a>

Scottish National Party News Release. "A distinctive Scottish voice on international issues: SNP in the mainstream of European Social Democracy." (8 January 1999).
<http://www.snp.org.uk/press/news/pr90108a.htm>

Scottish National Party News Release. "SNP welcomes Scotsman/ICM 'Euro' poll; New Labour's indecision is costing Scotland dear." (13 January 1999).
<http://www.snp.org.uk/press/news/pr90113a.htm>

Scottish National Party News Release. "SNP welcomes Herald/Systems Three 'Euro' poll; 'Referendum could be won in Scotland'." (19 January 1999).
<http://www.snp.org.uk/press/news/pr90119a.htm>

Scottish National Party Press Release. "Scottish economy in slowdown; 'Paying high price for exclusion from Euro'." (3 February 1999).
<http://www.snp.org.uk/press/news/pr90203e.htm>

Scottish National Party News Release, "Salmond Addresses London School of Economics; 'Millennium Grants for Community Projects'." (25 February 1999).
<http://www.snp.org.uk/press/news/pr90225a.htm>

Scottish National Party News Release. "SNP Reveal Executive Non-Attendance in Europe: 'Attended One Meeting in 30'." (10 November 1999).
<http://www.snp.org.uk/press/news/archives/pr1110f.htm>

Scottish National Party News Release. "SNP Attacks Fisheries Minister's Bare Faced Cheek Over Fisheries Negotiation 'Annual Quota System Must be Changed'." (17 December 1999).
www.snp.org.uk/press/news/archives/pr91217b.htm

Scottish National Party News Release. "Home Robertson Must Lead in Europe to Protect Scottish Fish Quota." (15 December 1999). <http://www.snp.org.uk/press/news/archive/pr91215f.htm>

Scottish National Party News Release. "French Offer on Scottish Beef.'Failure to tell Executive Broke Concordats'." (17 December 1999). <http://www.snp.org.uk/press/news/archive/pr912117a.htm>

Scottish National Party News Release. "London Vetoed Lifting of Scots Beef Ban 'SNP Call for Emergency Statement from the Executive'." (14 December 1999). www.snp.org.uk/press/news/archive/pr91214a.htm

Scottish National Party News Release. "Alex Salmond's Statement on Kosovo." (29 March 1999). <http://www.snp.org.uk/press/news/pr90329d.htm>