European and External Relations Committee

The EU referendum and its implications for Scotland

Written submission from Irene Oldfather and Sir Graham Watson

Is Flexibility the Lifejacket to Save the UK and the EU in Uncharted and Dangerous Waters

Three days after the opening of Parliament at Holyrood, at which Her Majesty Queen Elizabeth II expressed concern for the unity of her queendom, she received the Prime Minister whose determination to plough ahead with Brexit threatens to tear it apart. We may never learn what the monarch said to the new Prime Minister, or the tenor of their talks. The lips of the equerries and the amanuensis are sealed. But the unity of the realm was likely high on the royal agenda.

Like the UK itself, the European Union is a curious construction. It has never been 'one size fits all'. Variable geometry is one of its hallmarks. Denmark joined in 1973 along with Greenland, but without the Faroes. Some years later, Greenland withdrew. France has overseas territories of which some are in the EU and some outwith. If justice is to be served, the geometry will soon be more variable. For while England and Wales voted narrowly to withdraw, Scotland, Northern Ireland and Gibraltar voted decisively to remain. And if 'Brexit means Brexit', as Mrs May remarked, 'Remain means Remain' for the people of those three jurisdictions.

The U.K. dilemma over Europe is a challenge. How to marry the clear wishes of the Scots, the Gibraltarians and the Northern Irish with those of the English and Welsh? How to preserve this very special union of peoples on Shakespeare's sceptred isle, while allowing their attachments free rein? To say nothing of the preference of most continental Europeans to continue their attachment to the UK in one form or another. Add to that the desire of the new Prime Minister not to preside over the break-up of the UK - and hence her promise to devolved administrations of 'full involvement' in planning the UK's future - surely in such uncharted waters there must be a way.

Could three parts of the UK remain in the EU while two withdraw? There is nothing in the EU Treaties which prevents it. The Slovak Prime Minster, currently President of the European Council and a man with experience of how the two halves of Czechoslovakia separated, says he is willing to assist.

A first gesture of goodwill from all sides could be to ensure that the UK's EU Presidency from July to December 2017, which appears to be all but off the agenda, is put back on, led by those parts of the UK which want to remain. This would be a very tangible demonstration of the Prime Minister's commitment to full involvement and openness to new ideas. While the timing is tight, one couldn't imagine Nicola Sturgeon turning such an opportunity down, or failing to make a success of it. Similarly, EU attention to the challenges facing Gibraltar arising from Spain's claim to sovereignty would send a welcome signal to the 96% of Gibraltar's voters who seek to remain in the EU.

The practicalities of such an approach would recognise the democratic will of the people and would further provide a platform for an improved relationship between Europe and the UK. It can hardly be denied that the British approach has often been perceived across the Channel to be lukewarm.
To take such a scenario to its logical conclusion, Article 50 would not need to be triggered. Northern Ireland and Scotland would retain existing MEPs and other institutional representatives (Committee of the Regions and European Economic and Social Committee). Gibraltar's representation in the European Parliament could be assured by a recommendation from the Electoral Commission to transfer its attachment to the South West England constituency to a new attachment to Scotland. Since the UK is also entitled to nominees to both the Court of Justice and the European Commission, an arrangement whereby the "remain trio" shared these appointments is easily foreseeable.

Could Scotland host the European Medicines Evaluation Agency, currently located in London? There is no reason why not, nor shortage of the necessary human resource skills or appropriate buildings in Edinburgh. And the European Commission's representations in Belfast and Edinburgh could be easily expanded and a small representation in Gibraltar established.

For just as the governance of the United Kingdom of 1973, when the UK joined, has changed immeasurably, so too the European Community which had its roots in the 1955 Coal and Steel community is not the European Union of today. It cannot be assumed that the architecture which served the inauguration of Europe will be that which serves its future development.

Former European Commission President Jose Manuel Barroso infamously argued that the UK would have to leave before its constituent parts could re-apply to join. But joining the EU requires the unanimous consent of all member states; and it is unlikely that Spain, fearful for its own unity, would allow Scotland or Gibraltar back in without exacting a very heavy price. The conditions under which only parts of the UK withdraw would need only to be approved by other member states by qualified majority, thus depriving Spain of a veto. And current Commission President Jean-Claude Juncker, taking his cue from Germany's Angela Merkel, is wisely keeping all options open.

Direct trade across the border to England and Wales is at least as important to Scotland as direct trade with the continent. Scotland needs both to guarantee prosperity. But there is no reason why they should be mutually exclusive. With a little imagination and a sprinkling of continental goodwill, both can continue.

In any case, why erect border controls between Gretna and Carlisle? Traffic moves unimpeded between Norway and Sweden, though the former is out while the latter is in. If England and Wales leave but remain part of the EU's single market they would not be necessary. And nobody in now-prosperous Ireland wants to reintroduce the border posts at Newry.

Moreover, EU member states now seek the flexibility needed to keep restless populations on board. There will almost certainly be no compromise on the 'four freedoms' - freedom of movement of people, goods, money and services - which underpin the single market. Interestingly, many forget those very freedoms were designed for the EU by the UK - by Mrs Thatcher's European Commission appointee Lord Cockfield.

Twenty seven Member States will meet in Slovakia in mid-September. Is it possible to try to turn Europe's biggest challenge to date into a UK/EU survival strategy? Could flexibility be the lifejacket which saves both the EU and preserves the UK? No doubt both sides of the street at Holyrood will be watching and waiting with bated breath.