



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 3 March 2016

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

5th Meeting 2016, Session 4

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Hanzala Malik (Glasgow) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

*Jamie McGrigor (Highlands and Islands) (Con)

*Anne McTaggart (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alex Neil (Cabinet Secretary for Social Justice, Communities and Pensioners' Rights)

Simon Smits (Ambassador of the Kingdom of the Netherlands to the United Kingdom)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
European and External Relations
Committee

Thursday 3 March 2016

[The Convener opened the meeting at 09:16]

Decision on Taking Business in
Private

The Convener (Christina McKelvie): Good morning. Welcome to the European and External Relations Committee's fifth meeting in 2016. I ask everyone to turn off mobile phones or put them in airplane mode. We will go straight into the agenda as it is pretty packed, with two sessions.

Item 1 is a decision on taking business in private. Do members agree to take in private consideration of our legacy paper and annual report at future meetings?

Members *indicated agreement.*

Presidency of the Council of the
European Union (Priorities)

09:16

The Convener: Item 2 is our first evidence session, which is on the Netherlands presidency of the European Union. What an exciting time this is to be in the presidency, sir.

Simon Smits (Ambassador of the Kingdom of the Netherlands to the United Kingdom): You can say that again.

The Convener: I welcome both our witnesses: Simon J H Smits, the ambassador extraordinary and plenipotentiary of the Kingdom of the Netherlands to the Court of St James—that is very formal—and Ceta Noland, counsellor for EU and economic affairs at the embassy of the Kingdom of the Netherlands.

Good morning and welcome to our committee. We have many questions for you. Ambassador, would you like to make a brief opening statement about your priorities?

Simon Smits: Wonderful—thank you for having me. I will set out some of our principles and ideas for the coming months, and I will be most happy to take your questions.

As you said, convener, we live in interesting times. With everything that is coming to Europe and the challenges that we face, I think that you will agree that the presidency is hardly an easy task, but it is one that we are and will be executing with all the energy and input that we can muster.

On the one hand, we see that there is a lot of scepticism about Europe and about its ability to make decisions efficiently; on the other hand, we see that solutions and answers are requested from Europe. On the one hand, people feel that Europe is beyond their control and that Brussels is a kind of alien entity—although we are all part of Brussels; on the other hand, with the refugee crisis, terrorism and so on, there is a general question about what the EU can and should do.

I will say a few words on what kind of presidency we are running. First, on our role, we want to be a reliable and efficient mediator—an honest broker—in the Council of 28 member states, with the European Commission and with the Parliament. As that honest broker, we will try to move forward the strategic priorities that have been agreed in the Council and which have found their way into the European Commission's work programme.

We have three guiding principles. The first is focus, which means that the EU should focus on the things that have the most added value—in

other words, as the Commission's President Juncker has stated, it should be

"Big on the big things, but small on the small things."

It is no use for the EU to prescribe the length of windowpane washers' ladders; it should leave that to the local authorities. That is exactly what my former boss, First Vice-President Frans Timmermans, is busy with—better regulation.

That brings me to the second principle, which is connecting with citizens. The keywords here are transparency and visibility. Such connecting could be done, and we think that it should be done, by addressing the questions of the man in the street and of businesses—specifically, small businesses. To give one concrete example, if we reduce the burden of reporting for agriculture and fisheries businesses, that will reduce the workload and costs and will make a difference.

The third principle—not surprisingly—is about growth and jobs, and innovation is key to that. We should remain competitive and be more competitive as the European Union. We have succeeded in staying ahead of the competition, but it is extremely important not to be complacent about that.

One of the key issues is the internal market. The Netherlands is a trading nation and we attach great value to further extending and perfecting the internal market, which means extending it into the digital age. We also think that there is a lot of untapped potential with the internal market of services.

Those are the guiding principles. Our priorities are obviously to do with the events that have more or less overtaken us in the past year. I am thinking of security, the refugee crisis and getting agreements in place with countries such as Turkey, Jordan and Lebanon that are bearing the brunt of the influx but have also received substantial help in tackling the problems. That is the first priority; other than that, we will concentrate on the issues that I have mentioned.

Convenor, the interesting times that you mentioned for the United Kingdom come when some member states are reconsidering their relationship with the EU. We will at least try to facilitate an informed debate, as that is key to the whole issue.

The Convenor: Thank you. We will go to questions.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Ambassador Smits. Your presentation described one of your key priorities as connecting and reconnecting with ordinary people in the European Union. One of the criticisms of the Union is that it does not connect

particularly well with the ordinary man in the street, as you described it.

You are halfway through your presidency. Could you tell us how you have tried to re-establish the connection more strongly with ordinary people throughout the European Union?

Simon Smits: I will be glad to. By the way, we are only one third of the way through the presidency, not halfway—I wish that we were halfway.

To be serious, this is also a key point for my Government. People talk all the time about Europe's democratic deficit, but we should not forget that we have a directly elected European Parliament with parliamentarians from all the member states who sit in Brussels. As a result of the agreement that Prime Minister Cameron reached, we will also have a mechanism that enables national Parliaments to draw a red card if they do not want legislation to go through. Those points are important.

It is important to note that connecting with the man in the street is not an issue that only the European Union faces. In many member states, there is—and has been for a long time—a disconnect, not just between the man in the street and Europe, but between the man in the street and politics in general; it is not unique to the EU. I am not saying that it is a good thing—on the contrary—but we should realise that that disconnect affects all politicians, whether they are stationed in Brussels or in any of the member states.

Willie Coffey: You mentioned the new digital age that we are in. Social media can play a big part in reaching out to and communicating with ordinary people throughout the Union. Do you think that, through the social media that it uses—such as the media that the European Parliament uses or the Council of the European Union website, which I am looking at now—the European Union does a particularly good job of telling ordinary people about the benefits and advantages of the European Union?

Simon Smits: Social media play a critical role in getting information across and creating a dialogue, although I am not saying that the spread is always 100 per cent. There are various channels—Facebook, Twitter and lots of other media. I would be the last person to say that we are doing a good job, but we are trying hard, through Twitter and other media, to say what we are on about and what our priorities are.

On your first remark about the digital age, it is extremely important to show some of the successes that the European Union has achieved. There has been great success with roaming costs in the EU. The measures that have been taken on

that will directly benefit the finances of each and every citizen who possesses a phone.

As for what we want to do to extend the digital internal market, we might mention getting rid of obstacles to e-commerce and dealing with copyright and all the various laws that are still in place and which make it hard for people in the Netherlands to order something from Amazon in the UK, for instance—they are almost limited to Amazon Netherlands. Tackling that would be to the great benefit of consumers and industry.

Willie Coffey: I ask everyone who comes to our committee these kinds of questions. At the end of your presidency, what can we expect to see that will be different and will have been improved by the agenda of connecting with ordinary people that you have as a priority? What can we expect to see that has not been done so far?

Simon Smits: It is difficult to predict anything, but I can tell you what my hopes are and what my Government's input is. We will see better regulation. That means that, in some places, we will see less regulation. That is not only about tackling the existing body of regulations; it is also about reducing the number of new proposals. I ask you not to pin me down to an exact figure, but we can compare 2014 with last year. In 2014 more than 100 legislative proposals came from the European Commission—I think that there were 120 or 130. That number has dropped by about 80 per cent, to between 30 and 40. That is already a good sign in itself. The Commission's First Vice-President Timmermans has been playing, and will continue to play, an important role.

Another important step is to consider the existing body of regulations. I gave the committee a random example about ladders. It is important to distinguish between what is really European legislation and what is national gold plating. We see national gold plating all over Europe and all over the EU membership. National politics should concern itself with that.

It is easy to throw everything into the European or Brussels container and to talk about the ridiculous thing about the size of bananas, for instance. That is nothing to do with Europe, but everybody thinks that the shape of bananas is being prescribed by Brussels. It is important to have an informed debate on such issues.

Jamie McGrigor (Highlands and Islands) (Con): Your excellency, how did the Netherlands presidency contribute to the agreement of the reform package that has been negotiated ahead of the UK referendum? May we also have your personal view on the package?

09:30

Simon Smits: You may have my personal view, but I think that it is more important to have my Government's view, because I am only the messenger.

The negotiations on the package were conducted not by our Prime Minister but by Donald Tusk, who is the president of the European Council. The Government of the Netherlands played a constructive role in the negotiations, because we think that it is extremely important for the UK to remain a member of the EU. My Government and my Prime Minister have been pretty clear that it is in the strategic interest—as well as the political and economic interest—of the UK to remain.

On the package, the opinion of the Government as well as the public in the Netherlands is positive. It makes important changes. For instance, important deals have been made for the red-card system on competitiveness. I would be very careful about criticising the package as being not enough, not really meaningful and so forth. If we look at the negotiating time and trouble that all the EU membership went to in order to constitute the package, I think, honestly speaking, that the critics will be shown to be wrong.

Jamie McGrigor: Will the changes for competitiveness help the small to medium-sized enterprises that you spoke of?

Simon Smits: Yes. I gave the example of there being fewer reporting requirements. To go back to what I said about issues that relate to better regulation, there is a lot of concern, specifically on the part of SMEs, about the burden of red tape. It is important to see first what that burden is. There is a great variety of businesses, and some may be hurt or hampered more than others. It is important to have a good understanding of exactly what the problems and the obstacles to doing business are, and then to alleviate those problems and take away those barriers.

To be frank, it is also important to make a distinction between what is nationally possible and what is prescribed by Brussels. As you know, there is a difference between regulations and directives. There is also a difference when a policy is transposed into national law—national Governments have the freedom to make changes. It is important that national Governments look at how they can alleviate the administrative burden.

Jamie McGrigor: That is very true. Convener, do I have time for another question?

The Convener: Yes.

Jamie McGrigor: One of the presidency's key priorities is to promote sustainable growth, innovation and jobs, which goes back to elements

of the Europe 2020 strategy. How is the Netherlands Government using the presidency role to get the European Union economy back on the right track?

Simon Smits: We recently organised a competitiveness council meeting under the leadership of the Netherlands minister for economic affairs. Growth, jobs, the digital age and connecting businesses were at the forefront of that. In the Netherlands, we have come up with fiscal stimuli for innovation, so research and development costs are largely deductible, or people can even get subsidies for them. Of course, that involves a national competence, but we hope that showing such examples will encourage other member states to follow.

It goes without saying that, in Europe, there is open innovation, which involves sharing discoveries and letting businesses, universities and the Government work together. We call that the golden triangle of co-operation, although in some parts of the world it might be better referred to as a triple helix or something else. The idea is to get co-operation going between research institutes at universities, the Government and the private sector in order to produce innovation.

Anne McTaggart (Glasgow) (Lab): Good morning, panel.

Your excellency, I will take you back to the refugee crisis, which you mentioned in your opening statement. The competence for addressing the issue rests largely with the member state Governments, and you referred to countries that are bearing the brunt. How is the Netherlands presidency seeking to develop a unified EU response to the crisis?

Simon Smits: As I said, that is the subject that is closest to the hearts and minds of the Dutch Government at present, as we see what is happening at the borders.

A number of things need to be done. We cannot look at the refugee problem in isolation. A wide spectrum of actions need to be taken, starting with tackling the root causes. First and foremost, we must get a political solution to the crisis in Syria. Secondly, if we look at the refugee crisis, we need to take a number of actions relating to border controls and better-functioning hotspots for registration to enable us to distinguish between the real refugees, who flee death and destruction, and economic migrants, who—however understandable their decision—will not be granted refugee status.

It is also extremely important not only to get in place but to execute and implement agreements with Turkey and the surrounding countries. You will probably know that €3 billion has already been paid to the countries in the region, and Turkey in

particular, to make it possible to provide accommodation and first shelter for the refugees.

All that will be done with a view to stemming the flow of refugees and, as far as possible, giving them shelter in the region so that, if and when the situation goes back to normal, we can stop the brain drain of people who are now leaving their countries and they can return to help rebuild those countries when the time is right.

Anne McTaggart: Just to home in on your point about tackling the root causes, what kind of work has been done so far? What work is projected to come your way to make the situation better and tackle those root causes?

Simon Smits: It is very difficult from my perspective to say exactly what has been done. I know that my Government—the foreign minister and the Prime Minister—are extremely active in the various councils such as the Gymnich foreign affairs council and the European Council to alert colleagues in Brussels to the fact that the problem needs to be addressed by tackling the root causes.

Obviously, there is a whole spectrum of players involved in what is happening in Syria. To come back to what I said at the beginning, we will be constructive and we will act—and are acting—as an honest and efficient broker to whoever needs that service.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I want to follow up on the refugee crisis. You are obviously trying to act to ensure a unified response to the crisis from European member states, but we see on our television screens that barbed-wire fences are going up between countries, and there seems to be a fragmentation in individual states' responses to the crisis. The whole EU ethos is under challenge: the notion of co-operation is breaking down, and countries are expressing their national self-interest more and more. Do you see dangers in that for the whole EU project? How are you combating that?

Simon Smits: Your question relates exactly to the point that I made earlier. The only way to tackle the crisis is by working together. As our Prime Minister said the day before yesterday or thereabouts, that means that we must have in place an agreement for sharing the burden equally. It might also mean that refugees do not get a choice in where they will be relocated. Obviously, if everyone says, "Sorry—I only want to go to Germany" or "It's Sweden for me", or the next person wants to go to Holland, that is not conducive to an equal distribution of numbers. That needs to be tackled.

I would not go so far as—and it would be speculating too much—to say that this is the end of the European project and of European co-

operation. We have had some pretty challenging times as Europe and as the European Union, and somehow or other we have so far been able to find solutions and to come up with a joint approach. I am an optimist by nature, and I would like to remain that way. I hope sincerely that in this instance, too, we will find a common solution that is equitable and that involves equal sharing of the burden.

Adam Ingram: Have you made any progress in trying to broker an agreement between those countries that are particularly affected by the migrant crisis? People are travelling through particular countries and then being blocked at borders.

Simon Smits: I will give you a concrete example. Next week, we will hold a special European Council meeting with the Turkish Prime Minister, Mr Davutoğlu, which was previously postponed because of the terrorist attacks in Turkey. We will talk about those exact issues and look at not only how we can best stem the flow of migrants but how we can get the hotspots working and how we can provide first shelter in the region followed by equal distribution of the refugees among European member states.

Adam Ingram: It is clear that there are different approaches in different countries. For example, the UK does not wish to take any of the influx of people who have come into Europe. It would rather focus on the refugee camps surrounding Syria and take people directly from there.

Is there scope for something other than a one-size-fits-all solution to the problem, such as looking at what each country can contribute and then negotiating with them? Is that the way to go rather than trying to get a one-size-fits-all approach?

Simon Smits: All solutions are possible, but let us not forget that there are already agreements in place—including with Turkey and the surrounding countries—that need to be implemented and perfected. The first step, which is at least part of the solution, is to take a holistic view of the root causes. We need to look at the distribution of refugees, and at integrating them into society as quickly as possible and giving them something worth while to do to keep up their skills so that, if and when the time comes, they can go back. It is very hard to speculate on any further steps, but that is what we are doing.

09:45

The Convener: Your excellency, you mentioned next week's special European Council meeting with Turkey, which is very welcome. I know that Turkey has a dual role. It has a helpful role to play in hosting and, in some instances, supporting

refugee camps. Its other role relates to how it treats the people of the Kurdistan area in northern Turkey and into Syria. Turkey provides support, but it is also an aggressor. Will the special Council meeting address the challenges in that area? The human rights element of how Turkey has behaved over the years is part of the impediment to its accession.

Simon Smits: The honest answer is that I do not know. The accession procedure for Turkey involves various chapters and, as is the case in any other accession procedure, human rights and the rule of law and so on are an important element of that. However, I am afraid that I just cannot answer your specific question.

Roderick Campbell (North East Fife) (SNP): Good morning, Mr Smits. I will focus on an issue that is mentioned on the Netherlands EU presidency website and which is associated with migration, but which appears to be an independent matter, too. The website says:

"More focus is needed on the comprehensive approach to migration and international security."

A theme that I have picked up from the United Kingdom Government's campaign to remain in the EU is that the EU offers greater security. What is the Netherlands presidency doing on security? To what extent does that fit with the European Union's present priorities?

Simon Smits: It is unfortunate that migration, the refugee crisis and terrorism are all being put into the same basket, although we have seen in the past that there are links.

On your point about security, I come back to my central point that it is vital for us to work together and to exchange information on terrorist cells, extremism and people who go astray and do not feel part of society or do not even feel a responsibility to contribute to society. That is extremely important in order to counter terrorism.

My personal conviction, if you like, is that it is paramount that we keep working together on the issue, because the pulling up of any drawbridge will not solve any problem. You had terrorist attacks 10 years ago in London and we have seen recent tragedies in Paris. Therefore, it is most important that we keep track of what is happening, that we exchange information and that we work together on combating extremism across Europe.

Roderick Campbell: That is a laudable aim, but has anything tangible been added into the equation to enhance security under the presidency to date or are there plans in the remaining part of the presidency to tweak any aspect of that co-operation on security matters?

Simon Smits: If you look at the justice and home affairs council agendas, you will find that

they are dominated—I think that that is the best word to use—by exactly those issues. It is very hard for me from my position to distinguish between what agreements are being concluded and the precise ideas behind them. I also understand that some of that would be better kept if not secret then at least confidential, because we would not want to open our cards to the world on that aspect.

Roderick Campbell: Fine. I will move on to a different matter: the question of the transatlantic trade and investment partnership negotiations and what the presidency is doing on its stated ambition to conclude the negotiations.

An issue that seems to have come on to the agenda more rapidly is the question of the comprehensive economic and trade agreement—CETA—with Canada. Could you outline what the Netherlands presidency is doing in that respect?

Simon Smits: Yes. It is probably no coincidence that my next-door neighbour is called Ceta.

To start with Canada, CETA was more or less signed, sealed and delivered when the TTIP negotiations opened. As I understand it, because of the concerns that were voiced particularly on the issue of dispute settlement, there has been a tweaking or revision—or, if you like, a rehash—of those paragraphs. The agreement is regarded by my Government as favourable for both the EU and Canada.

There are similar concerns about a range of issues in TTIP. I was personally involved in discussions with the Commission in my previous job. As you know, it is not the presidency or individual member states that are negotiating on TTIP but the Commission, which is negotiating on behalf of the member states. At the outset, concerns were raised about a range of issues, from chlorinated chicken to hormone beef, genetically modified organisms and dispute settlement. It has been made clear by the Commission and the Government that we will not allow chlorinated chicken in our markets, and the same goes for the other products that I mentioned. We are in favour of a broad and ambitious agreement. If we start carving out all kinds of things, our American colleagues will obviously do the same and we might end up with a flimsy agreement on reducing some tariffs, which would be a missed opportunity.

A lot of progress is being made, including on dispute settlement. I will give you two concrete examples. First, on tariffs, many people say that the transatlantic tariff is not really an issue and that, anyway, it is only 3 per cent. That might be true, but the fragmentation of production chains all over the world means that basic goods or semi-

fabricated goods cross the Atlantic maybe two or three times, which is two or three times 3 or 4 per cent, which makes a difference.

Secondly, the car industry faces enormous costs in both Europe and America to fulfil the requirements for safety tests and collision tests. The issue has to do with the composition of crash test dummies, whether they are strapped and whether they collide with another car, a brick wall or whatever. No Government wants its pedestrians or drivers to be hurt more than those in any other country. To harmonise safety standards might be a bridge too far, but why not at least get mutual recognition of safety standards? That would save enormous costs for the car industry and hence for consumers and workers in the industry.

Roderick Campbell: In relation to the investor dispute settlement provisions, those that were agreed with the Canadian Government for the Canadian agreement are different from the Commission's current proposals for TTIP. Are discussions going on in relation to the investor dispute settlement provisions in particular? Will we proceed with the lesser protections—to say the least—under the Canadian agreement? What is happening with the investor dispute settlement issues?

Simon Smits: The negotiating round is going on as we speak, so I cannot give you the details of that. As you will know, one of the criticisms of the negotiating procedure is that it is not transparent and is taking place behind closed doors. However, there is now a reading-room mechanism so that, at least on a confidential basis, it is possible to go through the papers, although they do not provide very inspiring reading, because there are a lot of tables, statistics and what have you.

In any negotiation, it is not very wise to show your hand. If I was playing poker with you, I would not show you my hand. With CETA, the Commission's brief was leaked and published in a newspaper. That is not helpful for any negotiation. The Commission and the membership are doing what they can to be as open as possible.

I do not think that it is wise to pre-empt the outcome because we do not yet have a negotiating text on TTIP. However, there have been some important improvements to take account of the concerns that have been voiced about dispute settlement under CETA. That is an important step and is probably a building block for whatever comes out of TTIP, which I am not able to predict at this time.

Roderick Campbell: I appreciate that the TTIP negotiations are continuing. I was more concerned with the position in relation to CETA and what the timetable actually is for progress. Are you able to help with that?

Simon Smits: I am not—sorry. I cannot answer the question. I do not know the exact timetable for CETA. I just know that the dispute settlement paragraphs have been modified so as to take into account the concerns that were voiced, particularly by the European side.

Roderick Campbell: Okay. I will leave it there.

Hanzala Malik (Glasgow) (Lab): Good morning and welcome to sunny Scotland. You have been candid about TTIP—how it is progressing, what we can and cannot say and what we can and cannot do.

In Scotland in particular, the biggest concern is our national health service. We are very protective of it and we want to guard it. The health service staff and the general public are looking for greater assurances that the NHS will not be at risk.

A number of people have given evidence that suggests that the NHS is not at risk, but no one has given a categorical assurance that it is not at risk. Are you in a position to give us that assurance?

The Convener: I suspect that he is not, Hanzala. It is a very political question.

Hanzala Malik: Not really.

Simon Smits: Thank you for the question. All I can say is that the concerns about the NHS are very well known. They have been made abundantly clear—pretty vocally—to the negotiators. I will leave it at that. I do not want to speculate on any TTIP outcome.

Hanzala Malik: I feel reassured. Thank you so much for that.

Willie Coffey: Is any work being done to try to help with the market difficulties around dairy farming, particularly on milk production? As you probably know, many farmers across Europe and particularly in Scotland are facing extreme difficulties because of the very low price that they receive for their milk. I know that the issue has been raised with the presidency by members of the European Parliament, but can you tell us if anything is being done? Perhaps this is an occasion where some regulation might be advantageous in the UK, where—as I understand it—there is none in that particular sector. Is anything being done to address the situation and help farmers across Europe?

Simon Smits: I would very much like to answer but I cannot. To my knowledge, the quotas that we had up until recently—I think up until last year or so—have been abolished. Of course, that sometimes has an effect on the market, with farmers investing to produce more. We know about market mechanisms—if the supply and

demand sides are imbalanced, that has an effect on the price.

At this time, I am not at liberty to tell you what, if anything, is being thought up in relation to regulation or addressing the problem. I know that milk prices have been volatile over the years. They were very high at one point; now they are low. That is also not unique. Around three years ago, we saw very low milk prices even when the quotas were in place. I cannot tell you whether any regulation or anything else is in sight.

10:00

Willie Coffey: Could you say what the position is in the Netherlands? Do some farmers receive a high price for milk and others a low one? That is what is happening in Scotland, and there is no way that we can think of to balance the two.

Simon Smits: I cannot honestly tell you. You have probably heard of FrieslandCampina, which is the biggest dairy farming co-operative in Europe, I think, with 20,000 farmers who are co-owners. They get the price that is paid. I cannot think of any big differences between what various farmers are paid for a litre of milk.

Jamie McGrigor: On your wish to bring the European Union closer to the man in the street, I believe that the man in the street is horrified by the inability of the European Union to bring some form of concerted approach to dealing with the problem of the refugee crisis.

The mass migration that took place to the United States in the early 20th century was managed through a centre called Ellis Island and, although people did not necessarily go to the city or state that they wanted to go to, at least their movement was managed in an organised way. At the moment, the burden seems to fall on countries such as Greece and, to some extent, Italy, which are probably less able to cope with it than some of the more prosperous nations are. Is there a possibility of establishing a centre on the basis of something such as Ellis Island, which did the job all those years ago? That might give some confidence to the man in the street that this institution, which he voted for—or did not vote for—is doing something to alleviate the crisis and is not just saying, “It is not our fault; it is their fault.” I know that that is not a very good question, but it concerns something that I think is seen as a big failure.

Simon Smits: Your question refers directly to the hotspot issue. That is one of the priorities of not only my Government but the Commission. We have not only to get border controls functioning but to get the hotspots working, because that is where the intake and the registration will take place. In order to do that, it is a question not just of money

but of delivering qualified personnel and ensuring that border control—I think that you call it the border force in the UK—and others can assist the Greek and Italian authorities and so on. That is being done. Hopefully, that will restore the confidence of the man in the street with regard to how the problem is tackled.

The Convener: I am sure that you will agree that it is disappointing to see people being tear gassed at borders in Europe. That should horrify us all.

I have a final, quick question for you. It concerns a subject that you will be surprised you have not already been asked about. On 23 June, the UK goes to the polls to decide whether we will be in or out of Europe, so Brexit is on the horizon. That is the last week of your presidency.

Simon Smits: Yes—I postponed my leave.

The Convener: Are preparations under way? Scotland seems to have quite a Europhile view, which is something that has become much more evident in the past few weeks and which I am sure will grow. The Scottish Parliament has an election in a few weeks' time, and we hope to get our election out of the way before we focus on what is happening with regard to Europe. Obviously, however, the two things will be combined.

Today, BMW wrote to all its employees in the UK to say that a vote to leave would be a bad thing and that they must not vote to leave, because of the effect that it would have. We had some experience of that approach being used during the Scottish independence referendum. The approach of my party and, I suspect, other parties in this Parliament will be much more about the social union and the things that Europe gives us, such as the working time directive. I come from a trade union background, so all those things are important to me, along with workers' rights, people's rights and so on.

Is it the presidency's position that a very positive point of view should be taken on the good things about Europe? We do not think that the European Union is a perfect organisation—there is bureaucracy and there are things that we could maybe be better at—but letters should not be sent to people that say that their jobs can be on the line if they do not vote a certain way. The argument should be much more about the fact that there is a working time directive and that BMW staff can move from the UK to Germany to work and go back and forth. There should be a positive campaign. You may have only a week to respond to a possible Brexit, so what preparations are you making for that?

Simon Smits: You have already answered your own question to a large extent. Far be it from the Dutch Government, or the Dutch presidency, for

that matter, to lobby or interfere in the national democratic process that is the referendum. However, we will try to get the facts right, and I agree that scaring people does not help. People should make up their own minds on the basis of the information that they get. Getting the information and facts is crucial. People can make their own decision on that basis.

The issue with referenda has also been addressed in the Netherlands. Eleven years ago, we had a referendum on the EU constitution. The Dutch people voted no, as did the French. There was some scaremongering, but it was only partly about the EU constitution; it was about a lot of other things. It is important to focus on the real issue.

On 6 April, we will have an advisory referendum in the Netherlands on the association agreement—that is, the trade agreement—with Ukraine. The Government is in favour of that, so it will put forward the arguments on how that could be of benefit. Obviously, there are people who are lobbying against it, which is their right. We will see what happens on 6 April.

The Convener: I hope that our European friends will be constructive friends and critical friends when the need arises.

I thank you very much for your evidence. We have exhausted our questions. It is likely that you will be the last ambassador to give evidence to the committee this session. We thank you very much and wish you and your presidency the best in a very interesting time.

I suspend the meeting briefly to allow a changeover of witnesses and a short comfort break.

10:07

Meeting suspended.

10:16

On resuming—

Human Rights

The Convener: Welcome back to the meeting. Item 3 is a continuation—and almost a conclusion—of our human rights inquiry. I welcome to the committee Alex Neil, who is the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, and Duncan Isles, who is head of human rights in the Scottish Government. Good morning, gentlemen, and welcome to the committee.

We hoped that, by this stage, we would have proposals on the table from the UK Government on what it intends to do. I suspect that it is no coincidence that the main protagonists in the out campaign are the same people who want to repeal the Human Rights Act 1998, but we will maybe leave that parked for a wee while. The cabinet secretary can say something about that later if he wants to.

Cabinet secretary, I do not know whether you want to make an opening statement to give us some of your thoughts on where you think we are now, given that it is informed speculation at this point.

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil): Absolutely. I will widen things out a wee bit to consider wider human rights issues, if that is okay.

The Convener: Absolutely. You have had the benefit of having conversations with UK ministers, who decided not to accept our invitation to come to the committee to discuss the matter, so maybe you have a better insight than we do.

Alex Neil: Thank you very much.

I congratulate the committee on taking on the inquiry, which is extremely important and timeous, although it would obviously have been helpful at this stage if we knew what the UK Government was going to propose.

The Scottish Government's focus is firmly on the positive action that can be taken in Scotland to give further and better effect to human rights for the benefit of individuals and communities across the whole of Scotland and throughout Scottish society. That means the full range of human rights, as set out in the seven core United Nations treaties and a further eight instruments in the Council of Europe treaty system. It also means the rights in the European charter of fundamental rights, which are reflected in EU law.

It is essential to be clear in the current debate that the idea of human rights encompasses much

more than just the rights that are identified in the European convention on human rights, fundamentally important as those rights and the ECHR are. The Scottish Government is very clear that the poverty of ambition and regressive thinking that are evident in the debate that the UK Government has promoted should not be allowed to impose constraints or limitations on what we seek to achieve in Scotland. The UK Government's anti-human rights agenda and proposals for a British bill of rights are an unwelcome and damaging distraction.

I am struck by the fact that evidence that has been submitted to the committee and articulated by expert witnesses in the February round-table discussion reflects a widely drawn consensus. It is self-evident from the views that the committee has gathered that the UK Government's claim to be responding to popular demand in its attempts to scale back human rights in the UK is simply not supported by the facts.

In my November written submission, I argued that attempts to replace the Human Rights Act 1998 with a British bill of rights would do damage at both the domestic and international levels. Other submissions from organisations ranging from Amnesty International to the Church of Scotland have made similar points. Both the Law Society of Scotland and the Faculty of Advocates have pointed out the positive impact of the ECHR and the HRA. That beneficial effect, which has facilitated challenge and self-examination and prompted important practical changes to laws and procedures, is something that the First Minister also talked about in the human rights speeches that she gave in September and December.

We have seen evidence from the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland that unequivocally supports the Human Rights Act 1998 and the UK adherence to the European convention on human rights. A range of expert witnesses have provided persuasive testimonies relating to both the positive benefits of current mechanisms and the significant problems and undesirable consequences that are likely to result from the UK Government's proposals.

There is no coherent or convincing case for a British bill of rights. In fact, there is very clear support, both in Scotland and elsewhere in the UK, for the retention of the Human Rights Act 1998, and for doing more to give meaningful effect to the commitments that the UK has given in signing and ratifying international human rights treaties.

As I stated in my written evidence, the Scottish Government believes that it is in the best interests of Scotland—and of the UK as a whole—for the Human Rights Act 1998 to be retained and for the

UK to remain fully committed to the European convention on human rights. That is a point that I have reiterated in a recent letter to the UK's Secretary of State for Justice and Lord Chancellor.

Recent media reports suggest that the promised consultation paper has been delayed yet again, this time until after the EU referendum. It may be too much to hope that this further postponement is the precursor to UK ministers taking an eminently sensible and pragmatic decision to drop entirely the policy on this matter. That is a decision that we would certainly welcome. We might then expend our collective time and energy to rather more positive effect—as was pointed out by the report from the Jimmy Reid Foundation—by working to give effect to the full spectrum of civil, political, economic, social and cultural human rights that belong to everyone in our society, rather than having to defend against the UK Government's attacks on the fundamental rights that are the necessary foundation stones of any civilised, modern democracy.

The Convener: Thank you, cabinet secretary. You took the words out of my mouth for my first question, because I have just seen some of the stuff from the Jimmy Reid Foundation. It reflects a lot of evidence that we have taken over the past few months, in as much as people are seeking to extend human rights, rather than to curtail them.

The Human Rights Act 1998, the ECHR and the European Court of Justice are all conflated when it comes to the question of whether we should be in or out of Europe, but things are very different. We say that big, bad Europe is making us do this. However, when we see the results in domestic law and in the local decision making that is taken to protect and enhance people's human rights—we have seen that in the campaign against the bedroom tax, for instance, and I have come across local people who have challenged the system regarding their access to aids and adaptations and everyday living items that allow them to maintain their independence—the relevance of the debate becomes even clearer. In that respect, it is very like the European debate—"What does the Human Rights Act do for me?" Can you give the committee some insight into that and tell us what the Scottish Government is doing to advance that argument?

Alex Neil: First of all, when we talk about this in the context of the EU referendum, it is very important that we make a clear distinction between the institutional framework that specifically relates to EU legislation, the charter of fundamental rights, and the Council of Europe legislation, which is essentially the convention and the court. Those predate the creation of the European Union.

All that has to go together, and clearly the passage of the Human Rights Act 1998 in the UK

was the result of a consensus, at that time, about the need for us to reflect all of the charters obligations and conventions obligations in UK law. When the Scottish Parliament was set up, the Scotland Act 1998 made it explicit that we have to adhere to the European convention of human rights—and, indeed, human rights legislation more generally.

In 1999, the very first act that the Scottish Parliament had to pass was a result of the human rights legislation. The court had taken a decision about a prosecution that was unsafe under the terms of human rights legislation. We had to pass emergency legislation to rectify that situation. That is a practical example of where the impact of the legislation has been positive in ensuring that we implement people's human rights. It might not always be popular in certain circumstances, but we cannot decide human rights on the basis of what is popular—it is on the basis of what it is right in principle to do. That is extremely important.

Another important point is that, because it is written into the Scotland Act 1998, every piece of primary and secondary legislation that has been considered for introduction to the Scottish Parliament from day 1, both under the previous Scottish Executive and under the Scottish Government—as well as bills and Scottish statutory instruments being presented to the Presiding Officer for approval—has been human rights proofed at every stage. That has brought about a very good discipline in the Scottish Parliament, because it has meant that we have had to proactively give thought to the impact of any proposal on people's human rights, whether it has been introduced as proposed primary legislation or as secondary legislation. All of that is very positive from our point of view.

We might consider some of the very positive decisions that have arisen. You mentioned the example of the bedroom tax, convener. Personally, I think that there is no argument, and that the human rights provisions have been very positive for the people of Scotland and indeed for the rest of the UK. I am always concerned to ensure that the rest of the UK is well looked after, too.

Anne McTaggart: I have a few questions. I will start with the devolution settlement. Arguments have been made that the repeal of the Human Rights Act 1998 could have an impact on the devolution settlement. Others have argued against that point. What would be the impact of the repeal of the Human Rights Act 1998 on the devolution settlement in Scotland?

Alex Neil: As I have said, the Scotland Act 1998, which set up the Parliament, had adherence to the principles and provisions of the European convention on human rights and human rights

legislation built into it. Similarly, the Good Friday agreement in Northern Ireland had similar provisions built into it.

It is difficult to be 100 per cent definitive on this until we see the detail of the proposals but, in terms of how they have been presented so far, which is still pretty vague, the reality is that any proposal to change the Human Rights Act 1998 would require a legislative consent memorandum and the explicit approval of this Parliament. I cannot say that absolutely with no ifs, no buts, because we do not know the detail, but everyone I have spoken to, including Shami Chakrabarti of Liberty and people of that ilk, is very much of the view that it would be very difficult to implement or proceed legally with the proposals that have been outlined by the UK Government so far without the explicit approval of this Parliament. I suspect that the same will be true in relation to the Northern Ireland Assembly.

Anne McTaggart: Given the different human rights regimes in different parts of the UK, how would that pan out?

Alex Neil: The vast bulk of the legislation is very similar. In a lot of cases, it is identical. For obvious reasons, Northern Ireland has particular provisions and has been the subject of different kinds of cases. However, it is the fundamental principles that matter, rather than any specific angle or issue. My concern about the proposal is that it is basically an attack on the fundamental principles. Those principles have been well established at a United Nations level in 1945, then at Council of Europe level in the late 1940s. Since then, they have been embedded in UK legislation, through the Human Rights Act 1998, which was passed by the UK Parliament, and then in the Scotland Act 1998, which was also passed by the UK Parliament, as well as in the Northern Ireland legislation and all the other legislation. To unpick that is not easy.

I honestly believe that the reason for the delay is that the UK Government cannot find a way of doing what it wants legitimately in legislation without causing huge problems for itself and the devolved Administrations and without having a negative impact on the UK's reputation not only in Europe but globally. It is struggling to keep the commitments that David Cameron made.

10:30

Jamie McGrigor: From what you said, do I take it that the UK Government, which is compliant with the European convention on human rights, already has a bill of rights?

Alex Neil: We do not know whether it has a draft ready, Jamie.

Jamie McGrigor: The point that I am making is that you said that the Scotland Act 1998 is compliant with the ECHR, which means that there is a bill of human rights as such. The same must apply to the UK Government.

Alex Neil: There is not a bill of rights as such. We have the Human Rights Act 1998.

Jamie McGrigor: It is not called a bill of rights but the fact that the UK Government is compliant with the ECHR gives the same sort of rights as a bill of rights would.

Alex Neil: We do not know that because we do not know what the UK Government proposes will be in the bill of rights. Remember that the discussion inside the Tory party started with trying to pull out of the regime of the European Court of Human Rights because certain decisions of the court were very unpopular with certain elements within the House of Commons. It all started with trying to press the nuclear button and pull out of the European convention and the court. From more recent statements by the Prime Minister, the Lord Chancellor Michael Gove and others, the UK Government appears to have pulled back a bit from that nuclear option, but we do not know what it has pulled back to and we do not know what it intends to put in the UK bill of rights. Until we see all that, I cannot give you an honest answer to your question.

Jamie McGrigor: All right.

Roderick Campbell: Good morning. Mindful of my interest as a member of the Faculty of Advocates, I flag up the evidence that was given to the House of Lords EU Justice Sub-committee on 2 February, in which there seemed to be reference to the possibility of making our Supreme Court into a quasi-constitutional court, perhaps following the German example. It is not clear to me exactly how that would work. There also seemed to be some suggestion that the German constitutional court has to operate within the confines of EU law anyway, so I do not know where that takes us. Has the issue been flagged up in any of your discussions with UK ministers or has it simply been ignored to date?

Alex Neil: That issue has not cropped up in any discussions or correspondence that I have had with UK ministers. I would be very concerned if we were going to give the rights of a constitutional court to the Supreme Court in London. Of course, it already has some of those rights to a very limited degree because it inherited the responsibilities of the Judicial Committee of the Privy Council, which, prior to the Supreme Court's creation, would have been the referee in any disputes between the UK Government and the Scottish Government over the implementation of the Scotland Act 1998.

If we remain inside the UK—which, obviously, I hope we do not—and there is a need for a constitutional court, it should be separate from the Supreme Court in London. We would also need very wide consultation on the constitution and remit of such a court because, as we know from elsewhere not only in Europe but in the world, if you are giving such power to any court, you have to be careful about the remit that you give it, who is on it and how they are appointed. So far, there has been no discussion whatsoever in that regard. We picked up on the point from the committee in the House of Lords, but to the best of my knowledge—and we have very limited knowledge about what the UK Government is intending to do—that would not form part of any proposal in relation to human rights legislation, although one never knows.

Roderick Campbell: Indeed. Thank you. That is a very helpful answer. Obviously, a lot of human rights lawyers and activists and campaigners in the third sector are keen to extend human rights more forcefully into economic and social rights beyond the apparent narrow remit of the convention itself. Does the Scottish Government have a view on extending the nature of rights in legislation?

Alex Neil: We are open to consideration of the extension of rights. I will give you an example. When the coalition Government came in during 2010-11, it abolished the socioeconomic duty under the Equality Act 2010. The Scotland Bill 2015-16 going through the UK Parliament at the moment would give us the power, if we wished, to reintroduce the socioeconomic duty. I think that there is a case for looking at doing that. That is one example of where we could extend human rights using the new powers in the new Scotland act.

Adam Ingram: Good morning, cabinet secretary. I would like to hear your view of the critique of current human rights legislation that has been promulgated by the Conservative Government. As you have pointed out, Michael Gove seems to be at the centre of the effort to get rid of the Human Rights Act 1998 and any connection that we have to the European Court of Human Rights. The Conservative Government's critique is that the European court has indulged in mission creep on, for example, the issue of prisoners voting and that it seems to be friendly to criminals and terrorists. Moreover, it claims that the Human Rights Act 1998 undermines the role of the courts, the sovereignty of the UK Parliament and democratic accountability. Would you care to comment on those particular criticisms of the human rights legislation?

Alex Neil: Our very strong view is that we not only disagree with the UK Government's analysis

but think the opposite. Far from undermining the UK Parliament's sovereignty, the human rights legislation enhances its democratic accountability to the people of the UK. Similarly, we believe that the human rights legislation enhances the courts and their ability, where they believe that a human right has not been observed, to rule that that is the case, which effectively ensures that people's human rights are fully protected.

We have already mentioned the example of the bedroom tax, but there are many examples of rulings under, or with reference to, human rights legislation that have enhanced ordinary people's living standards. One such ruling related not only to disabled children but to the bedroom tax, while another related to a woman who had been the subject of domestic abuse and violence and her need to take measures to protect her from any further violence from her partner. That ruling was enforced by a court under the terms of the human rights legislation, and it might have been very difficult for that lady to have had the same result without it. It is a very good example of where the court's ability to do the right thing morally and ethically has, in my view, been substantially enhanced.

I find the concept of mission creep absurd. Ever since we created a Parliament in the UK nearly 1,000 years ago and ever since we have had the Scottish Parliament—indeed, ever since every Parliament in the world has been created—courts have had to interpret the laws that those Parliaments have passed. In interpreting the law, the courts have to take account of changes in society that have happened since it was introduced. If you look at specific cases under human rights legislation, you will very often find that the position is very similar to cases under any form of legislation; it is for the courts to interpret the law, and they must take account of changed circumstances, developments in society and whatever is relevant to what is presented in court.

I do not regard that as mission creep. The law of the land is a dynamic force; it is not static, and it must keep up with the times. A good example is the rights of Gypsy Travellers. Another example goes way back to the 1950s—which you might remember better than me, Adam—when we had discrimination against children, corporal punishment and capital punishment. Gay rights and the rights of other minorities are other examples. The rights in all those areas have been enhanced by the courts under human rights legislation. I do not think that people disagree with that approach. The one or two controversial decisions—the one that is often cited is prisoners' right to vote—have triggered, from a very small, extreme group in the House of Commons which is obsessed with the issue and which disagrees with

those decisions, demands that we take down the whole edifice. That is just not on.

Adam Ingram: They have fellow travellers in the popular press, including the *Daily Mail*.

Alex Neil: Absolutely.

Adam Ingram: The other issue relates to the House of Lords sub-committee meeting to which Rod Campbell referred and at which Michael Gove emphasised two areas of concern that needed to be addressed. One was the application of the Human Rights Act 1998 to the British military engaged in conflict abroad, and the other was the need for specific UK “glosses” to be placed on certain rights protected by that same act. The example given was that, traditionally in the UK, there is slightly more of an emphasis on the need for freedom of expression as opposed to privacy. Would you care to comment on the two areas of concern that Mr Gove highlighted?

Alex Neil: First of all, as far as the armed forces are concerned, some of what has allegedly happened in Iraq raises certain human rights issues with regard to a small number of, if you like, renegade members of our armed forces who have not just undermined human rights but explicitly broken the law of that country and ours. I do not want us to dilute our ability to deal with such cases, because if we are fighting on the principle of fundamental freedoms and liberties, as we were in Iraq and as we are in fighting terrorists, the evils of Islamic State and all the rest of it, we must be able to hold our heads high and say that we would never engage in the sorts of activities that we are fighting against.

It is extremely important that we maintain our highest standards of conduct, and that people are accountable, no matter the circumstances in which they are operating. There is no doubt that circumstances in places such as Iraq are very difficult, and our armed forces are doing a fantastic job there. However, one or two rogues have brought down everyone else, and the first people to criticise them are the other members of the armed forces, who share our views on the matter.

As for the “glosses”, I am not a lawyer but the issue in law is about balance. Sometimes, an individual case might involve different laws that appear to contradict each other. For example, on the one hand, we have the human right to protect family life, which is absolutely right; on the other hand, we want to extradite certain people who have not lived up to our standards when they have lived in our country. That is where the courts come in; they have to balance those rights and decide whether it is right to allow the extradition or not. Each case is different, and each case has to be considered on its merits. As a politician, I am not going to say whether a judge has got it right or

wrong. It is entirely the role of the judiciary to make those decisions, and it should not be interfered with by Government ministers.

What are being passed as “glosses” undermine the long-standing traditional role of our courts, which is for judges and juries to strike a balance in any possible conflict between two different aims that are set out in law. It is for them to decide the right thing in each case. “Gloss” is just another word for “Let’s do what we want them to do. Let’s tell the judges what they have to rule” instead of leaving the judges to get on with their job.

Adam Ingram: Okay. Thank you.

10:45

The Convener: Cabinet secretary, we have had a lot of evidence, including some quite detailed evidence from Michael Clancy of the Law Society of Scotland, who is always very helpful and who has an amazing ability to remember things like “devolution paper 10”. He raised some issues in relation to the Lord Chancellor having stated that the Human Rights Act 1998 is neither reserved nor devolved.

We have the capability to make legislation on devolved matters, but we do not have the capability to change the general principles of the Human Rights Act. I am not sure whether it was the Lord Chancellor or someone else who said last week that we can repeal the Human Rights Act and have better human rights. What are your thoughts on that?

Alex Neil: The first thing is to make a distinction between human rights and human rights legislation. Human rights are universal. They transcend time, geography, ethnicity, religion—every aspect of society right across the world. If that is what Michael Gove meant by that statement, I agree with him. In fact, the First Minister laid out clearly in one of her speeches that, as far as we are concerned, human rights do not stop or start at any border. That is fundamental to the whole principle and concept of human rights.

When we talk about human rights legislation, we have to talk about it in the context of the constitutional set-up, which in this case is within the United Kingdom. The reality is that, for the reasons that I outlined earlier, changing human rights legislation is not the sole prerogative of the UK Government or the UK Parliament. It is clear to me that, if they go ahead with the proposals that we think they are going to go ahead with, this Parliament, probably the Northern Ireland Assembly and possibly the Welsh Assembly—depending on the nature of the proposals—will have a proactive and explicit role to play. An LCM would certainly need to be agreed to in this

Parliament to legitimise the passage of certain types of legislation that would amend the Human Rights Act in the UK Parliament.

As I said, I cannot be definite about what will happen until we see the proposals, but from what they have said so far, it appears that that will be the case. In that sense, Michael Gove might unintentionally be correct that the act is neither wholly devolved nor wholly reserved, because he will require our permission to do what he probably wants to do.

The Convener: Yes, but do you not think that the fact that they do not know, or are not sure, whether the act is reserved, devolved or neither adds to the confusion that Michael Clancy mentioned in his submission to us about whether an LCM will be triggered or the Sewel convention will come into play? I agree that human rights transcend borders, but an aspect that has been raised by members who have come to the table to talk to us about human rights is that we could end up with fragmented human rights policy across the UK. Would that be helpful or unhelpful?

Alex Neil: It would be undesirable, because I think that we want to conform. It is important that we see the charter of fundamental rights, the Human Rights Act and so on as floors and baselines for human rights from which we develop policies in those areas as society moves forward.

In principle, I am not concerned if there is a degree of variety between the four nations that make up the United Kingdom as long as the fundamental principles are shared, because we share them not just within these islands but with the whole of Europe and indeed—in theory, at least—with every member of the United Nations that is signed up to the worldwide convention.

The real problem that the UK Cabinet has is simple. The UK Government has an overall majority of 12, and more than 12 of its back benchers are not prepared under any circumstances to dilute human rights legislation in the UK. Its fundamental problem is that it does not have the arithmetic to get this daft proposal through the House of Commons. I think that the main reason why we have not seen a detailed proposal is that the UK Cabinet knows that it does not have a majority to force the legislation through the House of Commons.

Jamie McGrigor: Cabinet secretary, what are your views on the importance of prisoner voting in the debate on human rights?

Alex Neil: The issue of prisoner voting has been fundamental in that the decision on it has triggered a lot of the demands that we have been talking about this morning. It is an important and emotional issue.

During the independence referendum, we had a hearing in the Court of Session about the rights of prisoners in Scotland to vote in that referendum, and it was ruled that they did not have that right.

On the more general issue of prisoner voting, we do not have legislative competence on the matter at present, but the Scotland Bill will give us legislative competence on that aspect of the implementation of human rights legislation.

Jamie McGrigor: You talked about rights in principle and a popular notion of what rights should be. One of the most talked about human rights is freedom of speech and freedom of expression, particularly in the United States constitution. As far as I can see, the difficulty here is that modern thought—popular thought—perhaps tends to restrict freedom of speech for other reasons. How do you see a way through that?

Alex Neil: On the restriction of freedom of speech, when somebody is using their right to freedom of expression and freedom of speech to, for example, incite racial hatred, I think that we have the balance right. It is an offence to incite racial hatred, and it is an abuse of someone's fundamental right if they use that right to incite racial hatred.

I am not an expert on the US constitution, although I am probably the only member of the Scottish Parliament who has a US social security number, because I used to work in the US.

Jamie McGrigor: In the President's office?

Alex Neil: I would make a better job of it than some of them.

It is like everything else in life; it is a question of balance. If someone incites racial hatred, that is clearly against the law, and I believe that it should be against the law, because they are infringing other people's rights.

Jamie McGrigor: All right. You have answered that question.

It is difficult to make a clear decision on freedom of expression because the popular concept changes all the time about what songs should be sung, what poems should be—

Alex Neil: Social media also raises a number of issues. There is no doubt that many of us have seen what I certainly regard as abuses on social media, which I find abhorrent. However, there is a big distinction between finding something abhorrent and trying to restrict the right of the person to say it or write it on social media or elsewhere. That is where the judiciary comes in.

Social media was not with us to any great degree 10 or 15 years ago, but now it is very much part and parcel of everyday life. New cases will

come to the courts relating to social media, and it will be for the courts to decide where the balance lies within the law. It might well be that legislators, at some point, have to add to existing legislation if issues arise about excessive abuse on social media, which is a total misuse of social media.

Jamie McGrigor: Absolutely. On that point, I understand that a complaint against Google was upheld by the courts. What do you think should be done in relation to cases in which people have their human rights taken away by cyberbullying?

Alex Neil: The issue of violence against women is one of my responsibilities. There is no doubt that, often, the violence that women face involves bullying not through physical injury but through psychological and mental injury, which is as much an offence as physical bullying is, provided that it can be proven. Similarly, I do not see why someone who uses social media should be treated any differently from how we would treat any bully. If someone is a bully and they indulge in those excesses, they should feel the full force of the law.

Jamie McGrigor: At present, there seems to be little regulation of the people who set up the internet or the web.

Alex Neil: I think that every Government is grappling with this because, arguably, to do anything effective, we would need international agreements. It is probably one of the advantages of being in the EU. At a European level, we could at least get agreement between the 28 countries in the EU on how we can regulate that, and that would make it easier for us to try to get North America and others to adopt similar laws.

There is no silver bullet. Further, some of the issues are our responsibility, but a lot of them are reserved.

The Convener: We have exhausted our questions. On behalf of the committee, I thank you for attending. We hope to publish a report in a few weeks' time that will help to take the issues forward. If the proposals get on the table and there is a consultation period, the possibility of that period encompassing the Scottish Parliament elections and the EU referendum will make it difficult for any committee of this Parliament to contribute to it. Therefore, we thank you for giving us the opportunity to dot the i's and cross the t's with regard to some of the issues that are still outstanding.

Adam Ingram: I would like to point out that Mr Neil is as familiar with the 1950s as I am.

The Convener: On that note, we will move into private session.

10:58

Meeting continued in private until 11:08.

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