



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee (PACAC)

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# The Role of Parliament in the UK Constitution: Authorising the Use of Military Force

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**Twentieth Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons  
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## Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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## Summary

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The decision to engage in military action is one of the most serious a country can take. The legal authority to use military force is derived from the non-statutory, executive authority of the royal prerogative, a power still held by the Sovereign. However, over the centuries as political attitudes and constitutional arrangements in the UK have developed, the powers under the royal prerogative have been exercised by others acting on the Sovereign's behalf. It is now a long-standing convention that the Prime Minister, together with the Cabinet, exercises the power to deploy military force on behalf of the Sovereign.

The legitimacy of the Government's use of the prerogative power to order military action is derived from the elected House of Commons and the Government's military decisions will continue to have this legitimacy as long as it maintains the confidence of the House. Against this background, it is vital that Members of Parliament understand their role in conferring legitimacy on the Government's decisions. It is properly for the Government to develop policy and make decisions in relation to military action and foreign affairs; and it is the role of the House of Commons to scrutinise, analyse and ultimately approve or reject the Government's policy and decisions. Nothing should compromise the ability of governments to use military force when our national or global security is threatened, but a clearer role for the House of Commons is necessary in order to underline the legitimacy of the use of military force, and to give the public confidence that the Government is being held to account.

This relationship between the Government and Parliament has been established since the Second World War in the convention, followed by successive governments, that the Government will consult the House of Commons to ensure that the will of the House is supportive of the Government's policy on armed conflict. This convention was further developed in 2003 when, for the first time, the Government sought prior approval from the House of Commons for the Iraq war. This vote signified a shift in the expectations of Parliament and the British people that, where possible, the consultation of the House of Commons should include an explicit vote in advance of major military action. The emergence of a post-2003 convention was then confirmed by the votes held on military action in Libya in 2011 and Syria in 2013.

We found a consensus in the inquiry concerning the post-2003 convention; that the Government is expected to seek prior authorisation from the House of Commons before taking military action, subject to certain exceptions where public debate before military action would not be possible or appropriate. The exceptions to the convention are important as the Government requires discretion in relation to the most effective means of protecting the UK's security and interests. There is, however, a legitimate concern that the Government remains the sole arbiter of what military action requires prior approval under the post-2003 convention, something which could create uncertainty. To address this concern, we recommend that, where the Government takes action under an exception to the convention, it should subsequently make a statement to the House and where necessary seek retrospective approval. In addition, we consider that the Government should provide a report to the Defence Committee setting out its reasons for acting without prior consultation.

We found that the reference in the Cabinet Manual to conventions on ordering military action lacked clarity and have recommended that the Manual be updated to set out an accurate account of the conventions. We also conclude that, while the involvement of

Parliament at the earliest opportunity is vital, any statutory formalisation of this expectation would create new risks, given the difficulty of legislating for all possible contingencies. We were, however, not convinced by the Government's arguments against developing clearer political expectations through a resolution of the House of Commons. We therefore recommend that the House of Commons considers and approves a resolution setting out the principle of the convention so that the Government, Members of Parliament and, importantly, the public are clear on what the expectations are when it comes to decisions on using military force.

It is the function and responsibility of those in Government to make policy and take decisions to protect the security of the UK. Scrutiny of Government policy and actions is a fundamental function and responsibility of Parliament, which falls particularly on Members of the House of Commons as elected representatives. Scrutiny performs a vital constitutional role as it ensures that the actions taken by the Government, on the authority of the House of Commons, are checked and where necessary adapted or halted. It is clear to us that strong scrutiny leads to better decision-making and this applies as much to policy and decisions on military action as it does to other areas of government policy. Scrutiny by the House of Commons should provide the public confidence that the Government is being held to account and that any military action taken is legitimate. The post-2003 convention has increased the opportunity for advance scrutiny of government policy in relation to major military action. However, we also conclude that other mechanisms to scrutinise Government policy and decisions are needed.

In order to carry out good scrutiny, Members of Parliament need to have sufficient knowledge and understanding of defence and foreign affairs issues. They also require access to the information necessary to carry out effective scrutiny. One of the most serious concerns raised with us during the inquiry was the widespread lack of knowledge and education of many Members of Parliament in these areas. It is the responsibility of every Member of Parliament to keep themselves educated so that they are prepared to engage effectively with these most serious of issues when the nation needs them to do so. It is also vital that the Government provide the House with the necessary information to enable effective policy scrutiny. Given the sensitive nature of some of this information, there is a duty on both the Government and the House of Commons to adapt and find ways to communicate sensitive information securely.

The need to develop new mechanisms for communication is all the more important because of the changing nature of conflict, which requires rapid reaction as new challenges emerge. In areas such as cyber- and hybrid-warfare, there must be flexibility around both the Government's decision-making process and the House of Commons' scrutiny mechanisms. The House of Commons should consider how it best manages these competing demands. We are persuaded, for example, that the principle of how special forces and drones are utilised should be considered by the House.

In order to adapt to these challenges, we have recommended that the role of committees of the House of Commons be expanded. Giving committees greater and, in some instances, full access to information would strengthen both the scrutiny and development of policy in relation to foreign affairs and defence. We have called on the Government to propose appropriate arrangements for committees to be given access to the information which has informed the Government's decisions about foreign affairs, military action and intelligence.

# 1 Introduction

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1. The Public Administration and Constitutional Affairs Committee launched its inquiry ‘Authorising the use of Military Force’ on 29 January 2019<sup>1</sup> as part of its wider inquiry series ‘The Role of Parliament in the UK Constitution’.<sup>2</sup>

2. The decision whether or not to take military action is one of the most serious a country can take. It is a life and death decision affecting members of the UK Armed Forces and those of our adversary, as well as civilians in the UK and abroad. The purpose of the inquiry has been to review how the UK’s constitutional arrangements for deciding whether to take military action have changed in the light of significant debate following the decision to go to war in Iraq in 2003. Since 2003, committees of both Houses of Parliament and the UK Government have examined the issue of Parliament’s role in decisions to use military force. These reports provide the background against which Parliament’s role in conflict decisions has developed (Appendix 1 provides a summary of these reports and Government papers).

3. The arrangements for taking military action involve one of the main residual prerogative powers held by the Monarch and exercised on her behalf by the Government. As such, changes to how prerogative power can legitimately be used in relation to military action have significant implications for other areas of the UK’s constitutional arrangements. This inquiry seeks to provide a thorough assessment of the current constitutional landscape and make recommendations for the future.

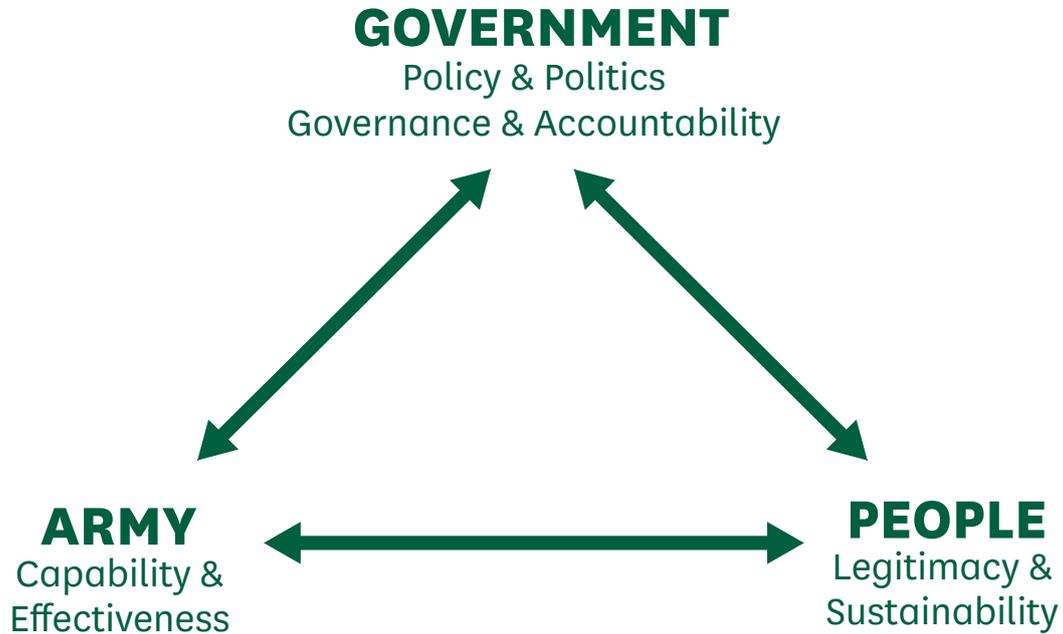
4. For at least two centuries, it has been expected that, when taking decisions about military force on behalf of the nation, the Government will take into account military and logistical limitations and how they relate to the effectiveness of the proposed military action, the political limitations, and the legitimacy of the action. In any military action, the Government must have the consent and support of the people it serves. If there are doubts about this consent and support, this will undermine the effectiveness of the military action. It follows that the Government does not take these decisions in a vacuum: it has always been necessary for the Government to engage with those to whom it is held accountable.

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1 PACAC, [PACAC launch inquiry on The Role of Parliament in the UK constitution: Authorising the Use of Military Force](#), 29 January 2019

2 PACAC, [“The Role of Parliament in the UK Constitution”](#), 13 September 2018

5. These considerations have been recognised and variously interpreted since Clausewitz set out his ‘remarkable trinity’ in his defining work *On War*.<sup>3</sup> For our purposes, it can be best represented as a triangle:



This report sets out contemporary expectations in relation to how the Government will take decisions to engage in military action, ensuring that the action will have sustainable effect and be viewed as legitimate both by the British people and internationally, including by our adversaries.

6. For the avoidance of doubt, this inquiry has not considered the issue of the UK’s nuclear deterrent.

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3 Carl von Clausewitz, *On War*, (Princeton, 1976)

## 2 The royal war prerogative: an executive function

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### The royal prerogative

7. The Armed Forces of the United Kingdom are deployed under the royal prerogative, as has been the practice for centuries. The royal prerogative powers are the source of non-statutory executive authority exercised by or on behalf of the Monarch.<sup>4</sup>

8. The royal prerogative was originally the absolute power of the Monarch and remains part of the British political system. Rt Hon Tony Benn, for example, suggested the royal prerogative originated with the declaration of William I at his coronation in 1066, meaning that some form of prerogative power has been an accepted part of the constitutional arrangements for almost a millennium.<sup>5</sup>

9. There is no single definition of the royal prerogative and its extent and use has become more limited over the centuries.<sup>6</sup> Professor Gavin Phillipson, University of Bristol, told the Committee that the royal prerogative powers in existence today are the residue of the absolute power of the Monarch. This description stems from the constitutional lawyer, A.V. Dicey, who described the prerogative as:

“both historically and as a matter of actual fact nothing else than the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown.”<sup>7</sup>

Originally, the war prerogative was used by the Sovereign alone, then the King or Queen in Council, then the Sovereign acting through the Prime Minister. Sebastian Payne, University of Kent, told the Committee that the person or people effectively exercising the royal prerogative power has transitioned over time with the rise of “responsible Government” and the establishment of increasingly democratic institutions.<sup>8</sup>

10. The royal prerogative is the legal basis for the Executive (Crown) to act where the authority has not been set out in or curtailed by an Act of Parliament. Professor Phillipson explained that, over time, Parliament has gradually assumed most powers of the Sovereign. Parliament has mostly done this through passing Acts of Parliament that supersede and forever remove prerogative power. For example, taxation was historically an important power assumed by Parliament; and more recently the power to dissolve Parliament was removed from the royal prerogative.<sup>9</sup> However, there are still a few, and some very significant, powers that Parliament has not taken, such as powers in relation to

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4 Professor Gavin Phillipson ([UMF0009](#))

5 “I vow before the altar of Peter the Apostle and in the presence of the clergy and the people to defend the holy churches of God and their governors, to rule over the whole people subject to me justly and with royal provenance to enact and preserve rightful laws and strictly to forbid violence and unjust judgments”. Oral evidence taken before the Public Administration Select Committee on 10 April 2003, HC 46, Q1 [Rt Hon Tony Benn]

6 Sebastian Payne, ‘The Royal Prerogative’, in Maurice Sunkin & Sebastian Payne (ed) *The Nature of the Crown: A Legal and Political Analysis*, (Oxford 1999), pp 77–110

7 A.V. Dicey, [Introduction to the Study of the Law of the Constitution](#), Liberty Fund (1915), 828

8 [Q2](#), [Q28](#)

9 See [Fixed-term Parliaments Act 2011](#)

war and foreign affairs, which remain prerogative powers. In these areas, therefore, the Government exercises powers derived from the Sovereign and not from the legal authority of an Act of Parliament.

## How has the royal prerogative developed and how has its use changed through history?

11. The idea that the Executive has exclusive powers over war and foreign policy is long-established in descriptions of the government of the UK, but the justifications have changed over time. In the 1560s, Sir Thomas Smith's treatise on the Government and politics of England, *De Republica Anglorum*, made plain that both the power and the authority to wield it rested with the Monarch:

Monarch of Englande, King or Queene, hath absolutelie in his power the authoritie of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or the advice onely of his privie counsell.<sup>10</sup>

12. In the eighteenth century, Sir Robert Walpole said, "our constitution has trusted entirely to the Crown, the power of making peace and war".<sup>11</sup> This was in line with political thought during this period. For example, leading political philosophers such as Montesquieu and Blackstone were clear that executive power in general, and power over war and foreign affairs in particular, ought to be in the hands of the Crown.<sup>12</sup> Blackstone, however, argued that, in these duties, the King is the delegate and sovereign representative of his people rather than acting through his own divine right.<sup>13</sup>

13. In the nineteenth century, Whig theories of representative government replaced those that saw the British constitution as one of mixed and balanced Monarchy. Nevertheless, the view persisted that war and foreign policy remained in the realm of executive power. The difference was that this period also marked a shift to an understanding that while, formally, the Sovereign had powers over war and foreign policy, in practice these powers were exercised on the advice of Ministers drawn from Parliament. In 1858, Rt Hon Earl Grey described the relationship:

It is the distinguishing characteristic of Parliamentary Government, that it requires the powers belonging to the Crown to be exercised through Ministers, who are held responsible for the manner in which they are used, who are expected to be Members of the two Houses of Parliament, the proceedings of which they must be generally able to guide, and who are considered entitled to hold their office only while they possess the confidence of the Parliament, and more especially the House of Commons.<sup>14</sup>

This interpretation of the operation of the royal prerogative, and therefore the powers relating to war and foreign policy, has remained dominant since the nineteenth century.

10 Thomas Smith, [De Republica Anglorum](#): The maner of governement or policie of the Realme of Englande, Chapter 3

11 Rosara Joseph, *The War Prerogative*, (Oxford, 2013), p 17

12 Montesquieu, *L'Esprit des lois* 1748; Sir William Blackstone, *Commentaries on the laws of England*, in four Books vol1, 13th Edition

13 Sir William Blackstone, *Commentaries on the laws of England*, in four Books vol 1, 13th Edition, 252, 256–7

14 Henry Grey, *Parliamentary Government, Considered with Reference to a Reform of Parliament...* (1858)

14. While there has been a clear, orthodox understanding that the war prerogative is an exclusive executive power, Parliament, and the House of Commons in particular, has, in reality and despite the protestations of the Executive, played an active and influential role in the exercise of the prerogative from the 17th Century to the present day.

15. The most obvious, but also the most exceptional, instance of Parliament influencing the use of military force was between 1648 and 1649 during the English Civil War when the powers of government, including war and foreign policy powers, were exercised by Parliament, or by a committee appointed by Parliament. In the years following the execution of Charles I, the different parliaments continued to exert some control over foreign policy and military affairs; however, these were increasingly delegated to Committees and then to Cromwell as Lord Protector. Even then, in order to dispose of standing forces, Cromwell needed the consent of Parliament while it was sitting, and the advice of the Privy Council when Parliament was not in session.<sup>15</sup>

16. While the restoration of Charles II as King reasserted the royal prerogative, it had become generally accepted that Parliament could properly debate any topics relating to war and foreign policy. Article VI of the Bill of Rights then established that raising or keeping a standing army without the consent of Parliament is illegal, a power that continues today, providing Parliament with a reserve power to take away the Government's ability to prosecute a war. This was also an important period as it solidified the convention that the Monarch exercises prerogative powers on the advice of ministers who were drawn from Parliament.

17. As parliamentary government became more established during the eighteenth and nineteenth centuries, there was a gradual transfer of power over both domestic and foreign affairs from the Monarch to ministers sitting in Parliament, representing a relative strengthening of Parliament's position. However, as parliamentary government became stronger, and therefore Ministers sought to exercise more control over business in the Commons, the power of Parliament to directly influence war and foreign policy waned. The nature and functions of parliamentary debates consequently changed quite significantly, moving away from considering foreign policy with the intention of shaping it towards Government using parliamentary debate to promote its policy and persuade the House of Commons, and then increasingly the public, of its merits. In turn, the House of Commons increasingly used parliamentary debate to scrutinise the Government's conduct in war and foreign policy.

18. Rosara Joseph in her book, *The War Prerogative*, writes that governments took very seriously the need to explain and respond to criticism from the House of Commons. Ministers were aware that parliamentary support bolstered their position both domestically and abroad; and would provide, either on request or on their own initiative, information to the Commons about war and foreign policy. Parliament also influenced the Government's use of executive functions through debates. Debates on foreign policy and war in the 18th and 19th centuries were frequent and detailed, and these issues were often significant features of debates on the King's or the Queen's Speech.<sup>16</sup> With the expansion of the franchise and the increasing influence of democratic thought and norms within British politics and around the world, the House of Commons was viewed, not only as representative of the people but also, increasingly, as the organ for the expression

15 [Humble Petition and Advice](#)

16 Rosara Joseph, *The War Prerogative*, (Oxford, 2013), p 62

of public opinion. This has led to increasing reference to and concern for public opinion on proposed military action. For example, before the start of the First World War questions were raised in the House of Commons as to whether the Government was compelled to consider its higher duty to the interests of the people before entering into war; and it was suggested that the public view on entering the conflict was to say “no”.<sup>17</sup>

## The royal war prerogative today: an executive function

19. The Government said in its written evidence:

The legal authority to commit Armed Forces to conflict abroad is provided by the Royal prerogative power exercised by Ministers on behalf of the Sovereign.<sup>18</sup>

Professor Phillipson described it as a “well-established convention” that the decision to engage in armed conflict, whether alone or as part of an international coalition, is taken by the Government on behalf of the Sovereign, under the royal prerogative.<sup>19</sup>

20. In terms of the balance of power and responsibility between the Executive and Parliament in modern times, Parliament has no legal role in authorising the use of military force because, with the exception of the limited provisions included in the Act of Settlement 1700, it has not legislated to take for itself a formal role in these decisions.<sup>20</sup> However, the existence and funding of the Armed Forces is a power held wholly by Parliament because, in accordance with Article VI of the Bill of Rights, Parliament authorises defence expenditure annually; and every five years renews the legal basis for the Armed Forces through an Armed Forces Bill.<sup>21</sup>

21. There was a clear consensus in both the written and oral evidence to the Committee that the deployment of military force is a necessary responsibility and function of the Executive.<sup>22</sup> In particular the importance of having the ability to act with “dispatch and discretion” and having all the tools, mechanisms and knowledge to make decisions on the deployment of military force was emphasised.<sup>23</sup> Sebastian Payne told the Committee that for him “it is the function of Government to work out the strategy and the policy” and “for Parliament to scrutinise, to analyse and maybe in some cases even to reject proposals”.<sup>24</sup> He was clear that Parliament was not “an appropriate body to micro-manage a military campaign” rather “that is the function of Government and it is necessary”.<sup>25</sup> Professor

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17 Rosara Joseph, *The War Prerogative*, (Oxford, 2013), p 66

18 Cabinet Office ([UMF0022](#))

19 Professor Gavin Phillipson ([UMF0009](#))

20 The Act of Settlement 1700 provides that if the Crown were to pass to a non-UK native, Parliament must give its consent for the use of Military force in defence of realms which are not UK dominions or territories. This was to prevent English forces being used to defend Hanoverian lands following the anticipated line of succession.

21 Every five years the legislation governing the legal basis for the Armed Forces, its system of command, discipline and justice must be renewed by an Act of Parliament and in the interim must be renewed by an annual Order in council. The current legislation is the Armed forces Act 2016, which continues the provisions of the Armed force Act 2006. No order in council can be passed to continue this Act beyond the end of 2021. A new Act must be passed by that date for the armed force to continue to exist.

22 Dr Daniel Kenealy ([UMF0020](#)); Society of Conservative Lawyers ([UMF0017](#))

23 Professor Philippe Lagasse ([UMF0006](#)); DefenceSynergia ([UMF0014](#))

24 [Q42](#), [Q41](#)

25 [Q41](#)

Phillipson agreed with Mr Payne, saying this retains the “classic Westminster system of Government” where “the Government proposes, and Parliament scrutinises and then either gives its assent or does not give its assent”.<sup>26</sup>

22. Rt Hon Jack Straw was clear in his evidence that the power to deploy military force was a responsibility of the Executive and “there is no way [a Government] can shuffle this off”.<sup>27</sup> He told us that every Prime Minister he was familiar with:

“recognised that the burden that ultimately fell on them alone in respect of initiating military action was a very personal burden and the largest burden on their shoulders.”<sup>28</sup>

23. **The royal prerogative has for centuries been the source of legal authority to wage war and conduct foreign relations. The legal authority to order the use of military force today, is still derived from the royal prerogative and the power to deploy the UK’s Armed Forces will remain under the royal prerogative unless an Act of Parliament is passed, setting out a new legal basis for the use of that power. However, who exercises these powers in practice has changed as political attitudes and constitutional arrangements in the UK have developed. In practice, the Sovereign no longer has the legitimate authority to exercise this prerogative power, which has for some time been exercised on their behalf, by ministers drawn largely from the House of Commons. The continuance of this convention is essential to the integrity of UK’s constitutional arrangements and the legitimacy of the UK’s use of military force. This convention is now unquestioned, and as such it is unthinkable that the Sovereign could exercise her own discretion in the use of this royal prerogative.**

24. **The development of policy in relation to foreign affairs and defence is also an executive function and responsibility. It is for the Government to develop this policy and monitor, judge and react to new information that may affect it. It is for Parliament, and in particular the elected House of Commons, to scrutinise, analyse and approve or reject the Government’s policy.**

## Legitimate authority

25. While the legal basis to use military force under royal prerogative has remained essentially unchanged for almost a millennium, the person wielding that power and the way in which they use it has evolved over time, in accordance with prevailing political principles and attitudes. Sebastian Payne described this as the change in the “guiding mind” that makes the decisions. Central to this development has been the relationship between Parliament and the Executive. This relationship has been developing ever since it became the accepted practice that the Monarch’s chief ministers must be drawn from Parliament and Acts of Parliament started the process of removing aspects of the royal prerogative and replacing them with parliamentary power. Sebastian Payne identified the rise of parliamentary government as the key change in the UK, which has meant “we do not expect the Monarch to take the decision because it is a constitutional Monarchy and a

26 [Q43](#)

27 [Q180](#) [Straw]

28 [Q180](#)

parliamentary democracy”.<sup>29</sup> As such, he continued, the justification for who takes these decisions is “intimately connected to the idea of our conception of how we should be governed; what the nature of our democracy should be”.<sup>30</sup>

26. While Ministers may have previously been a balancing force on behalf of Parliament on the absolute power of the Monarchy, the Government is now viewed as the legitimate exerciser of almost all the meaningful executive and royal prerogative powers. This legitimacy comes from commanding the confidence of the elected House of Commons. In the context of a discussion on the royal prerogative power, the Chancellor of the Duchy of Lancaster told us that:

... as a consequence of the outcome of a general election and, following a general election, a decision [is taken by] the House of Commons as to whom they should entrust with the formation of the Government. The Government of the day exist for so as long they have the confidence of the House of Commons. That is the ultimate sanction that any Parliament has over any Government.<sup>31</sup>

27. Rt Hon Lord Hague and Rt Hon Jack Straw were equally clear that the legitimate authority for the Government to use the royal prerogative comes from the consent and legitimacy of holding the confidence of the elected House of Commons.<sup>32</sup> Lord Hague told us that he now could not imagine a major military decision such as the Iraq War being taken “without explicit parliamentary consent” and that “it would not be possible or democratically legitimate in this country to do that against the will of Parliament”.<sup>33</sup> He told us that the question we were now facing was “what is the degree of scrutiny and accountability and control that Parliament is able to exercise over that.”<sup>34</sup> This understanding was widely expressed in evidence to the inquiry.<sup>35</sup>

28. One of the things that became apparent during this inquiry, and our wider inquiry into *The Role of Parliament in the UK Constitution*, is that there can be a tendency to view the British political system as one in which there is a separation of powers between Parliament and the Government, and as such they are locked into conflict. On the contrary, as Sir Stephen Laws, former First Parliamentary Counsel, told us:

... because the UK constitution, which is based, so far as the Executive and Parliament are concerned, on the confidence principle, is not one that provides for separate functions and powers of each, but one that provides for them both to be able to exercise power and that incentivises collaboration and co-operation between the two.<sup>36</sup>

Professor Alison Young added to this that while it is often said “that the idea that the Executive and Parliament are fused is in some sense the efficient secret”, as the Government has the backing of the majority party or at least the confidence of the House, it should also

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29 [Q24](#)

30 [Q24](#)

31 [Q231](#)

32 [Q179](#)

33 [Q180](#)

34 [Qq179–180](#)

35 Reprieve ([UMF0019](#))

36 Oral evidence taken on 29 January 2019, Parliament and the Constitution: Mechanisms allowing Parliament to direct the Executive, HC1907, [Q2](#)

be recognised “that it is the duty of Parliament to hold the Executive to account for its actions”.<sup>37</sup> This is an important function, she suggested, to counter concerns of potential executive dominance in Parliament.

29. Writing on behalf of Policy Exchange, Sir Stephen Laws, Professor Richard Ekins, and Professor Graham Gee, said that in the British system, one should not expect Parliament and Government to be routinely locked in conflict. Rather, Parliament will routinely support the Government in which it has placed confidence. Equally, it is a misconception to confine Parliament’s constitutional purpose to being simply a legislative body. On the contrary, Policy Exchange argues, “the confidence principle means that Parliament is also the source of legitimacy for everything the Government does and so is entitled to exercise powers of scrutiny over it and to call the Government to account in ways that have nothing to do with its role in relation to legislation”.<sup>38</sup> There is, according to Policy Exchange, not a rigid division of legislative and executive acts in the British political system, as Parliament is “much more than just a legislature”.<sup>39</sup> Parliament can decide what role it adopts and how to perform it, and, from time to time, adapts the way it conducts itself to meet the wishes of the electorate.

30. Nevertheless, Policy Exchange expressed the view that Parliament should be cognisant of the “constraints inherent in its composition”, as there are some things that are better dealt with by Government rather than a deliberative assembly of 650 people. Policy Exchange considered that these areas, which include the royal prerogative powers to conduct foreign policy or initiate military action, should be exercised by the Government but should be subject to parliamentary scrutiny and accountability.<sup>40</sup>

31. Professor Phillipson told us that a “strong and clear role for Parliament acting as a check upon governmental decisions to use military force may be seen as particularly important in the United Kingdom” because the uncodified constitution means there are no formal checks and balances present as there would be in other countries.<sup>41</sup> He pointed out that the royal prerogative is a “non-statutory executive authority that is defined in no authoritative constitutional text and which remains unclear in scope today”.<sup>42</sup> Given that the courts have repeatedly declared decisions of the executive to deploy military force non-justiciable, Professor Phillipson thought that the check on the Government’s power “must be a parliamentary check”.<sup>43</sup>

32. General Sir Richard Barrons, former Commander Joint Forces Command 2013–16, and Admiral Lord West, First Sea Lord and Chief of the Naval Staff from 2002 to 2006, said that, from the Military perspective, it is the job of ministers to determine what should or should not be done, and this is not an area where the military voice should be heard. Rather, General Barrons said, Parliament should have a role in overseeing the Government’s policy perspective, especially in advance of conflict situations arising, and have a voice on what the policy should be and if necessary “call it out and push back”.<sup>44</sup>

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37 Oral evidence taken on 29 January 2019, Parliament and the Constitution: Mechanisms allowing Parliament to direct the Executive, HC1907, [Q2](#)

38 Policy Exchange ([PAC0023](#)), para 29

39 Policy Exchange ([PAC0023](#)), para 30

40 Policy Exchange ([PAC0023](#)), para 33, 41

41 Professor Gavin Phillipson ([UMF0009](#))

42 Professor Gavin Phillipson ([UMF0009](#))

43 Professor Gavin Phillipson ([UMF0009](#))

44 [Q174](#)

They both thought that the duty on military leaders was “to be unequivocally clear and if necessary speak truth to power” to both Government and Parliament if they are asked to do something that they knew could not be done without failing, or with an unacceptable cost.<sup>45</sup>

**33. The source of the legitimacy for the exercise of the royal prerogative to order the use of military force has changed over the years. Currently, the Prime Minister, together with the Cabinet, exercises this power on behalf of the Monarch. In a parliamentary democracy it is clear that the authority for the Government to exercise the royal prerogative is derived from having the confidence of the elected House of Commons. This fact in no way diminishes the responsibility and accountability of the Government for its policy in relation to foreign affairs and the use of military force. It is, therefore, of paramount importance that every Member of the House of Commons understands that the government of the day ultimately enters into military conflict on the basis of an authority which Members themselves have conferred through the mechanism of the confidence of the House.**

## 3 War power conventions

### Historic role of conventions

34. Convention plays an integral role in the UK's constitutional arrangements for how military force is authorised, as in other parts of our constitution. The convention that the Prime Minister, together with Cabinet, takes decisions in relation to the deployment of the UK's Armed Forces is so well established that many may no longer even think of it as a convention.<sup>46</sup>

35. Following the 2003 parliamentary vote to authorise military action in Iraq, many argued for a new convention to be established, that the House of Commons be asked to give prior approval for the UK's engagement in major military action. This "post-2003 convention", however, can be analysed against the modern history of decisions on military action.

### The emergence of a stronger parliamentary convention

36. While the vote on military action in Iraq in 2003 is viewed as a pivotal point in how the UK decides to engage in military action, it is important to consider the 2003 vote in the wider context of how the UK has engaged in military action since the Second World War. Throughout this period, governments have consulted Parliament on foreign affairs and military action seeking both "in principle" and "retrospective" approval for military action both on motions for the adjournment and on substantive motions:

- During the course of the Second World War, there were numerous statements and debates and, while the majority of these were on a motion to adjourn, some key debates, such as the 1941 vote to approve the Government policy of sending help to Greece, occurred on substantive motions.<sup>47</sup>
- In the lead up to the Korean war in 1950, the Prime Minister made several statements following the North Korean invasion of South Korea and, following the commitment of forces, a substantive motion expressing support in the Government policy was agreed without division.<sup>48</sup>

46 Oral evidence taken on 23 October 2018, Status of Resolution of the House of Commons, HC 1587, Q92 [Professor Blackburn]

47 A debate was held on 6 and 7 May 1941 on a motion of confidence, to approve the Government's policy to send help to Greece; and to declare the confidence of the House that "war will be pursued by the Government with the upmost vigour". The motion was agreed to on division, by 447 to 3. HC Deb, 6 May 1941, [col 727–826](#), [Commons Chamber], HC Deb, 7 May 1941, [col 867–950](#), [Commons Chamber]

48 HC Deb, 5 July 1950, [col 485](#), [Commons Chamber]; That this House fully supports the action taken by His Majesty's Government in conformity with their obligations under the United Nations Charter, in helping to resist the unprovoked aggression against the Republic of Korea; In the run up to military action the Leader of the Opposition, Winston Churchill, was clear to express the Opposition's confidence in the Government to meet their international obligations. In the debate on the substantive motion he said: We consider that the Government were right to place a Motion on the Order Paper asking for approval in general terms of the course which they have adopted since the invasion of South Korea began. There are grave dangers, as we learned in the war, that false impressions may be created abroad by a Debate prominently occupied by a handful of dissentients. It is better to have a Division so that everyone can know how the House of Commons stands and in what proportion. Should such a Division occur, we on this side will vote with the Government. HC Deb, 5 July 1950, [col 495](#), [Commons Chamber]

- During the Suez Crisis in 1956, several debates were held as events developed and, after being recalled in September, the House of Commons passed a substantive motion approving the Government's approach, although it did not explicitly endorse the use of military force.<sup>49</sup> Following the commencement of military action, a censure motion in the Government's actions was moved, but was amended to express approval of the Government's actions.<sup>50</sup>
- When the House of Commons was recalled following the invasion of the Falkland Islands a debate was held on a motion to adjourn.<sup>51</sup> Concern was, however, expressed at the lack of opportunity for the House of Commons to consider the issues, to the extent that Jack Straw described the process to us as "risible".<sup>52</sup>
- Following several debates on adjournment motions, the start of the Gulf War was announced in the House of Commons in January 1991 and a retrospective substantive motion supporting the Government's decision was then passed four days later.<sup>53</sup> Concern was, however, expressed that there had not been an opportunity to vote in advance of the conflict.<sup>54</sup>
- In the course of various adjournment debates, similar concerns have been expressed about the lack of an opportunity to vote before the commencement of hostilities in Kosovo in 1999 and Afghanistan in 2001.<sup>55</sup>

37. In 2002, when the possibility of military action in Iraq became apparent, a number of Members raised the issue of whether the House would be given a vote ahead of military action.<sup>56</sup> The Government subsequently held two votes on substantive motions approving

49 HC Deb, 13 September 1956, [col 163](#), [Commons Chamber]; [Parliamentary approval for military action](#), House of Commons Library Briefing paper CBP7166, 8 May 2018

50 HC Deb, 01 November 1956, [col 1631–1744](#), [Commons Chamber]

51 HC Deb, 03 April 1982, [col 633](#), [Commons Chamber]

52 [Q182](#)

53 HC Deb, 17 January 1991, [col 979–96](#), [Commons Chamber]; HC Deb, 21 January 1991, [col 23–110](#), [Commons Chamber];

54 Concern was expressed for example by Tony Benn who said: "It is a matter of great concern, not least because of our anxiety in respect of the troops and their families. We have had three debates on the adjournment without substance. Today, we are having a debate without choice...The point I am seeking to make is not only that different views should be expressed, but that they should be able to be tested in the Lobby, so that Parliament is seen as a place where different views can be registered". HC Deb, 21 January 1991, [col 23](#), [Commons Chamber]

55 HC Deb, 24 March 1999, [col 483](#), [Commons Chamber]; Rt Hon Douglas Hogg raised the concern that action was being taken "without the authority of the House". HC Deb, 24 March 1999, [col 489](#), [Commons Chamber]; Others such as Rt Hon Tony Benn expressed concern over the Government's reluctance to hold a debate on a substantive motion that would have allowed Parliament to record its view on the Government's policy over Kosovo. HC Deb, 25 March 1999, [col 619](#), [Commons Chamber]; [Parliamentary approval for military action](#), House of Commons Library Briefing paper CBP7166, 8 May 2018; HC Deb, 14 September 2001, [col 604–670](#), [Commons Chamber]; HC Deb, 8 October 2001, [col 671–810](#), [Commons Chamber]; HC Deb, 8 October 2001, [col 812–902](#), [Commons Chamber]; concern was for example expressed by Paul Marsden, who said: "There is growing disquiet that for the third time Parliament has been recalled yet hon. Members have been denied a vote on this war. Can you confirm to me that there will be no vote? Is it in order for hon. Members to vote on an adjournment debate if similar occasions arise, when we are denied a substantive motion by the Government?" HC Deb, 8 October 2001, [col 829](#), [Commons Chamber]

56 For example, the Leader of the Liberal Democrats Rt Hon Charles Kennedy said: There is no specific proposal before the House today, but, if and when there is one, there must be an absolute, up-front opportunity for the House to vote on any proposal involving the possible use of British forces. In his statement today, the Prime Minister said that the House would be kept fully "in touch". Does "in touch" mean a democratic Division in the Lobby of the House? HC Deb, 24 September 2002, [col 10](#), [Commons Chamber]

the Government policy as events developed and ultimately put down the substantive motion on 18 March 2003 seeking the approval of the House of Commons for military action.<sup>57</sup>

**38. Since the Second World War, it has been the practice of successive governments to consult the House of Commons to ensure that the will of the House is supportive of the Government's policy on armed conflict. On a number of occasions, the Government has also sought and been granted retrospective support for military action. The decision to seek prior approval from the House of Commons for the Iraq War in 2003 was the first example in modern times of a government seeking approval in advance of specified military action. While circumstances particular to the question of the 2003 Iraq War were a factor, the decision to seek prior approval from the House of Commons represented a further development of the convention that the government of the day should consult the democratically elected House of Commons in its use of the royal prerogative before the Prime Minister gives orders to use military force.**

39. The Cabinet Manual, published in 2011, serves as the Government's "guide to laws, conventions and rules on the operation of government", although the Leader of the House told us that it is "a record of those rules and practices and not the source of any rule".<sup>58</sup> In his preface to the Cabinet Manual, Sir Gus O'Donnell, Cabinet Secretary at the time of publication, states that it is intended to act as "an essential guide to our system of Government".<sup>59</sup> It includes three paragraphs of guidance on the practice of the Government in relation to decisions on taking military action. The first of these paragraphs states:

Since the Second World War, the Government has notified the House of Commons of significant military action, either before or after the event, by means of a statement and has in some cases followed this with a debate on a motion for the adjournment of the House.<sup>60</sup>

40. The footnote to this paragraph of the Cabinet Manual gives three examples of instances when motions to adjourn were used to inform the House: "Afghanistan (4 and 8 October 2001); Kosovo (24 March 1999); and the Gulf War (17 and 21 January 1991)".<sup>61</sup> However, while debates in relation to Afghanistan and Kosovo were on a motion to adjourn, the 1991 Iraq vote was on a substantive motion.<sup>62</sup>

***41. It is important that the Cabinet Manual recognises that a convention has been in place since the Second World War that the Government will consult the House of Commons to ensure that the Government's policy on armed conflict reflects the will of the House of Commons. The Cabinet Manual should be updated to this effect. As currently drafted, the Cabinet Manual may give the erroneous impression that seeking the view of the House of Commons has been and could be treated as a formality. We further recommend that the Cabinet Manual should be updated to make clear that there are precedents for debates of this nature to take place on a substantive motion and not just on motions for the adjournment.***

57 HC Deb, 25 November 2002, [col 47–129](#); HC Deb, 26 February 2003, [col 265–363](#), [Commons Chamber]; HC Deb, 18 March 2003, [col 760](#), [Commons Chamber]

58 [Letter from the Leader of the House](#), 4 December 2018; Cabinet Office, [The Cabinet Manual](#), October 2011,

59 Cabinet Office, [The Cabinet Manual](#), October 2011, v

60 Cabinet Office, [The Cabinet Manual](#), October 2011, 5.36

61 Cabinet office, [The Cabinet Manual](#), October 2011, chapter 5 footnote 34

62 HC Deb, 21 January 1991, [col 23–110](#), [Commons Chamber]; Substantive motions were also passed for example for Korean War and in relation to the Suez crisis in 1956

## The 2003 precedent

42. The 2003 vote on the Iraq War stimulated considerable debate on how the decision to participate in the invasion and occupation of Iraq was taken within Government; and in relation to the specific information made available to Parliament prior to the Commons vote to approve the Government's proposed military action. These issues have been extensively examined in Sir John Chilcot's *Report of the Iraq Inquiry* (the "Chilcot Report").<sup>63</sup> The 2003 vote also raised more fundamental constitutional questions about how decisions to use military force are taken in the UK. Committees of both Houses of Parliament have considered this issue in detail, with both the Public Administration Select Committee in 2004 and the House of Lords Constitution Committee in 2006 concluding that approval of the House of Commons should be sought before major military action is taken.<sup>64</sup> In 2007, following an Opposition Day debate, the House of Commons resolved, and the Government accepted, that a precedent was:

“... set by the Government in 2002 and 2003 in seeking and obtaining the approval of the House for its decisions in respect of military action against Iraq [and] is of the view that it is inconceivable that any Government would in practice depart from this precedent.”<sup>65</sup>

43. There was almost unanimous agreement in evidence to this inquiry that the 2003 parliamentary vote to authorise the Iraq War set a precedent which, when combined with the actions of subsequent governments, has established a convention that Parliament should be consulted *in advance* over military action.<sup>66</sup> Against the background of the 20th Century convention, outlined above, that Parliament should be consulted over military action (although not necessarily in advance), this can be seen as an incremental development rather than a great leap forward.

44. Sebastian Payne told us that the Iraq War has given rise to an expectation in the House of Commons that the House will be given a vote in advance of military action, but in circumstances such as emergency action a vote may need to be retrospective.<sup>67</sup> Dr Strong went further, saying that, in addition to a general acceptance of the convention among Members of Parliament, there is now a majority of the public that also expects Parliament to have a vote on military action, and that it would raise questions of legitimacy if a vote were not held.<sup>68</sup> He explained that while the House of Commons does not have legal authority to veto military action, the post-Iraq conflict convention has meant it has exercised a “de facto veto”.<sup>69</sup> Lord Hague told the Committee that it would be “bizarre” if Parliament did not take part in the debate to take a premeditated decision to go to

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63 The Iraq Inquiry, July 2016, [The Report of the Iraq Inquiry](#)

64 Public Administration Select Committee, Fourth Report of Session 2003–04, [Taming the Prerogative: Strengthening Ministerial Accountability to Parliament](#), HC 422; House of Lords Select Committee on the Constitution, fifteenth report of the session 2005–6, [Waging war: Parliament's role and responsibility](#), HL 236-I

65 HC Deb, 15 May 2007, [col 579–582](#), [Commons Chamber]

66 Only the Society for Conservative Lawyers has argued that the 2003 Iraq vote should not be considered as a precedent and that, consequently, a convention around prior parliamentary approval has not been established. Society of Conservative Lawyers ([UMF0017](#))

67 [Qq48–49](#), [Q56](#)

68 [Q102](#), [Q108](#)

69 Dr James Strong ([UMF0003](#))

war. Both he and Jack Straw said that in a democracy the most serious decisions taken by the Government should be subject not only to scrutiny but, where possible, advance endorsement.<sup>70</sup>

45. Former leaders of the three UK Armed Forces (General Sir Richard Barrons, Admiral Lord West, and Air Chief Marshal Sir Glenn Torpy), raised concerns that military advantages could be lost through a prior public debate and vote on military action. They acknowledged, however, that a convention had been established in relation to the precedent set by the vote on the Iraq conflict in 2003. General Barrons told us that, if there was a planned military campaign with the scale of advance notice as for the 2003 Iraq campaign, “it would be remarkable if Parliament did not have a voice in this as a way of gauging public sentiment”.<sup>71</sup> Similarly, Admiral Lord West stated that “[i]f you are trying to generate huge force for an old-fashioned type war then obviously, as the General says, you need to have these sorts of debates because doing that takes time”.<sup>72</sup>

46. Addressing the timeline for the development of the convention, Air Chief Marshal Torpy noted that, although the 2003 convention requiring *advance* approval from the House of Commons was set out in the Cabinet Manual, the 2003 precedent was only followed for the first time in the 2013 debate and vote on whether military action should be taken in Syria.<sup>73</sup> The Government lost that vote and the planned military action never took place. On this basis, Air Chief Marshal Torpy said that, “While there appears to have been a convention since 2003, the degree to which that has been recognised or implemented has only since 2013 been enacted.”<sup>74</sup> In other words, a precedent only becomes a precedent - or in this case, a convention - if it is followed in practice.

47. A similar assessment of the development of the convention was given by Professor Phillipson, who explained that a convention is not established at the first occurrence of a procedure, but later on, when it is identified as, and followed as, a precedent. He identified the key moment when the 2003 vote was treated as a precedent as the decision in 2011 under the Coalition Government to give the House a substantive vote on the 2011 Libya campaign, albeit after action had actually commenced because there was no time for prior approval (which is probably why Air Chief Marshal Torpy did not reference this debate in his argument on the same point). According to Professor Phillipson’s argument, the convention then held when the House of Commons declined to approve action in Syria in 2013; and when the House agreed to air strikes in Syria following a vote in 2015. Lord Hague confirmed that the Coalition Government held the view in 2011 that it should consult the House in advance of military action and, by 2013, considered this an established convention.<sup>75</sup>

48. The Chancellor of the Duchy of Lancaster also considered that the 2003 vote set a precedent that has led to the development of a new convention. He told us, “I do think that Iraq in 2003 was something of a turning point here. It has been largely on the back of that experience that we have seen the modern convention develop”.<sup>76</sup>

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70 [Q194](#)

71 [Q154](#)

72 [Q157](#)

73 HC Deb, 29 August 2013, [col 1425–1556](#), [Commons Chamber]

74 [Q133](#), [Q154](#) [Air Chief Marshal Sir Glenn Torpy]

75 [Q193](#)

76 [Q245](#)

49. There is a general consensus that the 2003 vote in the House of Commons to give approval for military engagement in Iraq in advance of the commencement of conflict set a precedent. This is a development of the pre-existing convention that the House of Commons should be consulted, to include an explicit vote in advance of major military action

50. The vote in 2003 did not itself establish the convention. Rather, it signified a shift in the expectation of Parliament and the British people that was demonstrated through recommendations by committees in both Houses of Parliament. This was also confirmed in the House of Commons in 2007 by approval of an Opposition Day resolution. The Government then recognised that a convention was emerging, and this convention was confirmed by the votes on military action in Libya in 2011 and Syria in 2013. It has for some time been unthinkable that major planned military action would not be openly discussed in Parliament. There is now an expectation that the Government would seek prior approval for such an action, where practicable to do so.

## The post-2003 convention and its exceptions

### *The core post-2003 convention*

51. In the course of our inquiry, we have found broad agreement about the nature of the post-2003 convention.<sup>77</sup> As the Cabinet Manual explains, in respect of the two most recent examples of significant military action in Iraq and Libya, “Parliament has been given the opportunity for a substantive debate”.<sup>78</sup> The Manual goes on to state that:

In 2011, the Government acknowledged a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except when there was an emergency and such action would not be appropriate.<sup>79</sup>

The Government restated this formulation in its written evidence to this inquiry, emphasising that the convention related to conflict decisions rather than routine deployments.<sup>80</sup>

52. Dr Strong described the convention as being that:

“MPs should have the right to veto major overseas military combat operations, unless the emergency nature of the situation or the clandestine nature of the operation proposed precludes open prior discussion in the House of Commons.”<sup>81</sup>

77 Professor Philippe Lagasse ([UMF0006](#)); Professor Gavin Phillipson ([UMF0009](#)); Dr Tara McCormack ([UMF0008](#)); Mrs Susan Rogers ([UMF0010](#)); Protection Approaches ([UMF0013](#)); All-Party Parliamentary Group on Drones ([UMF0018](#)); Reprieve ([UMF0019](#))

78 Cabinet office, [The Cabinet Manual](#), October 2011, 5.37

79 Cabinet office, [The Cabinet Manual](#), October 2011, 5.38

80 Cabinet Office ([UMF0022](#))

81 Dr James Strong ([UMF0003](#))

53. Lord Hague singled out Dr Strong's evidence as providing a good definition of the convention, but added that there are still "many areas of uncertainty".<sup>82</sup> Jack Straw also agreed with this formulation of the convention and indicated that the core of the convention was clearly understood when he said:<sup>83</sup>

There is now the clearest possible appreciation by Ministers of every party that if there is a major decision to be made about military action, it has to go to the House of Commons for approval and it has to be on a substantive motion.<sup>84</sup>

54. Jack Straw's assessment was reflected in the evidence from the Chancellor of the Duchy of Lancaster and the Minister for the Armed Forces, who were both clear that troops would not be deployed without prior consultation with Parliament unless certain exceptions applied.<sup>85</sup> The Chancellor of the Duchy of Lancaster told us:

The convention makes it clear now that Government have a duty to seek prior authorisation from Parliament, unless there are good reasons not to do so and, if those good reasons do exist, nevertheless to come to Parliament at the earliest opportunity and be held to account for the decisions that have been taken and to explain those decisions.<sup>86</sup>

**55. We have found a general consensus in the evidence to this inquiry that the Government is expected to seek prior authorisation from the House of Commons before taking military action, subject to certain exceptions, such as the need to respond quickly or if it would otherwise preclude open, prior debate in the House of Commons. Furthermore, where exceptional action is taken without prior approval, the Government is expected to come to Parliament at the earliest opportunity to explain and be held to account for its decisions.**

### *Exceptions to the duty to consult the House of Commons in advance*

56. While we found consensus in the evidence around the core convention, there was also consensus that a considerable degree of uncertainty remains in relation to the scope of its exceptions.

57. The Government told us that it views the exceptions to the convention as "important to ensure that this and future governments can use their judgement about how best to protect the security and interests of the UK".<sup>87</sup> Both the Minister for the Armed Forces and the Government's written submission expanded on the exceptions set out in the Cabinet Manual and elucidated what the Government now views as the four bases for taking military action without prior consultation in Parliament:

First, where it could compromise the effectiveness of our operations and the safety of British service men and women. Second, to protect our sources

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82 [Q189](#)

83 [Q190](#)

84 [Q191](#)

85 [Q235](#)

86 [Q245](#)

87 Cabinet Office ([UMF0022](#))

of secret intelligence. Third, so as not to undermine the effectiveness or security of operational partners. Fourth, where the legal basis for action has previously been agreed by Parliament.<sup>88</sup>

58. Professor Phillipson said that the scope of the exceptions to the convention was uncertain, describing them as “vague”.<sup>89</sup> Sebastian Payne was clear that there needed to be some exceptions, but worried that a lack of clarity about their scope could render the convention of consulting Parliament pointless.<sup>90</sup> When asked about this concern, both Jack Straw and Lord Hague agreed there was a need for greater clarity, however they were equally clear in rejecting the idea that the convention might be pointless. They considered that the convention, even with its grey areas, would clearly apply if situations similar to the Second World War, the Korean War, Falkland Islands, Iraq or Libya arose again, and in such circumstances the convention would require the Government to seek the support of the House of Commons for proposed military action.<sup>91</sup>

59. Jack Straw told us that the uncertainty around the exceptions should be addressed by clarifying the circumstances in which the House of Commons should be invited to debate government decisions to be involved in military action. However, he was clear that, as there is widespread agreement that the Commons should not sit in the place of the Government:

some decisions have to be effected and implemented without coming to the Commons, there is always going to be a grey area where it will be a matter of judgment for the senior Ministers of the day as to whether the Commons is involved.<sup>92</sup>

60. From the military perspective there was a clear need for exceptions to the convention to be understood. Admiral Lord West thought there were many circumstances in which parliamentary debate before military action might be a “real problem” and that he was “not at all sure it is the best thing”.<sup>93</sup> Rather than debating military action in advance, he thought it was important for parliament to carry out post-hoc scrutiny of the basis for Government decisions.<sup>94</sup> Air Chief Marshal Sir Glenn Torpy raised the concern that previous uncertainty around consulting Parliament in advance of military action in Iraq had led to a protracted decision-making process. He cautioned that, if this occurred in future, it could “undermine the ability to generate the forces and then deploy them”.<sup>95</sup> General Sir Richard Barrons said that evolving modes of conflict meant that surprise and discretion were increasingly important and there may in future be a number of operations that the House of Commons would need to debate after the action was launched.<sup>96</sup>

61. When asked what he thought the exceptions to the convention should be, the Chancellor of the Duchy of Lancaster said that he thought they were: where there is a need for “operational flexibility” so that commanders do not have to “await a steer from Westminster” and can take the decisions in order to “deliver the mission that Ministers

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88 Cabinet Office ([UMF0022](#))

89 [Q54](#)

90 [Q54](#)

91 [Qq191–192](#)

92 [Q190](#)

93 [Q154](#)

94 [Q154](#)

95 [Q137](#)

96 [Q154](#)

on behalf of the Crown have given them”;<sup>97</sup> where there is a need for secrecy in advance of the operation so it is not compromised; where ministers have to act in an emergency; and he also suggested there may be a need for exceptions in areas where conflict is unclear, such as hybrid conflict and warfare.<sup>98</sup>

62. Lord Hague said that the areas of uncertainty were, in particular, highlighted by decisions over military action in Syria in 2013 and 2018. In relation to the 2013 action, when he was Foreign Secretary, Lord Hague said that:

I think that we probably did in several ways judge it incorrectly, but since all we had ever had in mind in that situation was a rapid, limited, one-off operation, not boots on the ground and becoming involved in a wider conflict, in retrospect, as indeed we saw last year when the Government took military action on Syria, it would have been better to make that decision.<sup>99</sup>

The difficulty with that vote, he said, was that the Government had come to the House advocating for a much smaller military action than had previously been taken. But the Government had not been able to explain, for “good operational reasons just how limited it was going to be, and then a misunderstanding can arise in Parliament”.<sup>100</sup> This assessment was shared by General Barrons, Commander of the Joint Forces Command during this period, who said that the “discussion in officialdom that had gone to a point of certainty that this was the right thing to do” but that there was a “failure of political mobilisation”.<sup>101</sup>

63. The 2018 Syria military action, taken without prior consultation with Parliament, was used by several people as evidence for how the Government can limit the scope of the convention. Dr Tara McCormack, University of Leicester, observed that Prime Minister Theresa May’s statement to the House of Commons following the 2018 Syria airstrikes both confirmed the Government’s acceptance of the convention and, at the same time, potentially limited its scope by saying that the air strikes she ordered did not fall within the remit of the convention.<sup>102</sup> Dr McCormack noted that the airstrike action taken in 2018 was essentially the same as in 2013 and 2015 when Prime Minister David Cameron asked the Commons for authorisation.<sup>103</sup> Both Professor Phillipson and Professor Lagasse also told us that the Prime Minister’s speech indicated a broader exception than had previously been thought. They both considered that it demonstrated the Government’s ability to determine and alter the scope of the convention and that this increased uncertainty.<sup>104</sup>

**64. There is consensus around the need for exceptions to the convention that, where possible, the Government will seek parliamentary approval for planned military action. The Government should be able to exercise its judgement about how best to protect the security and interests of the UK. We note that the Government has set out four broad bases under which it might not seek prior authorisation. These are, where it could compromise the effectiveness of UK operations and the safety of British**

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97 [Q235](#)

98 [Q235](#)

99 [Q193](#)

100 [Q193](#)

101 [Q165](#)

102 [Q90](#); HC Deb, 16 April 2018, [col 39–92](#), [Commons Chamber]; HC Deb, 16 April 2018, [col 200–209](#), [Commons Chamber]

103 Dr Tara McCormack ([UMF0008](#))

104 [Q55](#); Professor Gavin Phillipson ([UMF0009](#)); Professor Philippe Lagasse ([UMF0006](#))

service men and women; to protect the UK's sources of secret intelligence; so as not to undermine the effectiveness or security of operational partners; and where the legal basis for action has previously been agreed by Parliament.

65. However, there is also a legitimate concern that the Government will remain the sole arbiter of what constitutes military action such as would require parliamentary approval under the post-2003 convention; what the exceptions to the convention are; and whether the planned military action falls under one of these exceptions. This is of particular importance in respect of clandestine operations and other areas of sub-conflict confrontation which are becoming much more frequent, and this includes instances when Parliament may not even be notified of actions that could quickly escalate into full conflict.

66. We attach the highest importance to the concerns expressed by former leaders of the Armed Forces about the possibility of parliamentary consultation on proposed military action leading to a protracted decision-making process and the potentially negative implications this could have for military preparations. It is important that Parliament, and in particular the House of Commons, is cognisant of the need for nimble decision-making and the Government would be right to reflect this in the way the convention is applied.

67. In line with our earlier conclusion, it is clear that the reference to the post-2003 convention in the Cabinet Manual lacks clarity. This may have been the cause of some unnecessary uncertainty around the convention. The Cabinet Manual is not the source of this or any other rule, but it is viewed by many as an essential guide. The Cabinet Manual should be an accurate record and give an accurate and up-to-date account of how the convention will be applied.

68. *The Cabinet Manual should be reviewed and updated to set out an accurate account of how the conventions around the use of the royal prerogative power in relation to military action will be applied, together with a clearer exposition of the exceptions to those conventions. References should identify sources of authority and precedent.*

## 4 Formalising the convention: legislation and resolution

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69. Concerns about the uncertainties surrounding the post-2003 convention have led to calls to formalise it. Both legislation and a resolution of the House of Commons have been proposed as methods of formalising the convention.

70. One of the main recommendations from the Public Administration Select Committee's report *Taming the Prerogative* was that the executive power in the royal prerogative be put on a statutory footing and "war powers" was singled out as one of the first areas where this should be pursued. However, no specific legislation setting out the arrangements was proposed by the Committee in the report. The first serious consideration of formalisation through both legislation and resolution took place as part of the Governance of Britain series of papers under the last Labour Government.

71. The Governance of Britain, *War powers and treaties: Limiting Executive powers* consultation paper set out four draft options: legislation, a detailed resolution, a simple resolution, and a hybrid option.<sup>105</sup> Following the consultation, the Government said that it favoured the detailed resolution option, but as Jack Straw noted in his evidence to the Lords Committee in 2013, the resolution was not passed as it faced opposition from the Ministry of Defence and, after the 2008 financial crash, the attention needed from Prime Minister Gordon Brown to push it through had not been available.<sup>106</sup>

72. Lord Hague told us that when the Coalition Government came to power in 2010 it set out from its first day to formalise decision-making in relation to military action and so established the National Security Council.<sup>107</sup> Then in 2011, when closing the debate on a motion to approve the Government's military actions in Libya, Lord Hague, then Foreign Secretary, said the Government would "enshrine in law for the future the necessity of consulting Parliament on military action".<sup>108</sup>

73. Lord Hague told us that this commitment to put the convention on a statutory basis, had been in line with his "long-held view... about the royal prerogative in general".<sup>109</sup> But he also made clear that this was a commitment made with the full agreement and encouragement of Prime Minister David Cameron. The Coalition Government did not bring forward legislation and, as the Government's written evidence noted, in 2016 the Government "concluded that the prerogative remained the appropriate mechanism for deploying military force".<sup>110</sup> The Secretary of State for Defence set out the reasons for the

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105 The legislative option provided detailed processes and mechanisms for how approval should be sought and what the exceptions would be, and it also set out definitions for armed conflict and armed forces. The detailed resolution was very similar to the legislation, but relied on political and not legal authority to enforce it. The general resolution sets out the principle that the Government should seek approval from Parliament and that there are exceptions, but leaves out details of how the process should work. The hybrid option set out the obligation to seek approval from the House of Commons and definitions, but left the processes up to Parliament.

106 Oral evidence taken before the House of Lords Select Committee on the Constitution on 12 June 2013, HL 46, [Q34](#) [Jack Straw]

107 [Q186](#)

108 HC Deb, 21 March 2011, [col 799](#) [Commons Chamber]

109 [Q197](#)

110 Cabinet Office ([UMF0022](#))

decision in a written ministerial statement.<sup>111</sup> While Lord Hague was not party to that decision, he told us that he too had “reluctantly” come to the view that it was a mistake to set down the convention in statute. He explained that it became clear that “it was very, very difficult to frame all the contingencies that might exist, and there was a danger of decisions about military action ending up in the courts”.<sup>112</sup>

74. In 2014, while setting down the convention in statute was still Government policy, the Political and Constitutional Reform Committee published its final report in its *Parliament’s Role in Conflict Decisions* series. The report welcomed the commitment to enshrine the convention in statute, but said the Government’s priority should be to agree a resolution.<sup>113</sup> To aid this, a draft resolution was annexed to the report.<sup>114</sup> While the Government did not produce a response to the report, the 2016 statement by the Defence Secretary also ruled out a resolution.

75. In its written evidence to this inquiry, the Government said it was “mindful of the difficulties and risks” of formalising the convention, either by legislation or resolution. It further stated that, “Codifying the particular circumstances where Parliament should be consulted, and where it should not, would likely undermine our ability to act.”<sup>115</sup>

76. When asked about the Government’s opposition to formalising the convention through legislation or a resolution, both the Chancellor of the Duchy of Lancaster and the Minister for the Armed Forces emphasised the difficulties of future-proofing. The Minister for the Armed Forces described this as the “principal objection” as he said legislation could not cover “every single potential situation that we may face” and he did “not want to lose the flexibility to be able to react to situations I may not be aware of now”.<sup>116</sup> The Chancellor of the Duchy of Lancaster added to this concerns about the exceptions and the need to be able to act with the element of surprise or in an emergency. He raised the problem that setting out the convention in law would create a risk of involving the courts, and that formalising the convention could risk operational flexibility.<sup>117</sup> Finally, he noted that sometimes the information that affects a decision is secret intelligence and cannot be shared more widely.<sup>118</sup> When asked specifically about a resolution, the Chancellor of the Duchy of Lancaster said:

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111 [HCWS678 We cannot predict the situations that the UK and its Armed Forces may face in future. If we were to attempt to clarify more precisely circumstances in which we would consult Parliament before taking military action, we would constrain the operational flexibility of the Armed Forces and prejudice the capability, effectiveness or security of those forces, or be accused of acting in bad faith if unexpected developments were to require us to act differently...](#)

[... After careful consideration, the Government has decided that it will not be codifying the Convention in law or by resolution of the House in order to retain the ability of this and future Governments and the Armed Forces to protect the security and interests of the UK in circumstances that we cannot predict, and to avoid such decisions becoming subject to legal action.](#)

112 [Q197](#)

113 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament’s role in conflict decisions: A way forward](#), HC 892, 49

114 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament’s role in conflict decisions: A way forward](#), HC 892, Annex

115 Cabinet Office ([UMF0022](#))

116 [Q254](#)

117 [Q253](#)

118 [Q253](#)

The problem with it is, while it would carry greater flexibility than primary legislation, it carries the same problems in almost inevitably not being able to be drafted in a way that provides for all possible contingencies, particularly given how the character of conflict might change.<sup>119</sup>

77. However, while stepping back from commitments to legislative formalisation, both Lord Hague and Jack Straw considered that some form of codification was still important to reduce the uncertainties between the Government and Parliament in such a vital area of national policy.<sup>120</sup> According to Lord Hague, such codification would provide greater democratic legitimacy, more robust accountability and scrutiny, and would ultimately lead to better decisions.<sup>121</sup> He said that he thought that the convention could be improved; it could be codified in a way that avoided serious misunderstandings between Government and Parliament, as had happened in relation to Syria in 2013.<sup>122</sup>

78. While there was scepticism about the appropriateness of setting the post-2003 convention out in legislation, there were several advocates of a resolution being the best route forward. Professor Phillipson suggested that it would allow the House of Commons to consider what role it should have in a general constitutional sense, divorced from the controversies of a particular case, where the merits of the particular military action would be likely to interfere with thinking about the fundamental principles. It would also, he suggested, prevent the convention developing in a haphazard way, driven by the Executive and “short-term political exigencies”.<sup>123</sup>

79. Sebastian Payne said he thought there would be an advantage to having a resolution, as it would emphasise that this is a matter between Government and Parliament, and an Act of Parliament could change that position by including the courts.<sup>124</sup> He thought that Parliament should consider how it could “add to the decision-making process in different scenarios and under what circumstances should it be left to the Government”.<sup>125</sup> A resolution would formally set out what the convention was, and how it would be expected to function. The intention of passing a resolution rather than legislation would be that the convention would be given clearer political authority without placing legally-binding restrictions on the Government.

80. A resolution would not prevent a future government with a large majority from declining to follow the post-2003 convention as set out in that resolution.<sup>126</sup> However, as Jack Straw stated in 2013, a resolution would set out not only to the House of Commons but also to the public, who he described as the “the owners of our constitutional arrangements”, where the power over military action should ultimately lie.<sup>127</sup>

**81. The decision to deploy military force is an executive function, exercised in modern times by the Prime Minister in conjunction with the Cabinet. While we believe that the involvement of Parliament at the earliest possible stage of decision-making is vital, we**

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119 [Q255](#)

120 [Q196](#)

121 [Q196](#)

122 [Q196](#)

123 [Q55](#)

124 [Q55](#), [Q57](#)

125 [Q55](#)

126 [Q116](#)

127 [Oral evidence taken before the House of Lords Select Committee on the Constitution on 12 June 2013, HL 46, Q38 \[Jack Straw\]](#)

consider that any statutory formalisation of this expectation would create new risks. Members of Parliament are not in possession of the depth and quality of information and confidential advice necessary to take on the role of primary decision-makers. We are persuaded by the evidence that any attempt to legislate for all possible contingencies and exceptions would lead to unintended and unfortunate consequences, including the unwelcome possibility of judicial review of government decisions as well as legal action against members of the Armed Forces and consequent uncertainty in relation to the deployment of military force, which could be detrimental to the national interest. We regard it as significant that two former foreign secretaries who had previously been committed to the principle of statutory formalisation have since changed their minds. The Government should, nevertheless, be held accountable for its actions and policies, and Parliament, and the House of Commons in particular, should continue to develop its scrutiny role.

82. We were not convinced by the Government's arguments against setting out the post-2003 convention in a resolution of the House of Commons. We note the Government's concerns in relation to the difficulty of anticipating all contingencies, and the need to adapt to the changing nature of conflict. These are strong arguments which preclude the legally enforceable constraints of statutory codification, but not the political constraints of a resolution of the House of Commons requiring a debate and a vote of the House of Commons. A resolution would provide both clarity and flexibility for the Government to act in ways not previously anticipated, but still within the spirit of the post-2003 convention and the exceptions.

83. *We therefore recommend a resolution that would acknowledge the core convention and work in conjunction with agreed changes to practices in the communication between the Government and the House of Commons. We set out a draft resolution in paragraph 133. We also invite the Procedure Committee to consider whether the procedures of the House of Commons should be changed to allow the Government, in exceptional circumstances, to table without the customary minimum period of notice a motion seeking the authorisation of the House of Commons for military action, to be scheduled alongside previously announced business in similar fashion to the scheduling of emergency debates agreed to by the House under Standing Order No. 24.*

## 5 Parliamentary scrutiny

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### Scrutiny and direct Commons authorisation

84. The understanding that Parliament and, in particular, the House of Commons should scrutinise the Government's use of the royal prerogative in general, and in relation to authorising military force in particular, is a widely accepted convention. As set out in Chapter 3, there is also now an accepted convention that the House of Commons should be asked to give its direct consent for military action, unless there are exceptional circumstances. However, debate continues in relation to the extent to which effective scrutiny is possible; when scrutiny and votes that give direct consent should take place; and who determines these issues. These questions are particularly relevant in relation to activities falling within the exceptions to the new convention that Parliament shall be consulted in advance of armed conflict, and in relation to the emerging challenges arising out of the changing nature of conflict.

85. The Government accepts the need for and importance of parliamentary scrutiny. The Chancellor of the Duchy of Lancaster said that “[t]he principle of advance parliamentary scrutiny as well as post facto parliamentary scrutiny is right”, but emphasised that “there are good reasons why there are exceptions”.<sup>128</sup> He identified two purposes of scrutiny from the Government perspective:

[I]t provides the advantage of confidence that when Ministers are about to embark on a decision that is likely to risk the lives of serving personnel, they have the confidence of the House of Commons in doing so and to know that there is that degree of support—ideally support across party lines—in the House of Commons ...

...More generally, in terms of explaining—both to domestic public opinion and to international audiences—why the Government have acted in a particular way, it is of assistance to be able to say that we have clear political endorsement through the appropriate democratic mechanism.<sup>129</sup>

86. The Chancellor of the Duchy of Lancaster concluded that he did not think there was a “shortage of opportunities for parliamentarians to bring their voice to the debate and to influence Ministers”, noting the mechanisms of select committees, in particular the Defence Committee, parliamentary questions, and devices available in Standing Orders.<sup>130</sup> The Minister for the Armed Forces also pointed out that he and the Secretary of State for Defence regularly appear before the Defence Committee and answer Defence Questions on the floor of the House of Commons.<sup>131</sup> Some witnesses also highlighted the recent use of an humble Address by the House of Commons to compel the Government to publish the Attorney General's legal advice, and speculated that the House could do this in relation to controversial proposed military action.<sup>132</sup> However, the Chancellor of the Duchy of Lancaster said that using an humble Address would:

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128 [Q234](#)

129 [Q234](#)

130 [Q244](#)

131 [Q238](#)

132 [Q53](#), Dr James Strong ([UMF0003](#))

... take us into very difficult territory, if the purpose of the humble Address was to seek information that the Ministers responsible for that operation felt would be prejudicial either to the outcome of it or to the safety of men and women in the field.<sup>133</sup>

87. The Minister for the Armed Forces said that he thought it was important to separate where Parliament should and should not be involved. He said that there was a conflict threshold or line and that any military activity that fell below this line, and so was sub-conflict military action or deployment, would not be covered by the convention.<sup>134</sup> He told us that he thought “most military deployments ... would not engage the convention and would not be debated in Parliament”.<sup>135</sup> In addressing the difficulty of defining when military action constitutes a conflict, he said that, while there are not clear legal definitions the Ministry of Defence was quite clear “as to what constitutes a conflict and what does not”.<sup>136</sup>

88. Several witnesses to this inquiry emphasised the nature of the relationship between the Government and Parliament in relation to decisions to deploy military force. It is the function of Government to “formulate the policy and make the decisions”, and it is “for Parliament to scrutinise, to analyse and in some cases even to reject proposals”.<sup>137</sup> As mentioned previously, Professor Phillipson referred to the classic Westminster system of Government, where “the Government proposes, and Parliament scrutinises and then either gives its assent or does not give its assent”.<sup>138</sup> The Government is as responsible to Parliament for the decisions it takes on military action as it is for the rest of its decisions.<sup>139</sup>

89. Jack Straw told us that parliamentary scrutiny of government policy on military action, like scrutiny of areas like the National Health Service, was appropriate because in a democracy “the most serious decisions made by Cabinet should be the subject not only of scrutiny but, where possible, of advance endorsement as well”.<sup>140</sup> He also highlighted the success of the Intelligence and Security Committee in conducting scrutiny and holding to account institutions that have a high level of secrecy.<sup>141</sup>

90. Lord Hague was clear that he thought better decisions were made as a result of strong scrutiny of government by Parliament, and that “we should keep trying to improve and codify this process where possible”.<sup>142</sup> He suggested that better scrutiny of the Government could be carried out if access to a higher level of information and briefing were given to committees, that could then report to the House of Commons as a whole.<sup>143</sup> He said one of the biggest problems in the relationship between the House of Commons and the Government is that “there is a major problem of trust”. He had encountered this in 2013 over the Syria vote, where colleagues said to him, “ We do not believe anyone in

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133 [Q239](#)

134 [Qq235–236](#)

135 [Letter from Minister for the Armed Forces to Chair, 11 July 2019](#)

136 [Q238](#)

137 [Q41](#) (Sebastian Payne)

138 [Q43](#)

139 [Q24](#)

140 [Q194](#)

141 [Q178](#)

142 [Q190](#)

143 [Q190](#)

Government anymore after the weapons of mass destruction experience.”<sup>144</sup> This, for him, further strengthened the “argument for enhancing the scrutiny, knowledge, education and awareness at least of some of the committees of Parliament”.<sup>145</sup>

91. Enhancing the ability of the House of Commons to scrutinise Government policy over military action was strongly supported in our evidence. Professor Lagasse argued that Parliament should focus attempts at further reform on increasing and strengthening parliamentary scrutiny of executive decisions rather than seeking to expand further the convention on prior authorisation.<sup>146</sup> Similarly, the All Party Parliamentary Group on Drones told us that “when a pre-deployment vote is not possible, mechanisms to enable post-hoc scrutiny within Parliament must be strengthened and formalised”.<sup>147</sup>

92. Some witnesses wanted a further strengthening of prior and on-going scrutiny. Dr McCormack drew attention to the Chilcot report and the Intelligence and Security Committee report, which she said were examples of excellent and hard-hitting scrutiny, but also demonstrated the limits of current parliamentary scrutiny because they were retrospective.<sup>148</sup> Dr Kenealy also emphasised that “Parliament is a law-making and policy-approving body, not merely a retrospective scrutiniser of the activities of government”.<sup>149</sup> He pointed out that Parliament regularly scrutinises Government policy, makes contributions to the substance of that policy and then retains the right ultimately to decide whether or not to approve the policy.<sup>150</sup>

**93. It is the function and responsibility of those in Government to make policy and take decisions. Scrutiny of the Government’s policy and actions is a fundamental function and responsibility of Parliament, which falls particularly on Members of the House of Commons as elected representatives. Scrutiny performs a vital constitutional role as it ensures that the actions taken by the Government, on the authority of the House of Commons, are checked and where necessary adapted or halted. Scrutiny should give assurance to ministers that they are acting with the confidence of the House of Commons, and give assurance to the public that policies have the endorsement of the House of Commons. It is clear to us that strong scrutiny of Government leads to better decisions. This applies as much to the decisions and policies on military action, as it does to any other area of Government policy and decision-making.**

**94. The decision by the Government that a particular action or a category of action should not require prior consultation and approval by the House of Commons is one that must be open to full scrutiny.**

**95. *Where military action is taken under an exception to the post-2003 convention of prior consultation with the House of Commons, the Government should, at the earliest feasible moment, make a statement to the House and, where necessary, seek retrospective approval. The Government should also produce a report setting out in full its reasons for taking action without prior consultation, which should be presented to***

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144 [Q221](#)

145 [Q221](#)

146 Professor Philippe Lagasse ([UMF0006](#))

147 All-Party Parliamentary Group on Drones ([UMF0018](#))

148 Dr Tara McCormack ([UMF0008](#))t

149 Dr Daniel Kenealy ([UMF0020](#))

150 Dr Daniel Kenealy ([UMF0020](#))

*the Defence Committee. The Committee would then report to the House as to whether it was satisfied or not with the Government's explanation, and its report would be the subject of a debate on the next sitting day on a substantive motion.*

96. The post-2003 convention of prior consultation with the House of Commons developed as a mechanism to ensure that decisions on military action were democratically authorised and accountable. As the debate around the exceptions to the convention demonstrates, direct, prior consent is not always appropriate or possible. However, this does not mean that in these areas there is no need for democratic accountability and authorisation. It simply leads us to conclude that the mechanisms by which accountability and authorisation are achieved must be different. The increasing frequency and importance of sub-conflict confrontations highlighted throughout the evidence poses new challenges both for the Government and Parliament. While we accept that much of this would not, and should not, be covered by the existing convention on prior parliamentary approval, we do not accept the view of the Minister for the Armed Forces that these are not issues for Parliament. On the contrary, it is imperative that the House of Commons considers how it can effectively fulfil its duty to hold the Government to account in relation to foreign policy and defence issues.

97. *The House of Commons should ensure that the Government continues to ask for its approval for proposed military action in every instance where it is appropriate. Where this is not possible for operational or other reasons, the House of Commons should seek to strengthen its ability to scrutinise the Government's policy and actions in relation to military action and confrontation. In this regard, it is important that the House of Commons does not wait for an issue to reach the point of military conflict before it engages with the substance of it through debate, both in committee and on the floor of the House. Similarly, the Government should not delay, without good reason, in seeking the view of the House of Commons in areas it can see are likely to become areas of concern.*

## How Parliament considers foreign affairs and defence

98. One of the most striking and concerning issues raised in our inquiry was the view expressed by the former leaders of the Armed Forces that politicians, both in Government and in Parliament, were uninformed, under-educated and under-prepared to debate the issues surrounding international conflict.<sup>151</sup> General Sir Richard Barrons said that he thought the quality of debate among politicians on military action was “lousy”.<sup>152</sup> He went on to say there was a “massive failure” in the education and training of political leaders, who often have no interest in the business of conflict and security. He expressed concern that positions and decisions on important issues were arrived at only through a snapshot understanding of the issues. He also observed that the Military finds that politicians and Whitehall officials do not even share a common lexicon with military advisers. In general, he thought that as a country “our conversations and our political discourse about conflict and security are generally uninformed and poor”.<sup>153</sup> Admiral Lord West agreed with General Barrons' assessment, although he said that there were a few individuals in Parliament that understood the issues. In general, he found politicians'

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151 [Q163](#)

152 [Q163](#)

153 [Q163](#)

lack of understanding of what the Military could and could not do “extremely worrying”.<sup>154</sup> He suggested that the lack of military experience among politicians might have led them to forget or not realise “how visceral and thoroughly nasty” war is and that “wars effectively mean killing people and killing them in a pretty nasty way”.<sup>155</sup>

99. When General Sir Richard Barrons was asked about his view on the Syria debate in 2013, which took place while he was Commander of the Joint Forces Command, he described the debate as a “failure of political mobilisation”. He told us that there was certainly a view among officials that taking the proposed action in Syria was the right thing to do, but that the Government did not provide sufficient briefing to Members of the House of Commons. The result, he said, was that the decision was taken on a debate that appeared to him “rushed and rather amateur”.<sup>156</sup> Lord Hague shared this assessment of why the action in Syria was not approved. He thought, in retrospect, that the Government had failed to provide the House of Commons with the information and the reassurances it required.<sup>157</sup> This view of the quality of the Syria debate in 2013 contrasted with the view expressed by Professor Phillipson, who described it as “a forensic examination of the Government’s case”; and Dr McCormack, who described it as “excellent” and said that Members of the House of Commons asked many, “very probing questions”.<sup>158</sup>

100. When asked how the quality of debates on military action could be improved, General Sir Richard Barrons identified two primary routes. First, there needed to be investment in the training and education of political leaders. Second, he said that there needed to be improvements in “the way that Parliament exercises oversight of military operations”.<sup>159</sup>

101. The former leaders of the Armed Forces were not alone in their concerns about the knowledge and engagement of parliamentarians with the issues involved in military action. Sebastian Payne said that Parliament needed to engage actively in foreign affairs and defence issues, and that knowledge and access to information was vital for this. Lord Hague also thought that Members of the House of Commons would benefit from more information and education in order to help them make the decisions about military action which, as the elected representatives of the people, they were qualified to make. This should take the form of:

... regular enhancement of their knowledge and understanding of these situations, of the choices being made by Government, the capabilities of armed forces, and the activities of potential adversaries. It would be a bigger commitment than just coming to a meeting once when military action was envisaged.<sup>160</sup>

102. Jack Straw told us that greater parliamentary engagement would not replace the decision-making responsibilities of ministers. The decision to engage in armed conflict would still be taken by the Prime Minister and Cabinet. Involving Members of Parliament through committees, he said, would allow for testing the opinion of the House and, hopefully, aid in building a consensus.

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154 [Q163](#)

155 [Q164](#)

156 [Q165](#)

157 [Q196](#)

158 [Q63](#) [Phillipson]; [Q101](#) [McCormack]

159 [Q164](#)

160 [Q208](#)

### General defence debates

103. Both Jack Straw and Lord Hague said that they believed the House of Commons should spend more time debating foreign affairs and defence. Until 1998 a Service Day debate for each of the Armed Forces and two days of debate on the Statement on Defence Estimates took place every year. Following the Strategic Defence Review 1998, the Labour Government changed the policy and committed to five set-piece defence debates a year on: Defence Policy; Defence in the UK; Defence in the World; Armed Forces personnel; and Defence Procurement. When the Backbench Business Committee was established in 2010 these “set piece debate” days were included along with other “set piece debates” in 35 days over which the Committee was given control.<sup>161</sup> The intention set out in the Backbench Business Committee’s initial report was to continue the defence debates for the first session.<sup>162</sup> However, none of these general defence debates appear to have taken place since the establishment of the Backbench Business Committee, although one or two debates a year have taken place on specific defence-related topics.<sup>163</sup> Both Jack Straw and Lord Hague agreed that the House of Commons had lost something meaningful when these debates were stopped. Jack Straw added that “we should get those debates back for a start”, and Lord Hague said that he believed “Parliament needs to spend more time on foreign affairs and defence”, but that there needed to be “a decision of the House to bring [these debates] back”.<sup>164</sup>

104. When asked about whether the Government provides enough opportunities for the House of Commons to debate defence issues, the Chancellor of the Duchy of Lancaster said he thought the opportunities were there.<sup>165</sup> Addressing the five defence debates, he was clear, however, that the Government had given these up and it was for now an issue for the Backbench Business Committee “to decide what the appropriate priorities are for them to use to fill that time”.<sup>166</sup> He said that there is indeed an argument to say the House of Commons lost something because these defence matters were no longer being formally and regularly debated, but he considered that this loss had to be “set against the gain to the House from having time that is outwith the Government’s control”.<sup>167</sup>

105. When asked how the Government informs itself on the views of House of Commons on defence and foreign affairs, the Chancellor of the Duchy of Lancaster said:

It will vary from Minister to Minister. The Whips Office’s information gatherers will obviously advise Ministers, so the departmental Whips at Defence or the Foreign Office, will be advising their Ministers if they pick up either discontent or support, not just from the Government benches but more widely across Parliament.

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161 Backbench Business Committee, First Special Report of session 2010–12, Provisional Approach Session 2011, HC 334, para 6; House of Commons Reform Committee, *Rebuilding the House*, 24 November 2009, HC 1117

162 Backbench Business Committee, First Special Report of session 2010–12, Provisional Approach Session 2011, HC 334, para 8

163 Backbench Business Committee, [List of subjects chosen for debate during the 2016–17 session of Parliament](#) ; Backbench Business Committee, [List of subjects chosen for debate during the 2014–15 session Parliament](#) ; Backbench Business Committee, [List of subjects chosen for debate during 2013–14 session of Parliament](#); Backbench Business Committee, [List of subjects chosen for debate during 2012–13 session of Parliament](#)

164 [Qq225–226](#)

165 [Q285](#)

166 [Q285](#)

167 [Q287](#)

Ministers are MPs. If they are wise, they do make themselves available around the House. They go into the tearoom. They socialise in the Lobbies with their colleagues and make themselves available to pick up information and opinion less formally. Ministers do also meet both for one-off briefing sessions; they meet MPs for one-off briefing sessions but also more regularly will meet the members of the relevant all-party parliamentary groups or the UK delegations to the various international assemblies.<sup>168</sup>

106. The Minister for the Armed Forces also said that briefings were often available to Members, including one-to-ones with the Secretary of State for Defence, but he told us that the attendance at these meetings was low.<sup>169</sup> He suggested that the issue was often a lack of demand from Members rather than an unwillingness on the part of Defence Ministers to provide briefings, adding that “there is nothing more depressing, as a Minister, than offering a briefing and no one turning up”.<sup>170</sup>

107. **We take very seriously, as should every Member of Parliament, the concerns raised by the former leaders of the Armed Forces about the lack of knowledge and education amongst Members in relation to defence and foreign affairs, and their lack of preparedness to engage with decisions on military action. We acknowledge that Members of Parliament come from many different backgrounds and naturally have different policy interests. This variety and breadth of experience and expertise benefits the House of Commons as a whole. However, Members must take seriously their wider responsibility to inform themselves on issues which affect the nation as a whole, and foreign affairs and defence are two such areas. All Members should develop a sufficient understanding of foreign affairs and defence issues so that they are prepared to engage effectively with these most serious of issues when the nation needs them to do so.**

108. **Whatever the view of the quality of the debate in the House of Commons on the proposed military action in Syria in 2013, there was undoubtedly a failure on the part of the Government to communicate with the House its case for military action. Following the experience of Iraq and Afghanistan, trust between the House and the Government has broken down, and that resulted in the Government’s failure to win the support of the House for its proposed military action. The burden is on the Government to provide the House with the necessary information to support its policy. However, given the understandable sensitivity of some of this information, there is a duty on both the Government and the House of Commons to work together to find ways to communicate the necessary information to gain the confidence of the House of Commons.**

109. **The loss of the five annual set-piece defence debates has had a detrimental effect on MPs engagement with defence and security issues, and this is regrettable. We understand the position expressed by the Government, that it followed the recommendation of the Wright Committee in giving up control of these and other days, and that it is open to Members to request that the Backbench Business Committee reinstate these debates. We believe that these set-piece debates formed an important strand of Members’ education in defence matters. The House may wish to reflect on whether it should find a way for these defence debates to be reinstated. However, the Government also has a**

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168 [Q290](#)

169 [Q283](#)

170 [Q292](#)

**duty to ensure that the House is fully informed on such important matters of State, especially when the Government holds a near monopoly on the flow of information. While current opportunities to scrutinise the Government are comparable with those under previous administrations, we are convinced by the Government’s own argument about the need for flexibility to adapt to new challenges and changes in the nature of conflict, and believe that new mechanisms for informing the House of Commons and for providing time for debate, if necessary in government time, should be considered to keep pace with these changes.**

## The changing nature and challenges of war

110. A common theme in both oral and written evidence to the inquiry has been the changing nature of conflict and the new and emerging challenges the UK faces. For example, the Government stated:

The nature of armed conflict is evolving, driven both by the development of advanced military technology and the range of situations in which Armed Forces might be deployed.<sup>171</sup>

111. The Government highlighted this as an argument against creating formal definitions that could unwittingly impose limitations on its ability to act in the future. The Minister for the Armed Forces emphasised this point, telling us that, when he joined the Army, he was only concerned with “tanks, planes and ships” but now there are the new elements of “cyber and space that I certainly never envisaged we would be dealing with on a daily basis”.<sup>172</sup> He considered that future-proofing any convention effectively would be an impossible task given the pace of change in the nature of conflict.<sup>173</sup> Both the Minister and the Chancellor of the Duchy of Lancaster further argued that, in the context of some of these emerging types of conflict which may not engage armed force in the traditional sense, it is not always clear if they reach the threshold which would engage the convention for a prior parliamentary vote.<sup>174</sup> The Minister for the Armed Forces added that, in the case of areas like cyber, events might unfold so quickly that “it would not be possible to come and seek Parliament’s permission to respond to it”.<sup>175</sup>

112. Admiral Lord West told us that, in areas of conflict such as cyber where speed of response is of the essence, the responsibility to respond may need to be sub-ministerial and rest with someone quite junior.<sup>176</sup> General Sir Richard Barrons raised the issue that with some of the new areas of conflict like cyber and the use of proxies, producing evidence publicly to a legal standard becomes problematic if it necessitates revealing intelligence material.<sup>177</sup> General Barrons cautioned us that there was also a danger of Parliament being left behind in the era of hybrid warfare. Giving the example of current tensions and confrontations with Russia, and potentially with China, he told us Parliament must find a way to “oversee that confrontation from a policy perspective, understand what is going on and have a voice on how we identify it, call it out, and push back.”<sup>178</sup>

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171 Cabinet Office ([UMF0022](#))

172 [Q244](#)

173 [Q244](#)

174 [Qq235–236](#), [Q244](#), [Q253](#)

175 [Q265](#)

176 [Q154](#)

177 [Q141](#)

178 [Q174](#)

113. The All Party Parliamentary Group on Drones had similar concerns, telling us that “Britain’s growing military capabilities and commitments are far outpacing the existing procedures for parliamentary scrutiny and oversight”.<sup>179</sup> It said it was:

... crucial that Britain pursues the development of democratic accountability, scrutiny and oversight, that can match the rapid development of military capabilities. By grounding the responsibility of and decision to deploy force in Parliament, the UK will significantly ensure that high-stakes decisions are carefully considered and executed to the highest democratic standard.<sup>180</sup>

114. Dr McCormack raised the question of how to define what amounts to a “deployment of military force”. She told us that the current understanding of what Parliament must be consulted on is too narrow, as it appears only to include large “boots on the ground” deployments.<sup>181</sup> She suggested that any definition of what constitutes military action should consider the impact and effect of the action rather than simply the means of delivery.<sup>182</sup> Dr Strong also said that changes in the nature of warfare have complicated the question of what constitutes military deployment. While large-scale use of infantry, artillery and aerial bombardment are generally understood to fall within the definition of “armed conflict”, he considered that it was “less clear whether Special Forces, intelligence, and cyber operations, or the use of Unmanned Aerial Vehicles, meet the definition”.<sup>183</sup>

115. The Oxford Research Group also pointed out that special forces have operated both in countries where no authorisation had been given and where authorisation specifically precluded the deployment of UK ground troops.<sup>184</sup> The use of clandestine methods, Dr Strong told us, has increased over the last twenty years and if this trend continued, clandestine methods would become a significantly larger part of how the UK engaged in military conflict.<sup>185</sup> Dr Kenealy argued that “it is clearly problematic if activities that are going to form an increasingly large part of international military activities fall, by definition, outside of the [post-2003 convention]”.<sup>186</sup> As such, both Dr Strong and Dr Kenealy suggested that the exclusion of clandestine methods of conflict from the convention on parliamentary consent may have to be reconsidered.<sup>187</sup> Dr Strong said that while there are very sensible reasons why clandestine operations are not talked about in public, there was no reason why the *principle* of action being taken could not be debated.<sup>188</sup>

116. Considering this issue of the changing nature of warfare, Lord Hague said that there was increasing uncertainty as to whether there was, in fact, a state of war or peace. Jack Straw also acknowledged that potential combatants were increasing efforts to achieve what would otherwise be the political end of military action by other means. But he also said that none of these innovations in warfare change the fact that troops on the ground are needed if the aim is to liberate or recapture a city or town.<sup>189</sup>

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179 All-Party Parliamentary Group on Drones ([UMF0018](#))

180 All-Party Parliamentary Group on Drones ([UMF0018](#))

181 Dr Tara McCormack ([UMF0008](#)); [Q128](#)

182 [Q128](#); Dr Tara McCormack ([UMF0008](#))

183 Dr James Strong ([UMF0003](#))

184 Oxford Research Group ([UMF0001](#))

185 [Q108](#); Oxford Research Group ([UMF0001](#))

186 Dr Daniel Kenealy ([UMF0020](#))

187 Dr James Strong ([UMF0003](#)); Dr Daniel Kenealy ([UMF0020](#))

188 [Q129](#)

189 [Q204](#)

117. **Developments in the nature of conflict highlight the need for both the Government and Parliament to adapt rapidly to new challenges. We support the Government's view on the importance of retaining flexibility in the decision-making process so that governments can react and adapt to as yet unknown challenges. However, in a democracy such executive flexibility must be subject to democratic scrutiny. The challenges posed by the changing nature of conflict must be taken seriously.**

118. **We agree with the Government that the uncertainty around these areas such hybrid and cyber warfare requires flexibility over decision-making, and that direct approval from the House of Commons may not be appropriate or possible. The House of Commons must be flexible and be ready to adapt by keeping itself informed. We judge that the House has work to do to keep abreast of developments in areas such as in hybrid and cyber warfare. At the same time, we accept the need for secrecy around the use of clandestine operations and in relation to intelligence.**

119. *The House of Commons should consider how it best manages these competing demands. We are persuaded, for example, that the principle of how special forces and drones are utilised should be considered by the House, even if specific instances of deployment cannot be debated openly. This would both hold the Government to account for its general policy and give the Government guidance in relation to the types of policy which the House of Commons would, in principle, tolerate and support.*

### Potential expanded and new roles for committees

120. Throughout the evidence to the inquiry, the idea of expanding and establishing new roles for committees of the House of Commons has been suggested as a way to address some of the issues, concerns and uncertainty surrounding the authorisation of the use of military force.

121. Lord Hague and Jack Straw were very clear in their evidence that there should be new and expanded roles for the committees of the House of Commons. Lord Hague said that they should have a higher level of information and briefing, and this would then enable them to give views to the House as a whole. He emphasised that he thought this should happen through several committees rather than placing immense power and authority on one small group of Members of Parliament.<sup>190</sup> Lord Hague suggested that briefings should not just be one-offs, but rather there should be:

... some mechanism by which decisions on such matters come under scrutiny, whether that requires secret briefings to be given to parliamentary committees so that they can then alert Parliament to whether they need to have a fresh debate.<sup>191</sup>

122. Jack Straw proposed establishing a committee of the House of Commons under strict obligations of secrecy whose remit would be to consider which matters should go before the House for prior approval. He considered that this would address some of the uncertainty around the post-2003 convention.<sup>192</sup> It would also mitigate some of the problems associated with engaging in military action under the exceptions to the

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190 [Q190](#)

191 [Q183](#)

192 [Q190](#)

convention (that is, without prior approval from the House of Commons) as it would provide a means of “explaining [the Government’s reasoning] secretly to a committee of leading parliamentarians.”<sup>193</sup> Lord Hague said that this was “the only answer” to military concerns about an open debate in Parliament potentially compromising military action.<sup>194</sup>

123. General Sir Richard Barrons thought that providing a committee with “full access to the intelligence at the above secret level” was necessary for the House of Commons to provide oversight of military operations.<sup>195</sup> Sebastian Payne proposed that where information was regarded as secret, committees equivalent to the US Defence or Intelligence Committees could be given access to this information. He said that the UK’s Intelligence and Security Committee already heard evidence subject to some degree of secrecy.<sup>196</sup> Professor Phillipson also thought the Intelligence and Security Committee, or a similar committee, could be given greater access to sensitive information and this would allow it to report to the House on whether it supported the Government’s case for military action.<sup>197</sup>

124. Dr Strong suggested that this role could be spread out more effectively between committees. The Foreign Affairs Committee could be given access to greater information about the UK’s broader diplomatic strategy; the Defence Committee could be granted access to fuller information in order to scrutinise the capacity of the UK’s Armed Forces to achieve objectives; and the Intelligence and Security Committee could conduct a “smell test of any secret intelligence that could not be made public”.<sup>198</sup> Sebastian Payne suggested that giving Parliament greater access to information would likely have the effect of improving Government decision-making, because it would have to explain its policies with a greater degree of detail and sophistication.<sup>199</sup>

125. Dr Kenealy emphasised the increasing recognition of the influence of parliamentary committees and suggested that a committee be given oversight of special forces as was the case in other countries.<sup>200</sup> Reprieve told us that in Denmark information on special forces operations were provided to the Danish Parliament’s Foreign Policy Committee in a closed session.<sup>201</sup>

126. The Chancellor of the Duchy of Lancaster told us that he had seen the strategy of giving House of Commons committees greater access to information and briefings work on two counts. First, the Intelligence and Security Committee has shown that committees can operate with access to secret information, and the Government has even accepted that the Committee should operate with more independence than was originally envisaged. He also acknowledged that the Committee had not leaked. Second, he told us that, when he had been in the Foreign Office, private briefings had been given to committees in private session. This had allowed him to take Committee Members a little more into the Government’s confidence about issues it was facing. He did, however, emphasise that this was done without divulging classified information.<sup>202</sup>

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193 [Q207](#)

194 [Q207](#)

195 [Q164](#)

196 [Q61](#)

197 [Q61](#)

198 [Q127](#)

199 [Q62](#)

200 Dr Daniel Kenealy ([UMF0020](#))

201 Reprieve ([UMF0019](#))

202 [Q258](#)

127. The Chancellor of the Duchy of Lancaster made the point, though, that the issue was not just about parliamentarians trusting Ministers. He said that it was also about “Ministers feeling that they are able to trust Members of Parliament and Committees.”<sup>203</sup> Addressing the example of the Committees in the United States of America, he said he was struck that:

... it is routine for very senior officials and senior military people to give secret briefings to some of the key committees. It is done on the very clear understanding that that confidence is respected.<sup>204</sup>

128. The Chancellor of the Duchy of Lancaster considered that the idea of giving information in secret raised “quite challenging questions for Parliament”, as it went beyond the normal parliamentary practices. He told us that, in his experience, select committees had always operated on the basis that their proceedings should be in public and, wherever possible, that “information given to the Committee is in the property of the Committee and of Parliament, then to decide whether to make such information public or not”.<sup>205</sup> As such, he said, this raised “quite tricky constitutional issues for Parliament as well as for Government”.<sup>206</sup>

129. When asked if the Government would be open to providing briefings to committees on a confidential or secret basis, the Chancellor of the Duchy of Lancaster said, “the case would have to be made”.<sup>207</sup> The Minister for the Armed Forces told us, “[u]ltimately it is a balance with risk, isn’t it? It is the return of an increase in trust and at what level that is now”.<sup>208</sup> The risk he continued is that “[a] secret is not a secret once it is shared with more than those who absolutely need to know it”.<sup>209</sup> The Minister thought that the current balance between providing information to Members of the House and the risk of it coming out was about right.<sup>210</sup>

***130. Nothing should compromise the ability of governments to use military force when our national or global security is threatened, but a clearer role for the House of Commons is necessary in order to underline the legitimacy of the use of military force, and to give the public confidence that the Government is being held to account. Expanding the role of the House of Commons, and of its committees, and giving them greater and, in some instances, full access to information would strengthen both the scrutiny and development of policy in relation to foreign affairs and defence. There are precedents in other jurisdictions for committees having access to high-level information of this kind. Making the necessary arrangements so that Members of the House of Commons could be trusted to carry the responsibilities that would come with being given access to high-level and top-secret information will strengthen accountability, legitimacy and public confidence in the decisions taken.***

***131. The House of Commons must have access to as much of the information as possible so it can carry out effective scrutiny of the Government’s use of military force. In the twenty-first century, this means access to all but the most sensitive information at***

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203 [Q258](#)

204 [Q258](#)

205 [Q258](#)

206 [Q258](#)

207 [Q259](#)

208 [Q295](#)

209 [Q295](#)

210 [Q298](#)

*the earliest opportunity. This should include a summary of any relevant legal issues. Committees of the House should if possible be able to scrutinise foreign affairs and defence policy before the point of conflict is reached, so that the opinion of the House is clear and can inform the development of Government policy in advance of the need for military deployment.*

132. *In situations such as the conflict in Syria in 2013, where there was time to debate UK engagement in the conflict in advance, an appropriate committee, such as the Intelligence and Security Committee, with full access to relevant information, would be able to inform and reassure the House of Commons on the scope of the action proposed by the Government. Such a committee should be composed of Members of the House who both understand the trust and responsibility being placed on them in terms of keeping sensitive information confidential, and in whose advice and judgement the rest of the House can have confidence.*

133. *The Government should in its response to this report set out what arrangements it feels would be appropriate for committees of the House of Commons to be given access where possible to the most relevant information which have informed the Government's decisions about foreign affairs, military action and intelligence.*

134. *The House of Commons should consider and approve a substantive motion setting out the core principles of the convention governing the relationship between the Government and Parliament in relation to decisions to take military action. We propose a draft resolution for discussion:*

*“That this House:---*

- (1) recognises that Her Majesty's Government exercises Her Majesty's prerogative power to authorise the use of the UK's armed forces on her behalf on the basis that the use of force is legitimate and has the confidence of the House;*
- (2) recognises that, in order to strengthen the legitimacy of the use of military force and maintain this confidence, a convention has become established that Her Majesty's Government has a duty to inform and consult the House in relation to the deployment of the UK's armed forces in armed conflict, and to consult and seek prior authorisation from the House before engaging in military conflict, except in the following circumstances:*
  - a) where arrangements for prior authorisation could compromise the effectiveness of UK operations and the safety of British servicemen and women;*
  - b) where arrangements for prior authorisation could compromise the UK's sources of secret intelligence;*
  - c) where arrangements for prior authorisation could undermine the effectiveness or security of the UK's operational partners; or*
  - d) where a legal basis for action has previously been agreed by Parliament;*
- (3) requires, in each instance where UK armed forces have engaged in conflict without the prior authorisation of the House, that the Government shall explain its decisions to the House and be held to account for them, and that to*

*this end a Minister of the Crown shall make an oral Statement to the House, or shall provide oral evidence to a committee of the House, on the engagement at the earliest opportunity;*

- (4) *requires Her Majesty's Government, in each instance where UK forces have engaged in military conflict, to inform the House of the basis for its policy and decisions by facilitating the provision of all relevant information and intelligence material to such bodies of the House as the House shall determine, under arrangements for confidentiality which the House shall approve."*

## Conclusions and recommendations

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### The royal war prerogative: an executive function

1. The royal prerogative has for centuries been the source of legal authority to wage war and conduct foreign relations. The legal authority to order the use of military force today, is still derived from the royal prerogative and the power to deploy the UK's Armed Forces will remain under the royal prerogative unless an Act of Parliament is passed, setting out a new legal basis for the use of that power. However, who exercises these powers in practice has changed as political attitudes and constitutional arrangements in the UK have developed. In practice, the Sovereign no longer has the legitimate authority to exercise this prerogative power, which has for some time been exercised on their behalf, by ministers drawn largely from the House of Commons. The continuance of this convention is essential to the integrity of UK's constitutional arrangements and the legitimacy of the UK's use of military force. This convention is now unquestioned, and as such it is unthinkable that the Sovereign could exercise her own discretion in the use of this royal prerogative. (Paragraph 23)
2. The development of policy in relation to foreign affairs and defence is also an executive function and responsibility. It is for the Government to develop this policy and monitor, judge and react to new information that may affect it. It is for Parliament, and in particular the elected House of Commons, to scrutinise, analyse and approve or reject the Government's policy. (Paragraph 24)
3. The source of the legitimacy for the exercise of the royal prerogative to order the use of military force has changed over the years. Currently, the Prime Minister, together with the Cabinet, exercises this power on behalf of the Monarch. In a parliamentary democracy it is clear that the authority for the Government to exercise the royal prerogative is derived from having the confidence of the elected House of Commons. This fact in no way diminishes the responsibility and accountability of the Government for its policy in relation to foreign affairs and the use of military force. It is, therefore, of paramount importance that every Member of the House of Commons understands that the government of the day ultimately enters into military conflict on the basis of an authority which Members themselves have conferred through the mechanism of the confidence of the House. (Paragraph 33)

### War power conventions

4. Since the Second World War, it has been the practice of successive governments to consult the House of Commons to ensure that the will of the House is supportive of the Government's policy on armed conflict. On a number of occasions, the Government has also sought and been granted retrospective support for military action. The decision to seek prior approval from the House of Commons for the Iraq War in 2003 was the first example in modern times of a government seeking approval in advance of specified military action. While circumstances particular to the question of the 2003 Iraq War were a factor, the decision to seek prior approval from the House of Commons represented a further development of the convention

that the government of the day should consult the democratically elected House of Commons in its use of the royal prerogative before the Prime Minister gives orders to use military force. (Paragraph 38)

5. *It is important that the Cabinet Manual recognises that a convention has been in place since the Second World War that the Government will consult the House of Commons to ensure that the Government's policy on armed conflict reflects the will of the House of Commons. The Cabinet Manual should be updated to this effect. As currently drafted, the Cabinet Manual may give the erroneous impression that seeking the view of the House of Commons has been and could be treated as a formality. We further recommend that the Cabinet Manual should be updated to make clear that there are precedents for debates of this nature to take place on a substantive motion and not just on motions for the adjournment.* (Paragraph 41)
6. There is a general consensus that the 2003 vote in the House of Commons to give approval for military engagement in Iraq in advance of the commencement of conflict set a precedent. This is a development of the pre-existing convention that the House of Commons should be consulted, to include an explicit vote in advance of major military action (Paragraph 49)
7. The vote in 2003 did not itself establish the convention. Rather, it signified a shift in the expectation of Parliament and the British people that was demonstrated through recommendations by committees in both Houses of Parliament. This was also confirmed in the House of Commons in 2007 by approval of an Opposition Day resolution. The Government then recognised that a convention was emerging, and this convention was confirmed by the votes on military action in Libya in 2011 and Syria in 2013. It has for some time been unthinkable that major planned military action would not be openly discussed in Parliament. There is now an expectation that the Government would seek prior approval for such an action, where practicable to do so. (Paragraph 50)
8. We have found a general consensus in the evidence to this inquiry that the Government is expected to seek prior authorisation from the House of Commons before taking military action, subject to certain exceptions, such as the need to respond quickly or if it would otherwise preclude open, prior debate in the House of Commons. Furthermore, where exceptional action is taken without prior approval, the Government is expected to come to Parliament at the earliest opportunity to explain and be held to account for its decisions. (Paragraph 55)
9. There is consensus around the need for exceptions to the convention that, where possible, the Government will seek parliamentary approval for planned military action. The Government should be able to exercise its judgement about how best to protect the security and interests of the UK. We note that the Government has set out four broad bases under which it might not seek prior authorisation. These are, where it could compromise the effectiveness of UK operations and the safety of British service men and women; to protect the UK's sources of secret intelligence; so as not to undermine the effectiveness or security of operational partners; and where the legal basis for action has previously been agreed by Parliament. (Paragraph 64)

10. However, there is also a legitimate concern that the Government will remain the sole arbiter of what constitutes military action such as would require parliamentary approval under the post-2003 convention; what the exceptions to the convention are; and whether the planned military action falls under one of these exceptions. This is of particular importance in respect of clandestine operations and other areas of sub-conflict confrontation which are becoming much more frequent, and this includes instances when Parliament may not even be notified of actions that could quickly escalate into full conflict. (Paragraph 65)
11. We attach the highest importance to the concerns expressed by former leaders of the Armed Forces about the possibility of parliamentary consultation on proposed military action leading to a protracted decision-making process and the potentially negative implications this could have for military preparations. It is important that Parliament, and in particular the House of Commons, is cognisant of the need for nimble decision-making and the Government would be right to reflect this in the way the convention is applied. (Paragraph 66)
12. In line with our earlier conclusion, it is clear that the reference to the post-2003 convention in the Cabinet Manual lacks clarity. This may have been the cause of some unnecessary uncertainty around the convention. The Cabinet Manual is not the source of this or any other rule, but it is viewed by many as an essential guide. The Cabinet Manual should be an accurate record and give an accurate and up-to-date account of how the convention will be applied. (Paragraph 67)
13. *The Cabinet Manual should be reviewed and updated to set out an accurate account of how the conventions around the use of the royal prerogative power in relation to military action will be applied, together with a clearer exposition of the exceptions to those conventions. References should identify sources of authority and precedent.* (Paragraph 68)

### Formalising the convention: legislation and resolution

14. The decision to deploy military force is an executive function, exercised in modern times by the Prime Minister in conjunction with the Cabinet. While we believe that the involvement of Parliament at the earliest possible stage of decision-making is vital, we consider that any statutory formalisation of this expectation would create new risks. Members of Parliament are not in possession of the depth and quality of information and confidential advice necessary to take on the role of primary decision-makers. We are persuaded by the evidence that any attempt to legislate for all possible contingencies and exceptions would lead to unintended and unfortunate consequences, including the unwelcome possibility of judicial review of government decisions as well as legal action against members of the Armed Forces and consequent uncertainty in relation to the deployment of military force, which could be detrimental to the national interest. We regard it as significant that two former foreign secretaries who had previously been committed to the principle of statutory formalisation have since changed their minds. The Government should, nevertheless, be held accountable for its actions and policies, and Parliament, and the House of Commons in particular, should continue to develop its scrutiny role. (Paragraph 81)

15. We were not convinced by the Government's arguments against setting out the post-2003 convention in a resolution of the House of Commons. We note the Government's concerns in relation to the difficulty of anticipating all contingencies, and the need to adapt to the changing nature of conflict. These are strong arguments which preclude the legally enforceable constraints of statutory codification, but not the political constraints of a resolution of the House of Commons requiring a debate and a vote of the House of Commons. A resolution would provide both clarity and flexibility for the Government to act in ways not previously anticipated, but still within the spirit of the post-2003 convention and the exceptions. (Paragraph 82)
16. *We therefore recommend a resolution that would acknowledge the core convention and work in conjunction with agreed changes to practices in the communication between the Government and the House of Commons. We set out a draft resolution in paragraph 133. We also invite the Procedure Committee to consider whether the procedures of the House of Commons should be changed to allow the Government, in exceptional circumstances, to table without the customary minimum period of notice a motion seeking the authorisation of the House of Commons for military action, to be scheduled alongside previously announced business in similar fashion to the scheduling of emergency debates agreed to by the House under Standing Order No. 24.* (Paragraph 83)

### Parliamentary scrutiny

17. It is the function and responsibility of those in Government to make policy and take decisions. Scrutiny of the Government's policy and actions is a fundamental function and responsibility of Parliament, which falls particularly on Members of the House of Commons as elected representatives. Scrutiny performs a vital constitutional role as it ensures that the actions taken by the Government, on the authority of the House of Commons, are checked and where necessary adapted or halted. Scrutiny should give assurance to ministers that they are acting with the confidence of the House of Commons, and give assurance to the public that policies have the endorsement of the House of Commons. It is clear to us that strong scrutiny of Government leads to better decisions. This applies as much to the decisions and policies on military action, as it does to any other area of Government policy and decision-making. (Paragraph 93)
18. The decision by the Government that a particular action or a category of action should not require prior consultation and approval by the House of Commons is one that must be open to full scrutiny. (Paragraph 94)
19. *Where military action is taken under an exception to the post-2003 convention of prior consultation with the House of Commons, the Government should, at the earliest feasible moment, make a statement to the House and, where necessary, seek retrospective approval. The Government should also produce a report setting out in full its reasons for taking action without prior consultation, which should be presented to the Defence Committee. The Committee would then report to the House as to whether it was satisfied or not with the Government's explanation, and its report would be the subject of a debate on the next sitting day on a substantive motion.* (Paragraph 95)

20. The post-2003 convention of prior consultation with the House of Commons developed as a mechanism to ensure that decisions on military action were democratically authorised and accountable. As the debate around the exceptions to the convention demonstrates, direct, prior consent is not always appropriate or possible. However, this does not mean that in these areas there is no need for democratic accountability and authorisation. It simply leads us to conclude that the mechanisms by which accountability and authorisation are achieved must be different. The increasing frequency and importance of sub-conflict confrontations highlighted throughout the evidence poses new challenges both for the Government and Parliament. While we accept that much of this would not, and should not, be covered by the existing convention on prior parliamentary approval, we do not accept the view of the Minister for the Armed Forces that these are not issues for Parliament. On the contrary, it is imperative that the House of Commons considers how it can effectively fulfil its duty to hold the Government to account in relation to foreign policy and defence issues. (Paragraph 96)
21. *The House of Commons should ensure that the Government continues to ask for its approval for proposed military action in every instance where it is appropriate. Where this is not possible for operational or other reasons, the House of Commons should seek to strengthen its ability to scrutinise the Government's policy and actions in relation to military action and confrontation. In this regard, it is important that the House of Commons does not wait for an issue to reach the point of military conflict before it engages with the substance of it through debate, both in committee and on the floor of the House. Similarly, the Government should not delay, without good reason, in seeking the view of the House of Commons in areas it can see are likely to become areas of concern.* (Paragraph 97)
22. We take very seriously, as should every Member of Parliament, the concerns raised by the former leaders of the Armed Forces about the lack of knowledge and education amongst Members in relation to defence and foreign affairs, and their lack of preparedness to engage with decisions on military action. We acknowledge that Members of Parliament come from many different backgrounds and naturally have different policy interests. This variety and breadth of experience and expertise benefits the House of Commons as a whole. However, Members must take seriously their wider responsibility to inform themselves on issues which affect the nation as a whole, and foreign affairs and defence are two such areas. All Members should develop a sufficient understanding of foreign affairs and defence issues so that they are prepared to engage effectively with these most serious of issues when the nation needs them to do so. (Paragraph 107)
23. Whatever the view of the quality of the debate in the House of Commons on the proposed military action in Syria in 2013, there was undoubtedly a failure on the part of the Government to communicate with the House its case for military action. Following the experience of Iraq and Afghanistan, trust between the House and the Government has broken down, and that resulted in the Government's failure to win the support of the House for its proposed military action. The burden is on the Government to provide the House with the necessary information to support its policy. However, given the understandable sensitivity of some of this information,

there is a duty on both the Government and the House of Commons to work together to find ways to communicate the necessary information to gain the confidence of the House of Commons. (Paragraph 108)

24. The loss of the five annual set-piece defence debates has had a detrimental effect on MPs engagement with defence and security issues, and this is regrettable. We understand the position expressed by the Government, that it followed the recommendation of the Wright Committee in giving up control of these and other days, and that it is open to Members to request that the Backbench Business Committee reinstate these debates. We believe that these set-piece debates formed an important strand of Members' education in defence matters. The House may wish to reflect on whether it should find a way for these defence debates to be reinstated. However, the Government also has a duty to ensure that the House is fully informed on such important matters of State, especially when the Government holds a near monopoly on the flow of information. While current opportunities to scrutinise the Government are comparable with those under previous administrations, we are convinced by the Government's own argument about the need for flexibility to adapt to new challenges and changes in the nature of conflict, and believe that new mechanisms for informing the House of Commons and for providing time for debate, if necessary in government time, should be considered to keep pace with these changes. (Paragraph 109)
25. Developments in the nature of conflict highlight the need for both the Government and Parliament to adapt rapidly to new challenges. We support the Government's view on the importance of retaining flexibility in the decision-making process so that governments can react and adapt to as yet unknown challenges. However, in a democracy such executive flexibility must be subject to democratic scrutiny. The challenges posed by the changing nature of conflict must be taken seriously. (Paragraph 117)
26. We agree with the Government that the uncertainty around these areas such hybrid and cyber warfare requires flexibility over decision-making, and that direct approval from the House of Commons may not be appropriate or possible. The House of Commons must be flexible and be ready to adapt by keeping itself informed. We judge that the House has work to do to keep abreast of developments in areas such as in hybrid and cyber warfare. At the same time, we accept the need for secrecy around the use of clandestine operations and in relation to intelligence. (Paragraph 118)
27. *The House of Commons should consider how it best manages these competing demands. We are persuaded, for example, that the principle of how special forces and drones are utilised should be considered by the House, even if specific instances of deployment cannot be debated openly. This would both hold the Government to account for its general policy and give the Government guidance in relation to the types of policy which the House of Commons would, in principle, tolerate and support.* (Paragraph 119)
28. Nothing should compromise the ability of governments to use military force when our national or global security is threatened, but a clearer role for the House of Commons is necessary in order to underline the legitimacy of the use of military force, and to give the public confidence that the Government is being held to account.

Expanding the role of the House of Commons, and of its committees, and giving them greater and, in some instances, full access to information would strengthen both the scrutiny and development of policy in relation to foreign affairs and defence. There are precedents in other jurisdictions for committees having access to high-level information of this kind. Making the necessary arrangements so that Members of the House of Commons could be trusted to carry the responsibilities that would come with being given access to high-level and top-secret information will strengthen accountability, legitimacy and public confidence in the decisions taken. (Paragraph 130)

29. *The House of Commons must have access to as much of the information as possible so it can carry out effective scrutiny of the Government's use of military force. In the twenty-first century, this means access to all but the most sensitive information at the earliest opportunity. This should include a summary of any relevant legal issues. Committees of the House should if possible be able to scrutinise foreign affairs and defence policy before the point of conflict is reached, so that the opinion of the House is clear and can inform the development of Government policy in advance of the need for military deployment.* (Paragraph 131)
30. *In situations such as the conflict in Syria in 2013, where there was time to debate UK engagement in the conflict in advance, an appropriate committee, such as the Intelligence and Security Committee, with full access to relevant information, would be able to inform and reassure the House of Commons on the scope of the action proposed by the Government. Such a committee should be composed of Members of the House who both understand the trust and responsibility being placed on them in terms of keeping sensitive information confidential, and in whose advice and judgement the rest of the House can have confidence.* (Paragraph 132)
31. *The Government should in its response to this report set out what arrangements it feels would be appropriate for committees of the House of Commons to be given access where possible to the most relevant information which have informed the Government's decisions about foreign affairs, military action and intelligence.* (Paragraph 133)
32. *The House of Commons should consider and approve a substantive motion setting out the core principles of the convention governing the relationship between the Government and Parliament in relation to decisions to take military action. We propose a draft resolution for discussion:*

*“That this House:---*

- (1) *recognises that Her Majesty's Government exercises Her Majesty's prerogative power to authorise the use of the UK's armed forces on her behalf on the basis that the use of force is legitimate and has the confidence of the House;*
- (2) *recognises that, in order to strengthen the legitimacy of the use of military force and maintain this confidence, a convention has become established that Her Majesty's Government has a duty to inform and consult the House in relation to the deployment of the UK's armed forces in armed conflict, and to consult and seek prior authorisation from the House before engaging in military conflict, except in the following circumstances:*

- e) *where arrangements for prior authorisation could compromise the effectiveness of UK operations and the safety of British servicemen and women;*
  - f) *where arrangements for prior authorisation could compromise the UK's sources of secret intelligence;*
  - g) *where arrangements for prior authorisation could undermine the effectiveness or security of the UK's operational partners; or*
  - h) *where a legal basis for action has previously been agreed by Parliament;*
- (3) *requires, in each instance where UK armed forces have engaged in conflict without the prior authorisation of the House, that the Government shall explain its decisions to the House and be held to account for them, and that to this end a Minister of the Crown shall make an oral Statement to the House, or shall provide oral evidence to a committee of the House, on the engagement at the earliest opportunity;*
- (4) *requires Her Majesty's Government, in each instance where UK forces have engaged in military conflict, to inform the House of the basis for its policy and decisions by facilitating the provision of all relevant information and intelligence material to such bodies of the House as the House shall determine, under arrangements for confidentiality which the House shall approve.” (Paragraph 134)*

## Annex 1: Previous parliamentary committee reports and Government Command Papers

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1) Following the 2003 vote to authorise military action in Iraq, committees of both Houses of Parliament and the UK Government have examined the issue of Parliament's role in decisions to use military force. These reports provide the background against which Parliament's role in conflict decisions has developed. The following summary of the main conclusions and recommendations of these reports provides important context for PACAC's inquiry.

### ***Taming the prerogative: Strengthening Ministerial Accountability to Parliament (2004) - Public Administration Select Committee (PASC)***

2) In *Taming the prerogative*, PASC looked at the prerogative powers in general. The report found that many of the powers historically held by the Monarch have been delegated to ministers over the years and are therefore best described as ministerial executive powers. PASC recognised that many of the prerogative powers were necessary for effective administration, especially at times of national emergency, but raised the concern that these powers were not subject to systematic scrutiny. The report considered a range of different approaches for how prerogative powers could be scrutinised. The report concluded that a different approach to the royal prerogative powers was needed. It recommended that proposals be brought forward for "legislation to provide greater parliamentary control over all the executive powers enjoyed by Ministers under the royal prerogative".<sup>211</sup> In particular, the report specified that proposals for full parliamentary scrutiny of decisions on armed conflict, the ratifications of treaties, and revocation of passports should be produced. PASC also concluded that "any decision to engage in armed conflict should be approved by Parliament, if not before military action, then as soon as possible afterwards."<sup>212</sup>

### ***Waging war: Parliament's role and responsibility (2006) - House of Lords Constitution Committee***

3) Following the PASC report and the Government's response that they were "not persuaded" that replacing prerogative powers with a statutory framework would improve the present position, the House of Lords Constitution Committee examined the issue of Parliament's role and responsibility in relation to war powers. In its report *Waging war*, the Constitution Committee considered alternatives to the existing prerogative arrangements for deploying armed forces, whether Parliament should have a more direct role, and whether parliamentary approval should be required. The Constitution Committee concluded that:

... that the exercise of the Royal Prerogative by the Government to deploy armed force overseas is outdated and should not be allowed to continue as the basis for legitimate warmaking in our 21st century democracy.

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211 Public Administration Select Committee, Fourth Report of Session 2003–04, [Taming the Prerogative: Strengthening Ministerial Accountability to Parliament](#), HC 422, Para 60

212 Public Administration Select Committee, Fourth Report of Session 2003–04, [Taming the Prerogative: Strengthening Ministerial Accountability to Parliament](#), HC 422, Para 57

Parliament's ability to challenge the executive must be protected and strengthened. There is a need to set out more precisely the extent of the Government's deployment powers, and the role Parliament can—and should—play in their exercise.<sup>213</sup>

4) After considering a range of options for what Parliament's role should be, the Constitution Committee recommended that there should be a convention determining the role Parliament should play in decisions to deploy military force. It further recommended that this convention should require that the Government seek parliamentary approval if it were deploying forces outside the UK. It also recommended that in emergency situations action could be taken without prior consent, but the Government should then seek retrospective approval within seven days or as soon as feasibly possible.<sup>214</sup>

### **Governance of Britain (2007) - UK Government**

5) In 2007 the Conservative Party, as the Official Opposition, held an Opposition Day debate on parliamentary approval of armed conflict.<sup>215</sup> This debate built upon the conclusions and recommendations of *Taming the Prerogative*, and *Waging War* plus those of the Conservative Party's Democratic Taskforces report: *An End to Sofa Government: Better working of Prime Minister and Cabinet*.<sup>216</sup> The Conservative Party motion said:

That this House supports the principle that parliamentary approval should be required for any substantial deployment of British Armed Forces into situations of war or international armed conflict ...

6) The amendment put forward by the Government was acknowledged on both sides to be very similar to the main motion and marked a change in position by the Government.<sup>217</sup> While the Opposition motion was defeated, the motion as amended by the Government was agreed without division and the House of Commons passed the following resolution:

This House welcomes the precedents set by the Government in 2002 and 2003 in seeking and obtaining the approval of the House for its decisions in respect of military action against Iraq; is of the view that it is inconceivable that any Government would in practice depart from this precedent; taking note of the reports of the Public Administration Select Committee, HC 422 of Session 2003–04, and of the Lords Committee on the Constitution, HL 236 of Session 2005–06, believes that the time has come for Parliament's role to be made more explicit in approving, or otherwise, decisions of the Government relating to the major, or substantial, deployment of British forces overseas into actual, or potential, armed conflict; recognises the imperative to take full account of the paramount need not to compromise the security of British forces nor the operational discretion of those in command,

213 House of Lords Select Committee on the Constitution, fifteenth report of the session 2005–6, [Waging war: Parliament's role and responsibility](#), HL 236-I, para 103

214 House of Lords Select Committee on the Constitution, fifteenth report of the session 2005–6, [Waging war: Parliament's role and responsibility](#), HL 236-I

215 HC Deb, 15 May 2007, [col 481–583](#) [Commons Chamber]

216 Public Administration Select Committee, [Taming the Prerogative: Strengthening Ministerial Accountability to Parliament](#), HC 422, Session 2003–04; House of Lords Select Committee on the Constitution, fifteenth report of the session 2005–6, [Waging war: Parliament's role and responsibility](#), HL 236-I; [An End to Sofa Government: Better working of Prime Minister and Cabinet](#), Conservative Democracy Taskforce

217 HC Deb, 15 May 2007, [col 481–583](#) [Commons Chamber]

including in respect of emergencies and regrets that insufficient weight has been given to this in some quarters; and calls upon the Government, after consultation, to come forward with more detailed proposals for Parliament to consider.

7) The Government's proposals called for in the resolution were made in the *Governance of Britain* Green Paper, the *War powers and treaties: Limiting Executive Powers* consultation papers, the *Governance of Britain: Constitutional Renewal* White Paper and in *The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report*.<sup>218</sup> The *Governance of Britain* Green paper noted that, for centuries, the Executive has been able to exercise authority in the name of the Monarch without the people or their elected representatives in Parliament being consulted. It then said, "[t]his is no longer appropriate in a modern democracy. The Government believes that the Executive should draw its powers from the people, through Parliament."<sup>219</sup>

8) The Green Paper concluded that the current arrangement, under which the Government can deploy military force without a formal parliamentary agreement, is "an outdated state of affairs in a modern democracy".<sup>220</sup> It went on to say that the approval of the representatives of the people should be sought for significant, non-routine deployments of the Armed Forces. However, the Green Paper also argued that this must be done "without prejudicing the Government's ability to take swift action to protect our national security, or undermining operational security or effectiveness".<sup>221</sup> The consultation considered the best means of securing Parliament's role in authorising the use of military force, and the Government decided the convention should be formalised, but opted against using legislation, preferring to recommend a resolution of the House of Commons to secure the convention.<sup>222</sup> This was set out in both the *Governance of Britain: Constitutional Renewal* White Paper and in *The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report*.<sup>223</sup>

### **Constitutional implications of the Cabinet Manual (2011) & Parliament's role in conflict decisions (2011) - Political and Constitutional Reform Committee (PCRC)**

9) The proposals of the Labour Government set out in the *Governance of Britain* papers were not implemented before the 2010 general election. Following the election, the newly created Political and Constitutional Reform Committee (PCRC) raised the issue of the convention for parliamentary approval with the new Coalition Government. In evidence to the Committee, the Deputy Prime Minister, Rt Hon Sir Nick Clegg, and the Cabinet Secretary Lord O'Donnell acknowledged that there was a convention.<sup>224</sup> The PCRC

218 Ministry of Justice, [The Governance of Britain](#), Policy paper, Cm7170; Ministry of Justice, [The Governance of Britain, War Power and treaties: limiting Executive powers](#), CM7239; Ministry of Justice, [Governance of Britain: Constitutional Renewal](#), White Paper, Cm 7342-I; Ministry of Justice, [The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report](#), October 2009

219 Ministry of Justice, [The Governance of Britain](#), Policy paper, Cm7170, para 14

220 Ministry of Justice, [The Governance of Britain](#), Policy paper, Cm7170, para 26

221 Ministry of Justice, [The Governance of Britain](#), Policy paper, Cm7170, para 26

222 Ministry of Justice, [The Governance of Britain](#), Policy paper, Cm7170; Ministry of Justice, [The Governance of Britain, War Power and treaties: limiting Executive powers](#), CM7239

223 Ministry of Justice, [Governance of Britain: Constitutional Renewal](#), White Paper, Cm 7342-I; Ministry of Justice, [The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report](#), October 2009

224 Political and Constitutional Reform Committee, Sixth Report of the Session 2010–12, [Constitutional implications of the Cabinet Manual](#), HC 734, para

noted that this convention was not included in the new Cabinet Manual and in its report *Constitutional implications of the Cabinet Manual* recommended that the convention, as the Executive understands it, be placed into the revised Manual.<sup>225</sup> It followed up the recommendation in its report *Parliament's role in conflict decisions*.<sup>226</sup> In this report it repeated the recommendation that the convention be set out in the Cabinet Manual. While the Committee welcomed the commitment made by the Foreign Secretary Rt Hon William Hague to “enshrine in Law” Parliament’s role, it said that there was an urgent need to provide clarity and recommended that the Government bring forward a draft resolution for consultation and, once this resolution had been agreed, the longer-term project of legislation could be considered in more depth.<sup>227</sup> In response to the PCRC’s recommendation, the Government said it had included the convention in the newly revised Cabinet Manual.<sup>228</sup>

### **Constitutional arrangements for the use of armed force (2013) - House of Lords Constitution Committee**

10) In 2013 the House of Lords Constitution Committee returned to the issue of the constitutional arrangements for the use of armed force. This inquiry took place in the context of the 2013 House of Commons vote against taking military action in Syria and was a decade on from the 2003 House of Commons vote to approve military action in Iraq. The report highlighted a lack of clarity on the part of the Government over the role that Parliament should play in the decision to take action in Syria.<sup>229</sup> It concluded that the full Cabinet should continue to be the ultimate decision-maker, but that the detail of the internal decision-making arrangements should be set out in the Cabinet Manual. On the role of Parliament, the report said that the existing convention, that “save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed force overseas”, is the best means for the House of Commons to exercise political control over, and confer legitimacy on, the decision to use military force.<sup>230</sup> The report considered formalising the convention both through legislation and through a resolution of the House of Commons, concluding that the risks of these outweigh the benefits. In particular, the report expressed concern that a resolution would face a number of practical and definitional difficulties, and that it could limit the options available to Parliament.<sup>231</sup>

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225 Political and Constitutional Reform Committee, Sixth Report of the Session 2010–12, [Constitutional implications of the Cabinet Manual](#), HC 734, para 61

226 Political and Constitutional Reform Committee, Eighth Report of the Session 2010–12, [Parliament's role in conflict decisions](#), HC 923

227 Political and Constitutional Reform Committee, Eighth Report of the Session 2010–12, [Parliament's role in conflict decisions](#), HC 923

228 Political and Constitutional Reform Committee, Twelfth Report of the Session 2010–12, [Parliament's role in conflict decisions - further Government response](#), HC 1673

229 House of Lords Constitution Committee, Second report of Session 2013–14, [Constitutional arrangements for the use of armed force](#), HL 46,

230 House of Lords Constitution Committee, Second report of Session 2013–14, [Constitutional arrangements for the use of armed force](#), HL 46, p 4

231 House of Lords Constitution Committee, Second report of Session 2013–14, [Constitutional arrangements for the use of armed force](#), HL 46, para 61

### ***Parliament's role in conflict decisions: a way forward (2014) - Political and Constitutional Reform Committee (PCRC)***

11) In 2014 the PCRC conducted a follow-up inquiry into Parliament's role in conflict decisions. The report noted that the PCRC had repeatedly called on the Government to honour the Foreign Secretary's commitment to enshrine Parliament's role in law by bringing forward a resolution of the House of Commons setting out the Parliament's role in conflict decisions, as an interim step towards enshrining the process in law. The PCRC "respectfully disagreed" with the conclusion in the Lords Constitution Committee report *Constitutional arrangements for the use of armed force* that the existing convention without formalisation was the best means for the House of Commons to be involved in conflict decisions.<sup>232</sup> The PCRC repeated its earlier views that there is a need to formalise and clarify Parliament's role in conflict decisions.<sup>233</sup> It recommended that the Prime Minister give a specific minister the responsibility for making progress on formalising Parliament's role and that the Government make a clear statement of how it intends to honour the Foreign Secretary's commitment.<sup>234</sup> The report also highlighted that there was no provision in the convention for the information that should be made available to Parliament and said that the idea of a select committee being charged with reporting to the House of Commons on legal issues in relation to conflict decisions should be considered further.<sup>235</sup> The main recommendation of the report was that the Government's priority on this issue should be to agree a parliamentary resolution and the PCRC produced a draft resolution annexed to the report for the Government to consider.<sup>236</sup>

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232 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament's role in conflict decisions: A way forward](#), HC 892, para 4

233 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament's role in conflict decisions: A way forward](#), HC 892, para 9

234 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament's role in conflict decisions: A way forward](#), HC 892, para 17, 19

235 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament's role in conflict decisions: A way forward](#), HC 892, para 45, 47

236 Political and Constitutional Reform Committee, Twelfth Report of the Session 2013–14, [Parliament's role in conflict decisions: A way forward](#), HC 892, para 49, Annex

## Formal minutes

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**Tuesday 9 July 2019**

Members Present

Sir Bernard Jenkin, in the Chair

Ronnie Cowan      Mr David Jones

Kelvin Hopkins      Eleanor Smith

Dr Rupa Huq

Draft Report (*The Role of Parliament in the UK Constitution: Authorising the Use of Military Force*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 134 read and agreed to.

Annex agreed to.

Summary agreed to.

*Resolved*, That the Report be the Twentieth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

[Adjourned till Tuesday 3 September 2019 at 09.30am

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Tuesday 12 March 2019

**Professor Gavin Phillipson**, Department of Law, University of Bristol and **Sebastian Payne**, Department of Law, Kent University [Q1–88](#)

**Dr James Strong**, Lecturer in British Politics, Queen Mary University of London and **Dr Tara McCormack**, Department of Politics and International Relations, University of Leicester [Q89–131](#)

### Tuesday 26 March 2019

**General Sir Richard Barrons**, former Commander Joint Forces Command, Air Chief Marshal Sir Glenn Torpy, Chief of the Air Staff from 2006 to 2009, and **Admiral The Rt. Hon. The Lord West of Spithead**, First Sea Lord and Chief of the Naval Staff from 2002 to 2006 [Q132–176](#)

### Tuesday 30 April 2019

**Rt. Hon Jack Straw**, Foreign Secretary 2001–2006 and **Rt Hon Lord Hague Of Richmond**, Foreign Secretary and First Secretary of State 2010–2014 [Q177–228](#)

### Monday 20 May 2019

**Rt Hon David Lidington MP**, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office and **Rt Hon Mark Lancaster MP**, Minister for the Armed Forces [Q229–318](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

UMF numbers are generated by the evidence processing system and so may not be complete.

- 1 Action on Armed Violence ([UMF0021](#))
- 2 All-Party Parliamentary Group on Drones ([UMF0018](#))
- 3 Braun, Dr Christian Nikolaus ([UMF0011](#))
- 4 Cabinet Office ([UMF0022](#))
- 5 DefenceSynergia ([UMF0014](#))
- 6 Forsyth, Commander RN (Ret'd) Robert ([UMF0007](#))
- 7 Ingham, Dr Sarah ([UMF0016](#))
- 8 Kenealy, Dr Daniel ([UMF0020](#))
- 9 Kiely, Mr Mike ([UMF0005](#)), ([UMF0024](#))
- 10 Lagasse, Professor Philippe ([UMF0006](#))
- 11 Marks, Dr John ([UMF0002](#))
- 12 McCormack, Dr Tara ([UMF0008](#))
- 13 Oxford Research Group ([UMF0001](#))
- 14 Phillipson, Professor Gavin ([UMF0009](#))
- 15 Protection Approaches ([UMF0013](#))
- 16 Reprieve ([UMF0019](#))
- 17 Rogers, Mrs Susan ([UMF0010](#))
- 18 Society of Conservative Lawyers ([UMF0017](#))
- 19 Strong, Dr James ([UMF0003](#))
- 20 United Nations Association - UK ([UMF0015](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

### Session 2017–19

First Report	Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration	HC 484
Second Report	Parliamentary Boundary Reviews: What Next?	HC 559 (HC 1072)
Third Report	PHSO Annual Scrutiny 2016–17	HC 492 (HC 1479)
Fourth Report	Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report	HC 854 (HC 1555)
Fifth Report	The Minister and the Official: The Fulcrum of Whitehall Effectiveness	HC 497 (HC 1977)
Sixth Report	Accounting for Democracy Revisited: The Government Response and Proposed Review	HC 1197
Seventh Report	After Carillion: Public sector outsourcing and contracting	HC 748 (HC 1685)
Eighth Report	Devolution and Exiting the EU: reconciling differences and building strong relationships	HC 1485 (HC 1574)
Ninth Report	Appointment of Lord Bew as Chair of the House of Lords Appointments Commission	HC 1142
Tenth Report	Pre-Appointment Hearings: Promoting Best Practice	HC 909 (HC 1773)
Eleventh Report	Appointment of Mr Harry Rich as Registrar of Consultant Lobbyists	HC 1249
Twelfth Report	Appointment of Lord Evans of Weardale as Chair of the Committee on Standards in Public Life	HC 930 (HC 1773)
Thirteenth Report	A smaller House of Lords: The report of the Lord Speaker's committee on the size of the House	HC 662 (HC 2005)
Fourteenth Report	The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011	HC 1813 (HC 2065)
Fifteenth Report	Status of Resolutions of the House of Commons	HC 1587 (HC 2066)
Sixteenth Report	PHSO Annual Scrutiny 2017/18: Towards a Modern and Effective Ombudsman Service	HC 1855
Seventeenth Report	Ignoring the Alarms follow-up: Too many avoidable deaths from eating disorders	HC 855

Eighteenth Report	Governance of official statistics: redefining the dual role of the UK Statistics Authority; and re-evaluating the Statistics and Registration Service Act 2007	HC 1820
Nineteenth Report	Strategic Leadership in the Civil Service: Sustaining Self Governance and Future Capability while Supporting the Government of the Day	HC 1536
First Special Report	Will the NHS never learn? Follow-up to PHSO report 'Learning from Mistakes' on the NHS in England: Government Response to the Committee's Seventh Report of Session 2016–17	HC 441
Second Special Report	The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee, Session 2016–17	HC 442
Third Special Report	Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016–17	HC 708
Fourth Special Report	Government Response to the Committee's Thirteenth Report of Session 2016–7: Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action	HC 731
Fifth Special Report	Parliamentary Boundary Reviews: What Next?: Government Response to the Committee's Second Report	HC 1072
Sixth Special Report	PHSO Annual Scrutiny 2016–17: Government and PHSO Response to the Committee's Third Report	HC 1479
Seventh Special Report	Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report: Government Response to the Committee's Fourth Report	HC 1555
Eighth Special Report	Government Response to the Committee's Eighth Report: Devolution and Exiting the EU: reconciling differences and building strong relationships	HC 1574
Ninth Special Report	Government Response to the Committee's Seventh Report: After Carillion: Public sector outsourcing and contracting	HC 1685
Tenth Special Report	Government Response to the Committee's Tenth Report: Pre-Appointment Hearings: Promoting Best Practice, and to the Committee's Twelfth Report: Appointment of Lord Evans of Weardale as Chair of the Committee on Standards in Public Life	HC 1773
Eleventh Special Report	Government Response to the Committee's Fifth Report: The Minister and the Official: The Fulcrum of Whitehall Effectiveness	HC 1977
Twelfth Special Report	Government Response to the Committee's Thirteenth report: A smaller House of Lords: The report of the Lord Speaker's committee on the size of the House	HC 2005

Thirteenth Special Report	Government Response to the Committee's Fourteenth Report: The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011	HC 2065
Fourteenth Special Report	Government Response to the Committee's Fifteenth Report: Status of Resolutions of the House of Commons	HC 2066