



**National Defence & Strategy Research Group
Exposing the incoherence and weakness in the United Kingdom's
Defence and Security Strategies**

Contact: info@defencesynergia.co.uk, Website: www.defencesynergia.co.uk

**House of Commons Public Administration and Constitutional Affairs Committee Call
for Evidence on the issue of authorisation of the use of military force**

The House of Commons Public Administration and Constitutional Affairs Committee (PACAC) has invited evidence on the issue of authorisation of the use of military force. This DefenceSynergia (DS) submission is made in response to a request for input from the PACAC. However, DS is mindful that the PACAC inquiry will only consider the constitutional underpinnings for the use of military force and will not consider any aspect of defence policy, which is a matter for the Defence Committee. To that end, following a brief introductory passage about DS, our input will address each of the questions posed in numerical order in so far as the constraint of not addressing Defence Policy will permit.

DefenceSynergia Input

DefenceSynergia (DS) was formed ahead of the Strategic Defence and Security Review 2010 (SDSR2010) to research and expose incoherence and weakness in the United Kingdom's (UK) Defence and Security Strategies. Several of the founding members are former Directors and Policy Board Members of the United Kingdom National Defence Association (UKNDA). Our involvement with the PACAC began several years ago when DS wrote supporting Sir Bernard Jenkin in his earnest, alas, nugatory, efforts to persuade Her Majesty's Government (HMG) that an articulated National Grand Strategy was required.

To a degree this call for evidence on the subject of 'authorisation of the use of military force' might not have been necessary if a National Strategy had been articulated by HMG in which the issue of authorising military action and the circumstances for so doing (hopefully having cross party agreement) had already been addressed. However, this is not the case and we are where we are. But this call for evidence and the apparent need for one committee to avoid treading on the toes of another also illustrates a problem that pervades the whole process of government in respect of Defence Policy; the tendency for silos and spheres of influence to be created between departments (even committees) which restrict the flow of information, understanding and handicap corporate action. The Ministry of Defence (MOD), one can argue, defence policy generally, has had and continues to have multiple interactions with the Foreign Office (FCO), Home Office (HO), Treasury (HMT), Cabinet Office, National Security Adviser (NSA), Department of the Environment (DoE), Local Authorities (LAs) et al. Trying to 'tune out' defence policy entirely is therefore impracticable, restrictive and potentially misleading.

Below DS sets out its responses (**in bold**) to each of the questions posed:

1. To what extent is the deployment of military force a necessary responsibility and function of Government?

DS argues that, by convention if not constitutionally, HMG in Cabinet is the only executive arm within the British system that has all the tools, mechanisms and knowledge – intelligence, diplomacy, military, legal and financial – to decide if the deployment of military force is necessary to meet UK's security and Strategic intent. There are cases – one specifically referred to in question 4 below - where delay caused by debate in the House of Commons will put either the country at severe risk

or lives in mortal danger.

2. What are the conventions governing the deployment of military force?

That Her Majesty the Queen, on and through Prime Ministerial advice, has the royal prerogative to authorise military force.

3. How has the use of the royal prerogative to authorise military force changed over time?

There does not appear to have been material change to the way the royal prerogative has been exercised in at least the past 50 years and perhaps longer, although it has clearly on occasion been challenged in Parliament and not without consequences. For example: The decision by PM Cameron to seek Parliamentary approval on the proposal to take direct action in Syria resulted in a resounding rebuttal.

Parliament's refusal to support the PM on this point has been shown, at least to a highly arguable probability, to have been wrong; had the PM used the royal prerogative on his own judgement, supported by intelligence assessments and interaction with 5 Eyes allies, a better outcome may have been achieved rather than, as now, to have ceded to Russia control over events in that unhappy region that may have wide overspill into other areas of the Middle East, even into NATO nations.

4. Is the royal prerogative still the appropriate mechanism for deploying military force?

Yes. The PM must retain the right to prepare for and advise on going to war on, for example (but not limited to), intelligence advice of an impending pre-emptive strike against UK, our territories and protectorates and military forces wherever deployed. Under such circumstances there would not be time to debate in Parliament; and even were there time, to do so would be to the detriment of UK security by advantaging the enemy's position. However, this must surely stop short of giving the government unlimited 'Henry VIII powers'.

DS believes there may be advantage from changing current practises to include legal oversight of critical government decisions on military and intelligence services above the authority of the Attorney General. The world has changed in ways that could not have been predicted 50 years ago. Who could have foretold that any government, under its advice from the Attorney General, could be held in contempt of parliament as happened in early 2019 for matters considered normal government business? We therefore suggest there might be advantage in defining a military and intelligence oversight role for the Supreme Court sitting as the Judicial Committee of the Privy Council.

5. Since 2003, how has the involvement of Parliament in authorising the use of military force affected the conventions governing its deployment?

DS understands the premise behind this question but believes that this is a 'red herring'. Offering Parliament a vote on Iraq 2003 and again on Syria 2013 and 2015 may have been unusual but did not set a legal requirement to do so. Nor should it. See 6 below.

6. What role, if any, should Parliament have in the authorisation of military force?

DS maintains that, in general, Parliamentary authorisation to use military force should only be considered if the Chiefs of Staff Committee and NSA agree that military success and British lives are not unreasonably to be put at risk by doing so. This too indicates there may be advantage from an expanded role for the Privy Council, to enable in camera discussion across all parliamentary interests where sensitive information must be held secret.

Rather than consulting Parliament in the first instance it might be advisable to consider forming a small cross-party "Conflict" committee within the Privy Council working to the national and international law advice from the Judicial Committee in partnership with the Attorney General.

Therefore, by necessity, an increased role for the Privy Council would imply that Parliament's continuing role would normally be restricted to debating and offering views upon the merits of ongoing operations rather than on going to war. In any event, for MPs to decide on ongoing military action they must be well informed and the debates in 2003, 2013 and 2015, as will always be the case, relied upon HMG providing the 'casus belli' and background intelligence. It can be argued that HMG misled Parliament in 2003 and; failed to present a cogent and convincing Strategic

rai

s

o

n

d'etre

i

n

20

1

3

despite the expectations of our principal ally; Parliament supported military action against ISIL in Syria in 2015! Then in April 2018 HMG authorised joint military strikes with the USA and France against Syria without, quite rightly, seeking Parliamentary authorisation first. Clearly, there is a certain confusion as to Parliament's exact role under a myriad of circumstances; such uncertainty could lead to disastrous consequences.

6a. How should this role be assured?

By Act of Parliament and By expanding the role of the Privy Council which should be consulted if the luxury of time permits.

7. What can the UK learn from international comparators?

DS is of the opinion that HMG and Parliament should take account of International Law and maintain at least a watching brief on how allies and potential adversaries are thinking and where their interests are likely to be threatened requiring an international or bi-lateral response. Most influential should be the United Nations, the United States of America and 5 Eyes Members, the North Atlantic Treaty Organisation, the European Union, 5 Power Defence Agreement Nations not already covered and the Commonwealth. This baseline understanding would help to predict and inform potential joint action with allies. An example of this is China's unlawful actions in the South China Sea where it is proving important to hold a close 5 Eyes/5 Powers (plus others) general view on how to coordinate a response.

The UK has a long established and respected democratic and legal legacy that underpins many democratic and legal systems worldwide so there should be continual diplomatic effort to ensure that these values align with those of principal allies. Notwithstanding the 2003 Iraq invasion, which was arguably a New Labour/Parliamentary aberration, any decision that the UK takes to use military force must, and we assume will be, within recognised International and Domestic Legal constraints. Ultimately, whatever the international legal framework has allowed, HMG must and will be held to account by the public through Parliament for any military actions it authorises.