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Public Administration and Constitutional Affairs Committee
The Role of Parliament in the UK Constitution: Authorising the Use of Military Force inquiry

Executive summary

1. Much of the debate on the role of parliament (specifically the House of Commons) in authorising the use of military force focuses on whether MPs should possess in law, or already do possess by convention, ex ante veto rights over large-scale conventional military combat deployments.

2. MPs generally do not possess (with some partial exceptions), and do not seem likely to acquire, the legal authority to veto the use of force. They have in recent years exercised de facto veto powers by convention, but that convention remains unclear, weakly entrenched, and subject to challenge.

3. There seems little prospect of the UK acquiring a War Powers Act, which would place parliamentary veto powers on a statutory footing, without a fundamental change of heart on the part of both ministers and a majority of MPs. Such a change of heart remains possible but does not currently appear imminent.

4. Whether MPs will retain their recent conventional veto powers depends ultimately on future governments’ political calculations. It depends, specifically, on whether or not ministers believe they can win a vote approving a particular use of force, and on whether they believe the costs of bypassing MPs will outweigh the costs of allowing them a say.

5. A narrow focus on ex ante veto powers over conventional military deployments somewhat obscures two important points:

   a. First, the way changes in the nature of warfare itself complicate the question of what constitutes a military deployment. Most observers agree that the large-scale use of infantry, artillery, and aerial bombardment constitutes a use of force. It is less clear whether Special Forces, intelligence, and cyber operations, or the use of Unmanned Aerial Vehicles, meet the definition – especially given most MPs accept such activities must remain clandestine. It is also less clear where policing ends and military action begins when a state such as the UK confronts non-state combatants, such as Da’esh.

   b. Second, MPs have historically used a much wider set of mechanisms to influence the use of force, including powers to monitor and control expenditure; to inquire into, debate, and symbolically oppose or support government action; and to withdraw confidence from the government. Most of these historic mechanisms remain available in some form to MPs today, and represent potentially significant sources of influence.

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The legal position

6. The legal position is straightforward. The power to deploy the armed forces forms part of the Royal Prerogative, the vestige of absolute monarchical power conventionally exercised by the Prime Minister in the Monarch’s name. The Prime Minister is under no legal obligation to consult MPs before ordering the use of force. Nor is the deployment power justiciable; not deriving from statute, it cannot be subject to judicial review.

7. Parliament could conceivably pass a War Powers Act placing the deployment power on a statutory footing and guaranteeing *ex ante* veto powers over military action for MPs. Such provisions exist, albeit to varying degrees, in many other democratic states. That it has not done so suggests no majority exists for codification of parliament’s role in this way.

8. The key sticking point seems to be that legislation would have to define, in a manner capable of surviving judicial review, under what circumstances MPs should vote and, at least implicitly, under what circumstances MPs should not vote. Neither successive government ministers, nor back-bench MPs calling for change, have wanted the Supreme Court ruling – probably after the fact – on whether a particular military deployment was legal in UK law.

9. Both supporters and opponents of parliamentary oversight seem also to have recognized the benefits of the flexibility of the present Convention. MPs can press for greater involvement on highly salient issues – as they did, successfully, over the question of UK military assistance to rebel groups in Syria in 2013, and accept less involvement in less salient situations – such as the provision of UK support to French operations in Mali in 2014.

10. A recent study suggested “a War Powers Act of sorts already appears on the statute books”, and argued that its “intentional disregard” by generations of Ministers and MPs implied “a lack of political will” on both sides to place parliament’s war powers on a statutory footing. The argument refers to the Act of Settlement (1700, s. 3) which holds that “this Nation be not obliged to ingage in any Warr for the Defence of any Dominions or Territories which do not belong to the Crown of England without the Consent of Parliament”. This reference in fact relates specifically to circumstances

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3 Some states, such as Germany, require prior parliamentary authorisation for all overseas military deployments, regardless of size, purpose and duration, and for such mandates to be renewed annually. Others, such as Sweden or the Republic of Ireland, require parliamentary authorisation only for combat operations or those over a certain size, or, as in the case of Hungary or the Czech Republic, for operations without an explicit EU, NATO or UN mandate. Still others, such as Poland, require parliamentary notification but not approval. For a summary see Peters, Dirk and Wolfgang Wagner (2011) ‘Between military efficiency and democratic legitimacy: Mapping parliamentary war powers in contemporary democracies, 1989-2004’, *Parliamentary Affairs*, 64:1, pp. 175-192.

4 See, for example, the debate in the House of Lords on the Armed Forces Deployment (Royal Prerogative) Bill [HL], House of Lords Hansard, Vol. 779. Col. 2257 ff. 8 July 2016.

5 The public furore surrounding the Supreme Court’s ruling in *R (Miller) v Secretary of State for Exiting the EU* [2017] is indicative here.


in which the Crown devolves on “any Person not being a Native of this Kingdom of England”. It was intended, in other words, specifically to prevent English forces being used to defend Hanoverian lands following the anticipated succession, rather than as a general ban on the use of force without parliamentary consent.

The political position

11. Notwithstanding the legal position, precedents set between 2003 and 2015 created certain political expectations among MPs. The House of Commons agreed substantive government motions authorising military combat operations in Iraq in 2003, Libya in 2011, Iraq in 2014 and Syria in 2015. When it rejected a substantive government motion implying possible future military operations in Syria in 2013, the Prime Minister agreed to rule such action out.

12. Many MPs believe – and I have previously argued\(^8\) – that these precedents collectively constituted a new war powers convention – 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. This convention would not supplant the government’s legal power to deploy the armed forces. Rather, it would subject it to political constraints. It is mentioned in the Cabinet Manual\(^9\). Successive Prime Ministers have acknowledged that it exists.

13. Several aspects of this tentative convention remain unclear, and it is not, overall, well entrenched. Both the lack of clarity about its scope and application, and its weak entrenchment, render it vulnerable to reversal in future.

14. That the convention applies only to combat operations appears quite clear. MPs neither sought nor received a prior vote on non-combat military deployments to Mali in support of French intervention in 2014, Sierra Leone as part of international efforts to combat Ebola in 2014, or regular NATO training operations in the Baltic States. It remains unclear what would happen if an operation originally conceived of as a non-combat deployment escalated into a combat deployment – the precedents of UK intervention in Sierra Leone in 2000 or, arguably, Helmand Province from 2006 onwards demonstrate that such escalation can happen.

15. That the convention does not apply to Special Forces operations also appears clear. In August 2016 the BBC reported that UK Special Forces soldiers were engaged in combat operations on the ground in Syria despite the Prime Minister’s commitment on 2 December 2015 that ‘the government will not deploy UK ground troops in combat operations’\(^10\). The closest MPs came to challenging this apparent discrepancy was Tom Brake MP’s question to Defence Secretary Sir Michael Fallon in Defence

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Questions on 12 September. Fallon responded that the government did not comment on the deployment of Special Forces. MPs did not press the government further, implying tacit acceptance of the government’s right to engage in clandestine operations without parliamentary oversight. It remains unclear what might change this position. Neither the death of a serving SAS soldier in Syria in March 2018, nor the wounding of two of his colleagues in January 2019, appeared to have an impact. But it remains possible that a future development – a major loss of military or civilian life in a UK Special Forces operation, or a diplomatic incident such as that which occurred near Benghazi in 2011, could shift MPs’ calculus.

16. Whether the convention applies to Unmanned Aerial Vehicles appears unclear. The government did not seek prior authorization from the House of Commons before ordering an Unmanned Aerial Vehicle strike that killed two UK-born Da’esh operatives in Syria in 21 August 2015. On 7 September 2015 the Prime Minister informed the House of this operation, argued that the need to act quickly and in a clandestine fashion precluded a prior debate, stated that the particular operation was a one-off without ruling out a repeat, and promised that MPs would have the opportunity to veto any wider extension of the UK’s operations against Da’esh into Syria. Although the acting Leader of the Opposition questioned the legal basis for the operation, MPs generally accepted the Prime Minister’s arguments. The Joint Committee on Human Rights describe the operation as a ‘new departure’ in the UK’s use of UAVs, but accepted that the government acted in line with the War Powers Convention. It remains unclear what would happen if a future government embarked on a more sustained campaign of UAV strikes without seeking prior parliamentary approval.

17. Successive governments have claimed the right to act without prior parliamentary approval in an emergency situation, or one involving an imminent risk of humanitarian disaster. It remains unclear how future governments will define an “emergency”, and whether MPs will accept that definition. Prime Minister Cameron invoked this exception in justifying the August 2015 UAV strike in Syria, without significant backlash. Prime Minister May invoked it in April 2018 after ordering airstrikes on the Assad regime. Several MPs criticized this assertion in debate, but many also asserted that they supported the substance of the government’s decision. The House rejected a motion moved by the SNP stating that the House had not sufficiently considered the operation, and approved (against his urging) a motion moved by the Leader of the Opposition which stated that the House had “considered Parliament’s rights in relation to the approval of military action by British Forces overseas.

18. Whether a future government will permit MPs the opportunity to veto military action will depend on several factors, including whether the Prime Minister believes, as a

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point of principle, that MPs should wield veto powers, and whether they are psychologically willing to share power beyond their core decision-making circle or to risk the political consequences of their preferred course.

19. It will, above all, depend on two interlinked political calculations – set out, with examples, in Table 1:

a. On the one hand, will the House of Commons approve the proposed operation? Answering this question might not be straightforward, as the 2013 example showed. It is, however, a fundamental step. There is little point courting controversy by avoiding a vote likely to be won.

b. On the other hand, is the government willing to pay the political price of bypassing MPs? Answering this question involves figuring out what that price is likely to be, and weighing it against the government’s other priorities. As the government found in 2018, the price might actually be quite low in circumstances in which the proposed operation is either of low salience to MPs, or one they actually support.

Table 1: Plausible potential scenarios for future UK governments considering whether to allow a parliamentary vote on the use of force.

<table>
<thead>
<tr>
<th>Perceived political costs of bypassing parliament</th>
<th>High</th>
<th>Low</th>
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<tbody>
<tr>
<td><strong>High</strong></td>
<td><strong>Scenario 1: Costs of avoiding vote high. Government holds vote, e.g., Iraq 2003, Syria 2013, Da’esh 2015.</strong></td>
<td><strong>Scenario 3. Costs of both holding and avoiding vote high. Government changes policy, e.g. Da’esh 2014.</strong></td>
</tr>
<tr>
<td><strong>Low</strong></td>
<td><strong>Scenario 2. Costs of holding vote low. Leadership personality and precedent decisive, e.g. Libya 2011, Syria 2018.</strong></td>
<td><strong>Scenario 4. Costs of avoiding vote low. Outcome depends on deployment type, e.g. Da’esh drone strikes 2015.</strong></td>
</tr>
</tbody>
</table>

20. A government that believes it can afford to pay the likely costs of bypassing parliament might still choose to allow a vote it expects to be able to win. Ministers might decide that the short-term risk of political controversy associated with bypassing MPs outweighs the long-term risk of handing power to the House of Commons – especially in circumstances when success appears likely; this was, in effect, the Cameron government’s position over Libya in 2011.

21. Conversely, MPs seem unlikely to punish the government for bypassing the House of Commons to launch military operations they actually support. This was, in effect, what happened to the May government in April 2018.

Implications

22. Involving MPs in decisions about military action in this way raises a number of implications for the UK’s broader strategic stance. Chief among them is the simple fact that MPs have proven themselves willing, in the case of Syria in 2013, to veto a military operation previously publicly threatened by the government. That fact undermines the UK’s position as both an ally and an enemy. It raises the prospect that military commitments – or threats – made by ministers could be vetoed by MPs.

23. Although the Obama administration took great pains to state that the Syria veto did not damage the US-UK ‘special relationship’ – not least because President Obama decided of his own volition not to proceed with action on that occasion – it also made a point of stepping up military co-operation with France, its ‘oldest ally’. When President Obama ordered the use of force against Da’esh in Iraq in June 2014 he neither sought nor received UK support – a break from his own earlier practice in Syria and Libya, and indeed with precedents stretching back at least as far as the Gulf War.

24. Other factors are relevant here, also – for example the UK’s reduced offensive capabilities in the aftermath of the 2010 Strategic Defence and Security Review. But it remains true that a UK government unable to use force without prior parliamentary approval is inherently less able to commit to allies or threaten enemies than one able to act as it sees fit.

25. On the other hand, the recent debate in the UK has tended to downplay the role parliamentary approval can play in strengthening both the legitimacy and the credibility of government decisions about the use of force, and to over-emphasize the likelihood that MPs will veto military action.

26. On the legitimacy side, clearly a government explicitly backed by a parliamentary majority can claim greater democratic approval of its actions than one lacking such approval. Parliamentary approval is not a panacea: the Blair government won a large majority in favour of invading Iraq, yet questions still surround that conflict’s legitimacy. But a government unable to win parliamentary approval for the use of force clearly lacks a democratic mandate.

27. On the credibility side, the recent debate has largely ignored the impact a parliamentary vote in favour of military action can have on the government’s ability to make commitments to allies and issue threats to adversaries. The great weakness of all parliamentary governments in conducting international affairs is the risk that they will lose their majority unexpectedly – presidential administrations are more stable and therefore more reliable in this regard. A parliamentary government backed by a clear parliamentary majority, however, is arguably in a stronger position – especially if that majority encompasses potential electoral rivals. When the Blair government took Britain to war in Iraq with strong Conservative Party support, for example, it was able to signal clearly to the UK’s allies and enemies alike that even a future change of government would not mean a change of policy.

28. There is also an argument that involving MPs in military deployment decisions should improve the quality of those decisions. While questions will inevitably remain about
how well-informed MPs can possibly be without access to intelligence reports or government legal advice, some clearly do possess specialist knowledge, and there are indications in recent debates that their colleagues listen to them. MPs have generally proven willing to support the use of force, provided it appears necessary, proportionate, and likely to succeed. A government unable to satisfy MPs on these grounds should probably consider whether it is really ready to go ahead. It is true that MPs appear more concerned about mission creep in the Middle East than in other regions – arguably the mooted air strikes in Syria in 2013 raised less of a risk of ‘mission creep’ than the deployment of ground troops to Mali in 2014 – and that they have evinced a tendency in recent debates to consider every possible use of force in light of the perceived shortcomings of the decision to invade Iraq. It is also true that their views tend not to reflect – at least, not directly – what opinion polls suggest is the view of the public. Yet none of these points entirely undermines the point that involving MPs in decisions about the use of force can help the government make those decisions better.

29. As the Iraq example signals, finally, it is simply not accurate to suggest that involving MPs in decisions about military action subjugates strategic to party-political considerations, nor that MPs instinctively avoid approving the use of force. Each of the four votes approving military action since 2003 involved a degree of bipartisanship, though (as Table 2 makes clear) in 2015 a majority of Opposition MPs voted against military action against Da’esh in Syria. The only occasion on which MPs voted largely on partisan lines was the 2013 Syrian vote, in which no opposition MP supported the government. That outcome, arguably, reflected failures on the part of the Prime Minister and Leader of the Opposition, both of whom supported a policy of threatening the use of force in response to the Assad regime’s alleged use of chemical weapons against civilians. Indeed, taking the combined votes in favour of both the government motion and the opposition amendment, it is clear that had the Prime Minister and Leader of the Opposition agreed a common position – as they later did over Da’esh in Iraq in 2014, though it is true that in 2013 any common position would probably have had to rule out the immediate use of force – some three quarters of MPs, including a majority of Labour MPs, would have supported it.

Table 2: Official Opposition votes for and against military action, 2003-2015, excluding Syria 2013.

<table>
<thead>
<tr>
<th>Conflict</th>
<th>Official Opposition</th>
<th>For</th>
<th>Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq 2003</td>
<td>Conservatives</td>
<td>146</td>
<td>2</td>
</tr>
<tr>
<td>Libya 2011</td>
<td>Labour</td>
<td>214</td>
<td>11</td>
</tr>
<tr>
<td>Daesh 2014</td>
<td>Labour</td>
<td>191</td>
<td>24</td>
</tr>
<tr>
<td>Daesh 2015</td>
<td>Labour</td>
<td>66</td>
<td>153</td>
</tr>
</tbody>
</table>

30. The clearest argument against the claim that granting MPs veto powers over the use of force will prevent governments being able to use force when needed is that MPs have repeatedly voted to approve the use of force. The Syria vote in 2013 was an aberration, driven by miscalculation on the part of the Prime Minister and Leader of the Opposition, itself influenced by the vote’s timing at the end of the summer recess. The Cameron government drew the lesson that it should, in future, take greater care over consulting government backbenchers and over agreeing a common stance with
the Leader of the Opposition – lessons reflected in the successful September 2014 vote in favour of action against Da’esh in Iraq.

31. The 2014 Da’esh vote also, however, showed two downsides to consulting MPs properly. First, it took place some three months after the US began operations. Consultation takes time and leads inevitably to delay. Second, it restricted UK operations to Iraqi territory, where both the strategic picture and the legal grounds for action were clearer – a prerequisite for Opposition support. Compromises which make sense in domestic political setting do not necessarily make sense in military-strategic terms, and several MPs complained at the time and subsequently that the 2014 vote limited the UK’s operational effectiveness.

*Future prospects*

32. What will happen should a future government bypass MPs depends on three factors: first, whether the government can persuade a majority of MPs that its actions fall within the war powers convention – because they relate to an emergency situation, for example, or involve clandestine tools unsuited to public debate; second, whether MPs can credibly threaten the government with reprisals should it bypass the House; third, whether, explicitly or implicitly, MPs make clear they do not want veto powers.

33. MPs might conclude that the government is exploiting their willingness to accept that some military actions must take place at short notice or in secret in order to launch operations that could, in fact, have been approved in advance. A minority of MPs made exactly this complaint about the April 2018 operation.

34. The government might take military action, without prior approval from the House of Commons and without significant backlash, but then face significant negative consequences such as large-scale civilian or UK military casualties. One academic study of the relationship between public opinion and the use of force concluded that “victory has many friends”\(^{18}\). By the same reasoning, it seems likely that defeat or failure would have many enemies. The origins of the war powers convention – such as it is – lie in the fractious debate over war in Iraq. This implies that more contentious conflicts might see more pressure for parliamentary involvement.

35. The balance between conventional and clandestine military operations might shift further towards the latter. MPs appear willing at present to accept a limited role in overseeing clandestine operations, in part because they are assumed to be peripheral to the UK’s broader military posture. Should MPs begin to question that assumption – if, for example, it becomes clear that the government is using Special Forces or other clandestine tools on a large scale – their attitudes might change quite fast.

36. The Cabinet Manual promises a prior debate, but not a prior substantive vote, before most military deployments. That promise could, in theory, be met by an adjournment debate rather than one on a substantive motion. This was, after all, the method commonly used to consult MPs on military action prior to 2003.

37. The majority of MPs could decide that it is not in fact desirable for the House to exercise *ex ante* veto powers over military deployments; such sentiments appeared in a recent pamphlet published by several Conservative members under the aegis of the Society of Conservative Lawyers. Conventions live or die on MPs’ willingness to demand their application.

38. Successive governments could repeatedly bypass MPs to launch military action, citing circumstances specific to each particular case in mitigation. Over time, the accumulation of fresh precedents would establish new expectations. Conventions are made of precedents and expectations. When expectations change, conventions change with them.

*Other forms of influence*

39. In a historic sense, the idea that the House of Commons might exercise *ex ante* veto powers over military deployments remains novel. Yet MPs have influenced military action in a number of different ways over the centuries. The recent focus of public debate on the role of the House at the moment of deployment has tended to disguise this wider range of roles.

40. First, MPs continue to exert some oversight of government expenditure, both through the budget process and associated defence estimates, and through the retrospective oversight exercised (especially) by the Defence and Public Accounts Committees.

   a. This control of expenditure is the principle mechanism by which parliament historically exercised its legal right (under the Bill of Rights 1688) to oversee the “raising or keeping [of] a standing army within the Kingdome [sic] in time of Peace”.

   b. Following the British defeat at Yorktown in the American War of Independence, Sir James Lowther MP attempted to block the 1781 supply to prevent Lord North’s government – urged on by the King – continuing the conflict. Lowther failed because Ministers maintained that the estimates allowed no room for further offensive operations. He might otherwise have succeeded.

   c. After a scandal over the supply of cordite to the military rocked the Earl of Rosebery’s government, MPs passed an 1895 supply vote with a critical amendment. They reduced by £200 the salary of the Secretary of State for War, Henry Campbell-Bannerman, as a censure of his conduct. The Government resigned – though accounts differ over whether the censure constituted the reason or simply an excuse for its collapse.

   d. The basic principle that applied on both occasions still applies today – the government must seek parliament’s approval for the funds necessary to sustain military action, and that approval can be withheld. Doing so during active operations would be politically difficult, but not impossible.

41. Second, MPs retain the power to debate the use of force.

   a. Parliamentary debates are never “just” talk. Forcing the government to defend its positions in public in turn forces it to anticipate possible criticisms,
potentially improving the policy. The best way to defend a policy in the face of informed public criticism remains to make good policy.

b. To the extent that a debate allows MPs to consider different arguments before deciding their position on a particular question, it can improve the deliberative legitimacy of whatever outcome results.

c. While debates clearly do not determine votes in all cases, the content of a debate can sway wavering MPs. Several MPs described Prime Minister Tony Blair’s speech in the House during the debate on the invasion of Iraq in March 2003 as a deciding factors in their decision to support the use of force. Others criticized the performance of Deputy Prime Minister Nick Clegg during the August 2013 Syria debate.

d. Debate can also enable MPs to communicate both specific concerns and a more general mood to the government. Despite winning the vote that concluded the Norway Debate in May 1940, Prime Minister Neville Chamberlain nevertheless concluded from the tone of MPs’ remarks that he had lost the confidence of the House.

42. Third, MPs possess the power of inquiry into government activities. That power ranges from everyday parliamentary questions through the use of the humble address procedure to demand papers to the work of established and ad hoc committees.

a. Sir John Roebuck MP’s January 1855 motion for an inquiry into the Aberdeen government’s conduct of the Crimean War not only forced the resignation of the Prime Minister and Secretary of State for War, it also led to significant changes in military administration.

b. The Defence and Foreign Affairs Select Committees, and the Joint Committee on Human Rights, have held a number of inquiries into the Government’s approach to the use of force since 2001. Academic research has shown that Select Committee recommendations and report influence both the agenda of the House and actual government conduct. So there are grounds for considering this activity meaningful.

43. MPs have in the past used a humble address directly to constrain the government, regardless of whether the government offered a substantive motion for approval. It is less clear that such an approach could work today, but the humble address clearly can be used to call for relevant papers, including for the publication of government legal advice—a contentious issue in the Iraq case in particular.

a. General Henry Conway used a humble address to constrain the government in February 1782, effectively forcing Lord North to bring the North American War to a close. As this precedent suggests, the advantage of the humble address procedure was that it could be employed after the deployment of troops in order to curtail an ongoing operation.

b. More recent advice suggests, however, that this use of the humble address in this way would no longer be considered orderly or binding on ministers. Sir

19 Notwithstanding two inquiries by the House of Commons Political and Constitutional Reform Committee (2014) and the House of Lords Constitution Committee (2013) that touched directly on the question of war powers, and this present inquiry

David Natzler advised the Exiting the European Union Committee that “humble addresses can only be orderly and therefore only be moved if they seek something within the House’s accepted powers to do. That does not include directing Ministers to do anything, or not to do anything...you can get papers with a humble address...You cannot order the Government to do stuff”\(^\text{21}\).

44. It may, in sum, be more accurate to regard the use of the humble address to demand papers from the government as an adjunct to the powers of inquiry and debate.

a. One area where this point is worth highlighting, however, relates to the disclosure of government legal advice. Successive governments have refused to publish advice from the Law Officers about the legality of military deployments in international law. This refusal poses particular problems in the aftermath of the Iraq War. The Chilcot Report described the Blair government’s approach to legal advice on that occasion as “far from satisfactory”\(^\text{22}\). When the Attorney-General’s legal advice leaked during the 2005 general election campaign, many MPs considered its nuanced discussion of the shortcomings of the government’s position inconsistent with the categorical summary statement published ahead of the invasion in March 2003.

b. The convention that governments do not publish their legal advice suffered a blow on 4 December 2018 when the House voted by 311 to 293 to censure ministers for failing to publish the Attorney-General’s advice on the implications of leaving the EU under the terms negotiated in the draft Withdrawal Agreement, as demanded in an humble address agreed by the House on 13 November\(^\text{23}\). The government complied the following day.

c. Similar use could thus be made of a humble address to demand the publication of legal advice relating to the use of force in future – provided, as ever, that a majority of MPs supported the demand. That prospect might, in turn, lead ministers to be more forthcoming about the legal grounds for military action in future – though doing so would make giving the sort of categorical assurances about legality that MPs typically demand hard.

45. Fourth, MPs retain their ultimate “nuclear” option of withdrawing confidence from the government. Each of the governments historically felled by parliamentary opposition to their attempts to take military action experienced a loss of confidence:

a. Lord North resigned in March 1782 rather than lose a direct confidence vote, having failed to block General Conway’s humble address.

b. The Duke of Aberdeen considered the establishment of Roebuck’s Inquiry a vote of no-confidence in his administration and resigned.


c. The Earl of Rosebery did the same with the 1895 estimates vote, though it appears his government had not, in fact, lost the confidence of the House on that occasion.
d. Neville Chamberlain won the vote after the Norway debate, but with a much-reduced majority which he considered a sufficient censure of his conduct that he resigned.
e. Prime Minister Cameron survived defeat over Syria in 2013 because he had not lost the confidence of the House – as, for example, did Prime Minister May following her defeat over the EU Withdrawal Agreement in January 2019.
f. Both the growth of coherent parliamentary parties in the mid-nineteenth century and the introduction of the Fixed-term Parliaments Act have changed the dynamics of confidence in the House of Commons, but the fundamental principle remains. If a majority of MPs disagree sufficiently strongly with how the government proposes to conduct, is conducting, or has conducted military action, they can remove it from office.

46. Finally, MPs have an under-remarked power to support the government. An administration backed in threatening force by the legislature arguably carries greater credibility than one without parliamentary support.

a. Leader of the Opposition Winston Churchill asked Prime Minister Clement Attlee to grant MPs a substantive vote on British entry into the Korean War in order to demonstrate national unity.
b. Much of the debate on the question of whether MPs should have a prior vote ahead of military deployments assumes the only reason to have such a vote is to prevent action, but the question of the ways in which such votes might facilitate the achievement of UK foreign policy goals also deserves consideration.

Conclusions

47. The UK government is under no legal obligation to consult the House of Commons before ordering military action. It is legally obliged to secure MPs’ ongoing consent to its maintenance of a standing army through annual votes of supply. It is, at least in theory, also legally obliged to secure prior parliamentary approval for military deployments aimed at securing non-UK territories in the event that the Crown devolves on someone unable to claim English nationality – but such a scenario appears unlikely at present.

48. The UK government does face a degree of political expectation – potentially constituting a tentative convention – that it will permit MPs a prior opportunity to veto overseas military combat operations, except in emergency situations or when clandestine methods are employed.

49. Whether future governments consider themselves bound by these expectations depends on how able they feel to win a vote on a proposed military action, and whether they are willing to absorb the likely political costs of bypassing MPs. All conventions ultimately depend on this balance of calculations, but novel conventions are particularly vulnerable to being bypassed thanks to their very novelty.
50. Should successive future governments bypass or ignore MPs when launching military action, they will establish new precedents that supersede those described above, and change what MPs expect. How long this might take is impossible to predict.

51. Regardless, MPs retain a range of powers that could allow them to influence the use of force in future. Greater attention should be given to the power of the House of Commons to control government spending on defence, to inquire into government activity, to debate and to support government policy.

February 2019

References


