

Public Administration and Constitutional Affairs Committee

Oral evidence: The Role of Parliament in the UK Constitution: Authorising the Use of Military Force, HC 1891

Tuesday 12 March 2019

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[Watch the meeting](#)

Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Kelvin Hopkins; Dr Rupa Huq; David Morris; Eleanor Smith.

Questions 1 - 131

Witnesses

I: Professor Gavin Philipson, Department of Law, University of Bristol, Sebastian Payne, Department of Law, Kent University

II: Dr James Strong, Lecturer in British Politics, Queen Mary University of London, Dr Tara McCormack, Department of Politics and International Relations, University of Leicester

Written evidence from witnesses:

- [Professor Gavin Philipson](#)
- [Dr Tara McCormack](#)
- [Dr James Strong](#)

Examination of witnesses

Professor Gavin Philipson, Sebastian Payne

Q1 **Chair:** I welcome our first panel of witnesses to this Public Administration and Constitutional Affairs Committee inquiry into war powers and the exercise and authorisation of war powers. Could I ask each of you to identify yourselves for the record, please?



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Professor Phillipson: I am Gavin Phillipson, Professor of Law at the University of Bristol.

Sebastian Payne: I am Sebastian Payne. I am at the Kent Law School at the University of Kent.

Q2 **Chair:** Thank you both very much for being with us. We have quite a lot of questions to get through. We will try to be crisp in our questions. If you could be short and concise in your answers, I would be very grateful. I may have to pull you up if you are giving us too much. Thank you very much.

Can I start by asking just a general question about how the use of military force and declarations of war are authorised both historically and today, in a nutshell?

Sebastian Payne: Historically, the powers were authorised by the King. Obviously with the rise of responsible government, those powers shifted, maybe not as early as people think. George II himself went into battle, the last King to go into battle. They are obviously now authorised by the Prime Minister under the prerogative, but the body with the command is the Defence Council, via the Defence (Transfer of Functions) Act 1964, and also, by Letters Patent, the command is shared with the Queen. But the deployment and the decision to go to war is a prerogative and that is effectively in the hands of the Prime Minister.

Professor Phillipson: Nothing to add on that.

Q3 **Chair:** We talk in our constitution of conventions. What role do conventions play in regulating the use of prerogative?

Professor Phillipson: The clear and long-established convention is, as Sebastian just said, that the legal power, which lies in the hands of the Crown, is exercised by the Prime Minister and/or the Cabinet. That is the long-established convention. The convention, which I suspect we may debate for longer today, is the role of the House of Commons in authorising/being consulted about military action before or, in some cases, after it takes place. That obviously dates perhaps from the Iraq War in 2003. That was the first case in modern times in which there was a set piece, a formal authorisation vote in the House of Commons.

Sebastian Payne: I would not differ from that. Essentially, as members know, the convention has arisen as a result of dissatisfaction with the Iraq War. The first Select Committee to suggest looking at this was one of your predecessor Committees, which Mr Hopkins sat on in 2003, in the retaining of the prerogative.

Chair: We are going to come to that later, but Mr Hopkins.

Q4 **Kelvin Hopkins:** How does the UK Government's use of prerogative powers over military forces compare with the powers used by Executives in other countries?



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Sebastian Payne: In some instances, such as France and the United States of America, the powers—not in terms of their legal form, but their functionality—are quite similar. The French President has extensive powers. He is the decision-maker under the French constitution. In the US constitution, the President has the powers vested in him. There is a War Powers Resolution, a War Powers Act, and as is common knowledge, that is hotly-contested as to its constitutionality between Congress and successive US presidents, who do not accept it is constitutional now that it was vetoed by President Nixon. It was passed over his veto. At a functional level, France and the US have Executives who make the President take the decision.

At the other extreme is Germany, which has what is described as a parliamentary army and their Parliament has an extensive role. Of course what Germany does by way of military action is clearly rather different in scale from what the United States, the UK and France does, so there seems to be a functional divide. Of course it should be noted that France and the US have a written constitution, so the actual legal form of those powers are set in a very different context.

- Q5 **Kelvin Hopkins:** Just a brief supplementary. I was told some years ago by some Danish parliamentarians, "You have strong Government, weak Parliament, we have strong Parliament, weak Government". PR systems make it a very different situation. Executives cannot ride roughshod over Parliament, because we have the discipline of a two-party system, which makes a difference.

Sebastian Payne: Yes. Clearly that is so.

- Q6 **Chair:** The answer to Mr Hopkins's first question seems very much to reflect what sort of country France or the United States or Germany wish to be. Germany wants to be a particular kind of country because of its history. France and the United States want to be a very different kind of country, internationally and militarily. How much of this whole debate is in fact a proxy for what sort of country we want to be?

Sebastian Payne: The position as it is, any change will depend on that very question: what sort of country do we want to be or what sort of constitutional arrangements?

- Q7 **Chair:** What sort of constitutional arrangements are going to produce an effect that will determine what sort of country we are? That is the point I am making.

Sebastian Payne: I think there may be a causation issue, though. The fact that we have these arrangements does not necessarily reflect what parliamentarians want or the vision of a country. It is maybe the accumulation of history. Change will reflect that. There is a functional difference between countries, but I do not think we can say, "We have this system because it reflects our vision".

- Q8 **Chair:** We have a system that reflects what we are inheriting.



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Sebastian Payne: Exactly.

Q9 **Chair:** Is that necessarily the sort of country we want to be in the future?

Sebastian Payne: Indeed.

Chair: Is that a better phrasing of the question?

Professor Phillipson: I noted in my written evidence that the UK is, in comparative terms—and especially compared to some European countries—a relatively frequent user of military force. There have been over 60 military interventions by the United Kingdom since the Second World War. Whatever system you have, it needs to take into account the fact that—unlike some other countries—we are a country that has been very active. Militarily, we are also obviously a permanent member of the Security Council. Therefore, what we do matters greatly in that sense and, also, we have very significant armed forces as compared to many other European countries, other than France. Those are important factors to take into account. This is a thing that happens relatively frequently for the United Kingdom. In other countries it might be something of a rarity.

Q10 **Chair:** Are you saying that we take many military interventions because we have large armed forces, because we are a permanent member of the Security Council and because of our constitutional arrangements, as they are, or are you saying our constitutional arrangements, as they are, and we are on the Security Council and we have large armed forces because that is the sort of country we want to be?

Professor Phillipson: The reasons why we have taken many military interventions are numerous, I think, and to do with our political culture. They are partly to do with having traditionally strong Governments. Possibly a strong Government may be more likely to take action than a complex coalition, in which several parties have more veto points, essentially. I was not suggesting that we take more military action because we are a member of the P5. I was saying our example matters more and what we do matters more for that reason.

Q11 **Chair:** Perhaps we take more military action because other people will not do it.

Professor Phillipson: Quite possibly.

Q12 **Chair:** If nobody did it we would live in a more dangerous world.

Professor Phillipson: One correlation that the studies have found is that, essentially, a strong parliamentary role tends to be associated with a country taking slightly less military action. It is sometimes referred to as “the case for democratic peace”; essentially, the more veto points that you have, the more possibility that military action will not happen.

Q13 **Ronnie Cowan:** To balance your view, Chair, maybe we take more military action because we have larger forces and to justify larger forces, we have to take military action. You can only stow so many missiles in so



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many sheds and so on before you have to use them if you are going to manufacture more. Are we not caught in that quandary of: we have said what we are, and we have to live up to it or we are no longer going to be a military force? That seems to scare the living daylights out of the United Kingdom.

Professor Phillipson: That is a political question, which I would not—

Ronnie Cowan: I will give that to the next panel.

Q14 **Chair:** To what extent do you think we are a victim of some kind of constitutional Schlieffen Plan?

Sebastian Payne: I do not think we are a victim of that. I think this question of—

Dr Rupa Huq: Sorry, what is a Schlieffen Plan, for those who do not know?

Chair: That was the railway timetable that the German army set in the run-up to the First World War, which once it had started, it could not be stopped.

Dr Rupa Huq: I never did the First World War syllabus or German ever, so thank you for enlightening us.

Sebastian Payne: We could debate causation, but you have said we are short on time. What we know is that the UK has intervened in more military actions than any other country since the Second World War. If you look at the evidence provided in the House of Lords Constitution Committee's report, there is ample evidence of the fact that the UK is a major power and we know the interventions. I suppose, apart from what kind of country we want to have, it is the question of: what constraints, if any, should be put on the Government in their exercise of war powers and what other factors should we consider? I think the causation issue is difficult to disentangle, but I agree with you that the answer to "What are the appropriate constitutional arrangements?" does depend on what sort of country Parliament collectively thinks we should be.

Professor Phillipson: It has to be taken in the context of a lack of a codified constitution, which means that we do not have some of the more formal checks and balances that other countries have through their constitutions. As we will come to, the judges essentially play no role in this area, the domestic court, so there is no judicial check upon this, as there is for most areas of executive action. That to me means that the important thing about the fact that it comes from the prerogative, and that the courts have always ruled it to be non-justiciable, is that the only role is Parliament's. That means that what you are discussing today is very important, because Parliament is the only game in town if you want to have a check upon what the Government does militarily.

Dr Rupa Huq: Because our resident lawyer is not here, it falls to me. I did a law degree. I remember the snail in the ginger beer bottle, so it



falls to me to do the legal questions.

Chair: I do not know about the snail in the ginger beer bottle.

Q15 **Dr Rupa Huq:** Again, it depends what syllabus you did. What is the basis for the royal prerogative?

Sebastian Payne: If I may put it like this, the prerogative is the legal basis, so it is the other way around. The prerogative embodies the law. Maybe the answer to the sub-part of the question is: where does it come from? Historically, the power comes from the power of the King, but the royal prerogative has legal force, so it is the legal basis.

Professor Phillipson: Its legal basis lies essentially, yes, in history. It is what is left over in the gradual move from having an absolute monarch to a constitutional monarchy, and the prerogative powers are those that are left over in that process. Over time, Parliament has gradually taken most of the powers of the King—such as taxation, for example—for its exclusive use and the prerogative is the bit that is left over. The reason that it is unclear is because it is a residue as opposed to being a—

Q16 **Dr Rupa Huq:** It is a ceremonial thing, because we are always taught, aren't we, that the Queen—

Sebastian Payne: I think the use of the word "residue"—which goes back to Dicey—is potentially quite misleading, because it implies that it is just a little bit of something, perhaps even a ceremonial element, but it is not. The war powers are a major function of Government and a major power, so in no sense is it residual insofar as it is insignificant.

Professor Phillipson: Absolutely not. I would agree. The whole of foreign affairs is conducted under the prerogative, including military force, which are obviously enormously significant powers. I merely meant that was left over, but they are extremely significant, absolutely.

Q17 **Eleanor Smith:** Can I just come in, sorry, in regard to the constitution? The prerogative is because we do not have a written constitution as such, do you think?

Professor Phillipson: No, because Canada does have a written constitution, but it relies on the prerogative for many of the same areas as we do, because it essentially inherited that system of government from the UK. It is not just because of that, but I think the combination of it being the prerogative and the fact that we do not have a codified constitution means that the power is relatively broad and undefined and there is a lack of other checks, other than those that Parliament chooses to place upon it.

Sebastian Payne: If I could come in as well. There is no need to have a prerogative. In other words, in terms of legal form, there is no necessity to have the powers encoded as a prerogative. They could be changed. They could be abolished. They could be put into an Act of Parliament or they could be put into a written constitution. What obviously is needed is



that Government have certain key executive powers, so there is a functional issue. Obviously, the Government are going to need powers, but as for the question: does it have to be in the form of the royal prerogative? No, it does not but, as it happens, it is.

- Q18 **Dr Rupa Huq:** There was a quote from you, Professor Phillips, that it is, “an ancient source of residual, non-statutory executive authority that is defined in no authoritative constitutional text and which remains unclear in scope today”. Can you expand on the implications of that, the strengths and weaknesses? What analysis have—

Professor Phillipson: There are texts written about it—written by law professors and so on—and the Cabinet Manual nowadays sums up lots of the main powers that the Government have, but by “no authoritative text” I mean the authoritative text for a statute is the text of the statute. The authoritative text for common law is the judgments of courts. Those are authoritative written texts, only they contain the law. With the prerogative, there is no such text. You get bits of the prerogative that are written down in those texts where the courts do judicially review them, in the Miller case, for example, which decided that the prerogative could not be used to trigger Article 50. There is no case law on this because the courts, when they have been asked to rule on whether a use of force is or would be lawful, have said, “This is not justiciable, and this is not something that we can rule on”. In that sense it remains unwritten, other than by academic textbooks, essentially.

Sebastian Payne: It is the courts that determine the scope and extent of the prerogative, so it is common law. It is a common law power, insofar as the various prerogatives exist. If there is litigation, it is the courts that determine the scope of that. There may be definitional issues, but the question of whether prerogative exists or not, if it is disputed, is ultimately for the courts. For instance, the famous case of *Northumbria*, where the Government were acting and the argument was, “You do not have the power. This prerogative does not exist”, so then there was a sort of historical investigation as to whether it existed or not. There are definitional issues.

Dr Rupa Huq: Grey areas.

Sebastian Payne: But there are texts of jurists, constitutional experts, and it is for the court ultimately to decide, so it is common law in that sense. It was not the courts that gave the King the power, the King had the power, so there is a slight difference.

- Q19 **Dr Rupa Huq:** Is there a need for more clarity in defining these prerogative powers? How might you do that? Would it be desirable?

Sebastian Payne: It is a matter of emphasis. Most of the powers are known. It is not that nothing is known about them. I think the issue is a question of legal form: is this the most appropriate form in which Government have these executive powers? I do not think there is much doubt as to the definition of the war power, insofar as it is quite



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straightforward in that the Government exercises their powers. There is not any great uncertainty as to what the war power consists of. It resides with the Government and is held by the Crown.

Professor Phillipson: There are ways in which we can clarify it. One is if there happens to be a court case, which may clarify the scope of the power, and the other way is Committees like this, which can call expert witnesses and investigate any fuzzy edges and find what seems to be the best understanding of the particular prerogative in question that exists.

Sebastian Payne: For instance, in the Taming the Prerogative Select Committee, the Committee called for the Government to list all prerogatives and all those that were said not to be clearly needed should be discontinued. The Government ignored that, but—

Professor Phillipson: The Government never produces a definitive list. They always say they cannot produce a definitive list and they always say, “However, the prerogative includes—” and then there is a kind of standard list.

Q20 **Chair:** But to what extent is the prerogative codified in the Cabinet Manual in respect of decisions to take military action? I am looking at three paragraphs.

Professor Phillipson: It mentions the right for Parliament to be consulted. I cannot remember what the rest of it says. I think it just makes clear that it is exercised in practice by the Cabinet, but if you have it in front of you.

Q21 **Chair:** It says at paragraph 5.38, “The Government acknowledged that 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”. How much has that become a constraint on the prerogative?

Sebastian Payne: That is just a statement. It depends what you think the value of the Cabinet Manual is. It does not have any legal force. It does not codify conventions. It is a statement of what the Government believe in 2011 is the position. I know Graham Allen was a great devotee of the Cabinet Manual being a sort of proxy for the constitution. I do not think it is. It is essentially a manual.

Professor Phillipson: I would say that it is a codification of many—though not all—conventions. I think it has value, in the sense that one problem with our constitution is that it is often very obscure, and it is a document in which members of the public can go and find out basic stuff about the constitution. There is value in that sense, and it sheds a little light on what Peter Hennessy called “The Hidden Wiring”.

Q22 **Chair:** How is it any better than an indication of how the Government would like people to understand what they think about these matters?



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Professor Phillipson: Some of it conveys the Executive view and then there may well be a different view. A particular parliamentary Committee would take a different view of a particular convention, but quite a lot of what it says is relatively uncontroversial.

Q23 **Chair:** When the Prime Minister took the decision to take military action in Syria and informed Parliament afterwards, she argued she was complying with the terms of the Cabinet Manual. What do we draw from that?

Professor Phillipson: The Cabinet Manual is deliberately vague on the question of Parliament's role. It simply says Parliament should have the ability to debate the matter. It does not say—what is the crucial and contested point—whether Parliament must give its permission beforehand, subject to cases of urgent action.

Professor Phillipson: The status of the Cabinet Manual; the Cabinet Manual is not equivalent to a constitution and in no way does it tie the hands of a committee to argue for better or more detailed or, indeed, less arrangements.

Chair: Indeed, my Committee I chaired on the Cabinet Manual in the 2015 Parliament concluded it was little more than a precedent book.

Q24 **Ronnie Cowan:** We have established that the exercise of the prerogative powers has changed over the years. I am wondering about the justification for a legitimate exercise of these powers. Has that changed over the years?

Sebastian Payne: I think so. The exercise of the prerogative has not changed. What has changed is the guiding mind that makes the decision in exercising the prerogative. That change is linked to the rise of parliamentary government. The justification is: we are in a democracy and we do not expect the monarch to take the decision because it is a constitutional monarchy and a parliamentary democracy. The justification for who should take it is intimately connected to the idea of our conception of how we should be governed; what the nature of our democracy should be.

Professor Phillipson: In the other words, the Government remains responsible to Parliament for decisions they take on military actions, as for the rest of their decisions.

Q25 **Ronnie Cowan:** Does the justification come from the Prime Minister then—because that is where the power lies—or does the justification come from Parliament or from the Government or from the Cabinet or from a sofa Cabinet or from the Prime Minister ultimately?

Sebastian Payne: Are we talking about the justification for who takes the decision, or the justification in any one particular instance of the exercise of the power?

Q26 **Ronnie Cowan:** I am tending to think the latter but, also, the former is



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in there as well, sorry.

Professor Phillipson: The question on exactly how the decision is taken: we have a doctrine of Cabinet Government, but it tends to vary as to how it functions—as I think we all know—under different prime ministers. Some prime ministers have different styles. Thatcher and Blair were famous for probably giving Cabinet a less important role than some other prime ministers and the constitution is pretty flexible on that. Essentially it is the Prime Minister and, if necessary, the Cabinet.

Again, for the Iraq War, there was a formal decision by Cabinet taken to endorse the Iraq War because, obviously, it was a major deployment. I do not know whether the Cabinet formally takes the decision in every case or not. The justification is that it is the Government's responsibility to Parliament, and, therefore, from that you could say, "Since the Government are only the Government because they have the confidence of the Commons, they should not pursue policies in which the Commons does not have confidence".

Q27 **Ronnie Cowan:** What I am thinking is we got away from an absolute monarch saying, "You cannot have this power", so you have given it to the Prime Minister and does that absolute power now sit with the Prime Minister, potentially?

Sebastian Payne: The Prime Minister needs to have political support. That will reflect his or her authority, as well as the cogency of the arguments. For instance, as we all know, in the lead-up to the Iraq War there was a lot of protest against the Iraq War, and—as I understand from Graham Allen's comments—it was fought like trench warfare to get a debate and a vote, partly because the Government needed political support. They got it extensively, but there was clearly a need to get support from Parliament.

Q28 **Chair:** Then we went to Helmand without a debate and without a vote.

Professor Phillipson: You got a debate about 10 years after the initial deployment, which approved the continuing deployment, yes.

Q29 **Chair:** Isn't the political context much more significant than the legal context?

Professor Phillipson: This whole thing of when Parliament gets a vote, there is no law regulating, so it is always a matter of politics and/or convention.

Sebastian Payne: Yes. The point is: it gives discretion to the Prime Minister and, if the Prime Minister is strong—as the Chair has suggested—there can be a decision taken without recourse to Parliament.

Q30 **Ronnie Cowan:** You do not think the prerogative has been democratised?



Professor Phillipson: The tentative process of democratisation is underway and has been underway at least since 2003, but I think that the 2018 decision to take action against Syria, without prior parliamentary authorisation, has thrown the matter into some doubt. Before then there was a fairly steady process of prior authorisation and votes and the Government abiding by the vote. In 2018, that did not happen. That is the incident that you need to debate and reflect upon where that leads us, and whether you are happy with that incident or whether, as a Committee, you would like to push back on that.

Sebastian Payne: The paradox about 2003 was that there was a vote and it was heavily supported by the Commons to go to war in Iraq, but the Iraq War was the impetus for all the Select Committees subsequently, so it is slightly paradoxical.

Chair: We will come back to that decision.

Q31 **Eleanor Smith:** To what extent do you think the question of whether to use military force is a legal or political one? I think you have just alluded to it, haven't you, here?

Sebastian Payne: I think it must be both. It is both political and legal. It is legal insofar as the power to make the decision is encoded in the prerogative, so that when the Prime Minister decides that is backed up by law because that is what the prerogative effectively does. There are international law considerations too, but the decision to go to war is ultimately driven by political factors. Why else would one think of, for instance, invading another country? It must be for a political factor. It is both; it is not one or other.

Professor Phillipson: In terms of domestic constitutional law, there is no constraining domestic constitutional law. The prerogative essentially gives, in effect, as a matter of domestic law, legally unlimited power to the Prime Minister to authorise military force simply because the courts will not rule on it and, therefore, there is no legal check. The law that matters is international law, which exercises quite a strong constraint, I think, upon British Governments. Although we all know those cases in which the British Government have taken military action in which the legal case in international law was shaky, at best.

Q32 **Eleanor Smith:** I am going to come back to the written constitution. If you have a written constitution, would that be slightly different? Would you see it differently?

Sebastian Payne: Yes. A written constitution could change the form of powers. As I mentioned in response to one of your earlier questions, there is no need for there to be a prerogative. A written constitution could transform the legal basis. It would be an open question as to what those powers are—and you might choose to recreate high discretion in the hands of the Prime Minister—but the legal form would change. There are two things that are possible. You could change the way in which



decisions are made. You can change the legal requirements, but you would certainly change the legal form if you had a written constitution.

Professor Phillipson: It does not necessarily make a change in practice, I agree. It is a change of legal form. Whether it is a change in practice is up to the courts, but I believe in the United States the courts—although the power to use armed force is in the constitution—have never ruled that a given use of armed force was unlawful. Canada, which has a written constitution, but has inherited the prerogative, is similar.

Ultimately, if it is in legal form, it depends on whether the court thinks that it is suitable for legal adjudication, and their very strong view is that it is not suitable for legal adjudication. There is a quote from the CND case where the High Court judge says, “In my view it is unthinkable that the national courts would entertain a challenge to a Government decision to declare war or to authorise the use of armed force against a third country”.

Sebastian Payne: What the constitution could change: obviously, it is possible to recreate some aspects of the high discretion of the Government in a written constitution, but you could have any set of arrangements, so you are not compelled to have the existing set of arrangements. Of course, the fact that it was in a constitution I think would change the legal basis because it would be a constitutional issue if there was a challenge.

Q33 **Eleanor Smith:** What role have domestic courts played in the exercise of prerogative powers and to what extent have the courts been involved in the decisions around the use of military forces?

Sebastian Payne: The first part of your question is that the courts have been crucial to the application and definition of prerogatives in general. Since the 1960s, the courts have stepped up or been willing to judicially review prerogatives, so that in 1985, in the GCHQ case, the Government lawyer, Robert Alexander, could claim that prerogatives were completely unreviewable as a class, which the House of Lords did not accept.

We have seen a trend towards judicial review, so the courts will in principle judicially review prerogative powers, but—and as Gavin has referred to—in the case of war powers, the courts hold off. It is a question of branch competence. They do not think it is for them to judicially review the decisions of Government in relation to war powers.

Professor Phillipson: That was most recently confirmed in the case I just quoted to you, the CND case, in which the courts were invited to rule on whether the relevant UN Security Council resolution the Government was seeking to rely on did, as a matter of international law, authorise force. The courts declined to rule even on that, which was a narrower point than ruling on whether the use of force would be lawful, which they also declined to rule on. As I said, they said they thought it would be unthinkable that they could do so, which indicates that, in general, yes,



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they play a strong role in relation to the prerogative, but in this area they have been very hands-off and that is still their approach.

Q34 **Eleanor Smith:** Do you think that the role of the courts might change in this respect?

Professor Phillipson: It is possible, but I do not see it happening any time soon.

Sebastian Payne: It could change, depending on what the changes put in place were, so if you redefined “war powers” in an Act of Parliament or in a written constitution. It is a question of what you put into an Act or a written constitution, so it could change. That is an open question. It depends on what is in it. It does not have to change. Then of course I think a resolution would be in a different category.

The courts could have a role, as indeed in Germany there have been significant court cases about the deployment of forces, but then they have a very restrictive set of procedures about deployment of their army.

Q35 **Chair:** The Miller case came to the legal establishment as a bit of a surprise. To what extent do you think our Supreme Court, or the Court of Appeal might jump in unexpectedly?

Sebastian Payne: In the context of war powers, what we see is an extremely—I suppose you might say—conservative position in terms of the Supreme Court in relation to conventions. I think the Miller case is authority for the hands-off role of the courts in relation to matters they think are non-justiciable. I think the weight of Miller is in fact in the other direction.

Chair: That is interesting.

Professor Phillipson: Just to clarify, Miller only decided whether the Government had legal authority to trigger Article 50 under the prerogative. It did not and would not have decided whether the Government had acted rightly in triggering Article 50. The whole question of whether we ought to leave the European Union was one obviously that the courts would say nothing about, so the rationality of the decision to leave was not something on which there was any challenge. The sole question the court was asked was, “Does the Government have legal authority?” to which they said, “No, it has to be Parliament”.

Q36 **Chair:** Therefore, it is a much narrower question?

Professor Phillipson: It was a very narrow question.

Sebastian Payne: There was the devolution issue, though, and that is where the court was very conservative. They may not like that appellation, but it is in terms of their approach to conventions. In the intervention by the Scottish law officers as to whether they should be consulted and also the Welsh Government’s intervention, the court said that the Sewel Convention—which obviously everyone here knows was in



the Scotland Act 2016—counted for nothing insofar as the courts would have no part in applying it, even though it is an Act of Parliament. That is why I say it is conservative, insofar as it was a very conservative or orthodox view of the role of the court. I do not think they are likely to jump in.

Ronnie Cowan: We have learnt our lessons with the conventions.

Chair: There you are. I will take that as a comment and not a question.

Q37 **Kelvin Hopkins:** My question has at least been partly covered by some of your earlier answers, but you may wish to expand. It has been suggested that international law and international organisations have played an increasingly important role in the decision to authorise military force. How do you think international factors affect decisions within the UK to authorise military force?

Professor Phillipson: I would say that they play an important role, but not necessarily an overwhelming one. I think there are a large body of MPs that will want to know, first of all, is proposed military action lawful, but I do not think if they are then told it is lawful, that they will necessarily assume it is something that we should do. Because clearly MPs can see there is a distinction between whether something would or would not be lawful and whether it is a good idea, whether it is likely to have good results, whether the Government has a clear long-term strategy, whether it creates a danger of other countries being sucked into a wider conflagration.

Conversely, in some cases, the UK has been prepared to take military action, even where—as I said before—the international law case for doing so is shaky. Therefore, I would say the question of whether the UN has authorised it or whether there is another clear legal basis in international law is an important factor, but it has not always been either a necessary or sufficient factor on its own.

Sebastian Payne: The thesis you refer to has been elaborated on by Veronika Fikfak and Hayley Hooper. Their concern was that discussions in Parliament of international law issues might or have crowded out other considerations. I think that was their concern, if I understand their thesis properly.

International law is clearly very important, and the UK wishes obviously to observe international law. Tony Blair was very vexed by this question of a Security Council resolution in terms of the Iraq War. On the other hand, the legality or lawfulness may not necessarily draw in legal action.

Russia invaded the Ukraine—that was a clear breach of international law—seized a chunk of Europe and the UK did nothing. It is not decisive, but, if we are thinking of military action, obviously it is of the utmost importance. I think the thesis is whether it is crowding out other considerations. It is important and I think that thesis is just to remind



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people that there were other factors to bear in mind as well, political factors and questions of prudence or necessity.

Professor Phillipson: Exactly. I always thought that thesis rather underestimated MPs' intelligence, as if they cannot tell the difference between something being lawful is not the same thing as it being a good idea. There are many things that can be lawful, but the question of whether they are a good idea or likely to achieve good results or do what the Government says they will is clearly distinct from whether it is lawful.

- Q38 **Kelvin Hopkins:** Domestically, it depends upon the balance of views of whether or not to go to war. Those who opposed the Iraq War made much of international law and those who wanted to go to war said, "Why should they interfere? We are doing what we believe to be right". Isn't that fair?

Professor Phillipson: The Government's view was that they did have a legal case, as we know. It just was not one that was shared by international lawyers.

Kelvin Hopkins: It did not convince me, I have to say.

- Q39 **Eleanor Smith:** Should they look at the consequences of all these things? Do you know what I mean? Could we not look at that, particularly as regards international law, when they are saying something? Should we not have something about consequences?

Professor Phillipson: Yes, I think you do. From reading debates in *Hansard*, it seems to me that MPs address and ask questions about and query all of these things, which is entirely sensible, because the likely consequences of military action is one of the most important things that you want to know, although of course there is an element of uncertainty. If military action is likely to be ineffective, there is no good reason for taking it. Helmand caused too many civilian casualties.

- Q40 **Chair:** Going back to the Iraq decision, how much of the decision to approve military action in Iraq in 2003 should have been so dominated by legal considerations when, speaking as a parliamentarian, it is very easy to fill up the bandwidth of MPs with particular considerations so that we miss the wood for the trees?

Sebastian Payne: I think that was indeed the concern of Fikfak and Hooper in elaborating that thesis. It was just that. Obviously there is a serious point behind it, but I think there are other things that Parliament obviously are concerned to discuss as well. I suppose that is the point of their thesis: that we should not lose sight of the wood for the trees.

- Q41 **David Morris:** To what extent is the exclusive authority to deploy military force a necessary responsibility and a Government function?

Sebastian Payne: My own view is that it is Government that should formulate the policy and make the decisions. I do not think Parliament is an appropriate body to micro-manage a military campaign. I think that is



the function of Government and it is necessary. We know the UK is a major military power that is active, but that does not mean that it is not an important role for Parliament to scrutinise, to analyse and maybe in some cases even to reject proposals.

Q42 David Morris: You feel that the sole prerogative is for the Government to make the decision to perform the act of war?

Sebastian Payne: I think it is the function of Government to work out the strategy and the policy and for Parliament to scrutinise and analyse that. I do think, at a functional level, it is not very wise to have wars conducted by Parliament. I do not think that would work. Part of the issue is a paradigm, because a lot of the proposals for reform had a particular paradigm in mind—this is my speculation—the paradigm that the Iraq War was a war of choice, engaged in under a false prospectus.

In fact, there are many occasions when that will not be the case. For instance, we have NATO British troops in the Baltic States to deter the Russians from doing what they did in the Ukraine. They could act very swiftly. Not every paradigm is going to be the paradigm of, “Parliament was conned into going to war”. There may be a need to act quickly. There are lots of different scenarios you have to bear in mind.

Q43 David Morris: The procrastination of Parliament deliberating over whether there is a conflict not waiting to be had or even to be addressed should lie with the Government, because the Government have to act swiftly, should we have any particular military threat to the UK?

Sebastian Payne: Parliament has a very important role. It is quite proper for Parliament to be given a vote in many instances, but I think it is for Government to formulate, to direct the policy and there may be circumstances in which Governments have to act swiftly.

Professor Phillipson: That is a very important point, because some people argue that, under the Westminster system of responsible government, having Parliament involved in this just confuses matters and almost contravenes the separation of powers because, clearly, the conduct of foreign policy and particularly military action is a classic executive function. To me, as Sebastian just said, the important point is the Government proposes the policy. The Government gather the intelligence. They consult with their allies. They come up with a plan. I think there is nothing inconsistent in Parliament then having a right of veto over that plan, as in 2013.

That retains the classic Westminster system of government: the Government proposes, and Parliament scrutinises and then either gives its assent or does not give its assent. To me, that works perfectly well. The Government then remain responsible for the consequences of the action and, indeed, if it turns out that some of their case for military action was flawed, as we can think of several examples recently where that has proved to be the case. I do not see a problem with Parliament



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having a strong role. You still maintain separate functions as between the Executive and Parliament, because their roles are clearly defined.

Sebastian Payne: Also, we have to bear in mind that the UK has military obligations to 29 European countries through NATO, with an obligation under the NATO Treaty to come to their defence if they are attacked, which is not such a fanciful scenario as people might have thought 15 years ago.

Q44 **Ronnie Cowan:** We have already established the UK has had 60 military interventions since the Second World War. Is there a consistency in the decision-making process to get involved in those conflicts?

Professor Phillipson: Nowadays, there seems to be more of an open process of consultation but obviously, for example, an action like Suez, was taken in great secrecy, in which there was no declared policy beforehand and Parliament was not consulted. Obviously, many of our major allies—including the United States—were not consulted either. Of late, it has been more of a public process where certain allies together form a policy and that is then fairly publicly debated.

Q45 **Ronnie Cowan:** Is that because the public demand it and public expectations have changed?

Professor Phillipson: Yes, I think so. Possibly, also, because Suez showed how badly a secret plot to take military action without proper consultation of major allies can go badly wrong.

Q46 **Ronnie Cowan:** Does that number of 60 include UK forces deployed to Northern Ireland?

Professor Phillipson: It is over 60.

Sebastian Payne: I do not think forces deployed in Northern Ireland.

Professor Phillipson: No, because that is part of the territory of the United Kingdom. This is military force taken overseas.

Q47 **Ronnie Cowan:** It is my understanding, because I have been beautifully briefed, that you can only deploy UK forces on UK soil if you are invited to by the police. Is there any way to subvert that?

Professor Phillipson: That is not something I have researched for this session. I was looking at military force used overseas rather than on the territory of the United Kingdom.

Q48 **Ronnie Cowan:** In this post-Brexit world we are aiming towards I do not sleep very easy in my bed at night. The only two instances I can think of, off the top of my head, are when—it must have been—the local constabulary asked us to intervene in Northern Ireland, and 100 years ago when the Battle of George Square took place. It was painted as a Bolshevik uprising and military forces were deployed, tanks were put on the streets of Glasgow, and machine gun nests were put into George



Square. That was, again, at the invite of the local police force. Of course, if pressure was put upon them to invite the Government is a different matter. I was just wondering, having you in front of me, if there was some way in which we could maintain that role.

Sebastian Payne: As Gavin says, in terms of deployments overseas, there is a clear trend for greater consultation. I think that is the trend. Although people talk about a War Powers Convention, and although the shape of that may be open to interpretation—as we discovered last year—clearly it is indicative of an expectation. What has changed is that Parliament expects to be consulted and to have a vote in most circumstances. As to the process of decision-making, that would require a very careful analysis of Cabinet papers insofar as they are available.

Q49 **Kelvin Hopkins:** Did the fact of parliamentary approval of the Iraq conflict in 2003 change the conventions in decisions to deploy military force and, if so, how were the conventions changed?

Sebastian Payne: It has changed. You might say the Iraq War is what has given rise to the expectation that Parliament will be consulted. Dissatisfaction over the Iraq War was clearly the impetus for the Public Administration and Constitutional Affairs Select Committee's report, the Lords' Constitution Committee, the Governance of Britain Green Paper, the Governance of Britain White Paper, where they proposed a resolution, and then, more recently, Graham Allen's Political and Constitutional Reform Select Committee. They have all been driven by dissatisfaction over the events that led up to the war in Iraq and what we subsequently knew as well.

Professor Phillipson: I would add about Iraq that the interesting thing is that it shows that, when establishing convention, it is how the subsequent Government treat the precedent that is important, rather than how the Government thought of it at the time. Tony Blair's Government did everything they could to suggest that this was a one-off, and, although they might be permitting a vote because of the particular controversy, they went out of their way to say, over and over again, that they were not obliged—constitutionally, or legally, or anything—to hold a vote. They tried to stop it setting a precedent, but the Cameron Government decided to treat it as a precedent with the Libya campaign, and took the decision to say in advance that they thought there was a precedent of Parliament being consulted beforehand. That is the one I think showed that a convention existed from that time.

Sebastian Payne: While he was in opposition, David Cameron set up the Democracy Taskforce to look at this very question with Kenneth Clarke chairing that taskforce. There was buy-in when he was in opposition, and I suppose that whole trend was carried further when he was Prime Minister.

Professor Phillipson: If I may, I think Iraq showed two other things. One is that, if the Government alone can decide on the timing of the



vote, they can time the vote in such a way as to mean that it would be an enormous international humiliation for the UK. In other words, Tony Blair had to allow a vote, but at that point an enormous deployment had taken place and war was a few hours away. The result would have been if Parliament had voted against it the Government would have fallen. I think some Labour MPs openly admitted that they voted the way they did because they did not want to bring the Government down. The Prime Minister was able to leverage the power that he then had before the Fixed-term Parliaments Act to say that he would resign and force a general election, possibly, in order to push MPs into voting for something.

It showed that the timing of a vote is very important. Obviously in Syria in 2013 there was not the same pressure of events upon MPs, and they were able to consider the matter more dispassionately on its merits without mixing up the question of the survival of the Government.

Sebastian Payne: On that Syria 2013 issue, a thought had occurred to me that, by inviting the House to decide the matter, the fact that he was defeated did not follow that he had lost the confidence of the House, because he said to them, "You decide".

Q50 **Kelvin Hopkins:** On a specific at the time, what lessons could we learn in relation to how the Attorney General's advice was used in the Iraq decision?

Sebastian Payne: That whole saga with the Attorney General suggests that, if there was a greater scrutiny and accountability to Parliament, Parliament will have to decide exactly what advice it expects to get. This has been discussed quite a lot. I see it is referred to as a convention that advice is not given. I think the argument really is that it is part of the privilege of its legal adviser; its chief legal officer. I am not sure I buy that argument—and I suggested that to Graham Allen's Committee—that the relation that a bearer of public power is not the same as the relation of a solicitor to a family, for instance. There may be practical issues about what can be revealed in the evidence but, insofar as the question of legality is concerned, I do not see any reason why Parliament should not receive that.

Q51 **Kelvin Hopkins:** It was suggested at the time that the Attorney General's first advice was against and he was pressurised to change his advice?

Sebastian Payne: That is the commonly held belief. That he was pressured. We await the documentation, if it is ever revealed, but that is the understanding of most people.

Q52 **Chair:** What it is likely to have turned upon is that the earlier advice was based solely in terms of the international legal context, not respecting the domestic legal context. Of course they are different, and where they are in conflict in our system the domestic legal context can prevail.



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Professor Phillipson: His first advice was much longer, more detailed, and equivocal; more, "On the one hand" and, "On the other hand". His final advice was much shorter and more definite.

Sebastian Payne: Of course, another issue is what the Cabinet was or was not told, because that also matters in Cabinet Government.

Professor Phillipson: Another connection you might make is the fact of the use of the humble address to force the Government to publish the Attorney General's legal advice on the Northern Ireland backstop. I believe his updated advice is going to be published today, or has perhaps already been published. I do not know. I gather we are going to hear something about it.

Q53 **Chair:** I have been doing the day job.

Professor Phillipson: Yes. The fact that Parliament managed to find a way of forcing the Government to publish the AG's advice on the Northern Ireland backstop suggests that they might make use of that again if there was a very controversial proposed exercise of military action, as with Iraq.

Q54 **Dr Rupa Huq:** What functions and roles do you think Parliament should have in decisions to authorise the use of military force? I know, Professor Phillipson, you have said before that these things should be concretised, the convention.

Professor Phillipson: Yes. I think clearly there is now some kind of convention that Parliament should be generally consulted, and then there is now a vague exception of urgent action—which I think we always understood—or secret action that if you were taking military action to rescue hostages, obviously you would not pre-announce that. Everyone accepted that there had to be some exceptions for Parliament being consulted in advance.

The key questions now that are uncertain are: what is the scope of that exception? I think Theresa May's speech after the military action in 2018 suggested a rather broader exception than perhaps we had thought. Secondly, does the House of Commons have the right of veto, or does it merely have the right to be consulted?

I have argued in the past for Parliament having a right of veto. In other words, the Prime Minister should accept, as a matter of constitutional convention that, if the House of Commons votes against military action, it would be unconstitutional in the conventional sense to proceed. I think those are the two pressing questions now about what the convention is and what it should be.

Sebastian Payne: Likewise, I think Parliament definitely should have a role. I also think there will need to be exceptions. I do not think wrapping up the term as a War Powers Convention necessarily resolves the issue. There is still an open question as to exactly what the role of Parliament



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is. The Governance of Britain proposal for resolution was criticised. There was a detailed resolution. There have been several resolutions proposed.

The proposal by the then Government was criticised because they left the timing of the debate in the hands of the Prime Minister and it was thought that there were too many exceptions. I think that is a debate ultimately Parliament has to have: is it reasonable for the Government to be left to decide without reference to Parliament?

There is clearly going to be a grey area between things that are urgent and questions of whether there are too many exceptions, therefore, rendering the convention of consulting Parliament pointless. As I said, there have been several resolutions. It would make sense, perhaps, to have a resolution because then Parliament will discuss those exceptions and try to work out exactly what their role is.

At the end of the day one of the two crucial questions is: what should Parliament's role be? I think Parliament itself needs to think hard, which is why your inquiry is important because hopefully it will stimulate that.

Q55 **Dr Rupa Huq:** Would you agree with the automatic veto?

Sebastian Payne: I did not hear Gavin say "automatic veto". However, just to answer the question: yes, I do think there are circumstances where Parliament should be invited to vote on whether there should be a war, for instance. I do not think that applies in every circumstance.

Professor Phillipson: No. A veto with exceptions where truly urgent or secret action is genuinely needed and perhaps other exceptions, such as the use of special forces, which has always been something that the Government have not commented on.

I think putting it in the form of a resolution has two key advantages. One is that, if you do not do that and you allow it to continue to develop, what happens is that essentially its development is driven primarily by the Executive and quite a lot by short-term political exigencies. You get this Government acting, as in the case of Theresa May's Government in 2018, without getting permission from Parliament first, and that has changed the convention and rendered it uncertain.

For as long as you leave it without Parliament taking an active role by stepping up and proposing a resolution, essentially the convention will develop in a rather haphazard way, driven primarily by what the Government decide to do. The question is whether Parliament wants to play a more active role or simply sit and wait for the Government to do what they want and then react to that after the fact. I would suggest that Parliament can take a more proactive role.

The other benefit of that is that it allows Parliament to deliberate on what its role should be in a general constitutional sense. It is divorced from the controversies of a particular case because, in a particular case, the question of Parliament's role will always be mixed up with the merits of



the case and the controversies and military action always provokes very strong feelings and controversies.

It is better if you can consider the question in the abstract as to what you think Parliament's constitutional role should be, rather than allowing that to become mixed up with the merits of military action of the Government's case, in any particular case, in which the two issues always become intertwined and you cannot think as clearly about it. That is why debating a resolution helps separate out the question of constitutionality from the question of the merits of the case on any given occasion.

Sebastian Payne: There would be advantage to having a resolution. I agree with Gavin that a convention does arise in a rather piecemeal fashion. I am not sure I would say that Parliament should think of it in the abstract. I think Parliament should think of very many different particular scenarios. It is not that we are concerned by constitutional principle in a vacuum but, really, to think about: how could Parliament add to the decision-making process in different scenarios and under what circumstances should it be left to the Government?

Q56 **Chair:** How much do you think having a retrospective vote adds to what you would call the democratisation of the use of military force?

Professor Phillipson: It is better than nothing, but it is not as good as a vote beforehand, partly because, once the action has been taken, there tends to be—especially if nothing bad has gone wrong—a reaction in favour of it having happened, wanting to support the armed forces and not appear to criticise them after the fact. It is better than nothing, but it is nothing like as good as a debate before the action is taken.

Sebastian Payne: My answer would be it depends on the context. If the point of the retrospective vote is to censor the Government for an ill-conceived and badly communicated strategy, it has a value. There may be circumstances in which a retrospective vote is the only thing possible, because there may be an emergency situation. However, that does not necessarily preclude other circumstances where there could be a vote in advance of the action.

Professor Phillipson: Yes. Just to clarify, if the Government have a good case that urgent action is required then they should be free to take action without prior parliamentary votes. However, they should always come back and report to the House and submit themselves to the House's judgment after the fact. I think that should only happen where there is a genuine need to take action without prior parliamentary authorisation.

Q57 **Eleanor Smith:** To what extent should the powers for authorising military forces—I think you have just touched on it—be set out in statute?

Sebastian Payne: My view is that, if we are not going to have a written constitution—and that is not what we are discussing—a resolution would be more sensible. For my part, I think we should have a written constitution. That would allow for a proper distribution of powers and to



define the relative role of Parliament and the Executive. In the absence of a written constitution, a sensible step or improvement would be a resolution.

The point about an Act of Parliament is it depends on what is in it and—depending on what is in it—it could either just replicate the high discretion that exists in the Government or it could completely shackle the Government. I find it slightly difficult to answer that question without knowing what was going to be in an Act of Parliament. Of course, it would potentially change the position of the courts, but again that depends on how the act is drafted.

Professor Phillipson: I just do not see it as being a realistic proposition that is likely to happen. I gather that the last time it was looked at, the civil servants who were asked to draft it found that it was extremely difficult to come up with a form of words that did something that would place some limits on the Government's power but yet were sufficiently flexible and permissive, and I think that you will run into huge objections from the armed forces.

That is why I think the realistic, incremental, more modest but realistic approach is a resolution, which does not bring in any issues of legal liability or involve the courts, and does not involve the same problems over definition and things like that because, at the end of the day, you are talking about a form of political control. Therefore, legal definitions and that kind of thing just do not come into it. That is the modest and sensible step that could be taken. We now have several draft resolutions that have been produced by different committees and different Governments in the past. I do not see the statute as being a realistic prospect at the moment.

Sebastian Payne: A resolution emphasises that this is between Government and Parliament. An Act of Parliament, depending on what is in it, could change that position. Also, I do not think the courts are very keen to be drawn into a matter that they feel is really for Government to decide with the scrutiny accountability being held by Parliament. I think that is their view.

Q58 **David Morris:** In the previous Political and Constitutional Reform Select Committee—and I served on it—we came across the idea that a resolution should be put before the House. By and large that is more or less happening now, de facto. I am personally still uncomfortable with that. Do you think that Government should have the strongest powers possible to react should we be attacked given very short notice? These attacks do happen without notice. We know that is reality; war is war. Do you think that the full breadth of the law should lie with the Government and also the responsibility?

Professor Phillipson: Absolutely. Yes, everyone has agreed who has looked at this that any form of words, if it was in a Parliament resolution, has to allow an exception for urgent action. I think that all the drafts that



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are around—and that previous committee drafted one as well, and the Gordon Brown Government drafted one—have all allowed for exceptions for things like urgent action, special forces, and so on. There might be another particular question now about drone strikes, where I think the Government's view is that certainly prior parliamentary authorisation does not apply, and those are done in secret and reported about to Parliament afterwards.

Q59 David Morris: The American model where the President has 60 days, in effect, to send in the troops and then the politicians take up to extend that period, do you think we should have that kind of an arrangement in our constitutional arrangements?

Professor Phillipson: Only for urgent action, and you would probably want to have the Government reporting back rather more quickly than 60 days. From memory, I think seven or 14 days was talked about. If the Government had to take urgent action that the circumstances suggest, they should report back to Parliament as soon as reasonably possible, so not as long as 60 days. That is two months, isn't it?

Sebastian Payne: Yes. The resolution in your previous Committee did clearly make exceptions for emergencies. I am not quite clear the thrust of your question in terms of your being uncomfortable about the resolution. What aspects of it made you feel uncomfortable?

Q60 David Morris: I remember on the Committee at that time I was uncomfortable with the fact that we would take the powers away from the Government to have the responsibility to take action should something unforeseen happen. In other words, if war was declared we cannot just wait around and wait for Parliament to decide what we are going to do about it. We cannot even get Brexit through, so in this sort of a context how could we act very, very quickly? That was why I was a little uneasy about putting a resolution forward that would extend the period where, in effect, Parliament would be procrastinating over something that has more urgency.

Sebastian Payne: That concern obviously was reflected ultimately in the resolution that was drafted.

Professor Phillipson: A resolution can be drafted in fairly flexible terms. There is always going to be a trade-off between the Government pushing for as much flexibility as possible and some parliamentarians wanting as much control as possible and you reach a sensible compromise. Just because you have a resolution does not mean the Government are necessarily any more constrained than now. You make it as flexible or as narrow as you want.

Q61 Eleanor Smith: How might Members of the House of Commons be provided with the information necessary to take informed decisions about the authorisation of military forces?



Sebastian Payne: That is one of the vital questions in this because, if Parliament is to have a serious, valuable role, it has to have information. It cannot just be presented with events as a *fait accompli*. There has to be a cycle of information. There is a separate issue about information that is regarded as secret. Clearly, the active engagement of Parliament in foreign policy and defence issues, and its knowledge and access to information is vital.

Insofar as there is information that is regarded as secret, I suspect it may be that there has to be something equivalent to the US Defence Committee; a Select Committee or a Standing Committee that can hear the evidence. Clearly there are going to be some scenarios where some of the evidence is not going to be put forward or, indeed, should not be forward in front of the House and the whole media of the world.

That does not mean there cannot be communication. There could be a Committee. The Intelligence and Security Committee already hear evidence of some degree of secrecy. We do not know for sure how secret, but we are told they hear secret information. It is presumably possible to do it in a different context as well.

Professor Phillipson: I have two points. Where there is secret intelligence then the Intelligence and Security Committee can be briefed on that on a confidential basis. They are all security cleared and they can then report to the House as to whether they believe the Government's case is made out, in terms of the intelligence that cannot be shared with the whole House.

Sometimes it is put that the House should not have a role because it can never know the real information and, therefore, it cannot make a properly informed decision. What I would say about that is that the same issue arises often with counter-terrorism legislation, when the Government are demanding extraordinary powers and they are justifying that on the basis of the security threat. No one denies that Parliament has to make a decision as to whether to pass that legislation or not. The same issues often arise in the counterterrorism context, and there are ways around it, such as the Intelligence and Security Committee.

Q62 **Chair:** What I am interested in is the utility, the public benefit, the national interest that is served by trying to democratise the use of military force. I took part in the Iraq debate in 2003, and you seem to accept that if the Government got it wrong then the House of Commons got it wrong too, so what was the benefit of having the debate?

Sebastian Payne: That really is a follow-on issue from Ms Smith's question, which is information and knowledge in participation. I think the public benefit is that if Parliament supervises—I do not mean they make the policy—and the Government know they have to explain to Parliament their policies in a degree of detail and sophistication, it should improve the quality of decision-making and it should still, in some circumstances,



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be open to the House to say no. It was open to the House to say no in 2003. It did not in the Iraq War, but that was a possibility.

Professor Phillipson: It is not a guarantee against bad decisions being made. Sometimes bad decisions have been made and the House of Commons will go along with a bad decision. It is no more of an argument for excluding the House of Commons from a role than to say that sometimes bad legislation is passed, which everyone agrees afterwards was a mistake, but the Commons and the Lords agreed to pass it.

Q63 **Chair:** What did you think of the Syria debate that David Cameron lost? What did you think of the quality of the arguments being deployed by MPs in that debate?

Professor Phillipson: I thought it gave quite a forensic examination of the Government's case. What the lead up to the Iraq War showed was that Tony Blair had, more or less, managed to commit the British Government into going in with the Americans before he had even gained the consent of his Cabinet because he was such a politically strong Prime Minister. What that showed was that he got us quite a long way down the track, based purely on his view and the view of a small cohort of advisers, and then managed to get the rest of the country to go along with it. Partly because we were so far along that, by the time Parliament was asked to vote, it was almost impossible to pull out without putting the Government at risk.

Q64 **Chair:** I appreciate that, but I am asking about the Syria debate.

Professor Phillipson: In the Syria debate Parliament was not under that kind of time pressure, so it was able to expose the Government's case to forensic analysis.

Q65 **Chair:** I was in that debate. MPs got up and contested the veracity of the intelligence the House of Commons had been presented without any possibility that they could verify that information. People literally stood up and said they did not believe the Assad regime was responsible for the deployment of chemical weapons and, on that basis, the House of Commons turned down the military intervention. The result is the Syria crisis got far worse. The effect of us not taking part deterred the Americans from taking part. The whole problem festered, and we have had to get involved anyway. Where was the public national interest benefit of subcontracting a decision that is intrinsic to holding the Seal's office? Why should we respect a Government that does not want to take its responsibilities and wants to pass its responsibilities to the House of Commons and abdicate its own responsibilities?

Sebastian Payne: The Syria debate or, rather, the details that you describe of it, make the case for there being a committee that could view the evidence.

Q66 **Chair:** Our committees in Parliament scrutinise retrospectively and they encourage learning for the future. They do not take part in operational



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decisions. The Intelligence and Security Committee is not the Joint Intelligence Committee. It cannot be the Joint Intelligence Committee. The Prime Minister takes advice from the Joint Intelligence Committee, not from the Intelligence and Security Committee.

Professor Phillipson: The IC would advise Parliament on its view of the Government's case.

Q67 **Chair:** You have admitted that Parliament cannot possibly know everything that the Government know because it would compromise the intelligence sources. How can Parliament possibly make an operational decision that is valid?

Sebastian Payne: We are not suggesting that Parliament makes operational decisions in the field. Not all scenarios are the same. I think you are making one example good for every scenario.

Q68 **Chair:** Why is the confidence principle enough? If the Government choose to deploy military force and the House of Commons do not like it, the House of Commons can bring down the Government, if necessary. All the decisions the Government take in the end are accountable to Parliament. Why is that not enough?

Professor Phillipson: That mixes up the question of the merits of military with the question of the survivability of the Government, and whether or not MPs think that they might lose or regain their seats, or the wider political fortunes. It simply mixes up the merits of the thing together. That is exactly the problem with the Iraq debate; some Labour MPs knew that, if they voted against it, they would bring down the Government and they did not want to do that. It simply clouds MPs' minds with the survivability of the Government, instead of focusing on the question in hand.

Q69 **Chair:** That is the question that affects economic policy, education policy and every other policy.

Professor Phillipson: Those are expressly legislation on which Parliament ultimately can say "Yes" or "No".

Q70 **Chair:** Obviously. We took evidence quite recently on the relationship between Parliament and the Executive, and Igor Judge explained to us that Parliament is sovereign: Parliament makes the laws. It controls the supply of money, and the Government must maintain the confidence of Parliament to remain in office. We do not have Government by Parliament.

Professor Phillipson: No, indeed. That is why the Government must formulate the policy. The Government propose and make the policy, and Parliament only gets to say "Yes" or "No". That is always Parliament's role.

Q71 **Chair:** You have not given a single example of where parliamentary scrutiny of a military decision before deployment has provided any



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material benefit to the public security and global security of this country. Give us an example.

Professor Phillipson: The question of whether we should have intervened in 2013 is a matter of opinion, and we can never know for sure. We cannot know what the result would be. The result in 2015, when we did intervene and attacked serious chemical weapons, made no difference either.

Q72 **Chair:** How much have you considered the consequences for global peace and security if all the democratic countries in the world put constraints on their Governments to deploy military action but the dictatorships, like Russian, China and North Korea, and the religious regimes like Iraq, operate without those constraints?

Sebastian Payne: The points you make seem to be the view that there should be no such constraint. You have invited us to make suggestions or analyse the situation with regard to what is understood to be the existing convention. Not all scenarios are the same. In the case of secret intelligence, it may either come under an exception, which the convention such as it is exists recognises or, alternatively, it might be able to be dealt with by a committee that could report back to the House. You have made it emphatically clear that you think this is a terrible idea and that Government should have the ultimate say without being vetoed by Parliament.

If one does not take that view the question is: what are the circumstances in which there should be exceptions? How can it be constructively managed? There will obviously be examples where Parliament cannot be consulted. There may be emergencies; I have referred to that earlier. Then we come to the questions of that information that cannot be revealed. How is that to be dealt with? You can either conclude—as it appears that you have—that it is pointless and not in the public interest or, alternatively, you can try to devise a resolution or a convention that accommodates those scenarios so that Government can still act effectively.

Professor Phillipson: You seem to be portraying a slightly alarmist scenario in which democracies, essentially, have their hands tied by their Parliaments while the dictatorships will be free to act. If you just look at the recent record, the British Parliament authorised military action in 2011 with Libya, in 2014 with Iraq, 2015 with Syria, and again in 2018 with Syria. I know there was not a vote in advance but Theresa May won the vote afterwards. In fact, I think she probably would have won the vote in advance, which is probably why she felt confident in going ahead to do it. The recent record, even since the convention, in the last 10 years, has not indicated that the British Parliament is essentially going to tie the hands of the British Government.

Q73 **Chair:** The greatest benefit from what you are advocating would seem to be about the engagement of public consent, but it is funny that you have



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not mentioned that.

Professor Phillipson: It is. That is the basic democratic case, as expressed through Parliament's elected representatives. The Government are only the Government because they have the confidence of the Commons. The Government are not directly elected. Their mandate only comes from the Commons. To me, that means the Government should not pursue major controversial policies in the teeth of Commons' opposition, as seen currently in the Brexit debate in the meaningful vote where the Government have accepted that principle.

Q74 **Chair:** The Suez crisis clearly engaged a backlash, because not only was it a very ineffective international action but it clearly did not have public consent. The Falklands War clearly did have public consent. It did not require a vote before we went to military action.

Professor Phillipson: There were eight votes. They were on Adjournment debates, but it was very extensively debated in Parliament. There was just not a formal vote authorising it.

Chair: There was not a formal vote, correct.

Professor Phillipson: There was overwhelming support in Parliament for it.

Q75 **Chair:** Yes, but it was not a formal vote to approve military action.

Professor Phillipson: No.

Q76 **Chair:** If the Government can engage public support for military action they will obviously do so. If they cannot that will be a consideration. What is this intended to change?

Professor Phillipson: I do not think a general debate is—

Q77 **Chair:** It seems a theological debate that has no utility or benefit.

Sebastian Payne: That was not the view of David Cameron. It was not the view of Kenneth Clarke. It was not the view of the Lords Constitution Committee. It was not the view of Field Marshal Lord Bramall, if you care to read his evidence to the House of Lords Constitution Committee. It was not the view of Air Marshal Lord Garden, either. To you it may have no utility, but there are plenty of people who believe otherwise.

Q78 **Chair:** That I perfectly accept. However, I would not be doing my job if I did not put the alternative point of view to our witnesses so that you could argue with it.

Sebastian Payne: Yes, but it seems to me to be something of a stark contrast that does not reflect that there are different scenarios and Parliament will have different possible roles, some of which it will no doubt accept—as all the resolutions do—that there will be circumstances where some information is secret and some situations that are emergencies, and some situations that are in response to a sudden



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attack, or a NATO alliance obligation. I think that is well understood by everyone who has looked at that.

Q79 **Chair:** One last question: why do you think we tend not to include consideration of how a nuclear strike might be authorised in these discussions?

Professor Phillipson: Are you talking about a nuclear strike in response to an attack; in other words, one that was ordered very rapidly, or a pre-emptive strike?

Q80 **Chair:** We have gone through more than an hour of oral evidence and all the written evidence with no reference to the possibility of a nuclear strike.

Professor Phillipson: To answer your question, I assume it is because people think there are probably no circumstances in which the UK would make a pre-emptive nuclear military strike. In other words, it would only be used in response to an attack launched upon us, in which case there would be no time for Parliament to be involved.

Q81 **Chair:** Actually, the policy of the Government and successive Governments is not to rule out first use.

Professor Phillipson: Indeed, but I do not think it has ever been considered a realistic possibility. I am sure that if the Government were proposing to launch a considered nuclear military strike, not in response to a nuclear attack on them, they would feel that they had to get Parliament's assent in some way because, obviously, it would be a potentially catastrophic act.

Q82 **Chair:** Do you have a response to my question? Is it too difficult?

Sebastian Payne: No, I do not think it is too difficult. I do not think that anyone believes that there are simple, clear-cut answers. There are clearly complex issues that have to be considered. I do not think that anyone believes that Parliament should micromanage nuclear military action.

Q83 **Chair:** Why should it micromanage anything else?

Sebastian Payne: I do not think it should micromanage it. That was the thrust of what I was saying earlier on in my observations. That it is for Government to formulate the policy and it is for the military to conduct the campaign. The issue is: what role does Parliament have to debate, to analyse and, in some cases, possibly to be given a vote? That is the issue. I do not think anyone is suggesting that the role of Parliament is to conduct the campaign.

Professor Phillipson: The final point on nuclear weapons is that deterrence requires simply that potential enemies do not know, for example, if the UK were wiped out but the Trident submarines could still retaliate, whether that would happen. I do not know whether it is



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mythological or not, but I gather that a Prime Minister is asked to write a letter of last resort when they come into office. Clearly, if that letter's contents were disclosed, its deterrent value would go. There is controversy over Jeremy Corbyn in that respect. That is one good reason why Parliament would not have that disclosed.

- Q84 **Chair:** The adoption of the principle of deterrence relies upon potential adversaries not knowing what we might do? However, we do not just have nuclear deterrents. We have a whole spectrum of deterrents. Our military forces are about deterrents, about shaping the global environment for the benefit of global security and our own security. Why does the same principle not apply to the deployment of conventional military deterrents?

Professor Phillipson: Because nuclear weapons have never been used by any state since the Second World War.

- Q85 **Chair:** I am asking a different question. It is not about nuclear weapons. Why does the same principle not apply for the use of conventional deterrents?

Professor Phillipson: Because using nuclear weapons would be a decision that could potentially extinguish life on earth if it resulted in an uncontrolled nuclear exchange and, therefore, there is a very strong suspicion that no one would do it. Therefore, the only way of creating successful deterrents is to leave the matter unclear.

- Q86 **Chair:** That is a very clever argument, but you saying that the weapons are so terrible there is no point in trying to make them accountable to Parliament.

Professor Phillipson: There is an argument to say that the letter of last resort should be accountable to Parliament but, obviously, it would lose much of its value if the outcome was that the Prime Minister said—and that was read in Parliament, “If the UK is wiped out by nuclear weapons we will not retaliate”. Then you have lost your deterrent value immediately.

- Q87 **Chair:** The point is that our ability to defend our country depends on not telling potential adversaries everything we may or may not do.

Sebastian Payne: That is so, but leaders in various countries will be quite aware of the potential of the UK to attack in a certain circumstance, or to defend interest. It is a slightly false contrast in the idea that Parliament does not get to discuss it and, therefore, there will be a complete surprise that is militarily effective. I am sure Saddam Hussein realised that he was under risk. If anything, in that circumstance, if he had been sensible, he would have realised that he was under debate in Parliament. The fact that everyone was discussing it should have in itself formed a deterrent.



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Of course, there may be circumstances where there needs to be an element of surprise but, in many cases, there is a long lead in. People were talking about a war in Iraq for at least a year or two. In that example, I do not think your hypothesis stands up.

Chair: Thank you very much. We have one more question.

Q88 **Ronnie Cowan:** In terms of nuclear war, there is a consideration to be made that the missiles are not currently targeted at any particular co-ordinates, so there is a process to go through there, and the argument that Parliament should be involved in deciding who it is that we are going to nuke because it kind of matters to the planet.

Professor Phillipson: Yes. I think you have detailed evidence from a former commander. I would defer to his view on that as somebody having considerably great expertise.

Chair: Thank you very much indeed for your evidence today. It has been a very interesting discussion.

Professor Phillipson: Thank you for inviting us.

Chair: If you feel the need to add anything else, please do write to us. Thank you.

Examination of witnesses

Dr Hayley Hooper, Dr James Strong and Dr Tara McCormack

Q89 **Chair:** Please could you identify yourselves for the record?

Dr McCormack: Tara McCormack from the University of Leicester.

Dr Strong: James Strong from the Queen Mary University of London.

Q90 **Chair:** Thank you very much for being with us. Can you briefly explain how the use of military force and declarations of war are authorised, both historically and today?

Dr Strong: First of all, historically, the general rule is that the House of Commons has at various times pressed for greater power over questions of military action. While we have heard the orthodox Westminster model view that, essentially, the House gives the Government power to carry out military action, it sustains it in office, and then it holds it accountable subsequently, there have been a number of historic procedural exceptions, including: the end of the North American War in 1782, the establishment of Roebuck's Committee of Inquiry into the Crimean War in 1855, the substantive vote approving British participation in the Korean War in 1950, and, obviously, since 2003, this novel convention of prior consultation with the House before military deployments.

I would say that the general rule here is: when the nature of the issue or the particular politics surrounding it has led to a majority in the House



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wanting more power for the House, the House has sought out and taken more power. At times when the House has not had a majority seeking more power generally, the Executive has been able to take the lead.

Dr McCormack: I will give a slightly more contemporary account. Just think about what has happened post-Cold War. Historically, of course, as we know, the legitimate authority has rested with the Crown and then the Executive, as political power has shifted.

What happened with the end of the Cold War in the 1990s is that there was a very big debate in Britain and a sense that the British political system was losing legitimacy. You had new Labour's programme of constitutional change, but this was very much an across-party agreement. I think my colleagues who previously spoke discussed the Democracy Taskforce. The Iraq War and vote compounded it, so by the early 2000s there was a sense that the royal prerogative powers were unfinished business as part of this programme of constitutional renewal.

Then you had a number of excellent parliamentary inquiries and reports. Cameron, as we know, pledged to fulfil what was argued to be a new convention. Where we are now—which I think is the real point of discussion—is that, in April last year, Theresa May authorised air strikes. She did not recall Parliament, and her point was that we acknowledge the existence of the convention; however, this action does not fall within the remit of the convention. That to me seems to be the most important issue to discuss at the moment: where are we now?

Q91 **Kelvin Hopkins:** How does the UK Government's use of prerogative powers over military force compare with the powers used by executives in other countries?

Dr Strong: We had a good account from the previous panel. There is a wide spectrum, ranging from very, very strong executive power through to, in the German case, very, very strong legislative power. The Bundestag not only has to approve any overseas deployment of the armed force regardless of their purpose, but also has to renew its mandate every year. It is not just a matter of, "Okay, you can go off and do this", but each mandate has to be renewed on an annual basis.

Variation tends to come in terms of the size of deployment. In some states parliamentary approval is not required for smaller deployments. Some states do not require parliamentary approval for non-combat operations; they make a distinction based on the purpose of the deployment. Some base their parliamentary requirements on the degree of multilateral support. An operation explicitly approved by the UN Security Council would not require parliamentary approval, but one outside of explicit UN Security Council approval would require parliamentary approval. There is a range of different approaches taken.

Dr McCormack: I do not have much to add. I guess, in terms of interest for us would be France and Germany, our two biggest European allies. As



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James has said, Germany has extremely strong democratic war powers, and that extends up to and includes participation in a potential Article 5 military intervention. Parliament would still have to approve that. France has very weak democratic authorisation of powers and it is entirely within the powers of the Executive.

Dr Strong: It is interesting as a British parliamentary scholar talking to German parliamentary scholars, because they talk about the dozens and dozens of examples they have of parliamentary votes approving the deployment of the armed forces. I find myself saying, "Have I missed something? Has Germany been engaging in hundreds of military operations that I have not seen?" It is because, if they send 10 people on a training mission to Estonia, the Bundestag has to approve it and has to renew that approval annually.

Q92 **Chair:** Should we be more like France or more like Germany?

Dr Strong: That is the broad question that you are asking in the campaign. The one other thing I would add is: not all Parliaments are equal. In the UK we have a confrontational parliamentary model. Germany has a more consensual parliamentary model. It is the norm, for example, to have coalition Governments in Germany. Again, it is not a question of what powers Parliament has, but also what Parliament is and how Parliament works.

Q93 **Kelvin Hopkins:** I am not advocating such a change but if we went for a multiparty system, based on PR or something like that, would the whole demeanour of Britain in world terms change? Would the whole constitutional arrangements that we have in regard to war change too?

Dr Strong: Possibly. One reason arguably why the Cameron Government gave Parliament greater power was because, in a coalition situation, it is helpful to get all parties explicitly onside with a policy. It is the same reason why the Cameron Government used the National Security Council, because it meant that you got everybody around the table, and everybody bought into it. That might make a difference. Research on coalition Governments shows that they tend to fall into one or two extremes: either they are sclerotic, either they struggle to make big decisions about foreign policy, or they also wind up making more extreme decisions about foreign policy where the control of the relevant ministries falls into more extreme parties, which can happen in a more PR system.

Q94 **Chair:** Which country do you think contributes more to global security, France or Germany?

Dr McCormack: That is a political question. How do we understand the consequences, for example, of our interventions? How do we understand the consequences of our post-Cold War foreign policy? In that sense, that is a political debate to be had. We could obviously go through each intervention that Britain or France has engaged with and consider the consequences of it, but again that is a political debate.



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What do I think the consequences, for example, of the Libyan intervention were? I think it has been pretty bad. I do not think that slave markets run by ISIS have contributed much to international peace and security, but obviously there are those who do think that the consequence of the Libyan intervention have been positive. It is ultimately a political debate, but I do not think it is necessarily answerable in that sort of straightforward way.

Chair: I think that is a very honest answer.

Q95 **Ronnie Cowan:** Thank you. You have heard some of these questions before because you were listening to the first panel. We are curious about the movement of power from the prerogative powers of the monarchy to Parliament. From a political perspective, I am wondering how justifications for a legitimate exercise of these powers changed over the years.

Dr Strong: The broadest answer to the question is: we are no longer simply an absolute monarchy. We are an absolute monarchy with bits of democracy grafted on to it. I say to people Britain is not a democracy, it is an absolute monarchy with democracy grafted on to it. In the absence of a Britain constitution what we have is the Crown, and the Crown is the ultimate source of all political power. That is where all political power ultimately comes from but, over time, we have created institutions that democratise aspects of that power. I think we can see the recent convention as part of a general process of further democratisation of that absolute power.

Dr McCormack: I do not have much to add to that. As I said, I do think it is really important to look at the recent political context in the 1990s and the 2000s. I would say this discussion was pre-Iraq in terms of considering the democratic deficit in the British constitution. In the early 1990s there were all sorts of changes in terms of, for example, naming the head of MI5, which was a very new development. To me, this very much needs to be understood in the context of the post-Cold War sense that the British political system has less legitimacy. As I said, both parties very much took this seriously and, for me, weakening the royal prerogative powers can be understood in that context.

Indeed, you have Gordon Brown in 2005 saying that the royal prerogative powers are unfinished business. We need to work more towards closing the gap between the Government and the people. That is how I would understand the shift.

Q96 **Ronnie Cowan:** My concern is that, if we do not allow Parliament to be involved in these decision-making processes, we are handing that absolute power from a monarchy to a Prime Minister.

Dr Strong: A Prime Minister who is sustained in office by a majority support in the House of Commons that is elected. That is our democratic model. It is more democratic than it simply being held by someone who is there by virtue of being the child of the previous monarch, but it is not as



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democratic as a directly-elected head of Government would be. It is not as democratic as having Government entirely done by plebiscite would be. It is more democratic.

Q97 **Ronnie Cowan:** My point was that having that current situation is why it is important that these things do come in front of the House to be debated.

Dr McCormack: My argument would be that this should be a decision that Parliament makes, ultimately.

Q98 **Dr Rupa Huq:** I want to come back to this democratic deficit you mentioned. Dr McCormack, I think you are quoted as saying that going to war is an existential decision these days.

Dr McCormack: It can be, yes.

Q99 **Dr Rupa Huq:** It should always be democratically authorised. Can you say what you mean by that and what the gap is between what we have now and what it could be?

Dr McCormack: Yes. I think we have quite a problematic situation. First of all, I would argue that the decision to go to war should be one that is democratically authorised, that is it is the expressed will of British citizens in this context through their parliamentary representatives.

Q100 **Dr Rupa Huq:** Not a referendum then?

Dr McCormack: Who is to govern? As I said in my written evidence, is it to be us through our representatives, or is it to be the Executive making their closed decisions. Again, that is ultimately a political discussion. I do think there are parallels with Brexit, hate it or agree with it. There is a very interesting separation between much of the media and many politicians—by all means not all—certainly, between public opinion and the media and political class when it comes to questions of war. Consistently the British public has shown that the majority of people are anti-intervention.

In April last year—and this may well account for why Theresa May did not fancy going to Parliament—in the week gap between the use of chemical weapons and the British, American and French air strikes, there were several polls that showed that the majority of British people did not support military action in Syria, even if it was shown that the Syrian Government were responsible for the use of chemical weapons. We have a situation in which public opinion is far less belligerent than—not all—many politicians and many in the media. I think that is quite a democratic problem for us.

Q101 **Dr Rupa Huq:** What would be your ideal way of doing it?

Dr McCormack: Ideally, I would probably argue for a statute, although taking into account my colleagues' comment about the extreme unlikelihood of that happening.



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Dr Strong: Can I add on to that? Tara makes a normative argument about the rights and wrongs. I would add a practical argument. I would say that, by definition, a British Government have the support of a majority in the House of Commons. That is how they function on a day to day basis. I would argue that a Government that cannot keep hold of their majority, let alone win support from other parties in launching military action, should think very carefully about whether they have a good plan. That does link back to the public-opinion question as well if you cannot win a vote in the House of Commons at the outset of military action, what is going to happen to you if things go wrong?

I would not say this is necessarily a question about the rights and wrongs morally, I would say it is a practical question because experience has shown—and this was mentioned in the previous panel as well—the House of Commons is perfectly willing to approve the use of force if it is given half decent reasons for doing so. A Government unable to do that have not made a very good case, full stop.

Dr McCormack: One of the interesting things was that in 2013—as everyone will know—Cameron went to the House of Commons, and I have to disagree with the Chair, I thought the debate was excellent, having recently read it. There were many very, very probing questions. There is a great quote from Jim Sheridan, “We must understand from previous conflicts that war is not some sort of hockey-cokey concept. Once you’re in, you’re in”. It was not just people standing up and saying, “It was not Assad”. It was people asking, “What is the end point? What are the consequences? What are we there for?” I was reading the debate. I thought it was absolutely impressive and, as my colleague said as well, a really good example of free from the immediate political pressures of having a debate.

Cameron went to Parliament in 2013 to ask for permission to authorise airstrikes in response to the use of chemical weapons. It is of note that it was exactly the same situation in April last year that Theresa May refused to go to the House of Commons and said the convention—such as it was—does not apply here, but it was actually exactly the same situation, which obviously suggests that it is a very weak convention if the Government of the same party even can say, “Now we have changed our mind”.

Dr Strong: If I may just add two things while we are on Syria in 2013, the first thing is that it is important to note that the Prime Minister did not ask the House of Commons to approve military action. He asked the House to endorse the Government’s broader strategy, leaving open the possibility of military action and explicitly committed to a further debate and vote before any such military action could take place. The problem with doing that, as we heard with regard to Iraq in 2003, is that it allowed Members who thought the Government had not made a very good case but might in future have supported the use of force to justify rebelling or abstaining or not voting.



The second issue is that, if you look at the amendment put by the Labour Party and the Government motion, the two approaches proposed were very, very similar. We know that the Government had changed their position hoping to get Labour support for their motion. Essentially, the two motions are identical in terms of substance. Two-thirds of Members voted for one or the other; the problem is that the two party leaders were not able to agree on a form of words that they thought they could both get support for. When they subsequently did that over bombing Daesh in Iraq in September 2014, you had a vast majority of Members voting in favour of the use of force.

In the story of Syria in 2013, I take the point about some of the problems with the debate. One of the points that I took from the 2013 debate was that Members were right, we should not have invaded Iraq in 2003, because that came up almost as often as Syria did. But had the Government and Opposition agreed a form of words—and they were very close together on the substance—it would have been passed by two-thirds of Members. That is something that we tend to forget when we talk about that particular outcome.

Q102 **Ronnie Cowan:** You have veered on to the area that I was about to go on to. There is a danger in this debate that we sterilise the subject matter. We are not talking about a policy that may or may not affect transport in the United Kingdom. We are talking about going to war somewhere. It is a situation where if we get that wrong and that then brings down our Government, well, tough. MPs rotate round from Opposition to Government benches as we have done historically over the years. The situation in which we are making a decision where we will be putting our armed forces at risk and potentially killing civilians in a country in an area of the world that we know very little about should take precedence over the fact of whether the Government are going to lose the next election or not.

Dr Strong: That is a very strong argument and the public largely agrees with that argument. That is the situation where we are now. We can debate the hypotheticals but if we were to say, okay, this was a nice experiment, but we are not going to do it anymore, you would be saying to a public the majority of which expects a prior parliamentary vote before military action, "You know what, that is not going to happen". I think that that would raise legitimacy questions regardless of the rights and wrongs strategically.

Dr McCormack: I agree very much, and this is one of the problems with the debate. In fact, one of the things that I find quite worrying is that often in our discussions about the Iraq war, which I would say has been fairly catastrophic as the Chilcott report and memos that were published as part of the Chilcott report reveal, it was an extraordinary situation, as colleagues alluded to in the first session of evidence, whereby the Government actively presented a false narrative for war.



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One of the most worrying things I find—and I think that Chilcott himself warns of this—is that the Iraq war is almost taken as a kind of historical accident, “But we don’t do that stuff anymore”. Rather, as Chilcott I think said himself, we need to understand this is not an historical record but something that we need to think about for the future. So, yes, I agree.

Q103 Chair: Can I just pull you up on one thing, which is about how political support for a campaign is sustained once it has been commenced? Once we were embedded in Basra or Helmand, I would say there was very little public support for what our armed forces were engaged in and very little confidence that the military action was being effective for the long term. Helmand was particularly pointless. What should be Parliament’s role in those circumstances?

Dr Strong: Again, a lack of public support makes it difficult to conduct and sustain military operations over the long term and I think that Parliament has a role in conveying a lack of public support to the Government and in reflecting a lack of public support. I do not think it should be absolutely determinative, but certainly if you have clear public opposition to a given use of force, it is unlikely that that position is going to improve subsequently.

The only other thing I would add is that one of the problems we have had with military action in recent years is that it generally has not achieved the objectives that were explained at the outset. Success tends to be popular. The Falklands War was popular. The problem with Iraq and Afghanistan is they drag on for a very long time and do not necessarily achieve anything.

Q104 Chair: Ironically, in the first case, going to Iraq, at the actual point the decision was taken the Prime Minister persuaded the public and the House of Commons.

Dr Strong: There was a rally round the flag effect at the outset, but there had been sustained public opposition until about a week before the actual start of fighting. It is only I think the day before the final parliamentary debate you get the first opinion poll showing public support. That is sustained for roughly 15 months into the conflict. Essentially, it is sustained until, first, it is clear there are no weapons of mass destruction and, secondly, it is clear that the allies are being bogged down in urban warfare. The initial removal of Saddam Hussein was very popular. You get a peak of public support. That was very popular.

Q105 Chair: At what point did the war become undemocratised?

Dr Strong: I would argue that there is a high level of democratic oversight of the Iraq War. The problem there, I think, is more to do with how it was carried out rather than with the principle. There is a parliamentary vote. The House of Commons approves the invasion of Iraq. I think that is a highly democratic thing. Public opinion polls were in support at the time of the invasion. That is a helpful thing. But there are



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a number of things that go wrong with Iraq, boiling down to failure of the Executive. The Chilcott inquiry is pretty solid on this.

A colleague at the University of Birmingham, Professor Patrick Porter, has a book out about the Iraq War. The title is simply "Blunder". I think that from a strategic perspective, that is fairly clear. I would say that it is a case of an Executive failure, and I think that when the Executive fails to the degree it did in 2003 it is unrealistic to expect Parliament to correct that failure. That does not necessarily mean that there should not be a role for Parliament.

Q106 Kelvin Hopkins: Is there a big difference between a decision before action takes place, or opinion then, and once it has taken place? Because once a war has started and once an invasion has started, British personnel are dying. The public and Parliament are reluctant then to condemn it because it looks as if they are saying, "You are wasting your lives" and that would be very unpopular and not seen to be patriotic.

Dr Strong: Then, of course, that was also a problem with the war in Afghanistan full stop is that it is still today very difficult to say that we achieved nothing, and it was a waste of time.

Q107 Kelvin Hopkins: Decisions beforehand are very important because once it has started it is difficult to get a—

Dr Strong: That would be my view, yes.

Dr McCormack: I would agree with you. After last year's April airstrikes, there was, of course, an emergency debate. As we know, Theresa May went to the House of Commons and there was an emergency debate at which point it was fairly clear that there was strong support in the House of Commons for the action that had been taken, but notably, without being flippant, World War 3 had not started. Remember, of course, that Russia had specifically said in the lead-up that if any Russian military personnel are struck—as we know, Russian military personnel are, as they say, marbled through the Syrian military forces—that Russia would retaliate and so on. Clearly, that did not happen, and I think that is something worth discussing as well, that Russia was notified in advance. Parliament could not be notified in advance, but Russia could be.

I think that votes after the fact, either because of an ongoing conflict in which absolutely people will not wish to seem to be criticising soldiers in the field, or that something seems to be successful is a very different kettle of fish to being able to vote and discuss before any action, as with, I would say, the 2013 Syria debate.

Dr Strong: I would distinguish between one-off operations and sustained commitments to a war. In the case of the 2018 Syria strike and the one that was proposed in 2013 as well, these were explicitly intended to be a one-off thing. You could add in the 2015 UAV strike on Daesh operatives in Syria as well. One-off things go to the House afterwards. It is relatively easy to get approval for something that has happened. If you go



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beforehand, you get bogged down into hypotheticals. I would distinguish that between an intention to engage over a sustained period where—

- Q108 **Kelvin Hopkins:** Doesn't it become more complicated because once things like the Syrian War happen there is a lot of secrecy and there is a lot of embedding of secret forces from all sides going in different ways into the situation? There have been rumours about chemical warfare: who provided the chemicals, who was doing it and so on? At the secret part of Government they will know, but the public will not know.

Dr Strong: There has been general acceptance among MPs since 2003 that, to whatever extent, there is a convention of prior parliamentary consultation it does not extend to clandestine methods of war. One of the unanswered questions is: what happens if clandestine methods become an increasingly large part of how the UK wages war, as they already have done in recent years? Will that assumption have to be revisited? That is certainly one possibility for the future.

- Q109 **Eleanor Smith:** Just to talk about a constitution again, if we had a written constitution could that change things in the way that we do it?

Dr Strong: One issue with a written constitution is, yes, it would change things; yes, it might bring some clarity. It would also introduce an element that other states that have written constitutions have, which is that you would have a constitutional court that would be the final arbiter on these questions. The advantage of conventions in the UK system is that the House of Commons is the arbiter of whether a convention has been followed or not followed. Once you start putting powers like this in a written constitution or on a statutory basis, the courts become the final arbiter of whether the process has been followed properly.

Yes, if you have a written constitution it clarifies things, but it also changes the enforcement mechanism. At the moment, if the House of Commons believes that the Government have acted outside of their proper authority, the House of Commons can take action in response. Under a situation where you have a legal route, either a statute or a written constitution, if the House of Commons thinks that the Government have exceeded their authority, but the courts think that the Government have acted within their authority, the courts will prevail.

Dr McCormack: On a slightly different point maybe, one of the interesting discussions around a written constitution formalised in a statute, at the core of the issue it is ultimately down to the legislature to assert its rights. An interesting example would be America where, in principle, it is the legislature that has the war powers, but we know that, through various Executive instruments, the President essentially engages in intervention. There is an issue that ultimately I would say this is a political question. It is down to the legislature whether it is a constitution or a statute or a convention. If the legislature won't assert its authority, then it does not really matter. Then whatever form there is, if the legislature won't demand it, then it does not exist.



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Dr Strong: My view on this has been that a Government able to ignore a convention would be able to get around a statute or a constitutional provision. If the Government have sufficient support that they would not feel bound by the present convention even in its limited form, then it would be able to repeal legislation. It would be able to bypass the constitutional conventions. It would get around it in some way. The only scenario that you would add with a written constitution would be the possibility of the courts' ruling against the wishes of a majority of MPs, which to some extent is what happened in the Miller ruling.

We saw the public response to that. We saw the questions about the legitimacy, not just of the ruling but the legitimacy of the courts in general in a situation in which we do not have a tradition of administrative law in this country. We do not have a tradition of constitutional courts making these kinds of rulings. It might clarify things, but I do not think it would change that much, really.

Just one final point: it is much easier for the legislature to change the Government in the UK than it is in the US. A simple majority of MPs can throw any Minister individually or the Administration as a whole out of office.

Q110 **Chair:** We are having a very interesting discussion, but we are going to have to crack on because most colleagues will want to be in the Chamber very soon after 12.30, which means we have 20 minutes.

Dr McCormack: You have other issues today.

Chair: I am very sorry; there is another show in town. We will crack on. Have you dealt with your question, do you think? I think that you have.

Eleanor Smith: I have, yes.

Q111 **Ronnie Cowan:** We have covered this to an extent. I veered off topic in the previous panel as well. Maybe you have a view on this, maybe you don't. It is about the use of UK military forces on UK soil. Do you have any views on how we can improve that? The current situation is that recently Gavin Williamson said we will use armed forces to fight knife crime, which put all sorts of images into my head. Unfortunately, Cressida Dick, the Met Commissioner, said yes, the police are up to that idea. Should that not be coming from Parliament?

Dr Strong: I would learn the lessons of the Saville report. Personally, I would be very, very dubious about using the armed forces in that kind of circumstance and I suspect the armed forces would be as well. In terms of whether it should come in front of Parliament, I would subsume that under the general question, I think. These questions should come in front of Parliament. It is the kind of question you could ask in the abstract: under what circumstances would it be appropriate?

Q112 **Ronnie Cowan:** I have asked.



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Dr Strong: Should you gain the support of a majority of your colleagues the Government will not be able to ignore it.

Q113 **Ronnie Cowan:** I have written questions on that and I get very abstract answers.

Dr McCormack: I guess it depends what one wants to achieve. I cannot really imagine it would do much to help resolve knife crime, but that is a different issue.

Ronnie Cowan: Another matter, another day.

Q114 **Kelvin Hopkins:** This is a question that I asked the previous panel. Did the fact of parliamentary approval of the Iraq conflict in 2003 change the conventions in this area? This is about using military force.

Chair: Very briefly, yes or no.

Dr Strong: Not on its own. Precedents have to be followed.

Dr McCormack: Not on its own, but I think that it certainly sped up a discussion that was already in existence about constitutional changes. Yes, it certainly precipitated changes, I guess.

Dr Strong: I think that there is a question about whether we are moving inexorably in the same direction or whether this is another moment of greater parliamentary oversight, as we have seen in the past, and whether we might return to a freer Executive in future, which I think is an unknowable question at this stage.

Q115 **Eleanor Smith:** The question I was going to ask has more or less been answered, but I want to ask this one. To what extent should powers for authorising military force be set out in statute?

Dr Strong: I would be dubious about it for two reasons. First, by its nature the Executive will want a degree of flexibility in this area. Unanticipated threats are the most dangerous threats and if you can't respond to something you have not thought of in advance, you are going to be in difficulty.

I would also make the point that the House has used the absence of statute previously to extend its own authority over Government where there has been majority support for extending the authority of the House over Government. Statute freezes the situation from both perspectives. It limits the ability of MPs to extend their own power, as they arguably did over Syria in 2013, extracting a promise from the Government to seek prior authorisation before arming Syrian rebels, which is not the kind of thing that anyone would have written into a war powers statute. In a conventional situation, you can respond to the circumstances, but with statute you have to try to anticipate everything or write it in such a general way that you can get around it regardless of what happens.

Dr McCormack: I would be more favourable to a statute, notwithstanding I do not think it is very likely. I guess my argument



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would be that a written constitution, of course, is a very, very different context. If Germany can ensure parliamentary authority over decisions to intervene, even for small-scale operations, I do not think in principle there is any reason why it is beyond our capacities to write some form of statute that can achieve similar. I know I am an outlier in that sense.

Q116 **Chair:** If not statute, how about the resolution that our predecessor committee recommended in 2014?

Dr Strong: I don't see why not, but I do not think it would change anything. Anything that was written down in a resolution, if you subsequently had a majority in favour of not following what was written in the resolution, then you would not follow what was written in the resolution.

Q117 **Chair:** Or if the Government just exercised their prerogative in the absence of a resolution?

Dr Strong: If the Government exercised their prerogative, ignored a resolution, then you would be back where we are with the current position, which is that the House can either punish it or not.

Q118 **Chair:** You would see no benefit at all in Parliament setting out a framework of expectations?

Dr Strong: I would see no reason not to do it. It is fine to set these things out aspirationally and I think that the debate might be helpful, but it would not be binding realistically. A new circumstance would arise, and people would treat the new circumstance on its own terms. I am a bit of a sceptic, I think.

Q119 **Chair:** You want statute; you prefer statute?

Dr Strong: No, I think that a convention is the only realistic route, but the problem with convention is a convention either is, or it is not. The ability of any individual actor or any committee to force a change in a convention is limited because conventions change when the majority view changes.

Dr McCormack: I suppose again to go to the political question, I think that fundamentally Parliament should have the power to authorise war. I do not think that Parliament should be micromanaging a conflict, but absolutely once it is proposed I think it should be parliamentary authorisation of war. What we saw happen last April is that the convention that possibly existed for a brief period is obviously so weak as to be virtually non-existent. I would advocate for anything that could put the parliamentary authority on a stronger footing, I guess.

Q120 **Chair:** You think that Parliament should take the strategic decisions and then the tactical decisions should be left to the Government?

Dr McCormack: Yes, Parliament I would argue should make the decision about whether the country should engage in military intervention, and I



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would also argue that we need to have a much broader idea of what we are putting within that remit. Certainly, as James alluded to and I have mentioned in my written evidence as well, the methods by which many states—us, America, Russia—are intervening now, we are moving far beyond simple boots on the ground. I think that is quite an urgent discussion as well to be had.

Q121 Chair: I have a question about that, but you mentioned how opinion polls were supporting what the House of Commons decided on the Syrian vote in 2013. The polls were behind the Commons, not with the Government. Obviously, if you read any grand strategist back to Clausewitz, engaging your population in your strategic objectives in support of what you want to do is a vital component of effectiveness, but where do you draw the line? You cannot have foreign policy and defence policy run on the basis of opinion polls.

Dr McCormack: I think that in a modern democratic society one has to look at it the other way round. It is not about ensuring that the populace signs up to one's foreign policy. It is about who makes those fundamental decisions. You asked at the start what kind of country we should be, and I think that is exactly the right question. For me, the prior question is: who is to decide what kind of country we should be? That to me is fundamental.

Q122 Chair: That is decided by what Governments we elect. Once we have elected the Government that decides the kind of country we are to a large extent.

Dr McCormack: There is a fundamental discussion and that is a whole other question as well about how foreign policy is discussed, for example, and the extent to which foreign policy is discussed as part of the manifesto and so on. Fundamentally, I would argue it is for us as citizens to make that decision. There are lots of politicians who won't like those decisions. After the 2013 vote, we had lots of people bemoaning and saying, "What is going to become of the country? That is our action over" and so on, but agree or disagree, the principle for me is fundamentally a democratic one and sometimes that has consequences we don't like, as Brexit has, or we may like.

Dr Strong: I would also add that if the public is convinced that there is a threat to the national security of the United Kingdom, then it will support the use of force. The problem is that in all of these interventions we are talking about, the public is fundamentally unconvinced that there is a threat to the national security of the United Kingdom. There is public support for intervention against Daesh in 2014 and 2015 precisely because the public does think that there is a real threat to be dealt with. The reason you don't have public support for Iraq in 2003—which you can debate because it does go up—Libya in 2011 and Syria in 2013 is that the public simply is not convinced that there is actually a threat to UK national security, and it is not necessarily wrong on that.



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The problem is that we have not really made an effort to make the public case for a broader understanding of UK national security reflecting the UK's role as a great power and a member of the UN Security Council. This comes back to Tara's point again about what kind of country we want to be and how we have that conversation. It really doesn't get talked about in a way that has successfully engaged people in general in the country, and when it is talked about the balance of opinion is that the British people do not want to be that kind of country.

Q123 **Chair:** In 1936, 1937 and 1938, the majority of the public did not want to know that Hitler was going to be a great threat to our national security, to the extent that Baldwin refused to rearm in 1935 because he knew the British people would not support it even though it was becoming very obvious that we needed to rearm. These problems have always existed and institutionalising the ascendancy of—dare I say—wishful thinking in the public into the decision-making might not be in the national interest.

Dr Strong: But it is not a fair comparison because Adolf Hitler's Germany was a strategic threat to the United Kingdom. Saddam Hussein's Iraq was not.

Q124 **Chair:** Yes, but the point is that the public did not believe it was and didn't want to know it was.

Dr Strong: That is true but that is a failure of the political class.

Q125 **Ronnie Cowan:** No, it wasn't all the public. When we went and joined the International Brigade in Spain to fight against fascism, before this place the Government had decided it was a threat to us, so don't damn the citizens of the United Kingdom when the state did it first.

Chair: I beg your pardon.

Dr McCormack: I do think that there is a problem with the Hitler analogy. We have moved from Saddam Hussein to Hitler and Milošević here, but these are—

Q126 **Chair:** I am just making the point that public opinion does not necessarily have an accurate assessment of what the security threats are in the longer term.

Ronnie Cowan: In these days of fake data and fake news and illicitly funded campaigns, public opinion can easily be swayed in one particular direction very dangerously.

Chair: I am just underlining that there is a bit of a dilemma here.

Dr McCormack: Can I just make a quick point about the national interest? One of the interesting debates, and again this has been the subject of very good House of Commons reports as well, is that whole problem of the national interest. What is it? What is it today? I think that James is absolutely right, that is one of the things that successive Governments post-Cold War have shied away from. We have these huge,



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almost meaningless terms, "Oh, well, it is defending the rules-based order, everything" and then, of course, people can reasonably say, "Oh, what, like Iraq?" It is framed in such huge terms as to be almost meaningless. I think that is absolutely the crucial problem.

Chair: I would absolutely share your sentiments that the words are bandied around without any strategic coherence. I absolutely share your sentiment.

Q127 **Dr Rupa Huq:** How might MPs be provided with impartial, accurate information to take informed decisions about these things of such gravity, authorisation of military force?

Dr Strong: I would use the committees. I would ask the Foreign Affairs Committee to comment on the position of the use of force within the UK's broader diplomatic strategy, the appropriateness of the use of force as a tool for achieving the UK's diplomatic aims, ask the Defence Committee to comment on the capacity of the UK armed forces to achieve the objectives that are being set for them by the political masters, and I would ask the Intelligence and Security Committee to conduct a smell test of any secret intelligence that could not be made public.

The one area that would not be covered by that is the area of legal advice, and that is an area that would need to be thought about some more. The precedent of requiring the publication of the Government's legal advice over Brexit offers one possible route through, but I would also make the point that in terms of UK domestic law, if the Attorney General says that it is legal in international law, then it is legal in international law. It does not really matter in terms of UK domestic law whether other international lawyers disagree with the Attorney General because that is the mechanism that there is. There is no other way of testing that.

I would say use the committees and I think that is perfectly plausible and would fit quite nicely with Parliament's role as a strategic inquisitor rather than getting bogged down in the specific details to talk about these bigger questions.

Q128 **Chair:** This is the final question. Dr McCormack, you have talked about how war is migrating into other spheres. Of course, it is possible to conduct warfare almost covertly using machines without people, which to some extent hardly seems like warfare. Where do we draw lines around what constitutes the deployment of military force?

Dr McCormack: That to me is a big concern as well, that the deployment of use of military force is now understood very, very narrowly, Iraq—

Chair: Boots on the ground?

Dr McCormack: Boots on the ground, large-scale deployments. I think that we have to be brutally honest with ourselves. There are covert methods of intervention that, if we were on the receiving end, we would



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understand it as an act of war. This is not now a normative point, I think, but a purely practical point. For example, airstrikes against Syrian facilities: if that happened to us, obviously we would understand that as an act of war. We have funded moderate groups, opposition groups, in Syria. We would understand that, if we were on the receiving end of that, as a serious act of intervention.

Again, to go back to colleagues in the first session, that is something that really does need to be debated, and again not in the stress of an imminent conflict situation. How are we going to define it? This is a discussion that has run right through all the very good parliamentary debates and inquiries, that problem of definition: how do we define military action?

Before I hand over to James, it is noticeable that, for example, cyberspace is now being designated as a military operational domain by us, by NATO, by America, by Russia, naturally. We really do need to expand what we understand by military intervention, I would argue. That is quite an urgent discussion.

Q129 **Chair:** Maybe conventions and resolutions provide for flexibility that statute would not?

Dr McCormack: I can't see that it would be beyond our capacity to make some kind of definition. Again, I think that I would probably look more to the German model, which takes into account impact rather than the means of delivery, the effect. To me, that seems a fairly sensible thing.

Dr Strong: It has proven perfectly possible to put the intelligence services on a statutory basis. I think that there is a mistake when we talk about clandestine methods of war of thinking that just because you can't debate individual operations in a public forum that you can't debate the principle in a public forum. For example, the decision to deploy Special Forces on the ground in Syria, which was not debated, it was largely accepted that Special Forces are not covered by the convention. There is no reason why they should not be.

You could debate the principle: the Government are going to conduct military action in this area. It is going to be an aerial campaign but with the exception that Special Forces may be deployed, and then you can have that conversation. It does not mean you sit down and say, "We are going to send six guys into this province on this date". That is obviously not going to work.

With any of these things, again the drone strike in Syria in August 2015 as a point of fact was a one-off. The UK did not take further military action in Syria until December 2015 after it had parliamentary approval to do so. Had that been the start of a broader campaign, there is no reason why just because we were using drones Parliament could not have debated the principle of using drones in this area. The sensible reluctance to talk about clandestine matters in public fora needs to be reconsidered



in the context in which clandestine methods are becoming an increasingly dominant part of how we wage war, but I think you would still need to retain that desire not to talk about specific operations.

Chairman, I have read your comments in the debate last year about how the House asks about specifics. That has not really been the case in the debates in 2003, 2011, 2013, 2014 and 2015. Most of the comments have been on the broader strategic question. I still think that the debates could have been strengthened in terms of their strategic calculation and, as I say, I would use the committees to do that, but this would be my view. I think that we should be covering all methods in whatever arrangements we have.

Q130 Chair: If we debate these things, I come back to the exchange I had at the end of the last session, and this will be very brief. If we discuss all these things in Parliament so that our adversaries know what we are doing, we have no idea what Russia is doing. They do not discuss in public what they are doing. How do we avoid tying our hands when our adversaries are not tying theirs?

Dr Strong: First, Russia is militarily significantly weaker than NATO, so uncertainty is often your only option when you are the weaker party in a bargaining situation. I would add that there are also advantages from publicity. Often the reason—

Chair: There may or may not be.

Dr Strong: Often the reason why you threaten force is not because you want to use force; it is because you want to not have to use force. One advantage of obtaining early parliamentary approval, as President Bush did with congressional approval to invade Iraq, is it allows you to make highly credible threats, especially—and this is something that is really important in this context—if you get the support of the main Opposition party because then you are signalling both to your allies and to your enemies that even a future change of Government, always a hypothetical concern for a parliamentary state, will not result in a change of policy. That is a real advantage of getting early parliamentary approval for military action. If you get that, if you get approval for threats of force potentially to be carried out, then you can make extremely credible threats.

Dr McCormack: I can't see why there is any reason why we can't, as James says, have a formal approval. That would be an argument for, say, not revealing anything about Trident.

Very quickly, I do think that it is really significant in the April airstrikes that Theresa May categorically told the House that Syria had no knowledge of anything, yet, from a number of media reports, it was revealed that America and Russia, France and Russia, had discussed where the strikes were to be. Consequently, there were no casualties. All the sites were emptied and so on.



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Of course, we cannot know this for sure, but the French Defence Minister informed the French Parliament that France and Russia had discussed where the airstrikes would be. We do have the astonishing situation whereby for secrecy matters Parliament could not know but Russia and Syria did know, and I am happy we—

Q131 **Chair:** That is inevitable. There are all sorts of secret things that Parliament cannot possibly know because it would be a threat to national security to put those things into the public domain. Parliament is part of the public domain.

Dr McCormack: My point is that Parliament was not allowed to debate the issue, whereas our enemy, the person against whom we were launching the airstrikes, knew well a week in advance what was going to happen. To me, that seems a bit of an absurdity ultimately politically.

Chair: That may have been intentional, it may have been unintentional, but we will never know. Thank you very much for a very interesting session. We have enjoyed both panels very much indeed and it has got our inquiry off to a great start. Thank you very much.