

Public Administration and Constitutional Affairs Committee

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

Monday 20 May 2019

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Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones; David Morris.

Questions 229 - 318

Witnesses

I: Rt Hon Mr David Lidington MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, and Rt Hon Mark Lancaster MP, Minister for the Armed Forces.

Written evidence from witnesses:

– [Cabinet Office](#)

Examination of witnesses

Witnesses: Rt Hon Mr David Lidington MP and Rt Hon Mark Lancaster MP.

Q229 **Chair:** Can I welcome our two witnesses to this final witness session on the use of prerogative powers and the exercise of military force? Can I ask each of you to identify yourselves for the record, please?

Mr Lidington: David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

Mark Lancaster: Mark Lancaster, Minister for the Armed Forces.

Q230 **Chair:** Thank you. We have enough questions to keep us busy, so we will try to get through them quickly. If I have to pull you up because your answers are getting a bit lengthy, I am afraid I will do so.



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How can we justify the Executive's continued use of powers derived from the royal prerogative in a modern democracy?

Mr Lidington: I think, Chairman, because the decision on whether or not to use force to defend the safety and the interests of the United Kingdom is something that is inherent in Executive power. Under our constitutional system it falls to Ministers, on behalf of the Crown, to take those decisions but to be held to account by Parliament for the exercise of those decisions and those powers. That seems to me the correct constitutional balance and the reflection of our constitutional arrangements. It is quite hard to see how the legislature could act, in effect, as the Executive in taking those kinds of decisions.

Mark Lancaster: I agree entirely with that but, purely from a military perspective, I think the system as we have now enables speed of response; it enables us to react quickly, as I have just said. Also, from an operational perspective, it allows us a freedom of manoeuvre that means that we are not necessarily predictable to our opponents. It adds to our ability to deter through not being overly prescriptive about what we would or would not do. I think the flexibility that we have at the moment, through the convention as it stands, works well, and crucially over a period of time now has been demonstrated to work well.

Q231 **Chair:** Where do you think the legitimate authority to exercise this discretionary power comes from?

Mr Lidington: As I said, I think it is inherent within the functions of a state. Under our system the executive exists and exercises those powers as a consequence of the outcome of a general election and, following a general election, a decision about the House of Commons as to whom they should entrust with the formation of the Government. The Government of the day exist for so as long they have the confidence of the House of Commons. That is the ultimate sanction that any Parliament has over any Government.

Q232 **Chair:** We are often told that the decision to commit military force and put servicemen's lives at risk is one of the most serious responsibilities and, therefore, it should be more controlled by Parliament. What do the armed forces under your direction feel about that?

Mark Lancaster: We can go back a step as well. Having been involved in the Armed Forces Acts in 2010 and 2015, ultimately Parliament does have a degree of control over our armed forces because every year Parliament has to authorise the continued extension of the very existence of our armed forces, so Parliament does have a place to play in all of this.

I would also add—having been involved myself in three operations around the world in my time, in Kosovo, in Bosnia and Afghanistan as a soldier as opposed to a parliamentarian, although I was a parliamentarian when I served in Afghanistan—that I think in the eyes of the military, once they have been given clear direction and once they have been given a clear objective, they would like to think that they have the support of



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Parliament. There is probably nothing worse than there being continued debate at home over the legitimacy of whether or not what they are doing is right or wrong while they are attempting to follow orders and do what they have been asked to do by their military superiors.

Q233 David Morris: What is the underlying purpose of consulting Parliament on military action, and do the Government accept the post-2003 convention, subject to certain exceptions, that there should be parliamentary scrutiny and approval of policy decisions to take military action in advance of that action itself?

Mr Lidington: The principle of advanced parliamentary scrutiny as well as post facto parliamentary scrutiny is right, but there are good reasons why there are exceptions and why the convention has not been formally codified in legislation.

Q234 David Morris: Could you deal first of all with what the underlying purpose was?

Mr Lidington: The underlying purpose of the parliamentary scrutiny?

David Morris: Yes, and is it just an end in itself?

Mr Lidington: I think it is to do two things. For Government it provides the advantage of confidence that when Ministers are about to embark on a decision that is likely to risk the lives of serving personnel, they have the confidence of the House of Commons in doing so and to know that there is that degree of support—ideally support across party lines—in the House of Commons. As the Minister for the Armed Forces said, that is also helpful from the point of view of the servicemen and women themselves to feel that they have that expression of support. More generally, in terms of explaining—both to domestic public opinion and to international audiences—why the Government have acted in a particular way, it is of assistance to be able to say that we have clear political endorsement through the appropriate democratic mechanism.

Q235 David Morris: What should the exceptions be?

Mr Lidington: There are a number of exceptions. One is to allow, as the Minister for the Armed Forces said, for operational flexibility so that commanders on the ground do not have to await a steer from Westminster that decisions—not just commanders on the ground but their superior officers—can be taken in a way to deliver the mission that Ministers on behalf of the Crown have given them.

Secondly, there will be some operations, inevitably, where either there is a need for secrecy in advance for that operation not to be compromised, or when Ministers have to act in an emergency: possibly Parliament is not sitting or possibly there is some immediate humanitarian need to which Government need to respond.

These days there is also an issue over how you define a conflict. The advice I have is that the last formal declaration of war that this country



made was as far back as 1942. If one looks outside our own military involvement—one looks, for example, at the conflict in eastern Ukraine and the concept of hybrid warfare or hybrid conflict—I think that writing into law, with the inflexibility that that inevitably would carry, would create difficulties at a time when our ideas about what constitutes conflict are constantly subject to change in the light of experience.

Finally, I think there are issues about litigation; once you write something into statute, decisions are capable of judicial review. I do think it is better if these decisions, on which the safety of servicemen and women do hang, and the successful or unsuccessful outcome of a mission, are not subject to the risk of challenge before the courts while they are going on.

Mark Lancaster: On the basis on which forces might be deployed without prior consultation in Parliament, I would say there are four: the compromise of the effectiveness of our operations and the safety of British servicemen and women; to protect our sources of secret intelligence; not to undermine the effectiveness of security of operational partners, because we often operate with partners; and where the legal basis for action has previously been agreed by Parliament.

Equally, it is important that we separate when Parliament should be involved and when Parliament should not. That really is whether or not the conflict threshold has been passed. The legal basis for that would then fall under four different categories: self-defence; collective self-defence, such as Op Shader; a UN Security Council resolution, for example Afghanistan; or a humanitarian intervention where we have a duty to intervene.

I would draw a clear distinction, though, between operations that are below that threshold. They could be routine operations. Around the world we currently have some 6,100 personnel engaged in operations. We have personnel deployed on defence engagement in many different places around the world, particularly in Africa. We have employed over 1,200 personnel on exercises in 104 countries over the last year. These are the sorts of things that I do not think would fall under this convention and I would describe as routine military operations.

Q236 **Mr Fysh:** I want to expand a little bit on that discussion. Are there actual precise terms of the convention? Even if they are not in statute, are they written down anywhere other than what you have just quoted, in terms of how the exceptions work, for example? Is there a code of practice that you work to internally?

Mark Lancaster: It is quite difficult to exactly define conflict. As CDL said, we have not declared war on another nation since the 1940s. For example, many people think that we declared war on Argentina when we retook the Falklands in 1982. We did not. That would have been to declare war on the state of Argentina. We were simply operating in self-defence—the legal basis was self-defence—to effectively retake the Falklands after the invasion by Argentina.



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In many ways above the conflict line is clear from a legal basis. It is almost below the conflict line and the numerous things that we do as the military, which could be, for example, proactive. I have recently returned from Estonia where we are conducting Baltic air policing as a deterrent to Russia. Equally, we have the King's Royal Hussars who are deployed there as a battlegroup in support of our NATO allies, or indeed deploying short-term training teams. These all fall below what we consider to be conflict. This is simply training with our partners. Those are proactive things we can do.

From a reactive, there are other operations that we carry out around the world: for example, our humanitarian response to Ebola a couple of years ago, or a non-combatant evacuation where we would have to deploy members of the armed forces, not in a scenario that could be considered to be conflict but simply protecting our personnel in withdrawing them.

There are no clear definitions in a way that you would like, perhaps, as a lawyer, but I think we are quite clear within the MoD as to what constitutes a conflict and what does not, and above that conflict threshold where those legal principles would be required and what the exceptions would be before getting prior permission from Parliament.

I would return to one of the earlier points I made, which is this convention has now been in force for a number of years. We can run through the timeline that has already been submitted to you in written evidence. There does appear to be a consensus—it has been looked at several times—that, while it is hard to define, it works.

Q237 Mr Fysh: Is it fair to say that most military campaigns would fall under the threshold should it be chosen by the Government to make that judgment?

Mark Lancaster: Yes. The vast majority of military activity being carried out by the MoD at the moment I do not think anybody in this room would consider to be conflict, so above that conflict threshold.

Q238 Mr Fysh: How can Parliament be assured in circumstances where things might need to be kept secret for operational reasons? How can we be assured that the Government's assessment of where they are relative to such thresholds is correct?

Mark Lancaster: There are certain areas, clearly, where we have policies regarding our special forces. Equally, you have the Intelligence and Security Committee that has oversight of that. Of course, I am regularly in front of the House of Commons Defence Select Committee on its investigations into various areas and I have rushed straight from Defence questions, so I have been scrutinised already once today. This is my second session.

Chair: We are very grateful to you.

Q239 Mr Fysh: One last question. We have seen the resurgence of the use of



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the humble address as a way of Parliament getting information from Ministers. Is there any circumstance that you can imagine where that would be an appropriate thing for Parliament to ask for in terms of a military operation?

Mr Lidington: That would take us into very difficult territory, if the purpose of the humble address was to seek information that the Ministers responsible for that operation felt would be prejudicial either to the outcome of it or to the safety of men and women in the field.

Chair: A brief supplementary from David Jones.

Q240 **Mr Jones:** Yes, if I may. Mr Lancaster, you outline four broad exceptions to the convention that Parliament will be consulted before military action. So that we can understand how this operates in practice, can you help me with this? Last year the United Kingdom conducted air strikes in Syria without consultation with Parliament, although there was a statement to the House the following week. Could you explain how the exception operated in that practical example?

Mark Lancaster: Yes. The air strikes following the chemical weapons attack in Syria would fall under our duty to prevent a humanitarian crisis, which we have. Practically, had we come to the House before to discuss that, any element of surprise, for example, would have been lost. The likelihood is that, by the time we had discussed our targeted attack on chemical weapons stores in Parliament, the regime would have had the opportunity to move those chemical weapons, so the whole point of our attack with our allies—which sought to degrade the ability of that regime to carry out that attack again—would probably have been lost.

Q241 **Chair:** Is that exactly what happened in 2012 or 2013?

Mr Lidington: Last year, Chairman.

Mark Lancaster: With regard to last year, which I thought the question was about—

Chair: I was comparing it with that.

Mark Lancaster: About 12 months ago I was in post and I am confident it is as I have described it to the Committee.

Mr Lidington: Certainly, my recollection of those events is as the Minister described. It fell under the humanitarian justification. There was a real concern that announcing in advance that we were about to launch this operation would have seriously damaged the chance of a successful outcome and put our own personnel at risk.

Q242 **Chair:** How much was it a mistake when David Cameron came to the House of Commons before taking such identical military action?

Mark Lancaster: Forgive me; I am struggling from my position in post to be sure of a comparison between the two. I do not have the longevity of memory, perhaps, or indeed experience that you do, Chair.



Mr Lidington: From memory there was a difference, in that last year's decision was in the context of an operation in that region for which Parliament had already given authorisation: attacks on Daesh and degrading their capability. Whereas, thinking back to 2013, this was something that was new at the time. Obviously, this is a question the Committee would need to put to the former Prime Minister and those who were in Cabinet at the time.

Mark Lancaster: From what CDL says, that goes back to one of the four principles as to why we would not have to consult Parliament, where the legal basis of action had previously been agreed by Parliament, which I think was the case in the latter event last year but not in the former.

Q243 **Dr Huq:** In the evidence that we have had up to now in this inquiry, the recurring thing seems to be concern at how vague this convention is and, in particular, the exceptions and when the vagaries of those apply. Lord Hague said there are many areas of uncertainty, and Jack Straw did not like my question about 1 million people marching against the war in Iraq. Is it acceptable to have such uncertainty surrounding decisions to enter the life and death military conflict decisions? Also, how far should public opinion come into this? You said, David Lidington, that it is at general elections but, in between those, things can change.

Mr Lidington: I think every democratic Government takes account of public opinion when they take their decisions. Ultimately, I think Ministers, faced with a decision about whether or not to deploy military force, have to take what is in conscience the best decision they can in the national interest. You obviously hope that such a decision will coincide with your Government's political interest, but the duty that Ministers have in those circumstances is to take a decision on behalf of their assessment of the interests of the nation as a whole.

Mark will have his own views on this but I found the evidence given by William Hague and Jack Straw pretty persuasive about the need for flexibility and for exceptions, because you can never be certain. You can never be certain with absolute precision as to whether the circumstances of a particular operation would require you to go to Parliament, would put some serious interest at risk were you to go to Parliament in advance rather than to report to Parliament afterwards.

I do not think there is any difference of view about the need to keep Parliament informed as fully and as promptly as possible. The debate in the time I have been in the House seems to have moved from whether there should be a convention at all—which was very much a moot point when I was first elected—to: what is the point at which that convention is triggered? If one looks at the case histories and looks in particular at 2013 where the then Government, following the parliamentary vote, decided the mission had not been authorised and did not proceed with it, you can see how that greater role for Parliament has in fact come into being.



Mark Lancaster: You also have to bear in mind that the nature of any operation can change quite quickly. What could start potentially as a humanitarian operation could, for whatever reason, end up—not necessarily immediately—in a war fighting operation but that could evolve into a different operation altogether. The premise on which you have deployed troops can become quite different from peacekeeping to peace enforcement, although under a UN mandate that would be settled by the UN. We have seen the challenges of that before, particularly in the UN mandates as to troops who have been deployed being left unable to react.

Equally, without picking up CDL—purely in military language terms—there is a difference between the deployment of troops and the employment of troops. For example, if you go back to the first Gulf war where we had I think it was exercise Saif Sareea 1—we have just had the third one recently—where there was a large deployment over a long period of time of the British Army and Air Force into Oman. That was deployed as part of an exercise, effectively sub-threshold, as a deterrent to those in the region. That was quite different from the potential employment of those troops as you move forward into a war situation.

It is worth emphasising that when it comes to the traditional concept of conflict, it is not always a speedy process. The time it takes to corral your troops—or marshal, to use the correct military word—in order to be able to deploy and then employ can be quite a long-winded process. The deployment of troops is a very important part because in itself that can be a deterrent and, effectively, can prevent conflict breaking out in the first place. That is why I draw the distinction between the deployment, which in itself can prevent conflict, as opposed to the employment once the conflict starts.

Q244 **Dr Huq:** What do you think is the most appropriate and effective way for the House of Commons to approve and scrutinise the use of force? What should the sequencing be?

Mr Lidington: There are a number of different means available to the House of Commons. Obviously, if the Government come and seek authorisation in advance of any action, that is one mechanism. It is a formal role of decision taking. Again, if one looks at the history, as far back as the 1991 Gulf war, while there was not a prior vote to approve action—although there was a vote taken almost as soon as Desert Storm was launched, inviting the House to endorse that operation—the build-up to Desert Storm had been preceded by a number of Government statements and debates and gave members of Parliament the opportunity to influence Ministers in their decisions.

Select Committees, particularly the Select Committee on Defence, have a role. Parliamentarians can use questions and the various devices available in Standing Orders to hold debates on a particular international situation. I do not think there is a shortage of opportunities for



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parliamentarians to bring their voice to the debate and to influence Ministers.

Mark Lancaster: I suppose it goes to the very heart of the question. You ask: what role is there for Parliament to authorise the use of force? It is not Parliament's role to authorise the use of force. We have talked about the royal prerogative and how the convention is set up to try to effectively mitigate that position. Having looked at this carefully in preparation for this session, I understand probably all of our desires as parliamentarians to put this into a neat box and perhaps codify it. From reading the evidence put before you, even the likes of Jack Straw and William Hague who initially felt that that was the case have probably changed their view and I share their view. It is very difficult to put it neatly into a codified box.

We may manage that today for the situation that we envisage today and have experienced, but in my own time and my own involvement—I declare my interests as a serving reservist for the last 31 years—if I compare and contrast the army I joined in 1988, where I was only really concerned about tanks, planes and ships, with today where we have extra elements of cyber and space that I certainly never envisaged we would be dealing with on a daily basis. Indeed, as we move towards the age of constant competition in that sub-threshold spectrum, I have no idea how we will be able to codify this response that would future proof and be appropriate for even six months' time, let alone a year's time or two years' time. I think to attempt to do that would probably be a mistake.

Q245 **Mr Jones:** Mr Lidington, you have mentioned the national interest. The convention is of fairly recent development. It is evolving. As we have heard, it is subject to exceptions. To what extent would you say that the convention as it is now, subject to those exceptions, does serve the national interest?

Mr Lidington: I think it does and the evidence is that it does. I would add, before coming directly to Mr Jones's point, that our practice in the United Kingdom is not dissimilar to that followed by a number of other comparable democracies—Canada, Australia and New Zealand, for example.

However, I do think that Iraq in 2003 was something of a turning point here. It has been largely on the back of that experience that we have seen the modern convention develop. The convention makes it clear now that Government have a duty to seek prior authorisation from Parliament, unless there are good reasons not to do so and, if those good reasons do exist, nevertheless to come to Parliament at the earliest opportunity and be held to account for the decisions that have been taken and to explain those decisions.

If one looks at what has happened over the various efforts to do with Syria in recent years, you can see evidence of how that doctrine has



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evolved in terms of its practical application, for the same reasons given by the Minister for the Armed Forces. The idea that one crystallises or ossifies it in legislation, which can only then be amended and updated through further primary legislation, would be a mistake since we do not know exactly what form the next potential conflict is going to take. The public can have faith that the Government are acting in accordance with the convention and are seen to be accountable to Parliament for that.

Mark Lancaster: I would use the example that was raised earlier about the attack following the use of chemical weapons in Syria last year. I forget if the strike was carried out on the Friday or the Saturday, but at the first opportunity on the Monday there was a statement in the House and Parliament was consulted.

Q246 **Mr Jones:** Yes. Of course, we have already talked about the previous decision of the House not to approve the earlier chemical weapons strikes in Syria. To what extent was the national interest served by the refusal of the House of Commons to endorse that action, especially given the impact it had upon our relations with the United States?

Mr Lidington: I voted in favour of action on that occasion and I have clearly regretted the decision that was taken, which I felt was a mistake. If one looks at how the situation in Syria evolved subsequently, I would argue that those of us who supported action at that stage have been proved right. Obviously opinions will still differ among Members of Parliament on that point of recent history.

At the same time, in the circumstances as they were then, it would have been very difficult for the Government to go into that conflict without having gone to Parliament first. My recollection is that the coalition Government acted then on the basis of assurances that had been given to Parliament previously about a parliamentary endorsement being sought, and against the background of a sense still of mistrust on the part of Parliament and public opinion, which I think followed what happened in 2003. Historians will argue over the rights of 2003. It is all spelled out in multiple volumes from the Chilcot inquiry.

What is undeniable is that those events did damage parliamentary and public confidence about the trust that they could place in Ministers to give them a fair account of the factors that they were taking into account in making decisions about the use of military force. One could argue whether or not the Blair Government were right or wrong in their decisions, one can argue whether or not they were right in what they said to Parliament, but the impact of those events was very clear.

Q247 **Mr Jones:** Do you think that the behaviour of Ministers has improved as a consequence?

Mr Lidington: I think Ministers are very alive to the harm that was done to trust then and are very alive to the need to maintain parliamentary confidence in the decisions that they are taking.



Mark Lancaster: I would agree with that. It is easy to look back and try to think what the potential consequences of that decision were. I personally feel that it resulted in an emboldened Russia and we saw the consequences of that in Ukraine, when Russia saw a lack of unity among allies in the west, but that is probably outside the scope of this Committee.

What I would say—going all the way back to the Chilcot report—is that the Ministry of Defence firmly takes those findings on board. We have produced a small booklet called “The Good Operation”, which I will ensure that Committee members get. This takes the lessons from Chilcot and puts it in a very handy little manual to make sure that this acts almost as a checklist for us when we are considering planning for operations. We do like to think, certainly from a ministerial perspective and indeed from a departmental perspective, that we have learned those lessons. That is enshrined in this guide as to how we should act in the future.

Chair: That is very interesting. We did a follow-up inquiry on the Chilcot report. One of our recommendations was how the lessons should be learned. That is very interesting and we would be interested to see that.

Q248 **Kelvin Hopkins:** How does governing without a majority in the House of Commons influence the Government’s consideration of military action?

Mr Lidington: How confident you are of a parliamentary majority inevitably affects any Government assessment of how they are going to explain their case. I cannot recall any discussion within Government, to which I have been a party, where the fact that we are a minority Government has changed the judgment about whether or not a particular military deployment or a particular authorisation of combat is affected. I think Ministers have genuinely acted in the way that they thought was right. You do think inevitably about how you handle this in Parliament and what demands you are likely to face in Parliament as a consequence of that decision.

Mark Lancaster: In practice it should not. On the basis that if the legal basis is sound—either self-defence, collective self-defence, UN Security Council resolution or our duty to protect under humanitarian intervention and that the case for military action is sound—that should be beyond party politics and the fact that there is extraordinary minority Government should be irrelevant.

Q249 **Kelvin Hopkins:** Jack Straw told us that the decision-making process would be different, depending on the size of the Government’s majority. How can Parliament and the Government together ensure that there is consistency in the decision-making process and the involvement of Parliament regardless of a Government’s majority?

Mr Lidington: I have seen no evidence that this Government’s decisions have been affected, in terms of the sorts of decisions we are discussing this afternoon, by the fact that it is a minority Government.



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Q250 Kelvin Hopkins: Jack Straw, or it might have been William Hague, was saying that if you look at some countries where there is a very strong centralised presidential system, the President has prerogative about war decisions. At the other extreme, you have Governments like Germany where everything has to be decided to Parliament and it has a proportional system often with minority Governments. Are we not sliding from one kind of world with strong central power, a strong prerogative, towards a world much more like Germany?

Mark Lancaster: I have not had the opportunity to discuss this with Jack Straw. I would like to know what evidence he has to say that. The only evidence I can put perhaps in return is, given the original vote on Syria when the House turned it down, we go back to the events of last year when a minority Government carried out a strike on Syria. It was debated in the House on the Monday and the House gave its support, so I am not sure what the basis of Jack's comments are.

Q251 Kelvin Hopkins: We have not gone quite as far as Germany but it clearly is a situation where some countries are much more able to go to war in short term and others cannot do that.

Mark Lancaster: To be fair to Germany, that is a unique situation where, from memory, Germany did not have an army for approximately 10 years after the second world war and was not in that position. I think it was recreated in 1955 or 1956. Germany has effectively in recent years evolved its legislation; partly because it was asked to contribute to missions in Afghanistan and elsewhere, which it has, as part of NATO, so I am not sure Germany is a good example.

As CDL has already referred to, our system is very similar to that in Australia, Canada and New Zealand and not that dissimilar to the US, where I think only Congress can declare war but, none the less, there is accepted power when it comes to both the deployment and employment of their armed forces.

Mr Lidington: The point about Germany is that the constitution defines what the purposes of the armed forces are. For historical reasons we all understand, those purposes were defined as essentially defensive. They exclude any use of armed forces. It is not explicitly mentioned in the basic law of the Federal Republic. That then gives Parliament in Germany a greater say, for example, in having the power to declare a national state of emergency, which would then fall into the category of those occasions for which armed forces could be deployed.

Again, if one looks at Canada, Parliament need not be consulted before a Crown prerogative decision is taken to deploy Canadian forces on an international military operation. Australia has a similar system to the United Kingdom: the Prime Minister and Cabinet make the determination to deploy armed forces in conflict without requiring prior parliamentary involvement.



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In France, while a declaration of war shall be authorised by Parliament, the Government can inform, at the latest, three days after the beginning of an intervention, that they have commanded armed forces to intervene abroad. That can give rise to debate in the Assembly but that shall not be followed by a debate. There are plenty of examples of mature democracies that have a similar system to our own.

Q252 Kelvin Hopkins: There is a variety around the world. I do not want to labour the point but over a decade ago now I met some Danish parliamentarians who said, "Yes, your system is one with strong Government and weak Parliament. We are the other way around, with a strong Parliament and weak Government". They do not have overall majorities for a single discipline party.

Mark Lancaster: There is an interesting point, given that over a similar timeline where this convention has evolved over 20 or 30 years, or longer perhaps, we have moved from a strong Government, we have moved to a coalition Government with a majority and now we have a minority Government and yet, over that period of time, despite the evolution and being through all three stages of Government, I have not sensed a particular change in how this convention has worked or operated.

Chair: Thank you. We have had long enough on that.

Q253 Mr Jones: Mr Lidington, you have touched on this already, but could you discuss it a bit further? In the Government's written statement, they said that they are "mindful of the difficulties and risks associated with the formalisation of the current convention, either by legislation or resolution." As I say, you have touched on these but could you explain what those difficulties are?

Mr Lidington: Yes. One is the question of future proofing, particularly at a time when the nature of conflict and the character of the threats that we face is growing. The Minister for the Armed Forces mentioned cyber and space as two theatres of conflict for which we have to plan as a Government.

There are the issues that we have discussed earlier this afternoon about exceptions that would need to be made in the case where the element of surprise was essential to the success of an operation or where Government needed to act in an emergency, either because the need was acute or perhaps because Parliament was in recess and could not be recalled other than after a period of a few days. Thirdly, there is the risk of litigation and the courts being dragged in. Fourth is the risk to operational flexibility.

The additional point that I would make is one that the Minister for the Armed Forces touched on in passing earlier, which is that the kind of information that affects the decisions that Ministers have to take is sometimes of the nature of secret intelligence that cannot be shared more widely. If it is not possible for Ministers to go and give all the information to Parliament in advance, I think that does make a firm rule



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about parliamentary involvement in particular circumstances very difficult to define without carrying the risk that you compromise the flexibility of whoever is in office to carry out essential operations.

Mark Lancaster: I would add another point as well, if I may, which builds on what CDL has just said. Nobody wants to go into conflict; nobody wants to have a war. One of the strengths that we do have is our ability as a military to act as a deterrent. We have a number of different deterrents within our arsenal and we do that both unilaterally and with our allies. When we have clearly stated, "If you do something, we will do this", as a deterrent to other countries, the first time that we fail to do that the credibility of our deterrence is lost and our ability to deter and prevent conflicts is eroded. That is why it is very important that we can maintain that ability to be able to react quickly.

Q254 **Mr Jones:** Would it be fair to say that the principal objection to formalising the convention by legislation would be the threat of judicial review?

Mark Lancaster: No, the principal objection to formalising the convention is that while we try very hard to predict the future nobody has a crystal ball. In 1981, no one anticipated that Argentina was going to invade the Falklands. History is littered with military operations that were not necessarily predicted. For all I know, now that we are facing threats from cyber and elsewhere, I cannot have any great assurance as to what the next attack—for lack of a better word—on us will be. Therefore, I cannot anticipate legislation that will fully cover every single potential situation that we may face. That is my principal objection, which is that I do not want to lose the flexibility to be able to react to situations I may not be aware of now.

Mr Lidington: It is one of a number of risks that weigh against codified convention.

Q255 **Mr Jones:** In terms of a resolution of the House, what are your views on the merits of that?

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

Q256 **Mr Jones:** Would it be fair to say that a resolution would amount to a political rather than a legal constraint upon the Government? If that is the case, is that less of a concern than the statutory route?

Mr Lidington: It does not have the same inflexibilities as statute law would clearly provide. It risks leading to inflexibility in the system. I hesitate at the thought of Ministers and their advisers or even military commanders having to parse the sub-clauses of a lengthy parliamentary resolution to try to work out what precisely they were required to do,



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given the very fast-moving circumstances that were presenting themselves in terms of military decisions.

Q257 **Mr Jones:** If a convention is not formalised how can Parliament be assured that the Government have exercised the prerogative powers in a legitimate manner?

Mr Lidington: By rigorous questioning, both before and after. For many conflicts it will have been apparent for some weeks, if not months, that there is growing tension in a particular part of the world or an incipient humanitarian crisis. There are opportunities then to question, through urgent questions, through debates of different kinds, to put Ministers on the spot and to do that through Select Committee inquiries as well. The same applies after an operation has taken place.

What is unavoidable is that there needs to be a measure of trust. I know that in some of the Committee's previous sessions, this Committee has investigated whether some ISC-type process could be adopted for conversations between Ministers and Select Committees of the House on particularly sensitive defence and foreign policy subjects.

Q258 **Mr Jones:** What is your view?

Mr Lidington: I have seen that work well on two counts. The ISC has shown that it can operate and the fact that Governments have grown to accept that the ISC should operate with a greater independence than was envisaged when it was first created is a sign of mutual confidence; the ISC has not leaked.

When I was at the Foreign Office, I did sometimes, either myself or through officials, provide private briefing to a Committee in private session. It just enabled me, without divulging classified material, to take the Committee members a little more into the Government's confidence about some of the different diplomatic and political pressures that were affecting the decisions that we were facing. That is a practice that has worked.

It does rely not just on parliamentarians trusting Ministers; it does also allow Ministers feeling that they are able to trust Members of Parliament and Committees. I am very struck when I look at the United States' practice that it is routine for very senior officials and senior military people to give secret briefings to some of the key committees. It is done on the very clear understanding that that confidence is respected.

There are quite challenging questions for Parliament, if one were to go beyond normal practice with Parliament. Select Committees are always operated on the basis, in my experience, that their proceedings should be in public wherever possible and that information given to the Committee is in the property of the Committee and of Parliament, then to decide whether to make such information public or not. There are some quite tricky constitutional issues for Parliament as well as for Government about going further down the ISC route.



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Q259 **Mr Jones:** The innovation of providing briefings to Committees of the House on a confidential or secret basis is something that the Government would be prepared to consider?

Mr Lidington: The case would have to be made. There is a difference between being willing; it is very much a judgment for individual Ministers to make information available, which while not highly classified and in need of protection might be normally protected against FOI disclosure. Perhaps one was able to give a little bit more detail to a trusted Committee about the diplomatic circumstance on a particular foreign policy decision. That helps parliamentarians to understand the reasons. It is the equivalent of a Privy Council-style briefing to a senior Back Bencher, or to a Privy Counsellor if it is an Opposition spokesman. It is another method, which already exists, to try to share information on a confidential basis but without compromising those materials that have to be kept secret from anybody outside the list of those in Government who are authorised to see them.

Q260 **Mr Jones:** The Government would be prepared to consider that?

Mr Lidington: The Government are always willing to listen to constructive recommendations from Select Committees. We would have to consider any such recommendation. There would then obviously need to be a collective discussion and the decision taken.

Q261 **Ronnie Cowan:** We have strayed into this area of cyber-warfare a little bit earlier than we thought we would. You have both said there are difficulties with legislation with codifying the process but we have known this for some time. It is not new to us. We know we can track some things using drones. That has been possible for at least four or five years. Former Defence Secretary, Lord Browne, warned in 2015 that Trident can be rendered obsolete by cyber-attacks. Given that, are you convinced you can give Government updated information so that they can make accurate informations or are you suggesting that because there are complexities there is no place for Parliament or Government in the decision-making process?

Mark Lancaster: I am not suggesting that. I am going to declare an interest to the Committee, which is that in my role as an Army reservist I am deputy commander of 77 Brigade, which is our information advances brigade within the Army. There is a mystique about cyber but, in many ways, it is no different from any other golf club in the golf bag of potential military options. It is not quite as mysterious as perhaps some like to paint it, but it is a world that evolves very quickly. We have an ability to do various things defensively within cyber, and we are one of the few nations who have openly declared that we use offensive cyber—we have declared that capacity to NATO. We do not go into the detail of how that works because to do so would be detrimental to our national security. I believe that quite firmly.



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I do not think cyber should be treated any differently from any other capability that our armed forces have—it is not different—but given the nature of how we do things, because it is such a fast-changing world, I simply cannot see how legislation would keep up with that.

Q262 **Ronnie Cowan:** That brings me back to my question: if you cannot see how legislation can keep up with that, are you suggesting there should be no legislation?

Mark Lancaster: I say “legislation” as in the codifying of this convention.

Q263 **Ronnie Cowan:** What is the difference?

Mark Lancaster: We are somehow suggesting that, because cyber is new and people do not fully understand it, we should treat it differently. What I am trying to argue is it is very similar to other military capabilities but because in the age of constant competition, as we operate in the grey zone—but this is all sub-conflict threshold—that does not change the position that we have already articulated, where there is no need to codify the convention because the convention will evolve at a fairly rapid rate and we would struggle to keep up with those changes.

Q264 **Ronnie Cowan:** It is not brand new and I do understand it and it does scare the life out of me knowing what its capabilities are, so the question is: how do you brief a Government or a Parliament to make decisions about cyber-warfare?

Mark Lancaster: No different from any other capability that we have where we would seek to update Parliament, but there will be some aspects, as there are in our other military capabilities—for example, our nuclear deterrent—where we would not go to Parliament and explain every detail of it.

Q265 **Ronnie Cowan:** You talked about the speed of a cyber-attack. I am sure that is the key to this. If someone is moving a tank division across a country, we can see that happening, the area it is going to and maybe or maybe not take actions. If a cyber-attack is happening, it is happening there, it is happening now and it is happening rapidly. How do you go back to Government and say, “We have to do something about this”?

Mark Lancaster: Then you reinforce the point about why it would not be possible to come and seek Parliament’s permission to respond to it. If it is happening so quickly then, clearly, we have to respond without the necessary Parliament having a role.

Q266 **Chair:** Did I hear you correctly that you would regard all cyber capability as sub-conflict?

Mark Lancaster: No, not necessarily.

Q267 **Dr Huq:** We have touched on uncertainty, but one thing is clear that the UK very rarely engages in military action alone. How has the greater parliamentary involvement in authorising military force affected



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discussions with international partners? There was some talk of George Bush and Tony Blair praying together. I do not know how accurate those were.

Mark Lancaster: It is a factor. Take NATO, for example, which is the cornerstone of our defence. Article 5: an attack on one is an attack on all. I go back to my recent visit to Estonia where as part of the enhanced forward presence we have a battle group, the King's Royal Hussars, stationed in Estonia at the moment. I went to visit them on an exercise. The reason for that enhanced forward presence we describe as a tripwire but, also, it is a reassurance task for our Estonian allies who are part of NATO, and we have treaty obligations, which we have signed up to under the NATO treaty. If we were to be in a position where, having signed up to those treaty obligations, Parliament were to refuse to take part in that, that undermines the whole principle of NATO and our collective defence.

Q268 **Dr Huq:** Is it a bit of an annoyance then that you have these 650—it is another layer?

Mark Lancaster: In my parliamentary career, I have been both a poacher and a gamekeeper, so not at all. I do not consider Parliament to be an annoyance; anything but. I am a parliamentarian in my own right. The way things work around here I could be a Back Bencher tomorrow, for all I know. So no, absolutely not. I am just simply trying to explain that we do have partnerships. We do have alliances with our fellow nations and some things are codified into treaties and we have obligations under those treaties.

Mr Lidington: It made a real difference in 2013 when President Obama told David Cameron that he was prepared and ready to take action on Syria and David Cameron said to the President that he was going to need parliamentary authority before he could go ahead.

The same applied going back to the vote that Tony Blair's Government held here in 2003. I can recall a conversation with my then chief constable of Thames Valley, who had been approached by a US commander to give him notice that some heavy kit was going to be moved from one military base in the Thames Valley to another in order to be deployed to Iraq, and the chief constable said that he had to tell him that would be provided the House of Commons voted the following night to approve the motion that the Prime Minister had put down.

Q269 **Chair:** It gives rise to the question: is it a stronger nation or a more decisive nation perhaps who consults its legislature less?

Mr Lidington: That again strikes me as a good argument for maintaining the convention as it is rather than seeking to codify it. If the Government have an overriding duty to the national interest, to the security and safety of United Kingdom citizens and United Kingdom interests, they will take account of the capacity of a potential adversary and the speed at which that adversary is likely to move in, weighing up whether pre-



authorisation from Parliament would compromise the operation that we intend or not.

Q270 David Morris: The military is giving evidence to our inquiry expressing concern that an open, transparent, parliamentary debate in advance of military action could hand a degree of initiative to potential adversaries. Those adversaries are not bound by the same constraints as western democracies. How should the Government strike the right balance between the effectiveness and legitimacy of military action?

Mark Lancaster: I like to think we have, and this goes to the heart of the convention and how it has operated over previous years. It may not be perfect but, in the main, that is exactly what has happened.

Mr Lidington: You have to look at it case by case.

Q271 Chair: Part of the decision to deploy military force, is to explain to yourselves as Ministers, and also to anyone else who you want to listen, exactly what your objectives are for military action. Yet the military leaders who have come before this Committee have repeatedly said that the Government and Parliament have generally failed to identify what the real military objectives are. Why do you think this is?

Mark Lancaster: This goes once again back to the Chilcot report, and it is precisely why "The Good Operation" handbook was published because it is essential before any military operation starts that you establish the aim of your military operation—avoid what is called "mission creep"—and this is precisely where, from the MoD perspective, the Chief of Defence staff is the Prime Minister's principal military adviser. But it is down to politicians to establish very early on what exactly is it that you seek the military to achieve. From my own personal experience, it is very rare that ultimately it is always a military solution. The military solution can only be part of a wider diplomatic and potential development solution.

Q272 Chair: In the light of Iraq and Afghanistan, how do you think that experience has changed the way Ministers take advice on the political and diplomatic objectives in order to understand all the possible consequences of becoming involved in a military action?

Mr Lidington: The creation of the National Security Council was a very important institution designed precisely to learn those lessons. The NSC often meets weekly now. Around the table you have all the relevant members of the Cabinet together with the Chief of Defence Staff and the heads of the security intelligence agencies, and senior diplomatic and security advisers from Whitehall. The creation of the NSC and of the National Security Secretariat to support it has led to a greater awareness, collectively within Government, of those different factors. If one looks at NSC papers, those take account of the different factors that you have listed.

Q273 Chair: When we deployed to Helmand, first, we were trying to defeat the Taliban to protect our own cities from international terrorism. Then we



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were eradicating poppies to try to stop heroin flooding into Europe. Then we were trying to protect women's rights and advance democracy. Then we were trying to send children to school. The objectives kept moving as to what the Government thought the public appetite was for sustaining this military action. There was never a political solution in Kabul so the military action was, to some extent, rather pointless. Do you think we have learned from that particular episode? How could Parliament be engaged in the better assessment of what the ultimate objectives for military intervention should be?

Mark Lancaster: I am privileged to have seen it from both sides as a simple soldier in Helmand in 2006 and, also, as a Minister. But I go back to the comments I made a few moments ago. It is for previous Administrations to explain their actions. I am not seeking to blame anybody but presumably that is something you explored with Jack Straw when he was here.

From our perspective, I go back to the lessons learned from the Chilcot report and seek to reassure the Committee how we had sought to encapsulate those within our planning process for military operations. It is for politicians to be very clear at the outset what it is that they seek the military to achieve and then for the military, through professional military advice, to tell politicians what can and cannot be achieved. That is just from a purely military perspective but there is rarely, if ever, a simple military solution to any problem.

Q274 **Chair:** Correct, and it is very often the Chiefs of Staff who will be aware of these follow-on political and diplomatic consequences. How much do you think they feel it is their place to give broader diplomatic or political advice when they are asked for military advice given, I would argue, that they do have a perspective on global affairs and strategic matters, which perhaps are not shared in other parts of Government?

Mark Lancaster: The one thing that is very firmly encapsulated in the military planning process and military thinking is the concept of, "So what?" What are the second and third and fourth order effects of what it is you are about to go and do? That is very much part of a military planning process. As a young officer I was taught from a very young age to think about the unintended consequences of what you are about to do. What will be the subsequent effects?

My experience of our senior military, who I clearly have been dealing with on a daily basis, is that they are incredibly professional. They would not dream of straying into party politics in any shape or form. I have never experienced a single military officer that has done that while wearing a uniform, or any other time for that matter, but they are of course aware because of their wider experience.

Some of the best relationships that we have across the world—even when diplomatic relationships begin to break down between countries—are the professional military-to-military relationships. There are bounds as to



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where the advice would go but, of course, many of our military leaders have good contacts around the world. They have an insight perhaps into that and are prepared to offer a view but they know where their bounds are.

Q275 Chair: If the military are briefing parliamentarians—and I have had some experience of this as Shadow Defence Secretary and on the Defence Committee—how can parliamentarians have confidence that senior military chiefs have not been constrained unduly in what they can say because the Government are fearful of some aspects of their advice perhaps conflicting with what the Government want to do?

Mark Lancaster: I can only judge from my own personal experience. I have not experienced that. There are bounds as to what we would expect our professional military officers to be commenting on, but purely on military experience alone, as I have articulated, we have some very senior military officers with enormous experience in areas of conflict, particularly in the Middle East and elsewhere, and of course they have a view.

Q276 Kelvin Hopkins: Following on from the Chair's points, an important point to me is: do people in the centre of Government quietly anticipate that there will be mission creep? We will say we are going to do one thing and when we get there we are going to do more than that. Is there a sense in which sometimes even senior military people say, "Where did that come from? We were not told this is what we were going to do but we will do it because we are soldiers"?

Mark Lancaster: When we have discussed potential operations around the world—the vast majority of which are below the conflict threshold—I have always had very candid and open advice. You are very foolish if you do not consider the whole spectrum of options. Certainly, the concept of what used to be called the estimate process in the military planning process is: you start the process with an open mind. The last thing you do is to select the option that you want and then somehow reverse engineer the process to get there. That goes completely against the grain of the military estimate process, as it is described.

You must have an open mind. You must consider all options and then you deduce what is the best course of action. You do not do it the other way around. You do not start with a political course of action and then somehow engineer your military advice to achieve it.

Kelvin Hopkins: I could pursue that but I will leave it.

Q277 Mr Jones: The senior military officers who gave evidence to this Committee were highly critical of the level of debate engaged in by Parliament and Government in 2013 over Syria. They described it as rushed. They identified—as they put it—a massive failure in the education and training of political leaders in the area of conflict and security. General Barrons said that the Government had failed to brief Parliament effectively ahead of the debate in the summer of 2013. How would you



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respond to that negative view expressed by these senior officers of the knowledge on the part of parliamentarians and the level of debate?

Mark Lancaster: There is always a political-military divide. That is not necessarily unhealthy. In my now 14 years or so in this place—I realise that is considerably less than some—but none the less the military awareness of my colleagues has improved considerably. The general public tend to underestimate the number of Members of Parliament who have worn a uniform of some description at some time. I think we number in excess of 40. Equally, schemes such as the armed forces parliamentary scheme, which many colleagues have participated in, effectively offering 19 or 20 days' uniformed experience of one of the three services, have gone a long way to broaden the understanding of military matters among my fellow parliamentarians. That is a scheme that should be supported and encouraged.

Q278 **Mr Jones:** That was not the view expressed by the senior officers. They were absolutely scathing of the level of expertise and knowledge that was displayed in that debate.

Mark Lancaster: Is this not the joy of Parliament? By definition, we are 650 parliamentarians who come from a diversity of backgrounds. I can only say that if 40 of 650 of those have direct military experience, that is a high proportion compared with society as a whole. I do not think we are ever going to be in a position where every one of our 650 parliamentarians is somehow an expert. The military might find that slightly challenging if we do—if we have a whole series of armchair generals sitting on our green Benches.

Q279 **Mr Jones:** Not every Minister in the Ministry of Defence has military experience. Recently, we have seen a number of Ministers with no military experience at all. As a Minister, what information do you need to take an informed decision as to whether or not you should engage in military action?

Mark Lancaster: I think I partly already answered that. Coming from my own military background—my over 30-odd years as a soldier—I do not want to effectively be given almost a pre-decision. I want confidence that we have examined every option from left of arc to right of arc, and slowly distilled what the realistic options are to deliver. Equally, as politicians, we have a duty to make it very clear to the military what it is we are seeking to achieve. If they turn around and say, "You cannot achieve that militarily", they should not be afraid and I am confident they are not afraid to offer that advice. There is not always a military solution or even a military course of action that will contribute to a wider political solution.

I could give examples of situations where there has been a very effective military intervention and solution without there being mission creep. Sierra Leone would be a good example of that.

Q280 **Mr Jones:** Obviously, Ministers have access to senior officers in making



decisions as to whether or not to pursue military action. How is it possible for Members of Parliament to have a sufficient level of information to enable them properly to scrutinise Government?

Mark Lancaster: Through the all-party parliamentary group, there is a regular series of briefing sessions, both breakfasts and dinners, where Members of Parliament are invited to go and listen and question senior military figures who are experts in various fields. I am sure many in this room have attended those. If you haven't, I would encourage it. That is a very open session where, within their area of responsibility, they give full and frank answers to questions about their area of expertise.

Q281 **Mr Jones:** That is obviously useful in building a wide background knowledge but, in terms of individual actions upon which Parliament may be asked to express an opinion, surely more information is required. One of the key points made by the officers was that the Government did not provide enough information in 2013 in the context of Syria.

Mr Lidington: It is difficult for me, not having been at the ministerial table, to comment on 2013. My recollection is that that debate and vote took place at the tail end of a summer recess with MPs being hauled back from the beaches in order to take a decision on this. I think that accounts, at least in part, for the lack of preparation at the time.

Q282 **Mr Jones:** That was merely an example. The point that was being made by the officers in question was here was Parliament being asked to take a very difficult decision about a particular action but it did not have the necessary level of information. How could that be remedied for future purposes? How could we ensure that Parliament does have that level of information to make a suitably informed decision?

Mark Lancaster: With respect, is that any different from potentially any other decision that Parliament is asked to make? Parliament is asked to make decisions constantly on legislation and everything else—

Q283 **Mr Jones:** The consequences of a bad decision in terms of military action are particularly obvious.

Mr Lidington: From what I can see, it seems to be not a lack of information being available but every MP has to take a decision about which subjects he or she wishes to acquire specialist knowledge of. There will be some, many of whom have done military service of some kind, and some who have not, who have chosen to specialise in defence or defence and international relations. Others might have chosen to specialise in health policy or education policy and will know all the details on that.

It seems to me that the key skills that Members of Parliament need to have are the awareness of how to get information quickly, and brief themselves, and how to ask the right questions. Whether it is through all-party parliamentary groups, whether it is through schemes like the armed forces scheme, whether it is through think tanks like RUSI or the



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International Institute for Strategic Studies or Chatham House, it does seem to me that there are opportunities.

Government are always willing to look at how we can make more information available. Increasingly, these days, we point to the fact that every Government Department publishes volumes of information on our respective websites and it is a question of how Parliament and individual parliamentarians manage and prioritise their access to information about particular subjects.

Mark Lancaster: It probably goes further than that. You prompted me to think and remember. Before I became a Defence Minister in 2015, I was a Government Whip from 2012 to 2015 but I was the Government Whip attached to the Ministry of Defence. Effectively, I have been at the MoD now for seven years. I do recall during that period attending—as the Government Whip with the then Secretary of State—a whole series of briefings that are offered to parliamentarians and thinking at the time. We have done something exactly the same recently with the modernising of the defence programme, where I offered to brief colleagues of all parties upstairs in one of the Committee rooms. Although I do understand that parliamentarians do have busy timetables and there are often conflicts where you have to be in more than one place at one time, the attendance at those dedicated one-to-one briefings just between the Secretary of State and MPs was low. I think the general public would probably be disappointed at the level of attendance. The opportunity was there and given.

Q284 **Mr Jones:** You are absolutely right and I have attended some of those briefings myself.

In the context of a potential debate on individual military action in a particular scenario, would it possibly be the case that Parliament could be better informed by discrete and focused briefings on the particular action?

Mark Lancaster: That is precisely what I am referring to. I do remember those briefings happening.

Q285 **Mr Jones:** This is one for you, Mr Lidington, given your experience as Leader of the House: do you think that the Government allots enough time in the parliamentary calendar for debate on issues of foreign affairs and defence policy to enable parliamentarians to discuss these issues on the Floor of the House as often as they should?

Mr Lidington: Yes, the opportunities are there. When it is something that is of immediate relevance and interest, the Government usually either volunteer a statement or provide for a debate. Of course, Mr Speaker has very much developed the practice of the urgent question precisely to enable Parliament to have its say and to question Ministers on subjects, both international and domestic.



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In so far as Mr Jones's question referred back to the previous five Adjournment debates a year that were held on defence subjects, of course, those days were transferred to the Backbench Business Committee at the time of the implementation of the Wright report and the Government gave up Government time to add the days that were available for Back-Bench business. It is for Back Benchers—the Backbench Business Committee—to decide what the appropriate priorities are for them to use to fill that time. If there is a mood on the Back Benches to have more time for defence and international relations then great.

In my experience of attending some of those debates earlier in my parliamentary career, it tended to be the old familiar faces who took part on both sides of the House. It was either people who have developed an expertise in a particular interest in defence policy and Members of Parliament who had a constituency interest in defence. Those were the people who came together to debate those subjects.

Q286 Mr Jones: Do you think we have lost something by losing those five days to the Backbench Business Committee?

Mr Lidington: If the Backbench Business Committee wants to come back and say to my successor who leads the House that she can take back those days.

Q287 Chair: That was not the question. The question is whether you think the House has lost something because we do not discuss those matters as formally and as regularly as it used to.

Mr Lidington: Yes, there is an argument for saying that, but then that has to be set against the gain to the House from having time that is outwith the Government's control where Back Benchers can choose the subjects for debate without any ministerial interference. My point remains, Chair, that, if it is the wish of Back-Bench MPs across the House to spend five days or more days at those Back-Bench business sessions debating defence and international relations matters, that is entirely a matter for Back Benchers. The Government have no way of preventing that.

Q288 Mr Jones: Is perhaps the consequence that we have arrived at the situation—again, criticised by the senior military officers—that we are rather amateurish when we come to debating such issues as Syria in 2013?

Mr Lidington: I do not think that it is for Government on its own to respond to that. There is a serious issue for Parliament to confront. I would argue that it is not simply defence policy alone—the defence policy in the context of broader international relations policy. I would certainly welcome greater parliamentary interest and greater parliamentary understanding of those issues and the interrelationships between our defence, border security, our foreign policy and economic interest.



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That does require MPs to take decisions about how to prioritise their time and Parliament's time. The brutal reality—if we admit it to ourselves—as far as our constituents are concerned, is that their focus for the most part, most of the time, is on domestic policy priorities and it is, therefore, not a surprise that most MPs focus on that.

Q289 **Mr Jones:** Except of course at times of international emergency. Quite clearly, they want proper levels of debate in Parliament.

Mr Lidington: Yes.

Q290 **Mr Jones:** How do the Government inform themselves on the House's view on these issues? Are there regular discussions with senior Back Benchers?

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

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

I was Minister for Europe at the Foreign Office where my responsibilities included NATO. I would meet regularly with the UK delegation to the NATO Parliamentary Assembly. I would meet regularly with the UK Parliamentary delegation to the OSCE as well as the APPGs for different countries. Ministers do use a number of means to try to make sure they understand the trends of parliamentary opinion.

Q291 **Mr Jones:** Also pay close attention to Select Committee reports.

Mr Lidington: Indeed. Usually a Secretary of State—if he or she is wise—will have a good working relationship with the Chair of the relevant Select Committee that is covering his or her Department.

Q292 **Mr Fysh:** I want to follow up: would it be useful to have a mechanism whereby Ministers could propose for there to be an educated debate process to come forward within Parliament where there is a specific issue? For example, at the moment, we have quite a lot of uncertainty about what is happening with Iran. They have been set a deadline by the US that may cause differences between our two main allies, in the US and the EU. Yet we are not talking in detail about what is going on there at the moment. Are these things where you could see a use? We have assets in the region. They might be at risk at some point in time in the



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future eventually.

Mark Lancaster: As a Department, we certainly do our best to engage with parliamentarians. We have discussed with some of them. There are few other Departments that engage with parliamentarians to the extent of the armed forces parliamentary scheme, which is quite remarkable engagement when you think about it. Equally, we have already discussed the ad hoc briefings that are offered. The last one I did was for the modernising defence programme.

Much of this conversation has been about supply—supply from the Government or the Department to Members of Parliament. There also needs to be some element of demand. If there is not a demand for it—such is the scarce resource that is departmental, parliamentary and ministerial time—there is nothing more depressing as a Minister than offering a briefing and no one turning up, so there is a flipside to this coin.

Q293 **Chair:** I would argue that having those regular debates created its own demand. As someone who regularly took part in defence debates, it made you go back to your office, do your homework and prepare a proper speech on defence in the world affecting the UK, or defence procurement or defence policy.

Mark Lancaster: I accept that. I suppose I cannot compare it to other Departments, although I suppose I can as a parliamentarian. However, I think with the combination of regular briefings by the senior military that we have, the armed forces parliamentary scheme and the ad hoc briefings, as a Department the Ministry of Defence is doing pretty well when it comes to trying to engage with parliamentarians for a wider piece of education.

Q294 **Dr Huq:** Ideally, Parliament would be able to trust the Government on issues of military action. Despite the Tea Room and Lobby banter referred to, there does seem to have been an erosion of trust between Government and Parliament, with meaningful votes that were anything but and sometimes called at the last minute. Recently there was this big desert where there were no votes at all. Do the Government have any proposals for how Parliament's trust, in foreign policy and military decisions particularly, can be better assured?

Mr Lidington: Again, it is a matter of both supply and demand. In my experience, Ministers are always willing to be as open with individual parliamentarians and with Parliament institutionally as they can be, subject to the limits, meaning requirements for confidentiality and secrecy over certain information imposed upon you. In turn, that requires Members of Parliament to inform themselves so that they are asking questions of the right kind.

I think successive Foreign Secretaries—for example in dealing with the Foreign Affairs Committee, whether under Labour or Conservative Chairs—have found that there has been a maturity to those exchanges,



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an understanding that there is common ground cutting across party political divisions and an effort to try to identify and deliver the national interest.

Mark Lancaster: I think that is right. Like David, as I said before, I have been both poacher and gamekeeper. You would say that I would say this as a Minister, but I started life as a Back Bencher and I fully anticipate I will end life as a Back Bencher in some form or another.

What I can say during my tenure as a Minister of the MoD is that I genuinely do not think there has been an occasion when, for whatever reason, we have not been able to share information for reasons of national security or whatever. There has been occasion when I have sat there and said, "Do you know what, I can absolutely understand why we cannot risk that piece of information going into the public domain", as opposed to it being used as an excuse somehow to avoid what may be uncomfortable scrutiny. I can think of lots of examples during my tenure at the Ministry of Defence where, frankly, there have been things that have been uncomfortable and there has been no effort to somehow use the interests of national security to hide that.

As I say, you would say that I would say that as I sit here as a Minister. However, having been through the process, and intending probably at some point to go full circle back to Back Bencher, I have found that process as a Minister quite reassuring in that balance between my role as a parliamentarian and my role as a Minister.

Q295 **Dr Huq:** If Committees were given access to secret and tactically sensitive information it could help restore that trust. Would the Government be open to glasnost?

Mark Lancaster: Ultimately it is a balance with risk, isn't it? It is the return of an increase in trust and at what level that is now. I would argue, compared with the days of 2003, we are in a better place in the relationship between Government and Parliament, even from 2015 and the first vote over Syria to where we were last year. I think there has been an increase in trust between the two from the low post-Iraq.

On the flipside there is a risk. A secret is not a secret once it is shared with more than those who absolutely need to know it. There is a risk that that secret, maybe inadvertently, would somehow end up in the public domain. You have to balance those two things. All I am saying is that at the moment I think, on balance, it is correct.

Q296 **Dr Huq:** Could you not build things into the system, some sort of assurances that the Government and officials have, which would allow parliamentarians to see this information? We remember the reading room with some of those EU impact assessments.

Mr Lidington: It is more than a reading room. There is a parliamentary principle here that information that is given, certainly, to a Select Committee is information that is the property of the House from that time



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on. I have taken decisions in the last year where, following humble addresses, I have given information to a Committee of this House in a reading room, having discussed with the Chair of that Committee how it was going to be handled. I did so in the knowledge that ultimately—and the Chair would always stress this point—once that information had been handed over, it was for the Committee to decide whether it judged it should be made public or not. That is one risk.

I do not want to start going into detail and pointing fingers but there have been occasions in the past where questions have been posed about whether particular parliamentarians have been compromised in security terms, so you are getting into that really difficult territory. Those of our officials who have access to this sort of material do go through a vetting process, so does that apply to parliamentarians or to Clerks who would have access? There are some really difficult questions for Parliament to ask itself and not just for Government.

Mark Lancaster: Also, there is a basic question of benefit. What would be the benefit of making certain pieces of information, which even within the MoD are available to literally a tiny number of people, more widely available to parliamentarians? It may restore a level of trust but is it worth the risk, even inadvertent risk potentially, and not quite, “Did you know”? It is the inadvertent risk of that information becoming public. These are the calculations we have to make. All I am saying is that, right now, I think the balance is about right.

Q297 **Dr Huq:** I suppose it does give rise to the question: why should Parliament trust Government if Government do not trust Parliament?

Mark Lancaster: It is back to the point I made: not every single vetted employee in the Ministry of Defence has access to every single piece of information because there is no requirement for that to happen.

Mr Lidington: Ultimately, this applies to members of the Cabinet. There is certain information that is very sensitive in character, which is only seen by a very tiny number of senior Ministers and officials and that only needs to be seen by those people for the purposes of a considered decision being taken. Ultimately I do not think there is any avoiding the need for trust, particularly if it comes to the absolutely vital questions about national security.

Q298 **Chair:** Thank you. We have had a very full discussion about these matters and I am very grateful to you both. I will, if you are happy, go on to some devolution and new matters.

Mr Lidington: Yes, absolutely.

Chair: Minister, if you have other pressing matters I do not think we will need to detain you. Thank you very much indeed.

As you know, Chancellor, you received a report entitled “Devolution and Exiting the EU: reconciling differences and building stronger



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relationships”, in which we made a number of what I might call more advanced recommendations about how those relationships should be deepened and, if necessary, put on to a statutory footing. Could you give us an update on the progress of the review of intergovernmental relations that you announced you would have in response?

Mr Lidington: Yes. That is proceeding and the most recent official-level meeting was as recently as last Friday. We are planning a ministerial discussion of this at the next meeting of the Joint Ministerial Committee on European Negotiations that will take place in June.

There are five key workstreams that are the core of the intergovernmental relationships work. The first is to try to develop a set of overall principles to provide the context for future relations. Clearly—as you know, Chairman—both the current and the previous First Minister of Wales, in particular, have come forward with an alternative model that is, to some extent, based on the Council of Ministers idea from the European Union.

Secondly, there is a lot of work that has been going on very successfully on the governance of common frameworks. The frameworks have had to be given priority because of the need to deal with this in the context of the United Kingdom’s departure from the European Union. As the Committee will know, we identified more than 100 areas of competence that were being repatriated from EU level that intersected in some way with devolved competence.

Through effective work with the devolved Administrations we have reduced to a very small number those policy areas where we think a formal legislative framework will be needed. In most cases, either the power concerned is going to go back directly to the devolved Parliament and Government or it could be managed by means of a non-legislative framework, such as a memorandum of understanding. Common Frameworks is the second area that is subject to the IGR.

Thirdly, on dispute resolution: there is a dispute resolution mechanism in the current overarching memorandum of understanding on devolution. Again, we need to develop this in a way that deals with the range of policy differences that could arise as the United Kingdom leaves the European Union, including policy differences that might involve third parties.

Fourthly, we are re-examining the existing machinery, including the Joint Ministerial Committees. We are looking at that in terms both of the co-ordination of relevant domestic issues, including future governance of common frameworks, and also in terms of ongoing EU business and the UK’s future partnership with the European Union. It is how that is to be first negotiated and then managed in the context of that being an international agreement, and therefore a reserved matter, but which will inevitably touch upon a number of areas where the implementation of such an agreement would involve the exercise of devolved competencies.



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Finally, we are trying to make sure that there are effective arrangements for engagement more broadly on international matters. Where, again, we come to future free trade agreements—to take the most obvious example—those will be international agreements and very clearly reserved under the devolution statutes. However, the practical exercise of those agreements, giving effect to them, will touch on devolved matters so it is how we manage that in a mutually acceptable way.

Q299 Mr Jones: The Committee has had complaints from representatives of the devolved legislatures about the lack of progress. Also, as you may know, the First Minister of Wales made a speech in which he complained, as he put it, about the difficulty in extracting energy for the review from UK Ministers. Is that fair criticism? When do you think that we can expect to see the review or at least interim proposals?

Mr Lidington: I would disagree with those who assert that this has stalled. As I said, there is ongoing work. There have been frequent official-level meetings, up to and including last week, and we will be discussing this at ministerial level next month.

I am certainly going to go and sit down with Mike Russell and Jeremy Miles. I hope that that will be a constructive discussion and we will be able to agree on the next steps in taking the review forward. Ultimately it is due to report to JMCP, to the meeting the Prime Minister chairs and to which the First Ministers come.

In addition to doing this, we have upped the pace of meetings of the Joint Ministerial Committee on European Negotiations. We have instituted a new ministerial forum on European negotiations that my colleagues, Robin Walker and Chloe Smith, will be co-chairing. We are really trying to build in the detailed thinking of the devolved Administrations in putting together UK positions.

We have also invited the devolved Administrations—either their First Ministers or a deputy, who would usually be either Mike Russell or Jeremy Miles—to attend meetings of the Cabinet Committee EUXT(P). That is, the EU Exit and Trade (Preparedness) sub-Committee, where the matters on the agenda involve devolved competencies. Both First Ministers have attended that Committee in recent months and both of their appointed deputies have attended meetings in recent months too.

Q300 Mr Jones: In terms of timescale, what is your best guess as to when we may expect to see the review or at least interim proposals?

Mr Lidington: I cannot put a firm timescale on this. Perhaps, if we were looking towards the end of this year that would probably be the right timeframe to go for. Obviously the Prime Minister, the two First Ministers—if the Northern Ireland Executive is reformed, that may have an impact upon the progress of this review too—and potentially the Deputy First Minister of Northern Ireland will need to take a view about



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whether the review has reached the point where they can take some decisions about a reformed structure.

Q301 **Mr Jones:** You will recall that our report asked for the publication of the devolution policy for the Union, which the Government's response said would be published "in due course". Again, are you able to give us some sort of timescale as to when publication of this response will be made?

Mr Lidington: I do not think it would be fair for me to give a false steer without being confident about the process and when we will be likely to get collective agreement for such a publication. I think we need to have the IGR work taken a bit further before we are in a position to be able to respond to that particular recommendation the way we have said we will.

Q302 **Mr Jones:** The Committee also asked that the Government set out a, "clear set of principles for the governance and operation of Common Frameworks". Again, the Government response said they were open to this proposal and would consider it jointly with the devolved Governments. I take it this is happening. Can we expect to see the common frameworks published in the near future?

Mr Lidington: We have published three reports on the EU (Withdrawal) Act and common frameworks. Those three reports—the most recent of which was published on 16 May—set out in some detail the work that we and the devolved Administrations have done. Because of that work so far we have concluded we do not need to bring forward any section 12 regulations. Both the Welsh and the Scottish Governments have reaffirmed their commitment not to create divergent policy in a way that would cut across future frameworks, where we have agreed those are necessary or where we are continuing discussions.

We have set out publicly already a number of the principles that will determine common frameworks. First of all, they have established where they are necessary to ensure the functioning of the UK internal market; secondly, to ensure compliance with international obligations; thirdly, to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; fourthly, to enable the management of common resources; fifthly, to administer and provide access to justice in cases with a cross-border element; and, finally, to safeguard the security of the United Kingdom. Those were jointly agreed between the United Kingdom and the devolved Administrations in late 2017—I think, from memory, it was December 2017.

Q303 **Mr Jones:** Yes, quite some time ago. Are there likely to be any further developments?

Mr Lidington: That work is ongoing. It is ongoing dossier by dossier, giving priority to the various competencies that are returning to the United Kingdom from the European Union.

Mr Jones: Thank you.



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Chair: I think we would note that there seems to have been an improvement in communication with regard to intergovernmental relations from you. We want to commend that and reinforce it, because there is still a lot of disappointment in the devolved legislatures.

Q304 **Kelvin Hopkins:** If I could inject into our discussion an issue that has arisen in recent weeks concerning state aid, under what heading of the reserved matters schedules in the Scotland Act 1998, the Government of Wales Act 2006 or the excepted or reserved matters schedules in the Northern Ireland Act 1998 does the Government consider that state aid is a reserved matter?

Mr Lidington: As you know, we have a different view from the Governments of Scotland and Wales on whether it is a devolved or a reserved competence. I think Kelly Tolhurst set this out in the debate on state aid regulations a short while ago. Because this is one of a handful—less than a handful—of areas where competence is disputed between the UK and devolved Governments, I am hesitant about setting out at length a legal argument because that risks prejudicing any potential argument in court, should it end up there. I hope it does not. I hope we can reach agreement, but I do not want to prejudice the position there. However, we do think that the Scotland Act 1998 provides for the regulation of state aid to be a reserved matter.

Q305 **Kelvin Hopkins:** You are obviously reluctant to go into details explaining Government policy at this moment but could you write to us setting out that reasoning so we have something—

Mr Lidington: I am happy to write to the Committee, yes.

Q306 **Kelvin Hopkins:** May I suggest also—perhaps this is a party political thing to an extent—that Wales and Scotland have Governments that have a different complexion from the Government here? Perhaps they might be more enthusiastic about using state aid—maybe the north-east in England as well—and would like to have more freedom to use state aid to sustain their industries and jobs.

Mr Lidington: A couple of points, first of all. First, as Mr Hopkins knows, for so long as the United Kingdom remains a member of the European Union then it is subject to the state aid rulebook of the European Union. That would continue during any implementation period under the terms of the withdrawal agreement. There would need to be some questions asked about the impact of divergent state aid regimes on the integrity of a UK-wide single market and competition between companies located in different parts of the United Kingdom. Of course, it is already the case that where a public authority—whether that is a devolved Administration, the UK Government or even a local council—wishes to give some support to business, and that support complies with EU state aid regimes, it is open to that public authority to act in that way.

On Mr Hopkins's broader point, I am certainly aware that the Governments in Holyrood and Cardiff Bay are of a different political



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complexion from that in London and, of course, a very different political complexion from each other as well. I do think one of the interesting and challenging points about how the devolution debate has developed in the UK is that when the 1998 settlement came in the Governments in London, Edinburgh and Cardiff were all Labour party Governments and there was a sense that any problems could be sorted out within the family. When you have different political parties in office in different parts of the United Kingdom—if the Northern Ireland Executive is restored then we will have four different political complexions to the four different Administrations—it does make it a more challenging political environment in which to operate.

- Q307 **Kelvin Hopkins:** The people of the United Kingdom did vote to leave the EU and hiding behind EU legislation now is a temporary thing at the very best, one would think. Some of us are enthusiastic about state aid and want to see the Governments of these devolved countries, in particular, have greater freedom to use state aid to benefit them and indeed all of us, because if their industries prosper we prosper.

Mr Lidington: As I said, there is a political conversation there as well as a constitutional conversation to have.

- Q308 **Chair:** Can I clarify one thing? How important is it to get this issue of state aid settled before we may move into an implementation period under the withdrawal agreement? Do the devolution settlements in law recognise or carry over the same recognition of European Union law as is imposed under the treaties that exist at the moment?

Mr Lidington: Yes, as you say, Chair, it is imposed under the treaties but the implementation period would simply roll forward the application of EU arrangements for the duration of the implementation period, so the state aid regime would indeed apply during any implementation period.

- Q309 **Chair:** The withdrawal agreement Bill will include provision to impose the EU state aid regime on the devolved parts of the United Kingdom, regardless of what discussions you are having now?

Mr Lidington: That has always been the understanding. That is clear within the text of the withdrawal agreement itself. I have found, usually, that the argument with the devolved Governments is not so much about them wanting to diverge from the EU current arrangements but rather they are arguing the UK should be, as a whole, more willing to continue to align with EU arrangements after the UK has departed.

Kelvin Hopkins: Are you interested in explaining that to the Scottish National party? I will leave it there, thank you.

- Q310 **Chair:** It will be interesting when the European Court can impose state aid rulings over which we have no control, of course. We had some problem with our nuclear programme, for example, on that matter.

Before returning to the withdrawal agreement Bill in a moment, can I move on to inter-parliamentary relations in the UK? The Committee made



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a number of recommendations in our report, most particularly that the Clerks of the four legislatures should be working up proposals for some kind of permanent inter-parliamentary forum. In answer to a question from me on 6 February you very kindly said, "If Parliament will lead, the Government will support it." We are very grateful for that. We are in the process of drawing up these proposals now but are doing so without the knowledge of precisely what frameworks or intergovernmental arrangements we will be scrutinising on.

What do you think are the most important functions that inter-parliamentary machinery can carry out? It would be very helpful if you could say something now or maybe even put something in writing.

Mr Lidington: The issue that is immediately on my mind is this question of the UK internal market, and then the balance between the legal reality that international agreements are reserved but their practical implementation often touches upon devolved competencies. It seems to me that those are two key elements that some sort of joint parliamentary arrangement might consider but I am happy to write to you further, Chairman.

Q311 **Chair:** If you could enlarge on that in writing I think it would help us considerably.

Finally, can I return to the withdrawal agreement Bill that is in preparation, which we are longing to see but has been kept from Parliament's prying eyes? The direct talks between the Government and Her Majesty's Official Opposition have ended. They were, of course, extremely unpopular with many of our Conservative colleagues. Nevertheless, the Government are going to introduce the withdrawal agreement Bill that apparently, according to the Prime Minister, will constitute a "bold new offer".

To whom is this offer intended unless it is intended to tempt Labour MPs to support the Bill?

Mr Lidington: To parliamentarians of every political party. I think there is a responsibility on MPs, regardless of their political party, to try to agree a process that leads to an outcome that delivers the referendum result of 2016 but does so in an orderly fashion that allows for our departure in a way that best protects jobs, investment and living standards in this country and the Union of the United Kingdom.

Q312 **Chair:** In the absence of sufficient Conservative MPs supporting the Bill at Second Reading, how much are you hoping that the negotiations and this bold new offer will persuade sufficient Labour MPs either to vote for the Bill or at least to abstain in order to allow the Government to obtain a Second Reading?

Mr Lidington: I will be hoping, Chairman, for the widest possible support from MPs of all political parties because I think that is what the national interest requires.



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Q313 **Mr Jones:** Do any elements of the bold new offer require prior agreement with the European Union, and if so has that been obtained?

Mr Lidington: The legislation does not require approval from the European Union. The legislation will—

Q314 **Mr Jones:** I appreciate that, but is the offer represented subject to the agreement of the European Union?

Mr Lidington: I am not quite sure what Mr Jones means by the “offer”, but if we are looking at legislative change that is entirely a matter for Parliament here to determine.

Q315 **Mr Jones:** Yes, I understand. However, is any of that contingent subsequently upon agreement with the European Union?

Mr Lidington: To the best of my knowledge, no. Clearly, those things that would need European Union agreement would be things that stood outside purely domestic legislation but that required a change to the agreements that the UK Government and the European Union had made with one another.

Q316 **Mr Jones:** We may take it therefore that, for example, the Irish backstop will remain unchanged in the new offer?

Mr Lidington: Ahead of the Bill being published, I am not prepared to speculate about its contents. Members of this Committee will have heard what the Prime Minister has said very consistently on that subject.

Q317 **Chair:** We can assume that the legislation will be entirely compatible with withdrawal agreement as negotiated?

Mr Lidington: That is what I would encourage the Committee to expect. Not only has the EU been clear repeatedly that it is not willing to reopen or add further to the text of the withdrawal agreement but the legal decision that the European Council took, on the basis of which the withdrawal agreement was then sent to the European Parliament, has legal effect within the European Union in terms of the ratification process.

Q318 **Chair:** There might be some changes to the political declaration before a final conclusion?

Mr Lidington: I am not going to speculate further ahead of the Bill being published and a public statement being made. The EU itself has always made a distinction between its attitude to the withdrawal agreement and its attitude to the political declaration. I do not think I am telling the Committee anything new in repeating that.

Chair: You have been very helpful and you have been very clear that the bold offer is to all the political parties, including the Labour party.

Mr Lidington: Indeed.

Chair: Thank you very much.