



HOUSE OF LORDS

Constitution Committee

---

---

2nd Report of Session 2013–14

# Constitutional arrangements for the use of armed force

Report

---

Ordered to be printed 17 July 2013 and published 24 July 2013

---

Published by the Authority of the House of Lords

*London* : The Stationery Office Limited

£8.50

HL Paper 46

### *Select Committee on the Constitution*

The Constitution Committee is appointed by the House of Lords in each session with the following terms of reference:

To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

### *Current membership*

Lord Crickhowell  
Lord Cullen of Whitekirk  
Baroness Falkner of Margravine  
Lord Goldsmith  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Baroness Jay of Paddington (chairman)  
Lord Lang of Monkton  
Lord Lester of Herne Hill  
Lord Lexden  
Lord Powell of Bayswater  
Baroness Wheatcroft

### *Declarations of interests*

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

### *Publications*

All publications of the committee are available at: <http://www.parliament.uk/hlconstitution>

### *Parliament Live*

Live coverage of debates and public sessions of the committee's meetings are available at:

<http://www.parliamentlive.tv>

### *General information*

General information about the House of Lords and its committees, including guidance to witnesses, details of current inquiries and forthcoming meetings, is available at:

<http://www.parliament.uk/business/lords>

### *Committee staff and legal advisers*

The current staff of the committee are Nicolas Besly (clerk), Luke Wilcox (policy analyst) and Helen Gibson (committee assistant). Professor Maurice Sunkin and Professor Adam Tomkins are legal advisers to the committee.

### *Contact details*

All correspondence should be addressed to the clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.

The telephone number for general enquiries is 020 7219 5960.

The committee's email address is [constitution@parliament.uk](mailto:constitution@parliament.uk)

## CONTENTS

---

	<i>Paragraph</i>	<i>Page</i>
<b>Summary</b>		4
<b>Chapter 1: The context of our inquiry</b>	1	5
Introduction	1	5
Previous consideration of Parliament's role	4	5
The current Government's position	11	7
Developments over Syria	18	8
<b>Chapter 2: The Government's internal decision-making process</b>	22	10
Introduction	22	10
The Cabinet	23	10
The National Security Council	26	11
The Defence Council and senior armed forces officers	29	11
The Cabinet Manual	34	13
<b>Chapter 3: Parliament's role</b>	36	14
Introduction	36	14
Why parliamentary approval is needed	37	14
The overriding importance of legality	41	15
Parliament's role: the options	42	15
Formalising Parliament's role	48	17
The case for formalisation	48	17
The case against formalisation	50	17
Role of the House of Lords	60	20
Conclusion on formalisation	61	20
A constitutional convention	62	21
<b>Chapter 4: Summary of conclusions and recommendations</b>		22
<b>Appendix 1: List of members and declarations of interests</b>		23
<b>Appendix 2: List of witnesses</b>		24
<b>Appendix 3: Call for evidence</b>		25

Evidence is published online at [www.parliament.uk/hlconstitution](http://www.parliament.uk/hlconstitution) and available for inspection at the Parliamentary Archives (0207 219 5314).

References in the footnotes to the report are as follows:

Q refers to a question in oral evidence;

witness names without a question reference refer to written evidence

## SUMMARY

---

Over the last decade or so there has been an ongoing debate about Parliament's role in approving the use of armed force overseas. This debate has been in the context of changes in the nature of military interventions, developments in the techniques of warfare and alterations to the Government's internal processes for advice and decision-making. Given these changes, we decided to carry out a short inquiry into the constitutional arrangements for the use of armed force.

In this report we conclude that the Government's intentions as to the role Parliament should play in the civil war in Syria have been unclear, with the Government taking some time to commit to giving the House of Commons a vote before any decision to arm the Syrian National Coalition.

We find that the full Cabinet should continue to be the ultimate decision-maker within Government on whether to use armed force overseas, and that the Defence Council does not in practice play a meaningful part in such decisions. We recommend that the Government's internal arrangements should be set out in detail in the Cabinet Manual.

On Parliament's role, we conclude that the existing convention—that, save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed force overseas—is the best means by which the House of Commons can exercise political control over, and confer legitimacy upon, decisions to use force. We do not think Parliament's role should be formalised by way of legislation or a resolution; the risks that are associated with formalisation outweigh the benefits. We consider that the House of Lords is well placed to debate deployment decisions, but that the approval of such decisions should be for the House of Commons.

# Constitutional arrangements for the use of armed force

## CHAPTER 1: THE CONTEXT OF OUR INQUIRY

---

### Introduction

1. The decision to use armed force overseas is one of the most momentous a Government can make. At present the role played by Parliament in such decisions varies widely: there is no standard process by which Parliament becomes involved. In 2006 we conducted an extensive inquiry into Parliament's role in authorising the use of armed force overseas.<sup>1</sup> Since 2006 the nature of military interventions overseas has changed: the majority of recent interventions have concerned either "failed states" or anti-terrorism operations. In addition, the techniques of warfare have continued to evolve, particularly in the fields of intelligence-gathering, surveillance, cyber-warfare and remotely conducted military operations.
2. There have also been changes in the Government's institutional arrangements. In 2010 the National Security Council was established; as a new body its interaction with the other organs of Government involved in authorising the use of force overseas, particularly the Cabinet, is still developing. There is also a lack of clarity about the role in decision-making on the use of armed force of the Defence Council.
3. In the light of these changes in the military context and within the Government, we decided to look again at the constitutional arrangements for the use of armed force overseas. We have focused in particular on the significance of developments since 2006 for Parliament's role and on the Government's internal advisory and decision-making arrangements.

### Previous consideration of Parliament's role

4. The debate about Parliament's role over decisions on whether to deploy force has centred on whether it should be formally set out (and if so by what means) or whether it should be left to convention and practice.
5. The domestic legal position on the deployment of force is relatively straightforward: Her Majesty's armed forces are deployed under the royal prerogative, exercised in practice by the Prime Minister and the Cabinet.<sup>2</sup>

---

<sup>1</sup> Constitution Committee, *Waging war: Parliament's role and responsibility* (15th Report Session 2005–06, HL Paper 236).

<sup>2</sup> *The Governance of Britain—Review of the Executive Royal Prerogative Powers: Final Report* (October 2009) described the position—

“The Royal prerogative is the legal mechanism which allows the State to appoint people to carry arms in its service. Thus, the prerogative provides the authority for the Crown to:

- recruit members of the Armed Forces;
- appoint commanders and grant commissions to officers;
- establish the Defence Council; and
- make agreements with foreign states about stationing troops on their soil.

The decision to engage in armed conflict is one for the Government; Parliament has no legal role in authorising or approving the use of the armed forces overseas.

6. In practice, however, Parliament scrutinises the use of force closely, through debates and questions. In respect of the two conflicts with Iraq and the intervention in Libya, the House of Commons voted on substantive motions to approve the use of force.
7. The role that Parliament should play has been subject to significant consideration over the last decade. A 2004 Public Administration Committee report<sup>3</sup> recommended that the Government legislate to provide for greater parliamentary control over decisions on the use of armed force.
8. This committee's 2006 report<sup>4</sup> concluded that the use of the royal prerogative to deploy armed force overseas was outdated, and recommended that there should be a parliamentary convention that the Government should seek parliamentary approval if they propose to deploy British forces outside the UK into actual or potential armed conflict. Provision should be made for emergency deployments, in which case Parliament's approval should be sought within seven days or as soon as is feasible. The committee envisaged the House of Commons approving the use of force by way of a substantive motion, discussion of which could be informed by a debate in the Lords on a neutral motion. Significant alterations to the nature or objectives of deployments should require a renewal of the approval.
9. In their response<sup>5</sup> the then Government quoted Prime Minister Tony Blair saying he could not "conceive of a situation in which a Government ... is going to war—except in circumstances where militarily for the security of the country it needs to act immediately—without full parliamentary debate". The Government said they were "not presently persuaded of the case for going beyond that to establishing a new convention determining the role of Parliament in the deployment of armed forces ... But the matter needs to be kept under review."
10. As part of the Governance of Britain programme<sup>6</sup> in March 2008 the then Government proposed a detailed resolution which would formalise Parliament's role.<sup>7</sup> The resolution would be passed by the House of Commons, but would not have the force of law. It would mean that decisions on deploying force would still be taken by the Government, but Parliament's role in scrutinising and approving those decisions would be formally set out. The draft resolution would not have required retrospective approval for secret or urgent deployments, nor regular re-approval. The Prime Minister

---

Other matters, however—such as the enforcement of military discipline and the trial of offences under military law—are regulated by statute." (Para 46.)

<sup>3</sup> Public Administration Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament* (4th Report Session 2003–04, HC 422).

<sup>4</sup> *Op. cit.*

<sup>5</sup> Constitution Committee, *Waging war: Parliament's role and responsibility: Follow-up* (3rd Report, Session 2006–07, HL Paper 51).

<sup>6</sup> *The Governance of Britain*, Cm 7170, July 2007.

<sup>7</sup> *The Governance of Britain—Constitutional Renewal*, Cm 7342–I, March 2008, Annex A. The Government's proposal followed a green paper analysing different options, including legislation, (*War powers and treaties: Limiting Executive powers*, Cm 7239, October 2007) and a debate on the green paper in the House of Lords (HL Deb, 31 January 2008, cols 747–96).

would have decided at what point it was most appropriate to seek parliamentary approval. The House of Lords would have played a consultative role, with the Commons making the final decision.<sup>8</sup> No draft resolution was placed before the House of Commons before the 2010 general election.<sup>9</sup>

### The current Government's position

11. British participation in the operation to enforce the no-fly zone over Libya was announced on Friday 18 March 2011; at the same time the Prime Minister indicated that a substantive motion seeking retrospective approval for the deployment of forces would be tabled. Accordingly, on Monday 21 March 2011 the Commons approved a motion which, inter alia, "supports Her Majesty's Government ... in the taking of all necessary measures ... to enforce the No Fly Zone, including the use of UK armed forces and military assets".<sup>10</sup> During that debate the Foreign Secretary, the Rt Hon. William Hague MP, said: "We will ... enshrine in law for the future the necessity of consulting Parliament on military action."<sup>11</sup>
12. In May 2011 the House of Commons Political and Constitutional Reform Committee welcomed the Foreign Secretary's commitment. Noting that it was a longer-term project, it recommended "that the Government should as a first step bring forward a draft detailed parliamentary resolution, for consultation with us among others, and for debate and decision by the end of 2011."<sup>12</sup>
13. There were no further public developments on the matter until November 2012 when the Rt Hon. Lord Wallace of Saltaire, Government spokesman in the House of Lords for the Cabinet Office, stated in a written answer:
 

"Since United Kingdom military intervention in Iraq in 2003, a convention has developed in the House of Commons that before troops are committed, the House of Commons should have an opportunity to debate the matter. The Government propose to observe that convention except when there is an emergency and such action would not be appropriate."<sup>13</sup>
14. In a subsequent written answer Lord Wallace of Saltaire said, "There are a number of important questions of detail that need to be addressed in the options for the formalisation of this convention. These are under consideration."<sup>14</sup>

---

<sup>8</sup> The Government's proposal was scrutinised by two committees: Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill* (Report, Session 2007–08, HL Paper 166, HC 551); and Public Administration Committee, *Constitutional Renewal: Draft Bill and White Paper* (10th Report, Session 2007–08, HC 499).

<sup>9</sup> The Rt Hon. Jack Straw MP, who as Lord Chancellor from 2007 to 2010 had departmental responsibility for the Governance of Britain programme, told us why no progress was made before the 2010 general election: Q34.

<sup>10</sup> The motion was approved by 557 to 13.

<sup>11</sup> HC Deb, 21 March 2011, col 799.

<sup>12</sup> Political and Constitutional Reform Committee, *Parliament's role in conflict decisions* (8th Report, Session 2010–12, HC 923), para 6.

<sup>13</sup> HL Deb, 20 November 2012, col WA333. The answer closely reflects the wording in the Cabinet Manual (October 2011, para 5.38).

<sup>14</sup> HL Deb, 13 December 2012, col WA247.

15. In his annual oral evidence to us in January 2013 the Deputy Prime Minister, the Rt Hon. Nick Clegg MP, said there was a debate within Government about how to formalise and enshrine the convention. He said that he was in favour of making the convention as strong and fixed as possible, but others were more cautious. He said the debate had not been resolved.<sup>15</sup>
16. Similarly, in their response to the report of the Political and Constitutional Reform Committee, the Government said the imperative was to consider the issues properly, “rather than being driven by an artificial deadline. As the Government has already committed to observing the convention, the case for urgency has not been established”.<sup>16</sup>
17. In oral evidence to our inquiry, Alistair Burt MP, Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, stated that the Government have taken no decisions on how to proceed.<sup>17</sup> He said there was a difference of opinion on how to proceed amongst members of the Government;<sup>18</sup> Lord Wallace of Saltaire implied that this difference was not on party political lines.<sup>19</sup>

### Developments over Syria

18. Our inquiry was conducted against the backdrop of the continuing escalation of the civil war in Syria. As a result of the public and parliamentary debates on the nature of the UK’s involvement in Syria, there have been a number of statements in the House of Commons about when parliamentary debates and votes should take place.
19. The EU has not renewed its arms embargo on the Syrian opposition (which expired on 1 June 2013), although at the time of writing there has been no decision to send arms to Syrian rebels. On 18 June 2013 the Foreign Secretary clarified the position with regard to a Commons vote on arming the Syrian National Coalition: “We certainly would not want to pursue any aspect of our policy on this issue against the will of the House of Commons. That is neither feasible nor desirable, so of course we have made clear that there would be a vote. I have also made it clear that we would expect it to be before any such decision was put into action.”<sup>20</sup> Later the same day, in responding to a point of order, the Speaker of the House of Commons indicated that: “an explicit commitment [has been given] by the Foreign Secretary that there will be no implementation of such a decision without the prior assent in the form of a vote on a substantive motion in this House of Commons.”<sup>21</sup> In oral evidence to our inquiry, Alistair Burt MP confirmed that: “in relation specifically to the Syrian situation, [the Government] would look for the view of the House of Commons through a vote.”<sup>22</sup>

---

<sup>15</sup> Transcript of oral evidence on 9 January 2013, QQ34–5.

<sup>16</sup> Political and Constitutional Reform Committee, *Parliament’s role in conflict decisions—further Government Response* (12th Report Session 2010–12, HC 1673).

<sup>17</sup> Q44.

<sup>18</sup> *Ibid.*

<sup>19</sup> Q49.

<sup>20</sup> HC Deb, col 746.

<sup>21</sup> HC Deb, col 761.

<sup>22</sup> Q48.

20. In anticipation of further developments over Syria, on 11 July 2013 the House of Commons agreed by 114 votes to 1 a motion put forward by the Backbench Business Committee, “That this House believes no lethal support should be provided to anti-government forces in Syria without the explicit prior consent of Parliament.”
21. **The Government’s intentions as to the role Parliament should play as the civil war in Syria has escalated have been unclear. It took some time for the Government to give a commitment that the House of Commons should vote before any arms are supplied to the Syrian opposition, and it is unclear how they intend to involve Parliament should Her Majesty’s armed forces become further engaged in the conflict.**

## CHAPTER 2: THE GOVERNMENT'S INTERNAL DECISION-MAKING PROCESS

---

### Introduction

22. We have investigated aspects of the Government's internal process for making decisions on the use of force. In particular, we have considered the roles of the Cabinet, the National Security Council ("NSC"), the Defence Council and senior forces personnel. In this chapter we describe what we understand to be the Government's current arrangements, with the aim of shedding light on the processes which are followed and the relationships between various actors.

### The Cabinet

23. On these issues, as on all other matters of Government business, the Cabinet is the ultimate decision-making body within Government. Alistair Burt MP stressed that, though much of the detailed policy formulation and day-to-day discussions about military interventions take place in cabinet committees (including the NSC and, where appropriate, war cabinets), these discussions are advisory in nature, and "in line with the *Ministerial Code*, formal decisions relating to the commitment to military intervention are taken by the Cabinet."<sup>23</sup> Similarly, though the exigencies of a conflict situation may require the creation of a dedicated war cabinet (or the use of an equivalent cabinet committee) to receive information and make decisions day-to-day, the authority for such a body should be derived from the full Cabinet.<sup>24</sup>
24. The formal role of the Cabinet may also be significant in strengthening the actual and perceived legitimacy of deployment decisions. Though smaller (and potentially less formal) discussions will always occur around the Cabinet process, these ought not to be at the expense of formal Cabinet procedures for the taking of final decisions. In the context of the decision in 2003 to participate in the invasion of Iraq, for example, the Rt Hon. Jack Straw MP, Foreign Secretary from 2001 to 2006, said:
- "I was uncomfortable ... about the informality of decision-making that took place when Tony Blair was Prime Minister ... I absolutely stand by the decisions we made on Iraq but, on this issue of legitimacy, they would have been regarded—then and today—as far more legitimate if there had been a much more formal process within the Government over making them".<sup>25</sup>
25. The Cabinet's role in decision-making in this area is clearly of continuing importance. The need for decisions to be taken at Cabinet level is significant in ensuring both that the principle of collective ministerial responsibility is engaged (thus allowing the Government to be held properly to account for the decision by Parliament and the public) and, as far as possible, that the decision will be recognised as having been arrived at following a proper and robust process within the Government. **Though other Government bodies**

---

<sup>23</sup> Q57.

<sup>24</sup> Q10.

<sup>25</sup> Q41.

**have important roles in advising the Cabinet, preparing discussion there and implementing its decisions, we consider that it continues to be constitutionally important that the full Cabinet is the ultimate decision-maker on whether to use armed force overseas.**

### **The National Security Council**

26. The NSC was created by the current Government in 2010. It is a cabinet committee with terms of reference covering national security, foreign policy, defence, international relations and development, resilience, and energy and resource security.<sup>26</sup> It meets weekly under the chairmanship of the Prime Minister and is attended by senior Cabinet ministers, senior armed forces personnel (including the Chief of the Defence Staff) and the heads of the intelligence services, and is supported by a dedicated secretariat led by the National Security Adviser.
27. There was consensus amongst our witnesses that the NSC has brought a number of benefits to Government decision-making. Several witnesses emphasised that the NSC allows a cross-departmental approach in a manner which reflects the close connection between foreign policy, security and defence.<sup>27</sup> Nigel Inkster, Director of Transnational Threats and Political Risk at the International Institute for Strategic Studies, thought that the NSC “adds a significant element of process and clarity to debates which, in the past, often lacked both these attributes.”<sup>28</sup> Alistair Burt MP suggested that the regular, formal and well-informed discussions of the NSC have helped to elicit confidence in the Government’s decisions in the areas of security and defence.<sup>29</sup> Jack Straw MP told us that “all the reports I receive are that [the NSC] represents a significant advance in our constitutional arrangements.”<sup>30</sup> However, the parliamentary body which scrutinises the NSC has expressed concerns about how it has operated and how influential it has been in practice.<sup>31</sup>
28. The NSC provides a regular and formal line of communication between senior ministers, senior military figures and the heads of the intelligence services. It allows an “institutional memory” to develop, both through the regular attendance of ministers and through the National Security Adviser and the NSC secretariat. This in turn ought to allow the Cabinet to be provided with high-quality advice to inform its decision making on matters of national security and defence. Further, the NSC’s wide terms of reference take account of the increasingly blurred lines between defence, security and diplomacy.

### **The Defence Council and senior armed forces officers**

29. The Defence Council is the body which provides the formal legal basis for the conduct of defence in the UK through a range of powers vested in it by

---

<sup>26</sup> Q55.

<sup>27</sup> See, for example, Q26 (Field Marshal Lord Guthrie of Craigiebank, Chief of the Defence Staff 1997–2001).

<sup>28</sup> Q8.

<sup>29</sup> Q56.

<sup>30</sup> Q41.

<sup>31</sup> Joint Committee on the National Security Strategy, *The work of the Joint Committee on the National Security Strategy in 2012* (2nd Report, Session 2012–13, HL Paper 115, HC 984).

statute and Letters Patent.<sup>32</sup> It is chaired by the Secretary of State for Defence and comprises other ministers, senior military officers and senior civil servants in the Ministry of Defence.<sup>33</sup>

30. We heard evidence that, though the Defence Council possesses considerable legal authority, its practical role in the UK's defence arrangements is very limited. Air Chief Marshal Lord Stirrup, Chief of the Defence Staff 2006–10, told us, “[the Defence Council] is a legal entity but it does not meet regularly as a grand body, as it were.”<sup>34</sup> General Sir Mike Jackson, Chief of the General Staff 2003–06, clarified that the Defence Council is not involved in executive decision-making.<sup>35</sup> The practical significance of the Defence Council was summarised by the Rt Hon. Andrew Robathan MP, Minister for the Armed Forces: “put it this way: I do not have an appointment for the Defence Council in my diary.”<sup>36</sup>
31. Our witnesses were clear that the practical role of advising the Prime Minister on the armed forces falls to the Chief of the Defence Staff, in consultation with his senior colleagues. Field Marshal Lord Guthrie of Craigiebank, Chief of the Defence Staff 1997–2001, explained the process which was followed during his time in office:
- “Before I saw [the Prime Minister] I held a meeting with the other chiefs of staff so that we could get what we thought our line was. Obviously the Chief of Intelligence was there, as were various other people, including the Permanent Under-Secretary [of the Ministry of Defence]. I would chair the meeting, hear what had to be said and then tell the Prime Minister and the Secretary of State [for Defence]”.<sup>37</sup>
32. Lord Stirrup added: “clearly the Secretary of State [for Defence], the ministers and the Chief of the Defence Staff are all involved very closely in formulating advice for the Prime Minister. The decision ... is essentially taken by the Prime Minister in Cabinet.”<sup>38</sup>
33. The provision of military expertise and advice to the Prime Minister is delivered by the Chief of the Defence Staff, in consultation with other senior military officers, ministers and officials—many of whom are members of the Defence Council. **Although the Defence Council possesses potentially significant legal powers, it is not in practice a meaningful part of the decision-making apparatus of the Government as regards the use of armed force overseas. In terms used by Bagehot, it could be seen as a dignified, rather than efficient, part of the constitution.**

---

<sup>32</sup> The Defence Council was established by Order in Council in 1964 under the Defence (Transfer of Functions) Act 1964 and replaced the Defence Board. The Admiralty Board, the Army Board and the Air Force Board sit under the Defence Council and are charged with the administration of matters relating to the naval, military and air forces respectively.

<sup>33</sup> Its full membership is: all ministers at the Ministry of Defence; the permanent secretary, chief scientific adviser and director general for finance of the Ministry of Defence; the Chief of the Defence Staff and his deputy; the First Sea Lord, the Chief of the General Staff and the Chief of the Air Staff; and the Chief of Defence Materiel.

<sup>34</sup> Q29.

<sup>35</sup> *Ibid.* Nigel Inkster shared that view (Q8).

<sup>36</sup> Q55.

<sup>37</sup> Q27.

<sup>38</sup> *Ibid.*

### The Cabinet Manual

34. Taken as a whole, the Government's formal internal arrangements for deciding on whether to use armed force overseas seem to us to be appropriate. The arrangements allow for the provision of detailed advice on the security, defence and political considerations involved in authorising the use of force, through expert individuals such as the Chief of the Defence Staff and specialist bodies such as the NSC, whilst preserving the Cabinet as the forum for taking the final decision within government.
35. We are concerned, however, that the Government's internal mechanisms in this area are not well understood. In particular, we note that the Cabinet Manual does not contain a detailed description of the processes we have set out. Lord Wallace of Saltaire told us that, when the Cabinet Manual next undergoes a revision, the Government will consider including a fuller description of the NSC.<sup>39</sup> We welcome this; however, it would be clearer and more transparent if the Cabinet Manual covered the whole advisory and decision-making apparatus described in this chapter. **The Government should amend the Cabinet Manual so that it includes a detailed description of their internal arrangements for advising and deciding on the use of armed force.**

---

<sup>39</sup> Q57.

## CHAPTER 3: PARLIAMENT'S ROLE

---

### Introduction

36. The main focus of our inquiry has been to examine the role of Parliament in relation to decisions on whether to use armed force overseas. Our 2006 report concluded that, though the royal prerogative to deploy the UK's armed forces overseas clearly required parliamentary oversight and control, the most appropriate means for achieving this oversight was through convention rather than a more formalised process.<sup>40</sup> We decided to consider whether, in light of political and military developments in the intervening seven years, these conclusions remain appropriate. We did so particularly in view of statements by various Government ministers about their intention to formalise the convention that Parliament has the opportunity to debate whether to commit troops overseas before troops are committed.<sup>41</sup>

### Why parliamentary approval is needed

37. It is now widely accepted that Parliament should have a role in debating and approving the Government's decisions to deploy Her Majesty's armed forces overseas. This is in addition to the continuing need for governments to keep Parliament and its select committees informed about potential and ongoing conflicts. We took evidence on why Parliament should be involved, and on the constitutional, military and political advantages which flow from it.
38. First, and perhaps most important from a constitutional perspective, Parliament is the proper forum for holding the executive to account. As we have previously observed,<sup>42</sup> it is a cardinal principle of the UK constitution that ministers are constitutionally responsible to Parliament. Ministerial responsibility to Parliament generally operates retrospectively; in an area as important as the use of armed force abroad, the norm should be that the Government provide Parliament with the opportunity to exercise prospective oversight of executive decision-making.<sup>43</sup> We recognise that there may be exceptional circumstances in which that norm will be departed from. Closely linked to the principle of ministerial responsibility is the need for the Government of the day to maintain the confidence of the House of Commons, without which they cannot govern. Alistair Burt MP said: "Ultimately, the Government have to carry the confidence of Parliament, however that is devised and whatever system there may be. If that breaks down, the Government are in trouble one way or another."<sup>44</sup>
39. Secondly, the involvement of Parliament greatly enhances the substantive and perceived legitimacy of service deployments. Jack Straw MP told us:
- "one of the many advantages of having conflict decisions made by the House of Commons is that it is a way of securing their legitimacy. I dread to think what the situation would have been in the country and in

---

<sup>40</sup> *Op. cit.*, paras 103 and 108.

<sup>41</sup> See paras 11 to 17.

<sup>42</sup> Constitution Committee, *The accountability of civil servants* (6th Report, Session 2012–13, HL Paper 61), para 12.

<sup>43</sup> Q38.

<sup>44</sup> Q44.

the armed forces if we had not put the decision to go to war in Iraq to the House of Commons with a very explicit resolution.”<sup>45</sup>

40. Thirdly, Parliament’s approval may help improve the morale of service personnel, particularly if Parliament expresses its view by a large majority. Lord Guthrie of Craigiebank told us: “there were huge advantages if Parliament could be involved. When you visit people in the field on operations—for instance, when I went to Iraq—the questions you were asked were, ‘is the country behind us? Is Parliament, the Government, behind us?’”<sup>46</sup> Sir Mike Jackson added: “if demonstrably Parliament has taken the decision to support an executive decision to use force in this or that circumstance, that gives considerable succour to the service man or woman on the ground.”<sup>47</sup> Added to this is the increasing extent to which service personnel overseas can remain apprised of debates and developments in the UK. Professor Michael Clarke, Director General of the Royal United Services Institute, explained that in modern operational conditions members of the armed forces stationed abroad will be in touch with events at home:

“They see Sky TV every day; they are in touch with their families. So they get the domestic debates in the UK as they happen, as we do. It is not as if they go to an operational theatre and live that theatre until they come back on leave. They live the domestic theatre all the time.”<sup>48</sup>

### The overriding importance of legality

41. All of our witnesses agreed that the legality of any deployment was a prerequisite for that deployment taking place. Lord Stirrup said: “the legality issue is a *sine qua non*.”<sup>49</sup> **The legality of a deployment is of overriding importance. The analysis and conclusions in this report are made on the basis that a proposed deployment is legal.**

### Parliament’s role: the options

42. Three options have been put forward for the role of Parliament:
- primary legislation;
  - a detailed resolution of the House of Commons (such as that proposed by the previous Government in their 2008 white paper *The Governance of Britain*);<sup>50</sup>
  - continued reliance on a constitutional convention.<sup>51</sup>

---

<sup>45</sup> Q40.

<sup>46</sup> Q19.

<sup>47</sup> *Ibid.*

<sup>48</sup> Q17.

<sup>49</sup> Q23. This point was supported by Jack Straw MP at Q40.

<sup>50</sup> *The Governance of Britain—Constitutional Renewal*, Cm 7342–I, March 2008.

<sup>51</sup> In our recent report on the pre-emption of Parliament (13th Report, Session 2012–13, HL Paper 165) we considered the definition of constitutional conventions: “The word ‘convention’ is, in constitutional parlance, a term of art. Although there is no universally accepted definition of the term, the feature common to all definitions is that, whilst a convention is not justiciable, it is nevertheless regarded by all relevant parties as binding. Constitutional conventions may therefore be regarded as practices which are politically binding on all involved, but not legally binding” (para 25).

43. Various developments over the last seven years have influenced the debate on what Parliament's role should be. First, there have been significant developments in battlefield technology. In terms of munitions, we were informed of the development of "brimstone" missiles, which are capable of considerable accuracy and which can "literally destroy ... one end of a car but not the other."<sup>52</sup> Since 2006 the use of unmanned aerial vehicles ("drones") has increased, both for reconnaissance and strike purposes, leading to increasing public awareness of and controversy about their deployment. Asked whether the UK's use of drones will continue to increase, Nigel Inkster said:

"Over time I think inevitably, yes, it will. This is one of the directions that conflict is moving in. It makes perfect sense: battlefield intelligence is now critical—it is not an optional extra—and drone operations are one of the best ways of acquiring it, together with other techniques. It also gives you a very precisely-targeted, over-the-horizon strike capability with minimal risk."<sup>53</sup>

He described the technology involved in intelligence, surveillance, target acquisition and reconnaissance as one of the aspects of armed conflict which has changed most over recent years.<sup>54</sup>

44. Secondly, the types of situations into which the armed forces may be deployed have continued to evolve. We heard that it is increasingly difficult to draw clear distinctions between military and diplomatic engagement in foreign crises. Lord Wallace of Saltaire said:

"With the withdrawal of British troops from Afghanistan, we are unlikely to make a major deployment of ground forces in the foreseeable future. We are much more likely to be doing the sort of thing that we are doing off the coast of Somalia, or in Mali, where British forces may be involved in support operations ... the question therefore of where you draw the line, how much you tell Parliament, how you keep Parliament informed and make sure it has confidence in the Government, will be much more complex."<sup>55</sup>

45. Nigel Inkster similarly observed: "inter-state warfare has rather gone out of fashion ... however, we are seeing a lot of internal intra-state disputes and also ... countries that exist in a state which is neither war nor peace, where it is very difficult to ascribe clear motivations to particular actors."<sup>56</sup> Such fluid, non-conventional situations can pose difficulties for parliamentary scrutiny, as has been demonstrated by recent debates over UK military involvement with Syria.
46. Thirdly, the speed with which situations can escalate, and the corresponding military (and political and diplomatic) flexibility required to respond to such escalations, must be taken into account when devising an appropriate parliamentary approval mechanism.

---

<sup>52</sup> Q15.

<sup>53</sup> Q13.

<sup>54</sup> *Ibid.*

<sup>55</sup> Q49.

<sup>56</sup> Q6.

47. Allied to that is the fact that the scope of an intervention may not be clear at the outset. Lord Guthrie of Craigiebank told us: “you slide into a lot of ... wars or operations. They start in a small way and may have unforeseen consequences. Before you know where you are, you are up to your neck in it.”<sup>57</sup>

## Formalising Parliament’s role

### *The case for formalisation*

48. Those in favour of formalisation identify a number of advantages of passing legislation or a resolution. They would provide clarity and transparency about the role of Parliament in decisions over the deployment of the armed forces. Primary legislation would also provide democratic legitimacy to what is otherwise a legally unchecked exercise of the royal prerogative. Though under a Commons resolution the deployment power would remain a prerogative power, such a resolution would also enhance legitimacy. It is also argued that formalisation would mean that a Prime Minister could not bypass the parliamentary process: in the words of Jack Straw MP it would no longer “be a matter of grace and favour by the Prime Minister as to whether the House of Commons is asked for its view.”<sup>58</sup> Although those against formalisation argue that it would be difficult to draw up workable definitions, Jack Straw MP emphasised that if, in the light of experience, the definitions in a Commons resolution proved inadequate, it could easily be amended.<sup>59</sup> (It would not, of course, be so straightforward to amend primary legislation.)
49. As Lord Chancellor from 2007 to 2010, Jack Straw MP proposed a detailed House of Commons resolution which would have formalised Parliament’s role in debating and voting on Government decisions to deploy troops overseas. Although the draft resolution was never put before the Commons for adoption, he continues to support formalisation:

“There is an important constitutional point here about what we say to the public, who are, as it were, the owners of our constitutional arrangements, about where power over military action should ultimately lie ... the House of Commons is the elected, democratic body in this country. There is no more serious question in a democracy than putting our young men and women in harm’s way and that decision ought to be made by the House of Commons.”<sup>60</sup>

### *The case against formalisation*

50. The majority of our witnesses were opposed to formalisation, and favoured the flexible arrangements which exist at present. Notwithstanding the advantages which formalisation of Parliament’s role might bring, they highlighted various obstacles to formalisation, which are potentially more significant now than they would have been in 2006.

---

<sup>57</sup> Q20.

<sup>58</sup> Q38.

<sup>59</sup> QQ37, 38 and 42.

<sup>60</sup> Q38.

51. One of the main obstacles to formalisation is that of definition: formalisation (either through legislation or resolution) would mean specifying the kind of action which would engage parliamentary involvement. As set out above, however, the range of situations in which the UK's armed forces might be deployed is very wide and getting wider. There are large grey areas between military and diplomatic engagements. Professor Clarke, although not arguing in favour of formalisation, said: "if one was looking to establish a rough working threshold [for engaging the need for parliamentary approval], it might be where troops were going to be deployed overseas with the clear intention of engaging in conventional military combat operations"<sup>61</sup>—something he referred to as "death and destruction".<sup>62</sup> Other witnesses felt that the definitional problems of formalisation would be insurmountable.<sup>63</sup>
52. An issue that would have to be resolved in drawing up a resolution or legislation is what counts as "armed conflict". Should small deployments or the use of special forces alone be excluded? Another issue is the point at which Parliament's approval would be sought. The military might normally prefer blanket approval at the outset,<sup>64</sup> but Parliament may want to keep its options open until deployment is imminent. Different processes would have to be devised for when Parliament is not in session or is dissolved. Another issue is whether retrospective approval should be sought for certain deployments (such as emergency deployments). In that case, what happens if approval is declined? An additional dilemma is how much information Parliament should be given. Problems arise in disclosing secret, legal and tactical information, yet Parliament may not want to give approval if it has not been given full information.
53. The previous Government's 2008 draft resolution defined a conflict decision for which parliamentary approval is required as "a decision of Her Majesty's Government to authorise the use of force by UK forces if the use of force (a) would be outside the United Kingdom, and (b) would be regulated by the law of armed conflict."<sup>65</sup> We note that had the House of Commons adopted this resolution any decision to provide arms to the Syrian National Coalition would not be covered. Thus there is a risk that an inflexible resolution or legislation may exclude a military intervention from parliamentary control even in cases where it was widely accepted that Parliament should have a role in deciding on that intervention.
54. Another objection to formalisation is the risk of rendering deployment decisions justiciable, particularly through applications for judicial review. There was consensus amongst our witnesses that the appropriate forum for controlling and scrutinising deployment decisions is Parliament, not the courts. Specifying the parliamentary approval process in primary legislation may create a risk of the domestic courts being invited to rule on the lawfulness of a deployment decision.
55. We received evidence that when courts (particularly coroners' courts) scrutinise operational decision-making by service personnel, this has a

---

<sup>61</sup> Q4. He later clarified that his statement would also apply to the deployment of naval and air forces (Q7).

<sup>62</sup> Q3.

<sup>63</sup> QQ17, 19 and 20.

<sup>64</sup> Q20.

<sup>65</sup> *The Governance of Britain—Constitutional Renewal*, Cm 7342-I, March 2008, Annex A.

deleterious effect on the morale of the armed forces and leads officers to become more risk-averse. Lord Stirrup told us:

“Applying what can seem to be common sense [legal] principles in ordinary life to extraordinary situations can be extremely dangerous. There is no doubt that people in all three environments of the military are becoming more and more concerned about their personal legal positions in operations. One of the potential consequences of this is not that you have fewer casualties; it is actually that you have more.”<sup>66</sup>

**We share the concerns expressed to us about the negative effect on the morale and operational independence of the armed forces of courts scrutinising operational decisions.**

56. The apparent increasing willingness of the courts to become involved in decisions relating to the battlefield was highlighted by the recent case of *Smith v Ministry of Defence*.<sup>67</sup> The Supreme Court held that it is possible for certain actions and decisions of service personnel on the ground, as well as certain planning and procurement decisions, to give rise to liability under the common law of negligence, as well as under human rights law. Commenting on this decision, Alistair Burt MP said: “my view is that the Supreme Court judgment highlights that some options for formalising the convention we are talking about through legislation could make it more likely that government decisions to commit our armed forces to operations would be rendered justiciable.”<sup>68</sup> This may illustrate the risks potentially associated with a formalised parliamentary process, particularly if it involves legislation.
57. A third objection to formalisation is the risk that it would lead to parliamentary involvement in operational decisions, either before or during deployments. In some instances Parliament might want to grant consent subject to constraints on the type of action that may be undertaken. This could harm military effectiveness and limit commanders’ freedom of manoeuvre. Lord Guthrie of Craigiebank told us that, once the decision to deploy has been made, “the commanders must be given freedom to command the battlefield in the way they think best ... You have got to trust the commanders to get it right.”<sup>69</sup>
58. A fourth objection to formalisation is the need to ensure political and military flexibility. Any formalised process would need to leave a wide margin of discretion to the Prime Minister over whether and when to bring a matter to Parliament. Jack Straw MP observed in relation to the previous Government’s 2008 draft resolution: “The crucial thing ... is that the triggers are entirely in the hands of the Prime Minister. The Prime Minister decides whether there is a conflict decision. If it is something rather trivial, he may decide that there is no conflict decision to be made, in which case he calls it something else and this resolution does not operate.”<sup>70</sup> Any formalised process would have to allow for emergency deployments or for the armed forces to take defensive action. There may be instances where the UK’s international obligations require the Government to commit to action—for

---

<sup>66</sup> Q21.

<sup>67</sup> [2013] UKSC 41.

<sup>68</sup> Q53.

<sup>69</sup> Q30.

<sup>70</sup> Q35.

example to achieve collective security with fellow NATO members.<sup>71</sup> In such instances it would be detrimental to the Government's position to be in doubt as to whether they can secure the commitment of Her Majesty's armed forces: ministers might therefore seek an exemption from the requirement to follow a formal parliamentary process. Such extensive discretion limits the effectiveness of a formalised process in enhancing Parliament's control over deployment decisions. Indeed, there comes a point at which the number of exceptions is so great that it effectively negates the purpose of formalising Parliament's role.

59. A fifth objection, allied to the argument about the need to preserve flexibility, is that formalisation is unnecessary. In practice any Prime Minister seeking to commit British forces to a conflict overseas would have to obtain the approval of Parliament. In the words of Lord Guthrie of Craigiebank, any Government which took the country to war without the support of Parliament would be "mad".<sup>72</sup> Similarly, Alistair Burt MP told us that he found it: "difficult to imagine the circumstances in which a vote of the House of Commons would be disregarded by the Government."<sup>73</sup> If that is so, it may be argued that little will be gained by setting out a rigid, formal process.

#### *Role of the House of Lords*

60. Any discussion of the role of Parliament, of course, includes the House of Lords. We heard evidence on the appropriate constitutional role for the House of Lords in providing parliamentary oversight of Government decisions on the use of armed force. Our witnesses agreed that, though the House of Lords (as currently constituted) has an important advisory role, the approval decision itself should be vested in the House of Commons.<sup>74</sup> Lord Wallace of Saltaire told us that: "the House of Lords, as we all regularly say, is an advising and revising House. The Commons represents the sense of the nation ... we all accept the supremacy of the Commons, and, if we are talking about maintaining confidence, trust and a sense of legitimacy for operations overseas, the Commons has to come first."<sup>75</sup> We note that the House of Lords contains a number of experts in fields relevant to this inquiry, including former senior military personnel and retired senior diplomats. **The House of Lords is well-placed to debate the merits of deployment decisions. However, the decision on whether to approve a deployment decision should be vested in the House of Commons.**

#### *Conclusion on formalisation*

61. Our view is that formalising the Parliament's role in approving the deployment of Her Majesty's armed forces overseas would face a number of significant practical and definitional difficulties. The adoption of a formal resolution would potentially limit the options available to Parliament by removing flexibility; in addition, any such resolution might need to be

---

<sup>71</sup> This was a point made by Lord Hannay of Chiswick, a former permanent representative to the United Nations, in a 2008 debate on the then Government's proposals: HL Deb, 31 January 2008, cols 764–65.

<sup>72</sup> Q33.

<sup>73</sup> Q48.

<sup>74</sup> The House of Lords debated the decisions to intervene in Libya and Iraq, but did not vote in either case.

<sup>75</sup> Q49.

regularly amended to reflect the changing nature of warfare and deployments. We consider that the risks and difficulties associated with formalisation outweigh any benefits which it might bring. **Neither primary legislation nor a resolution should be introduced as a means of formalising the role of Parliament in approving deployment decisions.**

### **A constitutional convention**

62. The current arrangements for allowing parliamentary approval of deployment decisions seem to be working well. The Government have recognised that the need for Commons approval of deployment decisions is now a constitutional convention, and therefore politically binding on them.<sup>76</sup> Parliamentary approval was sought and obtained for enforcing the no-fly zone over Libya. Recent debates in the House of Commons on Syria have shown that the existing convention is capable of adapting to reflect new circumstances. The House of Commons has secured a commitment from the Government that any decision to arm the Syrian National Coalition should be taken only after the Commons has voted on the matter. Provision of arms to a conflict such as that in Syria was not a scenario envisaged by previous proposals for formalising Parliament's role, yet a process has been crafted by which the House of Commons will have its say. This demonstrates the benefits of flexibility.
63. The current arrangements are such that it is inconceivable that the Prime Minister would either refuse to allow a Commons debate and vote on a deployment decision, or would refuse to follow the view of the Commons as expressed by a vote. **It seems that much of the impetus for formalising Parliament's role is to make a political statement about where decisions should be taken, rather than to correct deficiencies in the legal or military process.**
64. **We conclude that the existing convention—that, save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed force overseas—provides the best framework for the House of Commons to exercise political control over, and confer legitimacy upon, such decisions. It is flexible, effective and consistent with the existing structure of parliamentary scrutiny of the executive. Parliamentary control over the Government in this area should remain a matter of constitutional convention.**

---

<sup>76</sup> Q44.

## CHAPTER 4: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

---

65. The Government's intentions as to the role Parliament should play as the civil war in Syria has escalated have been unclear. It took some time for the Government to give a commitment that the House of Commons should vote before any arms are supplied to the Syrian opposition, and it is unclear how they intend to involve Parliament should Her Majesty's armed forces become further engaged in the conflict. (Para 21)
66. Though other Government bodies have important roles in advising the Cabinet, preparing discussion there and implementing its decisions, we consider that it continues to be constitutionally important that the full Cabinet is the ultimate decision-maker on whether to use armed force overseas. (Para 25)
67. Although the Defence Council possesses potentially significant legal powers, it is not in practice a meaningful part of the decision-making apparatus of the Government as regards the use of armed force overseas. In terms used by Bagehot, it could be seen as a dignified, rather than efficient, part of the constitution. (Para 33)
68. The Government should amend the Cabinet Manual so that it includes a detailed description of their internal arrangements for advising and deciding on the use of armed force. (Para 35)
69. The legality of a deployment is of overriding importance. The analysis and conclusions in this report are made on the basis that a proposed deployment is legal. (Para 41)
70. We share the concerns expressed to us about the negative effect on the morale and operational independence of the armed forces of courts scrutinising operational decisions. (Para 55)
71. The House of Lords is well-placed to debate the merits of deployment decisions. However, the decision on whether to approve a deployment decision should be vested in the House of Commons. (Para 60)
72. Neither primary legislation nor a resolution should be introduced as a means of formalising the role of Parliament in approving deployment decisions. (Para 61)
73. It seems that much of the impetus for formalising Parliament's role is to make a political statement about where decisions should be taken, rather than to correct deficiencies in the legal or military process. (Para 63)
74. We conclude that the existing convention—that, save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed force overseas—provides the best framework for the House of Commons to exercise political control over, and confer legitimacy upon, such decisions. It is flexible, effective and consistent with the existing structure of parliamentary scrutiny of the executive. Parliamentary control over the Government in this area should remain a matter of constitutional convention. (Para 64)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTERESTS

---

The members of the committee that conducted the inquiry were:

Lord Crickhowell  
 Lord Cullen of Whitekirk  
 Baroness Falkner of Margravine  
 Lord Goldsmith  
 Lord Hart of Chilton  
 Lord Irvine of Lairg  
 Baroness Jay of Paddington (chairman)  
 Lord Lang of Monkton  
 Lord Lester of Herne Hill (from 12 June 2013)  
 Lord Lexden  
 Lord Macdonald of River Glaven (until 12 June 2013)  
 Lord Powell of Bayswater  
 Baroness Wheatcroft

Professor Adam Tomkins, John Millar Professor of Public Law at the University of Glasgow, and Professor Maurice Sunkin, Professor of Public Law and Socio Legal Studies at the University of Essex, acted as specialist advisers for the inquiry.

### Declarations of interests

The following interests were declared:

Lord Goldsmith

*Attorney General between 2001 and 2007 and involved on several occasions in the use of armed force, including particularly the conflicts in Afghanistan and Iraq.*

Lord Lester of Herne Hill

*Introduced private member's bill on the subject and advised the Lord Chancellor and Justice Secretary, the Rt Hon. Jack Straw MP, as independent adviser.*

Lord Powell of Bayswater

*Director and shareholder, Caterpillar Inc (heavy machinery).  
 Director and shareholder, Textron Corporation (corporate jets/helicopters).  
 Member, Galaxy Partners.  
 Chairman, Rolls-Royce International Advisory Board.  
 Member, Advisory Board, Thales UK.  
 Adviser, Asia, BAE Systems.  
 Member, Advisory Board, Aspide GmbH.  
 Business Ambassador, Prime Minister's Business Ambassador's Network.  
 Co-chairman, Asia Task Force.  
 Chairman, Atlantic Partnership.  
 Trustee and non-executive director, International Institute for Strategic Studies.  
 Member, Global Board of Advisers to the Council on Foreign Relations.*

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

## APPENDIX 2: LIST OF WITNESSES

---

Evidence is published online at [www.parliament.uk/hlconstitution](http://www.parliament.uk/hlconstitution) and available for inspection at the Parliamentary Archives (020 7219 5341).

Evidence received by the committee is listed below in order of receipt and in alphabetical order. All witnesses gave only oral evidence.

### Oral evidence in chronological order

QQ1–17	Professor Michael Clarke Nigel Inkster
QQ18–33	Field Marshal Lord Guthrie of Craigiebank General Sir Mike Jackson Air Chief Marshal Lord Stirrup
QQ34–43	Rt Hon. Jack Straw MP
QQ44–58	Alistair Burt MP Rt Hon. Andrew Robathan MP Rt Hon. Lord Wallace of Saltaire

### Alphabetical list of all witnesses

Alistair Burt MP  
Professor Michael Clarke  
Field Marshal Lord Guthrie of Craigiebank  
Nigel Inkster  
General Sir Mike Jackson  
Rt Hon. Andrew Robathan MP  
Air Chief Marshal Lord Stirrup  
Rt Hon. Jack Straw MP  
Rt Hon. Lord Wallace of Saltaire

### APPENDIX 3: CALL FOR EVIDENCE

---

The House of Lords Select Committee on the Constitution, chaired by Baroness Jay of Paddington, is announcing today an inquiry into the constitutional arrangements for the use of armed force. The committee invites interested organisations and individuals to submit written evidence as part of the inquiry.

Written evidence is sought by Friday 14 June 2013. Public hearings are expected to be held in May and June. The committee aims to report to the House, with recommendations, before the summer recess. The report will receive a response from the Government and may be debated in the House.

The decision to use armed force overseas is one of the most momentous a Government can make. However, the role played by Parliament in such decisions remains unclear: there is at present no standard process by which Parliament can become involved. In 2006 the House of Lords Constitution Committee conducted an extensive inquiry into Parliament's role in authorising the use of armed force overseas. Following the report published by the committee in 2006,<sup>77</sup> the then Government committed themselves to bringing forward a detailed resolution on the process Parliament should follow in approving the commitment of the UK's armed forces overseas.<sup>78</sup> The current Government have also indicated an intention to enshrine in law the necessity of consulting Parliament on military action.<sup>79</sup> However, no action has been taken to bring any such proposals into effect.

In addition to the lack of recent developments on Parliament's role, since 2006 the institutional and military context has evolved. In 2010 the National Security Council was established; it is unclear how this body interacts with the other organs of Government involved in authorising the use of force overseas. The nature of interventions has also changed: most recent interventions have concerned either failed states or anti-terrorism operations. In addition, the techniques of warfare have continued to advance, particularly with the increased use of drones and the development of cyber warfare.

The impact of these changes on the constitutional arrangements which we investigated in 2006 is uncertain. Therefore, the Constitution Committee has decided to look again at the constitutional arrangements for the use of armed force overseas. The inquiry will focus on four areas in particular:

- the reasons for the continuing absence of a war powers resolution or other formalisation of Parliament's role;
- changes in the Government's internal processes for authorising the use of armed force, and the suitability of those processes;
- the impact of the changing nature of deployments on the choice of constitutional process; and
- the implications of new techniques of warfare for designing a mechanism for parliamentary approval.

---

<sup>77</sup> Constitution Committee, *Waging war: Parliament's role and responsibility* (15th Report, Session 2005–06, HL Paper 236).

<sup>78</sup> *The Governance of Britain: Constitutional Renewal*, p. 51. Annex A of this paper included a draft war powers resolution.

<sup>79</sup> HC Deb, 21 March 2011, col 799, per the Foreign Secretary, William Hague MP

Written evidence is invited on the above matters. You need not address all the points. The committee would also welcome any other views which you think the committee should be aware of.

Evidence should be submitted in an editable electronic form as a Microsoft Word document, or as plain ASCII text, by e-mail to [constitution@parliament.uk](mailto:constitution@parliament.uk). Please do not submit PDFs. If you do not have access to Microsoft Word or to the internet you may submit a paper copy to Select Committee on the Constitution, Committee Office, House of Lords, London SW1A 0PW. The deadline for written evidence is Friday 14 June 2013.

Short submissions are preferred. A submission longer than six pages should include a one-page summary.

Evidence sent in paper form must be clearly printed or typed on single sides of A4 paper, unstapled.

Paragraphs should be numbered. Evidence should be dated, with a note of the author's name and status, and of whether the evidence is submitted on an individual or corporate basis. All submissions will be acknowledged promptly.

Evidence becomes the property of the committee, and may be published by the committee at any stage. Once you have received acknowledgement that the evidence has been received, you may publicise or publish your evidence yourself, but in doing so you must indicate that it was prepared for the committee. Parliamentary privilege will not apply to your own publication.

Personal contact details supplied to the committee will be removed from evidence before publication. However, personal contact details will be retained by the Committee Office and used for specific purposes relating to the committee's work, for instance to seek additional information or to send copies of the committee's report.

Written evidence will normally be published online and deposited in the Parliamentary Archives.

Persons who submit written evidence, and others, may be invited to give oral evidence. Oral evidence is usually given in public at Westminster, broadcast in audio and often video format on the internet, and transcripts are published online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the committee about the inquiry should be addressed through the clerk or the chairman of the committee, whether or not they are intended to constitute formal evidence to the committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy direct.

You may follow the progress of the inquiry at:

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/>