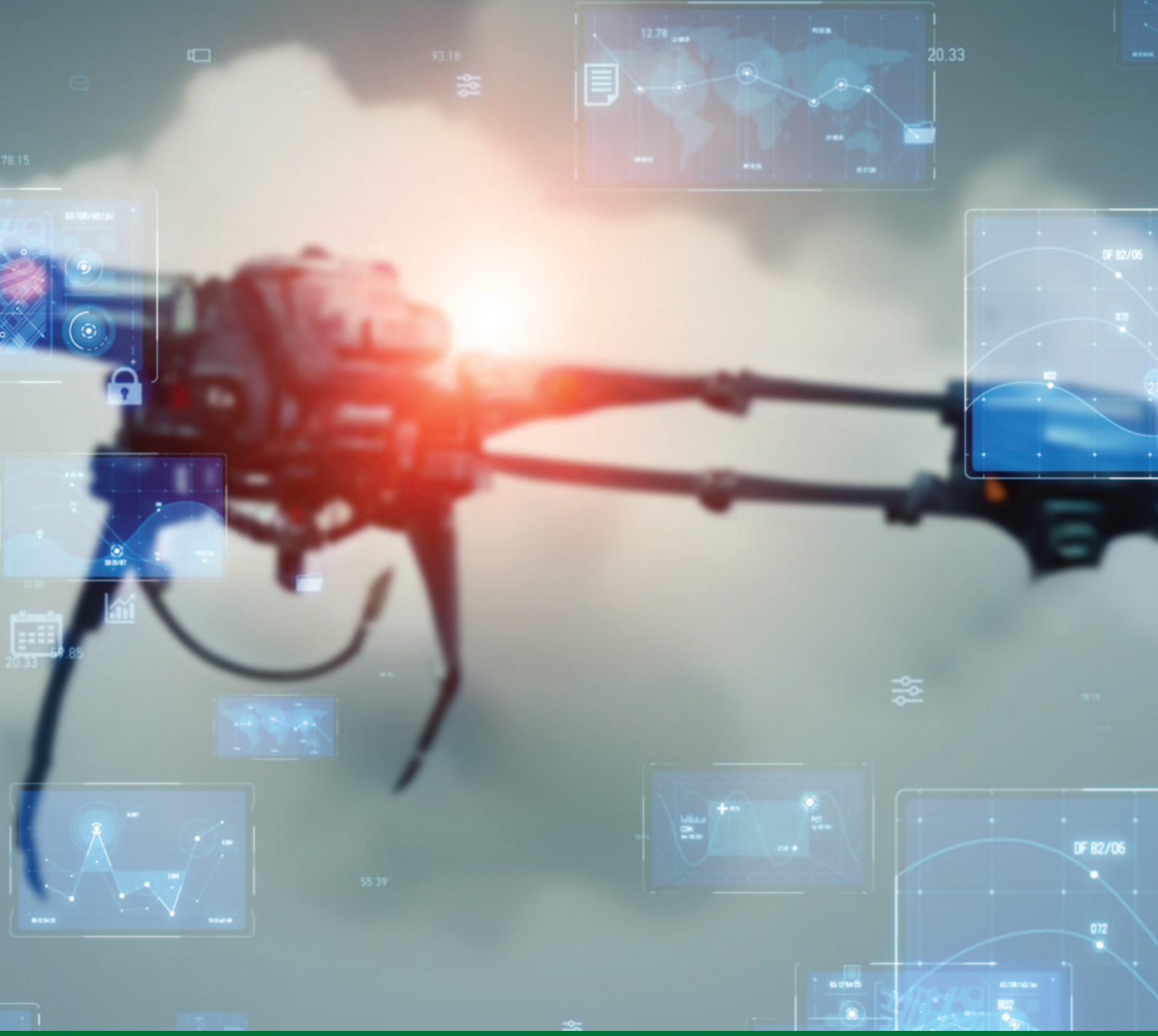

Strengthening democratic control of UK war powers in an age of remote and hybrid warfare

Policy brief

Nigel D White

CEASEFIRE
centre for civilian rights

Cover photo:
© Alessandro Scagluisi / Shutterstock

Nigel D White is Professor of Public International Law at the University of Nottingham, UK. His recent books include *An Advanced Introduction to International Conflict and Security Law* (Elgar, 2nd ed., 2023) and *Military Justice: The Rights and Duties of Soldiers and Government* (Elgar, 2022).

Ceasefire Centre for Civilian Rights

The Ceasefire Centre for Civilian Rights is an international initiative to develop civilian-led monitoring of violations of international humanitarian law or human rights in armed conflict; to secure accountability and reparation for violations; and to develop the practice of civilian rights.

Ceasefire is registered as a charity and a company limited by guarantee under English law; charity no. 1160083; company no. 9069133.

Acknowledgements
This publication was funded by the Joseph Rowntree Charitable Trust. The views expressed are not necessarily those of the Trust.

Published April 2024. Printed in the UK on recycled paper.

Contents

Executive summary

In the UK, the decision to go to war or otherwise commit UK armed forces or assets to foreign lands remains a prerogative power, originally belonging to the Crown, but now in the hands of the cabinet or a small part of it known as the war cabinet. Given that prerogative powers bypass normal methods of democratic control, and can be exercised without parliamentary approval, there is pressure in the modern era to re-evaluate the balance between recognizing the need for military effectiveness and the demands of democratic accountability.

In the years following the invasion of Iraq in 2003 a constitutional Convention was considered to have emerged requiring prior consultation, arguably approval, from Parliament before British forces can be deployed to combat overseas. However, it appears that without significant substantive normative content the Convention can readily be pushed aside when the government of the day, for whatever reason, does not want to risk a debate and possible negative vote in Parliament. The executive continues to dominate war powers decision-making.

At the same time, warfare is changing. Major kinetic uses of force have been joined by new forms of waging war, characterized by the use of remotely-piloted drones, deployment of special forces, extensive use of private military companies and cyber operations. Hybrid warfare and remote warfare are conducted in the shadows and so, by their very nature, tend to operate below the level of democratic scrutiny. Developments in warfare across the spectrum from high-intensity conflict to remote and hybrid operations below the threshold of force, involving UK forces and assets, have generally escaped the prior scrutiny of Parliament. Thus, in addition to the uncertain application to significant uses of kinetic force of a post-2003 war powers Convention requiring Parliament to be consulted, there is an absence of any established practice of parliamentary scrutiny of lower levels of remote or hybrid force or other measures by the UK.

Since 1945, the UK has shown itself to be one of the most active countries in terms of deploying its armed forces overseas. In this regard, the UK has a track record of relying on controversial legal justifications for its military interventions. It would be better if Parliament were able to make a more informed choice when deciding to vote for or against a proposal to go to war on the basis of both the legitimacy and legality of the operation. Questions over the legitimacy as well as the legality of wars of choice, in contrast to genuine wars of necessity involving instant defensive responses to imminent or actual attacks against the UK, lead to greater pressure for accountability for compliance with international law. Furthermore, wars of choice can raise the legal responsibility of the government and political and military leaders, and they may also lead to some service personnel questioning their duty to obey orders to deploy to what they might consider to be an aggressive, or otherwise illegal, war.

War powers decision-making based on a largely unaccountable exercise of prerogative powers seems to be an anachronism, a vestige of the monarch as the commander-in-chief of the armed forces. Democratic control over the exercise of war powers is stronger in most other European countries than in the UK. The case for increasing democratic accountability to balance executive and military efficiency now seems overwhelming.

This report recommends:

- A War Powers Resolution of Parliament should be passed to establish a normative framework for war powers decisions both in procedural and substantive terms. The Resolution should be drafted to deliver much improved democratic accountability, particularly in wars of choice, as well an in instances of hybrid and remote warfare, while preserving operational effectiveness in cases of necessity.
- Under the Resolution, Parliament should have the right to vote against military action, with the result that such action would be forestalled or, in the case of action already initiated, ceased or withdrawn.
- In all cases, the full legal advice of the Attorney General should be given to Parliament so that members can make an informed judgement as to whether to vote for or against a deployment of forces overseas.
- A War Powers Resolution should be seen as a first step, but one that could lead in time to a War Powers Act, which would largely reproduce the content of the Resolution but potentially make war powers the subject of judicial review.

1 Introduction

Warfare is changing. Although full-scale inter-state uses of force and other major military deployments will still occur and will be debated in Parliament, these major kinetic uses of force are being overshadowed by new forms of waging war: hybrid warfare (multi-level forcible and non-forcible measures) and remote warfare (whereby the state and state actors are one or more steps removed from the use of force).

Hybrid and remote warfare are conducted in the shadows and so, by their very nature, tend to operate below the level of democratic scrutiny. It is within this broader context that the current state of prerogative war powers in the hands of the government will be reviewed, including a consideration of whether a constitutional Convention has emerged since 2003 requiring prior approval from Parliament before British forces can be deployed to combat overseas. The practice and precedents surrounding war powers are shown to be emblematic of a 'political constitution', which includes the absence of judicial review of those international security powers deemed to be at the heart of the state. This suggests that a Convention, even if established, is not enough to ensure democratic accountability for the exercise of war powers, and that there is evidence that the 'emergency' exception in such a Convention, itself something more appropriate for internal crises or contingencies, will be interpreted very broadly to make any Convention almost without content.

The alternatives to a constitutional Convention, of either a non-binding War Powers Resolution or a piece of binding legislation in the form of a War Powers Act, are discussed. The former is argued to be an instrument that would more readily fit into the political constitution of the UK, at least as a first step. However, to make a difference, the content of a War Powers Resolution will need to include clearer procedures for war powers (co-) decision-making by the government and Parliament. Although the example of the US as a country in which a War Powers Resolution has been in operation (since 1973) might not be seen to be an unqualified success in practice for greater democratic accountability in war powers, it does still provide Congress with a legitimate claim to 'share in decisions to introduce US troops into hostilities'.[1]

Furthermore, it is argued that any future UK War Powers Resolution should have greater substantive normative content to bring decision-making into line with international law, while recognizing that there are a number of factors (security, humanitarian and ethical) that have to be considered alongside the law. The idea is that executive efficiency and decision-making should be emphasized in cases of wars of real necessity in order to enable the military to confront imminent and possibly existential threats to state and life,

hybrid and remote warfare are conducted in the shadows and by their very nature tend to operate below the level of democratic scrutiny

1 L. Damrosch, 'The interface of constitutional systems with international law and institutions on using military forces: changing trends in executive and legislative powers' in C. Ku and H.K. Jacobson (eds), *Democratic Accountability and the Use of Force in International Law* (Cambridge University Press, 2003) 39 at 48.

while democratic accountability in Parliament needs to be significantly increased in the case of wars of choice, exemplified in the recent past by the UK's expeditionary wars in Afghanistan and Iraq. The paper will then consider where hybrid and remote warfare sits on the scale between executive efficiency and democratic accountability. Both are characterized by elements of uncertainty, lack of clarity, even secrecy, all facts which may mean that they seem to sit on side of executive efficiency. However, it will be argued that, except in cases of necessity, such practices should sit on the side of democratic accountability.

2 War powers under a political constitution

A key feature of the UK's constitution is its political nature. In a lecture on 'The political constitution' given in 1979, on the cusp of a profound change in the politics of the UK, Griffith declared that: 'the constitution lives on, changing from day to day for the constitution is no more and no less that what happens'.[2] The idea that the UK's constitution is lacking normative content is supported by Sedley, who argues that the constitution is 'merely descriptive: it offers an account of how the country has come to be governed; and, importantly, in doing so it confers legitimacy on the arrangements it describes. But if we ask what the governing principles are from which these arrangements and this legitimacy derive, we find ourselves listening to the sound of silence.'[3]

Even those statutes that might be said to provide at least a partial legal framework that acts as some form of constraint on executive power have been criticized in the same vein. In Radin's view the Magna Carta of 1215 has become 'an ancient fetish, a sort of medicine bag, pulled out of the dust of the record-room … and made into the symbol of the struggle against arbitrary power', while 'the true effect of the Charter, if any, had been merely the hardening of the privileges of some hundred petty kings'.[4] The Bill of Rights of 1689 did seem to contain more by way of legal constraints, of particular relevance being the proscription against 'the raising or keeping a standing army within the kingdom in time of peace' without the consent of Parliament. The particular concern of this aspect of the 'Glorious Revolution' was to prevent the monarch keeping an army which would threaten Parliament. Although such purposes are long forgotten, the need for regular legislation to renew the mandate of the armed forces continues, something of a denial of the reality that the UK maintains a standing army in times of peace, indeed one based on prerogative powers. The Human Rights Act 1998 has impacted upon the actions of the armed forces, whether at home or abroad,[5] but it has not impacted upon the power of the executive to send soldiers to conflict zones with the concomitant increased risks to their lives.[6]

As well as there being a lack of constitutional restraint on war powers and a concomitant lack of judicial accountability, there is the issue of whether the institutions of state could provide for greater political restraint. There is a question of whether increasing the involvement of Parliament in war powers decision-making would provide an effective counterbalance to executive power. Bagehot's influential tract on the constitution dismisses theories of separation or balance of powers, holding them inapplicable to the UK. Rather, the reality hidden by such theories is 'the nearly complete fusion of the executive and legislative powers' through the 'connecting link' of the cabinet.[7] On this basis, sharing decision-making with Parliament by itself, even if this were to be based on a

2 J.A.G. Griffith, 'The political constitution' (1979) 42 *Modern Law Review* 1 at 19.
3 S. Sedley, 'The sound of silence: Constitutional law without a constitution' (1994) 110 *Law Quarterly Review* 270.
4 M. Radin, 'The myth of the Magna Carta' (1947) 60 *Harvard Law Review* 1060 at 1062.
5 See, for example, *Al-Skeini and Others v The United Kingdom,* Appl. No. 55721/07, 7 July 2011; *Smith and Others (FC) v Ministry of Defence* [2013] UKSC 41.
6 See *R (Gentle) v The Prime Minister* [2008] UKHL 20.
7 W. Bagehot, *The English Constitution* (Oxford: Oxford University Press, 2001) 11.

legally binding War Powers Statute, would not necessarily increase the quality of war powers decision-making. It will be argued that what is needed, in addition to involving Parliament in debating and decision-making on war powers, is to increase the quality of information available to Members of Parliament so that they will be expected by their constituents to make informed and impartial decisions, not simply to follow the party line.

the Bill of Rights of 1689 contained a proscription against 'the raising or keeping a standing army within the kingdom in time of peace' without the consent of Parliament

In the UK, the executive dominates war powers decision-making, which is based on prerogative powers originally belonging to the Crown,[8] but now in the hands of the cabinet or smaller groups within it – in times of conflict this will take the form of a 'war cabinet'.[9] Although this remains the strict legal basis of war powers decision-making, politically it is important for the government of the day to have Parliament on its side, particularly if it has decided to prosecute a controversial war that may become unpopular over time. Given that prerogative powers bypass normal methods of democratic control, there is pressure in the modern era to re-evaluate the balance between recognizing the need for military effectiveness and the demands of democratic accountability. There is certainly a strong view that the deployment of troops and the waging of war, or more generally 'the exercise of the physical might of the modern state' should be subject to greater democratic control.[10] In contrast, there are strongly held views that greater parliamentary control will undermine military effectiveness. For example, General Houghton, Chief of Defence Staff from 2013 to 2016, argued that 'successful military operational activity, particularly at the outset, relies on secrecy, security and surprise', elements that would clearly be undermined by open debate in Parliament.[11]

In general terms, prerogative war powers have two serious consequences for both the rule of law and democratic accountability: first, there is no legal requirement to secure parliamentary approval before action is taken under prerogative war powers.[12] Legally, the decision to go to war or otherwise commit UK armed forces or assets to foreign lands remains a prerogative power, and thus can be exercised without parliamentary approval. Politically, there is the question, since the Iraq war of 2003, of whether there is a non-legally binding Convention creating an expectation that the government seek prior parliamentary approval for a deployment of forces overseas (see discussion in section 3). The second consequence is that the courts are reticent to encroach on the competence of the executive by exercising or claiming a power to review the decisions of the Crown on the disposition and use of the UK's armed forces,[13] and this is despite a gradual judicial

8 A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 10th edn, 1959) 424–5.
9 C. Seymore-Ure, 'War cabinets in limited wars: Korea, Suez and the Falklands' (1984) 62 *Public Administration* 181 at 182.
10 A.W. Bradley and K.D. Ewing, *Constitutional and Administrative Law* (London: Longman, 14th edn, 2007) 343.
11 'Any new Parliamentary convention authorising armed conflict will undermine military effectiveness former Defence Chief says', *The Telegraph,* 6 February 2019.
12 Bradley and Ewing, Constitutional and Administrative Law, 323.
13 *China Navigation Co. Ltd v Attorney General* [1932] 2 K.B. 197; *Chandler v Director of Public Prosecutions* [1964] AC 736; *Campaign for Nuclear Disarmament v The Prime Minister of the United Kingdom* [2002] EWHC 2777. See P. Rowe, *Defence: The Legal Implications* (Brassey's, 1987) 3.

encroachment into other facets of prerogative powers.[14] In the build-up to the Iraq war in 2003, an application for judicial review of the government's case for war was roundly rejected by the court, with the leading judgment making it clear that there could be no 'question … of declaring illegal whatever decision or action may hereafter be taken in the light of the United Kingdom's understanding of its position in international law'.[15]

The unwillingness of the courts to apply international law to decisions to go to war, and the lack of national legal standards against which to judge political decisions to deploy troops, are the reasons for the complete absence of judicial review by British courts of any such decisions.[16] Whether a War Powers Act would change this is an interesting question, since it raises the issue of whether the courts are historically reluctant to review war powers because they are prerogative powers or because they are powers exercised on the inter-state plane, over which the courts do not see themselves as having jurisdiction.[17] The former view, in which prerogative powers are replaced by legislative powers, would open up the prospect of judicial review (unless the statute expressly excluded judicial review), whereas the latter view would not permit judicial review unless the statute expressly extended the jurisdiction of the courts.

However, the issue of judicial review (or lack of it) should not dominate the question of whether to legislate for war powers in the form of a War Powers Act, or whether to have a non-statutory War Powers Resolution (or whether to leave the system as it currently stands). The issue of whether Parliament should be involved in war powers decision-making is not primarily about the accountability of the government to the judiciary, but its accountability to Parliament. In order to avoid any initiative for the reform of war powers failing because of a (possibly misplaced) fear of judicial review hampering government freedom of action in a vital area of national security, a non-statutory War Powers Resolution would be preferable. The reality of the UK's political constitution and the fusion of executive and legislative powers signifies that giving Parliament an increased role in war powers' decision-making is not as momentous a step as it might first appear – in fact it can be seen as a natural development within a political constitution which is moving towards greater democratic accountability. Involving Parliament in war powers gives any decision to deploy troops greater legitimacy and might lead to Parliament voting against, and hopefully preventing or stopping, a particularly problematic and legally suspect military operation.

14 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374.

15 *Campaign for Nuclear Disarmament v The Prime Minister of the United Kingdom* [2002] EWHC 2777, para. 47 (Brown LJ).

16 See generally, A. Sanger, 'Review of executive action abroad: The UK Supreme Court in the international legal order' (2019) 68 *International and Comparative Law Quarterly* 35.

17 See *R (Gentle) v The Prime Minister* [2008] UKHL 20, para. 58 (Lady Hale).

3 Convention or practice?

An issue which attracts a great deal of attention is whether executive prerogative war powers have been partially limited by a constitutional Convention that arguably started to emerge in the decision-making process that led to the invasion of Iraq in 2003, and was then recognized in the Cabinet Manual of 2011. This Convention arguably creates an expectation (or presumption) of there being parliamentary debate and possibly vote before troops are finally committed to combat. The nature and function of conventions within a political constitution appear to be riddled with uncertainties to the extent that it remains valid to ask questions as to whether such a Convention exists and, if so, how effective is it at limiting the government's war powers? Can it be pushed aside when the government of the day does not want, for whatever reason, to risk debate and possible negative vote in Parliament?

A Convention has been said to be a 'practice which is politically binding on all involved, but not legally binding'.[18] According to Strong: '[s]omewhat tautologically, a convention is a rule based on reason and precedent *that is in fact obeyed.* … They are the "political" constitution's centrepiece.'[19] Conventions are distinguished from 'practices', which according to Lagassé lack consensus.[20] Looking at the use of war powers in the UK since 1945 it is true to say that: '[y]es, precedents exist for permitting MPs a substantive prior vote before taking military action; but a greater number of precedents exist for MPs being sidelined'.[21] However, there appeared to be a consensus emerging from the precedent of Iraq 2003, leading to recognition of a convention in the Cabinet Manual in 2011, which states that: '[i]n 2011, the Government acknowledged that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except when there was an emergency and such action would not be appropriate.'[22]

However, changing understandings of the Convention by the actors involved in decision-making on war powers are a central concern for those arguing for greater democratic accountability. The terms of the Convention are very general given that it does not require a prior vote in Parliament (only an opportunity to debate the matter). It also does not specify whether both Houses of Parliament could be involved; and, most contentiously, it uses a term 'emergency' to define the exception, a term that is more suited to domestic

18 House of Lords (HL) Select Committee on the Constitution, 'The pre-emption of Parliament', Session 2012–13, HL 165, 1 May 2013, para. 25.

19 J. Strong, 'Did Theresa May kill the War Powers Convention? Comparing parliamentary debates on UK intervention in Syria in 2013 and 2018' (2022) 75 *Parliamentary Affairs* 400 at 402, citing Griffith (1979) 19.

20 P. Lagassé, 'The Crown and government formation: Conventions, practices, customs and norms' (2019) 28 *Constitutional Forum* 1.

21 Strong, 'Did Theresa May kill the War Powers Convention? …' (2022) 403.

22 Cabinet Manual 2011, para. 5.85 – see M. Bennett, 'The ever-expanding "emergency" exception: Syria, the War Powers Convention, and the by-passing of prior parliamentary debate', UK Const. L. Blog, 25 April 2018: https://ukconstitutionallaw.org/2018/04/25/mark-bennett-the-ever-expanding-emergency-exception-syria-the-war-powers-convention-and-the-bypassing-of-prior-parliamentary-debate/

recent airstrikes against the Houthis in Yemen are indicative of the current position whereby lip-service is still paid to a parliamentary convention, but it does not enable prior debate or vote in Parliament

crises or civil contingencies,[23] than to international deployments. Precedents can be shaped and re-shaped by subsequent decision-making,[24] and this certainly seems to be the case with the War Powers Convention.

The emergence of a possible Convention requiring prior parliamentary involvement started with the debate and vote on the invasion of Iraq in 2003.[25] This is seen as a turning point evidenced by the fact that there was no prior vote in Parliament concerning the deployment of British troops to the earlier major deployment to Afghanistan in 2001.[26] However, the existence, let alone the exact nature, of this Convention is unclear as the debates over Libya 2011, Syria in 2013 and again in 2018 show. The recent airstrikes against Ansar Allah ('the Houthis') in Yemen in January 2024 are indicative of the current position whereby lip-service is still paid to the Convention, but it does not enable prior debate or vote in Parliament.

Practice in informing Parliament and holding a debate prior to deployment is uneven and unpredictable. Parliamentary debate and vote occurred after the deployment of the Royal Air Force (RAF) to enforce a no-fly zone and defend civilians in Libya in 2011 in the face of an imminent attack on Benghazi by the government forces of Colonel Gaddafi.[27] In contrast, in deciding whether to respond to chemical weapons attacks on civilians in Syria by the regime of President Assad in 2013, the government's proposal to launch airstrikes was put before the House of Commons and voted down, meaning that the government led by Prime Minister Cameron did not proceed with the airstrikes.[28] Prior parliamentary approval was sought and gained by Prime Minister Cameron to use force against the Islamic State in Iraq in 2014,[29] and then for the extension of the operation to Syria in 2015.[30] In contrast to the Cameron years, in April 2018 Prime Minister Theresa May launched airstrikes on Syria in response to further usage of chemical weapons by the Assad regime without first seeking parliamentary approval, even though it was not made clear that this was an 'emergency' within the meaning of the Convention.[31]

Debate in the House of Commons was held after the airstrikes on the Houthis in Yemen in January 2024 taken in response to their attacks on shipping in the Red Sea.[32] The

23 N.D. White, *Military Justice: The Rights and Duties of Soldiers and Government* (Cheltenham: Edward Elgar: 2021) 74–9.
24 K.N. Llewellyn, *The Common Law Tradition* (Boston, MA: Little Brown, 1960) 75–92.
25 House of Commons (HC) Public Administration Committee, 'Taming the prerogative: Strengthening ministerial accountability to Parliament', HC 422, 16 March 2004.
26 House of Commons Research Paper 08/88, 'Parliamentary approval for deploying the armed forces: An introduction to the issues', 27 November 2008, 14.
27 *Hansard,* HC, vol. 525, cols 739, 799, 21 March 2011.
28 *Hansard,* HC, vol. 566, cols 1555–6, 29 August 2013.
29 *Hansard,* HC, vol. 585, col. 1255, 26 September 2014.
30 *Hansard,* HC, vol. 603, col. 323, 2 December 2015.
31 *Hansard,* HC, vol. 639, col. 101, 16 April 2018.
32 *Hansard,* HC, vol. 743, col. 577, 15 January 2024.

government made it clear that there were 'no plans for a retrospective vote' in the House of Commons 'as parliamentary approval' was 'not required for military action'.[33] In explaining this to the House of Commons a few days after the airstrikes, the Prime Minister stated that 'the need to maximise the security and effectiveness of the operation meant that it was not possible to bring this matter to the House in advance'.[34] Prime Minister Sunak further stated that this was 'in accordance with the convention. I remain committed to that convention, and would always look to follow appropriate processes and procedures, and act in line with precedent … there were strikes in 2015 and 2018, when a similar process was followed'.[35] The leader of the opposition seemed to agree with the government, when noting that the military action against the Houthis was different to the deployment of troops when Parliament must be informed beforehand.[36] The Convention seems to be a reference point, but it lacks any clear normative content.

In the light of subsequent government practice since the recognition of a Convention in the Cabinet Manual of 2011, Bennett has stated that: 'in practice, the "emergency" exception has been broadly embraced; it has been suggested that to "act first, consult later" is to act in accordance with the War Powers Convention, not in spite of it'.[37] Furthermore, the same commentator notes the 'lack of any meaningful engagement with the question of "emergency" which, as the only explicitly acknowledged exception to the War Powers Convention, is at risk of being deprived of all meaning'.[38]

It appears that without significant substantive normative content the Convention can readily be pushed aside when the government of the day, for whatever reason, does not want to risk a debate and possible negative vote in Parliament, with the probable exception of major troop deployments to overseas combat zones when prior Parliamentary support would normally be sought by the government. The need for a non-binding War Powers Resolution or a binding War Powers Act aimed at grounding government decision-making within a clearer and more precise normative framework, specifying both procedural and substantive norms, becomes even more apparent.

33 'Rishi Sunak faces call for MP vote on Houthi airstrikes', BBC News, 12 January 2024 - https://www.bbc.co.uk/news/uk-politics-67956770.
34 *Hansard,* HC, vol. 743, col. 577, 15 January 2024.
35 Ibid, col. 581.
36 'Starmer denies backtracking on military action vote', BBC News, 14 January 2024 - https://www.bbc.co.uk/news/uk-politics-67973868.
37 Bennett, 'The ever-expanding "emergency" exception', UK Const. L. Blog, 25 April 2018.
38 Ibid.

4 Hybrid and remote warfare

The debate over the existence and scope of a post-2003 Convention revolves around high-profile uses of force (e.g. Libya 2011, Syria 2015, Yemen 2024) evidenced by the deployment of combat forces and the delivery of significant kinetic force. A hidden problem is that with developments in both hybrid and remote warfare, much of the activity (even certain 'lower-level' military measures) may not be seen as sufficient by themselves to trigger a parliamentary debate as a form of political accountability. There might be written questions asked and ministerial answers given, for example on drone usage.[39] Furthermore, there may be accountability after the event (evidenced, for example, by a Joint Committee report into drone usage after the targeted killing of Reyaad Khan in Syria in 2015),[40] but the prior or even subsequent approval of Parliament is not deemed necessary.

A crucial question remains as to how a War Powers Resolution or Act might ensure accountability for the use of the war powers prerogative in situations of hybrid or remote warfare, which are characteristically opaque, dissipated and outsourced, often with no obvious starting point.

Hybrid warfare has been characterized as 'an operational approach to warfighting that uses an explicit mix of military and non-military tactics'.[41] Furthermore, hybrid warfare has been understood as 'the synchronized use of multiple instruments of power tailored to specific vulnerabilities across the full spectrum of societal functions to achieve synergistic effects'.[42] The different levels and types of forcible and non-forcible measures taken by the state or states engaged in hybrid warfare signify that it is difficult to categorize in terms of the international rules governing the use of force and intervention. The outcomes of the NATO summit in 2022 included a statement that:

> *'[w]e will invest in our ability to prepare for, deter, and defend against the coercive use of political, economic, energy, information and other hybrid tactics by states and*

39 See, for example, the House of Lords discussion on the use by the US of an armed drone to assassinate Qasem Soleimani, the head of Iran's Islamic Revolutionary Guard Corps' Quds Force while on a visit to Baghdad in January 2020. In initiating the debate Lord Hodgson stated: 'What is the legal framework that covers the use of force on foreign soil? There are three elements: first, that it has been authorized by the United Nations; secondly, that it has the consent of the state in which the force is to be used; and finally, that it is used in self-defence. This right of self-defence depends on the imminence of any threat. The US interpretation of imminence has to date been a good deal more expansive than this country's, but in recent years there appears to have been a series of subtle shifts taking us closer to the US position.' – *Hansard,* HL Debate, vol. 801, col. 853, 16 January 2020. See also the All-Party Parliamentary Group on Drones and Modern Warfare: http://appgdrones.org.uk/.

40 House of Lords, House of Commons Joint Committee on Human Rights, 'The government's policy on the use of drones for targeted killing', Second Report of Session 2015–16, HL Paper 141, HC 574, 10 May 2016.

41 B. Renz, 'Russia and "hybrid warfare"' (2016) 22 *Contemporary Politics* 283.

42 MCDC Countering Hybrid Warfare Project, 'Countering hybrid warfare: A Multinational Capability Development Campaign project', March 2019, executive summary.

> *nonstate actors. Hybrid operations against Allies could reach the level of armed attack and could lead the North Atlantic Council to invoke Article 5 of the North Atlantic Treaty. We will continue to support our partners to counter hybrid challenges and seek to maximise synergies with other relevant actors, such as the European Union.'*[43]

Hybrid warfare is depicted as being normally conducted below the level of an 'armed attack' or 'armed aggression', which would trigger an inter-state use of force in response. However, NATO does not rule out that hybrid warfare might be of sufficient intensity to trigger the right of individual or collective self-defence embodied in Article 51 of the UN Charter and Article 5 of the NATO Treaty. The NATO summit of 2022 depicts states such as Russia and China as being engaged or potentially engaged in hybrid warfare,[44] which has been said by Renz to be exemplified by Russia's annexation of Crimea in 2014.[45] This may well be the case, but a question remains whether NATO states themselves are engaging in hybrid warfare against Russia, particularly in response to its invasion of Ukraine in 2022.

While there are question marks as to whether NATO states engage in hybrid warfare, there seems less doubt that, among that alliance, there is a 'growing preference for "warfare by remote control", such as the deployment of drones or military trainers', or the use of private contractors, which are 'perceived as' forms 'of intervention with less "skin in the game"'. One consequence being that such actions have been taken 'without Parliamentary approval – and without scrutiny'.[46] 'Warfare by remote control' seems closely related to hybrid warfare in that both forms tend to operate below the level of a full-scale use of force or armed attack and are not generally subject to extensive parliamentary scrutiny. While China and Russia are said to engage in 'hybrid warfare', it seems that NATO states engage more in 'remote warfare', 'a type of warfare characterised by the use of drones, special forces, private military companies (PMCs), and so on'.[47] 'Broadly speaking, these are modes of Western warfare that avoid large-scale, highly visible, traditional military operations involving ground troops'.[48] However, this geopolitical division is not clear cut, as shown by Russia's uneasy relationship with the Wagner Group of private military contractors during the on-going war in Ukraine. Remote (and potentially hybrid) warfare is generally incremental and conducted below the level of public debate and media attention and information about such operations tends to be unearthed or revealed in a piecemeal fashion. There is often 'no obvious start point',[49] making effective prior parliamentary scrutiny unlikely. Furthermore, as demonstrated by a number of clashes in the Middle East, the use of remote or hybrid warfare may swiftly escalate to engagement in high-intensity conflict.

the use of remote or hybrid warfare may swiftly escalate to engagement in high-intensity conflict

43 'NATO 2022 Strategic Concept', adopted by Heads of State and Government at the NATO Summit in Madrid 29 June 2022, para. 27.
44 Ibid., paras 8, 13.
45 Renz, 'Russia and "hybrid warfare"' (2016) 283.
46 T. McCormack, 'The emerging parliamentary convention on British military action and warfare by remote control' (2016) 161 *RUSI Journal* 22. Citing in support P. Rogers. 'Security by "remote control": Can it work?' (2013) 158 *RUSI Journal* 14.
47 McCormack, 'The emerging parliamentary convention on British military action …' (2016) 24.
48 Ibid.
49 Ibid.
50 Ministry of Defence, 'Defence's response to a more contested and volatile world', July 2023 (CP 901) 54.

A crucial finding of this paper is that these developments in warfare and other forms of conflict 'across the spectrum of conflict from high-intensity warfare to sub-threshold hybrid competition',[50] involving UK forces and assets, have generally escaped the prior scrutiny of Parliament. Thus, in addition to the uncertain application to significant uses of kinetic force of a post-2003 Convention whereby Parliament would be consulted, we have largely an absence of any established practice of parliamentary scrutiny of lower levels of remote or hybrid force or other measures by the UK.

In assessing the role of parliamentary scrutiny and approval in the light of developments in modern warfare, and in particular the UK's increasing practice of remote warfare, it is argued that a consistent and legitimate way to increase effective accountability will be to identify and clarify the avenues for democratic scrutiny, and to clarify their use in a War Powers Resolution or Act. In particular, the instrument should specify when Parliament should be engaged before force is used and when it should be involved afterwards.

5 The applicable legal framework for decisions to deploy armed forces

By its very nature, the sending of armed forces overseas to confront another state's forces or non-state armed groups operating within another state engages international law in its most basic form, namely rules contained in treaties and custom that govern inter-state relations. Debates over the legality of British interventions have become increasingly prevalent in Parliament and more broadly in the populace. The government appeals to international law to garner support for, and bolster the legitimacy of its military interventions, but in so doing it opens itself up to counter-arguments about the legal basis of the war.

Since 1945, the UK has shown itself to be one of the most active countries in terms of deploying its armed forces overseas. In this regard, the UK has a track record of relying on controversial legal justifications for its military interventions. While the UN Charter prohibits the threat or use of force, it allows states to defend themselves from armed attacks as well as to take military enforcement action under UN Security Council authority. This has led to the UK straining to apply these exceptions, for example as regards alleged Security Council authority in Iraq in 2003, and self-defence claimed in Syria in 2015 and against Yemen in 2024. In addition, the UK has regularly resorted to alleged customary rights to use force; most controversially it is probably the only state to have consistently claimed, in recent decades at least, the right of armed humanitarian intervention, for example in Kosovo in 1999[51] and Syria in 2018.[52] Given the controversial nature of a number of deployments, various forms of accountability might be expected to follow. The most prevalent is democratic accountability and there is plenty of evidence that international law plays a significant role in parliamentary debates on wars and post-conflict situations. However, Parliament has not been prepared to challenge the government with the exception of Syria in 2013. Public inquiries such as the one held into the invasion of Iraq 2003 provide ex post facto accountability for decisions made but they are not tasked with making legal determinations.

In reality, a number of the UK's post-1945 military interventions do not, in whole or in part, accord with the rules of international law. Examples include: the intervention in Suez in 1956 to protect British interests there;[53] the bombing campaign of 1999 to protect the people of Kosovo from Serbian forces;[54] the 2003 invasion of Iraq based on a novel re-interpretation of a Security Council resolution of 1990;[55] and a controversial combination of self-defence and Security Council approval used by the UK to extend its military action

51 See below, note 54.
52 See below, note 57.
53 *Hansard,* HL, vol. 199, cols 1349–50, 1 November 1956.
54 House of Commons Foreign Affairs Select Committee, 'Kosovo', Fourth Report 1999–2000, HC 28-I, 7 June 2000, paras 124–44.
55 J. Chilcot, 'Report of the Iraq Inquiry: Executive Summary', HC 264, 6 July 2016, 119–20; Attorney General's Advice released on 17 March 2003 in *Hansard,* HL, vol. 646, WA2-3, 17 March 2003.

against the Islamic State (ISIL) terrorist group from Iraq to Syria in 2015.[56] Another example is the airstrikes against Syria in April 2018, which were undertaken in response to the use of chemical weapons by the Assad regime. The latter had the hallmarks of a punitive attack against Syria for a violation of international law though the government justified it as a use of force to prevent humanitarian suffering.[57] In justifying armed force against the Houthis in Yemen in January 2024, the government claimed to be acting in self-defence in response to drone and missile strikes aimed at shipping, including warships, in the Red Sea.[58] While the shooting down of drones and missiles heading towards such shipping is clearly within the right of self-defence, the strikes within Yemen meant to reduce Houthi capacity seem akin to law enforcement operations, which might explain why the US and UK sought further justification support in a Security Council resolution. However, that resolution affirmed the right of self-defence, it did not authorize military enforcement action.[59]

The invasion of Iraq in 2003 demonstrates the problem of resting any constitutional convention or further reforms (such as a War Powers Resolution or Act) solely on parliamentary approval. Although approval from Parliament was secured, the invasion was contrary to international law, being action taken neither in self-defence nor under the authority of the Security Council. It has been argued that securing prior parliamentary approval was a way of 'making up' for the lack of a clear legal basis in international law – such as an authorizing UN resolution.[60] It would be better if Parliament were able to make a

56 Prime Minister David Cameron relied on the right of collective self-defence of Iraq to extend RAF airstrikes, pointing to the need to defeat Islamic State in both Iraq and Syria, but bolstered this by reference to Security Council Resolution 2249 – *Hansard,* HC, vol. 602, cols 1490–1, 26 November 2015.

57 The government justified its airstrikes in the following terms: '2. The Syrian regime has been killing its own people for seven years. Its use of chemical weapons, which has exacerbated the human suffering, is a serious crime of international concern, as a breach of the customary international law prohibition on the use of chemical weapons, and amounts to a war crime and a crime against humanity. 3. The UK is permitted under international law, on an exceptional basis, to take measures in order to alleviate overwhelming humanitarian suffering. The legal basis for the use of force is humanitarian intervention, which requires three conditions to be met: (i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief; (ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and (iii) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian suffering and must be strictly limited in time and in scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose). 4. The UK considers that military action met the requirements of humanitarian intervention in the circumstances of the present case …' – 'Syria action – UK government legal position', 14 April 2018: https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position

58 Summary of the UK Government Legal Position: The legality of UK military action to target Houthi facilities in Yemen on 12 January 2024 - https://www.gov.uk/government/publications/summary-of-the-uk-government-legal-position-the-legality-of-uk-military-action-to-target-houthi-facilities-in-yemen/summary-of-the-uk-government-legal-position-the-legality-of-uk-military-action-to-target-houthi-facilities-in-yemen

59 UN Doc S/RES/2722 (2024), para 3: 'Affirms the exercise of navigational rights and freedoms by merchant and commercial vessels, in accordance with international law, must be respected, and takes note of the right of Member States, in accordance with international law, to defend their vessels from attacks, including those that undermine navigational rights and freedoms'.

60 C.R.G. Murray and A. O'Donoghue, 'Towards unilateralism? House of Commons oversight of the use of force' (2016) 65 *International and Comparative Law Quarterly* 305.

more informed choice when deciding to vote for or against a proposal to go to war on the basis of both the legitimacy and legality of the operation. The legitimacy as well as the legality of wars of choice, in contrast to genuine wars of necessity involving instant defensive responses to imminent or actual attacks against the UK,[61] leads to greater pressure for accountability for compliance with the rules of international law.

the UK has shown itself to be one of the most active countries in terms of deploying its armed forces overseas, with a track record of relying on controversial legal justifications

Furthermore, wars of choice raise the legal responsibility of the government and political and military leaders, and may lead to some service personnel questioning their duty to obey orders to deploy to what they might consider to be an aggressive, or otherwise illegal, war.[62]

With British constitutional law providing little by way of substantive legal limitation on the prerogative war powers of the government, attention turns to international law and institutions as a means of restricting decisions of the government. Methods of enforcement at the international level are limited, particularly bearing in mind that the UK possesses the power of veto in potentially the most effective international executive organ dealing with matters of peace and security – the UN Security Council.[63] Furthermore, for a case to be brought against a state before the International Court of Justice (ICJ) by another state it has to be demonstrated that both states have given consent.[64] In addition, in terms of individual responsibility, although the UK has accepted the jurisdiction of the International Criminal Court (ICC) as regards war crimes, crimes against humanity and genocide, it has chosen not to be subject to the jurisdiction of the ICC as regards the crime of aggression.[65] The overall effect is to shield the UK as a state from legal responsibility as well as British political and military leaders from potential individual criminal responsibility for decisions to go to war that may potentially constitute the international crime of aggression. Given the unwillingness of the UK courts to entertain challenges to war powers under either domestic law or international law, the protections the UK and its agents have from the jurisdiction of the ICC and the ICJ, as well as from the quasi-judicial and enforcement powers of the UN Security Council, the issue is whether Parliament can play an effective role in trying to ensure that the UK's war powers are exercised in accordance with international law.

In this regard, it has to be recognized that the contours and parameters of even the most basic rules of international law are contested and subject to interpretation through practice. As has been stated, force between states is prohibited,[66] but the UN Charter allows for two exceptions, self-defence and action taken under the authority of the UN Security Council for the maintenance or restoration of international peace and security.[67] These rules are replete with ambiguity – for example does 'force' include support for armed private actors; when is an 'attack' deemed to be 'imminent' for the right of self-defence to kick in; what constitutes an authorization from the Security Council; what if a veto blocks a

61 House of Lords Select Committee on the Constitution, 'Waging war: Parliament's role and responsibility, volume I', Session 2005–6, HL Paper 236-I, 27 July 2006, para. 22.
62 White, *Military Justice* (2021) 128–38.
63 UN Charter (1945), Article 27(3).
64 Statute of the International Court of Justice (1945), Article 36.
65 G. Robertson, 'At last, a law that could have stopped Blair and Bush invading Iraq', *The Guardian,* 16 July 2018.
66 UN Charter (1945), Article 2(4).

resolution authorizing an otherwise legitimate use of force (for example, to protect the civilian population of a state from core crimes being committed against them) – can states go ahead and use force or should they seek the authority of the UN General Assembly or a regional organization? These are just some of the questions that well-informed MPs and members of the House of Lords would have to consider, alongside arguments raising humanitarian, ethical, national and international security considerations. Given that MPs are not judges, they are perhaps better placed to balance legal and contextual considerations, but only if they are given sufficient information, in particular a full and balanced legal opinion. At the moment, the Attorney General presents sanitized black-and-white legal opinions, which disguise any controversy or ambiguity, a short-term expedient measure that can have long-term negative repercussions. For example, in the summary of the government's legal position on the airstrikes against the Houthis in January 2024, the statement justifying the exercise of the right of self-defence was brief and made little attempt to apply the claimed exercise of the right to the facts of the situation.[68]

Parliament should be properly informed in advance as to the claimed international legal basis of a proposed use of force

Thus, for any deployment to be both lawful and legitimate, the question is not simply one of prior parliamentary approval or otherwise, but whether the decision-making process taken as a whole is compliant with the constitution (including rules embodied in a proposed War Powers Resolution or Act), and whether Parliament's involvement can be profound enough to increase the prospect of any proposed use of force by the UK complying with international law. By itself, prior parliamentary approval may increase the level of scrutiny of any proposed deployment and that will include scrutiny of the deployment under the principles of international law. However, this is not enough to significantly improve the UK's patchy record of compliance with international law given that the government controls the agenda and, as the Iraq war of 2003 shows, the legal advice from the Attorney General. So, an increase in parliamentary accountability, based on an assessment of the legitimacy and legality of any proposed use of force, will require Parliament to be properly informed in advance as to the claimed international legal basis of the operation to enable it to hold the government to account (including by questioning the legality and legitimacy of the proposed operation) and only then, if satisfied, support it.

It follows that a War Powers Resolution or Act should seek to ensure that the process of Parliamentary approval or accountability is informed by basic principles of international law (primarily those rules governing the use of force, human rights law, and the law of armed conflict, but others may well be triggered, e.g. international environmental law). It may be that the advice given to MPs will be to the effect that the proposed action is not fully in accordance with international law or that international law is unclear or contested, but nevertheless the proposed action is legitimate, for example when considering wider humanitarian issues, which essentially was the widely perceived understanding of the use of force to protect civilians in Kosovo in 1999.[69]

67 Ibid., Articles 42 and 51.

68 Summary of the UK Government Legal Position: The legality of UK military action to target Houthi facilities in Yemen on 12 January 2024.

69 House of Commons Foreign Affairs Select Committee, 'Kosovo', Fourth Report 1999–2000, paras 124–44.

6 Parliamentary approval for the use of force

War powers decision-making based on a largely unaccountable exercise of prerogative powers seems to be an anachronism, a vestige of the monarch as the commander-in-chief of the armed forces. Indeed, although medieval monarchs were the embodiment of a nation's sovereignty and power, they often struggled to raise armies of volunteers and mercenaries, whereas the modern British government has at its disposal well-resourced and professional armed forces, which are deployable around the world at limited notice. Put in such stark terms, the case for increasing democratic accountability to balance executive and military efficiency seems overwhelming.

Simply requiring (by War Powers Convention, Resolution or Act) that there is a debate and a substantive vote in Parliament before deployments to an armed conflict would improve accountability. This would not only hold the executive to account for its decisions, but the process of accountability itself should promote the 'efficient and effective performance of the required task' since it makes 'the primary actor', in this case the government, 'gather information and […] exchange ideas with those calling [it] to account'.[70] In other words, the government has to convince Parliament that deploying military forces is the correct approach to a crisis situation. Moreover, if the government cannot convince Parliament, or if it does convince Parliament but on the basis of misleading or incomplete information about the nature of the threat or the potential losses of life, it will lose its ability to convince the wider public of the justness of its cause.

The questions raised are whether prior parliamentary scrutiny and approval of significant uses of force/deployments overseas would improve the accountability of government for its war powers decisions, as well as the legitimacy and legality of the use of force by the UK in international relations. The argument that this is putting too much weight on Parliament cannot be sustained as such uses of force are undertaken on behalf of the whole country and Parliament uniquely represents that constituency. However, Parliament has to be properly informed about the nature of the threat and the international legality of any response without compromising operational effectiveness. The prime minister usually outlines the political, military, security, and humanitarian reasons, as well as the legal basis of the proposed operation. However, the latter is usually based on a sanitized version of the Attorney General's advice. Parliament needs to be properly briefed and the full legal advice given to the government should be released. Furthermore, the quality of that legal advice could be improved by the Attorney General receiving advice from an advisory committee on international law consisting of independent experts, along the lines of the system operated in the Netherlands. MPs will therefore have to make up their minds based on a balance of legal, humanitarian and military considerations. They do not constitute a court of law and so their decisions on military action are not determined solely by whether it has a clear legal basis in international law, but by wider factors such as security or protecting lives. Arguably, judicial accountability should be increased, and this might be achieved through a War Powers Act, whereas improving democratic accountability

70 A.C.L. Davies, *Accountability: A Public Law Analysis of Government by Contract* (Oxford: Oxford University Press, 2001) 76.

could be achieved through a carefully drafted War Powers Resolution. However, improving democratic accountability will help to improve legal accountability as Parliament will be concerned with the legality of the proposed operation, alongside other contextual factors. The argument that Parliament should not be concerned at all with matters of international legality because that is a job that should be left to judges,[71] ignores the fact that international law provides a key (but not the sole) normative framework within which war powers decisions will and should be made and is relevant to a range of actors including government and Parliament.

It is a salient fact that democratic accountability for the exercise of war powers is stronger in most other European countries than in the UK. In a 2008 study of the (then) 25 member states of the EU, the Geneva Centre for the Democratic Control of Armed Forces (DECAF) found that on a scale of 1–5, where 1 was the most developed in terms of the involvement of Parliament in war powers decision-making (including powers of investigation as well as approval) and 5 was the least developed, the UK was in the latter category along with France, Greece and Cyprus, whereas there were 11 countries in the most developed category, including Germany and Italy.[72] The case for reform of the exercise of war powers in the UK is overwhelming.

democratic accountability for the exercise of war powers is stronger in most other European countries than in the UK

71 V. Fikfak and H.J. Hooper, *Parliament's Secret War* (Oxford: Hart, 2018) 23.

72 S. Dietrich, H. Hummell and S. Marschall, 'Strengthening parliamentary "war powers" in Europe: Lessons from 25 national parliaments' (DECAF, Policy Paper No. 27, 2008) 11–12.

7 Suggested reforms

In this concluding section reforms are suggested that will increase democratic accountability in relation to the exercise of war powers in the UK, including the adoption of a War Powers Resolution. Such a Resolution not only readily fits into the political constitution of the UK, it is also a recognition of the fact that, in the area of war powers, the executive lacks accountability towards both Parliament and the courts, and it is to the former that we should first turn.

When war is waged by the UK, it is done in everyone's name, and this profound life-changing and potentially world-changing commitment has to be approved by those institutions representing the people. No doubt there is a need to develop judicial accountability for the exercise of war powers decision-making, but this involves further questions of the role of domestic courts in reviewing decisions made on the inter-state plane. For these reasons, a War Powers Resolution is seen as a first step, but one that could lead to a judicially reviewable War Powers Act, which would largely reproduce the content of the Resolution. The Resolution would establish a normative framework for war powers decisions both in procedural and substantive terms.

when war is waged by the UK, it is done in everyone's name

In outline, a suggested War Powers Resolution would be based on the idea of much improved democratic accountability, particularly in wars of choice that involve the UK's forces in armed conflict against or within another state, as well an in instances of hybrid and remote warfare, while preserving military effectiveness where there is an absolute necessity to act first and then seek parliamentary approval after. The latter should be very much the exception and, even in those cases, the failure to gain retrospective approval from Parliament should result in the forces being stood down or withdrawn. The content of the Resolution should include clear procedures and a substantive framework that allows Parliament to consider actions on the basis of the international law governing the use of force, while recognizing that this can be subject to differing interpretations and is potentially evolving. The aim will be to improve democratic accountability, while preserving operational effectiveness in cases of necessity. The following is merely an outline at this stage, designed to encourage debate around the normative content of war powers.[73]

73 There have been a number of drafts of War Power Resolutions/Acts. See for example, recently, HL Bill 119, 24 February 2022: https://bills.parliament.uk/publications/45407/documents/1478. The idea here is not to try to present an amalgam of the best parts of the proposals, but to outline the contents of a draft Resolution, which flows from the arguments and analysis in this paper.

War Powers Resolution (and later a War Powers Statute): Outline of Contents:

(i) Significant forces deployments

- The prime minister must seek prior parliamentary debate and approval for any significant deployment/use of military forces overseas.[74]
- If Parliament votes down a government proposal to undertake a significant deployment/use of military forces overseas, then the government will stand down/withdraw the forces as soon as possible.
- The only exceptions, when parliamentary approval can be sought as soon as possible after deployment, are instances of necessity (where there is no moment for deliberation).[75]

(ii) Lower levels of force deployment

- Lower levels of force deployment,[76] including covert or remote uses of forces,[77] and packages of lower-level forcible or non-forcible measures adopted against a third state or non-state armed group, should be reported to Parliament either before their use/deployment or as soon as possible thereafter.
- If brought to Parliament after their initial usage, the government shall give an explanation of the operational reasons justifying the failure to inform Parliament before deployment.
- Parliament has at any stage the right to vote against such actions, in which case the result will be their cessation/withdrawal.

(iii) Procedural aspects

- Votes should normally be held in the House of Commons and, if possible, the House of Lords for actions proposed under (i) and in the House of Commons in situations under (ii).
- In all cases, the full legal advice of the Attorney General should be given to Parliament so that members can make an informed judgement as to whether to vote for or against a deployment of forces overseas.
- The Attorney General will establish an advisory committee on international law consisting of independent experts to give the Attorney General objective and impartial advice on the content and application of international law. The Committee's report should be given to Parliament at the same time as the Attorney General's advice.

74 Guidance note: 'a significant deployment/use of military forces overseas' would normally be to situations where the UK becomes a party to an armed conflict thus triggering its international humanitarian law obligations.

75 Guidance note: for example, in an action taken in self-defence in response to an armed attack, where there is little or no time for deliberation.

76 Guidance note: 'lower levels of force deployment' would normally be to situations where the UK has not become a party to an armed conflict.

77 Guidance note: examples include the use of limited numbers of special forces, training of rebel troops, one-off (as opposed to a policy of) armed drone usage, and the limited use of private contractors.

Strengthening democratic control of UK war powers in an age of remote and hybrid warfare

Policy brief

In brief

Following the 2003 invasion of Iraq, a constitutional convention was said to have emerged in the UK that Parliament should be involved in the decision to go to war. But repeatedly in recent years – most recently in January 2024 – British military forces have been sent to war overseas without a prior debate or a vote in Parliament.

This policy brief considers the exercise of war powers under the UK's 'political constitution' and compares the relative lack of democratic accountability with that of the UK's allies and neighbours. A crucial question raised is how to ensure accountability for the use of the war powers prerogative in situations of hybrid or remote warfare, where the use of military force is characteristically opaque, dissipated and outsourced.

Reviewing options for reform which have previously received bipartisan support in Parliament, the brief concludes by outlining the contents of a potential War Powers Resolution or a War Powers Act which would strengthen democratic control over the decision to commit the UK to war.

Ceasefire Centre for Civilian Rights,
3 Whitehall Court, London SW1A 2EL, United Kingdom
www.ceasefire.org

CEASEFIRE
centre for civilian rights