

Parliament's role in deployment of armed forces



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Introduction

Currently, the deployment of the British Armed Forces during conflicts is a prerogative power bestowed upon ministers.^[1] However, from 2003, and following the choice to allow Britain's parliamentarians to pass a vote on the country's military action in Iraq, pressure has been growing for the implementation of reform. The Labor government, in 2008 proposed the passage of a resolution of the house giving parliament the right of approval "significant non-routine" of the deployment of the Armed Forces, though to the greatest degree possible. The implementation of the proposals did not take place before the Labor party left power in 2010. In 2011, there was a suggestion by the Coalition government that a convention had emerged in parliament to the effect that prior to the commitment of troops to military action, the House of Commons needs an opportunity to hold a debate on the issue. The government also proposed that it observes the convention except in case of an emergency where such action would not be suitable. In 2013, the defeat of the government's motion to have British troops deployed in Syria served to depict the growing strength that parliament had in such matters. Many commentators on the unfolding events suggested that it would be inconceivable for the country to deploy troops to military operations before recourse to the parliament. In September 2014, the view gained further authority when the government sought parliament's approval to conduct military operations in Iraq against the Islamic State (ISIS) in accordance with the recently adopted convention.^[2] Even with the emergence of the convention, parliament is yet to have a legally established role in the approval of the deployment of military forces. Many supporters of

a greater role of the parliament, cognizant of the lack of clarity of the convention, continue the push for a legal basis. This paper explores the constitutional convention that requires the government to seek the approval of the parliament in cases where it wishes to wage a war or commit Britain's Armed Forces to military action.

The Parliament's Role in Military Action Before 2011

An exploration of debates and statements in the House of Commons regarding military action in the past can help in understanding the parliament's contribution. One of the major wars in the past that was a subject of discussion in the House of Commons was the Second World War. A report of Britain's declaration of war against Germany in 1939 was made to the House.[3]Some parliamentarians responded to the speech by the Prime Minister in a short debate before putting and carrying the motion. While the House voted on several substantive motions relating the war, they were merely for the passage of emergency legislation associated with the war as opposed to the launch of hostilities against Germany. Throughout the war, there were numerous statements and debates with many of the debates pertaining to the motions of adjournment. However, there were also a number of debates on substantive motions. For instance, on the 6th of May 1941, there was a motion seeking to approve the government's decision to send assistance to Greece.

The Korean War that lasted four years, from 1950 to 1953, was also a subject of discussion in the House. Clement Attlee, the then prime minister, made several statements following the invasion of South Korea by North

Korea in June 1950.[4]His statements were majorly in response to Winston Churchill's Private Notice Questions. One of them was on the 28th of June 1950 in which he informed the House of the government's decision to avail British troops to the U. S. A debate was held on the 5th of July following the commitment of Armed Forces.[5]The House unanimously supported the government's action in protecting South Korea against external aggression. There were more debates relating to the war until the cessation of hostilities between the two sides.

There are other notable wars such as the Suez Crisis (1956), Falklands Conflict (1982), Gulf War (1991), and Kosovo (1999).[6]More recent examples that have informed much of the current talk on the role of the parliament in approving military action are the Iraq War (2002-2003), Afghan War (2001-2014), as well as the one involving the Islamic State. Concerning the Iraq War, the British parliament was on the 24th of September 2002 recalled to debate the Iraq situation and a possible recourse to military intervention.[7]There were two further debates on the same between 2002 and 2003. The Labour Government, despite not being obliged, made an announcement that parliament would be provided the opportunity to have a say on the deployment of the British Army to Iraq through a vote. The House debated on a substantive motion held on the 18th of March, 2003 and passed it. With regard to the Afghan War, the parliament debated the government's humanitarian, diplomatic, and military action as a response to the attacks by the U. S on Afghanistan. There were several other debates on the same before the deployment of the country's troops to join the International Security Assistance Program offering assistance in Afghanistan.

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Emerging Parliamentary Convention

In March 2011, Gus O'Donnell, stated that the government believes that since the events that culminated in sending of troops to Iraq, a convention came into being to the effect that parliament will be accorded the opportunity of debating decisions to send troops to conflict or war except in cases of emergency.[8] Sir George Young who was the leader of the house at the time brought forth to the floor of the house the suggestion that there had been an emergence of a convention in parliament to the effect that prior to the commitment of the troops to military action, parliament should discuss the issue. Further, he noted that the government was keen on observing the convention, as long as, the intended military operation was not an emergency. Even though the two key figures provided their reassurance on the convention, the constitutional and political reform committee, in a parallel report on the Cabinet Manual's Constitutional Implications, expressed surprise that the convention had been left out of the published, draft Cabinet Manual that elaborated on the working of the government.[9]

Evolution of the Convention

Dr David Jenkins posited that conventions derive their constitutional credence from consistent political observance over time. His suggestion offers a useful position from which one can perceive the developments surrounding the convention in the last few years. After the Libya campaign, Mali was the first country where the British military was deployed, which was in 2013. There was no debate or vote by parliament concerning the deployment, serving to draw criticism, given previous reassurances by the

government.[10]Such actions on the part of the government brought into question the credibility of the convention. Observers pointed to a lack of detail on the part of the convention as that would provide the threshold that can trigger a debate in the parliament.

Despite the setback, the parliament got the opportunity to debate as well as vote on the deployment of the armed forces in three different occasions. One of them was in response to the claim of chemical weapon use by the Assad regime against innocent civilians in August 2013, in Syria. The second case was in response to the activities of the ISIS in Iraq in September 2014, while the third one was in December 2015 concerning the extension of military actions in Syria against ISIS. The parliament defeated the government in the 2013 vote on the decision to deploy British military to Syria to fight against ISIS, marking major victory for advocates of greater involvement of the parliament as well as the strengthening of the status of the convention. The subsequent votes on a military operation against the Islamic state in Syria and Iraq served to consolidate the view.

The State of Clarity on the Convention

Many people view and continue to perceive the 2013 Syria vote as a turning point in the debate concerning parliamentary approval. Many commentators argue that government's defeat eliminated doubts over the existence of the convention, and made it difficult politically for Britain to deploy its Military in future before seeking the parliament's approval. The parliamentary mandate sought in August 2014 against ISIS in Iraq and the same group in Syria in December of 2015 have been considered as evidence of the strengthening

further of the constitutional convention process leading to a position that any government would find hard to reverse.[11]While clarity over the use of the convention is yet to be achieved, there appears to have been a metamorphosis of the issue over the last few years from a question of whether the convention is in existence to one of when it may be triggered.

In the case of the deployment of the British military, the government justified its decision not to seek the approval from the parliament arguing that it involved a response to emergency. It had pointed to an emergency request from both the Malian and French authorities that was supported by a resolution of the UN Security Council. The British Armed were also not involved in the war in an offensive capacity. The government's defense of its action by classifying it as an emergency depicted its acknowledgment of the convention. Where the operations entail direct combat, as was the case with Syria when fighting ISIS, the government appears keen on ensuring that it seeks the parliament's approval.[12]UK's deployment of 800 soldiers and assets in Sierra Leone in response to the Ebola outbreak that was never subjected to a parliamentary vote, also does not meet the threshold of offensive capacity. Fallon, the then Defense secretary, in 2015, confirmed this position while responding to queries regarding the deployment of a British military training team to Ukraine.[13]He noted that it was an already established convention that where the country is involved in an offensive military operation in another country, the government would first seek the approval of the House. He argued that the case of Ukraine was not a military operation, and as such, did not warrant bringing of the matter to the House so that it may approve it. He added that the UK was merely equipping

Ukraine's armed forces with trainers and advice that would enable it to defend themselves against external aggression better and minimize the high fatality rates that they were experiencing.

Threshold of the Convention

Based on evidence, one may argue that there are least conditions that will have to be met for there to be efforts to seek parliamentary approval. One of them is that at the minimum, there has to be an existence of the possibility of military action that is premeditated. The deployment of military forces needs to be in an offensive capacity. Where such deployment is for logistical assistance, training or humanitarian aid, then it would not meet the threshold criteria. Under the convention, it has become clear with time that the government would engage the House retrospectively when it comes to emergency scenarios where a need arises to protect the country's national interest that is critical or to avert a humanitarian crisis.

What many commentators on the issue of the conventions are concerned about is the vast spectrum of possible military operations. The absence of definitions within the conventions that are established continues to cause unease making many to posit that the government still retains significant discretion on what meets the threshold of the convention, leaving the whole framework possibly open to interpretation which may culminate in its exploitation.[14] Many notable figures emphasize the need to clarify and formalize the convention given the momentous nature of military action.

A. V. Dicey and Sir Ivo Jennings Views on the Convention

A. V. Dicey believes that there should be a separation between legal rules and conventions. However, Sir Ivo Jennings is of the belief that it is not possible to separate the two.[15] In the absence of conventions, case law and legislation are considerably unintelligible. If there cannot be a separation of law from conventions in line with suggestions by Jennings, it would be difficult to create a constitution that is codified incorporating the conventions. Despite the ambiguity associated with conventions, they are still observed due to the risk of challenges that may arise in case they are not. Dicey notes that such challenges entail legal difficulties whereas Jennings argues that conventions are observed due to political difficulties that come up in case they are not.[16] Where particular conventions have serious consequences in case of a breach, it would be considerably reasonable to enforce as law a given selection and codify them. Cases of ignoring conventions are rare and as such, starting a codification process and their enforcement could be seen as being unnecessary when considering the task at hand that is extremely challenging.

Conclusion

Evidently, it is paramount that there should be a definition of parliamentary approval for military operations, in a legislation or resolution, such that it provides the House with a meaningful role, while at the same time safeguarding the military and government's capacity to act. However, such a scenario is fraught with difficulties and has the potential of raising more questions than it can manage to resolve. As highlighted above, there are no definitive answers for all the issues associated with the drafting of legislation. The opinions and expectations on what legislation or resolution

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should achieve vary among MPs, government ministers, constitutional experts, and commentators alike. This dilemma is at the core of the current convention and is certainly one of the reasons for the push by advocates for a more formalized solution. Achieving a solution, acceptable to all, will call for immense political will making the continuation of the ongoing convention a prospect that is more likely for the foreseeable future.

References

- Abbott, L., *British democracy: Its restoration & extension* . Manchester, England: Industrial Systems Research, 2013.
- Barnett, H., *Constitutional & administrative law* . Taylor & Francis, 2017.
- Blunt, C., *The extension of offensive British military operations to Syria: Second report of session 2015-16: report, together with formal minutes relating to the report* . London: Stationery Office. London: Stationery Office, 2015.
- Caulfield, M., Constitutional Conventions in the United Kingdom: Should They Be Codified. *Manchester Rev. L. Crime & Ethics* , vol. 1, 2012.
- Galligan, B., *Constitutional conventions in Westminster systems: Controversies, changes and challenges* . Cambridge, United Kingdom: Cambridge University Press, 2015.
- Joseph, R. *The war prerogative: history, reform, and constitutional design* . 2013. Oxford, United Kingdom: Oxford University Press, 2013.
- Mills, C., Parliamentary approval for military action. *House of Commons Library*. 2018, pp. 1-71.

[1]H, Barnett, Constitutional & administrative law. Taylor & Francis, 2017, pp. 110

[2]B, Galligan, Constitutional conventions in Westminster systems: Controversies, changes and challenges. Cambridge, United Kingdom: Cambridge University Press, 2015.

[3]H, Barnett, Constitutional & administrative law. Taylor & Francis, 2017, pp. 109.

[4]C, Mills, Parliamentary approval for military action. House of Commons Library. 2018, pp. 10.

[5]C, Mills, Parliamentary approval for military action. House of Commons Library. 2018, pp. 11.

[6]C, Mills, Parliamentary approval for military action. House of Commons Library. 2018, pp. 11-15.

[7]C, Mills, Parliamentary approval for military action. House of Commons Library. 2018, pp. 13.

[8]B, Galligan, Constitutional conventions in Westminster systems: Controversies, changes and challenges. Cambridge, United Kingdom: Cambridge University Press, 2015, pp. 33-47.

[9]L, Abbott, British democracy: Its restoration & extension. Manchester, England: Industrial Systems Research, 2013, pp. 46-52.

[10]L, Abbott, British democracy: Its restoration & extension. Manchester, England: Industrial Systems Research, 2013, pp. 68-79.

[11]C, Blunt, The extension of offensive British military operations to Syria: Second report of session 2015-16: report, together with formal minutes relating to the report. London: Stationery Office. London: Stationery Office, 2015, pp. 5.

[12]C, Blunt, The extension of offensive British military operations to Syria: Second report of session 2015-16: report, together with formal minutes relating to the report. London: Stationery Office. London: Stationery Office, 2015, pp. 5.

[13]Joseph, R. The war prerogative: history, reform, and constitutional design. 2013. Oxford, United Kingdom: Oxford University Press, 2013, pp. 112-131.

[14]C, Blunt, The extension of offensive British military operations to Syria: Second report of session 2015-16: report, together with formal minutes relating to the report. London: Stationery Office. London: Stationery Office, 2015, pp. 23.

[15]M, Caulfield, Constitutional Conventions in the United Kingdom: Should They Be Codified. Manchester Rev. L. Crime & Ethics, vol. 1, 2012, pp. 46.

[16]Caulfield, M., Constitutional Conventions in the United Kingdom: Should They Be Codified. Manchester Rev. L. Crime & Ethics, vol. 1, 2012, pp. 42-46.