

## Voting 'No' on Syria: What Now for the Role of the UK Parliament in Approving Military Action?

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CATHERINE HADDON, SEP 10 2013

The UK House of Commons vote on military intervention in Syria and the 'No' it received has provoked much debate about UK politics, the country's role in international affairs and, of course, what is next for Syria. It has also provoked a debate about the strength of Parliament to curb the government and particularly about who should be part of decisions to begin military action.

In the UK, the power to commit troops in armed conflict is one of the remaining Royal Prerogatives – powers derived from the Crown rather than conferred by Parliament. The prerogatives are themselves complicated and difficult to pin down. But it is accepted that at present there is no codified parliamentary procedure that formally requires the Government to seek approval for military decisions.[1] The Prime Minister and Cabinet retain the constitutional right to decide when and where to authorise action.

In practice, significant conflicts in British political history have often been accompanied by parliamentary debate. As a House of Commons Library research paper on the subject shows, many of the major outbreaks of hostilities involving the UK government in the last 60 years have seen a Prime Ministerial statement at the outset and have usually seen a parliamentary debate later. Not all included a vote on a substantive issue. During the Suez crisis of 1956 (where Britain, France and Israel colluded to seize back the canal from a nationalist Egyptian government) the vote was expressing general support for the government's position, not specifically to commit troops.

In 2006, Tony Blair, following his own vote over Iraq in March 2003, acknowledged that he could not 'conceive of a situation in which a Government... is going to go to war – except in circumstances where militarily for the security of the country it needs to act immediately – without a full parliamentary debate'. [2] He did not here mention Parliament's vote of support of such military action. However, the Iraq War vote of 18 March 2003 is considered somewhat of a precedent on the issue, largely because Blair himself placed such political importance on him winning the vote as a necessary prerequisite for action.

But if Iraq was a precedent, it was a political one. Many politicians – including both Gordon Brown and David Cameron before each became Prime Minister – have referred to the importance of such a vote being the norm. [3] However, the constitutional right of the Cabinet and Prime Minister to take action remains.

The debate about Parliament's role in decisions for military action is fairly well rehearsed, but not resolved within Parliament itself. Since 2003, there have been parliamentary inquiries by the Public Administration Select Committee in 2004, the House of Lords Constitution Committee in 2006 and July this year and by the Political and Constitutional Reform Select Committee (PCRC), reissued after the Syrian vote. The debates have focused on two main issues: one, the democratic importance of parliament's role in such important decisions (upon which many agree); and, secondly, whether it is viable, practical or necessary to change the constitutional position of Parliament to achieve the democratic position (upon which each inquiry came to a different conclusion).

One of the practical issues concerns the effect on government decision-making and the quality and effectiveness of UK military action if it is subjected to a vote by rule rather than by convention. First is the issue of defining when such a vote should be applied. Specifying 'military action' is not so easy, especially when one considers intelligence support, proxy wars or cyber warfare. As the more recent Lords' Constitution Committee report also identified, there is the problem of 'rendering deployment decisions justiciable'. [4] Parliament does not want to

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take on this power only to see it handed to the courts.

Another difficulty is ensuring operational flexibility, speed of deployment or considering the effect of excess publicity on the success of any operation. Even those in favour of legislation acknowledge that there are situations where government action could not await parliamentary approval (which at the extreme includes the Prime Minister's finger on the nuclear button). Connected to this is the need for Parliament to have an informed view on such decisions. The Syrian vote also saw the provision of Joint Intelligence Committee evidence and the Attorney General's legal advice, both allusions back to the Iraq experience. If Parliament's role becomes formal it will need to be ever-more informed. How much information will it be able to get and to debate in public?

In thinking about whether to go further, commentators look to the US. Their 1973 War Powers Resolution requires the President to consult with and report to Congress on the use of force and ultimately gain their authorisation. But successive Presidents have questioned this power, seeing it in their role as Commander in Chief. Hence Obama's comments about the congressional vote on the same issue (announced in the aftermath of the UK no vote): 'While I believe I have the authority to carry out this military action without specific congressional authorisation, I know that the country will be stronger if we take this course and our actions will be even more effective.' If anything, the US example (itself quite extraordinary) could be taken as further proof that political power to force a parliamentary discussion can be stronger than the constitutional right.

In the UK, the Syrian vote both confirms and confounds the issue. Since taking office, David Cameron has, if anything, strengthened the position of Parliament. In March 2011, a Parliamentary debate took place *after* the outbreak of military action to enforce a no-fly zone in Libya. Last Thursday's division was more important a precedent because of the result and the government's response to it. By calling the vote, the Government was ensuring continued adherence to the practice that Parliament should have a say. Though not actually a motion authorising action, it came to symbolise one. By saying no *and* the strength of the Prime Minister's declaration that the government would abide by it, the *de facto* power of Parliament to authorise such action has been strengthened further.

It will be politically very difficult for governments in the foreseeable future to take significant military action without clear (and potentially prior) approval from Parliament, not just to ensure a substantive debate – but it is not inconceivable. And, though the Iraq vote has loomed large over recent decisions to deploy troops, it is not a universal convention; there has been no formal vote on the deployment of troops to Afghanistan in the decade and more since British troops have been there.[5]

The PCRC have, a week after the vote, repeated their call that the right of Parliament to be consulted before troops are committed be firmed up and have launched a new inquiry into the topic. They will have a wealth of material from previous inquiries by select committees to turn to, and the Syrian experience provides an important new focus for the question. However, this important question still seems to boil down to the same debate the UK sees elsewhere on its constitution. Critics see potential legislation as a constraining influence that would confuse matters further; do you need legislation if you already have the *de facto* power? For those in favour, it is this very certainty, ensuring that such powers happen by right and not by chance, that is needed.

The Syrian experience has seen the increased power of parliament to constrain the government on a major foreign policy issue. The full political, military and humanitarian outcomes for the UK, the US and, perhaps most importantly, for Syria remains to be seen. While this is on-going it seems unlikely that the settlement of parliament-government constitutional powers will be the highest priority. But the UK government will eventually have to consider how they now interpret the precedent. What we wait to see is whether, having experienced a 'no', the Government will be even more reluctant to make this precedent permanent.

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[1] See House of Commons Library Standard Note, *Parliamentary Approval for Deploying the Armed Forces: An Update* (SN05908, 28 August 2013) <http://www.parliament.uk/briefing-papers/SN05908>

[2] House of Commons Liaison Committee, *Oral Evidence given by Rt Hon Tony Blair MP*, (7 February 2006, HC HC 709-ii) Q303 <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmliaisn/709/6020708.htm>

[3] House of Commons Library Research Paper, *Parliamentary Approval for Deploying the Armed Forces: An Introduction to the Issues*, (RP08/88, 27 November 2008), pp.16-17

[4] House of Lords Constitution Committee, *Constitutional arrangements for the use of armed force*, (2<sup>nd</sup> Report of Session 2013-14, HL 46, 24 July 2013), p.18

[5] House of Commons Library Research Paper, *Parliamentary Approval for Deploying the Armed Forces: An Introduction to the Issues*, p.14