



Does the UK need a 'War Powers Act'?

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In the wake of Chilcot, questions have been raised about the democratic accountability of the process involved in taking this country to war.

In the middle of a stormy night on August 4, 1964, a US Navy warship patrolling the coast of North Vietnam detected radar and sonar signals in the Gulf of Tonkin that suggested it was about to come under attack. The USS Maddox spent several hours feverishly manoeuvring over rough seas and firing shells into the darkness. In the morning no evidence could be found of the enemy, but policy-makers in Washington nonetheless decided it meant war.

President Johnson immediately sought and gained permission from the US Congress to use “all necessary measures” against North Vietnam, which resulted in almost a decade of conflict. But by 1973, Congress was not happy. Many of its members claimed that, despite the ‘Gulf of Tonkin Resolution’ they had passed, their permission for a wider war had never been sought. They passed the War Powers Act that year: a law designed to ensure the president had to seek Congress’s explicit consent for any decision to go to war in the future.

Britain has no such law. Here, the prime minister alone has the authority to send troops to war using Royal Prerogative Powers that were originally handed to her office during the Glorious Revolution of 1688. But even though the government [poured cold water](#) over the idea of a War Powers Act earlier this year, it’s slowly starting to creep onto the agenda. After the [Chilcot report](#) was released in July, Labour leader Jeremy Corbyn [stated](#) that a US-style War Powers Act would help to prevent the UK from going to war on false pretences.

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He has also **suggested** that it could stop the government from sending special forces into secret wars without public awareness or consent.

Crispin Blunt, who chairs Parliament's Foreign Affairs Committee, has similarly **criticised** the lack of parliamentary authorisation for special forces when they're being sent on long-term combat missions. Meanwhile, the House of Lords is currently considering its own version of a War Powers Act, the Armed Forces Deployment Bill.

So why not pass a War Powers Act? It worked for America, didn't it?

Well, not quite. The War Powers Act has never actually been invoked, despite the US being involved in several wars since the 1970s. Every president has claimed it is unconstitutional. So the lesson from America is that relying on a War Powers Act to provide a bulwark against unwarranted military action could be complicated.

Not least in the UK, where the ludicrously undemocratic Royal Prerogative powers have been tempered over time by laws and conventions. Since 2003, a convention has emerged that is supposed to ensure that parliament has the opportunity to debate any decision to go to war. That started with Tony Blair's decision to consult parliament on the Iraq War, making any attempt to link the need for a War Powers Act to Chilcot and Iraq a bit of a stretch of the historical imagination. The convention was also applied to the question of intervening in Libya in 2011, and most recently in Syria at the end of last year.

The convention might seem to obviate the need for a War Powers Act. But its charm is also its flaw – it can be interpreted in many different ways. A hawkish

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government trying to seek a war without public scrutiny might claim that covert or indirect military action, such as embedding UK troops in foreign armies or using drones, is not included in the convention. Indeed, in recent responses to [one question](#) from Caroline Lucas MP and [another](#) from David Anderson MP, the current government appears to exclude both of these from its interpretation of the convention. At the same time, the Ministry of Defence is increasingly placing such methods at the forefront of its military strategy.

But intervention sceptics and advocates for accountability can also push for their own interpretations. In 2013 David Cameron [was forced](#) by backbench MPs from across the political divide to promise that Parliament would have a vote over any decision to send arms to Syrian rebels.

A War Powers Act muddies the water, because its value as a check on government depends on what its writers choose to include and exclude. Indeed, a War Powers Act that definitively does not cover drones, arming rebels, or the actions of embedded UK troops in foreign armies is actually worse for government accountability than a more flexible convention that could be applied to these methods should MPs demand it.

A case in point is the current Armed Forces Deployment Bill in the House of Lords. The Bill is essentially a War Powers Act, and it has been introduced in the welcome spirit of increasing transparency and accountability. But the way its definitions are drafted risks creating exemptions for drones, arming rebels, and embedded troops, and it definitively excludes special forces. It also doesn't have provisions that would apply retrospective approval to cover non-combat missions that subsequently escalate. It's strange to think that the UK military mission to Helmand started as a supposedly [peaceful reconstruction mission](#), but became one of the most lethal military campaigns in modern UK history.

And yet the proposed Bill in the Lords would not have subjected the decision to deploy over three thousands troops there in 2006 to a vote.

So any War Powers Act politicians may be considering needs to be drafted right. It can't exempt certain forms of warfare or fail to anticipate mission escalation. This is especially important given that remote forms of warfare, including drones, special forces, training missions, and foreign embedded troops, are expected to become the most common avenue for military intervention in the future. Right now UK special forces are fighting Islamic State all over [Syria](#), [Iraq](#), and [Libya](#), while British drones [conduct regular strikes](#) against Islamic State. UK forces are also [believed to be](#) advising on Saudi military operations in Yemen. To exclude these methods of fighting would make any War Powers Act futile. Bottom line – if you're going to do a War Powers Act, you'd better do it right.

Image by Defence Image via [Flickr](#)

About the Author

Andrew Noakes joined the Remote Control project as Senior Advocacy Officer in January 2016. Before joining the project he was founding Director of the Nigeria Security Network, working at the intersection of human rights and counter-insurgency in Nigeria. Andrew is also Director of the Labour Campaign for Human Rights, which campaigns on human rights issues within the UK Labour Party, notably on mass surveillance and the Human Rights Act. He has also previously worked for Amnesty International and Save the Children, as an independent human rights investigator in Cameroon, and as a lobbyist in

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