



# A World of Difference

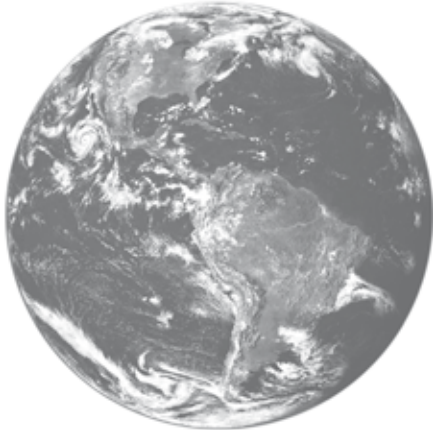
**Parliamentary  
Oversight of British  
Foreign Policy**

A Report by Democratic Audit, the  
Federal Trust and One World Trust



# A World of Difference

## Parliamentary Oversight of British Foreign Policy



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## Acknowledgements

The authors would like to thank Graham Allen MP, Lord Alton, Lord Archer of Sandwell, Professor David Beetham, Roger Berry MP, Lord Blaker, Stephen Crabb MP, David Drew MP, Mike Gapes MP, Rt. Hon. Bruce George MP, Philip Hollobone MP, Sir Gerald Kaufman MP, Dr Todd Landman, Glenn McKee, Chris Milner, Michael Moore MP, Senait Petros, Ben Rogers, Gavin Strang MP, and Fergus Thomas for their advice and assistance in preparing and researching this report.

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## About the Organisations

**Democratic Audit** was set up by the Joseph Rowntree Charitable Trust in 1991 to measure democracy in the UK and developed a system for assessing democracy that is now used widely around the world. The Audit is a research organisation that is attached to the Human Rights Centre, University of Essex, and has published three major audits of UK democracy as well as books and reports on social justice in the UK, quangos and counter terrorism laws and practice. Its director is Professor Stuart Weir.

The **Federal Trust** is a think tank founded to promote studies in the principles of international relations, international justice and supranational government. Set up in 1945 on the initiative of Sir William Beveridge, it has always had a particular interest in the European Union and Britain's place within it. Its director is Brendan Donnelly.

The **One World Trust** was formed in 1951 by the All Party Group for World Government in Parliament. The trust has built up a considerable knowledge base about the workings and accountability issues of many of the major intergovernmental organisations. Its director is Michael Hammer.

● In 2005, the three organisations combined forces to conduct research into parliamentary oversight of Britain's foreign policy. Their findings were published in a joint book, *Not in Our Name: Democracy and Foreign Policy in the UK*, by Simon Burall, Brendan Donnelly and Stuart Weir, Politico's 2006. This report is a detailed follow-up of that original study.

Design and cover illustration by Tony Garrett

Published by One World Trust, 3 Whitehall Court, London SW1A 2EL

Printed by Creative Print Group, 262 Water Road, Wembley HA0 1HX

# Contents



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## Introduction

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### Part 1 Global Security and the Special Relationship

#### DEVILLING IN THE DETAIL

Parliament's oversight of the wars in Iraq and Afghanistan; influencing the use of cluster bombs; investigating the UK's complicity in extraordinary rendition

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### Part 2 European Union business

#### MAKING EU SCRUTINY EFFECTIVE

Parliamentary scrutiny of European legislative proposals; seeking to make government's negotiations in the EU accountable; mainstreaming European scrutiny and other reforms

---

### Part 3 Conflict and humanitarian crisis

#### THE RESPONSIBILITY TO PROTECT

The role of Parliament in oversight of multilateral and bilateral negotiations; assessing the British government's policy at the United Nations; taking up cases of severe internal conflict: Chad, Sudan and Zimbabwe;

---

### Part 4 Conclusions and recommendations

#### THE PROSPECT OF A STRONGER PARLIAMENT

The need to strengthen parliamentary oversight; Gordon Brown's governance proposals evaluated; a package of recommendations.

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# Introduction

British governments make “foreign policy” as they see fit without ever being required to seek effective parliamentary or public approval. The public has principled views about Britain’s role abroad, on for example, the use of armed force abroad, complying with international law, the Special Relationship with the United States, arms exports, EU trade policies,<sup>1</sup> yet the government’s powers and policies often run counter to the public’s wishes – and even those of parliamentarians. MPs have little or no say in the government’s decisions over the whole range of foreign policy.

In 2006, the three organisations responsible for this report, published a ground-breaking study, *Not in Our Name: Democracy and Foreign Policy in the UK* (Politico’s), that analysed the nature and extent of the government’s domination of foreign policy and Parliament’s weakness in seeking to maintain oversight of this wide-ranging and disparate set of policies and actions. This study identified the significant role that royal prerogative powers played in protecting the government’s conduct of foreign affairs from effective parliamentary scrutiny and approval. These powers, a pre-democratic relic of monarchical rule, give the Prime

Minister, ministers and officials the power to make foreign policy without the approval, or even the knowledge, of Parliament. Among the decisions and actions that the government can take under prerogative powers and which are thus outside effective democratic control are:

- making war and deploying the armed forces
- agreeing treaties and other international agreements
- partnering the United States and choosing allies
- negotiating within the EU, in particular on legislative matters
- playing a role in international decisions on trade or climate change
- conducting all forms of diplomacy
- contributing to the policies of the World Bank, IMF and other international bodies
- playing a military role in Nato
- representing the UK on the UN Security Council.
- recognising states.

In July 2007, the government pledged itself in the green paper, *The Governance of Britain*, to end a state of affairs which it acknowledges is “no longer appropriate in a modern democracy.”<sup>2</sup> The green paper promises to redress the

imbalance of power between the executive and Parliament, states that “the executive should draw its powers from the people, through Parliament,” and proposes to

*seek to limit its own power by placing the most important of these prerogative powers onto a more formal footing, conferring power on Parliament to determine how they are to be exercised in future.*<sup>3</sup>

However, *Not in Our Name* also drew attention to other means by which the government could dominate Parliament and limit its scrutiny of policies through restrictions on the release of official information (which are most stringent in foreign and defence affairs), its control of parliamentary business and strong party discipline over its backbench MPs and their loyalty to its actions. We also found that some of Parliament’s own traditions and working practices reinforced the government’s autonomy in all areas of policy.

The purpose of this report is to take the first study further by way of detailed analysis of Parliament’s dealings with the government on matters of foreign policy in the course of the single parliamentary session, 2006-07, which came to an end in November 2007. Due to the great range and number of policy initiatives and actions falling within the vast area of foreign policy, this report focuses its resources on analysing in detail specific episodes of scrutiny of

<sup>1</sup> See the results of an ICM poll for Democratic Audit, the Federal Trust and One World Trust, January 2006. Further information from [www.myforeignpolicytoo.org](http://www.myforeignpolicytoo.org) or [www.icmresearch.co.uk](http://www.icmresearch.co.uk)

<sup>2</sup> Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007.

<sup>3</sup> *Op cit.*

particular relevance. The general conclusions to be drawn from these case studies are no less persuasive as a consequence. Part 1 assesses the role of Parliament in policies designed to improve global security within the perspective of the Special Relationship between Britain and the US and taking into account the UK's human rights obligations; Part 2 examines parliamentary scrutiny of EU legislation and the government's approach to EU business more generally; and Part 3 inquires into the role of Parliament and MPs in considering the need for humanitarian intervention in Darfur and nations in conflict within the parameters of UN policy. Our aim is to measure the influence Parliament and members had on government policy during this period, how it was achieved, what the obstacles were, and how these obstacles might be removed in future. Finally, in Part 4, we seek to judge how far the reforms that the Governance green paper and subsequent statements set out for its "national conversation" with the public may have changed what actually happened and how far they may democratise Britain's foreign policy. We consider as well what other changes in law and practice might be required to achieve this democratisation.

The select committees in the House of Commons, and to a lesser degree in the Lords, are the key instruments of parliamentary scrutiny of the government. Our primary focus is on the work of the Foreign Affairs Committee and the European Scrutiny Committee, alongside the Liaison Committee of select committee chairs in the Commons; the Joint Committee on Human Rights, made up of MPs and peers; and the Intelligence and Security Committee, the non-parliamentary committee of

parliamentarians chosen by the Prime Minister. If Parliament is to make government accountable for its external policies, then the committees will have to play a central role. We have noted the shortcomings of select committees in our earlier work, and extend these conclusions in this report (they are for example poorly resourced and their members are selected through the party whips). But the committees are important for a number of reasons. They take detailed evidence from ministers, academic and other experts and representatives of non-governmental organisations (NGOs) that bring to bear detailed practical experience. Through such bodies, they provide civil society with an opportunity to participate in the democratic process. Government is required – in theory – to provide meaningful and timely responses to their reports; they operate within a loose framework of responsibilities, known as the "Core Tasks"; and they strive to attain a non-partisan approach to their inquiries.

We also monitor other forms of parliamentary activity, especially where relevant to the case studies in this report, including the activities of individual MPs and All-Party Parliamentary Groups (APGs), Parliamentary Questions (PQs), Early Day Motions (EDMs), and ministerial statements; parliamentary debates of various kinds and Private Members' Bills; and more informal activity. We assess how Parliament learns about government policy; and take into account the politics around an issue – for instance the policies held by different parties. We examine the role the UK Parliament plays in the European Union, the United Nations and the large international and regional bodies of which the UK is a member. We consider the role

of treaties to which the UK is a signatory. We assess the value of the contributions of NGOs, think tanks and pressure groups and take into account the role of NGOs, sectional interest groups, the media and opinion formers.

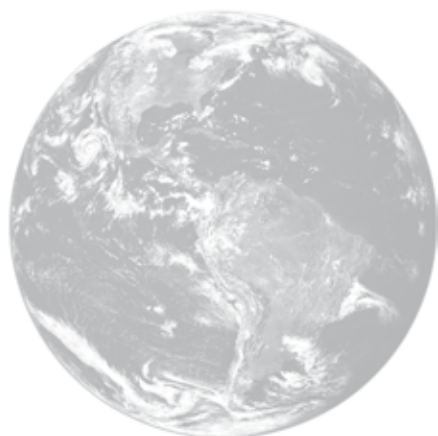
We consider a variety of ways in which Parliament could improve its oversight and how government might cooperate. In particular, we pay special attention to the role that departmental reports and government's annual policy papers, such as the report on strategic export controls and the FCO annual human rights reports, could play in raising Parliament's game. The Public Service Agreements negotiated mainly between the Treasury and individual departments contain a detailed set of commitments, against which committees could evaluate the performance of the Foreign and Commonwealth Office, DFID and the Ministry of Defence. During this parliamentary session, a new set of PSAs, coming into force in 2008, were being finalised.



# Part 1

## Global Security and the Special Relationship

### Devilling in the detail



IN PART 1, WE EXAMINE PARLIAMENT'S oversight role in three significant policy areas associated with Britain's commitment to the "War on Terror" that the United Kingdom was pursuing in close alliance with the United States throughout the 2006-07 parliamentary session – the ongoing military operations in Iraq and Afghanistan, the use and regulation of cluster munitions, and the "extraordinary rendition" by the US of people suspected of terrorism. The occupation of Iraq and war in Afghanistan are the most pressing issues the government has had to deal with during the 2006-07 parliamentary session, not least because of the deaths and injuries the armed forces have sustained. We carry out this analysis within the perspective of global security (a more appropriate term than "war on terror"), Britain's long-standing Special Relationship with the United States and its human rights obligations.

#### **Strategic oversight and public opinion**

At a strategic level, Parliament has been largely a spectator since the historic vote on 18 March 2003 approving the invasion of Iraq. Parliament was unable fully to hold government to account over whether it was living up to commitments such as those contained in the Foreign and Commonwealth Office's Public Service Agreements operative

during 2006-07, binding UK policies to an "international system based on the rule of law"; a "world safer from global terrorism and weapons of mass destruction"; "sustainable development... underpinned by...human rights"; and increasing "understanding of, and engagement with, Islamic countries and communities and to work with them to promote peaceful political, economic and social reform." Meanwhile, the United Kingdom has stood by the joint occupation of Iraq with the United States, though gradually diminishing its presence in the south; participated more intensely in the NATO-led conflict against the Taliban in Afghanistan; cooperated with the US, Pakistan and other foreign powers over intelligence and law enforcement; and continued tacit alliances with countries like Saudi Arabia and Uzbekistan where human rights abuses have aroused concern in Parliament and elsewhere.

In its human rights reports, the FCO acknowledges the human rights problems of these nations, listing them as "countries of concern", (though not always robustly enough for members of the Commons Foreign Affairs Committee (FAC). The committee called in April for the government to "use its close relationship with Saudi Arabia, including through the 'Two Kingdoms Dialogue,' to set measurable and time-limited targets for specific human rights objectives, in particular in the

areas of women's rights, the use of torture and the application of the death penalty."<sup>1</sup> In response the government agreed that it should use its close relationship with the Saudis to promote improved human rights, but while conceding that progress seemed slow argued that: "measurable and time-limited targets" should not be set. Owing to the "sensitive nature of reform there", the government said, they could be "counterproductive and undermine the very reform process."<sup>2</sup> Similarly the FAC called for the UK to consider imposing "tougher sanctions" against Uzbekistan over its human rights record.<sup>3</sup> The government replied, "We will continue to argue that the measures should reflect the response of the Uzbek Government to the EU's concerns".<sup>4</sup> The fact is that Parliament is unable to alter the basic strategic approach of policies which are driven by the Special Relationship with the US and which thus dictate the government's reluctance to press these foreign nations on human rights abuses, or even to influence aspects of these policies, evident for example in the unwillingness to criticise Israel over the disproportionate effects of the invasion of southern Lebanon in 2006 on its inhabitants.<sup>5</sup> As Sir Gerald Kaufman MP told us "I don't believe the House of Commons has got the tiniest influence whatsoever" on UK policy towards Israel.<sup>6</sup>

Parliament's weakness on major foreign policy issues contrasts strongly with the

wishes of the public. Asked by ICM Research who should decide Britain's main foreign policy objectives in pursuit of British interests abroad, 85 per cent of people in January 2006 said, "Parliament as a whole", as against 13 per cent for "the Prime Minister, ministers and their advisers". UK's deeper commitment to the Special Relationship and the occupation of Iraq during this period also ran counter to public opinion. Two thirds of respondents in the ICM poll wanted Britain to adopt a more independent position within the Special Relationship; half of the people asked (49 per cent) said that Britain's foreign policy should be based on a close and equal association with both the European Union and the United States, 22 per cent said it should be on a close association with the EU and only 7 per cent on such an association with the US.<sup>7</sup>

In *Not in Our Name*, we described how the Special Relationship, the centrepiece of UK foreign and defence policy since 1945, had evolved to become an unspoken and unquestioned "treaty" with the UK and how Parliament and the major parties had shared in the elite consensus about its benefits for this country.<sup>8</sup> The Foreign Affairs Committee did produce a rolling programme of six reports on the "War on Terror" after 2002 which referred to UK/US bilateral relations, but did not assess the nature or extent of the Special Relationship; in an interview with us, Lord Anderson, then the FAC chairman, agreed that an investigation into the

Special Relationship would be an appropriate area of future activity for the FAC.<sup>9</sup> So far the FAC has not taken this course, though expert observers have noted the difficulties the government has endured in adhering to the Special Relationship at a time when (in Chris Patten's words) the US has gone into "unilateral overdrive" and flouted principles of international legality and cooperation

The Prime Minister's dominance of bilateral foreign policy through Royal Prerogative powers has been a major obstacle to parliamentary scrutiny and influence.<sup>10</sup> Britain's strong commitment to the Special Relationship during the "War on Terror" and the wars in Iraq and Afghanistan were driven by Tony Blair who, in 2001, introduced structural changes to tighten his grip on foreign policy, commanded the cabinet and until early 2004 possessed great political authority. Parliament holds ministers to account through Parliamentary Questions, debates and select committee scrutiny. But when the Prime Minister is driving policy, Parliament has less purchase. Prime Minister's Question Time is a knockabout occasion for point-scoring, not serious discussion. The twice-yearly sessions that the Prime Minister holds with the Commons Liaison Committee (at which the chairs of all select committees question him) provided the only opportunity to probe Blair on the Special Relationship and global security, but as a host of issues arise and time is limited, Blair proved able to side-step searching questions from MPs like James Arbuthnot and Malcolm Bruce on "the propaganda battle for Western

<sup>1</sup> *Foreign Affairs Committee, Human Rights Annual Report 2006*, HC 269, 29 April 2007.

<sup>2</sup> *Annual Report on Human Rights: Response of the Secretary of State for Foreign Affairs*, Cm 7127, June 2007).

<sup>3</sup> *FAC*, *op cit*.

<sup>4</sup> *Annual Report on Human Rights*, *op cit*.

<sup>5</sup> See for instance: *Foreign Affairs Committee, Global Security: The Middle East*, HC 363, 25 July 2007.

<sup>6</sup> *Interview with Sir Gerald Kaufman MP*, 18 October 2007.

<sup>7</sup> In this poll for *Democratic Audit*, the *Federal Trust and One World Trust*, ICM Research interviewed a random sample of 1007 adults aged 18+ by telephone between 13 - 15 January 2006. Interviews were conducted across the country and the results were weighted to the profile of all adults. ICM is a member of the British Polling Council and abides by its rules. Further information at [www.icmresearch.co.uk](http://www.icmresearch.co.uk)

<sup>8</sup> Burall, S., Donnelly, B., and Weir, S., (eds), *Not in Our Name: Democracy and Foreign Policy in the UK*, Politico's, 2006.

<sup>9</sup> *Op cit*.

<sup>10</sup> See for instance: O'Malley, E., "Setting Choices, Controlling Outcomes: The Operation of Prime Ministerial Influence and The UK's Decision to Invade Iraq," *British Journal of Politics and International Relations*, vol. 9, 2007.

values in the Islamic countries" or the shifting reasons advanced to justify the invasions of Iraq and Afghanistan that they could not follow up.<sup>11</sup>

<sup>11</sup> House of Commons, Oral Evidence, 6 February and 18 June 2007.

### Parliamentary influence on controversial issues

In Part 1, we monitor parliamentary oversight of controversial issues where the government's policies are shaped in different ways by the Special Relationship

and the global security agenda: cluster munitions; "extraordinary rendition", and the wars in Afghanistan and Iraq. The Israeli Defence Force invasion of the Lebanon of summer 2006 generated substantial parliamen-

Table 1 **Parliament's oversight of global security and the Special Relationship, 2006-07**

Issue	Parliamentary activity	Other activity	Outcome	Successful oversight?
Ongoing operations in Iraq with rising casualties and resistance to UK presence	Initial operation had begun covertly before parliamentary vote in 2003; Foreign Affairs Committee; Defence Committee; Joint Committee on Human Rights investigation of prisoner mistreatment; PQs, debates, EDMs; no parliamentary consensus	Channel 4/Foreign Policy Institute Iraq Commission	Partial withdrawal from southern Iraq only after deal with US. UK troops likely to be present in Iraq beyond US Presidential elections in 2008.	Lack of strategic oversight; no full committee or inquiry into invasion and its aftermath established, despite demands from opposition; Defence Committee can only study 'instrument' of policy, not formation of policy; Prime Minister's initial statement about troop reductions not made in House
Ongoing operations in Afghanistan with rising casualties and concerns about clarity of expanding mission.	Defence Committee Inquiry; FAC interest in human rights aspects; PQs, debates; broad parliamentary consensus about UK presence.	Amnesty International and Human Rights Watch express concern about human rights issues	UK presence continues	No vote ever held on initial invasion or changes to mission parameters; Lack of strategic oversight
Cluster bombs and missiles kill and maim civilians, but are not yet outlawed by specific international convention. The UK armed forces hold and use these munitions.	Foreign Affairs (FAC) and Quadripartite committees; PQs; EDMs; All-Party Parliamentary Landmine Eradication Group; Private Members' Bills; debates.	Report by Handicap International; campaigns by the Campaign against the Arms Trade; evidence submitted to Parliament by Amnesty and Human Rights Watch; broadsheet media interest.	The government withdraws "dumb" cluster munitions from service and breaks with US to sign Oslo Declaration against their use, but decides to keep "smart" cluster munitions until the middle of next decade.	FAC/ Quadripartite committee coordination – assisted by split in government – may have influenced outcome. Challenge to official figures on munitions failure issued by FAC
Allegations that the UK was complicit in the US practice of "extraordinary rendition" of terrorist suspects (and thus also in their torture in custody).	FAC; All-Party Parliamentary Group on Extraordinary Rendition; PQs; EDMs; debates.	Inquiries by the Council of Europe and European Parliament; strong investigative television reports and broadsheet press interest; Liberty's request for a police investigation; Intelligence and Security Committee (ISC) inquiry and report.	The government gives evasive answers to questions about making UK airports and airspace available for CIA rendition flights. Possibility that information supplied by UK agencies has contributed to renditions by US. Poor record keeping makes it difficult to establish the hard facts	Main investigation carried out by non-parliamentary ISC; but parliamentary activity including by APPG means government now knows it is under scrutiny
The government rules that the Israeli actions in south Lebanon in 2006 were not "disproportionate" and refuses to demand an immediate ceasefire. The UK exports arms to Israel in spite of the controversy over the IDF's actions.	FAC; Quadripartite Committee; PQs	UN investigation into the actions of the Israeli Defence Force; submissions by Amnesty and Human Rights Watch to FAC about imbalance in UK government reports; UK Working Group on arms exports; campaign and evidence submission to Parliament by CAAT.	Government response yet to appear	FAC issued direct challenge to government; succeeded in getting minister to agree that immediate ceasefire could have worked

tary interest during the 2006-07 session, but the actual incident itself fell outside our calendar. Nonetheless we include reference to it in the table below. The point of choosing these case studies is to explore the theory that while Parliament is not equipped to hold government to account on strategic issues, it is generally better at detailed scrutiny. We have chosen areas of controversy where there has been parliamentary and other opposition to the government position, not because we see the executive-legislature relationship as one of conflict, but because such important issues give us a good measure of Parliament's ability to influence government and modify policy, and to weigh the strength of the instruments at its disposal. We recognise of course that there is no single parliamentary view on such subjects, but another measure of success is to ask how far Parliament is able to focus attention on issues that matter to the public.

Table 1 on the preceding page provides an overview of parliamentary involvement in the four key areas.

### **Wars in Iraq and Afghanistan**

In 2006-07, British forces were still involved in two major military conflicts with a direct bearing on global security and the Special Relationship: in Iraq, where British troops were stationed in Basra and special forces were active in the north; and Afghanistan, where UK troops had just been sent to reinforce the Nato operation in Helmand province. As we showed in *Not in Our Name*, parliamentary oversight of both operations has been flawed. Military operations against Iraq had begun covertly before Parliament was given a vote on the invasion and Parliament

has never voted on the operation in Afghanistan.

By the outset of the parliamentary session it was clear that the strategy of the allies in Iraq was under pressure, given the increased sectarian and terrorist violence there. In the south, British forces were subject to unrelenting attack from local Shia forces, prompting doubts about its peace-keeping role in Basra among the UK armed forces. At the same time the Special Air Service (SAS) was engaged, along with other special forces, in Baghdad, "facing its most severe challenge since it was set up during the second world war".<sup>12</sup> Sir Richard Dannatt, who became Chief of Staff in August 2006, gave an interview to the *Daily Mail* on 13 October 2006 in which he appeared to argue that British troops should leave Iraq, since their very presence was provoking the violence. With Gordon Brown becoming premier in the summer of 2007, there were briefly signs that the relationship between the UK and the US – including over Iraq – might not be as close. At the same time the security position in Basra was deteriorating, with British forces under increased attack. One of the concerns motivating mainstream critics of the UK presence in Iraq was that it did not enable a proper focus on the operation in Afghanistan. There was more of a consensus around the need for this action, though there were concerns about the clarity of mission parameters. The position of British troops became increasingly dangerous, with casualties accelerating from January 2006 onwards.

During August with Parliament in recess, the then Liberal Democrat leader Sir Menzies Campbell gained substantial

<sup>12</sup> *Sunday Times*, "Secret war of the SAS", 16 September 2007.

media by taking the initiative outside Parliament; due no doubt also to the relative paucity of news during August, he received considerable media coverage, and probably much more than he would have attained from a parliamentary exchange. He wrote an open letter on 22 August to Gordon Brown, calling for a rapid withdrawal from Iraq to enable greater focus on Afghanistan. He wrote, "What is being achieved by the continuing British presence [in Iraq]? Our troops are severely restricted in what they can do and they are subject to unreasonable risks." The British contingent there had been cut by 500 troops in July when the army also withdrew to Basra airport. Sir Menzies noted the "persistent reports that there will be a reduction in the number of British forces deployed to Iraq."

He received a detailed response from Gordon Brown on 28 August setting out the reasons why he would not "abandon" Iraq. Again this was more than might have been expected from a standard parliamentary approach.<sup>13</sup> Sir Menzies argued that the letter "could have been written by his predecessor"

On 2 October following a meeting with the Iraqi Prime Minister Gordon Brown announced that a further 500 would be brought back to the UK before Christmas. But well informed sources were stating that a "significant force will have to remain indefinitely". Mark Urban of the BBC stated that "in fact the British army is planning for a presence there for the next two years...[the US] will be more or less satisfied."<sup>14</sup> Brown had made his first statement during the recess, when one had been

<sup>13</sup> *BBC News*, "Letter from PM on UK forces", 28 August 2007.

<sup>14</sup> *BBC Radio 4, World at One*, 2 October 2007.

scheduled for the following week in the House, running counter to his previously stated intentions to use Parliament as the primary outlet for official announcements (though Parliament was not sitting at this point). On 8 October he informed the House that the number of troops would be cut to 2,500 by the spring.

### **Oversight of military supply and performance**

Public Service Agreements and associated departmental objectives, negotiated between the Treasury and government departments, set annual plans and objectives for the departments that, as we argue fully in Part 4, ought to form a major part of the framework for parliamentary oversight and scrutiny through select committees. The government's white paper, *The Governance of Britain*, proposes to develop parliamentary scrutiny by giving the House of Commons the opportunity also to debate departmental objectives on the floor of the House (see table, page 50).<sup>15</sup> During this period, the Ministry of Defence was required by an objective in its Public Service Agreement to "Achieve success in the military tasks that we undertake at home and abroad". In its Annual Report for 2005-6, published in the previous session, the MOD had claimed that on aggregate it was meeting its strategic objectives. But the Commons Defence Committee complained in December 2006 that the government gave "no information of the performance indicators against which it [the MOD] makes this judgment". The government refused a request from the committee for access to the quarterly reports from field commanders and military staff

against which the MOD had assessed performance, or at least summaries thereof, on the grounds that providing it "would raise too high a risk of inhibiting the free and frank provision of advice". The committee complained: "We strongly regret the MoD's refusal to supply us even with a classified summary of the information against which it assesses the success of its military operations. This makes it impossible for us to assure the House of the validity of its assessment [that military objectives are being met]."<sup>16</sup>

The Prime Minister's pledge to improve access to official information (see table, page 50) may bring such refusals to give information to an end, but the failure to provide significant information in this and other cases suggests that the new Public Service Agreements announced in October 2007 may well not be the route to enhanced oversight that they could be. Yet PSA 30 sets out a significant 28-page "Delivery Agreement" for a joined-up strategy led by the FCO, with MOD and DFID involvement, to "Reduce the impact of conflict through enhanced UK and international efforts". Indicator 2, which is described as "Reduced impact of conflict in specific countries and regions" includes detailed sections on objectives in Afghanistan and Iraq (as well as for the Arab/Israeli conflict and Lebanon). There is real scope here for Parliament to play a valuable scrutiny role.

During 2006-07 the Commons Defence Committee drew attention to another problem with parliamentary oversight of these engagements. Granting supply is the most basic parliamentary function and has been a historic lever for achieving executive

accountability. The MOD does not make provision for the cost of military operations in its Main Estimates on the grounds that they are difficult to predict at the beginning of the financial year and used to wait until the spring supplementary estimates in February before presenting estimated costs. This approach meant that the government was spending money without the prior approval of Parliament. In March 2006, the Defence Committee pressed the government to include estimates in the Main Estimates, with room for contingency. The government moved the estimates for operations to the winter estimates in November 2006. Noting that the FCO makes provision for the cost of Balkan operations in the Main Estimates, the Defence Committee called in December 2006 for the government to give estimates for the costs of the two wars in the Main Estimates: "Military operations are by their nature unpredictable [but] . . . the MoD will undoubtedly have made internal planning assumptions about the costs of the operations in Iraq and Afghanistan and we believe these should be shared with Parliament."<sup>17</sup>

### **The UK presence in Iraq**

The invasion and occupation of Iraq has never achieved the parliamentary consensus that is usual in the case of wars. Though the majority of Labour and Conservative MPs have supported the war, Labour MPs are severely split and the Liberal Democrats, Plaid Cymru and the Scottish National Party have been opposed to it from the outset and throughout the session urged rapid withdrawal from Iraq on the government. The

<sup>15</sup> Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007.

<sup>16</sup> Defence Committee, *Ministry of Defence Annual Report and Accounts 2005-06*, HC 56, 13 December 2006.

<sup>17</sup> Defence Committee, *Costs of operations in Iraq and Afghanistan: Winter Supplementary Estimate 2006-07*, HC 129, 7 December 2006.

opposition parties, including the Conservatives, also maintained the pressure begun in 2003 for a full parliamentary inquiry into the war. But Parliament has been unable even to undertake a strategic review of the ongoing conflicts there. Conservative MP Douglas Hogg tabled an Early Day Motion on 22 November 2006 to establish a committee of at least seven MPs to "advise this House on the present situation in Iraq and on what policies should now be pursued by the Government." His model was the cross-party US Iraq Study Group, set up by Congress in March 2006, to advise on US strategy in Iraq and the region. But such an initiative from within Parliament, however desirable, is unlikely ever to succeed in the face of the of the government's inbuilt Commons majority. Finally, in January 2007, Channel 4 and the Foreign Policy Centre (a New Labour-friendly think tank) held their own televised cross-party strategy review with Lord Ashdown in the chair.

Meanwhile, select committees undertook more detailed work. On 11 January 2007 the Defence and Foreign Affairs committees held a joint evidence session with the Foreign Secretary and officials, to discuss the US "troop surge" strategy then being adopted. On 7 February the Defence Committee announced an inquiry into "UK Defence: Commitments and Resources" to investigate "how the demands on, and the structures of, the Armed Forces have changed over the past ten years"; and to explore "whether current commitments are sustainable without an increase in resources". In other words it was to approach the issue of Britain's military commitments from the perspective of "overstretch" and resources – a tangential approach dictated by the fact that its remit

is confined to scrutiny of the MOD, which is as the committee chair, James Arbuthnot, put it to us, simply the "instrument" of policy that is formed (formally at least) by the FCO. On 21 June the Defence Committee began an investigation into "UK operations in Iraq", which is still taking place. Because the Defence Committee took on Iraq (and Afghanistan) during this session, the Foreign Affairs Committee was presumably precluded from initiating the wider inquiry, raising once again the need for joined-up working between select committees. In April 2007 the committee criticised the Foreign Office for underplaying in its *Human Rights Annual Report 2006* the rise in sectarian violence in Iraq.<sup>18</sup> It also expressed concerns in April about the sharp rise in executions (including that of Saddam Hussein), claims of unfair trials and allegations that some Iraqi ministers and ministries were involved in human rights abuses. The committee asked the government to "redouble efforts to promote respect for the rule of law and for human rights in organs of the Iraqi state.". In July, the FAC expressed doubts that the US troop "surge" would succeed in the absence of agreement between Iraqi politicians and urged the government to clarify its objectives in Iraq and how their attainment could be measured. It also asked for the evidence pointing towards the Iranian government's complicity in terrorism in Iraq and welcomed signs that the US was accepting the UK view that engagement with Iran was necessary.<sup>19</sup>

On 8 August the Joint Committee on Human Rights announced an inquiry into

<sup>18</sup> Foreign Affairs Committee, *Human Rights Annual Report 2006*, HC 269, 29 April 2007.

<sup>19</sup> Foreign Affairs Committee, *Global Security: The Middle East*, HC 363, 25 July 2007.

allegations of torture and inhuman treatment carried out by UK troops in Iraq. This inquiry is part of a revised interpretation of its function; the committee now aims to respond quickly to topical issues. The committee had already questioned the Attorney General, then Lord Goldsmith, on this subject on 26 June.<sup>20</sup> The JCHR inquiry, not yet complete, focuses on the activities of those further up the chain of command; its inquiry paper includes questions on the issue of information on human rights standards; the provision of legal advice; advice provided by the Attorney General; and government policy regarding the European Convention on Human Rights and its role in Iraq.<sup>21</sup>

During this session there were 89 Commons written questions referring to "Basra"; and 28 in the Lords. There were no less than 167 references to "Basra" in Commons debates; and 112 in the Lords.

### **The mission in Afghanistan**

There is greater parliamentary consensus around UK engagement in Afghanistan. Nevertheless there was much parliamentary interest in the operation. There were 104 Commons written PQs referring to Helmand; and 53 in the Lords; 109 references were made to Helmand in Commons debates; and 49 in the Lords. In its response to the government's *Human Rights Annual Report 2006* the FAC expressed concern about "the lack of progress in achieving basic human rights in large sections of Afghan society" and recommended that the government "provide statistics on incidence of rape, honour killings and other abuses against women in Afghanistan."

<sup>20</sup> See: [http://www.parliament.uk/parliamentary\\_committees/joint\\_committee\\_on\\_human\\_rights/jchr080807pn56.cfm](http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchr080807pn56.cfm)

<sup>21</sup> See: [http://www.parliament.uk/parliamentary\\_committees/joint\\_committee\\_on\\_human\\_rights/jchr080807pn56.cfm](http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchr080807pn56.cfm)

The committee also requested information from the government about compensation paid to civilian victims of bombing.<sup>22</sup> The government in response agreed with the committee's concerns but described the difficulties in providing exact statistics about mistreatment of women. It referred the committee to the website of the "Womankind" charity (<http://www.womankind.org.uk>) where it could find the best description of the trends.

The Defence Committee argued in July that if the Nato deployment in Afghanistan is to be a success in denying the Taliban and Al Qaeda an environment in which to operate and creating the basis for a flourishing democracy, the "size and strength" of the force deployed "must be very great." The committee said that the "mission to bring stability to Helmand" required "a long-term military and humanitarian commitment if it is to be successful. We recommend that the Government clarify its planning assumptions for the UK deployment to Afghanistan and state the likely length of the deployment beyond the summer of 2009." The committee noted that the "consent of the people living in Helmand province will not be gained through the deployment of superior military force alone. Once security is established, it is vital that development projects follow swiftly." It expressed the concern that the government was not communicating "key messages" to the British public about the purpose of its operations in Afghanistan effectively enough.<sup>23</sup>

### Cluster bombs and missiles

One of the significant insights that have emerged from these

studies is that non-governmental organisations (NGOs) and the media often play a crucial role in alerting parliamentarians and select committees to urgent issues, informing them and supplementing their work (see further, page 18). Evidence to select committees from Amnesty International and other NGOs and media coverage on cluster munitions (assisted by leaks from within Whitehall) seems not only to have strengthened Parliament's response but also to have influenced the government's approach to their use and regulation. This suggests that NGO research and lobbying and investigative media reporting filtered through Parliament can impact on government policy on defence and global security at least at a micro level, even if it leads to a divergence between UK and US policy.

Cluster munitions can broadly be defined as air-carried bombs or ground-launched missiles that eject numerous sub-munitions over a wide target area.<sup>24</sup> They are designed for use against troop formations, but once the sub-munitions are on the ground, they can kill or maim civilians for an indeterminate period in the same way as landmines if they have not detonated or self-disarmed. But unlike landmines, they are not prohibited by a specific international convention. Yet a report, *The Fatal Footprint: The Global Human Impact of Cluster Munitions*,<sup>25</sup> from Handicap International in November 2006 estimated that 98 per cent of the victims of these weapons have been civilians, most of them children; and that 11,000 such deaths and injuries have been documented over the past

30 years.<sup>26</sup> The real figure may be as many as 100,000 because of under-reporting in countries such as Afghanistan and Chechnya. The report received substantial broadsheet coverage in the UK.<sup>27</sup> International attention was drawn to their deadly effect when the Israeli Defence Force used them widely in south Lebanon during its campaign against Hezbollah in July and August 2006; and opposition to their use mounted when in late January 2007 the US State Department criticised Israel for misusing US-manufactured cluster bombs in the invasion of Lebanon and sent a preliminary classified report to Congress.<sup>28</sup>

There was substantial parliamentary activity around the issue of cluster munitions during 2006-07, including two Private Members' Bills, the first introduced in the Lords by Lord Dubs, the second by Nick Harvey, the Liberal Democrat shadow defence minister, in the Commons. Similar in form, they sought to ban the development, production, possession and use of certain types of cluster munitions. Both bills were short-lived, but served to raise the issue. It was also kept alive by an adjournment debate in the Commons on 23 November 2006; 123 written Parliamentary Questions in the Commons and 15 in the Lords; five Early Day Motions; and 47 references to "cluster munitions" in Commons debates and 103 in the Lords. Members of the All-Party Landmine Eradication Group in the last session made a collective

<sup>26</sup> Handicap International has since produced a follow-up report, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities in May 2007*, see [http://www.handicap-international.org.uk/pdfs/Circle\\_of\\_Impact\\_Handicap\\_International\\_May\\_2007.pdf](http://www.handicap-international.org.uk/pdfs/Circle_of_Impact_Handicap_International_May_2007.pdf)

<sup>27</sup> *Financial Times*, "Civilians hit most by cluster bombs"; 3 November 2006; *Independent*, "Study says almost all cluster bomb victims are children"; 3 November 2006; *Guardian*, "Civilians main cluster bomb victims"; 3 November 2006.

<sup>28</sup> *Guardian*, "US questions Israel's use of cluster bombs in a rare rebuke"; 30 January 2007.

<sup>22</sup> *Foreign Affairs Committee, Human Rights Annual Report 2006*, HC 269, 29 April 2007.

<sup>23</sup> *Defence Committee, UK Operations in Afghanistan*, HC 408, 3 July 2007.

<sup>24</sup> See: [http://www.handicap-international.org.uk/page\\_347.php](http://www.handicap-international.org.uk/page_347.php)

<sup>25</sup> <http://www.handicap-international.org.uk/files/Fatal%20Footprint%20FINAL.pdf>

decision at a meeting in June 2006 to prioritise the issue of cluster munitions.<sup>29</sup>

In November 2006 a letter from Hilary Benn MP, then International Development Secretary, to the Foreign and Defence Secretaries was leaked to the press, the *Sunday Times* noting that "one of the Labour ministers vying for the deputy leadership has broken ranks by challenging British and American military forces in Iraq to stop using cluster bombs that kill and maim civilians."<sup>30</sup> Benn argued that cluster bombs were "essentially equivalent to landmines", which were banned by the 1999 Ottawa Treaty. He complained that their high failure rate and untargeted use around the world meant that they have a very serious humanitarian impact, pushing at the boundaries of international humanitarian law. It is difficult then to see how we can hold so prominent a position against land mines, yet somehow continue to advocate that use of cluster munitions is acceptable.

The MOD and Foreign Office made it known in the media that they disagreed with Benn's view,<sup>31</sup> but on 24 January 2007 the Foreign Affairs Committee gave the issue additional momentum, taking evidence from Tom Porteous, of Human Rights Watch who said: "Cluster munitions endanger civilians, because they leave sub-munitions over a very wide area and there are many duds among them, so even after a conflict has ended, for example in Lebanon, you will get civilian casualties" from the "duds" left behind. He also informed the committee that the UK, along

with the United States, China and Russia, was obstructing Norway's attempt to agree a treaty which would ban cluster munitions. They were arguing that the use of cluster munitions should be discussed within the framework of conventional weapons – a means (in Porteous's words) of "making sure it does not happen – at least not any time soon."<sup>32</sup> On 25 January, Margaret Beckett, the Foreign Secretary, confirmed to the House that this was Britain's negotiating position.<sup>33</sup>

But then in February the UK surprisingly supported the Norwegian proposal made at a meeting of 49 states at Oslo (which was boycotted by the US, Israel and Russia). The Oslo Declaration bound states to conclude by 2008 "a binding instrument that will...prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians". The new convention would further establish a framework for assisting the victims of cluster munitions. Signatories to the declaration undertook to deal with the problem at national level. The reversal of the government's position under parliamentary pressure was not however absolute. Cluster munitions may be either "dumb" or "smart", and the Oslo wording, "cluster munitions that cause unacceptable harm to civilians" is generally regarded as meaning the "dumb" variety. On 1 March the Conservative MP Sir John Stanley pressed the International Development minister on Britain's position at an evidence hearing of the Quadripartite Committee (a joint committee of the FAC, Defence, International Development and the then-DTI select committees

that oversees strategic export controls). Stanley asked: "Is the British Government's policy objective a total ban on cluster bombs of all types or just a ban on 'dumb' cluster bombs?" The minister replied that Britain still had "to reach a more detailed definition with allies in the Oslo process".<sup>34</sup> Two weeks later Stanley pressed Margaret Beckett on the same question at the committee. She saw a difference between cluster munitions with a greater capacity to be used in a more targeted way, or which lose their capacity perhaps after time to inflict that kind of injury [unacceptable harm to civilians], and others which do not, which having been dropped just stay there as a potential lethal weapon under all circumstances.<sup>35</sup>

Five days later, on 20 March, Des Browne, the Defence Secretary, revealed in a Written Answer that the government was withdrawing "dumb" cluster munitions from service immediately, but would retain those with "inbuilt self-destructing or self-deactivating mechanisms".<sup>36</sup>

In April the Foreign Affairs Committee urged the government to work for an international agreement to ban all cluster munitions in its report on the government's *Annual Human Rights Report 2006*. The FAC observed that "the test of whether a munition causes 'unacceptable harm to civilians' is not only the weapon's capability, but how it is used. Any bomb dropped on a civilian target may cause unacceptable harm." Consequently the FAC welcomed the

<sup>29</sup> See: <http://www.stopclustermunitions.org/news.asp?id=22>.

<sup>30</sup> *Sunday Times*, "Benn slams cluster bombs", 5 November 2006.

<sup>31</sup> *Guardian*, "Cabinet Minister calls for ban on cluster bombs", 6 November 2006.

<sup>32</sup> *Foreign Affairs Committee, Human Rights Annual Report 2006*, HC 269, 29 April 2007.

<sup>33</sup> *HC Written answers*, Col. 1947W, 25 January 2007.

<sup>34</sup> *House of Commons Committees on Strategic Export Controls (Quadripartite Committee)*, *Strategic Export Controls: 2007 Review*, HC 117, 7 August 2007.

<sup>35</sup> *Ibid.*

<sup>36</sup> *HC Debates*, col. 37WS, 20 March 2007.



government decision to attend the Oslo conference and to sign the declaration. But it asked the government to clarify which cluster munition types were to be retained in service and for how long, and enquired whether "the Government has any plans to work toward an early international agreement to ban all cluster munitions." The FAC also requested that the 2007 human rights report should include an assessment of the impact on civilians of cluster munitions. In its response the government identified the artillery round with self-destructing sub-munitions that would remain in service. As it would be retained until approximately the middle of the next decade, the government said it was not possible to work for an early international agreement to ban all cluster munitions.<sup>37</sup>

The FAC kept up the pressure. Its report *Global Security: The Middle East*, published in July 2007, stated in a discussion of the conflict in the Lebanon the previous summer that the failure rate of both "dumb" and "smart" cluster bombs could be much higher than the government's estimates of 6 per cent and 2.3 per cent respectively; as high as 30 per cent in the case of "dumb" weapons, and 10 per cent for "smart" ones. The FAC pressed the government to state whether it accepted these revised figures and if so "how it justifies continuing to permit UK armed forces to hold such munitions".

<sup>38</sup> In August the Quadripartite Committee congratulated the government on its support for a ban on "dumb" cluster bombs and its commitment to end their use, but also asked the government to

withdraw "smart" cluster bombs, provided that the forces had an operational alternative for use to against massed troops.<sup>39</sup> In September 2007 groups such as Amnesty International queried the MOD decision to reclassify one of its weapons systems, the Hydra CRV-7 to escape the ban.<sup>40</sup>

### Extraordinary rendition

Rendition – the informal, international transfer of suspects to custody – was practised by the US before 11 September 2001 but has since become a key part of its "War on Terror." In September 2006 President George W. Bush announced that the Central Intelligence Agency (CIA) has operated a network of secret intelligence centres to which terrorist suspects were taken against their will. Rendition is not defined in law but the UK government frequently describes it as the "informal transfers of individuals in a wide range of circumstances, including the transfer of terrorist suspects." The term "extraordinary rendition" is similarly not a legal definition, it simply applies to renditions, according to the FCO, "where it is alleged that there is a risk of torture or mistreatment."

<sup>41</sup> The UK position (as iterated, for instance, in the *FCO Human Rights Annual Report 2006*)<sup>42</sup> is that it does not use rendition to bring suspects to face legal proceedings in this country. But the government maintains that rendition is not necessarily unlawful and that each case should be judged on the facts.

There has been a variety of investigations into extraordinary rendition by US agencies at European level, two under the

auspices of the Council of Europe; one of which was conducted by the Secretary General of the Council of Europe, the other by the Legal Affairs and Human Rights Committee of the Council's Parliamentary Assembly.<sup>43</sup> In June 2007, the Swiss Senator Dick Marty who led this second investigation published a report stating that:

What was previously just a set of allegations is now proven: large numbers of people have been abducted from various locations across the world and transferred to countries where they have been persecuted and where it is known that torture is common practice.

Marty's report raised a specific concern about the UK's involvement. His committee had received "concurring confirmations" that US agencies have used the island of Diego Garcia – the legal responsibility of the UK – in the " 'processing' of high-value detainees." Britain had "readily accepted 'assurances' from the US authorities, denying this evidence, "without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner."<sup>44</sup>

A draft report to the European Parliament in February 2007 from a temporary committee on rendition contained further circumstantial evidence of British complicity in the practice. The report expressed "serious concern about the 170 stopovers made by CIA-operated aircraft at UK airports, which on many occasions came from or were bound for countries linked with extraordinary rendition circuits

<sup>37</sup> *Annual Report on Human Rights 2006: Response of the Secretary of State for Foreign and Commonwealth Affairs*, Cm 7127, June 2007.

<sup>38</sup> *Foreign Affairs Committee, Global Security: The Middle East*, HC 363, 25 July 2007.

<sup>39</sup> *House of Commons Committees on Strategic Export Controls (Quadripartite Committee)*, op cit.

<sup>40</sup> See: <http://www.guardian.co.uk/military/story/0,,2171521,00.html>

<sup>41</sup> [http://www.fco.gov.uk/Files/kfile/hr\\_report2006.pdf](http://www.fco.gov.uk/Files/kfile/hr_report2006.pdf)

<sup>42</sup> [http://www.fco.gov.uk/Files/kfile/hr\\_report2006.pdf](http://www.fco.gov.uk/Files/kfile/hr_report2006.pdf)

<sup>43</sup> For an overview of Council of Europe work in this area go to: <http://www.coe.int/T/E/Com/Files/Events/2006-cia/>.

<sup>44</sup> <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>.

and the transfer of detainees" and deplored "the stopovers at UK airports of aircraft which have been shown to have been used by the CIA, on other occasions, for...extraordinary renditions." The report also criticised the British government for not cooperating properly with the committee, while thanking the All-Party Parliamentary Group on Extraordinary Renditions "for its work and for providing the temporary committee delegation to London with a number of highly valuable documents." Craig Murray, the former UK Ambassador to Uzbekistan who was driven out of his post for challenging human rights abuses there, was also thanked for "his very valuable testimony" on the exchange of intelligence obtained under torture and for providing a copy of FCO legal advice on torture.<sup>45</sup>

In the UK, Liberty has argued that rendition flights would violate a variety of domestic laws covering the prohibition of torture; aiding and abetting torture and conspiracy to torture; false imprisonment; and kidnap. In June 2007 Michael Todd, Chief Constable of Manchester Police, wrote to Liberty to inform it that that there was at this stage no basis for a police inquiry. Liberty denounced the conclusion as a "whitewash."<sup>46</sup> Further exposure was given to the subject of rendition by television documentaries<sup>47</sup> and press reports.<sup>48</sup>

The FAC took evidence on rendition as part of its human rights brief. Amnesty International criticised the government for its "prevarication over the legal

status of rendition", arguing that it was illegal under domestic and international law because it bypassed judicial and administrative due process and typically involved "multiple human rights violations". Amnesty cited the UN Convention for the Protection of all Persons from Enforced Disappearance, unanimously adopted at the UN on 13 November 2006, and criticised the government for being slow to answer questions about rendition and for failing adequately to investigate the use of UK airspace and airports by CIA-chartered aircraft known to have taken part in rendition. The government should launch a thorough and independent investigation into the use of UK airspace and airports to facilitate rendition.<sup>49</sup>

In its analysis of the government's *Human Rights Annual Report 2006* the FAC stated that "it is arguable that refuelling an aircraft immediately before or after its use in a rendition amounts to facilitating rendition."<sup>50</sup> The committee recommended the government to ask the US to confirm whether aircraft used in rendition operations had called at airfields in the UK or its Overseas Territories and to "clearly state its practice."<sup>51</sup> The government replied that there was no new evidence that UK airspace or that of the Overseas Territories being used for rendition purposes and there was no need to re-state what was already a clear policy. This reply failed to address the possibility that the US statement was untrue, or to clarify the status of US aircraft or personnel passing through UK airspace on the way to or from a rendition, extraordinary or otherwise. Because committees rarely comment immediately

on government responses to their reports, the FAC did not immediately draw attention to the inadequacy of this answer.

Beyond the select committee system, an All-Party Parliamentary Group on Extraordinary Rendition, comprising more than 50 MPs and peers, held evidence sessions, produced reports and obtained significant media coverage. In May 2007 this ad-hoc committee proposed a "measure" (i.e., a set of procedures and principles) to address concerns around Britain's role, that would ensure that the rights of people being transferred were safeguarded and that the UK acted in accordance with its international and domestic obligations.<sup>52</sup> Further, there were five written PQs on "extraordinary rendition" in the Commons; and five in the Lords that tended to elicit the same basic statement of policy – that the UK would not facilitate it.<sup>53</sup> In Commons debates, there were nine references to "extraordinary rendition", and as many as 56 in the Lords. Tory MP Andrew Tyrie initiated a Westminster Hall debate on rendition, held on 26 June. In the debate Tony Baldry, a Conservative MP, referred to "the very strong suspicion that US flights are rendering prisoners through UK airspace"<sup>54</sup>; while Liberal Democrat MP Norman Lamb stated: "apart from extraordinary renditions being morally wrong, they are wholly counter-productive given the efforts of this country and others to tackle global terrorism".<sup>55</sup> In response Kim Howells, the then Minister for the Middle East, reiterated the position that "the Government have not approved and will not

45 [http://www.europarl.europa.eu/comparl/tempcom/tdip/final\\_report\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf).

46 <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2007/acpo-er-findings.shtml>.

47 BBC2-TV, "This World: Mystery Flights", May 2007; Channel 4, "Dispatches: Kidnapped to Order", June 2007.

48 See for example, Guardian, "Destination Cairo: human rights fears over CIA flights", 12 September 2007.

49 Foreign Affairs Committee, *Human Rights Annual Report 2006*, HC 269, 29 April 2007.

50 *Ibid.*

51 *Ibid.*

52 [http://www.extraordinaryrendition.org/component?option=com\\_docman/task/doc\\_details/gid,56/Itemid,27/](http://www.extraordinaryrendition.org/component?option=com_docman/task/doc_details/gid,56/Itemid,27/)

53 HC Written Answers, 11 December 2006, Col. 772W.

54 Hansard, Westminster Hall Debates, 26 June 2007, col. 25.

55 Hansard, Westminster Hall Debates, 26 June 2007, col. 37.

approve a policy of facilitating the transfer of individuals through the United Kingdom to places where there are substantial grounds to believe that they would face a real risk of torture." He refused to criticise US policy.<sup>56</sup>

The report of the Intelligence and Security Committee (ISC), when it came in July 2007, upheld the principles of intelligence cooperation and sharing with the US and found that rendition could be acceptable in principle, while criticising the government's "difficulty in establishing the facts" about rendition through UK airspace. It argued that intelligence officials should have alerted ministers sooner to changing US policy on renditions after 11 September 2001 and warned:

What the rendition programme has shown is that in what it refers to as "the war on terror" the US will take whatever action it deems necessary, within US law, to protect its national security from those it considers to pose a serious threat. Although the US may take note of UK protests and concerns, this does not appear materially to affect its strategy on rendition.<sup>57</sup>

The ISC was critical of government departments for having "such difficulty in establishing the facts from their own records in relation to requests to conduct renditions through UK airspace."<sup>58</sup> The government acknowledged the problem,<sup>59</sup> but the lack of proper record-keeping was surely a restraint on the effectiveness of the ISC inquiry and therefore undermined the

principle of government accountability. The ISC found no evidence that UK agencies were complicit in any extraordinary rendition operations, but stated that, "Where there is a real possibility of 'Rendition to Detention' to a secret facility, even if it would be for a limited time, then approval must never be given"; and also insisted that where there was a real possibility that the actions of the intelligence agencies would result in torture or mistreatment, the agencies should seek ministerial approval. In its reply, the government agreed to this shift in responsibility, but was equivocal over the ISC's recommendation that approval for rendition to a secret facility should always be refused. The response was: "The Government notes the Committee's view. The UK opposes any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law."

The ISC advanced the possibility that US flights involved in rendition had used UK airspace (though it judged that there was no evidence base for a criminal inquiry). The government stated that "there is no evidence that renditions have been conducted through the UK without our permission", and (as when it responded to the FAC) did not fully answer the question about aircraft which had already facilitated or would later facilitate rendition. The ISC detailed individual cases in which it was alleged that the UK Agencies "were involved, or complicit" in rendition. Its criticisms included those relating to the case of Binyam Mohamed al-Habashi, an Ethiopian national, who was denied political asylum in the UK in 2000, six years after first applying. He was arrested in Pakistan in April 2002, held there

and then rendered to Morocco, Kabul, and Guantanamo Bay, where he remained at the time of the report's publication. He says he was told that the Morocco authorities were working with the British security service, and that he was tortured and asked questions based on information that must have been obtained from UK sources. The ISC established that the British security service did interview him once while he was in Pakistan; and that they knew of the US plan to render him. The conclusion of the ISC was that, "There is a reasonable probability that intelligence passed to the Americans was used in al-Habashi's subsequent interrogation...it is regrettable that assurances regarding proper treatment of detainees were not sought from the Americans in this case."<sup>60</sup> The government responded "Assurances would be sought in similar circumstances now."<sup>61</sup>

## Conclusions

Parliament clearly has no influence on the government's strategic foreign policies or even on their broad sweep. It is the case that select committees, all-party groups and individual members do carry out a great deal of detailed scrutiny of lesser, but nonetheless significant aspects of policy, but there is little evidence that this amounts to much more than heckling ministers and officials rather than influencing them or in any way effectively holding them to account. We chose to examine emotive issues where the government must have been anxious not to alienate the public who are now more than ever sensitive to the effects of

<sup>56</sup> Hansard, Westminster Hall Debates, 26 June 2007, cols 44-7.

<sup>57</sup> Intelligence and Security Committee, Rendition, Cm 7171, July 2007.

<sup>58</sup> Ibid.

<sup>59</sup> Government Response to the Intelligence and Security Committee's Report on Rendition (Cm 7172, July 2007).

<sup>60</sup> Intelligence and Security Committee, Rendition, Cm 7171, July 2007.

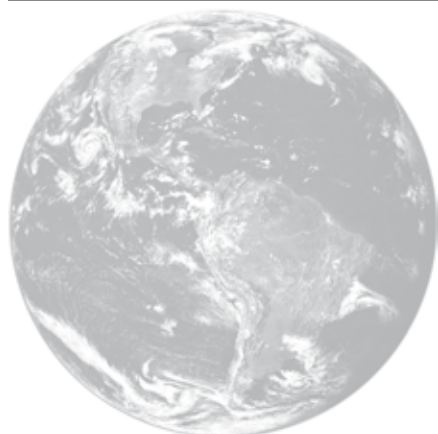
<sup>61</sup> Government Response to the Intelligence and Security Committee's Report on Rendition, Cm 7172, July 2007.

war and to human rights abuses, such as the wars in Iraq and Afghanistan, the use of cluster munitions by British forces and British complicity in the extraordinary rendition of suspects to detention and torture. On the two latter issues, parliamentarians made no headway on rendition, other than drawing attention to the issue, but some headway was made on cluster munitions. MPs and peers gained a great deal from the provision of information by NGOs and their lobbying; by high-quality investigative TV programmes establishing the extent of extraordinary rendition; and by continuous and supportive broadsheet coverage of the issues and parliamentary activity. Perhaps the most that can be said is that Parliament has been able to maintain continuous scrutiny of issues of this kind, providing a public platform on which to keep the issues alive and to oblige government to explain itself, though even here it can be evasive.

## Part 2

# European Union business

## Making EU scrutiny effective



### Introduction

A clear distinction between external and domestic policy is particularly difficult to draw in the context of UK membership of the European Union. In *Not In Our Name*, we describe how “in contrast to other areas of classical external policy, the British government’s negotiations within the EU result in a substantial body of legal texts, binding upon the British Parliament and electorate alike”<sup>1</sup>. The primary means by which Parliament can scrutinise and influence the formulation of EU law is by holding British government ministers to account for their actions in the Council of Ministers, the most important body in the European legislative process.

Current arrangements for the scrutiny of EU business, which in general are adaptations of those designed for the scrutiny of purely domestic law-making, fall short in many ways of providing an effective system suited to the particular nature of EU business. A culture of inaction and distraction among scrutiny committee members – a consequence of the system’s deficiencies – is exacerbated by the perception that scrutiny of EU affairs is less glamorous or more peripheral than that of “mainstream” legislation. In addition, *Not In Our Name* identifies a need

for greater coordination between the European Scrutiny Committee (ESC) and other committees to make better use of limited resources and valuable expertise. MPs are aware of the need for reform of the scrutiny process. In March 2005, the Select Committee on the Modernisation of the House published a report, *Scrutiny of European Business*, setting out prospective reforms.

Part 2 begins with a brief outline of the system of European scrutiny in Parliament – and the Commons in particular. The main part of the report, which seeks to underline the case for reform by considering recent examples, is split into two sections: first, *Influencing government*, looks at how scrutiny works in practice, and how and to what extent Parliament is able to exercise influence over the government; the second section, *The Best Use of Resources and Expertise*, explores how Parliament might maximise its ability to scrutinise European business by better allocation of resources and expertise. Part 2 concludes by assessing the degree to which progress has been made, or is likely to be made, towards reform since *Not in Our Name*, bearing in mind Gordon Brown’s commitment to enact constitutional changes giving Parliament greater control over foreign policy.

### How scrutiny works

At the centre of the European scrutiny system in the House of

<sup>1</sup> Burall, S., Donnelly, D., and Weir, S., *Not In Our Name: Democracy and Foreign Policy in Britain*, Politico’s, 2006, p.108.

Commons stands the European Scrutiny Committee and three specialist standing committees. A number of other groups within Parliament play important roles in the scrutiny of EU business, and accordingly have the potential to impact or duplicate the work of this system. The Foreign Affairs Committee and the Liaison Committee (which brings together all committee chairmen) are both capable of reviewing European affairs and thereby overlapping with the work of the European Scrutiny Committee. Departmental select committees, each of whose primary role is to scrutinise domestic legislation originating from the various government departments, are also able to investigate European matters within their respective areas of expertise.

The House of Lords has a system of scrutiny parallel to, and essentially entirely separate from that of the House of Commons. While it does not enjoy a democratic foundation equivalent to that of the Commons, the Lords scrutiny system is a valued source of expertise and research on European questions. In any discussion of reform of Commons scrutiny procedures, the current and future role of the Lords – its interaction with, or duplication of the work of the Commons in particular – is therefore of importance.

### **The European Scrutiny Committee and Standing Committees**

The system of European scrutiny in the House of Commons is complex and, in parts, opaque. *Not In Our Name* describes how, for example, European legislative documents deemed suitable for detailed scrutiny can disappear into a “black hole”<sup>2</sup>, within which

<sup>2</sup> Burall et al. op cit., p.118.

progress might often be delayed and from which little information is readily available.

The European Scrutiny Committee (ESC) consists of 16 MPs of all parties and defines its primary role as providing the Commons and other organisations and individuals with “opportunities to seek to influence UK ministers on EU proposals and to hold UK ministers to account for their activities in the Council of Ministers”<sup>3</sup>.

### **“Influencing ministers . . .”**

The bulk of the ESC’s work begins with the examination of “European Union documents” which usually relate to an EU proposal, such as the draft of a new piece of European legislation or a “common position” in foreign policy. But they can in fact be “any document submitted by a minister to the committee or published by one of the EU Institutions on ‘European Union matters.’”<sup>4</sup> The ESC examines approximately 1,000 documents a year (together with, in each case, an explanatory memorandum from the government which constitutes its evidence to Parliament), ruling whether each proposal or statement is of “political or legal importance”, or holding some for further consideration, in anticipation of clarifying documents or evidence. Those which are *not* deemed important or controversial are automatically cleared, and for these documents the scrutiny process ends immediately. Those documents which *are* deemed important (approximately one half of all those examined) may be referred for a second stage of debate.

The second stage of debate

<sup>3</sup> European Scrutiny Committee, *The European Scrutiny Committee in the House of Commons*, p.4. (<http://www.parliament.uk/documents/upload/TheEuroScrutinySystemintheHoC.pdf>)

<sup>4</sup> House of Commons Standing Order No.143.-(1).

ordinarily takes place in one of three “specialist” European *Standing Committees*, members of each having been selected according to their expertise in that committee’s policy areas. In considering in detail documents of political or legal importance, the standing committee has the right to receive oral evidence from a minister from the relevant department, after which a *motion* on the document (or documents) is adopted. The scrutiny process then culminates in the formal adoption of a motion by the House of Commons. Very occasionally, for items deemed by the European Scrutiny Committee to be of particular importance, this motion will follow a debate on the floor of the House rather than in a standing committee. Approximately 1.5% of “second-stage” scrutiny is conducted “on the floor of the House”, corresponding to one such debate every six weeks.<sup>5</sup>

The ESC also undertakes “non-legislative” scrutiny that does not have the same structured process nor gives rise to any parliamentary motion as an “end product”. For example, the Foreign Secretary or Europe Minister appears before the ESC prior to a European Council meeting to answer questions on the government’s position and intended approach. The committee also receives evidence from other government ministers in relation to their actions in the various configurations of the Council of Ministers. In addition, the committee takes oral evidence on “cross-cutting” or otherwise significant issues, in many cases as part of ad-hoc inquiries. In the 18 months until the end of 2006, the ESC held five such oral evidence sessions with

<sup>5</sup> European Scrutiny Committee, *The Work of the Committee in 2006*, HC 41-xiii, 15 March 2007, para 1. 11/760 = 1.44%; as measured from July 2005 – December 2006.

ministers on particular EU policy areas<sup>6</sup> – on, for example, the UK Presidency of the EU (where the Europe Minister appeared), the work of the European Commission (the Commissioner for Trade), and the Accession of Bulgaria and Romania (the Minister for Borders and Immigration).

### **“... and holding them to account”**

The ESC also seeks to “hold ministers to account” for actions they have taken in Council meetings. After a meeting of the Council of Ministers, a government minister always gives an account of the meeting to Parliament. This account sometimes constitutes a Written Ministerial Statement to the House (or an oral statement in the case of the Prime Minister following a European Council meeting), sometimes a letter to the European Scrutiny Committee. Significantly, the ESC is also able to call a minister before it if it considers he or she has acted contrary to prior commitments given in pre-Council scrutiny. Though the ESC has no formal power to “discipline” ministers or overturn actions with which it takes issue, it is of potential political embarrassment to be charged with disregarding the scrutiny of Parliament. One particular rule upon which the committee can rely when calling ministers to account is the Scrutiny Reserve Resolution, adopted by the House of Commons in 1998, which stipulates the need for scrutiny on a particular proposal to be *complete* before a minister may act upon it at the European level.

As *Not In Our Name* reports, this Scrutiny Reserve can be over-ridden for “special reasons”. In the year from July 2005 to the

end of June 2006, this occurred on 31 occasions.<sup>7</sup> When it is over-ridden, the minister must give these reasons as soon as possible to the ESC. On 28 March 2007, the ESC heard evidence from Joan Ryan MP, then Parliamentary Under-secretary of State at the Home Office, who was asked to explain why she had “agreed to a measure in the Council just days before it was due to be debated in a European Standing Committee.”

<sup>8</sup> The measure was a general approach to a draft Framework Decision on the application of “mutual recognition” to judgments in criminal matters imposing custodial sentences, something of potentially significant impact. Ms Ryan disputed that the Scrutiny Reserve had been over-ridden in that particular case, but she still faced robust questioning, particularly on why she had agreed to this “general approach” prior to appearing before the ESC when three separate letters from the ESC chairman had made clear that such action would be considered a breach of the Scrutiny Reserve. Ms Ryan insisted nonetheless that the Home Office had the “highest regard for the scrutiny process”.

### **The role of departmental select committees**

The remit of the Foreign Affairs Committee (FAC) extends across all areas of foreign affairs. It has a role analogous to that employed by the European Scrutiny Committee in its “non-legislative” capacity, as described above; holding independent inquiries on significant documents or on broader, “cross-cutting” issues. The FAC considers EU matters under the remit of a broad inquiry,

<sup>7</sup> *Ibid.*, para 20.

<sup>8</sup> *European Scrutiny Committee, Draft Council Framework Decision on the Transfer of Prisoners: Parliamentary Scrutiny Process, HC 442-i, 28 March 2007. Uncorrected evidence.*

ongoing since 1998, entitled *Developments in the European Union*. Periodically, the FAC will publish a report under this title exploring a wide range of EU-related questions, such as it did in July 2006. Equally significantly, it hears evidence from the Foreign Secretary as a matter of course before European Council meetings. Other departmental select committees periodically conduct equivalent EU-related inquiries; the Home Affairs Committee for example published in June 2007 a report into *Justice and Home Affairs Issues at EU Level*. In this appraisal, we question the value of the FAC and other departmental select committees having roles within European scrutiny that overlap with those of the European Scrutiny Committee.

### **House of Commons Liaison Committee**

The Liaison Committee considers general matters relating to the work of select committees, including the selection of committee reports for debate in the House. In addition it hears evidence from the Prime Minister on matters of public policy twice a year, when each committee chairman is able to question the Prime Minister directly. Michael Connarty, the ESC chairman, was for example able to ask Mr Blair in February 2007 about the EU’s constitutional “impasse” still then persisting after the French and Dutch referendums had rejected the European Constitutional Treaty. There is naturally some overlap between matters discussed by the committee meetings and those of real relevance to individual select committees. Such overlap does not amount to a “duplication” of a select committee’s work, but can indeed have real value. The

<sup>6</sup> *Ibid.*, Table 1.

ESC chairman alluded to the role of the Liaison Committee as an actor for coordination between select committees in the 28 March meeting with Joan Ryan MP, described above:

I would hope ... that in the new spirit that we have with the Liaison Committee ... that any of these arrangements that are talked about will in fact be transmitted to the Home Affairs Select Committee.<sup>9</sup>

### House of Lords EU Committee

The House of Lords EU Committee mirrors that of the European Scrutiny Committee in the Commons. Like the ESC, it sifts through “incoming” European documents, referring to its specialist sub-committees those it considers merit closer attention. It regularly takes evidence from ministers on Council meetings and other topics of interest, and benefits from the Scrutiny Reserve Resolution. The EU Committee’s work differs from the ESC in key ways, however. First, unlike the ESC, the EU Committee assesses the *merit* of a document in addition to its *importance*. Second, the Lords EU Committee relies on *seven* specialist sub-committees. They have narrower remits than their Commons equivalents (by virtue of their greater number). Their members are, in general, more expert and more inclined and able to carry out in-depth, “cross-cutting” inquiries of real quality and generally have fewer competing commitments for their time than their colleagues in the Commons. The EU Committee is therefore able to conduct more inquiries than its Commons counterpart and the resulting reports are held in great regard in the UK and abroad.

The Lords EU Committee is

less well-equipped to sift through European documents than the ESC. Peers have a less support from researchers at this stage of scrutiny than their Commons counterpart, with some feeling personally overwhelmed by the sheer volume of technical documents passing through the system.<sup>10</sup> Legislative oversight of this type is in any case arguably more legitimately exercised in the House of Commons. In Part 2 we will argue that a clearer division of labour between the ESC and the EU Committee along the lines of “legislative” and “non-legislative” scrutiny respectively would benefit both committees and improve the overall use of parliamentary resources in European scrutiny.

### “influencing” Government: the case for reform

All MPs are able to contribute to European scrutiny, for example, by taking part in standing committee meetings (all MPs are entitled to attend), and by voting (or, very occasionally, speaking) in the House of Commons on EU-related motions. There is, in addition, the opportunity for MPs to question the Prime Minister directly on European issues, should they wish, at Prime Minister’s Questions, though such short debate as might result is invariably lacking in detail. However, for the most substantive parts of scrutiny, the House of Commons is “represented” by the members of the European Scrutiny Committee and its three specialist standing committees. We now consider how far Parliament is able, through this scrutiny process, to influence government’s actions within the European sphere. The next section looks at the scrutiny of legislative documents, in which the standing committees play a key role, and from which parliamentary

motions result. The second section concentrates on the ESC’s non-legislative scrutiny and particularly its questioning of government ministers before Council meetings. Both sections conclude with recommendations to enhance the role of Parliament.

## 1. Scrutiny of legislative documents

The ESC’s role in filtering documents on the basis of their legal or political importance is clearly crucial, but it is in the standing committees, to which “important” documents are referred, that the more detailed scrutiny supposedly occurs. As noted above, however, documents at this second stage of scrutiny all too often disappear into a “black hole”, a sign of an opaque process which rarely gives rise to a robust outcome.

Standing committee meetings ordinarily involve the detailed questioning of a minister from the government department within the remit of which the document falls. Culminating in the adoption of a motion by the standing committee. Though the motion is put by the minister, the committee may amend it, thereby taking a position different to that suggested by the government. Indeed, effective scrutiny logically demands that Parliament can by such means formally express its discontent or disagreement with the position of the government. However, throughout the 2006-07 parliamentary session, on no occasion did a European Standing Committee adopt a motion different to that tabled by the government minister responsible. The membership of the standing committees, like the European Scrutiny Committee, reflects the proportions of political parties in the House of Commons, and all

<sup>9</sup> *Ibid.*, Q. 49.

<sup>10</sup> *Burall et al.*, p.120.



are subject to the party "whip". This of itself is one powerful consideration undermining the vigour with which the scrutiny of European matters is conducted.

However, a further feature of the scrutiny system undermines – arguably fatally – any incentive that a standing committee member from the governing party might otherwise have for voting to amend a minister's motion: the government can substitute its own motion for that adopted by the standing committee (after questioning and deliberation) and it is on this motion that the House of Commons votes as a whole without a debate being held. As a consequence, the scrutiny carried out in standing committee and the final motion adopted by the House are essentially independent of one another. For an MP to defy the party whip is usually politically costly, but to do so in standing committee to amend a government motion would also be utterly futile. The description of the scrutiny process as a "rubber stamp" seems particularly apt when applied to a system in which the government can put a motion to the House at the conclusion of the process which needs pay no heed to the process itself.

Thus that no European Standing Committees has, in the last parliamentary session, amended a government motion should not be surprising. Nonetheless, the government has in this same period taken advantage of being able to put a more positive motion to the Commons than to the standing committee on the basis of which substantive scrutiny took place. EU Document 11510/06, relating to maritime policy, was scrutinised in standing committee on 19 March, where the following motion was adopted:

Resolved,  
That this committee takes note of EU Document 11510/06 relating to Maritime Policy.

However, when the motion on this document was put to the House of Commons eight days later, it had added to the motion that the House

...endorses the government's approach to discussions on these documents.

This example shows how the standing committee was dissuaded from making any judgment on the government's approach to the document in question by an entirely neutral motion, while the House of Commons was asked to approve a motion expressing general support. The lack of any debate or a division of the House on such motions derived – only nominally, it would appear – from the scrutiny process, only underlines the need for reform. Such episodes illustrates vividly the ease with which scrutiny can be emasculated by government.

As a rule, the motions put by the government to standing committees or to the House of Commons as a whole are anyway framed in very general language, thereby minimising the degree to which a minister's subsequent actions are constrained. Over the course of the 2006-07 parliamentary session, only a very small minority of the 30 or so documents which underwent "second-stage" scrutiny resulted in motions which could be said seriously to constrain a minister's course of action in the Council of Ministers. Perhaps ironically, the most constraining such mandate was of the form "[Parliament] approves of the government's intention to vote for the adoption

of this proposal, provided it makes [a certain] suitable provision."

<sup>11</sup>. A minister voting against this proposal might expect to be called before the ESC to explain why he or she had done so.

On the rare occasion that a document's scrutiny is carried out on the floor of the House, as opposed to a standing committee, the expressions of parliamentarians are sometimes telling of a rarely-articulated but widely-felt frustration with the system of scrutiny. In October 2006, for example, the European Scrutiny Committee referred a number of Commission documents concerned with Justice and Home Affairs in the EU for debate in the House. Of particular sensitivity were proposals to make some JHA policy areas subject to Qualified Majority Voting (as opposed to each country wielding a veto), while also extending the powers of the European Parliament and European Court of Justice in these areas. The ESC argued that "on a matter of such importance it is vital that there should be no doubt or equivocation about the government's position". In the event, the tabled motion merely asked the House to "support the government's position that this is not the right time to focus on institutional change".

MPs from all parties expressed dissatisfaction at the limited capacity of the House to influence or clarify the government's position, the motion itself being described as being tabled in a "rather bland and meaningless fashion", and being "no more than some fairly woolly words"<sup>12</sup>. Labour MP Wayne David felt the need to stress that "we must be clear about where Parliament stands".

<sup>11</sup> European Standing Committee, *Conservation of the European Eel*, 23 April 2007.

<sup>12</sup> Edward Garnier MP (Con), *Commons Debates*, cols.1257-63, 30 November 2006.

## Recommendations

The most obvious weakness of the current scrutiny system is the extent to which the government holding a majority in the House of Commons controls the parliamentary process whereby its activities in the European Union are scrutinised. To some extent this problem is inherent in the UK's constitutional arrangements that give the executive a wide measure of discretionary power. Given the complexity of the European Union's legislative arrangements, in particular the large number of its institutional actors, British governments will always seek to retain some significant measure of flexibility in European negotiations. It must, however, be doubtful whether Parliament's legitimate role in European scrutiny is adequately recognised by the present arrangements.

We recommend therefore that there should be a more systematic relationship between the findings of the European standing committees and the final motion adopted *without debate* in the Commons, which concludes the scrutiny process. A number of possibilities present themselves: the government could undertake always to present to the House the motion adopted by the relevant standing committee, or to offer a choice of motions, always including the motion of the standing committee, or at least to publicise the committee's view when it differs from that of the government.

One entirely viable possibility was proposed by the European Scrutiny Committee itself in a note of February 2005 to the Modernisation Committee:

[I]f the government's motion is amended in the committee, the amended motion (rather

than the government's original motion) should be put to the House; the government could then propose an amendment to restore the original wording (or to change it in some other way).<sup>13</sup>

Further, as described above,

Such a procedure would probably be invoked only rarely, given that the government has a majority on the standing committees.<sup>14</sup>

The scrutiny system is an instrument of Parliament, not the government, and the ESC members, as Parliament's chosen expert representatives, must control it. Reform of the type discussed above would empower members of the standing committees in their role as parliamentary representatives, and bring greater attention to the European scrutiny process. Improving the culture of European legislative scrutiny is a theme explored further below (see section 3).

## 2. Scrutiny of non-legislative matters

A good proportion of scrutiny of the government's policies in the EU and EU affairs generally – that is, scrutiny that is not based on the assessment of legislative documents – does not give rise to a motion or formal vote. For scrutiny of this type, it is the evidence given by ministers (and other experts and interested parties) to standing committees that constitutes the outcome as well as the process of scrutiny. This section discusses how the scrutiny system oversees and seeks to influence ministers' actions in the

<sup>13</sup> *Select Committee on Modernisation of the House of Commons, Written Evidence, Note from the Clerk of the European Scrutiny Committee, 2 February 2005, para 1.* (<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmodern/465/465we28.htm>)

<sup>14</sup> *Ibid*, para 2.

absence of a formal motion.

*Not In Our Name* describes how the parliaments of some EU countries exercise genuine *control* over the actions of their governments in the Council of Ministers – a degree of assertive influence sufficient to be termed “mandating”. The Nordic member states in particular exercise a high degree of parliamentary oversight of a minister's negotiations in the Council of Ministers. Finland for example has a well-developed system of “soft mandating” that is “based on a continued dialogue between government and Parliament”<sup>15</sup>. If employed by all 27 member states of the Union, mandating of this kind would render effective negotiation within the Council of Ministers extremely difficult, if not impossible. While recognising this danger, we believe nevertheless that British parliamentary scrutiny could incorporate certain features of the Finnish system to strengthen the hand of Parliament *vis-à-vis* the government, and in *Not in Our Name* we recommended that the relevant committees should “develop a mandating process for the United Kingdom in advance of negotiations”.

The unsatisfactory nature of present arrangements was illustrated in a particularly striking fashion by an exchange on 7 June 2007 between the ESC and the then Foreign Secretary, Margaret Beckett. She appeared before the committee to give evidence on the forthcoming meeting of heads of state and government to be held on 21-22 June that was to address in detail the question of institutional reform in the wake of the failed Constitutional Treaty. (In the event, the European Council meeting agreed a successor to the Constitutional Treaty – the “Reform Treaty”.)

<sup>15</sup> *Burall et al*, pp.129-130.

The committee chairman, Michael Connarty MP described the committee's questions as "designed to elicit the government's position on key issues". He went on to articulate the committee's concerns about "the way in which, despite an avowed welcome for 'parliamentary contributions to the debate', the government has resisted every request from the committee for a statement of its views on what sort of changes there should be to the present [EU] institutional arrangements..."<sup>16</sup> Mrs Beckett's contributions throughout the lengthy examination that followed were described by Simon Carr in the *Independent*:

In the matter of the amending treaty that will replace the constitution she [Mrs Beckett] wouldn't say anything. Why? Because there is nothing to be said. Even if there was something that could be said, there was nothing to say it about. The whole thing is a 'frozen debate'. There is in fact, 'no debate'. There are 'no discussions' about it. She can't comment on proposals to leave things in or out of any treaty because they don't exist: 'Nothing has been proposed'.<sup>17</sup>

Simon Carr's piece accurately describes the nature of Mrs Beckett's repeated frustration of the ESC's attempts to "elicit the government's position on key issues" to any degree at all. She did however (presumably unwittingly) articulate very clearly the British government's approach to European treaty negotiations.

One of the conclusions that I have come to is that the less

<sup>16</sup> European Scrutiny Committee, *Institutional Reform*, HC 640-i, 7 June 2007, Q.1. Uncorrected evidence.

<sup>17</sup> Simon Carr, *The Independent*, 12 June 2007, "Mrs Beckett has nothing interesting to say – again". Copyright, Independent News and Media Ltd.

I say about what we might in principle accept and what we might not, the more I preserve the maximum amount of negotiating space to resist anything that I think is not in Britain's national interest. I appreciate that is unsatisfactory for the committee . . . [T]he more I say . . . the more I am giving away my negotiating room, which I am always deeply reluctant to do.<sup>18</sup>

Mrs Beckett's remarks were illuminating in two particular respects. First, it was plain from her choice of language that for the British government EU treaty negotiations are almost exclusively conceived of as exercises to "resist" suggestions from others supposedly damaging to British interests. Second, she saw a chasm of incompatibility between her own aspiration to "defend British interests" in the European Union and the committee's desire to elicit meaningful responses from her, a chasm which she made no serious effort to bridge.

### Recommendations

Where multi-faceted and sensitive negotiations are reaching their resolution, as in the example above, it is clear – and the European Scrutiny Committee will understand – that the government should not be expected to disclose every detail of its negotiating strategy. In addition, in certain circumstances, the government might be justified in not describing the preliminary negotiating positions of *other* member states so as not to undermine a European common position, once reached. But the committee can reasonably expect the government to give at least *some* evidence; evidence which outlines the general

<sup>18</sup> European Scrutiny Committee, *Institutional Reform*, HC 640-i, 7 June 2007, Q.28. Uncorrected evidence.

approach of the government and allows parliamentarians to give their opinions on it. The present situation, whereby the government is given the freedom to "close down" scrutiny of its position, according solely to its own assessment, is clearly unsatisfactory.

The European Scrutiny Committee must be better able to assert itself in its scrutiny of government ministers on occasions such as that described above. It should not be for the ESC to rely on the "good faith" or the openness of government ministers in their disclosures to committee meetings, but rather that, conversely, ministers should trust that their actions will be looked upon with fairness by parliamentarians (a majority of whom will anyway be members of the governing party). The Finnish example is helpful in this connection. There, it is incumbent on the minister to provide to Finnish parliamentarians his or her government's intended positions on all subjects on the agenda for a forthcoming meeting. If any of these positions, in the event, are resiled from, then the minister must explain to the parliamentary scrutiny committee the discrepancy between the expected and final positions.

Thus in June 2007, Mrs Beckett would have been obliged to present the government's *intended position*, at least on the broad aspects of the agenda to be discussed at the European Council meeting – not by describing the government's detailed negotiating tactics, but rather by indicating a range of outcomes which might emerge from the Council and what the government's initial attitude might be to the various outcomes within this spectrum. Mrs Beckett's conduct in June 2007 was the polar opposite of

any such transparency. Her denial that any negotiations had taken place (she later made a similar claim before the Foreign Affairs Committee just two days before the Council meeting) was at best disingenuous. Moreover, in the first half of 2007, the government had apparently made repeated use of its existing right to deny Parliament sight of relevant documents. Again from the same ESC meeting, according to the chairman:

[T]he government has resisted every request from the committee for a statement of its views on what sort of changes there should be to the present institutional arrangements or for a sight of either the Berlin Declaration or the Presidency Progress Report ahead of the relevant European Council meeting . . . Instead of information from the government, sadly we have had to rely upon joint press conferences given by the Prime Minister and his Dutch counterpart after their discussions in London in April and media speculation, which is never helpful.<sup>19</sup>

If the ESC continues to be reliant upon the government's "generosity" for information of central importance to its work, then it should perhaps be at liberty itself to define the aspects on which the government is obliged to state its intended position.

In the negotiations preceding the European Council, the government clearly believed that a satisfactory negotiating outcome would only be possible if these negotiations were pursued in secret. That no doubt explains, if it does not excuse, the obfuscatory and unhelpful nature of the Foreign Secretary's responses

to the Scrutiny Committee's reasonable questions and requests. We very much hope that this episode, which ironically may have hindered rather than helped the government's attempts to win public support for its European policy, will encourage the ESC and other relevant committees to be more persistent in their quest for "intended outcomes" from ministers, which can then be assessed against achieved results; and more persistent in their quest for access to documents which will inform and improve their ability to scrutinise the government's European choices. A scrutiny system in which government ministers were obliged to present to the ESC a range of possible and intended outcomes would strengthen parliamentary oversight to the extent that it could be said to constitute a British form of "soft mandating".

Change along these lines would bring the scrutiny of non-legislative European issues more into line with those relating to normal European legislative scrutiny, where the government's performance is *ex post* measured against an agreed benchmark. Equally importantly, however, such reform would bring into parliamentary debate issues of great importance which could otherwise be quite easily denied parliamentary scrutiny. The quality of the democratic process would be enhanced.

With a greater quality of scrutiny should come an improved *culture* of scrutiny. At present, debates in the House of Commons in general receive a great deal more attention – from fellow parliamentarians and the media – than do evidence sessions in the ESC, which are often regarded as being somewhat peripheral to the political life of the House. As a result, in trying to elicit the

position of the government, the ESC must often rely more on the good faith of the ministers appearing before it than on the political pressure which it can normally bring to bear. The more central the European scrutiny system is to parliamentary business as a whole, the more government ministers will wish to be seen to be acting within it with seriousness and good faith.

Indeed, the ESC in October 2007 proved itself more than able to bring a level of media and political scrutiny far beyond what would ordinarily be expected to bear on the government's actions. On 9 October, the committee published a report that compared the Constitutional and Reform Treaties, pronouncing them to be "substantially equivalent". The wide press coverage the ESC received, and the palpable discomfort it caused the government, demonstrate at least the latent potential of the ESC to play a wider and more consequential role in the scrutiny of non-legislative EU business. The committee undoubtedly benefited from the wider political salience of the issue in question; whether or not the ratification of the Reform Treaty should require a referendum. Nevertheless, the following week, Michael Connarty appeared on Radio 4's flagship *Today* programme and BB2 TV's *Newsnight* to discuss the issue, while the defence by the Foreign Secretary, David Miliband, of the government's position before the ESC attracted widespread national media coverage.

Politically high-profile and controversial issues will always represent the best opportunities for the scrutiny system to make its voice heard beyond its own committees' meetings. In this latest example, the ESC capitalised on this opportunity

<sup>19</sup> *Ibid.* Q.1.

by making a bold pronouncement in its report, and reinforcing its message through bullish performances in the media and in the questioning of the Foreign Secretary.

Effective scrutiny however requires much more than the ability of select committees to project their voices widely, only as political currents permit. An improved culture of scrutiny – among parliamentarians and the media – for *all* European issues – high or low-profile, media-friendly or otherwise – is as necessary as ever, and it can only come about as a result of an act of corporate political will by the House of Commons. But it will also need to be reinforced by a number of administrative and technical changes, set out below.

### **3. Better use of resources and expertise**

An improved culture of scrutiny will also need to be reinforced by a number of administrative and technical changes, designed to make a better use of available resources and the expertise of actors in the scrutiny system.

#### **a) Cross-cutting inquiries – A broader role for the House of Lords?**

In addition to filtering EU legislative documents and questioning ministers before (and after) their attendance at Council meetings – “responsive’ scrutiny” – the ESC also carries out detailed examinations of European issues of broad significance; so-called “cross-cutting” issues. When the ESC conducts such inquiries it typically invites ministers, expert parties and stakeholders to give evidence, before compiling and publishing a final report. *Not In Our Name* describes how the ESC carried out inquiries into the Convention

on the Future of Europe and the EU Constitutional Treaty, issues on which ESC members needed a level of expertise which might well not have resulted from their involvement in normal parliamentary business alone.

It is right that the ESC should have the benefit of inquiries of this type outside the normal flow of scrutiny work. Committee members particularly, and all other MPs besides, should be given the opportunity to familiarise themselves with and decide upon key issues which might not otherwise be explored. Such inquiries can only raise the general level of parliamentary expertise on European matters.

A second, and compelling, argument for the existence of such inquiries is that they can address the general philosophical and political concerns of individual committee members; concerns which might otherwise find expression in meetings whose focus should be on the specific legislative proposal in hand or the forthcoming Council meeting. The limited resources of European scrutiny are not best served by committee meetings distracted by the sometimes repetitive discussions of general concerns relating to the UK’s role in the European Union which should be addressed elsewhere. The ESC’s conclusions to a cross-cutting report it released in July 2007 on Article 308 EC, acknowledge this phenomenon: “Having fully set out in this Report the arguments for and against the various approaches to interpretation, we shall not need to rehearse them at length in reports on new proposals. . .”<sup>20</sup> (Article 308 EC is significant in that it is capable of providing a legal basis for the creation of new European law

<sup>20</sup> *European Scrutiny Committee, Article 308 of the EC Treaty, HC 41-xxix, 13 July 2007, para 27.*

where no other specific legal base is applicable; the ESC obviously has a legitimate interest in clarifying its precise operation). Thus in theory cross-cutting inquiries represent a prudent use of resources in that they ease the pressure on other components of the scrutiny system.

However, the stress placed on the limited resources of the ESC by “normal business” means inquiries of this type are few in number. The European Scrutiny Committee has conducted only a handful of major reports beyond the weekly flow of documents in the parliamentary session 2006-07 – on, for example, the transfer of sentenced persons under the European Enforcement Order; on mobile phone roaming costs; on the Commission’s Annual Policy Strategy for 2008; and on Article 308 EC, as described above. This is to be compared with the dozen or so documents either held under scrutiny, or cleared, by the ESC *each week*, and the half-dozen or so Council meetings each month for which the ESC carries out pre-and/or post-meeting scrutiny.

At the same time, the House of Lords’ EU Committee is free to devote more time and resources to carry out many more in-depth inquiries, the reports of which are widely acknowledged to be of excellent quality. Members of the Lords EU Committee have, on average, more expertise and experience in European affairs than do their counterparts in the European Scrutiny Committee.

#### **Recommendations**

There are theoretically two ways to bring to the benefit of the European Scrutiny Committee a greater number of high-quality cross-cutting inquiries. Additional resources would allow the ESC to carry out more inquiries into such issues, thereby enhancing the general level of knowledge

among MPs and the quality of scrutiny. Arguably the best use of such increased resources would be the increased provision of expert support staff to aid with the production of in-depth reports and to answer questions of fact which might otherwise take up much time in the committee's regular meetings. All MPs would presumably welcome the allocation of greater resources to strengthen the scrutiny of European business.

An alternative, and more radical option for the better use of resources presents itself. Peers on the EU Committee in the Lords have greater experience, expertise and, sometimes, interest in European affairs than MPs on the ESC. The Lords committee also has seven specialised select committees reporting to it (instead of the ESC's three) and it produces reports of very high standard. It focuses comparatively little of its energies on filtering legislative documents. The respective "specialities" of the two committees correspond to the natural roles of their two Houses – the Commons as a democratic overseer of policy and related developments, the Lords as a source of expertise, in which everyday legislative and political business is not the central preoccupation.

In this context, the Commons cannot be said to be making the best use of its resources by carrying out inquiries which duplicate the excellent work carried out in the House of Lords. Both Houses conducted reports into the Commission's 2008 Annual Policy Strategy, but to what end? If the House of Commons ESC can devote greater attention to legislative business and make use of reports of at least equivalent quality produced by its counterpart in the Lords, then surely it should do so?

The historic separation of the two Houses and the difference between their respective underlying political cultures should not in themselves be barriers to the better use of Parliament's resources and the better scrutiny of EU business. It should be possible for a system of interaction to be established between the scrutiny systems of the two Houses, which, at present, are effectively separate. On the few occasions when the Houses' respective European scrutiny committees do cooperate – most notably through the regular meetings they jointly hold with UK MEPs – the result is a "valuable way of exchanging views and information", according to the European Scrutiny Committee.<sup>21</sup>

If the European Scrutiny Committee were to cease its inquiries into cross-cutting issues, and to concede entirely this function to the House of Lords EU Committee (the Lords perhaps conceding its sifting of legislative documents), valuable resources would be saved, and in principle the ESC would have for reference a greater and more extensive resource than is currently the case; the Lords committee carries out cross-cutting inquiries approximately weekly, as opposed to its own annual handful. In the unlikely event that the ESC wished to further its expertise on a subject into which the Lords EU Committee had not, or did not intend to inquire, it might for example have the means to encourage the Lords EU Committee to conduct such an inquiry. Similarly, the ESC might be empowered to invite a Lords inquiry to focus on aspects of a subject which it deemed to be of particular relevance to its work. It is in any case difficult to envisage

<sup>21</sup> European Scrutiny Committee, *The Work of the Committee in 2006*, HC 41-xiii, 15 March 2007, para 29.

that a satisfactory arrangement between the two Houses' committees could not be found were the underlying rationale accepted and the will for reform mobilised.

Such reforms may be anathema to those who take a strict view of the separation of the House of Commons and Lords, but it would be foolhardy not to consider that which might be of real practical benefit to Parliament. Indeed, the Modernisation Committee's 2005 report suggested a far greater degree of interaction between the two scrutiny systems: the establishment of a joint Parliamentary European Committee which would meet quarterly, as well as on an *ad hoc* basis "as the need arose". *Not In Our Name* warned that such a committee might strain too greatly the "underlying differences in political culture between non-elected peers and elected MPs". Indeed, it would also result in a far greater degree of interaction than that resulting from the proposal described above, which essentially requires only a reliable and effective means of coordination between the Lords EU Committee and the ESC. With wide-scale reform of the House of Lords on the political agenda, it may be a good time to consider how the two Houses could work constructively together in ways which did not undermine – indeed may instead reinforce – their relative political roles.

## **b) Main-streaming European affairs**

The European Scrutiny Committee, like other House of Commons scrutiny committees, must assess a large number of documents which fall within its remit over the widest range of departmental spheres of interest. As we pointed out above, the

domestic impact of European legislation is felt for example in agriculture, in environmental affairs, in economic and social affairs. Whereas other departmental select committees are staffed by MPs who can bring expertise to bear on all documents which they consider, the ESC must judge the legal and political importance of EU documents from the many different departmental areas. Most ESC members – regardless of their knowledge of European affairs – cannot, for any given document, be experts at all.

The current system does acknowledge the anomalous position in which European Scrutiny Committee members find themselves. The ESC is unique in having the ability to call upon all other departmental committees for evidence. However, pressures of time and resources limit the use the ESC can realistically make of this power. In 2006, the committee sought opinions from departmental select committees on only three occasions.<sup>22</sup>

The above argument applies equally to the three standing committees which look in detail at those questions deemed by the ESC to be of legal or political importance. These committees, by virtue of their being only three, have, for *specialist* committees, departmental remit far broader than those of departmental select committees. Standing Committee B, for example, considers documents whose subject matter falls within the policy areas of the Treasury, the Department of Work and Pensions, the FCO, the Department for International Development, the Home Office, or the Ministry of Justice, along with “any matters not otherwise allocated”.<sup>23</sup> It should be of

<sup>22</sup> *Ibid.* para 22.

<sup>23</sup> *European Scrutiny Committee, A short guide for Members of Parliament, June 2005, p.13*

no surprise if attendance in committee meetings suffers as a result – particularly since only three of each committee’s 13 members are required to constitute a quorum.

### Recommendations

“Main-streaming” is a reform which would address the unrealistic demands placed upon participants of the European scrutiny system, make better use of Parliament’s resources, and bring European scrutiny nearer to the centre of political life in the Commons. We continue to take the view, expressed in *Not In Our Name*, that EU legislation should be scrutinised as if it were a part of the “main stream” of domestic legislation. At present, the ESC scrutinises agricultural laws of EU origin just as the Committee for the Environment, Food and Rural Affairs does for agricultural laws of domestic origin. Yet, in practical terms, both kinds of laws apply in the same way. Departmental committees however, enjoy a far greater concentration of expertise in this sector. Why should a separate system of European scrutiny exist to carry out the work which a departmental system of scrutiny is better equipped to do?

As things stand, departmental select committees do on occasion involve themselves in the scrutiny of important aspects of relevant European business. In December 2006, the European and Home Affairs scrutiny committees held a joint evidence session on the accession of Bulgaria and Romania to the EU. When Home Office Minister Joan Ryan appeared before the ESC in March 2007, to be taken to task on the government’s alleged breach of the Scrutiny Reserve, the session ended with expressions from the minister and the committee chairman that scrutiny on the

issue would be continued by the Home Affairs Select Committee.

<sup>24</sup> The Home Affairs committee did indeed consider the issue in question – the proposed transfer of sentenced persons between member states – in its wide-ranging and in-depth report, *Justice and Home Affairs Issues at the EU Level*, published in June 2007. In fact, this report held up the legislative deadlock over the issue as suggestive of the need for decision-making reform in the EU’s third pillar.<sup>25</sup>

The Home Affairs Committee is clearly conscious of the centrality of European questions to its work, inviting, in its JHA report, the ESC to “consider making more frequent use of its existing power to request opinions from [departmental select committees] on significant issues” ; and the Home Office to “undertake to consult us directly when major developments in the JHA field are at a formative stage”.<sup>26</sup> In this vein, it calls explicitly for “greater efforts to ‘mainstream’ EU scrutiny”, regretting the lack of progress on the proposals outlined in the Modernisation Committee’s 2005 report, and describing how it has itself already “taken such steps as are open to us” to enact change in this direction.<sup>27</sup>

However effective the communication and coordination between the two committees might be though, clarity, continuity and the best use of resources and expertise imply that such scrutiny would be best undertaken in a single crucible. Departmental select committees, for the reasons discussed, seem best placed to inherit sole responsibility for

<sup>24</sup> *European Scrutiny Committee, Draft Council Framework Decision on the Transfer of Prisoners: Parliamentary Scrutiny Process, HC 442-i, 28 March 2007, Q.49. Uncorrected evidence.*

<sup>25</sup> *Home Affairs Committee, Justice and Home Affairs Issues at European Union Level, HC 76-I, 5 June 2007, para 326.*

<sup>26</sup> *Ibid.*, paras 355, 356.

<sup>27</sup> *Ibid.*, paras 355, 358.

legislative scrutiny.

Just as main-streaming would divert the flow of EU-related documents into the various departmental select committees, so by the same rationale, these select committees would be best placed to hear evidence from that department's minister before his or her appearance at an EU Council of Ministers meeting. Both legislative and non-legislative business could be main-streamed in this way. For example, both the ESC and Foreign Affairs Committee (FAC) hear evidence Europe Minister or Foreign Secretary in relation to meetings of the European Council (as opposed to the Council of Ministers). Indeed, Mrs Beckett's performance before the ESC described above was virtually duplicated when she appeared before the FAC 12 days later.<sup>28</sup> Such a duplication of roles does not represent the best use of resources. The FAC might be in any case the better equipped of the two committees to carry out this kind of scrutiny.

Bringing European scrutiny into the main stream of domestic scrutiny would have the benefit not only of better allocating the limited resources of the Commons and ensuring a higher quality of focused debate. It would also bring European Union business into the main stream of MPs' consciousness. For many MPs, the EU remains an alien body from which legal proposals "emanate". As European legislation often has an impact which is domestic in character, it would be better scrutinised if the scrutiny system catered for this. Better scrutiny would result from the acknowledgement that the European Union is a central component of the United Kingdom's democratic life. And the EU would be

elevated from being seen as a fringe issue attracting only fringe interest, to one of importance to all MPs whatever their area of expertise. The *culture* of European scrutiny would improve greatly in consequence.

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<sup>28</sup> Foreign Affairs Committee, *Developments in the European Union*, HC 166-ii, 19 June 2007.



## Part 3

# Conflict and humanitarian crisis

## The responsibility to protect



BRITAIN IS VERY RARELY IN A POSITION to respond on its own to internal conflicts – genocide, ethnic cleansing and crimes against humanity in other countries – and to inter-state wars and war crimes. In the modern world, almost all responses and interventions to internal and inter-state conflicts where the UK is actively involved are multilateral and mediated through the UN Security Council (though of course regional attempts at mediation are common). However, the United Kingdom is not only a permanent member of the UN Security Council, but is also internationally respected for its approach to conflict, despite Iraq, and so has significant influence in this area of international policy. Part 3 will consider the part that the UK government has played in the United Nations, from the framing of general policy and practice to specific cases of severe internal conflict (specifically Chad, Sudan and Zimbabwe), and in international negotiations; and also the role that Parliament has sought, and should seek, in oversight of the government's policies and practice in the UN and multilateral and bilateral negotiations.

Britain is of course deeply involved in two fierce conflicts over geopolitical interests in Iraq and Afghanistan. But conflicts are overall at a historically low level. The Uppsala Conflict

Data Project<sup>1</sup> records a downward trend in all types of armed conflict from more than 50 at the peak in 1992-93 to 30 in 2004; and the Human Security Report points to a visible decline and all-time low in international (inter-state) conflicts since the early 1980s<sup>2</sup>, which is also corroborated by the data from Uppsala. Many of these conflicts are disputes over national boundaries or the division of scarce resources, often exacerbated by ethnic, religious or sectarian divides. Some current conflicts may be in abatement, but even when there is progress towards peace, a return to violence can often be sudden and swift as in, for example, the continuing cycle of conflict in the African Great Lakes region or West Africa. Thus policy responses to conflict are not just concerned with stopping or containing violence; but also involve long-term peace-building, peace-keeping, transitional justice, and post-conflict reconstruction. Such efforts are multilateral in their very essence – from neighbouring countries dealing with refugees to the international community giving support and aid for in-country peace processes. They are also by their very nature essentially unpredictable, frustrating and too often frustrated and very hard for a body like the British Parliament to get a grasp on.

<sup>1</sup> Harbom, L., and Wallensteen, P., "Armed Conflict and its international dimensions 1946-2004," in *Journal of Peace Research*, vol. 42, 2005: pp. 623-635.

<sup>2</sup> *Human Security Report, War and Peace in the 21st Century*, Human Security Centre, University of British Columbia, 2005: p. 146 ff

## The controversy over international intervention

The international community's failures to act effectively against genocide in Rwanda, or the massacre at Srebrenica, or in the crisis in Darfur, stand as eternal rebukes and reminders of its inability to prevent humanitarian tragedies around the world. But there is a constant tension between the growing view that the international community has a responsibility to act in such desperate situations and the traditional principle of state sovereignty and non-intervention in the internal affairs of states. This tension is constantly evident in the debates within the UN Security Council, which alone can sanction international intervention. Both China and Russia continue to uphold the principle of non-intervention, often bolstered by self-interested motives.

The United Nations has however attempted to address this dilemma through the emerging international legal norm known as the Responsibility to Protect (R2P). This doctrine proposes a way to deal effectively and legitimately with genocide, war crimes, ethnic cleansing and crimes against humanity. Establishing a tripartite concept of a responsibility to prevent; a responsibility to react; and a responsibility to rebuild, the doctrine seeks to build for the international community the basis for discussion of intervention by the international community on humanitarian grounds as well as giving emphasis to the importance of prevention.

The Responsibility to Protect doctrine is slowly making its way into customary international law, through such processes as incorporation in the Outcome Document of the UN's 2005 World

Summit<sup>3</sup> and subsequent use in different UN Security Council resolutions. The principles of the doctrine are laudable, and the UK has given it strong backing. However, the realities of power at the Security Council make the whole idea of international responsibility for the internal affairs of other nations a frustrating and difficult area of policy. As we note above, China and Russia, key members of the Security Council who both possess a veto on action, remain hostile to its adoption, especially where intervention is being contemplated. They are concerned not only to protect trading and other arrangements with some potential target nations, but also about the possible implications for their conduct in Chechnya and Tibet, among other places.

Nonetheless, the Responsibility to Protect represents a change in the basic understanding of the relationship between the individual and the state, emphasising the responsibilities of a state towards individuals as bearers of human rights that must be respected, protected and fulfilled.

### UK government policy

When Tony Blair came to power in 1997, Robin Cook, his first Foreign Secretary, announced that "[UK] foreign policy must have an ethical dimension".<sup>4</sup> There was an assumption that no longer would such atrocities as the genocide in Rwanda be allowed to happen as the international community stood by and watched. In 1999, Tony Blair unveiled his doctrine of "international community" in a speech in Chicago<sup>5</sup>, arguing

<sup>3</sup> 2005 World Summit Outcome, General Assembly Resolution 60/1, September 2005, paras 138 & 139.

<sup>4</sup> Robin Cook, address in the Locarno Room, Foreign and Commonwealth Office, 12 May 1997

<sup>5</sup> Tony Blair, speech to the Economic Club of Chicago, 22 April 1999.

that the international community has a responsibility to act at such times of crisis. In pursuit of this doctrine Blair led the UK into war over Kosovo and armed intervention in Sierra Leone, for which he received international accolades.

However, his pursuit of his doctrine and belief in "hard power" military interventionism in the joint invasion and damaging occupation of Iraq without a mandate from the United Nations has undermined the UK's international standing as a country acting in good faith and has proved politically divisive in domestic politics. The UK's response to conflict remains politically entwined with the unresolved Iraq occupation in both international and domestic debates and adds a further dimension to parliamentary activity. In his final evidence session with the Commons Liaison Committee in June 2007, Mike Gapes, chair of the Foreign Affairs Committee (FAC), questioned Tony Blair on his philosophy as set out in Chicago in 1999 and associated developments. He asked whether

the very deep difficulties we now have in Iraq, have actually discredited and undermined future interventions . . . You have talked about Darfur and there could be others. It is actually the case that liberal interventionism is now much harder to make because of the problems we are now experiencing in Iraq

In response, the then Prime Minister noted that "one of the odd things is that some of the people who are most opposed to Iraq are most in favour of [action in] Darfur" and emphasised the importance of being "prepared for the long haul".<sup>6</sup>

However, it is essential to distinguish between the invasion of Iraq, which was carried out

<sup>6</sup> House of Commons Liaison Committee, Minutes of Evidence, 18 June 2007.

without UN approval, and the UK's policy towards countries afflicted by internal conflict, like Sudan and the Democratic Republic of Congo, where the UK government seeks multilateral solutions. Indeed, the UK has been a long-standing supporter of the Responsibility to Protect doctrine in internal conflicts giving rise to humanitarian crises, regularly raising the issue at the Security Council<sup>7</sup> and ensuring that the doctrine was incorporated in the aforementioned summit outcome document.<sup>8</sup> Government ministers, such as John Reid,<sup>9</sup> when Secretary of State for Defence, to Hilary Benn,<sup>10</sup> as Secretary of State for International Development, have repeatedly referred in speeches at home and abroad to the need for the international community to fulfil its obligations under the Responsibility to Protect. The UK is internationally respected for its work in post-conflict situations, although it has been less effective in conflict prevention.<sup>11</sup>

In addition to speeches, there has been a concerted attempt over recent years to consider the policy changes needed to implement a commitment to conflict prevention and post-conflict reconstruction. The Cabinet Office has produced a report, *Investing in Prevention*,<sup>12</sup> DFID and FCO have consulted non-governmental organisations on various aspects of the

doctrine, and DFID, the FCO and Ministry of Defence (MOD) have created the Post-Conflict Reconstruction Unit as a joint venture. By September 2006, Whitehall accepted the principles of the Responsibility to Protect and the need to put them into practice. However, there was still no clear view as to how to do this. Government often fails to enunciate clear policies in particular cases which involve complex bilateral and multilateral negotiations and a multiplicity of small incremental actions that can seem *ad hoc* and fragmented while punchy media campaigns can simply drive home the need for decisive action.

Consecutive Public Spending Agreements (PSAs) reveal the complex and incremental nature of the government's attempts to fashion an overall strategy by setting clear and inter-linked goals for government departments to pursue. These agreements are set by the Treasury after negotiation with departments and their transparency is supposed to facilitate accountability and oversight by Parliament (though Parliament has a negligible role in determining PSAs to begin with).<sup>13</sup> The 2004 Spending Review's Public Service Agreement on conflict, set for the MOD in partnership with DFID and the FCO, showed just how hard and complex their task is:

By 2008 deliver improved effectiveness of UK and international support for conflict prevention by addressing long-term structural causes of conflict, managing regional and national tension and violence, and supporting post-conflict reconstruction where the UK can make a significant contribution, in particular Africa, Asia,

Balkans and the Middle East.<sup>14</sup>

The 2007 Spending Review contained a PSA on conflict issues, No. 30, which committed the three departments to work with other nations "to promote [the] willingness and capacity to operationalise the international agreement on 'responsibility to protect' in specific cases."<sup>15</sup>

The International Development (Reporting and Transparency) Act 2006 provides an additional platform for accountability to Parliament. The Act, which began as a Private Member's Bill tabled by the Labour MP Tom Clarke, requires the International Development Secretary to report annually to Parliament on the extent to which government policies across the board – including those towards conflict – contribute to development. The purpose of the Act was to ensure a more joined-up and transparent approach to reporting to Parliament. The government secured an amendment to the original Bill to include the report in DFID's Annual Report; and the first Annual Report after the Act in May 2007 included chapters on "Making the multilateral system more effective" and "Fragile states, conflict and crises". DFID also published a policy paper, *Preventing Violent Conflict*, setting out the department's plans to allocate additional resources to improve its response to conflict and to make development work more "conflict sensitive".<sup>16</sup>

## The parliamentary environment

There is support for the Responsibility to Protect doctrine across

<sup>14</sup> *Ibid.* Ministry of Defence Objective I(2), shared with the Foreign and Commonwealth Office, and the Department of International Development p. 25.

<sup>15</sup> HM Treasury, PSA Delivery Agreement 30: Reduce the impact of conflict through enhanced UK and international efforts, (PU 386, October 2007), objective 3.38, p. 13.

<sup>16</sup> <http://www.dfid.gov.uk/pubs/files/preventing-conflict.pdf>.

<sup>7</sup> See for example the UK statement in the Protection of Civilians Debate, 28 June 2006

<sup>8</sup> Speech by Gareth Evans, "Governments and NGOs: Their Responsibility to Protect", One World Trust, 15 September 2005.

<sup>9</sup> See for example John Reid's speech, "20<sup>th</sup> Century Rules, 21<sup>st</sup> Century Conflict", to the Royal United Services Institute, April 2006.

<sup>10</sup> See for example Hilary Benn's speech, "Humanitarian and Conflict Reform – An Emergency Service for the World", at the United Nations, January 2006.

<sup>11</sup> See for example Picciotto, R., "Memorandum Submitted to International Development Committee", in the committee's report, *Conflict and Development: Peacebuilding and Post-Conflict Reconstruction*, HC 923-II, 26 October 2006.

<sup>12</sup> Prime Minister's Strategy Unit, *Investing in Prevention: An International Strategy to Manage Risks of Instability and Improve Crisis Response*, February 2005.

<sup>13</sup> HM Treasury, 2004 Spending Review: Public Service Agreements 2005-2008, Foreword.

all the parties in Parliament. The divides are not party political, but can and do emerge on the actual policy making over tactical and country-specific issues. So first we examine parliamentary scrutiny of the broad issues of conflict and peace-keeping, and then consider three specific conflicts to measure the extent of parliamentary oversight and its effectiveness.

### Three mechanisms for regular scrutiny

The first major mechanism through which Parliament could and should review broad policy is the annual review by select committees of the work of the government departments they are delegated to shadow. The departmental annual reports provide an opportunity for doing so. Each departmental committee is required to "examine the department's Public Service Agreements,<sup>17</sup> the associated targets and the statistical measurements employed, and report if appropriate" as part of their "core tasks".<sup>18</sup> Obviously, the committees are obliged to pick and choose what they should concentrate their attention on, but there was no sign of a systematic approach to scrutiny of the 2004 PSA targets by the committees, Defence, Foreign Affairs and International Development, that were supposed to be maintaining oversight of the three departments' performance, and only limited scrutiny of the PSA target on conflict prevention.

In May 2006 DFID stated it was not entirely confident of meeting its targets for action on conflict.<sup>19</sup> But the International

Development Committee's review of DFID's 2006 departmental report showed minimal interest in conflict and dedicated just three paragraphs to all of DFID's PSA objectives, focusing on the need of DFID to report better against failing targets.<sup>20</sup> The Foreign Affairs Committee has not yet published its report on the FCO's report for 2007.

Only the Defence Committee explicitly considered the target on conflict prevention, going through each PSA target in its report reviewing the Defence Committee Annual Report 2005-06.<sup>21</sup> However, the discussion of this target is limited to a criticism of its nature, complaining that it is too outcome oriented to be an effective measure of performance.<sup>22</sup> As such, even though there was a target that could be used to increase transparency and accountability, and each of the three relevant departments reported against the target, the relevant parliamentary committees generally failed to scrutinise either the reporting, or use the opportunity to scrutinise thoroughly and systematically the activities of the departments.

It remains to be seen whether the committees will scrutinise the implementation of the 2007 agreement more thoroughly in the future. In June the International Development Committee began examining DFID's 2007 Annual Report and asked for detailed information from the department on conflict prevention, showing it was interested in the subject.

The second major opportunity for regular oversight in this area is through review of the annual Foreign Office Human Rights Reports. The Foreign Affairs Committee reviews them each

year. However, while there is a clear overlap of human rights and the issues that arise from conflicts, the focus is naturally on human rights rather than conflict prevention and resolution. This leads to a number of gaps in the report with respect to conflict prevention and response, and the scrutiny is not conducted from that perspective.

Finally, the Liaison Committee used its regular meetings with the Prime Minister to review aspects of foreign policy in the 2006-07 parliamentary session, choosing interventionism as one of the three themes chosen for discussion during the final evidence session with Tony Blair.<sup>23</sup> Inevitably the questions focussed on the UK's part in the invasion of Iraq and the validity of that policy choice. The questioning did broaden to discuss Blair's doctrine of interventionism, but there was no consideration of the more complex and refined understanding of intervention under the doctrine of Responsibility to Protect, nor was there a review of the UK's broader conflict policy.

In brief, none of the three major opportunities of regular scrutiny and oversight gave rise to sustained and repeated scrutiny of the broad strategic thrust of UK policy on conflict resolution or to detailed review of how that policy is implemented. In one sense, the Quadripartite Committee, which oversees the working of strategic controls on arms exports, plays a supplementary role in considering the UK's response to conflict. The committee took an interest in the export and use of UK weapons in countries, including Chad, Sudan and Zimbabwe, three countries riven by internal conflict or executive repression, in its annual

<sup>17</sup> The PSAs and targets were introduced of course as a mechanism of Treasury control of departments, but they are capable of being used as an instrument of scrutiny by parliamentary committee and members.

<sup>18</sup> Liaison Committee, *Annual Report for 2002*, HC 558, Objective C, Task 6, 1 April 2003.

<sup>19</sup> House of Commons International Development Committee, *Department for International Development Departmental Report 2006*, HC71, 21 November 2006.

<sup>20</sup> *Op cit*, paras. 62-64.

<sup>21</sup> Defence Committee, *Ministry of Defence Annual Report and Accounts 2005-06*, HC 57, 13 December 2006.

<sup>22</sup> *Pp cit*, para. 12.

<sup>23</sup> Liaison Committee, *Oral Evidence Given by Rt Hon. Tony Blair MP*, HC 300-ii, 18 June 2007.

report published in August 2007.<sup>24</sup>

A fourth possible route for scrutiny exists but did not manifest itself in the 2006-07 session. In 2003 the FCO began publishing an annual report on the *United Kingdom in the United Nations*. The reports since have included information on how the UK is working to improve international responses to conflict. But the title "Annual Report" has been dropped and while a report appeared in 2006, there was no report in 2005 and none so far in 2007. Had one been published in this parliamentary session it might have formed the basis for parliamentary scrutiny, though this outcome is by no means guaranteed since the FAC did not produce a report on the July 2006 publication.

In addition, of course, committees can take advantage of other hooks for regular scrutiny, as the European Scrutiny Committee does. In its oversight of DFID activities, for example, the International Development Committee has circumnavigated the lengthy report process by holding an annual oral evidence session following the autumn meetings of the World Bank. In advance of the meetings DFID circulates a UK objectives note to interested parties, including NGOs. After the meetings, which are normally attended by the Secretary of State, the International Development Committee issues a call for written evidence from NGOs and holds an oral evidence session with the Secretary of State. The committee quizzes the Secretary of State on the meetings and DFID's current and future work at the World Bank at an evidence session which is normally followed by a session with NGOs on the minister's replies and DFID's

<sup>24</sup> House of Commons Committees on Strategic Export Controls (Quadripartite Committee), *Strategic Export Controls: 2007 Review*, HC 117, TSO, 7 August 2007.

broader work. An advantage of this process, which doesn't entail a report, is that the administrative burden on the committee is low, but the recurring nature of the meetings ensures continual oversight as issues progress; and the process effectively develops "soft mandating" as a dialogue grows between the committee and the minister (see pages 26 and 55). Occasionally (in fact at the moment) the committee supplements this normal schedule of evidence sessions with a full inquiry on DFID and the World Bank. There is no reason why the FAC couldn't replicate this process for the UN General Assembly Week.

### Case studies in scrutiny:

#### 1. Zimbabwe

The current crisis in Zimbabwe has been covered extensively in the UK press since Robert Mugabe's government announced its plans for land reform in 1997, leading to violence against farmers and farm workers,<sup>25</sup> and over time to extreme hardship,<sup>26</sup> repressive measures, political corruption, and rising inflation<sup>27</sup> and unemployment, and falling life expectancy rates.<sup>28</sup> More than four million people are expected to need food aid next year.<sup>29</sup> By October 2007 Zimbabwe had run out of bread and the country lacked any hard currency for imports.<sup>30</sup>

The United Nations is distributing food and giving practical support in Zimbabwe, but has been unable to move at a policy level. The Security Council

<sup>25</sup> BBC News Online, "Zimbabwe Protests Turn Violent", 1 April 2000.

<sup>26</sup> BBC News Online "Zimbabwe Farmers: Seizures will Ruin Country", 28 November 1997

<sup>27</sup> HC Debates, 19 July 2007, col. 478.

<sup>28</sup> World Health Organisation, *Core Health Indicators*, 2005.

<sup>29</sup> Guardian, "Shops emptied as panic grips Zimbabwe", 5 July 2007.

<sup>30</sup> Guardian, "Zimbabwe runs out of Bread", 1 October 2007

discussed the repressive "slum clearance programme" in 2005, but no resolutions have been forthcoming during the period of this case study. China has been blocking the inclusion of Zimbabwe on its agenda on the grounds that it would threaten regional or global security. Wide-ranging UN reports often include critical comments about Zimbabwe,<sup>31</sup> and the UN Office for the Coordination of Humanitarian Affairs has chronicled the descent into a failed state. Overall, however, there has been little high-level action and some contradiction lower down, as when Zimbabwe was elected to chair the UN's Commission on Sustainable Economic Development.<sup>32</sup>

The British government strongly advocated greater UN political involvement in the crisis, seeking to add Zimbabwe to the Security Council agenda,<sup>33</sup> as well as asking the Human Rights Council to send in investigators.<sup>34</sup> The government has also acted in other multilateral forums: for example, Gordon Brown announced that should President Mugabe attend a forthcoming AU-EU summit, he would boycott it.<sup>35</sup> In fact, the UK's policy towards Zimbabwe is avowedly multilateralist, wisely seeking to act through such forums to try to prevent (though unavailingly) Britain being accused of neo-colonialism. At the same time, the lack of high level activity at the UN shows that the UK policy of seeking a multilateral solution is failing.

Despite the government's

<sup>31</sup> See for example the UN Special Envoy Report on Human Settlement Issues in Zimbabwe, Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina, UN-Habitat, 18 July 2005.

<sup>32</sup> Observer, "Fury at Zimbabwe UN role", 13 May 2007.

<sup>33</sup> Reuters, "Britain Urges Security Council to Act on Zimbabwe", 28 March 2007

<sup>34</sup> Independent, "Britain asks UN to Send Investigators in Zimbabwe", 16 March 2007.

<sup>35</sup> Independent, "It is right that I make clear my position. We will not shirk our responsibilities", 20 September 2007.

efforts, and the special responsibility the UK feels it has in a former colony's security, Parliament has not engaged with any vigour in seeking to assess the relevance and the success of the government's policies. During the 2006-07 parliamentary session, Zimbabwe's plight has been raised in only six PQs in the House of Commons and nine in the House of Lords (seven of which from one peer, Lord Blaker). There was also an adjournment debate, instigated by the government, in the Commons.<sup>36</sup> Furthermore the questions and answers have been fairly repetitive and rhetorical in flavour, with MPs focusing on the economic collapse and human rights abuses and urging the government to act either through a specific sanction or just in general. The exchange between Philip Hollobone MP and the then Foreign Secretary Margaret Beckett MP is typical. He asked:

... What hope can the Foreign Secretary offer to Morgan Tsvangirai and others who would lead a free and democratic Zimbabwe that Robert Mugabe's regime is under the intense scrutiny of Britain, the Commonwealth and the international community, and that something effective will be done in the very near future to ensure that that regime comes to an end?<sup>37</sup>

To which she replied:

I simply say that, of course, there is considerable concern across the international community and the hon. Gentleman is right to identify it. It is important to make it clear, particularly in this House, that, yes, the United Kingdom is

greatly concerned about the situation in Zimbabwe, but that those concerns are shared by the whole European Union, by the African Union—sadly, those concerns have not always been expressed as loudly as they might be—by the United Nations and by the whole international community. It is very important that we recognise that this is not a bilateral dispute between Britain and Zimbabwe; this is about the whole international community expressing concern about a very dangerous and deteriorating human rights situation. We will keep up the pressure through all those bodies.<sup>38</sup>

This exchange provided neither information on government policy, nor the opportunity for scrutiny on the efficacy of the government's policy of multilateral engagement. This is because to some extent MPs believe there is little more they can ask the government to do. MPs consider that it is has been pursuing a wise course in a positions where is has few alternative options. This limits the policy space and leaves little political traction for opposition parties – the major motor for challenge to government policy – to raise the question of Zimbabwe. Furthermore, Parliamentary Questions (PQs) are not an effective instrument for detailed analysis and discussion. They are brief and there is limited opportunity for follow-up questions. Even if substantive disagreement, or perceived need further to question a government position, were to arise, there is no immediate scope for MPs or opposition parties to call for a change in direction.

Yet, PQs are, for all their obvious weakness, far and away the most common way of drawing attention to humanitarian crises, no doubt because of their immediacy. When we talked to MPs about the issue, they explained that their main purpose was to ensure that Zimbabwe stayed high up the government's agenda and they saw PQs as a tool to achieve this rather than for oversight. For example, Philip Hollobone MP said that asking the question, quoted above, would demand ministerial and official time in preparing the answer and so put the issue in the minister's mind.<sup>39</sup> In the House of Lords, Lord Blaker, who has taken a special interest in Zimbabwe since being the responsible minister in 1974, seeks to ensure through his questions that there is regular discussion in the upper House.<sup>40</sup>

The adjournment debate on Zimbabwe,<sup>41</sup> though instigated by the government as we note above, came about under pressure from MPs. It was the first debate on Zimbabwe for three years, but took place in the absence of the Foreign Secretary. Meg Munn MP, a parliamentary under-secretary, spoke for the government instead and merely reiterated the point that the government was seeking multilateral solution. During the debate, MPs pressed her on the truth of a *Sunday Times* report that Gordon Brown would not attend the AU-EU summit if President Mugabe were invited, and whether or not other ministers would boycott the summit. She refused to confirm the report, or provide any further detail,<sup>42</sup> thus making it impossible for MPs to question the wisdom of this approach during the debate. (MPs

<sup>36</sup> *HC Debates*, 19 July 2007, cols. 477-535.

<sup>37</sup> *HC Debates*, 20 March 2007, cols 670-671

<sup>38</sup> *HC Debates*, 20 March 2007, col 671

<sup>39</sup> *Interview with Philip Hollobone MP*

<sup>40</sup> *Interview with Lord Blaker*

<sup>41</sup> *HC Debates*, 19 July 2007, cols. 477-535.

<sup>42</sup> *HC Debates*, 19 July 2007, col. 484

complained so strongly about the Foreign Secretary's absence, that Ms Munn was obliged to promise a further debate on Zimbabwe in the autumn.<sup>43</sup>)

Meanwhile neither of the two relevant select committees, the FAC and International Development Committee (IDC), engaged to any substantial degree with the crises in Zimbabwe. Neither held an inquiry into government policy during the 2006-07 session, even though it was four years since the FAC had conducted a full inquiry and since the IDC had dedicated just two pages to Zimbabwe in its inquiry into the humanitarian crisis in southern Africa.<sup>44</sup> The only significant reference to Zimbabwe came in the Foreign Affairs Committee report on the FCO Human Rights Report 2006.<sup>45</sup> The FCO report identified Zimbabwe as a "major country of concern", detailing oppressive tactics by the police, housing demolition, food shortages, state control of the media, expropriation of land and money, and civil and political oppression. The FCO report set out its policy responses, listing bringing Zimbabwe onto the agenda of the UN Security Council, using the UK presidency of the EU to raise awareness and extend a travel ban and continuing to provide humanitarian assistance through non-governmental and inter-governmental organisations. The FAC covered Zimbabwe in eight paragraphs, concluding that, the appalling human rights situation in Zimbabwe has deteriorated over the past year. We recommend that the Government continue strongly to urge South Africa

to apply greater pressure on the Mugabe regime. We further recommend that, in its response to this Report, the Government set out what progress has been made on the issue of Zimbabwe at the Security Council.<sup>46</sup>

This is not oversight. It basically endorses the government's approach with just one policy recommendation, that the government continue to focus on South Africa as a conduit for reform in Zimbabwe. There was neither analysis of the current UK policy, constructive ideas for policy alternatives, nor a review of progress from the previous year. The committee was limited, to some extent, by the lack of information provided by the Foreign Office, but there are many other sources of information on which the committee could have drawn.

The fact that neither select committee engaged fully with government policy on Zimbabwe, and that the opposition parties had no incentive to challenge the government, left the role of scrutinising government to individual MPs and peers. Inevitably, their efforts are largely *ad hoc*, and uncoordinated and their instrument of scrutiny lies with PQs with all their drawbacks (see above). The All Party Parliamentary Group on Zimbabwe, one of these increasingly popular loose cross-party alliances on political issues, does work behind the scenes. But once again its priority is to maintain attention on the issue, and to disseminate information. Neither goal can realistically be called oversight, nor do they attempt to be.

## 2. Sudan

The humanitarian crisis in Sudan shows how Parliament's scrutiny is hampered by the departmental structure of select committees that can fail to reflect government's cross-departmental approach. Departmental limits on the relevant select committees' freedom of manoeuvre and the absence of developed processes of cooperation can prevent comprehensive and fully relevant oversight of the policy in countries such as Sudan, where the Sudan Unit in the FCO facilitates ongoing cooperation between the Foreign Office and DFID.

The crisis in Darfur, with more than 200,000 people dead,<sup>47</sup> two million more displaced,<sup>48</sup> and accusations of genocide levelled against government-supported militias, naturally attracts huge public attention that is kept alive by active media coverage and NGO campaigns that draw parallels between the killings there and the genocide in Rwanda. Media and NGO pressures ensure that though civil wars have raged in Sudan for decades and all the conflicts in Sudan are interlocked, it is primarily Darfur that gains most attention. The Africa Union force (AMIS) has been in place since 2004, to monitor and prevent human rights abuses, but has proved unable to protect the most vulnerable people in Darfur, due to its weak mandate, low troop numbers and lack of equipment. The force's weakness and exposed position between the fronts has made AMIS a target for numerous attacks, including the raid in late September when their barracks were overrun and ten peace-keepers were killed.<sup>49</sup>

43 HC Debates, 19 July 2007, col. 477.

44 International Development Committee, *Humanitarian Crisis in Southern Africa*, HC 116-I, TSO, 11 March 2003.

45 Foreign Affairs Committee, *Human Rights Annual Report 2006*, HC 269, TSO, 29 April 2007.

46 Foreign Affairs Committee, *Human Rights Annual Report 2006*, (HC 269, 29 April 2007), para. 187.

47 UN Human Rights Council, *Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101*, para. 38, 7 March 2007.

48 *Ibid*, para. 34.

49 New York Times "Darfur Rebels Kill 10 in Peace Force", 1 October 2007.

There has been intense international interest in the plight of the people of Darfur, and much activity, though so far ineffective, at the United Nations. During the period of this case study, the UN Security Council received nine reports from the Secretary-General and passed three resolutions. The last of these, in July 2007, approved a mandate for a joint African Union-United Nations peace-keeping force there, following a significant initiative by Gordon Brown. The participation of the UN in the peace-keeping force in Darfur had long been the subject of intense negotiation with the Sudan government. A number of UN agencies are also actively working on or in Sudan from the Human Rights Commission to the World Food Programme. In addition the International Criminal Court has investigated human rights violations in Darfur and issued arrest warrants for government ministers and members of the Janjaweed militias.

The UK Government has been very active on the crisis in Sudan, not just on Darfur, and has backed initiatives for the negotiation of a comprehensive peace agreement in the south – with the then Secretary of State for International Development, Hilary Benn, flying out to take part in the peace talks in Juba. The United Kingdom also played a part in the passing of the Security Council resolution that created the provisions for a hybrid AU-UN force. However, this diplomatic pressure has not been matched by a commitment on the ground, despite the desperate need for troops and support. The UK has failed to commit any troops to the mission, although it has promised unspecified equipment.<sup>50</sup> This is in

contrast to France and Denmark, both of whom offered troops after the resolution was passed.<sup>51</sup> It is predicted that the force will take two years to get up to full strength.

As we state above, government policy on Sudan is cross-departmental with the Sudan Unit providing coordination between the FCO and DFID, though any troops or equipment sent in support of the UN peacekeeping force would fall under the remit of the Ministry of Defence which is not currently part of the Sudan Unit. The government has a commitment as part of Indicator 2 in the 2007 PSA 30 to achieve “reduced impact of conflict” in several countries, including Sudan. The Delivery Agreement contains a specific section describing objectives in Sudan.<sup>52</sup>

As with Zimbabwe parliamentarians across the different parties and in both Houses have become engaged with Sudan. MPs have asked 29 PQs (six at Prime Minister's Questions) and peers have asked six. Four adjournment debates have been held. Several MPs and peers have a long-standing interest in the Sudan, as with Zimbabwe, and visits to the country have inspired their involvement. For example, Lord Alton (who also frequently speaks on Zimbabwe) visited refugees camps in Southern Sudan with an NGO,<sup>53</sup> and David Drew MP, chair of the APG Sudan, has made three trips to all areas of the country.<sup>54</sup>

As we indicated above, parliamentary scrutiny of policy on Sudan is nowhere near as coordinated as the government's cross-department approach. Oversight has been slight, incomplete, and lacking in

coherence. Since the International Development Committee's report on the Responsibility to Protect and Darfur<sup>55</sup> in March 2005 and the follow-up report in January 2006,<sup>56</sup> there has been no strategic oversight of the rapidly-changing and desperate situation in Sudan in over 18 months while the government has been active both directly in Sudan and at the United Nations.

As with Zimbabwe, PQs have proved very limited instruments for oversight, and for the same reasons (see page 38). One typical exchange occurred on 13 June 2007 during International Development Questions. After a broad summary of the appalling situation in Darfur, Labour MP John Mann MP put the first substantive question:

When does the Secretary of State expect the second full phase deployment of UN personnel to be on the ground, so that the aid agencies can get to the more than one million people whom they cannot currently access? When will the international community get its act together when it comes to Darfur?<sup>57</sup>

The then Secretary of State Hilary Benn replied:

The answer is: as quickly as possible. The light support package is largely but not yet completely deployed. The Government of Sudan gave their agreement some time ago to the heavy support package, which would bring in, from memory, about 2,000 UN support personnel and other equipment. Most significantly, yesterday, President Bashir

51 CBC News, “Nations lining up for Darfur Peace-keeping Mission”, 1 August 2007.

52 See the Delivery Agreement at: [http://www.hm-treasury.gov.uk/media/1/5/pbr\\_csr07\\_psa30.pdf](http://www.hm-treasury.gov.uk/media/1/5/pbr_csr07_psa30.pdf)

53 Interview with Lord Alton.

54 Interview with David Drew MP.

55 International Development Committee, *Darfur, Sudan: The Responsibility to Protect*, HC 67-I, TSO, 30 March 2005.

56 International Development Committee, *Darfur: The Killing Continues*, HC 657, TSO, 26 January 2006.

57 HC Debates, 13 June 2007, col. 741.

50 RTE News, “Thousands to march for Darfur Day”, 16 September 2007.



of Sudan indicated Sudan's willingness to accept the hybrid package, following the proposals that had been put to him by the United Nations and the African Union. I welcome that commitment; but as ever, we will judge the Government of Sudan by what they do, and it is very important now that everybody makes every effort to enable that force to deploy, because that will eventually get in about 20,000 troops to provide better security for the people who have suffered far too much.<sup>58</sup>

The questioning then moved to the opposition spokesperson, Andrew Mitchell MP who asked:

Surely the only way to bring pressure on the disgraceful regime in Khartoum is to impose tough international sanctions? What chance does the Secretary of State think there is that that can happen through the United Nations, with a possible Russian or Chinese veto? If that is impossible, should Europe and American go it alone?<sup>59</sup>

To which Hilary Benn reiterated the point made in his first reply, thus:

I agree with the right hon.

Gentleman. It is precisely because parts of the international community have been threatening sanctions that we got both the result in relation to the heavy support package and yesterday's decision by the Government of Sudan on the hybrid. Our position as a Government, as he will be aware, has been extremely clear that the Government of Sudan must honour the commitments that they have

entered into, and we need to keep under review what further steps need to be taken, because commitments are not good enough; they must be matched by actions to support the deployment. We should say to the Government of Sudan, "We will continue to watch the steps that you take, and if at any point you fail to honour the agreement that you have given, we will go back to the UN Security Council." As the right hon. Gentleman will also be aware, however, not all members of the Security Council are in the same position as the United Kingdom Government, the United States of America and one or two other countries on the question of further sanctions.<sup>60</sup>

As can be seen, even when PQs concentrate on a specific issue, in this case the introduction of the AU-UN hybrid mission, there is little opportunity for detailed examination of government policy and its effectiveness. Opportunities were also missed. The question of the Sudan government's acceptance of the mission was important, but there was no discussion of what the UK was doing to support the mission, which is as we have seen not much.

As is the case with Zimbabwe, oversight is overly reliant on the work of individual MPs and peers, and their commitment to the issue. Although some MPs and peers have built up detailed knowledge through years of engagement with one particular country, often having visited on a number of occasions, this often only occurs through the work of NGOs external to the parliamentary process. Furthermore, the few MPs

and peers with experience and knowledge in such crises, have numerous other calls on their time.

### 3. Chad

Zimbabwe and Sudan are high-profile cases that excite media and popular interest and thus they received some form of parliamentary engagement, even if *ad hoc* and fragmented. By contrast, Sudan's neighbour Chad has suffered from near total neglect. Chad has been subject first to large numbers of refugees from Darfur, and later to an overspill of the violence, but Parliament has devoted little time to the crisis there, even though in February 2007 the UN Human Rights Commission warned of a potential genocide there;<sup>61</sup> and though in September the Security Council passed a resolution on the situation,<sup>62</sup> and plans are being made to increase UN aid and to send in peacekeepers.<sup>63</sup>

The section of the PSA Delivery Agreement 30, covering the period up to 2011, in dealing with Sudan refers to the problem of spill-over into Chad. However, there were only two oral PQs on Chad during the 2006-07 parliamentary session, both in the House of Lords and both related also to the crisis in Darfur rather than to the specific situation in Chad and broader regional issues. Similarly there is no mention of Chad in the Foreign Affairs Committee report that reviews the 2006 FCO report of Human Rights. Although the Human Rights Report is a fairly comprehensive almanac of human rights abuses, even it only covers the situation in Chad in a limited way, looking at abuses associated with the refugee crisis. This is partly

<sup>61</sup> *Chad may face genocide, UN warns, BBC, 16<sup>th</sup> February 2007*

<sup>62</sup> *UN Security Council Resolution 1778, September 2007.*

<sup>63</sup> *Chad: More aid needed now, but peacekeepers not expected for months, 7<sup>th</sup> September 2007.*

<sup>58</sup> *HC Debates, 13 June 2007, col. 741.*

<sup>59</sup> *HC Debates, 13 June 2007, col. 741-2.*

<sup>60</sup> *HC Debates, 13 June 2007, col. 742.*

because the report focuses on human rights abuses rather than conflicts and their consequences. As such it should not be a surprise that the Foreign Affairs Committee chose to concentrate its limited resources elsewhere. But unfortunately this is very much the norm for such low-profile situations eclipsed by the not necessarily greater humanitarian crises that receive media attention.

The FCO's Human Rights Report is the only regular mechanism for regular reporting to Parliament on dangers and abuses in particular countries. The report seeks to summarise very thoroughly the current human rights situation in countries around the world, reporting on the UK government's policy and considering broader policy issues. When the Foreign Affairs Committee reviews the report, it is driven by its very comprehensive nature to be selective in what it takes notice of. It is clearly impractical for the FAC, which has a wide range of international issues to consider with a resource base that is far from commensurate, to attempt to cover all the human rights issues that the report covers. Therefore the committee applies a filter focusing on the most dramatic situations and those where there is the potential for political traction; in other words, usually the most heavily publicised cases. However, this means that parliamentary scrutiny of government policy in serious situations in Chad and similarly-placed nations is practically non-existent.

## Conclusions

The three case studies illustrate that parliamentary oversight of the government's policies in conflicts around the world is generally superficial and sporadic at best, and virtually non-existent in less

visible cases. Gaps of years in scrutiny even of the most high-profile crises are common. Much oversight is carried on through *ad hoc* querying by individual MPs or peers acting on their own or with colleagues on informal all-party groups to raise country specific issues. In 2006, the International Development Committee did publish a thematic report, *Conflict and Development: Peacebuilding and Post-conflict Reconstruction*, that made several recommendations on the United Nations and international organisations.<sup>64</sup> The government's response came during the session under study here; but that apart, there was no systematic or strategic review of how policies, such as the Responsibility to Protect, work across the different nations in crisis, nor any assessment of how appropriate the government's responses are in developing multinational and bilateral policies and practice.

The case studies suggest that Parliament lacks the institutional framework for continuous strategic analysis of foreign policy issues that are long-lasting, complex and insoluble by the UK acting on its own. We have suggested above that the departmental structure of select committees – and the strict demarcation rules that tend to govern their conduct – contributes to their inability to deal appropriately with the necessarily cross-departmental approach of government to conflicts and their humanitarian consequences. The select committees are however the main and most reliable instruments of scrutiny and oversight at Parliament's command and can often be very effective. In *Not in Our Name*, our own analysis and discussions with parliamentar-

<sup>64</sup> IDC, *Conflict and Development: Peacebuilding and Post-conflict Reconstruction*, HC 923-I, TSO, 25 October 2006.

ians led us to conclude that select committees simply do not have the resources in terms of personnel and research capacity fully to meet the obligations that are imposed on them.<sup>65</sup> The case studies here reinforce that message. It is lack of resources that lies at the root of the prolonged gaps in scrutiny of government policies in Zimbabwe and Sudan and the inability even to engage with the situation in Chad.

While there are various mechanisms for informing Parliament of developments and work, in theory at least, we have identified areas in which the official benchmarks and targets for departments, set out in Public Service Agreements and the FCO human rights report, fail to provide a comprehensive reporting instrument for select committees, all-party groups and individual MPs and peers. There seems in particular to be no clear-cut linking of conflict prevention and resolution and the humanitarian consequences of conflict. The sporadic appearance of FCO reports on UK work at the UN is another problem. We return to this concern in Part 4.

We have looked at the contribution that MPs and peers can make at an individual level and also through all-party groups. These informal collectives depend heavily upon individual efforts and often the provision of external fundings, since no parliamentary funds are available to them. In certain circumstances those that do receive such funding may find themselves unduly vulnerable to the interests of their funders. (In 2005, for example, the Commons Health Select Committee drew attention to the support provided by the pharmaceutical industry to various

<sup>65</sup> See Donnelly, B., et al, *Not in Our Name: Democracy and Foreign Policy in the UK*, pp. 193-196, Politico's, 2006.

APGs, including the Africa Group funders<sup>66</sup> (In 2005 the Commons Health Select Committee drew attention to the support provided by the pharmaceutical industry to various APPGs, including the Africa Group.) Nevertheless, APGs can be remarkably effective at plugging gaps in the formal structures of scrutiny. The Associate Parliamentary Group on Sudan is a case in point (see box). The Sudan APG arranges regular meetings with the Secretary of State to discuss the latest developments and government policy; and while informal, its regular meetings (six in the 2006-07 session) provide some structure to the parliamentary engagement on this issue.

However, though the information gathering and sharing may prove valuable beyond its meetings, there is little political incentive for government to take them too seriously in terms of policy and process. The political cost for any failure by a minister in engaging with an APG is limited as such groups have no constitutional standing and their sessions are private. Moreover, they are always going to be prone to act as pressure groups rather than deliberative instruments of scrutiny, because both their sponsoring NGOs or other funders will naturally be pursuing developed policies through any such group and their members may very well have priorities of their own.

Even in those cases in which Parliament is engaged, Parliamentary Questions are the most commonly used instrument of scrutiny, but as we have shown, they are generally ineffective and accomplish little more than to keep an issue alive with the relevant minister. Calls for

“something to be done” are all too frequent without any further substance. It is not enough to draw an issue to the government's attention and to issue calls for action. Parliament should take a strategic view of the full breadth of Britain's policies and actions in conflicts in which citizens take an increasingly serious interest. Major questions of resources go unasked and nuanced policy alternatives are not raised. For example, do present troop configurations, focused as they are on southern Iraq and Afghanistan, prevent Britain from contributing more effectively to the prevention of humanitarian disasters – for example, by providing troops for the AU-UN peace-keeping force in Darfur? Can and should the UK put more pressure on South Africa to bring peace and stability to Zimbabwe? Could action in Chad now avoid greater hardships in the future?

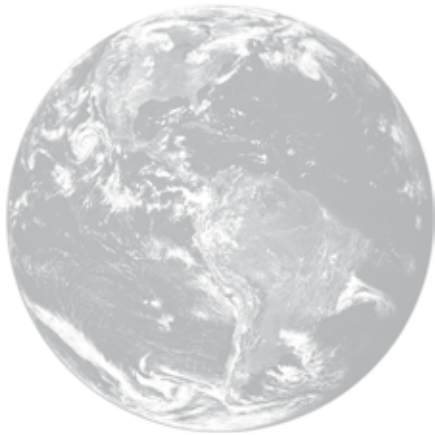
We are also concerned that Parliament often engages in oversight of the government's role in multilateral responses to conflict only when the actual conflict has reached crisis point and has received a high level of media and NGO attention. Yet these are fickle spurs to Parliament's democratic role in oversight and scrutiny, and tend to kick very late and do not necessarily maintain a spotlight on long-running crises. Often earlier action in relatively unpublicised cases might yield more worthwhile returns.

<sup>66</sup> The list can be viewed at <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhealth/42/4213.htm>

# Part 4

## Conclusions and recommendations

### The prospect of a stronger Parliament



DURING THE PARLIAMENTARY SESSION that has just come to an end, British troops were engaged in a perilous holding operation in southern Iraq and in fierce warfare with the Taliban in Helmand province in Afghanistan. In the 12 months from November 2006 when the session began, some 90 British troops taking part in the two operations were killed and about 120 were injured.<sup>1</sup> Just four months earlier, while Parliament was in recess, the British government had remained silent over the violence against civilians during the Israeli invasion of southern Lebanon, a military action that was widely regarded as "disproportionate", privately even by some ministers, and during the 2006-07 session the Foreign Affairs Committee was actively working on trying to convince ministers that they should formally recognise its disproportionate nature. It still remains to be seen whether in the face of mounting evidence about the indiscriminate Israeli use of cluster munitions, the government will reverse its assessment of the military action.<sup>2</sup> Throughout the session, the issue of the stand-off between Iran and the west over its nuclear ambitions remained tense and unresolved. In June 2007, the government agreed a mandate for the creation

of an EU Reform Treaty (the text of which was agreed in October 2007) without any serious attempt to canvass parliamentary opinion on the issues involved. Indeed, the government apparently did what it could to prevent any judgment by Parliament on the Treaty's negotiations by pleading ignorance on the subject before Commons scrutiny committees. Like the rest of the world, Britain found itself powerless to act in outrages from the widespread and systematic murder and rape in Darfur and the bloody suppression of popular protest in Burma. The continuing occupation of Iraq was the most urgent of these issues for the UK. There were signs that the military high command wanted to pull all Britain's troops out of Iraq and General Sir Richard Dannatt, Chief of the General Staff, made his disquiet public in October 2006.<sup>3</sup> The occupation was unpopular with the public, with support for the action steadily dropping off, dipping as low as one in four people.<sup>4</sup>

Parliament had scarcely any influence on any of these major strategic issues even though, for example, the EU Reform Treaty was very much in the minds of parliamentarians and the public as Conservative (and some government) MPs continued to call for a referendum. Moreover,

<sup>1</sup> See: <http://www.mod.uk/DefenceInternet/FactSheets/OperationsFactsheets/OperationsInIraqBritishFatalities.htm>; and <http://www.mod.uk/DefenceInternet/FactSheets/OperationsFactsheets/OperationsInAfghanistanBritishCasualties.htm>

<sup>2</sup> The FAC report was finally published in July 2007: Foreign Affairs Committee, title etc

<sup>3</sup> See: [http://www.dailymail.co.uk/pages/live/articles/news/news.html?in\\_article\\_id=410163&in\\_page\\_id=1770&ico=Homepage&icl=TabModule&icc=NEWS&ct=5](http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=410163&in_page_id=1770&ico=Homepage&icl=TabModule&icc=NEWS&ct=5)

<sup>4</sup> See, for instance: [http://www.yougov.com/archives/pdf/trackerIraqTrends\\_060403.pdf](http://www.yougov.com/archives/pdf/trackerIraqTrends_060403.pdf)

MPs do not have the means to take the initiative on these or other strategic matters. As we found in our previous study, *Not in Our Name: Democracy and Foreign Policy in the UK*,<sup>5</sup> the government in the UK has wide-ranging Royal prerogative powers to make foreign policy and wage war outside effective parliamentary control or contemporaneous scrutiny, and to fob Parliament off even when MPs or peers are seeking to make it accountable or are only seeking information. Moreover, foreign policy does not largely depend on legislation (aside from aspects of policy within the EU framework), as do most domestic policy initiatives, and so is not subject to the scrutiny and checks in both Houses that the legislative process entails. Further, the government maintains firm control of parliamentary business. We concluded that government had "a remarkable and undesirable degree of power over Parliament", especially in foreign policy, and that its prerogative powers "damage democratic oversight of the policies and actions of British governments in and around the world".<sup>6</sup> We detected then a degree of resignation among some (but not all parliamentarians) about the failure of Parliament and its structures to engage with the broader issues. Moreover just because Parliament, usually through one of its committees, has investigated an area, there is no guarantee that its findings will be taken seriously by government (as Carne Ross's comments quoted in our introduction suggest); or that the public will be aware of them. Parliament faces an even greater challenge where it wishes to hold the government to a particular

course of action, by securing assurances from it prior to its actions abroad. Parliament must rely, if it wishes to "mandate" the government to any degree, on the open engagement of ministers, something which is rarely forthcoming.

In mitigation, it is often said that while Parliament doesn't have the power or the means to deal with major strategic issues, it is nevertheless good at the broad sweep and detail of policy. It is for this reason that this report eschews the major issues that arose during the 2006-07 parliamentary session and concentrates instead on examining through case studies in Parts 1 to 3 just how good Parliament is at regular and detailed scrutiny of the broad sweep and detail of policy in three areas of foreign policy: global security, the European Union, and the Responsibility to Protect – though in Part 2 we briefly consider the attempt in committee at least to uncover the major question of the government's negotiating position on the EU Reform Treaty. Here in Part 4 we draw together the lessons from the case studies discussed in Parts 1 to 3. We identify structures of official target-making and reporting – such as the Public Service Agreements that departments sign up to – that could give Parliament and its committees some grasp, like climbers, on holds on the towering face of government policy-making from which to conduct scrutiny. We consider how effectively these structures are used and evaluate their potential for broad and consistent scrutiny. We evaluate the strengths and weaknesses of parliamentary processes, the resources that members and committees can call upon and ways in which scrutiny procedures might be adjusted to make the best use of parliamentar-

ians' expertise. We look at ways of improving the overall "culture" of parliamentary scrutiny. We then discuss what difference the various constitutional reforms proposed by Gordon Brown and ministers could make, and might have made, to the processes of scrutiny and accountability. Finally we make our own recommendations for change, building on those contained in *Not in our Name*.

### **Parliamentary scrutiny in practice**

Our case studies indicate that Parliament – for most purposes, the House of Commons – is no more capable of keeping the broad sweep of foreign policies under scrutiny than it is in influencing government policy on major issues; that its grasp on detail is fitful; and that it suffers from being almost wholly retrospective. In no sense has either House, any select committee or members individually or collectively been able to hold the government accountable for policies and actions within the sphere of traditional foreign policy, even at the level of detail contained within our case studies. (In its oversight of European Union business, Parliament is in theory able to call the government to account if its actions differ from any prior assurances it had given, though Parliament in any case has no power to force the government to reconsider its actions.) The most that can otherwise be said is that committees and members have been able to maintain a degree of pressure on smaller issues of importance, to let ministers know that they are under, as it were, parliamentary surveillance, and occasionally to gain concessions. One major cause of weakness is that Parliament and its committees remain under-resourced for the task of keeping government

<sup>5</sup> Burall, S., Donnelly, B., and Weir, S., *Not in Our Name: Democracy and Foreign Policy in the UK*, Politico's, 2006

<sup>6</sup> *Ibid*, p.184.

under scrutiny. Committees do, as we acknowledged in *Not in Our Name*, employ specialist advisers on a freelance basis (and on the cheap) on their inquiries to supplement their official research support. We highlight ways in which tight resources are not best used, in particular in the duplication of certain aspects of scrutiny in different committees. Our case studies also reveal strikingly the significant role the non-governmental organisations (NGOs) play in briefing committees and members. One MP (who asked to remain anonymous) said,

This is actually a positive thing.

You can't expect members to keep up to scratch on the myriad matters that arise, or to have ideas about what to do. It is the task of NGOs to brief us on events, and our business to respond, and NGOs probably give us a more pluralist steer than we would get from a horde of official researchers.

We believe that the relationship between Parliament and NGOs is valuable and should be enhanced, but select committees at least ought to have their own long-term research capacity so that they can develop sustained scrutiny of government policies, and escape what is sometimes a reactive tendency to follow media reports and NGO pre-occupations.

We had hoped that we would be able to point to "successes" in scrutiny and influence from the case studies. Perhaps the most effective example of parliamentary action was the tenacious campaign within Parliament to persuade the government to abandon its use of cluster munitions and to support an international ban on their use. In this case the FAC did engage with detail and won a partial success by encouraging

the government to back the international treaty that seeks to outlaw their use and to end of the use of "dumb" cluster munitions. However, there are as yet no plans to work to outlaw "smart" cluster munitions: they remain in service with the UK armed forces, and there is plenty of room for debate about what constitutes a "dumb" munition (see page 17). Here collaboration within Parliament and between it and outside groups appears to have been a key to this limited success. In the case of the strong circumstantial evidence pointing to Britain's complicity in the "extraordinary rendition" of terrorist suspects, Parliament was unable even to uncover the facts and the basic dilemmas of UK policy were not resolved. The government evaded "coming clean" on its actual conduct and possibly embarrassing the US government. However, close attention was brought to an issue of actual and symbolic importance. The government was made uncomfortably aware that it was under scrutiny where previously it had not been; and it was hard pressed through the work of the FAC, the Intelligence and Security Committee, parliamentary activities (PQs and debates), and the efforts of individual MPs, such as Andrew Tyrie, also chair of the All-Party Parliamentary Group on Extraordinary Rendition. The extra-parliamentary researches and pressure from the British press and television and foreign media, NGOs, the European Parliament, Council of Europe and other supranational organisations added to the pressure.

The European Scrutiny Committee's (ESC's) judgment that the EU Constitutional and Reform Treaties were, in effect, very similar is a second noteworthy example of parliamentary scrutiny bringing pressure

to bear on the government. The committee chair's vocal pronouncements to this effect, which were carried by various national media outlets, were undeniably effective in bringing attention to this issue. Though this episode shows how the ESC might be able to contribute to an issue already on the political agenda, there is little to suggest that the scrutiny committee could, if it wished, *lead* Parliament or the media on questions which had not already gained public momentum. (Arguably, the boldness of the committee's opposition to the government's position on this issue was partly a consequence of its having been denied an opportunity to effectively scrutinise government on the Treaty in its formative stages.)

There are potentially a series of targets and reporting processes that could and should facilitate scrutiny by select committees of the departments at the centre of foreign policy – in our case studies, primarily the Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID). The primary set of such instruments are the Public Service Agreements, devised initially to tie departmental expenditure to tangible policy outcomes and to increase Treasury influence over departmental policy and expenditure; annual departmental reports; the annual FCO *Human Rights Report*; regular hearings with ministers, usually on the occasion of European or international negotiations or meetings (e.g., as before and after meetings of the EU Council of Ministers and European Council or the annual World Bank meetings); and other more irregular reports (e.g., the FCO reports on the UK's work in the United Nations). One of the "core

tasks" for all select committees is to "examine their department's Public Service Agreements (PSAs),<sup>7</sup> the associated targets and the statistical measurements employed, and report if appropriate.<sup>8</sup> Obviously, the committees are obliged to pick and choose what they should concentrate their attention on; and in discussion with Mike Gapes, the FAC chair, it quickly became apparent that their cycles of scrutiny demand long-term planning over years and over a vast canvas of global proportions. Moreover, the committees don't have the resources they need, either in terms of members or research capacity (we make and renew recommendations to improve the situation, see page 56).

Our studies, however, reported in Parts 1 and 3, suggest that the relevant committees do not take on the task of reviewing their departments' work against their PSAs as systematically and thoroughly as they could, and that they do not make as effective use of them as they could. On the other hand, PSAs would assist parliamentary oversight more fully if the government provided sufficient quantitative and qualitative information against which to judge whether they are being attained. As we have noted above (see page 13), the Commons Defence Committee complained in December 2006 that it simply did not have the information it needed to judge whether the MOD was correct in its judgement that it was meeting its military objectives in Afghanistan and Iraq.<sup>9</sup> Nor are we confident that the annual

*Human Rights Report*, with its tight focus on human rights abuses, has the scope to address properly questions of violence against civilians in situations of armed conflict and the at times less visible yet drastic humanitarian consequences of such conflict. Without dedicated reporting on these areas of policy, it is difficult for Parliament as much as for government itself to assess progress against the government's cross-departmental PSA target to "Reduce the impact of conflict through enhanced UK and international efforts". We suggest later that this gap might be filled either by broadening one or other of the reporting instruments, or preferably by producing a separate report regularly on the UK's responses, unilateral and multilateral, to armed conflicts and their humanitarian consequences. Dedicated and regular reporting would enable key civil society groups to assist not only parliamentary oversight of the government's responses to armed conflicts, but also possibly to give early warning of humanitarian crises and to play a part in devising policies for conflict prevention and peace-building. The existing complementary efforts of the FAC and the human rights groups, Amnesty International and Human Rights Watch, in identifying and protesting about any lapses in the *Human Rights Report* strengthen its integrity and demonstrate how such cooperation can work well in practice. (This is probably a good place to pay tribute to the integrity of the *Human Rights Report*, which details abuses with what could be uncomfortable candour for a government set, for example, on cosying up to the oppressive regime in Saudi Arabia. The FAC and Amnesty International and Human Rights Watch play their

part here for they are vigilant in identifying and protesting about any lapses in the report.) Such reporting mechanisms would also help across a broad range of policy areas – particularly when there is ongoing government engagement in a multi-faceted arena.

There is also the problem that parliamentary oversight is not only retrospective, but extremely retrospective in this area. Systematic scrutiny depends on rigorous attention to the annual departmental and other reports which inevitably report on events and actions which can have taken place some six to 19 or so months previously. Add, say, six to 12 months for the committee to prepare and publish its report, and then a wait of normally up to three months for the government's response – and then the select committee's follow-up, and you are dealing in history. For example, the government's *2005 Annual Report on Strategic Export Controls* was published in July 2006 and reported on events as much as 19 months previously. The Quadripartite Committee report on this document came out in August 2007.<sup>10</sup> Thus government decisions came under scrutiny more than two-and-a-half years after the event, and by the time the government responds, say after three months, the discussion on policy and action could be nearly three years out of date.

The situation with respect to scrutiny of European developments is different by virtue of the relative regularity of Council meetings in Brussels, and the constant flow of EU-related documents. As a result, Parliament has greater demands made of it, but also the opportunity to scrutinise government prior to it

<sup>7</sup> The PSAs and targets were introduced of course as a mechanism of Treasury control of departments, but they are capable of being used as an instrument of scrutiny by parliamentary committee and members.

<sup>8</sup> Liaison Committee, *Annual Report for 2002*, HC 558, Objective C, Task 6, 1 April 2003.

<sup>9</sup> House of Commons Defence Committee, *Ministry of Defence Annual Report and Accounts 2005–06* (HC 56, 13 December 2006).

<sup>10</sup> House of Commons Committees on Strategic Export Controls (Quadripartite Committee), *Strategic Export Controls: 2007 Review*, HC 117 (TSO, 7 August 2007).

taking action, by questioning a minister in the European Scrutiny Committee before a decision is taken or a treaty agreed in Brussels, or by agreeing a parliamentary motion on a particular legislative proposal. Indeed, the Scrutiny Reserve Resolution asserts the need for scrutiny to have run its course before an EU legislative decision is taken. In reality however, this Resolution might deter government from disregarding parliamentary scrutiny, but Parliament has no powers of enforcement. In addition, ministers are free to contest whether such a breach has occurred at all, even where a committee has clearly stated what it would consider a breach. Most significantly, the "completion" of the scrutiny process cannot guarantee effective oversight if the process itself is open to abuse. Both the European Scrutiny Committee and Foreign Affairs Committees questioned the Foreign Secretary prior to her negotiating the Reform Treaty with European counterparts in June 2007, yet the minister's obstructive performances rendered their attempts at oversight or influence negligible. Given that, in practical terms, European law is enforceable in the UK to the same extent as is domestic law, prospective scrutiny is an absolute necessity. But the prospective element in European scrutiny is far from robust.

Part 2 describes how Parliament attempts to scrutinise a constant and heavy flow of EU legislative proposals. It shows how the procedures for this, the "substantive" phase of scrutiny, undertaken by the European Scrutiny Committee and satellite standing committees in the House of Commons, are not only balanced in the government's favour (naturally, since a majority

of its members are from the governing party), but also that the government can undermine the whole process by framing *itself* the motion that goes finally to the House for the formal closing vote (without debate). The standing committee, the specialist body considering the proposal in detail, may in theory adopt a motion expressing concern or objection to a specific proposal, but the government can quite simply reword any motion, paying no heed to the committee's conclusions or wording. Thus the system as it exists can in this respect fairly be described as a "rubber stamp" for the government; and the committee is rendered irrelevant.

We suggest various ways in which a standing committee's original motion could be placed before the House, alongside the government's alternative motion, obliging the government to justify it in debate. But we also raise the issue that the select committees which are far better equipped to deal with EU legislative or non-legislative proposals in their domain – agriculture, say, or trade – are generally by-passed and the scrutiny takes place in the European scrutiny committees which are less competent to deal with them. We consider ways to remedy this structural failing below.

Parliament experiences equal difficulty in making its voice heard when the Prime Minister or Foreign Secretary are engaged in negotiating a treaty in Brussels, or ministers are taking part in Council of Ministers discussions on policy issues. It is not possible for Parliament to specify precisely what outcome it expects ministers to achieve and ministers are adept at evading scrutiny of these processes entirely, by denying MPs and their committees answers and preliminary information.

There is a need to find ways of obliging the Prime Minister, Foreign Secretary and their colleagues to set out details of forthcoming negotiations, and their intentions, which do not undermine their negotiating strength but allow Parliament to play a full role in scrutinising and sharing in policy decisions that are otherwise beyond democratic supervision. Some form of "soft mandating" is called for (see page 55). Finally, beyond the constant flow of European proposals it must respond to, Parliament must also be able to carry out investigations into important, more general European questions of significance or complexity – e.g., on the Constitutional and Reform Treaties or the euro. We question the duplication of this kind of inquiry between the House of Lords and the Commons, and go on to suggest later that the Lords committees are best placed and most able to concentrate on such inquiries.

### **Proposed government reforms of Parliament**

It is almost universally recognised that the imbalance in power between government and Parliament damages parliamentary democracy in the UK and gravely weakens Parliament's ability to hold government to account. This imbalance, as we pointed out in *Not in Our Name*, is especially the case in foreign and external policies, one of several areas of governance where the government may by tradition and through the use of royal prerogative powers (see page 7) act and make policy without having to seek parliamentary approval. The government's proposals for the reform of Parliament, as set out in the green paper, *The Governance of Britain*, leave unfettered the fundamental base of the



imbalance in power between government and Parliament – the power of the government majority in the House of Commons – and most of what flows from this power. However, the green paper also states unequivocally that royal prerogative powers are “no longer appropriate in a modern democracy”; commits the government to strengthen Parliament in these words, “The flow of power from the people to government should be balanced by the ability of Parliament to hold government to account”; and proposes to “seek to limit its own power by placing the most important of these powers onto a more formal footing, conferring power on Parliament to determine how they are exercised in future.”

<sup>11</sup> The green paper also sets out other proposals for reform, relevant to our concerns, notably to give MPs the power to ask the Speaker to recall the House of Commons and to approve its dissolution, and to make the work of the non-parliamentary Intelligence and Security Committee more transparent. <sup>12</sup> The Prime Minister also made an important pledge on freedom of information in a speech at Westminster University on 25 October 2007, his “Speech on Liberty”:

*Because liberty cannot flourish in the darkness, our rights and freedoms are protected by the daylight of public scrutiny as much as by the decisions of Parliament or independent judges. So it is clear that to protect individual liberty we should have the freest possible flow of information between government and the people . . . The Freedom of Information Act has been a landmark piece of legislation, enshrining for the first time in our laws the public’s right*

<sup>11</sup> Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, p. 15

<sup>12</sup> *Ibid*, pp.6-21.



*to access information. Freedom of Information (FOI) can be inconvenient, at times frustrating and indeed embarrassing for governments. But Freedom of Information is the right course because government belongs to the people, not the politicians. I now believe there is more we can do to change the culture and the workings of government to make it more open – whilst of course continuing to maintain safeguards in areas like national security.*

This pledge will demand a major change in the culture of ministers and officials alike, but if it does in practice free the ‘flow of information’ from government to Parliament, it would make a significant contribution to more

effective scrutiny. Otherwise, six months later, insofar as the *Governance of Britain* reform process has gathered substance, <sup>13</sup> it seems that its proposals, admirable in principle, will do very little in practice in the near future to strengthen Parliament’s ability to call government to account in its conduct of foreign affairs or even to exercise influence over it (see Table 2 overleaf).

<sup>13</sup> See for example green paper, *The Governance of Britain* (Cm 7170, 3 July 2007) and subsequent papers branded as part of the overall *Governance of Britain* programme: the Ministry of Justice paper *War Powers and Treaties: Limiting Executive Powers* (Cm 7239, October 2007) and the Leader of the House of Commons Paper *Revitalising the Chamber – the role of the backbench Member* (Cm 7231, October 2007). Also significant are ministerial statements to Parliament, in particular those by Gordon Brown of 3 July 2007 and Jack Straw of 25 October 2007.

Table 2 **Gordon Brown's reform proposals – what difference might they make?**

Proposal	Comment	Spot the difference
Parliament to be given the vote on war-making (Governance of Britain Green Paper; Limiting Executive Powers, consultation paper).	The government will probably enshrine this reform in a convention (which some say already exists after the votes on the Iraq war) rather than in statute law. This would give this and future governments “wriggle room” as conventions do not have the force of law of Acts of Parliament.	The impact will be lessened unless the government does decide to make this a statutory change that would strengthen the supervision of military action both by Parliament and the courts. Parliament could however decide to adopt measures for continuous parliamentary oversight of conflicts.
Statutory role for Parliament in oversight of treaties (Governance of Britain Green Paper; Limiting Executive Powers, consultation paper).	The government's focus is on placing the “Ponsonby Rule” convention on a statutory basis. But the so-called rule does not guarantee a treaty will even be debated in Parliament, let alone voted on.	As currently envisaged, no noticeable difference (though European and other treaties that require changes to UK law will continue to need to be enacted by prior legislation requiring the assent of Parliament).
A National Security Strategy (Governance of Britain Green Paper, Jack Straw's statement 25 October).	Parliament does not have the mechanisms in place to carry out joined-up scrutiny of such a strategy.	If mechanisms for scrutiny are put in place, this change could improve oversight of the Afghan and Iraq conflicts and domestic counter terrorism strategy..
Create new convention so that a Prime Minister must seek the approval of the House of Commons before asking the monarch to dissolve Parliament (Governance of Britain Green Paper)	Currently, a Prime Minister may request the monarch to dissolve Parliament at any time during its five-year term or when the House of Commons has passed a motion of no confidence in the government. The power to request a dissolution gives a Prime Minister significant control over Parliament.	In most circumstances when the Prime Minister has a majority in the House, this proposal will make no difference at all. There may however be circumstances in which it could make a difference, and it is arguably of symbolic importance.
Amend Commons Standing Orders to enable a majority of MPs to request the Speaker to recall Parliament during a recess (Governance of Britain Green Paper).	Currently only the government can request the Speaker to recall Parliament. This became an issue when many MPs wanted to recall Parliament in 2002 to discuss the run-up to the invasion of Iraq and the government at first refused to do so until Graham Allen MP organised a partial parliamentary debate at Church House, Westminster.	This goes some way to meeting our proposal in Not in Our Name that MPs should be given the right to request a recall. But the green paper sets the threshold too high to be practicable; and where the government has a majority (as it will usually do) then it will normally be able to block such a request. Further, the final decision remains at the discretion of the Speaker.
Introduce debates on the annual objectives of major government departments on the floor of the House. (Governance of Britain Green Paper)	Could facilitate more involvement in shaping the priorities of external policy, rather than simply responding to developments	If they are to be of use, debates on floor of the House could assist in framing and giving more focus and status to the detailed and, as we recommend, more systematic scrutiny work of select committees of department annual and other government reports.
Reform of the Intelligence and Security Committee (Governance of Britain Green Paper; Jack Straw's statement 25 October).	Whether the ISC will become a full-blooded parliamentary committee, equivalent to existing select or joint committees, is not yet clear.	Could make oversight of the security forces more open and democratic and would have brought scrutiny of rendition within the scope of Parliament if brought about for the 2006-07 session.
Pledge in Gordon Brown's Speech on Liberty to extend the Freedom of Information Act, to facilitate “the daylight of public scrutiny”. On accepting the nomination for the Labour Party leadership (17 May 2007) he had promised “a more open and honest dialogue: frank about problems, candid about dilemmas ...” (speeches, 15 May and 25 October 2007)	As we pointed out in Not in Our Name (see Appendix A), the existing FOI regime is especially restrictive over all aspects of foreign and external policy, and the major global institutions with and within which the UK government works are themselves excessively secret institutions. This current study has also highlighted the reluctance of ministers to deal frankly and openly with select committees and of departments to provide information.	Maurice Frankel, of the Campaign for Freedom of Information, has stated (at: <a href="http://ourkingdom.opendemocracy.net/2007/11/04/a-great-day-for-freedom-of-information/">http://ourkingdom.opendemocracy.net/2007/11/04/a-great-day-for-freedom-of-information/</a> ) Gordon Brown's Speech on Liberty is a “turning point” in the government's approach to freedom of information. For the first time since 1997, he writes, a Prime Minister has not only spoken out clearly in favour of FOI but proposed to extend, rather than restrict, the legislation. More effective parliamentary oversight of external and EU policies depends upon ministers and departments dealing frankly and openly with select committees in the same spirit.

Proposal	Comment	Spot the difference
Transparency of government expenditure (Governance of Britain Green Paper, Jack Straw's statement 25 October).	It is agreed that recommendations made following National Audit Office review currently underway will be implemented by government.	Could be used as handle for more scrutiny of variety of military actions; but this remains to be seen.
More formalised responses to parliamentary petitions (Governance of Britain Green Paper; The Governance of Britain – Petitions)	This is not the bold initiative, based on the experience of the Scottish Parliament and other legislatures, that it seems to be. The government has stated its support for e-petitioning, but is cooler on the idea of a committee on petitions and measures to ensure that Parliament takes petitions any more seriously than it does now.	Could lead to popular campaigns gaining access to Parliament, e.g., over cluster munitions or against the Iraq war or on other issues of foreign and domestic policy.
Right of charities to campaign publicly (Governance of Britain Green Paper).	There is growing support in civil society to broaden the role that charities may play in public policy-making, but much will depend on the Charities Commission dumping its historic hostility to wider definitions of public education and debate.	Could facilitate greater involvement by charities in parliamentary inquiries; assist groups currently denied charitable status financially; and strengthen the ability of organisations in civil society to contribute to public debate and policy-making generally.
Plan to encourage more local media coverage of the national-level policy activities of MPs ( <i>Revitalising the Chamber – the role of the backbench Member</i> ).	A more retrograde as well as futile proposal than it appears. This is part of a package that emphasises plenary activity on the floor of the House at the expense of the more serious scrutiny work done in committee. Parliament urgently needs to strengthen and modernise its committee activities and other means of holding the executive accountable.	Local newspapers and radio are irredeemably parochial and usually trivial to boot. Skilful MPs already exploit the local media well; could provide other MPs with a marginal incentive to engage in national or international policy issues.

Sources: See footnote 13

The government, not unreasonably, is concentrating on reform of two main prerogative powers – the power to go to war and to ratify international treaties without parliamentary decision. Jack Straw, the Minister of Justice and architect of the governance programme, has published a consultation paper *War Powers and Treaties: Limiting Executive Powers* dealing with war-making and ratifying treaties and has promised a draft constitutional reform bill in the New Year that would be subject to full public consultation and pre-legislative scrutiny. On the first count, however, the government is edging towards developing a convention that is now widely believed to have been already established by the decision to invade Iraq – that is, that a future government should seek the approval of the House of Commons for deploying UK forces in armed conflict. Straw suggested before the House of

Lords Constitution Committee on 23 October 2007, that this was the government's preference, though he referred to the possibility of a "hybrid" approach involving changes to the Standing Orders. He acknowledged that the Commons Public Administration Select Committee (PASC) had advocated placing the royal prerogative on a statutory, and so stronger, footing in its groundbreaking report of March 2004.<sup>14</sup> The discretion that would remain with a government would then be subject to clear rules of conduct rather than to the more malleable regime of convention. A convention would have given Parliament the opportunity to vote upon the initial invasion of Afghanistan, but given the cautious wording of the green paper and the consultation paper, probably not upon the redeployment of troops into Helmand or

<sup>14</sup> PASC, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, HC 422, TSO, 16 March 2004.

changes in parameters of any mission once it was embarked on.

As for reform of the government's treaty-making powers, Gordon Brown promised in his statement on 3 July 2007 to "put on to a statutory footing Parliament's right to ratify new international treaties." But now it has become clear that all that is intended is to place the convention known as the "Ponsonby Rule" on a statutory basis. At present, this "Rule" stipulates that international treaties must lie before Parliament for a prescribed period of time before they can be signed. It ensures a treaty can be subject to a debate in Parliament but does not guarantee that it will be, and it certainly does not commit the government to a binding vote. As the consultation paper on war powers and treaties itself states: "there are no known examples in recent years of a vote being taken following a debate held under the Ponsonby Rule." The government's

current proposals do not measure up to the declared intention to give Parliament the “right to ratify” treaties; this legislation would simply give legal force to a measure which is inadequate. The practical impact on EU treaties will also be negligible as they all require implementation by domestic law. As a consequence, the entry into force in the United Kingdom of any European Union treaty (*de facto*, its ratification) is currently subject to a binding vote in Parliament – a vote on the implementing legislation following established legislative scrutiny procedures.

Meanwhile, the government will be able to continue making use of unreformed prerogative powers to pursue the whole range of foreign and external policies and actions. These powers, a pre-democratic relic of monarchical rule, give the Prime Minister, ministers and officials the power to make foreign policy without the approval, or even the knowledge, of Parliament. Among the decisions and actions that the government can take under prerogative powers, other than deploying the armed forces and agreeing treaties, are: the conduct of diplomacy; choosing allies and developing the Special Relationship with the United States in defence as well as foreign affairs; negotiating within the EU, in particular on legislative matters; giving development aid and humanitarian assistance; playing a role in international decisions on trade or climate change; contributing to the policies of the World Bank, IMF and other international bodies; and representing the UK on the UN Security Council. In the *Governance* green paper, the government accepted the proposition, made both by PASC in its 2004 report and in *Not in Our Name*, that such powers

should “in general” be put on a statutory footing and “brought under stronger parliamentary scrutiny and control” to ensure that “government is more clearly subject to the mandate of the people’s representatives”.<sup>15</sup> The green paper promised a broad review of prerogative powers in general, but as yet has not produced a consultation document.

The government’s plans do not unfortunately include the reforms suggested for the European sphere in *Not in Our Name*, including those for which this report has affirmed the rationale in Part 2 and which we summarise below, nor the well-considered alternative proposals for reform, set out in the Modernisation Committee’s report of March 2005.<sup>16</sup> This report was the product of a substantive investigation into the deficiencies of the scrutiny system; and given the close relationship between the government and the committee – its chairman being the Leader of the Commons, a ministerial position – there was naturally some expectation that the proposals would be implemented. However, what were identified as being “worrying shortcomings” in the European arena appear no closer now to being addressed than they were in 2005 – a state of affairs that implies (at best) a lack of commitment by the government to meaningful reform. The Modernisation Committee’s expectation that the subsequent Parliament might re-examine some of the identified issues has not been fulfilled either. It is unsurprising that the ESC itself, which actively contributed to the Modernisation Committee’s inquiry, and whose work is impinged by the current arrange-

<sup>15</sup> *Op cit*, *Governance green paper*, pp. 17-18.

<sup>16</sup> *Modernisation of the House of Commons Select Committee, Scrutiny of European Business*, 22 March 2005, HC465 – I.

ments, should express its own dissatisfaction with this pace of reform, and it did so in its “Work of the Committee in 2006” report:

The government has not responded formally to the proposals of the Modernisation Committee and progress on reform of the system of European scrutiny appears stalled. ... We are concerned at the lack of progress and consider ... that the government must bring forward its proposals ... without further delay.<sup>17</sup>

In brief, none of Gordon Brown’s proposed reforms will have any real impact on parliamentary scrutiny of European issues in the UK and pressure for reform from any domestic lobby is likely to be very limited. It may be that the best hope for reform comes from the new European treaty – the Reform Treaty – which, if enacted, will formalise and somewhat extend the involvement of national Parliaments in the process of European legislation. The formal new powers given to national Parliaments by this new document are not wide-reaching, but their implementation in the United Kingdom and elsewhere could arouse greater public and political interest in the whole issue of national parliamentary scrutiny of European policy and legislation. It is difficult to imagine that parliamentary and public interest in the European Union and the United Kingdom’s role within it will diminish. Whether this continuing interest and controversy will translate itself into a better and more coherent system of parliamentary scrutiny for what the British government does within the European Union is another question entirely. It is a familiar paradox that in the United

<sup>17</sup> See para. 5 of the report.

Kingdom, passionate debate about general questions of European integration is not always matched by discussion of the detailed unfolding of this process.

In October 2007, Harriet Harman, Leader of the House of Commons, also issued the *Revitalising the Chamber – The Role of the backbench Member* paper in response to the Commons Modernisation Committee report. The paper makes minor concessions to its recommendations, but rejected two proposals to give more prominence to select committee activity: first, for a weekly half-hour in Westminster Hall for ministers to give brief responses to select committee reports (it would not “be helpful to require a Minister to contribute to a debate in this way before the Government has had a proper opportunity to develop its response to the report”) and secondly, for committee reports to be debated on substantive motions. Instead, the response took for granted the assumption that the Chamber should be the focus for attention on Parliament. We acknowledge that the Chamber is the right place for significant and major debates and is often an unparalleled arena for great occasions, But we repeat our conviction (shared with other observers<sup>18</sup>) that a modern parliament must be a committee-based legislature with select and *ad-hoc* committees delivering detailed work of analysis and scrutiny that should then be debated on the floor of the House.

However, *Not in Our Name* also drew attention to other means by which the government could dominate Parliament and limit its scrutiny of policies through restrictions on the release of official information (which are

most stringent in foreign and defence affairs), its control of parliamentary business and strong party discipline over its backbench MPs and their loyalty to its actions. We also found that some of Parliament’s own traditions and working practices reinforced the government’s autonomy in all areas of policy.

### Final recommendations

The re-balancing of power between the executive, or government, Parliament and the peoples of the United Kingdom depends upon fundamental reforms to the current constitutional arrangements that the government’s wider “national conversation” upon those arrangements, citizenship and values, upon reform of the House of Lords, the review of voting systems (especially for general elections) and other reforms will, we hope, begin soon. In our view, this “conversation” should lead to the adoption of a written constitution, framed after popular debate and with popular approval. *Not in Our Name* also drew attention to other means by which the government dominates Parliament and limits its scrutiny of policies through restrictions on the release of official information (which are most stringent in foreign and defence affairs), its control of parliamentary business and strong party discipline over its backbench MPs and their loyalty to its actions.

### Priorities for reform

Our priority here, however, is to urge the government to strengthen and take further its *Governance* reforms and to identify more modest reforms that could improve parliamentary scrutiny of Britain’s external policies – prospective as well as retrospective – and strengthen Parliament’s ability

and resources in order that it can better influence those policies openly in the democratic arena. Our recommendations for reform from *Not in Our Name* are already on the table. We found then that some of Parliament’s own traditions and working practices reinforced the government’s autonomy in all areas of policy and our case studies reinforce those findings. In this section, therefore, we augment and take further the recommendations from our previous book and additionally draw attention to the recent Constitution Unit report, *The House Rules: International lessons for enhancing the autonomy of the House of Commons*, that makes a range of proposals to give Parliament more power as an institution in its own right; to give more prominence to the work of select committees and all-party groups, with powers for them to introduce legislation; and to enhance the influence MPs have over the agenda and business of the House (see panel).<sup>19</sup> Many of these proposals would prove valuable in making Parliament more independent of the executive, strengthening its scrutiny of government’s external and domestic policy-making, and shifting the culture of the Commons in a more proactive direction so that committees and members could dispose properly of the new responsibilities that the government proposes to transfer to it.

<sup>18</sup> See for example the detailed Hansard Society Commission report on parliamentary scrutiny, *The Challenge for Parliament*, Vacher Dod/Hansard Society, 2001.

<sup>19</sup> Russell, M., and Paun, A., *The House Rules: International lessons for enhancing the autonomy of the House of Commons*, Constitution Unit, October 2007

# Constitution Unit: enhancing the autonomy of the House of Commons

The Constitution Unit report, *The House Rules: International lessons for enhancing the autonomy of the House of Commons*, suggests in detail:

- House or “backbench” Business to be guaranteed “a larger and more regular block of time”. The allocation of this time should not be controlled by the government’s Chief Whip but by a new Backbench Business Committee
- A 30- minute slot every week for the introduction of committee reports. Held in the plenary, it would allow for members to vote for a fuller debate in Westminster Hall.
- More time in general for consideration of committee reports
- Committees empowered to propose bills, which should be given priority
- Groups such as All-Party Parliamentary Groups also empowered to propose bills, again with means for gaining priority.
- Backbenchers to be given a role in selecting members of select committees.
- Select committees to elect their own chairs in secret ballots.
- Similar reforms to be introduced for bill committees, which should reflect the balance of opinion within Parliament rather than the balance of parties.
- The government monopoly over changes to the Standing Orders to be ended.
- The Speaker to be “prepared to be an outspoken public defender of Parliament.”
- The chair of the Liaison Committee in the House of Commons to be elected by the whole House.
- Possible need to create a unified body to act as a “collective voice for the backbenches.”

First, we urge Gordon Brown and Jack Straw to put the government’s duty to seek parliamentary approval for the deployment of the armed forces in armed conflict abroad on a statutory footing, with safeguards that would preserve a necessary flexibility in practice; to bring forward proposals that will give Parliament a genuine right to debate and vote upon such treaties as its members choose; to begin the complex task of placing the other prerogative powers on which it relies for the conduct of external policies on a statutory footing as a matter of priority; and to take forward the Modernisation Committee’s alternative proposals for the reform of parliamentary scrutiny of European business for debate and resolution in the House. We have set out the rationale for these recommendations above.

Secondly, we reiterate our previous proposals that Parliament should shift its emphasis more emphatically towards developing its scrutiny functions through select and other committees and adopt a more assertive and proactive culture in its dealings with government. The proposals of the Constitution Unit to strengthen the powers of Parliament as an institution and of its committees are very important in this regard. More specifically, MPs should make more thorough use of the provision under House of Commons Standing Order No. 137A that makes it possible for select committees to work together and produce jointly agreed reports. In Part 3 we have specifically drawn attention to the need for a more cross-departmental response by Parliament to government policies and arrangements that cross departmental borders and we recommend that Parliament should work towards establishing collaboration between

committees as the norm rather than the exception, with a view to achieving “joined-up” strategic oversight of external policies. Parliamentary orders that inhibit such activity – such as those relating to quorums – should if necessary be amended. In the immediate future, the Liaison Committee could perhaps fill the gap with an external affairs sub-committee (probably comprising the chairs of the Defence, Foreign Affairs and International Development committees and interested members). In the first instance the sub-committee could ensure that the relevant aspects of Gordon Brown’s *Governance* programme are subject to full scrutiny at the earliest possible stage. (Owing to the parliamentary recess valuable time has already been lost.)

### **Strengthening committee scrutiny**

Select committees and members should make systematic use of Public Service Agreements, departmental reports and other such documents as a framework for continuing scrutiny. It is to be hoped that they will take advantage of the government’s proposal in the *Governance* green paper to give the Commons “an opportunity to debate, on the floor of the House, the annual objectives and plans of the major Government Departments”. Such debates could be used to frame and give focus and status to the detailed and, as we recommend, more systematic analysis of departmental annual reports and other government documentation that select committees can potentially provide. The scrutiny of the FCO’s *Human Rights Reports* by the Foreign Affairs Committee and of export controls by the Quadripartite Committee are models of what can be done.

We have identified above the need for regular reporting to Parliament on armed conflicts and their humanitarian consequences and for the FCO reports on its work at the United Nations to be made annually, as initially appeared to be the intention. We recommend that the relevant select committees should press ministers to make the FCO report on its work at the UN annual and to institute an annual report on armed conflicts and their consequences, or to provide suitable documentation on a regular basis. The Delivery Agreement for PSA 30 on conflict promises to use “Quantitative measures of progress ... supported by qualitative and narrative assessments”. But it does not make clear whether these measures will be shared with Parliament. A detailed document on conflicts, on the model of the *Human Rights Report*, could describe conflict situations worldwide, relevant government policy and its work in supranational organisations, including the UN. A comprehensive report of this kind would provide a base for a thematic overview of the area, building on the recent work of the International Development Committee. Here again joint working is likely to be necessary.

A great deal will also depend in general on government and individual ministers adapting an appropriate response to Parliament’s requests for information and transparency. Indeed, we recommend that ministers and committees should develop what we describe as a British form of “soft mandating”, whereby government ministers would be obliged to state a possible range of outcomes in forthcoming negotiations and indeed to set out the government’s intended positions to the European Scrutiny Committee for EU actions and to

the appropriate select committee in advance of other major international negotiations. If such reform proved insufficient to re-balance satisfactorily the relationship between ministers, the ESC, Foreign Affairs, International Development and other committees, a case could be made for a “harder” form of mandating, allowing the ESC and other committees a degree of control over the matters on which it would be necessary for the government to elucidate its position. These recommendations are likely to require more regular evidence sessions between committees and the government. Ideally it is ministers who should interact with committees. However, it may at times be possible for officials to take their place, which would require modification of the “Osmotherly Rules” (*Departmental Evidence and Response to Select Committees*) which govern what officials may say in evidence in Parliament, to enable them to respond more openly to a committee’s requests for information.<sup>20</sup>

We also summarise here the recommendations for the conduct of committees that come out of the study of Parliament’s handling of EU legislative proposals in Part 2:

### **1. Mainstreaming European affairs**

EU legislative proposals should be considered by the relevant departmental select committees instead of by the European Scrutiny Committee, thereby making the best use of the more specialised expertise of select committee members and staff and bringing the treatment of European legislation in line with that of domestic legislation.

<sup>20</sup> For the “Osmotherly Rules”, see: [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/osmotherly\\_rules.aspx](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/osmotherly_rules.aspx)

Non-legislative scrutiny could be mainstreamed in the same way, with ministers appearing before the relevant select committee prior to Council of Ministers meetings. The Foreign Affairs Committee, whose work in this respect is currently duplicated by the ESC, could *alone* continue to hear from the Europe Minister or Foreign Secretary in relation to European Council meetings (see pages 29-30). Were mainstreaming reforms to be implemented, the two other recommendations for reform made below would apply equally to the departmental select committees inheriting the roles of the European Scrutiny Committee.

## **2. Scrutiny of legislative documents**

A motion agreed by a European standing committee must have some direct expression in the formal House of Commons vote in which the scrutiny process culminates. The work of the standing committees otherwise is critically undermined. There are a number of possible procedural adjustments any one of which would enhance significantly the role of the European standing committees. For example, one proposal is that a standing committee's motion is voted on in the House *unless* the government's original wording is itself restored by a vote (see pages 29-30).

## **3. Cross-cutting inquiries – A broader role for the House of Lords?**

The European Scrutiny Committee, whose resources are stretched, should focus on the roles to which it is best suited and which it is most able to carry out – the filtering and assessment of legislative proposals and the robust scrutiny of ministerial action in Council meetings.

“Cross-cutting” inquiries should exclusively be undertaken by the House of Lords EU Committee for the benefit of both Houses. The different “cultures” of the two Houses should not be allowed to prevent the formulation of an effective system of interaction (see pages 29-30).

### **Resourcing committees**

We reiterate our previous recommendations that bear upon the resourcing of committees and Parliament.<sup>21</sup> Select committees should have highly qualified and knowledgeable experts at their disposal rather than (as is mostly the case) able young persons at the beginning of their careers. We also recommended the creation of two new institutions, a Legal Counsel's Office in Parliament and a Parliamentary External Audit Office to provide authoritative information and advice on which Parliament could base its judgments on government policies. (The first of these recommendations should be taken into account in the government's review of the office of the Attorney-General.) In addition, our detailed study of committees in action has made us acutely aware of how stretched the relevant committees have been when seeking to respond to events around the world. We recommend that there should be an experiment in the appointment of *rapporteurs* to monitor specific developments on their behalf, producing regular reports and raising issues with them when required. It may be that such officials could be partly based at major international organisations (such as at Brussels, the UN or, World Bank).

Given the importance of the informal structures and work

which occurs outside select committees, the House authorities should also seek to support the activities of All Party Groups (APGs) and individual MPs as an integral part of parliamentary scrutiny. We welcome the Constitution Unit's proposal to empower APGs to initiate legislation, but also suggest more modest reforms, such as the allocation of desk space to groups that exceed a certain size. We also believe that serious attention should be paid to the Unit's other proposals to give the House (or rather groups of backbenchers within it) greater control over the House's time, and the composition of its committees.

As we suggested previously in *Not in Our Name*, two further important resources within the grasp of parliamentary committees are neglected – MPs and time. In all our discussions with members of select committees and officials about mainstreaming, mandating and other changes, they have responded that too few MPs are involved in committee work; and that those who are involved do not have the time they need to give to their committee responsibilities, especially in view of all the other demands they have to meet. We have several times sat in on committees as their chairs and staff anxiously sought to summon up a quorum. In our judgment, as we have said above, Parliament should shift its emphasis from ritual encounters in the Chamber to systematic work of analysis and scrutiny in committees. We agree with the Hansard Society Commission on Parliamentary Scrutiny that select committees should be enlarged so that so that they can perform their duties more effectively; and that the great majority of MPs should therefore be expected to serve on at least one select committee. Thus Parliament would be “main-

<sup>21</sup> See Burall et al, *Not in Our Name: Democracy and Foreign Policy in the UK, Politico's 2006, Chapter 7, "The way forward"* pp.184-204.



streaming" committee service and raising the profile and status of scrutiny among MPs and the media. Larger committees would facilitate our other recommendations that involve joint working and the use of sub-committees.<sup>22</sup>

Reform of the existing parliamentary calendar is also long overdue. The summer break of around two and a half months from late July to October creates two kinds of difficulties. First, as we have pointed out above, Parliament is often in recess when an emergency, foreign or domestic, occurs and therefore MPs and peers are not sitting to ensure that government is held to account or that there is democratic debate about its response to a crisis. Secondly, time that could be devoted to Parliament's ongoing legislative and oversight activity is lost. The prolonged recess belongs to an earlier era when the role of an MP was not full-time and scrutiny of government was less demanding. In our view, the accountability gap and loss of parliamentary time are unjustifiable. Limited attempts have been made to address the problem. In 2003 and 2004, on the initiative of the late Robin Cook as Leader of the House, Parliament sat at the beginning of September, before a break for party conferences. As the summer recess also began earlier in July (as a trade-off), this practice did not produce extra parliamentary time, but it could have done. As it was, the practice was dropped in 2005 and the Commons voted not to reinstate it in 2006. Provision has been made for written answers and written ministerial statements in September. Select committees can of course meet and hold evidence sessions during a recess, as the FAC did over the invasion of Lebanon in 2006 and

<sup>22</sup> *Op cit*, pp 193-94.

the Treasury select committee did over Northern Rock in 2007. But given the absence of MPs from Westminster during a recess, this is not common practice; however, their work would naturally continue unabated while Parliament sat for longer, and some of the prolonged delays in their work would be avoided. We therefore recommend that MPs give urgent attention to bringing themselves up to date with their responsibilities. They should at least take less time off during the summer, a decision that would no doubt improve their standing with the public. They ought at least also to study the practicability of establishing an all-year-round "rolling" Parliament with only shorter breaks. Other organisations manage to continue functioning all year round through staggering holidays and having quieter periods. Surely Parliament could do the same?

One pledge in Gordon Brown's *Governance* package does at least recognise the first of these two difficulties, and the green paper commits the government to giving MPs the opportunity to initiate the recall of Parliament. However, the actual proposal is that it would require a majority of MPs to request the Speaker to recall Parliament; and that even then,

It would remain at the Speaker's discretion to decide whether or not the House of Commons should be recalled based on his or her judgement on whether the public interest requires it, and to determine the date of recall.

In our view, a prerequisite that a majority of MPs should be required to make the request sets far too high a threshold, especially as when the government has a majority in the House, this requirement would in normal circumstances effectively give

the government discretion over whether or not Parliament should be recalled – which rather contradicts the basic principle that MPs should be able to effect the recall independently of the government. The threshold should be set much lower; in *Not in Our Name*, we suggested that it should be set perhaps at a third of MPs from two or more parties. This proposal should avoid the mischief of party political opportunism while ending the greater mischief of executive control of the legislature. Moreover, it should be established that the Speaker would be expected to accede to that request; in any but the most exceptional circumstances, it is an egregious idea that a single member, albeit the House's chosen representative, should be able to substitute her or his judgment for that of a his or her colleagues.

Finally, one function of Parliament is to provide a forum for public debate of matters of political and social significance.

Parliament should continue to work closely with relevant non-governmental organisations and outside experts, especially in the kinds of partnerships which the FAC has with Amnesty International and Human Rights Watch over the government's human rights policy. Civil society organisations and MPs both benefit from this interaction, as does policy formation and ultimately the public interest within the UK and internationally. It is obviously in the interests of committees and MPs to continue working with NGOs and developing creative means to ensure that they gain the greatest possible assistance in analysing and understanding external policy matters. But Parliament could do more to showcase the work of NGOs and others, through closer engagement with their ideas through

organising seminars on key publications, panels of experts, and so on. A balanced engagement by Parliament and parliamentarians could also counteract the trend of undue parliamentary dependence on media pre-occupations which often have a limited perspective and short-term focus.



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