How Should Canada’s Parliament Decide Military Deployments? Lessons from the United Kingdom

by Philippe Lagassé

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Executive Summary

Since 2006, Canada’s House of Commons has been asked to vote on military deployments. These votes have allowed Members of Parliament to express their views on the operations of the Canadian Forces, while serving to democratize the executive’s power to send armed forces overseas. However, this practice of consulting the Commons does not impose any binding legal or political constraints on the executive’s prerogative to deploy the military. The legal and constitutional authority to send forces abroad still rests with the prime minister and Cabinet. The practice of consulting MPs when deploying the military remains a courtesy, rather than an obligation.

In contrast, the British House of Commons has been granted political control of the executive’s military deployment prerogative through a constitutional convention. The effect of this convention was recently shown in the vote involving British military strikes against Syria. Unlike in Canada, the British government is politically bound to consult and adhere to the views of MPs before considering military deployments overseas.

This paper examines whether Canada should follow the British example, granting members of Parliament control over the executive’s power to deploy the armed forces by means of a constitutional convention. It concludes that Canada’s existing practice has many advantages, and that Canadian parliamentarians should be mindful of the risks and costs involved in adopting a constitutional convention to control the executive’s military deployment prerogative.
Canadian defence policymaking has been democratized in a notable way since 2006. Under Prime Minister Stephen Harper’s Conservative government, votes have been held to secure the approval of the House of Commons, reinforcing the Crown’s prerogative to deploy the armed forces overseas. This practice stands in contrast to the approach taken by the Liberal governments of prime ministers Jean Chrétien and Paul Martin, where formal votes were eschewed in favour of take-note debates. While this author and other commentators have criticized the practice of holding Commons votes to approve military deployments, it appears that it has become well-entrenched, and it will likely continue should another party form the government. The New Democratic Party has long advocated for this practice and the Liberals have quietly endorsed it. Indeed, any future government that attempts to deploy the military overseas without consulting the Commons in some form would likely be accused of lacking respect for the House and Members of Parliament.

Although the practice of consulting the Commons when deploying the armed forces is likely to endure, it is equally important to note that the executive still enjoys a considerable degree of flexibility in choosing how and when it involves the House in such matters. This suggests that the aim of “taming” this executive power is incomplete. In the United Kingdom, where a similar push toward democratizing this prerogative power has been happening for more than a decade, greater steps have been taken to strengthen the requirement to consult the Commons prior to deploying the armed forces. The British Commons’ control over military deployments has evolved into a politically binding constitutional convention. The force of this convention was demonstrated in the summer of 2013, when British MPs prevented Prime Minister David Cameron from committing the UK to a potential military strike against Syria.

This paper examines whether Canada should follow Great Britain’s example by granting its House of Commons control of military deployments, through a constitutional convention. Although doing so would formalize the current practice of consultation, it argues that parliamentarians should be mindful of the disadvantages of making Commons approval of military deployments a constitutional requirement. While the current practice leaves the executive with a significant degree of discretion, a convention could fuel tensions between the executive and legislature over their respective authorities, and could unduly restrain a government’s freedom of action over a critical matter of state. This paper therefore concludes that Canadian parliamentarians should carefully consider developments in the United Kingdom before pursuing additional measures to strengthen the Commons’ control of military deployment decisions.

I. MILITARY DEPLOYMENTS AND THE CANADIAN HOUSE OF COMMONS

In Canada, the authority to deploy the armed forces is found in prerogative power, discretionary authorities that belong to the Crown. Prerogative powers are either exercised by the Governor General, on the advice of Cabinet, or they are delegated to ministers or officials, to be employed

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as part of their responsibilities. In addition to military deployments, these powers provide the legal authority to undertake executive actions, such as making judicial appointments, issuing pardons and passports, and conducting diplomatic affairs. They grant the government powers that are not explicitly provided for in statute, and vest the executive with the legal authority to conduct matters of state. As well, decisions made under prerogative authority are often deemed non-justiciable, or worthy of judicial deference. Consequently, decisions made under prerogative authority have a fair chance of being left untouched by the courts. Most important of all for the purposes of this discussion, prerogative powers are exercised by the executive alone; the House of Commons has no formal role in determining how or when governments use them.

The executive's monopoly over the exercise of certain prerogative powers has been questioned at various times in Canadian history. In particular, those that enable the executive to declare war and deploy armed forces have been considered too important to be exercised without some involvement by the House of Commons. Given the significance of sending Canada's armed forces abroad to fight, it was thought that this decision should be sanctioned by the democratically elected House of Parliament. The practice of consulting MPs was meant to ensure that declarations of war and military deployments had an added degree of democratic legitimacy, and that the people's representatives had an opportunity to discuss and debate the matter. Accordingly, under the Liberal government of Prime Minister William Lyon Mackenzie King, Parliament was consulted before advising King George VI, as King of Canada, to declare war on Germany in 1939. During the Cold War and post-Cold War eras, governments occasionally held Commons debates or votes when Canada's armed forces were sent overseas.

A crucial aspect of these Commons consultations was their flexibility. In spite of the precedent set by Mackenzie King's government, successive ones did not feel bound to hold a vote in the Commons each time the military was sent overseas. Canada's commitment to the Korean War was made without holding a vote in the House, as were innumerable peacekeeping deployments. Similarly, Canada's involvement in the conflict in Kosovo and initial deployments to Afghanistan were decided without Commons votes. The involvement of the Commons in military deployments, therefore, was largely ad hoc, set by the whims of the executive. When principle or political expediency demanded a Commons vote, it was done; when governments did not feel that votes, or even debates, were necessary, the House was snubbed.

The lack of a formal obligation to involve the Commons in deployments did not go unnoticed. Opposition parties expressed their dismay when governments failed to consult the House, and attempts were made by the Reform Party in the 1990s to legislate statutory constraints on this

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2 For an overview of prerogative power and how this authority is exercised, see Major Alexander Bolt, The Crown Prerogative as applied to Military Operations, Office of the Judge Advocate General, Strategic Legal Paper Series, Issue 2, 2008.
4 For a thoughtful, contemporary articulation of this view, see Aaron Wherry, “Syria and when a democracy goes to war,” *Macleans.ca*, 9 September 2013: [http://www2.macleans.ca/2013/09/09/what-happened-yesterday-in-britain/](http://www2.macleans.ca/2013/09/09/what-happened-yesterday-in-britain/)
executive prerogative. Yet the flexibility and decisiveness in foreign and defence affairs that an ad hoc approach provided the executive, as well as Canada’s executive-centric approach to governing, counteracted these efforts.

True to its Reform-era ideals, the Conservative Party has worked to give MPs a greater role in military deployment decisions. Shortly after forming his government in 2006, Prime Minister Stephen Harper asked the House of Commons to vote on an extension of Canada’s mission in Kandahar, Afghanistan. This was the first of several votes that Harper’s Conservative government would hold to secure MPs’ approval of military deployments or mission extensions. Of note, the Commons was again asked to approve an extension of the Kandahar mission in 2008, and it voted on the deployment of the Canadian Forces (CF) to conduct strikes against the Libyan regime of Muammar Gaddafi in 2011. As a result of the Conservative government’s efforts, there is now an expectation that the Commons will be asked to vote on military deployments, particularly if a mission involves the possibility of combat. Arguably, these consultations of the House are considered a custom, albeit a nascent one. A government that did not allow the Commons to express itself with a vote when deploying the armed forces on a combat mission would be roundly criticized today, despite the fact that the Harper government’s revival of this practice is less than a decade old. There is now an expectation that MPs will be allowed to voice their support for, or opposition to, significant expeditionary military operations.

Despite this expectation of Commons consultation, the executive is left with a considerable degree of discretion over how and when the armed forces are deployed, as well as how and when parliamentarians can express their views on the decision to deploy. Leading up to the 2006 Commons vote on extending the CF mission to Afghanistan, Prime Minister Harper stated that he would continue the deployment for at least a year, whether the House agreed to a two-year prolongation or not. This signalled that he did not intend to give the House a veto over his exercise of the prerogative. At most, Harper saw the vote as an expression of non-binding advice. The government further indicated that Commons votes would only be held when the executive considered that it was warranted by the nature of a particular military mission. For instance, the government asked the House to debate, but not vote on, the decision to commit the CF to a training mission in Kabul in 2011.

In the lead-up to Canada’s intervention in Libya, the Harper government also showed that the executive could continue to act in military matters without consulting the House when necessary. Canada’s deployment of a naval frigate to the Libyan coast occurred two weeks before the Commons was asked to approve military strikes against the Gaddafi regime. As well, although the Commons voted before airstrikes against the regime started, the vote happened after Canadian CF-18s had already been deployed to the region and had begun to take part in

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sorties. While the prime minister contacted opposition leaders in the lead-up to the vote, to ensure that they would support the CF mission, the prerogative to deploy the armed forces was exercised prior to consulting MPs. This suggests that the Commons vote to approve the Libya missions was merely an expression of support, rather than an authorization for the executive to act. Presumably, this is how the Harper government saw the vote as well; had the prime minister felt that the authorization of the Commons was required in order to deploy the armed forces, his government would have waited until the House had expressed itself before sending a CF frigate and fighter aircraft to the region.

As it stands, then, the Canadian practice of consulting the Commons when deploying the armed forces does not impose any binding constraints on the executive. Despite references to the House “approving” expeditionary military operations, the Commons’ role is more circumscribed. The government asks the House to express its views on a military deployment via a vote or debate. It is doubtful that the views of the Commons are binding on the executive, nor is there any evidence that the House’s consent is required to exercise the prerogative to send the armed forces overseas. At most, this practice adds an additional layer of democratic legitimacy to an executive decision. At the very least, it is a courtesy that the government extends to the House.

The advantages of this practice are many. It protects the government’s authority to act without the House when necessary. Regardless of whether Parliament is in recess, prorogued or dissolved, the executive retains the authority to respond to international crises and emergencies with force. As Commons votes will normally be held when Parliament is sitting, however, MPs will usually be able to express their support for, or air their concerns about, Canada’s military operations. The armed forces, meanwhile, will know that they have the support of the Commons when a majority of MPs approves a deployment. In the event that the executive is determined to commit the armed forces to an operation that does not have the support of a majority of the House, furthermore, the prime minister and Cabinet can opt to hold a debate alone or to ignore a vote against the deployment. This forces the Commons to choose between recognizing the executive’s right to decide such matters or withdrawing its confidence in the government. Hence, the current practice preserves the inherent flexibility of the prerogative as well as the underlying principle of responsible government, while giving the Commons an advisory, legitimizing role.

Yet as these advantages show, the current practice falls short of transferring authority for military deployments to the Commons. Because the House’s function remains an advisory one, the practice does not mean that “Parliament will decide,” as Prime Minister King put it.

II. COMMONS CONTROL OF MILITARY DEPLOYMENTS: THE BRITISH EXPERIENCE

Given that the Canadian House of Commons does not control the government’s prerogative authority to deploy the armed forces, it is worth asking how the elected part of the legislature might be granted this power, and what the costs and benefits of subjecting this executive decision to legislative constraint would be. To answer both questions, it is useful to examine how the United Kingdom has approached the issue over the past decade.

13 ibid.
Following the British government’s decision to join the American-led war against Iraq in 2003, parliamentarians in the United Kingdom looked to limit the executive’s authority to deploy its armed forces without the approval of the House of Commons. A first option was to pass an act of Parliament. This could either place legal constraints on the executive’s authority or replace the Crown’s prerogative with a narrower, statutory power. The advantage of such a statutory option was that it would have enshrined the Commons’ role, as well as the limitations on the executive’s authority, in law. There would then have been no question that the executive would be required to abide by the provisions of a statute requiring the approval of the Commons to deploy Britain’s armed forces. This approach would have brought about a fundamental legal change in the authorities of the Crown and Commons with respect to the use of the armed forces, with Parliament dividing the power to deploy the military between the executive and elected House.

The United Kingdom has shied away from this statutory option thus far. Two considerations have cautioned against it. First, placing statutory limits on military deployments, or supplanting the executive’s prerogative authority with a statutory power, would invite a judicial review of the decision to use the armed forces. While prerogative powers continue to evoke a degree of judicial deference, there is a concern that the courts will show a greater propensity to evaluate the legality of deployments if the government’s authority flows from statute instead. Second, it is unclear whether a statute could grant the executive the necessary discretion to address crises and emergencies without creating loopholes that could be exploited by a government intent on avoiding a vote in the House. Stated differently, a statute that is too restrictive might endanger the executive’s ability to act decisively when Parliament is not sitting or when international circumstances demand it, while a law that is too permissive could allow a clever government to circumvent the House when it suits.

In lieu of constraining or replacing the Crown’s prerogative authority with an act of Parliament, the United Kingdom gave the House of Commons control over military deployments through a constitutional convention, which has been refined over the past decade. Both houses of Parliament have published reports broadly outlining the convention in recent years. Britain’s executive has followed suit, updating its Cabinet Manual in 2011 to state that consulting the Commons when deploying the armed forces is required by convention, except in cases of emergency. In July 2013, the House of Lords constitutional committee added further precision, stating that through the convention, “save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed forces overseas.” In August 2013, British Prime Minister David Cameron further entrenched this convention, by asking the House of Commons to vote on the possibility of deploying the armed forces to conduct strikes against Syria. Immediately after the Commons voted against the motion, the leader of the official opposition asked for an assurance that the government would not exercise the Crown’s prerogative. Cameron stated that he would respect the will of the

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14 House of Lords, Select Committee on the Constitution, Constitutional arrangements for the use of force, July 2013.
16 United Kingdom, Cabinet Manual (2011), paragraph 5.38.
17 House of Lords, Constitutional arrangements for the use of force, paragraph 64.
Commons. His statement has been interpreted to mean that the constitutional convention has been expanded to include a House of Commons veto over military deployments.18

The British case has notable advantages. Because constitutional conventions are political rules, rather than laws, they cannot be enforced by the courts. As a result, using a convention to constrain the executive’s prerogative guards against a judicial review of military operations. Conventions also allow for a greater degree of flexibility than statutory provisions. As conventions do not impose any legal constraints on the prerogative authority, the armed forces can still be legally deployed when Parliament is not sitting and cannot be quickly recalled. Hence, the executive’s ability to respond to emergencies and crises is not affected by the parliamentary cycle. Yet, insofar as they are politically binding, conventions can serve as a robust constraint on a government. Were a British prime minister to deliberately avoid holding a vote in the House of Commons before deploying armed forces when Parliament was sitting, he or she would not only be acting disrespectfully or imprudently; a prime minister who did so could be accused of acting unconstitutionally. Likewise, if the British convention has granted the Commons a veto over military deployments, a prime minister who ignored a vote against a deployment could be accused of subverting the constitution. It is unlikely that a British prime minister would hold the confidence of the Commons or their party caucus if he or she were seen to have purposefully violated the constitution or challenged the supremacy of Parliament over the executive. Without being legally enforceable, then, this convention can serve as an effective check on the government’s authority to deploy the British armed forces.

Yet the British approach carries risks. What began as an effort to ensure that the House was consulted on deploying the armed forces has steadily evolved into a requirement to hold a vote, and, as it now appears, to give the Commons a veto over the government’s power to employ the military beyond the British Isles. In effect, over the course of a decade, the United Kingdom has gone from wide executive discretion in employing the armed forces to an expansive ability of the Commons to prevent a government from deploying the military overseas. As the Syria vote shows, the House of Commons can use this veto power to check the executive’s use of the armed forces as an instrument of British foreign policy, without having to withdraw confidence in the government. Indeed, whereas the Commons would once have had to face the electorate or express its confidence in another ministry, after refusing to accept a government’s exercise of prerogative authority, MPs can now prevent the executive from deploying the armed forces without facing imminent consequences or comparable responsibilities themselves. To be blunt, the Commons’ expanded control of British military deployments overseas is nearly all check and no balance. British MPs can now second-guess the executive on this critical matter of state without having to show that they, or at least another ministry, can govern any better.19

Considering the aims and pace of this change, moreover, it is not unfathomable that the British convention might further evolve. In the future, the Commons might be able to terminate an ongoing military operation altogether or determine which elements can be deployed and under what rules of engagement. While the British executive may attempt to limit how far the Commons’ control ultimately extends, the near past indicates that it is the legislature that will decide how much discretion it is willing to leave the government. Besides a few newspaper

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19 Charles Moore, “The world is not a better place for Britain taking a back seat over Syria,” Telegraph, 30 August 2013.
columnists and academics, in fact, it does not appear that there is any willingness to question the wisdom of allowing the Commons to further encroach on the executive’s military prerogatives.

However laudable this may be from the vantage point of democratic practice and parliamentary supremacy,20 it should be noted that these decisions have traditionally been left with the government for a reason. Unlike Parliament, the executive has unique access to the various sources of intelligence, professional military judgement and diplomatic considerations that should guide a state’s decision to employ armed force. Benefitting from this wider breadth of information, the executive could make more knowledgeable decisions about when the military should be deployed, for how long and in what way. Parliamentarians would then be expected to hold the executive to account for its decisions and to withdraw the Commons confidence in a government that acted improperly or with bad judgement.21 Under Britain’s new arrangement, however, these competencies and functions have been blurred. MPs with scarce information and no constitutional responsibility for foreign and military affairs can block the government from using armed force in pursuit of international security objectives or the British national interest. Whatever the benefits of the changes taking place in the United Kingdom, these costs and trade-offs should be acknowledged.

**III. LESSONS FROM THE BRITISH EXPERIENCE**

Canadian parliamentarians can derive useful lessons from the United Kingdom’s experiment in expanding Commons control over military deployments.

First, Canadian MPs should recognize that the problems associated with giving the Commons statutory control of military deployments in Britain will arise in Canada, too. Those opposed to Canadian military deployments have asked the judiciary to block exercises of this executive prerogative in the past. Although these efforts have not been successful, placing the authority to deploy the armed forces on a statutory footing might compel the courts to be more assertive in the future. Whatever the merits of having the judiciary weigh the legality of military deployments, this outcome would go well beyond the goal of giving the Commons the power to decide when Canada’s armed forces are sent overseas, and could lead to a host of potential hazards and constitutional confrontations. A Canadian statute, furthermore, would face the same challenges as a British law, in terms of either overly restraining the executive’s ability to act when Parliament is not sitting or allowing the government to avoid the Commons, despite the spirit of the law. In Canada, furthermore, it is unclear if an act of Parliament could ever fully eclipse the Crown’s military prerogatives, under section 15 of the Constitution Act, 1867.22 Specifically, a government could argue that a statute alone cannot prevent the executive from deploying the armed forces as it wishes, given the Crown’s constitutionally entrenched powers of command-in-chief. Taken together, these considerations suggest that the statutory option should be as unappealing in Canada as in the United Kingdom.

Second, if Canadian MPs wish to transform the current practice of Commons consultation into a constitutional convention of Commons control over military deployments, they should take note

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20 James Hallwood, “The Syria vote was a triumph of parliamentary sovereignty,” New Statesman’s blog, 30 August 2013.
of the process that the United Kingdom followed. The British Parliament did not expect a conventional convention to develop on its own. Committees from both houses of Parliament studied the issue at length and produced reports outlining what the convention should entail. The British executive also participated in the development of the convention, which ensured that the government expressly stated that it was bound by the new political rule. In the absence of detailed studies and an explicit statement by the executive that the government acknowledges that it is bound by a convention, the scope and applicability of a convention will remain nebulous and weak.

Third, assuming Canada’s Parliament and executive are able to muster the will and attention to establish a convention, they would be advised to be precise about the rules they put in place. Above all, Canadian parliamentarians should state whether they intend to give the Commons a veto over the executive’s prerogative to deploy the armed forces overseas. In the same vein, it should be clear whether MPs expect a Commons vote on a military deployment to count as a matter of confidence. Precision on these two questions would avoid the ambiguity that currently surrounds the British convention.

In making these determinations, Canadian parliamentarians should ask themselves exactly what they hope to achieve with a convention on military deployments. If the aim is merely to concretize the existing practice of giving the Commons an advisory role, while leaving intact the government’s ultimate control of armed forces operations, then it should be noted that the intent is to preserve the existing authorities of the executive and legislature. If, on the other hand, the convention would serve to grant the Commons political control of overseas military deployments, then Canada’s parliamentarians should acknowledge that this would entail a significant transformation of the relationship between the executive and the legislature in this area. A careful study of how this will affect the Canadian government’s authority to use the armed forces as an instrument of foreign policy should be undertaken. The British experience suggests that these questions should not be taken for granted.

In concluding this paper, it is worth observing that the current Canadian practice appears to have satisfied the demand for a Commons role in deciding to deploy the armed forces overseas. Although the Crown’s military deployment prerogative remains untamed in Canada, developments in the United Kingdom do not indicate that retracting this executive power is straightforward or even an unqualified good. Perhaps the current Canadian practice is good enough.
About the Author

Philippe Lagassé is associate professor of Public and International Affairs at the University of Ottawa. His research focuses on Canadian defence policy and politics, civil-military relations in Westminster democracies, machinery of government related to foreign policy and national security affairs, and the nature and scope of executive power in the Westminster tradition. He holds a B.A. in philosophy from McGill University, an M.A. in war studies from the Royal Military College of Canada, and a Ph.D in political science from Carleton University. His academic articles have been published in *Defense & Security Analysis, Defence and Peace Economics, Canadian Foreign Policy, Canadian Public Administration, International Journal, Diplomacy and Statecraft, Canadian Military Journal*, and by the Institute for Research on Public Policy. He routinely offers an academic perspective on defence issues in Canadian media outlets, and he regularly contributes articles to newspapers and magazines, such as the *Globe and Mail, Ottawa Citizen, Maclean's, La Presse*, and *Embassy Magazine*. His work in the media and communications earned him the University of Ottawa's Faculty of Social Science award for media and community relations and the President's Award for Excellence in Media Relations in 2012.

Lagassé also works as a contract defence analyst for government, the armed forces, political parties, and industry. Notably, he has co-authored a report for the Assistant Deputy Minister (Policy) at the Department of National Defence (2004), has advised the European Aeronautic Defense and Space Company Canada (2005), has served as a member of the Royal Canadian Navy’s Strategic Advisory Group (2008-2009), recently served as a member of the defence procurement working group of Industry Canada’s Aerospace Review (2012), an external advisor for the Office of the Auditor General of Canada (2012-2013), and is currently a member of the Independent Review Panel overseeing the evaluation of options to sustain Canada’s fighter aircraft capabilities within the National Fighter Procurement Secretariat. In addition, he has given talks on Canadian defence policy and civil-military relations for the Canadian Forces College, the Canadian Forces Leadership Institute, the Office of the Judge Advocate General, the Conference of Defence Associations, Thales University, l’Institut des Hautes Études en Défense nationale (ministère de la Défense de France), and has testified before the House of Commons Standing Committee on National Defence.

Lagassé’s current research focuses on the challenges confronting Canadian defence policy and procurement, and on the constitutional foundations of military command authority in Canada.
CDFAI is the only think tank focused on Canada’s international engagement in all its forms - diplomacy, the military, aid and trade security. Established in 2001, CDFAI’s vision is for Canada to have a respected, influential voice in the international arena based on a comprehensive foreign policy, which expresses our national interests, political and social values, military capabilities, economic strength and willingness to be engaged with action that is timely and credible.

CDFAI was created to address the ongoing discrepancy between what Canadians need to know about Canadian international activities and what they do know. Historically, Canadians tend to think of foreign policy – if they think of it at all – as a matter of trade and markets. They are unaware of the importance of Canada engaging diplomatically, militarily, and with international aid in the ongoing struggle to maintain a world that is friendly to the free flow of goods, services, people and ideas across borders and the spread of human rights. They are largely unaware of the connection between a prosperous and free Canada and a world of globalization and liberal internationalism.

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