



# The War Powers Convention: An Interview with James Strong

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British foreign policy expert James Strong discusses the history and evolution of the War Powers Convention and how this concept applies to the UK's use of remote warfare.

**Q. British Prime Minister Theresa May's recent decision for the UK to join the air strikes against the Assad regime in Syria was met with criticism largely because she bypassed parliament. In the debate over Syria, there have been mentions of the "War Powers Convention". What is the "War Powers Convention"?**

The War Powers Convention is a tentative constitutional convention that the government will seek the prior approval of the House of Commons before launching military combat operations abroad. It grew out of precedents set in substantive votes approving the invasion of Iraq in 2003, intervention in Libya in 2011 and two rounds of action against Da'esh, in Iraq in 2014 and Syria in 2015, as well as one vote opposing intervention in Syria in 2013. While its tentative nature leaves aspects of the War Powers Convention unclear – and the entire Convention potentially contestable and reversible, with governments empowered in law to use force without MPs' approval and no recourse to the courts – these precedents do suggest both the extent and limits of parliament's role.

First, parliament only gets a say when British forces expect to face or use deadly force. Deployment type and size are irrelevant.

Second, parliament should usually get a vote before the action starts, but governments reserve the right to act first and seek retrospective approval in

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emergency situations involving imminent threats to national security or of humanitarian disaster.

Third, parliament does not get a say on intelligence or Special Forces operations. It does in theory get a say over UAV operations outside of established combat areas, but (as David Cameron's strike on Syria in August 2015 established) there is not much point voting on a one-off operation that has already concluded.

**Q. As you mention, this convention is believed to have started with Tony Blair's decision to hold a parliamentary vote on the 2003 invasion of Iraq. Why do you think Blair decided to go down this route?**

Blair sought to reassure recalcitrant Labour back-benchers, and to generate democratic legitimacy for a decision that lacked clear public support and an unambiguous basis in international law.

**Q. How did this precedent set by Blair concerning the invasion of Iraq effect subsequent decisions on whether to deploy military force in response to the crises, particularly in the cases of Libya and Syria?**

Memories of Iraq had a particular impact on the Syria debate, though the parliamentary vote in 2013 said more about party politicking than anything else. David Cameron took pains to argue that he was not repeating Iraq in both 2011 and 2013. His decision to grant MPs a veto formed part of that argument.

In more general terms, clearly the war-weariness engendered by both Iraq and Afghanistan, combined with their demonstration of the limitations of the UK military, took the option of deploying significant ground forces off the table.

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**Q. Somewhat out of the public eye, the British government has been engaging in what is sometimes dubbed “remote warfare” for the past several years, which has included the use of Special Forces and drones. How do these military deployments fit within the “War Powers Convention”, if at all?**

Special Forces deployments appear to be exempt from the convention. Both the Cameron and May governments have insisted that no British ground troops would be employed in Libya or Syria, yet revelations (the 2011 incident in which an SAS team were arrested by Libyan rebels, the BBC’s 2016 publication of images showing SAS forces fighting in Syria and the 2018 death of an SAS soldier deployed alongside US forces) of Special Forces deployments have not generated backlash from MPs. Most seem to accept that these operations, alongside intelligence operations, only work if undertaken without public scrutiny. I have argued that this position could yet change in response to a large-scale fiasco, for example one involving a significant loss of civilian or military life. But it is where we are at present.

On drones, the picture looks more complicated. Their use in a non-combat capacity falls outside of the Convention, which only covers operations likely to involve killing or a risk of being killed. To my knowledge, they have been used only once in a combat capacity outside of a declared combat zone, to kill Reyaad Khan and Juneid Hussein in Raqqa in August 2015. On that occasion, David Cameron retrospectively reported the operation to the House of Commons, declared that he believed it fell under the Convention but that it had not been possible to recall parliament for a prior vote for reasons of the imminent nature of the threat and the operational need to act quickly. That

argument was generally accepted, for example in the 2016 report by the Human Rights Committee.

Cameron's operation was in fact a one-off. It is harder to say what might happen if a Prime Minister attempted to launch a string of similar strikes without approval. MPs would probably not demand oversight of individual operations, recognising that that would be impractical. But they might demand a say on the broader principle of using force in a particular theatre or in a particular way. At the very least, they could require more information on the processes followed and safeguards employed in approving such operations. Again, it is also unclear how MPs might react to a future fiasco, such as a drone strike accidentally hitting civilians.

**Q. It still remains possible for military action to be taken without parliamentary approval in an 'emergency'. In this scenario, how is an 'emergency' defined? Would Syria fall into this category?**

There is no agreed definition of an 'emergency'. That means it is open to the government in any situation to claim it had to act without prior approval because of the nature of the situation, and then for parliament to extract punishment should it disagree. That is essentially where we are in the case of the April 2018 Syria strikes. Prime Minister May argued that she authorised action without prior approval because of a need to act quickly, but that argument was widely rejected. At the same time, the fact that many MPs would have supported action had they been given the opportunity appears to have blunted the effect of this criticism.

**Q. The Syria episode has given a new lease of life to the debate over whether to introduce a British "War Power Act". Is this measure actually necessary**

## **and would it really provide the effective checks to power that some think it would?**

Previous attempts at putting together a War Powers Act foundered because most MPs – whether back-benchers or ministers, representing the governing party or the opposition – believe that, next time the issue arises, their side will benefit from the flexibility afforded by the Convention.

Stipulating parliament's powers in statute also means stipulating (at least implicitly) areas where parliament has no power. That would prevent back-benchers demanding additional say over particularly high-salience issues. It would also force them to spend parliamentary time debating and voting on non-contentious deployments (e.g. Mali, although that also, arguably, was not a combat mission).

Legislation would also raise the uncomfortable prospect of the Courts being asked to adjudicate in case of a dispute between the government and (potentially a small number of) MPs. Again, there is relatively little appetite for more of the sort of politicised legal arguments we saw over the Article 50 vote in 2017.

A War Powers Act would reduce the government's power to claim exceptions or to ignore the convention entirely. It would also, however, transfer responsibility for policing the limits on the government's power from parliament and to the Courts. In the end, it would not change the fact that what really matters is not the procedure but the politics. If MPs are willing to support the use of force, it doesn't matter if they are consulted via convention or legislation. If not, they will find ways to make life difficult for the Prime Minister in the absence of legislation. A government powerful enough to ignore convention entirely,

meanwhile, could probably repeal legislation. So legislation might not change things all that much.

Image credit: [UK Parliament/Flickr](#)

## About the interviewee

**James Strong** is a Lecturer in British Politics at Queen Mary University of London and member of the Mile End Institute. His research looks at the domestic politics of British foreign policy, including how public opinion, media debate and parliamentary politicking shape the context for decision making. His first book, *Public Opinion, Legitimacy and Tony Blair's War in Iraq*, was published by Routledge in 2017.

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