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Parliamentary involvement in declaring war and deploying forces overseas

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Introduction

Since 1901, neither the Australian Constitution nor Defence legislation has required the government to gain parliamentary approval for the decision to deploy forces overseas or, in the rare cases that it has occurred, to declare war. There have been attempts since 1985 by the Australian Democrats and more recently by the Australian Greens to remove the exclusive power of the government to commit Australia to war.

On 25 February 2010, the Senate Foreign Affairs, Defence and Trade Legislation Committee reported on an Australian Greens' Bill—the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]. The Committee concluded that the Bill could not be considered to be 'a credible piece of legislation' and recommended that the Bill not proceed. But the Committee also stated:

The committee is not in any way against the involvement of both Houses of Parliament in open and public debates about the deployment of Australian service personnel to warlike operations or potential hostilities. It agrees with the views of most submitters that the Australian people, through their elected representatives, have a right to be informed and heard on these important matters.¹

This background note considers the government's power to declare war and deploy troops overseas from a legal and parliamentary perspective. The paper outlines the legal requirements of the Constitution and Defence legislation, lists relevant proclamations and other legal instruments, tracks the parliament's involvement in the main conflicts in the 20th and 21st centuries and summarises overseas experience.

Constitutional background and legal requirements

The Commonwealth Constitution does not say expressly who is responsible for declaring war or deploying troops. In addition, there is no requirement in the Constitution or Defence legislation for parliamentary involvement in most aspects of declaring war and deploying troops. Indeed for several decades after the Commonwealth came into being in 1901, the Australian Government itself was unsure as to whether it could even declare war against another country without British Government approval. Although the federal Parliament could legislate, under section 51(vi) – the defence power - to ensure that all major decisions regarding Australia's commitment to a war are first approved by parliament, this has not been done.²

Section 61 of the Constitution states that 'The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative'. Section 62 states 'There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth'.

Former royal prerogatives – including the power to make war, deploy troops and declare peace – are now part of the executive power of the Commonwealth exercised by the

Governor-General on the advice of the Federal Executive Council or responsible ministers. Contemporary practice, however, is that decisions to go to war or deploy troops are matters for the Prime Minister and Cabinet and do not involve the Governor-General or the Federal Executive Council.

Although the major parties may condemn commitment of troops overseas without prior parliamentary involvement when they are in opposition, they have not taken the steps to codify the powers of the Governor-General in relation to war and to legislate for parliamentary oversight when they are in government.

Recent legislative proposals

With Australia generally adhering to the Charter of the United Nations, which requires member countries to seek UN Security Council approval before engaging in hostilities, the focus of parliamentary comment and action has been on the deployment of troops overseas, once hostilities have been declared by the UN.³

The Australian Democrats, in particular, have initiated steps to remove the exclusive power of the Government to commit Australia to war.

In 1985, Senator Colin Mason (Australian Democrats) introduced the Defence Amendment Bill 1985, which sought to require parliamentary approval in most circumstances before Australian troops could be deployed overseas. The Bill proceeded to the Second Reading stage but, without Government and Opposition support, did not pass.⁴

During the debates over committing troops to Iraq in 2003, Democrat Senators Andrew Bartlett and Natasha Stott-Despoja introduced a private senator's Bill, the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas Conflicts) Bill 2003.⁵ The Bill proposed to repeal and substitute section 50C of the *Defence Act 1903*, which allows the deployment of Australian troops overseas, and required both Houses of Parliament to approve a declaration of war and commitment of troops overseas.⁶ The Bill failed to pass.

Senator Andrew Bartlett reintroduced a similar Bill on 13 February 2008, the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008.⁷ Again the Bill failed to pass.

With no Australian Democrats remaining in Parliament after June 2008, in September that year Senator Scott Ludlam (Australian Greens) introduced a Bill of the same name, the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]. It too sought to repeal section 50C of the *Defence Act 1903* and to replace the section with a new provision which would require Parliamentary approval before troops could be deployed overseas.⁸

The Bill was introduced on 17 September 2008 and, on 20 August 2009, was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee. The Committee reported

on 25 February 2010. The majority report expressed doubts about the credibility of the legislation and made one recommendation: ‘that the bill not proceed’. The Committee stressed that it was not in any way opposed to the involvement of the Parliament in ‘open and public debates about the deployment of Australian service personnel to warlike operations or potential hostilities’.⁹

In his tabling speech, the Committee chair, Senator Mark Bishop stated that the Committee was mainly concerned with how the provisions of the Bill would operate in practice and noted that:

The committee has identified a number of deficiencies in the bill that need to be attended to by those who are interested in this debate if the bill is going to be brought forward this time or some time in the future for passage.¹⁰

The report included a dissenting report by Senator Ludlam who said that the Australian Greens were disappointed in the report’s findings. He also said that:

We see this as a step along the way to a more mature debate in Australia, and we will be pursuing it in this spirit, in the Parliament and the broader community.¹¹

Declaring war

There are no legislative provisions concerning declaring war against other countries.¹² As mentioned above, the Constitution does not expressly provide for who declares war. Indeed for many years, it was uncertain whether Australia had the power to declare war.

By 1914 the British Dominions, including Australia, generally had complete control of their own internal affairs and trade with other countries, though in the matter of foreign relations in general they had not progressed beyond an admitted claim to be consulted on important issues.¹³

It was not seriously disputed that, legally, if part of the Empire was at war, the whole Empire, including Australia, must be at war, although actual participation in hostilities would be a matter for each Dominion to decide for itself.¹⁴ Yet when war came on a large scale in 1914, and the Dominions were not consulted before war was declared, the constitutional position was seen to be unsatisfactory.¹⁵

However, during the war, the Dominions were represented on an equal footing with the United Kingdom at meetings of the Imperial War Cabinet in 1917 and, after the war, they participated at the Paris Peace Conference in 1919, signed the Peace Treaties and were admitted as original members of the League of Nations.

At the Imperial Conference of 1926, the independent status of the Dominions was established as:

... autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.¹⁶

The *Statute of Westminster 1931* (UK) marked an important step in the legal independence of the Dominions, including in the area of foreign affairs. However, its provisions did not automatically apply to Australia, which needed to pass legislation adopting the Statute. Australia was reluctant to do this and was content to follow the United Kingdom in matters of foreign policy. This was reflected in Robert Menzies' statement at the beginning of the Second World War:

Fellow Australians, it is my melancholy duty to inform you officially, that in consequence of a persistence by Germany in her invasion of Poland, Great Britain has declared war upon her and that, as a result, Australia is also at war.¹⁷

A return to a Labor Government in October 1941 saw Australia take a more independent role in declaring war and Prime Minister Curtin advised the Governor-General to declare war on several Axis power countries during late 1941 and early 1942. This was done, however, after consultation with the United Kingdom Secretary of State for the Dominions who recommended that British Commonwealth Governments adopt the same approach to declaring war on countries.¹⁸ Because there was some constitutional doubt that the Governor-General of Australia could declare war, King George was also requested by the Curtin Government to declare war on behalf of Australia.¹⁹ This was done in April 1942.

The Curtin Government secured the passage of the *Statute of Westminster Adoption Act* in 1942, eleven years after its passage in the United Kingdom. One reason for passing this Act, and presumably for making it retrospective to the outbreak of war in Europe, was to remove any doubts about Commonwealth legislative power that may have arisen in relation to World War II. This almost officially ended the role of the United Kingdom Parliament to legislate for Australia and to control its foreign relations.²⁰

The formal declarations of war during 1941 and 1942 are the only occasions when the Governor-General acting on ministerial advice has officially declared war against an enemy country.²¹ Since the establishment of the United Nations in 1948, it is illegal in international law to declare war without UN approval (except in certain circumstances). Australia has participated in some conflicts under UN auspices, for example Korea in 1950 and Iraq in 1991 (see Appendix 3).

Declarations of 'time of war'

Under section 4 of the *Defence Act 1903*, by definition, the Governor-General may proclaim a time of war.²² This is defined as: 'any time during which a state of war actually exists, and includes the time between the issue of a proclamation of the existence of war or of danger thereof and the issue of a proclamation declaring that the war or danger thereof, declared in the prior proclamation, no longer exists'.

The 'time of war' declaration appears to be a legal requirement or safeguard to ensure that legislation passed by the Commonwealth under section 51(vi) of the Constitution in support of the war effort is supported by the defence power.

According to *The Laws of Australia*²³:

The power conferred by the Constitution, s 51(vi), is elastic in that, in times of peace, it enables a limited sphere of Commonwealth action, while in times of "grave emergencies, it may be necessary, in the exercise of the defence power, to assume control of the greater part of the human and material resources of the nation".²⁴ Accordingly, an Act may be valid under the defence power during a time of war but invalid during a time of peace.²⁵

Parliament does not need to approve a declaration of 'time of war'. The last time Australia declared a time of war was in 1939.

Deployment of troops

As mentioned above, although Australia was initially reluctant or was not able to declare war on sovereign countries, it had discretion from 1901 as to whether it would commit troops to fight overseas. C. E. W. Bean states that Cabinet had decided in principle before the declaration of war by Britain on 4 August 1914 to commit troops to assist Britain.²⁶ It is the deployment of troops overseas which tends to focus Parliament on the fact that the Government does not require parliamentary approval for this decision.

Legal background

The legal background to the deployment of troops is as follows:

Section 50C of the *Defence Act 1903* requires that members of the Army may be required to serve overseas. There is no requirement for parliamentary approval for this to occur.

Section 50D allows the Governor-General to proclaim a call up of the Naval Reserve, the Army Reserve and the Air Force Reserve (formerly the Citizen Military Forces). Again, parliamentary approval is not required.

This was not always the case. Before the Defence Act was amended by the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, it provided that, if a proclamation was issued, Parliament had to be informed and be recalled within ten days if it was not sitting.²⁷ It is not clear why parliamentary consultation was removed in 2001, as neither the explanatory memorandum nor second reading speech explain the omission.

Sections 59–60 of the Defence Act allow the Governor-General to proclaim a call-up of most adults and make them liable to serve in the armed forces in a time of war. Subsection 60(5) of the Act requires a resolution of both Houses of Parliament to approve the proclamation. This subsection was amended by the *Defence Legislation Amendment Act 1992* to make

parliamentary approval necessary for conscription. The subsection previously required Parliament to be sitting at the time of the Proclamation or to be recalled within ten days, to enable debate on the decision which had already been made by the Government.²⁸ No proclamation has been made under section 59 which would require parliamentary approval.

Appendix 3 shows a list of legal instruments made by the Commonwealth Government dealing with war and when they were made.

Parliamentary involvement

Although the Government is not legally required to consult Parliament when declaring war or deploying forces overseas, on most occasions the prime minister or defence minister has informed Parliament of Cabinet’s decision through a ministerial statement and/or tabled paper(s). This has usually been followed by debate and a vote on the motion.

The following table lists major conflicts and summarises parliamentary involvement during the first parliamentary sitting weeks after the decision to deploy forces overseas. Non-parliamentary events are also recorded to show the parallel activities of the executive branch of government. A more detailed chronology on the federal Parliament’s involvement in the deployment of forces to Iraq in 2003 is at Appendix 4.²⁹

The table shows that the executive’s decision to declare war and deploy forces overseas has always been taken before Parliament has debated the issue. Parliament is, in effect, asked to endorse a decision already taken. It also shows that, though the opposition of the day has usually supported the government’s action, there have been occasions when the opposition has opposed Australia’s involvement in a conflict (for example Malaya, Vietnam and Iraq) or called for Parliament to be consulted on the conduct of war (for example World War II).

The motion most frequently moved in debate (on a ministerial statement or paper) is ‘that the paper be printed’. This technique was described by the then Speaker, Hon Archie Cameron, in 1955 as ‘only a formal method of securing debate’.³⁰

Motions have usually been passed without divisions being required, although there have been exceptions. In 2003, when the Senate debated the Government’s motion on the Iraq war, Opposition and minor parties succeeded in amending the motion to oppose the war.

The involvement of Parliament may not be an essential step in the process of declaring war and deploying troops overseas but ‘the calling of Parliament [is] an essential, and, indeed, natural step to take in waging war as a democracy’.³¹

Table 1: Parliamentary involvement in the declaration of war

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
World War 1 (1914–1918)	There was no ministerial statement to Parliament. The Governor General opened Parliament on 8 October 1914. In his speech he said: ‘You have been called together at the earliest moment after the return	The motion moved was ‘That the Address be agreed to by the House’ A Government senator speaking in the Address–in–Reply debate stated that ‘Our duty to the British Empire must never be questioned—must never be	Liberal Government in power. Federal Parliament was dissolved on 30 July 1914. On 31 July 1914 then Opposition Leader, Andrew Fisher, said ‘Should the worst

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	of the writs to deal with matters of great national importance, many of them arising out of the calamitous war in which the Empire has been compelled to engage ... It has been necessary to anticipate Parliamentary approval of expenditure urgently required for war purposes. A Bill covering all such unauthorized expenditure will be submitted for your consideration at the earliest possible moment. ³²	forsaken in any degree. ³³ During the debate the Leader of the Opposition, Joseph Cook, said 'I wish to say to the Government that we shall be behind them most cordially with our best support—and not critical support—in prosecuting this war right to the end, and in financing it to the full in every legitimate and reasonable way.' ³⁴ The question was resolved in the affirmative, without division, in the House of Representatives and the Senate. ³⁵	happen, after everything has been done that honour will permit, Australians will stand beside the mother country to help and defend her to our last man and our last shilling'. Speaking on the same night then Prime Minister, Joseph Cook, said 'If there is to be a war, you and I shall be in it. We must be in it. If the old country is at war, so are we.' ³⁶ Cabinet discussed the issue on 3 August 1914. Britain declared war on Germany on 4 September 1914. A double dissolution election was held on 5 September 1914. ALP Government elected. The new Parliament did not meet until 8 October 1914.
World War II (1939–1945)	Parliament met on 6 September 1939 after it was adjourned on 16 June 1939 until 'a day and hour to be fixed by Mr President' and Mr Speaker. ³⁷ On 6 September 1939 Prime Minister, Robert Menzies, tabled a White Paper and delivered a ministerial statement on the war in Europe. The White Paper contained texts of documents exchanged between the United Kingdom and	In his ministerial statement the Prime Minister said 'However long this conflict may last, I do not seek a muzzled Opposition. Our institutions of parliament, and of liberal thought, free speech, and free criticism, must go on.' ³⁹ During the debate the Leader of the Opposition, John Curtin, expressed surprise that the Prime Minister had not 'seized this first opportunity of meeting the Parliament to outline, at least broadly, the	Coalition Government in power. The announcement by British Prime Minister, Neville Chamberlain, that Britain was at war with Germany was received on short-wave wireless in Australia at 8pm on 3 September 1939. ⁴⁴ At 9.15pm on the same evening Prime Minister Menzies made a radio address to the nation. Menzies said 'It is my

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	<p>German Governments.³⁸ ‘The motion ‘that the paper be printed’ was debated in both Houses.</p>	<p>intentions of the Government in respect of the defence of this Commonwealth, and of the general principles upon which it proposed to be influenced in framing its programme’.⁴⁰ Curtin also read a statement endorsed by the Australian Labor Party caucus saying ‘...The democratic rights of the people must be safeguarded to the maximum ... To ensure that this be done, it is essential that the Parliament of the Commonwealth should remain in session.’⁴¹</p> <p>Debate on the ministerial statement was adjourned in the House of Representatives.⁴²</p> <p>In the Senate the motion was passed on the voices. There was no division.⁴³</p>	<p>melancholy duty to inform you officially, that in consequence of a persistence by Germany in her invasion of Poland, Great Britain has declared war upon her and that, as a result, Australia is also at war’.⁴⁵</p> <p>The Official History of World War II notes that Menzies ‘made no suggestion that Australia could have taken any other course than to stand beside Great Britain.’⁴⁶</p> <p>The Official History records other events of that evening:</p> <p>‘At 10.14 [pm] a proclamation was issued in Canberra that Australia was at war, and at 10.25 [pm] Mr Shedden [Secretary, Department of Defence] signed a memorandum to the Secretary of the Military Board, as to other Federal departments stating that “the action specified in the Commonwealth War Book for the War Stage (including that for the Precautionary Stage not yet taken) should be initiated forthwith”; at 11.47 [pm] a message that war had begun was sent to all military districts.’⁴⁷</p> <p>The Official History</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	<p>On 7 September 1939, the Minister for Defence, Geoffrey Street, tabled a ministerial statement on defence preparations.⁴⁹ No motion was moved.</p>	<p>The paper was not debated. The Leader of the Opposition noted that: ‘... I make the suggestion ... that regularly the Minister should make a statement to the House indicating the progressive steps that have been taken in relation to this most important and vital matter ... it might be considered very serviceable if a motion could be moved on the occasion of the delivery of such a statement so that some opportunity could be provided ... for members of the Parliament either to criticize it, ... or to make suggestions that may be of use to the Government. In that way it could be made clear that the statement is made not merely as a recital of what has been done but as an intimation for the Parliament to</p>	<p>suggests that, although the Opposition accepted the existence of a state of war, ‘as a fact with which, in the circumstances, Parliament had been unable to deal’, it was developing the view that ‘the nature and extent of Australian participation in the war should be determined or approved from time to time by the Commonwealth Parliament. The party’s request that Parliament should remain in session was in keeping with such a view.’⁴⁸</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
		<p>consider and even to express its mind thereon ... in that way this Parliament may not only act, ..., as the masters of the Government, but also we shall give every demonstration that in a democracy defence of the country is not a one-man job'.⁵⁰</p>	
	<p>19 September 1939, ministerial statement by the Prime Minister on the international situation.⁵¹ No motion was moved.</p>	<p>There was no debate on the statement.</p>	
	<p>16 December 1941, Prime Minister, John Curtin, delivered a statement on the international situation and tabled documents relating to US-Japan conversations and Australia's declaration of the existence of a state of war with Finland, Hungary, Rumania and Japan on 8 December. Curtin moved that the House approve the action of the Government in issuing 'proclamations declaring the existence of a state of war with Japan, Finland, Hungary and Rumania'.⁵²</p>	<p>In his speech on 16 December 1941, Curtin noted that when a proclamation is issued calling up men for military service under the Defence Act, if Parliament is not sitting, 'it shall be summoned to meet within ten days.' He stated that 'Parliament is now asked to endorse the advice which led to the issue of the proclamation by the Governor-General of Australia on behalf of His Majesty the King.'⁵³ The Official History notes that 'Although he [Curtin] created a precedent by seeking the passage of a resolution approving the Government's action in respect to the declaration of war, he did not appear to have advanced anywhere the thesis that it was constitutionally necessary to do so.'⁵⁴</p>	<p>ALP Government in power</p> <p>The War Cabinet met on 8 December 1941. That evening, Prime Minister John Curtin, announced in a national broadcast that 'we are at war with Japan', although the Official History reports that 'the formal decision to declare war was not made until the 9th [December 1941].'⁵⁷</p> <p>On 9 December 1941, the Government proclaimed 'the existence of a state of war with Japan as from 5 p.m. on 8th December.' The previous day the Government had 'declared the existence of a state of war with Finland, Hungary and Rumania respectively as from 5 p.m., 8th December'.⁵⁸</p>
		<p>Leader of the Opposition, Arthur Fadden responded: 'The Opposition not only associates itself with the</p>	

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
		grave and important resolution before the House, but also wholeheartedly allies itself with the Government in the steps it has taken. ⁵⁵	
		The motion was passed by the House of Representatives and the Senate without division. ⁵⁶	
	Parliament met on 20 February 1942. The Prime Minister, John Curtin, moved that ‘a joint meeting of members of the Senate and of the House of Representatives be convened for 4pm this day, for the purpose of discussing in secret the present war, and hearing confidential reports in relation thereto.’ ⁵⁹	Leader of the Opposition, Arthur Fadden responded that ‘The Opposition wholeheartedly supports the motion’. ⁶⁰ The motion was passed by the Senate and the House of Representatives without division. ⁶¹	On 6 January 1942, Australia declared war on Bulgaria. On 14 January 1942, the Minister for External Affairs, Herbert V. Evatt, issued a statement. On 2 March 1942, Australia declared war on Thailand. The Official History noted that ‘There was no reference to Parliament of any question related to the war on Bulgaria but the decision was made in consultation with and with the concurrence of the Advisory War Council. Subsequently Australia declared war on Thailand by a similar procedure.’ ⁶²
	On 25 February 1942, the Minister for External Affairs, Herbert V. Evatt, delivered a ministerial statement reviewing the war situation. He moved that the paper be printed. ⁶³	Leader of the Opposition, Arthur Fadden, said that ‘I am sure that the House joins with me in expressing appreciation of the trouble to which the Minister for External Affairs ... has gone in the compilation of the information he has just conveyed, and of the opportunity that is thereby afforded to us to debate and	

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
Korean War (1950–1953)	<p>Parliament was recalled on 6 July 1950.</p> <p>The motion moved by the Prime Minister stated that ‘this House, having before it the Charter of the United Nations and the recent resolutions of the Security Council in relation to Korea, approves of the action taken by the Government in placing at the disposal of the United Nations the forces indicated in the statement of the Prime Minister’.⁶⁶</p>	<p>review the international position in the light of what we have heard’.⁶⁴</p> <p>The motion was passed by the House of Representatives without division. In the Senate the statement was read and discharged.⁶⁵</p> <p>On 6 July 1950, Prime Minister, Robert Menzies, delivered a statement on the situation in Korea and outlined the events leading to Australia’s involvement in the war.⁶⁷</p> <p>The Leader of the Opposition, Ben Chifley, indicated that the Opposition would support the motion.⁶⁸</p> <p>In the debate in the Senate, William Ashley, Leader of the Opposition in the Senate, said ‘Whilst it is not always opportune to call the Parliament together, and it is realized that certain matters must be dealt with urgently, I stress that any future Australian commitments should have the approval of Parliament.’⁶⁹</p> <p>The motion, debated in the Senate and the House of Representatives, was resolved in the affirmative. There was no division in either House.⁷⁰</p>	<p>Coalition Government in power.</p> <p>The war commenced on 25 June 1950.</p> <p>In his statement to Parliament on 6 July the Prime Minister outlined the steps which led to Australia’s involvement in the conflict:</p> <p>United Nations’ Security Council resolutions were approved on 25 and 27 June 1950. The latter recommended that:</p> <p>‘Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.’</p> <p>On 29 June Australia advised relevant authorities that it had decided to support the Security Council resolution by ‘placing an Australian naval force ... at the disposal of the United States authorities on behalf of</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
<p>Malayan Emergency (1950–1960)</p>	<p>The Prime Minister delivered ministerial statements on the situation in Malaya on 30 May 1950 and the situation in Malaya – Australian assistance on 31 May 1950.</p>	<p>In his ministerial statement on 30 May 1950, the Prime Minister said that ‘The Government is giving careful consideration to the question of ways and means of assisting the United Kingdom Government in its Malayan problem.’⁷²</p>	<p>the Security Council for the purpose of furnishing assistance to the Republic of Korea.’ On 30 June, the Government announced that it ‘had decided to place at the service of the United Nations, through the American authorities, the Royal Australian Air Force fighter squadron stationed in Japan’.⁷¹</p>
	<p>The Prime Minister, Robert Menzies, delivered a ministerial statement on 20 April</p>	<p>In his ministerial statement on 31 May 1950, the Prime Minister informed the House that, in response to a request from the United Kingdom Government, it had been decided to render aid in Malaya by providing aircraft and crews and in servicing aircraft of the Royal Air Force stationed in the Far East.⁷³</p> <p>The motion ‘that the papers be printed’ was resolved in the affirmative in the Senate and the House of Representatives on 6 July 1950. There was no division in either House.⁷⁴</p>	<p>Coalition Government in power.</p> <p>The Official History notes that ‘The first direct approach for Australian assistance in combating the communist insurgency in Malaya was made in April 1950, when the British Government asked if Australia could provide reinforcements for British air squadrons operating in Malaya.’⁷⁵</p> <p>‘Australian air units arrived in the Malayan theatre in June 1950.’⁷⁶</p>
		<p>In his ministerial statement, Menzies stated ‘I have already announced publicly that the Government</p>	<p>The ALP conference held in March 1955 did not support sending</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	1955 and moved that the paper be printed.	<p>proposes to contribute a comparatively small force to a strategic reserve in Malaya. I will, a little later in this speech, indicate the acceptance of more extensive military responsibilities in the event of war.⁷⁷</p> <p>The Leader of the Opposition, Herbert V. Evatt, responded that ‘The Australian Labor Party is satisfied that the proposed use ... of Australian armed forces in Malaya at present will gravely injure our relations with Malaya and her Asian neighbours.’⁷⁸</p> <p>The Opposition moved that the following words be substituted after “that”:- ‘this House rejects the Government’s proposals to despatch Australian armed forces to Malaya as set out in the paper read by the Prime Minister’.⁷⁹ The amendment was defeated.⁸⁰</p> <p>In the House of Representatives, the main question ‘that the Paper be printed’ was negatived. There was no division.⁸¹</p> <p>In the Senate the motion was resolved in the affirmative. There was no division.⁸²</p>	<p>troops to Malaya.⁸³</p> <p>The Prime Minister announced the commitment of additional forces after a Cabinet meeting on 15 June 1955.</p> <p>These troops would be available for use in anti-terrorist operations. The Official History notes that ‘the press generally welcomed this decision regarding it as logical, indeed inevitable, but criticising the fact that it was announced when Parliament was in recess.’⁸⁴</p>
Confrontation (Indonesia) (1963–1966)	<p>Parliament met on 16 March 1965.</p> <p>On 23 March 1965 the Minister for External Affairs, Paul Hasluck, delivered a ministerial statement on international affairs. He stated that ‘... I shall</p>	<p>The Leader of the Opposition, Arthur Calwell, stated that ‘Aggression in all forms must be resisted. We believe, however, that the Australian Government has failed totally to take any diplomatic initiative either</p>	<p>Coalition Government in power.</p> <p>The Foreign Affairs and Defence Committee of the Cabinet decided on 27 January 1965 that 3 RAR and a squadron of SAS troops should be</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	confine my remarks to a few of the more urgent topics. This is not intended ... to limit the range of debate. ⁸⁵ Although the Minister referred to the situation in Indonesia he made no direct reference to the Government's decision to send troops to Borneo.	to end this dispute, or to reduce its temperature. I am optimistic enough to believe that war can be avoided; but if it is, it will be not because of any initiative taken by this Government. ⁸⁶ Debate on the motion 'that the House take note of the Paper' was adjourned on 1 April 1965. ⁸⁷	made available for operation. The decision was announced by acting Prime Minister John McEwen on 3 February 1965. (Prime Minister Menzies was in Britain attending Sir Winston Churchill's funeral). ⁸⁸
Vietnam War (1962–1972)	No statement to Parliament. Parliament adjourned on 17 May 1962 and did not meet again until 7 August 1962.		Coalition Government in power. On 24 May 1962, the Minister for Defence, Athol Townley, issued a press release announcing that 'at the invitation of the government of the Republic of Vietnam, Australia was sending a group of military instructors to that country.' ⁸⁹ These instructors became known as the Australian Army Training Team Vietnam. The Official History noted that, although there was no opportunity for a formal debate, it was 'unlikely that the Opposition would have mounted a major challenge to the Government's policy'. ⁹⁰
	In a ministerial statement delivered on 29 April 1965 Prime Minister, Robert Menzies, noted that in the ministerial	The motion moved was 'that the House take note of the paper'. In his ministerial statement Menzies said 'The	The first US proposal for the dispatch of Australian combat troops to Vietnam was made on 4 December

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	statement on Foreign Affairs on 23 March 1965 the Minister for External Affairs had also 'devoted a large part of his statement to Vietnam'. ⁹¹	<p>Australian Government is now in receipt of a request from the Government of South Vietnam for further military assistance. We have decided ... to provide an infantry battalion for service in South Vietnam ... I should say... that we decided in principle some time ago ... that we would be willing to do this if we received the necessary request from the Government of South Vietnam and the necessary collaboration with the United States.'⁹²</p> <p>In response the Leader of the Opposition, Arthur Calwell, said '... on behalf of all my colleagues of Her Majesty's Opposition, I say that we oppose the Government's decision to send 800 men to fight in Vietnam. We oppose it firmly and completely.'⁹³</p> <p>In the House of Representatives the motion 'that the paper be printed' was resolved in the affirmative: ayes 60, noes 44.⁹⁴</p> <p>In the Senate, the motion 'that the Senate take note of the paper' was resolved in the affirmative. There was no division.⁹⁵</p>	<p>1964.⁹⁶</p> <p>'Australia formally offered the commitment of a battalion to the US on 13 April [1965] and the offer was accepted with pleasure by US Secretary of State Dean Rusk.'⁹⁷</p> <p>The Official History noted that, as the timing of the Government's announcement depended on when it received a response from South Vietnam, the Prime Minister's ministerial statement was delivered at the end of a parliamentary week. Both the Leader of the Opposition, Arthur Calwell and Deputy Leader, Gough Whitlam 'had left Canberra ... for a political appointment in Sydney'.⁹⁸</p> <p>Debate on the statement was postponed until Parliament resumed on the following Tuesday, 4 May. 'The press therefore had a long weekend in which to react to the Government's decision before it was discussed in Parliament.'⁹⁹</p>
Gulf War (1990–1991)	21 August 1990 Prime Minister, Bob Hawke, delivered a ministerial statement. He said 'I want to take this first opportunity available to	The Prime Minister's motion, in part, condemned the Iraqi invasion of Kuwait; called upon Iraq to withdraw; affirmed the fundamental importance of	<p>ALP Government in power.</p> <p>Iraq invaded Kuwait on 2 August 1990.</p> <p>On 29 November 1990,</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	me to inform the House of the view the Government has taken of the situation which has arisen in the Middle East over the past three weeks and of the measures we have adopted to meet that situation'. ¹⁰⁰	<p>the United Nations Charter as the basis for the conduct of international relations and the preservation of peace; and supported the Australian Government's prompt action to implement UN sanctions.</p> <p>In response, Leader of the Opposition, John Hewson, said 'The Opposition parties are pleased to support the motion that is before the House'.¹⁰¹</p> <p>In the House of Representatives the motion was agreed to without a division. The Member for North Sydney, Ted Mack, asked that his dissent be recorded.¹⁰²</p> <p>In the Senate, the motion was agreed to without a division. The Australian Democrats asked that their objection to paragraph 5, subsection 2, be recorded.¹⁰³</p>	<p>the UN Security Council set 15 January 1991 as the deadline for an Iraqi withdrawal from Kuwait.</p> <p>On 17 January 1991, coalition forces began their air bombardment of Iraq that continued without respite until the war ended 43 days later.</p> <p>On 17 January 1991, the Prime Minister issued a statement announcing the participation of the Naval Task Force in armed action in the Gulf and the recall of Parliament to debate the decision.¹⁰⁴</p> <p>On 24 February 1991, the coalition's ground forces moved against Iraqi positions in Kuwait and in Iraq itself.¹⁰⁵</p>
	4 December 1990, Prime Minister, Bob Hawke, delivered a ministerial statement on the Gulf crisis. Hawke said that 'the Government unreservedly supports the United Nations Security Council resolution 678. Our support for the resolution imposes on us an obligation to respond to the request in its third paragraph for all nations to provide appropriate support for actions taken under the resolution. I emphasise that the resolution not only	<p>The motion moved was 'that the House take note of the paper'.</p> <p>In the debate Leader of the Opposition, John Hewson, said that 'we are committed as an Opposition to building a united national position on this issue'. But he was critical of the Government for failing 'to consult with the Opposition prior to its original decision to deploy Australian defence forces to the Gulf'.¹⁰⁷</p> <p>On 5 December 1990, in the House of Representatives, the</p>	

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
	authorises all necessary means; it explicitly requests that member states provide support'. ¹⁰⁶	question was resolved in the affirmative without division. ¹⁰⁸	
	Parliament was recalled on 21–22 January 1991 to debate the Gulf War. The Manager of Opposition Business, Wal Fife, protested that, as there would not be a question time on either day, there was no opportunity to question the Prime Minister or ministers. ¹¹⁰	The motion moved by the Prime Minister stated, in part, that this House, 'reaffirms its support for an on-going role for the United Nations in promoting world peace and the self-determination of nations ... affirms its support for Australia's positive response to the request made by the United Nations Security Council in Resolution 678 for support in implementing that Resolution; expresses its full confidence in, and support for, Australian forces serving with the UN-sanctioned multi-national forces in the Gulf; deplores Iraq's widening of the conflict by its unprovoked attack upon Israel'. ¹¹²	
	On 21 January 1991, the Prime Minister addressed the House and stated 'The decision to commit Australian armed forces to combat is of course one that constitutionally is the prerogative of the Executive. It is fitting, however, that I place on parliamentary record the train of events behind this decision'. ¹¹¹	The Leader of the Opposition, John Hewson, said that '... the Opposition parties strongly support this motion before the House'. ¹¹³	
		On 22 January 1991, in the House of Representatives, the question was resolved in the affirmative without division. Member for North Sydney, Ted Mack, asked that his name be recorded as voting against the motion. ¹¹⁴	

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
Afghanistan (2001–present)	No statement to Parliament.	On 22 January 1991, in the Senate, the question was resolved in the affirmative: ayes 59, noes 9. ¹¹⁵	<p>Coalition Government in power.</p> <p>On 4 October 2001, Prime Minister, John Howard, announced Australia’s commitment to the military coalition led by the United States at a press conference.¹¹⁶</p> <p>Bombing of targets in Afghanistan commenced on 7 October 2001.</p> <p>Federal Parliament was dissolved 8 October 2001.</p> <p>A federal election was held on 10 November 2001. The fortieth Parliament met on 12 February 2002.</p>
Iraq (2003–present)	On 4 February 2003 Prime Minister, John Howard, delivered a ministerial statement to explain the ‘government’s belief that the world community must deal decisively with Iraq’. ¹¹⁷	The motion moved was ‘that the House take note of the paper’. Attempts by the Opposition and independents to move motions on Iraq were not successful.	<p>Coalition Government in power.</p> <p>On 10 January 2003, the Prime Minister foreshadowed, at a press conference, ‘some forward deployment’ of elements of the ADF to the Persian Gulf.¹¹⁸</p> <p>On 22 January 2003, Defence Minister, Robert Hill, announced the Government’s decision to forward deploy HMAS <i>Kanimbla</i>, lead elements of a Special Forces Task Group & RAAF reconnaissance</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
			<p>team to the Middle East.¹¹⁹</p> <p>On 13 March 2003, Prime Minister, John Howard, addressed the National Press Club.</p> <p>On 17 March 2003, the Prime Minister advised at a press conference that federal Cabinet would meet on the evening of 17 March to discuss Iraq and Australia's military participation. Journalists asked about the role of Parliament in the decision to join the coalition of the willing. In response, the Prime Minister said that 'I have no desire at all to deny Parliament the full opportunity of debating this'.¹²⁰</p>
	<p>On 8 March 2003, a motion on Iraq was moved by the Prime Minister.</p>	<p>The motion stated, in part, that 'this House condemns Iraq's refusal to abide by UN Security Council resolutions and endorses the government's decision to commit ADF elements to the international coalition of military forces'.¹²¹</p> <p>In the debate, Leader of the Opposition, Simon Crean, said that '... Labor opposes your commitment to war. We will argue against it and we will call for the troops to be returned'.¹²²</p> <p>On 20 March 2003, in the House of Representatives the question that the motion be agreed to was resolved in the affirmative: ayes 80, noes 63.</p>	<p>On 18 March 2003 US President George W. Bush set a 48-hour deadline for Iraqi President Saddam Hussein to leave Iraq with his sons or face war.</p> <p>The war in Iraq commenced on 20 March 2003 (Australian Eastern Standard Time), The United States-led Coalition of the Willing launched military action against the Iraqi regime after the deadline for President Saddam Hussein to leave Iraq passed.</p>

Conflict	Statement to Parliament	Debate/Vote	Other events and key dates
		On 20 March 2003 in the Senate, an amended motion which, in part, opposed the decision of the Australian Cabinet and the President of the USA to commit troops to an attack on Iraq; and called for the Australian troops to be withdrawn and returned home, was resolved in the affirmative: ayes 37, noes 32. The Opposition, Australian Democrats, Australian Greens and an Independent senator supported the amended motion. ¹²³	Prime Minister, John Howard, announced at a morning press conference that Australian troops 'have commenced combat and combat support operations'. ¹²⁴

Appendix 1: Bibliography

Lindell G, ‘The constitutional authority to deploy Australian military forces in the Coalition war against Iraq’, *Constitutional Law & Policy Review*, vol. 5, no. 3, November 2002, pp. 46–49.¹²⁵ Revised version of an article published in *About the House*, May-June 2003, pp. 23–24, 36.¹²⁶

Sampford S and Palmer M, ‘The constitutional power to make war: domestic legal issues raised by Australia’s action in Iraq’, *Griffith Law Review*, vol. 18, no. 2, 2009, pp. 350–384.¹²⁷

Williams G, ‘The power to go to war: Australia in Iraq’, *Public Law Review*, vol. 15, no. 1, March 2004, pp. 5–9.¹²⁸

Appendix 2: Overseas experience: declarations of war and troop deployments in selected countries

The following table is a summary of the situation in selected countries. Constitutional and other legislative provisions which require Parliamentary approval for both declaring war and deploying troops in war zones are listed. Note that some governments or heads of state ignore the requirement for parliamentary approval.¹²⁹ More detail for some of the countries is provided in the reading list which follows the table.

Country	Declaring War	Deploying troops	Notes
Belgium	None	None	
Canada	None	None	
Denmark	Constitution, s 19(1) ¹³⁰	Constitution, s 19(2)	
Finland	Constitution, s 93 ¹³¹	Special law	
France	Constitution, art 35 ¹³²	Constitution, art 35	
Germany	Basic Law, art 115 ¹³³	Basic Law, art 115, 24.2	
Greece	None	None	
Ireland	Constitution, art 28 section 3.1 ¹³⁴	Constitution, art 28 section 3.1	
Italy	Constitution, art 78 ¹³⁵	Law of 18 February 1997, No 25, art 1; Resolution on deployment of military contingents abroad, 2001 (7-01007)	
Luxembourg	Constitution, art 37 ¹³⁶		
Netherlands	Constitution, art 96 ¹³⁷	Constitution, art 100 (right of consultation in advance)	

Country	Declaring War	Deploying troops	Notes
New Zealand	None	None	
Spain	Constitution, art 63 ¹³⁸	None	
Sweden	Instrument of Government, Chapter 10, art 9 ¹³⁹	Instrument of Government, Chapter 10, art 9	
United Kingdom	None	None	
United States	War Powers Resolution 1973 (also known as the War Powers Act); ¹⁴⁰ Constitution, art I	War Powers Resolution 1973	Occasionally ignored by the President

Overseas – commentary and further reading

This bibliography lists material which discusses the role of overseas legislatures in approving the declaration of war.

Canada

As a matter of Canadian constitutional law, the situation is clear. The Federal Cabinet can, without parliamentary approval or consultation, commit Canadian forces to action abroad, whether in the form of a specific current operation or possible future contingencies resulting from international treaty obligations. Under the Canadian Constitution [Constitution Act, 1867, sections 15 and 19], command of the armed forces - like other traditional executive powers- is vested in the Queen and exercised in her name by the federal Cabinet acting under the leadership of the Prime Minister. As far as the Constitution is concerned, Parliament has little direct role in such matters.¹⁴¹

Further reading¹⁴²

Canada, *Summary of legislation arising from the war, 1919*

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Canada, Parliament, House of Commons, Special Committee on Defence of Canada Regulations, *Minutes of evidence*, 1941.

Civil Liberties Association of Toronto, *Memorandum for the Members of the House of Commons on democracy in wartime and particularly on the Defence of Canada and Censorship Regulations*, 1940.

Fay JS, 'Restraints on executive emergency power in the United States and Canada', *Hastings International and Comparative Law Review*, vol. 3, Fall 1979, pp. 127-149.

Rossignol M, *International conflicts: Parliament, the National Defence Act, and the decision to participate*. Ottawa: Library of Parliament, 1992. (Background paper BP-303E).¹⁴³

Smith DE, *Emergency government in Canada and Australia 1914-1919: a comparison* (Ph. D. diss., Duke University, 1964).

Vaughn WM, 'Canadian reason of state : emergency power and civil liberties', In DA Charters, ed, *Democratic Responses to International Terrorism*, Transnational Books, New York, 1991.

Watson P, "*Strong and free...* ": *a response to the War Measures Act*, New Press, Toronto, 1970.

Europe

Two surveys of the situation in Europe have been published over the past ten years:

- M Troncho, *National parliamentary scrutiny of intervention by armed forces engaged in international missions: the current position in law: report submitted on behalf of the Committee for Parliamentary and Public Relations by Mrs Troncho*, (Document A/1762), Assembly of Western European Union, Interim European Security and Defence Assembly, Paris , 2001.¹⁴⁴ Examines the position in 13 western European countries. Of the countries examined, nine require parliamentary approval before a declaration of war is made. The issue is more uncertain as regards deployment of troops under international treaties which bind each country. See the report for more details and the table above.
- W Wagner, *Parliamentary Control of Military Missions: Accounting for Pluralism*, (Occasional paper no. 12), Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2006.¹⁴⁵ This examines 26 OECD countries and for western European countries largely reiterates the findings of the 2001 Troncho report.

Great Britain

The deployment of troops and the issuing of orders to engage in hostilities are matters of Royal Prerogative, exercisable by Ministers. The Government has liberty of action in this field, and Parliament need not give its approval. However, it is usual for Governments to keep Parliament well informed of decisions to use force and of the progress of campaigns. This is achieved primarily through statements to the House and debates, although other parliamentary procedures are also relevant.¹⁴⁶

Since 2003 there have been calls for aspects of the Royal Prerogative, including the monarch's war powers, to be codified and subject to parliamentary scrutiny. Progress on this

issue may be found in the documents listed below issued since 2003. As at February 2010, the legal position has not changed.

Further reading

*Halsburys Laws of England. 4th ed. Vol. 49. War and Armed Conflict. Paras 406–409. Declaration and Termination of War. See also Vol. 8. Constitutional Law and Human Rights. Paras 809-819. The Making of War and Peace.*¹⁴⁷

Great Britain. Parliament. House of Commons. Select Committee on Public Administration. *Taming the prerogative: strengthening ministerial accountability to Parliament: report* (Fourth Report of Session 2003–04), 2004.¹⁴⁸

Great Britain. Parliament. House of Lords. Constitution Committee, *Waging War: Parliament's Role and Responsibility: report*, 2006 (2 vols. HL paper 236-I; 236-II).¹⁴⁹

Great Britain. Parliament. House of Lords. Constitution Committee, *Waging War: Parliament's Role and Responsibility: follow up report* [includes Government response to the 2006 Committee report], (HL paper 51), 2007.¹⁵⁰

Great Britain. Ministry of Justice, *The Governance of Britain: constitutional renewal*. [White paper], (command paper Cm 7342-I), 2008, para 197–226 (war powers).¹⁵¹ Proposes a House of Commons resolution (rather than legislation) which would set out procedures the Government should follow when deciding to commit troops overseas.

Ireland

The Irish *Constitution* states:

War shall not be declared and the State shall not participate in any war save with the assent of Dáil Éireann.¹⁵²

In 2003 a Private Members Bill sought to amend this provision by proposing the following text for section 3.1:

War shall not be declared and the State shall not participate in any war or other armed conflict, nor aid foreign powers in any way in preparation for war or other armed conflict, or conduct of war or other armed conflict, save with the assent of Dáil Éireann.¹⁵³

For a brief background on Article 28.3.1 see the *8th Progress Report of the All Party Parliamentary Committee on the Constitution* (2003) at pages 14–16.¹⁵⁴

Parliamentary approval is also required for the commitment of troops to United Nations peace keeping forces of a policing nature. The *Defence Act* states:

A contingent of the Permanent Defence Force may be despatched for service outside the State as part of a particular International United Nations Force if, but only if, a resolution has been passed by Dáil Éireann approving of the despatch of a contingent of the Permanent Defence Force for service outside the State as part of that International United Nations Force.¹⁵⁵

New Zealand

The formal right to declare war was clearly part of the Royal Prerogative inherited from Great Britain in 1840 and it remains an acknowledged part of New Zealand law. Defence and wartime prerogatives include the right to declare war and peace, and the deployment and armament of defence forces.

The Royal Prerogative is primarily exercised by the Governor-General on the advice of elected ministers or executive by authority of the *Letters Patent Constituting the Office of the Governor-General of New Zealand 1983* (SR 1983/225).

The Queen's representative in New Zealand, the Governor-General, is designated Commander-in-Chief of the armed forces in recognition of the Crown's defence prerogative. Sections 5 and 6 of the *Defence Act 1990* provide a partial statutory foundation to the prerogative.¹⁵⁶

Russia

The *Constitution* appoints the President as Supreme Commander-in-Chief of the armed forces (article 87(1)) and gives the office power over foreign policy and martial law (article 86). In the event of the introduction of martial law the Federation Council and the State Duma must be notified (article 87(2)). The Constitution generally provides for a strong Presidency with a limited role for the Duma.¹⁵⁷

South Africa

The *Constitution* provides the President with the power to declare war (section 201 (2)) and a state of emergency (section 203) on the advice of the Cabinet member responsible for defence (section 202). In both situations the President must inform Parliament but does not need to obtain its approval.¹⁵⁸

United States

The *Constitution* grants to Congress the power to declare war, to raise and support armies, and to provide and maintain a navy (Article I, section 8, clause 11). The President is made the Commander in Chief of the armed forces (Article II, section 2, clause 1).¹⁵⁹

The *War Powers Resolution 1973* (also known as the *War Powers Act*) (50 USC 1541–1548) provides for the President to consult, report and terminate deployment of armed forces with the approval of Congress.¹⁶⁰

There is doubt about the legality of this Act and Presidents have not always followed it. Courts have failed to uphold its legality and the Supreme Court in particular has been reluctant to take on cases which deal with it, regarding it a political rather than a judicial issue.

In 2003 Judge Tauro of the District Court rejected the contention that the president must have congressional authority to order American forces into combat by saying ‘Case law makes clear that the Congress does not have the exclusive right to determine whether or not the United States engages in war’.¹⁶¹ An appeal later that year to the First U.S. Circuit Court of Appeals was not successful.¹⁶²

In 2008 the National War Powers Commission of the Miller Centre of Public Affairs at the University of Virginia, recommended a new War Powers Consultation Act.

The proposed statute would repeal the 1973 Resolution and require that the President consult with a newly-formed joint congressional committee before ordering the deployment of U.S. armed forces into ‘significant armed conflict’ or, under certain circumstances, within three days of deployment. The statute would also create a mechanism to ensure that both houses of Congress vote on the particular military action within thirty days of the deployment.¹⁶³ The proposed law, however, would still give enormous latitude to a President, who would not need consent to go to war, and makes it difficult for a Congress to stop him.¹⁶⁴ The proposed bill has not yet been introduced.

Further reading

Congressional Research Service papers

JK Elsea and RF Grimett, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, Congressional Research Service, Library of Congress, Washington, 2007 (RL31133).¹⁶⁵

RF Grimett, *War Powers Resolution: Presidential compliance*, Congressional Research Service, Library of Congress, Washington, 2009. (RL33532)¹⁶⁶

RF Grimett, *The War Powers Resolution: After Thirty-Four Years*, Congressional Research Service, Library of Congress, Washington, 2008. (RL32267)¹⁶⁷

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L Fisher, *Presidential war power*, University Press of Kansas, Lawrence, Kansas, 1995.

JH Ely, *War and responsibility: constitutional lessons of Vietnam and its aftermath*, Princeton University Press, Princeton, N.J., 1993.

JC Daly, ed, *War powers and the constitution*, with an appendix by Gerald R. Ford, American Enterprise Institute for Public Policy Research, Washington, D.C., 1984.

RF Turner, *The war powers resolution: its implementation in theory and practice*, Foreign Policy Research Institute, Philadelphia, Pa ,1983. (Philadelphia policy papers).

AD Sofaer, *War, foreign affairs, and constitutional power*, Ballinger, Cambridge, Mass.,1976.

JK Javits, *Who makes war: the President versus Congress*, Morrow, New York , 1973.

FD Wormuth, *The Vietnam war: the president versus the constitution*, Centre for the Study of Democratic Institutions, [Santa Barbara, Calif.], [1968]. (The Centre occasional paper)

Journal articles

J Nzeline, 'Are Congressionally authorized wars perverse?', *Stanford Law Review*, vol. 59, 2007, pp. 907–954¹⁶⁸

MD. Ramsey, 'Presidential declarations of war', *U.C. Davis Law Review*, vol. 37, 2003, pp. 321–377.¹⁶⁹

Appendix 3: Proclamations and other legal instruments relating to Australia's involvement in war¹⁷⁰

Note that instruments may have been issued at times other than occurrences of hostilities. All proclamations were made by the Governor-General unless otherwise stated.

World War 1 1914–1918

UK declares war on Germany 4 August 1914 (5 August Sydney time).

Proclamation under the <i>Defence Act</i> declaring a time of war to exist	<i>Gazette</i> no. 50, 3 August 1914, p. 1335
Proclamation under the <i>Defence Act</i> calling out the Citizen Forces	<i>Gazette</i> no. 50, 3 August 1914, p. 1335
Although there are no declarations of war by Australia against individual countries, several proclamations were issued relating to shipping which noted that the King had declared war. The first was issued under the <i>Convention Relative to the Status of Enemy Merchant Ships, 1907</i> and noted that the King had declared war against Germany. These proclamations appear to have been made under the Commonwealth's executive power in sections 61–62 of the Constitution	<i>Gazette</i> no. 51, 5 August 1914, p. 1337–1339
Proclamations of the King re trading with the enemy, reprinted by the Prime Minister	<i>Gazette</i> no. 53, 7 August 1914, p. 1345
Proclamation under the Prize Courts Act 1894 (UK) re shipping and noting that war exists between the King and Germany, and Austria and Hungary	<i>Gazette</i> no. 61, 19 August 1914, p. 1585
Proclamation under the Prize Courts Act 1894 (UK) re shipping and noting that war exists between the King and Turkey	<i>Gazette</i> no. 92, 7 November 1914, p. 2503
Proclamation under the <i>Termination of the Present War (Definition) Act 1919</i> declaring 1 September 1921 as the end of World War 1	<i>Gazette</i> no. 68, 31 August 1921, p. 1251. The dates proclaimed to be the dates of the end of war with Germany, Austria, Bulgaria, Hungary and Turkey were 10 January 1920, 16 July 1920, 9 August 1920, 26 July 1921 and 6 August 1924 (<i>Gazette</i> 1920, pp. 339,1141, 1193; <i>Gazette</i> 1921 p. 1207; <i>Gazette</i> 1924, p. 1913) respectively

World War 2 1939–1945

Proclamation under the <i>Defence Act</i> declaring ‘the extreme danger of war’	<i>Gazette</i> , no. 61, 2 September 1939, p. 1845
Proclamation under the <i>Defence Act</i> calling out the Citizen Forces	<i>Gazette</i> , no. 62, 2 September 1939, p. 1847
Notification by the Prime Minister of the existence of war between Great Britain and Germany, and Proclamation by the Governor-General under the <i>Defence Act</i> of the existence of war in Australia	<i>Gazette</i> , no. 63, 3 September 1939, p. 1849
Warning notice to traders and others by the Prime Minister not to trade with the enemy	<i>Gazette</i> , no. 64A, 6 September 1939, p. 1851A
Proclamation declaring war against Finland, Hungary and Rumania (sic)	<i>Gazette</i> , no. 251, 8 December 1941, p. 1849
Proclamation declaring war against Japan. Photo of signing ¹⁷¹	<i>Gazette</i> , no. 252, 9 December 1941, p. 2727
Proclamation declaring war against Bulgaria	<i>Gazette</i> , no. 14, 14 January 1942, p. 79
Regulation providing for secrecy of Parliamentary proceedings dealing with discussing reports relating to the war	Statutory Rule no. 78 of 1942. <i>Gazette</i> , no. 56, 20 February 1942. Published in the House of Representatives <i>Hansard</i> , 20 February 1942, p. 6
Proclamation declaring war against Thailand, 2 March 1942	<i>Gazette</i> , no. 177, 10 March 1942, p. 617
Royal Instrument made by King George VI declaring war between Australia and Finland, Hungary, Roumania, 8 December 1941	<i>Gazette</i> , no. 104, 7 April 1942, p. 859
Royal Instrument made by King George VI declaring war between Australia and Japan, 8 December 1941	<i>Gazette</i> , no. 104, 7 April 1942, p. 859
Royal Instrument made by King George VI declaring war between Australia and Bulgaria, 14 January 1942	<i>Gazette</i> , no. 104, 7 April 1942, p. 859
Royal Instrument made by King George VI declaring war between Australia and Thailand, 18	<i>Gazette</i> , no. 198, 20 July 1942, p. 1733

February 1942	
Proclamation under the Defence Act declaring that time of war no longer exists	<i>Gazette</i> , no. 36, 15 May 1952, p. 2481

Korean War 1950–1953

No proclamations have been found. According to the *Oxford Companion to Australian Military History* the United Nations Security Council invited UN member states to send forces to restore the situation before the invasion of South Korea.¹⁷² A declaration under section 4 of the *Defence Act* relating to ‘active service’ in Korea was made in the *Gazette*, no. 40, 1952, p. 2711.

Malayan Emergency 1950–1960

A declaration under section 4 of the *Defence Act* relating to ‘active service’ in Malaya was made in the *Gazette*, no. 40, 1952, p. 2712.

Confrontation (Indonesia/Malaysia) 1963–1966

Declarations under section 4 of the *Defence Act* relating to ‘active service’ in Malaysia were made in the *Gazette* in 1964: Malaysia/Thailand Border, *Gazette*, no. 21, 28 February 1964, p. 887, all of Malaysia, *Gazette*, no. 91, 5 November 1964, p. 4347, Brunei, Sarawak and Sabah, *Gazette*, no. 59, 2 July 1964, p. 2607.

Vietnam War 1962–1972

Australia entered its longest conflict with neither a formal declaration of war nor as a result of a United Nations resolution. As a result of requests from the South Vietnamese and United States Governments, Australia sent military advisers to Vietnam in 1962. These were later increased by combat forces.

A declaration under section 4 of the *Defence Act* relating to ‘active service’ in Vietnam was made in the *Gazette*, no. 65, 1962, p. 2643.

A proclamation in 1973 formally ended the involvement.

Proclamation under the <i>Defence Force Protection Act 1967</i> that defence forces are no longer engaged in war-like operations in Vietnam, 11 January 1973	<i>Gazette</i> , no. 5, 18 January 1973, p. 2
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Recent conflicts

No formal declarations of war have been found relating to later conflicts, for example Afghanistan (2001) and Iraq (1991 and 2003).

Appendix 4: Federal Parliament's involvement in the deployment of troops to Iraq

The table below shows the degree of parliamentary involvement in the Government's decision to deploy troops to Iraq. The table includes votes on most motions relating to Iraq. It does not include suspension of Question Time, or Questions without Notice, Questions on Notice, Matters of Public Importance, Censure Motions or Adjournment speeches relating to Iraq. The final motions passed by the Senate and the House of Representatives are reproduced at the end of this table. The text of some motions and amendments are provided in the endnotes.

Date	Senate	House of Representatives	Other events
2002			
19 August	Urgency motion moved by Senator Natasha Stott Despoja (AD). ¹⁷³ Question negatived: ayes 11, noes 46.		
28 August	Senator Kerry Nettle (AG) moved that a select committee known as the Select Committee on the Possible Support by Australia of a United States Invasion of Iraq be appointed. ¹⁷⁴ Question negatived: ayes 2, noes 45.		
17, 18 September	Minister for Defence, Senator Robert Hill (LIB) ¹⁷⁵ ministerial statement on Iraq, debate on Senator Hill's motion that the Senate take note of the statement. Amendment moved by Senator John Faulkner (ALP). ¹⁷⁶ Motion as amended agreed to: ayes 38, noes 31.	Minister for Foreign Affairs, Alexander Downer (LIB), ministerial statement on Iraq. ¹⁷⁷ Debate on motion 'that the House take note of the papers'. Amendment to the motion moved by Mr Peter Andren (IND) ¹⁷⁸ Seconded by Mr Tony Windsor (IND).	
19 September		Motion that debate be adjourned Question agreed to (Mr Peter Andren (IND) and Mr Tony Windsor (IND) voted against).	
8 November			UN Security Council passed resolution 1441
13 November	Senator Kerry Nettle (AG) moved a motion relating to the report by the global health charity Medact. ¹⁷⁹ Question negatived: ayes 9, noes 38.		Iraq accepted resolution 1441.

Parliamentary involvement in declaring war and deploying forces overseas

Date	Senate	House of Representatives	Other events
			UN weapons inspectors returned to Iraq.
12 December		Parliamentary Secretary to the Prime Minister, Jackie Kelly (LIB), moved that the orders of the day, government business be discharged including: Iraq-ministerial statement and papers- motion to take note of papers, and on the amendment moved by Mr Peter Andren (IND). The question was agreed to. ¹⁸⁰	
2003			
10 January			Prime Minister, John Howard (LIB) press conference, foreshadowed 'some forward deployment' of elements of the ADF to the Persian Gulf'. ¹⁸¹
22 January			Minister for Defence, Senator Robert Hill (LIB), announced Government's decision to forward deploy HMAS <i>Kanimbla</i> , lead elements of a Special Forces Task Group & RAAF reconnaissance team to the Middle East. ¹⁸²
27 January			UNMOVIC (United Nations Monitoring, Verification and Inspection Commission) Chief Weapons Inspector Hans Blix delivered report on Iraq's compliance to date.
4, 5 February	Minister for Defence, Senator Robert Hill (LIB), ministerial statement on Iraq. Motion moved: 'That the Senate take note of the statement'. ¹⁸³ Amendments moved by Senator	Prime Minister delivered a ministerial statement to explain the 'government's belief that the world community must deal decisively	

Parliamentary involvement in declaring war and deploying forces overseas

Date	Senate	House of Representatives	Other events
	John Faulkner (ALP) ¹⁸⁴ (ayes 33, noes 31) and Senator Bob Brown (AG)(ayes 10, noes 56.)	with Iraq'. Motion moved: 'that the House take note of the paper'. ¹⁸⁵	
6 February		Iraq debate continued. Amendment moved by Mr Peter Andren (IND) ¹⁸⁶	
10 February		Iraq debate continued in the Main Committee.	
11 February		Iraq debate continued in the Main Committee.	
12 February		Iraq debate continued in the Main Committee. Mr Peter Andren (IND) moved that the question be now put. Question referred back to the main chamber.	
13 February		Order of the day returned from the Main Committee to the House. Vote on unresolved question: that the question be now put. Question negatived, Mr Peter Andren (IND), Mr Michael Organ (AG) and Mr Tony Windsor dissenting (IND).	
15, 16 February			Mass peace rallies held in Australian and overseas cities.
24 February			US, Britain and Spain circulate draft resolution declaring that Iraq has squandered its 'final opportunity' to disarm.
4 March		Mr Peter Andren (IND) moved that standing and sessional orders be suspended. ¹⁸⁷ Attorney-General, Daryl Williams (LIB), moved that the member be not further heard: ayes 73, noes 61. Mr Tony Windsor (IND) seconded Mr Peter Andren's motion. Minister for Citizenship,	

Parliamentary involvement in declaring war and deploying forces overseas

Date	Senate	House of Representatives	Other events
		Gary Hardgrave (LIB), moved that the member be not further heard: ayes 73, noes 61.	
5 March		Mr Tony Windsor moved that standing and sessional orders be suspended. ¹⁸⁸ Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Warren Entsch (LIB) moved that the member be not further heard: ayes 75, noes 62. Mr Peter Andren (IND) seconded Mr Tony Windsor's (IND) motion. Minister for Employment and Workplace Relations, Tony Abbott (LIB), moved that the member be not further heard: ayes 76, noes 62.	
6 March	Motions moved by: Senator Lyn Allison (AD). Question agreed to. ¹⁸⁹ Senator Andrew Murray (AD) Question agreed to. ¹⁹⁰ Senator John Cherry (AD) Question negatived. ¹⁹¹ Senator Aden Ridgeway (AD) Question negatived. ¹⁹² Senator Kerry Nettle (AG) ayes 9, noes 34. ¹⁹³ Senator Andrew Bartlett (AD) ayes 9, noes 33. ¹⁹⁴ Senator Kerry Nettle (AG): Motion to suspend standing orders to debate motion on Iraq: ayes 10, noes 42. ¹⁹⁵	During Question Time Mr Peter Andren (IND) moved that standing and sessional orders be suspended to allow him to move a motion on Iraq. ¹⁹⁶ Motion seconded by Mr Tony Windsor (IND). Question that the motion (Mr Peter Andren's) be agreed to: ayes 60, noes 75. Mr Simon Crean (ALP) sought leave to suspend standing orders. Moved motion on Iraq. ¹⁹⁷ Question that the motion (Mr Simon Crean's) be agreed to: ayes 55, noes 75.	
13 March			Prime Minister, John Howard (LIB), Address to the National Press Club. ¹⁹⁸

Parliamentary involvement in declaring war and deploying forces overseas

Date	Senate	House of Representatives	Other events
16 March			Leaders of US, Britain and Spain meet in Azores Islands after other UN Security Council members reject efforts to win a new mandate for war on Iraq.
17 March			The Prime Minister, John Howard (LIB), advised at a press conference that federal Cabinet would meet on the evening of 17 March to discuss Iraq and Australia's military participation. Journalists asked about the role of Parliament in the decision to go join the coalition of the willing. US, Britain and Spain. ¹⁹⁹
18 March	Iraq debate on motion moved by Senator Robert Hill (LIB). ²⁰⁰ Amendment moved by Senator John Faulkner (ALP). ²⁰¹ Senator Andrew Bartlett (AD) moved an amendment to Senator John Faulkner's (ALP) amendment. ²⁰²	Iraq debate on motion moved by the Prime Minister, John Howard (LIB). ²⁰³ Amendment moved by Mr Simon Crean (ALP). ²⁰⁴	US President set 48-hour deadline for Iraqi President Saddam Hussein to leave Iraq with his sons or face war.
19 March	Iraq debate resumed on motion by Senator Robert Hill (LIB) and amendments moved by Senator John Faulkner (ALP) and Senator Andrew Bartlett (AD).	Iraq debate resumed.	
20 March	Iraq debate resumed. Senator Andrew Bartlett (AD) sought leave to amend his amendment. ²⁰⁵ Question agreed to. Senator Bob Brown (AG) moved an amendment ²⁰⁶ to Senator John Faulkner's (ALP) amendment. Question agreed to. Division on question that the amendment moved by Senator John Faulkner, as amended, be agreed to: ayes 37, noes 32. Division on question that the motion, as amended, be agreed to: ayes 37, noes 32. ²⁰⁷	Prime Minister, John Howard (LIB), informed the House in Question Time that Australian forces 'have commenced combat and combat support operations'. ²⁰⁸ Debate on Iraq resumes on Mr John Howard's motion and Mr Simon Crean's (ALP) amendment. Division That the words proposed to be omitted (Mr Simon Crean's amendment) stand part	War on Iraq commenced. Prime Minister, John Howard (LIB), announced at a morning press conference that 'Australian troops have commenced combat and combat support operations'. ²¹⁰ Prime Minister, John Howard, Address to the Nation. ²¹¹ Mr Simon Crean, Leader of the Opposition, speech to the National

Date	Senate	House of Representatives	Other events
		of the question: ayes 80, noes 63. Division That the motion (Mr John Howard's) be agreed to: ayes 80, noes 63. ²⁰⁹	Press Club. ²¹²
21 March			Leader of the Opposition, Mr Simon Crean (ALP), Address to the Nation. ²¹³
26 March	Senator Bob Brown (AG) moved a motion as amended on Iraq. ²¹⁴ Question agreed to.		
27 March	Senator Andrew Bartlett (AD) introduced the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas Conflicts) Bill 2003. Bill read a second time. ²¹⁵ Senator Bob Brown (AG) moved that matters on Iraq be referred to the Legal and Constitutional References Committee: ayes 11, noes 35. ²¹⁶		

Abbreviations

AD: Australian Democrats

AG: Australian Greens

ALP: Australian Labor Party

IND: Independent

LIB: Liberal Party of Australia

Final motions

House of Representatives

The House of Representatives passed the following motion on 20 March 2003:

That this House:

1. condemns Iraq's refusal, over more than 12 years, to abide by 17 resolutions of the United National Security Council regarding the threat it poses to international peace and security;
2. recognises:

(a) that Iraq's continued possession and pursuit of weapons of mass destruction, in defiance of its mandatory obligations under numerous resolutions of the United Nations Security Council, represents a real and unacceptable threat to international peace and security;

(b) that Iraq's behaviour weakens the global prohibitions on the spread of weapons of mass-destruction, with the potential to damage Australia's security; and

(c) that, as more rogue states acquire them, the risk of weapons of mass destruction falling into the hands of terrorists multiplies, thereby presenting a real and direct threat to the security of Australia and the entire international community;

3. abhors:

(a) Iraq's continued support for international terrorism; and

(b) the institutionalised widespread and grave abuse of the human rights of the Iraqi people over many years;

4. notes that United Nations Security Council resolutions adopted under Chapter VII of the United Nations charter, in particular resolutions 678, 687 and 1441, provide clear authority for the use of force against Iraq for the purposes of disarming Iraq of weapons of mass destruction and restoring international peace and security to the region;

5. endorses the Government's decision to commit Australian Defence Force elements in the region to the international coalition of military forces prepared to enforce Iraq's compliance with its international obligations under successive resolutions of the United Nations Security Council, with a view to restoring international peace and security in the Middle East region;

6. expresses its unequivocal support for the Australian service men and women, and other personnel serving with the international coalition, our full confidence in them and the hope that all will return safely to their homes;

7. extends to the innocent people of Iraq its support and sympathy during the military action to disarm Iraq of its weapons of mass destruction and the reconstruction period that will follow; and

8. notes that the government is committed to helping the Iraqi people, including through humanitarian assistance, to build a new Iraq at peace with itself and its neighbours.

The result of the division was ayes 80, noes 63.

Senate

The Senate passed a motion on 20 March 2003. The final motion, after several amendments, read:

That the Senate

(a) insists that Iraq must disarm under the authority of the United Nations (UN);

(b) believes that in the absence of an agreed UN Security Council resolution authorising military action against Iraq, there is no basis for military action to disarm Iraq, including action involving the Australian Defence Force;

- (c) insists that there should be no commitment of Australian troops to a war in Iraq outside the authority of the UN;
- (d) concludes that Australian involvement in a war in Iraq without UN authorisation is not in Australia's national interests nor in the interests of maintaining international peace and security; and
- (e) expresses its confidence in our service men and women and its full support for them and their families.
- (f) is of the view that the decision of the Australian Government to commit Australian troops to an invasion of Iraq is clearly being done without the authorisation or support of the UN Security Council;
- (g) opposes the decision of the Australian Cabinet and the President of the United States of America (Mr Bush) to commit troops to an attack on Iraq;
- (h) calls for the Australian troops to be withdrawn and returned home; and
- (i) calls on the Australian and the United States governments to continue the policy of containment and disarmament through weapons inspections under the existing UN Security Council authority, as proposed by the governments of France, Germany and Russia.
- (j) calls on the Government to immediately return Australia's 2000 Defence Force personnel home.'

The result of the division was: ayes 37, noes 32.

Endnotes

- 1 Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (parliamentary Approval of Overseas Service) Bill 2008 [No. 2]*, Commonwealth of Australia, 25 February 2010, p. 28, viewed 26 February 2010, http://www.aph.gov.au/Senate/committee/fadt_ctte/dapaosb08/report/report.pdf
2. Section 51(vi) Defence power; section 61 Nationhood power of the Constitution of Australia.
3. Article 24 of the Charter of the United Nations says: 'In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf', viewed 27 January 2010, <http://www.un.org/en/documents/charter/index.shtml>
4. C Mason, Second Reading Speech, Senate, *Debates*, 18 April 1985, p.1186, viewed 22 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1985-04-18%2F0018%22>. Remaining debate occurred in the Senate on 17 April 1986. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1986-04-17%2F0170%22>

5. The text of the Bill and debates may be found at, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs386%22>, viewed 20 January 2010.
6. For an analysis of the Bill see G. Williams, 'The power to go to war: Australia in Iraq', *Public Law Review*, vol. 15, no. 1, March 2004, pp. 5–9, viewed 27 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F3JWB6%22>
7. The text of the Bill and debates may be found at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs609%22>, viewed 21 January 2010.
8. The text of the Bill and debates may be found at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs649%22>, viewed 21 January 2010.
9. Foreign Affairs, Defence and Trade Legislation Committee report, op. cit., 25 February 2010, p. 28.
10. M Bishop, Senate, *Debates*, 25 February 2010, p. 19.
11. S Ludlam (Australian Greens), *Senate report on parliamentary approval to go to war: another missed opportunity*, media release, 25 February 2010, viewed 26 February 2010, <http://greensmps.org.au/content/media-release/senate-report-parliamentary-approval-go-war-another-missed-opportunity>
12. Note, however, that section 4 of the *Defence Act* says that 'War means any invasion or apprehended invasion of, or attack or apprehended attack on, Australia by an enemy or armed force'.
13. K Roberts-Wray, *Commonwealth and colonial law*, Stevens, London, 1966, p. 256.
14. Mr Justice Isaacs of the High Court said in 1916 '[t]he creation of a state of war and the establishment of peace necessarily reside in the Sovereign himself as head of the Empire,' *Farey v Burvett* (8 June 1916) [1916] HCA 36; (1916) 21 CLR 433 at p. 452, viewed 10 March 2010, <http://www.austlii.edu.au/au/cases/cth/HCA/1916/36.html>
15. *Ibid*, p. 251–2.
16. Report of the Inter-Imperial Relations Committee of the Imperial Conference 1926 (Balfour Declaration), National Archives of Australia, NAA: A4640/32.
17. Speech made by Prime Minister Robert Gordon Menzies, 3 September 1939: Screensound Australia, National Screen and Sound Collection, Screensound Title No: 387919, viewed 27 January 2010, <http://www.wa2australia.gov.au/wardeclared/index.html>
18. Cablegram from Lord Cranbourne, UK Secretary of State for Dominion Affairs, to Mr John Curtin, Prime Minister, 28 October 1941. Reprinted in: Department of Foreign Affairs, *Documents on Australian Foreign Policy 1937–49*, vol. v, p. 156.
19. P Hasluck, *The Government and the people*, vol. 2 1942–1945, Australian War Memorial, Canberra, 1956–1970, p. 5–9.

20. The United Kingdom Parliament could still legislate for Australia with the Commonwealth Parliament's request and consent but it did mean that there was virtually no restriction on Commonwealth legislative power.
21. In 1951 the Governor-General acting on advice declared peace with Germany without any delegation from the Queen. This is another significant development in practice.
22. The current text of the *Defence Act 1903* may be found on ComLaw at <http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401433?OpenDocument>
23. *The Laws of Australia*, Thomson Reuters, Sydney, para [19.5.87] (Government > Federal constitutional system > Section 51 powers > Defence: section 51(vi)). Updated 15 January 1998, viewed 10 March 2010, <http://legalonline.thomson.com.au/tla/resultDetailed.jsp?id=19.5.87>.
24. *Stenhouse v Coleman* [1944] HCA 36; (1944) 69 CLR 457, Dixon J at 471, viewed 10 March 2010, <http://www.austlii.edu.au/au/cases/cth/HCA/1944/36.html>
25. *Farey v Burvett* [1916] HCA 36; (1916) 21 CLR 433, Griffith CJ at 442, viewed 10 March 2010, <http://www.austlii.edu.au/au/cases/cth/HCA/1916/36.html>
26. CEW Bean, *The Story of Anzac (Official History of Australia in the War of 1914–1918)*, University of Queensland Press, St Lucia, c1981, pp. 26–27, viewed 27 January 2010, http://www.awm.gov.au/cms_images/histories/2/chapters/02.pdf
27. The previous wording of the section (50A) may be found in the 1973 reprint at <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/1F08DAB3A7E3220DCA2576650029D834> viewed 5 February 2010.
28. Ibid.
29. Dates for each conflict have been taken from the Australian War Memorial, 'Australian military history: an overview', viewed 18 January 2010, <http://www.awm.gov.au/atwar/conflict.asp>
30. A Cameron, House of Representatives, *Debates*, 5 May 1955, p. 523.
31. P Hasluck, 'War in the Far East, December 1941–January 1942', *Australia in the war of 1939–1945*, Series 4, Vol. 2, Australian War Memorial, Canberra, 1970, p. 10, viewed 10 March 2010, http://www.awm.gov.au/cms_images/histories/31/chapters/01.pdf,
32. Governor General's speech, Senate, *Debates*, 8 October 1914, p. 7.
33. D Watson, 'Governor General's speech: Address–in–Reply', Senate, *Debates*, 8 October 1914, p. 22.
34. J Cook, 'Governor General's speech: Address–in–Reply', House of Representatives, *Debates*, 14 October 1914, p. 174.
35. House of Representatives, *Debates*, 15 October 1914, p. 236, and Senate, *Debates*, 15 October 1914, p. 216.
36. Quoted in CEW Bean, *The Story of Anzac*, op. cit., pp. 16–17.

37. See Senate, *Debates*, 6 September 1939, p. 3 and House of Representatives, *Debates*, 6 September 1939, p. 28.
38. House of Representatives, *Debates*, 6 September 1939, pp. 80–96.
39. R Menzies, House of Representatives, *Debates*, 6 September 1939, p. 29.
40. J Curtin, House of Representatives, *Debates*, 6 September 1939, p. 36.
41. *Ibid.*, p. 37.
42. See House of Representatives, *Debates*, 6 September 1939, p. 79.
43. See Senate, *Debates*, 7 September 1939, p. 118.
44. P Hasluck, 'Australia enters the war, September 1939–April 1940', *Australia in the war of 1939–1945*, Series 4, Vol. 1, Australian War Memorial, Canberra, 1952, p. 152, viewed 15 February 2010, http://www.awm.gov.au/cms_images/histories/30/chapters/04.pdf
45. Speech by Prime Minister Robert Gordon Menzies, 3 September 1939, *op. cit.*
46. G Long, 'A second A.I.F.', *Australia in the war of 1939–1945*, Series 1, Vol. 1, Australian War Memorial, Canberra, 1953, p. 33, viewed 15 February 2010, http://www.awm.gov.au/cms_images/histories/17/chapters/02.pdf
47. G Long, 'A second A.I.F.', *ibid.*, pp. 33–34.
48. P Hasluck, 'Australia enters the war, September 1939–April 1940', *op. cit.*, pp. 159–160.
49. G Street, 'Ministerial statement: defence preparations', House of Representatives, *Debates*, 7 September 1939, p. 122.
50. J Curtin, *op. cit.*, pp 125–126.
51. R Menzies, House of Representatives, *Debates*, 19 September 1939, p. 681.
52. J Curtin, House of Representatives, *Debates*, 16 December 1941, p. 1068.
53. *Ibid.*, p. 1069.
54. P Hasluck, 'War in the Far East, December 1941–January 1942', *Australia in the war of 1939–1945*, *op. cit.*, p. 10.
55. A Fadden, House of Representatives, *Debates*, 16 December 1941, p. 1082.
56. House of Representatives, *Debates*, 16 December 1941, p. 1133 and Senate, *Debates*, 17 December 1941, p. 1163.
57. P Hasluck, 'War in the Far East, December 1941–January 1942', p. 5.
58. *Ibid.*, pp. 5–6.
59. J Curtin, House of Representatives, *Debates*, 20 February 1942, p. 6.
60. A Fadden, House of Representatives, *Debates*, 20 February 1942, p. 7.
61. House of Representatives, *Debates*, 20 February 1942, p. 8 and Senate, *Debates*, 20 February 1942, p. 4.

62. Ibid., p. 9. See also endnote 1.
63. H Evatt, House of Representatives, *Debates*, 25 February 1942, pp. 48–58.
64. A Fadden, House of Representatives, *Debates*, 25 February 1942, p. 59.
65. House of Representatives, *Debates*, 26 March 1942, p. 486 and Senate, *Debates*, 29 April, 1942, p. 569.
66. R Menzies, House of Representatives, *Debates*, 6 July 1950, pp. 4838–4839.
67. Ibid., pp. 4836–4839.
68. B Chifley, House of Representatives, *Debates*, 6 July 1950, p. 4839.
69. W Ashley, Senate, *Debates*, 6 July 1950, p. 4834.
70. House of Representatives, *Debates*, 6 July 1950, p. 4860 and Senate, *Debates*, 6 July 1950, p. 4834.
71. R Menzies, House of Representatives, *Debates*, 6 July 1950, p. 4837.
72. R Menzies, House of Representatives, *Debates*, 30 May 1950, pp. 3349–3351.
73. R Menzies, House of Representatives, *Debates*, 31 May 1950, p. 3464.
74. House of Representatives, *Debates*, 6 July 1950, p. 4860 and Senate, *Debates*, 6 July 1950, p. 4833.
75. P Dennis & J Grey, *Emergency and confrontation: Australian military operations in Malaya and Borneo 1950–1966*, Allen & Unwin in association with the Australian War Memorial, North Sydney, 1996, p. 22.
76. Ibid., p. 25.
77. R Menzies, House of Representatives, *Debates*, 20 April 1955, p. 49.
78. H Evatt, House of Representatives, *Debates*, 27 April 1955, p. 200.
79. L Haylen, House of Representatives, *Debates*, 4 May 1955, p. 403.
80. House of Representatives, *Debates*, 5 May 1955, pp. 521–522.
81. Ibid., p. 523.
82. Senate, *Debates*, 24 May 1955, p. 398.
83. Australian Labor Party, *Official report of proceedings of the 21st Commonwealth Conference*, 9th session, 18 March 1955, ‘8. Labor policy is to oppose the use of Armed Forces in Malaya’, p. 46.
84. P Edwards and G Pemberton, *Crises and commitments: the politics and diplomacy of Australia’s involvement in Southeast Asian conflicts 1948–1965*, Allen & Unwin in association with the Australian War Memorial, North Sydney, 1992, pp. 175–176.
85. P Hasluck, House of Representatives, *Debates*, 23 March 1965, p. 230.
86. A Calwell, House of Representatives, *Debates*, 23 March 1965, p. 242.

87. House of Representatives, *Debates*, 1 April 1965, p. 602.
88. Edwards and Pemberton, *op. cit.*, p. 343.
89. Quoted in F Frost, *Australia's war in Vietnam*, Allen & Unwin, Sydney, 1987, p. 15.
90. Edwards and Pemberton, *op. cit.*, p. 249.
91. R Menzies, House of Representatives, *Debates*, 29 April 1965, p. 1060.
92. *Ibid.*
93. A Calwell, House of Representatives, *Debates*, 4 May 1965, p. 1102.
94. House of Representatives, *Debates*, 6 May 1965, p.1288.
95. Senate, *Debates*, 24 & 25 May 1965, p.1211.
96. I McNeill, *To Long Tan: the Australian Army and the Vietnam War, 1950–1966*, Allen & Unwin, Sydney 1993, p. 53.
97. Quoted in F Frost, *op. cit.*, p. 19.
98. P Edwards, *A Nation at war: Australian politics, society and diplomacy during the Vietnam War 1965-1975*, Allen & Unwin in association with the Australian War Memorial, Sydney, 1997, p. 27.
99. *Ibid.*, p.36.
100. R Hawke, House of Representatives, *Debates*, 21 August 1990, p. 1118.
101. J Hewson, House of Representatives, *Debates*, 21 August 1990, p. 1123.
102. E Mack, House of Representatives, *Debates*, 21 August 1990, p. 1192.
103. P McLean, Senate, *Debates*, 21 August 1990, p.1857. Subsection 2 read 'supports the Government's decision to send ships of the RAN to the Middle East to assist-by means of identification, contact, interrogation and warning-in enforcing UN sanctions against Iraq under Article 51 of the UN Charter'.
104. The statement is reproduced in I Bickerton and M Pearson, *43 Days: the Gulf war*, Text Publishing in association with ABC Books, Melbourne, 1991, pp. 228–229.
105. Australian War Memorial, 'First Gulf War, 1990–1991', viewed 19 February 2010, <http://www.awm.gov.au/atwar/gulf.asp>
106. R Hawke, House of Representatives, *Debates*, 4 August 1990, p. 4319.
107. J Hewson, House of Representatives, *Debates*, 4 December 1990, p. 4325.
108. House of Representatives, *Debates*, 5 December 1990, p. 4432.
109. Senate, *Debates*, 4 December 1990, p. 4936.
110. W Fife, House of Representatives, *Debates*, 21 January 1990, p. 1.
111. R Hawke, House of Representatives, *Debates*, 21 January 1991, p. 2.
112. *Ibid.*

113. J Hewson, House of Representatives, *Debate*, 21 January 1991, p. 9.
114. E Mack, House of Representatives, *Debates*, 22 January 1991, p. 266. Seven ALP members did not support the Gulf War. See, for example, *43 Days: the Gulf war*, op. cit., p. 84 and 'War vote earns censure for ALP parliamentarians', *Canberra Times*, 12 February 1991, p. 6.
115. Senate, *Debates*, 22 January 1991, p. 267. The Australian Democrats and the Greens WA Senator did not support the motion. Three Labor senators spoke against the motion and abstained from the vote.
116. J Howard (Prime Minister), *Transcript of press conference*, media release, 4 October 2001, viewed 24 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FIV256%22>
117. J Howard, House of Representatives, *Debates*, 4 February 2003, p. 10642.
118. J Howard (Prime Minister), *Transcript of press conference*, media release, 10 January 2003, viewed 23 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FB3A86%22>
119. R Hill (Minister for Defence), *Forward deployment of ADF elements*, media release, 22 January 2003, viewed 22 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FMSC86%22>
120. J Howard (Prime Minister), *Transcript of press conference*, media release, 17 March 2010, viewed 22 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FU8T86%22>
121. J Howard, House of Representatives, *Debates*, 18 March 2003, p. 12505.
122. S Crean, House of Representatives, *Debates*, 18 March 2003, p. 12512.
123. Senate, *Debates*, 20 March 2003, p. 9886.
124. J Howard (Prime Minister), *Transcript of press conference*, media release, 20 March 2010, viewed 23 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FLWU86%22>
125. Viewed 27 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FGRZ96%22>
126. Viewed 27 January 2010, http://www.aph.gov.au/house/house_news/magazine/ath16_war.pdf
127. Viewed 27 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FEYHV6%22>

128. Viewed 27 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22library%2Fjrnart%2F3JWB6%22>
129. This is particularly so when treaty obligations are involved. See M Troncho, National parliamentary scrutiny of intervention by armed forces engaged in international missions: the current position in law: report submitted on behalf of the Committee for Parliamentary and Public Relations by Mrs Troncho, (Document A/1762), Assembly of Western European Union, Interim European Security and Defence Assembly, Paris, 2001. p. 5, viewed 27 January 2010, http://www.assemblee-ueo.org/en/documents/sessions_ordinaires/rpt/2001/1762.pdf
130. Viewed 28 January 2010, http://www.servat.unibe.ch/law/icl/da00000_.html
131. Viewed 28 January 2010, http://www.servat.unibe.ch/law/icl/fi00000_.html
132. Viewed 28 January 2010, <http://www.assemblee-nationale.fr/english/8ab.asp>
133. Viewed 28 January 2010, http://www.bundestag.de/interakt/informationsmaterial_alt/fremdsprachiges_material/download/s/ggEn_download.pdf
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168. Viewed 3 February 2010, <http://www.stanford.edu/group/lawreview/content/vol59/issue4/nzelibe.pdf>
169. Viewed 3 February 2010, http://lawreview.law.ucdavis.edu/issues/Vol37/Issue2/DavisVol37No2_Ramsey.pdf
170. A proclamation is 'the act of formally and publicly announcing, publishing, or declaring something issued and ordained by a competent authority'. *Butterworths Concise Australian Legal Dictionary*, Butterworths, Sydney, 1997, p. 319
171. John Curtin Prime Ministerial Library, Records of the Curtin family : Lord Gowrie (Alexander Gore Arkwright, Baron Gowrie) Signing Declaration of War on Japan (as observed by Cabinet), December 1941, JCPML00376/102, viewed 3 February 2010, <http://john.curtin.edu.au/manofpeace/crisisb.html>
172. *Oxford companion to Australian military history*, second edn, Oxford University Press, South Melbourne, 2008, p. 302.
173. N Stott Despoja, Senate, *Debates*, 19 August 2002, p. 3077. Senator Stott Despoja moved:
That, in the opinion of the Senate, the following is a matter of urgency:
The need for the Australian Government to rule out committing Australia to supporting a first strike against Iraq unless there is evidence of an imminent attack by Iraq on another nation.
174. K Nettle, Senate, *Debates*, 28 August 2002, p. 3912.
175. R Hill, Senate, *Debates*, 17 September 2002, p. 4250.
176. J Faulkner, Senate, *Debates*, 17 September 2002, p. 4256. Senator Faulkner moved:
at the end of the motion add:
and that the Senate emphasises that as yet the case has not been made as would support a pre-emptive strike on Iraq; and further emphasises the vital importance of the United Nations Security

Council and the United Nations Charter under international law for international dispute resolution, including in relation to Iraq.

177. A Downer, House of Representatives, *Debates*, 17 September 2002, p. 6378.
178. P Andren, House of Representatives, *Debates*, 17 September 2002, p. 6451. Mr Andren moved that all words after ‘that’ be omitted with a view to substituting the following words:
- while the House commends the Government for its strong condemnation of terrorists and their activities and its encouragement of Iraq’s compliance with United Nations resolutions the House believes that Australian Defence Forces should not be involved in any action in Iraq that is not carried out under a United Nations’ Resolution.
179. K Nettle, Senate, *Debates*, 13 November 2002, p. 6246. Senator Nettle moved:
- That the Senate:
- (a) notes the Medact report, *Collateral Damage: the health and environmental costs of war on Iraq*, launched internationally on Tuesday, 12 November 2002 by the International Physicians for the Prevention of Nuclear War; and
- (b) calls on the Government to adopt conclusions contained within the report, including:
- (i) the urgent need for humane and wise global leadership which recognises that national security is impossible without international security and that this can be achieved only the measures outlined in the report, and
- (ii) pursuing peaceful means of resolving conflicts with Iraq and thinking carefully about the effects of waging war that might damage our fragile planet and its people for decades to come.
180. J Kelly, House of Representatives, *Debates*, 12 December 2002, p. 10375.
181. J Howard (Prime Minister), *Transcript of press conference*, media release, 10 January 2003.
182. R Hill (Minister for Defence), *Forward deployment of ADF elements*, media release, 22 January 2003.
183. R Hill, Senate, *Debates*, 4 February 2003, p. 8193.
184. J Faulkner, Senate, *Debates*, 4 February 2003, p. 8203. The amendment moved by Senator Faulkner was as follows: At the end of the motion, add:
- and:
- (a) censures the Government for forward-deploying Australian troops to a potential theatre of war with Iraq in the absence of any United Nations authorisation and without revealing to the Australian people the commitments on which that deployment was based;
- (b) declares its opposition to a unilateral military attack on Iraq by the United States;
- (c) insists that the disarmament of Iraq proceed under the authority of the United Nations;
- (d) expresses its full support and confidence in our servicemen and women, while expressing its opposition to the Government’s decision to forward-deploy them;

(e) expresses its total opposition to any use of nuclear arms and that Australian support should not be provided to any operation where such weaponry may be used; and

(f) declares that it has no confidence in the Prime Minister's handling of this grave matter for the nation.

185. J Howard, House of Representatives, *Debates*, 4 February 2003, p. 10642.

186. P Andren, House of Representatives, *Debates*, 6 February 2003, p. 11104. Mr Andren said: To test this parliament's commitment I propose to move an amendment to the motion before the House, which at the moment is: 'That the House take note of the paper'. I move:

That the following words be added to the motion:

and insists that in the absence of specific, unambiguous and unanimous support of the United Nations Security Council, Australian defence forces not be involved in any military action in Iraq.

187. P Andren, House of Representatives, *Debates*, 4 March 2003, p. 12126. Mr Andren moved:

That so much of the standing and sessional orders be suspended as would prevent me from moving that the House:

(1) acknowledge that, in rejecting that the question be put, the House voted to continue the debate on the Prime Minister's statement on Iraq and proposed amendments on the last sitting day before the recent break, February 13;

(2) recognise that this debate has subsequently not been scheduled for further consideration and resolution of the question;

(3) acknowledge that the US Congress and UK House of Commons have debated and voted the question of their country's involvement in military action against Iraq;

(4) acknowledge that it is necessary that this House also vote on the nature of Australian Defence force involvement in Iraq;

(5) acknowledge that it is the wish of the Australian people that the House of Representatives vote on this important question; and

(6) immediately consider government business, order of the day No. 49 and that the question put forthwith.

188. T Windsor, House of Representatives, *Debates*, 5 March 2003, p. 12263. Mr Windsor moved:

That so much of the standing and sessional orders be suspended as would prevent me from moving that the House:

1) deplores the Government's denial of a vote on the commitment of Australian Defence Forces to war in Iraq in the absence of UN endorsement;

2) acknowledge that the US Congress and UK House of Commons have debated and voted on the question of their country's involvement in military action against Iraq;

3) acknowledge the urgency of clarifying Australia's role with a vote of Parliament in light of suggestions today the US and Britain will attack Iraq within the next two weeks with or without the support of the permanent members of the UN Security Council;

4) supports the statement of UN General Assembly President Jan Kavan that all political and diplomatic means be exhausted to avoid a military conflict in Iraq; and

5) immediately consider Government Business order of the day Number 46 and that the question be put forthwith.

189. L Allison, Senate, *Debates*, 6 March 2003, p. 9357. Senator Allison moved:

That the Senate:

(a) notes:

(i) the remarks by the Prime Minister (Mr Howard) in January 2003 that he believed Iraq's 'aspiration to develop a nuclear capacity' might be a sufficient reason for Australia to join in pre-emptive action, claiming 'there is already a mountain of evidence in the public domain',

(ii) that the Prime Minister has not provided any evidence that Iraq has or has access to nuclear weapons,

(iii) that former United Nations inspector, Mr Scott Ritter, has said that, by 1998, Iraq's nuclear infrastructure and facilities had been 100 per cent eliminated and that whilst scientists there would still have the knowledge to reconstruct this infrastructure, this would not be possible while weapons inspectors were there, and

(iv) that according to United States (US) nuclear weapons analyst, William Arkin, the US Strategic Command is compiling a list of Iraqi targets with planning focussed on the role for nuclear weapons in relation to underground facilities and to stop chemical or biological attack;

(b) acknowledges the letter from the Prime Minister to the President of the Senate, dated 3 March 2003, in which he said, '...I see no prospect of nuclear weapons being used against Iraq' and, '...if I believed that nuclear weapons were going to be used, I would not allow Australian forces to be involved'; and

(c) urges the Government to seek guarantees from the US Administration that no nuclear weapons will, under any circumstances, be used against Iraq.

190. A Murray, Senate, *Debates*, 6 March 2003, p. 9357. Senator Murray moved:

That the Senate

(a) notes that an estimated 41 per cent of the Iraqi population is below the age of 14;

(b) believes that in any war in Iraq that a significant proportion of any killed, wounded, or affected civilians could therefore be children under the age of 14;

(c) requests the Government to advise the Senate in writing, by no later than Tuesday, 18 March 2003, in the event of Australian participation in war in Iraq, what plans it has to contribute to the

recovery of injured children, and improving the circumstances of other children materially affected by the war.

191. J Cherry, Senate, *Debates*, 6 March 2003, p. 9358. Senator Cherry moved:

That the Senate

(a) notes the opinion of former Australian ambassador to the United Nations (UN), Richard Woolcott:

(i) that it is not in Australia's national interest to get involved in a distant, costly war,

(ii) that Iraq has been perfectly well contained by the UN for more than a decade, and

(iii) that Australia is becoming increasingly isolated diplomatically in its support for the United States; and

(b) calls on the Government to pursue continuing containment of Iraq under UN supervision as a viable alternative to a devastating and costly war.

192. A Ridgeway, Senate, *Debates*, 6 March 2003, p. 9358. Senator Ridgeway moved:

That the Senate

(a) notes that:

(i) respected world leaders such as Pope John Paul II and Mr Nelson Mandela have called for war against Iraq to be avoided,

(ii) the Pope said 'the future of humanity can never be assured by the logic of war', and called for a day of fasting on Ash Wednesday to remind people of the long years of suffering endured by the Iraqi people,

(iii) that Mr Mandela said 'the problems are such that for anyone with a conscience (who) can use whatever influence he may have to try to bring about peace', and has warned President Bush that his administration risks destroying the United Nations if it attacks Iraq without international support;

(b) notes also that Interpol have urged the world's police forces to prepare for an increase in terror attacks in the event of a war, warning that terrorist groups like al-Qaeda could use the war as a pretext to increase attacks; and

(c) urges the Australian Government to stay out of a war with Iraq with regard to Australia's international standing and the clearly expressed views of the Australian people.

193. K Nettle, Senate, *Debates*, 6 March 2003, p. 9361. Senator Nettle moved:

That the Senate calls on the Prime Minister not to commit Australia to joining a 'coalition of the willing' in a military invasion of Iraq.

194. A Bartlett, Senate, *Debates*, 6 March 2003, p. 9362. Senator Bartlett moved:

That the Senate

(a) notes that:

(i) the United Nations (UN) General Assembly President, Mr Jan Karvan, has criticised the Australian Government's statement that the UN would become irrelevant if it failed to enforce its resolution on Iraq, and intends to meet with the Minister for Foreign Affairs (Mr Downer) in the week beginning 2 March 2003 and explain the position of the UN General Assembly, and

(ii) the United States Administration had indicated that it considers another resolution on Iraq desirable but not necessary; and

(b) opposes Australia joining or supporting a war against Iraq without, at a minimum, a UN resolution authorising force.

195. K Nettle, Senate, *Debates*, 6 March 2003, p. 9362.

196. P Andren, House of Representatives, *Debates*, 6 March 2003, p. 12425. Mr Andren moved:

That the House:

(1) recognise that President Bush has flagged 14 March as the deadline for a decision to be made on an invasion of Iraq;

(2) recognise that such a decision could well be taken in defiance of a veto by any permanent member of the UN Security Council;

(3) recognise that such a strike could constitute a breach of international law;

(4) recognise that chief UN weapons inspector Hans Blix said over night that Iraq is cooperating proactively;

(5) recognise that today is the last sitting day until 18 March 2003 and Australians wish their Parliament to debate our role in any pre-emptive strike as the UK Parliament and US Congress have done; and

(6) immediately consider government business order of the day No. 43 and that the question be put forthwith

197. S Crean, House of Representatives, *Debates*, 6 March 2003, p.12431. Mr Crean moved:

That the House:

(1) be immediately recalled upon any decision taken by the Government to commit Australian troops to a war against Iraq;

(2) declares its opposition to a unilateral military attack on Iraq by the United States; and

(3) insists that the disarmament of Iraq proceed under the authority of the United Nations.

198. J Howard (Prime Minister), *Transcript of address to the National Press Club*, media release, 13 March 2003, viewed 23 February 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FPDS86%22>

199. J Howard (Prime Minister), *Transcript of press conference*, media release, 17 March 2003. The Prime Minister was asked by a journalist 'if Cabinet makes a final decision while Parliament is sitting this week, how quickly would you take the decision to Parliament?' The Prime Minister responded:

As soon as practicable ... I have no desire at all to deny Parliament the full opportunity of debating this, we will handle the issue in accordance with the constitutional processes of the Government and that decision is taken by the Cabinet and once the Cabinet's taken the decision it's given effect to immediately in an executive sense and I would seek as soon as practicable, and I mean that, to take the matter to the Parliament and allow the Parliament the opportunity of a full debate.

200. R Hill, Senate, *Debates*, 18 March 2003, p. 9497. Senator Hill moved:

That the Senate

(a) condemns Iraq's refusal, over more than 12 years, to abide by 17 resolutions of the United Nations Security Council regarding the threat it poses to international peace and security;

(b) recognises:

(i) that Iraq's continued possession and pursuit of weapons of mass destruction, in defiance of its mandatory obligations under numerous resolutions of the United Nations Security Council, represents a real and unacceptable threat to international peace and security,

(ii) that Iraq's behaviour weakens the global prohibitions on the spread of weapons of mass destruction, with the potential to damage Australia's security, and

(iii) that, as more rogue states acquire them, the risk of weapons of mass destruction falling into the hands of terrorists multiplies, thereby presenting a real and direct threat to the security of Australia and the entire international community;

(c) abhors:

(i) Iraq's continued support for international terrorism, and

(ii) the institutionalised widespread and grave abuse of the human rights of the Iraqi people over many years;

(d) notes that United Nations Security Council resolutions adopted under Chapter VII of the United Nations charter, in particular resolutions 678, 687 and 1441, provide clear authority for the use of force against Iraq for the purposes of disarming Iraq of weapons of mass destruction and restoring international peace and security to the region;

(e) endorses the Government's decision to commit Australian Defence Force elements in the region to the international coalition of military forces prepared to enforce Iraq's compliance with its international obligations under successive resolutions of the United Nations Security Council, with a view to restoring international peace and security in the Middle East region;

(f) expresses its unequivocal support for the Australian service men and women, and other personnel serving with the international coalition, its full confidence in them and the hope that all will return safely to their homes;

(g) extends to the innocent people of Iraq its support and sympathy during the military action to disarm Iraq of its weapons of mass destruction and the reconstruction period that will follow; and

(h) notes that the Government is committed to helping the Iraqi people, including through humanitarian assistance, to build a new Iraq at peace with itself and its neighbours.

201. J Faulkner, Senate, *Debates*, 18 March 2003, p. 9504. Senator Faulkner moved:

Omit all words after “That”, substitute “the Senate

(a) insists that Iraq must disarm under the authority of the United Nations (UN);

(b) believes that in the absence of an agreed UN Security Council resolution authorising military action against Iraq, there is no basis for military action to disarm Iraq, including action involving the Australian Defence Force;

(c) insists that there should be no commitment of Australian troops to a war in Iraq outside the authority of the UN;

(d) concludes that Australian involvement in a war in Iraq without UN authorisation is not in Australia’s national interests nor in the interests of maintaining international peace and security; and

(e) expresses its confidence in our service men and women and its full support for them and their families

202. A Bartlett, Senate, *Debates*, 18 March 2003, p. 9507. Senator Bartlett said:

In addition to the amendment moved by Senator Faulkner, which the Democrats support, I move:

At the end of the amendment, add:

(f) is of the view that the decision of the Australian Government to commit Australian troops to an invasion of Iraq is clearly being done without the authorisation or support of the UN Security Council;

(g) condemns and opposes the decision of the Australian Cabinet and the President of the United States of America (Mr Bush) to commit troops to an imminent attack on Iraq;

(h) calls for the Australian troops to be withdrawn and returned home immediately; and

(i) calls on the Australian and the United States governments to continue the policy of containment and disarmament through weapons inspections under the existing UN Security Council authority, as proposed by the governments of France, Germany and Russia.

203. J Howard, House of Representatives, *Debates*, 18 March 2003, p. 12505. Mr Howard moved:

That this House

1. condemns Iraq’s refusal, over more than 12 years, to abide by 17 resolutions of the United Nations Security Council regarding the threat it poses to international peace and security;

2. recognises:

(a) that Iraq's continued possession and pursuit of weapons of mass destruction, in defiance of its mandatory obligations under numerous resolutions of the United Nations Security Council, represents a real and unacceptable threat to international peace and security;

(b) that Iraq's behaviour weakens the global prohibitions on the spread of weapons of mass-destruction, with the potential to damage Australia's security; and

(c) that, as more rogue states acquire them, the risk of weapons of mass destruction falling into the hands of terrorists multiplies, thereby presenting a real and direct threat to the security of Australia and the entire international community;

3. abhors:

(a) Iraq's continued support for international terrorism; and

(b) the institutionalised widespread and grave abuse of the human rights of the Iraqi people over many years;

4. notes that United Nations Security Council resolutions adopted under Chapter VII of the United Nations Charter, in particular resolutions 678, 687 and 1441, provide clear authority for the use of force against Iraq for the purposes of disarming Iraq of weapons of mass destruction and restoring international peace and security to the region;

5. endorses the Government's decision to commit Australian Defence Force elements in the region to the international coalition of military forces prepared to enforce Iraq's compliance with its international obligations under successive resolutions of the United Nations Security Council, with a view to restoring international peace and security in the Middle East region;

6. expresses its unequivocal support for the Australian service men and women, and other personnel serving with the international coalition, our full confidence in them and the hope that all will return safely to their homes;

7. extends to the innocent people of Iraq its support and sympathy during the military action to disarm Iraq of its weapons of mass destruction and the reconstruction period that will follow; and

8. notes that the Government is committed to helping the Iraqi people, including through humanitarian assistance, to build a new Iraq at peace with itself and its neighbours.

204. S Crean, House of Representatives, *Debates*, 18 March 2003, p. 12512, Mr Crean moved:

That this House:

(1) insists that Iraq must disarm under the authority of the United Nations;

(2) believes that in the absence of an agreed UN Security Council resolution authorising military action against Iraq, there is no basis for military action to disarm Iraq, including action involving the Australian Defence Force;

(3) insists that there should be no commitment of Australian troops to a war in Iraq outside the authority of the United Nations;

(4) concludes that Australian involvement in a war in Iraq without UN authorisation is not in Australia's national interests or in the interests of maintaining international peace and security; and

(5) expresses its confidence in our servicemen and women and our full support for them and their families.

205. A Bartlett, Senate, *Debates*, 20 March 2003, p. 9886 and p. 9887. Senator Bartlett moved that: paragraph (g) omit 'condemns and' and 'imminent', paragraph (h) omit 'immediately'.
206. B Brown, Senate, *Debates*, 20 March 2003. Senator Brown moved:
At the end of the amendment add:
(j) calls on the Government to immediately return Australia's Defence Force personnel home.
207. Senate, *Debates*, 20 March 2003, p. 9886.
208. J Howard, 'Answer to Question without Notice', House of Representatives, *Debates*, 20 March 2003, p. 13144.
209. House of Representatives, *Debates*, 20 March 2003, p. 13167.
210. J Howard (Prime Minister), *Transcript of press conference*, media release, 20 March 2003.
211. J Howard (Prime Minister), *Transcript of address to the nation*, media release, 20 March 2003, viewed 22 February 2010,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FRZU86%22>
212. S Crean (Opposition Leader), *Speech to the National Press Club*, media release, 20 March 2003, viewed 23 February 2010,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FLQU86%22>
213. S Crean (Opposition Leader), *Address to the nation*, media release, 21 March 2003, viewed 23 February 2010,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FN0V86%22>
214. B Brown, Senates, *Debates*, 26 March 2003, p. 10224. Senator Brown moved the motion as amended:
That the Senate:
(a) reiterates its opposition to the war with Iraq and urges the safe withdrawal of Australian troops from Iraq;
(b) urges Australians opposed to the war to continue to voice their opposition to the Government's decision through peaceful and democratic means; and
(c) expresses its full support for Australian troops, and urges all Australians to maintain their support for Australian troops during and after the current deployment.

215. A Bartlett, Senate, *Debates*, 27 March 2003, p. 10320.

216. B Brown, Senate, *Debates*, 27 March 2003, p. 9907. Senator Brown moved:

That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by 15 May 2003:

(a) the legality of the Government's deployment of troops to Iraq;

(b) the likely implications for international law of this action;

(c) the constitutional changes necessary to ensure parliamentary consent for such deployments of Australian Defence Force (ADF) personnel;

(d) the other mechanisms that could be used to require parliamentary consent for deployment of ADF personnel to hostilities overseas, such as changes to the Defence Act, as contained in the Defence Amendment (Parliamentary approval for Australian involvement in overseas conflict) Bill 2003 or the various other Defence amendment bills introduced by Australian Democrats senators since 1985; and

(e) whether such legislative or constitutional changes are desirable.

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