

Parliament and National Security: Challenges and Opportunities*

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In this paper I will offer some suggestions for strengthening and deepening parliament's engagement with issues of national security, and why this should not be left entirely to the Prime Minister and the leaders of our defence and intelligence agencies. First, let me turn to national security and the parliamentary landscape.

Constitutional convention declares that the power to make Australia's national security policy is firmly in the hands of the executive branch of government. Broadly, national security covers public policy concerning foreign relations, defence, intelligence, and relevant facets of counterterrorism, immigration and border protection.

Many national security problems now directly impact on the states. The states have an interest in the role of the Australian Defence Force (ADF) in domestic counterterrorism, countering violent extremism and natural disaster response. In counterterrorism, Joint Counter Terrorism Teams (JCTTs) consist of officers from the Australian Federal Police (AFP) and state/territory police, and work with the AFP and the Australian Security Intelligence Organisation (ASIO). In natural disasters, it is the states that have primary responsibility. The states are vital in protecting critical infrastructure.

Aside from custom and convention, the dynamics of parliamentary involvement in national security continue to be shaped by four powerful realities of Australian political life. First, the Prime Minister's authority in relation to national security continues to grow. This might be desirable for managing a coherent national security policy or for acting quickly, but it can easily suck oxygen out of an open policy process, limit other parliamentary voices and, on occasion, other ministerial voices.

When the leader of the opposition is briefed by the Prime Minister on national security decisions it often brings the occupant into the 'cone of silence'.

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 30 June 2017. Author's note: Russell Trood was originally asked to present this paper, but he sadly passed away early this year. Russell was a Liberal senator for Queensland from 2004–2010 and deputy chair of the Senate committee on Foreign Affairs, Defence and Trade. He had enormous respect for the Senate and the parliamentary committee processes. The Prime Minister, the Hon. Malcolm Turnbull, described him as 'one of Australia's finest foreign policy minds' and the Attorney-General, Senator the Hon. George Brandis, said after Russell's passing that 'we're all better for knowing him'.

While sensible to have policy continuity, pushing too hard to get consensus on national security can act to inhibit debate and critical thinking and reduce accountability.¹ Bipartisanship can inhibit parliament from scrutinising operational matters with more vigour, or from using the full breadth of parliament's powers to compel information from the executive.

Second, all political parties increasingly seek to achieve and enforce party discipline. While this undoubtedly has considerable logic in the modern Westminster system, if it is overused or applied too strongly it constrains members and senators from taking independent action, and weakens the capacity of opposition and backbench parliamentarians to hold the executive to account in national security.

Third, members and senators are less likely to have a background in international relations, defence or domestic security than one in law, education or politics. Those parliamentarians with an interest or expertise in national security may exercise greater influence than their colleagues. Parliamentary oversight on these matters may in some ways depend on the strength of such individuals.

Fourth, despite what I said about Australian politicians generally treating national security in a bipartisan fashion, the modern parliamentary ritual tends towards political point scoring. This makes it more difficult to analyse complicated national security issues with the rigour they deserve. Despite these trends, parliament's processes and procedures continue to offer many opportunities to ventilate national security issues and, theoretically, strengthen the ability of backbenchers who want to develop their interests in national security policy.

I would now like to turn to the topic of parliament and war powers. In recent years, there have been increasing calls by civil society groups and some representatives from the minor parties for greater parliamentary scrutiny over the executive's long-held prerogative to deploy Australian military forces overseas. In 2011, the UK moved to a system in which parliament must be involved in any decision to go to war. In 2013, the House of Commons debated a government motion for the UK join US-led strikes in Syria. The motion was defeated and Prime Minister Cameron responded by saying he would respect the result.

But in my view governments need the capacity to react quickly to events. Involving parliament could hamper its ability to do so and impose a heavy additional burden on decision-making. The unique knowledge of complex foreign affairs issues

¹ Andrew Carr, 'Is bipartisanship on national security beneficial? Australia's politics of defence and security', *Australian Journal of Politics and History*, vol. 63, no. 2, 2017.

needed and the access to intelligence required for informed decision-making pose additional challenges to greater parliamentary involvement.

Governments are elected to govern and there is no greater responsibility than to protect the national interest. Central to this task is the onerous need to decide when military force should be deployed. Australians expect their governments to make difficult policy choices. In simple terms it is about democratic legitimacy—allowing a government to govern, unless parliament no longer has confidence in the government.

But some contend that going to war is too important to be left solely to the Prime Minister. Instead, parliamentarians should have the right to vote on military action and should have an obligation to explain their position. Senator Nick Xenophon, for example, made exactly this argument quite recently at the Australian Strategic Policy Institute in a speech with a great title, ‘Kill the chicken to scare the monkey’. Xenophon argued in favour of war powers reform, against a backdrop of a changing regional strategic environment and a potential future confrontation between the United States and China. Xenophon stated quite plainly that he doesn’t think any Australian participation in the South China Sea conflict ought to occur until ‘every member of the Australian parliament has had a chance to vote on it’.²

From this idea flow a number of questions. For the entire parliament to give an informed vote, it stands to reason that they would require more information to do so. Given most of them vote along party lines, then there is an argument that it would be better go straight to the party executive and do a deal. In general it would mean extending the inner circle privy to such sensitive information to include each and every parliamentarian. It is not a show stopper but members of the defence and intelligence communities would resist this idea.

More importantly, however, there is the challenge of determining precisely what kind of government decision should trigger action—is it any deployment of the ADF, a commitment for a certain period, a certain force structure? Could action under a United Nations (UN) Security Council decision constitute an exemption? Would a commitment to peacekeeping trigger the need for a vote? In our complicated world, the occasions and circumstances in which force, in its various manifestations, is required are becoming more difficult to describe and define. Having parliament involved at every turn would impose a heavy additional burden of decision-making in relation to issues that are already among the most difficult government makes—and the most carefully considered.

² Nick Xenophon, ‘On killing chickens and scaring monkeys’, address to the Australian Strategic Policy Institute, 20 April 2017, www.aspi.org.au/video/senator-nick-Xenophon-address-war-powers-reform-kill-chicken-scare-monkey.

A parliamentary authorisation model could perhaps be framed in such a way as to address at least some of these concerns. Xenophon, for example, advocates a model that distinguishes between ‘wars of choice’ and ‘wars of necessity’. He argues that this provides the necessary flexibility to take into account a range of contingencies, protects the security of classified information, and provides for the time-sensitive nature of emergencies.

‘Wars of necessity’ are defined as—and I quote Senator Xenophon—‘military actions taken in self-defence and [which] require the use of rapid and/or covert military force’. In other words, actions provided for in Article 51 of the *Charter of the United Nations*. Conversely, ‘wars of choice’ are those covered by either the framework of collective action in Chapter VII of the UN Charter or a request for assistance from the legitimately constituted government of a state.

But I would agree here with the Australian Strategic Policy Institute's Rod Lyon, who argues that the distinction between wars of necessity and choice is not that useful. By allying ourselves with other countries, aren't we, Lyon asks:

effectively saying that we accept an element of automaticity to our involvement in conflicts where they are attacked?...it sounds more than a little odd subsequently to claim that we take all such treaties as denoting mere wars of choice. If we thought that, why did we sign a treaty?³

Dr Lyon is also right to question the idea that wars of necessity are just wars of self-defence. In the Second World War, for example, even before our home front was attacked, we confronted a group of adversaries ‘who wanted fundamentally to reshape the world’.⁴ Even if they hadn't attacked Australia, it is right to question how we could have sat that one out. Strategic necessity does not end at our low-water mark.

There are some other issues to consider. Passing legislation to grant parliament control over expeditionary military deployments may invite the judiciary to review the legality of them. In my view we should be very wary of involving judges in what are essentially political decisions. Xenophon rightly acknowledges that a degree of flexibility in executive power is necessary to allow for unforeseeable circumstances. Indeed, our Constitution and High Court jurisprudence substantiate that executive power is subject to control by the legislative branch of government. But just because something can be done, does not mean it should be, or that it is the right thing to do.

³ Rod Lyon, ‘Wars of necessity, wars of choice’, *The Strategist*, 26 April 2017, www.aspistrategist.org.au/wars-necessity-wars-choice/.

⁴ Ibid.

Furthermore, where the government of the day does not have control of the Senate (which is usual in Australian politics) to give the parliament a vote would add confusion and ambiguity to overseas deployment decisions. Under these circumstances parliamentarians would be able to prevent the executive from sending armed forces on operation with no immediate consequence to themselves—it would be all check, with no balance.

I suppose a one chamber vote might be workable if a decision on troop deployments was thought necessary. But then, we have that in effect already in the House of Representatives where members can change a government or the majority party can change a leader if they oppose a war strongly enough. Even if we introduced a parliamentary vote to go to war, it would be unlikely to make any practical difference to the actual outcome. I cannot think of a single example where it would have changed a decision on Australia's commitment to send our troops to war. We should therefore, in my view, preserve the existing relationship between the parliament and cabinet when it comes to decisions about overseas military deployments.

That said, while an extension of war powers may be a bridge too far, parliament's role could be considerably enhanced in this area. Government might take parliament into its confidence more often, for example providing a statement to parliament outlining the basis of the decision and reporting more regularly on the progress of military operations. In some cases time could be set aside in the parliamentary schedule for a debate. The defence subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade could consider inquiring into the desirability of Australia extending some measures of authority to parliament over the overseas deployment of the ADF.

I would like to suggest four measures to strengthen parliament's role in national security. First, parliament should be respected as the forum for considering national security issues. Existing parliamentary procedures can be better utilised to more fully consider and debate, for example, foreign affairs, defence, intelligence and border security. Doing so would reinforce the standing of parliament while also giving parliamentarians the opportunity to contribute to policy thinking.

For many years governments have seemed inclined to bypass the parliament when dealing with security issues. This is regrettable but in part has been a result of rapid changes in the way parliament engages with the media and a view by government that the micro parties really can't be educated to contribute anything meaningful—that it is better to have conversations behind the scenes with them. But it must be said that it has simply suited the political imperatives of successive governments—not necessarily the cause of good public policy.

Australian governments should commit themselves to ensuring that the Australian parliament is the primary national institution for discussing and debating the nation's national security policy. They should ensure that parliament is the forum for pronouncements on all key national security policy decisions and that it is provided with regular opportunities to discuss, consider and debate policy issues.

It is regrettable that recent defence white papers have been launched in military aircraft hangers or at naval bases. Just last month we saw the defence minister announce that Australia will increase our troop numbers in Afghanistan, an announcement made not in the parliament but in a response during Senate estimates. Contrast this with what we saw in Canada a few weeks ago when Canada's foreign minister launched Canada's new foreign policy, not at some diplomatic meeting or a mega conference, but right on the floor of the Canadian parliament.

Second, we should develop parliamentarians' education in national security. In these challenging and uncertain times, good national security policy choices call for parliamentarians who have been sufficiently educated and informed on national security matters. This could include providing a new members' orientation program focused on national security, an enhanced program of regular informal briefings by senior public servants, site inspections of specific national security agencies, and participation by parliamentarians in national security exercises. It could also include the creation of a cross-party parliamentary friendship group dedicated to improving knowledge and understanding of Australia's national security policy through seminars, lectures and briefings by experts in the field.

Third, we should develop what I would call parliamentary diplomacy. Although many senators and members regularly engage with foreign government officials and parliamentarians through various mechanisms, such as parliamentary friendship groups, overall our parliamentarians are a rather underused resource in our foreign relations. At a time when the nation's overseas diplomatic footprint is ranked 20th out of 35 OECD countries and 19th in the G20 group,⁵ there is room for some creative thinking to identify opportunities to make better use of interested and able parliamentarians to enhance our international presence.

One useful measure would be to expand the structured and focused outgoing parliamentary delegations program. No doubt they would have to bear the brunt of the tabloids having a crack about expenditure on overseas 'jollies' by our politicians! In conjunction with the relevant parliamentary committees, the Minister for Foreign Affairs and the department should consider ways in which members and senators

⁵ Lowy Institute for International Policy, *Global Diplomacy Index 2016*, globaldiplomacyindex.lowyinstitute.org/# (as of 8 November 2017).

might make useful contributions to the conduct of Australia's international diplomacy. For example, this could be through parliamentary participation in international negotiations, attendance at diplomatic conferences, membership of delegations and participation in special missions for which a parliamentarian has unique knowledge or experience.

I can hear you say 'don't all our representatives think they are smart and want a high profile', however what I am suggesting only risks diverting valuable resources from government, or creating 'fake' programs where the less knowledgeable members or senators can't do any real damage. But we live in a democracy so we need to manage those risks. None of us has all the answers!

Fourth, I suggest we should review parliamentary committee resources, enhance the potential impact of committee reports, and examine committee mandates. The parliamentary committee system is impacted by the general bipartisan agreement on the overall thrust of national security policy. While this makes it easier to pass legislation and looks better in international negotiations, it also means that the two major parties do not press for committees to have access to sensitive information.

Moreover, bipartisanship means that sometimes the larger policy questions are not vigorously debated, leaving the committees to look at marginal areas of disagreement. It will be interesting to see what comes out of the inquiry, conducted by the defence subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, which aims to find out if our two major political parties could reach a bipartisan agreement on defence planning and if it is desirable that they should.⁶

Turning to the committees themselves, several suggestions can be made to strengthen their role in national security. A material improvement in parliament's role in national security issues requires increased human and financial resources for key committees. The resources allocation to the functions of parliament has eroded steadily over recent years. This has had an impact on the length of committee inquiries, the employment of staff, the ability to have witnesses attend hearings and the capacity of members to undertake inquiry related travel, among other things.

The Senate and the House of Representatives should each review the staffing and resourcing of its committees. These reviews should examine the extent to which greater budgetary constraint has affected the provision of staff to parliamentary committees with responsibilities in national security. The chairs of the key national

⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into the benefits and risks of a bipartisan Australian defence agreement, as a basis of planning for, and funding of Australian defence capability', www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/BipartisanDefAgreement.

security committees should take much more advantage of making secondments to their committees from among personnel in the national security agencies. Secondments would not only increase committees' human resources and build staff expertise, but improve the secondees' knowledge and understanding of the working of parliament and the role it plays in the administration and oversight of Australia's national security policy.

Parliamentary reports in the areas of foreign affairs, defence and national security are not always given the attention within government agencies that they deserve or that the committees expect. As Professor Julius Sumner Miller was fond of saying, 'Why is it so?' I think the answer relates to the way committee reports are structured and presented. Committee chairs need to consider this and work to ensure that time pressure, other responsibilities, level of experience or even want of interest, does not discourage different approaches. Compared to some other parliamentary systems, not least in the UK, Australian committees are more deferential to ministerial preferences and place a higher premium on secrecy. We certainly do not want committees to be places where politicians park difficult decisions or become, as Sir Barnett Cocks, former Clerk of the House of Commons, once observed, 'a cul-de-sac down which ideas are lured and then quietly strangled'.

So let us consider, in a bit more detail, some of the existing parliamentary committees relevant to national security, all of which would benefit from some degree of reform. Take, for example, the Joint Standing Committee on Treaties (JSCOT) which has struggled with the fact that international instruments arrive on its agenda only after they have been negotiated by government, often through a protracted process. Committee members would be better placed to offer comment and review at an earlier stage when there is still the opportunity to make a valuable contribution. This could occur through a confidential briefing of the committee or perhaps by including key committee members in negotiating delegations. JSCOT could consider encouraging treaty negotiators to provide JSCOT with regular updates on the progress of treaty negotiation, or to include committee members in negotiating delegations, or both.

The Joint Standing Committee on Foreign Affairs, Defence and Trade has a wide remit, and together with the Senate Foreign Affairs, Defence and Trade Committee, assumes much of the parliament's burden of investigation and oversight of foreign affairs and defence. Some of us will ask why there are two committees with overlapping remits when a joint standing committee might serve both houses. I suspect the reason is historical and, like the Constitution, not easy to change but maybe it would be worth taking a fresh look at this issue.

The bipartisan consensus between the major parties on defence and the self-selecting nature of the defence subcommittee suggests that this is largely a discussion between people who agree. I would note here that the few parliamentarians with military experience will on the whole be more comfortable with technical issues and military matters. Over time some of the joint committee's inquiries have resulted in influential reports valued by governments. This is especially the case when the reports are unanimous, they address an issue ministers are not confident about or where the ministers may be concerned about the objectivity of their departments, or when they offer a novel take on a controversial or neglected issue.

I would note that often the influence of committee reports is felt years later, because they shape the marketplace of ideas rather than exercising direct influence over policy at a given time—although I could not find a survey on committee reports and influence on government policy. Perhaps we could refer this question to a committee!

The need for its inquiries to be referred by an appropriate minister or by resolution of one of the houses of parliament is, however, a constraint on the committee's independence. This condition is a vestige from a bygone era that compromises the committee's capacity to make a potentially valuable contribution to policy debates in Australia. It should be removed. Committees should have power to self-refer and initiate their own inquiries outside of their powers to consider matters arising from annual reports of relevant agencies. Of course, either house can give a referral but it is more common for the Senate. A committee can approach a minister to get a reference, but if committee members think the minister will not support the request they are unlikely to ask for it!

The committee's public education role would be enhanced if the practice of ministerial appearances before the committee for private briefings was extended to public briefings on matters of contemporary importance, such as events in Afghanistan or the Middle East. Alternatively, it might consider following the example of the House Economics Committee before which the governor of the Reserve Bank regularly appears. Although the heads of Australian government departments are not statutory officers, inviting the secretary of the Department of Foreign Affairs and Trade to provide a regular update to the foreign affairs subcommittee on the state of Australia's international relations would be a valuable exercise in public education.

Let me say something about the Parliamentary Joint Committee on Intelligence and Security (PJCIS)—one of parliament's busiest committees in recent years. Since September 2014, when the National Terrorism Threat Level was raised to 'probable', there have been eight legislative packages progressed through the federal parliament. It should be noted that ASIO and the AFP also come under the Senate

Legal and Constitutional Affairs Committee. The *Intelligence Services Act 2001* mandates that the PJCS comprise of six members of the House and five senators. It is currently required to have a membership of a majority of government members. Consequently, its findings often align with the government of the day. This is the committee that the government immediately refers that counterterrorism legislation to and it has served as a check and balance really well.

One might argue that the committee has performed this scrutiny role almost too well in the sense that it does not always serve immediate security needs. In some cases it has taken two years between the legislative update requested for operational needs and the actual approval (such as legislation lowering the age for control orders). That is not helpful to people on the ground. It is fair to say that approvals have, however, sped up when the committee is better informed and has more knowledge of the topics. In other words, once people have been in the committee for a while they have the history, context and perspective to make quicker decisions and to understand the issues. But what happens when new people rotate in? We are repeatedly losing this maturity and knowledge base.

When law enforcement and security agencies recommend changes, these are carefully asked for based on what they need. But one of the side effects of the joint committee's work is that you can get a watered-down version of legislation. As a result agencies have sometimes been cautious about proposing new laws because they know they may lose something else as a consequence, even from pre-existing and therefore previously approved laws.

Sometimes the agencies have to justify the need for a law to be ongoing, such as the control order law and laws around keeping people in detention—once passed, the agencies still have to go back each year and defend the need for it. The committee may decide the need or urgency is no longer there. But, shortly down the track, circumstances may change again, making the law vital. That is tough for law enforcement and security agencies. Balancing the important oversight role of the committee with the need of law enforcement to be agile and responsive to on the ground matters is a tough dilemma. But there is no doubt counterterrorism legislation is best developed in a considered and ongoing manner in order to anticipate, as well as respond to, the changing threat environment. And here the committee has served us well in terms of the legislative review process and typically including public inquiry into that process.

One way to institute an additional check would be to have all six intelligence agencies appear before Senate estimates. Right now only the Office of National Assessments and ASIO do so. Only one of the six intelligence agencies, ASIO, is required to

produce an annual report to parliament, and any sensitive or operational parts of that report are redacted. I would suggest all six intelligence agencies should produce an annual report to parliament.

In the UK, the Intelligence and Security Committee of Parliament has a broadly similar role to that of our intelligence and security committee. Although the UK committee is made up of parliamentarians, it reports to the Prime Minister, not the parliament. Nevertheless, it has a wider, more intrusive oversight mandate. In 2013, the committee's powers were extended when its enabling legislation was amended to permit it to examine or otherwise oversee the expenditure, administration, policy and, very interestingly, operations of the UK's key intelligence agencies.

Expanding the role of Australian parliament's intelligence committees to oversight operations to see not just if they are lawful but rather effective, does, however, raise some curly questions. For example, who would scrutinise an operation if our parliamentarians themselves were involved? Such a change would probably mean overturning the historical practice of not applying to members and senators the same checks required of public servants and instead subject our parliamentarians to the security clearance regime.

What would happen, for example, if one or more parliamentarians failed to be security cleared? I should add here that the Parliamentary Joint Committee on Intelligence and Security is the only one where the Prime Minister has to approve appointments to the committee. That is set out in the *Intelligence Services Act 2001*. While some might argue that those excluded through this process would be unable to represent voters adequately, and thus this move would present a challenge to our democratic system, I argue that it does not. It simply excludes people without a clearance from accessing information that is sensitive, and given that this rule would now apply to everyone on the committee, this is surely a democratic outcome. I would add that members of equivalent committees in the UK and USA require security clearances. And by the way, the PJCIS secretariat staff are required to be security vetted to the highest levels.

Moreover, the greater number of people who are given sensitive information and intelligence, the higher the chance of leaks and compromised operations. And there is another consideration that I touched upon earlier. Processes and approvals within the intelligence and security committee are sped up when its members are more knowledgeable and experienced—both with respect to the issues at hand and the function of the committee itself. The rotational nature of the committee means this maturity and knowledge base can be lost.

My earlier suggestion regarding the importance of education is relevant here as well—if all parliamentarians are better equipped to engage with difficult national security issues, they will come to parliamentary committees better prepared. I would add purely as an aside here that the Inspector-General on Intelligence and Security (IGIS), while not based in the parliament, is a critical position in our system. The Inspector-General has unfettered access to all information on operations, including classified information. The IGIS doesn't report to the public, and this may give a perception of less oversight, but the IGIS does report to government.

The thrice-yearly Senate estimates process is the locus of accountability in the Australian system. For all its faults—and there is no doubt that they have become quite politicised—estimates hearings provide senators with the opportunity to vigorously question executive officials and officers. The fact that any senator can ask questions and that the estimates process occurs three times a year is impressive. It is an incredible accountability mechanism. The role of smaller parties to use their votes in the Senate to propose committee references, particularly in the defence realm, should not be overlooked. One area that escapes parliament's systematic attention is the foreign aid budget. Another area is capability planning within the Department of Defence. Perhaps they could become part of the regular work program of the Senate Foreign Affairs, Defence and Trade Committee.

To conclude, the role of the parliament as a forum for discussing national security, investigating new and significant policy challenges and overseeing executive authority, particularly in relation to intelligence activities, has grown significantly. That growth has been reflected in the steady but rather piecemeal expansion of the parliamentary committee system, which now covers all areas of national security policy. If anything, the process has been evolutionary as parliament has rather carefully and cautiously tested its ability to push the boundaries of its role, sometimes against strong resistance from ministers.

But reform has changed the institutional culture of the parliament. It has legitimised parliament's role as an increasingly important partner of the executive in the conduct of Australia's national security policy. There is undoubtedly room for further expansion of this role, as I have pointed out. Enhancing parliament's role in national security would reinforce executive accountability, expand public access to policy processes, improve the quality of public debate about national security and strengthen our democratic foundations. Our parliamentarians should move the needle in the direction of change to improve and strengthen the management of our national security policy in an era of growing complexity and challenge.



Question — I was very intrigued by your proposition that decisions to go to war are most carefully considered and I'd like to test that against the decision to invade Iraq in 2003. We had the Flood inquiry into intelligence, which established a lot of failures, but we haven't had an inquiry into the decision-making process, like the Chilcot inquiry in the UK. I think it is widely understood that when the archives are eventually thrown open and academics feverishly look for cabinet submissions, policy papers and so on they will actually find nothing. Secondly, you referred to the UK current practice and Prime Minister Cameron's respect for the resolution of the House of Commons in relation to Syria. It is my understanding that most European countries also have provisions requiring parliamentary approval for going to war—I think Ireland, France, Austria, Sweden, the Netherlands require parliamentary approval. Have they all got it wrong or why should Australia be different?

Anthony Bergin — On the decision-making around the commitment to go to war in Iraq—we haven't had a formal inquiry in Australia like the Chilcot inquiry, that is absolutely true—I think until we actually know the processes of decision-making we won't be able to come up with a formal judgement about whether all the different arguments were considered. At the moment the official history of our involvement in the Iraq War is being written so we will know more in time. At the time, I supported the war decision, but in the light of further information I think I wouldn't have supported it. I think what you are saying is that until we conduct a comprehensive examination of the whole way in which that decision was conducted, it is difficult to say that all circumstances and the way it evolved were factored into the decision-making.

On the point that you've raised about overseas examples, where parliament gets to vote or gets some involvement—and obviously the United States is very important here in terms of their model—I am speaking in the Australian context. You asked are all the others wrong. I think you have to look at the circumstances of each particular country. I am not going to repeat all the arguments I set out at length in the talk, but I believe it is a bridge too far, however I also think the parliament can do more. For example, I thought it was quite stunning that the Australian parliament did not have a debate on Afghanistan in 2010. Amazing when you think about the length of time we were involved in that war before there was any parliamentary discussion. Parliament can certainly play a much greater role. I find it disappointing, for example, that the parliament has spent much more time looking at the politics of commemorating wars of one hundred years ago than at our involvement in wars right now. So I absolutely concur with you that we should be doing more but let's look at the Australian case rather than saying because they do it overseas we have got to follow them.

Question — I'm Sue Wareham from Australians for War Power Reform. You argued against both houses having to vote before a deployment to international armed conflict. One of the arguments against both houses having a vote is that it could prevent the country from going to war when it is actually required, but the only situation in which that would occur is if the government could not convince the opposition that we need to go to war. Now if the opposition is not convinced that there is a good case for going to war, then one could say there is probably not a good case for war. Can you comment on that?

You also mentioned that a need for a vote in both houses could delay a deployment when we need speed, but one of the points made by the President of Australians for War Power Reform, Paul Barratt, is that our forces are generally not kept in a high state of readiness and there is always delay in any event.

In referring to ANZUS, I thought you were saying Australia goes to war every time the United States goes to war and the ANZUS treaty compels it to be that way. Many people would argue that the ANZUS treaty does not actually say that Australia needs to go to war whenever the US does and the fact that we do is seen by many people in this country as a big, big problem.

Anthony Bergin — On the role of the opposition, the point that I was making was that if you include the entire parliament then you are also talking about the Senate, and the new normal in Australian politics is that we are going to have micro parties represented on a continuing basis in the Senate, so it is definitely not just the role of the opposition.

On the issue of readiness and my point that certain circumstances may require quick decisions, for a start I'm not sure that Mr Barratt would have access to the readiness levels of the ADF. My point is that there are circumstances where governments need to make decisions in a timely manner and locking that into parliamentary debate and procedures could potentially not serve the national interest. The other point I would make is that whenever I've seen these arguments about war powers for the parliament, it is not clear what exactly the factual circumstances are. For example, would our deployment to Timor have required a parliamentary vote even though originally it was a stabilisation mission? The factual circumstances of where and how our military are deployed now are very varied. It is not as simple as Senator Xenophon's distinction between wars of choice and wars of necessity.

The final question you asked about ANZUS—the answer to your question is no, of course we are not automatically obliged to go to the assistance of the US under any circumstances involving conflict. But countries don't enter into treaties that require

some form of collective self-defence unless they think they will act on it. Now you are right, it is not automatic, it is up to the individual country, but you don't enter into those sorts of treaties unless you are prepared to very seriously consider the option of joining a conflict.

Question — I was wondering if there is an in-between option where the cabinet votes to decide if we go to war, rather than it being up to the Prime Minister and the parliament. I understand there is a body within the government—the national security committee—which includes the Attorney-General, the Minister for Defence, the Minister for Foreign Affairs, the Deputy Prime Minister and the Prime Minister, who all get regular, top-secret security briefings and updates. There could be a body within the cabinet or within the government that is very well-informed and which meets to take a vote as opposed to putting it to the whole parliament.

Anthony Bergin — That is what happens now—the national security committee of the cabinet is already involved in those executive decisions about deployment, or am I missing the point you are making?

Question — My understanding is that Bob Hawke committed us to the first Gulf War without calling the cabinet together and consulting them. My reading of the situation is that that doesn't necessarily happen and I am suggesting it could be made a requirement.

Anthony Bergin — I think it would almost be unheard of if a prime minister did not try to leverage the national security committee of cabinet in a decision about troop deployments. It happens as a matter of course. I take your example of Bob Hawke. I don't know in the Gulf War whether he actually drew in the cabinet—I'd be surprised if he didn't talk to the foreign affairs and defence ministers. I believe, as a formality, the national security committee of the cabinet would be convened to consider those sorts of executive decisions.

Question — I agree with your point that the bipartisanship in Australian politics on national security issues doesn't really lend itself to having a good discussion on these issues, so could you expand on why this is the case? Why do we have such bipartisanship?

Anthony Bergin — I think the answer is that parliamentarians believe that if they are seen to be rocking the boat on a security issue they are somehow perceived as disloyal, that public safety is far too important to be left to politics. I have noticed, for example, that when parliamentarians have come out with a different view, let's say on South China Sea policy, they are often criticised in the media for taking a different

position to their party. I think the emphasis on trying to seek consensus has had a retrograde effect. On the one hand it is good to have policy continuity, but if senators and members are drawn too much into an artificially constructed consensus on national security it actually doesn't help advance public debate. In a way it is telling parliamentarians to do what they are supposed to be doing—to argue, debate, discuss and so forth. As I said, it is curious that we have spent more time in the parliament discussing issues to do with commemorating battles from one hundred years ago than we have on some of our current conflicts. I would like parliament not to throw away bipartisanship but certainly to be much more willing to test an argument when it comes to national security. I think that is only healthy. It is an unfortunate trend, as your question implies, that parliamentarians are constrained by not wanting to be seen to rock the boat or as disloyal to the national interest if they question defence policy or counterterrorism settings. I think debate is healthy, as you are suggesting.

Question — The power of the parliament is considerable when you think about the budget processes. Everything you have said is perfectly right but it goes much deeper and outside the typical national security committee environment and national security questions because it goes right to the resourcing issues which parliament is well and truly in control of.

Anthony Bergin — One healthy debate that the Australian parliament had was about the adequacy of defence spending and whether we should aim for two per cent and so forth. There was one recent defence white paper that promised a lot and then within two weeks the money wasn't there and that prompted a lot of parliamentary discussion about the adequacy of defence budgets, which goes to your resourcing question. Again tying it to the previous question, have we got too much consensus, I think your point—are we adequately resourcing our military, our policing agencies, our intelligence agencies—that is a debate that doesn't often get heard in the parliament. I agree it is an important area where there should be debate and scrutiny.