

WB14.6 - WATCHING BRIEF: WAR POWERS

On 17 July 2014 Senator Scott Ludlam (Australian Greens) reintroduced into Parliament the *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2014* “to ensure that the decision to deploy members of the Australian Defence Force be made not by the executive alone but by parliament as a whole”. In an article in *The Guardian* on that day, Scott Ludlam made the following points:

- Australia is one of the few remaining democracies that can legally deploy its defence force into a conflict zone without recourse to Parliament.
- The experience of the entry into the Iraq war in 2003 on flawed intelligence and against the protests of millions of people should underline the need for a change in the decision-making process.
- No inquiry has been held in Australia into the Iraq war and its disastrous consequences for the people of that country.
- There were 41 Australian soldiers killed in the Afghanistan war, but little attention is paid to the thousands of civilians who have died.
- Specific legal provisions operate in Denmark, Finland, Germany, Ireland, Slovakia, South Korea, Spain, Sweden, Switzerland and Turkey before troop deployments can take place. In addition, some form of parliamentary approval is also expected in Austria, the Czech Republic, Italy, Japan, Luxembourg, the Netherlands and Norway. The US Constitution says that Congress shall have the power to declare war, and the United Kingdom now has a convention that has prevented a rushed deployment into Syria this year.

The history of such legislation is that a Bill was first introduced into Parliament in 1985 by Senator Colin Mason of the Australian Democrats. That failed to pass. A similar Bill was tabled in 2010 by the Greens, but the committee which examined it was not prepared to support it, despite considerable enthusiasm from many submissions from the public. There was concern that the Bill placed too many constraints on the Defence Force and did not allow for emergency situations. The Bill did not go any further. QPLC issued an *Action Alert* at the time to encourage Friends to make known their views to Senators.

The Legislation

The Bill includes the following provisions:

- Service by members of the Australian Defence Force (ADF) beyond the territorial limits of Australia overseas requires a resolution approved by both Houses of Parliament.
- In an emergency, the Governor-General (on written advice from the Prime Minister) can issue a Proclamation authorizing overseas deployment, on the basis

**Quaker Peace &
Legislation Committee**
Religious Society of Friends
(Quakers) in Australia Inc.
Incorporated in the ACT

PO Box 6063
O'CONNOR, ACT 2602
Email qplc@quakers.org.au
Web www.quakers.org.au
ABN 16 036 715 933

that Parliament must be informed within two days of the reasons, the legal authority, the duration, and the numbers involved.

- In the absence of Parliament's approval, such an emergency Proclamation ceases to have effect after 7 days.
- While members of the ADF are deployed overseas, the Minister must report in writing to each House of Parliament regularly (every two months) advising on the progress of the deployment and the reasons for its continuation.
- Service in non-warlike situations (such as training, attachment of other forces, consular work) does not require such authorization by Parliament.

Analysis and Comment

One group that has shown a strong interest in this matter is the Campaign for an Iraq War Inquiry, whose president is former Defence Department Secretary Paul Barratt. The group includes some 35 prominent citizens from diverse backgrounds. In a March 2014 letter to all members and senators of Federal Parliament, the group expressed concern at the absence of an Inquiry into "how the Australian government decided to commit our armed forces in that war", sought an independent inquiry, and encouraged politicians to consider how that decision-making process should be changed in future.

The group pointed out that inquiries into civilian tragedies are common to learn from what has happened and avoid future mistakes and losses. In addition, it emphasised that the British and American debates about the Iraq war have demonstrated the value of parliamentary involvement in decision-making about going to war.

Quaker Responses

In Britain, Quakers put a submission to the Ministry of Justice in 2008 about 'Governance of Britain – War Powers and Treaties'. In the submission, the following points were made:

- Any steps taken to make prerogative powers democratically accountable to Parliament are to be welcomed.
- Parliamentary approval should be needed when the forces of the Crown are deployed outside the UK, even on peacekeeping missions, unless the state where they are deployed consents.
- Approval should be needed even in urgent situations, unless Parliament cannot be recalled, in which case the Supreme Court should approve.
- Parliament should be given as much information as possible, and its approval sought regularly and at least once a year for any deployment.

In America, the Friends Committee on National Legislation (FCNL) published an article on 4 October 2013 by Elizabeth Beavers and Ruth Flower, in which the following points were made:

- The War Powers Resolution passed in 1973 sets up a clear framework – the president must 'in every possible instance' consult with Congress, report to Congress within 48 hours of introducing armed forces into hostilities, and withdraw troops after 60 to 90 days if Congress does not provide authorization. No president has considered this resolution binding.
- The recent discussion about whether to become engaged militarily in Syria has raised awareness of the importance of some kind of consultation between the President and Congress.

- Congress needs to define what 'war' actually is, to strengthen its claim to be consulted.
- Congress should not give a 'blank cheque' to the President as it did in 2001 with the Authorisation for the Use of Military Force.
- Congress should use its power of the purse, by refusing to allow money to be borrowed for purposes of war.

The article concludes: "This is the time for elected representatives to re-assert themselves and the voices of the American people into the decision-making process. Rather than enabling the president to unilaterally commit American life and treasure, Congress must set up an effective framework to ensure the even decisions of war are subject to the consent of the governed".

Australian Quakers can follow the progress of the Bill by reference to the Parliament website www.aph.gov.au