Introduction

When Parliament met in the evening a short but very fierce debate occurred, in which the Prime Minister’s [Mr. Chamberlain] temporising was ill-received by the House. When Mr. Greenwood rose to speak on behalf of the Labour Opposition Mr. Amery from the Conservatives benches cried out to him, ‘Speak for England.’ This was received with loud cheers. There was no doubt that the temper of the House [on 2 September 1939] was for war. I even deemed it more resolute and united than in the similar scene on August 3, 1914, in which I had also taken part. (Winston Churchill writing of events on the eve of Britain’s declaration of war against Germany in 1939)¹

Although the struggle would be long and hard, requiring the most strenuous effort from all, we had reached the top of the pass, and our road to victory was not only sure and certain, but accompanied by constant cheering events. I was not denied the right to share in this new phase of the war because of the unity and strength of the War Cabinet, the confidence which I preserved of my political and professional colleagues, the steadfast loyalty of Parliament, and the persisting goodwill of the nation. (Winston Churchill writing of the turning of the tide in the war in September 1942)²

When I hear people talking in an airy way of throwing modern armies ashore here and there as if they were bales of goods to be dumped on the beach and forgotten I really marvel at the lack of knowledge which still prevails of the conditions of modern war. (Winston Churchill writing about complaints in Parliament made in September 1943 over the delay in attacking Naples)³

Britain’s democracy stood firm during the Second World War. Winston Churchill’s history of this period reveals the importance of the relationship between the government, in particular the Prime Minister, and parliament. In 1939 Prime Minister Neville Chamberlain seemed to lack the same political will for war as shown by parliament. As the war became one of survival for Britain, Churchill as Prime Minister relied heavily on the support of his executive as well as parliament and the country, but even as the war turned in favour of the Allies, criticism of specific policy and tactics could still be found in the House of Commons. However, the justness and legality of the cause against the Axis powers meant that on the big issue of the overall prosecution of the war there was limited criticism of Churchill’s leadership.

With the end of the Second World War there came the United Nations and a new world order based on the prohibition of military force in international relations, and yet since 1945 British troops have been regularly deployed around the globe: most notably to Korea, Suez, Cyprus, and the Falklands during the Cold War; and Kuwait, Bosnia, Kosovo, Afghanistan and Iraq since the fall of the Berlin Wall. The decisions to deploy forces are political ones made within several constitutional frameworks, national, regional, and international. After considering the various legal and institutional regimes applicable to such deployments, the main purpose of this book is to examine the decision to deploy troops from the perspective of international law.

In its military interventions since 1945 Britain has consistently tried to utilize international law to justify its actions, though often it argues against orthodox interpretation of the laws. In an area of law that is notoriously open-ended and contested, caution must be observed and the simple application of rules to the facts avoided. However, the inherent fluidity of international law must be balanced against the fact that there is consensus among states on certain fundamental rules, though that consensus must be constantly reappraised. In gauging whether Britain’s actions are in breach of international law we can make judgements at different levels using various forms of accountability: from judicial fora (for example the International Court of Justice in the Hague or the European Court of Human Rights in Strasbourg), to political ones (the UN General Assembly in New York or the House of Commons in Westminster), though political ones dominate. While this book examines international and regional mechanisms, tumultuous debates on Suez, Afghanistan, Iraq and others in the House of Commons and its Committees are highlighted to show how international law impacts upon domestic politics. In considering whether democratic accountability is effective in upholding the principles of international law, this book throws new light on an old democracy, and thereby makes a contribution to current reform proposals that are aimed at improving democratic decision-making.

The book places domestic political decision-making within the international, as well as domestic, legal orders. In considering whether governmental actions are compatible with international law, the main points of reference are the international rules governing the use of force in international relations (known as the *jus ad bellum*). These rules define the circumstances under which a use of military force by a state is lawful, whether it be to claim or reclaim territory, to protect its nationals or its homeland, to remove an unpopular government or rout a terrorist group from some remote location within another country. Decisions to deploy troops to conflicts in other countries are judged by reference to these rules since they are directly applicable. Other international laws that may be applicable once a deployment has been made, such as international humanitarian law (part of the *jus in bello*) or human rights law, are not directly
the subject matter of the book, though they are referred to. Given that the book follows the duration of the deployments of British troops in the main post-Second World War conflicts, issues of humanitarian law may arise, but the focus of these discussions remains an examination of the reasons for their deployment. What is the legal basis of the continuing presence of British troops in Afghanistan long after the events of 9/11 of 2001; and in Iraq, over five years after the invasion of that country? These are still issues concerning the justification for armed force and therefore are to be judged by the principles of the *jus ad bellum*.

A subsidiary purpose of the book is to consider the functions of the UK democratic system in times of war and foreign crises, when British troops are deployed to conflict and post-conflict zones around the world. From the outset it engages in the debate surrounding the balance between democracy and the necessities of war, and considers whether the British constitutional system is sufficiently democratic in taking decisions on military intervention. It places that decision-making process within the wider international context, in particular by considering the impact of international law and international legal debate upon the British political and legal systems.

British troops can be sent to operate in many different capacities: as military observers, peacekeepers, peace-enforcers, state-builders, and war-fighters. Sometimes they have authority from parliament as a whole and sometimes just from the executive, sometimes they operate under the mandate of an international organization, other times not. Often they fight alongside troops from allied states, occasionally by themselves. Advice on the legality of war and deployment of troops is occasionally clear, other times not. The book examines how these different factors can influence decisions to deploy and increases or decreases their legality and legitimacy.

In overview, the book first of all considers the domestic and then the international legal and institutional regimes within which decisions to go to war or more generally to deploy troops are made. Then, by taking the international legal framework for military operations, a number of case studies reveal how the international legal basis of military action impacts on the national political debate, and serve to illustrate the role international law plays in the domestic legal and political orders. With recent interventions being based on controversial international legal bases there has been increased pressure for greater accountability, especially to parliament. The reform debate that this has sparked gives the book a contemporary political relevance.

These chapters also consider how the domestic debate may help to re-shape international law and institutions. The international legal system does not simply consist of a set of fixed rules that must be followed by states, but is in a process of change and development since it is primarily made by governments and institutions. In essence the relationship between the international legal
and political order and, with focus on Britain, the domestic legal and political orders on the issue of using military force are the questions addressed in this book.

The first half of the book is mainly concerned with developing the constitutional, institutional and legal contexts at both the domestic and international levels. The relationships between the national and international regimes are developed in this part, but detailed analysis follows in the second half of the book by taking examples of different types of military operations in which British troops have been deployed: under UN mandates, self-defence, collective-defence, humanitarian intervention, and in the case of enforcement operations without an international mandate. The order is thus not a chronological one but is primarily dictated by the legal basis upon which the deployment is made and ranges from consensual peacekeeping (Bosnia in the 1990s), through self-defence (Falklands in 1982 and Afghanistan in 2001), to humanitarian intervention (Kosovo in 1999), and intervention on the basis of UN Resolutions (Iraq 2003). The latter is the most controversial intervention in that there was no clear mandate to use force, and can be contrasted with instances of clear authorization to use force (in Korea in 1950 and Iraq in 1991) dealt with in the earlier part of the book.

More specifically, chapter one contains an historical account of the origins of the Crown’s authority in military matters and its continuation in modern times in the shape of executive prerogative powers. Historical developments are considered but more attention is paid to the Second World War, the end of which ushered in a new order in international relations, one based around the United Nations and international law, though traditional balance of power politics prevailed during the Cold War.

After considering the post-1945 international legal regime and Britain’s attitude towards it in chapter two, the importance of the UN and NATO to the UK is discussed in chapter three by considering the parliamentary and wider political and legal debates that led to the UK’s membership and subsequent contributions to these organizations. At this point consideration is given in chapter four to the development of the UN collective security system, and Britain’s role in it by tracing the development of coalitions of the willing acting under UN authority. The actions in Korea in the 1950s and Iraq in 1991, both involving significant British contributions, are analysed. In the post-Cold War era the EU has taken on an increased foreign and security profile resulting in British troops being committed to European operations, as well as NATO and UN forces. The development of the European dimension of collective security is considered in chapter five. On other occasions though Britain acts alone or in collaboration with its allies without any institutional mandate. Practice is brought into the discussions in the first half of the book, but more detailed analysis is left until
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later. Coverage of the main instances of post-1945 British military deployment will be ensured to give a complete modern account of such practice, and the legal problems it raises.

In taking a number of conflicts and explaining the political and legal background to decisions to send troops, and ultimately addressing the questions of whether the deployment was justified legally and politically, the complex interplay of domestic and international legal and political factors becomes clearer. The inadequate international response, in which Britain played an influential role, to the conflict and atrocities in Bosnia in the 1990s is reviewed in chapter six. The resolute action to recover the Falklands from Argentinian attack and occupation is considered in chapter seven, while the decision to join the US in responding to the terrorist attacks of September 2001 is discussed in chapter eight. Chapter nine looks at the controversial decision to bomb Serbia to stop its repressive actions in Kosovo in 1999. Chapter ten considers the hugely divisive decision to join the US in invading Iraq in 2003, the repercussions of which are still being felt today. Each of these chapters examines in detail the international legal framework and rules applicable to such operations. Throughout, the relationship between parliamentary involvement and the international legal and institutional basis of the military operation is discussed. Parliamentary debates are examined to consider the relevance of the international legality and institutional legitimacy of the intervention in evaluating executive decision-making. Would greater accountability be achieved by requiring prior parliamentary approval of the operation, or does the dominance of party politics in the Westminster system mean that this would make little difference?

The book concludes with a chapter that considers the complex interplay of democracy with international law. Different mechanisms of legal and political accountability both at the domestic and international levels are considered with a view to their application in cases where decisions to deploy troops are politically or legally controversial. The role of Select Committees of the House of Commons, of domestic courts (including courts-martial), of (public) inquiries, and their equivalent at the international level including cases before the International Court of Justice and the International Criminal Court, give the conclusions a practical perspective. Pressure for the strengthening of mechanisms of accountability at the domestic and international level, and the practical reforms called for as a result of this pressure are analysed in full. At the domestic level, for instance, this has led to calls for prior parliamentary approval of military actions.

In order to place the interplay of democracy and war in a wider context, some comparisons are made in the final chapter to other countries, especially when they form part of a coalition with Britain. While Britain is the focus of the study,
reference to other countries facilitates a better understanding of this complex issue. This in turn will provide some comparative analysis within which to place the current debate within parliament and elsewhere on the issue of whether prior parliamentary approval should be necessary before decisions on foreign deployment of British forces are made.