

Britain's Shadow Army:

Policy Options for External Oversight of UK Special Forces

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This report has been written by staff at the Oxford Research Group's **Remote Warfare Programme**, formerly known as the Remote Control Project. We were set up in 2014 to examine changes in military engagement, with a focus on remote warfare. This is the trend in which countries like the United Kingdom choose to support local and regional forces on the front lines rather than deploying large numbers of their own troops. The political origins of remote warfare can be traced to a lack of popular support for large 'boots on the ground' operations following the recent wars in Iraq and Afghanistan.

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Foreword

When the Remote Warfare Programme was set up in 2014 to examine changes in military engagement, we didn't envisage that we would focus so heavily on transparency and accountability. We wanted to cut straight to analysing a trend that we saw emerging in which countries like the United Kingdom were choosing to support local and regional forces on the front lines rather than deploying large numbers of their own troops. This is what we call remote warfare, and we wanted to know whether it was working, what the long-term impact of its use might be, and whether it was part of a viable strategy to bring warring parties to the peace table.

However, we soon found that our access to information about this more indirect approach to warfare was restricted. The levels of disclosure that accompanied large British military missions in Iraq and Afghanistan did not seem to apply to this remote style of war. British strategy in countries where it was using remote warfare—such as Libya, Iraq, Syria, Nigeria, Somalia, or Yemen—was unclear from public statements or open debates. This opacity over the aims of remote warfare makes it hard to assess its effectiveness.

Deniability may bring flexibility when it comes to dealing with fluid and complex security threats. But our research suggests that this is not a simple relationship whereby more secrecy automatically brings greater strategic advantage. External scrutiny can provide an important last check on the strategic sense of a plan when internal methods may fail. Our March 2017 report *"All Quiet on the ISIS Front: British Secret Warfare in an Information Age"* highlighted three ways that the British government is currently able to use opacity to obscure inadequate strategy: the use of unilateral strikes, special forces, and partner assistance.

The report concluded that introducing some form of parliamentary oversight over the UK's special forces (UKSF) would be one way to reduce the risk of their misdeployment by a risk-averse government that might otherwise be keen to avoid public debate. We have spent the last year discussing the different options that might achieve greater openness while protecting what is an undeniably sensitive area of British military operations from undue exposure. This has meant drawing on the British intelligence community's experiences of parliamentary scrutiny, insights from the UK's allies, and the expertise of many who sit within the British parliamentary and defence systems.

Crucially, the role of external oversight is to hold the government to account. It is not to demonise special forces, or to suggest that they are failing. There are a whole host of internal mechanisms that UKSF can and do use to advocate both for and against plans for their use. However, as the only part of the British armed forces that does not have a public voice to speak out if government priorities fail to materialise, resources do not match allocated tasks, or forces are unsustainably stretched, UKSF are currently denied the opportunity of external debate offered through the parliamentary committee system.

From a government perspective, there is clearly a balance that needs to be struck between the need for secrecy to provide security and the need to open up government

decisions to the scrutiny and debate that is so pivotal for a healthy democracy. However, it is important for decision-makers to recognise that the UK is currently performing worse than many of its allies when it comes to publicly commenting on its actions or opening up its strategies to scrutiny. In doing so, the government is neglecting the advantages that greater transparency can bring for strategy, narratives, and public relationships. Instead it is narrowly interpreting greater access to information as a security concern.

This report is all about the advantages, risks, and concerns that surround the introduction of some form of parliamentary oversight over UKSF. We hope that this will feed into a broader debate about how to improve government strategy when it comes to dealing with the complex security challenges that face the UK and its allies. We believe that improving external oversight is one answer, but we look forward to the discussion.

Thank you,

A handwritten signature in cursive script that reads "Emily Knowles".

Emily Knowles

Director, Remote Warfare Programme

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Introduction

There is currently a dilemma for governments wanting to confront credible threats to UK security against the backdrop of low popular support for the commitment of British troops. As the UK's Attorney General recently noted, the increasing terrorist threat means the "frontline has irretrievably altered."¹ The internet—especially social media—allows groups across the world to plan, enable and inspire others to carry out attacks, while individuals are connected through networks that disregard state boundaries.

In 2013, a Ministry of Defence (MoD) study discussing how to maintain operations despite a "risk averse" public was leaked. The document suggested, among other things, "investing in greater numbers of SF [special forces]."² This advice appears to have been followed. In the 2015 National Security Strategy and Strategic Defence and Security Review (SDSR) the government pledged to double investment in special forces.³ This amounts to £2 billion of new investment in UK Special Forces (UKSF) equipment, according to the 2015 Spending Review.⁴

This growing investment in special forces is not restricted to the UK. The post-9/11 period has been dubbed "the golden age of special operations."⁵ In the U.S., where statistics on special forces are more widely available, the data paints a stark picture. From 2001 to 2011, funding for U.S. Special Operations Forces (U.S. SOF) more than doubled, from roughly \$3.8 billion to more than \$9.8 billion. Over the same nine-year period, SOCOM's (Special Operations Command) manpower increased by more than 28%, growing from 45,655 to 58,657 individuals. By January 2017 troop numbers stood at 70,000—roughly a 50% increase in SOCOM manpower over a 16-year period.⁶ President Trump's proposed military budget suggests that the administration is hoping to increase SOCOM spending by another 11%, bringing the budget for Fiscal Year 2019 up to \$13.6 billion.⁷

This "golden age" has not been without its consequences—particularly for the transparency and accountability over the use of force. In the UK, successive governments have supported a move away from what they called an "outdated" model of intervention where the decision to go to war sits with the Prime Minister and the Cabinet alone, arguing that a move towards greater transparency and accountability was pivotal for a 21st century democracy.⁸ However, while conventional military deployments have become increasingly open to scrutiny by Parliament, UKSF have bucked the trend. At the moment, changes in the way wars are being fought are far outpacing any reforms being made to the democratic controls over the use of force.

The UK government has a long-running policy not to comment on UKSF. Their deployments fall outside the convention that British combat operations be taken to Parliament for debate and approval, and they are the only part of the UK's defence and security apparatus not to be overseen by a parliamentary committee. This not only makes them less transparent than even their peers in the intelligence agencies, but it also precludes any critical debate about their part in British defence and security strategy. This raises some concerns, particularly whether this accountability gap is being exploited by

risk-averse politicians, who may be more likely to deploy UKSF because they can do so without scrutiny, rather than because they are the best tool for the jobs they are undertaking.

While there remain many good reasons for the tactical secrecy of UKSF activities, there appear to be fewer good reasons for the complete opacity that currently surrounds them. Our research shows that Britain is alone among its allies in not permitting any discussion on the staffing, funding, and the strategy surrounding the use of its special forces. Like in the UK, the U.S., Canadian, Australian, French, Danish and Norwegian governments all recognise the valuable contribution that their special forces make to international security. But unlike the UK, each of these countries has mechanisms for the government to comment on their use or for their legislature to scrutinise their actions.

It appears a peculiar argument, then, for the UK government to continue to claim that introducing greater openness over UKSF is inherently incompatible with the utility of these forces. Instead, there must be ways to protect operational and tactical secrecy while ensuring that such an important segment of British defence and security strategy is properly debated, resourced, and understood by those responsible for both making and overseeing it.

This report makes the case for introducing some form of external oversight of UKSF, and examines allied experiences of legislative scrutiny. It then outlines two different models of parliamentary committee oversight that might be appropriate policy options for the UK:

Option 1

Introduce legislative scrutiny of UKSF by expanding the mandate of the Intelligence and Security Committee (ISC).

Option 2

Reform the House of Commons Defence Committee (HCDC) by providing it with the appropriate permissions to scrutinise UKSF.

Additional recommendation

Relax the “no comment” policy on UKSF to allow ministers to release unclassified briefings and budgetary information as deemed appropriate.

The case for modernising the British approach

The opacity over UKSF stands in contrast to an increasing expectation in Parliament that the use of force should be subject to external scrutiny. In 2011, a commitment to allow Parliament to vote on military action before it is authorised was included as part of the Cabinet Office Manual.⁹ Today, this is referred to as the War Powers Convention (WPC), which has been strengthened by successive years of votes on military action on Libya, Iraq and (twice) on Syria.¹⁰ While a 2015 parliamentary briefing argued that special forces are an “obvious exception” to the need to vote on combat deployments, there is growing parliamentary pressure against their current exemption from all other forms of external scrutiny.¹¹

Over the past two years the Chairs of the Intelligence and Security Committee (ISC), the Foreign Affairs Committee (FAC) and the House of Commons Defence Committee (HCDC) have each publicly questioned the government’s blanket opacity policy towards UKSF:



**Rt. Hon.
Dominic Grieve
QC MP**

“My view is that the current trend in this country has been towards facilitating parliamentary scrutiny of all government activities. Indeed, in a modern democracy, having areas of state activity that are not subject to any scrutiny at all by parliament is not a very good place to be. What is clear is if there was a desire for us to look at special forces, then this committee would probably be in a position to do it . . . But it is a matter for parliament”.

Source: *The Sunday Times* (December 2017)

“We do not have a mechanism in Parliament for any form of scrutiny of the activities of UK special forces. That work is classified for understandable reasons, but so is the work of the intelligence and security services, and we have a mechanism in the form of the Intelligence and Security Committee that is able to exercise scrutiny over those top-secret activities. Would it not be sensible for Parliament to fill what is apparently a scrutiny gap so far as UK special forces are concerned, especially when the United States and other countries seem able to manage such scrutiny without impeding operational capabilities?”

Source: HCDC Evidence Session (October 2017)



**Rt. Hon. Dr
Julian Lewis MP**



**Rt. Hon. Crispin
Blunt MP**

“If they are classic Special Forces operations—sharply in, and sharply out—then you would need to maintain their secrecy. If they are part of a strategy you would expect that strategy to be overseen.”

Source: *Middle East Eye* (May 2016)

Figure 1: Comments made by current and former Chairs of parliamentary select committees.

In general terms of course, the Ministry of Defence (MOD) and all parts of the armed forces are accountable to Parliament through the Secretary of State and his or her ministers. They are called to give Statements, respond to Urgent Questions (UQs), and respond to questions in the House of Commons at six-week intervals at Departmental Question Times. However, in practice the policy of not commenting on special forces, plus their exemption from the Freedom of Information Act,¹² means that the usual mechanisms for eliciting comment and scrutinising government activity do not apply.

Any parliamentarian raising media reports of UKSF activity in the House of Commons receives a standard “no comment” response:

- In February 2016, claims surfaced that UKSF were spearheading a “secret war” against Islamic State (IS) in Libya, including covert discussions about supplying weapons and training armies and militias. The MOD responded that it is a “long-held policy... not to comment on **Special Forces**.”¹³
- In March 2016, when a leaked memo confirmed that UKSF had been operating in Libya since at least the beginning of 2016, this was repeated: “It is our long-standing policy that we don't comment on **Special Forces** operations.”¹⁴
- In May 2016, a story began to circulate that UKSF had fired on, and destroyed, an IS suicide-truck heading for Misrata in north-western Libya. The official statement released was “The Ministry of Defence does not comment on Special Forces.”¹⁵ When a report later that month suggested that the Special Forces Support Group and the Special Boat Service may be involved in planning an attack against IS in Sirte, a spokesperson replied that “The MOD neither confirms nor denies claims about **Special Forces** activity.”¹⁶
- In June 2016, it was reported that UKSF were on the front line in the fight against IS, this time in Syria. The MOD responded that “It is our longstanding policy that we don't comment on **Special Forces** operations.”¹⁷
- In response to seven separate questions that the Rt. Hon. Emily Thornberry MP raised about UKSF in April 2016, the same answer was provided to each of her seven questions: “This Government has demonstrated its commitment to our **Special Forces** by announcing a £2 billion programme of investment over the course of this Parliament....However, as it is the longstanding policy of the Government not to comment on our **Special Forces**, or to release information relating to them, I cannot comment on specific questions about personnel, equipment, discussions or activities in relation to these units.”¹⁸
- When asked to explain the blanket opacity over UKSF, then-Secretary of State for Defence Sir Michael Fallon responded that “**UK Special Forces (UKSF)** are a world class force capable of conducting short notice, high risk operations in the most challenging environments around the world in support of UK interests and the safety and security of our people. To maintain their ability to conduct these types of operation it is critical that the security of personnel, equipment and tactics,

techniques and procedures is maintained. The long-standing policy of not commenting on **UKSF** has been upheld by successive Governments and is reflected in legislation in the form of the Freedom of Information Act. I have no intention of changing this policy.”¹⁹

- In December 2017 Paul Flynn MP asked, “whether the National Audit Office has inspected the account of the office of the Director of Special Forces since it was established in 1987.” The government responded: “The National Audit Office has a thorough process for inspecting all aspects of the Department's accounts. The Department does not routinely comment on any aspect of **Special Forces**.”²⁰
- In response to a question raised in November 2017 by Crispin Blunt MP, former chair of the Foreign Affairs Select Committee, who asked if the MOD would “undertake a review of access to information on **Special Forces** by Parliament to enable effective scrutiny,” the Department responded: “Given the sensitivity of their activities, oversight of **Special Forces** is exercised through the Prime Minister and Defence Ministers. We have no plans to change the current arrangements.”²¹
- In an answer provided to Mr Blunt requesting information about any additional spending that had been invested in **UK Special Forces** since the £2 billion allocation as a part of the 2015 SDSR, the Minister responded that “It is long-standing Departmental policy not to comment on specific details of **Special Forces** capability.”²²

This stock response disincentivises questions, which makes it difficult to judge the true extent of parliamentary appetite for information on UKSF. Therefore, even though ministers are ultimately responsible to Parliament, this system breaks down when parliamentarians are unable to use formal channels to question and scrutinise areas of UK policy.

In contrast to the lack of legislative oversight of UKSF, the actions of the intelligence agencies have been brought under increasing oversight. The 2013 Justice and Security Act strengthened the ISC, giving Parliament greater powers to scrutinise the operational activities and wider intelligence activities of the government.²³

As well as MI5, MI6 (also known as the Secret Intelligence Service, or SIS), and the Government Communications Headquarters (GCHQ), the ISC examines the intelligence-related work of the Cabinet Office including the Joint Intelligence Committee (JIC); the Assessments Staff; and the National Security Secretariat. The Committee also provides oversight of Defence Intelligence in the MOD and the Office for Security and Counter-Terrorism in the Home Office.²⁴ An additional layer of scrutiny has emerged now that MI5, MI6 and GCHQ each have press officers authorised to speak to the media.²⁵

There is no parallel parliamentary system to oversee the actions of UKSF. As their operations contain sensitive intelligence and security information, the Defence Committee of Parliament does not have the clearances needed to monitor them. The ISC, as the only Committee of Parliament composed of members with security clearance, does

have the relevant permissions, but does not have the mandate, nor the resources. The Foreign Affairs Committee, although it reports on UK interventions abroad, does not have the clearances or the remit to include any information about UKSF outside of public media reports of their actions. In addition, information about UKSF is specifically exempt from the Freedom of Information Act,²⁶ and any leaked stories are open to prosecution under the Official Secrets Acts.²⁷

The purpose of introducing oversight is to reduce the risk that UKSF are misdeployed. By demanding that the government make its strategies publicly defensible and debatable, the hope is that external oversight might ensure that UKSF are deployed as part of a coherent, effective government strategy. UKSF are a useful and adaptable force for countering threats to national security. They are also an agile alternative to deploying regular troops, as they do not require the same support or logistics chain in order to operate. However, this does not leave them invulnerable to overstretch, or immune from misuse. UKSF are a valuable and finite resource and should not be treated as a panacea by risk-averse governments that may be more keen to avoid external scrutiny than they are willing to put in the cross-departmental effort required to develop effective security strategies.

The benefits of external oversight of UKSF for UK strategy

In response to a parliamentary question from Yasmin Qureshi MP in July 2016 on whether the government would “assess the potential merits of appointing a committee of parliamentarians to oversee the operations and budget of special forces, similar to the functions of the Intelligence and Security Committee in respect of the intelligence services,” Sir Michael Fallon simply replied: “No.”²⁸

While the government may have previously found it easy to reject calls for greater transparency out of hand, increasing demands from Parliament may place that position on shaky ground in the future. The effective treatment of classified information about the activities of the British intelligence agencies under the ISC also weakens the argument that sensitive information cannot be externally scrutinised. These things should provide positive impetus for the government to re-examine its position on UKSF oversight.

In addition to these external pressures for change, there are several potential strategic advantages for the UKSF and government communities of relaxing the UK’s no comment policy and introducing some form of external oversight over UKSF, including:

- Ensuring appropriate levels of funding for UKSF;
- Avoiding UKSF overstretch;
- Building public trust, legitimacy, and understanding of UKSF.

Funding and equipment

In the U.S., legislative oversight—through the Senate and House Armed Services Committees—acts as a safety net to ensure that U.S. Special Operations Forces (U.S. SOF) operations are properly funded. The Commander of SOCOM can give evidence to the Senate Committee on Armed Services (SASC) and make a reasonable case for increasing

funding. As the government body that has an important role in allocating annual Department of Defence (DOD) funds, Congress has the authority to scrutinise requests from SOCOM to increase its funding, and either accept or reject those requests.²⁹

In the past, British parliamentary committees have served as champions of the interests of the armed forces when government decision-making has failed them. When the issue of inadequate equipment was brought to the attention of the British public during the deployment of British troops in Helmand, the subject was debated, and the executive held to account.³⁰ Without any form of external oversight of UKSF; the public, Parliament—and likely much of the Cabinet³¹—will be unaware if UKSF are being adequately prepared for the theatres they are being deployed to. While the UK government has recently committed to substantially increasing their budget, they have been ambiguous about how this money will be spent, and whether it matches UKSF’s current and future commitment levels. In response to a written parliamentary question about the SDSR 2015 funding commitments for UKSF, then-Armed Services Minister Penny Mordaunt MP said:



Rt. Hon. Penny Mordaunt MP

“This Government has demonstrated its commitment to our Special Forces by announcing a £2 billion programme of investment over the course of this Parliament. All military operations, including the activities of the Special Forces, are discussed and scrutinised at the highest levels of Government, including at the National Security Council. However, as it is the longstanding policy of the Government not to comment on our Special Forces, or to release information relating to them, I cannot comment on specific questions about personnel, equipment, discussions or activities in relation to these units.”

Source: HC Deb 14 April 2016 C 32773W

Figure 2: Former Armed Forces Minister, Penny Mordaunt responding to a written parliamentary question about UKSF funding.

In an era of enhanced pressure on defence to demonstrate value for money, it seems reasonable to suggest that external oversight could add an additional layer of protection against short-term thinking and damaging budget cuts. While internal conversations doubtless happen about UKSF resourcing, there have been indications this past year that this is not necessarily enough to ensure that budget decisions that affect UKSF are being made strategically. For example, the impact on UKSF of proposed cuts to the Royal Marines (see Box 1) has only been debated on the bases of leaks and speculation, rather than allowing UKSF to speak openly about how these plans might affect them.

Box 1: Cuts to Royal Marines and consequences for UKSF



On 16 October 2017, the *Daily Mirror* published reports that suggested UKSF had been understaffed by about 100 troops for years and were being provided with additional funding to bring them up to strength. This shortfall would reportedly be met by reducing the costs of regular military units.³²

One week later, on the 28 October, the *Telegraph* published a report claiming that the MOD planned to downsize the Royal Marines. Far from freeing up funds for UKSF, this could put additional pressure on units that reportedly already provide about half of their recruiting pool.³³

Instead of the Director of Special Forces being able to speak openly about the constraints that this could put on the force, we can only guess at their dissatisfaction at the plans from the large number of leaks and resulting speculation in the media.

Proposed expenditure on UKSF—whether it rises or falls—should be publicly defensible. This would in turn provide a government incentive to think strategically about defence spending to ensure that resourcing adequately covers the tasks assigned to them. While the current struggles over defence budgets show quite clearly that external oversight does not automatically produce strategic defence spending decisions, it does at least create a climate of debate that allows the other services to make their case for funds in public. This is not currently an option that is open to UKSF.

Avoiding overstretch

SDSR 2015 hinted at the expansive role UKSF will be expected to play as part of UK defence.³⁴ External oversight could add an additional safeguard to mitigate against the risk of stretching UKSF too thinly, potentially to the detriment of operational effectiveness and individual wellbeing. It is important to learn the lessons of Iraq and Afghanistan, where the UK's apparent overestimation of what it could achieve militarily had negative implications for its chances of mission success and relationships with its partners.³⁵

The concern that risk-averse governments tend to stretch special forces too thinly has long been voiced in the United States. General Raymond Anthony Thomas has been quoted on record stating that the role U.S. SOF are asked to play is quickly evolving, highlighting that SOF are no longer a “mere ‘break-glass-in-case-of-war’ force, but are now proactively engaged across the battlespace.”³⁶ With increases in both the number and variety of missions, many are worried that U.S. SOF—which constitute less than 5% of total U.S. military forces—are being asked to do too much.³⁷ For example, Scott Taylor

(R-Va.), a former Navy SEAL, spoke to this issue when he observed "There's been misuse and overuse of our special operation forces in recent years."³⁸



Senate Armed Services Committee Hearing

U.S. legislators are cautious about using ground troops "but seem less concerned about utilising special forces...we can do things with special forces and [don't] really have to be accountable for it to the public."

[I] worry about the perception...that [SOF] go it alone, do it alone, and that is completely incorrect."

"There's a growing SOF myth [that] you can do special forces and have special forces and nothing else to accomplish your goals..."



Sen. Tim Kaine (D-VA)

Source: Transcript of Senate Committee on Armed Services, 'U.S. Special Operations Command', 4 May 2017

Figure 3: Senator Tim Kaine (D-VA), a member of the Senate Armed Services Committee, commenting on the public perceptions of U.S. SOF at a 2017 hearing with the USSOCOM Commander.

The seriousness of U.S. SOF overstretch since 9/11 was illustrated by General Thomas' remarks that the current situation is "unsustainable."³⁹ His predecessor, Admiral William McRaven said his force was "fraying"⁴⁰ and, before him, Army General Joseph Votel warned Congress about the high operational tempo in 2015.⁴¹

The *New York Times* recently reported on the strain continuous operations had put on individuals. For example, Chief Petty Officer William “Ryan” Owens (the U.S. Navy Seal who was killed in the much-criticised raid in Yemen in January 2017), had been deployed almost non-stop for ten years.⁴³ Jim Moriarty, whose son was in the Green Berets and was killed in Jordan, said that other members of his son’s team were “showing the wear of constant deployment”—with many divorced and others considering “getting out of the Army.”⁴⁴ He said, “I worry all this reliance on them is really using them up.”⁴⁵

“Long periods of battle are sometimes unavoidable in war, but the likelihood that such scenarios will take place in the future will only increase as SOF are tasked with more responsibilities and equipped with fewer resources than they had in the past.”⁴²

Philip Lohaus, American Enterprise Institute

In June 2017 a *Washington Times* article also revealed reports that the strain of the battlefield was “taking a personal toll on Navy SEALs and members of other special operations elite forces” and had led to an increased use of drugs and alcohol “on deployment and at home.”⁴⁶

The challenging operational tempo has also been identified as a risk by French Special Forces (FSF). In recent testimony to the Assemblée Nationale, the head of FSF noted that “I don’t have a recruitment problem. The challenge is to keep personnel, because of the unstoppable rhythm of our work... with time, fatigue builds up.... It is not always the individual who decides that they want a break, it is often their family. The difficulty will

therefore be more of a long-term one than an immediate one at the recruitment stages.”⁴⁷

External oversight could add an additional mechanism to ensure UKSF are not subject to unsustainable overstretch. In particular, greater pressure on the government to publicly defend their strategy for their use could provide a greater incentive for the government to think more carefully about its priorities, and how and where UKSF might have the most chance of success.

Box 2: Congressional Hearings on U.S. Special Operations



At a hearing of the **Senate Armed Services Committee**,⁴⁸ members were provided with the opportunity to question the Commander of SOCOM, **General Raymond Thomas**, and then-Acting Assistant Defence Secretary for Special Operations and Low-Intensity Conflict (SOLIC), **Theresa Whelan**.

SOF Overstretch/ Recruitment & Retention

Sen. Kaine raised the point that by SOCOM's own admission, "most special operations require non-SOF assistance." However, he raised his concerns over what he described as a "growing SOF myth...[that] you can do special forces and have special forces and nothing else to accomplish your goals." He added that U.S. legislators are apathetic about the "use [of] ground troops" but seem less concerned about utilising special forces."

Sen. Kaine said he did not believe this was a military calculation but a political one "we can do things with Special Forces and not really have to be accountable for it to the public." **General Thomas** said **Sen. Kaine** was right to "worry about the perception...there have been too many books and movies and publications that might imply that we go it alone, do it alone, and that is completely incorrect."⁴⁹

SOF Budget Pressures

In the U.S. Senate Armed Services (Open) Committee Hearing on Department of Defense Authorization of Appropriations for Fiscal Year 2014 and the Future Years Defense Program, former SOCOM Commander, Admiral William McRaven was able to outline the challenges that fiscal constraints were having on SOF.

In particular, he highlighted that "I get a tremendous amount of my support from the various services and [fiscal constraints] will absolutely affect the special operations capability of this nation."⁵⁰ Further, McRaven suggested that for SOF "the problems are current, so I don't want to lead you to believe that the cuts that were incurred now, or that we're accepting now, are not affecting the force now. They are." Quantifying the impact, McRaven suggested that SOF had cut "deployments by about 20% in some cases, in some cases 60% of my deployments for some of [SOCOM's] less forward units."⁵¹

Building public trust in an information age

There is a balance that needs to be struck between the need for tactical secrecy over UKSF operations and the growing public expectation that governments be open about their defence and security strategies. The current approach does not appear to account for the fact that in today's information age building policies on the assumption of complete secrecy is becoming increasingly untenable.

Refusing to comment on UK military actions even once a significant amount of information is available in the public domain means that the government ends up handing the narrative of UK military engagement over to others. This could result in the direct manipulation of reports of British military activity to serve the interests of adversaries. It also puts direct constraints on the government's ability to put across its own counter-narratives in the face of uncontrolled leaks and media speculation. Forfeiting the ability to discuss, justify, or disprove accounts that appear in the public domain could serve to erode the legitimacy or credibility of UK military action abroad.

The 2010 SDSR made this point very clearly, speaking of the need to “win the battle for information, as well as the battle on the ground” and acknowledging that “a more transparent society” aided by “the speed and range of modern global communications” would submit British operations to intense scrutiny.⁵²

The Chilcot Inquiry when it was published in July 2016 chimed with many of the concerns raised by the 2006 Butler Review into the Iraq War—outlining the ways in which devising policy in closed circles had undermined strategic decision-making. It appears a stark contradiction, therefore, that the contributions of UKSF to overall defence and security strategy remain outside public debate and discussion. As Alastair Finlan of the Swedish Defence University notes, “For Special Forces to generate strategic effect against the enemy, they must be directed and authorised by the most senior military planners with an eye on how they can influence the overall strategy within a specific operational theatre. Without such higher-level strategic guidance, special forces tend to be misused at the operational and tactical levels.”⁵³

In the UK, it is possible that the secrecy surrounding UKSF is allowing the government to obscure a lack of good strategy in the theatres in which they are deployed. It is already difficult to get different government departments behind a shared set of goals and priorities for countries where the UK is engaged. This challenge can only be exacerbated when some of the activity is not disclosed, and the government is able to deploy military force without scrutiny or disclosure.

Box 3: Policy fratricide in Libya?

2016 sightings of UKSF in Libya suggested that anti-IS operations were carried out in conjunction with Libyan armed groups from Misrata and eastern Libya, areas that have each at times resisted the emergence of the Government of National Accord (GNA) that the UK is diplomatically supporting.⁵⁴ If UKSF have been used to support these groups to fight IS, this may have the longer-term consequence that they feel empowered to resist the very peace process the UK government publicly supports.⁵⁵

In response to reports of UKSF operating in the country, the Foreign Affairs Committee warned:

“Special Forces operations in Libya are problematic because they necessarily involve supporting individual militias associated with the GNA rather than the GNA itself, which does not directly command units on the ground. For example, British Special Forces reportedly engaged in combat to support a militia from Misrata rather than a Libyan Army unit directly commanded by the GNA....Special Forces missions are not currently subject to parliamentary or public scrutiny, which increases the danger that such operations can become detached from political objectives.”⁵⁶

After conducting interviews with a wide array of Libyans (including civil society activists, businessmen, officials, Islamist leaders, former ministers and former fighters), Alison Pargeter, a North Africa and Middle East expert, concluded in a report for the Remote Warfare Programme that there could be other long-term consequences of the UK bolstering such groups:

“By empowering certain factions in this way, such intervention not only creates tensions with other components in the conflict, but also potentially sets off more internal power struggles in place of dialogue and cooperation between groups.”⁵⁷

This is just one case where opacity may be confounding a joined-up approach to overseas conflict. External oversight could provide a better forum to discuss wider strategic goals, and may improve efforts to align different departmental interests and activities.

The risks of inaction

There are many reasons why introducing external oversight over UKSF could have positive benefits for the government. Regardless of these, there could also be negative implications of sticking to the status quo.

As the recent deaths of U.S. SOF in Niger have shown, special forces missions can and do go wrong. Acknowledging this and allowing investigations into the circumstances of failed missions is an important mechanism for learning lessons. It also means that those responsible can be held to account. The Chairman of the Joint Chiefs of Staff, General Joseph Dunford addressed this point in a press conference following the events in Niger:

“[In] this particular case we owe the families as much information as we can find out about what happened, and we owe the American people an explanation of what their men and women were doing at this particular time. And when I say that I mean, men and women in harm's way anywhere in the world - they should know what the mission is and what we're trying to accomplish when we're there.”⁵⁸

Gen. Joseph Dunford, Chairman of the Joint Chiefs of Staff

In contrast, in the UK there has been a much more closed reaction to stories of alleged UKSF malpractice that have surfaced. For example, in July 2017, *The Times* published an extensive write-up of an investigation called Operation Northmoor. Northmoor was set up in 2014 by the Royal Military Police (RMP), who originally planned to investigate 52 allegations of unlawful killings by UKSF between 2010 and 2013. It was first anticipated that the investigations would run until late 2021. However, a RMP source reportedly claimed that the MOD just wanted to “make [the scandal] go away” and avoid any details leaking to the press.⁵⁹

A senior Whitehall source suggested that “the army’s most senior generals had regarded the evidence of ‘mass executions’ emerging from Northmoor as ‘credible and extremely serious.’”⁶⁰ In February 2017 then-Secretary of State Sir Michael Fallon, however, took the decision to reduce the number of inquiries that were part of Northmoor by 90%.⁶¹ It is now understood that RMP detectives are looking into just one incident involving the killing of four family members from Helmand Province, who were shot dead by SAS operatives carrying out a night raid in February 2011.

In an evidence session in November 2017, the Chair of the House of Commons Defence Committee asked Fallon if he could say anything that would “reassure the public that, in the absence of any mechanism for parliamentary scrutiny, if anything of the nature of a war crime has been committed, it will be properly investigated, and the appropriate action will follow?” In response, Sir Michael refused to even confirm that UKSF were implicated in the investigation.

“I’m afraid, Mr Chairman, that you are making an assumption that there are special forces involved in this particular investigation. I cannot comment on whether that is or is not the case, because we simply do not comment on special forces’ activities. What I can do is to reassure you that this investigation is being conducted independently of the units concerned and independently of Ministers. It is not a process that I exercise any control over.”⁶²

Sir Michael Fallon MP, Secretary of State for Defence (2014-17)

It is in the government’s interests to avoid the scandal-driven reform that often characterises calls for greater oversight of defence and intelligence matters. In the U.S., revelations of failed and legally questionable operations abroad pushed Congress to seize

greater powers of oversight over the use of force.⁶³ One of these missions was the Black Hawk Down incident which led to the deaths of 18 U.S. SOF. This event was remembered for its brutality because the bodies of the dead were dragged through the streets of Mogadishu.⁶⁴ Another important event in U.S. history was the Iran-Contra affair, when President Ronald Reagan told a packed White House news conference that “funds derived from covert arms deals with the Islamic Republic of Iran had been diverted to buy weapons for the U.S.-backed Contra rebels in Nicaragua.”⁶⁵

In the UK, revelations in the 1980s about illegal sales of arms to Iraq during the Iran-Iraq War—which had been privately backed by the British Government—led to a growing consensus in support of the need to introduce oversight of MI6 and GCHQ.⁶⁶ In this area, it appears that the UK Government realised that a steadfast “no comment” approach in the face of increasing information about the operations of British intelligence agencies was unsustainable and counterproductive.

While initially sceptical of additional oversight and transparency, during John Major’s government many intelligence personnel were glad of the added transparency because it allowed them to do some “myth busting”—as former Director-General of MI5 Dame Stella Rimington called it.⁶⁷ Supporters of parliamentary oversight over the British intelligence agencies have set out several reasons why a system of external oversight is important:

- 1. Intelligence agencies must work effectively to ensure recipients of their intelligence analysis can be relied upon to make important decisions—the intelligence used to justify the UK’s involvement in the Iraq War was repeatedly deemed inadequate in the decade that followed the intervention.**
- 2. Oversight can be used to assess the record of intelligence agencies in their goal of defending the nation and its national security interests.**
- 3. Intelligence agencies are provided with special powers to carry out ‘intrusive surveillance’, which (as recent scandals have shown) are open to abuse and must be justified.**
- 4. A high degree of secrecy contradicts the principles of the UK’s system of liberal democracy, and therefore oversight can serve as a check on whether intelligence agencies’ activities are in keeping with UK values and law.**
- 5. Oversight of intelligence agencies’ budgets allows for an assessment of whether funds are being spent effectively and whether they are adequately resourced to defend UK national interests.⁶⁸**

It is unclear why UKSF would not benefit from the same advantages of external oversight. In the wake of stories like Operation Northmoor, it would seem prudent for the government to pre-empt future scandals and commit to a series of reforms that it could direct and control.

Assuaging known concerns

Litigation

Concerns have been raised in recent years about haranguing British service personnel “on the basis of bogus charges.”⁶⁹ Some have expressed concerns that calls to introduce external oversight of UKSF are nothing but thinly-veiled attempts to constrain their activities through litigation. However, parliamentary committees have stepped in before to protect UK forces from charges seen as excessive. A total of 3,300 allegations of abuses committed by British military personnel in Iraq were received by the Iraq Historic Allegations Team (IHAT). But the IHAT staff were challenged by the HCDC, among others, for reports claiming that law firms had been “cashing in.”⁷⁰ For example, 1,500 allegations were brought forward by one law firm alone, Public Interest Lawyers.⁷¹

This issue was raised by Johnny Mercer MP—who himself led a HCDC sub-committee inquiry on IHAT in 2016—at a February 2018 evidence session with the Secretary of State for Defence, Gavin Williamson MP. Mr Mercer asked if it was appropriate that an individual who had served in Iraq was, over the course of 14 years, investigated for the same offence eight times. In response, Mr Williamson said, “If we need to change the way we do things, I am very happy to do so, because the impact on morale and on people’s lives is absolutely devastating. That is not something that I, as Secretary of State, want to see happen or will tolerate. If there are things that I can do to improve that, I am very happy to look at every single option.”⁷²

The point of drawing on the example of IHAT is not to question the fact that service personnel should be accountable for breaches in IHL—this is obviously hugely important. Instead, this case demonstrates that external scrutiny can help to ensure that litigation remains a tool for genuine accountability. Indeed, as raised by the Chair of the HCDC Dr Julian Lewis MP, in cases like Operation Northmoor the “bulk of allegations...have come from members of our owned armed forces, NGOs and other bodies working in Afghanistan, rather than claimant lawyers.”⁷³

Full transparency

External oversight does not have to mean the same thing as “full transparency”. There will doubtless be situations where information needs to be withheld to protect the UK’s national interests, as well as to offer troops the freedom of manoeuvre and security they need to operate effectively. Many existing mechanisms—like the prohibition on ISC oversight of ongoing operational matters except on request by the Prime Minister or the voluntary provision of information by the intelligence agencies—could likely be applied to UKSF to safeguard information that is not suitable for the public domain.⁷⁴

Allowing for informed public and parliamentary discussion around the use of UKSF as part of the UK’s broader approach to defence and security does not require ‘full transparency’. It just cannot operate within the constraints of blanket opacity. A balance should be struck that ensures UKSF remain an agile and effective force.

In the UK context, this will likely mean adopting a different style of oversight than that exercised by the U.S. Congress who can be briefed in advance of special operations.⁷⁵ It will also likely be different to the Norwegian and Danish systems of putting special forces deployments to parliamentary vote in the same way as they do for the rest of their armed forces.⁷⁶ Through mutual exchange between the UKSF community and Parliament, any issues and misunderstandings should be teased out and addressed.

It is up to the UK government and Parliament to determine the mechanisms that are the most applicable to the British context when it comes to introducing external oversight over UKSF

In summary, it is up to the UK government and Parliament to determine the mechanisms that are the most applicable to the British context when it comes to introducing external oversight over UKSF. The most important takeaway from this report should be that inaction is not a good strategic option.

Thin end of the wedge

It is understandable that some people have raised concerns that relaxing the current policy of blanket opacity may be used by Parliament to demand ever-more detail on UKSF activities. However, there are some good examples from the British intelligence agencies' experience with the ISC that suggest that this need not be the case. It is also worth noting that changes in the ISC's mandate have been introduced by consensus between the PM, the intelligence agencies and the ISC, rather than reform being forced through by Parliament.

Since the 2013 Justice and Security Act (JSA), the ISC has had the legal authority to review operations on an *ex post facto* basis, as part of its scrutiny of the work of the intelligence agencies. However, before this agreement was formalised, there appears to have been an informal arrangement whereby the circumstances under which the ISC is granted oversight of operational matters was dependent on trust between the intelligence agencies and the executive.⁷⁷

Even since the JSA, evidence suggests that the executive continues to hold great sway in determining when and what the ISC can scrutinise. Operational matters "can only be considered at the request of the PM and on the condition that they are not ongoing."⁷⁸ In fulfilling this function, the Committee has established a reputation for respecting the need to protect sensitive information which is shared between it, the intelligence agencies and the Prime Minister's Office.

Learning from the UK's allies

As allies continue to strengthen their external oversight models for special forces, the UK stands alone with its blanket opacity policy. While there are challenges in comparing systems in different states with very different attitudes and cultures surrounding the use of military force, allies' ability to be more open should stand as testament to the fact that greater levels of transparency can be achieved without putting troops at undue risk or inhibiting their effectiveness.

Even France, which once echoed the UK's opaque approach to special forces, has adopted constitutional reforms that have significantly opened space for their external scrutiny. Legislative hearings with key government and military leaders—including the head of their special forces in December 2017—have allowed for discussion on the size, tasks, and resources of their special forces. Additionally, officials are increasingly sharing information with media outlets on special forces deployments, missions, and needs.

UK allies have each adopted at least one of two options for external scrutiny of the activities of their special forces. Some countries—the U.S., France, Denmark and Norway—have adopted some form of legislative scrutiny, with Denmark's system being the most expansive and France's being the most limited. Others—Australia and Canada—have adopted a policy of releasing unclassified briefings on the activities of their special forces, which can then be used by the media, the public, and their legislatures as a basis for debate.

United States

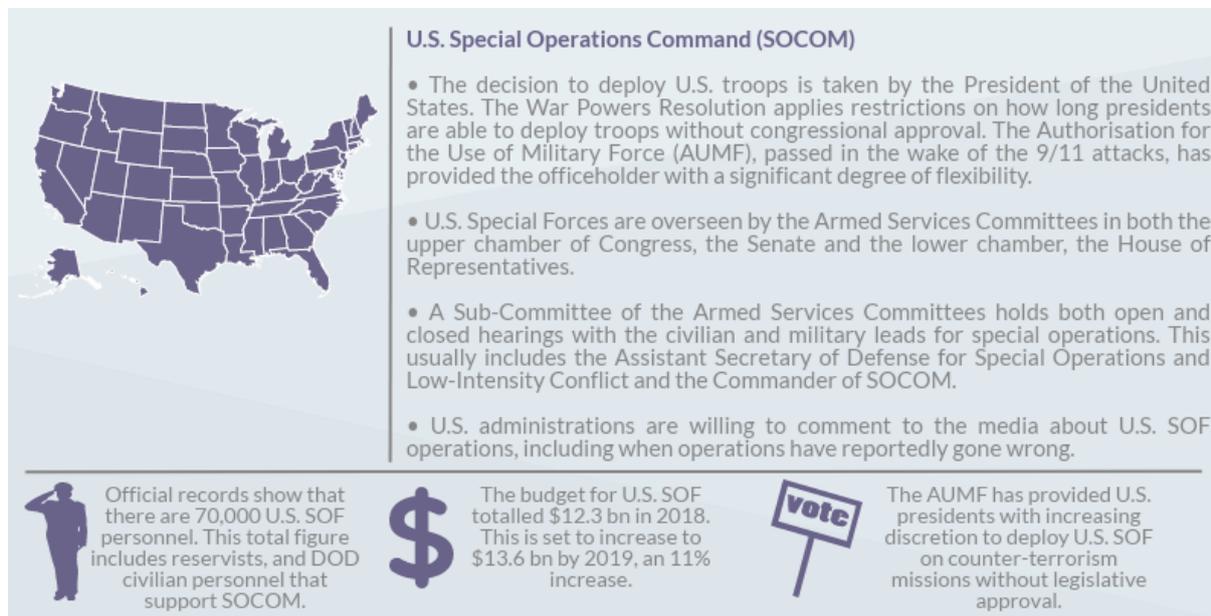


Figure 4: A summary of U.S. Congressional mechanisms for U.S. Special Operations Forces.

In David P. Auerswald's study of UK-U.S. legislative authority over matters of defence and security, he points out that the two systems have "radically different powers" over civil-military relations. Unlike the U.S. House and Senate Armed Services Committees (ASC), the HCDC does not wield the tools to directly "influence civil-military relations."⁷⁹

In comparison, the U.S. Congress sets the DOD budget; can regulate the military, either through stand-alone legislation or through the budget process; can conduct classified oversight; can subpoena witnesses to force them to testify under oath; and has comparably large staff resources that are at the disposal of the ASCs and its serving members.⁸⁰ The source of the ASCs' power lies within the U.S. Constitution—through statute and practice by which authorised Committees can hold classified hearings. Additionally, members receive frequent formal and informal briefings.⁸¹

In comparison to the HCDC, its U.S. counterparts' resources are vast. The ASCs of both the Senate and House are provided with separate large staffs that report to each party leader on the committee.⁸² All members of Congress receive top secret security clearance, as do some personal staff and most defence committee staff. This is in stark contrast with the HCDC, where even the Chair of the committee does not go through a vetting process to gain security clearance. Members of Congress also usually have at least one personal staff member who handles defence issues, an example of the U.S.' expansive foreign policy agenda and the general expertise that U.S. lawmakers are required to have on defence matters.



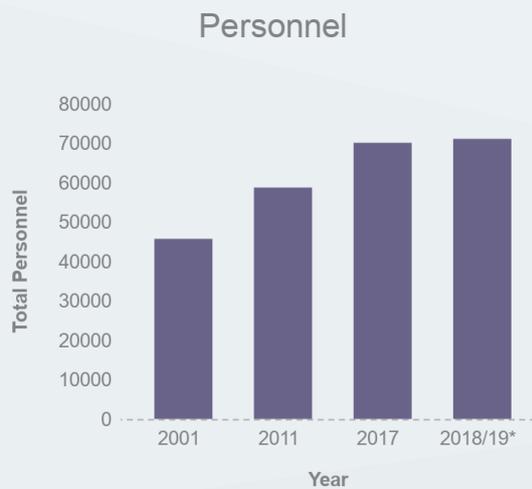
Insignia of US SOF (Image credit: united states army contributor/Wikimedia Commons).

In 2012, Congress introduced a defence bill that “mandated confidential quarterly briefings from the Pentagon, outlining counterterrorism operations and activities involving special operations forces.”⁸³ In 2017, however, Congress introduced further changes requiring monthly Pentagon briefings on U.S. SOF operations. The briefings occur before the ASC Sub-Committee on Emerging Threats and Capabilities, as the body responsible for overseeing U.S. SOF.

Attendance at these briefings is reportedly low, except on occasions when Pentagon officials come to brief members on Joint Special Operations Command (JSOC) operations.⁸⁴ The contrast in the level of information being so openly discussed with security cleared legislators and their staffers, in comparison with parliamentary select committees is stark. For example, following a 29 January 2017 raid in Yemen, in which civilians were reportedly killed, JSOC was represented by a group of officials from the Office of the Assistant Secretary of Defense for Special Operations/ Low-intensity Conflict to report to ASC members.⁸⁵

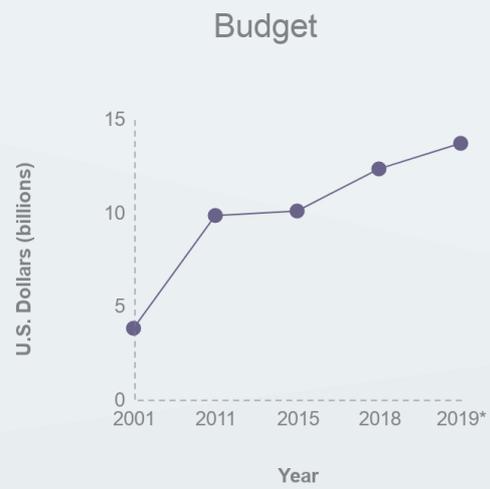
The above examples show the extent to which members of the ASC are provided with the opportunity to probe DOD officials about the overall strategic purpose of SOF. However, according to some Pentagon officials who served under Obama's administration, ASC members were not often interested in the “granular details about the way things were trending,” and only showed interest if “an operation [had gone] south and made the papers.”⁸⁶ While this illustrates that access to information alone does not create effective oversight, U.S. legislators do have an opportunity to play a role in scrutinising U.S. SOF's effectiveness and ensuring that the executive's use of U.S. SOF is understood as part of a wider strategy.

U.S. Special Operations Forces since 9/11



U.S. SOF have seen an almost 50% increase in manpower over a 14 year period.

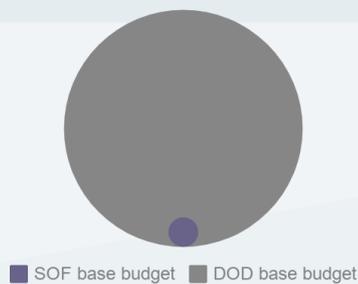
*SOCOM plan to increase total personnel to at least 71,000



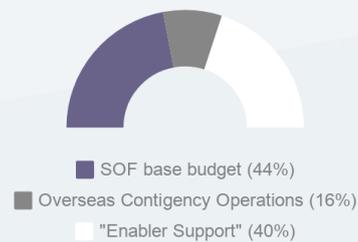
U.S. SOF have seen significant budgetary increases since 9/11.

*Figures are prospective.

A. Breakdown of U.S. SOF Budget (with DOD base budget)



B. Breakdown of U.S. SOF Budget (without DOD base budget)



Sources: Tampa Bay Times (March 2018), Defense One (January 2015)

Figure 5: Data on U.S. SOF budgets and personnel.

Denmark

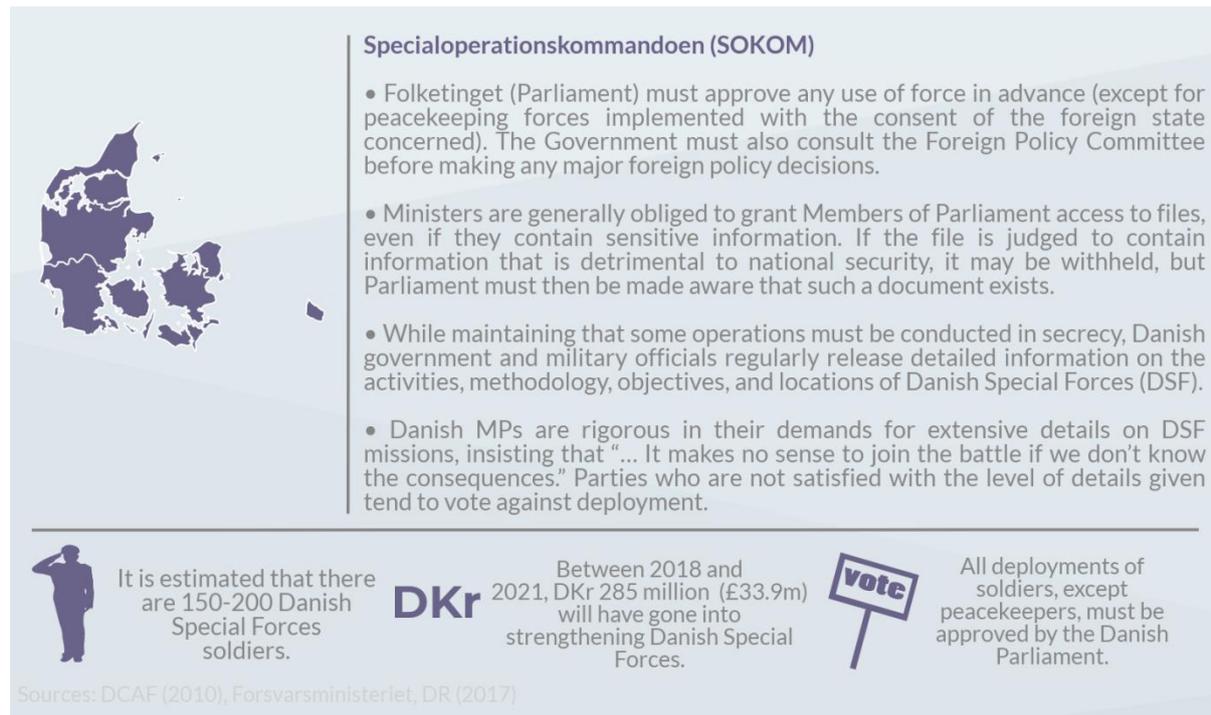


Figure 6: A summary of Danish parliamentary mechanisms for oversight of Danish Special Forces.

The Danish model of external oversight over its special forces is among the most robust of the UK's allies. Parliament must vote on any deployment of troops—including those of special forces. Parties are rigorous in their demands for details on the objectives, methods, and partners for special forces deployments and tend to vote against deployment if they do not believe they have adequate details.

Danish Special Forces (DSF) are coordinated by the Specialoperationskommandoen (SOKOM). SOKOM's annual budget is DKK 50 million per year (£5.9 million).⁸⁷ The size of DSF is not publicly declared, but it is estimated by national newspapers that there are between 150-200 soldiers.⁸⁸ A brigade of 4,000 is kept on standby to reinforce special forces at short notice.⁸⁹ The current Defence Agreement outlines that between 2018-2023, DSF personnel numbers will expand by 50%, with predictions that DSF will end up at double its 2018 size by the end of the following strategic cycle.⁹⁰ At the end of the period covered by the current Agreement, DKK 285 million (£33.9 million) will have gone into strengthening DSF.⁹¹ SOKOM is also in the process of being restructured to include the tri-national Composite Special Operations Component Command (C-SOCC), a joint command centre for Denmark, the Netherlands, and Belgium that will lead and coordinate SF task groups in small joint NATO or UN operations.⁹²

The Folketing (Danish Parliament) has to grant prior approval for any use of force against a foreign state except peacebuilding operations, which have to be approved by the Foreign Policy Committee (FPC).⁹³ If the Folketinget is not in session when a decision needs to be made, it must be immediately convened. Members of Parliament are provided with a brief before votes on proposed deployments, but parties are usually rigorous in their demands for further details. For example, there have been requests for information

on who DSF will be partnering with in theatre, and what the overall purpose of their missions will be.

Parties who are dissatisfied with the amount of detail disclosed usually publicly condemn the lack of clarity and vote against proposed deployments of DSF.⁹⁴

“We’re very, very hesitant. There are no plans for what will happen. If areas are freed, who we will be working with? These premises are very uncertain... It makes no sense to join the battle if we don’t know the consequences.”

Holger Nielsen, Defence Spokesperson for Socialistisk Folkeparti

Therefore, transparency and accountability on this topic are highly valued and can determine the nature and scope of the engagement.

The Danish Foreign Policy Committee also has a large amount of decision-making power with regards to deployments of DSF and any other decisions of “major importance to foreign policy.”⁹⁵ While the entire Parliament must vote on deployment of any non-peacekeeping troops, it is the FPC that advises the Executive on their proposal to Parliament.

While the entire Parliament may not receive details that are judged to be a threat to members of DSF or national security, the FPC receive a larger amount of information pertaining to the deployment of DSF. The information discussed in these meetings is highly confidential and not

released to the public. The 17 MPs who are permanent members, and 17 substitute MPs are all sworn to secrecy as outlined in the Constitution. It is not clear what security clearance is required to be a member of the FPC as there is a tradition that Danish prime ministers do not comment on security clearances.⁹⁶

However, ministers are generally obliged to provide Parliament with access to documents if a request for information is filed—even if it contains sensitive information. If there is a judgement that a document cannot be released for reasons of national security, the government must still inform Parliament that the document exists but cannot be shared.⁹⁷

Danish MPs can also enquire about DSF deployments in written questions and tend to receive direct answers including details on mission locations, tasks undertaken by DSF and their specific mandates. The military releases a weekly newsletter detailing the developments of Danish troops abroad, including DSF. These newsletters go into specific details on the work of DSF in mentoring and training Iraqi Security Forces, such as how far they are in their training programme, and which weapons they are training with.⁹⁸

“The Government has not proposed a clear plan for how it will manage occupied areas in Syria once they have been freed. Here we feel cautious because of experiences from the first Iraq wars and Afghanistan ... At the same time, the situation in Syria is – mildly speaking – unclear...”

Martin Lidegaard, Foreign policy Spokesperson for Radikale Venstre

Norway

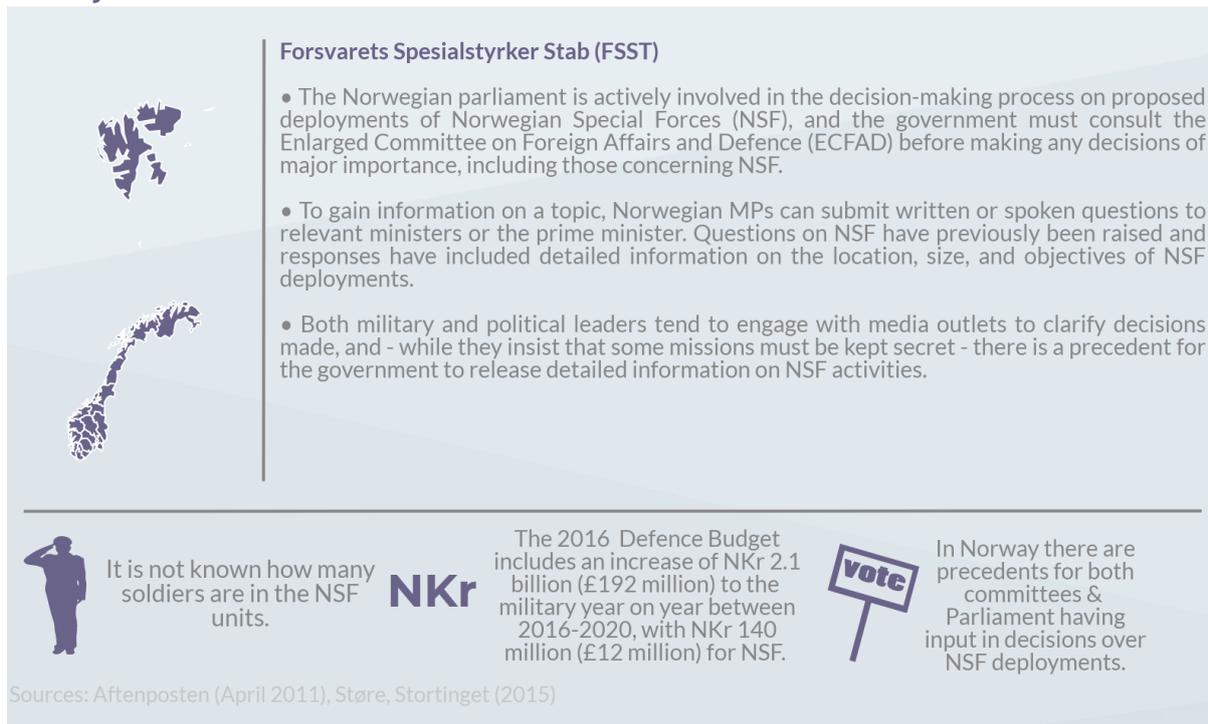


Figure 7: A summary of Norwegian parliamentary mechanisms for oversight of Norwegian Special Forces.

The Norwegian Special Forces (NSF) are coordinated by Forsvarets Spesialstyrker (NFSK).⁹⁹ It is not known how many soldiers are in the NSF units. Norway is the first NATO country to have equal conscription for women and men, and one of the NSF units consists exclusively of women.¹⁰⁰ The Long-Term Defence Budget adopted in 2016 outlines an increase of NKR 2.1 billion (£192 million) to the military year-on-year between 2016-2020, with NKR140 million (£12 million) of this going to one of the Special Forces units¹⁰¹. This is part of a plan to add NKR 165 billion (£15 billion) to the Norwegian Armed Forces over the next 20 years.¹⁰² With the additions outlined above, Norway’s Defence budget for 2017 was NKR51 billion (£4.6 billion).¹⁰³

According to the Norwegian Constitution, the Storting (Norwegian Parliament) must consent to deployment of troops outside of Norway, except in the case of conscripted soldiers between the ages of 19-33.¹⁰⁴ Conscripted soldiers are not usually deployed internationally, although in rare circumstances (such as a war being declared against Norway) they may volunteer to be deployed abroad. The size of the armed forces may not be increased or reduced without consent of the Storting.

In accordance with the constitution, parliamentary committees have been involved in the decision-making around Special Forces. As an example, in June 2016 the Enlarged Committee for Foreign Affairs and Defence (ECFAD) authorised NSF to enter Syrian territory, and in 2008 Storting rejected a motion to allow Norwegian Special Forces to be deployed to Afghanistan.¹⁰⁵

However, there appears to be some constitutional ambiguity on whether Parliament should be involved in decisions covering all military deployments—including NSF deployments. This stems from a decision in 2011 when the government authorised six F-16s and approximately 100 general support staff to deploy to Libya. The decision was made based on consensus among the relevant ministers and party leaders expressed over

According to the Norwegian Constitution, the Storting (Norwegian Parliament) must consent to deployment of troops outside of Norway

phone calls—no formal meetings in the Storting or the Enlarged Committee on Foreign Affairs and Defence (ECFAD) took place until 2 days later.¹⁰⁶

After the process drew criticism from media outlets and the general public, government officials engaged widely with the media to clarify that the decision had been made in haste because of time pressure of the engagement, which was triggered by a UN resolution.¹⁰⁷ While this was not specifically a deployment of NSF, it does raise questions on the consistency of parliamentary involvement in decision-making on military deployments.

In Norway, there are two committees of importance—the Standing Committee on Foreign Affairs and Defence (SCFAD), and the Enlarged Committee on Foreign Affairs and Defence (ECFAD)—which have significant decision-making power over the activities of the armed forces. SCFAD consists of 16 members and the distribution of party members is proportional to overall distribution in Parliament. SCFAD’s primary role is to prepare matters that will be deliberated by the Storting. Recommendations of standing committees generally determine the outcome of a vote in the Storting, as Norwegian MPs tend to follow the vote of their party members represented in the committee.¹⁰⁸

The ECFAD consists of the 16 members of the SCFAD, the President of the Storting, and the leaders of all political parties represented in the Storting. Unlike the Standing Committee, the Extended Committee’s role is to discuss foreign affairs and defence matters with the government, before any decisions are made. As such, ECFAD does not make suggestions to the legislature, but instead advises the Executive.¹⁰⁹ The government is required to consult ECFAD when making any decision of importance to foreign relations. If they wish, ECFAD can also directly address the legislature by providing recommendations on military deployments. Meetings of the ECFAD are confidential, and the Chair may even decide to keep summons to the meetings secret. Documents classified as restricted or confidential may not be taken out of committee rooms.¹¹⁰

However, there appears to be some constitutional ambiguity on whether the Storting should be involved in decisions covering all military deployments—including NSF deployments



Norwegian Special Forces (Image credit: Lance Cpl Sullivan Laramie/Wikimedia Commons).

Finally, Norwegian MPs can submit questions of two relevant types to government: 1) oral questions during question time and 2) written questions. The weekly question time is split in two: in the first, MPs may ask questions of government ministers, who are not aware of what questions will be asked in advance. The government decides which ministers will represent it at question time, although the Prime Minister (PM) is required to represent the government at one session per month. In the second half of the question time, the ministers representing the government or PM answer questions they have received in advance.¹¹¹

Written questions are not debated in Parliament: instead they are submitted to ministers, who must respond within 6 days. The topic of Special Forces has previously been raised in both forms of questions. The Prime Minister or relevant government Minister tend to answer in some detail. For example, in November 2014, Prime Minister Erna Solberg clarified that the NSF unit in Baghdad consisted of 50-60 personnel who were applying their experiences from Kabul to train Iraqi security forces.¹¹²

France

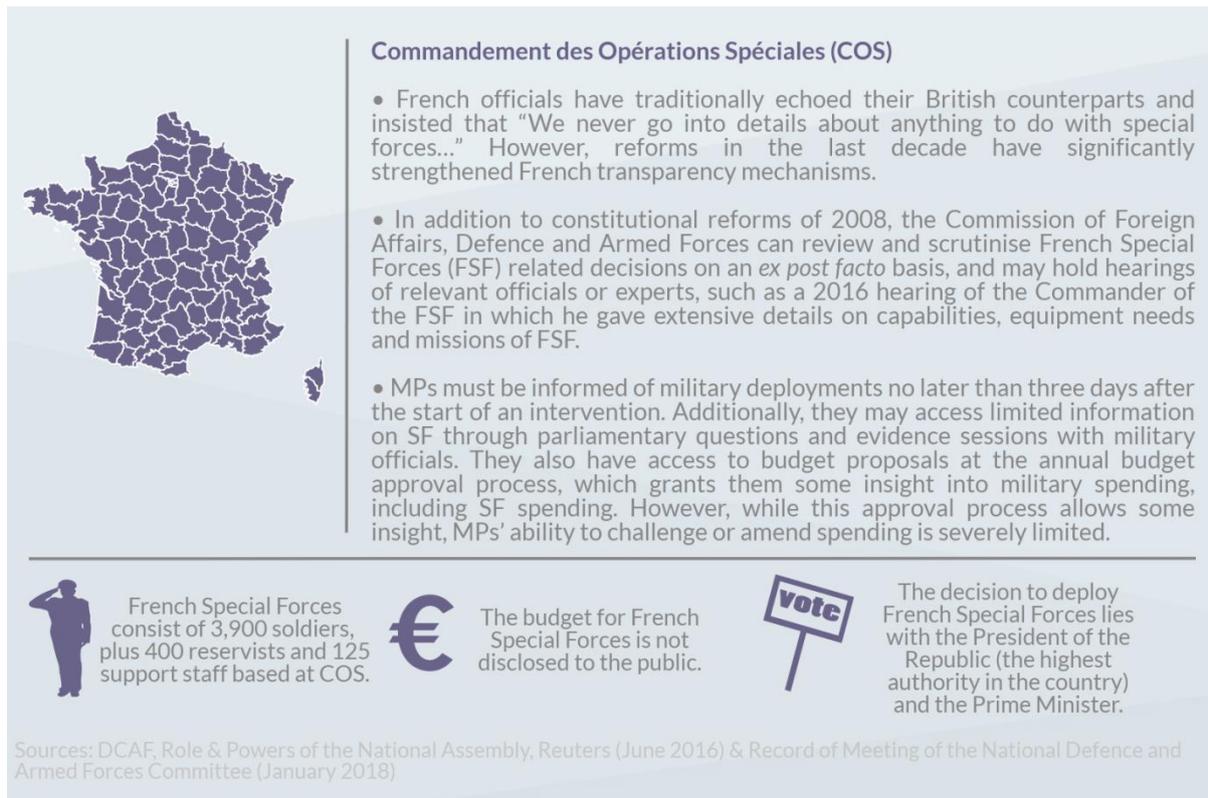


Figure 8: A summary of French parliamentary mechanism for oversight of French Special Forces.

The French Special Forces (FSF) are jointly coordinated by the Commandement des Opérations Spéciales (COS), which has 125 staff members.¹¹³ FSF consists of 3,900 soldiers, with an additional 400 reservists.¹¹⁴ While the FSF budget is not released to the public, French MPs annually review and approve the national budget which inherently include military and FSF budgets.¹¹⁵ This review is a chance for the French Parliament to gain insight into the government’s defence and security policy, but the MP’s ability to challenge aspects of the budget and to suggest amendments is severely restricted. In 2013, for example, amendments represented less than 0.1% of the total budget.¹¹⁶



Brig. Gen. Gregoire de Saint-Quentin with Lord Hague, Former UK Foreign Secretary in 2013 (Image credit: Foreign and Commonwealth Office/Wikimedia Commons).

The Commission of Foreign Affairs, Defence and Armed Forces (CFADAF) is the relevant standing committee to monitor FSF activity. While CFADAF does not vote on the deployment of FSF or get involved in decision-making for specific missions, it can review and propose amendments on defence bills and can scrutinize FSF-related decisions in hindsight through hearings of members of government, military officials, professional organisations and/or any specifically qualified individuals. Some of these hearings are open to the press and to the public.¹¹⁷

In connection to such hearings, committees may demand information, including access to documentation, from the government and the relevant ministers. These hearings may cover details of FSF missions, or—as seen in a June 2016 hearing with the Commander of Special Operations—may reveal details on the equipment utilized by the Special Forces and some of its equipment needs.¹¹⁸ A second significant committee in France is the Finance Committee, which has some power in that it examines the annual budget, including the defence budget, proposed by the government, before it is passed to Parliament for approval.¹¹⁹



French National Assembly, (Image credit: Wikimedia Commons).

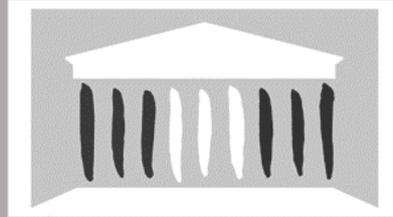
Until 2008, there was no obligation for the President or Prime Minister to inform the National Assembly or Senate about military deployments. However, with constitutional amendments adopted in 2008, the government must now inform the French legislature of its decision to involve the armed forces abroad no later than three days after the start of the intervention, and it must specify the mission objectives.¹²⁰ Parliament may debate the information they have received, but there is no subsequent vote. Another 2008 amendment specifies that there must be legislative authorisation of the extension of external operations when they exceed 4 months.¹²¹ However, actions “*militaires non officielles*,” which include operations by FSF, continue to take place in several arenas without approval or disclosure.¹²²

However, in other areas transparency over FSF appears to be improving. For example, in 2017 the French military made recruitment for the Air Force branch of FSF public and began promoting their work.¹²³ In connection with this, they have released information on the types of roles FSF may undertake, the weapons and machinery they work with, and the size and capabilities of COS.¹²⁴

In addition to the June 2016 hearing with a commander of the FSF, in December 2017 another commander, Admiral Laurent Isnard, was called to give open evidence to MPs represented in the *Assemblée Nationale* about FSF resourcing, recruitment, and past

operations. He responded to questions about equipment, overstretch, and the evolving strategy of France's enemies, and the full transcript was published online within a month, as is the usual practice for other French legislative committees.¹²⁵

Box 4: the French system of legislative oversight



At a June 2016 hearing of the Commission of Foreign Affairs, Defence and Armed Forces, the Commander of French Special Forces (FSF), Brigadier-General Gregoire de Saint-Quentin, was called to give open evidence about the role and capacity of FSF. In response to a question from **French MP Charles de La Verpilliere** asking if the Commander could describe some typical operations conducted by FSF, **Gen. Saint-Quentin** responded:

“There are really no “typical” operations: special forces can be used for a range of operations, from the lightest and most discreet, to the heaviest...An operation such as [Opération] Sabre [the name of FSF operations in West Africa] always starts with an intelligence phase. It is often said that special forces do not “hold” the ground: that is correct, for the good reason that it is not their role. We seek first to understand the organisation of the enemy, so as to optimise our leverage... Once you have solid information, you have a mission preparation phase, which assumes an even greater degree of certainty about your objectives and context. Finally comes the time of the action, and all means of action can be considered... Today, [French Special Forces] play a major role in our defence system.”¹²⁶

Policy options for external oversight of UKSF

Option 1: Expand the mandate of the ISC to cover UKSF

Summary

Expand mandate of the ISC to cover oversight of UK Special Forces (UKSF) activity on an ex post facto basis.

ISC members would be provided with details on the expenditure, administration and policy related to the UK government's use of UKSF. Disclosure surrounding individual operations would remain at the PM's discretion.

Changes	Challenges
<ul style="list-style-type: none"> • Reduces the risks that UKSF are selected for deployment for purposes of political expediency rather than being judged the best tool for the job. • Allows the ISC to examine UKSF strategy without needing ex ante access to operational details. • Committee members would have the opportunity to question the Director of Special Forces, giving ISC members a better understanding of how Parliament can support UKSF. • Establishes a single oversight body that can scrutinise major security and intelligence matters, including covert military operations (post facto, and only if approved by government). 	<ul style="list-style-type: none"> • ISC may require an increased budget and payroll to fulfil expanded mandate. • The JSA may have to be amended to place their expanded mandate on a statutory footing, which would require the support of government and Parliament. • Not being able to oversee operational detail could potentially undermine the Committee's credibility. <h3 style="text-align: center; margin: 10px 0;">Unanswered Questions</h3> <ul style="list-style-type: none"> • Can the ISC be provided with additional resources without legislation? • Would changes made to the ISC's mandate, and/ or resourcing, have to be approved by Parliament? (Since the JSA was introduced, primary responsibility for resourcing has rested with Parliament, while an amendment to the JSA inserted a provision which allowed a Minister of the Crown a) "make payments to either House of Parliament relating to any expenditure incurred by the ISC, or b) provide staff, accommodation or other resources, either directly to the ISC or via Parliament). • Would it be more appropriate if oversight of UKSF was conducted through a sub-committee of the ISC?

Sources: Parliament of Australia Research Paper

Figure 9: A summary of policy recommendation option 1.

In December 2017 the Chair of the ISC, the Rt. Hon. Dominic Grieve MP, was quoted in *The Sunday Times* stating that he believed “in a modern democracy, having areas of state activity that are not subject to any scrutiny at all by Parliament is not a very good place to be,” he added that if “there was a desire for [the ISC] to look at special forces, then this committee would probably be in a position to do it.”¹²⁷

One advantage of handing UKSF oversight to the ISC is that the committee has developed a trusting relationship with the intelligence agencies and the executive, which has helped establish itself as a reputable overseer of the UK's intelligence and security policy. In addition, the ISC is traditionally the body that handles topics of a particularly sensitive nature that might otherwise sit under other committees. For example, MI6, MI5 and Defence Intelligence (DI) fall under the remit of the Foreign & Commonwealth Office, the Home Office and the Ministry of Defence, respectively.

Historically, the membership of the ISC has been made up of senior parliamentarians with prior experience with intelligence and security issues (each of whom is subject to Section

1(1)(b) of the Official Secrets Act 1989 and are provided with access to highly classified material to carry out their duties)¹²⁸. These are drawn from both the House of Commons and the House of Lords, which means the ISC operates much like a Joint Committee of Parliament.¹²⁹ Moreover, ISC members have often served in government, indeed 23 out of 39 parliamentarians who sat on the Committee prior to 2015 had previously held ministerial office with broad experience serving at the Foreign and Commonwealth Office (FCO), MOD, Home Office and Northern Ireland Office.¹³⁰

The ISC also benefits from being able to draw from the experience of members who have served in the military—a useful attribute if UKSF were brought under their mandate. This mirrors the U.S. Armed Services Committees which have also been well represented by members with a military service record—the most obvious example being the Chair of SASC, Senator John McCain.

The fact that members of the ISC are likely to be familiar with intelligence and security issues means they start from a good position in terms of understanding how to appropriately handle sensitive information.¹³¹ However, one former member of the ISC, themselves a former Home Office Minister, suggested that while it made sense to do this to an extent, it “could be problematic as [ISC members] could be too empathetic to the [Intelligence] Agencies.”¹³² However, another former ISC member commented that drawing from parliamentarians with backgrounds in the above departments mitigated against appointing someone who was “a risk” and would lead the [intelligence agencies] to “just go schtum.”¹³³ This reflects a broader concern that has dogged the ISC in terms of its effectiveness as an oversight body: its proximity to government and ability to provide objective scrutiny.¹³⁴ The *perception* of bias can have as great an impact on the reputability of the ISC’s reporting even if *actual* bias is not particularly prevalent within the ISC’s reporting.¹³⁵

Many of the limitations found within the ISC’s reporting is a result of its historically narrow mandate, and not the Committee’s published reporting. While it currently has the authority to scrutinise the activities of the “intelligence and security community,” which extends their remit beyond the intelligence agencies alone, its authority to oversee “any other activities of the government with respect to security matters” must be set out in its Memorandum of Understanding (MoU), “mutually agreed between the prime minister and the ISC.”¹³⁶ Therefore, introducing ISC oversight of UKSF would likely require a revision of its current MoU.

Option 2: Allow a Reformed HCDC to Scrutinise UKSF

Summary

Security clear the HCDC and FAC/ subcommittee of the HCDC and/or FAC and provide them with access to classified material.

HCDC/ a subcommittee of HCDC would receive an expanded mandate to oversee UK Special Forces (UKSF). Members of the Committees would have the mandate to examine the policy, administration and expenditure related to UKSF activities.

Changes

- Reduces the risks that UKSF are selected for deployment for purposes of political expediency rather than because they are judged to be the best tool for the job.
- It allows the HCDC to examine UKSF strategy without needing access to operational details.

Challenges

- Uncertain if every member of the HCDC could be security cleared.
- Presupposes a higher level of confidence in the handling of classified information given to the HCDC.
- Could invite demands from other select committees, such as the Home Affairs Select Committee, overseeing departments that have a link to security services such as MI5.
- By spreading scrutiny of SF across House of Commons Select Committees may reduce the likelihood that parliamentarians build enough area-specific expertise to scrutinise UKSF effectively.

Unanswered Questions

- Could a parliamentary committee receive an expanded mandate without amending Standing Order No. 152?
- Is there an appropriate location in Parliament that can be used for holding classified meetings on SF activities?
- Should MPs (and their staff) elected to HCDC be provided with security clearance to foster greater trust between the MOD and the committee?

Figure 10: A summary of policy recommendation option 2.

A longer-term trajectory may be to improve the capacity and experience of HCDC to deal with classified or sensitive information. This would mean bringing it more into line with its American counterparts—whose membership is security cleared, the resources of the committees are much greater, and the expertise in defence and security is much stronger.

At the moment, the relationship between the Committee and the MoD is unequal and often “appears adversarial.”¹³⁷ In an analysis of Select Committees in the 2010-15 Parliament, Ian Marsh writes that the “Defence Committee’s fraught relations with certain ministers” eventually led to “one secretary of state...[preventing] civil servants from speaking to the HCDC, except with formal permission from ministers.”¹³⁸ In his view, this was a clear “benchmark [for] poor practice.”¹³⁹ The extent of the MOD’s reticence over disclosing information outside its concrete walls is demonstrated by parliamentary “legend” that “even the [MOD] canteen menu is classified as ‘Advice to Ministers.’”

It is worth stating, however, that battles “over the release of information and its classification” have been the root of most of the clashes between the HCDC and government, rather than “major confrontations” with the MoD over specific documents.¹⁴⁰ It was “not usually a case of information being refused as of questions not being answered fully.”¹⁴¹ However, beyond this façade, “the goals of both—although not

congruent—are quite similar.” For example, “both strive to get the best defence at an affordable cost.”¹⁴² This has been demonstrated recently by threats from a Senior MOD minister resigning over proposed cuts to the size of the British Army¹⁴³ and efforts by members of the HCDC lobbying the HM Treasury to increase spending on defence.¹⁴⁴ However, this also illustrates the HCDC’s weakness in directly influencing government decision-making beyond applying pressure to achieve positive policy outcomes.

The HCDC, in comparison with legislatures of other states, is best described as a “committee of inquiry” with little power to directly influence government decision-making.¹⁴⁵ Not only does the HCDC not have the mandate assigned to the U.S. Congress, but without additional resources it would struggle to fulfil its responsibilities even if they were expanded through reform. Outside the UK-U.S. comparison, Bruce George (a former Chair of the HCDC) identifies several other countries with similar constitutional models to the UK where they have greater input in the legislative process: setting budgets; confirming appointments; and ratifying treaties.¹⁴⁶

Staff members on the Committee are not provided with clearance by virtue of [their] position as Defence Committee Staff. This means that HCDC staffers are not necessarily in a better position to other committee staff members when it comes to getting access to official government documents. Being on the Privy Council also does not necessarily provide its members with access to classified documents. Instead, Privy Council terms are usually used by the government to share sensitive information with senior members of opposition parties. However, there are no security clearance procedures in place for those being received by the Privy Council. This means a chair of a committee who is also a member of the Privy Council, would not have an advantage over a committee chair who is *not* a member of the Privy Council when it comes to accessing sensitive information.

One criticism levelled at the Westminster model of government in the context of parliamentary select committees is the inevitable convergence that exists as a result of the fusion of both the legislative and executive branches of government. This has led some to argue that committees will always possess an inherent bias.¹⁴⁷ The U.S. President does not wield the same influence over U.S. legislators from his/her respective party in comparison with the executive branch in the UK Parliament (it is for this reason that comparing UK practices directly with the U.S. can sometimes prove problematic). Nevertheless, select committees have proven capable of providing unbiased scrutiny of government departments. The HCDC is no exception.

In recent years, the HCDC has played a crucial role in the SDSR, which customarily takes place at the beginning of every new Parliament. These contributions, however, are not always regarded as positive. Nick Ritchie—who usually regards HCDC reports to be “high-quality, balanced, and unafraid to challenge government practices and narratives”—calls the Committee out for a series of reports on the government’s 2015 SDSR that he argues rested on “unsupported assertions and reflect[ed] a narrow, militaristic view of security” without challenging conventional modes of thinking.¹⁴⁸ Nevertheless, since its inception, the HCDC has “gained a reputation for its low level of political partisanship,” while being unafraid to offer “blunt criticism of [MoD] actions.”¹⁴⁹

Key Questions to be addressed:

- **One:** if the HCDC was given greater access to classified material should MPs—much like U.S. legislators—be security cleared (along with their staff) if they hope to sit on the HCDC?
- **Two:** is it possible that a “clean room” can be set up in Parliament for sensitive closed-door inquiries, and if not currently, should this be considered as part of the renovation plans for the parliamentary estate?

Additional recommendation: Relaxing the “No Comment” Policy

Summary

Relax the “no comment” policy to allow the government to release unclassified briefings on UK Special Forces.

Parliamentary access to information on UKSF would be managed through the release of official unclassified briefings.

Changes

- Committees, like the FAC and HCDC, will be able to improve their understanding of UK defence and foreign policy by including basic information on UKSF, where the government has provided relevant information.
- Broader analysis of UKSF strategy could be carried out by allowing different policy focused committees, for example, the FAC, to assess UKSF’s effectiveness as part of the UK’s wider role as an instrument of its defence and foreign policy.

Challenges

- The information provided in unclassified briefings could preclude rigorous analyses on UKSF effectiveness.
- Information will likely be shared with the committees on an ad hoc basis.
- This could lead to increased competition between parliamentary committees, vying for access to unclassified documents they feel is relevant to their committee’s remit.
- Spreading scrutiny of SF across House of Commons Select Committees may reduce the likelihood that parliamentarians can build enough area-specific expertise to effectively scrutinise UKSF.

Unanswered Questions

- Would this require the Freedom of Information Act to be amended to allow the government to formally comment on UKSF?
- Will the government be required to devise a framework for distinguishing between strategic and tactical information.

Figure 11: A summary of our additional recommendation to relax the UK’s “no comment” policy towards UKSF.

While the UK public and Parliament appear quite used to the existing “no comment” policy that surrounds UKSF, our research has shown that blanket opacity is not the norm among Britain’s allies. For example, it is not unusual for official spokespeople from the American, Australian, and Canadian administrations to publicly announce details of SOF deployments.¹⁵⁰ This provides reporters, and the general public, with an important opportunity to question government strategy and debate the implications of their involvement in conflicts overseas.

In October 2015, President Obama announced that he had authorised the first sustained deployment of Special Forces to Syria. He reported that they would number fewer than 50 personnel and were being deployed to strengthen anti-IS forces. The statement came by way of an official spokesperson, who defended the move against accusations of mission creep from the media audience and insisted that this did not mean that Obama’s strategy to avoid putting combat troops in Syria had fundamentally changed.¹⁵¹

In November 2015, Canadian Prime Minister Justin Trudeau gave a press conference where he discussed increasing Canada’s contingent of 69 SOF trainers in Iraq. While the Department of National Defence refuses to discuss operational details, it confirmed at the time that Canada’s Special Forces in Iraq were operating under a mandate that allowed them to accompany Kurdish forces up to and across front lines and into battle.¹⁵²

In a later statement, Trudeau estimated that only around 20% of Special Force activity in Iraq happens in forward positions close to the front lines, and that the remaining 80% consists of training—a comment that was echoed by the head of Canada's Special Operations Forces Command, Brigadier-General Michael Rouleau.¹⁵³

In November 2015, then-Australian Prime Minister Tony Abbott announced that 200 Special Forces members had been cleared to deploy to Iraq, where they would begin to advise and assist local security forces in the fight against IS.¹⁵⁴ This was followed, in April 2016, by the announcement that the Australian Defence Inspector General had begun an investigation into the internal culture of the Special Forces.

The Australian Chief of Army, Lieutenant-General Angus Campbell, agreed to a wide-ranging independent review following a period of high-intensity Australian Special Forces deployments in the post-September 11 period. In particular, their deployment to Afghanistan between 2005 and 2013 has given rise to stories of unlawful behavior and civilian casualties.¹⁵⁵

In Denmark, even lower-level personnel are cleared to speak to the media about their operations. For example, a platoon commander responded to questions by the Danish media that during DSF deployment in the Helmand Province, 40-70 people had been killed, and the 12 Taliban leaders who had been targets of the Danish efforts had escaped.¹⁵⁶

In February 2017, three Norwegian SF commanders in Afghanistan talked openly about the fact that they were finding themselves in active fighting more often than planned and gave details on specific missions and their outcomes. This included providing combat support during an attack on the Russian embassy in Kabul, in which 21 Afghan SF were injured.¹⁵⁷ The Norwegian Foreign Minister gave comments to the same article on the high quality of work by the NSF.¹⁵⁸

Even in France, known historically for a more restrictive approach to announcing SOF operations in comparison with many of the UK's other allies, officially announced a presence in Libya in July 2016 following the deaths of three soldiers.¹⁵⁹ In October 2016, a French spokesperson confirmed that a booby-trapped drone had injured two members of its Special Forces in Erbil, Iraq.¹⁶⁰

While not every deployment of special forces is announced, the policy of providing official, unclassified briefings on selective activities is an indication that there is nevertheless the expectation that the public should be kept as informed as possible, and that debate on special forces' actions abroad should not be unreasonably restricted.



GCHQ (Image credit: Ministry of Defence/Wikimedia Commons).

Similarly, heads of the British intelligence agencies are starting to realise the reputational benefits of being more public facing.¹⁶¹ For example, Andrew Parker, Director General of MI5, engaged in interviews with *BBC Today* and *The Guardian* to defend the Investigatory Powers Bill.¹⁶² Sir John Sawers, former Chief of the Secret Intelligence Service (MI6), also said in an interview with the *Economist* in 2014 that “it is important that people understand a bit more about why intelligence is necessary.”¹⁶³ Director of GCHQ, Robert Hannigan, wrote an opinion piece for the *Financial Times*, in which he stated: “For our part, [intelligence agencies] such as GCHQ need to enter the public debate about privacy...We need to show how we are accountable for the data we use to protect people.”¹⁶⁴

As the UK’s responses to global insecurity increasingly rely on UKSF and other covert means of engaging in warfare, the release of more unclassified official statements on SF activity would help ensure that public debate and parliamentary scrutiny of UK military action overseas is not unreasonably restricted.

Conclusions

Currently, UKSF are the only part of the British defence and intelligence community that are not subject to parliamentary scrutiny of any kind. Instead, the government has adopted a “no comment” policy which prevents public discussion about their role in UK defence and security strategy.

Transparency and accountability are important to increase public trust in British actions abroad. However, external oversight also plays an important part in making sure that government decisions are strategic as well as publicly defensible. The current opacity policy towards UKSF is unsustainable in a modern climate of parliamentary scrutiny over the use of force, and in an information age that has eroded government control over access to information.

While there are undoubtedly many aspects of UKSF activity that cannot be made public, the precedent of parliamentary scrutiny of the intelligence agencies suggests that there are still viable options for consideration. While the government may be uncomfortable with proposals that would relinquish their control over information pertaining to UKSF, it would be better to be proactive rather than waiting for pressure to mount further.

The experience of the intelligence agencies shows that change may ultimately be taken out of the government’s hands if it waits for a scandal to drive reforms.

It is ultimately for the government and for Parliament to decide what model would work best for external oversight over UKSF. However, our research suggests that expanding the mandate of the ISC to include oversight of UKSF may be the most viable option in the short-term, but that with reform HCDC could make a viable long-term option.

In addition, there are areas of special forces activity that the UK’s allies find themselves able to talk about publicly. We suggest that the government examines its current “no comment” policy so that it can better communicate its narrative of UK military engagement overseas.

Finally, conversations about the external oversight of UKSF should be part of a broader debate about how to improve government strategy when it comes to dealing with the complex security challenges that face the UK and its allies. External oversight is just one answer, and we look forward to the rest of the discussion.

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