

PREPMUN 2019

HOUSE
OF COMMONS OF THE
UNITED KINGDOM
STUDY GUIDE





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WELCOME LETTER FROM THE DAIS

Dear Members of Parliament,

The Dais welcomes you to the House of Commons. This council is a unique addition to this year's conference that seeks to explore the inner workings of the Lower House of the United Kingdom. The House of Commons traces its roots to the conclusion of the Magna Carta in 1215. From then on, a series of compromises between the King and the landowning classes eventually led to the creation and growth of the English Parliament - and with it, the Commons. The Commons now serve an instrumental legislative role in the governance of the United Kingdom, exemplifying how one of the World's oldest democracies has been maintained through cooperation at the highest level among its very diverse interests.

The often conflicting ideologies among the various political parties in the Commons make it unlikely that a government may go forth implementing policies without consequential opposition. Further, recent developments in UK politics have engendered an atmosphere of unprecedented tension in the House that may run counter to the spirit of compromise. In these polarised times, it may be rather optimistic to envision Members overcoming such material rifts through constructive debate, strategies and apt diplomacy as has been done in the Commons on innumerable occasions in the past. Regardless, the Dais wishes that Members see these as ideals worth striving for. It is our hope that the House develops constructive solutions to the issues it is presented, through examining the many intricacies that such matters entail.

If you have any queries, do feel free to contact the dais at hoc.prepmun@gmail.com.

We look forward to your active participation at PREPMUN 2019!

Regards,
Joshua Tan, Teoh Ning and Min Sitt Hman
Dais of the House of Commons of the United Kingdom



DAIS INTRODUCTION

Joshua Tan

Joshua Tan is a Year 6 student at NUS High, awaiting graduation and National Service. He still wonders why despite his amazing 20-MUN (and counting) experience, he has not retired from the circuit. While not settling the academic matters of the various MUNs he partakes in, he indulges in watching anime, Netflix and planking while watching educational videos on history. Joshua also enjoys reading up on the exhilarating US politics and partaking in JoJo memes. He hopes that all MPs will simulate the House of Commons to the best of their abilities and leave with an educational experience.

Teoh Ning

Ning is a freshly-graduated student from Raffles Girls' School. She is a person full of contradictions, whose interest in theatre and love for history conflict with the science subjects she studies - what she used to study, anyway. Although she is often mocked for her rather short stature (her blazer was once deemed by her council as fitting for a primary school student), she firmly believes that good things come in small packages. Outside of school, she can commonly be found emptying her wallet or participating in her all-time favourite activity: taking 3 hour afternoon naps. She hopes that MPs will be able to leave from the 4-day experience at the House of Commons with long-lasting memories.

Min Sitt Hman

Min Sitt is a Year 4 student at Raffles Institution. Often, he would attempt to make himself cultured but is really just another dilettante. When not listening to a mouldy Spotify playlist or researching on really important questions (why does "cow" refer to the animal but "beef" to the meat???), he is either working diligently on your study guide or scrolling deeper down the abyss of ironic comedy. He is glad to chair a special council and hopes to make delegates' experience as special as possible.



INTRODUCTION TO THE COMMITTEE

House of Commons of the United Kingdom (HOC)

The United Kingdom of Great Britain and Northern Ireland ('the UK') is a sovereign state consisting of four constituent countries, each with separate devolved legislative bodies: England, Wales, Scotland and Northern Ireland.¹

'Great Britain' refers to the whole of England, Scotland and Wales in combination, albeit excluding Northern Ireland ('Britain' may be used informally to refer to the UK).²

The legislature of the UK has three separate bodies - the Monarch, the House of Lords, and the House of Commons. The Honourable the Commons of the UK of Great Britain and Northern Ireland in Parliament assembled (the 'House of Commons', or alternatively, 'the Commons') serves as the Lower House of the Parliament of the UK ('Parliament' or 'Westminster'). Besides the Commons, Parliament further consists of the House of Lords ('the Lords') and the Queen-in-Parliament. The House of Commons in fact did not undertake ministerial responsibilities until the 19th Century and remains dually accountable to the House of Lords and the ballot.³

The Commons serves to debate issues that are most relevant to UK citizens and to pass bills that are representative of their interests. These bills have to be approved by the Lords, who serve as a check on the Commons' powers. After a bill is approved by both Houses of Parliament, the prepared bill goes to the Queen for royal assent. No monarch has withheld royal assent since Anne, Queen of Great Britain, did so in 1708.

As of October 2019, The Conservative Party forms a minority government, meaning to say they form the Cabinet, but do not have a simple majority in the House. The Labour Party, being the Official Opposition, forms the 'Shadow Cabinet' that scrutinises the Government. Other Opposition parties represent their own unique interests as well - notably, the Scottish National Party (SNP) and the Democratic Unionist Party (DUP).⁴ For example, the SNP is generally supportive of devolution in line with the Scottish government's interests, whereas the DUP generally represents Irish Unionist sentiments.

¹ "United Kingdom | History, Geography, Facts, & Points of Interest | Britannica.Com." n.d. Accessed October 11, 2019. <https://www.britannica.com/place/United-Kingdom>.

² Ibid.

³ Ibid.

⁴ "Current State of the Parties." n.d. UK Parliament. Accessed October 11, 2019. <https://www.parliament.uk/mps-lords-and-offices/mps/current-state-of-the-parties/>.



Special Rules of Procedure (ROP)

As the House of Commons is a parliamentary body, the proceedings of the council deviate from the regular rules of Model United Nations (MUN) committees.

First, the Presiding Officer of the House is the *Speaker* instead of the *Chairperson*.⁵ The Speaker performs a role similar to that of the Chairperson in MUN councils; he/she is responsible for moderating the debate and must be politically impartial.

Instead of *yield/s* during speeches in the GSL and open debate, MPs must now request for the speaking MP to **“give way”**. Hence, if MPs wish to interrupt the speaking MP, whether to ask a question or make a follow-up speech, they must raise their placards and exclaim, “*give way*”. Speaking MPs can choose whether to allow some time for interrupting MPs to speak, whereupon the floor will be returned to them once interrupting MPs have finished speaking. MPs must also practice restraint when interrupting speaking MPs to ensure that the House may observe orderly debate. However, the Point of Privilege shall still be entertained during speeches and may also be used to interrupt speaking MPs.

Question Time may be called by the Speaker at their discretion. Upon beginning Question Time, the House will enter a Question and Answer time for a specific amount of time stated by the Speaker. MPs may pose questions to each other during this time in order to clarify and understand their positions and solutions. As the Speaker will inform the House of the Question Time in advance, MPs are encouraged to send their questions to the MPs or Ministers via notepaper beforehand such that they have sufficient time to prepare constructive responses.

In contrast with the draft resolutions of MUN committees, the House of Commons shall focus on the passage of legislative documents referred to as ‘Bills’ instead. Aside from the differences in naming, Bills also possess different structures and functions compared to that of Draft Resolutions.

First, the proceedings for a Bill are very different from that of a Draft Resolution. The Bill has four different phases, namely: First Reading, Second Reading, Resolving the House into a Committee on the Bill and the Third Reading. The detailed explanation for these phases can be found in **Annex A**.

Second, the structural differences can be found in **Annex B** below. These include the presence of a Long and Short Title, an absence of preambulatory clauses and operative verbs, as well as the inclusion of Schedules.

Finally, the functions of the Bill are also fundamentally different from a Draft Resolution. Bills can be introduced by either the Cabinet or individual MPs. In addition, Bills may create new legal provisions or amend existing laws once they have passed through the Parliament and received

⁵ “Office and Role of Speaker,” *UK Parliament*, accessed September 13, 2019, <https://www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/role-of-the-speaker/>.

Royal Assent. Of course, the difference also lies in their jurisdiction - UN resolutions generally have an international mandate, whereas Bills may only apply within the State.

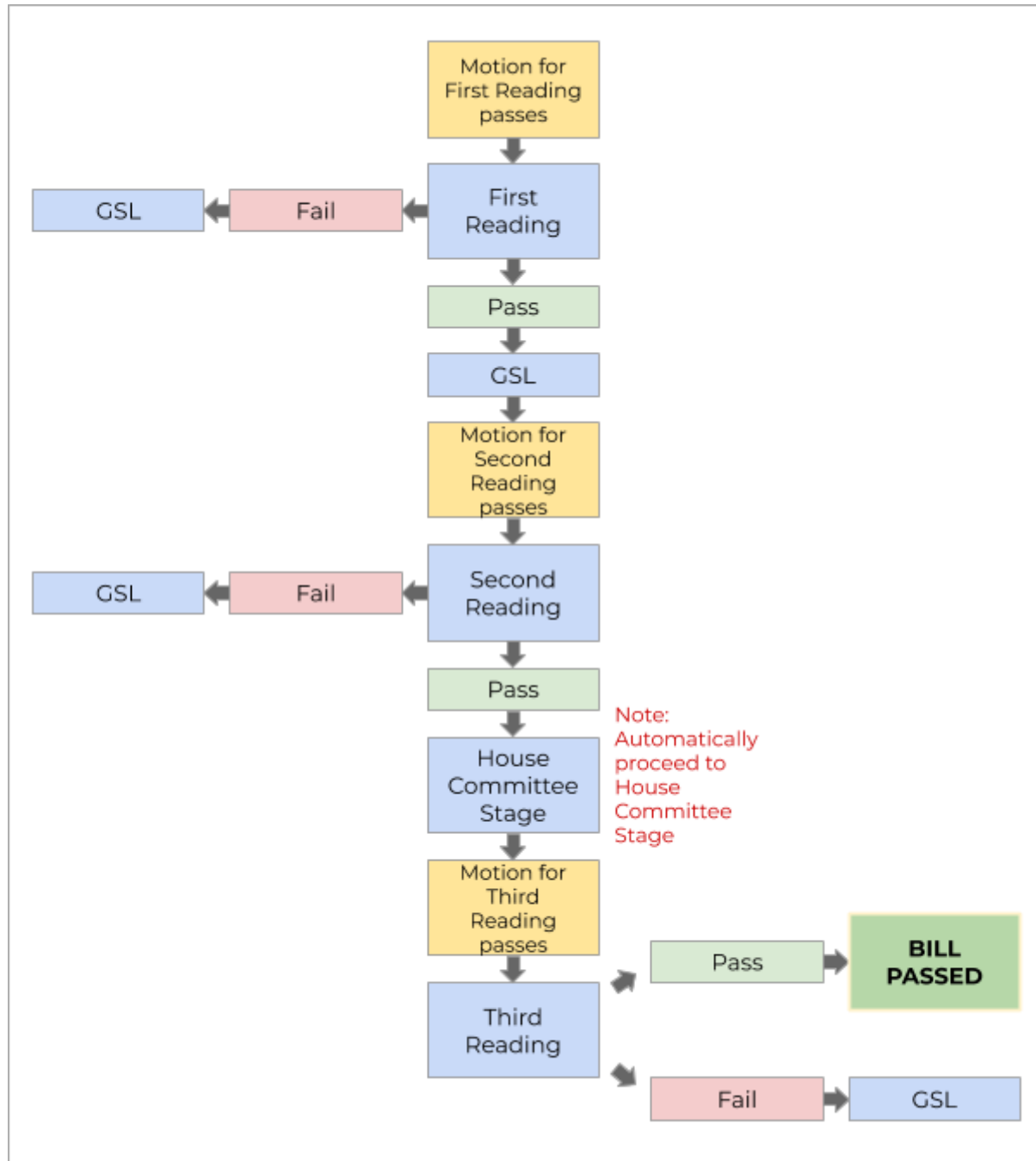


Fig. 1. Summary of procedures for Bill drafting

Fig. 1 illustrates the procedures Members must go through in order to pass in Bill in the House. Members are encouraged to familiarise themselves with the intricacies of these procedures. The dias will also go through the Special ROP once again, before the first Council Session.



The following is a list of HOC-specific procedures contrasted with corresponding conventional MUN procedures:

HOC procedure	Conventional MUN procedure(s)
First Reading	Introduce Draft Resolution
Second Reading	Open Debate; Members may not yet introduce amendments
Committee Stage	Open Debate; Members may also motion to introduce amendment
Third Reading	Closed Debate (2v2), followed by Direct Voting Procedure



TOPIC A: QUESTION OF DEVOLUTION IN THE UNITED KINGDOM

Introduction to the Topic

“Devolution” refers to the delegation of powers from Westminster to regional parliaments. Under the Blair administration, various Acts of Parliament were instituted to establish regional legislative bodies in the UK such as the Scotland Act 1998 and Northern Ireland Act 1998 with provisions to make laws under reserved matters for the respective governments.

Prior to Brexit, there already existed a significant separatist sentiment in devolved regions. For instance, the 2014 Scottish Independence Referendum showed that 44.70% of Scottish voters desired independence.⁶ The referendum gave Scottish politicians more leverage to demand further political autonomy through amendments to their devolution settlement.

Brexit, however, has exacerbated this tension between Westminster and devolved governments. It has brought about disputes on the repatriation of EU powers to devolved regions and on mechanisms to replace EU structures, while also raising fundamental questions on the relationships among the constituent countries of the UK. In view of this, there have been constant negotiations between Parliament on one side and various devolved legislatures on the other.

Erosion of trust between Parliament and devolved regions have further fuelled separatist sentiments, and puts the UK at risk of disintegration. Polls have shown that support for Scottish independence is on the rise, and Northern Ireland’s First Minister has raised concerns of Nationalist support for a referendum on Irish Reunification. In light of these events, there have been calls for a fundamental restructuring of the constitutional settlement on devolution, as well as demands for a fairer, more equitable treatment of devolved regions given the bizarre political developments brought forth by Brexit.

Background Information

Devolution came about separately in each of the constituent nations in response to an increasing pressure for regional independence. The establishment of devolved legislatures was a result of separate referenda in Scotland and Wales - while in Northern Ireland, it was a consequence of the Good Friday Agreement (1998), which marked the conclusion of the Troubles. This was all accomplished in the past two decades or so, during which Labour’s Blair administration passed a series of Parliamentary Acts to devolve power - namely the Scotland Act (1998), Government of Wales Act (1998) and the Northern Ireland Act (1998). England, however, was left largely untouched by the process of devolution, likely due to the perception of an existing concentration of governing power in England.⁷

⁶“Scottish Independence Referendum.” n.d. GOV.UK. Accessed October 11, 2019.
<https://www.gov.uk/government/topical-events/scottish-independence-referendum/about>.
⁷“A Guide to Devolution in the UK.” *BBC News*, September 18, 2016, sec. UK Politics.
<https://www.bbc.com/news/uk-politics-35559447>.



Under the Scotland Act 1998, a set of powers from Westminster was transferred to the Scottish Parliament. These powers extended to all legislation except those 'reserved' for Westminster - such as in the fields of defence and foreign affairs. Scotland had the freedom to legislate on issues such as agriculture, economic development, justice and education.⁸

The Government of Wales Act (1998) led to the creation of a Welsh Assembly which had the mandate to legislate in limited scopes defined as 'fields', covering broad areas like healthcare and education, while any area outside these fields were under Westminster's control. This was clearly distinct from the Scottish system of broadly delineating powers to Scottish control - rather, the Welsh system allowed instead for the transfer of limited regional powers to the devolved body.⁹

Northern Ireland faced a period of sectarian violence dubbed "The Troubles" from the late 1960s to 1998, a result of growing pro-Republican dissent met with forceful Unionist opposition. This shaped the formation of the Northern Ireland Assembly under the Northern Ireland Act (1998), a unique legislative body adopting a cross-community vote system, under which the consent of both the Nationalist and Unionist blocs are required for any legislation to pass. Devolution in Northern Ireland is slightly different from Wales and Northern Ireland, in that there are three types of powers: transferred, reserved and excepted. The Northern Ireland Assembly has full control over transferred powers. Reserved powers are those that could be transferred to the Assembly given cross-community consent, whereas excepted powers - like assembly elections, defence and international relations - are held by Westminster.

Northern Ireland has been without a regional government for the past two years;¹⁰ the result of a deadlock between the pro-union Democratic Unionist Party (DUP) and nationalist Sinn Féin. Nonetheless, both Sinn Féin and Democratic Unionist parties have urgent concerns regarding devolution and talks are underway to restore the devolved powers of the Northern Ireland Assembly. In the absence of the Assembly, MPs in Westminster had pushed for the liberalisation of abortion and legalisation of same-sex marriage in Northern Ireland, much to the discontent of the Protestant-affiliated DUP.¹¹

Recent Developments

From 1999 to 2010, there was a notable increase in public spending in all regions of the UK as the UK shifted away from the neoliberal policies of the Thatcherite governments in previous decades. Beginning in the early 2000s, however, the UK accumulated an overwhelming budget deficit that compelled the Conservative Government to implement austerity measures in 2010. This led the government to make controversial prioritisations in spending that created new

⁸ Ibid.

⁹ Ibid.

¹⁰ Jayne McCormack, "Arlene Foster: 'Serious Negotiations' to restore NI devolution," *BBC*, last updated July 21, 2019, accessed July 22, 2019, <https://www.bbc.com/news/uk-northern-ireland-49063374>.

¹¹ "Abortion and Same-sex Marriage Moves for NI Backed by MPs," *BBC*, last updated July 9, 2019, accessed July 22, 2019, <https://www.bbc.com/news/uk-northern-ireland-48924695>.



tensions between themselves and the newly devolved governments, increasing popular support for further devolution of powers in finance and in other areas.¹²

In June 2016, the UK voted in a referendum to leave the EU. This UK-wide result, however, masked a rift between the four constituent nations - England and Wales voted in favour of leaving (52-53%), whereas Scotland and Northern Ireland were pro-Remain, with only 38% and 44% of voters in each country voting 'Leave' respectively.¹³ This displayed fundamental differences in stance towards the EU amongst the constituent nations of the UK.

Revisions of devolution settlements also followed the Constitutional developments in the 2010s, especially after the Scottish Independence referendum in 2014, which, though it failed, demonstrated popular support for greater devolution. The Scotland Act (2016)¹⁴ granted the Scottish Parliament far more competences - for example, the ability to amend sections of the Scotland Bill 1998 that relate to the Scottish Government.¹⁵ The Wales Act (2017)¹⁶ replaced the conferred model of devolution with a reserved one closer to the Scottish model. These amendments to the devolution settlements have moved Britain closer in constitutional power distribution to a federal government, though it remains that Westminster can override devolved governments.

Previous Measures Taken

European Union (Withdrawal) Bill

The European Union (Withdrawal) Bill was enacted by Parliament in 2018. The Bill originally transferred all EU legislation into Westminster legislation ('retained EU law') pending the outcome of discussions between Westminster and devolved governments. Further, Clause 11 of the Bill amends the Scotland Act 1998 (section 29), Government of Wales Act 2006 (Section 108A) and the Northern Ireland Act 1998 (Section 6), removing the restriction on devolved governments that has prevented devolved governments from making legislation incompatible with EU law. Clause 11 substitutes this restriction with a new restriction, that they cannot modify retained EU law (which would now be under Westminster's competence).¹⁷ This ensures a lack of functional difference in terms of legislable jurisdiction between pre-EU and post-EU standing for the devolved governments of the UK.

The government has since reached an agreement with the Welsh government to return all EU powers to devolved administration except in areas where UK ministers say otherwise through statutory instruments, rather than having these powers retained in Westminster until the

¹² "Overview." 2019. The Institute for Government. April 30, 2019.

<https://www.instituteforgovernment.org.uk/publication/devolution-at-20/overview>.

¹³ "EU Referendum Results." n.d. BBC News. Accessed October 11, 2019.

https://www.bbc.com/news/politics/eu_referendum/results.

¹⁴ "Scotland Act 2016." n.d. Accessed September 22, 2019.

<http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>.

¹⁵ BBC News. 2016. "Holyrood Approves Scotland Bill," March 16, 2016, sec. Scotland politics.

<https://www.bbc.com/news/uk-scotland-scotland-politics-35815426>.

¹⁶ "Wales Act 2017" n.d. Accessed September 29, 2019. <http://www.legislation.gov.uk/ukpga/2017/4/contents>

¹⁷ "European Union (Withdrawal) Act and Common Frameworks Report." n.d. GOV.UK. Accessed October 11, 2019. <https://www.gov.uk/government/publications/european-union-withdrawal-act-and-common-frameworks-report>.



Government determines otherwise.¹⁸ However, the Scottish government has refused to give consent to this agreement, thus preventing a similar settlement in Scotland.

Act of Union Bill

The Constitution Reform Group (CRG) is a group of former and practising politicians, academics, civil servants and ordinary citizens whose aim is to enact an 'Act of Union' that guarantees increased political autonomy for devolved governments. Lord Lisvane, a member of the CRG, previously introduced an Act of Union Bill in the House of Lords. The legislation is meant to be a radical constitutional reform, creating a 'bottom-up' federal system in which devolved governments would decide which of their powers would be 'federated upwards' to Westminster.¹⁹ It also aims to preserve and codify 'successful aspects' of the current system, making it more difficult for Westminster to undermine devolution in the future. Some of the measures in the Bill include:²⁰

- Strengthening the Scottish Parliament, which would control all powers except those 'central policy areas' assigned to the UK Parliament
- Creation of an English Parliament
- Abolition of the House of Lords, which is to be replaced with a new revising chamber with members from each of the four regional parliaments

The bill is much welcomed by academics and a number of former politicians who believe that the new federal system would prevent the disintegration of the UK, in light of separatist movements across the Union. This includes the former Labour Northern Ireland and Wales secretary Peter Hain and Ulster Unionist politician David Burnside. The Group also claims to have the support of backbencher Graham Brady, the current Chairman of the Conservative Party's 1922 Committee.²¹

Key Definitions

Brexit: "Brexit" refers to the UK's withdrawal from the European Union through its invocation of Article 50 of the Treaty on European Union.²²

Common Frameworks: Government regulations, statutory or otherwise that apply to all regions of the UK.²³

¹⁸"European Union (Withdrawal) Bill - Agreement between the UK and Welsh Governments." n.d. GOV.UK. Accessed September 10, 2019.

<https://www.gov.uk/government/collections/european-union-withdrawal-bill-agreement-between-the-uk-and-welsh-governments>.

¹⁹ seneddresearch. 2018. "An Act of Union Bill." IN BRIEF. November 21, 2018.

<https://seneddresearch.blog/2018/11/21/an-act-of-union-bill/>.

²⁰ "The Herald: New Act of Union Bill Published." n.d. Accessed September 15, 2019.

<https://www.constitutionreformgroup.co.uk/the-herald-new-act-of-union-bill-published/>.

²¹ Kettle, Martin. 2016. "Brexit Vote Paves Way for Federal Union to Save UK, Says All-Party Group." *The Guardian*, July 10, 2016, sec. Politics.

<https://www.theguardian.com/politics/2016/jul/10/brexit-vote-paves-way-for-federal-union-says-all-party-group>.

²²Kenton, Will. n.d. "Brexit Definition." Investopedia. Accessed October 11, 2019.

<https://www.investopedia.com/terms/b/brexit.asp>.

²³ Ibid, 17.



Competence: The legal authority of a body to deal with certain matters.²⁴

Constitution: The Constitution is the supreme law of the State that dictates the legitimacy of all other laws. In the UK, the Constitution is not codified; rather, it is a set of principles derived from statutes, case law and political convention. The UK is therefore considered to have an 'unwritten constitution'.²⁵

Devolution: "Devolution" refers to the statutory delegation of powers from Westminster to regional parliaments.²⁶ Under the Blair administration, various acts were instituted to establish regional legislative bodies in the UK (eg. under the Scotland Act 1998, the Scottish Parliament was established, devolving to it all powers except those 'reserved' for Westminster).

Devolution settlement: The Parliamentary Acts dictating the terms of devolution - namely the Scotland Act (1998), Government of Wales Act (1998) and the Northern Ireland Act (1998) - including any amendments that follow suit (eg. Scotland Act 2016).²⁷

European Union: The European Union is a political and economic union of European states that have established an internal single market and a common jurisdiction.²⁸

European Union (Withdrawal) Act 2018: A Parliamentary Act that transfers EU law into domestic law under Westminster's competence.²⁹

Federal system: A system under which multiple states form a union, in which some powers are handed to a federal authority but each state preserves independence in internal affairs. Federal systems typically involve constitutionally distributed powers and jurisdictions. Prominent countries with federal governing systems include the United States and India.³⁰

Precedent: An action that sets a norm or standard for subsequent actions in similar circumstances. In legal circumstances, this refers to a reported opinion of an appeals court, which sets the legal rule for future cases. In the United Kingdom, lower courts must follow precedents, a principle referred to as *stare decisis*.³¹

Retained EU Law: EU law that will be converted into domestic law, with effect from the date of the UK's withdrawal from the EU.³²

²⁴"Competence and Jurisdiction | Law | Britannica.Com." n.d. Accessed October 11, 2019.
<https://www.britannica.com/topic/competence-and-jurisdiction>.

²⁵"Britain's Unwritten Constitution." n.d. The British Library. Accessed October 11, 2019.
<https://www.bl.uk/magna-carta/articles/britains-unwritten-constitution>.

²⁶"Devolution : The Law And Policy" , *bartleby*, accessed September 15, 2019,
<https://www.bartleby.com/essay/Devolution-The-Law-And-Policy-PKU32E92LBQQ>

²⁷ Ibid, 7.

²⁸"The EU in Brief." Text. European Union. June 16, 2016.
https://europa.eu/european-union/about-eu/eu-in-brief_en.

²⁹ Ibid, 17.

³⁰"Political System - Federal Systems." n.d. Encyclopedia Britannica. Accessed October 11, 2019.
<https://www.britannica.com/topic/political-system>.

³¹"Legal Dictionary | Law.com." n.d. Accessed October 12, 2019.
<https://dictionary.law.com/Default.aspx?selected=1573>.

³²Cowie, Graeme. 2019. "The Status of 'Retained EU Law,'" July.
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8375>.



Sewel Convention: A political convention that necessitates that any legislation in Westminster concerning devolved regions must be passed with the consent of the respective devolved legislature. This is, however, not mandated by law.

Key Issues

Disputes over the Devolution of Powers Previously under EU Competence

Under EU regulations, the UK has been obligated to transfer control over some areas of governance to the EU. The EU's common frameworks have provided consistency across the UK since they applied uniformly across the Union. For instance, the Common Agricultural Policy (CAP) has seen aspects of UK's agriculture policy such as regulations and subsidies being extensively standardized with the rest of the European Union.

In light of Brexit, the Conservative Government has passed the EU (Withdrawal) Bill, which ensures that EU laws will still remain in place in the UK after Brexit while giving Westminster control over them indefinitely. The Conservatives claim that their incorporation of powers under Westminster ensures the functioning of a UK internal market (the shared market of the four constituent countries) and the UK's compliance with international obligations.

The abovementioned bill was met with fierce opposition from devolved governments. The Scottish and Northern Irish governments claim that this was a 'naked power grab' that undermined Devolution. There are many areas currently governed by EU law that would fall within the competence of devolved legislatures. The Scottish Government, for instance, argued that areas such as fisheries and agriculture fall under its competence and should not be controlled by Westminster.

Lack of Intergovernmental Cooperation

Underlying the internal divisions within the UK is a lack of trust and cooperation between the governments of the four constituent countries together with Westminster. The House of Commons Public Administration and Constitutional Affairs Committee suggested that the "present lack of intergovernmental institutions for the underpinning of trusting relationships and consent will no longer be sustainable" once the UK has left the EU.

At the heart of devolutionary reforms under the Blair administration was the Joint Ministerial Committee (JMC), where Ministers from Westminster and the devolved administration were meant to collaborate on issues arising in the course of devolution. One advantage of this system was its flexibility - Ministers could call for multilateral cooperation on various issues, as was the case in the establishment of the "JMC (Domestic)" on internal relations, and the "JMC (Europe)" for matters regarding the European Union.

However, the JMC has been increasingly disjointed, obscure and unaccountable. Since there are no mechanisms for transparency in the Committee, the opportunity for Parliamentary scrutiny is severely limited. Frustrated, the Scottish Government established the Written Agreement on Parliamentary Oversight of Intergovernmental Relations, which required Scottish Ministers to disclose their discussions with UK ministers to the Scottish Parliament. Similar



provisions do not exist in Westminster. Though notions of cooperation, communication and consultation were enshrined in 'soft law' terms - through Memorandums of Understandings (MoUs) and concordats - such precepts have failed to materialise in reality.³³

After the Brexit referendum, the JMC (EU Negotiations) was established for intergovernmental cooperation on matters pertaining to devolution settlements post-Brexit. Despite its implementation, there was minimal engagement between Westminster and the devolved governments as evident in their lack of communication prior to the publication of the EU (Withdrawal Bill), which led to the strong antipathy of the devolved governments against the bill. Such a shortcoming has reinforced the perception that Westminster holds excessive leverage over Scotland, fuelling support for Scottish independence. This is only made worse by the fact that the UK does not have clear legislative frameworks to determine the constitutionality of Westminster's actions; with barely 20 years of Common Law precedent (due to the recency of the implementation of devolution), sufficient judicial precedent the constitutional relationship between Westminster and regional governments has not been established.³⁴

Regional Funding

Regional inequality is one factor that characterises the British political landscape. It may be beneficial to mitigate such inequalities to strengthen relations within the Union. Historically, the EU has provided significant investment (about €2.4 billion a year) in the form of the European Structural and Investment Funds (ESIF), which had supported numerous local projects in the UK, largely outside England.³⁵ The UK's withdrawal from the European Union calls for an alternative source of funding for these projects. Otherwise, devolved administrations are bound to be hit disproportionately by the economic impacts of Brexit.

At the same time, it is important to consider the balance between regional funding, and retaining control over public spending. Though in theory it may be possible to redirect taxpayer money that previously went to the EU towards the Shared Prosperity Fund, in practice the economic impact of Brexit may result in lower public expenditure. Thus, the practicality of such measures or the maintenance of tax rates in the status quo must be examined - and if necessary, mitigatory measures to protect the currently funded projects must be discussed, especially with regard to whether such measures would fall under the redirected powers under Westminster or under the competence of devolved parliaments.

Scope of Debate

Devolution of Powers

How EU powers are transferred to devolved governments is a contentious issue. While the Welsh Government has come into agreement with Westminster on the terms of devolution in

³³"Devolution and the Joint Ministerial Committee." 2017. The Institute for Government. December 11, 2017. <https://www.instituteforgovernment.org.uk/explainers/brexit-devolution-joint-ministerial-committee>.

³⁴Richard Rawlings. "Brexit and the Territorial Constitution: Devolution, Reregulations and Inter-governmental Relations". The Constitution Society.

<https://consoc.org.uk/wp-content/uploads/2017/10/Brexit-and-devolution-final.pdf>

³⁵ Brien, Philip. 2019. "The UK Shared Prosperity Fund," May.

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8527>.

line with the EU (Withdrawal) Act, the Scottish and Northern Irish governments have refused to do so.

In practice, however, there is a need for a form of a UK-wide common framework in some areas in order to reduce policy divergence among the different countries of the UK so that trade is not significantly disrupted. Other powerful arguments for these frameworks include the need to standardize environmental regulations, such as policies on chemical waste and air pollution. However, the list of areas which should fall under Westminster competence, as well as the length of time for which Westminster may have these powers is disputed.³⁶

There has been an array of amendments proposed by devolved governments. Some of these propositions include:³⁷

1. Preventing the diversion of devolved powers to London
2. Preventing UK Ministers from unilaterally making changes to the devolution settlements
3. Preventing UK Ministers from unilaterally making changes to areas under devolved Ministers' executive competence
4. Provisions whereby devolved Ministers have an equal capability to make changes to retained EU Law as UK Ministers

Members may also consider amending the Withdrawal Bill, such that provisions are left for Parliament to modify retained EU Law and/or devolution settlements to reflect frameworks agreed upon between Westminster and the devolved governments.

At the same time, however, members must consider the consequences of each policy on the efficiency of trade and administrative processes. A primary argument by the Government in favour of centralisation of powers has been to provide uniformity in regulations in order to remove any unnecessary barriers Brexit may entail. If any measure is to be implemented in favour of the autonomy of devolved governments, it needs to be weighed against its potential repercussions on policy divergence across the UK, which as described earlier, does entail drawbacks.

Improving Intergovernmental Cooperation

There have been calls for Westminster to reform the JMC system. The Public Administration and Constitutional Affairs Committee has expressed dismay at the central bias of the JMC, and has called for the UK Government 'to show a genuine receptiveness to the concerns and suggestions put forward by the devolved administrations', and to increase transparency standards.

To this end, devolved governments have raised their own propositions as well. In the White Paper titled 'Securing Wales' Future', the Welsh government included proposals for negotiation and cooperation on common frameworks through a 'UK Council of Ministers ('UKCoM') loosely modelled on the EU Council.

³⁶ Cabinet Office and others, "Joint Ministerial Committee (EU Negotiations) communiqué", GOV.UK, 2017, retrieved 15 April 2019, www.gov.uk/government/publications/joint-ministerial-committee-communique-16-october-2017

³⁷Ibid, 34.



Constitutional Reform

Given the conflicting legislative developments on the constitutional aspect of the UK Parliament's competence in devolved regions, it has become necessary for Parliament to demarcate the constitutional boundaries of each government.

The fundamental rule of the (uncodified) UK constitution is that Parliament at Westminster has unlimited legislative authority, according to the principle of parliamentary sovereignty. Since 1998, however, the UK has made a progressive shift towards Federalism, with the creation of devolved governments. Despite this, Parliament has been careful to maintain their supremacy over devolved bodies. For example, sections 28 and 29 of the Scotland Act 1998 says that the Scottish Parliament may pass laws for Scotland on matters within its competence, but the Act adds in section 28(7) that this "does not affect the power of the Parliament of the United Kingdom to make laws for Scotland" (section 107(5) of the Government of Wales Act 2006 is to the same effect and section 5(6) of the Northern Ireland Act 1998 is similar),³⁸ thus preserving legislative and judicial precedent for parliamentary sovereignty.

Questions were raised regarding Westminster's power to override devolved governments. This has led to the establishment of the Sewel Convention in 2001 which has made its way into 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006. The Convention states that the UK Parliament "will not normally legislate with regard to devolved matters without the consent" of devolved governments.³⁹ The Convention was undisputed for about 200 Acts of Parliament since 1999. It remains, however, a political convention and norm rather than a legal necessity.

In 2018, the passing of the EU (Withdrawal) Act without the consent of the devolved bodies violated the Sewel Convention, allowing the UK Parliament to freeze devolved powers where UK-wide common frameworks are created to replace EU frameworks. Critics fear that this has set a precedent for UK governments to impose laws in cases where legislative consent motions fail in devolved bodies. This Act was met with fervent opposition from devolved governments.⁴⁰ The Scottish Government, disregarding the Withdrawal Act, passed the Scottish Continuity Bill that required that retained EU law come under Scottish competence. The Bill was brought to the Supreme Court by the Attorney General for England and Wales, and found to be inconsistent with the competence granted to the Scottish Government under the Scotland Act (1998) - effectively, it was struck down. This adds to the litany of grievances among devolved governments regarding Westminster's perceived disregard for their views amidst the Brexit process.

³⁸ Clifford Chance. "Brexit: European Union (Withdrawal) Bill and the Devolution Dimension." July 2017. Accessed September 5, 2019.

<https://www.cliffordchance.com/content/cliffordchance/microsites/brexit-hub/briefings/Brexit-European-Union-Withdrawal-Bill-and-the-Devolution-Dimension.html>.

³⁹ "Scotland Act 2016." n.d. Accessed September 13, 2019.

<http://www.legislation.gov.uk/ukpga/2016/11/section/2/enacted>.

⁴⁰ "Brexit and its Implications for Scottish Devolution," *Centre on Constitutional Change*, accessed July 22, 2019, <https://www.centreonconstitutionalchange.ac.uk/blog/brexit-and-its-implications-scottish-devolution>.



One consequence of this is that the ruling Scottish National Party (SNP) is increasingly committed to holding another referendum on independence. The last referendum held in 2014 before Brexit saw a close majority rejecting Scottish independence⁴¹ - however, recent opinion polls suggest greater support for independence among Scottish citizens, presumably due to a sense of alienation from UK politics surrounding Brexit and the devastating economic impact of leaving the EU, whereas EU membership was presented as a key reason for Scots to vote to stay in the UK. Thus, the question of independence, motivated by SNP activists, may sit on the basis of greater political autonomy of the Scottish Government in light of Brexit.⁴²

Afraid of such a prospect threatening the integrity of the Union, several MPs and Lords have advocated for a constitutional reform to establish a 'fairer' system of devolution.

Potential Solutions

The following is a brief outline of policies that may be applicable to the issue of Devolution. Members may consider elements of the following solutions in debates and in the submission of Bills, but should also propose alternative and/or complementary solutions.

Common Economic Frameworks

Common Frameworks that apply to all regions in the UK may need to be clearly defined and legislated to replace regulations previously under EU competence. The devolved governments agree with Westminster that *some* UK-wide frameworks ('common frameworks') are required in areas that were previously devolved in principle but have been constrained by EU regulations. In the Joint Ministerial Committee (EU Negotiations) communiqué⁴³ between the UK government and representatives of the devolved administrations, it was established that these common frameworks must:

- "be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;"
- "maintain, as a minimum, equivalent flexibility for tailoring policies to the targeted needs of each territory as is afforded by current EU rules;"
- "lead to a significant increase in decision-making powers for the devolved administrations."

These frameworks, meant to be uniform across the UK, may be achieved in one of two ways: either through the enforcement of mutual recognition of each region's regulations, or through a far-reaching programme of harmonisation of legislation and frameworks.

Constitutional Framework

One clear problem is that there are disputes regarding devolved governments' powers, that often lead to prolonged legal cases. There may be a need for a clear determination of the

⁴¹"Scottish Referendum: Scotland Votes 'No' to Independence," *BBC*, last updated September 19, 2014, accessed July 22, 2019, <https://www.bbc.com/news/uk-scotland-29270441>.

⁴²Mure Dickie, "Scotland: Brexit Uncertainty Revives Independence Debate," *Financial Times*, last updated June 20, 2019, accessed July 22, 2019, <https://www.ft.com/content/b572e8a2-8ea5-11e9-a1c1-51bf8f989972>.

⁴³Ibid.



relationship between Westminster and devolved governments and for demarcation of when it is not possible for Westminster to intervene, supported by transparent decision-making and dispute resolution processes. This may come in the form of amendments to, and extension of devolutionary settlements for the various devolved nations. Members may also consider new provisions that stop Westminster from amending the terms of devolution unilaterally without the devolved government's consent.⁴⁴ Such a framework may entail the use of a nation-wide Constitutional Convention that allows Civil Society to forward proposals on Constitutional Reform in a cogent manner. This may be similar in form to the Scottish Constitutional Convention that produced a comprehensive 'blueprint' for the establishment of the Scottish Parliament. Such a convention may increase support for more unprecedented constitutional changes, which may not be desirable to more conservative (in the sense of resistance to change) Members in Westminster.

Constitutional reform aimed at creation of a fully federal system may be a radical extension to a constitutional framework. In such a system, the Parliamentary Sovereignty of Westminster may be abolished, with more representative political institutions emerging to grant more leverage to devolved regions. Though such a controversial measure would drastically reduce the competence of the House of Commons, one perspective is that this is a necessary trade-off in securing the devolved regions' faith in the UK - in a way, a last resort to prevent separatist movements from succeeding.

Shared Prosperity Fund

To replace EU funding mechanisms, The Conservative Government has proposed a Shared Prosperity Fund in the 2017 Conservative Manifesto. However, certain issues have yet to be resolved in Parliament, halting its implementation.

Firstly, the method of allocation of resources remains contentious. EU structural funding uses a needs-based allocation system to pre-allocate funding for each region. There is a variety of possibilities in distributing the funds across the UK post-Brexit. One way would be to do so according to the Barnett Formula. The Formula has been used by the UK Treasury to determine government grants for devolved administration, taking into account the population and the degree to which each government is devolved in order to scale increases or decreases in funding. This would result in the distribution of funding being altered; since EU funding in per person terms is generally higher in devolved nations than in England, the funding these nations may receive may end up lower than it was before Brexit.

In a response to the Scottish Parliament's Finance and Constitution Committee, researchers argued that the Barnett Formula does not set an initial level of funding, and can lead to funding per person in devolved regions converging with that of England (the 'Barnett Squeeze').⁴⁵ This can lead to the aforementioned issue of the devolved nations facing a more severe capital squeeze than England.

⁴⁴ Ibid, 13.

⁴⁵ Ibid, 35



Contrarily, the UK could use a needs-based formula for the Shared Prosperity Fund, similar to the EU, although measures other than national income could be considered if they are deemed more accurate in assessing need. The EU structural fund uses GDP per capita to assess needs - however, because GDP per capita measures the economic contribution of *workers* divided by the number of *residents* in a region, it may not be accurate in depicting the level of development in some areas where workers often commute to work from different regions. Such is the case, for instance, in Central London, which may account partly for the UK's high regional inequality. Some alternatives may be to measure the GDP per employee working in a region, or household income.⁴⁶

Guiding Questions

1. What incentives are there for constituent nations to remain in the UK? Have they been enough?
2. How has Brexit affected the dynamics between Westminster and the regional governments in Scotland and Northern Ireland?
3. Can tensions between constituent nations be relaxed through legislation? If so, are the harms (if any) brought about by this change outweighed by the benefits of maintaining "good relations" between the constituent nations and the UK Parliament?
4. How can regulations previously under EU competence be replaced to maintain a uniform UK internal market, while respecting the autonomy of the regional governments?
5. What may be the long-term repercussions of legislation that the Commons may introduce on the relationship between Westminster and the regional governments?
6. Is legislation in Westminster necessary for whatever changes deemed desirable?
7. How do the political undercurrents of English Nationalism in England and Separatism in devolved regions affect their representatives' stance in Parliament? Given such sentiments, would it still be possible to strike a conciliatory tone?

Questions a Resolution Must Answer (QARMA)

1. Will powers previously in EU hands be devolved from Westminster? If so, should this be legislated in Parliament or sought through other means (eg. Memorandums of Understanding)?
2. In which areas of governance can the UK parliament intervene in the future?

⁴⁶Keep, Matthew. 2018. "The Barnett Formula," January.
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7386>.



3. Should a new mutual framework between the UK and devolved governments be established with regard to the Sewel Convention? If so, should there be legally binding restrictions on Westminster's powers?
4. In what manner will EU funding mechanisms in the UK be replaced, if at all?
5. How will *English* citizens react to efforts that benefit devolved administration, perhaps at their own expense?

Key Stakeholders

Conservatives

The Conservative Party (or 'Tories') forms the incumbent government of the UK. In relation to or the Conservatives' 2017 manifesto, devolution has been addressed under '*Our Precious Union*', in which the Conservatives' narrative is that Devolution must be protected.⁴⁷ However, the Conservative government has largely left devolved governments out of Brexit coordination. It has been keen on holding centralised powers deemed necessary for the public interest, instead of devolving these powers. For instance, it had thwarted Scotland's attempt at passing a Continuity Bill devolving EU powers to the Scottish Parliament by referring the Bill to the Supreme Court, which then struck down the legislation. In its place, the Conservatives passed the EU Withdrawal Act in order to preserve the "coherence of the UK internal market" and to limit policy variation among different areas of the UK, without consulting the various devolved governments.⁴⁸

Labour

Under the Blair administration, the Labour government spearheaded efforts in regional devolution, and so Labour claim they are '*the party of devolution*'. In their Manifesto, they pledge to 'radically' devolve repatriated EU powers after Brexit. They have also expressed a desire to establish a Constitutional Convention, which would view devolution across local, regional and national levels, exploring the possibility of 'greater federalisation of the country'.⁴⁹ This goes further than the Conservative Party. However, in some areas of devolved governments, Labour's proclivity for numerous statist policies in education and healthcare undeniably may end up in the centralisation of government efforts, and may therefore not be in line with further devolution.⁵⁰ At the moment, Labour's stance on specific devolutionary measures is unclear.

Scottish National Party

The SNP largely represents Scottish interests in Westminster. It is keen on achieving Scottish independence and had worked towards an independence referendum in the past. It is keen on

⁴⁷"The Conservative Party Manifesto 2017." n.d. Accessed October 12, 2019.

<https://www.conservatives.com/manifesto>.

⁴⁸ "Leaving the European Union: Stability of the United Kingdom's Union," *House of Lords*, accessed July 21, 2019, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2018-0147>.

⁴⁹"Extending Democracy." n.d. The Labour Party. Accessed August 24, 2019. <https://labour.org.uk/manifesto/extending-democracy/>.

⁵⁰"What Do the Party Manifestos Say on Devolution?" 2017. DevoConnect. May 26, 2017. <https://devoconnect.co.uk/2017/05/26/party-manifestos-say-devolution/>



extending Scottish autonomy as far as possible, evident in their passing of the Continuity Bill.⁵¹ The SNP is thus generally pro-devolution and generally supports the devolution of home rule powers to devolved governments, and the restriction of the ability of Parliament to censure these powers.

The Democratic Unionist Party

The DUP has a confidence-and-supply agreement with the Conservatives - that is, they will vote for the Conservatives in motions of confidence and appropriation or budget votes. The deal also states that the DUP will vote for the Conservative Agenda on legislation regarding the UK's departure from the EU and relating to national security.⁵² However, the DUP generally votes independently on bills outside the scope of this deal. Their primary intention would be to ensure that the Northern Ireland Assembly has extensive autonomy once it is restored, so that it will be able to limit the proliferation of non-representative legislation from Parliament, as mentioned in the background section.

Conclusion

Legislation on Devolution in the UK is all but predictable. Given the nascent nature of devolved administrations, there is much conflict on how this system ought to work. The House of Commons has, in recent times, been far too embroiled in no-deal planning such that it has relegated devolution to a secondary priority in its Brexit coordination, instead of discussing matters pertaining to devolved governments. There is a harrowing lack of trust between Westminster and devolved governments, and the very premise of devolution has been undermined in this troubling Brexit era. In a recent survey, it has been found that a majority of Conservatives would rather see an independent Scotland than have Brexit compromised.⁵³ In view of this, the Commons needs to scrutinise the current constitutional framework for devolution, to thoroughly consider the perspectives of devolved governments and to prevent the aggravation of already hostile relations with devolved governments. Members should work together with the desire of establishing a mutually agreeable framework aimed at achieving a stable devolution settlement in the long run.

⁵¹ Ibid, 48.

⁵² "Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party." n.d. GOV.UK. Accessed October 12, 2019.
<https://www.gov.uk/government/publications/conservative-and-dup-agreement-and-uk-government-financial-support-for-northern-ireland/agreement-between-the-conservative-and-unionist-party-and-the-democratic-unionist-party-on-support-for-the-government-in-parliament>.

⁵³ "The Tories Would Now Rather Face Scottish Independence than Lose Brexit." n.d. Accessed September 15, 2019.
<https://www.newstatesman.com/politics/uk/2019/06/tories-would-now-rather-face-scottish-independence-lose-brexit>.



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TOPIC B: QUESTION OF THE PROTECTION OF WAR VETERANS

Introduction to the Topic

During the entire process of peace brokering between Britain and Northern Ireland, much violence and destruction took place as Ministers struggled to enforce a ceasefire and initiate peace talks. Perhaps the most well-known incident in this aspect was the Bloody Sunday Killings in Northern Ireland that took place in 1971, in which British soldiers shot unarmed civilians during a protest march against internment.⁵⁴ Another such incident occurred in 1974, when a series of IRA bombs in British pubs killed 28 people and wounded more than 200. Such IRA attacks were motivated by the perception that the British military intervention in Northern Ireland was an act of invasion.

Eventually, the conflict concluded in the Good Friday Agreement, signed in 1998 by representatives of Britain, Ireland, Northern Ireland and various stakeholders.

From 2000 to 2003, the European Court of Human Rights (ECtHR) applied Article 2 of the European Convention of Human Rights (ECHR) to several cases related to the Troubles. In these cases, which came to be referred to as *Mckerr* cases (after *Mckerr v. United Kingdom*), the Court found that the rights of the deceased under Article 2 of the ECHR have been violated by the inadequacy and ineffectiveness of investigations led by the UK Government.

Following *Mckerr*, the UK Government prescribed a 'packet of measures' to increase the rigour of investigations, including the establishment of the Historical Enquiries Team (HET) to investigate Troubles-related deaths.

Today, various ex-military personnel involved in the Troubles have prosecuted for alleged "war crimes" committed at that time with claims of them violating military law by breaking the Rules of Engagement and the Geneva Conventions. Charges of murder and grievous bodily harm have been brought against a number of living war veterans.

Given the violence took place on both the Irish and English sides of the Troubles, MPs would have to take into account the various politicals. Furthermore, in light of the complex historical backdrop of the Troubles which began around 40 years ago, much detail has been lost on the exact events which occurred that led to said "war crimes". Whereas pro-veteran citizens have considered the investigations a farce, more progressive factions together with Irish nationalists have called for stronger prosecution measures against alleged these military personnel.

⁵⁴ "Bloody Sunday: What happened on Sunday 30 January 1972?", accessed August 17, 2019, <https://www.bbc.com/news/uk-northern-ireland-foyle-west-47433319>



Background Information

Historical Developments

Although the exact starting date of the Troubles remains largely undefined, a common reference point for the start of the conflict which lasted three decades is the civil rights march in Derry on 5 October 1968. This marked the beginning of a series of protests and civil rights marches. During the Troubles, the UK deployed soldiers to Northern Ireland to quell the conflict. The violent revolt was led by the Irish Republican Army, a paramilitary wing of the Sinn Féin party, though bombings, gun violence and roadblocks and counter revolts were launched by other paramilitary groups in support of Britain. The UK government was also responsible for some of the killings and violence that took place - events such as Bloody Sunday and summary executions targeted both civilians and rebels.⁵⁵

The conflict was put to a close in 1998 with the Good Friday agreement. Currently, the Police Service of Northern Ireland (PSNI) has investigated 1,118 Troubles-era killings.⁵⁶ British soldiers are being charged for war crimes in relation to Troubles-era killings, on the basis of violating the Rules of Engagement or human rights conventions, such as the Geneva Conventions.

The peace process that gradually ended the Troubles in 1994 rested on a virtual amnesty, albeit not a formal one. Many formerly-imprisoned fighters were released and relevant authorities did not prosecute them at the time. The Good Friday Agreement did not provide for the prosecution or investigation of former members of the armed forces.⁵⁷ Instead, its main focus was on the early release of prisoners affiliated to paramilitary organisations, as a means of cooperation between the two governments in deadlock at that time.

The Good Friday Agreement

The Good Friday Agreement acted as a formal end to the Troubles conflict of more than 3 decades, and as such included provisions for the protection of war criminals.⁵⁸ Though no mechanisms for prosecution were established, the Agreement allowed any person convicted of paramilitary crimes to be granted early release.

However, exceptions were made in the cases of:

- Those suspected but not convicted of such crimes before the signing of the Agreement and,

⁵⁵ Alan Cowell, "50 Years Later, Troubles Still Cast 'Huge Shadow' Over Northern Ireland," *The New York Times*, last updated October 4, 2018, accessed July 23, 2019, <https://www.nytimes.com/2018/10/04/world/europe/northern-ireland-troubles.html>.

⁵⁶ "Westminster report backs Troubles prosecution limitation for soldiers", *BBC News*, accessed August 17, 2019, <https://www.bbc.com/news/uk-northern-ireland-39716554>

⁵⁷ Kieran McEvoy, "Investigations into the Troubles are vital – and that includes ex-soldiers", accessed August 17, 2019 from <https://www.theguardian.com/commentisfree/2018/may/11/investigations-troubles-ex-soldiers-northern-ireland>

⁵⁸ Vincent Kearny, "John Downey: Hyde Park bomb accused to be charged with murder", *BBC News*, accessed August 21, 2019, <https://www.bbc.com/news/uk-northern-ireland-46100103>



- Persons who had been charged or convicted previously but who had escaped from prison.

The Historical Enquiries Team

In an effort to review deaths related to the Troubles, the PSNI set up a special investigative unit named Historical Enquiries Team (HET) in 2006. The HET investigated deaths that occurred between 1968 and the Good Friday Agreement. The team of detectives reviewed 1,625 cases, which related to 2,051 deaths.⁵⁹

In 2012, Her Majesty's Inspectorate of Constabulary (HMIC), commissioned by the Minister for Justice of Northern Ireland criticised the HET for "serious shortcomings" and "inconsistencies" in its investigations. A report stated that the body failed to maintain impartiality. The HMIC further discovered that the HET failed to adopt a consistent approach towards all cases (i.e. both military and paramilitary cases), leading to cases relating to state involvement in violent deaths being reviewed with 'less rigour' than non-state cases.⁶⁰

The decision-making by the HET had been called into question as the HMIC listed concerns on the question of whether "the force used in killings during 'The Troubles' was justified in state involvement cases, therefore potentially preventing the identification and punishment of those responsible."

The Legacy Investigations Branch

Eventually, financial pressures led to the closure of the team and the now-defunct HET has now been replaced by the smaller Legacy Investigations Branch (LIB), which has a similar task of investigating murder cases related to the Troubles. Any decision by the LIB to prosecute is referred to the Director of Public Prosecutions for Northern Ireland, the process not involving either the Ministry of Defence or the British government. Despite criticism that the HET's investigations into previous cases had "serious shortcomings" and "inconsistencies", the new LIB had decided not to look into previous cases closed by the HET.

Recent rebuke of the LIB has indicated that the investigations are disproportionately focused on killings by the military and the actions of loyalists, thereby ignoring actions committed by the Irish Republican Army (IRA). Such biased prosecution, if confirmed, would certainly lead to resentment, especially amongst those prosecuted. However, the PSNI legacy branch has clarified that they did not believe that the police were specifically targeting any one group.⁶¹

⁵⁹ Kearney, Vincent. 2017. "Legacy Cases 'bias' Disputed by Figures." *BBC News*, February 2, 2017, sec. Northern Ireland. <https://www.bbc.com/news/uk-northern-ireland-38844453>.

⁶⁰ Gerry Moriarty, "Northern Ireland's killings review team criticised in report", *The Irish Times*, accessed August 2, 2019, <https://www.irishtimes.com/news/crime-and-law/northern-ireland-s-killings-review-team-criticised-in-report-1.1451794>

⁶¹ Vincent Kearny, "Troubles legacy cases bias disputed by figures", *BBC News*, 2 February 2017, accessed August 2, 2019, <https://www.bbc.com/news/uk-northern-ireland-38844453>



The Saville Inquiry

In 1998, Lord Saville led a three-judge panel to hold public hearings on alleged atrocities conducted on “Bloody Sunday”, in Londonderry, Northern Ireland.⁶² However, this was not the first investigation launched into the events of Bloody Sunday- a previous inquiry was conducted by Lord Chief Justice, Lord Widgery, immediately after Bloody Sunday. However, despite the tribunal sitting for three weeks, Irish nationalists were sceptical of the fairness of the investigation and considered it a “whitewash” of the Bloody Sunday events.

First, Irish nationalists felt that the location of the tribunal affected the partiality of the investigation as it was held in Coleraine, a unionist town 30 miles from Londonderry. Second, there were many contradictions in the report and its summary. Though there was inconclusive evidence on the wounded or dead protesters shot while handling firearms, the report still concluded that the soldiers had been fired upon first. In addition, the soldiers’ actions were merely described as having “bordered on the reckless”. The short three weeks of investigation (especially as compared to the second 12-year investigation) also did not capture the testimonies of key witnesses or survivors during the event.

Hence, years of campaigning against the initial trial eventually led the Irish Republic’s government submitting a dossier of evidence to Britain containing fresh information on the events as well as an indictment of the British government.⁶³ This prompted a study on the evidence before agreements were made to conduct a new investigation.

Under Lord Saville’s leadership, a more extensive investigation was conducted with 2500 statements being taken from soldiers, civilians and journalists. The tribunal concluded, after investigation, that there was “serious and widespread loss of fire discipline” among soldiers involved in the events of Bloody Sunday.⁶⁴ In addition, in contradiction to the previous report, none of the civilian casualties were found to possess firearms or bombs, and evidence that soldiers had fired after coming under attack was rejected.⁶⁵

However, there were mixed sentiments on the Saville Inquiries. Following then-Prime Minister David Cameron’s apologies to the victims’ families, widespread support was shown for the acknowledgement of the Bloody Sunday Events by Londonderry citizens and the head of the Army, General Sir David Richards.⁶⁶ Furthermore, Unionists in Northern Ireland viewed the second inquiry as a concession to Sinn Féin - Gregory Campbell, a vocal Unionist MP, has called the inquiry an act of ‘revisionism’ which the Government has “bowed to”, since it

⁶² British Broadcasting Channel. “The Saville Inquiry: Q&A.” *BBC News*, 11 June 2010, accessed August 28, 2019, <https://www.bbc.com/news/10147362>.

⁶³ British Broadcasting Channel. “Irish Government Publishes Bloody Sunday Dossier.” *BBC News*, 29 January 1998, accessed 24 August 2019, http://news.bbc.co.uk/2/hi/uk_news/51775.stm.

⁶⁴ The Stationery Office. “Principal Conclusions and Overall Assessment of the Bloody Sunday Inquiry.” *GOV.UK*, 15 June 2010, accessed 24 August 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279167/0030.pdf.

⁶⁵ Haroon Siddique and Megan French. “Bloody Sunday Inquiry: Key Findings.” *The Guardian*, 15 June 2010, accessed 24 August 2019, <https://www.theguardian.com/uk/2010/jun/15/bloody-sunday-inquiry-key-findings>.

⁶⁶ British Broadcasting Channel. “Bloody Sunday Killings ‘Unjustified and Unjustifiable’.” *BBC News*, 15 June 2010, accessed 24 August 2019, <https://www.bbc.com/news/10320609>.



contradicted the established narrative of Bloody Sunday that the organisers of the march encouraged lawlessness among the protestors.

The “On the Runs” Deal

The “On the Runs” Scheme was brought about by the Blair government in 2006, and has since been scrapped as a result of complications and conflict between the various parties involved. The On-the-Runs (OTRs) IRA members were individuals who were wanted in either Great Britain or Northern Ireland for suspected involvement in crimes committed during the Troubles between 1969 and 1998. There were 187 such individuals at the time. In the process of Stormont House negotiations, Tony Blair’s government attempted to introduce legislation to grant such IRA fugitives amnesty from prosecution of past crimes for which they were wanted. However, such legislation was never put in place.

However, other parties involved in the process of resolving Troubles-era matters opposed such legislation, some parties claiming that such amnesty would be unfair given the scope of the crimes committed.. Amongst others, the Irish government pointed out that such legislation could encourage Parliament to call for further protection for British soldiers, and not only Irish soldiers accused of killing civilians or loyalist terrorists.

As such, the Blair government offered an under-the-table deal to protect the OTRs from prosecution via IRA secret letters. The provision of so-called “comfort letters” by the government were designed to give the OTRs assurances that they were not being sought by police. Such a controversial scheme has been interpreted by Unionists as a sign of government duplicity and betrayal, where the government was seen to be keeping negotiations under wraps while deceiving the public. After the information on such a scheme leaked, Blair claimed that “without IRA letters, the peace process would have collapsed”, describing the deal as essential to keeping the nationalist Sinn Féin open to cooperation.

In order to clear up the case, Sinn Féin pushed for a scheme that would allow escaped prisoners, criminals and those who live with fear of arrest to return to the UK. However, such a formal legislation was not feasible in the face of strong unionist opposition.

The PSNI started reviewing the origins of the process that culminated in the issuing of such “comfort letters”. The PSNI deployed a team of 16 detectives investigating the circumstances of each member who received a letter, and examining the original checks by a specialist PSNI team that resulted in the Public Prosecution Service being told none of the individuals were wanted.

The government-commissioned independent review into the scheme by Lady Justice Hallett in 2014 found “significant systemic failures” in how the scheme was administered. However, her analysis of the scheme conflicted with the investigations conducted by the PSNI on many aspects such as their conclusions on the lawfulness and transparency of the process. Despite these differences, both investigations concluded that the OTRs scheme was flawed and ought to be put to an end.



The Northern Ireland Affairs Select Committee conducted its own inquiry, claiming that the investigation led by Lady Justice Hallett would be scoped too narrowly and would not be public knowledge. It published a report that subsequently condemned the entire scheme for the distortion of the process of justice. It further asserted that greater transparency might have prevented confusion.

The government has announced the rejection of such a scheme by no longer standing by such On the Runs letters and no longer considering them as a form of “amnesty”. However, there has not yet been a formal closure to the situation. Various MPs have raised concerns over how the status of the letters after the devolution of Policing and Justice has not yet been called into question. Despite all the above developments, the status of the letters, their validity and the future action to be taken regarding them is presently unclear and should be resolved.

Stormont House Agreement

The Stormont House agreement was an agreement reached by the governments of the UK and Ireland during the negotiations of 2014. It laid the groundwork for the resolution of important issues relating to the Troubles conflict, having been intended to resolve areas of conflict and to come to a settlement on contentious issues. One of the most significant outcomes was the establishment of four Legacy Institutions to promote reconciliation.⁶⁷ Two of such Legacy Institutions were the Historical Investigations Unit, which would investigate Troubles-related deaths, and the Independent Commission of Information Retrieval, which would allow family members to receive information about the Troubles-related death of their loved ones

Further schemes contained within the Agreement include the provision for early release of prisoners convicted of Troubles-related offences after serving two years in prison.

As of today, the Stormont House agreement is viewed as an important document that resolved many legacy-related issues. The structure of government’s legacy consultation is largely based off the Stormont House Agreement, with many of its solutions still in effect today.

Case Studies

The Prosecution of Soldier F

Amongst six former soldiers currently facing prosecution, the most high-profile investigation amongst them is the case of former British soldier, only referred to in public as “Soldier F” due to anonymity granted to all military witnesses through the Saville Inquiry into the circumstances around the killings. He currently faces charges over the killing of two men on Bloody Sunday in 1972, and further is accused of the attempted murder of three more persons.

To date, he remains the sole war veteran amongst those who participated in the Bloody Sunday killings who has faced a prosecution case thus far. This is due to the lack of sufficient

⁶⁷ Northern Ireland Affairs Committee, “Consultation on Stormont House Agreement inquiry”, accessed August 13, 2019, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/inquiries/parliament-2017/consultation-stormont-house-agreement-inquiry-launch-17-19/>



evidence found by the Public Prosecution Service (PPS) of Northern Ireland to prosecute sixteen other soldiers and two members of the Irish Republican Army.

John Downey

The discovery of the largely undisclosed and highly secretive “On the Runs scheme” was due to the collapse of a suspected IRA bomber, John Downey. Following Downey’s collapse at the Old Bailey, further investigations led to his arrest for the murder of two British Army Infantrymen in the 1972 Enniskillen bombing.

Subsequently, Downey was supposed to go on trial charged with killing four soldiers in the 1982 IRA Hyde Park bombing. However, prior to the trial, Downey cited an official letter he had received in 2007 stating: “There are no warrants in existence, nor are you wanted in Northern Ireland for arrest, questioning or charging by police. The Police Service of Northern Ireland are not aware of any interest in you by any other police force.”

This letter was one of the many “comfort letters” distributed as part of the OTRs scheme, whereby Downey was misinformed that he was not wanted by the police for his previous crimes. Eventually, during the trial, the judge ruled that Downey, who denied any involvement in the bombing, ought not be prosecuted as that he had been given a guarantee that he would not face trial.

The news that such a suspected criminal had not been convicted due to the existence of this series of letters, which had not been disclosed to the public, resulted in a public uproar. In an effort to clarify the matter, Sinn Féin subsequently released a list of names of the IRA agents which had also received the letters. Negotiations have persisted after the signing of the agreement between Sinn Féin and the government, to deal with the On the Runs.

Recent Developments

Soldiers continue to be prosecuted for Troubles-era crimes, even amidst much criticism from Northern Ireland. In recent years, the Director of Public Prosecutions for Northern Ireland has brought charges against several former army personnel. According to the Public Prosecution Service for Northern Ireland, 21 out of 26 prosecution cases brought since 2011 have involved republican and loyalist paramilitaries,⁶⁸ against whom prosecution was not brought forth separately. This has further fuelled allegations that investigators are unfairly targeting cases involving military personnel under the reformed investigative organisations.

Up till today, six military personnel have been charged with offences relating to the Troubles, including one former soldier prosecuted for murder on Bloody Sunday. Though family members of the victims involved in these cases have expressed support for the prosecutions, pro-veteran individuals and organisations have condemned them. Former Tory Defence Minister Mark

⁶⁸ Claire Mills, “How were armed forces personnel prosecuted for fatalities during the Troubles in Northern Ireland?“, *PoliticsHome*, accessed August 20, 2019, <https://www.politicshome.com/news/uk/home-affairs/justice-system/house/house-magazine/104745/how-were-armed-forces-personnel>



Francois has claimed that these prosecutions have been based on weak evidence from decades years ago, rendering the investigations and convictions invalid.

Key Definitions

War Crimes: “War Crimes”, in the context of the UK, refers to acts committed by a soldier during warfare that violate the Rules of Engagement, under which is included the Geneva Conventions (1949).⁶⁹ This includes acts such as, but not limited to willful killing, torture or inhumane treatment, extensive destruction or appropriation of property not justified by military necessity and the taking of hostages.

The Troubles: “The Troubles” was a series of violent ethno-nationalist conflicts that took place between the Unionists and the Republicans from 1968-1998 based on the issue of Northern Irish independence.⁷⁰ Unionists often identified as British and wanted Northern Ireland to remain a part of the UK, while the Republicans desired to ‘reunite’ Northern Ireland with the rest of Ireland as an independent Irish Republic.

The Good Friday Agreement: “The Good Friday Agreement” is a political agreement signed by both the Northern Ireland and British governments in 1998. This major political development in the Northern Ireland peace process acted as a formal means to an end of the Troubles. It currently serves as the basis of the terms on which Northern Ireland is governed today.

The Rules of Engagement: The “Rules of Engagement” is a series of orders issued by the British government that delineate when, where, how, and against whom military force may be used, and they have implications for what actions British soldiers may take on their own authority. It serves to “establish the circumstances and limitations under which personnel can use armed force”.⁷¹

Given that the Rules of Engagement acts as a form of procedure for military personnel, it tends to vary from place to place. Each soldier is briefed on the exact Rules of Engagement in his or her particular circumstance before engaging in conflict.

On the Runs: The “On the Runs” refer to individuals suspected of, but not charged with, paramilitary offences committed before the Good Friday Agreement, due to secret agreements between the Blair Government and Republican parties to protect these individuals from prosecution, in order to advance the peace process. Currently, there are approximately 187 such fugitives from the Irish Republican Army (IRA) wanted in either Great Britain or Northern Ireland for crimes committed during the Troubles between 1969 and 1998.

⁶⁹ “Customary IHL - Rule 156. Definition of War Crimes.” n.d. Accessed August 20, 2019. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.

⁷⁰ “Brief history of the Good Friday Agreement,” Dr Alan MacLeod, *History Extra*, accessed July 11, 2019, <https://www.historyextra.com/period/20th-century/northern-ireland-good-friday-agreement-protestants-catholics-br-exit-border-ira/>.

⁷¹ “Rules of engagement”, retrieved July 21, 2019 from <https://www.britannica.com/topic/rules-of-engagement-military-directives>



Key Issues

Statute of Limitations

In light of Northern Ireland's turbulent past and its role as the central stage during the Troubles, the Government of the UK conducted a mass consultation on general public sentiment on ameliorating the lasting effects of the Troubles. Although questions directly relating to a statute of amnesty were not directly asked, a report has shown that most of the public is opposed to a possible statute of limitations for crimes committed during the Troubles. Given that such a statute would prevent military veterans from being prosecuted, there is widespread sentiment that victims, survivors and families ought to be entitled to pursue criminal justice. Furthermore, this move could backtrack progress towards reconciliation by promoting a perception of favouritism towards ex-military personnel.

Despite widespread negative public sentiment against the statute, the concept of a statute of limitations has been widely supported by Tory backbenchers in Parliament. In May 2018, the notion of a statute of limitations had been withdrawn from a legacy consultation document published in May 2018, even though Theresa May had claimed that the way the system investigated the past was "patently unfair."⁷² Furthermore, the concept of amnesty has been further backed by army veterans who perceive lack of assistance to ex-military by the government as a form of betrayal to their service. Former British military leader Iain Duncan Smith - who served in Northern Ireland during the Troubles - claimed that many old veterans were finding that despite having been cleared decades ago, they were being investigated again "with no new evidence".⁷³

One case that has particularly sparked controversy is that of Dennis Hutchings. As a leader of a patrol in Northern Ireland, Hutchings faces charges of attempted murder and grievous bodily harm related to an incident in 1974, where he allegedly shot an individual. Though he had received 'comfort letters' confirming his immunity from prosecution, a judge in Belfast has rejected his contention that the trial was not feasible given the time lag and the lack of surviving witnesses, and found that there was sufficient evidence for him to go to trial.⁷⁴ This has prompted protests and social media movements criticising the judiciary's handling of the matter, and the government's lack of protections for veterans like Hutchings.

⁷² "New office to improve support for military veterans", *BBC News*, accessed August 5, 2019, <https://www.bbc.com/news/uk-politics-49152253>.

⁷³ "Iain Duncan Smith Speaks in a Debate on Giving Immunity to Northern Ireland Veterans | Iain Duncan Smith - MP for Chingford and Woodford Green." n.d. Accessed October 12, 2019. <https://www.iainduncansmith.org.uk/content/ian-duncan-smith-speaks-debate-giving-immunity-northern-ireland-veterans>.

⁷⁴ *The Economist*. 2018. "Veterans of Northern Ireland Face Trial for Decades-Old Crimes," September 20, 2018. <https://www.economist.com/britain/2018/09/20/veterans-of-northern-ireland-face-trial-for-decades-old-crimes>.



Accountability of Measures for Prosecution

In their 2013 report,⁷⁵ The HMIC laid out a number of recommendations to address issues faced by the Historical Enquiries Team which Inspector of Constabulary Stephen Otter said need to be carried out 'as a matter of urgency'.

For instance, there was a stark contrast in how cases involving military personnel were treated relative to those involving terrorists, since the HET's Operational Guide states that soldiers were "bound by the laws of the UK and military Standards of Procedures" as compared to terrorists who did not. The HMIC thus recommended that the HET verifies its Operational Guide with the Deputy Public Prosecutor to ensure the fair treatment of veterans with respect to case law.

Another problem was that the HET was not a fully independent organisation. The HET relies on the intelligence branch of the PSNI, which passes on much of the information needed for investigations to take place objectively. The report found that many of the HET's intelligence unit was comprised of former employees of the Royal Ulster Constabulary (RUC) or the PSNI. For this reason, it was recommended that the HET implement an independent audit to ensure that the HET was privy to all appropriate intelligence held by the PSNI.

Although the HET has subsequently been closed down, MPs may refer to such recommendations that identify existing gaps in the system when taking further steps to reform current methods of investigation. Of course, MPs most consider what must be done from a statutory standpoint - not one at a mere level of departmental policy.

Similar to the HET, PSNI's Legacy Investigative Branch is alleged to be biased against military personnel, by the PM, Secretary of State and other Unionist and Conservative politicians.

However, figures obtained by the BBC seem to contradict this claim. Statistics relating to the completed HET caseload showed that of the 1,615 cases undertaken, 1,038 were attributed to Irish republicans, 536 to loyalists, 32 attributed to the British Army and nine were unknown. Furthermore, out of the 17 prosecutorial decisions taken since 2011, a majority of 11 are related to paramilitary groups. In fact, no member of the security forces has ever been convicted to date.

Increasing the Transparency of Investigations

The investigation processes of Troubles-era crimes has always been under intense scrutiny in the public eye, especially regarding the LIB's investigations in recent years. On both sides of the prosecution issue, there has been substantial criticism of the process by which legacy investigations have been, and continue to be, undertaken. Concerns have been raised over the credibility and reliability of evidence and witness statements from decades ago, as well as the re-opening of investigations that were previously closed.

⁷⁵ Constabulary, © Her Majesty's Inspectorate of, and Fire. n.d. "Inspection of the Police Service of Northern Ireland Historical Enquiries Team." HMICFRS. Accessed September 27, 2019.
<https://www.justiceinspectorates.gov.uk/hmicfrs/publications/hmic-inspection-of-the-historical-enquiries-team/>.



One of the most notable concerns is the aforementioned perception that investigations have disproportionately focused on the actions of the armed forces and former police officers, which constitute about an approximate 10% of the overall deaths during the Troubles, but make up 30% of the LIB's workload.⁷⁶

Scope of Debate

Operations of Current Investigative Bodies

Currently, the way that investigative bodies such as the Historical Enquiries Team operate remains highly contentious. MPs are encouraged to look further into such issues and find ways to ensure that investigative measures are conducted with greater accountability and impartiality. Different investigative bodies have been accused of favoring different groups of former members of either the British Army or the Irish Republican Army, hurting reconciliation efforts and reducing cross-community trust. Given the conflicting nature of perspectives and the consequential differences in the focus of investigations, greater cooperation between Northern Ireland and British organisations can also be looked at.

Legal Protections

Whether or not to grant general amnesty, statutory limitations or any legal protections for veterans is a contentious issue. Former Defence Secretary Penny Mordaunt has announced "a statutory presumption against prosecution" for alleged offences committed in the course of duty for more than 10 years ago covering wars in Iraq and Afghanistan, but not Northern Ireland. The previous Northern Ireland secretary, Karen Bradley, had repeatedly voiced her opposition to any statute that encompasses Northern Ireland.⁷⁷ The Northern Ireland Affairs Committee also raised concerns that proposals for amnesty "would not be compatible with the UK's international legal requirements"⁷⁸ - rather, it would act as a hindrance to the peace process. Furthermore, opposing MPs raised concerns over the implications of blanket amnesty on the grounds of encouraging military violence and reducing accountability of soldiers.

As a solution, an Armed Forces (Statute of Limitations) Bill has been drawn up and introduced in the Commons, and has passed the first reading so far. The Bill establishes a statute of limitations for military personnel. This makes it impossible to bring charges against military personnel for crimes they have committed more than 10 years ago.

MPs should take great care in analysing the aspects of such a Bill and consider the effects of this statute's implementation and consider potential mechanisms to reduce any drawbacks that may come along with the statute. The widely contrasting opinions on this statute also serve as an important factor.

⁷⁶ Mills, Claire, David Torrance, Pat Strickland, and Noel Dempsey. 2019. "Investigation of Former Armed Forces Personnel Who Served in Northern Ireland," October.

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8352>.

⁷⁷ Nicholls, Dominic. 2019. "New Law to Block Armed Forces Veterans from Prosecution Does Not Apply to Northern Ireland." *The Telegraph*, May 15, 2019.

<https://www.telegraph.co.uk/news/2019/05/15/new-law-will-stop-armed-forces-veterans-prosecuted-historical/>.

⁷⁸ BBC News. 2019. "Legality of Army 'amnesties' Questioned," September 4, 2019, sec. Northern Ireland. <https://www.bbc.com/news/uk-northern-ireland-49580000>.



Prosecution Measures

Despite thousands of investigations into past ‘crimes’, to date, only 17 referrals for prosecutions have been issued.⁷⁹ With the wide array of solutions proposed by various members, MPs may consider improving or making more effective the current system of prosecuting war veterans. Conversely, MPs may see efforts at prosecution as fundamentally flawed, and call for a fundamental restructuring of such a system towards a model of restorative justice that resembles, for instance, South Africa’s Truth and Reconciliation Commission. Regardless, there is certainly room for improvement in the nature of prosecution measures, such that the investigation and the conclusion process of these post-conflict matters can be settled at the soonest possibility, ultimately to facilitate reconciliation and the establishment of a lasting peace.

Guiding Questions

1. Will the Commons further current prosecution efforts or ‘protect’ war veterans? Can there ever be a compromise between these two?
2. What repercussions will decisions made in the Commons have on the peace process in Northern Ireland?
3. Are current practices of investigative bodies beneficial in the long run? If not, in what areas may the Commons improve on the operations of such agencies in the prosecution of war veterans?
4. How will repeat investigations be dealt with?
5. How may the Commons facilitate discussion in light of the deep-rooted differences between Unionists and Nationalists in this Troubles-related conflict?
6. Does the Stormont House Agreement remain relevant and effective today?

Questions a Resolution Must Answer (QARMA)

1. In what manner may current investigative measures of war crimes be amended? Will the Commons continue to improve on the operations of such bodies in the prosecution of war veterans or create new regulatory bodies?
2. In which areas of prosecution the various government agencies from Northern Ireland and Britain cooperate in the future?

⁷⁹ “Bloody Sunday: What Next After Soldier F Charged with Murder?”, *BBC*, March 14, 2019, accessed October 12, 2019, <https://www.bbc.com/news/uk-northern-ireland-47576026>.



3. How can historical events be further verified to ensure their accuracy?
4. Does the Stormont House Agreement still stand today or are further measures in the works?

Key Stakeholders

Members Supporting Further Legal Protections

This category of persons mostly consists of veterans who seek protection against prosecution, along with a substantial majority of Conservative Party and Democratic Unionist Party (DUP) members. The DUP has previously described the prosecution of veterans a “witch hunt”,⁸⁰ feeling that the majority of crimes were committed by “terrorists” instead of patriotic war veterans. The DUP currently has a preference for exempting servicemen and women from prosecution. However, they do oppose any amnesty that might quash the remote possibility of bringing ex-paramilitaries to trial, citing the possibility of amnesty providing criminals with a back door to escape punishment for the heinous acts they have committed.

The Conservative former defence secretary, Penny Mordaunt, has attempted to strengthen legal protections for troops facing investigation over alleged historical offences, although veterans of Northern Ireland are not covered in this (therefore, the veterans of the IRA would correspondingly not be covered). The exclusion of Northern Ireland was revealed to be a result of opposition from Theresa May’s administration.⁸¹ However, due to increasing pressure from Conservative backbenchers, Prime Minister Boris Johnson has promised to end ‘unfair’ prosecutions against veterans during his campaign trail, though it is unclear whether he would fulfill such a pledge.

Those for Further Prosecution

This group consists of a majority of the Labour Party, as well as nationalist political parties in favour of Northern Irish nationalism. A significant segment of the Labour Party is opposed to granting blanket immunity to war veterans, being aligned to the anti-militarist stance espoused by Party Leader Jeremy Corbyn, seeing such measures as a flagrant dismissal of justice, citing the distress of family members of the deceased and further the aspect of legal accountability. They have lambasted the more moderate sections of the Party willing to support the Government’s attempt to implement immunity measures. For instance, 1,500 Labour Party members called for the resignation of Shadow Minister for Defence Nia Griffith after she supported Penny Mordaunt’s plans for granting amnesty to British soldiers.

⁸⁰ “Prosecution of Bloody Sunday soldier part of a ‘witch hunt’, says DUP MP”, *The Irish Times*, accessed September 13, <https://www.irishtimes.com/news/ireland/irish-news/prosecution-of-bloody-sunday-soldier-part-of-a-witch-hunt-says-dup-mp-1.3873996>

⁸¹ Dan Sabbagh. 2019. “Amnesty Should Be given to Troubles Soldiers, Says Mordaunt.” *The Guardian*, May 15, 2019, sec. UK news. <https://www.theguardian.com/uk-news/2019/may/15/northern-ireland-troubles-soldiers-should-be-given-amnesty-says-mordaunt>.



Human rights groups such as Liberty have expressed opposition to amnesty measures, stating that the current measures in due process already prevents unfounded prosecutions, and that all alleged war crimes need to be criminally investigated, irrespective of when they occurred.

Sinn Féin and Irish nationalists remain vehemently against granting amnesty for war veterans, seeing it as unjust treatment that favours the English. Such a nationalist perspective is perceived to be part of a populist rhetoric in appealing to general Irish public sentiment.

For a staunchly nationalist political party, the prosecution of soldiers is crucial to establishing its narrative of the conflict. Sinn Féin largely views the investigations process as a means of “gaining justice and truth” for those afflicted by prior British actions.⁸² They raised concerns that further attempts at giving amnesty would be greater insults to victims of British state violence and would result in the mass protection perpetrators of murders and other serious crimes.

Conclusion

The issue of protection of war veterans is a highly contentious one, in which there are internal divisions within different political parties. On one hand, continued efforts at prosecution of war veterans is seen to be in favour of the survivors of The Troubles, and thus intuitively a means to progress towards reconciliation. This, however, has to be balanced with consideration for the obsolescence of the war crimes in question, the repercussions on future military operations and the counterintuitive such prosecutions may have on reconciliation. Members are encouraged to consider relevant cases of similar circumstances of British veterans in Iraq and Afghanistan, as well as the issue of amnesty for military personnel in other countries. Members are also urged to examine the nuances of each perspective on this issue, and to approach the topic prudently.

⁸² Jayne McCormack. “Boris Johnson vows to end 'unfair' prosecutions of Army veterans”. BBC News. accessed 13 August, 2019, <https://www.bbc.com/news/uk-northern-ireland-48961053>



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Annex A: Specialised Rules of Procedure

1. General Rules

- a. The Parliamentary proceedings of the House of Commons⁸³ will be adapted for this council. In the Commons, the Rules Of Procedure ('ROP') has been modified such that Bills are submitted in a similar manner to that of a resolution. However, the process of successfully passing a Bill differs from that of traditional MUN councils.
- b. All speeches by MPs are to be addressed not to the Speaker, not the House ('Mister Speaker' or 'Madam Speaker'). MPs have the following options when addressing fellow members:
 - i. Referring by their names;
 - ii. their designations (eg. MP, PM, Minister, Secretary of State..),
 - iii. as the Right Honourable Lady/Gentleman' instead of 'he/she/they'.

2. Precedence of Points and Motions

All points and motions will be seconded and objected, as well as voted upon in order of most disruptive to least, as follows:

1. Point of Personal Privilege. It is the only point that can interrupt a speaker.
2. Point of Order.
3. Point of Parliamentary Inquiry.
4. Right to Reply.
5. Motion to Adjourn/Suspend Debate.
6. Motion for Unmoderated Caucus.
7. Motion for Moderated Caucus.
8. Motion to Table Bill.
9. Motion to Table Amendment.
10. Motion to Proceed to a First Reading of a Bill.
11. Motion to Proceed to a Second Reading of a Bill.
12. Motion to Introduce Amendment.
13. Motion to Move into Third Reading of the Bill (akin to Direct Voting Procedure).

When in voting procedures on a draft resolution, the following motions are considered in order of most superseding to least:

1. Motion to Divide the House.
2. Motion to Divide the Question.
3. Motion for a Roll Call Vote.

⁸³ "How Does a Bill Become a Law?" n.d. UK Parliament. Accessed July 7, 2019. <https://www.parliament.uk/about/how/laws/passage-bill/>.



3. Giving Way / Interruptions

When MPs wish to interrupt a speaking MP, they must request for the speaking MP to give them the floor by raising their placards and saying "Give way". This shall replace yields in standard MUN procedure for MPs to interrupt speaking MPs to ask questions or make follow-up speeches. Interruptions will be entertained in accordance with the following rules:

- a. Giving way may only take place during speeches in the GSL or open debate. It shall not be entertained in closed debate or moderated caucuses.
- b. Speaking MPs may decide whether to grant the floor to interrupting MPs. If they wish not to, interrupting MPs may not speak and the speaking MP may continue with their speech.
- c. Once interrupting MPs have concluded their follow-up speech or question and there are at least 10 seconds of speaking time left for the speaking MP, they may return the floor to the speaking MP. If there are less than 10 seconds left, the interrupting MP must return the floor to the Speaker.
- d. If there are less than 10 seconds remaining for the speaking MP, MPs may not interrupt their speech.
- e. Once the final speaker (either the interrupting or speaking MP) has finished their speech, they shall return the floor to the Speaker. No yielding is required when they have finished their speech.
- f. Giving way may be subject to the discretion of the Speaker in the event that interrupting MPs disrupt order in the House.

4. Question Time

Question Time will be a period of time for MPs to pose questions to other Ministers and MPs on their responsibilities, positions on certain issues and previous or proposed policies. Question Time will be observed in accordance with the following rules:

- a. The Speaker shall introduce and move the House into Question Time at their discretion. MPs will be informed in advance of the Speaker's decision to move the House into Question Time and are encouraged to send their questions to the MPs or Ministers via notepaper beforehand to ensure sufficient preparation of responses to their question.
- b. The Speaker will introduce the Question Time with the specific amount of time allocated to it. For example, if the Speaker intends for a five-minute Question Time, they will state, "*The House will now proceed to a five-minute Question Time.*"
- c. MPs who wish to ask questions shall raise their placards for the Speaker to recognise them. Upon recognition, they will then state which MP or Minister they wish to answer the question and pose the question. Following this, the addressed MP or Minister will then answer the question.
- d. Time given for each MP or Minister to answer questions may be subject to the discretion of the Speaker in the interest of time.



5. Motions

Motions must be introduced in the manner, "I beg to move, that...". For instance, an MP calling for a Motion to proceed to the First Reading of the Bill will state, "*Madam Speaker, I beg to move that the Bill now be read the first time*" or "*Madam Speaker, I beg to move that the House proceeds to the First Reading of the Bill.*"

- a. Motion to proceed to the First Reading of the Bill:
 - i. Once a Bill is approved by the dais, members may raise this motion,
 - ii. Sponsors will read out each clause of the Bill;
 - iii. Sponsors will face a 5-minute Q&A;
 - iv. There are no debates.
- b. Motion to proceed to the Second Reading of the Bill:
 - i. A sponsor may call for a bill to proceed to the Second Reading;
 - ii. MPs will be chosen to respond with their views on the Bill in a closed debate;
 - iii. During the debate, this motion gives MPs an opportunity to propose further amendments to the Bill;
 - iv. The MP who has raised the motion will proceed to introduce the amendment;
 - v. At the end of the debate, the Commons decides whether the Bill should be given its second reading by voting, meaning it can proceed to the next stage;
- c. Motion for Committee stage:
 - i. This motion gives MPs
- d. Motion to proceed to the Third Reading of the Bill:
 - i. Debate shall be concluded at the Third Reading of the Bill;
 - ii. No amendments are allowed at this stage;
 - iii. At the end of the debate, the House decides (votes on) whether to approve the third reading of the Bill.

6. Submitted Documents

1. In place of resolutions in traditional MUN conferences, MPs are required to submit Bills as solutions to the issue at hand.
2. Bills passed in this council will be in the form of Public Bills. Such bills pertain to matters of national interest (*jus generale publicum*) and may include financial provisions. There are two types of Public Bills:
 - i. Government Bills
 1. Government Bills may only be submitted by government Ministers for approval (in this case, Ministers from the ruling Conservative Party).
 2. Once passed into law, Government Bills become Acts of Parliament
 - ii. Private Members' Bills
 1. Private Members' Bills may be submitted by a Member who is neither a Minister nor a Parliamentary Secretary for approval.



3. In the voting or submission of Bills, members are encouraged to stick to their party lines - that is, not to stray from their party platform, unless such an act is substantially justified.



Annex B: Draft Bill Template

Content page

[Short Title of Bill]

CONTENTS

Article name 1

1 [Clause header 1]

2 [Clause header 2]

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etc.

Article name 2

3 [Clause header 3]

4 [Clause header 4]

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Etc.



Bill Content

A
BILL

TO

[All purposes of Bill (i.e. LONG TITLE OF THE BILL) to be listed here, as exemplified blow];
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*Ordered to be brought in by [NAME OF SUBMITTER 1],
[NAME OF SUBMITTER 2],
[NAME OF SUBMITTER 3],
... etc.*

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[ARTICLE NAME]

1 [CLAUSE HEADER 1]

- (1) [CLAUSE 1(1)]
 - (a) [PARAGRAPH];
 - (i) [SUBPARAGRAPH 1];
 - (ii) [SUBPARAGRAPH 2];
 - (iii) [SUBPARAGRAPH 3];
- (2) [CLAUSE 1(2)];

2 [CLAUSE HEADER 2]

- (1) [CLAUSE 2(1)];
- (2) [CLAUSE 2(2)].