

Submission by Richard Tanter to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into international armed conflict decision-making.

18 November 2022

### **Introduction: a personal note**

I welcome the establishment of this inquiry and the opportunity to make a submission, which will be principally concerned the second of the inquiry's terms of reference.

If I may be forgiven for introducing a brief personal perspective into the matters under consideration by the committee, I write as a founding committee member of the Campaign for an Iraq War Inquiry and its subsequent incarnation as Australians for War Powers Reform.

I also write as someone who was a registered conscientious objector to conscription at the time of the Vietnam War (1969) on the basis of my political objections to Australia's large-scale participation in that war. The thinking that lead me to take that position long ago relates to the current concerns of the committee.

The restricted ad hoc circle of people involved, the poor intelligence foundation, and truncated manner in which the decision to enter that war was undertaken, as explicated by subsequent diplomatic and political historians (most notably by the former chair of the National Intelligence Committee, Mr Garry Woodard in his magisterial book *Asian Alternatives*, had profound and far-reaching negative consequences for this country, its diplomatic standing in our region, and not least, tragically so for a great many Army veterans, and people in Vietnam. (I note that much the same could be said of Australia's decisions to join the invasions of Iraq and Afghanistan, albeit under UN auspices in the latter case.)

In 2012 I shared a stage with former Prime Minister Malcolm Fraser in a public discussion at the University of Melbourne when Mr Fraser was asked by an audience

member of a certain age as to how, in the context of his critique of current Australian foreign policy, and as it happens, war powers matters, he squared those critical opinions with his championing of participation in the Vietnam War as Minister for the Army and Minister of Defence?

I will not forget the audible intake of breath by the large audience when Mr Fraser said quite simply 'We were wrong. I was wrong.' He went on to repeat what he had said, and to specifically criticise the way in which the April 1965 decision by Prime Minister Robert Menzies to escalate Australian participation was taken.

While many former political leaders will admit to regrets, and sometimes to accept responsibility for what they come to see as errors of judgement, Mr Fraser went on to campaign actively for reform on the question of war powers.

I worked with Mr Fraser intensively over a number of years, including in relation to his work as a patron of the Campaign for an Iraq War Inquiry, and have no doubt that he saw an urgent need to establish a sound legislative basis in explicit parliamentary decision-making for any Australian decision to conduct overseas armed conflict operations. I have no doubt that this was a carefully-thought through but heartfelt position based on Mr Fraser's experience of that decision and its consequences for this country.

**Reference (b) parliamentary processes and practices, including opportunities for debate to provide greater transparency and accountability on the deployment of the ADF.**

A minimal requirement is the passage of legislation requiring parliamentary approval, by direct vote, in both houses of parliament for the dispatch of the Australian Defence Force overseas that involves armed conflict. The fundamental reason for this requirement is to promote an effective foundation for responsible and representative government as the foundation of Australian democracy.

A vote on war (declared or otherwise) in parliament generates a public parliamentary debate, provides a foundation for each member as a representative of the people to be accountable to their electorate, and in the current state of parliament, allows for the possibility of prior parliamentary public inquiry on the relevant matter.

A vote in both houses provides a greater chance that opinions beyond those of the current cabinet will be heard and, in the case of the Senate, a greater possibility of parliamentary inquiry.

One goal of reform of war powers in Australia is to ensure this category of decision-making works to strengthen the legitimacy of government in Australia, with a preference for such decisions by the largest possible accountable forum of political representatives. At present that is the parliament itself. Given that it is widely noted that we are in a period of widening doubt about the adequacy of parliamentary democracy reform of war powers on the basis of parliamentary approval is desirable both in itself and to the further end of bolstering the legitimacy of our political institutions.

It may be suggested that a reasonable compromise might be that the decision be allocated a smaller group of parliamentarians, especially due to the requirement to maintain security over highly sensitive intelligence which may be the foundation of decision-making. This sometimes leads to a suggestion that the decision could be taken on behalf of parliament by a smaller group, such as the National Security Committee of Cabinet.

I am not an expert on the functions of the National Security Committee, but I attach a study of one significant decision by the NSC in September 1997 to allow the establishment of a Joint Australia-United States Relay Ground Station at Pine Gap to support two United States early warning satellite systems in place of its predecessor, the Joint Space Communications Facility at Nurrungar:

Richard Tanter, *Hiding from the light: The establishment of the Joint Australia-United States Relay Ground Station at Pine Gap*, Special Report, Nautilus Institute for Security and Sustainability, 2 November 2019, at <https://nautilus.org/napsnet/napsnet-policy-forum/hiding-from-the-light-the->

[establishment-of-the-joint-australia-united-states-relay-ground-station-at-pine-gap/?view=pdf](#)

That decision was of considerable strategic consequence for Australia, with a distinct possibility of maintaining a situation in which Australia could come under nuclear attack in time of war – a matter not far removed from the decision to go to war.

The Cabinet papers on that matter released in 2019 provide an instance of the limitations and deficiencies of Australian government procedure in foreign affairs and defence decision-making. In Australian government procedure in general, the whole of the cabinet decides on major matters, and takes collective responsibility for the consequences.

I would argue that this is not an example of decision-making on matters of strategic significance that offers support for the idea that a small subset of parliamentarians are to be preferred to vesting that authority in debate and voting in both houses of parliament.

Yours sincerely,

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