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A parliamentary entente cordiale? The House of Commons Defence Committee's joint inquiry with the Assemblée nationale's Standing Committee on National Defence and the Armed Forces

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Abstract

Inter-parliamentary relations are not an area which attracts much in the way of public or even academic attention. However, they are an aspect of parliamentary life in which there has been series of experiments by Select Committees in the House of Commons. While one of the more prominent examples of such experimentation was the international grand committee on Big Data, Privacy and Democracy spearheaded by the Digital Culture Media and Sport Committee, this article will look at another example of Select Committee-led inter-parliamentary relations, namely the 'joint inquiry' conducted by the House of Commons and Assemblée nationale's Defence Committees into Future Cruise and Anti-Ship Missiles in 2018.

This article, written by an official involved in the inquiry, offers the first reflections on the experience of this 'joint inquiry', demonstrates how the model undertaken for the inquiry differed from the approaches taken by other Select Committees involved in inter-parliamentary working and explores whether it might offer a blueprint for future joint inquiries.

Keywords: Select Committees, UK Parliament, inter-parliamentary relations, parliamentary procedure, innovation

Introduction

Interparliamentary relations are not a subject area which generally commands much attention in the academic literature on legislatures, however they are an arena where there has been a recent spate of activity by Committees in the House of Commons. Despite the Standing Orders of the House precluding formal joint meetings of Commons Committees with Committees from other legislatures (save in the unique case of the Welsh Affairs Committee), since 2017 the Scottish Affairs, Digital Culture Media and Sport, and Defence Committees have all engaged in interparliamentary activities with international colleagues.

This article focuses on the interparliamentary activities of the House of Commons Defence Committee and, in particular, its innovative ‘joint inquiry’ with the Assemblée nationale’s Standing Committee on National Defence and the Armed Forces in 2018.ⁱ This inquiry marked a significant evolution in the near decade of collaboration between Committees in the UK and French parliaments since the signing of the Lancaster House Agreements by the UK and French Governments in 2010.

This article offers the first reflections on the experience of this joint inquiry, demonstrates how the model undertaken for the inquiry differs from the approaches taken by other Select Committees that have sought to engage in interparliamentary relations and also how it might, in the absence of changes to the House of Commons’ Standing Orders, offer a blueprint for future joint inquiries.

Context: Defence Committee interparliamentary relations after the Lancaster House Agreements

Whilst there is a longstanding history of collaboration between the UK and French Armed Forces, there has been a marked increase in defence cooperation since the signing, in 2010, of the Lancaster House Agreement ('the Agreement') between the UK and French Governments. The Agreement's main objectives included maximising the two countries capacities through coordinated development, and acquisition, of materiel and joint deployment of forces into theatres in which both parties have agreed to be engaged and in operations conducted under international and bilateral banners.ⁱⁱ

The Agreement has not just seen strengthened cooperation at the intergovernmental level, but also closer working relationships at the interparliamentary level. To date much of this work has taken place in the form of the UK-France Parliamentary Working Group on Bilateral Defence Co-operation ('the Parliamentary Working Group'). The Parliamentary Working Group emerged as a result of a conference held on 6 December 2010.

Attended by representatives of the House of Commons Defence Committee and the House of Lords EU Sub-Committee on Foreign Affairs, Defence and Development, the aim of the conference was to coordinate parliamentary scrutiny of the implementation of the UK-French treaties signed at Lancaster House in November 2010. An agreement was reached to hold two meetings of the Parliamentary Working group a year, alternating between Paris and London. The four chambers are represented as follows:

- House of Commons – members of the Defence Committee
- House of Lords – members of the EU Sub-Committee C on External Relations and members of the International Relations and Defence Committee

- Assemblée nationale – members of the Standing Committee on National Defence and the Armed Forces
- Sénat – members of the Committee on Foreign Affairs, Defence and the Armed Forces.

At these meetings, parliamentarians are provided with briefings from representatives from the Ministry of Defence of the host nation, with time also provided for Members to discuss bilateral defence relations and matters of common interest. While the meeting takes place behind closed doors, a communique was issued following the June 2019 Working Group meeting.

On the fringes of the Parliamentary Working Group’s meeting in Paris in February 2018, the Chairs of the House of Commons and Assemblée nationale’s Defence Committees agreed to deepen the collaboration between the two committees by holding a joint inquiry on the Future Cruise/Anti-Ship Warfare (FC/ASW) programme.

The FC/ASW aims to provide, by 2030, a heavy anti-ship weapon (to replace Harpoon in the UK and Exocet in France) and deep strike capability replace the SCALP/Storm Shadow missiles that both nations deploy. This programme was chosen for scrutiny by both the Commons and Assemblée Defence Committees due to the importance of the ‘One Complex Weapons’ initiative to UK-French defence cooperation.ⁱⁱⁱ

The Joint Inquiry

Once the principle of a joint inquiry had been agreed by the Chairs of both Committees in February 2018, the staff of the two committees then set to the task of developing a draft set of terms of reference for approval by their respective Chairs and members. During this phase, the Commons staff also needed to consider the way in which the inquiry would be conducted.

Procedural issues

Developing a methodology for conducting the joint inquiry was not necessarily a straightforward process. The Standing Orders of the House of Commons do not provide Select Committees, save in one particular case, with the power to hold formal, joint evidence sessions with committees from other legislatures. The sole exception is the Welsh Affairs Committee (WAC) which has the power to “invite members of any specified committee of the National Assembly for Wales (NAfW) to attend and participate in its proceedings (but not to vote)”.^{iv} This power, coupled with an reciprocal arrangements in NAfW’s Standing Orders, has enabled joint working between WAC and NAfW Committees on the principle of ‘reciprocal enlargement’ (in effect the host committee continues to apply its usual working methods and procedures, albeit with an expanded membership as a result of its guest members).^v

In the absence of WAC style powers, the Defence Committee had to choose between trying to devise its own way of providing as formal a level of protection for the joint inquiry as was procedurally possible, or adopting a model that had been developed by the Scottish Affairs Committee (SAC) for its work with the Scottish Parliament’s Social Security Committee (SSC) in March 2017, when both committees examined intergovernmental cooperation between the UK and Scottish Governments on the partial devolution of welfare powers to Holyrood.

To counter the lack of procedural cover for formal joint meetings of this sort in both Westminster and Holyrood, the two committees agreed that members of the visiting committee in each instance would be technically classified as witnesses, albeit unlike the real ‘witnesses’, they would sit at the horseshoe with members of the host committee and ask questions. In essence these meetings ran, like WAC’s engagement with NAfW committees, on the principle of reciprocal enlargement.^{vi} This model was adopted by the Digital, Culture, Media and Sport Committee (DCMSC) for its ‘International Grand Committee on Disinformation and Fake News’ in November 2018.^{vii}

No major issues emerged from either the SAC or DCMSC experiences, however in neither case were the committees involved seeking to run a full inquiry or to agree a comprehensive joint report. For this reason, the Defence Committee staff sought to develop a bespoke architecture for their joint inquiry that would facilitate multiple sessions and the joint working that might be required for drafting and approving a joint report. This architecture would need to provide procedural protection where possible, whilst also proving flexible enough to accommodate the realities of interparliamentary cooperation.

As a result, the model adopted consisted of a twin-track approach: 1) a formal track which involved decisions of the Committee properly constituted, and which in turn has enabled/provided the necessary protections for 2) the effective, albeit informal, track of the inquiry. To illustrate, the informal decision, made by both Chairs, to conduct an inquiry and to agree the draft terms of reference was then followed by the Defence Committee formally launching an inquiry on the subject matter and publishing terms of reference in the same way that it would for any inquiry.

Evidence gathering

Once the methodology was in place, and the joint inquiry officially launched on 23 May 2018, the Committees and their respective secretariats needed to chart a practical plan for the inquiry, including the evidence sessions in Westminster and in Paris. The Defence Committee approved a core group of Members^{viii} to act as a de-facto sub-committee and attend both sessions, while the French Committee, in their usual fashion, appointed two rapporteurs and a core group of Members who would lead on the inquiry from their side.^{ix}

The first session was held in London on 11 July, with witnesses including representatives from the Ministry of Defence. The session was designed to run like any normal Defence Committee evidence session, again based on the principle of reciprocal enlargement, albeit with an important procedural, and more minor practical, differences. The most obvious practical difference was the

presence of translator booths in the committee room and the use of simultaneous translation during the session. Procedurally, the main difference was that, because Standing Orders do not permit such a joint evidence session, and because of the methodology adopted by the Committee, the session was technically a public, informal evidence session.

As such, this meant that the live proceedings of the evidence session were not covered by parliamentary privilege, a fact that Members and witnesses were reminded of by the Defence Committee Chair at the outset of the session.^x However, in keeping with the twin track approach to the inquiry, a transcript was taken by Hansard of the session. This transcript was then reported by the Defence Committee as formal evidence for its inquiry. As a result, while the 'live' proceedings of the session were not covered by parliamentary privilege, the written proceedings were protected.

This approach was repeated, a fortnight later, when the two Committees met in Paris, with witnesses from the French military, Defence Ministry and defence industry. Once again embracing the principle of reciprocal enlargement, the session ran along the lines of a normal *Assemblée nationale* committee meeting. A Hansard reporter accompanied the UK members and produced a transcript of the session that was again considered formally at the next Defence Committee meeting and reported as written evidence for the Committee's inquiry.^{xi}

Agreeing a report

Shortly after the Paris session, the two committee secretariats discussed how to go about writing a joint report for the inquiry. This posed obvious procedural and practical issues for the committee secretariats. The procedural issue being that a Chair's draft report (the draft report which is drafted by Committee staff and then submitted to members for approval before formal publication) cannot be divulged, prior to agreement and publication, with external actors.

Practically, there are obvious issues in trying to draft a report bilingually with a larger pool of veto players than normal.

To surmount the procedural issues, it was decided that the draft 'joint report' would take the form of a draft memorandum, rather than be called a Chair's draft report, albeit the difference was essentially titular in nature. The draft memorandum would be drafted jointly by the two secretariats and would then be picked up by each committee and reported to their respective legislatures, in the usual manner (again demonstrating the twin track approach described above).

In terms of managing practical issues, the two secretariats agreed to a report structure that divided the workload equally, with each team taking responsibility for leading on two chapters apiece. It was agreed that each set of draft chapters would then be exchanged for comments and suggestions, to ensure 'joint ownership' of a draft that could be distributed to the respective committee memberships.

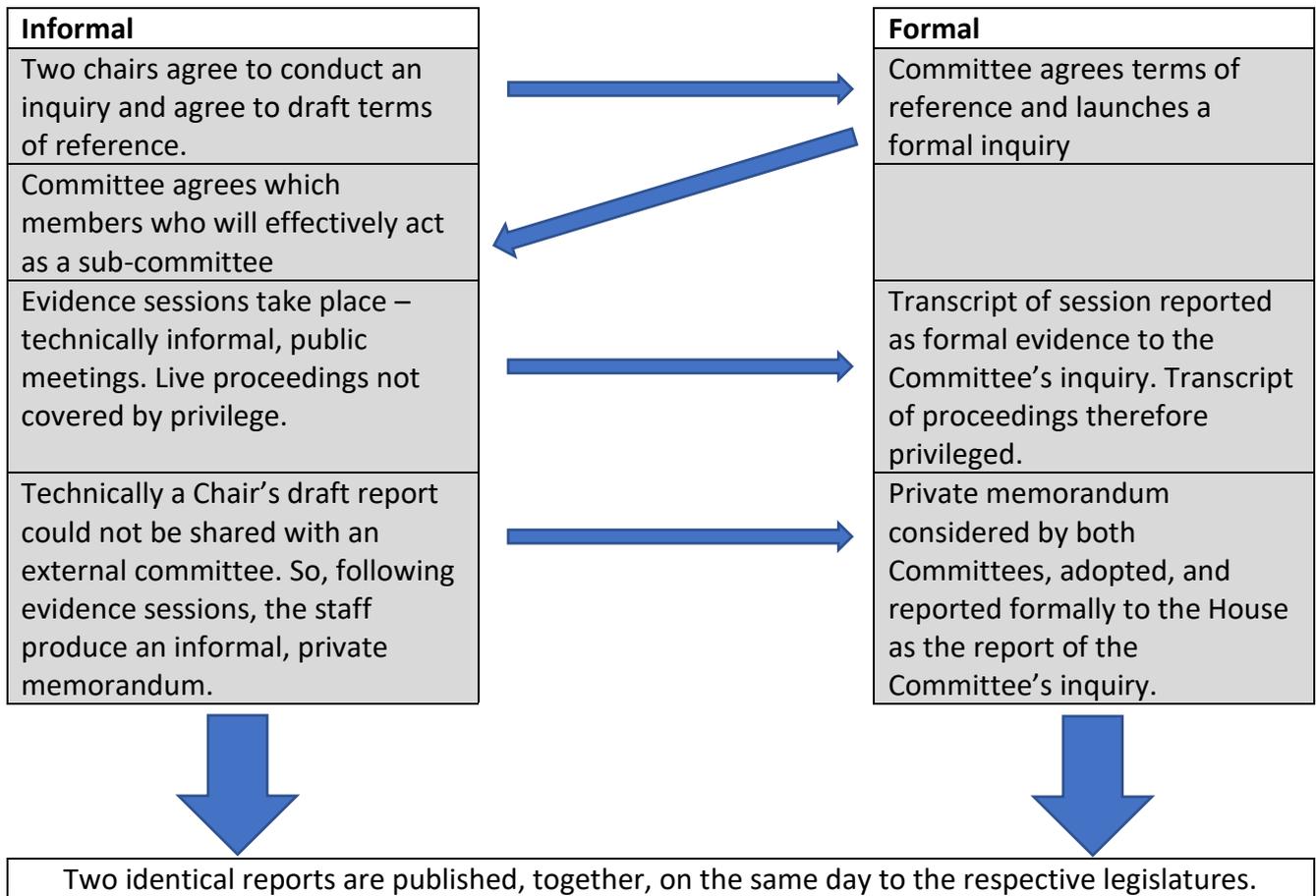
Once the drafting, exchanging, translation process had been completed at a staff level, the joint memorandum was then transmitted to the Chair of the Defence Committee and the rapporteurs from the French committee for their comments and suggestions. Once agreement was reached at this level, the draft memorandum was sent to members of the Defence Committee for consideration. Due to the unusual nature of the inquiry, the normal ability for members to propose sweeping amendments to the report was constrained. Ultimately, if Members wished for the document to be a 'joint report' they would need to be mindful of whether any amendments they would wish to see made to the document would also need to be acceptable to their French counterparts.

As such, Members were asked to provide their amendments/comments considerably ahead of the formal consideration of the document, mindful of that warning above. Any comments could then be transmitted to the French rapporteurs for their consideration (they played a particularly

significant role as Rapports d'information are traditionally considered at length, but without major amendment, by the Committees once presented by the rapporteurs).

On 11 December 2018, in the last phase of the twin track approach taken to the inquiry, the Defence Committee formally adopted the memorandum, approving it without division, and reported it as a committee report to the House of Commons. The next day, the French committee approved publication of the French language version of the report (both documents were bilingual). Both versions of the joint report were published at the same time, online, on 12 December, thus producing the first joint 'report' produced between a House of Commons Select Committee and a committee from a non-UK legislature.^{xiii} Befitting this unique example of interparliamentary cooperation, the official Government response to the Defence Committee's report (published as a Special Report by the Committee) was agreed by both the UK and French Ministries of Defence.^{xiiii}

Chart One: The twin-track approach to the joint inquiry



Conclusion: a model for wider use?

Inter-parliamentary engagement at the level of joint evidence sessions remains a rare occurrence, however there are some reasons to believe, at least within the intra-UK context, that it may increase in the near future. Welsh devolution has always seen a blurred boundary between devolved and reserved competence, resulting in policy areas with significant overlapping responsibilities (if not outright shared responsibilities), while there has been a notable growth in shared policy fields in the context of Scottish devolution since the 2012 and 2016 Scotland Acts (most notably in the areas of fiscal and social security policy). In addition, the UK’s withdrawal from the European Union is set to result in a significant increase in shared policy fields, leading to debates between the UK administrations on the establishment of ‘common frameworks’.^{xiv}

There could thus be a significant potential for enhanced inter-parliamentary cooperation within the United Kingdom, while it is possible that examples of international cooperation such as that between the Defence Committee and its counterparts in the *Assemblée nationale* and the DCMSC with its ‘international grand committee’ colleagues could prompt other committees to consider similar engagements. Should this be the case, one obvious question is whether the model adopted by the Defence Committee could be applied elsewhere.

The answer is perhaps a rather prosaic one: it depends. As can be seen from the above discussion, and the visualisation provided in Chart One, the Defence Committee’s approach was more complex than the approach taken by the SAC in 2017 and the DCMSC in 2018. By not providing the protection of parliamentary privilege for the live proceedings of evidence sessions, albeit providing protection of the transcript of said sessions, the Defence approach would also be inappropriate for inquiries on matters of high controversy and/or where potentially libellous content may materialise. Indeed, it could well have been a problem for the DCMSC work on disinformation and ‘fake news’.

That said, the architecture developed by the Defence Committee did provide a useful structure upon which to build a full ‘joint inquiry’, rather than a one-off evidence session. Having a thorough, albeit possibly complex, twin-track approach ensured that the committee staff were able to implement an inquiry that ticked the necessary procedural boxes, but was also flexible enough to accommodate the inevitable bargaining and negotiating process that comes from interparliamentary cooperation. It meant that, from the outset, there was an understanding of where and how procedural protection could be sought and take effect, as well as where the boundaries of such protection lay. It also allowed the two Committees to not only hold evidence sessions together, but also to produce what was genuinely, if not formally, a ‘joint report’. Admittedly, the report was not only on a highly technical subject, but also one which had

relatively uncontroversial conclusions, thus facilitating the reduced scope, politically, for amendments than is usually provided in consideration of reports.

Were a report to be on a subject where there were clearer differences of opinion, then this model would clearly come under greater strain. In such circumstances, the informal report deliberation time would arguably need to be longer (so as to allow veto players on both sides to have time to weigh up whether to accept or block or fudge differences) or could end up in two divergent reports, or a less detailed document like a communique, rather than a ‘joint report’.

Ultimately, the twin-track approach was not a perfect model for inter-parliamentary cooperation and will always be inferior to express powers, in the Standing Orders of the House of Commons, to hold formal joint sessions. Nonetheless, and despite the issues identified above, the approach taken provided a reliable framework for the purposes of the Defence Committee’s inquiry and, if nothing else, offers a basis for experimentation for other Committees whether in the House of Commons or in the other UK legislatures that are interested in inter-parliamentary cooperation. Such experimentation may become an increasing occurrence in the next few years.

ⁱ Defence Committee, *Future Anti-Ship Missile Systems: Joint inquiry with the Assemblée nationale’s Standing Committee on National Defence and the Armed Forces*, Thirteenth Report of Session 2017-19, HC 1071

ⁱⁱ Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic for Defence and Security Cooperation (2 November 2010), Cm 8174, Article 1

ⁱⁱⁱ Defence Committee, *Future Anti-Ship Missile Systems*, Summary and paras.7-8

^{iv} House of Commons (2017), Standing Orders of the House of Commons – Public Business, No. 137A(3)

^v Evans, A. (2019). Inter-parliamentary relations in the United Kingdom: devolution’s undiscovered country?, *Parliaments, Estates and Representation*, 39(1), 102-105

^{vi} *Ibid.*, 105

^{vii} Digital Culture Media and Sport Committee (23 November 2018), Parliamentarians from across the world to question Richard Allan of Facebook and the Information Commissioner at inaugural hearing of ‘international grand committee’ on Disinformation and ‘fake news’, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/grand-committee-evidence-17-19/> (accessed online 21 June 2019)

^{viii} The core group of UK Members consisted of the Rt Hon John Spellar MP, the Rt Hon Mark Francois MP, Mrs Madeleine Moon MP and Gavin Robinson MP, although more Members of the Committee participated in the London session.

^{ix} Natalia Pouzyreff and Charles de La Verpillière were the co-rapporteurs for the French committee, the other members of their group were Jean-Pierre Cubertafon, Jean-Jacques Ferrara, Jean-Charles Larsonneur and Stéphane Trompille.

^x Defence Committee (11 July 2018), Oral evidence: Future Anti-ship Missile System - Joint Inquiry, HC 1071, Q1

^{xi} Defence Committee – Written evidence (FAM0004)

^{xii} Defence Committee, Future Anti-Ship Missile Systems: Joint inquiry with the Assemblée nationale's Standing Committee on National Defence and the Armed Forces, Thirteenth Report of Session 2017-19, HC 1071; Commission de la Défense Nationale et des Forces Armées, Rapport D'Information Conjoint, en conclusion des travaux d'une mission d'information conjointe sur la prochaine génération de missiles anti-navires, No.1493

^{xiii} Defence Committee, Future Anti-Ship Missile Systems: Joint inquiry with the Assemblée nationale's Standing Committee on National Defence and the Armed Forces: Government Response to the Committee's Thirteenth Report of Session 2017-19, Sixteenth Special Report of Session 2017-19, HC 2033

^{xiv} Torrance, D. and A. Evans (2019), The Territorial Select Committees, 40 Years On, *Parliamentary Affairs*, Advance access: <https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsz032/5552797> (accessed online 21 August 2019)