

How Democratic is the UK? The 2012 Audit

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Democracy beyond the state

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4. Democracy beyond the state

4.1. External influences on the country's democracy

Executive Summary

This chapter reviews the available evidence relating to the three 'search questions' concerned with external influences on UK democracy.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

(a) Areas of improvement

1. Steps taken to improve the democratic legitimacy of the European Union.

Under the Lisbon Treaty of 2007 various provisions were made to strengthen the position of national parliaments with respect to the EU. The position of the European parliament was enhanced also. Changes to the procedure of the Council of Ministers has made their business more transparent; and a basis was provided for a system of 'European Citizens' Initiatives', which could enable citizens to call upon the European Commission to act in particular areas. (For further details and discussion, see Section [4.1.1](#))

Areas of continuing concern

1. The lack of transparency and direct democratic accountability of international organisations.

Various international and regional organisations such as the European Union and World Trade Organisation may well perform necessary and potentially democracy-enhancing functions. Yet they are criticised both for their negative impact upon the autonomy of democratic nation states; for their lack of transparency; and - with the exception to some extent of the European Union - their lack of direct democratic accountability. (For further details and discussion, see Section [4.1.1](#))

2. Continuation of European Union 'democratic deficit'.

The European Union is at the peak of its power to date in certain senses: the scope for its policy activity, which has broadened substantially; and the potential for it to act on a basis of qualified majority voting, potentially against the wishes of some member states. Its decisions are directly incorporated into the law of member states. Concerns about the so-called 'democratic deficit' in EU affairs - that there is no clear line of democratic accountability for the decisions that it makes - persist. Yet, there is also evidence to suggest that the UK would face as much of a 'democratic deficit' operating outside the EU as it does inside it. (For further details and discussion, see Section [4.1.1](#))

3. The 'special relationship' with the United States serves to compromise UK foreign policy autonomy.

In the period since the Second World War, the UK has tended to place a high premium on close relations with the US. This relationship has been founded in a variety of concerns, including matters of security and intelligence, and military issues. At times, for instance over UK participation in the Iraq War of 2003, the desire to adhere to this alliance has appeared to override more regular democratic decision-making and led the UK into activities of a democratically questionable nature. It is not clear that the UK obtains the influence over the US that it seeks through public support for many of its policies; nor that the negative consequences of pursuing a more independent foreign policy would outweigh the potential benefits. The value of the special relationship is not generally the subject of wide political scrutiny and debate. (For further details and discussion, see Sections [4.1.1](#), [4.2.2](#), [4.2.4](#) and [2.4.3](#))

4. The role of UK in supranational arrangements testing traditional constitutional/democratic models.

Parliamentary sovereignty is a central doctrine to the UK constitution as traditionally understood. This doctrine is called into question both by the European Communities Act 1972 and the Human Rights Act 1998, both of which are protected from implied repeal by subsequent acts of parliament, a break with regular constitutional practice. Moreover, parliament is unable by convention to alter the royal rules of succession without obtaining the agreement of all the other states of whom the UK monarch is also head of state. These doubts about parliamentary sovereignty are problematic because they create a lack of clarity regarding how UK democracy functions, but it is by no means clear that repealing the European Communities Act 1972 and the Human Rights Act 1998 would resolve the problem. (For further

details and discussion, see Section [4.1.1](#))

5. Parliamentary EU committees lack of formal authority.

When placed in comparative European perspective, committees charged with oversight of the European Union lack the formal ability to control or oversee the government. Moreover, the UK parliament is not characterised by an institutional environment in which parliamentarians cooperate across party lines to assert their authority over the government. In this sense, both requirements for a strong system of parliamentary oversight of European business are absent. (For further details and discussion, see Section [4.1.3](#) and Table [4.1e](#))

6. Lack of parliamentary authority in overseeing activity within international organisations.

The rights of the UK parliament with respect to UK participation in international organisations is even weaker than its position with regard to the European Union. Diplomacy continues to be conducted under the non-statutory royal prerogative. Mechanisms such as the 'mandating' of ministers prior to their attendance at international negotiations used in other countries have not yet been adapted to the UK. (For further details and discussion, see Sections [4.1.3](#) and [4.2.4](#))

(c) Areas of new or emerging concern

1. Exaggerated claims about globalisation have served to restrict discussion of economic and social policy options.

It is not at all clear that economic globalisation is, of itself, an irresistible force that will inevitably serve to entirely compromise the autonomy of nation states. Indeed, while the UK has often portrayed itself as unavoidably responding to world economic trends in its policies of economic liberalisation, the UK is certainly not amongst the most globalised or open economies. This observation leads us to the conclusion that globalisation has been used primarily as a rhetorical device to close off debate on different policy options in the UK, rather than responded to it as a reality. (For further details and discussion, see Section [4.1.1](#) and the [Introduction](#) to Section 1.4, and Table [4.1a](#) and Figure [4.1a](#))

2. Domestic policies adopted in response to globalisation are causing the UK to diverge from European social welfare norms.

Evidence exists that there has not been a single pattern of policy response in European democracies - or indeed internationally - to the trend of globalisation. In the area of welfare policies, some countries have been more disposed to retrench than others. It is in the liberal welfare states, such as the UK, that retrenchment has been greater, as compared with the social democratic welfare states. (For further details and discussion, see Section [4.1.1](#) and [Introduction](#) to Section 1.4, and Table [4.1a](#) and Figure [4.1a](#))

3. The impact of coalition retrenchment plans upon the capacity of the Foreign Office.

The capacity of the UK effectively to secure influence over decisions impacting upon it may be undermined by reductions in the Foreign and Commonwealth Office (FCO) budget under the present coalition retrenchment plans. The FCO had already undergone spending cuts; and its scope for absorbing reductions was less than in some other departments. (For further details and discussion, see Section [4.1.2](#))

Introduction

The external influences bearing on a state are a crucial determinant of the quality of its democracy, being both capable of helping and hindering national democratic processes and institutions. This much is demonstrated by an observation from the previous Audit that a 'country might have the most perfect democracy internally, but enjoy little real self-government if most of the decisions that mattered for the life of its citizens were taken beyond its borders' (Beetham et al., 2002, p. 274). We use this simple premise as the basis of our analysis in this chapter, which is split into three areas. In the first, we examine, in general terms, whether the external influences affecting the UK compromise its democratic processes and national interests; while in the second and third, we assess the extent to which the influence and decision-making power that the UK government wields within international organisations, is both equitable and subject to proper parliamentary scrutiny and public debate at home.

As a key member of various international institutions, and one of the most fully-integrated units in the new global economy, the UK, like many other comparable states, is of course subject to a broad range of external influences, which include political, diplomatic and trade organisations; powerful corporate bodies operating in industry and finance; and even other nation-states more powerful than itself. Yet, as we discover in this chapter, the influence that these entities exert over the UK does not always appear to be to the benefit of its democracy. Indeed, the decision-making of international bodies such as the EU and the WTO, for instance, continues to be criticised for a lack of transparency and accountability; whilst elsewhere, public unease appears to be growing over corporations intent on shaping domestic policy at the same time as paying very little tax on profits made in the UK. In the realm of foreign policy, meanwhile, we find that the UK

government continues to be influenced to an unhealthy extent by the position of the United States - despite that country's ongoing relative decline. A constitutional doctrine central to the traditional model of UK democracy, that of parliamentary sovereignty, is tested by UK participation in such organisations as the European Union.

Although these are the same concerns, for the most part, that were made by the previous Audit, the threat that they pose, collectively, to the integrity of UK democracy appears to have grown, just as the ability of democratically-elected governments to effect change appears to have shrunk. This trend has been particularly evident in relation to the unbalanced relationship between government and international industry and finance. On this subject, the previous Audit (Beetham et al., 2002, p. 275) felt that, although the UK, like other countries, was undoubtedly vulnerable to the whims of transnational corporations and financial markets, the danger posed by them was mitigated by a combination of the UK's economic weight, reducing national debt and adequate exchange reserves. However, events since the onset of the worldwide financial crisis in late-2007 have arguably shown the autonomy of states such as the UK to be rather more limited now than previously appeared to be the case. Indeed, having taken on considerable debts in bailing out crisis-stricken financial institutions, national governments in Europe and beyond find their economic policies dictated not by the wishes of the electorates to which they are supposedly accountable, but increasingly to the privately-run credit ratings agencies whose assessments affect the ability of a state to borrow money through government bond issues. Mainstream acceptance of the idea that globalisation dictates certain policy options has served to close off discussion of different policy options for the UK. The policy courses that have been entailed have also led to divergence from social policy norms in Europe.

Elsewhere, meanwhile, the impact of the EU is also no less ambivalent, despite the introduction of reforms designed to improve the democratic credibility of that organisation in the eyes of the EU citizenry. At the same time, the UK approach to the EU falls between two stools of either: accepting the constraints upon national autonomy that membership entails because of the gains, including of a democratic nature, that can be obtained; or on the other hand, not participating in order wholly to preserve national sovereignty. In international affairs, the UK continues to punch above its weight; generally enjoying far greater influence within multilateral bodies than its population alone would entitle it to, although without sufficient oversight of this power from both parliament and the public.

4.1.1 External influences on UK democracy

How free is the country from external influences which undermine or compromise its democratic process or national interests?

External influences upon a state can take many different forms and can, as is discussed above, serve to challenge internal democratic processes. In this subsection, consideration is given to the impact of economic globalisation; UK membership of international and regional organisations, including the European Union (EU); and the UK's bilateral dealings with a key ally, the United States. It is also necessary to consider the relationship between the internal constitutional arrangements of a state and its external dealings. In this context, the status of the UK doctrine of parliamentary sovereignty is considered.

Economic globalisation

In our last full Audit, we touched briefly on the role of global economic forces as an external influence which potentially undermines the UK democratic process. In particular, we noted the potential vulnerability of UK political actors to threats of 'capital flight' associated with multinational corporations and international financial actors. At the same time, we noted that the UK ranked among those national economies with the least exposure to volatile international economic conditions.

In the period since our last Audit, debates about the origins, nature and consequences of globalisation have developed considerably. As a result, discussion of the implications of globalisation for democracy have featured more significantly in both academic social science research and public policy-making. Within the academic literature, the consequences of globalisation for democracy has been addressed in two contrasting ways, with this distinction also reflected in much political and policy debate. First, a number of authors have attempted to assess whether globalisation has fostered the recent growth in the number of democracies world-wide, by virtue of creating the conditions of economic liberalisation which have historically promoted demands for political freedom ([Li and Reuveny, 2003](#); [Eichengreen and Leblang, 2006](#)). Second, a contrasting body of work has considered the extent to which globalisation has brought about a 'power shift', which has eroded the autonomy and capacity of the state and therefore narrowed the policy options open to democratically elected governments (Cox, 1992; Schmitter, 1996). In this second body of literature, various 'threats' to democratic decision-making arising from globalisation are discussed. These potential threats include: the enhanced power of international financial interests (Cerny, 1999); the growth of multinational corporations, whose turnover is often greater than the GDP of small European states (Dicken, 1998); and the growing influence of international organisations such as the EU, the World Bank and the International Monetary Fund ([Jones and Hardstaff, 2005](#)).

Before turning to consider the evidence relating to how globalisation may have impacted upon UK democracy, it is vital to note that there is

much disagreement about what globalisation constitutes. Indeed, despite - or perhaps because of - its widespread conceptual usage, protagonists in debates about globalisation have tended to define the term in a multitude of different ways or, more commonly, not attempted to define it at all. Consequently, the assumed nature of globalisation is often left implicit, while in some cases the concept is used in a relatively crude rhetorical fashion. At its core, however, globalisation is generally defined with reference to a set of economic and technological changes which are held to have dramatically increased economic and communication flows across what are seen as increasingly porous national borders. Hence, globalisation is generally associated with notions of the world becoming increasingly interconnected, with goods, services, investment, financial transactions and skilled labour moving freely between countries, and of the globe effectively 'shrinking' in comparison to previous decades, due to rapid developments in telecommunications and the continued growth and expansion of air travel.

As noted above, it has been suggested by a number of commentators that the liberalisation and intensification of global economic flows has fostered the growth in the number of democracies over the last four decades. However, attempts to assess the validity of this 'globalisation promotes democracy' thesis empirically have generally been inconclusive and, in some instances, sceptical. Certainly, the era of economic globalisation has coincided with a period of democratisation, which has seen a trebling of the number of electoral democracies worldwide from around 40 in the 1950s to about 120 today. However, as [Eichengreen and Leblang \(2006\)](#) note, it would appear that the relationship between globalisation and democracy is one of 'bi-directional causality', whereby democracy and globalisation foster one another via a sort of positive feedback loop. Meanwhile, [Li and Reuveny \(2003, p. 52\)](#) have found that while 'the spread of democratic ideas promotes democracy persistently over time', indicators of economic globalisation suggest that its association with the growth of democracy is, if anything, negative. As the same authors put it:

'the growing capital mobility accompanying globalization produces a political dilemma for governments who want both economic competitiveness and democratic political accountability. Footloose capital is generally not accountable to the public. The mobility of capital reduces democratic governments' ability to respond to popular demands for social welfare and effective economic management. Our findings imply that under economic openness, the room for policy manoeuvring is obviously reduced. Hence, the threats to democracy from financial inflows and foreign direct investments are substantial' ([Li and Reuveny, 2003, p. 53](#)).

These conclusions have been echoed in much of the second body of literature which we identify above. In particular, the early literature on globalisation, particularly that originating from Marxist political economy perspectives, argued that even wealthy western states were increasingly unable to exert themselves against the panoply of powerful external political and economic forces operating beyond their borders (Cox, 1992; Schmitter, 1996; Cerny, 1999). These studies tended to assume that globalisation would lead to competitive pressures on welfare states which would be felt more or less equally by all countries, thus resulting in universal retrenchment and convergence towards the (neo-) liberal 'subsistence' model of welfare (Mishra, 1999). As we noted in Section [1.4.6](#), this analysis was also reflected on the opposite side of the political spectrum, in the form of corporate interests and right-of-centre political parties arguing for a distinctive set of neo-liberal policy changes in areas such as the labour market, social welfare and fiscal policy.

However, we also noted in Section [1.4.6](#) that there is evidence of clear variation in the extent to which individual democracies have adopted measures deemed to be 'essential' or 'inevitable' policy responses to globalisation. Indeed, empirical analyses have shown that the political and corporate pressures to adapt to globalisation via a neo-liberal 'race to the bottom' are far from evenly spread; and that particular countries have been more susceptible to retrenchment than others. In one view, the impact of globalisation on public policy, and on the welfare state in particular, has been generally exaggerated. Indeed, Liebfried and Rieger (2003) argue that it is the existence of the welfare state which has provided western societies with the degree of social protection which has enabled their democratically-elected governments to push for policies fostering globalisation. Meanwhile, [Dreher et al. \(2006\)](#) find that there is no evidence of globalisation causing shifts in the composition of government expenditure internationally. In addition, there is clear evidence to suggest that the impact of globalisation has been heavily mediated according to the principal welfare regime 'types' operating in established democracies (Swank, 2002; [Korpi and Palme, 2003](#); [Navarro et al., 2004](#); for details of the welfare regimes, see [Introduction](#) to Section 1.4 and Esping-Andersen, 1990).

Indeed, both [Navarro et al. \(2004\)](#) and [Korpi and Palme \(2003\)](#) show that, despite some specific examples of policy transfer, there was no overall convergence among welfare states during the 1980s and 1990s. Thus, retrenchment has been greatest in liberal welfare states ([Navarro et al., 2004](#)) and the value of benefits has been cut less in social democratic welfare states than liberal ones ([Korpi and Palme, 2003](#)). Meanwhile, despite the general reduction in corporate tax rates we noted in Section [1.4.6](#), the proportion of tax revenue originating from taxes on profits and corporate gains has only fallen in liberal welfare states ([Navarro et al., 2004](#)). As Table 4.1a shows, levels of social expenditure as a proportion of GDP increased across all types of welfare state from 1980 to 1997, but the average increase was significantly higher in social democratic welfare regimes (plus 5.2 percentage points) than it was in liberal welfare states (plus 2.9 percentage points). Moreover, the statistics for public employment in Table 4.1a point to a similar trend, with public employment growing as a proportion of the workforce in social democratic welfare states (plus 6.5 percentage points) compared to a modest decline in liberal welfare regimes (minus 0.9 per cent).

Table 4.1a: Change in social expenditure as % of GDP and in public employment as % of all employment, by welfare regime type (percentage points)

Welfare regime type	Change in social expenditure as % of GDP, 1980-97	Change in public employment as % of total employment, 1974-97
Social Democratic	5.2	6.5
Conservative/corporatist	4	2
Liberal	2.9	-0.9

Source: Adapted from [Navarro et al. \(2004, p. 138\)](#)

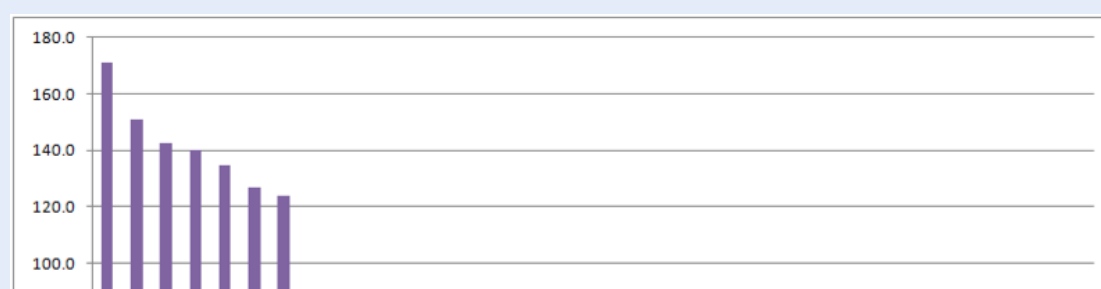
There is some more recent evidence, using data from the 2000s, to suggest that the impact of globalisation on social expenditure may be having more of a convergent effect than previous studies had established ([Busemeyer, 2009](#); [Schmitt and Starke, 2011](#)). Nonetheless, it is not at all difficult to find evidence to support the supposition that it is in liberal welfare states in the Anglo-Saxon realm, notably the USA, Australia, New Zealand, Ireland and the UK, that governments have been most enthusiastic in responding to, and championing, demands for neo-liberal policy change ([Seidel, 2005](#); [Sapir, 2006](#)). Indeed, as Colin Hay notes in relation to the UK:

'The British economy has been widely touted, not least by the government itself, as a model of - and for -European competitiveness in an era of globalization. Its unquestionably impressive record (until 2008 at least) of steady and uninterrupted growth, stable and low unemployment, and, certainly in comparative historical terms, low inflation is typically attributed to its lean and flexible labour markets, its fiscal and monetary discipline, and, in European terms, its light-touch regulatory environment. It is, in short, widely seen as a model of adaptation to the imperatives of globalization - and one which other more reform-averse European economies can benefit from emulating' (Hay, 2009, p. 874).

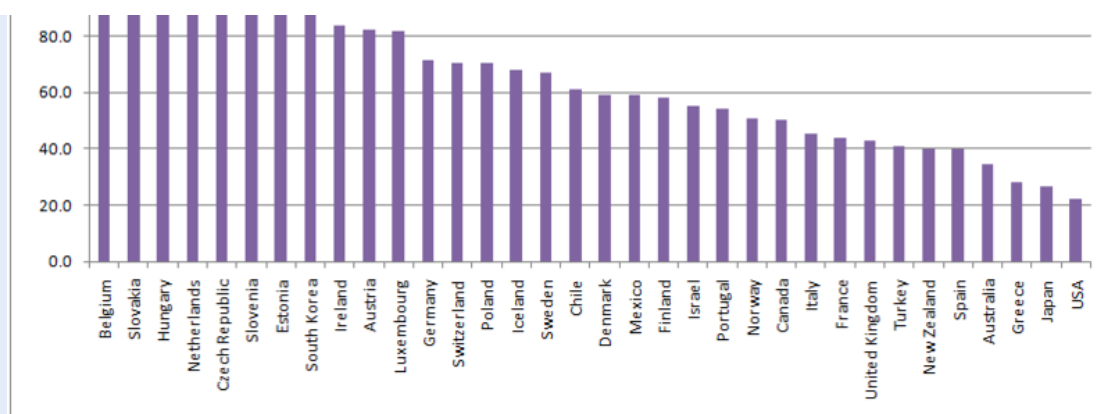
However, as Hay goes on to note, this notion of successful UK adaptation to globalisation is a myth for two key reasons. First, the UK's weak economic performance since 2008 exposed the inherent flaws of an economic model based on boosting consumer demand via 'unprecedented levels of personal debt and the release of equity arising from sustained house-price inflation' (Hay, 2009, p. 876). Quite aside from the impact of the crash which arose from the banking crisis of the late-2000s, the UK was already showing signs by the early/mid-2000s of failing to adapt to increased international economic flows. Thus, the UK's weakness in export markets prompted a sharp rise in its balance of payments deficit from 2001 onwards, while the UK has long been a net exporter of foreign direct investment. Second, Hay argues that the UK economy has not been 'globalised' to anything like the extent that is commonly argued and, moreover, is less exposed to international markets than other European states. As Hay notes, patterns of change in relation to international trade, foreign direct investment and even financial trading point primarily to a strengthening of economic ties with the rest of the European Union, and to a lesser extent with North America and Japan, rather than to the integration of the UK into a genuinely 'global economy'.

This myth of UK adaptation to globalisation highlights a genuine paradox. For two decades or more, UK public policy has been underpinned by a specific neo-liberal logic of adapting to globalisation, despite the fact, as with other Anglo-Saxon countries, the UK's economy is far less open to international economic forces than most OECD member states. Figure 4.1a shows the ratio of merchandise trade to GDP, a standard measure of the extent to which an economy is open to the international economy, for each OECD member state in 2010. Based on this indicator, the UK's exposure to international markets is the lowest in northern Europe and significantly less than smaller European states such as Belgium, the Netherlands, Ireland and Austria. As the graph shows, most other Anglo-Saxon economies also have comparatively low levels of openness to world trade, including Canada, the USA, Australia and New Zealand.

Figure 4.1a: Ratio of merchandise trade (value of imports and exports) to GDP, OECD members states, 2010



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Note: Figures for Australia and New Zealand are for 2009.

Source: [World Bank \(2011\)](#)

Yet, many of the countries with the highest levels of economic openness have higher levels of social expenditure, more tightly regulated labour markets, and lower levels of income inequality than those countries with far lower levels of exposure to international markets ([Rodrik, 1998](#); [Reuveny and Li, 2003](#); [Brady et al., 2005](#)). Indeed, while the strong correlation between economic openness and levels of social expenditure found up until the 1990s (Katzenstein, 1985; [Rodrik, 1998](#)) appears to have diminished ([Busemeyer, 2009](#)), it remains the case that countries with a high dependency on international trade tend to have lower levels of inequality ([Reuveny and Li, 2003](#)). In addition, a number of small European states have opted to maintain expansive welfare states, with large-scale income redistribution, despite the alleged pressures of globalisation. The most notable examples of this continued commitment to social democratic policies are found in the Nordic countries, which we find to have out-performed the UK on virtually every democratic indicator presented in this study:

'the Scandinavian social democracies of Denmark, Norway, and Sweden [...] have always maintained highly globalized economies, and have institutionalized generous decommodification. Moreover, these countries have increased their decommodification as they became even more internationally open' ([Brady et al., 2005, p. 943](#)).

Despite all these observations, there can be little doubt that claims about globalisation have impacted significantly on UK political debate in recent decades. Yet, there are very strong grounds to argue that it has been the power of globalisation as a discursive construct, rather than as an empirical reality, which has been used to justify the policies adopted by UK governments ([Hay and Rosamund, 2002](#)). In doing so, the UK has diverged increasingly from the European social model and taken an increasingly oppositional stance to EU policies aimed at promoting social protection and social cohesion ([Hay and Rosamund, 2002](#); [Sapir, 2006](#)). Given the experience of other north European countries, we reject the straightforward view that globalisation acts automatically as an external force which serves to compromise UK democracy. This is not to deny that the dynamics of economic internationalisation do not pose genuine challenges for national representative democracy. It cannot be denied, for instance, that in the financial sector at least the UK has been exposed to external forces which have had and continue to have a detrimental impact on our democratic life. The degree of integration of the UK's banking sector into an international financial network meant that a problem originating in the US mortgage market threatened to destroy our banks in 2008, and led to a prolonged recession and drain on the public finances from which the government was powerless to protect its citizens. That same international network makes possible a huge industry of tax avoidance and evasion that has further weakened our public finances, and transferred a greater burden onto ordinary taxpayers. Furthermore, the external, US based, ratings agencies now set clear limits to the government policies for addressing the fiscal deficits which are deemed acceptable to international lenders, even if they do not determine them.

However, we would also argue that the greater threat to UK democracy arising from globalisation is the use of the concept, by all of the principal political parties, to justify the adoption of neo-liberal policy agendas, including deregulation of the financial services, as a necessary response to the challenge of promoting a competitive UK economy. While neo-liberal policies have without question left both government and citizens increasingly vulnerable to external forces outside our democratic control, it is vital to note that they were originally, and remain, policies of choice. With regard to this latter point, it is vital to note that not only are assertions of UK adaptation to a globalised economy based on a flawed understanding of globalisation, but the policy choices adopted have also failed to provide the UK with a successful economic model. As Hay (2009, p. 877) argues, the UK economy 'has simply not experienced a process of globalization by any but the least exacting of definitional standards [and] despite the rhetoric, Britain is [...] no model of adaptation to globalization'. Yet, as the same author notes, none of this has done anything to prevent UK policy-makers from asserting the need to adjust to global economic imperatives: 'in no other country has globalization been invoked so frequently and so consistently as a source of constraints and

imperatives which domestic policy-makers must negotiate and internalize' (Hay, 2009, p. 856).

International organisations

The UK is a member of a number of international organisations established for the purposes of trade, diplomacy and military assistance - most of which enjoy unquestioned and often implicit support from government, the general public and business interests. However, a small handful of these organisations - including, most notably, the EU and the World Trade Organization (WTO) - do attract criticism from those with an interest in safeguarding and strengthening UK democracy, both from the left and the right of the political spectrum. These concerns are longstanding, and are too manifold to be considered here comprehensively. However, for those on the right, concerns might typically be said to focus on the ways in which particular national democratic values, practices and customs are perceived to be threatened by the loss of sovereignty that membership of international bodies (in particular, the EU) is believed to entail; while for those on the left, criticisms tend to emphasise the ways in which the purportedly shadowy and publicly unaccountable structures and practices of international organisations are vulnerable to lobbying by corporate interests.

There is at least a superficial level of plausibility to both of these arguments. It is certainly true, for instance, that international organisations are not, for the most part, subject to a great deal of direct popular control or accountability; and this should be the cause of legitimate concern. Yet, it could be asked in response, firstly, how realistic an objective this would be to adopt in a world still characterised by quite distinct and, at times, antagonistic national identities. Even the EU, for example, with its directly-elected European parliament, remains to a great extent a fragmented collection of peoples lacking any strong sense of shared European identity - having relatively little interest in European affairs, and exhibiting a noticeable disinclination to assert their right to influence EU policy via European elections. More fundamental still, however, is the question as to whether direct public accountability is really necessary at all for an international organisation to satisfy commonly imagined notions of democratic legitimacy. Although Dahl (in Shapiro and Hacker-Cordón, 1999), for instance, argues that the inverse relationship between 'efficacious popular control', on the one hand, and 'consequential decision-making', on the other, makes it impossible to operate international organisations on a democratic basis, he nevertheless concedes that they can fulfil valuable and, in many cases, democracy-enhancing ends. Elsewhere, others (see, for instance, Grant and Keohane, 2005, pp. 29-30) have argued, similarly, that despite the fact that large international organisations may score poorly on direct democratic accountability, they often have well-developed mechanisms to ensure fiscal and supervisory accountability to the governments of member states; and that membership of international organisations can in practice boost other aspects of democracy within member states, by contributing, for example, towards the protection of human rights (through organisations such as the European Court of Human Rights), the provision of high-quality and politically-insulated information on which to base policy (through organisations such as the Intergovernmental Panel on Climate Change), and the restriction of special interest factions (Keohane et al., 2009). Likewise, although membership of international bodies may also - as right-wing critics of the EU fear - entail the loss of control over certain areas of policy, the 'pooling' of that sovereignty arguably leaves the state better equipped to act effectively in pursuit of policies that will benefit its people.

Concerns regarding international organisations such as the EU and the WTO would be far less prominent in public discourse if it could be satisfactorily demonstrated that they are: (i) *necessary* for the fulfilment of public goods that nation-states acting alone could not achieve; (ii) ordered in an *internally democratic* way, so as to ensure the equitable distribution of power between member states (for further discussion, see Section 4.1.2); and (iii) *transparent and accountable*, so as to facilitate scrutiny of their internal workings, and responsibility to the people whose lives they affect. Yet, the adherence of international organisations to all of these standards would, in general, be very difficult to prove. This is, in part, simply because the governance and structures of an organisation such as the EU are enormously complex, and thus difficult to evaluate as a whole. However, it is also partly because the essence of terms such as 'accountability' can be contested by those on opposing sides of the debate. In some cases, it can even be because some of these standards are, in practice, achieved by international organisations at the expense of others.

The European Union

In two key respects, the EU is more powerful now than at any point in its history. Firstly, it has greater *scope* for action. Where once the European project was concerned primarily with matters relating to trade, its remit now spans the full range of policy areas, from food standards and customs, to foreign policy and home affairs. Secondly, it has greater *power* to make decisions that are opposed by the governments of a number of its member states. Where most decisions by the Union were once exercised by representatives of the governments of member states on the basis of unanimity, now the most common method of decision-making (known officially as the 'ordinary legislative procedure' since the Treaty of Lisbon came into effect) is for co-decision between the directly-elected European parliament and the Council of Ministers; with the latter acting on the basis of a qualified-majority vote (QMV; see also Section 4.1.2). This all matters for two key reasons. Firstly, as a member of the EU, all European legislation automatically becomes part of the UK legal framework without the need for approval by the UK parliament (as in accordance with the European Communities Act 1972, see below for the impact upon the UK doctrine of parliamentary sovereignty). Second, it also matters because the notion that the EU suffers from a 'democratic deficit' is widely accepted. Together, this creates the anxiety that a significant proportion of UK law could be being made, and transposed directly, by a body that is severely flawed in its democratic architecture and processes.

Since the last Audit reported, a number of steps have been taken by the EU to enhance the democratic legitimacy of the Union. Chief among these were the measures enacted by the Treaty of Lisbon to strengthen the role of national parliaments (for further discussion of which, see Section [4.1.3](#)) and the European parliament. As mentioned above, the European parliament was strengthened by the treaty through the expansion of co-decision into most policy areas. However, a number of other reforms were also passed. For instance, meetings of the Council of Ministers - which had previously been held in private - were made more transparent by the decision to split them into parts dealing with legislative and non-legislative acts, with the provision that the former be held publicly. The treaty paved the way for European Citizens' Initiatives: a new scheme under which European citizens will be able to call upon the commission to initiate legislation in a specific area (provided an initiative attracts at least a million citizens from a quarter of EU member states). Finally, Lisbon also introduced the 'yellow' and 'orange' cards procedures, to allow national parliamentary chambers to express concerns about the compatibility of draft legislation with the principle of subsidiarity directly to the EU institution from which the legislative proposals originated. The procedures are simple. In the case of the 'yellow' card, for instance, draft legislation must be reviewed if one-third or more of national parliaments make reasoned objections that the principle of subsidiarity has been violated. Where a majority of national parliaments issue such objections, the 'orange' card procedure is triggered. In such instances, the European Commission is required to re-consider the legislative proposal and, if it wishes to proceed, to make a clear justification for doing so. Where draft legislation proceeds with an orange card, a majority of 55 per cent in the Council of Ministers or the European Parliament is sufficient to vote down the bill at the first reading. These changes were welcomed by national parliaments; although many have questioned the likelihood of these mechanisms ever being used, given the level of inter-parliamentary cooperation that they would require ([Cygan, 2011, p. 6](#)).

Yet, the greater involvement of the European parliament in decision-making has also led inadvertently to practices which are arguably undermining the best intentions of the European leadership. For instance, the House of Lords European Union Committee and others have noted with unease the increasing tendency towards 'first reading deals' between the European Parliament and the Council of Ministers, which are typically reached through informal discussions rather than formal debate. These early stage agreements have been possible since the Treaty of Amsterdam, but look set to increase in number following the expansion of the co-decision procedure by the Treaty of Lisbon. In evidence to the committee, the European Commission itself disclosed that over 70 per cent of cases were now agreed at the first reading stage; while Professor Simon Hix stated that since 2004 '94 per cent of co-decision bills (201 out of 219 agreements) were discussed via the informal dialogue procedure before open deliberations and votes could take place in committee' ([European Union Committee, 2009, pp. 12-15](#)). Although supporters argue that this arrangement allows the EU to be more efficient, it also involves legislation being passed more secretly: a development that cannot be conducive to proper scrutiny, either by the European parliament, national legislatures or the European people itself.

The Protocol on the Application of the Principles of Subsidiarity and Proportionality created by the Amsterdam Treaty were also rewritten at Lisbon, further extending the procedural requirements, although the European Scrutiny Committee, in a report of 2008, felt that the substance of the subsidiarity article in the Lisbon Treaty was not substantively different from that which already existed (see [European Scrutiny Committee, 2008, p. 11](#)). Following the Treaty of Amsterdam, national parliaments were given a legal right to receive European documentation (albeit with some exceptions, and without any explicitly stated responsibility for national governments to transmit the documentation), as well as a guaranteed period of at least six weeks in which to scrutinise draft legislation before it became law. However, as this did not in practice lead to the prompt and comprehensive transmission of European documentation to national parliaments that many would have hoped for ([Cygan, 2011, pp. 3-4](#)), it was decided under the Barroso Initiative of 2006 that most EU documentation would henceforth be sent *directly* to national parliaments from the institutions of the Union. This right of national parliaments was later affirmed in the Treaty of Lisbon, which also expanded the minimum scrutiny period guaranteed by the European treaties from six weeks to eight weeks; although national parliaments, including that of the UK, do not appear convinced that even this extended period allows enough time in which to conduct effective scrutiny (COSAC, 2011, pp. 35-7). As a result of the Treaty, national parliaments were given the responsibility to ensure that EU legislation complies with the principle of subsidiarity. National parliaments have often been considered to be 'losers' from the process of European integration.

Quite apart from the issues concerning the relationships between national parliaments and the EU, which have acquired a particular significance in the UK, it is also important to note that UK citizens are among the least enthusiastic participants in EU affairs, including elections to the European parliament. UK turnouts at European elections are among the lowest of all member states; public knowledge of, and interest in, the EU is low; and negative perceptions of the EU are widespread. In part, these perceptions may arise from the content of UK media reporting. In a recent Eurobarometer survey, respondents from the UK were the most likely to report that the media - and, in particular, the press - is too negative in its treatment of the European Union ([European Commission, 2008](#)).

The 'Special Relationship'

During the present Audit period, the UK has engaged in a variety of activities in international policy, that can be regarded as democratically problematic, which arise from its close association with the US. In particular, participation in the invasion of Iraq in 2003 involved the arguable misuse of the royal prerogative war powers - themselves a democratically questionable device; the presentation of misleading

evidence to parliament and public; and in the military operation itself what is widely regarded as a violation of international law (see Sections [2.3.5](#), [2.4.3](#), [2.5.1](#), [4.2.2](#) and the [Introduction](#) to Section 2.4). More broadly, in the period following the terrorist attacks on the US of 11 September 2001, the UK was supportive to the US in its rejection of a multilateral response. In the process, the UK may have become complicit in ventures, including rendition and torture, that served to undermine key democratic principles such as the upholding of human rights and the international rule of law (see Sections [4.2.1](#) and [4.2.2](#)).

This adherence to the US, which might reasonably be seen as leading to an erosion of UK democracy and possibly the compromising of its national interests, has longer-term historical roots. The basis is historical and cultural, given the origins of the US as an English colony. In the nineteenth and early-twentieth centuries, relations between the UK and the US were not always strong. However, the Second World War brought about an increasing closeness, with the UK emerging as the subordinate partner. The Suez crisis of 1956 confirmed for UK policy-makers that they could not carry out major international initiatives without the backing of the US. Thereafter, the 'special relationship' developed further. It involves, in particular, close cooperation over military activity and technology, and intelligence sharing. The status of the UK as a nuclear power was dependent upon the technological support of the US and is sustained by the 'Mutual Defence Agreement'; a renewable treaty dating from 1958 (Burall et al., 2006, pp. 70-3). The UK has also at times had a degree of financial and economic reliance upon the US since the period of fixed exchange rates under the 'Bretton Woods' system that existed from the end of the Second World War until 1971. As is discussed elsewhere in this Audit, the nature of the 'special relationship' has rarely been the subject of serious mainstream political debate or challenge (see Section [4.2.4](#)). Yet, it represents an external influence to which the UK - or at least its political leadership - could be seen as having voluntarily subjected itself. Other options have existed. Adherence to the US has not always been slavish. For instance, the UK resisted participation in the Vietnam war in the 1960s; and in the 1970s Edward Heath as prime minister prioritised relations with Europe; securing UK membership of what is now the EU. Moreover, other European powers, including France and more recently Germany, have been able to pursue policies which diverged with those of the US, including over Iraq in 2003, without noticeably suffering (Burall et al., 2006; [Wallace and Phillips, 2009](#); [Foreign Affairs Committee, 2010](#)).

External influences and the doctrine of parliamentary sovereignty

Traditionally, parliamentary sovereignty is often regarded as a - or indeed *the* - key feature of the UK constitution. Although both the desirability and viability of the notion of a sovereign parliament are often and increasingly disputed, successive UK governments have continued to assert the overriding nature of this principle. The doctrine is central to the way in which UK democracy functions, even though it raises problems for other important aspects of a democratic constitution, such as the rule of law (see the [Introduction](#) to Section 1.2; [Cabinet Office, 2011](#)). However, a number of supranational arrangements have arguably served to compromise parliamentary sovereignty (as has the process of devolution to the three 'Celtic' nations, see Section [1.1.4](#)). Three sets of supranational arrangements are of particular significance: the European Union; the European Convention on Human Rights (ECHR); and the Commonwealth.

The organs of the EU have long asserted that European law is superior to national law simply by virtue of a member state's acceptance of membership. The idea of the supremacy of European law was well developed by the time the UK formally became a member of what was then the European Economic Community in 1973 (Jowell and Oliver, 2011). Member states have a tendency to assert that European law is given expression by the domestic legislation or constitutional text that provides for EU membership. But the practical effect has been the same; that EU law takes precedence over the national law of member states.

European law may be expressed in the form of regulations, which directly become law in member states; or directives, which must be transposed into legislation by member states in the way they deem proper (although failure to do properly carries with it legal consequences). The doctrine of direct effect means that not only can the European Commission seek to enforce European law through the European Court of Justice, but individuals within member states can seek to uphold rights provided by the EU through legal action in domestic courts. Sensitivities surrounding the doctrine of parliamentary sovereignty have been part of the basis for Euroscepticism in the UK, helping to explain both why UK membership was delayed, and the ongoing controversy that has existed since entry. Those who seek to radically alter or end the position of the UK within the EU often argue that the impact of the EU on parliamentary sovereignty represents an unacceptable imposition upon UK democratic practices.

One consequence for the UK of EU membership has been that the UK parliament no longer possesses a monopoly on law making for the UK (Bradley and Ewing, 2011). Another has been that acts of parliament cannot by implication repeal the European Communities Act 1972 (ECA), which gives domestic legal expression to UK membership of the EU. Some argue that the traditional doctrine of parliamentary sovereignty cannot be reconciled with this development since the UK parliament of 1972 effectively bound future UK parliaments through the ECA - the one thing parliament is supposed to be legally unable to accomplish (Wade, 1996).

On the other hand it might be held that European law only has effect in the UK because parliament wills it, via the ECA, to do so; and that parliament retains the explicit ability to amend or repeal the ECA, and indeed to affect departure from the EU (which is now expressly allowed for under the Treaty of Lisbon of 2007). A clause included in the European Union Act 2011 sought to assert parliamentary sovereignty by arguing that European law was only effective in the UK by virtue of an act of parliament. However, this measure did not

address the issue of the ECA being immune to implied repeal. Moreover, it seems logically impossible that the authority of parliament could be founded in, or sustained by, an act of parliament, since it would not explain where such an act drew its force from ([Cabinet Office, 2011](#); [European Scrutiny Committee, 2010](#); Goldsworthy, 2010). Whatever the precise conclusion, European law is clearly the primary mode of legislation within the UK while it remains a member of the EU.

The Human Rights Act 1998 (HRA) also involves a supranational legal order which poses challenges for parliamentary sovereignty, in particular through undermining the doctrine of implied repeal (see also Section [1.1.5](#), [1.2.2](#) and [4.2.1](#)). The HRA gives domestic legal protection to the European Convention on Human Rights (ECHR), which was signed in 1950, ratified by the UK in 1951 and first came into force in 1953. The convention is a document of the Council of Europe; and is enforced by the European Court of Human Rights. What made the ECHR different from many other international human rights instruments which have appeared since, a number of which the UK is a signatory to, is that it created the possibility for individuals to petition for their rights. The UK acceded to this mechanism in 1966, as well as signing up to the compulsory jurisdiction of the court (Bradley and Ewing, 2011). This change can be seen as a crucial moment in UK constitutional development, though it was not until 1975 that an individual petitioner was first successful. While before the HRA, the ECHR existed only as an external obligation, although UK governments took findings against it by the court seriously and acted upon them (Wicks, 2006). But the recent conflict between the European Court of Human Rights and UK politicians over prisoner voting rights shows the potential that can arise from this arrangement and lead to claims that UK democracy has been undermined by an external force (see Section [1.1.1](#)). On the other hand, since human rights are universal and fundamental in nature, as well as being essential to a meaningful democracy, it could be concluded that a supranational mechanism which can protect rights even against national legislatures is democratically desirable. Indeed, since the UK is exceptional in the lack of restraints upon its parliament, the ECHR might be seen as particularly valuable to it.

The Labour government elected in 1997 was committed to incorporating the ECHR into UK law. This policy was presented as a means of enabling individuals to seek recourse to their rights in domestic courts, rather than at the court in Strasbourg, in order to create an institutional culture of human rights compliance. The HRA was designed to operate within the traditional framework of parliamentary sovereignty. It did not enable courts to disapply acts of parliament. Where primary legislation was found to violate the ECHR, the courts would make a declaration of incompatibility, leaving both the offending act and the HRA on the statute book, and passing the decision about how to respond back to ministers and parliament: UK politicians. However, the HRA was protected from implied repeal by subsequent acts of parliament (while at the same time not repealing earlier acts). In this sense it conflicted with traditional notions of parliamentary sovereignty. Moreover, the HRA called on the UK courts as far as possible to interpret acts in such a way as to render them compatible with the ECHR; possibly meaning they can go as far as reading into them words that are not in the text, arguably tilting the balance of power away from parliament and towards the judicial interpretation of an international treaty. If such interpretation is not possible, a fast-track procedure enabled ministers to correct incompatibility through subordinate legislation amending primary legislation. Declarations of incompatibility have not been ignored, even if they have not always been responded to in an ideal fashion. When they review the compatibility of legislation and administrative acts with the convention, courts are called upon by the HRA to take into account Strasbourg jurisprudence, underlining the supranational dimension of this important work.

In comparison to the EU and the ECHR, the potential implications of the Commonwealth for the doctrine of UK parliamentary sovereignty are not immediately obvious, and are rarely discussed. On the surface, the Commonwealth appears more as a loose organisation of largely historic significance to the UK, rather than wielding the dynamic impact upon the everyday functioning of democracy in the manner of the 'special relationship', the ECHR or the EU. However, the relationship between the UK and some of its former empire places an important practical restriction on the exercise of parliamentary sovereignty, which existed some time before more recent issues arose involving the EU and HRA.

Historically, it is arguably the most important feature of the UK parliament that it is able to regulate the rules of royal succession. Indeed, the doctrine of parliamentary sovereignty has been held to have come about to a significant extent as a means of asserting the principle of parliamentary strength in the face of assertions of the divine right of kings (Goldsworthy, 1999). In this sense, while the doctrine of parliamentary sovereignty was pre-democratic in its origins, in so far as it introduced a limitation on arbitrary monarchical rule, it helped create the conditions in which democracy could develop.

Of the 53 members of the Commonwealth, 16 including the UK have Queen Elizabeth as their head of state. It would be possible for each of the Commonwealth states that remains a monarchy to have different rules of succession. The ultimate consequence of such an arrangement would be that countries would end up with different individuals as their heads of state. Such a pattern developed in Hanover after 1837, which did not allow female succession and therefore did not accept Victoria on its throne. UK policy makers have long regarded such an outcome as undesirable from the point of the political solidarity of the Commonwealth (and before then the Empire). In 1931, an act of parliament, the Statute of Westminster, set out in its preamble a previously agreed arrangement to the effect that the consent of the parliaments of all the countries involved was required for any change to the rules of succession. This stipulation is not a legal requirement, because it is not in the main body of the act, but it is a convention to which successive UK governments have adhered. It means today that any change to the succession to the UK throne would be dependent on the complex constitutional procedures of various other countries.

Indeed in a number of cases, formal constitutional amendment procedures far more demanding than those applying to the UK would need to be fulfilled ([Blackburn, 2011](#); see also Section [1.1.5](#)).

These restrictions could be seen as an issue of general principle, in that they have the practical effect of restricting the power of parliament in one of its most important traditional areas of operation. They also create difficulties for any attempt to remove discrimination from the rules of succession, which are discriminatory both on grounds of gender and faith, and would contravene equality law if applied in the regular workplace. However, unlike with the issues of the HRA and the EU, the apparent infringement upon the autonomy of the UK and its parliament signified by the convention embodied in the Statute of Westminster has not been subject to major political or media criticism.

4.1.2 UK influence on international organisations

How equitable is the degree of influence exercised by the government within the bilateral, regional and international organisations to whose decisions it may be subject?

Nation states and international decision-making

All nations in the world are subject to decisions that involve countries other than themselves. These decisions may involve direct one-on-one dealings between particular states in various bilateral relationships, such as between the UK and the US. They may also be made by multilateral groupings, some of an informal nature, such as the G8, or some more formally, such as the United Nations (UN), which is underpinned by international agreements signed by its members and which has its own institutional support. Organisations may be regional, such as the European Union (EU), or international, such as the UN. The actions these organisations vary by degrees, meaning they may simply make agreements for their member states to act in a certain way; produce obligations that are binding under international law; or even that take effect in the domestic law of their members, such as happens in the EU. The scope and potential importance of these sorts of deliberations should not be underestimated as they can cover a wide range of policy areas - including the environment, the economy and national security (Burall et al., 2006).

Clearly democratic principles suggest that nations should have a meaningful role in decisions which impact upon them, while at the same time, no nation should have excessive influence over issues affecting other nations. Diplomacy should be conducted in as even-handed a way as possible and supranational institutions should be designed to accommodate democratic procedures; although this principle is not always realised in practice. In many instances, nations may not even participate in discussions at all. An extreme example would be when Afghanistan did not take part in the initial decision for a North Atlantic Treaty Organisation (NATO) military action in the country in 2001. Also, developing world countries are disproportionately impacted upon by the work of the EU and Organisation for Economic Cooperation and Development (OECD), of which they are not members. In an organisation such as the UN, each individual nation has limited scope for influence, because of its sheer size and especially if a state is not a member of the UN Security Council (UNSC). In this sense, the tendency for the established powers to dominate decision-making and perpetuate their position of advantage they hold at a national level is replicated on the international stage. In some instances, as in certain critiques of the EU, supranational institutions may be held to be power-hoarding institutions in their own right, seeking to impose their own agendas upon nation states.

However, there is another dimension to this discussion. The purpose of many international agreements and organisations is to create conditions conducive to the functioning of a healthy democracy at national and international level, such as protecting the environment, creating economic stability, guaranteeing security or promoting international development. Often, other less democratic agendas may play a part and the means by which these objectives are sought can be controversial to those who are adversely affected. Nonetheless, the need to adhere to democratic decision-making and involve countries in decisions affecting them should not be interpreted as meaning that each individual nation should always have an absolute veto over any form of action that may be in the wider international interest. For instance, the UNSC can authorise action to prevent states endangering international security, even to the point of military action (see Section [4.2.2](#)). Therefore, as at national level, individuals may be bound to pursue courses of action that they do not support due to majority decision-making or wider social requirements. As such, a democratic assessment of the impact of the UK on international decisions which affect it must consider these sometimes conflicting needs.

The UK and mechanisms for decision-making

Central to an understanding of the influence that the UK has on external decisions that impact upon it is the formal role the UK occupies within a variety of international organisations, including:

- The World Bank (WB) is responsible for international development around the world and the UK government, as one of the five largest national shareholders, is able to appoint one of the 24 executive directors of the bank and holds voting power which reflects its dominant position.
- Within the International Monetary Fund (IMF), which is responsible for providing emergency loans to countries in financial difficulties

and reporting on the economic policies of countries, the UK has a larger than standard voting share due to its use of a quota system partly based on national income.

- The Bank for International Settlements (BIS) seeks to maintain international financial stability and operates as a bank for central banks and supranational institutions. Only six countries have ex officio directors, of which the UK is one.
- The World Trade Organisation (WTO) is responsible for the regulation of international trade. Although the UK is an individual member of the WTO, the EU (as a customs union) conducts negotiations within the WTO on behalf of all its members - including the UK.
- Within the UN, the UK is a member of the general assembly, which includes all UN members, each with an equal vote. The UK also holds a permanent seat on the UNSC, alongside the US, France, China and Russia, and ten temporary members. The UN Charter binds all members to follow the decisions of the UNSC, but only its permanent members, including the UK, have the right to veto its resolutions (see Section 4.2.2) (Cabinet Office, 2011; Burall et al., 2006).

Table 4.1b presents details of the UK's membership of various organisations in comparison with other European nations of a similar population size. It shows that France and the UK are the best represented across the three organisations considered, due in part because of their status as nuclear powers.

Table 4.1b: Larger European nations' participation in supranational organisations

	Appoints a World Bank Executive Director	Has ex officio director of Bank for International Settlements	Permanent Member of United Nations Security Council
France	✓	✓	✓
Germany	✓	✓	x
Italy	x	✓	x
Spain	x	x	x
UK	✓	✓	✓

Main source: Burall et al. (2006)

As noted above, the EU is an exceptionally important supranational organisation for the UK because, not only does the EU operate across a wide range of areas, its laws are directly incorporated into the domestic legal system, taking precedence over other UK law, and is not subject to implied repeal by subsequent acts of parliament (see Section 4.1.1). The way in which the UK government influences the production of European law is therefore of substantial significance to the present discussion. Legislation is proposed by the European Commission, which also takes action to enforce it, and the UK, like all EU member states, appoints one commissioner. Prior to the enlargements of the EU in 2005 and 2007, the UK was one of the countries which appointed two commissioners, but from 2014, only two thirds of states will have appointed commissioners at any given time.

The European Council of Ministers is an intergovernmental organisation, attended by ministers from member states; with the particular minister who attends determined by the nature of the business under consideration (Bradley and Ewing, 2011). Increasingly, as discussed previously (see Section 4.1.1), the council has come to reach decisions through a system of 'qualified majority voting' (QMV), whereby votes are allocated on a general basis of the population of each country. Out of a total of 345 votes overall, the UK, France, Germany and Italy, have the most votes each, with 29. Under present rules, QMV requires: 255 of the 345 votes to support a proposal; that the states supporting it cover 62 per cent of the EU population; and that the majority of member states are in favour of the proposal. Rules coming into effect in 2014 will mean that only 55 per cent of member states (15 out of 27) must support a measure, although these countries will have to account for 65 per cent of the population of the EU. QMV means that any state, including the UK, may become subject to a measure which it originally opposed unless it can assemble a blocking minority (Barnett, 2011; Bradley and Ewing, 2011). However, following the transferral of justice and home affairs matters to QMV under the 2007 Treaty of Lisbon, the UK was able to obtain mechanisms to enable it to opt-out of proposals in these areas before they were agreed (Donnelly, 2008).

Traditionally the council has been the most important body in the legislative process, although the directly elected European parliament has gained an increasingly prominent role in this respect, particularly following the 2007 Treaty of Lisbon. There are 736 seats in the parliament which are allocated to member states on a basis of population size. As such Germany has the largest number of seats with 99, followed by the UK, France and Italy, each with 72 seats. The normal process for law-making requires that the commission proposes a measure to the council, which passes it on to the parliament to scrutinise, known as the first reading. Following this initial review, the European parliament then refers the proposal back to the council, which votes on the proposal using QMV. The position of the council is then considered by the European parliament, which constitutes the second reading, and then can either: agree to the measure, which the council can then adopt; propose changes for the council to make to the original proposal; or reject it altogether. If the council does

not agree to amendments, or if the parliament rejects the measure, a conciliation committee composed of members of the European parliament and the council is set up, wherein a resolution to the proposal can be agreed upon, which can then be adopted if it is approved by QMV in the council and majority vote in the parliament. If mutual consent cannot be achieved, the council can reassert its original position through a majority vote, although the parliament can in turn veto this response by a majority vote of its own. In effect, legislation now requires the agreement of both bodies (Jowell and Oliver, 2011).

Assessing UK influence over international and regional decisions

The position of the UK within the various multinational institutions discussed above suggests that in formal terms, it is in a strong position to influence the decisions which apply to it. Indeed, it would seem that the UK is one of a number of privileged nations that possess excessive influence relative to other nations. This position is derived partly from its existing relative prosperity, but also from historic resources. The introduction of the present structure of multinational organisations began at the close of the Second World War, in which the UK was one of the victors, guaranteeing it a place at the table as such. It remains to be seen that if such organisations were to be re-established in the current political and economic climate, whether the UK's existing position would be maintained with respect to new emerging powers, such as India, who might well have a claim for higher status in these organisations.

The relatively strong position of global influence possessed by the UK is suggested when the concept of 'soft power' is considered. Soft power involves the ability to influence other actors through such means as persuasion and agenda setting. It is distinguished from 'hard power', meaning the coercion through routes such as the use of force, diplomacy or economic measures. Table 4.1c provides the headline findings of the 2011 Global Ranking of Soft Power for 30 states. It measures the soft power of countries across five categories of government - culture, diplomacy, education and business/innovation - and takes into account variable subjective elements. The various scores are combined to produce a figure between zero and one, which is then multiplied by 10 for presentational purposes. The UK was placed second, behind the US, ranking ahead of comparable European powers such as France and Spain, as well as larger economies such as Germany and China. The UK performed particularly well in 'culture' and 'diplomacy and 'education', coming second overall in each of these categories, but was outside the top 10 for 'government' and 'business/innovation' ([McClory, 2011](#)).

Table 4.1c: Soft Power Index Results 2011

Rank	Country	Score
1	USA	7.41
2	UK	6.78
3	France	6.21
4	Germany	6.15
5	Australia	5.64
6	Sweden	5.35
7	Japan	5.08
8	Switzerland	5.07
9	Canada	4.91
10	Netherlands	4.9
11	Norway	4.82
12	Denmark	4.78
13	Spain	4.68
14	Korea	4.52
15	Finland	4.45
16	Italy	4.28
17	New Zealand	4.17
18	Austria	4.1
19	Belgium	3.8
20	China	3.74
21	Brazil	3.55

22	Singapore	3.49
23	Turkey	3.33
24	Chile	2.94
25	Portugal	2.81
26	Israel	2.67
27	India	2.64
28	Russia	2.43
29	Czech Republic	2.36
30	Greece	2.35

Source: [McClory \(2011, p. 15\)](#)

While the UK government certainly possesses the potential to wield influence in international decision-making, its capacity to do so may currently be under threat. The House of Commons Foreign Affairs Committee recently argued that the present government retrenchment programme was likely to impede the capacity of the Foreign and Commonwealth Office (FCO) to represent UK interests abroad. The FCO already had a relatively small budget within Whitehall and, therefore, its scope for reducing costs was inhibited because of the imperative nature of the programmes it is involved in. Substantial cuts had already been made under the previous administration and those intended for the FCO in the current round were relatively large in the context of the overall coalition package, resulting in the likelihood of diminished future capacity ([Foreign Affairs Committee, 2011](#)).

Whatever its position within multilateral bodies, there are grounds for believing that UK governments have failed to achieve sufficient influence within arguably its most important bilateral relationship with the US - sometimes termed the 'special relationship' (see Sections [4.1.1](#) and [4.2.4](#)). It is widely claimed by observers that UK representatives tend to take a less realistic approach to this engagement than the US, which pursues specific practical objectives in a more direct fashion ([Wallace and Phillips, 2009](#)). In this sense, the UK may not achieve the influence that it hopes that adherence to US objectives obtains for it. Relatively little mainstream political scrutiny of the value of this relationship has taken place (see Section [4.2.4](#)). However, in 2010, the Commons Foreign Affairs Committee, while positive about its overall nature, suggested that the term 'special relationship' should no longer be used since it overlooked the fact that the US had close connections with other nations. It argued that UK influence over the US was likely to decline in future and that the UK should be less deferential towards the US. Where UK and US policy differed, it was suggested that the UK should look more to other partners, particularly in Europe ([Foreign Affairs Committee, 2010](#)).

Assessing the equitability of UK government influence on EU decisions is a complex task. On one level, it could be held that changes in the organisation of the EU reflecting in part the growth of its membership - as well as a broader shift away from intergovernmentalism, culminating in the 2007 Treaty of Lisbon - has led to a lessening of UK influence. The simple fact that it is only one state amongst a growing number of others could be seen as a trend of diminishing influence, while the rise of QMV on the council increases the chances that the UK will become subject to decisions that it did not support. Moreover, the growth in the power of the European parliament means that a supranational body is playing an increasingly important role in the legislative process, which was previously dominated by the council. While the UK will still be able to appoint members of the commission, their specific role while serving in such offices is to represent the whole of the EU, not the individual nation which nominated them.

However, whether these ongoing developments in the nature of the EU should be seen as necessarily entailing a reduction in influence is open to question. It partly turns on the conception of national sovereignty within the UK itself. Some might view any transferral of sovereignty to the supranational level as a loss, and that full democratic legitimacy is not possible above the UK level, even if it involves the directly elected European parliament. Others would note that by pooling sovereignty with other European states, it is possible to gain additional influence that could not be attained by the UK acting alone (Wicks, 2006). On this second model, any gains for UK influence might be achieved when both it successfully secures the adoption by the EU of policies it favours, and more generally by its participation in an organisation through which it is able to achieve an impact on the outside world, such as through its participation in the WTO. Indeed, it might be better to view the EU as in some senses an extension of the UK government, rather than an external body to be influenced. Moreover, democratic oversight of the pooled functions is possible via the European parliament, which, as noted above, has recently been growing in strength.

These contrasting perspectives on how the UK's membership of the EU impacts on parliamentary sovereignty and domestic democratic accountability more generally are considered in more detail in Section [4.1.1](#), where it is noted that it is by no means the only example of a

constraint on the notion of the absolute sovereignty of UK parliament. Yet, it is questionable whether there are any democratic gains to be made from the only obvious means of resolving this apparent conflict outright; namely, that the UK would leave the EU altogether. Given that the vast majority of UK trade is with EU member states, a decision to leave the EU would almost certainly have dire economic consequences, unless the UK were to negotiate a detailed agreement with the EU via membership of the European Free Trade Association (EFTA), as is the case for Norway, Iceland and Lichtenstein. Aside from the complexities of moving from the EU to EFTA membership (which has never previously been attempted), it would be hugely misleading to assert that such a move would resolve the democratic tensions we highlight in this chapter. As we outline in Case Study 4.1a, a recent study published by the Norwegian Ministry of Foreign Affairs illustrates that the democratic deficit associated with EFTA membership is as great, if not greater, as that associated with full EU membership.

Case Study 4.1a: The democratic implications of Norway's membership of EFTA

In January 2010, the Norwegian government appointed a European Economic Area (EEA) Review Committee with a mandate to 'carry out a comprehensive and thorough review of the political, legal, administrative, economic and other social consequences (including its implications for welfare and regional policy) of the EEA Agreement' for Norway ([EEA Review Committee, 2012](#)). The membership of the committee was primarily comprised of academic experts, with additional representatives from the legal profession and the corporate sector.

The committee's report was submitted to the Norwegian Ministry of Foreign Affairs in January 2012. It noted that, by virtue of being part of the EEA, Norway had entered into agreements with the EU covering issues as diverse as immigration, foreign policy, police co-operation, agriculture and fisheries. Moreover, the committee identified a total of 170 statutes and 1000 government regulations which incorporated some element of EU law. The committee's report was clear that no other international agreement impacted as substantially on Norwegian domestic policy as extensively as the EEA.

In light of this influence on, and incorporation into, domestic policy, the committee took the view that the most problematic consequence of Norway's membership of the EEA was a democratic one. As the report notes:

'Norway is in practice bound to adopt EU policies and rules on a broad range of issues without being a member and without voting rights. This raises democratic problems. Norway is not represented in decision-making processes that have direct consequences for Norway, and neither do we have any significant influence on them. Moreover, our form of association with the EU dampens political engagement and debate in Norway and makes it difficult to monitor the Government and hold it accountable in its European policy.'

'This is not surprising; the democratic deficit is a well-known aspect of the EEA Agreement that has been there from the start. It is the democratic deficit. It is the price Norway pays for enjoying the benefits of European integration without being a member of the organisation that is driving these developments' ([EEA Review Committee, 2012, p. 7](#)).

Unlike the UK, Norway has never been a member of the EU or its predecessor organisations, although the case for membership was twice put to the electorate in referendums (in 1972 and 1994). If the UK were to seek to leave the EU and acquire membership of the EEA, it is clear that the very same profound democratic considerations highlighted by the EEA Review Committee would apply.

If the EU is considered as a means by which influence is achieved, its effectiveness as a coherent organisation requires consideration. The Treaty of Lisbon contained measures intended to bring about the more effective coordination of EU foreign policy ([Federal Trust, 2009](#)). While some institutional changes have been secured, other tendencies may have undermined the potential gains for the EU. It has been argued that the recent economic difficulties experienced by the EU have inhibited its ability to act as a unified force in international affairs and that member states have acted on a more individual national basis ([Vaisse and Kundnani, 2012, p. 17](#)). The specific contribution made by the UK to the cohesiveness of EU foreign policy is also questionable. According to the European Foreign Policy Scorecard, which assesses the collective performance of the European Union in achieving foreign policy and outcomes across a variety of goals, its 2012 survey it found the UK to be the third highest scoring 'leader' in the EU, behind Germany (first) and France (second). However, while noting that the UK had played a prominent role, alongside the French, over the intervention in Libya of 2011, the report found that the UK was becoming less active over European foreign policy matters and was failing to take a creative approach to policy-formation ([Vaisse and Kundnani, 2012, pp. 21-2](#)). In its wider approach to the EU, the UK seems to have followed a middle course with regard to the two interpretations of sovereignty. While participating in the EU suggests that the UK sees some value in sovereignty pooling, it has increasingly emerged as less than a fully-committed member, such as when it has secured opt-outs over justice and home affairs. When this occurs, the arguable impact of UK policy is potentially to undermine an organisation of which it is a member (Blick, 2012).

Democratic Audit notes that in some respects the UK has a substantial ability to influence decisions that impact upon it. Indeed, this role is arguably greater than its present economic and global political position merits, and is difficult to justify. However, we are also concerned that the UK does not achieve the degree of influence that would be required to validate its policy of adherence to US foreign policy. While we accept that it is always possible to make a case against cuts in virtually any area of government, we note the concerns that have been raised about possible damage to the capacity of the FCO to function effectively in ensuring the representation of UK interests.

The issue of the role of the UK in the EU is complex and controversial. It is certainly the case that the particular role of the UK in individual decisions has been potentially reduced, as it has for all member states. However, we also accept that differing views of the nature of sovereignty are possible, some of which do not treat the position of the UK and the EU as a zero-sum power game. We do not take a specific position on the terms of UK membership of the EU, we are clear in our view that a decision by the UK to leave the EU would not resolve the genuine democratic tensions we have highlighted. Indeed, as the report of the Norwegian EEA Review Committee (2011) suggests, the option of remaining outside of the EU but inside the European Economic Area also has very serious democratic implications. At present the UK appears to be pursuing a dual approach which entails an uncomfortable combination of European and national outlooks ([Adler-Nissen, 2008](#)), but we are by no means persuaded that such a stance can be sustained.

4.1.3 Domestic oversight of relations with international organisations

How far are the government's negotiating positions and subsequent commitments within these organisations subject to effective legislative oversight and public debate?

The effective parliamentary and public oversight of government negotiations within international organisations is clearly essential if decision-making at that level is to be democratically accountable and in the best interests of the country. Yet at the same time, it is generally recognised that these safeguards should not be so stringent as to sacrifice the flexibility that is often required for important compromises to be achieved between governments when negotiating at an international level. A balance between these two competing priorities can be difficult to achieve in practice, and observers may disagree over where exactly the line between them should be drawn. However, most would affirm that if parliament is to influence international negotiations to any reasonable extent, it must, as a minimum enjoy the right of swift and unencumbered access to information it requires; sufficient time and resources to consider this information; and the formal rights to scrutinise and influence government action, within the context of a parliamentary and party system in which these powers are able, and likely, to be used (see also Section [4.2.4](#)).

The European Union

In common with every other national parliament of the European Union (EU), the UK parliament maintains a number of committees and sub-committees to oversee the actions of the government in relation to the EU (for a summary of the committee structure, see Case Study 4.1b). As consistent with the features of a 'document-based' system of scrutiny, the work of these committees focuses mainly on the examination of documents produced during the pre-legislative and legislative processes of the EU; with the stated aim of the committees being able to influence the government on EU matters and hold its ministers to account.

Case study 4.1b: Parliamentary scrutiny of EU affairs

While matters relating to the European Union are occasionally debated on the floor of both Houses of Parliament, the majority of the work that parliament does in scrutinising the proceedings of the EU is performed by specialised European committees - of which there exist separate networks in both the House of Commons and the House of Lords. Broadly speaking, these committees employ similar, 'document-based' systems, in which European draft legislation and consultative papers are the focus of scrutiny, rather than the negotiating positions of government ministers themselves; and where the scrutiny process itself is guaranteed by 'scrutiny reserve' resolutions in both houses, which state that the government will usually refrain from agreeing to an EU legislative proposal which has not cleared parliamentary scrutiny.

In the House of Commons, the scrutiny process begins with the weekly meeting of the European Scrutiny Committee, where EU documents received by parliament (around 1,000 per year in total) are sifted to identify those of legal or political importance. Those documents *not* judged to be important are cleared from scrutiny immediately. However, when the committee does consider a document submitted to it to be of legal or political importance (of which there are usually around 500 per year), further action is taken. This may involve the committee requesting further information from the government, either in writing or in the form of oral evidence from a minister, in order to arrive at a decision. It may also, from time to time, involve the recommendation that a document be debated, either by one of the three general European Committees (this typically happens around 40 times per year), or on the floor of the House of Commons itself (this requires the approval of the government, and typically happens only around three times per year).

These processes offer some scope for parliamentary influence over the government - not least because ministers can be called before the European committees to answer questions. However, the extent of this influence remains limited by the control that the government retains over the terms of debate. Resolutions arrived at by the European Committees, for instance, do not clear scrutiny before being sent for resolution in the House of Commons, where the government is responsible for tabling the final motion, which is held without debate and does not have to be the same motion agreed upon by the committee. For documents that the government agrees to debate on in the House of Commons, meanwhile, it is the government, again, that is responsible for the motion that is tabled for debate.

In the House of Lords, the task of scrutinising EU documents is entrusted to the European Union Committee and its seven specialised sub-committees. As under the Commons system of European scrutiny, the European Union Committee first sifts the documents it receives in order to determine whether an EU document is unimportant, and should thus be cleared immediately; or whether it is important, in which case it is referred to the relevant sub-committee for further consideration. In contrast to the Commons European Scrutiny Committee, which considers hundreds of documents every year and often reports on them within the week, the Lords committee is more deliberative - considering fewer documents but often spending a great deal more time in debating them. However, the stages of the scrutiny procedure are not markedly different. If a document is referred for further consideration, then the sub-committee responsible can choose either to correspond with the government in writing, hold one-off hearings, or commence a full inquiry - the report of which may then be debated on the floor of the House (usually on the basis of a 'take note' motion or a 'question for short debate'), if the committee so wishes. The scrutiny process is then considered complete.

The existing system is acknowledged to have a number of strengths. For instance, although initiatives undertaken by the EU should ensure that national parliaments now have near-universal access to all of the European consultative papers and draft legislation needed to conduct proper scrutiny (see Section 4.1.1), the UK parliament has previously declared itself generally satisfied with the range of European documentation that it receives from the government (COSAC, 2009). In addition, the fact that the government cannot usually approve a document at the European level unless it has cleared parliamentary scrutiny means that the committees have time to deliberate and, if necessary, request further information from the government either in writing or at committee debates. The work of the committees themselves, moreover, is highly transparent by European standards, thus facilitating greater involvement in the scrutiny process by both the public and the media (see Table 4.1d).

Table 4.1d: The transparency of European affairs committees within each member state of the Union

Member state (lower house)	Are EU committee meetings publicly accessible?	Are EU documents received by parliament from EU/ government publicly accessible?	Are EU documents produced by parliament publicly accessible?	Are the meetings of other specialised committees publicly accessible?
Austria	Yes	Yes (EU) / No (government)	Yes	No
Belgium	Yes	No	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes
Cyprus	No	No	Yes	No
Czech Republic	Yes	No	Yes	Yes
Denmark	Yes	Yes	Yes	No
Estonia	No	Yes	Yes	No
Finland	No	Yes	Yes	No
France	No	Yes	Yes	No
Germany	No	No	Yes	No
Greece	Yes*	No	No	Yes*
Hungary	No	No	No	No**
Ireland	Yes	No	Yes	Yes

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Italy	No	Yes	Yes	No
Latvia	Yes	No	Yes	Yes
Lithuania	No	Yes (EU) / No (government)	Yes	No
Luxembourg	No	Yes	No	No
Malta	No	Yes	Yes	Yes
Netherlands	Yes	No (EU) / Yes (government)	Yes	Yes
Poland	Yes	Yes (EU) / No (government)	Yes	Yes
Portugal	Yes	No	Yes	Yes
Romania	Yes	Yes	No	Yes/No***
Slovakia	Yes	No	Yes	Yes
Slovenia	No	No	Yes	No
Spain	No	No	Yes	No
Sweden	No	Yes	Yes	No
<i>United Kingdom</i>	Yes	Yes	Yes	Yes

Note:

*Possibly not open to public visits as such, but committee meetings are as a rule broadcast on Parliament TV.

** Open to the press.

*** Contradictory information on parliamentary website.

Source: Table and accompanying notes derived from [Raunio \(2011\)](#).

However, in terms of their formal powers of influence and control, the European committees of the UK parliament are relatively weak compared to those of the national parliaments of many other EU member states with regards to having no rights either to direct or veto the positions taken by the government at the European level. As Table 4.1e shows, this is in stark contrast to arrangements in countries such as Denmark, Finland, Sweden and Austria, where national parliaments have the power to issue mandates that bind the actions of their government in the meetings of the council of ministers.

Clearly, the mere existence of such powers is no guarantee that they will be used regularly or effectively. The fact that, in Denmark, the European Affairs Committee of the *Folketing* is highly involved in EU matters; whereas, in Austria, the *Nationalrat* has, by contrast, made very little use of its ability to issue binding resolutions on matters relating to EU negotiations ([Pollak and Slominski, 2003](#)), illustrates this point very well. This disparity could be argued to lend credence to theory that the broader features of the parliamentary and party system in which each parliament operates are a more reliable predictor of effectiveness in relation to EU matters than the narrowly-defined powers that the parliament possesses in this area. The partisan domination of parliament has been identified as a key factor in explaining the Austrian parliament's reluctance to make full use of its powers in influencing the EU agenda ([Pollak and Slominski, 2003](#)); whereas the long history of minority government in Denmark, and the politics of compromise and consensus-generation that this necessitates on a daily basis, is, by contrast, thought to explain the prominence of the European committee in that country ([Auel, 2007, pp. 493-4](#)). The problem for the UK parliament is that it arguably enjoys neither the formal powers nor the wider institutional context required to operate in the same way as the Danish *Folketing*. Indeed, although it could be argued that the responsibility for backbench MPs of the majority party (or parties) to scrutinise and oversee the actions of government in EU affairs is especially great (as this is one area in which they have no direct influence on the legislative process), the strong desire to avoid any appearance of disunity among the governing party (or parties) can nevertheless be a powerful deterrent to those wishing to question the government line.

Table 4.1e: National parliaments and the EU-15 (ranking of relative powers, where Danish parliament = 10.0)

Member state	Relative powers	Nature of powers
Denmark	10	Parliament has the power to mandate the government prior to meetings of the Council of
Finland	8.8	

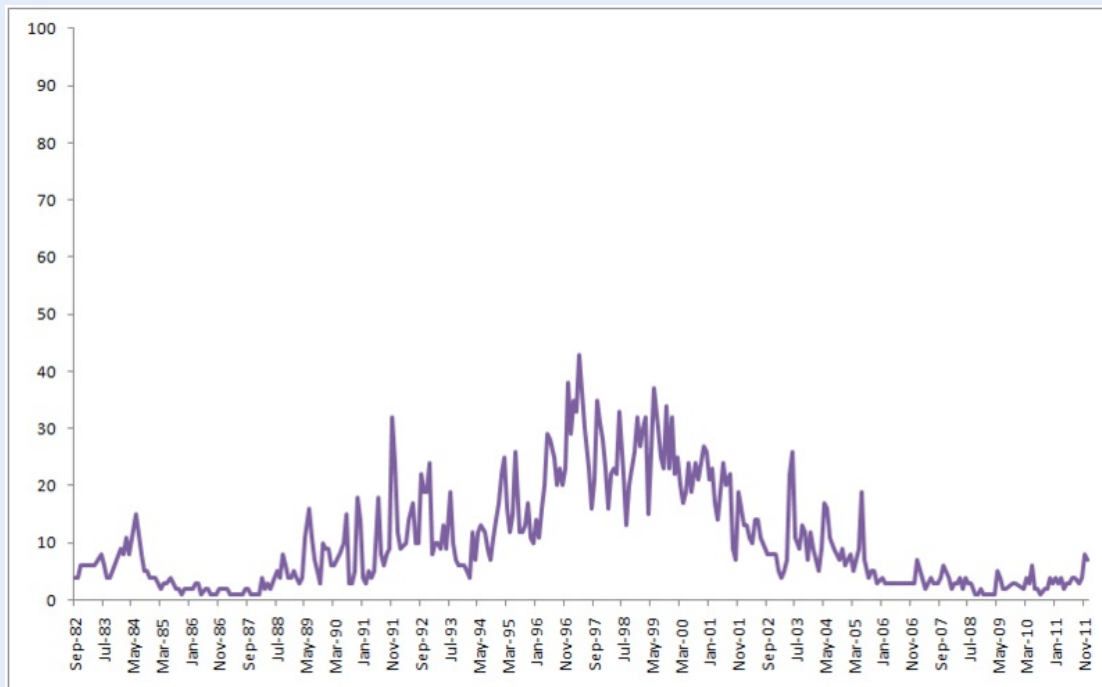
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Country	Score	Description
Sweden	8.3	meetings of the Council of Ministers. In Denmark and Austria these mandates are legally binding.
Austria	8	
Germany	6.7	Parliaments have partial powers of mandate over government's position in the Council of Ministers.
Netherlands	6	
UK	5.3	Parliaments have the scope to express views to government on matters to be discussed at the Council of Ministers, but governments maintain considerable discretion as to the extent to which they take these views into account.
France	4	
Italy	3.7	
Ireland	3.3	
Belgium	2.7	
Luxembourg	2.3	Parliaments have very few or no powers with respect to the government's position in the Council of Ministers.
Portugal	2	
Spain	1.7	
Greece	1.3	

Source: Adapted from Lord (2004, pp. 169-171) after Rozenberg (2002).

The task of European scrutiny is made more difficult, still, by the apparent lack of interest or concern with the EU outside of parliament. As Figure 4.1b shows, the EU has never been considered to be an issue of great importance by the vast majority of the public, despite the unequalled level of negative media coverage of the EU in the UK media (see Section 4.1.1); while UK citizens' knowledge of, and interest, in the EU is among the lowest in the Union.

Figure 4.1b: The percentage of the public citing Europe as an 'important issue facing Britain'



Note: Respondents to the survey are asked 'What would you say is the most important issue facing Britain today?' and 'What do you see as other important issues facing Britain today?'. The answers given by respondents are unprompted. The results in the graph above combine the answers from both questions, but only for those respondents citing Europe (that is, the Common Market, the EU, Europe or the Single European Currency) as an important issue facing Britain.

Source: Ipsos MORI (various years).

Other supranational organisations

Parliament possesses less clearly defined rights still in relation to supranational organisations other than the EU. While the national parliaments have enhanced roles defined for them under the EU treaties, most international business of the UK government is conducted under the royal prerogative (see also Sections [2.4.3](#), [2.5.1](#) and [4.2.4](#)). The royal prerogative is by definition a non-parliamentary set of powers. It covers, in the field of external policy, the conduct of diplomacy and treaty-making. Recently, the conventions governing the role of parliament in treaty ratification were placed on a statutory basis by the Constitutional Reform and Governance Act 2010, but the difference this shift will make remains to be seen. Moreover, the actual power of treaty-making remains on a prerogative footing. Parliamentary involvement in the supranational commitments of the UK is therefore largely a matter of informal political influence. The practice of 'legislative mandates' used in the US, stipulating the parameters within which the executive may operate in certain international organisations, does not exist for the UK.

Specialist select committees play an important role. For instance, in the mid-2000s, the Commons International Development Committee began taking evidence from the international development secretary annually after the autumn meeting of the board of governors of the World Bank. However, World Bank secrecy rules have seriously restricted parliamentary knowledge of what transpired at World Bank meetings. Sometimes, the route to parliamentary accountability is unclear. The Bank of England represents the UK at the Bank of International Settlements (BIS). Since the Bank of England is independent from the Treasury, the Commons Treasury Committee has found it difficult to establish responsibility for the UK role in the BIS. For some bodies, such as the G8, there is no single committee with a role, because it is a cross-cutting responsibility within the UK government (Burall, 2006).

Democratic Audit notes that it is not possible to apply the same standards of democratic oversight to international policy as it is to domestic policy. However, the weaknesses in legislative oversight inherent in the UK constitutional system (see Section [2.4](#)) are magnified for the accountability of the executive in its supranational activities. There are clear problems with the formal powers of oversight of EU policy, and the institutional environment in which this oversight is conducted. Moreover, the extent and quality of public debate in this area is not conducive to meaningful democratic accountability. The position with regards to other multilateral organisations is worse still. Such oversight as exists is largely retrospective, with no means of formally mandating ministers in advance of negotiations.

Conclusion

Democratic legitimacy in international policy is a complex concept; and one that is difficult to secure. One area in which there has been improvement is through the enhancements for the roles of the European and national parliaments in EU activity provided for under the 2007 Treaty of Lisbon, as well as its limited improvements to transparency within the council of ministers, and its enabling of citizen calls for action. The UK does have access to various levers of influence both of the hard and soft variety - though arguably the extent of its reach is too great when considered in an international perspective. However, elsewhere the picture has been one largely of continuing or emergent problems.

Despite the improvement, the EU - in some ways now at the peak of its influence to date - continues to suffer from a democratic deficit (although, as we note, UK withdrawal from the EU would almost certainly substitute one type of democratic deficit with another). The UK's relationship with the US sometimes leads it to pursue policies which raise democratic difficulties in themselves, and are adopted in ways which also raise democratic problems. Moreover, 'the special relationship' may not achieve the gains for the UK in terms of influence which governments hope to receive for their loyalty; while other options are available. Traditional constitutional models in the UK, particularly that of parliamentary sovereignty, are difficult to match up to modes of international interaction. Partly because of its attachment to the doctrine of parliamentary sovereignty, the UK has had difficulties in establishing a clear democratic rationale for its engagement in the EU; while at the same time judging it necessary, nonetheless, to participate within it. The means by which the UK parliament oversees the executive in its conduct of European and international policy are, when placed in international comparison, weak, overly dependent upon informal methods of which the UK constitutional system discourages the effective use.

A growing body of analysis now also suggests that the concept of globalisation - which is complex in itself - has seemingly been misused for some time in political discourse in the UK. It is used as a means of portraying policies of retrenchment in public welfare as inevitable, when international evidence suggests that they are not - even in countries subject to greater exposure to globalisation than the UK.

The findings presented in this chapter connect to a number of the key themes in the Audit as a whole. The constitutional tensions highlighted in this chapter are of particular significance to the wider evidence we produce in this Audit that the UK is characterised by growing constitutional instability. The traditional model of a sovereign UK parliament, legally unlimited, is increasingly difficult to sustain intellectually or in practice, in light of UK membership of the EU and the incorporation of the European Charter of Human Rights into UK law (see also Section [1.1.3](#) and [4.2.1](#)). However, it is far from clear that decisions to leave the EU or repeal the Human Rights Act 1998

would provide the basis for restoring parliamentary sovereignty. The high degree of public controversy about the EU and UK membership of it provides another example of the distrust towards established democratic institutions in the UK (see Section [1.1.3](#)), although it is notable that the level of distrust is higher in the UK than in virtually all other EU members states ([Wilks-Heeg and Blick, 2009](#)). The various measures introduced to render the EU more democratic, regardless of their merits (or otherwise) have not altered this position and may have aggravated it.

Meanwhile, policies which have been justified - often in rhetorical terms - by reference to the concept of globalisation underline the democratic implications of growing corporate power. International comparisons highlight that measures such as labour-market deregulation and reductions in welfare spending are by no means the 'inevitable' consequence of globalisation. However, the adoption of a distinctively neo-liberal policy response in the UK has clearly served to aggravate social inequality, and has become a key factor driving the growth of political inequality which we highlight throughout this Audit (see Section [1.4](#)). Finally, the difficulties in ensuring parliamentary oversight of the EU and other organisations provide further illustrations of extent to which representative democracy in the UK is faltering, but with no clear alternative democratic model currently in sight.

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4.2. The country's democratic impact abroad

Executive Summary

This chapter reviews the available evidence relating to the four 'search questions' concerned with the country's democratic impact abroad.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

(a) Areas of improvement

1. UK participation in a declaration on the ban on cluster munitions.

Unexploded cluster bombs can pose a substantial threat to civilians. Following significant domestic pressure, in 2008 the UK agreed to the Convention on Cluster Munitions banning these weapons. It came into force in 2010, though some loopholes possibly remained in UK fulfillment of this agreement. (For further details and discussion, see Section [4.2.1](#))

2. New legal controls of exports.

The start of the present Audit period saw the introduction of the Export Controls Act 2002. It established a new statutory footing for the regulation of exports; one of the purposes of which was to prevent the facilitation of human rights abuses abroad. The act was accompanied by a new system of parliamentary scrutiny of export policy. (For further details and discussion, see Section [4.2.1](#) and Case Study [4.2b](#))

3. New statutes covering international development aid.

The International Development Act 2002 stipulated that international development aid should be directed towards the purpose of the lessening of poverty; and sought to prohibit tied aid, though not defining it in the act. The International Development Act 2006 introduced more openness about official performance over development. (For further details and discussion, see Section [4.2.3](#))

4. Progress towards the international development aid target.

The idea of an international target for development aid reaching 0.7 per cent of gross national income can be traced to the late-1960s.

While some have challenged the relevance of this measure, it at least provides a popular and political focus that can help galvanise and assess progress towards a more extensive international commitment to development. UK progress towards this target improved over the last decade, following two decades of poor performance. However, placed in international perspective, UK performance is not spectacular. (For further details and discussion, see Section [4.2.3](#) and Figure [4.2b](#))

5. A firmer institutional basis for international development and policy consensus around development aid.

The Department for International Development which was established by the Labour government in 1997 was retained by the coalition which took office in 2010. In earlier periods, when Labour had enhanced the institutional basis for development aid this move had been reversed when the Conservative Party came to power. This new institutional consensus has been accompanied by agreement over key policy goals, including the 0.7 per cent target for the ratio of development aid to gross national income. (For further details and discussion, see Section [4.2.3](#) and Case Study [4.2f](#))

6. Limited reform of the royal prerogative with respect to the conduct of external policy.

The home civil service and the diplomatic service, both of which play a crucial part in the development and implementation of UK external policy, were previously regulated under the royal prerogative, a set of powers which have never been approved by parliament and in which parliament generally has no formal part. The Constitutional Reform and Governance Act 2010 placed the civil and diplomatic services on a statutory basis. The same act also introduced a statutory role for parliament in the oversight of treaty-making, which is conducted under the royal prerogative. (For further details and discussion, see Section [4.2.4](#))

(b) Areas of continuing concern

1. Less than full nominal commitment to human rights instruments.

Signing up to international human rights agreements does not in itself guarantee adherence to the norms they represent. However, it can contribute to the strength of those agreements internationally and help facilitate a more favourable climate for human rights internationally. It also provides a means of measuring adherence to human rights. The UK has not performed well relative to other democracies in Europe and elsewhere in the extent of the agreements and instruments it accepts, though some progress was made during the present Audit period. (For further details and discussion, see Section [4.2.1](#) and Figure [4.2a](#))

2. Conflicts between strategic alliances and trade objectives on the one hand; and the need to promote human rights on the other hand.

The UK is in principle committed to human rights and their international promotion as a matter of policy. However, there is evidence that it has softened its approach or lessened its criticism when faced by violations perpetrated by countries which may be important trading powers or strategic allies of the UK, or both. The universal nature of human rights makes this inconsistency problematic and unacceptable. (For further details and discussion, see section [4.2.1](#) and Case Study [4.2a](#))

3. Continuing concerns about arms exports.

Despite the existence of legal and parliamentary mechanisms regulating arms exports, arms exported by UK companies continue to be used in the perpetration of human rights abuses. The House of Commons Arms Control Committee regularly raises various concerns about the regulatory system and the way it works in practice. There are grounds for questioning the extent to which the Export Credits Guarantee Department prioritises human rights considerations when promoting arms exports; and this issue is part of a broader problem involving an apparent lack of adherence to human rights values within the UK private sector's international dealings, over which the UK government has failed to provide the necessary lead. (For further details and discussion, see Section [4.2.1](#) and Case Study [4.2b](#))

4. Limitations on the ability of parliament to oversee external policy.

Traditionally, governments enjoy high levels of discretion in their international dealings. External policy in the UK continues, to a significant extent, to be dependent upon the royal prerogative. This ancient set of powers have by definition never been approved by parliament, which generally does not have a formal role in overseeing their exercise. The royal prerogative is used for such purposes as the conduct of diplomacy and treaty making, notwithstanding limited reforms that have taken place. (For further details and discussion, see Section [4.2.4](#))

5. Restrictions on the impact of public opinion upon international policy.

In a representative democracy, to have an impact on policy, public opinion must filter through parliament and its members, or less formal

routes such as the media and pressure groups. In the UK, general elections are rarely dominated by foreign policy issues; though the Iraq war was a significant factor in the 2005 general election. With the exception of Iraq and nuclear policy in the 1980s, there is a broad tendency towards consensus between the main parties over foreign policy, making the representation of divergent views more difficult to attain. Unusual levels of secrecy surrounding international policy inhibit informed public debate. (For further details see Section [4.2.4](#))

(c) Areas of new or emerging concern

1. A desire on the part of the UK to weaken international human rights obligations.

The UK has intervened in cases before the European Court of Human Rights with a view to securing greater discretion in such areas as deporting terrorist suspects to potentially dangerous destinations; and maintaining a blanket ban on voting by prisoners. As part of a domestic agenda involving a review of human rights protection, it has promoted the idea of reducing access to the European Court. The potential outcome of such actions, if successful, would be to weaken the European Convention on Human Rights for all those who are protected by it, not just in the UK. (For further details and discussion, see Section [4.2.1](#))

2. Association with the unilateral approach of US in its approach to global security.

In the wake of the terrorist attacks on the United States (US) on 11 September 2001, the US developed an approach to foreign policy that involved stretching or ignoring existing principles of the international rule of law; building on tendencies it had already to some extent displayed. As a key ally of the US, the UK was to a significant extent supportive of and involved in this method of operation. There was credible evidence that the UK facilitated the rendition of terrorist suspects by the US; and was in various ways complicit in torture taking place abroad. Most controversially of all, the UK participated in the US-led invasion of Iraq in 2003, the international legality of which has been widely challenged, and which served to undermine the authority of the United Nations. (For further details and discussion, see Section [4.2.2](#) and Case Study [4.2d](#))

Introduction

Democracy is not simply an internal matter; and the values associated with it, though they may be realised in many different ways, are fundamentally universal in nature. It is therefore an important component of democracy that a state upholds the core principles of democracy, such as the international rule of law and human rights, in its external engagements, as well as the supranational mechanisms which exist to promote them. In so doing, it should seek to ensure that other considerations - such as international alliances and commercial strategies - do not override its impartiality. Moreover, while it is often held that foreign policy requires a high degree of discretion for governments, it is essential that external policy is subject to democratic oversight and public input.

Taking into account these concerns, the following section considers:

- The consistency of UK support for and protection of human rights internationally;
- The extent to which the UK supports agencies for international cooperation, including the United Nations, and its degree of respect for the international rule of law;
- The extent and consistency of UK contributions to international development;
- The parliamentary and public impact upon external policy.

Our 2002 Audit found that the UK had a good record of promoting human rights and supporting institutions designed for this purpose. The UK had entered into the most important international agreements in this area; and substantial contributions had been made to development aid. However, we noted that the strategic attachment to the US had involved the UK in military actions - including in Kosovo and Afghanistan - that were questionable under international law. We also described ongoing concerns about UK arms exports to regimes which might deploy them in the perpetration of human rights abuses (Beetham et al., 2002).

In this Audit, we find some instances of improvement. The UK has participated in a treaty banning cluster munitions. Progress has been made in the reaching of international aid targets; in the institutional commitment to development aid; and wider acceptance of its value as a policy goal. There have been limited improvements to the regime of parliamentary oversight of external policy. However, there are concerns about the reluctance of the UK to ratify certain international human rights treaties; and over the destinations of some arms exports. The UK parliament remains restricted in its ability to oversee the conduct of UK foreign policy. The most dramatic problem during the present Audit period has been the association of the UK with the US in the pursuit of the so-called 'war on terror', particularly during the presidency of George W. Bush (2001 to 2009). This attachment has involved an undermining of the global rule of law and the authority of the United Nations.

4.2.1 Support for human rights overseas

How consistent is the government in its support for, and protection of, human rights and democracy abroad?

International human rights

Human rights and democracy, two interdependent sets of values, apply not only to individual countries, but universally - or at least they should do. In this sense a truly democratic state must seek to further democracy on an international scale. In part this obligation involves participation in the numerous international human rights instruments that have been established in the period since the United Nations was established at the end of the Second World War, covering both 'traditional' civil and political rights and other generations of rights, such as economic and social rights (Burall et al., 2006). These instruments may cover both states' internal adherence to human rights; and their external dealings, for instance in the conduct of war.

In ratifying such agreements, a country is committing itself in principle to certain norms; and at the same time arguably contributing to the international credibility of these instruments, thereby increasing the chances that the standards they represent will be upheld universally. The history of UK participation in the European Convention on Human Rights (ECHR), signed in 1950, provides evidence of the potential strength of such instruments. When it was first devised, the UK saw propaganda value in the document in the context of the Cold War era. It was also reluctant to alienate its western European allies by pulling out of an agreement that had been negotiated with UK sensitivities in mind. For these reasons the UK government was forced to set aside its unease about the impact the ECHR might have upon domestic executive discretion. Over time various UK governments have been pressured into greater compliance with human rights norms through participation in the ECHR in ways they might otherwise not have been. Then, in 1998, the ECHR was strengthened further through its incorporation into UK law by the Human Rights Act 1998 (Wicks, 2006. See Section [1.2.2](#)).

Nominal commitments have their limitations as a measure of human rights compliance. It is possible that a state may fail to uphold rights to which it is committed; or indeed uphold rights to which it is not committed. But acceptance of international norms at least provides a standard against which the performance of a country can be measured, and compared to others ([Landman, 2004](#); for UK performance with respect to civil and political rights, see Section [1.3](#); for economic and social rights, see Section [1.4](#)).

As these qualifications suggest, as well as taking on obligations, a state must fulfill them in practice. If it fails to do so, either in external or internal policy, such behaviour is not only unsatisfactory in itself, but also because it undermines the international standing of human rights more generally. Even if general goodwill towards human rights and democracy exists, within a government there may be strong temptations and pressures not to adhere to them consistently. In domestic policy, for instance, security concerns or popular pressure may lead to the targeting of certain groups, such as terrorist suspects (for the playing out of this tendency in the UK and its internal impact on civil and political rights see Section [1.3](#)). In international terms, the desire to pursue global strategic objectives or secure commercial advantage for national commercial interests over foreign competitors may sometimes take priority over human rights commitments or support for democracy. Given its history as a global power and tradition as an international trading nation, these considerations may apply to an exceptional extent to the UK.

It might also be hoped that a state would not only avoid violating its international obligations, but would have a policy of actively promoting human rights and democracy through the avenues that are open to it. For instance, it might seek through public or private routes to encourage powers over which it has an influence to curb undesirable activities. It could seek to secure certain courses of action by supranational organisations of which it is a member, such as the European Union or United Nations. In extreme cases, states might also participate in humanitarian military interventions, as the UK did in Kosovo in 1999, and in Libya in 2011 (this latter issue, and the international legal complications that are entailed, is considered in Section [4.2.2](#)).

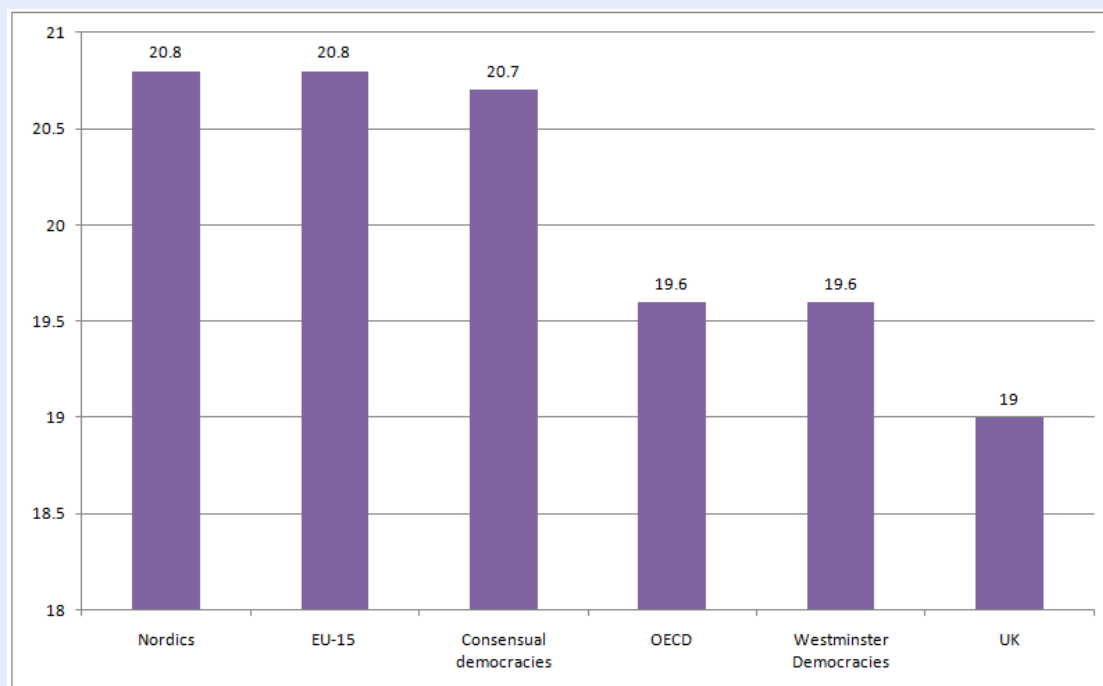
UK commitments and policy

The UK is the signatory to a wide range of international human rights instruments; but when placed in international perspective, its level of nominal commitment is not high. In 2009 a survey was conducted of 194 countries (the 192 members of the United Nations, the Cook Islands and the Holy See) to quantify the international human rights treaties to which they had agreed ([Anton et al., 2009](#)). It scored and ranked countries according to their ratification rates. In its ranking of the commitments of members of the Council of Europe to its human rights instruments, the UK came joint sixth, or rather joint bottom, having ratified only five out of 10 agreements that formed part of the assessment. A total of 43 countries came above the UK (Switzerland, Spain and the Russian Federation were ranked alongside). When its adherence to individual petition mechanisms was considered against all 194 states, the UK again came joint sixth, having accepted two such mechanisms, with the lowest ranking being eighth, for those countries that had accepted none. Countries without the African, American or European human rights systems had less opportunity to join petitioning mechanisms, making the performance of the UK even less impressive. The three top-ranked countries, Belgium, Italy and Sweden, who had accepted seven mechanisms, were all within the same system as the UK.

Democratic Audit

In overall ranking, scoring countries on a basis of whether they had signed up to a total of 24 treaties and mechanisms globally, [Anton et al. \(2009\)](#) ranked the UK joint sixth with a score of 19 out of 24. Fifty countries came above the UK, 14 were ranked alongside it and 129 below. Figure 4.2a provides the average overall scores out of 24 for the groups of comparator democracies used in this Audit. While the differences are fairly modest, the UK's scores are below those of the average for each comparator group. The Nordics and EU-15 jointly perform best, with an average score of 20.8. The consensual democracies achieve 20.7; the OECD and Westminster democracies both score 19.6.

Figure 4.2a: Nominal human rights commitment, UK and groups of comparator democracies.



Source: Calculated using [Anton et al. \(2009, pp. 14-17\)](#)

When participation in international instruments underpinning human rights and democratic values is considered, the particular legal and constitutional system of the UK must be taken into account. Broadly speaking, there are two general approaches towards the legal status of international agreements within a constitution. The first, monism, involves such obligations being incorporated directly into the domestic legal hierarchy of a state. Countries such as France and the US broadly accord to this model. The second, that of dualism, implies that international commitments only become effective internally if enacted by domestic legislative procedures. The UK is closer to the dualist approach, which accords with the doctrine of parliamentary sovereignty, according to which the supreme law-making body is parliament (Jowell and Oliver, 2011). In the UK, if an international agreement requires domestic legal force, it must be provided by an act of parliament (though by tradition UK courts may consider customary international law - the international equivalent to common law - to be a part of domestic UK law). For instance, European law is incorporated through the European Communities Act 1972. The ECHR, after being applicable only as an external commitment since the 1950s, was incorporated by the Human Rights Act (HRA) 1998 (see Section [1.2.2](#)).

The HRA can be a means of regulating both the domestic and to some extent the external activities by the UK state. During the present Audit period, case law established that the ECHR applied abroad in certain circumstances: if a state subject to it has military control of a territory; and on diplomatic premises or in vehicles registered to the state concerned (Barnett, 2011). However, the potential for the domestic judicial enforcement of international instruments giving expression to human rights and democratic values is limited if they are not incorporated into UK law. They can be taken into account, but not directly enforced. For this reason, political mechanisms for ensuring adherence to international democratic principles have a marked importance (see Section [2.4.2](#)).

In addition to its international legal obligations, throughout the period of this Audit, the UK government has been officially committed to the active pursuance of human rights and democracy internationally. The Labour government, first elected in 1997, was committed to an 'ethical dimension' to foreign policy (Burall et al., 2006). An innovation introduced by this government was the publication of annual international human rights monitoring reports. The coalition has continued to produce these documents, slightly retitled as human rights and democracy reports. The coalition also has an official commitment to human rights. The Foreign Office first adopted in 2010 a 'Business

Plan' comprising of five 'structural reform priorities' (see Case Study 4.2a). The commitment to human rights was part of item five on the list. It was, however, not an item in its own right. Moreover, in this item, human rights were presented as being a subset of 'British values', arguably a curious categorization given that the UK is committed to human rights under *international* conventions, and as *universal* values.

Case Study 4.2a: Foreign and Commonwealth Office 'Structural Reform Priorities' for 2011-2015, excerpts from Foreign and Commonwealth Office's Business Plan

1. Protect and promote the UK's national interest [...]
2. Contribute to the success of Britain's effort in Afghanistan [...]
3. Reform the machinery of government in foreign policy [...]
4. Pursue an active and activist British policy in Europe [...]
5. Use "soft power" to promote British values, advance development and prevent conflict [...] expand the UK government's contribution to conflict prevention; promote British values, including human rights; and contribute to the welfare of developing countries.

Source: [Foreign and Commonwealth Office \(2011, p. 2\)](#)

During the period covered by this Audit, the Export Control Act 2002 was newly introduced. It supplanted a practice whereby the government had used regulations intended to prevent trading with the enemy during war. This earlier approach was judged legally questionable. The new act determined that export controls could be introduced 'for the purpose of giving effect to any [European] Community provision or other international obligation of the United Kingdom'; and a range of other ends such as the national security of the UK and allies of the UK; or generally in the interests of stability worldwide. The products that could be controlled included those whose export might bring about 'breaches of international law and human rights'. The act provided for the issuing of orders which came into force at once, but had to be approved expressly in both Houses of Parliament. The act required the government to produce annual reports to parliament on its operation (Burall et. al., 2006, pp. 34-5 and pp. 95-6). In the House of Commons, the Select Committees for Business, Innovation and Skills; Defence; Foreign Affairs; and International Development, collaborate to examine the government's strategic export control system and policies. This arrangement is known as the 'Committees on Arms Export Controls' or 'Arms Control Committee'.

The UK applies a set of criteria governing export controls that are based on a combination of national standards and the EU Code of Conduct on Arms Exports (see Case Study 4.2b). While due concern is attached to human rights and related democratic issues, the provisos about commercial concerns, the industrial base of the UK and international relations could be seen as creating an inbuilt tension within the operation of the rules themselves. It is unclear which of these motives takes precedence when difficult decisions must be made.

Case Study 4.2b: Consolidated export control criteria, excerpts from the Arms Control Committee Annual Report, 2009

CRITERION ONE

Respect for the UK's international commitments, in particular sanctions decreed by the UN Security Council and those decreed by the European Community, agreements on non-proliferation and other subjects, as well as other international obligations [...]

CRITERION TWO

The respect of human rights and fundamental freedoms in the country of final destination [...]

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts [...]

CRITERION FOUR

Preservation of regional peace, security and stability [...]

CRITERION FIVE

The national security of the UK, or territories whose external relations are the UK's responsibility, and of allies, EU Member States and other friendly countries [...]

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law [...]

CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions [...]

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources [...]

OTHER FACTORS

Operative Provision 10 of the EU Code of Conduct specifies that Member States may where appropriate also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the criteria in the Code.

The Government will thus continue when considering export licence applications to give full weight to the UK's national interest, including:

- a. the potential effect on the UK's economic, financial and commercial interests, including our long-term interests in having stable, democratic trading partners;
- b. the potential effect on the UK's relations with the recipient country;
- c. the potential effect on any collaborative defence production or procurement project with allies or EU partners;
- d. the protection of the UK's essential strategic industrial base.

Source: [Arms Control Committee \(2011, pp. 58-62\)](#)

UK policy and practice regarding international human rights and democracy

The attitude of the UK towards participation in international human rights instruments has been challenged. In 2004 the UK government concluded a review of its international human rights commitments. It chose to accept the optional protocol to the UN Convention for the Elimination of all forms of Discrimination Against Women for a trial period. But no other changes were made. In 2005 the parliamentary Joint Committee on Human Rights (JCHR) criticised the government for failing sufficiently to explain its reasons for not opting into more agreements at this stage. The JCHR called into question the reluctance of the government to accept individual rights of petition under

human rights instruments; and its rejection of protocol 12 of the ECHR, which would provide a free-standing protection against discrimination (for discrimination see Section [1.1.2](#)). The committee called for further consideration of ratifying protocol four of the ECHR, which would strengthen freedom of movement. It found fault with UK reservations regarding international agreements on the rights of children, entered for the purposes of retaining discretion in immigration and asylum policy (see also Section [1.1.6](#)). The JCHR did however welcome a number of recent ratification decisions. The UK had accepted protocol 13 of the ECHR, completely abolishing the death penalty; the optional protocol to the Convention Against Torture, allowing independent inspection of detention premises; agreements to prevent the exploitation of children; and protocol 14 of the ECHR, providing for better functioning of the European Court of Human Rights ([Joint Committee on Human Rights, 2005](#)).

During the present Audit cycle, the UK has also sought through legal action to reduce the impact of the ECHR. It has intervened in cases before the European Court of Human Rights, in particular with a view to allowing it to deport terrorist suspects to potentially dangerous destinations, and to continue to impose a blanket ban on prisoner voting rights (Bradley and Ewing, 2011; Turpin and Tomkins, 2011; see Section [1.1.1](#)). In both cases, were it successful, the UK would have an impact upon rights throughout the states to which the ECHR applied. In early 2012, the UK is seeking through its presidency of the council of Europe to reduce individual access to the European Court of Human Rights, linked to a domestic agenda of reviewing human rights provision ([Lewis, 2011](#); see also Section [1.1.3](#)).

Whatever the formal international obligations and objectives of the UK regarding the associated causes of human rights and democracy, concerns have long been raised about the extent to which they are consistently fulfilled in practice, as they have often seemed to be undermined by the desire to pursue commercial and strategic alliances. In its review of the 2008 Foreign Office annual human rights report, the House of Commons Foreign Affairs Committee observed a number of problems with UK policy towards human rights internationally. For example, the committee noted 'that there remains little evidence that the British Government's policy of constructive dialogue with China has led to any significant improvements in the human rights situation' ([Foreign Affairs Committee, 2009, p. 78](#)). Furthermore, enormous violations of democratic principles continued in Saudi Arabia, yet the human rights report tended to downplay this problem. The committee warned that '[t]he fact that Saudi Arabia is a strategic ally of the UK should not lead to an official policy of turning a blind eye to its human rights failings' ([Foreign Affairs Committee, 2009, p. 93](#)). In 2011 the same committee pressed the government on its reluctance to support the establishment of an international panel to investigate alleged atrocities during the Sri Lankan civil war ([Foreign Affairs Committee, 2011](#)). A longstanding criticism of the UK has been its tendency in various ways to support - or fail to criticise - Israel for its questionable activities during the ongoing Middle East conflict. For instance, in 2006 Israel launched attacks against Lebanon, but the UK (along with the US) would not call for an immediate ceasefire ([Weir, 2007](#)). The UK alliance with the US, and its implications for the international rule of law, including the prohibition of torture, is considered in more detail below (see Section [2.4.2](#)). One feature of this relationship has manifested itself in extradition policy. Under the US-UK Extradition Treaty of 2003 the UK must provide the US with reasonable evidence that they are seeking the correct person; while the US need not meet such a requirement ([Joint Committee in Human Rights, 2011](#)).

There is evidence of special privileges apparently being accorded to the arms manufacturing sector in the UK and that their export activities are not as tightly controlled as they should be, to the detriment of human rights internationally (see Section [2.6.4](#)). The House of Commons Arms Control Committee has expressed the view that: 'the Government should take a longer term view about unstable countries, and further appraisal is required where the peace is fragile. UK arms exports have ended up in places that were contrary to UK policy' ([Arms Control Committee, 2010, pp. 51-2](#)). As a result of the violent response to uprisings in the Middle East and North Africa in 2011, the committee has observed that there was a frenetic change in government export control policy. This outcome suggested that the previous approaches adopted by successive governments had in some way been far from ideal. However, despite the repeated recommendations of the committee for the government to make its legal controls over extraterritorial arms deals - involving UK firms selling arms from one foreign country to another - more extensive, the intention of the present coalition government to enhance the sale of arms overseas raises particular concerns ([Arms Control Committee, 2011](#)). On a more practical note, the committee has also complained about the inadequate delays in receiving timely information from the government in order to fulfil its scrutiny role ([Arms Control Committee, 2010](#)).

During the period under examination, some progress was made in the area of arms control. Cluster munitions, if they do not detonate immediately, can become similar to unexploded landmines, posing a great threat to civilians. In 2007, after substantial pressure within parliament and from civil society groups, the UK government signed up to the Oslo Declaration, which required states to produce a binding treaty to prevent the 'use, production, transfer and stockpiling of cluster munitions'. However, there were some concerns voiced about the precise way in which the government interpreted and implemented this agreement, and whether it left unsatisfactory loopholes ([Weir, 2007, pp. 15-7](#)). In 2008 the UK signed the Convention on Cluster Munitions, which came into force in 2010.

The Export Credits Guarantee Department (ECGD) plays an important official role in supporting UK trade policy, providing insurance and guarantees for UK manufacturers. For some time concerns have existed about its work in countries which have poor records on human rights. It has also been found to be subject to unsatisfactorily slight forms of democratic oversight ([Hawley, 2003](#); Burall et al., 2006). In 2009, the JCHR investigated the relationship between the private sector and human rights, both within the UK and internationally. It raised specific concerns about the ECGD. The committee held that there was not sufficient due diligence involved when the impact of companies

seeking ECGD support on human rights was considered. Furthermore, ECGD decision-making processes were found not to be sufficiently transparent. In the same report, the JCHR identified wider failings by government to take clear measures to ensure that the commercial sector operated with sufficient regard to human rights concerns in its international operations ([JCHR, 2009a](#)). This issue is of particular concern given that it has been argued that under international law, states can have responsibility for the commercial activities of their nationals abroad and for the outcome of the subsidies that states provide ([McCourquodale and Simons, 2007](#)).

In conclusion, Democratic Audit notes that in its rhetoric, the UK presents human rights as being inherently 'British' in nature. Moreover, through its actions, for instance in issuing official international human rights assessment reports, it regards itself as having a special international role in upholding human rights and democratic values. It seems only fair to assess the UK itself against the high standards it purports to set. On a plus note, the agreement to an international ban on cluster bombs is promising and some progress has been made with the UK ratification of more international human rights instruments. However, such progress has been limited; and the UK clearly does not set the best example in this regard. Moreover, the UK's record of litigation under the ECHR and attitude towards the European Court of Human Rights is suggestive of a desire to loosen the application of human rights standards not only to the UK, but, by extension, to Europe as a whole. There is also clear evidence of inconsistency in the application of human rights and democratic principles internationally, conditioned by political and commercial concerns, which we find a cause for concern. The private sector as a whole appears to be insufficiently concerned with international human rights issues.

4.2.2 Support for UN and international law

How far does the government support the UN and agencies of international cooperation, and respect the rule of law internationally?

Achieving international cooperation and sustaining the international rule of law

The rule of law is an essential component of democracy, internationally as well as domestically (see [Introduction](#) to Section 1.2). The fundamental principle of the rule of law, that all institutions and individuals should be subject to the law, is essential to the establishment and maintenance of international circumstances in which democracy can flourish. Initially, international law existed mainly as custom. Then a process which began to gain pace from the late-nineteenth century saw a process of increased codification. A corpus of codified international law and organisations associated with its development and implementation developed. This tendency accelerated further after 1945. The subject matter these rules and bodies deal with is wide, ranging from commercial and technological cooperation to the protection of the environment ([Alvarez, 2007](#)). All of these areas are important to democratic values as discussed throughout this Audit, and the principle that democracy should be promoted not only within any given state, but universally.

The central institution in international law is the United Nations (UN). The International Court of Justice (ICJ) is the main legal organ of the UN. It is a civil court, which mainly hears disputes between states, rather than dealing with the actions of individuals, and works closely with the International Criminal Court (ICC), which is not specifically a UN body, though it has links with it and was proposed by the UN. It was created by the Rome Statute of 1998, which came into force in 2002 (Burall et al., 2006).

Much of international law is concerned with day-to-day, regular dealings, but an underlying issue involves the use of force and its legitimacy. The desire to establish a newly-regulated world order following the Second World War drove the formation of the UN in 1945. Its charter seeks to outlaw war altogether, banning unilateral use of force by individual states directed against others. However, it does specifically leave open the possibility of military action taken in self-defence. The body with primary responsibility for decisions about the use of force is the United Nations Security Council (UNSC), which has five permanent members: China, France, the Russian Federation, the UK and the United States (US); and ten rotating temporary members, elected for two year terms by the UN general assembly. Under the UN Charter, the UNSC is responsible for identifying threats to international peace and security, and to take action to restore it, including sanctions and military action. It can call upon other member states to support such action. Military operations authorised by UNSC Resolutions in this way include the interventions in Korea in 1950 and to end the Iraqi occupation of Kuwait, which rested on a Resolution passed late in 1990 (Blick, 2005).

While the rule of law may be held to be a universal value, applicable to international relations as much as domestic affairs, its international application presents particular challenges. There is no clearly defined canon of all international law, though the UN Law Commission, first established in 1949, has been entrusted with codifying it. Moreover, at national level, law can be expected to be produced by a legislature. At international level, no body as such exists. International law is generally now produced by two or more states entering into agreements with each other. From a democratic perspective, this arrangement could be seen as problematic in that it means that there is no body that contains at least some directly elected component, such as the House of Commons provides in the UK parliament. Furthermore, just as international law is to a large extent the product of agreements between assorted states, it is essentially dependent upon their willingness to adhere to it (Bingham, 2010). In this sense, the international rule of law and the organisations that facilitate international cooperation may not be greater than the sum of its parts - i.e. the states that comprise it.

The international rule of law is especially vulnerable, then, to the agendas of particular states. Powerful countries can override or undermine it in different ways, as has been repeatedly demonstrated in the case of the US. One means of doing so is not to take part in agreements and institutions. The US has declined to participate in important features of the development of international law, including the ICC; and has withdrawn from the full jurisdiction of the ICJ (Burall et al., 2006). Another option is unilaterally to pursue particular interpretations of international law which are not generally accepted. During the present Audit period, in the wake of the terrorist attacks of 11 September 2001, the US has stretched the concept of self-defence against international terrorism to the point where it was used as a justification for pre-emptive military action anywhere in the world, even if an attack was not imminent (see Case Study 4.2c).

Case Study 4.2c: Excerpts from the 2002 National Security Strategy of the United States of America

'We will disrupt and destroy terrorist organizations by [...] defending the United States, the American people and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country [...].'

Source: [President of the USA \(2002, p. 6\)](#)

The US also partly drew on self-defence as a justification for the invasion of Iraq it led in 2003. This action was particularly controversial and widely regarded as incompatible with international law ([Alexander, 2003](#); Sands, 2005; Bingham 2010). The association of the UK with the broad approach of the US during the last decade is discussed below.

A further complication arises from the importance of individual states to international law and organisations for attaining international cooperation. A number of countries in the international community fall severely short of even basic democratic standards; and may use the principle of state sovereignty, which is to some extent protected by the UN Charter, as a shield for activities within their own borders that seriously compromise democratic values such as human rights; even to the point of committing major atrocities. While in theory the UNSC can act to prevent such activity, it is often painfully slow to do so in a meaningful way; and may be deadlocked. Of the permanent members of the council, which have a right to veto resolutions, China and the Russian Federation have been resistant to the practice of humanitarian intervention, presumably on the grounds that it could create a precedent which might be used against them at some point in the future (Burall, 2006).

Gradually a new doctrine has begun to develop. It involves the idea that states have not only a right, but a duty to intervene to prevent humanitarian disasters in circumstances where a domestic government is unable or unwilling to help - or is perhaps the source of the problem. Such intervention can involve, in the extreme, military action, such as the bombing of Belgrade in 1999 to prevent atrocities against ethnic Albanians in Kosovo. Russia and China had used their position on the UNSC to block intervention, so the operation took place under the auspices of the North Atlantic Treaty Organisation (NATO). The doctrine of a 'responsibility to protect' made international headway during the period of the present Audit and was endorsed by a UN investigation published in 2004. Though maintaining that decisions about the use of armed force still rested with the UNSC, the UN supported the idea of intervention to prevent 'genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law' ([High-level Panel on Threats, Challenges and Change, 2004, p. 66](#)). It should however be noted that this principle is itself vulnerable to manipulation by states seeking cover for military action they may wish to take for other purposes; and such action can bring the whole doctrine into disrepute. The invasion of Iraq in 2003 and various forms of questionable counter-terrorist activity undertaken by the US and its allies over the last decade were held to be justified as carried out in pursuit of democratic values.

The commitments of the UK

As the analysis above suggests, the commitment of particular states to the rule of law and organs of international cooperation is vital to their sustainability, since they lack sufficient autonomous existence. This commitment can be assessed both by the extent to which a state participates in agreements and institutions, its practical policy activity, and the interpretations it seeks to place on particular features of international law at given times. The underlying principle is whether a state uses such influence and power it possesses to pursue only its narrow perceived self-interests, or display genuine support for broader principles of legality.

The UK has a long history as an internationally active state. Indeed, so extensive are its commitments that the UK government itself does not have a single complete list of all the treaties to which it is a signatory (Burall et al., 2006). Through the formation of the UN in 1945, the UK took a leading role in conjunction with the US in the attempt to establish a firmer world legal order and was also more recently a central player in the creation of the ICC (Sands, 2005). As such, the UK government has long maintained its stance of commitment to the international rule of law.

In the UK, the constitutional position regarding the handling of treaty agreements comes closer to what is known as the 'dualist model' than the 'monist model' (see also Sections [4.2.1](#) and [4.2.4](#)). This arrangement means that international agreements are not automatically integrated into domestic law, but can only be directly enacted through parliament (Jowell and Oliver, 2011). The courts can, however, consider customary international law and take it into account in their deliberations, but national law always supersedes it ([Crawford, 2006](#)). Parliament can also pass legislation contrary to international law which will be accepted as legal within the UK.

The non-statutory ministerial code describes the 'overarching duty on Ministers to comply with the law including international law and treaty obligations' ([Cabinet Office, 2010, p. 1](#)). Furthermore, the Foreign and Commonwealth Office asserts its intention to provide support to various international organisations including the UN and the Commonwealth. More recently, the current coalition government has supported permanent UNSC membership for Japan, India, Germany and Brazil, as well as African representation ([Foreign and Commonwealth Office, 2011, p. 2](#)).

The UK and the international rule of law in the post 9/11 era

The previous full Audit found that the Labour administration which took office in 1997, had provided valuable support to institutions of international cooperation including the UN; and had 'shown a clear commitment to the international rule of law' (Beetham et al., 2002, p. 282). However, it noted that the UK was involved in territorial disputes with Spain over Gibraltar and with Argentina over the Falkland Islands, while it also expressed concerns about the position of the UK as 'chief ally to the US' (Beetham et al., 2002, p. 282). In the period covered by the present Audit, concerns intensified about the manner in which the UK pursued its longstanding strategic alliance with the US. As noted above, the US has not always fully committed itself to the instruments and organs of international law and its response to events of 11 September 2001 was to harden this approach, including through the development of a doctrine of preemptive self-defence. It has been argued that the UK, in supporting the US in its endeavours, served to damage the authority of the UN and the international rule of law (Sands, 2005).

The most dramatic manifestation of this tendency was UK participation in the US-led invasion of Iraq in 2003. Already by this point, the Labour government under Tony Blair had engaged in various military actions, some of which, such as the intervention over Kosovo, stretched existing understandings of international law (Kampfner, 2004). There was no clear final UNSC authorisation for the Iraq invasion, though the UK claimed that a combination of earlier resolutions gave it a legal basis. In particular the UK asserted that UNSC resolution 678, which had authorised the ejection of Iraq from Kuwait in 1991, could be revived and used as an authority for the invasion of Iraq, without need for a further specific resolution if Iraq failed to comply with UN requirements that it rid itself of weapons of mass destruction (see Case Study 4.2d).

Case Study 4.2d: Full text of public statement of attorney general's advice on legality of the invasion of Iraq, as provided to House of Commons in a written answer of 17 March 2003

1. In resolution 678 the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.
2. In resolution 687, which set out the ceasefire conditions after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area. Resolution 687 suspended but did not terminate the authority to use force under resolution 678.
3. A material breach of resolution 687 revives the authority to use force under resolution 678.
4. In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution.
5. The Security Council in resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not.
6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the

implementation of resolution 1441, that would constitute a further material breach.

7. It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.

8. Thus, the authority to use force under resolution 678 has revived and so continues today.

9. Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force'.

Source: [Solicitor General \(2003\)](#)

The argument offered by the UK government in defence of the legality of the invasion of Iraq has been widely disputed. It has been argued that Iraqi non-compliance with UNSC resolutions was not of an extent justifying military action and that the final decision about action should have been clearly taken by the UNSC, which it was not ([Alexander, 2003](#); Bingham, 2010). The issue cannot be settled in the sense that it has not been heard by an international court, nor is it likely to be. However, it is notable that in an earlier (now declassified) internal version of his advice on the legality of the proposed invasion, which the prime minister received on 14 January 2003, the attorney general, Lord Goldsmith, expressed the view that 'resolution 1441 does not revive the authorisation to use of force contained in resolution in the absence of a further decision by the Security Council' ([Attorney General 2003](#)).

The attorney general seemed to have shifted his position by the time he provided further advice on 7 March 2003, but was not as definitive as the public statement could be interpreted as suggesting. The earlier, more equivocal, views of the attorney general on the operation were not only denied to MPs voting on the action and the public, but also the cabinet who - according to constitutional doctrine - were collectively responsible for the decision to invade. There were difficulties in reconciling this approach with the statement in the ministerial code that when a summary of advice from law officers is included in cabinet papers, 'the complete text of the advice should be attached' ([Cabinet Office, 2010, p. 5](#)). This approach to the handling of legal advice was part of a broader technique pursued towards Iraq (and other issues) by Tony Blair. As prime minister he sought to dominate decision-making by working in small informal groups, who possessed access to detailed information not made available to full cabinet and its more official sub-committees (Short, 2005; Burall et al., 2006).

In addition to the invasion raising issues of international legality, the legal advice which the UK government received regarding the occupation of Iraq was unambiguous with regard to any attempts to restructure the Iraqi political or economic system. As Case Study 4.2e outlines, a subsequent memorandum from the attorney general, dated 26 March 2003, made it absolutely clear that 'a further Security Council resolution is needed to authorise imposing reforms and restructuring of Iraq and its Government'. Yet, the occupation that followed the invasion of Iraq on 19 March 2003, in which the UK participated, gave rise to exactly the sorts of wide-ranging political and economic reforms which Lord Goldsmith warned would be unlawful. There were, moreover, wider allegations of occupying forces, including those from the UK, engaging in actions which violated international laws and norms. Following the death of an Iraqi civilian, Baha Mousa, in British custody in 2003, a British soldier was prosecuted in the UK under the International Criminal Court Act 2001 for war crimes ([Gage, 2011](#); Bradley and Ewing, 2011).

Case Study 4.2e: The attorney general's advice on the occupation of Iraq

One memo from the attorney general to the prime minister on the subject of the legality of the 2003 Iraq war has escaped mention in the various inquiries and public debates. Yet this [memo](#), sent on 26 March 2003, is perhaps the clearest evidence that the British government knew that its conduct was illegal and that the prime minister failed to act to ensure the UK complied with international law.

The memo presented the attorney general's reading of the legal framework imposed by the Geneva and Hague conventions. In his opinion, he noted that 'some changes to legislative and administrative structures of Iraq may be permissible if they are necessary for security or public order reasons, or in order to further humanitarian objectives [however] more wide-ranging reforms of governmental and administrative structures would not be lawful'. He added that this general principle 'applies equally to economic reform, so that the imposition of major structural economic reforms would not be authorised by international law' ([Lord Goldsmith, 2003](#)).

The Geneva and Hague rules, as the attorney general's opinion suggests, make very clear the circumstances under which an occupying power can impose new laws upon a population. To cite article 43 of the 1907 Hague Regulations on Land War more fully,

the assertion is that an occupying power 'shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'. Subsequently, article 64 of the Fourth Geneva Convention of 1949 broadened the remit of the occupying power to maintaining 'the orderly government of the territory'.

Profiting from war is not permitted in law, nor is reconstructing the economy in the image of the Washington consensus, something that was made abundantly clear in the attorney general's memo to the British prime minister and his cabinet. Subsequent events certainly contradicted this advice, yet the UK-US coalition restructured the economy tightly around neo-liberal, WTO compliant principles (Whyte, 2007), transforming the political and economic systems (Wheatley, 2006), and creating a new legal basis for enabling access to Iraqi oil reserves to British and American oil companies (Muttitt, 2012). The administration of the Iraqi occupation was primarily carried out by the US, the UK and Australian governments and, as such, those governments are therefore implicated in those potential breaches of international law.

Consistent with both the principles of the laws of war set out in the Geneva and Hague Conventions, the UN resolution authorising the occupation (UNSCR 1483) stated merely that that 'the Development Fund for Iraq shall be used [...] to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq'. The consequences of the occupation are, by now, well known: a weakening of local systems of production and distribution in every sector; an ongoing political crisis; and the weakening of healthcare and education systems. According to the UN, up to 5 million Iraqis have become refugees since the occupation, and unemployment now stands at 40 per cent. Ongoing water shortages are described by Iraqi government officials as the worst since the beginning of Iraq's civilisation and agricultural food production is also at a record low.

Another area of controversy which arose from the UK alliance with the US involved suspicions that the UK had become involved in rendition. This issue was considered in a [report](#) co-produced by Democratic Audit in 2007. Describing the practice as 'the informal, international transfer of suspects to custody', we noted that rendition had already been carried out before the terrorist attacks in the US of 11 September 2001. However, thereafter it became central to US counter-terrorist policy, including 'extraordinary rendition', involving individuals being tortured. Clear evidence has emerged during the last decade of the UK collaborating with the US in rendition. In view of these issues, human rights pressure groups, such as Amnesty International and Liberty, have condemned rendition of all types and argued that it clearly violates both UK domestic law and international law ([Weir, 2007, pp. 17-19](#); [Intelligence and Security Committee, 2007](#)).

When the UK government described its position regarding rendition in 2009, the account it provided did not completely condemn such a policy, nor was there a complete denial that the UK might be implicated in it. The statement argued that the descriptions 'rendition' and 'extraordinary rendition' had not yet attained a widely acknowledged definition, but that the UK was opposed to 'any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law'. It went on to claim that if the UK were asked to help another country with rendition, and if its participation in doing so were within the law, it 'would decide whether or not to assist taking into account all the circumstances'. Furthermore, it stated that the UK had not and would not 'approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture' ([Foreign and Commonwealth Office, 2008, pp. 16-17](#)).

Broader claims have been made that the UK, as part of its efforts against international terrorism, has been complicit in torture. Concerns exist about the possibility that UK officials may have asked foreign intelligence agencies to torture and interrogate individuals; helped foreign intelligence agencies known to practice torture detain individuals; provided information for use in interrogations of individuals who have been subjected to torture; taken part in interrogating individuals who have been or might be tortured; been present when torture has taken place; and regularly received intelligence acquired through torture. The government has also been strongly criticised for resisting scrutiny of its activities in this respect ([Joint Committee on Human Rights, 2009b](#)). While, the successor to the US administration of George W. Bush, led by President Barack Obama who took up office in 2009, has demonstrated more commitment to the international rule of law, it is premature to assess the precise implications of this shift. When pressing for military intervention in Libya in 2011, the UK emphasised obtaining clear UN approval.

Democratic Audit acknowledges that international law can be imprecise and disputes involving it can be difficult to involve. We also accept that some of the states incorporated within the international system of rule of law are clearly undemocratic. However, like the rule of law on the national scale, to bend, ignore or break the rules is a dangerous violation which is difficult to justify. Moreover, simply signing up to treaties and organisations and committing to support these principles is essential but not sufficient. We regret that the UK, which has in the past played a valuable role in promoting the international rule of law, became party to attempts, driven by the US, to bypass multilateral cooperation. The participation in the invasion of Iraq was difficult to reconcile with concepts of legality, notwithstanding the novel arguments put forward by the UK government. This act was part of a broader trend of supporting US international security activity which - there are

grounds for believing - involved UK collaboration with rendition, possibly including extraordinary rendition, and becoming complicit in torture. We are also concerned that UK constitutional arrangements, in particular the relatively informal way in which conformance to international legality is regulated, seem to have made such conduct possible, and could do so again in the future.

4.2.3 Contribution to international development

How extensive and consistent is the government's contribution to international development?

Just as severe disparities in levels of wealth within a particular state are detrimental to democracy, so such extremes on a global scale have negative democratic connotations. It is hard for people living in countries blighted by extreme poverty to fully enjoy the benefits of democracy, and indeed for democracy to function at all in such circumstances. As part of its commitment to democratic principles, a state should acknowledge and realise its obligation to alleviating international inequalities of this kind. Simply devoting financial resources for aid purposes is not sufficient. It is necessary to ensure that aid programmes accord with internationally agreed norms and that they are not distorted by purposes such as trade benefits or political goals. A country's domestic political and legal arrangements must therefore be aligned with supranational objectives.

A key target for developed countries in the field of development aid was first recommended as long ago as 1969. It entails seeking to raise the level of Overseas Development Aid (ODA) to 0.7 per cent of Gross National Income (GNI). Initially, the target related to Gross National Product (GNP), but since 2001 it has been linked to GNI, which includes income from abroad, while GNP relates solely to internal production. A resolution of the United Nations (UN) general assembly, issued in 1970, called upon advanced economies to work towards the target by the mid-1970s, but this objective has yet to be reached on an international level. Between 1960 and 1969, the average percentage spent by members of the Organisation for Economic Cooperation and Development's (OECD) Development and Assistance Committee (DAC) was 0.45 per cent. In the decade following the introduction of the target (the 1970s), the figure actually fell to 0.32 per cent, rising marginally to 0.33 per cent during the 1980s, only to fall again during the 1990s to 0.27 per cent. Since 2000, that figure has remained static ([OECD, 2011, p. 227](#)). In 2005, existing European Union member states committed to attaining the 0.7 per cent target by 2015 ([Townsend, 2010](#)). The performance of individual countries, including the UK, is considered below.

In disputing the relevance of the 0.7 per cent target, [Clemens and Moss \(2007\)](#) hold that the modelling on which it was initially based is no longer applicable and that there was never agreement within the UN to actually *reach* the target, rather to use it as a yardstick. Furthermore, the ODA/GNI ratio is not considered an effective means of measuring aid commitments. However, though the 0.7 per cent target may be imperfect, it is still an effective means of providing a popular and political focus on the provision of development aid internationally, as well as making it possible for some kind of comparative consideration to be made of the resources devoted to aid over time and a tool by which enhanced commitment can be promoted.

In conjunction with the 0.7 per cent target, the millennium development goals are central to international efforts to coordinate aid. In 2010, the member states of the UN recommitted themselves to these objectives and set out how they might be achieved by 2015. As set out by the UN, the goals are: to eliminate hunger and extreme poverty; to bring about primary level education for all; to advance women's rights; to reduce levels of child mortality; to achieve better maternal health; to combat diseases, in particular malaria and HIV/AIDS; to bring about a sustainable environment; and to attain more international cooperation in pursuit of development. Up to this point in time, progress towards these goals has not been judged entirely satisfactory, with the UN revealing that: the poorest groups of children have made the weakest advances in nutrition; employment opportunities for women remain inadequate; the chances of children in difficult circumstances of receiving education are still low; the number of urban poor people is rising; and, sanitation and drinking water remain pronounced concerns in a number of countries ([United Nations, 2011](#)). Alongside the millennium development goals, the UK is also a signatory to the Paris Declaration of 2005 and the Accra Agenda for Action of 2008, which seek to make aid more effective through pursuing ownership of aid programmes within the recipient countries; for donors to work to simplify their programmes in countries; for aid to be focused on measured outcomes; and for both donors and recipients to be held to account for these outcomes.

UK law and policy commitments

The purpose of the International Development Act 2002 was to make the grounds on which aid is disbursed more coherent. It applies to all UK bilateral aid (64 per cent of the total in 2010), but only 30 per cent of UK aid that is distributed by the European Union. A central objective of the act was to prevent aid from being deployed for diplomatic ends or for profit, making the reduction of poverty its legal purpose. However, 'tied aid', which it sought to prohibit, is not defined in the act, allegedly because there were technical problems associated with doing so. There is also no definition of 'poverty' in the act (Burall et al., 2006, pp. 33-4). Another statutory component of UK development aid provision is the International Development (Reporting and Transparency) Act 2006, which was initiated as a private members' bill by the Labour MP Tom Clarke. The act creates a requirement for the government to report annually on the UK provision of development aid and, in particular, on the extent to which it is reaching the target for ODA to reach 0.7 per cent of GNI.

Beyond its statutory provision for aid, the UK has a specific Department for International Development (DFID) headed by a cabinet-level secretary of state. In 1964, the Ministry of Overseas Development was first established by the Labour government. Thereafter, whenever there was a change to a Conservative government, the tendency was for the international development function to be folded back into the Foreign Office; only for it to be made a freestanding function again whenever Labour returned to government. However, with the change of government in 2010 from a Labour to a Conservative/Liberal Democratic coalition, DFID was retained as an independent department.

In a statement of its aid priorities, the coalition states that it will no longer 'support projects that are failing to perform', instead money will be redirected to 'programmes that are better placed to combat poverty' ([Department for International Development, 2011, p. 5](#)). For instance, there is a policy of not providing significant aid to those nations that are judged not to need it, most notably with reference to China and Russia. The DFID budget has been protected from the large coalition financial retrenchment programme, signalling a commitment from the coalition to international development; the details of which are set out below in the DFID business plan for 2011-2015 (Case Study 4.2f). The coalition government also show a continued commitment to achieving agreed international objectives as pursued by the previous Labour government, including the millennium development goals and the 0.7 per cent ODA/GNI target. While there is a commitment, again inherited from the previous administration, to place this latter obligation on a statutory basis, it had not yet been acted upon. There is reference to issues important to the Paris Declaration, such as local ownership, a focus on outcomes, and accountability, but at the same time, the present government has advocated making DFID more 'friendly' towards the private sector. An Independent Commission for Aid Impact (ICAI) has been established, to assess DFID aid programmes.

Case Study 4.2f: Excerpts from the DFID Structural Reform Plan 2011-15

1. Honour international commitments [...]

1.1 Honour UK commitment to spend 0.7% of gross national income on overseas aid from 2013, enshrine this commitment in law and encourage other countries to fulfil their aid commitments [...]

1.2 Support actions to help achieve the Millennium Development Goals [...]

1.3 Use the aid budget to support the development of local democratic institutions, civil society groups, the media and enterprise [...]

2. Introduce transparency in aid [...]

2.1 Increase independent scrutiny by establishing the Independent Commission for Aid Impact and by strengthening evaluation throughout DFID [...]

2.2 Introduce full transparency in aid and publish details of all new UK aid spending [...]

2.4 Re-orientate DFID's programmes to focus on results [...]

2.5 Give poor people more power and control over how aid is spent [...]

3. Boost wealth creation [...]

3.1 Make DFID more private sector friendly [...]

4. Strengthen governance and security in fragile and conflict-affected countries [...]

5. Lead international action to improve the lives of girls and women [...]

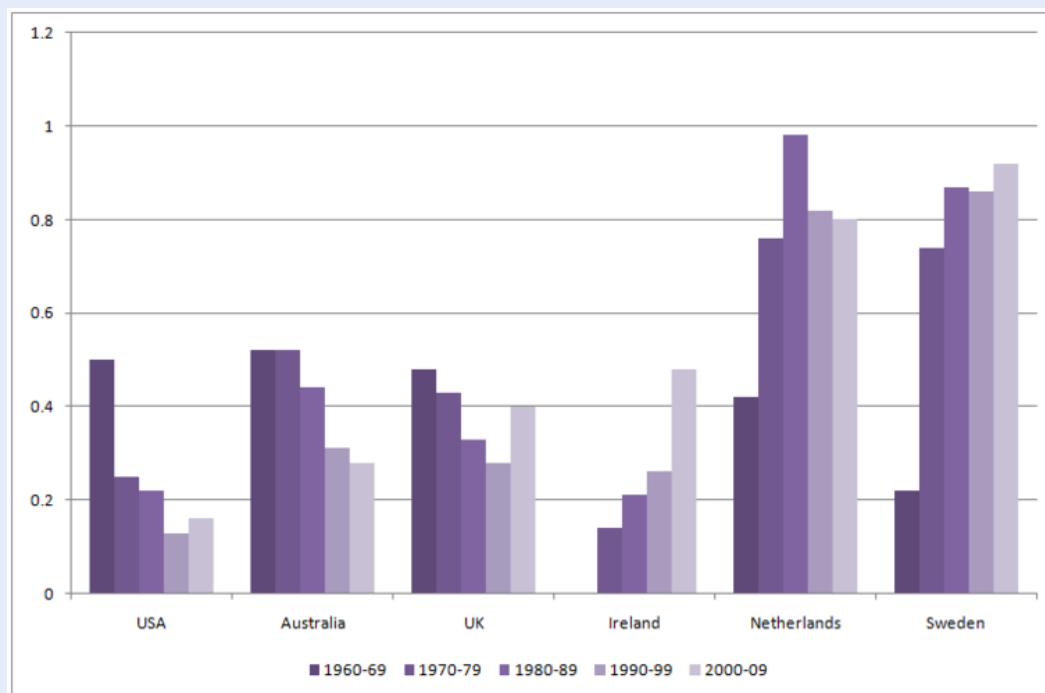
6. Combat climate change [...]

Source: [Department for International Development \(2011, pp. 7-18\)](#)

UK aid in practice

As noted above, a key UK commitment is to attainment of the target for GDA at 0.7 per cent of GNI. This target has never been achieved. As Figure 4.2b shows, during the decade 2000 to 2009, the UK reached 0.4 per cent. This figure was an improvement on the previous two decades (0.28 per cent for the 1990s and 0.33 per cent for the 1980s), but worse than the two decades before that (see Figure 4.2b). Moreover, while the UK's increased commitment to ODA stands in stark contrast to the reduced levels observable in Australia and the USA, the share of GDI which both Sweden and the Netherlands committed to aid in the 2000s was double that of the UK.

Figure 4.2b: Overseas Development Aid as percentage of Gross National Income, UK and comparators, 1960s-2000s

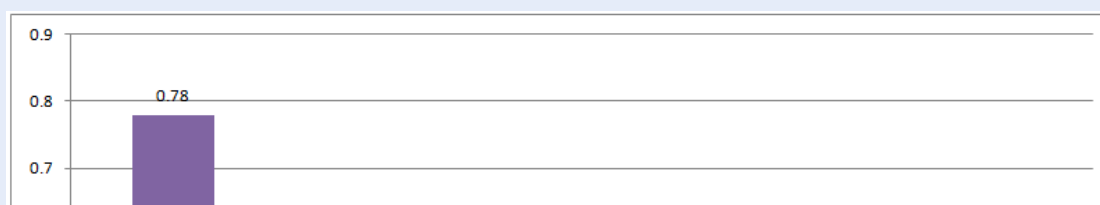


Source: [OECD \(2011, p. 227\)](#)

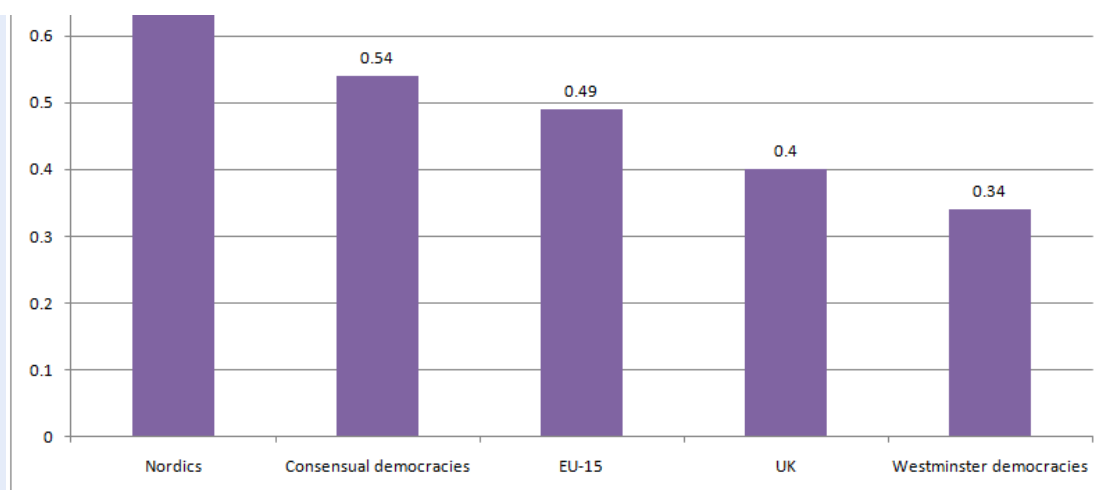
In 2010, the figure stood at 0.51 per cent, suggesting that the commitment to 0.7 per cent by 2013 was attainable ([OECD, 2011, p. 140](#)). However, these high levels relative to past performance should be considered partly against the background of an economy which has suffered from the ongoing financial crisis. A rise in ratio was thereby easier to achieve on the same absolute expenditure than it would have been had no such downturn occurred ([Townsend, 2010](#)).

When international comparisons are made to other members of the DAC, the UK has clearly lagged behind a number of states that exceeded the target during the period 2000 to 2009, including Denmark (0.87 per cent), Luxembourg (0.88 per cent), the Netherlands (0.8 per cent), Norway (0.91 per cent) and Sweden (0.92 per cent). However, the UK has been performing better than Germany (0.33 per cent), Spain (0.33 per cent), Italy (0.19 per cent) and the US (0.16 per cent), while having a similar level as France (0.41 per cent). Figure 4.2c sets out the performance of the UK against our groups of comparator democracies for the period 2000-2009. It shows the Nordics performing best, exceeding the target, while the consensual democracies committed an average of 0.54 per cent of GNI to ODA. The UK, on the other hand, is below the EU-15 average (0.49 per cent), but above the average for the Westminster democracies (0.34 per cent).

Figure 4.2c: Overseas development aid as a % of gross national income, UK and groups of comparator democracies, 2000-2009.



Democratic Audit



Source: [OECD \(2011, p. 227\)](#)

While spending levels can be measured and placed in comparison, the extent to which the UK is facilitating the achievement of shared global objectives on aid is often difficult to disentangle. It involves complex collective action, the totality of which any one state can only contribute to, rather than to unilaterally influence. However, the approach taken by the UK towards the millennium development goals has been praised by the House of Commons International Development Committee. The committee has argued that the UK had taken an effective lead on women and children's health, as well as action against malaria, but it also stated that continuous engagement was required and that there were other areas where progress was required ([International Development Committee, 2010](#)).

In 2011, the same committee assessed the approach of the new coalition government towards development aid, noting that there would be substantially more funding directed towards nations that were fragile or impacted upon by war. Such spending stood at £1.8 billion in 2010 and was projected to reach £3.8 billion by 2014-15. In the difficult circumstances presented by these countries, ensuring the effectiveness of spending would be problematic. At the same time, the amount of aid channelled to more stable countries where better outcomes were easier to achieve was likely to decrease ([International Development Committee, 2011a](#)). In its recent consideration of the proposed changes to the aid programme for India, the committee supported the intended refocusing of funds upon the poorest states within India. However, it argued that this shift should only be implemented if agreed to by the Indian government, reflecting the principle of local ownership. Furthermore, the committee raised concerns about the government policy of directing 50 per cent of its Indian aid budget (£280 million per year for the period 2011-15) through the private sector by 2015. While it did not object to the use of the private sector *per se* and indeed supported it in principle, the committee held that its use required careful consideration and suggested that earmarking a total before planning this aspect of the programme might not be the best way to proceed ([International Development Committee 2011b](#)).

During the Audit period under consideration, there have been achievements in securing a more extensive, consistent contribution to international aid. It has been the longest period in UK history in which a free-standing department represented at cabinet-level and devoted to international development has functioned. The value of such an autonomous body is that it promotes the cause of development in its own right. If primary responsibility for aid is located inside a foreign affairs or military department, there is a danger that consistency will be lost or subordinated to political, diplomatic or military concerns. Under UK constitutional arrangements, a separate department entails a specific Commons select committee shadowing its brief, another valuable outcome.

The UK has also displayed a clear commitment both to promoting international cooperation to secure international development and endeavouring to attain international objectives once established. Improvements have been made in particular regarding the 0.7 per cent ODA/GDI target. The agreement and pursuit of internationally agreed goals can be a means of ensuring a consistency of approach and increased contributions to aid, as well as its ultimate effectiveness. The domestic legislative framework has also been aligned more clearly to these ends. Another important consideration is the political dimension. A change of government has not signalled an alteration in the underlying approach to aid. The coalition has retained DFID as an independent department and key commitments undertaken by the previous Labour government, as well as protecting the financing of aid. We hope that this development will help ensure consistency over time as well as across aid policy.

However, Democratic Audit sees certain reasons for caution. The International Development Act 2002 does have inherent flaws, most notably in its failure to rule out 'tied aid'. Also, a statutory commitment to the 0.7 per cent target has not yet been established and, given that it is due to be reached next year, it seems to have been left a little late (although what precisely such a law might achieve is debatable). Progress towards the 0.7 per cent target has been accelerated in part by economic contraction, though not wholly. Meanwhile, the UK still

lags well behind certain other nations in this respect. Despite the coalition government's commitment to international aid, certain policies may prove to be problematic; with the focus on unstable states potentially making clear success harder to achieve. Moreover, the plan to utilise the private sector more extensively in delivering aid raises a number of concerns and should therefore be approached with caution.

4.2.4 Domestic oversight of international policy

How far is the government's international policy subject to effective parliamentary oversight and public influence?

When the representatives of any government operate in an international context, they require a degree of discretion and diplomacy, such as if there is a need to reach rapid agreement over an urgent security issue. If multilateral negotiations are taking place, in order for agreements to be concluded it may prove necessary for participants to alter their previously stated positions. There may also be politically or security sensitive issues involved that states are reluctant to publicise in full.

For these reasons, well-informed and effective democratic supervision of external policy, either by elected representatives or electors, can be problematic. Yet, there is no reason that government should not be accountable for its foreign actions just as much as its internal ones. Furthermore, there is no clear distinction between the external and the domestic policy fields. Governments may interact with each other over a range of activities - including trade, finance, security, the environment and health - that clearly have a direct impact on the citizens they represent. It is therefore important that the requirements of effective foreign policy do not override the democratic principle stating that powers exercised by ministers and officials are clearly defined, open to scrutiny and ultimately subjected to democratic control. There is a pronounced necessity for elected representatives to play a part in this process because in many states the role of the judiciary in this regard tends to be relatively circumscribed.

External policy and UK constitutional arrangements

An understanding of provision for democratic oversight of external policy in the UK requires an assessment of certain constitutional arrangements. As discussed above, the handling of the relationship between international and domestic laws in a state can be considered through the prism of two models - monist and dualist (see Sections [4.2.1](#) and [4.2.2](#)). Under monist system, international agreements entered into by a country can be incorporated directly into its internal law. Dualist arrangements, on the other hand, are categorised by a separation of external commitments and domestic law. International agreements only become internal law if specifically enacted by legislation (though courts may treat customary international law as part of UK law and take treaty commitments into account). Indeed even if parliament legislates in violation of treaty commitments, UK courts will by tradition uphold such legislation.

A potential danger of monist systems is that a government can in effect change national law through entering into treaty commitments with other nations. For this reason, the constitutions of monist states often include provisions for the oversight of the executive, which is intended to act as a check upon the arbitrary entry into international agreements. For instance, under the constitution of the US, which can broadly be categorised as a monist system, ratification of treaties by the president is subject to approval from two thirds of the Senate. The executive in the US can, to some extent, bypass this procedure through classifying commitments as executive agreements rather than treaties (Jowell and Oliver, 2011). However, the Senate possesses a real power and has used its veto, for better or worse, to dramatic effect at times in the past, such as when preventing US ratification of the Treaty of Versailles in 1919 and 1920. The mere potential for it to use this power in turn gives it a wider influence over external policy.

The UK, by contrast, adheres more closely to the dualist model, the implications of which for the democratic oversight of external policy are complex. If a government wishes to incorporate a treaty into UK law, or is required to do so by the terms of the agreement, then it is subject to the parliamentary scrutiny that any bill, whether domestic or foreign, would be subjected to (for an assessment of the effectiveness of the parliamentary legislative process, see Section [2.4.2](#)). However, a parallel tendency exists for the external activities of the UK executive not engaging domestic legislative change to be subject to less rigorous oversight (Jowell and Oliver, 2011).

An important component of the low level of parliamentary involvement in UK foreign policy is the royal prerogative. The prerogative is a set of powers deriving historically from the era of actual monarchical rule. These powers have in practice largely been devolved to ministers and to some extent officials, with the prime minister often playing a prominent role in their exercise (see also Section [2.4.3](#)). The prerogative is relied on exceptionally heavily in the conduct of foreign policy where it can be used to issue declarations of war (though this practice has apparently become an internationally anachronism) and to deploy the armed forces in potential or actual hostile circumstances abroad, as well as direct the disposition of the armed forces within the UK (see Section [2.5.1](#)). The prerogative enables the state to acquire and cede territory, send and receive ambassadors, and conduct diplomacy. It is also relied upon for treaty-making ([Ministry of Justice, 2009](#)).

Royal prerogative powers have by definition never been approved by parliament. In the main, parliament has no formal role in their exercise. Moreover, the courts have generally proved reluctant to involve themselves in scrutinising the exercise of the prerogative, particularly with respect to foreign affairs (Burall et al., 2006). Of course, any government is in theory accountable to parliament for all that it

does. Furthermore it must secure the consent of the Commons if it is to obtain the funds to support foreign policy. In some cases, particularly the control of the military, prerogative and statutory powers are interwoven with each-other, giving parliament a slightly firmer role (see Section [2.5.1](#)).

However, in seeking to oversee the exercise of the prerogative, and by extension important portions of external policy, parliament is dependent less upon hard powers and more upon informal influence. Its levers include mechanisms of varying degrees of effectiveness, such as parliamentary questions and debates. A number of select committees in both houses consider external policy from different perspectives. In all of its activities in securing government accountability in this area, as in any other, the effectiveness of parliament is restricted by the strong position of the executive within its primary chamber, the House of Commons (see [Introduction](#) to Section 2.4 and Section [2.4.3](#)). Such role as it has in the deployment of the prerogative may be dependent upon constitutional conventions, which are by their very nature vaguely defined and cannot directly be legally enforced (Turpin and Tomkins, 2011). Foreign policy is reserved to central government within the UK, with any role exercised by the devolved administrations limited to consultation, depending upon whether the conventions impact upon them specifically ([Ministry of Justice et al., 2007](#)).

Reforming the prerogative in external policy

In recent years the royal prerogative, including in so far as it applies to external policy, has been subject to reform. A convention has seemingly developed that parliament should be consulted, preferably in advance, over UK engagements in armed conflict. The government is committed to bringing forward legislation to clarify the role of parliament, but it has not yet appeared (see Section [2.5.1](#)).

Such a shift, though it may be politically delicate, would not in principle be difficult to execute. It is an important principle of the UK constitution that the royal prerogative cannot be extended and that parliament has the power to modify or replace parts of it through legislation - though for it to do so in practice requires a government to desire the imposition of restraints upon its own powers. Recently reform of the prerogative was brought about by the Constitutional Reform and Governance Act 2010, enacted by the Labour government of Gordon Brown. One of the effects of this act was to place the management of the civil service and the diplomatic service on a statutory basis, where previously it had been carried out under the prerogative. This change followed on from an earlier reform, whereby responsibility for the Intelligence and Security Agencies, which can also play an important part in external policy, was shifted from the prerogative to a statutory footing during the 1990s. However, the precise difference that will be made by the change of basis for the civil and diplomatic services is difficult to ascertain.

The Constitutional Reform and Governance Act also altered arrangements regarding the role of parliament in one of the most fundamental features of foreign policy - treaty-making. As discussed above, parliament has a formal role in treaties that involve alterations to domestic law, but traditionally any part it played in other international agreements was provided for by a convention known as the 'Ponsonby rule'. The rule had its origins in an undertaking made to the Commons by Arthur Ponsonby in 1924, the Labour foreign affairs minister, that the government would make the text of treaties available to the House before they came into force. Over time a convention developed that a treaty had to be tabled for 21 sitting days before it came into force. Over a ten year period from 1997 to 2007, about 30 to 35 treaties were tabled per year under the rule. The rule also provided that, if a debate were requested through the 'usual channels' - that is the whips - time would be made for it. In 2000, the government undertook that it would also facilitate debates if select committees requested them. However, requests for debates were highly unusual ([Ministry of Justice et al., 2007](#)).

While treaties are still made under the royal prerogative, part two of the Constitutional Reform and Governance Act puts the 21 day rule on a statutory basis. The Commons can resolve that the treaty should not be ratified, though a minister can seek to ratify it again by making a statement as to why its ratification is necessary, although the Commons can block it again. The Lords does not possess the same blocking power as the Commons. It is also possible for a minister, in exceptional circumstances, to bypass this process entirely. It is not entirely clear that placing the Ponsonby rule on a statutory footing will make debates (or indeed votes) on treaties substantially more likely than they were when it was a convention. This legislative change was not accompanied by an overhaul of the parliamentary mechanisms for considering treaties, as such, a treaty committee, for which some reform campaigners have called for, was not introduced. There has been no equivalent established to the system used in some Nordic states whereby ministers are mandated by parliamentary committees in advance of international negotiations as to the position they can take (Burall et al., 2006). Moreover, it leaves many key features of the prerogative in foreign affairs wholly intact, including the conduct of diplomacy, with no formal position for parliament. It is only once an agreement is concluded that parliament has a more firmly defined role.

External policy and public impact

Since the ultimate source of democratic authority must be the people, the views of the public should be crucial to external policy formation. It is necessary for their opinions to have both formal and informal means of expression. Therefore, outlets for a range of different outlooks on external policy and the possibility of a well-informed public debate should be clearly established.

In a parliamentary system such as in the UK, the primary formal route through which public influence is wielded is via parliament, since the executive, which conducts policy, is not directly elected. The formal power of the electorate from this perspective is at its peak when a general election is held. However, foreign policy issues are rarely decisive at these times. An arguable exception was the 2005 general election, at which electoral support for the Liberal Democrats appeared to be boosted because of the two main parties support for the controversial invasion of Iraq, which the Liberal Democrats opposed (although this was not reflected in the distribution of seats, owing to the nature of the electoral system which works against third parties; see Section [2.1.4](#)). Often the range of options on offer to voters is restricted by a general tendency towards consensus over foreign policy amongst the main parties. This convergence extends beyond the contents of party manifestos. For instance, parliamentary committees considering external matters place a premium on consensus. Sections of the media also tend - particularly when a military conflict has begun - to prioritise patriotism over the balanced appraisal of issues (Burall et al., 2006; Blick, 2005). Thus while there are means of achieving influence other than through more formal political processes, such as through pressure groups and public campaigns, a degree of consensus amongst opinion formers can restrict their impact.

Issues involving external policy-making have long been surrounded by exceptionally high levels of official secrecy. In keeping with this tradition, the opening up of policy making to public exposure that followed the introduction of the Freedom of Information Act 2000 has made less of an impact in foreign policy than other areas (see Section [2.3.5](#)). Many of the exemptions under the act explicitly involve, or could be applied to, external activity. An absolute exemption applies to information involving the intelligence and security agencies, and special forces, whereas a prejudice test is applied to information involving international relations and defence. Various other exemptions, such as those intended to protect policy formulation processes, could feasibly be applied to external policy. One of the only two uses of the ministerial veto on the release of information under the Freedom of Information Act to date related to a request for the minutes of cabinet meetings at which the attorney general's advice on the legality of the invasion of Iraq was discussed in March 2003 (see Section [2.3.5](#)). On occasions, however, the government has been more open than strictly required by the law in its release of information, such as in the case of the various public inquiries that have been held into the military intervention in Iraq of 2003. However, there is a perception that the issuing of previously classified information can be carried out in a partial way and - as with intelligence about supposed weapons of mass destruction in Iraq - can serve to mislead the public (Blick, 2005).

Partly because of the tendencies towards consensus and the high levels of confidentiality surrounding decisions, it is possible for major developments in foreign policy to take place without fully being subject to public or political debate. In the post-Second World War period, the UK developed an increasingly close relationship with the US (Riddell, 2004). This linkage has at times been the determining factor in major foreign policy decisions, as the participation in the invasion of Iraq demonstrated. Unlike the other key dimension of UK external policy (participation in the European Union), at no point was a definite decision taken in public to initiate the Atlantic alliance, with no specific pledge made in any party manifesto along these lines, no referendum and no parliamentary vote (Burall et al., 2006).

Opinion research, co-commissioned by Democratic Audit in 2006, suggested that the views of the public regarding the general course of external policy and the way in which it is overseen might be significantly at variance with current practice. Questions were asked about the overall orientation of the UK as between the US and the European Union. Of those surveyed, 66 per cent supported being more critical of the US, even publicly, while only 26 per cent favoured the securing of private influence through public support for the EU. Half (49 per cent) supported policy that involved equal association with the US and the EU; 22 per cent with only the EU; 7 per cent with only the US; and 20 per cent neither of those choices. On the issue of democratic oversight, 85 per cent preferred 'Parliament as a whole' to determine external objectives, as opposed to 13 per cent 'the Prime Minister, ministers and their advisers'. A large majority, 86 per cent, agreed with the idea of parliamentary committees mandating ministers in advance of international negotiations. In addition, 89 per cent favoured the UK working through the UN to protect the interests of the UK and its allies, while only eight per cent supported the more unilateral use of military intervention. Despite being told of the importance of the arms industry to the UK, 83 per cent were opposed to exports of its products to states with poor records on human rights ([Democratic Audit et al., 2006](#)).

Democratic Audit regards it is a fundamental flaw in UK democracy that the executive continues to wield powers, under the royal prerogative, that are archaic and have never been formed in a democratically satisfactory nature, nor subjected to effective democratic control. While we acknowledge that ministers and officials may require some degree of discretion in the conduct of external policy, it should be within a democratically determined framework. If the UK possessed a written constitution, it seems inevitable that the powers currently existing under the prerogative would probably be redefined within such a text and probably subjected to clearer parliamentary - and perhaps judicial - control. Short of the codification of democratic arrangements for the UK in this way, it seems clear that the prerogative should be placed on a statutory basis by parliament, which should also have some kind of clearly prescribed and meaningful role in its ongoing exercise.

Unfortunately, the royal prerogative continues to be used heavily in the conduct of foreign policy. Two modifications of this position have taken place during the period of the present Audit, involving the power to manage the civil and diplomatic services and the role of parliament in treaty-making, which nonetheless continues to be carried out under the prerogative. It is not clear that the impact of either change will be immense and much of the foreign affairs dimension of the prerogative remains intact. As a consequence, the role of

parliament in overseeing external policy is considerably restricted.

We also accept that there is a need for some degree of confidentiality in international affairs. However, the level of secrecy associated with such policy in the UK has long been excessive and can be manipulated to suit the political convenience of the government of the day, rather than genuine public interest. The Freedom of Information Act has had the effect, in part, of perpetuating this tendency. The restriction of publicly available information about foreign policy reduces the possibility for meaningful discussion of the issues involved. This deficiency is aggravated by the unusually high level of consensus that tends to develop around certain aspects of external policy - in particular, the relationship with the US. The wider limitations on the ability of parliament to oversee the executive restrain its ability to bring the views of the public to bear, yet there is no other clear means by which this outcome can be achieved.

Conclusion

The present Audit has found some areas of progress in the extent to which the UK promotes democracy internationally. Improvements have been made in general attitudes towards development aid and in actual policy delivery in this area. We are pleased that the Department for International Development now seems to possess a relatively secure existence and that there is a cross-party consensus about the importance of development aid to meet agreed international objectives. However, accelerated progress towards the central target for assistance to reach 0.7 per cent of gross national income followed a long period of stagnation. Comparisons with other established democracies, particularly in northern Europe, underline that there is much room for improvement in this respect.

Similarly, enhancements that have been made to the role of parliament in overseeing external policy are limited. While the civil and diplomatic services now have a basis in an act of parliament, and there is a new statutory role for parliament in treaty-making, the fundamental position that external policy is primarily a matter of royal prerogative and, therefore, subject only to circumscribed democratic control remains. We are concerned about the persistence of this tradition, which partly arises from the dualist tendency in the handling of international agreements within the UK constitution.

Progress that has been made is more than offset by a serious range of new and emerging negative aspects of the UK contribution to international democracy. The UK has a long-term tendency to not fully to commit itself to international human rights instruments, which is regrettable and does not help strengthen the standing in the world of such conventions. In seeking, in some respects, to weaken the application of the European Convention on Human Rights, the UK is negating its support for international human rights principles further. Perhaps most problematic of all is that the UK was associated with the US tendency to reject multilateralism and pursue its own perceived interests regardless of the impact upon international law and the supranational organisations, in particular the United Nations, which are associated with maintaining it. Such activity is all the more worrying because of the marked dependence of international law upon the willingness of states - particularly those that are the most powerful - to sustain it.

We note that the UK has a rhetorical tendency to present itself not only as a leading democratic state, but a force for democracy in the world. Democratic Audit suggests that the reality of UK international policy in many cases does not match these claims and in some cases directly contradicts it. Far from being an exemplar state for democracy the UK is often at best moderate and, in some cases, well below par in its performance. Available measures of nominal commitment to human rights suggest that the UK's relative performance is relatively poor for an established democracy. However, with regard to overseas development aid, the UK exhibits an improved record, but is still far from being a world leader.

That there are inconsistencies, even contradictions, in the UK's international policies with respect to democratic values should not be surprising. Many of the democratic shortcomings we identify throughout this Audit in relation to the UK's domestic political system are inevitably reflected in the positions that the UK adopts with respect to foreign policy and international law. The tension in the UK constitution between the difficulties of executive discretion and the rule of law is paralleled with the difficulties which the UK has in reconciling mechanisms intended to uphold the international rule of law and human rights with the UK's traditional governmental arrangements. The conduct of successive UK governments towards the international maintenance of human rights is suggestive of an underlying ambivalence towards such values. Meanwhile, corporate power seems able to influence the undermining of principles governing the promotion of human rights in international relations, especially when commercial advantage is judged to be at stake.

It also seems evident that recent UK foreign policy, most obviously the war in Iraq, is likely to have impacted negatively on domestic perceptions of British democracy. In the wake of the decision-making process which led to the UK supporting the US-led invasion of Iraq, profound questions have been raised about parliament's role in relation to decisions to go to war and about parliamentary oversight of the intelligence services. Attempts to reform areas such as the royal prerogative have confirmed the democratic illegitimacy of such executive devices, but has not yet effectively replaced them with new approaches to decision-making. Perhaps most importantly of all, the war in Iraq underlined the growing tension between political participation and political representation in contemporary Britain (Beetham, 2003). The scale of popular protest and direct action spawned by the UK government's support for the 'war on terror' stands in clear contrast to declining participation in elections and party politics. It is one of the most bitter ironies of the period since our last Audit that UK foreign

policy decisions justified with reference to promoting democracy abroad are highly likely to have increased popular disillusionment with representative democracy at home.

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