

The Unintended Consequences of Parliamentary War Powers: A Comparative Analysis of Canada and Germany

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Paper prepared for presentation at the International Studies Association's
58th Annual Convention, 22-25 February 2017, Baltimore, MD.

– DRAFT –

Abstract: Parliamentary influence on security policy has received increased attention in recent years. While a new strand of literature has shown that democracies are characterized by substantial variance in the formal-institutional legislative control and oversight of military deployments (*parliamentary war powers*), research also shows that security policy cannot be attributed to the formal-institutional position of parliament alone. This paper further argues that there is a need to question whether parliamentary war powers actually lead to the intended effects of increased legitimacy and deliberation. We compare the unintended consequences of parliamentary votes on the use of force in two 'most-different cases': Canada and Germany. Despite substantive differences in their institutions, political culture, and the formal position of parliament in foreign affairs, both countries held votes on their military operations in Afghanistan. Applying rationalist institutionalism, we argue that the observed type of parliamentary involvement led both countries to produce outcomes that undermine the original intent of parliamentary control. Rather than enhancing the legitimacy of a military mission and increasing deliberation on such matters, as assumed by proponents of parliamentary war powers, these parliamentary votes effectively diminished political questioning of the mission, thus reducing parliamentary scrutiny.

Introduction

Legislative control of military deployment decisions has been the subject of notable political and scholarly debate in the past decade. A central premise in these discussions has been that increasing parliamentary control of military deployment provides a net democratic benefit.¹ Having legislators vote on military operations, it has been argued, increases the democratic legitimacy of deployments, augments public debate and understanding of how armed forces are employed, and provides a check on imprudent actions by the executive. Although there is significant variation amongst the formal institutional structures of democratic systems and the level of control their legislatures exercise over military deployments, ensuring a parliamentary veto over these decision is understood to produce largely positive results.

The paper questions the notion that parliamentary votes on military deployments necessarily produce positive deliberative and democratic outcomes. Analysing two 'most different cases', Canada and Germany, we find that these votes yielded unintended consequences that ran counter to the intent of establishing greater parliamentary control. Specifically, in examining the votes on the military missions to Afghanistan in Canada and Germany, we find that the deployment votes reduced political deliberation about the war and incentivized political parties to cease debating about the costs and benefits of the missions. In both cases, the votes diminished political questioning of the mission, thus reducing parliamentary scrutiny.

In explaining these outcomes, the paper relies on rationalist institutionalism. In line with rationalist accounts of how institutions operate, we find that the deployment votes were approached in an instrumental fashion by political actors. Governing and opposition parties focused on how the votes would benefit them politically, rather than seeing parliamentary control as an inherent democratic good or norm to be pursued in and of itself. The deployment votes created incentives for political actors that discouraged them from working toward the supposed goal of the votes: stronger parliamentary debate and legislative scrutiny of their country's operations in Afghanistan. The end result were political decisions that were removed from public opinion on Canadian and German operations in Afghanistan, and weakened legislative scrutiny of executive decisions pertaining to the war.

The similarities between the Canadian and German and cases, moreover, reinforce the rationalist argument that incentives and preferences can take precedence over historical structures and societal/political norms in explaining institutional outcomes. Canada's House of Commons is elected under a single member plurality system that typically results in single party majority or minority governments, and the Canadian legislature is not formally required to approve or vote on military deployments. Germany's Bundestag is elected via a mixed-member proportional system that produces coalition governments, and the German legislature is formally required to approve military deployments.

Until late 2009, German operations in Afghanistan sought to avoid a direct combat role, reflecting Germany's hesitance to engage in offensive operations. This was

¹ We use the terms 'legislature' and 'parliament' interchangeably. For a discussion of their origins, see Martin et al. (2014).

evident from its deployment to the initially relatively secure northern part of the country and highly restrictive rules of engagement. Canada's operations in Afghanistan involved a significant combat role between 2005 and 2011, highlighting a post 9/11 commitment to play an active combat role in allied operations (see Figure 1 for a timeline of both countries ISAF deployments and key dates). In spite of these important differences, however, the effect of holding parliamentary deployment votes was similar in both countries.

The paper offers three novel contributions to the study of parliamentary war powers and legislative scrutiny of military operations. First, the paper highlights how the incentives of parliamentary actors can undermine the normative goals of having parliament vote on military operations. Second, the paper finds that the powers of these incentives can be seen across two notably different democratic systems. And third, the paper's findings suggest that rationalist institutionalism merits as much attention as historical and normative theories in the study of parliamentary war powers and their effects.

The paper begins with a discussion of the parliamentary war powers debate and assumptions that are made how legislative voting affects political dynamics surrounding military deployments. Next, the paper outlines how rationalist institutionalism offers an alternative account of how actors will behave anticipating and following these votes. Thirdly, the paper applies a rationalist account to the German and Canadian parliamentary votes on Afghanistan. The paper then concludes with avenues for future research.

[Figure 1 about here]

The Debate about Parliamentary War Powers

Parliamentary influence on security policy has received increased attention in recent years (cf. Raunio and Wagner, 2017). In particular, a new strand of literature on 'parliamentary war powers' has shown that democracies are characterized by substantial variance in the formal-institutional legislative control and oversight of military deployments (Born and Hänggi, 2005; Ku and Jacobson, 2003; Mello and Peters, 2016; Peters and Wagner, 2011). The concept of 'parliamentary war powers' refers to the concrete authority of the legislature in the field of military deployment policy. Whereas some governments face no legislative constraints in sending the military abroad, others are required by their constitution to seek parliamentary approval before authorizing troop deployments (Dieterich et al., 2010; Wagner et al., 2010). Still other countries have seen a trend toward legislative votes on military deployments, despite the absence of a formal requirement. Strong (2015) argues that legislative-executive relations and the precedent of a vote over the Iraq war led to the emergence of a 'parliamentary prerogative' in Britain. Yet, ambiguity remains concerning the scope and contents of this new convention, as Mello (2017) highlights in a comparison of the Libyan and Syrian conflict. While votes on military operations have become frequent in Britain and Canada, Lagassé (2016) shows that parliamentary war powers have developed quite differently in these two Westminster democracies.

Studies on parliamentary war powers have provided an important specification of democratic foreign policy processes and identified sources of variation among democracies that have been neglected in previous work. Notably, parliamentary war powers are analytically closer to decisions on the use of force than abstract measures of 'institutional constraints' that solely differentiate between political regime types. Hence parliamentary war powers are of immediate relevance in the areas of foreign policy analysis and conflict studies. However, parliamentary war powers need to be distinguished from constitutional restrictions on the use of military force (Mello, 2014) and they are also distinct from a constitutional right to declare war because this is essentially obsolete at a time where armed conflict is ubiquitous but formal declarations of war are non-existent. This means that surveys that examine the formal constitutional right to declare war (cf. Fish and Kroenig, 2009) are inadequate as measures of parliamentary influence on foreign and security policy.

While there is a large body of work on the conflict behaviour of parliamentary and presidential democracies (e.g. Leblang and Chan, 2003; Reiter and Tillman, 2002), few have investigated the concrete involvement of legislatures in decision-making on the use of military force. Yet recent work shows that significant variation exists beyond the parliamentary–presidential distinction. Works in this vein suggest that it is rather the degree of legislative participation in military deployment decisions that can, under certain preconditions, reduce war involvement (Dieterich et al., 2015; Kesgin and Kaarbo, 2010). In their study of European participation in the Iraq War, Dieterich, et al. (2015) find that countries that were involved militarily had 'basic' or 'deficient' parliamentary war powers, whereas countries with 'comprehensive' war powers made hardly any contribution. The authors interpret this as confirming evidence for the 'parliamentary peace' hypothesis, which holds that, given a war-averse public, countries with wide-ranging parliamentary war powers abstain from military participation.

Parliamentary war powers relate primarily to the question of whether the legislature holds a veto right over government decisions on military deployments. In its strongest form this right grants an *ex ante veto* over all military deployments. By contrast, an *ex post veto* grants parliament a vote on operations that have already been initiated (Dieterich, et al., 2010; Wagner, et al., 2010). The latter, arguably, is a much weaker form of influence, since the reputational and material costs for revoking an executive decision are substantial and make it unlikely that parliamentarians are willing to use this power except under severe circumstances. The logic is similar to 'audience costs' that leaders need to take into account before backing down on a public commitment (Fearon, 1994). At the low end of war powers are informational rights that give parliament no binding veto but a right to be informed regularly and to initiate hearings and parliamentary debate (Dieterich, et al., 2010; Wagner, et al., 2010).

While the theoretical argument in favour of parliamentary war powers is relatively straightforward, empirical evidence for the expected effect of parliamentary involvement is not conclusive (Wagner, 2016). For instance, while Dieterich, et al. (2015) show a correlation between war powers and non-involvement in the Iraq war, others have demonstrated that this pattern might have been unrelated to parliamentary involvement and rather a matter of constitutional restrictions (Mello, 2014). Nonetheless, Haesebrouck (2016: 15) finds the absence of a parliamentary veto a 'core causal condition' towards military participation in the fight against Daesh.

A Rationalist-Institutionalist Account

Rationalist institutionalism offers an alternative lens with which to view the effects of parliamentary war powers, whether in systems that formally give legislatures authority over military deployments or in those that involve legislators informally. While granting parliament war powers may be driven by normative ends, such as increasing the democratic legitimacy of deployments, or an historical legacy, as in response to the state's past military aggressiveness or errors made by executives in previous conflicts, rationalist institutionalism offers an understanding of how legislative war powers affect the strategies and incentives of self-interested political actors. In so doing, a rationalist institutionalist account helps to explain why the exercise of parliamentary war powers may lead to outcomes and consequences that do not align with normative expectations or historical aims.

Rationalist institutionalism makes three claims that are of value to the study of parliamentary war powers. First, the school argues that political actors are utility maximizing, meaning that they are motivated by a desire to fulfil their preferences (Peters, 2012: 51). The content of these preferences will vary depending on the actor and institutional setting, but rationalism is united in the view that their behaviour is driven by efforts to achieve them, rather than by socialisation, established customs or practices, or ideational trends. Secondly, actors are seeking to fulfil their preferences in settings where they can either complement or be in conflict with the preferences of other. Consequently, actors take the decisions and behaviours of others into account when acting, identifying ways of working with those who have complementary preferences and prevailing over those with whom they are in conflict. This implies that actors act strategically and exercise foresight (Shepsle, 2010: chapter 6).

Thirdly, rationalist accounts understand institutions as formal or informal powers that structure how political actors pursue their preferences (North, 1990: chapter 1). From a rationalist perspective, institutions ultimately serve as a means of establishing the 'rules of the game' in a political setting. Rules allow political interactions to occur with a degree of predictability and confidence; indeed, from a rationalist perspective, institutions ultimately arise out of a need to allow for competitive preference-seeking in a safe and stable setting (North, 1990: 6). Institutions do so by creating incentives that reward rule-respecting behaviour and punish rule-breaking actions. However, rationalist institutionalists also recognize the rules can lead to suboptimal or perverse outcomes. Certain institutional designs and incentive structures can encourage actors to achieve their preferences through manipulation or deception (Riker, 1986). Institutional designs or changes that ignore preferences or fail to anticipate how alternating incentive structures will change strategic behaviours, moreover, may not achieve their stated aims or may create unanticipated consequences.

Rationalist theories of institutions can focus on the individual as a political actor (Scharpf, 1997). The behaviour of individual legislators can thus be understood with reference to the preferences they have, the incentive structures they face, and the strategic interactions they navigate as members of a congress or parliament. For individual politicians, utility maximization can involve re-election, promotion and power, and maintaining one's reputation (Dewatripont et al., 1999; Fenno, 1978; Fiorina, 1987; Frank, 1987; Müller and Strøm, 2008; Schlesinger, 1966).

Political parties can also be treated as unified, self-interested political actors. Indeed, in parliamentary systems with strong party discipline and centralized party decision-making, it can be fruitful to treat parties as single actors. Work on party preferences has established how these political actors can vary in terms of how they understand their utility. Strøm has categorized parties based on whether they are vote-seeking, office-seeking, or policy-influencing (1990). A simplified rendering of these preferences into office-oriented and policy-oriented, where 'office-oriented politicians make policy in order to win elections whereas policy-oriented politicians win elections in order to make policy' (Shepsle, 2008: 29-30). Regardless of which category they belong to, however, parties will act in ways that maximize their ability to achieve their objectives.

Turning to legislative approval of military operations, our application of a rationalist approach leads us to the following expectations. First, regardless of whether a legislature is formally or informally involved in sanctioning military action abroad, individual politicians and political parties will approach the votes from a self-interested, utility maximizing perspective. While the rhetoric surrounding the votes may appeal to democratic ideals and the importance of parliamentary scrutiny (cf. Müller and Wolff, 2011), legislative actors will approach the votes strategically, with a view to achieving their preferences, whether in cooperation or in conflict with other actors.

Second, when major parties with office-seeking preferences vote together in favour of a military deployment, their members are expected gravitate toward less contentious debates after the vote, since the issue has been settled. Moreover, the debate diluting effect of a consensual vote will be especially noticeable when those who voted in favour of a deployment face a public that is sceptical or opposed. In such cases, office-seeking political actors have an incentive to avoid stirring contentious debates about the mission, making the public less seized of their support for the deployment. This effect will be still further amplified when there is an election on the horizon. Under this situation, office-seeking parties who voted in favour of the deployment will collude to keep the mission out of the campaign.

Thirdly, policy-seeking parties will aim to keep contentious debates over a military deployment alive after a vote, particularly if they opposed it. However, their ability to achieve sustained legislative scrutiny of the mission will depend on their relative strength in parliament; smaller parties are expected to have more difficulty focusing parliament's attention on a deployment they oppose, particularly if larger parties support the mission. Finally, individual political actors may occasionally vote against their party or parties may not be able to prevent their members from splitting into blocs for or against a military deployment. In such instances, the preferences of the individual politicians will explain their behaviour, but the impact will depend on how other actors react.

Regardless of democratic system type, therefore, we hypothesize that the preferences and incentives of political actors will lead to less aggressive parliamentary debate and legislative scrutiny when office-seeking parties vote together in favour of a military deployment. This suggests that parliamentary votes do not necessarily enhance parliamentary debate or legislative control of military operations. While policy-seeking parties and individual politicians may attempt to

sustain intense parliamentary debate about the deployment, their impact will vary depending on their relative influence in the legislature and how other parties respond to their efforts.

Parliamentary Votes in Canada²

Parliamentary war powers have been a long-standing concern in Canada. Prior to the Second World War, Prime Minister William Lyon Mackenzie King made it a point to say that Parliament would decide Canada's involvement in any future conflict. Given the divisions between English and French Canadians that the First World War created, this was a politically sound position. The authority to declare war and deploy forces belonged solely with the executive, but prudence demanded a role for the legislature. Asking Parliament to decide Canada's entry into another war would ensure that the choice had the greatest level of democratic legitimacy. Doing so also helped to keep the French and English wings of King's Liberal Party unified. When Parliament was recalled to vote on Canada's entry into war against Germany in September 1939, the decision was preordained; there was no real doubt that Canada would fight alongside the United Kingdom. But King's political objectives were achieved (Hillmer and Lagassé, 2016).

Parliament's involvement in military deployment decisions waxed and waned over the next six decades. The House of Commons was not consulted when Canada joined the Korean War, but members of parliament did vote on various United Nations peacekeeping missions and on the decision to deploy forces as part of the Persian Gulf War. Between 1994-2005, the Canadian government committed the military to a number of expeditionary operations without consulting the Commons. Under the Liberal governments of Prime Ministers Jean Chrétien and Paul Martin, the Canadian Forces took part in the Kosovo War, Operation Enduring Freedom in Afghanistan, and the International Security Assistance Force in Afghanistan without parliamentary votes; these governments opted to hold take note debates alone (Dewing and McDonald, 2006).

The executive's monopolization of military deployment decisions during the Chrétien and Martin governments did not go unnoticed. Opposition parties on both the right and left wing of the political spectrum criticized the governments' disregard for the Commons and introduced a number of bills and motions aiming to grant the legislature a role in approving expeditionary military operations. The Chrétien and Martin governments defeated these reform efforts, but the opposition parties were determined to keep the issue on the agenda. Together with wider concerns about the executive's dominance in Canada, increasing Parliament role in military deployment decisions was presented as a means of addressing the country's 'democratic deficit' (Aucoin and Turnbull, 2003).

² Data for the Canadian case was gathered from the Parliament of Canada's official record of the debates of the House of Commons. The debates were searched using 'Afghanistan' and 'Military Operations' as search terms. Party filters were used to identify which portion of the interventions belonged to members from each of the parties. A table detailing the debate statistics is being prepared.

In the 2006 election, Canada's Conservative Party pledged to 'Make Parliament responsible for exercising oversight over [...] the commitment of Canadian Forces to foreign operations' (CPC, 2006: 45). Members of the Conservative Party had worked to increase parliament's role in military deployments since the mid-1990s and had become the principal champions of this reform following the debates about the 2003 Iraq War and the Martin government's decision to deploy the Canadian military to a major combat and counterinsurgency mission in Kandahar, Afghanistan without a vote in 2005. Interestingly, the Conservatives had criticized the Chrétien government for not joining the Iraq War in 2003 and they supported the Martin government's Kandahar mission. But they argued that these were decisions that the executive should take with the Commons, not alone.

The political incentives and preferences held by the Conservatives at the time explain why they championed parliamentary war powers. Chrétien's government had been criticized for ignoring Parliament and overly centralizing decision-making in the Prime Minister's Office. Coupled with infighting within the Liberal Party and a scandal involving federal funding in the province of Quebec, Martin's government was reduced to minority standing in the 2004 election. This was the first time since 1979 that the government had not held a majority of seats and it presented the Conservative Party with an opportunity to win back power for the first time in more than a decade. Emphasizing parliamentary oversight of military operations linked a high-risk international mission with discontent about executive dominance. Indeed, with increased media attention of the Canadian mission in Afghanistan that followed the Kandahar deployment, stressing the need to increase parliamentary oversight allowed the Conservatives to differentiate themselves from the Liberal government about a mission that they supported and that attracted steady media attention. Although parliamentary war powers were by no means the central theme of the Conservative's campaign, and did not come up during the campaign, this connection served their larger vote-seeking preferences and incentives ahead of the 2006 election.

The Conservatives carried the 2006 election, though only as a minority in the House of Commons. This result meant that voters would head back to the polls before long. Nearly all parties in the Canadian House of Commons face an incentives to engage in vote-seeking behaviour as a general rule (Lagassé and Saideman, 2017), and this propensity was amplified by relatively unstable minority government situation. Under Canada's single member plurality system a relatively small shift in the popular vote from one party to another could swing the balance of power in the Commons from one party to another, or lead a minority government to majority status. A 'permanent campaigning' mentality took hold following the 2004 election that led to the Liberal minority government and continued during the Conservative minority (Marland et al., 2017).

Canada's new Conservative prime minister, Stephen Harper, visited Canadian soldiers in Afghanistan shortly after election day. He expressed his unwavering support for the mission during the trip. Upon his return, Harper declared that he planned to extend the Kandahar mission. The previous Liberal government had committed the Canadian Forces to a 2007 end date, but the new Conservative government decided the deployment should go on to 2009. In keeping with his

party's electoral platform and past effort to increase the role of the Commons, Harper announced that the extension would be brought to the House for a vote.

Harper's motives for holding the vote were threefold and aligned with vote-seeking preferences. First, he sought to fulfil his party's electoral pledge to improve the Commons' role in military deployment decisions. This would allow the Conservatives to highlight that they adhered to their electoral promises and that they were addressing Canada's 'democratic deficit'. Second, the vote allowed Harper to further highlight his government's support for the Canadian military and their deployment to Afghanistan. Interestingly, Harper made it clear that he did not consider the vote binding. He stated that he would extend the mission by one year if the Commons did not endorse a two-year extension.³ Either way, he would stand to benefit. If his party stood alone in supporting a two-year extension, he could claim that only the Conservatives supported the military and its mission, and if the two-year extension carried, he could claim to have secured the support of the House for his policy. Thirdly, the vote promised to divide or embarrass the Liberal Party. Since the Liberals had initiated the Kandahar mission when they were in power, they would be ill-placed to oppose an extension; yet a number of Liberal parliamentarians were opposed to an extension. If the Liberals voted against the extension, they could therefore be made out to be hypocritical, and if the party split, it would highlight divisions and incoherence within the party.

The Liberals, for their part, were placed in a disadvantageous position by Harper's pledge to hold a vote. On the one hand, the party and individual MPs who had previously supported the Kandahar mission faced the prospect of a damaged reputation if they voted against the extension. On the other hand, if they voted with the government, their ability to criticize the Conservatives for their handling of the mission would be hampered thereafter. Canada's other main opposition party, the New Democratic Party, faced no such dilemma. It was opposed to the mission from the outset and would continue to do so.

Parliament was summoned 03 April 2006, approximately four months after the election. Harper's extension vote was vigorously debated until the vote was held on 17 May 2006. In these six weeks, the Afghanistan mission was discussed 139 times in the House. On the day of the vote, the 103-member Liberal party caucus, with 30 high-ranking MPs, including the interim leader, voted in favour of the extension. Thanks to their defection, the vote narrowly passed 149 to 145.

Having been outflanked and divided by the Conservatives, the Liberals had an incentive to remain largely silent about the Afghan war following the vote. From 18 May 2006 to the end of the year, the official opposition only raised the military mission to Kandahar 9 times in the House of Commons. The New Democrats, in contrast, raised the topic 15 times, and the Bloc Quebecois, the separate party from French-speaking Quebec, addressed the mission 9 times as well. The governing Conservatives, on the other hand, discussed the mission 15 times, either in response to the New Democrats and to highlight mission successes. Overall, from late May to

³ Canada, House of Commons, Debates, 39th Parliament, 1st session, 17 May 2006, vol. 141, 1605.

the end of December 2006, mentions of Afghanistan fell to 45, far fewer than in the weeks leading up to the vote.

Debate about the future of Canada's mission in Kandahar began to amplify again in April 2007. In December 2006, the Liberals had selected Stéphane Dion as their leader, an MP and former minister who had voted against the extension in 2006 and was opposed to a further prolongation of the deployment. As well, Canadian casualties had begun to grow and there was growing concern that the mission was facing difficulties. For the first time since the 2006 election, all three opposition parties were engaged in pointed critiques of the mission and questioning the government about an exit strategy. The Conservatives seemed vulnerable on the file, making it an attractive target for opposition parties focused on the next election, which was expected relatively soon given the government's minority status. From April 2007 to October 2007, Afghanistan was discussed 346 times in the House, with the mission itself being included in 308 of those debates, and the issue of an exit strategy coming up 47 times. In contrast to their behaviour in 2006, the Liberals engaged in 114 of those debates, whereas the New Democrats were involved 44 exchanges and the Bloc Québécois 39. On the defensive answer questions while also trying to vaunt the mission's successes, the Conservatives discussed the operation 149 times.

By the summer of 2007, Prime Minister Harper was determined to further extend Canada's deployment in Kandahar. However, given his government's minority standing in the House and the possibility of an election in the near term, he realized that making the decision without having the Liberals onside was politically risky. When the next election came, it was in the Conservative's interest to have the Liberals publicly supporting their policy on Afghanistan. If the Conservatives were alone in supporting the Afghan war, or if the government extended the mission without a supporting vote in the Commons, they alone would shoulder responsibility for the mission and possibly suffer at the polls, given that the operation was losing popular support. The Conservatives' vote-seeking preferences demanded that they either abandon the idea of a further extension or find a way to get the Liberals to openly endorse the policy in the Commons ahead of the next election.

The Conservative's strategy to coopt the Liberals involved the establishment of an independent panel on Canada's future in Afghanistan chaired by former Liberal minister John Manley. The Manley Panel, as it came to be known, was established in October 2007 and mandated to make a bipartisan recommendation on Canada's future in Afghanistan. Over the following months, the Manley Panel reviewed the mission to Kandahar and what would be required to ensure that the deployment was better placed to succeed. On 20 January 2008, the Panel released its report (Independent Panel on Canada's Future Role on Afghanistan). In addition to listing various conditions that should be met for Canada to remain in Kandahar, the Panel recommended that the government extend the mission indefinitely.

Armed with this recommendation, made by a bipartisan chaired by one of their own, Harper approached the Liberals about a compromise. Harper and Dion ultimately settled on a final two-year extension to 2011, to be voted on in March 2008. The exact reason why the Liberals agreed to the further extension remains speculative. However, from a rationalist perspective, a case can be made that the party feared

another division when the matter was brought to the House. Indeed, Manley's views on the need to remain committed to the mission likely resonated with a good number of Liberal MPs. The Liberal Party would not be particularly well-placed to campaign against the Conservative's Afghanistan policy if a sizable number of Liberal MPs voted with the government, and the Dion's standing as party leader would be weakened going into an election if he appeared unable to unify his caucus. Finally, those Liberals opposed to the mission could take solace in the fact that the compromise involved a last, two-year extension rather than the open-ended extension recommended by the Manley Panel.

The months between the establishment of the Manley Panel and the lead up to the vote on the second extension saw an explosion of debate on Afghanistan in the House of Commons. The mission was discussed 852 times between October 2007 and March 2008. Intent on explaining and justifying the extension, the Conservatives were involved in 421 of these exchanges. The Liberals followed with 219 exchanges, while the New Democrats took part in 121 and the Bloc Quebecois in 83. On 13 March 2008, the motion to extend the mission carried 198 to 77, with the Conservatives and Liberals voting in favour, and the New Democrats and Bloc Quebecois voting against.

From 14 March 2008 to 7 September 2008, when Parliament was dissolved for an election, discussions on Afghanistan fell sharply in the Commons. The topic was broached 283 during these months. The Conservatives were involved in 127 of these discussions, defending the mission, pointing to progress, and reminding critics that the House voted in favour of a second extension. The Liberals discussed the war 86 times during this period, honouring wounded and fallen soldiers, and asking for clarifications from the government and offering soft critiques of the Conservatives' handling of the mission. The New Democrats continued to criticize the mission, though their interventions fell to 45 during this period. Similarly, the Bloc Quebecois largely abandoned the topic, discussing the matter only 26 times.

Owing to the consensus between the Conservatives and the Liberals, the Afghan deployment was discussed and debated little during the 2008 general election. While the NDP and the Bloc Quebecois continued to critique the mission, the two major parties focused on other issues and questions were they were in disagreement. Although Canadians were increasingly skeptical of the mission owing to the difficulties that the coalition was encountering and the casualties that the Canadian military was incurring (Saideman, 2016), the March 2008 vote ensured that neither the Conservatives nor the Liberals had an incentive to highlight the war. Instead, the vote led them to collude to keep the topic off the table as they both sought to carry the election.

The Conservatives were re-elected with a slightly larger number of seats in 2008, but not a parliamentary majority. They thus continued in power as a minority government. Over the next year and a half, the New Democratic Party continued to lead opposition debates about Afghanistan, owing to the consensus between the Liberals and the Conservatives. Yet the New Democrats also chose to approach the Afghan question differently; rather than questioning the rationale for the war itself, the New Democrats focused on Canada's handling of Afghan detainees. This issue would dominate the Canadian Afghanistan debate until the spring of 2010, when the

Liberals and Conservatives joined to establish a committee of parliamentarians to study documents related to the handling of detainees (Saideman, 2016).

In late 2010, Prime Minister Harper revealed that Canada would deploy the military on a training mission to Kabul, Afghanistan after the mission in Kandahar came to an end the following year. Although the New Democratic Party protested that Harper was renegeing on his pledge to complete Canada's involvement in ISAF in 2011, the Liberals supported the Conservatives once again, ensuring that the two major parties had an incentive to keep debate to a minimum. Indeed, both the Liberals and Conservatives agreed that a vote was not necessary in this instance. Arguably, both parties wanted to avoid even the short-term spike in debate that typically led up to the votes. The Kabul training mission began in May 2011 and ended in March 2014. This was Canada's last deployment to ISAF.

In summary, Canada's Conservative government introduced the practice of parliamentary deployment votes and made strategic use of the practice in 2006 and 2008. In both instances, the Conservatives presented the votes as an effort to strengthen parliamentary war powers and to enhance legislative control of the executive. Yet in both cases, the votes resulted in fewer debates about the war in Afghanistan in the House of Commons. The votes created a disincentive for the official opposition to keep debating the mission or scrutinizing the government after they took place. In May 2006, the vote exposed a rift in the Liberal Party ranks, leading the party to regroup and refocus for the remainder of the year. Part of that recalibration included keeping relatively quiet about Afghanistan, lest their apparent incoherence and divisions come to the fore again. In 2007, under a new leader, the Liberals began debating and scrutinizing the government about Afghanistan again. With public support for the war waning, the Liberal's vote-seeking incentives encouraged a stronger critical stance. The Conservatives responded by targeting the Liberals' reputational concerns and solidarity again. By establishing a panel headed by a former Liberal minister, the Harper government sought to coopt the Liberals into supporting a further extension of the Kandahar mission. Faced with the prospect of another vote that would split their caucus, and anticipating an election in the near future, the Liberals opted to work with the Conservatives. The two parties voted together on a motion that outlined a 2011 termination date for the Kandahar deployment. Following the vote, both the Liberals and the Conservatives had a vote-seeking incentive to keep talk of the mission to a minimum, as the deployment grew evermore unpopular. This left the role of scrutinizing and debating the deployment in Parliament to the New Democratic Party and Bloc Quebecois, the two small opposition parties. It also meant that when Harper called an election in September 2008, both the Conservatives and the Liberals made it a point not to highlight the war.

Parliamentary Votes in Germany⁴

Due to its authoritarian past and historical experience of militarism, Germany's post-war constitution (*Grundgesetz*) placed substantial restrictions on the use of force and the participation in military operations. In fact, only after its eventual accession to NATO in 1955 was Germany allowed to maintain armed forces again. The introduction of parliamentary war powers – understood as a formal parliamentary veto right over military deployments – go back to a seminal ruling of the German constitutional court in 1994 that eventually led to a specific deployment law that only became effective in 2005.

The *Grundgesetz* spells out three general provisions that affect the use of the military. First, the armed forces shall be employed solely for defence purposes unless they are used within a system of mutual collective security. This implies that military deployments have to occur within organizational frameworks such as those provided by the UN, EU or NATO for Germany to take part in collective security operations and it means that military participation in *ad hoc* coalitions poses substantial constitutional problems (Nolte, 2003: 352). Second, Article 25 of the Basic Law prescribes the “primacy of international law” over federal legislation. It follows that the German government shall refrain from any violations of international law, even if these are committed by other states (Jarass and Pieroth, 2007: 572). Finally, Article 26 declares that any actions with the “intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be made a criminal offence.” This resonates with principles of international law regarding the use of force and further underlines the Basic Law's peaceful orientation (Sachs, 2011: 1004).

While Germany fulfilled the role of a “civilian power” (Mauil, 1990) throughout much of the Cold War, the 1990s saw an increasing engagement of German forces in peacekeeping and peace enforcement missions. Before unification, German involvement in international military operations had been restricted solely to humanitarian assistance and rescue missions. This changed when the conservative-liberal coalition under Chancellor Kohl deployed *Bundeswehr* units to the Persian Gulf and Iraq, Cambodia, Bosnia, and Somalia in the early 1990s. Although the government carried a parliamentary majority for these operations, which were officially labelled “humanitarian assistance” and/or in support of UN resolutions, they nonetheless occurred under conditions of severe constitutional uncertainty. Specifically, the Social Democrats, then in opposition, held all military operations beyond NATO (“out of area”) to be unconstitutional and regarded executive decisions on such deployments a violation of parliamentary rights. The Liberals (FDP), as the junior coalition partner in government, disagreed with Germany's deployment of AWACS reconnaissance planes to observe the no-fly zone over Bosnia in 1993 and brought the case before the constitutional court.

This eventually led to a seminal ruling in 1994, where the constitutional court for the first time spelled out the constraints under which military operations were to take place – including a parliamentary veto right (*Parlamentsvorbehalt*) for all military

⁴ Data was derived from the German Bundestag Documentation System:
<http://dipbt.bundestag.de>.

operations where the use of force is deemed possible. Nonetheless, it took until 2005 before a deployment law (*Parlamentsbeteiligungsgesetz*) became effective. This deployment law prescribes that the government has to submit a motion to parliament that details the specifics of the planned military operation including mission objectives, area of operations, legal basis, maximum number of soldiers, required capabilities, duration, and estimated costs. Parliament cannot change the motion but only approve or reject it in its entirety. For low-intensity operations, the law allows for an “accelerated procedure” where all parliamentary groups and relevant committees are informed at least seven days in advance of a planned operation and are given the opportunity to demand a full consideration and vote in parliament. Otherwise, parliamentary approval is assumed and the operation can proceed. For emergency cases, retroactive approval is allowed. Finally, the Bundestag is given the power to revoke its approval and demand an immediate withdrawal from an ongoing military operation. In practice, most mandates are valid for durations of 12 months before they need to be renewed in parliament. This is complemented by regular meetings of the defense committee, where the ministry of defense briefs about current military operations and answers MPs’ questions in closed sessions.

In line with the 1994 court ruling and its conception of the Bundeswehr as a “parliamentary army” (*Parlamentsarmee*), all major military deployments have since been placed before parliament for an up or down vote. However, several smaller operations have been exempt from this rule. First, in 1997 the Kohl government decided to use an SFOR helicopter team (“Operation Libelle”) to rescue foreigners from the Albanian capital Tirana before asking for confirmation from the Bundestag, which held a retroactive vote on the mission. Second, in 2003 the Schröder government decided to deploy AWACS planes as part of a NATO operation to observe Turkish airspace (“Operation Display Deterrence”) against any potential Iraqi attacks. The government of Social Democrats and Greens argued that this case did not fall under the parliamentary prerogative because AWACS planes were unarmed. However, the Liberals, then in opposition, brought the case before the Constitutional Court and it was eventually decided in 2008 that the deployment had indeed occurred in violation of parliamentary rights due to the overall nature of the military mission. Finally, in February 2011 the government decided to evacuate German nationals from Libya without getting parliamentary approval, which was also ruled unconstitutional.

Germany’s involvement in Afghanistan started in November 2001, when the red-green government decided to partake in “Operation Enduring Freedom” (OEF) with 3900 soldiers (including 100 special forces in Afghanistan) and, one month later, deployed 1200 troops to the newly created “International Security Assistance Force” (ISAF) in Kabul. The mandates for these operations were renewed numerous times and ISAF was enlarged to an eventual force of 5350 soldiers. In November 2008 the Bundestag ended the OEF involvement in Afghanistan, whereas ISAF was prolonged until the end of December 2014 (after which it was succeeded by NATO’s “Operation Resolute Support”). With its extensive timeframe, Germany’s military engagement in Afghanistan has become the largest and most costly military operation in the history of the country’s armed forces with estimated costs of 8.8 billion Euros for ISAF alone (Thiels, 2015).

Between 2001 and 2014 the German Bundestag contained four to five parliamentary

parties, depending on the legislative term. While the political decisions in favor of military involvement in Afghanistan were made under a leftist coalition of Social Democrats and Greens under Chancellor Schröder, the mandates were renewed under the succeeding conservative-centrist governments of Chancellor Angela Merkel, including two Grand Coalition governments of Conservatives and Social Democrats (2005-2009, 2013-ongoing) and a Conservative-Liberal coalition (2009-2013). This means that all major parties except the socialist The Left (*Die Linke*) have been in government at one time or another during the Afghanistan campaign and shared responsibility for the military deployments.

The initial debate about Germany's involvement in Afghanistan nearly spelled the end of the coalition between Social Democrats and Greens. The parliamentary vote call on November 16, 2001 resulted in the closest vote on military deployments in the history of the Bundeswehr, with 336 to 326 parliamentarians voting in favor of the mandate. Chancellor Schröder had set the tone with his declaration of "unconditional solidarity" with the US in the face of the September 11, 2001 terrorist attacks (Bundestag, 2001: 18293). Following 9/11, it soon became clear that unconditional solidarity had to include military participation in the fight against terrorism. However, the pacifist wing of the Green Party and a sizable group of Social Democrats were strongly opposed to any involvement in OEF, which the US had initiated together with the UK on October 7, 2001. Twelve Green MPs and four Social Democrats had threatened to vote against the motion, which meant that there was no governmental majority in favor of OEF (Weinlein, 2011).

In an attempt to rein in dissenters from within the red-green government, Schröder combined the decision to deploy armed forces to OEF with a parliamentary vote of confidence. Since 1949, there have been five confidence votes and the 2001 incident was the only such motion combined with a decision on the use of force. Intended to secure a "Chancellor's majority" (*Kanzlermehrheit*), the confidence vote meant that all opposition MPs would vote *against* the motion, despite the fact that Conservatives and Liberals had already expressed their support for the fight against terrorism and would in all likelihood have supported a simple vote call on OEF. Forced by Schröder's vote of confidence, the Green Party leadership around Foreign Minister Joschka Fischer faced the dilemma of reconciling antimilitarist sentiments among the party base and substantial concerns regarding the US-led military operation with the party's desire to remain in government. To Fischer it was "political suicide" to consider abstaining from military involvement in Afghanistan, as parts of his own party preferred (Fischer, 2011: 49). One group of Green critics published a "position paper" that expressed strong doubts about the supposed OEF mandate and the mission in Afghanistan (Buntenbach et al., 2001). Ultimately, the critics within the Greens decided on continued support for the Chancellor, but signalled their disagreement with the military deployment by splitting their votes, which resulted in four Greens voting against the proposal, including delegate Winfried Hermann who explained this reasoning in his parliamentary statement on behalf of the critics within the Green Party. One member of the Social Democrats, Christa Lörcher, decided to leave the parliamentary group and vote against the motion as an "unaffiliated" MP (Bundestag, 2001).

The politics surrounding the initial OEF mandate demonstrate that Social Democrats and Greens adopted a strategic approach that was primarily driven by the desire to

remain in office rather than policy concerns. Indicating the political controversy of the Afghanistan mandate, 74 MPs from the governing coalition submitted written statements for the parliamentary record in which they explained the reasoning behind their own vote. Nonetheless, the fact that the Social Democrats, apart from one MP, voted entirely in favor of the motion and the Greens decided to display their (muted) concerns without seriously risking their position in government shows that office-seeking concerns took precedence. Four of the authors of the Green position paper voted against their expressed policy position, solely to remain in government.⁵ The combination of a confidence vote with a substantive motion effectively undermined parliamentary war powers, as MPs had to decide between remaining in government or following their own conscience. Unlike in Britain where institutional changes were made to prohibit the combination of confidence votes and substantive motions, the German system still allows for this option.⁶

Public support for Germany's military involvement in Afghanistan has experienced a slow but steady decline between 2001 and 2015. At the time of the initial deployment decisions, about 56% of the public supported the engagement (Mello, 2014: 123). Through 2006 there was still a majority in favor of the operations but since then a plurality of respondents spoke out against military involvement in Afghanistan (Mader, 2017: 168). In 2012-2013 almost 60% of the public were undecided or against German military involvement in ISAF (ZMSBw, 2014: 52). These trends in public opinion contrast markedly with parliamentary votes on the Afghanistan mission that – apart from the initial mandate on OEF – continuously gained 70% or more support from Bundestag MPs (cf. Schoen, 2010).

One particularity of the German deployment was the placement of significant restrictions (*national caveats*) on military commanders and troops on the ground in Afghanistan. Most of these were already formulated in the parliamentary mandates. But sometimes coalition politics led to the imposition of additional restrictions that were then added to the mandate as a formal note (*Protokollerklärung*).⁷ This included severe limitations of permissible tasks for the deployed soldiers, a geographical restriction to the northern part of the country (Kunduz district), after the extension of ISAF, a strict separation of OEF and ISAF mandates, and the abstention from counternarcotics operations.⁸ As Foreign Minister Fischer explained when the initial ISAF mandate was passed, the planned mission was a “peace operation” solely

⁵ Notably, all four of those Green MPs who switched their votes were women, which allowed prominent MPs like Hans-Christian Ströbele and Winfried Hermann to “save face” and publicly stick to their dissenting vote without having to bear the consequences, as Fischer also notes in his memoirs (Fischer, 2011: 61).

⁶ Interestingly, in September 2014, Prime Minister Harper also implied that parliamentary votes on military deployments could be interpreted as confidence matters by the government, suggesting that this might be another tool to secure backbench and opposition support for a contentious operation. See, Canada, House of Commons, *Debates*, 15 September 2014, vol. 147, 1425.

⁷ For example, a formal note further restricted the German OEF mandate “to target solely the terrorist network of Bin Laden and Al-Qaeda and those associated with it” (own translation). URL: <http://www.documentarchiv.de/brd/2001/protokollerklaerung-antrag-bundeswehr.html>

⁸ For a discussion of German caveats, see and Meiers (2011: 99-103).

aimed at stabilizing the interim Afghan government in Kabul and the surrounding area (BT 2002, Dec. 22). By implication OEF was thus the “combat mission” but it received substantially less mention by decision-makers in Berlin. This distinction characterized German politicians’ approach towards Afghanistan for many years. In November 2008, the Bundestag eventually decided to end OEF participation in Afghanistan, though Germany continued to support anti-terror operations elsewhere.

Another important constraint on troops in Afghanistan was their legal accountability before civilian courts. This meant that soldiers could be prosecuted in their home district in Germany based on actions conducted in the context of OEF and ISAF operations. It took until the Kunduz affair noted below that the legal system acknowledged Afghanistan as a “non-international armed conflict” to be prosecuted by a separate agency under the Humanitarian Law of War instead (Rid and Zapfe, 2013: 200). By 2009, the overall level of violence in Afghanistan had increased and the formerly calm northern region where the Bundeswehr was deployed had become particularly hostile. This led to several changes including less constraining rules of engagement for the German contingent. The Bundeswehr was now allowed to take part in offensive operations, using heavy weapons like tanks and mortars against Taliban positions (DW, 2009).

A watershed event occurred in the early morning hours of September 4, 2009, when the German commanding officer of the Provincial Reconstruction Team Kunduz, *Oberst* Georg Klein, ordered an airstrike against two gasoline trucks that had been abducted by Taliban forces and were stuck on a sandbank in the Kunduz river. This attack caused the death of insurgents but also killed civilians including many underage boys, some of which had apparently been forced to help syphon gasoline from the trucks. Separate investigations reported between 99 and 125 deaths (Bundestag, 2011).⁹ The “Kunduz” affair single-handedly changed the German domestic debate about Afghanistan as it became clear that ISAF was not simply a “peace operation” but that the country was engaged in war-fighting in a hostile environment. While Colonel Klein faced no legal consequences for his actions, the political-military leadership in Berlin was in turmoil. First, Defence Minister Franz-Josef Jung, who had by then moved to another ministry, had to step down as government minister, partly because of his inadequate handling of the affair. His successor in the defence ministry, Karl-Theodor zu Guttenberg, then decided to relieve the country’s top military and political leaders, chief of defense Wolfgang Schneiderhan and deputy minister of defense, Peter Wichert. Both of them had apparently withheld critical information from their superiors. On the upside, the “post-Kunduz shake-up” led to a process of generational change among top-level decision-makers, as noted by Rid and Zapfe (2013: 210).

Apart from the initial vote on OEF, which came down to a 10-vote difference, all other mandate decisions – a total of 26 parliamentary votes between 2001 and 2014 – received overwhelming majorities in parliament. Figure 2 shows a timeline of parliamentary speeches on Afghanistan and decisions on ISAF and OEF mandates. The largest number of individual speeches was given in December 2001, when the

⁹ Parliament appointed a fact-finding commission, which published a 580-page report on the Kunduz incident with a detailed description of the political-military decision-making procedure (Bundestag, 2011).

initial ISAF mandate was decided upon (56 speakers). Afterwards, there has been a slight decrease in parliamentary activity on Afghanistan until late 2006, when the number of speeches picked up again noticeably. While the Kunduz airstrike of September 4, 2009 marked a watershed for Germany's Afghanistan policy, the frequency of parliamentary speeches did not change substantially. However, it must be noted that the figure does not take into account committee activity, as for instance the meetings and hearings of the fact-finding commission on the Kunduz affair. From 2011 onward, activity decreased markedly until the end of the ISAF mandate in December 2014. Over the entire timeframe, the average mandate decision received 20 speeches.

[Figure 2 about here]

According to parliamentary practice, mandates for military operations are usually revisited in the Bundestag on a yearly basis. However, for operations in Afghanistan it is evident that electoral concerns affected the timing of parliamentary debates and votes. Two cases stand out. In October 2008 all the major parties except the socialist The Left (*Die Linke*) agreed to keep the issue of Afghanistan out of the general election campaign in the next year and to prolong the mandate for an additional three months until December 2009. The government justified this unusual step on the basis that the decision whether to prolong the next mandate should be given to the newly elected legislature (Bundestag, 2008: 7). Nonetheless, many commentators saw it as an attempt to keep the increasingly unpopular Afghanistan engagement out of the election campaign (Brummer and Fröhlich, 2011: 16). A similar case happened in 2010, when it became public that the Merkel government intended to let the Bundestag approve a renewal of the ISAF mandate six weeks earlier than originally planned for. Allegedly, Chancellor Merkel had insisted on an earlier date to keep the Afghanistan issue from regional elections in three German *Länder* at the end of February in 2011 (Spiegel, 2010). Both of these episodes indicate that political decision-makers adopt a strategic and instrumental approach to parliamentary votes, rather than seeing them as a forum for deliberation and debate.

To sum up, Germany's military involvement in Afghanistan during the OEF and ISAF mandates was characterized by consensus politics typical of coalition governments. With the exception of The Left, all parliamentary parties (CDU/CSU, FDP, SPD, and Greens) had been involved in the decision-making on Afghanistan and shared government responsibility at one time or another between 2001 and 2014. This meant that all major parties were implicated due to their previous support for the respective mandates and they were not in any position to seriously question or criticize governmental policy with regards to Afghanistan. Due to parliamentary and coalition politics, decisions on mandates and operational aims had to be agreed-upon first within the governing coalitions and then among a majority in the Bundestag and its respective committees. Parliamentary war powers in this sense led to the anticipation of legislative preferences. The government, and especially the ministry of defence regularly consulted with key members of relevant factions and legislative committees to find agreement on contentious policy positions before a mandate was finalized. This is one reason, unlike in the UK, why there has never been a veto against a suggested military deployment in Germany (cf. Kaarbo and Kenealy, 2016). However, parliamentary war powers also led to the creation of extensive caveats of which the operational restrictions in the mandates and formal notes

(*Protokollerklärungen*) are only the publicly available information. This caused problems for troops on the ground in Afghanistan and their operability within the multilateral context of NATO and its partners. While there was little evidence for a debate dampening effect in Germany, with 25 parliamentary votes between 2001 and 2014, all of which passed the Bundestag, these have become routine exercises that spark little political controversy. Moreover, the analysis showed that despite the formal empowerment of parliament, the executive still dominates the agenda. This power was exercised, for instance, to shift the date of a parliamentary vote away from important regional or general elections, as happened in 2008 and 2010. Finally, if push comes to shove, the government can always combine a confidence vote with a substantive vote on a military deployment to enforce a governmental majority in parliament, as witnessed in 2001.

Conclusion

Studies of parliamentary war powers have compared how countries vary regarding the influence of their legislatures on military deployment decisions. These studies have examined the effect that parliamentary war powers have on a countries' foreign and military policies, as well as how different systems enhance or diminish legislative influence over matters of war and peace. Few studies, however, have examined how parliamentary war powers affect the quality of debate and legislative scrutiny. Arguably, the existing literature assumes that parliamentary war powers enhance debate and scrutiny. This paper has sought to examine that assumption, using a rationalist institutionalist perspective. From a rationalist institutionalist perspective, parties and legislators will approach parliamentary war powers strategically and instrumentally. They will view these powers as a means or obstacle to achieving their office-seeking or policy-seeking preferences. While these strategic uses of parliamentary war powers may lead to greater debate and legislative scrutiny, an opposite effect is also possible. Parties may seek to avoid substantial debate after a military deployment vote if they feel it benefits them politically. The two case studies presented here support the contention that parliamentary war powers can lead to less effective parliamentary scrutiny and public debate about foreign military operations.

Future research is needed to examine whether parliamentary war powers have had similar negative effects in other states. Additional work is also needed to examine whether the diminishment of parliamentary debates following a military deployment vote are correlated with a similar dampening of media attention. If future research demonstrates that parliamentary war powers do not have a negative impact in other cases, it will be worthwhile to examine what conditions contributed to this effect in Canada and Germany, and whether these two countries saw a similar result following other, post-Afghanistan deployments.

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Figure 1. ISAF Deployments by Canada and Germany (2003-2014)

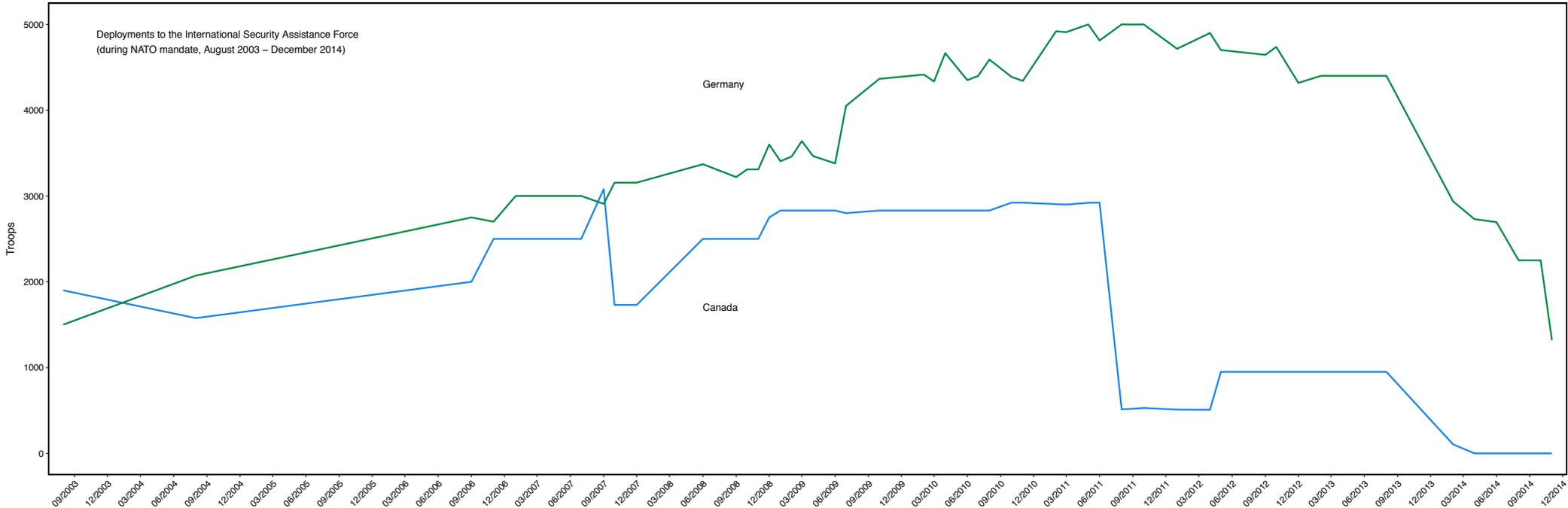


Figure 2. German Parliamentary Speeches on Afghanistan and Mandate Decisions (OEF & ISAF)

