



2018

All Party Parliamentary Group
on Drones Inquiry Report



The UK's Use of Armed Drones:

Working with Partners



A report by the All-Party Parliamentary Group on Drones

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Concluding its Inquiry into The UK's Use of Armed Drones: Working with Partners

July 2018

The All-Party Parliamentary Group on Drones examines the use of unmanned aerial vehicles by governments, and for domestic, international, military and civilian purposes.

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The purpose of the Group's Inquiry into the UK's use of armed drones with its partners was to analyse the emerging technologies of drones and the ways in which the UK works with allies with regard to use of armed drones, and to make recommendations to ensure an appropriate level of transparency and accountability for these operations exists in Parliament.

The current staff of the Group are Aditi Gupta (Coordinator) and Camilla Molyneux (Researcher). George Woodhams also provided research assistance for the report.

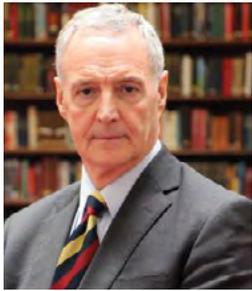
This report has been published on the Group's website at appgdrones.org.uk. Evidence relating to this report is published on the Inquiry page of the Group's website.

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Prof. Michael Clarke

Foreword

Unmanned Aerial Vehicles (UAV) or Remotely Piloted Aircraft Systems (RPAS) - both more commonly known to the general public as 'drones' - are at the tip of a technological iceberg as the revolution in robotics and information systems becomes increasingly weaponised by the significant military powers.

The All-Party Parliamentary Group on Drones initiated a special Inquiry in 2016, of which this is the official report, because its Members became increasingly concerned about the potential of drone technologies to lead significant technological changes in the way military power might be used in the near future. The Group was concerned that there seemed to be an element of complacency in the way the Government had used recent drone deployments, combined with the possibility that it was storing up trouble for itself in the future by being less than clear in its own mind - and less than transparent in its dealings with Parliament - as to how drone technologies might undermine lawful military action.

Military robotics have a long history. The German V-1 rocket was a good example of an early drone. But military analysts agree that 'weaponised robotics' are now on the verge of some truly significant developments. They will impact on all elements of warfare: in land systems, in the maritime sphere, in command and control, and not least in supply and logistics. But it is in the aerial sphere - the development of drones - that most of the current robotic applications are most advanced, most applied, and more likely to be transformative. The fact is that decisions being made now, and precedents increasingly being set now, on the way drones are employed, both for lethal and non-lethal operations, will have major effects on the protocols governing the weaponisation of robotic technologies for many years to come.

In general, the United Kingdom has had a good story to tell on the deployment of drones for a range of military purposes. Over the last two decades, the UK's use of military drones has been highly constrained and was widely regarded by other countries, and by the United Nations, as a model of responsible and ethical use. It was also regarded as different in some significant respects to the way lethal drones were used by the United States. In the Iraq War and Afghanistan campaigns, UK drones were used strictly according to battlefield needs for the protection and facilitation of UK forces operating in designated areas. But the post-withdrawal campaigns that have been ongoing since in Iraq and Afghanistan and in particular, the demands of Operation Shader to suppress the so-called Islamic State in Iraq and Syria, have diminished that record and raised some serious questions about the legality, efficacy and strategic coherence of the UK's use of drones. These doubts extend not only to its armed drones involved in lethal strikes, but also to its drone surveillance operations, and particularly to its cooperation with allies in the increasing use of drones for a range of diverse purposes.

Certainly, the UK's good record on the employment of drones has been compromised, if by nothing else then by a lack of transparency and accountability in the way the Government has reacted to increasing concerns over how drones are being used. The APPG argues that there is a political and ethical imperative for the Government to review and clarify its procedures for using drones and all the multi-national systems that back them up, lest ambiguities in the current position leave the UK dangerously exposed to legal challenges arising either from its own direct use of drones, or effective complicity in their use by others.

But alongside this imperative there is also a major opportunity for the UK to take a lead in the way international protocols are developed for the application of robotic technologies to military purposes. Its long experience of operating drones and its international reputation as a country seeking to uphold the principles of a rules-based international order suggest that the UK is well-placed to offer both a principled and a practical global lead in this area.

The weaponisation of robotics and information technologies is currently occurring at a quickening pace around the world. The western world's current adversaries have not shown themselves much constrained in their use of airpower by international conventions. Meanwhile, western powers are increasingly ambiguous about the use of military force and are not easily united around a robustly legal approach to the deployment of airpower. If by example and exhortation the UK can help create a strong international protocol on the use of drone technologies and particularly in relation to their lethal

use - then, like the Anti-Personnel Mines Convention of 1997, it will have done great service to a rules-based international order.

This Inquiry is undertaken at the service of Parliament and for use by its Members. Its material and its recommendations are designed to offer Parliamentarians the necessary information to form judgements and decide on what actions they may, or may not, choose to recommend in response. Certainly, it is the belief of the APPG that Parliamentarians can have a considerable influence in demanding greater transparency in the way the UK currently operates drones, and also in helping establish better mechanisms of accountability for the future. These, we believe, are the necessary but not sufficient conditions for the Government to deal more satisfactorily with the emerging questions that drone technologies pose for the future of lawful, and strategically effective, military action.

Prof. Michael Clarke
Chair, Inquiry Panel

Acknowledgements



Adam Holloway MP
Chair, APPG on Drones

The APPG on Drones wishes to thank the Inquiry Panel members for their time, expertise and commitment. Special appreciation must go to the chair of the Inquiry Panel, Prof. Michael Clark, its legal adviser, Prof. Dapo Akande and to Lord Hodgson of Astley Abbots, Clive Lewis MP, Lord Macdonald of River Glaven and Lucy Powell MP for their probing questions and guidance.

We are particularly grateful to all those Group members, supportive Parliamentarians, individuals, organisations and researchers who took part in this Inquiry, and especially to those who provided evidence to us in person. This includes Air Marshal Greg Bagwell, General Sir Richard Barrons, Jennifer Gibson, Sir Mark Lyall Grant, Eric King, Dr. Larry Lewis, Air Marshal Iain McNicoll, Prof. Nils Melzer, Dr. Marko Milanovic, Prof. Stuart Russell, Namir Shabibi, Dr. Tom Simpson and Chris Woods.



The Baroness Stern
Co-chair, APPG on Drones

The Group remains indebted to its staff and associates, past and present, for their professionalism, dedication and hard work in both running the Inquiry and preparing this report; in particular, report authors Cecila Evimy, Aditi Gupta and Camilla Molyneux, and former staff Harriet Hoffer, George Woodhams, Anna Thomas and Jack Stewart. We are also very grateful to Open Society Foundations for their support.

We are proud to present this report at a pivotal time in the strengthening of transparency and accountability in security policy. On behalf of the Group, we look forward to working with all concerned to strengthen this important area of UK security policy by implementing these recommendations in the months ahead.

Adam Holloway MP
Chair, APPG on Drones

The Baroness Stern
Co-chair, APPG on Drones

Recommendations

In order to ensure its actions strengthen, rather than undermine, its obligations under the rules-based international system, we call on the Government to:

I. Operational

1. Update and publish its policy on the use of drone technologies for military purposes, with explicit reference to the use of drones (a) for lethal strikes, and (b) in complex environments where allied partners are, or may be, involved.
2. Clarify the processes in place to ensure that its rules of engagement, and the UK's adherence with international law, are upheld at all times.
3. Explain to Parliament the steps it has taken, and intends to take, in response to the UN Secretary General's call to action in May 2018, to lead the creation of common protocols amongst allies on the legal and effective use of drone technologies in complex environments.

II. Legal

4. Review and revise the UK's expansive interpretation of 'imminence', as conveyed in the Attorney General's speech in January 2017, in light of the damaging influence it could have on the international rule-based order.
5. Set out its position on the geographical scope of armed conflicts with non-state armed groups. In particular, the Government should clarify its position with specific regard to two criteria under the law of armed conflict: (a) whether it considers that lethal force may be used against members of a non-state armed group that the UK is involved in an armed conflict with, when those persons are located in a different state from that in which the conflict is taking place, and (b) whether non-state actors operating across different states may be targeted in light of affiliations with other groups.
6. Publish its guidance on the principle of distinction in the context of non-international armed conflicts in order to address concern that the UK has not properly counted as civilians persons killed in airstrikes. This guidance should specifically address the 'continuous combatant' principle.
7. Focus its attention on how to apply international human rights law in situations of armed conflict (including its obligations under the European Convention on Human Rights), rather than continuing to debate whether human rights law applies.

III. Transparency and accountability

8. Publish its policy on the targeted killings of individuals in line with the precedent set by the US and Israel. This policy should include the (a) legal basis, (b) criteria used and precautions applied in the selection of targets, (c) decision-making processes,
 - (d) oversight mechanisms in place, (e) the processes in place during, and after each strike to ensure (i) that the operation was conducted in a manner that would avoid disproportionate civilian casualties, (ii) a meaningful remedy in case of any error, and (f) that the process in determining that every alternative method of neutralising a threat posed by an individual target (for example, capture) has been exhausted.
9. Establish an independent scrutiny mechanism responsible to Parliament in the event that any UK drone (armed or unarmed) is used in an operation where lethal force is also employed, particularly if that operation is undertaken outside of existing military action. Such independent scrutiny could take the form of (a) extending the mandate, with commensurate resources, of the Intelligence and Security Committee, (b) establishing a new Parliamentary Task Group with members drawn from appropriate parliamentary committees, or (c) creating the post of an

independent reviewer of such operations in the manner of the successful Independent Reviewer of Terrorism Legislation.

10. Seek, other than in exceptional circumstances, prior authorisation from Parliament if it (a) intends to operate drones for lethal or non-lethal purposes outside the circumstances of a declared military campaign, or (b) embed UK personnel with authority to prosecute drone strikes in an ally's military establishment.

11. Commit to (a) ex post facto reporting to Parliament of any use of armed drones deployed via emergency measures and without parliamentary approval; and (b) formalise automatic post-strike scrutiny of the intelligence and legal basis for such strikes.

12. Urgently re-evaluate its methodology by which civilian casualties are calculated in 'air-only' operations, and publish (for example, by making it available to the Intelligence and Security Committee) the process by which civilian casualties are (a) calculated, and (b) investigated.

13. Publish the number of UK drones in deployment, in line with transparency and reporting for conventional, manned aircraft.

IV. Partnerships

14. Make all memorandums and arrangements with other states concerning the use of drones, guidance systems and related operational intelligence available to Parliament via one of the suggested mechanisms above in recommendation 9.

15. Report regularly to Parliament with precise details (including the number, location and precise function) of all UK personnel embedded in allies' forces, with specific reference to when such personnel are involved in air operations, including the use of drones.

16. Review the mechanisms by which the role of UK personnel embedded in allies' forces should, in principle, be subjected to a higher level of parliamentary scrutiny than personnel operating within regular UK forces.

17. Report regularly to Parliament with precise details of how UK military assets (including the provision of basing facilities for drone operations) are shared with allies, and subject these arrangements to appropriate scrutiny via one of the suggested mechanisms in recommendation 9.

18. Ensure that any determination of ad hoc military cooperation with an ally involving air power is assessed against consolidated criteria in the same vein as the existing Arms Export Control Regime. This criteria should include the Government's commitment to (a) its legal obligations, (b) human rights, (c) peace and security, and (d) the security of the UK.

19. Publish consolidated guidance on the provision of intelligence for allied air strikes, with specific regard to drone operations and drone strikes, in line with best practice set by the publication of the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees in July 2010.

Are British drones flying into danger?

I) Introduction

This report will show that without clear policy and sound legal basis, UK armed drones are flying into political and operational danger, risking both harm to innocent civilians and opening up personnel to criminal prosecution. The UK's use of lethal force by drone without parliamentary approval, and its assistance to partners' lethal use of drones risks violating national and international law. As even the architects of the US drone programme raise concerns about drone policy under the Trump Administration,¹ clarity regarding UK assistance is urgently needed.

The APPG Inquiry was launched following reports on the UK's use of drones by the Intelligence and Security Committee (ISC) and the Joint Committee on Human Rights (JCHR). Both committees have found the Government's provision of information inadequate, preventing the necessary levels of oversight and accountability. Focusing on issues that remain unanswered, this Inquiry has found that:

- No parliamentary body has the mandate to holistically scrutinise armed drone policy.
- There is no means to evaluate the policy's legality due to the absence of a publicly available policy.
- The Government conducts partner operations without parliamentary approval or disclosure.
- UK use of lethal force by drones, and its assistance to partners' use of lethal force outside UK armed conflict, risks criminal liability and violations of international law.
- The UK's partnership with the US drone programme comes with serious risks, particularly under the Trump administration, and similar concerns also arise as the UK works increasingly with non-traditional partners, such as the Gulf nations.

In this report, 'working with partners' has a dual focus - operational and legal. Given its role as a proponent of the international rules-based order and a forerunner of armed drone use, the UK is uniquely positioned to advocate for a common international standard; a pressing need reiterated most recently by UN Secretary-General Antonio Guterres in May 2018.²

II) Working with partners: The operational context

We call on the Government to:

Update and publish its policy on the use of drone technologies for military purposes, with explicit reference to the use of drones (a) for lethal strikes, and (b) in complex environments where allied partners are, or may be, involved.

Clarify the processes in place to ensure that its rules of engagement, and the UK's adherence with international law, are upheld at all times.

Explain to Parliament the steps it has taken, and intends to take, in response to the UN Secretary General's call to action in May 2018, to lead the creation of common protocols amongst allies on the legal and effective use of drone technologies in complex environments.³

The UK's use of drones has been internationally regarded as a model of responsible and ethical use. However, this good record is at risk of being compromised. Since 2015, the UK appears to have been taking serious risks in its use of drones. Specific concerns have been raised about the Government's

shift towards a policy of ‘targeted killing’ as well as the legality of UK assistance to partner operations - and particularly that with its closest ally, the US.

Operating drones requires comprehensive international partnership and assistance. As drone use proliferates globally,⁴ UK asset-sharing and collaboration in partner operations will only increase - and is likely to do so dramatically as the armed services place “big bets on those technologies that we judge may offer exponential advantage”.⁵ The UK currently operates in two countries with Parliament’s approval: Iraq and Syria. In these arenas, the UK engages directly with partners through formalised structures and operates under clear legal frameworks. However, this does not come without risks. For instance, Air Marshal Bagwell described the Global Coalition as “a completely coordinated international approach”.⁶ This can become problematic when coalition personnel abide by different rules of engagement (ROE). Whilst a ‘red card’ system allows allies to recuse themselves, Air Marshal Bagwell told the Inquiry that “a British officer could well be authorising an American or Iraqi aircraft to prosecute an attack within the wider coalition mission.”

In 2015, a UK drone killed two British citizens - Reyaad Khan and Ruhul Amin - in Syria without Parliament’s approval. Speaking before the House of Commons, the Prime Minister admitted that the strike marked “a new departure” and that “this [was] the first time ... that a British asset has been used to conduct a strike in a country where we are not involved in a war.”⁷ The Government has denied that this strike signified a new policy of ‘targeted killing’, though this position continues to be challenged.⁸

Most significantly, the JCHR found the UK policy was ‘to be willing to use lethal force abroad, outside of armed conflict, when there is no other way of preventing an imminent terrorist attack’.⁹ The ISC concluded Khan had constituted a ‘significant, ongoing and imminent threat to the UK’.¹⁰ However, it also criticised the Government for withholding information necessary to make an independent judgement on the strike’s legality. Causing further uncertainty, a (now deleted) line in the Ministry of Defence (MOD) Joint Doctrine Publication on Unmanned Aircraft Systems stated that the UK had ‘a practice of targeting suspected terrorists outside of the armed conflict itself’.¹¹ This was followed by the Defence Secretary, Gavin Williamson MP stating that he would “hunt down” suspected terrorists in “Iraq and Syria and other areas.”¹² These developments make it difficult to ascertain the Government’s position. Regardless, the Government has committed to inform Parliament ahead of any strike outside of areas where the UK is party to an armed conflict.¹³

There is also growing evidence that Britain is taking on military commitments without Parliament’s explicit authorisation through assistance to partners. When this facilitates or assists partners’ lethal strikes in conflicts the UK is not a part of, there is a distinct lack of process to ensure that Parliament is informed - or its approval sought. This has raised serious questions about the legality, efficiency and strategic coherence of UK drone use.

UK cooperation: What we know

<p>Bases and assets</p> <ul style="list-style-type: none"> • The US operates four bases in the UK.¹⁴ • The UK operates and flies military drones from partner-bases.¹⁵ 	<p>Intelligence</p> <ul style="list-style-type: none"> • The UK shares intelligence with allies, some of which may inform strikes. • The UK receives intelligence from allies. 	<p>Embedded personnel</p> <ul style="list-style-type: none"> • The UK provides personnel to, and receives from, allies. • UK personnel pilot US drones.
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Considerable concerns were raised regarding UK intelligence-sharing with partners amongst many of the expert submissions made to the Inquiry. Particular concerns were raised about intelligence facilitating the US drone programme, which is widely seen to be in violation of international law. Evidence submitted to this Inquiry suggests that the UK provided intelligence that facilitated US targeted killings in Yemen, Somalia and Pakistan. With no requirement to inform Parliament about such activities - let alone any formal or appropriate oversight - there is considerable danger of the UK being complicit in its partners’ unlawful conduct.

III) Assistance to partners



We call on the Government to:

Make all memorandums and arrangements with other states concerning the use of drones, guidance systems and related operational intelligence available to Parliament via one of the suggested independent scrutiny mechanisms outlined below.

Report regularly to Parliament with precise details (including the number, location and precise function) of all UK personnel embedded in allies' forces, with specific reference to when such personnel are involved in air operations, including the use of drones.

Review the mechanisms by which the role of UK personnel embedded in allies' forces should, in principle, be subjected to a higher level of parliamentary scrutiny than personnel operating within regular UK forces.

Report regularly to Parliament with precise details of how UK military assets (including

the provision of basing facilities for drone operations) are shared with allies, and subject these arrangements to appropriate scrutiny via one of the suggested independent scrutiny mechanisms outlined below.

Ensure that any determination of ad hoc military cooperation with an ally involving air power is assessed against consolidated criteria in the same vein as the existing Arms Export Control Regime. This criteria should include the Government's commitment to (a) its legal obligations, (b) human rights, (c) peace and security, and (d) the security of the UK.

Publish consolidated guidance on the provision of intelligence for allied air strikes, with specific regard to drone operations and drone strikes, in line with best practice set by the publication of the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees in July 2010.



A substantial part of UK assistance is the sharing of intelligence, provision of bases and embedding of personnel. This is deeply problematic because Parliament is not privy to this intelligence, and almost every request for information on this topic is categorically dismissed. Likewise, there is no form of parliamentary approval or oversight sought for embedded personnel, despite remaining the legal responsibility of the UK.

It is understood that operational and security considerations must be taken into account. Nevertheless, there is existing precedent for publishing guidance on intelligence-sharing in other sensitive areas. In 2010, the Government published its Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees.¹⁶ This commendable demonstration of transparency has enabled informed debate and goes some way to address concerns in this area. We suggest that similar guidance relating to intelligence-sharing that may be used in targeted killing should also be published. In addition, a mechanism akin to the Arms Export Control Regime¹⁷ could provide vital oversight in the form of a list of consolidated criteria to assess any sharing of assets against Britain's legal obligations and the Government's commitments to human rights, security and national and regional peace and security.

IV) Legal norms and ethics: An erosion of standards?

We call on the Government to:

Review and revise the UK's expansive interpretation of 'imminence', as conveyed in the Attorney General's speech in January 2017, in light of the damaging influence it could have on the international rule-based order.

Set out its position on the geographical scope of armed conflicts with non-state armed groups. In particular, the Government should clarify its position with specific regard to two criteria under the law of armed conflict: (a) whether it considers that lethal force may be used against members of a non-state armed group that the UK is involved in an armed conflict with, when those persons are located in a different state from that in which the conflict is taking place, and (b) whether non-

state actors operating across different states may be targeted in light of affiliations with other groups.

Publish its guidance on the principle of distinction in the context of non-international armed conflicts in order to address concern that the UK has not properly counted as civilians persons killed in airstrikes. This guidance should specifically address the 'continuous combatant' principle.

Focus its attention on how to apply international human rights law in situations of armed conflict (including its obligations under the European Convention on Human Rights), rather than continuing to debate whether human rights law applies.

The UK recently shifted its position towards more expansive legal interpretations which may violate established limitations on targeting and the scope of the battlefield. The APPG is concerned that there are significant legal risks to the UK and its personnel in pursuing these interpretations. Such risks are particularly high when providing assistance to partners' drone operations without parliamentary approval or, in some cases, knowledge of operations.

Importance of Parliament's approval for operations with partners

According to the constitutional convention, the Government must seek parliamentary approval before using force abroad.¹⁸ However, this important safeguard falls short when providing assistance to partners. The current Government does not consider parliamentary approval necessary when providing assistance to allies. As cooperation is likely to increase in the future, this approach leaves an expanding oversight and accountability gap. Moreover, it leaves UK personnel and Ministers vulnerable to criminal liability in allies' unlawful strikes.

Dangers of an expanded definition of 'imminent' attacks in self-defence

The Attorney General's speech in January 2017 suggested that the UK has adopted America's dangerously expansive interpretation of the right to self-defence.¹⁹ Prior to this speech, the UK had disavowed this position when it was first set out by the US.²⁰ This widely criticised approach poses serious risks. Not only is it potentially legally incorrect, it may also erode broader restraints on the unilateral use of force by states internationally, resulting in knock-on effects to the international rules-based order. In his evidence to the Inquiry, Dr. Marko Milanovic raised this revised interpretation of permitted pre-emptive attacks, warning that:

*"The danger here is not drones, [it's] - say - North Korea. On the basis of this principle, a lawyer in the US Department of Justice can tell President Trump, 'Yes, you can nuke North Korea'. It's not a slippery slope. It's a cliff."*²¹

Dr. Marko Milanovic

Principle of distinction: Civilian or combatant?

The Government has confirmed that it will not provide a copy of its policy on targeting, or any guidance on the process to Parliament. Without this, it is impossible to determine the legality of the UK's targeting process. There is also growing concern that the UK's 'combatant' definition is overly broad. This may be the reason for the much criticised near-lack of civilian casualties reported in Iraq and Syria.²² Distinction is a fundamental principle of international humanitarian law (IHL). It is essential that the distinction process remains robust - and any attempts to expand it are restricted. Elizabeth Wilmshurst²³ and Sir Michael Wood²⁴ note that an overly expansive approach to targeting would be "contrary to the jus ad bellum and, in most circumstances, to international humanitarian law."²⁵

Stretching the definition of armed conflict: Extending the battlefield?

Central to understanding the legality of UK drone strikes, as well as its assistance to partners, is the pivotal question: 'Has this use and assistance taken place within - or outside of - a situation of armed conflict?' This is critical, because it informs the applicable legal framework determining who can be targeted and when.

The Reyaad Khan strike signified a 'new departure' in the use of armed drones between "non-international" and "conflict as confined only to overseas. The Government explained that the strike was carried out as part of the armed conflict with ISIL in Iraq.²⁶ This statement suggests that the UK does not view non-international conflicts as confined only to the country where military action was previously taking place. It remains unclear whether the UK has adopted the controversial US position that drone strikes may be carried out against members, or affiliates, of organised armed groups that the US is in armed conflict with, regardless of where those individuals happen to be located.

Greater clarity on the legal frameworks governing the use of armed force, and on the UK's definition of a 'non-international armed conflict', is therefore essential. We call upon the Government to acknowledge the following constraints:

- The use of armed force in a new country requires justification under the law on the use of force as set out in the UN Charter and in customary international law.
- In all drone strikes conducted in a non-international armed conflict, it is essential to determine whether the targeted individual is part of the same armed group, subject to a strict definition.

Putting UK personnel at risk of criminal liability

In its current form, assistance to partners is putting the UK and its personnel at risk of criminal liability. UK use of force or assistance to partners in drone strikes outside situations of armed conflict are not protected

"The possibility of criminal prosecution for complicity in murder also arises for all those UK personnel who have a role in assisting or facilitating the use of lethal force by coalition allies, such as the US, which has a much wider approach to the use of lethal force outside of armed conflict. Such assistance might take the form of logistical support, for example, permitting US jets to use UK airbases, or the provision of intelligence about targets gathered by UK surveillance and reconnaissance."²⁷

Joint Committee on Human Rights, 2016

by combatant immunity, therefore making personnel liable to prosecution for murder.

There is growing concern that the UK is likely supporting a drone programme where the US commits unlawful acts. This Inquiry has found that the support provided by the UK constitutes the provision of material assistance to a state that appears to be violating international law. As the UK knows of these allegations, the UK is likely liable under Article 16 of the International Law Commission's Articles on State Responsibility.²⁸ In the past, a rule that prohibits domestic courts from adjudicating on the legality of actions of foreign governments has shielded the Government from liability in UK courts when assisting another state in an unlawful act.²⁹ However, in January 2017 the Supreme Court ruled that the doctrine does not bar UK domestic courts from adjudicating on claims against UK authorities.³⁰ This leaves the door open for UK courts to hear future cases in which Britain has assisted a foreign state, including in relation to drone strikes.

Risks in rejecting the application of the European Convention on Human Rights

The UK's current position is that the European Convention on Human Rights (ECHR) does not apply to drone strikes, which may cause the UK to inadvertently participate in illegal activities. The JCHR has rejected this blanket position in its report on targeted killing.³¹ In testimonies to the Inquiry, Prof. Melzer and Dr. Milanovic expressed that courts would eventually find the Government's position to be wrong, with the potential for claims for significant amounts of compensation. As such, they argue, the UK should justify their actions under the ECHR.

We call on the Government to:

Publish its policy on the targeted killings of individuals in line with the precedent set by the US and Israel. This policy should include the (a) legal basis, (b) criteria used and precautions applied in the selection of targets, (c) decision-making processes, (d) oversight mechanisms in place, (e) the processes in place during, and after each strike to ensure (i) that the operation was conducted in a manner that would avoid disproportionate civilian casualties, (ii) a meaningful remedy in case of any error, and (f) that the process in determining that every alternative method of neutralising a threat posed by an individual target (for example, capture) has been exhausted.

Establish an independent scrutiny mechanism responsible to Parliament in the event that any UK drone (armed or unarmed) is used in an operation where lethal force is also employed, particularly if that operation is undertaken outside of existing military action. Such independent scrutiny could take the form of (a) extending the mandate, with commensurate resources, of the Intelligence and Security Committee, (b) establishing a new parliamentary Task Group with members drawn from appropriate parliamentary committees, or (c) creating the post of an

independent reviewer of such operations in the manner of the successful Independent Reviewer of Terrorism Legislation.

Seek, other than in exceptional circumstances, prior authorisation from Parliament if it (a) intends to operate drones for lethal or non-lethal purposes outside the circumstances of a declared military campaign, or (b) embed UK personnel with authority to prosecute drone strikes in an ally's military establishment.

Commit to (a) ex post facto reporting to Parliament of any use of armed drones deployed via emergency measures and without parliamentary approval; and (b) formalise automatic post-strike scrutiny of the intelligence and legal basis for such strikes.

Urgently re-evaluate its methodology by which civilian casualties are calculated in 'air-only' operations, and publish (for example, by making it available to the Intelligence and Security Committee) the process by which civilian casualties are (a) calculated, and (b) investigated.

Publish the number of UK drones in deployment, in line with transparency and reporting for conventional, manned aircraft.

V) Call for action: The need for accountability, oversight and transparency

It is unclear whether the Government has guidance on the use of drones, or on UK assistance to partners' use of drones, as neither have been made available to Parliament or the public. By contrast, the US and Israel have published detailed guidance that set out their policies and legal views, without evidence of this impacting their operational capabilities.³² The Government should take these same steps. Such a move would be instrumental in informing a meaningful debate about drone use and policy, and ensure compliance with the rule of law. It would also facilitate effective scrutiny and accountability.

Accountability for civilian casualties: 'Not fit for purpose'

One of the most frequently raised concerns in submissions to the Inquiry was the lack of transparency concerning civilian casualties. The UK has conducted more than 1,700 strikes in Iraq and Syria with only one confirmed civilian casualty.³³ Likewise, only one UK strike reportedly caused civilian harm in Afghanistan.³⁴ Despite questions from Members of the APPG and others, civil society and the media, the Government will not disclose further information on the grounds that 'disclosure would, or would be likely to, prejudice the capability, effectiveness or security of the armed forces'.³⁵ This lack of transparency raises serious concerns about the process of investigation and mechanisms of identifying civilian casualties. Chris Woods, director of Airwars, told the Inquiry that this repeated inability to see civilian harm suggests that the MOD aerial civilian casualties monitoring is "not fit for purpose".

Beyond civilian casualty monitoring

Reports also show that drones have implications beyond the taking of life. Local populations experience psychological trauma, economic loss and are preemptively restricted in movement.³⁶ This is most prevalent in Yemen and Pakistan where drone use is extensive.³⁷ We call on the Government to remember in its assessments of civilian harm that protracted, or large scale use of drones have far-reaching effects in the societies impacted.

Limited powers: Scrutiny of operations and investigations

Not one parliamentary committee has the mandate to conduct comprehensive investigations into all aspects of a drone strike. Whilst the Defence Committee and ISC scrutinise certain aspects of strikes, a potential gap between their respective mandates may be preventing complete and effective parliamentary scrutiny. Moreover, any scrutiny of intelligence used for targeted killing is at the discretion of the Prime Minister. This is highly unsatisfactory, particularly in light of the Prime Minister's decision to block an ISC investigation into a US strike that killed UK citizens - and despite the UK working 'hand in glove' with its ally.³⁸ As partner operations will only increase in the future, we echo the JCHR's recommendation to widen the ISC's mandate, thereby facilitating more effective scrutiny.

VI) The UK as a global standard setter?

The use of armed and unarmed military drones is set to proliferate. Today, twelve states have deployed armed drones.³⁹ More states yet will use drones to collect intelligence.⁴⁰ Without international common standards, each state will have varying views on policy and legality. The current use of armed drones by the UK and its allies is setting a dangerous precedent and raises challenges to long-held principles of international law. Moreover, it may have a major effect on the protocols governing weaponisation of robotic technologies in the future. To date, the UK's traditional allies fail to agree on an appropriate policy. However, this should be seen as a golden opportunity for the UK to use its experience and international position to take a leading position in efforts to establish robust international protocols for the use of drones and related technologies.

VII) Conclusion

The Government's failure to publish its guidances on the use of drones and on its assistance to partners significantly impeded the Inquiry. Without a clear legal basis and stated public policy, UK drones run the risk of flying into danger; both in terms of civilian harm, and opening military personnel up to prosecution. It was clear from the evidence heard by the Inquiry that existing processes and mechanisms for scrutiny and transparency have failed to keep up with the rapid evolution of military capabilities, commitments and

partnerships. Only Parliament has the mandate to hold military policy and practice to account. Therefore, it is crucial that Parliamentarians from all parties echo the APPG's recommendations and call for considered policy, legal precedents and adequate scrutiny mechanisms. This will guarantee a solid foundation for future drone operations, and set international best practice moving forward.

As military drones rapidly proliferate and robotics, autonomous and artificial intelligence technologies change the nature of weaponry and warfare,⁴¹ the creation of a global legal framework is now essential. The UK's experience with drones and reputation for good practice provides an unique opportunity to lead this effort. As the Secretary of Defence, Gavin Williamson MP put it in March 2018:

“Let us not give into the demons of doubt. Instead, let us be confident. Let us be determined. And let us be resolute in our belief that, by using all our power - hard and soft - Britain will continue bringing light to a darkening world.”⁴²

Gavin Williamson MP

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- 2 European Forum on Armed Drones, *UN Secretary-General calls for action on armed drones in new disarmament initiative*, 25 May 2018, <https://bit.ly/2u1RUNe>, last accessed 8 July 2018.
- 3 For the list of recommendations in their complete form, see pg. [x].
- 4 Joanna Frew, *The next generation: An overview of new armed drone operators*, 17 May 2018, *Drone Wars UK* (<https://bit.ly/2KKTofl>).
- 5 Deborah Haynes, *Prepare for combat, says new army chief* General Mark Carleton-Smith, 20 June 2018, *Times*, <https://bit.ly/2u9RUe4>, last accessed 11 July 2018.
- 6 The Global Coalition against Daesh was formed in September 2014 (see, <http://theglobalcoalition.org>).
- 7 HC Deb 7 September 2015 vol 599 c30 (<https://bit.ly/2NqR30u>).
- 8 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing: Government response to the Committee's second report of Session 2015-16*, 19 October 2016, HC 747 (<https://bit.ly/2NqUC6P>).
- 9 HC Deb 7 September 2015 vol 599 cols 30-65 (<https://bit.ly/2NqR30u>); Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, HC 574, p.7 (<https://bit.ly/2v07Mkp>).
- 10 Intelligence and Security Committee, *UK Lethal Drone Strikes in Syria*, 26 April 2017, HC 1152, p.10 (<https://bit.ly/2lSfLdG>).
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- 12 David Willetts, *New Defence Secretary wages war on British IS fighters*, Sun, 13 November 2017, <https://bit.ly/2ADXAxX>, last accessed 4 July 2018.
- 13 HC 25918, 4 February 2018 (<https://bit.ly/2KSZlSw>).
- 14 The four bases are RAF Menwith Hill (North Yorkshire), RAF Croughton (Northamptonshire), RAF Lakenheath (Suffolk) and RAF Mildenhall (Suffolk).
- 15 Military drones do not have flight permission in the UK. Therefore, training is conducted in the US, and drones used in military operations are launched from partner bases abroad.
- 16 Cabinet Office, *UK involvement with detainees in overseas counter-terrorism operations*, 5 August 2010 (<https://bit.ly/2m8HHdj>).
- 17 Jon Lunn, *The legal and regulatory framework for UK arms exports*, House of Commons Library Research, SN02729, 4 September 2017 (<https://bit.ly/2uSsxhB>).
- 18 Claire Mills, *Parliamentary approval for military action*, House of Commons Library Research Paper, CBP 7166, 8 May 2018 (<https://bit.ly/2MSeoXP>).
- 19 Jeremy Wright QC MP, *Speech at the International Institute for Strategic Studies on the modern law of self-defence*, 11 January 2017, Office of the Attorney General, <https://bit.ly/2igDccE>, last accessed 9 July 2018.
- 20 Lord Goldsmith, *Advice on the legality of military action against Iraq without a further resolution of the Security Council*, 7 March 2003 (<https://bit.ly/2NxiiGH>).
- 21 Dr. Milanovic is associate professor of law at the University of Nottingham School. His oral evidence to the Inquiry is available at <https://bit.ly/2u3jedU>.
- 22 HC 120695, 8 January 2018 (<https://bit.ly/2JbFSW9>); Samuel Oakford, *Former RAF commander: British claims of zero civilian deaths 'not credible'*, 10 January 2018, *Airwars*, <https://bit.ly/2mbPc3r>, last accessed 11 July 2018.
- 23 Ms Wilmshurst CMG is a distinguished fellow at Chatham House, professor of international law at University College London and was deputy legal adviser at the FCO, 1999-03.
- 24 Sir Michael is a member of the UN International Law Commission and was the principal legal adviser at the FCO, 1999-06.
- 25 Elizabeth Wilmshurst and Michael Wood, *Self-defense against non-state actors: Reflections on the 'Bethlehem Principles'*, April 2013, *American Journal of International Law*, 107(2), pp. 390-395 (<https://bit.ly/2MRppsw>).
- 26 HC Deb 20 December 2017 vol 633 c60WS (<http://bit.ly/2zxvQzh>).
- 27 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, HC 174, pg. 24 (<https://bit.ly/2v07Mkp>).
- 28 UN General Assembly, *UNGA resolution 56/83: Responsibility of states for internationally wrongful acts*, 28 January 2002, A/RES/56/83 (<https://bit.ly/2LOGnUF>).
- 29 For example, in 2012 a Pakistani man, Noor Khan - whose father was killed in a US drone strike - sued the Government for allegedly providing the US with the intelligence that made the strike possible. The case was eventually dismissed by the Court of Appeal in 2014, which ruled that it could not make a judgement about a case hinging on the actions of a foreign country, except in exceptional circumstances. For more information, visit the Reprieve website (<https://bit.ly/2zcT7q8>).
- 30 Belhaj and another v Straw and others [2017] UKSC 3 (<https://bit.ly/1GSIQhN>).
- 31 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, HC 574 (<https://bit.ly/2v07Mkp>).
- 32 Emily Knowles and Abigail Watson, *All quiet on the ISIS front? British secret warfare in an information age*, Oxford Research Group Remote Warfare Programme, 31 March 2017, p.28 (<https://bit.ly/2u3ieWA>); Chris Woods, *Sudden justice: America's secret drone wars*, 13 May 2015, Oxford University Press.
- 33 BBC News, *Syria war: MoD admits civilian died in RAF strike on Islamic State*, 2 May 2018, <https://bbc.in/2Jaz37d>, last accessed 10 July 2018.
- 34 Nick Hopkins, *Afghan civilians killed by RAF drone*, 5 July 2011, *Guardian*, <https://bit.ly/2K0X2yQ>, last accessed 10 July 2018.
- 35 HC 59422, 10 January 2017 (<https://bit.ly/2tZkXRD>).
- 36 Camilla Molyneux, *Women living under drones: The Yemeni experience*, 2018 (forthcoming); James Cavallaro et al, *Living under drones: Death, injury and trauma to civilians from US drone practices in Pakistan*, 25 September 2012, Stanford University (<https://stanford.io/2jC5IM9>)
- 37 Ibid.
- 38 Claire Phipps et al, *'High degree of certainty' that US strike killed Mohammed Emwazi*, *Guardian*, 13 November 2015, <https://bit.ly/2MPLJr8>, last accessed on 4 July 2018
- 39 US, UK and Israel operate US-made drones. Nigeria, Pakistan, Saudi Arabia, Iraq, UAE and Egypt all operate Chinese-made drones - and four other countries are thought to have recently taken possession of, or be in discussions about the sale of, Chinese drones. See, *Drone Wars UK, Drone wars: Next Generation, An overview of new armed drone operators*, <https://bit.ly/2KKTofl>, last accessed 9 July 2018.
- 40 A number of studies by think tanks and NGOs over the last few years have shown that military drone technology has spread to over 90 countries, see *Drone Wars UK, Drone wars: Next Generation*.
- 41 Ministry of Defence, *British Army set to redefine warfare with joint Autonomous Warrior*, MOD Press Office, 20 June 2018, <https://bit.ly/2madGtG>, last accessed 11 July 2018.
- 42 Gavin Williamson MP, *Hard as well as soft power: Defence Secretary Gavin Williamson outlines the case for a modern defence*, Ministry of Defence, 15 March 2018, <https://bit.ly/2FNyBef>, last accessed 10 July 2018.

Introduction

In the wake of two inconclusive parliamentary inquiries,¹ this Inquiry - undertaken by Parliamentarians, for Parliamentarians - seeks to interrogate current UK policy and practice, and considers the precedents being set in terms of the legal basis, procedure and oversight for both the UK's own drones policy - and how the UK works with partners.

Methodology and scope

This cross-party Inquiry is the culmination of just under two years of work, bringing together expertise from academics, lawyers, civil society and the armed forces. It collated evidence from 28 individuals through six oral evidence sessions via an open call for submissions and evidence.²

More than merely an aircraft, remotely piloted aircraft - commonly referred to as 'drones'³ - represent the tip of a complicated system of integrated intelligence gathering, surveillance and targeting capability between intelligence and military bodies, often involving multiple states. This report focuses its attention on military drones. While the Inquiry's focus is on partner operations⁴, a number of UK-specific issues play into our drone partnerships. Therefore, the scope has been broadened to capture some of the themes covered in this report - from the UK's legal definition of 'imminence', to suggestions of its own targeted killing policy, and its position on future technological trends.

Drones as a key military asset

Drones range in size and capability: from tiny helicopters weighing less than 200g, to the Global Hawk, a long endurance aircraft flying at up to 60,000 feet.⁵ In addition to a wide range of smaller unmanned aircraft, the UK currently has a fleet of 10 MQ-9 Reapers, which is set to be replaced in 2024 with a fleet of more than 20 Protector aircraft.

Drones have many potential military uses, from surveillance and reconnaissance, to collecting intelligence and identifying potential targets (functioning primarily as part of military ISR or ISTAR).⁶ Drones can also be armed to attack targets on the ground. In UK forces, only the MQ-9 Reaper drone currently carries missiles and has a strike capability.

Armed and unarmed drones have rapidly become an integral UK military asset. As General Sir Richard Barrons told the Inquiry,⁷ they have now become "a normal part of the business of gathering intelligence and conducting precision strike operations."⁸ In the words of the most recent UK military doctrine of August 2017, "the last five years have seen much of the business of operating unmanned and remotely piloted aircraft normalised."⁹

UK Government position on drone use

The UK military has expressed the view that there is no reason for the public to mistrust the use of drones, armed or otherwise.

Armed drones, it is said,¹⁰ are in essence no different to manned aircraft - the pilot simply operates the aircraft remotely, rather than from the cockpit. The same laws and rules of engagement govern manned and unmanned strikes; and that framework of laws and rules is clear and well known, with any strikes conducted in compliance with it.¹¹ This view is also supported in the joint doctrine publication on unmanned aircraft systems (known as JDP 0-30.2)¹² and was reflected by the military experts who gave evidence to the Inquiry.¹³

The UK Government and military maintain that drone technology enhances, rather than undermines, civilian protection and is in compliance with legal norms. In his evidence to the Inquiry, Air Marshal Greg Bagwell explained that:¹⁴

"In my view, there is no difference between a remotely piloted aircraft system and a manned system. I would argue that the system that they operate in is more aware, more informed, more capable and in a much calmer environment because it's not in combat; and that actually the decision-making process that goes into decisions to strike are supremely better. So remotely piloted air systems are not a bad thing."

The view that drone use, in principle, may enhance protections for civilians and compliance with legal norms has also been acknowledged by the UN Special Rapporteur¹⁵ and by the Birmingham Policy Commission in its influential 2014 report¹⁶

Concerns raised about UK drone use

Nevertheless, the use of drone technologies remains controversial. There have been a number of international reports and commentaries on different aspects of drone use. In the UK, Parliament's Joint Committee on Human Rights (JCHR), the House of Commons Intelligence and Security Committee (ISC), and Amnesty International¹⁷ have all considered controversial aspects of drone use.

Indeed, the evidence submitted to this Inquiry raised various concerns that:

1. The availability of drone technology has led to an increased and illegitimate use of lethal force abroad - and that this use erodes international legal norms.
2. UK drone strikes have caused civilian casualties, so far unacknowledged by the Government.
3. The UK has been complicit in illegal drone strikes conducted by other states.
4. The policy and guidance regarding cooperation with other states' drone strike programmes is either lacking or unaccountable, or both.

Overall, the Government's policy and practice regarding drone use is accused of being opaque, ambiguous and effectively unaccountable, and especially when that practice involves partnerships.

The use of drones by the UK's closest ally, the US, is of particular concern among critics. The US legal position, which stretches the definition of 'imminence' into the sphere of pre-emption, the lack of transparency and the resulting high numbers of civilian casualties has resulted in international criticism from governments and civil society. In respect to the UK, there are concerns about the UK's role in the US programme given its close intelligence sharing and military relationships with the US Government, and the potential liability the UK - and UK personnel - may incur if it partners with the US in such situations. Indeed, in recent correspondence with Stewart McDonald MP, Minister of State for the Armed Forces, Mark Lancaster MP stated that when addressing threats outside of armed conflict, the UK does "work with allies who may be able to disrupt and negate the threat".¹⁸

This risk has become more acute as a result of policy shifts undertaken by the Trump Administration, which has significantly expanded the US drone programme, and rolled back safeguards on the targeting of drone strikes, which increases the likelihood that UK personnel will be exposed to legal risk.^{19 20}

Implications for the future

This report takes account of the Government's and the military's stated position on the use of drones alongside criticisms that have been levelled against that position. The APPG views with concern the lack of consensus regarding the ethical, legal and strategic implications of the use of drones, and the impact this lack of clarity has, and will have, on the UK's partnerships. These concerns are magnified when future trends, of which drone operations are very likely to be a central feature, are taken into account.

1.First, drone technologies are only the beginning of a wider technological revolution in robotics, computing and the application of artificial intelligence (AI) to military operations. The ways in which even relatively simple aerial drones are used today will set a course for how much more complex drone and robotic devices are likely to be employed in the future.

2.Second, the troubled international environment in which these technologies have (mainly) been employed appears to be persistent. They are often used in complex conflicts within spaces that lack central government control. These spaces can be easily occupied by non-state groups in theatres of civil war, and the continuing evolution of international terrorist campaigns - all of which remain prevalent in South Asia and across the Middle East; both areas of strategic importance to Britain. The UK has not - and so far cannot - employ drones in Europe, though growing tension and instability across the continent suggests that the temptation and rationale to use drones in European theatres is also likely to rise.

3.Third, the efficient use of drone technology increasingly depends on partnerships between allies: to share intelligence and necessary infrastructures for drone use, as well as foreign bases and all other air and ground operations of which drone flights are a necessary part. Like artillery or manned aircraft sorties, drones are not a stand-alone military capability; they are used as part of integrated

military campaigns. And such campaigns, particularly for countries such as the UK, are characteristically conducted via coalition partnerships. UK protocols for the legal and proper use of drones must also be set in the context of the international partnerships that are involved in their operational use. These partnerships are likely to extend and deepen as the robotics revolution becomes a military reality.

For these three key reasons, the APPG advocates that the ethical and legal bases on which the UK employs its drones (armed and unarmed) and the way it develops partnerships must be made more robust. As future trends unfold, any weakness in the UK position will likely be magnified as the use of drones and other robotic devices proliferate.

The UK's key role on the international stage means it is in a good but improvable position to help create robust international protocols that can then be shared between western military partners which work together regularly in military operations. UK foreign and security policy recognises a fundamental national interest in maintaining a 'rules-based international order'.²¹ The APPG believes that drone technology is a vitally-important area in which the UK's practical commitment to that stated national interest has already been tested, and will likely be tested more severely in the immediate future. The opportunity to set internationally robust standards must therefore be seized, and led by, the Government.

Structure of this report

This report is structured as follows:

Chapter 1: Operational context

Chapter 2: Legal norms and ethics - An erosion of standards?

Chapter 3: Accountability, transparency and oversight

Chapter 4: Future technological trends

1. Joint Committee on Human Rights inquiry into the UK Government's policy on use of drones for targeted killing (<https://bit.ly/2udRNNW>) and Intelligence and Security Committee inquiry into UK lethal drone strikes in Syria (<https://bit.ly/2KH2NhF>).

2. See, appendices 2 and 3 for the full list

3. The military preference is for the term 'remotely piloted aircraft' (RPA) which refers to the aircraft itself, and 'remotely piloted aircraft system' (RPAS) referring to the aircraft, together with the operator and system that supports it. The terms 'unmanned aircraft' and 'unmanned aircraft system' or 'unmanned aerial vehicle' (UAV) are also used.

4. See appendix 5 for the Inquiry terms of reference.

5. US Air Force, RQ-4 Global Hawk, 27 October 2014, <https://bit.ly/2u7AOxx>, last accessed 11 July 2018.

6. ISR or ISTAR refers to intelligence, surveillance, target acquisition and reconnaissance. It is a military capability that generates and delivers specific information and intelligence to decision-makers at all levels in support of the planning and conduct of operations; see, Defence Committee, *The contribution of unmanned aerial vehicles to ISTAR capability*, 15 July 2008, HC 535 (<https://bit.ly/2KDVmI4>).

7. General Sir Richard Lawson Barrons was Commander Joint Forces Command until April 2016. His evidence to the Inquiry is available at <https://bit.ly/2MSPTd2>.

8. Ministry of Defence, JDP 0-30.2: Unmanned aircraft systems, 12 September 2017, pg. 5 (<https://bit.ly/2zusE7F>) which states that 'the last five years have seen much of the business of operating unmanned and remotely piloted aircraft normalised.'

9. *Ibid.*

10. Wg Cdr Damian Killeen, *Future force or force multiplier? An analysis of manned/unmanned platforms and force balancing for Future Force 2020 and beyond*, 3 June 2012, Ministry of Defence Research Paper, JSCSC, 2012-13 (6) (<https://bit.ly/2umS01b>).

11. HC Deb 1 December 2015 vol 603 c62WH (<http://bit.ly/2ump4qc>).

12. Ministry of Defence, JDP 0-30.2: Unmanned aircraft systems, pg. 39.

13. However, Air Marshal McNicoll told us he did not think the application of international humanitarian law and human rights law to some drone strikes was clear. He was appointed Deputy Commander (Operations) at RAF Air Command in 2007, in which he served until his retirement in 2010. His evidence to the Inquiry is available at <https://bit.ly/2MSPTd2>.

14. Air Marshal Greg Bagwell served as the Deputy Commander (Operations) at RAF Air Command until his retirement in 2016. His evidence to the Inquiry is available at <https://bit.ly/2MSPTd2>.

15. Ben Emmerson, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/68/389, 18 September 2013, pg. 23 (<https://bit.ly/2LOvS42>).

16. Birmingham Policy Commission IV, *The security impact of drones: Challenges and Opportunities for the UK*, University of Birmingham, 22 October 2014 (<https://bit.ly/2KW0jvo>).

17. Amnesty International, *Deadly assistance: The role of European states in US drone strikes*, 19 April 2018, ACT 30/8151/2018 (<https://bit.ly/2KBQV0H>).

18. Mark Lancaster MP, *Letter from the Minister of State for the Armed Forces to Stewart McDonald MP*, 17 January 2018.

19. Greg Miller, *Why CIA drone strikes have plummeted*, 16 June 2016, *Washington Post*, <https://wapo.st/2ziiBLZ>, last accessed 8 July 2018.

20. Missy Ryan et al, *Accelerating Yemen campaign, US conducts flurry of strikes targeting Al-Qaeda*, 2 March 2017, *Washington Post*, <https://wapo.st/2KXvink>, last accessed 8 July 2018; Idress Ali and Grant McCool, *Trump grants US military more authority to attack militants in Somalia*, *Reuters*, 30 April 2017, <https://reuters/2MXSFOo>, last accessed 8 July 2018; Charlie Savage and Eric Schmitt, *Trump poised to drop some limits on drone strikes and commando raids*, 21 September 2017, *New York Times*, <https://nyti.ms/2jQcYn0>, last accessed 8 July 2018.

21. Ministry of Defence, *Raising the bar for regional security cooperation: Gavin Williamson's speech at the 2018 Shangri-La Dialogue*, 6 June 2018, <https://bit.ly/2MZ5tnK>, last accessed 8 July 2018.

CHAPTER 01

The Operational Context

About the UK drone fleet:¹

- At present: 10 "MQ-9 Reapers"
- By 2024: 20 or more "Protectors"¹ (updated replacement model)

About the MQ-9 Reaper:²

- Developed by General Atomics³ Aeronautical system (for the US; purchased by UK)
- Only UK drone that can be armed and carry out air-to-ground strikes⁴
- Operated by crews of pilots, sensor operators and mission intelligence co-ordinators from ground control stations in the UK, US and elsewhere;
- Originally designed to carry out intelligence, surveillance and reconnaissance (ISR) missions
- Carries surveillance sensors; video feeds relayed to ground stations
- Infrared and laser targeting system
- Ability to loiter over targets
- Medium altitude and long endurance ²

MQ-9 REAPERS



CURRENT UK FLEET 10x planned fleet 20x



SPEED
250 knots



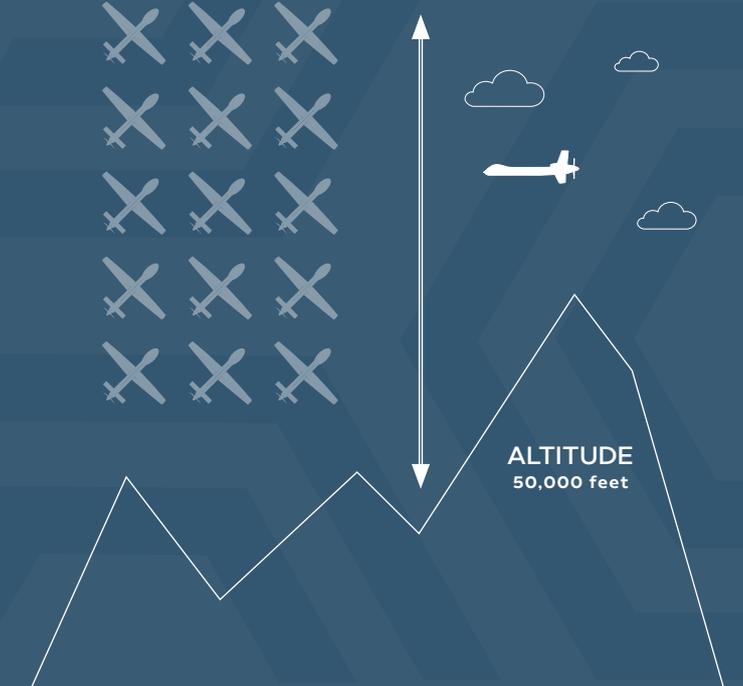
RANGE
1,000 Miles



BATTERY
14+ Hours



LIVE
Video



The UK's military operations are normally conducted in close collaboration with allies and other partner states.⁵ The UK's closest relationships are with its longstanding allies, and in particular, with NATO countries. These include the US, Canada, European NATO partners, Australia and New Zealand. Increasingly, the UK works with a wider group of partners on operations. In Iraq and Syria, for example, the UK has worked closely with Arab nations.⁶

This Inquiry focuses on how we engage with these partners, and outlines the risks surrounding the methods by which we engage (whether directly, or through collaboration), the lack of transparency around drone operations in particular, and the diminishing capacity of Parliament to scrutinise these operations and hold them to account.

Collaboration with allies: An increasing strategic imperative

The UK's National Security Strategy and successive doctrinal statements are all based on a presumption that ever closer collaboration with a range of military partners is likely in future UK operations.⁷ As General Barrons told the Inquiry,⁸ collaboration with allies and partners has become an "inescapable strategic imperative".⁹

In the case of Iraq and Syria, Air Marshal Bagwell told the Inquiry:¹⁰

"If you go into HQ currently conducting operations for Iraq and Syria, you won't see a lot of different flags. You will see a completely coordinated, international approach. It is seamless. Of course, different nations may be doing different functions and performing different operations, but collaboration is absolutely part of it, and that includes Arab nations as well. The collaboration already exists."

Air Marshal Bagwell

Drone operations require a high degree of international collaboration. Many small military drones, and particularly those used in local tactical situations, will be controlled by UK forces alone and are not concerned with launching lethal weapons. Nevertheless, MQ-9 Reaper drone operations span the tactical and strategic levels and their operations normally require the close cooperation and/or consent of other nation states for legal, technical and geographical reasons.

Aviation regulations dictate that Reapers cannot be flown in the UK.¹¹ By law, therefore, every UK Reaper flight must take off and land from the territory of a foreign state and fly over

foreign airspace. The training of UK operators takes place in the US. In written evidence to the Inquiry, it was suggested by Drone Wars UK that the UK is not yet able yet to fully operate Reapers without the technical assistance of the US.¹² This means that the UK has to rely on US-owned equipment and processing capabilities, the cost of which is currently unknown. In addition, the interdependency and sprawl of drone operations indicates potentially high running costs between partners from the outset.¹³ The efficient use of drones in the future will therefore require high levels of alliance, partnership and cooperation with a number of countries, all of which could come with significant cost implications.

In reality, a UK-US Memorandum of Understanding permits RAF personnel to operate US MQ-9 Reapers - and US Air Force personnel to operate UK MQ-9 Reapers - in the US Central Command (CENTCOM) area, which includes Iraq, Syria and Afghanistan. In Afghanistan, UK personnel have flown US Reapers on over 500 sorties, primarily because of a lack of UK reapers available for use.¹⁴ In principle, this type of asset sharing may arise with other states which have acquired MQ-9 Reapers, including France and Italy. A NATO MQ-9 Users Group consisting of the US, UK, France and Italy, "aims to cooperatively defray MQ-9 operational costs and enhance interoperability, in addition to sharing operational concepts, and pooling training, logistics and operational simulation."¹⁵ As current UK military doctrine states, "it is incumbent on all future unmanned and remotely piloted programmes that interoperability is designed in, and resourced at, the earliest stages of capability development."¹⁶

Operations authorised by Parliament

The UK has been engaged in three countries where Parliament has authorised military action: Afghanistan, Iraq and Syria. Collaboration with partners in these theatres is direct, through formalised structures and mandated by Parliament to carry out combat operations.

This form of collaboration comes with its own set of risks around negotiating differing rules of engagement between partners. For example, Air Marshal Bagwell explained to the Inquiry that there may be geographical or legal boundaries between what particular nation states within a coalition can do which precludes collaboration. A 'red card' system allows allies to recuse themselves where national rules of engagement do not allow involvement in a given operation. Nevertheless, Air Marshal Bagwell told the Inquiry that:

"[at] the far end of the spectrum, and it happens now, a British officer could well be authorising an American or Iraqi aircraft to prosecute an attack within the wider coalition mission."

Air Marshal Bagwell



UK Reaper operations in Afghanistan, Iraq and Syria



Afghanistan: The UK first acquired MQ-9 Reapers for operations in Afghanistan, striking targets and providing close air support to British ground troops who were engaged in operations. The first reconnaissance flights were conducted in 2007 and the first armed strike in 2008. According to the UK Government, there were 5,262 sorties by MQ-9 Reapers in Afghanistan between 2008 and November 2014.¹⁷ In September 2013, it estimated that the percentage of Reaper sorties involving the release of a weapon was 5-10%.¹⁸ ISAF¹⁹ ceased combat operations and was disbanded in December 2014. By this date, the UK had withdrawn its fleet of MQ-9 Reapers from Afghanistan.



Iraq and Syria: In September 2014, Parliament voted in favour of military action in Iraq following a formal request by the Government of Iraq for assistance in light of the ISIL attacks earlier that year. Airstrikes were authorised in support of Iraqi and Kurdish security forces fighting ISIL. Ground combat operations and airstrikes in Syria were explicitly excluded, though a year later on 2 December 2015, Parliament subsequently approved airstrikes against ISIL (only) in Syria.²¹ In fact, the UK had been flying regularly MQ-9 Reaper sorties in Syria (for reconnaissance purposes) since October 2014.

The UK Government confirms the number of aircraft deployed to operations over Iraq and Syria, but has refused to confirm how many MQ-9 Reapers are operational. Up to 31 March 2018, MQ-9 Reapers have flown 1,311 sorties in Iraq, with 334 sorties firing weapons (25%), and 1,293 in Syria, with 214 sorties firing weapons (17%).²³ In 2016, the Ministry of Defence (MoD) confirmed that no strikes have been conducted outside the Iraq-Syria conflict zone. The APPG is not aware of any to date.

Crucially, information regarding UK collaboration in these theatres has an expectation of transparency, and Parliamentary bodies, such as the Defence Select Committee, are mandated to scrutinise and evaluate these operations, enabling informed debate within Parliament.

Operations conducted without Parliamentary approval

In recent years, the UK's use of armed drones has been at the forefront of evolving applications of the use of force in foreign operations. In 2015, the UK Government utilised armed drones in Syria to target and kill British citizens for the first time - and without parliamentary approval for any operations in Syria. This has raised concerns that the UK Government has adopted the controversial practice of extra-judicial 'targeted killing', similar to that carried out by the US and Israel.

Furthermore, there is evidence that the UK is taking on growing military commitments in areas where Parliament has not explicitly authorised military action through collaboration with partners. For drone operations, this takes the form of intelligence gathering and sharing, the provision of bases, and embedding personnel within partner forces. This indirect engagement takes place without any formal requirements to inform Parliament, bypassing the need for debate and scrutiny by Parliamentarians..

Does the UK have a policy of targeted killing by drone?

Targeted killing:

- The term 'targeted killing' is not defined in international law, but is the name given to policies publicly espoused by Israel, and then the US, in their counter-terrorism efforts under which lethal force is deliberately used against an individual who is specifically identified in advance.
- "Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal."²⁴
- This is why, when the UK Government undertakes a premeditated strike against a particular individual, it is vital to be absolutely clear whether the strike has taken place in the context of an armed conflict or not.

The strike on Reyaad Khan and Ruhul Amin: 'A new departure'

On 21 August 2015, a UK drone strike in Syria targeted and killed, among others, two British citizens, Reyaad Khan and Ruhul Amin who were working with ISIL. Crucially, this strike occurred before Parliament had given consent to air strikes outside the Iraq theatre of operations.

Speaking before Parliament, Prime Minister David Cameron admitted that this drone strike marked

*“a new departure” and that “this [was] the first time ... that a British asset has been used to conduct a strike in a country where we are not involved in a war.”*²⁶

Prime Minister David Cameron

Though the UK Government subsequently denied it operated a policy of ‘targeted killing’, the JCHR concluded that the UK was operating a policy of using lethal force outside zones of declared armed conflicts as a last resort, but felt it had insufficient information on whether this strike was lawful under the Law of War.²⁷ The ISC also reviewed the case and concluded that Khan had constituted a ‘significant, ongoing and imminent threat to the UK’²⁸. However, the ISC criticised the UK Government for failing to provide it with the material necessary to make an independent judgement on the legality of the strike under the doctrine of self-defence.

The UK Government continues to deny operating a policy of ‘targeted killing’, however the precedent set by the Khan strike, and the conclusion of the JCHR Inquiry, may suggest otherwise. An acknowledgement of this policy was also suggested by a line stating ‘worries’ regarding the use of drones may arise from ‘UK, and other states’ practice of targeting suspected terrorists outside of the armed conflict itself’ in an earlier version of the MOD joint doctrine on unmanned systems²⁹ This line, however, was deleted and a new document was uploaded in its place.³⁰ Recent comments by ministers³¹ supporting the use of lethal force to “hunt down” and kill suspected terrorists in “Iraq and Syria and other areas” have caused further confusion, making it difficult to pin down what position the UK Government endorses.³²

Whatever its policy, the UK Government has committed to inform Parliament should it take any strike outside of areas where the UK is party to an armed conflict. We welcome this commitment despite the concerning lack of clarity on the UK position.

Working with partners: Collaboration in other targeted killings?

The commencement of any UK combat operation in a specific territory would now normally require a vote in Parliament - or - at least require the UK Government to report back retrospectively, as in the case of the Reyaad Khan strike. However, when capabilities - such as intelligence, bases and embedded troops - are provided to facilitate or assist partners’ lethal strikes in conflicts the UK is not considered to be a part of, there is a distinct lack of oversight and scrutiny to ensure that Parliament is informed, or its approval sought.

Types of assistance to partners include:

- Intelligence sharing
- UK personnel embedded with armed forces of allied states
- Sharing of assets and provision of UK bases

Intelligence-sharing

The UK has a long history of sharing intelligence with other countries. The UK is part of the ‘Five Eyes’ alliance, a 70-year-old integrated global surveillance network which includes the US, Australia, Canada and New Zealand. In a range of agreements, known as the UKUSA Agreement, the US and UK committed to sharing intelligence in what is now one of the deepest and most comprehensive intelligence sharing relationships in the world.³³ The UK’s most recent National Security Strategy and Strategic Defence and Security Review states that the extent of UK-US cooperation is ‘unparalleled’, including on intelligence, and plays a vital role in guaranteeing the UK’s national security.³⁴

The vast majority of UK drone sorties are to gather intelligence, most of which is naturally shared with operational allies. Air Marshal Bagwell told the Inquiry that:

“We already prosecute targets in a coalition that may well have come from a different intelligence feed or another nation’s aircraft, and vice versa. We often provide intelligence to one nation which they can use to prosecute targets. As long as that is within the agreed Rules of Engagement and Principles, then that is absolutely fine. This gives you maximum flexibility. So collaboration generally is a good thing.”

Air Marshal Bagwell

Provision of intelligence to the US drone programme: Syria

The UK has shared intelligence in order to aid US drone strikes in a number of countries, and controversy has arisen regarding the extent to which Parliament should have a say on the matter. In

August 2015: Junaid Hussain strike

According to a senior US official, UK and US officials met months in advance and decided that Hussain and other prominent UK citizens in ISIL should be captured or killed.³⁶

The UK has admitted involvement in this successful strike against Junaid, but has refused to disclose whether it was similarly involved in the first strike attempt, or if it was consulted before that strike. This failed strike missed its target, instead killing three civilians.³⁷

Hussain's wife, Sally Jones, a UK citizen who had joined ISIL and was believed to be a propagandist and recruiter, was also killed by a US drone strike - alongside her 12-year-old son - in October 2017. However, it remains unclear what role the UK may have played in this strike.³⁹

November 2015: Mohammad Emwazi (‘Jihadi John’) strike

The Prime Minister publicly confirmed that there had been close collaboration with the US. In a statement to Parliament on 13 November 2015, he said:

“We have been working with the US around the clock to track him down. This was a combined effort. And the contribution of both our countries was essential. I want to pay tribute to all those professionals in our own security and intelligence agencies and armed forces for the extraordinary work they do on behalf of our country. On this, as so often, they have been working hand in glove with their American colleagues. We are proud of them.”⁴⁰

Emwazi was located either by GCHQ or MI6 who then gave this information ‘to the Pentagon, enabling the operators of an armed Predator drone already in the sky above Raqqa to spot the car in which he was travelling.’⁴¹

Syria, for example, before Parliament gave authorisation for the UK to undertake strikes itself, Foreign and Commonwealth Office Minister, Tobias Ellwood MP admitted the UK was “providing intelligence and surveillance to support coalition partners, who are carrying out air strikes in Syria against ISIL.”³⁵

Provision of intelligence to the US drone programme: Setting new precedents

More concerning and controversial is the UK's collaboration with allies, and in particular, the US, in areas outside the conflict zones of Iraq and Syria. The US has employed armed drones since 2002 against terrorist targets in Pakistan, Yemen, Somalia, Libya - and

possibly elsewhere - in a programme of targeted killings.⁴² The legality of the US programme has been widely challenged by UN bodies,⁴⁹ governments⁵⁰ and civil society.⁵¹ Likewise, it has been widely criticised for causing a large number of unacknowledged civilian deaths⁵² on an impermissibly wide interpretation of international law. The programme has been further criticised for its secrecy, since it was only acknowledged in 2012⁵³ - after a decade of operations.⁵⁴ It was also criticised for its counter-productivity⁵⁵ by some of its own Generals⁵⁶ and security advisors.⁵⁷



The US under President Trump has dramatically escalated its drone programme, with a reported rollback of the safeguards instituted by the Obama Administration:⁴³

- Drones strikes taken in Yemen in 2017 tripled as compared with the number of strikes taken by President Obama in 2016, with an estimated 181-235 people killed.⁴⁴
- President Trump has also increased the number of US special forces raids in the country.⁴⁵
- Strikes in Somalia in 2017 almost equalled the number of strikes taken in the previous fifteen years combined.⁴⁶
- President Trump has resumed strikes in Pakistan.⁴⁷
- The US has also begun drone strikes in Niger.⁴⁸

Intelligence ties between the UK and US are so closely intertwined that it is “inevitable” that information has been passed to the US that has been used to target drone strikes in covert campaigns such as Pakistan and Yemen. He added that “it would be absurd if it were not the case.”⁵⁸

Ben Emmerson



+ SOMALIA:

The deaths of two British men by separate US drone strikes in Somalia in 2012 appear to implicate the UK in providing intelligence that contributed to their deaths.

The two men travelled between the UK and Somalia for a number of years and were suspected of being affiliated with Al-Qaeda.⁵⁹

The Economist claimed that after el-Berjawi was injured in a failed US strike in Somalia, he called his wife and the ‘telephone call seems to have been traced by British intelligence and the coordinates passed on to the Americans’ - soon after this, el-Berjawi was killed by a US drone.⁶⁰

In September 2010, the UK Government revoked the passports of both men under the British Nationality Act 1981, severing its legal obligations to uphold their rights as citizens; a move that may have paved the way for their assassination.⁶¹



+ PAKISTAN:

The Snowden documents revealed a 2008 memo from the UK documenting ‘surveillance of two specific sites and an overview of satellite-phone communications of the Federally Administered Tribal Areas’, the area which has seen the largest share of US drone strikes in the country.⁶²

A document from June 2009 also shows GCHQ speaking about its ability to provide ‘tactical and strategic [signals intelligence] support to military operations in-theatre, notably Iraq and Afghanistan, but increasingly Pakistan’.⁶³

Based on this information,⁶⁴ a case was brought against the Foreign Secretary by Noor Khan,⁶⁵ whose father, Malik Daud Khan - an esteemed tribal leader - was killed in a US drone strike. Appeal was refused on grounds a UK court would not judge US policy, however the court flagged that if this information regarding UK involvement was true, it potentially exposed the UK to criminal liability.⁶⁶

Australia was also implicated in strikes. In 2013, the Bureau of Investigative Journalism noted that the country’s Pine Gap intelligence base had ‘intercepted radio transmissions from Pakistan’ and used the intelligence to fix the location of suspects, feeding this information into the CIA drone programme.⁶⁷





+ YEMEN:

Investigative journalist, Namir Shabibi informed the Inquiry⁶⁸ that the UK had a team of surveillance operatives from the Secret Intelligence Service (SIS) mentoring the Yemeni National Security Bureau, assisting them to track targets for drone strikes, and sending assets to infiltrate Al-Qaeda in order to gather intelligence on targets.⁶⁹

In addition, documents obtained by the Intercept have outlined collaborative UK-US surveillance programs (GHOSTWOLF and GHOSTHUNTER) conducted at the UK base, Menwith Hill, which provide geolocational assistance to aid drone strikes in Yemen. Successive UK governments have publicly stated that all activities at the base are carried out with the ‘full knowledge and consent’ of British officials.⁷⁰ Shabibi received confirmation from US, UK, and Yemeni military and diplomatic sources that British personnel worked in a Joint Operations Room at the National Security Bureau (NSB), assisting in intelligence gathering.⁷¹

Shabibi’s evidence to the Inquiry included quotations provided to him from US, UK and Yemeni sources, including:

"We had a targeting list with names that we could pursue." Seche described working with UK officers as, "very collaborative, and it was very useful for both [Britain and America] to sit and help triangulate what we were hearing from our different sources."

Stephen Seche, US Ambassador to Yemen

*"During my whole time there, I cannot remember a strike where there was no British involvement."*⁷²

Anonymous British official, Yemen

"The Secret Intelligence Service] cooperated with us a lot in mentoring our surveillance team, which prepares for raids and arrests, observation of targets, and fixing them. That was really one of the reasons

for the success of the NSB"

Ali al-Ahmadi, NSB director 2012-2015

*"The British would help with] tracking and informants would say that Mr. X is moving from one place to the other. They would pass it to the Americans and the American drone would try to follow the target."*⁷³

Abubakr al-Qiribi, Yemen Foreign Minister, 2000-2014

Investigative reporting by Namir Shabibi and Jack Watling has outlined strikes laying out the degree of collaboration between the two states:

Ahmed Said Saad Strike ⁷⁴

- “Saad was found by an agent working for Britain’s [SIS] who tagged his vehicle, allowing it to be picked up by the Overhead program.”
- “The Overhead program, of which GCHQ is a part, then informed the CIA, who sought corroboration of the target’s location from officers at Yemen’s NSB, who SIS agents were mentoring, before routing a drone to intercept the car. It is likely GCHQ was tracking Saad as part of the program, before passing on the information for the strike.”

Nassir Salim Lakdim Strike

- Nasser Salim, a 19-year-old student, was killed in a strike which was among the foremost successes of the US counter-terrorism effort in Yemen. Fahd Al-Quso, its actual target, was a senior field commander in Al-Qaeda in the Arabian Peninsula (AQAP).
- A former senior CIA official responsible for operations in Yemen explained that “the most important contribution [to the intelligence for the strike came from] a very important British capability.” The UK agent provided the CIA with al-Quso’s position, allowing a drone to track his car. “That was quite unique,” the former official explained, “it was something we didn’t have.”⁷⁵

The Government has not been forthcoming on its involvement.⁷⁶ However, in response to Shabibi and Watling’s investigation, an FCO spokesperson said:

*"We have previously provided counter-terrorism capacity building support to the Yemeni security services to increase their ability to disrupt, detain and prosecute suspected terrorists in line with Yemeni rule of law and international human rights standards. Following the closure of the Embassy in Sanaa in February 2015, we suspended this activity. We continue to work with regional and international partners to tackle the threat posed by terrorist organisations including AQAP and Daesh-Yemen [an alternative acronym for the Islamic State group] and to build regional capacity on counter-terrorism."*⁷⁷

UK provision of bases to the US

Reaper use is entirely dependent on an international network of bases connected by datalinks, transatlantic fibre-optic cables and satellite communications. Whilst much of the detail of flying procedures is classified, it is known that - when deployed on operations - launch and recovery of drones must be undertaken by operators from a local base with visual 'line of sight' of the aircraft. Once airborne, Reapers are operated remotely by UK personnel out of RAF Waddington, Lincolnshire and Creech Air Force Base, Nevada via satellite communications. Control can be switched mid-flight between these two locations during a Reaper's 14-hour mission. Indeed, it is possible for a Reaper drone run by an allied state to be taken over mid-operation by UK operators, or vice versa, though we understand that this has not yet happened.⁷⁸ Reapers have also been run from ground control stations at undisclosed locations in the Middle East.⁷⁹ The Government has refused to confirm whether UK permission to use the US Naval Air Station at Sigonella, Sicily extends to Reaper missions⁸⁰ or whether there are ground control stations available for use by UK Reapers in North Africa.

The Government has confirmed that the US does not operate armed drones from bases in the UK. This Inquiry nevertheless received written and oral evidence⁸³ that operational and ISTAR support to ongoing operations was provided from US bases in the UK,⁸² and in particular, from RAF Menwith Hill, RAF Molesworth and RAF Croughton⁸⁴. Despite a number of parliamentary questions posed in 2012, 2013 and 2017⁸⁵ no substantive Government response has been forthcoming on this point.

Embedded personnel

The UK has a long-standing policy of embedding service personnel in the armed forces of its allies. It currently has over 250 exchange personnel in the armed forces of allies including the US, Australia, Canada, Netherlands, Italy, France and Germany.⁸⁶

According to the Government, embedded troops, or 'embeds', are considered part of the force they are embedded in, following their chain of command and Rules of Engagement (ROE). However, they must also follow UK ROE and UK law.⁸⁷ When the host nation has less restrictive rules than the UK, embedded personnel follow UK law and the laws of armed conflict.⁸⁸

Questions have arisen about the purpose and extent of embedded UK forces in Yemen, Pakistan and Syria, with concerns that they might be used to facilitate potentially unlawful strikes undertaken by the US.

Libya: A 2015 parliamentary research briefing showed that UK personnel flew US drones (Predators) during 'Operation Ellamy', the codename for the UK's participation in the military intervention in Libya in 2011.⁸⁹

Yemen: In 2014, it was revealed that three UK staff were embedded with US forces within the Combined Joint Task Force-Horn of Africa (CJTF-HOA) at the Camp Lemonnier base, Djibouti - the

US base from which it launches controversial unmanned strikes against Al-Qaeda in the Arabian Peninsula (AQAP) in Yemen.⁹⁰ Investigative journalist Namir Shabibi showed the APPG on Drones evidence he obtained that claimed three embeds at CJTF-HOA held senior roles in military planning and intelligence in regional operations. The MOD maintained these personnel were not involved in strikes, stating 'UK personnel are not involved in the planning for, or operation of, any US unmanned or remotely piloted aircraft systems (UAS/RPAS) from Camp Lemonnier.'⁹¹

Pakistan: Submissions to this Inquiry claim that there is a possibility that UK embeds have taken part in drone strikes in Pakistan. A Freedom of Information (FOI) request by legal NGO, Reprieve revealed a 'memorandum of understanding' between the UK and US which indicated that UK pilots have been assigned to the command of US drone squadrons operating out of Creech Air Force Base, Nevada from which many Predator drone operations in Yemen and Pakistan are controlled. In 2015, the MOD also declined to answer an FOI request that sought to confirm whether personnel had been embedded with US military teams operating drones in the skies above Pakistan claiming that doing so might jeopardise 'international relations'.⁹²

Syria: In July 2015, before Parliament authorised the extension of the combat zone to Syria, the Secretary of State for Defence Michael Fallon MP was called before Parliament to explain the engagement of UK embedded forces in Syria.⁹³ He confirmed, that:

*"Since the international Coalition commenced military operations against ISIL last year, up to 80 UK personnel have been embedded with US, Canadian and French forces. They have undertaken a range of roles including planning, training and flying and supporting combat and surveillance missions. A small number of embedded UK pilots have carried out airstrikes in Syria against ISIL targets: none are currently involved in airstrikes."*⁹⁴

Michael Fallon MP

This meant that as the Government was considering taking a vote on whether or not to engage militarily in Syria, UK military personnel had already engaged in hostilities in that country - but under the control of allied forces.

Clarity needed: Strategic and legal implications

There appears to be a significant and growing body of strong circumstantial evidence that suggests US bases in the UK are involved in signals intelligence gathering and analysis that supports the US drone strike programme; that there is collaboration on this - at least, in some respects - with Government Communications Headquarters (GCHQ); and that the UK has assisted the US drone programme with other sources of intelligence in places such as Yemen. Ultimately, however, this is not a matter on which the Inquiry is able to draw any final conclusions: such investigations are a matter for the ISC.

We also recognise that there are inevitable constraints on what information the UK Government can place in the public domain about intelligence gathering and sharing. Nevertheless, we consider that there is an imperative for the UK Government to clarify whether, and to what extent, it has been involved in aiding strikes outside areas where UK forces are explicitly conducting combat operations and where Parliament has authorised military action. There is also an urgent need to clarify its policy and general guidance on this issue.

Chapter 1: The Operational Context

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CHAPTER 2:
**Legal norms and ethics -
An erosion of standards?**

Working with partners: Development of principles governing the use of force

We suggest that ‘working with partners’ is not just an operational concept. While there is a practical strategic imperative for closer collaboration with partners, the other crucial element of this work is legal.

The operational aspect of the UK’s work with partners raises important domestic and international legal issues such as potential criminal liability for UK personnel and Ministers involved in unlawful strikes. This is of particular importance, as working with foreign allies does not exempt the UK from the operation of the laws governing those actions.

On the global stage, the UK works with partners in setting standards and upholding principles which govern the legitimate use of force in armed conflict. As a leading and early user of military drones in operational conditions, the UK has a unique opportunity to help forge a more robust and inclusive international approach to the use of drones and related technology in the future. Since the employment of drones, and other robotic military systems, seems set to increase exponentially in the coming years,¹ the UK’s current operational behaviour in using drones may be influential in setting standards that will apply for many years to come.

The Government’s use of drones has been the subject of intense debate in recent years. Specific legal concerns have been raised by the JCHR. A bulk of the criticism concerns a change in the government’s position towards legal interpretations espoused by the US. Specifically, there has been criticism of the increased willingness to use lethal force outside of existing military action to address terrorist threats, which have been justified by controversial interpretations of the international law principle of self-defence.

Crucially, there are claims that the UK’s approach may have influenced the positions of other states, leading to concerns that the established legal frameworks applicable to the use of force by states are being slowly eroded.²

To better understand the legal issues at stake, this chapter will first set out the established domestic and international legal frameworks constraining the use of force. It will then examine UK collaboration with partners to push expanded interpretations of these frameworks that potentially violate limitations on targeting and scope of the battlefield. The chapter will culminate in examining the significant risks, posed to the UK and its personnel, in pursuing these interpretations in their assistance to partners’ drone operations.

Domestic legal constraints: The importance of parliamentary approval for operations with partners

There is now a constitutional convention that the Government must seek Parliament’s approval before using force abroad. However its safeguards fall short with regards to assistance to partners. The UK is currently engaged in three countries where Parliament has authorised military action: Afghanistan, Iraq and Syria.

This convention first emerged during the 2003 Iraq War, when then Prime Minister Tony Blair decided to seek parliamentary approval for the UK’s participation in the US-led war.³ Since then, Prime Minister David Cameron has asked for parliamentary approval three times, in 2011 to join the NATO coalition enforcing a no-fly zone over Libya in 2013,⁴ to take military action against the Syrian Government for its use of chemical weapons⁵ and in 2014 to join the Coalition against ISIL in Iraq.⁶ In all three cases, he honoured Parliament’s vote, thereby crystallising the convention.

In September 2015, when announcing the strike against UK citizens Reyaad Khan and Ruhul Amin, the Prime Minister indicated he would seek Parliament’s approval before committing the UK to any coalition against ISIL in Syria:

“I have been absolutely clear that the Government will return to the House for a separate vote if we propose to join coalition strikes in Syria.”⁷

Prime Minister David Cameron

On 2 December 2015, the Government held a debate in Parliament regarding the UK’s participation in the US-led anti ISIL coalition operating in Syria.⁸

The Cabinet Manual acknowledges the existence of a parliamentary convention to seek authorisation before using military force:

“In 2011, the Government acknowledged that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except when there

was an emergency and such action would not be appropriate.”⁹

Cabinet Manual

The Government should continue to follow this convention. It allows for plurality of opinion and ensures that decisions to take military action are subject to proper scrutiny and oversight. The convention benefits both the Government and our armed forces by legitimising operations and ensuring they have proper legal underpinnings. The current Government has made it clear that it does not consider parliamentary approval necessary when providing allies with embedded personnel or intelligence. Moreover, the controversial strikes in Syria, taken alongside France and the US in April 2018, as well as the 2015 strike against Khan and Amin suggest that the Government may in future take the view that military actions abroad, including drone strikes, are also not subject to parliamentary debate and approval.

As cooperation is likely to increase into the future, this approach leaves an expanding oversight and accountability gap. When UK personnel are embedded with allies, they remain subject to UK disciplinary regulations and ultimate control over their actions remains with the UK. Therefore, the UK will not escape state responsibility for their actions and lack of parliamentary oversight could leave the UK vulnerable to implication in unlawful actions.

The international law framework regulating the use of drones

When the Government conducts a drone strike, according to international law, two broad categories of tests need to be carried out to assess the legality of the strike:

1. The tests for assessing the use of force on that territory (*ius ad bellum*), and
2. The tests for assessing the legality of attacking a particular individual (*ius in bello* and/or international human rights law)

The two tests outlined above are distinct. The first set of rules determines whether the use of force against a territory is lawful and is designed primarily to protect the territorial sovereignty of states. These rules emerge from the Charter of the UN and longstanding rules of customary international law. They dictate the circumstances when states can use force in self-defence. We discuss below concerns regarding the adoption by the Government of expanded notions of self-defence.

The second test determines who, within that territory, is a legitimate target. The use of force (by drone or otherwise) must comply

with the applicable rules of international humanitarian law and international human rights law. These bodies of law are aimed at protecting individuals, and in particular civilians. This distinction was emphasised by Prof. Nils Melzer in his evidence to the Inquiry,¹⁰ where he warned against the risk of conflating the two tests. We discuss below the question of who is a legitimate target, as well as concerns that the Government is stretching the definition of what constitutes an armed conflict in order to permit the UK to rely on the more permissive rules of IHL with regard to the use of lethal force.

With regards to this second category of test, there is an ongoing debate concerning whether the UK must adhere to the European Convention on Human Rights (ECHR), and in particular Article 2 on the right to life, when employing lethal force abroad. The application of the ECHR to any individual targeted outside of the territory of the contracting state (i.e. the UK) depends on whether the individual was ‘within the jurisdiction’ of the state (Article 1 of the ECHR).

The use of force against a foreign state: dangers posed by an expanded definition of imminent attacks in self-defence

Government statements have suggested that the UK is moving closer to the dangerously expansive interpretation of the right to self-defence espoused by the US. This position poses serious risks. Not only is it potentially incorrect; it may erode broader restraints on the use of force by states internationally.

The ‘inherent right to individual or collective self-defence’ is a lawful basis for the use of force abroad acknowledged as such in the UN Charter. However, interpretation of the proper scope of this uncontroversial right is subject to divergence between states and between international lawyers. As a result, its definition becomes a critical step in assessing whether UK operations with partners are potentially putting the UK at risk of liability.

The extent to which states may use force abroad unilaterally against terrorist targets, without the consent of the Security Council or the state where the terrorists are located, is highly restricted.¹¹ It is dependent upon whether those terrorists are engaged in armed attacks against the UK or its partners, and whether the resort to force by the UK is both necessary and proportionate.

Where lethal force is used abroad in anticipation of an armed attack, the legality of that use of force will depend on whether the attack anticipated is imminent. The meaning of the concept of ‘imminence’ has been the subject of fierce debate in recent years. Its ordinary meaning requires an assessment of temporal factors only and translates to an attempt to answer the question: is the attack about to happen?

This view of imminence as a temporal limitation can be seen in the Caroline standard, which stems from an exchange of legal letters between the UK and the US in the 1800s. Under the Caroline standard, force may be used if there is a:

“Necessity of self-defence instant, overwhelming, leaving no choice of means, and no moment for deliberation.”¹²

This position is well established. It emphasises the need for a specific and identifiable threat which is being prepared at the time and about to be delivered in a very short amount of time. That standard does not allow for force to be used against a threat that is vague, abstract or potential only.¹³

However, the UK and US Governments have now taken the view that the concept of imminence is not solely, or indeed mainly, about temporal factors. In their view a threatened armed attack can be imminent even if it will not manifest in a short of amount of time. Nor must it even be known when the threat will materialise. All that is required is that the view be taken that there are no other means available, apart from the use of force, to prevent the threat from materialising. This interpretation stretches the definition of imminence beyond the position set out in the Caroline test. On this view it is no longer required that action in self-defence must be ‘instant’ or leave ‘no moment for deliberation’.

Moreover, this expanded interpretation of imminence conflates two separate legal requirements for the use of force in self-defence: that of an imminent armed attack and that of necessity. The former is a requirement contained in Article 51 of the UN Charter, the latter comes from customary international law. The expanded view wrongly assumes that fulfilment of the latter will automatically satisfy the former. The expansion of the test for self-defence is worrying, both because of the legal risk posed to the UK by using a legal definition that is potentially incorrect, and because of the slippery slope it poses for broader restraints on the use of force internationally.

It is of relevance to note that the traditional position of the UK was that imminence had the meaning set out in the Caroline test. Indeed, the UK had reiterated that view in recent years and had also disavowed the expanded view of imminence when it was first set out by the US.¹⁴ Before the Justice Select Committee, in 2015 the Attorney General confirmed that the Caroline test was applied to the strike that killed Reyaad Khan.¹⁵ He did not indicate that the UK had changed its view on the Caroline test.

Following questions raised by the JCHR Inquiry, the current UK Attorney General, Jeremy Wright QC, in a speech in 2017¹⁶ adopted an expansive interpretation of imminence, identical to that expressed in an article¹⁷ by Sir Daniel Bethlehem in 2012. These Principles expanded the notion of imminence by proposing non-temporal factors to assess whether an attack is ‘imminent’.

We note that the Principles set out by Sir Daniel have by no means been accepted as an authoritative statement on the law in this area. Rather, they have been the subject of significant criticism.²⁰ In the view of some commentators, Sir Daniel’s Principles represent a radical expansion of the right of anticipatory self-defence by

Established international law position on self-defence and ‘imminent’ armed attack: Caroline Standard

Temporal factors to assess whether an attack is imminent. Force may only be used if:

“Necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment for deliberation.”¹⁸

UK position post-2017: Bethlehem Principles

Non-temporal factors to assess whether an armed attack is ‘imminent’. Force may be used based on:

- (a) The nature and immediacy of the threat
- (b) The probability of an attack
- (c) Whether the anticipated attack is part of a concerted pattern of continuing armed activity
- (d) The likely scale of the attack and the injury, loss or damage likely to result therefrom in the absence of mitigating action, and
- (e) The likelihood that there will be other opportunities to undertake effective action in self-defence that may be expected to cause less serious collateral injury, loss or damage.¹⁹

providing a new standard of imminence to enable preemptive military strikes against threats.²¹ This new conception blurs the lines between the tests, and so enables the use of force by a small number of powerful states where previously it would not have been justified, with no input or consent from the less powerful states who may be the subject of attack.

Expansion of principles: Impact on international legal order

Beyond questions of liability, the UK’s actions could have knock-on effects for the stability of the international rules-based order. The long-term implications of an expansive definition of ‘imminence’ are the potential erosion of use of force norms more broadly in a manner that may be used by an increasingly greater number of states, including states such as Russia, North Korea and China.

It has been reported that the formulation of the Bethlehem Principles was a joint endeavour by a group of senior government officials from like-minded states - led by officials from the US - working behind closed doors, to develop the jus ad bellum to meet ‘modern threats’.

Dr. Milanovic explained that the US State Department Legal Advisor and the Australian Attorney General had also recently endorsed Sir Daniel’s proposed statement of the law on self-

defense. Canada and New Zealand, the two remaining ‘Five Eyes’ members, have not. In his view, the approach of the US, UK and certain other states, was a concerted push towards establishing a legal framework which permitted more frequent use of military force unilaterally without Security Council approval. Without a temporal requirement, he warned that there was no clear threshold for the use of force which would prevent an entirely preemptive strike, based on a mere possibility, probability or likelihood of future attack. He warned:

“The danger there is not drones. The danger is, say, North Korea. On the basis of this principle, the way that they have articulated it, a lawyer in the US Department of Justice can, today, write the memorandum telling President Trump ‘You can nuke North Korea’. So that’s the danger with this. It’s not a slippery slope. It’s a cliff.”

Prof. Nils Melzer

Use of force against an individual: Who is a legitimate target?

There is concern that the UK and its partners are adopting an overly expansive approach to determine who is a lawful target. In the absence of any information on the test UK armed forces apply when targeting members of ISIL, it is impossible to determine if the targeting process is lawful. The need for clarity is made more urgent by the acknowledgement of only one civilian casualty by the UK in its conflict in Iraq and Syria.

What is an armed conflict?

- Under the law of armed conflict (or international humanitarian law) the concept of an armed conflict can be divided into two:
 - International armed conflict occurs whenever there is resort to armed force by one state against another.
 - Non-international armed conflict occurs whenever there is intense armed violence between a state and an ‘organised armed group’, or between two or more organised armed groups.
- International humanitarian law is predicated on there being belligerent parties, consisting of armed forces, confronting each other.

The recent conflict in Afghanistan and the ongoing conflict in Iraq and Syria with ISIL, both of which have parliamentary

approval, are non-international armed conflicts (NIAC), under international humanitarian law.

A fundamental principle of international humanitarian law is that of distinction, which governs who may be targeted and killed in a conflict. Specifically, this principle requires belligerents to distinguish between combatants and civilians.

In the context of drone operations in Afghanistan, Iraq and Syria, the complex nature of the ‘organised armed groups’ makes distinguishing between civilians and combatants difficult in practice.

One difficulty is factual. In the case of a terrorist armed group, which is loosely organised, lacks a uniform and deliberately shields itself in the civilian population, it can be difficult to distinguish combatants from civilians. Nevertheless, it has been argued that any state conducting drone strikes should be subject to stringent identification standards, given the enhanced surveillance capabilities drones afford.²²

The other difficulty is legal: who, as a matter of law, may be considered a ‘member’ of an armed group and so may legitimately be targeted in an NIAC. The International Committee of the Red Cross (ICRC) has issued Interpretive Guidance which states that only those who have a ‘continuous combat function’ qualify as ‘members’ of an armed group.²³ This is stated to protect those with abstract affiliation or family ties from being classed as members - and so legitimate targets. This definition, introduced by the ICRC in 2009 is subject to some debate.²⁴ However, what can be said with certainty is that, in launching drone strikes against potentially civilian targets, states must exercise a great degree of caution. They must only proceed on compelling evidence of direct participation of those targets in hostilities.²⁵

Prof. Melzer explained that the same test must be applied to armed forces and organised armed groups: those who support or assist armed groups but are not participating in combat should be treated as part of the civilian population. This includes those producing weapons and food, paying taxes, or providing recruitment and logistical support. In addition, civilians who may become fighters for a limited time, but then return to civilian status are not allowed to be targeted when they have ceased fighting. For example, this

would apply to farmers in Afghanistan who fight for three months of the year but return to their farms for the remaining nine months.

The position of the Government on the proper test to be applied to determine who may be targeted in a non-international armed conflict is not clear. The Joint Service Manual on the Law of Armed Conflict does not address the issue of the ‘continuous combat function’ principle. The Government has confirmed that JSP900: UK Targeting Policy (edition II, September 2015)²⁶ contains the

policy and direction on targeting, and guidance on the processes involved and best practice to apply. However it has confirmed that no copy will be released to Parliament or the public. In the absence of any information on the test the UK armed forces apply when targeting members of ISIL, it is impossible to determine if the targeting process is lawful.

This issue is of obvious importance, as the targeting of civilians in an international and non-international armed conflict is a war crime, and those involved in such are subject to prosecution in domestic and international courts.³⁰ The issue is also critical to a proper assessment of the Government’s assertions that its drone strikes have killed only one civilian in the current conflict in Iraq or Syria, despite carrying out more than 1,700 airstrikes.³¹ This broad claim begs the question: is the assertion correct with the strikes having been extremely precise, or instead is it wrong either because there has been a failure in harm monitoring, or because an overly expansive approach to the concept of who qualifies as a combatant has been adopted?

The Attorney General’s indication that the Government has adopted the Bethlehem Principles raises concerns that an expansive approach to determining who is a lawful target is indeed being adopted. Sir Daniel’s seventh principle would permit the targeting of those responsible for the ‘provision of material support essential to the attacks’. However, Elizabeth Wilmshurst and Sir Michael Wood, former Deputy Legal Adviser and Legal Adviser (respectively) at the Foreign and Commonwealth Office, note that this approach to targeting would be “contrary to the jus ad bellum and, in most circumstances, to international humanitarian law.”³²

In addition, the comment made by Secretary of State for Defence and other Ministers suggesting a willingness to target (with

Who can be targeted?

Combatants/Fighters:

The ICRC has provided guidance that members of state armed forces (except religious and medical personnel) and fighting members of organised armed groups who have a ‘continuous combat function’ can be targeted.²⁷

Civilians

Civilians are entitled to protection from direct attack, and must not be targeted unless they directly participate in hostilities, and only for such time as they take a direct part in hostilities.²⁸

The ICRC has provided guidance that those involved only in training or logistical support are not legitimate targets, nor are civilians who have directly participated in an attack, but have ceased to do so for the time being.²⁹

airstrikes) foreign fighters in Syria and Iraq who have pledged allegiance to ISIL, even if they have ceased fighting and are seeking to return to the UK is of some concern. Where those fighters have disengaged from ISIL in an objective and clear manner, they regain their civilian status. While they may be prosecuted for their unlawful acts, the targeting of civilians no longer taking a part in hostilities would be a breach of IHL.

If the use of drones is part of an armed conflict:

- International humanitarian law and international human rights law both apply.
- IHL will provide the primary legal framework for assessing whether the person targeted is a legitimate target and for assessing the legality of incidental civilian casualties.
- In an armed conflict, a person constitutes a legitimate target under IHL if they are a member of an organised armed group that is a party to the conflict.
- Under IHL, it is not illegal to use force that would cause civilian casualties or civilian damage as long as those casualties or damage are not disproportionate.
- IHL can modify the application of IHRL and will usually provide a more permissive framework for the use of force than would be case outside of armed conflict.

If the use of drones is not part of an armed conflict:

- International humanitarian law does not apply but international human rights law does.
- The circumstances in which an individual can be targeted are much narrower than would be the case in armed conflict.
- The standards to be applied are much the same as would apply to a policeman targeting a civilian on the streets of the UK in a law enforcement operation.
- Outside of armed conflict a person can only be targeted if
 1. their conduct constitutes a threat to life or other lethal threat;
 2. the threat posed is imminent;
 3. the use of force is a last resort; and
 4. the benefit to be derived from the use of force would outweigh the dangers posed by the force to be used by the state authorities.

The APPG Chair has pressed for clarification on the Government's policy. While we welcome the confirmation that UK armed forces will comply with IHL principles in all military action, the UK's

understanding of how the principle of distinction is to be applied to ISIL fighters and former fighters in Iraq and Syria is in need of urgent clarification.³³

Stretching the definition of armed conflict: How extensive is the battlefield?

Crucial for understanding the legality of the UK's own drone strikes to date, as well as its assistance to partners, is the pivotal question: Has this use and assistance taken place within or outside of a situation of armed conflict? The answer to this question is critical, because if the strike takes place in a situation that qualifies as an armed conflict, international humanitarian law applies to the use of force and determines who can be targeted and when.

Moreover, a determination that international humanitarian law applies is highly significant because the rules of international humanitarian law regarding targeting, and the use of lethal force, are more permissive than ordinary rules of human rights law. IHL allows targeting of a person on the basis of his or her status as a combatant or fighter, even if the person does not pose an imminent threat at the particular point in time. Also, international humanitarian law will modify the application of human rights law in the sense that human rights law would be interpreted in the light of (i.e. in a manner compatible with) IHL in situations of armed conflict.

Is the UK stretching its definition of an armed conflict?

The Government says it has been in a non-international armed conflict with ISIL in Iraq since September 2014, and Syria since December 2015 - but it remains unclear what exactly the geographical boundaries of this conflict with ISIL are. Recent

Reyaad Khan & Ruhul Amin Strike

- The UK had been involved in military operations against ISIL in Iraq, authorised by Parliament, since 2014.
- Although the US and other members of the anti-ISIL coalition were also taking military action in Syria, Parliament had not authorised UK military action in Syria.
- On 21 August 2015, a UK drone targeted and killed Reyaad Khan and Ruhul Amin, two British citizens who were said to be members of ISIL.
- This military operation was justified by the Prime Minister in Parliament on the grounds that the operation was "not part of the coalition military action against ISIL in Syria".³⁵
- The UK Mission to the UN reported to the UN Security Council that the action was taken under the UK's right to self-defence according to Article 51 of the UN Charter, but in addition claimed that Khan's actions in Syria, in particular, were a threat to the Iraqi government, whom the UK was legally pledged to help.³⁶

statements supporting lethal force to “hunt down” and kill suspected terrorists in “Iraq and Syria and other areas” by Defence Secretary Gavin Williamson sow doubt on the matter.³⁴ This raises questions as to whether the UK would be prepared to use force outside of Iraq and Syria (for example in Libya) to pursue alleged terror targets. It also raises questions about whether any such use of force would be part of the armed conflict with ISIL, and thus governed by the more permissive rules of IHL.

The Reyaad Khan strike signified a ‘new departure’ for the UK’s policy on the use of its armed drones overseas. Until that moment, the UK had been careful to confine its drone strikes to countries where it was clearly already engaged in an armed conflict with an organized armed group. This was evidenced by existing hostilities against organized armed groups within that country. British drones had previously been used in Afghanistan and Iraq (and in 2011 British pilots operated US drones in Libya within the NATO-led coalition against Gaddafi). The level of hostilities between the UK and armed groups meant that the UK was clearly involved in a non-international armed conflict in those countries.

However, in the case of the strike against Reyaad Khan, the UK had not previously been involved in any hostilities in Syria though it had been engaged in armed hostilities with ISIL across the border in Iraq. The Government suggested that the strike was carried out as part of the armed conflict with ISIL and that it was therefore entitled to apply the rules of international humanitarian law which permit the targeting of a member of an organized armed group. Implicit in the Government’s actions and statements is the theory that military strikes conducted as part of a non-international armed conflict need not be confined to the country where military action was previously taking place.

It remains unclear whether the UK has adopted the US view that drone strikes may be carried out against individuals who are members of organised armed groups (or members of “associated”, “affiliated”, or “co-belligerent” forces) that the US is in armed conflict with, wherever those individuals happen to be located. This stance would potentially open up the possibility of UK drone strikes conducted in multiple countries across the world as long as the UK was already involved in an armed conflict with the non-state group in one country. In addition, despite hostilities with the group within any single country failing to meet the threshold for an armed conflict, this stance may enable the aggregation of strikes taken globally to do so.

Two senior military commanders who gave evidence to the Inquiry - General Barrons and Air Marshal Bagwell - expressed confidence that the drone strikes conducted by the UK to date had complied with the relevant legal framework. However, Air Marshal McNicoll, a former deputy Commander-in-Chief of Operations at RAF Air Command, expressed doubt about the relatively new use of drones to conduct lethal strikes outside areas of existing military action:

“I remain unclear as to whether the law of armed conflict does apply to

all of these circumstances, or indeed as the Joint Committee on Human Rights said, is it the law of armed conflict or human rights law that would apply to the government’s policy to be willing to use lethal force outside of armed conflict against individuals suspected of planning an imminent terrorist attack against the UK. To answer the first question, is there anxiety, there may not be but I think there should be. And secondly, is there a framework, I don’t know but I think there should be one.”³⁷

Air Marshal McNicoll

Evidently, greater clarity on the legal frameworks governing the use of armed drones, and consensus around areas of contention would be of great benefit to assuage the concerns of military personnel, and be in the interest of maintaining consensus at the international level.

As international lawyers continue to debate whether the theory that non-international armed conflicts can spill-over into other countries, or might be spread across multiple countries is correct, the Government needs to clarify what the UK position on this question is.

However, whatever the correct legal position is, it is important to recognise, and we call upon the Government to so acknowledge, the following constraints:

Whether armed force can be used in any new country where force has previously not been used requires justification under the law relating to the use of force as set out in the UN Charter and customary international law.³⁸

- The presence or absence of an armed conflict with a non-state group occurring elsewhere does not in and of itself justify the use of force in a second country. IHL simply governs how force may be used and does not regulate whether or when armed force may be used.³⁹

In all cases where drone strikes are conducted as part of a non-international armed conflict, it is essential to determine that the individuals being targeted, whether in the same or in different states, are part of the same organised armed group that the UK is involved in the armed conflict with.

- This requires an assessment that the targeted individual or any group they belong to are part of the hierarchical structure of the group the UK is fighting. That an individual has merely been inspired by a group does not suffice. Nor is it sufficient that a group has declared allegiance to another where it is not part of a common command and control infrastructure.
- A correct determination of whether a targeted individual is a fighter within an organised armed group that the UK is involved in an armed conflict with is also important for another reason - the risks relating to prosecution of UK personnel. Targeting of civilians (persons who are not members of armed group) in situations of armed conflict constitutes a war crime which is subject to prosecution domestically and before international courts, including the International Criminal Court.

Extra-territorial application of the European Convention on Human Rights:

There are serious concerns that the Government’s current approach to the ECHR,⁴⁰ namely that it does not apply to drone strikes within, or outside, armed conflict, may cause the UK to participate in illegal activities.

The Government takes the position that the ECHR does not apply to drone strikes conducted by the UK abroad.⁴¹ However, in concluding its Inquiry, the JCHR did not accept this blanket position: it considered that whether the ECHR applied would turn on all the facts of a given case, including matters such as the extent to which an individual is subject to surveillance prior to a lethal drone strike.

Prof. Melzer and Dr. Milanovic both further expressed the view that the position of the UK Government was one which the courts would, eventually, find to be wrong. In their view, the better approach of the Government was to accept that the ECHR applies, but to justify their actions under it.

Risks of rejecting the application of the European Convention on Human Rights

If the Government is proceeding on a wrong assumption that the ECHR does not apply to drone strikes in these areas, that potentially has significant consequences. If it is assumed the ECHR does not apply within an armed conflict, the UK will fail to comply fully with all the international legal obligations incumbent on it. Article 2 of the ECHR, prohibits “intentional” deprivation of life. The permissions to kill under Article 2 are ordinarily (i.e. in situations outside of armed conflict) narrower than those allowed under IHL.

This means the UK may, in those situations, only kill someone in a very narrow set of circumstances – the same circumstances as would apply, for example, to the killing of an individual by a state agent in the UK, rather than the standards governing

soldiers under IHL. In addition, Article 2 of the ECHR requires an independent and impartial investigation when the state is alleged to have wrongfully killed someone. This procedural obligation has been held by the European Court of Human Rights to apply even in situations of armed conflict. It extends beyond any requirement under IHL or customary international law.

If, contrary to the Government’s assumption, the ECHR applies to drone strikes, the UK may be found by domestic courts and/

“A drone operation pursuing an individual, most of the time for weeks on end until they’ve been targeted...this is a typical human rights situation really.

Prof. Nils Melzer

or the European Court of Human Rights (ECtHR) to have violated the provisions of the Convention, with the potential of claims for significant amounts of compensation. Similar claims for compensation have had to be paid out by the UK with regard to detention or ill treatment by UK forces. In these cases, the government had also wrongly assumed that the ECHR did not apply to military operations but the courts subsequently found that it did.

The Iraq abuse scandal and the European Convention on Human Rights

In Iraq, the Government’s decision that the ECHR did not apply had significant consequences. Courts later found that the UK had failed to comply with its investigative obligations under the ECHR in relation to allegations of abuse of Iraqi citizens by its armed forces,¹³⁷ and was therefore obliged to set up public inquiries and an investigative authority. As suggested by prominent legal scholars, courts are likely to find that the ECHR applies to (certain) drone strikes.¹³⁸ Unless the Government adjusts its current application of the ECHR, it may find itself in a similar position to that following Iraq.

Looking ahead

Today, and in the foreseeable future, the overwhelming majority of drones are unarmed, equipped for intelligence, surveillance, target acquisition and reconnaissance (ISTAR) missions only.

An emerging body of literature seeks to document the many consequences drones - armed and surveillance - have on the subject population. New York University and Stanford

University conducted a ground-breaking report in 2012 documenting a wide array of physical and psychological impact drones had on the local population. Today, such side-effects of drones are best illustrated in Pakistan and Yemen, where the presence of drones have life-altering effects; limiting people's actual freedom of movement, access to public services and substantially restricting the livelihoods of people in local communities.^{44 45}

Today, the US, China and India already operate drones within their borders. The domestic application of extensive surveillance capabilities could severely impact Britons' rights to privacy and potentially violate the ECHR. The Government should take leadership in international debates - concerning legal and ethical issues - on the proliferation of surveillance drones and the importance of an appropriate legal framework, domestically and in their use abroad. This is especially pertinent, in light of the lower threshold for deployment and the changing landscape of armed conflict laid out in this report.

Putting UK personnel at risk of criminal liability

UK personnel (including Ministers) who conduct, assist in the conduct of, or who provide approval for lethal drone strikes may find themselves exposed to the risk of criminal prosecution in certain situations. Where strikes are conducted in armed conflict and persons who are civilians are targeted this may amount to a war crime. Also, the risk of prosecution will be present where drone strikes occur outside situations of armed conflict. This is because the doctrine of combatant immunity, which provides immunity for lawful acts of war does not operate outside situations of armed conflict. In such cases UK personnel could be liable to prosecution for murder.

“The possibility of criminal prosecution for complicity in murder also arises for all those UK personnel who have a role in assisting or facilitating the use of lethal force by coalition allies, such as the US, which has a much wider approach to the use of lethal force outside of armed conflict. Such assistance might take the form of logistical support (for example, permitting US jets to use UK airbases), or the provision of intelligence about targets gathered by UK

*surveillance and reconnaissance.”*⁴⁶ **Joint Committee on Human Rights**

The JCHR's position mirrors that of the Court of Appeal. In a judicial review brought by a Pakistani man who claims his father was killed in a US drone strike, the Court held that it was “certainly not clear” that UK personnel would benefit from the combatant immunity defence.⁴⁷ Reports suggest that some senior RAF commanders share the “legal misgivings” around the use of drones outside of armed conflict.⁴⁸

Our Armed Forces are already operating in difficult circumstances to ensure our safety. The Government should take immediate steps to ensure legal certainty to this area, so that they are not also faced with criminal liability for carrying out their roles.

Aiding and assisting lethal drone strikes by other states

The cooperation of the UK with the US drone programme raises urgent questions regarding legal liability in the case of assistance in any unlawful strikes. Such cooperation includes the provision of bases in the UK, the sharing of intelligence, embedded personnel, and the sharing of assets and facilities which enable drones to operate.

Many submissions to this Inquiry assert that this cooperation may be problematic due to the differing stance of the US on key legal issues relevant to drone strikes.¹⁴⁴ Even though the position of the UK on the scope of the law of self-defence is now closer to that of the US, it remains the case that since 2001 the US has used military force to conduct drone strikes on terrorist targets abroad in circumstances which other states consider to be unlawful.

Under the current US administration, collaboration with the US drone programme carries further specific risks. Under the Obama Administration, a Presidential Policy Guidance (PPG) provided important safeguards which served to reassure its allies that, even where allied interpretations differed on aspects of the relevant legal framework governing the existence of armed conflict, or the scope of self-defence within it, the safeguards contained in the PPG would keep armed strikes compliant with international law.¹⁴⁶

There have been multiple reports, however, that President Trump has adopted a new approach to the deployment of armed drones, which weakens some of these constraints, raising concerns among policymakers and experts.¹⁴⁷ The Trump administration has neither denied nor acknowledged the veracity of these reports.

UK liability for assistance in unlawful strikes

In light of growing international consensus that the US drone programme is unlawful, it is vital to ensure that any UK involvement with this programme is not unlawful too.

The rules governing the responsibility of one state for the wrongful acts of another, is set out in the International Law Commission's Articles on State Responsibility. While not formally adopted as treaty, the Articles on State Responsibility reflect customary international law, and so are binding on all states.

The key provision of the Articles on State Responsibility relating to potential UK liability for assisting the US drone programme is Article 16 which provides responsibility for aiding or assisting another state in knowledge of the circumstances of the unlawful act.

UK liability under Article 16

Article 16 sets out a general rule of responsibility which applies in all circumstances of internationally wrongful conduct, however serious. It provides that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) that State does so with the knowledge of the circumstances of the internationally wrongful act; and
- b) the act would be internationally wrongful if committed by that State.”

The UK would be internationally responsible for assisting in an unlawful drone strike conducted by the US if it meets three conditions:

- Knowledge of circumstances of the internationally wrongful act
- The assistance contributes to the commission of the unlawful act to the requisite degree
- The act would be wrongful if it has been committed by the UK

Knowledge: When assisting in US drone strikes, the UK does not need to know at the time that the strike in question was unlawful, nor share the intention to commit a wrongful act; it simply needs to know of the circumstances of the strike, and the likely outcome its assistance will facilitate.⁵⁴

Material contribution to the US drone programme: The assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act.⁵⁵

Would the act be wrongful if committed by the UK?: Aspects of the US drone programme have been seen by experts, civil society and UN Special Rapporteurs to violate provisions of international law that bind the UK just as directly.⁵⁶

Complicity in aggression

The provision to the US of bases on UK soil to provide intelligence

for and plan armed drone strikes which may violate the territorial sovereignty of other states, also risks the UK being seen as complicit in acts of aggression. As the UN General Assembly has stated, a state commits aggression also where it allows its territory to be used by another State for perpetrating an act of aggression against a third State.⁵⁷

The urgent need for clarity

As outlined, there is growing concern that the UK is likely supporting a programme whereby the United States commits unlawful acts with regularity. The support provided by the UK to assist the US drone programme, constitutes the provision of material assistance to a State apparently violating international law. As the UK knows of these allegations, the UK is likely liable under Article 16.

In the past, the act of state doctrine, a rule that prohibits domestic courts from adjudicating on the legality of actions of foreign governments, has shielded the government from legal liability in UK courts when assisting another state in an unlawful act.⁵⁸ However, in January 2017 the Supreme Court ruled that the doctrine does not bar UK domestic courts from adjudicating on claims against UK authorities.⁵⁹ This leaves the door open for UK courts to hear future cases where Britain has assisted a foreign state, including in relation to drone strikes.

Beyond broad assertions that the “government seeks to ensure its actions remain lawful at all times”, no specific guidance for compliance with these important rules has been published. In agreement with the JCHR, we stress that legitimate concerns regarding the implication of UK personnel in unlawful drone strikes must be addressed directly. As such, the Government should produce and publish procedures that ensure that UK officials are not complicit in unlawful drone strikes.

There are therefore significant legal risks associated with the provision of assistance by the UK to the US (or any other state) in relation to drone strikes that may be unlawful under international law.

Strategic implications of the Government’s approach to the legal framework

There can be no doubt that the law relating to lethal drone strikes is, in many respects, complex and uncertain, both within and outside situations of armed conflict. Nevertheless, the Government, in response to questioning on its understanding of the legal position, has frequently refused to expand on its understanding of the law, and has instead resorted to assertions that the law is “clear”.⁶⁰ Published military doctrine echoes this approach and does little to elaborate on any of the difficult legal issues thrown up by the use of drones to counter terrorist threats abroad. The Government has also in the past stated that it has not had discussions with international counterparts on the

framework governing the legality of the UK's drone programme "as the framework for their use is clear".

We recognise that the speech of the Attorney General in January 2017 went some way to explain part of the Government's understanding of the law, insofar as it relates to the doctrine of self-defence, and we welcome that openness. In this respect, however, we remain extremely concerned that the approach to this issue adopted by the Government lacks international consensus. It seems to us that the Government is seeking to stretch the principles contained in existing legal frameworks to fit a new use of lethal force abroad, rather than conforming its practice to existing principles. This risks encouraging other states to adopt expansive interpretations of existing international law and the further erosion of international legal norms. Moreover, we have concerns that adopting such a broad approach to the doctrine of self-defence, and thus a broad approach to the circumstances in which states can use force unilaterally without host state consent or the authorisation of the UN Security Council, risks dangerous consequences. This was so vividly described by Dr. Milanovic in his evidence in relation to possible preemptive action against North Korea.

We also have concerns about the Government's approach to the application of the ECHR to drone strikes either within, or outside armed conflict. Whilst we recognise that the Government may legitimately maintain the argument that the ECHR does not apply to such strikes, we consider that it should nevertheless proceed on a cautionary basis, and apply standards and procedures sufficient to comply with the right to life in any case it considers conducting a lethal drone strike either within or outside the context of armed conflict. Not only would such an approach go a long way to reassuring Parliament and the public that the Government is not involved in a programme of unlawful targeted killings, it would establish a firm ethical basis for its use of lethal force abroad in the future.

The UK is still regarded as an international leader in promoting respect for international law. The National Security Strategy and Strategic Defence and Security Review 2015, under the heading 'Our vision', sets out the following objective:

*"Help strengthen the rules-based international order and its institutions, encouraging reform to enable further participation of growing powers. We will work with our partners to reduce conflict, and to promote stability, good governance and human rights."*⁶¹

Strategic Defence and Security Review 2015

At paragraph 4.8, the Review further provides that the UK will:

*"uphold and strengthen the rules-based international order to ensure that those who transgress international law and agreed standards of behaviour are held to account ... If our adversaries reject or operate outside these bounds, we will act decisively, and use our influence, including through our membership of international organisations, to persuade others to take a similarly tough stance."*⁶²

We welcome these commitments, but we consider that if the UK is to influence others to encourage compliance with international law, it is imperative that it lead by example.

Chapter 2: Legal norms and ethics - an erosion of standards?

1. From three states (US, UK and Israel) in 2013, there is now a further nine who have deployed armed drones. See, Joanna Frew, *The next generation: An overview of new armed drone operators*, 17 May 2018, *Drone Wars UK* (<https://bit.ly/2KKTofI>) which shows that a further nine states are very close to having armed drone capabilities, almost doubling the number of existing users.
2. This point was raised in both oral and written submissions to the Inquiry, and has been voiced widely from the UN, academia and civil society. See, Ben Emmerson, *Report of the Special Rapporteur, A/HRC/25/59*; Mary O'Connell, *Lawful use of combat drones: Evidence presented to US House of Representatives Subcommittee on National Security and Foreign Affairs hearing, Rise of the Drones II: Examining the Legality of Unmanned Targeting*, 28 April 2010, US Congress (<https://bit.ly/2zrQmRG>); Spencer Ackermann, *US to continue 'signature strikes' on people suspected of terrorist links*, *Guardian*, 1 July 2016, <https://bit.ly/29aNFd6>, last accessed 10 July 2018.
3. HC Deb 18 March 2003 vol 401 c902 (<https://bit.ly/2IYOotv>); Claire Mills, *parliamentary approval for military action*, House of Commons Library Research Paper, CBP 7166, 8 May 2018 (<https://bit.ly/2MSeoXP>).
4. HC Deb 21 March 2011 vol 525 c700 (<https://bit.ly/2IYOotv>).
5. HC Deb 29 August 2013 vol 566 c1425 (<https://bit.ly/2Ns0uwG>).
6. UK Parliament, *Commons recalled to debate Iraq: Coalition against ISIL*, 26 September 2014, <https://bit.ly/2KEYdRe>, last accessed 6 July 2018.
7. HC Deb 15 September 2015 vol 599 c1 (<https://bit.ly/2Ntzjle>).
8. HC Deb 2 December 2015 vol 603 c323 (<https://bit.ly/2IY1vtb>).
9. Cabinet Office, *Cabinet Manual: A guide to laws, conventions and rules on the operation of government*, 11 October 2011, 406764/1011, pg. 44 (<https://bit.ly/2MQHmHM>).
10. Prof. Nils Melzer took up the function of UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 1 November 2016. He is the human rights chair of the Geneva Academy of International Humanitarian Law, and professor of international law at the University of Glasgow (<https://bit.ly/2ukshX8>).
11. Rights Watch UK, *Written submission to APPG on Drones Inquiry into the use of armed drones*, 2017, p.7 (<https://bit.ly/2NxlWiN>).
12. Hunter Müller, *British-American Diplomacy: The Caroline Case*, 2008, Avalon Project, Yale Law School, <https://bit.ly/X2WQi5>, last accessed 6 July 2018; Arabella Lang, *Legal basis for UK military action in Syria*, House of Commons Library Research Paper, CBP 7404, 1 December 2015, pg. 15 (<https://bit.ly/2zbpHbD>).
13. Noam Lubell and Nathan Derejko, *A global battlefield? Drones and the geographical scope of armed conflict*, 20 March 2013, *Journal of International Criminal Justice*, 11(1), pg. 65-88 (<https://bit.ly/2KNRONY>).
14. Lord Goldsmith, *Advice on the legality of military action against Iraq without a further resolution of the Security Council*, 7 March 2003 (<https://bit.ly/2NxiGH>).
15. Justice Committee, *The work of the Attorney General: Evidence given by Jeremy Wright QC MP*, HC 409, 18 September 2015 (<https://bit.ly/2u9Qhwi>).
16. Jeremy Wright QC MP, *Attorney General's speech at the International Institute for Strategic Studies, Attorney General's Office*, 11 January 2017, <https://bit.ly/2igDccE>, last accessed 6 July 2018.
17. Sir Daniel Bethlehem, *Principles relevant to the scope of a state's right to self-defence against an imminent or actual armed attack by nonstate actors*, October 2012, *American Journal of International Law*, 106(4), pg. 769-777 (<https://bit.ly/2zqQJyl>).
18. Hunter Müller, *British-American Diplomacy: The Caroline Case*, 2008, Avalon Project, Yale Law School, <https://bit.ly/X2WQi5>, last accessed 6 July 2018; Arabella Lang, *Legal basis for UK military action in Syria*, House of Commons Library Research Paper, CBP 7404, 1 December 2015, pg. 15 (<https://bit.ly/2zbpHbD>).
19. *Ibid*, pg. 775-776.
20. See, responses provided in the *American Journal of International Law* 107(3) of July 2013 and 107(4) of October 2013. Issue 3 is available at <https://bit.ly/2tYrETJ> and Issue 4 is available at <https://bit.ly/2tXbDOI>.
21. Elizabeth Wilmschurst and Michael Wood, *Self-defence against nonstate actors: Reflections on the 'Bethlehem Principles'*, April 2013, *American Journal of International Law*, 107(2), pg. 390-395.
22. Christof Heyns et al, *The international law framework regulating the use of armed drones*, 2016, *International and Comparative Law Quarterly*, 65(4), pg. 791-827 (<https://bit.ly/2zbxJRU>).
23. Nils Melzer, *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, May 2009, *International Committee of the Red Cross* (<https://bit.ly/1WjvRb3>).
24. Watkin, *Opportunity lost: Organised armed groups and the ICRC 'Direct participation in hostilities' interpretive guidance*, 2010, *NYU Journal of International Law and Policy*, 42(3), pg. 641 (<https://bit.ly/2zcz8b6>); Michael Schmitt, *Deconstructing direct participation in hostilities: The constitutive elements*, 2010, *NYU Journal of International Law and Policy*, 42(3), pg. 697 (<https://bit.ly/2ubzcsf>).
25. William, Boothby, *The Law of Targeting*, 16 August 2012, Oxford University Press, pg. 60-62 and 441-442.
26. HC 27212, 19 February 2016 (<https://bit.ly/2NGuPb1>).
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28. *Ibid*.
29. *Ibid*.
30. Rights Watch UK, *Written submission to APPG on Drones Inquiry into the use of armed drones*, 2017, pp.12-14 (<https://bit.ly/2NxlWiN>).
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32. Elizabeth Wilmschurst and Michael Wood, *Self-defence against nonstate actors: Reflections on the Bethlehem Principles*, April 2013, *American Journal of International Law*, 107(2), pg. 390-395 (<https://bit.ly/2MRppsw>).
33. Gavin Williamson, *Letter from the UK Secretary of State for Defence to Clive Lewis MP*, 27 December 2017, (<https://bit.ly/2FLnGly>).
34. David Willets, *New Defence Secretary wages war on British IS fighters*, Sun, 13 November 2017, <https://bit.ly/2ADXAxx>, last accessed 4 July 2018.
35. HC Deb 7 September 2015 vol 599 c23 (<https://bit.ly/2NqR30u>).
36. Matthew Rycroft, *Letter from the Permanent Representative of the UK to the President of the UN Security Council*, 7 September 2015, S/2015/688 (<https://bit.ly/2ubJvGI>).
37. Air Marshal Iain McNicoll was Deputy Commander-in-Chief Operations, RAF Air Command until 2010. His oral evidence to the Inquiry is available at <https://bit.ly/2NmXBxc> (see, pg. 8-9).
38. Christof Heyns et al, *International law framework regulating the use of armed drones*, pg. 809
39. *Ibid*.
40. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, adopted 4 November 1950, entered into force 3 September 1953, ETS 5*.
41. This is based on the ruling in *Al-Saadoon and others v. Secretary of State for Defence and others* [2016] EWCA Civ 811 (<https://bit.ly/2Nutm7D>) that 'jurisdiction' under the ECHR required states to exert 'a greater degree of power and control than that represented by the use of lethal or potentially lethal force alone'.
42. Jonathan Owen, *Devastating dossier on 'abuse' by UK forces in Iraq goes to International Criminal Court*, Independent, 12 January 2014, <https://ind.pn/2KMIPCr>, last accessed 6 July 2018.
43. Christof Heyns and Dapo Akande et al, *The international law framework regulating the use of armed drones*, 2016, *International and Comparative Law Quarterly*, 65(4), pg. 821-822 (<https://bit.ly/2u6WOZk>); Sean Aughey and Tom Tugendhat MP, *Drone strikes and international law: What the Joint Committee on Human Rights got wrong*, 18 May 2016, Policy Exchange, <https://bit.ly/2u72eU3>, last accessed 10 July 2018.
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45. James Cavallaro et al, *Living under drones: Death, injury and trauma to civilians from US drone practices in Pakistan*, 25 September 2012, Stanford Law School (<https://stanford.io/2jC5IM9>).
46. Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, HC 174 2015-16, pg. 24 (<https://bit.ly/2v07Mkp>).
47. R. (on the application of Noor Khan) v. Secretary of State for Foreign and Commonwealth Affairs [2014] EWCA Civ 24 (<https://bit.ly/2KweNm1>).
48. Peter Foster, *RAF remote drone pilots facing real-world combat stress*, Telegraph, 9 November 2015, <https://bit.ly/2uaHycX>, last accessed 6 July 2018.
49. See, appendix 6.3 for more information
50. See, appendix 6.4 for more information on problematic aspects of the US drone programme
51. These safeguards required that (1) any target must be a 'high-value terrorist' and 'pose a continuing, imminent threat to US persons, and (2) lethal action should be taken 'only when capture of an individual is not feasible and no other reasonable alternatives exist to effectively address the threat' and if there is 'near certainty that the action can be taken without injuring or killing non-combatant'.
52. While the PPG limited lethal US strikes to alleged 'high value terrorists' who posed a 'continuing imminent threat', the PSP reportedly expands the list of targets to alleged 'foot soldier jihadists with no special skills or leadership roles' with no requirement that they pose a 'continuing and imminent threat'. The PSP also eliminates 'high level

vetting' of drone strikes. See, written evidence from British NGO, Reprieve for more information (<https://bit.ly/2KSSrAu>).

53. The Government has expressly acknowledged that Article 16 is the applicable law. It set out its position first in the reply to the report of the Joint Committee on Human Rights regarding allegations of UK complicity in torture and recently confirmed this in its response to the Joint Committee on Human Rights report regarding the Government's use of drones for targeted killing.

54. The details of the US drone programme are well documented in the JCHR report, reports by UN Special Rapporteurs and civil society, as well as statements by US Government representatives. Scholars have argued that if, in the face of evidence of illegality from credible and readily available sources (such as these), a state has not made enquiries, it may be held to be 'wilfully blind' - rendering them liable under Article 16, Articles on State Responsibility.

55. As outlined in Chapter 1, the Government provides assistance by embedding UK personnel in US and partner states' forces, via the provision of bases for use by the US on UK soil, and through systematic sharing of intelligence with the US; all of which are directly used by the US to facilitate drone strikes. The UK has also publicly acknowledged that it has provided support facilitating US use of lethal force outside of armed conflict in Libya (though in this case, by manned aircraft).

56. Violations include strikes that violate the territorial sovereignty of states such as Yemen, Somalia and Pakistan, justified by an interpretation of self-defence that is out of step with international consensus; plus violations of the protections on the right to life under international humanitarian law and international human rights law.

57. UN General Assembly, Definition of Aggression: Resolution 3314 (XXIX), 14 December 1974, A/RES/3314 (<https://bit.ly/2KSwOqO>).

58. For example, in 2012 a Pakistani man, Noor Khan - whose father was killed in a US drone strike - sued the Government for allegedly providing the US with the intelligence that made the strike possible. The case was eventually dismissed by the Court of Appeal in 2014, which ruled that it could not make a judgement about a case hinging on the actions of a foreign country, except in exceptional circumstances. For more information, visit the website of Reprieve (<https://bit.ly/2zcT7q8>).

59. Belhaj and another v Straw and others [2017] UKSC 3 (<https://bit.ly/1GSIQhN>).

60. HL 2240, 21 October 2014 (<https://bit.ly/2KX3XF3>).

61. HM Government, National Security Strategy and Strategic Defence and Security Review, 23 November 2015, Cm 9161, pg. 10 (<https://bit.ly/2vlh1hb>).

62. *Ibid.*

CHAPTER 3:
**Accountability, transparency
and oversight**

The Government has taken some steps to provide information to Parliament and the public about drone strikes. Nevertheless, many aspects of the UK's drone operations, and the UK's involvement in the drone programmes of other states, remain secret. As seen in the Intelligence and Security Committee's recent reports on rendition and torture, the UK is not insulated from assisting or cooperating with allies in unlawful acts.¹ Robust transparency and oversight mechanisms will be crucial to ensure the same mistakes are not repeated in this policy area. Whilst we recognise the need for operational secrecy, it is also important that the fullest information possible be provided to Parliament and the public. It is evident that there is a great deal of public mistrust concerning the use of drones. This was made clear in submissions from various concerned individuals and civil society organisations to our Inquiry.

By playing a supporting role for partners who undertake the bulk of frontline fighting, the UK incurs a number of risks, particularly around complicity in combat methods that may be morally and legally hazardous, as well as potentially damaging for the UK's strategic interests.² While strides have been made in developing the transparency and accountability framework around the deployment of conventional forces, that progress has been outpaced by changes in military engagement. This includes the use of armed drones by the UK to target and kill individuals as well as other assistance to partners who similarly use armed drones. The failure to develop adequate measures of transparency regarding these new practices not only has implications for the UK's democratic controls over the use of force, but has serious implications for the standard of debate around military intervention – potentially to the detriment of broader strategic thinking.³

Policy and guidance

As outlined in the legal chapter, it is likely the UK has a policy to use force in a manner akin to the 'targeted killing' policy espoused by the US and Israel. The UK has publicly distanced itself from the US "global battlefield" position. However, in the absence of published guidance, concerns continue to be raised about how the UK will ensure the lawful and ethical use of drones.

In response to these concerns, the MOD has emphasised that 'during missions, operators have access to trained and experienced legal and policy advisors'. However, such access to advisors only operates as an effective safeguard against unlawful or improper use of armed drones if the legal or policy advice given is sound.

To date, the Government has provided some information to Parliament and the public, through committee inquiries and responses to parliamentary questions. For example, the Government has published its military doctrine on the use of drones⁴ and provides some operational information online about airstrikes in the current conflict in Iraq and Syria. The Attorney General has also explained some aspects of the Government's understanding of the legal framework.

We welcome all of these steps. However, none of these sources outlines the specific guidance on when it is permissible to use drones to target and kill terrorist groups and individuals. Likewise they provide no information at all on the use of

drones in a country that is different from those where existing military action is occurring between the UK and a non-state armed group.

In addition, crucial information regarding the Government's policy and legal guidance has not been disclosed to Parliament. This prevents Parliament and its committees from drawing a picture of UK policy, operations and their legality. For example, in 2017, the Government reneged on a previous promise to publish the JSP 900, UK Targeting Policy, which relates to drone operations with partners such as the US.⁵ In response to a written parliamentary question Defence Minister, Mike Penning MP confirmed on 10 January 2017 that:

“While we are working to produce an updated version of JSP 900 which is releasable to 5-eyes and NATO allies, it is now not the case that we are producing a version which would be releasable to all. It is judged that the necessary removal of information that would prejudice the capability, effectiveness or security of the Armed Forces would result in a version with insufficient detail to warrant publication.”⁶

Mike Penning MP, Defence Minister

In comparison to the US and Israel, the UK transparency measures fall far behind. The US and Israel have published detailed guidance that sets out their policy and legal views with no evident impact on their operational capabilities. By contrast, the Government maintains a ‘no comment’ policy. By publishing its guidance, the Government would provide information that is central to a meaningful and democratic debate about drone policy and use. It would strengthen the UK's position as an international leader and highlight its commitment to democratic processes. Moreover, this is crucial to a meaningful accountability mechanism. Without published guidance and communication of a clear legal framework, there is no way for Parliament and external bodies to push for measures that mitigate the risk of bad policy or safeguard against involvement in unlawful conduct.

With this in mind, the Government should publish an updated policy, for discussion in Parliament, on its use of drone technologies for military purposes, and publish guidance surrounding its use of targeted killings. This should include:

- The legal basis for targeted killing
- The criteria used in the selection of targets and precautions incorporated in such criteria

- The decision-making process and oversight mechanisms in place
- The processes in place during, and after each strike to ensure the operation was conducted in a manner that would avoid disproportionate civilian casualties; and to ensure a meaningful remedy in case of any error
- Whether other methods of neutralising the threat posed by the individual target (e.g. capture) must be exhausted before force is employed

Targeted killing: The need for a clear policy

The 2015 drone strike against Reyaad Khan in Syria, carried out without prior recourse to Parliament, highlighted the difficulties of the constitutional convention requiring Parliament's prior approval for the use of force as a robust form of oversight for drone operations. Initially, drones were used in Syria to conduct intelligence, surveillance, and reconnaissance missions rather than combat missions. Since those drones were not initially used for lethal operations, parliamentary scrutiny was lacking. However, the Khan strike established a precedent for using these same drones for targeted, lethal strikes as an emergency measure - highlighting the fluidity between combat and non-combat drone missions.

There is also a lack of clarity as to the Government's views on the geographical boundaries of the armed conflicts that this country may be involved in with non-state groups. In particular, it is unclear whether the Government considers that drone strikes against individuals operating in one country (for example, Reyaad Khan in Syria) are part of the same armed conflict as ongoing military activities against an armed group in another country (for example, Iraq in the case of Reyaad Khan). This is important because, as a matter of law and as discussed in Chapter 2, if the UK is unable to show that the drone strikes are part of that armed conflict, it has to follow a more limited set of rules of targeting that are derived from international human rights law rather than those derived from international humanitarian law. When asked to clarify its policy, the government refused to publish guidance in relation to strikes conducted in countries where there is no existing UK military action on the basis that such strikes are ‘hypothetical’.⁷

Until the Government publishes its policy and strategy on the use of drones outside of existing military action, questions on transparency and oversight mechanisms with regards to this specific issue remain unanswered. A key element of this should be the clarification of the government's position on the geographical scope of armed conflicts with non-state armed groups.

There must also be clarification of the methods employed for distinguishing between civilians and combatants. As outlined in the Chapter 2, understanding this is critical because it informs the government's position and legal basis for a host of other important legal and procedural issues that ensure protection of civilians. In our opinion, such a disclosure is essential to ensure adherence

with UK and international law, and to confirm the existence and effectiveness of appropriate transparency and oversight mechanisms.

Assistance in partner operations: ‘No comment’

As outlined in Chapter 1, a key feature of armed drones, is that they are dependent on partnerships. This makes the use of armed drones a locus for UK assistance in the military operations of other states. Where this assistance facilitates lethal operations, the safeguards provided by the convention again, fall short.

There is a lack of any published guidance on the provision of assistance to other states using drones to target terrorist groups and individuals. While partnership working is a necessary and desirable part of UK defence and security policy, as outlined in Chapters 1 and 2, a number of allegations have been made regarding the UK’s assistance in areas outside of its existing military action - in Yemen, Pakistan and Somalia, and Syria (pre-2015).

As the UK was providing assistance, rather than directly engaging in combat, this has allowed the Government to be involved in the facilitation of lethal force overseas with minimal scrutiny. Sharing intelligence is a large part of assistance. This is not subject to the parliamentary convention, adding a layer of opacity and keeping the details of involvement out of public scrutiny. In theory, the current lack of parliamentary oversight and accountability means that the UK could be involved in conflicts not just without parliamentary approval, but without Parliament’s knowledge.

It is imperative that the Government explain and, to the fullest extent possible, publish guidance on its approach to the legal framework governing assistance given to other states in the conduct of lethal drone strikes abroad. This needs to go beyond mere broad assertions that personnel must act in accordance with Rules of Engagement and international law.

We appreciate that there will always be operational and security considerations that need to be taken into account. Nevertheless, there is existing precedent for publishing guidance on intelligence-sharing in other sensitive areas. In July 2010, the Government published the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees. This demonstration of transparency has enabled informed debate, and goes some way to address concerns in this area. It is crucial that similar guidance relating to intelligence-sharing that may be used in targeted killing is also published. This would provide clarity to concerned parliamentarians, military personnel and the public.

Intelligence-sharing

The lack of any oversight mechanisms is especially relevant to UK assistance or cooperation in US operations, due to widespread concern that the UK is complicit in unlawful drone strikes. As

outlined in earlier sections, the majority of UK assistance to the US takes the form of intelligence-sharing and provision of bases.

Oversight of intelligence sharing⁸

- Ministerial oversight is provided by the Secretary of State for Foreign and Commonwealth Affairs
- Legal advice is provided by the Attorney General
- The Joint Intelligence Committee sits within the Cabinet Office and advises ministers on priorities, assessing results and oversight of intelligence capability, and its assessments feed into the National Security Council (NSC)
- The NSC is the main forum for collective discussion on the government’s national security objectives
- Judicial oversight is provided by the new Investigatory Powers Commissioner
- The Intelligence and Security Committee (ISC) has the relevant security clearance to provide oversight of the intelligence agencies - however its power to investigate drone strikes has proved limited (see, Investigations below).

The UK has been transparent about its intelligence-sharing assistance for US drone strikes in Syria. However, submissions to the Inquiry have pointed to a building evidence alleging the UK’s involvement in US targeted killings in Somalia, Pakistan and Yemen. To date, the Government has refused to disclose any information, citing a “long-standing policy not to comment on intelligence matters”.⁹ In some cases it denies involvement completely, as in the case for Yemen and Pakistan.

“Drone strikes against terrorist targets in Yemen are a matter for the Yemeni and US governments.”¹⁰

Sir Hugh Robertson MP

In 2012, when asked about the UK’s intelligence sharing role in Pakistan, former Foreign Secretary William Hague MP said: “Once you comment on one case, you have to comment on many hundreds of other cases. I can’t comment on who we share intelligence with, and on what subjects.”¹¹ When the Snowden documents raised questions over the government’s role in drone strikes in Yemen and Pakistan in June 2015, the Government simply commented that ‘it is the longstanding policy of successive UK governments not to comment on intelligence operation. We expect all states concerned to act in accordance with international law and take all feasible precautions to avoid civilian casualties when conducting any form of military or counter-terrorist operations.’¹²

Provision of bases

The four US bases in the UK are veiled in secrecy, with no means

of obtaining information about their activities. In 2017, the APPG on Drones filed a FOI case for the memorandum of understanding signed between the UK and US relating to the use of the RAF Croughton base. However, the government was not willing to ask the US to consider the request, as this action alone could upset UK-US relations. This default position effectively insulates the US from any requests regarding the UK-US partnership.

The Government has shown commitment to implementing due diligence and accountability mechanisms in other spheres where we work with partners. A similar commitment should be shown by the establishment of an oversight regime for the provision of bases and sharing of assets, based on the arms control export regime. This would provide three distinct benefits. First, it would safeguard Britain's national security by reducing the risk that essential combat assets could be used to undermine peace and stability. Second, it would strengthen our capability through enabling responsible partnerships. Finally, it would uphold our values by taking into account potential risks to human rights, international humanitarian law and sustainable development. Taking on lessons from existing policy, we recommend the establishment of a consolidated criteria against which all sharing of assets and provision of bases is decided.

Embedded personnel

The Government has confirmed that it does not seek prior parliamentary approval for deployment of UK personnel when they are embedded with the armed forces of other nations. This because “the convention does not apply.”¹³

“While it has been standard practice not to publicise the placing of embeds with other countries’ forces, [the Government] will always confirm details if and when asked to do so.”¹⁴

Michael Fallon MP, Secretary of State for Defence (2014-2017)

On the surface, the Government has committed to transparency on embeds. When it was discovered UK embeds were operating in Syria, Michael Fallon MP did commit to “increased transparency by publishing an annual update to the House on embedded personnel.”¹⁵ However, this update was criticised as ‘hopelessly vague.’¹⁶ The information represents a snapshot of the number of troops embedded on one day meaning it provides no insight into the continuation or trends of these operations.¹⁷ In addition, this transparency is not forthcoming in all situations. In 2015, for example, the MOD declined to answer a FOI request that would confirm whether its personnel have been embedded with US military teams operating drones in the skies above Pakistan, claiming doing so might jeopardise international relations.¹⁸

The Convention does not apply to British military personnel embedded in the Armed Forces of other nations as they operate as if they were the host nation’s personnel, under that nation’s chain of command, while remaining subject to UK domestic, international and Host Nation law. This is in line with international practice. To do otherwise would risk undermining the usefulness and viability of these exchanges.”¹⁹

Michael Fallon MP, Secretary of State for Defence (2014-2017)

Unless the Government acts to allay concerns in this respect, there is a real risk that trust in the Government’s military operations - particularly those involving partners - will be undermined, both by the public and in Parliament.

We call for the Government to make public its policy and strategy for the use of armed drones, and assistance in lethal drone operations of partner states. We believe it is essential for the



Available Information

- Red Card System: designed to ensure UK personnel do not become involved in action taken by other states which does not comply with UK ROE or the UK understanding of applicable laws;
- Published guidance on the use of the red card system, and evidence of when and how it has been used has not been forthcoming from the Government in response to parliamentary Questions;
- Following a FOI request in 2015 and other inquiries the Government provided information on the numbers of personnel embedded in operations with allies and in joint headquarters (EU, NATO, UN) and “coalition headquarters”, but has not specified what roles those personnel carry out.

Outstanding information

- Lack of information about basic operational issues such as where drones are located;
- What permissions the Government has in relation to the use of bases abroad and where those bases are;
- The extent of cooperation with other States in relation to drone strikes and intelligence related to them;
- The extent to which the US supports its drone programme from bases located in the UK;
- The Government’s understanding of the applicable legal framework;
- The operation of the “red card” system
- Procedures for conducting reviews of civilian casualties caused by drone strikes in current operations in Iraq and Syria.

Government to set out its interpretation of the decision-making process dictating the use of force overseas. The importance of this has been highlighted by many submissions to our Inquiry, several of which emphasise the current lack of a comprehensive and cohesive publicly available interpretation of the decision-making mechanisms on the use of force. Likewise, recent debates among parliamentarians, within academia and in the media alike, suggests that further clarification of the current Government’s position on the use of armed force abroad is necessary.

Limited powers: Scrutiny of operations and investigations

To date, there is no one parliamentary body with the mandate to conduct comprehensive investigations into all aspects of a drone strike. Instead, the ISC, Defence Committee and JHRC have conducted investigations into their mandated areas and security clearances. As drone strikes almost inevitably involve the use of intelligence within the context of military operations, there is a potential gap in parliamentary scrutiny. Furthermore, the ability of parliamentary committees to examine drone policy and practice, depends on the Government supplying relevant information.

The pitfalls of current investigation arrangements are epitomised in the ISC’s Inquiry into the Reyaad Khan strike. The Prime Minister exercised his discretionary power to permit the Inquiry to go ahead on the basis there was significant public interest. However, he effectively curtailed the Committee’s ability to make a conclusive judgement by withholding crucial documents on the grounds that these fell outside its scope.

At present, Parliament’s ability to exercise scrutiny on intelligence used for targeted killing is at the discretion of the

Prime Minister. This defies the very notion of division of power, and undermines Parliament’s central role in overseeing the use, or facilitation of the use, of force.

The JCHR recommended in its report on targeted killing that the ISC’s remit: “should be widened to enable it to fulfil the important function of conducting thorough and effective scrutiny capable of providing Parliament and the public with the necessary reassurance that future uses of lethal force outside armed conflict were necessary and proportionate”.²⁰

We agree with this recommendation, and suggest two further options that may be considered as an effective body to investigate allegations of unlawful use of force, particularly with regard to the mitigation of civilian casualties:

- A task group constituting members of the Joint Committee on the National Security Strategy (JCNSS) and ISC to investigate allegations and outline mechanisms for remedy in the case of any violation.
- Building on the success of the Independent Reviewer of Counter-Terrorism Legislation, an Independent Reviewer of the Use of Lethal Force.

Further gaps in oversight regarding partner operations

The Prime Minister denied the ISC permission to inquire into the two US drone strikes on 13 November 2015 and 21 August 2015 which killed British citizens Junaid Hussain and Mohammed Emwazi. He justified that decision on the basis that “the operational decisions were taken by the US, not the Government” and were not therefore of the same level of public interest as the strike against Reyaad Khan.

This decision was made despite the fact that the Prime Minister had earlier stated that the UK intelligence agencies had worked

“hand in glove” with the US in connection with the strike on Emwazi. The refusal to let the ISC inquire into strikes by the US on UK citizens which were assisted by the UK in our view illustrates a significant gap in scrutiny.

The recent decision of the Supreme Court in *Belhaj*, demonstrates that the Courts in principle are willing to consider claims against UK agents which raise important human rights issues even if they involve allegations of illegality or impropriety by another state. The ISC, or another suitable parliamentary Committee, should similarly be able to look into issues concerning UK complicity in drone strikes conducted by other States.

Accountability for civilian casualties: ‘Not fit for purpose’

UK military investigations of alleged civilian casualties

The Government maintains that only one confirmed civilian casualty has been recorded as a result of its airstrikes in Iraq and Syria,²¹ and has acknowledged civilian casualties caused by only one strike in Afghanistan.²² This raises serious questions about the process of investigating, and mechanism of identifying, civilian casualties.

UK procedures for assessing civilian casualties in Afghanistan and in Iraq-Syria have not been disclosed. MOD Minister of State, Earl Howe has assured that all allegations of civilian casualties are taken “very seriously”, stating that “robust processes are in place to review reports of civilian casualties and to launch investigations when required”.²³ Pressed for further information in November 2016, the MOD stated that:

“Operational commanders undertake a detailed assessment of every strike. If there were to be credible evidence from that assessment that a serious incident had taken place, a UK investigation would be initiated. Furthermore, we accept the submission by third parties of information about civilian casualties from any source and will assess that evidence in detail.”²⁴

From the limited information available, it appears likely that the current procedures do not comply with the ECHR. Specifically, the human rights requirements under Article 2, which require an effective and independent investigation, subject to public scrutiny, into all cases where an individual has been killed by agents of the state. Investigations into deaths caused by armed forces which are conducted by the chain of command are not independent for these purposes.

Coalition investigations

In relation to the current conflict in Iraq-Syria, the Government has confirmed that there is no joint Coalition policy for investigating civilian casualties. Instead, investigations are conducted in accordance with ‘national methodologies’.²⁵ We encourage the government to disclose its methodologies.

Iraq and Syria: 3,762 UK weapons fired, only one acknowledged civilian casualty²⁶

We are not aware of any independent estimates of the numbers of civilians killed by UK airstrikes since September 2014 in Iraq and Syria. Estimates do exist for civilian casualties caused by Coalition airstrikes²⁷ as a whole in Iraq and Syria. Chris Woods, director of Airwars, an independent monitoring organisation²⁸ gave oral evidence to the Inquiry on this issue. At the time he gave evidence in July 2017, Woods estimated that the Coalition had killed a minimum of between 4,500 and 6,000 civilians in Iraq and Syria. By June 2018, the figure had increased to between 6,321 and 9,712.²⁹ The Coalition’s official figure for civilian casualties for the period to April 2018 is 892 (out of a total 29,358 strikes) with a total of 321 reports of civilian casualties yet to be considered.³⁰ Neither Airwars nor the Coalition has given a breakdown of civilian casualties by reference to the Member State responsible.

In his evidence, Woods stated that Airwars had assessed the UK as the most transparent of all the Coalition allies in the information it provides about airstrikes. However, in relation to civilian casualties, he said:

“Where we think it falls down is this British position where they say they are unaware of having harmed any civilians, because we are now at a point where the UK has conducted more than 1700 airstrikes [totalling 3,762 weapons dropped by May 2018].”^{31 32}

Chris Woods, Airwars

Chris Woods cited aerial conflicts modelling conducted by the UN in Afghanistan³³, and by the US in the current Iraq-Syria conflict.³⁴ These showed one civilian killed in every five to ten, and in every 40 strikes, respectively. Whilst acknowledging that rates of civilian casualties caused by UK strikes may be lower than these other models, because of stricter ROE or other reasons, he concluded:

“I don’t think it is possible for the UK to have conducted so many airstrikes and not to have harmed civilians. So, our view is, if the British repeatedly cannot see civilian harm, but all of the modelling indicates that we should be seeing civilian harm, then

that suggests that the aerial civcas [civilian casualties] monitoring that the MOD is doing is not fit for purpose.”³⁵

Chris Woods, Airwars

The surveillance capabilities and the precision weapons carried by drones potentially provide the opportunity for strikes to be carried out with fewer civilian casualties than conventional platforms. However, this is only possible if the underpinning processes in place are adequate. Dr. Lewis told the Inquiry that a decade of data from US drone strikes in Afghanistan showed that drone strikes were ten times more likely to result in civilian casualties than conventional air attacks.³⁶ This increased risk of casualties arises largely due to faulty procedures used to target, including lack of training and coordination failures between the drone operator, image analyst and others involved in identifying and approving targets.³⁷

The evidence provided to this Inquiry suggests that the UK approach is suffering from a similar failure in process. Recent media reporting challenges the UK’s near zero civilian casualties record in Iraq and Syria, and echo the concerns raised in this report. Without adequate processes surrounding the identification and mitigation of civilian casualties in conflict, the UK risks causing disproportionate harm to those on the ground, and a loss of credibility on the global stage.

We strongly encourage a re-evaluation of the methods by which civilian casualties are measured, and the processes surrounding targeting and identification of combatants. This should specifically consider the inadequacy of acquiring accurate information from the air only. The Government should publish, or make available to the ISC, the process by which civilian casualties are investigated.

Under the current accountability and oversight mechanisms, the challenges raised above are set to increase in the future. As the UK and its allies increasingly turn to light footprint operations at the cusp of the robotics revolution, it is imperative that guidelines and accountability mechanisms develop in parallel.

Chapter 3: Accountability, transparency and oversight

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27. Note: 'airstrike' is a flexible term that can denote one weapon aimed at one target or multiple weapons launched from different aircraft at different targets within the same area. See, *Drone Wars* (<https://bit.ly/2fglupr>).
28. Airwars is a UK not-for-profit that works with local researchers to gather accounts from individuals affected by airstrikes, and collects information from local and social media (for more information, visit <https://airwars.org>).
29. Air Wars, *Summary findings on Coalition air and artillery strikes: 8 August 2014 to 4 June 2018*, June 2018, <https://bit.ly/29VGe2n>, last accessed 6 July 2018.
30. Global Coalition, *Airstrikes, civilian casualties and investigations*, 4 June 2018, <https://bit.ly/2KF1Ma3>, last accessed 4 July 2018 (based on Combined Joint Task Force-Operation Inherent Resolve, *Monthly civilian casualty report*, 31 May 2018, <https://bit.ly/2MUi7nX>).
31. Chris Woods is an investigative journalist and leads the Airwars project. His oral evidence to the Inquiry is available at <https://bit.ly/2m3W7f7> (see, pg. 17); NB: his initial figure of 1400 when giving evidence has been updated to match current figures.
32. Defence Committee, *UK military operations in Mosul and Raqqa Inquiry*, UK Parliament, 10 May 2018, <https://bit.ly/2KcTOLV>, last accessed 6 July 2018; See *Drone Wars*, <https://bit.ly/2fglupr>, last accessed 6 July 2018.
33. Christopher Kolenda et al, *The strategic costs of civilian harm: Applying lessons from Afghanistan to current and future conflicts*, 3 June 2018, *Open Society Foundations*, pg. 34 (<https://osf.to/2zpgbC5>).
34. Until April 2017 the US routinely accepted responsibility for individual civilian harm events in Iraq and Syria, and also declared the number of strikes its own forces had conducted in both Iraq and Syria. Airwars modelling indicates that the US conceded a civilian fatality on average for every 40 strikes to that point.
35. *Ibid*.
36. Dr. Larry Lewis is the director of the Center for Autonomy and Artificial Intelligence, Center for Naval Analyses. His oral evidence to the Inquiry is available at <https://bit.ly/2m3W7f7> (see, pg. 3-5) and Dr. Lewis' prepared comments, *Doing 'everything possible to reduce civilian casualties in military operations*, 12 July 2017, pg. 4 (<https://bit.ly/2m09rkg>).
37. The data shows that the main cause of civilian casualties was not 'collateral damage' in the familiar sense in which it is understood, i.e. that a strike on a valid target results in bystander civilians being accidentally killed, although that did occur. See, APPG on Drones, *Oral evidence session III: Inquiry into 'The use of armed drones: Working with partners'*, 12 July 2017, pg. 3-5 (<https://bit.ly/2m3W7f7>); Larry Lewis, *Doing 'everything possible' to reduce civilian casualties*, pg. 4, although that did occur. See, APPG on Drones, *Oral evidence session III: Inquiry into 'The use of armed drones: Working with partners'*, 12 July 2017, pg. 3-5 (<https://bit.ly/2m3W7f7>); Larry

CHAPTER 4:
Future Technological Trends

It is apparent that incremental technological developments in a variety of fields including communications, sensors, miniaturisation and highly accurate ordnance, have given new utility to a long-standing military platform - the drone. Such technologies have made drones extremely useful for surveillance and intelligence collection, but have also brought about the birth of the very accurate, armed drone. This technology has been put to particular use in the last decade for counter-terrorism purposes, outside the sphere of armed conflicts.

In particular, armed drones allow lethal force to be used accurately against targets in remote locations that would not otherwise be accessible to forms of military action. In turn, that access and accuracy has an impact on judgements about the proportionality of using lethal force in any given situation. Operations that might have been rejected because of the risk to nearby civilians or civilian infrastructure,¹ or rejected on the grounds that military advantages would be outweighed by the risk to one's own forces in undertaking it, may now be regarded as entirely proportionate for the sake of relatively small military advantages. Not least, the overall cost of drones and their related systems, in comparison to the military capabilities they provide, is not excessive and will almost certainly fall as robotics technologies mature. Drone technology allows military planners to exploit many marginal operational advantages, and may come to represent the most affordable, high-tech branch of airpower available to military powers of medium-size and above.

Even more significantly, drone technology is one of the leading edges in military robotics. This, in itself, is a subset of a more profound technological revolution taking place both inside and outside the military establishments of developed countries. As General Barrons put it:

“What I think we now will see remarkably quickly are how the constituent parts of what is called the Fourth Industrial Revolution are going to change not only how we live and work in our normal lives but also how military capability is perceived and operated. By which I mean, as led by the civil sector, advances in big data, connectivity, processing, artificial intelligence, robotics and autonomous systems, will lead to us seeing rapid acceleration wof capability that is autonomous and unmanned, and we will see a decline in platforms that are manned....The world that is coming is how you will mix manned, unmanned and genuinely autonomous systems to build the most effective military capability at a price you can afford.”²

Like all military innovations, the integration of artificial intelligence in military capability can be either positive or negative, depending on how it is applied. Dr. Larry Lewis³ has recently argued that the use of narrow artificial intelligence, applying techniques such as machine learning to large data sets, could potentially optimise decision making to better protect civilians in armed conflict.⁴

Nevertheless, drone technology is just the tip of a technological iceberg as robotics and information systems become increasingly weaponised by military powers. Unless the UK is comprehensively prepared to address concerns raised about the future of autonomous weapons, they have the potential to change our ROE in fundamental ways before we have realised it. Decisions made - and precedents set now - on the way drones are employed, both for lethal and non-lethal operations, will have major effects on the protocols governing the weaponisation of robotic technologies for many years to come.

The possibility of Lethal Autonomous Weapons Systems

Drones are not synonymous with lethal autonomous weapons systems (LAWS), a concept that refers to a troubling technological possibility across a wide range of future weapon systems.⁵ Nevertheless, drones in general, and armed drones in particular, embody some of the technologies that could most easily be converted to create a full-blown lethal autonomous weapons system. The technologies to make drones both more lethal and more autonomous already exist. The Government asserts that it has no intention to develop them in this direction. The Government has no policy to create LAWS and it intends always to have responsible individuals in control of weapons systems.⁶ Nevertheless, robust guidelines for future policy on LAWS are clearly required, since the implications of relying on LAWS in the future are so serious. The basis of current Government thinking in this respect is not encouraging.

The Government's definition of an autonomous system ... limits both the extent to which the UK can meaningfully participate in international debates on autonomous weapons, and its ability to take an active role as a moral and ethical leader on the global stage in this area.

House of Lords Artificial Intelligence Select Committee⁶

Many studies since 2012 have raised concerns about the ethical and operational consequences of LAWS. These have included

studies by Human Rights Watch and the International Human Rights Clinic at the Harvard Law School,⁷ the Stockholm International Peace Research Institute, the UN Human Rights Council,⁸ the UN Certain Conventional Weapons Convention (CCW),⁹ the ICRC¹⁰ between them encompassing parties including the governments of Russia, China, the US, the UK and all EU states, plus a great many civil society groups,¹¹ prominent scientists¹² and individuals.¹³

These concerns include:

- The ethics around autonomous systems making decisions to kill human beings
- The extent to which LAWS are able to discriminate between legitimate targets and persons to be spared from attack;
- The ability of LAWS to comply with international legal frameworks, including the principles of distinction and proportionality;
- Concerns about individual accountability for a technology that would be operated without meaningful human control;
- The possibility that large swarms of anti-personnel LAWS would effectively become weapons of mass destruction.

Other concerns are operational, in exercising command and control over systems which develop their own logic paths based on autonomous learning. There is concern about the potential for catastrophic, systemic mistakes. Special safety concerns are also relevant since, in principle, LAWS would be no less vulnerable to hacking than other computerised systems, and possibly harder to recover, in the event of penetration, before harm was caused by its features acting autonomously. Not least, there is a strategic concern that the availability of LAWS could lower the threshold for the use of force, and be used outside armed conflict situations - for example, as a tool to suppress dissent amongst civilian populations.

There is a case for a preemptive ban on the development of LAWS, or else strict controls falling short of a ban. Also, there is active discussion over whether existing legal frameworks are sufficient to control LAWS (and in particular, Article 36 of Additional Protocol I to the Geneva Conventions which mandates reviews of new weapons to determine whether their employment would be lawful in international law).¹⁴ There is, however, no international consensus on the way forward, or even agreement on essential definitions.¹⁵ Simultaneously, however, the civil sector strongly pushes AI and robotic technologies in the drive to integrate fourth generation technologies into the post-modern economy; the technologies that facilitate LAWS have developed apace in the last decade.

UK Government policy

The UK's position on autonomous weapons was set out by the MOD in August 2017.¹⁶ It attempts to draw a distinction between 'automated systems' and 'autonomous systems'.

"In the unmanned aircraft context, an automated or automatic

system is one that, in response to inputs from one or more sensors, is programmed to logically follow a predefined set of rules in order to provide an outcome. Knowing the set of rules under which it is operating means that its output is predictable.”²¹¹

Ministry of Defence

By contrast, it defines an ‘autonomous system’ as one which is:

“...capable of understanding higher-level intent and direction. From this understanding and its perception of its environment, such a system is able to take appropriate action to bring about a desired state. It is capable of deciding a course of action, from a number of alternatives, without depending on human oversight and control, although these may still be present.”

Ministry of Defence

Current air defence systems, such as Phalanx and C-RAM,¹⁸ already embody some of these features. They have, in the MoD’s own words, “automatic modes that are designed only to destroy incoming rockets in self-defence, using self-destruct rounds, within very limited parameters”.¹⁹ These are distinguished from ‘fully autonomous weapons systems’ defined by the MOD as “machines with the ability to understand higher-level intent, being capable of deciding a course of action without depending on human oversight and control.”²⁰ Such systems, it says, “currently do not exist and are unlikely [to] in the near future”.²¹

The fundamental principle of UK policy in this respect is that “the operation of UK weapons will always be under human control as an absolute guarantee of human oversight, authority and accountability. Whilst weapon systems may operate in automatic modes there is always a person involved in setting appropriate parameters.”²²

Such a clear distinction between ‘automated’ and ‘autonomous’ systems, however, is not universally shared. Other international sources find this distinction little help in arriving at ethical judgements on the nature of the technology. It might be perfectly

acceptable, for example, for a weapons platform to navigate its way to a battle zone as an autonomous system, making its own decisions and learning as it goes, but quite another then to be autonomous in the matter of choosing targets and releasing weapons. The difference between being ‘automated’ and ‘autonomous’ is not a distinction so much as a spectrum.

In April 2018, the House of Lords Select Committee on Artificial Intelligence challenged the UK’s definitions of autonomous weapons systems as “clearly out of step” with those of the rest of the world, and demanded that the UK’s position be changed to align with these within eight months. The Lords also recognised, importantly, that a “lack of semantic clarity could lead the UK towards an ill-considered drift into increasingly autonomous weaponry.”²³

Prof. Russell told the Inquiry that it is not possible to draw a clear dividing line between ‘automated’ and ‘autonomous systems’, as the UK seeks to do. He drew on other studies that considered a better approach was to define ‘autonomous’ according to how any given military system created its practical impact - how it acted.^{24 25}

Air Marshal Bagwell agreed that it was best to acknowledge a ‘spectrum’ when he addressed the autonomous potential of systems, such as Phalanx:

“We can control when that autonomy is allowed to function, which is key. We control the permissions. The far end of the spectrum is the artificial intelligence part, which is probably the conundrum we have all described. But we are already on that spectrum. The question is how far we will go and what permissions we will grant.”²⁶

ibid

Prof. Stuart Russell also took issue with the MOD’s assertion that autonomous weapons systems are ‘unlikely’ to be developed in the near future. He referred not only to the rapid advances in self-driving vehicles, but also to the arrival of ‘scalable’ small weapons, whereby a very few troops with sufficient servers could command very large numbers of small autonomous weapons. Small drones (quadcopters), for example, equipped with onboard processing capabilities and cameras, carrying a few grams of explosive - sufficient to kill a person - are entirely feasible in the near future. Prof. Mary Cummings also concurs that rapid commercial development in these technologies may have destabilising and unpredictable effects on future military use.²⁷

Other states and LAWS

Just as important is the attitude and approach of other states to LAWS. There is no consensus among the UK's traditional allies on an appropriate policy response. The US Third Offset Strategy seeks to develop an asymmetric approach among its allies to the growing power of their adversaries which aims to "exploit all the advances in artificial intelligence and autonomy ... to achieve a step increase in performance that the [US Department of Defense] believes will strengthen conventional deterrence."²⁸ Recent press reports detail the development by the US of prototype autonomous drones which can identify targets and operate in swarms.²⁹ The Center for Naval Analysis, Virginia acknowledges in one report that there is a "significant policy difference between the US and the UK" on the development of LAWS which potentially has "many implications" for the future of the UK in the US Third Offset Strategy.³⁰

Even further, the development of AI has been declared a national priority by China and Russia. As President Putin expressed it, "artificial intelligence is the future, not only for Russia, but for all humankind," and "it comes with colossal opportunities but also threats that are difficult to predict. Whoever becomes the leader in this sphere will become ruler of the world."³¹ Today, China's production of quadcopters outweighs that of any other nation. Moreover, the country's artificial intelligence capability is rapidly growing.³²

The maturity of drone technologies, and the use of military drones, large and small, passive and lethal, is set to proliferate; certainly among the significant military powers in world politics.

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1. See, for example, the footage released by the MOD of a drone strike taking out of a sniper located very close to a crowd of civilians, available on BBC News (Islamic State 'execution' stopped by RAF drone in Syria, 20 September 2017, <https://bbc.in/2KT8QvN>, last accessed 5 July 2018).
2. General Sir Richard Barrons served as Commander Joint Forces Command until April 2016. His oral evidence to the Inquiry is available at <https://bit.ly/2NmXBxc>.
3. Dr. Larry Lewis is the director of the Center for Autonomy and Artificial Intelligence, Center for Naval Analyses.
4. Larry Lewis, AI for good in war: Beyond Google's 'Don't be evil', *Breaking Defence*, 29 June 2018, <https://bit.ly/2KSFpdj>, last accessed 5 July 2018.
5. HC Deb 27 November 2017 vol 632 c902 (<https://bit.ly/2N01Ely>).
6. Select Committee on Artificial Intelligence, AI in the UK: Ready, willing and able?, 16 April 2018, HL 100 (<https://bit.ly/2vhDmfr>).
7. Bonnie Docherty, Making the case: The dangers of killer robots and the need for a preemptive ban, *Human Rights Watch*, 12 September 2016 (<https://bit.ly/2u8YiS6>).
8. Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/23/47, 9 April 2013, (<https://bit.ly/2tVP10a>).
9. Jean-Hugues Simon-Michel, Report of the 2014 Informal Meeting of Experts on Lethal Autonomous Weapons Systems, CCW/MSP/2014/3, 11 June 2014 (<https://bit.ly/2lUrQ21>); Michael Biontino, Report of the 2015 Informal Meeting of Experts on Lethal Autonomous Weapons Systems, CCW/MSP/2015/3, 2 June 2015 (<https://bit.ly/2KSd0ai>); Michael Biontino, Report of the 2016 Informal Meeting of Experts on Lethal Autonomous Weapons Systems, CCW/CONFV/2, 10 June 2016 (<https://bit.ly/2KDBzc5>).
10. International Committee of the Red Cross, Expert meeting: Autonomous weapon systems implications of increasing autonomy in the critical functions of weapons; Versoix, Switzerland, 15-16 March 2016, 1 September 2016 (<https://bit.ly/2d6nfHy>).
11. Lists of relevant material have been collated by campaigning organisations, including Ban Lethal Autonomous Weapons (<https://autonomousweapons.org>) and Campaign to Stop Killer Robots (<https://stopkillerrobots.org>).
12. Future of Life Institute, Autonomous weapons: An open letter from AI and robotics researchers, 28 July 2015, <https://bit.ly/2KPwooz>, last accessed 5 July 2018. According to Future of Life Institute, 'to date, the letter has been signed by 3,978 AI/robotics researchers and 22,541 others'.
13. UN Institute for Disarmament Research, The weaponisation of increasingly autonomous technologies: Concerns, characteristics and definitional approaches - A primer, UNIDIR Resources No. 6, 2017.
14. Article 36, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (<https://bit.ly/2LXJmf7>).
15. For a helpful analysis of the various approaches to definition, see UNIDIR, The weaponisation of increasingly autonomous technologies, chapter 3.
16. Ministry of Defence, Joint Doctrine Publication 0-30.2: Unmanned Aircraft Systems, Development, Concepts and Doctrine Centre, 12 September 2017, pg. 42, s. 4.14-4.19 (<https://bit.ly/2tQz7Vc>).
17. *Ibid*, pg. 43, s. 4.17.
18. Counter-rocket, artillery and mortar, also known as Counter-RAM.
19. *Ibid*, pg. 42, s. 4.15.
20. *Ibid*, pg. 13, s. 2.5.
21. *Ibid*, pg. 43, s. 4.17.
22. UK Government, Statement to the Informal Meeting of Experts on Lethal Autonomous Weapons Systems: 11-15 April 2016, 15 April 2016, pg. 2 (<https://bit.ly/2KAFBBO>).
23. Lords Select Committee on Artificial Intelligence, AI in the UK: Ready, willing and able?.
24. ICRC, Expert meeting: Autonomous weapon systems implications of increasing autonomy in the critical functions of weapons.
25. UNIDIR, The weaponisation of increasingly autonomous technologies.
26. APPG on Drones, Inquiry into the use of armed drones: Evidence session I, 7 December 2016, pg. 4 (<https://bit.ly/2NmXBxc>).
27. Mary Cummings, Artificial intelligence and the future of warfare, Chatham House,

26 January 2017, pg. 9-12 (<https://bit.ly/2KyLLCu>).

28. Cheryl Pellerin, Deputy secretary: Third offset strategy bolsters America's military deterrence, *Department of Defense News*, 31 October

Conclusion

In carrying out this Inquiry, the APPG set out to interrogate UK policy and practice in a consideration of the current precedents being set through the UK's work with partners. As we examined, modern UK drone operations take place in complex environments, with differing levels of collaboration and assistance in drone operations, and with multiple partners that may not all adhere to the same rules of engagement.

This issue raises new challenges and opportunities, that each require a considered policy response, as supported by an informed Parliament. In line with best practice set out in other areas of policy, the Government should now take the opportunity to ensure that its processes upholding its obligations under international humanitarian law and human rights law are robust, and set the stage for common protocols and standards at the highest global levels.

With this in mind, the APPG makes the call for greater transparency and oversight by appropriate bodies in Parliament. This will enable informed debate and the development of the strong policy and process that should underpin all UK drone operations.

In this report and throughout our Inquiry, we have endeavoured to show that 'working with partners' is not just an operational concept. While there is a practical strategic imperative for closer collaboration with partners, the other elements of such work centre on the need to develop and commit to agreed legal standards. The UK has been, and should remain, a leading force in the development of such precedents. And this Government can, and should, set the direction of global policy and practices to govern the use of drones and the application of force.

We have also outlined the danger posed by the Government's shift in its stance to an expanded notion of 'imminence', and the urgent risks for the Government and UK personnel in proceeding with partner operations without a clear position on the geographical scope of armed conflicts with non-state groups. We reiterate the need for clarity on these points.

These legal principles are central to the protection of civilians in areas where (evidence to this Inquiry suggests) the UK is involved - from Syria to Yemen. Crucially, this is an area where the Inquiry has found a growing body of expert opinion warning that current UK processes in mitigating civilian harm, and remedying any errors, are not fit for purpose. Here, again, we call for action from the Government.

This Inquiry has also uncovered that the UK's current processes and mechanisms for adequate transparency and scrutiny of UK drone use - both directly, and through joint military operations - has not kept pace with the rapidly shifting nature of UK military capabilities, commitments and partnerships.

Indeed, at the brink of the fourth industrial revolution, the UK's

experience with drone technology, and the policy and the process underlying their use, will be sharply put to the test. New challenges include rapidly developing state capabilities in remotely piloted and robotic systems utilising algorithmic decision-making,

miniaturisation and Lethal Autonomous Weapons Systems; all of which are driving forward surveillance and kinetic capabilities across air, sea and land.

The strategic environment is quickly becoming more complex, especially as contested airspace and theatres of operation are lacking in centralised government control. In view of this, we suggest that there are clear risks of the UK proceeding without both clarity of policies and legal principles, and - as we have set out to prove - the informed support of Parliament.

As the bulwark of scrutiny and bastion of accountability of Government policy and practice, Parliamentarians play a pivotal role in this arena. Their constitutional responsibility requires them to call for - and help shape - considered policy, clear legal precedents and adequate scrutiny mechanisms. These are essential if the UK is to have a solid foundation for its drone operations with its allies going forward. We therefore look forward to working with Parliamentarians, Government and civil society in taking these recommendations forward, and working with all interested parties to implement them in the months and ahead.

Appendices

1. Inquiry Panel

The Inquiry Panel comprised of eight members:¹

Prof. Michael Clarke (chair) | Prof. Clarke is a senior associate fellow of the Royal United Services Institute, where he was director-general from 2007 until his retirement in 2015.

Prof. Dapo Akande (legal adviser) | Prof. Akande is a professor of public international law at Blavatnik School of Government and co-director of the Oxford Institute for Ethics, Law and Armed Conflict.

Adam Holloway MP | Mr. Holloway is the MP for Gravesham and is chair of the APPG, and was a member of the Defence Committee between 2006-10 and 2012-14.

Baroness Stern CBE | Baroness Stern is the co-chair of the APPG, and was a member of the Joint Committee on Human Rights between 2004-08.

Lord Hodgson of Astley Abbotts CBE | Lord Hodgson is vice-chair of the APPG. He chairs the Armed Forces Charity Advisory Committee and served on the Joint Committee on the National Security Strategy in 2014.

Clive Lewis MP | Mr. Lewis is the MP for Norwich South and served as the Shadow Secretary of State for Defence in 2016. He chaired the APPG in 2015-16.

Lord Macdonald of River Glaven QC | Lord Macdonald is vice-chair of the APPG. He was the Director of Public Prosecutions of England and Wales from 2003-08 and is chair of legal NGO, Reprieve.

Lucy Powell MP | Ms. Powell is the MP for Manchester Central, vice-chair of the APPG and served as Shadow Secretary of State for Education in 2015-16.

2. Evidence sessions

Session I: Military and operational issues | 7 December 2016²

Witnesses: General Sir Richard Barrons, Air Marshal Greg Bagwell, Air Marshal Iain McNicoll

Members: Prof. Michael Clarke, Douglas Chapman MP,³ Lord Hodgson of Astley Abbotts, Lord Macdonald of River Glaven, Baroness Stern and Kirsten Oswald

Session II: Surveillance, reconnaissance and intelligence sharing: UK involvement in the US drone programme | 8 March 2017⁴

Witnesses: Namir Shabibi, Jennifer Gibson, Eric King⁵

Members: Prof. Michael Clarke, Lord Hodgson of Astley Abbotts, Mike Gapes MP,⁶ Lord Hamilton of Epsom,⁷ Lord

Hannay of Chiswick,⁸ Clive Lewis MP, Dr. Julian Lewis MP,⁹ Kirsten Oswald, Baroness Stern and Lord West of Spithead¹⁰

Session III: Ethical, strategic and legal issues around targeting and civilian protection | 12 July 2017¹¹

Witnesses: Prof. Michael Clarke, Dr. Larry Lewis and Chris Woods¹²

Members: Lord Hodgson of Astley Abbotts, Clive Lewis MP and Baroness Stern

Session IV: The UK's security and defence alliances | 17 October 2017 (closed session)

Witness: Sir Mark Lyall Grant¹³

Members: Prof. Michael Clarke and Clive Lewis MP

Session V: The emerging technology relevant to unmanned weapons systems | 31 October 2017¹⁴

Witnesses: Dr. Tom Simpson and Prof. Stuart Russell¹⁵

Members: Prof. Michael Clarke, Clive Lewis MP, Lord Macdonald of River Glaven and Baroness Stern

Session VI: International and domestic legal frameworks relevant to the use of armed drones | 5 December 2017¹⁶

Witnesses: Dr. Marko Milanovic and Prof. Nils Melzer¹⁷

Members: Prof. Michael Clarke, Clive Lewis MP, Lucy Powell MP with Murray Hunt¹⁸

3. Written submissions

Dr. Aurel Sari and Dr. Noëlle Quénivet | 24 February 2017 (available at <https://bit.ly/2KEvnQM>)¹⁹

Remote Warfare Programme | 24 February 2017 (available at <https://bit.ly/2lY9bm7>)²⁰

Lindis Percy | 22 March 2017 (available at <https://bit.ly/2NzrBpG>)²¹

Drone Wars UK | 16 March 2017 (available at <https://bit.ly/2tTCLNU>)²²

Laura Green | 29 March 2017 (available at)²³

Reprieve | 7 April 2017 (available at <https://bit.ly/2KYR6Pz>)²⁴

Rights Watch UK | 2 May 2017 (available at <https://bit.ly/2NxIWIn>)²⁵

Dr. Peter Lee | 12 June 2017 (available at <https://bit.ly/2u4FXWZ>)²⁶

Khalil Dewan | 14 June 2017 (available at <https://bit.ly/2KZFbo9>)²⁷

Dr. Larry Lewis | 12 July 2017 (available at <https://bit.ly/2m09rkg>)²⁸

Harriet Moynihan | 30 December 2017 (available at <https://bit.ly/2KK0qe3>)²⁹

Dr. Michael Mair, Alex Holder and Elizabeth Minor | 5 December 2017 (available at <https://bit.ly/2ugH2tY>)³⁰

ICRC | 5 December 2017 (available at <https://bit.ly/2zva7In>)³¹

Dr. Elke Schwarz | 5 December 2017 (available at <https://bit.ly/2NCiwWn>)³²

Max Brookman-Byrne | 5 December 2017 (available at <https://bit.ly/2KJ5BuX>)³³

Remote Warfare Programme (formerly, Remote

Control Project) | 5 December 2017 (updated submission, available at <https://bit.ly/2MUmVd7>)³⁴

Reprieve | 5 December 2017 (additional submission, available at <https://bit.ly/2NvHBcn>)³⁵

4. Glossary

AI - Artificial intelligence
 APPG - All-Party Parliamentary Group, UK Parliament
 AQAP - Al-Qaeda in the Arabian Peninsula³⁶
 CIA - Central Intelligence Agency, US Government
 CJTF-HOA - Combined Joint Task Force - Horn of Africa, US Africa Command
 CJPTF - Combined Joint Predator Task Force, USAF-RAF
 CENTCOM - United States Central Command
 CCW - UN Certain Conventional Weapons Convention 1983
 C-RAM - Counter-rocket, artillery and mortar
 DOJ - Department of Justice, US Government
 ECHR - European Convention on Human Rights
 ECtHR - European Court of Human Rights
 EU - European Union
 FCO - Foreign and Commonwealth Office, UK Government
 FOI - Freedom of Information
 GCHQ - UK Government Communications Headquarters
 IHL - International humanitarian law
 IHRL - International human rights law
 IAC - International armed conflict
 ICRC - International Committee of the Red Cross
 ISAF - International Security Assistance Force, NATO
 ISC - Intelligence and Security Committee, UK Parliament
 ISIL - Islamic State of Iraq and the Levant³⁷
 ISTAR - Intelligence, surveillance, target acquisition, reconnaissance³⁸
 JCNSS - Joint Committee on the National Security Strategy, UK Parliament
 JCHR - Joint Committee on Human Rights, UK Parliament
 JDP - Joint doctrine publication, UK Ministry of Defence
 JSP - Joint service publication, UK Ministry of Defence
 LAWS - Lethal autonomous weapons systems
 MOD - Ministry of Defence, UK Government
 MP - Member of Parliament
 NATO - North Atlantic Treaty Organisation
 NGO - Non-governmental organisation
 NIAC - Non-international armed conflict
 NSB - National Security Bureau, Yemen Government
 NSC - National Security Council, UK Government
 PPG - Presidential policy guidance
 RAF - Royal Air Force UK
 ROE - Rules of engagement
 RPAS - Remotely piloted aircraft system
 SIS - Secret Intelligence Service, UK Government³⁹
 UAS - Unmanned aerial system
 UAV - Unmanned aerial vehicle
 UK - United Kingdom of Great Britain and Northern Ireland
 UN - United Nations
 US - United States of America
 USAF - United States Air Force

5. Terms of reference

The following is a copy of the Inquiry terms of reference issues by the APPG in November 2016. For a full list of the questions listed in the terms, please see the APPG on Drones website.⁴⁰

The purpose of the Inquiry is to analyse the emerging technologies of drones and the ways in which the UK works with allies with regard to use of armed drones, and make recommendations to ensure an appropriate level of transparency and accountability for this in Parliament. It will build on the report of the Joint Committee on Human Rights, which found that the Government has a policy to use lethal force abroad outside armed conflict for counter-terrorism purposes, focusing on areas outside the remit of that inquiry.

The UK is dependent on the US for the operation of its 10 armed Reaper remotely piloted aerial systems (known as ‘drones’) and works collaboratively with the US in various ways. Other European governments appear to be following the UK-US model: the US recently granted Italy permission to arm its six Reapers and France has committed to acquiring a second batch of 12 Reapers, adding to its current fleet of three. A ‘Reaper Users Group’ has now been established.

This inquiry will review the context, nature, emerging technologies and governance for new forms of drones operations, and in particular, collaborative working with regard to the growing use of armed drones - the forefront of modern data-driven warfare. It will examine working practices and emerging trends through the prism of Reaper use and the networked systems that support the operation of this platform. It will consider the implications of relevant reports published recently by investigative journalists and others.

Drones gather data and project lethal force within a complex interconnected system involving multiple intelligence sources, different operating methods, and personnel working in widely dispersed locations. This makes collaboration both easier and more sophisticated, especially in relation to a shared model of unmanned aircraft.

The Inquiry is launched at a time when the UK plans to acquire up to 26 additional Reaper variants (‘Protectors’) and plans for the Reaper User Group members to enhance interoperability and collaborative working are under way. In the UK, the Strategic Defence and Security Review 2015 highlighted the importance of the Reaper’s intelligence surveillance and reconnaissance to ‘find and track’ terrorists in hostile environments, and announced the Government will enhance the UK’s ‘global strike capability’ to protect both British interests and those of allies.

Since last year, UK Reapers have been used both offensively in battlespaces approved by Parliament, as well as in self-defence. Drone strikes carried out by the US but in consultation with the UK mark a new phase of collaboration with allies.

6. Additional information

6.1 Legal concerns raised by the Joint Committee on Human Rights

The JCHR in its April 2016 report, *The Government's policy on the use of drones for targeted killing*⁴¹ addressed in some detail the legal framework for the use of armed drones and asked the Government to clarify a number of issues. The Government responded and the JCHR discussed its response in a further report.⁴² The intervention of the JCHR was prompted by the drone strike on Reyaad Khan and focused, in particular, on the law applicable to lethal strikes outside armed conflict. In summary:

On the issue of self-defence, the JCHR welcomed the Government's clarification that an "armed attack" had to reach a threshold where "terrorist violence reaches a level of gravity such that were it to be perpetrated by a State it would amount to an armed attack". It also welcomed the Government's clarification that the approach to the issue of 'imminence' was the same as set out by the Attorney General, Lord Goldsmith in his statement to the House of Lords of 21 April 2004.⁴³ It noted, however, that the Government had gone on to muddy the waters by stating that "an effective concept of imminence cannot therefore be limited to be assessed solely on temporal factors. The Government must take a view on a broader range of indicators of the likelihood of an attack".⁴⁴

The JCHR in its main report asked the Government to clarify what law it considered applied to lethal strikes outside armed conflict. The Government declined to give its "detailed and developed thinking" on this issue on the basis that it was "hypothetical", but stated that the applicable law would turn on a "detailed analysis of the law and all the facts" and that "in relation to military operations, IHL would be likely to be regarded as an important source in considering the relevant principles." The JCHR strongly criticised this response, concluding:

"In our view, the response comes close to asserting that the applicable law follows the choice of means by the State to deal with a particular threat to its security: that if the State choose to deal with it by military means, the relevant principles and standards are the Law of War, even if the military operation is carried out in an area which is outside armed conflict. In this response, the Government has failed to answer one of the most important questions identified in our Report."⁴⁵

The JCHR disputed the Government's view that the decision of the Court of Appeal in *Al Saadoon v Secretary of State for Defence* established that Article 2 of the ECHR (the right to life) did not apply to drone strikes abroad - whether within or outside armed conflict.

The JCHR took the view that its application would turn on "a careful analysis of the degree of physical power and control exerted over the individual prior to the use of lethal force".⁴⁶ The JCHR also called on the Government to clarify its understanding of the content of Article 2 in this context.

Finally, the JCHR asked the Government to clarify its understanding of the legal basis on which the UK provides any support which facilitates the use of lethal force outside armed conflict by other states. The Government responded that it accepted that the relevant law is set out in Article 16 of the Articles on State Responsibility⁴⁷ and asserted that it sought to ensure that its actions remain lawful at all times. The JCHR criticised the lack of detail in this response, stating:

"We expect the Government to provide a more detailed response to an important question raised in our report, which is highly relevant to whether the Government is complying with international law and whether there is sufficient legal certainty for the UK personnel to reassure them that they are not at risk of criminal prosecution for complicity in unlawful acts."⁴⁸

6.2 Government response to the concerns raised by the Joint Committee on Human Rights

In JDP 0-30.2 *Unmanned Aircraft Systems*,⁴⁹ the MOD addresses allegations that drones may be misused or used illegally, and acknowledges that some concerns arise "from the recent UK, and other states, practice of targeting suspected terrorists outside of the armed conflict itself and the meaning and application of a state's right to self defence".

In its response, the MOD states that all drone missions are conducted under "exactly the same rules of engagement and legal authority as manned missions." The JDP goes on to state:

"All military and civilian personnel who work in areas associated with procuring, tasking, operating and supporting unmanned and remotely piloted aircraft systems should be aware of the legality of such systems. In particular, the legal basis for their use should be understood and considered and where appropriate their use explained and justified. The UK has a balanced and informed position regarding its employment of unmanned and remotely piloted aircraft systems." (section 4.3)⁵⁰

In a footnote to this paragraph, the JDP acknowledges that “Other states have different interpretations of international law and different practices for their armed forces and agencies.” The JDP does not, however, set out in full what the “balanced and informed position” of the UK is on the legal framework, nor how it differs from that of other states. It states that:

“Unmanned and remotely piloted aircraft systems are operated in accordance with the same domestic and international law framework (including international humanitarian and international human rights law) that regulates conventional manned aircraft, other weapons and other means or methods of warfare.”⁵¹

Under the further heading ‘During operations’, the JDP states that “where a weapon is to be used in an armed conflict” the Law of Armed Conflict must be complied with. The JDP does not address the question of what law applies to the use of drones outside armed conflict, nor the application of human rights law to situations of armed conflict and non-armed conflict.⁵²

6.3 Material provision to the US drone programme

Embedding of personnel: UK military personnel embedded in the forces of other states “operate as if they were the host

nation’s personnel”.⁵³ However, as an agent of the UK, they have to abide by UK Rules of Engagement and the Government will always be held liable if they engage in any unlawful activity. The UK provides operational support to the US drone programme, embedding UK personnel in US bases and allowing US personnel to use UK bases.⁵⁴ Provision of bases: The US operates four bases in the UK. These provide crucial communications and intelligence infrastructure to the US drone programme. One base, RAF Croughton, has a direct fibre-optic communication link to US Camp Lemonnier in Djibouti from which most drones strikes on Yemen and Somalia are carried out.⁵⁵

Sharing of intelligence: Since 1955, the UK and US have by default shared all raw intelligence and techniques related to its gathering. The cooperation between the two nations is “unparalleled” according to the most recent National Security Strategy and Strategic Defence and Security Review.⁵⁶ In 2008, leaked documents revealed that the NSA and GCHQ had developed intelligence programmes operated from within UK bases “that enabled a significant number of capture-kill operations against terrorists”.⁵⁷ In addition, reports show that US intelligence agencies collect intelligence and operate from within the UK to support drone (and other) operations.⁵⁸ The UK also shares intelligence with its ‘Five Eyes’ alliance, a 70-year-old integrated global surveillance network that also includes Australia, Canada and New Zealand.⁵⁹

6.4 Problematic aspects of the US drone programme

US policy

The US considers that it is in a ‘global armed conflict’ against Al-Qaeda and all associated terrorist groups which is without territorial boundaries. This means it considers drone strikes against such terrorist targets, in areas where there are no existing hostilities between it and these groups (such as Pakistan, Yemen, Somalia and Libya) lawful

The US has long conducted strikes based not on a positive identification of the target as a combatant, but on the basis that the movement, location, appearance or age of the persons targeted are typical of combatants. Such strikes are known as ‘signature strikes’.

Global/UK response

The view that there can be a global non-international armed conflict is not universally accepted. The view that targets can be directed against ‘associated’ forces or ‘co-belligerent’ groups in a non-international armed conflict has been rejected as improperly combining distinct armed groups.

The Secretary of State for Defence confirmed to the JCHR in evidence that the UK considers itself to be in a non-international armed conflict with ISIL in Iraq and Syria alone, and not in a “generalised state of conflict”.

Even where such strikes take place in the course of a recognised armed conflict, global consensus remains that they are - or at least risk - being unlawful because they fail to comply with proper principles of distinction under IHL. These strikes are also argued to violate the obligation of all states to take all feasible precautions to ensure a positive identification of the target as military, rather than civilian. more broadly. He accepted that this means that there are differences between the policies of the UK and the US.

- 1 Kirsten Oswald (MP for East Renfrewshire, 2015-17).
- 2 A copy of the minutes is available on the APPG website at <https://bit.ly/2NmXBxc>.
- 3 Mr. Chapman (Scottish National Party) is the MP for Dunfermline and West Fife and Shadow Spokesperson for Defence Procurement and Nuclear Disarmament (<https://bit.ly/2KF3CYp>).
- 4 A copy of the minutes is available on the APPG website at <https://bit.ly/2IUPdBC>.
- 5 Namir Shabibi is an investigative journalist and documentary producer (<https://bit.ly/2KW1NCr>); Jennifer Gibson is a human rights lawyer and head of the drones and kill list projects at Reprieve (<https://bit.ly/2ufFeBI>); Eric King is an independent consultant and visiting lecturer in on surveillance technologies at Queen Mary, University of London (<https://bit.ly/2J6xRSn>).
- 6 Mr. Gapes is MP for Ilford South (Labour Co-op) and sits on the Committees on Arms Export Controls and Foreign Affairs Committee (<https://bit.ly/2KFJYvA>).
- 7 Lord Hamilton was the Minister of State for Defence (1988-93) and the Parliamentary Under-Secretary for Defence Procurement (1986-87). He is a member of the Joint Committee on the National Security Strategy (<https://bit.ly/2ugJaLL>).
- 8 Lord Hannay is a member of the International Relations Committee (<https://bit.ly/2KQ1L2n>).
- 9 Dr. Lewis is the MP for new Forest East (Conservative) and a member of the Defence Committee, Defence Sub-Committee and Joint Committee on the National Security Strategy (<https://bit.ly/2KP4eKv>).
- 10 Lord West was Minister for Security and Counter-Terrorism (2007-10), chaired the Cabinet Office National Security Forum (2007-10) and was a member of the Joint Committee on the National Security Strategy between 2015-17 (<https://bit.ly/2Cki8zO>).
- 11 A copy of the minutes is available on the APPG website at <https://bit.ly/2m3W7f7>.
- 12 Dr. Lewis is the director of the Center for Autonomy and Artificial Intelligence, Center for Naval Analyses (<https://bit.ly/2KWhMDM>); Chris Woods is director of not-for-profit organisation, Airwars (<https://bit.ly/2ziJczl>).
- 13 Sir Mark Justin Lyall Grant was the UK National Security Adviser 2015-17, Permanent Representative of the UK to the UN 2009-15 and is visiting professor at King's College London (<https://bit.ly/2J5jEW5>).
- 14 A copy of the minutes is available on the APPG website at <https://bit.ly/2u1mZRi>.
- 15 Dr. Simpson is associate professor of philosophy and public policy at the University of Oxford (<https://bit.ly/2rwvZMe>); Prof. Russell is professor of computer science and engineering at Berkeley, University of California (<https://bit.ly/2J5CFay>).
- 16 A copy of the minutes is available on the APPG website at <https://bit.ly/2u3jedU>.
- 17 Dr. Milanovic is associate professor in law at the University of Nottingham (<https://bit.ly/2u3J6GN>); Prof. Melzer is the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 18 Mr. Hunt directs the Bingham Centre for the Rule of Law and was the legal adviser to the Joint Committee on Human Rights (<https://bit.ly/2u1COYO>).
- 19 Dr. Sari is a senior lecturer in law at the University of Exeter and director of the Exeter Centre for International Law (<https://bit.ly/2m0ICwp>); Assoc. Prof. Quéniwet is associate professor in international law at the University of the West of England (<https://bit.ly/2KWgTrO>).
- 20 Remote Warfare Programme (formerly, Remote Control Project) is a defence and security research project of the Network for Social Change, and is hosted by Oxford Research Group (<https://bit.ly/2J4izOb>).
- 21 Ms. Percy is co-founder of the Campaign for the Accountability of American Bases and joint coordinator until 2016 (<https://bit.ly/2J9xkzm>).
- 22 Drone Wars UK is an NGO which undertakes research, education and campaigning on the use of armed drones (<https://dronewars.net>).
- 23 Ms. Green is an international law and policy adviser at the International Committee of the Red Cross, and submitted her Universiteit Leiden LLM thesis, *The UK's use of armed drones: The principle of distinction between civilians and combatants* (<https://bit.ly/2L01wi3>).
- 24 Reprieve is an international human rights charity focussed on death penalty and extreme human rights abuses (<https://reprieve.org.uk>).
- 25 Rights Watch UK is an NGO which works to promote, protect and monitor human rights in the context of the UK's engagement in conflict and counter-terrorism measures (<https://rwuk.org>).
- 26 Dr. Lee is a reader in politics and ethics at the University of Portsmouth, and assistant director of academic support service, RAF College Cranwell (<https://bit.ly/2KHylKH>).
- 27 Mr. Dewan is researcher on Middle East and North Africa and a consultant contributor analyst at MENA Country Risk, IHS Markit (<https://bit.ly/2KZHO62>).
- 28 In addition to providing oral evidence, Dr. Lewis also submitted prepared comments via a paper, *Doing 'everything possible' to reduce civilian casualties in military operations* (<https://bit.ly/2m09rkq>).
- 29 Ms. Moynihan is an associate fellow on the international law programme at Chatham House (<https://bit.ly/2m47oMD>).
- 30 Dr. Mair is a senior lecturer in sociology, University of Liverpool (<https://bit.ly/2L30LVd>); Mr. Holder is a sociology researcher, University of Liverpool (<https://bit.ly/2KHYYwkz>); Elizabeth Minor is advisor at Article 36, a not-for-profit organisation working to prevent the unintended, unnecessary or unacceptable harm caused by certain weapons (<https://article36.org>).
- 31 The International Committee of the Red Cross is a humanitarian institution based in Geneva, Switzerland helping those affected by armed conflict, and promoting compliance with international humanitarian law (<https://www.icrc.org>).
- 32 Dr. Schwarz is a lecturer in international politics the University of Leicester (<https://bit.ly/2u27c4m>).
- 33 Mr. Brookman-Byrne is a lecturer in law at the University of Lincoln and a PhD candidate (law) at the University of Reading (<https://bit.ly/2NAiC7R>).
- 34 Remote Warfare Programme submitted an updated version of their written evidence on 5 December 2017. Their original written submission is available at <https://bit.ly/2Y9bm7> (24 February 2017).
- 35 Reprieve submitted supplementary written evidence on 5 December 2017. Their original written submission is available at <https://bit.ly/2KYR6Pz> (7 April 2017).
- 36 Also, Ansar al-Sharia.
- 37 Also, ISIS, Daish, Daesh or Islamic State.
- 38 Also, ISR.
- 39 Also, MI6.
- 40 All Party Parliamentary Group on Drones, APPG Inquiry into the use of armed drones: Working with partners terms of reference, <https://bit.ly/2KNUTDx>, last accessed 6 July 2018.
- 41 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, HC 574, p.37 (<https://bit.ly/2v07Mkp>).
- 42 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing: Government response to the Committee's second report of Session 2015-16*, 19 October 2016, HC 747 (<https://bit.ly/2NqUC6P>).
- 43 HL Deb 21 April 2014 vol 660 c370 (<https://bit.ly/2JfZxV3>).
- 44 JCHR, *Government response to the Committee's second report of Session 2015-16*, pg. 6.
- 45 *Ibid*.
- 46 *Ibid*, pg. 8.
- 47 Joint Committee on Human Rights, *The Government's policy on the use of drones for targeted killing: Government response to the Committee's second report (Appendix: Government response)*, 18 October 2016, HC 574 (<https://bit.ly/2zwvRmR>).
- 48 *Ibid*, pg. 9.
- 49 Ministry of Defence, *Joint Doctrine Publication 0-30.2: Unmanned Aircraft Systems, MOD Development, Concepts and Doctrine Centre, August 2017, JDP 0-30.2* (<https://bit.ly/2zusE7F>).
- 50 *Ibid*, pg. 39-40.
- 51 *Ibid*, pg. 40.
- 52 *Ibid*, pg. 41.
- 53 HC WS678, 18 April 2016 (<https://bit.ly/2N8TyDQ>).
- 54 Amnesty International USA, *Deadly assistance: The role of European state in US drone strikes*, 19 April 2018, ACT 30/8151/2018, (<https://bit.ly/2KBQV0H>).
- 55 *Ibid*.
- 56 UK Government, *National Security Strategy and Strategic Defence and Security Review 2015*, Cm 9161, 7 December 2015, p. 51 (<https://bit.ly/2ucW5ps>).
- 57 *Ibid*; National Security Agency, *APPARITION becomes a reality: New corporate VSAT geolocation capability sees its first deployment*, 11 November 2008, <https://bit.ly/2Nvegij> (via Intercept), last accessed 6 July 2018.
- 58 Ewan MacAskill, *GCHQ taps fibre-optic cables for secret access to world's communications*, 21 June 2013, *Guardian*, <https://bit.ly/2qNgEVI>, last accessed 6 July 2018; James Ball, *NSA collects millions of text messages daily in 'untargeted' global sweep*, 16 January 2014, *Guardian*, <https://bit.ly/2rknsuX>, last accessed 5 July 2018.
- 59 Ewan MacAskill, *GCHQ taps fibre-optic cables*.

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Designer: Samuel Marc Price Ltd.

Printer: Brightside Print and Design Ltd.

Proofreader: Olivia Lockyer

