

Iraq/Syria/UK, Drone Operations against ISIS

INTRODUCTORY TEXT: This case deals with the UK's involvement in the conflicts in Iraq and Syria, and focuses particularly on the use of armed drones in these conflicts.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Case prepared by Eleonora Heim, Master student at the Universities of Basel and Geneva, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

A. RAF REAPER DRONES USED IN AIRSTRIKE THAT KILLED SYRIAN TROOPS, MoD SAYS

[Source: "RAF Reaper drones used in airstrike that killed Syrian troops, MoD says" The Guardian, 19 September 2016, available at, <https://www.theguardian.com/world/2016/sep/19/raf-reaper-drones-used-airstrike-killed-syrian-government-troops>]

[...]

[1] RAF [Royal Air Force] Reaper drones were involved in the weekend airstrike that killed at least 62 Syrian government troops and threatened the fragile truce in the country, the Ministry of Defence [MoD] has said.

[2] An unspecified number of weapons were fired from the drones capable of firing 500lb laser guided bombs and Hellfire missiles, it added.

[3] The British military said it was cooperating fully with an investigation by the US-led coalition into the

incident, which led to dozens of soldiers being killed and injured, according to Syrian government reports.

[4] Australian, Danish and US air forces were also involved in the raid.

[5] An MoD spokesman said: "We can confirm that the UK participated in the recent coalition airstrike in Syria, south of Deir ez-Zour on Saturday, and we are fully cooperating with the coalition investigation.

[6] "The UK would not intentionally target Syrian military units. It would not be appropriate to comment further at this stage."

[7] The incident is likely to be the most serious mistake by UK air forces since the House of Commons sanctioned the extension of attacks from Iraq to Syria last December.

[8] Until the end of August the Reaper drones had flown 547 sorties in Syria, releasing weapons in 29 of these, including 45 Hellfire missiles. The raids are supposed to be confined to attacks on Islamic State (Isis) fighters.

[9] The raid prompted a furious response from Russia and Syria, and led to allegations that the airstrikes on the Syrian soldiers could not have been mistaken.

[10] Syria's president, Bashar al-Assad, described the attack as "flagrant aggression".

[...]

[11] The US military has not confirmed the strikes against the Syrian troops but has suggested it was carrying out a raid against Isis fighters in eastern Syria.

[12] Syria's weeklong ceasefire, brokered by the US and Russia, was in any case in growing doubt amid claims of repeated violations by both sides and the UN's failure to deliver aid to eastern Aleppo.

[13] The Australian prime minister, Malcolm Turnbull, confirmed that his country's aircraft had been involved, but pulled out when Russian officials advised the targets may have been Syrian military personnel.

[...]

[14] He said Australia's rules of engagement were to target Isis, but that the environment in Syria was very complex.

[...]

[15] The location of the strike was in an area the coalition has struck in the past, US [...] officials said. Coalition members in the air operations centre had earlier informed Russian counterparts of the upcoming strike.

[16] "It is not uncommon for the coalition air operations centre to confer with Russian officials as a professional courtesy and to deconflict coalition and Russian aircraft, although such contact is not required

by the current US-Russia memorandum of understanding on safety of flight,” officials said in a statement.

[17] “Syria is a complex situation with various military forces and militias in close proximity, but coalition forces would not intentionally strike a known Syrian military unit,” the officials said. “The coalition will review this strike and the circumstances surrounding it to see if any lessons can be learned.”

B. BRITISH DRONE OPERATIONS AGAINST ISIS, 2014-2016

[Source: “British Drone Operations against ISIS, 2014 – 2016: Operational data, Continuing issues of concern”, Drone Wars UK, February 2017, Available at <https://dronewarsuk.files.wordpress.com/2017/02/uk-armed-drone-operations-against-isis-in-iraq-and-syria-feb2017.pdf> (footnotes omitted)]

UK AIR OPERATIONS AGAINST ISIS: BACKGROUND AND TIMELINE

[1] On 10 June 2014, Iraq declared a national state of emergency after militants from ISIS took over the Iraqi city of Mosul. Six days later, UK Foreign Secretary William Hague made a statement on the situation in the House of Commons, reporting that the UK was taking action to promote political unity, offering assistance where possible and alleviating humanitarian suffering. He went on to state, “We have made it clear this does not involve planning a military intervention by the United Kingdom.”

[2] In August 2014, US forces began air strikes on ISIS positions in Iraq. RAF [Royal Air Force] aircraft dropped aid to refugees and “pre-positioned” six RAF Tornados [attack aircraft] in Cyprus. On 18th August the new Foreign Secretary Phillip Hammond also insisted that there were no plans for UK air strikes:

[3] *“There’s no call for us to deliver air strikes at the moment. The US is delivering targeted air strikes, and they’re perfectly able to do what needs to be done, so we have no plans at the moment to engage in air strikes”*

[4] In late August and early September 2014, ISIS released three videos depicting the beheading of western hostages. As many commenters and experts stated at the time, the videos appeared to be aimed at not only causing terror, but also at goading further military response from the West. In response, US forces extended bombing of ISIS into Syria, while in the UK the Prime Minister recalled parliament to vote on military action against ISIS in Iraq.

[5] On 26 September 2014, parliament debated a resolution supporting air strikes against ISIS in Iraq. The government motion argued that Iraq’s request for military assistance gave a clear legal basis for such action in Iraq but not in Syria. Parliament voted overwhelmingly to support the motion and UK armed Tornado sorties began over Iraq the next day, with the first UK airstrike occurring on 30 September.

[6] On October 16 2014, the UK MoD announced that UK Reapers were to be deployed from Afghanistan for operations in Iraq. The first UK Reaper flight in Iraq took place on October 22, with the first Reaper strike

occurring on November 9th.

[7] On 21 October 2014 the [Ministry of Defence (MoD)] MoD announced that UK Reapers and Rivet Joint aircraft would begin surveillance flights over Syria. When questioned by the media about legal authorisation for such missions, the Prime Minister's official spokesman said the flights did not amount to military action:

[8] *"The prime minister and government have made clear that we would return to parliament for a separate decision if we were proposing to take military action. This is about intelligence-gathering. [sic][...]"*

[9] As many legal experts and scholars pointed out at the time, without a UN resolution or a request from the Syrian government, any UK military operations within Syria was controversial at best. However over the ensuing months, Reaper drone operations within Syria gradually increased with almost one third of British drone operations taking place inside Syria prior to the December 2015 parliamentary vote to extend UK military operations against ISIS into Syria. While Ministers stated on several occasions these flights were unarmed, the MoD later confirmed this was not the case with all UK drone fights into Syria being armed.

[10] From summer 2015 UK Ministers began pushing for UK aircraft to undertake strikes within Syria as well as Iraq, with Defence Secretary Michael Fallon arguing that it was "an illogicality" not to do so.

[11] On September 7 2015, the then British Prime Minister told the House of Commons that a British Reaper had targeted and killed British national Reyaad Khan near Raqqa in Syria on 21 August. Killed alongside Khan was his cousin from Aberdeen, Ruhul Amin, and a Belgian man known only as Abu Ayman al-Belgiki. The PM stated that it was "the first time in modern times that a British asset has been used to conduct a strike in a country where we're not involved in a war".

[12] UK Reaper drones also played a direct role alongside US drones in the targeted killing of two other British nationals Junaid Hussain and Mohammed Emwazi (known as 'Jihadi John') inside Syria in summer and autumn of 2015.

[13] Following a November 2015 UN Security Council resolution on ISIS in Iraq and Syria, partly in response to terror attacks in Tunisia (June 2015) and Paris (November 2015), UK MPs voted to extend UK airstrikes against ISIS into Syria in December 2015.

2.0 UK AIR OPERATIONS AGAINST ISIS: FOL DATA, 2014-2016

[...]

3.0 ISSUES OF CONCERN: ARMED DRONES & UK OPERATIONS IN IRAQ/SYRIA

3.1 Lowering the threshold for use of military force

[14] One of the key concerns about the use of armed drones is whether they are lowering the threshold for the use of force. Within six weeks of the September 2014 parliamentary vote authorising UK military action against ISIS strictly within Iraq, British drones were crossing the border into Syria, with intelligence gathered

by the British drones used by Coalition forces to undertake strikes in Syria.

[15] Officials argued such flights did not amount to military action with Ministers stating that the Reaper missions were unarmed. However the MoD later confirmed that all British Reaper drones crossing into Syria before the 2015 vote to extend UK military action into Syria were in fact armed. While drone advocates often insist that armed drones are no different from manned aircraft, it is difficult to believe that the UK would have sent manned aircraft into Syria in 2014 as the operational and political risk was far too great.

[16] From mid-2015, UK defence officials began arguing that it was illogical that UK forces could not undertake airstrikes against ISIS in Syria as well as Iraq. The fact that British drones were already flying missions in Syria was used in part to leverage support for wider military action in Syria by British forces.

3.2 Expanding targeted killing

[17] Despite repeated denials that the UK would follow the US down the path of drone targeted killing, on 21 August 2015, British drones targeted and killed UK citizen Reyaad Khan near Raqqa in Syria. Alongside Khan, his cousin from Aberdeen, Ruhul Amin, and a Belgian man known only as Abu Ayman al-Belgiki were also killed. Senior military officials acknowledged that the strike represented the 'crossing of a Rubicon'. Defence Secretary Michael Fallon made it clear that the UK was prepared to carry out such targeted killings again.

[18] In its letter to the UN reporting the strike, the UK Ambassador argued the strike was undertaken as part of the collective self-defence of Iraq as well as self-defence of the UK. The MoD insists, however, that the August 2015 strike against Khan was not part of Operation Shader, its name for the UK's military support of Iraq against ISIS.

[...]

3.2 [sic] Civilian Casualties

[19] The MoD continues to insist that there is no evidence that any of the 1,200 strikes, launching more than 2,500 missiles and bombs (up [sic] 31 December 2016), have killed or injured any civilians. The US has admitted to just 188 civilian deaths from its airstrikes. Airwars, which monitors reports of civilian casualties from airstrikes in Iraq and Syria estimates that between 1,959 and 2,898 people were likely killed in Coalition airstrikes in 2015 and 2016.

[...]

[20] The suggestion that 1,200 airstrikes can be carried out without killing or even injuring a single civilian is dangerous. Airwars is leading a growing civil society call on the MoD to commission an independent review of its casualty assessment process:

[21] *"Given the statistical improbability of the UK having killed no civilians in more than 1,000 airstrikes, this*

suggests the MoD's monitoring capabilities may not at present be fit for purpose. We therefore recommend that the MoD commissions an independent review - which is able to examine the validity of classified civilian casualty assessments. We also call for the key findings of such a review to be made public."

3.3 Transparency and Accountability

[...]

[22] The government's perspective appears to be that they should be able to operate armed drones outside of public view and without the need for proper public accountability. From a wider international security perspective however, it is crucial, as more and more nations acquire armed drones, that there is a strong expectation and culture of transparency and public oversight of the deployment of these systems. As one of the few countries operating armed drones beyond its own borders, the UK should recognise that it has both the responsibility and also the opportunity to set high standards internationally for such transparency. However if the UK refuses such basic details as the number of armed drones that have been deployed, other nations acquiring such systems are likely to follow this lead.

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. *(Document B, para. [1])*

- a. Using only the information in this paragraph, how would you classify the situation in Iraq as of 10 June 2014?
- b. Did the statement made by the UK Foreign Secretary on 16 June 2014 affect the classification of the situation?

2. *(Document B, paras [2]-[3])*

- a. Using only the information in these paragraphs, how would you evaluate the impact of the US air strikes on the classification of the situation in Iraq. Was this involvement enough to turn the US into a party to the conflict? Would you classify the conflict as international or non-international in character?
- b. Did the UK's air drops of aid affect the classification of the conflict? It's pre-positioning of fighter aircraft in Cyprus?

3. *(Document B, para. [4])*

- a. What impact did the US extension of its bombing campaign of ISIS into Syria have on the classification of the situation? Would you characterize this as a non-international armed conflict that had spilled over onto Syrian territory? In your opinion, did these actions trigger an international armed conflict between Syria and the US? Why/Why not?

4. *(Document B, para. [5])*

- a. Based on the information in this paragraph, how would you classify the situation in Iraq as of 30 September 2014? Who were the parties to the conflict at that time?

5. *(Document B, paras. [6]-[9])*

- a. Did the first strike using Reaper drones in Iraq on November 9th change the classification of the situation?

b. By undertaking surveillance missions over Syria, did the UK become a party to the conflict in Syria? If it had consent of the Syrian Government? If it did not obtain such consent? Since all the drone flights into Syria were in fact armed?

c. Do you agree with the statement made by the official spokesman of the UK Prime Minister to the effect that surveillance missions do not constitute military action? Even if all the drones conducting these missions were armed?

6. (*Document B, paras [10] – [13]*)

a. Did the UK's use of force on Syrian territory in the summer and autumn of 2015 affect the classification of the conflict in Syria? Does it matter that force was directed against UK nationals and not the Syrian Government?

b. Did the vote by UK MPs in December 2015 to extend UK airstrikes into Syria affect the classification of the situation?

7. (*Document A, paras [1], [5]-[8]*)

a. Does the admission by the British Ministry of Defence in September 2016 that its drones were involved in an airstrike that killed 62 Syrian Government soldiers have an impact on the classification of the conflict in Syria as at that date? Referring to para. 6, do you think the classification outcome depends on the intention of the British Government?

b. Are Government soldiers legitimate military targets? Is it problematic that the UK was involved in an airstrike that killed 62 Syrian soldiers?

c. (*Document A, paras [16]-[17]*) How could one argue for and against the existence of one or more international or non-international conflict(s) with the United Kingdom as a party to the conflict? Does it matter whether the coalition forces informed Russia prior to the strikes?

d. Is an armed conflict between the United Kingdom and ISIS limited to the territory of one or more states? Does it matter for the classification whether the government of Iraq agrees to the assistance of UK military forces? Is the situation in Syria different? Does IHL apply to the entire territory of these States or only the parts where the fighting, if any, is taking place? Does IHL apply to the fighting between the United Kingdom and ISIS outside the territory of these countries? (GC I-IV, Art. 3)

e. Does it matter for the classification of the conflict whether the Syrian government soldiers were struck intentionally or by accident? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

f. Can fighting against a terrorist organization amount to an armed conflict? What criteria shall be fulfilled for such fighting to be regarded as an armed conflict? Does IHL apply to armed conflicts against terrorist groups? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

g. (*Document A, paras [4], [13]-[14]*) Do you think Australia and Denmark are also parties to the conflict in Syria? Are each of these States involved in an international armed conflict with the Syrian Government? Why/Why not?

II. Targeted killings

8. (*Document B, paras [11]-[12] and [17]-[18]*)

a. What are targeted killings? Does IHL apply to the targeted killings described in this case? What particular rules of IHL are at risk of being violated as a result of the practice of targeted killings? (CIHL, Rules 1-21; P I, Arts 35-36; 48, 50, 51 and 57; P II, Art. 13)

b. Under IHL, may individuals be deliberately targeted with the sole aim of killing them? If yes, which individuals may be so targeted? Is your answer the same for IACs and NIACs? What categories of persons

may be targeted in a NIAC? Does this depend on where the individuals are geographically located? Is targeting such individuals lawful if an option to capture them were available? (CIHL, Rule 6; P II, Art. 13 (3); P I, Art. 51 (3)); See also, Document, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities, Part 2. A. II and Part 2. C. IX).

9. (*Document B, paras [19]-[21]*)

- a. Under IHL, is there any obligation to subsequently investigate attacks, which have resulted in death? Injury? If fighters are killed? If civilians are killed? Only those incidents that may constitute war crimes? Is there such an obligation under IHRL?
- b. Are states under the obligation to report civilian casualties? Do States have to make the results of their investigations public?
- c. In your opinion, is the MoD's insistence that no civilians have been killed in the 1200 strikes carried out problematic? What steps do you think the MoD should take to better comply with IHL as far as accountability is concerned?

10. (*Document B, para. [22]*) Do you agree that the UK has a responsibility to be transparent about its use of drones? Might this conflict with the prerogative of States to keep military secrets? Could there exist a legitimate interest that might justify lack of transparency about the criteria according to which persons will be targeted? About which individuals were actually hit?

III. Conduct of Hostilities

11. Is the use of drones per se prohibited under IHL? Do IHL rules on conduct of hostilities apply to drone strikes? If the target is located outside the territory of a State involved in an armed conflict? (CIHL, Rules 1, 7, 14-15, 21 and 22; P I, Arts 48, 51(2) and (5)(b), 52 (2), 57 and 58)

12. In your opinion, what principles and/or rules of IHL are particularly problematic when drones are used as a weapons platform? What principles and/or rules become easier to comply with when drones are used as a weapons platform? Is it easier or more difficult to respect precautions in attacks prescribed by IHL when drones are used? (CIHL, Rules 1, 7, 14-16, 21 and 22; P I, Arts 48, 51(2) and (5)(b), 52 (2), 57 and 58)

13. (*Document A, para. [13]*) According to the Australian Prime Minister, his country's aircraft withdrew from the operation after Russian officials advised that the intended targets may have been Syrian military personnel. Do you think that by failing to act similarly, the other States involved violated the IHL rules on precautions? Would your response be different if the persons killed in the attack were not Government soldiers but civilians? (CIHL, Rules 15 and 16; P I, Art. 57)

14. In your opinion, is it unfair to use drones against an enemy who possesses none and/or is unable to shoot them down? Is it unethical that a drone operator does not run any personal risk of harm during the conduct of an operation? Is either of these situations illegal?

15. Is the current legal framework sufficient to respond to the development and use of drones or similar new technologies? Where do you see potential for additional rules?