



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [The UK Government's policy on the use of drones for targeted killing](#), HC 574

Wednesday 16 December 2015

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Written evidence from witness:

- Rt Hon Michael Fallon MP, Secretary of State for Defence

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Karen Buck; Jeremy Lefroy; Amanda Solloway; Baroness Buscombe; Baroness Hamwee; Baroness Lawrence; Baroness Prosser; and Lord Woolf

Questions 19-36

Witness: **Rt Hon Michael Fallon MP**, Secretary of State for Defence gave evidence.

Q19 Harriet Harman MP (Chair): Welcome, everyone. I hope everyone has managed to find a chair. In particular, I thank the Secretary of State for Defence for coming to give evidence to us today. Obviously, we know that these issues border on national security and we do not expect you to say anything that would compromise national security, so please take it that we are not asking you to stray into issues that would be sensitive in relation to national security. We are very grateful to you for coming, because we asked for you, the Foreign Secretary and the Attorney-General, and they said that you could take responsibility for the whole of the Government and that we did not need the Foreign Secretary or the Attorney-General because you would be able to answer across the piece. We are genuinely grateful to you for that. As you know, we asked for the legal advisers of the RAF and the MoD to come and give evidence to us but that was not agreed to, so we will be grateful to you for helping us out not only on the legal basis for this but on the legal procedures that are followed, which is why we wanted to speak to the legal advisers. We have three broad areas of questioning: the policy, the processes, and accountability and oversight. I will ask Jeremy to lead off on the first point.

Q20 Jeremy Lefroy: Thank you very much, Chair. Thank you, Secretary of State. What is the United Kingdom's policy on targeted killing outside recognised areas of conflict?

Michael Fallon MP: There is no policy of targeted killing. I need to make it absolutely clear that any military action that we may take in respect of imminent threats to the United Kingdom is not, as you have probably discovered, particular to any type of weapon or type of aircraft. It might involve the use of manned aircraft, unmanned aircraft, a missile from a

ship or whatever. There is nothing special about the use of unmanned aircraft in this respect. As far as out of area is concerned, that is why the Prime Minister made the statement that he did. This was the first time that we had acted in an area in which we were not previously involved in an armed conflict. That is why, in view of the exceptional circumstances, the action was taken and that is why the Prime Minister reported it to Parliament as soon as he could.

Jeremy Lefroy: Would that apply anywhere where there is no recognised Government, where there is a vacuum, as the Prime Minister made clear was the case in that part of Syria?

Michael Fallon MP: If there is a direct and imminent threat to the United Kingdom and there is no other way of dealing with it—it is not possible to interdict that threat or to arrest or detain the people involved in that threat—then of course as a last resort we have to use force. That is what happened in Syria.

Jeremy Lefroy: So it could apply, for instance, at the moment to areas of Libya that are under ISIL control?

Michael Fallon MP: At the moment there is not a political authority in Libya but obviously we are all working and hoping that there will be a political authority in Libya.¹ I do not want to be drawn on to other countries. This was a particular situation. What was novel about it was that it was not only a country in which we were not involved militarily but a country in which we said we would not be involved militarily when we first came to Parliament in August 2013 to get approval to act in Iraq. That was what was slightly different about this particular operation.

Q21 Jeremy Lefroy: In terms of the people involved, we had evidence last week that suggested that there might be a list of people who would be deemed of such threat to the United Kingdom that it would be justified to take this kind of action. Would that be restricted to highly dangerous people within an organisation or more broadly within Daesh or ISIL?

Michael Fallon MP: That, I am afraid, is an intelligence matter. I am not going to confirm or discuss intelligence matters this afternoon.

The Chair: Could you tell us whether or not you think the policy we have is different from the policy the Americans have, and, if so, how?

Michael Fallon MP: I do not really want to comment on the approaches other states take but, yes, I think you would find that each country may have a marginally different policy in terms of their rules of engagement, for example, or accountability of their Government to their legislature. So it might well be different in each case, but I do not want to comment on what the United States does.

¹ The Defence Secretary was referring to ongoing work to establish a Government of National Accord (GNA) in Libya. Following negotiations over the preceding months, the process to establish the GNA began with the signature of the Libyan Political Agreement on 17 December. The unanimous adoption of UN Security Council Resolution 2259 on 23 December 2015 was a clear demonstration of the international community's full support to the Libyan Political Agreement. Following June 2014 Libyan Parliamentary elections, the UK, along with its international partners, recognised the election of the House of Representatives.

The Chair: I do not think I am asking you to comment on it. Obviously, their policy is a matter for them and they decide it and I would not expect you as Secretary of State to comment on it. But obviously you know what the American policy is because they have published it. That is a matter of fact. Obviously, you know what our policy is because you are the Secretary of State for Defence. Can you say, as a matter of fact comparing the two, where you think the differences are or if they are the same?

Michael Fallon MP: I do not want to draw comparisons between our policy and their policy.

The Chair: Okay, shall we move on to the processes then?

Q22 Baroness Hamwee: Thank you for coming, Secretary of State. Are you at least able to confirm that our policy deals with items that are listed in the United States policy, which spells out issues about where the terrorist target is, the possibility of non-combatants being injured and so on, or whether it is more general and those sorts of issues are covered in terms such as “imminence” and “proportionality”?

Michael Fallon MP: I think what you are describing is more the United States’ definition of what a non-international armed conflict is. It is for the Americans to defend or describe their own definition. We would consider on a case-by-case basis, where there is an armed conflict between government authorities and various organised armed groups, and we would look at various factors case-by-case, as I said, such as the duration or intensity of the fighting. Each country probably has a slightly different view of where a non-international armed conflict exists.

Baroness Hamwee: I am sure that they do, and rightly so. I am seeking information not on the assessment of the criteria but on whether there is a list of criteria incorporated into the UK’s policy.

Michael Fallon MP: No, we look at these things on a case-by-case basis.

The Chair: Can you clarify whether the Government consider the UK to be in a non-international armed conflict with ISIL wherever it may be found?

Michael Fallon MP: We consider that to be true in Iraq and Syria.

The Chair: Wherever it is?

Michael Fallon MP: No, in Iraq and Syria.

The Chair: So we are not in a generalised state of conflict with ISIL, except in Iraq and Syria? What about in Yemen, Somalia or Libya, as Mr Lefroy asked?

Michael Fallon MP: No, we consider we are involved in a non-international armed conflict in Iraq and Syria, primarily because we have been invited to assist by the legitimate Government of Iraq.

The Chair: That is different from the Americans’ policy, is it not?

Michael Fallon MP: There may well be differences, yes, as I said.

Baroness Buscombe: May I suggest to the Committee that the questions in relation to the US occur, in part at least, because of the issue of joint command, or am I jumping the gun here? In other words, if we are working with the Americans—or indeed with any other country, such as France—to what extent does it matter in terms of sharing policy if we are sharing operations and working with them?

Michael Fallon MP: It does matter because we are a sovereign nation and part of the international coalition. Our component commanders—the British commanders in theatre—have policy advice and legal advice and will have slightly different rules of engagement from some of the other countries that are involved, reflecting their own domestic laws. Yes, that is something we have to take account of.

Q23 Lord Woolf: Secretary of State, I would like to press you a little further. You may or may not be able to help me. We know what is in the US policy because that has been published. According to the information the Committee has, the criteria that must be met before action are: “Near certainty that a terrorist target is present ... Near certainty that non-combatants will not be injured or killed ... An assessment that capture is not feasible ... An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to US persons ... An assessment that no other reasonable alternatives exist”. Can you help us at least to this extent: are these the sorts of considerations that would operate in our minds as well?

Michael Fallon MP: Yes, they are. Any action we take has to be taken in accordance with international humanitarian law, from which some of those criteria are derived, I think. There must be the possibility of attack that is actual or imminent—the test for that must be satisfied—and that the action taken to forestall it must be necessary and proportionate, and fit with the rest of international humanitarian law; for example, that it must also be a distinctive, legitimate target and there must be a test of proportionality that the force used is not excessive. I suspect that the criteria you have described probably derive from the international legal framework but I am not an expert on the American legal position.

Lord Woolf: I was looking at it from our point of view, whether those are the sorts of things that we would have in mind.

Michael Fallon MP: Yes, the military force we use is governed by humanitarian law. The force involved must be necessary and proportionate. We look at these things on a case-by-case basis and I have to be absolutely satisfied that there is simply no other way of preventing an attack that is imminent.

The Chair: The human rights law standard says that lethal force outside an armed conflict situation is justified only if it is absolutely necessary to protect life. Is that the standard?

Michael Fallon MP: I think that compliance with international humanitarian law discharges any obligation that we have under international human rights law, if I can put it that way. If any of those obligations might be thought to apply, they are discharged by our general conformity with international humanitarian law.

The Chair: Let us move on to the processes of authorisation, using the case we have had in Syria to illuminate the authorisation process for this situation, which could happen again in the future.

Q24 Fiona Bruce: Good afternoon, Secretary of State. You said that there was not a policy of targeted killing. Can you help us understand the decision-making process that would precede a targeted killing by drone, perhaps using the example of the strike that killed Reyaad Khan on 21 August? According to the Government's memorandum, the decision was made at a meeting of "the most senior members of the National Security Council" that military action should be taken "should the right opportunity arise". Can you describe who was there at that meeting? Who are the most senior members of the National Security Council? When did it take place? What was the process?

Michael Fallon MP: I am afraid I cannot.

Fiona Bruce: Can you tell us the date on which you authorised that operation?

Michael Fallon MP: No, I am not going to go into timelines or details of who was present.

Fiona Bruce: You are not going to tell us who is involved as a senior member of the National Security Council?

Michael Fallon MP: No. What I can tell you is that the action was approved by the Prime Minister and the most senior members of the National Security Council and, with the advice of the Attorney-General, the operation was then authorised by me.

Fiona Bruce: The legal advice that you took was from the Attorney-General. Was it from anyone else?

Michael Fallon MP: Yes, I think the Attorney-General has confirmed that to the Justice Committee. To pick up your last point, he is not the only source of legal advice. I have legal advisers in my own department, as do other Ministers.

Fiona Bruce: Where would your department seek legal advice from in such a case, to satisfy yourself that the thresholds you spoke about earlier are satisfactorily going to be applied?

Michael Fallon MP: I would take legal advice from our legal advisers.

Fiona Bruce: You did so in this case?

Michael Fallon MP: Absolutely.

Fiona Bruce: How do you ensure that intelligence is reliable in such a case?

Michael Fallon MP: I am not able to discuss intelligence matters but, clearly, in taking a decision of this kind you will depend on analysis and advice—military advice, policy advice and legal advice—as you mentioned.

Fiona Bruce: Would it be a factor in your decision-making to ask whether there would be any civilians in the facility, for example? Would that be something that you would go into in that amount of detail or would you be relying on the advice that you receive?

Michael Fallon MP: International humanitarian law obliges you in the use of force to avoid or minimise the risk of civilian casualties.

Fiona Bruce: Have you made other decisions of a similar nature?

Michael Fallon MP: I am not going to answer that, I am sorry.

Q25 The Chair: You have said that you authorised the operation against this individual. Does that mean that you authorised the targeted killing of that individual or did you also authorise the circumstances? An individual has to meet the test of being a threat to life but there is also the other evidential test you have alluded to, which is about whether it is proportionate in relation to the danger of civilian casualties. One is about the individual in principle, and the other is about whether it is right to take that action against the individual now. Am I to understand that you took responsibility for the authorisation of the operation against this particular individual but that it was delegated to somebody further down the system or elsewhere in the system to identify whether or not at this particular point it was proportionate because there was sufficient evidence that there was not going to be collateral damage of civilians being killed at the same time? Did you authorise it in principle or did you authorise it for the actual strike? If not, who else authorised it? We are asking because we are concerned with identifying who is responsible for ensuring that there is evidential sufficiency that those tests that you have identified have been passed—those thresholds have been crossed.

Michael Fallon MP: I am trying to be helpful but you are drawing me into the discussion of a particular operation. There are other operations currently and there are other operations that may be planned. It is not really helpful to discuss these things too widely in public, but I will say two things. First, when I used the word “authorised” I was drawing the distinction between approval of the operation by senior Ministers, including the Prime Minister, with the advice of the Attorney-General, and the actual authorisation. Legally, it is only the Defence Secretary—not the Prime Minister, the Attorney-General or anyone else—who can authorise military force, and that authorisation is then passed down the chain of command. In respect of your question about proportionality, in broad terms, yes, in an operation such as this I have to be satisfied that the test of proportionality we have discussed in terms of international humanitarian law is met. That is my responsibility.

Amanda Solloway: I am trying to keep this broad but just so I am clear in my mind about the process, is it that first of all the risk of the target is assessed? By that I mean if that target is not identified and something done about it, the risk of what they may do. Once that has been defined, is it then a case of that target being assessed for risk? Is there an assessment of the risk of action, and then the action is carried out, if all those criteria are met? I do not think I have said it very well but that is in lay man’s terms.

Michael Fallon MP: I think you have kind of described it. First of all, we identify a threat to the United Kingdom. This is the action that we are discussing and you are quite properly inquiring into. That is, a very direct threat to us here in the United Kingdom that

cannot be forestalled or prevented in any other way: you cannot go in and arrest the person; there is no source of authority in that area of Syria. Obviously, there is an assessment of the threat to the United Kingdom itself but there is also, as you say, a military assessment, a policy assessment and a legal assessment as well. All these things are brought together.

Q26 Jeremy Lefroy: Going to the question of imminence, the letter published by the Ministry of Defence talked about “a specific ISIL target that presented a clear, credible and specific threat of armed attack on the United Kingdom”, which I think we understand. What is your understanding of the meaning and importance of “imminence” in this context?

Michael Fallon MP: Imminence is important. It is one of the criteria that apply and which allow states to take action in their self-defence. They do not have to wait for an attack to be made on them before they defend themselves. States are entitled to take action to prevent a threat if it is imminent. Clearly, we would look at the immediacy of the threat, the seriousness of the threat and the likelihood of it being put into effect. There is some legal literature or case law around the word “imminence” which I am probably far less qualified than other people here to venture into but, absolutely, imminence is one of the tests.

The Chair: Going back to the process, obviously we are not discussing individual aspects of the evidence behind the operation; we are discussing the process. Am I right that identifying and assessing the individual as a threat to the UK is decided by the National Security Council overall but the actual authorisation of the particular operation to target that individual is down to you, and that you do it yourself rather than give a general authorisation and at some suitable time somebody further down the chain, nearer the operational command, decides it? Do you decide the actual operational moment or do you delegate that to others?

Michael Fallon MP: I do not want to get into the details of this particular case but clearly the threat can be assessed by a number of agencies of government and a picture can be built up of how imminent and serious that threat is. It is not simply the National Security Council framework involved there. It would involve a number of departments and agencies that would identify the threat and confirm its seriousness.

The Chair: Obviously, the process of gathering the evidence for whether or not a person is a threat can happen in many different places. When I say identifying, I do not mean identifying by virtue of getting the evidence, I mean specifying—perhaps that is the word. The specification of an individual as being somebody who is going to be on what is described sometimes as a kill list—that is, is a threat to the UK—is at National Security Council level but at what level is this decided in terms of the department or the RAF? I do not think it is unfair for us to seek to establish this, bearing in mind that we are talking about the loss of life outside an armed conflict situation. How far down the chain does that authorisation go or is it right at the top; that is, you?

Michael Fallon MP: First of all, you refer to loss of life; we are talking about preventing loss of life—what could be very significant loss of life—among our own people. That is the primary duty of this Government. So far as your question is concerned, the authority to carry out the operation is given by me, as Defence Secretary. This authority, having been

given, of course is then passed down the chain of command, so the actual operation is put into effect in theatre. But, yes, the authority stops with me.

Lord Woolf: When you say “me”, do you mean you personally?

Michael Fallon MP: Absolutely.

The Chair: I think there is a difference between ultimately taking responsibility and taking the decision. It sounds to me that what you are saying is that you are involved in the decision about the individual but the decision about whether the operation can go ahead—whether there are not civilians in the area that might make it not okay to go ahead—you do not get involved in; that is taken operationally further on down the line.

Michael Fallon MP: No, that is not right. That is absolutely not right. First of all, we have rules of engagement that are very clear. Secondly, we have operational directives for each particular campaign. Those apply in Iraq and now in Syria. Thirdly, I have to be satisfied, as I said earlier, that these tests of proportionality are met—that the force being used is not excessive and that everything possible is being done to avoid or minimise civilian casualties. I have to be satisfied of that.

Q27 Baroness Hamwee: I am trying to picture how this operates in a theoretical way. We had a very useful trip to RAF Waddington and heard some very helpful explanations from serving officers there. I take the point that drones or any other weapons are the same for this purpose, but if the people operating them were concerned at the last minute that a child was next to the target, is there a clear structure for deciding to pull back, as it were? I am using very non-military terms. As Secretary of State, carrying out the functions you have described, how does that operate on a real-time basis?

Michael Fallon MP: As I said, I set the authority for an operation such as this and I set the rules, if you like, as to how it is to be conducted. Obviously, if those carrying it out—or any operation or strike—get to the point where they think they might be in breach of the rules, the criteria I have set out, then they would pull back. They can seek advice at any point from the component commander and from his legal advisers, policy advisers and so on. You may have learned at Waddington that it does happen in military operations in Iraq that our aircraft can be called in in support of ground forces and because of our rules of engagement, even though the aircraft are in the area, they are not able to come to a specific incident and give specific assistance because it would breach the rules of engagement that we have set.

Baroness Hamwee: That is what I expected and hoped to hear, because I felt that the operational buck might be stopping with you, and that is not the case.

Michael Fallon MP: Absolutely not, no.

The Chair: In that case, I did get the wrong impression. Basically, you authorise the individual to be a target but you leave it further down the chain of command for commanders in theatre to decide whether the test has been met for the particular circumstance—they knowing what the rules are that they are applying—which is the same as it would be in a generalised armed conflict: that is, you agree there is an armed conflict, you agree the rules, and then they do the operationalisation of it. In that respect, there is no difference. It is

handed down the chain for somebody to work out whether to go ahead with the target you have identified.

Michael Fallon MP: Yes, it is delegated down the chain of command but it is not for them to work out. The rules are very clear as to what they can and cannot do in prosecuting a particular operation.

The Chair: But they are the ones who decide that the proportionality test—the lack of collateral damage—has been met; it is not at your level.

Michael Fallon MP: No, I set those rules and they have to comply with them.

Baroness Prosser: They have to determine that the circumstances on the day fit the rules that you have set, is that what you are saying?

The Chair: They are doing the determination that the evidence crosses the threshold, not you—you are setting out the threshold and it is under your authority that the individual has crossed that threshold.

Michael Fallon MP: Irrespective of this particular strike that you are concerned about, in general terms that is not quite right because in approving a particular target—in Iraq, say, or now in Syria—they would be asking for approval for a particular threshold and I would then agree it and authorise it and say that the operation must be carried out within that threshold. It would be only if they felt that in the circumstances, when the operation was actually being put into effect, that they might be in danger of deviating from that threshold that they might pull back.

Q28 Jeremy Lefroy: Secretary of State, to return to the understanding of the word “imminence”, because it is clearly very important, in the past an armed attack was considered imminent only if it was so proximate in time that it left no moment for deliberation. Clearly, we live in an era of instant communication and the fact that we are dealing with people who have made it quite clear that they want to kill us at any time and in any way possible means that that definition of “imminent” may have changed a bit. Is your understanding that “imminence” means what it used to mean—that is, so proximate that it leaves no time for deliberation—or have circumstances changed so that an ongoing threat from a specific terrorist is considered imminent all the time?

Michael Fallon MP: Circumstances have certainly changed from the definition that you have quoted. I would not want to rest on that. You look at these things on a case-by-case basis in the light of the assessment that you make in each particular case. I do not think it is possible to have a hard and fast rule about how you would define “imminent”.

Lord Woolf: Before there is any question of this happening, you have to give your authority for it to happen on the information you have been given. What I really want to ask you is this: if something changes in the information you have been given and there has to be a decision whether or not to go ahead, if there is any question of it being outside your authority am I right in thinking that it must not go ahead without being authorised again?

Michael Fallon MP: Absolutely. It must not exceed the authority that has been given. This applies generally to all our deliberate targeting in Iraq. As you probably learnt at

Waddington, there are essentially two types of targeting. First, there is dynamic targeting, where, in accordance with rules of engagement that we have set, our aircraft are in close air support of ground forces in ground combat and they know what they must do and what they are not able to do. Secondly, there are deliberate targets. Where there are deliberate targets of facilities, depots, buildings or positions, they require specific particular authorisation. That is provided by me or, in certain circumstances, one of my Ministers.

Lord Woolf: You have given a series of situations where there must be specific authority. If a particular individual is in mind, does this specific authority have to exist?

Michael Fallon MP: Absolutely.

The Chair: Basically, to summarise your response to Jeremy's question, an imminent threat can be ongoing: somebody by their very nature, by their ongoing commitment to a particular course of action, can be an ongoing imminent threat by virtue of what they have done in the past and their general way of going about things?

Michael Fallon MP: I am not, as you have probably realised, a lawyer. But yes, an imminent threat can presumably grow in immediacy. It may grow in seriousness. It may grow in likelihood. It may exist for some period of time, absolutely.

Q29 Amanda Solloway: Again, just for clarification, when I think about authority and responsibility, I think that above those is accountability. I think what you are saying is that you have the accountability to look at cases either individually or as a situation that happens and—forgive me if I have this wrong—you can then delegate the authority or the responsibility to carry out that action as long as it operates within the boundaries given at the start of the process.

Michael Fallon MP: Yes, essentially. It passes down the chain of command.

The Chair: I thought that in response to Lord Woolf's question you were saying that you do not delegate it. You take responsibility for the identification of that individual—

Amanda Solloway: Sorry, can I come back on that? This is where I am getting tied up as well. I think it is around words. In my view, you can have accountability and you can give responsibility but ultimately as long as it operates within that accountability, that person is accountable. What I am hearing is that the accountability remains with you, while there is authority and/or responsibility given. You are hearing something different, Chair.

The Chair: We are talking about who is deciding. You are accountable but who is deciding? I understand that you are deciding about the individual and someone else is deciding about the moment.

Michael Fallon MP: Yes, in conflict, in a military operation, there is obviously a chain of command for how an operation is put into effect on the ground. The precise timing of it, for example, is obviously something that has to be done in theatre rather than from my desk.

The Chair: The question about whether they have crossed the threshold for it being compliant with all the laws concerning not causing civilian casualties, that is a delegated part

of the operational decision, which is taken by others, not by you? You are not the moment; you are the in principle.

Michael Fallon MP: No. I am sure you heard this at Waddington. If they are in any doubt as to whether they are approaching or are in danger of crossing a particular threshold, they can and must seek advice. That advice is available to them up the chain of command, including legal advice in theatre.

Baroness Buscombe: Secretary of State, this can happen in a very short space of time. I think we are all trying to get our heads round the whole process. At the same time, I am assuming that this can happen with great speed. It has to.

Michael Fallon MP: An attack on our country can happen with great speed. In Paris, people were killed within minutes by an enemy that does not take hostages or negotiate but simply wants to kill very rapidly. These are particular instances where action sometimes has to be taken very quickly.

The Chair: So you decide on the target and they decide whether the other criteria for taking action on that target are met.

Michael Fallon MP: I set the criteria.

The Chair: But you decide the individual as well. You have said that.

Michael Fallon MP: I approve the target, yes.

The Chair: You approve the target.

Michael Fallon MP: I approve the target and I set the criteria.

The Chair: But what about the operational carrying-out of it—as to whether the other criteria are met. Harry, is that what you understand? You are not looking puzzled any more.

Lord Woolf: I think there is a danger of unintentionally getting concepts muddled. Secretary of State, I hope you will not mind me clarifying for my own benefit. I have the image that you give your authority on the facts that are put before you. In giving that authority, you recognise that there is bound to be a space of time and you are assuming that the situation on which you have given your authority will continue or will not change in a significant way. If it is changing significantly, as I see it, the matter would come back to you. Is that right?

Michael Fallon MP: That is pretty well right. It is not simply about facts, obviously. I rely on advice as well, as I have said.

Lord Woolf: You take the decision on the basis of a combination of information with which you are provided, including legal advice.

Michael Fallon MP: Absolutely. In respect of various targets in Iraq, it is perfectly open to me to set various conditions for how those targets are prosecuted, including, if necessary, a time limit. I do not want to be specific but there may be some kinds of target that change over a period of days or weeks, in which case, they might have to return to me for further approval.

The Chair: Let us move on to independent accountability or oversight. We will probably get into a load of terminological issues here, too. Karen, may I ask you to clarify?

Q30 Ms Karen Buck: Welcome, Secretary of State. I shall just pick up on the last point about the speed and gravity of the threat. Does this not reinforce the importance of the accountability review—the oversight of those decisions that takes place afterwards? Can you explain the review mechanism for ensuring that the decisions you take are correct? I am thinking about being sure that the person is the right person, being sure that the assessment of the threat was correct and so forth.

Michael Fallon MP: For any of the deliberate strikes I have referred to on specific targets, we carry out a post-strike assessment. That is done by the Royal Air Force to make sure that the effect that was intended has been achieved.

Ms Karen Buck: That is a slightly different point

Michael Fallon MP: No—whether the strike was successful, whether the target was hit and hit in the right way. Of course, that leads through into decision-making for future strikes. That is carried out in each case.

Ms Karen Buck: As a lay person, I feel that that is a different point. Hitting the right target is not the same as saying, “What was the review mechanism for being sure that all the circumstances that justified your original decision were met?”. The fact that a strike was carried out successfully is not the same as saying that the grounds on which all those decisions were made were as they were when you made them.

Michael Fallon MP: I am not sure about that.

Ms Karen Buck: It does not feel the same to me but maybe it is a terminological point. It is a question of reviewing the accuracy of all that information.

Michael Fallon MP: A better answer would be that there are other means of doing that. As you know, the Intelligence and Security Committee of Parliament is doing precisely that. It is reviewing the intelligence that led up to the strike you are referring to. It has the ability to do that and it will look at the various intelligence that was involved and the analysis behind it, and it has powers to investigate that.

Ms Karen Buck: In the evidence that has been given to us, I think the consensus would be that the ISC is not sufficiently independent to satisfy all the expectations.

Michael Fallon MP: Is it not? It is a committee of this Parliament.

Ms Karen Buck: It is a committee of Parliament whose members are approved by the Prime Minister. Evidence was certainly given to us by Reprieve, among others, that it would not satisfy the full expectation that it was independent.

Michael Fallon MP: I do not think it would be very happy to hear that.

Ms Karen Buck: You will know, from being briefed for this Committee, that much of the evidence given to us has reflected a concern about the level of scrutiny and accountability. Is that, then, something that you do not recognise?

Michael Fallon MP: Oh, I think accountability is important. I am accountable—that is one reason why I am sitting here this afternoon: I am accountable to Parliament. The Prime Minister came straight to Parliament and answered questions on this for two hours. He is agreeing this format with the Intelligence and Security Committee and is making intelligence available to the Committee so that it can scrutinise it properly. There certainly is accountability.

Ms Karen Buck: What would happen if the ISC found that the justification for a strike was not supported by the intelligence?

Michael Fallon MP: That is hypothetical.

Ms Karen Buck: So?

Michael Fallon MP: It is a purely hypothetical question, I am afraid. I cannot help you with that.

Ms Karen Buck: Okay. What should the legal accountability be?

Michael Fallon MP: On legal accountability, the Government are taking these decisions and the Government should be accountable to Parliament—and to you. That is what I am doing, or trying to do, this afternoon.

Q31 The Chair: May I follow that up and say that what you are doing is accounting in public, as the Prime Minister accounted in public in the House of Commons. What we would like to explore with you is the question of oversight that is informed by the intelligence—either the intelligence that the target was genuinely the threat, which is necessary to justify its being a target, or the evidence from the intelligence information that there are no civilians around. None of those can be done on the Floor of the House of Commons by the Prime Minister or by you in an open Committee or to the Defence Committee. This is oversight that requires being able to look at the intelligence. Can we just clear out you being here and the Prime Minister being in the House, because we are trying to talk about intelligence-based oversight and accountability, leading to the Intelligence and Security Committee, as you said? So, it has requested to look into this operational matter and to look at the intelligence to see whether it justified and complied with all the thresholds. It is security-cleared and it sits in private so that it can do that. Do you think it should be automatic that that should happen every time there is a killing outside an armed conflict, or should it rely on the ISC asking to look at it? In this case, it asked to look at it but it is not automatic. If a police officer kills somebody in the street in this country, it automatically goes to the Independent Police Complaints Commission because it is recognised that there should be some independent oversight automatically. Bearing in mind that this is a new departure, as described by the Prime Minister, do you think there should be automatic scrutiny of this, which is able to draw on the intelligence and would be able to look over the shoulder of the decision that this individual was genuinely a threat of the level required, and that it genuinely was the case at the time the individual was struck that there were no other civilians around? Do you not think it would be helpful for this to be automatic, analogous to the IPCC?

Michael Fallon MP: I think we can rely on the Intelligence and Security Committee to do its work. It is in charge of its work programme. We recently strengthened its powers through the Justice and Security Act. The Government are going to co-operate fully with it. So I think really that is a matter for the Intelligence and Security Committee.

The Chair: The fact that is it an ongoing operation is not an issue?

Michael Fallon MP: Yes, it is an issue.

The Chair: There is an issue there then, because the question is: what is an ongoing operation? If there is an ongoing operation against ISIL in a particular region, it could be ongoing for many years, which would mean that you would not look to the Intelligence and Security Committee until after it was regarded as finished. Why would you limit it and why, in view of what the situation is now and what the Government have said they have done, would you not allow the Intelligence and Security Committee automatically, after it has happened, to look into it? It would not wait for you to define whether or not the operation was finished.

Michael Fallon MP: As I understand it, it is going to look at this particular strike. It is not going to wait until all operations have ceased there, and we have said we will co-operate with it.

The Chair: So you are not going to say to it: “Actually, operations here have not ceased”? You are treating it as if it is a completed operation and you are going to give it full co-operation and all the intelligence, and you are not making the point about the fact that it is still an ongoing operation and therefore there are things that it should wait to see?

Michael Fallon MP: We have said that we will co-operate fully with the work of that Committee, as far as we are able. I do not think I can go further than that. “Co-operate fully” is what we have said.

The Chair: You would like to leave the initiative with the Intelligence and Security Committee and not institutionalise that oversight? You are still going to make the decision as to whether or not it is an ongoing operation and therefore you will choose whether or not to co-operate with it. You have chosen to co-operate with it at this point but therefore it is your choice.

Michael Fallon MP: On the first point, it is for the Committee to determine its work programme. It is not for the Government to tell a Committee of this House—or indeed your Committee—how its work should be organised. On the second point, yes, we have said we will co-operate fully with the Committee in its inquiry. The Prime Minister made that very clear when he made his Statement.

Q32 Baroness Hamwee: Perhaps I should put this theoretically rather than specifically: if someone who is later identified as the national of another state is caught up in the operation and is killed at the same time as the target—in the case of Reyaad Khan there was a Belgian national—what are the communications between the two Governments? I think we have tried find out whether the Belgians have done any investigations into this at parliamentary or equivalent level but we are not sure whether they have, is that correct, Chair?

The Chair: I think so. The Belgian national was not a target, but if you kill the national of another country in a targeted operation to kill a British national who is a threat to us, do you tell them afterwards or give them intelligence to explain it?

Michael Fallon MP: Again, I am not going to comment on intelligence-sharing. That is a matter of national security. But I want to clear something up. This particular individual would have been targeted whatever nationality he was—Swiss, Australian or whatever. The fact he was British was irrelevant. His threat was to us in Britain.

The Chair: The Belgian?

Michael Fallon MP: No, Mr Khan.

The Chair: Yes, but we are talking about the Belgian because he was killed incidentally to Mr Khan.

Michael Fallon MP: When you say incidentally, these were ISIL fighters, let us be clear about that. These were people fighting for ISIL. They were not innocent civilians. But their nationality was irrelevant. They were part of the threat to this country.

Baroness Hamwee: So he was part of the target, are you able to say that?

Michael Fallon MP: No, he was an ISIL fighter but I cannot go further into exactly what his role was.

The Chair: Do we have three categories then when we are not in an armed conflict zone? One is a target, who is agreed to be a continuous, imminent threat to life; that is, Reyaad Khan. The second is innocent civilians, who need to be avoided, and great efforts are taken to avoid killing them, and that is well established. There is a third category, which is people who are not the target but who are not innocent civilians and therefore if they are killed, that is all right—and we put the Belgian person in that third category, is that what you are saying?

Michael Fallon MP: I would not categorise them quite like that but clearly the others killed alongside Mr Khan were not innocent civilians.

The Chair: So you are saying there is a third category. There is the target; there are innocent civilians; and then there is a third category, which is not the target but not innocent civilians either, and therefore in pursuing a target it is all right for people in that category to be killed. Is that not the logic of your answer?

Michael Fallon MP: I would not categorise it precisely like that but it comes back to the discussion I had with Lord Woolf earlier, in that I have to be satisfied that the military advantage of striking a particular target outweighs any collateral damage—the number of other fighters that might be killed or whatever. We have to be satisfied of that in each case, that the action being taken is properly proportionate.

The Chair: If somebody is involved in ISIL—because they are driving a tanker of oil that is going to be used by ISIL, or they are working in an oilfield, or they are what is described as a jihadi bride—are they in this third category; that is, not a target but not an innocent civilian either?

Michael Fallon MP: I am not going to discuss publicly how we define a target, for reasons of operational security. I have said already that we take all targeting decisions extremely carefully. We do everything possible to minimise any civilian casualties, and to apply these tests of necessity and proportionality under international humanitarian law. But I am not going to speculate in public about who is regarded as a legitimate target and who is not.

The Chair: I am not asking you to speculate on that. Obviously, these people were not targets—that is the whole point. They were not the intended target of the operation but nor were they innocent civilians whose presence would stop the operation, possibly, because there would be a need to avoid civilian casualties. It is these people who are in the grey area and I think it is fair enough for us to ask what the criteria are to get you in the grey area. We know what the criteria are for innocent civilians and we know what the criteria are for people to be authorised to be targeted to be killed, because that is well established and you talked about them being a threat, but then there are these others—those people who if they are in the area, although not the target, do not stop the operation going ahead.

Michael Fallon MP: It is a fair question. Again, we would look at this on a case-by-case basis, look at the numbers of other people involved, and apply the tests of proportionality and military advantage. Does the advantage of stopping potentially large loss of life on our own streets outweigh the necessity of one or two further casualties? What is proportionate in each case is a matter for the consideration of each case.

Q33 The Chair: Would you say that there is a continuum between the target and an innocent civilian? In any particular operation, if there are other people involved, you work out where they are on the continuum in order to decide whether or not to stop the operation going ahead.

Michael Fallon MP: I would not describe it as a continuum. I have said to you already, several times, that we take every possible care to avoid and minimise civilian casualties. That may not always be possible but we take every possible precaution to avoid them. But there are instances, as I have said, where it is wholly possible that other ISIL fighters will be caught in a strike.

The Chair: When you have civilians and armed forces—that is, soldiers—it is two clear categories: there are soldiers and there are civilians, and everybody is clear about that. When somebody is a target, we are clear about that. But ISIL does not have a uniform. It does not have soldiers in the same way. Therefore, I am trying to work out from what you are saying who is regarded as ISIL to the extent that while they are not an identified target, it is all right for them to die in an operation in an area where we are not in armed conflict. You must have thought about this.

Michael Fallon MP: I certainly have.

The Chair: For example, supposing a jihadi bride was there, would they be regarded as a fighter if they were part of that ISIL enterprise or would they be in the category of innocent civilians?

Michael Fallon MP: I am sure you can see why it would be extremely dangerous for me to answer that question and say exactly the circumstances in which we would strike a potential terrorist and those in which we would not. Obviously, I am not going to answer that question because that would enable our enemies to better protect themselves. But I assure you again that we look at these things on a case-by-case basis and we do everything possible to minimise civilian casualties, and the action taken must be proportionate.

Lord Woolf: In answering the question as to whether you are going to give the authority, you take the knowledge you have of those people who might be affected by what you do. The Chair, for reasons I understand, is dividing things into categories. I wonder whether in looking at the matter, you look at all the facts before you ask the question: is it proportionate? So there will be people of different sorts who could be affected and what they are, to the best of your knowledge, is what you take into account.

Michael Fallon MP: Absolutely. That puts it very fairly.

The Chair: Jeremy, has that answered your question?

Q34 Jeremy Lefroy: I just want to pick up something the Secretary of State said, which was that the nationality of the person involved was basically irrelevant because what we are concerned about is protecting the people of the United Kingdom against people who wish to do us ill—quite rightly, it is the Government’s duty to do that. I fully understand that. So the fact that the Prime Minister came to the House in September was purely because we were talking about the use of British assets in this case, rather than because it was a British citizen who was involved?

Michael Fallon MP: Yes, what was novel about this particular case was that it was the first time that a strike such as this had occurred in Syria, in an area where not only did we not have military operations but in which we had told Parliament that we would not have military operations when we won the authority in September 2014 to operate in Iraq.² That is what was novel about this case and why I think it was right for the Prime Minister to be as transparent as possible and indeed to answer questions on it at length.

Jeremy Lefroy: I think everybody fully accepts that. Certainly, as somebody who was there at the time, I very much welcomed his transparency and openness on that. But would it be the case that since Parliament had not given authorisation for armed action against ISIL in Syria at the time—obviously, it has now—that all other options would be considered? Obviously, we have heard of other British citizens who were involved with ISIL and posed a threat to the United Kingdom who have been killed in strikes by, for instance, the United States of America, which obviously was operating with its own authority at the time. I am just trying to tease out, for other areas of ungoverned space that might come into play in the future, whether, if there was no authorisation from Parliament, all other options would be considered from those actors who were authorised to carry out strikes at the time before we said, “Well, we have to do this because nobody else can”?

Michael Fallon MP: Yes, if there is no other way of preventing an attack, of course you would look at other options. Your original question goes to a very interesting point. If we

² The motion that was approved on Iraq on 26 September 2014 expressly did not endorse UK air strikes in Syria. It did not, however, preclude other military activity, such as conducting surveillance overflights.

had known that our 30 citizens were going to be murdered on the beach in Sousse, and we knew that that attack was being directly planned from, say, a training camp in Libya, would we have needed to seek authority if we were trying to forestall that attack by striking in Libya? I suspect that the answer would be fairly similar, that there was no political authority in Libya,³ there might have been no other way of preventing it and therefore we would have been justified in doing it—but, again, we would have had to explain it afterwards. But these are exceptional circumstances. In most other countries, of course, there is authority; there are other forces you can rely on to go in and interdict these attacks or to arrest or detain people.

Q35 The Chair: I think the Lords will be voting shortly and we are a Joint Committee. Perhaps I could ask one concluding question. Would it not be better, rather than people piecing it together from what you and the Prime Minister have said on different occasions, for the Government to do what the US Government have done; that is, publish a policy which says that outside of where there is armed conflict, this is what we think the rules are, this is what we think the legal framework is, this is as much of the process as we are prepared to tell you, and this is what we believe should be the accountability? Would it not be better for the Government to do that rather than it coming out bit by bit? I do not mean that in a negative way but would it not be more helpful to have a proper policy expression of it in writing, like they have in the US?

Michael Fallon MP: It sounded rather negative. I sent you a memorandum that set out the framework under which we conduct these operations. Each country approaches these things rather differently. But I will certainly reflect on that.

The Chair: Is the memorandum, then, the last word? We are aggregating information to try to identify the policy. Would it not be a better idea to set out, in one go, the policy, the legal framework, the processes and what you believe to be the accountability, rather than leaving it for people to work out as they go along?

Michael Fallon MP: I think the memorandum does set out the essential framework, and there is now an inquiry going on. There will be an inquiry by the Intelligence and Security Committee and we will co-operate with that.

Q36 Baroness Lawrence of Clarendon: This question is about accountability. At the end of the day, as a Prime Minister and a Secretary of State, you have accountability to Parliament as well as to the public. In some of your answers, I do not think you have given relevance to the public and their interest, as well as our interest, in understanding how you decide to make a decision. There is accountability and I do not feel that that is explained. Each time a question is asked, you say you are not obliged to answer. But Parliament and the public have that right.

Michael Fallon MP: Absolutely, Lady Lawrence, you have the right to ask these questions but I am afraid that some of them touch on issues of national security and operations that are current. Therefore, it is not possible for me to answer all your questions as fully as I would otherwise like. I am afraid there are some limits. But we have this first inquiry by the Intelligence and Security Committee into the details of this particular operation and let us learn from that as to whether the accountability can be improved.

³ See footnote 1 for clarification.

The Chair: If there are no more questions, perhaps we can just thank you—

Lord Woolf: Sorry, there is one more but I think the answer will be very easy. Do the Government at present have any plans to derogate from the right to life in Article 2 of the European Convention on Human Rights, which protects the right to life?

Michael Fallon MP: No present plans. You will know, of course, of our manifesto commitment to look at the application of the whole convention to the operation of the Armed Forces.

Lord Woolf: Yes, that is why I specifically put it in this way: have you any plans at the moment?

Michael Fallon MP: No plans that I am aware of but if I am wrong on that, I undertake to write to you.

Lord Woolf: Thank you very much.

The Chair: Thank you for coming here and taking the time to answer our questions today.

Michael Fallon MP: Thank you.