

Airwars: Defence Select Committee Submission October 2021

Inquiry: US, UK and NATO

Summary

This submission focuses on how the UK, US and NATO align and depart in their response to the protection of civilians in armed conflict, focusing on the so-called War on Terror and particularly the US-led Coalition against ISIS in Iraq and Syria.

Following the publication of the UK Integrated Review, where the final document lacked details regarding how the UK intends to better protect civilians, we reiterate our call for the UK to follow emerging best practice by looking to the US at recent legislation changes, and where systematic engagement with civil society on these issues is officially encouraged. Currently, UK policy is falling dangerously behind other allies including the US, in adequate policies to mitigate, monitor, investigate and publish potential instances of civilian harm reportedly involving UK forces.

We believe that NATO can learn lessons but also share and implement lessons regarding the protection of civilians and accounting for harm. Whilst NATO's policies on the protection of civilians to be used in all NATO operations have been endorsed by the UK, the recommendations have not been transferred to the same extent to the UK's own approach.

We include urgent recommendations for the UK to coordinate more effectively with allies, including the US and NATO, to protect civilians and learn lessons about harm, when it does occur.

About Airwars:

1. Airwars is a non-governmental international watchdog organisation, based in London. Since being founded in 2014, we have monitored nearly 60,000 locally reported civilian deaths resulting from international and domestic military actions in Syria, Iraq and Libya; as well as from US counterterrorism strikes in Yemen and Somalia. Where possible, we constructively engage with militaries and governments to better understand civilian harm and help reduce battlefield casualties. For example, we regularly engage on a granular level with the US, Belgian and Dutch militaries to support their improvement of understanding civilian harm, transparency and accountability standards. We are the only external referral organisation routinely cited by name in the US-led Coalition's monthly official casualty reports for Iraq and Syria.

2. Our research, advocacy, and policy efforts have provided us with conflict data and analysis which we believe will be highly relevant to the Defence Select Committee's ongoing inquiry into the relationship between the US, UK, and NATO.
3. The focus of this submission will be analysing differences, similarities, and points of collaboration in the US, UK and NATO policies on the protection of civilians. Airwars has previously submitted evidence, [Credibility Gap](#), to the Defence Select Committee's inquiry into the global terrorist threat in 2019 with our director, Chris Woods, also participating in oral evidence.

Where do the US, UK and NATO align on their understanding of global threats and their view of how (using measures across the 'Diplomatic, Information, Military, Economic, Financial, Intelligence and Law Enforcement' spectrum and the wider spectrum of civil society) to respond? Where do they diverge?

4. As the UK works with allies to respond to global threats, protecting civilians, and accounting for their harm, should be a top priority. In order to be effective, this protection must be coordinated and divergences in the approach of allies must be addressed. Reviewing how the UK protects civilians in conflict as part of the Defence Select Committee's wider review of the UK's partnerships with US and NATO is timely and important due to recent changes in warfare, which have left military actions less transparent and accountable; rather than the large-scale deployment of their own troops, the UK and many allies in the so-called War on Terror has been defined by their provision of air power and/or intelligence to local forces and security actors. Reviewing the UK's approach to the protection of civilians and how they diverge from those of the US and NATO is vital because of the urgent improvements needed in the UK, particularly where the US and NATO members operate together, for example with the ongoing campaign with the US-led Coalition in Iraq and Syria.

UK challenges on accountability

5. Airwars assesses the UK to be the most transparent of all international actors operating in both Iraq and Syria, setting key good practice benchmarks for other states in declaring its actions.
6. Nevertheless, the UK's approach to accounting for civilian harm has fallen dangerously behind other allies, including the US. The UK still only admits one civilian casualty killed by British strikes in the whole campaign against ISIS as part of the US-led Coalition in Syria and Iraq. Airwars monitoring suggests that at least 8,300 and up to 13,000 civilians have been killed there so far by the US-led Coalition, including from thousands of British strikes. The MoD claim to only have compelling evidence of one such death - but as Airwars has shown, [the US-led Coalition has itself concluded civilians were killed in at least three British airstrikes](#).
7. The Foreign, Commonwealth and Development office (FCDO) leads the UK Approach to the Protection of Civilians in Armed Conflict, published in 2020. While this approach offers several improvements on its predecessor, the 2010 UK Policy on the Protection of Civilians in Armed Conflict, committing, for instance, to 'investigate any credible reports that the UK actions may have caused civilian harm,' there has yet to be any evidence of how the FCDO will meet these commitments. There is also no clarity given on how FCDO works together with the MoD on this issue due to lack of engagement with civil society organisations such as ourselves.

8. The section below explores the areas of convergence and divergence in the approach of the UK, US, and NATO.

Legislative changes

9. There have been few developments in increasing UK Parliament's ability to provide oversight over UK actions against the US-led Coalition in Iraq and Syria and into the civilian cost of historical conflicts in the so-called War on Terror, over the last few years. As a result, key recommendations from the Chilcot Report have yet to be implemented - for example that a "government has a responsibility to make every reasonable effort to identify and understand the likely and actual effects of its military actions on civilians."
10. This stands in contrast to developments in the US. Since 2018, there have been some significant legislative improvements in the US, when it comes to both accounting for and investigating instances of civilian harm. Notably, the US Department of Defence has been legally required to report civilian casualties to Congress on an annual basis since 2018. The [most recent report](#) admitted responsibility for the deaths of 22 civilians, though previous years presented significantly higher numbers. In June 2020, the DOD issued an interim policy regulation for providing ex gratia payments to civilians harmed as a result of US military operations, another welcome step forward. Before these changes, Congress had limited oversight into US involvement with the US-led Coalition, other major conflicts such as Afghanistan, and US counterterrorism operations.
11. Within the US military there have also been significant improvements to account for civilian casualties, which are in the process of becoming enshrined in law. CENTCOM and CJTF-OIR, the military commands with responsibilities for the US-led Coalition campaign in Iraq and Syria, Operation Inherent Resolve (OIR), have established a permanent OIR civilian casualty assessment team; the publishing of regular monthly civilian casualty reports; the publication of close coordinates for assessed and confirmed events; and granular engagement with civil society organisations like Airwars, which have all been highlighted by Airwars to the US Department of Defense as current better practise standards. The Pentagon is currently concluding a two year comprehensive review of civilian mitigation issues, which is expected to be synthesised into a Department of Defense Instruction (DOD-I) before the end of this year where the requirements described above will likely become legal obligations.
12. The problems in accounting for civilian harm within the US-led Coalition against ISIS in Syria and Iraq are exacerbated due to the different approaches of states within the coalition in publishing and investigating potential events. In their most recent annual report, for instance, [the Pentagon wrongly claimed responsibility for a series of historical strikes that were actually carried out by its allies](#), including the UK. The admission of these casualties is in sharp contrast to the UK's insistence that there is evidence of only a single civilian casualty killed from British strikes in the whole campaign against ISIS.
13. We urge the UK government to coordinate more effectively with counterparts in the US (and beyond) to understand lessons on how to improve oversight of civilian harm by enshrining monitoring and accountability requirements into law.

Civil society involvement

14. It has been difficult for civil society organisations to engage meaningfully with the Ministry of Defence on protection of civilian policies over the last several years. This is true for Ministries of Defence in other countries as well, but not to the same extent. In the

US, Airwars remains the primary public reference for civilian harm events from international and domestic military actions tracked across Syria, Libya, Iraq, Somalia and Yemen involving air delivered munitions - and is therefore a critical reference point for affected local communities, for media and analysts, and for US commands. Airwars is the only external civilian harm referral agency routinely referenced by Operation Inherent Resolve in its own monthly conflict casualty assessments. Three quarters of all potential (credible and non credible) civilian casualty incidents examined by the US Commands have been flagged by Airwars. There has never been the same level of engagement with the UK and MoD. This is a wasted opportunity; meaningful dialogue between the MoD and civil society organisations could contribute significant value to the planning, design, implementation, and evaluation of military operations and security partnerships, while reinforcing effective governance and oversight.

15. The DOD has recently finalised comprehensive bilateral policy development processes with civil society organisations including Airwars, which focused on improvements in transparency and accountability standards which are expected to result in the [major overhaul of civilian harm policies](#) through the publication of a forthcoming DOD-I. There is a focused group of civil society organisations in the UK with valuable insight and expertise on the improvements needed within the MoD to better mitigate, monitor and investigate instances of civilian harm and we would recommend the same level of engagement in these processes. While reviewing these civilian harm assessment processes, as mandated by Congress, the DOD continues to engage with multiple NGOs and international agencies in bilateral meetings and roundtable sessions, including senior officials from the Pentagon and individual US Commands.
16. This was not seen, for example, in the publication of the Integrated Review, where despite the opportunity to submit evidence, civil society organisations had a limited role in its progression and influence in the final report. Namely, the Integrated Review lacked any details regarding the protection of civilians in conflict, including information on a gender-specific focus to protection and prevention, the Children and Armed Conflict agenda, the inclusion of people with disabilities, and practical civilian protection measures. We reiterate our calls from the Integrated Review, for the UK to create and institutionalise systematic engagement with civil society organisations, where civil society can play an essential role in fostering accountability and transparency in the conduct of operations and civilian harm monitoring.

Case study: US Drone Strike in Kabul and future potential for UK remote operations in Afghanistan

17. Airwars welcomed the US investigation into the drone strike on 29th August 2021, which led to the admission of the killing 43 year old aid worker Zemari Ahmadi and his family outside their home. In our [recent intervention](#), we showed how this example is the exception rather than the rule in US operations in Afghanistan, with thousands of civilians credibly reported killed by US actions since 2001. For example the former head of NATO's Civilian Casualty Investigation Team in Afghanistan, Mark Goodwin-Hudson, has said that "civilian casualty investigations in Afghanistan were strongly weighted against finding sufficient evidence for an allegation to be recorded as credible."
18. Indeed, we believe that a key reason for the UK's failures to better determine civilian harm from its own actions within the MoD is due to the exceptionally high 'proof' threshold presently applied. Senior MoD officials have confirmed to Airwars that the UK presently requires what it calls 'hard facts' when assessing civilian harm claims - an

apparently higher standard even than the 'beyond reasonable doubt' used by UK courts. Civilian casualty assessors within the US military instead use a 'balance of probabilities' approach, Airwars understands, allowing them to consider local credible reports of civilian harm in their own investigations.

19. Ben Wallace, the Defence Secretary has recently made it clear that the UK would consider the use of remote actions in Afghanistan, citing on 7th September that he would do "whatever I have to do to protect citizens' lives and our interests and our allies, when we're called upon to do so, wherever that may be." We reiterate calls for robust and transparent mechanisms in place to mitigate, monitor and investigate all instances of civilian harm before these actions are considered. Currently the UK is systematically failing to hold itself accountable and to properly investigate historical instances that have been flagged by monitoring organisations such as Airwars.

How can NATO best learn collective lessons from both warfighting and post-conflict operations?

20. We urge the members of the Defence Select Committee to expand their focus in this question to go beyond how NATO can learn lessons, to also explore how it can *share* and *implement* these lessons.
21. When it comes to protecting civilians and accounting for civilian harm, NATO has done well to write a policy which reflects some of the most important lessons of the last two decades of warfare, including the need for transparency, open communication, and working with local civil society. These are outlined both in NATO's 2016 Policy on the Protection of Civilians and the 2021 Protection of Civilians Allied Command Operations Handbook to be used in all NATO operations.
22. While the UK is a part of NATO and has endorsed the 2016 NATO policy, the sharing and implementation of lessons on this topic have been insufficient. While NATO's policy outlines the need to "make every effort to communicate known civilian casualties to the host nation authorities, local population, and media... [to] counter false information, demonstrate transparency and strengthen its credibility", these same concepts have not been shared to the same extent in the UK's own approach to the protection of civilians. In fact, a focus on transparency and open communication when harm occurs were largely left out of the UK's 2010 POC policy, which largely focused on the UK's role as a protector in situations where others harmed civilians. The recently released UK 'approach' to the protection of civilians, published in August 2020, repeats the omission. Yet transparency on this subject is - as NATO's policy rightly points out - vital. It is the only way for the UK to become accountable.
23. At the same time, the commitment by NATO member states to transparency, open communication, and working with civil society has not always translated into action. Most notably, an analysis of civilian casualties from all parties during the NATO-led intervention in Libya in 2011 was never conducted, even after the 2016 policy was published. It was only in 2021, when [Airwars conducted the first comprehensive overview](#) of casualties from the actions of all belligerents, that it became clear that between 223 to 403 civilians were likely killed by NATO countries, according to local community reports. An institutionalised process of engaging independent monitoring organisations (and civil society organisations, where possible) to understand data of this kind will be instrumental in allowing NATO to understand its actual impact on the ground.

24. NATO policies must also translate properly to individual member states. As Airwars' recent study of the 2011 uprising in Libya notes, likely civilian harm from NATO actions were relatively light according to several reputable studies, including by the United Nations. Yet no individual member participant in that conflict - including the UK and US - has conceded any civilian harm from their own actions a decade on. NATO's own institutional position remains that it can confirm no civilian deaths as a result of its 2011 intervention - not because it believes this to be the case, but because individual states have failed to declare any such harm.
25. If NATO is to improve its approach to learning collective lessons, it must have a bigger focus on engaging with data collected by independent organisations to understand its true impact on the ground. While this does happen to some extent, there have been significant exceptions.

Recommendations

26. There is a strong need for the UK to coordinate more effectively with allies, including the US and NATO, to protect civilians and learn lessons about harm, when it does occur. As it stands, such coordination is not sufficient, leading to a loss of best practice.
27. In particular, the UK should take on board lessons from the US and NATO on the importance of introducing both public and parliamentary transparency on civilian casualties and civilian harm from operations.
 - a. While the US Congress now has some legislative insights into civilian casualties from American strikes, the British parliament has no such mechanisms and cannot therefore fulfil its role of providing oversight. This is a detrimental situation.
 - b. At the same time, the MoD should learn from its allies' approaches to engaging with civil society actors. British civil society organisations have effectively been shut out of impactful engagements with the UK MoD, while such engagements with civil society are becoming the rule, not the exception, among key allies.
28. When examining lessons learned collectively through NATO on the protection of civilians, it is vital to look beyond the learning aspect, to also examine how such lessons can be shared and - importantly - effectively implemented.
 - a. The UK has failed to include important aspects of the 2016 NATO approach to the protection of civilians into its own national policies, including a focus on transparency, open communication, and working with local civil society groups.
 - b. At the same time, there is a gap between NATO's policy commitments and reality on the ground. It is therefore important to better understand how lessons learned collectively through NATO can be implemented.

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