

## Written evidence submitted by Drone Wars UK

### House of Commons Defence Committee

#### Inquiry into the role of the military in countering migrant crossings (Operation Isotrope)

1. Drone Wars UK is a UK based non-government organisation which undertakes critical research into the use of armed unmanned systems, commonly known as drones, and other emerging military technology (see [www.dronewars.net](http://www.dronewars.net) for more information). We scrutinise the increasing use of technology for security purposes, undertaking research, education, and campaigning on these issues, advocating a human security approach.
2. Our work has included a recent study investigating the increasing use of military-style drones by governments to secure state borders.<sup>1</sup> We wish to give evidence to the Defence Committee on general principles relating to military involvement in border policing and on the potential use of drones for this purpose.

#### *Guiding principles and legal basis for the involvement of the armed forces in border operations.*

3. Drone Wars takes the view that the military should not be involved in day-to-day border control operations in the absence of any threat of military invasion. This role is primarily a policing and enforcement role centred on dealing with civilians which should be conducted by civilian agencies. Military forces are not principally trained or equipped to deal with humanitarian or policing situations. The UK borders are not a war zone, and civilians attempting to enter and leave the country are not armed combatants. It is frequently claimed that the UK's armed forces are already under-resourced to undertake the tasks they face, without having additional non-military duties thrust upon them. For these reasons it is inappropriate to involve the armed forces in border control operations.
4. Despite this, the UK military have been asked by the government to assist with border control operations in the English Channel during times of perceived crisis. In a study on border control in the United States and European Union, Rey Koslowski and Marcus Schulzke have pointed out that "it is often important to politicians to demonstrate to voters that they are "doing something" to control immigration", and that actions to stop illegal border crossings "are highly visible and make for wonderful "symbolic politics"." This approach has long shaped border control policy-making,<sup>2</sup> and was exemplified by the highly publicised deployment of military assets, including drones, in the Channel by the UK government in 2020.
5. **Recommendation: The Committee should carefully examine the justification given by the government for involving the armed forces in border control and establish whether there is a genuine operational need for their involvement, and what they may be able to contribute.**
6. Should the UK armed forces become involved in border control operations in the Channel, the basis of this involvement must focus on saving lives, meeting humanitarian needs, and be

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1 'Crossing a Line: How the use of drones to secure borders threatens everyone's rights'. Drone Wars UK, 26 December 2020. <https://dronewars.net/2020/12/26/crossing-a-line-how-the-use-of-drones-to-secure-borders-threatens-everyones-rights/>

2 Rey Koslowski and Marcus Schulzke: Drones along Borders: 'Border Security UAVs in the United States and the European Union'. International Studies Perspectives, 25 May 2018. [http://eprints.whiterose.ac.uk/127015/1/Drones\\_along\\_Borders\\_Final.docx](http://eprints.whiterose.ac.uk/127015/1/Drones_along_Borders_Final.docx)

human-rights led.

7. **Recommendation:** To ensure that the focus of any armed forces intervention is on saving lives and meeting humanitarian needs, forces involved in addressing the informal entry of people into the UK across the Channel should report to HM Coastguard as the appropriate civilian co-ordinating agency. A formal memorandum of understanding between HM Coastguard and the armed forces should be drawn up to confirm that the aim of using the military is to assist in rescuing people in distress, not turning them away from the UK's border. To allay public concerns over this matter, the memorandum should be published.
8. If deployed in the Channel, the Royal Navy and other armed forces should support HM Coastguard in search and rescue operations according to the UK Search and Rescue framework and doctrine to which the Coastguard deliver operations, recognising the UK Government's legal obligations under a number of international conventions, most notably:
  - The United Nations Convention on the Law of the Sea 1982 (UNCLOS).
  - The Convention on Safety of Life at Sea 1974 (SOLAS).
  - The International Convention on Maritime Search and Rescue 1979 (SAR Convention).
9. International law requires any ship to assist another ship in distress. This duty is articulated in Article 98(1) of UNCLOS (requiring states to oblige the master of a vessel to provide assistance to persons found at sea and in danger of being lost) and Regulation 33 of Chapter V of SOLAS (requiring the master of a ship to provide assistance to persons in distress at sea if they are able to do so). This obligation is implemented in domestic law by virtue of the Merchant Shipping (Safety of Navigation) Regulations 2002 and the armed forces are also required to meet it.
10. The issue of the migration status of people attempting to cross the Channel is a separate issue which should be determined by the proper authorities when those people have landed. If information becomes available during the course of a rescue that would be of benefit to law enforcement organisations such as the Border Force, then those authorities should be informed so that they are able to take action. Preventing refugees from crossing borders is a contravention of international law. UK shipping, including Royal Naval and UK Border Force vessels, must always provide aid to distressed seafarers, regardless of their suspected immigration status.
11. **Recommendation:** The rules of engagement for any forces involved in operations in the Channel should include instructions to rescue all seafarers in distress or difficulty and should explicitly forbid attempts to 'push back', ignore, or leave French forces to act to deal with such situations.
12. It is conceivable that the armed forces may be asked to assist with providing assistance with surveillance and intelligence-gathering activities to help in assessing the situation in the Channel. This should focus on providing expertise, training, and capacity building rather than direct involvement in operations, and remain under the direction of the appropriate civilian agency.
13. **Recommendation:** As a longer term measure to deal with informal crossing of the border via the Channel, the government should move away from its current emergency-driven response and set up safe and secure routes for entry into UK for asylum seekers and refugees.

### *Use of drones for border control operations*

14. Drones can provide a mobile surveillance capability that can be used to detect activity and guide operations on the ground, and have been used for border control purposes in various parts of the world, including the Channel. In September 2020 the Home Office published a notice stating that it had awarded a contract for a “fixed wing UAS [Unmanned Aerial System] managed service to enhance maritime awareness” from November 2019 to March 2020 to Tekever Ltd.<sup>3</sup> Tekever provided a surveillance service operating its AR5 drone from Lydd airport to undertake surveillance over the Channel.<sup>4</sup> Drones were only permitted to fly in areas covered by temporary airspace restrictions.<sup>5</sup> While the Home Office is refusing to disclose details of the use of Tekever's services beyond this initial contract, anecdotal information from plane spotters indicates that drone operations continue on an irregular basis.
15. In August 2020 the government controversially considered calling in the Royal Navy to support the UK Border Force in the Channel in undertaking unlawful 'pushback' operations to return people crossing the Channel to France without allowing them to apply for asylum,<sup>6</sup> but instead eventually deployed Royal Air Force crewed aircraft to assist with search operations. This represented the first time that military aircraft had flown in support of the Border Force. Initially this consisted of support from a low-flying A400M Atlas transport aircraft,<sup>7</sup> subsequently replaced by P8-Poseidon MRA1 marine patrol aircraft and Shadow R1 surveillance aircraft.<sup>8</sup>
16. Just over two weeks later the Army's Watchkeeper drone was deployed to patrol the Channel, operating from Lydd Airport in support of the Border Force amid speculation that, if successful, the trial could become a permanent tool in the government's border control machinery.<sup>9</sup> Watchkeeper took its first operational flight in support of the UK Border Force on 2 September 2020, undertaking 15 sorties with a total flight time just short of 44 hours during the month of September 2020.<sup>10</sup> In the following month, October, the number of sorties was down to six, with a flight time totalling slightly under 24 hours up to 16 October, at which point the operation was quietly stopped.<sup>11</sup> The drones were only permitted to fly in areas covered by

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3 'FW UAS Managed Service'. Gov.uk Contracts Finder. 15 September 2020.

<https://www.contractsfinder.service.gov.uk/Notice/def2ca3f-aed8-43ef-82e6-50f3742d99ac>

4 Morgan Meaker: 'Here's proof the UK is using drones to patrol the English Channel'. Wired, 10 January 2020. <https://www.wired.co.uk/article/uk-drones-migrants-english-channel>

5 'Temporary Danger Areas English Channel. Temporary Danger Area Complex 31 August 2020 - 30 September 2020. NATS, 31 August 2020. [http://www.nats-uk.ead-it.com/aip/current/misc/BRIEFING\\_SHEET\\_ENGLISH\\_CHANNEL\\_V3.pdf](http://www.nats-uk.ead-it.com/aip/current/misc/BRIEFING_SHEET_ENGLISH_CHANNEL_V3.pdf)

6 Diane Taylor: 'UK plan to use navy to stop migrant crossings is unlawful, lawyers warn'. Guardian, 7 August 2020. <https://www.theguardian.com/world/2020/aug/07/uk-plan-to-use-navy-to-stop-migrant-crossings-is-unlawful-lawyers-warn>

Mattha Busby: 'MoD considering request to deploy navy to stop Channel migrants'. Guardian, 8 August 2020. <https://www.theguardian.com/uk-news/2020/aug/08/alarm-fingerprinting-custody-channel-migrants-uk>

7 Jamie Grierson and Dan Sabbagh: 'Boris Johnson accused of scapegoating migrants over Channel comments'. Guardian, 10 August 2020. <https://www.theguardian.com/uk-news/2020/aug/10/boris-johnson-hints-at-law-change-to-deport-migrants-who-cross-channel>

'RAF A400M supports Home Office and UK Border Force'. Royal Air Force, 11 August 2020. <https://www.raf.mod.uk/news/articles/raf-a400m-supports-home-office-and-uk-border-force/>

8 'P-8 Poseidon aircraft to support Border Force operations in the Channel'. Royal Air Force, 13 August 2020.

<https://www.gov.uk/government/news/p-8-poseidon-aircraft-to-support-border-force-operations-in-the-channel>

9 Lucy Fisher: 'Army drone deployed to spot migrants in Channel'. Times, 31 August 2020.

<https://www.thetimes.co.uk/article/army-drone-deployed-to-spot-migrants-in-channel-d3qs3nxxh>

10 Letter from Ministry of Defence responding to Request for Information reference FOI2020/11074, 14 October 2020.

[https://dronewars.net/wp-content/uploads/2020/12/20201002-](https://dronewars.net/wp-content/uploads/2020/12/20201002-FOI202011074_Watchkeeper_UAVs_flown_in_support_of_UK_Border_force_RESPONSE-FINAL.pdf)

[FOI202011074\\_Watchkeeper\\_UAVs\\_flown\\_in\\_support\\_of\\_UK\\_Border\\_force\\_RESPONSE-FINAL.pdf](https://dronewars.net/wp-content/uploads/2020/12/20201002-FOI202011074_Watchkeeper_UAVs_flown_in_support_of_UK_Border_force_RESPONSE-FINAL.pdf);

temporary airspace restrictions.<sup>12</sup> It is clear that Watchkeeper's contribution to operations in the Channel was minimal.

17. The Royal Air Force is planning to bring its new Protector drone into service from 2024 onwards to replace its current Reaper fleet of armed drones. Some of the Protector aircraft will be based at RAF Waddington in Lincolnshire and the Ministry of Defence has stated that if requested, Protector would be available to support civilian agencies in the UK, for example in search and rescue and disaster response missions.<sup>13</sup> During a series of test flights within the UK over the summer of 2021 by a US SkyGuardian drone (the latest version of the Predator drone and the prototype of Protector) on Saturday 26 September, the drone flew from RAF Lossiemouth in Scotland to undertake a mission which involved employing a search pattern while flying over the Channel. This suggests that the highly sophisticated and expensive strike-capable drone is being considered for a border patrol role. We would strongly argue that the use of military-grade Protector drones for this type of operation is unnecessary and inappropriate.<sup>14</sup>
18. Other nations have used drones for border patrol purposes with limited success. In the US the Customs and Border Patrol (CBP) agency has used Predator drones to patrol US borders. An audit conducted by the Department of Homeland Security's inspector general in 2014 concluded that this programme had cost five times as much as expected; aircraft were frequently grounded; operations were restricted by weather and airspace restrictions, and that the drones had only helped identify a small number of illegal border crossings. The inspector general found "little or no evidence" that the fleet had met its programme expectations and concluded that money allocated to expand the programme could be put to better use by investing in alternatives such as manned aircraft and ground surveillance assets.<sup>15</sup> A subsequent audit by the inspector general highlighted concerns that CBP did not have adequate security precautions in place to safeguard data collected using the drones. Failures included a lack of monitoring to ensure effective handling of security incidents; inconsistent oversight of contract personnel; and inadequate control of access to ground control stations housing surveillance data.<sup>16</sup>

- 11 Letter from Ministry of Defence responding to Request for Information reference FOI2020/12813 4 December 2020, [https://dronewars.net/wp-content/uploads/2020/12/20201204-FOI2020\\_12813\\_Cole\\_Watchkeeper\\_UAVs\\_Flown\\_in\\_Support\\_of\\_UK\\_Border\\_Force-FINAL.pdf](https://dronewars.net/wp-content/uploads/2020/12/20201204-FOI2020_12813_Cole_Watchkeeper_UAVs_Flown_in_Support_of_UK_Border_Force-FINAL.pdf); Letter from Ministry of Defence responding to Request for Information reference FOI2021/01218, 22 February 2021, [https://dronewars.net/wp-content/uploads/2021/03/20210222-FOI2021\\_01218\\_Watchkeeper\\_UAVs\\_Flown\\_in\\_Support\\_of\\_UK\\_Border\\_Force-FINAL.pdf](https://dronewars.net/wp-content/uploads/2021/03/20210222-FOI2021_01218_Watchkeeper_UAVs_Flown_in_Support_of_UK_Border_Force-FINAL.pdf)
- 12 'Temporary Danger Areas English Channel. Temporary Danger Area Complex 31 August 2020 - 30 September 2020. NATS, 31 August 2020. [http://www.nats-uk.ead-it.com/aip/current/misc/BRIEFING\\_SHEET\\_ENGLISH\\_CHANNEL\\_V3.pdf](http://www.nats-uk.ead-it.com/aip/current/misc/BRIEFING_SHEET_ENGLISH_CHANNEL_V3.pdf)
- 13 'DE&S awards contracts for first three Protector aircraft'. Desider issue 144, Ministry of Defence, Aug 2020. P8-9. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/906752/Desider-August2020-v1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906752/Desider-August2020-v1.pdf)
- 14 'General Atomics MQ-9B SkyGuardian #N190TC Heading Back To RAF Lossiemouth After Operating Over The English Channel.' [https://twitter.com/scan\\_sky/status/1442011374096375809](https://twitter.com/scan_sky/status/1442011374096375809)
- 15 'U.S. Customs and Border Protection's Unmanned Aircraft System Program Does Not Achieve Intended Results or Recognize All Costs of Operations'. Report OIG-15-17, Department of Homeland Security Office of Inspector General, 24 December 2014. [https://www.oversight.gov/sites/default/files/oig-reports/OIG\\_15-17\\_Dec14.pdf](https://www.oversight.gov/sites/default/files/oig-reports/OIG_15-17_Dec14.pdf)  
Craig Whitlock, 'U.S. surveillance drones largely ineffective along border, report says'. Washington Post, 6 January 2018. [https://www.washingtonpost.com/world/national-security/us-surveillance-drones-largely-ineffective-along-border-report-says/2015/01/06/5243abea-95bc-11e4-aabd-d0b93ff613d5\\_story.html?utm\\_term=.c26cee21d1d0](https://www.washingtonpost.com/world/national-security/us-surveillance-drones-largely-ineffective-along-border-report-says/2015/01/06/5243abea-95bc-11e4-aabd-d0b93ff613d5_story.html?utm_term=.c26cee21d1d0)
- 'MQ-9 Unmanned Aircraft System Capability Analysis'. Department of Homeland Security Science and Technology Directorate, 22 September 2016. [https://www.dhs.gov/sites/default/files/publications/FactSheet%20-%20MQ-9%202016.09.22%20Final\\_2.pdf](https://www.dhs.gov/sites/default/files/publications/FactSheet%20-%20MQ-9%202016.09.22%20Final_2.pdf)
- 16 'CBP Has Not Ensured Safeguards for Data Collected Using Unmanned Aircraft Systems'. Report OIG-19-79, Department of Homeland Security Office of Inspector General. 21 September 2018. <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-79-Sep18.pdf>

19. Unless specific permission has been granted by the Civil Aviation Authority, for safety reasons drones can only be flown beyond visual line of sight (BVLOS) in certain areas which are not open to general air traffic. This is usually achieved by imposing temporary airspace restrictions in a particular zone. This approach places severe limits on the use of drones and is also disruptive to normal air traffic. Work is underway to allow UK airspace to be opened up for routine BVLOS drone flights but it will be some time until technology is available to allow drones to routinely fly without restriction. Drone flight is also highly weather dependent and restricted to certain conditions, raising questions about how much practical value they can provide in UK skies. This was a significant factor limiting the use of Watchkeeper over the Channel. Furthermore, drones may allow a situation to be observed and monitored but, unlike boat or ground patrols, are unable to intervene directly to prevent harm.
20. The use of drones for surveillance purposes also raises privacy issues for the public. The Cato Institute, a US think-tank, has critiqued the use by CBP of drones for border surveillance and raised concerns about the privacy implications of drone surveillance, warning that they allow CBP to “freely use its surveillance authority to collect information on the lives of law-abiding US residents inside the United States”. The Institute recommended that CBP should wind down its drone programme and in the meantime establish more robust privacy protections.<sup>17</sup>
21. **Recommendation: The Defence Committee should question the Ministry of Defence and the Home Office on their evaluation of the use of drone flights and previous military interventions over the Channel, and ensure that lessons are learnt. The Committee should also ask the Ministry of Defence to set out the capabilities that the Protector drone will provide towards maritime surveillance and other tasks conducted in support of civilian agencies; the circumstances under which Protector might be used over UK waters and the UK homeland; and measures which will be taken to safeguard privacy.**

24 January 2022

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17 David J. Bier and Matthew Feeney: 'Drones on the Border: Efficacy and Privacy Implications'. Cato Institute, 1 May 2018. [https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb\\_5.pdf](https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb_5.pdf)