

Jack Stewart
Researcher
APPG on Drones

24 February 2017

RE: APPG Inquiry into the Use of Armed Drones

Dear Mr Stewart,

Further to our email correspondence, we are writing to draw your attention to a draft paper that might assist the APPG in its current inquiry into the use of armed drones.

Our paper explores the applicability of the right to life under Article 2 of the European Convention on Human Rights in the context of aerial targeting. The paper discusses three main questions: the extra-territorial applicability of the Convention, the substantive aspects of the right to life and the procedural aspects of that right. At present, we are only able to share our findings in relation to the extra-territorial applicability of the Convention.

We challenge the conventional wisdom that jurisdiction within the meaning of Article 1 of the European Convention must be equated with actual control. Instead, we suggest that the extra-territorial reach of the Convention, as it emerges from the progressive evolution of the case-law, cannot be understood without distinguishing between jurisdiction as regulatory authority and jurisdiction as actual control.

We also investigate in some depth the requirements for ‘authority and control’ within the meaning of the ‘State agent authority and control’ model of jurisdiction. This issue is of considerable interest from an air perspective, since it determines whether or not the use of force against an individual who is not within the physical custody of a State party brings that person within the jurisdiction of the State concerned. As members of the APPG will be aware, the Divisional Court and the Court of Appeal came to different conclusions on this issue in the case of *Al-Saadoon*. Our work lends support to the position adopted by the Court of Appeal.

We have uploaded the paper onto SSRN to enable the APPG to cite the text, if appropriate. The draft is available at <https://ssrn.com/abstract=2923012>.

We regret not being able to share the complete paper at this point, but hope that the Group will nevertheless benefit from our analysis. In this respect, we would also like to draw the Group’s

attention to our written evidence on the [International Law Aspects of the Use of Drones for Lethal Targeting](#) submitted to the Joint Committee on Human Rights.

We would be grateful if you could bring these points to the APPG's attention. Thank you very much.

Yours sincerely,

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