

Parliamentary Panel Event | Monday, 25 June 2018 | House of Commons

Current challenges in armed conflict, and state accountability in urban warfare

Chairs: Rt Hon Dominic Grieve QC MP and Lord Hodgson of Astley Abbots CBE

Speakers:

- **Dr. Helen Durham**, Director of International Law and Policy, International Committee of the Red Cross (ICRC): on fundamental IHL rules and standards, and how states should apply them in practice, including in urban armed conflict
- **Emily Knowles**, Programme Director, Remote Warfare Programme, Oxford Research Group: on use of armed drones in conflict, including in urban armed conflict
- **Professor Philippe Sands QC**, Professor of Law and Director, Centre on International Courts and Tribunals at University College of London; barrister at Matrix Chambers: on detention and the application of key IHL standards, including in urban armed conflict

Summary of Discussion:

The panel discussion focused on the importance of ensuring all countries adhere to and support international law and explored how parliamentarians can hold government and others to account. With specific reference to armed drone use, extraordinary rendition and treatment of detainees, the event examined the specific impacts of armed conflict in urban areas, the important role of international law in protecting civilians and the challenges around application and enforcement of international law rules in practice.

Dr. Helen Durham initially provided an overview of the ICRC's role as "guardians of international humanitarian law" that serves to balance military necessity with humanity by promoting adherence to the Geneva Conventions, additional protocols and treaties. **For a detailed outline of states' obligations under international humanitarian law (IHL), please see the attached factsheet on IHL.**

All three speakers agreed that there are three trends identifiable in current warfare that make it harder both to protect civilians and to hold states accountable for unlawful actions:

- Wars are increasingly being fought in urban areas (over 50 million individuals are affected by conflict in urban areas, and it is estimated by 2020 two thirds globally who are affected by conflict will be living in urban areas);
- Conflicts are increasingly protracted;
- Parties to conflicts are also multiplying.

Professor Philippe Sands QC pointed out that while the military takes its obligations very seriously, the actions of politicians, in the UK and globally, risk undermining the existing international order by sidestepping their obligations in the name of security. This is particularly apparent in the treatment of detainees by the US, and the recent confirmation of the UK's role in global rendition and torture.

Professor Sands focused particularly on the important role Parliament has to play in promoting IHL and holding the government to account. He warned that the UK government is stepping back from its historic role as a champion of international law and that this risks impacting our international reputation. Currently, for example, for the first time since it was established, there is no British judge at the International Court of Justice. Prof. Sands warned that,

“The UK is facing a catastrophic collapse in credibility on the global stage...We’re on the cusp of a real challenge to the system of multilateralism in place after 1945. Two countries that did more than any other to create this system are the UK and the US. We stand on the edge of an abyss. It’s not too late to do something about this.”

The panel discussion and Q&A focused on how to respond to the challenges of forms of warfare that appear to be ‘new’, with multiple actors (state and non-state) and hybrid conflicts that blur the distinction between war and peace.

While there is a discourse of ‘exceptionalism’ combined with a diffusion of the responsibility of actors, all three speakers agreed that the challenges we face in today’s urban conflicts are not in fact ‘new’. Forty years ago, the issues topping the ICRC’s agenda were the same as today:

- Proliferation of non-state armed groups and the difficulties involved in protection of civilians (e.g., Vietnam);
- New technology in warfare (e.g., aerial bombardment)

Professor Sands added that urban conflict and the issue of asymmetrical conflict have been present since time immemorial. The UK in particular has previously faced these challenges in combating the Irish Republican Army (IRA).

All three speakers believed however, that the difference today was states’ response to these same challenges, driven by enhanced technological capabilities.

The ensuing discussion highlighted that though Counter-terror legislation was seen as an important tool, it was also seen as part of the problem exacerbating civilian harm in conflict. Ms. Knowles posited that what are put forward as a counter-terror imperatives can provide the political means to undermine IHL obligations . A counter-terror approach can often involve more opaque forms of warfare such as drone warfare and special forces operations that circumvent parliamentary scrutiny. This has resulted in a huge increase in civilian casualties. Severe concerns were also raised by Ms Knowles and Prof. Sands, in the context of counter-terror approaches, regarding the UK and US’ targeting policies, as well as treatment of detainees and foreign fighters.

Dr. Durham explained that in response to intensified fear of non-state armed groups and the perceived need for more extreme measures,

“There is disconnect between the fear to fact ratio...In an age of asymmetrical warfare, we’re becoming what we’re fighting”.

Questions to the panel posited that the normative definition of a civilian also appears to be blurring under current practices in urban warfare, with representatives from Air Wars and Amnesty International highlighting the UK’s ability to recognise civilian harm combined with a total lack of processes for identifying, mitigating and addressing civilian casualties. Independent

monitoring organisation, Air Wars, commented that over 26,000 civilians have been killed by the US-led Coalition in Iraq and Syria due to urban fighting; the UK has declared 750 as killed, and near zero civilian harm.

Ms. Knowles stressed that

“responsibilities don’t stop just because we’re doing things with a lighter footprint...we need to have honesty about how hard this [identifying and mitigating civilian casualties] is to do from the air”.

Outlining the importance of IHL in the protection of civilians as well as civilian infrastructure, Dr. Durham stated

“there is a need for us to have a better and more sophisticated understanding about how urban warfare actually has a huge impact on civilian populations that sometimes is not captured in the news, because the suffering occurs after the cameras stop rolling. The suffering occurs when children can't go to school. The suffering occurs when maternity services are shutdown.”

In addition, states are disregarding their obligations towards their citizens who have left Europe to go to conflict areas overseas. Dr. Durham outlined that,

“Detention and prosecution of those arrested are effectively stripped of due process, with hundreds being executed after ten minute trials; many of those involved do not directly participate in hostilities and so should be given protection under IHL.”

Technological capabilities have increased the UK’s ability to target those overseas with lower risk to UK troops. Prof. Sands stated that aided by this capability,

“For the first time in history we [the UK] are killing our own citizens. That for me was a shock...if we’re going to do that, we have to explain why we’re doing this - what’s different from before?”

It was argued that the way forward was through a strengthened parliamentary engagement, greater transparency and the building of mechanisms for effective oversight. Lord King of Bridgwater suggested that an active, Parliamentary select committee could be created to look at issues pertaining to conflict in a holistic way. These types of mechanisms would provide the appropriate means to have more nuanced and informed debates. Professor Sands was also in favour of strengthened Parliamentary scrutiny. Ms. Knowles highlighted the strategic importance of transparency mechanisms, and the need for the UK to be proactive in promoting these:

“Litigation seems to be the only tool for getting answers. This has a chilling effect in government, and there needs to be a better way of building trust. Being opaque only feeds suspicion, it sends the message you have something to hide”.

A key challenge here was the lack of legal expertise currently provided to Parliamentarians. Dr Durham mentioned that the ICRC is open to working with MPs and Peers to enhance knowledge of IHL and support its ability to hold HMG to account. This could be done via specific training as appropriate and interest dictates.

Outline of panellist presentations

Dr. Durham emphasised the crucial importance of IHL in urban contexts, stressing “in urban areas we are going backwards when we have the tools to make a difference.” Critical obligations that apply in situations of armed conflict, for example in urban contexts focus on an adherence to the principles of distinction, proportionality and precautions. Due to the difficulties in identifying combatants in largely civilian urban areas, Dr. Durham described how the lines between fundamental principles of IHL such as distinction can often be blurred in the context of parallel and intersecting counter-terror operations in the same theatres.

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The increasing complexity of conflict in urban contexts was seen as an additional difficulty in relation to state accountability in armed conflict. Emily Knowles explained that today's conflicts are fought in the context of large Coalitions - not unilateral actions. This leads to a double black box of accountability where Coalitions are not transparent about their processes and policies, and this opacity is compounded by the further black box of national policy.

Emily Knowles outlined the broader policy implications when looking at state accountability in the context of partner and “light footprint” or “remote” operations. The War Powers Convention suggests that there is an expectation of transparency and accountability to ensure informed debate, with votes taken in Parliament to approve any on combat deployment. However, in the case of assistance in partner operations other than front line deployment there is no such requirement. As several complex legal regimes govern the responsibility of partner actions, it is often difficult to unpick who may be responsible for an unlawful act.

In addition, policy and law often lag behind technological developments and changes in the ways that militaries engage. A key example of this is the use of armed drones, where there is a distinct lack of transparency and accountability as compared to operations conducted by manned aircraft. In stark contrast to the US' use of drones (however controversial), Ms Knowles explained that the UK government's unwillingness to disclose relevant information means the legality of UK policy on drones is impossible to evaluate. Not only does this lack of clarity to the parliament and the public serve to undermine the legitimacy of UK operations, it also undermines the possibility of any meaningful accountability for unlawful harm to civilians.

Philippe Sands QC elaborated on the importance of transparency and oversight - particularly the role of Parliament. Prof. Sands warned that the UK has been seen as a leader in the upholding of international rules - but is now “going back in history” and “stepping back from talking about [security] issues”. He explained that despite debates about the applicability of the international legal framework to exceptional or “new” aspects of security threats in today's conflicts, the current system of international rules is solid notwithstanding its complexity.

While previously there was only one legal framework to uphold in conflict - international humanitarian law - we now have two new areas of law: international human rights law (that intersects with IHL) and international criminal law. Each has their own rules and enforcement

The All-Party Parliamentary Group on Drones,
The All-Party Parliamentary Group on Extraordinary Rendition,
The All-Party Parliamentary Human Rights Group and
The All-Party Parliamentary Group on Rule of Law

mechanisms, and there is a crucial need to think about the three in a more holistic way. Importantly, in the interface between all three, there resides a “grey zone” of civilian protection.

IHL does not have the same mechanisms available for enforcement as IHRL and ICL, and there is no political will to create mechanisms. While the military takes its obligations very seriously, Prof. Sands warned that the actions of politicians, in the UK and globally, risk undermining the existing international order by sidestepping their obligations in the name of security.. This is particularly apparent in the treatment of detainees by the US, and the recent confirmation of the UK’s role in global rendition and torture.

Prof. Sands explained that “we’re on the cusp of a real challenge to the system of multilateralism in place after 1945. Two countries that did more than any other to create this system are the UK and the US. We stand on the edge of an abyss. It’s not too late to do something about this.” To conclude, he argued that parliament has a central role to play in ensuring adherence to these frameworks by allowing for scrutiny to ensure any UK military engagement is considered and reflected upon.