

FORGING A NEW PATH:

Prioritising the Protection of Civilians in the UK's Response to Conflict



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This report was written by staff at the Oxford Research Group's **Remote Warfare Programme**. We were set up in 2014 to examine changes in military engagement, with a focus on remote warfare. This is the trend in which countries like the United Kingdom choose to support local and regional forces on the front lines rather than deploying large numbers of their own troops.

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List of abbreviations

- Armed Conflict Location and Event Data Project (ACLED)
- Armed Non-State Actors (ANSA)
- Center for Strategic and International Studies (CSIS)
- Conflict Sensitivity Marker (CSM)
- Conflict Stability and Security Fund (CSSF)
- Counter Terrorism Associated Prosecutorial Reforms Initiative (CAPRI)
- Department for International Development (DFID)
- Department of Defence (DOD)
- European Union (EU)
- Foreign and Commonwealth Office (FCO)
- Foreign, Commonwealth and Development Office (FCDO)
- Intelligence and Security Committee
- Intelligence, Surveillance, Target Acquisition and Reconnaissance (ISTAR)
- Internal Vetting and Security Tracking (INVEST)
- International Humanitarian Law (IHL)
- International Human Rights Law (IHRL)
- International Security Assistance Force (ISAF)
- Iraq Historic Allegations Team (IHAT)
- Islamic State (IS)
- Joint Analysis of Conflict and Stability (JACS)
- Joint Committee on the National Security Strategy (JCNSS)
- Joint Incidents Assessment Team (JIAT)
- Joint Services Publication 1325: Human Security in Military Operations (JSP 1325)
- Ministry of Defence
- National Security Advisor (NSA)
- Non-Governmental Organisation (NGO)
- Organisation for Economic Cooperation and Development (OECD)
- Overseas Security and Justice Assistance (OSJA)
- Oxford Research Group (ORG)
- Peace Research Institute Oslo (PRIO)
- People's Protection Units (YPG)
- Protection of Civilians (POC)
- Royal Air Force (RAF)
- Royal United Services Institute (RUSI)
- Somali National Army (SNA)
- Special Air Service (SAS)
- Strategic Defence and Security Review (SDSR)
- United Kingdom Special Forces (UKSF)
- United States Special Operations Command (USSOCOM)
- United States Special Operation Forces (US SOF)

Executive Summary

The United Kingdom (UK) currently faces a rare opportunity to forge a new path for its foreign policy. Among other things, it is preparing to leave the European Union (EU) and finds itself responding to one of the most significant global health crises in living memory. At the same time, the Government is embarking on the “largest review of the UK’s foreign, defence, security and development policy” since the end of the Cold War. For this review to improve the way the country engages overseas, it must incorporate lessons from the last decade on the impact of remote warfare on civilian populations.

Remote warfare has characterised the UK’s response to conflict over the last decade and sees states like the UK deploying fewer numbers of their own troops. Instead, they provide support to local and regional partners who do the bulk of the frontline fighting. Western policy-makers often perceive this approach to be both low-cost and low-risk, compared with previous major conventional deployments in Iraq and Afghanistan. However, this is not the case for those civilians who live in the theatres of these military operations. Our research has shown that remote warfare presents distinct risks to civilians. Accounting for the people on the ground, and building effective tools to safeguard against their harm, is vital not just for legal and moral reasons. It must also be done to ensure that the UK’s international engagements contribute to forging peace and stability abroad. It is also in the UK’s strategic interests to ensure that its international engagements contribute to forging peace and stability and abroad.

However, as it stands, the UK’s safeguarding mechanisms are inadequate. Based on roundtables and expert interviews with

military and political officials and members of the civil service, this report lays out the challenges of the UK’s current policies and the steps required to improve the UK’s safeguarding mechanisms. It argues that for the UK’s safeguarding mechanisms to be effective, the following changes must be made:

The Protection of Civilians (POC) Strategy must be updated.

While it is positive that the UK has a national policy focused on protecting civilians in conflict, the 2010 POC Strategy is now a decade old and must be updated to reflect contemporary conflicts. Such an update was promised in early 2019, yet it remains unclear when the renewed Strategy will be published and how it will take into account the challenges of remote warfare. To be effective, an updated POC Strategy must focus on:

- Moving beyond a focus on civilian harm caused by others to also address **harm to civilians from the UK’s own actions**, and the actions of partners who have received UK support;
- Committing to **communicating clearly on POC**, including by accounting more accurately for civilian harm and deaths.

At the same time, it is important to go beyond a narrow focus on the POC Strategy to ensure that gaps in other relevant strategy documents are also addressed. Important among these is the Joint Services Publication 1325, which was published in January 2019 to cover the military’s approach to human security. Both the POC Strategy and the JSP 1325 must focus on the following elements to improve the UK’s

approach to protecting civilians in remote warfare:

- **Bridging differences in the approach** taken by departments who share responsibility for implementing the Government's commitments to protect civilians – including differences in the use of language;
- Routinely engaging with civil society actors **including civil society groups in the countries where the UK operates.**

The Overseas Security and Justice Assistance (OSJA) Guidance must be reformed.

Beyond strategy documents, there are mechanisms in place to prevent civilian harm from UK actions during international programmes and projects – key among these is the Government's OSJA Guidance. However, the OSJA lacks transparency and is too narrowly focused on addressing the legal risks of providing security assistance abroad. It fails to account for the broader drivers of conflict that need to be considered to improve the UK's contribution to long-term peace and stability. To tackle these problems, the Government must focus on:

- Setting out a mechanism to account for the **underlying causes of conflict** in the places it engages overseas;
- Introducing a **clear policy on suspending and withdrawing support to partners**, including a process of remediation when instances of abuse occur;

- Expanding the **remit of Parliament in overseeing the OSJA process;**
- Incorporating specific guidance on the **particular risks when providing support to non-state actors** as part of its OSJA Guidance;
- Introducing a **database for collating information on OSJA** to improve cross-government working, in Whitehall and in-country.

Addressing the Accountability Gap over UK Special Forces

The blanket opacity afforded to the UK's Special Forces (UKSF) makes it impossible to assess the effectiveness of their approach to civilian harm mitigation. It is therefore essential that the Government:

- **Ensures** allegations of wrongdoing follow the same due process as the rest of the British Armed Forces;
- Supports the introduction of a **process of external accountability of UKSF in Parliament;**
- **Releases details** of the accountability mechanisms in place to address both instances where UKSF soldiers, and foreign units they have trained, commit abuses against civilians.

At the same time, the UKSF must:

- Prioritise the protection of civilians **both as part of its own operations**, but also **where it is deployed to train foreign military units.**

Introduction



No. 10 Press Statement

“The UK’s departure from the EU presents new opportunities to define and strengthen Britain’s place in the world at a time when the global landscape is changing dramatically.”

The United Kingdom’s (UK) foreign policy stands at a crossroads. In the context of the UK’s formal withdrawal from the European Union (EU), the country is undergoing one of the most dramatic reviews of its approach to foreign policy in decades. Prime Minister Boris Johnson’s Government intends to use this as an opportunity for the UK to re-define its role on the international stage as “Global Britain”¹, launching what is being described as the “largest review of the UK’s foreign, defence, security and development policy” since the end of the Cold War.²

This has gained the title ‘The Integrated Security, Defence, Development and Foreign Policy Review’ – or the ‘Integrated Review’ for short. Such an extensive and timely assessment of the UK’s foreign policy offers an opportunity to take stock of what has worked in the UK’s international approach over the last two decades and what has not. Doing so objectively is vital as the results of the review are likely to have implications for many aspects of UK

foreign and domestic policy for years to come.

Remote warfare is no exception. Over the last six years, the Remote Warfare Programme at Oxford Research Group (ORG) has examined this form of engagement which has emerged since the post-9/11 wars in Iraq and Afghanistan.

Facing shrinking military budgets and perceived resistance from electorates, countries like the UK have become increasingly reluctant to deploy large numbers of their own troops, and focus instead on supporting local and regional forces, who do the bulk of frontline fighting. The UK’s support can range from intelligence sharing, arms exports and military training, to special forces deployments and air support – both combat and non-combat. Remote warfare has been key to the UK’s military engagements across the Middle East, the Sahel and the Horn of Africa in the last decade. For risk-averse policymakers, fearful of the political and public backlash from military

deployments, this approach has been, and continues to be, considered lower risk and lower cost compared to conventional deployments. Yet our research over the last six years has found that this interpretation fails to account for the effects on civilians in conflict-affected countries, where ‘remote’ warfare is not at all remote but rather part of the everyday reality. This shift towards remote warfare poses distinct risks to civilians. To better understand these particular risks to civilians and the opportunities offered by the Integrated Review, the Remote Warfare Programme conducted a series of five roundtables between June 2019 and June 2020, covering both protection of civilians (POC), and the Integrated Review itself. We supplemented this with interviews with members of the military, academia, government, civil servants, and civil society.

Our research has found that while recent campaigns, including the counter-Islamic State (IS) wars in Iraq and Syria, have provided plenty of tangible lessons on protecting civilians in remote warfare, these lessons have not been effectively incorporated into British policy. This gap is particularly disconcerting given that remote warfare is likely to remain the predominant means by which the UK engages militarily in the decade ahead. While the COVID-19 outbreak has led to the temporary suspension of many of the UK’s training programmes, the pandemic is likely to exacerbate the temptation to rely on remote warfare in the long run.³

As the military, political and economic constraints which led to the dominance of remote warfare at the beginning of the last decade worsen, in part as a consequence of the financial pressures brought on by the pandemic, working through partners is likely to remain the preferred option with policymakers.⁴ Improving the protection of civilians in remote warfare is therefore not

only vital for moral and legal reasons; it is also essential to ensure that the UK’s international engagements contribute to the UK’s strategic interests.

This report lays out how the UK’s safeguarding mechanisms to protect civilians in conflict can be improved as part of its contribution to resolving conflict abroad. It does so in four sections.

Section 1 explores the Integrated Review and the UK’s role in the world – and how this is likely to change over the next few years.

Section 2 examines the opportunities and challenges of the UK’s strategic POC documents, including the *POC Strategy* itself, as well as the Ministry of Defence’s (MoD’s) *Joint Services publication 1325: Human Security in Military Operations*.

Section 3 goes on to examine gaps in current mechanism to safeguarding against harm to civilians from UK projects abroad, with a focus on the Government’s Overseas Security and Justice Assistance (OSJA) Guidance.

Section 4 examines how the blanket opacity over the UK’s Special Forces makes it impossible to assess the effectiveness of their POC efforts.

Section 1

The UK's Role in the World

It is welcome that the Government has announced what appears to be one of the most expansive reviews of UK foreign policy in decades. However, recent events have provided strong evidence that the Johnson Government may use the Integrated Review as an opportunity to drive forward a UK foreign policy focussed on value for money and narrow national interests, rather than a thorough analysis of the worst effects of remote warfare and how these undermine the UK's ambition to act as a "force for good in the world."⁵

The starkest example of this focus has been Johnson's decision to merge the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO) into a new department, the Foreign, Commonwealth and Development Office (FCDO).⁶ This is a move that the Prime Minister has said would "unite our aid with our diplomacy and bring them together in our international effort."⁷ Indeed, Johnson emphasised that the goal is to "achieve the maximum value with every pound we spend."⁸

However, as Crispin Blunt said in response to the announcement in the House of Commons, the success of this decision will depend largely on the values that underpin UK foreign policy going forward.⁹ This merger of the FCO and DFID – preceding the findings of the Integrated Review – may indicate a Government that has already set its priorities and is unwilling to wait for external input.

Tobias Ellwood, Chair of the House of Commons Defence Committee, echoed Mr Blunt's concerns, arguing:¹⁰

"The Prime Minister himself mentioned the defence, security and foreign policy review, which was designed to understand what our Whitehall architecture should be, in understanding what our vision, our outlook, our place in the world should be and aspire to be. Surely, that should come first."

Tobias Ellwood MP, in response to the Prime Minister's Statement on Global Britain, 16 June 2020

The decision to partially predetermine the outcome of the Integrated Review, therefore, seems peculiar, especially in light of concerns from a large number of civil society groups, DFID and FCO providers, not to mention a former Conservative prime minister – concerns that we share.¹¹ This also undermines the sincerity of Government commitments to undertake broad consultation with external experts. Nevertheless, despite the lack of clarity on the extent to which the Johnson Government will take the findings of the Review into account, there may still be an opportunity to drive forward positive change in the UK's foreign policy, one that places the protection of civilians at the heart of its approach to international engagements.

However, we recognise that this will not be without its challenges. There are already signs that the Government may rely on its favourable parliamentary majority to institute major changes in Whitehall without consultation. For instance, influential figures within Downing Street are already pushing for a stronger focus on value for money in the UK's foreign policy, beyond the merger of FCO and DFID. Dominic Cummings, the Prime Minister's influential Chief Adviser, appears to have his sights on the MoD budget itself.¹² While it is a battle that has not yet come to fruition, Cummings' contempt for MoD procurement costs is well documented. For example, he has indicated a desire to use technology to

find “innovative ways” to increase the effectiveness of UK decision-making around procurement, as well as reducing the costs associated with them.¹³

This context is likely to lead to a greater push for remote warfare; as one roundtable participant said, this cost-saving focus means “partnered operations could become more attractive.”¹⁴ The risk being that this could lead to a narrower focus on UK security partnerships as a way to pursue perceived UK national security objectives. Not only would this undermine the Government’s attempt to be a “force for good in the world”, but it would also ignore the strategic benefits of pursuing UK interests in a principled way – an approach that would not necessarily require more funds, but one which would deliver the desired outcomes.¹⁵ The Integrated Review offers an opportunity for the Government to address these misconceptions about the impact of remote warfare to ensure the UK’s foreign policy is better placed to address “the causes of instability, fragility, and conflict upstream”, something it has repeatedly identified as a core objective.¹⁶

The Challenges of Remote Warfare

The increasing reliance on remote warfare presents two distinct risks to civilians. The first comes from the fact that this approach leads to the UK relying more heavily on providing air support to local and regional forces on the ground. Despite advances in technology, relying solely on air-based intelligence has not counteracted the gaps that have emerged as a result of “fewer eyes and ears on the ground.” The limits of air-based ISTAR (intelligence, surveillance, target acquisition and reconnaissance) are exacerbated by the fact that countries like the UK often come to rely on partners with weaker intelligence capabilities compared to those of Western militaries.¹⁷

This renders pre- and post-strike intelligence assessments less effective at tracking civilian populations on the ground and increases the likelihood that Western strikes result in higher civilian casualties. These weaknesses have been unaided by a notable lack of political will by the UK Government to either acknowledge the distinct risks to civilians in these recent military campaigns or to adapt its approach to tracking civilian harm.¹⁸

This challenge has been exemplified by the UK’s recent contributions to the anti-IS coalition in Iraq and Syria. While the UK dropped more than 3,700 bombs and missiles between 2014-2018, which the Royal Air Force (RAF) claimed killed over 4,000 IS fighters by January 2019, the British Government has maintained its position that there is only enough evidence to show that one civilian was killed as a result of UK military action.¹⁹ This position was summed up by former Armed Forces Minister, Mark Lancaster, who said in April 2019: “[I]t is not our position that there has been only a single civilian casualty as a result of our military action. What we are saying is that we have evidence of only a single, or what we believe to have been a single, civilian casualty.”²⁰

This stands in stark contrast to reports by organisations such as Amnesty International, which estimates that 1,600 civilians were killed in the battle for Raqqa alone, as well as Airwars, an independent organisation tracking civilian casualties, which estimates that anywhere between 8,259–13,135 civilians were killed in the five years of the campaign.²¹

If the UK is unwilling to act on the data collection of international NGOs, it may prefer to take inspiration from its American ally. After a strong campaign by US civil society groups and Congress, the US has now acknowledged 1,370 civilian casualties as



A depiction of the devastation in Mosul after the Battle for Mosul. (Image Credit: H. Mourdock/Public Domain).

a result of its air campaign in Iraq and Syria.²²

While it is important to caveat this point with the fact that the US has reportedly carried out 34,502 airstrikes, 30,000 more than the UK, it has nonetheless been more proactive in addressing concerns about the impact of remote warfare on civilian populations.²³ Indeed, the US military claims it has evidence that British airstrikes have caused more casualties than the one confirmed by the MoD.²⁴ This reinforces the need for the UK to improve its mechanisms for assessing whether civilians have been killed as a result of British airstrikes.

The second major risk to civilians emerges when the UK empowers local partners who may not have the capacity or sufficient interest in implementing strong POC mechanisms.²⁵ This is a particular risk in remote warfare, which tends to be focused on short-term tactical objectives (such as militarily countering terrorist organisations or furthering regional influence and international reputation).²⁶

Consequently, the nature of security partnerships is often dictated by these short-term objectives, rather than a longer-term consideration of local partners' propensity for committing violence against civilian

populations and its relationship with other ethnic/social groups in-country. In recent years, there have been several cases in which the UK's local partners have gone on to commit abuses against civilians.²⁷ For instance, the Somali National Army (SNA) has received significant support from the UK to combat al-Shabaab.

However, our research has found that rather than combatting this terrorist group, the abuses by the SNA have actually had the opposite effect and have instead become a significant recruitment tool for al-Shabaab among civilians who perceive the SNA to be "just another militia."²⁸

Even if a local partner shows a strong commitment to protecting civilians, they may lack the capacity to do so in practice. Mosul provides an unfortunate example of the catastrophic consequences this can have on the ground. The low risk-appetite on the part of Western forces meant that Iraq security forces were forced to do the vast majority of the frontline fighting.

Yet inexperienced in clearing and holding densely populated urban terrain, and experiencing high casualties among their own forces, Iraqi troops were often reluctant to advance in the city without heavy levels of international air support – presenting significant risks to civilians on the ground.²⁹ In the aftermath of the battle in the city, during which the anti-IS Coalition conducted 1,250 strikes with nearly 30,000 munitions, 80% of the Old Town lay in ruins.³⁰ Three-quarters of Mosul's roads, all of its bridges, and most of the electrical network were also destroyed.³¹

Independent organisations estimate that as many as 9,000 civilians were killed.³² It was a battle that led one British general to say: "I don't think any military in living memory has encountered a battle of this nature. I have said regularly – I stand ready to

challenge – that I cannot think of a more significant urban battle since the Second World War.”³³ As such, while the risk to British soldiers is comparatively lower in this form of warfare than in conventional war, it is wrong to say that remote warfare is low-risk; the risks are merely transferred to others. These lessons must not be ignored in the Integrated Review, at a time when there is a growing tendency among policymakers to consider the use of remote warfare as low-risk and low-cost.

This is particularly important on account of growing pressure for the Government to sign up to new trade deals, which may see UK military engagements abroad handed out as a quid pro quo for more favourable trading arrangements post-Brexit, including to states who may not have favourable human rights records, such as Saudi Arabia.³⁴ This is a reality that Rachel Kleinfeld says

is commonplace in US defence and security policy approaches. It would not be surprising if this becomes a key part of a UK strategy which increasingly prioritises influence and value for money.³⁵

As the Government resumes the Integrated Review process, which was paused as a result of COVID-19 pandemic, it should recognise the importance of using this Review to add real substance to its aspirations for a new Global Britain, while ensuring that the risks and challenges of remote warfare are clearly articulated and addressed. That requires a critical re-assessment of the impact that the UK’s security partnerships have on civilian populations. Nowhere is this clearer than in Britain’s relationship with Saudi Arabia.



Figure 1 Graphic of Global Britain’s three pillars.

The UK: A Force for Good in the World?

At a UN General Assembly meeting marking the 20th anniversary of the UN Security Council taking up the protection of civilians on its agenda, UK Ambassador to the UN, Johnathan Allen, gave an impassioned defence of the importance of prioritising an honest approach to POC:

Statement on the Protection of Civilians

"When we receive reports of attacks on civilians, on schools, on hospitals and medical facilities, we need collectively and individually to be ready to say what we see and to say who is behind it. It can be uncomfortable to do so. It can cut across political priorities or international friendships. But for the sake of all, we must do so. After all Madam President, if we do not speak up for other countries' civilians when they are attacked who will speak for our own?"

UK Ambassador to the UN, Jonathan Allen

The speech set the right tone for a nation currently trying to reinforce its commitment to the international rules-based system, a standpoint that permeates the UK's public statements and Government policy documents, in which the UK repeatedly expresses its aim to act as a force for good in the world.³⁶ However, to truly deliver on this ambition, the UK needs to practice what it preaches and ensure that its own actions encapsulate this same call for change.

While remote warfare operations do not necessarily place UK soldiers on the front-line, the country's reputation as an upholder of the rules-based order is still at stake. This is exemplified by the UK's security partnership with a country like Saudi Arabia, which is regarded as a "Human Rights Priority Country" by the FCO.³⁷ The UK arms exports to this country have received significant media attention since the beginning of the Saudi-led war in Yemen. Yet the relationship also involves other forms of support. Despite public outrage,

the Government believes that suspending military support – including the transfer of arms – to the regime would put the UK's national interests at risk. On a visit to the region in June 2020, for example, Foreign Secretary Dominic Raab said that Saudi Arabia represented one of the UK's "closest trade partners [who] plays an important role in keeping Britain safe."³⁸ However, the failings of this relationship have repeatedly demonstrated that the difference between rhetoric and reality can severely undermine the sincerity of the UK's commitments on POC.

In its support for the Saudi-led coalition's war against the Houthi rebels in Yemen, the UK has been complicit in the ongoing war, where two-thirds of civilian casualties have been caused by Saudi-led airstrikes.³⁹ While 2019 saw a decrease in incidents by 6% compared to 2018, this reduction was largely a result of the various ceasefire agreements reached between belligerents.⁴⁰ Despite sporadic cessations in hostilities throughout 2019, the Civilian Impact Monitoring Project recorded 2,213 incidents of civilian harm as a consequence of coalition airstrikes, many of which the Yemen Data Project have classified as war crimes⁴¹ The civilian cost of the Saudi-led war in the country has contributed to what the UN regards as the worst humanitarian crisis in the world today.⁴²

While the UK has made efforts to reduce the civilian casualties caused by its partner, they have been woefully inadequate. The UK and other Western allies have engaged with the Saudis to establish a civilian casualty tracking cell, the Joint Incidents Assessment Team (JIAT). The UK has been keen to emphasise the positive impact this has had. For instance, after the 2018 August airstrike on a school bus (which killed at least forty school children), the UK Government argued that the post-strike review process had been "almost unparalleled in



Boris Johnson and Saudi Minister of Foreign Affairs Adel bin Ahmed Al-Jubeir at the international Syria meeting in London, 16 October 2016. (Image Credit: Foreign and Commonwealth Office/Wikimedia Commons).

terms of admitting error” and demonstrated the “hand of the United Kingdom.”⁴³

Had such an airstrike been committed by a non-partner state, such as Iran, this would surely have been heavily (and rightly) condemned by the British Government, not lauded as an opportunity for self-congratulations for the UK’s positive influence over Saudi Arabia. Above all, this also fails to recognise that the JIAT is inherently biased as assessments of strikes are conducted by the Saudis themselves. As Andrew Mitchell, a senior Conservative MP argued, this is equivalent to the Saudi’s “marking their own homework.”⁴⁴

Moreover, there is little evidence to suggest that the JIAT or British engagements have led to a significant institutional shift within Saudi targeting policy or a measurable reduction in the number of civilian casualties.

¹ This report was commissioned by the Oxford Research Group.

Numerous experts have argued that the UK did nowhere near enough to stop abuses or to press for real improvements to the JIAT once its failing became clear.⁴⁵ This is despite the UK Government’s claims that its security relationship with Saudi Arabia gives it unprecedented leverage over the country. Instead of raising the possibility of suspending support, former Prime Minister Theresa May claimed in 2017 that the best way forward would be to create “an even deeper partnership ...[which] will increase our ability to address the issues that concern us.”⁴⁶

However, a report written by the Policy Institute at King’s College London¹ in 2018 found that “there is little evidence, based on publicly available information, that the UK exerts either influence or leverage over Saudi Arabia.”⁴⁷ This chimed with research conducted by Dr Larry Lewis, a former

State Department advisor for civilian protection, who urged the Saudis to set up the JIAT. He argued, in a report for the CNA, that using relationships as leverage with Saudi Arabia didn't always have the intended, positive impact.⁴⁸ Instead, he concluded, the most effective way to alter behaviour was by "training and mentoring [that] was data-driven"⁴⁹ to address specific patterns of harm to reduce the civilian casualties committed by the Saudi-led coalition in Yemen.⁵⁰

In assessing the success of JIAT, Lewis said: "the JIAT failed on its own terms because it was simply ignored by the Saudi defence ministry."⁵¹ As one expert pointed out in conversations with us, this raises questions on whether the UK is focused primarily on preventing "PR disasters"⁵² or meaningfully pushing for structural improvements to the Saudi's POC mechanisms.

As the UN Security Council penholder² for both Yemen and the POC agenda, the UK's blindness to the criticism of its complicity in Saudi war crimes undermines its efforts to be regarded as a force for good in the world.⁵³ Contrasting Ambassador Allen's speech with the UK's support for Saudi Arabia illustrates how the UK is keen to talk up the importance of issues like POC but is not doing enough in practice to demonstrate it is serious about embedding the protection into its foreign policy approach in a practical way.

If the UK Government is to balance its interests with its values, it should do much more to counter accusations of hypocrisy by adopting a more proactive and principled approach to its interests. To do this, the UK should not necessarily sever

relations with autocratic regimes. Instead, it needs to change its approach to security relationships. In the words of Sir Nicholas Soames, former Conservative MP of thirty-five years and former Minister for the Armed Forces:⁵⁴

"We have a choice as to what Britain will be known for globally and how we will see ourselves. Do we uphold international law impartially, without fear or favour? Will we challenge our international friends and allies when they undermine the rule of law, as true friends should and must?"

Sir Nicholas Soames, former MP for Mid Sussex (1997 - 2019)

²Penholders are countries on the UN Security Council who hold responsibility for a thematic area.

Section 2

POC and UK strategy

In 2010, the UK released its Strategy for the Protection of Civilians in Armed Conflict ('POC Strategy') which lays out the UK's moral and legal obligations to protect civilians in conflict across the world.⁵⁵ When it released this document, the UK became one of the first countries to publish a strategy specifically on POC, something the UN advises all countries to do.

However, the 2010 POC Strategy is a product of its time, reflective of the UK's role in the world as it looked a decade ago. Since its release, circumstances have changed with a growing apathy about the Responsibility to Protect, which formed the backbone of the 2010 Strategy, as well as the emergence of remote warfare and the UK's changing role in the world in the context of Brexit. As such, while the 2010 strategy raises important points, it fails to capture the challenges posed by the changing character of conflict and therefore risks being ignored in discussions around how to plan for future deployments overseas.

In early 2019, after immense pressure from civil society groups including ORG, the Government made it clear that it was willing to prioritise updating its approach to POC. In January, the MoD released the *Joint Services Publication 1325: Human Security in Military Operations* (JSP 1325).⁵⁶ The JSP 1325 is, in effect, a tool to implement the Women, Peace, and Security agenda anchored in UN Resolution 1325. Introducing such a policy document, that specifically addresses the gendered impact of conflict on civilians is hugely valuable, especially when it is accompanied by a practical focus on how to integrate these elements into operations and training. However, the terminology of the JSP 1325 raises a challenge. While it is good that a WPS strategy document exists in the UK, the fact that the

'human security' term is used simply as a synonym for gender challenges leaves many other aspects of human security un-addressed.

Regardless, the Government's commitment to updating its approach to protecting civilians was reiterated further in February 2019, when it announced that it would be launching a review into its 2010 POC strategy.⁵⁷ Just two months later, then Defence Secretary Gavin Williamson demonstrated the apparent MoD buy-in by announcing the launch of a new UK Centre of Excellence for Human Security.⁵⁸ Analysts at the time saw this as a sign that the MoD was broadening its approach to POC, bringing it more in line with the terminology used by both the FCO and DFID.⁵⁹ Williamson emphasised: "In modern warfare, there is no 'front line' and the sad reality is that innocent bystanders are in harm's way in conflicts around the world. Protecting civilians from human rights violations is as much a military task as defeating the enemy."⁶⁰ A member of staff at the NATO Headquarters emphasised, during an interview, that the organisation was encouraged by the UK taking on such an initiative.⁶¹

However, since these announcements were made, the commitments to a renewed focus on POC appear to have fallen by the wayside. Brexit discussions, the December 2019 General Election, and, of course, the UK's response to the COVID-19 pandemic, have dominated headlines and policy bandwidth. This issue has been exacerbated by ministerial postings changing at a rapid pace – with three different Secretaries of State for Defence in 2019 alone. In the meantime, the Centre of Excellence has since been deemed unfeasible in an internal MoD study, and its creation curtailed.⁶² The review of the POC Strategy appears to have been deprioritised and it remains unclear when it will be completed.

Such a de-prioritisation of POC is a mistake. Brexit and COVID-19 do not make

this less so. In fact, both events heighten the need for a strong approach to POC. As the UK redefines its role in the world following Brexit, an updated, relevant POC Strategy would reconfirm its commitment to a foreign policy that balances the pursuit of interests and values. So too would a stance against partners who use COVID-19 as an opportunity to repress civilian populations by implementing restrictive curfews, censoring journalists, and imprisoning political opponents.⁶³

Getting the POC Strategy Right

If the updated POC Strategy is to have a tangible impact on the way the UK engages in conflicts, it must reflect the shift towards remote warfare. While such contemporary engagements have not resulted in numbers of civilian casualties comparable to those of the Iraq and Afghanistan wars, it would be a mistake to assume that civilian deaths do not occur at all, or that the lower numbers require less attention.

It is problematic, therefore, that 2010 POC Strategy focuses overwhelmingly on British contributions as an external peacekeeping force rather than as a belligerent to the conflict. It makes sense for the UK's role as a peacekeeper to be included in the Strategy. Yet the document is meant to "draw together the different strands needed for coherent and consistent action, along diplomatic, legal, human rights, humanitarian, development and military tracks."⁶⁴ As such, it seems right that an updated Strategy should include a focus on civilian harm which may be inadvertently *caused* by British forces, and the forces the UK trains and supports overseas.

This is particularly important as the character of warfare, and the UK's participation in conflict overseas, changes. Remote warfare is not just conventional warfare 'lite'; it is its own form of engagement, which

presents its own unique challenges.⁶⁵ These are yet to be addressed directly in British policy documents.

This clearly shows that the UK's POC mechanisms have not managed to keep pace with the emergence of remote warfare and the predominance of partnered military operations. To ensure the UK POC strategy keeps pace, it should incorporate the four following elements:

1. Committing to incorporating POC lessons from recent campaigns;
2. Ensuring better dialogue with civil society, local populations and local authorities;
3. Committing to better communication when civilian harm or deaths do occur;
4. Developing a more coherent UK response to POC.

When looking at the first three of these, the UK can draw inspiration from the POC strategies of other countries and allies. NATO's 2016 Strategy, in particular, offers valuable aspects which should be echoed in the UK's national POC Strategy.

Learning Lessons from Recent Campaigns

The first element that must find its way into the POC Strategy is the prioritisation of learning lessons from previous military campaigns.⁶⁶ In particular, as the NATO policy emphasises, lessons must be taken from Afghanistan, where the NATO-led International Security Assistance Force (ISAF) found that, as a direct result of its weak monitoring mechanisms, the overall objective to win the 'hearts and minds' of the Afghan population was being undermined. Instead, Afghans felt that they had become the target. In response, ISAF adopted policies to reduce civilian harm, in addition to introducing a civilian tracking

cell. These steps had a dramatic impact on civilian harm from the international air campaign, reducing civilian deaths from one every 5.71 strikes in 2009 to one every 15.67 strikes by 2012.⁶⁷ These improvements and a desire to further lower the numbers of civilian casualties served as the impetus for the NATO Alliance to formulate its own Policy for the Protection of Civilians in 2016. This was later operationalised in 2018 in the NATO Military Concept on Protection of Civilians.⁶⁸

The 2010 POC Strategy does refer to the importance of learning lessons, but it does so only in passing, referring to the importance of learning from the international community. Yet this needs to be given greater priority as a large part of the effectiveness of the UK's international engagements in the coming decade will depend on how well the UK can learn lessons from previous decades.

We were told by a member of the UK military, during one of our roundtables, that the problem is not a lack of the British army identifying lessons, but rather, “part of the problem is that we don't talk about it or publicise it. [The military] is not very good at publishing what it is doing. Everything has been re-written since we were in Afghanistan.”⁶⁹

However, sharing such lessons with external actors, including both civil society and Parliament, allows these institutions to act as an important check on whether the right lessons are identified and incorporated into future operational planning. It is impossible to perform this role if lessons are not shared.

The POC Strategy offers an ideal opportunity to commit to identifying the right lessons from recent engagements, including by engaging more with civil society and Parliament.

Improving Dialogue In-Theatre

The UK's POC Strategy would do well to further reflect on NATO Policy which emphasises: “Promoting long-term, self-sustained peace, security and stability [which] is best achieved in cooperation with the local authorities, population and civil society.”⁷⁰

While working with local civil society groups should be a part of all international engagements, it is especially important in remote warfare where engaging on a light footprint can make it difficult to have sustained engagement with civil society in-country.⁷¹ Without such engagement, it can be even more difficult to mitigate against the very risks that remote warfare often exacerbates, such as lending support to local and regional forces who worsen insecurity in the long term. Engaging with civil society groups and with local communities is essential for gauging the true drivers of conflict; which actors are upholding the rule of law; and which actors make civilians feel safe. The importance of this was corroborated by the Organisation for Economic Cooperation and Development (OECD) which concluded that “[g]iven the weakness of state capacity in many countries,” civil society groups are essential in helping to not just denounce bad policies but also to “make practical suggestions that will help to sustain the reform process.”⁷²

The UK has committed to prioritising such engagement with civil society on many occasions. For instance, it emphasises in ‘The UK Government's Approach to Stabilisation’, that UK programmes should have an emphasis “on regular two-way dialogue and engagement with a wide range of stakeholders, formal and informal power-holders but also as far as possible civil society.”⁷³ Nevertheless, while the UK has recognised the importance of owning the narrative in theory, this has not been

sufficiently reflected in practice. As ORG documented extensively in our report on the Fusion Doctrine, 'Five Steps to Fusion: Lessons Learned from Remote Warfare in Africa', we heard complaints from both civil servants and members of civil society organisations that engagement between these two groups has decreased in recent years and that civil society is rarely included in strategic decision making.⁷⁴ The POC Strategy would be an ideal place to commit to reverse this trend and ensure that civil society engagement on the ground occurs systematically as an integral component of the UK's engagements overseas. As one interviewee suggested to us, there could also be a further consideration on how to build the capacity of partners to engage with local civil society, a topic which is beyond the scope of this report.

Despite the commitments to include civil society, the processes of updating both the UK's POC Strategy and the JSP 1325 appear to have included little engagement with groups and organisations in countries where the UK operates. Even with British civil society organisations, the Government's engagement has been largely driven by such organisations pushing to engage on the issue of POC, rather than an active attempt by Government to consult with external experts. And even then, it remains unclear to what extent the feedback from civil society will be incorporated – if at all.

Communications Around Civilian Harm

The NATO Policy emphasises the importance of communicating clearly about civilian harm when it occurs. It states: "Establishing a clear communications and public information strategy to address POC is critical for the credibility of an operation or mission...By being first with the facts, NATO can counter false information, demonstrate transparency and strengthen

its credibility."⁷⁵ This is as true for the UK's unilateral engagements in conflicts as it is for its operations that it may conduct alongside its NATO allies. Shaping and projecting narratives have always been important in conflicts. However, in an age of rapidly growing global internet access, the battle to control the narrative has picked up speed and become more intense as adversaries use the internet to compete for ownership of the narrative.⁷⁶

The UK, and many of its allies, have acknowledged this challenge, and the importance of adequately addressing it, on several occasions. The 2010 Strategic Defence and Security Review (SDSR), for instance, made this point very clear, speaking of the need to "win the battle for information, as well as the battle on the ground"⁷⁷ and acknowledging that "a more transparent society" aided by "the speed and range of modern global communications"⁷⁸ would submit British operations to intense scrutiny. In 2019, the Modernising Defence Programme reiterated this point, adding that: "More generally, we will focus on gaining 'Information Advantage' as the character of warfare changes."⁷⁹

Such a need to proactively take ownership of the narrative is particularly acute when it comes to countering terrorist groups that thrive on discontented civilian populations. This remains true whether the UK deploys its own forces to engage in countering such groups overseas or chooses instead to work through local security forces.

In both cases, the UK is likely to be perceived as complicit by those on the ground if they do not account for civilian harm. As one member of the British military emphasised at one of our roundtables: "if the local population perceive that you are doing illegitimate acts or supporting illegitimate acts or actors, those who would oppose British engagement increase."⁸⁰

By its very nature, remote warfare is a more discreet means of engaging overseas, both owing to the capabilities employed as well as less public and media attention. Factors which have been part of the appeal to UK policymakers. Nevertheless, the UK and its allies must communicate more openly and transparently about why they are present in these theatres and how they are safeguarding against harm to civilian populations. This should extend to communicating more clearly with Parliament and the wider British public as well, to make clear the risks of remote warfare.

A Whole-of-Government Approach to POC

A final consideration is how the government develops a whole-of-government approach to POC. As we noted in our report, *Five Steps to Fusion*, this is no easy feat and there are already indications of a fragmented UK approach to protecting civilians in conflicts. Take the JSP 1325's use of language, which is centred around 'human security'. The JSP outlines that:⁸¹

JSP 1325

The UNDP's definition of human security states that the scope of global security includes seven areas of threat to the individual; economic, food, health, environmental, political, community and personal. The latter being understood as protection from physical violence, whether from the state or external states, from violent individuals and sub-state actors. It is the latter threat – 'personal' security, that this JSP will focus on.

This indicates that the MoD's focus overlaps with the focuses of both DFID and FCO on their uses of the concept of 'protection of civilians'. However, in spite of the departments pursuing common goals, and a Government commitment to ensuring

fusion among its departments, there is no clarification on why these departments have aligned themselves to different concepts – especially as the departments must work together to deliver these operationally. We heard from several experts in our roundtables, including staff from the FCO and DFID, a concern that there does not appear to be a plan in place to ensure that these agendas interlink.⁸² With no clarification on the different terms used, it also becomes difficult to understand how the MoD will meaningfully contribute to – and later implement – the new POC Strategy if this is still to be introduced. As the Royal United Services Institute (RUSI) and Save the Children emphasised in a recent joint report calling on the Government to update its current POC Strategy: "Practically realising civilian protection objectives strongly depends on being able to secure collective understanding of what POC is and what its implementation entails."⁸³

As it stands, the POC Strategy is a well-intentioned, but outdated document. If it is to be improved, it must take into consideration how warfare has changed – and how this presents new and different risks to civilians in conflict. The four suggestions above would each contribute strongly to ensuring that civilians are protected as much as possible where the UK engages in future operations.

Section 3

Overseas Security and Justice Assessments

Security Force Assistance: Risk Mitigation in Practice

Beyond strategy documents like the POC Strategy, successive UK governments have attempted to put in place mechanisms to prevent civilian harm from UK security assistance – key among these is Overseas Security and Justice Assistance (OSJA) Guidance.⁸⁴ The OSJA was established as a tool to address civilian harm by identifying risks of abuses and laying out mitigation measures. However, as a compliance tool, the focus is centred disproportionately on the legal risks associated with providing security assistance abroad.

This inhibits its effectiveness at ensuring UK security assistance prioritises the protection of civilians as part of a broader approach to conflict overseas.

The OSJA Guidance was first published in March 2011 by then-foreign secretary William Hague (see Box 1 below). It emerged in recognition of the need to balance between the UK's pursuit of national security objectives while maintaining its obligations to international law as it increased its focus on working with a range of partners across the world to tackle terrorism at source.⁸⁵ As Hague emphasised at the time, such an approach would sometimes mean “working with countries, institutions or units where we have concerns about their adherence to and respect of human rights and democracy” but that “these countries or institutions are where security and justice assistance is most needed.”⁸⁶

Textbox 1

What is the Overseas Security and Justice Assistance Guidance?⁸⁷

The UK's training and support of partner militaries abroad does not take place without an assessment of the risks involved. While the UK has not passed domestic legislation to enshrine due diligence obligations to verify the human rights situation on the ground – as states like the US have done through the Foreign Assistance Act and Leahy Laws – the UK Government has produced what it refers to as the OSJA Guidance.

The OSJA Guidance sets out what International Humanitarian Law (IHL) and International Human Rights Law (IHRL) risks must be considered before approving the provision of UK assistance overseas. This is done through a two-stage process. In the first stage, there is an assessment on the likelihood that a breach may occur as a result of assistance being provided, while the second stage considers the political and reputational risks that the UK Government may face if a breach were to occur.

To complete the OSJA, policymakers are asked to consider a wide range of sources. This includes the FCO's Annual Human Rights Report, US State Department human rights reports, UN reports, “credible”⁸⁸ NGO reports (though what is regarded as credible is not specified), cross-governmental Joint Analysis of Conflict and Stability assessments (JACS),⁸⁹ and DFID Country Governance Analyses.⁹⁰

Depending on the risks identified – and the extent to which such risks can be mitigated – officials designate the proposed activity in one of the following three categories: low-risk, medium-risk and high-risk (see diagram below). The mitigation steps must cover both IHL and IHRL risks and the political/reputational risks. It is important to note that while the broader political and reputational risks are considered as part of the OSJA, the focus here was to identify the specific political and reputational risks that would emerge if legal breaches were to occur. This has been an area of confusion among some researchers. With many often interpreting the OSJA Guidance’s inclusion of a separate assessment of the political and reputational impact looking at the broader consequences of the assistance being given, rather than a narrow assessment of the political and reputational risks of a legal breach taking place. However, several civil servants we interviewed for this research confirmed that the OSJA does not consider broader political and reputational risks. Rather, these are considered through other processes, such as “ministerial submissions, governance board meetings etc.”

Based on the risk level identified, the assessor will determine the grade/seniority of the civil servant required to provide approval. The high-risk designation is used when officials are not satisfied that the risks of providing assistance could be mitigated effectively. Programmes that have received this designation can still go ahead but require ministerial approval. It should be noted, however, that the Guidance does ask civil servants to consider whether a minister would want to be informed about the assessment if it is considered low- or medium risk. The decision to inform ministers, therefore, appears to be left to individuals rather than a set process or circumstance.

In theory, it would seem logical to target those states and institutions most in need of reform, where human rights abuses are most common and commitments on POC limited. However, OSJA risks leading policymakers into a false sense of security, especially as it can lead to the assumption that mitigating the legal risks of providing security assistance will lead to the mitigation of wider risks. There are four major flaws with OSJA that prevent this from being the case:

1. There is currently no specific advice for policymakers on providing support to non-state actors, despite support for such actors presenting specific challenges to civilians;
2. As a compliance-based tool, there is insufficient recognition of the need for a broader peacebuilding approach to risk mitigation and UK security assistance as a means to

address underlying causes of civilian harm;

3. The Guidance fails to set out a clear policy on stopping and/or suspending support when abuses are reported or proven to have taken place;
4. There is a lack of transparency and accountability surrounding the OSJA process. This has, in part, led to poor cross-departmental coordination on assessments.

Armed Non-State Actors

OSJA needs to better reflect the risks of providing support to Armed Non-State Actors (ANSA).⁹¹ Working with ANSAs has been a dominant feature of recent military campaigns, as we explored in our report ‘No Such Thing As a Quick Fix’.⁹² For instance, Western support to groups like the Syrian Democratic Forces in Syria played a

key role in the territorial defeat of IS. However, as our research has shown on many occasions, these same campaigns also revealed the unique challenges and risks of providing military support to ANSAs. Unless the UK accounts for these, it is likely to lead to more violent conflict in the long term.⁹³

The Government claims that the OSJA Guidance can be applied whether the recipient is a state or an ANSA. In response to a parliamentary question on this point, former FCO Minister, Mark Field, said:

Written Parliamentary Answer

“The guidance applies to any security and justice assistance from Her Majesty's Government that could result in changes to the laws, policies, practices or capabilities of foreign justice or security institutions and/or result in individuals being identified, investigated, arrested, detained, interviewed, interrogated, prosecuted, tried or sentenced by foreign authorities”

Mark Field, Former Minister of State for Asia and the Pacific (2017-19)

However, as the risks presented by partnering with ANSAs are significantly different from those presented by partnering with states, it should follow that different mitigation measures will also be necessary. Senator Leahy (the US lawmaker behind the Leahy Laws) noted the challenges of providing support when no institutions exist for justice to be applied: “Every situation is different, and it can be challenging to apply the law consistently under the conditions that exist [which can make] it harder to do the vetting of recipients of our aid, harder to identify those responsible for crimes, and harder to bring people to justice”.⁹⁴ Rachel Kleinfeld, of the Carnegie Endowment for International Peace, offers a more critical assessment of its limits: “The Leahy Law...[cannot] address governments that choose to give up the monopoly of force to

non-state violent groups – a common tactic in these so-called weak, but actually complicit, countries.”⁹⁵

While some ANSAs, such as the People's Protection Units (YPG) in Syria, have impressive hierarchies and systems of accountability, this is often not the case.⁹⁶ In some instances, providing support to ANSAs would not only mean trusting weak and rudimentary accountability mechanisms but it would also mean taking a leap of faith in providing support to a group where such mechanisms are almost non-existent.

In this context, it is questionable how the 'one-size-fits-all' approach of OSJA can be counted on to effectively apply the appropriate checks to avoid civilians being harmed when working with a wide array of partners. Or in instances where civilians are harmed, ensuring that appropriate action is taken to address abuses. Beyond immediate civilian harm caused, Western security assistance creates broader, longer-term risks to civilian populations. In particular, sowing the seeds of social discord among different social, cultural and ethnic divides that could exacerbate conflict and lead to civilian harm. As ORG argued in a report published in July 2018:⁹⁷

“While working with ... local groups has greatly helped U.S. and UK efforts in the fight against IS, with some senior U.S. officials saying that many of its operations would not have been possible without local eyes and ears on the ground, it has had a number of broader implications.”

Abigail Watson & Emily Knowles, 'The aspiration-capabilities gap in British remote warfare', July 2020

OSJA RISK CATEGORIES

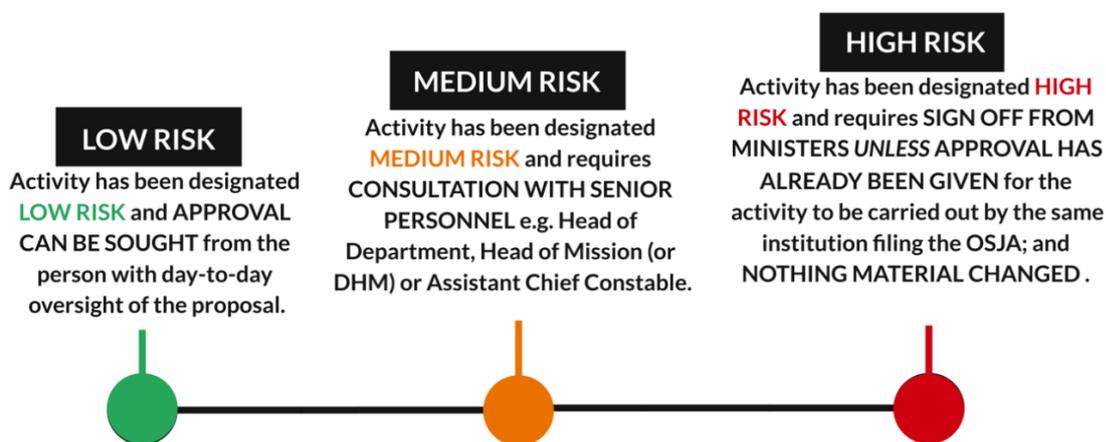
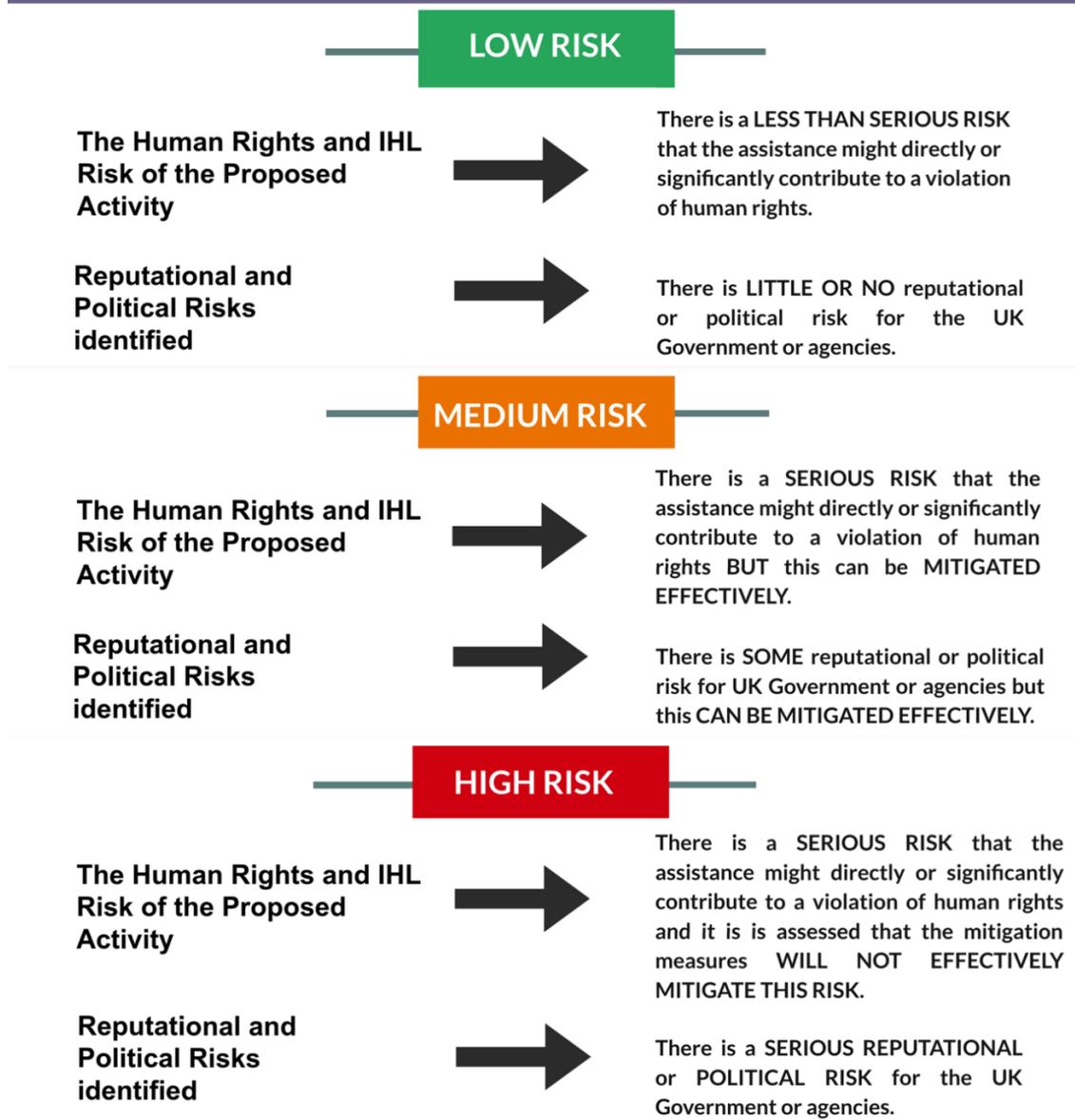


Figure 2 Graphic of OSJA's risk categories.

On that basis, the Government should consider reflecting these unique challenges so that officials can more effectively mitigate the risks associated with providing assistance to ANSAs.

Security Assistance in Fragile States

Our interviews with British Army personnel shows that IHL training remains the most common means of mitigating civilian harm; however, our research has also shown time and again the limits of such an approach in tackling the underlying drivers of civilian harm.⁹⁸ Despite some impressive efforts from soldiers to develop innovative training which reflects local cultures and religion, such training will have little impact if it is not accompanied by long-term efforts aimed at the root causes of abuse such as ineffective accountability mechanisms for addressing abuses committed.⁹⁹

As Emily Knowles, Research Fellow at the Oxford Research Group, and Jahara Matisek, a US Air Force officer, argued in an article for the RUSI Journal in December 2019:¹⁰⁰

[I]n many cases poor host-country behaviour and non-compliance with IHL standards are not a result of a lack of training and will therefore not be fixed by technical SFA [security force assistance]. Fragmentation, sectarianism, corruption and the normalisation of violence by a regime or within a state shape how security forces behave towards civilians and inform their responses to conflict and insecurity. An alternative vision for SFA is needed that is more adequately prepared to meet the challenges of how politics and violence are intertwined and exercised in a weak state context.

Emily Knowles and Jahara Matisek, 'Western Security Force Assistance in Weak States', *The RUSI Journal* 164, no. 3 (16 April 2019): 10–21

This argument was reinforced in the Armed Conflict Location & Event Data Project's (ACLED) 2019 annual report, which argued: "Governments continue to pose the greatest threat to civilians around the

world, with state forces responsible for more than a quarter of all violence targeting civilians in 2019 – the largest proportion of any actor type."¹⁰¹ As such, OSJA's focus on mitigating the legal risks over a broader assessment of the long-term drivers of conflict will undermine the UK's contribution to tackling the causes of state violence against civilians. Among the long-term drivers which should be considered are local conflict dynamics, underlying political tensions, corruption, institutionalised discrimination and/or weak institutions in the host country.¹⁰² While legal compliance is an important factor, it is ill-suited to form the entire basis of a risk assessment.

There were signs from the Government's 2018/19 Conflict Stability and Security Fund (CSSF) annual report that this was being considered. Indeed, the Government announced that it was piloting a 'conflict sensitivity marker' (CSM) as part of its CSSF programming in its 2017/18 annual report. It was explained in that report that the CSM would set "standards for all programmes to ensure that they are suitably informed by context analysis and that they identify, monitor and adapt to specific conflict sensitivity risks."¹⁰³

Despite a further roll-out across CSSF programmes in 2018/19, it is unclear what the CSM looks like in practice or how it (if at all) aligns with a tool like OSJA.¹⁰⁴ There would be considerable merit in combining the CSM with the OSJA to provide a broader assessment of the risks associated with the UK's security assistance programmes abroad.

As Saferworld argued in a submission of written evidence to the Joint Committee on the National Security Strategy (JCNSS) in 2012: "The human rights guidance should...be incorporated into a practical set of operational guidelines for ensuring that not only does such assistance do no harm,

but it helps to build sustainable peace and security.”¹⁰⁵ This could be done by aligning these two tools more effectively.

As the UK looks set to continue its focus on security partnerships as part of its National Security Strategy going forward, these issues must be addressed by committing to an improved system of risk mitigation which takes into account the broader drivers of conflict.¹⁰⁶ This should be based primarily on the impact of UK military assistance on contributing positively to peace and stability for the local population, and with it UK national security. There will, however, be situations where abuses will require the UK Government to withdraw support; temporarily or indefinitely, depending on whether issues can be resolved.

A Formal Process for Suspending Support

“A policy of the ends justifying the means, no matter how outrageous the conduct, is beneath our great nation and its people, and it is doomed to fail. We have to show that we and those we support abide by the laws, unlike the terrorists who have no respect for the rule of law.”

US Senator, Patrick Leahy (D-VT)

The UK Government must consider suspending or withdrawing its military support to local partners as a separate policy tool in its own right. The OSJA Guidance stipulates that officials should consider circumstances where there is “an opportunity for regular or periodic review/ assessment [of the project] in order to identify and/or consider HRs/ IHL risks...[and] consider whether the programme or project provides an opportunity to withdraw”¹⁰⁷ but there is no formal process for doing this as is the case in other countries, like the US.¹⁰⁸

Moreover, it remains unclear to us what process is in place to ensure that OSJAs are routinely reviewed if and when circumstances on the ground change. One expert emphasised that it would be beneficial to set up “clear triggers for reassessments...and a sequence and course of action that could lead to suspension being discussed.”¹⁰⁹

The Dangers of Suspending Support?

As part of our research for this report, we spoke to many who argued that the UK should not risk applying strict conditions on support because the competition for influence in places where the UK is engaged overseas is so intense that doing so would undermine UK national security interests. In particular, some emphasised that by removing themselves from supporting states who commit abuses, the UK would be allowing countries who place less emphasis on human rights (such as China and Russia) to take the UK’s place; undermining UK influence and its broader national security interests. However, not only is it problematic to frame the UK’s role overseas as having a ‘civilising effect’, by promoting Western values, it is also an oversimplification in several ways.

First, many experts we interviewed pushed back on the idea that places in Africa and the Middle East are “vacuums” to be filled by other states if the UK is not present.¹¹⁰ In many cases, this is not true. Not least because – as one roundtable participant said – countries like Russia and China are not waiting to “fill the vacuum. They’re already there.”¹¹¹ The challenge, then, is not to rely on mere presence – which seems to be the strategy behind the UK military’s emphasis on ‘persistent engagement’ – but to ensure that the UK contribution is desirable for foreign governments and their populations by delivering the intended impact.

As argued in a briefing published by the Center for Strategic and International Studies (CSIS):¹¹²

When states like the UK “seek to compete with rivals that do not play by the same rules, there may be a strong policy impulse to bypass accountability checks in working with partners. In fact, these are the very situations in which the allies should distinguish themselves, harnessing their principles as an asymmetric advantage.”

Melissa Dalton and Hijab Shah, ‘Partners, Not Proxies: Capacity Building in Hybrid Warfare’, 27 May 2020

The UK Government itself was clear in its 2015 National Security Strategy and Strategic Defence and Security Review that the desired outcome, in “Everything we do” is driven by our determination to protect our people and our values...”.¹¹³ This appears significantly more difficult if the UK is not willing to push for its values. As one of our roundtable participants emphasised, “...if we come in and reinforce approaches that do not respect our values, [China and Russia] still win. If our identity is defending these rights, we are losing.”¹¹⁴ In this sense, they argued, “formulating our values is not just a thing we should do to be nice, it’s strategic.”¹¹⁵

It is also noteworthy that many of the same experts who expressed concerns about applying conditions to UK assistance overseas, at the risk of losing local partners to competing international actors, were also adamant that UK support is particularly sought after in regions such as the Sahel and the Middle East. One member of the British military – representing a view that we have heard from many others – emphasised: “There is a British brand of training. They will choose us as a nation to come train them as their first choice.”¹¹⁶ While the appeal of receiving British military training

over other states may be based in truth, there needs to be greater clarity on whether the ‘British brand’ is sufficiently ‘marketable’ to the extent that partners will accept greater conditionality. Moreover, applying a rigorous approach to abuses from partner forces will likely strengthen Britain’s international reputation because it will show that the UK leads by example when it comes to keeping civilians safe and respecting international law. Furthermore, it will lend validity when British trainers on the ground train their local counterparts in protecting civilians.

That is not to say that it will always be practical to stop or suspend support if a partner force commits abuses. This is especially the case when training is focused on addressing patterns of human rights abuses from security forces by training them in the legal, operational, and strategic imperatives to protect civilians. However, unlike the US the UK is not bound by national legislation to suspend support when abuses occur at the hands of a local partner in receipt of direct support. In the US case, this is laid down in the Leahy provisions of the US Foreign Assistance Act, commonly referred to as the ‘Leahy Laws.’¹¹⁷

As a direct consequence of Leahy, there have been plenty of examples where the US has effectively suspended support as a temporary response to abuse(s) committed by a partner force, only for this to be reinstated once the perpetrators have been held to account (see Textbox 2). Going beyond risks of future liability, the importance of a robust response by the UK Government to abuses by partners is essential to retaining the moral high ground. If civilians have been harmed, the UK may still incur significant reputational damage even if there has not been a breach of international law. This is because it could still hinder the strategic success of the UK’s efforts over the long term. In essence, the point at

which the UK will be perceived as complicit in transgressions, which may weaken chances of mission success and damage relationships (posing political and reputational risks) can come before the point of legal complicity.¹¹⁸ Local and domestic audiences tend to apportion a general sense of British responsibility for the conduct of conflicts to which the UK is contributing troops or other forms of assistance – even when standards of legal responsibility are unlikely to be met. There are examples where assistance has been withdrawn by the UK Government. Research by the Peace Research Institute Oslo (PRIO), for example, has found that DFID “Training

programmes in Sudan and DR Congo were first monitored and later terminated in 2013 and 2014 respectively.”¹¹⁹ However, there appears to be little formal guidance on how and when this should be done. The current OSJA Guidance refers to the need to routinely review assessments which fall within the remit of OSJA Project Leads.¹²⁰ However, the Guidance does not set out a clear policy on when and how the UK holds its partners accountable when abuses occur.¹²¹ There is also a risk of inconsistencies across government as the process appears to be largely determined by OSJA leads.¹²² Embedding a process of remediation could provide various opportunities for

Textbox 2 **Contrasting Responses to Human Rights Abuses**

The contrast between the British and American approaches to holding perpetrators among partner forces to account were illustrated by an example given to us by a British military trainer during an interview.

While training local security forces in Afghanistan, the trainer had been approached by the troops they were training, who informed them that they would be going on a “blue only” mission – that is, without British accompaniment. In spite of objections from the British trainer, the troops went to a local village where they arbitrarily executed three men accused of rape. According to the trainer, who reported the incident to their commander, UK training resumed the next day. The only repercussion was seemingly a “strongly worded letter” from the FCO. When asked if they thought a more robust response would have been appropriate, the trainer responded that upon discussing the matter with their superiors they were told to “respect the local ways of doing things”, and that “if we don’t train them someone else will.” (Interview 01/11/19)

This stands in contrast to examples from the US, where such instances trigger a suspension of support as described in the Leahy Laws. In fact, there have been several examples very similar to the one given to us by the British trainer. For instance, August 2014 saw an “extrajudicial killing of a civilian by a group of Afghan soldiers in Logar Province. Following this incident, the Afghan General Staff and Ministry of Defense carried out an investigation, arresting and ultimately sentencing the soldiers involved...DoD determined that the Afghan government had taken ‘all necessary corrective steps’ to hold the perpetrators who had committed the gross violations of human rights accountable and therefore resumed U.S. security assistance to the previously sanctioned units” (Dalton et al., “Shifting the Burden Responsibly,” 11.).

While these must be recognised as singular examples of abuse, in which we of course do not have all the details of internal conversations between British officials and their Afghan counter-parts, the case studies illustrate the inadequacy of the argument that the UK must maintain support simply to ensure that others don’t.

the UK Government. Firstly, it could allow the UK to actively respond and demonstrates its commitment to the rules-based system, thereby increasing the credibility of its rhetoric on the protection of civilians. Secondly, it could serve as a corrective measure that would prevent future incidences of abuse and the potential reputational or political harm such incidents would inflict on the UK. Finally, it would allow the UK to directly influence the institutional drivers of civilian harm by state security forces and contribute directly to long-term stability. It is important, therefore, that the Government sets out a clear approach to withdrawing and suspending support when abuses occur.

Getting Answers: OSJA Risk Assessments

The Government remains reticent to share information about OSJA with Parliament. This not only undermines the aim of successive governments to increase the transparency and accountability of the UK's national security policy overseas, but also serves as a barrier to effective reform of the current policy. When attempts have been made by Parliamentarians to glean information about OSJA assessments – in particular, high-risk cases signed off by ministers at the MoD and Foreign Office – officials often respond by saying that such information can only be found at a disproportionate cost to the UK taxpayer:

Written Parliamentary Answer

“Ministerial approval may be required to authorise the proposed activity described by the OSJA assessments...approvals are not held centrally and could be provided only at disproportionate costs”.

Mark Lancaster, Former Minister of State for the Armed Forces
(2017-19)

This is concerning because it provides no accountability of decisions to go ahead with programmes that have been deemed high risk. The lack of accountability and its impact on the ground is not merely theoretical but has presented real challenges on several occasions.

The UK's assistance to Pakistan's justice system, for example, has led to accusations of UK complicity in the use of torture and the death penalty, practices which are illegal in UK domestic law. According to Re-prieve, a human rights NGO, this has resulted in UK funding being used in “prosecutions in anti-terrorism courts in Pakistan that have handed down more than 350 death sentences” between 2014 and 2019.¹²³ This project was part of “The Counter Terrorism Associated Prosecutorial Reforms Initiative (CAPRI)”, part of the Pakistan Rule of Law Programme funded by the CSSF.

In 2018-19 alone, the Programme was allocated £9.32 million.¹²⁴ Dan Jarvis MP, a member of the JCNSS, pushed the Government on this point in an oral evidence session when he asked, David Lidington, the minister responsible for the Government's CSSF fund at the time, to give assurances that “taxpayers' money is not being used to fund activities that might lead to the death of people in other countries, either through torture or human rights abuses”.¹²⁵

In reply, Lidington said that “ambassadors and high commissioners on the ground are intimately involved in judgments about which programmes will work or not work in the particular political and governance context of that nation.”¹²⁶ However, James Gray MP, a former member of the JCNSS said of the Rule of Law Programme:¹²⁷

“It’s massively complicated and largely secret and I certainly wouldn’t want to swear in a court that I have the faintest idea where the money is going – I really don’t know. It doesn’t surprise me in the slightest to discover some of it may be going in the wrong place.”

James Gray MP, member of the JCNS from 2017-2019

Demonstrating the weaknesses of the Government’s process of risk mitigation.

The provision of military assistance to foreign actors – as opposed to justice assistance in the example above – comes with a different set of risks that need to be considered. Nevertheless, the above example is indicative of the lack of external scrutiny that surrounds OSJA: both of the original assessment produced by officials and the decision-making process undertaken by ministers on programmes of activity that have been designated as high-risk (the risk categories for the OSJA process are shown above). It seems inappropriate that a minister can sign off on a programme even if there is a high probability that the proposed activity could lead to severe breaches of UK obligations under domestic and international law. While ministers take on the burden of risk individually, it undermines UK law if it can be overruled for purposes of political expediency.¹²⁸

Officials we interviewed for this research were keen to emphasise that they carry out the OSJA assessment with significant caution, ensuring that they receive the appropriate sign-off on low-risk cases.¹²⁹ But the fact remains that even if a programme of activity, such as training provided to a foreign military unit, was designated high-risk as part of the assessment, the project could still go ahead pending ministerial approval. That is not to say that these decisions are

taken lightly, or that they will necessarily be the wrong decisions. Indeed, one of our interviewees emphasised that ministers remain highly risk averse. But the lack of accountability raises suspicions about the validity of UK assistance programmes overseas and whether the current approach strikes the right balance between national security and UK commitments on human rights. Effective accountability is not simply about ensuring taxpayers’ money is spent responsibly, but as researchers at CSIS have noted with regards to US security force assistance, it’s about being “in a position to better direct, track, and calibrate” assistance to partners so that it remains consistent with a state’s national objectives.¹³⁰ Parliament must play a lead role in holding the Government to account on OSJA and its broader military partnerships abroad.

Growing Political Interest in OSJA

Since the release of the updated OSJA Guidance in January 2017, the third version since 2011, there have been over seventy-five written parliamentary questions on the issue.¹³¹ This shows growing political interest from parliamentarians on the efficacy of the Government’s application of risk mitigation measures on assistance programmes abroad. This was reinforced recently when, following the appointment of Sir Keir’s Shadow Foreign Office team, some of the first written parliamentary questions put to Government ministers concerned OSJA.¹³² Clearly, OSJAs are not at the top of the political agenda, but the number of written parliamentary questions about a compliance tool, likely to be unknown to the majority of the public, suggests a strong interest across all political parties about the efficacy of this tool to mitigate human rights risks.

Regardless of the interest shown by Parliamentarians, the Government has failed to

engage with Parliament properly. Even when the Cabinet Office announced an independent audit of OSJAs across CSSF programmes in 2019, ministers refused to publish the details of its findings or recommendations.¹³³ In response to a written parliamentary question by Dan Jarvis in July 2019, David Lidington replied:¹³⁴

Written Parliamentary Answer

"The audit itself contains a number of sensitive in-depth samples of OSJAs and therefore there are no plans to publish the audit."

Rt. Hon. David Lidington, Former Minister for the Cabinet Office, (2018-2019)

There is no doubt that, owing to the nature of these assessments, there will be sensitive information pertaining to UK national security interests and the national security interests of the recipient state/ actor/ institution.¹³⁵ However, the value of such an audit seems questionable if there is no mechanism for Parliament to hold the Government to account on the findings of this review and if/how its recommendations will be implemented. That is why the Government must commit to greater openness on this policy area. That could be done by formalising the JCNSS' role in holding the Government to account on OSJA.

The JCNSS has already shown that it has the capacity and expertise within its membership to review OSJAs. For example, the committee has held oral evidence sessions on the Government's CSSF, including an ad hoc closed-door briefing by David Lidington in response to concerns raised by JCNSS members about the UK's Rule of Law Programme in Pakistan. However, further adaptations should be made to turn this informal, ad hoc arrangement, into a formal process.

If the Government is keen to avoid public disclosure of sensitive information, members of the JCNSS could undergo the same security vetting that is required for the membership of the Intelligence and Security Committee (ISC). We recognise the challenges that this committee has faced; most significant among them are its heavy workload and the delays to reconstituting the committee following three general elections since 2015.¹³⁶

Expanding the role of the JCNSS would, however, do two things. Firstly, it would provide the Government with assurances that the information it shares would be handled sensitively by committee members. Secondly, it would provide members (and committee staff) with the evidence they need to evaluate Government policy effectively. Given that the JCNSS is made-up of Chairs from seven parliamentary select committees – including the ISC – this would address any concerns that this would risk creating a two-tier system among select committees, as all committees with a stake in the UK's national security are represented on the JCNSS.¹³⁷ While it was positive to see the previous Government commit to sharing information on CSSF Annual Reviews with the JCNSS in confidence, increasing information-sharing would ensure this becomes systematic.¹³⁸

Improving Cross-Government Data Sharing

The issue of information-sharing also extends to the collection of OSJA assessments themselves. Ministers have stated in response to parliamentary questions that records of OSJA risk assessments are not held centrally. It seems logical for the Government to consider introducing a database system that can be accessed cross-departmentally, whereby information can be shared between departments and embassies in-country who may benefit from

accessing previous assessments. When the former Shadow Secretary of State for International Development put this proposal to the former Foreign Office minister, Mark Field, he responded:

Written Parliamentary Answer

“...there are no certain merits in introducing a centralised system for recording OSJA assessments...there is a benefit in taking a consistent approach across HMG, but this is dealt with by the knowledge of posts in particular areas, as well as a network of OSJA Leads in each department or organisation involved in security and justice assistance.”

Mark Field, Former Minister of State for Asia and the Pacific
(2017-19)

However, the OSJA Guidance states that OSJA Leads should determine their own approach to record-keeping, increasing the likelihood of inconsistencies between departments.¹³⁹ This was demonstrated by the fact that, in response to a series of parliamentary questions and FOI requests, both the FCO and MoD refused to publish details about the number of high-risk cases, whereas DFID openly stated that between 2015 and 2018 no OSJA assessment had required ministerial sign-off.¹⁴⁰

One of our roundtable participants from the FCO, with experience of Government security policy (though not of OSJA directly), emphasised that, while they had good experiences of cross-departmental collaboration, “It’s very frustrating when you cannot access [the] same information as [the] MoD.”¹⁴¹ Another emphasised that the current approach of basing cross-governmental information-sharing “on personalities and relationships” was not necessarily the ideal approach.¹⁴² Moreover, in the spirit of current Government efforts to implement its Fusion Doctrine, it seems contradictory that the Government can suggest, on the one hand, that there are no certain benefits of a centralised system, while at the same time ministers can continue to argue that

the cost of sharing information with Parliament about the UK’s security partnerships comes at too high a cost.¹⁴³

There is, of course, the question of how this information would be shared between departments. One expert said that the system would have to reflect the fact that information is “Collated at embassies... at different levels [of seniority and many] don’t use the same technology”, adding that there would be a question of “how...you keep [information] classified.”¹⁴⁴ However, another official working on OSJA explained that much of the information used to draft assessments was not classified. Rather, it was designated as “OFFSEN [which] is a subset of the OFFICIAL classification, and as such is a relatively low-level classification which is widely accessible across government.”¹⁴⁵ This demonstrates that this challenge could be easily overcome.

Indeed, if a “multi-factor authentication” process can be introduced for Parliamentarians to access their own IT, as was done following a cyber-attack in 2017, it’s not entirely implausible that the Government could introduce a similar authentication process for cross-Government working on OSJA.¹⁴⁶

On this point, the Government may want to take inspiration from US reforms to the Internal Vetting and Security Tracking (INVEST) system which is due to be rolled out as part of a process to increase information-sharing and the efficiency of Leahy vetting.¹⁴⁷ One expert we spoke to with knowledge of the US system pointed out some issues around the functionality of the system, particularly that, “some can see it, others can’t, [even though] everyone needs to work off the same sheet of music.”¹⁴⁸

However, a new system was being trialled and piloted, they explained, to address the issues with the existing database.

Given that the UK's capacity building activities often take place at the same time as other projects being led by different departments, having a central system could improve cross-government working. The creation of the Foreign, Development and Commonwealth Office (FDCO) could serve as the impetus to establish this data-sharing platform, especially as ambassadors are set to inherit a larger remit in coordinating activities that were previously the responsibility of DFID. Indeed, there is evidence that influential figures within Number 10 Downing Street are already looking at ways "to improve data use and collection across Whitehall to help inform policy-making and implementation."¹⁴⁹

An issue that will be incredibly important in the context of the FDCO merger, given that it will likely entail data from projects that are currently DFID-led to be integrated into the new department. This could make it an opportune moment to invest time and resources into a new data-sharing capacity for OSJA across Whitehall.

Section 4

Addressing the Accountability Gap Over UK Special Forces

In 2019 alone, media reports revealed UK Special Forces (UKSF) had been deployed in Afghanistan, Iraq, Kenya, Libya, Syria and Yemen.¹⁵⁰ However, despite evidence of the increased use of UKSF, there is no mechanism for the UK Parliament to hold the Government to account over their use. In our report, “Britain’s Shadow Army: Policy Options for External Oversight of UK Special Forces” we argued that increased transparency and accountability of UKSF could play an important role “in making sure that Government decisions are strategic as well as publicly defensible” in a post-Chilcott era.¹⁵¹ However, the reality is that the Government’s current blanket opacity policy also makes it impossible to assess the effectiveness of UKSF at responding to concerns about its capacity for civilian harm mitigation. As a force designed to have both a strategic and tactical effect, operations that do go wrong, and where civilians are harmed, could severely undermine UK national security interests and its reputation for upholding international law.

The Risks of Blanket Opacity

The ease with which prime ministers can deploy UKSF, without recourse to Parliament, has increased the appeal of special forces deployments over the past decade.¹⁵² This sees UKSF increasingly deployed, not just in support of conventional forces, but also as the only “instruments of national power”¹⁵³ in many parts of the world today.

In these places, they are often tasked with building the capacity of partner militaries. This places UKSF units in fragile conflict environments, working with partners who

have a propensity to commit violence against civilian populations. Therefore, it is essential that they prioritise POC as part of the training and advising missions they are tasked to undertake by Government ministers. To do this effectively, the Government also needs to consider how it holds these units accountable for allegations of abuses committed by their own actions.

However, the shroud of secrecy that covers UKSF operations means it is unclear how consistently concern about harm against civilians, and its impact on long-term stability, is factored into decision-making around their use. More importantly, whether internal accountability mechanisms exist to respond to incidents of abuse against civilians. This must change if the UK hopes to boost the credibility of its commitment to be a force for good in the world and increase the impact of capacity building activities by UKSF.

This is especially important given that Government statements suggest that the tempo of UKSF deployments are only set to continue.¹⁵⁴ At the inaugural conference of the cross-service strategic command, Minister for Armed Forces, James Heapey, outlined a growing role for UKSF.¹⁵⁵ As the UK commits to being persistently engaged “above and below the threshold of warfighting”¹⁵⁶ to compete against Russian and Chinese influence, UKSF are likely to be an essential component of the UK military’s response, he said.

In this context, UKSF deployments must prioritise the protection of civilians to maximise the UK’s contribution to building stability overseas.¹⁵⁷ In doing so, UKSF need to look to how their operations can (1) address the long-term causes of conflict and (2) improve their own transparency and accountability so they can help others do the same.

UKSF Building Partner Capacity Operations

UKSF must ensure that they prioritise POC when working ‘by, with, and through’ partners. Such partnerships are an integral part of what they do, and previous experiences have revealed that such relationships often present significant risks when it comes to safeguarding civilians.¹⁵⁸ This point is demonstrated by UKSF’s experiences in Kenya in 2008.

After 9/11, the Labour Government established Operation Monogram to support foreign military units to counter terrorist threats in their regions to prevent “hotbeds of violent extremism that could threaten the UK.”¹⁵⁹ It is an initiative that continues to this day, but with a geographical focus on the Middle East and Asia.¹⁶⁰

Among those to receive support in the first decade of the programme were members of Kenya’s elite forces.

In 2008, several media reports provided evidence that Kenya’s 20 Para used the training they had received from the UK’s Special Air Service (SAS) to commit a series of human rights abuses against civilians in the Mount Elgon region on the border with Uganda, rather than fighting al-Shabaab in

Somalia as was intended.¹⁶¹ This involved Kenyan forces going “village to village rounding up nearly all of the male population” where they were later taken to military camps to undergo “screening”.¹⁶² Human Rights Watch reported at the time that over 4,000 civilians had been rounded up by Kenyan security forces, many of whom sustained severe injuries.¹⁶³

The UK Government, in response, suspended military training to 20 Para in July 2008; however, as Ben Rawlence noted at the time, the fact the UK had to resort to suspending support was evidence of ineffective training and programme design by the UK’s most elite unit.¹⁶⁴ Moreover, rather than using the suspension as an opportunity to push for the perpetrators being held to account, training was resumed after two months without clear evidence of the effect that the suspension had in changing behaviour – of both the partner and UKSF themselves.¹⁶⁵

One expert we spoke to suggested that the opacity afforded to UKSF units is unnecessary for such training operations, “since good line units are more than capable of carrying out this training without the risk apparently attached to SF attitudes to IHL”.¹⁶⁶ As a result, “opacity is an added adverse side-effect.”¹⁶⁷



Figure 3 Map of UK Special Forces known activity in 2019.

It should be noted that the case discussed above took place before the introduction of the UK Government's POC Strategy and OSJA. Nevertheless, because there is no information available to the public on UKSF training of partner forces, this remains one of the few case studies available, and there is no proof that lessons have effectively been learned from this experience. In fact, it remains unclear how either the POC Strategy or OSJA influence UKSF prioritisation on issues like POC as part of their training missions. Prioritising POC would improve the behaviour of UK military partners and directly contribute to the addressing drivers of insecurity. Additionally, if UKSF are to set an example to their partners, they must first address the record of harm to civilians from their own actions over the last decade.

UKSF's Direct Actions in Remote Warfare

Setting an example for partner-forces is made difficult by a series of scandals and accusations of abuse which have rocked UKSF. Even in recent months, there have been several high-profile accusations against UKSF in the British media, including accusations from within their own ranks.

In March 2019, a series of media outlets reported, "up to 30 British troops based in Sa'dah [Yemen]"¹⁶⁸ had been fighting alongside Saudi-funded militia, who purportedly recruited child soldiers. Parliament had, at no point, been informed of the deployment of British troops to this conflict. Senior Conservative MP, Andrew Mitchell, the former Secretary of State for International Development, noted that "were it not for the all-consuming nature of Brexit, I suspect the House would want to explore this as a matter of urgency."¹⁶⁹

This stands in stark contrast to how similar accusations have been dealt with in the

US, where Congress and the military have taken strong action. Indeed, accusations against US Special Operations Forces (US SOF) have been taken incredibly seriously by the US Congress who have responded swiftly and publicly. Moreover, as part of the US National Defense Authorization Act in 2019, US lawmakers mandated the US Department of Defense (DOD) to undertake a review into US Special Operations Command (USSOCOM) based on concerns over ethics within the force.¹⁷⁰

In March 2020, this review concluded that the "Army's Green Berets [Army Special Forces] and the Navy SEALs [including SEAL Team 6], have developed a problematic culture that overemphasises combat 'to the detriment of leadership, discipline and accountability'".¹⁷¹ President Donald Trump's unprecedented intervention into an inquest into the conduct of Noel Gallagher – a Navy Seal who was accused of fatally stabbing a detainee in Iraq and covering up the incident – demonstrates the damage of political attempts to cover up cases of wrongdoing as well as the limits of the US system of oversight over US SOF.¹⁷² Indeed, not only did it take a year for Gallagher's colleagues to "summon the courage to deal with" the accusations of murder but the fact that a sitting president was in a position to grant Gallagher clemency, in effect overruling the decision of a US military court, places a question on the efficacy of internal accountability mechanisms for US SOF units.¹⁷³

In other ways, however, the US system of legislative oversight has been responsive to accusations of misconduct by its elite forces. SOCOM leaders have openly acknowledged that "USSOCOM's ability to continue the proud legacy of the men and women who have made the ultimate sacrifice is contingent on our ability to recognize when and where organizational drift has occurred, hold ourselves accountable, own

the problem, take corrective action, and implement controls".¹⁷⁴

Similarly, the Australian SAS chief, Major-General Adam Findlay, has admitted that his forces had committed war crimes in Afghanistan, which he blamed on the lack of "moral leadership."¹⁷⁵ A report in Australia's, *The Age*, in June 2020 said:¹⁷⁶

Australia's SAS Chief Admits War Crimes

"In a private briefing delivered in late March, Major-General Adam Findlay...made the stunning admission that war crimes may have been covered up and that Australia's special forces will take a decade to recover from the long running investigation overseen by senior New South Wales judge, Paul Brereton."

The Age, June 2020

Unfortunately, accusations against UKSF have not led to the same level of debate compared to its allies. Instead, it seems that valid concerns have often been ignored or even covered up by the MoD. In early January this year, SNP Defence spokesperson, Stewart McDonald, sponsored a debate in the House of Commons on the topic of alleged abuses committed by UKSF during the height of the conflicts in Iraq and Afghanistan.¹⁷⁷

These accusations were broadcast as part of a joint BBC Panorama and *Sunday Times* investigation in November 2019. In the documentary it was revealed that the MoD attempted to "cover up"¹⁷⁸ alleged war crimes committed by British troops – including UKSF. These accusations were made by fellow British service personnel who corroborated witness accounts of war crimes.

In 2014, the UK Government set up Operation Northmoor to investigate 52 allegations of unlawful killings by UKSF in Afghanistan between 2010 and 2013.¹⁷⁹ Yet

owing to immense pressure from MPs to cease the inquiries into UK service personnel, former Defence Secretary, Sir Michael Fallon, decided to reduce the number of inquiries that were being investigated "with over 100 RMP officers involved".¹⁸⁰ Staff working on cases were, therefore, pressured to wrap up the investigations. With the MoD choosing not to dedicate any additional resources to speed up the process of reviewing claims, staff were forced to abandon many of the accusations they were previously pursuing.¹⁸¹

One investigator told BBC Panorama that "The Ministry of Defence had no intention of prosecuting any soldier of whatever rank he was unless it was absolutely necessary, and they couldn't wriggle their way out of it."¹⁸² Operation Northmoor was shut down in 2017, despite one senior officer suggesting at the time that the situation was "amber, blinking red".¹⁸³ One expert told us that they interpreted this as mounting evidence that UKSF had committed war crimes.¹⁸⁴

The pressure to shut down investigations into UKSF came in the context of fervent campaigns to stop convictions of British service personnel.¹⁸⁵ For instance, pushing for the release of 'Marine A' (Sgt Alexander Blackman), a Royal Marine who was convicted of battlefield murder after killing an injured Taliban insurgent in Afghanistan in 2011.¹⁸⁶

In addition, there were attempts to close down the Iraq Historical Allegations Team (IHAT), which was set up by the Labour Government in 2010 "to draw a line under lingering allegations from an unpopular war and dispatch the idea that military misconduct was widespread."¹⁸⁷

This swell of public and political anguish reached a peak in 2016 after it emerged that Phil Shiner, a solicitor who had brought over 1,000 cases to IHAT, had paid an Iraqi

middleman to find complainants.¹⁸⁸ Following legal proceedings in 2017, Shiner was found guilty of “multiple professional misconduct charges” and banned from practising law.¹⁸⁹ Rather ironically, in cases like Marine A, British Armed Forces chiefs described publicly how the media’s campaign to release him was “misguided.”¹⁹⁰

This led to a bizarre situation where a hawkish and persuasive lobby group thought that, in defending Blackman, they were speaking on behalf of the majority of British Armed Forces personnel, while in fact, they were doing the opposite.

It is right that British Armed Forces personnel are not inappropriately pursued based on poor evidence. The case of Phil Shiner demonstrates the damaging effect this can have on the lives of UK personnel. However, the way in which investigations pertaining to Northmoor were politicised and bungled by inadequate resourcing has made it more, not less, likely that the cloud of suspicion continues to hang over UKSF which could inhibit the effectiveness of future operations.

This is especially true when accusations of transgressions come from within UKSF ranks. If these individuals do not have the opportunity to clear their names through due process, it may be that these accusations resurface in the future.

It is essential not to forget the families who were affected by crimes committed by British service personnel and that these families are able to see justice is done. It is one thing for ministers to claim that the UK has “some of the most rigorous [prosecuting authorities] in the world”,¹⁹¹ but another to demonstrate this in practice.

As Samira Shackle, who undertook an extensive investigation of IHAT for *The Guardian* newspaper in 2018, has said:¹⁹²

“Both military advocates and human rights defenders agree that the scandal around I[HAT] was at the very least, politically convenient for the Ministry of Defence. With human rights lawyers cast as the villains, the MoD could avoid uncomfortable questions about its own role in training soldiers in procedures that breached the Geneva Conventions.”

Samira Shackle, *The Guardian*, June 7th 2018

One former military officer with extensive experience of Britain’s recent wars suggested to us that: “the importance of culture is either ignored or understandably brushed under the carpet”.¹⁹³ He added that, “Internal culture in the SAS (UKSF) is set largely by [non-commissioned officers], not officers” but because “the culture is known only to those in it is not clear whether...[it] is characterised by one of accountability for human rights abuses, rather than one of deliberate opacity and the evasion of responsibility”.¹⁹⁴ The toxic culture of a particular unit, he said, could quickly and easily spread throughout the rest of the British Armed Forces on account of the reverence afforded, to the SAS especially. Consequently, they said, this could also spread “to trainees from foreign units.”¹⁹⁵

The spotlight placed on UKSF demonstrates the vital importance of oversight, not only in ensuring all British Armed Forces personnel act in accordance with UK values and domestic and international law, but also to ensure that the UK can secure its national security interests and maintain its reputation. In the words of the Minister for Defence, People and Veterans, Johnny Mercer: “the UK’s armed forces, [is] an institution that prides itself on its ethos and values that set it apart from this nation’s enemies.”¹⁹⁶ Without a forum for political consultation with senior UKSF commanders and political leaders in the UK Parliament, the UK risks falling behind its

allies, given that France, Denmark, Norway, and Australia all have oversight mechanisms in place over their special forces.¹⁹⁷

As the UK continues to cast itself as a principled actor and champion of the rules-based international order, it is paramount that it ensures that UKSF apply an approach to training foreign militaries that builds the legitimacy of the Global Britain brand and contributes positively to the UK's efforts towards peace and stability abroad.

Conclusion

The UK faces a great opportunity to redefine its role in the international community and to reinforce its commitment to the protection of civilians in conflict. Several factors including the UK's departure from the EU, the Government's integrated review and the fallout from the COVID-19 pandemic provide an opportunity to forge a new path for the UK's foreign policy priorities for the next decade. Speaking at a select committee hearing in October 2016, then Foreign Secretary, Boris Johnson said: "You look around the world and you see that this country is a massive force for good in an increasingly uncertain world, a world that has been deprived of leadership and values that we try to project."¹⁹⁸ However, as this report has shown, remote warfare undermines this ambition owing to the distinct risks it creates for civilian populations and the long-term prospects for peace in the states and regions where the UK intervenes. These risks are insufficiently addressed in British policy. This continues to put civilians in harm's way and undermines the UK's self-image as a benign actor under the banner of 'Global Britain'. For the UK to address this, it must learn *and implement* the lessons of the UK's past military engagements.

We believe there **are three key areas** that the UK Government must act on to ensure that it can contribute to its position as a force for good in the world.

First, the UK needs to update its strategic policy documents on protecting civilians in conflict. These must take on board the lessons of recent campaign to reflect the specific challenges that remote warfare poses to civilians who live in the places where 'remote' warfare is the reality on the ground.

Second, the Government needs to reform how it mitigates the risks of its security partnerships and the impact on civilians in the countries where the UK engages. This must include expanding the process of risk mitigation beyond a narrow assessment of the legal risks of security force assistance and ensuring there is a clear approach to suspending, withdrawing or remedying instances of abuse.

Additionally, the Government must commit to increasing the transparency and accountability of its Overseas Security and Justice Assistance Guidance and improving the capacity for information-sharing on OSJA across government. It should also consider allowing a committee like the JCNSS to adopt a broader mandate so it can more effectively fulfil its role in holding the Government to account on its national security strategy.

Third, as part of a commitment to act as a force for good in the world, the Government must ensure that all branches of the British Armed Forces are held to the same scrutiny. It must take immediate action in ensuring that UK Special Forces prioritise the protection of civilians from their own actions but also the actions of foreign military units they are deployed to train.

The Integrated Review offers an opportune moment for the UK to think critically and honestly about the impact of its military engagements abroad. The UK's ability to act as a positive influence on the world stage depends on its willingness to turn rhetoric into reality when it comes to protecting civilians in conflict. It is our hope that this report will contribute to the ongoing discussion about the UK's future foreign policy priorities and that it will serve as a driving force for positive security policy change.

Recommendations

The UK's Role in the World

- The UK Government must implement the lessons from remote warfare on civilian populations. This should feature as a key component in the upcoming Integrated Review, which will set the UK's foreign policy priorities, post-Brexit.

POC Strategy and JSP 1325

- The UK must follow through with its planned update of the 2010 POC Strategy. For the updated Strategy to be meaningful, it must take on the following elements.
 - **Address harm to civilians that occurs as a result of the UK's own actions, and the actions of partners who have received UK support**
 - **Commit to communicating more clearly on its approach to POC.** This must include a focus on how to account for civilian casualties and civilian harm more broadly.
 - **In line with the roll out of Fusion Doctrine, the POC Strategy must create a more coherent approach to POC.** This must involve bridging the language used by the MoD, FCO, and DFID when discussing how to protect civilians in conflict.
- Additionally, both the POC Strategy and the JSP 1325 must make a concerted effort to **capitalise on civil society engagement.**
 - Both documents **must clearly communicate whether there will be further opportunities for engagement and who will be eligible to contribute.**
 - Additionally, they must also commit to ensuring that **civil society voices from countries where the UK operates will be able to meaningfully feed into the design and conduct of operations and activities overseas.**

OSJA

- The Government must set out how the OSJA can **more effectively address the underlying causes of conflict** in the places it engages overseas.
- The Government must **introduce a clear policy on suspending and withdrawing security assistance**, including a process of remediation when instances of abuse occur. This must include clear guidance on what would trigger the need for reviewing an OSJA.
- **Expand the remit of Parliament** in overseeing the OSJA process.
- The Government must consider including **specific advice on risks to civilians when providing support to ANSAs** as part of its OSJA Guidance
- The Government should introduce a **database for collating information on OSJA** to improve cross-government working, including in Whitehall and in-country.

Addressing the Accountability Gap Over UK Special Forces

- The Government must **demonstrate that special forces are not above the law** and that allegations of wrongdoing follow the same due process as the rest of the British Armed Forces.
- UKSF must prioritise protection of civilians **as part of its own missions and those where it is deployed to train foreign military units.**

- The Government should consider **introducing a process of external accountability of its special forces so that Parliament** can assess the efficacy of its mechanisms for prioritising POC as part of its deployments overseas.
 - The Government must **release details of the accountability mechanisms in place to address both instances where UKSF soldiers, and foreign units they have trained, commit abuses against civilians.**

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