



Intelligence and Security Committee of Parliament

UK Lethal Drone Strikes in Syria

Chair:
The Rt. Hon. Dominic Grieve QC MP



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Presented to Parliament pursuant to section 3 of the Justice and Security Act 2013

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THE INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT

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The Intelligence and Security Committee of Parliament (ISC) is a statutory committee of Parliament that has responsibility for oversight of the UK intelligence community. The Committee was originally established by the Intelligence Services Act 1994, and has recently been reformed, and its powers reinforced, by the Justice and Security Act 2013.

The Committee oversees the intelligence and security activities of the UK, including the policies, expenditure, administration and operations¹ of the Security Service (MI5), the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ). The Committee also scrutinises the work of other parts of the UK intelligence community, including the Joint Intelligence Organisation and the National Security Secretariat in the Cabinet Office; Defence Intelligence in the Ministry of Defence; and the Office for Security and Counter-Terrorism in the Home Office.

The Committee consists of nine Members drawn from both Houses of Parliament. The Chair is elected by the Members. The Members of the Committee are subject to section 1(1)(b) of the Official Secrets Act 1989 and are routinely given access to highly classified material in carrying out their duties.

The Committee sets its own agenda and work programme. It takes evidence from Government Ministers, the Heads of the intelligence Agencies, officials from the intelligence community, and other witnesses as required. The Committee is supported in its work by an independent Secretariat. It also has access to legal, technical and financial expertise where necessary.

The Committee makes an annual report to Parliament on the discharge of its functions. The Committee may also produce Reports on specific investigations. Prior to the Committee publishing its Reports, sensitive material that would damage national security is blanked out ('redacted'). This is indicated by *** in the text. The intelligence and security Agencies may request the redaction of material in the Report if its publication would damage their work, for example by revealing their targets, methods, sources or operational capabilities. The Committee considers these requests for redaction carefully. The Agencies have to demonstrate clearly how publication of the material in question would be damaging before the Committee agrees to redact it. The Committee aims to ensure that only the minimum of text is redacted from the Report. The Committee believes that it is important that Parliament and the public should be able to see where information had to be redacted. This means that the published Report is the same as the classified version sent to the Prime Minister (albeit with redactions). The Committee also prepares from time to time wholly confidential reports which it submits to the Prime Minister.

¹ Subject to the criteria set out in section 2 of the Justice and Security Act 2013.

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INTRODUCTION

1. On 7 September 2015, the then Prime Minister announced that three UK nationals in Syria had been killed in two separate air strikes:

- On 21 August 2015, a UK drone² targeted and killed Reyaad Khan, a UK national, in the Raqqah area of Syria. Two other individuals, both described as ISIL associates, were also killed (one of whom, Ruhul Amin, was also a UK national).
- On 24 August, UK national Junaid Hussain (a close associate of Khan) was killed in a US air strike in the Raqqah area.

2. On 13 November 2015, another UK national – Mohammed Emwazi – was killed in a US air strike in Raqqah and this was reported to Parliament by the Prime Minister on the same day.

3. While these strikes were significant because they had targeted UK nationals, the 21 August 2015 strike was exceptional, since it was the first time outside participation in a military campaign that the UK had conducted a lethal drone strike against a terrorist target.

4. The Prime Minister said:

I can inform the House that in an act of self-defence and after meticulous planning, Reyaad Khan was killed in a precision airstrike carried out on 21 August by an RAF remotely piloted aircraft while he was travelling in a vehicle in the area of Raqqa in Syria. In addition to Reyaad Khan, who was the target of the strike, two ISIL associates were also killed, one of whom, Ruhul Amin, has been identified as a UK national. They were ISIL fighters, and I can confirm there were no civilian casualties.³

- ***.
- ***.
- ***.
- ***.

The ISC's Inquiry

5. On 29 October 2015, the ISC announced that it would be investigating the intelligence basis for the lethal strikes. The Committee decided this should encompass the assessment of the threat posed by Reyaad Khan, the intelligence that underpinned that assessment, and how that intelligence was used in the ministerial decision-making process. On 2 November, we discussed the Inquiry with the then Prime Minister, who subsequently proposed the scope of the Inquiry in writing on 5 January 2016.

² The word 'drone' has been used throughout this Report since it is a widely understood and commonly used term. We note that the strike in question was launched from an RAF remotely piloted aircraft.

³ HC Deb, 7 September 2015, vol 599 c25.

6. The Prime Minister noted that the strike against Reyaad Khan fell outside the standard remit of the Committee since it was part of a wider ongoing intelligence operation. He explained that:

*The primary objective of the operation, of which the strike [against Khan] was a part, remains to identify and disrupt external attack planning by Khan and his wider network against the UK and allies. The Security and Intelligence Agencies continue to investigate a network involved in such planning, ***. It is essential that we do not jeopardise Agency effort and resources at such a critical time.*⁴

7. That said, the Prime Minister recognised the importance of the issue, and therefore undertook to use his discretionary power under the Justice and Security Act 2013 to ask the Committee to investigate. The conditions of so doing were that the investigation should focus on the threat posed by Reyaad Khan, and that the evidence made available to the Committee would be limited to an oral brief and contemporaneous written assessments, to avoid diverting frontline resource from a current operation:

*[T]here is significant public interest in the Committee considering the threat that Khan posed and I would like this to form the basis... The strike on 21 August is of significant national interest because it is the first time the UK has taken this type of action... I have been clear with the Agencies that you should receive a full oral briefing – consistent with the level of detail presented to the Prime Minister and Secretaries of State. I have also agreed that the Agencies can provide the Committee with a copy of the contemporaneous written assessment of the threat posed by Khan ... it is vital that any scrutiny applied is rigorous (in line with the arrangements I have set out above), while not diverting frontline resource from critical operations.*⁵

8. However, the Prime Minister considered that the exceptional circumstances which allowed him to permit the Inquiry into the Khan strike did not extend to the other two strikes:

*[They] are in a different category. The operational decisions were taken by the United States not the UK Government... As such, I do not consider it to be of the same order as the Khan strike.*⁶

We return later to the difference between action taken by the United States and action taken by the UK itself, in the section of the Report on the decision-making process.

9. On 21 January 2016, we held an oral evidence session with the Agencies and the Deputy National Security Adviser. We received written material, including two contemporaneous MI5 intelligence assessments relating to Reyaad Khan and 25 original intelligence reports which underpin those assessments. We requested material relating to targeting procedures and the consideration of potential collateral damage, but this was declined on the basis that it was not within the scope of the Inquiry set by the former Prime Minister. We also requested sight of the submissions which were put to Ministers regarding the intelligence assessments. However, the National Security Secretariat, on behalf of the Prime Minister, declined to provide these to the Committee on the basis that

⁴ Letter from the Prime Minister, 5 January 2016.

⁵ *Ibid.*

⁶ *Ibid.*

the Ministerial submissions did not contain any additional material relevant to the threat posed by Khan, and therefore were outwith the agreed scope of the Inquiry.

Consideration

10. Submissions to Ministers are clearly relevant to the decision-making process. The Committee was not seeking to ‘second guess’ the decisions taken by Ministers but to establish the processes followed in reaching those decisions. It is right that that process is subject to robust scrutiny. The failure to provide what we consider to be relevant documents on an issue of such seriousness is therefore profoundly disappointing: it has had a significant bearing on the conclusions we have reached, and we return to this matter later in this Report.

Publication of the Report

11. When the Committee produces a report, there are three stages to be completed before it can be published:

- (i) Circulation of the final draft to the Agencies and Departments to check the Report is factually correct.
- (ii) Circulation of the final text to Agencies and Departments for them to consider whether any material in the Report, if published, might be prejudicial to the discharge of the functions of one of the Agencies or of one of the other bodies that fall within the Committee’s remit. Each proposal is scrutinised in detail by the Committee, and there is usually a period of several weeks during which we negotiate how much material can safely be published. This usually results in the number of redactions initially requested being reduced substantially.
- (iii) Submission of the redacted Report to the Prime Minister for their agreement to publish (under section 3 of the Justice and Security Act 2013).

The Committee then lays the Report before Parliament.

12. The Committee had completed its Report on 16 December 2016 and it was sent to the current Prime Minister at that point, whilst we awaited requests for redactions. The final set of requests was received on 12 April 2017. The Committee would, in accordance with the process explained above, have then expected to scrutinise the requests. However, on 18 April, the Prime Minister announced that she would seek an early General Election.

13. The only way that this Report could be published before the dissolution of Parliament, therefore, was for the Committee to agree to the requests for redactions submitted and not seek to challenge them as would be usual. The Committee decided that it was in the public interest for the Report to be published, even if it were more heavily redacted than we would normally accept. The redactions shown in the Report are therefore precisely those as proposed by the Agencies and Departments on behalf of the Prime Minister.

GOVERNMENT'S JUSTIFICATION FOR THE STRIKE ON KHAN

14. In investigating the strike against Reyaad Khan, our focus has been the intelligence on him and the resulting assessment of the threat he posed. Other Committees have considered the legal, policy and military aspects of the strike but have been unable to scrutinise the intelligence basis, given that the intelligence itself is highly classified. This is where we see the ISC's role.

15. When considering the threat posed by Khan, we have taken as our starting point the legal justification set out by Government, since it provides a structure against which to assess the intelligence. We have not, however, sought to reach conclusions as to the legal basis for the strikes.⁷

16. On 7 September 2015, the UK's Permanent Representative to the United Nations set out the UK Government's understanding of the legal position in a letter to the President of the Security Council:

In accordance with Article 51 of the Charter of the United Nations... the [UK] has undertaken military action in Syria against the so-called Islamic State in Iraq and the Levant (ISIL) in exercise of the inherent right of individual and collective self-defence.

On 21 August 2015 armed forces of the [UK] carried out a precision airstrike against an ISIL vehicle in which a target known to be actively engaged in planning and directing imminent armed attacks against the United Kingdom was travelling. This airstrike was a necessary and proportionate exercise of the individual right of self-defence of the United Kingdom...

*... ISIL is engaged in an ongoing armed attack against Iraq, and therefore action against ISIL in Syria is lawful in the collective self-defence of Iraq.*⁸

17. The Government subsequently set out the grounds for individual and collective self-defence under Article 51 as being:

- a threat sufficiently severe that it can be described as a potential 'armed attack';
- and which is imminent;
- but that the action taken must be necessary;
- and proportionate (including in terms of the Laws of Armed Conflict).⁹

The Committee's consideration of the intelligence on Reyaad Khan in relation to each of these points is set out below.

⁷ Although we note the conclusions reached by others who have considered the legal basis – such as the Joint Committee on Human Rights (JCHR) – and agree with them that there is a worrying lack of clarity around some aspects of the legal framework.

⁸ Letter from the UK's Permanent Representative to the President of the Security Council, 7 September 2015.

⁹ An extract from the Government's memorandum to the JCHR can be found at Annex B.

‘SEVERITY’: WAS THE THREAT FROM KHAN SERIOUS ENOUGH THAT IT COULD LEGITIMATELY BE DESCRIBED AS A POTENTIAL ‘ARMED ATTACK’?

*Reyaad Khan: An early chronology*¹⁰

- Khan was born in Penarth, near Cardiff, attending Cantonian High School and St David’s College in the city.
- Khan was apparently a straight-A student who at one point harboured dreams of becoming Britain’s first Asian prime minister.
- In a 2010 video, Khan spoke of his desire to rid the world of evil and the problems of growing up in a deprived inner-city area. In the video, he also argued that the Government was wasting money on illegal wars and said more should be invested in young people to prevent them from being led down “the wrong path”.
- Khan travelled to Syria in November 2013 – ***.
- After joining ISIL he posted messages on Twitter, bragging about the people he had killed and his extremist plans. ***.
- In June 2014, Khan appeared in an ISIL propaganda video, after which his family spoke of their shock and said he had been brainwashed.
- Khan associated and worked together with another ISIL member, Junaid Hussain, who was also a prolific radicaliser, inciter and attack planner.

18. ***, Reyaad Khan *** as a member of ISIL involved in planning and inciting attacks. When the Agencies began to consider how to disrupt ISIL threats at source (i.e. those planning attacks for others to carry out), Khan was therefore one of the individuals on whom they focused.¹¹

19. The Committee was told that two formal assessments of the intelligence on Khan were produced by MI5 for Ministers and senior officials: the first in March 2015, and the second (a review of the initial assessment) in July 2015. Both were reviewed by the Joint Terrorism Analysis Centre, SIS and GCHQ. We have been provided with copies of both assessments, and these are included at Annexes C and D.

- The March assessment was sent to Ministers on 1 April 2015. It concluded:

*A body of reliable and corroborated reporting indicates KHAN is currently working with Junaid HUSSAIN to make contact with and task operatives to kill UK and *** individuals.*

¹⁰ Derived from media reports.

¹¹ Further detail and a chronology can be found in the decision-making process section (paragraph 66).

- The July review assessment was sent to senior officials on 19 August 2015. It concluded:

A body of reliable and corroborated reporting indicates KHAN, alongside HUSSAIN, continues to be involved in a concerted and prolific online campaign to recruit, task and encourage operatives in the West to conduct attacks in the name of ISIL.

*KHAN has [made available to] operatives improvised explosive device construction plans and other instructions along with identified targets, ***.*

20. We requested sight of the actual intelligence reports on which these summary assessments were based, and have been provided with 25 such reports. In terms of the threat they reveal, we would highlight the following examples:

November 2014 to March 2015

November 2014	→	• *** • ***
November 2014	→	• *** • *** • ***
January 2015	→	• *** • ***
February 2015	→	• ***

April to August 2015

April 2015	→	• ***
May 2015	→	• ***
June 2015	→	• ***
June 2015	→	• ***

July 2015	→ • ***.
August 2015	→ • ***.

21. Taken together, the intelligence reports confirm that over the course of nine months Reyaad Khan and Junaid Hussain had together encouraged multiple operatives (***) around the world (***) to conduct attacks. (They were connected to *** of the seven major plots thwarted in the UK in 2015.) It is to the Agencies' credit that their investigation of Khan's activities revealed these plots which they were then able to disrupt, thereby avoiding what could have been a very significant loss of life.

22. Khan and Hussain's actions included the provision of practical instructions for the manufacture of *** improvised explosive devices (IED) and possible targets – including *** and dates and locations of public events. When we asked the Agencies which aspects of Khan's activity they regarded as of most concern, it was clearly his role as an 'enabler', providing others with the capability to carry out attacks:

*This included providing [IED] instructions: ***. But this also included providing capability ***. KHAN also provided operatives with specific target ***.*

23. In addition to providing the 'know-how', they also noted his character as a significant factor, citing:

*... his ability repeatedly to recruit and mobilise individuals towards conducting attacks. KHAN's personal popularity and status online helped attract and influence potential operatives, and he invested significant effort persuading recruits and providing them with *** methodology.¹²*

24. One of the key lessons learned from previous reviews of the use of intelligence by Government is to ensure that there is adequate challenge within the system as to the reliability of sources and credibility of the intelligence obtained. We therefore questioned the Agencies about their level of confidence in their sources of intelligence on Khan. They said:

*The Agencies had multiple reliable and direct sources of coverage including: ***.*

*In addition, MI5's assessment... drew on reporting from international intelligence and law enforcement partners ***.¹³*

We note the considerable effort required by MI5, GCHQ, SIS and our allies to develop a range of sources and accesses sufficient to expose the severity of the threat posed by Khan.

25. In terms of reliability and credibility, the Deputy National Security Adviser also noted that both the March and July MI5 assessments were subject to challenge by the other Agencies and were independently reviewed and validated by the Joint Terrorism Analysis Centre (JTAC).

¹² Letter from the Deputy National Security Adviser, 15 February 2016.

¹³ Ibid.

26. While it appeared from the intelligence reports that Khan was a prolific recruiter and attack-planner, we nevertheless sought to establish how the threat from Khan compared with what had previously been heard from al-Qaeda in the Arabian Peninsula – from individuals such as Anwar al-Awlaki, for example. The Agencies told us:

Al Qaida and its affiliates have at various points sought to both inspire and incite individuals in the West to conduct attacks in their own country, in addition to planning large scale directed terrorism... Al Qaida in the Arabian Peninsula (AQAP) have been particular proponents of this approach which was initially driven by Anwar Al AWLAKI. AQAP release accessible, English language media like Inspire magazine which call for attacks in the West and provide capability through the provision of IED instructions and basic attack plans.

However, Daesh and its associates have deployed this methodology on a different scale. Daesh has a strong grasp of 21st century communication capabilities. The group uses its large social media and communications outfit together with high production quality videos and digital publications to spread its message to a wide audience across the world, and to encourage attacks.

KHAN was prominent in attack planning on behalf of Daesh; directly inciting individuals to conduct attacks. KHAN used social media to identify potential operatives and then provide them with encouragement and basic capability to enable an attack. KHAN, together with HUSSAIN, did this on an unprecedented scale.¹⁴

27. The extent of the Agencies' concern over Khan's activities is illustrated by the fact that they responded on an almost unprecedented scale:

We were talking about the range of threat that was coming from this network and the pace at which it was affecting the UK as being unprecedented...

***¹⁵

Consideration

28. From the intelligence reports we have seen, we are in no doubt that Reyaad Khan posed a very serious threat to the UK. He orchestrated numerous plots to murder large numbers of UK citizens and those of our allies, as part of a wider terrorist group which considers itself at war with the West. The Committee agrees with JTAC's summary of this threat, contained in MI5's July 2015 intelligence review assessment:

[T]hrough his persistent and prolific efforts to recruit, advise, and encourage operatives in the West to conduct attacks, Khan poses a significant, ongoing and imminent threat to the UK.¹⁶

29. There is nevertheless a question as to how that threat is quantified. In its report on *The Government's policy on the use of drones for targeted killing*,¹⁷ the Joint Committee on Human Rights (JCHR) argued that the Government's self-defence justification hinged

¹⁴ Letter from the Deputy National Security Adviser, 15 February 2016.

¹⁵ Tri-Agency evidence session, 21 January 2016.

¹⁶ MI5 intelligence review assessment, July 2015.

¹⁷ HL Paper 141 / HC 574 – 27 April 2016.

on whether or not the actions of Khan and his associates amounted to an imminent ‘armed attack’ against the UK or Iraq. In response, the Government clarified that:

*The Government’s position is that grave terrorist violence can constitute an ‘armed attack’ so as to justify the recourse to force to repel the armed attack. In the words of one leading writer, where terrorist violence reaches a level of gravity such that were it to be perpetrated by a State it would amount to an armed attack, “it would be a strange formalism that regarded the right to take military action against those who caused or threatened such actions as dependent upon whether or not their acts could be imputed to a State.”*¹⁸

30. Whether terrorist activity might be so severe that it is at the same level as an armed attack by a State is clearly a subjective assessment. While we believe that the threat posed by Khan was very serious, we are unable to assess the process by which Ministers determined that it equated to an ‘armed attack’ by a State.

¹⁸ HL Paper 49 / HC 747 – 12 October 2016.

‘IMMINENCE’: COULD AN ATTACK HAVE BEEN LAUNCHED OR INSTIGATED WITH NO, OR VERY LIMITED, WARNING?

31. The Government has previously set out that:

[F]orce may be used in self-defence, not only where an armed attack is underway, but also where an armed attack is imminent. Where the UK determines that it faces an imminent armed attack from ISIL, it is entitled to use necessary and proportionate force to repel or forestall that attack in exercise of the inherent right of individual self-defence...

[In terms of Khan,] the threat of attack was current; and an attack could have become a reality at any moment and without warning.¹⁹

32. In evidence to this Committee, on 21 January 2016, the Agencies said that Khan was identifying and recruiting operatives, and providing targeting information, sometimes within a short period of time (***). This led them to conclude that there was a “*high risk of an attack occurring before we could intervene*”.²⁰ ***.

33. MI5’s formal intelligence assessment produced in March 2015 stated:

- *A body of reliable and corroborated reporting indicates KHAN is currently working with Junaid HUSSAIN to make contact with and task operatives to kill UK and *** individuals.*
- ***.

34. By July 2015, the MI5 review assessment noted:

- *A body of reliable and corroborated reporting indicates KHAN, alongside HUSSAIN, continues to be involved in a concerted and prolific online campaign to recruit, task and encourage operatives in the West to conduct attacks in the name of ISIL.*
- *KHAN has [made available to] operatives improvised explosive device construction plans and other instructions along with identified targets, ***.*
- *To date all these attacks have been successfully disrupted, however there is a high risk an attack could occur before we could intervene. ***.²¹ [Emphasis added.]*

¹⁹ Government memorandum to the JCHR, 3 December 2015.

²⁰ Written evidence – MI5, SIS, GCHQ and Cabinet Office, 21 January 2016.

²¹ MI5 intelligence review assessment, July 2015.

35. We have examined the underpinning intelligence reports to establish the grounds on which these summary assessments were made, and highlight the following examples:

November 2014 to March 2015

November 2014	→	• ***. • ***.
November 2014	→	• ***.
January 2015	→	• ***.

April to August 2015

April 2015	→	• ***.
April 2015	→	• ***.
April 2015	→	• ***.
July 2015	→	• ***. • ***.

36. It is clear from the intelligence reports that the timescale between Khan contacting an operative, recruiting them and providing targets could be a short period of time (***). We do not underestimate the very significant pressure this placed on the Agencies in seeking to disrupt such attacks.

37. From the evidence we have been provided with, we note that in the ***, and we have considered the bearing this has on the concept of ‘imminence’.²² In evidence to the JCHR, the Government suggested that the concept of imminence (in the context of Article 51 obligations) is not limited solely to how soon an attack will take place. The Government argued that it would be unlikely to “*know in advance with precision exactly where, when and how, an attack will take place*” and, consequently, “[a]n effective concept of imminence cannot therefore be limited to be assessed solely on temporal factors”.²³

38. The Government told this Committee that the question of imminence is decided by Ministers, with support from the Attorney General, after they have considered the Agencies’ assessment of the threat.²⁴ Without access to the Ministerial submissions, we are not in a position to comment on the process by which Ministers considered the question of imminence, and how it might have been considered in relation to the decision to conduct a

²² *The National Security Secretariat has made clear that the Committee has not been provided with all the intelligence, but only the “main primary intelligence reports specifically drawn upon in compiling the contemporaneous assessments and a selection of supplementary reports”. We requested sight of any further intelligence reports which would disprove our statement, but the National Security Secretariat declined to provide any such material.*

²³ *JCHR report, HC 747 / HL Paper 49 – 12 October 2016.*

²⁴ *Tri-Agency evidence session, 21 January 2016.*

lethal strike. However, we do know that one of the considerations for the Agencies related to visibility. GCHQ told the Committee:

*... even though we collectively had access to some of Khan's attack-planning in the UK *** our assessment was that there were *** gaps in our coverage, ***... .*

***²⁵

39. The Agencies explained that these 'gaps' meant that they might not have visibility of Khan organising an attack, and – given the timescales involved – it *“felt to us at the time as though, at any day, there could be something that was happening beyond our reach”*.

Consideration

40. It is clear to us that Khan was orchestrating and inciting a significant number of attacks, some of which could have been launched within a short period of time (***). The question of imminence therefore appears to centre not on one specific attack about to take place but on a broader concern that – due to gaps in coverage – a plot might go undetected ***. ***. This must have given rise to concerns that the Agencies would lose 'sight' of Khan altogether, and would no longer be in a position to disrupt any future attacks, and we can only speculate that it was this aspect which was a factor in the Ministerial decision-making process.

²⁵ *Tri-Agency evidence session, 21 January 2016.*

‘NECESSITY’: WAS A LETHAL DRONE STRIKE THE ONLY REALISTIC PROSPECT OF DISRUPTING THE THREAT?

41. From the evidence we have seen, the threat posed by Reyaad Khan to the UK did not lie in him conducting his own attack against the UK, but in his identifying others to act as operatives and tasking them with attacks in this country. In terms of disrupting the individual threats posed by operatives, we have already addressed the problems of both timescale (the short lead time ***) and visibility (the risk of a plot not being ‘seen’). As a result, focusing solely on the UK ‘end’ of the threat would not offer any guarantees in terms of successful disruption. We recognise therefore that the Government had to tackle the threat at source and seek to disrupt Khan himself.

42. The key issue in terms of options for disrupting the threat posed by Khan was his location in Syria. The Deputy National Security Adviser provided evidence on the problem, as follows:

- the Government has no relationship with the Government in Syria, who themselves have no reach into ISIL-controlled areas;
- even if it were possible to do so, the Government would not work with the Syrian Government to achieve a criminal justice outcome, because of their human rights record;
- there are no proxies through which the UK could act, and the UK could not request arrest by local forces; and
- military detention was not a viable option because of the physical risks of the environment.

43. However, were Khan to leave Syria, then that would potentially open up a number of routes through which to disrupt him and the threat he posed. ***. The Agencies said that “*the assessment of the likelihood of him travelling was kept under constant review*”,²⁶ and MI5’s March 2015 assessment set out plans in case he should do so:

*In the event that Khan does leave ISIL controlled territory, the West Midlands Counter Terrorism Unit would likely seek an international arrest warrant against Khan on TACT charges and would begin extradition proceedings. ***.*²⁷

44. However, the JTAC comment accompanying the same assessment said:

*JTAC notes the possibility of KHAN leaving Syria, in which case an alternative means of disruption would be available. However, JTAC also notes the uncertainty of this occurring...*²⁸

²⁶ Letter from the Deputy National Security Adviser, 15 February 2016.

²⁷ MI5 intelligence assessment on Khan, March 2015.

²⁸ *Ibid.*

45. ***. The Agencies reached the conclusion that Khan was highly unlikely to travel outside ISIL-controlled territory, stating in the intelligence review:

*[I]t is very uncommon for foreign fighters to travel outside of Syria and Iraq. ***.*²⁹

46. ***:

***.³⁰

This clearly indicated his commitment and that he was unlikely to be easily dissuaded; the threat he posed was ongoing and there appears to have been no realistic prospect of it diminishing. MI5 concluded in its assessment: *“There are no other credible opportunities for us to comprehensively disrupt Khan’s attack planning beyond a lethal strike.”*³¹

Consideration

47. The principle of ‘necessity’ is crucial. A lethal strike conducted outside participation in a military campaign should be considered only as a last resort. The Committee has seen evidence that other disruption options were considered (although we have not had sight of the extent to which they were highlighted as a factor later, during the Ministerial decision-making process). Nevertheless, we recognise the need to tackle the threat at source and the limited options for doing so whilst Khan was in Syria.

²⁹ MI5 intelligence review assessment, July 2015.

³⁰ Letter from the Deputy National Security Adviser, 15 February 2016.

³¹ MI5 intelligence review assessment, July 2015.

‘PROPORTIONALITY’: WAS THE ACTION CONSISTENT WITH THE LAW OF ARMED CONFLICT, MAKING AN ADEQUATE DISTINCTION BETWEEN COMBATANTS AND NON-COMBATANTS?

48. The 21 August 2015 strike which killed Reyaad Khan is also thought to have killed two other individuals travelling in the same vehicle: Ruhul Amin (a UK national) and another passenger, ***.

49. We consider the issue of collateral damage to be of significant public interest and have therefore raised it here, although we note that as part of a military operation we have been prevented from looking at this issue in as much detail as we would have liked. On the basis of the information volunteered to us by the Agencies, it appears that there are policy questions regarding targeting arrangements which would benefit from scrutiny. We set out below those aspects of which we are aware.

50. In January 2016, the Committee questioned the Agencies on what was known about the other occupants of the vehicle. ***:

***...

***³²

51. However, when questioned about the other individual killed in the strike, ***.

52. The legal requirements of the Law of Armed Conflict are summarised in the Ministry of Defence’s Joint Service Manual on the Law of Armed Conflict as follows:

*The main purpose of the Law of Armed Conflict is to protect combatants and non-combatants from unnecessary suffering and to safeguard the fundamental human rights of persons who are not, or are no longer, taking part in the conflict... and of civilians.*³³

53. It specifically mandates:

- “to use only that degree and kind of force... that is required in order to achieve the legitimate purpose of the conflict... with the minimum expenditure of life and resources”;
- “there must be a clear distinction between the armed forces and civilians, or between combatants and non-combatants”; and
- “... losses resulting from a military action should not be excessive in relation to the expected military advantage”.

³² Tri-Agency evidence session, 21 January 2016.

³³ MOD Joint Services Publication 383, paragraph 1.8.

54. The other occupants of the car travelling with Khan might have been legitimate targets in terms of the law – they were, after all, travelling with a known ISIL attack-planner, in ISIL-controlled territory. Even if they were not targets in their own right, they may nevertheless have been deemed acceptable collateral damage in relation to the ‘expected military advantage’ as part of the standard military targeting procedures. However, ***.

Consideration

55. While the possibility of collateral damage cannot always be avoided in military engagements, it must always be properly assessed beforehand. ***. ***.

OTHER FACTORS

56. There appear to be other factors relevant to any consideration of the Government's response to the threat posed by Khan – which, as we have already set out, was significant and ongoing.

(i) Disruptive impact

57. The first such aspect is whether a strike would achieve the desired result – i.e. removing the threat to the UK.³⁴ In the March 2015 intelligence assessment, MI5 had already acknowledged that the threat from Reyaad Khan did not exist in isolation, and that efforts to disrupt the threat he posed, through a lethal strike, would also need to deal with his closest associate, Junaid Hussain. JTAC commented on that assessment:

*JTAC agrees that lethal strikes against both KHAN and Junaid HUSSAIN would significantly disrupt this strand of attack planning, but the death of just one of these individuals would not. If necessity required them to, both KHAN and HUSSAIN are likely capable of progressing attack plans on their own, or recruiting help in order to do so.*³⁵

This clearly states that a strike solely against Khan would not achieve the necessary disruption of the full known threat to the UK.

58. However, the July review assessment no longer made that link and we have seen no explanation for this.³⁶ Instead, the focus had switched to the impact of a strike on Khan alone. In relation to this, JTAC's assessment was that:

... KHAN's removal would likely significantly decrease the volume of operatives being advised and encouraged to conduct attacks throughout the west by Syria-based ISIL members.

JTAC assessed that there remained, however, a residual risk since:

*... operatives he has already tasked, advised, or encouraged could still remain committed to carrying out attacks after his death.*³⁷

59. Consideration was also given to whether Khan would simply be replaced, i.e. whether others would step in to continue his work, or to what extent he posed a unique threat:

*Whilst there are others who could potentially replace KHAN, it is likely that it would take some time for them to become equally proficient in his role.*³⁸

³⁴ It is worth noting that, in some respects, a successful attack on Khan posed risks, in that the Agencies had some reasonably good coverage on Khan which was providing useful intelligence. In their July 2015 review, MI5 said: "we have identified (and disrupted) a large number of extremists across the globe purely from our... coverage of KHAN. ***."

³⁵ MI5 intelligence assessment on Khan, March 2015.

³⁶ Junaid Hussain was, in fact, killed in a US strike just three days after Khan.

³⁷ MI5 intelligence review assessment, July 2015.

³⁸ *Ibid.*

Consideration

60. Given Khan's prolific work recruiting, inciting and directing others, removing him would clearly have a significant impact on the threat to the UK although, as JTAC noted, it is questionable for how long. Giving evidence to the Committee five months after the strike, the Agencies noted:

**** we have not seen anywhere near the pace of operational activity that we saw from Khan and Hussain in the way that I have described over 2015. I would describe the effect of the disruption as being immediate and serious on the network.*³⁹

Nevertheless, it is difficult to consider Khan in isolation ***.⁴⁰

61. Given the time that has elapsed since the strike, we suggest the Prime Minister should return to Parliament to update the House on the impact which the use of lethal force in this instance has had on the threat to the UK, and whether the objectives were successfully achieved.

(ii) Retaliation

62. The second aspect which we consider relevant is the potential ramifications of Khan being killed by a lethal strike, in terms of the response of ISIL and Khan's associates.

63. In March 2015, the Agencies considered:

*****⁴¹

64. However, by July, the assessment concluded:

*****⁴²

Consideration

65. Retaliation was a valid concern *** and it is correct that this risk featured in the March 2015 intelligence assessment. The July review assessment appears to have been validated in this instance.

³⁹ *Tri-Agency evidence session, 21 January 2016.*

⁴⁰ ****. (Oral evidence, 21 January 2016.)*

⁴¹ *MI5 intelligence assessment on Khan, March 2015.*

⁴² *MI5 intelligence review assessment, July 2015.*

THE DECISION-MAKING PROCESS

66. The preceding sections of this Report are based upon our assessment of the evidence provided by Government in relation to what the then Prime Minister assessed to be an ‘ongoing intelligence operation’ (since it went wider than Reyaad Khan alone). In reviewing this material, it became apparent that there was a wider policy issue as to how intelligence is presented to Ministers and the administration of operations across Government (including the transition from intelligence activity to military activity). We consider these to be issues of significant public interest and have therefore raised them here, although we note that the decision-making process in this particular case was considered by both the current and former Prime Minister to be outside the scope set for this Inquiry.

67. We have, at various times in this Report, referred to March 2015 and July/August 2015 as being the key dates at which intelligence reporting was brought together and formally assessed. While these were important stages in the decision-making process (***) , the fuller chronology (***) appears to be as follows:

- ***.
- ***.
- ***.
***.
- ***.⁴³
- ***.
- ***.
- ***.
- ***.

68. The key document – referred to by Government as “the *** submission” – is the 1 April 2015 submission to the Foreign Secretary. ***.⁴⁴ ***.

69. ***.⁴⁵ ***:

- ***; and
- ***.

70. ***.⁴⁶

71. Given that the 1 April 2015 submission *** is clearly the central document, ***, we requested a copy of it as part of our evidence-taking, together with a number of other documents which we regarded as important to our Inquiry. However, we were told by the

⁴³ ***.

⁴⁴ ***.

⁴⁵ ***.

⁴⁶ ***.

National Security Secretariat (after consultation with the then Prime Minister) that “*we do judge that the requests you made... go beyond these parameters*” in terms of the scope of the investigation as set by the Prime Minister, i.e. “*the nature of the threat posed by Reyaad Khan to the UK’s national security*”.⁴⁷

Consideration

72. We have, as we have noted, seen the intelligence assessments regarding the threat and have been assured that the March 2015 intelligence assessment contains all the information which was presented to Ministers in the 1 April submission. We have also received the primary intelligence reports underpinning these assessments. But we have not been provided with the submission itself. Oversight and scrutiny depend on primary evidence: without sight of the actual documents provided to Ministers we cannot ourselves be sure – nor offer an assurance to Parliament or the public – that we have indeed been given the full facts surrounding the authorisation process for the lethal strike against Reyaad Khan.

⁴⁷ Letter from National Security Secretariat, 11 July 2016.

ANNEX A: ***

ANNEX B: EXTRACT FROM GOVERNMENT'S MEMORANDUM TO THE JOINT COMMITTEE ON HUMAN RIGHTS

Legal basis

The legal basis for the Government's activity against ISIL in Syria is therefore the inherent right of individual and collective self-defence as recognised by Article 51 of the UN Charter. Article 51 provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Individual terrorist attacks, or an ongoing series of terrorist attacks, may rise to the level of an 'armed attack' for these purposes if they are of sufficient gravity. This is demonstrated by UN Security Council resolutions 1368 (2001) and 1373 (2001) following the attacks on New York and Washington of 11 September 2001. Whether the gravity of an attack is sufficient to give rise to the exercise of the inherent right of self-defence must be determined by reference to all of the facts in any given case. The scale and effects of ISIL's campaign are judged to reach the level of an armed attack against the UK that justifies the use of force to counter it in accordance with Article 51.

It has been the long-held position of successive Governments that force may be used in self-defence, not only where an armed attack is underway, but also where an armed attack is imminent. Where the UK determines that it faces an imminent armed attack from ISIL, it is entitled to use necessary and proportionate force to repel or forestall that attack in exercise of the inherent right of individual self-defence.

Additionally, it is clear that ISIL are engaged in an ongoing attack on Iraq, and have been since 2014. On 20 September 2014 the Government of Iraq wrote to the UN Security Council seeking military assistance of other States to bring an end to ISIL's attack on Iraq, including through action against ISIL bases outside Iraqi territory. The US and other members of the Coalition (including the UK) have therefore asserted the right to take action against ISIL in Syria on the basis of the collective self-defence of Iraq. The UK asserted this right in its letter to the UN Security Council of 25 November 2014.

The UK always adheres to International Humanitarian Law when applying military force, including upholding the principles of military necessity, distinction, humanity and proportionality. This applies as much to our use of remotely piloted aircraft systems as it would to any other manned or remotely controlled military capability. The policy for the use of remotely piloted aircraft is the same as that for manned aircraft. Pilots operate under the same strict Rules of Engagement.

Following the vote in Parliament on 2 December, the UK has extended its contribution to coalition efforts in Iraq and Syria. Specifically, our Armed Forces are now authorised to conduct air strikes against ISIL targets in Syria as part of the coalition effort. Such action will be taken in exercise of the inherent right of self-defence as recognised in the United Nations Charter.

Reyaad Khan

In the case of Reyaad Khan, who was targeted in an RAF air strike in Syria on 21 August, the legal basis for military action was the inherent right of individual and collective self-defence. There was clear evidence of Khan's involvement in planning and directing a series of attacks against the UK and our allies, including a number which were foiled. That evidence showed that the threat was genuine, demonstrating both his intent and his capability of delivering the attacks. The threat of attack was current; and an attack could have become a reality at any moment and without warning. In the prevailing circumstances in Syria, this airstrike was the only feasible means of effectively disrupting the attacks planned and directed by this individual. There was no realistic prospect that Khan would travel outside Syria so that other means of disruption could be attempted. The legal test of an imminent armed attack was therefore satisfied. The UK would not have acted had it not been necessary in the self-defence of the UK.

Additionally, the UK has supported and contributed to the US-led efforts to target ISIL in Syria as a necessary aspect of effectively bringing an end to ISIL's armed attack on Iraq, at the request of the Government of Iraq. Military action against members of ISIL in Syria that is necessary and proportionate to bring an end to ISIL's attack on Iraq is in accordance with the right of collective self-defence of Iraq. The strike targeting Khan was therefore also lawful in the collective self-defence of Iraq.

As indicated above, any action taken under Article 51 must be both necessary to deal with the threat and proportionate to the threat, i.e. no more than required to deal with it. Care was taken in the planning of this operation to limit force only to what was necessary to disrupt the activities that Khan was planning and directing. No civilian casualties were sustained.

This was therefore a lawful use of force in the individual self-defence of the United Kingdom and the collective self-defence of Iraq. The Government reported it to the Security Council on 7 September 2015, in accordance with the requirements of Article 51 of the Charter of the United Nations.

ANNEX C: INTELLIGENCE ASSESSMENT (MARCH 2015)

ANNEX D: INTELLIGENCE REVIEW ASSESSMENT (JULY 2015)

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