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COUNTER-TERRORISM AND HUMAN RIGHTS

WEDNESDAY 26 MARCH 2014

DAVID ANDERSON QC AND BEN EMMERSON QC

Evidence heard in Public

Questions 1 - 23

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Oral Evidence

Taken before the Joint Committee on Human Rights

on Wednesday 26 March 2014

Members present:

Mr Hywel Francis (Chair)
Baroness Berridge
Baroness Buscombe
Baroness Kennedy of The Shaws
Baroness Lister of Burtersett
Mr Robert Buckland

Examination of Witnesses

David Anderson QC, Independent Reviewer of Terrorism Legislation, and **Ben Emmerson QC**, UN Special Rapporteur on Counter-Terrorism and Human Rights

QI The Chair: Good morning. Welcome to this session of the Joint Committee on Human Rights, which is dealing with counter-terrorism and human rights. Could the witnesses please introduce themselves?

David Anderson QC: I am David Anderson. I am the Independent Reviewer of Terrorism Legislation.

Ben Emmerson QC: I am Ben Emmerson, the United National Special Rapporteur on Counter-Terrorism and Human Rights.

The Chair: Thank you very much. Could I begin by asking both of you a very broad question? Can you each tell us what you consider to be the three most important significant human rights issues in relation to counter-terrorism law and policy? Mr Emmerson, perhaps you could begin.

Ben Emmerson QC: Before I begin, may I make one general observation about the division of responsibility between myself and David Anderson? Protocol generally requires that in the discharge of my mandate, I avoid making specific criticisms or comments of individual

states without having gone through the formal procedure of putting into those Governments first. If you will forgive me, I will tend to address questions from the perspective of a more general and international point of view, leaving David, who is far better equipped and more squarely within his mandate, to comment on the more detailed questions of the United Kingdom's counter-terrorism provisions.

With that general comment, the first of the three most pressing issues that are forcing their way towards the top of the international human rights law agenda is the right to privacy in the digital age in the broadest terms: that is to say, the need to ensure that the protection of the right to privacy is not, in practical terms, undermined by modern digital technology and surveillance techniques. The second issue is the use of armed drones as a counter-terrorism and counter-insurgency technique. Thirdly, there is the question of accountability for past human rights violations: that is to say, the obstacles that exist to holding to account those responsible for engagement in systematic and gross human rights violations of the past decade. I would say that those are the three headline issues from the international law perspective.

David Anderson QC: To put it in perspective domestically, I would say that for the last four to five years we have been living through a time where counter-terrorism law in this country has been evolving in a more rights-friendly direction. I do not say that that process began in May 2010; I think there were signs of that beforehand. In quite a number of ways, the rights compliance of our terrorism laws has improved. If you ask me to pick three areas, I do not think I could avoid Ben's first area, which was this whole question of surveillance and privacy, which is plainly one of them. The second one I would identify as something I touched on last year, and I will say more about it this year, in my summer report. It is the whole question of the definition of terrorism, its breadth and the consequences of that breadth. Then, if I had to pick a third, I would probably say it is the executive orders: TPIMs, asset-freezing and

proscription. Of course, they are exceptional powers. There are lots of safeguards on the exercise of those powers, but constant vigilance is required to check that they are being properly used.

The Chair: Could we now move on? Baroness Buscombe and Baroness Kennedy want to ask questions about the implications of the Miranda judgment.

Q2 Baroness Buscombe: I would like to begin by asking you about your view of the role, effectiveness and relevance of the D-notice system and the D-notice committee in the digital environment. Can it now do its job as currently constituted? I ask this bearing in mind that its most up-to-date website seems to be 2008. Some of the quotes from the website are quite disturbing. They appreciate that the internet varies from country to country and there is therefore considerable confusion at present. The D-notice system has never been a 100% watertight system. This also encompasses the really important question of what a journalist is, and therefore who should have the full protection of the protections afforded by custom to journalists, given that as a blogger I could become a journalist overnight.

David Anderson QC: If I may say so, they are excellent questions. They fall outside the scope of my responsibilities and I am a little wary of pronouncing, on the back of my job, on issues that do not fall within its remit. All I would observe in relation to D-notices is that it would appear, at least from what Mr Rusbridger and the *Guardian* have been saying, that there was at least some attempt to take guidance from the D-notice committee and to comply with what it said. How complete those attempts are might be a rather controversial topic.

In relation to the definition of journalists, yes, it is very difficult. I have been a Council of Europe monitor of the freedom of the media in various places such as Russia, Ukraine and Georgia, which are united by the fact that they have statutes under which you must be registered as a journalist. I must say that my experience of those countries was that I was

not particularly comforted by that arrangement, because, of course, privileges granted could be very readily removed. It is also a problem post-Leveson, I suppose, where you draw the line between a journalist and a blogger. I am afraid that is not something I think I can enlighten you on today.

Ben Emmerson QC: Like David, I am cautious about commenting on the current effectiveness of the D-notice committee, partly because it is outside the immediate remit of my mandate and partly because I do not know enough about its practical workings to give you helpful information.

So far as the position of journalists is concerned, the guiding principles were very helpfully set out last year out by a group of NGOs, with the assistance of special rapporteurs and others, under the heading of the Tshwane principles, so named because they were concluded in South Africa. They effectively go through all of the international and domestic comparative law to distil the core guiding rules, distinguishing between, for example, those who are guilty of breaches of secrecy law and those who can and should properly be regarded as whistleblowers. I take a fairly robust view, though, in relation to the position of the media, whatever may be the position in relation to persons such as Edward Snowden or others. There, putting it very crudely, the tests laid down under law are effectively: does the individual expose a genuine public iniquity, and have they done all that they could do, other than going public, to have that redressed in the first instance? Those questions have been asked and answered about the Edward Snowden revelations in different ways by different people. So far as the media are concerned, first and foremost they exist as a vital public bulwark in order to ensure debate on matters of genuine public interest. Again, without descending in detail into the Snowden case, in my own view—and I have said this publically—there can certainly be very little doubt that the revelations published by the *Guardian* and other newspapers around the world have promoted a vital debate nationally,

but perhaps more so internationally, culminating in a resolution at the United Nations General Assembly in October last year, Resolution A/RES/68/167, on the right to privacy in the digital age, which has called upon the Office of the High Commissioner to produce a comprehensive report by the end of this year on the issues that that gives rise to.

Baroness Buscombe: One of the reasons for raising this issue is that I am concerned that it is not in the interest of the media to debate this issue, because at the moment one could describe the D-notice as a very light-touch, self-regulatory system. Therefore, they could shield their freedom behind that system, saying that it is adequate. Therefore, it is important to bring it into the public domain for a fuller debate. The last time I found it to be discussed publicly in the House of Lords was in 1967 in an exchange between the Earl of Longford and Lord Carrington, so perhaps my questions are timely.

Q3 Baroness Kennedy of The Shaws: I too want to ask about the Miranda judgment. I then want to move on to Snowden, because we seem to have segued into that already. Mr Emmerson, you and the special rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a joint statement after Miranda. One of the things you urged on the British authorities was to review their operations to ensure that they would comply with our obligations under the European Convention on Human Rights, regarding the right to liberty and security and the right to respect for private and family life. I wanted to ask you a little about that. One of the concerns expressed here in the UK, and I think internationally, is that national security secrets can be used as an excuse to intimidate people, journalists and the press into silence. That is one of the concerns: it is used as a cover all for chilling free expression. I wanted to know what you had in mind that you thought Britain ought to be doing when you suggested that the British authorities ought to be looking again at our arrangements.

Ben Emmerson QC: The statement that you are referring to was made very shortly after David Miranda's arrest, rather than in the light of the judgment of the court, which raises an issue that I am going to come to in a moment. Obviously, one is cautious in a case that is subject to Schedule 7 concerns, which are well known in relation to Articles 5 and 8 of the European Convention on Human Rights and were already the subject of ongoing litigation in Strasbourg on those questions. The formulation that was used in the statement, which is a common formulation in situations where the facts are unclear and the precise balance is not yet determined, was designed to remind the United Kingdom of its obligations to ensure that the system as a whole properly balances the rights under the European convention or the ICCPR, which are effectively equivalent in this context.

The Miranda judgment—and this may be a subject that we could touch on separately or as part of this—has brought into sharp focus the breadth of the definition of terrorism under the domestic legislation. I can say this without transgressing the injunction I imposed on myself at the outset. The United Kingdom's definition of terrorism is not unique; many other states have definitions similar to it. But it is a constant problem in the course of my mandate that the use of legislation that is as broad as that is capable of descending into discriminatory or improper practice by states. I am not suggesting that that is the position in relation to the United Kingdom. The Supreme Court effectively endorsed David's own concerns about the breadth of the definition in the decision in *Gul* at the end of last year, but we do know that we have a piece of legislation that defines conduct as terrorism which Parliament cannot have intended to be the subject of the broad range of measures that the legislation then gives rise to, not just criminal prosecution but all the preventive and other measures that the definition of terrorism attracts.

The purported safeguard—I say purported; it was expressly relied upon by the prosecution and therefore impliedly by Her Majesty's Government in the litigation in *Gul* was that if it is

to be a domestic prosecution, it requires the consent of the Director of Public Prosecutions, or if it is the prosecution concerning international terrorism it requires the consent of the Attorney-General, the implication being that it is accepted that this legislation criminalises conduct far more broadly than Parliament can have intended, but the safeguard is one of executive discretion in ensuring that it is only used against those that we really intend to criminalise. Putting it as crudely as one can—and David has said this himself in one of his reports—if you apply the legislation without qualifying its language, it is capable of applying to the activities of the United Kingdom’s Armed Forces overseas. To have a piece of legislation that hands to the Executive the power to determine whether conduct is criminal or not criminal, and the power to make that determination effectively *ex post facto*, is not consistent with common understandings of our basic constitutional principles.

Baroness Kennedy of The Shaws: I just—

The Chair: Baroness Kennedy, you did tell me before we started that we needed to be disciplined.

Baroness Kennedy of The Shaws: I certainly did. It is a huge area. Mr Anderson raised as one of his three points this issue of the definition of terrorism. Is there any indication that there might be a revisiting of that definition?

David Anderson QC: I am going to revisit it. Whether anybody else does is up to them. I visited it last summer. I came to some provisional conclusions but said I would welcome further comment. I have had quite a few comments. For me, the Miranda judgment has brought things into more acute focus. In the old days, when things were simple, terrorism was the threat or use of violence for political ends. I do not think anybody in their wildest dreams could have thought that it might be worth stopping Mr Miranda to see whether he was going to use violence for political ends.

Now of course, it seems from the Miranda judgment that a publication, or indeed the threat of publication, can be an act of terrorism if it is likely to endanger life, creates a serious risk to the health or safety of a section of the public in any country if there is a political motivation for it or if it is aimed at influencing the Government. It seems to me that although the Miranda case focused on the treatment of journalistic material and the issue of responsible journalism and so on after the stop, there was a real issue of chilling. That applied not only to journalists but indeed to writers of other kinds, if things that they write, which it is said may be liable to endanger life or public health or if there is political motivation, can be construed as acts of terrorisms. As Ben says, that is not just worrying in the context of Schedule 7; it is worrying when you look at all the other apparatus of terrorism laws. If you look at the criminal offences, for example, of possessing an article useful for terrorism or collecting information useful for terrorism, and the offences that apply to preparatory conduct or to groups that associate themselves with terrorists, the consequences are very wide. When Lord Carlile looked at the definition of terrorism seven or eight years ago, he recommended that the test of being likely to influence, or calculated to influence the Government, was too weak, and it ought to be replaced with something stronger, such as “intimidate”. That might partly do the trick and it is certainly something I shall be looking at this summer.

The Chair: I know that Baroness Berridge has been very patient. Will you ask a very short question, Baroness Berridge, and then I will hand over to Mr Buckland to ask his two questions?

Q4 Baroness Berridge: Mr Anderson, my question may be short but it might require quite a long answer. Are you looking to revisit the scope of Schedule 7 following the Miranda judgment? We have focused a lot on the lack of need for reasonable grounds, but perhaps you could take this opportunity to clarify an issue which the Committee is aware I

have raised with you. What powers do the marine police on the river actually have or not have? Do they have the Schedule 7 power on the river? Do they need it? On terrorism, are you satisfied that they have the powers that they require? As you will know, I went out with them and discovered that we have this massive entry point, and there was some confusion about whether they had the requisite powers they needed to stop and search on the river.

David Anderson QC: On that point, at your kind suggestion I also went out with the marine police unit. I had a very agreeable day with them. I did ask them whether they thought that their powers were sufficient, and they said they would write to me if they thought that they were not. So far, I have had nothing. One plainly needs to be within the area of a port to use Schedule 7. That might not exclude the River Thames, but as far as I am aware it is not a power that the marine police use.

More generally, in relation to recommendations and what will happen after Miranda, my sense is that the Government and the police take the view quite properly that they won the Miranda case, which indeed they did. The Bill has now become an Act, which makes six changes to Schedule 7. This Committee and I have each said in our own way that, welcome though that Act is, it leaves some important issues unaddressed. Of course, one is conscious that some of those issues are being addressed in the litigation process, both now before the Supreme Court in Beghal, the Court of Human Rights in Malik, and—who knows?—the Court of Appeal in Miranda. My sense is that in that context, the Government are not rushing to look further at some of the issues that we discussed. I would make an exception for the issue relating to the retention of data from phones, which I know ACPO is in dialogue with the Information Commissioner about. That is an issue that goes well beyond Schedule 7, of course.

Mr Buckland: I think your point about structuring the definition of terrorism too far is well made. A lot of us feel that the Miranda case perhaps showed that there is a category of genuine public concern about the potential disclosure of about 58,000 highly classified documents that could lead to the endangerment of national security and life. If it is not to be put within the terrorism category, what sort of category do you think we should be devising to deal with that sort of mischief?

David Anderson QC: It is something that I have been conscious about for a couple of years now. The police will sometimes be asked to do things that might only arguably concern the stopping of a terrorist. One can think of other threats to national security, in particular espionage and nuclear proliferation, which a lot of sensible people would say are sufficiently grave to justify people being stopped as they go through a port. One could debate whether reasonable suspicion is required, in which case one would be in the normal position of arresting somebody on suspicion of committing a criminal offence. One could debate whether the current Schedule 7 power, designed for dealing with terrorists, might need to be expanded to deal with proliferators and spies. That might at least have the advantage of enabling the definition of terrorism to be reduced to its proper bounds, as most people would understand them. Of course, one is reluctant to suggest expanding any of these powers unless one is convinced that there is a real need to do it. I am certainly not at that stage yet, although I think it is something that may well need to be looked into.

Q5 Mr Buckland: We have had a debate in the context of the convention about what “threat to economic well-being” means. Some of us are less convinced. I am quite seriously convinced that it is an issue. I wonder whether, using some of those principles, we should look to devise differing categories of threat, for want of a better word, that could better deal with the situation than just the word “terrorism”. Back in 2000 and 2001, terrorism

was highly relevant. As I think we acknowledge, it is subject to a very changing landscape when it comes to threats to national security and well-being.

David Anderson QC: One consequence of the Miranda judgment is that it would appear that no expansion of a power is necessary in order to stop people like Mr Miranda. In one sense, that might be thought a benevolent consequence. If terrorism is reduced to mean what normal people think terrorism means, and if there is a need to expand it further, speaking personally I would be very wary of concepts as broad as threats to economic well-being. Indeed, I am also wary of the concept of the threat to national security, which is notoriously undefined and subject to expansion. If one is talking about non-proliferation and counterespionage, that might be easier to handle.

Ben Emmerson QC: I just wanted to add something for the Committee's information. When it comes to the leaking of sensitive documents, historically that will have been dealt with under the Official Secrets Act or comparable legislation, which applies not only to government employees but to those who receive information from government employees. For example, that is the way the revelations by David Shayler were dealt with, both in relation to the media and in relation to Shayler himself.

Can I add a couple of footnotes? My predecessor, Martin Scheinin, in this mandate, produced a report in December 2010 at the Human Rights Council that set out 10 areas of best practice for countering terrorism. Practice 7 was a model definition of terrorism. May I just commend that to the Committee's attention, because it is certainly a great deal narrower than the definition that the United Kingdom has. It is the definition that we use when travelling around the world to do country visits and inspections, to determine whether or not the legislation is properly directed at terrorism or is, like the legislation that we have in the United Kingdom, capable of being applied to those who would, for example, write articles indicating that using the MMR vaccination could lead to autism.

Q6 Baroness Berridge: Mr Anderson, this is quite a specific question on Schedule 7. I believe that you have been out to Heathrow and seen the Counter Terrorism Command, which I spent the day with as well. Under the powers, they copy your mobile phone and any of your electronic devices under Schedule 7. I was wondering whether you had any contact with the Information Commissioner. In relation to copying my phone, it is very different to taking my Filofax and copying it and putting it in a safe for seven days. If it was stolen, you would be well aware it was stolen. For that period of time, I presume my data are held by the Counter Terrorism Command on its systems. It struck me, practically, where they store that. For that period of time, my data are potentially accessible in a way that, by comparison, photocopying my Filofax would not be.

David Anderson QC: There are a number of issues there. One issue is that the threshold ought to apply when they take your phone or copy your data. We have both made recommendations on that. One is the issue of whether you are made aware that it is even happening? I see nothing in the current leaflets that are handed to people indicating that that is even a possibility. I am not sure that people are, in practice, always told when that is happening. The point you are really making is about the question of retention, which is currently subject to standards, which I described in my last report as pretty variable across the country. They are designed, really, to ensure that the information is kept for a sufficiently long period of time. The mismatch with DNA material, for example, under the Protection of Freedoms Act is very marked. It is something I have raised with the Information Commissioner and which I believe he is now discussing with ACPO.

Baroness Berridge: Say that somebody came in and they had some kind of security breach, which does happen, while they had your data on their systems. I am not aware that there is a specific duty for them to tell you that there was a risk that your data, which they then destroyed, were vulnerable to being taken during that period of time—say, that half

hour window. I have not seen anything to show that there is any duty. It is very different to having your papers in a safe. There is no duty, is there, as far as I have been able to detect?

David Anderson QC: If you leave that one with me, very kindly, I will certainly reflect on it.

Q7 Baroness Kennedy of The Shaws: I would like to raise a concern about the fact that an interim report was issued by Sir Peter Gibson, a retired judge, who looked into the extent of the UK's involvement in torture and other human rights violations by way of complicity. The extent to which there was some level of complicity by our security services has been a source of great concern to many of us. It has been announced that the next stage will not be conducted by an independent judge, but by the Intelligence and Security Committee. Some of us are rather concerned about that, because we are worried that it is somewhat captured by the security services mindset and does not have the level of independence that one would need. I wanted to ask the UN special rapporteur, Mr Emmerson, what view he took about this business of handing it over to the Intelligence and Security Committee, rather than it remaining in the hands of someone much more independent.

Ben Emmerson QC: It is necessary first to go back to the Gibson inquiry itself, which was set up in July 2010 and was a Committee of Privy Counsellors under the chairmanship of Sir Peter Gibson. The inquiry was set up to examine whether, and to what extent, the United Kingdom Government and their security and intelligence agencies were involved in, or aware of, the improper treatment or rendition of detainees held by other countries in counter-terrorism operations outside the UK. The real problem with the Gibson inquiry, which we identified as it was ongoing, was that there were some serious limitations in its terms of reference. It lacked the power to compel the attendance of witnesses or the production of documents. It did not have the power to request the production of evidence from other states, either to request the production of other states or to request the attendance of their

personnel. Moreover, under protocol that was established by the Gibson inquiry, the final say on the disclosure of any information was vested in the Cabinet Secretary rather than in the inquiry itself. As it happens, that last concern, which exercised particularly the individuals affected and their representatives, did not appear to bite very substantially on the interim report which the Gibson inquiry produced. Most of the report was public, and the report itself indicates that those redactions that there were were redactions which the panel considered had been adequately negotiated with the Cabinet Secretary.

The question that I am specifically asked to address is why then, when the inquiry was abandoned and the Government announced that there would undoubtedly be a judge-led inquiry to follow it, the inquiry has been handed to the Intelligence and Security Committee. What view do we take in relation to that? It is premature to say anything about what may emerge from the ISC investigation. We are particularly concerned that if the ISC is to have this responsibility, then first of all it must have the resources available to enable it to do the job properly. Secondly, following the procedural problems encountered by the Gibson inquiry, the procedural limitations on its operation need to be removed so that the committee has the tools at its disposal to get at the truth. Both I and the special rapporteur on torture made this position clear when the announcement was made. It is to be remembered that all the representatives and individuals affected boycotted the Gibson inquiry in the end, because of the limitations on its terms of reference and the protocol governing its operating procedures. It is vital that the ISC must have the active co-operation of those who were directly affected by these crimes. They were crimes. I am not necessarily suggesting that crimes were committed by British personnel, but the issue is complicity in a network of international crimes committed under the Bush era of the CIA. If the truth is to be exposed, the Committee needs to have both the powers and the resources that it needs to expose the truth.

Baroness Berridge: I had a more general point on a combination of that issue and the proposed deprivation of citizenship. I am not an expert in this field, but surely if there is a reversal of the international trend of using a power to render people stateless, those people are not by definition more vulnerable if such networks of criminality exist. If we have many more people floating around as stateless, rather than citizens of a nation where you have all those rights and that state stands in on your behalf, are they not more vulnerable in this situation?

Ben Emmerson QC: Yes.

Q8 Mr Buckland: Thank you for that detailed answer about the ISC. The status of the ISC has changed; it is a welcome change. It is now a Committee of Parliament, as opposed to part of the Executive. Quite clearly, there would have been a conflict issue there. It now has a wider remit in terms of general scrutiny; it can now look at other departments—for example the MoD. Do you think that its changed status plus its wider remit has enhanced its position? Do you think it makes it more compatible with the sort of standards that you, as a rapporteur, would apply?

Ben Emmerson QC: It entirely depends on what function it is performing. There is certainly no suggestion that a democratic parliamentary committee is incapable of performing the necessary functions of supervision of the intelligence services. Indeed, it is the mechanism used in many of the advanced democracies. Provided it has the teeth that it needs, and it operates with the transparency that is necessary for it to be able to do its job in a way that commands wide-scale public confidence, then in principle there is nothing constitutionally wrong with, or objectionable about, a Committee of Parliament. Indeed, the democratic element of it is one of the identifying features that my predecessor set out as being commendable attributes of independent scrutiny mechanisms for the intelligence services.

In relation to this particular inquiry, it is rather more difficult to fit it within ordinary questions of supervision of the intelligence services. This investigation is, really, parasitic upon the inquiry that still remains classified in the United States, conducted by Senator Feinstein's Intelligence Committee. As you know, that has recently been the subject of some allegations and counter-allegations between the Committee and the CIA. There is a very high judicial element to an investigation into the complicity of our services in the commission of what was an international criminal conspiracy of gross human rights violation. Some might think, therefore, that there ought to be a substantial judicial component in any inquiry that investigates it. That certainly was the view of the Government, both at the time of establishing the Gibson inquiry and at the time of abandoning it. It is natural that people should be concerned to see whether the ISC proves itself capable of conducting an inquiry that has the attributes of a judicial inquiry.

The Chair: Given that the ISC does not meet that often in public, would it be wise and sensible for it to meet more regularly in public? We are now dealing with very sensitive issues here. We rarely, if ever, meet privately. Would it therefore be sensible for the ISC to make more effort, in the spirit of transparency, even if it is only to make the public aware of the boundaries within which they themselves work and are constrained by?

Ben Emmerson QC: Of course, it is always very difficult, with a body that is dealing with sensitive information, to know whether it is being overly inclusive in the circumstances in which it will sit in private. By definition, one simply does not know whether the privacy is fully justified. If one takes the task that has been entrusted to it, in relation to complicity and rendition, we know that those parts of the investigation that relate to evidence and testimony from individuals are capable of being heard in public. For all accountability bodies, the general proposition ought to be that as much information as can safely be put into the

public domain is put into the public domain. Therefore, public hearings would be an important way of ensuring public confidence.

Q9 Baroness Buscombe: I was interested that use of armed drones is among the top three in our list of concerns in relation to human rights. Some of my concerns were very much allayed by reading the most recent report of the House of Commons Defence Committee, *Remote Control: Remotely Piloted Air Systems—Current and Future UK Use*. Clearly, there are concerns about the legal uncertainty surrounding their use, and the provision of locational intelligence in connection with their use. Could you expand on that a little, please?

Ben Emmerson QC: I have been working on the subject of armed drones pretty much continuously for the last 18 months. I have done two reports on the subject. If I was to crystallise a very long and complex topic into a very short answer, I would make four points. The first point is that drones are a 21st century weapon, which are designed specifically and are usable primarily in relation to asymmetrical armed conflict: that is to say, conflict where one of the parties is an organised, non-state armed group. They are a counterinsurgency weapon of relatively little use in traditional, interstate warfare.

The Committee is right to say that the technology is such that it allows virtually real-time, 24-hour surveillance and is therefore capable of improving the situational awareness of military commanders. Therefore, if used in accordance with the principles of humanitarian law in traditional armed conflict, the technology is capable of reducing the risk to civilian life, rather than increasing it. In parenthesis, there is only one instance in which it is known that the United Kingdom's responsibility for civilian casualties has been through the infliction of casualties by means of ordinance by drone, rather than by any other form of weapon system or air platform. I have said a little bit about that; it is mentioned in the report.

Much, much more difficult questions arise about the use of armed drones outside traditional theatres of armed conflict. In particular, they arise in areas such as the federally administered tribal areas of Pakistan, parts of Yemen and Somalia and so forth, where the United States in particular is not directly engaged in armed conflict with the state concerned, or with any non-state armed group in the recognised sense. That has given rise to some very difficult questions of international law on which there is no consensus.

Far and away the greatest number of civilian casualties by drone, and far and away the greatest area of concern, was the CIA use of drones in Pakistan. I am not sure who it was originally that thought it was a smart idea to hand the waging of what amounts to a campaign of war through the air into the hands of an organisation that is bound by the principle of NCND—neither confirming nor denying the existence of its operations. Clearly, the CIA simply was not in a position to go public on the nature of its operations or the reasons for it. That is one of the reasons why they are not the right organisation to be engaged in the direct infliction of casualties through the delivery of ordinance through the air. It is rather like giving MI6 a fleet of aircraft and telling them to go off and do what they needed to do. It is an unthinkable proposition in this jurisdiction and it was an unwise decision for the United States. It is a decision which, in his National Defense University speech on 21 May last year, President Obama announced the reversal of. The programme has now migrated from the CIA over to the Department of Defense, or has been in the process of migration. It is perhaps not an insignificant point to make that since Director John Brennan was appointed just over one year ago, there has not been a single reported civilian casualty in Pakistan, so it can be done.

Q10 Baroness Buscombe: This may seem like an incredibly simplistic question, but one of the thoughts I have had in relation to this and in so many other issues is: is it time that we

rethought definitions of what war is and what conflict is, and therefore what applies? What do we mean by traditional armed conflict? It probably requires a long answer.

Ben Emmerson QC: It is an extremely complicated question, on which opinions differ between states and among international lawyers. There is a general weight of opinion to the effect that the existing framework of law ought not to be unearthed—in other words, that the Geneva Convention should remain our guiding principles for armed conflict, without substantial amendment. At the same time, they need to be interpreted and applied in light of the fact that in the modern world, it is difficult to find an armed conflict that is not an asymmetrical armed conflict where one group is a non-state armed group and where the targeting rules of humanitarian law become extremely complicated to apply. In a sentence, if you are engaged in armed conflict with an enemy that draws its membership from the civilian population and lives, eats, breathes and shields itself among the civilian population, the dividing line between who is and is not a legitimate military target is an extremely complex and sensitive one. That is an area on which states are notoriously jealous in guarding their information as to how they interpret the principle of direct participation by civilians in hostility.

Baroness Buscombe: Is there not a strong role for the UN here, to be a little bit stronger and a little bit more decisive?

Ben Emmerson QC: There is a strong role for the UN. That is what I have been doing for the last 18 months. It has culminated in a resolution, on the back of the report I presented about three weeks ago, which recommended the establishment by the United Nations of a full panel discussion at the next session of the Human Rights Council. States could be required to set out their answers to what amounts to a very complicated and unpleasant series of examination questions that I set in the report. I am glad to say that a number of states have taken that forward into a resolution. We are expecting a vote on it within the

next couple of days. The United Kingdom was not terribly keen that the Human Rights Council was the right place for that debate to take place.

Q11 Baroness Kennedy of The Shaws: I am sure that both of you are aware of the current Immigration Bill going through Parliament. It has a clause in it which gives the Secretary of State the power to deprive a naturalised UK citizen of their citizenship, even in the circumstances where they might be rendered stateless by doing so. The right to deprivation of citizenship has been around, but its use has suddenly increased over the last year or so. I wanted to ask you first of all, Independent Reviewer Mr Anderson, whether you had any role at all in reviewing the exercise of this power. If you did not, do you feel that it is a role that you should have had? As a supplementary to that, why has there been this increase? What explains the increase of the use of removal of citizenship from people who have gained citizenship? I am going to ask Mr Emmerson about the whole issue of statelessness and international law and about how it renders people more vulnerable to abuse of their rights. We certainly know the case where someone picked up in Djibouti, by the Djibouti secret police, was then hooded to America by Americans without any extradition processes or any due process at all. It seems to create an issue about vulnerability. Mr Anderson, were you in any way consulted with regard to the review of the use of this power?

David Anderson QC: No, I have no review power in relation to it, or indeed in relation to any other immigration, deportation or deprivation of citizenship power. My understanding is that there is currently an amendment before Parliament that would provide for review, initially after one year, and thereafter at regular intervals. I do not know whether that would be for my office or whether it would be for John Vine, as the Chief Inspector of Borders and Immigration, or indeed for some other person.

I would raise in that context another power that is perhaps less dramatic than the deprivation of citizenship but has been revived in the last 12 months, which is the power to refuse or withdraw passport facilities. The Security Minister told the Home Affairs Select Committee a few weeks ago that that power was used 14 times since April 2013, having been largely dormant since 1997. It is a power that is asserted under the royal prerogative. Maybe, if one were reviewed, it would be sensible to look at the other as well.

Baroness Kennedy of The Shaws: Yes, but the interesting thing here is that the argument being used by Government is that this is for the purposes of protecting the British citizen from terrorism. It is not being used in regard to some sort of generalised immigration matter. It is being used very specifically, with regard to terrorism. That being your purview, would it not seem that you ought to be someone who would be consulted?

David Anderson QC: I am certainly not resisting a role, but nor am I begging for one. If it does need review, it is for others to decide who the appropriate person should be.

Baroness Kennedy of The Shaws: What do you think explains this increase in the two categories you have just mentioned? What explains this having happened in the last 12 months?

David Anderson QC: In relation to deprivation of citizenship, I just do not know. I am not sighted, as the civil servants like to say. In relation to passports, it seems to me that it is perhaps not unconnected with the decline of TPIMs. This Committee has described TPIMs as “withering on the vine”. Indeed, we learnt the other day that there are now no TPIMs currently in force. Of course, it is not as simple as to say that people who have been on TPIMs simply have their passport facilities withdrawn instead. Lord Carlile used to recommend that there should be a TPIM-lite, the only significant ingredient of which would be the removal of passport facilities. Certainly, in relation to some of these TPIM subjects

or targets, the main concern is to stop them travelling abroad. It may be there is some crossover there.

Ben Emmerson QC: Statelessness in international law places an individual at a very substantial disadvantage. Not only is there no state to offer diplomatic protection, but there is also no right of entry or abode. That places an individual in a particularly vulnerable position, where the ground for rendering them stateless is that they are suspected of involvement in acts of terrorism. The Baroness mentioned the Djibouti incident. There are other instances as well, including two individuals we are aware of who were the subject of lethal drone attacks in Somalia, very shortly after having had their citizenship removed. Clearly, it is a subject of very significant concern. It is something that would render the individual especially vulnerable in that climate.

Q12 Baroness Berridge: In relation to this, I have two specific questions, probably for Mr Anderson. First, have we increased our risk in relation to this matter? There is potentially some weakness in the system of embarkation checks. Do we have a robust system? It seemed to me from visiting some of the ports that there were changes in 1997 to whether we check who is actually going out of the country, rather than only who is coming into the country. Would you therefore recommend a more robust system of embarkation checks? Has anyone assessed the local terrorism risk to us? If this power is used in a tit-for-tat way, is there a risk that other states might deprive their citizens of their citizenship while they are here? We could end up with certain people being left in the UK who we might not want to have here. We have obviously just re-entered another tit-for-tat, Cold War-type thing. Has that risk been assessed at all?

David Anderson QC: I am flattered by two questions that are again rather outside my expertise. In relation to exit checks, the only one I am concerned with is Schedule 7, which of course can be used on exit. My understanding is that exit checks are being re-introduced

and that it is due to happen by next year. I am really not fully up to speed on that. So far as other states are concerned, I believe that there are other states who practise the deprivation of citizenship, in circumstances where someone may be rendered stateless, and claim that that is consistent with international law. I have no view as to how numerous those states are. That might well be something Mr Emmerson knows about.

Ben Emmerson QC: I am afraid that without preparation, I am not in a position to answer that question. I can make some inquiries and come back.

Baroness Berridge: It is a possibility, is it not, that we could be left with people here that we do not want to have here?

Ben Emmerson QC: We could be left with people in this country who are stateless, certainly.

Q13 Baroness Lister of Burtersett: I have a couple of questions, and I will ask them separately. Again, they are probably directed more towards Mr Anderson. The Joint Committee asked the Government for statistics on the number of cases in which the power to deprive citizenship has been exercised abroad, and the number of decisions on deprivation taken wholly or partly in reliance on information that, in the Secretary of State's view, should not be made public. I also pressed this in the Committee debate in the Lords. The Government have refused to make this information available for reasons of national security and operational effectiveness. I would welcome your views on this. We are only asking for statistics. We are not asking for any details at all that would identify these cases. What would be the national security issue here? Do you agree that there is a national security issue?

David Anderson QC: I had better diplomatically say that I do not know, because I am not briefed on it. My sympathies are very much with your request. I saw the frustration that came out in your report when you were not told those details. If they will not tell them to

you, I can only assume that they would tell them at least to a security-cleared reviewer, who might in turn be able to make a recommendation that may be released more widely. As to the reasons asserted, I am afraid I cannot shed any light.

Baroness Lister of Burtersett: On the face of it, you cannot see why that should not be made available. Is that fair to say?

David Anderson QC: I am trying to stay diplomatic, so I will just say that I do not know.

Q14 Baroness Lister of Burtersett: It may be you want to be diplomatic around this question, as well. I do not know if you have been following the debates. One issue raised with us, by organisations such as Liberty and ILPA, is whether this would actually improve security. Liberty calls it a security fallacy that you have stateless people either trapped in this country or trapped in another country, who can be just as much a threat. Another issue raised was: why not use the criminal justice system, rather than take this very draconian step of making someone stateless and reversing the trend in international law, which we helped to create? You both might have views on that, perhaps, while being diplomatic.

David Anderson QC: My view would be ill informed. Plainly, if there were to be an independent review of this system, those would be highly pertinent questions. Just as when I look at TPIMs, the non-use of the criminal justice system is almost the first question in my mind.

Ben Emmerson QC: I essentially take the same position as David. It has not just been the TPIMs; it was the predecessors—control orders and, indeed, going right back to the Belmarsh deprivation of liberty cases. It has always seemed to me that those who are singled out for treatment of a kind that is wholly public, so that they are put fully on notice of the governments and the services interested in them, are likely to be those who pose the least acute threat. Deprivation of citizenship, as you say, carries with it such potentially

adverse consequences that one would wonder why it was, if an individual justified that type of measure, that other measures were not a more appropriate way of dealing with them.

Baroness Buscombe: This is not a short-term solution, but would it not make sense for the longer-term to revisit our rules on tests applied for citizenship?

David Anderson QC: I am really reluctant to use my rather limited functions to pronounce on these highly pertinent questions, as much as I might like to. If you do not mind, I will duck that one.

Ben Emmerson QC: That would certainly be outside the sphere of my mandate.

Q15 Mr Buckland: Hopefully we are on safe territory, Mr Anderson, when we come to the topic of TPIMs, which we have already touched on. I know you have taken an interest and been part of the evidence-gathering for our report that we produced in January. The Government are due to make its response by the end of this month. It seems to me that there has been a rise in prosecutions recently, particularly in connection with activities in Syria. We have used the phrase “withering on the vine”, and there are no TPIMs at the moment. It is difficult to draw a direct correlation between the two, but do you broadly welcome an approach that emphasises prosecution as opposed to the continued use of control orders-lite?

David Anderson QC: I do not think anybody liked TPIMs very much. I certainly did not. I am delighted that there are no TPIMs currently in force, and I would agree with you that part of the reason for that is the very good reason that we had a lot of prosecutions, a lot of convictions, and indeed a huge number of guilty pleas last year, in some quite substantial plots. The other thing that happened last year was a number of deportations, some of them pretty high profile. I am not saying that all those people would now be on TPIMs, had they not been successfully prosecuted or had they not been deported, but that is certainly part of the explanation.

There may, however, be a slightly less happy explanation for the disuse of TPIMs—and there has only been one new one since the beginning of 2012—which is that a couple of TPIM subjects have absconded. There is a perception in some quarters that TPIMs are therefore not very effective, not only as investigative measures, where they have never been seen to achieve a very great deal, but even as prevention measures. I saw that the radical pressure group in these matters, Cageprisoners—now CAGE—even said publicly after the first abscond that anyone who wants to escape from a TPIM can. That seems to me as an extremely damaging perception. It may be part of the explanation for why no TPIMs have been made over the last year and a half.

Politics is not my game, but I can only imagine that the political risk of imposing one of these TPIMs if the person then subsequently escapes, whether dressed in a burka or otherwise, could be quite large. Therefore, one might instinctively look to other ways of neutralising the threat than a TPIM. My own annual report on TPIMs will also come out before the end of this month, perhaps even as early as tomorrow morning. I have not had that confirmed yet. Although I welcomed TPIMs and I welcomed the liberalisation that they represent in many respects, it may be that one of the things we need to revisit is whether they are fully effective of doing their job of preventing terrorist activity and containing the person who is subject to them.

Q16 Mr Buckland: One of the issues that caused a lot of debate here was relocation. My personal view is that absconding will happen wherever the subject is. Do you think that the argument about the lack of relocation power in TPIM was perhaps the tipping point that has led to a different perception, or do you think that that is a bit of a red herring?

David Anderson QC: In a way, it is always going to be an academic argument. There is some evidence that suggests that if people are relocated away from a location that is familiar to them, it could be easier for them not only to abscond but to associate with former

undesirable associates. Before relocation came in, in mid-2007 there were five absconds. There were then none for five and a half years. After relocation was ended, there have been two absconds. Ibrahim Magag, the first one to abscond, had been subject to a judgment a year or so earlier in which the High Court had said it was too dangerous to allow him to come to London for even a short period of time, partly because of the abscond risk. Without being too certain about it, one can infer that although of course people can abscond from anywhere in the country, it may be easier for them to abscond from a large city where they are well connected and know plenty of people.

That is not to say that one simply needs to turn the clock back and re-introduce relocation. There is much more flexibility available, partly because of the GPS tags that have come in fairly recently. So long as they remain affixed to the TPIM subject, they enable the authorities to know where they are at any given time. It may be that the question of exclusion measures, for example, could be revisited. That is interpreted very conservatively at the moment. The order might say, "You are not allowed to go to this street", where somebody lives. Perhaps an order might say, "You are not allowed to go into this borough", or, "You are not allowed to go into this town". These are not measures I am suggesting should be applied in every case. It may be that they should be there, just in case they are needed and in case there is a sufficient security case for them. They would render these measures, which although nobody likes them are very useful in a small number of cases, still useful.

Q17 Baroness Berridge: With regard to the proposed measures from the post-Woolwich task force on extremism, are there any issues of concern for either of you in relation to the human rights compatibility? In particular, the Committee in the early days received some evidence from some women's rights groups who were concerned about the

Government's initial engagement through what they perceived to be patriarchal religious structures in relation to tackling extremism.

Ben Emmerson QC: I can say a little about this, putting it in a more general context. The whole countering violent extremism agenda forms an important part of the work that I do, particularly in other parts of the world. I have not been directly involved in looking at the Prevent or post-Prevent initiatives in this country. Generally, the guiding document that we use within the United Nations for counter-terrorism strategies is the 2006 global counter-terrorism strategy. Pillar I of the strategy is about addressing the conditions conducive to the spread of terrorism. It is a vital part of the UN's work, although it is one of the most challenging areas for obvious reasons. When I first took this mandate, it came as a surprise to me that there is consensus among the member states of the UN as to what the conditions conducive to the spread of terrorism are. They include, as you would imagine, economic, social and political exclusion, as well as long-running regional conflicts.

Most of the most imaginative and creative work that is taking place is being done by NGOs. There are some initiatives that are government-sponsored in the Gulf. The initiative that would touch on your question most directly, and which I would commend to your attention if you are not already aware of it, is an initiative run by Women without Borders, called Sisters Against Violent Extremism. Its programme is designed to take men out of the equation altogether. It brings the women from the victim community into communion with the women from the perpetrator community, so as to create cross-sectarian lines of communication from sisters and mothers. It has had the most remarkable levels of success. Like most of these organisations, although there are staff, it is driven by one particularly inspirational individual called Edit Schlaffer. She has been in the UK running what she calls mothers workshops. These are workshops designed to assist the mothers from communities where the youngsters are vulnerable to radicalisation, to voice their concerns,

to find ways of supporting their families in order to find access to services that will divert individuals away from radicalisation and to find support for themselves in diverting their kids away from radicalisation as well.

David Anderson QC: Again, Prevent is not one of my statutory responsibilities. I have looked at the post-Woolwich task force report, if you can call it that. It is very short. My sense is that there is a lot of good stuff in there. There are also a couple of proposals that may or may not come to anything, which certainly raise civil liberties issues. One is the suggestion of orders banning groups that undermine democracy or practise hate speech, and the other is new civil powers to target behaviour that extremists use to radicalise. I am sure that if those powers ever surface, they are powers that you will be very interested in.

Q18 Baroness Lister of Burtersett: Mr Anderson, I believe you have been carrying out a review, at the Home Secretary's request, of policy in the area of deportation with assurances. As you will be aware, Parliament has not said very much about this policy, it being an area for the Executive. What do you think Parliament's role should be in relation to policy on deportation with assurances?

David Anderson QC: I suppose that I would selfishly very much hope that when my report has been produced at the end of the year, it might receive some sort of a hearing, whether in a debate or in the work of a Committee. I can understand that with the confidentiality that cloaks a lot of these things, it will be quite difficult to debate it without something to go on, as it were. One thing I have often recommended is that more Members of Parliament should be given security clearance, or should be treated as security-cleared, in order to give debates of this nature some meaning. I said this, for example, in the context of proscription. There are frequent proscription debates in which a Minister explains that this group is very dangerous for reasons that cannot be said publicly, and people are asked to vote one way or

the other. I wonder whether it might not be better if more MPs were trusted with this information, so that the debate could be a more meaningful one.

Baroness Lister of Burtersett: Maybe you do not want to answer this prior to finishing your report, but do you think there should be a statutory framework to regulate the detail of the policy?

David Anderson QC: That is something I will be addressing. I was in Jordan last week, meeting the British Government, the Jordanian Government, NGOs and one of the people we have deported there. I went to see him in prison. I had been to see the other one previously and in another context. That is certainly something I will carry away and think about as I prepare the report.

Q19 Baroness Berridge: We obviously had a lot of contact with you during the run-up to the Justice and Security Act. Do you think there is scope again for ongoing review and monitoring of closed material procedures? How would we go about that?

David Anderson QC: I think that the Justice Security Act says a report within five years, does it not? I can see that that might seem rather a long time to wait. I can imagine reports at various levels. There could be a report that almost an academic could do, which would pick up the judgments—and they are accumulating now, some of them of course from very high courts—saying how they thought the procedure was used, seeing how it was used in published cases, and doing that survey of the practice at an open level. Much more ambitiously, one could get somebody with clearance to look into the closed judgments as well. The problem with that is that if one is not very careful, one ends up second-guessing judges or acting as a kangaroo Court of Appeal, which I do not think is very appropriate. One might need to think about what the most useful sort of review would be. In principle, five years does seem a long time to wait and I think it would be a very good thing.

Baroness Berridge: You may be aware that when we did the consideration, there were parliamentarians who asked to be security-cleared to go in to closed material procedures; they were not given the permission to do so. If people have been given the opportunity to go in and see the procedures, could that also be a useful way of equipping Parliament in debating these issues?

David Anderson QC: I assume that members of the Intelligence and Security Committee would be allowed in. This may tie in with the issue of appointment of the Intelligence and Security Committee.

Q20 Mr Buckland: It is very early days for the Justice and Security Act, but are you detecting any particular trends in the potentially increased use by the judiciary? Is it a question of the discretion that is now being built in being used as we would expect, very carefully?

David Anderson QC: What I have detected is a very strong, and if I may say so, very welcome steer from the Supreme Court in *Bank Mellat*. There has been acknowledgement that this procedure is here and that in some cases it is necessary, but extreme caution has been counselled on the part of the Government before requesting these closed material procedures. There has also been extreme caution on behalf of the court, not only in deciding whether to exceed to that request, but in continuing to monitor whether it really remains necessary.

Baroness Berridge: In relation to that, one of the issues we often come against is statistics and being able to look at what is going on. Are we collating the appropriate statistics? One issue that arose was the difficulty of appealing. Comparative statistics on the rate of appeals in more open proceedings compared to the rate of appeals might give us some indication. Are you happy that the requisite services are collating the statistics so we can do such work?

David Anderson QC: I have no jurisdiction over this. I imagine that policy is now driven by the Ministry of Justice, with whom I have no particular connection. I would certainly welcome the collation of statistics on this. Anyone who was ever going to prepare such a report would find that that was the essential starting point.

Q21 Mr Buckland: Again, this is primarily a question for Mr Anderson. In a statement made some months ago now, the Home Office changed the process by which organisations can be de-proscribed. It has been made a little bit more transparent. Are you aware of any applications that have yet been made using this process, or is it still early days?

David Anderson QC: It is a slightly unhappy story, if I may say so. I made the point in my last summer's report, effectively for the third time. Quite a number of organisations appear to be proscribed, in respect of which at least arguably the statutory conditions for proscription were not met. Indeed, the Government themselves were content for me to say that there were 14 groups, in respect of which this was at least a possibility. They did not say that 14 were incorrectly proscribed. In response to my report, the Home Secretary did offer to review, with a view to de-proscription, those suspect groups. That was something which Professor Conor Gearty of the London School of Economics had previously described as something that would be an act requiring "almost eccentric courage". That courage was displayed. However, as you say, a few weeks ago things went into reverse. It was determined that in future de-proscription would be considered only on application, and it was further determined that the annual review of every prescribed group, to see whether the statutory criteria are still met, would be discontinued. In a sense, no evidence will be collected on a routine basis. That very much puts the onus on the groups themselves, people associated with them or indeed well-wishers. In the past, such applications have been made by parliamentarians, who nobody suspects were actually

members of the group in question. It does now seem that this is the only route to de-proscription for a group that is no longer involved in any way with terrorism.

The Chair: Thank you very much for your evidence today. You have been extremely helpful, concise and precise. My colleagues have also been very disciplined. I will now ask them if they have any additional questions they may wish to ask you.

Q22 Mr Buckland: Some people have accused me of being rather brave. This is a question you do not have to answer if you feel it is outside your remit. Whilst we do have a law of privacy in the UK, based upon Article 8 and developed by case law, it is probably time for the UK to legislate domestically on privacy. It needs to incorporate data protection as well. It needs to look to create a statutory framework domestically to try to deal with some of the challenges that I think you, Mr Emmerson, have mentioned as one of your priorities, and indeed you as well, Mr Anderson. Do you think I am being eccentric?

Ben Emmerson QC: The ISC and Sir Anthony May are in the process of looking at whether the existing overlapping frameworks are operating as effectively as they ought to. From an international perspective, as you will appreciate, there is gathering momentum in favour of some form of international instrument, at whatever level of generality. I suspect that it is unlikely to be a treaty, or indeed anything that imposes direct obligations on states. We do know that it is not so much a question of domestically incorporating the right to privacy as we understand it, for example in relation to intrusions into people's personal life by the media, which has been the main focus of the case law that you have been referring to: rather, it is a statutory regulation of the overlapping systems. The relationship between the RIPA, the Intelligence Services Act and the Human Rights Act certainly needs some careful thought, to see whether or not a new framework is required.

David Anderson QC: I suspect an overarching article of a convention or a human rights Act is not enough. It is always better to pin these things down. I rather agree with Ben that the

best can be the enemy of the good and that sometimes one has to start with where one is. In my little corner of the field, you have Schedule 7. My observation, not previously publicised, was that people were having their phones taken away, having their data downloaded and having them retained for indefinite periods. It would be nice to think that some grand statute would regulate all that, but it seems to me that there are patches that are available as well, at least until that happy day comes.

Q23 Baroness Kennedy of The Shaws: I would like to raise a concern that I would like you both to take away with you. These moves towards statelessness and the willingness to engage with statelessness are actually about Britain not wanting to be accused of complicity in actions that involve illegality. By removing someone's citizenship and rendering them stateless, when illegal things happen to them, such as them being either airlifted or droned or whatever, we are less able to be accused of being complicit because we are no longer the state that has responsibility for such persons. Such a thing is a very serious matter, if that were the situation. I would like you both to have that in mind as you review matters into the months that come.

The Chair: Is there anything you wish to put on record now, given that we are now in public session?

David Anderson QC: I have put out a call for submissions on my website on one aspect of the terrorism laws that I have never sought to review, which is how they are reviewed. My office is provided for by statute. I am asked to do an annual review of four specific statutes, but I am not asked to review anything else in the terrorism field. I am there partly to advise the Home Secretary, but also partly to inform the political debate. I take my responsibilities to Parliament very seriously. I would be very eager to know if, from the Committee's point of view, there is any improvement it could envisage to that system for independent review. I would be eager to know whether now that we do not renew our terrorism statutes

annually, it remains a good thing to do an annual review of each of them, whether there ought to be a larger discretionary element, a wider possible range for review, or whether, as in Australia—although a Bill to repeal the statute was put before the Australian Parliament last week—there ought to be a statute setting out the powers, responsibilities and immunities and so on of the Independent Reviewer. I will just throw it out, in case there is any reaction at any stage.

The Chair: That is an extremely helpful question.

Baroness Buscombe: I was extremely involved, as a member of Her Majesty's Opposition, in taking the Terrorism Acts of 2000 and 2001 through the House of Lords. It is fair to say, and I am sure you are aware of the fact, that they were done extremely quickly. There was very little time and there was a huge amount of emotion that surrounded the introduction of those two pieces of legislation. Therefore, I think your suggestion is a very good one. We do need to annually review, because they were introduced so quickly.

The Chair: I note your question, which I think is extremely important. It is to do with confidence and trust in Parliament, and I am sure that Ministers will take note of that question.

We will obviously respond to you. There will be other questions we will want to write to you about. When you respond, with your agreement, we will put those replies on the record in the spirit of transparency, so that the public is made aware of what we are doing and of what you are doing. Thank you very much.