

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 19, 2016  
CORRESPONDENTS' REPORTS

UNITED KINGDOM<sup>1</sup>

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*Government Inquiry — Involvement of United Kingdom in Iraq*

☛ Iraq War Inquiry

The Report of the Inquiry, chaired by Sir John Chilcot, was published in July 2016 after a long delay. The questions before the Inquiry were (i) whether it was right and necessary for the UK to invade Iraq in March 2003, and (ii) whether the UK could – and should – have been better prepared for what followed.<sup>2</sup>

In his public statement made immediately prior to publication of the Report, Sir John summarised the conclusions of the Inquiry as follows<sup>3</sup>:

- The UK chose to join the invasion of Iraq before the peaceful options for disarmament had been exhausted. Military action at that time was not a last resort.
- The judgements about the severity of the threat posed by Iraq's weapons of mass destruction – WMD – were presented with a certainty that was not justified.
- Despite explicit warnings, the consequences of the invasion were underestimated. The planning and preparations for Iraq after Saddam Hussein were wholly inadequate.
- The Government failed to achieve its stated objectives.<sup>4</sup>

The Executive Summary sets out 'lessons on collective Ministerial decision-making, where the principles identified are enduring ones' and 'other lessons which have general application'.

In relation to the decision to go to war, the Inquiry set out the following lessons:

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<sup>1</sup> Dr Caroline Kittelmann (nee Harvey), Solicitor of the Supreme Court of England and Wales.

<sup>2</sup> Sir John Chilcot, 'Public Statement', <<http://www.iraqinquiry.org.uk/media/247010/2016-09-06-sir-john-chilcots-public-statement.pdf>>.

<sup>3</sup> The key findings are set out at paragraphs 799-824 of the Executive Summary.

<sup>4</sup> Sir John Chilcot, 'Public Statement', <<http://www.iraqinquiry.org.uk/media/247010/2016-09-06-sir-john-chilcots-public-statement.pdf>>, 1-2.

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- Any future Government could better manage public expectations with regard to a major military operation by guarding ‘against overstating what military action might achieve and against any tendency to play down the risks’.<sup>5</sup> ‘The Government should not commit to a firm political objective before it is clear that it can be achieved’ with ‘regular reassessment’ essential.<sup>6</sup>
- Where an issue goes before the United Nations Security Council, ‘the UK Government cannot expect to retain control of how it is to be discussed and eventually decided, unless it is able to work with the interests and agendas of other Member States.’<sup>7</sup>
- A diplomatic timetable should not dictate a military timetable. ‘If a strategy of coercive diplomacy is being pursued, forces should be deployed in such a way that the threat of action can be increased or decreased according to the diplomatic situation and the policy can be sustained for as long as necessary.’<sup>8</sup>
- With regard to the issue of influencing the United States, this was a ‘constant preoccupation’ of the Government<sup>9</sup> but, despite the US and UK being close allies, ‘the relationship between the two is unequal’<sup>10</sup> and influence should not be an objective in itself, but rather the ‘exercise of influence is a means to an end.’<sup>11</sup>

In relation to weapons of mass destruction, the Inquiry set out the following lessons:

- It was ‘a mistake not to see the risk of combining in the September dossier the JIC’s [Joint Intelligence Committee’s] assessment of intelligence and other evidence with the interpretation and presentation of the evidence in order to make the case for policy action.’<sup>12</sup> ‘The nature of the two functions is fundamentally different. As can be seen from the JIC Assessments quoted in, and published with, this report, they contain careful language intended to ensure that no more weight is put on the evidence than it can bear. Organising the evidence in order to present an argument in the language of Ministerial statements produces a quite different type of document.’<sup>13</sup>
- The perception that the evidence was massaged in order to make the case for action ‘has produced a damaging legacy, including undermining trust and confidence in Government statements, particularly those which rely on intelligence which cannot be independently verified.’<sup>14</sup>
- Specific lessons for any future ‘explicit and public use of material from JIC Assessments to underpin policy decisions’ would include:
  - ‘The need for clear separation of the responsibility for analysis and assessment of intelligence from the responsibility for making the argument for a policy.
  - The importance of precision in describing the position. [...] Constant use of the term “weapons of mass destruction” without further clarification obscured

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<sup>5</sup> Iraq Inquiry, *The Report of the Iraq Inquiry* (2016), <[http://www.iraqinquiry.org.uk/media/247921/the-report-of-the-iraq-inquiry\\_executive-summary.pdf](http://www.iraqinquiry.org.uk/media/247921/the-report-of-the-iraq-inquiry_executive-summary.pdf)> (‘the Executive Summary’), [827].

<sup>6</sup> Ibid [828].

<sup>7</sup> Ibid [829].

<sup>8</sup> Ibid [830].

<sup>9</sup> Ibid [831].

<sup>10</sup> Ibid [833].

<sup>11</sup> Ibid [834].

<sup>12</sup> Ibid [836].

<sup>13</sup> Ibid [837].

<sup>14</sup> Ibid [838].

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the differences between the potential impact of nuclear, biological and chemical weapons and the ability to deliver them effectively. For example, there would be a considerable difference between the effects of an artillery shell filled with mustard gas, which is a battlefield weapon, and a long-range ballistic missile with a chemical or biological warhead, which is a weapon of terror.

- The need to identify and accurately describe the confidence and robustness of the evidence base. There may be evidence which is “authoritative” or which puts an issue “beyond doubt”; but there are unlikely to be many circumstances when those descriptions could properly be applied to inferential judgements relying on intelligence.
- The need to be explicit about the likelihood of events. The possibility of Iraq producing and using an improvised nuclear device was, rightly, omitted from the dossier. But the claim that Iraq could build a nuclear weapon within one to two years if it obtained fissile material and other essential components from foreign sources was included without addressing how feasible and likely that would be. In addition, the Executive Summary gave prominence to the International Institute of Strategic Studies suggestion that Iraq would be able to assemble nuclear weapons within months if it could obtain fissile material, without reference to the material in the main text of the dossier which made clear that the UK took a very different view.
- The need to be scrupulous in discriminating between facts and knowledge on the one hand and opinion, judgement or belief on the other.
- The need for vigilance to avoid unwittingly crossing the line from supposition to certainty, including by constant repetition of received wisdom.<sup>15</sup>

The Inquiry also noted that ‘[w]hen assessed intelligence is explicitly and publicly used to support a policy decision, there would be benefit in subjecting that assessment and the underpinning intelligence to subsequent scrutiny, by a suitable, independent body, such as the Intelligence and Security Committee, with a view to identifying lessons for the future.’<sup>16</sup>

In relation to the invasion of Iraq, the Inquiry noted inter alia the following lessons:

- ‘The difficulty and complexity of successfully delivering distinct strategic messages to each of the audiences a government needs to reach should not be underestimated. For any future military operations, arrangements tailored to meet the circumstances of each operation need to be put in place in both London and on the ground before operations begin.’<sup>17</sup>
- ‘When the UK acceded to the US request that it assume leadership of a military Area of Responsibility encompassing four provinces in southern Iraq, it did so without a robust analysis either of the strategic implications for the UK or of the military’s capacity to support the UK’s potential obligations in the region.’<sup>18</sup>
- ‘A step of such magnitude should be taken deliberately and having considered the wider strategic and resource implications and contingent liabilities.’<sup>19</sup>

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<sup>15</sup> Ibid [840].

<sup>16</sup> Ibid [841].

<sup>17</sup> Ibid [852].

<sup>18</sup> Ibid [853].

<sup>19</sup> Ibid [854].

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- 'That requires all government departments whose responsibilities will be engaged to have been formally involved in providing Ministers with coherent inter-departmental advice before decisions are taken; the proper function of the Cabinet Committee system.'<sup>20</sup>

As to the post-conflict period:

- 'The UK did not achieve its objectives, despite the best efforts and acceptance of risk in a dangerous environment by military and civilian personnel.'<sup>21</sup>
- 'Although the UK expected to be involved in Iraq for a lengthy period after the conflict, the Government was unprepared for the role in which the UK found itself from April 2003. Much of what went wrong stemmed from that lack of preparation.'<sup>22</sup>
- 'In any undertaking of this kind, certain fundamental elements are of vital importance:
  - the best possible appreciation of the theatre of operations, including the political, cultural and ethnic background, and the state of society, the economy and infrastructure;
  - a hard-headed assessment of risks;
  - objectives which are realistic within that context, and if necessary limited – rather than idealistic and based on optimistic assumptions; and
  - allocation of the resources necessary for the task – both military and civil.'<sup>23</sup>
- 'All of these elements were lacking in the UK's approach to its role in post-conflict Iraq.'<sup>24</sup>
- 'Where responsibility is to be shared, it is essential to have written agreement in advance on how decision-making and governance will operate within an alliance or coalition. The UK normally acts with allies, as it did in Iraq. Within the NATO Alliance, the rules and mechanisms for decision-taking and the sharing of responsibility have been developed over time and are well understood. The Coalition in Iraq, by contrast, was an ad hoc alliance. The UK tried to establish some governance principles in the Memorandum of Understanding proposed to the US, but did not press the point. This led the UK into the uncomfortable and unsatisfactory situation of accepting shared responsibility without the ability to make a formal input to the process of decision-making.'<sup>25</sup>
- 'As Iraq showed, the pattern set in the initial stage of an intervention is crucial. The maximum impact needs to be made in the early weeks and months, or opportunities missed may be lost for ever. It is very difficult to recover from a slow or damaging start.'<sup>26</sup>

Lessons are also set out with regard to reconstruction,<sup>27</sup> de-Ba'athification,<sup>28</sup> security sector reform,<sup>29</sup> resources,<sup>30</sup> military equipment (post-conflict)<sup>31</sup> and civilian personnel.<sup>32</sup>

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<sup>20</sup> Ibid [855].

<sup>21</sup> Ibid [857].

<sup>22</sup> Ibid [858].

<sup>23</sup> Ibid [859].

<sup>24</sup> Ibid [860].

<sup>25</sup> Ibid [861].

<sup>26</sup> Ibid [862].

<sup>27</sup> Ibid [866]-[879].

<sup>28</sup> Ibid [880]-[883].

<sup>29</sup> Ibid [884]-[887].

<sup>30</sup> Ibid [888]-[895].

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*Early Day Motion — Ministerial Corrections on Saudi Arabia and War Crimes*

• Early Day Motion 569 of 19 October 2016

Primary sponsor: Roger Godsiff

Sponsors: Mark Durkan, Margaret Ritchie, Jim Shannon, Alison Thewliss, Paul Flynn

That this House notes with great concern the Government's decision to issue corrections to six Ministerial Statements on whether Saudi Arabia committed war crimes in Yemen just as Parliament was about to rise for the summer recess; condemns the timing of these statements as an attempt to avoid scrutiny and accountability; further notes that these corrections acknowledge that previous Government statements that Saudi Arabia was not violating human rights or committing war crimes in Yemen were incorrect; believes that the Government either knew or ought to have known that these statements were incorrect; is concerned that Ministers may have inadvertently misled the House; is extremely worried that, despite this acknowledgement by the Government that Saudi Arabia is in fact committing war crimes by targeting civilians and non-military infrastructure in Yemen, the UK is continuing to sell weapons to Saudi Arabia; remains concerned that these weapons may be used to commit war crimes in Yemen by the Saudi regime, which is a dictatorship with no regard for democracy or human rights; notes that continuing to sell arms to the Saudi regime both enables and condones violence against civilians; further believes that the UK's standing in the world is diminished by this action; and strongly urges the Government to urgently reconsider its arms export policy to Saudi Arabia in light of these corrections and to prioritise the safety of civilians in Yemen and the UK's reputation in the world over the profits of arms companies.

Total number of signatures: 31<sup>33</sup>

*Early Day Motion — Government's Response to the Second Report of Session 2015-16 from the Joint Committee on Human Rights, the Government's Policy on the Use of Drones for Targeted Killing*

• Early Day Motion 701 of 21 November 2016

Primary sponsor: Kirsten Oswald

Sponsors: Lucy Powell, Douglas Chapman, Corri Wilson, Tom Brake, Catherine West

That this House welcomes the Report of the Joint Committee on Human Rights on the Government's response to its Report on the Government's policy on the use of drones for targeted killing; further welcomes the confirmation that existing legal frameworks, including international humanitarian and human rights law, apply to the use of armed drones; notes, however, the conclusion of the Joint Committee that the Government has a policy to use lethal force abroad outside armed conflict but that this policy is in fact based on a misunderstanding of the legal frameworks that apply; invites the Government to articulate the differences between the UK and US positions on the applicable international standards; further notes that the recent Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles offers an opportunity to set the standards for the future use of armed drones; notes that the Ministry of Defence is currently conducting a Defence policy review on remotely piloted

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<sup>31</sup> Ibid [896]-[900].

<sup>32</sup> Ibid [901]-[911].

<sup>33</sup> See <<https://www.parliament.uk/edm/2016-17/569>>.

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air systems, and is drafting Joint Doctrine Publication 0-30.21, *The UK Approach to Unmanned Aircraft Systems*; avers the need for parliamentary understanding, approval and accountability for the Government's policy on the use of drones, and any other means, for targeted killing, both in and outside armed conflict; and calls on the Government to forge a positive precedent and implement the recommendations of the Joint Committee as a matter of urgency, before the defence policies are finalised and before the Government engages in talks on international standards for armed drone use.

Total number of signatures: 37<sup>34</sup>

*Early Day Motion — Use of UK Airbases for US Airstrikes in Libya*

☛ Early Day Motion 1121 of 23 February 2016

Primary sponsor: Kirsten Oswald

Sponsors: Steven Paterson, Brendan O'Hara, Martin Docherty, Mark Durkan, Margaret Ritchie

That this House is disappointed that the Secretary of State for Defence has authorised the US use of UK bases, in particular RAF Lakenheath, for US airstrikes in Libya; notes that such action has not been the subject of debate or a vote in the House of Commons; believes that the House must be given the opportunity to discuss the basis on which this authorisation was given; urges the Secretary of State to explain the legal background to this decision, in particular in relation to any assessment of whether the airstrikes were lawful under UK standards for (i) law on the use of force, (ii) international humanitarian law and (iii) human rights law; is concerned that the House has not been made aware of what further authorisation would be required for any future airstrikes in Libya carried out by the US from UK bases; and further urges the Government to reconsider this policy as a matter of urgency.

Total number of signatures: 29<sup>35</sup>

*Early Day Motion — UN Convention on the Prevention and Punishment of Genocide*

☛ Early Day Motion 1192 of 2 March 2016

Primary sponsor: Robert Ffello

Sponsors: David Amess, Stephen Gethins, John McNally, Martyn Day, Alan Meale

That this House welcomes the recent resolution of the Parliamentary Assembly of the Council of Europe and the recent motion of the European Parliament each of which identifies the slaughter by Daesh of Christians and other minorities in Syria and Iraq as the genocide that it is; notes the recent statements by Hillary Clinton, by leading Republican contenders for the US Presidency, and by His Holiness Pope Francis that the targeting of those communities is genocide; observes that an amendment was recently proposed to the Immigration Bill in the House of Lords to place upon the Government a duty to act to protect vulnerable individuals from genocide, and looks forward to that amendment being moved again at a future stage of the Bill; reminds the Prime Minister of the UK's duties under the UN Convention on the Prevention and Punishment of Genocide to act both directly and with others to bring this killing to an end and to bring its perpetrators to trial and punishment; expresses its frustration at the reluctance of Ministers to present evidence and to work to create a consensus at the UN that the killing

<sup>34</sup> See <<https://www.parliament.uk/edm/2016-17/701>>.

<sup>35</sup> See <<https://www.parliament.uk/edm/2015-16/1121>>.

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is genocide; and observes that such inaction risks bringing shame on our nation and the reputation of the Government into international disrepute.

Total number of signatures: 43<sup>36</sup>

*Early Day Motion — Calls for Reports of Civilian Casualties in Military Conflicts*

☛ Early Day Motion 1236 of 10 March 2016

Primary sponsor: Ronnie Cowan

Sponsors: Margaret Ferrier, Paul Monaghan, Philippa Whitford, Deidre Brock, Patricia Gibson

That this House calls on the Government, and specifically the Ministry of Defence, to make clear their policy on investigating reports of civilian casualties which have been caused by British military action in Iraq and Syria; and calls on the Government to expand current investigations into independent reports of civilian casualties coming from those regions and backdate said investigations to September 2014 in order to fully understand the number of civilian deaths.

Total number of signatures: 34<sup>37</sup>

*Early Day Motion — Contamination of War Zones*

☛ Early Day Motion 1257 of 15 March 2016

Primary sponsor: Paul Flynn

Sponsors: Mark Durkan, Peter Bottomley, Kelvin Hopkins, Margaret Ritchie, Alan Meale

That this House recognises the long-term unresolved problem of toxic contamination of war zones, especially in Iraq; notes research on this problem recently presented by Dr Mozghan Savabieasfahan to the University of Stavanger; is concerned about the lead pollution from burn-pits on US bases and from use of munitions and bullets; further notes the resolution agreed by American Public Health Association in November 2015 that parties involved in military activities abroad have a post-conflict responsibility to clean up and decontaminate polluted areas; and calls on the Government to work with the US to take the necessary action to clean up areas polluted by the allied military forces and assist current generations in Iraq with remedial health care.

Total number of signatures: 30<sup>38</sup>

*Early Day Motion — Use of Schools and Hospitals in Conflict Areas*

☛ Early Day Motion 1360 of 12 April 2016

Primary sponsor: Alan Meale

Sponsors: David Crausby, Jim Shannon, Virendra Sharma, Paul Monaghan, Mark Williams

That this House views with alarm the continued use of schools and hospitals throughout the world to harbour armed insurgents at times of conflicts resulting in the failure

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<sup>36</sup> See <<https://www.parliament.uk/edm/2015-16/1192>>.

<sup>37</sup> See <<https://www.parliament.uk/edm/2015-16/1236>>.

<sup>38</sup> See <<https://www.parliament.uk/edm/2015-16/1257>>.

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especially to keep safe and protect young children and the sick from harm; and calls on the Government to urgently sign and promote the International Safe School Declaration in any peace talks, to re-emphasise the terms of the Geneva Convention and to help train all militaries in the importance of such important humanitarian practices.

Total number of signatures: 29<sup>39</sup>

*Early Day Motion — Cluster Munitions Use*

☛ Early Day Motion 78 of 24 May 2016

Primary sponsor: Tom Brake

Sponsors: Alan Meale, Mark Durkan, Ronnie Campbell, Martyn Day, Jim Cunningham

That this House notes with grave concern that, according to Amnesty International, fragments of UK-manufactured cluster munitions have been uncovered in Yemen; denounces the use of cluster munitions due to their indiscriminate and disproportionate nature; believes that any indiscriminate use of cluster munitions by Saudi Arabian forces in Yemen amounts to a grave breach of the Geneva Conventions of 1949, and is a violation of international humanitarian law; calls on the Government to suspend all arms exports to Saudi Arabia until international humanitarian law violations have been investigated and disproved; and urges the Government to call for a full independent inquiry into the use of cluster munitions in the Yemen war to establish the truth about such allegations.

Total number of signatures: 33<sup>40</sup>

*Written Questions — International Law*

☛ Written Question 31216 of 15 March 2016

Tom Brake, Liberal Democrat, 15 March 2016:

To ask the Secretary of State for Defence, pursuant to the Answer of 9 March 2016 to Question 29390, what definition of principle of proportionality his Department uses to assess whether an incident counts as a violation of international humanitarian law.

Penny Mordaunt, Minister of State (Ministry of Defence) (Minister for the Armed Forces), 21 March 2016:

International Humanitarian Law is founded in customary international law but now extensively codified in international agreements, most notably the Geneva Conventions of 1949 and the Additional Protocols. The UK's interpretation of the principles of proportionality, military necessity, humanity and distinction is set out in the Ministry of Defence's Joint Service Publication (JSP) 383, the Manual of the Law of Armed Conflict, which is available online (<https://www.gov.uk/government/collections/jsp-383>).<sup>41</sup>

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<sup>39</sup> See <<https://www.parliament.uk/edm/2015-16/1360>>.

<sup>40</sup> See <<https://www.parliament.uk/edm/2016-17/78>>.

<sup>41</sup> See <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-15/31216/>>.



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*Written Questions — Armed Forces: Ammunition*

• Written Question 32085 of 22 March 2016

Paul Flynn, Labour, 22 March 2016:

To ask the Secretary of State for Defence, what attempts have been made to clean up contamination from bullets and shells used by UK forces in (a) Afghanistan, (b) Iraq and (c) Libya; what the cost has been of that work to date; and which UK companies have been awarded contracts to carry out that remediation.

Penny Mordaunt, Minister of State (Ministry of Defence) (Minister for the Armed Forces), 29 March 2016:

In all operational theatres the UK, where practical and possible, records the use of all explosive ordnance and makes every effort to ensure no remnants, hazardous or otherwise, remain. This is done for both humanitarian concerns and operational imperatives as we would not wish to leave any ordnance which could fall into the hands of our adversaries and subsequently be used against UK forces.

UK forces records the use of all munitions and protects civilians under the Geneva Conventions with marking, removal and destruction of Explosive Remnants of War (ERW) wherever practical and possible: where troop movements may be affected or where ERW represent an immediate and significant danger to life. The Ministry of Defence does not hold information centrally on commercial ERW clearance: after the cessation of hostilities, the UK will normally contract commercial organisations, through the Department for International Development, to carry out the routine assessment, marking and clearance of ERW and risk education for humanitarian and developmental purposes.<sup>42</sup>

*Written Questions — Turkey: Armed Conflict*

• Written Question HL8124 of 3 May 2016

Lord Hylton, Crossbench, 3 May 2016:

To ask Her Majesty's Government what assessment they have made of (1) whether Turkey has breached the Geneva Conventions by (a) killing and wounding unarmed civilians in south-east Turkey, and (b) firing across its frontiers with Syria and Iraq; and (2) whether there may be scope for prosecuting individuals responsible for those actions before the International Criminal Court and for claiming compensation for individuals whose property has been destroyed.

Baroness Anelay of St Johns, Conservative Minister of State (Foreign and Commonwealth Office), 11 May 2016:

We are closely monitoring Turkish government security operations in south-east Turkey and actions it has taken in northern Iraq and northern Syria. Our condolences are with civilians caught up in the violence, as well as Turkish soldiers and police who continue to be targeted in terrorist attacks by the Kurdistan Workers' Party (PKK). The Foreign Secretary, my Rt Hon. Friend the Member for Runnymede and Weybridge (Mr Hammond), and our Ambassador in Ankara have emphasised to the Turkish government the need to respect human rights, avoid civilian casualties and return to the peace

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<sup>42</sup> See <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-22/32085/>>.

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process. We understand that the Government of Turkey has committed to compensating those whose properties were damaged in recent violence.<sup>43</sup>

*Written Questions — Occupied Status of the Gaza Strip and East Jerusalem*

✦ Written Question HL4019 of 12 December 2016

Baroness Tonge, Liberal Democrat, 12 December 2016:

To ask Her Majesty's Government what assessment they have made of the International Criminal Court's affirmation of the occupied status of the Gaza Strip and East Jerusalem.

Baroness Anelay of St Johns, Conservative Minister of State (Foreign and Commonwealth Office), 23 December 2016:

We are aware of the International Criminal Court's position and are following closely. It has been the position of every British Government since 1948 that the Occupied Palestinian Territories (OPTs, ie the West Bank including East Jerusalem and Gaza) were not lawfully part of the state of Israel at its creation or at any point thereafter. We consider that the level of control that Israel retains over these territories amounts to occupation under international law and hence that Israel's presence in the OPTs is governed by the provisions of the Fourth Geneva Conventions of 1949, to which Israel is a state party.<sup>44</sup>

CAROLINE KITTELMANN

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<sup>43</sup> See <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-05-03/HL8124/>>.

<sup>44</sup> See <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-12-12/HL4019/>>.