

## APPG on the Rule of Law

**Date:** 08 February 2021  
**Time:** 9:30am-10:45  
**Location:** Virtual Meeting,  
Zoom

### 2021 Minutes of the Inaugural Meeting of the APPG on the Rule of Law

Monday 08 February 2021

#### 1. Attendance/Apologies

**Apologies** from Lord Carlile of Berriew, Lord Faulks, Lord Foulkes of Cumnock, Baroness Northover, Lord Lisvane

**The following members of both Houses of Parliament were in attendance:**

Sir Bob Neill MP, Lord Anderson of Ipswich QC, Joanna Cherry QC MP, Lord Pannick QC, Baroness Lister of Burtersett, Tony Lloyd MP, Baroness Jones of Moulsecoomb, Baroness Kennedy of the Shaws, Lord Arbuthnot, Lord Thomas of Cwmgiedd, Lord Judge, Lord Hodgson of Astley Abbotts, Lord Hope of Craighead, Martin Docherty Hughes MP, Lord Janvrin, Lord Craig of Radley, Baroness D'Souza, Lord Dubs, Lord Garnier QC, Baroness Ludford, Baroness Chakrabarti, Andy Slaughter MP, Baroness Stern, Baroness Whitaker, Baroness Blower, Lord Hannay, Lord Tyler.

#### 2. Statement of income and finances of the APPG

Sir Bob Neill MP, Chair, confirmed that the meeting was quorate to proceed.

Sir Bob gave a short statement of assets and Liabilities received from the previous incarnation of the APPG on the Rule of Law, which amounted to zero. The APPG received no assets or liabilities from its previous iteration.

Sir Bob noted the benefit in kind of secretariat and associated support services provided by the Bingham Centre, which are funded by the Joseph Rowntree Reform Trust. The value of the benefit in kind falls in the bracket £19,501 to £21,000.

Sir Bob gave thanks to the Bingham Centre for the Rule of Law and Andrew Hodge for their work and support as secretariat to the APPG.



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### **3. Election of Officers**

The following Parliamentarians stood for election and were elected as officers:

- a. Sir Bob Neill MP, Chair and registered contact
- b. Lord Anderson of Ipswich QC, Co-Chair (Lords)
- c. Joanna Cherry QC MP, Vice Chair
- d. Tony Lloyd MP, Vice Chair
- e. Lord Pannick QC, Vice Chair
- f. Baroness Lister of Burtersett CBE, Vice Chair
- g. Baroness Jones of Moulsecoomb, Vice Chair

Murray Hunt was appointed Legal Adviser to the APPG on the Rule of Law.

### **4. The formal inaugural meeting was followed by a briefing presented jointly by the APPG on the Rule of Law and the APPG on Drones**

#### **Good Questions, Wrong Answers: Fixing the Overseas Operations Bill**

Sir Bob Neill MP introduced the following expert speakers:

- His Honour Judge Jeff Blackett, Judge Advocate General from 2004 to 2020
- Elizabeth Wilmschurst CMG, distinguished fellow of the International Law Programme at Chatham House.
- Emma Norton, the Director of the Centre for Military Justice.
- Major General PLG Brereton, Judge of the New South Wales Court of Appeal and a Major General in the Australian Army Reserve
- General Sir Nick Parker KCB CBE, Commander-in-Chief Land Forces 2010-2012

The Speakers made the following recommendations for improvements to the Overseas Operations Bill in their speeches.

#### **HH Judge Blackett:**

- Introduce a statutory time bar for investigations into minor offences similar to “summary matters” in our Magistrates Courts. There should be a limit of 6 months where the allegations relate to summary only matters or a matter which is de minimis.
- Introduce judicial oversight of investigations to enable a court to set a timetable for investigations, providing an opportunity for a judge to stop an unmeritorious or vexatious investigation early.
- Raise the bar for re-investigation. Following a person’s acquittal, or a determination by a judge advocate that an investigation should cease, no further investigation shall be commenced unless compelling new evidence has become available and the evidence is sufficiently strong to support a conviction.
- Restrict access to public funds for complainants. There should be no funding for complainants where the allegation is de minimis or after a judge advocate has ordered the investigation should cease.

### **Elizabeth Wilmshurst CMG:**

- The best way to fix the Bill is to remove the presumption altogether (clauses 1 to 4).
- Another possibility would be to add to the list of excluded offences. At present only sexual offences are excluded. If war crimes, crimes against humanity, genocide and torture were excluded - and the corresponding offences under domestic law - that would enable the UK to meet its international obligations and to ensure that the ICC would not take jurisdiction.
- I also support Judge Blackett's first three proposals, with some kind of judicial filter.

### **Emma Norton:**

- Remove Part 2 of the Bill in its entirety on the basis that adequate measures already exist in law and policy to address the concerns of the Government.
- In the alternative, as a last resort to minimise harm, remove the 6 year longstop and retain the other criteria as factors that may be considered by the court in conjunction with S33 Limitation Act (for tort claims) or the "equitable" test (HRA claims) when deciding whether to extend time beyond the standard statutory period.

### **Gen. Sir Nick Parker KBC CBE:**

- Core military capabilities as important as a weapon system that should be resourced accordingly:
  - Transform our inadequate operational record keeping, which has not kept up with a massive increase in data available on the battlefield, the speed of events, or the multitude of parties involved. And current information technology, developments in artificial intelligence and so on, mean that this is entirely possible.
  - Build a credible, independent operational capability which can examine any allegations as rapidly as possible, retain information for challenges that come back in the future, and critically must be respected by both individuals and the institution as a whole.
- Ensure that those who are answering to allegations are properly supported and if they are innocent, suffer no disadvantage.
- Ensure that the commanders who give the orders, at every level in the chain of command, are held properly accountable for their instructions and their behaviour.

**Maj. Gen. Justice Brereton (commenting on the Australian experience of investigating allegations of war crimes):**

- We recommended the establishment of an independent tri-service multidisciplinary specialist operational inquiry cell, with powers of compulsion analogous to those that my inquiry or a royal commission had, which would have to function side by side with a criminal investigation organisation.
- I see force in what Judge Blackett has suggested about Judicial scrutiny. But I am also utterly convinced that you cannot get to the bottom of these things without military experience and understanding of the particular operational setting in question.

Because there are good and understandable reasons why information about war crimes often takes time to emerge, the presumption, if enacted, would likely result in grave breaches of the Geneva Conventions not being prosecuted domestically, with the consequence that the ICC would likely assert jurisdiction

**5. Following the panels' speeches, attendees asked questions and discussed possible improvements that could be made to the Overseas Operations Bill at Lords Committee Stage under the Chatham House Rule, chaired by Lord Anderson of Ipswich.**