

<b>Institution:</b> University of Reading		
<b>Unit of Assessment:</b> UoA18 Law		
<b>Title of case study:</b> Promoting Human Rights and the Rule of Law in Military Operations		
<b>Period when the underpinning research was undertaken:</b> 2013–16		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Lawrence Hill-Cawthorne	Lecturer Associate Professor in Law	01/09/2013 – present
<b>Period when the claimed impact occurred:</b> 2014–17		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b></p> <p>As military operations have evolved over time, the protection of individual rights and the rule of law have lacked clarity. Hill-Cawthorne's research has clarified highly contested legal frameworks and led the way in promoting human rights and the rule of law in military operations, particularly regarding detention by States of civilians and fighters, as well as lethal targeting by armed drones. Hill-Cawthorne's research findings on the continued importance of human rights law in military operations have been adopted in judgments by the UK Court of Appeal and Supreme Court over the government's arguments for a much broader detention authority. The research has also been adopted by the UK Parliamentary Joint Committee on Human Rights in its oversight of the government's drone programmes, leading to important policy clarifications by government. Through engagement with the International Bar Association, Hill-Cawthorne has contributed to an international consensus on the use of lethal drone strikes. By promoting the rule of law in conflict, this research has enhanced the protection of war victims, as well as the interests of international society generally.</p>		
<p><b>2. Underpinning research</b></p> <p>The research underpinning this case study focuses on the legal regulation of detention in armed conflict and of targeting via armed drones. These are the key areas of controversy with respect to international law and military operations. This is because most contemporary military operations are between States and non-State armed groups (known as 'non-international armed conflicts'), a category that the major treaties on armed conflict regulate only minimally. The consequence is a lack of clarity over the extent to which international law regulates detention and targeting in such situations. Clarification of the law is thus vital, both for the protection of individuals and to guide States in how to conduct military operations legally.</p> <p>Regarding detention, most of the underpinning research arises from Hill-Cawthorne's monograph, <i>Detention in Non-International Armed Conflict</i> (2016) [Section 3, ref 1]. The monograph remains the only book-length analysis of the degree to which international law regulates detention in non-international armed conflicts, and is based on considerable primary research into domestic and international case law and State practice. The principal findings of the monograph are as follows: that the law of armed conflict does not provide a legal basis to detain, and such a legal basis must therefore be sought elsewhere (e.g. a domestic statute); that the law of armed conflict prohibits both States and non-State armed groups from arbitrarily detaining in non-international armed conflicts; and that international human rights law continues to regulate detentions by States in non-international armed conflicts. These have all been deeply contested issues amongst States and the monograph is the first and only sustained exploration of them.</p> <p>Hill-Cawthorne's 2014 <i>Israel Law Review</i> article [ref 2] also underpins some of his work with the</p>		

UN Working Group on Arbitrary Detention. The article employs a theoretical methodology for developing an innovative argument for understanding the relationship between the law of armed conflict and international human rights law (a heavily debated issue). It then uses this to show that the prohibition on the arbitrary deprivation of liberty in international law is absolute and non-derogable.

Regarding armed drones, a co-authored (25% contribution per author) journal article [ref 3] underpins Hill-Cawthorne's written evidence to the UK Parliamentary Joint Committee on Human Rights and his contributions to the International Bar Association's task force on drones. The article offers the first detailed elaboration of the core international law rules applicable to drone strikes (under the UN Charter, the law of armed conflict and human rights law), and is based on legal doctrinal research. One of its principal arguments, which Hill-Cawthorne developed, is a clear rebuttal of the claim made by certain States, that 'self-defence' actions or the consent of the territorial State offer blanket justifications for drone strikes abroad. This research demonstrates that States must comply with both the law of armed conflict and human rights law in such cases.

Based on an in-depth analysis of case law, State practice and scholarship, Hill-Cawthorne's research has systematically clarified the international legal regulation of conflict detention and armed drones. This has been adopted in domestic and international accountability processes, promoting human rights and the rule of law in military operations.

### 3. References to the research

1. Hill-Cawthorne, L. (2016) *Detention in Non-international Armed Conflict*. Oxford Monographs in International Humanitarian and Criminal Law. Oxford University Press, Oxford. Monograph awarded 2016 Lieber Prize by American Society of International Law and 11th Paul Reuter Prize by International Committee of the Red Cross, the two most prestigious international academic awards in international law and armed conflict. These alone confirm quality well in excess of threshold 2\*.
2. Hill-Cawthorne, Lawrence (2014) 'The role of necessity in international humanitarian and human rights law'. *Israel Law Review*, 47 (2). pp. 225–251.  
doi: <https://doi.org/10.1017/S0021223713000265>. Awarded runner-up prize for Faculty Best Research Output competition in arts, humanities and social sciences at Reading.
3. Heyns, Christof, Akande, Dapo, Hill-Cawthorne, Lawrence and Chengeta, Thompson (2016) 'The international law framework regulating the use of armed drones'. *International and Comparative Law Quarterly*, 65 (4). pp. 791–827.  
doi: <https://doi.org/10.1017/S0020589316000385>. Published in the *ICLQ* – one of the top international law journals.

### 4. Details of the impact

Hill-Cawthorne's research at Reading has clarified the most contested legal rules applicable to military operations overseas. It has been adopted in judicial and parliamentary processes scrutinising the UK's conflict-related detention and drone policies. It has also informed an emerging international consensus on the law applicable to lethal drone strikes. This has produced important impact, not only in terms of benefiting war victims, but also in upholding the values of the rule of law, which benefits the UK and international society more widely.

#### ***Hill-Cawthorne's research on detention adopted in decisions by Court of Appeal of England & Wales (CA) and UK Supreme Court (UKSC) against the UK government's argument for broader detention powers***

Detention has been a major feature of recent conflicts involving the UK. In Iraq, at its highest in 2007, the number of detainees held by coalition forces was 26,000. Yet there has been a considerable lack of clarity over the applicable legal framework, with the UK government altering its position over time. Without a clear regulatory framework, the risk of unnecessary detentions increases, as does the risk of detainee mistreatment, as seen, for example, in the UK's 2011 Baha Mousa Inquiry. Hill-Cawthorne's research at Reading has changed this by clarifying the

law and influencing court decisions that have rejected the broad detention powers claimed by government. It has also fed into developments on the international scene that seek to clarify the law here.

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In the CA, these two blog posts were cited in the *Serdar Mohammed/Rahmatullah* judgment (2015) [Section 5, source 3] as authority for rejecting the government's core legal position that the law of armed conflict gives States broad detention powers in conflicts with armed groups that displace detainees' rights under the European Convention on Human Rights (ECHR) [241]. They were also cited by a number of Non-Governmental Organisations in their intervention in the case before the UK Supreme Court [source 2].

Similarly, in the UKSC, Lord Reed cited and relied on Hill-Cawthorne's book [Section 3, ref 1] throughout his judgment in the *Al-Waheed* (2017) case [Section 5, source 1] as authority, for the following, with which the majority agreed: first, that the law of armed conflict does not grant a legal basis to detain in conflicts with armed groups, requiring such a basis to be found elsewhere (e.g. domestic law) [225, 262–3]; second, that detentions in overseas conflicts remain regulated by the ECHR [311]. This was, again, in contrast to the government's core legal position and the basis of its entire detention operations in Afghanistan and Iraq. The result is that detentions must now have a clear legal basis, ensuring that detainees in future conflicts understand the grounds of their detention, enabling them to challenge it where appropriate.

On the international scene, there remain major disagreements between States over the applicability of international law rules on detention to conflict. Over several years, including since joining Reading, Hill-Cawthorne worked with and advised the UN Working Group on Arbitrary Detention (UNWGAD) in order to disseminate his research and assist UNWGAD in its development of universal rules governing detention.

***Hill-Cawthorne's research on the regulation of drone strikes adopted by the Parliamentary Joint Committee on Human Rights (JCHR), leading to significant policy clarifications by the government***

The rise in the use of armed drones for targeted killings by States has led to confusion over the international law rules that regulate them. Some States have taken a very broad view of their right to use drones. This is especially important as the number of States using armed drones for targeted killings quadrupled between 2013 and 2018, with more States and non-State actors continuing to acquire the technology. The UK alone has carried out 3,500 drone missions in Iraq and Syria since 2014. Hill-Cawthorne's research at Reading has been adopted in the recommendations of the JCHR to the UK government on its use of lethal drones, in which the JCHR calls on the government to clarify its legal positions and ensure all drone strikes comply with international law. This research has also informed some of the key international developments here.

Hill-Cawthorne co-authored an academic article [Section 3, ref 5] with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Christof Heyns) and two others (Akande and Chengeta) in which they clarify the complex legal framework applicable to drone strikes. Based on the draft of that article, Hill-Cawthorne and his co-authors submitted written evidence [Section 5, source 4] to the JCHR during its 2016 hearings scrutinising the UK government's drone programme. These hearings were the result of the government's 2015 targeted killing of Reyaad Khan, a British citizen who appeared in an ISIS recruitment video. This strike was carried out without parliamentary approval, leading the JCHR to investigate. Hill-Cawthorne et al.'s evidence was cited and relied upon throughout the JCHR's report and recommendations [Section 5, source 5] (for example, for the proposition that existing legal frameworks are sufficient to regulate drone use; on the need for the UK to clarify its views on the scope of its right to self-defence; on the risks associated with flexible interpretations of the international law on the use of armed force; and for the argument that international human rights law represents the default legal regime).

The JCHR recommendations represent a major shift towards accountability by confirming the rules applicable to armed drones (thus pushing back against permissive legal positions that some States have adopted) and by calling on government to clarify its drone policy. Indeed, the government was forced to respond with certain clarifications of its policy, including with respect to some of those issues flagged in the JCHR report that specifically drew on Hill-Cawthorne et al.'s written evidence (e.g. the scope of the right to self-defence against armed groups) [Section 5, source 6].

On the international scene, Hill-Cawthorne was appointed by Human Rights Institute (HRI) of the International Bar Association (IBA) to a seven-person international task force (comprising academics, the Red Cross, and Open Society Foundation) on armed drones. The aim was to publish an authoritative IBA HRI resolution and background paper clearly setting out the legal framework regulating drones in response to significant disagreements amongst States. These were published in 2017 [source 7], and they rely in part on Hill-Cawthorne's co-authored article [Section 3, ref 3], notably for the core argument that the legality of drone strikes is to be tested against multiple legal rules. The IBA is the global organisation of law societies. A resolution from the IBA HRI thus carries weight as reflecting the consensus of lawyers worldwide. As more States and armed groups acquire drones, it is hoped that the resolution will promote a universal regulatory framework constraining their use.

Addressing the lack of clarity in the protection of individual rights and the rule of law in military operations, Hill-Cawthorne's research has been relied upon in judicial and parliamentary accountability processes for UK detention operations and armed drone use. It has underpinned the UK courts' refusal to uphold the UK government's core legal position on detention in military operations and prompted clarifications by the government of its policy on armed drones. It has also contributed to the emergence of an international consensus on the legal regulation of armed drones. These are significant developments that improve the protection of individual rights and the rule of law in military operations.

## 5. Sources to corroborate the impact

- [S1] [Al-Waheed & Mohammed v Ministry of Defence \[2017\] UKSC 2](#), Lord Reed, paras 258, 262, 263, 311 (UK Supreme Court), citing Hill-Cawthorne's book (Section 3, ref 1).
- [S2] UK Supreme Court, [Al-Waheed & Mohammed v Ministry of Defence](#), Written Submissions on the Behalf of the Second Intervenor, para 28 (citing Hill-Cawthorne's research).
- [S3] [Serdar Mohammed v Secretary of State for Defence](#); Rahmatullah & The Iraqi Civilian Claimants v Ministry of Defence & Foreign & Commonwealth Office [2015] EWCA Civ 843, para 241.
- [S4] Submitted written evidence to UK Parliamentary Joint Committee on Human Rights (DRO0024),
- [S5] [UK Parliamentary Joint Committee on Human Rights, 'The Government's Policy on the Use of Drones for Targeted Killing'](#), May 2016, HC 574/HL Paper 141 (cited as DRO0024, as above).
- [S6] [UK Parliamentary Joint Committee on Human Rights, 'The Government's Policy on the Use of Drones for Targeted Killings: Government Response to the Committee's Second Report of Session 2015-16'](#), 18 October 2016.
- [S7] [International Bar Association, 'The Legality of Armed Drones Under International](#)

[Law', Resolution and Background Paper](#) (adopted 25 May 2017) citing Hill-Cawthorne et al.'s 2016 *ICLQ* article (Section 3, ref 3).