

Section A		
Institution: Durham University		
Unit of Assessment: 18 – Law		
Title of case study: Strengthening accountability and human rights protection in the security sector		
Period when the underpinning research was undertaken: Between 2005 and 2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Ian Leigh	Professor of Law	Since 1997
Period when the claimed impact occurred: Between 2013 and 2020		
Is this case study continued from a case study submitted in 2014? N		
Section B		
1. Summary of the impact		
<p>Research conducted by Ian Leigh at Durham University on security sector reform has had substantial transnational and international impact on international organisations and national governments:</p> <p>a. EU regulation of mass surveillance by intelligence agencies The European Parliament and the European Fundamental Rights Agency have adopted recommendations from Leigh’s research to strengthen legal mechanisms for oversight of mass surveillance in the context of international intelligence co-operation.</p> <p>b. Council of Europe protection of the Human Rights of Armed Forces Personnel In 2010 the Council of Europe formally adopted a series of principles for protecting the human rights of armed forces personnel based on Leigh’s research. These recommendations have subsequently been given further effect in the national legal systems of Council member states.</p> <p>c. Military Legislation and Training in Armenia Leigh’s research was adopted in law and used as the basis for the development of an OSCE (Organization for Security and Co-operation in Europe) training programme for the armed forces of the Republic of Armenia.</p>		
2. Underpinning research		
<p>The security sector, including the military and security and intelligence agencies, are in many countries not subject to good governance standards. National security concerns frequently impede effective accountability and implementation of human rights protection, in both their inward and outward-facing actions and policies. Leigh’s research diagnoses these shortcomings and demonstrates how good governance can be consistent with legitimate security concerns. It focuses on international cooperation between intelligence agencies and on human rights of armed forces personnel.</p> <p><i>International Intelligence Cooperation and Mass Surveillance</i></p> <p>Since the 1970s most western states have installed tighter legal and democratic controls over their security and intelligence agencies. Despite this, in the aftermath of 9/11 a pattern of abuse emerged, involving extraordinary rendition, ‘black sites’ and mass surveillance, which these mechanisms had failed to prevent or to expose. Building on earlier work on national oversight and accountability for security and intelligence, Leigh’s research identified lack of accountability for international intelligence cooperation as a key reason. Specifically, it highlighted the danger that cooperation could result in the compromise of domestic constitutional and legal standards and hinder attrition of human rights violations, the</p>		

limitations of existing accountability mechanisms in the UK and the need to strengthen human rights protections (**R1**, 934-952 and **R2**,730-733).

Leigh broadened this research in collaboration with Born and Wills from the Geneva Centre for Democratic Control of Armed Forces (DCAF) and the Norwegian Parliamentary Committee for Oversight of Intelligence (EOS), to bring together a distinguished team of international collaborators. The findings of their research (published in **R3**) diagnosed the failure of intelligence oversight bodies to prevent or investigate agency abuses involving international intelligence cooperation in various countries and the efforts of international bodies to investigate abuses and respond.

Following this Leigh, Born and Wills developed a policy guide (**R4**, published by EOS) aimed at agencies, government departments, legislators, parliamentary committees and domestic and international courts to strengthen such oversight. An international advisory panel of 11 former senior intelligence officials, intelligence overseers and academics from 7 countries and the CoE scrutinised the draft and commented upon it at an all-day review meeting. The report was launched in March 2016 at the UN Human Rights Council (at a meeting hosted by the Norwegian ambassador to which all members of the diplomatic community were invited), and in September 2016 at the University of Oslo, with a presentation by the Attorney-General of Norway. **R4** makes 68 specific recommendations covering every stage of cooperation from negotiating international agreements, the underpinning legal and policy framework (advocating risk assessments before entering cooperation), the exchange of information and other forms of cooperation, use of information (including the attaching of caveats), legal action and monitoring cooperation (including international cooperation between oversight bodies).

A further study (**R5**), which Leigh co-edited with a former EOS adviser (Wegge), evaluates developments in intelligence oversight in response to new challenges from large scale intelligence collection and intrusive surveillance practices revealed by Edward Snowden. Preliminary findings were presented at a conference in Oslo in April 2016 which Leigh co-organised at the request of the EOS Committee to mark its 20th Anniversary (E5, pp. 43 and 49). The book was launched in October 2018 at workshop at the Norwegian Institute of International Affairs, attended by some 70 members of the defence, intelligence and diplomatic communities, with contributions from the Head of the EOS Committee, the Danish Intelligence Oversight Board and the Norwegian Police Security Service.

Human Rights of Armed Forces Personnel

The OSCE is the world's largest regional security organisation involving 56 participating states. Leigh's research, funded by the OSCE Office of Democratic Institutions and Human Rights (between 2005 and 2008, and in 2018) and involving collaboration with DCAF, evaluated existing legislation and policy in participating states to identify and promote best practice, building on the OSCE Code of Conduct on Politico-Military Aspects of Security 1994. The research took the form of an OSCE Handbook co-authored with Born (a Senior Fellow at DCAF) in 2008 (and updated in 2018) (**R6**) intended to act as a resource for strengthening human rights protection for service personnel. The Handbook drew on questionnaire results from the ministries of defence of 35 participating states. The results were tested at two international workshops (sponsored at ministerial level in Berlin and Bucharest) and subjected, before publication, to detailed scrutiny by desk and field officers in the OSCE and at a workshop involving academic and user experts organised by the ODIHR. The range and depth of analysis that this research contains, engaging multiple aspects of rights protection for serving members and veterans (including the effective promotion and enforcement of civil, political, social and economic rights, freedom from discrimination, and equality) is unprecedented in the legal literature on armed forces. The Handbook identifies significant problems with bullying and initiation, and disparities across states in the treatment of certain rights, especially concerning restrictions on democratic participation, freedom of expression and collective representation. In response, it advocates a 'Citizens in Uniform' approach (detailed in 119 specific recommendations), proposing that any restrictions on the

rights of service personnel should be strictly related to concrete military objectives and be no more than are necessary to fulfil them.

3. References to the research

R1. I. Leigh, 'Changing the Rules of the Game: Some Necessary Legal Reforms to UK Intelligence' (2009) 35 *Review of International Studies* 943-955

<https://doi.org/10.1017/S0260210509990374> (The *Review of International Studies* is a forum for the publication of truly outstanding interdisciplinary work that challenges the boundaries of thinking in the field of global affairs. This special issue was the output from an ESRC funded seminar series on the future of UK Intelligence and Special Operations.)

R2. I. Leigh, **Rebalancing Rights and National Security: Reforming UK Intelligence Oversight a Decade After 9/11** (2012) 27 (5) *Intelligence and National Security* 722-738.

<https://doi.org/10.1080/02684527.2012.708525> (This is the leading peer reviewed journal in the field of intelligence studies).

R3. H. Born, I. Leigh and A. Wills (eds.), **International Intelligence Cooperation and Accountability** (Routledge, 2011), 336 pp. ISBN 978-0-415-58002-1. (This book presents an extensive collaborative study with a range of interdisciplinary contributions from leading experts in the field).

R4. H. Born, I. Leigh* and A. Wills, **Making International Intelligence Cooperation Accountable** (Norwegian Parliament Printing House, Oslo, 2015), 196pp (40%) (This report was overseen by a high-level advisory panel of 11 senior intelligence experts. The draft was scrutinised by the Council of Europe and the report itself was launched at the UN's Human Rights Committee).

R5. I. Leigh and N. Wegge (eds.), **Intelligence Oversight in the Twenty-First Century: Accountability in a Changing World** (Routledge 2018) ISBN: 978-0-8153-9334-4 (This monograph is part of the leading series 'Routledge Studies in Intelligence').

R6. I Leigh & H Born, **Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel** (Organisation for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, Warsaw, 2008).

4. Details of the impact

Leigh's research demonstrates how, notwithstanding the resistance of the security sector to effective accountability and implementation of human rights protection, change can nonetheless be stimulated by engagement with supra-national and international organisations and, through them, at the national level.

Engaging supra-national bodies: shaping EU Reports on Mass Surveillance

Leigh's evidence to the European Parliament (EP) Committee on Civil Liberties, Justice and Home Affairs (E1a, Annex) is directly reflected in the conclusions and recommendations of its 2014 Report on mass surveillance by intelligence agencies (E1a, 57). Leigh's evidence, based on the research insights from R1 R2, R3 and R4 was adopted in the Report's findings that most existing national intelligence oversight mechanisms have been overtaken by the growth in international intelligence cooperation and that a gap in accountability had resulted (R3, ch. 1; E1a Preamble BX and BZ), notably because of the limited access of oversight bodies to information received from foreign intelligence agencies due to the 'third party' rule ('originator control') (E1a, Preamble BY). In line with Leigh's evidence, the Report recommended further steps to increase cooperation among national oversight bodies (R3, 9-10, R4, 156-158; E1a, reccs. 76 and 80) and that further attention be given the exclusion of oversight bodies from information about cooperation under the 'third party' rule (R4, 152-154; E1a, recc. 77). These findings were adopted in the EP resolution of 12 March 2014 (E1b).

Following this report, at the request of the EP the EU Agency for Fundamental Rights (FRA) launched a project in 2014, to assess the protection of privacy and data protection in the context of large-scale surveillance across the EU 28 member states. Leigh was involved at every stage as one of a small group of invited experts, participated in three whole-day advisory meetings in November 2014, November 2015 and February 2017 and provided

written feedback on the drafts of the two reports issued by the FRA in 2015 (E2 and E3, 12) and 2017 (E2 and E4, 18) which was incorporated into the final versions.

The 2017 Report predominantly draws on **R4** for its key recommendations on oversight of international intelligence cooperation. These include: the need for prior executive approval of intelligence cooperation arrangements (**R4**, 93; E4, 101); that risk assessments be carried out before undertaking intelligence cooperation (**R4** 109 and 112; E4, 102); that caveats should be attached to intelligence shared with foreign partner agencies dealing unambiguously with how the intelligence may be shared and used and that reliability assessments should be similarly attached to shared intelligence relating to identifiable individuals (**R4**, 114-115; E4, 103); legislation should include provisions on record keeping (**R4**, 94; E4, 104), requiring oversight bodies to be informed of cooperation agreements and clarifying the role of oversight bodies in relation to cooperation (**R4**, 94 and 190; E4, 105); and that these bodies receive should such agreements and conduct audits of implementation of the agreements (**R4**, 144; E4, 107).

Engaging international organisations: Council of Europe protection of Human Rights of Armed Forces

In 2010 the CoE Council of Ministers formally adopted a series of principles for protecting the human rights of armed forced personnel based substantially on **R6**: Recommendation CM/Rec(2010)4. R4 is the sole non-treaty source referred to in the resolution. Of the 85 principles in the resolution, 41 correspond directly to best practices advocated in **R6**. The resolution recommends that member states give effect to these principles in national legislation and through military training, practice and dissemination.

In March 2017 Leigh was invited by the CoE to participate in a project on 'Strengthening the Application of European Human Rights Standards in the Armed Forces in Armenia' (budget: EUR1 million), to enhance capacity to apply European human rights standards and to improve the prevention, identification, referral and handling of human rights violations in the armed forces, especially ill-treatment. As a result of the project the relevant military legislation is being reviewed and amended to make it compliant with international and European human rights standards. In January 2019 the CoE Council of Ministers reconfirmed the programme in its *Action Plan for Armenia 2019-2022* (total budget: EUR19.8 million) (E6).

Another CoE organ the European Court of Human Rights (ECtHR) relied on CM/Rec(2010)4 (reccs. 40-46); 'that the length of any alternative service to be performed by objectors should be reasonable in comparison with the length of ordinary military service' (**R6**, 82 and 86) to conclude that RoA had violated the Art. 9 ECHR in *Adyan v. Armenia* App no 75604/11 (12 Oct. 2017), para. 41.

National level reform: Military Legislation in Armenia

Armenia (RA) has been engaged in continuing military conflict with Azerbaijan since 1991 in the disputed Nagorno- Karabakh region. Conscription into military service applies to men between 18-27. Significant human rights abuses of conscripts in RA have been detailed by several international bodies, including the CoE. R4 was translated into Armenian in 2008. In 2009 the government and the OSCE set up a training programme on human rights for RA armed forces personnel as advocated in **R6**, **ch. 19**, involving use of **R6** in training the staff of army units and military educational institutions. Leigh participated in a review of aspects of military discipline legislation by oral evidence to the Standing Committee on Defence, National Security and Internal Affairs on the Draft Military Code (National Assembly of RA, 11 March 2011).

Under the CoE *Strengthening Human Rights programme* Leigh co-authored 2 major reports (15,000 words each) based on **R6** and CM/Rec(2010)4 and 4 missions to Armenia in 2017, during which c. 50 meetings were held with officials from the Ministry of Defence, military academy, military police, military prosecutor's office, military investigator's office, Court of Cassation, Ministry of Justice, Public Defender's office, defence attorneys and various NGOs. The reports make extensive specific recommendations for reform of RA legislation covering

the following: military call-up and medical examination process (and appeals procedures for both); deferment and exemption from military service; data protection; equality and non-discrimination; conscientious objection; freedom of religion and of expression; investigation into cases of torture or ill-treatment and non-combat deaths; compensation for death or permanent injuries caused to military personnel; military discipline and military offences; the independent investigation of complaints of human rights violations; and whistleblowing.

Extensive legislative and policy changes are being implemented in response to these reviews. The RA government has included implementation of the project in its Program for 2017-22 (E7, 'Defence', 4 'Nation Army Concept') and has relied upon its participation in the programme in its implementation plan to the CoE Council of Ministers (2017) following two adverse ECtHR judgments (*Zalyan and Others v. Armenia*, App nos. 36894/04 and 3521/07, 17 March 2016 and *Muradyan v. Armenia*, App no 11275/07, 24 Feb. 2017). A number of changes have already been made by the RA Ministry of Defence and in law (E8 and E9). These include substantial reform of the process for medical examination of conscripts: closer regulation of the content and structure of the medical report (E9, Art. 17(3)); a clear requirement to provide all related medical documents/data to recruits or their parents within 3 days (E9, Art. 25(6)); publication of the limitations applicable to recruits with health problems; and introduction of specified degrees of fitness for military service (E9, Art. 17(3)). Restrictions on the human rights of members of the armed forces have also been removed concerning: belonging to a religious association (E9, Art. 8); use of mobile phones; and preventing women entering the Armed Forces and allowing them to hold some "pure" military positions.

5. Sources to corroborate the impact

E1. a. EU Parliament Committee on Civil Liberties, Justice and Home Affairs, *REPORT on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs* (2013/2188(INI)) (21 February 2014, adopted by European Parliament 12 March 2014)

b. European Parliament resolution of 12 March 2014 2013/2188 (INI)

E2. Emails on file – FRA – expert meeting on national intelligence authorities and surveillance in the EU, Vienna, 16 November 2015. (Summary record produced and on file); review of draft report.

E3. EU Fundamental Rights Agency, *Surveillance by Intelligence Agencies: Fundamental Rights Safeguards and Remedies in the EU* (November 2015),

E4. EU Fundamental Rights Agency, *Surveillance by Intelligence Services: fundamental rights, safeguards and remedies in the EU – Volume 2: field perspectives and legal update*. And related emails on file.

E5. Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, *Annual Reports for 2016 and 2015*

E6. Council of Europe Action Plan for Armenia 2019-2022, Adopted by the Committee of Ministers, CM (2018) 168 -final, 1333rd meeting 9 January 2019.

E7. Program of the Government of the Republic of Armenia 2017-2022 (No. 646A, 19 June 2017).

E8. Speech by Dr. Armen Grigoryan (former Council of Europe official) at the concluding event of the 'Strengthening the Application of European Human Rights Standards in the Armed Forces in Armenia' Programme, Yerevan, 26 March 2019.

E9. Republic of Armenia Law on Military Service and Status of Serviceperson 2018 (English translation). <https://cis-legislation.com/document.fwx?rgn=109784#>