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FOREIGN DRONE CLAIMS

Lesley Wexler*

We’re bringing a case against British Telecom for facilitating drone strikes because we feel that, in the UK, there are people who care about human rights and protecting innocent lives.1

INTRODUCTION

What function might legal claims challenging targeted killing practices such as drone strikes serve? This Essay concludes a trilogy of pieces attempting to answer this question. The first two pieces concluded that domestic litigation influenced domestic executive-branch behavior by facilitating and disseminating government answers about basic international humanitarian law (IHL) questions, such as the nature and existence of an armed conflict, the classification of combatants and civilians, and the existence of civilian casualties.2 In contrast, this piece examines foreign complaints under the Organisation of Economic and Co-Operative Development (OECD) guidelines challenging allied state and corporate facilitation of U.S. drone strikes.3 This Essay emphasizes that these foreign claims raise issues of potential IHL divergence by identifying alternate legal interpretations of IHL that might govern allied states as well as disputing government claims that allied states and corporations do not actively support controversial U.S. activities. By enhancing transparency as to facts on the

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* Professor of Law, University of Illinois College of Law. Thanks to Paul Heald for comments and to Carlos Rubio-Luna and Nathaniel Koppel for research assistance.

1. Joseph Cox, A Yemeni Man Is Suing British Telecom over America’s Deadly Drone Strikes, VICE NEWS (May 24, 2014, 7:11 AM), https://news.vice.com/article/a-yemeni-man-is-suing-british-telecom-over-americas-deadly-drone-strikes (quoting Mohammed al-Qawli, whose brother was killed by a drone strike in Yemen, in stating his reasons for filing a claim against British Telecom). Al-Qawli suggested that “[British Telecom] is a partner in these crimes, whether directly or indirectly.” Id.


3. Those papers demonstrated that lawsuits drew attention to targeting practices, created a new frame to understand the behavior, helped encourage executive branch transparency, and may have contributed to changes in the executive branch’s targeting practices. However, in those lawsuits discussed previously, courts played a relatively minor role in the process.
ground and calling for a ruling, foreign complaints may reduce political cover for allied support of legally contested activities, such as drone strikes.

Part II of this Essay explains why enhancing transparency, and thus reducing political cover, may raise the costs of allied participation for certain activities in the War on Terror. While the United States maintains the lawfulness of its targeted killings program, allied governments are reluctant to clarify their positions on the lawfulness of assisting these strikes. One reason for this reluctance may be the costs the allied countries would face from their citizens and legislators who view these strikes as unlawful. Foreign claims provide a visible opportunity to force foreign governments to publicly address the issue.

Part II also discusses how the identification of potential IHL divergence might affect the behavior of allied countries and the United States. Secrecy is a popular strategy for managing potential IHL divergence, but if the allied publics and legislatures become aware of facts on the ground that show allied participation in drone strikes, states may choose a different management strategy. This Part identifies even more costly alternatives, such as clarifying and harmonizing their legal interpretations as well as ending their cooperation on contested activities. If states choose the former, they may allow for greater scrutiny and accountability of targeted killings programs. If they choose the latter, they could significantly alter the targeted killings landscape by discontinuing vital intelligence-sharing architecture.

Part III of this Essay focuses on Reprieve v. British Telecommunications plc: an important example of a foreign claim that may enhance transparency with regard to allied state and corporate participation in the War on Terror and the potential IHL divergence this participation raises. While the OECD guidelines complaint system might be dismissed as a futile effort to force companies, the states that host them, and the states that receive their services to change their behavior, I argue that these OECD claims helped establish facts on the ground that countries such as the United Kingdom and the United States, as well as companies such as British Telecom, would prefer to remain unknown by the public. While my earlier pieces noted that advocates use the legal claims themselves to establish and publicize factual relationships to contest practices in the War on Terror, Reprieve demon-

4. See infra notes 10–15 and accompanying text.
5. See infra notes 16–30 and accompanying text.
7. See infra notes 31–79 and accompanying text.
strates a different mechanism by which this transparency occurs. Here, the filing of a complaint prompted an independent analytic volunteer to donate resources to identify (and make transparent) the relationship between an allied corporation and the United States in regard to the facilitation of drone strikes.

This Essay concludes by describing the ways in which this foreign drone claim inspires transparency and fosters accountability. It provides a foreign public and foreign legislative branch the opportunity to better question the U.S. executive branch about its provision of surveillance data and allowance of technological assistance for drone strikes in the War on Terror. Relatedly, it gives allied states and corporations a new reason to end their silence on their understanding of IHL, which might permit this behavior. This transparency fosters accountability even if it does not change the behavior of the allied state and corporation.

II. IHL DIVERGENCE: TARGETED KILLINGS VIA DRONE STRIKES

In this section, I briefly explain why IHL divergence might emerge during the War on Terror with particular reference to targeted killings. Rather than provide a scholarly analysis of who provides the most compelling legal arguments, I identify how these differences might arise and provide a short discussion of how states may choose to manage these differences. I note that legal claims, such as those brought by Reprieve, which are discussed in Part II, may disrupt states’ preferred strategy of secrecy and force consideration of other options such as harmonization and elimination of allied support.

A. Potential

In an earlier work, I explored the reasons for IHL divergence and the ways by which states negotiate that divergence. In short, the

8. Complaint to the UK Nat’l Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enters. in respect of BT plc, Reprieve, U.K. NCP (July 15, 2013), http://oecdwatch.org/cases/Case_325/1281/at_download/file [hereinafter First Reprieve Complaint]. As discussed infra, in filing the complaint, Reprieve spurred an independent third party, Mark Ballard, to volunteer his time and expertise to further develop the factual allegations. See infra notes 74–79. Given this development, I believe this Essay adds to the literature on the value of meritless litigation, which identifies its potential contributions as “revealing facts that would otherwise remain private: facts that expose wrongdoing that is not remediable under law, facts that lead to other actors instituting action, and facts that lead to legal reform.” See Alexander A. Reinert, Screening Out Innovation: The Merits of Meritless Litigation, 89 IND. L.J. 1191, 1197 (2014).
9. See infra Part V.
10. See infra notes 11–30 and accompanying text.
absence of a universal arbiter, the existence of heterogeneous state preferences, the plausibility of multiple legal interpretations, and varied treaty ratifications allow for state differences regarding the applicability of IHL to specific events. In the War on Terror, the United States faced at least four categories of potentially high-profile divergence with its allies, including: “the existence and typology of armed conflicts; the interaction of IHL and international human rights law; means and methods; and targeting and proportionality practices.”

The use of drones, also referred to as unmanned air vehicles, for targeted killings raises questions in all of these potential divergence categories. Are CIA conducted strikes problematic because of the lethal force wielded by civilians? Are individuals targeted by drone strikes correctly classified as permissible targets? Are the civilians killed by drone strikes lawful collateral damage? Are drones inherently incapable of the discrimination demanded by IHL?

First, allied countries may disagree about the legality of U.S. behavior itself. In parsing legal justifications for activities, allies might agree with the United States about what IHL applies but disagree on its interpretation. For instance, they might disagree on how to ascertain permissible collateral damage or the exclusive nature of IHL and contend that international human rights law applies as well. To take a specific example: Are strikes in places such as Yemen and Somalia part of armed conflicts governed by IHL, or should they instead be governed by law enforcement and human rights law? Allied countries might believe that human rights enshrined in UN treaties provide grounds for challenging the community effects of drone strikes, whereas the United States does not.

Second, allied states may disagree with the United States about the legality of allied participation in, or support for, U.S. activities. Allied countries may also acknowledge that the U.S. interpretation of IHL is reasonable and defer to it for U.S. activities but hold a different view of how to interpret IHL for purposes of assessing its own actions. Or, because of differences in treaty ratification, allied states may believe that this activity is lawful for the United States, but not lawful for the ally to support or participate in.

In addition, the potential for divergence exists when an allied state fails to publicly ascertain the legality of U.S. behavior or its support for that behavior. Although the foreign executive branch may have conducted its own legal analysis assessing drone strikes and support for them, if this analysis is not transparent, other actors simply do not

12. Id. at 552.
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know whether divergence exists. Moreover, the possibility exists that other actors, such as the allied legislature or civil society, disagree with the executive’s interpretation and wish the state to disavow it. This disagreement is likely more than theoretical. While the majority of the U.S. public approves the use of drone strikes in countries like Pakistan, Somalia, and Yemen, the majority in Britain, France, Germany, and Spain opposes this use.\textsuperscript{13} Relatedly, European Parliament overwhelmingly voted in favor of a resolution identifying drone strikes in Yemen and Pakistan as unlawful.\textsuperscript{14} Of course, European opposition may signal the belief that strikes are “lawful, but awful”;\textsuperscript{15} but, given the European Parliament’s vote, many also believe these practices are also illegal or should be considered so for our allies.

B. Consequences

Does it matter if allied states or global civil society disagrees with the United States’ application and interpretation of IHL? One might initially think “no” because the International Criminal Court lacks jurisdiction over the United States, and U.S. allies seem generally disinclined to publicly probe the areas of potential legal disagreement. If the United States can afford to “go it alone,” then the divergence might simply be costless pluralism.

Yet, the United States rarely goes it alone in the War on Terror; allied states and corporations often play a significant background role in U.S. operations. For instance, allied states may: (1) offer accompanying forces;\textsuperscript{16} (2) provide access to their territory through basing or flyover rights;\textsuperscript{17} (3) share intelligence;\textsuperscript{18} or (4) provide access to individuals.\textsuperscript{19} Similarly, allied corporations may assist U.S. operations by

\textsuperscript{13} U.S. Use of Drones, Under New Scrutiny, Has Been Widely Opposed Abroad, PEW RES. CTR. (Feb. 6, 2013), http://www.pewresearch.org/2013/02/06/u-s-use-of-drones-under-new-scrutiny-has-been-widely-opposed-abroad/.


\textsuperscript{16} Wexler, supra note 11, at 563–68.

\textsuperscript{17} Id. at 568–72.

\textsuperscript{18} Id. at 572–74.

\textsuperscript{19} Id. at 574–75.
providing transportation,\textsuperscript{20} constructing facilities,\textsuperscript{21} enhancing security,\textsuperscript{22} or playing other subsidiary roles.\textsuperscript{23}

If the United States receives support from its allies and allied corporations for its targeted killings program, how might the involved states manage IHL divergence? Secrecy is one of the most popular and powerful tools.\textsuperscript{24} States may not be generally inclined to state their position on the lawfulness of drone strikes or other practices in the War on Terror.\textsuperscript{25} If no one outside of a select group of high-ranking executive officials knows that allied states or corporations are supporting U.S. activities, this behavior could not be policed by foreign courts, foreign legislatures, or foreign publics. But, given the existence of an inquisitive media, leakers, and curious third parties, secrecy is often difficult to maintain.\textsuperscript{26}

When secrecy fails, how else might states manage potential IHL divergence? If no one presses the issue, states might simply continue on as before. Even then, they must know, accept, and manage the political costs of potential divergence. For minor disagreements, the political costs may be low or even nonexistent. But, for issues of high salience for the public and the legislature, states may feel the need to directly address this divergence.


\textsuperscript{22} E.g., Simon Chesterman, Leashing the Dogs of War: The Rise of Private Military and Security Companies, CARNegie REP., Fall 2008, at 36.

\textsuperscript{23} Laura Dickinson, Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability Under International Law, 47 WM. & MARY L. REV. 135, 147–51 (2005) (e.g., military activities and foreign aid).

\textsuperscript{24} Wexler, supra note 11, at 576–79.


One side may unilaterally harmonize its IHL approach through law or policy. For drone strikes, this could mean the United States acceding to allied pressure, as it did in announcing its willingness to voluntarily limit the acceptable conditions for targeting. Conversely, the allied state could publicly accept the United States’ approach as lawful by acknowledging the existence of an armed conflict and the exclusive application of IHL. Either way, to harmonize, one state must shift from its preferred option. Sometimes this change may be relatively painless, but other times it may impose significant domestic political costs as well as change the scope of potentially legal behavior.

If states do not wish to harmonize, they may instead choose to limit their interactions to avoid divergence on the ground. Again, for those activities where allied support is relatively unimportant, decreased reliance may be relatively costless. Limiting interactions allows each side to maintain its preferred IHL approach—as is often done with national caveats during multilateral military operations. But, without full cooperation from allied states, U.S. military objectives can become more expensive and more difficult to attain. For instance, if allied states stop gathering and sharing intelligence used for targeted killings, the United States will either need to find alternative sources with no guarantee of comparable quality information or engage in less targeted killings.

In this next section, I turn to the role foreign legal claims may play in mediating IHL divergence with regard to drone strikes. While foreign and domestic legal bodies may be reluctant to directly constrain the executive branch’s options, I suggest that legal claims can disrupt secrecy by uncovering, generating, and publicizing information about the role of allied states and their corporations in targeted killings. Even if neither claim causes the United States to harmonize or the allied states to cut ties, reducing secrecy allows for greater political accountability.

27. Wexler, supra note 11, at 583–86.
29. Wexler, supra note 11, at 586–89.
III. Reprieve v. British Telecommunications plc

This Part explores Reprieve’s complaints against British Telecom to identify the OECD guidelines’ role in encouraging transparency and accountability of allied states and corporations. I begin with a brief factual background and a summary of the complaints and their disposition. I then explain how the complaint identifies potential IHL divergence by forwarding Reprieve’s vision of the relevant IHL that governs U.K. activity in the context of drone strikes during the War on Terror. Most importantly, this Part then details how the legal complaints uncovered, generated, and disseminated factual information about British Telecom and U.K. participation in drone strikes. This information may raise political costs by establishing that the British government is actively engaging in information sharing and allows corporations to facilitate information transmission that requires legal justification. I note that these costs may not cause the British government or companies to end their participation in drone strikes, but it may allow for greater accountability and foster greater clarity.

A. Complaints and Disposition

As noted above, the United States rarely goes it alone in the War on Terror; allied countries and companies play a vital role in supporting targeted killings practices. Reprieve identified and challenged two aspects of this support. First, Reprieve alleged that the company British Telecom fulfilled a contract with the United States to facilitate the transmission of sensitive information regarding drone strikes between military bases abroad.\(^{31}\) Second, it alleged that at the behest of the British government, British Telecom surveilled the British population to gather information then shared with the United States for drone strikes.\(^{32}\)

In July 2013, Reprieve filed a complaint against British Telecom alleging that its contract violated the OECD Guidelines for Multina-

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32. Id. (“Facilitating the blanket surveillance of telecommunications by the Government Communications Headquarters (GCHQ), the National Security Agency (NSA), and other intelligence agencies. This mass data collection has been openly acknowledged as a key part of drone targeting.”).
tional Enterprises. In particular, Reprieve alleged that British Telecom’s equipment was likely to support the United States’ targeted killings program and that British Telecom failed to conduct human rights due diligence with regard to this usage. It requested that the U.K. National Contact Point (U.K. NCP) investigate this claim. In August 2014, Reprieve submitted another complaint renewing its allegations that British Telecom’s cables supported U.S. drone strikes in Yemen and Somalia, as well as alleging that British Telecom facilitated U.K. telecommunication surveillance used for drone strikes. The cable complaints concluded with a call for British Telecom to either end or amend the contract to preclude information transmission supporting drone strikes in “any . . . territory where there [was] no declared armed conflict.” The surveillance complaints asked British Telecom to end its surveillance cooperation with the U.S. National Security Agency (NSA) and Government Communications Headquarters (GCHQ) or “at least explain the extent of its complicity with GCHQ and the NSA.”

33. First Reprieve Complaint, supra note 8. The nonbinding guidelines instruct companies in OECD countries to: (1) respect the human rights of those affected by their activities including the activities of their clients; (2) engage in a risk assessment prior to entering a contract to predict potential human rights violations; and (3) address human rights impacts should they occur by their own direct actions or by those of their clients. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 19–20 (2011), http://www.oecd.org/daf/inv/mne/48004323.pdf.

34. First Reprieve Complaint, supra note 8, at 1. “Reprieve submits that BT Group plc (BT) has breached the OECD Guidelines by: (i) [C]ontracting with the US government’s Defense Information Systems Agency (DISA) to supply a fibre-optic communications cable that connects RAF Croughton to Camp Lemonnier.” Id. This is likely to be used in support of U.S. unmanned aerial vehicles (UAVs) or drones operated by the United States Air Force and CIA as part of its “‘targeted killing’ programme.” Id. Reprieve submits that BT should “[p]rovide Reprieve with clear evidence documenting . . . the human rights due diligence carried out prior to entering into the Contract, as required by OECD Guidelines.” Id. at 13–14.


36. First Reprieve Complaint, supra note 8, at 1–2.


38. Second Reprieve Complaint, supra note 31, at 13; First Reprieve Complaint, supra note 8, at 14.

To understand these allegations better, I offer a brief factual background of the claims. First, how might British Telecom fit into the U.S. drone strike infrastructure? Over the course of the War on Terror, the United States military created the Defense Information Systems Network (DISN), which serves as the “global fibre-optic backbone of US intelligence and military operations.” In addition to other tasks, the United States uses this network to transmit sensitive information needed to carry out drone strikes. As part of the DISN, the United States contracted with British Telecom to link three military bases: Royal Air Force (RAF) Croughton in the United Kingdom, Camp Lemonnier in Djibouti, and the U.S. Navy Command Center in Capodichino, Italy. Each base is believed to serve an important function in drone-based targeted killings. British Telecom’s cables allow sensitive CIA and top-secret intelligence, including the type used for targeted killings, to safely flow between the three locations. Reprieve’s complaints attempted to connect the dots, suggesting that the British Telecom cables were in fact used to convey information used for drone strikes and asked the U.K. NCP to investigate further.

Second, how might British Telecom and the British GCHQ provide information for U.S. drone strikes? Reprieve’s surveillance claim

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45. British Telecom’s contract guarantees the protection of data moving through the circuit via devices capable of encoding top secret data. *Garside, supra note 42.*

46. GCHQ is like a civilian National Security Agency.
is that British Telecom “installs wiretaps on the United Kingdom’s telecommunication cables and operates compromised optical fibre networks to enable the mass surveillance of global internet and phone traffic.”

In particular, Reprieve relied on press reports to allege that British Telecom works “with the GCHQ to tap overseas communication cables and also to give the agency access to its customers’ private communications without their knowledge or consent.” It also relied on popular press accounts to suggest the GCHQ shares this information with the NSA, who in turn uses this information for targeted killings.

The U.K. NCP declined to pursue any of the allegations. In October 2013, the U.K. NCP rejected Reprieve’s first complaint. In May 2014, the U.K. Treasury Solicitor’s Department denied Reprieve’s request for judicial review indicating that Reprieve must pursue action through U.K. NCP procedures. Then, in January 2015, the U.K. NCP rejected Reprieve’s second cable complaint, concluding that it would neither ask British Telecom to respond to inquiries about its contract nor investigate whether its communications line was used in drone strikes. Furthermore, the U.K. NCP noted that because drone strikes had not been outlawed, British Telecom need not answer for them. It dismissed an extensive investigation and instead concluded that no evidence showed the cable was either necessary or designed specifically for drone operations. Reprieve then called for

47. First Reprieve Complaint, supra note 8, at 1.
52. U.K. NCP SERVICES PROVIDED TO U.S. DEFENCE AGENCY, supra note 51; Ballard, supra note 51.
53. Ballard, supra note 51.
judicial review of the U.K. NCP's decision not to investigate the complaint.54

The U.K. NCP also rejected Reprieve's surveillance complaint because it found insufficient evidence to move forward with an investigation. Because the public sources linking the GCHQ to U.S. intelligence services relied on unauthorized disclosures of internal documents regarding intelligence agencies, the U.K. NCP lamented that these sources could not be made available to the parties in the complaint and thus could not be relied on. Therefore, the U.K. NCP did not believe that the articles substantiated the company's link to the complaint.55

B. A Divergent Legal Position

The Reprieve complaints offer a legal vision that varies significantly from the U.S. legal defense of drone strikes. Reprieve suggests that Yemen and Somalia are not part of an armed conflict, and thus, targeted killings can only be legally carried out under human rights law.56 It identified numerous potential human rights violations, including: (1) the right to be free from torture; (2) the right to be free from arbitrary or unlawful interference with privacy; (3) the right to family and home; (4) the right of peaceful assembly and association; and (5) the right to education.57 In the alternative, Reprieve argues that if IHL governs, the United States is not correctly applying targeting and proportionality principles.58 It also contended that the United States is engaged in signature strikes that misclassify all military-aged males as combatants or militants.59 The complaints identified specific individuals whose rights may have been violated.60


56. See generally Third Reprieve Complaint, supra note 39; Second Reprieve Complaint, supra note 31; First Reprieve Complaint, supra note 8.

57. Second Reprieve Complaint, supra note 31, at 10–11; First Reprieve Complaint, supra note 8, at 11.

58. First Reprieve Complaint, supra note 8, at 9.

59. Id. at 3.

60. Third Reprieve Complaint, supra note 39, at 5–6.
In forwarding this legal position, Reprieve joins a robust debate over the U.S. approach to IHL in the War on Terror. Admittedly, Reprieve’s legal position is neither particularly well-crafted nor well-supported. Unlike the briefs in *al-Aulaqi v. Obama*,61 which presented a sophisticated analysis of the relevant law, the legal position set forward in the OECD complaints is relatively cursory and underdeveloped. The legal analysis underpinning its legal conclusions is sparse at best. What makes it a potentially qualitative addition to the existing commentary is the use of a state complaint system to directly ask a government actor (the U.K. NCP) to resolve the United Kingdom’s answer to these questions. The U.K. NCP must respond; the state cannot simply ignore a complaint as it might ignore other sources making the same legal argument.

**C. Transparency**

I suggest that transparency is the most important function served by the Reprieve complaints. This transparency might relate to facts on the ground or to the legal view of IHL. I offer three different mechanisms by which these complaints might illuminate these issues. First, the U.K. NCP may order information from allied states and corporations or it may itself offer an IHL interpretation that provides some insight into the state’s position. Second, states and corporations may voluntarily respond to the complaint by offering information to the public. Third, and most importantly, the existence of the complaint itself can uncover, generate, and disseminate information by the complainant or third parties.

1. **Ordered or Offered by the Complaint Body**

Repace hoped to use the OECD process to obtain information from both British Telecom and the U.K. NCP. If the U.K. NCP finds a complaint to “merit further consideration[,]”62 the accused party is then expected to produce relevant information in cooperation with the proceedings.63 The U.K. NCP can also issue a final pronouncement about the specific allegations.64 Reprieve sought both—it wanted the U.K. NCP to investigate British Telecom’s behavior and to

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64. *OECD Guidelines for Multinational Enterprises*, *supra* note 33, at 73.
force it to come forward with evidence about its practices. It also wanted the U.K. NCP to agree with its vision of IHL, therefore demonstrating an existing divergence between the British view of the law and the behaviors of British Telecom and the state. The U.K. NCP declined to do either.

Even so, the complaint body highlighted a lacuna in IHL policy. The U.K. NCP noted the absence of an official British view of the law, which rendered it impossible to pursue an investigation. The U.K. NCP observed that it received no “definitive statement of an international authority on the international law position of the drone operations in the complaint” nor “any statement of U.K. government policy on the issue.” The second claim also forced the U.K. NCP to acknowledge several facts on the ground that the state had not previously admitted. For instance, the U.K. NCP concluded after the second cables complaint that “BT’s connection probably formed part of a global US military network capable of running drone operations” and that “the US had conducted drone strikes from the Djibouti base.”

2. Voluntary by Allied Government or Company

Parties to the complaint may also choose to voluntarily provide information about facts on the ground or their view of IHL. While British Telecom has hardly been forthcoming, it did publicly respond to Reprieve’s complaint. When news of the possible connection first appeared, British Telecom declined to “comment on rumour or speculation.” After the U.K. NCP denied the first claim, however, British Telecom told reporters that “BT can categorically state that the communications system mentioned in Reprieve’s complaint is a general purpose fiber-optic system. It has not been specifically designed or adapted by British Telecom for military purposes. British Telecom has no knowledge of the reported US drone strikes and has no involvement . . . . ” While this is hardly the divulgence of records and due diligence that Reprieve sought in its complaint, it forced BT to take a

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65. Third Reprieve Complaint, supra note 39, at 9; Second Reprieve Complaint, supra note 31, at 13–14; First Reprieve Complaint, supra note 8, at 2, 14.
66. Third Reprieve Complaint, supra note 39, at 9; Second Reprieve Complaint, supra note 31, at 13–14; First Reprieve Complaint, supra note 8, at 2, 14.
68. Ballard, supra note 51.
69. British Telecom first responded to Reprieve’s initial inquiry by noting that it “does not disclose contractual matters such as those you have requested.” Cox, supra note 43.
70. Id.
71. Cox, supra note 1.
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public stance, which, as I explain below, can facilitate accountability by providing a statement of fact that can be challenged and disproved.

3. Uncovered, Generated, and Disseminated by Complainant and Third Parties

With Reprieve, the most significant transparency function is the uncovering, generating, and disseminating of information by the complainant and third parties. Prior to the first claim, few, if any, members of the public or British legislature knew of the potential connection between British Telecom and U.S. drone strikes.72 While the complaint has not garnered the same coverage as high-profile litigation, major U.K. news outlets, such as the Guardian and the Independent, have covered Reprieve’s claim against British Telecom.73

In addition, the filing of a legal complaint reduced political coverage for British Telecom and the United Kingdom through “distributed analytic voluntarism.”74 In other words, Reprieve was able, albeit unintentionally, to leverage its complaint to convince others to establish the facts on the ground for free. Reprieve lacked the resources and expertise to perform a deep dive into the publicly available government documents, and instead, relied on mass media for its allegations regarding facts on the ground. But, in filing the complaint, Reprieve spurred an independent third party to volunteer his time and expertise to further develop the factual allegations. A Computer Weekly analyst, Mark Ballard, utilized a sophisticated open-source indexing system and the Recoll search tool to independently75 review thousands of pages of publicly available documents.76 After doing so, Ballard pub-

72. Both Lexis and Google searches reveal that the journalism referring to British Telecom’s role in U.S. drone strikes consistently refer to Reprieve’s complaint and were written after the filing of the first complaint.


74. Thanks to Nathan Miller for suggesting this term.

75. He has stated that his investigation “was conducted entirely independently of Reprieve. It found documents in the public domain, none of which were provided by or sourced from the legal charity.” Mark Ballard, BT Asks Department of Business, Innovation and Skills to Reject Links to US Drone Strikes, COMPUTERWEEKLY.COM (Nov. 20, 2014, 10:15 AM), http://www.computerweekly.com/news/2240235035/BT-asks-UK-authorities-to-reject-appeal-over-links-to-controversial-US-drone-strikes.

lished numerous articles explaining the role of British Telecom in building the DISN, which drones use “to disseminate mission data and for long-range command and control” and serves as “the basis of intelligence sharing between US military and intelligence agencies and US allies.” While Reprieve’s complaint requested the U.K. NCP to investigate and establish the relationship between British Telecom and drone strikes, Ballard provided a compelling second best option concluding that “there’s absolutely no doubt whatsoever that this [British Telecom contract] is part of the Defense Information Systems Network (DISN).” . . . ‘Drones use DISN to disseminate mission data and for long-range command and control.’ Ballard then went on to further document the United Kingdom’s larger role in drone strikes by identifying and discussing documents detailing the United Kingdom’s creation of software to share intelligence used to cooperatively geolocate drone targets.

IV. Conclusion: Toward Accountability

Foreign complaints are a small piece of the transparency ecology in which drone strikes operate. While the United States, its allies, and corporations may prefer to act in secrecy, foreign complaints are one way to unearth details of their relationships, and in so doing, allow other actors to demand accountability for their behavior. For complaints such as Reprieve, states may still choose how to respond in regard to facts on the ground and the doctrine that guides their behavior, but the political costs have changed.

77. Ballard, supra note 41.

78. Cox, supra note 1 (quoting Mark Ballard).


80. E.g., Dutta, supra note 73 (noting that political costs can also affect the corporations as multiple major financial services reexamined their relationship with British Telecom in the wake of the drone allegations).