



House of Commons
Defence Committee

**UK Armed Forces
Personnel and the
Legal Framework for
Future Operations:
Government Response
to the Committee's
Twelfth Report of
Session 2013–14**

**Third Special Report of Session
2014–15**

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The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

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The current staff of the Committee are James Rhys (Clerk), Karen Jackson (Audit Adviser), Eleanor Scarnell (Committee Specialist), Ian Thomson (Committee Specialist), Christine Randall (Senior Committee Assistant), and Rowena Macdonald and Carolyn Bowes (Committee Assistants).

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Third Special Report

The Defence Committee published its Twelfth Report of Session 2013–14 on UK Armed Forces Personnel and the Legal Framework for Future Operations on 2 April 2014. The Government's response to this Report was received on 25 June 2014. This is appended.

Annex: Government response

The Government welcomes the Defence Committee's report and is grateful for its careful analysis of the implications for the Armed Forces of a wide range of legal developments. It shares the Committee's view that some of these developments potentially pose challenges to the ability of the armed forces to carry out their tasks effectively on behalf of the nation, and that it must be ready to take effective action to mitigate risks as they materialise. It hopes to demonstrate in this response that the necessary work is well under way.

The Committee sets out its high-level conclusions at the end of its Report (paragraphs 127 to 133). It notes the unprecedented number of legal cases brought against the Ministry of Defence in recent years; argues that International Humanitarian Law is the appropriate body of law for the regulation of armed conflict, and that the extension of the jurisprudence based on the operation of the European Convention on Human Rights into this sphere is creating a significant, and by implication disproportionate, burden on the armed forces; and expresses concern at the possibility of the erosion of the principle of combat immunity. The Committee goes on to call for a strategic plan to address these issues, to emphasise the importance of proper training and support for members of the armed forces who may be faced with the challenges of litigation, and to stress the importance of opportunity presented by the next Strategic Defence and Security Review to clarify the military doctrine and legal framework for defence operations in the future.

The Government fully agrees with this analysis, which is consonant with the written evidence which it provided to the Committee in the course of its enquiry. As to the matter of combat immunity, it would draw attention to paragraph 26 of that evidence in which it indicated that it was considering the possibility of legislation to give a statutory basis to the doctrine of combat immunity if current litigation results in a significant reduction of its scope. The relevant cases are likely to be considered by the High Court in the course of 2015.

The other matters covered in the Committee's conclusions form the subject of specific recommendations. Recommendations are not numbered individually in the report: for ease of reference they have been numbered here. Recommendations 4, 5, 6, 8, 11 and 17 and the Government's responses to them as set out below are particularly relevant.

1. We recognise that the UK Government has had a long and honourable involvement in the establishment and continued application of International Humanitarian Law and human rights law. The Government should continue to participate actively in the

development of such law to protect civilians and to regulate the conduct of Armed Conflict. (Paragraph 13)

The Government remains committed to promoting respect for and compliance with international humanitarian law by all participants in armed conflicts: it believes this is the best way to achieve the goal of protecting non-combatants caught up in conflicts. It also believes that international humanitarian law provides a coherent and comprehensive legal regime for regulating armed conflicts. The Government is fully aware of the developing interface between international humanitarian law and international human rights law and has articulated its view of how the regimes apply in armed conflicts in its submissions in the domestic case of *Serdar Mohammed v Ministry of Defence (2014) EWHC 1369 (QB)* and in its observations in the European Court of Human Rights case of *Hassan v the United Kingdom*. The Government was disappointed with the finding in the *Serdar Mohammed* case that the ECHR applies to detention operations in Afghanistan and is seeking leave to appeal; judgment in the *Hassan* case is expected later this year. Government lawyers and other officials from the Ministry of Defence and the Foreign and Commonwealth Office routinely and actively engage with the International Committee of the Red Cross (ICRC), other international bodies and other governments, and the academic community to share ideas and to influence thinking on the development of international humanitarian law. The UK Manual on the Law of Armed Conflict is one of the most highly regarded and widely quoted manuals in this field.

2. We have found no evidence that adversaries of the UK are deliberately misusing UK and international law by bringing cases under human rights law to undermine military operations. However, we are concerned about the forced use of civilians as shields by insurgents strategically exploiting the restraint shown by UK and other Forces mindful of the need for humanitarian respect for civilians and of their legal obligations. (Paragraph 17)

It is unfortunately true that our adversaries too often show little or no respect for the lives even of their own compatriots. British forces will continue to seek effective ways of meeting their objectives without compromising on their humanitarian obligations.

Growing legal challenges-the problem

3. The increasing number of legal actions being brought against the MoD about the conduct of military operations by the Armed Forces raises a range of questions about the legal context of operations. The UK Government needs to take account of the tension between International Humanitarian Law and human rights law with reference to the nature of conflicts. The Government also needs to consider the implications of what is expected to be the continuing practice of conducting operations in coalition with international partners when determining the legal framework of operations. (Paragraph 29)

The MOD recognises that UK Armed Forces will continue to work in coalition with international partners. Whether the Armed Forces operate independently or as part of a coalition, the requirement to comply with UK law and defence policy and the values and standards of the Armed Forces remains the same. Up-to-date education and training will

ensure that the Armed Forces are aware of and apply the UK Government's interpretation of international law when acting in a coalition.

4. There is a concern amongst Armed Forces personnel that they and their legitimate actions are frequently exposed to extensive legal scrutiny in coroners' courts, public inquiries and cases brought under human rights law. The MoD should identify the extent of and concern about legal developments amongst Armed Forces personnel at all levels to identify the impact on their operational effectiveness and, in particular, the willingness of personnel to accept responsibility and take necessary risks. We recommend that, in order to identify the extent of the concern, the MoD ask for the Army Personnel Research Establishment to include a section on the subject in its next survey. When the MoD has identified the concerns, it should take steps to provide Armed Forces personnel with appropriate assurances and adequate training to illustrate where personnel are not personally liable. It should also offer its support when Armed Forces personnel come before the courts to testify in coroners and other courts where the MoD is being challenged. The MoD should also inform Armed Forces personnel of what it is doing to tackle the difficult legal challenges it faces. (Paragraph 37)

The Ministry of Defence has carefully noted the Committee's interest in research gauging the impact of legal development on Service personnel operational effectiveness and willingness to accept responsibility and to take risks. It is currently reviewing the questions for the 2015 Armed Forces Continuous Attitudes Survey.

The values and standards of the Armed Forces, enforced where necessary through the Service Justice System, require the highest standards of conduct even in the most difficult circumstances. All Armed Forces personnel receive comprehensive training on operational law and have access to appropriate legal advice. This training is regularly reviewed to ensure it is current and the advice available includes guidance on the circumstances when they might be personally liable for their actions. One of the aims behind the training is to reassure, as well as educate, so that Armed Forces personnel feel confident to make necessary and often difficult decisions when required. Rules of Engagement and other operational guidance are drafted to ensure that all relevant legal considerations, not just international humanitarian law, and including human rights obligations, are taken fully into account when planning and executing operations. Members of the Armed Forces who comply with this guidance and who take difficult operational decisions in the course of combat operations, which require a number of competing interests to be balanced, can have a high degree of confidence that they will not incur personal liability. They will also not be at risk of personal liability for actions committed in the course of their duty in civil cases, including human rights claims. It is however right that in those - very rare - instances where personnel blatantly disregard the law and undermine the mission they should be dealt with through disciplinary or other appropriate measures.

MOD recognises a duty of care to current and former staff, military and civilian, who may act as witnesses to legal proceedings or face legal proceedings (or the possibility of them) as a result of actions taken in the course of their duties. This extends to providing independent legal advice if appropriate. Departmental policies, published by the Directorate of Judicial Engagement Policy (DJEP), on the support available are published in extant Defence Instructions and Notices. DJEP also takes the lead in contacting those

who may be affected by proceedings in order to keep them abreast of developments and the support available, while the Defence Inquests Unit, a part of DJEP, provides support both for families and comrades in inquests on members of the Armed Forces.

Support for those acting as witnesses includes providing familiarisation with the requirements of the relevant proceedings and the arrangement and funding of transport and accommodation in order to attend hearings. Where appropriate, MOD will also make or facilitate claims for appropriate adjustments (e.g. anonymity or screening) to protect witnesses' identities.

Where current or former staff require help in accessing documents in order to provide investigators with an informed account of events MOD will provide assistance.

Personal support for serving military staff who may be under stress due to demands of supporting legal proceedings is provided by the Chain of Command, drawing on service padres and other resources. For former or retired staff the main source of personal support is provided by veterans' associations and service charities. DJEP plays a role in identifying potential vulnerable witnesses as proceedings progress and referring them to appropriate support organisations.

The Ministry of Defence agrees that this task is of great importance, and it is carried out in a number of ways. A recent example is the letter sent by the Chief of the Defence Staff to the chain of command on the implications of the High Court judgment in the *Serdar Mohammed* case. Important legal developments are also briefed on the home page of the DII communications system which is used by the vast majority of service personnel and are reflected in training courses provided by the Defence Academy.

5. There are clearly a number of legal challenges facing the MoD and the Armed Forces as a result of recent legal cases and developments. Views as to the extent of these challenges differ but no one doubts that they exist. These challenges should be addressed head on and in a strategic manner rather than on a case by case basis. (Paragraph 43)

The Ministry of Defence will defend cases brought against it robustly wherever that is appropriate. It actively reviews the range of operational litigation brought against it. These reviews include the Department's external legal advisors as well as those interested internal stakeholders: in particular, DJEP (see response at paragraph 4), the Operations Directorate, and the Department's Central Legal Services work closely together to ensure that a coherent approach is adopted. Such reviews help to ensure that the links between cases are recognised and addressed and to ensure that the Department can indeed take a strategic approach in developing its responses.

6. In the light of the many recent cases challenging aspects of military operations, and as part of the lessons learned from operations in Iraq and Afghanistan, we believe that the time is right for the Government to reassess the current legal framework for military operations and to develop its response to the many legal challenges in a more strategic way. Recognising the changing nature of conflicts, legality, ethics and the importance of the media, the resulting questions should be considered as part of the next Strategic Defence and Security Review. (Paragraph 46)

As stated in its response at paragraph 1, the Government remains of the view that international humanitarian law provides a coherent and comprehensive legal regime for regulating armed conflicts. Nonetheless the Government has not ruled out legislating in the future to provide further clarity for members of the Armed Forces should it consider it necessary to do so.

The next Strategic Defence and Security Review (SDSR) will consider the societal trends that impact upon the effectiveness of our armed forces out to 2035. Over the past 25 years, the legal, political and cultural changes in society have impacted on the Armed Forces and Defence in general evidenced by a curtailment in the Royal Prerogative powers relating to defence, the reduction in the number of exemptions for the Armed Forces in legislation and particular the repeal of Section 10 of the Crown Proceedings Act. This has all happened in a period which has seen the transition from a standing force configured to fight a war of national survival to one heavily involved in counter-insurgency operations. Some of the legal changes including the ratification of certain Weapons Treaties have had some effect on military operations, although there is as yet no consensus on the extent of those effects in the long term. Understanding from a strategic perspective how such trends will further manifest themselves is crucial to maintaining the effectiveness of our Armed Forces and ultimately our national security. The MOD's Development, Concepts and Doctrine Centre (DCDC) considers these types of societal trends out to 2045 in its '*Global Strategic Trends*' publication and this will form part of the evidence base for the SDSR. Learning the lessons from the long engagements in Iraq and Afghanistan is of course equally important. With a continued high level of uncertainty in the future strategic context, the forthcoming SDSR allows an opportunity to take stock of the constraints and opportunities associated with the evolving legal framework.

Human Rights Law and International Humanitarian Law

7. The number of legal challenges facing the MoD in respect of human rights law is large, uncertain and growing. We recognise that there is nothing the MoD can do to prevent these existing cases but we recommend it should fight each of them vigorously. We will cover possible future arrangements including legislation and procedural changes later in this Report. The MoD should inform us of the size and costs of the legal challenges it is facing in regard to the challenges from people in Iraq and Afghanistan on human rights grounds. It should also set out the arrangements it has introduced for carrying out the required inquiries akin to Coroners' inquests on those people who died in Iraq as a result of the actions of the UK Armed Forces. (Paragraph 65)

The Ministry of Defence defends cases brought against it, including human rights challenges, robustly wherever it considers them ill-founded. For example the Government has strongly argued that the European Convention on Human Rights has no application to operations in Afghanistan, and intends to appeal against the recent judgment of the High Court in the case of *Serdar Mohammed* which indicates otherwise. It has also sought to limit the application of the ECHR to Iraq operations: the High Court will hold preliminary issues hearings in a number of cases arising from the Iraq conflict in the autumn which are expected to rule on these issues. It is also fully committed to defending the civil cases being brought against it which it considers to infringe the principle of combat immunity, under

which damages cannot be claimed for alleged breaches of duty of care in respect of events occurring in the course of combat.

To date there have been two public inquiries, over two hundred Judicial Reviews and over a thousand damages claims made against the Department on human rights grounds as a result of operations in Iraq and Afghanistan. The cost of these legal challenges is of the order of £85 million to date. Over half of this cost relates to the two Public Inquiries, the Baha Mousa Inquiry (£24.9 million) and the Al-Sweady Inquiry (£28.4 million to date). The balance relates mainly to damages and legal costs paid, the vast majority being for Iraq cases.

It is very common for actions brought under the Human Rights Act to be linked with other types of legal action, but we have included all costs arising from such actions in this response.

The Divisional Court ordered the Secretary of State for Defence to establish inquisitorial inquiries modelled on coronial inquests in order to ascertain the circumstances that led to the deaths of a number of Iraqi citizens where the Secretary of State accepted that an obligation under Article 2 to investigate those deaths has arisen. The Court directed that such inquiries, which the MOD has termed Fatality Investigations to avoid confusion with public inquiries or inquests, should be set in hand as soon as it is clear there will be no prosecution of those alleged to have been involved in those deaths. In the cases of Nadhem Abdullah who died on 11 May 2003 and Hassan Abbad Said who died on 2 August 2003 where there was no outstanding avenue of prosecution, the Court directed that those Fatality Investigations should commence as soon as practicably possible.

To date, the cases of Mr Abdullah and Mr Said are the only two cases which will definitely be the subjects of a Fatality Investigation, but the Secretary of State currently considers that Fatality Investigations will need to be held in a further nine cases. This number will be kept under review. Fatality Investigations in the remaining cases will follow as quickly as possible once it is clear that the Service Prosecution Authority will not direct that any person be charged in connection with the death (upon receipt of the referred case by the Iraq Historic Allegations Team (IHAT) or the service police).

The Secretary of State has appointed Sir George Newman to conduct the Fatality Investigations into the deaths of Mr Abdullah and Mr Said. These have been established as non-statutory inquiries. Sir George is required to examine the actions of the British soldiers involved in order to establish the circumstances in which the deaths occurred and the accountability, if any, of the State for the actions of the soldiers. He is not concerned to determine or to consider any person's criminal or civil liability. Sir George is assisted by two barristers and has been provided with offices at Horse Guards.

Sir George has published on the internet information relating to the two Fatality Investigations that he is chairing.¹ He is currently considering approximately 10,000 documents comprising a record of previous investigations and reports in connection with the cases of Mr Abdullah and Mr Said. He has embarked upon the work of drawing up lists of witnesses and has started planning the timing, listing and arrangements for the taking of evidence from witnesses, including the witnesses from Iraq. While he intends to hear some

¹ <http://www.iraq-judicial-investigations.org/>

witnesses in public, he does not currently expect to take all witness evidence at a public hearing. The public hearings will take place at the Inner London Crown Court.

The Divisional Court held that the Chairman in these Fatality Investigations must have the ability to compel persons who might be able to provide relevant evidence and who will not attend voluntarily to give evidence. Sir George intends to use where necessary the procedure provided for under the Civil Procedure Rules.

8. The MOD should identify the lessons from the legal issues arising in Iraq and Afghanistan and ensure that in all future operational deployments, the Armed Forces are clear about the legal position of the deployment and that all measures have been taken to ensure that they will not be open to legal challenge. (paragraph 66)

Comprehensive advice on the legal arrangements applicable to any deployment is available to commanders and deployed members of the Armed Forces. The precise nature of the legal regime will depend upon a number of factors including the legal basis for the deployment. Rules of Engagement and other operational orders are drafted to reflect the legal regime applicable. Suitably trained and experienced legal advisors deploy with commanders and their staffs and if necessary they have access to further legal advice through Joint Forces Command, the Ministry of Defence and across Whitehall.

9. Baha Mousa's treatment and subsequent death in detention was an horrific example of a few Armed Forces personnel behaving inhumanely and illegally. It is obviously right in such cases that individuals and the Armed Forces should feel the weight of the law. In its response, the MoD should detail how it is addressing the recommendations from the Baha Mousa Inquiry and the progress made to date in the implementation of these recommendations. (Paragraph 67)

The Minister for the Armed Forces reported the progress made by the MOD in implementing the recommendations of the Baha Mousa Report in a Written Ministerial Statement on 27 March 2014. Of the 73 recommendations, 72 were accepted, including one which invited the MOD to consider changes to the arrangements for inspecting Afghan detention facilities. The 27 March Statement announced the decision, after careful consideration, not to make the changes in question, and confirmed that all the other 71 recommendations had now been implemented.

10. We await with interest the results of the Government's work on the reform of legal aid. The MoD should inform us how any such reform will impact on the legal challenges it faces. The Government should also tell us of its intentions to limit the use of judicial review in respect of military operations. (Paragraph 70)

The Government believes that individuals should in principle have a strong connection to the UK in order to benefit from the civil legal aid scheme. Having consulted on these proposals, the Government has decided to introduce a residence test that will require individuals to be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time of applying for civil legal aid and to have been lawfully resident for a continuous period of 12 months in the past. The Government believes that this is a fair and appropriate way to demonstrate such a strong connection. In certain circumstances, however, the Government recognises that it would be appropriate to provide for specific exceptions to the residence test - such as for asylum seekers and members of the Armed

Forces, as well as for certain cases under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which broadly relate to an individual's liberty, where the individual is particularly vulnerable or where the case relates to the protection of children. Anyone excluded by the residence test would be entitled to apply for exceptional funding which enables funding to be granted where the statutory tests set out in section 10 to LASPO are met. The scheme ensures the protection of an individual's rights to legal aid under the European Convention on Human Rights or EU law.

The Government also considers that limited legal aid resources should be properly targeted at those judicial review cases where they are needed most if the legal aid system is to command public confidence and credibility. The Government has therefore amended the Civil Legal Aid (Remuneration) Regulations 2013, to implement the proposal that legal aid providers should only be paid for work carried out on an application for permission if permission is granted by the court, subject to a discretion to pay providers for work carried out on an application for permission in cases that conclude prior to a decision on permission.

The Ministry of Defence did, in its written evidence to the Committee, express concern that cases which might more appropriately have been dealt with as personal injury claims had been proceeded with by way of judicial review. It is however a matter for the court to determine whether a claim for judicial review should or should not be granted. The Ministry of Justice's reforms to the legal aid system will however be likely to have an effect in reducing public funding in less meritorious cases.

11. The UK Government should participate in appropriate international work to strengthen International Humanitarian Law and in particular should be more actively involved in the ICRC consultations on detention in non-international armed conflict and on strengthening compliance with IHL (paragraph 74)

The Government has been actively involved in a range of initiatives aimed at strengthening international humanitarian law. Representatives of the Ministry of Defence and Foreign and Commonwealth Office have been heavily engaged in working with the ICRC and other states, both privately and in the working groups held in Montreux in December 2012 and Geneva in January 2014, on the current process to strengthen the law relating to detention in non-international armed conflicts. This work builds on the Copenhagen Process in which the United Kingdom was also actively involved. The United Kingdom's Joint Doctrine Publication 1-10, Captured Persons, is widely regarded as a leading text in this area to which other states have regard. The International Institute of Humanitarian Law at Sanremo, Italy, is a world-renowned centre for the instruction of military and civilian officials in International Humanitarian Law. The Director of the Military Department is a Colonel in the Army Legal Services and military and civilian lawyers regularly attend its courses as both lecturers and students.

Representatives of the Ministry of Defence and Foreign and Commonwealth Office have also been engaged in working with the Swiss government, the ICRC, and other states, both privately and in the working groups held in Geneva since 2012, on the current process to strengthen international humanitarian law. The Government sees merit in developing a forum for states to discuss topical matters of international humanitarian law and believes that the proposal for states to report on their own implementation of such law will lead to

better understanding of and respect for the law. The Government is committed to working for a constructive outcome to this process and will be attending the meeting of states in Geneva on 30 June and 1 July 2014.

12. We are concerned about the implications of the Supreme Court judgment in June 2013 in the Smith case for the principle of combat immunity. We recognise that the judgment appeared to limit the scope of the cases to the ‘middle ground’ between the policy and the conduct of the armed conflicts. However, we believe that this may still open up decisions, taken in situations of intense armed conflict where commanders are forced to make the best judgments they can, to examination by the Courts. (Paragraph 86)

The full implications of the Supreme Court decision not to strike out the claims in *Smith & Others v Ministry of Defence* will need to be tested as that case and others which involve the doctrine of combat immunity proceed to trial. The MOD shares the Committee's view on the importance of the principles involved and despite its sympathy with the claimants in the losses of their loved ones it must continue to contest these cases vigorously.

Possible ways forward

13. We are not in a position to determine which of these solutions, if any, would help the Government resolve the sense that the law is adversely impacting on operational effectiveness. However, we are strongly of the opinion that the Government should think of these issues strategically and start to determine long-term solutions now to enable the Armed Forces to conduct armed conflict certain in the knowledge of which laws apply and how their military judgments are likely to be challenged in the future. We are also aware that some of the areas to be pursued may have reputational risks for the UK, but that this should not allow the Government to duck the difficult issues. (Paragraph 96)

The Government would refer the Committee to its response at paragraph 6.

14. The Government should bear in mind that whichever solutions it adopts for the Armed Forces and military operations, there are likely to be implications for FCO, DFID, Stabilisation Unit and Home Office activities in post-conflict stabilisation and peacekeeping operations. The approach taken by the Government and the MoD must be appropriate and applicable to them where relevant. (Paragraph 97)

Again, the government would refer the committee to its response at paragraph 6. Consideration of these questions in the Strategic Defence and Security Review will ensure that the perspectives and needs of all relevant Departments will be fully taken into account.

New developments

15. Given the MoD's stated intention to develop a cyber warfare capability, we are pleased to note that the UK Government is talking with ICRC on the legal and humanitarian implications of cyber warfare. We noted in our recent Report on deterrence that difficulty in identifying the perpetrator of a cyber attack brought into question the legality of a response to such an attack. The MoD should inform us of its work in determining the legal framework of possible cyber operations and its plans to

incorporate such work into training of personnel and the preparation of appropriate manuals. (Paragraph 101)

The Government believes that the use of cyber activities in armed conflict is appropriately regulated by international humanitarian law. Difficult issues will arise when considering whether cyber attacks can be attributed to any particular party and when assessing the collateral effect of any actions: these however remain fundamentally questions of fact and do not reflect any inadequacy in the applicable legal regime. The Government continues to discuss cyber operations with other states in order to develop a coherent approach to this activity. UK Lawyers were actively engaged in drafting the Tallinn Manual on the International Law Applicable to Cyber Warfare.

16. The MoD should prepare the legal framework for new forms of weapons or conflict at the start of their development. We welcome the MoD's assurance that no planned weapons system will be able to attack a target without the involvement of a human being. The MoD should think through the legal and moral consequences of new forms of conflict and developments in new weapons systems. This work should start immediately in parallel with work in progress to develop new capabilities in particular in the cyber field and in autonomous weapons. We seek assurance from the MoD that such consideration has already begun in respect of autonomous weapons and indeed for highly evolved automated weapons. (Paragraph 108)

The Ministry of Defence conducts legal reviews of all new weapons and methods of warfare before they are brought into service in accordance with its obligations under Article 36 of the First Additional Protocol to the Geneva Conventions. Where appropriate, these reviews can be and are carried out at the early stages of development, including the conceptual stage, of any new weapon or method of warfare. Where necessary, reviews can be quickly undertaken in response to urgent operational requirements.

The MOD can give the Committee the assurance it seeks that consideration of the legal and moral implications of autonomous weapons and highly-automated weapons systems has been undertaken. This includes fullest participation in ongoing discussions on autonomous weapons systems under the UN Convention on Certain Conventional Weapons in Geneva. Current UK policy is that the operation of weapon systems will always be under human control and that no planned offensive systems are to have the capability to prosecute targets without human involvement. By retaining highly-trained and qualified aircrew at the heart of the decision making process, the UK ensures that the legal requirements governing the use of force during armed conflicts are observed. There are no plans to replace military pilots with fully autonomous systems.

Practical questions for the Armed Forces

17. We support the ICRC view that the UK should assist other states by providing technical advice and capacity building in International Humanitarian Law. This work should form part of the planned capacity building by the Armed Forces. The UK Government should participate in appropriate international work to strengthen International Humanitarian Law and, in particular, should continue to be actively involved in the ICRC to strengthen IHL. We also support the view that the UK should

take proactive steps to reconfirm the primacy, continued value and distinct nature of IHL. (Paragraph 112)

As noted in its response at paragraph 11, the Government is committed to participating in work to strengthen and promote international humanitarian law. Members of the Armed Forces do provide training on international humanitarian law to other nations in a range of fora, and this is regarded as an important task which contributes to strengthening the protection available to civilians caught up in conflicts.

18. The MoD and the Armed Forces should re-examine their legal training for all ranks in the Armed Forces to ensure that it is as up to date as possible and is consistent with the latest cases. It should also clarify and detail where Armed Forces personnel have personal liability and where they do not. (Paragraph 117)

This is covered in the response at paragraph 4.

19. An understanding of the underpinning doctrine of the Law of Armed Conflict is crucial to the Armed Forces. The consequent manuals are important tools in ensuring that the Armed Forces act within the law. They provide clarity and a measure of certainty. The MoD should update the UK Manual on the Law of Armed Conflict and ensure that it is fully maintained in future. (Paragraph 120)

The Manual on the Law of Armed Conflict has been reviewed and amended since its production; the MOD is actively considering whether there is a need for a new edition and has carefully noted the Committee's interest.

20. The MoD should review its arrangements for providing legal advice and guidance to the Armed Forces to ensure it has the best available knowledge, expertise and experience—both legal and military. It should ensure that the civilian and military lawyers work together to best effect; if necessary, it should change the arrangements and structures for the provision of legal advice to the individual Services and to the MoD to ensure this happens. (Paragraph 124)

Military and civilian lawyers from a range of Government departments already work closely together to ensure that legal advice, particularly on operational matters, is accurate, pragmatic and consistent. The operational and international humanitarian law team in the Ministry of Defence's Central Legal Services works particularly closely with the civilian and military lawyers in Permanent Joint Headquarters and deployed lawyers. As the report notes, both civilian and military lawyers bring particular expertise and the best legal advice will draw on all sources of expertise. The Head of Central Legal Services regularly meets with the Heads of the Service legal branches to discuss matters of common interest. As indicated in the response at paragraph 8, legal advisers are integrated into deployed commanders' staffs and can reach back to higher headquarters and Government. Ministry of Defence and Foreign and Commonwealth Office lawyers also work closely together on matters of common interest, involving the Law Officers as appropriate.

21. The media is an increasingly important player in armed conflicts. It can and has been exploited by the UK's adversaries and will increasingly be so in the future. The MoD should ensure that it has an effective media strategy in place to deal with

**accusations of war crimes and violations of International Humanitarian Law.
(Paragraph 126)**

The MOD's primary focus is to prevent any such incidents. But recent developments in the Al-Sweady public inquiry have demonstrated again the very real problem of false accusations, which in this case were highlighted in MOD's submissions to the Inquiry. MOD will continue to resist false accusations, whether in inquiries or in other legal proceedings such as personal injury claims. The Department will continue to seek to make clear to the media and the public both the severe view it takes of violations and its determination to protect staff against false accusations.