



Foreign &  
Commonwealth  
Office

United Kingdom Government

# **Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level**



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# Ministerial Foreword



## Foreword by Minister for International Humanitarian Law



### **Lord (Tariq) Ahmad of Wimbledon**

As the Minister responsible for International Humanitarian Law (IHL) at the Foreign and Commonwealth Office (FCO), I am delighted to introduce the United Kingdom Government's first 'Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level'.

This Government is committed to promoting and upholding the rules-based international system, and we believe that the proper implementation of, and compliance with, IHL is an important part of that system. We are proud of our strong record of IHL implementation and compliance.

The Voluntary Report aims to explain in a single document the key steps that the United Kingdom has taken at a domestic level to implement IHL. Publishing specific examples of our practice to implement IHL is intended to help to improve understanding of IHL, and encourage and inform dialogue on IHL issues both at home and abroad. We hope it will encourage other States to publish details of their activities to implement IHL at the domestic level, to better identify best practice and ultimately to improve implementation and compliance with IHL.

I am grateful to the United Kingdom National Committee on International Humanitarian Law for leading the compilation of this Voluntary Report. The British Red Cross, in its capacity as an auxiliary to the UK Government, deserve special thanks for assisting the FCO with the production of this Voluntary Report.





# Introduction



## Introduction

- 1 The 1949 Geneva Conventions form the bedrock of international humanitarian law (IHL). Every state in the world is a party to the Geneva Conventions, which means that every state is legally obliged to comply with the shared rules. However, the rules are only genuinely shared if they are properly implemented in the legal systems of the signatory states. In stark contrast to international human rights law, there are no general mandatory reporting systems on national implementation in the field of IHL. This is despite the fact that the overall success and impact of IHL as a whole depends on the effectiveness of national implementation and compliance.
- 2 The UK National Committee on International Humanitarian Law is an interdepartmental body with a mandate to, *inter alia*, consider national implementation of IHL instruments and encourage the dissemination of IHL. In accordance with its mandate, the UK National Committee on International Humanitarian Law recommended the publication of a report on the UK's implementation of international humanitarian law at the domestic level. The overall lead policy responsibility for the compilation of the report rests with the Foreign and Commonwealth Office (FCO), as chair of the UK National Committee on International Humanitarian Law, but the report was produced in consultation with, and with contributions from, all members of the Committee. The Committee is extremely grateful to the British Red Cross, in its capacity as an auxiliary to the UK Government, for assisting with the production of this report.
- 3 The report is in the form of a short questionnaire, divided into five sections: (i) general domestic implementation, (ii) dissemination and training, and access to legal advice, (iii) violations of IHL under national criminal law, (iv) protections, and (v) means and methods of warfare. The question and answer format seeks to provide a record of the UK's implementation in an accessible way to anyone with an interest in IHL matters – including the general public, non-governmental organisations, IHL practitioners, government officials, parliamentarians, academics, and journalists. It is hoped that with such voluntary reporting, HMG can encourage constructive dialogue on IHL issues both at home and on the international plane.
- 4 The UK is committed to upholding the rules-based international legal system and to maintaining its strong record of IHL implementation and compliance. Effective IHL compliance promotes an international framework with shared rules. Shared rules, in turn, encourage predictable behaviour by states, and create conditions for the rule of law, accountability and transparency. The Voluntary Report is not intended to represent an exhaustive account of domestic UK implementation.<sup>1</sup> Rather, it aims to gather in one document key aspects of the UK's implementation to help people understand what it means to give effect to IHL domestically within the context of the UK's common law system.

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<sup>1</sup> Legal references are accurate as of March 2019.





# General Domestic Implementation

**1 To which significant treaties of international humanitarian law (IHL) is the United Kingdom a party? Which domestic legislation implemented these treaties?**

See Annex A which sets out the relevant IHL treaties, when they were signed and ratified or acceded to, and the corresponding domestic implementing legislation (where such implementing legislation was required).

**2 Does a National Red Cross Society exist in the United Kingdom and what is its role?**

A National Red Cross Society does exist: it is called the British Red Cross Society. The constitutional basis of the British Red Cross Society is set out in Article 3 of the Royal Charter of 1908 (last amended in 2003), as “a voluntary aid society, auxiliary to the public authorities and particularly to the medical services of the armed forces in accordance with the Geneva Conventions”.

The British Red Cross has a responsibility and role in the promotion and implementation of international humanitarian law that gives it a special relationship with the United Kingdom’s Government. The Society’s work is unique and its roles include:

- To provide assistance to victims of armed conflicts, natural disasters and other emergencies;
- To work for the improvement of health, for the prevention of disease and the alleviation of human suffering; and
- To educate people in the field of international humanitarian law, to work with the Government to ensure respect for the law, and to protect the integrity of the red cross, red crescent and red crystal emblems.



### 3 Does a National Committee for the implementation of IHL exist and what is its role?

In October 1999, the Government established a United Kingdom National Committee on International Humanitarian Law (formally, the Interdepartmental Committee on International Humanitarian Law). This was in response to a recommendation of the Intergovernmental Group of Experts on the Protection of War Victims which was subsequently endorsed by the 26th International Conference of the Red Cross and Red Crescent in 1995. The National Committee includes representatives from the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MOD), the Department for International Development (DFID), the devolved administrations and other Government departments, as well as the British Red Cross Society, which is a full member. It meets bi-annually and is attended by both administrators and lawyers to reflect the dual policy and legal aspects of the Committee's work. The lawyers are specialists in IHL from the FCO, MOD, British Red Cross and the single Services (Royal Navy, Army and Royal Air Force).

The purpose of the National Committee is to:

- consider national implementation of IHL instruments and identify where legislation might need to be enacted or amended to ensure full implementation of IHL obligations;
- encourage the dissemination of IHL to the Armed Forces and to other segments of the population, including the police, civil servants, teachers, the judiciary, the medical profession and journalists;
- consider UK negotiation of and adherence to IHL treaties;
- consider UK participation at international conferences relating to IHL;
- monitor new developments in IHL and consider implications for the UK;
- promote consultation between the government, the British Red Cross and others from the NGO community involved in IHL;
- consider assistance to other States in meeting IHL obligations, drawing on UK expertise; and
- achieve greater domestic and international recognition for what is being done.<sup>2</sup>

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<sup>2</sup> UK National Committee on International Humanitarian Law: terms of reference, FCO, 24 July 2018.







# Dissemination, Training and Legal Advice

1

**How are the 1949 Geneva Conventions and their Additional Protocols disseminated? Which institutions are involved in IHL training? Are specific dissemination and training practices identified for specific target groups, such as the armed forces, public officials, journalists, students and the general public? Please provide examples.**

International Humanitarian Law is also known as the Law of Armed Conflict or the Laws of War. Many armed forces, including that of the UK, use the term “Law of Armed Conflict”.

The United Kingdom’s tri-Service Manual on the Law of Armed Conflict (the LOAC Manual<sup>3</sup>) acknowledges the duty to disseminate the Geneva Conventions and Additional Protocols as follows:

*“16.2.1. ...[T]he first step to enforcement of the law of armed conflict must be to ensure as wide a knowledge of its terms as possible both within the armed forces and outside...”*

*16.3. States are also required to disseminate the texts of the Geneva Conventions 1949 and the two Additional Protocols 1977 as widely as possible in peace and war so that the general population can learn about them.*

*16.3.1. The manner in which dissemination is done is left to the states themselves and may be by means of orders, courses of instructions, commentaries or manuals. There is a specific requirement to instruct medical personnel, chaplains, and those responsible for handling prisoners of war and the administration of protected persons. There is a general requirement to disseminate to the armed forces as a whole. Any military or civilian authorities with responsibility for applying the Conventions or Protocol must be fully acquainted with the text.”<sup>4</sup>*

In the United Kingdom, the texts of the Conventions are annexed to the Geneva Conventions Act 1957. The texts of Additional Protocol I and II were added by the Geneva Conventions (Amendment) Act 1995. The text of Additional Protocol III was added by the Geneva Conventions and United Nations Personnel (Protocols) Act 2009. The texts are freely available online.

Several institutions are involved in training of IHL, including the armed forces, the British Red Cross and a number of universities. Schools have a role in teaching young people about their rights including human rights and international law. There are opportunities for IHL to be covered within several areas of the school curriculum in the different countries of the UK. The National Committee on International Humanitarian Law also plays a role in IHL training.

**Armed forces:** The armed forces ensure that all Service personnel at all levels are given training in international humanitarian law and its practical relevance to military operations. Personnel in all three Services are required to undertake periodic LOAC training to agreed standards. Army Personnel are required to take the ‘Army Military Annual Training Test (MATT) 7’, which provides training and assessment in LOAC, investigations and accountability, captured persons, and the use of force.<sup>5</sup> Similar requirements are contained in the Royal Navy’s Core Maritime Skills 7 and the Royal Air Force’s Individual Reinforcement Training standards. Civil servants deploying in key roles to operational theatres and in key operational policy roles in the Ministry of Defence are also required to undertake LOAC training.

<sup>3</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004.

<sup>4</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraphs 16.2.1 to 16.3.1.

<sup>5</sup> Parliamentary Question to Secretary of State for Defence: “What training modules are provided to armed forces personnel in international humanitarian law?”, International Law: Training: Written question – 31271, 16 March 2016.

No service lawyer deploys on operations without having attended the requisite training in operational law, delivered through a combination of internal military instruction and external academic sources.<sup>6</sup>

It is the Operational Law Branch within the Army Legal Services (ALS) that is responsible for training all Army units and individuals regarding operational law (both at home and on operations abroad) prior to operational deployments and throughout their careers. The ALS Operational Law Branch provides expert advice on the practical application of international law on operations. It also reviews all material taught in both the adaptive foundation training (generic training for all personnel in the Army to prepare them for war) and on pre-deployment training. They also contribute to the Operational Law Customer Executive Board, which oversees, co-ordinates and reports on the operational law training delivered to each of the single Services and at the Defence Academy of the United Kingdom.

The Director of the Ministry of Defence's Development, Concept and Doctrine Centre is the Training Requirements Authority for the delivery of LOAC training across the Ministry of Defence, and ensures that training is managed, governed and assured in accordance with general MOD policy on the delivery of training<sup>7</sup>. Representatives from the individual Services, the Service Police, MOD Legal Advisers and other key stakeholders sit on a Customer Executive Board tasked with reviewing the relevance and delivery of the mandated training syllabus. An annual report on the delivery of LOAC training is made to the Vice Chief of the Defence Staff.

**British Red Cross:** External dissemination and training activities of the British Red Cross are directed at selected audiences, primarily based on their current or potential responsibilities for implementing international humanitarian law.

The audiences have included: parliamentarians; officials from relevant Government departments, notably the FCO, MOD, DFID, Department of Health and Home Office; Service personnel (mainly legal, medical and operational officers and chaplains); university lecturers and students (primarily in law, international relations, politics and peace studies); staff from humanitarian aid agencies and human rights organisations; trainee and practising journalists; health professionals; and the general public. The British Red Cross has also had an internal training programme to raise awareness and understanding of international humanitarian law among its own volunteers and staff for over 30 years.

The British Red Cross routinely organises a variety of dissemination and training events, including conferences, seminars, lecture series and other activities focused on international humanitarian law. For example:

- The British Red Cross runs an established biennial Summer School on international humanitarian law at Cambridge University.
- The British Red Cross routinely organises lecture series on a variety of international humanitarian law topics with other national organisations, including the British Institute of International and Comparative Law, Chatham House and the Foreign and Commonwealth Office.

<sup>6</sup> The Aitken Report: An Investigation into Cases of Deliberate Abuse and Unlawful Killing in Iraq in 2003 and 2004, British Army, 25 January 2008, paragraph 31.

<sup>7</sup> Defence direction and guidance for training and education (JSP 822), Ministry of Defence, updated 11 April 2017.

- The British Red Cross supports the International Institute of Humanitarian Law in San Remo, Italy, which organises international humanitarian law training courses for armed forces officers and civilians.
- The British Red Cross also provides a range of teaching resources on international humanitarian law, primarily for secondary school audiences. Educators are able to access these resources to support their own teaching on international humanitarian law and related subjects.

**Schools:** International humanitarian law is not a prescribed topic for schools in the UK. However, there are opportunities to include the study of IHL in the different national curricula. For example, in England, pupils should learn about international law through citizenship education, which is a compulsory part of the National Curriculum in secondary schools. IHL is also included in the GCSE Citizenship course, subject content (ages 14-16) for schools in England.<sup>8</sup> In Scotland, the topic can be covered as a context for learning in the social studies area of the curriculum where young people can learn about the concept of rights, international conflict and peaceful resolution. IHL may be covered within Personal and Social Education (PSE) in Wales or the Welsh Baccalaureate. In Northern Ireland, between ages 11-16, all pupils must study Local and Global Citizenship as part of the Learning for Life and Work area of the curriculum, and this could include IHL.

**National Committee on International Humanitarian Law:** One of the key roles of the Committee is to encourage the dissemination and training of international humanitarian law to the armed forces, police, civil servants, teachers, the judiciary, the medical profession, journalists and others as necessary. For example, the 'Practitioner Level' training modules for Foreign and Commonwealth Office policy and operational staff at the Law Faculty of the FCO's Diplomatic Academy include a module on 'The Laws of War: an introduction to international humanitarian law'. As another example, the Foreign and Commonwealth Office hosted an IHL expert-level series over 2018, which involved six lectures bringing together leading HMG practitioners and academic experts from around the world.

In addition, joint FCO and British Red Cross conferences to mark significant IHL anniversaries have been held under the auspices of the Committee. These large events have included participants from the specific target groups mentioned in the question and others, such as Parliamentarians, as relevant. As an illustration, a joint event entitled "From Suez to Syria: Modern armed conflicts and the evolution of international humanitarian law," was held in June 2017 to mark the anniversary of the first two Additional Protocols to the 1949 Geneva Conventions.

HMG also has a website entitled 'UK and International Humanitarian Law 2018', which sets out the sources of IHL, relevant treaties, basic IHL principles and a list of all the relevant institutions. The website also provides a platform to host links to important IHL related documents, such as the 'Terms of reference of the United Kingdom National Committee on International Humanitarian Law' and the 'Joint service manual of the law of armed conflict'.<sup>9</sup>

## 2 Is there a military manual on IHL for the armed forces? If so, how often is it updated?

Yes. An updated tri-Service Manual of the Law of Armed Conflict<sup>10</sup> (the LOAC Manual) was published in 2004 and is updated as required.<sup>11</sup>

<sup>8</sup> Department for Education, Citizenship studies - GCSE subject content, February 2015, p7.

<sup>9</sup> HMG website 'UK and International Humanitarian Law 2018', FCO, 24 July 2018.

<sup>10</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004.

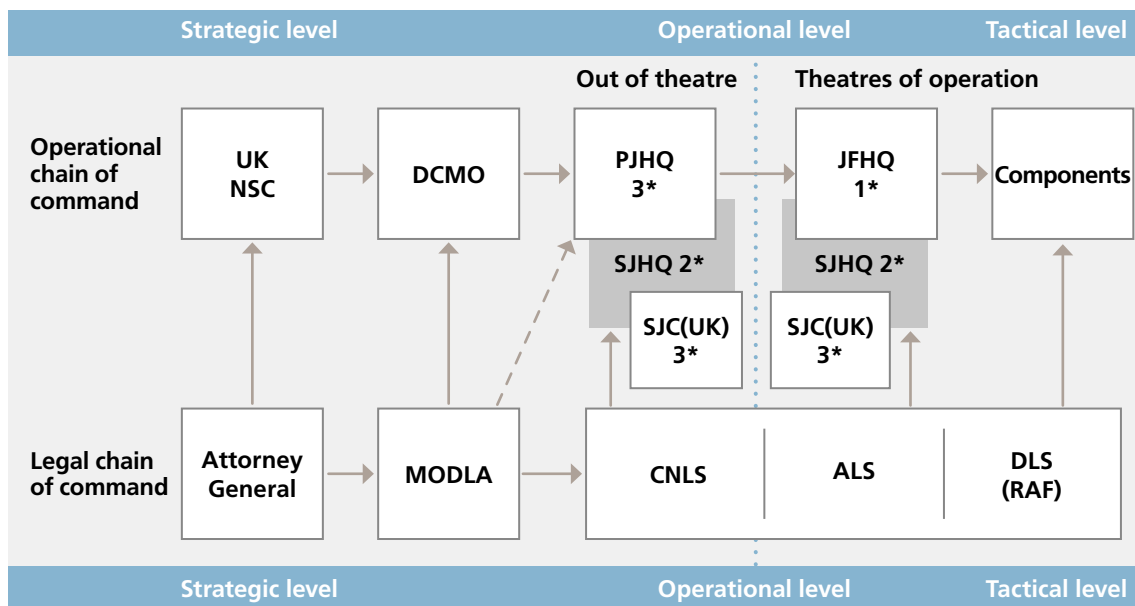
<sup>11</sup> Amendments to the LOAC Manual were made in January 2004, July 2007, September 2010, July 2011, August 2011, November 2011, May 2013, August 2013 and May 2014.

### 3 Are legal advisers available to advise on IHL within HMG?

**Armed forces:** In accordance with the obligation under Article 82 of Additional Protocol I 1977, the LOAC Manual states at paragraph 16.5 that: “Legal advisers are required to be available, when necessary, to advise military commanders at the appropriate level on the application of the law of armed conflict and also on the appropriate instruction to be given to members of the armed forces in this subject.”

All three Services accordingly employ legal advisers: the Royal Navy Legal Services, Army Legal Services and the Royal Air Force Legal Branch. The legal advisers are uniformed lawyers – qualified solicitors or barristers, or advocates in Scotland – who provide commanders and their staff with legal advice at the operational and tactical levels, including legal aspects of operations. Under Chapter 1 of the Joint Doctrine Publication 3-46, concerning Legal Support on Operations each of the three Heads of the Legal Services – the Captain (now Commodore) Navy Legal Services, the Director of Army Legal Services and the Director of Legal Services (Royal Air Force) – is responsible for the availability of appropriately trained Service lawyers to support operations.

The Legal Support to Joint Operations guide sets out, in extensive detail, the role of the legal adviser in the conduct of operations. The guidance states that the legal adviser is one of the commander’s principal staff officers and advisers, and has a pivotal role in campaign planning and execution. It also provides a diagram of legal support to the operational chain of command:



ALS	Army Legal Services	MODLA	Ministry of Defence Legal Advisers
CNLS	Captain Navy Legal Services	PJHQ	Permanent Joint Headquarters
DCMO	Defence Crisis Management Organisation	SJC (UK)	Standing Joint Command (UK)
DLS (RAF)	Directorate Legal Services (Royal Air Force)	SJFHQ	Standing Joint Force Headquarters
JFHQ	Joint Force Headquarters	UK NSC	UK National Security Council

**The Ministry of Defence:** MOD Legal Advisers are a division within the Government Legal Department and they are responsible for civilian legal support and services to MOD ministers and the department. Legal teams are based in London, Bristol, Cyprus and Germany, all of which provide legal advice across the full range of the department's activities. MOD Legal Advisers represent Defence legal interests with other government departments in Whitehall, and liaise as required with Service lawyers and the legal staff of other governments. The Operational and International Humanitarian Law team advise on: military and crisis operations (including operational legal advice to the Permanent Joint Headquarters (PJHQ) and single Services) and relationships with allies and partner organisations such as NATO. The team also provide strategic legal advice to MOD Head Office, and advise on strategic issues such as the application and development of International Human Rights Law and International Humanitarian Law.

**Foreign and Commonwealth Office:** The Foreign and Commonwealth Office Legal Directorate provides legal services to the department, advises on treaty and maritime policy and provides litigation services in United Kingdom and international courts.<sup>12</sup> The Legal Directorate comprises lawyers working in London and overseas, including Brussels, New York, Geneva, The Hague and Strasbourg. The Foreign and Commonwealth Office Legal Directorate is not a division within the Government Legal Department, but works closely with it. The FCO Legal Directorate provides a lead role across HMG in advising on international law, including IHL, and is responsible for convening and chairing the National Committee on International Humanitarian Law.

**Law Officers:** The Attorney General and the Solicitor General, along with the Advocate General for Scotland, are known as the Government's Law Officers. The Attorney General, who is a member of the Cabinet and is the Government's principal legal adviser, advises the Prime Minister at the strategic level on the legal basis for committing armed forces.<sup>13</sup> The Attorney General also provides advice to the MOD and other government departments on legal issues impacting on existing operations.

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<sup>12</sup> Foreign and Commonwealth Office Legal Directorate Annual Report, FCO, 2016-2017.

<sup>13</sup> Legal Support to Joint Operations (Joint Doctrine Publication 3-46), Ministry of Defence, 3rd Edition, June 2018, p5.

#### 4 What is the role of the British Red Cross in the provision of legal advice to the Government?

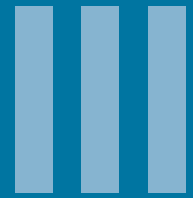
The British Red Cross is a neutral humanitarian auxiliary to the UK Government. The British Red Cross has a responsibility and role in the promotion, implementation and development of international humanitarian law and works closely with the relevant government departments and the armed forces. It has an International Law Department, which is responsible for implementing the IHL and public international law functions of the British Red Cross, including supporting national IHL implementation. It achieves this through the provision of expert advice, training and assistance to relevant audiences in the United Kingdom, including civil servants, Service personnel, university students and media professionals.











# Domestic Jurisdiction over Violations of IHL and International Criminal Law

## 1 What is the legal basis for the prosecution and punishment of violations of the 1949 Geneva Conventions?

The national criminal law that enables the United Kingdom to prosecute serious violations of IHL includes the Geneva Conventions Act 1957 (as amended), the International Criminal Court Act 2001 and the International Criminal Court (Scotland) Act 2001.

## 2 Does the national criminal law contain provisions for the prosecution of war crimes, crimes against humanity or genocide? If so, do domestic courts have extra-territorial jurisdiction over these offences?

**Geneva Conventions Act 1957:** The Geneva Conventions Act 1957 implements within the United Kingdom the specific provisions concerning grave breaches of the 1949 Geneva Conventions. The 1957 Geneva Conventions Act was amended by the Geneva Conventions (Amendment) Act 1995 to enable the United Kingdom to ratify the two 1977 Protocols Additional to the Geneva Conventions of 1949. The Geneva Conventions (Amendment) Act 1995 specifically incorporates the grave breaches provisions of Articles 11(4) and 85(2), (3), and (4) of Additional Protocol I into the law of the United Kingdom. Grave breaches under the Geneva Conventions Act 1957 are subject to universal jurisdiction. This enables prosecution to take place in the UK even though the offence was committed outside the United Kingdom, and irrespective of nationality.

**The International Criminal Court Acts:** Domestic courts have jurisdiction over the offences of war crimes, crimes against humanity or genocide if they are committed in England, Wales or Northern Ireland (International Criminal Court Act 2001) or Scotland (International Criminal Court (Scotland) Act 2001). Domestic courts also have extra-territorial jurisdiction over these offences if committed outside the United Kingdom by a national of the United Kingdom, a resident of the United Kingdom<sup>14</sup> or anyone subject to the Service jurisdiction of the United Kingdom. In the case of residents of the United Kingdom, courts have jurisdiction over crimes committed before they came to reside in the United Kingdom (provided they were committed after the entry into force of the Acts).<sup>15</sup> This ensures that no one can come to live in the United Kingdom as a way of evading justice for their crimes committed overseas. In view of the gravity of these crimes, the offences in the Acts attract the same sentences as provided for in the International Criminal Court (ICC) Statute: imprisonment for a term not exceeding 30 years,<sup>16</sup> or life imprisonment. Giving domestic courts jurisdiction over these crimes ensures that any national or resident of the United Kingdom accused of an ICC crime may be brought before a domestic court. This is the case wherever in the world they have committed their crime, including if they have assisted in the United Kingdom in the commission of a crime overseas. The same goes for anyone subject to the Service jurisdiction of the United Kingdom.<sup>17</sup>

These Acts also provide the legal basis for the United Kingdom to provide support and co-operation to the ICC, including the extradition of suspects to the Court.

<sup>14</sup> International Criminal Court Act 2001, s 51(2) in respect of England and Wales, s 58(2) in respect of Northern Ireland; and s1(2) International Criminal Court (Scotland) Act 2001 in respect of Scotland.

<sup>15</sup> International Criminal Court Act 2001, s 68.

<sup>16</sup> International Criminal Court Act 2001, s 53.

<sup>17</sup> Armed Forces Act 2006, s 42. See also Legal Support to Joint Operations (Joint Doctrine Publication 3-46), Ministry of Defence, 3rd Edition, 19 June 2018 p33, which refers to the prosecution of the first British person to be convicted of a war crime under the International Criminal Court Act 2001.



### 3 **When, and for what, will an individual and a commander be held criminally responsible?**

Under Article 25 of the ICC Statute individual members of the armed forces are accountable for their own actions on operations. An individual is responsible for violations if: (1) they commit the crime, on their own or jointly with others, (2) they order, solicit or induce a crime which is committed or attempted, (3) they aid, abet or otherwise assist in the commission of the crime, including providing the means for its commission, (4) they contribute to the commission or attempted commission of the crime by a group of persons acting with a common purpose.

Commanders have additional accountability under the doctrine of command responsibility. A commander must take into account LOAC when issuing orders and instructions or establishing procedures or training, and must take steps to prevent or report violations, and if necessary institute disciplinary action. A commander will be criminally responsible if, for example: (1) he participates in the commission of a war crime in the manner described above, particularly if he orders its commission; or (2) he knows or, owing to the circumstances at the time, should have known, that war crimes were being, or were about to be, committed by forces under his command and control, and failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authority for investigation and prosecution (Article 86(2) of Additional Protocol I, Article 28 of the International Criminal Court Statute).

These provisions have been given domestic effect with regard to Service personnel by the Armed Forces Act 2006 which applies domestic criminal law to Service personnel (section 42), even when they are abroad (section 51); and by sections 65(2) and (3) of the International Criminal Court Act 2001 concerning the responsibility of commanders and other superiors.

## What institutions are in place for the prosecution of breaches of IHL?

### Service jurisdiction prosecution

The Service Prosecuting Authority (SPA) is the principal prosecuting authority within the United Kingdom's Service Justice System and is responsible for the prosecution of service offences before the Service Courts. The latter include the Court Martial, the Court Martial Appeal Court, the Service Civilian Court and the Summary Appeal Court. In respect of cases referred to it by either a Service Police Force or a Commanding Officer, the SPA: (1) decides whether the case should be prosecuted, (2) decides where the case should be prosecuted, (3) determines the appropriate charges to bring, and (4) prepares cases and presents them in the Service Courts – using either employed advocates or members of the independent civilian Bar. In addition, the SPA works closely with and provides advice to the Service Police Forces with respect to the investigation of offences. The SPA is independent of both the MOD and the military chain of command in respect of its prosecutorial functions. The SPA acts under the general superintendence of the Attorney General and fulfils its functions in accordance with the Code for Crown Prosecutors.

A Protocol regarding the exercise of criminal jurisdiction in England and Wales, was agreed between the Director of Public Prosecutions, the Director of Service Prosecutions, and the Ministry of Defence, and signed in October 2011. The Protocol sets out the principles to be applied when there is concurrent jurisdiction between the mainstream criminal courts and the service justice system, and provides a framework for how cases may be handled by the Crown Prosecution Service or Service Prosecuting Authority.

### Non-Service jurisdiction prosecution

The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all non-Service allegations of war crimes, crimes against humanity, genocide and torture. The Counter Terrorism Division (CTD) of the Crown Prosecution Service, Special Crime and Counter Terrorism Division, has responsibility for prosecuting any such crimes. SO15 and CTD have published guidelines<sup>18</sup> in regard to the investigation and prosecution of allegations of war crimes, crimes against humanity, genocide and torture in order to enable the process for investigations, arrests and prosecutions to be conducted in an orderly and transparent way. These guidelines will be followed when there is a referral to SO15 to investigate a suspect or suspects. Separate guidance<sup>19</sup> has been published in relation to applications for the consent of the Director of Public Prosecutions for the issue of a private arrest warrant for a named suspect for grave breaches of the Geneva Conventions, hostage-taking and torture in accordance with Section 1(4A) of the Magistrates' Courts Act 1980. This separate guidance is to be followed when there is an imminent prospect of a suspect arriving in UK jurisdiction.

<sup>18</sup> Note on the investigation and prosecution of crimes of universal jurisdiction, Annex A: War crimes / crimes against humanity referral guidelines

<sup>19</sup> War Crimes/Crimes Against Humanity: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with section 1(4A) of the Magistrates' Courts Act 1980

## 5 Has the Government taken any measures specifically to address crimes of sexual violence in conflict?

The United Kingdom has shown its leadership and commitment to ending sexual violence in conflict. In May 2012, the former Foreign Secretary, William Hague, launched the Preventing Sexual Violence Initiative (PSVI) with the Special Envoy of the UN High Commissioner for Refugees, Angelina Jolie. In June 2014, William Hague and Angelina Jolie hosted the Global Summit to End Sexual Violence in Conflict. The Summit brought together the world's leading experts and top decision-makers to address these issues. Holding a Summit on this scale with such high-level attendance and profile represented a major step forward in international efforts to tackle sexual violence in conflict. Outcomes from the Summit included the launch of the first International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. The second edition of the Protocol was published in March 2017.<sup>20</sup> The revised version contains a number of additions, including guidance on the specific context, challenges and techniques required for interviewing and documenting conflict and atrocity-related sexual violence against children and against male victims; further guidance on trauma; and a focus on analysing evidence and establishing patterns of violations.

After the Summit, the UK Government worked to instil preventing sexual violence in conflict into standard discourse and practice of international conflict prevention, stabilisation, peace-building, security and justice, and humanitarian and human rights work. To deliver this, the Government pursued a programme of political and practical activity that included:

- In February 2015, the FCO held an event for international faith leaders to see what more they could do to use their influence in war-torn communities to condemn crimes of sexual violence and support survivors.
- In February 2015, William Hague, in his capacity as the Prime Minister's Special Representative on Sexual Violence in Conflict, and Angelina Jolie launched the first European Centre on Women, Peace and Security at the London School of Economics.
- In October 2015, Baroness Verma, in her capacity as Parliamentary Under Secretary of State at the Department for International Development, announced<sup>21</sup> eight new commitments on Women, Peace and Security, and pledged \$1 million of new funding to support the creation of the UN Global Acceleration Instrument. This new UN initiative was launched to mark the 15th anniversary of UN Security Council Resolution 1325 (a landmark UN agreement on Women, Peace and Security).

In 2016, the UK Government launched the next phase of the PSVI strategy, which was aimed at tackling the stigma associated with sexual violence to challenge the negative attitudes and misunderstandings that cause further suffering to survivors and children born of sexual violence.<sup>22</sup> Throughout 2016, HMG held a series of workshops in Burma, Colombia, Iraq, Kosovo, Nepal, Nigeria, Rwanda, Somalia, Sri Lanka and Uganda. In February 2017, HMG published a report called 'Preventing sexual violence initiative: shaping principles for global action to prevent and tackle stigma'.<sup>23</sup> The report followed a three-day expert roundtable meeting convened by the Government to inform this next phase of the PSVI

<sup>20</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Sara Ferro Ribeiro and Danaé van der Straten Ponthoz on behalf of the FCO, 2nd Edition, March 2017, preface, p7.

<sup>21</sup> New UK Commitments on Women, Peace And Security, FCO, 14 October 2015.

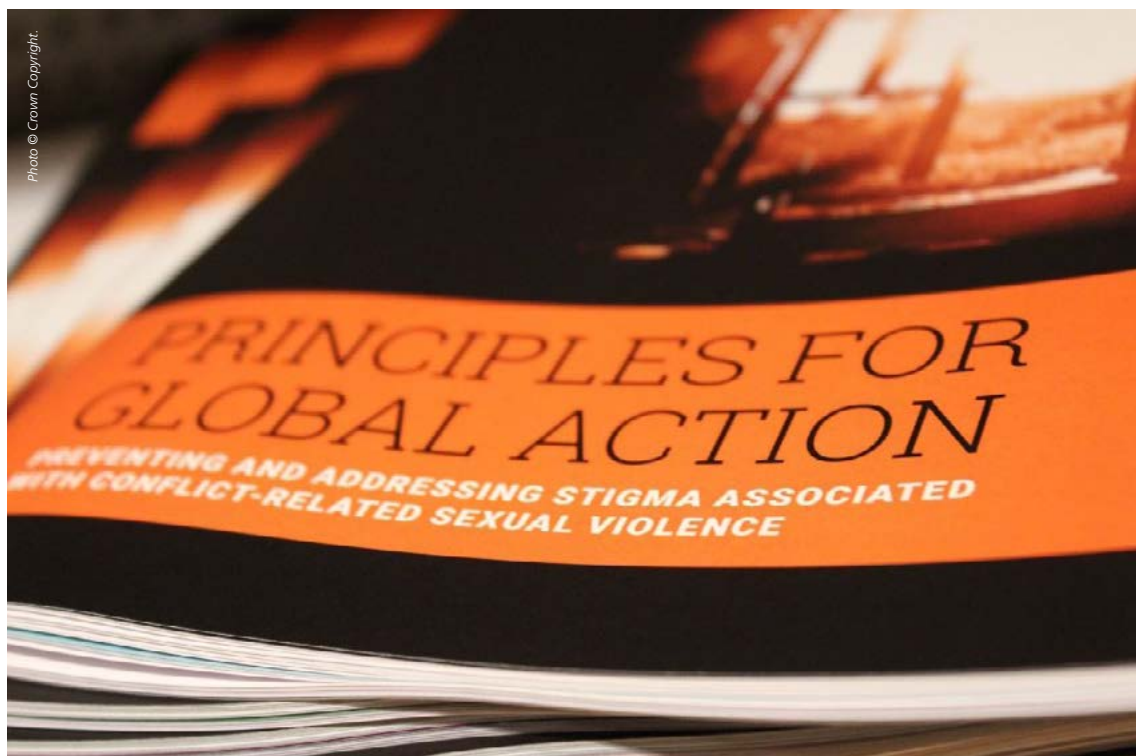
<sup>22</sup> #EndStigma: Tackling the stigma associated with survivors of sexual violence in conflict, FCO, 9 March 2017.

<sup>23</sup> Preventing sexual violence initiative: shaping principles for global action to prevent and tackle stigma, FCO, 7 February 2017.



strategy. The meeting and the workshops brought together survivors, victims, officials from the governments concerned, experts, civil society, media, faith groups, and UK government officials to identify and understand some of the issues associated with, and challenges to, tackling stigma. This contributed to the development of principles and recommendations to tackle and prevent such stigma for inclusion in a Global Action document ('Principles for Global Action: preventing and addressing stigma associated with conflict-related sexual violence'). The final document was launched at the UN General Assembly in September 2017. It will continue to be used to mobilise increased political will and resources to prevent and tackle sexual violence related stigma.<sup>24</sup>

The UK's fourth National Action Plan on Women, Peace and Security (2018-2022)<sup>25</sup> was launched in January 2018, with nine focus countries (Afghanistan, Burma, DRC, Iraq, Libya, Nigeria, Somalia, South Sudan, Syria) and seven strategic outcomes, including decision making, humanitarian efforts, gender based violence, peacekeeping, security and justice, preventing and countering violent extremism, and UK capabilities. The strategy is jointly owned by the Foreign and Commonwealth Office (FCO), Ministry of Defence (MOD) and the Department for International Development (DFID), with support from the Stabilisation Unit. The strategy guides our work on Women, Peace and Security, ensuring that women and girls are at the heart of our work to prevent and resolve conflict. It provides a framework to ensure that the provisions of United Nations (UN) Security Council Resolution 1325 and associated Resolutions are fully implemented and incorporated into the Government's work on violent conflict.



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<sup>24</sup> Principles for Global Action on tackling the stigma of sexual violence, FCO, 25 September 2017.

<sup>25</sup> UK National Action Plan on Women, Peace & Security: 2018-2022, FCO, DFID and MOD, 2018.

Within the MOD, the Vice Chief of the Defence Staff chairs the Women, Peace and Security (WPS) Steering Group, responsible for implementing the Defence contribution to the UK National Action Plan on Women, Peace and Security 2018-2022. A two-star officer in the MOD has been appointed as the Senior Responsible Officer for delivery of WPS actions and is supported by a dedicated WPS team. UK Defence doctrine deliberately does not contain a single publication covering WPS or PSVI as the subject is considered so important that it must be reflected across UK doctrine. For example, the latest edition of JDP 3-46 'Legal Support to Operations' specifically draws the attention of operational commanders, their staffs and legal advisors to United Nations Security Council Resolution 1325 (2000) and steps that should be taken to recognise the impact that sexual violence in conflict has on the maintenance of peace and security. The UK MOD is also delivering practical support to other nations, for example, by 2017 the British Support Team (East Africa) had trained 17,000 military and police personnel in preventing sexual violence.

## 6 **Extradition: Are there any legal provisions to allow for the extradition of persons charged with war crimes, crimes against humanity or genocide to another state? Are there any legal provisions to allow for the extradition of persons charged with war crimes, crimes against humanity or genocide to the International Criminal Court?**

**Extradition to other states:** The domestic law in the United Kingdom allows for the extradition of persons charged with war crimes, crimes against humanity or genocide to another state. Section 196 of the Extradition Act 2003 ensures that genocide, crimes against humanity, war crimes and related offences under the International Criminal Court Act 2001 are "extradition offences". They are "extradition offences" regardless of the location in which the conduct is alleged to have taken place.<sup>26</sup> Different extradition procedures apply according to whether the requesting state is designated as a category 1 or category 2 territory (or neither) under the Extradition Act 2003.<sup>27</sup>

**Extradition to the International Criminal Court:** The domestic law also allows for the extradition of persons charged with war crimes, crimes against humanity or genocide to the International Criminal Court. The legal provisions to allow for the extradition to the International Criminal Court are set out in Part 2 of the International Criminal Court Act 2001.

<sup>26</sup> A Review of the United Kingdom's Extradition Arrangements, Right Honourable Sir Scott Baker, David Perry QC and Anand Doobay, 30 September 2011, paragraph 6.50.

<sup>27</sup> Extradition: processes and review, Home Office Guidance, 5 January 2016.





IV

**Protections**

## 1 Captured persons: Where are the rules that protect captured persons deprived of their freedoms outside the United Kingdom, specifically prisoners of war, internees and detainees?

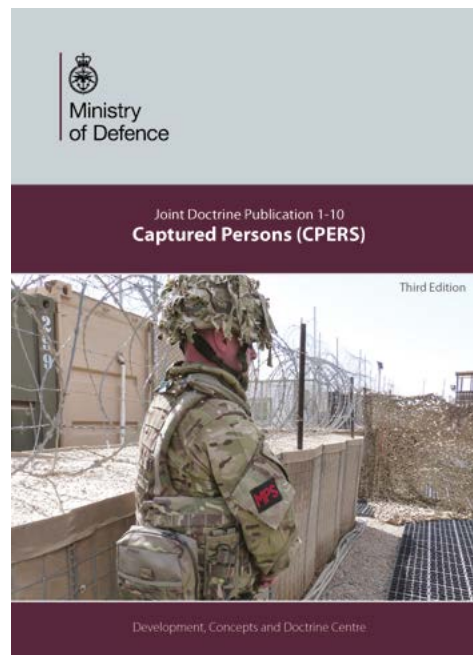
Captured Persons Joint Doctrine Publication 1-10 (JDP on captured persons) is the key doctrine publication for all 'captured persons' (CPERS) activities.<sup>28</sup> The generic term 'captured persons' or CPERS embraces all three categories, namely prisoners of war, internees and detainees. It is based on the legal framework governing CPERS and contains enduring principles and best practice, setting out guidance for the strategic level together with the fundamental rules and principles that apply at the operational level. Importantly, it also reflects the Government's policy and guidance resulting from recent operations.

## 2 How are these rules disseminated to Service personnel?

Policy in the United Kingdom on captured personnel is disseminated through training to all Service personnel, and is kept under constant review. All members of our armed forces are fully trained in CPERS handling practices and prepared to deal with CPERS during an operation, and commanders are accountable for training their units.<sup>29</sup>

## 3 Is there a basic level of protection?

International and domestic law stipulates basic standards of treatment that are applicable to CPERS as a minimum in all circumstances. Irrespective of the category, all CPERS are legally entitled to be treated humanely at all times. The JDP on captured persons sets out that the underlying principle governing treatment of CPERS is one of equivalence. That is, except where qualified by operational constraints or the exigencies of the situation, CPERS will be given basic provisions to an equivalent standard as those normally received by UK Armed Forces. The JDP on captured persons then sets out in detail the entitlements contained in international law including that ALL CPERS are entitled to respect for their person, honour and religion, and to have their needs met. To the extent operational circumstances permit, all CPERS are to be protected from the effects of the conflict.<sup>30</sup>



Crown copyright 2015, Development, Concepts and Doctrine Centre.

<sup>28</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 2.

<sup>29</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 506.

<sup>30</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 202.

#### 4 How is the status of captured persons determined and identified?

Certain categories of CPERS are entitled to additional rights and protections and, therefore, the armed forces ultimately need to determine the status of CPERS to comply with applicable international law. The JDP on captured persons provides that, at the point of capture, the armed forces should, where possible, categorise CPERS. It further provides that by the time CPERS are admitted to a CPERS holding facility, it is essential that their categorisation has taken place.

The JDP on captured persons provides as follows:

*“Generally, the appropriate categorisation of a CPERS should be obvious, whether through the circumstances under which they were captured or through clear indications of status. For example, during an international armed conflict, wearing military uniform is, on the face of it, generally clear evidence that an individual is a combatant and, therefore, must be treated as a prisoner of war. Where an individual’s status is not immediately obvious, it becomes necessary to formally determine status by an Article 5 tribunal. In cases of doubt, and in accordance with the Geneva Conventions, our Armed Forces must presume CPERS to be prisoners of war until their status is determined.”<sup>31</sup> Please see Chapter 1, Section 5 – ‘Categories of CPERS’ in the JDP for captured persons for more detailed information.*

#### 5 Does status categorisation differ in a non-international armed conflict (NIAC)?

The JDP on captured persons provides that commanders are entitled to expect clear direction on the distinction between international armed conflict, non-international armed conflict and other operations, as the categories of CPERS will differ depending on the legal nature of the conflict. With regard to a NIAC, the JDP on captured persons states that:

*“As prisoner of war status only applies during international armed conflict, it follows that Article 5 tribunals do not exist during non-international armed conflict. However, tribunals may also be convened during non-international armed conflicts to assist in categorising CPERS, for example, whether the CPERS is an internee or a detainee. These tribunals may also review the detention or internment of CPERS and carry out the functions of a detention review committee. They may be convened either to review the information and reasons for upholding a decision to detain or intern, or to make that decision at the outset.”<sup>32</sup>*

<sup>31</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 130.

<sup>32</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 131.

## 6 What protections are in place for medical personnel, religious personnel and war correspondents?

**Medical or religious personnel:** The JDP on captured persons provides that captured enemy medical or religious personnel, even if members of the armed forces, do not have combatant status. They do not become prisoners of war, but may be retained in order to carry out their duties on behalf of prisoners of war.<sup>33</sup> They are often referred to as 'retained personnel'. While being held they shall receive, as a minimum, the benefits and protection accorded to prisoners of war.

**War correspondents:** The JDP on captured persons provides that duly authorised war correspondents are entitled to prisoner of war status. The armed forces must issue these personnel with an appropriate identity card. They are also entitled to the rights and protections guaranteed to prisoners of war under Geneva Convention III and Additional Protocol I.

The 'Green Book' details the MOD working arrangements with the media throughout the full spectrum of conflict and MOD deployment. It is a general guide to the procedures that the MOD adopts in working with the media in the UK and overseas. It covers the practical arrangements for accrediting 'war correspondents', requiring them to carry an identity card as a means of proof of such authorisation, and providing them with distinguishing media insignia while working with units in the field.

The UK LOAC Manual states that: "Apart from war correspondents accredited to the armed forces, who have prisoner of war status on capture, journalists engaged in professional missions in areas of armed conflict are entitled to the protection afforded a civilian."



<sup>33</sup> Captured Persons (CPERS) Joint Doctrine Publication 1-10 (JDP 1-10), Development, Concepts and Doctrine Centre, Ministry of Defence, 3rd Edition, January 2015, paragraph 138.

## 7 Cultural property: How do cultural property sites enjoy protection?

The United Kingdom enacted the Cultural Property (Armed Conflicts) Act 2017, which implements the 1954 Hague Convention and its two Protocols. This Act came into force, together with the three treaties, in December 2017. Section 2 of the Cultural Property (Armed Conflicts) Act 2017 incorporates the definition of cultural property as set out in Article 1 of the 1954 Hague Convention. The term ‘cultural property’ includes:

- Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined above, such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined above; and
- Centres containing a large amount of cultural property as defined above, to be known as ‘centres containing monuments’.

The Department for Digital, Culture, Media and Sport (DCMS), in consultation with relevant stakeholders, has established categories of cultural property to receive general protection in the United Kingdom. The 2017 Act established the cultural emblem, and a system to regulate the use of that distinctive (protective) emblem. The Act also established new offences, such as making protected cultural property the object of attack, and dealing in unlawfully exported cultural property.

Two guidance documents were published by the government in November 2017 to support the effective implementation of the three treaties and the 2017 Act.<sup>34</sup> A Cross-Government Cultural Protection Working Group has also been established. It includes experts from external organisations and among other objectives, aims to ensure that the UK implements effectively the 2017 Act and related international obligations.

Prior to the coming into force of the 2017 Act, the armed forces were operating as if they are bound by the substantive provisions of the Convention in any event, through policy and direction given in the LOAC Manual, the Chief of the Defence Staff’s Directive, Targeting Policy, and Rules of Engagement. Dissemination of knowledge of the Hague Convention and its Protocols is also part of regular IHL training.



*The cultural emblem*

<sup>34</sup> The guidance documents can be found at the following links: [www.gov.uk/government/publications/protection-of-cultural-property-in-the-event-of-armed-conflict](http://www.gov.uk/government/publications/protection-of-cultural-property-in-the-event-of-armed-conflict), and for Scotland, at [www.gov.scot/Publications/2017/12/4837](http://www.gov.scot/Publications/2017/12/4837).

## 8 Schools and educational facilities: How is the protection and continuation of education in armed conflict supported?

**Safe Schools Declaration:** The UK recognises that the enjoyment of human rights can be substantially affected by the presence of instability and armed conflict. As a result the UK is closely engaged with UN and other international programmes aimed at protecting the rights of civilians, in particular of women and children, during armed conflict. The Safe Schools Declaration recognises the impact of armed conflict on the right to education. It is a non-legally binding intergovernmental commitment which provides states with the opportunity to express support for the protection and continuation of education in armed conflict, and for the implementation of concrete measures to deter the military use of schools and universities. Following UK endorsement, in April 2018, a further nine states have signed the Declaration, bringing the current number of supporting states to 83. International Partners, NGOs and civil society groups have reacted positively and the UK is keen to work together with them to ensure effective implementation.

As indicated in this report, the UK complies with its obligations under International Humanitarian Law, including those on which the Safe Schools Declaration was based. States which endorse the Declaration are encouraged to adopt further reporting and administrative actions. A cross-Government Safe Schools Working Group has thus been created to oversee UK implementation. It includes policy leads and legal experts from the FCO, DFID and the MOD. The Working Group also provides the opportunity to discuss wider issues on the conflict agenda and ensure UK implementation of the Declaration fits in with broader work across Government on relevant policy issues. Endorsement of the Declaration demonstrates the UK's commitment to the continuation of education in emergencies, and the UK will continue to call upon others to endorse and implement the Declaration.

## 9 Emblems<sup>35</sup>

### a) Do the armed forces use one of the distinctive emblems, i.e. the red cross, the red crescent or the red crystal emblem?

Choice of emblem: The British armed forces use the red cross emblem for the identification of medical and religious personnel, medical units, and transports.<sup>36</sup>

### b) Are medical and religious personnel entitled to use a distinctive emblem?

Medical and religious personnel: Medical and religious personnel are entitled to use the distinctive emblem. The LOAC Manual in fact makes it compulsory for Service medical personnel to display the emblem:

*"Service medical personnel must be clearly identifiable as such so that they receive the protection and respect due to them. To achieve this, all service medical personnel must, in addition to normal service identity discs, wear on the left arm a water-resistant armlet (brassard) bearing the appropriate distinctive emblem... Service medical personnel must also carry a special identity card bearing the distinctive emblem... In no circumstances may service medical personnel be deprived of their armlets".<sup>37</sup>*

<sup>35</sup> Please see above for information on the cultural emblem. The British Red Cross also has a special responsibility to cooperate with the Department for Digital, Cultural, Media and Sport in helping to protect the integrity of the cultural emblem.

<sup>36</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 7.23.

<sup>37</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 7.26.



**c) Where are the domestic rules that prohibit the misuse of the emblems in peacetime and in time of conflict?**

The rules prohibiting the misuse of a distinctive emblem in conflict and in peacetime are set out in the Geneva Conventions Act 1957, as amended by the Geneva Conventions (Amendment) Act 1995, the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 and the International Criminal Court Act 2001. The LOAC Manual also notes that “[i]t is prohibited to make improper use of the distinctive emblem”<sup>38</sup> and that “[g]reat care must be used to ensure that rules on the use of protective emblems are scrupulously observed.”<sup>39</sup>

**d) Is wrongful use of a distinctive emblem a criminal offence, and if so, what is the maximum penalty?**

Under section 6(3) the Geneva Conventions Act 1957, it is a criminal offence in the United Kingdom to use one of the distinctive emblems without the authority of the Secretary of State (in practice, this is normally the Secretary of State for Defence). Use of a distinctive emblem by any civilian person or organisation other than the British Red Cross is a misuse.

In accordance with Article 85(3)(f) of Additional Protocol I, sections 1(1) and 1(1A)(b) of the Geneva Conventions Act 1957 provides that the perfidious use of the red cross and red crescent emblems shall be regarded as a grave breach when committed wilfully and when causing death or serious injury to body or health. Further, in accordance with Article 6(1) of Additional Protocol III 2005, sections 1(1) and 1(1A)(c) also make perfidious use of the red crystal emblem a grave breach. Section 1A(6) of the Geneva Conventions Act 1957 states that grave breaches are criminal offences that carry a maximum sentence of 30 years.

**e) How are wrongful uses of a distinctive emblem reported and processed domestically?**

The British Red Cross has a special responsibility in preventing or repressing misuse or unauthorised use. In line with its special status and role as auxiliary to the public authorities in the humanitarian field, the British Red Cross responds to reported instances of emblem misuse and of misuses of imitations of the emblem in the United Kingdom, in close co-operation and consultation with the MOD and the Intellectual Property Office. British Red Cross volunteers and staff members contribute by reporting apparent misuses to the International Law Department at the British Red Cross Office, and by upholding the emblem rules and procedures themselves. Members of the public are able to report potential misuses of emblems via the British Red Cross website.



*The three distinctive emblems: red cross, red crescent and red crystal.*

<sup>38</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 5.10.

<sup>39</sup> The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 5.10.1.







# Means and Methods of Warfare

## 1 Which weapons are categorically outlawed, or otherwise prohibited in some way? Where are these rules set out?

**Biological weapons:** The relevant treaty is the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972. Also known as the Biological Weapons Convention 1972, the treaty prohibits the development, production, acquisition and retention of biological agents or toxins. On 26 March 1975, the United Kingdom ratified the Convention. The Biological Weapons Act 1974 enabled relevant provisions of the Convention to be incorporated into domestic law. The Terrorism Act 2000 is also relevant as, under Section 54, a person commits an offence if he receives, or invites another to receive, instruction or training in the making or use of chemical, biological or nuclear weapons. The Anti-terrorism, Crime and Security Act 2001 is also relevant as it amended the Biological Weapons Act and the Chemical Weapons Act and extended their territorial reach.

**Weapons with non-detectable fragments, mines, incendiary weapons, blinding laser weapons and explosive remnants of war:** The relevant treaty is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects 1980. Also known as the Convention on Certain Conventional Weapons 1980, or 'the CCW', this is a weapons-specific measure of international humanitarian law. On 13 February 1995, the United Kingdom ratified the CCW, Protocol I on weapons with non-detectable fragments, Protocol II on prohibitions or restrictions on the use of mines, booby-traps and other devices, and Protocol III on prohibitions or restrictions on the use of incendiary weapons. On 11 February 1999, the United Kingdom ratified Protocol II as amended and Protocol IV on blinding laser weapons. The UK took the view that implementing legislation was unnecessary to implement the obligations in these international agreements.

The United Kingdom has not ratified the most recent Protocol V on explosive remnants of war 2003. The UK has, however, provided considerable resources of personnel, equipment and funds to assist in clearing unexploded ordnance around the world to minimise its impact on civilians.

**Chemical weapons:** The relevant treaty is the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction 1993. Also known as the Chemical Weapons Convention 1993, it prohibits the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons. On 13 May 1996, the United Kingdom ratified the Convention. The Chemical Weapons Act 1996 enabled relevant provisions of the Convention to be incorporated into domestic law. The Terrorism Act 2000 is also relevant as, under Section 54, a person commits an offence if he receives, or invites another to receive, instruction or training in the making or use of chemical, biological or nuclear weapons. The Anti-terrorism, Crime and Security Act 2001 is also relevant as it amended the Biological Weapons Act and the Chemical Weapons Act and extended their territorial reach. In June 2018, States Parties to the Chemical Weapons Convention convened in special session at the initiative of the UK alongside a number of international partners in light of chemical weapons use in Malaysia, Syria, Iraq and the UK to address the threat from

chemical weapons use. States reaffirmed their support for the Convention and agreed action to protect the global norm against chemical weapons use, and prevent impunity for such use. The Decision secured enables the Organisation for the Prohibition of Chemical Weapons, the implementing body for the Chemical Weapons Convention, to attribute responsibility for chemical weapons attacks in Syria, and potentially more widely at the request of an affected State Party. Please see the guidance of the Department for Business, Energy and Industrial Strategy on The Chemical Weapons Convention UK National Authority for information on the designated National Authority that is responsible for overseeing the implementation of the Chemical Weapons Convention.

**Anti-personnel landmines:** The relevant treaty is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. Also known as the Mine Ban Treaty 1997, or the Ottawa Convention, it prohibits the use, stockpiling, production and transfer of anti-personnel mines. On 31 July 1998, the United Kingdom ratified the Convention. The Landmines Act 1998 enabled relevant provisions of the Convention to be incorporated into domestic law, making it a criminal offence to use, develop, produce, keep, or participate in the acquisition or transfer of an anti-personnel landmine. Destruction of all operational stocks of anti-personnel landmines was completed in February 1999, and no export licences have been issued in respect of anti-personnel landmines since the entry into force of the Convention.

**Cluster Munitions:** The Convention on Cluster Munitions 2008 prohibits all use, stockpiling, production and transfer of cluster munitions. On 4 May 2010, the United Kingdom ratified the Convention on Cluster Munitions. The Cluster Munitions (Prohibitions) Act 2010 enabled relevant provisions of the Convention to be incorporated into domestic law. Total destruction of UK stocks was completed on 17 December 2013.

**Arms Trading:** In 2006, the United Kingdom and six other countries (Argentina, Australia, Costa Rica, Finland, Japan and Kenya) co-authored the UN resolution that began the process of negotiating an Arms Trade Treaty. On 2 April 2013, the Arms Trade Treaty was adopted at the UN General Assembly after 154 states voted to adopt the Treaty. The Arms Trade Treaty requires states to refuse to authorise the export of arms if there is an overriding risk that the arms could be used to commit or facilitate a serious violation of human rights law or international humanitarian law. The United Kingdom ratified the Arms Trade Treaty in 2014, the same year that the treaty entered into force. Primary legislation was not required for ratification but secondary legislation was amended and the United Kingdom's Consolidated Criteria, which are the basis upon which official decisions are made about whether to approve licence applications for arms exports, were updated.

**Does the Government conduct a weapons review to determine whether new weapons and means or methods of warfare may be employed lawfully in accordance with Article 36 of Additional Protocol I? At what point(s) in the procurement process does the Government conduct legal reviews? Are there any forums, conferences or practices designed to share information and good practice on weapons review between states?**

**Weapon review:** Article 36 of Additional Protocol I requires States to determine whether new weapons, means or methods of warfare may be employed lawfully under international law. The UK Weapon Reviews document<sup>40</sup> sets out how the United Kingdom gives effect to Article 36 of Additional Protocol I, noting that the Government takes the obligation very seriously.<sup>41</sup> Weapon reviews in the United Kingdom are generally undertaken by serving military lawyers (tri-Service) on the staff of the Development, Concepts and Doctrine Centre located in the Defence Academy in Shrivenham, on behalf of the MOD Legal Advisers. Reviews of cyber tools are undertaken separately by the National Cyber Security Centre. The UK Weapon Reviews document also makes clear that the United Kingdom will still conduct a review if it seeks to acquire equipment that is already in service with the armed forces of another state, even if that state has conducted its own weapon review.

**Legal review:** The UK Weapon Reviews document explains that legal reviews take place at key milestones in the procurement process of a piece of equipment. Broadly, these are at:

- the MOD's decision to commit funds to developing a specific capability (known as 'Initial Gate');
- the MOD's decision to commit fully to the procurement of a particular piece of equipment or weapon (known as 'Main Gate'); and
- at the date the finalised equipment enters service.

However, the procurement process can change, most notably in respect of urgent capability requirements. Where these arise, weapons are often developed or altered in reaction to events on the battlefield very quickly. These weapons are still legally reviewed, orally if necessary, with more formal comprehensive advice to follow.

**Sharing information/practice:** The Development, Concepts and Doctrine Centre held the first ever international Weapons Review Forum in Autumn 2015. States, academics, the ICRC, the British Red Cross and key non-governmental organisations were invited to contribute. The forum enabled fourteen States, who were the primary participants, to discuss the weapons review process between themselves, as well as in open sessions with selected academics and other parties involved in the process, including procurement teams and defence industry representatives. The aim of the forum was to share and learn good practice between states and see how other states fulfil their Article 36 obligations. The 2015 forum represented an important step forward in international co-operation. A second forum was organised in 2016.

<sup>40</sup> UK Weapon Reviews, Concepts and Doctrine Centre, Ministry of Defence, March 2016.

<sup>41</sup> UK Weapon Reviews, Development, Concepts and Doctrine Centre, Ministry of Defence, March 2016. As the International Committee of the Red Cross (ICRC) commentary to Article 36 of Additional Protocol I confirms (paragraph 1480), it is the normal use of a new weapon which is evaluated.

The MOD has also published a detailed Equipment Plan 2016-2026, which involves developing a budget for a 'core programme' of key equipment projects and an additional sum set aside for contingency.<sup>42</sup> The Equipment Plan covers forecast spend for 10 years and is updated annually. Other documents of interest might include the Counter Proliferation Programme Strategy on Small Arms & Light Weapons: Weapons and Ammunition Management (WAM) Programme, and Guidance on current arms embargoes and other restrictions.

More detail is available in the LOAC Manual on specific topics, such as:

- Rules relating to the prohibition of attacks or damage to the natural environment;<sup>43</sup> and
- Rules relating to methods of warfare that are prohibited in some way (for example, terror attacks, use of human shields, and the starvation of the civilian population).<sup>44</sup>



42 The Equipment Plan 2016 to 2026, National Audit Office, Ministry of Defence, January 2017.

43 The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 5.28, 5.28.1, 5.29.3.

44 The Manual of the Law of Armed Conflict (JSP 383), Ministry of Defence, 1 July 2004, paragraph 5.21.1, 5.22.1, 5.27, 5.27.1, 5.27.2, and 15.14.2.



# Annex A

## Significant IHL Treaties to which the United Kingdom is a party

International Humanitarian Law Treaties	Signed	Ratified/ Acceded	Implementing legislation
Geneva Conventions I – IV 1949	08.12.1949	23.09.1957	Geneva Conventions Act 1957, Geneva Conventions (Amendment) Act 1995, Geneva Conventions and United Nations Personnel (Protocols) Act 2009, plus Orders in Council <sup>45</sup>
Additional Protocol I 1977	12.12.1977	28.01.1998	Geneva Conventions (Amendment) Act 1995
Additional Protocol II 1977	12.12.1977	28.01.1998	Geneva Conventions (Amendment) Act 1995
Additional Protocol III 2005	08.12.2005	23.10.2009	Geneva Conventions and United Nations Personnel (Protocols) Act 2009
Hague Convention (and Protocols) for the Protection of Cultural Property in the Event of Armed Conflict 1954	30.12.1954	12.09.2017	Cultural Property (Armed Conflicts) Act 2017
Biological Weapons Convention 1972	10.04.1972	26.03.1975	Biological Weapons Act 1974, Terrorism Act 2000, Anti-terrorism, Crime and Security Act 2001
Convention on Certain Conventional Weapons 1980 (CCW)	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Protocol I to CCW on Non-Detectable Fragments	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this Protocol.
Protocol II to CCW on Prohibitions or Restrictions on the Use of Mines, Booby- Traps and Other Devices (and Protocol II as amended)	10.04.1981	13.02.1995 (11.02.1999 for Protocol II as amended)	HMG took the view that implementing legislation was unnecessary to implement the obligations in this Protocol.
Protocol III to CCW on Prohibitions or Restrictions on the Use of Incendiary Weapons	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this Protocol.

<sup>45</sup> Where necessary, it is the practice of the United Kingdom to extend the provisions of IHL implementing legislation to Crown Dependencies and British Overseas Territories. Examples for the 1949 Geneva Conventions and Additional Protocols include the Geneva Conventions Act (Guernsey) Order 1966, Geneva Conventions Act (Jersey) Order 1966, Geneva Conventions Act (Isle of Man) Order 1970, Geneva Conventions Act (Colonial Territories) Order in Council 1959, Geneva Conventions (Amendment) Act (Overseas Territories) Order 2002, and Geneva Conventions (Overseas Territories) Order 2010.



International Humanitarian Law Treaties	Signed	Ratified/ Acceded	Implementing legislation
Protocol IV to CCW on Blinding Laser Weapons		11.02.1999	HMG took the view that implementing legislation was unnecessary to implement the obligations in this Protocol.
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction 1993	13.01.1993	13.05.1996	Chemical Weapons Act 1996
Anti-Personnel Landmines Convention 1997	03.12.1997	31.07.1998	Landmines Act 1998
Rome Statute of the International Criminal Court 1998	30.11.1998	04.10.2001	International Criminal Court Act 2001, International Criminal Court (Scotland) Act 2001
Cluster Munitions Convention 2008	03.12.2008	04.05.2010	Cluster Munitions (Prohibitions) Act 2010
Arms Trade Treaty 2013	03.06.2013	02.04.2014	Primary legislation was not required for ratification but secondary legislation was amended and the United Kingdom's Consolidated Criteria, which are the basis upon which official decisions are made about whether to approve licence applications for arms exports, were updated.





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