

List of Topics for the Legal Framework regulating UKSF operations in Afghanistan

N.B. All topics relate specifically to the Relevant Period under the Terms of Reference, mid-2010 to mid-2013.

Legal Classification of the Armed Conflict

1. The legal definition of an Armed Conflict, to include the relevant criteria for, and the distinction between, an International Armed Conflict ('IAC') and a Non-International Armed Conflict ('NIAC').
2. An explanation on how it is the case that the war in Afghanistan in the period of 2010-2013 was (i) an Armed Conflict, and (ii) specifically classified (at that point in time) as a NIAC.

Legal Status of Persons and Applicable Principles of the Law of Armed Conflict (LOAC)

3. The definition and scope of the following within an NIAC:
 - (a) a member of an organised armed group;
 - (b) a civilian taking a direct part in hostilities;
 - (c) a civilian; and
 - (d) a member of a State's armed force.
4. An explanation of the following principles of LOAC that regulate the conduct of UKSF operations:
 - (a) Military Necessity,
 - (b) Humanity,
 - (c) Distinction,
 - (d) Proportionality,
 - (e) Precautions in Attack, and
 - (f) The concept and the parameters of "*hors de combat*".

Application of Relevant Treaty Law and Relevant Customary International Law (CIL) by States

5. The application of the minimum protections afforded by Common Article 3 of the Geneva Conventions.
6. The application of relevant provisions of Protocol II Additional to the Geneva Conventions.
7. CIL applicable in NIACs.
8. The duty on States under IHL to investigate war crimes allegedly perpetrated by their nationals or armed forces during a NIAC and, if appropriate, prosecute the suspects; and the wider duty of States to exercise its criminal jurisdiction over those responsible for international crimes.
9. The relevance of International Human Rights Law (IHRL) and IHRL's relationship to LOAC.

Detention

10. The definition and scope of "*detention*" and "*detainee*" in a NIAC.
11. The duties and obligations owed by UKSF to detainees in a NIAC.

Application of International Criminal Law

12. A definition of International Criminal Law and its relationship to LOAC.
13. The concept of "*personal*" or "*individual*" responsibility for serious violations of international law, and the routes through which a person may be held individually accountable.

Application of the Rome Statute

14. As far as is relevant, the correct interpretation and application of the substantive crimes within the Rome Statute, with particular consideration to be given to Articles 7(1)(a), 7(1)(h), 7(2)(a), 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(ix).
15. As far as is relevant, an explanation of the principle of complementarity in the Rome Statute and the intersection between the jurisdiction of the International Criminal Court and national jurisdiction (Article 17 and 19).

Preparation

16. A description of what is required of a State before it deploys its armed forces into an armed conflict.
17. A description of what is required by way of precautions in attack during a NIAC under LOAC and/or International Criminal Law.

Modes of Liability

18. Relevant forms of accessory liability known under International Criminal Law and/or LOAC.
19. In respect of superior/command responsibility, a definition of the relevant elements and an explanation as to how they have been interpreted.

Defences

20. A definition and explanation of the elements of defences to war crimes as they are known in international law.

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