

The Inquiry's Consideration of the Law of Armed Conflict

1. The Inquiry's investigation under the Terms of Reference requires it:

"1. To investigate into and report on alleged unlawful activity by United Kingdom Special Forces ('UK Special Forces') in their conduct of deliberate detention operations ('DDO') in Afghanistan during the period mid-2010 to mid-2013.

...

5. To determine whether any, and if so what, further investigations are necessary arising out of the above, what form such investigations should take and, so far as is appropriate, to carry out such investigations or recommend others to do so. In particular:

(a) To determine whether there is credible information that any of those who died in the DDO carried out on 16th February 2011 and on 18th October 2012 were killed unlawfully.

(b) To determine whether there is credible information that any of those who died in the course of other DDO during the period mid-2010 to mid-2013, which were referred to and/or investigated by the RMP, were killed unlawfully.

(c) Insofar as appears necessary, to examine any other DDO during the period mid-2010 to mid-2013, and to carry out such enquiries as are considered necessary to determine whether there is credible information that any individual who died during any such DDO was killed unlawfully"

2. To enable consideration of these issues, the Inquiry will require a clear understanding of the Law of Armed Conflict, to inform what may or may not constitute "unlawful activity" and an "unlawful" killing.
3. The Inquiry has engaged Professor Tim McCormack to assist the Chair in understanding the principles of the Law of Armed Conflict and International Criminal Law¹.
4. To ensure the legal framework is focused on those matters likely to be of particular assistance to the Chair, Professor McCormack has been asked to provide OPEN legal submissions in relation to a list of legal topics prepared by the Inquiry. The list

¹ Professor McCormack is the Professor of International Law at the University of Tasmania Law School, Honorary Professorial Fellow at the University of Melbourne Law School, and former Special Advisor on War Crimes to the International Criminal Court.

of topics was provided in draft to all Core Participants for comment, and where comments or suggestions were made these were considered by the Chair in advance of the list being finalised.

5. The Chair has now instructed Professor McCormack to consider and provide written submissions on the final list of legal topics. He has been asked to do so with regard to the matters falling under the Terms of Reference.
6. Within the list of topics, there are various references to the term “relevant” or “as far as is relevant”. The purpose of those permissive terms is to allow Professor McCormack to opine on matters that he considers relevant to the topics, with regard to the Terms of Reference. However, for the avoidance of doubt, the Chair remains the ultimate arbiter of relevance where it is necessary to determine this in his fulfilling the Terms of Reference.
7. Professor McCormack’s submissions will be circulated to all Core Participants, and published on the Inquiry website, in Spring 2026.
8. In due course, Counsel to the Inquiry will assist the Chair by providing a note to be shared with Core Participants in relation to:
 - i the domestic incorporation of international law, and
 - ii the applicability of international or domestic law.
9. All Core Participants will be given the opportunity to make submissions on the legal framework in so far as there are any points of disagreement with Professor McCormack’s submissions or the advice of Counsel to the Inquiry.
10. The Chair will then determine the relevant international and domestic legal framework in the light of all the evidence and submissions.

Issued by the Inquiry to Core Participants on 6 January 2026.