

Defence Sub-Committee

Oral evidence: [MoD support for former and serving personnel subject to judicial processes](#), HC 109

Wednesday 19 October 2016

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Members present: Johnny Mercer (Chair); Douglas Chapman; Mr James Gray; Dr Julian Lewis; Mrs Madeleine Moon; Mr John Spellar; Jeremy Wright.

Questions 180-322

Witnesses

I: Sir David Calvert-Smith QC and the Rt Hon Jeremy Wright QC MP, Attorney General.

II: Professor Richard Ekins, Director, Judicial Power Project, Policy Exchange.

Written evidence from witnesses:

- [Judicial Power Project, Professor Richard Ekins](#)

Examination of witnesses

Witnesses: Sir David Calvert-Smith QC and Jeremy Wright QC MP.

Chair: Good afternoon, Attorney General and Sir David, and thank you very much for coming in to our Committee today. You are well aware of why we are here and what we are trying to do. I will say at the outset that this Committee and what we are looking into have absolutely nothing to do with cases in which individuals have clearly broken the law. This Committee is very strongly behind the rule of law and feels that individuals who break those standards that we work so hard to uphold must in all cases be prosecuted. That is not what this is about; it is about an entirely different matter. I wanted to make that clear at the start.

Q180 **Mr Spellar:** Attorney General, there has been reference to consideration of derogations for certain operations. Have you started detailed work on how such derogations would work? Is it your intention to build a legislative framework so that there is a mechanism in place to derogate when needed?

Jeremy Wright: The first thing to say, Mr Spellar, is that, as you will know, derogation is not a new concept; there have already been derogations from the ECHR, both by this country and by other countries. But certainly we have started to think about how this might work. Inevitably, it is going to be fact-specific. What the Secretary of State and the Prime Minister have made clear is that we will, in appropriate circumstances, be prepared to derogate from the ECHR. As I said, the ECHR structures and routines themselves allow for derogation when states choose to exercise that right. As you will also know, it does not permit derogation from all articles of the ECHR. There are some—for example, article 3 and article 7, I think, off the top of my head—you cannot derogate from, but there are others from which you can. So the answer to your question is yes, we have started to think about how it might work, but in terms of setting out a detailed rubric for how it might work, that is difficult to do when you are not familiar with the exact circumstances in which that derogation decision might be made.

In terms of the involvement of Parliament, of course it will be a matter for the Secretary of State, and perhaps for the Prime Minister also, to decide in what way Parliament would be engaged in that process. As you may hear me say more than once this afternoon, I know you have the Secretary of State for Defence coming before you, I think next month, and this may be something he wishes to touch on. But in terms of parliamentary involvement, there is every opportunity, of course, for the Government to set out why it intends to derogate and explain the reasoning.

Q181 **Mr Spellar:** That may be true, but given that events can move quite quickly, surely you would require a framework with which you would then test whether the individual case met that framework, and if so, how far



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advanced are you with that work—either yourselves or yourselves in conjunction with the MoD?

Jeremy Wright: The backdrop to this is clear; the concerns that have led to this conclusion are clear; so what we want to make sure is this. In relation to court cases that may otherwise be brought, which cost a great deal of money to be defended and cause a good deal of distress in being processed, where we can avoid them by making the Government's intention clear before a conflict begins that it intends to derogate from the relevant articles of the convention, I think that is helpful; I think it is a good thing for the Government to consider. But inevitably, as I said, whether that it is the appropriate thing to do or not will depend on the circumstances of each individual instance of derogation. I know that the Committee is aware of this, but it cannot be done in relation to every article of the convention in any event. It should not be thought that this is a way in which liability for all types of behaviour can be avoided. That clearly is not the case.

Q182 **Mr Spellar:** I understand that, but is there any possible idea that you could share with the Committee as to when you would be likely to have either an outline or a more refined template against which you would judge each case?

Jeremy Wright: As I say—I am in danger of repeating myself—it will be very fact-specific—

Mr Spellar: No: when?

Jeremy Wright: Oh, when. Inevitably it will be a decision made in advance of each set of circumstances from which you intend to derogate.

Q183 **Mr Spellar:** I press the point: surely you will have a policy against which you will assess each individual instance. You will not be starting de novo from when the Ministry of Defence and the Prime Minister announce their intention to take action. You will surely have established a framework to deal with this. What we are really trying to tease out of you is when you are likely to have established that framework against which you will test an individual case.

Jeremy Wright: We certainly do not start de novo, and as I said at the outset, there are other international precedents for other countries doing this in particular circumstances. For example, most recently and in relation to the attacks in Paris, France issued an intention to derogate from the convention, but the range of circumstances in which that might be appropriate are so wide that it is very hard at this point to say, "This is the exact set of rules we would apply." What we would seek to do in any decision to derogate is ensure that it is the appropriate thing to do and that we recognise that there are certain things from which you cannot derogate in any event. I am not seeking to be unhelpful, Mr Spellar, but it is very difficult at this stage for me to give the Committee any real assistance as to what that rubric would look like now.

Q184 **Mr Spellar:** Okay. To take one particular instance, would derogation stop



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claims if British troops were on peacekeeping missions or merely posted abroad? In other words, what is your office's understanding of the legal tests of war and/or a "public emergency threatening the life of a nation"?

Jeremy Wright: Again, it will be very fact-specific. It is very hard for me to set out what that might look like in a particular set of circumstances, but the Government would need to be able to justify the decision to derogate, because that decision may not itself be immune from challenge. There would need to be a logical and defensible thought process applied to the decision to derogate in the first place. I do not think this is a blank cheque for Government to say, "We do not much fancy the idea of being challenged, therefore we will derogate." We will have to justify the decision to derogate in the first place, but because it will depend entirely on the circumstances we deal with, inevitably it is very hard for me to say on what basis that would be done in each case.

Q185 **Mrs Moon:** I am a little confused. You cite derogation in the case of the attacks in France. How many other NATO allies who were involved in Iraq are having their service personnel facing charges in the way that the UK has? How many countries and how many personnel? Is this confined only to the UK? If derogation is something that the UK is looking at, has it not been looked at by those countries?

Jeremy Wright: Let me try to separate derogation from the IHAT process that I think you are describing. In terms of the process of investigating criminal offences that may or may not have been committed by British armed forces personnel, that is a decision taken by this country's Government. In fact, the decision to set up the IHAT process was taken by the last Labour Government, but implemented by the coalition Government. The decision-making process there is to say, "Do we have an obligation to investigate these allegations?" It seems to me to be very clear as a matter of law that we do. That obligation arises primarily from English law, in fact.

The Armed Forces Act 2006 sets out an obligation to investigate potential criminal offences. The Committee may already have had sight of it, but there is a complex interrelationship with different sections of that Act. What it amounts to is that if a commanding officer is presented with a suspicion that an offence might have been committed—an offence in the list set out in a schedule of that Act—it has to be passed on to the service police. If the service police believe it is appropriate, it needs to be passed on to the Director of Service Prosecutions. The obligation to investigate and then to pursue allegations of criminal offending is one we have within our law. Obviously I am not in a position to tell you exactly what position applies in other countries.

The other point worth making is that as a nation we have also signed up to the statute of the International Criminal Court. As the Committee is well aware, the prosecutor's office of the ICC has expressed interest in any offences that may have been committed by British armed forces, and therefore they have asked about the processes whereby this country demonstrates that it is investigating in a proper way whether or not any



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such offences may have been committed. The IHAT process was always envisaged as a way in which you could carry out those investigations, leading in appropriate cases to prosecutions.

We may come on to talking about—I am sure we will—exactly how efficient those processes are now and how much more efficient they could be, but it seems clear to me that the obligation to investigate exists in domestic law as well as being part of our international law responsibilities.

Q186 Mrs Moon: I accept that, but if those international law responsibilities exist for the UK, I assume they exist for other nations who are part of the forces that were in Iraq. I would have thought that if other nations were going through an equivalent IHAT process—call it whatever you like—it would have been helpful for Attorneys General, or whatever they are called in those other nations, to be working together to make sure that the process was smooth. Is that happening or not? Are other prosecutions taking place?

Jeremy Wright: I am not aware of anything comparable to IHAT elsewhere. That doesn't mean that there isn't anything comparable, just that I am not aware of it. You make the point about other countries having the same international obligations, and in terms of the comments I have made about the jurisdiction of the ICC, that only applies, of course, if you have signed up to the jurisdiction of the ICC. Not every country has, including not every country in operations jointly with us in Iraq. The Americans, for example, have not done so.

In terms of our obligations that arise from that, what I am saying to the Committee, in blunt terms, is that we must be aware of the fact that if we are not demonstrating to the ICC that we are investigating these matters properly, the chances of the ICC deciding to do it for us are very much increased. It seems to me that that situation is best avoided. In terms of that particular issue and that particular pressure, that only applies if you have signed up to the ICC statute, which we have, but not all our allies have.

Q187 Mrs Moon: Forgive me, I am not a lawyer, but there will be other allies that we were fighting alongside in Iraq who are signed up to the ICC, who have the same commitments to the ECHR, but who are not going through this process. Is there not a danger that Britain is seeming to have a more criminally based armed forces than other nations, because of the IHAT process?

Jeremy Wright: As I say, I am not in a position to comment on what happens in other countries. The Government's responsibility is for what happens in this country. Our view is that these investigations should certainly be efficient—as I say, I am sure we will come on to how they might be made more so—and should certainly resolve themselves as swiftly as possible, but we have an obligation to investigate when allegations are made.

It seems to me that the concerns that have perfectly properly been expressed about the impact that this has on the armed forces have to be



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set against the backdrop that our armed forces justifiably have a very high reputation. They have a very high reputation, as this Committee knows better than anyone, not just for operational efficiency but for the very high ethical standards that are applied. It seems to me that we have to assist in maintaining those ethical standards by demonstrating that when they are challenged, we are prepared to investigate properly and establish whether there is any truth in those allegations. It is very hard to do that without some form of investigatory process. That is what IHAT was designed to do.

What I am saying, in reference to the obligations under domestic law, is that if we did not do it via IHAT, we would have to do it another way. There would have to be some method by which we investigate allegations that are made. It seems to me that is unavoidable, not just under our international legal obligations, but under our domestic ones too.

Q188 Chair: Thank you. Forgive me, but we are on a time schedule, so I do not want to be rude and interrupt you. You do keep making some of the same points, which is absolutely fair enough, but a key point here is why we have not looked at why other people are not doing it. Why are we the only country on earth putting our servicemen and women through this process? I understand what you said about the ICC and about European human rights law, but other countries abide by those, so why are we the only ones doing this?

Jeremy Wright: I need to be clear that my responsibilities here are in relation to oversight of the process. That is something I take very seriously, which is why I have asked Sir David to look at the way in which this process is undertaken, to see whether we can make it any more efficient.

Chair: Yes, but why are we doing it in the first place?

Jeremy Wright: That, I am afraid, is a matter that you may have to take up with the Secretary of State for Defence. This is not an Attorney General's Office process.

Q189 Chair: Of course, forgive me, but has no one in the process stopped to think why we are doing this, when no one else is?

Jeremy Wright: Again, I can take you to the sections of the Armed Forces Act 2006 that set out why we have to investigate allegations of criminal behaviour within the armed forces. So there is, as you know, a set of provisions already within domestic law that say we have to carry out investigations—

Q190 Chair: Absolutely, but we are talking about something different, aren't we?

Jeremy Wright: I think what we are talking about is the method that has been chosen to carry out those obligations—

Chair: IHAT.



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Jeremy Wright: Yes; to set up a process whereby those investigations can take place. Now, I think we can quite sensibly—this is why I asked for the report that Sir David did to be done—talk about whether that is an efficient system, whether it can be made quicker or whether it can come to its conclusions more swiftly, but if the question is, “Why are we doing anything at all? Why are we investigating?”—

Q191 **Chair:** No one is asking that at all, because we absolutely understand that we must investigate crimes. But why IHAT, and why the industrial scale of these claims in which we have not tested any of the evidence? Armed Forces Ministers have come before Parliament and mocked the level of the evidence that is presented to IHAT, so why have we allowed it, when no one else in the world has allowed it to become the beast that it has become, with such a ruinous effect on our armed forces?

Jeremy Wright: The scale of the material that comes before IHAT is of course a function of the number of claims that are made, the number of allegations that are made. There is an issue here—no question, there is. A very large number of claims are being made, a large number of allegations, and that large number of allegations is causing some real challenges for processing—no question about that. Sir David might want to say something about how that is being done.

There are, however, two different questions here. First, what do you do about the flow, if you like, the number of cases that come into IHAT in the first place? In relation to that, as the Committee knows, we have already expressed to the Solicitors Regulation Authority concerns about the behaviour of particular firms. The Committee is well aware that the material being supplied to IHAT, the cases brought to IHAT, are not coming from a wide range of different legal firms; they are coming from a very small number of legal firms, two in particular. Both of those legal firms are now being looked into by the appropriate regulatory authorities, and quite right too, in my judgment.

Chair: Absolutely.

Jeremy Wright: If what such firms are doing is putting before IHAT cases that have no merit whatever, then the appropriate sanctions ought to be applied by their professional regulators. On that I am sure we are all agreed.

The difficulty for IHAT, of course, is that when they are presented with an allegation, just looking at the name of the complainant does not assist them in knowing whether this is a genuine claim, so some form of investigation has to happen—

Q192 **Chair:** Of course. Forgive me, I don’t want to be rude, and I will come on to James Gray in a moment, but is no one saying in your Department or in Government, around the Cabinet table, “Why are we getting this volume of claims?” Do we not think that maybe our system is being exploited and, therefore, we are getting this industrial-scale operation, which is simply a self-financing way of those two companies you were talking about



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propping themselves up? If I can work that out, as someone who has no legal brain whatever, I am surprised. I know you say that action has been taken, but this started in 2010. Lives have been ruined right up until this point, when we said in this Committee that we would look at this. It may not be linked, but somehow, shortly after that, Sir David did his review, and now we are at this place where we are derogating from European human rights law. My point is that there should have been some intervention right when this started; because it comes across to the untrained eye as totally insane.

Jeremy Wright: Mr Mercer, I understand your point entirely, and, much as I would love to give the Committee credit, it was not entirely, I have to say, the Committee's intervention that caused that to happen.

Q193 **Chair:** It was just a coincidence.

Jeremy Wright: It was something we were intending to do in any event. When I came to the position I hold, and I started to look at IHAT, it seemed to me sensible at the very least, whatever we were doing to try and deal with the flow issues, if I can put it like that, to also think about the stock issues—in other words, how efficiently were we dealing with those cases already before IHAT. Of course that was a very substantial number of cases already.

It would not have been possible to simply say, "Right, we are going to immediately dispense with investigation on all of those cases," and simultaneously meet some of the legal obligations I have already talked about. So the best thing to do would be to look at a way in which we could process those cases more quickly and get to the right conclusions faster.

I am perfectly prepared to say, as I am sure the Committee would say is common sense, that I am convinced, as I am sure you are, that at the end of this process the vast majority of allegations that have been made will be found to be baseless; but there is a difficulty in making that assumption and working out which ones they are without a process of investigation.

Chair: Absolutely. We do not underestimate that point at all.

Jeremy Wright: I am grateful for that. It just means that you have to find the most efficient and swift way of processing them. That is really, I think, why I asked Sir David to look at this, to see if there was a better way of doing it—if we could get through this quicker so that the members of the armed forces who had a cloud hanging over them could have it removed as fast as possible.

Q194 **Mr Spellar:** Could I just finally press this point about why you have not looked at other countries' experience, particularly in your office of state? Because, as Lord Shawcross rightly identified, this absolutely sits at the nexus between politics and the law, and actually has to make judgments, sometimes, about what is for the good of the country. Not necessarily you, but your predecessors as well, why did they not— particularly given the massive public row there has been about this, not just recently but



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over a long period of time—ask the basic question, if we are operating under the same international treaties and obligations why are we taking this course of action and all these other countries, in different ways, are not? That rests with the AG.

Jeremy Wright: I absolutely understand the point, and I am not attempting to avoid responsibility for finding any way we can of making this process more efficient and better. I am certainly not trying to do that.

I am glad you mentioned the word judgment, because this is another element that I should draw the Committee's attention to. There are really three things operating here that affect what the Government can and cannot do. There are our domestic legal obligations from statute. I have talked about those. There are our international legal obligations via the ICC, and the pressure that puts on us to do things so that the ICC does not; but there is also, of course, the operation of our own courts.

There have been judgments in our courts that set out some restrictions on the way in which we go about investigating these matters. The courts have very specifically said, for example, that the original iteration of IHAT, whereby the Royal Military Police did the investigation, was unacceptable. It was insufficiently independent, if you like, from the branch of the services that was being investigated, which is why IHAT had to be reformed to allow for the naval police to do the investigating instead.

But we have also been able, I think, to try and refine, with the courts' approval this time, the test that is used for deciding whether or not to take any case brought to IHAT any further. I will just, if I may, read out what that one-line test now is, applied by the Director of Service Prosecutions to all new cases coming into IHAT, so that we can quite quickly, to use this expression again, sort the wheat from the chaff. So what, at the moment, the High Court is content for the Director of Service Prosecutions to do, is apply the following test—in other words, "Is there a realistic prospect of obtaining sufficient evidence to charge an identifiable individual?"

That test is now the one that is used to decide not just whether we conclude an investigation in a particular way but whether we take the investigation any further than a preliminary examination. I am sure that will have an effect on the number of cases that are taken to an extensive investigation and therefore how quickly we can get through the large pile of cases IHAT still have to deal with. Again, I am keen that you hear from Sir David about the processes that IHAT are using and the way in which they will try to refine those now to make sure we get through it quicker, but I am afraid—as I say—there really is no way out from under our obligation to investigate in some form.

Chair: We will absolutely get on to Sir David. We want to talk about that.

Q195 **Mr Gray:** Sure. I want to jump very slightly, if you will forgive me. On your final point about the new test, which the High Court approved of, had that test been in place at the beginning of IHAT, of the 3,367 cases



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that have been investigated by IHAT, how many in your estimation would have passed that test?

Jeremy Wright: That is impossible for me to judge, but common sense tells you that because the threshold set out in that test, which the High Court really has to approve and has now approved, is undoubtedly higher, it stands to reason that fewer cases will meet it. So I would expect there would certainly have been an effect if that had been the approach taken sooner.

Q196 **Mr Gray:** You are being very lawyer-like and careful. Of the 3,367 cases, most have already been chucked out. Surely, if that test had been applied, nearly all of them would have been chucked out.

Jeremy Wright: As I made clear, I think under any test—

Q197 **Mr Gray:** No. What you said a moment ago was that had this test been applied there might have been rather fewer if it had an effect, but, hang on, most of the 3,367 cases have been dismissed. I would have thought you knew that, in which case surely had that test been applied all of them would have been chucked out, wouldn't they?

Jeremy Wright: No, that doesn't automatically follow and we cannot assume that even on the threshold test I have just set out all cases will not proceed to a full investigation and perhaps, more than that: we simply don't know that.

Q198 **Mr Gray:** I am sorry. I am judging whether or not that test is a good one. We know that close to 3,400 cases have come before IHAT and most of them have been chucked out for perfectly good reasons. My question to you is: if you believe that test is a good one and if it is a sound test that will prevent these bogus cases coming up in future, how many of the 3,400 would have been dismissed on that ground, not other grounds? In other words, would that test be effective?

If you were to come back and say, "Oh no, I think all 3,400 would still have gone through due process", I would say that test is useless. If you come back and say, "Well, a very small handful would still have gone through, I would say it is a good test." I am therefore asking for your judgment as Attorney General of whether you think that test is an effective test of how useful these cases are.

Jeremy Wright: The difficult is that on your premise, which is right, the vast majority of cases that are brought to IHAT on the old test do not make progress. They are found to be without merit. So judging how much more likely it would have been that they would not have come to anything under the new test is very difficult.

The point I made earlier is still relevant here. To find out whether a case has no merit, you have to conduct at least some form of investigation, so how quickly you can get from receiving a complaint to deciding it has no merit is absolutely crucial here in processing these cases fast. The higher you set the threshold test, the quicker you can get to that conclusion. That



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is why I think this is a useful addition to the processes that IHAT are using and why I think that in future we will see faster progress.

Q199 **Mr Gray:** Coming back to my remit—forgive me for jumping around—I take your point about the decision as to whether to do this is a matter for the MoD rather than for you as Attorney General. That is a perfectly reasonable point to make. As Attorney General, presumably you have a view about double jeopardy.

Jeremy Wright: Well, yes. Lots of things flow from that concept. Here, of course, we are talking only about single jeopardy in the sense of criminal prosecution because in relation to a criminal prosecution, that is what IHAT deals with. It determines whether there is sufficient evidence for the Director of Service Prosecutions to consider a prosecution and of course, as the Committee knows, they determine in that whether there is sufficient evidence for a realistic prospect of conviction and then they determine whether it is in the public interest to proceed to a prosecution. This is jeopardy certainly, but not quite double jeopardy yet.

Q200 **Mr Gray:** That is true, but of course some of these cases have been looked into informally by the commanding officer and some have gone to courts martial and been acquitted. We were talking about ECHR and the ICC; you are talking about the criminal courts under IHAT. Surely we are talking here not about double jeopardy, but about quinquennial jeopardy or some such thing. In other words, a soldier carrying out an action on the battlefield is not concerned just about the law; he is concerned about all sorts of different aspects of the law. If he is not tripped up by one, he will be tripped up by another later on.

Jeremy Wright: Again, I don't want to keep coming back to it, but the 2006 Act sets out what the obligations are under the criminal law. In other words, it brings a lot of the criminal law into the service code. In reality, what has to happen is that a commanding officer faced with such an allegation would have no option, assuming it was on that very extensive list of criminal offences, but to refer it to the service police, who would, in appropriate cases, refer it on to the Director of Service Prosecutions.

There is not a separate process, if you like, for the commanding officer to consider this and then for the Director of Service Prosecutions to consider this. It is all part of one process. But I absolutely understand that what we should be about here is making sure that members of the armed forces understand what their criminal legal obligations and stay on the right side of those. Inevitably, as I say, in order to establish whether that has or has not happened, some form of investigation is essential. That is what IHAT is there to do. I don't pretend for a moment that IHAT is a perfect process—far from it. Part of the difficulty it has, which is the volume of material that comes to it in the first place, is not its fault.

Q201 **Mr Gray:** We are talking about the actual process. The many jeopardies I think soldiers are facing do not apply to a civilian. If I murder you after this meeting I will be properly arrested, charged and sent to prison. I will



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not have to go through three or four processes, just one. Soldiers are having to go through many more legal processes than an ordinary civilian. Why is that?

Q202 Jeremy Wright: Well, they shouldn't. In relation to criminal prosecutions—as I say, these are criminal allegations we are discussing here under the IHAT umbrella—the same test will be applied if you are a civilian as it would be if you are a member of the Armed Forces. The test I set out—that there has to be sufficient evidence for a realistic prospect of conviction and it has to be in the public interest to prosecute—is exactly the test that is applied. The difference is that it is applied by the Crown Prosecution Service in a civilian case and the Director of Service Prosecutions in an Armed Forces case, but the test is the same.

This, I think, is a discussion about how quickly you can get to that conclusion through the investigatory process, which is complicated by a number of things that Sir David's report very well highlights, around collection of evidence and other things. That means it takes a very long time to get to the point where the service prosecutors can make that judgment. When they do, they do it on the same test as a civilian prosecution would.

Mr Gray: My final question—we are pressed for time. I am sure you will be familiar with Article 6 of ECHR.

Jeremy Wright: Yes.

Q203 Mr Gray: Don't you think the process you describe is in breach of Article 6?

Jeremy Wright: The Article 6 obligation is predominantly around the right to a fair trial. When we get as far as that, that is a different question.

Mr Gray: The point about Article 6, of course, is that there must be a fair trial within a reasonable time.

Jeremy Wright: Yes, that is absolutely right.

Q204 Mr Gray: Is this a reasonable time?

Jeremy Wright: You have heard me say already that there are things we can do, and which we seek to do, to make this a swifter process. That is why I am grateful to Sir David for having investigated precisely how that might be done. I don't seek to claim, and I hope I haven't suggested to the Committee, that I think it is a good thing that it takes this long to process these cases. As I say, I think it is worth recognising that one reason for that is the volume of material that IHAT have to deal with. Another is the complexities in evidential terms, which don't arise so much in domestic cases, of people you need to talk to being in other countries and very hard to get hold of.

Chair: Absolutely, and I think it's fair to say we understand those complexities. Mr Gray, are you content?

Q205 Mr Gray: I was going to ask one final question: don't you think there is at



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least a risk that Her Majesty's Government are therefore in breach of Article 6 of ECHR, which stipulates it must be in reasonable time? For whatever reason—I am not going to discuss the reasons—these allegations have not been investigated within a reasonable time. Is there not therefore a presumption that Her Majesty's Government is in breach of the convention?

Jeremy Wright: It would probably be unwise of me to try to work through what advice I might give on this subject to the Government, even if I were permitted to discuss that, which I am not. It strikes me that that consideration, in terms of deciding what a reasonable time is, will include consideration of some of the factors I've mentioned. Whether or not you are bringing a case to trial within a reasonable time depends on the nature of the case and the nature of the evidence that contributes to that case, and whether you have dealt with all of those things, with all of those difficulties, in what might be termed a reasonable time. I don't think it's possible to say that a reasonable time might be defined in exactly the same way for this kind of case as it would, for example, for a domestic burglary somewhere in Wiltshire. That would not necessarily be a comparable case.

Q206 **Mr Gray:** We haven't got any burglaries in Wiltshire.

Jeremy Wright: Of course, there are none. I understand that, Mr Gray, but were there to be any, I think there would be a different kind of reasonable timescale. That, I think, would be my initial response.

Q207 **Chair:** So some sifting has gone on in this process. We have seen the figures that you provided and are very grateful for that help. We are down to 325 cases of unlawful killing. Can you see why members of the armed forces who have served on operations might find it a little bit offensive that the Government believe that there are 325 credible cases of unlawful killing on operations?

Jeremy Wright: I can absolutely see why, if that impression is gained, that is offensive. That is why I want to make it very clear, Mr Mercer—and I hope I have done so—that that is not the Government's view. The Government's view is that there are 325 allegations of unlawful killing that need to be looked at. We are certainly not suggesting that it is our view that there are 325 unlawful killings, but we need to establish that that is not what has happened.

I hope that I have been quite clear in saying that my strong view—I am sure, like everyone else's—is that when the process is complete, a very, very small minority of what is brought to IHAT will need to be taken any further at all. None the less, we cannot avoid entirely that process of working out which cases have any merit at all and which are the vast majority that do not. I certainly do not want it thought that, by having 325 cases alleging unlawful killing brought to them, the Government are suggesting that they believe that there have been 325 unlawful killings.

Q208 **Chair:** No, we had many more than that. This is after you have done your initial gross error check, and have looked at the facts and thought, "This



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reaches a threshold, so we will take it forward." At that stage, does nobody in your office think, "For that to happen, there would have had to have been a complete breakdown of law and order in the British Army in 2003. Perhaps we need to look at the threshold that we apply to the evidence that is coming in." Does no one think that?

Jeremy Wright: They have thought that. That is why I have set out what the new threshold test is.

Q209 **Chair:** In 2015, but—forgive me—this process started five years before that.

Jeremy Wright: That is right. As I say, the threshold test has to be approved by the High Court. We could not do anything until the High Court approved a new test. You are absolutely right that there is a problem of volume, and a problem that people might get the impression that that is the volume of genuine meritorious cases. That is why I am saying, as clearly as I can—I hope—that that is not, in my view, what that number means at all. The likelihood—the almost certainty—is that a very, very small minority of those cases have any merit whatsoever. The trick, of course, is working out which of those cases are meritorious.

Chair: Absolutely, and we do not underestimate that challenge for a minute.

Q210 **Mr Spellar:** Does not what you are saying really run contrary—or is certainly at variance with—the Shawcross doctrine? The first paragraph of that states: "it is the duty of an Attorney-General, in deciding whether or not to authorize the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy." Is not that what the Attorney General should be doing?

Jeremy Wright: In certain cases, yes, where the authority of the Attorney General is required for a prosecution. That does not arise in most of these cases. This is a series of criminal offences, not all of which need the requirement of the Attorney General's consent. In fact, a minority do.

What you are describing is the consideration that an Attorney General has to give to the public interest part of the test that I read out earlier. Now, that does not apply if the Attorney General does not make the decision in the first place. Most of these decisions are made by service prosecutors independent of politicians, as they ought to be, considering the matter on the basis of the evidence before them and on their assessment of the public interest test. Of course, they must do that properly and they must take into account all the relevant factors in the public interest test.

When the matter comes to me, I have to take the same view. I do not take it, by the way, as a politician. I take it as an exercise of my public interest responsibilities. Where it comes to me, I apply a public interest test, as any other prosecutor would. Where it does not, it is for other prosecutors to do the same thing.



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Q211 Chair: I think we are going to get a lot of this, as we have found this during the process. I am not suggesting that you are saying that it is other people's fault and so on, but there are a lot of things at play. People are saying that it is the MoD's fault, that it is down to the service prosecutors or that we did not prosecute them first correctly. In which case, if the RMP cannot investigate the Army, what is the point of the RMP? We start entering this territory that appears crazy. How do we get to a situation where the Attorney General is in a position to say, "Right, what is going on here that isn't happening anywhere in the world and has a clear and direct effect on operational effectiveness"? If we are putting our servicemen and women through this process and subjecting them to things like IHAT, which we will come on to in just a moment, and that is affecting operational effectiveness, if the Attorney General is not going to say, "Perhaps we need to sort this system out", who else is supposed to do it?

Jeremy Wright: I hope, Mr Mercer, that I haven't suggested that I am abdicating all responsibility here—

Chair: No, not at all.

Jeremy Wright: Although I haven't said that I think it's worth looking at how we might do it better. Again, the gentleman sitting next to me is sitting here because I have asked him to have a look, based on what I think is the considerable relevant experience that he has got, at how this might be done better.

Just to go back a stage or two in what you said—

Q212 Chair: It is about the responsibility, I think—the taking of responsibility for the system.

Jeremy Wright: Absolutely. However, just to take one of the elements that you have mentioned—I will not go back over the international comparisons and our international obligations, as we've done that already a number of times. You made the point around, "What's the point of the RMP if they don't investigate the Army?" Well, this was a point argued, I'm afraid, before the courts and we have a court judgment that said very specifically, "It is simply not acceptable in this process for the Royal Military Police to be the investigating body in relation to these allegations."

Now, that is not the Government's choice; that is a decision made by the courts. And I know the Committee would accept that the Government have no option but to accept the judgments of the courts in these matters. So having accepted that that is the judgment of the court, we did something about it—the last Government, in fact—and said, "Right. Well, if that's how it's got to be, we'll replace the Royal Military Police with the Royal Navy Police and we'll carry on from there."

As I say, I don't dispute for a moment how difficult this process is, how frustrating it is, for everyone, including—may I say?—people on this side of the table, that it is taking this long; it really shouldn't. But that only



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takes you half the way. Once you've got to that point of frustration, you then have to work out what you can actually do about it within the constraints you have and the constraints of domestic law, international law, plus of course the judgments of the courts on specific points, by which you are limited.

Q213 Chair: You are absolutely right. There is no point in persistently hand-wringing over this. We need to find a way out of it and that's certainly what we hope we can talk through with our next witness and with you to an extent.

Finally from me, IHAT was set up, as I understand it, in response to a particular industrial-load of allegations made by an individual called Phil Shiner. Is that correct?

Jeremy Wright: Certainly, as I said at the outset, there are two firms of lawyers, from whom—

Q214 Chair: Of which he is one, who have provided 1,400-plus cases. IHAT was set up in response to that. Nobody is disputing that we investigate credible allegations, but given that he has been entirely discredited and disbarred, why has IHAT not closed? Why has that evidence just been parked, because we now know how we got it—in a manner that is not in keeping with how it should have been done? So why are we still feeding that machine and using that evidence when the individual who collected it collected it in a manner that it should not have been collected, and he has been discredited? Surely in a normal trial, if you have witnesses who are caught out lying they will be discredited and then we will go from there?

Jeremy Wright: Okay. I need to be a bit cautious about some elements of that. First of all, Mr Shiner and his firm are now subject to Solicitors Disciplinary Tribunal procedures and they will need to consider what the appropriate action is, so I have to be a bit careful about what I say. I think the Committee can probably get a sense of what I think about Public Interest Lawyers and the way in which they've behaved, but it is for the disciplinary tribunal to consider exactly what should happen to him.

What has happened to him already is that the legal aid contract he previously had has been withdrawn from him, and as a result that particular company has gone out of business. That is what has happened.

On the next part of your question—"Doesn't that mean that all the claims he brought to us should fall with him?"—I'm afraid it doesn't. We can't assume—much as we might like to for administrative convenience—that everything he brought to us is false. We cannot do that. Again, I'm afraid, the obligation to investigate still exists, even if it came from Mr Shiner and his company.

The other point to make finally, of course, is that although quite a large proportion of the cases have come from him and his company, they have not all come from there, so it wouldn't deal with everything.

Q215 Chair: Absolutely. Let me be clear in my mind about this. Although this



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individual collected evidence in the way he did and abused the legal aid system in the way he has been found to have abused the legal aid system to get evidence, the evidence itself—not the method by which he collected it, but the physical evidence itself—we still have to take forward, even though it has come forward in a manner that has been proved to be incorrect.

Jeremy Wright: What has not yet been demonstrated—perhaps it will be—is that every single one of the cases that Mr Shiner brought to the IHAT process was not a genuine case. That has not been demonstrated yet. If it is, we can absolutely proceed down the line you suggest.

Q216 **Chair:** And close IHAT.

Jeremy Wright: No, we can't close IHAT, because, as I said, he is not the only source of the cases. Even if you could come to that conclusion, because he is not the only source of the cases, it doesn't follow.

Q217 **Chair:** But he is the source of the vast majority, isn't he?

Jeremy Wright: I couldn't tell you exactly what the proportion is, but he is certainly a very large chunk of it; that is absolutely right.

That has not been established yet, so we are back, I'm afraid, to the same problem of sorting the wheat from the chaff. Even if a large proportion of the cases he brought to us are fake, are false, do not have any merit at all, working out which they are—assuming Mr Shiner is not going to tell us—would still require an investigatory process.

Q218 **Chair:** So do you think that this evidence that has been collected in the manner in which it has been collected, and what Mr Gray was saying about all these processes that are gone through—I know you; you are an extremely good man. Do you think it is fair, what we have done to our soldiers?

Jeremy Wright: I think the experience that they are going through is horrendous.

Q219 **Chair:** No, do you think we, as a Government, as a country, have been fair to the soldiers?

Jeremy Wright: I don't think I can say that there is a way in which I could avoid this process. That is the difficulty.

Q220 **Chair:** But you can make a judgment as to what is fair.

Jeremy Wright: If I were to say it is unfair, that would suggest that in some way there was another way of doing this. As I said, I think there are things we can do to improve this process. What I can't say—I know the Committee would like me to say it, and I absolutely understand why—is that we can shut up shop on this process and say, "No more. There has to be a huge proportion of these that are nonsense. Therefore let's just draw a line now." I can't do that.

Q221 **Chair:** Nobody is asking you to do that.



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Jeremy Wright: It follows from that that the process, unpleasant though it is—I accept that—is not one that I could sensibly say in all conscience could have been avoided entirely. I just don't think it could: some form of investigation was necessary.

Q222 **Chair:** But if we have had these recommendations as to how we would do it better, it follows that we were not doing it particularly well in the first place.

Jeremy Wright: It certainly follows, if there are recommendations that it could be done better, that it could have been done better in the past. That absolutely follows; you're right. But my responsibility, I thought, was to say, coming into this position, with IHAT already under way, "Let's see whether there is a better way of doing it. Is there an improvement or a series of improvements we can make?"

Q223 **Chair:** Okay, so before you came in, when you saw this process, when you saw this IHAT thing, and your experience since then—it is quite within anybody's gift to assess whether something is fair. We are working extremely hard to make sure we are fair to a number of spurious claims that may come from Iraq, but suppose it was your son or daughter going through this process. Are we really being fair, according to the true principles of British justice, to these individuals?

Jeremy Wright: We are attempting to apply the true principles of British justice.

Q224 **Chair:** Yes, we're trying; we're trying a lot of things, but fundamentally, are we being fair?

Jeremy Wright: What we are doing is what the British justice system requires, which is that if an allegation is made, we investigate that allegation.

Q225 **Chair:** Which no one has a problem with at all.

Jeremy Wright: Right, and if there is any merit to it, consequences follow.

Q226 **Chair:** That is not what's up for discussion.

Jeremy Wright: Surely that is exactly what's up for discussion, because we are trying to work out whether there is a way of continuing that process, which we all agree is the right process, in a better way. By definition, because I have asked for this report, I imagined, when I looked at this situation, there might be a better way of doing it. I am sure Sir David will be able to talk about what he found and what he thought might be improved. But I don't think it follows from those improvements, assuming we can make them all and assuming they have a positive effect, that everything that was done before was bad. It is also worth remembering that when IHAT started, there was no expectation that we would be dealing with the volume of cases that they now are dealing with. I can't remember the exact figures, but I think the first caseload was about 100 cases—Sir David will correct me if I've got the figure wrong. We



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are clearly well beyond the parameters of anything that was expected. So IHAT are running to catch up and have been for the period of time they have been in operation.

Q227 Chair: Absolutely. And I must be honest: we keep on saying we are “surprised” when things happen, we were “surprised” at what happened in Iraq and Afghanistan, and now we are “surprised” at what is happening with these claims. We are very much in danger of being a little naive, when it comes to conducting foreign operations, if we don’t think this is going to happen. If we drive around a foreign country asking whether anyone has a problem with another country conducting military operations and we don’t expect someone to come forward, I would suggest that that is quite naive. Is that fair?

Jeremy Wright: I certainly agree that if the system is not capable of weeding out quite quickly those cases that very obviously don’t have any merit, we are only going to encourage an even larger number of unmeritorious cases to be brought to us. That is absolutely right, which is exactly why, if you look at the processes I have applied, the real objective is to find a way of sorting out those cases that have no merit fast, to dispense with them quickly, and to focus your energy on what is a much, much smaller number of cases that require further investigation. It is worth saying that not all of those will result in anything in the end, but they certainly have enough to them to merit some further investigation.

Q228 Chair: You are absolutely wrong. A question was answered this week about how much this has cost in public money. What was it—£34 million?

Jeremy Wright: It is an expensive process.

Chair: And 1,500 soldiers.

Jeremy Wright: I’m afraid that the whole British justice system is a very expensive process.

Q229 Chair: It is about not only money but what we have done to our servicemen and what we have done in operational capacity. In your judgment as Attorney General, you feel that there is no other way that we could have done anything about it, despite the costs that we have borne.

Jeremy Wright: No, I am not saying that. Again, the fact that I have asked for people to look at ways in which things can be improved should indicate, I hope, that I didn’t think it was perfect in the first place. What I have said though, and I will repeat it, is if what you are putting to me is, “Couldn’t we have avoided this process in its entirety?”, I’m afraid the answer is no.

Q230 Chair: No, to be very clear, I am not putting that to you.

Jeremy Wright: Right. So somewhere between us is the right place, which is a process of investigation that is sufficient and swift and that gets the right answers quickly enough that you can dispense with the cases that have no merit and focus on the ones that do, if there are any. That is



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exactly what we have been trying to get to. Now, can I say to you that I am happy that IHAT is in that perfect place? Of course I can't—it isn't. But I do say that part of it is outside our control and part of it is about the flow into the system as much as the way you manage things once they are there. We have to address both those things, and we have tried to do that.

Q231 **Chair:** I absolutely understand the challenges in it, I really do.

Finally, you talked about the Armed Forces Act 2006, but a lot of these allegations come from before that, don't they?

Jeremy Wright: That's right.

Q232 **Chair:** So between 2003 and 2006, what was going so wrong with the investigations that we now have to do it all again?

Jeremy Wright: I should be clear that the regime that is set out in the 2006 Act obviously doesn't apply before 2006, but there were clearly also obligations on the Armed Forces to investigate—

Chair: Well, the Army was around for a long time before that, wasn't it?

Jeremy Wright: Exactly. And, as you know, they have had an obligation to investigate allegations made before that, too. It is not that the world changed dramatically in that sense in 2006. The point I was making is that if you take the 2006 regime as an example, there are domestic legal obligations on the Armed Forces, as well as international ones. I don't think any of us is seriously suggesting that we shouldn't have those.

Chair: Of course not.

Jeremy Wright: It's all a matter of how you deal with a very, very large influx of cases, and we are not disagreeing that a lot of those are unmeritorious.

Q233 **Chair:** We absolutely understand those challenges, but what was wrong with the investigations in 2003, when these guys went through a court martial the first time?

Jeremy Wright: The requirement for something that is independent is the difficulty we have had through the court cases I have mentioned. The reason we now have the Navy rather than the Army is that the Royal Military Police were not considered impartial and independent enough to process the claims. That had to change because that is what the court said. It is also worth thinking about whether or not you could sensibly deal with any of these types of claims through the chain of command, without referring either to the Royal Military Police or to some form of service police. I think that would be difficult. But yes, you are absolutely right. Again, I don't think there is a huge amount of distance between us. This is a pretty unpleasant process. Would we choose to be here? Absolutely not, but we just have to find a way through.

Q234 **Chair:** My view is that it is deeply unfair, but that is not your view.



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Jeremy Wright: As I say, it is not a comment I would make, because I think it would require me to say that there was something radically different that we could have done at the start—I'm not sure that I see that there was—and that it was possible to make the improvements we are making in a dramatic way much, much earlier, which is difficult for me to say.

Q235 **Chair:** Great. Thank you. Sir David, I am sorry that it has taken a while to get to you. How did you decide to approach your review? Were you given access to all the people and documents you required? Did everybody co-operate fully with you in that review?

Sir David Calvert-Smith: First, in answer to Question 1, I attempted to bring such skills as I had acquired as a salaried prosecutor some years ago, to try to rationalise processes in that organisation and bring value for money. Secondly, I saw everybody I needed to, many of them many times. Thirdly, I did not get involved because I was not asked to and it would have been impracticable, in the details of any given case. What was the last question?

Q236 **Chair:** Did everyone co-operate? Did you find it a good environment to work in and find out what was going on?

Sir David Calvert-Smith: I did indeed. If you look at the report, I was extremely impressed by April 2016, when I started, by the degree to which the senior command team was working together. If you think about it, a senior police officer from a given police force and a senior naval police officer had not worked together before, and they had very different working practices before they started. They had, by the time I got to them, formed an extremely competent team. One of my concerns is that the people are terribly important in an organisation like this, and if people have to move on—as they obviously do, because it is taking so much time and they will want to go further in their careers—you don't want to lose that without it being covered very, very well.

Q237 **Chair:** Did you speak to any soldiers going through this process?

Sir David Calvert-Smith: I didn't, no. I was not asked to look at the experience. I did not speak, other than in the most general terms, to the investigators, except to the heads of the various pods they had—the little groups of investigative teams—to see whether their processes could be speeded up, cut down, improved and so on. Of course, in other fields I have been very closely involved with the victims and families.

Q238 **Chair:** Why was that? Would it not have been a good idea to speak to someone who was experiencing this process, if we are looking at a way of doing it better?

Sir David Calvert-Smith: This is not the most satisfactory answer, but I had a set of terms of reference, and that was not one of them.

Q239 **Chair:** That is fair enough. One of the problems we have come up against is that we have persistently been told one thing from the command teams. For example, if you talk about an individual being approached by



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IHAT, the Ministers and everyone else will say, "That never happened," and then, lo and behold, we get 10 or 15 emails after a session like this saying, "That has happened." That is the challenge we are up against. At command level things seem okay, but for the guys it is appalling.

Sir David Calvert-Smith: You will have gathered from some of the things I have said that until very recently there was not what there would be in an organisation that you are used to—performance appraisals and people being supervised properly. That was something I was greeted with when I arrived. I was told that things in the past 12 months or so were considerably improved and that real steps had been taken to ensure that people behaved—not just got on with it, but treated people with appropriate respect. That is as far as I was asked to go. I was looking at processes, rather than people.

Chair: Sure. I understand that.

Q240 **Mr Gray:** As an inquiring, intelligent QC, even though your terms of reference did not include a wider inquiry, were you not tempted to say, "Actually, in order to do my job properly, I ought to be looking into some of these wider matters"?

Sir David Calvert-Smith: It would clearly be very interesting for somebody with my background, having done a number of different jobs in the legal field, to stray off my brief and say, "Well, if I were in charge, this is what I would do," but I did feel that I had terms of reference to keep to. I've been out of the game for quite some time now, so I really can't say whether I have anything particularly good to add. My last experience of military law was back in the 1970s doing courts marshal in Germany. That is so far out of date that I have no great experience of it.

Q241 **Mr Gray:** So your remit was entirely about the process, rather than the purpose behind the process.

Sir David Calvert-Smith: Exactly. I was given the purpose as a given.

Q242 **Mr Gray:** Didn't you feel that you might have said that in your final report? Surely the purpose behind IHAT is of crucial importance to the way in which it is conducted. In other words, if yours is a purely mechanistic report, it hasn't achieved the purposes that this Committee is trying to dig into.

Sir David Calvert-Smith: I skirted around it because I was asked a question after I produced my first draft. Right at the end of my report, it says, "Finally, I have been asked to express a view on the compatibility of the IHAT process with UK and international law", which was not part of my original remit. I then had to aim off for the fact that I am not now a qualified barrister. I shouldn't actually have these letters after my name in this room, because I am no longer a QC. I don't want to read it all out, but my guarded answer is there. It looks as though what is being done does satisfy domestic and international law.

Q243 **Mr Gray:** Okay. So your review was not actually about the wider law and the wider process.



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Sir David Calvert-Smith: No.

Q244 **Mr Gray:** In that case, I think we have to turn to the Attorney General and say, why was it that Sir David's terms of reference were so narrowly drafted? Surely what we should be doing here is looking into whether the principle behind IHAT is a good one, or whether we should have an IHAT.

Jeremy Wright: It seems to me that the Committee is doing that in any event.

Q245 **Mr Gray:** My question to you is this: why didn't you instruct Sir David to do that?

Jeremy Wright: The answer is because my terms of reference are similarly limited. It is not my policy responsibility to decide whether IHAT should exist, nor indeed to decide how it should be funded. What I have is a slightly looser arrangement, whereby I have interactions with the service prosecutors. I don't have the same kind of superintendence responsibly for them as I do for the Crown Prosecution Service and the Serious Fraud Office, for example. But because, therefore, my interaction with IHAT was more limited, if I am going to commission Sir David to do something, I had to operate within my frame of reference, too.

Q246 **Mr Gray:** Hang on. Our possible thesis is that IHAT is unfair, that it is doing things to soldiers that law wouldn't do to civilians and that it is a cumbersome and useless organisation. You are now saying that you didn't ask Sir David to look into that question because you yourself don't have the authority to do that, despite the fact that you are the Government's senior law adviser.

Jeremy Wright: No. The decision about whether or not IHAT should continue to exist is not my decision; you are entirely right.

Q247 **Mr Gray:** Hang on. If IHAT was found to be an unjust system—a wrong system under the law—surely it is the Attorney General's job to advise the Prime Minister that that is the case.

Jeremy Wright: If it were my legal opinion that what was being done at IHAT contravened the Government's legal responsibilities, either domestic or international, you can be assured, Mr Gray, that I would say so, but I am afraid I wouldn't say it to this Committee; I would say it to the Government. You may take the fact that IHAT is still in existence to mean that my opinion is not that, but that is not my policy responsibility.

Q248 **Mr Gray:** We are getting close to it now. You are saying that, because you didn't raise that matter with the Prime Minister, you are content that the system is indeed just.

Jeremy Wright: Despite your skilful cross-examination, Mr Gray, I am not going to tell you what conversations I had with the Prime Minister, in terms of legal advice.

Q249 **Mr Gray:** I am not asking you to do so. My question was, "Do you think the system is just?" and you said, "That's beyond my remit." I asked you why that should be and you explained all that to me, but then you said,



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"If I thought that the system were unjust, I would have told the Prime Minister that that is the case."

Jeremy Wright: No. Forgive me, Mr Gray, but that is not what I said. What I said was that if I thought what the Government were doing with IHAT was in breach of our domestic or international legal obligations, I would have advised as such. Now, I am not going to talk to you about what my advice was, for all sorts of reasons we can discuss around the Law Officers' convention, but that is not the question you are actually asking me.

The question you are asking me is why I did not give Sir David a wider remit. The answer to that question is that my engagement with IHAT is not as broadly based as this Committee's. Therefore, if there is a question to be asked—the Committee is perfectly entitled to ask it—about why IHAT exists in the first place, that is not a question for me, subject to the legal point I have made. It is a matter you will be able to take up with others, but because of that—

Q250 **Mr Gray:** That is a very useful clarification. We have the Attorney General in front of this Committee, and he says about the existence of IHAT—this judicial investigative process—"It's nothing to do with me, guv'nor; that's all down to somebody else."

Jeremy Wright: I haven't said that, Mr Gray.

Q251 **Mr Gray:** You did.

Jeremy Wright: No, I haven't. I said that my interaction with IHAT is on a relatively limited basis. It is not a policy responsibility of the Attorney General's office; it is a policy responsibility of the Ministry of Defence, hence the Defence Committee's interest in it and your opportunity, as I understand it, to talk to the Secretary of State for Defence about precisely this subject. I am sure he will be delighted to talk to you about his policy responsibilities. They are not mine. My responsibilities are legal responsibilities.

I decided that it would be sensible, given the position I do hold, to ask some questions about the process being applied here, and whether or not, if IHAT is to exist, it could be made to operate more efficiently. That is what I asked Sir David to comment on. It is not his fault that the remit is so narrow—it is entirely my responsibility—but it would not have been appropriate for me to have widened the remit, and certainly not to the extent that this Committee's inquiry will cover.

Q252 **Mr Gray:** Sticking with your remit to Sir David, he was asked to conduct a report in April this year, to conclude by September this year. IHAT has been running for how many years now?

Jeremy Wright: Since 2010, when it was set up.

Q253 **Mr Gray:** So about seven years. Why did it take seven years for Her Majesty's Government to conduct such a review?



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Jeremy Wright: I can only say, as I have said before, that the shape of this process is very different from what was originally envisaged. That is mostly a function of the sheer volume of cases that have come to it, which I don't think anyone anticipated. The process—I think Sir David reflects this in his report—has changed over time, simply to deal with the scale of the challenge that it faces, and of course Government have had to catch up with that scale of challenge as well.

I am not trying to suggest that it would not have been better if Government had come more quickly to the view that we could have done different things, but as I said, there are a number of different pressures here: domestic legal obligation, international legal obligation, plus a series of court hearings and court judgments that affect what our freedom of movement is. I entirely plead guilty to being slow off the mark, if I have been, in asking Sir David to do what he did—

Q254 **Mr Gray:** So you would have commissioned the review sooner had it come up with the normal business of Government, but it did not. Had it come two years earlier, how many of the 3,500 cases that have come before it would not have been heard?

Jeremy Wright: Again, Mr Gray, as we discussed earlier, it is very hard for me to say. For reasons we have already discussed, neither I nor Sir David has looked at the detail of each allegation. It would not be proper for us to do so.

Q255 **Mr Gray:** No, but you can list some numbers and things. How many of them have been initiated in the last two years? You pled guilty a moment ago to being a bit slow in commissioning Sir David's report. How many soldiers of the 3,500 have been put through this process—

Jeremy Wright: Perhaps I should clarify my plea. What I said is that—

Q256 **Mr Gray:** How many of the 3,500 would have been saved had it been two years earlier?

Jeremy Wright: I don't know the answer to that, and there is probably no way of telling. If the Committee would like figures on what the increase has been in the number of cases that have come to IHAT over a seven-year period, I am sure we can supply that, and I apologise that I do not have them in front of me.

Q257 **Mr Gray:** That would be helpful. Maybe you could produce a chart.

Jeremy Wright: I am sure we can produce something to that effect, but the point about my engagement with this is that I started by saying, "Well, look. It is not my policy responsibility. I would like to see what is happening." So I went to visit IHAT myself and asked some questions about how the processes were conducted, and then I came to the view over a period of time that I thought what Sir David might be able to add here might be valuable. I suppose it is possible that I could have come to that conclusion earlier, but I am glad that I did it when I did it, and I am glad that Sir David has produced his recommendations. I hope they are helpful to the Committee, and to IHAT.

Q258 **Mr Gray:** Is it possible in a court of law to withdraw a plea of guilty?

Jeremy Wright: It rather depends on the circumstances, which is the answer to almost every legal question, I find.

Q259 **Chair:** Did you say that, with all the intellectual horsepower of Whitehall, it was impossible to foresee that should we go to a country we invaded seven years earlier and ask if anyone has a problem, people would come forward in the numbers they have?

Jeremy Wright: To the extent that it has never happened before in the same way; there was no precedent for it. You might say, "Look, it was common sense. This was bound to happen if this is what you did", but I do not think we anticipated the way in which the law firms we have already talked about would go about their business. I do not think in all honesty we anticipated that.

Q260 **Chair:** You can't blame the law firms. The law firms are going to do what they are going to do. The system is there. We provide them with the system to generate their own money from legal aid.

Jeremy Wright: As we have already discussed, Mr Mercer, and as you were robustly putting to me, if those law firms behave in the way that they do, consequences should follow. That can only be right if what they are doing is improper in some way, and that is a matter for the solicitors regulatory authorities.

If you are asking me, "Did you see this coming?" I do not think it is fair to suggest that in 2010 anyone expected that IHAT in 2016 would be dealing with the volume of cases that it is now dealing with. That is absolutely right. If that is lack of foresight, then it is lack of foresight, but it may be that there were a number of things that no one could have seen coming, including perhaps that these firms were generating workload in a way that I do not think has ever been seen before in any other context. I am certainly not familiar with that kind of workload generation being done in the way it was. The very fact that it is now subject to investigation suggests to me that it is not the normal way of doing things.

Chair: Thank you.

Q261 **Dr Lewis:** What do you think would happen if you just wound up IHAT and dropped the cases?

Jeremy Wright: I don't think you were here, Dr Lewis, when we were discussing this earlier, but there is a risk—we should be conscious of it, and you will be aware of it—with the interest shown by the ICC and the office of the prosecutor of the ICC. We have always sought to demonstrate, and I believe we can successfully demonstrate that the investigations we carry out domestically are at least as good and are arguably much better than the office of the prosecutor would be able to initiate and conduct. If we were to say that we intend to carry out no such investigations, there is in my judgment a substantial risk that the ICC, having already expressed interest in the matter, would say, "If you are not



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prepared to do it, we will have to do it for you”, and therefore there would be a more full-blown investigation.

Q262 **Dr Lewis:** I do not want to retread ground that you have already covered, but may I be indulged just a little, Chair, just in case I happen to come on to a little area that was not covered before? We are talking about a very large number of outstanding cases. If you drop the lot at once, you are telling me that the ICC would then proceed to work its way through this huge number of cases to sift out the ones that are valid and the ones that are not, rather than simply saying, “This whole process has been massively tainted and compromised by the fact that all these cases, or a very large proportion of them, come from a single source that has been largely discredited.” How many years do you think it would take before the ICC got anywhere near looking into any individual case?

Jeremy Wright: Well, I certainly think that if the ICC was to conduct its own investigation, it would take a very large amount of time. As I have said, I think we can make a very convincing argument that it would be an inferior process to the one that we ran ourselves, but there are no guarantees of outcome here in any event, and we cannot say what would happen for certain. What we can say is that the level of interest expressed so far by the ICC means that in my view it is unlikely, were we to say in the bald way that you put it initially, “We will not investigate any of these matters in any way”, that the ICC would simply walk away and say, “All right then, we will let it go.” I think that is a risk not worth taking, and in any event—I made this point earlier—there are obligations on us as a matter of domestic law to conduct investigations into allegations of this kind. Even if the ICC decided to no longer take an interest in this, we would still have those obligations and need to meet them.

Q263 **Dr Lewis:** And you are not in a position to narrow down this very large number of cases—the vast majority of which I have heard you repeatedly say are baseless—by stripping out the larger majority of them so as then to be able to make decisions quickly on the small minority of them.

Jeremy Wright: What you have heard me say is that I have a very strong expectation that when the process is completed, a very, very small minority of the cases that are being investigated will merit considerable investigation. Of that I have little doubt, but I have not looked and would not look at these cases to determine which are which. The fundamental problem that we have discussed already this afternoon in some detail is working out which of the cases before IHAT at the moment are meritless and which are the ones—it is undoubtedly a much smaller number—that may have some merit.

Q264 **Dr Lewis:** Have you communicated with the ICC? Are they fully aware of the largely discredited and tainted source of the vast majority of these cases and are they not willing to co-operate with you in any way that would enable you to foreshorten this process? There is a reason I am asking.

Jeremy Wright: We have certainly attempted to keep the ICC and the office of the prosecutor—



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Q265 **Dr Lewis:** That is not what I asked. Are they willing to help you foreshorten the process?

Jeremy Wright: Can I finish the answer? We have certainly tried to keep them up to date with what we are doing. That includes all the surrounding circumstances of the processes that IHAT are engaged with, including of course the material that has come to IHAT and where it has come from.

As you will know, Dr Lewis, the stage that we are at is that there is a preliminary examination being conducted by the office of the prosecutor. We hope that they, and we have encouraged them, bring that to a conclusion as swiftly as possible and conclude that they need to take the matter no further—in other words, that the ICC's involvement can at that point cease. I regret to say that the office of the prosecutor now believes that that process will not complete by the end of this year, as we might otherwise have hoped.

Dr Lewis: End of 2019.

Jeremy Wright: No, that is the IHAT process, so I would very much hope that the office of the prosecutor would come to a conclusion much earlier than that—I hope in the early part of next year. That is of course a matter for them, which I can't determine. What we will always seek to do, and we have now communicated with the office of the prosecutor formally three times to this effect, is to say that we would like them to bring their conclusions forward as quickly as possible because we are very confident that our processes are quite sufficient—many around this table would say far too sufficient—for the purpose of investigating those potential offences.

Q266 **Dr Lewis:** The reason I wanted to revisit this was that you were very resistant to the Chairman's line of questioning, which was simply trying to get a straightforward statement that this whole process from the perspective of the soldiers concerned has been massively unfair. I don't know why you should be so resistant, for a simple reason: is it not generally accepted that there are certain principles, such as justice delayed is justice denied? Is it not perfectly possible that you can have conscientiously followed all the processes within your power, as laid down by law, and done that assiduously and had no choice but to do what you have done—that is the case that you have been making this afternoon—but that nevertheless, because of the abuse of process that has gone on by this firm of lawyers, justice has been and is being delayed and is therefore being denied, and therefore the process is, as our Chairman is saying, manifestly unfair to the soldiers? I don't see why you are resisting conceding that point, because it is not a reflection on you or anything you have done. After all, that is why we change laws—because sometimes, in practice, laws show themselves to be inadequate for purposes that we hadn't anticipated. We see that something has gone wrong. Something has gone wrong—that is why we want to change the laws. Why can you not concede the rather obvious point that, from the soldiers' perspective, this has been a hugely unfair process, which is why you are trying to put it right?



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Jeremy Wright: Dr Lewis, I appreciate the tempting offer that you have put before me. However, the danger is—not as a result of what this Committee would wish—that were I to say that this is an unfair process, that would be taken to mean that I do not think that the process should be happening as it is. The point that I have attempted to get across to the Committee is that, in my judgment, it would be very difficult to see how we could honour our legal responsibilities without conducting some form of investigation. It has not been my case this afternoon that this is a perfect process—far from it. The reason I have asked Sir David to do what I have asked him to do is because I anticipated that there may be grounds for improvement. I think that there undoubtedly are. That is a different thing. Unpleasant though it undoubtedly is, and wish though I do that it were not necessary, if allegations are brought to us, they must be dealt with, and at the standards and in a way that the British justice system, whether it be the service or the civilian justice system, expects and the world expects of us. It seems to me that it is worth again making the point that the reputation of not just the justice system but the Armed Forces requires us to demonstrate that where these allegations are brought to us, we deal with them properly. That doesn't mean dragging them out beyond where they should go, and it doesn't mean not dealing swiftly with those cases that have no merit, but the great challenge that we really need to focus on here is how you sort the wheat from the chaff—how you quickly work out which are the meritorious cases, if any.

Q267 **Dr Lewis:** I heard you say earlier that this was all unprecedented. I am not a lawyer and I am not an expert in the subject, but I do know of the term lawfare. The term lawfare, I believe—other people on the Sub-Committee will correct me if I am wrong—comes from America. It comes from America because this sort of abusive technique was, I believe, pioneered by American lawyers. Is it really the case that there is no precedent for this? If there is no precedent for this, how did the term lawfare come to be in generally understood and accepted use from the United States experience onwards?

Jeremy Wright: When I talked about there being no precedent, the conversation I was having with Mr Mercer was specifically around the way in which a very large number of claims had been collected by a limited number of legal firms and then brought to IHAT. That is not, as far as I am aware—I could well be wrong, and there may be others who have seen this happen—something that has precedent in our domestic system.

Q268 **Dr Lewis:** I am talking about in America.

Jeremy Wright: Understood, but you were putting to me that I had said something earlier on about there being no precedent; I simply wanted to put that in context.

Dr Lewis: That is the UK context.

Jeremy Wright: And specifically in relation to the way in which a large number of claims had been “farmed”. That is a word that has been used,



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and it may not be an inappropriate one; it will be up to the regulatory authorities to decide. That is a process that I do not think has a precedent.

Your broader point is around the concept of lawfare. There is no doubt that that has been around a long time, as you say. This is something that, as you know, the Government are considering in a broader context, not simply as a result of the activities of IHAT. There are other matters that we have to think about around the obligations of the Ministry of Defence, as well as individual soldiers, sailors and airmen, to deal with a variety of different legal claims against them, with all the costs and difficulties that that incurs. That is lawfare in its widest sense, and the Government are seeking to present a policy response to that. Again, that is not something that I should comment about. We have already talked a bit about derogation from the ECHR. There may well be other things to be said, and doubtless the Secretary of State will be able to discuss them with the Committee in due course.

Q269 Dr Lewis: I am going to come on to Sir David with some specific points in a moment, but just to wind this up, in general, are you reasonably confident that the Government will be able to come up with a set of changes for the future that means nothing on this scale can ever happen again?

Jeremy Wright: I certainly hope so. Our immediate obligation is to resolve the stock of cases already before us in relation to both Iraq and Afghanistan, and we should do everything we can to resolve those swiftly. We must then deal with what I described earlier to Mr Mercer as the flow argument as well as the stock argument. We must deal with the capability for firms like the ones we have described to bring a large number of cases that may have no merit, take up a very large amount of time and cause a great deal of angst in processing them. That is something that I believe we have to think about on a number of fronts, and that is why I think your broader lawfare point is the right one.

We have to think about exactly how this fits into a broader-range policy response to the way in which the Armed Forces and the Ministry of Defence are put under a significant amount of legal pressure—not legal pressure that they should be expected to bear. As you would expect from the Attorney General, I am certainly not suggesting that there should not be scrutiny of the law, both domestic and international, but if that scrutiny is taken from fair scrutiny to unfair scrutiny and pressure that causes all the negative effects we have spent some time discussing this afternoon, the Government are entitled to think about an appropriate policy response to that. That is exactly what the Government are doing, and when we are in a position to bring forward conclusions, we will do so and I am sure the Secretary of State will be keen to come before the Committee and discuss them.

Q270 Dr Lewis: Finally—this may have been covered before—are you basically saying that although you are therefore reasonably confident that you are going to be able to come up with a package of changes for the future, there is little that can be done for not only those people who have been



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advised and put on notice that charges could be brought against them, but anyone else who in future might be faced with such allegations relating to any conflicts that have already begun?

Jeremy Wright: I think it will depend very much on the type of policy response that we are talking about. Again, I am not in a position to talk about that now.

Q271 **Dr Lewis:** In other words, is there anything you can do, if not retrospectively, at least currently?

Jeremy Wright: As you say, the retrospective point is probably the important one here. The majority of sensible policy responses that the Government could bring forward would be unlikely, it seems to me, to be retrospective in effect. So we probably have an obligation to look at those cases already in the system. There is a whole series of practical responses we need to give to how quickly we can resolve those cases.

Then there is the position of policy going forward and for future engagements, for future activities, whether there are safeguards we can bring about as a matter of policy to assist in making sure this does not all happen again. But again, it is difficult for me to say too much more. I do not think it is my place to talk about those policy options and the Committee, I am sure, would not expect me to.

Q272 **Dr Lewis:** I would not expect you to, but I am sure you can see from the passion of the questioning from both the Chairman and Mr Gray earlier how strongly this is felt in military circles and among the public generally.

Jeremy Wright: Dr Lewis, perhaps I can take the opportunity to say, and I hope I transmitted this effectively earlier, I do not in any sense wish to gainsay that strength of feeling. Indeed, I share it and I think all those across Government share it. It is a source of deep frustration that we find ourselves where we are, but I am afraid it is my obligation to talk not just to the Committee but to others about what I perceive to be the Government's legal obligations here, however unpleasant they may be and however much we may wish we were not in this position.

Q273 **Dr Lewis:** Thank you for letting me do that, Chairman—I hope I did not unnecessarily duplicate what came before. Just turning to a few specifics: you are said to be confident that IHAT could conclude its work by the end of December 2019, if four conditions are met. I will not read them all out. The one that we are interested in is where you say if “the transition of the IHAT from being ‘victim-focused’ to suspect focused is matched by corresponding shifts in the balance of employees/contractors and resources”. What do you mean by this shift by IHAT, which you evidently identify as having happened from being victim-focused to suspect-focused? Could you explain that, please?

Sir David Calvert-Smith: As the number of cases coming in has grown, they have been identified by the IHAT command team. A number of areas into which perhaps half a dozen, may be up to 20, separate allegations look as though they should be investigated as one, whether it is the fact that similar sorts of things seem to have happened at a particular



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detention facility at a particular time and not at another time, and which was the company, and so on.

So there are particular areas where, rather than looking at the complaint made by the citizen—if it is a complaint of homicide it will be their parents, or whoever it is—but if it is an allegation of ill treatment, it is not just the individuals who are in the detention centre, but perhaps higher up—failures in the command structure or whatever it might be—which might mean that whether they lead to criminal prosecutions or simply to recommendations to the MoD, which is one of the functions set out by the Court of Appeal in one of the earlier cases, that would be one of our duties in domestic and international law.

That is why instead of just looking at victim, victim, victim as an individual case, most of those are now dealt with. But if it is, “Oh, it’s victim so-and-so and it was on April 2 and it was at that detention centre. Oh, I see we have six others”. Well, this looks like something we should look at more closely.

Q274 Dr Lewis: I think we are talking about the consolidation of cases. You have 25 different allegations from different sources, but they all boil down to the same three or four people in the same unit and the same place.

Sir David Calvert-Smith: Exactly, that sort of investigation.

Q275 Dr Lewis: Thank you very much, that was very clear. At another point, you attribute delays to a culture of fastidiousness in the following terms: “The fact that it”—by which you mean IHAT—“has been criticised by claimants and the courts over the years has understandably induced a mind-set which demands that every i be dotted and every t crossed so that the entire process will withstand scrutiny at every stage.”

There is an implicit criticism in there, so would you explain to us whether you think the investigators got the balance right between the need to be accurate and the need to be speedy, on the “justice delayed is justice denied” principle? In particular, do you think that those working at IHAT are human enough to be aware of the anguish that those servicemen and veterans have gone through by having had justice delayed for all these years?

Sir David Calvert-Smith: I made that comment in part because it was a comment made to me when I started. I think the IHAT had received a number of court decisions in which it had been criticised for not being thorough enough, so it then devised procedures that were designed to dot every i and cross every t. Most of the command team—all of them have been in post for some years now—probably chafed under those restrictions, which they had imposed on themselves because the downside of further criticism by the courts and maybe others demanded that at that time they do the most thorough job of all.

The best thing that has happened to the IHAT process, to put it back to a more realistic way of working, has not been my arrival on the scene but



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the coincidental arrival of the judgment of Mr Justice Leggatt, which I quote extensively and which says that the test you propose—which we discussed before your arrival, Dr Lewis—is the right one. But perhaps just as importantly as that, the IHAT will be able to say to anybody—to PIL or any of the other firms coming to them—"I'm sorry, but from now on a three-line statement without a proper date on it is not going to trigger an investigation." Even with that, in the old days, the nervous IHAT would have thought, "Well, we'd better do something." Now Mr Justice Leggatt has said "No, that is simply not good enough; you can send them away and say, 'If you can't come up with anything better than that, don't come at all'." They have been given licence to be more realistic, if you like, by the court itself. I hope some of the things I have said will help to justify them being more realistic still.

Q276 Dr Lewis: That answer segues perfectly into the next question—I just have two more. You note in your review that "the vast majority of the claims are generated by PIL. The quality of the information supplied has often been very poor...sparse"—you have just given a perfect example of that. The question that anybody with a degree of common sense would ask, therefore, is why so many of these claims were not rejected from the outset. As an experienced lawyer, do you think it is acceptable for a law firm to present such poor-quality evidence in the first place—or, indeed, for anyone to take it seriously?

Sir David Calvert-Smith: I will deal with the last part of that in the most general way. The Attorney General—quite rightly, if I may say so—has stressed that all this is sub judice, as it were, because the SRA is looking into the way in which the firm responsible has behaved. Perhaps I can just develop the point. There is a contrary risk, which is that a better statement will be supplied that is properly interpreted, where the name of the deceased or the complainant is properly spelt, the dates are all consistent and so on. One result of dismissing an allegation is that you may get an allegation back that actually is better phrased and better justified and that may, in due course, trigger an investigation. Simply to say, "We are going to send a case back because what you have provided does not justify us going any further," may not mean that the case goes away completely. It may just come back again with a better statement.

The quality of the input to the IHAT has been a fact that has grown on the command team as they have seen these cases come in and become better able and perhaps more confident in rejecting, but it won't send the cases away completely.

Q277 Dr Lewis: No, I understand that. Surely, given that we are now expecting to find that the vast majority of these cases are baseless, isn't there at least a sporting chance that those who had come in with a blatantly inadequate, vague and unspecific claim would have fallen at the first fence?

Perhaps somebody should have been robust enough to tell the lawyers to say to their clients, "Come on, you can't be serious about this. If you are making a serious allegation, you know perfectly well that we need



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chapter and verse.” If they had been sent away, surely there is a very strong probability, particularly looking back on what we know about the whole thing, that many of them would not have come back again, because there was no substance with which they could have fleshed it out. If there had been any substance, the claim probably would have been better fleshed out in the first place.

Sir David Calvert-Smith: That may well be the case.

Q278 **Dr Lewis:** So wasn’t that a failure of the IHAT to be sufficiently robust and discriminating? Doesn’t this go back to what you were saying before about their apparent paranoia about dotting every i and crossing every t?

Sir David Calvert-Smith: I think it does. I am going round in circles here, but I think we come back to the position regarding the appointment of a judge to oversee all these cases, who has set out—it is not for me to say—what may seem to the Committee to be very sensible parameters. They would allow the IHAT to say, “Go away” to a number of allegations, or ones that are not properly justified by signed statements and the like. That does mean that, had they had the confidence to do that before, they could have done it before.

Q279 **Dr Lewis:** So that is a failure in the system, isn’t it?

Sir David Calvert-Smith: Yes. On the other hand, the mood music from the courts until quite recently, whenever a complaint was made—the Attorney reminded us of taking the RMP out of the equation early on—induced a mindset, I suspect, of saying, “Hang on. We can’t do this; we can’t do that. We had better be careful about we do.”

Q280 **Dr Lewis:** I shall resist the temptation to say in detail that it goes back to the Chairman’s point about unfairness. Because if these people had operated the system with even a modicum of good sense and discrimination, many of the soldiers would not have been put through this, would they?

Sir David Calvert-Smith: I think that is right; that it must be right.

Q281 **Dr Lewis:** Thank you.

Sir David Calvert-Smith: There are people at the other end—

Dr Lewis: Don’t spoil it! Finally, you mention in your report that you were informed that all suspects are themselves informed of their right to free legal assistance before interview in the same way as civilian suspects. I am going to ask you how those assurances were given and whether you investigated that any further. I just want to check whether someone else is going to be asking question 10, because otherwise I would like to work something in.

Chair: Yes but please go for it.

Q282 **Dr Lewis:** This is the reason I mention this. I will read the next point because this is something of which I have personal knowledge. We heard evidence from a lawyer representing soldiers under investigation who



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claim that IHAT investigators turned up at their barracks saying that they wished to arrest them. When they asked for legal representation, they were told that they were only being treated as witnesses. We want to know whether you saw any evidence of this during your review; and how serious those claims are, if they can be substantiated?

I am particularly keen on this because a very distinguished retired general first alerted me to this sort of problem some time ago, and said that people long out of the forces would get a knock at the door, and then they would start being questioned by people in authority, then and there, on things that had happened 10 or 20 years ago. This is absolutely monstrous. Then the question would be, of course, presumably, if they were potential suspects, shouldn't they have been read their rights? If they were not read their rights, weren't their interests being jeopardised by being asked to make statements about things that might incriminate them?

There seems to be a bit of soft-shoe shuffle going on, here. Are you a suspect or are you just a potential witness? Are we going to approach you as a witness, and then, if you say something that you shouldn't have said, lo and behold you are suddenly a suspect, and you have incriminated yourself? This is an appalling situation for people to be faced with, even if we are only talking about events that happened within the past few months, or a year ago—let alone people who are suddenly confronted by a knock on their door 20 years after the event. Outrageous, isn't it?

Sir David Calvert-Smith: Well, if something like that actually happened and it wasn't made clear to the person concerned whether they were being asked questions as a suspect or as a witness, and if, as a suspect, they weren't informed of their right to free legal assistance, then clearly something went wrong. I was told that anybody who is being treated as a suspect is offered free legal assistance.

Q283 Chair: It is interesting that you say "If this has happened". This has been presented to Ministers, and so on, who say, "If this is going on". We have made films about this. You must have seen some of this in the media. Have you investigated any of these claims at all?

Jeremy Wright: It is going to sound like I am passing the responsibility on to someone else again, but, of course, in terms of the behaviour that Dr Lewis has described, if it has happened it is clearly something that Ministers at the MoD should look at. It is not about the process of IHAT as much as the process of the behaviour of either service police officers or, conceivably, I suppose, civilian police officers; but, absolutely, if what Dr Lewis has described has taken place, that is a wholly unacceptable way of going around dealing with the people who are subject to these investigations. I do not think you will get any disagreement from any of us about that.

Q284 Mr Gray: I cannot see why this is a matter for the MoD. This is a purely legal matter. If, indeed, there are people behaving in what you describe as an illegal manner, surely that is a matter for the Attorney General's



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office, to say—

Jeremy Wright: I said it was unacceptable. I am not prepared to say, at the moment, that it is illegal, without understanding rather more about it. If it is the behaviour of the service police then that clearly is not something that I as Attorney General would comment on.

Q285 **Mr Gray:** It is not service police. Have you met an organisation called Red Snapper?

Jeremy Wright: I have heard of them.

Q286 **Mr Gray:** But you have not had meetings with them.

Jeremy Wright: No—

Mr Gray: That is important.

Jeremy Wright: Yes, but let me explain why not. As I understand it, Red Snapper is an organisation that contracts with the Ministry of Defence to provide personnel. Now, there is no reason for the Attorney General to interact with any of that, as far as I can see.

Q287 **Mr Gray:** Red Snapper are the people who have been purporting to be police officers and indicating to service personnel of the kind that have been described that they might be under arrest.

Jeremy Wright: As the former Director of Public Prosecutions will tell you, impersonating a police officer is a criminal offence, and if that is what has happened then I have no doubt that those who pursue that type of offending ought to do so. But the question you have asked me is about my interaction with Red Snapper. There has been no such interaction, and it is not surprising that there has not. There is no reason for me to have interacted with them at this point.

Q288 **Mr Gray:** Did you ask Sir David to look into the process, to work out whether or not the IHAT processes were or were not working properly? At least part of the allegations we have heard is that Red Snapper, contracted by IHAT, has been acting in a way that you describe now as illegal. Surely that would be an absolutely essential part of Sir David's investigation.

Jeremy Wright: We have talked about the remit. Sir David will answer for himself as to what he has found and the conclusions he has drawn from it. I do not think there is anything more I can say.

Q289 **Mr Gray:** Sir David, did you meet Red Snapper?

Sir David Calvert-Smith: I did not meet Red Snapper. I watched on television the gentleman you interviewed a month ago. I spoke with a number of the Red Snapper people, because they are the investigators, but, looking again at my terms of reference, I was not asked to vet the performance of Red Snapper. I was informed—I set this out in general terms in the report—that any organisation based in the depths of Wiltshire will have problems with recruiting staff, supervising them, putting in proper systems of appraisal and ensuring that generally people do the job



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properly. That will of course include their interaction with members of the public. But none of that was really the system stuff that I was looking at.

Mr Gray: I will not pick you up on the depths of Wiltshire, which I represent. It is not very deep.

Sir David Calvert-Smith: That is why I said it. I am so sorry. It was only a tease.

Mr Gray: I will pass over that. Can I ask a general question?

Chair: Please do. I think we are going to get called to a vote in the minute.

Q290 **Mr Gray:** We have gone through this afternoon in great detail the whole process, the thought that lies behind it and the way the review has been conducted. Leaving aside the detail for a moment, do you not agree that something has gone badly wrong here with natural justice? Some 3,500 soldiers who were doing their duty have been hauled through a process by Her Majesty's Government—by the state and by the establishment—that they should not have been hauled through. Is there not something deeply wrong here somewhere, whether it is the MoD, the Attorney General, the Prime Minister, the Army or Red Snapper? Do you not agree with the general proposition that something has gone very, very badly wrong here, and that British Army soldiers have been pulled through something that they should not have been pulled through?

Jeremy Wright: I entirely accept that this is a wholly unsatisfactory process. I absolutely accept that. The difficulty for me is that I cannot simply rest on that contention. I have to determine whether there is anything I can do to assist in the process of making it slightly less unsatisfactory. We have talked about some of those things. It is probably also worth saying, before we leave this conversation, that it would be wrong, in my view, to suggest that IHAT has made no progress. It has made progress. That is clear from Sir David's report, in terms of the cases it has already been able to clear out of the way. That is not of no value. Anyone who was dealing with the prospect of being suspected of wrongdoing in any one of those cases can at least be grateful that those cases have now been dealt with. They are perfectly entitled to say that it took a heck of a long time, but it is a good thing at least that they are dealt with.

Chair: I don't think they are going to be particularly grateful.

Jeremy Wright: I am not saying they should be grateful. The point is that those cases have now been processed. There is a danger, when we look at IHAT and make perfectly reasonable comments about its performance, of missing the fact that a large number of cases have in fact now been dealt with and cleared out of the way. It is important to make that point. I am not suggesting that that makes this a satisfactory experience for anyone concerned. The point I made earlier still stands. We will do anything we can to make it less unsatisfactory, and you will no



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doubt want to talk to others who have responsibility in this process on the same basis.

Chair: I imagine you cannot come back for 10 minutes after the vote.

Jeremy Wright: I will struggle, on the basis that I thought we would finish at 4.30 pm.

Chair: Can you come back for a five-minute conclusion?

Jeremy Wright: If I go and vote straight away, I can come straight back, but I will probably need to be away shortly after 4.30 pm.

Chair: We have two more questions and then will finish at 4.30 pm. Thank you.

Sitting suspended for a Division in the House.

On resuming—

Q291 **Mr Gray:** Sir David, there are two particular aspects of your inquiry that we want to look at, as quickly as we possibly can if we may. The first is Operation MENSA, the process by which witnesses are summoned. The summons are apparently to a country near Iraq, but not Iraq, for a sort of mass inquiry. Is that how it works?

Sir David Calvert-Smith: For reasons of which I am totally unaware, my rather more detailed account has been summarised, I suspect because of diplomatic repercussions. I have not named a country and I will not, because I was told not to, but what happened was that days were set aside whereby a facility was available in this country into which the witnesses were brought. Investigators from IHAT went out. An interview took place and a statement was made and signed. A decision was then made—"Well, we need to take this further," or "Well, that's not enough to mount a prosecution," or whatever decision was taken—but at least the process of interviewing the actual person who was alleging what had happened, rather than the solicitor who had alleged it on their behalf, had taken place. Sadly, that process came to an end at just about the time I started. Throughout the period in which I was looking at it, solutions were being sought, but as I hope I made clear, it seemed to me absolutely fundamental that a solution is found, and fast.

Q292 **Mr Gray:** Surely that process was a complete logistical nightmare—getting people who are witnesses out of Iraq and into another country at the same place and same time, and getting lawyers out from here to wherever that might be. Surely that is an extraordinarily clumsy way of doing it?

Sir David Calvert-Smith: Did I not say "logistical nightmare" somewhere in the report? It was certainly quoted to me as being such. I did advocate, as a way of being realistic, sensible and saving the logistical nightmare, better and more extensive use of video conference, which is now a way of doing business both in courts and outside, as you obviously well know.



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Q293 **Mr Gray:** Yes, although that hasn't actually happened very much, has it?

Sir David Calvert-Smith: I don't think it has, no.

Q294 **Mr Gray:** Why not?

Sir David Calvert-Smith: It has not been arranged. It has not been organised. Without being indiscreet, it has been difficult on the ground in Iraq for various reasons to even organise that sort of facility, but it certainly ought not to be impossible, as I recommend.

Q295 **Mr Gray:** Why was MENSA necessary in the first place? Why couldn't lawyers and others simply go? Iraq is a perfectly accessible country. Why couldn't these interviews be conducted in Iraq?

Sir David Calvert-Smith: The information that I was given was that it is not—that even the green zone is not as safe as it might be and other parts of Iraq are very far from safe. The logistics of keeping people safe 24 hours a day are enormous still, or so I was told.

Q296 **Mr Gray:** It is certainly not easy, but it is not impossible. Plenty of people are operating throughout Iraq. Anyway, you were told that Operation MENSA was necessary, but it was a vastly complex thing to do. How necessary was it, therefore, given all that cost and complication? Did we really have to see the witnesses in the way that Operation MENSA laid down?

Sir David Calvert-Smith: In order for a conscientious decision to be made about whether the investigation was worth following up or going straight to a matter of recommending a charge for the Director of Service Prosecutions to consider, I would have thought in most jurisdictions it would have been necessary to interview the key witnesses—the eyewitnesses in particular, if any—as to what had taken place, or the alleged victim as well.

Q297 **Chair:** A final one to you, Attorney General. We have now decided to derogate from European human rights law, and I assume you were involved in that decision-making process. Why now? Why haven't we done that before?

Jeremy Wright: What we have said is that in appropriate circumstances, we would be prepared to derogate. So it this broad-based—

Q298 **Chair:** No, it is not a broad base. Why have we not done it before as the French have? We have talked about why the French haven't done this and the reason is that they have chosen to derogate. Why have we not done that?

Jeremy Wright: I would say, first, that we have in the past, specifically in relation to Northern Ireland for example, sought to derogate from the ECHR. There were some legal problems with it at the time but we did try. I cannot answer the question as to why a decision has not been made before now to make the statement that we have made, which is that where it is appropriate to do so we would be prepared to derogate. That is perfectly standard procedure. It is within the confines of ECHR. It is, in my



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view—this is my prerogative to say—perfectly lawful for the Government to do so. It is something that the Prime Minister and the Secretary of State have decided it is appropriate to say now.

Q299 **Chair:** They did not feel that in 2003 and 2004.

Jeremy Wright: Of course, that certainly wasn't our responsibility.

Q300 **Mr Gray:** The Government announcement said they intend to derogate. You seem to be saying they might sometimes, but the very public statements by the Prime Minister and the Secretary of Defence were that they intend to derogate.

Jeremy Wright: What they have not said is that in every single set of circumstances a derogation will automatically follow. There will still be an exercise of judgment before the derogation takes place, which is why we had difficulty earlier on, without wishing to be unhelpful, in specifying what rules would apply when derogation was initiated.

Q301 **Mr Gray:** You are being very modest. The Prime Minister's statement, when she talked about our wonderful troops on the frontline, was: "We will repay them with gratitude and put an end to the industry of vexatious claims that has pursued those who served in previous conflicts" by derogation. We will put an end to it. We will repay these brave soldiers on the frontline. That was a big political statement, but you seem to be much more cautious.

Jeremy Wright: As I say, Mr Gray, what you will find is that the support for the Prime Minister's statement, which is obviously right and I am sure will have broad-based support, will not just come from derogation. There will be other things that I hope we will be able to do, but it will not be for me to set them out for the Committee. That will be for others, and I hope very much that the Committee will have the chance to scrutinise those.

Chair: Thank you. You have been anything but unhelpful, so thank you very much for coming along today.

It is worth saying: £34 million, 3,000 cases, families and soldiers' lives ruined, and not a single prosecution yet. People are enormously grateful. This is not about us or about me, but about the guys and girls going through this process. They are enormously grateful that we have done this review, but I find it hard to understand why you cannot say the process is unfair. To this date, what we have put these people through is appalling. I understand why you are saying it; of course I do. We talk a very good game in this place about our armed forces. We go to the Despatch Box and we talk about how we will do anything for them, and yet this crystallises the betrayal, in my view, of what we have actually done. We have talked some great stuff, but this is what it looks like. That is why I have called it a national disgrace. I stand by that, because this is how what we say over there manifests itself for our guys and girls. It just appears so desperately weak that we are the only country that does this. I know you are not here to talk about other countries, but we are the only people that do this.

I have been talking about this in Washington and to the French and others. Their view and my view is that we are weak. Why do we not just say in the first place, "We are going to derogate from this."? Or, like we have over prisoners' rights on voting, why do we not say, "I am sorry, but we are a sovereign country and we will not do this to our servicemen and women"? That is where the difficulty has come.

But you have been enormously helpful today and I absolutely understand the position that you and Sir David are in. Thank you so much for coming along and helping us with this process. I hope we will never be in this position again and that we can do what we can for those who will be going through the process. Thank you very much for coming.

Jeremy Wright: Thank you.

Examination of witness

Witness: Professor Richard Ekins.

Chair: Our next witness is Professor Richard Ekins. Thank you very much for coming to talk to us today. I am sorry you have had a bit of a wait. First, what was your view on today's session?

Professor Ekins: It has been very stimulating. There seems to be a bit of confusion about what derogation might or might not achieve. With respect, I was not quite sure from listening to the Attorney General how he thought derogation would stop the problem next time. If the legal basis for the wave of investigations is just the Services Acts in 2006, it would seem that the European convention on human rights must have a significant part to play in the process; otherwise derogation is beside the point.

Your last question was about why the Government never derogated in 2003. I think that the reason was that no one ever thought this situation could arise. Everyone took for granted—because there had been a decisive European Court of Human Rights judgment the year before—that the European convention would not apply in Iraq, save in very exceptional cases like on a military base and so forth; therefore, there was no need to derogate. It would have made no sense.

That was the understanding for the next eight years, until 2011, when it was suddenly announced that actually the European convention had applied all the way back. Suddenly, it was too late to derogate; the moment had passed. That is not the position going forward, of course. You know what the new position is from Strasbourg, so it makes some sense to try to derogate. That is why it was never contemplated beforehand.

Q302 **Chair:** That is interesting. Thank you. Can you give us a brief overview of the work of the Judicial Power Project that you are heading at Policy Exchange, and its broad approach on matters of military law?

Professor Ekins: Sure. As you implied, it is not confined to military law by any stretch. The project is concerned with the expansion of judicial



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power in our constitutional arrangements, and some of the drawbacks that that has for self-government, for the rule of law and for effective government. Some of the work we have done has been about cases concerning military action as an example, rather than as a main focus in its own right.

There have been some important cases. One, as I mentioned, was the Strasbourg Court changing the rules of the game in quite a dramatic way after the fact, but that was not the only one. There are some surprising judgments of our own courts as well, although sometimes British courts have expressed concerns about the direction taken in Strasbourg. It is a broad-brush project bringing academics, retired officials and lawyers together to point out some problems.

In relation to military action, we have a fairly old-fashioned view. Not that long ago, in 2007 maybe, Lord Bingham articulated that view well. He pointed out some very real problems with extending human rights law to different countries where it would be hard to gather evidence and where there is already a bespoke body of law—the law of armed conflict and international humanitarian law. It is a somewhat, but not very, old-fashioned view that one does not need European human rights law to do everything. There are some deficiencies with it.

Chair: Absolutely.

Q303 **Mr Gray:** I am getting in a muddle and maybe, as a Professor, you can help to un-muddle me a bit. First, I did not quite catch what you said, but I understand you to say that in the 2003 invasion of Iraq, it was generally agreed that the ECHR did not apply, and it was only in 2011 that the Court in Strasbourg indicated that they thought it had applied, even though we did not.

Professor Ekins: It changed the meaning of the term “jurisdiction” in the European convention on human rights. The UK, like every other state, guarantees everyone in its jurisdiction their convention rights. Jurisdiction had been understood to mean, more or less, territory. Suddenly, the meaning was extended to mean not only your territory, but within your control and power, and subject to you and so on.

It has been quite a tangle to figure out exactly what that means. There is a great deal of case law on it. The Strasbourg Court effectively overruled the British courts’ position, which was that jurisdiction has a limited sense and does not extend to military action outside the territory.

Q304 **Mr Gray:** It seems to be an extraordinarily important point. In other words, in most of the cases that are being investigated by IHAT, the thing occurred at the time when the British Government understood that the European convention on human rights did not apply anyhow.

Professor Ekins: That is right.

Q305 **Mr Gray:** It was only subsequently that the European Court of Human Rights in Strasbourg concluded that it did apply. None the less, the cases



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are being heard now under the presumption that the convention had applied.

Professor Ekins: Yes. Strictly, the Strasbourg Court does not say, "This is the new law from now." It says, "This is what it has been all along." The effect, for everyone involved, is that it is retrospectively applied all the way back. Suddenly, the investigations undertaken are being judged to be inconsistent with the convention, insufficiently independent and insufficiently broad by not covering every single case of a death in the zone and so on.

Q306 **Mr Gray:** I am sorry we haven't still got the Attorney General here. This seems to me to be absolutely extraordinary. I'm no lawyer, but—

Professor Ekins: It is extraordinary and I am a lawyer.

Mr Gray: It is absolutely weird that the thing we are investigating, namely the IHAT inquiry into these soldiers and what they did, is being conducted under the presumption that the European convention on human rights applies, which it theoretically does under the law because in 2011 the Strasbourg Court said that it did. None the less, at the time of the alleged crimes, our courts and the British Government thought that the ECHR did not apply.

Professor Ekins: That is correct.

Q307 **Mr Gray:** That seems to me to be an absolutely extraordinary circumstance. We are now prosecuting our soldiers for doing something they were conceivably allowed to do under British law at the time. In retrospect the Strasbourg Court produced a ruling that says they were in fact subject to the ECHR, even though they didn't think they were.

Professor Ekins: The ECHR has definitely been retrospectively been applied.

Q308 **Mr Gray:** That seems absolutely weird.

Professor Ekins: Having said that, there is of course the point that has been stressed at various times this afternoon, which is that British troops were always subject to the services Acts and to obligations under international humanitarian—

Q309 **Mr Gray:** Good point, and we will come back to that in a minute. I want to stick with the ECHR for one second. Given that the Strasbourg Court, by changing the definition of territoriality in the way you described, effectively applied the ECHR retrospectively, could the British Government not also derogate retrospectively in precisely the same way?

Professor Ekins: There is very little chance, if any, that would survive scrutiny. They could attempt it, and it would be good theatre, but I am sure the Court would say the power to derogate is a power to derogate prospectively—"You can't use it because you disagree with us; you have got to use it to announce an emergency in advance," and so forth.

Q310 **Mr Gray:** The second point you are making is perhaps the more important



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one. All this fuss the Government are making about how they are determined to derogate for the future is actually slightly more theatrical than realistic, because the International Criminal Court and domestic law continues to apply in precisely the way it did before.

Professor Ekins: I do not think derogation is just theatre. I think we should derogate, and so long as we are a member of the ECHR, we should use every tool available, and this is one of them, to attempt to limit the scope of the ECHR. It is subject to challenge and it is not a panacea, but it has some prospect of working. If it was undertaken, one could limit the robustness or fastidiousness of investigatory techniques undertaken and so forth. Whether that is enough to square with the ICC, I am not sure. I am not a specialist in the jurisdiction of the ICC. I would be surprised, given, as has been pointed out, that they cover a great many states in the world, if they would require the same sort of level or ECHR gold standard within European territory. I doubt it.

Q311 **Mr Gray:** None the less, the notion that in future theatres of war we will derogate from the ECHR is not necessarily going to remove the possibility of an IHAT-type operation occurring in future conflicts at all. That might well still occur under domestic law, military law or the ICC.

Professor Ekins: I was doubtful, with respect to the Attorney General's claim, that the services Act was the legal mechanism by which the investigations were having to be heard and so forth. I am not a military lawyer but I have looked at the services Act. It looks like it imposes obligations on commanders to take seriously allegations that come before them and to report certain things and for the service police to act. It does not require anything like the ECHR requirements of an impartial, independent investigation in every single case of a death when a state is involved. I would think, if the ECHR were removed from the picture and we were being governed just by the services Act, that one would not need something as laborious as IHAT. On the position of the ICC, I am not sure but again I would not expect that to be as demanding as what the European Court of Human Rights demands within Europe.

Q312 **Mr Gray:** It would help but it wouldn't be decisive? Can I just pick up on one particular point you made in your written evidence? The Government have announced that they intend to derogate, although I must say I think the language the Prime Minister and the Secretary of State for Defence used was quite different to the language used this afternoon by the Attorney General. None the less, let's take the Prime Minister at her word that we will derogate in the future, which will stop our brave boys being prosecuted in this way. You indicated in your written evidence that that is not binding on future Governments, and it is therefore barely worth the paper it is written on.

Professor Ekins: It is worth more than that I think, but it is certainly not going to change the position in a permanent, stable way because any successive Government could think again or simply take a different view of the policy. A legislative change to the scope of the Human Rights Act would obviously reduce the impact of European human rights law beyond

these shores in a more stable way. Plainly, Parliament could change it later if it thought it had to, but that is much more difficult.

Q313 **Mr Gray:** Is there such a thing as a permanent derogation?

Professor Ekins: No, there isn't. It could be worth a try, but I am afraid it would certainly be challenged and voided. One could immunise derogations from challenge in British courts, but there is the question of challenge in the European Court of Human Rights as well. It might be quite a good idea to immunise them from challenge in the British courts, but you still have to think of what will happen at that stage.

Q314 **Dr Lewis:** Briefly, I want to pursue what I think is a particularly important point, as James has brought up derogation there. We are being told that we did not know that this law applied. I thought we were told that other countries had derogated from it in the past. James's ingenious idea is that we could do a retrospective derogation. Okay, that won't work, but couldn't we argue that we would have derogated, but were not in a position to do so because we had no idea that this applied? Or should we have known that it applied all the way along? Did other countries know it? Is that why they were able to derogate and we didn't?

Professor Ekins: No, I don't think their derogations are in respect of military action abroad. I think they are derogations in respect of local emergency and so forth. So I don't think that point applies.

It is a powerful moral and political point, I think: the rules have been changed and we would have derogated and it isn't terribly fair to change the rules—but it is not going to persuade the European Court of Human Rights because their position, understandably—

Q315 **Dr Lewis:** But would it not persuade the ICC?

Professor Ekins: I do not think the ICC's concern would be whether you scrupulously followed European human rights law. Their concern will be whether you have a robust approach to war crimes. I suppose the question is whether we think we had a robust approach to war crimes in 2006 under the services Act, whether we applied it and whether the overlay of European human rights law is essential or just greatly complicates and raises the risk of obstruction and delay.

Q316 **Chair:** It is fascinating. James has largely covered most of the questions. It is extraordinarily useful. What would you suggest? I want to finish in the next five minutes because I know you have got to go. Thank you so much for hanging on for us. What would you do now, if you were the Attorney General?

Mr Gray: Or the Prime Minister.

Professor Ekins: That might be an easier position to be in for this purpose. I think one does need to consider amending the Human Rights Act. Derogation should be part of the picture, because even if one amends the Human Rights Act, there is still going to be litigation later, unless we leave the ECHR, which isn't on the table. One needs to amend the Human



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Rights Act to narrow the scope and return it to the position as was understood up until 2011—effectively, that European human rights law does not apply worldwide. The question is whether one tries to make that change retrospective so that it has some bearing on IHAT. I don't think it would justify closing it down, but it would certainly free the Government from the wave of legal challenges that they have been dealing with constantly, including whether it is independent enough or is conforming to article 2. I would consider a retrospective amendment to the Human Rights Act and then, with a somewhat more free hand, decide which investigations to maintain.

Q317 **Mr Gray:** That is the European Human Rights Act.

Professor Ekins: Indeed.

Q318 **Mr Gray:** So it could be amended perfectly easily within Parliament if we had a majority to do so.

Professor Ekins: Indeed.

Q319 **Chair:** Why do you think he is not doing that?

Professor Ekins: Well, I am sure he can make this decision himself. There has been the ongoing question about the British Bill of Rights. The question has always been when this is raised, as it was in the Lords in relation to the Armed Services Bill, that it is going to be taking place in the course of the reform of the British Bill of Rights. Obviously, no details about that have been announced yet. It might be worth taking—

Q320 **Mr Gray:** That is hardly the question. I am being a bit dim—let me just get this absolutely right. We thought we were going to war in Iraq without the ECHR applying and it was only eight years later, after the war had finished, that we discovered it applies retrospectively, because of a ruling by the European Court of Human Rights. The only binding part of that is the UK Human Rights Act. In order to effectively say that that no longer applies, we could simply amend the Human Rights Act. Presumably we could write a clause into that saying that it applies equally to legal cases currently being considered.

Professor Ekins: You certainly could. It changes the domestic legal position so the Government is no longer subject to challenge in the High Court. The UK will still be subject to various proceedings in Strasbourg; one has to decide whether one is willing to put up with that.

Q321 **Mr Gray:** But we will be in a strong position. If our domestic law made it plain that soldiers serving overseas were not subject to it, that would give us a very strong case to defend ourselves in the ECHR, wouldn't it?

Professor Ekins: I am not sure I would say it is a very strong case. I think the Strasbourg Court might well just say, "These are our rules, and you are in violation of them." Having said that, a sovereign state is not necessarily going to fall in line with—

Q322 **Mr Gray:** It's like votes for prisoners. In terms of looking for things that we might think about, a quick amendment to the—



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Chair: That is something we can ask. In two minutes, what would that amendment say?

Professor Ekins: It would say that the Human Rights Act applies either within the territory of the United Kingdom and not otherwise, or in the sense of jurisdiction understood in the 2002 case of Bankovic in the European Court of Human Rights. It would say it more elegantly, plainly. Then one could add, "And this applies to events whenever they arose or took place, including such that are subject to ongoing legal proceedings or investigations." For my part, I would not want to overturn decisions and agreements that have already been made—I don't think you should—but ongoing proceedings are a different matter, I think. Plainly, this will invite criticism that it is a retrospective legal change. To my mind, the answer is: "Yes, but a retrospective legal change that is putting the legal position back to what everyone at the time thought it was."

Chair: Brilliant. Thank you so much. I am sorry it has been short, but you sent us some stuff on this. It has been really helpful, and I think you will find a heavy piece of your work in our report.