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Isabelle Westbury

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1923-2023: The Royal Air Force and 100 years of Legal Officers – a developing role in a century of change

ISABELLE WESTBURY*
Independent Scholar, UK
Email: isabelle.westbury@gmail.com

ABSTRACT
Five years after the Royal Air Force (RAF) celebrated its centennial, its Legal Services marked the same milestone in 2023. While the RAF has had a constant need for uniformed lawyers since, how it has employed them in the past and how it will in the present and future has changed considerably. This paper will demonstrate the evolving role of the RAF's Legal Officers, how unfolding conflicts and the development of international law and domestic policy have impacted that role, and the overarching challenges faced by the RAF's Legal Officers today and in the future.

Introduction

On 28 June 1923, Air Ministry Order No 400 was released by the UK Government. Sandwiched between Order 399, which related to bread and bacon cutting machines, and Order 401, on the duties of civilian medical practitioners, this Order determined the appointments, conditions and duties of RAF Legal Officers. Five years after the founding of the RAF, its Legal Branch was inaugurated and with it the first Terms of Reference for the RAF's Legal Officers, or Legal Advisers.[1] Some duties of those first Legal Officers are retained by those in the role today, but their initial purpose was very different. Contemporary Legal Officers are geared for operations, their

*Squadron Leader Isabelle Westbury is the Royal Air Force's Exchange Legal Officer at the Pentagon, USA.

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[1]As part of RAF internal reorganisation in April 2022, the RAF Legal Branch became the RAF Legal Profession, also known as RAF Legal Services. However, for the purposes of this article, reference to the RAF Legal Branch, as it was first inaugurated, shall be taken to include the RAF Legal Profession or Services; United Kingdom (UK) Air Ministry Weekly Order (AMWO), 400/1923, *Appointment, Conditions of Service and Duties of Legal Officers*, 1923.

commission into the uniformed services allowing them to perform roles at a proximity to the military chain of command that a civilian counterpart cannot. The RAF Legal Branch's mission at the time of writing is to deliver 'high quality, effective and operationally focussed legal services to the Royal Air Force and Defence.'[2] However, at its founding and for the first few decades of the Branch's existence, the focus was on the discipline of Service personnel; Air Order 400 fell under the heading of 'Personnel – Pay, services etc.'[3]

Because of their absence from operational decision-making for much of their existence, documented histories of the role of Legal Officers in the RAF, or any other of the UK's uniformed military services is limited. Factual registers and indexes chart the role of Legal Officers in military justice and wider service and administrative law. The RAF's Air Historical Branch keeps a venerable depository of historical resources and documents on the wider RAF's operational history, which includes references to the limited role of then Judge Advocates. However, leveraging off the excellent historical account of the RAF's Legal Branch privately published and distributed internally in 2013 by a former Director of Legal Services, Air Vice-Marshall Geoffrey Carleton, on its ninetieth anniversary this paper will demonstrate how and when that marked shift towards a unique, operations-focused role arose, and from the perspective of a serving Legal Officer who was enticed into service because of that focus. The paper concludes by noting that, while the *raison d'être* of today's RAF Legal Officers is to always be on hand for that core operational law advice, the rising requirement for policy advice and the interpretation and application of the relevant laws by other nations and their armed forces makes the role as varied as ever, and one which will continue to evolve just as much as it has done over the past century.

Before 1923, those RAF Legal Officers which did exist were part of other branches co-opted to the department of the Judge Advocate General (JAG), the office responsible for service justice and the courts-martial system. This mirrored the practice of their counterparts in the other single Services, both throughout the First

[2]DLS (RAF) Diversity and Inclusion Statement https://www.raf.mod.uk/documents/pdf/dls-diversity-and-inclusion-statement/ Accessed 18 February 2025.

[3]Air Vice-Marshall Geoffrey Carleton, '90 Years of Legal Service', *The Royal Air Force Legal Branch History,* (2013, internally distributed to RAF Legal Officers), p. 6.

World War and since its conclusion.[4] While the Air Order created a separate branch, with a separate pay structure for Legal Officers, it remained under the auspices of the JAG's Office, whose remit was a wide one. As a result, the duties of its personnel did not change, nor would they for roughly the next half century. These duties were to provide disciplinary advice to RAF Police reports, advise and prosecute RAF cases at courts-martial, advise the Boards of Inquiry in Service inquiries and investigations, provide legal assistance to RAF personnel with personal matters, and administer Air Force Law – as it was at the time.[5]

Absent from this list of duties was advising on military operations during armed conflict. In fact, the concept of the operational Legal Adviser was still many decades away, not just in the RAF but universally across the UK's armed forces. Throughout most of the twentieth century, including in the two world wars that would define British military action therein, the role of military lawyers in wartime was to provide the same assistance as during peacetime, which was typically limited to the prosecution of crimes. While huge numbers of civilian lawyers enlisted into the military during the Second World War, commensurate with the rest of the population, for most their wartime service was in roles wholly unrelated to their civilian practice. For example, a future Director of Legal Services, Air Vice-Marshal Peter Furniss, was awarded the Distinguished Flying Cross in December 1944 for his role as a fighter pilot during the war.[6] For those lawyers who did transfer directly into the JAG's Office, the Second World War didn't stretch their capacity for operational reasons but because the number of service trials rose dramatically, a direct result of the huge increase in numbers within the RAF's ranks. The number of RAF courts-martial reached a peak of 3,800 between September 1944, when RAF strength topped at 1,006,080 personnel, and August 1945, compared to just 219 in the year leading into August 1939.[7] Military

[4]Judge Advocate General, *Courts and Tribunals Judiciary*, https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judges/judge-advocate-general. Accessed 10 March 2025.

[5]Prior to 31 October 2009, when the Armed Forces Act 2006 came into force, the Air Force Act 1917, and its future iterations, was the separate, single Service discipline Act for the RAF. *See* Sally Dray, *Armed Forces Act (Continuation) Order 2021*, House of Lords Library, 2021, https://lordslibrary.parliament.uk/armed-forces-act-continuation-order-2021. Accessed 25 March 2025.

[6]The London Gazette (Supplement), No. 36863, 26 December 1944, p. 5954.

[7]Wilfred Lewis, *Report of the Army and Air Force Courts Martial Committee 1946*, 16 (London: HMSO, 1948) [hereinafter the Lewis Committee] https://tile.loc.gov/storage-services/service/ll/llmlp/Vol-V-British-report/Vol-V-British-report.pdf. Accessed 8 March 2026.

lawyers were also involved in the War Crimes Trials both at Nuremberg and Tokyo that followed the end of the Second World War[8] As with during the war, however, prosecuting war crimes was simply an extension of one of the Legal Officers' traditional roles: the administration of military justice.[9] Therefore, the absence of the operational lawyer in armed conflict until the latter stages of the Vietnam War meant that how law applied to the RAF's practices during conflict was neither advised upon nor applied by lawyers but by military commanders themselves.[10] In some respects, this delineation remains, in that each serving member of the UK's armed forces is responsible for their own actions; individual criminal responsibility, as well as individual civil liability, is a key tenet of both customary International Humanitarian Law (IHL) and those international treaties which govern armed conflict, as well as states' own domestic criminal laws.[11] For those leading others in conflict, formally or otherwise, command responsibility is a duty similarly bestowed upon them.[12]

A post-war review

The prospect of engaging RAF Legal Officers to advise on the Law of Armed Conflict (LOAC) might be traced back to when its Legal Branch separated completely from the

[8]United States (U.S.) Army Judge Advocate General's Corps, *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775-1975*, (Washington: U.S. Government Printing Office, 1975), pp. 181-184.

[9]Michael F. Lohr & Steve Gallotta, 'Legal Support in War: The Role of Military Lawyers', *Chicago J. Int'L L.*, 4 (2003), p. 465, p. 470 https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1223&context=cjil. Accessed 8 March 2026.

[10]Major Mark S. Martins, 'Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering', *MIL. L. REV.,* 143, 1 (1994), pp. 27-46.

[11]International Committee of the Red Cross (ICRC) Customary IHL (CIHL), Rule 102; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, art 33, first paragraph [hereinafter Geneva Convention IV]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 art. 75(4)(b) [hereinafter Additional Protocol I or AP I]; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, art. 6(2)(b) [hereinafter Additional Protocol II or AP II]; Armed Forces Act, 2006, § 42, c. 52, Acts of Parliament, 2006 (United Kingdom); and Rome Statute of the International Criminal Court, 17 July1998, art. 75(2) [hereinafter the Rome Statute].

[12]See Rome Statute, art. 28; Additional Protocol I, arts. 86(2) and 87; and CIHL Rules 152 and 153.

JAG's Office a few years after the end of the Second World War, in 1948.[13] This separation created a new Directorate of Legal Services, and designated as DLS (RAF), something which had first been proposed on the Branch's conception, a quarter of a century earlier. Legal Officers had previously held judicial responsibility for the administration of courts-martial, i.e. summoning and supervising the court, as well as their prosecutions. A report on the matter (known as the 'Lewis Committee') recommended that a separate DLS should carry out prosecuting functions with a '… complete separation of the judicial and prosecuting sides of the Judge Advocate General's work (a reform which we consider is long overdue) …'.[14] The report concluded with the observation that: 'It will be a matter of consideration and decision by others whether the … new legal department[s] above recommended should perform other legal work for …the Royal Air Force in addition to work in connection with courts-martial.' Those comments provided an insight into the wider role of the operationally focused Legal Branch in existence today.

In a November 1948 Cabinet Meeting, and reflected in Cabinet Papers published shortly thereafter, the sitting British Prime Minister Clement Attlee observed that: 'It is very desirable that we should make full use of the experience of the Law Officers on the legal aspects of policy questions. I have not here in mind the long-established and valuable practice of referring difficult legal issues to the Law Officers for a formal Opinion, but rather the general assistance which they can give to their Ministerial colleagues on the legal questions which arise in the formulation and administration of policy.'[15] Attlee's assessment applied to public sector lawyers more widely but included those in the military, recognising 'the value of securing the attendance of one of the Law Officers at any meeting at which legal issues are likely to arise.'[16] As a key driver of the expansion of the welfare state and with first-hand military experience accrued during the First World War, Attlee believed firmly in the rule of law and the rights established by law as having the ability to guide every citizen's day-to-day lives, as well as to govern states' use of force.[17] That such dynamic, in-the-room legal advice

[13]Carleton, *supra* note 3, at p. 4.
[14]Lewis, *supra* note 7, at p. 25; and The UK National Archives (hereinafter TNA) CAB 129/31/30, at 25, William Jowitt, Memorandum by the Lord Chancellor, Cabinet Memorandum on the Lewis Report, 13 December 1948.
[15]TNA CAB 181/2, Prime Minister Clement Attlee, Note by the Prime Minister, Assistance of the Law Officers, p. 2, 16 November 1948.
[16]Ibid., at p. 2.
[17]See Labour Party Annual Conference Report, at 173, 1935; and Prime Minister Clement Attlee, Address at the opening session of the United Nations General Assembly, 12 January 1946.

might apply as much to the civil service as it did the military demonstrated the direction towards which political thinking was steering at the time.

Nevertheless, as far as the RAF was concerned, while there may have been an early intention to use RAF Legal Officers on matters of law and policy in conflict, in the immediate post-war period the demands of administration took precedence. The occupation of the defeated Germany and Austria was administered under Four Power Control. This meant that the work of the new DLS (RAF) in the UK and overseas would continue to consist mainly of disciplinary, prosecution and police advisory work, as well as providing legal advice to more junior ranks under the RAF Legal Assistance Scheme.[18] In practice, the concept of the operational lawyer, working contemporaneously alongside units on operations, was still some way off.

In the late 1950s and into the 1960s, the focus of the work of the RAF's Legal Branch remained disciplinary, in particular duties relating to courts-martial and the administration of Service law in military establishments overseas. Largely this was in the newly incorporated Federal Republic of Germany, where there were reportedly around 25,000 RAF Service personnel stationed, as well as 15,000 wives and families.[19] Further afield, this period also saw the RAF involved in the Malayan Emergency, from the late 1940s to the late 1960s, with RAF Legal Officers largely involved in disciplinary matters relating to Service personnel stationed in both Singapore and North Borneo. Therefore, it wasn't until the second half of the twentieth century that the range of work of RAF Legal Officers started to expand beyond those 1923 Terms of Reference. One of the catalysts for this change were global, multilateral agreements, most notably the surrounding conferences and eventual signing and ratification of the 1949 Geneva Conventions and, sometime later, its Additional Protocols. The 1949 Conventions included specific provisions requiring governments to ensure their armed forces comply with LOAC. There had been previous efforts seeking to limit or otherwise shape the conduct of warfare; this included both the 1863 Lieber Code, which arose during the U.S. Civil War, and the 1907 Hague Conventions, as well as other, less

[18]Carleton, *supra* note 3, at p. 15.

[19]See the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, 23 August 1953 [hereinafter the NATO SOFA 1953]; the NATO SOFA Supplementary Agreement, 3 August 1959, art. 22, which provided for most civil offences not involving German citizens nor property to be dealt with by the Service authorities; and Carleton, *supra* note 3, at p. 18, which cites this as having been according to a 1953 account by one of the RAF's National Service Sergeant Solicitors, Jack Newton.

formal examples.[20] However, while a state's armed forces may have long been guided by such codes and conventions, any regulation or audit of their compliance was scarce. The ratification of the four Geneva Conventions in 1949 provided a baseline legal framework within which to conduct armed conflict, acting beyond which would constitute a crime. They also provided a mechanism of redress where states did not comply. In practice, however, it would require something more bespoke for states to be able to operate within the LOAC framework and hold its practitioners to account.

This would materialise through the development of states' own Rules of Engagement (ROE). Not to be confused with the applicable law, ROE are 'directions for operational commands that set out the circumstances and limitations under which armed force may be applied', and in the case of the UK, 'to achieve military objectives for the furtherance of UK government policy.'[21] While breaking state ROE do not have the same consequences as breaking international law, they have proven just as important in shaping the conduct of armed conflict in the second half of the twentieth century. Belligerent parties to a conflict have been guided by informal policy constraints for centuries; evidence of the use of restrictions on armed forces' practice can be traced back to the Middle Ages and the chivalrous conduct expected of medieval knights in the fourteenth century.[22] However, the first formal ROE, or at least the use of the term, likely first arose in 1954.[23] In November of that year, the U.S. Joint Chiefs of Staff (JCS) issued an 'Intercept and Engagement Instruction', following dogfights between American and Soviet aircraft; the instructions were swiftly, but informally, termed 'Rules of Engagement' by those in the U.S. military administering them, and the term was born.[24] Shortly thereafter, the term was formally adopted by the JCS; ROE would become normalised in every U.S. intervention since.[25] By having such a broad, arguably permissive, legal basis upon which to act when engaged in conflict (*jus in bello*, enshrined by the Geneva Conventions and its Additional Protocols), it therefore leaves much room for governments to place more specific restrictions in the forms of

[20]Michael F. Lohr & Steve Gallotta, *supra* note 9, at 466.
[21]UK Ministry of Defence Joint Service Publication (JSP) 383, Manual of the Law of Armed Conflict, p. 53, 1 July 2004.
[22]New Zealand Defence Force (NZDF), Directorate of Legal Services, NZDF Operational Law Companion, 11.0 Rules of Engagement 11-1, 1999.
[23]Theodor Meron, 'Henry's Wars and Shakespeare's Laws, Perspective on the Law of War in the Later Middle Ages', (Oxford: OUP, 1993), pp. 91-93.
[24]See Martins, *supra* note 10, at p. 36.
[25]Christopher D. Amore, 'Rules of Engagement: Balancing The (Inherent) Right and Obligation of Self-Defense with the Prevention of Civilian Casualties', *1 Natl. Secur. Law J.*, 39 (2013), p. 51.

those military directives, namely a state's ROE. Policy, rather than law, would become the decisive factor in how conflicts would unfold.

From training providers to operational lawyers

The 1949 Conventions did not have any explicit requirement for Legal Advisers to be constantly on hand for commanding officers; this would have to wait until 1977 and the introduction of the Conventions' Additional Protocols. That such a provision came about at this stage was no coincidence; their development mirrored the direction that state practice and policy was also heading. By the early 1970s, just as the Additional Protocols were starting to be drafted, RAF Legal Officers were taking their first steps towards a more pragmatic, operational role.[26] In 1972, RAF Legal Officers attended a preliminary meeting in Whitehall to discuss the practical shortcomings of the existing system.[27] The extant LOAC training for the RAF's Service personnel had comprised of one short lecture by members of the RAF Directing Staff, who were not Legal Officers, given to RAF Officers at the Officer Training Unit. This practice alone, lacking any continuous or even any further supplement, was deemed ineffective in equipping the RAF's personnel for armed conflict.

Instead, what ensued was a programme of lectures and instruction to cover not only initial training at both the enlisted and officer training establishments, but also on-going training. Drafting work also started on the first Tri Service Manual of Armed Conflict Law, which would ultimately take thirty years to complete, eventually being published in 2004.[28] The RAF Legal Branch, along with its single Service equivalents, was integral to its completion. One outcome for the RAF specifically was to set up a new senior post to oversee and develop a more comprehensive, and ongoing, delivery of LOAC training and guidance, a practice which remains today.[29] Such developments reflected those in other nations; in 1974, the U.S. armed forces established a uniform Law of War programme across its Services, with the Army JAG Corps as the penholder for

[26]See Research Guide, Drafting history of the 1977 Additional Protocols, 16 October 2019 https://blogs.icrc.org/cross-files/drafting-history-1977-additional-protocols. Accessed 25 March 2025.
[27]Carleton, *supra* note 3, at p. 29.
[28]JSP 383, *supra* note 21, at p. viii.
[29]Carleton, *supra* note 3, at p. 34. By this stage, DLS (RAF) was divided into four areas of responsibility: Legal Services 1 advised on police reports and prosecuting courts-martial; Legal Services 2 administered the RAF Legal Assistance Scheme overseas; Legal Services 3 focused on the recruitment and management of Legal Officers, as well as other administrative matters; while Legal Services 4 was concerned with advisory work, policy development and now also LOAC.

the programme's implementation.[30] However, while the LOAC training being instilled in armed forces' Service personnel was improving, there remained no requirement for the *in situ* Legal Adviser during times of conflict and operations.

This changed three years later, when the ratification of Additional Protocol I of the 1949 Geneva Conventions provided written direction for Legal Advisers to be available, when necessary, to military commanders during conflict to ensure the appropriate application of IHL.[31] In the UK, the first operational lawyers were soon deployed as part of the Army Legal Services during the 1982 Falklands War.[32] Meanwhile in the U.S., which had signed but not ratified AP I, its existence nevertheless similarly catalysed the involvement of U.S. judge advocates in the development and review of operational plans, to ensure compliance with the law of war. By 1983, under Operation Urgent Fury, the United States' invasion of Grenada, it was deemed that a 'contingency-oriented U.S. Army' would routinely require judge advocates 'adept at handling more than traditional peacetime legal missions.' This, in effect, was the birth of operational lawyers 'in the room', on operations.[33] Fast forward to today and for many states the most restrictive constraints upon their use of force, in aerial warfare or otherwise, are their ROE as they apply to any given operation. While the basis upon which many states' ROE have been drafted are informed by LOAC, and those laws now enshrined in AP I, it is therefore domestic policy, rather than formal laws, which govern the practice of aerial targeting. It is also worth noting that while most states the world over have ratified the Geneva Conventions, there are notable absentees from their Additional Protocols, such as the U.S., Israel, Iran and India from APs I and II, for example.[34] This only cements the assertion that while LOAC compels a state and its armed forces to consider whether a target is lawful, and therefore whether they 'could' prosecute a target, it is their ROE which will add another layer and inform whether it is within policy to do so – whether they 'should' prosecute a target.

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[30]U.S. Dep't of Defense, Directive No. 5100.77, DoD Program for The Implementation of The Law of War, 5 November 1974.

[31]Additional Protocol I, art. 82; and Jean de Preux, *Commentary,* Additional Protocol I, art. 82, at p. 3344 https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-82/commentary/1987.

[32]Army Legal Services, 'ALS History' https://www.army.mod.uk/who-we-are/corps-regiments-and-units/adjutant-generals-corps/army-legal-services/. Accessed 10 February 2024.

[33]Frederic L. Borch, 'Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti', *Mil. L. Rev.,* 174, (2001), p. 180, p. 186.

[34]See States parties and signatories to the Additional Protocol I.

By the end of the 1970s and throughout the 1980s, RAF Legal Officers were now regularly providing training to Service personnel soon to be deployed on operations. They were also heavily involved in the drafting of policy and routinely participated in tri-Service exercises involving the application of LOAC. However, it wasn't until the outbreak of the first Gulf War in 1990, and the involvement of the UK under Operation Granby, the codename for British military operations during the Second Gulf War, that the first RAF Legal Officers were deployed. Two RAF Legal Officers were sent out to HQ British Forces Middle East in Riyadh, Saudi Arabia.[35] The first of these, a then Wing Commander Richard Anthony Charles, would later become the RAF's Director of Legal Services, a post he held as Air Vice-Marshal.[36] While the first Army Legal Officers had seen operational duty during the Falklands War some years earlier, the first Gulf War was the first international armed conflict in which air assets played the lead role in military operations – the first in what might be termed a 'decade of air power'. Uniformed lawyers embedded with other RAF personnel on operations was the logical next step.

By the 1990s, therefore, the RAF had a Legal Officer acting as the *in situ* and personal Legal Adviser to the UK's Joint Force Commander on all things related to aerial targeting. This meant that for the first time, RAF Legal Officers, alongside their single Service counterparts, were directly involved in advising commanders on all of ROE, targeting and prisoner of war handling, as well as host nation issues and more familiar disciplinary cases. The experiences of these Legal Officers, including the physical realities of being within the theatre of operations during a very kinetic time, led to a re-alignment of the RAF Legal Branch; there was an increased emphasis on Legal Officers' participation in, and training for, operations.[37] The establishment of a Permanent Joint Headquarters (PJHQ) of the UK armed forces in 1996 soon saw the RAF create a Legal Officer position there too. Its role was to provide strategic level legal support to operations, while the developing conflicts in Bosnia and Iraq saw RAF

[35]Carleton, *supra* note 3, at p. 43.
[36]Group Captain David Garratt, *The Gulf War 1990-91 in International and English Law (1st ed.)* (London: Routledge, 1993), p. 116; and The London Gazette (Supplement), No. 56668, 20 August 2002, p. 10042.
[37]For definitions of 'theatre of operations' see *Theatre*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/theatre, meaning 'an area or place in which important military events happen' and *Theater of operations*, Collins Dictionary, https://www.collinsdictionary.com/dictionary/english/theater-of-operations, meaning 'the part of the theater of war, including a combat zone and a communications zone, that is engaged in military operations and their support'; and Carleton, *supra* note 3, at p. 35.

Legal Officers deployed at the operational and tactical level in those locations as well. RAF Legal Officers on operations was now the norm; these roles spanned from single Service operational deployments in posts in Combined Air Operations Centres (CAOCs) alongside international allies, to detachments to the United Nations (UN), which involved, for example, the conduct of judicial inquiries into suspected ceasefire agreement breaches.[38] The demand for Legal Officers on operations would only increase at the turn of the millennium. By now, their role specifically involved providing legal advice both in-theatre and at the strategic level on the law of targeting and the UK's ROE. The new norm was here.

In contemporary conflict, the prospect of nation states operating without Legal Advisers, and increasingly Policy Advisers, is unthinkable in modern warfare. 'I cannot stress that enough. I would not go anywhere now on any operation without a lawyer by my side ,' recalled Brigadier Ginn, the then Chief of Staff of the UK Joint Standing Committee in 2020.[39] The sentiment was one similarly shared by Colonel Dunlap, of the U.S. Air Force (USAF), who observed at the height of Operation Enduring Freedom in the early 2000s that, '… savvy American commanders seldom go to war without their attorneys.'[40] Of the academics, Michael Ignatieff expanded on this rationale when he articulated that lawyers,

> provide harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality, so that whatever moral or operational doubts a commander may have, he can at least be sure he will not face legal consequences. In effect, lawyers determined the legal barriers so that the 'harried' commander on the ground did not have to. This was, and remains, caveated by the principle of individual responsibility, regardless of what legal advice a commander does, or doesn't, receive.[41]

The former Chief of the Air Staff to the RAF, Air Chief Marshal Sir Andrew Pulford, went one step further when he observed in 2013, shortly after British operations had ended in Iraq, under Operation Telic, and were coming to an end in Afghanistan,

[38]Carleton, *supra* note 3, at p. 37.
[39]Catherine Baksi, 'Military Mettle', *The Law Society Gazette*, p. 3, 22 June 2020 https://www.lawgazette.co.uk/analysis/military-mettle/5104689.article. Accessed 25 March 25.
[40]Colonel Charles J. Dunlap, 'Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts', prepared for the Humanitarian Challenges in Military Intervention Conference, p. 6, 2001 https://people.duke.edu/~pfeaver/dunlap.pdf.
[41]Michael Ignatieff, *Virtual War* (New York: Metropolitan Books 2000), p. 199.

Operation Herrick, that, 'the nature of modern air operations, usually conducted in the glare of the world's media, requires the closest of attention to legal principles', and that there were 'no indications that the thirst for such air-minded legal advice is likely to diminish in the future.'[42] He was right, in particular with his acknowledgement of an increasingly public sphere in which the world's military operations now unfold, something which has only grown in scrutiny, speed and detail since. In 2013, it was indeed the 'world's media', or at least a mainstream media which was scrutinising the way in which military operations unfold, restricted as they were by finite resource, location and technological capability. More than a decade on and the advent of social media in particular means that open source intelligence (OSINT) reporting can frequently outpace any secure intelligence when it comes to updating both belligerents and the wider public on an unfolding conflict.[43]

The complex, rapidly evolving nature of both international armed conflict (IAC) and increasingly non-international armed conflict (NIAC) now throw up all sorts of legal, and policy, challenges. These are faced both by those RAF Legal Officers deployed in theatre at the operational and tactical level, as well as those stationed in air, joint or international headquarters, where the planning and strategic stages unfold. RAF Legal Officers acting as direct, contemporaneous operational lawyers is now the norm. Indeed, the mission statement of RAF Legal Services 'to deliver high quality, effective and operationally focussed legal services' reflect that; RAF Legal Officers are there in the first instance to contribute to the RAF's operational output. Everything else – the disciplinary, policy and administrative advice – comes secondary to that ability to be on hand, and ready, should an armed conflict arise.[44]

Another interesting development in the context of the advice received by operational commanders in armed conflict is the growing importance of Policy Advisers alongside their uniformed legal counterparts. While we know that Legal Advisers also dispense policy advice insofar as they advise on their nation's ROE, it is now also UK policy for an expert Policy Adviser to equally be 'available to operational commanders and their targeting staff in person or through reach-back, at all levels of command' and specifically that their advice 'should be sought if there is a risk that targeting could pose reputational issues for the UK'. It is therefore the responsibility of a Policy

[42]Carleton, *supra* note 3, at p. 3.
[43]Richard Baffa, 'The Ukraine-Russia War Confirms the Value of OSINT', *Babel Street*, 2022 https://www.babelstreet.com/blog/the-ukraine-russia-war-confirms-the-value-of-osint. Accessed 8 March 2026.
[44]Director of Legal Services (RAF), *supra* note 3.

Adviser to 'advise a commander on prevailing political sensitivities.'[45] Just as the laws, and the legal advice provided by Legal Advisers might inform military commanders as to whether they 'could' use lethal force under the law and a state's ROE, a Policy Adviser would therefore fulfil the role of advising whether they 'should' do so under those 'prevailing political sensitivities'. At present, the UK deploys civil servant Policy Advisers from its Ministry of Defence across its operational centres, where they form part of the UK military's Target Clearance Board for the prosecution of lethal force through deliberate targeting.[46] This is a practice seemingly unique to the UK, with other countries relying instead on formal policy advice through reach-back to Policy Advisers outside any given theatre of operations.[47] Whether this will evolve to see more nations deploying Policy Advisers to advise military commanders *in situ* remains to be seen; in a world where the prevailing political sensitivities are changing at a rate beyond which can only be imagined just years ago, this step may well transpire.[48]

Present and future operational law challenges

Reviewing the past can inform the trends apparent in more recent and ongoing conflicts and operations over the last couple of decades, as well as the challenges that operational Legal (and Policy) Advisers might face in the future. If we consider the conflicts or operations in which the UK has been involved over this period in Afghanistan, Iraq, Libya, Syria and now more recently Yemen, there have been pretty much continuous operations at varying tempos since 2000.[49] In all such operations, the UK has deployed Legal Officers alongside its commanding officers. Each are also conflicts which have thrown up all sorts of challenges to the lawyers in theatre as they try to apply the relevant laws and policy to the practice of aerial warfare.[50]

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[45]UNESCO National report on the implementation of the 1954 Hague Convention and its two (1954 and 1999) Protocols, four-year cycle 2017-2020, questionnaire: United Kingdom, at pp. 38, 52, 2021.

[46]InsideAIR, *LEGAD and POLAD on Ops – Targeting's Check and Balance* (Royal Air Force, 2024), 3:45.

[47]UNESCO Digital Library, https://unesdoc.unesco.org/permalink/P-af6754c3-aef0-41e8-9e9e-b0b431f5808e. Accessed 11 March 2025.

[48] UNESCO National report, *supra* note 45, at p. 56.

[49]Ministry of Defence, UK armed forces Deaths: Operational deaths post World War II, UK Government Official Statistic Report, p. 3, 5 March 2021 https://assets.publishing.service.gov.uk/media/6059cefa8fa8f545d995f161/20210325_UK_armed_forces_Operational_deaths_post_World_War_II-O.pdf. Accessed 8 March 2026.

[50]Notes from correspondence with Squadron Leader Lucy Jordan, UK Exchange Legal Officer, U.S. Air Force, 30 May – 9 September 2023.

Firstly, there's the challenge of asymmetric warfare. While counter-insurgency operations can be incredibly demanding, generally these conflicts have allowed the UK and its allies to operate in environments with little air threat, limited logistical risk and no air deep battle. For example, at the height of Operation Herrick in Afghanistan, in January 2012, there were 50 Troop Contributing Nations within an International Security Assistance Force (ISAF) total strength exceeding 130,000.[51] However, a joint coalition environment brings its own set of challenges. A prime one is trying to successfully operate under different ROE, continuously varying IHL interpretations, national caveats and varying intelligence sharing policies. To be effective, not only must a Legal Adviser know their own doctrine, policy constraints and legal interpretations, but they must also understand the policy variations between coalition nations in order to turn those constraints into freedoms, or at least to prevent them hindering operations.[52] That understanding must extend to cases when the armed forces from one nation may be able to act in self-defence of others, or only in certain, limited circumstances but those from another may not. Or when a commander might have to be advised that they are unable to aid a particular attack, due to differing treaty or policy obligations. Another challenge is understanding a state's risk appetite, and how it might evolve. Early on in any campaign, significant risk might be tolerated. However, that has often changed if the strategic impact of casualties manifests at the political level, which it did during Operation Herrick. With this comes increasing political pressure to maintain an expectation of limited, even zero, civilian casualties and zero collateral damage. This in turn can impose quite heavy ROE restrictions far beyond those required by LOAC, resulting in a requirement for precision-delivered effects to be applied to all engagements.

Further, while the absolute number of war deaths has been declining since 1946, the number of conflicts is on the rise.[53] There are currently more than 100 armed conflicts

[51]North Atlantic Treaty Organization, 'ISAF's mission in Afghanistan (2001-2014)', *NATO* https://www.nato.int/cps/en/natohq/topics_69366.htm. Accessed 13 February 2024.

[52]Dr Gloria Gaggioli, 'Soldier Self-Defense Symposium: Self-Defense in Armed Conflicts–The Babel Tower Phenomenon', *OpinioJuris*, 3 May 2019. https://opiniojuris.org/2019/05/03/soldier-self-defense-symposium-self-defense-in-armed-conflicts-the-babel-tower-phenomenon/. Accessed 8 March 2026; and E.L. Gaston, 'When Looks Could Kill: Emerging State Practice on Self-Defence and Hostile Intent', *Global Public Policy Institute*, (2017), p. 22.

[53]Bastian Herre, Lucas Rodés-Guirao, Max Roser, Joe Hasell & Bobbie Macdonald, 'War and Peace', *Our World in Data*, 2023 https://ourworldindata.org/war-and-peace. Accessed 8 March 2026.

in the world; since 2000 the number of NIACs has tripled, with more sides involved.[54] According to the ICRC, as of 2020 there were more than 60 states and 100-non-State armed groups involved in conflicts.[55] It perhaps follows, therefore, that the conflicts that are taking place are tending to be more fragmented, as armed groups split into factions. These are also far more complex to operate in, as well as being more protracted. The civil, and then increasingly proxy, and more recently again civil war unfolding in Syria is a prime example.[56] This has also manifested in developing role of civilians – both as victims and as belligerents. The multi-faceted nature of civilian involvement has raised difficult targeting questions in relation to objects as well as people. It has also posed issues for those acting in joint coalitions in terms of the interpretation of LOAC. For example, the legality of targeting 'war-sustaining' objects is interpreted differently by different nations often working in tandem, like the U.S. and UK.[57] The modern interpretation of one man's freedom fighter is another's terrorist might now be that one man's notion of a civilian is another's combatant. One recent example of this challenge is the question of whether Ukraine's 'IT army', a network of cyber volunteers recruited to target adversary websites and networks and formed at the behest of Ukraine's Minister of Digital Transformation, have become Direct Participants in Hostility (DPH).[58] This has opened dangerous questions for persons who might otherwise consider themselves civilians. Ukraine's Legal Advisers might argue, after having considered factors such as their status and what exactly their actions are targeting, that such persons remain civilians. However, their Russian counterparts may advise the equal and opposite, and suddenly the advice to Russia's

[54]Geneva Academy, 'Today's Armed Conflicts', *Academy of International Humanitarian Law and Human Rights* https://geneva-academy.ch/galleries/today-s-armed-conflicts. Accessed 13 February 2024; and International Committee of the Red Cross, The Roots of Restraint in War, *ICRC Report*, (2018), p. 13.

[55]Report of the General Secretary, Protection of civilians in armed conflict, *United Nations Security Council* S/2022/381, (2022), p. 13, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_381.pdf. Accessed 8 March 2026.

[56]International Committee of the Red Cross, *supra* note 54 at p. 46.

[57]10 U.S.C. § 950p(a)(1) (2009), which defines the term 'military objective' as 'combatants and those objects during hostilities which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability…'; and Office of the General Counsel, U.S. Department of Defense, Law of War Manual § 5.6.6.2 *Make an Effective Contribution to Military Action* (updated ed. July 2023).

[58]Ann Väljataga, 'Cyber vigilantism in support of Ukraine: a legal analysis', *CCD COE*, 1, (March 2022), p. 2 https://nsarchive.gwu.edu/sites/default/files/documents/rkbxaa-p6qlc/003-CCDCOE-Cyber-vigilantism-in-support-of-Ukraine-a-legal-analysis-March-2022.pdf. Accessed 2 March 2025.

military commanders might be that these are legitimate military targets. Similarly, there has been much discussion around the interpretation of 'protected persons' in territory that has been invaded but not strictly occupied.[59]

This article has considered the current and recent trends and challenges facing RAF Legal Advisers in the operational context, but what comes next?[60] Technological development continues at pace. Technology has helped develop weapons and in so doing it has also improved the accuracy of targeting in aerial warfare. This in turn has helped inform the genesis of any given ROE. For example, the continual evolution of technological capabilities has enabled the setting of low, or even zero, civilian casualty limits. Technology is also important in terms of media awareness, and therefore wider public awareness and scrutiny of operations, which again can impact the ROE. For example, in the Cuban Missile Crisis there was over a week between the missiles first being detected by an American U-2 reconnaissance aircraft and the press conference where John F. Kennedy went public.[61] In contrast, within the last decade, news organisations have been able to break news of attacks within an hour of them occurring while data analysis firms, which do not require the verification of sources to the degree that news outlets do, have broken such news within a matter of minutes.[62] Commercial providers now routinely supply the intelligence to media outlets, to break the news of what's happening in the moment that it is. It is not so much a matter of minutes as it is contemporaneous; the impact of aerial strikes is posted to social media before states' armed forces have even announced they've occurred. Often the perpetrating aircraft won't even have returned to base.[63]

The means and methods of warfare also increasingly rely on ever more complex technology. Such technological advances can be hugely positive but also raise questions

[59]Kubo Mačák & Mikhail Orkin, *'Who is Protected by The Fourth Geneva Convention? The Case of Civilians in Invaded Territory'*, *Lieber Institute Articles of War* (15 August 2022), https://lieber.westpoint.edu/who-is-protected-civilians-invaded-territory. Accessed 2 March 2025.

[60]Jordan, *supra* note 50.

[61]U.S. Office of the Historian, 'The Cuban Missile Crisis, October 1962', *The Office of the Historian* https://history.state.gov/milestones/1961-1968/cuban-missile-crisis. Accessed 13 February 2024.

[62]Sean P. Larkin, 'The Age of Transparency: International Relations Without Secrets,' *Foreign Affairs*, 95(3) (2016), pp. 136, 143.

[63]On 2 February 2024, the U.S. launched airstrikes against Iranian targets in Iraq and Syria. Within hours of the strikes, U.S. Central Command had confirmed the strikes, and that it had included 'long-range bombers flown from United States'. It would be almost 20 hours between the release of the statement and the time that the B-1 bombers flown in this mission would return to Dyess Air Force Base, Texas.

about how existing laws should be applied and interpreted, and whether new laws are required.[64] While it is relatively settled, at least in a Western context, that existing laws do indeed apply to new domains, this doesn't necessarily manifest as such in practice.[65] Once again, no two campaigns are the same. Therefore, while the academic argument may be a straightforward one, in theatre this concept is constantly being tested, and at times exploited. Technology therefore is always hovering in the background as a threat, or at the very least an excuse for certain actions, even those amounting to a use of force, that we must anticipate. The space domain provides another challenge but also raises many possibilities. For example, in a domain where intent is very hard to determine, how does that balance with the law in relation to self-defence?[66] When it comes to targeting, can a nation target hundreds of satellites in different orbits; is it even capable of doing so? Would it require force that might become hugely escalatory? What is the risk of targeting such objects?[67] Indeed, the commercialisation of space raises its own problems. Since the turn of the century, it has consistently been estimated that around 95%, if not more, of satellites on orbit are dual-use compatible, which raises the legitimate question of whether these can be targeted?[68] Similarly, can collateral damage estimates and proportionality advice be done accurately in the context of a kinetic attack in space? Can the impact on civilian life be estimated should an attack occur from space, and what about the debris created

[64]Yahli Shereshevsky, 'International humanitarian law-making and new military technologies,' *Int. Rev. Red Cross*, 104, 920-921(2022), pp. 2131, 2151 https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-11/international-humanitarian-law-making-and-new-military-technologies-920.pdf. Accessed 13 February 2024.

[65]Dan Efrony & Yuval Shany, 'A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice', 1 *AJIL*, 12 (4) (2018), pp. 583, 585.

[66]Dr Anne-Sophie Martin, 'State's Right to Self-Defence in Outer Space: A New Challenge for NATO's Deterrence', JPACC Journal, 30 (2020), pp. 30, 32; Brian Weeden & Victoria Samson, 'Self-defense in Space: A Summary of Discussions', *Secure World Foundation* (2015) https://swfound.org/media/205345/self-defense_space_summary_dec2015.pdf.

[67]International Committee of the Red Cross Report, *see* International humanitarian law and cyber operations during armed conflicts, *Int. Rev. Red Cross*, 102, 481-492, pp. 481, 484 (2020), https://international-review.icrc.org/sites/default/files/reviews-pdf/2021-03/ihl-and-cyber-operations-during-armed-conflicts-913.pdf. Accessed 14 February 2024.

[68]See, for example, Joan Johnson-Freese, *Space as a Strategic Asset* (Columbia University Press, 2013) p. 30; Roger Cliff, *The Military Potential of China's Commercial Technology* (RAND Corporation 2001), p. 27; and NATO's overarching Space Policy https://www.nato.int/cps/en/natohq/official_texts_190862.htm. Accessed 14 February 2024.

and the impact that this has? There are a lot of hypotheticals in there; there is also a lot to consider that is not outside the realms of possibility.

Another issue brought into sharp focus by both the Ukraine-Russia and Israel-Hamas conflicts is large-scale combat operations. This has once again brought into sharp focus the questions of whether legal advice should be provided on every targeting decision, even though the law does not strictly require it. And if targeting decisions increasingly become multi-national, prosecuted through alliances such as NATO or similar, questions area se arise?? of whose nation state prevails? How will the risk appetite, of your nation state and that of your allies, change over the course of a conflict? How will a conflict's evolving geography impact this? What might this do to minimising civilian harm? And where will legal advice be provided from – does it need to be physically in theatre, or can it be completely remote? Ultimately, these questions will only continue to evolve in complexity and urgency as the nature of conflicts become in themselves more complex, more fragmented and likely more protracted. Policies will also diverge, as each state seeks to answer these questions for themselves.

The nature of armed conflict and the tasks and challenges that RAF Legal Officers have had to contend with over the last one hundred years have changed dramatically. Contemporaneous, on-hand legal and policy advice is now a requirement rather than an aspiration, as military commanders contend with conflicts which are unfolding more quickly and unpredictably than ever before, and often involving a wider set of actors. In a world of increasing uncertainty, the next one hundred years will undoubtedly invite widespread change in the role of RAF Legal Officers, but it is reasonable to assert that its operational focus will remain, in one way or another.