

Written evidence submitted by Dr Solon Solomon.

I. OVERVIEW OF THE SUBMISSION

1. The author makes the submission in response to the call from evidence issued by the Defence Committee. This submission focuses on Question 3, sub question 1 in the call for evidence which asks:

‘Are there areas which the Armed Forces Covenant ought to be extended to and why? If so, which are the priority areas?’

2. As an expert on the junction between the laws of war and war trauma, the author will discuss in Part II of this submission how the language of the Covenant should be extended in order to encompass also ‘operational stress’ and in Part III, how the language of the Covenant should be extended also beyond defensive wars and should further come to encompass also foreign nationals contributing to the UK war efforts, in tandem with the combatants-civilians distinction according to the laws of war.

II. THE LEGAL SIGNIFICANCE OF WAR TRAUMA

A. Short overview of operational stress

3. War trauma is a particular facet of psychological trauma related to stressors in the battlefield. The fact that traditionally, battles have largely taken place throughout the centuries far from civilian centres, has led war trauma to be mostly associated with combatants.¹ Such trauma related either to the fact that actual fighting generated, known as operational stress or combat stress reaction, or to the general repercussions that the combatants’ exposure to hostilities entailed for their mental health, even long after hostilities were over. These psychological scars on the soldiers’ psyche, were reported already from the 19th century, but they did not merit any concrete psychological treatment at that time. For example, in the aftermath of the Franco-Prussian war, neurologists had treated soldiers for incidents involving nightmares of wartime experiences.²
4. World War I proved to be the turning point for the attitude towards war trauma. The war’s repercussions gave rise to the notion of ‘shell shock’, which comprised psychological effects thought to stem from the soldiers’ exposure to intense artillery attacks.³ The eruption of World War II brought a renewed interest in the symptoms soldiers experienced once chronically exposed to combat. These symptoms included anxiety, intense automatic arousal and reliving of the traumatic event. The syndrome they came to comprise was tagged with different names as traumatic war neurosis, combat fatigue, battle stress and gross stress reaction.⁴

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¹ Marc Perrin et als., Determinants of the Development of Posttraumatic Stress Disorder in the General Population, 49 Social Psychiatry & Psychiatric Epidemiology 447 (2014)

² Edgar Jones & Simon Wessely, A Paradigm Shift in the Conceptualization of Psychological Trauma in the 20th century, 21 J. Anxiety Disorders 164,165 (2007)

³ Nancy Andreasen, Posttraumatic Stress Disorder: A History and a Critique, 1208 Annals of the New York Academy of Sciences, 67 (2010)

⁴ Ibid

5. Nowadays, operational stress is widely acknowledged. Studies have found that combat soldiers exposed to stressors such as killing enemy soldiers or civilians, suffer more than non-combat troops from combat stress reactions.⁵ Along these lines, the last few years, more countries and national armies recognize the importance they have to award to operational stress. This is the case with the U.S. Department of Defense which defines such stress as “the expected and predictable emotional, intellectual, physical, and/or behavioural reactions of Service members who have been exposed to stressful events in war or military operations other than war.”⁶ In the realms of the United Service Institution of India, high-ranking Indian military officers have referred to the need for operational stress to be addressed, in particular in cases soldiers undertake peace-keeping missions in extremely hostile environments.⁷
6. The UK Parliament and this Committee have hailed in the past the steps the UK Government has taken the past 10 years to stress the acknowledgement of operational stress and of the combatants’ mental harm.⁸

B. Operational Stress in International Law

7. Due to the fact that operational stress has been lately acknowledged in mental health sciences as a distinct condition, it is only in the last decade that international law scholars have started discussing war trauma as a legal concept relevant either to combatants or to civilians.⁹ Contrary to traditional views, which regarded combatants as ‘war machines’, bereft of any feelings and of any ability to be affected by the woes of the battlefield, contemporary international law scholars have stressed that soldiers are also human beings and can also suffer and experience mental harm throughout warfare.¹⁰
8. The UK Supreme Court has also emphasized how combatants should not be seen as ‘war machines’, but as human beings, entitled to human rights protection. In *Smith et al v Ministry of Justice*, a case where the families of UK soldiers who lost their lives in missions in Iraq brought a lawsuit against the UK Government, arguing that their beloved’s deaths would not have occurred had the UK Army supplied them with proper vehicles and training,

⁵ David Anaki et al, *Faces in the Face of Death: Effects of Exposure to Life-Threatening Events and Mortality Salience on Facial Expression Recognition in Combat and Noncombat Military Veterans*, 12(4) *Emotion* (2012) 860

⁶ DoD Dictionary of Military Terms, *Combat/Operational Stress* available at http://www.pdhealth.mil/op_stress.asp#dod

⁷ Major-General Atanu Pattanaik, SM (retd), *Combat Stress in Fast-Changing Paradigms of Conflict*, United Service Institution of India, October-December 2015 available at <https://www.usiofindia.org/publication-journal/combat-stress-in-fast-changing-paradigms-of-conflict.html>

⁸ UK Parliament, House of Commons Defence Committee, 11th Special Report-The Armed Forces Covenant in Action, Part 5: Military Casualties, a Review of Progress: Government Response to the Committee’s Fourth Report of Session 2014-15 available at [House of Commons - 11th Report - The Armed Forces Covenant in Action Part 5: Military Casualties, a review of progress: Government Response to the Committee's Fourth Report of Session 2014-15 - Defence Committee](#); Land Forces Standing Order No.3209 (Third Revise), Land Post-Operational Stress Management (POSM), April 2014 available at [Land Forces Standing order \(LFSO\) 3209 Post operations stress management \(POSM\)](#)

⁹ Michael Schmitt & Chad Highfill, *Invisible Injuries: Concussive Effects and International Humanitarian Law*, 9 *Harvard National Security J* 72, 93 (2018); Sarah Knuckey et al, *The Proportionality Rule and Mental Harm in War in NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW* (Claus Kress & Robert Lawless eds, Oxford University Press, 2020) 367; Eliav Lieblich, *Beyond Life and Limb: Exploring Incidental Mental Harm under International Humanitarian Law in APPLYING INTERNATIONAL HUMANITARIAN LAW IN JUDICIAL AND QUASI-JUDICIAL BODIES* (Derek Jinks, Solon Solomon & Jackson Maogoto eds, TMC Asser Press, 2014) 185; Solon Solomon, *Is All Mental Harm Equal? The Importance of Discussing Civilian War Trauma from a Socio-Economic Legal Framework’s Perspective*, 92 *Nordic J Int’l L.* 528 (2023); Solon Solomon, *The Psychological Impact of Military Operations on Civilians and the UN Human Rights Committee Japalali Decision: Exploring Mental Anguish under a Vida Digna, Right to Life Prism*, 26 *J Conflict & Security L* 401 (2021)

¹⁰ Solon Solomon, *Targeted Killings and the Soldiers’ Right to Life*, 14 *ILSA J Int’l. & Comp. L.* 99 (2007); Gabriella Blum, *The Dispensable Lives of Soldiers*, 2 *Journal of Legal Analysis* 115 (2010); Ido Rosenzweig, *‘When you Have to Shoot, Shoot!’-Rethinking the Right to Life of Combatants during Armed Conflicts*, 106 *Int’l Rev Red Cross* 863 (2024)

the Supreme Court pointed out how also combat soldiers are entitled to the right to life under the European Convention on Human Rights.¹¹

9. Arguments that combatants, due to operational stress, have unjustifiably shot and killed or injured enemy civilians, have been raised as points of defence before courts in cases involving U.S. soldiers killing innocent civilians in Iraq.¹²

C. Operational Stress and the Armed Forces Covenant

10. As it currently stands, the Armed Forces Covenant states that it is 'an enduring covenant between the People of the United Kingdom, His Majesty's Government and all those who serve or have served in the Armed Forces of the Crown and their families' and that 'The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and sometimes, suffering serious injury or death as a result of their duty.' The Covenant itself does not further define whether the concept of 'serious injury' comprises also mental harm.
11. The programmes established by the Covenant Fund, in execution of the Covenant's aims, do comprise support for mental harm suffered by combatants. Nevertheless, as evident from the Trust's webpage, the programmes that have been in place, address only veterans.¹³ They thus do not cover the serious mental harm, meaning the operational stress, suffered by soldiers still in duty. In that sense, the Covenant creates an unsustainable distinction between active and veteran soldiers that should be abolished.

D. Suggestion

12. The Armed Forces Covenant should be extended in order a) to include explicitly also the soldiers' mental injury in its reference to 'serious injury' b) to ensure that this reference to the soldiers' mental injury comprises both active and veteran soldiers.
13. Pursuant to the comments also in paragraph 20 of this Opinion, the first paragraph of the Armed Forces Covenant should be amended as follows: 'Our Armed Forces sacrifice on behalf of the Government some civilian freedoms, facing danger and, sometimes, suffering serious physical or mental injury either in the course of their duty or thereafter.' The programmes awarded by the Covenant Fund should be adequately modified to cover also the operational stress suffered by active soldiers.

III The Combatants-Civilians Distinction

A. The Combatants-Civilians Distinction under International Law

14. According to the laws of war, only combatants can be legitimate targets in warfare. Furthermore, under Additional Protocol I to the Geneva Conventions, civilians can be targeted if they take 'direct part' in hostilities,¹⁴ meaning when they undertake combatant

¹¹ Smith & Others v Ministry of Justice, [2013] UKSC 41

¹² Eric Johnson, U.S. Soldier charged in 2009 Iraq Shootings to Appear in Court, Reuters, March 12, 2013 available at <https://www.reuters.com/article/us-iraq-shootings/eric-johnson-u-s-soldier-charged-in-2009-iraq-shootings-to-appear-in-court-idUSKBN081000>; Homicide Charges Rare for Troops in Iraq War, NBC News, 28 August 2006 available at <https://www.nbcnews.com/id/wbna14545561>

¹³ Tackling Serious Stress in Veterans, Carers and Families Programme, The Armed Forces Covenant Trust available at <https://covenantfund.org.uk/programme/tackling-serious-stress-in-veterans-carers-and-families-programme/>; Positive Pathways programme, The Armed Forces Covenant Trust available at <https://covenantfund.org.uk/programme/http-covenantfund-org-uk-programme-positive-pathways/>; One is Too Many programme, The Armed Forces Covenant Fund available at <https://covenantfund.org.uk/programme/one-is-too-many/>

¹⁴ Article 51(3), Additional Protocol I to the Geneva Conventions, adopted on 8 June 1977; Marco Sassoli, Legitimate Targets of Attacks under International Humanitarian Law, Harvard Program on Humanitarian Policy and Conflict

activities.¹⁵ These do not entail only the execution of the attacks themselves, but also the wider organization of military operations, including the transmission of information regarding targets.¹⁶

15. According to international law, in *jus in bello*, meaning the law that is relevant once hostilities have erupted, there is equality of combatants. In other words, irrespective of which side has started the war and of whether that war is a war of aggression, in the battlefield, all soldiers are entitled to the same rights and bound by the same obligations.¹⁷

B. The Combatants-Civilians Distinction and the Armed Forces Covenant

16. The Armed Forces Covenant states that 'The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility...In return, the whole nation has a moral obligation to the members of the Naval Service, the Army and the Royal Air Force, together with their families.' Yet, the particular phraseology covers only the scenario where the members of UK forces act in self-defence. The current phraseology, as it stands, leaves uncovered members of the UK forces in case the latter fight in a war that cannot be deemed to be defensive, for example as part of a wider UN-mandated mission like the First Gulf War. In these cases, as it stands, the Armed Forces Covenant seems to imply that members of the UK Armed Forces would not be entitled to the Covenant's providence.
17. The distinction currently implied in the Covenant between UK combatants fighting in the name of the country in the realms of a defensive war and UK combatants fighting in the name of the country in the course of other missions and contexts that the country sends them, lies contrary to the equality of combatants according to international law and unjustifiably creates a two-tier perception of UK soldiers.
18. Moreover, the Armed Forces Covenant speaks about 'those who serve in the Armed Forces, whether Regular or Reserve'. By focusing only on members who officially serve in the UK Armed Forces, the Covenant disregards a whole category of foreign nationals who may have equally substantially contributed to the UK war aims, losing thus their civilian status and having turned into combatants according to international law and Additional Protocol I. These foreign nationals can be local informers or interpreters the UK Army may have used throughout its expeditions abroad. Along these lines, to the extent that they are also combatants contributing to the UK war causes, the non-inclusion of these foreign nationals in the Covenant creates an unjust result for these persons and their families that should be rectified.

C. Suggestion

19. The Armed Forces Covenant should be extended to comprise all military operations even beyond defensive wars. The first sentence of the first paragraph stating 'The first duty of Government is the defence of the realm' should be deleted.
20. The first paragraph of the Armed Forces Covenant should be amended as follows: 'Our Armed Forces sacrifice on behalf of the Government some civilian freedoms, facing danger

Research, Background Paper prepared for the Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law, Cambridge, January 27-29, 2003 at 6 available at [I. The basic principle of distinction](#)

¹⁵ Supreme Court of Israel, HCJ 769/02, Public Committee against Torture v Government, Judgment, 14 December 2006, para.35 available at <https://versa.cardozo.yu.edu/opinions/public-committee-against-torture-v-government>

¹⁶ Ibid

¹⁷ Vaïos Koutroulis, And Yet It Exists: In Defence of the 'Equality of Belligerents' Principle, 26 Leiden J. Int'l. L. 449 (2013)

and, sometimes, suffering serious physical or mental injury either in the course of their duty or thereafter.'

21. The Armed Forces Covenant should be extended to include under its aegis also foreign civilians who have substantially contributed to the UK's war aims. The second paragraph of the Armed Forces Covenant should be amended as follows: 'Those who serve in the Armed Forces, whether regular or Reserve, those who have served in the past and their families as well as foreign nationals who have substantially contributed to the aims of UK military operations and their families, should face no disadvantage compared to other UK citizens in the provision of public and commercial services.'

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