



HOUSE OF COMMONS
LONDON SW1A 0AA

Rt Hon Gavin Williamson MP
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
London
SW1A 2HB

8th December 2017

Dear Secretary of State,

I am writing, as a former Shadow Secretary of State for Defence and British serviceman, to ask you to clarify as a matter of urgency, your understanding of the legal framework relevant to the targeting of British-born ISIS members in Iraq and Syria.

Your recent statements to the media that all British nationals who have travelled to fight with ISIS should be 'eliminated' in order to prevent them from returning to the UK, raises real concerns regarding your interpretation of the application of international humanitarian law (IHL).

There are two legal issues that I urge you to comment on.

1. The distinction between a combatant and civilian is a foundational premise of international humanitarian law. If our military cannot positively identify a combatant, the presumption must be protection. The 2007 International Committee of the Red Cross interpretative guidance on IHL has previously stated that only those who serve a 'continuous combat function' have taken a 'direct participation in hostilities' in non-international armed conflict and therefore lost their protection as civilians.

Your recent statements obscure more than they reveal regarding how the UK interprets its legal obligation to distinguish a genuine ISIS combatant from a civilian. We ask you to clarify the Ministry of Defence's interpretation of the notion of the direct participation in hostilities under international humanitarian law as a matter of urgency.

2. Secondly, as you will be aware, Rule 47 of customary international humanitarian law states that 'anyone who clearly expresses an intention to surrender' is *hors de combat* and not a lawful target. As Coalition efforts to defeat ISIS progress, it is perfectly conceivable that individuals, British-born or otherwise, may express such an intention. To deny them the right to do so risks committing the very same war crimes that we are hoping to prevent.



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Indiscriminately targeting British nationals in Iraq and Syria for the sole purpose of preventing them returning to the UK not only puts our servicemen and women at risk of prosecution for war crimes, but decreases the standing of our armed forces in being a global leader in upholding the rule of law and international standards. Your recent statements not only suggest a lack of understanding of these legal obligations, but also unnecessarily harm our service men and women in all theatres in which they are deployed today.

I do not doubt that ISIS pose a risk to the UK's national security. However, it is imperative that efforts to defeat ISIS are lawful. Our Armed Forces rely on clear leadership and a robust understanding of the law to direct their operations. You hold the highest responsibility for this task.

As heinous as ISIS crimes may be, undermining the rule of law will ultimately only serve those who seek to harm the UK. I urge you to clarify the criteria by which an individual is assessed to have taken a direct role in hostilities in Iraq and Syria and to confirm that a British-born ISIS fighter may surrender and be protected from the use of lethal force by the UK.

Yours sincerely,

A handwritten signature in black ink that reads "C. Lewis". The signature is written in a cursive style with a long horizontal stroke at the end.

Clive Lewis
Member of Parliament
Norwich South