

Lawfare of warfare

Sir, The letter from a number of generals effectively seeks immunity for servicemen and women in the interest of “fairness” ([“Generals decry lawfare’s effect on warfare”](#), Nov 11). I was the first lawyer to have to consider the extra-territorial application of the Human Rights Act (HRA) in an international armed conflict in my role as “commander legal” during the Iraq war. As such I do not recognise the concerns of the generals. First, the HRA holds the state to account and not individual servicemen and women. Second, it does not apply in combat as the state does not have jurisdiction on the battlefield. Third, it only applies when a man or woman is captured or where the state acts as the de facto authority during an occupation. In this regard the HRA was undoubtedly a force for good. It resulted, for instance, in the Baha Mousa public inquiry that got to the bottom of some of the appalling treatment meted out to prisoners when held by the state. Without the HRA there would undoubtedly have been another era of cover-up, as there was in Kenya, Cyprus and Malaya. We do not want any more of these barbarous chapters. Fairness means fairness to all, including victims. If we operate within the rule of law and human rights norms we have nothing to fear and there is no impact on operational effectiveness. Indeed, it can enhance operational effectiveness. I respectfully suggest that the generals kick this political football into touch.

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