

# The workplace of war: unlimited liability or safety crimes?

**Ross McGarry highlights British military deaths and questions the commitment of the government to adequately protect the armed forces within war as a 'workplace'**

*It has been 13 years since Ruth Jamieson (1999) called upon criminology to use its analysis more creatively in relation to war and show that 'there is more to be said' with regards the criminality of war itself and its impacts thereafter. With some notable exceptions during this time (e.g. Hudson and Walters, 2009) war has been paid limited attention by either criminology or victimology. However, given that more than 590 British soldiers have lost their lives serving in the wars in Afghanistan and Iraq (since 2001 and 2003 respectively) it is perhaps time to reconsider if there is even 'more to be said' about the circumstances under which some of these deaths have occurred.*

## An unlimited liability

Tragic deaths at war form part of the 'unlimited liability' that British military personnel succumb to whilst under the services of the Ministry of Defence (MoD). This 'unlimited liability' originates from the first fully drafted version of the Military Covenant; the instrument under which the commitments and sacrifices of British service personnel are outlined. Herein it is stated that:

*...every soldier is a weapon bearer, so all must be prepared personally to make the decision to engage the enemy or to place themselves in harm's way. All British soldiers share the legal right and duty to fight and if necessary, kill, according to their orders, and an unlimited liability*

*to give their lives doing so. This is the unique nature of soldiering.*  
(Ministry of Defence, 2000)

An emphasis on this 'unlimited liability' remains present in subsequent versions of the Military Covenant (produced in 2005 and 2010) and for British soldiers the 'unique nature' of their duty means forfeiting their liberties, foregoing many of their human rights and dying in the interests and protection of the Nation. In exchange the 'Nation' - characterised by the public, the British government and the MoD - have an obligation to provide life long support to both current and former members of the British military. The support on offer includes a public appreciation of their sacrifices as documented in the Armed Forces Covenant (see MoD, 2011), and a commitment from the British government and MoD to ensure that British service personnel are suitably equipped, prepared and protected during the wars in which they participate as per the Military Covenant (see MoD, 2000), and not *unnecessarily* placed 'in harm's way'. Between both Covenants the lives of British service personnel are provided with mechanisms to be supported and protected for the sacrifices they make on behalf of the Nation, and under the conditions of 'unlimited liability' it is appreciated that such deaths during war are unavoidable. However from the first deaths of eight British service personnel during the Iraq war on 21 March 2003 to the recent deaths of six British soldiers in Afghanistan

on 6 March 2012 there has been a noticeable creep in the number of fatalities sustained by the British military at the behest of 'accidents' and inadequate protection.

## An ambiguous liability?

The MoD documents all work related accidents resulting in death and injury that occur to all serving military and civilian personnel (see Defence Analytic Service and Advice (DASA), 2011). However there is some complexity in how incidents are defined in relation to the spaces and times at which the MoD assumes responsibility. In an attempt to decode this jumble of quantitative information it is clear that from 2001 – 2010 there have been 694 'work related deaths' of British service personnel and MoD civilians that can be attributed to health and safety issues; 449 of these are documented as due to 'hostile action' and are therefore accountable under the remit of an 'unlimited liability'. Of the remaining figure 82 deaths were caused by on duty road traffic accidents occurring on public highways outside of MoD facilities, and 163 deaths were caused by 'work place incidents' occurring on MoD property. Here the most common cause of these 'work place incidents' (81 in total) were by transport accidents including air, land and sea vehicles. This means that over a period of ten years the most common cause of British military deaths at work (except for 'hostile action') were due to vehicle 'accidents' both on and off military bases (163 in total), a figure that almost equals the total number of British military personnel who perished during the war in Iraq (179 in total) (DASA, 2011). But the concern does not stop at these headline statistics as there is some ambiguity in the circumstances under which deaths reported as 'hostile action' and 'accidents' within this context are defined.

A qualitative look at many of the stories behind the deaths of military personnel due to 'accidents' highlights a range of additional variables such as drowning, negligent discharges of weapon systems, mechanical failures and

'friendly fire' incidents. Indeed the first eight British service personnel to die in an air crash during the Iraq war in 2003 was caused by a 'mechanical failure' and attributable to a 'transport accident'. When held up against the tenets of the Military Covenant it is clear that 'accidents' such as this are not easily catered for under an 'unlimited liability' as the deaths of these service personnel were clearly avoidable and caused by inadequate military equipment which *unnecessarily* put them 'in harm's way'. However the British armed forces are not required to notify the UK Health and Safety Executive of any injuries or deaths that occur as a result of work-related practices or negligence (DASA, 2011). Similarly it is also worth reminding ourselves of the death of Private Jason Smith who died of heat exhaustion in

Iraq on 13 August 2003. Recorded as only one of two 'heat injuries' in the past ten years his case resulted in the MoD being briefly made legally accountable by the High Court to uphold and protect the 'right to life' of all British military personnel both in the UK and on operations overseas. This decision was later overruled by the Supreme Court. Therefore as the crux of this issue the British military are currently not accountable under any health and safety or human rights legislation for the deaths of its service personnel whilst in the UK or on operations in Afghanistan and Iraq.

### Work as war, war as work

In the absence of any legal checks and balances for the MoD it is worth creating some space with which to begin asking more critical questions about the circumstances in which military 'work related deaths' have occurred. To do so it is necessary to rethink the operational environments the British military are engaged in as workplaces of war, and the personnel

who serve in them as workers: in brief, for British soldiers work is war, and war is work. Although often received as bland subject matter, by drawing attention to issues of health and safety that have resulted in the deaths of many British military personnel in the 'workplace' the criminological lens can expand its analysis of war to include safety crimes (see Tombs and Whyte, 2007). To add some further complexity to this, when seen as workers British military personnel occupy a 'unique' position in relation to the State. Akin to Whyte's (2009) repositioning of Agamben's 'naked life' as 'naked labour' members of the British armed forces are the 'subject of sovereign power' under an 'unlimited liability', having their rights and liberties suspended in the interests of the State; as servants of the State they

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clearly have no means to seek 'protection from the sovereign' for themselves; and during war British service personnel also appear able to be 'killed with impunity' as a result of 'hostile action' and other 'work related deaths' without any recourse to the law, even if their deaths are attributable to negligence. Within this relationship the economic force of the British military as an employer meets the political right and 'unlimited liability' of military personnel as workers, and as Whyte (2009) crucially notes 'Being bare or naked in this context means without 'right' and the protection of the state'.

As a concluding example we return our attention to the six British soldiers to die in Afghanistan in March 2012. Their deaths occurred when their Warrior transport vehicle was destroyed by a large improvised explosive device (IED) killing everybody on board. Although recorded as 'hostile action', in the aftermath of their deaths the suitability of this vehicle was brought into question in terms of its fitness for

purpose in protecting the lives of those who were travelling in it. Unfortunately this tragedy is not unique and similar concerns have been raised historically in relation to the safety of the Snatch Land Rover when used in Afghanistan and Iraq (as opposed to Northern Ireland). This vehicle has over 20 deaths of British service personnel attributed to its lack of efficacy, including Corporal Sarah Bryant (the first female soldier to die in Afghanistan) and four other members of the British Special Forces who were killed by an IED whilst travelling in a Snatch on 17 June 2008. Here the questions linger: are such deaths really part of an 'unlimited liability' or is there indeed 'more to be said' about the conditions whereby British soldiers have sustained death and injury during the wars in Afghanistan and Iraq? Such critical questions currently fall between the interstitial spaces relating to criminological debates of war. ■

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