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The Implications of the Iraq Inquiry on a Soldier's Right to Life



Picture: Chris Butcher

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THE RIGHT TO LIFE

- (i) not to take life without justification
- (ii) in certain circumstances to take steps to protect the lives of those within the state's jurisdiction
- (iii) to hold an investigation arises where there has been an arguable breach of a substantive obligation owed by the state under article 2

SMITH REFINEMENT

- **POLITICAL EXCLUSION**

‘if the decisions that were or ought to have been taken about **training, procurement or the conduct of operations** were at a high level of command and **closely linked to the exercise of political judgment and issues of policy**’

- **OPERATIONAL EXCLUSION**

‘So too if they relate to things done or not done when those who might be thought to be responsible for avoiding the risk of death or injury to others **were actively engaged in direct contact with the enemy**’

‘Middle Ground’

‘may engage article 2 if it is arguable that the death was caused by insufficient state systems, regulations or control’

R(Long) v Secretary of State for Defence [2015] 1 W.L.R. 5006,
Lord Dyson [13]

POSITIVE OBLIGATION TEST

THE OBLIGATION

- State has knowledge of a real and immediate risk to the life of an identified individual or individuals
(*Osman v United Kingdom*)
- a State undertakes or organises dangerous activities, or authorises them
(*Stoyanovi v Bulgaria*)

THE APPLICATION

- all that could be ‘reasonably expected’
- so far as is ‘practicable’
- to take such measures ‘which are “feasible” in the circumstances’
(*Finogenov v Russia*)
- Margin of appreciation ‘so far as the military and technical aspects of the situation are concerned’
(*Finogenov v Russia*)

Enhanced Combat Body Armour (ECBA)



Iraq Inquiry Findings:

‘[e]nough body armour was procured to equip only British fighting formations (and) that was insufficient to equip all British troops deployed abroad’.

Evidence before the Inquiry states that in some cases only 50-60% of soldiers had been provided ECBA.

Asset Tracking

‘[p]oor asset tracking meant that even fighting formations were not fully equipped, resulting in an urgent redistribution programme on the front line’



‘We lost a company of Warriors at one stage. We knew that it had been offloaded from the boats, but I didn’t know where it was’
Major Gen Binns

Snatch Land Rover

Iraq Inquiry Findings:

Delays in providing an alternative to the Snatch Land Rover 'should not have been tolerated'.

The MoD was 'slow in responding' to the IED threat.

Photo: AFP / Getty Images

Legal Implications

- Potential evidence of systematic failures by the State
- Finding the middle-ground may now be more difficult
- The success of cases will depend on the angle which litigants take
- Enforcing a soldier's right to life will only occur in the most serious of cases