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Focus

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“The American War library estimates that friendly fire accounted for 21% of US casualties in WWII, 18% in Korea, 39% in Vietnam and 49% in the first Gulf war in 1990-1991”

Article 119 of UCMJ

“(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being--

(1) by culpable negligence;

[...]

(2) [...] is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.”

Article 128 of UCMJ

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who--

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; [...]

(2) [...] is guilty of aggravated assault and shall be punished as a court-martial may direct.

Can friendly-fire be punished?

Several times during the operations in Iraq the expressions “friendly fire” or “blue-on-blue” were mentioned in the press. They describe the situation where a party to an armed conflict mistakenly attacks its own troops or material or those who are fighting with them shoulder to shoulder. On one occasion, two American pilots turned their guns on a convoy of five British vehicles, killing one man, injuring four others and wiping out two armoured reconnaissance vehicles. Earlier an RAF Tornado aircraft was shot down by an American Patriot 3 missile and a US F-16 fighter attacked a Patriot missile battery, fortunately without causing any casualties.

These incidents are not new to history. Suffice is to mention the death of 400 American soldiers during World War II who were killed by US forces in Sicily or the 93 Scots soldiers shelled and napalmed by the Americans in 1950 during the Korean war. In modern high-tech limited war, these tragic mistakes are even more noticeable as there are less and less casualties on the battlefields. The last battle against Iraqi troops left 367 Americans killed, of whom 165 died in friendly fire incidents. So far in this conflict, Britain has suffered more casualties from friendly fire than from assaults by the Iraqis! International humanitarian law is unfortunately not relevant to such incidents because it only covers violent acts committed by a party against the enemy. Consequently the only applicable laws and regulations are those to be found in domestic legislation and more particularly in national military codes. If death follows a friendly fire, then it is possible to prosecute a person for manslaughter according to article 119 of the American Uniform Code of Military Justice. Otherwise, the perpetrator may be prosecuted for assault under article 128 of the Uniform Code of Military Justice.

For example, two American F-16 pilots, Major Harry Schmidt and Major William Umbach, who had killed four Canadian soldiers and wounded eight others by dropping a 250kg laser-guided bomb on a live-fire military exercise in Afghanistan, were charged with (aiding and abetting) involuntary manslaughter and (aiding and abetting) assault after a joint US-Canadian investigation had concluded that the pilots showed “reckless disregard” for standing orders against attacking, ignored briefings about allied troop locations and could have flown their F-16s out of the area. However, on 20 March 2003, a military hearing officer recommended against court-martialing them. The final decision is yet up to the commander who is not bound by this recommendation.

The problem takes a different turn in a civil suit filed by the family of a Canadian soldier against the US government in February 2003. The question here relates to the competence of a Canadian court to decide on the lawfulness of the action of the two American pilots and to obtain financial compensation. This may be a severe hurdle in condemning such acts.

Besides, one may wonder whether international human rights law is not applicable too as the right to life is enshrined in article 6 of the International Covenant for Civil and Political Rights, a treaty ratified by both the United States and in Canada. This body of law is indeed also applicable in times of armed conflict. Yet, again the implementation of this right is mainly through national legislation in force in the US and in Canada before it reaches the Human Rights Committee.

This means that there are several avenues to investigate the facts and punish the perpetrators but in the case of friendly fire of coalition forces, the matter is complicated by problems related to jurisdiction.

Responsibility

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