

Australian detainee at Guantanamo Bay abandoned by Howard government

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In an open repudiation of the democratic rights of one of its own citizens, the Australian government has refused to demand the repatriation of David Hicks, a 26-year-old Australian being held by the US military at Camp X-Ray in Guantanamo Bay, Cuba. Moreover, in its ongoing efforts to curry favour with Washington, the Howard government has extended full support to the denial by the US of Hicks' rights as a prisoner of war under the Geneva Convention.

Hicks has been held by the US military for two months. He was captured by Afghanistan's Northern Alliance during fighting with Taliban forces near Kunduz on December 9 and handed over to the US army. After being interrogated by US and Australian security and military officials on *USS Peleliu*, he was transported—shackled and blindfolded—to Guantanamo Bay in January.

Along with 220 other Taliban supporters from 25 different countries, Hicks has been imprisoned in an outdoor cage measuring 2.4 by 1.8 metres, under an executive order of US President George Bush. Although not a single official charge has been brought against him, the Australian has been classified an "illegal combatant" and could face the death penalty if the Bush Administration decides to try him in one of its proposed secret military tribunals, where normal rules of evidence do not apply and there is no right of appeal.

Legal experts, including Michael Kleiner from the International Committee of the Red Cross, have emphasised that the Australian government could, under international law, insist that Hicks be returned to Australia and tried under Australian law. Human rights organisations have demanded that Hicks, as well as the other detainees, be classified as "prisoners of war" and afforded their rights under the Geneva Convention—including the right to legal representation and trial by an independent court. The Howard government has not only ignored these calls, but stonewalled demands by the Hicks family that their son be provided with legal and consular access.

Government ministers have gone out of their way to praise the US military. Defence Minister Robert Hill told the media he was "satisfied" with the way the US had dealt with Hicks and that he saw "nothing to suggest he's not being held humanely." Brushing aside the principle of "innocent until proven guilty", Hill went on to describe Hicks as a "terrorist" who was "prepared to kill innocent people." Attorney General Daryl Williams claimed that criticism of the Australian government was "unfounded" and that the detention of Hicks by the US military was "appropriate." The government, he said, was "satisfied with those arrangements".

Foreign Minister Alexander Downer, claimed Hicks was an al Qaeda member and deserved to suffer harsh retribution. "We are an ally of the United States and we agree with them. They're perfectly

entitled to take very tough action." What happens to Hicks, Downer said, "was entirely a matter for the US." Downer's identification of Hicks as an al Qaeda member—a charge that has been denied by Hicks' family—may well be used by Washington to continue to deny Hicks POW status.

There is not a shred of evidence that Hicks is a "terrorist," a member of any specific organisation or that he was associated in any way with the September 11 terror attacks. He apparently arrived in Afghanistan in September but virtually nothing is known about his activities there. Described by friends as a "pretty decent bloke," he grew up in the working class suburb of Salisbury in Adelaide, which has one of the highest levels of unemployment in Australia. Hankering for a bit of adventure, he moved from one job to another, mainly in the remote centre and north of Australia, for several years.

After settling down in Adelaide, Hicks was reportedly devastated when he lost his job and his de facto marriage broke up. He applied to join the Australian Army but was rejected. He apparently experimented with drugs, turned to Islam and in mid-1999 travelled to Kosovo where he fought with the Kosovo Liberation Army (KLA). He returned to Australia, formally converted to Islam then went to Pakistan to study in an Islamic school or madrassas. In late September, he phoned his father to tell him that he was going to Afghanistan to defend it from US attacks. However badly misguided his turn to Islamic fundamentalism, Hicks is by no means the only young person involved in a desperate search to find some meaning to his life.

The government has justified its callous position by referring to American press reports describing Hicks as a "hothead" who wanted to "kill Americans". In fact, the source of these allegations was a Guantanamo prison guard, who relayed them to a Republican senator as a group of 20 US politicians touring the prison were escorted past Hicks' cage. Stephen Kenny, the lawyer acting on behalf of the Hicks family in Australia, commented that the allegations had no legal standing whatsoever. They were nothing but hearsay and could simply be a distorted version of protests Hicks may have been making against the harsh conditions of his internment.

One not insignificant factor in the Howard government's shameless actions is the legal minefield it would confront were Hicks to return home. The young man cannot be charged with treason because neither the Australian nor the US governments have declared war against Afghanistan. Moreover, any evidence extracted from Hicks during his interrogation on *USS Peleliu* or in Cuba could be challenged in an Australian court because he has not been informed of his rights and no lawyer has been present.

Suggestions have been raised that Hicks could be prosecuted instead

under the Foreign Incursions and Recruitment Act, which was introduced in 1978 to prevent Australians fighting as mercenaries. But this is also problematic.

Under this law it is illegal for anyone to serve as a mercenary or attempt to “overthrow by force or violence the government of a foreign state or of a part of the foreign state” or to cause by violence or force the public in that state to fear death or personal injury. Anyone serving as a member of the armed forces of the state cannot be prosecuted. In other words, if Hicks were fighting with the state forces of Afghanistan—which, until December, were under the control of the Taliban—he cannot be charged under Australian law, because he was defending the sovereignty of that state and its government.

Interestingly enough, Hicks could, in principle, be charged and prosecuted under the Foreign Incursions and Recruitment Act for being a member of the Kosovo Liberation Army (KLA). Hicks’ activity at that time was aimed at overthrowing the legally-recognised rule of the Federated Republic of Yugoslavia in Kosovo. But since the terrorist activities of the KLA were endorsed and supported by the US administration and its Australian ally, there is no danger the Australian government would ever want to press charges on that score.

More significantly, however, the Howard government’s actions have been animated by concerns that any criticism of the Bush administration, or any assertion of national sovereignty, may undermine Australia’s efforts to strengthen its political and military ties with the US.

The prime minister, in particular, has leapt at the opportunity provided by the US-led war in Afghanistan to demonstrate his unconditional loyalty to the Bush Administration. Howard was one of the first government leaders to pledge military support following the September 11 terror bombings, and has since been at pains to justify every crime carried out in their name. This has extended to the government expressing its agreement with Bush’s “axis of evil” speech last week, and its “understanding” of the Administration’s decision to withdraw from the 1972 Anti-Ballistic Missile Treaty with Russia in order to pursue a unilateral missile defence program.

Three years ago, Howard outlined his vision of the Australia-US relationship. In an interview with the *Bulletin* magazine in 1999, he explained that he would like to see his country functioning as a “deputy” for the US in the region. “Australia,” he declared, had the “responsibility” of being a US deputy because “we occupy that special place—we are a European, Western civilisation with strong links with North America, but here we are in Asia.”

The conception of Australia as the local Asia-Pacific agent for its most powerful imperialist ally goes all the way back to the founding of the federated nation in 1901, when Britain was the dominant world power. More than 15,000 Australian troops fought for Britain in the Boer War (1899-1902), while in 1914 Prime Minister Andrew Fisher promised “the last man and last shilling” to defend British interests in World War I. Some 330,000 soldiers were sent to fight, nearly making good Fisher’s pledge. During the course of the bloody four-year conflict, there were more than 200,000 casualties, including 60,000 deaths, from a population that numbered less than five million.

When Britain declared war on Germany in 1939, Prime Minister Robert Menzies declared that “consequently” Australia was also at war. But halfway through, it became apparent that Australia’s vast economic and strategic interests in the south Pacific could no longer be defended by Britain. After Britain’s forced withdrawal from Singapore, at the hands of the Japanese, in 1942, the Australian

government realigned itself with the new emerging power in the Pacific, the United States.

Since then successive Australian governments have snapped to attention whenever the US has demanded military assistance: in South Korea in the 1950s, Vietnam in the 1960s and early 70s. Former Liberal Prime Minister Harold Holt summed up the relationship in 1966 with his slogan “All the way with LBJ.”

In 1990 the Hawke Labor government was the first country in the world to offer military support to the US-led war against Iraq. It subsequently participated in the US intervention in Somalia. The Howard government followed suit by backing the NATO assault on Yugoslavia in the first half of 1999. By the end of that year it had already reaped the dividend. Without US support it would have been impossible for the Australian government to intervene into East Timor, thereby protecting its lucrative oil and gas interests in the Timor Sea.

Earlier this week, US Secretary of State Colin Powell, told the US Senate foreign relations committee, that “our Australian friends, in particular, have been forward leaning in their efforts to support the war on terrorism.” Notwithstanding Powell’s praise, the Howard government’s abandonment of David Hicks and its unconditional support for the US “war against terrorism” is meeting with growing criticism. Sections of the establishment are becoming increasingly nervous that the government is putting all of its strategic eggs in the one basket.

An editorial in the Fairfax controlled *Sun-Herald* insisted that Hicks was not a traitor or a mercenary and chastised the government for being “blithely unconcerned” that an Australian citizen could be put before a US military tribunal, “where guilt is presumed and no international rules of law apply.”

Justice John Dowd, a former conservative politician who is president of the Australian chapter of the International Commission of Jurists, said Hicks was a “casualty” of his government’s attempts to maintain favour with Washington.

“Clearly, if it were not for our relations with the US, we would be protesting his continued imprisonment without proper trial. The Australian government is, frankly, pathetic in that, for the argument of convenience, we are letting this man be held in conditions that clearly violate established conventions on the treatment of prisoners.”

Taken together with its flagrant breach of United Nations conventions relating to the rights of children and refugees, the Howard government’s treatment of Hicks is a further expression of a sharp rightward shift, aimed at undermining fundamental democratic and legal rights.



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