

# Australian and British governments claim military trials will be “fair”

**Richard Phillips****26 July 2003**

The Howard and Blair governments claimed this week to have gained “substantial concessions” from the Bush administration over the projected military trials of Guantanamo Bay prisoners, Australian David Hicks and British citizens Moazzam Begg and Feroz Abbasi. The three men are expected to be the first of six war prisoners to be put before American military courts. They have been held incommunicado by the US military at Guantanamo Bay where they have been illegally interrogated for 18 months without any access to lawyers or their families.

The “concessions” are a fiction. Apart from a widely predicted agreement that the men would not face the death penalty, there is no change to the kangaroo court style hearings, which constitute a flagrant violation of democratic rights, the Geneva Conventions on war prisoners and other international legal conventions.

According to Clive Stafford Smith, US counsel for the two British detainees, Washington officials told him that a deal had been worked out even before British and Australian officials arrived in the country. He dismissed the talks as “smoke and mirrors” and said the US was never likely to seek the death penalty for British or Australian prisoners and that most of the other US assurances simply restated existing rules.

This week’s talks were held after British Prime Minister Tony Blair urged Washington to meet with British officials over the military tribunals. Blair faces increasing demands in Britain, including calls by over 200 MPs for the repatriation of Begg, Abbasi and seven other British citizens currently held at Guantanamo Bay. Likewise, Australian Prime Minister John Howard has come under mounting domestic criticism over his refusal to defend Hicks and another Australian, Mamdouh Habib, jailed in Guantanamo Bay.

British Attorney General Lord Goldsmith claimed the negotiations had made “significant progress” while Australian Justice Minister Peter Ellison told the media that Hicks would “get a fair trial”. Ellison said that the military hearings would now include “presumption of innocence”, “standard of proof beyond a reasonable doubt” and “all those features that we would find in the Australian jurisdiction.”

The underlying foundation of the Washington discussions, however, was not “presumption of innocence” but “assumption of guilt” with the outcome treated as a forgone conclusion. Before a single charge has been laid against the prisoners, US, Australian and British officials have come together to negotiate what the punishment will be and how it will be imposed.

Even as Justice Minister Ellison was cynically claiming that Hicks would get a “fair trial”, Prime Minister Howard and Foreign Minister Alexander Downer were doing their utmost to prejudice any hearing, issuing a steady stream of comments alleging Hicks was a hardened terrorist and a member of Al Qaeda.

The US had a “right” to put Hicks before a military court, Howard said, because they “are dealing with people who they believe were intent on doing evil things to their people and others.” Foreign Minister Downer told ABC Radio on Tuesday that Hicks had received advanced weapons, ambush and surveillance training with Al Qaeda and claimed he was a member of Lashkar e-Taiba, a Kashmiri group. Both politicians have admitted, however, that neither Hicks nor Habib has broken any Australian laws.

Neither Downer nor Howard has provided any evidence to substantiate their allegations. Nor has any information been provided to Hicks’s family or lawyers. Hicks’s lawyers immediately pointed out that Howard and Downer’s statements constituted contempt of court under Australia law.

In line with previous procedures, the personnel and conduct of the military trial is determined entirely by the Bush administration, which appoints the prosecutor, defence lawyers and judges, who are all military officers. Guilt or innocence is determined on the basis of a two-thirds majority by a panel of three to seven judges and there is no right of appeal to any higher court.

Hearsay and statements made under interrogation and without the presence of the prisoners’ lawyers can be admitted in court. Even if found innocent of charges, the US can still continue to detain the prisoners indefinitely in Guantanamo Bay.

Under modifications approved by the US this week, discussions between the British and Australian prisoners and their military defence lawyers will no longer be taped. The prisoners may, subject to a military security clearance, be allowed to have a consulting non-military lawyer. The Bush administration has refused to say whether the non-military lawyer will be allowed to have any direct contact with their clients.

Australian press reports claim that the prisoners will be allowed to have phone contact with their families, and that David Hicks, if convicted, could serve his sentence in Australia. Washington, however, has provided no guarantee of this.

In addition, the changes do not apply to future military trials. US officials have made clear that British or Australian prisoners brought before any future US military tribunals would have no

automatic right to the conditions governing the Hicks, Begg or Abbasi trials. In other words, the process is arbitrary and determined on a case-by-case basis entirely by Washington, with President Bush having final say. The Bush administration will control every aspect of the trial, working out side deals with foreign government officials on hearing procedures and sentencing, including the use of the death penalty, according to how it benefits US foreign policy.

The reason behind the Howard government's open repudiation of its political obligation to defend its own citizens was exposed on July 21 when it blocked a Freedom of Information (FOI) request by the Murdoch-owned *Australian* for access to 108 pages of government documents on the Australian Guantanamo Bay prisoners. While the *Australian* has provided little detail, the material includes correspondence and internal minutes from Australia's Department of Foreign Affairs and a December 17 cable from Washington giving the Howard government legal advice on how to deal with Hicks's detention.

The FOI request was rejected by the government on the grounds that it could "damage relations" with Washington.

In other words, the Howard government is an active partner in destroying Hicks' and Habib's basic democratic rights in order to maintain the closest possible relations with the Bush administration and its aggressive political and military agenda. So determined is the Howard government to pursue this course that Australia now has the shameful distinction of being the only country in the world that has not called for the repatriation of its citizens imprisoned in Guantanamo Bay.

Prisoners' lawyers in Britain and Australia have denounced the "new" procedures and maintained calls for the immediate repatriation of their clients. Frank Camatta, representing Hicks, said that concessions on the death penalty and contact with family members were "a relief", but the military court was still a "show trial". "It is also incongruous," he said, "that the death penalty is not on the agenda because you are Australian but it might be on the agenda because you are a Pakistani."

Gareth Pierce, the lawyer for Moazzam Begg, said Attorney General Lord Goldsmith had traded human rights for "marginal reassurances". Louise Christian, representing Feroz Abbasi, denounced the British deal with the US government as "outrageous" and called for the attorney general's resignation. She said the military trials did not satisfy the basic requirement for a fair trial as set out in the International Covenant on Civil and Political Rights, article 14, to which the US was a signatory.

Stephen Jakobi, director of the international human rights group Fair Trials Abroad, said: "Giving priority to discussion of the death penalty gives the whole game away." The fact that the discussions had centred on the sentence and where they should be served was a "tacit admission that the trial is a formality and they've already been convicted."

This week, as Howard and Downer declared there could be no repatriation of Hicks and Habib, the Pentagon flew a total of 11 Pakistani and 16 Afghan prisoners back to their home countries. No charges were ever laid against any of the men, who were held for almost two years by the US military. They were immediately released after routine questioning by local authorities in Pakistan

and Afghanistan.

Contrary to US, British and Australian government claims that the Guantanamo Bay prisoners are treated "humanely", the released detainees said they had been tortured and punished by the US military.

Twenty-nine year old Abdul Rehman from northeastern Afghanistan told Associated Press in Kabul after his release that prisoners were tortured. "Who says we were not punished? It's not true. They pushed us all over, treated us very badly. They put 24 of us in a small, congested room. They also put us into cold rooms," he said through an interpreter. Rehman said he had been "badly punished" during the more than 19 months in Guantanamo Bay and that his captors had chained his hands and feet and beat him with a metal rod on his legs and back.

Meanwhile, Mohammed Sanghir, a Pakistani prisoner released from Guantanamo Bay in November 2002 after 10 months in the US military prison, announced last week that he plans to begin legal action against the US government on August 9 over his illegal detention and mental torture.

Sanghir was captured by the Northern Alliance in Kunduz, northern Afghanistan in October 2001. After his arrest, he was moved with another 250 prisoners to Mazar-i-Sharif and Khandahar in small shipping containers. He says that 50 people suffocated in the containers during the journey and that he saw prisoners buried alive.

He was later airlifted, manacled and hooded, to Guantanamo Bay where he was held in solitary confinement for eight days and later for another sixteen in a dark, tiny cell with constant cold air. This was punishment for not being able to provide the US military with information on Al Qaeda.

His lawsuit accuses US personnel in Guantanamo Bay of adding alcohol—forbidden by Islam—to prisoners' drinks and says that he "suffered mental shock, financial loss, physical victimisation, estrangement and religious victimisation." He is suing the US for \$US10.4 million damages over his illegal detention.



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