

US deserter's refugee claim

Canadian government blocks consideration of legality of Iraq war

Keith Jones
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Canada's federal government intervened in a refugee hearing for a US Army deserter late last year to block discussion of the legality of the US invasion and occupation of Iraq.

A lawyer representing Solicitor-General Irwin Cotler argued that the legality of the war is beyond the purview of Canada's Immigration and Refugee Board (IRB). He claimed that the International Court of Justice in The Hague is the only body with the authority and competence to hear arguments concerning the war's legality.

Jeremy Hinzman, who fled to Canada after the Army twice rejected his request for Conscientious Objector (CO) status and his battalion was ordered to go to Iraq, is arguing that Canada is legally obligated to give him refugee status, because he will be persecuted if he is returned to the US for having refused to participate in an illegal war.

The IRB panel hearing Hinzman's case was quick to endorse the government's position. It ruled that Hinzman's argument that the war was illegal under international law—because it was unprovoked, “had been condemned by the international community,” and because the Bush administration lied about Saddam Hussein's regime having weapons of mass destruction and ties to Al Qaeda—was irrelevant to his refugee claim.

“Evidence with respect to the legality of the US embarking on military action will not be admitted into evidence at the hearing of these claims,” wrote Brian Goodman, chairman of the IRB panel.

Hinzman's lawyer, Jeffry House, responded by saying his client would be willing to await a decision on the war's legality if the Canadian government

would bring the question before the International Court. But the Canadian government has no intention of seeking such a ruling. Its intervention in the Hinzman case was not aimed at ensuring that the appropriate legal body renders judgment on the legality of the war, but at suppressing consideration of the issue.

The Canadian government's intervention in the Hinzman case is significant for three reasons.

Firstly, it undermines Hinzman's refugee claim and thereby increases the likelihood he will be denied refugee status and handed over to US authorities.

The federal government is legally limited in its powers to intervene in the refugee determination process. There is no question, however, that the Liberal government of Paul Martin and Canada's political and corporate elite are determined that Canada not become a magnet for US deserters and thereby further encourage dissension and anti-war sentiment within the US military. In particular they don't want to see a repeat of the Vietnam War experience, when tens of thousands of draft dodgers and deserters were given refuge in Canada and the Canadian government was compelled by popular antiwar sentiment to give them the right stay in Canada.

Hinzman's refugee claim has elicited an avalanche of unfavorable press commentary, with newspaper editorialists and columnists arguing that he should be denied refugee status because he volunteered to join the US Army and won't face “genuine” persecution if he is returned to the US. (In fact, Hinzman could be jailed for up to five years. He also fears extra-legal reprisals. Both he and his wife, who is of Vietnamese origin, have received death threats and have been the target of racial slurs.) Revealingly, the *Globe and Mail* and the

National Post chose the same headline for their anti-Hinzman editorials: “A deserter, not a refugee.” The Bush administration could not have put it better.

Secondly, the Canadian government’s intervention to prevent Hinzman from pointing to the illegal character of the war represents a further assault on the right of asylum.

The Fourth Nuremberg principle holds that all persons are obliged, if there is any possibility to do so, to defy government and military orders that violate international law. The United Nations High Commission on Refugees holds that a deserter can be deemed a refugee if the “type of military action” from which he desists has been condemned by the international community as against elementary humanitarian principles.

Yet the Canadian government has intervened to prevent Hinzman from arguing that fear of legal retribution for having refused to shoot and kill others in an aggressive war is grounds for political asylum.

“It cannot be irrelevant to a soldier that a war is legal or illegal,” says Hinzman’s lawyer, Jeffry House. “That just can’t be. It can’t be the case that a war is illegal and that it’s just to imprison someone who refuses to fight. If illegal means anything it means you can’t be prosecuted for refusing to participate.”

Last but not least, the Canadian government’s intervention in the Hinzman case points to the utterly hypocritical and calculated character of the Canadian government’s decision not to join the US-led “coalition of the willing” in invading Iraq.

While the Liberals have basked in the strong popular support for their decision not to deploy the Canadian Armed Forces (CAF) in Iraq, the Liberal government has provided important political and logistical support for the US invasion and occupation of that country.

The CAF was for months actively involved in the war planning of the US and British military. Only when Canadian efforts to broker an eleventh-hour deal between Washington and the major continental European powers for an end of March 2003 “ultimate deadline” for Saddam Hussein, did then-Prime Minister Jean Chrétien decide that the CAF would not participate in the invasion.

Nonetheless, as US Ambassador Paul Cellucci conceded, Canada did far more in support of the conquest of Iraq than many members of the war

coalition. The Canadian navy led a multi-national “anti-terrorism” task force in the Persian Gulf that worked hand-in-glove with the US and British. Canada sent a large force to Afghanistan, thereby freeing up US troops for action in Iraq, and several dozen CAF personnel participated in the invasion as embedded “exchange” members of the US and British forces. So highly did the Pentagon think of CAF Brigadier-General Walter Natynczyk, he was made one of the principal commanders of the occupation forces.

No sooner had the war begun than Chrétien publicly affirmed his support for a US victory, while dismissing the question of the legality of the US-British invasion as a matter that lawyers and historians will quibble about for decades to come.

This position underscores the fact that Canada’s support for a regime of international law—like that of the other imperialist powers—is entirely self-interested. Otherwise how can the question as to whether a war launched by the world’s most powerful state is illegal be only of academic interest?

The truth is Ottawa knows full well that Bush’s doctrine of “pre-emptive” war breaks with the precepts of international law—precepts that the US itself helped develop in the decades following World War Two.

One of the chief reasons the federal government intervened in the Hinzman case is that it recognizes the charge that the Bush administration has waged a war of aggression as defined in the Nuremberg trials of Germany’s war leaders is unanswerable.

The federal intervention also underscores the Liberals’ determination to prove a loyal ally of Washington. In a world marked by growing antagonisms between the great powers and frenetic economic competition, Canadian big business deems it vital to securing its predatory interests that Canada pursue a closer economic and geo-political partnership with the US.



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