



INTERNATIONAL
COMMISSION
OF JURISTS

The Hon John Howard MP
House of Representatives
Parliament House
Canberra ACT 2600

Dear Prime Minister,

Re: David Hicks and Guantanamo Bay - Open Letter

As Australian lawyers we wish to bring to your attention that the imprisonment of David Hicks at Guantanamo Bay and his proposed trial by Military Commission, are illegal under international law.

Whether or not David Hicks is in fact guilty or innocent is not the issue. The illegality lies in the process of indefinite detention and unfair trial by Military Commission, a process which expressly has no application to any American citizen.

Notwithstanding contrary positions adopted by the United States, the protections of international humanitarian and human rights law, as reflected in the Geneva Convention and the Civil and Political Rights Covenant, remain applicable to Mr Hicks. Both the United States and Australia are parties to these treaties and are bound by them. However, Australia has failed to comply with its obligations and fulfill its responsibilities under international law and has been complicit in the conduct of the United States.

The imprisonment at Guantanamo Bay and the unfair trial of David Hicks by Military Commission are an affront to international legal standards, indeed all civilized legal standards. The President of the United States has claimed the unilateral authority to try persons nominated by him as suspected terrorists in a system which is wholly outside the traditional civilian and military judicial systems. He seeks to conduct such trials before persons who are his chosen subordinates. The Military Commissions deny the basic rights to an independent and impartial trial and the procedures do not exclude evidence obtained by coercion including the use of cruel, inhuman or degrading treatment.

ICJ AUSTRALIA

GPO Box 173
Sydney NSW 2001
Australia
+61 2 9286 8767
+61 2 9283 3323
info@ICJ-Aust.org.au

WWW.ICJ-AUST.ORG.AU

ICJ GENEVA

President
The Hon Justice Arthur Chaskalson SC
former Chief Justice
Constitutional Court of South Africa

Secretary-General
Nicholas Howen

*Chairperson of
Executive Committee*
The Hon John Dowd AO QC

Australian Commissioner
Justice Elizabeth Evatt AC

ICJ AUSTRALIA

NATIONAL SECTION

President
The Hon John Dowd AO QC

National Vice-President
The Hon Chief Justice David Malcolm AC
Supreme Court of Western Australia

Chairperson
Steve Mark
Legal Services Commissioner, NSW

Secretary-General
David Bitel
Solicitor

Council Secretary & Treasurer
Nicholas McNally
Solicitor

Assistant Secretary-General
Lucy Robb
Solicitor

STATE BRANCH PRESIDENTS

Australian Capital Territory
The Hon Justice Terry Connolly
Supreme Court of ACT

New South Wales
Judge John O'Meally AM RFD
President, Dust Diseases Tribunal of NSW

Northern Territory
Mr Colin McDonald QC
William Forster Chambers, NT

Queensland
The Hon Justice Rosalyn Atkinson
Supreme Court of Queensland

South Australia
The Hon Justice David Bleby
Supreme Court of SA

Tasmania
The Hon Justice Alan Blow OAM
Supreme Court of Tasmania

Victoria
The Hon Justice Bernard Bongiorno QC
Supreme Court of Victoria

Western Australia
The Hon Justice Robert Nicholson AO
Federal Court of Australia, WA

The system also denies the fundamental right to an expeditious trial. David Hicks was in custody for two and a half years before he was charged on 10 June 2004. He has now been imprisoned for four and a half years without a trial. It is not fairly open to attribute this inordinate delay to Mr Hicks and his lawyers. It was the unjust system of trial by Military Commission which gave rise to his legitimate court challenge, a process which in any event occupied a small proportion of the total period. Further, there remains no explanation for the unconscionable delay prior to Mr Hicks being charged.

If Australia fails to join the United Kingdom in condemning these violations, it not only fails in its duty to one of its citizens, it also plays a part in undermining international legal order. This is not in our own interests nor is it in the interests of our strategic partner. It is therefore imperative that Australia encourages the United States to respect the principles of the rule of law and the protection of the bed rock freedoms which are enshrined in the major international law treaties.

The menace of terrorism is real. However, to meet the danger the world needs not only a military solution, but renewed and sustained commitment to the rule of law and to fundamental principles of human dignity and respect for human rights. This is the shared heritage of a civilized world. Unless we are vigilant, terrorism may achieve the destruction of these values. We should not give it such a victory.

Yours Sincerely,



The Hon John Dowd AO QC
President
ICJ Australia

on behalf of all of the Australian lawyers who are
signatories to this letter published on www.icj-aust.org.au