

at Guantanamo Bay, no longer apply. This is good news for all Australians. It is especially comforting to members of our defence force who have been badly let down by a succession of Australian governments since the early 1950s on this issue. ♦

No more *get-out-of-gaol-free* cards

This legislation will also help prevent future confusion concerning the applicability of International Humanitarian Law in general, and the Laws of Armed Conflict (LOAC) in particular, to Australians involved in a war. In the arguments about David Hicks many Australians appeared to believe the inconsistent and illogical position that the applicability of LOAC to Australians somehow depended on which side in a war they were fighting for.

Most Australians seem to understand, and would indeed rightly demand, that any ADF personnel who might be captured by an enemy during a war would be protected by LOAC, particularly the Third Geneva Convention governing the status and protection of prisoners-of-war (PW). At the same time, however, many also seemed to believe (wrongly) that LOAC should not apply to an Australian – David Hicks – who was a combatant for the other side in a conflict in which the ADF was engaged.

Expressed another way, most Australians seem to understand that captured ADF personnel should be detained and protected as PW under LOAC until the relevant war ends (or their earlier release on PW parole is negotiated). But many then inconsistently claimed that the detention (and protection) of David Hicks under LOAC was somehow a civil matter, that he had somehow been ‘imprisoned without trial’, and that the civil principle of habeas corpus somehow applied to his detention under LOAC instead of the specialist body of international law actually applying.

Many persisted with this mistaken belief even after the June 2006 ruling by the US Supreme Court in the Hamdan case reaffirmed the applicability of LOAC to those captured in the war in Afghanistan, and used this ruling to strike down the original separate criminal trials by military commission that a very small minority of those detained (including Hicks) were also facing. The inconsistency of this mistaken belief is further illustrated by those agitating for Hicks’ release from detention being happy for the consequent part of the Hamdan ruling to apply but refusing to recognise the legal basis for it. Many were often also unaware, or chose to ignore as another inconvenient fact, that the International Committee of the Red Cross had long been acting as the protecting power, as required by LOAC, for those so detained (including Hicks).

International humanitarian law (including LOAC) is universal and specifies, among other things, both responsibilities by, and protections for, individuals. There is no special ‘get out of gaol free’ card for any Australian involved in an armed conflict as a belligerent party just because he or she is Australian – or indeed any other nationality. ♦



AUSTRALIAN PEACEKEEPING MEMORIAL - AN INVITATION TO BE A SPONSOR OR MEMBER

The Australian Peacekeeping Memorial will commemorate and celebrate Australian peacekeeping. It will honour the sacrifice, service and valour of Australian peacekeepers given in the same spirit as in other conflicts honoured in cenotaphs and memorials across Australia and on ANZAC Parade, Canberra.

Progress to Date

The Federal Government, through the Department of Veterans’ Affairs, has provided an initial grant of \$200,000 to assist with the construction of the Memorial, which experience indicates requires about \$2.5 million to fund such a major national memorial in Canberra. A committee for the Australian Peacekeeping Memorial Project has been convened with duly elected office bearers and representatives from the ADF, the AFP, State and Territory Police, and peacekeeping veterans.

The APMP Committee welcomes membership and support from all peacekeeping veterans, interested individuals and organisations.

Full details of the project are listed on our website : www.peacekeepingmemorial.org.au



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