

ADF recruitment policies, or of the complex practices adopted by those foreign countries such as the UK and India (with the Gurkhas) and France (with the Foreign Legion) who employ some foreigners as troops. Not least of the latter are the segregation of foreign personnel in their own units with separate cultural traditions, restrictions on the rank they can attain even within such units, their command by officers of host-country nationality on purely citizenship or ethnic grounds and, to some extent, remuneration that is set at rates less than those applying to personnel who are citizens of the host country concerned.

Advocacy of the guest worker option also usually ignores that the ADF already recruits overseas (including South Pacific islanders) among those who qualify for emigration to Australia as permanent residents and potential citizens. Moreover the 'guest worker as potential temporary digger' idea is based on a false assumption or misunderstanding about the nature of the ADF's recruiting problems. The recruiting shortfalls in general enlistments have largely been overcome, especially in the Army and the Air Force. The remaining deficiencies in professional and technical trades are unlikely to be met by many South Pacific islanders and where they are, such potential enlistees would probably qualify for permanent residence in Australia anyway.

Some have thus suggested that our immigration standards and policies could or should be relaxed to the extent that we grant permanent residency to foreigners supposedly willing to fight for us – but who would otherwise not qualify for immigration to Australia on skills, education or other grounds. This suggestion is taking the idea beyond the guest worker stage and would in any case risk compromising the integrity of our immigration policy on a range of equity, citizenship policy, social cohesion, and economic efficiency grounds. It would also raise serious moral questions akin to legalising the immigration of prostitutes on the spurious claim that Australians would then not have to undertake paid sex work.

There has also traditionally been a general reluctance to admit guest workers to Australia because of fears such a step might undermine Australian working conditions and cost Australians their job. While union opposition to guest workers in the wider economy may be weakening, the ADF should not be leading the charge in an area that could be politically and socially divisive.

Finally there are two compelling moral issues involved. First, what type of society is unwilling to defend itself or is not worth defending by its own people? National defence is a universal civic responsibility of all Australians, like jury duty, not something that can be duck-shoved on indigent foreigners as a matter of our convenience and in exploitation of their desperation. If the problem of maintaining our defence force at the required strength is supposedly serious enough to warrant the temporary employment of foreign guest workers, then surely a large range of other measures should be tried first. We could and should, for example, first raise ADF pay rates so the Services could compete effectively with labour market forces and if this did not work, introduce selective or universal conscription to meet recruiting shortfalls.

Second, and even more disturbingly, at least some of the motivation for suggesting the temporary hiring of South Pacific islanders to fight and potentially die for us, for money, appears driven by the subliminal, and in some cases open, belief that young black males from the South Pacific are naturally violent, or naturally 'warriors', so will make good soldiers. This is condescending belief masquerading as anthropological or social theory at best. At worst it is unadulterated racism, particularly where it assumes that such foreign soldiers would be expendable replacements for young Australians. ♦

No more Burchett and Hicks-type dilemmas

With the expiry of the gag order negotiated in his plea bargain of guilty before a US Military Commission, David Hicks has no legal restrictions from telling his side of the story. Under Australian law governing the proceeds of crime he is, however, officially thought to be unable to profit financially from doing so. Whether this is the case or not may yet be tested in the courts.

The ADA has long criticised the gag order as unnecessary and indeed counter-productive to the principles and national interest issues underlying such cases. As with the example of Mamdouh Habib, the sooner the Australian public can weigh up Hicks' account first-hand, and make its own judgements about him directly, the better.

Up until now many on both sides of the Hicks controversy have ignored evidence and argument that contradicts what they want to believe. The general politicisation of the matter, and the absence of David Hicks being able to speak for himself, has also allowed the Hicks camp considerable licence to generate subjective publicity for his cause when agitating for his release from detention. Many are the interviews, for example, where Hicks' father has not been challenged by objective and informed media questioning about inconsistencies in his claims concerning his son, perhaps for fear it might have delayed Hicks' release. Now David Hicks is free from gaol and the gag there is no longer any excuse for holding back from proper scrutiny of Hicks' beliefs and actions.

One major reform from the Hicks saga is that the legal, moral and practical dilemmas of such cases are unlikely to be repeated. It may have taken nearly 60 years for the appropriate legislation to be passed, following Wilfred Burchett's activities with the Chinese and North Koreans during the Korean War (and perhaps the North Vietnamese during the Vietnam War), but Australian law finally includes offences covering actions that assist the enemy in time of war where these fall short of outright treason (the illegal overthrow of the Australian government).

The technical loopholes and lack of specific legislation that allowed Burchett to escape prosecution have finally been closed. This also means that the lack of legislation that prevented David Hicks from being tried for criminal offences in Australia, and which consequently delayed his release for such a trial from detention as a captured combatant

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



SHOW YOUR TRUE COLOURS

HELP US CARE FOR FAMILIES LEFT BEHIND

By giving to Legacy, you're helping us look after widows and children who have lost loved ones in Australia's Defence Force during war, peacekeeping or during hazardous training. Please show your true colours by supporting Legacy. Phone 1800 LEGACY (534 229) or visit www.legacy.com.au to make a donation.

