

Canada's Supreme Court opens door to deportation of US "war resisters"

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On November 15 Canada's Supreme Court ruled that it would not hear an appeal for refugee status by two US soldiers who, in government-military parlance, "deserted," rather than participate in the US's illegal invasion and occupation of Iraq.

The two conscientious objectors, Jeremy Hinzman and Brandon Hughey, contested the decision of the Immigration and Refugee Board of Canada (IRBC), later confirmed by two lower level federal courts, to reject their application for political asylum based on the illegality of the Iraq War.

Hinzman arrived in Canada in 2004 after his request for conscientious objector status was twice refused by the US Army and after learning that his battalion would be sent to Iraq.

Hinzman left no doubt as to the political nature of his actions. "They said there were weapons of mass destruction," Hinzman declared. "They haven't found any. They said Iraq was linked to international terrorist organizations. There haven't been any links."

"This was a criminal war. Any act of violence in an unjustified conflict is an atrocity."

According to those who have studied the US military justice system, persons prosecuted for desertion—as Hinzman and Hughey will be if they are deported from Canada—usually receive prison sentences on the order of five years. But the charge of desertion carries a possible death sentence.

The previous Liberal government of Paul Martin argued before the IRBC that the legality or illegality of the war could not be used as an argument in making a claim for political asylum (refugee status). The pretext used by the government was that only the International Court of Justice at the Hague has the authority and the jurisdiction to hear arguments concerning the legality of the war.

The IRBC quickly embraced the Canadian government's arguments and refused to admit any evidence bearing on the war's legality at Hinzman's refugee hearing. Subsequently, the Federal Court and the Federal Court of Appeal upheld the decision to disallow Hinzman and Hughey from arguing that the Iraq war was illegal. And on this basis, the Canadian state has concluded that the two men are not at risk of "cruel and unusual treatment or punishment" for their political views and has denied them political asylum.

Habitually Canada's Supreme Court provides no explanations when refusing to hear a case and it followed this course when it announced that it would not hear Hinzman's and Hughey's appeal.

The Supreme Court decision will have an immediate effect on some forty other US soldiers who have sought political refugee status in Canada and an estimated 200 others who have fled to Canada but not formally applied for refugee status.

Unless the Canadian government gives them special permission to stay in Canada—an improbable scenario given the close ties between the minority Conservative government of Stephen Harper and the Bush administration—Hinzman and Hughey and the other war resisters will be turned over to US authorities and tried for the crime of desertion because they refused to participate in the Bush administration's illegal Iraq war.

In justifying the 2003 invasion of Iraq, the Bush administration concocted a new and patently illegal doctrine of "preventive war," under which the US gave itself the right to attack a state if it believed it could constitute a threat to the US at some point in the future. As for the various justifications Washington gave for the war, from weapons of mass destruction to the reputed ties of the regime of Saddam Hussein to al Qaeda, they have all been exposed as lies.

The war has, moreover, resulted in untold violence and countless atrocities. According to studies by reputable agencies, the war and the accompanying destruction of Iraq society have caused the death of over one million Iraqis and the flight of millions of people from their homes and Iraq altogether.

If the Canadian government intervened in the Hinzman and Hughey cases to prevent their raising the illegality of the war, it wasn't just to save the Bush administration from embarrassment. Ottawa feared Canada would become a haven for "war resisters" and a pole of resistance to the war. Given a different decision on Hinzman's and Hughey's refugee claim, thousands more might well have joined them.

According to the Pentagon's own figures, most likely underestimated, desertion is a growing phenomenon. The US army admits that 4,700 soldiers deserted in 2006 alone, an increase of over 40 percent compared to 3,300 soldiers in 2005, and up by 80 percent compared to 2003. These figures do not include personnel from the Air Force, Navy, or the Marines. (See: US Army reports rising desertion rates)

The attitude of the Canadian government and state to the Iraqi war resisters is in sharp contrast to that which it adopted in the 1960s and early 1970s during the Vietnam War. Then some 50,000 young Americans fled the military or obligatory conscription and were given refuge in Canada.

If the decision of the Supreme Court did not hit the front pages, neither did it pass unnoticed. It was the object of articles in daily papers all over the world.

In sanctioning Hinzman's and Hughey's deportation and refusing to allow them to challenge the legality of the Iraq War, Canada's highest court has officially adopted the credo of "might makes right," tacitly affirming the legitimacy of the Iraq war and more generally wars of aggression.

The court's decision and the Canadian government's intervention in the war-resister case underline the fact that the Canadian state's attitude towards international law is entirely self-interested and subordinated to the protection of the Canadian elite's own interests. When international law comes into conflict with the Canadian government's and state's

perceived needs, it is simply put aside without further ado.

In the aftermath of World War II, the Canadian ruling class judged that its interests lay in signing agreements and declarations to the effect that soldiers had an obligation to refuse “illegal” orders, if these went contrary to international law. The Supreme Court has effectively announced that these signatures are not worth the paper they are printed upon.

All major sections of the Canadian elite support the immigration-judicial establishment’s decision to refuse political refugee status to soldiers opposing US army orders, notwithstanding that doing so would make them complicit in war crimes. Since the beginning of this affair, newspaper editorials have portrayed Hinzman and the other soldiers as “deserters, not refugees.” It was the Liberal government of Paul Martin that intervened in Hinzman’s case to prevent him from arguing the war was illegal and this month’s refusal of the Supreme Court to hear the war resisters’ appeal was no doubt toasted in private by the Conservative government. Harper, it should be recalled, chastised the then Liberal government for refusing, at the eleventh-hour, to have the Canadian military join the US-led invasion of Iraq, because it had not been endorsed by the UN or even the US’s traditional allies.

There are two principal reasons for the Canadian elite’s rallying behind the US over the war-resister issue.

Big business fears Canada may be branded as insufficiently supportive of Washington’s wars of conquest and that this could jeopardize its access to the US market upon which 40 percent of the Canadian economy is dependent.

Secondly, Canada is involved in its own imperialist adventures, having deployed the Canadian army to Afghanistan in its biggest offensive role since the Korean War of the early 1950s. The Afghan war is greatly unpopular at home and the Canadian elite does not want to lend any legitimacy to the US war resisters for fear that their example might help give rise to a similar phenomenon in the Canadian military.

There is no question that the Canadian Armed Forces (CAF) is implicated in war crimes in Afghanistan.

The CAF has declared that the Geneva Convention articles do not apply in Afghanistan. Recently two further government documents have come to light that show that the Canadian government knew that prisoners turned over to Afghan security forces by the CAF had been or were likely to be abused and tortured. The CAF has been regularly implicated in the murder of civilians, both by calling in air strikes and by shooting at unarmed civilians in and around Kandahar.

In Afghanistan, Canadian soldiers are paying a “blood price” so that the Canadian ruling class can be, to use the words of the CAF Chief of Staff Rick Hillier, “respected” in international bodies like NATO and so that it can “influence and shape regions and populations in accordance with our interests.”

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