Assignment 3

 [Name of the writer]

[Name of the institution]

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***Introduction***

Every human in this world is born with some basic rights. These rights are understood and pre-definedwithout any explicit explanation or notification and are known as “Human Rights”. Human rights are the basic and fundamental rights bestowed upon every human irrespective of age, gender, race, colour, caste, nationality, religion, sexual orientation or social status. The implication of these rights starts on an individual with the time of his or her birth and goes with them until they die (Friedman, 2018, pg., 23). The human rights comprise various rights like the right to live, right to good and healthy food, right to clean and safe water, right to freedom, right to democracy, right of thinking, right to freedom of expression and right to plea or seek legal assistance in case of any crucial matter.

 There are many cases in the history of mankind where human rights were not only denied but also new stories of cruelty and brutality were written for the world (Meron, 1989, pg 82). Such instances or cases can be more commonly seen in the case of International law, where the victims are mostly prisoners, more specifically, prisoners of war. History has witnessed numerous cases in which the prisoners of war, or in modern times, prisoners involved in terrorist activities, or even accused of the involvement in terrorist activities, are treated in such a brutal way that the whole humanity is put to shame (Lippke, 2017, pg 188). One prominent instance of such a case is the prosecution case of David Hicks, who was held captive in by the United States Government from 2002 until 2007.

***Discussion***

 The case of David Hicks was considered from multiple aspects in the court of law, and the Federal Court and the Military Court of the United States viewed it in different lights (Poynting, 2015, pg 16). The United Nations also raised their voice against the violation of human rights in the matter of this case. Detailed case history of the prosecution of this legal trial of David Hicks has been provided as under. Moreover, the case has been analyzed from various perspectives including the perspective of the United Nations and under the laws and legislations defined by the Third Geneva Convention.

*Case History*

David Mathew Hicks was held captive by the United States Government and the United States Security Forces, camp from 2002 until 2007, in Guantanamo Bay detention. He is an Australian national and was captured from Afghanistan. Hicks was accused of being an enemy combatant and providing “material support” to the terrorists. Along with this, he was charged with multiple other crimes including conspiracy to indulge in illegal activities like terrorism, attempted murder, and providing aids to the enemy. He was one of the first people to be detained the detention centres of Guantanamo Bay.

Hicks was kept in total isolated detention for three whole years and at the end of this period, he was charged with all the above-mentioned charges. He was forced to appear before the Military Commission established as a result of the orders by the President. Before the trial could proceed further, the US Supreme Court banned the Military Courts, declaring it illegal and Hick’s trial stood hanging in between (Glazier, 2014. pg, 295).

Also at the end of 2007, Hick only pleaded guilty of a single crime, which was providing material support and arms to the terrorists. Hicks recently appealed in the court that the law used against him in the United States Court was passed after 9/11, so its application was totally baseless and it could not be applied retroactively.

 A Marine Corps major, Michael Mori, after careful observation and analysis of David Hick’s case, commented, "Hicks will finally get justice," Michael Mori was also Hick’s military lawyer in this case. Mori also exclaims that Hicks would never have been convicted "if the case had been tried in federal court, instead of the politically motivated military commissions,". He presents such comments in his book about the case, "In the Company of Cowards: Bush, Howard and Injustice at Guantanamo," which got published last September.

*International Human Rights Law*

The United Nations has a separated department or body working solely for the purpose of providence and protection of human rights all over the world. This body is known as the United Nations Human Rights Commission or UNHRC (Conte, and Burchill, 2016, pg 132). This commission works for the protection of human rights all over the world and makes sure that the rights of humans are not violated anywhere in the world.

 United Nations Human Rights Committee has made numerous contributions with respect to the protection and prevalence of fundamental human rights all over the world. The first and foremost development is the introduction of International Human Rights Law (Shelton, 2015, pg 55). This law bounds the governments of all the countries to act responsibly and respect the basic and fundamental rights of every individual. As per the United Nations, the International Human Rights Law states that “[International human rights law](https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html) lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups”

 The biggest achievement of The United Nations Human Rights Committee is the establishment of universal body or law that complies with the social, cultural and religious values of almost every region (Morgan, 2016, pg 99). It is a universally accepted and acclaimed code of conduct, to which everyone can relate to; every nation can subscribe to it and all people aspire it.

*Protection of rights of the prisoners in the Third Geneva Convention*

The third Geneva Convention is one of the most significant and relative law for the treatment of the prisoners of war. It is one of the four treaties of Geneva Convention, but among all of them, it is considered the most significant and powerful regarding the security and protection of the rights, especially human rights of the prisoners (Rorty, 1993, pg 20). The Geneva Convention is a set of rules and regulations that stresses over the humanitarian treatment of the prisoners of war. It was initially adopted in 1929 but got revised in the conference of 1949. There are 196 state parties to the convention to this convention.

 The Third Geneva Convention strictly forbids any state or government to carry on inhumane behaviour against the prisoners of war. The laws and regulation laid down in the Convention prohibit the use of violence against the prisoners (Palmer, 2014, pg, n.p.). The definition of violence defined under the convention comprises all the aspects of violence, be it physical, sexual, psychological or emotional. In addition to this, the laws defined in the convention also prohibit the use of any such treatment which can result in the death or even putting the life in a seriously endangered or life-threatening situation. The Third Geneva Convention also protects the prisoners from any acts of intimidation, reprisals, insults and public curiosity, torture (of any kind) and exercise (Rabkin, 2018, pg, 69). The convention completely provides and protects the rights of the prisoners to have adequate and healthy food, clean water, clothing, shelter, religious freedom, sanitary living conditions and the right to complain. The convention, however, supports the use of appropriate forces in the case of riots or efforts of escape by the prisoner (Richardson, 2017, pg 166). The laws defined in the Geneva Convention also allows the use of labour against the prisoners only until it follows the above-mentioned regulations.

*Law Council of Australia*

The Law Council of Australia endorses and supports all such approaches and practices that respect and are in harmony with the International Law of Human Rights as defined by the United Nations. The Law Council laid out the plan for the delivery and protection of human rights as a major strategic priority in the Strategic Plan of 2015-2020. The basic aims of this Strategic Plan are defined as under

* Implementation of international human rights in Australia at domestic levels.
* Educating the masses and spreading awareness about the basic human rights in Australia
* Participating in the international human rights system.

*Human Rights Violations in the case of David Hicks*

A number of human rights were violated in the case of David Hicks. Some of these violations occurred during the capturing and detention of the accused while most of the rights were violated during the captivity and stay in the Guantanamo Bay detention cells.

 *Capture and Detention*

David Hicks was captured by a Northern Alliance Warlord and handed over to the United States Special Forces for US $ 5000. His father Terry, comments on this,"David was captured by the Northern Alliance unarmed in the back of a truck or a van. So he wasn't on the battlefield at all." Terry Hicks also requested the Australian Government to bring his son back to Australia for trial in 2002.

 *Torture Allegations*

 Hicks alleged the US forces to mistreat him during the detention at Guantanamo Bay. In an affidavit released on December 10, 2004, he claimed the following violations of human rights against the US Security Forces:

* Sexual assault
* Sexual harassment
* Being sedated by the use of injection or sedative without consent
* Being forced to take unidentified medication
* Being hit while under sedation
* Being beaten while handcuffed and blindfolded
* Being kept awake regularly
* Witnessing the use of attack dogs to injure and traumatize the prisoners

*Stance of the United States of America*

One of the striking advancements in the case is the striking retreat of the United States Government in the case of David Hicks. The American Government labelled Hicks as “Worst of the Worst,” a phrase used for men held in Guantanamo Bay. Moreover, in 2007, when Hicks was still in the captive facility of Guantanamo Bay, the American ambassador in Australia, MR. Robert D. McCallum Jr. used the phrase "ruthless fanatics who would kill Australians and Americans without blinking an eye" for the detainees of Guantanamo Bay.

*Court’s Ruling on the case of David Hicks*

David Hicks was released by the United States Military Court in 2015. In an eight-page majority decision, the United States Court of Military Commission Reviews set aside the guilty plea placed by Hicks, along with his sentence, and vacated his sentence on 18 February 2015.

Hicks was very pleased over this decision and he stated he felt "very good to be an innocent man”. He considered it a great win against a legal challenge. He considered it a big vicious cycle and claimed that he was totally wrongly convicted of carrying and supplying material support to the terrorists.

 The United States Court of Military Commission, on the other hand, stated that “The findings of guilty are set aside and dismissed, and appellant’s sentence is vacated.” Moreover, the United States Defense Department spokesperson confirmed that the government did not intend to file an appeal against the court decision. The Defense Department confessed in the Military court that the charges pressed again Hicks were not viable as the material; support law was passed after 2006, and all the charges before 2006 were not going to come under this umbrella.

***Conclusion***

 In a nutshell, the case of David Hicks proves that a serious violation of human rights takes places even in big countries like the United State of America. The topic of Human Rights Violation is especially very important with respect to the prisoners or prisoners of war. The United Nations and lays great emphasis over the importance of Human Rights and it has even set up a separate body for the protection of these rights under the name of United Nations Human Rights Committee or UNHRC. The rights of prisoners have also been significantly emphasized in the Third Geneva Convention.

The case of David Hicks provides an account of the struggles and the hardships he himself and his family went through during the period when the case was ongoing. The American Military Court provided a ruling in 2015 in favour of the prosecution and finally, David Hicks is an innocent man in the eyes of law and in the eyes of the world.

**References**

Conte, A. and Burchill, R., 2016. *Defining civil and political rights: The jurisprudence of the United Nations Human Rights Committee*. Routledge.

Friedman, E., 2018. Women’s human rights: The emergence of a movement. In *Women's Rights, Human Rights* (pp. 18-35). Routledge.

Glazier, D., 2014. The Misuse of History: Conspiracy and the Guantánamo Military Commissions. *Baylor L. Rev.*, *66*, p.295.

Lippke, R.L., 2017. Toward a theory of prisoners’ rights. In *Prisoners' Rights* (pp. 177-200). Routledge.

Meron, T., 1989. *Human rights and humanitarian norms as customary law* (p. 82). Oxford: Clarendon Press.

Morgan, R., 2016. *Transforming law and institution: Indigenous peoples, the United Nations and human rights*. Routledge.

Palmer, J.W., 2014. *Constitutional rights of prisoners*. Routledge.

Poynting, S., 2015. Empire crime, rendition and Guantánamo Bay: the case of David Hicks. *State Crime Journal*, *4*(1), pp.16-33.

Rabkin, J., 2018. After Guantanamo: The War over the Geneva Convention. In *The National Interest on International Law and Order* (pp. 63-76). Routledge.

Richardson, G., 2017. The case for prisoners’ rights. In *Prisoners' Rights* (pp. 165-176). Routledge.

Rorty, R., 1993. Human rights, rationality, and sentimentality. *Wronging Rights?: Philosophical Challenges for Human Rights*, pp.1-34.

Shelton, D., 2015. *Remedies in international human rights law*. Oxford University Press, USA.