

Australia's engagement in Afghanistan

This submission is mainly under Part d. of the Terms of Reference with implications for Part b. (i) and (iii).

The presence of Australian military forces in Afghanistan under ANZUS after 2 May 2011 is legally questionable.

The Howard government's stated reasons in 2001 for participating in the war in Afghanistan was as part of its ANZUS treaty obligations because the United States of America (USA) had been attacked on 9 September 2001.

Prime Minister Scott Morrison recently stated "Let me say this about our presence there [Afghanistan]. We went there to stop Osama bin Laden and to stop al-Qa'ida having a base of operations in Afghanistan. And that's what was achieved."

The stated reasons for the US and its Treaty partners were to the kill or capture of Osama bin Laden and to eliminate Al Qaeda's capacity to deal with more attacks on the United States from that territory.

I am not aware of any published reason for Australia's presence within Afghanistan under ANZUS to be other than those two stated reasons. Displacing the Taliban from governing and other nation building efforts were never stated as the reasons for invading Afghanistan, it was solely about al-Qa'ida and Osama bin Laden.

While the Taliban may be medieval and obnoxious, but I am not aware of any evidence they were active in international terrorism, or of any evidence they posed any threat to any country including those under the ANZUS Treaty.

By May 2011 Al Qaeda's capacity to threaten the USA from within Afghanistan was non-existent, and on 2 May 2011 Osama bin Laden was killed.

Australia's obligation to support the USA in Afghanistan under the ANZUS alliance ceased that day.

This leads to some questions:

1. Was Australia's justification to remain in Afghanistan after 2 May 2011 part of ANZUS alliance obligations, even though they were finalised on that date?
2. What Treaty obligation, apart from ANZUS, did Australia rely on for the Australian military to remain active in Afghanistan after 2 May 2011?
3. Is there any evidence, other than harbouring al-Qa'ida, that the Taliban were acting in concert with al-Qa'ida regarding the attacks on the USA on 9 September 2001?
4. If there is no evidence of same, what was the legal justification for remaining at war with the Taliban after al-Qa'ida was no longer a threat within Afghanistan or to the USA?
5. What then, is the legal justification for endangering the ADF including the 18 Australians killed in Afghanistan after 2 May 2011?

I submit it is incongruous for any claim there was any ANZUS treaty obligation after 2 May 2011.

Had Australia withdrawn after ANZUS commitments were completed, Part b (i) and (iii) of the Terms of Reference would not have occurred.

So not only did 41 Australians die arguably in vain, 18 definitely would not have been killed and many more wounded and disabled if Australian forces were only in Afghanistan for the time it took to achieve its two stated objectives under the conditions of the ANZUS treaty.

The only semblance of legality I can ascertain is the bipartisan agreement of the major political parties to remain in Afghanistan after 2 May 2011. There was no reason for remaining in that war zone on the basis it was acting against threats from within Afghanistan to Australia's sovereign territory.