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# **Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development**

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**EVIDENCE**

**Tuesday, May 13, 2008**

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**Chair**

**Mr. Scott Reid**

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## Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

Tuesday, May 13, 2008

• (1300)

[English]

**The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)):** Order.

I'll ask the cameramen to be as brief as they can and move on out.

We are the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development. This is meeting 14 and it is Tuesday, May 13.

Before turning to our witnesses and the business for today, I have been approached by one of our members, Mr. Silva, with a motion that has not met the appropriate notice period, but he has asked if there would be unanimous consent to consider this. I said I would broach this with the committee but would suggest that if there is unanimous consent, we deal with this at the end of the meeting, after we've heard from our witnesses and questioned them. He thought that was a reasonable set of terms.

May I ask the members if that seems like a reasonable approach?

**Some hon. members:** Agreed.

**The Chair:** All right. In that case, that's what we'll do.

I turn now to our witnesses. We have two witnesses today. One is Professor David Crane from the College of Law at Syracuse University. Professor Crane, of course, is here to draw upon his expertise regarding child soldiers, particularly relating to his experiences in Sierra Leone.

We have Senator Dallaire, and the senator, of course—as just about every Canadian knows—is formerly a military man. He served in Africa, Rwanda, and also has some expertise on this subject.

Gentlemen, I'm happy to turn the floor over to you. I assume you have already decided who will go first?

Perhaps you haven't decided who will go first.

**Hon. Roméo Dallaire (Senator, Senate):** You know the collegial approach here.

**Professor David Crane (College of Law, Syracuse University, As an Individual):**

Good afternoon, and thank you so much for allowing me to be here, particularly with someone whom I admire so greatly and a colleague whom I knew in East Africa while I was doing work in West Africa. So we come to you with some unique perspectives,

from a continent that saw both conflict and children being abused. I hope we can have a good dialogue today related to this, because what I saw in West Africa was beyond description, as I described to the tribunal in my opening statement against the leadership of the civil defence force.

Imagine a child who has no hope, and this is what I want to start off with. I also want to thank you again, Mr. Chairman and the members of this committee, for allowing me to address you today. I approached you not as a professor at Syracuse University College of Law but as someone who has seen child soldiers, who has seen what they have done. I have looked them in the eye, I have talked to them, I have hugged them, I've cried with them, and I've come to you to tell you that when I was the chief prosecutor at the International War Crimes Tribunal in Sierra Leone, I chose not to prosecute child soldiers, as it is my opinion that no child under the age of 15 can commit a war crime. That's why we're here, to be thinking and considering this particular proposition.

I am not a member of Omar Khadr's defence team, nor do I condone or comment on the situation related to Omar Khadr, though I'd be willing to chat with you about that. I simply come to you today, humbly, to discuss the scourge of child soldiers and what the international community has failed to do, and that is to cause an international consensus related to this. My work in Sierra Leone allowed us to investigate, indict, prosecute, and convict senior members of the civil defence force, the Revolutionary United Front, as well as the Armed Forces Revolutionary Council, of a new crime against humanity, and that is the unlawful recruitment of children under the age of 15. So with that being said, I think it's important for us to just consider a few things.

I also want to recognize the leadership of Canada and the people of Canada related to this issue of international humanitarian law, particularly child soldiers. Canada was always a great supporter of my work while I was there for three years, from 2002 to 2005. They provided money, but more importantly they provided me young Canadians who had a heart of gold, going out in some places to seek justice for those who were abused in West Africa. I recall many times my good friends from the Royal Canadian Mounted Police, hard-core homicide investigators out with me investigating killing fields, all of us having tears streaming down our faces, having never seen anything quite like this, many of them the product of child soldiers.

I'd like to give you a vignette, because I think it's very important for you to understand. I think this personalizes the concept of child soldiers.

While chief prosecutor in West Africa, in Sierra Leone, I literally walked the entire countryside, listening to the people of Sierra Leone in my town hall meetings tell me what took place in that particular region. I was in Makeni, the former headquarters of the infamous Revolutionary United Front, and I was speaking to a group of about 400 people, which is not untypical of the size of the meetings. My approach was to stand in front of the people and literally talk to them, listen to them, cry with them, laugh with them, hug them. I was answering questions about the special court and other issues, and a little hand came up from the back. I walked to the back of the room and this young man about 12 years old stood up. He had been injured and had become deaf from the conflict. He signed, but he also spoke, and in the atonal voice of someone who is deaf, looked me right in the eye and said he had killed people, he was sorry, he didn't mean it. He was 12, the conflict had been over about two years, so you can do the math. He probably was eight or nine years old when he was killing human beings.

• (1305)

I went over to him, tears coming down my cheeks, and hugged him. He wept in my arms. That's a child soldier. There were 35,000 of them in Sierra Leone alone.

So one has to consider, despite what he may have done, who is really at fault here. I would say that a child soldier and the victims of child soldiers all are victims, because they are usually placed in these situations in armed conflict, be it in Afghanistan, East Africa, Uganda, or West Africa, in situations they cannot control.

The international law in this area is pretty clear, even though it doesn't say that children are immune from their war-like acts. It just says that children are to be especially protected—the Geneva conventions. That suggests we shouldn't put them in places that cause them to do these things, even if they do them voluntarily, because a child does not have the capability of making those choices.

This is my opening statement to you. I'd like to simply finish with another comment I made in my opening statement before the tribunal in West Africa, if you will bear with me, please.

He was a young man. He had been captured by the Revolutionary United Front. A group of individuals, all children, were lined up by the members of the Revolutionary United Front and made to answer a question. Do you want to join us or do you want to go home? All of them were under the age 15. They all chose to go home. Of course, that was the wrong answer. They began killing from right to left, and by the time they got to the middle child they began to volunteer to be child soldiers.

The individual I'm talking about was the last and he was on the left. It was just one of the those situations where they chose to go one way or the other. They were all held down and had RUF carved in their chests with a cutlass. From then on—some were 12, some were 13, and I think one was nine—they killed their way across Sierra Leone.

It's incumbent upon the international community to ensure that we don't place children in these situations; that we respect the results of

that situation and take great care to ensure we don't automatically treat children who are in these extreme situations as adults or war criminals.

With that, Mr. Chairman, I thank you for this time.

• (1310)

**The Chair:** Thank you very much, Professor Crane.

Senator Dallaire is next, please.

[*Translation*]

**Hon. Roméo Dallaire:** Mr. Chair, thank you for inviting me to testify before the subcommittee today on the Omar Khadr case. I have an interest in his case for one very simple reason: Omar Khadr is a child soldier. When he was captured by the Americans and sent first to Bagram and then to Guantanamo, he should, as a child soldier, have been treated according to the international rules set out in the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. He should have been rehabilitated and demobilized from the outset, as stipulated by the optional protocol and the Paris Commitments.

I will speak to a number of points this afternoon. I have listened to or reviewed a good deal of the testimony to date. Today, I restate a constant that cannot be denied, either in logic or in international law, unless a purely political decision is made to do so. Despite the protestations of complete transparency made with great fanfare from the beginning of the government's mandate, we have to wonder on which legal arguments and under which convention Canada bases its continuing silence and inaction on the decision to keep Khadr in illegal detention.

My involvement with child soldiers in armed conflict did not just begin today. My previous experience has led me to be in contact, and work closely, with child soldiers involved in armed conflict in various parts of the world. As a result, I believe that I have acquired some useful expertise that qualifies me to investigate and speak out about the Omar Khadr case. In Rwanda, in 1993 and 1994, I noticed that child soldiers were involved with the paramilitary Interahamwe militias and the Rwandan Patriotic Front. From that moment, my desire to work to prevent them being recruited and deployed was born.

I would like to tell you about a personal experience. I was approaching a checkpoint manned by soldiers who were 14- to 16-year-old children. They were very agitated. When my vehicle stopped, I opened the door to get out. A boy of about 15, with an AK-47 assault rifle in his hands, aimed it virtually up my nose. Egged on by the others, he had his finger on the trigger. I am absolutely convinced that I am alive today because he saw the chocolate bar I had in my hand. He took his finger off the trigger and we were allowed to move on. We are dealing with a real threat used in the field by adults.

As deputy commander of the Canadian army, I took part, on my return, in seminars and peacekeeping doctrine meetings dealing with child soldiers in conflicts. From 2000 to 2005, after my medical discharge, I worked part-time as special advisor to the Minister of International Cooperation on children affected by armed conflict. I looked more deeply into the question of demobilizing, disarming, rehabilitating and reintegrating child soldiers, and into Canada's programs in that field. In January 2006, after the new government was elected, I was, for all intents and purposes, unceremoniously fired.

● (1315)

[English]

This position was offered to me in 2000 because Canada was then determined to take a leadership role in offering protection to war-affected children. This was following the first International Conference on War-Affected Children, in which 137 countries participated. It was held in Winnipeg in September 2000 and was led by Lloyd Axworthy and Maria Minna, Ministers of Foreign Affairs and International Cooperation respectively.

By June 2001, Canada was launching its action plan on child protection, which committed \$122 million over five years to help the world's most marginalized children, including child soldiers.

In late 2002 I was sent to Sierra Leone to look at what Canada could do in regard to funding not only the DDRR processes, which I've described to you as demobilization, disarmament, rehabilitation, and reintegration, but also the tribunal. One of the judges is the ex-Judge Advocate General of the Canadian Forces, Judge Pierre Boutet, who has been sitting there since that time.

We committed some funds and efforts towards sustaining the tribunal and the actions of demobilization, or DDRR. That investment brought home not only boys but also girls, who made up some 40% of child soldiers at the time. This was a significant investment with a positive result, and our commitment exists even today. We are retraining those ex-child soldiers, who have been rehabilitated and are now adults, for the professional army of Sierra Leone. My son is a captain, part of the Canadian and British team who are doing that at this time.

In 2004-05, I supervised research at the Carr Center for Human Rights Policy at the Harvard Kennedy School, and we published "Children In Conflict: Eradicating the Child Soldier Doctrine". It was essentially about how to stop the use of children as a primary weapon of war. How are adults, then, prevented from using children as the primary instrument of war? I am doing research with Search for Common Ground—USA, UNICEF Canada, the Universities of Winnipeg and Victoria, the Pearson Peacekeeping Centre, and the

Canadian Forces. Next year, this research will be used in the Congo in a one-year field trial.

As to the Khadr case, I was not aware of it until about a year ago, when the circumstances surrounding it were finally becoming open to all. Before that, I had erroneously assumed that Canada was working out a deal with the Pentagon. Like other countries, we were well aware of the breach in the Geneva conventions at Guantanamo Bay, as well as the secret prisons the U.S. had established around the world in flagrant violation of the same laws of armed conflict designed to protect, and to be applied by, our own troops in operations like Afghanistan.

In regard to the child soldier, Omar Khadr, the optional protocol to the convention on the rights of the child on the involvement of children in armed conflict, hereafter optional protocol, is the only binding international instrument that concerns child soldiers. The child soldier is commonly referred to as any person under 18 years of age who is compulsorily, forcibly, or voluntarily recruited or used in hostilities by any kind of armed forces or groups in any capacity. This means soldiers, cooks, porters, messengers, camp followers, and those accompanying such groups, including girls used as bush wives or sex slaves and forced into marriage. It does not, therefore, refer exclusively to a child who is carrying or has carried arms.

Article 4 of the optional protocol prohibits armed groups from recruiting or using children under the age of 18 in hostilities. That includes family members who actually recruit their children to provide what they perceive as protection. They are as guilty as those who are participants in the armed groups.

Canada ratified the optional protocol in July 2000. Today, more than 120 countries have ratified it, including the United States in January 2003. That was while Omar Khadr was detained in Guantanamo Bay. We're looking from both sides of our heads. We are obviously *bicéphales* in that perspective.

In addition to the optional protocol, Canada ratified the Rome Statute of the International Criminal Court. Under the Rome Statute, recruitment and use of children under the age of 15 in hostilities, whether international or non-international, is a war crime.

● (1320)

I met the chief prosecutor and the president of the court, and will be going over to discuss child soldier implications in conflicts. They have, themselves, now, an adult who has been recruiting children in the Congo and is in front of the court.

In February 2007, while Omar Khadr remained in detention, Canada, along with 57 other states, including the United States, agreed to the Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups. The 2007 Paris commitments further clarified the definition of a child soldier, worded as "a child associated with an armed force or armed group".

The document defines them as

any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or who has taken direct part in hostilities.

According to these international standards regarding child soldiers, it is quite clear, unless you don't want to see it, that Omar Khadr was, at the time of his capture by the U.S., at 15 years of age, a child soldier, both according to the optional protocol and the Rome Statute.

Omar Khadr was coerced, indoctrinated, and used by his father to take part in the military activities of an armed group, namely al-Qaeda. Khadr is exactly the victim this optional protocol is trying to save and why some of us are working at eradicating the use of children as weapons of war, because even the parents are using them, and that does not make the children more guilty. They are still child soldiers.

The optional protocol contains no specific provisions on the extent of criminal responsibility for crimes committed during conflicts that will warrant prosecution of child soldiers, and introducing the term "terrorist" has absolutely no legal standing whatsoever.

Articles 6 and 7 of the optional protocol rather insist on cooperation and assistance for the physical and psychological rehabilitation and social reintegration of child soldiers. It is in the spirit of international consensus that Canada and the U.S. have spent millions upon millions in demobilizing and reintegrating programs to assist former child soldiers begin a new life in the aftermath of conflict in Africa, Latin America, and Asia.

Article 10 of the Paris principles further states that "all children under 18 years of age who are detained on criminal charges" should be "treated in accordance with relevant international law and standards".

Article 11 then qualifies the principles that go on, as one step further, when specifying that child soldiers should be "considered primarily as victims of violations against international law and not only as alleged perpetrators".

It states that they should be treated in accordance with international standards of juvenile justice, such as the framework of the restorative justice and social rehabilitation.

Because of time, I'm going to cut this short, if I may.

In other words, child soldiers should be seen as victims and should be rehabilitated and treated in accordance with a juvenile justice system, and so should Omar Khadr. Omar Khadr is a victim, not a terrorist or a perpetrator. Why has he not benefited from rehabilitation and treatment, such as all the other child soldiers who have been demobilized and reintegrated into Afghanistan? Our forces have demobilized over 7,000 of them in Afghanistan. None have been prosecuted. In fact they are being rehabilitated, reintegrated, and potentially, at the age of 18, recruited into the same forces we want to use to replace us to be able to bring stability to that nation.

It is because he allegedly killed an American soldier. Is that a criterion? That would not be defensible by even a very solid ally in the war on terrorism such as us. There must be some political reason. There are surely no legal or war operational reasons that keep Omar Khadr in that jail. What is the political reason? What makes him different from the others? What criteria did the government use and is it receiving from its functionaries in regard to this case?

I have raised questions on this five times in the Senate, to which I continue to get the same response, that Omar Khadr is following a judicial system and that he is being treated humanely.

● (1325)

Ladies and gentlemen, the President of the United States wants to close the place down. Everybody else has pulled theirs out. The current potential candidates for the presidency all want to close down Guantanamo Bay. The judicial system in the United States and Canada has spoken eloquently on the illegality of Guantanamo Bay, on the manoeuvring of the Geneva conventions, of torture and coercion to get information and testimony. The thing is flawed. It is illegal. And we're letting it happen.

Ladies and gentlemen, in conclusion, we will be the first country in the world to actually have one of our own, as a child soldier, prosecuted in a foreign land, on an illegal charge, by an illegal court, and in the process, we let it happen.

Thank you very much.

**The Chair:** Thank you to both our witnesses.

I'll remind committee members that we had agreed to do five-minute rounds, both for the first and second rounds. Given that it's now 1:25, I anticipate the second round will have to be cut even more tightly. Perhaps we can agree, when we get to that point, as to how long the rounds will be in order to ensure that everybody gets a crack at a second question.

We will begin with a Liberal MP. I think it's Mr. Silva.

**Mr. Mario Silva (Davenport, Lib.):** Thank you, Mr. Chair. I want to thank Professor Crane and also Senator Dallaire for their presentations.

The thing that strikes me the most from all the witnesses that have come before this committee is the illegal nature of this so-called war on terror that the U.S. is conducting in Guantanamo. We all realize that Guantanamo operates outside the spheres of international law. We are also really concerned about the Military Commissions Act. From my reading, the whole issue of who's a child and the issue of a child soldier has never really been discussed. We reference the fact that he was 15 at the time he was captured, but I know that under the military commission you can charge children that are even younger than 15. There's no date. There's no age. There's nothing on it. So there's a problem there already with that system.

Because it operates outside the scope of the international law and norms we are used to, and given that there are some serious challenges to this particular process, would it not be in the government's interest.... Every other western country has recognized that there are serious restrictions on the due process of the law. It doesn't conform and comport with the way we see international law.

Given all these factors, doesn't it make sense to this government to say that Omar Khadr needs to be repatriated to Canada so he can have his due process of the law? Nobody is saying he should come to Canada and basically roam around scot-free. We're saying there has to be a process, and the process cannot be respected in Guantanamo under this military system. It does not comport with international law.

• (1330)

**Hon. Roméo Dallaire:** Let me put it in the context. After 9/11, the world power panicked. It was the first time it had actually been attacked in its homeland, and it was found vulnerable—although that's not exactly true, because we attacked it twice and won—in 1775 and 1812. Of course, they came to Canada and burned down Toronto, but I'm from Montreal, so that didn't bother me too much. But we went to Washington and burned that place down.

Essentially the world power panicked. In panicking, it is doing exactly what the extremists and terrorists are doing. They don't want to play by the rules. All the humanitarian laws, laws of armed conflict that were established over centuries, have been pushed aside, including the conventions that protect our own people—never mind how our people face the enemy forces or non-combatants. They pushed that aside because the other side wasn't playing by the rules. So they introduced the Patriot Act. They introduced the possibility even of the use of torture. They throw away conventions to achieve what they think will be successful against this threat.

If you have to turn your country into a police state and work outside international programs that have been established as the rule of law, then aren't you no better than the other gang? If in my estimation they are no better than the other gang in how they are facing this threat, then it is absolutely essential that we pull any Canadian, be they a child soldier or an adult, out of that system and bring them back home.

Hopefully one day that panic in the United States will bring back a logic so they can play within the rules and achieve their aim of security, with our help.

**Mr. Mario Silva:** I want to understand a little better. We have clear understanding, both domestically and also internationally, of what a child soldier is and what those rules are. It seems to me in the U.S. system, particularly this system that has been set up under the Military Commissions Act, there is really no definition. It can basically impact any child, even if they're ten, or nine, or eight. Is that the case?

Maybe Professor Crane could elaborate further.

**Prof. David Crane:** Just recently a sitting officer down in Guantanamo made this exact point when the motion was made related to removing the charges on Omar Khadr because he was a child. He clearly stated the point that the law doesn't define the age of a person who could be before this particular body and used that as one of the cornerstones by which he denied the motion and allowed the trial to move forward.

**Mr. Mario Silva:** The U.S. doesn't recognize or seem to have a definition of what a child soldier is, but we in Canada do have clear definitions, and we have also ratified several conventions and protocols that specifically state what a child soldier is. Omar Khadr is clearly under that category, so we have a positive obligation on the

part of the government to enforce our own domestic law, and also international law, to make sure that Khadr does get repatriated and to make sure he does face due process in the Canadian judicial system and not some foreign system that does not respect our own conventions and laws. Is that not the case?

**Hon. Roméo Dallaire:** In fact, they are operating on a law of their own. It is not even U.S. law, because even the Supreme Court of the United States has attacked the commission and what it does. That commission—the MCA—is also allowed to hold people for an indefinite period of detention, to use evidence obtained by torture, and to hold trial more than once for the same crime. It denies the protection in the Geneva conventions of the right to see incriminating evidence before trial. It goes against every element of justice that we know.

I do not believe it's the United States that has thrown aside the conventions and what they have ratified on the child soldiers protocol and so on; it is that specific military commission, which was set up by the President through the Pentagon and the Secretary of Defense in a process that they believe is part of their security program with regard to terrorism. In so doing, it is a political institution; it is not purely military, nor is it a legal institution. It is a political tool that the President has used in excess of his power to install.

The way to sort it out is to get the Prime Minister of this country to call the President and say, "I want my boy out, and we'll fill in the paperwork after", and that's it.

**The Chair:** The time for that round has expired.

Madame Barbot is next, *s'il vous plaît*.

[Translation]

**Mrs. Vivian Barbot (Papineau, BQ):** Thank you, Mr. Chair.

May I ask Senator Dallaire a question first and then put another one to Mr. Crane?

Senator Dallaire, as a professional soldier, could you tell me your view of the fact that the United States makes no distinction between a child and a soldier?

Then, in addition, does the Canadian army believe that signing the protocol on child soldiers would somehow prevent the military from doing its job properly?

• (1335)

**Hon. Roméo Dallaire:** I was assistant deputy minister for human resources in 1998 when discussions took place about whether Canada should or should not ratify that protocol. The Canadian Armed Forces recruit future officers who are 16 and 17 years old when they enter military college. But they are in no way involved in operations or operational training before the age of 18. This distinction is allowed by the protocol where it is defined, established and described.

The Americans and the British have a similar way of allowing the recruitment of officers from secondary schools or from the system.

In general terms, no one is allowed to use young people under the age of 18 in any way whatsoever. When the Canadian government captures prisoners of war or takes prisoners during operations, it is dealing with individuals who are identified as a threat, not just in the classical sense, but also in the complex situation that we see today. Canada is required to follow the international rules that stipulate that children must be separated from adults and that girls must be separated from boys. The trauma suffered by girls is more destructive than that suffered by boys because they have, almost without exception, been raped and kept as slaves. So a completely different rehabilitation process has to take place.

So we are following the letter of the law. This allows us to go to countries like Sierra Leone today, to send our people to help the people there to introduce a new democracy into their armed forces, and to be responsible. We have that credibility. I am convinced that each day that Omar Khadr spends in prison...Internationally, his case has become a major one, and we must be able to prove that we can take responsibility. Parents of children in Afghanistan who have been recruited in some fashion or other know that, if the children end up in Canadian hands, they will be treated as minors. If we lose that credibility because we do not take care of our own people, you can imagine the impact that it could have over there.

**Mrs. Vivian Barbot:** Thank you.

Mr. Crane, I know that you chose not to charge child soldiers when you were in Sierra Leone, but I also know that a protocol was established to allow the prosecution of children between 15 and 18.

Can you tell us what those procedures are?

[English]

**Prof. David Crane:** Yes, I can. Thank you.

When I was asked by the Security Council to go to West Africa and prosecute those who bore the greatest responsibility for war crimes and crimes against humanity, in the statute they gave me I had the power, if I chose to do so, to prosecute someone whom I found between the ages of 16 and 18 for war crimes and crimes against humanity.

Based on the mandate, and also based on my personal legal opinion after decades of practising law, particularly in this area, I realized that no child has what we call the *mens rea*, the evil-thinking mind, to commit a war crime. That is just an inappropriate approach to this. My mandate said "greatest responsibility", and I found that no child bore the greatest responsibility for these war crimes and crimes against humanity.

But you have to put this in context. When you have children, be they 12, 13, 14, or 15, even if they voluntarily join the force, they're really not voluntarily joining the force. This was as much the case in Afghanistan, in many instances, as it was in Sierra Leone. The international community has clearly understood this: any child 15 years or younger just doesn't have the requisite mental capability to choose this particular situation, regardless of whether they volunteer or not.

Sierra Leone was horrific in many ways, but many of them did volunteer, and there were about 35,000 of them, as I said in my opening statement.

But that's not the point. The international standard is that we don't place children in situations of armed conflict such as this, where they could even have the capability to volunteer themselves to do that. Children, under the Geneva conventions, are to be especially protected, and I would say that certainly that is one of those standards. The floor here is that we don't put children, particularly under the age of 15, in those situations where they either volunteer or are coerced to do so.

We have a situation here, with Omar Khadr, who was 15, and you know the facts. In my opinion, he is a child soldier; he is a child placed in armed conflict who, under the circumstances, appears to maybe have volunteered—or may not have; that is in dispute. He was placed in a circumstance where he was forced to kill, and even that is in dispute at this point factually—whether he was the individual who in fact committed the alleged crime itself.

But that's not the point I'm making here, Madame. The point is, children shouldn't be placed in these situations, and if they are, we shouldn't prosecute them for what they did, because legally I don't think they're responsible at the international level during times of armed conflict.

As my colleague has very eloquently stated as well, we just don't do this any more. It has to stop, and that has to start here. We don't want to use Omar Khadr as a poster child to start down the very slippery slope whereby we do in fact prosecute children for war crimes. I chose not to, even up to the age of 18. I felt that they did not have the capacity to commit a war crime.

• (1340)

**Hon. Roméo Dallaire:** May I have a supplementary?

**The Chair:** Be very brief, please, because we have a tight time restraint for each round.

**Hon. Roméo Dallaire:** Right.

There is a similarity in our philosophy regarding bringing in the protocol, because "child soldiers" is really still a fairly new phenomenon, since the late eighties in Mozambique, and so on. We have a weapon here that we're actually trying to neutralize on the battlefield called a child soldier.

The reason not to go after them under age 18 is similar to the reason for which I created a rule in my force to not fraternize; it's that there is no such thing as consenting adults in a country in conflict. The women do not fall in love automatically with the uniform; they're doing it for money, for their family, for protection, from fear, for food, and so on. There is no such thing as fraternization or consenting adults in a conflict zone.

These children are in a similar sort of ethical scenario, which we must be prepared to respond to.

**The Chair:** That was very helpful. It was also eight minutes and 30 seconds, and that was unfair. So before I go to Mr. Marston, I'd just alert you to that. We'll deal with it in the second round.

Please go ahead.

**Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP):** Thank you, Mr. Chair, and I want to thank the witnesses for their testimony today.



I must say, it's a continuation of what we've already been hearing in this committee, particularly around the Guantanamo commission, that it's obviously an extrajudicial type of place, for lack of a better term. It's my belief that Canada should not be supporting or condoning in any fashion the things that are happening there, especially as you've been told, Mr. Dallaire, that there is a process under way. Well, that's an extrajudicial process, as far as I'm concerned, and I would suggest that Omar Khadr, to some extent, is trapped in all of that. To me, it's a blight on the face of justice. The position our government is taking on this is, in my opinion, bringing shame to Canada.

I'd like both of you, if you would, in turn, to comment on your view of how this whole process is affecting Canada's reputation both at the United Nations and worldwide.

**Hon. Roméo Dallaire:** It is rather interesting to see that in the realm of human rights and the application of international law that is supportive, of course, of human rights, internationally this country is starting to get a whole different *visage* than what we have seen in the past.

I sit on the human rights committee in the Senate. We go to Geneva, where we used to have 30 or 40 NGOs quite prepared to meet with us and discuss how Canada is moving on a whole series of dossiers there. The last time we went, and I was attending, we barely had five of them. They find no value in us, because they feel we're sort of the lackeys of the Americans, who don't even want to join the group of 47.

In a variety of applications of human rights, which is a fundamental law of this nation, the law says it's human rights for all humans—not for Canadians, not for somebody else, but all humans. So if you apply it for all humans, then you have to be held accountable for all humans if you get involved or some of your people get involved.

In this case, we have people whose politics maybe we don't like, or we don't absolutely like the fact that they're out there maybe fighting our troops and they have family. That is irrelevant. That is part of the process of demobilization, of rehabilitation and reintegration into society, that we will face that case with that individual when he comes. There are a whole bunch of people prepared to do that.

But in the backdrop of it all, we are being very hypocritical. It has to be one of the best examples of one of the innovative dimensions that we're trying to move forward with Graça Machel and the international community on eradicating the use of child soldiers, and we actually won't even sort out the ones who come from our country.

If you think this is the last one, then we're really smoking dope, because I do believe in this era we're going to face scenarios in the future, and we have to be prepared in this multi-ethnic country to handle that.

So, no, we are hypocrites. And I'll tell you, I'm sure that one of the happiest people on earth right now would be President Bush if he got a phone call to say, "I'm helping you clear out that damned Guantanamo Bay by pulling out Khadr."

● (1345)

**Prof. David Crane:** I think it's important that we consider what Canada can do for Omar Khadr, and that is to bring him home and have his case fairly and openly considered in a Canadian court. The courts are open in Canada, and whatever the judgment is, I think the Canadian people could handle that. But I think that's the appropriate place where Omar Khadr can be judged, and that is by his own citizens, not in Guantanamo.

**The Chair:** You have a bit more time, Mr. Marston.

**Mr. Wayne Marston:** One other question that comes to mind revolves around his age. You mentioned earlier that you had the opportunity to prosecute 16-, 17-, and 18-year-olds, but I noticed that 15-year-olds were missing on your list. Presumably that's because they are, as you're saying, less able to formulate the plans and the deeds that would bring them to prosecution.

**Prof. David Crane:** There's a practicality here. I think the international community has made some judgments here. Even though the definition of a child is anybody under the age of 18, they also recognize the fact that military forces recruit people younger than that.

But they certainly have come to a consensus that anybody who's 15 years of age and younger is a child, and it doesn't matter what the situation is. There is a floor. In fact, it's important for this esteemed committee to consider the case of the prosecutor versus Hinga Norman, the prosecutor being me. They ruled in the appellate decision that the concept of the unlawful recruitment of children under the age of 15 is now customary international law and has been—since crystallizing their customary international law—since 1994, and it has said it is a crime against humanity.

Of course, all of the international tribunals follow each other's jurisprudence. So we now have a legal standard by which we now review these cases, and the international tribunal—the Special Court for Sierra Leone—was the first of those tribunals to do that. It was a clarion call stating that individuals who cause these children to be placed in situations to kill should be held accountable as a crime against humanity.

**The Chair:** All right. Thank you very much.

From the government side, Mr. Kenney, please.

**Hon. Jason Kenney (Calgary Southeast, CPC):** Thank you.

Senator Dallaire, correct me if I'm wrong, but I believe you said in your testimony that what the United States is doing is exactly what the terrorists are doing. You also said, I believe, that the United States is no better than the other guy. I assume when you said "the other guy", you were referring, *inter alia*, to the terrorists, or al-Qaeda. Is that actually your position?

•(1350)

**Hon. Roméo Dallaire:** My position is that the minute you start playing with human rights, with conventions, and with civil liberties in order to say you're doing it to protect yourself—and you are going against the fundamentals of those rights and conventions—you are no better than the guy who doesn't believe in them at all. We are slipping down the slope of going down that same route and using the argument that these conventions and these methods are in fact preventing us from protecting ourselves. I would argue that, on the contrary, they are in fact a guarantee that we can protect ourselves. It's a matter of us knowing how to use them and to be innovative in trying to provide our protection in this complex era.

**Hon. Jason Kenney:** So when you said “the terrorists”—there are different terrorists from different movements—I presume, in the context here, you are principally talking about al-Qaeda-style terrorists, jihadi extremists. Those are the terrorists you were referring to?

**Hon. Roméo Dallaire:** In this case, yes, that's what we're working with.

**Hon. Jason Kenney:** So would you contest the fact that this category of people is responsible for things such as capturing and beheading innocent civilians, and, in one instance recently, capturing teenage girls with Down's Syndrome, strapping them with suicide belts and sending them into a child's pet market in Baghdad, and calling for the destruction of all the Jewish people? Would you contest that these are some of the tactics and aspirations of the terrorists to whom you referred?

**Hon. Roméo Dallaire:** I notice you just threw in the last one there to give yourself a whole context.

First of all, it is the same as those adults who use child soldiers in Rwanda, Sierra Leone, Burundi, Uganda, Sudan, Darfur, and Sri Lanka. In so doing, it is the child soldier who is being used, and we are using illegal means to try to try them.

**Hon. Jason Kenney:** So is it your testimony that al-Qaeda strapping up a 14-year-old girl with Down's Syndrome and sending her into a pet market to be remotely detonated is the moral equivalent of Canada's not making extraordinary political efforts for a transfer of Omar Khadr to this country? Is that your position?

**Hon. Roméo Dallaire:** If you want it in black and white, then I'm only too prepared to give it to you: absolutely. You're either with the law or you're not with the law. If you wish to fiddle with the law and say, well, we're going to go a bit this way and we're going to go a bit this way, then fine. But in the process of what we are looking for, you're either guilty or you're not. You're either a child soldier or you're not.

If you like, you can use the extreme scenarios under which I'm articulating my position, which is that you are not allowed to go against those conventions, and if you do, you're going down the same road as those who absolutely don't believe them at all.

**Hon. Jason Kenney:** Sir, I submit the only thing extreme here is what you're saying.

You said you've raised several questions very nobly in the Senate in recent months. Were you appointed to the Senate in the spring of 2005?

**Hon. Roméo Dallaire:** Yes.

**Hon. Jason Kenney:** And did you avail yourself of the opportunity to raise this matter with the Attorney General, the Minister of Foreign Affairs, the Prime Minister, or any representatives of the government in 2005?

**Hon. Roméo Dallaire:** In 2005 I was doing just like the opposition is: on one side ignoring it and on the other side not being aware of it.

**Hon. Jason Kenney:** Is that a no? You did not raise it with them?

**Hon. Roméo Dallaire:** I was not aware of it. I said that in my testimony.

**Hon. Jason Kenney:** I see.

You weren't aware of the Khadr affair in 2005?

**Hon. Roméo Dallaire:** I was not aware of it.

**Hon. Jason Kenney:** You were not aware of Omar Khadr being—

**Hon. Roméo Dallaire:** I was in the United States, at Harvard at the time.

**Hon. Jason Kenney:** You were not aware of Omar Khadr. You had never heard of the case, the Khadr family, in 2005?

**Hon. Roméo Dallaire:** No, I was...well, to be quite honest, you couldn't even get a *Globe and Mail* at Harvard, so I'm not sure. I don't remember seeing the Khadr case when I was there, no.

**Hon. Jason Kenney:** You were a senator for nine months in 2005, a senator of the Senate of Canada, and you'd never heard about this case at the time?

**Hon. Roméo Dallaire:** I started to pick up the dossier, as I've said, about a year to a year and a half ago.

**Hon. Jason Kenney:** I see, so after there was a change in government.

You implied how the government's position is politically motivated. Insofar as the current government's position is identical to the former government's position, would you also suggest that the former government's position was politically motivated?

**Hon. Roméo Dallaire:** I think the former government's position in regard to Khadr...they didn't want to touch it. And I think the opposition certainly didn't. The consistency is in the opposition, even though the circumstances have changed and Khadr has now been tried—correction; he has been brought in front of an illegal court, and we are aware of the charges, although he had been held illegally. At least the opposition have decided that this should be changed, although the government seems to be holding the same story it held in 2002, when we had more information.

**Hon. Jason Kenney:** I'm not sure that's an answer.

Thank you.

•(1355)

**Hon. Roméo Dallaire:** Thank you very much.

**The Chair:** For what it's worth, that round was exactly five minutes to the second, thereby making it the only round that was the right length. I'm not complaining, but I am alerting the committee to the fact that it's now five minutes to two and it would be difficult to engage in a second round.

I can see different ways we can proceed here. I think the most logical, if I may place a suggestion with you and see if it meets a favourable response, is simply to ask our witnesses to make any concluding remarks and then to give them our thanks, dismiss them, and move to Mr. Silva's motion. Does that seem reasonable?

**Some hon. members:** Agreed.

**The Chair:** All right, let's do that.

Do our witnesses have any concluding remarks?

**Prof. David Crane:** Again, I thank you for this time, and I thank you for the ability to listen to your concerns and to your questions.

I would only ask this esteemed committee, at least from my particular points...it is the precedent this would set, and that is trying children for war crimes. I am not condoning any acts of any child. I am only submitting to you that there are many levels of justice, to include domestic justice, and that we have the capability, you have the capability, of reviewing his case at the appropriate level and dealing with it openly and fairly. And I would submit to you that the case of Omar Khadr should be reviewed here in Canada, as opposed to in Guantanamo.

Thank you, ladies and gentlemen.

**The Chair:** Thank you, Professor Crane.

**Hon. Roméo Dallaire:** My comment is that in this era of complex and ambiguous conflict scenarios and threats, it is absolutely essential that we use all legal means possible to prevent us from being used or abused in the international community by those who are not at all operating under the rules. In so doing, it is essential, in the case of Canadians who are being held internationally, that we do respond by the proper rules. In the case of a child soldier who is Canadian, then the rules are clear that he is a child soldier and should be repatriated to the country in order to be in a proper judicial system, because the one in the United States has not recognized the fact that he is a child soldier. Any movement we do beyond those fundamental principles that we have as laws, in order to attenuate what we think might be a threat, are manipulative and ultimately will bring us down.

We must work within those rules and apply them.

**The Chair:** Thank you very much to both of our witnesses. We do appreciate you coming here. Essentially, you are dismissed while we turn to other business. So thanks again.

The other business that is before us is a motion that Mr. Silva placed before the committee. We did get unanimous consent to proceed with this, even though there wasn't the normal notice period.

Perhaps, Mr. Silva, I can turn the floor over to you.

**Mr. Mario Silva:** Thank you.

**The Chair:** Sorry. I see there is a point of order here.

**Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC):** So that people don't bolt after we're finished with Mr. Silva's motion, I have one for which I would like to ask unanimous consent to waive the 48-hour notice, in order that we can deal with something, because we're not going to be meeting again until after the break.

**The Chair:** Okay. While Mr. Silva is dealing with his comments, we'll have the clerk distribute it.

Thank you.

Mr. Silva, please.

**Mr. Mario Silva:** Thank you, Mr. Chair.

I think all of us have agreed that the situation in Burma is quite appalling and horrific, and what's taking place there is beyond imagination.

I just wanted to make sure this committee had a statement that in fact we are very much worried and concerned, and that we condemn the actions of the military junta in Burma.

I put the motion forward; it's in both English and French. I have heard there might be some issues of concern about how the motion is worded. I think "whereas" might not be the norm, but I'm not sure if that's an issue.

If there are any other points that need to be changed in terms of the English to French translation, I'm quite willing to accept whatever they are—I think the Bloc might have some issues. I think they would constitute a friendly amendment, and I don't see any problem.

[*Translation*]

**The Chair:** You have the floor, Mrs. Barbot.

**Mrs. Vivian Barbot:** Thank you, Mr. Chair.

I would like to talk about the expression "whereas". Perhaps we will decide that it is not part of the motion, but, in general, we do not accept them. As well, the third and fourth paragraphs say substantially the same thing. When the redrafting is done, I would like one of them to be removed.

In addition, at the bottom of the text, it says this, and I quote: "... that the subcommittee condemn the resistance of the military junta... to international aid..." I propose that, instead, we say "condemn the refusal". In our opinion, it is much more than a resistance.

Those two items aside, we would agree to pass the motion. I will get you the French copy, of course.

• (1400)

[*English*]

**The Chair:** Yes, Mr. Kenney.

**Hon. Jason Kenney:** I just want to be sure. Did you get consent to extend time for a few minutes, or do you need a motion? I just wanted to be clear.

**The Chair:** Actually, I had asked beforehand if we could go for 10 minutes, yes.

I have a sense that if we get into debate, our 10 minutes won't be enough, so let me ask two questions. One is to Madame Barbot and one is to Mr. Silva.

I'll ask Mr. Silva first. Mr. Silva, would you be willing to regard these as friendly amendments, allowing us not to have to debate them?

**Mr. Mario Silva:** Yes, Mr. Chair.

**The Chair:** The second thing, Madame Barbot, is that I have a sense we might not have been able to capture all of them, unless our clerk has been very fast.

**Mr. Marcus Pistor (Committee Researcher):** You do have to make an additional change, in the English, to the last paragraph, if you use the word “refusal”, but that’s just grammatical: “the refusal to allow international aid”, rather than “refusal to international aid”. It doesn’t work, and you just have to add that.

**The Chair:** The word “allow” is missing?

**Mr. Marcus Pistor:** It would be if you used the word “refusal” instead of “resistance”, if that were the wish of the committee.

**The Chair:** Because Madame Barbot is suggesting—

**Mr. Marcus Pistor:** She is suggesting using the word “refusal” instead of the word “resistance”.

**The Chair:** Okay.

Given that additional consideration, does it all seem okay to you?

**Mr. Mario Silva:** I think it’s important for us to have something on record. That was the intent of my motion, and I’m fine with the amendments.

**The Chair:** Is there consent from the members to proceed?

**Some hon. members:** Agreed.

**The Chair:** All right.

The other item was one that Mr. Sweet put before each of us. I have to ask the question. Is there consent to look at that item now? We would need unanimous consent to proceed and to look at the item. Is there unanimous consent?

**Some hon. members:** Agreed.

**The Chair:** Okay.

In that case, Mr. Sweet, can you make this short and sweet?

**Mr. David Sweet:** Yes. The motion is this:

Moved that the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development hear witnesses to deliberate on the treatment of religious minorities in Pakistan and elsewhere.

The “elsewhere” means countries like Iran, Iraq, etc., where religious minorities are being severely persecuted.

**Hon. Jason Kenney:** Could I speak to this?

**The Chair:** Yes, Mr. Kenney, please.

**Hon. Jason Kenney:** I was visited, and I’m told other members of the committee were visited, by representatives of a coalition of groups who are raising this serious set of issues. I gave my personal support to this committee’s holding at least one or two hearings on this set of issues. We talked about getting into Iran a number of times, and I think this could allow for that, at least on the religious freedom side.

The reason I think this is timely and would require consideration today is that the groups that would like to present include, I believe, Ahmadiyya, Ismailis, Baha’i, Christian minorities, and others, and they are prepared to fly witnesses in from overseas, at their own expense. Of course, that takes advance time, so they would need a

date from us rather than one of these last-minute scheduling things. That’s why I think it needs to be considered with some dispatch.

**The Chair:** And I should mention, you came up to me while our witnesses were here and mentioned you were looking at a date in June.

**Hon. Jason Kenney:** I think they said mid to late June, and of course that’s when we wrap up, late June. They’ve indicated to me—and I think they told me they met with Irwin Cotler and other members of the committee—that their preferred date would be mid to late June.

**The Chair:** We have time for debate or discussion.

Madame Barbot.

[*Translation*]

**Mrs. Vivian Barbot:** I think the proposal is particularly vague, Mr. Chair. We are talking about hearing from witnesses to deliberate on the treatment of religious minorities. I would like to have a little clarification about how we want to go about that, what religious minorities we are talking about, because it could be just fringe groups or whatever.

Is there a way to get some information about that?

[*English*]

**The Chair:** Mr. Sweet or Mr. Kenney, perhaps.

**Mr. David Sweet:** I think, Mr. Chair, Mr. Kenney already mentioned the Baha’i in Iran and Christians in Iraq. We have situations where there have been not only persecution but mass killings as far as Christians are concerned, and incarcerations as far as Baha’i are concerned in Iran, so they’re going to present their case about what’s been a continuation of persecution toward them. After we hear their evidence, we can decide how to deal with that in the future.

• (1405)

**Hon. Jason Kenney:** If I could just add, essentially we’ve agreed in the past that when witnesses are coming through town on a particular issue of general interest to us, we would try to accommodate them on our schedule, and they’re saying they’d like to bring a coalition of different witnesses from different religious backgrounds on a date that works for us.

**The Chair:** May I assume then that the purpose of the motion is to allow us to have a hearing that would take place likely on a single date in June, and the reason for wording it this way is that the witnesses would include some people from Pakistan and some from one or perhaps two of the surrounding countries?

I don’t know if that satisfies you, Madame Barbot.

[*Translation*]

**Mrs. Vivian Barbot:** I heard that it was about massacres. I would really like to know what they want to talk about. I have some examples, but I really do not know why we have to hear them now, or why them and not others. I do not understand. If it is just to accommodate a group that wants to be here, I do not see what is gained by hearing them.

[*English*]

**Mr. Mario Silva:** Sorry, Mr. Chairman. I'm a little bit dumbfounded about what the problem is here, seriously. It's quite clear what the motion was asking for. I don't see what the problem is. Let's not get very bureaucratic about the issue. We just want to hear about the situation. I think the motion is clear. Let's at least approve it. I'm not sure what else we need.

**The Chair:** Would anybody like the floor at this point?

**Mr. David Sweet:** I think considering the time, we'll just have to check and see. It seems as if we have agreement at least from most folks. This is something that's in the DNA of the committee, as far as opportunities like this.

**The Chair:** Right.

Normally in this committee we seek unanimous consent, so I'm just trying to confirm we have that. We also have the option of going to a vote on something, but I won't do that unless there's a will to do that. We still have a couple of minutes here, so that's why I'm doing this in this way.

Just to confirm whether Madame Barbot is satisfied or has additional concerns....

[*Translation*]

**Mrs. Vivian Barbot:** I am perfectly satisfied.

[*English*]

**The Chair:** Okay.

In that case, I assume we have consent.

**Some hon. members:** Agreed.

**The Chair:** We do have consent. Thank you very much.

That brings an end to the proceedings. I thank everybody for their patience and for their pertinent questions as well.

The meeting is adjourned.

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