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Chair

Mr. Scott Reid

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• (1205)

[Translation]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Welcome to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development. Today's meeting is our 16th.

[English]

We have two witnesses today. Howard Anglin is going to be here for our first hour, and Naresh Raghubeer, representing the Canadian Coalition for Democracies, is in our second hour.

However, Mr. Kenney's intervention raises a point, which is that we ought to be precise in our timing and try to wrap up each of these segments as quickly as we can. In part, that is because we have other matters that have to be dealt with. We have a scheduling issue that must be dealt with. As well, I believe I'm correct, Mr. Kenney had proposed a motion yesterday. Those two items go together. They have to be done in camera, so we're going to have to get the media and other people out of the room and then have that discussion. We only have until 2 p.m. scheduled. So I'm going to suggest that we try to deal with both witnesses as promptly as possible. Perhaps each of the two segments can finish a little ahead of the planned time to give ourselves time at the end. I'll assume that this is acceptable to folks.

[Translation]

Mrs. Vivian Barbot (Papineau, BQ): Mr. Chair, I have something to bring up at the end of the meeting too. If we could end 20 minutes before the scheduled time, at 1:40 p.m., for example, it would be enough to allow us to deal with the matter.

[English]

The Chair: Madame Barbot is suggesting that we try wrapping up 20 minutes ahead of time. That suggests that we shave 10 minutes from the time for each witness. I think that's probably about the right amount of time. To do that, I'm going to suggest that what we do here is have five-minute rounds followed by three-minute rounds. That is effectively like the second and third rounds of a normal committee meeting. Can I assume that there is acceptance for that?

Some hon. members: Agreed.

The Chair: In that case, Mr. Anglin, you are on. Please lead off.

Mr. Howard Anglin (Lawyer, As an Individual): Thank you, Mr. Chairman.

Ladies and gentlemen, I am grateful for the opportunity to appear before you today.

As I believe I'm the first witness who is not recommending that Canada repatriate Mr. Khadr, and the only witness testifying this hour, I hope you'll indulge me if I take some time to briefly lay out my position.

First, I want to make it clear that I do not presume to tell Canada what action to take, nor do I carry a brief for the United States government, with whose policies I frequently disagree. International law imposes no binding legal obligations on Canada in this case. I'm here only to clarify some of the factors that I believe the Canadian government should consider in formulating its policy.

I will make three primary points today. First, contrary to the claims of some of the earlier witnesses, the prosecution of Mr. Khadr is neither unprecedented nor contrary to international law. Second, I will examine the actual text of the applicable law to correct what has hitherto been an extremely shoddy presentation of that law by previous witnesses. The third point I will make is that U.S. policy, far from being lawless or in violation of international law, more than satisfies the minimum requirements of due process set out in the Geneva conventions.

On the first point, as Mr. Khadr's own lawyer, Lieutenant Commander Kuebler, has stated, there is nothing in the optional protocol, customary international law, U.S. federal law, or Canadian law that bars the prosecution of a juvenile for war crimes. Mr. Lorne Waldman of the Canadian Bar Association confirmed Lieutenant Commander Kuebler's position in his testimony before this committee when he said:

In terms of the question with respect to the child soldier, it's not our intent to say that it would be a violation of the convention...there's no specific provision that precludes prosecution.

That point is worth repeating. There is nothing in international law, Canadian law, or U.S. domestic law that prohibits the prosecution of Mr. Khadr by the United States.

Professor Crane, a previous witness, agreed with this assessment. The furthest he went was to venture that in his opinion, no child under the age of 15 can commit a war crime. Professor Crane's age cutoff does not help Mr. Khadr.

Professor Crane was admirably candid when he acknowledged no bar to the prosecution of a soldier as young as 15 under international law. Although he testified that he declined to prosecute any soldiers under the age of 15 when he had the choice, that was a matter of prosecutorial discretion. He was clear, however, that the United Nations mandate under which he operated permitted him to prosecute soldiers under the age of 18 for war crimes. If the United Nations explicitly permits the prosecution of soldiers under the age of 18, it is absurd to claim that doing so violates international law.

For my second point I would like to focus on the applicable international law itself; not the law as many previous witnesses appeared to wish it were written, but the law as it's actually written.

Contrary to the testimony you have heard, there is good precedent for prosecuting soldiers under the age of 18 for war crimes. I can provide specific examples if the committee likes. Nor does international law say that those between the ages of 15 and 18 can never be soldiers. General Dallaire testified that the optional protocol concerning the involvement of children in armed conflict is the "only binding international instrument that concerns child soldiers". So let us look at what the optional protocol actually says.

Article 1 in its entirety says:

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

There are two key terms employed here that I would like to focus on. The first is the phrase "take all feasible measures". This is emphatically not an absolute bar to the use of soldiers under the age of 18. The phrase has an established meaning under international law that pre-dates the optional protocol. It means:

those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

This is the definition of "all feasible measures" that Canada used in its adoption of protocol 1 to the Geneva conventions.

The International Committee of the Red Cross acknowledged this meaning in its working group notes during the negotiation of the United Nations Convention on the Rights of the Child. The Red Cross wrote:

In other words, the text which was finally approved means that voluntary participation by children is not totally prohibited.

This meaning was also reflected in the position statements of various nations when they ratified the optional protocol. For example, the United Kingdom expressly reserved the right to use soldiers under the age of 18 when there was a genuine military need.

•(1210)

The second key term in article 1 of the optional protocol on child soldiers is the word "direct", as used in the phrase "take a direct part in hostilities". Contrary to General Dallaire's claim, the use of "direct" means there's no prohibition concerning forward deployment of soldiers younger than 18 in non-combat roles.

Again, as the Red Cross explained in its working group notes:

...the Working Group could have strengthened protection by removing the word "direct". The ICRC suggested this too during the Diplomatic Conference but the proposal was not approved. This being the case, it can reasonably be inferred... that indirect participation, for example gathering and transmitting military

information, transporting weapons, munitions and other supplies is not affected by the provision.

Finally, article 3 of the optional protocol lays out the conditions for voluntary recruitment of soldiers between the ages of 15 and 18. The first condition is that the recruitment be genuinely voluntary. So the idea that a soldier under the age of 18 can never really be a soldier, and to claim that a 15-year-old is not capable of genuinely consenting to serve, are directly refuted by the text of the only applicable international instrument, in the words of General Dallaire.

When Lieutenant Commander Kuebler says that "children are never soldiers; they are children", or General Dallaire says that "no one is allowed to use young people under the age of 18 in any way whatsoever", their opinions are flatly contradicted by the official position of the United Kingdom, the UN Security Council, and the text of both the Convention on the Rights of the Child and the optional protocol on the involvement of children in armed conflict.

Turning to my final point, almost every witness so far has been eager to denounce the United States policy as illegal or in violation of international law. But I have yet to see any convincing evidence that it is so. Assertions and claims are not arguments.

It may come as a surprise to many Canadians who have not spent significant time in the American legal system—and this is a very important point—that the United States does not do show trials. The combatant status review tribunals and the military commissions are modelled on procedures that would satisfy the U.S. Constitution for the treatment of its own citizens. A fortiori they are adequate for members of al-Qaeda.

The error committed by most critics of the combatant status review tribunals and military commissions is that they will accept nothing less than the full protections of a civilian criminal court, even for unlawful combatants captured on the battlefield, and they denounce anything short of those protections as lawless. But theirs is a specious comparison, not only because such protections would be impractical for dealing with accused terrorists, and not only because battlefield detainees have never been accorded such expansive rights, but also because that is not what international law requires. For unlawful belligerents such as Mr. Khadr, the Geneva conventions require only the minimum or indispensable protections of due process. Those requirements are, as one would expect, much more limited than we require in a civilian court.

So what is the evidence that the process in place violates the minimum standards of due process under the Geneva conventions? It can't be the use of hearsay testimony. That's a common practice in war-time prosecutions, even of a nation's own soldiers. Indeed, it's a virtual necessity given the circumstances under which battlefield arrests take place. Many witnesses are dead, there's no forensic detective squad to document the scene, and most of the surviving witnesses are serving overseas at the time of trial. For all these reasons, military commissions throughout history have not applied the same evidentiary standards we demand of a civilian criminal trial. If they were required to do so, it would be virtually impossible to ever try detainees.

Nor can it be the withholding of sensitive information that makes the tribunals somehow unlawful, because again it's impossible to conceive of a process that permits full disclosure of classified information to the enemy. The Canadian Supreme Court's recent decision to permit a limited release of information relating to the interrogation of Mr. Khadr accepted this limitation.

• (1215)

The folly of a contrary system was demonstrated in the trial of Sheikh Omar Abdel-Rahman, the mastermind of the first World Trade Center bombing. In that case, brought under the regular U.S. criminal system, the prosecution was forced to turn over to the defence a list of people whom the U.S. government thought were involved in the bomb plot but had insufficient evidence to charge. Within weeks of the disclosure of this list, it was in the hands of Osama bin Laden.

Nor can there be any objection to the limited right of review by a civilian court. First, every country that recognizes a right to habeas corpus—and many western civilized countries do not—also recognizes that it can be suspended. Even the Canadian charter permits the suspension of habeas corpus, as does the U.S. Constitution. And most countries that allow habeas corpus to be suspended have actually done so.

Prime Minister William Pitt, “the younger”, suspended habeas corpus for seven years. Abraham Lincoln suspended habeas corpus during the American Civil War. And Prime Minister Trudeau suspended habeas corpus during the October Crisis in 1970. Indeed, Trudeau sent tanks into the streets of Montreal and rounded up hundreds of Canadian citizens and detained them without charge for weeks over the kidnapping of two persons and the death of one. We can only be thankful that the full devastation of 9/11 did not take place on Trudeau's watch. If habeas corpus can be suspended for suspected sympathizers of the FLQ, there can be no objection to suspending it for members of al-Qaeda and similar terrorist groups.

Besides which, the United States has not completely abolished the right to legal review. Detainees have a right of appeal first to the U.S. Court of Appeals for the District of Columbia, which is a civilian court, and thence to the Supreme Court itself. Moreover, whether detainees at Guantanamo Bay have a full constitutional right to habeas corpus is still an open question before the U.S. Supreme Court that will be decided next month.

Most observers expect the court to require some form of habeas review. If it does grant such a right, if the court does say that detainees at Guantanamo Bay are entitled to some form of habeas

review, the United States will confer rights on enemy combatants that are unprecedented in the history of warfare.

So at best, it's premature to object to a U.S. policy based on the lack of a right to habeas corpus. At a minimum, Canada should await the decision of the U.S. Supreme Court in *Boumediene v. Bush* next month before formulating any policies.

A previous witness, Ms. Hilary Holmes from Amnesty International, objected to the indefinite nature of detainment at Guantanamo Bay and offered that as a compelling reason to press for Mr. Khadr's release. But even if Mr. Khadr were a lawful combatant, he could still be detained under the Geneva convention, at least as long as there is active combat in Afghanistan.

No one alleges that Mr. Khadr and his ilk are lawful combatants entitled to prisoner of war status. It is therefore illogical to expect them to be accorded protections greater than those that would be accorded to prisoners of war.

In any case, the CSRTs and the military commissions at Guantanamo Bay actually exceed the requirements of an article 5 tribunal under the Geneva convention. I'd be happy to expand on this point, with specific examples if the committee is interested.

Were Mr. Khadr being held by China or Saudi Arabia or Indonesia, the Canadian government would be rightly concerned about whether the minimum requirements of due process were being met, but he is not. The terms of his detention and trial are being supervised by all three branches of the United States government, which are constantly refining their procedures to reach the optimal balance between the rights of the accused and the requirements of national and international security. There is probably no country in the history of this world more committed to the preservation of individual liberty than the United States of America.

I hear sniggers on that point and I can address them; I can address them.

No fewer than four appeals by detainees have reached the Supreme Court, resulting in significant changes to the detainment regime already. This is how a civilized country, committed to the rule of law, operates. Everyone agrees that the detention of a fanatical and zealous enemy desirous of martyrdom imposes a new challenge for traditional and often anachronistic military and legal procedures. The United States has risen to that challenge, perhaps more slowly and hesitantly than most of us would like, but it indisputably has done so.

The rule of law that must reconcile many compelling and competing interests is not always neat and tidy. The compromises of our domestic legal system were worked out over centuries. It should not be surprising that the United States has taken several years to develop a reasonable and workable process, but the system now in place is working, it satisfies the minimum requirements of the Geneva conventions, and exceeds them in many regards, and there is no legal obligation for Canada to interfere with it.

I am happy to take questions on any of these matters or any other questions or sniggers that members of the committee might have.

• (1220)

The Chair: Thank you.

We will go to five-minute rounds of questioning, followed by three-minute rounds of questioning.

I will be, as usual, pretty tight on this and remind you that if your questions are overly long in the first round, I'll take it out of your time in the second round. If you do it too much, you may not get a second question at all. That's simply to allow everybody to get equal time in asking their questions.

I also want to advise members of the committee that we do have lunch available. I do not intend to break for lunch, but you're free to get some lunch and bring it back to the table.

That being said, we normally start with questions from the Liberals.

Mr. Cotler, please.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

Thank you, Mr. Anglin, for appearing before us today.

You co-wrote an article in the *National Review* in which you wrote, and I'm quoting from an excerpt of that article—I think this will allow you to expand on some of the points you mentioned:

The terrorists we fight today, by contrast, are not dutiful conscripts or professional soldiers; they are would-be martyrs motivated by a fanatical and uncompromising ideology. Granting them the panoply of rights under the Geneva Conventions is inconsistent with the history and underlying assumptions of those treaties.

My questions today are in that regard and in relation to your testimony today. I appreciate you mentioned that there's nothing that bars the prosecution of a child soldier such as Omar Khadr. Assuming that such prosecution is lawful, would you regard him as a terrorist or illegal combatant unworthy of Geneva protections? Or are you saying, more broadly, that the Geneva conventions are not applicable to illegal combatants and that Omar Khadr is such an illegal combatant?

My final question, if time will permit—you can assimilate it into your remarks—is whether you are suggesting that the law of armed conflict, presupposed conflict, between states and their respective combatants is effectively inapplicable to asymmetrical warfare involving terrorists as illegal combatants.

Mr. Howard Anglin: Well, one could write a thesis on either question. I'll try to be as brief as I can.

It's my position that the laws of armed conflict are very problematic when dealing with asymmetric warfare. I think everyone can seize that point. They were clearly designed to deal with two armies of civilized western countries who respect certain basic norms of warfare. Built into them is an enforcement mechanism of reciprocity, so that if your side will obey the laws of war, your prisoners will be treated according to the Geneva conventions and given the full panoply of rights under the conventions. If they do not, they will not be accorded the full panoply of rights. Really, that's the only enforcement mechanism that the Geneva convention presupposes.

Mr. Khadr, as a member of al-Qaeda, is not a member of a contracting party to the Geneva conventions. He does not participate in a militia or an army that follows the laws of war, including distinguishing marks to distinguish them from civilians, bearing arms openly, otherwise complying with the laws of war, a recognized hierarchy of leadership. So he is not entitled to the full panoply of rights under the Geneva conventions, which in any way are anachronistic. The Geneva conventions really conveyed a *Hogan's Heroes* sort of detention camp of gentlemen soldiers. Whatever you want to say about Mr. Khadr, he is not a gentleman.

The rights he is entitled to—the U.S. Supreme Court has found this, and this is why I say his process is being well supervised by the U.S. courts—are the minimum protections of the Geneva conventions, which are “the indispensable rights”. So I wouldn't say the Geneva conventions are wholly inapplicable. I would say that those protections, such as receiving pay during his detention and receiving scientific instruments through the mail, are things that are wholly anachronistic in dealing with murderers and fanatical would-be martyrs. He's not entitled to those protections. But he is entitled to be treated humanely. He is entitled to fundamental requirements of a neutral arbiter and to be made aware of the case against him and to have an opportunity to rebut it.

Those are the requirements that the U.S. Supreme Court has said must be provided and that have been provided to detainees in Guantanamo Bay, which is why I say the process in place actually meets the minimum requirements of the Geneva conventions.

• (1225)

Hon. Irwin Cotler: So in your view Omar Khadr has been provided the minimal protections under the Geneva convention that should be accorded to him.

Mr. Howard Anglin: Yes. I don't want to take up too much time with your question, but I'm happy to go into a list of the rights he has been provided and the actual procedures of the CSRTs and military commissions. I'm not sure they've been fully described before this committee.

Hon. Irwin Cotler: What about the U.S. Supreme Court's finding, to which the Canadian Supreme Court referred, regarding the illegality of the military commission's prosecution?

Mr. Howard Anglin: I believe you're referring to the decision of *Hamdan v. Rumsfeld*. Yes, the U.S. Supreme Court did find that the procedures in place at the time were inadequate. This is, again, why I said this process is being worked out as a series of compromises—as the rule of law always is—between various branches of the United States government. But when the U.S. Supreme Court has found a procedure to be inadequate, the U.S. government—the executive branch in cooperation with the legislative branch—has come up with a solution to satisfy the Supreme Court. I think they have done that. The Supreme Court continues to hear appeals, and the process will be further refined. That's how the rule of law works in a country that is committed to the rule of law.

I wouldn't expect that of a country that holds kangaroo courts or show trials. They don't refine their procedure in response to a Supreme Court decision that tells them it's inadequate. But the U.S. has done that, and the procedures currently in place do satisfy the Geneva convention.

As I said, it's important to note that the procedures in place are modelled now on the rights that would be considered constitutional for a U.S. citizen, so I do think he is being provided with all the adequate protections of the Geneva convention.

Hon. Irwin Cotler: The military commission distinguishes between citizens and non-citizens; it would not be applicable to citizens of the U.S.

Mr. Howard Anglin: The military commissions are actually being modelled on an army regulation that meets the requirements of Constitution forces. I could cite it; I think it's army regulation 190-8.

Hon. Irwin Cotler: What about the allegations that in fact—and not a matter of hearsay, the introduction of hearsay evidence—Omar Khadr has been subjected to coercive interrogation, to prolonged and arbitrary detention, to denial of counsel over a prolonged period of time, etc.? You know the various representations that have been made in that regard. Do you still say he has not only been entitled to but has received the minimum protections under the Geneva convention?

The Chair: This will have to be a brief response. I apologize for that.

Mr. Howard Anglin: Very briefly, the Geneva convention does not provide for counsel at the initial processing at the CSRT.

Secondly, he has been provided counsel. I think Lieutenant-Commander Kuebler appeared before you, and no doubt you were impressed by him. He represents his client very zealously and ably. I think there's no question that he's being provided with adequate counsel, which I think was your third point.

As for coercive interrogation, I'm not going to sit and defend the torture of detainees. There is a provision in the appeals process—and during the military commissions themselves—for the court to decide whether a detainee has been subjected to coercive interrogation and to reject any evidence that's been produced by that, and that can be appealed to the D.C. Court of Appeals and to the Supreme Court. So I think there's a process in place for preventing any information that's the product of coercive interrogation from ever being used, and I would strongly condemn the use of any torture against detainees.

• (1230)

The Chair: That took eight minutes.

Madame Barbot, you're next.

[*Translation*]

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

I am a little confused by your evidence. At the start, you said that you had come to tell us why Omar Khadr should not be brought back to Canada to stand trial. All the arguments you raised told us, first, if I understood correctly, that he is not a Canadian citizen, or that the treatment he has received at Guantanamo exceeds the minimum requirements. This is a military prison. The laws that apply there are not those of a civil society.

However you approach the matter, Omar Khadr was clearly 15 years old when it happened. Given that, and given also that both the United States and Canada have signed the International Convention on the Rights of the Child, do you really feel that the treatment that Omar Khadr has received in Guantanamo is in accordance with that convention? It provides for rehabilitation, reintegration and getting him back on his feet, if I may call it that, because the proper term escapes me?

I am also a little confused to hear you hold up the United States as a model of justice; though it does not practice torture at home, it sends people to countries that do.

In that context, I would really like you to clearly explain to us why we cannot bring Khadr back here to stand trial. Once again, we are not saying that he is right or that he has done nothing. That is not the point. The point is that Canada has a tradition of looking after its citizens wherever they may be and whatever the mistakes they may have made. In this particular case, we are talking about a child, and we feel that he should be brought back to this country.

The Chair: You have used 10 minutes, Mrs. Barbot.

[*English*]

Mr. Howard Anglin: Thank you very much, Ms. Barbot.

Of course, I'm responding to the translation and not directly to your comments, so please forgive me if I have misunderstood anything.

First, you said something early on about us questioning whether he's a Canadian citizen. I certainly don't question that. That's a matter for Canada to decide.

Secondly, you mentioned at one point that I was speaking on behalf of the U.S. I don't know if that was just a translation issue. I do not speak on behalf of the United States. I speak as somebody who has studied U.S. policy and international law, and I speak, actually, as a loyal subject and a Canadian citizen.

Regarding your two primary questions—one, on the treatment of a child, and two, on why Canada can't bring him back...Canada can bring him back. I'm not here to say that Canada shouldn't bring him back; I am saying there is no legal obligation for Canada to bring him back. Canada needs to make a decision, in an exercise of its diplomatic sovereignty, on whether or not to bring him back. That's for Canada to decide. I'm just here to clarify some issues of international law and some misrepresentations as to the U.S. policy that I've heard in previous testimony.

The other question was whether he is being treated according to the Convention on the Rights of the Child. The Convention on the Rights of the Child, of course, allows for the use of soldiers in combat as of the age of 15. So if it presupposes the use of soldiers at the age of 15 in the Convention on the Rights of the Child, I don't think it's inconsistent, then, to treat those soldiers as soldiers when they are detained.

Secondly, you've heard testimony that the United States has had quite a number of people at Guantanamo Bay between the ages of 15 and 18, and that they've actually segregated most, if not all, other than Mr. Khadr, and treated them differently, consistent with the precatory and hortatory provisions of the optional protocol. I wouldn't say they're binding legal obligations.

The fact that the U.S. has actually treated Omar Khadr differently is reflective of a process whereby the United States has looked at each of the child soldiers before it and made a determination as to the best way of treating each soldier. Every other soldier is being treated in a separate detainment facility. They're all at Camp Iguana. Mr. Khadr is not. Clearly, there was a reason for that.

The Canadian civil justice system, like the U.S. civil justice system, provides for the opportunity to treat juveniles as adults under certain circumstances. I don't see why it would be any different in the military context. It appears the U.S. has decided to do that with respect to Mr. Khadr. If the Canadian government wants to object to that and bring him home, that's absolutely within the power of the Canadian government to do. And I would not object to it doing that. I don't presume to dictate Canadian policy.

• (1235)

The Chair: That concludes the time available for that round of questions.

Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Actually, I'm very pleased with your last comment, that you wouldn't object to this young man being brought back to Canada to face court here. Nobody is suggesting that he should be brought back and turned loose on the streets.

In your initial comments, you referenced the War Measures Act in Canada, as if somehow that was something totally acceptable to Canadians. Well, our party, the NDP, with Tommy Douglas leading the way, opposed the War Measures Act. We believed that to be a horrendous violation of the rights of Canadians. I just wanted to put that on the record.

You said another thing, and I'm not going to debate you on the legal aspects of this, because I'm certainly not qualified to do that. But I have been listening to your comments, and it struck me as

interesting that you made the comment that Mr. Khadr is not a gentleman. I'd like to know when you met Mr. Khadr or if you have had any education in psychology that puts you in a position to make that evaluation on a person you haven't met.

You talked about how the Americans have handled him, keeping him separate from the other young people in Camp Iguana, and that there must be a good reason for that. Well, I think you're giving them the benefit of the doubt down in the U.S., because this strikes most of us as being a case of the United States using this individual almost as it would use a hardened battle campaigner for al-Qaeda, rather than as it would use a 15-year-old boy.

You will certainly disagree with my view that he was a 14-year-old boy, a dutiful son following his father who took him to this place, but the real crux of what we need to know here.... I want to interrupt myself.

You mentioned about Canada interfering in the U.S. I disagree with you that our government, standing up for any citizen to ensure that citizen has due process, habeas corpus, and the rights they should have under Canadian law, is interfering with another state. If you have a positive relationship with that other state, as we do with Australia and Britain, you have your person repatriated to Canada so they can stand before the court—

The Chair: Mr. Marston, you've used two minutes.

Mr. Wayne Marston: —and seek justice here.

I'd like your comments. Thank you, sir.

Mr. Howard Anglin: Absolutely. Again, there's more I can get into some other time.

I actually wouldn't disagree with your characterization of him as a dutiful son. Stepping back and looking at it from a detached perspective, there is always something noble about sons—in this case a family of sons—standing up for their patrimony and for their father's beliefs. This sentiment is nobly and memorably represented in the *Oath of the Horatii*, the great classical painting by Jacques-Louis David, in which the three sons swear to defend Rome against Alba Longa. Unfortunately, if we're going to be Rome in that analogy, the Khadr's are the Curiatii and not the Horatii. He chose the wrong side, and I think it's appropriate to take that into consideration in the context of being a most dutiful son.

I can't object if Canada decides to repatriate Mr. Khadr. I think it would still be inappropriate to apply domestic Canadian criminal law. Geneva conventions nowhere presuppose or require that a domestic civil law of Canada be applied to Canadians who are detained in the battlefield. If Canadian soldiers were detained in Italy, Japan, or Germany during World War II, Canada would have had no right to demand that the military tribunal supply full Canadian civil domestic law. If he were to be brought back, it would be inappropriate for him to be tried in a civilian court. He's an illegal combatant, not a bank robber or a shoplifter.

Finally, on whether he's a gentleman or not, clearly it's a rhetorical point, but it's based on publicly available evidence. Gentlemen don't take up arms against their country and its allies. Apart from the other side, I think any definition would preclude him being called a gentleman. Perhaps he will grow up to be one some day.

On the War Measures Act, Tommy Douglas was prescient and quite right on that point. I used that to show that every country that provides habeas corpus also provides—and the Canadian charter still provides—for habeas corpus to be suspended.

I think that addresses as much as I can of your point.

• (1240)

The Chair: That unfortunately uses up all the time available in that round.

Mr. Kenney, you're next.

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

Thank you, Mr. Anglin. You've indicated you would be prepared to specify some of the due process privileges granted to Mr. Khadr under the CSRT system. There have been representations at the subcommittee that the military tribunal system in the United States is effectively a kangaroo court with a predetermined outcome, and Mr. Khadr has no opportunity for a proper defence or to be the beneficiary of due process.

Would you care to elaborate on some of the points to which you have generally alluded?

Mr. Howard Anglin: I'd be very happy to do so.

This is some background context. At the end of World War II, there were approximately 2 million combatants detained by the United States around the world, more than 400,000 on U.S. soil—not in Guantanamo Bay, not in Cuba, but on U.S. soil. It never occurred to anybody that any of these detainees had a right to habeas corpus, and no one claimed that this violated international law.

By contrast, the process in place for detainees at Guantanamo Bay—excuse me, if I refer to some notes, it's quite intricate—is this. Each detainee's enemy combatant determination is based on a specific record unique to its case.

After the initial assessment determination is made, that decision is subject to two mandatory levels of review, first by a legal adviser to the CSRT and then by the director of the CSRT. This process alone has led to the determination that 38 now-released detainees were not enemy combatants. Kangaroo courts don't release; they accuse.

In addition to the CSRT review process, the Department of Defense conducts an annual administrative examination of whether it's appropriate to release or repatriate each enemy combatant. Since 2002, about 390 detainees, or more than half of all detainees, have been transferred or released through this process.

Beyond the CSRT and military commissions, detainees have a right of appeal, first to the U.S. Court of Appeals for the D.C. circuit, a civilian court, and then to the Supreme Court.

In response to the earlier point, this is a stage at which any accusations of torture can be addressed by a civilian court, and by a very responsible civilian court, probably the highest court in the United States and probably the second-most important court in the United States.

Throughout the military...Khadr will be represented by competent and committed counsel who will pursue seriously....

In terms of how they meet or exceed international norms—it's like on the Geneva conventions—the CSRTs contain express qualifications for the judges to ensure the tribunal's independence. This is more than we gave the accused at Nuremberg. There are no comparable qualifications for an article 5 tribunal. They provide the detainee with a personal representative at the CSRT level and a military lawyer at the military commissions level. The first is not required by an article 5 tribunal; the second meets the requirements of the Geneva convention.

The recorder of the process is obligated to provide a tribunal with evidence to suggest that the detainee should not be designated as an enemy combatant—a devil's advocate, if you will. There's no such requirement under the Geneva conventions.

The detainee is provided with an unclassified summary of the evidence supporting his detention in advance of the hearing. He's presented an opportunity to testify. There's no such requirement for an article 5 tribunal.

They allow the detainee to introduce relevant documentary evidence. Article 5 tribunals provide no analogous guarantee.

Every decision is automatically reviewed by a higher authority. There's no right to an appeal under the Geneva conventions.

Briefly, without laying out the full procedures as they're enacted in statutory law, those are the key points on which the trials meet or exceed the requirements of international law.

Hon. Jason Kenney: One of the representations we received from a witness, indicating that the CSRTs constitute a de facto kangaroo court system, came from a member of the Canadian Senate, Senator Dallaire. I don't know if you've had a chance to review his or other witnesses' testimony. During his testimony—I emphasize, not under questioning—he indicated that the United States was, in its administration of these military tribunals, at the same level as the terrorists. I later clarified when he spoke about the terrorists that he was speaking of al-Qaeda, Islamic jihadi extremist terrorists.

Do you think that comment is reasonable in any respect?

• (1245)

Mr. Howard Anglin: As I just testified, 38 detainees were released under the CSRT process. I don't believe there's any analogous process that's been implemented by al-Qaeda or any of its terrorist organizations. They certainly haven't released anybody under that process that I'm aware of.

Senator Dallaire—General Dallaire—made some very unfortunate statements and backed himself into a corner from which he couldn't find an elegant escape. So like a soldier, he just plowed straight ahead, unfortunately.

I did read the comment. I have the greatest respect for General Dallaire, but the sophomoric, radical relativism that most of us abandon when we put away our tweed coats and berets...it's unworthy, it's puerile, and I think it reflected poorly on him and on Canada.

Hon. Jason Kenney: You mentioned that individuals were released—

The Chair: Mr. Kenney, we're out of time on this round.

In this round everybody kept within the timelines, except in the first round with Professor Cotler, who went over the time allowable for both rounds. So I suggest that for the next round we simply move Mr. Cotler down to the end. We'll proceed to Madame Barbot, Mr. Kenney, Mr. Marston, and, if there is time, back to Mr. Cotler. That will allow equal time for all persons.

Does that seem reasonable to people? Okay.

Madame Barbot, you're up next.

[*Translation*]

Mrs. Vivian Barbot: Let me come back to the fact that you referred to Mr. Khadr as not being a "gentleman", implying that he should not receive the same respect that a "gentleman" would receive.

It is also true that no one brought to trial is really a "gentleman" as generally understood. Your definition could be very different from mine. It is completely subjective, and I would go as far as to say that your comment is inappropriate.

I would like to know the following. There has been a lot of comment about the Khadr family, some of whom are terrorists, at least the father was. Do you think that it is fair for the child to be judged by what his father has said? Do you not think that he is a completely separate human being and that, as a child, he has the right to be protected by his country of birth?

[*English*]

Mr. Howard Anglin: Thank you.

I fully agree with that. I don't think the sins of the father should be visited on the son. But at the same time, his proximity to his family—which also brought him into proximity with al-Qaeda and the bin Laden family—makes him a very rich intelligence target. The fact that he might be treated differently because of information he knows, as the son of his father, is distinct from punishing him for being the son of his father. But I have no comment on the Khadr family. I don't know them.

I hesitate to get back to the question of "gentleman". The only point there is that the full Geneva conventions—if you read the 100-odd articles of the Third Geneva Convention—were drafted with a very specific type of responsible soldier in mind. Members of al-Qaeda do not meet that definition, thus many, but not all, of the rights provided by the Geneva conventions are anachronistic. He's still entitled to the basic, indispensable norms of due process and humane treatment. I don't think we have a disagreement on that; it clarifies my use of the term "gentleman".

I don't know if there's any other part of your question I didn't address.

[*Translation*]

The Chair: You have 30 seconds left.

• (1250)

Mrs. Vivian Barbot: What I am trying to get clear is that you are always talking about Khadr as a combatant, while, according to everyone else, he is a 15-year-old child. When you hold a trial, you hold it under the laws of the country where it happened, hence the need to bring him back here so that all the context can be Canadian. When you talk about the American military tribunal process, please understand that that is not what I want to hear, especially since, in Khadr's case, the process has not been respected from the first moment when he was denied access to a lawyer.

[*English*]

Mr. Howard Anglin: The Geneva conventions, whether you like it or not, do not provide access for a lawyer upon capture. That's international law. I agree with you that the law must be applied—not what some people wish the law said, but what the law says. The fact is that Canadian law does not apply to an enemy combatant detained by a foreign party. It never has applied in military history, and it doesn't today.

I talked about the American process because each country, when it sets up military tribunals, has to establish a new process. We did so after World War II, it was done in Sierra Leone—it's done in every country. The only question is whether the process that is established—in this case the American process—meets the international norms. I've testified that it does.

You might say he's a boy of 15, but unfortunately the law says he is a soldier at 15. *Dura lex sed lex* is an old proverb.

The Chair: Thank you.

It's the government's turn.

Mr. Kenney is next again.

Hon. Jason Kenney: I'm aware, for instance, of a number of ethnic Uighur detainees who were released. I think some have now been transferred by the United States to Albania. I gather there are more Uighur detainees that the system has been unable to find any evidence against, who may have been picked up inadvertently in the confusion following the liberation of Afghanistan. But the point is that I gather that the United States has had difficulty finding countries to which they could actually repatriate some of these individuals. Is that your understanding?

Mr. Howard Anglin: It is my understanding. You're clearly better informed of some of the specifics of the Uighurs, for example, but it would not surprise me that the United States would have trouble finding somebody to take the Uighurs back. We all see the persecution they are undergoing in China and in bordering states.

Hon. Jason Kenney: As you've alluded to, a number of the witnesses at this subcommittee have testified that the recruitment of individuals under the age of 18 to engage in any kind of combat constitutes a violation of respective international conventions. You disagree with that view.

Mr. Howard Anglin: Absolutely, and the text disagrees with that view.

Hon. Jason Kenney: Right, for those who are over 15.

Mr. Howard Anglin: Over 15, yes.

Hon. Jason Kenney: Fifteen or over.

Mr. Howard Anglin: Yes.

Hon. Jason Kenney: Perhaps you could comment on this. There seems to be a certain problem in the argument of those who maintain the illegality of recruiting combatants over the age of 15, in that if he was recruited he was apparently recruited by his own family, and his own family is resident in Canada. Is there any legal implication for the recruitment of Omar Khadr vis-à-vis his family, who were, by all appearances, his sponsors and facilitators in his military action?

Mr. Howard Anglin: It's a difficult question. I certainly don't claim to speak for Canadian law on the point.

As a matter of international law, the law punishes states and non-state actors who recruit underage children. If members of his family could be considered members of a non-state actor, such as al-Qaeda, and responsible for his illegal recruitment—and I know there are a lot of ifs in here—then they could be considered guilty of violating the optional protocol on the involvement of children in armed conflict. But it would require much more investigation and more facts than I have at my disposal.

Hon. Jason Kenney: If he can't be prosecuted in Canada under our domestic criminal law—as you've testified—what would happen to him, in your judgment, if he were to be transferred back to Canada?

Mr. Howard Anglin: I'm sorry, did you say if he can or can't?

•(1255)

Hon. Jason Kenney: If he cannot be prosecuted under our criminal law... I don't see what charge could be brought against him, because the charges are that he killed an American in Afghanistan,

and I'm not aware of any domestic Canadian laws that would allow us to prosecute for what happened abroad to a foreign citizen. So if he were to be repatriated to Canada, what do you think would happen to him?

Mr. Howard Anglin: Again, I'm not a Canadian-trained lawyer; I can't speak to the Canadian law.

I didn't testify that he couldn't be tried in Canada. I think it would be inappropriate to try him in a civilian court; he's a military detainee. I wish I could speak to it. I really am not familiar enough with Canadian law. I couldn't say whether he could or couldn't be prosecuted under Canadian law. I'm sure there would be great difficulties—certainly evidentiary difficulties—that are taken into consideration in a military tribunal that I presume wouldn't be taken into consideration in a Canadian civilian court. To me, that would be the biggest bar to any conviction.

As to what he could be charged with, I presume Canada has some statutes that relate to aiding and abetting terrorism. Perhaps he could be charged under those, but you would have to ask a Canadian lawyer.

The Chair: That concludes the time for this round.

Mr. Marston, you're going to have to be our last questioner, so please go ahead.

Mr. Wayne Marston: Obviously, from the comments you just made, you didn't get a chance to see the testimony from Professor Forcese yesterday. He had some legal students with him, and he was going through those statutes of Canadian law that would be applicable if Mr. Khadr were brought back to Canada. I appreciate the fact that you were not even attempting to step outside of your expertise.

Consistent with the testimony we had yesterday, if he were brought back here, do you believe—and this may be a stretch here—that within the norms of Canadian law as you understand it to be, if Mr. Khadr were charged in Canada, the process in Canada would supply the sense that justice was satisfied by going through the Canadian court system?

We have a situation in which the significant difference, I think, between us and some others is the recognition that this person was a child combatant. We do have a grey area around the age of 15. I'm not trying to refute what you're saying, but if that person were brought back to Canada and treated under Canadian law as though the offence had taken place at the age of 15, would you see that as being an area in which the Canadian public would be satisfied that justice was served?

Mr. Howard Anglin: I think it would require a poll to determine whether the Canadian public would think it had been served. I've no doubt the Canadian courts meet the requirements of the Geneva convention. I'm certainly not going to debate you on that point. I think it would be inappropriate, as I said, given the way battlefield detainees are captured and the lack of evidence taken at that time, to then try to obtain a conviction based on the sort of evidence naturally obtained when one captures someone on a battlefield, as opposed to at a crime scene, with careful documentation and witness statements and evidence.

I don't disagree with your point that if he can be tried in Canada, I'm sure the Canadian public will be satisfied, but I don't think it alters the fact that the process he's currently undergoing is just as sufficient to meet international legal requirements. So if Canada is trying to make a determination based on whether he's receiving insufficient process or not, I don't think there's a difference there.

The Chair: You still have a little bit of time, Mr. Marston.

Mr. Wayne Marston: There's one thing that's a little bit outstanding for me, and that is Camp Iguana and the fact that the other—for lack of a better term—“child combatants” in Guantanamo were all segregated there. Can you offer any insight as to why you think this individual, who was 15 when captured and 16 when he got to Guantanamo, would be excluded?

Mr. Howard Anglin: I have no idea. I really don't. I postulate, but it's purely a guess, that his intimacy with the bin Laden family in particular and with high-ranking members of al-Qaeda may have made him a very information-rich intelligence target that some other children might not be. That, to me, seems plausible, but I don't know.

Mr. Wayne Marston: That intimacy, in my view, would be playing with the other bin Laden children, but that's my own personal view.

Mr. Howard Anglin: His father was a close intimate, from what I understand—

Mr. Wayne Marston: Oh, his father was a different story.

Mr. Howard Anglin: He was a dutiful son following his father, I'm sure. Around the campfire, many stories were shared that could be useful to Canadian and U.S. intelligence.

• (1300)

The Chair: All right. That concludes this round of questioning.

Thank you very much, Mr. Anglin, for coming here. Thank you for putting up with the vagaries of the way this committee operates.

I'm going to ask our next witness to come up immediately so we can keep going.

I'll remind everybody that we do have refreshments available, but you have to get them on the fly or else wait until the end of the meeting, because we're not planning to stop at any point.

We were meant to complete this part 10 minutes early. That didn't work. We are at exactly 1 p.m., so when Mr. Raghubeer is finished with his comments, we'll see how much time is left. I suspect it will make the most sense for us to have one round of questions, and we'll adjust the length as necessary to allow for us to go in camera at the end of the meeting. I'll seek consensus on what seems like a

reasonable length of time for that one round when we get to that point.

With that out of the way, Mr. Raghubeer, if you are ready to start, please proceed.

Mr. Naresh Raghubeer (Executive Director, Canadian Coalition for Democracies): Good afternoon. On behalf of the Canadian Coalition for Democracies, I'd like to thank the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development for inviting me to testify.

Founded in 2003, the Canadian Coalition for Democracy—CCD for short—is a national, non-partisan, multi-ethnic, multi-religious organization of concerned Canadians dedicated to promoting democracy at home and abroad and to defending civil liberties and national security. CCD focuses on research, education, and media outreach to build a greater understanding of the importance of national security and a pro-democracy foreign policy.

CCD is concerned about Mr. Omar Khadr and the challenges his case poses for Canada as a nation that respects human rights, international law, and due process. Before presenting our concerns, CCD wishes to make clear that, first, we support Mr. Khadr's right to Canadian consular access, and second, we believe the Canadian government has an obligation to make direct representation to the U.S. government, a close ally and major trading partner, to ensure that Mr. Khadr enjoys the full benefit of a constitutional U.S. regime of law and procedure.

I will touch on three areas arising from the Khadr case during my presentation: the jurisdictional struggle over Mr. Khadr, the Khadr family, and the issue of Canadian citizenship jurisdiction.

CCD is concerned about the potential precedence arising from jurisdictional questions concerning charges that Mr. Khadr “conspired with members of Al Qaeda to commit acts of murder and terrorism against U.S. and coalition forces”.

Generally available facts and testimony heard by this committee attest to the extent of an unfolding jurisdictional struggle over Mr. Khadr. Which nation has the right and responsibility to bring him to trial? Three national jurisdictions come to mind: Afghanistan, the United States of America, and Canada.

Mr. Khadr, a Canadian citizen, is alleged to have committed serious crimes in Afghanistan. All else held equal, Afghanistan might therefore have claimed jurisdiction for the homicide and wounding cases. The United States of America was another possible jurisdiction, counting two of its citizens, one injured and one dead, and both U.S. armed service members, victims in the fray: Sergeant Layne Morris and medic Sergeant 1st Class Christopher James Speer.

The third state with any particular jurisdiction over Mr. Khadr is Canada, where he happens to be a citizen. Mr. Khadr was not charged in Afghanistan for the crimes allegedly committed there. Rather, it was the United States that asserted jurisdiction to charge and bring Mr. Khadr to trial before a U.S. court. In its recent decision, the Supreme Court of Canada recognized constitutional and other shortcomings highlighted by the U.S. Supreme Court and the latter's criticism of military tribunal arrangements respecting Mr. Khadr. However, there is some indication that this tribunal regime has since been revised to take account of U.S. international legal issues. In any case, the Supreme Court of Canada was perhaps more realistic when, in last week's *Canada v. Khadr* decision, the full bench conceded that, "The ultimate process against Mr. Khadr may be beyond Canada's jurisdiction and control".

Considering the Supreme Court of Canada's decision, CCD believes that Parliament must allow process to take place, as long as Mr. Khadr is granted the full measure of the benefit of U.S. constitutional legal protection.

With regard to the Khadr family, CCD is concerned about the possible legal and other responsibilities of certain members of Mr. Khadr's immediate family, for one or more of these members have reportedly jeopardized Mr. Khadr's and others' safety by radicalizing and inciting him to idealize *shahid* status—martyr status. They then delivered him as a child into the control of the most virulent of the world's jihadists or holy warriors. CCD believes it is incumbent on Parliament and the Minister of Justice to review the role played by members of the Khadr family in exposing Omar Khadr, a child, while still in Afghanistan, to what might be considered hate, jihadist incitement, and weapons used for no other purpose than killing. Indeed, to what extent did this priming for hatred occur in homes and institutions of our own country?

According to testimony before this subcommittee, Mr. Khadr's defence counsel, Lieutenant-Commander William Kuebler, expressed his "condemnation of Maha and Zaynab Khadr" and noted that "it would be appropriate for the U.S. government not to want to repatriate him in such a way that he will fall in line with them and other influences in his immediate family". Such statements call on us to ask why this subcommittee on human rights, the Minister of Justice, and even the Ontario Ministry of Children and Youth Services are not investigating the Khadr family's possible role in leading Omar Khadr down the path to martyrdom.

● (1305)

Canadians need to know if there was negligence or something worse on the part of Maha Khadr and need to show others that the family law presumption of "the best interests of the child" does not contemplate hatred and killing. Moreover, Canadians deserve to fully understand the role played by the Khadr family in promoting jihad and martyrdom to children who are Canadian citizens. Were members of the Khadr family party to Omar Khadr's alleged offences? Again, this should be investigated.

If indeed Mr. Omar Khadr was coaxed or manipulated into becoming a jihadist, those responsible should be brought to justice in Canada as soon as possible. Failure to enforce our laws would establish a dangerous precedent and embolden extremist parents to use Canada as a hate haven in which to groom Canadian children for

jihadi Islamist activity against unsuspecting Canadian neighbours and foreigners.

Next, allow me to touch briefly on the subject of Canadian citizenship. CCD is also concerned about Parliament's relative inattention to the need for clear thinking and serious study about the rights and duties of citizens and government in matters of Canadian citizenship. CCD urges members of this subcommittee and Parliament as a whole to undertake a comprehensive public review of the rights and responsibilities of Canadian citizenship, and of dual citizenship, in this new era of global travel, tourism, tribal regional conflicts, and wars carried out by non-state actors like Hezbollah, Hamas, and al-Qaeda.

As part of this study, CCD urges Parliament to seriously consider Canada's obligation or support for dual-citizenship and other Canadians who serve without Canadian authorization in foreign militias and armed forces such as the Israel Defense Forces, the Islamic Courts Union in Somalia, the Taliban, or the U.S. armed services. Is service in foreign armies—or in foreign governments, for that matter—really compatible with the kind of assurance of loyalty that Canada and Canadians deserve? Parliament must consider whether it wishes to continue permitting any and all Canadians, regardless of country of origin, to maintain dual nationality.

We have seen in the case of Syria and Mr. Maher Arar how certain countries refuse to respect Canadian citizenship. By studying and reviewing the issue of citizenship and the government's proper role in attendant matters, Parliament can begin an important dialogue. Parliamentarians can clarify what it truly means to be a Canadian, what limits and expectations apply to citizens at home and abroad, and the nature of any boundaries beyond which Canada's capacity to assist nationals abroad might be circumscribed. This is a fundamental matter of sovereignty, and as elements of the Khadr case suggest, this conversation has been a long time coming.

Thank you.

The Chair: Thank you, Mr. Raghubeer.

You've completed your comments at 10 minutes past. I suggest we have one round of seven-minute questions and answers.

Mr. Cotler, if you would start.

● (1310)

Hon. Irwin Cotler: Thank you, Mr. Chairman, and I want to thank the witness for being with us today.

My question is based on a comment you made, if I heard it correctly, that the legal process with respect to Omar Khadr should be allowed to take place provided he is being given the full protections under U.S. constitutional law.

Do you believe he has been provided with such appropriate constitutional protections, given the illegal and prolonged detention, the lack of counsel during the first several years of his detection, the coerced interrogation and the like? Indeed, even the U.S. Supreme Court found this process to be illegal.

Do you believe that Omar Khadr has in fact received appropriate constitutional protections with respect to prosecution?

Mr. Naresh Raghubeer: At this time we believe the system under which he is being brought to trial is appropriate. There were certainly violations of international law, and the U.S. Supreme Court recognized that. The Canadian Supreme Court also recognized the U.S. decision. We acknowledge those difficulties. But there's a process in place, and as the Canadian Supreme Court noted, we may not have any jurisdiction there. At this time we agree that the process should continue.

Hon. Irwin Cotler: I'm asking whether you believe he has received appropriate protection under U.S. constitutional law, leaving aside for the moment such violations of international treaty law as may have been found by the U.S. Supreme Court, and which in fact underpinned the recent decision by the Canadian Supreme Court. I'm talking about positions you have taken. Do you maintain that Omar Khadr has received appropriate protections under U.S. constitutional law?

Mr. Naresh Raghubeer: Sir, I'm not a U.S. constitutional expert, nor am I a lawyer. However, I and our Canadian Coalition for Democracies believe that Mr. Khadr has been treated relatively well compared to how other states treat their citizens. Mr. Khadr has been granted very able counsel, and he has been able to communicate with his family. He's healthy, from what we are made to understand, and we are confident that he is being treated appropriately.

As for the U.S. constitutional law, the U.S. Supreme Court, as you know, is reviewing this matter and it will make that decision. But at this point, we do believe he has been treated appropriately.

Hon. Irwin Cotler: And do you believe that his detention, treatment, and prosecution have been conducted in accordance with international humanitarian law, including the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict?

Mr. Naresh Raghubeer: We do believe, sir, that he has been treated appropriately.

Hon. Irwin Cotler: That will conclude my questions.

The Chair: All right. We will open it up to your colleague, Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): I am curious about his belief. Can he tell us what evidence he has for that being the case?

I'm baffled by your statement, without there being any concrete backing to those remarks. If you feel he has been treated properly, tell us how. I have yet to hear it.

Mr. Naresh Raghubeer: As I noted, Afghanistan, first of all, had a jurisdictional claim to Mr. Khadr. They could have charged him in Afghanistan and tried him there. The Americans have asserted their right to try Mr. Khadr. In doing so he has been afforded the protection of U.S. constitutional law. The U.S. Supreme Court has reviewed this matter, and where there were violations they noted that. That system is now being corrected, and it has been corrected, so he is currently being treated appropriately.

• (1315)

Hon. Irwin Cotler: Sorry, I have one question. If the U.S. Supreme Court found he was not afforded the protections under

international law, that in fact international treaty obligations were violated, and the Canadian Supreme Court based its decision on that finding of fact and conclusion of law of the American Supreme Court, how is it that you maintain he was treated in accordance with norms of international humanitarian law?

Mr. Naresh Raghubeer: I believe the question was whether he is being treated appropriately, and I do believe he is currently being treated appropriately. There were violations, which we have acknowledged and the U.S. Supreme Court has acknowledged. There have been steps to remedy those violations. So at this current point, and from when the U.S. Supreme Court ruled on that, actions have been taken to ensure that he is being treated appropriately.

The Chair: You still have a bit of time left.

Hon. Irwin Cotler: I fail to appreciate how there can be a retroactive legitimization of actions that were clearly unconstitutional and illegal at the time they were taken. For example, how do you legitimate or sanitize prolonged and illegal detention, denial of counsel during the first several years of his detention, coerced interrogation—I could go on. These things cannot be remedied by subsequent later compliance by the U.S. with a prosecution that is already fatally flawed and deemed to have been illegal.

Mr. Naresh Raghubeer: That is your opinion, and you're welcome to it, but as I've noted, we've not tried to whitewash the fact that violations took place, violations that were acknowledged by the U.S. Supreme Court. Since those decisions, actions have been taken to remedy those violations, and it is our belief that he is being treated appropriately.

The Chair: I'm afraid that uses up the time available for that round of questions.

Madame Barbot, s'il vous plaît.

[Translation]

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

Mr. Raghubeer, we are not talking about opinions but about established facts. In Mr. Khadr's case, not everything has been appropriate and not all international laws have been observed, particularly the Geneva Convention that the United States and Canada have signed. In that light, it seems to me that, as people of good will, we should at least admit that Mr. Khadr has not been treated according to the provisions of the Geneva Convention, to which we are a signatory.

You also bring up the question of family responsibility. His detractors would have us believe that he chose to be with al-Qaeda in 2002. At least one member of his family has said that the father would have killed him if he had done anything against Islam.

In that light, how do we conclude that a boy from a family like that could really have chosen the situation he found himself in in 2002? If his own country is not prepared to help him and make up for the possible inadequacies of his family—I say possible—who is? Is it not the Canadian government's role to do so? Instead of making more accusations, let us get him back to his country to stand trial.

[English]

Mr. Naresh Raghubeer: Thank you.

With regard to your comments about the Geneva convention, in my brief statement I did not go into that convention. I'm not an expert on the Geneva convention, nor did I claim to be. I simply stated that we believe he's being treated appropriately at this point.

As for your question about family responsibility, I think there is ample evidence that this family may have contributed to brainwashing him, to manipulating him, and perhaps to coaxing him into becoming a jihadist. If we acknowledge that, what responsibilities do we have as Canadians, and what responsibility does the government have to ensure that Canadian parents are not treating their children in that way or are not grooming their children to become bomb factories or jihadists? We have a responsibility, I think, after hearing the comments from the Khadr family.

Let me cite Mrs. Elsamnah, who praised al-Qaeda and suicide bombers on camera for CBC. She said Americans got what they deserved on 9/11 and that terror camps in Afghanistan were preferable to the school system here, where they risked exposure to our values. We've had another member of the family, Omar's sister, say they all wish for martyrdom. Her views were no doubt shared by her husband, an al-Qaeda terrorist. So there is family responsibility.

• (1320)

[Translation]

Mrs. Vivian Barbot: Sir, excuse me. We are not here to put his family on trial. We are here to talk about Omar Khadr.

How responsible is a 15-year-old boy? Should the state be protecting this child even though he might have the worst kind of family? That is what I want to know exactly.

[English]

Mr. Naresh Raghubeer: Should the father protect the young children, you ask? Should the mother protect the young children, I ask? Mothers have traditionally been the guardians of children. The father is now deceased; we can't hold him accountable. But should the mother protect the children?

Should the siblings protect those under the age of 15? I would argue yes, and I think it's incumbent upon parliamentarians to ensure that he's protected.

[Translation]

Mrs. Vivian Barbot: We are not putting the parents on trial: we are discussing Omar Khadr. Could you get back to Omar Khadr and tell me if, at the age of 15, he has to be accountable for everything that his family has said or done?

[English]

Mr. Naresh Raghubeer: As you've said, if he's 15 he's a minor. In Canadian law, minors are the wards of their parents. There are two

parents involved here, a mother and a father. The mother is partially responsible for him. I don't know why you wish to ignore her role and responsibility in acting to protect her son from jihadist incitement, the quest for martyrdom, and wanting to get engaged with al-Qaeda, a known terrorist entity.

The Chair: You still have two minutes.

[Translation]

Mrs. Vivian Barbot: No, I will let it go. That is all.

[English]

The Chair: Okay.

Mr. Marston, it's your turn.

Mr. Wayne Marston: Thank you.

I want to take you back to the comment you just made that at 15 years of age it's the family's responsibility to ensure that a young man grows up appropriately. Is that basically what you were saying when you were talking about the Khadr family?

Mr. Naresh Raghubeer: Yes, it's partially the family's responsibility.

Mr. Wayne Marston: I don't disagree with you, and I don't think there's a person around this table who would agree in any fashion with the quotes and things that have been attributed to the Khadr family.

You said earlier in your testimony it was clear that the family had taken Omar Khadr to the level of wanting to be a martyr—or words to that effect. Is that basically what your testimony was in the first part of your presentation?

Mr. Naresh Raghubeer: I said we should be investigating whether the provincial government should be looking into the role played by the family in contributing to that.

Mr. Wayne Marston: But in your testimony you referred to the fact that your belief, or your organization's belief, was that the family had either instilled in Omar Khadr or brought him to the point where he wanted to be a martyr. Is that pretty much what you were saying or inferring?

Mr. Naresh Raghubeer: We said in our statement:

Such statements call on us to ask why this Subcommittee on Human Rights, the Minister of Justice, and even the Ontario Ministry of Children and Youth Services, are not investigating the Khadr Family's possible role in leading Omar Khadr down the path to martyrdom?

Mr. Wayne Marston: But even prior to that in your testimony you were basically saying that. We have plenty of evidence of the feelings and views of the Khadr family, but what hard evidence do you have that the family instilled that in their son?

Are you aware that Omar Khadr was probably around 14 years of age when he left Canada? Coming back to what we were discussing a moment ago about the family's responsibility to protect him at that age, we've had testimony before this committee from Mr. Crane, who was a Sierra Leone prosecutor who refused to prosecute 8,000 child soldiers. The UN calls for rehabilitation and then reintegration for young people who are involved as child soldiers.

He was 15 years old. If he wasn't protected by his family, he sure as hell should have been protected by his country once he was in Guantanamo and in the middle of the system. In Bagram he was interrogated 42 times in 10 weeks before he went to Guantanamo. When he was in Guantanamo he didn't have the option the other young people had of being put in Camp Iguana; he went into Delta where the adults were.

That was not somebody looking out for the interests of this young man, this boy. I think it's incumbent on Canada to take up his case and bring the young man home for rehabilitation. It should be done in a manner where he's not brought into the bosom of his family; the way they view Canada and the rest of the world is not acceptable to us. We want him brought to Canada to come before our judicial system, be rehabilitated, and be put back into society once that's done.

• (1325)

Mr. Naresh Raghubeer: Let me try to address the three points you brought up.

First you asked about evidence I may have. You can list Mr. Khadr's own defence counsel, Lieutenant-Commander William Kuebler, who expressed in front of this very committee that "it would be appropriate for the U.S. government not to want to repatriate him in such a way that he would fall in line with them and other influences in his immediate family".

We know that this family has contributed to raising this child as a young jihadist. They have certainly contributed to his current situation. You asked whether he should have been protected, and I would argue he should have been protected here in Canada first before he became a jihadist. It's not just the role of families to protect their children. In our country, if the parents are failing to perform their very duties, the state has a responsibility to intervene. We have seen situations around the world where tens of thousands of kids are being taught today, through programs on television or from books, to aspire to be *shahids* or martyrs. That may even be happening in Canada, and it's incumbent on us to review those situations and ensure it never happens here.

Mr. Wayne Marston: But in the case of Omar Khadr, we do want the government to intercede and bring him home.

Mr. Naresh Raghubeer: And that is perfectly fine.

The Chair: Any further items, Mr. Marston?

Mr. Wayne Marston: No, that's good.

The Chair: In that case, it's the government's turn.

Mr. Sweet.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): I have a question, and then I'll give the rest of my time to Mr. Kenney, because I haven't been here. But I did go through our previous witnesses' testimony.

I always want to make sure we frame the argument in full, with all of its complexities. Mr. Khadr is facing very serious charges with the murder of a medic and the blinding of a sergeant 1st class. Even in our own Youth Criminal Justice Act there is a provision that if a crime is particularly heinous, and this has happened on our soil, a youth can be tried as an adult.

I'll read this previous testimony, which I wasn't here for, but I have it documented.

I'll read some of it back to you and then get your comment, Mr. Raghubeer. It reads:

So the idea that a soldier under the age of 18 can never really be a soldier and the claim that a 15 year old is not capable of genuinely consenting to serve are directly refuted by the text of the only applicable international instrument.

When Lt.-Cdr. Kuebler says that "children are never soldiers, they are children", or General Dallaire says that "no one is allowed to use young people under the age of 18 in any way whatsoever," their opinions are flatly contradicted by the official position of the United Kingdom, the UN Security Council, and the text of both the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children....

I'd like you to comment on those comments that were made one hour before you, Mr. Raghubeer.

Mr. Naresh Raghubeer: I think those comments speak for themselves.

You did raise the comments made by General Dallaire in front of this subcommittee. As a Canadian, I would like to say that I was quite appalled by his comments comparing Canada and the system he's being tried under today to al-Qaeda. I think General Dallaire should have been a lot more responsible in respecting Canadian law, in respecting the American constitutional legal process, and in understanding fully what we're dealing with when we talk about al-Qaeda and this new strand of stateless actors who are aspiring to kill not only non-believers, but also lots of Muslims who do not share their views. I think Mr. Dallaire needs to review those facts and certainly apologize to Canadians for what he said.

• (1330)

Mr. David Sweet: Thank you, Mr. Raghubeer.

Mr. Mario Silva: On a point of order, Mr. Chairman, I rarely ever do this, especially to witnesses, but certainly General Dallaire, who has served this country honourably, is a man with great integrity and respect for human rights. I'm appalled that it's turned into a question about his honour and service to both this country and to the rule of law. I think what he was trying to say more than anything else was the question of respect for international law and not to disregard international law. I think that needs to be put on the record.

The Chair: Mr. Silva, I appreciate the intervention. That's not actually a point of order, which has to deal with whether order is being followed, but I appreciate that.

Let's turn this over to Mr. Kenney.

I won't take this out of your time, Mr. Kenney.

Hon. Jason Kenney: Mr. Raghubeer, we've had a lot of legal testimony. Of course, you indicated you're not a lawyer. I gather you represent an organization whose preoccupations and principal concerns are terrorism and national security. Obviously those are issues very much at the heart of the Khadr matter.

We have sought to call to this subcommittee as witnesses members of the Khadr family, so that we could better understand the context and motivation surrounding his recruitment and service apparently in the al-Qaeda network. But we have been unsuccessful. They have refused to cooperate with this subcommittee.

Given that you commented on the Khadr family and the environment in which he was raised, recruited, and put to the service of al-Qaeda, could you elaborate a little more? I actually have never seen the interviews. Mr. Marston keeps talking about his passionate disagreement with the opinions of the Khadr family. I don't know what they are, but I could guess. Could you summarize as best as possible? Perhaps you've studied the al-Qaeda movement, the Khadr family's sentiments. Can you explain what you think motivated Mr. Khadr to do what he did?

Mrs. Vivian Barbot: What did he do?

Hon. Jason Kenney: What did he do? I gather he joined al-Qaeda, which is an international terrorist organization dedicated to creating an 8th century caliphate extreme Muslim dictatorship and to killing Jews and Americans and allies of the United States. I think that's what he did.

An hon. member: We're talking about Omar Khadr.

The Chair: I encourage everybody to keep order here. The question was directed to Mr. Raghubeer.

You have the floor.

Mr. Naresh Raghubeer: Thank you.

In terms of what motivated Omar Khadr, I'm not exactly sure, as I've not spoken to him. However, when you look at the influences around him, you've got to start asking questions. What we as an organization have done is we've spent a fair bit of time looking at Islamic jihad, radical Islamic movements, and other terrorist movements, whether it's the Tamil Tigers or other non-state actors. We are concerned about the level of hate and incitement that is being broadcast to young people in Canada and abroad. I believe CSIS has also commented on the Internet being used to promote hate and incitement and even to recruit young jihadists.

We've seen the arrest of a number of young men in Toronto a few years ago. We've seen the London bombing. We've seen incidents in Madrid. We've seen incidents just two weeks ago in Jaipur, India, where jihadists were seeking to maim and kill innocent people.

What we have to do—I hope what Parliament will do—is begin to comprehensively review incitement in Canada and take steps to ensure that there are laws in place that prohibit the glorification of terror, that prohibit incitement, and that our law enforcement agencies will actively seek out and go after those who promote hatred and incitement. That includes parents who expose their children—especially their minor children—to such messages, whether it's in a mosque, whether it's in a gurdwara, whether it's at a temple, pick your place. But if parents are exposing their children to such views, it's incumbent upon all of us—especially Parliament and our law enforcement agencies—to ensure that does not continue.

•(1335)

The Chair: Do you have any further questions?

Hon. Jason Kenney: So you don't have any specific comment on the family—what they've said, what's on the record, their commentary on Omar's situation?

We've been at this for over a month; I haven't seen anything. Perhaps researchers have provided it.

Have we asked for a research report on that?

The Chair: They've been sent to translation.

Hon. Jason Kenney: All right. I'll take a look at those transcripts.

Do you have anything you could furnish us with, with respect to the atmosphere that apparently motivated Mr. Khadr to do what he did?

Mr. Naresh Raghubeer: I'll just comment briefly on a few of the family members. We know that his deceased father, Ahmed Said Khadr, was a friend of Osama bin Laden's. He was an alleged financier of terrorism. He sought to work with al-Qaeda; he moved his family to Afghanistan to do just that. And we know that from the views expressed by his family who remain alive today—it was Omar's sister who noted it—they all, the entire family, wished for martyrdom. Certainly that view, she noted, was shared by her husband. We know that Omar's other brother, Abdullah, is currently awaiting the outcome of deportation proceedings that could result in his extradition to the U.S. He is reputed to have purchased arms for al-Qaeda in Afghanistan, buying AK-47 mortar rounds and rocket launchers. We know that Ms. Elsannah praised al-Qaeda and praised suicide bombing on CBC television.

But aside from these publicly available comments and views, the person who may know Omar and his family best would be his defence counsel, who in front of this very subcommittee offered condemnation of Maha and Zaynab Khadr. He went on to say that it would be appropriate for the U.S. government not to want to repatriate him in such a way that he would fall in line with them and other influences in his family.

There is clearly a problem in the Omar Khadr family. We need to recognize that and we need to take steps to ensure that any hatred and incitement, any quests for martyrdom, are not passed on to younger children who are within that family context today so that we do not create more young jihadists.

The Chair: That concludes the time available for that question and therefore the questions for our witness.

Mr. Raghubeer, we thank you for coming before us and for your testimony.

We are now going to go in camera, so I'm going to ask the assembled members of the media and others who can't hear in camera meetings to...

I'll just finish my thought, and then please excuse yourselves.

Mr. Marston.

Mr. Wayne Marston: It's just that we have two and a half minutes left before twenty to two. I thought perhaps we might be able to get one more question in.

The Chair: True enough, I suppose, if there's a willingness in the committee. I will look at who has used the least amount of time.

Strictly speaking, I suppose it would be either you or Madame Barbot, if there's a willingness.

All right, there's no objection.

Mr. Marston, just remember the time constraint.

Mr. Wayne Marston: I'll watch the clock, Mr. Chair. Thank you. I appreciate that.

One of the things I want to be clear on—because it was alluded to in the conversation back and forth across this table—is that we have hate crime laws in Canada. Those are significant laws, and if anybody—the Khadr or any other family—violates those laws or incites genocide, they certainly should be prosecuted under the law.

I think we're spending an undue amount of time here regarding the family, because it's clear. Your testimony was that the U.S. should not be repatriating him to Canada, according to Mr. Kuebler, if he was going to go into the bosom of his family. That has never been a suggestion here. We're talking about having him come back under due process of Canadian law and having him rehabilitated. He has one brother who has renounced the rest of the family, and that was the person whom the lieutenant-commander was suggesting it might be appropriate for him to return to.

I just wanted to get that on record, and it looks like I'm running out of time. Thank you.

• (1340)

Mr. Naresh Raghubeer: Can I just speak?

The Chair: Yes, but remember that brevity is in order here.

Mr. Naresh Raghubeer: Sure.

We do have hate crime laws in this country, sir, but as we've seen in various situations, they're not being applied. We do need stricter laws dealing with incitement and the glorification of terror, and we do need to enforce those laws.

The Chair: Thank you, Mr. Raghubeer.

I would encourage all those who can't be here for in camera proceedings to head toward the exits. We'll go in camera as soon as you've left the room.

[Proceedings continue in camera]

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