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Monday, May 12, 2008

Chair

Mr. Scott Reid

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● (1205)

[*English*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): I call this meeting to order.

We are the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development. This is meeting number 13. It is May 12.

We have one order of business for the first part of our meeting. That is, we have two witnesses at 1 p.m. After an hour, they will be dismissed and we will then move to the in camera consideration of committee business.

Without further ado, we should turn the floor over to our witnesses, who are Hilary Homes and Kathy Vandergrift. Respectively, they are campaigner for international justice, security, and human rights with Amnesty International, and chairperson of the board of directors of the Canadian Coalition for the Rights of Children.

Before I begin, I'll just remind our members that we adopted a motion at the last meeting that rounds will be five minutes long—the first round will be five minutes long as well as the others. That may not be necessary today, depending on how many folks are here for this part of the meeting. Unless we change those rules, that's what they are.

Without further ado, please begin.

Mrs. Hilary Homes (Campaigner, International Justice, Security and Human Rights, Amnesty International): Thank you.

This is a welcome opportunity to clarify and elaborate on our concerns about the case of Omar Khadr.

This is one of many cases of concern in Guantanamo Bay and other places of detention in the context of the so-called war on terror. Amnesty International is not alone in its position that the detention centre in Guantanamo Bay was created and continues to operate outside the rule of law, be that international human rights and humanitarian law or U.S. domestic law.

Many governments, including U.S. allies, have been critical of the conditions in Guantanamo Bay and have successfully sought the repatriation of their citizens years ago. Amnesty International has repeatedly called for the closure of the detention centre in Guantanamo Bay. Detainees should be released unless they are to be charged with recognizably criminal offences and provided with a fair trial before an independent and impartial tribunal such as a U.S. federal court. In cases where detainees face the risk of torture or other serious human rights abuses if returned to their home country, another solution should be found.

It is in this context that Amnesty International has raised the case of Omar Khadr with successive Canadian governments, through letters to ministers, media work, and public campaigning, since his capture at the age of 15, in the summer of 2002, and his initial detention and interrogation at Bagram Air Base in Afghanistan.

Whatever assurances the current government and past Canadian governments have accepted from U.S. counterparts, they must surely ring hollow by now. The treatment in Guantanamo Bay has not been humane. Even the International Committee of the Red Cross broke from its customary silence to express concerns about conditions in Guantanamo, including the impact of indefinite detention on the health of the detainees. The international committee also explicitly stated that it does not consider Guantanamo an appropriate place to detain juveniles.

Recently in the House, the Minister of Foreign Affairs, after reiterating the government's long-held position that seeking Omar Khadr's release was premature, given the legal proceedings and appeals under way, said “We are making sure that justice takes its course”. That's from Hansard on April 30, 2008. Respectfully, justice is simply not possible as long as Omar Khadr remains in Guantanamo Bay. Every step along the way the U.S.A.'s treatment of Omar Khadr has failed to comply with international law, including the special protections for children taken into custody and for children affected by armed conflict.

Guantanamo is a highly coercive regime, where detainees have been subjected to years of indefinite detention under harsh conditions. The right to be presumed innocent has been systematically undermined by a pattern of official commentary on their presumed guilt.

It is worth noting that the former chief prosecutor of the military commissions, Colonel Morris Davis, resigned on October 4, 2007, after concluding that full, fair, and open trials were not possible under the current system that had become deeply politicized.

Amnesty International is not saying that people currently detained in Guantanamo cannot be put on trial. We are saying that the military commission system does not represent a fair trial according to international human rights standards. The military commission system is part of a detention regime developed by the U.S. authorities to avoid independent judicial scrutiny of government conduct for its detainees, including by denying them the basic safeguard of a habeas corpus review.

It was a habeas challenge that was brought against the original military commission that led to that system being declared unlawful by the U.S. Supreme Court. The U.S. government's legislated response to the Hamdan ruling, the Military Commissions Act of 2006, subsequently barred the U.S. federal courts from considering habeas corpus appeals from four nationals held as so-called enemy combatants.

The current military commissions fall short of international standards in many areas, including the following. I'll just list a few here.

The prerequisite for trial under the Military Commissions Act is that the individual is an alien unlawful enemy combatant, a status that is unrecognized in international law. Among those currently facing trial are civilians detained outside any zone of armed conflict. Using military tribunals to try such civilians runs counter to international standards.

The military commissions also lack independence from the executive branch. They may admit information obtained in cruel, inhuman, or degrading treatment or punishment. The fact that the U. S. administration's definition of “torture” does not comply with international law, such as the convention against torture, could also mean that information extracted under torture could be admitted as evidence.

The right to trial within a reasonable time is not guaranteed.

● (1210)

The right to be represented by a lawyer of the detainee's choice is restricted. The rules on hearsay and classified information may severely curtail a defendant's ability to challenge the government's case against him. The right of appeal is limited, essentially, to matters of law and not fact. Of course, the military commissions apply only to those who are not U.S. citizens and thus are discriminatory.

Finally, the detainees may be subjected to the death penalty after an unfair trial.

Further, the failure of the Military Commissions Act to expressly exempt children from the jurisdiction of military commissions contradicts principle 7 of the draft United Nations principles governing the administration of justice through military tribunals. Principle 7 states that, and I'll quote:

> Strict respect for the guarantees provided in the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) should govern the prosecution and punishment of minors, who fall within the category of vulnerable persons. In no case, therefore, should minors be placed under the jurisdiction of military courts.

A source for that quote is the report of the special rapporteur on the administration of justice through military tribunals, January 2006.

As the committee members no doubt know, no existing international tribunal has ever prosecuted a child for war crimes, reflecting the wide recognition that the recruitment and use of children in armed conflict is a serious abuse of human rights in itself. Both the United States and Canada have ratified the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Central to the optional protocol is the condemnation of the use of child combatants and the obligation of states to provide the immobilized children with all appropriate assistance for their physical and psychological recovery and their social reintegration.

The Paris principles and guidelines on children associated with armed forces or armed groups further state that, and again I will quote:

> Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation....

The United Nations Committee on the Rights of the Child, through its general comment 10 on children's rights and juvenile justice—and that is one of the documents that has been distributed to the committee—has emphasized that every person under the age of 18 at the time of the alleged offence must be treated under the rules of juvenile justice. This includes promoting his or her reintegration into society. Detention must be a last resort and for the shortest appropriate period of time. Any deprivation of liberty must be tested before a legitimate court without delay.

After almost six years, Omar Khadr is still waiting for the opportunity to effectively challenge the legality of his detention. For the first few years of his detention, Omar Khadr did not have access to legal counsel. Rather than being afforded special protections by staff trained in the administration of juvenile justice, his young age was exploited in the context of coercive interrogations and incommunicado detention.

When the trial in another country meets international standards, non-intervention on behalf of a Canadian citizen might be understandable while the process is ongoing. But that is simply not the case here. Continuing to monitor and engage with the military commissions process, up to and including the appeal stage, serves only to endorse an unfair system and ultimately undermine international human rights standards, including the Convention on the Rights of the Child and the optional protocol on the involvement of children in armed conflict.

Canada has been a champion of these rights far too long to create an exception out of one of its own citizens. Given that the U.S. has no apparent interest in transferring the case to a civilian jurisdiction within the United States, the Canadian government should take all possible steps to protect its citizen by seeking Omar Khadr's repatriation and, if there is sufficient and admissible evidence, arranging for his trial in Canada. Any such trial must comply with international standards, including fully taking into account Omar Khadr's age at the time of any alleged offence and the role that adults played in his involvement as a child in the armed conflict in Afghanistan.

In keeping with the approach to other demobilized child combatants throughout the world, priority should be placed on his rehabilitation and reintegration into Canadian society.

Thank you.

● (1215)

The Chair: Thank you, Ms. Homes.

Ms. Vandergrift, please.

Ms. Kathy Vandergrift (Chairperson, Board of Directors, Canadian Coalition for the Rights of Children): Thank you for this opportunity.

I'm speaking to you today as chair of the Canadian Coalition for the Rights of Children, but it's relevant for my testimony that I have been a board member of the Coalition to Stop the Use of Child Soldiers. I was also coordinator of the children and armed conflict working group at the time the optional protocol on children and armed conflict was adopted. I co-chaired the civil society group at the first international conference on war-affected children, held in Winnipeg in 2000, and at the UN special session on children in 2002.

As a co-founder of the Watchlist on Children and Armed Conflict, which is an international monitoring group, I was engaged in the process leading up to each of the six Security Council resolutions on children in armed conflict.

So this adds up to ten years of working on this issue and trying to improve protection for the rights of children caught in wars.

From this background, I would like to present three points for your consideration today. The first one relates to the best interests of the child.

The best interests of the child are to be the primary consideration in all actions concerning children. This central principle of the Convention on the Rights of the Child is repeated in the optional protocol on children and armed conflict, both of which were ratified by Canada. It is central for dealing with child soldiers. The term "child soldiers" applies to more than those who fight on the front lines. It applies to persons under the age of 18 who are associated with fighting forces, whether they worked as carriers, as spies, or as captains on the front line.

Omar Khadr clearly fits in this group. The primary principle for your examination of this issue should be the best interests of the child, since he was under 18 at the time he was associated with fighting forces.

I have not seen an explanation of how Canada's current policy implements this principle. In November the government response to a Senate report on the rights of children stated that all policies relating to children are assessed for compliance with Canada's obligations under the Convention on the Rights of the Child. This committee may wish to ask for a copy of the assessment that was done to show that the position on Omar Khadr complies with the principle of the best interests of the child, to which Canada subscribes.

May I suggest to you that any assessment based on the best interests of the child, the optional protocol, and the relevant Security Council resolutions would point toward a plan for rehabilitation and reintegration.

Article 6 of the optional protocol states—and I'm quoting—"States parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present protocol are demobilized or otherwise released from service." This is the important line: "States parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."

This approach would be in the best interests of Omar Khadr, who was a Canadian child recruited into a fighting force. He remains a Canadian citizen.

But let's consider for a moment what has been stated as the primary consideration of the government—diplomatic relations with the United States. That is also important. The United States adopted the optional protocol on child soldiers even though it has never ratified the Convention on the Rights of the Child. I think that's significant, because it means this decision was a very deliberate policy choice by the United States.

Article 7 of the optional protocol commits states to helping other states fulfill their commitments. If Canada repatriates Omar Khadr with a reintegration plan, we would in fact be helping the United States live up to the commitments it has made as well as keeping Canadian commitments.

The second point I would like to ask you to consider is the best interests of Canada, including the interests of the Canadian military. Canadian soldiers do not like to meet child soldiers when they're deployed.

● (1220)

The Department of National Defence was not a strong proponent of the law against child soldiers when we were discussing it and it was adopted, but many, especially those who have seen child soldiers in action from Afghanistan to the Congo, now want to see it upheld. Undermining it is not in their best interests.

From the perspective of Canadian communities, the standard for good practice is a plan for rehabilitation and reintegration that addresses the specific situation of the child and the context. Such plans combine short-term intensive treatment and then longer-term community-based support.

Research has documented that returning child soldiers with a plan is better than without a plan. There is an emerging standard of good practice although this is still a new field. For an easy-to-read resource, I would suggest *Child Soldiers*, by Dr. Mike Wessells, a child psychologist who has developed and implemented programs that combine social-psychological treatment, education, and livelihood training through working for the Christian Children's Fund. He has experience also with programs in Afghanistan.

This issue does not need to be a partisan issue in Canada. All parties with strong public support supported Canada being the first country to adopt the optional protocol. In 2007, under the current government, Canada and 40 countries adopted something called the Paris principles and guidelines on children associated with armed forces or armed groups. Article 7 of that document spells out specifically that children captured by an opposing armed force retain their human rights as children, and specifically should not be subjected to torture or other cruel and inhuman treatment. It also states that all measures to promote physical and psychological recovery and social reintegration must be taken.

Article 3 spells out, as Hilary said, that children accused of crimes should be considered primarily to be victims, and those who recruit children should be prosecuted as criminals. Article 3.7 states that wherever possible alternatives to judicial proceedings must be sought. This approach would be in line with the standards of good practice for juvenile justice in Canada as well, as Hilary has mentioned.

The third point I'd like you to consider is the global best interests for peace and security. I would now draw your attention to six Security Council resolutions that state that protecting the rights of children caught in armed conflicts is a matter of international peace and security. They are resolutions 1261, 1314, 1379, 1460, 1593, and 1612, adopted in a timeframe from 1999 to 2005.

Canada worked for and supported each of these resolutions, each one stronger than the last. All of them call for the reintegration of former child soldiers and the prosecution of those who recruit and abuse children. That is the course laid out in Security Council resolutions. The last one, resolution 1612, puts in place very specific implementation mechanisms, because the Security Council was very concerned about continuing violations and strongly committed to achieving compliance in order to end the most egregious violations, including the use of child soldiers.

So we are asking Canada to do only what other countries are asked to do. If Canada does not follow Security Council resolutions, why should other countries? Other countries have been asked to take back and reintegrate young people who have committed offences as child soldiers, and they have done so. There are also cases in which this was not done, and young people joined other fighting forces, creating instability elsewhere. This is a security issue.

Finally, if Canada wants to have a principled, consistent, integrated foreign policy, then the policy on Omar Khadr needs review and revision. Canada is supporting programs in Colombia and northern Uganda to help in the reintegration of young people who are also involved with groups listed as terrorist organizations. Community acceptance is a challenge there too, as much as it is in Canada. But all those efforts are undermined if Canada does not do the same thing when the child involved happens to be a Canadian child.

● (1225)

We have letters from the former Minister of Foreign Affairs, Peter MacKay; the current minister, Maxime Bernier; the former Minister of International Development, Josée Verner; and the current Minister of International Cooperation, Bev Oda. All say that implementation of Security Council resolutions and other policies on children and armed conflict remain a high priority for Canada. So implementing at home those policies we promote elsewhere is essential.

The Omar Khadr case is not isolated or exceptional. It's a bellwether case. How it is handled will have serious implications for the future of the international laws that so many Canadians worked so hard to put in place. It is drawing increasing international attention and has the potential to undermine all the good work done by Canada and Canadians to protect the rights of children. Within a few weeks, a new global report on child soldiers will be released. Some progress is being made. The Omar Khadr case will be cited as potentially undermining these achievements. A change in Canadian policy before the release of that report would show Canadian leadership and encourage other countries to protect the rights of children caught in conflicts.

Finally, I will remind this committee that implementation of the Security Council resolutions on protection of children is widely seen as a step toward implementation of the responsibility to protect, a policy direction endorsed by all parties and the Canadian public. So the issue before you is a very important one. Canada has a choice: it can either undermine progress made toward protection of children, or it can show leadership in the best interests of the child, the military, youth justice in Canada, and global peace and security. Developing a reintegration plan and asking the United States to repatriate Omar Khadr with such a plan is the best way for both countries to respect commitments they made to children, and to contribute to global peace and security.

Thank you.

● (1230)

The Chair: Thank you to both of our witnesses.

Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

I want to take this opportunity to thank the witnesses. They are from well-respected organizations. I'm more familiar with Amnesty International, as I'm a member. I support Amnesty International, and I appreciate all the wonderful work they're doing on behalf of human rights all over the world.

We've heard that Canada has signed and ratified several major international treaties on the rights of the child. I think we have to realize that Canada has a positive obligation to make sure that we are fulfilling the commitments that we have signed and ratified. The U. S. has not ratified the Convention on the Rights of the Child. I think it's the only country besides Somalia that has not ratified it. But the U.S. still has obligations, because it has also signed the convention.

Most of us would agree that the situation in Guantanamo is outside the scope of international law. This is the case of a child soldier who is the only one in the western world still there. It seems to me that we ought to hold to the commitments we've made on international treaties. The Paris principles talk about child soldiers more as victims, and I think that's the way we have to see this.

How do we get the government to follow with their positive obligations? This is something they have to do as a matter of law if we are to adhere to our international commitments. Maybe you can elaborate on this.

Mrs. Hilary Homes: From our perspective, one of the things that has to happen is the recognition of the inadequacy of the military commissions. As long as that process is being treated as if it were a legitimate court, it's very problematic. Around that, of course, are all the obligations that say putting a child soldier on trial should be the last resort. In fact, it's something the States has never resorted to before. That's one of the key things at issue right now that does need to change.

I don't know if Kathy wants to add something specific on child rights.

Ms. Kathy Vandergrift: Thank you.

Certainly we have submitted letters and we are trying to dialogue with the government about it. I think more dialogue would be helpful. We find there's a hesitancy to talk about this; I recognize there's a security dimension.

What talking about it can also do—and I think it would be important—is to say there is an alternative. Other countries have used alternatives. We have worked with other countries to integrate child soldiers. I've had the privilege of working with some of those young people. You may have met Ishmael Beah, a former child soldier who came to Canada from Sierra Leone and leads initiatives globally.

There is an alternative path. That's helpful for the public debate. The more our members of Parliament debate the alternatives, the more helpful it will be. It's not just to see it so very narrowly, but to talk about it.

Mr. Mario Silva: I think both of you have spoken pretty much to the issues that are of concern, so maybe I'll turn it over to the next person.

The Chair: Okay.

[*Translation*]

You have the floor, Ms. Deschamps.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Thank you, Mr. Chairman.

Thank you, ladies, for your presentations which have helped shed a little more light on these matters of concern to me.

As you know, I have been very interested in the Omar Khadr case. He is a child soldier. As Mr. Kuebler mentioned during his testimony, children are never soldiers. They are merely children who have been illegally exploited by persons who lead them into danger.

After listening to various experts, I am even more concerned about the Canadian government's inaction. To date, it has not asked that Omar Khadr be repatriated. Furthermore, I would point out that Canada was the first country to ratify, in 2000, the Optional Protocol to the International Convention on the Rights of the Child on Involvement of Children in Armed Conflict. I also have to wonder why Canada is currently the only Western country that has not insisted that a national being held in Guantanamo be returned for trial to Canada. I think Omar Khadr can be assured of a fair trial under Canadian law.

Furthermore, according to a report submitted in 2007 to the United Nations under the Protocol, the United States is committed to using effective reintegration measures to address the problem of child combatants and espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants. This commitment by the United States is contained in a report presented in 2007 to the United Nations.

I have to wonder what is stopping the US government from taking steps to improve the treatment of this child. In my mind, he is still a child. He has been held since the age of 15 at Guantanamo Bay. Just how long has he been held there? I think it's been several years now, and he needs some support. It is difficult for us to know how he has been treated. Why are things not progressing? Is it because the government wants to make an example of Khadr and show in the process how the sins of humanity can be purged? I really don't know. I've leave it up to you to form your own opinion.

● (1235)

[*English*]

Mrs. Hilary Homes: I'll start.

On the question of whether or not he could be tried in Canadian courts, I would recommend that the committee hear from Craig Forcese, a law professor at the University of Ottawa, who did an extensive study on the Canadian legal system and what sort of trial and which laws might apply. It's about a 150-page report.

This question of the U.S. commitments—under the optional protocol—to reintegration of children and consistency, in terms of child soldiers.... Even when we look at what's happened in Guantanamo, we see the inconsistencies and we see how this case and some others are being treated as exceptions. They did detain upwards of 18 to 20 people in Guantanamo who were under the age of 18 when they were captured, and seemed to have created a dividing line at age 15 at the time of transfer. It is interesting, because of course Omar wasn't transferred until he was 16.

There was a group of youths who were held in what was called Camp Iguana and treated in a very different way from Omar Khadr and a number of other people, including another young offender in that context, who was also facing trial by military commission. I mean, they were certainly interrogated; they were treated as intelligence sources, but much more of their treatment reflected some of the principles of reintegration.

I would still not hold that Guantanamo was any example around how to deal with minors, but you could see that there was that divide and there was that inconsistency. It is important to mention this because it shows that the U.S. recognized that some of those obligations under international law exist, that there is a different way you are supposed to treat children captured in a context of armed conflict. Yet Omar and some others were treated very differently.

As to why that is happening, there are many different theories out there. It does certainly seem strange to compare this trial and the particular circumstances to some of the other individuals. In the level of responsibility they are alleged to have had in terms of events following September 11, 2001, there is quite a contrast there, shall we say.

What this really gets down to is seeing someone like Omar Khadr as an individual and not seeing him as a proxy for members of his family or members of the organization he was connected with. In the end, he has to be seen as an individual child caught up in armed conflict and treated according to the law that governs that, and that is simply not what we're seeing. While it may be understandable on one level, it is simply not acceptable, and that has to change.

● (1240)

The Chair: Sorry, Ms. Vandergrift, this is not your fault, but the question was very long. We're now at almost at seven minutes. You can certainly speak to it, but I'll ask you to be concise.

Ms. Kathy Vandergrift: Okay, I will just add another bit of detail.

I was part of the group that helped to take some of those young children from Guantanamo to other countries, and the model was we did need to find a way they could move back to their location. That is a bit of a challenge, and dealing with these is not an easy matter. I don't want to underestimate it, but certainly we have the resources in Canada to do it, and we should do it.

The Chair: Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): I want to thank both of you for being here and also for bringing a bit of a different perspective.

One of the things that has not been given a lot of consideration—at least by our government—is what to do with this young man once he's home. That is crucially important. When you think of Canada's history, going all the way back to the Nuremberg trials, and how since that time society as a whole has tried to wrestle with the aspect of child soldiers and the military, as you pointed out.... I had one person in Hamilton talking to me a couple of weeks ago, and he suggested that in the heat of the battle when you're faced with a child, you'll hesitate, and that's something they can't do in the heat of battle.

A moment ago you alluded to the fact that it appears that this boy was 13 or 14 when he left here and followed his father— and I made the case repeatedly here—as a dutiful son, but to some extent it appears that both the U.S. and perhaps Canada are punishing him for the sins of the father. The damage that is doing to Canada's worldwide reputation.... We have an opportunity here to salvage some of that, because since 9/11 there have been a lot of questions—both in the U.S. and in Canada—about the rights that were sacrificed because of 9/11 and the intensity of the time. Now that we have moved a bit away from that, we tend to look at it a little more clearly.

The question would be how do you see this particular case, and Canada's handling of it, and how will that set a precedent perhaps worldwide, a negative precedent?

Ms. Kathy Vandergrift: Thank you for that question.

That was one of my points, and I would really urge the committee to think about that very hard.

This is not an exceptional case. It is being cited internationally as undermining the progress that's being made. I would just repeat the point I made: If Canada is not going to follow UN Security Council resolutions and the optional protocol, how can we ask other countries to do so? It is setting a precedent. It will be cited in the child soldiers global report. It was already cited in the last report of the special representative of the Secretary General for children and armed conflict. It will be again. It will be re-cited at the United Nations Human Rights Council in terms of Canada's record.

There is a global impact. We can set a precedent.

I would also appreciate this committee focusing on the positive precedent we could set, even at this late stage. If we decide to do something now, we could change that precedent and show some leadership and, as I argued, also help the U.S. fulfill commitments it has made under the optional protocol. It is not too late to turn what could be a bad precedent into a good one.

● (1245)

Mr. Wayne Marston: I would just add that the cost of revenge is very high here, because to my mind, that is all I see. I can't see any rationale anywhere for treating a child combatant, who was 15, in the manner in which he is being treated. We have the opportunity, by simply following the covenants we have signed and the protocols we are signatories to, to change the whole perspective of this. I am very troubled—I'm kind of repeating myself—by the tone we are setting for the rest of the world. Canada has been a leader for so many years on the human rights front. All our protestations elsewhere will ring very hollow at the end of this day.

Thank you, Mr. Chair.

Ms. Kathy Vandergrift: I would agree. There is time to do something about it.

The Chair: Thank you.

Mr. Sweet, you have the floor.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): Thank you, Mr. Chair.

Thank you for your comments thus far and for the good work you do.

I will maybe just confirm that we all agree with your statement that this issue before us is an important one.

Omar Khadr stands accused of killing medic Christopher James Speer and of blinding Sergeant First Class Layne Morris. Isn't it true that if repatriated, Omar Khadr would not be tried for the death of Christopher James Speer?

Mrs. Hilary Homes: That is a question you really need to put to someone like Professor Craig Forcese in the context of the study he did. I cannot say either way. Part of it has to do with whether the evidence is admissible and so on. The evidence was collected under questionable circumstances, and that is one thing that has to be tested.

I can't give you an absolute answer to that today.

Ms. Kathy Vandergrift: What I would like to draw your attention to is that if that is going to happen, then according to all the conventions we have signed, it would happen in the context of the youth justice system that Canada has in place. There has to be that legal assessment.

I would also ask you to consider that other child soldiers are accused of equally horrendous things—some of them, in northern Uganda, of killing members of their own families. Yet we ask those countries to bring those young people home and reintegrate them, often without trials. I've seen it, and I've worked with them.

We're not being asked to do something we don't ask other countries to do. There are various ways of having legal accountability, and in some of those countries it has to do with traditional approaches to justice. That is not to say that young people are not held accountable, but they're held accountable in ways that are restorative and that reintegrate them into their societies. That's what we are holding up as a norm when they are children. That is the norm that's held up in all the agreements Canada has signed.

The Chair: Before going back to Mr. Sweet, I think Ms. Homes had something to add.

Mrs. Hilary Homes: I have just a small point.

As I mentioned at the beginning of our remarks, Amnesty International has been campaigning on this case since his initial capture in 2002. One of the things we raised in the context of this case and in the cases of other people who were before the initial military commission was the question of whether it was appropriate for them to be before a military tribunal, regardless of who they were and what they were charged with, given that a number of them were either child combatants or civilians. The alternative, which doesn't seem to be in play here, has to do with jurisdiction within the U.S., including the U.S. federal courts, which I mentioned before.

The reason we're asking for repatriation now is because the U.S. shows no interest in transferring this case or any other case to the jurisdiction that does in fact meet international standards for fair trials and that can accommodate some of the juvenile justice issues. If that were in play, we would be having a different conversation. But it simply does not appear to be in play at all.

Mr. David Sweet: Ms. Vandergrift, you mentioned in your testimony that this case is not exceptional but a bellwether one, so it seems to me that it is exceptional in some sense. I am very familiar with Ishmael Beah. I recently read his book, and it seems to me that the circumstances of Mr. Beah's life and how he was recruited, etc., are far different from this case.

Of course, the Khadr family are on public record as very clearly supportive of al-Qaeda and of being complicit with them.

Let me ask you this: given your position that he was illegally recruited as a child soldier, who should be prosecuted for this case?

● (1250)

Ms. Kathy Vandergrift: We'd need a lot more time and a closer examination of the details of the case to go into that. When I said that he was not exceptional, I was highlighting that there are child soldiers in many different situations. Yes, Beah is one. You can look at northern Uganda and you can look at Sri Lanka, and there are differences, but how they are similar and why this is precedent-setting is that we are trying to change the way these cases are treated. In that sense, I think this one sets a precedent. It isn't so apart from all the others that it isn't going to be seen as a precedent—it is. So that's what I mean when I say it is not exceptional.

I'm arguing that there needs to be a very specific plan to deal with this case to look at the particular circumstances and particular context. We have to do that in other countries as well. Sometimes children can go home to their families, and sometimes they can't, for various reasons. If it's not in the best interests of the child to go home to his family, then there needs to be an alternative care plan. That's why the first point that I highlighted for you was about the best interests of the child; that's where we start when we talk about these cases.

So it may be that it is or isn't in his best interests to go home to his family, but that's where you start with a careful assessment, and then you develop the reintegration plan and implement it.

The Chair: Mr. Sweet, unfortunately, we are out of time in this round.

We will go back now to Mr. Silva.

Mr. Mario Silva: I think it may be good to clarify this, not just for members of the committee but also for the wider audience out there who might be listening to this.

Obviously, none of us is dismissing that there are issues of concern about what has taken place. None of us is saying that we should dismiss those concerns out of hand. There are some serious allegations about what Omar Khadr has in fact committed.

The question is the process of how we get to deal with those issues. A military tribunal is not the right venue for a child soldier to be in. Also, this particular military tribunal of the U.S. is being seriously questioned by international legal experts as maybe being outside international law. So there is a whole question about the process and how it's being handled. So advocacy for him is not so that we can say yes, come here and you can be scott free, as we'll just ignore whatever happened. That's not the issue.

I think there has to be a clarification that this is not what we intend to do. I think the government also needs to understand that perspective as well, that what is really in question is this whole tribunal and the way he is being handled. Guantanamo is in fact outside of international law, and we should all be opposed to what's taking place there. There is not a legal process, as all the habeas corpus rules have basically been tossed out the door. Even if he is found to be innocent by the military tribunal—and this is what I find really appalling about the whole thing—he is still going to be classified as an unlawful combatant and could be held there indefinitely, as well as in the U.S.

So the whole process is totally new; it's in the realm of something that we've always opposed. It does not abide by international law and international norms of the judicial process. I think that is the point that needs to be clarified and emphasized.

Mrs. Hilary Homes: I agree. Certainly the allegations against Omar Khadr and everyone else who's facing the military commissions are quite serious. It's our position, though, that the failings of that system are also quite serious.

When someone faces any charges, but particularly charges of this nature with the penalties attached to them, it's all the more reason to ensure that the tribunal that they are before meets international standards and, in this particular case, to make sure it is also governed by the proper juvenile justice principles. In my opening remarks I reiterated in a number of places where these come up. I think if you take a look, in particular, at general comment 10 on the rights of the child, from the UN Committee on the Rights of the Child, you'll see a lot of this elaborated. This is one of the key points here, which goes hand in hand with looking at when do you actually resort to a trial system and what are the alternatives?

In the end, you have to judge the case and the place it needs to be in; but, fundamentally, the military commission system is short of international standards by a long stretch.

● (1255)

The Chair: We have enough time for one more five-minute question, unless the committee chooses to allow this part of the meeting to go beyond its 1 p.m. wrap-up time. Can I get a sense of the will of the committee as to whether we should end with Madame Deschamps' question, or extend it so each of the parties gets one question?

Mr. Marston.

Mr. Wayne Marston: I'd like to ask our two presenters if they're satisfied that they have presented all the information they brought to us today.

The Chair: First, is everyone willing to go beyond our regular time for this?

Madame Deschamps.

[*Translation*]

Ms. Johanne Deschamps: I think it would be appropriate to put additional questions to the witnesses after we have gone around the table once. That would be my preference, if committee members have no objections.

[*English*]

The Chair: I'm really asking if we can go up to ten minutes past our time to allow not just Madame Deschamps but the other members to ask their questions. Is that reasonable?

Okay. That's what we'll do.

[*Translation*]

You have the floor, Ms. Deschamps.

Ms. Johanne Deschamps: Thank you.

You have faced a barrage of questions. People have different views, based on how they perceive the Khadr case. If memory serves me well, Ms. Vandergrift, you were the one who mentioned that the US Supreme Court recently ruled that the military commissions for detainees were illegal because they violated international standards.

Does that finding not invalidate the work currently being done by the military commission in the case of Omar Khadr?

I have a very basic question for you. In your opinion, has a serious investigation been conducted into the events leading up to the arrest of Omar Khadr? Is there a single human rights organization that has yet to denounce the detention of Omar Khadr?

[*English*]

Ms. Kathy Vandergrift: Hilary spoke to the Supreme Court decision, so I'll let her answer that question.

Mrs. Hilary Homes: There have been several versions of military commissions. The first was through an executive order. In Hamdan v. Rumsfeld, the Supreme Court declared them illegal, so the new Military Commissions Act came along and was passed by Congress. That is also being examined by the Supreme Court. The ruling is expected in June 2008 on the issue that the new iteration of the military commissions strips the detainees of their right to habeas corpus.

The current courts exist under the law in the U.S. From an international human rights perspective, they're still well short of international standards. But they are U.S. law for those who are not U.S. citizens, in that particular context, who have been classified as unlawful enemy combatants, and all that sort of thing.

On whether there's a single human rights organization that hasn't condemned the Khadr case, I don't know of every human rights organization in the world, so I couldn't say that definitively, but the big international ones like Amnesty International and Human Rights Watch have certainly expressed concern for years about this case—the detention of children in general in Guantanamo, and Guantanamo itself in connection with the whole war-on-terror detention system and the use of various techniques that violate human rights in that context.

On the third point, of whether there's been a serious investigation of his capture, we don't really know. I guess you're asking whether the U.S. administration has thoroughly investigated that or not. I'm not sure who you're asking, but access to that information is quite restricted, in the context of the military commission. On many levels we don't know. The information we have is what has been disclosed intentionally or accidentally to the media in the public sphere.

● (1300)

Ms. Kathy Vandergrift: If it's helpful, some of the human rights organizations were part of the strategy to deal with some of the young persons in Guantanamo. I just want to add again in terms of highlighting that there are alternatives, and the human rights organizations are interested in pursuing those alternatives.

The Chair: I'm not sure if it's Mr. Sweet or Mr. Kenney at this point.

Mr. Sweet.

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

I wanted to ask this question last time. You had referenced Ishmael Beah's book, and of course that's an extraordinarily moving book. The circumstances that those child soldiers in Sierra Leone faced were ones where both the army and the military groups that were fighting against the army would come in, abduct these children, force them to take these drugs called brown-brown, and sometimes shoot their family in front of them to desensitize them. They subjected them to extraordinarily stressful psychological duress in order to keep control over them.

It is my assertion that there are some differences in this case. Mr. Khadr is 21 years old right now. In Mr. Beah's situation, they had homes where they brought 13- or 12-year-olds, etc., and took an extended amount of time to rehabilitate them.

Mr. Khadr is a man now. If he's repatriated to Canada, what do you suggest? What do you see as a path forward as to what we would do with Mr. Khadr, particularly in light of the family circumstances?

Ms. Kathy Vandergrift: I appreciate that question, and I think that gets us toward where we need to begin to focus our discussion, around what is a reintegration plan.

I would agree with you that there is not an exact parallel between this case and the case in Sierra Leone, but many of the other cases we deal with regarding child soldiers aren't exact parallels either. In some, young people have joined under pressure from families, which may be a closer parallel to this case. We do find those. In some cases they have even joined because they believed in a cause. But international law says we deal with all of them as if they were children. It's a violation to have recruited them and used them.

In terms of what the alternative is, that is where it would have to start with a very careful assessment, as I said. What is his personal health, psychological health, mental health? We need to look at education. He left school at a very early age. We face that with former child soldiers in other countries too, who come back as adults. They left school early. You can't put them back in the classroom. So we develop appropriate programs for them, often ones that involve income generation and education in other options. Other countries also deal with child soldiers who come back older and who have missed a whole portion of their development.

We need to find ways to rehabilitate and try to reintegrate them in some way and deal with them under the youth justice system appropriately. But that's what we should be focusing on.

Mr. David Sweet: That's all I have, Mr. Chairman, but I messed up the names of the two victims in this case. I don't think that's right, so I just want to reiterate that the names of the persons I was speaking of are medic Christopher James Speer and Sergeant First Class Layne Morris.

Thank you.

The Chair: That is duly noted. Thank you.

Mr. Marston, please.

Mr. Wayne Marston: I was sitting here thinking back to the beginning of the movie *Gone with the Wind*, and how the horsemen came riding up and announced that there was a great civil war starting, that it was only going to be a matter of weeks, that it would be over soon and everything would go back to normal. And think in terms of the devastation that happened beyond that. As well, think in terms of this commission that, if it were following the protocol, would have been addressing this particular case based on a sentence that would have to be restorative to rehabilitate the person and reintegrate him.

And somewhere in all of this.... Every combatant who is at war has a good chance of killing somebody in battle, and how is this case different? It's tragic that the two individuals died in that firefight. Certainly it's tragic, as any loss is. But I am mystified at how people have lost sight that this was a boy. I don't care if he's 82 now; he was a boy at the time. He was a young teenager when he left here, and he was only 15 in the middle of this battle.

You get to the point where you just wonder how we got to this place. How did our government get to this place, that the sense of vindictiveness is there?

I'll ask you one last question. What do you think will happen if the Canadian government just walks away from it and doesn't intercede? I've left that generally wide open on purpose to give you free rein.

● (1305)

Ms. Kathy Vandergrift: What will happen if the Canadian government doesn't intercede? Well, as part of my testimony I argued that Canada faces a choice here. A do-nothing choice, according to the scenario I paint, undermines not only what we have developed in terms of the protection of children but also the whole notion of responsibility to protect. We are undermining that. That is what a do-nothing choice is: it's not a do-nothing position but a negative position, and that grows. The longer this case goes on, the more international attention it gets.

We also have a choice to show positive leadership, and I would hope that would be the path that Canada would choose.

I don't know as we have a real choice to do nothing. We are right now trending toward being very negative, and I think the Canadian public increasingly understands that as well and wants to see Canada do something to uphold protection of children's rights.

Mr. Wayne Marston: Thank you.

I have no more questions. Thank you, Mr. Chair.

The Chair: We do have sufficient time, because we had said we would go until ten past, to allow the witnesses to take Mr. Marston's suggestion and make any final comments to deal with any issues they think might have been neglected in the course of discussions.

Is there anything you'd like to add?

Ms. Kathy Vandergrift: I feel we've covered it.

The Chair: All right.

In that case, thank you both very much.

Ms. Kathy Vandergrift: I might just say that if there are further details as you deliberate about this, based on the experience of dealing with child soldiers elsewhere, we'd be happy to try to either help you find that expertise or bring it forward. Certainly there is a lot of experience elsewhere in the network of NGOs that work on this issue. We believe Canada can come up with a better alternative based on that experience, so we'd be happy to provide those resources.

The Chair: Thank you very much.

I'll just make the obvious observation to you with regard to that generous offer, which is that time is of the essence in this matter, so it's best to get anything you have to us sooner as opposed to later.

Thank you very much.

Okay, everybody, that completes this part of the meeting. You have an opportunity to grab some refreshments; then I would like us to go in camera to move to the second part of our meeting.

Perhaps we can give ourselves a very brief break. Let's make it no more than five minutes before we recommence. I do have my timer here, so five minutes does mean five minutes.

[*Proceedings continue in camera*]

● (1305)

(Pause)

● (1350)

[*Public proceedings resume*]

The Chair: I have a little statement I want to read to you. I'm taking the unusual measure of reading this statement because I want to deal with a procedural matter that arose before our subcommittee at our most recent meeting on May 6. At that time one of our members requested that the meeting not adjourn until a matter then before the committee be brought to a vote. This represented the first occasion since I've been chair of this subcommittee when we deviated from the practice of seeking a consensus on all matters.

From a procedural point of view, there's nothing wrong with moving, either on a periodic basis or as a matter of normal practice, from the more informal consensus model that has characterized this committee to the model that is used by most committees in which votes are held on most motions. However, this change requires me to become more formal as I conduct myself as your chair. I want to make it clear how I will act when again dealing with the issue of how to deal with the expiration of the clock when there is an unresolved motion on the floor of the subcommittee.

In order to do this, I have to make reference to some of what took place at that meeting, but because the meeting of May 6 was in camera, and I've moved the present meeting of this committee out of camera, I have to take care to respect the in camera convention by making no specific reference to the members of the subcommittee or to the subject matter of the business that was dealt with at that time.

My purpose in speaking to you now, out of camera, is to publicly establish how I'll deal with the kind of procedural problem that arose at that meeting, and I want to do this in public for two reasons. First, it's because the Hansard of our public meetings will be available for all of you to peruse in relatively short order, thereby allowing you to have a written text of what I'm about to say. If the meeting were held in camera, there'd be no way for you to have access to this information other than by visiting the clerk in his office. Secondly, it's because I want any outside observer of this subcommittee to be aware of the strenuous efforts I am making to maintain order by remaining strictly obedient to the Standing Orders. Therefore it's important that the understanding of the Standing Orders on which I will base my future actions is visible to everybody.

I turn now to the meeting of May 6. At 1:59 p.m.—that is to say, one minute prior to the time at which the meeting was scheduled to end—one of our members moved a motion that had earlier been received by the clerk and that was in order. Another member began to speak to the motion and within a minute or two of that, I adjourned the meeting, at about 2:03 p.m.

This seemed to the first member to be an inappropriate action on my part, and he contacted me after the fact to indicate his concern. I believe he was sincerely of the belief that in adjourning the meeting I was in breach of the Standing Orders.

I appreciate the sincerity of my colleague's belief in this regard. However, I believe the Standing Orders require all meetings of all committees to adjourn precisely at the time noted on the agenda of the relevant meeting for their adjournment, unless some action has been taken to deviate from the normal course of affairs in order to permit the meeting to continue.

There are three ways in which such a deviation may take place. First, the committee could agree to incorporate a change to its rules, causing meetings to continue indefinitely until a motion to adjourn is introduced by a member of the committee and voted upon by the committee. This is how things are done at many meetings conducted under *Robert's Rules of Order.* Once such a rule is adopted, it would be binding upon us at all future meetings, and I would behave as I do when I chair meetings off Parliament Hill, under *Robert's Rules of Order*. When business seems to be winding up, I would ask members whether anyone would like to propose a motion to adjourn, and if such a motion is made, a vote would be held and that would decide the matter.

We are of course free to adjust certain aspects of our own rules of order, and just last week we did so, reducing the length of time of first-round questions to witnesses during the remaining Omar Khadr hearings.

Second, a committee member could propose and the committee would then debate and vote upon a motion to in some way extend that particular meeting of the committee then in progress. Our subcommittee has never engaged in this particular way of doing things, but this course of action is always available to us.

And third, the committee can easily agree to extend any given meeting as long as unanimous consent is sought and found, and this of course is the method I've used on the occasions when we have had to run over time in order to give our witnesses more time to make their presentations.

However, in the absence of one of the three methods cited above, all meetings ended exactly at the scheduled time, and not a moment later. Nor for that matter will they end a moment earlier unless there has been a majority vote on a motion to adjourn or unanimous consent.

Procedurally this is the case because the rules that bind the House of Commons require it to adjourn its proceedings at precisely scheduled hours, which are laid out in Standing Order 24, with provisions for their periodic modification laid out in Standing Orders 25, 26, and 27.

● (1355)

Standing Orders 26 and 27 relate to special circumstances with no parallel in the realm of committee business, but Standing Order 25 makes it clear that business adjourns at the scheduled time unless specific provisions have been in advance.

I quote Standing Order 25:

> When it is provided in any Standing or Special Order of this House that any business specified by such Order shall be continued, forthwith disposed of, or concluded in any sitting, the House shall not be adjourned before such proceedings have been completed except pursuant to a motion to adjourn proposed by a Minister of the Crown.

This rule is made binding upon us by the application of Standing Order 116, which states,

> In a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches.

In consequence, I'll continue to dismiss all meetings at the time noted in the agenda unless instructed to do otherwise by one of the three means I outlined above.

Thank you.

Is there any other business?

Then we are adjourned.

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