

## **A View from Guantánamo Bay: Reflections on Omar Khadr's Long Ordeal**

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It begins, close to nine years ago now. January 11, 2002. Twenty detainees, flown halfway around the world – hooded, handcuffed, shackled – arrived at the US Naval Base in Guantánamo Bay, Cuba. And thus began a preposterous misadventure in injustice that has become one of the most defining and enduring images of the so-called ‘war on terror’ – images of orange jumpsuits, jail cells that were little more than cages, prisoners languishing for years without charge, hunger strikes and suicide attempts. Who would have every imagined at the time that these images would soon come to ensnare and define the life of a Canadian teenager named Omar Khadr. And give rise to profound and troubling questions about the nature of Canadian citizenship and concerns about Canada’s commitment to human rights.

Since that first group of twenty’s auspicious inauguration in January 2002 of Guantánamo Bay’s latest turn in the detention game, it is thought that the naval base’s several prison camps have been home to 779 ‘war on terror’ detainees from 48 countries, including 2 from Canada – Omar Khadr and his brother Abdurahman, who was held there for about eighteen months in 2002 and 2003.

Of the 779 who have called Guantánamo home over the past eight years, only five have ever been convicted --- that is a whopping .6% of the total prisoner population, just over ½ of 1%. Three of those convictions were on the basis of plea deals such as the one in Omar Khadr’s case. Only two have proceeded through a full trial to conviction.

As of today, 174 prisoners, from 27 countries, remain in detention; with Omar Khadr being the only westerner. That means that 605 of the detainees, 77% of the original 779 -- individuals

who at various moments of Bush-era hyperbole were described as the worst of the worst; among the most dangerous men in the world --- have been released.

The concerns about failure to abide by a range of fundamental human rights safeguards at Guantánamo are now legion and well documented.

- There is the fact that the entire system is premised on a conception of inequality, as it is only used against individuals who are not US citizens. US citizens get the full legal protections of the regular civilian court system. Only non-citizens get second-class justice or really, in most cases, no justice.
- There has been lengthy, in some cases, indefinite detention without charge or trial.
- At the outset, prisoners endured harsh and inhuman detention conditions, held in facilities that were little more than outdoor cages, with very little protection from the elements.
- In early days, there was refusal to recognize that international or even US Constitutional rights protections, including something as fundamental as *habeas corpus*, had any applicability to the treatment of Guantánamo prisoners.
- For several years officials refused to provide detainees with access to visits from consular officials and did not allow them legal representation or contact with family.
- A long list of interrogation techniques have been used at Guantanamo which were quite clearly tantamount to torture or at the very least, cruel, inhuman or degrading treatment or punishment; all of which are clearly prohibited under international law and US domestic law.
- Techniques that included, to name only a handful: painful stress positions for lengthy periods of time, humiliating nudity, sensory deprivation, including through hooding, desecration of the Koran, threatened attacks by dogs, food deprivation, and sleep deprivation (the famous “frequent flyer” program that Omar himself was subject to).

But enough of the generality. What of Omar Khadr? I imagine that most of you are quite familiar with the salient facts in Omar's case. But let me remind us all of a few key essentials.

Omar was born in 1986, in Canada. His father, Ahmed Said Khadr, moved his family – Omar, his mother, 3 brothers and 2 sisters to Pakistan and later Afghanistan beginning in the late-80's, with some back and forth to Canada. He did have some early schooling at an Islamic school in Mississauga, but most of his school years were spent at an Islamic school in Peshawar, Pakistan or through home-schooling.

Famously, Omar's father was arrested in Pakistan in late 1995, accused of being involved in the bombing of the Egyptian Embassy in that country. Charges were dropped several months later and Ahmed Khadr was freed, after Prime Minister Jean Chretien raised his case with Pakistan's then-Prime Minister, Benazir Bhutto. That episode came back to haunt Prime Minister Chretien when Ahmed Khadr's extensive involvement in sympathizing with al Qaeda and supporting terrorist activities, particularly by arranging financing, later became notoriously well known.

The back and forth between Pakistan, Afghanistan and Canada continued for young Omar Khadr for some time, but with less and less of his time spent in Canada. His upbringing came to be entirely dominated by the social milieu his father had chosen, which included the families of Osama bin Laden and many other senior al-Qaeda leaders. He was surrounded by talk of extremism, fanaticism and violence. And this is precisely where he found himself in September 2001 when the world was turned upside down by the September 11<sup>th</sup> terrorist attacks and also one month later – October 7, 2001 when US and allied forces launched war against Afghanistan's then Taleban government and their al-Qaeda allies.

And even then Ahmed Khadr did not evacuate Omar and Omar's siblings – who ranged from 10 to 22 years of age at the time – to safety. Instead he took them deep into the devastation of war. Omar and his brothers -- two older, one younger -- spent time in al Qaeda training camps. Ahmed Khadr took Omar, who by all accounts has quite a talent for languages, with him as he travelled around Afghanistan. And by 2002 Ahmed had arranged for then-15 year old Omar to assist an al-Qaeda allied cell involved in making IED's who were in need of an Arabic/Pashto translator, in the Afghan village of Khost. Not exactly the sort of decision one would hope that

a father would make about his son's activities. But, as Omar's military-appointed defence counsel, Lt-Col Jon Jackson, simply but poignantly put it in his opening address to the jury when Omar's trial at Guantanamo opened in August of this year --- Ahmed Said Khadr was a man who "hated his enemies more than he loved his son."

And Khost, Afghanistan is where Omar was on July 27, 2002 when the compound in which he was housed was attacked by a joint US Special Forces/Afghan militia team that eventually came to number about 100 men. Over the course of several hours there were exchanges involving AK47's and other small arms fire, grenades and a pounding from the air when a US airstrike was called in, culminating with 2 – 500 pound bombs being dropped on the compound.

And in the aftermath – as the compound lay largely in ruins, a small team of US soldiers was sent in to mop up and secure the area. Incredibly, Omar and one other fighter were still alive – but they were quickly shot by one of the Special Forces officers who had entered the compound. In Omar Khadr's case that was two shots in the back – which, remarkably, did not kill him, though very nearly did. In fact he was initially left for and assumed to be dead. The other remaining fighter was shot in the head and is thought to have died instantly.

In the meanwhile, however, either Omar or the other man had lobbed a grenade a fair distance, and fragments from that grenade explosion gravely injured a US Sgt, Christopher Speer. Until last month Omar had adamantly and consistently insisted that he did not throw the grenade. But as the last sitting of his trial opened, he changed his plea to "guilty" to all charges, including the charge of having thrown that grenade, further to a plea deal concluded between his lawyers and US government lawyers. Sgt. Speer was evacuated – ironically, alongside Omar – but he died at a US military hospital in Germany 10 days later.

It is, beyond a doubt, miraculous that Omar Khadr even survived that day. Military doctors worked admirably hard to save his life. But ... having saved his life – the US military certainly had no further favours in store for Omar Khadr. He was held at the notorious Bagram Air Base for three months. During that time he was interrogated relentlessly. Omar has made quite detailed allegations as to the torture and mistreatment he went through during those sessions

– some of which he went through while still badly injured and recovering from his wounds and surgery. His allegations include:

- sounds of people screaming, day and night;
- confined to a stretcher for two weeks to a month, sometimes with his hands and feet painfully shackled at his sides, and interrogated relentless during that time;
- barking dogs brought into the interrogation room while a bag covered his head;
- cold water thrown on him during interrogations;
- his hands tied to the top of a door frame or ceiling, forcing Omar to stand for hours at a time, despite the pain of his injuries; and
- threats of rape and beatings at the hands of large black men and Nazis in American prisons – notably, this has been confirmed by the interrogator who made these threats;

On October 27 2002 Omar Khadr was transferred to Guantanamo where – over 8 years later now – he remains. His torture and mistreatment continued, well into 2003, including demeaning incidents such as the time Mr. Khadr describes being used as a human mop to clean up his own urine on the floor of an interrogation room, with his hands and feet shackled behind him; and extensive use of sleep deprivation, through Guantanamo’s infamous “frequent flyer” program – during which he was constantly moved from cell to cell, every three hours, over the span of three weeks in early 2003. Notably that was in advance of a planned visit of Canadian intelligence officials, the first of several Canadian interrogation sessions of Omar at Guantanamo Bay. Omar was put through the frequent flyer program at that time to “make him more amenable and willing to talk.”

His case was selected to be one of a handful to come to trial before a military commission at Guantanamo. And not only has Guantanamo justice not been fair for Omar; it most certainly has not been speedy. He was first arraigned in 2005 – five years ago.

Eventually - the trial got underway. In fact, it was scheduled to begin in earnest with hearings to deal with a number of pre-trial issues, in late January 2009. That session was, of course, overtaken by political developments when President Obama made his famous, now-broken promise within 24 hours of his inauguration, to close Guantanamo by the end of January 2010. The hearings were adjourned and the prevailing wisdom was that would mark the end of Omar Khadr's Guantanamo debacle.

But, by October 2009 President Obama had backed away from his promise. And to the astonishment of many it soon became clear that Omar Khadr's case would be among the first that the Obama administration would use to convince the world that a new and better commitment to justice now prevailed at Guantanamo Bay. A child soldier. Who has made detailed allegations of torture and ill-treatment in US custody. Whose crime, if found guilty, is not about terrorism but, rather, throwing a grenade that killed a soldier in the midst of a war. The new face of justice at Guantanamo Bay?

And lo and behold, the trial did indeed go ahead. I travelled to Guantanamo three times this year to observe the proceedings. I was there in April to hear Omar's lawyers argue that statements and confessions that had been extracted from him during more than 100 interrogations at the hands of more than 30 interrogators at both Bagram and Guantanamo from 2002 through to early 2004 should be excluded from the trial because they were either directly or indirectly products of torture.

I was back in August for what was supposed to be the full trial. But only four days into the proceedings, Omar's military-appointed defence lawyer collapsed in court, leading to a further delay of two months.

And I was there in October, when – pursuant to a last minute plea deal – Omar changed his plea from not-guilty to guilty --- to all 5 charges: murder, attempted murder, conspiracy, material support to terrorism, and spying.

What was initially kept secret was the prison term that had been agreed in the plea deal; though it was the worst kept secret on the island – it was well known, but perhaps not to the

jury, that it would be 8 years, with one further year served at Guantanamo. The jury went through their own largely fictitious week long sentencing hearing – and came back with a recommendation of 40 years in prison. 40 years – makes one wonder what they would recommend for someone who hadn't been a child at the time and hadn't been tortured. And all for naught, as it was the 8 years agreed in the plea deal that prevailed.

Alongside all of these developments down in Cuba, there was of course much legal activity in Canada as well. All against a backdrop of Canadian refusal to intervene in any meaningful way on Omar's behalf, such as by seeking his repatriation to Canada – something that had been done successful by every other western government that had a detained national at Guantanamo. Particularly disillusioning was that the vehemence of the government's defiance only grew as time passed and the human rights concerns in the case mounted.

The political system was obviously not going to stand up for justice. So three times Omar's tenacious Canadian legal team have turned to the Canadian courts. Three times their efforts were vigorously opposed by Canadian government lawyers. Three times, the courts sided with Omar.

The first was a Federal Court injunction in 2005 ordering CSIS to desist from any further interrogations of Omar at Guantánamo. They had interrogated him on a number of occasions in 2003 and 2004 – the videotapes of which have been recently been sound enhanced and released as a very powerful documentary.

Next, his lawyers went to court to get copies of materials CSIS and other government officials had compiled after those interrogations and shared with the Americans. That went all the way to the Supreme Court of Canada which, in May 2008, again ruled in Omar's favour. Notably, the Court found that government officials had violated his rights under the Charter of Rights when they interrogated him at Guantanamo in circumstances which clearly contravened international human rights requirements.

Then third time (still lucky) - in January 2010 a unanimous Supreme Court of Canada concluded that Omar's Charter rights were still being violated. They did not feel it was their role to specify

what remedy the government should pursue as redress for the violations, but made it clear a remedy was necessary. Not about to back down, of course, the government certainly did not pursue a repatriation request in response to the Supreme Court ruling. Instead they chose to send a low level diplomatic note asking US officials to consider, possibly, not making use of any material they had received from Canadian officials at Omar's military commission trial. US officials refused. Canadian officials made no further effort to comply with the Supreme Court ruling.

In July, a frustrated Federal Court judge gave the government 7 days to demonstrate what remedy it was going to pursue. The government appealed that decision and convinced the appeals court to put the judge's 7 day line in the sand on hold until the appeal could be dealt with. That appeal has still not been heard --- and obviously is, to say the least, moot now -- given the outcome of Omar's trial at Guantanamo.

Before I turn to the implications of this long meandering journey through injustice, let me share with you a series of reflections from various episodes over the course of my three trips to Guantanamo this year -- small moments and larger moments that were not always picked up in the media coverage.

The first: the rules.

When we arrived in April for two weeks of arguments as to whether Omar's statements should or should not be excluded from the trial we were faced with a very substantial hurdle. While President Obama had, in the end, chosen not to follow through on his promise to close Guantanamo, he did see through some changes to how military commissions would operate. A revised Military Commissions Act was passed in October 2009. But six months later, as we prepared to head into court, the rules to govern the actual operation of the reformed military commissions were nowhere to be found. It was the night before hearings were to get underway -- and still no rules. Rumours began to circulate that the hearings would be cancelled -- how could things go ahead, after all, without any rules? But things changed overnight. Sometime in the wee hours, the rules -- several hundreds of pages long -- were approved by the Secretary of Defence -- and an hour before the hearing was to begin, a copy was given to the



defence team. They were given a 4 hour adjournment to familiarize themselves with the new rules. It was one more sharp reminder of the lack of independence that mars the entire military commission process. The judge works for the Secretary of Defence. The prosecution lawyers work for the Secretary of Defence. The Secretary of Defence writes the rules that govern the entire process. Even Omar's lawyer works for the Secretary of Defence. But Omar is expected to have confidence that this system will deliver a fair – and independent – trial.

The second: eyes and ears.

Also in April, a controversy arose when Omar protested a change in the rules governing how he was brought back and forth between the courtroom and where he was being detained, Camp 4, quite some distance from the court building. As the hearing began one morning, very notably Omar was not present. A prosecution witness took to the stand and testified that when he was brought to the van that was to bring him to the hearing early that morning, he refused to put on a tight-fitting, blacked-out goggles and ear piece unit which he was told he must wear. He apparently described it as a humiliation. It is important to recall that during the firefight that led to his capture in 2002 Omar experienced considerable shrapnel damage in both of his eyes and is now entirely blind in his left eye and suffers considerable pain and discomfort in his right. She told him that he had the right to attend the hearing and a refusal to do so could be held adversely against him. That is how it was left and she was now in court providing that account.

Omar's legal team sought to call their own witnesses to provide more information as to what had happened. They proposed calling Dr. Zenakis, a psychiatrist /physician (also a retired Brigadier General) who has an extensive history of interviewing and assessing Omar. Nate Whitling, Omar's Canadian lawyer, was also prepared to testify as to his knowledge of an exchange a Canadian consular officer had with Omar about the issue, including that the use of the "goggles" in the van (which has no windows in the back) was apparently a new and unexplained requirement.

The judge refused to hear from them. He summarily indicated that he was not prepared to "second-guess" security decisions made by military officials on the base. Not prepared to "second-guess"? The temptation to stand up in the back of the courtroom and ask – if you are

not prepared to second guess your honour: who will? Is it not a judge's very job to do precisely that ..... second guess? It was not a moment where guilt or innocence hung in the balance – but it was a stark illustration of the lack of independence that plagues military commissions.

Next, the suppression ruling

Then came the suppression ruling. Extensive evidence – both through witnesses and documentation – was presented to the judge in April laying out the numerous, credible allegations Omar has made with respect to the torture and ill-treatment he has endured at the hands of his captors. Quite remarkably, in at least one instance that was confirmed under oath by the very interrogator responsible for the mistreatment – threats that Omar would be sent to a prison in the US where he would likely be raped by “big black men and Nazis.” It is worth remembering as well that Canadian courts had based their decisions about Charter violations on a finding that Omar had, among other forms of mistreatment, been subjected to the frequent flyer sleep deprivation program. Omar's lawyers argued that the various statements and confessions taken from him during his first two years in detention were so directly and indirectly tainted by this torture and other mistreatment that all should be suppressed and not allowed to be entered as evidence at the hearing. It is a crucial human rights concern, and one that has been troubling about the military commission process from the very beginning.

It was also central to the future of the case. If the suppression motion was granted and the statements excluded – the prosecution would have been left with virtually no evidence against Omar. If it failed and the statements went in, the balance would swing very much the other way, and make Omar's conviction a strong likelihood.

The judge was not swayed. In August he ruled, in a stunningly terse 90-second decision – that all of the statements would be admitted into evidence. Several weeks later his written reasons for the ruling were released, mostly coming down to the fact that Omar had not taken to the stand and submitted himself to cross-examination of his torture allegations.

This issue reared its head again during the fictitious sentencing hearing in front of the jury. Omar's lawyers asked to enter into evidence the transcript from the sworn testimony of the

interrogator who had admitted to threatening Omar with rape. The judge again refused. He made it clear that he had already dealt with the issue of torture and ill-treatment and would not revisit it.

#### Fourth : jury selection

I arrived at court for the beginning of 2 days of jury selection in August with my mind made-up that this was simply going to be one more example of the lack of independence. And in the end it largely was. But not without some interesting twists and turns. We began with 15 possible jurors. A minimum of 5 were needed for the trial to go ahead. The strategy of objections and challenges was like watching a chess game. Troubling, but not surprising, was the vehemence with which government lawyers sought to uncover any potential jurors who had ever read about any of the human rights concerns associated with Guantanamo Bay. Troubling, but I suppose not surprising, was that the majority all smilingly indicated that they had never read or heard a whisper of concern about Guantanamo. But three had and were, in fact, quite forceful in laying out what they knew and describing their own concerns about things like detention without charge or trial, cruel treatment and the negative impact on the US's international reputation. One of the three was quite savvy in defending his own concerns by referring to the fact that they were shared by President Obama, who is after all the Commander in Chief of US Forces. That led to one of the more peculiar moments of the hearing when government lawyers sought to have that juror dismissed, arguing that the degree to which he kept insisting that he agreed with the President when it came to Guantanamo Bay was clear evidence that he was biased against the government. One was left wondering just who they conceive the government to be. They did not succeed in having that juror excluded for cause but later used their one peremptory challenge to have him thrown out.

#### And finally: psychiatric experts

Perhaps the most disappointing and frustrating side to the sentencing hearing in October came down to what psychiatric evidence was heard and not heard. The one psychiatric witness who was heard was Dr. Michael Welner, who testified for the government. This was the first time he had ever been asked to formulate an opinion on the future danger posed by, as Dr. Welner

kept describing Omar, a “radical jihadist”. Dr. Welner testified that he spent about 500 – 600 hours working on the Omar Khadr case – a whopping 8 hours of which was taken up with actually interviewing Omar. Not having previous experience to draw upon, Dr. Welner heard of a Danish doctor, Dr. Nicolai Sennels, who had developed a framework in a book called “Among Criminal Muslims” for assessing the likelihood of once radical jihadists continuing to pose a danger after being released from prison.

Much was troubling about the framework, including the degree to which it led to Omar’s religious devotion being used against him. Upon cross examination it became clear that Dr. Welner actually knew very little about Dr. Sennels. Turns out that he hadn’t actually read Sennels’ book, as it is only available in Danish. He did apparently have a phone conversation with him. What he didn’t do was a basic Google search, which readily exposes Dr. Sennels as a racist and bigot. Dr. Sennels talks of Muslims as prone to inbreeding (in fact he says that half of all Muslims in the world are inbred); calls for an end to Muslim immigration to the west; and for punitive measures to be put in place to encourage Muslims already in the west to leave. He describes the Koran as a “criminal book”, and says that having a Muslim on his couch (he’s a psychologist) is like “having someone from another planet”.

Meanwhile, the defence found itself in an impossible quandary. Two remarkably dedicated mental health professionals, Retired Brigadier General Steven Zenakis and Bellvue Hospital based psychologist Dr. Kate Porterfield have, between them, carried out over 300 hours of interviews of Omar over the past 2 to 3 years. Both have made it very clear that they see great potential in Omar Khadr and do not believe he poses a risk or danger.

In the end, neither testified. While I’m not privy to the defence team’s strategic deliberations – I can easily see that one big problem arose from the fact that Omar had pleaded guilty in the end. A guilty plea that most people understand represented an escape from Guantanamo more than a true admission of honest guilt. And that gave rise to an impossible dilemma. Imagine the inevitable cross examination: Dr. X, Dr. P., we now know, through his guilty plea, that Omar carried out these terrible crimes. You must have spent a great deal of time talking about that with him – please share with us what he talked about when it came to his sense of

responsibility and remorse for these crimes. Do the doctors tell what many expect would have been the truth --- well no, that is not what we discussed – in fact he described to us that he had not committed these crimes and felt hopelessly trapped in the unjust legal system at Guantanamo. The next question would then become, of course, are you saying he lied to the court when he entered his guilty plea; or are you saying he lied to you during your interviews, in which case why should we believe anything he may have told you.

So the jury – and the world at large, never heard what I know would have been powerful and insightful testimony from these two doctors. They were left only with the inflammatory findings of a psychiatrist who hardly knew Omar at all and based his analysis on the work of a racist Danish psychologist, written in a language he did not understand.

Walking away from this sorry spectacle all I keep thinking is that at the end of the day, absolutely nobody and nothing has won.

Certainly Omar Khadr has not won. He has been dragged through a blatantly unfair trial process, during the final days of which he agreed to plead guilty. It is a process that refused at every turn to give serious attention to various pressing human rights concerns. The fact that he was a 15-year old child when he was arrested; the fact that long before that he had been propelled into a world of extremism and violence by his fanatical father --- ignored.

It has in fact been staggering to see the unrelenting determination of both the US and Canadian governments to go out of their way to pretend that binding international human rights standards dealing with the protection and rehabilitation of child soldiers are not relevant at all. And on the Canadian side of that issue let us not forget that Canada led global efforts just over a decade ago to craft those very standards. Humiliating to see such an about-face -- from admirable champion to recalcitrant nay-sayer.

Equally, grave concerns about how Omar Khadr was treated by US officials, particularly in the early days of his imprisonment, have been consistently swept under the carpet. Omar Khadr's case has certainly very powerfully demonstrated that the military commission process is not prepared and in fact not even interested in ensuring that torture and ill-treatment are not only

firmly rejected during trials but also that they be vigorously investigated and prosecuted outside the courtroom.

Those individuals who suffered personal loss or injury as a result of the July 27<sup>th</sup> 2002 firefight at the heart of his case have also not won. That includes the family of Sgt. Christopher Speer, the US soldier killed by the grenade that Omar has now said that he threw. Fair trials matter for many reasons. Certainly at the core of fair trial principles is the notion that an accused's rights must be protected, to avoid miscarriages of justice. But it is wider than that. Fair trials also allow anyone with a direct interest in the case, and beyond that circle – the general public as well – to have confidence that the outcome reflects the truth and is just and appropriate.

But do we come to the end of Omar Khadr's travels through the military commission process with that sense of confidence. Not at all. We are left with no confidence, one way or the other. Maybe he meant it when he pleaded guilty. On the other hand, given everything that was stacked against Omar Khadr in this trial and the fact that he had been utterly abandoned by his own government it would most certainly not be surprising to learn that he chose to plead guilty because he had decided that it was his last resort; his only way to one day, some day, finally find his way out of Guantánamo. Sadly, it leaves little confidence that the guilty plea represents anything more than an escape from injustice.

So the accused doesn't win. Victims and the public don't win. Security has certainly been no big winner here either. Is the world a safer place because we have locked up a young man whose domineering father propelled him into a world of extremism when he was 9 years of age? Who ultimately found himself in the middle of a war, as a 15-year old, during which he says he threw a grenade that killed a US soldier? A young man in whom many see real potential for rehabilitation? Seems a stretch.

Which suggests that the US taxpayer has been no winner either. It would be hard to affix a price tag to eight years of detention and five years of prosecution of Omar Khadr, but I can't imagine that it doesn't run into the tens of millions of dollars. Add to that the millions that the Canadian government has likely spent trying to reverse and avoid the many Federal Court, Federal Court of Appeal and Supreme Court of Canada judgements over the past several years,

ordering them to take action to remedy violations of Omar's rights. The final sum would be astronomical. The human rights activist in me certainly insists that there should never be a price tag on justice. But there most certainly should be a price tag on injustice. Even a very small fraction of this fortune spent on propagating and defending injustice would have gone far in providing the treatment and reintegration he deserved as a child soldier.

What about the rule of law? A clear loser. Omar Khadr has been convicted of war crimes, on the basis of legal definitions hastily rewritten by the US government following September 11<sup>th</sup>. The central charge he faced was killing a soldier, during an armed conflict – a soldier who was actively engaged in combat. His death is not a happy occasion, obviously --- no death in war ever is. But most experts, and likely most of the general public, would scratch their head and say – isn't that what happens in war. Soldiers get killed, don't they? Absolutely – and numerous US and international legal scholars insist there is absolutely no legal basis for characterizing what Omar Khadr has been convicted of to be war crimes.

And then there is Canada's reputation as a global human rights leader which has certainly taken a big hit. Right up to the very end the determination of the Canadian government to appear unconcerned was stunning. In fact as the week unfolded their only preoccupation appeared to be to convey to the world at large in every way possible that they were disinterested, uninvolved and had nothing to say about the case --- even when their involvement in bilateral talks with US officials had been confirmed. Last minute interventions from two UN human rights experts, the UN Secretary-General's Special Representative on Children and Armed Conflict and the UN Special Rapporteur on the protection of human rights while countering terrorism, calling for Canada to intervene on Omar Khadr's behalf -- went unheeded. As have so many calls from so many courts and independent experts previously.

In the aftermath of our bruising loss in UN Security Council elections last month, and the many questions since about Canada's deteriorating global reputation as a human rights champion, the time was ripe for a principled Canadian stand in Omar Khadr's case. But the government remained defiantly and disgracefully unwilling to go there. Unequal citizenship.

Is it case closed then? Absolutely not – though there is a real risk of that being the case with respect to media, political and even public interest in the case. There are numerous concerns which, in the spirit of equal citizenship, should be the focus of principled government action on his behalf.

Most immediately, there are concerns about the likelihood that Omar – who has thrived in the more open and communal detention conditions of Guantánamo’s Camp 4 over the past 2-3 years will now go through quite a setback if transferred, as expected, to the near isolation he will face in detention in Camp 5. The Canadian government should be intervening forcefully about those concerns and pressing for assurances that his detention over the coming year will offer him the rehabilitation to which he is entitled under international human rights standards dealing with child soldiers and children more generally and that he be given maximum possible opportunities for social interaction, physical recreation, and educational programming.

Next there is, of course, the question of his wish to return to Canada, and what will await him here. We need to hear a clear statement from the government that his transfer application will be accepted and the government needs to work with Omar Khadr’s legal counsel – now – to ensure that measures are put in place upon his return to Canada that safeguard his rights and provide him with treatment and support for the violations he has experienced.

And finally, there is the question of justice and accountability. There has not yet been a remedy in response to the January 2010 Supreme Court ruling. There have been no investigations, let alone prosecutions and remedies for the many violations, including lack of protection as a child soldier and the torture and ill-treatment he has gone through at Bagram and Afghanistan. US authorities should of course be pressed to do so and it should be the Canadian government’s voice that is the loudest in making that demand.

And beyond these measures that are needed to respond to the ongoing human rights concerns in Omar Khadr’s case, there is a need for law and policy reforms to ensure that something like



this does not happen again. Because it has happened far too often as of late and has left a deepening feeling that Canadian citizenship does not mean the same thing for all Canadians.

The blueprint for at least some of that already exists, particularly in the policy recommendations that Justice Dennis O'Connor made in part two of the Maher Arar Inquiry, including a proposed comprehensive overhaul of review and oversight of agencies involved in national security investigations. Four years later the government has not yet taken up those recommendations and is instead pursuing a dramatically less comprehensive and effective tinkering instead of an overhaul, limited only to RCMP oversight.

Alongside the Arar Inquiry proposals there is a need for law reform in the area of consular assistance, enshrining in Canadian law that it is not simply something that should be left to the whim and discretion of officials and the prevailing politics of the government of the day – to decide whether or not to come to the aid of and imprisoned or otherwise distressed Canadian abroad. No, it must be clearly established to be a duty and obligation of the government to do so – on behalf of all Canadians – no matter their race, religion, political affiliation or family background.

Unless we begin to make and implement these sorts of changes other similar travesties are almost certain. We cannot stand for that. When it comes to a case like Omar Khadr's, and the many other Canadians who have been treated as less than equal citizens at times when they needed their government's support and protection the most, our mantra must be .... never again. Never.