

Guantánamo judge rules Omar Khadr, arrested at 15, can be tried as war criminal

Bill Van Auken
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Omar Khadr, a Canadian who was shot and detained by US Special Forces troops in Afghanistan in July 2002 when he was 15 years old, goes before a drumhead military tribunal at the US detention camp in Guantánamo, Cuba today. Arrested as a child, he is now charged as a war criminal and faces a possible sentence of life in prison if convicted by the US military officers who are to decide his fate.

Of all the many violations of international law committed by Washington in its “global war on terrorism” the prolonged detention and now prosecution of this youth is undoubtedly one of the most repugnant.

Thursday’s hearing follows a decision last week by a US military judge to reject a motion by defense attorneys that, because Omar was a child when captured by US forces, he is entitled under international law to protection and assistance, rather than being subjected to prosecution.

Colonel Peter Brownback issued a brief ruling in which he described the international statutes dealing with the protection of children involved in armed conflict as “interesting as a matter of policy,” but made it clear that they would have no impact on the kangaroo court proceedings organized by the White House and the Pentagon at Guant-namo.

The upcoming trial represents the continuation of the vicious persecution of Omar Khadr that has gone on for nearly six years. Now 21, he has spent more than a quarter of his life in US detention, much of it while being subjected to solitary confinement, sensory deprivation, abusive interrogations and outright torture. Throughout this time, he has been denied education or any regular access to his family.

While other minors incarcerated at Guantánamo were held in a separate camp, Omar was imprisoned together with adults.

He is charged under the Military Commissions Act, a law passed by Congress in 2006 that essentially abrogates

habeas corpus rights, while affirming the president’s assumed power to designate anyone an enemy combatant and ignore laws against torture.

He is accused of murder in violation of the laws of war, attempted murder in violation of the laws of war, conspiracy, providing material support for terrorism and spying.

The charges stem from a July 27, 2002 firefight in Afghanistan in which US Army Sergeant Christopher Speer was killed and Omar himself was seriously wounded, shot twice in the back by American soldiers. Thus, the only “crime” of which he stands accused is defending himself in an unequal battle with heavily armed US soldiers. Even this allegation, however, is apparently a fabrication.

The military claimed to have proof that Omar had killed the American soldier with a grenade. But a document mistakenly provided to journalists last February revealed that the youth was not—as the Pentagon had claimed—the only person left alive in the house that the Special Forces troops had stormed and where the sergeant was killed. Rather, an adult fighter who was present was alive, but was shot through the head by the US soldiers.

Documents from the incident were subsequently altered to make the case against the Canadian youth, who apparently was unarmed, on his knees and facing away from the battle when he was shot in the back. Doubts have also been raised as to whether the sergeant was a victim of “friendly fire,” given testimony by other soldiers that the American troops had themselves thrown grenades in the battle.

After his capture, Omar was taken to the US prison at Afghanistan’s Bagram Air Base, where he was reportedly denied adequate medical attention or pain medication for his serious wounds, while being subjected to physical abuse and coercive interrogations.

In November 2002, he was flown to Guantánamo Bay,

where he has been held ever since. According to his own affidavit, he has been subjected over a period of years to systematic abuse amounting to torture. Interrogators have shackled him into painful “stress” positions, threatened him with rape, used dogs against him and, in one instance, turned him into a “human mop” after he urinated on the floor during an abusive interrogation session.

The imprisonment, torture and war crimes prosecution of a child constitute direct and heinous violations of international law and multiple treaties signed by the US government.

Defense attorneys have, in particular, cited the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by the United Nations in 2000 and signed by President George W. Bush in September 2002—two months after Omar’s detention by US troops.

The treaty, as the US State Department web site spells out, requires that governments “take all feasible measures to ensure that in the event of hostilities within their jurisdictions,” child combatants are “demobilized” and treated as “victims. The treaty further states that children recruited into armed conflicts are entitled to “all appropriate assistance for their physical and psychological recovery and their social reintegration.”

The trial of a youth arrested at the age of 15 as an adult on charges of war crimes has virtually no precedent internationally and flies in the face of legal tradition relating to the treatment of juveniles that goes back centuries. In answering the defense brief, military prosecutors had to reach back to a handful of obscure cases predating the Nuremberg tribunals, which made a conscious decision to treat the Hitler Youth as misguided children, rather than a target for war crimes prosecution.

The charge sheet prepared by the Pentagon against Omar Khadr includes offenses he is alleged to have committed when he was 11 years old, accompanying his father to meetings with leaders of Al Qaeda in Afghanistan.

The case has served to expose not only the criminality of the US government, but also the complicity and hypocrisy of its Canadian ally. Omar Khadr is the last citizen of any Western country incarcerated at Guantánamo, and neither the Conservative Party government of Prime Minister Stephen Harper nor its Liberal Party predecessor has lifted a finger to seek his release. Citizens of other countries, including Australia, Britain, Germany and Sweden, have been repatriated at the request, however belated, of their governments.

Canada chairs a “friends” group of nations formed to support the implementation of UN resolutions relating to child combatants. Yet, in regard to its own citizen, detained and tortured as a child and now being subjected to military prosecution, it has repeatedly deferred to the Bush administration, claiming that it has received assurances that he is not being ill-treated and that it must let the “legal procedure” take its course.

On the eve of the Guantánamo judge’s ruling denying the appeal based on Omar Khadr’s status as a juvenile, his military defense lawyer, Lieutenant-Commander Bill Kuebler, visited Canada, appearing before a parliamentary human rights panel and speaking to the media in an apparent attempt to shame the Canadian government into intervening on behalf of his client.

He made it clear that the youth has no chance of receiving a fair trial in the Guantánamo tribunal. “There is almost no real evidence to support the proposition that Omar actually threw a hand grenade in July 2002 that killed a US soldier,” he told the committee. “Omar will probably nonetheless be convicted of murder by the military commission for little more than having survived the firefight.”

After the military judge’s ruling, Kuebler called it “an embarrassment to the United States.” He added pointedly, “The military commission process has now clearly failed and Canada will share in the embarrassment if it does not act soon.”

The military defense attorney stated that the practical effect of the decision was “to agree with the government view that Congress affirmatively intended to give the Pentagon the authority to seek the death penalty against children if the so-called ‘convening authority’ felt it appropriate.”

On Tuesday, meanwhile, over 100 Canadian students demonstrated on the steps of the Canadian parliament chanting “Free Omar” and waving placards reading “Justice for Children.”

“For the grace of God, they could be in Omar’s shoes,” said Marcel Lacroix, a teacher accompanying the student protesters. “He’s a Canadian born in Toronto. I can’t understand why the Canadian government doesn’t just bring him home.”



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