

Guantanamo: Military Oaths Confront the Constitution in the Omar Khadr Case

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In response to the events of September 11, the US government asked the Afghan government to extradite Osama bin Laden, who was a citizen of Saudi Arabia. As usual for such situations, [the Afghan government asked to see the evidence against bin Laden](#). Instead of providing that evidence, President Bush declared "[There's no need to discuss innocence or guilt. We know he's guilty](#)" and began bombing Afghanistan on October 7, 2001. The US subsequently [refused the Afghanistan government's extradition offer](#). The US then invaded Afghanistan, destroyed its government, and began a military occupation. This attack had not been sanctioned by the UN Security Council; hence, this was an illegal act of aggression by the United States. The UN Charter, which the US wrote and agreed to, states that "[All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state](#)". The government of Afghanistan had not attacked the USA, had not threatened to attack the USA, and had no capability to attack the USA. Thus, even arguments of national self-defence, or pre-emptive war to prevent an anticipated attack, cannot explain or justify the US attack on Afghanistan and the destruction of its government and civil order.

On July 27, 2002, US forces waging war in Afghanistan attacked a rural residential compound, and the people inside defended themselves. An air strike was called in, and the compound was destroyed. As US forces approached the ruins, someone in the ruins threw a hand-grenade and killed Delta Force commando Christopher Speer. When the US forces finally entered the ruins, they found a child, Omar Khadr, still alive but severely wounded. [An eye-witness](#) at the scene concluded that Omar had not thrown the grenade, and [the July 28, 2002, report by the US commander at the scene](#) stated that the person throwing the grenade had died, ruling out Omar as the suspect. Two months later, that report was changed to lay the blame on Omar. The changed report was post-dated July 28, 2002; hence, it is a fraudulent document.

The child, Omar Khadr, was born in Toronto, Canada, on September 19, 1986. He was in Afghanistan because his parents took him there when he was 10 years old, to indoctrinate him and to give him military training for jihad. He has been in US military prisons for the past 6 years, most of that in Guantanamo. He has been subjected to torture, for example, stripped [naked while guards photographed his genitals](#), shackled in painful positions, moved to new cells over and over, every 3 hours for 21 days, to make him have a [mental breakdown](#). On April 24, 2007, in a US military court in Guantanamo, Omar was charged with murder, attempted murder, conspiracy, providing material support for terrorism, and spying on US forces in Afghanistan. On June 24, 2007, a US military judge [dismissed the case](#) because the military court only had jurisdiction over "unlawful enemy combatants" and that was not Omar's classification. On June 29, 2007, another military judge refused to re-

instate charges against Omar. On September 24, 2007, the US Court of Military Commission Review over-ruled the two earlier dismissals, and Omar is again charged with military crimes. Clearly prosecution has become persecution, for reasons of revenge and politics, not for reasons of law or justice.

There are many legal problems with this case.

1) If the US invasion was an illegal act, then the Delta Force commando was killed in the commission of a crime, a war crime. If the US invasion is considered to be a legal war, then the Delta Force commando is a casualty of war, not a victim of murder.

2) The Delta Force commando had been engaged in an attack on the people in the home, trying to kill them. Their fighting back is self-defence.

3) The case against Omar rests on a fraudulent document, and exonerating eye-witness testimony has been withheld by the prosecutors.

4) The US Constitution, in Amendment VIII, declares that the government may not inflict "[cruel and unusual punishments](#)."

5) The military officers participating in this case as prosecutors and as judges, by that very participation, violate their sworn oaths to honour the US Constitution. Consider these four points:

5a) All US military officers take an oath, to "[solemnly swear \(or affirm\) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same](#)".

5b) The US Constitution, in Article VI, states that "[all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land](#)".

5c) One treaty passed by the US Congress, signed by the US President, is the "[Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict](#)". It is "optional" because it was an addition to the Convention on the Rights of the Child, and nations had the option to ratify the addition or not. The US chose to ratify it, as did most civilized nations.

5d) By this treaty, a child is any person under age 18. By this treaty, child soldiers are victims of war. By this treaty, the US is obligated to be "mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts," including the possibility that "armed groups that are distinct from the armed forces of a State" may be recruiting child soldiers. By this treaty, the US is obligated to "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", and the US is obligated to "accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration". Because these are treaty obligations, they are Constitutional obligations. They are not optional.

Because Omar Khadr was a child when captured by US military forces, his imprisonment, torture, and prosecution by US military forces violate the "Optional Protocol to the

Convention on the Rights of the Child on the Involvement of Children in Armed Conflict". Violating that treaty in turn violates the US Constitution. For military officers to violate the US Constitution in turn violates their sworn oaths. People who violate their sworn oaths cannot participate in a court of law. Thus, no US military personnel may be involved in the Khadr Case.

Guantanamo and other prisons were constructed outside of the territorial boundaries of the USA in order to try to avoid the duties and obligations enshrined in the US Constitution. However, US military officers' oaths to support and defend the US Constitution have no territorial limits. In the Khadr Case, all judges and prosecutors must be persons who are free to violate the US Constitution. That excludes all US military personnel.

The Khadr Case should be closed. The US government should fulfill its treaty obligations to release Omar, assist his recovery and perhaps compensate him for unlawful confinement and torture. Military prosecutors should investigate and charge officers who have been violating their sworn oaths to support and defend the US Constitution.

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