United States Department of State

Washington, D.C. 20520

October 24, 2010

~~SENSITIVE BUT UNCLASSIFIED~~

MEMORANDUM FOR MICHAEL L. BRUHN
EXECUTIVE SECRETARY
DEPARTMENT OF DEFENSE

SUBJECT: Mr. Omar Khadr

On October 23, 2010, the Office of the Legal Adviser at the U.S. Department of State and the Office of the Legal Adviser at the Department of Foreign Affairs and International Trade of the Government of Canada signed and exchanged the two attached diplomatic notes with respect to the case of Mr. Omar Khadr. This memorandum from the Executive Secretary of the U. S. Department of State to the Executive Secretary of the U. S. Department of Defense conveys signed and certified copies of the two diplomatic notes for delivery to appropriate parties at the U. S. Naval Base, Guantanamo Bay, Cuba. This memorandum affirms that the Governments of Canada and the United States in fact exchanged these two diplomatic notes on the 23rd day of October, 2010.

Stephen D. Mull
Executive Secretary

Attachments:
1. U.S. Diplomatic Notes
2. Canadian Diplomatic Notes

~~SENSITIVE BUT UNCLASSIFIED~~

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The Department of State refers the Embassy of Canada to discussions between the United States and Canada regarding the matter of Mr. Omar Khadr, a Canadian citizen detained at Guantanamo Bay, Cuba.

Mr. Khadr is currently on trial in the U.S. military commission system, and proceedings are scheduled to resume on October 25, 2010. On behalf of the Government of the United States of America, the Department of State brings to the attention of the Government of Canada Mr. Khadr's agreement to plead guilty to all charges against him. The plea agreement includes various undertakings and conditions, including that "duly authorized officials of the United States and Canada exchange diplomatic notes reflecting United States and Canadian Government support for [his] transfer to Canada to serve the remainder of [his] approved sentence after completing no less than one additional year in United States custody after the date of approval of [his] sentence, and that the United States provide copies of these diplomatic notes to [Mr. Khadr's] detailed defense counsel."

The Government of the United States proposes that were Mr. Khadr to request a transfer to Canada to serve any sentence there, the United States and

Canada could implement such a transfer under the *Treaty between Canada and the United States of America on the Execution of Penal Sentences* (the "Treaty") and existing domestic authorities. The Government of the United States of America further notes that if Mr. Khadr enters into the proposed plea agreement, is convicted in accordance with the terms of that plea agreement, complies with the terms of that agreement, and thereafter requests to be transferred to Canada to serve his sentence, the Government of the United States would approve his transfer to Canada. The Government of the United States further states its understanding that following such transfer, Canadian law would determine whether Mr. Khadr serves the full remainder of his sentence, or some lesser portion of his sentence. The Government of the United States specifically understands that such transfer would result in Mr. Khadr being subject to Canadian law pertaining to detention and in Mr. Khadr being able to apply to the National Parole Board (an independent administrative tribunal operating autonomously from the Government of Canada) for parole following the completion of one-third of his sentence. The Government of the United States understands that eligibility for parole does not mean that the release will be granted; only that it will be considered. The Government of the United States further understands that public safety is the paramount consideration in all decisions.

The Government of the United States requests the Government of Canada to indicate by response to this diplomatic note whether Canada would be inclined to consider favorably Mr. Khadr's application to be transferred to Canada to serve the remainder of his sentence, or such portion of the remainder of his sentence as the National Parole Board determines, provided the aforementioned conditions are met and the Government of the United States approves Mr. Khadr's transfer to Canada.

In order to comply with the terms of Mr. Khadr's plea agreement, the Government of the United States intends to provide a copy of this note to Mr. Khadr and his defense counsel, as well as to the Military Commissions Convening Authority, the military judge and the prosecution team in this case. The Government of the United States likewise requests Canada's consent to provide a copy of its response to the aforementioned parties.

Department of State,

Washington, October 23, 2010.

MEM

23 October 2010

The Embassy of Canada presents its compliments to the State Department of the United States of America and has the honour to refer to the matter of Mr. Omar Khadr, a Canadian citizen detained at Guantanamo Bay, Cuba. The Embassy acknowledges receipt of Diplomatic Note of October 23, 2010 from the State Department of the United States on this matter.

The Government of Canada is aware that Mr. Khadr is currently on trial in the United States' military commission system, and that proceedings are scheduled to resume on October 25, 2010. The Government of Canada takes note of Mr. Khadr's agreement to plead guilty to all charges against him and that this plea agreement includes various undertakings and conditions, including that "duly authorized officials of the United States and Canada exchange diplomatic notes reflecting United States and Canadian Government support for [his] transfer to Canada to serve the remainder of [his] approved sentence after completing no less than one additional year in United States custody after the date of approval of [his] sentence, and that the United States provide copies of these diplomatic notes to [Mr. Khadr's] detailed defense counsel."

The Government of Canada shares the view of the United States that were Mr. Khadr to request a transfer to Canada to serve any part of his sentence in Canada, the United States and Canada could implement such a transfer under the *Treaty between Canada and the United States of America on the Execution of Penal Sentences* (the "Treaty") and existing domestic authorities. Canada understands that if Mr. Khadr enters into the proposed plea agreement, is convicted in accordance with the terms of that plea agreement, complies with the terms of that agreement, and thereafter requests to be transferred to Canada to serve his sentence, the United States Government would approve his transfer to Canada. Canada confirms the specific understanding of the United States that following such transfer, Canadian law would determine whether Mr. Khadr serves the full remainder of his sentence, or some lesser portion of his sentence. Canada further confirms the United

States' specific understanding that such transfer would result in Mr. Khadr being subject to Canadian law pertaining to detention and in Mr. Khadr being able to apply to the National Parole Board (an independent administrative tribunal operating autonomously from the Government of Canada) for full parole following the completion of one-third of his sentence. Canada confirms the United States' understanding that eligibility for parole does not mean that release will be granted, only that it will be considered, and that public safety is the paramount consideration in all decisions.

The Government of Canada therefore wishes to convey that, as requested by the United States, the Government of Canada is inclined to favourably consider Mr. Khadr's application to be transferred to Canada to serve the remainder of his sentence, or such portion of the remainder of his sentence as the National Parole Board determines, provided the aforementioned conditions are met and the Government of the United States approves Mr. Khadr's transfer to Canada.

As requested by the Government of the United States, the Government of Canada also wishes to express its consent for the United States Government to provide a copy of this diplomatic note to Mr. Khadr's defense counsel, as well as to the Military Commissions Convening Authority, the military judge and the prosecution team in this case.

The Embassy of Canada avails itself of this opportunity to renew to the State Department of the United States of America the assurances of its highest consideration.

Canadian Embassy
Washington, October 23, 2010