

MPS OUT OF THE LOOP ON AFGHAN TORTURE? UNLIKELY

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By Chantal Hébert, [The Toronto Star](#), 20 November 2009

✘ Under a majority Conservative government, former diplomat Richard Colvin's assertion that Canada knowingly allowed scores of Afghan civilian detainees to fall into the hands of torturers would likely have remained the stuff of informed behind-the-scenes speculation. Until a parliamentary subcommittee stepped in to look into the matter, the government had deployed a lot of heavy legal artillery to prevent Colvin from telling his story to a more private inquiry held by the independent Military Police Complaints Commission. Why?

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✘ Under a majority Conservative government, former diplomat Richard Colvin's assertion that Canada knowingly allowed scores of Afghan civilian detainees to fall into the hands of torturers would likely have remained the stuff of informed behind-the-scenes speculation. Until a parliamentary subcommittee stepped in to look into the matter, the government had deployed a lot of heavy legal artillery to prevent Colvin from telling his story to a more private inquiry held by the independent Military Police Complaints Commission. Why?

From the Prime Minister on down, the Conservative government has always claimed it was unaware of detainee torture at the hands of the Afghan authorities, at least until a case surfaced in 2007, prompting a belated review of the detainee transfer protocol.

But Colvin's narrative makes it clear the government could not have been in the dark about the potential prevalence of torture unless the country's top civil servants conspired to keep their political masters out of the loop, and that is highly unlikely.

As of 2006, Colvin – who was serving in a senior official position in Afghanistan – was sending scores of reports warning of systematic detainee abuse. At first they seemed to fall on deaf ears. In time, he was asked to deliver them only verbally.

There is no evidence those instructions stemmed from a lack of confidence in Colvin's professional judgment or in the information he provided.

He is currently posted at Canada's embassy in Washington as a senior intelligence officer.

The embassy is hardly a backwater on the Canadian diplomatic circuit. It is not the kind of venue where rogue officials are normally posted until they can be quietly put to pasture.

According to Colvin, the clampdown order came from the very top, from officials who reported directly to Prime Minister Stephen Harper or his ministers, often on a daily basis.

✘

Richard Colvin

In 2006 and 2007, the Afghan file was not only Canada's most important military engagement in decades; it was also the Prime Minister's self-chosen defining foreign policy file.

Moreover, Harper had come to office purporting to make human rights a more significant cornerstone of Canada's foreign policy, a notion he missed no occasion to spell out in public and, presumably, in private.

At the time the Conservatives took power, the public service was still reeling from the fallout of the Gomery inquiry into the sponsorship scandal. By and large, federal mandarins were determined to take all available steps to avoid getting tangled up in a partisan chain of command again.

It would have been an astounding decision on the part of the senior civil service to keep its Conservative masters out of any critical loop on the Afghan file.

In the House Thursday, Defence Minister Peter MacKay did not say the government had not been apprised of Colvin's reports. Instead, he dismissed them as lacking in hard evidence and implied that they were based on Taliban propaganda. It is hard to ascertain how Harper or his ministers could have come to such a definitive and contrary conclusion from their Parliament Hill offices. Colvin, among others, was supposed to be their eyes and ears in Afghanistan.

His testimony comes at a time when Canada's military deployment in Kandahar is starting to wind down.

Given the heavy toll of the mission and its ambiguous results, some form of comprehensive post-mortem was already very much in order.


The latest developments make that even more of a necessity.

The Gomery commission was set up for much less cause than a suspicion of high-level wilful negligence of Canada's human rights obligations.

Chantal Hébert is a national affairs writer. Her column appears Monday, Wednesday and Friday.

Only the losers need to fear war-crime laws

By Thomas Walkom, [The Toronto Star](#), 21 November 2009

 In its handling of Afghan prisoners, the Canadian government appears to have committed two types of offences. The first and most serious – crimes against humanity – will almost certainly not result in any sanction. The second, which is political rather than legal, may (although even that outcome is uncertain).

Technically, there seem to be grounds for charging Prime Minister Stephen Harper, former defence minister Gordon O'Connor, current Defence Minister Peter MacKay, former chief of defence staff

Rick Hillier and various others under both Section 269.1 of the Criminal Code and Canada's Crimes Against Humanity and War Crimes Act.

These are two of the main vehicles Parliament used when it decided 22 years ago to ratify and write into Canadian law the United Nations Convention Against Torture. That convention specifically forbids any signatory from handing over people to a state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."

✘ In a 2004 photo, Canadian troops round up detainees, who were then turned over to Kabul city police.

The Canadian government is under fire for its policy regarding the handling of detainees.

We are now told that between April 2006 and October 2007, senior diplomat Richard Colvin repeatedly warned Canada's political and military leadership that prisoners being handed over by Canadian soldiers to Afghan authorities faced brutal torture.

Harper, MacKay, and O'Connor argue that they weren't personally contacted by Colvin (he reported to their subordinates). But that excuse is rarely accepted in crimes against humanity cases. It certainly didn't work for Saddam Hussein.

The UN torture convention not only makes the alleged actions of these top Canadian leaders illegal. It requires Canada as a signatory to apprehend and prosecute them.

No wonder then that a spooked MacKay is lashing out at Colvin's credibility. Luckily for him, crimes against humanity laws are applied only against the vanquished.

Otherwise, former U.S. president George W. Bush would be facing trial for illegally making war on Iraq without United Nations authorization.

More to the point for the opposition Liberals, former prime minister Jean Chrétien, former U.S. president Bill Clinton and other NATO leaders would be facing charges for waging illegal war on Serbia in 1999.

That conflict too contravened international law, since it was neither authorized by the UN security council nor waged in self-defence.

In short, there are too many important Canadian politicians who could be caught in the war crimes net for it to be deployed.

Political crimes are a different matter. The Harper government's political crime has been to cover up its role in the Afghan scandal.

It has stonewalled and delayed legitimate attempts by Amnesty International and the B.C. Civil Liberties Union to find out what was going on. It has shamelessly used every available dodge – including Canada's anti-terror laws – to shut down a lawful inquiry by its own military police

complaints commission.

It has almost certainly misled both Parliament and the public, a political crime for which, in a normal world, ministers would resign.

Which explains why, in its usual brutal fashion, the government is attempting to turn this affair into a referendum on the Taliban.

Essentially, it is arguing that anyone who complains about torturing Afghan prisoners is either a traitor or a Taliban dupe.

If Canadians have a lick of sense, they'll see through this wheeze. We shall see whether they do.

Thomas Walkom's column appears Wednesday and Saturday.

EU diplomat backs claims on torture

Canadian's warnings on Afghan detainees reflected common view, says his European colleague

By Tonda Maccharles & Allan Woods, [The Toronto Star](#), 21 November 2009

Richard Colvin's repeated warnings to the Canadian government about detainee torture in Afghanistan were an expression of the common concerns of like-minded Western nations, not the baseless ramblings of a rogue diplomat, a European colleague says. 

Michael Semple, former deputy head of the European Union's mission in Afghanistan when Colvin was second-in-command of the Canadian embassy, said his own records from his time in Kabul are littered with the same findings that the senior Canadian envoy shared with a House of Commons committee this week.

Colvin, now a top intelligence officer at the embassy in Washington, expressed concerns that were "absolutely credible," said Semple, now a research fellow at Harvard University's Carr Center for Human Rights.

"We all worked on it, and we appropriately compared our notes, in terms of understanding what was happening on torture inside the Afghan intelligence service," he told the Star.

The Canadian government should have heeded Colvin's allegation that detainees transferred by Canadian soldiers to local authorities likely were abused, Semple said.

Colvin told a special Commons committee on Afghanistan Wednesday that Canada took vastly more battlefield prisoners than either the British or Dutch militaries operating in southern Afghanistan.

He said that those detainees were, by and large, innocent taxi drivers and farmers rather than Taliban operatives, and that abuse was the "standard operating procedure" of Afghan authorities,

regardless of the intelligence value of a prisoner.

The implements of torture were wire cables, electrical shocks and physical and sexual abuse, he said.

Colvin says his verbal and written warnings, sent far and wide to Canadian diplomats and military officials between May 2006 and October 2007, were at first ignored.

Once newspaper reports in April 2007 brought the problems to light, Colvin said he was instructed to keep quiet by David Mulroney, a senior official who had responsibilities to report on Afghanistan to Prime Minister Stephen Harper, then-foreign affairs minister Peter MacKay and Gordon O'Connor, who was the defence minister before he became the first political casualty of the detainee scandal.

Under Mulroney's tenure, diplomats were told not to put torture allegations on paper, Colvin said.

But a senior government official with knowledge of the file told the Star yesterday there was a simple – and not a nefarious – explanation for Mulroney's instruction.

"Under instructions from Mr. Mulroney, regular phone calls were instituted that connected Ottawa with the field, Kabul with Kandahar, and civilians with military," the source said. "That's why some people were reminded to use the phone instead of simply sitting in an office writing out the same report."

The same source, who answered the Star's question on condition of anonymity, said Colvin's allegations were reviewed by departmental officials, not political officials. The timing of that review was not exactly clear, but the source suggested it was in 2007.

"A complete and thorough review of everything that was alleged was done, and a whole government team set to design a monitoring system still in place now. No detail was hidden, every relevant fact was brought to light."

Mulroney is said to be willing to testify in front of the parliamentary committee, to counter Colvin's allegations, which the Conservative government dismissed as "not credible" and "entirely suspect."

"I don't believe it's backed up by fact, and what we have to deal with in a parliamentary hearing, as we do in a court of law or another judicial or public inquiry, is evidence that can be substantiated," MacKay, who succeeded O'Connor as defence minister, said in Halifax Friday. "The evidence and the suggestion that every single Taliban prisoner that was taken into custody and turned over (to be tortured) is simply not credible."

Semple said the burden of proof should not be on Colvin to show that every detainee was sent to Afghan torture chambers. He also said Colvin never complained to him about Canadian officials in Ottawa or Afghanistan ignoring his advice from the front lines, nor did he mention, as he did in his testimony, that he was being asked to keep his explosive findings out of written reports to his superiors to avoid a scandalous paper trail.

"My reading of this is that he was discreet and did not discuss internal Canadian affairs with people outside his office," Semple said.

Like the defence department earlier this week, the foreign affairs department urged patience to let the Commons committee's hearings run their course. Department spokesman Jamie Christoff said in an email to reporters that current and former foreign affairs employees will provide testimony in the weeks ahead that "will provide important context and information about this issue."

Mackay has acknowledged it was based on the reports of Colvin and others in 2007 that Canada signed a new transfer agreement with the Afghan government that allowed Canadian officials to visit and interview prisoners.

Opposition parties continued to call on the Tories Friday to investigate Colvin's allegations, and the possibility that Afghan detainees may have been abused in the full knowledge of senior Canadian military and diplomatic and political leaders. That, they say, would violate international law, which prohibits a country from knowingly placing individuals in a situation where they will be tortured.

