

Thursday, September 10, 2009

The Right Honourable Stephen Harper
Office of the Prime Minister
80 Wellington Street
Ottawa ON K1A 0A2

The Honourable Rob Nicholson
Attorney General of Canada
Minister of Justice,
House of Commons

The Honourable Peter Van Loan
Minister of Public Safety,
House of Commons

The Honourable Jason Kenney
Minister of Immigration,
House of Commons

The Honourable Lawrence Cannon
Minister of Foreign Affairs,
House of Commons

Dear Prime Minister, Attorney General & Ministers Nicholson, Van Loan, Kenney and Cannon;

Re: Request that George W. Bush, Dick Cheney and Tony Blair be barred from Canada

Lawyers Against the War (LAW) is writing to inform you of planned visits to Canada by:

- George W. Bush, former President of the United States of America (U.S.) on October 20, 21 and 22 2009 to Edmonton, Saskatoon and Montreal;¹
- Dick Cheney, former Vice-President of the U.S. to British Columbia from October 8 to 15, 2009;²
- Tony Blair, former Prime Minister of the United Kingdom (U.K.) to Surrey British Columbia on October 6, 2009.³

LAW is writing to request that G. W. Bush and Dick Cheney and Tony Blair each be barred from entering Canada in accordance with the inadmissibility provisions of the *Immigration and Refugee Protection Act* (IRPA) provisions that bar entry to foreign nationals suspected of human or international rights violations.⁴

Credible Accusations: George W. Bush and Dick Cheney and Tony Blair have each been accused by knowledgeable groups and individuals throughout the world of complicity in war crimes, crimes against humanity and other gross human rights abuses. Accusation of war crimes and crimes against humanity carried out by the Bush administration under the supervision and direction of G.W. Bush as President and Commander in Chief of the U.S. Armed Forces and Dick Cheney as Vice-President are well documented. For example, Professor Michael Haas, in his book, *George W. Bush, War Criminal? The Bush Administration's Liability for 269 War Crimes*, identifies and documents evidence of 269 war crimes and crimes against humanity committed by the U.S. under the direction and supervision of Bush and Cheney. Tony Blair has been credibly accused of authorizing, directing or failing to prevent, war crimes and crimes against humanity committed while he was prime minister during the invasion and occupation of Iraq. None of these accusations have been dismissed or confirmed by a court of law. However, the credible inculpatory evidence supporting the accusations is overwhelming and there does not appear to be any credible exculpatory evidence refuting the accusations.

¹ In Edmonton at the Shaw Convention Center October 20, 2009, 5:00 pm; in Saskatoon at TCU Place October 21/09 at noon; in Montreal at the Fairmont Queen Elizabeth October 22, 2009 at noon.

² Dick Cheney is booked for a week of fishing at the Silver Hilton Lodge on the Babine River near Smithers BC from October 8 to 15 2009

³ Tony Blair will be the keynote speaker October 6 2009 at the Surrey Regional Economic Summit, at the Sheraton Vancouver Guilford Hotel in Surrey.

⁴ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 35 (1)(a)&(b).

Reliable Evidence: Evidence that is part of the public record far exceeds the ‘reasonable grounds’ required by the inadmissibility sections of the IRPA. That torture and other criminal treatment was used by U.S. officials on non-Americans imprisoned in Guantánamo Bay, Abu Ghraib, Bagram and other offshore U.S. prisons is no longer open to question. In our letter of February 23, 2009 we advised you of some recent reports.⁵ These reports indicate that Bush and Cheney authorized and directed and failed to prevent torture and other prohibited treatment of prisoners in Guantánamo Bay, Abu Ghraib, Bagram and other U.S. controlled offshore prisons. Evidence now available establishes that Canadian citizen Omar Khadr is one of the victims of those criminal acts, prohibited by CAT and by Canadian law⁶. Additional torture memos released by the Obama administration indicate that Bush and Cheney approved for use on prisoners held in these offshore prisons, sleep deprivation (used on Khadr), water boarding (simulated drowning) and other treatments prohibited by international and Canadian law. Records and documents released to date indicate that Blair and Bush knowingly planned and carried out the illegal invasion and occupation of Iraq⁷ that has resulted in the death, injury and displacement of millions of people.

Court Decisions: Courts in Canada and the U.S. have confirmed the involvement of the Bush administration in war crimes. The U.S. Supreme Court in *Rasul v. Bush* 542 U.S. 455 (2004) ruled that Bush’s 13 November 2001 order⁸ depriving Guantánamo Bay prisoners of habeas corpus was unlawful under both U.S. and international law. Again in 2006 the U.S. Supreme Court in *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) ruled that the Guantánamo Bay regime created by that same 13 November 2001 order violates the Geneva Convention fair trial rights. Under international (Geneva Conventions) and Canadian (*Crimes against Humanity and War Crimes Act* and the *Geneva Conventions Act*) depriving a prisoner of a fair trial is a war crime.

The Supreme Court of Canada in *Canada (Justice) v. Khadr*, 2008 SCC 28, confirmed that the Bush administration’s treatment of prisoners in Guantánamo Bay violated the Geneva Conventions, Canada’s domestic law and Canada’s international law obligations. The Federal Court of Canada in *Khadr v. the Prime Minister et al*, 2009 FC 405, ruled that the U.S. treatment, of Omar Khadr in Guantánamo Bay and the use of sleep deprivation (moving Khadr every three hours for a period of three weeks to ‘soften’ him up for interrogation by Canadian officials) violated CAT and that Khadr’s detention was illegal under international law.

Canadian law: As observed by UN High Commissioner of Human Rights Navi Pillay all states are responsible for enforcing international humanitarian law by ensuring that violators are prosecuted and held accountable. Canada, as a signatory to CAT, the Geneva Conventions and the *Rome Statute for an International Criminal Court*, has a legal duty to take effective measures to prevent and punish war crimes and crimes against humanity (torture is both) wherever such crimes occur, no matter what the nationality of the perpetrator(s) or victim(s). The Geneva Conventions⁹ and CAT impose a mandatory

⁵ See, *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts*, A Report by Physicians for Human Rights, June 2008. http://brokenlives.info/?page_id=69; *Senate Armed Services Committee Inquiry Into The Treatment Of Detainees In U.S. Custody*, Dec. 11, 2008.

<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>;
RIGHTS: Call to Try Bush, By Julio Godoy, IPS/Berlin, February 2, 2009.
<http://ipsnews.net/news.asp?idnews=45636>

⁶ Under the *Criminal Code*, the *Geneva Conventions Act* and the *Crimes against Humanity and War Crimes Act* torture is a crime in Canada no matter where and by who and against whom it is alleged to have occurred.

⁷ See, Jamie Doward, Gaby Hinsliff and Mark Townsend, *Leaked Memorandum proves Bush and Blair planned illegal Iraq invasion*, *The Observer*, June 21, 2009.

⁸ *Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism*. Executive Order dated November 13, 2001, 66 Fed. Reg. 57833 (Nov. 16, 2001).

⁹ Article 129 of the Third Geneva Convention on Prisoners of War and article 146 of the Fourth Geneva Convention protecting Civilians in wartime (ratified by Canada) provide,

duty to prosecute people suspected of, in the case of CAT, torture and in the case of the Geneva Conventions, war crimes and crimes against humanity, once they enter Canada.

In order to fulfill these duties Canada has passed laws to prevent people suspected of war crimes and crimes against humanity from entering Canada for any purpose.¹⁰ Canada has also made war crimes and crimes against humanity--committed anywhere in the world, against and by any person(s)--crimes under Canadian law¹¹. Canada's duty to prosecute these crimes is triggered when the victim is a Canadian citizen—e.g. Omar Khadr--or the suspected offender enters Canada.

Reports of visits to Canada by Bush, Cheney and Blair coupled with evidence of their involvement in war crimes and crimes against humanity trigger these legal duties. Unless the Attorney General of Canada plans to initiate prosecutions once each enters Canada, Canada's legal duty is to ensure that Bush, Cheney and Blair are not allowed to enter Canada. The duty to direct, supervise and carry out all the steps necessary to ensure this result rests with the Prime Minister, the Attorney General of Canada and with the Ministers of Immigration and Public Safety. The Minister of Foreign Affairs is included as a recipient of this letter in the event that he elects, as a courtesy, to advise G.W. Bush, Dick Cheney and Tony Blair of their inadmissibility as was done in the case of British MP George Galloway. While the latter decision is discretionary, taking the steps necessary to prevent entry is required by law. The law does not allow an option of suspending the law to allow, even temporary, immunity to former heads of states or political colleagues who stand credibly accused of war crimes, crimes against humanity of other gross human rights violations. Indeed, the rule of law¹² forbids such preferential treatment.

Official Investigations of War Crimes: There are several ongoing official investigations of the aforementioned accusations against the Bush and Blair administrations of crimes committed during extra-legal wars. Three examples are: in the U.K., the Chilcot Inquiry; in the U.S., Attorney General Eric Holder has ordered an investigation into “whether or not federal laws were violated in connection with the interrogation of specific detainees at overseas locations”; in the Hague, the International Criminal Court is conducting preliminary investigations of accusations of war crimes and crimes against humanity committed in Afghanistan.

Conclusion: LAW demands that the government of Canada immediately take all necessary steps:

1. To advise George W. Bush, former president of the U.S. and Dick Cheney, former vice-president and Tony Blair, former prime minister of the U.K. that they are inadmissible to Canada, at least until the above mentioned official investigations have been completed, made public and exonerated each of them; and,
2. To take all steps necessary to ensure that G.W. Bush and Dick Cheney and Tony Blair are denied entry to Canada as required by both Canadian law and Canada's international law obligations; and,
3. If any one of G.W. Bush, Dick Cheney or Tony Blair is not advised of his inadmissibility or, being advised, presents himself for entry, to treat this letter and the sources referred to, as a report under s. 44. (1) of the IRPA and to refer the matter to the Immigration Division for an admissibility hearing; and,
4. To take the steps necessary to have the George W. Bush administration, between October 2001 and November 2008 designated as a “government that...has engaged in systematic or gross human rights violations, or a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act, pursuant to s. 35(1)(b) of the IRPA.

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such graves breaches, and shall bring such persons, regardless of their nationality, before its own courts."

¹⁰ *Immigration and Refugee Protection Act* S.C. 2001 c. 27, Division 4 Inadmissibility, s. 35, Human or international rights violations.

¹¹ *The Crimes against Humanity and War Crimes Act* S.C. 2000 c. 24, *Criminal Code* R.S.C. 1985 c. C-46, *Geneva Conventions Act*, R.S.C. 1985 c. G-3.

¹² *The Canadian Charter of Rights and Freedoms*, provides, “Whereas Canada is founded upon principles that recognize the supremacy of ...the rule of law.”

We remind you of your government's oft repeated statement, "The most effective measure to ensure that Canada is not a safe haven for suspected perpetrators of war crimes, crimes against humanity and genocide is their early detection and subsequent prevention of entry into Canada."¹³

We are ready to provide such additional information as you may require, including excerpts from the statutes and international instruments referred to.

We request an immediate reply and prompt action by the Prime Minister, Minister of Immigration, Attorney General of Canada, Minister of Public Safety and by the Canadian Border Services Agency to comply with Canadian law and Canada's international law obligations and to bar entry to Canada by G.W. Bush and Dick Cheney and Tony Blair on the grounds of their suspected involvement, while heads of state, in authorizing, directing, supervising and failing to prevent war crimes and crimes against humanity.

Sincerely,

Gail Davidson, Lawyers against the War
StopWar.ca
Derrick O'Keefe, Editor, Rabble.ca

Copies to:

Leader Jack Layton-NDP
Joe Comartin, Justice Critic
Paul Dewar, Foreign Affairs Critic
Don Davies, Critic on Immigration & Public Safety
Liberal Leader Michael Ignatieff
Bob Rae, Foreign Affairs Critic
Dominic Leblanc, Justice Critic
Maurizio Bevilacqua, Immigration Critic
Gilles Duceppe, Leader of the Bloc Quebecois
Real Menard, Justice et Procureur Général
Serge Menard, Sécurité Publique
Thierry St-Cyr, Citoyennet & Immigration
Paul Crete, Affaires Etrangé

Lawyers Against the War (LAW) is a Canada-based committee of jurists and others who oppose war and advocate for adherence to international humanitarian law and against impunity for violators.

Contacts:

Gail Davidson, Tel: 604 738 0338; Fax: 604 736 1175, Email: law@portal.ca

¹³ *Canada's Program on Crimes Against Humanity and War Crimes: Tenth Annual Report, 2006-2007*
<http://www.cbsa-asfc.gc.ca/security-securite/wc-cg/wc-cg2007-eng.html>