

Wednesday, November 24, 2004

The Honourable Judy Sgro, P.C., M.P.
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Dear Minister Sgro;

Re: President George W. Bush proposed November 30th 2004 visit to Canada.

We wrote to Prime Minister Martin on November 19 2004 protesting the invitation of President Bush to Canada on the grounds of the President's flagrant commission of the most serious crimes against international law. Our letter is enclosed.

As that letter indicates, many of the crimes of which President Bush stands accused are crimes under Canadian law, specifically under the *Crimes Against Humanity and War Crimes Act*.

We are writing to you now to remind you that these crimes render President Bush *inadmissible* to Canada under our immigration laws. Because responsibility for the operation and enforcement of the *Immigration and Refugee Protection Act* lies with you and your Ministry, we are calling on you to advise the Prime Minister of this fact and to insist that he rescind this invitation out of respect for our laws.

As you know, section 35 of the *Immigration and Refugee Protection Act*, 2001 2001 provides as follows:

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for
- (a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

Paragraph 2 of section 35 allows for exceptions to be made for other classes of inadmissible foreign nationals 'who satisf[y] the Minister that their presence in Canada would not be detrimental to the national interest.' However, these exceptions specifically do not apply to those who have committed acts constituting offences referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

Section 6 of the *Crimes Against Humanity and War Crimes Act* incorporates by reference all international crimes against humanity and war crimes, and, explicitly, all crimes enumerated in Articles 7 and 8(2) of the Rome Statute of the International Criminal Court. Section 7 of the Act places special responsibility on 'military commanders' and other 'superiors' for crimes committed by their subordinates that they knew of, or were criminally negligent in failing to know of, and with respect to which they did not take necessary and reasonable steps to prevent.

Section 33 of the *Immigration and Refugee Protection Act* specifically provides that

'facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.'

The evidence of President Bush's past and ongoing criminality is overwhelming. A recent editorial in the Washington Post commented on some of the now well known facts regarding the chain of memoranda from the President and white house White House counsel Alberto R. Gonzales, now Attorney General, that led to the use of torture by the US Armed Forces. These memoranda clearly establish the President's culpability for the torture used on detainees at Guantanamo Bay and Abu Ghraib prisons. We also refer you to the many careful reports prepared by respected human rights organizations, journalists and scholars and also to recent decisions by US Courts, some of which are referenced in our letter to the Prime Minister and others we have listed below. These clearly provide far more than 'reasonable grounds to believe' in President Bush's legal and moral responsibility for the gravest crimes under numerous provisions of the *Crimes Against Humanity and War Crimes Act*.

We are sending a copy of this letter directly to the Interdepartmental Operations Group (IOG), the agency through which, we have been given to understand, Citizenship and Immigration Canada, the Department of Justice and the RCMP investigate all allegations of crimes against humanity and war crimes.

We remind you of the proud claim made by Canada's War Crimes Program in its 2003-2004 report that,

The policy of the Government of Canada is unequivocal. Canada will not be a safe haven for persons involved in war crimes, crimes against humanity or other reprehensible acts.

The time is short before President Bush's intended visit, so we are asking that you or your representative meet with us immediately to explain the action you intend to fulfill your obligations under the *Immigration and Refugee Protection Act*.

Sincerely,

Michael Mandel and Gail Davidson
on behalf of Lawyers against the War (LAW) a Canada-based committee of jurists and others with members in thirteen countries.

cc. Interdepartmental Operations Group, war_crimes-crimes_de_guerre@rcmp-grc.gc.ca

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*SELECTED LIST OF REPORTS DOCUMENTING CRIMES AGAINST HUMANITY AND WAR CRIMES FOR WHICH
PRESIDENT BUSH IS CRIMINALLY RESPONSIBLE*

HUMAN RIGHTS WATCH, Report *Off Target: The Conduct of the War and Civilian Casualties in Iraq*
<http://hrw.org/reports/2003/usa1203/usa1203.pdf>

AMNESTY INTERNATIONAL

Report, *UNITED STATES OF AMERICA Human dignity denied Torture and accountability in the 'war on terror'*

<http://hrw.org/reports/2003/usa1203/usa1203.pdf>

MDE 16/11/2004 Iraq: Urgent action needed to prevent war crimes

MDE 14/057/2004 12/11/2004 Iraq: Fears of serious violations of the rules of war in Falluja

MDE 14/055/2004 04/11/2004 Iraq - Falluja: assurances needed for the protection of civilians

MDE 14/049/2004 17/09/2004 Iraq: Urgent inquiry needed into civilian killings by US troops

MDE 14/043/2004 30/07/2004 Iraq: Violence must stop - rule of law must prevail

AMR 51/102/2004 18/06/2004 Iraq: Clarification needed on status of prisoners after 30 June Open letter to the Permanent Representative of the United States of America to the United Nations

NWS 21/005/2004 28/05/2004 Iraq: Incommunicado detention/Fear of torture, Mohammad Jassem 'Abd al-'Issawi

MDE 14/027/2004 28/05/2004 Open letter to state members of the Coalition in Iraq

MDE 14/021/2004 11/05/2004 Iraq: Killings of civilians in Basra and al-'Amara

MDE 14/007/2004 11/05/2004 Iraq: Civilians killed by UK Armed Forces and armed groups

MDE 14/019/2004 07/05/2004 An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment

AMR 51/078/2004 07/05/2004 USA: Pattern of brutality and cruelty -- war crimes at Abu Ghraib

ORG 10/004/2004 30/04/2004 Iraq: Torture not isolated -- independent investigations vital

MDE 14/001/2004 04/03/2004 Iraq: Incommunicado detention/Fear of torture

MDE 14/179/2003 20/11/2003 Iraq: Amnesty International seeks clarification on house demolitions by US troops in Iraq

MDE 14/177/2003

MDE 14/101/2003 25/04/2003 Iraq: Stripped naked and humiliated by US soldiers

MDE 14/078/2003 08/04/2003 Iraq: Civilians under fire.

MDE 14/071/2003 08/04/2003 Iraq: Civilians under fire

MDE 14/072/2003 03/04/2003 Iraq: Condemnation of British use of cluster bombs

IOR 41/011/2003 02/04/2003 Iraq: Use of cluster bombs -- Civilians pay the price

IOR 41/010/2003 01/04/2003 Iraq: US must investigate civilian deaths

MDE 14/058/2003 30/03/2003 Iraq: In the shadow of war: backlash against human rights

MDE 14/056/2003 27/03/2003 Iraq: Risk to civilians if landmines and cluster bombs used

MDE 14/045/2003 26/03/2003 Iraq: Fear of war crimes by both sides

MDE 14/044/2003 26/03/2003 Iraq: Bombing of Iraqi state television

OFFENCES OUTSIDE CANADA

6. (1) Every person who, either before or after the coming into force of this section, commits outside Canada

...

- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

Definitions

(3) The definitions in this subsection apply in this section.

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

...

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

ARTICLE 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) murder;

...

(e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) torture;

(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

...

(i) enforced disappearance of persons;

(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

...

(e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

...

(i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

PARAGRAPH 2 OF ARTICLE 8

War crimes

2. For the purpose of this Statute, "war crimes" means:

(a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) wilful killing;

(ii) torture or inhuman treatment, including biological experiments;

(iii) wilfully causing great suffering, or serious injury to body or health;

(iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

...

(vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) unlawful deportation or transfer or unlawful confinement;

(b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

...

(iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

...

(vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

...

(ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

...

(xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

...

(xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...

(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

[As a result of Security Council Resolution 1546 of 8 June 2004, it is arguable that the conflict ceased as of that day to be 'of an international character'. In that case, crimes committed from that day forward would fall under the following provisions:]

(c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...

(e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

...

(iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...

(vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

...

(ix) killing or wounding treacherously a combatant adversary;

...

(f) paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

[President Bush's 'command responsibility derives from the following provisions of Section 6 of the Crimes Against Humanity and War Crimes Act:]

Breach of responsibility by military commander

7. (1) A military commander commits an indictable offence if

(a) the military commander, outside Canada,

(i) fails to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 6;

(b) the military commander knows, or is criminally negligent in failing to know, that the person is about to commit or is committing such an offence; and

(c) the military commander subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

Breach of responsibility by a superior

(2) A superior commits an indictable offence if

(a) the superior, outside Canada,

(i) fails to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 6;

(b) the superior knows that the person is about to commit or is committing such an offence, or consciously disregards information that clearly indicates that such an offence is about to be committed or is being committed by the person;

(c) the offence relates to activities for which the superior has effective authority and control; and

(d) the superior subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

Conspiracy, attempt, etc.

(2.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) or (2) is guilty of an indictable offence.

Jurisdiction

...

Punishment

(4) Every person who commits an offence under subsection (1), (2) or (2.1) is liable to imprisonment for life.

Definitions

(6) The definitions in this subsection apply in this section.

"military commander" includes a person effectively acting as a military commander and a person who commands police with a degree of authority and control comparable to a military commander.

"superior" means a person in authority, other than a military commander.