

Friday, November 19, 2004

The Right Honourable Paul Martin

Prime Minister of Canada
Office of the Prime Minister
Langevin Block
80 Wellington Street
Ottawa, Canada K1A 0A2
Tel: 613 6868
Fax: 613-941-6900
Email: pm@pm.gc.ca

URGENT

Dear Prime Minister Martin:

It was with absolute dismay that we learned of the planned visit of President Bush to Canada on November 30th 2004.

Surely you are aware of the many grave crimes against humanity and war crimes for which President Bush stands properly accused by the world, starting with the Nuremberg Tribunal's 'supreme international crime' of waging an aggressive war against Iraq in defiance of international law and the Charter of the United Nations, and including systematic and massive violations of the Geneva Conventions Relative to the Treatment of Prisoners of War and Relative to the Protection of Civilian Persons in Time of War, as well as the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As recently as November 16, U.N. High Commissioner for Human Rights and former war crimes prosecutor Louise Arbour called for an investigation into crimes against the Geneva Conventions in the assault by US forces on the densely populated city of Fallujah.¹

The terrible toll in life and limb of these crimes was documented in a study carried out by the Johns Hopkins University School of Public Health in Baltimore and published in the October 29, 2004 issue of the British Medical Journal *The Lancet* which conservatively estimated that the war had taken 100,000 Iraqi lives, mostly women and children.² This was well within the range predicted before the war, for example by a British affiliate of International Physicians for the Prevention of Nuclear War who, in

¹ Reuters, "U.N. Rights Boss Urges Fallujah 'Abuses' Probe"
<http://yahoo.reuters.com/newsArticle.jhtml?type=topNews&storyID=6828157>.

² Les Roberts, Riyadh Lafta, Richard Garfield, Jamal Khudhairi, Gilbert Burnham, *Mortality before and after the 2003 invasion of Iraq*, published online 29 October 2004. <http://image.thelanct.com/extras04art10342web.pdf>

November 2002, assessed the probable death toll at a minimum of 48,000 deaths, mostly civilians, and predicted that post-war conditions would cost an additional 200,000 lives.³

The President's responsibility for these offences derives not only from his 'command responsibility' as Commander in Chief of US forces, for crimes that he knew were being committed, or ignored through willful blindness, but did nothing to prevent; it also comes from his direct involvement in the formulation of policy. This includes his personal involvement not only in the devising and waging of an aggressive, illegal war, but also of the unlawful refusal to grant prisoner of war status to prisoners of war, contrary to specific provisions of the Geneva Conventions, an act repudiated in the US Courts.⁴ It also includes the approval of techniques of interrogation by his direct subordinate, Secretary of Defense Rumsfeld, that legally and morally constitute torture and that led directly to the disgraceful violence against Iraqi prisoners, for example at the prison at Abu Ghraib.

As you know, not only are these acts criminal under international law, but many of them are also criminal under *Canadian* law, under laws enacted in pursuance of our international obligations, most importantly the *Crimes Against Humanity and War Crimes Act*, put in place just four years ago under a Liberal government. They also violate the provisions on torture in the Canadian *Criminal Code*.

By these laws, Canadians and non-Canadians alike are liable to prosecution in Canada, no matter where in the world they have committed their crimes. Furthermore, as the Attorney General can advise, the fact that these crimes have been committed by Mr. Bush while President of the United States is absolutely irrelevant to his personal liability to prosecution in Canada, according to principles established at Nuremberg and universally recognized since then, including by the British House of Lords in the *Pinochet* case in 1999. And if President Bush were to visit Canada after leaving office, we would be seeking the Attorney General's permission under section 9 of the *Crimes Against Humanity and War Crimes Act* and section 7 of the *Criminal Code* to commence proceedings against him.

However, as you also know, should President Bush come to Canada now, while still President, he would be clothed with both diplomatic and head of state immunity from our laws and we would be powerless to bring him to justice.

Your invitation in these circumstances, therefore, shows contempt for both Canadian and international law and is a grievous insult to the literally hundreds of thousands of victims of President Bush's international crimes. It is also our belief that the invitation endangers Canadians' security at home and abroad, because it is a departure from our steadfast refusal to this point to participate in this criminal war of the Bush

³ Collateral Damage: the Health and Environmental Costs of War on Iraq, 12 November 2002.
<http://www.ipnw.org/CollateralDamage.pdf>

⁴ For example *Hamdan v. Rumsfeld et al*, (United States District Court for the District of Columbia, November 7, 2004).

administration. In fact, it is our belief that this invitation can only act as an *encouragement* to President Bush in his continuing criminal activity, providing him with an important platform in this, his first post re-election foreign visit, to defend illegal US actions in Iraq and to improve his international standing despite them, all this against the wishes of the majority of Canadians.

Indeed, we feel bound to point out that your invitation to President Bush may thus constitute an *abetting* of the crimes he and his administration and military continue to commit. As such you and your colleagues could be personally liable to prosecution under the *Crimes against Humanity and War Crimes Act* by virtue of section 21 of the Canadian *Criminal Code*, for crimes so serious that they are punishable in Canada by up to life imprisonment. Abetting a crime, as the Attorney General will advise, is regarded as equally criminal to actually committing it and is complete when one intentionally, knowingly, or with willful blindness encourages the commission of a crime by another.

Nor would President Bush's immunity be capable of shielding you and your colleagues from prosecution, because, as the Attorney General will advise, the immunity applies only to foreign officials visiting Canada and not to members of the Canadian government itself. Nor does the inability to prosecute a criminal affect the criminal liability of an abettor.

It is for all these reasons we urgently request a meeting with you, the Foreign Minister, the Attorney General or your representatives in Ottawa, so that we might have the opportunity to elaborate on these matters and to persuade you to declare President Bush *persona non grata* in Canada, or at least to rescind this invitation, and thus to avoid implicating yourselves and Canada in the most serious of international crimes.

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.

Contacts:

Michael Mandel, Professor, Osgoode Hall Law School, York University, 4700 Keele Street, Toronto, Ontario, M3J 1P3. Tel: 416 736-5039, Fax: 416-736-5736,

Email: MMandel@osgoode.yorku.ca

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