

Should Canada indict Bush?

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When U.S. President George W. Bush arrives in Ottawa — probably later this year — should he be welcomed? Or should he be charged with war crimes?

It's an interesting question. On the face of it, Bush seems a perfect candidate for prosecution under Canada's Crimes against Humanity and War Crimes Act.

This act was passed in 2000 to bring Canada's ineffectual laws in line with the rules of the new International Criminal Court. While never tested, it lays out sweeping categories under which a foreign leader like Bush could face arrest.

In particular, it holds that anyone who commits a war crime, even outside Canada, may be prosecuted by our courts. What is a war crime? According to the statute, it is any conduct defined as such by "customary international law" or by conventions that Canada has adopted.

War crimes also specifically include any breach of the 1949 Geneva Conventions, such as torture, degradation, wilfully depriving prisoners of war of their rights "to a fair and regular trial," launching attacks "in the knowledge that such attacks will cause incidental loss of life or injury to civilians" and deportation of persons from an area under occupation.

Outside of one well-publicized (and quickly squelched) attempt in Belgium, no one has tried to formally indict Bush. But both Oxfam International and the U.S. group Human Rights Watch have warned that some of the actions undertaken by the U.S. and its allies, particularly in Iraq, may fall under the war crime rubric.

The case for the prosecution looks quite promising. First, there is the fact of the Iraq war itself. After 1945, Allied tribunals in Nuremberg and Tokyo — in an astonishing precedent — ruled that states no longer had the unfettered right to invade other countries and that leaders who started such conflicts could be tried for waging illegal war.

Concurrently, the new United Nations outlawed all aggressive wars except those authorized by its Security Council.

Today, a strong case could be made that Bush violated the Nuremberg principles by invading Iraq. Indeed, U.N. Secretary-General Kofi Annan has already labelled that war illegal in terms of the U.N. Charter.

Second, there is the manner in which the U.S. conducted this war.

The mistreatment of prisoners at Iraq's Abu Ghraib prison is a clear contravention of the

Geneva Accord. The U.S. is also deporting selected prisoners to camps outside of Iraq (another contravention). U.S. press reports also talk of shadowy prisons in Jordan run by the CIA, where suspects are routinely tortured. And the estimated civilian death toll of 100,000 may well contravene the Geneva Accords prohibition against the use of excessive force.

Canada's war crimes law specifically permits prosecution not only of those who carry out such crimes but of the military and political superiors who allow them to happen.

What has emerged since Abu Ghraib shows that officials at the highest levels of the Bush administration permitted and even encouraged the use of torture.

Given that Bush, as he likes to remind everyone, is the U.S. military's commander-in-chief, it is hard to argue he bears no responsibility.

Then there is Guantanamo Bay. The U.S. says detainees there do not fall under the Geneva accords. That's an old argument.

In 1946, Japanese defendants explained their mistreatment of prisoners of war by noting that their country had never signed any of the Geneva Conventions. The Japanese were convicted anyway.

Oddly enough, Canada may be one of the few places where someone like Bush could be brought to justice. Impeachment in the U.S. is most unlikely. And, at Bush's insistence, the new international criminal court has no jurisdiction over any American.

But a Canadian war crimes charge, too, would face many hurdles. Bush was furious last year when Belgians launched a war crimes suit in their country against him — so furious that Belgium not only backed down under U.S. threats but changed its law to prevent further recurrences.

As well, according to a foreign affairs spokesperson, visiting heads of state are immune from prosecution when in Canada on official business. If Ottawa wanted to act, it would have to wait until Bush was out of office — or hope to catch him when he comes up here to fish.

And, of course, Canada's government would have to want to act. War crimes prosecutions are political decisions that must be authorized by the federal attorney-general.

Still, Prime Minister Paul Martin has staked out his strong opposition to war crimes. This was his focus in a September address to the U.N. General Assembly.

There, Martin was talking specifically about war crimes committed by militiamen in far-off Sudan. But as my friends on the Star's editorial board noted in one of their strong defences of concerted international action against war crimes, the rule must be, "One law for all."

Thomas Walkom writes for The Toronto Star. .

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Canada has right to ban Bush entry

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Thomas Walkom makes an impeccable case for President George W. Bush's status as a war criminal under international and Canadian law, but he is wrong to suggest that our only choices are to indict Bush (and violate his immunity as a visiting head of state), or to welcome him with open arms.

We are certainly not helpless when a notorious war criminal wants to visit Canada, even if he is the president of the United States. For instance, Canada has the unfettered right under international law to declare Bush "persona non grata" — a status he has already earned for himself in the hearts of most Canadians — and ban him from entering our country.

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