

The War Crimes Act of 1996: Bush, Rumsfeld could be indicted under US law

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The War Crimes Act of 1996, a federal statute set forth at [18 U.S.C. § 2441](#), makes it a federal crime for any U.S. national, whether military or civilian, to violate the Geneva Convention by engaging in murder, torture, or inhuman treatment.

The statute applies not only to those who carry out the acts, but also to those who [ORDER IT, know about it, or fail to take steps to stop it](#). The statute applies to [everyone, no matter how high and mighty](#).

18 U.S.C. § 2441 has no statute of limitations, which means that a war crimes complaint can be filed at any time.

The penalty may be life imprisonment or — if a *single* prisoner dies due to torture — death. Given that there are numerous, documented cases of prisoners being tortured to death by U.S. soldiers in both Iraq and Afghanistan, that means that the death penalty would be appropriate for anyone found guilty of carrying out, ordering, or sanctioning such conduct.

Here's where it gets interesting. The general in charge of the notorious Abu Ghraib prison in Iraq stated this week that [Secretary of Defense Donald Rumsfeld and other top administration officials ORDERED that inhuman treatment and torture be conducted as part of a deliberate strategy](#).

It has also recently come out that, even after the torture at Abu Ghraib hit the news, torture still continues [at that prison](#) and, indeed, the U.S. is still [torturing people worldwide](#). Even to the casual observer, it is obvious that [the administration has no plans to stop, but has instead been working tirelessly to make it easier to carry out torture in the future](#).

Let's recap. We now know that torture in Iraq was ordered by top officials, and that torture is continuing, notwithstanding the administration's claims that it was only "a couple of bad apples" that were responsible for Abu Ghraib. Making a potential prosecutor's job easier, U.S. Attorney General Alberto Gonzales wrote a memo in January 2002 to President Bush saying that America should opt out of the Geneva Convention because top officials have to worry about prosecutions under 18 U.S.C. § 2441. By attempting to sidestep the Geneva Convention, Gonzales created a document trail that can be used to prove that top administration officials *knowingly* created a policy of torturing prisoners, and that such a policy could reasonably have been expected to result in the death of some prisoners.

The U.S. did opt out of the Geneva Convention for the Afghanistan war, but *we never opted*

out of the Geneva Convention for Iraq. Indeed, President Bush has repeatedly stated that Geneva applies in Iraq (although he has since claimed that foreign fighters captured in Iraq are not covered). Thus, there would be very little room for fancy footwork by defense lawyers in a prosecution against top officials concerning torture in Iraq.

The Abu Ghraib general's recent statements about torture coming from the top is an important piece of evidence for convicting Bush, Cheney, Rumsfeld, Gonzales, and a host of other top administration officials for violation of the War Crimes Act of 1996. Upon conviction, they could be sentenced to life in prison, or even death.

Additionally, violation of the war crimes act almost certainly constitutes a "high crime or misdemeanor" which would allow impeachment of such officials.

posted by George Washington

ANNEX

- [United States Code](#)
 - [TITLE 18 - CRIMES AND CRIMINAL PROCEDURE](#)
 - [PART I - CRIMES](#)
 - [CHAPTER 118 - WAR CRIMES](#)

U.S. Code as of: 01/06/03 **Section 2441. War crimes** (a) Offense. – Whoever, whether inside or outside the United

States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances. – The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition. – As used in this section the term "war crime" means any conduct –

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol,

willfully kills or causes serious injury to civilians.

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