

[Crimes Against Humanity and War Crimes Act](#) (2000, c. 24)
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Subject: Justice, Courts, and Judiciary

Crimes Against Humanity and War Crimes Act

2000, c. 24

An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts

[Assented to 29th June, 2000]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Crimes Against Humanity and War Crimes Act*.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act.

"conventional international law" « *droit international conventionnel* »

"conventional international law" means any convention, treaty or other international agreement

- (a) that is in force and to which Canada is a party; or
- (b) that is in force and the provisions of which Canada has agreed to accept and apply in an armed conflict in which it is involved.

"International Criminal Court" « *Cour pénale internationale* »

"International Criminal Court" means the International Criminal Court established by the Rome Statute.

"official" « *fonctionnaire* »

"official", in respect of the International Criminal Court, means the Prosecutor, Registrar, Deputy Prosecutor and Deputy Registrar, and the staff of the organs of the Court.

"Rome Statute" « *Statut de Rome* »

"Rome Statute" means the Rome Statute of the International Criminal Court adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998, as corrected by the *procès-verbaux* of November 10, 1998, July 12, 1999, November 30, 1999 and May 8, 2000, portions of which are set out in the schedule.

Words and Expressions

- (2) Unless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*.

HER MAJESTY

Binding on Her Majesty

- 3. This Act is binding on Her Majesty in right of Canada or a province.

OFFENCES WITHIN CANADA

Genocide, etc., committed in Canada

- 4. (1) Every person is guilty of an indictable offence who commits
 - (a) genocide;
 - (b) a crime against humanity; or
 - (c) a war crime.

Conspiracy, attempt, etc.

- (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" « *crime contre l'humanité* »

"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.

"genocide" « *génocide* »

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide 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" « *crime de guerre* »

"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.

Interpretation -- customary international law

- (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. This does not limit or prejudice in any way the application of existing or developing rules of international law.

Breach of responsibility by military commander

- *5. (1) A military commander commits an indictable offence if
(a) the military commander
(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, 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.

*[Note: Section 5 in force October 23, 2000, see SI/2000-95.]

Breach of responsibility by a superior

*(2) A superior commits an indictable offence if

- (a) the superior
- (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, 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.

*[Note: Section 5 in force October 23, 2000, see SI/2000-95.]

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.

Punishment

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

Definitions

- (4) The definitions in this subsection apply in this section.

"military commander" « *chef militaire* »

"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" « *supérieur* »

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

OFFENCES OUTSIDE CANADA

Genocide, etc., committed outside Canada

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

- (a) genocide,
- (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.

Conspiracy, attempt, etc.

(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" « *crime contre l'humanité* »

"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.

"genocide" « *génocide* »

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide 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" « *crime de guerre* »

"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.

Interpretation -- customary international law

(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.

Interpretation -- crimes against humanity

(5) For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

- (a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and
- (b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

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

- (3) A person who is alleged to have committed an offence under subsection (1), (2) or (2.1) may be prosecuted for that offence in accordance with section 8.

Punishment

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

Application before coming into force

*(5) Where an act or omission constituting an offence under this section occurred before the coming into force of this section, subparagraphs (1)(a)(ii) and (2)(a)(ii) apply to the extent that, at the time and in the place of the act or omission, the act or omission constituted a contravention of customary international law or conventional international law or was criminal according to the general principles of law recognized by the community of nations, whether or not it constituted a contravention of the law in force at the time and in the place of its commission.

*[Note: Section 7 in force October 23, 2000, see SI/2000-95.]

Definitions

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

"military commander" « *chef militaire* »

"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" « *supérieur* »

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

Jurisdiction

8. A person who is alleged to have committed an offence under section 6 or 7 may be prosecuted for that offence if
- (a) at the time the offence is alleged to have been committed,
 - (i) the person was a Canadian citizen or was employed by Canada in a civilian or military capacity,
 - (ii) the person was a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state,
 - (iii) the victim of the alleged offence was a Canadian citizen, or
 - (iv) the victim of the alleged offence was a citizen of a state that was allied with Canada in an armed conflict; or
 - (b) after the time the offence is alleged to have been committed, the person is present in Canada.

PROCEDURE AND DEFENCES

Place of trial

9. (1) Proceedings for an offence under this Act alleged to have been committed outside Canada for which a person may be prosecuted under this Act may, whether or not the person is in Canada, be commenced in any territorial division in Canada and the person may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

Presence of accused at trial

(2) For greater certainty, in a proceeding commenced in any territorial division under subsection (1), the provisions of the *Criminal Code* relating to requirements that an accused appear at and be present during proceedings and any exceptions to those requirements apply.

Personal consent of Attorney General

(3) No proceedings for an offence under any of sections 4 to 7, 27 and 28 may be commenced without the personal consent in writing of the Attorney General or Deputy Attorney General of Canada, and those proceedings may be conducted only by the

Attorney General of Canada or counsel acting on their behalf.

Consent of Attorney General

(4) No proceedings for an offence under section 18 may be commenced without the consent of the Attorney General of Canada.

Evidence and procedure

*10. Proceedings for an offence alleged to have been committed before the coming into force of this section shall be conducted in accordance with the laws of evidence and procedure in force at the time of the proceedings.

*[Note: Section 10 in force October 23, 2000, see SI/2000-95.]

Defences

11. In proceedings for an offence under any of sections 4 to 7, the accused may, subject to sections 12 to 14 and to subsection 607(6) of the *Criminal Code*, rely on any justification, excuse or defence available under the laws of Canada or under international law at the time of the alleged offence or at the time of the proceedings.

When previously tried outside Canada

12. (1) If a person is alleged to have committed an act or omission that is an offence under this Act, and the person has been tried and dealt with outside Canada in respect of the offence in such a manner that, had they been tried and dealt with in Canada, they would be able to plead *autrefois acquit*, *autrefois convict* or pardon, the person is deemed to have been so tried and dealt with in Canada.

Exception

(2) Despite subsection (1), a person may not plead *autrefois acquit*, *autrefois convict* or pardon in respect of an offence under any of sections 4 to 7 if the person was tried in a court of a foreign state or territory and the proceedings in that court (a) were for the purpose of shielding the person from criminal responsibility; or (b) were not otherwise conducted independently or impartially in accordance with the norms of due process recognized by international law, and were conducted in a manner that, in the circumstances, was inconsistent with an intent to bring the person to justice.

Conflict with internal law

13. Despite section 15 of the *Criminal Code*, it is not a justification, excuse or defence with respect to an offence under any of sections 4 to 7 that the offence was committed in obedience to or in conformity with the law in force at the time and in the place of its commission.

Defence of superior orders

14. (1) In proceedings for an offence under any of sections 4 to 7, it is not a defence that the accused was ordered by a government or a superior -- whether military or civilian -- to perform the act or omission that forms the subject-matter of the offence, unless

- (a) the accused was under a legal obligation to obey orders of the government or superior;
- (b) the accused did not know that the order was unlawful; and
- (c) the order was not manifestly unlawful.

Interpretation -- manifestly unlawful

- (2) For the purpose of paragraph (1)(c), orders to commit genocide or crimes against humanity are manifestly unlawful.

Limitation -- belief of accused

- (3) An accused cannot base their defence under subsection (1) on a belief that an order was lawful if the belief was based on information about a civilian population or an identifiable group of persons that encouraged, was likely to encourage or attempted to justify the commission of inhumane acts or omissions against the population or group.

PAROLE ELIGIBILITY

Parole eligibility

- 15.** (1) The following sentence shall be pronounced against a person who is to be sentenced to imprisonment for life for an offence under section 4 or 6:
- (a) imprisonment for life without eligibility for parole until the person has served 25 years of the sentence, if a planned and deliberate killing forms the basis of the offence;
 - (b) imprisonment for life without eligibility for parole until the person has served 25 years of the sentence, if an intentional killing that is not planned and deliberate forms the basis of the offence, and
 - (i) the person has previously been convicted of an offence under section 4 or 6 that had, as its basis, an intentional killing, whether or not it was planned and deliberate, or
 - (ii) the person has previously been convicted of culpable homicide that is murder, however described in the *Criminal Code*;
 - (c) imprisonment for life without eligibility for parole until the person has served at least 10 years of the sentence or any greater number of years, not being more than 25, that has been substituted for it under section 745.4 of the *Criminal Code*, if an intentional killing that is not planned and deliberate forms the basis of the offence; and
 - (d) imprisonment for life with normal eligibility for parole, in any other case.

Parole eligibility

- (1.1) The sentence pronounced against a person who is to be sentenced to imprisonment for life for an offence under section 5 or 7 shall be imprisonment for life with normal eligibility for parole.

Provisions of *Criminal Code* apply

- (2) Sections 745.1 to 746.1 of the *Criminal Code* apply, with any modifications that

the circumstances require, to a sentence of life imprisonment imposed under this Act, and, for the purpose of applying those provisions,

- (a) a reference in sections 745.1, 745.3, 745.5 and 746.1 of the *Criminal Code* to first degree murder is deemed to be a reference to an offence under section 4 or 6 of this Act when a planned and deliberate killing forms the basis of the offence;
- (b) a reference in sections 745.1 to 745.5 and 746.1 of the *Criminal Code* to second degree murder is deemed to be a reference to an offence under section 4 or 6 of this Act when an intentional killing that is not planned and deliberate forms the basis of the offence;
- (c) a reference in sections 745.4 and 746 of the *Criminal Code* to section 745 of that Act is deemed to be a reference to subsection (1) or (1.1) of this section;
- (d) a reference in section 745.6 of the *Criminal Code* to the province in which a conviction took place is deemed, in respect of a conviction that took place outside Canada, to be a reference to the province in which the offender is incarcerated when the offender makes an application under that section; and
- (e) a reference in section 745.6 of the *Criminal Code* to murder is deemed to be a reference to an offence under section 4 or 6 of this Act when an intentional killing forms the basis of the offence.

Minimum punishment

(3) For the purpose of Part XXIII of the *Criminal Code*, the sentence of imprisonment for life prescribed by sections 4 and 6 is a minimum punishment when an intentional killing forms the basis of the offence.

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

Obstructing justice

16. (1) Every person who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice of the International Criminal Court is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

When deemed to have obstructed justice

(2) Without restricting the generality of subsection (1), every person is deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in an existing or proposed proceeding of the International Criminal Court

- (a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence; or
- (b) accepts, obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence.

Obstructing officials

17. Every person who resists or wilfully obstructs an official of the International Criminal Court in the execution of their duty or any person lawfully acting in aid of such an official

- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) is guilty of an offence punishable on summary conviction.

Bribery of judges and officials

- 18.** Every person is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years who
- (a) being a judge or an official of the International Criminal Court, corruptly accepts, obtains, agrees to accept or attempts to obtain for themselves or any other person any money, valuable consideration, office, place or employment
 - (i) in respect of anything done or omitted or to be done or omitted by them in their official capacity, or
 - (ii) with intent to interfere in any other way with the administration of justice of the International Criminal Court; or
 - (b) gives or offers, corruptly, to a judge or an official of the International Criminal Court, any money, valuable consideration, office, place or employment
 - (i) in respect of anything done or omitted or to be done or omitted by them in their official capacity, or
 - (ii) with intent to interfere in any other way with the administration of justice of the International Criminal Court.

Perjury

- 19.** (1) Subject to subsection (5), every person commits perjury who, with intent to mislead, makes a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false, before a judge of the International Criminal Court or an official of that Court who is authorized by the Court to permit statements to be made before them.

Video links, etc.

- (2) Subject to subsection (5), every person who gives evidence under subsection 46(2) of the *Canada Evidence Act*, or gives evidence or a statement under an order made under section 22.2 of the *Mutual Legal Assistance in Criminal Matters Act*, commits perjury who, with intent to mislead, makes a false statement knowing that it is false, whether or not the false statement was made under oath or solemn affirmation in accordance with subsection (1), so long as the false statement was made in accordance with any formalities required by the law of the place outside Canada in which the person is virtually present or heard.

Punishment

- (3) Every person who commits perjury is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Application

- (4) Subsection (1) applies whether or not a statement is made in a judicial proceeding of the International Criminal Court.

Application

- (5) Subsections (1) and (2) do not apply to a statement that is made by a person who is not specially permitted, authorized or required by law to make that statement.

Witness giving contradictory evidence

20. (1) Every person who, being a witness in a proceeding of the International Criminal Court, gives evidence with respect to any matter of fact or knowledge and who later, in a proceeding of that Court, gives evidence that is contrary to their previous evidence, and who, in giving evidence in either proceeding, intends to mislead, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, whether or not the prior or later evidence is true.

Evidence in specific cases

(2) Evidence given under section 714.1, 714.2, 714.3 or 714.4 of the *Criminal Code* or subsection 46(2) of the *Canada Evidence Act* or evidence or a statement given under an order made under section 22.2 of the *Mutual Legal Assistance in Criminal Matters Act*, is deemed to be evidence given by a witness in a proceeding for the purpose of subsection (1).

Meaning of "evidence"

(3) Despite the definition "evidence" in section 118 of the *Criminal Code*, for the purpose of this section, "evidence" does not include evidence that is not material.

Proof of former trial

(4) If a person is charged with an offence under this section, a certificate that specifies with reasonable particularity the proceeding in which the person is alleged to have given the evidence in respect of which the offence is charged, is evidence that it was given in a proceeding of the International Criminal Court, without proof of the signature or official character of the person by whom the certificate purports to be signed, if it purports to be signed by the Registrar of that Court or another official having the custody of the record of that proceeding or by their lawful deputy.

Fabricating evidence

21. Every person who, with intent to mislead, fabricates anything with intent that it be used as evidence in an existing or proposed proceeding of the International Criminal Court, by any means other than perjury or incitement to perjury, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Offences relating to affidavits

22. Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years who, in respect of an existing or proposed proceeding of the International Criminal Court,

(a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before them when the writing was not so sworn or declared or when they know that they have no authority to administer the oath or declaration;

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that they know was not sworn or declared, as the case may be, by the affiant or declarant or before a person authorized to administer the oath or declaration; or

(c) signs as affiant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by them, as the case may be, when the writing was not so sworn or declared.

Intimidation

- 23.** Every person who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that the person has a lawful right to do, or to do anything that the person has a lawful right to abstain from doing, in relation to a proceeding of the International Criminal Court, causes the person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them
- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
 - (b) is guilty of an offence punishable on summary conviction.

Meaning of "internationally protected person"

- 24.** For greater certainty, the definition "internationally protected person" in section 2 of the *Criminal Code* includes judges and officials of the International Criminal Court.

Offences against the International Criminal Court -- outside Canada

- 25.** (1) Every person who, being a Canadian citizen, commits outside Canada an act or omission in relation to the International Criminal Court that if committed in Canada would be an offence under any of sections 16 to 23, or would be contempt of court by virtue of section 9 of the *Criminal Code*, is deemed to have committed that act or omission in Canada.

Offences against the International Criminal Court -- outside Canada

- (2) Every person who, being a Canadian citizen, commits outside Canada an act or omission that if committed in Canada would constitute conspiring or attempting to commit, being an accessory after the fact in relation to, or counselling in relation to, an act or omission that is an offence or a contempt of court under subsection (1) is deemed to have committed that act or omission in Canada.

Retaliation against witnesses -- outside Canada

- 26.** (1) Every person who, being a Canadian citizen, commits outside Canada an act or omission against a person or a member of the person's family in retaliation for the person having given testimony before the International Criminal Court, that if committed in Canada would be an offence under any of sections 235, 236, 264.1, 266 to 269, 271 to 273, 279 to 283, 430, 433 and 434 of the *Criminal Code*, is deemed to have committed that act or omission in Canada.

Retaliation against witnesses -- outside Canada

- (2) Every person who, being a Canadian citizen, commits outside Canada an act or omission that if committed in Canada would constitute conspiring or attempting to commit, being an accessory after the fact in relation to, or counselling in relation to, an act or omission that is an offence under subsection (1) is deemed to have committed that act or omission in Canada.

PROCEEDS OF CRIME

Possession of property obtained by certain offences

- 27.** (1) No person shall possess any property or any proceeds of property knowing that all or part of the property or proceeds was obtained or derived directly or indirectly as a result of
- (a) an act or omission in Canada that constituted genocide, a crime against humanity or a war crime, as defined in section 4;
 - (b) an act or omission outside Canada that constituted genocide, a crime against humanity or a war crime, as defined in section 6;
 - (c) the commission of an offence under any of sections 5, 7, 16 to 23 and 28, or an offence in respect of an act or omission referred to in section 25 or 26;
 - (d) the commission of an offence in respect of an act or omission referred to in subsection 7(3) of the *Criminal Code* against a judge or official of the International Criminal Court, or against any property referred to in section 431 of that Act used by that judge or official; or
 - (e) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in any of paragraphs (a) to (d).

Punishment

- (2) Every person who contravenes subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or
 - (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than two years.

Exception

- (3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that they possess property or the proceeds of property mentioned in subsection (1) for the purpose of an investigation or otherwise in the execution of the peace officer's duties.

Laundering proceeds of certain offences

- 28.** (1) No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner or by any means, any property or any proceeds of property with intent to conceal or convert the property or proceeds and knowing or believing that all or part of the property or proceeds was obtained or derived directly or indirectly as a result of
- (a) an act or omission in Canada that constituted genocide, a crime against humanity or a war crime, as defined in section 4;
 - (b) an act or omission outside Canada that constituted genocide, a crime against humanity or a war crime, as defined in section 6;
 - (c) the commission of an offence under any of sections 5, 7, 16 to 23 and 27, or an offence in respect of an act or omission referred to in section 25 or 26;
 - (d) the commission of an offence in respect of an act or omission referred to in subsection 7(3) of the *Criminal Code* against a judge or official of the International Criminal Court, or against any property referred to in section 431 of that Act used by that judge or official; or
 - (e) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in any of paragraphs (a) to (d).

Punishment

- (2) Every person who contravenes subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or
 - (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than two years.

Exception

- (3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that they do any of the things mentioned in subsection (1) for the purpose of an investigation or otherwise in the execution of the peace officer's duties.

Part XII.2 of *Criminal Code* applicable

29. (1) The definitions "judge" and "proceeds of crime" in section 462.3 of the *Criminal Code*, and sections 462.32 to 462.5 of that Act, apply with any modifications that the circumstances require in respect of proceedings for an offence under this Act.

Enterprise crime offences

- (2) For the purpose of subsection (1), the references in sections 462.32 to 462.47 of the *Criminal Code* to an enterprise crime offence are deemed to include references to offences under this Act.

CRIMES AGAINST HUMANITY FUND

Fund established

- 30.** (1) There is hereby established a fund, to be known as the Crimes Against Humanity Fund, into which shall be paid
- (a) all money obtained through enforcement in Canada of orders of the International Criminal Court for reparation or forfeiture or orders of that Court imposing a fine;
 - (b) all money obtained in accordance with section 31; and
 - (c) any money otherwise received as a donation to the Crimes Against Humanity Fund.

Payment out of Fund

- (2) The Attorney General of Canada may make payments out of the Crimes Against Humanity Fund, with or without a deduction for costs, to the International Criminal Court, the Trust Fund established under article 79 of the Rome Statute, victims of offences under this Act or of offences within the jurisdiction of the International Criminal Court, and to the families of those victims, or otherwise as the Attorney General of Canada sees fit.

Regulations

(3) The Governor in Council may make regulations respecting the administration and management of the Crimes Against Humanity Fund.

Credits to Fund

31. The Minister of Public Works and Government Services shall pay into the Crimes Against Humanity Fund

(a) the net proceeds received from the disposition of any property referred to in subsections 4(1) to (3) of the *Seized Property Management Act* that is forfeited to Her Majesty and disposed of by that Minister, if the property was derived as the result of the commission of an offence under this Act; and

(b) amounts paid or recovered as a fine imposed under subsection 462.37(3) of the *Criminal Code* in relation to proceedings for an offence under this Act.

Partial exclusion of *Seized Property Management Act*

32. Paragraphs 9(d), (e) and (f) and sections 10, 11 and 13 to 16 of the *Seized Property Management Act* do not apply in respect of any property, proceeds of property or amounts referred to in section 31.

CONSEQUENTIAL AMENDMENTS

33. to 75. [Amendments]

CONDITIONAL AMENDMENT

76. and 76.1 [Amendments]

COMING INTO FORCE

Coming into force

***77.** The provisions of this Act and the provisions of any Act enacted or amended by this Act come into force on a day or days to be fixed by order of the Governor in Council.

*[Note: Act in force October 23, 2000, see SI/2000-95.]

SCHEDULE

(*Subsection 2(1)*)

PROVISIONS OF ROME STATUTE

ARTICLE 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

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;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (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;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid;
- (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;
- (b) "extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (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;
- (f) "forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "the crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (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.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

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;
 - (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (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;
 - (viii) taking of hostages.
- (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;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (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;
 - (v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (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;
 - (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) declaring that no quarter will be given;
 - (xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) compelling the nationals of the hostile party to take part in the operations

- of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) pillaging a town or place, even when taken by assault;
 - (xvii) employing poison or poisoned weapons;
 - (xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) 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;
 - (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;
 - (xxvi) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (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;
 - (iii) taking of hostages;
 - (iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) paragraph 2(c) 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.
- (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;

- (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (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;
 - (v) pillaging a town or place, even when taken by assault;
 - (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;
 - (vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) killing or wounding treacherously a combatant adversary;
 - (x) declaring that no quarter will be given;
 - (xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (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.