

October 28, 2005

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**VIA FAX and FED-EX**

Dear Sirs:

**RE: Ariel Sharon: Liability For War Crimes And Crimes Against Humanity  
Under Canadian And International Law**

We write this letter to ask that the Minister of Immigration prohibit Ariel Sharon from entering Canada pursuant to s. 35 of the *Immigration and Refugee Protection Act* (hereinafter "*IRPA*"), which renders individuals guilty of committing war crimes or crimes against humanity inadmissible for entry.

We ask further that the Minister of Foreign Affairs exercise his authority under the Vienna Convention on Diplomatic Relations and declare Sharon *persona non grata* so that any entry he might make will be denied the protection of diplomatic immunity.

We also request that, should Sharon nevertheless enter Canada, he be prosecuted for the offence of committing war crimes and crimes against humanity, contrary to s. 6 of Canada's *Crimes Against Humanity and War Crimes Act 2000*, c. 24 (hereinafter "*War Crimes Act*"). Under s. 9 (3), no proceedings under s. 6 may be commenced without obtaining the personal consent in writing of the Attorney General or Deputy Attorney General of Canada.

## **Introduction**

Ariel Sharon is guilty of committing crimes against humanity in his capacity as Prime Minister of Israel during the period March 2001 to present.

Ariel Sharon is guilty, under purely Canadian domestic law, of committing and being accessory to committing crimes against humanity contrary to ss. 6 (1) (b) and (3), namely:

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.

(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...

The enumerated specific crimes against humanity known to Canadian domestic law, are to be read disjunctively from the "other" residual clause of crimes with reference to international law found in the definition under s. 6 (3). These are: murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, and persecution. This reading is reinforced by s. 2 (2), which reads:

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

The enumerated offences require no recourse to international law jurisprudence.

Furthermore, with respect to international law, as incorporated under s. 6 of the *War Crimes Act* 2000, all of Israel's settlement activity in the territories taken in the June 1967 war *further* constitute war crimes punishable in Canada by, *inter alia*, way of reference to s. 8 of the *Statute of the International Criminal Court* adopted in Rome by The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998 (hereinafter "*Rome Statute*"), which is contained in the *War Crimes Act* by virtue of ss. 2 (1) and s. 6 (4) which read:

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

"*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.

6. (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.

Canada has obligations, under several international conventions to which it is a party, to arrest and prosecute international criminals such as Mr. Sharon. In pursuance of some of these obligations Canada has enacted the *War Crimes Act*. The complete statute is attached to this letter ([Tab 1](#)).

Section 6 (1) of the *War Crimes Act* makes war crimes and crimes against humanity punishable by up to life imprisonment in Canada even when committed outside of Canada and even when committed before the *War Crimes Act* came into force. Pursuant to s. 8 (b), there is no requirement that the criminal be a national of Canada or that the crimes be committed against Canadians, merely that the criminal be present in Canada at any time after the crime has been committed. The *War Crimes Act* is an exercise of an internationally recognized "universal jurisdiction" that has been repeatedly re-affirmed since the second world war, including by the Supreme Court of Israel in the case of *Attorney-General of Israel v. Eichmann* (1962) 36 I.L.R. 277.

Notwithstanding Palestinian violence arising in the context of the illegal occupation, Israeli military and government policies deviate drastically from a number of

international standards. Where these breaches of law occur, superfluous claims based on national-defence are readily transparent and in breach of international and Canadian domestic law. Whatever concerns have faced Sharon during his tenure, many of his actions are disproportionate, and the measures taken or approved by Sharon have been in breach of international law as well as the terms of the *War Crimes Act* in Canada.

Attached to this letter, are the findings of U.N. Special Rapporteur, John Dugard, on the situation of Human Rights Violations in the Occupied Territories, which state, in part, that, under Sharon,

the excessive use of force that disregards the distinction between civilians and combatants, the creation of a humanitarian crisis by restrictions on the mobility of goods and people, the killing and inhuman treatment of children, the widespread destruction of property and, now, territorial expansion... [\(Tab 2\)](#).

is not a justifiably proportionate response to the actual or threats of violence faced by Israel.

Sharon's responsibility for the commission of war crimes and crimes against humanity as a result of his role in the 1982 Sabra and Shatila massacres has been well-documented. In addition, multiple sources have documented continuous breaches of international law that have occurred throughout Sharon's tenure and under his direction or tacit authority [\(Tab 3\)](#).

Amnesty International, B'Tselem Human Rights Watch and United Nations organs have reported various incidences in which the Israeli government committed war crimes or crimes against humanity with respect to combatants as well as civilians. The documents attached and referred to in this letter include reports from government and non-governmental organizations, as well as reports published in the international media.

### **Sharon's Liability**

Sharon is personally responsible, as a principal party and as an accessory, for the crimes of "murder... deportation, torture... [and] persecution." These offences are a matter of purely Canadian domestic jurisprudence as set out by s. 2 (2) of the *War Crimes Act*.

#### **- s. 2 (2), 6 (1) (b) and (3) *War Crimes Act***

Sharon's personal responsibility for war crimes and crimes against humanity is further found in ss. 2 (1), 6 (1) (b) (3) and (4), and include war crimes and crimes against humanity included in the *Rome Statute*. Any acts contrary to that statute committed on or after July 17, 1998 are punishable under s. 6 (4) of the *War Crimes Act*. Under s. 6 (3) of the *War Crimes Act*, a war crime means:

- a) 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.

Section 6 (4) clarifies that,

“[f]or 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.”

Under ss. 6 (1) and (2) the *War Crimes Act*, war crimes or crimes against humanity are offences punishable, in Canada, by a maximum sentence of life imprisonment.

Under s. 6 (1) (b) of the *War Crimes Act*, Sharon is guilty of a number of crimes against humanity during his tenure, including;

- murder;
  - ss. 6 (1) (b) and (3), *War Crimes Act* – murder;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (a), *Rome Statute*
- torture;
  - ss. 6 (1) (b) and (3), *War Crimes Act* – torture;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (f), *Rome Statute*
- persecution;
  - ss. 6 (1) (b) and (3), *War Crimes Act* – persecution;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (h), *Rome Statute*
- apartheid; and
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (j), *Rome Statute*
- other inhumane acts of a similar character intentionally causing great suffering or serious injury.
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (k), *Rome Statute*

Under s. 6 (1) (c) of the *War Crimes Act*, he is also guilty of committing war crimes in breach of Israel’s obligations under the 1949 Geneva Convention. These offences include;

- wilful killing;
  - ss. 6 (1) (b) and (3), *War Crimes Act* – murder;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act* re art. 8. 2 (a) (i), *Rome Statute*
- torture or inhuman treatment;
  - ss. 6 (1) (b) and (3), *War Crimes Act* – torture;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act* re art. 8. 2 (a) (ii), *Rome Statute*

- wilfully causing great suffering or serious injury to body or health;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (a) (iii), *Rome Statute*
- wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (a) (vi), *Rome Statute*
- other serious violations namely, intentionally directing attacks against civilians not taking part in hostilities;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (i), *Rome Statute*
- intentionally directing attacks against civilian objects which are not military objectives;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (ii), *Rome Statute*
- 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 clearly in excessive widespread long-term and severe damage to the natural environment;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (iv), *Rome Statute*
- attacking or bombarding by whatever means towns, villages, dwellings or buildings which are undefended and which are not military objectives; and
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (v), *Rome Statute*
- the indirect and direct transfer of parts of its own civilian population into occupied territory and transferring parts of the occupied territory within or outside this territory.
  - ss. 6 (1) (b) and (3), *War Crimes Act* – deportation;
  - ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (viii), *Rome Statute*

Under s. 6 (1.1) Sharon is guilty under the *War Crimes Act* as one who committed any of the acts himself, or as a conspirator, accessory after the fact, or counsellor to the war crime and crime against humanity. That section reads:

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.

Sharon during his tenure as Prime Minister, between March 2001 and now, has not only “failed to take all necessary and reasonable measures... to prevent or suppress the commission of offences...”, he in fact has taken active command steps with knowledge and intent to commit and perpetuate those offences.

Furthermore, by virtue of s. 7. 2 (a), Sharon is guilty as a superior or person in authority for knowing, or for consciously disregarding information that clearly indicates, the offences were committed or for failing to take all necessary and reasonable measures within his effective authority and control to prevent or repress the commission of offences and further offences under the *War Crimes Act*. Section 7. 2 (a) reads:

A superior commits an indictable offence if 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;

Furthermore, all of the acts which form the bases of Sharon's liability for crimes against humanity and for war crimes were "committed as part of a plan or policy or as part of a large-scale commission of such crimes" and/ or "committed pursuant to or in furtherance of a state or organizational policy." Thus Sharon is liable under Canadian law.

Under the principles established at Nuremberg, and accepted since then, there is no immunity from prosecution for international crimes for heads of state or government or high officials. Diplomatic immunity exists under international law, but is entirely within the power of the receiving state, in this case Canada, to withhold by declaring any proposed visiting official *persona non grata* (*Vienna Convention on Diplomatic Relations*, Article 9).

### **Specific War Crimes and Crimes Against Humanity**

Insofar as the offences set out in s. 6 refer to offences and terms recognized in Canada, commission of these offences is a matter of purely domestic law & jurisprudence without recourse to international law jurisprudence.

Ariel Sharon is guilty, under purely Canadian domestic law, of committing and being accessory to committing crimes against humanity contrary to s. 6 (3), namely:

6. (3)... ***murder... deportation, ... torture... 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...

This is born out both by the disjunctive reading of the specific offences, namely, from the residual bracket class with reference to international law as well as s. 2 (2) of the ***War Crimes Act*** which reads:

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

These offences include murder, deportation, torture, and persecution.

#### **A. Murder/ Wilful Killing**

Murder in s. 229 (1) of the Criminal Code includes cases where an offender has intentionally caused death, or recklessly caused death while intending to cause bodily harm. It also includes cases where one person is killed by accident, but where some other person was intended as the unlawful target.

B'Tselem reports that at least 54% of those Palestinians killed between September 29, 2000 and June 30 2005 were not participating in fighting at the time of their murder. The use of armed fire by the Israeli Defence Forces (IDF) has increased over the years as a result of the "routine use of lethal gunfire in non-life threatening situations" and "Israel's failure to acquire non-lethal means to disperse violent demonstrations." B'Tselem reports that of the very small percentage of cases in which Palestinians were killed that have been investigated, indictments have been filed in a minority of the cases ([Tab 4](#)).

Amnesty has also reported a "pattern" of a lack of or inadequate investigation into unlawful killings by the Israeli army of hundreds of Palestinians, "including hundreds of children" ([Tab 5](#)).

Since the second intifada, the Israeli Defence Forces (IDF) actively pursued a policy of deliberately targeting those alleged to have carried out, or to have planned to carry out, violent attacks against Israelis. Many of the Palestinians killed during the relevant period were civilians killed as "collateral damage" in military operations, or persons armed with weapons ranging from stones to guns in clashes with Israeli forces. Amnesty reports a number of examples of the "widespread and increasingly entrenched pattern of killings and injury of bystanders in the pursuit of a policy of assassinations, themselves illegal" ([Tab 6](#)). These killings all constitute murder under Canadian law.

Self-defence is not available to illegal occupiers because the illegal occupation means that the attacks they are claiming to defend themselves against have been wilfully provoked, and they always have the option of ending the illegal occupation. Hence the claim of self-defence by an illegal occupier against attacks aimed at dislodging it lacks the crucial element of necessity (Christine Gray, *International Law and the Use of Force*. Oxford University Press, 2000, pages 101-102).

The illegality of Israel's occupation of the territories it conquered in 1967 was confirmed by Security Council Resolution 242 of November 22, 1967 ([Tab 7](#)) requiring Israel to withdraw from the territories it occupied in the 1967 war, because of the "inadmissibility of the acquisition of territory by war." This Resolution has been repeatedly re-affirmed

by almost every Security Council Resolution dealing with the conflict, including most recently Resolution 1435 of September 24, 2002 ([Tab 8](#)).

Furthermore, “self-defence” is not invocable as a planned, deliberated, active and “pre-emptive” military tactic which envelopes the army’s dealings with Palestinians, but an imminent, measured response to an actual and immediate threat to identifiable human life. What the Israeli army routinely engages in is premeditated murder of both *civilian* and “military” targets.

Under article 30 of the *Rome Statute*, the mental element required for the offence of murder, and other war crimes and crimes against humanity, includes cases where a person (1) “means to engage in the conduct” or (2) “means to cause that consequence, or is aware that it will occur in the ordinary course of events.”

Thus the liability in murder.

- ss. 6 (1) (b) and (3), *War Crimes Act* – “murder”
- ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (a) *Rome Statute*
- ss. 2(1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (i) *Rome Statute*

## B. Torture

Under s. 269.1 (2) of the *Criminal Code*, “torture means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for a purpose...” In 1994 the United Nations expressed “deep concern” over Israel’s interrogations modes, which permits the use of “moderate physical pressure.” Israel was said to be “creating conditions leading to the risk of torture or cruel, or inhuman or degrading treatment or punishment” worsened by its practice of secrecy “leading inevitably to some cases of ill-treatment” ([Tab 9](#)). In 1998, its concluding observations remained largely unchanged ([Tab 10](#)). Despite a promising Supreme Court ruling in 1999 barring Israel from the use of torture, allegations of abuse continue, even to date. Prior and subsequent to this, including during Sharon’s tenure, Israel was condemned for torture by the United Nations Committee Against Torture (Tabs [9](#), [10](#) & [11](#)). Mass arrests and ill-treatment amounting to torture increased significantly during Sharon’s tenure, “from some 30 people in November 2001 to more than 1000 in May 2002,” with continuous allegations of torture ([Tab 12](#)).

Palestinian prisoners and other protected persons are systematically treated inhumanly and tortured by Israeli forces under Sharon in contravention of domestic and international law. Although the government has responded in part to petitions dealing with the use of torture and inhuman treatment, Israeli human rights groups, such as Amnesty International, report that in some aspects, detention conditions have deteriorated since the Supreme Court ruling, and improvements, if any, are fleeting and/ or marginal ([Tab 13](#)).

As outlined above, the Israeli government under Sharon committed a number of acts that violate its obligations under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter “*Convention*”). The UN Committee Against Torture has affirmed that, no exceptional circumstances may be invoked as justification of torture (art. 2.2 of the *Convention*).

- ss. 6 (1) (b) and (3), *War Crimes Act* – “torture”
- ss. 2 (1), 6 (1) (b) and (4), *War Crimes Act*, re art. 7. 1 (f), *Rome Statute*
- ss. 2 (1), 6 (1) (b) and (4), *War Crimes Act*, re art. 8. 2 (a) (ii) *Rome Statute*

### C. Persecution

Canadian courts have defined the limits of persecution as follows: (1) “an affliction of repeated acts of cruelty or a particular course or period of systematic infliction of punishment;” or (2) “...discriminatory acts... ‘sufficiently serious and occur[ing] over such a long period of time that it can be said that the claimants’ physical or moral integrity is threatened.’”

- *Bandula v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1341, 2003 FC 1062 (F.C. Snider J.).
- *Rajudeen v. Minister of Employment and Immigration* (1984), 55 N.R. 129 (Heald, Hugessen, Stone, JJ.).
- *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74, 103 D.L.R. (4th) 1 (La Forest, L’Heureux-Dube, Gonthier, Stevenson, Iacobucci JJ.).

The crucial fact about the occupation for the purposes of this section of the law is that, by the time of Sharon’s tenure as Prime Minister, Israel had settled hundreds of thousands of Jewish Israelis in these territories who were granted full constitutional, legal, political and economic rights under the protection of the Israeli military occupation force, while the millions of Palestinians *in the same geographic location* continue to be systematically and sometimes brutally denied these rights on the bases of religion and nationality. The radically different treatment of the indigenous community when compared to the settlers qualifies this treatment as persecution.

Article 7 of the *Rome Statute* further describes the offence of “persecution against any identifiable group or collectivity” resulting in the “intentional and severe deprivation of fundamental rights contrary to international law.” All of the crimes against the person, dignity and property of the Palestinians committed during Sharon’s tenure are committed against a specific group or collectivity in the relevant sense, who are deprived through unlawful military occupation of the most fundamental human, political and civil rights, including self-determination.

- ss. 6 (1) (b) and (3), *War Crimes Act* – “persecution”
- ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (g) (h), *Rome Statute*

Furthermore, the (quasi) judicial bodies with jurisdiction in Canada to decide whether Palestinians have been the subject to “persecution” by the Israeli forces and government(s), namely the Immigration and Refugee Board’s Refugee Protection Determination Division and Federal Court(s) have so determined that the Israeli military and government have engaged in persecution against individual Palestinians during Sharon’s tenure as Prime Minister with his knowledge and interest (i.e. Tab 14). Also in 2002, the Federal Court of Canada held that evidence of country condition prepared by Amnesty, the Red Cross and media sources was sufficient for a successful claim to refugee status by persons living in the Occupied Territories.

- ***Shalhoub v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 616, 2002 FCT 455 (Dawson J).**

#### **D. Israeli Settlements**

Israel’s settlement building in the occupied territory naturally results in, as outlined in art. 8. 2 (b) (viii) of the ***Rome Statute***, “the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies...” The provision is taken directly from article 49 of the Fourth Geneva Convention of 1949, ratified by both Israel and Canada. Like most Prime Ministers before him, Sharon’s government follows a policy of protection and expansion of these settlements, already hundreds of thousands settlers strong, through military force. Under s. 6 (1) of the ***War Crimes Act***, settlement activity after 1998 is clearly criminal. In his capacity as Prime Minister, Sharon is primarily responsible for the settlement policies that violate international law as well as for failing to freeze settlement activity in violation of international law.

For example, between January 9 and October 23, 2003 1,713 tenders for settlement housing were issued to Israelis living inside the illegal settlements ([Tab 15](#)). In the months between March and June 2004, and July and August 2004, existing settlements were expanded by 808,251 m<sup>2</sup> and 489,798 m<sup>2</sup>, respectively (Tabs [16](#) & [17](#)). Thus, Sharon is liable under Canadian law for the direct transfer of parts of the occupying Power’s population into occupied territory.

- **ss. 6 (1) (b) and (3), *War Crimes Act*** – “persecution”
- **ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (viii), *Rome Statute***

## **E. Causing Great Suffering/ Serious Injury to Body/ Health, and Murder**

### (1) Medical Delays

The Israeli government under Sharon also intentionally commits acts that result in great suffering and serious injury to the Palestinians. Many of these constitute acts of an inhuman character, including, the intentional denial, prevention and delay of transportation and medical assistance to persons in need of care. A number of authorities, including B'Tselem and the U.S. State Department have documented several such incidences (Tabs [18](#) & [19](#)). The delays are in large part incidental to the discriminatory checkpoints and closures enforced by the Israeli government in the occupied territories. Despite this being well-documented, the government maintains its policy of detaining vehicles passing through checkpoints and closed areas on the basis that ambulances and other vehicles may be used as a conduit for terrorist activity. In an overwhelming number of cases, this rationale has little or no basis.

### (2) Settler Violence

The Israeli government has also promoted settler violence directed against Palestinians in the occupied territories. The settlers live in areas under military rule and “benefit from an extraterritorial status that enables them, among other things, to be tried under Israeli penal law in civil courts in Israel. Palestinians, on the other hand, are tried under military law.” A substantial segment of the settlers in the Occupied Territories carry weapons that they received from the IDF. The IDF frequently has knowledge of the illegal use of the weapons and does not function effectively so as to protect the Palestinians from inhuman acts of violence stemming from illegal acts by Israelis. Despite many petitions to the IDF, the IDF does not appear to take any preventative steps toward ending the violence.

B'Tselem has documented several instances during Sharon's tenure where settler violence resulted in great suffering or serious injury. Beyond firing at Palestinians, other acts of settler violence under Sharon include throwing stones at Palestinian vehicles, damaging property, uprooting trees, burning a mosque, harming Palestinian medical teams, attacking journalists, preventing farmers from reaching their fields, and blocking roads (Tabs [20](#), [21](#) & [22](#)).

#### (a) Law Enforcement: IDF

The IDF enforces the law in a manner that shows contempt toward Palestinian life. In several instances, Israeli Defence Forces have been passive witnesses to attacks against Palestinians or have prevented victims from receiving access to medical assistance. For example, B'Tselem reported in 2001 that the IDF refused to handle the incidents where settlers injured Palestinians without police being present. Occasionally, the IDF has altogether refrained from enforcing the law after arriving at a scene where Palestinians have been killed or injured ([Tab 23](#)). By mid-2002, despite harsh criticism by human

rights organizations directed at the Sharon government for this inaction, B'Tselem reports that the IDF has not changed its practices ([Tab 20](#)).

(b) Law Enforcement: Israeli Police

The Israeli police also employed similar methods of gross disregard for Palestinian life in the territories during Sharon's tenure. Sharon supervised the systematic treatment of Palestinians under occupation. While Israeli deaths at the hands of Palestinians are vigilantly pursued for suspects, investigations relating to Palestinian deaths are often closed without any accountability or justice. With respect to settler attacks generally, many were not investigated during Sharon's rule (Tabs [20](#), [21](#), [22](#) & [23](#)).

US State Department reports for 2001 confirm that the IDF did not typically investigate cases where the victim was a Palestinian ([Tab 24](#)). In the 2004 U.S. State Department report, concerns about the non-investigation of Palestinian victims persist. Israel, as the occupying power, is in breach of its obligations under international law with respect to the Palestinians living under its effective control ([Tab 18](#)).

These instances of crimes against humanity, while constituting "persecution", at times have constituted murder.

- ss. 6 (1) (b) (3) – "murder," "persecution"
- ss. 2(1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (k), *Rome Statute*
- ss. 2 (1), 6 (1) (b) and (4), *War Crimes Act*, re art. 8. 2 (a) (iii), *Rome Statute*

**F. Extensive/ Unjustified Destruction/ Appropriation of Property**

Israel's policy of demolishing the homes of families of suspected terrorists was discontinued by 1997 but was resumed in 2001 during Sharon's tenure as Prime Minister (Tab 14). Since then, the Israeli army has destroyed close to 500 homes of suspected attackers ([Tab 25](#)). In 2002, the largest single demolition operation left some 4000 persons homeless in the Jenin refugee camp, with the knowledge and interest of Sharon. After Jenin, demolition operations have been less prolonged and intense, but more frequent and, between 2000 and 2003, more than 2,150 homes were destroyed and more than 16,000 damaged in the Gaza strip. In the same period, 600 homes were destroyed in the West Bank ([Tab 25](#)). Often, the land that is destroyed or razed by Israel is subsequently confiscated by the Israeli government. Over the course of a few days in May 2004, 1000 Palestinians were made homeless after demolitions by the Israeli army were undertaken in Rafah ([Tab 25](#)). In its March 28, 2001 oral submissions to the 57<sup>th</sup> Session of the Committee of Human Rights, the Brooklyn based Center for Economic and Social Rights cited Israel's confiscation of real property as one of the roots causes of the Palestinian-Israeli conflict ([Tab 26](#)).

- ss. 6 (1) (b) (3) – "persecution"
- ss. 2 (1), 6 (1) (b) and (4), *War Crimes Act*, re art. 8. 2 (a) (iv), *Rome Statute*

### **G. Attacks Against Civilians**

According to reports from Amnesty International, “the overwhelming majority of Palestinian children have been killed in the Occupied Territories when members of the Israeli Defence Forces (IDF) responded to demonstrations and stone-throwing incidents with excessive and disproportionate use of force, and as a result of the IDFs reckless shooting, shelling and aerial bombardments of residential areas” ([Tab 5](#)). While some degree of violence may, sadly, be expected during acts of civil disobedience during Israel’s military incursions, Israeli attacks are more often completely disproportionate and without justification. That children are a high proportion of the killed, maimed and wounded supports that the attacks are not, as purported, in response to life threatening situations. Rather, attacks against Palestinians appear to be a systematic and sustained means of dealing with the individuals living under Israel’s occupation ([Tabs 5 & 14](#)).

- **ss. 6 (1) (b) (3)** – “murder,” “persecution”
- **ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re **art. 8. 2 (b) (i), *Rome Statute*****

### **H. Attacks against civilian options not military objectives**

Human rights organizations and media sources have documented a number of instances in which Israel has attacked civilian “options”. Between 2000 and 2004, the Palestinian National Information Centre reports that over 300 establishments have been destroyed resulting in industrial losses amounting to millions of dollars in loss ([Tab 27](#)). These attacks on Palestinian-owned homes and factories in the territories have crippled the economy and stymied production ([Tab 28](#)). This problem is compounded by the difficulties that result from supplies being turned away from or being delayed passage through checkpoints and closed areas. This also compounds the already high unemployment and poverty rates and acts as a form of collective punishment on the Palestinian population ([Tabs 14 & 29](#)). In 2002, Palestinian authorities estimated losses resulting from a single incursion into the West Bank during Sharon’s time in office, and between March 29 and April 30, 2002, to be 891 million (USD), with 465 million (USD) in economic losses owing to infrastructure destruction alone ([Tab 28](#)).

- **ss. 6 (1) (b) (3)** – “murder,” “persecution”
- **ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re **art. 8. 2 (b) (ii), *Rome Statute*****

### **I. Incidental Injury, Loss of Life, Environmental Damage**

Israel’s assassination policy, though illegal in itself, is carried out with wanton disregard for bystanders and family members proximate to the target. The strategy very much reflects the tendency toward collective punishment and symbolic gestures intended to frustrate or eliminate any resistance on the ground. Beyond any strategic importance, the

attacks causing incidental injury or loss of life reflect the attitude of disregard for the importance attached to Palestinian life in the territories (Tabs [25](#) & [29](#)).

- ss. 6 (1) (b) (3) – “murder,” “persecution”
- ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (iii), *Rome Statute*

#### **J. Attacking Undefended Towns, Villages, Dwellings/ Buildings**

Frequent incursions into Palestinian towns and communities during Sharon’s rule resulted in the deaths of many non-combatant Palestinians. The U.S. State Department reported in 2004 that, “since 2000, approximately 1,500 buildings in Rafah have been demolished by the IDF, making more than 15,000 Palestinians homeless” ([Tab 19](#)). At the start of Sharon’s tenure and in 2001, the U.S. Department of State reported that “Israeli forces fired tank shells, heavy machine-gun rounds, and rockets from helicopters and F-16s at targets in residential and business neighbourhoods” ([Tab 24](#)). According to the PA Ministry of Health, the Palestine Red Crescent Society, and B’tselem, at least 800 Palestinians were killed during the course of Israeli military and police operations during 2004. The PA Ministry of Health estimated that approximately half of those killed were noncombatants. B’tselem reported a figure of 452 innocent Palestinians killed this year ([Tab 30](#)). The overwhelming evidence suggests that this is in clear violation of international law.

- ss. 6 (1) (b) (3) – “murder,” “persecution”
- ss. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 8. 2 (b) (v), *Rome Statute*

#### **K. Apartheid**

The crime of apartheid includes not only the practices of the former government of South Africa but “acts of a character similar to it”. A September 2001 declaration from South African members of the Palestine Solidarity Committee in Durban referred to a South African journalist’s observations and conclusions on apartheid in Israel:

In both countries [apartheid South Africa and apartheid Israel] ‘subordinate races’ were dispossessed of their land and crowded into marginal, drought-stricken ghettos; their movement was restricted; access to education and skilled jobs limited so that they inevitably sank into a pool of low wage labour. In both societies, bans on inter-marriage and daily lives segregated by race did little to dispel the fear and ignorance that feeds racial bigotry ([Tab 31](#)).

Civil rights groups within and outside of Israel have used this term “apartheid” to describe the system of segregation applied by Israel in the Occupied Territories precisely because of its striking similarities to the former South African regime ([Tab 32](#)).

Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid states that the crime of apartheid includes policies and practices similar to those that were carried out in South Africa, including:

Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including... the right to freedom of movement and residence... [\(Tab 33\)](#).

In the West Bank and, until September 13, 2005, the Gaza Strip, approximately 200,000 Israeli Jews living in armed enclaves among about 2 million Palestinians. The Israelis have full citizenship, including the right to vote for the government of the occupying force, while the Palestinians can vote for a Palestinian Authority under more or less permanent military siege that has limited formal authority over a non-contiguous entity, criss-crossed by Israeli security roads and checkpoints. The Israelis have lavish material support from their government, while most of the Palestinians are destitute, their livelihoods and the roofs over their heads entirely within Israeli control. Within the Israeli state itself, Arab towns populated by Palestinian citizens of Israel are consistently omitted from specific government social and economic plans. Despite recognition of many racist policies within Israel, “assessments of disadvantages suffered by Arab Israelis” remain unaddressed while measures indicative of apartheid continue to characterize Israeli governance [\(Tab 18\)](#). This has gone on unapologetically for decades.

- s. 6 (1) (b) (3) – “persecution”
- s. 2 (1), 6 (1) (b) (3) and (4), *War Crimes Act*, re art. 7. 1 (j), *Rome Statute*

### **Inadmissibility Under the *Immigration and Refugee Protection Act (IRPA)***

As this letter indicates, Sharon is guilty of having breached Canadian law under the *War Crimes Act*. Thus, and in accordance with s. 35 of the *IRPA*, Sharon is thereby inadmissible on “grounds of violating human or international rights.” A copy of the Act is attached, the relevant section of which is 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 of Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

Although the inadmissibility clauses are subject to exceptions, the exceptions specifically are not available to individuals who have committed an offence referred to in sections 4 to 7 of the *War Crimes Act*.

As stated above, s. 6 of the *War Crimes Act* incorporates by reference all international crimes against humanity and war crimes, and, specifically, all crimes listed within articles 7 and 8 of the *Rome Statute*. Liability attaches, pursuant to s. 6 of the *War Crimes Act* and as previously outlined, to individuals with effective control, including military commanders and individuals who knew or ought to have known about the commission of an offence or an omission that resulted in a war crime or crime against humanity.

The inadmissibility clauses under s. 34 to 37 of *IRPA* apply to a *less than* balance of probability standard, and employ a “reasonable grounds” standard which has been interpreted by the Federal Court of Appeal to be more than mere speculation but much less than balance of probability. This is an evidentiary stipulation codified by Parliament under s. 33 of *IRPA* which reads:

33. The 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.

## Conclusion

As a result of the foregoing, we call upon the Minister of Foreign Affairs to declare Ariel Sharon *persona non grata* so that any entry he might make will be denied the protection of diplomatic immunity.

We also call upon the Minister of Citizenship and Immigration to prohibit Prime Minister Sharon from entering Canada and in accordance with the inadmissibility clauses with respect to war crimes and crimes against humanity under *IRPA*. We note that the Minister supported re-defining the Occupied Territories as “Disputed Territories,” and condemned United Nations resolutions for being part of an “Arab-controlled process.” We note that both the International Court of Justice and the Israeli Supreme Court have unanimously affirmed, as recently as last year, that the proper designation of all territories taken by Israel in 1967 and still held is ‘occupied territories’ and that Israel is an ‘occupying power’ bound by the Geneva Conventions. It is also our concern that the Honourable Joe Volpe, as member of the Liberal Parliamentarians for Israel, alongside the Attorney General, has made statements in support of Israel, which flagrantly contradict or ignore decisions made by Canadian courts with respect to Palestinians being persecuted by or with the knowledge of the Israeli government. These statements are also contrary to Canada’s historical position on the Israeli occupation and Palestinian response, as well as with numerous decisions coming out from various international

entities and organs of the United Nations. Thus, and notwithstanding any prohibition on Sharon entering the country, if he does enter, or is allowed to enter, we demand his prosecution and, failing prosecution by your office, we request the consent of the Attorney General or Deputy Attorney General in commencing prosecution proceedings against Sharon.

However, and lastly, we express concern that the Attorney General and Minister of Justice, Mr. Irwin Cotler, publicly voiced support and admiration for Ariel Sharon before and during Sharon's tenure as Prime Minister. We note that the Honourable Mr. Cotler will be speaking at the event that Sharon is scheduled to attend, as is shown on the attached Schedule ([Tab 34](#)). We therefore request that the Deputy Attorney General deal with this request and that the Honourable Mr. Cotler recuse himself from dealing with this matter whatsoever.

I ask kindly that you respond to this letter within seven (7) days of the date that this letter is post-marked. In support of my request is a Coalition Against Israel's War Crimes comprised of separate and distinct organizations that collectively endorse this, my letter to you.

All of which is respectfully submitted dated this 28<sup>th</sup> day of October 2005.

Yours truly,

Khaled L. Mouammar

**Al-Awda – Palestine Right of Return – Toronto (Al-Awda)**

**Al-Huda Lebanese Muslim Society**

**Arab Law Student's Association, Osgoode Hall (ALSA)**

**Alternative Perspective Media / Regard Alternative Media (ARM-RAM)**

**Arab Students' Collective (University of Toronto)**

**Arab Students' Collective (York University)**

**Canadian Arab Federation (CAF)**

**Canadian Arab Human Rights Organisation (Montreal)**

**Canada Palestine Association (CPA), Halifax**

**Canada Palestine Association (CPA), Vancouver**

**Canada-Palestine Support Network (Ottawa)**

**Canadian Druze Society**

**Canadians for Jerusalem (CFJ)**

**Canadian Islamic Congress (CIC)**  
**Canadian Muslim Forum (CMF)**  
**Canadian Palestinian Foundation of Quebec (CPFQ)**  
**Canadian Peace Alliance (CPA)**  
**Canadian Union of Public Employees (CUPE) – Toronto District**  
**Coalition for a Just Peace in Palestine and Israel**  
**Creative Response**  
**CUPE’s International Solidarity Committee – Ontario Division**  
**International Socialists**  
**International Women’s Peace Service (IWPS)**  
**Islamic Ahlul Bayt Assembly of Canada**  
**Islamic Foundation of Toronto**  
**Islamic Society of York Region**  
**Jewish Women’s Committee to End the Occupation (JWCEO)**  
**Jordan Canadian Friendship Society**  
**La Fondation Canado-Algerienne du Quebec**  
**Lawyers Against the War (LAW)**  
**Medical Aid for Palestine (MAP)**  
**Moroccan Association of Toronto**  
**Movement for Universal Justice**  
**Muslim Unity Group**  
**Near East Cultural Education Foundation (NECEF)**  
**Niagara Coalition for Peace (NC4P)**  
**Niagara Palestinian Association (NPA)**  
**November 16 Coalition (N16C)**  
**Palestine House**  
**Palestinian & Jewish Unity / Palestiniens et Juifs Unis (PAJU) – Montréal**  
**Palestine Solidarity Group (Vancouver)**  
**Pickering Islamic Centre**  
**Queen’s Arab Student Association**  
**Solidarity for Palestinian Human Rights (SPHR)**

**SPHR Carleton University**  
**SPHR McMaster University**  
**SPHR Queens University**  
**SPHR University of Western Ontario**  
**SPHR York University**  
**Socialist Action**  
**Students for Palestinian Rights (SFPR), University of Waterloo**  
**Students for Peace in Iraq, University of Toronto**  
**StopWar.ca Coalition**  
**Sumoud Political Prisoners Solidarity Group (Sumoud)**  
**Syrian Arab Association of Canada**  
**Syrian Canadian Cultural Association**  
**The Muslim Services, Toronto**  
**Toronto Coalition to Stop the War (TCSW)**  
**Toronto Forum on Cuba**  
**United Front Canada**  
**Voice of Palestine, Vancouver**  
**Women for Palestine**

**TO:**

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(613) 941-2279

Nb. Please note letter faxed; hard copy of letter + attachments Fed-Exed.  
Nb. Please note that the Tabled attachments are sequentially paginated following the letter.