



**Statement by Dr. Lutz Oette to the
Standing Committee on Citizenship and Immigration**

15 October 2012

Distinguished members of the Committee, thank you for inviting us to testify to the Committee today. In my statement, I will focus on what steps Canada could and should take where suspects of international crimes are present in the country.

I am Counsel at REDRESS, an international human rights organisation based in London that seeks justice for torture survivors worldwide. REDRESS has been involved in a number of cases in several countries worldwide aimed at bringing to justice perpetrators of international crimes, such as genocide, war crimes, crimes against humanity and torture.

Suspects of international crimes who are foreign nationals fall within the broad scope of immigration but they clearly constitute a special category whose treatment raises some distinctive legal questions. Here, I will focus on the situation that has given rise to concern in respect of Canada's practice. That is, what should or must a state do if it finds such suspects on its territory? The rules of international law are quite clear on this point. The Convention against Torture and the 1949 Geneva Conventions require states either to extradite suspected perpetrators of torture or war crimes to face prosecution or to exercise their jurisdiction to prosecute such suspects. This principle is also increasingly held to be applicable to genocide and crimes against humanity. Indeed, this is widely recognised and followed in state practice. More than 125 states have relevant implementing legislation and over 15 states have brought prosecutions on the basis of extraterritorial jurisdiction. In Europe, this includes perpetrators of international crimes committed in Argentina, former Yugoslavia, Rwanda, Afghanistan and Iraq.

These developments are part of an international commitment to ensure that there is no impunity for those who inflict intolerable suffering on their fellow human beings and to provide justice to victims who have nowhere else to turn to. To this end, the international system relies on states' commitment and cooperation to bring perpetrators to justice in the appropriate forum. Legislation enabling national authorities to exercise jurisdiction over international crimes and institutional arrangements to make prosecutions effective are key means to achieve

this goal. Indeed, Canada is among the countries that have taken a lead to hold perpetrators of international crimes to account. Its 2000 Crimes against Humanity and War Crimes Act was the first of its kind to implement the Rome Statute of the International Criminal Court in national laws, a move that has been followed by several states in Europe since.

As a general rule, a state must prosecute a suspect found on its territory unless it extradites him or her. Importantly, the rule explicitly refers to extradition as the formal procedure used in criminal cases. Other measures, such as deportation used in the immigration context, are insufficient to meet a state's obligation under international law. This is for good reason. In extradition proceedings, a state actively cooperates with other states in line with its extradition laws, which signals the mutual interest in criminal justice being done. Deportation proceedings, in contrast, are aimed at removing a person; the deporting state has no formal interest in what happens to the deported person. The person may or may not be prosecuted for international crimes but the deporting state has no formal role in this.

On this point, I would like to draw your attention to the UN Committee against Torture's June 2012 concluding observations on Canada's state party report. In its observations, the Committee expressed its concerns that Canada's 'policy of resorting to immigration processes to remove or expel perpetrators from its territory rather than subjecting them to the criminal process creates actual or potential loopholes for impunity'. This means that individuals 'have been expelled and not faced justice in their country of origin'. The Committee therefore recommended that Canada exercises its jurisdiction over persons responsible for torture, including foreign nationals. It emphasised that Canada 'should enhance its efforts, including through increased resources, to ensure that the "no safe haven" policy prioritizes criminal or extradition proceedings over deportation and removal under immigration processes.'

This is particularly important considering that Canada may not be able to secure extradition. It may also be prevented from sending a suspect to the country concerned because he or she faces a genuine risk of torture, ill-treatment or persecution if returned. It is in these situations that a state must be ready to prosecute; if it fails to do so, it breaches its international obligations.

There are also sound policy reasons for a policy of prosecuting suspects of international crimes found in Canada. First, it sends a strong message to perpetrators that they are not welcome. Second, it pre-empts Canada having to face a situation in which it stands accused of tolerating the presence of war criminals or taking measures, such as deportations, that fail to ensure justice. Third, it underscores Canada's commitment to international justice, which enables it to take a leading role and speak with enhanced legitimacy when seeking to prevent and respond to international crimes worldwide. Fourth, such policy and practice acts as precedent and potential deterrent if coordinated with other states; as such, any expenditure for the

prosecution of international crimes constitutes a good investment towards international peace and stability. Fifth, mirroring the first point, Canada would send a strong signal that it is on the side of victims of international crimes. While there may be no short term political currency in taking such stance, it builds on a series of historical precedents that are essential to a stable and just international order and international solidarity.

What does all this mean in practice? Where suspects of international crimes are in the country, Canada should cooperate with the authorities of other states with a view to ensuring criminal accountability. Equally, it is important that Canada makes strenuous efforts to strengthen the capacity of its authorities to investigate and prosecute suspects of international crimes where the individuals concerned cannot be extradited to face trial. Experiences from Europe may be helpful in this regard. While there are a number of difficulties, the European Union has taken steps to strengthen state cooperation to make the investigation and prosecution of international crimes more effective. Several countries have been inspired by Canada's War Crimes Programme and Belgium, Denmark, France, Germany, the Netherlands, Norway, Sweden and Switzerland have established specialised units within their police and/or prosecution services dedicated to cases involving crimes under international law. What is critical here, and this applies equally to Canada's Crimes against Humanity and War Crimes Programme, is that sufficient resources are allocated so that these programmes can effectively fulfil their task. In the absence of such concerted efforts, we risk that the cycle of international crimes and atrocities, and the instability and suffering that goes with this, will never end.

Thank you.