Federal Court  Cour fédérale

Date: 20200330

Docket: IMM-3363-19

Citation: 2020 FC 454

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 30, 2020

Present: The Honourable Mr. Justice Pamel

BETWEEN:

ELMONTHE ELVE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The applicant is seeking judicial review of the January 4, 2019, decision by the Refugee Protection Division [RPD]. The applicant submits that the RPD committed reviewable errors in finding that the applicant was complicit in crimes against humanity and was therefore excluded pursuant to Article 1F(a) of the United Nations *Convention Relating to the Status of Refugees*,

July 28, 1951, 189 UNTS 137 [Convention], and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and, moreover, in retroactively applying the *Rome Statute of the International Criminal Court* (signed on July 17, 1998, entered into force July 1, 2002, Can TS 2002 No 13 [Rome Statute]).

[2] In my opinion, the RPD did not commit a reviewable error with regard to the finding of the applicant's complicity, or with regard to its interpretation of international law. The application for judicial review is dismissed for the reasons set out below.

II. Facts and proceedings

[3] The applicant is a military engineer and citizen of Haiti. He states that he voluntarily enlisted in the Haitian armed forces [FADH] in September 1984 and served until its dissolution in 1994. From September 1984 to 1989, he worked as a guard at Casernes Dessalines, a political prison connected to the presidential palace that was part of the presidential complex.

[4] Between 1984 and 1989, the overwhelming documentary evidence establishes that political prisoners were regularly tortured at Casernes Dessalines. According to the applicant's testimony, he was not aware of this activity and, to his knowledge, the prison cells were only used to punish undisciplined soldiers.

[5] The applicant testified that when he worked at the prison, he also resided there. According to the transcript from a Canada Border Services Agency [CBSA] hearing and his own testimony before the RPD, the applicant had testified that he was simply a guard at gates 1 and 2

of Casernes Dessalines, that his job was to secure the perimeter of the prison and that he was not aware of the torture that took place in the prison during his time in service.

[6] The army in Haiti was dissolved in 1994 by then president Jean-Bertrand Aristide.

[7] He submits that because of his support for President Jovenel Moïse, who had fought for the reinstatement of the military force in Haiti since his election campaign in 2016, the applicant was persecuted by criminal gangs.

[8] According to his written account, the applicant's residence was attacked during the night of March 16 to 17, 2017.

[9] The applicant's spouse, Christilia Nard Elve Israel, had planned a trip to the United States the following day, March 17, 2017 [TRANSLATION] "to buy products for [her] business, so [she] took advantage of that trip to come to Canada" on March 27, 2017, to claim refugee protection with her brother, Ecclesiaste Israel, who had left Haiti for the United States the previous day, on March 26, 2017.

[10] On April 9, 2017, the applicant arrived in Canada, also through the United States, and claimed refugee protection at the Canadian border. In his written account, the applicant alleged a fear of persecution because of his political opinions and his support for the politics of the Haitian president, Jovenel Moïse. He also submitted that his brother-in-law's spouse had been attacked

three times between March and April 2017. The applicant submitted several police reports and a medical report in support of these allegations.

[11] Before the RPD, the agent for the Minister of Public Safety and Emergency Preparedness stated that the refugee protection claimants lacked credibility and that the applicant was not a refugee within the meaning of Article 1F(a) of the Convention and section 98 of the IRPA.

III. RPD decision

[12] On January 4, 2019, the refuge protection claim was rejected. The RPD concluded that the three claimants were not Convention refugees nor were they persons in need of protection.

[13] First, the RPD noted that the documentary evidence established, on a balance of probabilities, that the torture of civilians took place at the Dessalines prison between 1984 and 1989 and that this prison was described as one of the points in the [TRANSLATION] "triangle of death" in Haiti (citing a multitude of Human Rights Watch, Amnesty International, Organization of American States, and United States Bureau of Citizenship and Immigration Services reports). According to this same documentary evidence, the RPD noted that state security agencies committed acts of torture in a generalized and systematic manner at the prison.

[14] Although the RPD noted it did not have any evidence suggesting that the applicant personally committed torture, the RPD concluded that the applicant's contribution to the torture was (i) voluntary, (ii) knowing, and (iii) significant:

i. The applicant's contribution was voluntary, considering his own testimony indicating that he carried out his professional duties voluntarily.

ii. This contribution was knowing because of the long term of his assignment at the prison, the fact he resided at the prison and the unlikelihood that he was not aware of the well-documented torture that took place in the prison.

iii. According to the RPD, the applicant's contribution was significant by maintaining the clandestine nature of the prison and ensuring that the victims of crimes did not escape from the institution.

[15] For these reasons, the RPD concluded that the applicant was a person described in Article 1F(a) of the Convention.

[16] The RPD also analyzed the applicant's testimony. According to his testimony, he was merely a guard in charge of securing the perimeter of the Dessalines prison and was not aware of the torture that took place inside the prison when he was on duty. According to the RPD, this testimony lacked credibility, considering the documentary evidence that attests to the prison's reputation as a place of torture.

[17] Following the RPD decision, the applicant and his fellow refugee protection claimants (his spouse and his brother-in-law) filed a notice of appeal with the Refugee Appeal Division [RAD].

[18] Three months later, the Minister served a request for dismissal, claiming the RAD did not have jurisdiction, for the applicant only. The RAD allowed the Minister's request and decided to dismiss the applicant's appeal for lack of jurisdiction pursuant to paragraph 110(2)(d) of the IRPA.

[19] On January 28, 2020, the RAD dismissed the refugee protection claim of the applicant's spouse and his brother-in-law. They filed applications for judicial review of this decision with this Court, and their applications are still pending.

[20] As a result, the case before me only addresses the RPD decision that the applicant was not a refugee and is excluded from the protection granted to refugees under Article 1F(a) of the Convention and section 98 of the IRPA.

IV. Issues

[21] This case raises two issues:

1. Did the RPD come to an unreasonable conclusion by finding that the applicant was complicit in crimes against humanity and was therefore excluded from the application of the Convention under Article 1F(a) and section 98 of the IRPA?
2. Did the RPD err by finding that at the time of the atrocities committed at the Casernes Dessalines, torture was a crime against humanity?

V. Standard of review

[22] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada presented a redesigned analytical framework for determining which standard of review applies to administrative decisions. According to this framework, the

starting point is the presumption that the reasonableness standard will apply (*Vavilov* at para 23). This presumption may be rebutted in two types of situations: when there is a statutory appeal mechanism or when the rule of law requires that the standard of correctness be applied (*Vavilov* at para 17). In this case, we do not have either of these situations that justify a departure from the presumption of the reasonableness standard. The immigration officer's decision is subject to the reasonableness standard of review (*Vavilov* at paras 73–142).

VI. Discussion

1. *Did the RPD draw an unreasonable conclusion by finding that the applicant was complicit in crimes against humanity and was therefore excluded from the application of the Convention under Article 1F(a) and section 98 of the IRPA?*

[23] Section 98 of the IRPA and Article 1F(a) of the Convention state the following:

Exclusion — Refugee Convention	**Exclusion par application de la Convention sur les réfugiés**
98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.
Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees	**Sections E et F de l'article premier de la Convention des Nations Unies relative au statut des réfugiés**
. . .	. . .
F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	F Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
. . .	. . .

[24] The RPD clearly stated that no evidence had been produced to establish that the applicant himself directly participated in the acts of torture. As a result, the question for the RPD was whether he was complicit in the torture committed at Casernes Dessalines when he lived there and was on duty.

[25] The test for complicity with regard to the Article 1F(a) exclusion was recently reviewed by the Supreme Court of Canada at paragraph 29 of *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*]:

> For the reasons that follow, we conclude that an individual will be excluded from refugee protection under art. 1F(a) for complicity in international crimes <u>if there are serious reasons for considering that he or she voluntarily made a knowing and significant contribution to the crime or criminal purpose of the group alleged to have committed the crime</u>.
>
> [Emphasis added.]

[26] The burden of proof is on the Minister to establish the complicity of the individual (*Ezokola* at para 29, citing *Ramirez v Canada (Minister of Employment and Immigration)*, 1992 CanLII 8540 (FCA), [1992] 2 FC 306 at p 314 [*Ramirez*]).

[27] Before me, the applicant focused on the issue of the voluntary, knowing and significant contribution of the applicant (*Ezokola* at paras 29, 68, 84, 91).

[28] I must also note that is was not seriously challenged in this case that, between 1984 and 1989, when the principal applicant lived and was working at Casernes Dessalines, and as confirmed by overwhelming objective documentary evidence, torture occurred there, or that the FADH constituted the central element of the Haitian government and state repression.

(1) Voluntary contribution of applicant

[29] It was also not seriously challenged in this case that the applicant voluntarily participated in the FADH's activities as a member. In fact, as he testified before the RPD, the applicant specifically requested that his assignment be at Casernes Dessalines.

[30] As a result, the RPD's conclusion that there were serious reasons to believe the applicant's contribution to the torture in this case was voluntary seems reasonable to me.

(2) Knowing contribution by applicant

[31] At the time, the applicant was part of the 21st company of the Jean-Jacques Dessalines battalion. The applicant described this battalion as a specialized unit of the Haitian army that answered directly to the Haitian president, Jean-Claude Duvalier, until he was removed from power in 1986. The 21st company was a tactical unit and, along with four other elite companies, was stationed at Casernes Dessalines.

[32] According to the applicant's testimony, three of the five elite companies, including the 21st, guarded the interior of the prison in rotation, such that [TRANSLATION] "when the company guarded the interior, he took on sentry duties to monitor all of the buildings" with access to all of the Casernes Dessalines buildings.

[33] The 21st company was composed of around 300 to 400 individuals in several platoons. The applicant's platoon was composed of 27 men. He confirmed that when his platoon guarded the interior of the prison, he performed his duty like a good soldier.

[34] The applicant argues that the RPD considered Casernes Dessalines as a small complex; as the applicant lived and worked there, the RPD simply assumed that he was aware of the flagrant acts of torture that took place there in secret.

[35] The applicant refers to an article that reveals that the FADH had around 9,000 members, 4,000 of which were based in the capital, Port-au-Prince, and that they supervised Haiti's prisons, among duties. This article states that Casernes Dessalines was also home to the Service détectif [SD], the government's specialized political police, whose 200 members were in charge of detaining and interrogating political prisoners.

[36] The applicant submits that there is no evidence that establishes in which department of Casernes Dessalines the prisoners' interrogations and torture took place. The applicant states that he was not a member of the SD and never guarded the entry gate to the presidential palace.

[37] Before me, counsel for the applicant states that the applicant was only in charge of the security perimeter at gates 1 and 2, which had nothing to do with the SD's activities. He submits that by referring to Casernes Dessalines in general terms, the RPD never truly attempted to determine whether the applicant was concretely aware of the acts that were committed in violation of human rights.

[38] It was established that gates 1 and 2 lead to the interior perimeter of Casernes Dessalines, without necessarily giving access to the presidential palace. However, it does not seem that the prisoners' interrogations and torture took place in the presidential palace. The same article to which the applicant refers states the following:

> [TRANSLATION]
> The Casernes prison is made up of a sort of square wall with a corridor in the middle. This has five individual cells on each side. Each cell is six feet long and three feet wide. When arriving, the prisoner is undressed and left naked in the cell, which has only an old dirty mattress in it.

[39] Moreover, it was not exactly true that the applicant was only stationed at gates 1 and 2. During his testimony before the RPD, and after confirming that the companies, in rotation, guarded the interior of the prison as sentries responsible for monitoring all the buildings, the applicant stated the following:

> [TRANSLATION]
> Yes, because we . . . there were several stations and we were all assigned to monitor the building and there were several of the . . . several stations.

[40] When counsel for the Minister asked him whether he was always on duty at the gate, he replied:

> [TRANSLATION]
>
> There were several gates and our . . . and I, I was on rotation. Sometimes, we were at station 1, station 2, and so on.
>
> [Emphasis added.]

[41] The applicant never stated that he was only assigned to gates 1 and 2. What he said was that there was a rotation in terms of each station ([TRANSLATION] "we were at" station 1 and after at station 2, etc.). It is therefore inaccurate to say that the applicant was only on duty at gates 1 and 2 and that he did not know what was happening or who entered or exited from the other gates around the perimeter of the prison.

[42] The evidence seems to support the RPD conclusion that the applicant should have been aware of the comings and goings of the prisoners, inside and outside Casernes Dessalines, and more specifically, of what was going on inside.

[43] The applicant notes that the RPD erred in concluding that he was aware of the atrocities on the basis of mere conjecture and that it was essentially a negative credibility finding. He cites *Ventocilla v Canada (Minister of Citizenship and Immigration)*, 2007 FC 575 [*Ventocilla*], in support of the argument that the Minister cannot meet his burden of proof with regard to Article 1F(a) of the Convention on the basis of inferences and negative credibility findings.

[44] In *Ventocilla*, Justice Teitelbaum observed the following:

> [29] The applicant submits that a finding of complicity in committing war crimes cannot be based on a negative credibility finding. He relies on the decision *La Hoz v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 762, wherein Mr. Justice Blanchard held, at paragraphs 21 and 23:

> In my view, the Board's decision to exclude the male applicant from application of the Convention cannot be upheld because it found he lacked credibility. The burden, however, is on the Crown to establish that there are "serious reasons for considering" that the male applicant committed acts described in section 1F. In this case, the Board seems to have concluded that the male applicant should be excluded because he did not provide convincing evidence that he did not commit these acts. This burden is not on the male applicant. The Board's reasoning on this matter is erroneous and warrants the intervention of this Court, since it erred in law.
>
> . . .
>
> The evidence must show that there are serious reasons for considering that the male applicant committed crimes against humanity. The Board did not address this issue. It did not establish which war crimes the male applicant allegedly committed. It simply referred to war crimes in broad terms and found that the Peruvian army frequently uses torture and commits acts of violence against civilians in areas where Tupac Amaru and Shining Path rebels are found. Since it ruled that the male applicant's testimony was not credible, the Board concluded that, because he was a member of the Peruvian army, he was responsible for these crimes. In my view, these reasons are not sufficient to establish that the male applicant committed crimes against humanity.
>
> [30] In my view, *La Hoz* is directly applicable. The Minister cannot meet his burden through inferences, particularly ones that are not reasonably drawn.
>
> [Emphasis added.]

[45] Moreover, it is the Minister's burden to show there are "serious reasons for considering" that the applicant was complicit in the torture that was taking place at Casernes Dessalines (*Ramirez* at para 10; *Ezokola* at para 29).

[46] I recognize that the Minister cannot meet this burden through mere innuendo, insinuation, pure conjecture or negative credibility findings. This burden requires more than mere suspicion or conjecture, but less than the civil standard of proof, the balance of probabilities (*Sivakumar v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 433; *Ezokola* at paras 101–2). Similarly, the concept of complicity by association was rejected by the Supreme Court (*Ezokola* at para 30).

[47] However, there comes a time when there is a clear line between the evidence and a specific conclusion, where there is no other reasonable conclusion. In such situations, when the specific conclusion becomes obvious, it seems to me that inferences are not necessarily unreasonable (*Harb v Canada (Citizenship and Immigration)*, 2003 FCA 39 at paras 26–28 [*Harb*]).

[48] In this case, considering the small size of the prison complex, how often the applicant guarded the prison, the relatively small size of the FADH battalion in question, and the long period of time during which the applicant lived and worked at the complex, after referring to the documentary evidence on the atrocities committed at Casernes Dessalines, the RPD noted:

> [TRANSLATION]
> It is simply implausible that international organizations, which had no access to Casernes Dessalines during this period, were aware of the widespread and systematic torture of civilian prisoners in this prison, but Mr. Elve [the claimant], a person who worked, lived and provided services in the prison for more than five years, was not.

[49] The applicant was right in the thick of things. He was not hundreds of kilometres away. The applicant was not only responsible for the security perimeter, but also lived there

permanently. The space is relatively small, and those who entered and exited were monitored closely. One can only imagine the screams of agony that came from the prisoners' cells.

[50] The applicant states that he was just at the bottom of the chain of command. However, he was promoted from private to private first class while he was stationed at Casernes Dessalines.

[51] In *Ezokola v Canada (Citizenship and Immigration)*, 2010 FC 662, Justice Mainville summarized the law regarding a finding of presumed complicity. At paragraph 4, he stated the following:

> In short, merely being an employee of a state whose government commits crimes against humanity is not sufficient for exclusion under Article 1F(a), any more than mere knowledge of those crimes is sufficient. There must be a nexus between the claimant and the crimes alleged. That nexus may be established by presumption if the claimant held a senior position in the public service, where there are serious reasons for considering that the position in question made it possible for the refugee claimant to commit, incite or conceal the crimes, or to participate or collaborate in the crimes.
>
> [Emphasis added.]

[52] This summary of the law was not repudiated by the Federal Court of Appeal or the Supreme Court.

[53] Although *Ezokola* involved the presumed knowledge of a person in a fairly high position in the Congolese foreign service, I do not think that the principle could not apply to lower members in the hierarchy who meet the criterion of complicity based on contribution, a principal that was ultimately confirmed by the Supreme Court in that case (*Ezokola* at para 29).

[54] In such a case, the requisite link with the torture can be established by presumption.

[55] In the case at hand, I am of the view that when the applicant submits that he was not aware of the atrocities committed, it is contrary to simple logic. There were certainly serious reasons to believe that the applicant voluntarily contributed in a knowing manner to the atrocities committed at Casernes Dessalines. The RPD's conclusion seems reasonable to me.

(3) Significant contribution of applicant

[56] Having concluded that there were serious reasons to believe that the applicant knew that torture was being carried out in the prison in question, the RPD found that, on a balance of probabilities, guarding the institution and ensuring that these crimes could be committed in relative secrecy constituted a significant contribution.

[57] The applicant argues that, once again, the RPD continued to consider Casernes Dessalines in general terms and did not pay attention to the more specific element of the evidence: the applicant was only responsible for security at gates 1 and 2, not the general perimeter of the entire institution.

[58] The applicant admitted in his testimony that his company performed sentry duties and was part of the perimeter guard at Casernes Dessalines, in rotation at various entry stations. As for the rotation, he mentions [TRANSLATION] "going from one station to another." He confirmed he was able to [TRANSLATION] "look everywhere" from where he was posted. Moreover, as noted by the RPD, the applicant admitted during his interview with CBSA that his security duties

included [TRANSLATION] “guarding the checkpoints to monitor the entire Casernes Dessalines complex”.

[59] I have already noted that the applicant’s statement before me, indicating that he was placed at stations 1 and 2 with no knowledge of the activities at the other stations, was a contradiction of his own testimony.

[60] The applicant states that, if torture was occurring in the building, it was done in secret by the SD, not by a branch of the army responsible for securing the prison’s perimeter, and that, since he was not a member of the SD, he was not aware of the alleged atrocities.

[61] I must admit that I find this difficult to believe, considering the context, in which the applicant lived and performed his duties at Casernes Dessalines: it is established that this is a small place.

[62] I also note, based on the applicant’s testimony, that he was adamant that he was not aware of the atrocities that took place there, and when he was asked what the prison was for, he replied it was merely to discipline soldiers. However, when questioned, he stated that the SD’s activities were different from those of the soldiers.

[63] The respondent asks the following rhetorical question: Why did the applicant even mention the SD when the RPD had not, especially since the applicant himself was adamant that Casernes Dessalines was used exclusively to discipline soldiers?

[64] I admit that it is strange for the applicant to refer to the SD's activities in the prison after simply denying all knowledge of the atrocities that took place there.

[65] The applicant's position allowed him to aid in, abet and conceal the crimes in question. In fact, to be complicit in government crimes, a public servant must be aware they are being perpetrated and know how his or her behaviour "will assist in the furtherance of the crime or criminal purpose" (*Ezokola* at para 89).

[66] The RPD concluded as follows:

> [TRANSLATION]
>
> [57] A guard who provides security services for an institution ensures that the crime can take place in relative secrecy. A guard ensures that individuals who might be able to expose the criminal activity inside the institution—militants, journalists, family of the victims, opposition politicians, human rights observers—cannot access the crimes that are occurring on the inside or document them. A guard ensures that the victims of crime are unable to escape from the institution where they are tortured.
>
> [58] <u>For all these reasons, the tribunal concludes that there are serious reasons to believe that the contribution of Mr. Elve [the claimant] in the torture was significant</u>.
>
> [Emphasis added.]

[67] This is not a situation where the applicant was complicit by association, nor was it a passive acquiescence. The position of the applicant allowed him, directly and on site, to abet and conceal the crimes in question. Through his behaviour, the applicant facilitated the commission of the crime.

[68] In *Ezokola*, the Supreme Court set out the test regarding the minimum requirements for complicity under Article 1F(a). The test includes six factors (*Ezokola* at para 73):

> (1) the nature of the organization;
>
> (2) the method of recruitment;
>
> (3) position/rank in the organization;
>
> (4) knowledge of the organization's atrocities;
>
> (5) the length of time in the organization; and
>
> (6) the opportunity to leave the organization.

[69] In its decision, the RPD did cite these factors but focused, in the analysis of the Article 1F(a) exclusion, on the nature of the crimes committed at Casernes Dessalines and the applicant's contribution.

[70] Considering the evidence on file, the RPD concluded that the applicant's testimony lacked credibility and that there were serious reasons to believe that the applicant was complicit in the crimes of torture (*Harb* at paras 27–28).

[71] I see nothing unreasonable in the RPD's conclusion on this issue.

2. *Did the RPD err by finding that at the time of the atrocities committed at Caserne Dessalines, torture constituted a crime against humanity?*

[72] The RPD stated that [TRANSLATION] "torture constitutes a crime against humanity" in accordance with the Rome Statute and the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24 [*Crimes Against Humanity Act*].

[73] Following this statement, the RPD concluded that the applicant made a voluntary, knowing and significant contribution to the torture committed from 1984 to 1989 at Casernes Dessalines, and as a result, it concluded that the Minister established that there were serious reasons to believe that the applicant was complicit in the international crime of torture within the meaning of the Rome Statute and the *Crimes Against Humanity Act*.

[74] The applicant submitted that he could not be considered complicit in the generalized and systematic torture committed at Casernes Dessalines between 1984 and 1989 because, at that time, torture was not recognized as an international crime under the Rome Statute. The applicant submits that this conclusion by the RPD constitutes an error in law because the Rome Statute was applied retroactively.

[75] I must note that this question was not raised before the RPD; it is a new argument presented for the first time before me. However, because of the importance of this question, I feel this is a situation in which I must exercise my discretion and allow this argument to be debated (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654 at paras 5, 27–29; *Yahaya v Canada (Citizenship and Immigration)*, 2019 FC 1570 at para 42; *Canada (Attorney General) v Public Alliance of Canada*, 2014 FC 688 at paras 17–24; *Agence du revenu du Québec c Commission des relations du travail*, 2015 QCCS 6142 at para 30; *Federal Courts Act*, RSC 1985, c F-7, section 18.1).

[76] First, in this case, the applicant was not subject to a criminal prosecution; he was not found guilty under any law of having committed or having been complicit in any torture. The

reference to the Rome Statute was simply to illustrate the international crimes in which the RPD considered there were serious reasons to believe the applicant was complicit.

[77] The RPD did not truly apply the Rome Statute retroactively. In my opinion, the RPD adopted a retrospective interpretation of the Rome Statute, which is consistent with the Canadian case law. According to my interpretation of the decision, the RPD noted, rather, that torture is recognized internationally, including in Canada, as a crime against humanity.

[78] I will first note that at paragraph 114 of *Vavilov*, the Supreme Court recognized that international law constitutes "an important constraint on an administrative decision maker" because of the presumption of compliance with international law (notably recognized in *R v Hape*, 2007 SCC 26 at paras 53–54 and *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at paras 47–49):

> We would also note that in some administrative decision making contexts, international law will operate as an important constraint on an administrative decision maker. It is well established that legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with . . . the values and principles of customary and conventional international law": *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, at para. 53; *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754, at para. 40. Since *Baker*, it has also been clear that international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power: *Baker*, at paras. 69-71.

[79] Thus, an erroneous interpretation of international law is a sub-category of "fundamental flaw" (*Vavilov* at para 101) that could "cause a reviewing court to lose confidence in the outcome reached" (*Vavilov* at para 106). In other words, in accordance with the presumption of

compliance with international law, the decision maker cannot reasonably interpret a Canadian provision in a manner that is incompatible with the obligations imposed on Canada by international law (e.g., *Vavilov* at paras 177–82, 194).

[80] In its decision, the RPD cited the definition of torture (as a crime against humanity) as set out in Article 7 of the Rome Statute and noted it in support of the conclusion that torture indeed constituted such a crime.

[81] This provision reads as follows:

> 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:
>
> . . .
>
> (f) Torture;
>
> . . .
>
> 2. For the purpose of paragraph 1:
>
> (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;
>
> . . .

[82] Canada ratified the Rome Statute in 2000 when the *Crimes Against Humanity and War Crimes Act* received Royal Assent (*United States v Burns*, 2001 SCC 7, [2001] 1 SCR 283 at para 88; *Ezokola* at para 49).

[83] As Justice Létourneau explained, the *Crimes Against Humanity Act* aims mainly to "sanction crimes of genocide, crimes against humanity and war crimes committed in or outside Canada" and to implement "the Rome Statute of the International Criminal Court" (*Zazai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 303 at para 2; see also *Crimes Against Humanity and War Crimes Act*, Preamble, subsection 2(1)).

[84] The recognition of torture as a crime against humanity was incorporated into Canadian law under subsections 4(3), 4(4), 6(3), 6(4) and 6(5) of the *Crimes Against Humanity Act.*

[85] Article 24 of the Rome Statute states the following:

> Article 24
>
> Non-retroactivity *ratione personae*
>
> 1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
>
> 2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

[86] The applicant cites *Ventocilla*, doctrine and Article 24 of the Rome Statute (non-retroactivity *ratione personae* clause) in support of the argument that torture was not recognized as a crime against humanity before the coming into force of the Rome Statute, on July 1, 2002.

[87] I reject this argument. Torture has been recognized as a crime against humanity since at least 1945 (*Bonilla v Canada (Citizenship and Immigration)*, 2009 FC 881 at para 124 [*Bonilla*]; *Ramirez*; *Ventocilla*; Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/1P/4/ENG/REV.1, Geneva, 1992, UNHCR 1979; subsections 4(3), 4(4), 6(3), 6(4) and 6(5) of the *Crimes Against Humanity Act*).

[88] In *Ramirez*, the Federal Court of Appeal accepted the argument that the torture and murder committed by the armed forces constituted either a war crime or a crime against humanity. However, as noted by the Court, the qualification of the applicant's acts was less significant, considering the acts took place in a context of civil war or civil insurrection (*Ramirez* at para 2) :

> In the case at bar the crime in question is either a war crime or a crime against humanity. It is certainly not a crime against peace, and would normally be included in crimes against humanity.[1] However, since we are, on the facts under consideration, concerned with crimes committed in the course of what is either a civil war or a civil insurrection, and nothing hangs on whether one category or the other is the more relevant, I have chosen to employ the term "international crimes" to refer indifferently to both classes of crime.

[89] Footnote 1 in this excerpt refers to a doctrinal opinion that equates torture to a crime against humanity:

> [1] Professor James C. Hathaway, *The Law of Refugee Status* (1991), at p. 217, includes "genocide, slavery, torture, and apartheid" as crimes within this category. Guy S. Goodwin-Gill, *The Refugee in International Law* (1983), at pp. 59-60, writes that "The notion of crimes against humanity inspired directly the 1948 Genocide Convention, Article ii of which defines the 'crime under international law' . . .".

[90] In *Harb*, the Federal Court of Appeal accepted the respondent's argument that the Rome Statute is an international instrument that can be used to interpret Article 1F(a):

> [6] At the hearing counsel for the respondent suggested that the reference to the *Statute of the International Tribunal for the Former Yugoslavia* and the *Statute of the International Tribunal for Rwanda* be deleted from the certified question. In his submission, these statutes are not really "international instruments" within the meaning of article 1F(*a*). Counsel for the appellant did not object to this proposition and, without ruling on the validity of the respondent's argument, the Court accepted his suggestion.
>
> [7] In the same breath, counsel for the respondent maintained that although the crimes alleged in the case at bar were committed between 1986 and 1993 the *Rome Statute of the International Criminal Court*, adopted on July 17, 1998 and in effect on July 1, 2002, was an international instrument which could be taken into account in defining "a crime against peace, a war crime or a crime against humanity" for purposes of the application of article 1F(*a*).The question could be important, in so far as article 7 of the *Rome Statute* contains a more up-to-date definition of "crimes against humanity".
>
> [8] In my opinion, it is clear that article 1F(*a*) should be interpreted so as to include international instruments concluded since it was adopted. Paragraph 150 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, published in 1979 by the United Nations High Commission for Refugees, states that "There are a considerable number of such [international] instruments dating from the end of the Second World War up to the present time" (my emphasis).

[91] However, these two decisions do not discuss the effect of the non-retroactivity clause (article 24) in the Rome Statute, nor do they clarify the date Canada recognized torture as a crime against humanity, according to treaty law or customary law. Moreover, the *Crimes Against Humanity Act* does not state whether torture was recognized as a crime against humanity before July 17, 1998 (*a contrario*, *Crimes Against Humanity and War Crimes Act*, subsections 4(4), 6(4); *Munyaneza v R*, 2014 QCCA 906 at paras 24, 27 [*Munyaneza*]).

[92] These gaps resulted in a slight inconsistency in the case law.

[93] In *Ventocilla*, the Immigration and Refugee Board had concluded that the applicant had committed acts, during the Peruvian armed conflict, that had been recognized as war crimes within the meaning of the Rome Statute, and therefore he was excluded from any Article 1F(a) protection. The Federal Court allowed the application for judicial review on the ground that the Board had erred by concluding that war crimes committed during an internal conflict could bring the exclusion under Article 1F(a) of the Convention into play.

[94] This decision was based on a non-retroactive application of the Rome Statute and the *Crimes Against Humanity Act:*

> [14] There is no question that the Rome Statute is an international instrument which can be used to interpret the crimes in Article 1F(a) (see *Harb v. Canada (Minister of Citizenship and Immigration)* (2003), 2003 FCA 39 (CanLII), 238 F.T.R. 194 (F.C.A.), at paragraphs 7-8 and the UNCHR [United Nations High Commissioner for Refugees] *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, dated September 4, 2003) and the acts attributed to the applicant, namely the torture and murder of "prisoners of war" (Shining Path and/or Tupac Amaru guerrillas), fall within the list of acts considered war crimes in an internal conflict (article 8, paragraph 2(c)(i) of the Rome Statute).
>
> [15] The applicant acknowledges that the acts attributed to the applicant would be considered war crimes under the definitions set out in the Rome Statute but submits that the Rome Statute cannot be applied to the acts attributed to the applicant because it came into force on July 1, 2002 and the acts attributed to him took place between 1985 and 1992. In effect, the applicant submits that the definition of war crimes provided in the Rome Statute cannot be applied retroactively. The applicant notes that the Rome Statute contains a retroactivity clause. Moreover, the applicant relied on *Ramirez* for the proposition that a person must have the *mens rea* for an international crime in order to be found excluded from

> refugee protection (*Ramirez v. Canada (Minister of Employment and Immigration)*, 1992 CanLII 8540 (FCA), [1992] 2 F.C. 306 (C.A.)) and submits that this principle extends such that a person cannot have the *mens rea* to commit an international crime if he is not aware that the acts in question are international crimes.
>
> [16] I agree with the applicant that the definitions in the Rome Statute cannot be applied retroactively. The definition of "war crime" set out in the *Crimes against Humanity and War Crimes Act* supports the applicant's argument. . . .
>
> [17] Since the Rome Statute was not part of international law at the time of the commission of the acts in question reference should not be made to how it defines war crimes for the purpose of determining whether the acts attributable to the applicant constitute war crimes.
>
> [18] This interpretation is supported by the principle in international criminal law of non-retroactivity. This principle is described as the "second corollary of the principle of legality. It means that a person cannot be judged or punished by virtue of a law which entered into force after the occurrence of the act in question" (John R. W. D. Jones and Steven Powles, *International Criminal Practice* (Ardsley, N.Y.: Transnational, 2003 at § 6.1.21)).
>
> [19] Furthermore, I conclude that the definition of war crimes provided in the Rome Statute cannot be used to determine whether the acts in question constitute war crimes because they were committed before the Rome Statute was part of international law.
>
> [20] Consequently, in assuming that war crimes could be committed during an internal conflict, the Board erred in law. This error was determinative given that the current definition of war crimes in international law cannot be applied retroactively. This application for judicial review will be allowed and the matter should be sent back to a different Board to be redetermined.

[95] Applying the non-retroactivity rule is in compliance with the principle of *nullum crimen sine lege, nulla poena sine*—there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and non-retroactive (*Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, 1990 CanLII 105 (SCC), [1990] 1 SCR 1123, at p 1152).

[96] Two years after *Ventocilla*, the Federal Court noted that torture had been recognized as a crime against humanity since the Second World War (*Bonilla*):

> [105] **Issue 4** Did the Board err in law by applying definitions of crimes against humanity from the *Rome Statute* retroactively?
>
> . . .
>
> [107] The applicant's submission that section 4 of CAHWCA precludes the application of the *Rome Statute* because it had not come into force requires an analysis of that section.
>
> . . .
>
> [108] I note the respondent's submission that this section is under the heading "OFFENCES WITHIN CANADA" and as such, does not apply to these circumstances.
>
> [109] I also note that the wording of the section suggests that Parliament, by enacting the statute, did not want to open the door for the kind of arguments put forward by the applicant. The second sentence states that the coming into force date does not mean that "existing or developing rules of international law" should be limited or prejudiced by the introduction of this legislation.
>
> [110] Canadian courts have also incorporated international conventions on torture. As the Board noted, *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (CanLII), [2002] 1 S.C.R. 3 at paragraph 43 approved the definition of "torture" in Article 1 of the *Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment* ratified by Canada in 1987
>
> [111] Secondly, the analysis required here involves interpreting international and national laws regarding crimes against humanity.
>
> [112] As stated by Lorne Waldman in *Immigration Law and Practice* "Convention Refugees and Persons in Need of Protection", (2006) 1 LexisNexus Canada 8.519 at 8.540:
>
> . . . the acts constituting crimes against humanity are no longer limited to those contained in the definition of Art. 6 of the IMT Charter. The international community has since labeled genocide and apartheid as crimes against humanity. In addition, acts such as torture and piracy have been declared, in effect, to be international crimes.

> [113] The Supreme Court of Canada in *Mugesera* above, stated that "a crime against humanity" consists of the commission of one of the enumerated proscribed acts which contravenes customary or conventional international law or is criminal according to the general principles of law recognized in the community of nations". Clearly, the Supreme Court recognizes that it would be wrong to get bogged down in the technical aspects of many different laws, established for differing purposes, enacted at different times.
>
> [114] There is no doubt that there is consensus in our courts and in the world that the elimination of crimes against humanity such as torture has been the focus of international instruments since the aftermath of World War II (see *Ramirez* above). There has been no arbitrary date imposed on finding culpability in torture. For these reasons, I am not satisfied that the Board made an error in law and I would not allow the judicial review on this ground.
>
> [Emphasis in original.]

[97] Moreover, I note that several other legal sources align with the argument that torture was recognized as a crime against humanity before the implementation of the Rome Statute (*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, [1987] Can TS No 36; *International Covenant on Civil and Political Rights*, December 19, 1966, [1976] Can TS No 47, articles 4, 7, 10; *Universal Declaration of Human Rights*, UN Gen Ass Res 217 A (III), December 10, 1948, articles 3, 5; The Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 Off doc UN SC, 1993, UN SC Doc/25704 at para 48; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paras 61–65; Fannie Lafontaine, *Prosecuting Genocide, Crimes Against Humanity and War Crimes in Canadian Courts* (Toronto: Carswell, 2012) at pp 149–55).

[98] However, it is not necessary to rule on this issue as the RPD did not truly apply the Rome Statute retroactively. As I have stated, in my opinion, the RPD applied a retrospective interpretation of the Rome Statute, which complies with Canadian case law.

[99] As noted by Justice Mosley in *Betoukoumesou v Canada (Citizenship and Immigration)*, 2014 FC 591, rejecting the relevance of *Ventocilla*, the implementation of the *Crimes Against Humanity Act* shows Parliament's intent to give a retrospective (and not retroactive) effect to international obligations in regard to international crimes:

> [25] The applicant relies on *Ventocilla* . . . .
>
> [26] *Ventocilla* is of limited assistance to the applicant as it dealt with a definition of war crimes that is not applicable in the present proceedings. Moreover, the question in the present matter was not of retroactive application of the offences in the 2000 legislation but the effect of its declaratory aspects. Section 14 of the *Crimes Against Humanity and War Crimes Act* is declaratory, in my view, of what the law was at the time the applicant worked for the SNIP in what was then Zaire. Alternatively, it is valid retrospective legislation that attaches new consequences for the future to events that took place before the statute was enacted: *Benner v Canada (Secretary of State)*, 1997 CanLII 376 (SCC), [1997] 1 SCR 358 at paras 39-40 (SCC).

[100] The distinction between retroactivity and retrospectivity was also recognized by the Court of Appeal of Québec in *Munyaneza*:

> [50] It is true that the crimes alleged against the appellant were committed in 1994, whereas the [*Crimes against Humanity and War Crimes*] *Act* was not enacted until 2000. This does not, however, result in the retroactive creation of an offence.
>
> [51] The *Act* does not attempt to create an offence *ex post facto*. Rather, it seeks merely to allow the prosecution in Canada of persons who, before the *Act* entered into force, committed acts that, at the time of their commission, constituted genocide, crimes against humanity, or war crimes, according to the definitions of those crimes under international law, as illustrated by subsection 6(3) of the *Act* . . . .
>
> [52] The *Act* is thus consistent with paragraph 11(*g*) of the *Charter*, which recognizes that the criminal nature of an act at the moment it is committed may be assessed under either domestic or international law . . . .

> [53] Moreover, the law of this country does not prohibit an amendment to the rules governing the jurisdiction of courts to allow for prosecutions in Canada for acts that, at the time they were committed, were offences under Canadian or international law (*R. v. Finta*, 1994 CanLII 129 (SCC), [1994] 1 S.C.R. 701). And in fact, that is what the *Act* did.
>
> [54] In summary, through the *Act* and the repeal of the 1987 amendments to the *Criminal Code*, Parliament did not create new legal consequences for the past but only for the future. At most, the *Act* is retrospective in effect but not retroactive, as defined in *Benner v. Canada (Secretary of State)*, 1997 CanLII 376 (SCC), [1997] 1 S.C.R. 358 at 381.
>
> [55] Consequently, the *Act* validly permits the prosecution of an individual in Canada for a war crime committed before 2000.
>
> [Citations omitted.]

[101] In this case, the RPD accepted the argument that torture constitutes a crime against humanity. In doing so, the RPD established new consequences for acts committed prior to the implementation of the *Crimes Against Humanity Act* and the Rome Statute. There is therefore a retrospective, not retroactive, application of the Act (Pierre-André Côté, *Interprétation des lois*, 4e ed (Montréal: Éditions Thémis, 2009) at paras 508–27; *Épiciers Unis Métro-Richelieu Inc., division Éconogros v Collin*, 2004 SCC 59, [2004] 3 SCR 257 at para 46; Elmer A. Driedger "Statutes: Retroactive, Retrospective Reflections" (1978) 56 Can Bar Rev 264 at pp 268–69, 275–76).

[102] Although the RPD was terse in describing its decision-making process, I conclude that its interpretation was not unreasonable (*Vavilov* at paras 115–24).

[103] As a result, our intervention is not necessary in this case.

VII. Conclusion

[104] For these reasons, I conclude that the officer's decision is reasonable, and the application for judicial review is dismissed. The parties did not present any questions for certification.

JUDGMENT in IMM-3363-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"
Judge

Certified true translation
This 14th day of May 2020.

Michael Palles, Reviser

Appendix A – Relevant Provisions

Crimes Against Humanity and War Crimes Act, SC 2000, c 24

Offences Within Canada	**Infractions commises au Canada**
Genocide, etc., committed in Canada	**Génocide, crime contre l'humanité, etc., commis au Canada**
4 (1) Every person is guilty of an indictable offence who commits	4 (1) Quiconque commet une des infractions ci-après est coupable d'un acte criminel :
. . .	. . .
(b) a crime against humanity; or	b) crime contre l'humanité;
. . .	. . .
Conspiracy, attempt, etc.	**Punition de la tentative, de la complicité, 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.	(1.1) Est coupable d'un acte criminel quiconque complote ou tente de commettre une des infractions visées au paragraphe (1), est complice après le fait à son égard ou conseille de la commettre.
Punishment	**Peines**
. . .	. . .
(2) Every person who commits an offence under subsection (1) or (1.1)	(2) Quiconque commet une infraction visée aux paragraphes (1) ou (1.1) :
(a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and	a) est condamné à l'emprisonnement à perpétuité, si le meurtre intentionnel est à l'origine de l'infraction;

(b) is liable to imprisonment for life, in any other case.

b) est passible de l’emprisonnement à perpétuité, dans les autres cas.

Definitions

Définitions

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

(3) Les définitions qui suivent s’appliquent au présent article.

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. (crime contre l’humanité)

crime contre l’humanité Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d’une part, commis contre une population civile ou un groupe identifiable de personnes et, d’autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l’humanité selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity)

. . .

. . .

Interpretation — customary international law

Interprétation : droit international coutumier

(4) For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of

(4) Il est entendu que, pour l’application du présent article, les crimes visés aux

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.	articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de Rome sont, au 17 juillet 1998, des crimes selon le droit international coutumier sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.
Offences Outside Canada	**Infractions commises à l'étranger**
Genocide, etc., committed outside Canada	**Génocide, crime contre l'humanité, etc., commis à l'étranger**
6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada	6 (1) Quiconque commet à l'étranger une des infractions ci-après, avant ou après l'entrée en vigueur du présent article, est coupable d'un acte criminel et peut être poursuivi pour cette infraction aux termes de l'article 8 :
. . .	. . .
(b) a crime against humanity,	b) crime contre l'humanité;
. . .	. . .
is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.	
Conspiracy, attempt, etc.	**Punition de la tentative, de la complicité, 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	(1.1) Est coupable d'un acte criminel quiconque complote ou tente de commettre une des infractions visées au paragraphe (1), est complice

offence referred to in subsection (1) is guilty of an indictable offence.

après le fait à son égard ou conseille de la commettre.

Punishment

Peines

(2) Every person who commits an offence under subsection (1) or (1.1)

(2) Quiconque commet une infraction visée aux paragraphes (1) ou (1.1) :

(a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and

a) est condamné à l'emprisonnement à perpétuité, si le meurtre intentionnel est à l'origine de l'infraction;

(b) is liable to imprisonment for life, in any other case.

b) est passible de l'emprisonnement à perpétuité, dans les autres cas.

Definitions

Définitions

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

(3) Les définitions qui suivent s'appliquent au présent article.

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

crime contre l'humanité Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après les principes généraux de droit reconnus

of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (crime contre l'humanité)

par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity)

. . .

. . .

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.

Interprétation : droit international coutumier

(4) Il est entendu que, pour l'application du présent article, les crimes visés aux articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de Rome sont, au 17 juillet 1998, des crimes selon le droit international coutumier, et qu'ils peuvent l'être avant cette date, sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.

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:

Interprétation : crimes contre l'humanité

(5) Il est entendu qu'un crime contre l'humanité transgressait le droit international coutumier ou avait un caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations avant l'entrée en vigueur des documents suivants :

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at

a) l'Accord concernant la poursuite et le châtiment des grands criminels de guerre des Puissances européennes

London on August 8, 1945; and

(b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

de l’Axe, signé à Londres le 8 août 1945;

b) la Proclamation du Commandant suprême des Forces alliées datée du 19 janvier 1946.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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Zoé Richard	FOR THE RESPONDENT

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