

Building a world community



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Canada can lead in strengthening the rule of law and preventing atrocity crimes

By Fergus Watt

In the early part of this century Canada was a global leader in the development of two historic initiatives to promote peace, international justice and the rule of law. The International Criminal Court (ICC) came into force in 2002. And the Responsibility to Protect (R2P), launched following a Canadian-led study in 2001, was adopted by the UN General Assembly in 2005.

Both of these initiatives aim to strengthen prohibitions against the worst violations of international humanitarian law: genocide, war crimes and crimes against humanity. Canadian leadership is once again needed to address criticisms and remedy problems in the implementation of the Responsibility to Protect and the ICC's Rome Statute.

Based in The Hague, the International Criminal Court now includes 123 state parties. There are currently [nine situations under investigation](#), relating to crimes in: Democratic Republic of the Congo, Uganda, Central African Republic (two separate situations, referred at different times), Darfur, Sudan, Kenya, Libya, Côte d'Ivoire, and Mali. Additionally, preliminary examinations are ongoing in Afghanistan, Colombia, Nigeria, Georgia, Guinea, Honduras, Iraq, Ukraine, and Palestine.

Four States Parties – Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali – have referred situations occurring on their own territories. In addition, the United Nations Security Council has referred the situation in Darfur, Sudan, and the situation in Libya – both non-States Parties.

The Court has drawn criticism from members of the African Union for its perceived excessive focus on prosecuting political and military leaders in Africa. And outside of Africa critics have pointed to the slow pace of trials as well as the high cost of investigations and court operations.

Canada was a true leader in the 1995 - 2002 period of negotiations and ratification of the ICC's Rome Statute. Canada led the 'like minded' coalition of middle power governments all the way through the negotiations in Rome. A Canadian government that resumes that position of energetic (but not uncritical) political support for this still new institution and enhanced

international system of criminal justice is much needed today.

Canada, other states parties and court organs should:

- Make a commitment at the ICC Assembly of States Parties to work to reduce by 30 – 50 percent the time required to process individual cases.
- Adopt measures to ensure much greater levels of cooperation on arrests, protection of witnesses, relocation of witnesses, cooperation with investigations, detention, etc.
- Build on the complementarity provisions of the Rome Statute (i.e., the preference for national prosecutions, with the ICC only acting when states are unable or unwilling to take action domestically), in order to increase the number of prosecutions at the national level. Canada's *Crimes Against Humanity and War Crimes Act* has been notoriously under-utilized since it was passed in 2000.
- Demonstrate a greater commitment to the Court by working diplomatically to improve the inconsistent cooperation between the ICC and international organizations, especially the United Nations Security Council.

Similarly, the Responsibility to Protect has reached a critical stage. Greater engagement by middle power states like Canada would generate considerable benefits for the international community's capacity to promote international peace and security and prevent mass atrocity crimes.

Ten years after R2P was formally adopted at the 2005 UN Reform Summit, the norm is now firmly established. However, although there exists a solid political consensus regarding the norm's conceptual outlines, what is needed now are constructive actions and proposals to operationalize and institutionalize R2P across the machinery of the United Nations and within governments.

International understanding of the Responsibility to Protect has solidified around the "three-pillar" description first outlined in the UN Secretary-General's 2009 report to the General Assembly. These include (1) the primary protection responsibilities of the state to protect populations from genocide, crimes against humanity, war crimes and ethnic cleansing; (2) the parallel responsibility of the international community to assist the state in meeting its protection responsibilities, and (3) the international responsibility to respond in a timely and decisive manner, using whatever tools under Chapters VI, VII, and VIII of the UN Charter are available and appropriate, when the state is failing to meet its responsibilities to protect populations from the four crimes.

Recent criticism of R2P has centered primarily on its controversial application in Libya, and also on the failure of the international community to employ R2P in situations such as Syria, Central African Republic, Myanmar and South Sudan, among others.

There are practical steps that Canada could take, at home and internationally, to strengthen the Responsibility to Protect. These include:

- Appointing an R2P focal point. Within national governments, R2P focal points are senior officials with a mandate to operate across departments and mobilize protective strategies

to prevent and halt mass atrocities crimes. At present 50 governments have identified such senior officials, forming a network of practitioners that helps overcome international indifference and inaction and demonstrates a national commitment to atrocities prevention.

- At the United Nations, operationalization of R2P objectives requires full integration within existing conflict prevention and resolution processes, accompanied by broader acceptance of the relevance of R2P across UN organs, offices, agencies, and mandates. Promoting a more coherent systemic approach in a fragmented state-driven organization like the United Nations is difficult, but necessary. Persistent advocacy by like-minded governments can make a difference.
- Promote a UN General Assembly resolution to formalize and regularize consideration of R2P by the assembly and lay a foundation for deeper institutionalization within the Secretariat, for example by generating regular requests for follow-up and reporting.
- Join the ACT (accountability, coherence, transparency) group of states. The Security Council veto is often a barrier to collective action to stop mass atrocities. While reform of the Council is politically difficult, the ACT group of states are mobilizing international support for restraint on use of the veto in instances when mass atrocities are being committed.
- Support calls for greater oversight by the Security Council in the implementation of resolutions that invoke R2P and include civilian protection mandates, especially when prevention fails and collective measures under Chapter VII are necessary to respond to mass atrocity crimes. An example is Brazil's proposals for "Responsibility While Protecting" an effort to remedy perceived excessive use of force and misinterpretation of Security Council mandates during the implementation of resolutions in Libya, and the lack of needed state rebuilding and reconstruction efforts following that intervention.

Both the International Criminal Court and the Responsibility to Protect are controversial initiatives, which have attracted considerable criticism in recent years. Nevertheless, the world community has evolved beyond the stage when governments, citizens and international organizations can simply stand idly by when others become the victims of genocide or other atrocity crimes. The ICC and R2P represent the emergence of a new, more mature system of international justice and the rule of law, built on the enforcement of universally accepted international humanitarian norms. Support for the effective application of these norms would form an important element of a more civilized and enlightened Canadian foreign policy.