

The “Accountability Turn” in the Global Struggle Against Impunity: What Does this Mean for Canada?

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By: Terry Beitner

Researchers at University of Oxford are conducting a study to determine whether some form of permanent investigative mechanism should be created to support investigations of international criminal law offenses or “core crimes” (crimes against humanity, war crimes and genocide).

The researchers point to an “accountability turn in UN-fact-finding” to describe recent developments in international criminal justice. They state that the most significant development in the past four years has been the creation of the International, Impartial and Independent Mechanism for Syria (IIIM), the International Independent Mechanism for Myanmar (IIMM), and the UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD). The trend to prefer the creation of these mechanisms to support the struggle against impunity instead of the creation of new international criminal tribunals is the “accountability turn” at the international level.

The importance of the accountability turn lies in the fact that it demonstrates that there is still a desire, at the international level, to find creative new ways to contribute to the international struggle against impunity for core crimes. This is not to say that the United Nations (U.N.) has been idle since the Security Council, acting under its authority pursuant to Chapter VII of the UN Charter, established the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 (here) and the International Criminal Tribunal for Rwanda (ICTR) in 1994 (here).). Other criminal tribunals established by or in cooperation with the U.N. include:

Special Panels for Serious Crimes in East Timor (SPSC) created on June 6, 2000 (here)

Special Court of Sierra Leone (SCSL) established on January 16, 2002 (here)

Extraordinary Chambers in the Courts of Cambodia (ECCC) (2006) (here) and

Special Tribunal for Lebanon (STL) established on June 10, 2007 (here);

Admittedly, the STL was not created to deal with core crimes per se, however it is noteworthy that it is an international criminal tribunal created by the U.N. Security Council acting under its authority pursuant to Chapter VII of the United Nations Charter which allows the Security Council to determine the “existence of any threat to the peace, breach of the peace, or act of aggression”. As noted above, this is the same legal authority that the U.N. employed to create the ICTY and the ICTR. The U.N created the STL to investigate the terrorist bombings that killed former Lebanese Prime Minister Rafik Hariri and 21 others (here).”

Although, the accountability turn is said to reflect a shift away from the creation of new international tribunals, these mechanisms (IIIM, IIMM and UNITAD) may address an important stumbling block present in a large number of investigations of core crimes whether undertaken by states or international bodies. Efforts to bring perpetrators of core crimes to justice at the national or international level occur years or sometimes decades after the atrocities have taken place. This shift, at the very least, recognizes that there is an ongoing need to preserve evidence until accountability mechanisms get off the ground. For example, among the 13 “situations” currently under investigation by the International Criminal Court, 7 matters concern events that occurred in or prior to 2007. The rest of the situations deal with events that would have occurred between 2008 and 2017. (here)

As highlighted by the Oxford study, these three bodies share a unique mandate which is to “collect, collate and analyse evidence of international crimes (committed in Syria, Myanmar, and Iraq by Daesh/ISIL) according to criminal justice standards, and make this evidence available for domestic or international prosecutions.”(here)

Canada has the Crimes Against Humanity and War Crimes Program that investigates allegations that there are individuals in Canada who may have committed core crimes. The Program (for more detail see here) is comprised of The Royal Canadian Mounted Police, Department of Justice Canada Crimes Against Humanity and War Crimes Section, Canada Border Services Agency, and Immigration, Refugees and Citizenship Canada.

Additionally, there are national authorities in the United States, Europe and elsewhere that have ongoing investigations that mirror the work undertaken by Canada in the global struggle against impunity for core crimes. The list of countries with which Canada cooperates are too numerous to mention herein. Suffice it to say, that all refugee receiving states have an interest in forming a common response the impunity question and I would submit that most of them do. Additionally, those states that have gone through the turmoil of armed conflict related atrocities also have an interest in supporting the global effort and again, many do so.

It should therefore come as no surprise that these investigations require international cooperation among states as witnesses to these crimes are often found within various diaspora communities who have escaped the turmoil of their homelands.

Occasionally, these witnesses may also have other evidence of atrocities that they took with them upon their departure in the form of documents, videos and images captured on cell phones.

In addition to states undertaking national investigations there are other bodies carrying out this work such as the International Criminal Court and the International Residual Mechanism for Criminal Tribunals. Finally, there are a number of NGOs along with other United Nations bodies (UN Fact-Finding Missions and Commissions of Inquiry) tasked with examining situations with a view to human rights reporting.

Now, we have the accountability turn that introduces new players on to the field. For Canada, this means that there are new partners that are willing to cooperate with our investigators. These mechanisms are not pre-existing bodies that were designed for a different purpose and were given a new mandate. These bodies, as noted above, are designed to cooperate with states and other accountability mechanisms at the international or national level. They have the advantage of creating their internal processes from the outset to guarantee that the fruits of their labour are fit for purpose.

Fit for purpose means that information is collected, preserved and processed in such a way so as to permit the information to be received by a state or international tribunal and be used as evidence according to local law. This includes the adoption of proper precautions to care for the health and safety of witnesses such as protection of identities and support by social workers or other mental

health professionals, as may be required, while at the same time safeguarding the legal integrity of their statements along with securing informed consents for the use of the information provided.

National investigative and prosecution authorities and international tribunals are well versed in addressing these critical issues. Having international partners with the same, singular focus (the protection of witnesses and the integrity of collected evidence from a legal perspective) will only improve the capacity of states such as Canada to undertake this important work.

For further reference:
https://globaljustice.queenslaw.ca/news/the-search-for-justice-military-collection-of-evidence-on-the-battlefield

https://globaljustice.queenslaw.ca/news/working-methods-of-the-united-nations-security-council-failures-in-syria

https://globaljustice.queenslaw.ca/news/analysis-international-justice-for-war-crimes-committed-in-syria

https://globaljustice.queenslaw.ca/news/prosecuting-international-crimes-series-management-of-information

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About the author

Terry BeitnerTerry Beitner is General Counsel and Director of the Crimes Against Humanity and War Crimes Section of the Department of Justice Canada.

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