

At a Glance

AN EDUCATIONAL TOOL BY THE INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT

INTERNATIONAL & REGIONAL JUSTICE: IMPLEMENTING THE THIRD PILLAR OF THE RESPONSIBILITY TO PROTECT

The Role of International and Regional Justice under RtoP's Third Pillar

Within the RtoP framework, international and regional justice mechanisms and institutions contribute to the prevention of and response to threats of mass atrocities by ending impunity, deterring would-be perpetrators, and delivering justice to victims. Under RtoP, *the state bears the primary responsibility* for the protection of its population, and is thus held accountable for the commission of mass atrocities. Many judicial bodies interpret this responsibility by **investigating** cases where populations are at risk, and then **indicting, trying and sentencing individual** perpetrators, regardless of rank or title, for the commission of one or more of the RtoP crimes. These institutions work to facilitate **transitional justice**, ensuring accountability for massive human rights violations and establishing a basis for sustainable peace and reconciliation.

International and Regional Justice Mechanisms and Institutions

Justice mechanisms at all levels have been employed in the context of country-specific situations to try individuals responsible for the commission of one or more of the four crimes under the RtoP framework.

The International Criminal Court (ICC)

The ICC, the sole permanent, independent, international court and legal system, investigates and prosecutes individuals responsible for committing mass atrocities.

- The ICC was established with the entry into force of the Rome Statute (RS) in 2002, and is mandated to try individuals responsible for the commission of genocide, war crimes, and crimes against humanity. Recognizing that national legal systems are primarily responsible for holding perpetrators of these crimes accountable, the ICC exercises jurisdiction only when nations are unable or unwilling to prosecute.
- The Court can exercise its jurisdiction in three ways: States can formally refer situations to the ICC; the United Nations Security Council (UNSC) can refer a situation to the Court; and the Chief Prosecutor can open an investigation *a proprio motu*, or on his/her own accord, for crimes committed in or by nationals of States Parties to the RS. The Court can also conduct preliminary examinations of situations, which can deter recurrence of crimes.
- The Court has been engaged in situations in Sudan, the Democratic Republic of the Congo, Uganda, the Central African Republic, Kenya, Côte d'Ivoire, and Libya.

International criminal tribunals, special courts, and commissions

Prior to the establishment of a permanent international court, *ad-hoc* justice institutions were established by the UNSC, or at the behest of an individual government with UN cooperation, to try individuals responsible for the commission of mass atrocities.

- **The International Criminal Tribunal for the former Yugoslavia (ICTY)** was established by UNSC Resolution 827 (1993) with a mandate to investigate and prosecute individuals responsible for violations of humanitarian and human rights law during the wars in the former Yugoslavia (1991-1995). The ICTY issued 161 indictments; the proceedings for 126 of these individuals have concluded, and the remaining 35 persons stand either at pre-trial, trial or before the Appeals Chamber.
- **The International Criminal Tribunal for Rwanda (ICTR)** was established by UNSC Resolution 955 (1994), to investigate and prosecute those individuals responsible for committing mass atrocities and other violations of international humanitarian law during the 1994 genocide in Rwanda. The ICTR has indicted over 100 individuals, with 17 ongoing cases.
- In 1997, the Cambodian government formally requested the assistance of the UN to establish trial proceedings against leaders of the Khmer Rouge responsible for mass atrocities from 1975-1979. **The Extraordinary Chambers in the Courts of Cambodia (ECCC)** was created in 2003 following an agreement between the UN and government of Cambodia, and remains operational to date.
- The government of Sierra Leone requested the assistance of the UN in 2000 to try individuals bearing the greatest responsibility for mass atrocities during the nation's civil war (1996-2002). **The Special Court for Sierra Leone (SCSL)**, established jointly by the UN and national government in 2002, convicted former Liberian president Charles Taylor of war crimes and crimes against humanity in April 2012.

THREE PILLAR FRAMEWORK OF THE RESPONSIBILITY TO PROTECT

United Nations (UN) Secretary-General Ban Ki-moon established the three-pillar framework of the Responsibility to Protect (RtoP, R2P), in his 2009 Report *Implementing the Responsibility to Protect*.

- **Pillar One:** The state bears the primary responsibility to protect their population from genocide, war crimes, crimes against humanity and ethnic cleansing.
- **Pillar Two:** The international community, i.e. the UN, regional organizations, governments and civil society, must assist states in fulfilling their protection obligations.
- **Pillar Three:** When a state manifestly fails to protect its population or is in fact the perpetrator of these crimes, the international community has a responsibility to take collective action in a timely and decisive manner to prevent or halt the commission of mass atrocities. Such action must be on a case-by-case basis using a broad range of political, economic, humanitarian, and should peaceful means prove inadequate, coercive measures, including the use of force as authorized by the Security Council and in accordance with the UN Charter.

International Court of Justice (ICJ)

The ICJ is the principle judicial organ of the United Nations (UN) mandated to settle legal disputes between Member States, such as the violation of ratified treaties, and provide guidance on legal questions put forth by UN organs. In 2007, the ICJ made a landmark decision holding a Member State accountable for failing to prevent genocide when it confirmed that genocide had been committed in Srebrenica by Bosnian Serbs and that Serbia had breached the Genocide Convention by failing to prevent and punish these crimes.

Regional justice mechanisms

Regional courts and judicial bodies can enforce state compliance with relevant regional human rights agreements and provisions, providing additional fora through which the commission of crimes under the RtoP framework can be investigated and prosecuted. Regional justice mechanisms have not yet been established in all regions and sub-regions. Thus, developing judicial bodies and mechanisms in such regions and enhancing existing systems will strengthen the capacities to respond to mass atrocities.

- **The African Court for Human and Peoples' Rights (AfCHPR)** was created to enforce states' compliance with the African Charter on Human and Peoples' Rights. In March 2011, the AfCHPR issued its first-ever ruling against a state, Libya, which found that the government had committed massive human rights violations during the crackdown against anti-government protesters. Though the AfCHPR and the **African Court of Justice** may merge into an **African Court of Justice and Human Rights**, per a protocol adopted in 2008 by member states in the *African Union*, both courts remain operational to date.
- **The European Court of Human Rights (ECHR)** was established to hear complaints against states found in violation of the European Convention on Human Rights, which protects individual human rights and fundamental freedoms in all 47 *Council of Europe* member states. ECHR has issued numerous rulings against alleged war crimes and crimes against humanity committed by Russian forces in the context of the Second Chechen War (1999), but non-compliance with the Court's decisions remains an issue.
- **The Inter-American Court for Human Rights** applies and interprets the American Convention on Human Rights, ensuring all 35 member states of the *Organization of American States (OAS)* are compliant with the Convention. Rulings were handed down in 2005 against the Colombian government for its complicity in massacres of civilians in Mapiripan by paramilitary groups in 1997.

Strengthening Judicial Institutions

International and regional justice institutions face challenges, despite the important role they play in preventing and responding to the commission of crimes under the RtoP framework. **Increasing state membership** to judicial bodies through the signing and ratification of statutes, founding documents, and protocols is essential to expand universal jurisdiction against the commission of mass atrocities. Upholding the decisions of judicial mechanisms requires **states to abide by obligations** bestowed upon them through ratification.

Debate has arisen over how conducive the pursuit of justice and accountability amid ongoing mass atrocities is to peacefully resolving crises; the so-called **peace and justice debate**. **State cooperation** with such mechanisms also remains a critical issue, as seen in the case of Sudanese President Omar al-Bashir who, despite being wanted by the ICC for genocide, war crimes, and crimes against humanity, has travelled widely, including to three States Parties to the RS, without being arrested. The **cost of operations** and the **pace of proceedings** also draw criticism to judicial bodies. The case of Thomas Lubanga Dyilo, a Congolese warlord found guilty by the ICC in 2012 of conscripting and using child soldiers, though a milestone as this was the first verdict issued by the Court, took six years to adjudicate.

Role of Individual Governments and Civil Society

National authorities can work in tandem with international and regional justice mechanisms by ratifying statutes, founding documents and protocols. Those states that have already ratified can support the effective deliverance of justice by meeting their obligations, including full cooperation with the decisions of tribunals and courts at the international and regional levels. Furthermore, individual governments can work to introduce national legislation against the four crimes under the RtoP framework, making them punishable in domestic courts of law, and try suspects within these bodies.

Civil society, including women's and elders groups, think tanks, businesses, and other non-governmental organizations, strengthen justice mechanisms by monitoring their operation and providing legal and research support. Civil society can also alert actors to potential crises, and call for referrals of situations to international and regional courts and for indictments of individual perpetrators.

ICRtoP

INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT

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The International Coalition for the Responsibility to Protect convenes and collaborates with civil society, Member States, and regional and sub-regional organizations to continue close scrutiny of the consistent implementation of the third pillar and develop effective methods to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

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