

ICRtoP

INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT



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My answers are in my capacity as Executive Director of WFM-Institute for Global Policy, an old international peace movement that is honored to host two excellent global NGO networks on RtoP and the ICC, but of course I cannot speak for these networks.

I am delighted to join George Kegoro from Kenya and Sulaiman Jabati from Sierra Leone in responding to these very difficult questions. As an overriding comment, I think it is important to clarify that the Rome Statute and RtoP are based on major international humanitarian laws that do not 'outlaw' war or armed conflict, but are laws prohibiting war crimes, genocide and other crimes against humanity – that is that over the last hundred years almost all of the world's governments have agreed to strong international laws stating that even in war there are certain acts that are not only unacceptable, they are crimes against humanity. The Rome Statute holds individuals, no matter who they are, accountable and RtoP creates a norm addressing the responsibility and accountability of states and the international community for the same exact crimes. The Rome Statute is widely considered – by supporters and opponents alike – as one of the greatest advances in international law ever.

Is it appropriate for the Court to be involved while armed conflict is occurring? Or, in the effort to prioritize the peaceful resolution to a conflict first, should the ICC only be involved post-conflict? Please feel free to draw on country-specific examples.

For WFM, we agree with Sulaiman that there can be no peace without justice. So-called elite foreign policy experts and many 'peace negotiator' experts often argue that it is obvious that pursuing peace and accountability for international crimes at the same time are incompatible. But, this is not true and the recent-year examples of Bosnia, Sierra Leone, Uganda, DRC, and Colombia make the opposite case, that in many conflict situations introducing international criminal justice actually helps achieve and fortify peace initiatives.

Each situation needs to be evaluated independently. The elite's position has been that the best peace strategy is to give major combatant leaders amnesty and if



needed transfer them to a third country with personal and financial security. I cannot think of a peace strategy that has worked worse. The Rome Statute allows for the Prosecutor to consider the 'interests' of peace and justice; the treaty allows for the UN Security Council to ask the ICC to suspend investigations or prosecutions if the Council believes it is in the interest of maintaining international peace. Again, in the last 20 years there has developed major agreement, especially among global civil society, but increasingly among the policy elites, that the cessation of hostilities does not equal peace – this also is a major advance.

In summary, each situation must be evaluated independently with the interests of the protection of civilians at the forefront. Of course it is too soon for some, but I personally am certain history will prove that if the political and military leaders waging wars know they will face international prosecution if they commit war crimes and other crimes against humanity it will deter these crimes and millions of lives will be saved in this century.

Touching on the situations in Libya and Cote d'Ivoire, has the involvement of the ICC been helpful or detrimental to preventing further atrocities, prosecuting perpetrators and securing peace?

I believe there are thousands, perhaps tens of thousands of Libyan citizens alive today who would have been victims of horrific violence if the UN Security Council had not adopted Resolutions 1970 and 1973, which including referring the crimes being committed and threatened to the ICC. I believe Resolution 1970 is one of the finest ever of the UNSC, and the process leading to the 15-0 decision among the best examples of how the international community should maintain international peace and security. I think the new leaders of Libya are aware of these crimes and their responsibility and accountability precisely because of the referral.

As George and Sulaiman have stated, the ICC has also had a positive impact in Cote d'Ivoire.

As a non-governmental organization working on the ICC and RtoP, how can the Court become more effective as a tool within the RtoP framework? What measures can be taken by states, the Court itself and the United Nations Security Council to ensure this? What are the common challenges faced by the Court and the norm in the effort to prevent the four RtoP crimes and punish their perpetrators? Do you have any other additional thoughts on the relationship between the ICC and the RtoP?

The Rome Statute is a major new or enhanced system of international criminal



justice. The new international organization created by the treaty, the ICC, is a centerpiece of the new system. The RS is based on the principle (called complementarity) that national legal systems have primary responsibility and the international community and the ICC only become involved when the national systems are unable or unwilling to prevent or prosecute the crimes. RtoP emerged massively from the Rome Statute process – the same crimes, complementarity, national and international responsibility. Thus, the RS/ICC are arguably the strongest ‘tools’ in the RtoP framework.

Also, there has been a quiet legal revolution occurring in the last 10 years of national prosecutions in Spain, Mexico, Argentina, Belgium, etc., of crimes committed against their nationals in other countries, and national systems exercising aspects of ‘universal jurisdiction.’

In Kampala in 2010, against almost all expectations, the international community agreed to add the definition of the crime of aggression to the Rome Statute – which is done – and to provisions for the ICC to exercise jurisdiction over the crime after 2017 and after a further decision by the RS governing body.

Thus, the world is closer than ever in human history to surrounding war with enforceable international humanitarian laws, and to even outlawing ‘aggressive’ war. None of this would have occurred without the extraordinary efforts of civil society – NGOs at the national, regional and international levels. Both the RS and RtoP were essentially achievements of the middle and small power democracies working with NGOs like the CICC and ICRtoP (then the R2PCS project). This new partnership for democratic global governance may achieve in the next decade or generation a goal thought nearly impossible to achieve, the end of impunity for the worst crimes in international affairs.

George and Sulaiman provided more concrete and excellent answers to the first part of this question which I do not need to reiterate.

As to the relationship – the Rome Statute provides for individual responsibility and RtoP provides for state and international community responsibility. The potential ‘symbiosis’ between ICC and RtoP isbreathtaking!