

Liberal Internationalism – Then and Now

On the 100th Anniversary of Pierre Trudeau

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Thanks to our host Nathalie, Tom, Margaret, Minister Gould and Ali

In 1968, during the campaign, Pierre Trudeau pulled no punches when he began to speak out on his views on Canadian foreign policy. Then, in 1969 he declared that: “The basic pillars of Canadian foreign policy are not NATO, NORAD and the UN – they are disarmament, non-proliferation and the development of a special role in foreign aid and assistance related to our unique capacity and special needs.”

He stayed consistent on these points, although not relentless, as domestic policy and politics took over his time and energy. His consistency was mostly seen in the big things – the Foreign Policy Review of the 1960’s was followed with the Strategy of Suffocation, a practical and imaginative and courageous contribution to slowing if not reversing the arms race, the decision to terminate nuclear weapons roles for Canadian forces (to the chagrin of the US and UK) and the 1983-4 Peace Initiative, which others will address this afternoon.

Many things have changed over the past 5 decades and many things have not - some things are decidedly better and some things much worse. His “ominous rhythm of crises” language of the early 80’s certainly has a place today and more pertinently this week.

He understood the dynamic tension between foreign policy and defense policy and said, “foreign policy can become the servant of defense policy which is **not** the natural order of policy making”. He would not find much changed there when it comes to weapons policies. He understood the tension between an activist Prime Minister and the bureaucracy and took steps to work around a bureaucracy he found too slow and perhaps too small “c” conservative or at least with a bias for the status quo. He would not find much changed here either. He was frustrated by the recurring theme of “one should not do anything significant that the Americans might not like.” Perhaps... not much has changed after all....

His reflection that we should not play the role of “helpful fixer” internationally is a good reminder of the limits of what we can and should do but can also be considered as an apt framing for where we can play a highly effective role, consistent with our geography, history, relationships and memberships. I will offer some thoughts on one particular area flagged for this panel’s purview, on Development and International Justice.

Our consistency of foreign policy on justice and accountability provides an opportunity for us to continue to step up an even more focused approach on some of the grand challenges facing the world, arising from the flagrant abuses and disregard for International Humanitarian Law and the associated Geneva Conventions, International Human Rights Law and Treaties, all key elements of the Rule of Law and a rules based international system that has endured more or less since the 1940’s and which Canada played a large role in shaping, both its instruments and institutions.

How do we preserve a “culture of justice” and accountability even in countries who seem to be taking a sabbatical from their decades old commitments and obligations and how do we build a culture of justice and accountability in countries without a rule of law tradition or where it has not yet matured beyond traditional and customary norms and practices at a community level to a national level of state accountability? And, how do we evolve and develop a spectrum of instruments of accountability in practice so that IHL and human rights violations satisfy the demands of citizens as well as states for justice and accountability?

These questions become more pressing in the situation of today’s conflicts and violence. Unanswered unlawful violence by state and non-state actors, domestic and foreign, is the major reason people leave their homes, creates health crisis that can become regional and global in the case of infectious diseases, is a major cause of food insecurity, destroys health care systems, undermines the social fabric of communities and increasingly of cities where most of us live. Violence is the number one reason businesses decide not to invest in a community, causing a pathological spiral of poverty and deprivation and impunity that results inevitably in cycles of peace/near peace and then descends back into conflict, and, it goes without saying, no human or economic and social development.

So how do we engage and avoid the “helpful fixer” label?

First, Trudeau said it must start with our national interests not charitable instincts and this was repeated in the most recent foreign policy statement of former Foreign Minister Chrystia Freeland – “Beginning with Bretton Woods in 1944”, she said, “our collective commitment to territorial integrity, human rights, democracy, respect for the rule of law and free and fair trade have served the interests of all Canadians and upholds our broadly held national values, preserves and nurtures Canadian prosperity and security, and contributes to our collective goal of a better, safer, more just, more prosperous sustainable world.”

Self-interest is best protected when we step up to our global responsibilities and address the gaps for which we have unique credibility and competency as Trudeau said. The Global Commons is not just the climate, the oceans, etc, it is also the myriad of rules, conventions, treaties, we all agreed to be bound to in the pursuit of peaceful relations among states. These too are the global commons. When health care workers are targeted, when women and girls become instruments of war, when crimes against humanity and war crimes are committed with impunity, somewhere else in the world.....these too are threats to Canada and Canadians.

The war in Syria has given us a perfect picture of countless instances of violations of human rights and IHL and evidence of war crimes and crimes against humanity. The atrocities committed in conflicts like Syria but not limited to Syria have put a fresh lens on the Rules of War. Armed conflict is being documented on a timely basis by individuals armed with a cell phone unlike we have seen before.

Awareness of the rules of war and the limitations to the conduct of aggression are in fact trending in social media this week in light of the assassination of a military leader of a sovereign country by the United States. I am all for increased global literacy around the Geneva Conventions and the various laws of armed conflict and military doctrine! And, the critical and thoughtful questions this new found literacy provokes. Someone with advanced degrees from UofT asked me this week if cultural properties were indeed protected from bombings by law? I love that these questions are being asked.....and answered in the affirmative, not just by me but by regular citizens and students who are now forever equipped with new knowledge and hopefully now forever vigilant and outspoken about rights and responsibilities! That is the essence of a liberal internationalist!

The Syrian example is an important one because for too long, it was viewed as “somewhere else” and “over there” by too many of us. It was only when the refugee flows started demonstrating the borderless nature of conflict first regionally and then internationally did we step up. Twelve million people are forcibly displaced (6 million IDPs and 6 plus million refugees) ----whatever the outcome of this war - and that outcome is clearer, day by day - at its end, Syria will not end with it. It will continue to exist as a sovereign state and member of the UN and it will also continue to exist as a society and a people. We have barely begun to figure out what that means. However the political choices get framed and rebuilding/ reconstruction/stabilization assistance evolves, (Minister Gould’s dilemma!) we can avoid complicity in the crimes committed by sticking to principles of justice and accountability. Indeed, all of the billions of dollars that sooner or later will flow into Syria will be short term investments awaiting a return to conflict without some measure of accountability, for the lives destroyed by the crimes committed in this conflict, for the Syrian citizens who remain.

Syria has brought out some of the worse in our collective approach to conflict and created terrible precedents but has also given us the test ground for innovation in the international accountability infrastructure. What do I mean by this?

In the more than 8 years since the start of the Syrian conflict, there have been countless instances of violations of human rights – pervasive torture - and breaches of IHL, countless uses of prohibited weapons including barrel bombs and chemical weapons, and evidence of war crimes (starvation tactics) and crimes against humanity. Every red line has been crossed and whenever we thought it could not get worse it did. It is over 20 years since the Treaty of Rome was adopted establishing the International Criminal Court (ICC). Canada was an instrumental founding creator. We still press for its universalization and its critics still press to undermine it. The accountability demanded by the ICC puts some fear into war criminals, but process and politics make it a long wait for justice.

How do we know that the ICC matters? Russia and on occasion China have vetoed 7 UNSC accountability related resolutions since the beginning of the Syrian conflict. Russia also blocked renewal of the OPCW Joint Investigative Mechanism

on the use of banned chemical weapons and the referral of the situation in Syria to the ICC. The potential power of the ICC to hold the worse among us to account is not lost on anyone and is why some countries work so hard to undermine its credibility or deny it jurisdiction.

Syria has also become the poster child for attacks on health care facilities and health care workers with countless, targeted attacks with devastating consequences. Notwithstanding wide acknowledgement, documentation and reporting of these violations of several tenets of international law including UNSC 2286, there has yet to be any independent accountability proceeding holding any one accountable. There are many countries who need to be held to account for their military attacks that have resulted in deaths of doctors, nurses, ambulance drivers and patients and their families in recent years and days in Yemen, Afghanistan and Syria.

Perversely, there are some positive things arising out of the carnage in Syria:

For example, in December 2016 the UN General Assembly (UNGA) passed a resolution establishing the International, Independent, Investigative Mechanism (IIIM) on Syria. The IIIM is a unique and groundbreaking creation in filling a gap in the accountability spectrum. Some day in the distant future if and when we are able to bring cases to the ICC on atrocities committed in Syria, many of the witnesses and victims will have given up or passed away and evidence would have been lost or destroyed. Impunity for the crimes committed by the Syrian government and its allies against the citizens of Syria would be a crime onto itself. The IIIM was designed with a view to collecting and preserving probative evidence that would stand up in a court of law many years after the time of the commission of the offense. Since its start up, it has been the recipient of over 5 terabytes of evidence constituting over 1 million files. With the strictest rules of confidentiality and impartiality it is already providing data and evidence to national prosecutors in several jurisdictions including for example Germany where prosecutions have begun against Syrians located in Germany suspected of committing torture and other international crimes. Evidence being preserved in the IIIM will one day be used to effect in the ICC.

The IIIM model is now also being used similarly to gather and preserve evidence in the situation of the Rohingya forcibly displaced from Myanmar. This model has

enormous potential in situations in protracted conflicts where we risk impunity by states and individuals because of loss or destruction of evidence or poor collection of evidence or testimony required for future prosecutions.

In order for any future peace to be sustainable in Syria or Myanmar or Yemen or Sudan, the transition out of conflict will need to be accompanied by inclusive processes of accountability. These include processes governing state accountability **and** individual accountability. New mechanisms like the IIM will ensure this.

A few of the trends and considerations in international justice and accountability on the horizon:

1 What is the future of international criminal accountability - is it moving in the direction of national prosecutions using the doctrine of extraterritorial and universal jurisdiction? There are currently about 149 cases being investigated under universal jurisdiction in 15 countries. Syria is giving universal jurisdiction new life! Can we encourage national prosecutions and greater use of universal jurisdiction without weakening the role of the ICC?

2 Would the establishment of a permanent body to investigate serious human rights violations including sexual violence in conflict be desirable/ possible? Why would citizens trust returning home when tens of thousands of Syrians remain disappeared by the state? Why would women and girls be satisfied with an unjust peace where their justice was traded away in a peace agreement for the “greater good”? In the past, Canada has been very good at creating new institutions when gaps in the legal or policy infrastructure have been clear. CIDA and the IDRC are two great legacies of the Trudeau era today.

3 Inclusive justice means a role for survivors, victims and their families in pursuit of justice and remedies like civil litigation, truth commissions, reparations, recognition/acknowledgement of harm. Can we support these? Do they take away from criminal accountability? What are the challenges of a victim centered approach in international justice?

4 In the spectrum of international justice and accountability we need to choose deftly but not always the easiest or fastest choice among referrals to the ICC, criminal proceedings, sanctions, freezing, seizing and redistributing assets - like

the recommendation of the World Refugee Council, now in a Bill in the Canadian Senate, which is attracting favourable international attention to freeze the assets of those responsible for forced displacements and then redistribute these assets in the service of the forcibly displaced. Canada is creating and pushing these innovative approaches onto the agendas of states and multilateral institutions to effect.

5 What is the possible role of expanding capacity for expanding universal jurisdiction in regional hotspots by building legal and judicial capacity and understanding of the opportunities for accountability through the exercise of universal jurisdiction? It brings accountability closer to the victims and can perhaps accommodate concerns of state sovereignty. Is this an appropriate role for Canadian ODA, in for example a regional hub in Africa? The ICC in the Hague and its complex processes are a long way away in every regard for victims in places like Uganda and DRC and elsewhere. Is this a useful way for Canada to partner with the AU in a subject area they are concerned with? Our dual justice system in common law and civil law gives us the unique credibility and competency Trudeau described, in a special needs area.

6 Is there opportunity to influence military doctrine and codes of conduct of allies and others regarding the use of indiscriminate weapons in populated areas? What Syria and other arenas have brought forward is the disproportionate impact contemporary conflicts are having on civilians in terms of loss of life and property and lifelong injuries which impact family livelihoods and stability and decimate communities. It is also raising questions for our capacity to protect urban civilians and essential infrastructure in conflicts executed largely in urban poor areas. Does Canada have some unique skills and capabilities in urban governance that is applicable to cities that are the new military combat fields?

7 Is there more to do in protecting medical missions in conflict zones? It takes 30 years to grow a doctor and a quarter century for a nurse. How do we ever compensate for these losses to a country? How do we rebuild the sanctity and respect for health care in the wake of Syria? Without medical personnel and infrastructure there can be no development. How do we push for independent investigation of the dozens of strikes on health facilities of the last few years so

states and non-state actors are assured that there is no impunity and only clear and severe consequences?

8 How do we support civil society to engage with non-state actors and combatants to promote respect for international humanitarian law, provide training, conduct investigations and promote a culture of respect for IHL among commanders? And, do so while protecting civil society from overreaching security laws regarding terrorists? The work of civil society organizations in combat zones like the Centre for Humanitarian Dialogue, in Trac 2 efforts with ISIS and others is invaluable but done at great risk to the staff who move effectively because they are neutral, independent and impartial. Combatants who have knowledge of the rules governing war are an important tool in preventing avoidable civilian losses and injuries.

While Canadian diplomacy and development requires the backstop of hard power - it is the **principled** use of force, including the choice of weapons, together with our allies and governed by international law that we need to protect.

Minister Freeland as Foreign Minister asked the critical question - is Canada an essential country at this time? It's a great question. The easiest answer is an unequivocal yes. But that requires us to use the full extent of our influence, be consistent in the application of our values and principles, calling out friends and allies, not just adversaries, when they violate established and limiting rules of conflict. Without consistency, our influence and credibility are greatly diminished.

Back to our former PM Pierre Trudeau "Canada", he said, "is not a country for the cold of heart or the cold of feet."

Anything we do that is important will win us some new friends, cause consternation among some old friends but gain us begrudging respect by the people who count and will set the tone for this new generation of Canadians about principled and practical leadership. The status quo is not nearly good enough. Using our influence beyond our borders as Pierre Trudeau attempted with the Peace Initiative comes with a cost - but asserting our values pragmatically and consistently??? like the MasterCard advertisement said - Priceless!

There is no room for cold feet in effective foreign policy and our efforts to preserve the international rules based order.

Remember the Canadian interests and values we seek to advance -universal education, universal health care, human rights and some democratic institutions, climate justice, open trading, gender equality and the Rule of Law. As Mr. Trudeau said, these reflect a foreign policy that is a natural extension of domestic policy.

I am an optimist. These liberal attributes and objectives have a long arc - the short arc are governments in place that are illiberal - Putin, Xi, Assad, Erdogan, Netanyahu, Trump, Orban and many others. They will come and go but since at the moment they are staying, we feel that the inevitability of liberal democracy may be in jeopardy, when in fact it has just more or less been paused in some areas and is quite healthy, although different in others. There is no room for complacency but there is always room for the optimism of pragmatic idealists like us.

Thank you.