Canada is a promoter of human rights and international law in a world where global rules are being challenged
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INTRODUCTION

When we began our conversations with Canadians about the new realities facing Canada in the international arena, one theme came up time and time again – the erosion of international norms. Some people used the term international law, rather than norms to describe what they meant. Others focused specifically on what they perceive to be the break down in trade or environmental agreements or the rise in human rights abuses. Others focused on the decline in “multilateralism”.

Multilateralism is a term in international relations, which not only coordinates policies in groups of three or more states but also does so based on principles of ordering relations among those states.


The basic principles guiding cooperation through multilateralism include mutual benefits to members, diffuse reciprocity ensuring long-term balances in relations, increased legitimacy for larger states and a stronger voice for less powerful states.

Multilateralism should be considered a means of achieving specific goals, rather than a goal in itself.

Martin, Lisa L. "Interests Power and Multilateralism," 1992

Whatever the starting point for the discussion, each of the consultations addressed an anxiety that our ‘international order’ is shifting. Multilateral institutions, like the United Nations are struggling to deliver results to pressing global problems, countries are ignoring or undermining existing treaties and agreements, new “non-state” actors are becoming powerful forces in international affairs, all at a time when public expectations for effective multilateralism and the rule of law have never been so high. This is leading to a growing gap between expectations and capacity.

We don’t need to look far to see examples of these trends and their importance in Canada:

• The unlawful deportation of Mahar Arar to prison and torture in Syria, leading to a public inquiry and compensation
• The breakdown of the ratification and implementation of the Kyoto Accord
• The detention of prisoners in Guantanamo Bay without trial
• The use of U.S.-laid anti-personal landmines to protect Canadian soldiers in Afghanistan
• The “just sue us” approach to adhering to international trade laws practiced by many countries
• Ineffective action by the UN to address the humanitarian crisis in Rwanda and Darfur
• The use of child-soldiers by rebel and government forces (e.g. in Sri Lanka, Democratic Republic of the Congo)

If the role of the international community and laws in addressing global injustices are not meeting public expectations, and if some see an erosion of international norms, what can or should Canadians do about this? What role do we want Canada to play in adapting to or advancing an international system that is being challenged by the emergence of new actors and issues?

The voices of Canadians are needed in this discussion: we will live with the consequences of choices made and we have a right and responsibility to provide direction to our leaders. This discussion guide provides background to help set the stage for your discussions. It also supplies some approaches to the issue to stimulate your ideas and thinking about where we should be headed as a country.

INTERNATIONAL LAW

*International law* is a body of rules that ‘international persons’ (such as states and intergovernmental organizations) recognize as binding in their mutual relations. It consists of treaties and conventions as well as customs and general principles of law.

These laws govern state behaviour in a wide range of areas including trade, territory, use of the seas, environmental issues, dispute settlement, the use of force, and human rights. While many laws are commonly accepted and generally unchallenged, the laws regulating trade, the use of force and human rights law are still often disputed. Because international law is often unenforceable, when states break these laws, they tend to have a weakening effect on the overall effectiveness of the international legal system. This becomes particularly dangerous when human rights laws or the laws of war are being broken, resulting in the potential for a more widespread disregard for these norms and threats to international security.


**International Norms**

Like all social systems, the international system is governed by a set of commonly practiced and expected norms which dictate ways in which states act within the international system. Like international law, these norms regulate a range of issues in state-to-state relations including human rights practices, the settlement of disputes, use of resources, territorial sovereignty, trade and environmental practices; the adherence to these norms results in predictable standards by which conflict has been minimized.

While many of these norms have been codified into treaty law or accepted as *customary international law*, many of these widely accepted behavioural expectations remain outside international law and as such are unenforceable. When the existing system of norms become challenged or violated, international order becomes ambiguous and unstable. As these international norms evolve states must adapt their policies to deal with the implications of new standards governing the international system.

BACKGROUND

For decades, Canadians have celebrated their role in the international community as promoters of human rights and the rule of law. This approach to building a “rule-based” world system has been at the heart of Canadian diplomatic efforts. As a middle-power country, Canada has leveraged its influence on the world stage through alliances and diplomacy to advance human rights, economic well-being, security and global environmental protection.

Some of Canada’s most notable contributions to building international law include:

- In 1948, Canadian Professor John Humphrey, drafted the United Nations Universal Declaration of Human Rights.¹

- Canadian Diplomat Lester B. Pearson played a lead role in easing tension in the Suez Crisis in 1956 by creating the first peacekeeping mission.²

- In the late 1980s and early 1990s Canada played a leadership in generating global environmental agreements including: the Montreal Protocol on Substances that Deplete the Ozone Layer; and, the Stockholm Convention on Persistent Organic Pollutants.⁴

- From 1996 to 1997, Canada played a lead role in negotiating the Ottawa Treaty, currently ratified by 156 countries, to prohibit the use, stockpiling, production and transfer of anti-personal landmines.⁵

- In the late 1990s, Canada contributed significantly to the drafting of the Statute of the International Criminal Court (ICC) and to its ratification process.⁶

- In 2001, Canada launched an independent commission which developed The Responsibility to Protect Doctrine (R2P), which outlines the responsibility of states to “protect civilian populations facing genocide, crimes against humanity and ethnic cleansing.”⁷

Although our legacy of supporting international law has been impressive, some would argue that Canada has not backed our international agreements in tangible ways. For example:

- We did not take steps to reduce our green house gas emissions to
6% of our 1990 levels, which was our obligation under the Kyoto Accord.

- While new expenditures on the Canadian Armed Forces strengthen Canada’s capacity to contribute to the implementation of The Responsibility to Protect doctrine, it is not clear that we have made the political decision to actually do so.
- We have transferred prisoners over to Afghan authorities knowing that they may be subject to torture.  

Many foreign policy analysts suggest that Canada is a ‘fading power’ because it has not adequately invested in foreign policy capabilities and diplomatic posts abroad. Critics argue that Canada has been resting on the legacy of its past ‘positive reputation’. They characterize the Canadian diplomatic corps as lacking the resources needed to properly ensure Canadian social, economic and political interests are protected and advanced internationally.

Without getting lost in the extensive debates which flow from the journals and books about Canada’s foreign policy, it is important to note a fair bit of consensus around one point: some of Canada’s policy actions have undermined or challenged existing international laws and agreements (see above list). Of course Canada is not alone – many other countries have far more serious transgressions.

Some significant trends that are challenging, or at a minimum changing, international law and human rights regimes include:

- ***The United Nations is no longer the centre point for international collaboration.*** Geographically-based, regional organizations such as the African Union, Association of Southeast Asian Nations, Organization of American States and the European Union are taking stronger initiatives in promoting their own interests which may not be in line with existing international agreements. Some states have focused on membership in regional alliances over other global organizations like the United Nations, to achieve their goals, thereby setting precedents which may contribute to the weakening of international legal frameworks established by these organizations.

- ***Policy making related to international law is no longer the exclusive purview of nation states.*** National governments have less control of their policy agendas (domestic and international) than they once did. New “non-state” actors (e.g. corporations, non-government organizations, international philanthropists, labour
unions) are driving action on the global stage. These actors are not necessarily interested in waiting for governments to act, nor are they accountable to them. As a result, governments seem to be losing some of their authority in controlling international policy. The multilateral system, which is state-based system, has not evolved effectively to accommodate these “non-state” actors, who can be both supporters and detractors in developing and implementing international law and human rights.

• State sanctioned torture continues despite its near-universal condemnation. Even liberal western democracies such as the United States have challenged the definition of actions which constitute torture. Countries such as Myanmar, Syria, Uzbekistan, China, and Saudi Arabia continue to regularly use torture in law enforcement and intelligence gathering practices. Today, nearly fifty countries have still refused to sign or ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and remain unbound to its provisions.

• There are challenges to, and in some cases an erosion of civil liberties in some democracies. Security imperatives (e.g. use of security certificates) are being used to justify actions that can conflict with personal rights and the rule of law. In some cases freedom of expression is being diminished, and new, ambiguous boundaries limiting dissent and political opposition are being set by some states.

• The existence of religious fundamentalism or extremism in the North and South and serious conflicts between secular and religious laws are challenging international and domestic legal and human rights norms. For example, in some countries like Afghanistan, Somalia and Pakistan, cultural or religious practices are used to rationalize human rights abuses of women.
FUTURE DIRECTIONS

Deciding how best to proceed is not about finding the correct technical solution – your decisions will reflect your beliefs, values and assumptions. In the final section of this discussion guide, four broad, value-based approaches are presented as a starting point for your deliberations on what actions you think Canadians should consider in addressing the issue of promoting rights and the rule of law within the current international context. Accompanying a brief overview for each approach are some arguments in favour and against, which reflect different viewpoints in society on the approach.

These approaches are not exhaustive, definitive or mutually exclusive. They are meant to stimulate your thinking about the most important steps to take, the choices you are prepared to commit to and why. You are not being asked to pick one approach.

Rather, we invite you to use these approaches as a starting point for considering other options or combination of approaches.

Given the challenge to international law and human rights regimes, what should Canada do? Deciding how best to proceed is not about finding the correct technical solution – your decisions will reflect your beliefs, values and assumptions.
**Approach 1**

**Emphasize Strengthening the Rule of Law and Human Rights through the Reform of Existing Multilateral Organizations**

This approach would see Canada work through existing multilateral, international institutions, especially a revitalized, more effective United Nations. It would also strengthen traditional diplomacy, to advance the existing framework for international law. Priority would be given to reforming multilateral institutions and strengthening their internal capacity.

For over sixty years, the UN has provided the international community with a place to decide issues of global relevance. It also maintains the current framework for international law and norms of state-to-state interaction. In addition to these functions, it serves to protect and advance human rights, health, development and cultural issues. While its effectiveness leaves much to be desired, it continues to offer the best prospects for dealing with international human rights and legal challenges.
**ARGUMENTS IN FAVOR**

☑ States’ trust and willingness to work within multilateral organizations are assets that can be leveraged to create a more positive environment for dialogue and the promotion of international law.

☑ Given Canada’s middle-power status, our domestic and international rights are best safeguarded by working within the existing international system of law. This is the best route to help us enshrine human rights in international agreements.

☑ Acting through pre-existing methods, which are already accepted by the international community, is significantly more cost-effective than entering into new institutional arrangements and agreements that have not been proven to deliver results.

**ARGUMENTS AGAINST**

☒ The effectiveness of working through the UN is often compromised by states whose views conflict with Canadian values, making it difficult to reach consensus on how to strengthen and promote rights and the rule of law.

☒ Structural flaws of the UN – in particular the Security Council and its dominance by a few powerful countries – are exceedingly difficult to resolve. Though the UN has expanded its scope of issues, it is cumbersome and poorly representative of the global south. Look, for example, at its failure to stop genocide in Rwanda, and now at its ineffectiveness in Darfur.

☒ Relying on organizations, which include states with polarized and conflicting positions, severely limits the ability of Canada to promote its values, and may limit our options for action.

**QUESTIONS**

1. Does Canada have the credibility to be an influential actor at the international level without committing the necessary resources? (For example, Canada does not substantively contribute to UN peacekeeping missions and its overseas development assistance at 0.3% is still well below its 0.7% of GNI commitment).

2. Is the existing multilateral framework the most practical method of strengthening human rights regimes and the rule of law?

3. As a middle power, can Canada afford not to work through existing multilateral agencies?

4. If Canada and other countries did not support the UN system, what other processes or institutions would have to be created to address pressing global problems?
The second approach embraces the reality that we live in a diverse and changing world in which state-to-state relations can no longer be relied on as the exclusive method of strengthening rights and the rule of law. This approach focuses on public diplomacy, not on traditional state-to-state diplomacy. It emphasizes working with non-state actors like NGOs, businesses, international philanthropists, academics or local governments to create more comprehensive policies rather than relying solely on traditional governmental avenues.

The success of the Ottawa Treaty banning anti-personnel landmines, in which Canada played a leading role, was in no small measure due to the persistence and passion of a coalition of NGO-activists. The treaty was celebrated as a success of international civil society in pressuring the international community to strengthen the rule of law. Canada would promote this model of working with international civil society to advance human rights and international law.
ARGUMENTS IN FAVOR

✓ Working more closely with non-state actors provides for a diversity of approaches to strengthening human rights and the rule of law, each with its own channels and methods of interaction and reach.
✓ Non-state actors are involved in developing and implementing international norms, although their roles might be ambiguous. Formally building alliances with non-state actors at the policy design stage helps to clarify their roles, creates accountability and strengthens the policy outcomes.
✓ Working with non-governmental organizations and businesses in countries where the government is weak, unable or unwilling to protect the rights of its citizens may be the only effective way of protecting human rights and establishing the rule of law.

ARGUMENTS AGAINST

✗ Formalizing the role of non-state actors in international dialogues and policy making may destabilize or weaken existing formal governance structures, rendering them less able to uphold human rights and the rule of law.
✗ Including non-state actors in policy development is like opening a Pandora’s Box. There are a myriad of groups with divergent interests that would demand input and involvement in policy creation. It would be difficult for the Canadian government to effectively define policy if it had to collaborate with so many non-state actors.
✗ Non-state actors’ opinions often represent a narrow range of viewpoints. While these groups make up a component of civil society, not everyone agrees with the opinions they advocate – and they are not accountable to the electorate.

QUESTIONS

1. Do democratic states have the responsibility to seek out and respond to the advice of non-state actors, particularly those that are representative of civil society? What is the consequence of ignoring these voices?
2. Is it possible for government to advance human rights and address global problems without the support and involvement of businesses, the philanthropic community, NGOs or other non-state actors?
3. Does deferring to non-state actors to protect human rights, take government off the hook? Where is the line between governments working with and through non-state actors and governments offloading their responsibilities to set policy to non-state actors who are non-accountable to the electorate?
**Approach 3**

**Emphasize Canada serving as a role model for the protection of human rights and the rule of law.**

Canada would focus its attention domestically, strengthening its own human rights record, particularly in relation to Indigenous People, gender equity and ethnic equality. Key actions would include: committing to a speedy resolution to outstanding Aboriginal land claims disputes, working to remove barriers that inhibit women’s full participation in politics and corporate boards, and commitments to work with ethnocultural communities to fight discrimination. There is more to be gained by demonstrating our commitment to human rights at home, than by trying to export our values and imposing them on other countries.

As Canada addresses its own shortcomings, it can serve as a model for other countries, by providing technical skills to countries seeking support in developing and maintaining the rule of law and advancing human rights.
**ARGUMENTS IN FAVOR**

- Canada's contribution to the promotion of human rights will be much greater if we can show the world that we are walking the talk at home—dealing effectively with our own Indigenous peoples and their rights.
- This approach is practical and realistic and ensures that Canada’s contributions and resources are not stretched too thinly.
- Canada can play a role in providing capacity building assistance to countries who request our support. This ensures that the countries we work with are in the driver’s seat in developing laws that are appropriate to their local conditions.

**ARGUMENTS AGAINST**

- Historically, Canada has been well recognized as a world leader in advocating for human rights and the rule of law. By abandoning this position and focusing our efforts domestically, Canada risks further eroding our profile and contributions on the world stage.
- By diluting our role as an active advocate and protector of international law and human rights, Canada risks weakening existing international law and international institutions that protect human rights.
- By supporting countries to develop locally appropriate laws to protect human rights, Canada abandons the notion of universal human rights and enables culturally-specific human rights regimes to flourish.

**QUESTIONS**

1. To what extent do women and Aboriginal peoples in Canada depend on an international human rights regime and international law to advance their rights domestically? Would it be in their interests if our government withdrew from advocating for rights and the rule of law on the world stage?
2. If all countries withdrew from advocating for human rights and the rule of law internationally in favour of focusing on domestic issues, what processes would guide global cooperation?
APPROACH 4

EMPHASIZE THE PROTECTION OF HUMAN RIGHTS AND THE RULE OF LAW THAT ADVANCES CANADA’S DOMESTIC INTERESTS IN THE INTERNATIONAL ARENA.

Canada would concentrate its resources and efforts in those areas and arenas where it can deliver the greatest benefits to Canada. Canada would choose to intervene when doing so will help further our interests. This would include the creation of laws that promote our security, enhance our economic well-being and protect our environment and resources.

For example, Canada would focus on collaboration with other countries to strengthen existing laws and create new international laws and regulations to: address security threats; enhance global trade; protect arctic sovereignty; protect aquatic environments; reduce greenhouse gas emissions; and limit cross-border pollutants.
**ARGUMENTS IN FAVOR**

✔ Canadian diplomatic energies are too diffused. By focusing on our interests rather than values, we ensure that we receive an adequate return on our investments and diplomatic efforts.

✔ By focusing on our areas of domestic strength, Canada can offer its expertise and capacity internationally, for example in developing international norms for financial regulation.

✔ Canadians do not have the resources to support an international human rights regime. It’s better to focus on supporting a few countries so that they will be better allies and trading partners.

**ARGUMENTS AGAINST**

✖ Such an instrumental approach to human rights and international law undermines Canada’s long-standing commitment to international humanitarianism and multilateralism.

✖ The world is too integrated and Canada is too connected through its citizens and its relationships to ignore its global obligations to promote human rights and the rule of law.

✖ By focusing too narrowly on Canadian interests, Canada risks being unable to circumvent crises that may have devastating global impacts. For example, despite its dismal human rights record and its clear rejection of international law, most of the world turned a blind eye to the rise of the Taliban in Afghanistan. It was under the Taliban that Al-Qaeda thrived and was able to plan their attacks on the World Trade Centre.

**QUESTIONS**

1. If we pursue this approach, will the international community perceive this strategy to be self-serving and lacking in compassion for the world's disadvantaged countries and peoples? Will our international reputation and credibility be damaged, leading to a diminished voice within multilateral institutions like the WTO and the G8?

2. By compromising contributions to foreign aid and international obligations in favour of a set of narrowly defined Canadian interests, how might Canada cope with the potential decline of support from the international community when Canada or its citizens require assistance?

3. Given the high percentage of foreign born Canadians (20%), is this approach one that would fail to be supported by this large and increasingly important group of Canadians?
CONCLUSION

So now, it’s your turn. What do you think? As we have noted above, the information and the approaches outlined in this discussion guide offer a starting place for your discussions. They are intended to stimulate questions, help you consider options and develop your own views on how to best position Canada in addressing human rights and international law in the current context.

This issue, like any foreign policy issue, is complex. The conditions within the international arena are always changing and it is often difficult to navigate the best course for Canada. We can decide not to do anything and get swept up in the current or we can set sail in a direction that we have mapped out and defined. Imagine you are the Prime Minister or the Minister of Foreign Affairs for the weekend. What ideas, insights, questions and options would help you in making decisions about what actions Canada should take?
YOUR NOTES

USE THIS PAGE TO COME UP WITH YOUR IDEAS
Sources


END NOTES

1 For full text of the Universal Declaration of Human Rights see: http://www.un.org/Overview/rights.html

2 For biography on Nobel laureate Lester B. Pearson see: http://www.collectionscanada.gc.ca/2/4/h4-3356-e.html

3 For more information on the Montreal Protocol see: http://www.theozonehole.com/montreal.htm


7 The full text of the Responsibility to Protect can be found at: http://www.responsibilitytoprotect.org/

8 An agreement negotiated with Afghan officials under the former Liberal government allowed for detainees to be transferred from Canadian authority to Afghan officials. The agreement, however, lacked Canadian oversight to ensure that prisoners would not be tortured once under the authority of the Afghan government. See: http://www.canada.com/topics/news/story.html?id=870fe676-f503-436a-bef2-e61c1938922d

9 See: http://www.oecd.org/dataoecd/14/5/38354517.pdf

10 Until very recently, the government in Sudan refused to allow a United Nation peacekeeping mission to intervene in the conflict in Darfur. They opted, instead, to allow a weak, ineffective African Union mission to be deployed in the region. See: http://www.un.org/Depts/dpko/missions/unamid/background.html

11 NATO’s bombing campaign of Serbia was unsanctioned by the Security Council. Although being humanitarian in nature, the intervention was considered illegal by the international community and sent a dangerous example of state’s willingness to act outside the legal framework maintained by the UN. Byers, Michael. Intent for a Nation: What is Canada For?, 2007, page 116


13 For reports on the use of torture see: http://hrw.org/campaigns/torture/world.htm

14 For full text of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment see: http://www.unhchr.ch/html/menu3/b/h_cat39.htm


In November 2007, Canada was ranked at 56th place for personnel contributions to international peacekeeping missions. We contributed a mere 164 troops; Pakistan with the highest number of Military and Police contributions provided 10,623 members. [http://www.un.org/Depts/dpko/dpko/contributors/2007/nov07_2.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2007/nov07_2.pdf)