The Clock is Ticking
Canada and the referral of Syria to the ICC

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Canada is on track to make history this week, but not for the right reason.

On Thursday, the United Nations Security Council will vote on whether to refer the situation in Syria to the International Criminal Court (ICC). Syria is not a party to the Rome Statute of the ICC and a Security Council referral is needed to open an investigation into war crimes and crimes against humanity perpetrated by the Assad regime, pro-government militias, and armed opposition groups (including the al-Nusra Front).

Amid growing bloodshed, Russia and China are expected to use their veto power for the fourth time in the three year conflict to block a resolution on Syria. The thirteen other Security Council members are expected to vote in favour, including the United States and Rwanda who are not parties to the Rome Statute of the ICC.

The Security Council has referred two previous cases to the ICC, those investigating the situation in Darfur and Libya. What makes the current situation unprecedented, however, is both the risk of the veto and the groundswell of support for a Security Council referral from non-Council members. The Swiss along with 57 other governments have spearheaded an initiative urging countries to support the pursuit of justice for Syria’s victims by co-sponsoring the resolution. Dozens of governments have answered their call.

Canada is not one of them.

Our absence is perplexing for a number of reasons.

First, all of Canada’s major friends and allies are on the list, including the United States and the entire European Union. When Switzerland first launched their initiative to call for a referral to the ICC in January of 2013, the United States, Canada and Sweden were not signatories. Today Canada is alone. Even the United States, with its long-standing concerns about the ICC and reservations concerning whether a referral in the case of Syria would help or hinder efforts to end the fighting, has shifted its position. Unless Canada does the same, it risks being isolated from its closest allies on this issue.

Second, Canada has been outspoken regarding the importance of tackling impunity in Syria. At a 2012 Friends of Syria meeting Foreign Minister Baird said, “What Assad needs to be facing is the International Criminal Court to face charges for committing crimes against humanity.” The Canadian government has
repeatedly condemned the Assad regime, enacted targeted sanctions against key individuals, and stressed the importance of accountability. Failing to co-sponsor the resolution is out of step with Canada’s stated objectives and position.

Third, the Harper government has a history of calling for an ICC referral in situations where war crimes and crimes against humanity are suspected of being perpetrated. Canada was one of the first countries to request the United Nations Security Council to refer the situation in Libya to the ICC. Atrocity crimes are rampant in Syria and have been well-documented. A United Nations Commission of Inquiry has reported that pro-government forces are perpetrating crimes against humanity and that as violence increases so too does the commission of war crimes by pro and anti-government forces. Given Canada’s strong stance on events unfolding in Libya, our relative public silence on a Syria ICC referral has left other governments questioning how principled Canada’s foreign policy is when it comes to accountability.

Finally, the Canadian government has historically been one of the staunchest defenders of the court and of ending impunity for mass atrocity crimes. Canada was the fourteenth country to sign the Rome Statute in 1988. It did so because the government believed that those who commit the most heinous of crimes should be held accountable, that tackling impunity helps to prevent a recurrence of violence, and that victims deserve justice. Today Canada’s leadership is needed again, this time on behalf of victims in Syria. Failing to co-sponsor the resolution will be a departure from Canada’s role as a human rights leader and send the wrong message to those whose cause it should be championing, the Syrian people.

The ICC, with its focus on those most responsible for the commission of atrocities, will not solve all of Syria’s accountability needs. Similarly, the court was created to tackle impunity, not end conflicts. While it can play a preventive and deterrent role, no tool like the ICC, or for that matter others like targeted sanctions, can in isolation bring an end to the conflict in Syria. It is one of many measures that must be used to address rampant impunity, seek justice, and bring an end to the violence. What is clear is that in the absence of any national accountability mechanisms in Syria itself, the ICC will remain—for the foreseeable future—the only avenue available for the hundreds of thousands of victims in Syria to seek justice.

160,000 people have been killed in Syria, over nine million are displaced, and peace talks have failed. By co-sponsoring the resolution Canada would send a critical message to all parties that there will be consequences for the commission of atrocities and raise the cost of using the veto. It is hard to understand why the Harper government has not co-sponsored the resolution by now.

Canada has until Thursday morning to co-sponsor the resolution. I hope that Ottawa decides to be on the right side of history.