Chapter 4
Accountability for Crimes Against International Law in Canada: An overview and a comparison with UK practices

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1) INTRODUCTION

This chapter presents a general overview of the principal legal steps taken by Canada in moving from a culture of impunity to a culture of accountability in the field of crimes against international law,¹ and undertakes a comparative study of practices in the United Kingdom. The paper deals primarily with the prosecution in these states of those suspected of war crimes, crimes against

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humanity and genocide when the suspects are originally from other countries and commit these crimes in other states.\(^2\) I argue that after a period of impunity, both countries have entered into a new era of accountability, which can be traced to the beginning of the twenty-first century and the implementation of the Rome Statute of 1998.\(^3\) However, given the close link between mounting social and political pressure and the prosecution of suspected war criminals, as both countries’ past practices show, the current legal response represents little more than an initial step. In order to see how the two countries are actually dealing with these problems, one needs to examine how the law is enforced, which is heavily dependent upon the judges and the criminal policies of the respective governments. One would expect these governments to be setting an example within their own borders, given that they have taken leading roles in the fight against impunity outside their borders.

The fact is that since the 1990s, both countries have been closely involved in the fight against impunity at the international level. Canada has made this fight one of the pillars of its Human Security Policy and it was largely instrumental in the establishment of the International Criminal Court (ICC),\(^4\) the ad hoc International Tribunals for the former Yugoslavia and for Rwanda, and the Special Court for Sierra Leone. The UK has played a similar role.\(^5\) Along the same lines, one can remark on the UK’s recent efforts to convince the United States not to veto the Security Council’s referral of the situation in Darfur to the ICC.\(^6\)

The first measure adopted by both countries to strengthen the culture of accountability has been to ratify the Rome Statute. In order to do so, both countries introduced statutes to bring their legislation into line with the provisions of the international treaty; these statutes represent the legal instrument by which

\(^2\) The study goes beyond the more narrow issue of Canadian or British soldiers who commit such crimes abroad, as in the cases of Canadian soldiers in Somalia who were charged and prosecuted in Canada and of UK soldiers in Iraq who were charged with war crimes under the ICC Act.


\(^5\) On its contribution to the Rome Conference, see R. S. Lee, ibid. The UK has given strong backing to ad hoc International Criminal Tribunals and the Special Court for Sierra Leone, as well as to the establishment of the International Criminal Court.