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Douglas Irvin-Erickson, Christian Gudehus, Susan Braden, Joann DiGeorgio-Lutz, Lior Zylberman, and Brian Kritz

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This issue of *Genocide Studies and Prevention*, titled “Global Approaches to Atrocity Prevention: Theory, Practice, and the State of the Field,” presents a critical overview of the current state of Atrocity Prevention around the world. The issue was conceived of in mid-2016 by Douglas Irvin-Erickson and James P. Finkel, with the hope of responding to two immediate needs in scholarship and practice. First, we felt, scholars can always benefit from the perspectives of practitioners, officials, and others with experience working in various bureaucracies—while practitioners and policy makers could benefit from scholarship that helps them critically reflect on their work. Secondly, very little research was being conducted on the sudden outburst of energy around the world (over the past five years) to create national-level government, governmental, and civil-society institutions (with clear institutional connections to governments) dedicated to the prevention of genocide and mass atrocities.

Why there has been such little scholarship on these national mechanisms is a matter of speculation. Perhaps the horrors of mass atrocities and genocide in Syria, South Sudan, Iraq, Myanmar, and many other places, cast a shadow over these bright spots? Whatever the reason, the editorial board of GSP felt it was important to try and cast a spotlight on some of the positive developments around the world in the area of atrocity prevention. Even when the authors in this special issue feel that the institutions and “mechanisms” they are writing about might be failing to meet their goals or fulfill their mandates, there is nevertheless a collective sense that hundreds of millions of people around the world have a stake in the success of these efforts.

How far has the field of genocide and atrocity prevention come in the last decade? Readers are encouraged to peruse back issues of GSP to get a sense for just how much the state of the field has evolved—looking especially to the first issue of the journal dedicated exclusively to atrocity prevention, issue 2.1 published in 2007.¹ Now, there are national level mechanisms for atrocity prevention (or other national-level officially established bodies that include representatives from different areas of government relevant to the prevention of atrocity crimes) in Argentina, Burundi, Canada, Central African Republic, Democratic Republic of Congo, Germany, Kenya, Mexico, Paraguay, Switzerland, Tanzania, the United States, Uganda, and many others. Most of these national-level mechanism, such as the Ugandan National Committee for Genocide and Atrocity Prevention, are focused primarily on the prevention of mass atrocities domestically in their own national communities. Others, like the United States’ Atrocity Prevention Board, are exclusively concerned with the prevention of mass atrocities outside of the country. Others still, such as the Swiss national body, integrate both foreign and domestic prevention efforts into their mandate.

There are also many international and regional mechanisms for atrocity prevention, working in various capacities (and in various directions), including the United Nation’s Office on the Prevention of Genocide and the Responsibility to Protect, the International Conference on the Great Lakes Region, the African Union, the Association of Southeast Asian Nations, the North Atlantic Treaty Organization, the Collective Security Treaty Organization, and so forth. Of course, these institutions and organizations have their own agendas, and are certainly not working synchronously. In some instances, they even seem to be contradicting each other. Yet, in one way or another, genocide and atrocity prevention is now part of their mandates.

The authors who responded to our call for papers issued in 2016 represent some of the leading international scholars in the field. The editors were pleased to see many of the above-mentioned cases covered in the submissions, and we hope this issue will inspire GSP’s readers to submit research on those efforts left out of this issue. What makes this issue especially valuable is the profile of the contributors. Some of the authors consider themselves atrocity prevention practitioners, and many have years of experience working in government or international organizations.

¹ Herb Hirsch, “Editor’s Introduction,” *Genocide Studies and Prevention*, 2, no. 1 (2007), 1–6.

Finally, we would like to thank the guest editor James P. Finkel for working tirelessly with the authors to produce this issue. We also extend a special thanks to our anonymous peer reviewers for their considerable efforts.

Douglas Irvin-Erickson
Christian Gudehus
Susan Braden
Joann DiGeorgio-Lutz
Lior Zylberman
Brian Kritz

Global Approaches to Atrocity Prevention: Introduction to the Special Issue

Most observers who follow US human rights policy and atrocity prevention issues and recall the fate of Washington's first effort to systematically foresee and prevent atrocities—the second Clinton Administration's Interagency Atrocity Prevention Group led by former Ambassador-at-Large For War Crimes David Scheffer—probably expected the incoming Trump Administration to quickly dismantle the Obama era Atrocity Prevention Board and its subordinate units and procedures. Instead, despite the tumult of the Trump Administration's first year in office, an Atrocity Prevention Board has been reconstituted under the auspices of the National Security Council's International Organizations and Alliances directorate. The working level Sub-APB has continued to meet, staffed by a remarkable cadre of civil servants who are determined to ensure that the hard-learned lessons about what works are not lost, and who are also willing to reconsider approaches that have proved less promising or simply haven't worked. To their credit, they seem to be giving considerable thought to seeking ways to bridge the traditional “regional-functional” divide that has frequently weakened Washington's efforts on these questions.¹ They also appear to be making a conscious effort to deepen the dialogue on atrocity prevention with key like-minded states and international organizations while simultaneously robustly engaging civil society. None of this is a one-time effort. It requires constant attention, and maintaining momentum is challenging due to frequent turnover of key staff, resource issues, and sudden shifts of policy decided at much higher levels of authority.

Meanwhile, as the essays that follow illustrate, atrocity prevention continues to attract attention from a diverse range of scholars and practitioners, both in the United States and abroad. Samantha Capicotto and Rob Scharf's article, “National Mechanisms for the Prevention of Atrocity Crimes,” underscores the broad range of approaches to atrocity prevention currently being explored by different states, particularly in the global south, and the important role that local civil society is playing. It is hard to read their essay and avoid concluding that, while the mechanisms they discuss all have their individual challenges, the National Mechanisms are generating some of the most creative thinking about atrocity prevention that can be found anywhere.

Two of the issue's articles explore the structures and evolution of atrocity prevention policy in key like-minded countries, Switzerland and Germany. Giulia Persoz in her “Neutrality: A Tool or a Limit for Preventing Mass Atrocity Crimes and Genocide? The Case of Switzerland” traces the development of Switzerland's approach and Bern's efforts to be pro-active, while simultaneously continuing to pursue its traditional neutrality. Persoz underscores Swiss creativity and its support for various regional atrocity prevention forums, which in 2013 gave rise to a new international network, the Global Action Against Mass Atrocity Crimes, or GAAMAC. Persoz describes GAAMAC as a “platform to exchange best practices” and for helping build state capacities to develop and implement national preventive strategies. Switzerland chairs the network's Steering Committee.

Sarah Brockmeier and Philipp Rotman in “Germany's Politics and Bureaucracy for Preventing Atrocities” set out to introduce us to “the political context and recent history of Germany's institutional setup for atrocity prevention.” They recount the implications of Germany's lack of a strong NGO community focused on atrocity prevention and note that “most of the prominent or semi-prominent politicians who do support a stronger German leadership role on atrocity prevention prefer to do so quietly, rather than championing the issue in public and risking to alienate voters.” Individual studies of various countries' approaches to atrocity prevention have been few and far between. Hopefully, journal readers will take up the challenge in the months ahead to undertake similar research on other key countries including the UK, France, the Nordics, etc.

¹ See James P. Finkel, *Atrocity Prevention At The Crossroads: Assessing The President's Atrocity Prevention Board After Two Years* (Washington, DC: United States Holocaust Memorial Museum Center for the Prevention of Genocide, 2014); James P. Finkel, “Moving Beyond The Crossroads: Strengthening the Atrocity Prevention Board,” *Genocide Studies and Prevention: An International Journal*, 9, no. 2 (2015), 138-147.

Persoz's and Brockmeier and Rotman's articles both touch on resources and coordination as key challenges. Ed Luck, in his "Why the United Nations Underperforms at Preventing Mass Atrocities" and Ekkehard Strauss in "The UN Secretary General's Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations" highlight those issues as well. Luck insists that many of the UN's shortcomings arise from conceptual misunderstandings and institutional dysfunction along with capacity deficits. He also notes that the UN's emphasis on "maintaining impartiality and presence, humanitarian space and access may (sometimes) entail prioritizing the cultivation of good relations with the very regimes that may be committing or planning to commit... atrocities against their populations." He concludes with an important reminder that we are still very early in the process of learning how to curb atrocities.

In one of the most far-reaching looks at the UN's Human Rights Up Front Initiative to date, Strauss traces the evolution of UN thinking about various failures to deal effectively with atrocities, touching on Bosnia and Rwanda and more recently the Sri Lanka Panel's report on UN missteps. He characterizes the Human Rights Up Front Initiative as an internal UN action plan aimed at introducing "a cultural change within the UN, an operational change to bring the three pillars of the UN Charter (i.e. development, peace, and security, human rights) closer together, and a change to UN engagement with its member states." Strauss stresses that the Initiative is primarily a prevention tool that "aims to strengthen the link between early-warning and early-action." It is based on "a general recognition that human rights violations" can be "an early indicator of a deteriorating situation and that field presences can observe changing events and discuss them with their counterparts on the ground." To my knowledge, human rights has not heretofore figured prominently in most of the mainstream quantitative modeling efforts that aim to rank countries in terms of atrocity risk. Intuitively, this has never made sense to me. Regardless of whether the issue has been a data problem or a modeling issue, I suspect Strauss would agree that finding better ways to systematically and more dynamically integrate human rights information into our efforts at early warning of mass atrocities should yield important returns.

David Frank in his "The Reduction of Mass Atrocity Crimes in East Asia: The Evolving Norms of ASEAN's Prevention Mechanisms" and Matthew Levinger in "Forging Consensus For Atrocity Prevention, Assessing the Record of the OSCE" shed renewed light on the value and importance of norms at a time when so many of what have long been considered established rules of international relations are being cast in doubt. While highlighting Myanmar's treatment of its Rohingya population as a bright red exception, Frank notes the dramatic reduction in the incidence of mass atrocity crimes in East Asia over the past forty years. He argues that some of the change can be attributed to such "structural developments" as a decrease in the use of mass atrocities as a tool of war, rising incomes, and the spread of democracy, but his main focus is on the impact of the global community's development of new norms like the Responsibility to Protect (R2P) and their surprisingly rapid adoption by ASEAN and its member states. Matthew Levinger's essay on the Organization for Security and Co-operation in Europe (OSCE) provides something of a more cautionary tale in comparison to Frank's ASEAN piece. Levinger traces the evolution of the CSCE to what is now the OSCE along with its rules and institutions. He rightly lauds the accomplishments attributable to the generally quiet efforts of parts of the organization like the office of the High Commissioner on National Minorities (HCNM), but notes the impact that the evolution of NATO and the EU, and most importantly the strained relations between Russia and the US, have had on the OSCE's ability to play the type of role that originally was envisaged. He concludes that for OSCE to get back on track and "play a more robust role in enhancing human security in Eurasia," the organization will need to find a way to begin "rebuilding the normative consensus between its Eastern and Western participating states."

Finally, in their essay entitled "Improving Intervention Decisions To Prevent Genocide: Less Muddle, More Structure," decision scientists Robin Gregory, Michael Harstone, and Paul Slovic draw on multi-disciplinary research in decision analysis and psychology to offer "a general approach to assessing genocide prevention decisions" that they believe could provide decision makers with insight into how to construct more defensible intervention policies, linking proposed actions to national values in a manner that is both consistent and efficient. The authors readily concede that no decision-aiding framework can or should "make" the tough choices required of

the US (or any other) government with respect to interventions intended to reduce the risk of genocide or other mass atrocities. But they argue (and persuasively, in my view) that adoption of a clear decision-aiding framework can improve the quality and extent of those deliberations. Surely, with so many lives potentially at risk, more systematic and thoughtful deliberations are called for.

My thanks to the articles' authors and the Journal's editorial board for making this special issue possible.

James P. Finkel

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-----, "Moving Beyond the Crossroads: Strengthening the Atrocity Prevention Board." *Genocide Studies and Prevention: An International Journal*, 9, no. 2 (2015): 138-147.

National Mechanisms for the Prevention of Atrocity Crimes

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What is a National Mechanism?

National Mechanisms for the Prevention of Genocide and other Atrocity Crimes are officially established bodies that include representatives from multiple areas of government relevant to the prevention of atrocity crimes.¹ "Atrocity crimes" refers to three legally defined crimes under international law: war crimes, crimes against humanity, and genocide.² National Mechanisms have been established to lead the development of a coordinated national strategy for the prevention of such crimes on behalf of their government.

The inclusion of representatives from all relevant areas of the state enables National Mechanisms to carry out an initial system-wide assessment of strengths and weaknesses from the perspective of atrocity prevention. Following this assessment, the National Mechanism supports the development and implementation of the necessary preventive policies to bolster the state's resilience to atrocity crimes. National Mechanisms are not intended to be the sole body of government tasked with thinking about prevention. Instead, they are meant to be the primary body responsible for ensuring that the entirety of the state is thinking about, and working towards, prevention.

National Mechanisms are vehicles through which states are able to exercise their responsibility to prevent genocide under their obligations as parties to the United Nations Convention for the Prevention and Punishment of the Crime of Genocide, as well as their responsibilities to prevent atrocity crimes as parties to other relevant international treaties, regional protocols, and as a product of their own national legislation. There is no single prescribed method for establishing a National Mechanism. However, a growing number of governments have looked to pre-existing institutions to incorporate this agenda, while others have chosen to establish new structures with the sole mandate of atrocity crimes prevention.

With regard to the structure of these bodies, ministries of foreign affairs, justice, defense — and where they exist, national human rights institutions — are regularly represented. Additionally, in some countries, ministries of education and national security forces are represented. In Latin America, national and international civil society organizations often play an advisory and support role through the provision of technical assistance, capacity building, and output monitoring. In the Great Lakes Region of Africa, by contrast, a heightened level of civil society engagement with National Mechanisms has been observed. In this region, representatives of civil society have membership in the Mechanisms alongside their government colleagues. National Mechanisms differ from state to state, but four major themes emerge in their mandates and activities:

1. Risk assessment and early warning, including data gathering and analysis using an atrocity prevention lens, in order to detect patterns of group vulnerability and to alert the appropriate authorities so that they are able to take the recommended course of early action;

¹ The information presented in this article is drawn primarily from an annual publication produced by the Auschwitz Institute for Peace and Reconciliation (AIPR), an international non-governmental organization that works with states to prevent genocide and other atrocity crimes. Specifics relating to the parameters and activities of the National Mechanisms are reported by the members of the bodies themselves and aggregated by AIPR to provide a practical resource for use by practitioners in the field.

² David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention: An International Journal* 1, no. 3 (2006).

2. Development of training programs for civil servants and other relevant actors in society, which offer preventive approaches and practical tools that are able to be employed at the local and national levels;
3. Recommendation and elaboration of policies geared towards the protection of vulnerable populations from risks of genocide and other atrocity crimes; and
4. Communication and partnership building with regional and international organizations on issues related to the prevention of genocide and other atrocity crimes.³

Across the globe, the majority of active National Mechanisms are at an early stage of development, capacity building, and work plan implementation. However, each year the Mechanisms engage more profoundly in targeted preventive programming and policy development, resulting in the whole-of-government approach to atrocity crimes prevention gaining both momentum and legitimacy. The following sections detail the work of specific National Mechanisms in the Great Lakes Region of Africa and Latin America on atrocity crimes prevention.

The Kenyan National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination

History

On March 22, 2012, Kenya's Permanent Secretary of the Ministry of Foreign Affairs, Mr. Thuita Mwangi, officially launched the Kenyan National Committee (KNC). The Committee was established and complies with the International Conference on the Great Lakes Region (ICGLR) Protocol for the Prevention and Punishment of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination, which all founding ICGLR Member States ratified on November 29, 2006. This Protocol reaffirms the responsibility of Member States to domesticate and operationalize their duties under international law to combat atrocity crimes. One of the measures under the document calls for the establishment of a Regional Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes Against Humanity and all forms of Discrimination. The ICGLR Regional Committee subsequently required all ICGLR Member States to establish their own National Committees to operationalize these duties under both the regional Protocol and international law.

The launch of the Kenyan National Committee was followed by two days of training on Early Warning Systems (EWS), facilitated by the UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect (UN OSAPG).

Mandate

The Committee has a mandate to:

- Regularly review situations at both the national and county levels for the purpose of preventing genocide, war crimes, crimes against humanity, and all forms of discrimination;
- Collect and analyze information related to genocide, war crimes, crimes against humanity, and discrimination;
- Alert both national and county governments in a timely manner to take urgent measures to prevent potential atrocity crimes;
- Suggest specific measures to effectively fight impunity for these crimes;
- Contribute to raising awareness and education on peace and reconciliation through national and county-level programs;
- Recommend policies and measures to guarantee the rights of victims of the crimes of genocide, war crimes, and/or crimes against humanity to truth, justice and compensation, as well as their rehabilitation, while taking into account gender-specific issues and ensuring that gender-sensitive measures are implemented; and

³ The Auschwitz Institute for Peace and Reconciliation (AIPR), *National Mechanisms for the Prevention of Genocide and other Atrocity Crimes: Effective and Sustainable Prevention Begins at Home* (New York: 2015), 3, accessed December 28, 2017, http://www.auschwitzinstitute.org/wp-content/uploads/2015/06/AIPR_National_Mech_Booklet_2015.pdf.

- Monitor the National Program on Disarmament, Demobilization, Rehabilitation, Repatriation and Reinstallation (DDRRR) for former child soldiers, ex-combatants and combatants.

Structure

The National Committee operates under the guidance of a National Chairperson, who works in consultation with the Regional Committee, the National Coordinator of the Great Lakes Region, and other arms of the Kenyan government. The membership of the National Committee is drawn from governmental departments and non-governmental/civil society organizations. The Committee's membership is currently comprised of representatives from: the Ministry of Provincial Administration and Internal Security, the Ministry of Justice, National Cohesion and Constitutional Affairs, the State Law Office, the Director of Public Prosecutions, the Kenya Police, the Office of National Cohesion and Integration Commission, the Kenya National Commission on Human Rights, Truth, Justice and Reconciliation, the Law Society of Kenya, the International Commission of Jurists, FIDA Kenya, Peace Net Kenya, the Kenya Red Cross, and the National Coordinator of the Great Lakes Region (the Committee's coordinator).⁴

Outputs

Currently, the Committee is moving toward formalization within the Kenyan government and has drawn up a draft national legal notice seeking to formally institutionalize its mandate within the state. Although still in an interim period of consolidation, the Committee is already active, in carrying out its stated mandate under the auspices of the ICGLR. To strengthen the effectiveness of its operations, the KNC has established subcommittees on: the construction of a National Memorial for Post-Election Violence, Early Warning, Rules, Resource Mobilization, a national Genocide Prevention Bill and Policy, as well as the use of punishment as a preventive mechanism. The KNC has also undertaken training and capacity building initiatives for its members aimed at enhancing their knowledge and skills surrounding the prevention of atrocity crimes.

Ahead of the general elections held on March 4, 2013, the KNC held a Peace Forum in the Coast region for County Commissioners, Provincial Commissioners, and community leaders. Using this precedent, the Committee has held peace fora in hotspots for potential violence around the country. The KNC also carried out an initiative of public messaging, distributing pamphlets with peace messaging in Nairobi and other at-risk regions.⁵ In order to respond to the atrocity crime risk factors presented by the outbreak of violence following the now-annulled August 2017 election, Committee members are working in the field to mediate disputes and diffuse tensions at the local level among other preventive efforts.

Previously, the KNC co-organized a capacity building seminar in July of 2015 with AIPR that focused on the memorialization of violence related to the 2007-2008 electoral process. The seminar hosted participants from several Kenyan government bodies for training, with the objective of examining the state of prevention in Kenya and the surrounding region, as well as developing capacity to plan and implement prevention projects at national and grassroots levels. Additionally, the KNC participated in the Sixth Regional Committee Meeting and Training of the Regional and National Committee Members on Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination in the Great Lakes, held in January of 2015 in Kampala, Uganda. The activity provided ICGLR and state representatives with a space to share best practices and learn about the latest trends in prevention. The KNC also participated in an ICGLR Regional Committee Meeting in Congo (Brazzaville) in December of 2015, which focused on the situation in Burundi.

Finally, in February of 2016, the Committee attended a meeting organized by AIPR in Kampala, Uganda, and also contributed to the GAAMAC II meeting held in Manila, Philippines.

⁴ AIPR, *Effective and Sustainable Prevention*, 5.

⁵ The Auschwitz Institute for Peace and Reconciliation (AIPR), *National Mechanisms for the Prevention of Genocide and other Atrocity Crimes: Pursuing Institutionalization of the Prevention Agenda* (New York: 2017), 6-7, accessed December 28, 2017, <http://www.auschwitzinstitute.org/wp-content/uploads/2017/05/2017-National-Mechanisms-Booklet.pdf>.

In March of 2016, the Committee participated in a workshop held by the Budapest Centre for the International Prevention of Genocide and Mass Atrocities, as well as a training seminar conducted by the Tanzanian National Committee in collaboration with AIPR in Dar es Salaam. Additional training programs for committee members took place in December of 2016, February and August of 2017 in collaboration with AIPR. These programs focused on early warning and risk assessment frameworks and brought in partners from the region including the East African Community to develop and expand upon current models in place for the period leading up to the general elections in August 2017.

The Committee also has a number of planned activities, including:

- Establishing a memorial, or memorials, such as peace parks in the capital city of Nairobi and other strategic locations to commemorate past atrocities and promote prevention. The KNC is collaborating with the government of Argentina on this project, as Argentina has vast experience in establishing public memorials to commemorate atrocity crimes committed on their soil.
- Spearheading the formulation of genocide prevention policy and legislation.
- Further considering ways in which punishment can be used as a mechanism to prevent future atrocities in collaboration with the Kenyan Judiciary.⁶

The Tanzania National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination

History

The Tanzanian National Committee (TNC) was established under the auspices of the ICGLR Protocol for the Prevention and Punishment of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination. Tanzania established their National Committee in February of 2012, making it the first ICGLR Member State to do so.

The government prioritized its establishment of the Committee given the country's history of religious tensions and internal land disputes — both recognized as potential flashpoints for future violence. Another potential spark for conflict stems from the presence, within Tanzanian borders, of refugees and groups of foreign citizens who oppose foreign governments. For decades, Tanzania has received refugees from neighboring countries such as Rwanda and has recently mediated peace talks in Burundi and Rwanda. Moreover, the country has hosted foreign opposition groups from many countries in southern Africa. According to the Chair of the National Committee, Felistas Mushi, these risk factors are a by-product of Tanzania's inclusive culture. As explained by Ms. Mushi, Tanzanians strive to help fellow citizens and their neighbors build peaceful and tolerant societies. The requirements maintained by the Protocol, she said, are therefore complementary to Tanzania's inherent commitments in this regard.⁷

Mandate

Tanzania's National Committee seeks to prevent the crime of genocide, war crimes, crimes against humanity, and all forms of discrimination through:

- Regularly monitoring situations and processes that could lead to these crimes;
- Collecting and analyzing relevant information;
- Alerting the government and proper authorities in a timely fashion to undertake
- immediate measures to prevent the commission of these types of crimes;
- Recommending measures to effectively prevent them;
- Fighting impunity for the crimes listed above;

⁶ The Auschwitz Institute for Peace and Reconciliation (AIPR), *National Mechanisms for the Prevention of Genocide and other Atrocity Crimes: Durable Solutions to Challenges in Effective Prevention* (New York: 2016), 7, accessed December 28, 2017, <http://www.auschwitzinstitute.org/wp-content/uploads/2016/01/2016-National-Mechanisms-Booklet-Electronic-Version.pdf>.

⁷ AIPR, *Effective and Sustainable Prevention*, 7.

- Raising awareness on the processes that enable these crimes and educating others about
- prevention to promote the implementation of peace and reconciliation programs;
- Recommending policies and measures to guarantee the rights of victims of these crimes to truth, justice, compensation, and rehabilitation; and
- Carrying out any further tasks the Minister of Justice may entrust to the Committee under its mandate.

Structure

The Tanzanian Committee is comprised of members of the government, human rights institutions, civil society, religious institutions, and academia. Government officials from the following institutions are represented: the Ministry of Constitutional and Legal Affairs, which holds the Chair, the President's Office, the Prime Minister's Office, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Defense and National Service, the Ministry of Home Affairs, the Ministry of Community Development, Gender and Children, the Attorney General's Chambers, the Ministry of Education and Vocational Training, the Office of the Director of Public Prosecutions, the State Police Force, the Ministry of Information, Youth, Culture and Sports, the Ministry of East African Cooperation, and the Commission for Human Rights and Good Governance. From civil society, there is representation from the Centre for Foreign Relations, the Mwalimu Nyerere Foundation, and the Legal and Human Rights Center. Both Catholic and Muslim communities have representation on the Committee through the Inter-Religious Council. Finally, the University of Dar es Salaam and the Legal Aid Committee of the University of Dar es Salaam School of Law are also members.

The process of selecting members was based on the model provided in the ICGLR's Rules of Procedure of the Regional Committee and was also localized according to the Tanzanian administrative system. The main goal was to draw membership from all key ministries and sectors dealing with peace and security, either directly or indirectly. Throughout its work, the Committee invites a broad spectrum of institutions to assist in implementing its operational strategy. For example, capacity building seminars for members have been conducted in collaboration with AIPR and other international organizations. The Committee's operational strategy includes the development of partnerships and management capacity to enable further cooperative work. The Committee believes that broad participation and inclusiveness of Tanzania's citizenry in the formulation and implementation of preventive policy ensures operational effectiveness.⁸

Outputs

The Committee has conducted interfaith peace forums and programs involving both civil society and political leaders, and has developed tailored training and technical assistance programs to increase capacity in order to carry out its mandate. These training programs have been supported by international civil society organizations, as well as the UN OSAPG. The first of these trainings took place in March and October of 2014 and covered such topics as electoral violence, land conflict, inter-religious tensions, and natural resource-based conflict. More recently, in March of 2016, the TNC and AIPR co-organized an additional training to:

- Familiarize participants with the concept of genocide and other atrocity crimes, the relationship between them, and the processes by which they occur;
- Empower participants with the practical competencies (knowledge and skills) necessary to be able to identify, deter, and limit the impact of genocide and other atrocity crimes; and
- Strengthen the capacity of leaders, as shapers of political will, to become agents of atrocity crime prevention with a heightened degree of sensitivity and awareness to the role of governmental and non-governmental actors in zones of conflict.

⁸ Ibid., 8.

The main topics discussed during this training were the prevention and management of electoral violence, early warning and response tools for atrocity crimes prevention, and the construction of institutional synergies between regional and national mechanisms for prevention. This event served as the third in a series of capacity building training seminars and has been followed by additional programming already taking place in 2017.

The success of interfaith peace forums towards building peace and social cohesion in Tanzania is noteworthy. These forums have covered concrete strategies and opportunities to prevent genocide in Tanzania as well as the role of religious leaders in peacebuilding. More specifically, genocide prevention strategies most relevant to the Tanzanian context were identified as:

- Fostering peaceful cooperation, interactions, and coexistence between different religious faiths in peacetime;
- Encouraging the media to adhere to established professional ethics and act as positive forces relative to building national unity, social cohesion, and sustainable development;
- Building political and governance systems on the principles of transparency, accountability, and the timely administration of justice; and
- Eliminating nepotism, discrimination, and injustice in national institutions.

Finally, the TNC is currently in the process of establishing a National Centre for Conflict Early Warning and Early Response. The objective of the Centre will be to build an efficient framework for information sharing and communication, utilizing available technologies among governmental and nongovernmental actors. The resulting network will include local and national-level representatives and function with the goal of providing timely advice and policy recommendations for burgeoning conflicts and threats to peace and security in Tanzania.⁹

The Uganda National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination

History

Like the Tanzanian and Kenyan National Committees, the Ugandan National Committee (UNC) was established under, and in compliance with, the ICGLR Protocol for the Prevention and Punishment of Genocide, War Crimes, Crimes Against Humanity and All Forms of Discrimination. The Ugandan National Committee was officially launched on October 15, 2012, in Entebbe, Uganda, with support from the UN OSAPG. A preliminary one-day training was held for members of the Committee to coincide with the launch, at which time a six-month work plan was developed. The plan addressed the unique challenges facing Uganda — a country where the process of genocide has unfolded in the past and where the risk of atrocity crimes remains.

Mandate

Uganda's National Committee seeks to prevent the crime of genocide, war crimes, crimes against humanity, and all forms of discrimination by:

- Regularly monitoring situations and processes that could lead to these crimes;
- Collecting and analyzing relevant information;
- Alerting the government and proper authorities in a timely fashion to undertake immediate measures to prevent the commission of the above crimes;
- Recommending measures to effectively prevent these types of crimes;
- Fighting against impunity for the above crimes;
- Raising awareness and providing education on the processes that enable these crimes to promote the implementation of peace and reconciliation programs;
- Recommending policies and measures to guarantee the rights of victims of these crimes to truth, justice, compensation, and rehabilitation; and

⁹ AIPR, *Pursuing Institutionalization*, 8.

- Carrying out any further tasks the Minister of Justice may entrust to the Committee under its mandate.

Structure

Unlike others in the region, the Ugandan National Committee features a member of civil society as its chairperson. While all national committees in the Great Lakes Region include a significant number of non-governmental experts and practitioners, this structure is unique to Uganda. The UNC is comprised of the Chair and Secretary, a Treasurer, who represents academia and the legal community, and a representative from the Human Rights Commission of Uganda as the Communications Director. Additional members include representatives from the Ministry of Foreign Affairs, the Ministry of Justice and Constitutional Affairs, the Ministry of Gender, the Uganda People's Defense Force, and other civil society organizations.¹⁰

Outputs

In August 2014, the UNC engaged in community-level consultative and mediation meetings to address tensions in Western Uganda. This led to the diffusion of violent escalations and has served as a model for further peace talks and mediation techniques undertaken by the Committee. In 2015, the Committee completed an initial assessment of national strengths and weaknesses from the perspective of atrocity prevention. The main policy gap that was discovered concerned domestic legislation for atrocity crimes. The Committee subsequently forged a partnership with a group of parliamentarians to draft a bill defining punishment for the crime of genocide as well as institutionalizing the UNC within the state apparatus. The "Genocide Bill", as it is most commonly called, was introduced on the floor of parliament and was referred to a select committee. The UNC is working to support the passage of the bill into law over the coming parliamentary sessions, which will give Uganda a domestic legal framework for the National Committee and its mandate.

Later, in December of 2015, the Committee led a training session, held in collaboration with AIPR, for various members of the National Committees in the ICGLR region. The primary objectives of the seminar were to provide background information on past experiences and to address new challenges and lessons learned on thematic issues involving the work of National Committees in the Great Lakes Region of Africa. It also worked to provide state leaders and National Mechanisms with policy and programmatic recommendations towards further institutionalization and increased sustainability of efforts for the prevention of genocide and other atrocity crimes. Members of the Ugandan Committee also participated in the March 2016 training in Tanzania, described in the previous section. During the workshop, Ugandan representatives proposed initiatives for the translation of existing human rights documents and legislation into local languages as well as classroom and extracurricular programs for youth on the prevention of paramilitary mobilization. Paramilitary mobilization remains an ongoing problem and one to which the Committee has devoted much of its work. Unfortunately, the successful and complete implementation of these programs is still pending the availability of resources.¹¹

The Commission for International Humanitarian Law of Costa Rica (La Comisión Costarricense de Derecho Internacional Humanitario - CCDIH)

History

The Costa Rican government has looked to the existing body of the CCDIH to manage the state's agenda of atrocity crimes prevention. The Commission was created by an Executive Order in 2004 as an inter-ministerial/inter-departmental body with an advisory role to the Executive branch of the government. The CCDIH is also mandated to implement International Humanitarian Law (IHL) and propagate its dissemination. The Commission is led by the Ministry of Foreign Affairs and Culture, and is the only inter-ministerial mechanism in Costa Rica with a mandate and competency in issue areas pertaining to atrocity crimes prevention.

¹⁰ AIPR, *Effective and Sustainable Prevention*, 10-11.

¹¹ AIPR, *Durable Solutions*, 9.

Mandate

The mandate of the CCDIH concerning IHL is drawn from Costa Rica's commitments in this area, as party to various international treaties, regional agreements, and national regulatory legislation. As the CCDIH performs an advisory role on matters of compliance with relevant legal obligations and assists in the implementation and dissemination of regulations, it is, therefore, well suited to operationalize the agenda of atrocity crimes prevention, considering that the field of IHL holds many tools for prevention. Specifically, the CCDIH has a mandate to carry out the following functions:

- Make recommendations to the Executive on measures to be taken towards the implementation of international legal provisions in force relevant to International Humanitarian Law;
- Advise the Executive in the drafting of bills and regulations to ensure Costa Rica meets its international obligations in the field of International Humanitarian Law;
- Promote, encourage and support the dissemination of International Humanitarian Law in the institutions of the state and society in general, as well as taking appropriate action to this end;
- Attend meetings, seminars, and conferences related to International Humanitarian Law, with the nomination of the Executive;
- Promote and collaborate with the academic authorities of the country for the incorporation of International Humanitarian Law in educational curricula; and
- Suggest actions to contribute to the implementation and enforcement of international humanitarian law.

Structure

The Commission consists of three subcommittees, which manage various aspects of the body's work. They are a) Rules/Standards, b) Outreach and Education, and c) Protection of Cultural Property. The Commission includes the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Justice and Peace, the Ministry of Public Security, the Ministry of the Presidency, the Ministry of Health, the Ministry of Culture and Youth, the Attorney General's Office, the Judiciary, the Legislature, the Office of the Ombudsman, the University of Costa Rica, the National University, the National Council of Rectors, the Costa Rica Red Cross, and the Bar Association of Costa Rica. Thus, the CCDIH's membership exemplifies a whole of government approach in addition to including membership from other sectors, such as academia and civil society, which are extremely important to the development and implementation of effective preventive policy within the country. Furthermore, the efforts of Costa Rica in this area demonstrate that a government does not need to establish a new body to act as a National Mechanism, but instead can pursue this agenda through an existing mechanism that includes the necessary characteristics and competencies.

Outputs

The CCDIH has produced a number of outputs that contribute to the prevention of atrocity crimes in Costa Rica. Firstly, under the impetus of the Subcommittee on Rules and Standards, the Costa Rican Legislature has begun the process of incorporating protections for individuals and property under International Humanitarian Law (IHL) into the National Penal Code. Specifically, the drafted bill pertains to "Offenses Against Human Rights" and "Crimes Against Persons or Property Protected by International Humanitarian Law." The bill is awaiting discussion and debate during an upcoming plenary session of the Deputies of the Legislative Assembly.

Additionally, the Commission is currently working to address the status of the implementation of current international law into the National Penal Code as it pertains to the prevention of genocide. At this time, the crime of genocide is stipulated in Article 375 of the National Penal Code, however, according to the Commission, the stated law fails to fully meet the current international standards on atrocity crimes, particularly with regards to the Rome Statute of the International Criminal Court, of which Costa Rica is a signatory. Therefore, the Commission is

recommending that Article 375 be amended to include specific and systematic acts of torture and forced disappearance, whether committed within the context of an armed conflict or outside of one.

Regarding its mandate to disseminate IHL, there are a number of activities the Commission has highlighted within the framework of its tenth anniversary, specifically pertaining to its work with state institutions and civil society. The CCDIH has been involved in the development of training programs for various actors from these sectors, including those from state security forces and legislative bodies. Additionally, the CCDIH organized a series of workshops to prepare for the XXXII International Conference of the Red Cross and Red Crescent, which was held from December 8-10, 2015 in Geneva, Switzerland. The first workshop, held on March 4, 2015, consisted of an introduction to IHL at the headquarters of the Bar Association of Costa Rica, with participation from civil society and legal professionals. Drawing on its mandate for collaboration with academic authorities, the CCDIH has recently established partnerships with the National University of Costa Rica and its Faculty of Law, which led to the initiation of a series of activities with the Commission, beginning in 2017.

Beyond these outputs, the Commission has been very active in communicating with the general public on issues concerning IHL and, by extension, the prevention of atrocity crimes. It has participated in various radio programs, such as Radio Universidad de Costa Rica, to speak about these topics and their importance in the lives of civilians. The CCDIH also sponsored the Race of the Red Cross in Costa Rica, which welcomed the participation of over 3,000 runners and carried messages related to IHL and the prevention of atrocity crimes.

The CCDIH also played an important role in the organization of the 2014 Global Action Against Mass Atrocity Crimes meeting held in San Jose. The Ministry of Foreign Affairs developed the program, in coordination with the governments of Denmark, Argentina, Switzerland and Tanzania. The event looked to bring together representatives from government and civil society around the world who serve as focal points for atrocity crimes prevention.

Finally, members of the CCDIH have participated in multiple training seminars held by AIPR in conjunction with Costa Rica's membership –through its Ministry of Foreign Affairs– in the Latin American Network for Genocide and Mass Atrocity Prevention. As a result, these participants are now able to organize training modules on topics related to genocide prevention for the members of the CCDIH. The last session, which took place on August 5, 2016, was called "Social Identity and the Creation of 'the Other'" (*Identidad Social y la Creación del Otro*), and was inspired by AIPR's curriculum for the Latin American edition of the Raphael Lemkin Seminar for Genocide Prevention.¹²

Other Emerging Mechanisms

Argentina

The government of Argentina is currently in the process of developing its National Mechanism for the Prevention of Genocide. The motivation for the creation of this inter-ministerial Mechanism comes from its national human rights policy, which has been in development since 2003. The establishment of a National Mechanism is complementary to a number of existing initiatives on fundamental human rights related to memory, truth, and justice that were launched in light of the country's civil-military dictatorship of 1976-1983.

In this sense, the National Mechanism is an essential institutional tool in the pursuit of higher levels of effectiveness in the prevention of genocide and other mass atrocities and is consistent with Argentina's active membership in the Latin American Network for Genocide and Mass Atrocity Prevention. The impetus for establishing a National Mechanism is also derived from Argentina's responsibility as a party to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. In this context, the Mechanism will serve as a tool for the domestication and operationalization of international law. Official authorization of the Mechanism will be provided through a Presidential Decree, which, as of the date of publication, is awaiting signature by the

¹² AIPR, *Durable Solutions*, 17-18.

President.

The Argentinian National Mechanism has been designed as an inter-ministerial body with a well-defined framework for governmental and non-governmental actors playing a joint role in matters related to the prevention of atrocity crimes. In accordance with the Presidential Decree, the responsibilities of the Mechanism will include:

- Risk detection and early warning, including the development of procedures for the circulation and exchange of information within the government and to interested external parties, including civil society organizations and academic institutions, on various cases and situations posing a possible risk of atrocity. This also provides for the development of a standardized evaluation process for the data gathered.
- Systemic prevention and awareness, including the implementation of seminars and trainings on topics related to human rights, international humanitarian law, transitional justice, and other related topics under the prevention umbrella. This also provides for the implementation of standardized training curricula on anti-discrimination and atrocity prevention for public academic institutions, as well as institutions training civil servants. Lastly, it entails the development of an evaluation process for content in the media and mass communications.
- Collaboration and information exchange, including the establishment of procedural mechanisms for data processing and communications with the United Nations, as well as regional organizations, such as the Latin American Network for Genocide and Mass Atrocity Prevention.

The agencies that will participate in the National Mechanism and form its Coordinating Committee are the Ministries of Defense, Foreign Affairs and Worship, Justice and Human Rights, Education, Public Communications, and Institutional Reform and Democracy Building, as well as the Director of the Ministerial Cabinet, and the National Institute for the Prevention of Discrimination, Xenophobia and Racism. The Mechanism will also include a Committee for Genocide Prevention, which serves as a space for exchange with civil society organizations that are accredited by the Committee. Additionally, a Federal Network for Genocide Prevention will be established under the auspices of the National Mechanism, and will assist in developing the capacity of the Federal Government to coordinate prevention policy with provincial authorities.

As of the date of this publication, the nascent National Mechanism has only had preparatory meetings. However, the development of internal procedures is currently underway. The next step in the process will be the coordination of a National Action Plan for genocide prevention, which will be approved and put into place once the Presidential Decree has been signed and an assessment of the strengths and weaknesses of the current prevention policy framework has been conducted.¹³

Paraguay

The Truth, Justice and Reparation Directorate General of the Office of the Ombudsman, as well as the Ministry of Foreign Affairs of Paraguay — both Focal Points of the Latin American Network for Genocide and Mass Atrocity Prevention — have developed a bill to create a National Commission on the Prevention of Genocide and Mass Atrocities. The National Commission will facilitate interagency coordination among the various state agencies that have authority with respect to the prevention of genocide and other mass atrocities. The establishment of the Commission is supported by Paraguay's responsibilities derived from international law under the framework of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. To this end, the Ministry of Foreign Affairs acts as the focal point for the domestication of the Convention.

The Ministry of Foreign Affairs and the General Directorate for Truth, Justice and Reparations within the Office of the Ombudsman will chair the National Commission. The Commission shall

¹³ AIPR, *Effective and Sustainable Prevention*, 17-18.

consist of a primary and alternate representative from the following institutions: the Ministry of Foreign Affairs, the Office of the Ombudsman, the Ministry of Interior, the Ministry of Justice, the Ministry of Education and Culture, the Ministry of National Defense, the Judiciary, the Public Prosecutor, the Departments of the Armed Forces, the Ministry of Defense, Congress, and the State Police. The Commission reserves the right to call upon other institutions to join, should their membership become necessary.

The Congressional approval process for the bill creating the National Mechanism is currently underway, having been submitted for official consideration by six Senators. The prospective Commission is engaging with AIPR to develop capacity building programs, which will provide training to the body's members in order to assist in effectively carrying out its mandate.¹⁴

Common Challenges and Innovative Solutions

A number of the National Mechanisms featured in this article have existed in various forms for several years, and so it is appropriate to discuss some of the challenges that they are facing in effectively carrying out their mandates and highlight some of the innovative solutions they have developed to meet these obstacles head-on. Despite the varying geographical landscapes and even more diverse political and social narratives, a number of the challenges faced by National Mechanisms exhibit common themes.

States establishing new bodies often face difficulties in formally integrating the nascent Mechanism into the national government, such that it becomes an official body with resources allocated towards its mandate. This has been the experience of the Kenyan, Ugandan and Tanzanian National Committees, as well as the emerging Mechanisms in both Argentina and Paraguay. Each of these bodies is still waiting for proper legal integration through the necessary bureaucratic processes of their legislatures. Without this formalization, it remains very difficult for members to receive official leave from their primary professional duties to carry out programming and activities convened by the Mechanisms. Additionally, without proper funding allocated by their respective national legislature, the Mechanisms are obliged to seek resources from outside organizations in order to carry out their activities, which is not a sustainable practice.

While this lack of resources has continually proven to be among the most challenging obstacles to overcome, the Tanzanian, Ugandan, and Kenyan National Committees have been successful in employing outside funding to carry out a diverse array of programming. This includes the successful execution of a variety of training seminars, memorialization projects, and early warning activities, all while concurrently working towards formal institutionalization. As Felistas Mushi, Chairwoman of the Tanzanian National Committee, explains:

Our biggest strength as a Committee is our individual and collective commitment to prevention work. Despite all the challenges, the Committee has been able to accomplish what we have thus far because of this commitment, which has given us a great deal of credibility.¹⁵

Conclusions and Lessons Learned

In reviewing the outputs and activities of existing National Mechanisms for the Prevention of Genocide and other Atrocity Crimes, a small collection of lessons learned should be highlighted. Perhaps the most important of these lessons is that a National Mechanism does not necessarily need to be formally integrated into the central government to begin carrying out its stated mandate. We have seen this in the experiences of the Kenyan, Ugandan, and Tanzanian National Committees, as well as the nascent National Mechanisms in Argentina and Paraguay. In the same vein, a Mechanism also does not necessarily require its own resources to hold effective programming such as trainings, peace forums, and other meetings at the outset. Collaboration with outside partners, whether through regional bodies or international civil society organizations, foundations, or donor governments, has proven to be an effective method for gathering the requisite resources and

¹⁴ AIPR, *Pursuing Institutionalization*, 11.

¹⁵ AIPR, *Effective and Sustainable Prevention*, 9.

expertise to hold programming under their stated mandates in the initial stages of their work plan.

Additionally, the role that National Mechanisms play in the gathering and assessment of information has not been significantly constrained by a lack of formal institutionalization. As long as the members representing the various apparatuses of the national government and other sectors of society are present and committed to the mandate, in many cases information has continued to flow. This information has been utilized to issue formal policy recommendations to the proper authorities, often providing crucial early warning for potential crises.

That being said, it is also clear from discussions held between AIPR and members of the National Mechanisms that the long-term sustainability of these bodies, as well as their general effectiveness over the coming years through administration changes and shifting political contexts, depends heavily on their formal institutionalization into governmental structures and the allocation of budgetary resources that follows. Therefore, its long-term importance cannot be understated. This is why each of the Mechanisms has prioritized the active pursuit of institutionalization alongside their ongoing activities.

Based on the collective experiences of existing bodies, the following considerations are important in the establishment of new National Mechanisms:

Mandate: The establishment of a National Mechanism often requires that a national government take a strong policy position on atrocity prevention as a national priority. This will not only aid in the inception of a new Mechanism, but also allow for the future actions of the body to be framed as part of this national-level policy. In the case of the African Great Lakes Region, the 2006 Protocol that mandated the establishment of a regional committee and individual national committees continues to constitute the main point of departure.

Membership: What areas of government should be represented, and why? Comprehensive membership confers many benefits and extends beyond government. Civil society organizations are also seen to be key partners in an effective prevention agenda, occupying both formal advisory roles and participating directly alongside governmental members of a National Mechanism.

Structure: It is important include both horizontal and a vertical considerations. Horizontally, all relevant departments must be included. Vertically, Mechanisms can often produce policies that would require implementation by agents within the national-level administration, as well as those from regional and local power structures. While this may be clearer in federated states, it is not exclusive to them.

Goal: It is important to emphasize that the objective of these mechanisms is the design of unified national policies for the prevention of genocide and other atrocity crimes. Inherent in this is an emphasis on “upstream” prevention, meaning that National Mechanisms aim to address the steps leading up to violence, taking measures to halt these processes before we see any resulting casualties.

Function: National Mechanisms are established to carry out two main functions. The first of which is to carry out a system-wide assessment of strengths and weaknesses from the perspective of atrocity prevention. Ideally, the results of the assessment should lead the discussion on further functions of the mechanism. Secondly, they are established to support the design, implementation, and coordination of national policies for prevention.

Outputs: In order to maintain institutional momentum and demonstrate efficacy, there is a need to realize concrete achievements. These most often include trainings, published

national strategies, inter-ministerial forums, and a variety of other programs or policy recommendations. The National Mechanism needs to display value added to ensure its sustainability.

Impact: Ideally, the process of establishment should build in a system of impact evaluation. The National Mechanism should also be flexible in amending its work plan in order to take the results of any evaluation into account.

Budget: National Mechanisms can rely on international assistance in the short term, but they must quickly become self-sustaining, which requires inclusion in the national budget. This step constitutes a true indication of the priority that a national government gives to the establishment of a National Mechanism.¹⁶

These lessons are important to note for countries working to establish their own National Mechanisms within the particular context of their governmental structure and the societal conditions concerning atrocity crimes prevention. Genocide and other atrocity crimes are complex social problems that must be addressed effectively by the societal collective as a whole. Thus, it follows that the state must employ a whole of government approach to the prevention of such crimes, bringing in those representatives who have responsibilities concerning prevention to the planning table, as well as non-state actors who play a key role in prevention policy implementation.

In *Confronting Evil: Engaging Our Responsibility to Prevent Genocide*, James Waller notes the importance of National Mechanisms in the upstream prevention of atrocity crimes. To mitigate risk factors for atrocity associated with governance, conflict history, economic conditions, and social cohesion, he finds that “initiatives that are highly responsive to the unique internal dynamics of the society are crucial in building a state’s resilience, reducing its susceptibility to genocide and, ultimately, reinforcing a state’s sovereignty.”¹⁷ He follows this by citing the work of a number of National Mechanisms featured in this article as examples of effective frameworks for civilian protection. Bridget Moix has asserted that:

...Turning genocide prevention inside-out to focus first on supporting and strengthening local capacities for peace within a society, linking them more effectively with regional and global backup response systems, would not only save lives, it would also be significantly less expensive and less damaging, and holds greater promise for finally closing the prevention gap so often debated.¹⁸

The work of National Mechanisms represents a more community-based or localized approach to atrocity prevention, inclusive of both state and non-state actors within society. Moix points to various examples of what she calls “local peace agency,”¹⁹ which provides important opportunities to the field of genocide prevention, challenging the dominant assumptions about external interventions. She goes on to explain that such localized approaches may help “re-orient our theory and practice in ways that can help [us] move upstream to earlier prevention, break repeating cycles of violence, and ensure more sustainable recovery and reconciliation processes over the long-term.”²⁰

This growing understanding within the field, one that supports local solutions to local problems and involves both state and non-state stakeholders in the development of prevention strategies, is reflected in the emergence of National Mechanisms and has manifested in their programming and

¹⁶ AIPR, *Durable Solutions*, 24-25.

¹⁷ James Waller, *Confronting Evil: Engaging Our Responsibility to Prevent Genocide* (New York: Oxford University Press, 2016), 196-197 and 163.

¹⁸ Bridget Moix, “Turning Atrocity Prevention Inside-Out: Community-Based Approaches to Preventing, Protecting, and Recovering from Mass Violence,” *Genocide Studies and Prevention: An International Journal* 9, no. 3 (2016), 62.

¹⁹ *Ibid.*, 60.

²⁰ *Ibid.*

activities. The proliferation of these bodies in states around the world lends itself to the notion that National Mechanisms represent an inclusive approach to atrocity prevention that has had a positive impact on our field and will continue to do so.

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Germany's Politics and Bureaucracy for Preventing Atrocities

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Germany has accepted the unique responsibility arising from its history. The avoidance of war and violence in international relations, the prevention of genocide and severe violations of human rights, and the defence of endangered minorities and the victims of oppression and persecution are integral to Germany's reason of state.¹

As of June 2017, this is official German government policy, adopted by the federal cabinet as the highest executive organ in its "Guidelines on Preventing Crises, Resolving Conflicts, Building Peace." Compared to earlier policy documents, the ambition is expressed more strongly than ever: *raison d'état*, or reason of state, is vernacular usually reserved for Germany's unwavering commitment to the survival of the state of Israel.

The statement quoted above must be seen in the context of Germany's broader coming of age in matters of international leadership. It does not describe the emphasis on preventing genocide and mass atrocities in current policy. Interpreting this aspiration and its prospects for shaping future policy requires substantial background on the past and present of Germany's political debates and bureaucratic infrastructure on crisis prevention, atrocity prevention, and responsibility to protect.

This paper consists of two main sections. The first introduces the political context and recent history of Germany's institutional setup for atrocity prevention. The second describes this setup and explains its strengths and weaknesses, as well as the key challenges to be addressed in order to live up to the aspiration of making more effective contributions to the prevention of genocide and other atrocities. We conclude with an outlook on Germany's contributions to atrocity prevention in the next few years.

Context: Debates on Prevention and Intervention in Germany

Atrocity prevention as a distinct category in German political debates is fairly new and still rarely used. Over the past 15 years, the issues that were discussed in the US as atrocity prevention were linked either to the responsibility to protect (R2P) or to conflict prevention, which is referred to as "crisis prevention" in the German debate.² Part of the reason for this is evident in the language. There is no consistent, agreed-upon phrase for "mass atrocities" in German. However, the two debates about R2P and conflict prevention have been almost completely disconnected from one another: the R2P debate is tainted by its association with military intervention, while the conflict prevention debate is shaped by an emphasis on long-term, structural peacebuilding with civilian means. Accordingly, atrocity prevention is almost never treated as a category in itself, and there is little awareness of the differences between conflict and atrocity prevention.³

"Never Again What?" Contradicting Historical Lessons at the Center of the Prevention Debate

Key to comprehending German views on all three categories – R2P, conflict prevention and atrocity prevention – is understanding the societal and historical debates in Germany on these topics. This

¹ German Federal Government, *Guidelines on Preventing Crises, Resolving Conflicts, Building Peace*, July 21, 2017 (German Federal Foreign Office), accessed December 31, 2017, www.diplo.de/guidelines.

² The German policy community uses the term "crisis prevention" ("Krisenprävention") where most English speaking experts would use conflict prevention. The German usage comes with many conceptual debates on its own.

³ Gregor Hofmann, "Politische Bekenntnisse ohne Folgen," *HSFK Standpunkte* 6 (2013), 6.

is linked to Germany's own history and the Holocaust, but also the history of the peace movement and its role in shaping the internationalist left. The distinct meaning and use of the pivotal term "never again" in Germany illustrates a key difference to the United States.

In the US, genocide prevention advocates, Holocaust survivors, and high-ranking politicians regularly draw comparisons between the Holocaust and mass atrocities in Rwanda, Srebrenica, Darfur or Syria.⁴ Historical responsibility, in that interpretation, includes not only remembering the past but also fighting mass atrocities today.

In Germany, the phrase "never again" is used in two ways. First, to refer to "never again war," the conclusion drawn from the responsibility for two World Wars that expresses the core of the pacifist streak in mainstream German society. Second, where "never again" is used in reference to the Holocaust ("never again Auschwitz"), it is usually interpreted as a responsibility to prevent right-wing ideology, racism, and fascism in Germany. When, in 1999, then-foreign minister Joschka Fischer used "never again Auschwitz" to mobilize support for the military intervention in Kosovo, he was heavily criticized for abusing the phrase and diminishing the singularity of the Holocaust. Since then, politicians hardly ever make such connections. In the German peace movement, including significant parts of the foreign policy community from the left of the political spectrum, the Kosovo intervention is still hugely controversial.

In 2001, the International Commission for Intervention and State Sovereignty that developed the idea of a responsibility to protect actually had a prominent German member. Klaus Naumann had recently retired as the Chairman of the NATO Military Committee and previously served as the Inspector-General, effectively the Chief of Staff, of the German *Bundeswehr*. Known as a passionate advocate for muscular intervention in the Balkans, Naumann was put in charge of the chapter on military options by the Commission. The German government, however, did everything to ignore that Naumann existed: the defense department refused to meet or even reply to his requests for guidance, and the Foreign Office directed him to junior officials who received his occasional reports about the proceedings but refused to provide him with any insight into the considerations of the government on the matter.⁵

It took a whole decade, as well as a controversial German vote in the UN Security Council, to bring the R2P debate home. Beginning in 2005, when the UN General Assembly endorsed a version of R2P, German policymakers treated the concept as a legal norm in the making that required German support at the level of the European Union and the United Nations, mostly in the sense of including the words "responsibility to protect" in statements and resolutions.⁶ In 2011, Germany's controversial abstention on a resolution authorizing an intervention in Libya triggered the first genuinely public debate on R2P in Germany.⁷ Mainstream newspapers published editorials on R2P's origin and purpose, and parties in the *Bundestag* voiced their support for R2P in party motions. In this context, German policymakers began to see R2P as not only international law in the making, but also a moral principle and a practical commitment that needs operationalization.

The dominant links to Kosovo and Libya, however, exemplify the bias in the public perception of atrocity prevention in Germany. To this day, every debate about preventing or stopping atrocities gets short-circuited into a debate about military intervention. Whatever the political decision, whether Germany refuses to employ military force, as in Libya, or whether it breaks a longstanding taboo and delivers military assistance, as in Iraq in 2014, as soon as the military question is settled, the debate ends. How best to use and equip German armed forces for such interventions, or which other diplomatic, economic, or judicial tools the German government has at its disposal, is hardly ever subject to public or even expert discussion.

⁴ See, for example, Elie Wiesel, "Genocide Prevention Initiative Launch" (speech, Washington, DC, April 23, 2012), United States Holocaust Memorial Museum, accessed February 20, 2018, <https://www.youtube.com/watch?v=xTGJxYp76w>.

⁵ Interviews with former German policymakers, Berlin, Summer 2013.

⁶ Sarah Brockmeier, Gerrit Kurtz, and Julian Junk, "Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect," *Conflict, Security and Development* 14, no. 4 (2014), 448-449.

⁷ Sarah Brockmeier, "Germany and the Intervention in Libya," *Survival Global Politics and Strategy* 55, no. 6 (2013), 63-90.

Little Civil Society and Political Pressure

The open public dispute over Germany's lessons from history may also partly explain why the German public and civil society advocacy are relatively listless and lackluster on atrocity prevention. Whereas US reforms on atrocity prevention have been significantly driven by civil society mobilization, there is no comparable NGO infrastructure devoted to the issue in Germany. Most internationalist civil society organizations, including religious and human rights groups, build on an anti-imperialist, often pacifist tradition of opposing American interventions during the Cold War and beyond. They advocate for human rights and peace in general, but hardly any of them work on atrocity prevention specifically. Instead of embracing R2P as an advocacy tool, most of them see the principle primarily as a back-door attempt to legitimize military adventures. There are very few exceptions: Genocide Alert, Crisis Action, Human Rights Watch Germany, and the Society for Threatened Peoples are the main groups.⁸ In contrast to the US, Germany does not have large-scale advocacy campaigns pressuring the government to take action on particular country cases or to improve its atrocity prevention tools.

All of this makes atrocity prevention an unattractive and even difficult issue for political leaders to support. Most of the prominent or semi-prominent politicians who do support a stronger German leadership role on atrocity prevention prefer to do so quietly, rather than championing the issue in public and risking to alienate voters.

In the European Union as a whole, dynamics are similar. Although a large number of groups are committed to peace and human rights, the topic of atrocity prevention does not play a substantial role in major human rights organizations.⁹ There are also fewer political entrepreneurs, such as Samantha Power, who alternate between civil society and bureaucracy. Compared to the United States, political elites and the bureaucracy in both Germany and the European Union are less open to exchange with academia and civil society in general.

These differences between the United States and the European Union are exemplified by a comparison between the results of the U.S. Genocide Prevention Task Force (GPTF) and the fate of the attempted European replica, the *Task Force on the EU Prevention of Mass Atrocities*.¹⁰ The EU Task Force, in 2012, provided a thorough assessment of the EU's strengths and weaknesses on mass atrocity prevention and provided a list of recommendations to European institutions on how to improve the institutional set-up of the EU (some of which we repeat below). Yet while many of the GPTF's recommendations were taken up by the Obama administration, the EU Task Force's report seems to have largely been forgotten shortly after its presentation in early 2013. The key difference between the EU and the US version of the reports was not the quality of their content, but the political clout of their drafters. The most important feature of the Genocide Prevention Task Force was its composition, a veritable who's who of credible foreign and security policy experts, chaired by Madeline Albright and William Cohen. This was vital to its acceptance as an objective among Washington's political elite. The European equivalent, initiated by a Hungarian NGO, failed to receive such high-level political backing for its work—a reflection of the differing conditions for promoting mass atrocity prevention between the US and the European Union.

Recent Growth in Responsibility

Despite the shortcomings in the political and societal context for atrocity prevention debates in Germany and the EU, Berlin's role in the world and willingness to take on responsibility has been growing. This has important side effects for atrocity prevention, as we will show in the next section.

⁸ One of the authors was a board member of Genocide Alert from 2010 to 2015. More information on Genocide Alert's work can be found at <http://www.genocide-alert.de>.

⁹ Chiara De Franco, Christoph O. Meyer, and Karen E. Smith, "'Living by Example?' The European Union and the Implementation of the Responsibility to Protect (R2P)," *Journal of Common Market Studies* 53, no. 5 (2015), 994–1009.

¹⁰ Budapest Centre for the International Prevention of Genocide and Mass Atrocities, *The EU and the Prevention of Mass Atrocities – An Assessment of Strengths and Weaknesses* (Hungary: Foundation for the International Prevention of Genocide and Mass Atrocities, February 2013), accessed December 31, 2017, http://massatrocitiestaskforce.eu/Report_files/The_EU_and_the_prevention_of_mass_atrocities_-_an_assessment_of_strengths_and_weaknesses.pdf.

For a long time, Germans have seen events in distant war zones as something that does not concern them. This has been changing. The 2015 refugee crisis confronted many previously unconcerned Germans with the reality of wars and atrocities in far-away places. Chancellor Angela Merkel summarized this tendency in an unusually candid fashion in the fall of 2015: "In many regions war and terror prevail. States disintegrate. For many years we have read about this. We have heard about it. We have seen it on TV. But we had not yet sufficiently understood that what happens in Aleppo and Mosul can affect Essen or Stuttgart. We have to face that now."¹¹

German support of the negotiations with Iran, Berlin's central role in addressing the crisis in Ukraine, its decision to arm the Kurdish Peshmerga in their fight against IS as well as its support of the anti-IS coalition with up to 1200 German troops are all signs that Germany is taking increasing responsibility. Polls show unprecedented backing for this approach. In annual polling about public attitudes toward security issues, record numbers of Germans reported that they now support an active role in addressing the problems, crises and conflicts of the world. After 2000, support for this question usually lingered between the mid-40s and mid-50s; in many years, there was essentially a tie between supporters and opponents of an active role. In 2014, the picture changed. Suddenly, there were clear majorities in favor: support jumped to 59%, then 66% (2015) and then 63% (2016), with fewer than 35% opposed each year.¹²

In this context of growing international ambitions, based on a foundation of growing public support, the last administration issued two new foundational documents about Germany's international posture. In the summer of 2016, a new defense white paper was issued, while a year later, in the summer of 2017, guidelines on "Preventing Crises, Resolving Conflicts, Building Peace" followed. Both documents broke new ground in placing Germany's responsibility for international peace and security in the context of its historical past. In so doing, the government has begun to turn a powerful argument that had previously been used mostly to support restraint and passivity into a justification, even a requirement, for the country to play a more active role.

Both documents are formally of equal status, adopted by the entire cabinet as the highest organ of the executive, and both are meant to express a cross-party consensus that should hold for the next five to ten years, regardless of changes in government. At the same time, German security policy continues to be lopsidedly biased toward territorial and alliance defense, and the defense white paper—which does not go into any kind of detail on atrocity prevention—is thus seen as significantly more important than the guidelines. The effective political weight of the guidelines remains to be seen in the coming years.

Germany's Institutional Setup for Atrocity Prevention

Who Owns Atrocity Prevention? Inter-agency Coordination

The administration of Germany's international relations is based primarily on the country's parliamentary system of government and an electoral system that usually leads to coalition governments. Germany's Basic Law firmly enshrines the "Ressortprinzip" (usually translated as "departmental principle") that grants a high degree of autonomy and responsibility to individual ministries. Compared to many other Western democracies, these legal foundations and the decades of political custom built on them have produced an unusually weak role for the Chancellery in any but the top-tier foreign policy issues of the day. The day-to-day policymaking process is supposed to be coordinated by the Foreign Office but on any overlapping policy issues, its leadership role is often challenged by either the Defense or the Development Ministry. In contrast to almost any other country in the world, the latter is a separate ministry, independent from the Foreign Office.

These general observations have a number of implications for atrocity prevention. First, Germany's Federal Security Council is largely defunct as a policy-making forum on international

¹¹ Karl Vick and Simon Shuster, "Time Person of the Year: Chancellor of the Free World," *TIME*, December 9, 2015, accessed December 31, 2017, <http://time.com/time-person-of-the-year-2015-angela-merkel/>.

¹² Markus Steinbrecher, et al., *Security and Defense Policy Opinion climate in the Federal Republic of Germany* (Potsdam: Centre for Military History and Social Sciences of the German Armed Forces, 2016), accessed December 31, 2017, <http://www.mgfa-potsdam.de/html/einsatzunterstuetzung/downloads/161124kurzberichtbevoelkerungsumfragezmsbw2016.pdf>.

security; its main role is to take decisions about arms exports. On conflict prevention and peacebuilding, the existing working level coordination group has done little more than facilitate information exchange between various ministries. There is no other cabinet-level forum to coordinate international security or prevention issues, not even a single deputies-level forum with this kind of broad mandate. After years of constant squabbling, the cabinet decided in June 2017 to pilot a “coordination group for crisis prevention, stabilization and peacebuilding” among directors-general (roughly equivalent to undersecretaries in the U.S. administration). Its future under the new administration depends on the arrangements and decisions to be taken by the next government.

Second, given these structural challenges, there is little inter-agency strategy development on conflict prevention and stabilization in general, let alone atrocity prevention. In addition, so far, German political leaders across all ministries lack an overview of the tools available for atrocity prevention. What is still missing is an inter-agency review that could provide an overview of existing instruments and capabilities and that not only refers to the tools of the Foreign Office and the Ministry of Defense, but also include the contributions by the Development Ministry, intelligence services, as well as the Ministries of Justice, Finance and the Interior.

Conflict Prevention, Stabilization and R2P in the Foreign Office

If there is no structure akin to the Atrocities Prevention Board coordinating inter-agency prevention initiatives, is there at least an individual in any of the ministries responsible for such coordination? In the fall of 2012, the German foreign office named the deputy director of its UN division the R2P focal point. However, successive focal points have mostly viewed themselves as the German representative at international focal point meetings organized by the Global Centre for the Responsibility to Protect. None of the German focal points of the past five years considered themselves responsible for looking inward and examining how the German government could improve its coordination and improve its tools for atrocity prevention.¹³

The relative neglect of R2P stands in stark contrast to the huge build-up of resources for “crisis prevention, stabilization, peacebuilding and humanitarian aid,” which is the name of an entirely new directorate-general created in 2014. As of 2017, it has more than 100 staff and an annual budget of more than 2 billion euro, the largest part of which is being spent on humanitarian aid. After the most recent reshuffling in the summer of 2017, there is now a division for “strategic foresight, early warning, scenario planning, R2P and civilian experts” as part of the new directorate-general. It supports the R2P focal point and seeks to keep track of atrocity risks as part of its broader early warning and early action efforts (see below).

The Foreign Office has long funded projects for what is known as civilian crisis prevention – usually without a link to an explicit conflict analysis or strategy process, but rather based on suggestions or requests from embassies or implementers (mostly NGOs) submitting proposals. In the fall of 2012, along with designating a formal R2P focal point, it began designating already existing crisis prevention projects as R2P projects to be able to respond to international or civil society questions about its operational footprint. Of course, the distinction between crisis, conflict, and atrocity prevention is usually more relevant at the analytical stage (to avoid missing certain risks) than at the level of programming.

An even larger proportion of the increased spending—hundreds of millions of euros per year in recent years—goes into civilian stabilization projects. Again, there is no formal distinction made between funding for atrocity prevention or R2P. Many of these projects seek to re-establish basic public services along with the social fabric of communities after civil war, displacement, and/or atrocities. Iraq, Afghanistan and Libya, among others, are priority countries. In recent years, some of this support went to supporting communities outside government or extremist control in Syria. Some projects promote inter-ethnic reconciliation or similar efforts that might be considered contributions to atrocity prevention in particular, while others follow merely broadly similar goals. However, despite significant conceptual investments into the improvement of programming for

¹³ Brockmeier, *The Future of Germany's Support*.

crisis prevention and stabilization at large, the role of atrocity prevention or R2P in decisions about priority countries or program design remains unaddressed.

Early Warning

A prerequisite for prevention is the ability of government bureaucracies to develop appropriate strategic policy options at an early stage and in every new phase of escalation. In most cases, however, violence escalates while the pressure to act only mounts as a response to media attention, at which point it is too late for most forms of prevention. As in other countries, German decision-makers are then too often confronted with the choice between either authorizing a military intervention—with all the associated political and practical risks of such an intervention, which translate into significant obstacles for such a decision—or just standing by while the slaughter unfolds.

For this reason, it is critically important to create political instruments that provide a wider range of policy options at all stages of violent escalation¹⁴ and increase the government's capacity to detect crises early. Related to the lack of coordination structures in the German administration, there are several individual early warning tools by different ministries, but no opportunities to analyze their results together and adjust the German government's strategy and programming accordingly.

While the foreign ministry draws on its embassies, there is little incentive for individual ambassadors to raise the alarm bells. Diplomats themselves are overextended, since embassies in at-risk countries are often too small and their freedom of movement is restricted. In some cases, embassies have been closed precisely at a time at which particularly close monitoring of the situation would have been decisive. There is no training for the diplomatic corps or embassy personnel on R2P or the risk factors in atrocity prevention (let alone for intelligence agents or development workers). Aid workers regularly complain about the lack of reporting from the government on violence and conflict risks, while government representatives prohibit them from publicizing their own early-warning analyses. The Ministry for Economic Cooperation and Development commissions annual country assessments by the German Institute of Global and Area Studies, which classifies the 90 countries that the ministry works in into three categories: low risk of conflict, increased risk of conflict, acute risk of conflict. This traffic light-style system is supposed to guide country desk officers in longer-term programming decisions and is shared with the Foreign Office, but there is no systematic, unified approach by the whole government to assessing the results of the different early warning instruments and devising a response.

The situational awareness provided by the intelligence services with regard to atrocities is even more deficient, largely because threats to Germany dominate the mission of the Federal Intelligence Service (*Bundesnachrichtendienst*, BND).¹⁵ Meanwhile, German military advisors serving in fragile countries are not even required to report on conflict or atrocity risks. Some of them consider any kind of critical reporting on local partners, even within their confidential internal channels, as damaging to their trust-building mission.

Mediation Capacities and Sanctions

The new government guidelines on crisis prevention and peacebuilding identify German support to mediation initiatives as a priority and commit the government to strengthening its own capacities as well as those of international institutions. The government also promises to appoint more high-ranking special envoys for specific crises. Germany might also be able to increase its support to mediation capacities on a European level; in many cases, the EU as a whole can be better placed to mediate than individual member states. In recent years, the Mediation Support Team within the European External Action Service (EEAS) has provided technical support to mediation processes in Mali, Myanmar, Lebanon, South Sudan, CAR, and Ukraine.¹⁶

¹⁴ Compare to Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

¹⁵ German Federal Government, "Konfliktregionen weltweit," Bundesnachrichtendienst, accessed November 10, 2017, http://www.bnd.bund.de/DE/Themen/Lagebeitraege/Konfliktregionen/Konflikte_node.html;jsessionid=7B3B77A151CA04D165390DFA3075F070.2_cid377.

¹⁶ European External Action Service, *Factsheet EU Mediation Support Team*, EEAS, accessed November 10, 2017, <http://eeas>.

Similarly, the guidelines promise to strengthen targeted sanctions and sanctions regimes—something that the German government would do through the European Union as well. The threat or imposition of targeted sanctions such as visa and travel bans, or the freezing of assets against individual perpetrators, is one tool at the disposal of the international community to deter atrocities. In comparison to the United States, the EU's capacity to impose and monitor targeted sanctions remains very weak. While more than 180 people are dedicated to designing and implementing sanctions at the US Treasury, some US policymakers complain that they face just a handful of people at the EEAS to deal with the measures.¹⁷ Here the EU could learn from the US experience, as well as review its own lessons from previous sanctions regimes.¹⁸ Strengthening the EU's capacity to design and impose sanctions will also allow it to engage more with the United States on the legal questions concerning listings of individuals. The required legal changes include improving the legal framework for sanctioning individuals so that well-founded travel and financial sanctions will be more difficult for perpetrators to challenge in the European Court for Human Rights.

Conflict-Sensitive Development Cooperation

In the context of Germany's system of strong ministerial autonomy, the fact that R2P belongs, so to speak, to the Foreign Office has long been a convenient excuse for other ministries to avoid participating in any possibly controversial discussion on their potential contributions to atrocity prevention. This is regardless of the fact that several other ministries have been responsible for important contributions to atrocity prevention themselves. While atrocity prevention or R2P are thus not formally recognized as relevant issues by the German development apparatus, there is a longstanding commitment (with its associated institutional backbone) to contributing to conflict prevention, security, and peacebuilding in development cooperation. The Ministry for Economic Cooperation and Development has a policy division for "peace & security and disaster risk reduction," and the implementing agencies have their own departments on peace and conflict reduction.

Around two-thirds of the partner countries of German development cooperation are fragile or in conflict. The Ministry for Economic Cooperation and Development and its main implementing agencies, the KfW banking group and the Gesellschaft für Internationale Zusammenarbeit (GIZ), claim to implement conflict-sensitive development programming and to follow a do-no-harm approach. Their analytical foundation for doing so is the country-specific traffic light assessment mentioned above as well as an internal GIZ classification of countries at risk of conflict. Both lists are updated once a year. If a given country is marked yellow or red in the annual analysis, the corresponding programs need to conduct a so-called peace and conflict assessment. This assessment (in theory) includes an analysis of the main conflict drivers and key actors, identifies development needs related to the risk factors, outlines options for contributions to peacebuilding that the suggested project could deliver, describes external risks, and suggests ways to monitor the implementation of such projects.¹⁹ In this context, there should be trainings for all employees in risk management and conflict sensitivity in crises countries.

In reality, the degree of conflict sensitivity for any given program depends very much on the country context and its staff. In some cases, conflict sensitivity has been exclusively understood as reputational risk management for GIZ or its implementing partners, not as minimizing the risk that a given project escalates a conflict. In some countries – in particular those that receive a high level of political attention in Berlin – time and pressure to spend money is so high, that there is no time for proper analysis, trainings, or check-ins for and with implementing partners.²⁰

europa.eu/factsheets/docs/factsheet_eu-mediation-support-team_en.pdf.

¹⁷ Interview with policymaker at the US Treasury Department, March 2015, Washington, D.C.

¹⁸ Mark Leonard, "A vision for the EU's new foreign policy strategy," European Council on Foreign Relations, April 24, 2015, accessed November 10, 2017, http://www.ecfr.eu/article/commentary_a_vision_for_the_eus_new_foreign_policy_strategy3006.

¹⁹ GIZ, *Safeguard Konflikt und Kontextsensibilität*, Guidance note for staff, on file with authors, January 2017.

²⁰ Interviews with GIZ employees, evaluators of GIZ projects and officials of the German Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development, throughout 2017.

Support to International Criminal Justice Mechanisms

An area in which the German administration has made promising progress in 2017 is international criminal justice – again without labeling it atrocity prevention or as relevant to R2P, as was the case with development cooperation. Until recently, the baseline for German or EU contributions to the national or international criminal prosecution of atrocity perpetrators was low.²¹ The German Federal Criminal Police (*Bundeskriminalamt*) has a “Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law,” which cooperates with the war crimes units of international police services in the EU Genocide Network, with the International Criminal Court, as well as with Europol and Interpol. The level of staffing remains low, and witness protection as well as stakeholder involvement require improvement.²²

The influx of almost a million refugees from Syria and the introduction of universal jurisdiction in German law has led to significant developments. First, the Federal Prosecutor is investigating cases in which suspected Syrian war criminals are now on German soil. As of late 2017, German authorities have conducted 27 investigations against individuals for war crimes committed in Syria or Iraq, as well as two wide-ranging investigations about Syrian war crimes (so-called structural investigations without targeting a particular accused individual). Four of the individual cases have been brought to trial on charges of war crimes or crimes against humanity, in addition to 45 cases based on terrorism charges.²³

Second, it seems that the German Federal Prosecutor is willing to, for the first time, apply the principle of universal jurisdiction and prosecute high-ranking members of the Assad regime for war crimes or crimes against humanity. The so-called principle of opportunity has so far given German prosecutors an out from prosecuting war criminals worldwide (something that would theoretically be possible within German law). The principle stipulates that if perpetrators are not in Germany, do not have German citizenship, and the prosecution has little chances for success, the Office of the Federal Prosecutor (*Bundesanwalt*) can decide against taking up such a case. On Syria, however, the fact that thousands of potential victims and witnesses now live in Germany and that there is more available evidence gathered on the crimes of Syrian regime members, has significantly increased the chances of success. In mid-2017, the Federal Prosecutor General (*Generalbundesanwalt*) seemed willing to bring a case against key members of the Assad regime to trial (*in absentia*) in Germany. In the fall of 2017, the Federal Prosecutor was handed the so-called “Ceasar” files, which had been smuggled out of Syria years earlier and document systematic torture in Syrian prisons with photographic evidence. The German Federal Prosecutor is the first judicial authority worldwide that could use evidence to issue international arrest warrants against key members of the Assad regime.

Military Contributions

Despite a growing readiness to deploy German troops, military interventions remain controversial and their mixed results have only reinforced a tendency to be skeptical about the utility of military force to achieve political objectives among the German strategic community. Accordingly, for the Ministry of Defense, atrocity prevention is a difficult issue in several ways. Despite 82% support in polls for using the military to “prevent acts of genocide”²⁴ and the fact that the public had little

²¹ Despite the massacre in Andijan/Uzbekistan (2005) and the EU sanctions, the German armed forces continued its military training program; the erstwhile Uzbek Interior Minister, Sakir Almatow, the person with primarily responsible for “Andijan,” traveled to Germany in November 2005 on “humanitarian grounds” and received treatment in a private clinic in Hannover. On criminal law actions against war criminals in Germany: Dominic Johnson, Simone Schlindwein, and Bianca Schmolze, *Tatort Kongo – Prozess in Deutschland. Die Verbrechen der ruandischen Miliz FDLR und der Versuch einer juristischen Aufarbeitung* (Berlin: Ch. Links Verlag, 2016).

²² Wolfgang Kaleck, “Keine Straflosigkeit bei Kriegsverbrechen – Völkerstrafprozesse in Deutschland voranbringen,” Anhörung im Ausschuss für Recht und Verbraucherschutz des Deutschen Bundestages (statement, Berlin, April 25, 2016), European Center for Constitutional and Human Rights, accessed December 31, 2017, <https://www.bundestag.de/blob/419958/16a05fb20339cecc383b10dba5835b10/ecchr-data.pdf>.

²³ Human Rights Watch, “These Are the Crimes We Are Fleeing” Justice For Syria In Swedish and German Courts, October 2017, accessed December 31, 2017, https://www.hrw.org/sites/default/files/report_pdf/isyria1017_web.pdf.

²⁴ Körber Foundation, *Einnischen oder zurückhalten? Ergebnisse einer repräsentativen Umfrage von TNS Infratest*

objection to arming and training the Kurdish Peshmerga since 2014, the measure is still considered unpopular. Preventing or stopping atrocities is also widely seen as irresponsible overreach among the military itself and the strategic community, partly due to a lack of expeditionary capabilities and partly because of a lack of familiarity with specific operational and tactical scenarios such as those developed in the Mass Atrocity Response Operations (MARO) project in the US or similar work in Norway.²⁵ As a result, neither the Defense Ministry as an institution nor any incumbent ministers have anything to gain politically by actively looking for expeditionary adventures.

The most likely scenario for a German military contribution to preventing atrocities in the coming years is through its growing participation in UN peace operations. Since 2015, up to 600 soldiers have been serving with the UN peacekeeping mission in Mali. This tripled German participation in peacekeeping, which had thus far been limited to contributions to the UN Interim Force in Lebanon and to a few soldiers each in South Sudan, Darfur, and Liberia, among other places. At the same time, the German government presents its participation in Mali not as a contribution to strengthening the UN peacekeeping system and the protection of civilians, but as a contribution to the fight against terrorism. Similarly, the government contributed to the anti-IS coalition as a response to French demands.

It is still likely that German contributions to peacekeeping will further increase in the next four years, and since most peacekeeping operations are mandated to protect civilians, it would be high time for the German military to familiarize itself with the practical challenges of this particular mission. So far, there is no doctrine on operational or tactical protection of civilians (POC) in the *Bundeswehr* that goes beyond the basics of international humanitarian law.

The other military pillar that Germany is likely to expand in the coming years is military assistance. A new €100m train and equip program, created in 2016, partly aims to build the capacity of reliable military contributors to UN, African Union (AU), and other peace operations, particularly in Africa and the Middle East. This program is set to expand along with a similar police training component and an older, slightly smaller non-lethal equipment and advisory program. As the specific projects under these programs move from their historical focus on logistics and medical support toward frontline capabilities, a focus on operational and tactical protection of civilians and broader atrocity prevention scenarios such as safe zones will become increasingly relevant as well.²⁶

Engaging Emerging Powers and Rebuilding Effective International Order

Since the global political fallout over NATO's abuse of the UN Security Council resolution for military intervention in Libya 2011,²⁷ leading powers have been unable to find common ground to discharge their duties in safeguarding international peace and security. The most glaring example has been the war in Syria. Most major supporters of atrocity prevention turned their attention away from the multilateral promotion of atrocity prevention toward internal, operational instruments they were able to improve regardless of the multilateral environment. At the same time, atrocities take place in a permissive political climate. In an increasingly contested world order, technical instruments such as prevention, stabilization and development projects through

Politikforschung zur Sicht der Deutschen auf die Außenpolitik [Get in or Keep out? Results of a representative survey by TNS Infratest Policy Research about the View of Germans on Foreign Policy], October 2014, accessed February 20, 2018, http://www.aussenpolitik-weiter-denken.de/fileadmin/user_upload/allgemein/Koerber-Stiftung_Umfrage_Aussenpolitik_Broschuere.pdf.

²⁵ Stephen F. Burgess, "Comments on the Mass Atrocity Prevention Response Operations (MARO) Handbook," *Genocide Studies and Prevention: An International Journal* 6, no. 1 (2011), 66-69, accessed December 31, 2017, <http://scholarcommons.usf.edu/gsp/vol6/iss1/9>; Stian Kjeksrud, Alexander W. Beadle, and Petter H.F. Lindqvist, "Protecting Civilians from Violence: A Threat-Based Approach to Protection of Civilians in UN Peace Operations," (Oslo: FFI and NODEFIC, 2016), accessed December 31, 2017, <https://www.ffi.no/no/Publikasjoner/Documents/Protecting-Civilians-from-Violence.pdf>.

²⁶ One of the authors developed more detailed recommendations along these lines in Andreas Heinemann-Grüder and Philipp Rotmann's contribution to the *Peace Report 2017*. Heinemann-Grüder and Rotmann, *Practical Implementation of Prevention*.

²⁷ Sarah Brockmeier, Oliver Stuenkel, and Marcos Tourinho, "The Impact of the Libya Intervention Debates on Norms of Protection," *Global Society* 30, no. 1 (2016), 113-133.

criminal prosecutions, sanctions, mediation, or military force alone will not stop atrocities. In many cases, Syria or Burundi being just two of the most obvious current examples, preventing atrocities remains foremost a problem of international political order.²⁸

For the UN Security Council to overcome its paralysis on atrocity prevention, the Council needs to address the danger of mandate abuse. Germany, which is seeking another two-year non-permanent seat for 2019 and 2020, could play a pivotal role in building bridges, having abstained from the ill-fated mandate for the military intervention in Libya together with the later critics Brazil, India, Russia and China. Germany could use the Brazilian proposal for "Responsibility while Protecting" (RwP) as a starting point in such an endeavor. Brazil proposed the idea in late 2011, frustrated with how the Libya intervention had turned into regime change with no checks by the UN Security Council. At the time, the initiative fell flat,²⁹ but the substantive proposals continue to be worth another serious look.

RwP focused on two areas that are of continued interest to Germany: the criteria for the use of force to protect civilians, and the creation of accountability mechanisms for the use of force. Given the controversies surrounding Resolution 1973, it is unlikely that the Security Council will ever again pass a resolution to protect civilians with all necessary means without also installing checks or regulations that give the council more control over an intervention.³⁰

Conclusion

Slowly, Germany is making progress on atrocity prevention, but the issue is far from playing a key role in Berlin. As our review of Germany's bureaucratic structures on atrocity prevention has shown, German contributions to atrocity prevention—whether diplomatic, financial, conceptual or military—will not fill the gap created by the US retreat in this area any time soon. This is equally the case for other countries in the European Union and the EU as a whole. Much of the recent progress, both on the operational and on the doctrinal levels, is the result of nimble bureaucratic entrepreneurship rather than popular political mobilization or effective lobbying by civil society. Civil servants, as the name implies, are servants of state and society. More domestic political and civil society leadership will be required to realize Germany's stated commitments to preventing genocide and mass atrocities.

Note

This article draws on previous publications by the authors, including Sarah Brockmeier, Gerrit Kurtz, and Philipp Rotmann, "Schutz und Verantwortung: Über die US-Außenpolitik zur Verhinderung von Gräueltaten" Berlin: Heinrich-Böll-Stiftung & Global Public Policy Institute, 2013; Tessa Alleblas, et al, "In the Shadow of Syria. Assessing the Obama Administration's Efforts on Mass Atrocity Prevention," Policy Brief (Hague Institute for Global Justice and Global Public Policy Institute, April 2017); Sarah Brockmeier, Julian Junk, and Gerrit Kurtz, "Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect," *Conflict, Security & Development* 14, no. 4 (2014), 429-460; Sarah Brockmeier, "The Future of Germany's support to the Responsibility to Protect," in *Shifting Power and Human Rights Diplomacy*, eds. Doutje Lettinga and Lars van Troost (Amsterdam: Amnesty International Netherlands, October 2016), 73-81; Andreas Heinemann-Grüder and Philipp Rotmann, "Practical Implementation of Prevention: Outlaw the Violence, Protect the People," In *Peace Report 2017: A Selection of Texts*, eds. Bruno Schoch, et al (Zurich: Lit Verlag GmbH & Co. KG Wien, 2017), 54-68.

²⁸ Philipp Rotmann, Gerrit Kurtz, and Sarah Brockmeier, "Major Powers and the Contested Evolution of A Responsibility To Protect," *Conflict, Security & Development* 14, no. 4 (2014), 355-377; Gerrit Kurtz and Philipp Rotmann, "The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect," *Global Society* 30, no. 1 (2016), 3-20.

²⁹ Sarah Brockmeier, Oliver Stuenkel, and Marcos Tourinho, "'Responsibility While Protecting': Reforming R2P Implementation," *Global Society* 30, no. 1 (2016), 134-150.

³⁰ Thorsten Benner et al, *Effective and Responsible Protection from Atrocity Crimes: Toward Global Action*, Global Public Policy Institute (April 2015), 25.

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Why the United Nations Underperforms at Preventing Mass Atrocities

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Introduction

If the United Nations always succeeded or never succeeded in preventing atrocity crimes, then there would be no point in trying to improve its performance. Instead, its track record has been remarkably uneven. Its quiet successes at preventing mass violence have been more than matched by horrific and well-publicized failures to prevent (or protect).¹ Though it is impossible to measure prevention with any degree of certainty, it appears that the world body has, on occasion, made a positive difference.² So, it has potential. But, in too many situations, that potential has not been realized. This essay asks why the UN's preventive efforts have been so inconsistent and how some of the shortcomings in its performance might be remedied.

At the outset, this paper makes three assumptions. One, over the years, the United Nations has been no worse at preventing mass atrocities than have been regional and sub-regional organizations, governments, and/or civil society. Two, when prevention has worked, it has generally been because there has been productive collaboration among actors of these various types and levels, so credit or blame should be shared. Three, nevertheless, mediocrity on any actor's part is not an acceptable standard when it comes to an issue of public policy with such existential implications for human life.

This essay argues further 1) that the United Nations has a unique combination of assets that could be put to much better use in this area, 2) that shortcomings in its performance arise as much from conceptual misunderstandings and institutional dysfunction as from capacity deficits, 3) that these shortcomings have negative implications for whether and how effectively other critical actors respond to the atrocity prevention challenge, and 4) that steps could be taken to improve the situation significantly without a huge infusion of scarce resources. These points are addressed in the following four sections on potential, shortcomings, implications, and remedies, respectively.

Potential

International efforts to prevent mass atrocity crimes require four core elements: legitimacy, authority, capacity, and strategy. Legitimacy is the ability to generate and sustain political support on the local, national, and regional, as well as international, levels for the preventive measures being undertaken or contemplated and for the purposes being served. Authority, which may buttress legitimacy, derives from those legal instruments and institutional decision-making processes that confirm that those preventive actions are appropriate to the circumstances and proportional to the purposes being pursued. Capacity refers to having and/or mobilizing and being able to employ the requisite physical, material, financial, and human resources to carry out the preventive measures fully and effectively. Strategy relates to the ability to assess and frame the unfolding situation

¹ For the purposes of this paper, mass atrocity crimes are considered to be those identified under United Nations, *General Assembly Resolution 60/1, 2005 World Summit Outcome*, October 24, 2005 (UN Doc. A/RES/60/1), paragraph 138, its discussion of the Responsibility to Protect, namely genocide, war crimes, ethnic cleansing, and crimes against humanity. The terms atrocity and mass atrocity are used interchangeably in this paper.

² In his 2015 and 2016 reports on the Responsibility to Protect (R2P), UN Secretary-General Ban Ki-moon noted that preventive efforts by the United Nations and its partners had helped to prevent mass atrocity crimes and/or their escalation in Côte d'Ivoire, Guinea, Kenya, Kyrgyzstan, and Timor-Leste. United Nations, Report of the Secretary-General, *A Vital and Enduring Commitment: Implementing the Responsibility to Protect*, July 13, 2015 (UN Doc. A/69/981-S/2015/500), para. 8; United Nations, Report of the Secretary-General, *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, July 22, 2016 (UN Doc. A/70/999-S/2016/620), paras. 33 and 55. Twelve chapters of the 2016 *Oxford Handbook of the Responsibility to Protect* are devoted to situations in which mass atrocity crimes occurred or were prevented. See Alex J. Bellamy and Tim Dunne, eds., *Oxford Handbook of the Responsibility to Protect* (Oxford: Oxford University Press, 2016), 693-910. Also see Naomi Kikoler, "Guinea: An Overlooked Case of the Responsibility to Protect in Practice," in *The Responsibility to Protect: Overcoming the Challenge of Atrocity Prevention*, eds. Serena K. Sharma and Jennifer M. Welsh (Oxford: Oxford University Press, 2015), 304-323.

and the players involved both in a timely manner and from an atrocity prevention perspective, to develop an effective plan for response to developments on the ground, to build a sustainable coalition of actors on all levels willing to pursue the same objectives in a mutually reinforcing manner, and to reassess and adjust the strategy as needed in the face of unexpected developments. Ultimately, prevention is not completed until steps are taken to discourage a reoccurrence of such threats of mass atrocities.

Legitimacy should be one of the United Nations' prime attributes. The 193-member General Assembly, the world's only virtually universal political body, has endorsed both the Genocide Convention and the Responsibility to Protect (R2P). Though its decisions—other than on internal matters—are not legally binding, the Assembly has, from its earliest days been the world's prime incubator of global norms and standards. Since 2009, the Assembly's annual informal interactive dialogues on R2P have shown broad and persistent support from the Member States for the preventive dimensions of R2P, even as some delegations continue to express reservations about possible coercive measures under the third pillar of the Secretary-General's implementation strategy (as crafted by this author).³ Successive Secretaries-General have produced a series of well-received reports on conflict prevention, something which António Guterres has pledged to make the centerpiece of his tenure.⁴ In many cases, moreover, the United Nations is more likely to be perceived as a disinterested actor than would neighbors or more distant but powerful states. Perceptions of impartiality should bolster claims to legitimacy. Multilateral measures are generally assumed to be more legitimate than unilateral ones, as long as the measures undertaken by the UN (or a regional body) are not perceived as being manipulated by a few powerful Member States to further narrow national interests.

Authority should be another advantage for the world body. Its Charter gives the United Nations ample legal authority for initiating preventive efforts and for building global-regional partnerships to do so, as well as historically unprecedented authority for undertaking multilateral enforcement action. Prevention is the first purpose mentioned in the Charter and Chapter VI lays out a wide range of non-coercive tools for preventing and resolving conflict. Chapter VIII defines the modalities for collaboration with regional arrangements in these pursuits, while Chapter VII outlines the Security Council's unsurpassed and historically unique enforcement powers.

Though enforcement is often thought of solely in terms of coercive military action, there are a wide range of sanctions—relating to diplomatic, political, financial, and economic measures, as well as restrictions on military assistance and arms transfers—that could be employed with greatest effect early in a crisis for preventive and/or deterrent purposes, whether targeted on individual, group, or national actors. Multilateral sanctions tend to be much more persuasive than unilateral ones, so getting Security Council authorization can be an essential step. In the context of atrocity prevention, it should be recalled that the Council's enforcement powers override the constraints on intervening in essentially domestic matters noted in Article 2 (7). Though the Charter is silent on genocide and mass atrocities, it is replete with multiple references to promoting and encouraging respect for human rights and fundamental freedoms. In that regard, the Security Council has the authority to make referrals to the International Criminal Court (ICC), a non-UN body, concerning the alleged commission of atrocity crimes. In a number of situations, UN representatives have reminded local and national actors of this possibility.

³ In 2009, the General Assembly held both a short informal interactive dialogue and then a formal debate on the Secretary-General's report, *Implementing the Responsibility to Protect*, of 12 January 2009, which laid out his three-pillar strategy. United Nations, Report of the Secretary-General, *Implementing the Responsibility to Protect*, January 12, 2009 (UN Doc. A/63/677). This author was the architect of the strategy and the principal drafter of that report and all other statements and reports by the Secretary-General on R2P from 2007 to mid-2012. Each year since 2009, the Secretary-General has produced a report on different aspects of R2P to be addressed at informal interactive dialogues of the General Assembly. The reports and summaries of the dialogues can be found on the web sites of the Global Centre on the Responsibility to Protect and of the International Coalition for the Responsibility to Protect.

⁴ The first major report, by Secretary-General Kofi Annan, was United Nations, Report by the Secretary-General, *Prevention of Armed Conflict*, June 7, 2001 (UN Doc. A/55/985-S/2001/574). More recently, see António Guterres, "Secretary-General-Designate Remarks to the General Assembly on Taking the Oath of Office" (speech, New York, December 12, 2016) United Nations.

It is commonplace to observe that the United Nations' claims to legitimacy and authority are not matched by a reliable capacity to carry out its decisions and to forward its values. There is much to this observation. However, this is more a commentary on its capacity for response than for prevention, given that a coercive response under Chapter VII requires the mobilization of the economic and/or military capacities of the Member States, as well as authorization by the Security Council. The organization's capacities for preventive action under Chapter VI and Article 99 (see below)—even if only undertaken by the Secretary-General, the Secretariat, or other parts of the UN system—do not necessarily depend on explicit action by the Member States. These preventive capacities are quite varied and broad, if not deep or robust.

In terms of structural or upstream prevention, the UN system has a presence, whether for sustainable development, humanitarian, human rights, peacebuilding, peacekeeping, and/or conflict resolution purposes, in most of the countries of potential concern. In terms of operational or more immediate preventive measures, when endorsing R2P at the 2005 World Summit, the gathered heads of State and government agreed to support the United Nations "in establishing an early warning capacity" and to assist States "under stress before crises and conflicts break out."⁵ Though the Summit authorized the establishment of a Peacebuilding Commission (PBC) limited to post-conflict scenarios, it should be recalled that the initial proposal for the Commission, introduced by Secretary-General Kofi Annan's High-level Panel on Threats, Challenges and Change in late 2004, envisioned it having an R2P-like preventive function as well. The first core function for the Commission, according to the High-level Panel, should be "to identify countries which are under stress and risk sliding towards State collapse" and "to organize, in partnership with the national Government, proactive assistance in preventing that process from developing further."⁶ The substantive parallels to the R2P language on assisting states under stress are striking. Yet the fact that the preventive dimension of the PBC was not retained in the Summit articulation of the purposes of the PBC is suggestive of the political hurdles that have to be overcome in some cases of structural and operational prevention, as well as in crafting effective responses to unfolding atrocities.

In terms of operational prevention, under Article 99 of the Charter the Secretary-General "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."⁷ Since 2009, this clause has increasingly been interpreted as including the potential commission of mass atrocity crimes, whether in statements to the Council by the Secretary-General, his Special Advisor for the Prevention of Genocide, or the High Commissioner for Human Rights.⁸ The bully pulpit that the Secretary-General and his small army of SRSGs (Special Advisers, Special Representatives, and Envoys) share can be critical to getting preventive messages to would-be perpetrators, bystanders, vulnerable populations, media, civil society leaders, governments, and regional arrangements. These messages have often been about discouraging the incitement of atrocity crimes, something which all of the world leaders agreed at the 2005 World Summit to prevent (paragraph 138 of the Outcome Document). In this author's experience, pushing back against indications of incitement has proven to be one of the most flexible and timely tools in the prevention toolkit.

⁵ United Nations, *2005 World Summit Outcome*, paras. 138 and 139, respectively.

⁶ United Nations, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2004 (United Nations Department of Public Information), 83, para. 264.

⁷ United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, June 26, 1945 (United Nations), article 99.

⁸ The inclusion of the four R2P crimes under Article 99 was proposed by this author to the Security Council's Ad Hoc Working Group on Conflict Prevention and Resolution in Africa in December 2008. This has since become common practice. United Nations Security Council, *Letter Dated 30 December 2008 from the Permanent Representative of South Africa Addressed to the President of the Security Council*, December 31, 2008 (UN Doc. S/2008/836), 13. Also see Simon Chesterman, "Relations with the Secretary-General," in *The UN Security Council in the 21st Century*, eds. Sebastian von Einsiedel, David M. Malone, and Bruno Stagno Ugarte (Boulder: Lynne Rienner, 2016), 453. In his final report on R2P, Secretary-General Ban Ki-moon noted that "when the situation has required it, I have informed the Security Council of atrocity crime risks and urged it to take early and decisive action. My hope is that future Secretaries-General will continue to draw on the authority provided to them under the Charter of the United Nations." United Nations Secretary-General, *Mobilizing Collective Action*, 11, para. 39.

Strategy, perhaps more than the other core dimensions, is an area under construction. Though the General Assembly approved the Genocide Convention almost seventy years ago, the first UN plan to prevent genocide was not articulated until 2004 to mark the tenth anniversary of the Rwandan genocide (discussed more fully below).⁹ Since 2009, the Joint Office on Genocide Prevention and the Responsibility to Protect has developed an all-encompassing Framework for Analysis for the Prevention of Atrocity Crimes and the Secretary-General's annual reports on different aspects of R2P have placed a heavy emphasis on prevention. Though the UN was late to framing concepts and strategies for preventing atrocity crimes, so too were governments, regional organizations, and academia. In the 1990s, however, the UN was at the forefront of the articulation of concerns about human security and human protection that continue to provide an intellectual and political context for atrocity prevention.¹⁰ This intellectual heritage suggests that the world body is in a position to develop a broader and more multilateral framework for preventing and responding to mass atrocity crimes beyond the narrower perspectives of some governments, much as it did in the case of counter-terrorism following the attacks of 9/11.

Shortcomings

It would be tempting, but overly sweeping and simplistic, to assert that the primary reason for the UN's underperformance in atrocity prevention has been because of the narrow domestic and geopolitical agendas of powerful Member States. This may be the case in places, such as Syria, Sudan, or Yemen, where the geopolitical stakes are perceived to be high and the UN's entreaties have fallen on deaf ears. The UN's preventive efforts may well have had more success in low profile cases on the whole than in high profile ones in which there have been more actors of significance. Yet the UN has done relatively well in some places, such as Kyrgyzstan and Kenya, where the stakes were high geopolitically and relatively poorly in others, such as Sri Lanka and Central African Republic, where the international stakes were modest.

It may well be that the 193 Member States are simultaneously the greatest strength and the greatest weakness of the United Nations. Either way, forging their collaboration on matters of common concern was a founding purpose of the organization. So it is not enough for the Secretariat—or for capitals or civil society—just to lament the differences among key Member States and declare some situations to be too politically sensitive to handle, especially when there appears to be an imminent threat of mass atrocity crimes. The inter-governmental bodies provide the mandates that the Secretariat has an obligation to implement, but the latter cannot be passive bystanders to the political process. Their responsibilities are not limited to narrow interpretations of the specific mandates they are assigned by the inter-governmental bodies.

UN officials are obligated both to act to further the principles and purposes of the Charter and, as noted above, to inform the Security Council of possible threats to international peace and security under Article 99 of the Charter. The latter entails taking proactive steps to gather and assess the information needed to provide the Council and other relevant organs with the Secretariat's informed and considered judgements about situations of concern. As the 2000 Brahimi peacekeeping report famously commented, in the context of mass atrocity prevention, the Secretariat has an obligation to tell the Security Council what it needs to hear, not what it wants to hear.¹¹ Too often, the Secretariat engages in pre-emptive self-censorship, trimming their analytical sails before even testing the direction and velocity of the political winds. (There have also been occasions, of course, when the Secretariat has exaggerated risks and potential casualties.)

⁹ The reasons for this delay are discussed in Edward C. Luck, "Roots of Ambivalence: The United Nations, Genocide, and Mass Atrocity Prevention," in *Policies and Practices for Preventing Atrocities*, eds. Ted Robert Gurr and Barbara Harff (London: Routledge, forthcoming).

¹⁰ Tellingly, genocide prevention and mass atrocity prevention—the latter under the rubric of R2P—were among the last entries in a long list of human protection concerns adopted by the UN. They were preceded, among other concerns, by humanitarian assistance, internal displacement, children and armed conflict, sexual and gender-based violence, women, peace, and security, and civilian protection in peacekeeping contexts. See Chapter One of Alex J. Bellamy and Edward C. Luck, *The Responsibility to Protect: From Promise to Practice* (Cambridge, UK: Polity Books, forthcoming).

¹¹ United Nations, *Report of the Panel on United Nations Peace Operations*, August 21, 2000 (UN Doc. A/55/305-S/2000/809).

The long tradition of blaming the Member States for every UN failing has done little to enhance understanding of how to improve the organization's performance, especially in areas, such as atrocity prevention, in which the Secretariat could, and often does, play a major operational role. The Security Council's growing willingness to hear from the Secretariat—and, in informal settings, from civil society—about potential atrocity crimes has been an important step forward, but much more could be done in the future to make this a more regular feature of Secretariat-Member State collaboration.¹² Little attention, for instance, has been given to the roles the General Assembly, the Peacebuilding Commission, and the Human Rights Council could play in forwarding the atrocity prevention agenda.

Though the Assembly, under Article 12 (1) of the Charter, may not make recommendations on matters being addressed by the Council, it may discuss or investigate any matter. It has, for instance, passed several pointed resolutions on Syria, reflecting broad frustration among the Member States about the blockages within the Council on the situation.¹³ Under the Uniting for Peace formula, the Assembly has a long history of authorizing peace operations under Chapter VI of the Charter.¹⁴ Though such operations would not have an enforcement mandate, they might play a useful function as preventive deployments in places where there are real possibilities of instability and atrocity crimes. Under Article 11 (3) of the Charter, the Assembly has the equivalent of Article 99 authority for referring threats to the Council. As noted earlier, the Assembly has been the locus for efforts to refine R2P and to build broader Member State support for it. But it has also been the forum for frustrating attempts to gain the human and financial resources needed to mount a proper and sustainable effort to prevent atrocity crimes. For instance, a small minority in the Assembly's Fifth Committee has been able—or allowed—to repeatedly block the provision of even very modest capacities to implement R2P, despite its endorsement at the highest levels at the 2005 World Summit.

As noted above, the Peacebuilding Commission (PBC) was originally conceived as an inter-governmental body that could deal with countries either sliding into or emerging from conflict. It was established as a subsidiary advisory body both of the General Assembly and of the Security Council.¹⁵ Though its pre-conflict function was dropped, it could still have a preventive role in helping societies that had suffered sectarian violence from repeating the cycle. This could be a significant preventive measure, as it has long been said that the best predictor of genocide is past genocide. In its country-specific configuration, the PBC could potentially help draw economic and political resources to situations of atrocity concern that have not received much international attention. In practice, however, there has been relatively little overlap between the countries on which the PBC has focused and those of highest priority from an atrocity prevention viewpoint. As a 2015 review of the PBC underscored, for a variety of political and institutional reasons, it has not been able to realize its potential for strategic leadership or for bridging the gaps between the Security Council and the General Assembly.¹⁶

The Geneva-based Human Rights Council came rather late to the R2P debate for both political and geographical reasons. However, the Council's Commissions of Inquiry on the Democratic

¹² Alex J. Bellamy, "UN Security Council," in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 249-268; Edward C. Luck, "Prospects for Institutional Renovation and Reform," in *The Oxford Handbook on the United Nations*, 2nd ed., eds. Thomas G. Weiss and Sam Daws (Oxford: Oxford University Press, forthcoming).

¹³ The General Assembly, for instance, authorized the creation of a mechanism to investigate the alleged commission of atrocity crimes in Syria. United Nations, *Resolution Adopted by the General Assembly on 21 December 2016* (UN Doc. A/RES/71/248).

¹⁴ Dominik Zaum, "The Security Council, the General Assembly, and War: The Uniting for Peace Resolution," in *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, eds. Vaughan Lowe, et al. (Oxford: Oxford University Press, 2008), 154-174.

¹⁵ United Nations, *General Assembly Resolution* (UN Doc. A/RES/60/1180); United Nations, *Security Council Resolution 1645 on Post-conflict Peacebuilding*, 2005 (UN Doc. 1645).

¹⁶ United Nations, *Identical Letters Dated 29 June 2015 from the Chair of the Advisory Group of Experts on the Review of the Peacebuilding Architecture Addressed to the President of the General Assembly and the President of the Security Council*, June 30, 2015 (UN Doc. A/69/968-S/2015/490); United Nations, *The Challenge of Sustaining Peace*, Report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, June 30, 2015 (UN Doc. A/69/968-S/2015/490).

People's Republic of Korea (DPRK) and on Syria have both been outspoken about the growing evidence of mass atrocity crimes, and the former invoked R2P and called on the international community to address the dire human protection situation in the DPRK more vigorously.¹⁷ In late 2016, the Russian Federation failed to be elected by the General Assembly to membership in the Human Rights Council, purportedly because of widespread concerns about the commission of atrocity crimes in Syria.¹⁸ From the passage by the General Assembly of the Genocide Convention and the Universal Declaration of Human Rights a day apart in 1948, these two agendas have followed parallel, not convergent, paths.¹⁹ Mutual respect and common purpose have been combined with a sense of ambiguity and even ambivalence about the relationship between atrocity crimes and human rights.²⁰ In terms of implementation, the relatively large Office of the High Commissioner for Human Rights in Geneva and its much smaller cousin addressing genocide prevention and R2P in New York have tended to have distinct perspectives on reporting and institutional matters, even as they generally have viewed specific situations from similar but not congruent perspectives.²¹ It was this author's experience that the human rights conditions in a country were not always indicative of its proclivity to mass violence. Some chronic human rights violators were relatively stable, while some societies that were not among the worst violators, such as Kenya and Kyrgyzstan, nevertheless witnessed sudden violence and atrocity crimes.

The pursuit of human rights is not the only seemingly natural partner for atrocity prevention in which the relationship has had dysfunctional elements. In the case of humanitarian affairs, the differences have run deeper, based on divergent conceptual and political assumptions that are not easily reconciled. R2P, in particular, has not been embraced by many in the humanitarian community because of its inclusion of the use of coercive military force as a response option in extreme situations. As Hugo Slim has put it, the concerns of humanitarian actors about the third pillar of the Secretary-General's R2P implementation strategy "focus on four issues: the politicization of civilian protection; raised expectations that tend to freeze conflicts and postpone peace-making; the likely failure of force and the widening of conflict; and the contamination of humanitarian agencies by association."²²

From an atrocity prevention or R2P perspective, the emphasis in humanitarian principles on maintaining impartiality and preserving humanitarian space and access may entail prioritizing the cultivation of good relations with the very regimes that may be committing or planning to commit mass atrocities against their populations. These differences came to a head in the shaping of the UN Secretariat's response—the Security Council largely stayed on the sidelines—to the mounting violence targeted at civilians in the concluding phases of the civil war in Sri Lanka in late 2008–early 2009. It was decided at the upper reaches of the Secretariat that the situation should be framed as a humanitarian emergency, with the Emergency Relief Coordinator and the Office for Coordination of Humanitarian Affairs (OCHA) put in charge. R2P and genocide prevention perspectives were

¹⁷ United Nations Human Rights Council, *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, February 7, 2014 (UN Doc. A/HRC/25/63) and Detailed Findings (UN Doc. A/HRC/25/CRP.1).

¹⁸ It is highly unusual for one of the five permanent members of the Security Council to lose such a vote. Julian Borger, "Russia Denied Membership of UN Human Rights Council," *The Guardian*, 28 October 2016.

¹⁹ It took several decades for human rights to gain a solid foothold in the UN Secretariat, and the first UN High Commissioner for Human Rights was not appointed until 1993, 45 years after the Universal Declaration. Genocide prevention took even longer, not gaining any presence in the Secretariat until 2004, as discussed below.

²⁰ For largely historical reasons, the ten human rights treaty bodies addressed by the Human Rights Council do not include the Genocide Convention. United Nations, Report of the Secretary-General, *Status of the Human Rights Treaty Body System*, July 18, 2016 (UN Doc. A/71/118), 2, para. 1. For the negotiating history of the Genocide Convention and the singular role of Raphael Lemkin, see James Waller, *Confronting Evil: Engaging the Responsibility to Prevent Genocide* (Oxford: Oxford University Press, 2016), 15–23 and Samantha Power, "A Problem from Hell: America and the Age of Genocide" (New York: Harper Collins, 2002), 51–60. For a discussion of the reluctance of the UN founders to embrace genocide or atrocity prevention, see Luck, *Roots of Ambivalence*.

²¹ The appointment in 2010 of an Assistant Secretary-General to head the High Commissioner's office in New York has enhanced the opportunities for collaboration.

²² Hugo Slim, "Saving Individuals from the Scourge of War: Complementarity and Tension between R2P and Humanitarian Action," in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 555.

not welcome in the deliberations, reports of mounting human rights violations were dismissed, and the UN's voice was muted as the war crimes unfolded.²³

The internal review of the organization's failures in the Sri Lankan crisis was candid about its shortcomings and pointed to a number of areas needing improvement. The primary institutional response was the enunciation of the Rights Up Front Action Plan by Secretary-General Ban in September 2013.²⁴ The Plan had many positive elements, including the development of more coherent and streamlined means of collecting and integrating information on serious human rights violations into crisis response planning at UN headquarters. From an atrocity prevention perspective, however, the results have been more mixed. The differences in perspective between the humanitarian and atrocity prevention views of the crisis in Sri Lanka were finessed rather than confronted.

As Andrew Gilmour, at the time a key official in the Office of the Secretary-General and now Assistant Secretary-General for Human Rights in New York, put it: "those involved in formulating the initiative avoided getting into what was seen as an unproductive debate on the distinction between the 'protection of civilians' and the 'protection of human rights,' as Rights up Front is committed to both."²⁵ He goes on to note the common emphasis in Rights Up Front and R2P on prevention and to underscore the concerns of some Member States with the possibility of using force under an R2P banner.²⁶ Though the use of force was never a desirable or feasible alternative in Sri Lanka, the 1999 reports on the UN's failures to act in a timely and decisive manner in the Rwandan genocide and the massacre at Srebrenica highlighted the consequences of the UN's reluctance to take decisive military action when atrocity crimes were unfolding and it was a feasible option.²⁷

The Rights Up Front initiative had significant implications, as well, for decision-making in the upper echelons of the Secretariat. A Senior Action Group (SAG) was established, chaired by the Deputy Secretary-General, to review a range of ongoing crises and to insure that human rights perspectives were taken into account. Though probably a net positive for atrocity prevention, SAG added little in those cases in which violence was not necessarily preceded by an escalation of human rights abuses. It also helped to ease the demise of the Policy Committee, a high-level group that had been chaired by the Secretary-General and that permitted more opportunities for his Special Advisers to present the case for addressing particular situations from an atrocity prevention perspective. This author's experience suggests that there are risks in imposing any barriers to the direct access of those mandated to prevent atrocity crimes to the Secretary-General or in creating distance between the Secretary-General and his/her personal responsibility for acting to try to prevent such crimes.²⁸ That, after all, should have been one of the primary lessons from Sri Lanka.

²³ The report of the Secretary-General's Internal Review Panel on UN Action in Sri Lanka of November 2012 was never published, but it can be found on line (with some sections redacted). Also see Kimberly Nackers, "Framing the Responsibility to Protect in the 2009 Sri Lanka Civil War," *Global Responsibility to Protect* 7, no. 1 (2015), 81-108; Kimberly Nackers, "Sri Lanka," in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 876-894; Damien Kingsbury, "Sri Lanka," in *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, eds. Jared Genser and Irwin Cotler (Oxford: Oxford University Press, 2012), 298-315; Edward C. Luck and Dana Zaret Luck, "The Individual Responsibility to Protect," in *Reconstructing Atrocity Prevention*, eds. Sheri P. Rosenberg, Tibi Galis, and Alex Zucker (New York: Cambridge University Press, 2016), 237-242.

²⁴ The "Rights Up Front" Detailed Action Plan prepared by the Inter-Agency Standing Committee, dated March 2014, is available online, though it is marked as an internal document. For a highly favorable view, see Gerrit Kurtz, *With Courage and Coherence: The Human Rights Up Front Initiative of the United Nations*, (Berlin: Global Public Policy Institute, July 2015).

²⁵ Andrew Gilmour, "The Future of Human Rights: A View from the United Nations," *Ethics & International Affairs*, 28, no. 2 (2014), 240-241.

²⁶ *Ibid.*, 246-247.

²⁷ United Nations, *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, December 16, 1999 (UN Doc. S/1999/1257); United Nations, Report of the Secretary-General pursuant to General Assembly Resolution 53/35: *The Fall of Srebrenica*, November 15, 1999 (UN Doc. A/54/549).

²⁸ The author introduced the notion of an Individual Responsibility to Protect (IR2P) into the Secretary-General's 2009 R2P implementation strategy. The concept is explained at greater length in Luck and Luck, *The Individual Responsibility to Protect*.

Another potential asset—the presence of UN peacekeepers on the ground—has proven to be a mixed blessing. The record has been inconsistent. In Rwanda, Srebrenica, Sierra Leone, Darfur, and the Democratic Republic of the Congo (DRC), mass atrocities occurred despite the presence of UN forces. A moral hazard can be created when the promise of protection is not matched by commensurate action by those institutions and countries with the capacity to offer protection, as with the Security Council's declaration of safe areas in Bosnia-Herzegovina.²⁹ Yet in Mozambique, Cambodia, the Former Yugoslav Republic of Macedonia, Côte d'Ivoire, and Mali, the blue helmets helped to prevent mass atrocities or their reoccurrence. In Kenya (twice), Kyrgyzstan, and Guinea (Conakry), preventive efforts prevailed without an international force on the ground. In South Sudan, peacekeepers have provided shelter for hundreds of thousands of civilians even as mass atrocities escalated elsewhere.

Given this mottled history, it is not surprising that the United Nations has developed distinct, if related, doctrines for the protection of civilians (POC) in a peacekeeping context and for mass atrocity prevention and R2P.³⁰ Those in charge of peacekeeping at the UN have tended to be quite cautious about R2P for both political and conceptual reasons and about adding atrocity prevention tasks to already ambitious mandates for over-stretched peacekeeping operations.³¹ The United Nations, at this point, does not have a well-developed doctrine for the use of force, with or without consent, for the explicit purpose of protecting civilians from atrocities or of deterring such crimes.³² It has relatively few cases from which to draw lessons and these scattered experiences have been quite disparate. As Paul Williams puts it, “while it is understandable that the main practitioners of POC (UN peacekeepers and the Secretariat) would like this agenda to remain as uncontroversial as possible, pretending that these mandates can ignore the four R2P crimes or that they do not arise from a similar sentiment as R2P-inspired military intervention is not helpful. Avoidance is not the solution.”³³

This conceptual muddle has not been simplified or clarified by the growing recognition that non-state armed groups are—and have long been—among the more virulent perpetrators of atrocity crimes. In 2008, when this author was Special Adviser, he introduced armed groups, including those practicing terrorism, into the UN's R2P lexicon, which previously had focused entirely on governments as the sole perpetrators.³⁴ Now, however, there is a real danger that concerns about preventing mass atrocity crimes could be distorted or overwhelmed by the much larger narrative and more widely embraced policy agenda on counter-terrorism. It is not entirely reassuring, in that regard, that the first time that a Security Council meeting directly addressed R2P was in a counter-terrorism context or that the Secretary-General's 2015 report on conflict prevention included a

²⁹ On moral hazard, see Alan J. Kuperman, “The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans,” *International Studies Quarterly*, 52, no. 1 (March 2008), 49-80. On safe areas, see Phil Orchard, “Revisiting Humanitarian Safe Areas for Civilian Protection,” *Global Governance*, 20 (2014), 55-75.

³⁰ Paul D. Williams, “The R2P, Protection of Civilians, and UN Peacekeeping Operations,” in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 524-544.

³¹ Jean-Marie Guéhenno, the able Under Secretary-General for Peacekeeping Operations from 2000-2008, has asserted that talk about possible humanitarian intervention had made it more difficult to obtain consent to a more traditional peacekeeping deployment in Darfur and that the use of force in Libya had stiffened Chinese and Russian resistance to effective action in Syria. He also argues, unconvincingly from this author's experience, that those countries favoring R2P are less likely to commit forces than those taking a more negative stance in the annual R2P debates in the General Assembly. Jean-Marie Guéhenno, *The Fog of Peace: A Memoir of International Peacekeeping in the 21st Century* (Washington, DC: Brookings Institution Press, 2015), 186, 286, 310, and 305, respectively.

³² Nevertheless, since the Secretary-General's first report on R2P in early 2009, the Security Council has authorized robust military enforcement measures at least in part for human protection purposes in six situations (all in Africa): Côte d'Ivoire (resolutions 1933 (2010), 1962 (2010), 1967 (2011), and 1975 (2011)); Libya (resolution 1973 (2011)); Mali (resolution 2100 (2013)); CAR (resolution 2127 (2013)); DRC (resolutions 2098 (2013) and 2147 (2014)); and South Sudan (resolutions 2206 (2015) and 2304 (2016)).

³³ Williams, *The R2P, Protection of Civilians*, 539.

³⁴ Edward C. Luck, “From Promise to Practice: Implementing the Responsibility to Protect,” in *The Responsibility to Protect*, eds. Jared Genser and Irwin Cotler (Oxford: Oxford University Press, 2012), 85-106. On the statist orientation of the original conception of R2P, see Luck and Luck, *Individual Responsibility*.

section on “Violent Extremism and Atrocity Crimes.”³⁵

The mother of all muddles, however, has been the UN’s conflation of conflict prevention and atrocity prevention.³⁶ When Secretary-General Kofi Annan proposed the world body’s first post and action plan to prevent genocide in 2004, to mark the tenth anniversary of the Rwandan genocide, he apparently had no inter-governmental mandate to do so. Instead, he cited a Security Council resolution on conflict prevention, which responded to his report on conflict prevention. Neither document addressed the matter of atrocity or genocide prevention, despite the two mea culpa reports in 1999 on the organization’s failures in Rwanda and Srebrenica.³⁷ For the UN, the temptation to make atrocity prevention a subset of conflict prevention and resolution can be overwhelming. The Charter has countless references to preventing and resolving conflicts and, as noted above, not one to genocide or mass atrocities. The UN—both its Secretariat and its inter-governmental organs—is highly sophisticated and experienced in the former and little more than a novice in the latter. As they say, when your only tool is a hammer, everything looks like a nail. This would apply as much in the UN context to peaceful settlement as it does to the use of force in the US government.

Though it is undoubtedly true that more atrocities occur within armed conflicts than outside of them, experience has shown that horrific atrocities have occurred in a number of situations without armed conflict. During the period when the author was Special Adviser, these cases included, among others, Kenya (twice), Guinea (Conakry), and Kyrgyzstan, as well as the early stages of the violence in Libya and Syria. The etiology of mass atrocity crimes may sometimes include armed conflict, but that explains neither why atrocity crimes do not occur in all armed conflicts nor why they often take place in other circumstances. Prevention, therefore, demands a broader yet more dedicated understanding of the origins, course, termination, and possible reoccurrence of atrocity crimes. The very process of conflict resolution may tempt one or more parties to resort to the commission of atrocities to undermine the potential peace settlement, as may have been the case in both Rwanda and Srebrenica.

Conflating conflict prevention and atrocity prevention presents challenges for practice as well as for understanding and doctrine. For those engaged in mediation, keeping doors to the parties open will generally be perceived as more important than relaying uncomfortable messages about possible atrocity crimes. It was this author’s experience that warnings from UN headquarters to parties in a conflict about behavior that was troubling from an atrocity prevention perspective were sometimes seen by SRSGs in the field and officials of the Department of Political Affairs in New York as too pointed or untimely. Governments are never eager to be told that their supporters or armed forces are committing atrocities, especially when they are facing armed opposition and their grip on power is threatened.

Sometimes quiet diplomacy, especially by the Secretary-General and/or senior regional figures, can make a difference in preventing atrocities, especially when the regime is divided or not fully committed to a genocidal project and the message is given relatively early. As noted above, the advent of the ICC has added a critical talking point about the decline of impunity and possible personal consequences for leaders in such situations, but that message tends to fall on deaf ears when the targeted leadership already sees the struggle in existential terms, has the backing of a permanent member of the Security Council, or the atrocities are being committed by extremist armed groups. From a conflict resolution perspective, however, the invocation of

³⁵ United Nations Security Council, *Arria Formula Meeting on the Responsibility to Protect and Non-State Actors*, December 14, 2015. The statement by this author is available on the web site of the Global Centre on the Responsibility to Protect. United Nations, Report of the Secretary-General, *United Nations and Conflict Prevention: A Collective Recommitment*, September 25, 2015 (UN Doc. S/2015/730), 9, paras., 32-34.

³⁶ Alex J. Bellamy, “Operationalizing the ‘Atrocity Prevention Lens’: Making Prevention a Living Reality,” in *Reconstructing Atrocity Prevention*, eds. Sheri P. Rosenberg, Tibi Galis, and Alex Zucker (New York: Cambridge University Press, 2016), 67-69; Ruben Reike, “Conflict Prevention and R2P,” in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 581-603; Edward C. Luck, “Getting There, Being There,” in *Oxford Handbook of the Responsibility to Protect*, eds. Alex J. Bellamy and Tim Dunne (Oxford: Oxford University Press, 2016), 297-299.

³⁷ Luck, *Getting There, Being There*, 294-296.

possible post-conflict ICC referrals may be regarded as a deterrent to a peaceful settlement that could leave leaders vulnerable to prosecution. In sum, when conflict prevention and atrocity prevention narratives converge, they can be mutually reinforcing, but often quite the opposite has been the case.

Implications

As the foregoing discussion underscores, the fact that the United Nations is pursuing so many related agendas simultaneously presents both opportunities and challenges for atrocity prevention efforts. There is no shortage of symbiotic possibilities, both in the field and at headquarters. But it is difficult to pursue so many policy streams at the same time and in the same place, as policy coherence tends to be far more difficult to achieve than surface-level coordination. Early warning, in this author's experience, is much less of a problem than assessment and framing. Policy makers with different responsibilities are likely to read the same information flows in distinct ways. What are the frameworks and patterns within which policy makers understand, sort, and prioritize the information before them? Why was Rwanda framed chiefly as a matter of implementing the Arusha accords rather than of preventing a massive genocide? Why was it believed that Serbian forces would not test the Security Council's will to enforce the safe areas it had established? Why was Sri Lanka regarded as a primarily humanitarian matter? And why were the early responses to the growing violence in Syria couched as a question of regime change rather than as a question of changing regime behavior and addressing the longer-term risks of mass atrocities, including against the ruling largely Alawite minority? Can atrocity prevention perspectives, given their chronically weak institutional positions, even get a voice at the key decision-making tables?

In this regard, the question of mainstreaming R2P and genocide prevention concerns presents risks as well as opportunities. In his final report on R2P, Secretary-General Ban was anything but ambivalent. The United Nations," he asserted, "must redouble its own efforts to mainstream the responsibility to protect. Faced with mounting challenges on multiple fronts, business as usual will not be sufficient."³⁸ The common theme from the multiple reviews of related UN work in 2015-2016, he underscored, was prevention. Fair enough, but the price of gaining the benefits of wider institutional visibility and greater conceptual coherence cannot be that atrocity prevention becomes just part of the bureaucratic checklist of other, more robust, institutional mandates. In the process of mainstreaming, it is essential that the singular perspective of atrocity prevention not be lost. The goal must not be the typical bureaucratic blending of messages—for which the UN is well known—but to maintain a distinctive and sometimes obnoxious voice for the prevention of mass atrocities. It has been—and will continue to be—hard to have it both ways.

Finding a distinct voice can be particularly difficult at the stage of structural prevention, when states under stress are not yet at a crisis point. As this author commented in 2001, in the context of conflict prevention, structural prevention strategies can confront a "dilemma of comprehensiveness" in which so many factors are perceived as potentially relevant that there is no basis for coherent priority setting or policy making.³⁹ If everything is critical, then nothing is. More recently, the UN's joint office on genocide prevention and R2P developed a Framework of Analysis for Atrocity Crimes that is being employed with increasing frequency around the UN system.⁴⁰ As a checklist, it has some merit. But, with 14 risk factors and 143 indicators, the Framework does not provide a clear basis for determining the relative weight of the various factors and indicators. Most importantly, it lacks a dynamic dimension and a sense of which of these elements matter the most in which situations. For those decision makers charged with making quick and critical decisions in situations of acute concern, an over-reliance on such generic lists or templates could lead to the overlooking of those characteristics that make each situation unique.

³⁸ United Nations Secretary-General, *Mobilizing Collective Action*, 17, para. 60.

³⁹ Edward C. Luck, "Prevention: Theory and Practice," in *From Reaction to Conflict Prevention: Opportunities for the UN System*, eds. Fen Osler Hampson and David Malone (Boulder: Lynne Rienner, 2001), 256. Bellamy, *Operationalizing the 'Atrocity Prevention' Lens*, 65-66.

⁴⁰ United Nations Secretary-General, *Mobilizing Collective Action*, 12, para. 41.

For these reasons, it is understandable that policy makers tend to put a premium on operational over structural prevention. Early engagement with societies under stress can be helpful for developing familiarity with the local dynamics and for gaining a modicum of mutual trust. Being engaged, however, is not the same thing as making a difference when push comes to shove. Mass atrocities are not spontaneous events. They require some degree of planning and mobilization, flowing from a series of destructive choices over time. The United Nations, regional arrangements, neighbors, influential governments, and civil society need to recognize opportunities to interrupt and disrupt such a chain of decisions and actions before they become irreversible. Some regimes and armed groups, of course, are determined to take such a course and cannot be dissuaded. Others, however, are reachable and perhaps persuadable through some combination of reason, carrots, and credible sticks. Local partners can be invaluable, particularly from civil society, media, clergy, the private sector, and parliaments. Where no such partners can be engaged because of the authoritarian or totalitarian nature of the political and security systems, as in Syria or the DPRK, respectively, then external actors have much less to work with and less chance of making a difference.

In all of this, getting the framing right is essential. That is why this author based the Secretary-General's R2P implementation strategy on the premise of "early and flexible response tailored to the specific needs of each situation."⁴¹ That is also why efforts to smooth out R2P's rough edges so that it can blend better with other UN mandates pose the risk of missing the most valuable and distinctive elements of atrocity prevention work. This was not meant to be a comfortable, inoffensive quest. Crafting the most productive conceptual and working relationships between atrocity prevention and its conflict prevention, peacekeeping, human rights, and humanitarian cousins may take some time. As even Goldilocks discovered, it takes patience to find the right fit. But the effort is worth it.

How these conceptual, doctrinal, and institutional matters are resolved will matter far beyond the confines of the world body. As discussed earlier, the UN's unmatched political legitimacy and legal authority mean that what it does and does not do, where it does or does not speak out, matter much more than its deficits in material capacities would suggest. It is not a marginal player when it comes to atrocity prevention, in operational as well as normative terms, because of its catalytic role in encouraging regional and sub-regional bodies, governments, and civil society to step up when atrocities are threatened and societies are under stress. Each time the UN fails to utilize its voice or to try to make a difference, it feeds cynicism about the prospects for preventing mass atrocities and makes such crimes appear to be normal, if not acceptable. The world body, in that regard, has an enduring obligation to keep hope alive.

When costs and risks are high, the UN may have trouble rousing others to action, especially when its own Security Council is divided. But it has a responsibility to try to make a difference. Time has shown that the absence of its voice can be deafening when it decides to look the other way, as in Cambodia, Rwanda, and Sri Lanka. Each of its absences from the struggle for prevention, just as its operational shortcomings, tends to undermine both its moral authority/legitimacy and the strength of the norms, purposes, and principles for which it stands. In atrocity prevention, people and governments expect the UN to demonstrate moral and political leadership. And they notice when it fails to do so.

Remedies

Any honest enumeration of lessons learned about how to do atrocity prevention better is bound to be both short and speculative. The base of experience is recent and scattered. Trying to prevent mass atrocities is a recent endeavor, whether by governments, international institutions, or civil society. The United Nations did not even begin to articulate a strategy—and that just to prevent genocide—until 2004. Not surprisingly, the learning curve has proven to be quite steep. No one who has tried to curb atrocities could ever claim it to be an easy or assured task. We are still learning how to do it. It is essential to retain a profound sense of modesty about what has been accomplished and about

⁴¹ United Nations, *Secretary-General Defends, Clarifies 'Responsibility to Protect' at Berlin Event on 'Responsible Sovereignty: International Cooperation for A Changed World,'* July 15, 2008 (UN Doc. SG/SM/11701).

what future prospects look like. Vulnerable populations should not expect the United Nations to be anything close to a miracle worker, as it has at best proven to be a sometimes partner and/or catalyst to prevention and, less often, to protection.

R2P, in this author's view, offered two essential elements, both of which remain works in progress. One was to underscore that the prevention of atrocity crimes imposes both individual and collective responsibilities. Neither side of this equation will get far without the other. Notions of collective responsibility bring collective action problems. As the UN illustrates all too well, in this and most other areas, collective undertakings offer myriad opportunities for passing the buck. Nevertheless, as noted at the outset, there is reason to believe that the unique political legitimacy and legal authority offered by the United Nations and other inter-governmental bodies outweigh the collective action dilemmas that multilateral approaches to problem-solving entail. Only occasionally do other, more unilateral, avenues offer feasible and sustainable alternatives. The collective action dilemmas associated with genocide prevention and R2P at the world body led this author to emphasize the need for a parallel assumption of an individual responsibility to protect.⁴² As discussed above, the Secretariat can, and often has, acted without specific mandates from the Security Council or other inter-governmental organs. Obviously, the best chance of making a difference is when both individual and collective responsibilities are triggered at the UN and it has willing partners at the regional, national, and local levels.

The second essential element offered by R2P was the possibility of drawing much broader public, political, and media interest to prevention and protection issues. The fact that the assembled heads of state and government at the 2005 World Summit endorsed R2P at a time when they could not agree on many other matters was, in and of itself, quite remarkable. The Secretary-General's 2009 implementation report generated the longest debate on any question in the General Assembly that year, and there have been reports and Assembly debates (informal interactive dialogues) every year since. The Security Council has referred to R2P in 62 resolutions as of June 2017, with the frequency actually accelerating since the controversies over the use of force in Libya in 2011.⁴³ The academic and policy literature on R2P seems endless.

Much of the commentary has, naturally, been critical, but the essential point is that the advent of R2P has undoubtedly spurred far more attention and analysis to the question of how to prevent atrocity crimes and protect populations than had been achieved over the more than a half century between the agreement on the Genocide Convention in 1948 and the ICISS report introducing R2P in 2001. Whether that momentum is sustainable, however, remains an open question. The progress with parliamentarians has been decidedly uneven and sporadic, and the discouraging developments in Syria, Yemen, and South Sudan appear to have had a dampening effect. As of spring 2017, 59 governments had appointed R2P focal points, but there is little uniformity in their backgrounds or assignments.⁴⁴ It may be that too much of the action has been at the UN in New York and too little in national capitals.

Atrocity prevention and R2P continue to be much more political than technical or institutional challenges, though progress on the latter could affect political calculations about what is possible and what the associated costs and risks of engagement are likely to be. Among the steps that could be helpful at this point would be:

- Assigning a higher priority to identifying, discouraging, and disrupting incitement.
- Developing global, regional, and national doctrine and capacities for preventive deployments of peacekeepers and monitors in countries under stress, such as was done in the Former Yugoslav Republic of Macedonia and Burundi.
- Revisiting the initial conception of the PBC as an inter-governmental body concerned with situations under stress and sliding towards conflict and possible atrocities as well as those

⁴² Luck and Luck, *The Individual Responsibility to Protect*.

⁴³ This number is drawn from the web site of the Global Centre for R2P, which maintains a running list of the relevant resolution texts. The Centre counts R2P references in 17 statements—PRSTs—by the President of the Council as well. The International Coalition for R2P also tracks the Council references on its web site.

⁴⁴ For updates, see the web site of the Global Centre for R2P, which acts as the secretariat for the focal points network.

emerging from conflict.

- Reviving the convening function given to the Special Advisers for Genocide Prevention and for R2P in the Secretary-General's 2010 report on early warning and assessment.⁴⁵
- Initiating joint UN/African Union and UN/European Union assessments of lessons learned from past efforts to prevent mass atrocities and of ways to enhance their collaboration in operational prevention efforts in the future, including responding to incitement and undertaking preventive deployments individually or jointly.
- Preparing a report by Secretary-General Guterres on how atrocity prevention fits thematically, operationally, and institutionally into his announced intention to prioritize prevention strategies in the work of the United Nations.

None of these or similar steps could make much difference, however, without a more far-reaching reassessment of the UN's institutional culture when it comes to preventing atrocities and protecting populations. Despite three wrenching mea culpa reports on Rwanda, Srebrenica, and Sri Lanka, there remains a deep-seated resistance in the Secretariat and among the Member States to absorbing the hard lessons of those fundamental failures. There have been two entrenched assumptions: one, that the UN's natural and proper stance towards parties should be one of impartiality and two, that the use of force should always be a last resort. Neither assumption, in this author's view, conforms with the provisions or spirit of the Charter. Each has its place, but should not be applied uniformly, especially when the risk of mass atrocities appears high and imminent.

The 2015 report of the Secretary-General on conflict prevention properly heralds the value of impartiality for providing "access to a diverse number of stakeholders with whom we can build trust and engage."⁴⁶ But it goes too far in asserting that the UN's unique role stems from "impartiality and the legitimacy derived from the principles of the Charter."⁴⁷ In fact, the Charter never uses the term "impartiality" or anything similar, as this is an attribute for conflict resolution, not a founding principle of the organization. There are times when the UN should be impartial and others when it needs to take sides. To avoid the League of Nations' debilitating shortage of will and capacity, the founders of the UN did their best to prepare it to organize resistance to aggression. In his report on *The Fall of Srebrenica*, Secretary-General Annan criticized the "the general tendency to assume that the parties were equally responsible for the transgressions that occurred," which led to negotiations with those planning and executing atrocities that "amounted to appeasement."⁴⁸ He faulted the "institutional ideology of impartiality even when confronted with attempted genocide."⁴⁹ And he concluded that "the men who have been charged with this crime against humanity reminded the world and, in particular, the United Nations, that evil exists in the world. They taught us also that the United Nations global commitment to ending conflict does not preclude moral judgements, but makes them necessary."⁵⁰

The founders would also be surprised to learn that it has become customary at the UN to assert that the use of force should always be a last resort. That is far from what they had in mind in crafting the Charter. In preparing the Secretary-General's 2009 strategy for implementing R2P, this author used the phrase "measure of last resort" instead. This was meant to convey the notion that force was not a preferred tool, given its costs, risks, and consequences, but that it should not be relegated to consideration as a final, desperate, alternative when all else has failed. The stance of some Member States and members of the Secretariat that force should be regarded as a last resort in a sequential or chronological manner runs counter to the goal of protecting populations and to Secretary-General Ban's early and flexible response strategy. Regarding the latter, Secretary-General Annan's report took his predecessor to task for speaking "against a 'culture of death'"

⁴⁵ United Nations, Report of the Secretary-General (as drafted by this author), *Early Warning, Assessment and the Responsibility to Protect*, July 14, 2010 (UN Doc. A/64/864), 7, para. 18.

⁴⁶ United Nations, *United Nations and Conflict Prevention*, 4, para. 12.

⁴⁷ Ibid.

⁴⁸ United Nations, *Fall of Srebrenica*, 107, paras. 496 and 500.

⁴⁹ Ibid., 108, para. 505.

⁵⁰ Ibid., 108, para. 506.

and for “arguing that peace should be pursued only through non-military methods.”⁵¹ He acknowledged that “errors of judgement were made—errors rooted in a philosophy of impartiality and non-violence wholly unsuited to the conflict in Bosnia.”⁵² And he pointed to “the pervasive ambivalence within the United Nations regarding the role of force in the pursuit of peace.”⁵³

More than two decades after these horrific failures to protect, the debate over R2P illustrates how deeply these inhibitions continue to affect the effort to articulate and implement an effective UN strategy for curbing mass atrocities. For instance, Brazil’s ‘responsibility while protecting’ (RWP) proposal, whatever its other merits, would have imposed both a sequenced approach to R2P implementation and a series of standards for Security Council authorization for the use of force in stopping atrocities that do not exist for the Council’s employment of force for other purposes.⁵⁴ That approach certainly would not have been among the lessons drawn from Rwanda and Srebrenica.

Given these multiple obstacles, some imposed and others self-generated, it is striking that the United Nations has had any success at all in helping to prevent mass atrocities. It has undoubtedly underperformed, but its assets, particularly in terms of legitimacy and authority, are both real and sustainable. There are unrealized capacities on the Secretariat side and the Member States could do much more if they had greater confidence that their investments in the world body would pay off and if they generally placed a higher priority on preventing atrocities and protecting populations. If there is good news about unrealized potential, it is that there are substantial opportunities waiting to be pursued. At every level—individual, local, national, regional, and global—curbing atrocities is a relatively new enterprise that could take decades to nurture and develop. Possible synergies abound. It is time to stop pointing fingers, to start taking responsibility, and to get to work on building the kind of partnerships that could make a real difference over time.

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⁵¹ Ibid., 107, para. 497.

⁵² Ibid., 107, para. 499.

⁵³ Ibid., 108, para. 505.

⁵⁴ Brazil’s RWP concept paper can be found at United Nations, A/66/551-S/2011/701, November 11, 2011. For analysis and commentary, see Thorsten Benner, “Brazil as a Norm Entrepreneur: The ‘Responsibility While Protecting’ Initiative,” (Berlin: Global Public Policy Institute Working Paper, March 2013); Monica Herz, “Brazil and R2P: Responsibility While Protecting,” in *The International Politics of Human Rights: Rallying for the R2P Cause?*, eds. Mónica Serrano and Thomas G. Weiss (London: Routledge, 2014), 107-128.

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The UN Secretary-General's Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations

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Introduction¹

In September 2013, Secretary-General Ban Ki-Moon adopted the Human Rights Up Front (HRUF) initiative and communicated his decision in a letter to staff in November. He recommitted, on behalf of the UN senior leadership and all staff, to uphold the responsibilities the Charter assigned them whenever there is a threat of serious and large-scale violations of international human rights and humanitarian law.² His successor, Secretary-General Antonio Gutierrez, appears determined to continue the initiative, with regard to the explicit reference in his vision statement³ and congratulating his predecessor in general terms on HRUF in his remarks on taking the oath of office.⁴

Given the confidentiality that surrounds the initiative arising from fear of adverse Member States' reaction, it remains difficult to identify all of its elements and assess its current status of implementation. However, based on publicly available UN documents, recent academic writing⁵ and public statements by UN officials, it is possible to attempt a preliminary evaluation of the impact of the HRUF initiative and its potential contribution to the prevention of genocide and other mass atrocity crimes.⁶

Context

Past UN Action in Situations of Mass Atrocities

According to Deputy Secretary-General Jan Eliasson (DSG), the HRUF initiative is closely related to the recommendations, which derived from past reports reviewing UN action in situations of serious violations of human rights and humanitarian law, particularly the 1994 Rwandan Genocide.⁷ Secretary-General Ban made an explicit reference to the initiative in his remarks at the occasion of the 20th anniversary of the genocide in Kigali in 2014. Thus, as a starting point for evaluating the possible impact of the HRUF initiative on the prevention of and response to, mass atrocity crimes, the main findings and recommendations of relevant reports will be reviewed.

¹ The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

² Ban Ki-moon, "Renewing Our Commitment to the Peoples and Purposes of the United Nations" (speech, New York, November 22, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/speeches/2013-11-22/renewing-our-commitment-peoples-and-purposes-united-nations-scroll>.

³ António Guterres, *Challenges and Opportunities for the United Nations*, (remarks, New York, April 4, 2016), accessed December 30, 2017, http://www.un.org/pga/70/wp-content/uploads/sites/10/2016/01/4-April_Secretary-General-Election-Vision-Statement_Portugal-4-April-20161.pdf#page=4.

⁴ António Guterres, "Secretary-General-Designate Remarks to the General Assembly on Taking the Oath of Office" (speech, New York, December 12, 2016), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/speeches/2016-12-12/secretary-general-designate-ant%C3%B3nio-guterres-oath-office-speech>.

⁵ Andrew Gilmour, "The Future of Human Rights: A View from the United Nations," *Ethics & International Affairs*, 28, no. 2 (2014), 239–250; Gerrit Kurtz, *With Courage and Coherence. The Human Rights Up Front Initiative of the United Nations*, (Berlin: Global Public Policy Institute, July 2015); Kristen Boon, "Assessing the UN's new 'Rights Up Front' Action Plan," *Opinio Juris*, February 27, 2014, accessed December 30, 2017, <http://opiniojuris.org/2014/02/27/assessing-uns-new-rights-front-action-plan/>; Jan Eliasson, "The United Nations' Human Rights Up Front Initiative," *ACUNS Quarterly Newsletter* 1 (2015), 3–4, 9.

⁶ "Mass atrocity crimes" are understood as serious violations as described in para. 138 of the World Summit Outcome Document. United Nations, *General Assembly Resolution 60/1, 2005 World Summit Outcome*, October 24, 2005 (UN Doc. A/RES/60/1). The objective to prevent exceptional grave crimes addressed by the R2P has also a moral and value-based dimension, which cannot be described in exact legal terms. Mass atrocities crimes encompass the main elements of genocide, war crimes and crimes against humanity, see David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention: An International Journal*, 1, no. 3 (2006), 229–250.

⁷ Jan Eliasson, *Letter to Special and Personal Representatives, Envoys, Advisers and Coordinators of the Secretary-General, Heads of Mission*, May 7, 2014, accessed December 30, 2017, https://www.humanitarianresponse.info/en/system/files/documents/files/013_fact_sheet_-_rights_up_frontin_the_field_draft_2014-08-21_2.pdf. See the link for other documents quoted in this document.

Secretary-General Annan established the Rwanda Commission of Inquiry in March 1999 and he presented its report to the Security Council in December of that year.⁸ The Commission found that the failure of the United Nations to prevent and, subsequently, to stop the genocide in Rwanda was a failure of the UN system as a whole. The Commission sought to contribute to preventing similar tragedies in the future. The overriding failure the Commission established was a lack of both resources and will to take on the commitment necessary to stop or prevent the genocide. The sequence of events the Commission established in the interaction between the Secretariat, the Security Council and a peacekeeping operation on the ground has been similar in other emergency situations. The Commission looked at the actions of the United Nations Assistance Mission for Rwanda (UNAMIR) rather than any other UN actor present in Rwanda. The Commission found, in particular, inadequate peacekeeping resources and logistics, a lack of analytical capacity, a failure to protect political leaders and civilians and a flawed information flow as the main reasons for the UN's "collective failure."

Secretary-General Annan also submitted a report on the fall of Srebrenica in 1999, pursuant to General Assembly resolution 53/35.⁹ That report aimed at drawing lessons for the Secretariat and Member States from the UN's response to the collapse of the former Yugoslavia, particularly its safe-area policy. While the report also reviewed humanitarian activities, it concentrated mainly on the functioning of the United Nations Protection Force (UNPROFOR) and the role of the Security Council. Similar to the Rwanda report, it noted the UN's difficulty securing sufficient numbers of troops to protect the safe areas and the peacekeeping operation's inadequate capacity, especially the reluctance of Member States to use air power to support the operation. It also deplored the lack of exchange of intelligence information with Member States, which was needed to arrive at a shared analysis of the situation.

The Kosovo Commission of Inquiry was an independent initiative led by Göran Persson, then Prime Minister of Sweden. Its members were appointed in their personal capacity. The final report was handed over to Secretary-General Annan for further consideration.¹⁰ The Commission recommended closing the gap between legality and legitimacy and, with a view to the NATO intervention, called for a principled framework to guide future interventions. The Commission also recommended an increase in peacekeeping capacities to protect civilians on the ground. The Commission's analysis went beyond the limited scope of the Rwanda Commission to include the role of humanitarian workers, NGOs and the media. In this regard the Commission noted a lack of coordination of mainly donor driven humanitarian action, institutional rivalries within the UN and a lack of sufficient high-level UN staff to address the diplomatic challenges. The media were not supporting the humanitarian interests, but reported on the details of violence. The Commission did not look at the role of other UN actors on the ground, such as development agencies.

In order to respond more systematically and coherently to the recommendations regarding peacekeeping operations, the UN Secretariat initiated several broad reviews of UN doctrine and the functioning of its missions.

In May 2000, Secretary-General Annan appointed a Panel to undertake a thorough review of the UN peace and security activities, and to present specific, concrete and practical recommendations. The Panel presented its report to the Security Council in November of that year.¹¹ The report argued that the UN's impartiality was based on the Charter, which includes a number of values and historic experience. Equal treatment of all parties irrespective of their roles as perpetrators or victims had damaged the UN's credibility in the past. The report concluded that, following the experience in Rwanda and Srebrenica, UN troops and police who witness violence against civilians should be presumed to be authorized to stop it within their means, in support of basic UN principles. Any

⁸ United Nations, *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, December 16, 1999 (UN Doc. S/1999/1257).

⁹ United Nations, Report of the Secretary-General pursuant to General Assembly resolution 53/35: *The Fall of Srebrenica*, November 15, 1999 (UN Doc. A/54/549).

¹⁰ Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).

¹¹ United Nations, *Report of the Panel on United Nations Peace Operations*, August 21, 2000 (UN Doc. A/55/305 – S/2000/809).

UN peace operation must be able to pose a credible deterrent to potential spoilers and UN military units must be capable of defending themselves, other mission components, and the mission's mandate. The report found that in most situations of large-scale violence, the Secretariat was likely to face the challenge of persuading Member States and the international community to step up their efforts. In this regard, pessimism about the lack of political will and strongly held perceptions about the interests of Security Council members were prevalent within the Secretariat and often lead to hesitation and self-censorship. The report recommended the creation of an Information and Strategic Analysis Secretariat to facilitate closer cooperation among the key departments and a more strategic UN approach to conflict prevention, peacekeeping, and peacebuilding.

Secretary-General Ban appointed a High-Level Independent Panel on Peace Operations in October 2014 to review the current state of UN peace operations. In its report, the Panel recommended shifting the UN's focus and, giving primacy to politics, tailoring all missions to context, stronger partnerships with regional organizations, a stronger focus on enabling field missions, and a renewed resolve to serve and protect the people.¹²

The Impact of the Review of UN Action at the End of the Conflict in Sri Lanka

The HRUF initiative explicitly encompasses a series of steps foreseen by the 2012 Review Panel report on United Nations action in Sri Lanka¹³ to ensure that the lessons of that experience are fully learned and acted upon.

The Secretary-General's internal review panel on Sri Lanka was created in 2010 following the recommendation of the Panel of Experts on Sri Lanka the previous year, which had suggested that the UN review its own action during the end phase of the conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE). The internal review panel was requested to look in particular into implementation of the UN's humanitarian and protection mandates and to make recommendations to strengthen UN country teams (UNCTs) and the UN as a whole to respond to 'escalated conflict'. The UN had been present in Sri Lanka throughout the conflict, which began in the 1970s, and worked on the basis of a joint United Nations Development Assistance Framework (UNDAF) and a Common Humanitarian Action Plan (CHAP) and within established coordination and reporting structures with headquarters in a non-mission setting.

The Panel reviewed rather comprehensively the history of the Secretariat's internal decision making history, between agencies at headquarters and in the field, and the discussions within various governmental bodies such as the Security Council, the Human Rights Council and the General Assembly. Rather than analyzing the role of Member States, the Panel made an important contribution by identifying lacunae in the joint analysis and planning capacities at UN headquarters and in the field during crisis, the lack of a common sense of purpose between the different agencies, funds, and entities serving under the same UN flag, and the lack of an UNDAF analysis of government related root causes for conflict and crisis mainly due to institutional competition and narrow approaches to mandate implementation.

The recommendations built explicitly on the Rwanda report and, not surprisingly, stressed the importance of its findings for non-mission settings. However, the report was the first review of UN action in a non-mission context during a situation of unfolding mass atrocity crimes. The vast majority of UN presences are organized in a similar operational setting and, thus, the main responsibility for the internal organization of their cooperation rests with the UNCT rather than Member States.¹⁴

¹² United Nations, High-Level Independent Panel on United Nations Peace Operations, *Uniting Our Strengths for Peace – Politics, Partnerships, and People*, June 1, 2015, accessed December 30, 2017, http://peaceoperationsreview.org/wp-content/uploads/2015/08/HIPPO_Report_1_June_2015.pdf.

¹³ United Nations, *Report of the Secretary-General's Internal Review Panel on United Nations in Sri Lanka*, November 2012, accessed December 30, 2017, http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf.

¹⁴ UNCTs exist in 131 countries, covering all 161 UN programming countries, compared to 16 peacekeeping operations and 26 special political missions.

Following the report of the panel, the Secretary-General tasked the UN system to develop an action plan to ensure that the necessary lessons were drawn and that the UN was better positioned to deal with protection challenges during conflict. The HRUF policy is the direct result of these efforts.

The Human Rights Up Front Initiative

Objectives

The HRUF initiative is essentially an internal UN Action Plan, based on the findings of the Sri Lanka report and building on recommendations emanating from previous reports on UN action in situations of serious violations of international human rights and humanitarian law that amount to mass atrocity crimes. The objectives of the initiative are to introduce a cultural change within the UN, an operational change to bring the three pillars of the UN Charter, i.e. development, peace and security, and human rights closer together, and a change to UN engagement with Member States.¹⁵ These objectives are sought to be reached by undertaking a list of activities outlined in the Action Plan.

HRUF is primarily a prevention tool and aims at strengthening the link between early-warning and early-action. It includes procedures to more systematically review the unique information and analysis available from UN field presences, covering almost every country in the world. It is based on a general recognition that human rights violations are early indicators of a deteriorating situation and that field presences can observe changing events and discuss them with their counterparts on the ground. The initiative includes mechanisms for responding to crisis, but seeks to avoid the creation of new heavy structures and to remain cost neutral, in an attempt to remain below the level requiring Member States' budget approval.¹⁶

Different from past initiatives, HRUF seeks to ensure that the UN leverages the full breadth of its existing development, peace and security, and human rights mandates to protect people at risk, based on a collective and individual recommitment of its staff to their responsibilities under the Charter. The individual responsibility of staff members is put into the wider dictum that there can not be peace without development, no development without peace, and there can be neither without human rights.¹⁷

Implementation

With a view to the limited implementation rate of recommendations contained in past panel reports, the most senior UN officials, namely Secretary-General Ban and the DSG, promoted and supported implementation of the initiative through heavy personal engagement.

As can be gathered from the documents available,¹⁸ implementation measures of the HRUF initiative since March 2014 has been considerable and has included measures to clarify the UN vision and responsibility for preventing and responding to serious violations of international human rights and humanitarian law, UN engagement with Member States, UN action at country level, and UN headquarters coordination, in an effort to anchor HRUF permanently in the UN.

Secretary-General Ban shared the renewed commitment to the peoples and purposes of the UN with Member States on different occasions. In December 2013, the DSG delivered remarks at a briefing of the General Assembly on HRUF¹⁹ and sought the views of Member States in Geneva

¹⁵ United Nations, *Human Rights Up Front: A Summary For Staff*, accessed December 30, 2017, <http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf>.

¹⁶ Bertrand G. Ramcharan, "Early-Warning at the United Nations: The First Experiment," *International Journal of Refugee Law*, 1 (1989), 379, et seq. on the unsuccessful previous attempt to create UN early-warning and early-action mechanisms.

¹⁷ Jan Eliasson and Helen Clark, *Joint letter to Resident Coordinators*, February 24, 2014.

¹⁸ United Nations, "Human Rights Up Front. An Overview," accessed December 30, 2017, https://interagencystandingcommittee.org/system/files/overview_of_human_rights_up_front_july_2015.pdf. This includes a link to the detailed Action Plan.

¹⁹ United Nations, "Deputy Secretary-General's Remarks at Briefing of the General Assembly on Rights Up Front" (remarks, New York, December 17, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2013-12-17/deputy-secretary-generals-remarks-briefing-general-assembly-rights>.

in July 2014. The DSG updated Member States on the progress that had been made in his remarks during a panel discussion in commemoration of Human Rights Day 2015.²⁰ In January 2016, he held an interactive dialogue with the General Assembly on HRUF.²¹ For the purposes of that briefing, the Secretary-General previously had summarized his interaction with Member States on HRUF in a letter to the President of the General Assembly.²²

The DSG's letter to Special Representatives and Envoys²³ and the joint letter with the chair of the United Nations Development Group²⁴ (UNDG)²⁵ reflected the endorsement of the commitment by the different UN entities, defined their respective roles and responsibilities, and encouraged them to discuss the Action Plan with their senior staff. Resident Coordinators (RCs) were encouraged to undertake discussions with their country teams and share their suggestions. The joint letter with the chair of UNDG was also an attempt to reach out directly to local heads of agencies, funds and programmes, which are only under a limited supervision by the Secretary-General.

The commitment was also embedded in human resources management processes through including effective advocacy of human rights and other UN values, standards, principles and activities in the RC job description.²⁶ Reportedly, 13,000 staff from across various UN entities attended a newly developed mandatory online training on human rights responsibilities.²⁷ Senior UN staff is held accountable for fulfilling their responsibilities regarding the prevention of and response to, serious violations of international human rights and humanitarian law through a revised performance appraisal system for UNCTs and RCs, which includes an annual evaluation with more systematic participation of the UN Office of the High Commission for Human Rights (OHCHR) and the UN Department of Political Affairs (DPA) with regard to the evaluation of the human rights and political aspects of the revised RC job description.

The Secretariat engaged pro-actively with Member States in the Security Council on situations of serious violations of international human rights and humanitarian law. The Council's Informal Expert Group on Protection of Civilians continued to meet regularly and was briefed on key protection concerns in country-specific situations, actions taken to address these concerns and suggestions for possible language to be incorporated in Security Council resolutions. Since the adoption of the HRUF initiative, the expert group has convened several times regarding the situations in Afghanistan, the Central African Republic (CAR), Darfur, the Democratic Republic of Congo (DRC), Iraq, Mali, and Somalia.²⁸ The DPA used a new informal meeting format, the "DPA briefing", which has been considered by some a successor to the "horizon scanning" started in 2010.²⁹ The use of the agenda items "any other business" has increased since the adoption of

²⁰ United Nations, "Deputy Secretary-General's Remarks at Panel Discussion in Commemoration of Human Rights Day" (remarks, New York, December 9, 2015), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2015-12-09/deputy-secretary-generals-remarks-panel-discussion-commemoration>.

²¹ United Nations, "Deputy Secretary-General's Remarks at Interactive Dialogue with the General Assembly on Human Rights Up Front" (remarks, New York, January 27, 2016), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2016-01-27/deputy-secretary-generals-remarks-interactive-dialogue-general>.

²² United Nations, *Letter dated 24 December 2015 from the Secretary-General Addressed to the President of the General Assembly*, January 6, 2016 (UN Doc. A/70/656).

²³ Eliasson, *Letter to Special and Personal Representatives*.

²⁴ Eliasson and Clark, *Joint letter to Resident Coordinators*.

²⁵ The United Nations Development Group (UNDG) unites the 32 UN funds, programmes, specialized agencies, departments, and offices that play a role in development. At the global level, the UNDG serves as a high-level forum for joint policy formation and decision-making. It guides, supports, tracks and oversees the coordination of development operations in 165 countries and territories: <https://undg.org/about/undg-global/>, accessed December 30, 2017.

²⁶ United Nations, *Resident Coordinator Generic Job Description*, approved on February 6, 2014, accessed December 30, 2017, <https://undg.org/wp-content/uploads/2015/04/APPROVED-RC-Job-Descriptions.pdf>.

²⁷ United Nations Secretary-General, *Mandatory Learning Programme: United Nations Human Rights Responsibilities*, bulletin, November 8, 2016 (UN Doc. ST/SGB/2016/12).

²⁸ Security Council Report, *In Hindsight: The Informal Expert Group on the Protection of Civilians*, August 2016 Monthly Forecast, accessed December 30, 2017, http://www.securitycouncilreport.org/monthly-forecast/2016-08/in_hindsight_the_informal_expert_group_on_the_protection_of_civilians.php.

²⁹ Security Council Report, *Horizon-Scanning Briefings*, January 2017, accessed December 30, 2017, <http://www.>

the HRUF initiative and was used, inter alia, to discuss specific incidents in CAR, Guinea-Bissau, Libya, Mali, Burundi, Syria and Yemen.³⁰

At the country level, the UNDG issued interim UNDAF guidance which aims at reflecting better human rights concerns in Common Country Assessments (CCA) and UNDAF processes, including the implementation of development and humanitarian activities.³¹ The UNDG Human Rights Working Group acts as the lead mechanism through which the UNDG can effectively deliver on the responsibilities and demands made on the UN development system by the HRUF initiative.³² So far, interdisciplinary light teams, mainly comprised of OHCHR, DPA and the United Nations Development Programme (UNDP), were deployed to Lesotho, Burkina Faso and Nigeria in order to support UNCTs with conflict prevention and human rights capacity in critical moments of prevention.³³

Some basic procedures and mechanisms were established for better coordination of early-warning and early action at UN headquarters. In order to better organize its early warning and crisis management system, the HRUF initiative looks to develop strategies for different countries through a Regional Quarterly Review (RQR). The RQR is a mechanism through which representatives of UN system regional divisions at headquarters scan all countries in their respective region every three months for early warning signs (developmental, political, humanitarian, or explicitly human rights) and then discuss in more detail those situations that are “evolving” and can presage the risk of serious violations and crisis. Where there is a UN country presence, the senior UN official is consulted by the RQR co-chairs (DPA and Regional UNDG) on the situation. In case of a heightened risk of serious violations of international human rights and humanitarian law, the senior UN representative on the ground or headquarters can call for the establishment of an Inter-Agency Task Force (ITF), which will serve as the principal coordination platform at headquarters.

A Senior Action Group (SAG), which can be convened by the DSG, may provide guidance from executive heads of departments and agencies in situations of a high risk of or ongoing, serious violations.

Reportedly, the response mechanism was activated in 2014 in response to developments in CAR and South Sudan. Early support from headquarters allowed the United Nations Mission in South Sudan (UNMISS) to continue its “open gate” policy, which succeeded in directly protecting 75,000 people in December 2013.³⁴

Perceptions by UN Staff

The DSG reported on the enthusiastic reception of the HRUF initiative by staff. At the same time, it can be perceived that staff at the country level and within small UNCTs may be less enthusiastic regarding their capacity to implement the initiative and may hope that business as usual will return, given the UN's past track-record of change following similar initiatives. This likelihood has increased for guidance material being available only in English; staff members in Arabic, French

securitycouncilreport.org/un-security-council-working-methods/horizon-scanning-briefings.php.

³⁰ Security Council Report, *In Hindsight: Making Effective Use of “Any Other Business”*, April 2016 Monthly Forecast, accessed December 30, 2017, http://www.securitycouncilreport.org/monthly-forecast/2016-04/in_hindsight_making_effective_use_of_any_other_business_1.php.

³¹ United Nations Development Group, *United Nations Development Assistance Framework Guidance*, May 23, 2016, accessed December 30, 2017, http://procurement-notice.undp.org/view_file.cfm?doc_id=120296.

³² United Nations Development Group, “Human Rights Working Group,” accessed November 15, 2017, <https://undg.org/about/undg-global/undg-working-groups/>.

³³ E.g. African Gong, “2015: UN to Deploy Human Rights Up Front Light Team to Nigeria,” blog post, January 5, 2015, accessed December 30, 2017, <https://africangong.wordpress.com/2015/01/05/2015-un-to-deploy-human-rights-up-front-light-team-to-nigeria/>.

³⁴ UN News Centre, “No One Could Have Predicted Scope Of South Sudan Crisis, Outgoing UN Envoy Says,” June 30, 2014, accessed December 30, 2017, <http://www.un.org/apps/news/story.asp?NewsID=48171#.WIT6dFN96M>; United Nations, “Secretary-General's Briefing to the Security Council on South Sudan,” (statement, New York, May 12, 2014), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/statement/2014-05-12/secretary-generals-briefing-security-council-south-sudan>.

and Spanish speaking countries may not be able to study the related material themselves and will have to rely on summaries and oral presentations

Heads of agencies at the country level are often unclear about the authority of the Secretary-General versus their Executive Directors and may wait for more detailed instructions coming from their own headquarters. As past experience has shown, there is a general concern over the negative impact on their cooperation with their host governments if they started referring to human rights considerations. Moreover, they often lack the capacity to undertake this analysis. It may be difficult for development and humanitarian agencies to see a benefit for the implementation of their country programmes from the present guidance material on HRUF. Many UNCTs, including those involved in a RQR, may not feel sufficiently included in the discussions in New York.

In addition, the perception of HRUF suffers from its unclear relationship with the Responsibility to Protect (R2P). While there is a clear parallel between the initiative and pillar 2 and the former could, in fact, contribute to the implementation of the latter, the policy does not clarify this relationship leaving it open to speculation in a difficult political environment for both policies.

Evaluation of the HRUF Initiative Regarding the Prevention of and Response to Mass Atrocity Crimes

General Observations

The HRUF initiative is an ambitious policy regarding the prevention of and response to, serious violations of international human rights and humanitarian law, which has already accomplished more than similar initiatives in the past. The Action Plan provides all of the elements of a comprehensive strategy for implementing R2P as it has been discussed since 2005, in particular clear leadership by the Secretary-General based on the Charter, a recommitment to the principles and purposes of the Charter in order to close the commitment gap, and steps to counter the resource gap tailored to align existing processes and structures with the overarching purpose of preventing people from mass atrocity crimes starting with those structures and processes under the authority of the Secretary-General.³⁵ The “open gate” policy applied by UNMISS in South Sudan is an impressive example of the possibilities for the UN to physically protect people from violence.³⁶

Notwithstanding these first successful steps taken under the HRUF, it should be asked whether factors, which inhibited the implementation of past recommendations, have been adequately addressed under HRUF. In addition, the situation in Sri Lanka was characterized by a high level of public attention to the situation, but Member States in the Security Council, the General Assembly and the Human Rights Council, nevertheless, were not able to agree on joint action. The prevailing deadlock led to increased self-censoring within the Secretariat and the UNCT as staff attempted to avoid contributing to the deadlock, while upholding their ability to deliver humanitarian relief. HRUF needs to be sufficiently specific regarding guidance and requires strong leadership from the Secretary-General when confronting this type of scenario.

It should be noted that the documents and statements related to HRUF lack reference to the legal responsibilities of Member States regarding violations of international human rights and humanitarian law. Human rights accountability will need to be established more concretely in each country situation, taking into consideration the recommendations and findings of UN human rights mechanisms regarding the respective country and the general observations on the interpretation of particular rights and corresponding obligations in order to make the implementation appear impartial and non-politicized. Article VIII of the Genocide Convention³⁷ could be used as an encompassing framework for the initiative, if the relationship between HRUF and R2P was clarified.

³⁵ E.g. Ekkehard Strauss, *The Emperor's New Clothes? The United Nations and the Implementation Of The Responsibility To Protect* (Berlin: Nomos, 2009), 122-137.

³⁶ For more details e.g. UN News Centre, “UN Action Saved Thousands in South Sudan: Peacekeeping Chief,” April 2, 2014, accessed December 31, 2017, <https://ourworld.unu.edu/en/un-action-saved-thousands-in-south-sudan-peacekeeping-chief>.

³⁷ United Nations, *General Assembly Resolution 260, Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948 (UN Doc. A/RES/260(III)).

The Relationship Between HRUF and R2P

While in practice there is an overlap between the situations considered under the R2P and the HRUF, the relationship between “serious violations of human rights and humanitarian law” and mass atrocity crimes remains unclear. In addition, the whole history of HRUF, which is built upon past reports of UN shortcomings, points towards a close relationship. Secretary-General Ban has referred to “atrocities and egregious crimes” in his presentations to Member States, which came very close to R2P language. This wording was later replaced for the more general and legalistic expressions of “serious violations of international human rights or humanitarian law”. It will be important to link “serious violations of human rights and humanitarian law” to mass atrocity crimes through a more concrete description of the scenarios the UN has committed to prevent or halt and link their different elements to HRUF and R2P.³⁸ In general, R2P could provide arguments and approaches in cases, where early-warning indicators point towards mass atrocity crimes. In addition, the application of R2P to the respective country situation could clarify responsibilities for taking action agreed in the ITF or SAG. Depending on the risk-level determined and the risks identified, action may be required by political bodies, UN entities - including the Special Adviser on the Prevention of Genocide - or remain at the country level, according to available genocide prevention methodology.

At the same time, HRUF could weaken the application of the R2P by the UN. While in the past the Secretary-General used the latter to call on Member States to provide the mandate and resources for the UN to intervene in situations of evolving mass atrocity crimes, HRUF offers a possibility to carve out space for UN entities sheltered from the political bodies. Given the considerable political investment of the Secretary-General in situations like Syria or Yemen and the negative impact on the authority of the UN of Member States not following his call, HRUF could lead the Secretary-General in future situations to concentrate on internal coordination rather than pleading to non-receptive Member States to uphold their R2P obligations.

The Institutional Commitment

The HRUF, like other initiatives for cooperation among UN entities, has to rely on an institutional commitment based on a limited legal basis for cooperation between specialized agencies and the Secretary-General in the Charter.³⁹ Specialized agencies, and similarly other UN funds and programmes, were created for a greater independence in their operational activities in order to depoliticize certain areas of international cooperation. They are funded through voluntary contributions by Member States, are legally independent and supervised through specific Member States structures. Some of the executive heads of specialized agencies are appointed by the Secretary-General and members of the Chief Executive Board of Coordination (CEB), chaired by the Secretary-General. Thus, the cooperation of specialized agencies, funds and programmes are mainly based on the cooperation provision in the respective relationship agreement with the UN and, ultimately, the cooperation of Member States in their governing bodies.

On the implementation of HRUF, RCs, as representatives of the UNCT, should report to a joint cell in the EOSG rather than the head of UNDP in her capacity as head of UNDG, which creates a constant conflict of interest when the RC is also the UNDP resident representative. This would compensate for the lack of authority of the Secretary-General over agencies, funds and programmes outside the Secretariat, provide direct access to RCs and UNCTs and underline the centrality of HRUF at the field level.

In this regard, the present scope of HRUF may be generally too broad, as it applies a policy, which derived primarily from recommendations developed after reviewing the extraordinary circumstances of the end phase of the conflict in Sri Lanka to any country situation and applies

³⁸ For more details Ekkehard Strauss, “A Short Story of a Long Effort. The United Nations and the Prevention of Mass Atrocities,” in *Reconstructing Atrocity Prevention*, ed. Tibi Galis, Sheri P. Rosenberg, and Alex Zucker (Cambridge, UK: Cambridge University Press, 2015), 428-449.

³⁹ The Charter provisions relating to specialized agencies include arts. 63, 17 para. 3, 58, 60, 62, 64 and 70. For details: Klaus Hüfner, “Specialized Agencies,” in: *A Concise Encyclopedia of the United Nations, Second Revised Edition*, ed. Helmut Volger (Leiden: Brill, 2010), 670-675.

to all human rights violations. This can expose the UNCT and its members to criticism by the host government, whose cooperation many agencies and funds require for implementation of their country programmes. OHCHR, which suffers from considerable funding gaps, may soon find itself overstretched by its role in implementing the policy, which may lead to HRUF being ignored at the country level. Instead, the elements of HRUF should be implemented by every UNCT according to a central schedule and based on questionnaires and reporting guidance distributed by the EOSG. This exercise should benefit from the presence of OHCHR, but should not rely on OHCHR for its implementation.

When the DSG referred to human rights as the “lifeblood” of the UN, he pointed out an important difference between the UN system and, in particular, bi-lateral development and humanitarian actors, i.e. the universal normative framework for all UN action. At the country level, each UN field presence accepted in general human rights and humanitarian law as a basis for joint planning and implementation. This institutional commitment will be sustainable if, inter alia, this position of the UN can be promoted at the country level without a major drop in funding compared to other multi-lateral and bi-lateral actors. UNCT members often compete for limited voluntary contributions by Member States for their activities and support for HRUF will depend in the long-term on its impact on access to this funding.

At the more practical level, HRUF will be difficult to sustain over time without a common information management system linking the field and headquarters, and headquarter entities.

The Individual Commitment of Senior Managers and All Other Staff Members

Unlike past reforms, the HRUF initiative builds on explicit individual commitments of senior managers and all other staff members.

In addition to institutional and structural approaches, which have not lead to sustainable change in the past, HRUF emphasizes the responsibility of every UN staff member to protect human rights regardless of the field in which he or she is working.

The individual responsibility placed on senior staff and each lower level staff member is meant to be compensated by headquarters. The letters of the DSG acknowledged that it was often difficult to choose between the wider humanitarian and development roles and raising serious human rights concerns. The DSG pledged that headquarters would take over the burden of raising serious concerns with state authorities.⁴⁰ The use of Charter article 99 by the Secretary-General in a well-documented and analysed case could encourage all staff members that the risks related to their individual commitment to speak out is equally shared by the Secretary-General himself. However, the structural and procedural distance between RCs, UNCTs and headquarters regarding the RQR and the coordination through the ITFs or SAG will hardly encourage UN staff in the field to raise the alarm, as the possibilities for the field to influence the analysis and its role in decision-making may be very limited and could create concerns of overriding political considerations at headquarters determining the response strategy. It could be preferable to apply the principle of subsidiarity to the response to country situations, i.e. to prioritize local action and participation of local stakeholders over headquarters and, first, target the impact level of violence and the immediate perpetrators and, second, the broader underlying economic and political interests at stake.

The individual commitment of each staff member could make a decisive contribution to the sustainability of HRUF, if the UN succeeded in an increasingly polarized world, united mainly in rejecting international human rights and humanitarian norms running counter to short-term political and economic interests, to bring its diverse work-force behind a commitment that puts them in conflict with many Member States as donors, host-countries or members of mandating bodies. The policy and the accompanying material must be translated into all six UN languages as soon as possible and new material should not be distributed before it exists at least in English, French, Spanish and Arabic. This will avoid the impression in the field that HRUF is an initiative promoted mainly by a former Secretary-General, which will go away over time as similar initiatives in the past.

⁴⁰ United Nations, *Human Rights Up Front: A Summary For Staff*.

The individual commitment of all staff and its inclusion in personnel management tools aims at mainstreaming its content into day-to-day action by individual staff members. The approach of mainstreaming the objectives of HRUF may suffer from the same deficits observed regarding the mainstreaming of other cross-cutting issues in the past, including gender, HIV/AIDS and human rights, unless this general approach is broken down into a list of implementable practical and compulsory activities summarized in a thematic compendium with proposed forms and concrete language. The individual commitment can be translated into individual action only if the respective staff member had simple and practical tools available for the application of the HRUF and understood his/her role in the context of the broader early-warning and early-action methodology applied. The repeated assertion by the DSG that human rights violations are often a precursor to mass atrocities remains too general. The connection between the violation of particular rights and their impact on specific risk factors in a particular country situation remains too vague and requires fine tuning for each country. While any risk analysis will become more reliable after a long-term process of data collection over several years, the expectations towards HRUF are very high. Thus, there is a need to design a strategy for the application of different methodologies of data collection and analysis over the coming years. In addition, detailed analysis could be limited initially to a number of countries, while undertaking more of a screening for others until they pass a particular threshold, i.e. if a 'real risk' of mass atrocity crimes actually appears.⁴¹

Regarding senior managers, annual instructions, including generic elements for the inclusion in annual work-plans of RCs and UNCTs, should be developed by the EOSG as a constant reminder of HRUF.

Implication of Member States

Unlike past reforms, the implementation of the HRUF Action Plan does not depend entirely on Member States' prior approval.

Notwithstanding its focus on elements under the prerogative of the Secretary-General, ultimately, for the different reasons stated above, HRUF will depend on the cooperation of Member States to become sustainable. Thus, it will be important to navigate the different political sensitivities by using all existing tools with great flexibility and to time interventions carefully.

Given its connection to the UN's failure to respond adequately to the situation in Sri Lanka, the HRUF initiative will have to prove its impact on other situations where no UN peace mission is on the ground and which are not on the Security Council's agenda. While Member States have reiterated the importance of early-warning and discussed possible procedures in the Security Council, general sensitivity of early-warning briefings has not been overcome. This suggests that there will continue to be limitations to the enhancement of cooperation with Member States on situations of serious violations of international human rights and humanitarian law.

Conclusion

The HRUF initiative is a promising new attempt to reinforce the UN's capacity to prevent and respond to, serious violations of human rights and humanitarian law. It encompasses the lessons-learned from past failure and translates them into realistic and modest new processes and structures. Given the difficult global environment for the protection and promotion of human rights, it is yet to be seen whether the organization will be granted the time and space required for the initiative to be fully implemented. Much will depend on whether the Member States are prepared to promote in practice early-warning and conflict prevention as main elements of a collective a norms-based international order.

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⁴¹ See for this threshold Sheri P. Rosenberg, *A Common Standard for Applying the Responsibility to Protect*, Cardozo Law School, 2012.

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Introduction

The prevention of genocide and mass atrocities involves normative as well as practical challenges. To motivate effective action to deter or halt mass killings of civilians, it is first necessary to persuade the relevant actors of the legitimacy and necessity of such a policy. The struggle to implement robust atrocity prevention measures is often lost at the normative level. Key government decision-makers may decide that the prevention of atrocities is peripheral, or even antithetical, to “core national security interests.”¹ Conversely, when the United States or other great powers do intervene to protect civilians, they may arouse suspicion from other parties. As the Albright-Cohen Genocide Prevention Task Force observed in 2008, many governments “regard assertive U.S. policies as ultimately self-interested, even or perhaps especially when framed in terms of humanitarian purposes.”²

Comprising fifty-seven participating States “from Vancouver to Vladivostok,”³ the Organization for Security and Co-operation in Europe (OSCE) provides a particularly salient case study of the normative dimension of atrocity prevention efforts. The OSCE is the successor to the Conference on Security and Co-operation in Europe (CSCE), established by the Helsinki Final Act of 1975 with the goal of finding “common ground through a process of dialogue, norm-setting, and consensus” among the member states of NATO and the Warsaw Pact. The CSCE was “designed as a *process*, with an informal structure that could provide flexibility” in promoting “common and comprehensive” security.⁴ In the words of former OSCE Secretary-General Wilhelm Höynck, “[T]he Final Act affirmed that the respect for human rights and fundamental freedoms is an essential factor for the peace, justice, and well-being, necessary to ensure the development of friendly relations and cooperation.”⁵

The end of the Cold War brought fundamental changes both to the structure and mission of the CSCE. Between 1990 and 1992, the organization established a formal institutional structure including a Secretariat, a Permanent Council of ambassadors from all participating States, the Conflict Prevention Centre (CPC), the Office for Free Elections (later to become the Office for Democratic Institutions and Human Rights or ODIHR), the Forum for Security Co-operation, and the Office of the High Commissioner on National Minorities (HCNM).⁶ In 1995, the CSCE was renamed the OSCE, reflecting this formalization of its institutional structure.

With an annual operating budget for 2017 of EUR 139 million (including EUR 4.7 million for Conflict Prevention and EUR 3.4 million for the HCNM), the OSCE has been described as a “flea” in comparison to the “elephant” of the European Union (EU), whose 2017 budget was more than a thousand times larger.⁷ Despite its limited resources and lack of coercive power, the OSCE has

¹ Samantha Power, *A Problem From Hell: America and the Age of Genocide* (New York: Basic Books, 2002), 504; Madeleine Albright and William S. Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers*, Report of the Genocide Prevention Task Force (Washington, DC: United States Holocaust Memorial Museum, The American Academy of Diplomacy, and The Endowment of the United States Institute of Peace, 2008), 1-3; Matthew Levinger, “A Core National Security Interest: Framing Atrocities Prevention,” *Politics and Governance* 3, no. 4 (2015), 26-43.

² Albright and Cohen, *Preventing Genocide*, 95.

³ Government of Canada, Global Affairs, “Delegation to the Organization for Security and Co-operation in Europe,” July 11, 2017, accessed December 20, 2017, <http://www.international.gc.ca/osce/index.aspx?lang=eng>.

⁴ Connie Peck, *Sustainable Peace: The Role of the UN and Regional Organizations in Preventing Conflict* (Lanham: Rowman & Littlefield, 1998), 118.

⁵ Quoted in Peck, *Sustainable Peace*, 118.

⁶ Ibid., 120-21; David Galbreath, “Convergence Without Cooperation? The EU and OSCE in the Field of Peacebuilding,” in *The European Union and Peacebuilding: Policy and Legal Aspects*, eds. Steven Blockmans, Jan Wouters, and Tom Ruys (Leuven: T.M.C. Asser Press, 2010), 177.

⁷ Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 1252: Approval of the 2017 Unified*

played a critical role in preventing or containing violence against civilians in numerous regions of Europe and Central Asia. As Gregory Flynn and Henry Farrell argued in a 1999 essay, the CSCE/OSCE mechanisms for preventive diplomacy

have proven to be the real workhorses of the international community in its attempts to control substate conflict in post-Cold War Europe.... CSCE mechanisms have been involved in managing far more potential substate conflict situations that either [NATO or the EU]... Moreover, nearly all of these missions involved circumstances where it would have been impossible for states to have used either of the other two institutions for collective intervention, because neither had been endowed with the instruments to deal with prevailing conditions.⁸

In recent years, however, some observers have questioned the effectiveness of the OSCE's work, remarking on the "growing futility"⁹ of the OSCE as the EU has expanded its political and security-related missions. During the Cold War, a clear demarcation existed between the structure and function of the European Economic Community (EEC) and that of the CSCE: the EEC was a regional organization focusing on the economic integration of Western Europe, whereas the CSCE was an informal dialogue process promoting cooperative security measures between NATO and the Warsaw Pact. In 1993, the EEC was subsumed under the EU, which had a more comprehensive mission including a Common Foreign and Security Policy. Over the past quarter-century, a "functional convergence" has occurred between the EU and OSCE. Not only has the EU expanded eastward into the former Warsaw Pact region, it has increasingly taken on political and security functions, such as election monitoring and security sector reform, that had previously been the province of the OSCE.¹⁰ The eastward expansion of NATO and the EU has also put the Russian Federation on the defensive. Russian leaders have argued that "instead of acting as a genuine transatlantic organization, the OSCE has evolved into an institution that seeks to act as a tool of Western influence, pushing forward an agenda of excessive intrusion and potential destabilization in Russia's neighborhood."¹¹ As long ago as 2006, one expert asserted: "The OSCE is in crisis. . . . There can be no doubt but that the OSCE today, as compared to its heyday during the Cold War, is a far less visible landmark on the European institutional landscape than was formerly the case."¹²

This essay will argue that the OSCE continues to play a unique and vital role in preventing and containing ethnic conflict in Europe and Central Asia, but that its greatest distinctive strength—the capacity to help foster shared political norms supporting "common and comprehensive security"—has eroded since the late 1990s. Part I of the essay will discuss the original operating concept of the CSCE and OSCE, which sought to constitute a cooperative transatlantic security community through the promulgation of shared norms. Part II will examine the erosion of the normative consensus between the Eastern and Western participating States of the OSCE since the late 1990s, focusing on some Eastern states' distrust for the Western democracy promotion agenda. Finally, Part III will examine the prospects for a more robust role of the OSCE in protecting civilians from violent conflict and mass atrocities, given the increasing tensions among Eastern and Western OSCE participating States in recent years.

Budget, June 1, 2017, (OSCE Doc PC.DEC/1252/Corr.1), accessed December 8, 2017, <http://www.osce.org/permanent-council/321931?download=true>; European Council, "EU Budget for 2017," November 28, 2016, accessed December 8, 2017, <http://www.consilium.europa.eu/en/policies/eu-annual-budget/2017/#>; Galbreath, *Convergence Without Cooperation?*, 189.

⁸ Gregory Flynn and Henry Farrell, "Piecing Together the Democratic Peace: The CSCE, Norms, and the 'Construction' of Security in Post-Cold War Europe," *International Organization* 53, no. 3 (1999), 507.

⁹ Galbreath, *Convergence Without Cooperation?*, 189.

¹⁰ *Ibid.*, 175, 189; see also Emma J. Stewart, "European Union Conflict Prevention and the European Security Architecture," in *EU Conflict Prevention and Crisis Management: Roles, Institutions, and Policies*, eds. Eva Gross, et al. (London: Routledge, 2011), 41-45.

¹¹ Alexandra Gheciu, *Securing Civilization? The EU, NATO, and the OSCE in the Post-9/11 World* (Oxford: Oxford University Press, 2008), 171.

¹² Pál Dunay, "The OSCE in Crisis," *Chaillot Paper*, no. 88 (Paris: Institute for Security Studies, April 2006), 7.

The OSCE Ideal: Community Building Through Norm Formation

Emanuel Adler has evocatively termed the OSCE an “imagined security community,” describing the logic of the organization’s founders as follows:

[T]he OSCE has adopted the view that you must first let the largest number of people from different states *imagine* that they are part of a community; only then, when all have formally and instrumentally accepted the institution’s shared normative structures and practices, do you socialize their elites and peoples by means of continual diplomatic interaction and a wide range of community-building practices.¹³

Adler’s description of the OSCE community-building enterprise points to the power of norms not only to constrain or regulate behavior but also to constitute new communal identities:

When assessing and measuring the influence of OSCE’s practices, we cannot simply look at this institution’s regulative tasks or short-range activities, because what matters most is the long-range effectiveness of its practices and activities as constitutive of community identity and bonds . . . [W]hat matters most is not the short-range success of the mission, seminar, or inspection, but the construction of a foundation for community practice and behavior.¹⁴

Although it might be tempting to dismiss the OSCE’s “seminar diplomacy” as an elaborate sleight of hand, conjuring the illusion of a transatlantic community that remains purely imaginary, this would ignore the real historical impact of the CSCE/OSCE enterprise. During the 1970s and 1980s, the Helsinki Process created a space for the articulation of human rights claims by dissident groups in the Warsaw Pact, which played a role in facilitating a peaceful end to the Cold War. Since the early 1990s, the HCNM and other OSCE institutions have sought to foster “an environment characterized by shared meanings, trust, increased cooperation, and a sense of common identity.”¹⁵ For all the frustrations and setbacks involved in this project, there have also been important successes.

Of the various component institutions of the OSCE, two are particularly relevant to the mission of atrocity prevention: the Conflict Prevention Center (CPC), along with the field operations that it supports, and the Office of the High Commissioner on National Minorities (HCNM). These will be the focus of analysis for this paper.

Created in 1990, the CPC “acts as an OSCE-wide early warning focal point, facilitates negotiation, mediation, and other conflict prevention and resolution efforts, and supports regional co-operation initiatives.”¹⁶ In its initial years, the CPC focused principally on reducing risks of interstate conflict among the OSCE participating States, for example by promoting Confidence and Security Building Measures such as exchange of military information.

Over the past two decades, the mandate of the CPC has expanded to include early warning, situation monitoring, mediation and dialogue facilitation, and support for OSCE field operations, among other roles. It supports mediation initiatives in Ukraine, Nagorno-Karabakh, Transdniestria, and Georgia.¹⁷ The OSCE also currently deploys sixteen field operations in South-Eastern Europe, Eastern Europe, the South Caucasus, and Central Asia, addressing issues including reconciliation and human rights protection in the Balkan states, conflict monitoring in Ukraine, and the monitoring

¹³ Emanuel Adler, “Imagined (Security) Communities,” *Millennium: Journal of International Studies* 26, no. 2 (1997), 249-277; Emanuel Adler, “Seeds of Peaceful Change: The OSCE’s Security Community Building Model,” in *Security Communities*, ed. Emanuel Adler et al. (Cambridge, UK: Cambridge University Press, 1998), 133.

¹⁴ Adler, *Seeds of Peaceful Change*, 121; see also Flynn and Farrell, *Piecing Together the Democratic Peace*, 510.

¹⁵ Gheciu, *Securing Civilization*, 122.

¹⁶ Organization for Security and Co-operation in Europe, Secretariat, “Conflict Prevention and Resolution,” accessed August 27, 2016, <http://www.osce.org/secretariat/conflict-prevention>.

¹⁷ Organization for Security and Co-Operation in Europe, “What We Do: Conflict Prevention and Resolution,” accessed December 10, 2017, <http://www.osce.org/what/conflict-prevention>.

and prevention of ethnic conflict in Kyrgyzstan.¹⁸

The HCNM, which was created in 1992 in response to the outbreak of war in Yugoslavia, has played the most robust role within the OSCE in the prevention of mass atrocities and other forms of ethnic conflict. In the 1990s alone, the HCNM was involved in mediations in thirteen states, and the OSCE deployed thirteen missions of long duration in Eastern Europe, the Caucasus, and Central Asia.¹⁹ OSCE interventions helped prevent conflict or defuse political crises in Estonia, Latvia, the Crimea, and Albania. In other regions such as Nagorno-Karabakh, Georgia, and Moldova, the OSCE was unable to facilitate negotiated settlements to the conflicts. Nonetheless, even there its missions may have “made important contributions by keeping negotiations open and by preserving the cease-fires that... prevented large-scale violence from reappearing.”²⁰ In recent years, the HCNM has continued its intensive and wide-ranging activities. In May 2016, High Commissioner Astrid Thors reported that over the past six months, she had traveled to ten countries—Kyrgyzstan, Serbia, Ukraine, Bosnia and Herzegovina, Georgia, Croatia, Hungary, Slovakia, Moldova, and Macedonia—for consultations on issues related to national minorities.²¹

According to the 1992 Helsinki Document, the HCNM was intended to “be an instrument of conflict prevention at the earliest possible stage.” The office’s mandate was described as follows:

The High Commissioner will provide “early warning” and, as appropriate, “early action” at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the OSCE area, affecting peace, stability or relations between participating States.²²

Under the mandate established by the Helsinki Document, the HCNM has the authority to act independently, without approval either from other OSCE authorities or from the concerned state, in order to address situations involving national minorities that have the potential to escalate into violence. Max van der Stoep, a former Dutch foreign minister who served as the first High Commissioner, has described the HCNM as “an independent, nonstate entity but with the political support of member-states... This depoliticized, multilateral approach allows the High Commissioner to employ cooperative, noncoercive problem-solving techniques...”²³

In describing the early work of the HCNM in preventing ethnic violence in post-Cold War Europe, Van der Stoep emphasized the normative foundations of his office’s authority. In a 1999 article, he asserted that

the HCNM’s independence follows naturally from the logic of international public interest that underlies the concept of comprehensive security. Indeed, I believe it is now well established that the multilateralism that created and sustains the HCNM offers opportunities to address highly charged and potentially violent situations in a somewhat depoliticized manner—at least at arm’s length through an impartial intermediary.²⁴

¹⁸ Alice Ackermann, “Strengthening the OSCE’s Capacities in Conflict Prevention, Crisis Management, and Conflict Resolution” *Security and Human Rights* 23, no. 1 (2012), 11-18; Organization for Security and Co-Operation in Europe, “Where We Are,” accessed December 10, 2017, <http://www.osce.org/where>; Organization for Security and Co-Operation in Europe, Conflict Prevention Center, *Survey of OSCE Field Operations* (Vienna: OSCE, October 2017, OSCE Doc. SEC/GAL/27/16), accessed December 10, 2017, <http://www.osce.org/secretariat/74783?download=true>.

¹⁹ Flynn and Farrell, *Piecing Together the Democratic Peace*, 507.

²⁰ P. Terrence Hopmann, “Building Security in Post-Cold War Eurasia: The OSCE and U.S. Foreign Policy,” *Peaceworks*, no. 31 (Washington, DC: United States Institute of Peace, September 1999), 45.

²¹ Astrid Thors, “Address by Astrid Thors, OSCE High Commissioner on National Minorities, to the 110th Plenary Meeting of the OSCE Permanent Council” (speech, Vienna, June 2, 2016) OSCE.

²² Quoted in Max Van der Stoep, “The Role of the OSCE High Commission in Conflict Prevention,” in *Herding Cats: Multiparty Mediation in a Complex World*, ed. Chester A. Crocker et al. (Washington, DC: United States Institute of Peace Press, 1999), 68.

²³ Van der Stoep, *The Role of the OSCE High Commissioner*, 65.

²⁴ *Ibid.*, 70.

Although van der Stoel saw the HCNM's independence as a critical prerequisite for its success, he also stressed that the High Commissioner "could not function properly without the *political support* of the participating States."²⁵ He declared:

Durable solutions are possible only if there is a sufficient measure of goodwill and consent from the parties directly involved. I always endeavor to find such solutions and to bring the parties to a consensus. I always try to find mutually agreeable solutions and to offer my assistance in implementing measures. I am there to assist OSCE participating States that are experiencing difficulties, and I work together with the parties on the basis of their good faith and their mutual interest in settling difficulties with a view to enjoying a more peaceful and prosperous life together.²⁶

Thus, for example, he stressed that "the protection of persons belonging to national minorities has to be seen as essentially in the interest of the state"; and conversely, that "solutions that allow for the full realization of the aspirations of persons belonging to minorities should be sought as much as possible within the framework of the state itself."²⁷

Van der Stoel was careful to emphasize the convergence of shared values and interests that motivated the members of the OSCE community. This convergence was emphasized by the very blandness of his own professional title: he was not the "High Commissioner for National Minorities"—an advocate or ombudsman for threatened ethnic groups—but rather the "High Commissioner *on* National Minorities," charged with preventing and managing substate conflicts related to minority rights.

From the outset of the Helsinki Process, there have been normative tensions within the OSCE community-building enterprise. The Helsinki Final Act recognized not only the inviolability of European borders but also the principle of self-determination—which had the potential to redraw borders. Likewise, it asserted the principle of noninterference in states' internal affairs while also guaranteeing respect for human rights—which legitimated human rights monitoring of the Warsaw Pact states. In addressing conflicts over minority rights, the OSCE has emphasized the importance of resolving such conflicts without disrupting existing borders. In OSCE practice, write Flynn and Farrell,

The norm of self-determination was not only subordinated to the norm of inviolability of borders; it was also effectively removed as an independent principle of international relations in Europe separable from the norm of democracy. Self-determination was to be directly and exclusively related to creating political institutions that would protect cultural and ethnic differences within common frameworks, rather than using these differences as a basis in themselves for separation.²⁸

In the next section, we will examine several case studies that illustrate how the normative authority of the OSCE has played a role in preventing or containing ethnic violence in Europe and Central Asia, as well as how that authority has eroded since the late 1990s.

Case Studies: The Declining Normative Authority of the OSCE

Although the OSCE's mandate contains no formal provision referring to the prevention of genocide or mass atrocities, several of its diplomatic interventions during the 1990s played an important role in defusing crises that had the potential to result in large-scale violence against civilians. Its efforts were generally more effective in regions that had not yet reached the boiling point—such as

²⁵ Ibid., 70-71.

²⁶ Ibid., 72-73.

²⁷ Ibid., 73.

²⁸ Flynn and Farrell, *Piecing Together the Democratic Peace*, 527.

Estonia, Latvia, and Crimea—than in active conflict zones such as Bosnia, Chechnya, or Nagorno-Karabakh.

After the Soviet Union annexed Estonia and Latvia in 1940, significant Soviet military bases were established in both republics, and large numbers of ethnic Russians moved into the region. By 1989, a third of the population of Estonia and 42 percent of the population of Latvia consisted of Russians and other Slavic nationalities. When the Baltic states achieved their independence in 1991, tensions intensified between the Baltic and Slavic ethnic groups, particularly in Estonia and Latvia. Ethnic Estonians and Latvians, resenting the half-century-long Soviet “occupation” and the accompanying suppression of their national languages and cultures, denied citizenship rights to ethnic Russians who had entered the country after 1940. The countries’ Russian minorities, many of whom had supported independence, felt betrayed by the restrictive citizenship laws. The Russian government weighed in by vocally supporting the Russian minorities; and, in October 1992, it suspended the withdrawal of Russian military forces from the Baltics, citing its concern for the violation of Russian minority rights. Outside observers grew concerned that Russia might capitalize on the crisis to justify military intervention in the Baltic states.²⁹

The OSCE’s conciliation efforts between the Baltic governments and their Russian minorities included the establishment of missions of long duration in Estonia (1992-2001) and Latvia (1993-2001), along with numerous visits by the HCNM, Max Van der Stoep. The OSCE missions steered clear of recommending wholesale revisions to the countries’ restrictive citizenship laws, but encouraged them to implement the laws with greater lenience and to make it easier for members of minority groups to pass the citizenship tests, for example by expanding access to language classes to enable Russian speakers to pass language exams. At the same time, the missions consulted extensively with the leaders of the minority communities in both countries, urging them to accept and cooperate with the national governments, rather than taking destabilizing actions that might have provoked Russian military intervention.³⁰

The Crimean Peninsula, whose population was about 67 percent ethnic Russian, had been transferred as a “gift” to the Soviet Republic of Ukraine by Nikita Khrushchev in 1954. The issue of the Crimeans’ national identity became salient only after 1991, when Ukraine achieved independence. When a nationalist Russian was elected the first president of Crimea in 1994, he proposed secession from Ukraine, provoking a political crisis. As in Estonia and Latvia, the OSCE’s intervention involved the establishment of a mission of long duration (1994-1999) and a series of visits by the HCNM. Van der Stoep’s office also organized several conferences and seminars that successfully sought to harmonize the constitutions of Crimea and Ukraine, establishing a special status for Crimea as an autonomous region within Ukraine.³¹

In describing the OSCE’s approach to addressing the crises in Estonia, Latvia, and Crimea, Terrence Hopmann observes:

Issues of identity are virtually impossible to settle through negotiations based on a traditional bargaining process. Instead, they require what has become known as a problem-solving approach to negotiations. This negotiation process prescribes a number of negotiating behaviors that are quite different from traditional, confrontational bargaining. The parties should approach the conflict as a problem to be solved jointly rather than as a conflict to be “won.” They should treat the dispute essentially as a “non-zero-sum” game, in which both parties stand to lose from escalation while both may gain from mutual accommodation.³²

Several features of the geopolitical context of these conflicts were favorable to this problem-solving approach. The Russian government of Boris Yeltsin actively supported the

²⁹ Hopmann, *Building Security*, 16; Flynn and Farrell, *Piecing Together the Democratic Peace*, 508; Natalie Mychajlyszyn, “The OSCE and Conflict Prevention in the Post-Soviet Region,” in *Conflict Prevention: Path to Peace or Grand Illusion*, ed. David Carment et al. (Tokyo: United Nations University Press, 2003), 135-36.

³⁰ Hopmann, *Building Security*, 17-18; Flynn and Farrell, *Piecing Together the Democratic Peace*, 508.

³¹ Hopmann, *Building Security*, 24-25.

³² *Ibid.*, 26.

OSCE's diplomatic engagement in Estonia and Latvia, because Yeltsin saw the missions as a means of protecting the rights of Russian minorities in both countries while defending his credibility against his own nationalist domestic critics. Government officials in Estonia, Latvia, and Ukraine, by contrast, viewed the OSCE's involvement as a means of strengthening their countries' ties to the West and breaking their dependence on Russia. These governments' desire to join the EU provided leverage to OSCE mediators, who were able to sustain their conflict prevention efforts even in the face of staunch criticism from nationalist leaders in the Baltics, who denied that there was any conflict to prevent. Finally, the United States was itself able to exercise coercive leverage on behalf of the OSCE's efforts: in 1994, the U.S. Senate voted to suspend all aid to Russia until it completed the withdrawal of its military forces from Estonia.³³

Since the late 1990s, however, the OSCE has rarely been able to rely on such a supportive context for its mediation efforts. For example, the carrot of potential EU membership, which provided a powerful motivation for leaders of the Baltic states, has not been available to bolster mediation efforts in Central Asia or the Caucasus. To the contrary, writes one commentator, the presence of an OSCE mission "is often unfavorably perceived as an indication of an unstable area, thereby warding off necessary foreign investment and weakening the country's economic development in these areas."³⁴

A greater challenge to the OSCE collaborative problem-solving efforts has been the rising tension between Russia and the West. During the early 1990s, Yeltsin and other Russian leaders embraced the organization as the potential centerpiece for a future collaborative European security architecture. In subsequent years, however, the Western participating States placed increasing emphasis on expanding NATO and the EU, to the detriment of the OSCE. The expansion of NATO to include Poland, Hungary, and the Czech Republic in 1999, and an additional seven states including the Baltic republics in 2004, drove home the view among Russian leaders that the OSCE was "erecting a wall within itself, artificially dividing its members into the NATO and EU members, and the rest." Under these new conditions, declared Russian Foreign Minister Sergei Lavrov, "NATO deals with security issues, the EU with economic issues, while the OSCE will only monitor the adoption of these organizations' values by countries that have remained outside the EU and NATO."³⁵

In the late 1990s, Western criticisms of Russia's military campaign in Chechnya, along with Russian unhappiness over NATO's bombing of Kosovo and Serbia, created further frictions, which intensified after the election of Vladimir Putin as President of the Russian Federation in 2000. Russia's leaders increasingly expressed suspicions that the OSCE agenda was "destabilizing its neighborhood and in the long run potentially also Russia itself."³⁶ They were particularly unhappy with the work of the Office for Democratic Institutions and Human Rights (ODIHR), which they saw as "regionally biased against the East."³⁷ Beginning in 2002, Russia sent its own observers to monitor elections in the post-Soviet states, alongside monitors from the OSCE and EU, in order to counter the "Western bias" in ODIHR's conclusions. On Russia's insistence, the OSCE also sent observers to monitor elections in Western participating States, including Canada and the United States.³⁸ Russian leaders accused the OSCE of being a tool of Western interests in Ukraine both during the Orange Revolution of 2004 and during the political crisis of 2014, and bridled at ODIHR's repeated criticisms of election irregularities in Belarus. Unnamed Western states, claimed

³³ Ibid., 17; Mychajlyszyn, *The OSCE and Conflict Prevention*, 148; Heather Hurlburt, "Preventive Diplomacy: Success in the Baltics," in *Opportunities Missed, Opportunities Seized: Preventive Diplomacy in the Post-Cold War World*, ed. Bruce W. Jentleson (New York: Carnegie Corporation of New York, 2000), 103.

³⁴ Mychajlyszyn, *The OSCE and Conflict Prevention*, 140.

³⁵ Sergei Lavrov, "Democracy, International Governance, and the Future World Order," *Russia in Global Affairs* 3, no. 1, (2005) 151-52, quoted in Dunay, *The OSCE in Crisis*, 70; see also Gheciu, *Securing Civilization*, 171.

³⁶ Dunay, *The OSCE in Crisis*, 71; see also Stewart, *European Union Conflict Prevention*, 42.

³⁷ Galbreath, *Convergence without Cooperation?*, 179.

³⁸ Ibid.; Organization for Security and Co-Operation in Europe, Office for Democratic Institutions and Human Rights, "General Elections, 8 November 2016," accessed December 10, 2017, <http://www.osce.org/odihr/elections/usa/246356>.

Putin in 2007, were “trying to transform the OSCE into a vulgar instrument designed to promote the foreign policy interests of one or a group of countries.”³⁹

Over the past decade, the OSCE has been largely stalemated in its efforts to resolve many protracted conflicts on the periphery of the Russian Federation, including Nagorno-Karabakh, South Ossetia, and Transdniestria; and it has struggled to respond to Russia’s military interventions in Georgia and Ukraine. In dealing with the crisis in Syria since 2011, the OSCE’s response has largely been confined to a few statements addressing the refugee crisis. Syria is not a state partner of the OSCE, so the organization has no official mandate vis-à-vis events in that country. Moreover, as Alice Ackermann points out, the EU and OSCE sometimes establish an informal “division of labor” in their efforts: for example, the OSCE has taken the lead role in addressing the conflict in Ukraine, while the EU and UN have played more prominent roles with respect to Syria.⁴⁰ Nonetheless, given the profound implications of the Syrian civil war for international security within the boundaries of both Eastern and Western participating States of the OSCE, a more robust joint response would have been desirable.⁴¹

The Path Forward: Building Cooperative Capacity for Atrocity Prevention

In an October 2016 interview, OSCE General Secretary Lamberto Zannier observed that “the OSCE as a security organization is facing a very complicated environment,” because of the “return of geopolitics” involving “divisions in Europe that we haven’t seen in a long time,” aggravated by global challenges including terrorism along with migration stemming from violent conflicts and the effects of climate change. Zannier observed:

As the OSCE was built in a divided environment to bridge the gulf between opposing sides, today the convergence of all these problems is eroding the effectiveness of the tools that were created at that time. So we are facing a situation where we may have more division, and the tools that we developed to address the problems coming with the divisions are not functioning... as well as they were. So engagement, creating a space of dialogue in spite of the differences and the bitter debates... remains the key task for all of us.⁴²

In the bitter aftermath of the 2016 presidential election in the United States, where the Russian intelligence services allegedly sought to undermine the campaign of Democratic candidate Hillary Clinton in order to tip the result to Republican candidate Donald Trump, such constructive dialogue has become more challenging than at any time since the end of the Cold War. Having long complained of Western meddling in Russia’s “near abroad” through democracy promotion initiatives and support for the “Color Revolutions,” the Putin regime has effectively turned the tables on its Western counterparts. Russia is alleged to have “cultivated an opaque web of economic and political patronage” throughout much of Central and Eastern Europe,⁴³ as well as to have forged connections with right-wing parties in Western Europe including the UKIP in Britain and the National Front in France.⁴⁴ The heated accusations of ill will on both sides have further narrowed the already constricted avenues for cooperation between the OSCE’s Eastern and Western participating States.

³⁹ Quoted in Martin Nilsson, “Organization for Security and Co-operation in Europe,” in *International Organizations and the Implementation of the Responsibility to Protect: The Humanitarian Crisis in Syria*, ed. Daniel Silander et al. (New York: Routledge, 2015), 182.

⁴⁰ Alice Ackermann, personal communication, October 2016.

⁴¹ Nilsson, *Organization for Security and Co-operation in Europe*, 180-183.

⁴² Lamberto Zannier, “Unsere Instrumente funktionieren nicht mehr so gut,” *Internationale Politik und Gesellschaft Journal*, October 2016, accessed December 10, 2017, <http://www.ipg-journal.de/videos/artikel/unsere-instrumente-funktionieren-nicht-mehr-so-gut-1506/>.

⁴³ Heather A. Conley, *The Kremlin Playbook: Understanding Russian Influence in Central and Eastern Europe* (Washington, DC: Center for Strategic and International Studies, October 2016), accessed December 20, 2017, <https://www.csis.org/analysis/kremlin-playbook>.

⁴⁴ Fredrik Wesslau, “Putin’s Friends in Europe,” *European Council on Foreign Relations*, October 19, 2016, accessed December 20, 2017, http://www.ecfr.eu/article/commentary_putins_friends_in_europe7153.

As one scholar has written, the OSCE is “*par excellence*, a ‘soft security’ institution with extremely few material resources at its disposal.” Unlike other regional organizations such as the EU and NATO, the OSCE cannot exercise coercive power by imposing economic sanctions or threatening the use of military force. Nor, in the current geopolitical environment, can it credibly offer material rewards such as the prospect of EU membership, which served as a powerful incentive for cooperation by the Baltic governments in the 1990s. The effectiveness of the OSCE depends on its ability to “use its moral authority as a principled organization and its limited amount of cultural capital (e.g. technical expertise) to exercise symbolic power.”⁴⁵

In the current polarized international security environment in Eurasia, it is increasingly difficult for the OSCE to assert universally recognized moral authority. During the 1970s and 1980s, the CSCE took shape as a dialogue process between NATO and the Warsaw Pact in a period of high international tension and distrust, which eased temporarily during the decade after the fall of the Berlin Wall. To some degree, the rising frictions between the Russian Federation and its Western counterparts have returned Europe full circle to the geopolitical atmosphere that surrounded the CSCE’s founding.

Even in an inhospitable geopolitical context, the OSCE can make several valuable contributions to protecting civilians threatened by violent conflict in Eurasia: conflict prevention, crisis management, cooperative problem-solving, and the promotion of norms favoring peaceful coexistence of diverse ethnic and national groups. The remainder of this essay will address each of these aspects of the OSCE’s work in turn.

Conflict Prevention. During the recent period of rising tensions between the Eastern and Western factions of the OSCE, a number of efforts have been made to bridge this geopolitical divide and develop more constructive strategies for mitigating threats of violent conflict. In 2008, Russian President Dmitry Medvedev and French President Nicolas Sarkozy called for a new European security dialogue to discuss post-Cold War security arrangements.⁴⁶ In 2009, the Greek Chairmanship of the OSCE launched a series of dialogues known as the “Corfu Process,” which sought “to strengthen the Organization’s responsiveness to conflict in all its phases,” including “early warning, early action, dialogue facilitation and mediation support, and post-conflict rehabilitation.”⁴⁷ These dialogues culminated in 2011, under the OSCE’s Lithuanian Chairmanship, in Ministerial Decision No. 3/11 on Elements of the Conflict Cycle, which affirmed “the Organization’s commitment to revisiting its approaches to conflict prevention and conflict resolution for the twenty-first century.”⁴⁸ Among other things, Ministerial Decision No. 3/11 called for the establishment of a systematic conflict early warning system and a more robust mediation-support capacity. Unfortunately, there has been limited practical follow-through on many of its recommendations.⁴⁹

Crisis Management. Some of the most intractable conflicts in the OSCE region—e.g. those in Ukraine, the South Caucasus, Moldova, and Nagorno-Karabakh—are located in areas on the periphery of the Russian Federation where Russia has a strong vested interest in the outcome. Given the OSCE’s lack of material instruments of leverage, the organization is unlikely to be able to successfully mediate such conflicts that have become locked into a “security competition” frame. Nonetheless, it can help contain violence by focusing international attention on events in the conflict zones, monitoring developments, and providing early warning of potential escalation. The presence of an OSCE field mission or visits by the HCNM may also provide channels of

⁴⁵ Gheciu, *Securing Civilization*, 149.

⁴⁶ Organization for Security and Co-operation in Europe, “Restoring Trust: The Corfu Process,” December 1, 2010, accessed December 20, 2017, <http://www.osce.org/mc/87193>.

⁴⁷ Alice Ackermann, “Forty Years of the Helsinki Final Act – Forty Years of Conflict Management,” in *Četrdeset godina od potpisivanja helsinkskog završnog akta / Forty Years Since the Signing of the Helsinki Final Act*, ed. Mina Zirojević et al. (Belgrade: Institute of Comparative Law, 2015), 46; Organization for Security and Co-Operation in Europe, Ministerial Council, *Decision No. 3/11 – elements of the conflict cycle, related to enhancing the OSCE’s capabilities in early warning, early action, dialogue facilitation and mediation support, and post-conflict rehabilitation*, (Vilnius: OSCE, December 7, 2011, OSCE Doc. MC.DEC/3/11).

⁴⁸ Ackermann, *Forty Years*, 46–47.

⁴⁹ Ibid.

communication between leaders of rival groups, which may help keep a lid on violence even in the absence of a formal settlement.

In Ukraine, for example, the OSCE Special Monitoring Mission (SMM) has tracked the living conditions of the 1.8 million IDPs from Crimea and Eastern Ukraine since 2014, offering recommendations for how the government of Ukraine and international donors can meet the needs of IDPs and enhance relations between IDPs and host communities.⁵⁰ The SMM issues daily spot reports on security conditions in Eastern Ukraine, monitoring compliance with the Minsk ceasefire agreements, and “engages with authorities at all levels, as well as civil society, ethnic and religious groups and local communities to facilitate dialogue on the ground.”⁵¹ Astrid Thors, who served as High Commissioner on National Minorities from 2013 through 2016, also engaged in efforts to “facilitate a dialogue between national minorities and the Ukrainian authorities on issues of common concern.” For example, she co-hosted a 2016 roundtable in Kyiv on “Strengthening the Institutional Framework Related to Inter-ethnic Relations in Ukraine in the Context of Decentralization.” Asserting that “improved policies in the field of inter-ethnic relations would help to consolidate Ukrainian society and would increase stability in the country as a whole,” the HCNM has worked to provide a platform for Russian and other minority communities in Ukraine to express concerns about the protection of their language and cultural identities.⁵²

In less geopolitically sensitive regions, such as Central Asia and the Balkan states, the OSCE may have greater potential for robust conflict prevention and crisis response—but its record in achieving this potential has been uneven. For example, in May and June 2010, HCNM Knut Vollebaek issued urgent warnings to the OSCE Permanent Council on the risk of interethnic violence in Kyrgyzstan, asserting that the situation represented “one of the OSCE’s biggest challenges since the 2008 war in the Caucasus.”⁵³ When violence between ethnic Kyrgyz and Uzbeks erupted in southern Kyrgyzstan that June, however, the OSCE Permanent Council displayed no appetite for a robust response. In the words of one commentator, “The lack of collective will by the participating States and the Kyrgyz interim government’s inability to take substantial steps in managing the conflict in Kyrgyzstan significantly curbed the OSCE’s room for maneuver.”⁵⁴

Cooperative Problem-Solving. Even in geopolitically contested settings where a comprehensive settlement remains elusive, the OSCE may be able to promote incremental progress toward peaceful coexistence of rival groups. For example, in Georgia, where the OSCE field mission was closed down on Russia’s insistence in 2008, the HCNM has “encouraged the effective implementation of the State Strategy for Civic Equality and Integration for 2015-2020 and Its Action Plan,” and has “continued to support a project to facilitate interaction between the political parties in the country and national minority representatives, including by bringing them together to discuss topical issues on televised talk shows.”⁵⁵ In Moldova, High Commissioner Thors worked with the parliament to establish a “joint working group with members of parliament and the People’s Assembly of Gagauzia” to improve “the functioning of the Gagauz autonomy,” and she has worked with the OSCE Mission to Moldova to address cultural and linguistic issues surrounding the status of Transdnistria.⁵⁶ Thors also remained engaged in addressing issues related to citizenship rights, political representation of ethnic minorities, and protection of minority languages in a wide

⁵⁰ Organization for Security and Co-Operation in Europe, Special Monitoring Mission to Ukraine, *Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities* (Vienna: OSCE, August 26, 2016), accessed December 10, 2017, <http://www.osce.org/ukraine-smm/261176>.

⁵¹ Organization for Security and Co-Operation in Europe, Special Monitoring Mission to Ukraine, “Mandate,” accessed December 10, 2017, <http://www.osce.org/ukraine-smm/117729>.

⁵² Thors, *Address to the 1102nd Plenary Meeting*, 4.

⁵³ Knut Vollebaek, “Early Warning to the (Special) Permanent Council on 14 June 2010” (statement, Vienna, June 14, 2010), OSCE, 2; Frank Evers, “OSCE Conflict Management and the Kyrgyz Experience in 2010: Advanced Potentials, Lack of Will, Limited Options,” *CORE Working Paper 24* (Hamburg: Institute for Peace Research and Security Policy at the University of Hamburg, March 2012), 32.

⁵⁴ Evers, *OSCE Conflict Management*, 40.

⁵⁵ *Ibid.*, 6-7.

⁵⁶ *Ibid.*, 10-11.

range of other countries including Kyrgyzstan, Croatia, Serbia, Bosnia-Herzegovina, Macedonia, Hungary, and Slovakia.⁵⁷

Norm Promotion. Over the past twenty years, the OSCE has issued a number of statements of principles regarding the protection of minority rights, including the Hague Recommendations Regarding the Education Rights of National Minorities (1996), the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (2008), and the Ljubljana Guidelines on Integration of Diverse Societies (2012).⁵⁸ In documents such as the Charter for European Security, adopted at the Istanbul summit of 1999, it has also reaffirmed its commitment to “preventing the outbreak of violent conflicts wherever possible” and “to settle conflicts and to rehabilitate societies ravaged by war and destruction.”⁵⁹ Beyond affirming these principles related to human security, the OSCE has sought to memorialize its operational approach to conflict prevention in documents including “The OSCE Concept of Comprehensive and Co-operative Security” (2009) and the Ministerial Decision No. 3/11 on Elements of the Conflict Cycle (2011).⁶⁰

Scholars disagree about the efficacy of the OSCE’s efforts to transform norms governing relations among diverse ethnic groups in Eurasia. Some observers, such as Wolfgang Zellner, have argued that the HCNM has been relatively successful in “de-securitizing” relationships between states and minority groups by “introducing international minority rights standards as the frame of reference for majority, minority and kin-states.” The HCNM, Zellner asserts, has facilitated “substantive short-term solutions with a view towards sustainable long-term solutions under local ownership.”⁶¹ Others have taken a more skeptical view: David Galbreath and Joanne McEvoy contend that “the HCNM’s role in societal security often appears to maintain the status quo ‘state vs. minority’ logic of the European minority rights regime,” and that the OSCE as a whole has been unable to transform the “zero-sum context” of interethnic relations in Eurasia.⁶²

Despite the sometimes disappointing results of its conflict prevention and crisis management initiatives, the OSCE remains a vital component of the Eurasian security architecture, both because of its inclusive membership structure and because of its core mission to advance “common and comprehensive security” through a consensus-based approach. Yet, for the organization to play a robust role in addressing the urgent security challenges in contemporary Eurasia, it is essential that its participating States share a genuine consensus about the importance of protecting civilians threatened by violent conflict.

One stumbling block to productive cooperation between the Eastern and Western participating States of the OSCE has been mutual suspicion over the other side’s motives. In Zellner’s words, “what the U.S. regards as democratization, Russia takes as destabilization.”⁶³ As Alistair Miskimmon and Ben O’Loughlin have observed, a profound misalignment has emerged between Russian and

⁵⁷ Thors, *Address to the 1102nd Plenary Meeting*, 2-10.

⁵⁸ *Ibid.*, 13-16; Jennifer Jackson-Preece, “The High Commissioner on National Minorities as a Normative Actor,” *Journal of Ethnopolitics and Minority Issues in Europe* 12, no. 3 (2013), 77-82; Organization for Security and Co-Operation in Europe, High Commissioner on National Minorities, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note* (Vienna: OSCE, June 2008); Organization for Security and Co-Operation in Europe, High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (Vienna: OSCE, November 2012).

⁵⁹ Quoted in Nilsson, *Organization for Security and Co-operation in Europe*, 176.

⁶⁰ Organization for Security and Co-Operation in Europe, Conflict Prevention Centre, *The OSCE Concept of Comprehensive and Co-operative Security: An Overview of Major Milestones* (Vienna: OSCE, June 17, 2009, OSCE Doc. SEC.GAL/100/09); Ackermann, *Forty Years*, 46-47.

⁶¹ Wolfgang Zellner, “Working without Sanctions: Factors Contributing to the (Relative) Effectiveness of the OSCE High Commissioner on National Minorities,” *Journal of Ethnopolitics and Minority Issues in Europe* 12, no. 3 (2013), 30. See also Knut Vollebaeck, “The Challenge of Diversity: Is Integration an Answer?” *Security and Human Rights* 21, no. 3 (2010), 213-219; Franzisca Zanker, “Integration as Conflict Prevention: Possibilities and Limitations in the experience of the OSCE High Commissioner on National Minorities,” *Security and Human Rights* 21, no. 3 (2010), 220-232.

⁶² David Galbreath and Joanne McEvoy, “European Organizations and Minority Rights in Europe: On Transforming the Securitization Dynamic,” *Security Dialogue* 43, no. 3 (2012), 274, 281.

⁶³ Wolfgang Zellner, “Managing Change in Europe: Evaluating the OSCE and its Future Role: Competencies, Capabilities, and Missions,” *CORE Working Paper* 13 (Hamburg: Center for OSCE Research, 2005), 13; see also Dunay, *The OSCE in Crisis*, 73.

Western narratives about the post-Cold War order. Rather than being recognized as “co-constitutor of this emerging system,” since the early 1990s “Russia has complained of being excluded from the major decisions affecting it.” Consequently, Russia “feels mis-recognized,” driving a “cycle of miscommunication, generating frustration on all sides and restricting the scope for cooperation.”⁶⁴

During the 1970s and 1980s, the CSCE explicitly avoided establishing a democratization agenda, which the Western participating States recognized as a bridge too far for their Soviet counterparts. Instead, participants in the Helsinki dialogue process focused on promotion of human rights and other aspects of the “human dimension” of security, in an effort to build mutual trust and lay a foundation for a broader range of security cooperation activities.

In the current period of retrenchment in relations between NATO and the Russian Federation, it is essential for the OSCE to seek areas of common ground that can serve as a focal point for constructive engagement. A narrowing and deepening of the OSCE’s mission, refocusing on the objectives of promoting human security in regions afflicted by conflict, might help rebuild the normative consensus between Eastern and Western participating States and increase the OSCE’s operational effectiveness.

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⁶⁴ Alister Miskimmon and Ben O’Loughlin, “Russia’s Narratives of Global Order: Great Power Legacies in a Polycentric World,” *Politics and Governance* 5, no. 3 (2017), 114, 118.

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Neutrality: A Tool or a Limit for Preventing Mass Atrocity Crimes and Genocide? The Case of Switzerland

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Introduction

Slowly opening up to the rest of the world at the end of the Cold War, Switzerland has been active in various countries and context to deal with the past and prevent mass atrocity crimes as well as genocide for many years. These activities have been institutionalized by the establishment in 2011 of a cross-departmental entity, the Task Force for Dealing with the Past and Prevention of Atrocities. Part of the wider peace promotion policy, the Task Force activities are thus a specialized area of activities in Switzerland's foreign policy. As a consequence, they are influenced by the way foreign policy is shaped and by prominent political features of the country.

The present article aims to confront the Swiss practice regarding the prevention of genocide and mass atrocities in Swiss foreign policy and its particularities shaping its international relations. Neutrality, a core part of Switzerland's identity on both the internal political level and the international level, will be at the center of our analysis. Indeed, how can a country engage in prevention activities while keeping its neutral status? How does neutrality influence these activities across time? What foreseeable impact could neutrality have on them?

Despite the institutionalization of prevention of mass atrocities and genocide several years ago, the Swiss government did not define in precise terms what falls under the label of mass atrocities and genocide, nor under the label of prevention. As we will see throughout our analysis, the lack of clear and precise definition is a constant in Switzerland's foreign policy concepts and goals. While this can be easily explained (it allows the government some leeway in its actions following international and internal political circumstances as it is not bound by a precise wording) this shortcoming is a challenge to the present article. In order to remedy to this situation and better frame what shapes prevention activities regarding mass atrocities and genocide, the article will be divided following a macro to micro logic, going from Switzerland's political and foreign policy key yet general features and principles, before addressing peace promotion, and finally mass atrocities and genocide prevention.

The present article will thus be divided as follow: the first part will be an overview of the Swiss government and the Federal Department of Foreign Affairs (A). We will then lay out Switzerland's characteristics shaping its international relations (B), especially neutrality, before presenting its foreign policy principles and objectives (C), with a special focus on peace promotion policy (D). This contextualization of Swiss institutions and foreign policy aims to enable a better understanding of how activities pertaining to the prevention of mass atrocity crimes and genocide are embedded in Switzerland's political environment. The following part will present the evolution of Switzerland's activities regarding prevention of genocide and mass atrocities, as well as the actual mechanism—the Task Force Dealing with the Past and Prevention of Atrocities (E). We will consider how the Task Force is related to other areas of the government and the international community, what are its areas and countries of activities, which procedures it follows to start a project as well as the challenges it ought to overcome in the future. Finally, the last part of this article will present a critical analysis of the Swiss mechanism through the lens of its foreign policy and neutrality, to establish if—and how it is compatible with Switzerland's neutral status (F). From the conclusion reached, the article will flesh out the future of the Task Force's work in light of potential evolutions of Switzerland foreign policy and neutrality.

A. Swiss Government and Federal Department of Foreign Affairs: A Brief Overview

In order to better understand the place of mass atrocity prevention activities in the Swiss context, it is necessary to step back and give an overview of Swiss characteristics likely to influence any foreign policy decision. These factors can be internal, namely the Swiss political system, or external, the Swiss key characteristics in the international realm. The following part gives a brief overview of the Swiss political system and government.

Since 1848, Switzerland has been a democratic federal state composed of 26 regional states called cantons. Its political form is a direct consequence of the country's heterogeneous nature: with four national languages (German, French, Italian and Romansch), different cultures and religions, Switzerland's population is extremely diverse. The Swiss political system is thus a multi-ethnic federalism, an alternative to the nationalist integration strategy that prevailed in Europe during the 19th century.¹ Similar to the American model, the Parliament follows a bicameral system. It is composed of two chambers (the National Council and the Council of States), both representing the cantons.² The executive branch of the government, however, differentiates itself from the United States: instead of having a government lead by a powerful single presidential figure, the leadership of the country is assumed by a council composed of seven equally powerful ministers, elected by the Parliament every four years.³ Each year, one of its member assumes the role of President of the Federation. However, while they are considered head of state, they enjoy no special political privileges.⁴

Democracy in Swiss political culture is not perceived as a majoritarian democracy but as a consensus democracy. Thus the Swiss perceive that "[...] conflicts are resolved not on the basis of narrow and shifting majorities, but rather through negotiations leading to a clear majority or even total consensus."⁵ Conceptualizing politics this way yields two consequences. First, political bodies should be drawn from all important groups (linguistic, geographic, etc.).⁶ Secondly, Federal Council decisions should be taken collegially. As such, deliberations within the Council should be led jointly, aiming for consensus.⁷ If consensus is unachievable, then the decision should be taken following the majority principle. However, once the decision is made, each Councilor must back it even if they originally adhered to the overruled minority.⁸

Another strong political feature of the Swiss system is direct democracy. At the federal level, referenda are mandatory for all constitutional amendments, as well as the ratification of treaties concerning membership in international collective security organizations or supranational bodies.⁹ The system also allows in the case of federal legislation, or permanent international treaties that provide an accession to an international organization, that contain important legislative provisions or whose implementation requires the enactment of additional federal legislation, for an optional referendum when requested by 50,000 citizens or eight cantons.¹⁰ If the voting population rejects the act or treaty, it cannot be passed or ratified. In addition to this post-facto procedure of democratic control, Swiss citizens also possess a right of initiative to modify the Federal Constitution.¹¹ One-hundred thousand citizens have to petition for the initiative to be put to vote.¹²

These features have a strong impact on foreign policy making. Within the government, the lack of outright opposition, as well as the lack of election of individuals based on specific foreign policy goals, and the slow decision-making process inherent in collegiality help shape the way the

¹ Adrian Vatter, "Federalism," in *Handbook of Swiss Politics*, ed. Peter Knoepfel et al., 2nd ed. (Zürich: Neue Zürcher Zeitung Publishing, 2007), 78-79.

² Ibid., 78.

³ Government of Switzerland, *Federal Constitution of the Swiss Confederation*, 18 April 1999, as of 1 January 2016, RS 101, art. 174 and 175 (hereinafter FC). An official English version is online, accessed December 28, 2017, <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html>.

⁴ Ulrich Klöti, "The Government," in *Handbook of Swiss Politics*, ed. Ulrich Klöti, 2nd ed. (Zürich: Neue Zürcher Zeitung Publishing, 2007), 145.

⁵ Ibid., 149.

⁶ Ibid.

⁷ FC, Art. 177.

⁸ Klöti, *The Government*, 155-156.

⁹ FC, Art. 140.

¹⁰ FC, Art. 141.

¹¹ FC, Art. 138 – 139.

¹² For more on Swiss direct democracy: Wolf Linder, "Direct Democracy," in *Handbook of Swiss Politics*, ed. Peter Knoepfel et al., 2nd ed. (Zürich: Neue Zürcher Zeitung Publishing, 2007), 101-119.

country is run.¹³ Moreover, referendum and initiatives can modify Swiss foreign policy, more often than not impeding a possible active and integration-based role in favor of a more protectionist approach.¹⁴ Swiss citizens strongly identify with the state's emblematic political specificities (namely federalism, collegiality, concordance and direct democracy). They want to preserve this combined approach and are extremely reluctant to change it, especially when they feel pressured to do so by a foreign interference.¹⁵

In Switzerland, state competences are divided between cantons and federal authorities, which are called the Confederation, on the basis of the Federal Constitution (hereinafter cited as FC). The Confederation's executive branch has the task of implementing the law enacted by the legislature and is divided into seven Departments, each led by a member of the Federal Council: the Federal Department of Foreign Affairs, the Federal Department of Home Affairs, the Federal Department of Justice and Police, the Federal Department of Defense, Civil Protection and Sport, the Federal Department of Finance, the Federal Department of Economic Affairs, Education and Research, and the Federal Department of the Environment, Transport, Energy and Communications.¹⁶

Mass atrocities and genocide prevention activities fall within the competence of the Federal Department of Foreign Affairs (hereinafter FDFA). The FDFA is responsible for implementing Switzerland's foreign policy and for protecting its interests abroad.¹⁷ In addition to its network of Missions, embassies and other representations abroad, the head office of the FDFA is subdivided into eight departments, each pertaining to a special theme. The State Secretariat is responsible for the maintenance, development and coordination of Switzerland's bilateral relations with other States, as well as its multilateral foreign policy. The background work central to the proper running of the FDFA such as the development of foreign policy goals and strategies, as well as the identification of the current trends, challenges and risks is done by the Directorate of Political Affairs. The Directorate itself is organized into sections focusing on bilateral relations, multilateral relations, sectoral foreign policies, security policy and human security. Given the importance that Switzerland attaches to the European Union, a special Directorate for European Affairs has also been established. In addition to this political core, the FDFA also encompasses the Swiss Agency for Development and Cooperation, which is responsible for the coordination of development activities and cooperation Switzerland undertakes, as well as for the humanitarian aid; the Directorate of International Law; the Consular Directorate; the General Secretariat; and the Directorate for Resources.¹⁸

B. Key Characteristics of Switzerland's International Relations

As stated above, while collegiality, consensus and direct democracy have an impact on foreign policy decision, the Swiss government is influenced by several other external factors. The section below addresses three key characteristics likely to shape foreign policy either during its decision-making phase: Switzerland's small state status; neutrality; and/or during its implementation, a lack of colonial past.

Within the international community, Switzerland is distinguished from other states by several characteristics. First, Switzerland is a relatively small state. Surrounded by big European powers such as France or Germany, Switzerland has, from its historical creation in 1291 until today, been "a small state surrounded by much larger nations" whose "existence depended on the good will

¹³ Jürg Martin Gabriel, "The Price of Political Uniqueness: Swiss Foreign Policy in a Changing World," in *Swiss Foreign Policy 1945-2002*, eds. Gabriel, Jürg Martin et al. (London: Palgrave Macmillan, 2003), 9.

¹⁴ The paramount example is Switzerland's integration to the European Union: while it was a goal for the Federal Council to integrate the EU, repetitive plebiscites made it clear that Swiss citizens were against it. The Swiss government had to modify its approach and chose to pursue strong bilateral agreements instead.

¹⁵ Gabriel, *The Price of Political Uniqueness*, 8.

¹⁶ Government of Switzerland, *Ordonnance sur l'organisation du gouvernement et de l'administration*, 25 November 1998, as of 1 August 2016 (RS 172.010.1), Annex 1.

¹⁷ Government of Switzerland, *Ordonnance sur l'organisation du Département fédéral des affaires étrangères*, 20 April 2011, as of 24 March 2015 (RS 172.211.1), art. 1.

¹⁸ *Ibid.*, art. 7-11; Government of Switzerland, Federal Department of Foreign Affairs, "Organisation of the FDFA," March 10, 2016, accessed September 4, 2016, <https://www.eda.admin.ch/eda/en/home/fdfa/organisation-fdfa.html>.

Figure 1. The full-size version of this figure can be downloaded at <http://doi.org/10.5038/1911-9933.11.3.1507>.

of these neighbours.”¹⁹ The potentially threatening bigger neighbors have had a large impact in shaping the Switzerland’s foreign policy. That policy simultaneously pursued two different aims: to guarantee the collective defense of the Confederation against intruders while remaining neutral, and to ensure that its powerful neighboring states would not view its defensive policies as provocative.²⁰ According to Graf and Lanz, “the two World Wars, in which Switzerland remained uninvolved, solidified the image that Switzerland, being smaller and less powerful than its neighbours, should refrain from competing with the big powers but adopt a niche foreign policy in order to maintain its independence.”²¹

Secondly, and as a consequence of its small-state status and geographical situation, Switzerland has chosen to remain neutral when faced with conflicts throughout Europe.²² Neutrality was the political response Switzerland devised to counter its vulnerability among European greater powers: it allowed the country to protect its sovereignty and placed the principle of non-interference, the fundamental mantra of small-state diplomacy, at the core of Swiss foreign policy.²³ Some have argued that neutrality stood for the absence of foreign policy.²⁴ But Goetschel was probably more accurate when he underlined that “neutrality was actually a strategy for survival.”²⁵

It is not evident to establish *prima facie* how neutrality affects Switzerland’s foreign policy, and, *in extenso*, its mass atrocities prevention activities. In order to do so, it is necessary to layout what entails neutrality for the Swiss government, and how it evolved through time according to the international circumstances. In subsequent section (F), Switzerland’s approach to mass atrocity and genocide prevention will be analyzed through the lens of this conceptual framework.

Swiss neutrality can be traced back to the battle of Marignano in 1515, however its status as a permanent neutral state has been formally recognized by the international community only since the Congress of Vienna in 1815.²⁶ Since then, Switzerland has ratified in 1910 the two international

¹⁹ Laurent Goetschel, Magdalena Bernath, and Daniel Schwarz, *Swiss Foreign Policy: Foundations and Possibilities* (Milton Park: Routledge, 2005), 14.

²⁰ These two ideas can still be found today in FC, Art. 173 and Art. 185.

²¹ Andreas Graf and David Lanz, “Conclusions: Switzerland as a Paradigmatic Case of Small-state Peace Policy?” *Swiss Political Science Review* 19 (2013), 412.

²² Laurent Goetschel, “Foreign Policy,” in *Handbook of Swiss Politics*, ed. Peter Knoepfel et al., 2nd ed. (Zürich: Neue Zürcher Zeitung Publishing, 2007), 573.

²³ Andrew Cooper and Timothy Shaw, “The Diplomacies of Small States at the Start of the Twenty-first Century: How Vulnerable? How Resilient?” in *The Diplomacies of Small States: Between Vulnerability and Resilience*, ed. Andrew Cooper et al. (New York: Palgrave Macmillan, 2009), 5.

²⁴ Gabriel, *The Price of Political Uniqueness*, 15.

²⁵ Goetschel, *Foreign Policy*, 573.

²⁶ Stefan Aeschmann et al, *Swiss Neutrality*, 4th ed. (Bern: Communication DDPS, 2004), 10.

conventions respecting the rights and duties of neutral Powers. The status of a neutral state invokes rights and duties for both the neutral state and the belligerent states in times of conflict.²⁷ While it is a political choice to abide by neutrality law, its consequences are of a legal nature.²⁸ Neutrality law can be summed up as follows: as long as the actions of the neutral state do not interfere with an armed conflict, impeding or giving an advantage to one side or the other, the neutral state benefits from a special protection from the consequences of the conflict (such as the interdiction for the belligerents to militarily use its territory).²⁹ Moreover, any action taken by a neutral state in order to protect its neutrality cannot be qualified as a hostile act by parties to the conflict.³⁰

A State can decide to stay neutral with regard to a specific and delimited armed conflict (occasional neutrality achieved by an ad hoc declaration), however Switzerland has chosen to remain permanently neutral. This implies that it stays neutral at all times, with respect to all conflicts. Although ad hoc neutrality applies only in times of war, permanent neutrality also creates duties for neutral state in times of peace: the neutral state cannot bind itself to any military obligations nor act in a way that would impede the realization of its duties if an armed conflict were to arise.³¹ In other words, a permanent neutral state promises not to enter into preventive alliances,³² and can only enter a defensive alliance in reaction to a perceived threat.³³

Conceptually, neutrality has served two security purposes for Switzerland. On the one hand, it has protected the country from foreign interference. On the other hand, it has also proved useful to achieve domestic stability.³⁴ As mentioned above, Switzerland is a heterogeneous country composed of several religions, languages and cultures. Given its lack of common identity, internal cohesion has never been set in stone, especially in times of European tension. For instance, the Swiss population was divided over whom to follow during the 16th century's era of religious conflicts, as well as during the two World Wars. Picking a side would have led to internal crisis. Thus, neutrality avoided a potential national implosion.³⁵

It is worth noting that while the security and the independence of the country are mentioned in Article 2(1) of the FC, which specifies the aims of the Confederation, neutrality has been purposely left out. Neutrality actually only appears twice within the federal Constitution: Articles 173(1) and 185(1) give to the Federal Council and to the parliament the power and duty to take "measures to safeguard external security and the independence and neutrality of Switzerland." As a consequence, though neutrality is a central maxim that shapes Swiss foreign policy, it has to be considered not as an aim per se but as a flexible tool which can be used to foster its independence and security.³⁶

This flexibility is made possible by the distinction between neutrality law and policy of neutrality. All measures taken by the Swiss government that exceed its legal duties as enshrined in neutrality law are defined by its policy of neutrality.³⁷ A neutral state must *a minima* ensure the respect of the relatively narrow neutrality law, but can make a political choice to go further. In

²⁷ Michael Bothe, "The Law of Neutrality," in *The Handbook of International Humanitarian Law*, ed. Dieter Flecker, 3rd ed. (New York: Oxford University Press, 2013), 549.

²⁸ *Ibid.*, 554.

²⁹ Leslie Green, *The Contemporary Law of Armed Conflict*, 3rd ed. (Manchester: Manchester University Press, 2008), 297.

³⁰ *Ibid.*, 305.

³¹ *Ibid.*

³² For instance, a neutral State cannot enter a military alliance such as NATO. The principle of collective defence as enshrined in Article 5 of the North Atlantic Treaty would go against its neutral state duties in case of an aggression.

³³ The threshold that allows the shift between preventive and reactive alliance is the gravity of subjective notion of the perceived threat. If it is considered as grave, "[...] caution would dictate the planning of a preventive alliance and the establishing of first (and secrets) contacts. The Swiss did just that in two World Wars [...]." Gabriel, *The Price of Political Uniqueness*, 11.

³⁴ Aeschmann et al., *Swiss Neutrality*, 3.

³⁵ *Ibid.*; Gabriel, *The Price of Political Uniqueness*, 9.

³⁶ Government of Switzerland, Federal Council, *White Paper on Neutrality, Annex to the Report on Swiss Foreign Policy for the Nineties*, November 29, 1993 (FF 1994 I 150), 7.

³⁷ *Ibid.*, 8.

this regard, “neutral politics have the function of protecting the credibility of neutral law.”³⁸ For the Federal Council, this possibility gives to Switzerland a large freedom of action.³⁹ The Council even considers that there is only one immutable principle in regard to its neutral status: the non-involvement in an international armed conflict.⁴⁰

For the Swiss government, neutrality is a flexible instrumental concept that should be used to best serve the country’s interests, namely its independence and security.⁴¹ In that regard, the Federal Council considers it necessary to adapt its policy of neutrality to changing international circumstances. The Council justifies this approach not as a case of opportunism but as a way to preserve Switzerland’s stability and predictability.⁴² This concept implies that if neutrality were to be unable to best protect and preserve the country’s independence and security, Switzerland could renounce to its neutral status.

From the Second World War until the end of the Cold War, Switzerland has followed a strict policy of neutrality, going so far as to refuse, in the name of neutrality, to adhere to international economic sanctions for a limited amount of time.⁴³ Perceived by the population as the reason why the country made it out of the Second World War relatively unscathed, neutrality was more and more considered as an end unto itself rather than as an instrument of foreign policy.⁴⁴ Despite the weakening of the nation-state era and the beginning of a new trend towards multilateralism and integration, as well as the radical power balance shift brought on by the end of the Second World War, this conception remained unquestioned for more than four decades.

From the end of the Cold War, the shift from a bipolar to a multipolar world with the rise of new kinds of cross-border threats such as international terrorism, organized crime, environmental issues, etc., the strict understanding of neutrality that prevailed was no longer considered sufficient to ensure Switzerland’s independence and security. In 1993, reconsidering its foreign policy according to the changes occurring since 1945, Switzerland shifted from its traditional, more isolationist interpretation of neutrality to a more flexible approach.⁴⁵ This new approach, called active neutrality, allowed for expanding its humanitarian activities and security policy, namely by increasing its cooperation with other states in order to fight and prevent these new threats.⁴⁶ Two consequences arose from the government’s 1993 White Paper on Neutrality: first, it somewhat reduced the importance of neutrality.⁴⁷ Secondly, it subordinated neutrality to the principle of solidarity.⁴⁸ Indeed, according to the White Paper, for Switzerland to stay useful to the international community, “neutrality needs to be interpreted in light of the requirements of international solidarity and should be used to serve of the international community and world peace.”⁴⁹

Despite this redefinition, Swiss neutrality still plays an important role nowadays. While the obligations deduced from its neutrality policy have been gradually scaled back in the wake of the Cold War, Switzerland’s status as a neutral state was publicly reaffirmed by the Federal Council.⁵⁰ This apparent dichotomy can be explained by the role of neutrality as a cohesion factor: as Goetschel argues, “[neutrality’s] role as an identity provider has become neutrality’s most important function

³⁸ Gabriel, *The Price of Political Uniqueness*, 10.

³⁹ Switzerland, Federal Council, *White Paper on Neutrality, Annex to the Report*, 7.

⁴⁰ Ibid.

⁴¹ Ibid., 9.

⁴² Ibid., 7.

⁴³ Aeschimann et al., *Swiss Neutrality*, 6.

⁴⁴ Gabriel, *The Price of Political Uniqueness*, 12.

⁴⁵ The 1993 White Paper on Neutrality from the Federal Council brought Swiss foreign policy in line with both multilateralism and collective security. Gabriel, *The Price of Political Uniqueness*, 20.

⁴⁶ Switzerland, Federal Council, *White Paper on Neutrality, Annex to the Report*, 27.

⁴⁷ Jürg Martin Gabriel, “Neutralität für den Notfall: Der Bericht des Bundesrats Zur Aussenpolitik der Schweiz in den 90er Jahren,” *Swiss Political Science Review* 1 (1995), 129-158.

⁴⁸ Switzerland Federal Council, *White Paper on Neutrality, Annex to the Report*, 27.

⁴⁹ Ibid., 11.

⁵⁰ Goetschel, *Foreign Policy*, 574.

since the end of the Cold War.”⁵¹ Indeed, a large majority of the population still continues to believe that the country’s foreign policy should be based on neutrality.⁵² Direct democracy ensures that Swiss foreign policy makers do not stray too far away from this popular conception, including in peace promotion and prevention activities.

As popular but also foreign policy makers conception of neutrality and Switzerland’s role in the international realm does not always equate to the legal definition of neutrality, it is necessary to ask oneself how this Switzerland’s characteristics are likely to influence its foreign policy. Drawing on Holsti typology,⁵³ Graf and Lanz consider the tendency to isolationism, a corollary to Switzerland’s small and neutral state status, as one of its national role conception—which they define as a “state’s self-image as well as the expectations it perceives from the outside world [that] are incorporated into the foreign policy-making process.”⁵⁴ According to Holsti, “the national role of the isolate demands [...] a minimum of external contacts of whatever variety. [It] reveals fears of external involvements of any kind and emphasizes self-reliance.”⁵⁵ Switzerland’s isolate national role conception should however be nuanced. While neutrality may play a great part in shaping a protectionist approach, placing independence and sovereignty at the core of Swiss foreign policy, other interests and characteristics may have a clashing impact. In that sense, Gabriel considers that Switzerland suffers from dualism: “economically, scientifically, and culturally the country is extremely interdependent internationally, while at the same time it places extraordinary emphasis on maintaining its independence.”⁵⁶ As a consequence, he makes a distinction between “high politics” (namely security and other areas of high political importance where the Swiss are more protectionist) and “low politics” (related to well-being and technical areas where the Swiss are more likely to be internationalist).⁵⁷ One could argue that given this dualism, Switzerland could be considered independent instead of isolate, as it lacks the fear element. Indeed, in accordance with Holsti’s definition of independent government, Switzerland stresses the element of self-determination and interest-driven foreign policy, as we will see below.⁵⁸

Graf and Lanz recognize a second Swiss national role conception: the role of mediator-integrator. Holsti defines mediator-integrator governments as governments perceiving

[...] themselves as capable of, or responsible for, fulfilling or undertaking special tasks to reconcile conflicts between other states or groups of states. (Statements that referred to a mediatory role in only one specific crisis were not counted.) The themes for this national role conception indicate perceptions of a continuing task to help adversaries reconcile their differences.⁵⁹

As the isolate national role conception, the role of mediator-integrator is a direct consequence of Switzerland’s neutrality. Neutrality often entails an idealistic dimension, which compels neutral states to promote world peace through their services. This semblance of missionary faith can be explained following a utilitarian logic. According to Goetschel, “neutrals felt the need to highlight their own role in the international system, and for this purpose they conceived their policy as

⁵¹ Laurent Goetschel, “Neutrality, a Really Dead Concept?” *Cooperation and Conflict* 34 (1999), 132.

⁵² According to the annual security studies by the Swiss Military College at the Federal Institute of Technology in Zurich, from 1993 to 2004, between 80% to 90% of the population thought that Switzerland should retain its neutrality; see as well Jean-Marc Rickli, “Neutrality Inside and Outside the EU: A Comparison of Austrian and Swiss Security Policies after the Cold War,” in *Small States in Europe: Challenges and Opportunities*, ed. Robert Steinmetz et al. (Surrey: Ashgate, 2010), 181–198.

⁵³ Kalevi Jaakko Holsti, “National Role Conceptions in the Study of Foreign Policy,” *International Studies Quarterly* 14 (1970), 233–309.

⁵⁴ Graf et al., *Conclusions*, 411.

⁵⁵ Holsti, *National Role Conceptions*, 270.

⁵⁶ Gabriel, *The Price of Political Uniqueness*, 1.

⁵⁷ Ibid.

⁵⁸ It could even be argued that its interest-driven foreign policy may lead to an “active-independent” instead of a solely “independent” national conception role. Holsti, *National Role Conceptions*, 268 and 262.

⁵⁹ Ibid., 265.

something ‘higher’, like an ideal of justice.”⁶⁰ The mediator-integrator role is for instance embodied in the Swiss traditions of providing good offices in situations of conflicts. Switzerland can either offer its protecting power or can position itself as a facilitator in the mediation process.⁶¹ Another example is the longstanding Swiss humanitarian tradition—a reference to this long-time tradition is present since the beginning of Switzerland constitutional history, in 1848.⁶²

A priori contradictory, the isolate and the mediator-integrator national role conceptions are another dualism in Swiss foreign policy. Both roles co-exist as they are traditionally associated with different political trends and groups within Switzerland. One or the other can prevail at different moment in time according to the evolving circumstances of the international world. As we mentioned earlier, the Cold War era led to the prevalence of the isolate role conception, while since 1993, a more flexible approach of neutrality has allowed a more active mediator-integrator role. While peace promotion appears to be a logical extension of a strong mediator-integrator role, activities in the field are not completely put to a stop whenever the other conception prevails. Peace promotion, during tense period, is a way to demonstrate Switzerland’s usefulness to greater powers.⁶³

While Graf and Lanz limit themselves to two Swiss national conceptions, it can be argued that other role conceptions defined by Holsti apply to Switzerland. To name a few, Switzerland could also be considered as a bridge state, which completes its mediator-integrator role as it searches to build bridges between different in times of war and peace.⁶⁴ Indeed, as Didier Burkhalter, Federal Councilor in charge of Foreign affairs from 2009-2017, stated: “the idea of bridge-building is also an intrinsic part of Switzerland’s identity and foreign policy. It is part of our political DNA. As a multi-ethnic country with four national languages, Switzerland has relied on dialogue and compromise to ensure its domestic cohesion for centuries.”⁶⁵ It could also be argued that the government considers itself bound by the defender of the faith national role conception in relation to its tradition of promoting humanitarian value.⁶⁶

Last external factor likely to influence Switzerland’s foreign policy activities, whereas the majority of European States have historically been involved on other continents, Switzerland has no colonial past. As a consequence, Switzerland benefits from a broader flexibility to undertake actions and programs with a broader array of international partners. This characteristic, in opposition to the ones mentioned above, may not have a significant impact in foreign policy making process. However, it may give to Switzerland a greater freedom of action in its implementation. For instance, peace promotion activities from former colonial powers may sometimes be considered as a new form of colonial interferences and be refused on that basis. Both the lack of colonial past and neutrality give to Switzerland a comparative advantage in its international relations.⁶⁷

C. Swiss Foreign Policy’s Principles and Objectives

To understand how Switzerland’s activities regarding mass atrocities and genocide prevention are enshrined within Swiss foreign policy, it is necessary to go beyond external and internal factors shaping foreign policy and define what exactly stems from them and constitutes Swiss foreign policy’s principles and objectives. As a consequence from Switzerland’s limited power as a small state, as well as its neutrality, direct democracy and federalism, Swiss foreign policy historically

⁶⁰ Goetschel, *Neutrality*, 120.

⁶¹ Government of Switzerland, Federal Department of Foreign Affairs, “Good Offices,” December 18, 2017, accessed February 7, 2018, <https://www.eda.admin.ch/eda/en/home/foreign-policy/human-rights/peace/switzerland-s-good-offices.html>.

⁶² Graf et al., *Conclusions*, 413.

⁶³ Ibid.

⁶⁴ Holsti, *National Role Conceptions*, 266-267.

⁶⁵ Government of Switzerland, Federal Council, “Good Offices: A Swiss Speciality” (speech, Valetta, September 15, 2016), accessed October 3, 2016, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-60927.html>.

⁶⁶ Holsti, *National Role Conceptions*, 264.

⁶⁷ Government of Switzerland, Federal Department of Foreign Affairs, *For Peace, Human Rights and Security: Switzerland’s Commitment to the World*. Bern, 2012, 3.

has not been accorded particularly high importance.⁶⁸ Until the end of the Cold War, Switzerland usually privileged the preservation of its independence through neutrality over its international influence.⁶⁹ In the old Federal Constitution, foreign policy was given a single goal: to preserve Switzerland's independence.⁷⁰ Yet, the circumstances have changed. Switzerland has not been viewed as a small state since the end of the Second World War. Globalization and integration tend to question the viability and feasibility of a foreign policy based on independence.⁷¹ However, due to its political characteristics and its conception of its national role, changes in Switzerland happen very slowly.⁷²

As mentioned above, the reconsideration of Swiss foreign policy in a post-Cold War conflict led to a new approach to neutrality. More importantly, the extremely narrow foreign policy that prevailed until then was considered inadequate.⁷³ The protection of Swiss sovereignty as the sole goal of the country's foreign policy was abandoned in favor of a cluster of five programmatic goals.⁷⁴ Originally issued in the 1993 Foreign Policy Report, the goals were included in the revised Federal Constitution of 1999, currently in force.

According to the revised Constitution, foreign relations are primarily the responsibility of the federal government.⁷⁵ Cantons only benefit from a limited role in shaping Switzerland's foreign policy, as they shall be consulted only if the decision affects their powers or their essential interests.⁷⁶ The Constitution establishes overlapping responsibilities of the government and the parliament. Special committees of both chambers on foreign policy thus enjoy a consultative role. The Parliament in full form addresses only the most important treaties.⁷⁷ Swiss people benefits from a broad range of opportunities to shape foreign policy, consequence of direct democracy. The electorate enjoys a right of initiative on matters related to foreign policy as well. The sole limit of this right is that initiatives must respect mandatory international law to be considered valid.⁷⁸ Moreover, constitutional guidelines foresee a mandatory and an optional referendum on international treaties.⁷⁹

In addition to the potential limits put by the Parliament or the Swiss population, the government does not enjoy a complete liberty to elaborate foreign policy aims and strategies. Article 2 FC defines the overall aims of the Swiss government and states that: "[the Swiss Confederation] is committed [...] to a just and peaceful international order."⁸⁰ More precisely, Article 54 (2) FC gives the Confederation the duty to "[...] ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the conservation of natural resources."⁸¹

Article 54 (2) FC upheld the five programmatic goals established in 1993. In defining its foreign policy, the government should equally aim to 1) maintain and promote peace and security; 2) enhance human rights, democracy and the rule of law; 3) advance prosperity; 4) reduce social inequalities; and 5) protect the natural environment. However, these goals have to be understood

⁶⁸ Goetschel, *Foreign Policy*, 573.

⁶⁹ *Ibid.*, 587.

⁷⁰ Jürg Martin Gabriel and Jon Fanzun, *Swiss Foreign Policy: An Overview* (Zürich, ETH Zürich - Forschungsstelle für Internationale Beziehungen, 2003), 3.

⁷¹ Goetschel, *Foreign Policy*, 757 and 587.

⁷² In 2003, Gabriel and Fanzun considered that political changes to adapt to the post-Cold War era had only "merely begun." Gabriel et al., *Swiss Foreign Policy*, 3.

⁷³ *Ibid.*

⁷⁴ Gabriel, *The Price of Political Uniqueness*, 21-22; Gabriel et al., *Swiss Foreign Policy*, 3.

⁷⁵ FC, Art. 54.

⁷⁶ FC, Art. 55(1).

⁷⁷ Goetschel, *Foreign Policy*, 578.

⁷⁸ FC, Art. 139(3).

⁷⁹ FC, Art. 140 – 141.

⁸⁰ FC, Art. 2(4).

⁸¹ FC, Art. 54 (2).

as an expression of the duty “to ensure that the independence of Switzerland and its welfare is safeguarded,” considered by Goetschel as the “supreme goal” of Swiss foreign policy.⁸² The revised Constitution thus adds the notion of welfare to the traditional goal of independence. In comparison with the 1993 Report, it specifically provides a special treatment to trade policy, giving to the government a task to safeguard Swiss economy’s interest abroad.⁸³ It is interesting to note that the two national role conceptions of Graf and Lanz can be linked to this segmentation—the supreme goal might be attached to the national role of the isolate, while the five programmatic goals might be an expression of the mediator-integrator national role. As such, undertaking activities of prevention of mass atrocities and genocide seem to easily fall within most, arguably all, five clusters. They must however always be taken in accordance with Switzerland’s independence and its welfare.

The elaboration and implementation of foreign policy is primarily the task of the FDFA. As we saw, the FDFA is divided in several units, usually given different theme of foreign policy. This subdivision is subjective. Subjects are often cross-sectional: while the lead role is usually the task of a specific unit, coordination and consultation of relevant divisions, sometimes even outside the FDFA, are planned in internal procedure (consultation with the offices). Goetschel argues that the adoption of five thematic goals of foreign policy is an expression of the thematic specialization within the FDFA.⁸⁴

The overall constitutional aims are concretized through foreign policy reports and strategies. They follow the implementation principles traditionally governing Swiss foreign policy, among which neutrality, universality, dialogue, efficiency and coherence, solidarity and responsibility. Indeed, according to the Swiss government, the importance of a State within the international community is also measured by its responsible commitment to face global challenges in solidarity with other States. While the principle of universality implies that Switzerland searches to maintain good relationships with every States, it does not mean a lack of priority. Actions are privileged wherever Switzerland can make a substantial contribution. Following a logic of efficiency, thematic and geographic priorities are periodically redefined according to Swiss interests and area of competences.⁸⁵

In the heart of Europe, Switzerland has since long put an emphasis on European States in its foreign policy. Since 2005, Great Powers, economically powerful countries, or countries with whom Switzerland has strong economic ties are also awarded a special position (in particular US, Russia, China, Brazil, India, Japan, and South Africa). Another special focus has been set on South East Europe since the Balkan war, motivated by the proximity of the conflict menacing Europe’s stability, as well as the migratory impact the war had on Switzerland. The importance of the Middle East has also grown over the past few years.⁸⁶

Currently, Switzerland’s foreign policy is defined by the 2016-2019 Foreign Policy Strategy, explained by a Message of the Federal Council to the Parliament.⁸⁷ During that lapse of time, Swiss foreign policy will be embodied in four interlinked strategic priorities: relations with the European Union and the EU and EFTA member states, relations with global partners, peace and security, and finally sustainable development and prosperity.⁸⁸ According to the Strategy, Switzerland pursues a pragmatic, citizen-oriented foreign policy, which, while flexible to rapidly changing international

⁸² Goetschel, *Foreign Policy*, 577.

⁸³ FC, Art. 101.

⁸⁴ Goetschel, *Foreign Policy*, 582.

⁸⁵ Government of Switzerland, Federal Council, *Swiss Foreign Policy Strategy 2016-9: Federal Council report on the priorities for the 2016–19 legislative period*, Bern: Federal Department of Foreign Affairs, 2016, 7.

⁸⁶ Government of Switzerland, Federal Council, *Rapport sur la politique extérieure 2000, Présence et coopération: la sauvegarde des intérêts dans un monde en cours d’intégration*, November 15, 2000 (FF 00.09); Government of Switzerland, Federal Council, *Rapport de politique étrangère*, June 15, 2007 (FF 07.058); Government of Switzerland, Federal Council, *Rapport sur la politique extérieure 2015*, January 13, 2016 (FF 16.009).

⁸⁷ Switzerland, Federal Council, *Swiss Foreign Policy Strategy 2016-9: Federal Council report*.

⁸⁸ *Ibid.*, 5.

circumstances, is in continuity with previous strategies.⁸⁹ Moreover, it considers that Switzerland is comparatively well placed within the international community and enjoys considerable soft power.⁹⁰

D. Peace Promotion in Switzerland's Foreign Policy

The comprehensive overview of what constitutes and shapes Switzerland's foreign policy gives us the necessary context to understand Swiss political choices regarding peace promotion, and *in extenso*, mass atrocities and genocide prevention. The section below will thus take a closer look at the field of peace promotion, before the subsequent section can address Switzerland's approach to preventing mass atrocities and genocide.

With one out of the five objectives enshrined in the federal Constitution and a specific division working towards its realization, peace promotion is an important part of Switzerland's foreign policy.⁹¹ In that matter, Switzerland core objective is to "[...] build on its commitment to peace and security, lending significant impetus to a viable and just international order."⁹² It is ensured by mediation and crisis diplomacy, as well as the promotion human rights, fighting against terrorism, and a continuous commitment to international law.

The argument used to pursue the objective on peace and security is twofold within the 2016-2019 Foreign Policy Strategy. First, it underlines the recent unrest development worldwide and the negative reverberations it has for Switzerland. Indeed, "as a highly globalized country with an export-oriented economy, Switzerland depends for its security and prosperity on a stable environment and a viable and just international order."⁹³ Secondly, Switzerland is independent in its peace commitment. It is not part of any military alliance, does not dispose of sufficient power in itself to impose solutions, nor has a colonial history. As such, Switzerland does not follow a hidden agenda. Moreover, given its multicultural population, democratic institutions and appreciated tradition to provide good offices, Switzerland possess the knowledge and first-hand experience to make a substantial contribution in peace promotion.⁹⁴

The conception of peace promotion as an interest-driven policy and as a tool to assert its position within the international community is regularly used by the Swiss government.⁹⁵ As a consequence, peace promotion is usually fuelled by security, economic stability and migratory movement interests. Other arguments are also used for an active peace promotion policy, such as the expectations of the international community towards Switzerland, or its sense of responsibility and solidarity towards civilians whose security is jeopardized by conflictual situations.⁹⁶ Sometimes, the government states that Switzerland has to be active because the longstanding Swiss humanitarian tradition shares common values with peace promotion.⁹⁷ However this language regime has to be taken with caution. Indeed, positions taken in official documents undergo scrutiny from other states. Thus Switzerland has an interest to reaffirm its appreciated role in peace promotion as a self-fulfilling prophecy. More importantly, the documents undergo the scrutiny from the Swiss electorate. Convincing them that any foreign policy objective is well funded is especially important as direct democracy give them a possibility to impede, even to forbid government activities.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Graf et al., *Conclusions*, 410.

⁹² Switzerland, Federal Council, *Swiss Foreign Policy Strategy 2016-9: Federal Council report*, 21.

⁹³ Ibid.

⁹⁴ Ibid.; Government of Switzerland, Federal Council, *Message concernant la continuation de mesures de promotion de la paix et de la sécurité humaine 2012-2016*, June 29, 2011 (FF 11.045), 5893-5896.

⁹⁵ For instance: Switzerland, Federal Department of Foreign Affairs, *For Peace, Human Rights and Security*, 3; Switzerland, Federal Council, *Message concernant la continuation de mesures de promotion de la paix*, 5887-5888; Government of Switzerland, Federal Council, *Message sur la coopération internationale 2017-2020*, February 17, 2016 (FF 16.022), 2459.

⁹⁶ Switzerland, Federal Department of Foreign Affairs, *For Peace, Human Rights and Security*; Switzerland, Federal Council, *Message sur la coopération internationale 2017-2020*, 2459.

⁹⁷ For instance: Switzerland, Federal Council, *Message concernant la continuation de mesures de promotion de la paix*, 5886. It is interesting to note that this document even goes as far as to imply that peace promotion is vital to preserve Switzerland's neutral status, for more information on this, see 5879 of this document.

Currently, with a majority of the population convinced of the necessity of Switzerland's neutral status, and a strong conservative political party traditionally against international involvement, the electorate can be the main detractor of an active Swiss foreign policy.

Swiss peace promotion is presented in a general and to some extent programmatic document pertaining to Switzerland's commitment for peace, human rights and security.⁹⁸ More importantly, the Federal Council has to review past peace promotion activities and has to present new orientation and strategies to the Parliament, which in turn will vote an according framework-credit. For the upcoming credit term (2017-2020), peace promotion measures are for the first time part of the more general framework of Switzerland's international cooperation. For this credit term, 230 million CHF have been allocated to peace promotion and human security activities.⁹⁹

According to the coherence and efficiency principles, Switzerland is active in regions and themes representing a special interest for the country and where its activities are likely to have a substantial impact and make a difference.¹⁰⁰ The government, however, is reticent to define a long-term peace promotion policy. It considers that peace promotion strategies should be progressive, innovative and flexible to best suit evolving conflictual context and partnerships with relevant actors.¹⁰¹ Notwithstanding this concern, thematic and geographic priorities are defined and regularly updated. The Human Security Division, in charge of peace promotion, is in priority active in sub-Saharan Africa, North Africa, in the Middle East, within the Organization for Security and Cooperation in Europe, and in several countries in Asia and Latin America.¹⁰² Moreover, the HSD works mainly in four areas: peace policy, which aims to resolve conflicts through dialogue; to further develop humanitarian policy to ensure a better protection of civilian during armed conflicts; to strengthen and promote human rights; and lastly, regarding migratory policy, to better protect migrants and internally displaced people, and fight against human trafficking.¹⁰³

E. Switzerland's Approach to Preventing Mass Atrocities and Genocide

Prevention of mass atrocities and genocide are part of Swiss peace promotion policy. Since 2003, Switzerland has taken note of the principles developed by Louis Joinet in a report to the United Nations Human Rights Commission. Joinet delimited four key areas for action: the right to know, the right to justice, the right to reparation and the guarantee of non-recurrence.¹⁰⁴ Switzerland has subsequently focused in these four areas in situations of serious violations of human rights and international humanitarian law. The underlining idea has been to avoid repetition of conflicts and other atrocities.

Working within this conceptual framework, in 2003, the FDFA's Human Security Division, which is subordinated to the Directorate of Political Affairs, began to develop a series of activities pertaining to dealing with the past and the prevention of mass atrocities and genocide. The HSD has focused these efforts on four particular areas of interest: peace, migration, humanitarian policy and human rights.¹⁰⁵ Swiss activities for preventing mass atrocities and genocide were undertaken by the HSD peace promotion division. Given Joinet four key areas of action and the evolution of the international circumstances, it became clear that the complexity of these activities called for an interdepartmental approach. In April 2011, the FDFA direction decided to create a new

⁹⁸ Ibid.

⁹⁹ Switzerland, Federal Council, *Message sur la coopération internationale de la Suisse 2017-2020*, 2454.

¹⁰⁰ Switzerland, Federal Council, *Message concernant la continuation de mesures de promotion de la paix*, 5889.

¹⁰¹ Ibid., 5897.

¹⁰² Countries are selected following a set of criteria laid out in: Switzerland, Federal Council, *Message sur la coopération internationale de la Suisse 2017-2020*, 2327-2328.

¹⁰³ Ibid., 2464 – 2466.

¹⁰⁴ United Nations, Economic and Social Council, *The Administration of Justice and the Human Rights of Detainees*, June 26, 1997 (UN Doc. E/CN.4/Sub.2/1997/20).

¹⁰⁵ Government of Switzerland, Federal Department of Foreign Affairs, "Human Security Division," January 14, 2018, accessed February 2, 2018, https://www.eda.admin.ch/eda/en/home/das_ed/organisation_deseda/direktionen-abteilungen/politische_direktion/ams.html.

entity: the Task Force for dealing with the past and the prevention of atrocities (hereinafter cited as the Task Force).¹⁰⁶

The Task Force is responsible for ensuring that the Swiss strategy pertaining to dealing with the past and preventing atrocities is coherent and consistent across the FDFA. While formally attached to the HSD, the Task Force currently consists of eight experts distributed across the FDFA's various departments. They are based within the HSD, the Political Affairs Directorate's International Organization Division (where they follow discussions happening in international fora and elaborate Swiss positions), the Swiss Agency for Development and Cooperation, and the Directorate of Public International Law (where they focus for instance on the complementarity between local, regional and international justice systems). The Task Force's head office and Special Envoy, who typically chairs international committees when the need arise, are based within the HSD. The eight experts work together on operational tasks and meet bimonthly to review current activities.

The Task Force's one-year annual planning is defined by a Steering Committee composed of the Ambassadors who head each expert's department. They issue an internal annual plan that lays out projected working over the coming twelve months. In addition to this yearly framework, the Steering Committee also reviews the work undertaken by the Task Force twice a year (mid-term and end of term review). Credits for the Task Force are included within the human security credit, which is part of the global framework-credit for Switzerland's international cooperation.

On a bilateral level, the Task Force has also been active in conflict and post-conflict situations, as well as in countries undertaking a political transition from authoritarian regimes. Its overall aim has been to bring about reconciliation in post-conflict societies, where tragic past events can create smoldering resentments. This resentment, in turn, if left unchecked, can lead to social tensions, a resurgence of violence, and can go as far as the commission of mass atrocities and genocide. By re-establishing social cohesion and having a deterrent effect, dealing with the past is closely linked to the prevention of mass atrocities and genocide.

The Task Force's conceptual framework of action has been constructed in a comprehensive and holistic manner, based on the four key areas set out by Joinet's original principles and subsequent recommendations.¹⁰⁷ The idea behind the holistic approach is that the four pillars suffer from mutual influence and are interdependent. As a consequence, the Task Force works on a long-term basis to reconstruct social cohesion between victims and perpetrators.¹⁰⁸ Its goal is to bring about reconciliation by contributing to a conducive environment to facilitate dialogue and by providing experts. This does not mean that the Task Force is always active in each pillar. It will usually analyze the situation as a whole, taking into account the four pillar, and subsequently tailor its activities to better fit each situation. As such, it is difficult to layout an exhaustive catalogue of activities undertaken by the Task Force, as it is constantly evolving, based on needs and means at disposal. A tentative list can however be established according to the Task Force's conceptual framework and past activities: concerning the right to know, the Task Force works closely with various fact-finding and truth commissions, on the safeguarding and the publication of archives, and provides assistance to the search for missing persons. Concerning the right to justice, it works closely with local, regional and international ad hoc tribunals as well as the International Criminal Court. Concerning the right to reparation, it provides assistance to ensure the restitution of goods, individual and collective reparation as well as psychosocial counseling, public apologies and erection of memorials. Finally, concerning the guarantee of non-recurrence, it provides assistance to disarm, demobilize and reintegrate combatants, to hold elections and reform institutions, to reform the security sector and the judiciary system, and to ensure no human rights violations or war crimes perpetrators hold a position of power, for instance within the armed force or the

¹⁰⁶ While it seems unsure why the form of "Task Force" has been chosen for the new entity, favouring a nomenclature featuring "dealing with the past" over "transitional justice" was a political choice. Indeed, it was thought that the former benefits from a wider scope than the later, and allows two approaches focusing on victims' rights on one hand, and states obligations on the other.

¹⁰⁷ Swisspeace, *Un Cadre Conceptuel pour le Traitement du Passé*. Bern: Swisspeace Essentials, 2014, 2.

¹⁰⁸ *Ibid.*, 2.

police (vetting).¹⁰⁹ The holistic nature of the Task Force is a direct consequence of Joinet's principles, which set out individual right of the victim (or the family of the victim), collective rights for the society, and the duty for the state to ensure these rights are guaranteed and implemented.¹¹⁰

It is important to stress that the Task Force's bilateral activities are solely consent-based and only launched upon request. No action will be undertaken without official consent from the State where it takes place. While it incidentally safeguards the principle of non-interference, consent logically enhances the probability of success of any activities aiming to diffuse a tense situation.

There is no official procedure for establishing a program within a country: sometimes first contact is made through embassies, but it can also be made directly by or through the Task Force's head office in Bern. In the countries where the Task Force is active, a human security adviser is usually attached to the staff of the local Swiss embassy and serves as the focal point for the HSD experts. The exact nature of the Task Force's work is extremely diverse, and is organized to best suit each national context. Switzerland currently supports several initiatives, in particular the Philippines, Guatemala, Columbia, Bosnia, Serbia, Kosovo, Ukraine, Burundi, Mali, Chad, and the Middle East. The geographic areas of action change over time, depending on the evolution of international and national situations. It provides financial, logistical, and/or political support, and serves in an active advisory capacity.¹¹¹

The Task Force works closely with the HSD's peace promotion section and the geographic sections of the Directorate of Political Affairs to implement its activities. As a practical consequence, even if the Task Force is not bound to work only in specific countries, it is somewhat constrained by priority countries listed within Switzerland's foreign policy. Priority countries are strategically important to Switzerland, and thus any support provided to deal with the past and prevent future mass atrocities fits within Switzerland's broader foreign policy goals. That was for instance the case in the Balkans, where Swiss programs were driven primarily by interests due to the Balkans' close geographical location as well as by the conflicts' migration impact. There have also been instances where countries with historical ties to Switzerland, and where Switzerland has had an active diplomatic and economic presence, have turned to Switzerland when facing difficulties and called on the Task Force for support. Colombia provides an excellent example: Switzerland extended its good office during the conflict and is now supporting the Historical Memory Centre.

Considerations pertaining more specifically to prevention of mass atrocities and genocide led Switzerland to the co-organization of four regional forums in Argentina (2008), Tanzania (2010), Switzerland (2011) and Cambodia (2013). They have been aiming to raise awareness among participating governments about genocide prevention as well as to strengthen their capacities in this field by sensitizing them to early warning signs and encourage timely and efficient responses.¹¹²

At the initiative of Switzerland, these forums led to the establishment in 2013 of a boarder initiative: the international network Global Action Against Mass Atrocity Crimes (hereinafter cited as GAAMAC). GAAMAC's role is twofold: it has been conceived as a platform to exchange information on best practices; it also provides assistance to build states capacities to prevent mass atrocities as well as to develop and to implement national preventive strategies. In addition, GAAMAC also aims to serve as a bridge-builder between the Responsibility To Protect and the genocide prevention communities. In fact, the name GAAMAC was specifically chosen with an eye to attempting to comprehensively incorporate the themes underlying both the Responsibility To Protect and genocide prevention. To date, GAAMAC has hosted two international conferences:

¹⁰⁹ Ibid., 4-12; Government of Switzerland, Federal Department of Foreign Affairs, "Switzerland's framework for action," January 27, 2017, accessed February 7, 2018, <https://www.eda.admin.ch/eda/en/home/foreign-policy/human-rights/peace/dealing-with-past/conceptual-framework.html>.

¹¹⁰ Swisspeace, *Un Cadre Conceptuel pour le Traitement du Passé*, 4.

¹¹¹ Government of Switzerland, Federal Department of Foreign Affairs, "Dealing with the past," November 27, 2017, accessed February 7, 2018, <https://www.dfae.admin.ch/eda/en/home/foreign-policy/human-rights/peace/dealing-with-past.html>.

¹¹² Government of Switzerland, Federal Department of Foreign Affairs, "Preventing atrocities," November 11, 2017, accessed February 4, 2018, <https://www.eda.admin.ch/eda/en/home/foreign-policy/human-rights/peace/genocide.html>.

Figure 1. Source: <http://www.dealingwiththepast.ch/about/approach.html>.

GAAMAC I in Costa Rica (2014) and GAAMAC II in the Philippines (2016). Switzerland chairs the network's Steering Committee since its establishment.¹¹³

In addition to GAAMAC, the Task Force is also engaged on a multilateral level in diverse international fora, working especially closely with the UN's Secretariat. Swiss diplomats have actively promoted and assisted in the development of several new ideas and concepts pertaining to the prevention of mass atrocity crimes. For instance, Switzerland launched diplomatic initiatives in 2005, 2008, 2009, 2012 and 2016 which led respectively to the adoption of resolutions by the UN Commission on Human Rights and by the Human Rights Council aimed at strengthening human right and justice in transitional processes. Switzerland also supported the establishment of a mandate for a UN Special Rapporteur For The Promotion Of Truth, Justice, Reparation, and Guarantees of Non-recurrence.¹¹⁴ Within the staff of the Special Rapporteur, Switzerland financed one expert's position. At the country level, Switzerland was at the origin of the resolution A/HRC/33/L.10 of the Human Rights Council, adopted in September 2016. It requests a joint study from the United

¹¹³ Global Action Against Mass Atrocity Crimes, "History," accessed September 4, 2016, <http://www.gaamac.org/about-gaamac/history>.

¹¹⁴ Government of Switzerland, Federal Department of Foreign Affairs, "Dealing with the past," November 27, 2017, accessed February 7, 2018, <https://www.dfae.admin.ch/eda/en/home/foreign-policy/human-rights/peace/dealing-with-past.html>.

Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser of the Secretary-General on the prevention of genocide. The study should address the contribution of transitional justice to the prevention of gross violations and abuses of human rights as well as serious violations of international humanitarian law and their recurrence. The Task Force also works with other international organization on an ad hoc basis, providing for instance, experts to the European Union at various times.

Since 2010, the Task Force has also organized an invitation-only advanced lecture on dealing with the past and the prevention of mass atrocity crimes. The goal of the course is “to provide participants with in-depth knowledge of fundamental Dealing with the Past concepts, mechanisms, best practices and lessons learned, as well as an opportunity to engage in a process of critical reflection about different approaches to Dealing with the Past in post-conflict contexts.”¹¹⁵ The course brings together civil society professionals and state officials from various countries (usually around five states). While nationals are dispersed during the course, the course usually ends with a group work conducted by nationals of the same country, which allows them to reflect on the elaboration of a road map for their national context. Over the years, interest in the advanced lectures has grown. Since 2015, lectures can be offered for specific context on a case-by-case basis. Switzerland views the course, at least in part, as a way to construct and consolidate a network of experts on dealing with the past and mass atrocity crimes prevention.¹¹⁶

Since its establishment, the Task Force has been confronted with a number of diverse challenges. Some challenges can be attributed at least partly to the subject itself. With the rise of demands over the past few years as well as the expansion of GAAMAC, the Task Force is victim of its own success: it currently lacks the financial and personal resources to address all of the demands being placed on it. As a consequence, the Task Force recently developed an internal set of criterion against which to accept or refuse requests for help. Switzerland’s foreign policy principles of efficiency and coherence may provide broad guidelines in this establishment. They must however be used in accordance with the principles of solidarity and responsibility. Establishing an assessment process is not an easy task and raises multiple practical and ethical questions.

Challenges can also be due to the holistic approach followed. As a matter of fact, dealing with the past and the prevention of mass atrocity crimes are extremely sensitive subjects in usually extremely tense contexts. Activities must be the result of a good comprehension and inclusive planning, taking carefully into account the conflictual situation and possible impacts to avoid any escalation of violence. They must be sensitive and adaptable to the evolving conflicts dynamic in diverse political, social and economic contexts. Moreover, to avoid problems due to the lack of legitimacy and unfitting planning, a “bottom-up” approach elaborated with the inclusive participation of significant national actors should ideally be followed. While a bottom-up approach allows for the establishment of a fitting mechanism, it entails the challenge of defining measures and mechanisms for each situation which could contribute to the transformation of a conflict, to reconciliation and to the rule of law. These measures and mechanisms should not lead to impossible expectations, but should be realistic and take into account available resources, often scarce in conflict or post-conflict context.¹¹⁷

F. Prevention of Mass Atrocity Crimes in The Light of Swiss Neutrality and Foreign Policy

The general overview of the content and evolution of Swiss foreign policy underlined the shift operated in the beginning of the nineties. By adopting an active neutrality, as well as defining peace promotion as one of the five constitutional goals of Switzerland’s foreign policy, the Federal Council paved the way for the development of peace promotion activities. Moreover, peace promotion was actively developed as a niche diplomacy substitute for the ailing Swiss good offices. Peace

¹¹⁵ Swisspeace, “Goals,” *Dealing with the Past: An Advanced Learning Course for Professionals*, accessed September 4, 2016, <http://www.dealingwiththepast.ch/about/goals.html>.

¹¹⁶ For more information: Swisspeace, “Dealing with the Past Course,” *Dealing with the Past: An Advanced Learning Course for Professionals*, accessed September 4, 2016, <http://www.dealingwiththepast.ch/course.html>.

¹¹⁷ Swisspeace, *Un Cadre Conceptuel pour le Traitement du Passé*, 14-18.

promotion thus developed and specialized in different areas where Switzerland, in conformity with its foreign policy principles, could be efficient and make a substantial impact. Swiss characteristics shaped this development. The Balkans war led to more peace promotion activities focused on dealing with the past and genocide prevention, as a way to ensure Switzerland's security and economic and migratory stability, ultimate goal of Swiss foreign policy. Neutrality and direct democracy also influenced this development. Military peace promotion was forbidden by popular plebiscite in 1994 as a result of the right wing Swiss People Party's action for an "Independent and Neutral Switzerland." Participation in UN and OSCE peace operations has subsequently been accepted in 2001, under the condition that it should conform to Switzerland's foreign policy and that Swiss participants would only carry a weapon for self-defence and not engage in any enforcement action.¹¹⁸ This partial acceptance does not allow Switzerland to be a prominent actor in military peace promotion, which could also explain the strong focus given to civilian peace promotion. These multiple factors and slow evolution led to the establishment of the Task Force, a niche diplomacy that seems to be in concordance with the values and principles of Swiss foreign policy, as well as its neutrality. But are the Task Force activities really compatible with the flexible and evolving conception of neutrality? How can neutrality influence the future of Swiss genocide and mass atrocities prevention?

The following analysis aims to first establish whether the Task Force activities abide to neutrality law in different conflicts configurations. In a second phase, they will be analysed through the lens of the policy of neutrality and its defining characteristic, namely the Swiss national role conceptions as defined by Graf and Lanz. The last part of the analysis will address the future of mass atrocities and genocide prevention in the light of the conclusion reached at this stage.

As we saw above, the juridical acceptance of neutrality is relatively narrow and forbids the neutral state to intervene in armed conflicts. One can ask whether there should be a special exception excluding the application of neutrality in case of mass atrocity crimes and genocide. During the Kosovo war, Switzerland was confronted to this problematic through NATO's humanitarian intervention.¹¹⁹ Switzerland addressed the hypothetical applicability of neutrality law to military measures taken as a reaction to mass atrocity crimes or genocide, in a case where the UN Security Council did not endorse the measures. The Federal Council made a distinction between ethics and neutrality. From the ethical point of view, the Council affirmed that States are expected to lend support to populations suffering or being exposed to grave mistreatment. In terms of neutrality, however, the Council recognized that Switzerland would have to decide whether or not neutrality law would be applicable. The Council considered it hardly conceivable that an unlawful use of force would not trigger the application of neutrality law, whereas the exclusion of neutrality, if the use of force was undertaken in accordance with international law, was a disputable matter. In that case, the Council fleshed out how the decision should be made. It "[...] necessitates a careful and comprehensive weighing up of all the interests involved. In so doing, the prevention of and action against international crime, respect for the prohibition of force and consolidation of the UN's system of collective security will be as important as Switzerland's interest in a coherent, consistent policy which—at least at present—seems completely guaranteed only by a purely formal approach (i.e., existence of a decision by a legitimized organ)."¹²⁰ No subsequent decisions or positions were taken in that regard. While the establishment of a new circumstance excluding the applicability of neutrality law is still open, it is however not (yet?) recognized by Switzerland.

As cases of genocide and mass atrocity crimes do not automatically exclude the application of neutrality law, the common rules for its application and content must be analyzed to know whether it forbids prevention activities. The Swiss government reaffirmed several times that the application of neutrality law was limited to international armed conflict, in situations where the UN Security

¹¹⁸ Government of Switzerland, State Chancellery, *Votation populaire du 12.06.1994*, accessed September 4, 2016, <https://www.admin.ch/ch/f/pore/va/19940612/index.html>.

¹¹⁹ The label of humanitarian intervention is controversial but as it is the terminology used, with caution, by the Federal Council, the analysis will use this nomenclature without questioning it.

¹²⁰ Government of Switzerland, Interdepartmental Working Group, *Swiss Neutrality in Practice - Current Aspects: Report of the interdepartmental working group*, August 30, 2000, 16.

Council did not legitimize the use of force of one State.¹²¹ This understanding means that genocide and mass atrocity crimes prevention activities are thus always compatible with neutrality law if 1) they happen in a strictly internal tensions context (civil war, political transition, etc.) or 2) if the Security Council has endorsed one party, in accordance with international law. While legal, such activities must still be confronted to the prevailing policy of neutrality, as it will be done below.

The lawfulness of the Task Force activities in case of other conflict configurations is less clear. In the case of an international armed conflict where no side's use of force has been legitimized by a resolution of the UN Security Council, Switzerland considers that neutrality law forbids Switzerland to militarily support a belligerent State.¹²² This interdiction is a corollary of the obligation of equal treatment, core obligation of neutrality law.¹²³ However, it is nuanced: the principle of equal treatment only applies to acts of the neutral state which are of military relevance to the parties of the international armed conflicts.¹²⁴ In a hypothetical situation where State A and B are opponents in an international armed conflict, State A is at the verge of committing mass atrocities against State B's nationals. If we consider that leading prevention activities provides a military advantage to State B or military impede State A, then, by acting, Switzerland may violate its neutral state's duty of equal treatment. While preventing mass atrocities committed against State B's troops logically impacts the outcome of the conflict and should be considered as giving at least an indirect military advantage, the status of crimes targeting civilian is less clear. Indeed, given the psychological impact mass atrocities and genocide are likely to have on the victim State's nationals, as well as how they weaken the victim State's apparatus and economy, they could be considered as having an indirect effect on the military capacity of the victim State. As the Swiss government recognized in its 2005 Neutrality Report, it is debatable how far the law of neutrality governs measures which could indirectly influence the conflict to the advantage or disadvantage of one conflict's party.¹²⁵ While some argue that a broad notion of military support should be retained, which scope includes all indirect military support, the general acknowledged duties of neutral States, including Switzerland, tend toward limiting neutrality law to its military core. According to this understanding, providing indirect military support, limited to the principle of equal treatment in trade, is forbidden.¹²⁶ As such, activities of prevention may lawfully take place in this context. They must however still undergo the policy of neutrality scrutiny.

The same debatable analysis has to take place in the case of an internationalized internal armed conflict. In that configuration, State B might suffer from an internal conflict against a rebel group, whose committing mass atrocities or a genocide. State A and State B are not directly in conflict with each other. However, State A might be providing assistance to the rebel group in State B. It is unclear if this configuration enters the scope of application of neutrality law. If the international element of the internal armed conflict is deemed sufficient to trigger the application of neutrality law, then the same analysis has to be made to define if undertaking prevention activities are violating the neutral state's duties.

As we have seen thus far, activities of prevention of mass atrocities might be taken in accordance with neutrality law. However, if neutrality law does not seem to forbid all prevention activities, a State can still politically choose to go further by adopting a stronger policy of neutrality. Any mass atrocity crimes and genocide prevention activities that were deemed legal according to neutrality law must also be compatible with Switzerland's policy of neutrality to be carried out. As aforementioned, Swiss policy of neutrality aims to give credibility to Switzerland's position as a neutral state. As such, bilateral activities—if led in purely internal armed conflict context, or, in case of international armed conflict, if the activities do not fall in the scope of neutrality law—as

¹²¹ Ibid., 13 and 16; Government of Switzerland, Federal Council, *Neutrality Under Scrutiny in the Iraq Conflict*, December 2, 2005, 2.

¹²² Switzerland, Federal Council, *Neutrality Under Scrutiny*, 12.

¹²³ Paul Seger, "The Law of Neutrality", in *The Oxford Handbook of International Law in Armed Conflict*, ed. Andrew Clapham et al. (Oxford: Oxford University Press, 2014), 257.

¹²⁴ Ibid.

¹²⁵ Switzerland, Federal Council, *Neutrality Under Scrutiny*, 12.

¹²⁶ Ibid., 13.

well as multilateral activities irrespective of an armed conflict, should be analyzed through the lens of the neutrality policy.

Given its nature of flexible tool, there is no precise definition of what the policy of neutrality entails. Since the shift operated in 1993, Switzerland is following an active neutrality to answer global threat—in opposition to the isolationism prevailing during the Cold War Era—and should be realized “in the service of peace.”¹²⁷ This conception is twofold: on the one hand, to compensate the loss of Switzerland’s importance for providing good offices, neutrality should be interpreted in a way that allows a stronger peace promotion policy. On the other hand, the Federal Council affirms that neutrality is subordinated to the solidarity principle, which underpins Swiss foreign policy.¹²⁸ The Council concludes that “Switzerland will continue to direct its neutrality toward humanitarian and peaceful goals. [...] In shaping its neutrality, it will also take the needs of international solidarity into account in order to serve the community of nations. Swiss neutrality must remain a peace-promoting factor both in Europe and throughout the world.”¹²⁹

However, this ambiguous and vague definition of active neutrality does not necessarily mean that mass atrocities and genocide prevention are compatible with the current Swiss policy of neutrality. By using a deliberately vague language in 1993, the Federal Council allowed the expansion of peace promotion activities, while keeping a leeway to forbid any future politically delicate activities in the name of neutrality. This seems to be confirmed by subsequent practice. Instead of better define what the new conception of active neutrality meant, the Federal Council used the same language on policy of neutrality in its two subsequent throughout analysis in 2000 and in 2005. In 2005 however, the Council introduced a slight change to its reaffirmed position, stressing that “neutrality should not be equated with indifference” and considered that Switzerland activities aiming to increase the respect of international humanitarian law by the parties to the Iraqi conflict were deemed compatible with the Swiss policy of neutrality.¹³⁰ An analogy could probably be drawn from this consideration for the Task Force multilateral activities, such as GAAMAC, as its aims are similar. On a bilateral level, it seems harder to conclude that the Federal Council’s previous positions expressly allows Switzerland to play a more active role within a country party to an international armed conflict.

Given the lack of clear and written policy of neutrality regarding mass atrocity crimes and genocide prevention, and its evolving and fluctuant nature, we have to take a closer look on what is shaping it, namely Switzerland’s national role conceptions—which stem from neutrality and, as well as the aims of neutrality.

As mentioned earlier, two main and seemingly contradictory national role conceptions are shaping Switzerland policy-making. The first one is the isolate national role conception—the tendency to fear and avoid international relations. The second one is Switzerland’s mediator-integrator national role conception, which can to some extent be linked to its less pronounced bridge-builder and defender of faith national role conception. The inherent nature of mass atrocities and genocide prevention seems to be the logical extension of the mediator-integrator national role conception, and be in direct contradiction with its isolate national role. If we consider it to be the case, then the existence of the Task Force implies that the mediator-integrator is actually stronger than the isolate national role conception in the political sphere—and, through direct democracy, the public sphere— as it can afford to contradict it.

However, another reading of the situation is possible. As underlined by Goetschel’s dualism between “high” and “low” politics, not every international relation is following an isolationist trend. Mass atrocity crimes and genocide prevention, though primarily aiming at avoiding the commission of atrocities abroad, are part of Swiss peace promotion policy and thus obey its interest-driven logic, fuelled by security, economic stability and migratory movement interests. Its secondary aim is thus to ensure Switzerland’s stability and security, as well as its well-being.

¹²⁷ Switzerland, Federal Council, *White Paper on Neutrality, Annex to the Report*, 11.

¹²⁸ Ibid.

¹²⁹ Ibid., 27.

¹³⁰ Switzerland, Federal Council, *Neutrality Under Scrutiny*, 14.

Because the work of the Task Force is not directly affecting Switzerland's security, but only has a future, negative and difficult to quantify impact (in the sense that it does not improve but allows the situation to remain unchanged), it can be argued that mass atrocities and genocide prevention should be labeled as "low" politics.

This second understanding seems to be confirmed by three facts. First, there is no available document issued by the government to confirm that the Task Force's activities are compatible with neutrality. An internal analysis might have been realized, however, the lack of published document on the matter seems to attest that government policy-makers did not believe it would be in contradiction with the Swiss population conception of neutrality. Second, while neutrality is a recurrent subject of parliamentary interpellation, no parliamentarian asked the Federal Council to justify any genocide and mass atrocities prevention activities in regard to neutrality. Third, there has been no plebiscite regarding civilian peace promotion activities, in opposition to military peace promotion. The lack of reaction raised by prevention activities seems to confirm that they must be considered as low politics, which are not limited by the isolate national role conception.

In conclusion, by following the current trend to limit the neutral state's obligations to its military core, Switzerland excludes mass atrocities and genocide prevention activities from the scope of neutrality law. Moreover, as an expression of the mediator-integrator national role conception or as a matter of low politics, they thus appear to be in conformity with the current Swiss policy of neutrality.

What does it mean for the Task Force future? As the policy of neutrality is conceived as a flexible instrument, its evolution is likely to influence Switzerland's peace promotion and the Task Force's existence. Changing international circumstances may lead the Federal Council to reinterpret Switzerland's neutrality. One possible development would be to go even further than the current active neutrality, interpreting Switzerland's policy of neutrality and neutrality duties in a narrower sense. In that scenario, the activities of the Task Force would remain unchallenged.

On the contrary, if Switzerland evolves toward a strict neutrality due to the resurgence of a neighboring threat, similar to the integral neutrality of the Cold War, it would affect them to a certain extent, depending on the degree of the evolution. A first step would be to adopt a broad definition of what constitutes a military advantage in neutrality law, effectively forbidding prevention in international armed conflict. A second step would be the adoption of a strict policy of neutrality. In that configuration, the change in the political climate would likely result in a stronger isolate national role conception over its mediator-integrator rival.

Two scenarios might unfold in this case: if mass atrocity crimes and genocide prevention stems from the weakened mediator-integrator conception, the reinforcement of the isolate national role conception will probably lead to discard prevention in favor of a more isolate behavior. If however, prevention activities are, as we argued, part of Goetschel's low politics, then it is possible that they would not be challenged by the strengthening of the isolate conception. Given their inherent international nature however, it seems unlikely that they would not attract further notice. The Federal Council would probably have to realize an in-depth analysis of prevention activities in the light of their utility to Switzerland and the international community, and their potential contradiction to the aims of a strict understanding of neutrality. In case of clashing interest, the Task Force's existence would probably be in peril. While it could be argued that the indirect security and stabilizing effects of prevention may be a sufficient replacement of neutrality, it seems unlikely that Switzerland would abandon neutrality in favor of prevention. Indeed, prevention, while it might ensure security, would not be able to ensure social cohesion by providing Swiss population with a distinct identity. Moreover, national role conceptions at the basis of prevention — mediator-integrator, bridge-builder and to a certain degree defender of the faith — are a direct consequence of neutrality. It seems thus extremely difficult to replace neutrality by prevention, as neutrality is indirectly one of the justifications of Swiss prevention activities.

G. Conclusion

Before the end of the Cold War, Switzerland was following a strict policy of neutrality which tended toward isolationism. The shift from a bipolar to a multipolar world led to a new interpretation of the policy, which allowed for the development of peace promotion activities. Peace promotion

was then enshrined in the revised Federal Constitution as one of the five goals of Swiss foreign policy. Two decades later, a specialized and cross-departmental entity—the Task Force for Dealing with the Past and Prevention of Atrocities—was created. This specialization could be the result of multiple factors: the diminishing role of the good offices, the need to reassert Switzerland's position in the international community by investing in new diplomatic niches, the impossibility to develop military peace promotion as a consequence of direct democracy, etc. After a few years of working both at the multilateral and bilateral level, following an inclusive and holistic approach, the Task Force has to overcome a new challenge induced by the lack of resources and lay out a set of criterion to accept or decline help request.

At the same time, Switzerland neutral status did not lose its force. The Federal Council reaffirmed several times that neutrality has proven its capacity to protect Switzerland security and stability. As we saw above, neutrality is thus both what allowed prevention activities to flourish—as a consequence of the mediator-integrator national role conception—and what can potentially limit them, as a consequence of the isolate national role conception. As we demonstrated, the current interpretation of Swiss neutrality law and policy is compatible with mass atrocities and genocide prevention. However, if new threats considered grave enough to adopt a stricter policy of neutrality were to arise, it could have serious consequences on the existence of the Task Force. A broader understanding of the interdiction to provide military advantages to the belligerents, including in its scope indirect advantages, may lead to the illegality of prevention activities. The strengthening of the isolate national role conception could also have an enormous impact on these activities. If prevention activities are based on the mediator-integrator national role conception, they may stop in favor of a more isolate behavior. However, if, as we argued, they are considered to be part of Goetschel's low politics, they may survive to the strengthening of the isolate national role conception.

Regardless of the national role conception's affiliation of mass atrocity crimes and genocide prevention, the cessation of the Task Force activities must also be analyzed regarding Switzerland's international relations. Indeed, neutrality proves a lack of hostility, but peace promotion proves usefulness vis-à-vis greater powers.¹³¹ In the light of Switzerland's candidacy for the Security Council in 2023-2024, niche diplomacy will surely be highly put forward to distinguish Switzerland from rival countries. In addition, as Switzerland is a small, almost absent, player regarding military peace promotion, it will probably counterbalance this weakness by an active, efficient, and, more importantly, specialized civilian peace promotion. As a consequence of its candidacy, Switzerland will probably intensify in the upcoming years its activities regarding genocide and mass atrocity crimes prevention, especially in multilateral fora.

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¹³¹ Graf and Lanz, *Conclusions*, 413.

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The Reduction of Mass Atrocity Crimes in East Asia: The Evolving Norms of ASEAN's Prevention Mechanisms

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Introduction¹

"East Asia's recent past is littered with examples of conscience shocking inhumanity against civilian populations," writes Alexander Bellamy.² "Indeed, for much of the Cold War, people in East Asia were arguably at greater risk of death by genocide and mass atrocities than anyone else in the world," Bellamy observes.³ He continues:

Almost unnoticed, however, the region has been transformed. There are fewer cases of genocide and mass atrocities in East Asia today than at any point in history for which we have reliable records. This change has coincided with, and been informed by, a quiet revolution in the region's understanding of the rights and responsibilities of sovereignty.⁴

This "quiet revolution" is due in part to an unfolding commitment to what Steven Pinker has called the global human rights revolution, which broke out in the wake of World War II and spread to the countries in East Asia.⁵

Pinker has assembled in his book, *The Better Angels of Our Nature*, compelling "big data," drawn from a host of sources, that since 1945 the world community has experienced a significant reduction in the number of genocides and mass atrocities.⁶ While it is a controversial thesis that seems to be defied by current events, including President Bashar al-Assad's barrel bombing of Syrian civilians and the rise of ISIS, Pinker has effectively answered his critics and has updated his argument.⁷ In comparative terms, "the world's civilians are several thousand times less likely to be targeted today than they were 70 years ago," argue Pinker and Mack.⁸ The development of norms by the global community that are then adopted by regional organizations like the Association of South East Asian Nations (ASEAN)⁹ help explain the success of the post-World War II human rights revolution.

The global community created the UN (1945), held 13 trials holding the Nazis responsible for crimes against humanity (1947-1948), and endorsed the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and more recently, the Responsibility to Protect doctrine (2005). The doctrine, based on three pillars, makes it a responsibility for the member states of the United Nations to prevent genocide and mass atrocities that may result from interstate and

¹ This article is based on a paper presented to the Carnegie Council for Ethics and International Affairs Global Ethics Fellows Fifth Annual Conference, New York, NY, October 2015. I would like to thank Edward Luck, Dana Luck, and Alexander Bellamy for the conversations that inspired this essay.

² Alexander J. Bellamy, "The Other Asian Miracle? The Decline of Mass Atrocities in East Asia," *Global Change, Peace & Security* 26, no. 1 (2014), 1.

³ Ibid.

⁴ Ibid., 1; Timo Kivimäki, "East Asian Relative Peace and the ASEAN Way," *International Relations of the Asia-Pacific* 11, no. 1 (2010), 57-85; Benjamin E. Goldsmith, "A Liberal Peace in Asia?," *Journal of Peace Research* 44, no. 1 (2007), 5-27.

⁵ Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Viking, 2011). Pinker's thesis covers a 10,000 year period, not just to 1945.

⁶ Ibid.

⁷ Steven Pinker, "Response to the Book Review Symposium: Steven Pinker, the Better Angels of Our Nature," *Sociology* 49, no. 4 (2015), 3-5.

⁸ Steven Pinker and Andrew Mack, "Why the World Is Not Falling Apart," *Slate Magazine*, December 22, 2014, accessed December 30, 2017, http://www.slate.com/articles/news_and_politics/foreigners/2014/12/the_world_is_not_falling_apart_the_trend_lines_reveal_an_increasingly_peaceful.html.

⁹ The Association of Southeast Asian Nations (ASEAN) has ten members: Brunei Darussalam, Myanmar/Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

intrastate conflict.¹⁰ Luck and Luck correctly argue that R2P has been a success; it has been called one of the fastest-developing international norms in history.¹¹ Beginning in 2005, the norms of R2P have inspired international activism, have been invoked in twenty-five UN Security Council resolutions, have been used to justify successful efforts to prevent or mitigate atrocity violence in Africa (Kenya, 2008; Burundi, 2008; Cote d'Ivoire, 2010; Libya, 2011), and have contributed to the reduction of mass atrocities in East Asia.

I suggest that the reduction of mass atrocity crimes in East Asia can be attributed to the global human rights revolution and ASEAN genocide and mass atrocities prevention norms and mechanisms that work to assimilate the global values of R2P with those of ASEAN member states. The "ASEAN way" serves as a positive model for other regional organizations.¹² To be sure, the recent mass atrocities committed against the Rohingya civilians in Myanmar, a member of ASEAN, illustrate that the creation of shared human rights norms may be a necessary but not a sufficient condition for the prevention of human rights abuses. However, the horror visited upon the Rohingya stands out in relief against a relatively violence-free period in the region, and as a 2015 report issued by the Holocaust Museum indicated, there were many warning signs, including the violation of accepted regional and international norms of human rights, suggesting that the Rohingya would become targets of mass atrocities.¹³ The government of Myanmar has violated established international and ASEAN human rights norms; the issue now concerns the political will needed to enforce the norms.

Bellamy is careful to acknowledge that the acceptance of the R2P norm is but one of four factors in the reduction of mass atrocities in Southeast Asia:

The dramatic and sustained decline of genocide and mass atrocities in East Asia was not produced by any single factor, but by the combined effects of at least four important ones: a reduction in the deliberate targeting of civilians in war, growing incomes across the region, creeping democratization, and changing ideas about the nature of sovereignty and the responsibilities for protection.¹⁴

Three of these factors, Bellamy observes, are structural; the fourth is cultural and symbolic, a result of the incorporation of norms adapting the values of global human rights and R2P to those of East Asia.¹⁵ These structural forces have played powerful roles in the reduction of mass atrocities and in the creation of prevention mechanisms. Research has suggested as well that these structural factors alone, without the appropriate cultural and ideational norms, do not and cannot lead to reduction in mass atrocities.¹⁶ In the case of East Asia, it is clear that the establishment of human rights norms and the values codified in R2P have played a role in the reduction of atrocities. As Pinker, Bellamy, and others document, the structural factors that influence the outbreak or prevention of mass atrocities are framed by ideas, norms, and discourse.¹⁷ The post-World War II human rights revolution has, in Bellamy's words, altered the thinking in East Asian countries

¹⁰ Alexander J. Bellamy, ed., *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015).

¹¹ Edward C. Luck and Dana Luck, "The Individual Responsibility to Protect," in *Reconstructing Atrocity Prevention*, eds. Sheri P. Rosenberg, Tibi Galis, and Alex Zucker (New York: Cambridge University Press, 2015), 207–248.

¹² Mikio Oishi, "Can ASEAN Cope with 'Human Insecurity' in Southeast Asia? In Search of a New ASEAN Way," in *Human Insecurities in Southeast Asia*, Vol. 5, eds. Paul J. Carnegie, Victor T. King, and Zawawi Ibrahim (New York: Springer, 2016), 103–119.

¹³ United States Holocaust Memorial Museum, *They Want Us All To Go Away: Early Warning Signs of Genocide in Burma* (Washington D.C.: United Holocaust Museum Press, 2015).

¹⁴ Bellamy, *The Responsibility to Protect*, 19.

¹⁵ *Ibid.*, 1–2; Bellamy, *The Other Asian Miracle?*

¹⁶ Bellamy, *The Other Asian Miracle?*; Jennifer M. Welsh, "Norm Contestation and the Responsibility to Protect," *Global Responsibility to Protect* 5, no. 4 (2013), 365–396; Noële Crossley, *Evaluating the Responsibility to Protect: Mass Atrocity Prevention as a Consolidating Norm in International Society* (New York: Routledge, 2016).

¹⁷ Pinker, *The Better Angels of Our Nature*; Alexander J. Bellamy, "Atrocity Prevention: From Promise to Practice in the Asia Pacific," *Global Responsibility to Protect* 8, no. 2–3 (2016), 180–199.

about what constitutes legitimate conduct. These ideational shifts, which came in part from global transformations, and in part from within the region, were transmitted by the region's growing middle class and activist civil societies and changed the expectations about the proper relationship between governments and peoples.¹⁸

Scholars have corroborated Bellamy's conclusions: Okere, Aning, and Nelson find that the countries of ASEAN "have become increasingly involved in moving the [R2P] norm from rhetoric to practice."¹⁹ While there is a significant body of work that examines the three structural factors that play significant roles in the decline of genocide and mass atrocity in East Asia, I seek here to briefly explain how ASEAN's genocide and mass atrocity prevention mechanisms intended to foster changes in thinking and norms about human rights have contributed to the atrocity prevention mechanisms and how they are evolving.

ASEAN was formed in 1967 to promote economic development and regional stability and has contributed to the reduction in interstate war in the region.²⁰ However, until the creation of the R2P doctrine, ASEAN countries did not concern themselves with the mass atrocities that have taken place within the borders of their member states until the advent of R2P. The Asia Pacific Centre for the Responsibility to Protect (APCR2P is "the most important norm entrepreneur and advocate for R2P in Southeast Asia...").²¹ The Centre "has led efforts to socialize the region on the 2005 version of R2P" and seeks to embed the three pillars of R2P, including extension of the human rights imperative into the internal politics of ASEAN member countries.²² Launched in February 2008 with the help of Assistant Secretary-General of the United Nations Edward Luck and former Foreign Minister of Canada Lloyd Axworthy, the aspiration of the Centre, observes Noel Morada, one of the Centre's directors, is to build "domestic constituencies around" the R2P norm with its various programs.²³

To build the R2P norm, the APCR2P uses a "bottom-up" approach through use of seminars and workshops at the local level in the Asia-Pacific region on R2P and offers scholars the opportunity to conduct policy-relevant, peer-reviewed academic research. The efforts of the Centre and the more general and gradual acceptance in the region of the responsibilities of the state to protect its citizens, and when it doesn't, the responsibility of outside bodies to assist or to intervene to protect human beings, irrespective of their geographical location, has borne some fruit in Southeast Asia. The consensus of the emerging literature suggests that if global norms of human rights are to find a place in ASEAN mass atrocity prevention mechanisms, they will need to be grafted onto those that currently rule in the region; they cannot be imposed.²⁴

The first mission of the APCR2P is to offer R2P norm-building training, projects, activities, and workshops. Noel Morada, after conducting a series of interviews and workshops at different locations in the Asia-Pacific region in 2005 to determine what might be done to promote R2P norms, identified three best practices: translations of important UN and R2P materials into East Asian languages, development and inclusion of R2P materials in the curriculum of East Asian universities, and R2P workshops for government officials, military personnel, and important civilian groups. The legacy of the Centre's first R2P constituency-building workshop, hosted by the Centre in the Philippines on June 25-26, 2009, is of importance. The workshop brought representatives from

¹⁸ Bellamy, *The Responsibility to Protect*, 14.

¹⁹ Frank Okere, Kwesi Aning, and Susan Nelson, "Article 4(H) of the African Union Constitutive Act," in *Africa and the Responsibility to Protect: Article 4(H) of the African Union Constitutive Act*, eds. Dan Kuwali and Frans Viljoen (Abingdon: Routledge, 2013), 279.

²⁰ Kivimäki, *East Asian Relative Peace*, 57-58.

²¹ David Capie, "The Responsibility to Protect Norm in Southeast Asia: Framing, Resistance and the Localization Myth," *The Pacific Review* 25, no. 1 (2012), 82.

²² Ramesh Thakur, "The Responsibility to Protect at 15," *International Affairs* 92, no. 2 (2016), 430.

²³ Noel M. Morada, "ASEAN Responses to the Responsibility to Protect: Challenges, Opportunities and Constraints," in *Responsibility to Protect: From Principle to Practice*, eds. Julia Hoffmann, André Nollkaemper, and Isabelle Swerissen (Amsterdam: Amsterdam University Press, 2012), 242.

²⁴ Capie, *The Responsibility to Protect Norm in Southeast Asia*, 75-93.

all of the important constituencies and focused on how the R2P norm could be promoted in the Philippines. Morada reports that the workshop played an important role in providing information on R2P to the Philippines' Department of Foreign Affairs, which in turn influenced the Philippines' taken on R2P during a meeting about the doctrine at the UN in July 2009.²⁵

The second mission of the Centre is to promote research on R2P. The Centre has served as a publishing house for works of research and as a scholarly clearinghouse for R2P in the Asia-Pacific region. The APCR2P website hosts an "R2P Ideas in Brief" webpage. As a "resource hub," the webpage lists reports, podcasts, newsletters, and issue briefs outlining problems facing R2P. The Centre has published full reports. A review of the "Ideas in Brief," which lists five annual volumes of research summaries of major issues, reveals well-researched and written case studies of R2P as applied to human rights problems in the Asia-Pacific region.²⁶ Individual scholars sponsored by the Centre have made significant scholarly contributions to our understanding of genocide and mass atrocity prevention mechanisms set forth by ASEAN. Two stand out as norm entrepreneurs: Noel Morada and Alexander J. Bellamy. Both have provided comprehensive treatments of efforts made by ASEAN member states to establish and develop the architecture for atrocity prevention.

Morada, in his 2006 article "R2P Roadmap in Southeast Asia: Challenges and Prospects," outlined a future of R2P in the Asia-Pacific region.²⁷ Written one year after the doctrine was endorsed by the United Nations, Morada's contribution is prescient, as he accurately predicted both the obstacles to and the promise of implementing R2P in Southeast Asia. ASEAN member states, with their principle of noninterference, have successfully avoided interstate war, but the principle undercuts interference and interventions that might prevent mass atrocities committed by ASEAN member states against its citizens.²⁸ Morada has led efforts to embed the values of R2P in the East Asian cultural context.

Bellamy is a prolific author, and he has emerged as an international authority on R2P. His articles in *Ethics and International Affairs*, reviewing R2P at five years (2010) and at ten years (2015), are major contributions to an understanding of R2P's perils and potential. Articles published in 2008 (on conflict prevention and the responsibility to protect), 2009 (on R2P in the Asia-Pacific region), three in 2011 (on R2P, the invasion of Libya, global politics, and international law), and his 2015 *The Responsibility to Protect: A Defense* (Oxford University Press) contribute to an understanding of R2P and the importance of norms and their creation, adaptation, and adoption.²⁹ Morada and Bellamy provide important leadership and support for ASEAN member states to implant the norms of human rights and R2P as mass atrocity prevention mechanisms.

²⁵ Morada, "ASEAN Responses," 243.

²⁶ See for example, Garima Mohan, "India and the Responsibility to Protect," *R2P Ideas in Brief* 4, no. 3 (2014), 1-9.

²⁷ Noel M. Morada, "R2P Roadmap in Southeast Asia: Challenges and Prospects," *UNISCI discussion papers*, no. 11 (2006), 59-70.

²⁸ *Ibid.*; Noel M. Morada, "Entrenching Responsibility to Protect in the Asia-Pacific," in *The Globalization of World Politics: Case Studies from Australia, New Zealand and the Asia Pacific*, eds. Charles Hawkesley and Nichole Georgeou (South Melbourne: Oxford University Press, 2014); Noel M. Morada, "Institutionalization of Regional Order: Between Norms and Balance of Power," in *Regional Order in East Asia: ASEAN and Japan Perspectives*, ed. Jun Tsunekawa (Tokyo: National Institute for Defense Studies, 2007); Noel M. Morada, "The Association of Southeast Asian Nations," in *An Institutional Approach to the Responsibility to Protect*, eds. Zyberi Gentian and Kevin T. Mason (Cambridge, UK: Cambridge University Press, 2013); Noel M. Morada, "The Responsibility to Protect: Why This Evolving Norm Matters and Is Here to Stay," in *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World*, eds. Doukje Lettinga and Lars van Troost (Amsterdam: The Strategic Studies Project, Amnesty International Netherlands, 2014).

²⁹ Alexander J. Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics & International Affairs* 19, no. 2 (2005), 31-54; Alexander J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics & International Affairs* 20, no. 2 (2006), 143-169; Alexander J. Bellamy and Sara E. Davies, "The Responsibility to Protect in the Asia-Pacific Region," *Security Dialogue* 40, no. 6 (2009), 547-574; Alexander J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (London and New York: Routledge, 2011); Alexander J. Bellamy, Sara Ellen Davies, and Luke Glanville, *The Responsibility to Protect and International Law* (Leiden and Boston: Martinus Nijhoff Publishers, 2011); Bellamy, *The Other Asian Miracle?*, 1-19; Alexander J. Bellamy, "The Responsibility to Protect Turns Ten," *Ethics & International Affairs* 29, no. 2 (2015), 161-185; Bellamy, *The Responsibility to Protect*.

Seaman writes that ASEAN “provides one of the most interesting case studies in relation to R2P.”³⁰ Although Morada notes that the doctrine “remains a difficult norm to promote and gain acceptance in South-East Asia,” some progress is evident.³¹ R2P seems to be “making significant inroads as a regional norm in the Asia-Pacific region”³² and has “great promise as a norm developer for the principles of underpinning conflict prevention...”³³ The literature suggests that at least four norms, with varying levels of acceptance, are in use or development by ASEAN member states.

The ASEAN Way: The Norm of Collective Decision Making through Networked Civil Societies in South East Asia

The formation of ASEAN in 1967 fostered diplomatic communication, promoted the creation of shared values among the ten-member states, and helped create a regional civil society. As Morada writes,

For almost 40 years, ASEAN has relied principally on norm-building and promotion to manage inter-state conflicts... Much of the pressure [to create norms] emanates from an increasingly networked civil society groups in Southeast Asia, which has undeniably become a moral force to contend with especially on humanitarian issues and concerns. In short, ASEAN states cannot just simply ignore the emergence of a regional civil society that now serves as the main avenue for promoting more people-oriented norms in ASEAN.³⁴

ASEAN, according to James Waller’s recent survey, “has demonstrated a constructive capacity to partner with existing institutions, mechanisms, and relevant government actors of the 10 countries within their organization to promote genocide prevention.”³⁵ After the end of the Cold War, ASEAN countries sought to create shared norms between 1997 and 2007, which then led community building between 2008 and 2015.³⁶ To be sure, the progress toward shared norms has not been without setbacks, as ASEAN’s collective decision making resists rapid implementation of new values. Rather, over time, the networked ASEAN civil societies work out through compromise and accommodation the tensions between global and local norms.³⁷

Bellamy points to the numerous efforts made by his Centre and ASEAN member states to promote atrocity prevention. There are a “number of regional initiatives” under way to strengthen mass atrocity prevention norms, including the Asia Pacific Partnership for Atrocities Prevention.³⁸ These initiatives build from the progress made to prevent mass atrocities in the region, doing so by recognizing that individual nations will need to assimilate global human rights values through dialogue and debate. ASEAN uses a consensus model of decision making, with all of its drawbacks and strengths. While it takes time to secure a consensus, a process Bellamy rightly calls “exasperating,” the shared judgments that produce norms are “sustainable and considered legitimate.”³⁹ The progress to establish norms against mass atrocity made through the networked

³⁰ Kate Seaman, “The Regionalization of the Responsibility to Protect,” in *The Responsibility to Protect and the Third Pillar: Legitimacy and Operationalization*, eds. Daniel Fiott and Joachim Koops (New York: Springer, 2014), 63.

³¹ Morada, *The Association of Southeast Asian Nations*, 248.

³² David Carment, Joe Landry, and Sean Winchester, “The Role of Regional Organizations: A Responsibility Gap?,” in *The Oxford Handbook of the Responsibility to Protect*, eds. Alexander J. Bellamy and Timothy Dunne (Oxford: Oxford University Press, 2016), 360.

³³ Alexander J. Bellamy and Timothy Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford: Oxford University Press, 2016).

³⁴ Morada, *R2P Roadmap in Southeast Asia*, 64-65.

³⁵ James Waller, *Confronting Evil: Engaging Our Responsibility to Prevent Genocide* (Oxford: Oxford University Press, 2016), 196.

³⁶ Noel M. Morada, “Southeast Asian Regionalism, Norm Promotion and Capacity Building for Human Protection: An Overview,” *Global Responsibility to Protect* 8, no. 2-3 (2016): 118-119.

³⁷ Sarah Teitt, “Asia Pacific and South Asia,” in *The Oxford Handbook of the Responsibility to Protect*, eds. Alexander J. Bellamy and Timothy Dunne (Oxford: Oxford University Press, 2016), 380-381.

³⁸ Bellamy, *Atrocity Prevention: From Promise to Practice*, 187.

³⁹ *Ibid.*, 189.

civil societies of ASEAN member states has been, in Bellamy's judgment, "impressive."⁴⁰ As a preventative mechanism, the collective decision making based on consensus is understood as the "ASEAN Way."⁴¹ ASEAN has, over time, assimilated some of the global human rights norms.

The Norms of Global Human Rights

Although Bellamy categorizes the decrease in the use of mass atrocities as a stratagem of war as a structural factor, he also acknowledges that the "principal reasons why states have moved away from employing mass atrocities as a tactic are both ideational and material in nature."⁴² The creation of international norms prohibiting genocide and mass atrocity after World War II, backed by the physical and moral force of the United Nations and the International Criminal Court (ICC), found their way into the value structures of ASEAN member states. These actions include an ongoing interrogation of norms that have been used to justify mass atrocity. Norms in the Asia-Pacific region that were once viewed as "natural," such as the right of a nation to attack another or the right of a state to commit mass atrocities against its citizens, have been inverted. Since 2005, countries in the Asia-Pacific region have gradually come to view human rights as a responsibility of the sovereign state. Rather than framing relationship between global human rights and state sovereignty as an antinomy, the R2P doctrine has prompted ASEAN member states to define the protection of human rights as a responsibility of the state.

The R2P doctrine has encouraged sovereign states in the Asia-Pacific region to broaden the range of their responsibilities to include the prevention of mass atrocities. As such, ASEAN member states are attending to factors that spark atrocity crimes, including climate change, economic disparities, food security, and others. Teitt identifies two efforts made by ASEAN member states to broaden the focus of mass atrocity prevention.⁴³ First, the Japanese are working to broaden the definition of human security to include social and economic inequalities, health disparities, hunger, and other problems. Second, ASEAN member states are seeking to implement policies that confront poverty and economic inequality as mass atrocity prevention measures. The "narrow but deep approach to implementing R2P," Teitt writes, "which recognizes a broader development assistance agenda is part of the global effort to end atrocities, resonates both with human security concepts originating in the Asia Pacific and the structural capacity-building agenda advocated by the states in the region."⁴⁴

The consensus of the scholarship on ASEAN human rights norms and mass atrocity prevention mechanisms suggests that both are the result of slow and incremental modifications of local norms through consensus-building decision-making procedures. International and regional organizations, including ASEAN, are in constant dialogue through the offices of the United Nations and institutions like APCR2P. The goal is to assimilate the universal values of human rights into the norms of ASEAN countries. Indonesia and the Philippines, for example, endorsed both the nonintervention policy favored by ASEAN member states and the third pillar of R2P that called for intervention into the affairs of a sovereign state when that state had failed to protect the human rights of its citizens. The "consensus decision-making and evolutionary institutional change" in use by the United Nations "appears to have increased comfort among Asia Pacific states" with the R2P implementation agenda.⁴⁵ However, ASEAN member states have not fully worked through the tension between the doctrine of nonintervention, which has decreased interstate mass atrocities, and R2P in its call for humanitarian intervention by outside forces when a state has failed in its responsibility to protect its citizens. A norm bridging the two is forming.

⁴⁰ Ibid., 190.

⁴¹ Ibid., 117. Morada, *Southeast Asian Regionalism*.

⁴² Bellamy, *The Other Asian Miracle?*, 8.

⁴³ Teitt, *Asia Pacific and South Asia*.

⁴⁴ Ibid., 379.

⁴⁵ Ibid., 380.

An Evolving Norm Nesting the Principle of Noninterference and the Responsibility to Protect within the Sovereign State

ASEAN's founding documents (1967), the Zone of Peace, Freedom and Neutrality Declaration of 1971, and the 1976 Treaty of Amity and Cooperation and Article Two of the ASEAN Charter (2007) commit ASEAN to the principle of noninterference by external parties in the sovereign affairs of member states. The significant decline in the number of mass atrocities due to armed conflict between states in the region since the end of the Cold War can be traced to this principle.⁴⁶ Indeed, "scholars are relatively unanimous in agreeing that during the first decades of ASEAN, the principle [of non-interference] managed to translate into reality."⁴⁷ As a result, "there has been no interstate conflict involving casualties between two ASEAN members, despite the fact that some ASEAN members have been traditional enemies since before joining the organization. This is the case also in East Asia: inter-state war has almost disappeared after 1979, and especially after 1987."⁴⁸ Paradoxically, the principle also protected and shielded states that committed mass atrocities against its own citizens. ASEAN has resisted contesting human rights abuses conducted by its member states against its citizens.⁴⁹

The application of the principle of noninterference by ASEAN "has been extremely strict and has presented one of the major obstacles for ASEAN human rights bodies to interpret their mandates and their functions effectively since their inception."⁵⁰ ASEAN was faced with the choice of either rejecting or accepting R2P's principle that interference and intervention in the affairs of an ASEAN member state is justified if the government is committing human rights abuses against its citizens. Rather than framing the choice as a binary, ASEAN is attempting to bridge the two through an act of creative accommodation and dissociation.⁵¹

ASEAN is on a trajectory that is slowly, with its ponderous, consensus-based decision making, aligning and assimilating the principle of noninterference with the three pillars of R2P.⁵² The networked international and regional civil societies have insisted that the ASEAN principle of noninterference "evolve in a way that reflects a degree of receptivity to principles associated with R2P... Thus, many Southeast Asian states are moving away from the traditional notion of sovereignty and towards accepting a localised variant of sovereignty as responsibility."⁵³ This act of assimilation and dissociation is not simply a crude importation of global human rights norms or a continuation of local practices with a symbolic nod to R2P. Rather, ASEAN has engaged in the negotiation and creative adaptations producing new norms "that alters both the new norm (R2P) and those more established norms (non-interference)."⁵⁴

The ASEAN dissociation and creative reframing of the principle of non-interference and those of R2P has broadened the definition of ASEAN state sovereignty to include the responsibility to safeguard the human rights of its citizens. Bellamy and Drummond highlight two illustrations of this new formulation in action: ASEAN's response to Cyclone Nargis, which caused 138,000 casualties in Myanmar in 2008, and the positions taken by the region's governments during the 2009 UN General Assembly debate on R2P. Both illustrations demonstrate how ASEAN honored the principle of noninterference, while justifying intervention to secure the human rights of individuals within member states as acts of assisting sovereign states to protect their citizens.

⁴⁶ Bellamy, *The Other Asian Miracle?*.

⁴⁷ Kivimäki, *East Asian Relative Peace*, 64.

⁴⁸ *Ibid.*, 73.

⁴⁹ Alexander J. Bellamy and Catherine Drummond, "The Responsibility to Protect in Southeast Asia: Between Non-Interference and Sovereignty as Responsibility," *The Pacific Review* 24, no. 2 (2011), 185-186.

⁵⁰ Sriprapha Petcharamesree, "ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect: Challenges and Prospects," *Global Responsibility to Protect* 8, no. 2-3 (2016), 138.

⁵¹ Bellamy and Drummond, *The Responsibility to Protect in Southeast Asia*. On the role of creative accommodation and dissociation as a means of transcending binaries, see Chaim Perelman and Lucie Olbrechts-Tyteca, eds. *The New Rhetoric, a Treatise on Argumentation* (Notre Dame: University of Notre Dame Press, 1971), 411-459.

⁵² Bellamy and Drummond, *The Responsibility to Protect in Southeast Asia*.

⁵³ *Ibid.*, 196.

⁵⁴ *Ibid.*, 197.

Bellamy, in his 2016 survey concludes, “significant normative progress has been made in building a regional consensus around the principle of the responsibility to protect.”⁵⁵ In light of this progress, ASEAN member states are now creating the norms necessary to prevent mass atrocity.

The Norm of Mass Atrocity Prevention

While atrocity crimes have decreased in Southeast Asia, there is a need to strengthen existing and build new structures designed to prevent future outbreaks. The research suggests that mass atrocity prevention is best done at the national level. Scholars and government officials are seeking to build from the ASEAN’s successes in reducing the frequency of mass atrocities to develop an ASEAN-inflected R2P. Toward this end, a major effort is under way to fully mainstream R2P in Southeast Asia. Government reports and scholars have offered recommendations that if implemented would help create national architectures for ASEAN member states designed to prevent mass atrocities.⁵⁶ Among the many recommendations, three are at the top of the agenda:

- A. The need to continue promoting R2P and adapting it to the values and norms in the region. To accomplish this end, R2P should be “properly contextualized in ASEAN’s language.”⁵⁷ An effort should be made to suggest that ASEAN regional norms, values, and principles are embedded in the Responsibility to Protect and are not alien to it.”⁵⁸
- B. A dedicated effort to strengthen and develop mass atrocity early warning systems. Social science has identified the precursors to mass atrocity. ASEAN member states seek to develop the tools needed to alert policymakers and the general public to conditions, speech, and behavior that foretell mass atrocity. There is a need for networks that join the ten ASEAN member states for the purpose of gathering and analyzing information on human rights violations. At present, ASEAN countries need to devote resources to the development of national architectures designed to prevent atrocity crimes.
- C. The constructive management of diversity and deep pluralism. Atrocity crimes are often the result of identity-based conflict. Government reports and scholarship highlight the need for ASEAN countries to create cultural space and government institutions for people of multiple and overlapping identities. Legal protections for minorities or those who do not adhere to the majority’s religion or lifestyle are necessary to inoculate against atrocity crimes. Conflict management systems, including conciliation, mediation, and arbitration, should play major roles in atrocity prevention.

Conclusion

The member states of ASEAN have successfully reduced the number of wars and as a result, the frequency of mass atrocities since the formation of the association in 1967. Scholars have identified structural factors (reduction of mass atrocities as a weapon of war, rising incomes, and the spread of democracy) and the norms framing them as explanations. The norms in play determine the influence of the structural factors on the frequency of mass atrocities. The effectiveness of these norms can be debated. Kassim argues, “R2P has only enjoyed lip service in Southeast Asia.”⁵⁹ However, Kassim agrees with Bellamy and others that the doctrine is gaining acceptance as the norm is debated and discussed by ASEAN member states.⁶⁰ ASEAN member states have adopted norms of collective decision making and global human rights and are integrating global human rights into regional and national value systems. Although there are serious environmental and political issues facing ASEAN, the association can draw from its history of success to develop new norms that equip member states with the tools needed to prevent atrocity crimes. ASEAN stands as

⁵⁵ Bellamy, *Atrocity Prevention: From Promise to Practice*, 199.

⁵⁶ High Level Advisory Panel, *Mainstreaming the Responsibility to Protect in Southeast Asia* (New York: United Nations, 2014); Petcharamesree, *ASEAN Human Rights Regime*; Bellamy and Drummond, *The Responsibility to Protect in Southeast Asia*.

⁵⁷ Panel, *Mainstreaming the Responsibility*, 333.

⁵⁸ Ibid.

⁵⁹ Yang Razali Kassim, “ASEAN and R2P,” in *The Geopolitics of Intervention* (New York: Springer, 2014), 54.

⁶⁰ Bellamy and Dunne, *The Oxford Handbook of the Responsibility to Protect*.

a model in its success at decreasing atrocity crimes, and the norms it has set forth and is developing can offer lessons to other regional organizations. Future studies of successful norm creation should include the roles played by the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC), the ASEAN Intergovernmental Commission on Human Rights (AICHR), the R2P focal points adopted by Australia, Cambodia, and Timor-Leste, and the UN's "Human Rights Up Front" initiative on the formation of ASEAN's human rights norms.

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Improving Intervention Decisions to Prevent Genocide: Less Muddle, More Structure

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Introduction

Concerns about people fleeing war-torn homelands have become part of our daily news. Vivid images of destroyed cities, brutally murdered civilians, and crowded refugee camps have resulted in an outpouring of compassion and humanitarian aid. Many countries, including the United States, are being pressed to simultaneously undertake actions to halt genocide¹ and to open their doors to new waves of refugees. As a result, policy makers and citizens are asking themselves: How do we decide when to get involved and if we are doing enough to halt the killing (or its threat)? What types of actions might be most effective? How can we ensure that things go right? And what constitutes a successful or unsuccessful intervention?

The importance of preventing genocide is not at issue. The doctrine of responsibility to protect (R2P),² articulated in 2005, permits the international community to intervene in the affairs of a sovereign state if it fails to protect its population from mass atrocity crimes. In the United States, the Executive Summary of the Genocide Prevention Task Force, co-chaired by Madeleine Albright and William Cohen, begins by emphasizing “the fundamental reality that genocide and mass atrocities threaten American values and interests.”³ President Obama supported and strengthened this position by proclaiming, as part of Presidential Directive 10, the establishment of the Atrocities Prevention Board (APB) and by stating that “Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.”⁴

It might then be assumed that clear criteria and policies are in place for deciding when and what to do. The reality, in sharp contrast, is that the *absence* of coherent procedures for addressing intervention decisions is widely acknowledged. For example, in their comprehensive 2008 review of genocide prevention strategies, Albright and Cohen wrote that “Simply put, the U.S. government does not have an established, coherent policy for preventing and responding to genocide and mass atrocities.”⁵ Drawing on techniques from decision analysis, psychology, and negotiation analysis, we highlight a general approach to assessing genocide prevention decisions that we believe could provide decision makers with insights about how to construct defensible intervention policies and link proposed actions to national values in a manner that promotes consistency, efficiency, and defensibility.

¹ This paper follows the lead of U.S. Executive Order No. 13729 and is concerned with decisions to prevent or reduce “large-scale and deliberate attacks on civilians,” a concept that includes actions which could be described as genocide or as mass atrocities. Barack Obama, *Executive Order 13729 of May 18, 2016, A Comprehensive Approach to Atrocity Prevention and Response* (Washington, DC: The White House, 2016).

² United Nations, *General Assembly Resolution 60/1, 2005 World Summit Outcome*, October 24, 2005 (UN Doc. A/RES/60/1), paras. 138–140.

³ Madeleine K. Albright and William S. Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: United States Holocaust Memorial Museum, 2008), xv.

⁴ Barack Obama, *Presidential Directive Study 10*, August 4, 2011. (Washington, DC: Office of the Federal Register, 2011).

⁵ Albright and Cohen, *Preventing Genocide*, 3.

Although we lack direct experience as senior-level policy officials, our research—as academics and frequent advisors to governments—has focused on understanding how people both do and should make decisions characterized by multiple dimensions of value, uncertain consequences, and difficult tradeoffs. This characterization applies to most decisions concerning genocide prevention but also to a host of other tough public policy choices facing governments such as responses to climate change, storage of high-level nuclear wastes, or prevention of terrorism. Each of these national-level policy choices is said to have an influence on “national security” and the long-term “national interest”—two terms that often surface as part of discussions of genocide prevention. In each of these diverse policy arenas the consequences of decisions typically are subject to uncertainty (and thus good outcomes are not guaranteed). Nevertheless, appropriate decision-making approaches have the capability to improve the quality of outcomes by identifying choices that better align with and achieve the considered interests of decision makers. As President Obama stated when discussing U.S. policies in the Middle East, “We have to be able to distinguish between these problems analytically, so that we’re not using pliers where we need a hammer, and we’re not using a battalion when what we should be doing is partnering with the local government.”⁶

Evaluating Tough Intervention Choices

Everyone would acknowledge the many difficulties facing national leaders making decisions about intervening in a foreign country in hopes of preventing genocide and mass atrocities. Whether the U.S. (or any nation) should intervene and attempt to stop genocide is complicated, on many levels.⁷ Such choices place a cognitive demand on decision makers because they involve multiple dimensions of value and a wide range of possible alternative actions. The decision context typically is characterized by numerous constraints including insufficient time, limited information, and scarce financial resources. Intervention decisions also involve strong emotions because people’s lives—foreign as well as domestic—are at issue and because decision makers feel a moral responsibility for the outcomes of their choices.

In a widely cited speech to a group of foreign policy experts meeting at the Holocaust Memorial Museum in Washington, DC,⁸ then Secretary of State Clinton emphasized the importance of preventing mass atrocities when she said “The United States and our partners must act before the wood is stacked or the match is struck.” She also noted that intervention efforts should “ensure that all our tools and resources are being put to good use.” However, there was no explicit linkage to methods or deliberative processes that might provide a practical and generalizable template for assessing what it means to put resources to “good use”—presumably, a reference to undertaking genocide prevention efforts that help to achieve (remembering Albright and Cohen) the Nation’s “values and interests.”

Two basic approaches typically are used to come up with strategies and action plans in the face of difficult choices. The first is to rely on past experiences and informed intuition. For such decisions, some maintain, there is no substitute for experience and little role for external decision aids or methods. This perspective—“decision making as an art”—is a reasonable characterization of much of medicine,⁹ law,¹⁰ and the military:¹¹ good decisions will arise naturally from discussions among a small group of experienced experts. The alternative perspective—“decision making as a

⁶ David Remnick, “Going the Distance,” *The New Yorker*, January 24, 2014, accessed May 11, 2017, <http://www.newyorker.com/magazine/2014/01/27/going-the-distance-david-remnick>.

⁷ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

⁸ Rebecca Berg, “Foreign Policy Experts Discuss Ways to Avert Future Genocide,” *The New York Times*, July 25, 2012, A8, accessed May 11, 2017, <http://www.nytimes.com/2012/07/25/world/clinton-and-other-experts-discuss-ways-to-avert-genocide.html>.

⁹ Atul Gawande, *The Checklist Manifesto: How to Get Things Right* (New York: Metropolitan Books, 2009).

¹⁰ Paul Brest and Linda Hamilton Krieger, *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policymakers* (Oxford: Oxford University Press, 2010).

¹¹ Rex Brown, *Rational Choice and Judgment: Decision Analysis for the Decider* (Hoboken: John Wiley & Sons, 2005).

discipline”—derives from studies in decision analysis,¹² psychology,¹³ and behavioral economics.¹⁴ It maintains that peoples’ unaided judgment is prone to numerous biases and errors, particularly when decision contexts are novel, choices are sequential and shared (i.e., requiring multiple decisions among multiple individuals), or when the task of balancing diverse objectives is critical.

Prescriptive Decision Aids

Prescriptive decision making is concerned with how people can improve their choice processes. As succinctly characterized in the book *Smart Choices*,¹⁵ a recommended decision-making sequence forms the acronym ProACT: understand the Problem context, clarify Objectives and associated measures, define Alternatives, identify their likely Consequences and important uncertainties, and highlight key Trade-offs. When used in an iterative fashion, cycling back to re-examine assumptions due to shifts in the importance of different objectives or because new information is available, the approach is both rigorous and links with the logic of common sense.

To the extent that similar decisions are made over time, the use of a consistent decision-making framework encourages learning because it facilitates the comparison and review of choices, examining criteria and reasons that (in hindsight) will turn out to have a stronger or weaker rationale. The use of a simplifying structure to address intervention choices also has the benefit of forcing decision makers to confront a paradoxical truth: it is because the issues involved in framing such choices can appear overwhelmingly difficult that a simplifying structure is useful. Without an organizing structure, the breadth of concerns involved in thinking about interventions to prevent genocide can effectively serve to paralyze rational decision making. As a result, what often happens is that the difficult becomes (falsely) easy by relying on a single consideration (what is the dominant concern?), habit (what did we do last time?) or intuition (what is my gut feeling?). Unstructured discussions often serve to bias decisions in favor of short-term, emotionally satisfying goals (they attacked us so we’ll attack them) or achieving objectives that are easy to defend, such as national security, without carefully weighing these against less prominent, more long-term, or more difficult-to-achieve objectives such as enhancing human rights or reducing the loss of civilian lives.¹⁶

In our experience, significant clarity can be gained through the simple act of developing a common language for the key decision elements and placing considerations into their proper place or order—an organizing or binning process referred to as “decision sketching.”¹⁷ The structuring process begins by identifying a small set of objectives that effectively capture the concerns that matter most in the context of a defined problem. Alternative responses can then be compared in terms of their ability to achieve these identified values; the outcomes collectively determine the overall benefits and costs of any selected policy. Some of the consequences will matter more to some people than to others, which can help to shed light on individuals’ underlying values as well as their interpretation of the available facts. The balancing of these different outcomes forms the basis for discussions of trade-offs: how much of a potential gain in one objective is needed to offset potential losses in another?

A decision-aiding approach uses several specific tools to help structure deliberations about tough intervention choices, with the goal of highlighting key considerations and—by making relationships among key decision elements more transparent—encouraging participants to pay

¹² John S. Hammond, Ralph L. Keeney, and Howard Raiffa, *Smart Choices: A Practical Guide to Making Better Decisions* (Cambridge, MA: Harvard Business School Press, 1999).

¹³ Sarah Lichtenstein and Paul Slovic, *The Construction of Preference* (New York: Cambridge University Press, 2006); Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus and Giroux, 2011).

¹⁴ Paul R. Kleindorfer, Howard C. Kunreuther and Paul J. H. Schoemaker, *Decision Sciences: An Integrative Perspective* (Cambridge, UK: The Press Syndicate of The University of Cambridge, 1993).

¹⁵ Hammond et al., *Smart Choices*.

¹⁶ Paul Slovic and Daniel Västfjäll, “The More Who Die, the Less We Care: Psychic Numbing and Genocide,” in *Behavioral Public Policy*, ed. Adam Oliver (Cambridge, UK: Cambridge University Press, 2013), 94–114.

¹⁷ Robin Gregory, et al, *Structured Decision Making: A Practical Guide to Environmental Management Choices* (Chichester: Wiley-Blackwell, 2012).

attention to areas of agreement and disagreement. Four tools drawn from the decision sciences are particularly helpful.

Objectives hierarchies provide a vehicle for identifying and ordering concerns relevant to a decision.¹⁸ For example, key values for intervention decisions to prevent mass atrocities and genocide will typically include effects on national security (including both domestic and international political or economic threats), loss of lives and injuries (both domestic and foreign), economic costs of intervention and aid, effects on the nation's reputation (related to meeting moral and legal obligations), and the anticipated impacts on regional stability. Each of these fundamental concerns often will include several sub-objectives: "protecting human lives," for example, includes deaths and injuries that might affect either civilians or members of the military. Delineating objectives (a) provides a clear basis and record for identifying what matters to the decision, (b) identifies an explicit and consistent framework for comparing the consequences of alternative actions or for generating new, creative alternatives, and (c) allows different participants to express the importance they place on each concern, which often provides the rationale for disagreements regarding choices.

Means-ends networks (also known as influence diagrams) are a common decision structuring or modeling tool that graphically represents the relationship between decisions, uncertainties and outcomes, using nodes and arrows.¹⁹ They emphasize the causal variables over which decision makers have some control and their sequential influence on the values and objectives at stake: an increase in funding for on-site medical personnel is a means that leads to better-staffed hospitals which, in turn, allows for lower response times and helps to achieve the fundamental (i.e., end) objective of saving more lives (see Figure 1). These diagrams can play an important role in defining evaluation criteria to better estimate the consequences of different courses of action and improve understanding of ways to achieve strategy objectives: meeting with leaders in Congress could be shown as a useful way to build support and, in turn, to maximize domestic political acceptance of proposed actions intended to protect the nation's security. Moreover, means-ends networks provide an easily accessible visual tool that facilitates communication among technical experts, decision makers, and stakeholders about their understanding of the decision context, what information is important, and why.

Performance measures establish one or more specific metrics (aka attributes) that account for changes in the achievement of objectives related to an action. Developing good measures for each interest is essential to the consistent evaluation of alternatives and also permits clear communication about what matters among the decision participants. To work well, performance measures should be understandable, complete (otherwise important concerns are omitted), concise (to facilitate the ready comparison of alternatives), direct and unambiguous (to ensure clear communication), and measurable (so that data can be found to estimate consequences among different intervention alternatives).²⁰ Coming up with good measures for some objectives is relatively easy, for example using dollars to measure cost. Other important objectives, such as "national security" or "national reputation," are more ambiguous and can be difficult to define. In his 2016 review of the "Obama doctrine," journalist Jeffrey Goldberg notes that within the Pentagon or State Department, America's "national-security credibility" is seen as "an intangible yet potent force."²¹ Because vague definitions—however strongly held—can lead to misunderstandings among the different players,²² deliberations will be improved to the extent that different intervention

¹⁸ Ralph L. Keeney, *Value-Focused Thinking: A Path to Creative Decisionmaking* (Cambridge, MA: President and Fellows of Harvard College, 1992).

¹⁹ Ronald A. Howard, "Decision Analysis, Practice and Promise," *Management Science* 43, no. 6 (1998), 679–695.

²⁰ Ralph L. Keeney and Robin Gregory, "Selecting Attributes to Measure the Achievement of Objectives," *Operations Research* 53, no. 1 (2005), 1–11.

²¹ Jeffrey Goldberg, "The Obama Doctrine," *The Atlantic*, April 2016, 74.

²² This same problem arises in the context of many objectives considered straightforward to measure, such as using numbers of fatalities for lives lost. The issue is that any measure frames the objective using a specific lens; numbers of fatalities, for example, counts all deaths as equal and fails to distinguish the age and gender of people or the circumstances of their deaths.

Figure 1. Illustrative (partial) means-ends network. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

alternatives can be compared on key dimensions and with all participants using the same working definitions.

Consequence tables are another key structuring tool,²³ used to emphasize the link between the consequences of alternative actions and the concerns that matter the most. They provide a simple visual tool that conveys the anticipated changes across multiple accounts. As noted by Samantha Power: “You have to take into account the other collateral issues that you’re dealing with on the international stage.”²⁴ Columns show the different intervention alternatives that are under consideration; rows show the different values that may be impacted. Each cell of the table thus shows what is likely to happen if that alternative is selected. Consequence tables can be kept simple or they can be constructed to incorporate additional considerations such as the existence of sequential decisions, information changes over time, thresholds signaling the need for possible shifts in actions, or important geographic differences among potentially affected regions. In complex decision contexts, consequence tables can also be used to highlight and characterize critical uncertainties and to express probabilities and confidence levels in the expected consequences of alternatives.

Expert elicitations provide a formal set of tools for incorporating the judgments of experts whenever data needed as part of an intervention decision is either lacking or of low quality, a situation that is common to many war-torn countries that are experiencing rapid and profound economic, environmental, or social changes. Although ad-hoc approaches are still widely employed, there exists a well-established consensus on best practices for selecting experts, setting up elicitation protocols, avoiding bias (such as being overconfident in one’s knowledge or anchoring on recent events), aggregating across experts, and documenting findings so that their limits are clear and peer review is made easy.²⁵ A common requirement is constructing a conceptual model that facilitates decomposition of a complex technical question into its component parts, which in turn allows for estimates of the uncertainty associated with the occurrence of these key elements. Experts are encouraged to assign plausible upper and lower bounds to the likelihood of an event as well as to identify the most likely value and the confidence held in their assessments. All of this information then becomes the basis for discussions among experts, which

²³ Robert T. Clemen and Terence Reilly, *Making Hard Decisions with DecisionTools*, 3rd ed. (Mason: South-Western, 2014).

²⁴ Evan Osnos, “In the Land of the Possible,” *The New Yorker*, December 22 & 29, 2014, 90–107.

²⁵ Mark A. Burgman, *Trusting Judgements: How to Get the Best out of Experts* (Cambridge, UK: Cambridge University Press, 2016).

facilitates learning and leads to improved transparency in the comparisons that are made among alternatives.

Fast vs. Slow Thinking

A structured, decision-aiding process also can help to balance the role of two main judgmental mechanisms, involving the automatic and the more thoughtful responses that have been termed System 1 and System 2—fast and slow—thinking by Kahneman²⁶ and others. System 1 is a fast, automatic system based on experience and involving intuition and feelings. System 2 brings in slower, more reasoned responses that involve cognition and analysis. Together these two ways of comprehending reality form the basis for how we identify and make difficult tradeoffs; different individuals and different groups—at the extreme, different countries—will rely on varying mixtures of System 1 and System 2 inputs when addressing intervention decisions.

A particular concern with respect to genocide prevention choices is that the fast, automatic thinking of System 1 can override the slower, more deliberate thinking of System 2 and lead to a reliance on emotional responses and judgmental shortcuts. Although these “judgmental heuristics” help decision makers to cope with the complex cognitive demands placed on them, they can also open the door to a variety of decision-making biases that lead individuals to anchor on past experience and oversimplified analogies or to give insufficient attention to their own perspective and values, thus resulting in the well-known phenomenon known as “groupthink.” Results from behavioral research also show that people facing multi-sided choices, particularly in crisis situations, often tend to focus on only one or two prominent dimensions of a choice to the neglect of other considerations that they previously have said to be important (Slovic, 2015). Awareness of these judgmental biases—which research has shown to influence the choices and reasoning processes of experts as well as laypersons—can help significantly to improve the quality of decisions and aid in balancing the contributions of our System 1 and 2 inputs to choices.

Understanding Psychological Influences

Both policy makers and citizens ask themselves similar questions when considering the wide range of genocide prevention intervention strategies: What can we do to halt or reduce the killing of civilians? How do we even think about such large-scale losses of human lives? How do we decide when we are doing enough?

These questions bring into play—for individual citizens and for national policy makers—a mix of feelings and empathy that can run counter to the rational argument that the larger the loss of life, the more serious the problem and the stronger the case for intervention.²⁷ A key insight from research into how people frame choices concerned with helping others—whether focused on charitable giving or taking actions to prevent harms or civilian deaths—is that people often exhibit a sharply diminishing sensitivity to what should be meaningful differences in the numbers of affected people. Although an argument can be made that large losses of life are disproportionately more serious, because they may threaten the social fabric or viability of a community or group, research clearly has shown that the importance of saving one life is large when it is the first, or only, life saved but diminishes as the total number of lives at risk increases.²⁸ This effect, known as psychic numbing (or, in the context of charitable giving, as *compassion fade*), can be extreme. In some situations, for example, the value of protecting two lives is less than twice the value of protecting one life, and the value of saving 10,000 lives not significantly different from saving 100 lives. It appears that peoples’ System 1 automatic, fast thinking systems can visualize and feel empathy for the plight of one person but this emotional connection quickly becomes tenuous as the number of people involved increases and statistics take the place of an identified person.²⁹

²⁶ Kahneman, *Thinking, Fast and Slow*.

²⁷ Paul Bloom, *Against Empathy: The Case for Rational Compassion* (New York: Harper-Collins, 2016).

²⁸ Slovic and Västfjäll, *The More Who Die*.

²⁹ Deborah A. Small, George Lowenstein and Paul Slovic, “Sympathy and Callousness: The Impact of Deliberative Thought on Donations to Identifiable and Statistical Victims,” *Organizational Behavior and Human Decision Processes* 102, no. 2 (2007), 143–153.

Psychic numbing is often enhanced by an accompanying (and often false) feeling of inefficacy, that nothing important can be done about the underlying issue. Although we can get our heads and hearts around helping one person at risk, helping hundreds or thousands of people at risk seems like it is beyond our capacity to make a difference. This feeling of pseudo-inefficiency leads us to believe that nothing we do will be effective, leading to inaction and passivity; similar feelings may lie behind the lack of response on the part of many individuals to other large-scale global issues such as climate change.³⁰ The problem is that although it is true that these are massive and urgent issues, in fact the actions taken by individuals—considered one by one, or when summed across many people—can make an important difference.

A third reason for lowered levels of concern in the face of mass atrocities is that intervention decisions involve multi-sided trade-offs. We care about the lives of civilians in other countries but we also worry about the cost of an intervention, whether it will be successful, and whether America's long-term security will be improved. In such circumstances other considerations, thought to be justified more easily than the uncertain ability to save foreign lives, often become more prominent and capture both peoples' attention and the bulk of public resources. Thus "homeland security" or "the national interest," despite being only vaguely defined, may be viewed by policy makers as more easily justified; to the extent these objectives conflict with other goals of intervention, then little may be done to address the ongoing loss of innocent civilian lives.³¹

These psychological mechanisms operate in the background as citizens and decision makers ponder what is an appropriate response to an emerging genocide or mass atrocity event. Different people will feel differently about proposed interventions to protect the lives of foreign civilians, and this is as it should be: our interest is not to push decision makers in one direction or another. Instead, our intent is to make sure that psychological tendencies such as psychic numbing, a false sense of inefficacy, or ignoring less prominent attributes, are not permitted to push us (or our elected representatives) into sub-optimal decisions, ones that they and we will regret and would want to change if only we had a better understanding of what is guiding our intervention choices.

Communicating About Intervention Choices

Decisions about whether to intervene to prevent or halt genocide and mass atrocities are rarely made by a single individual or a group at a single point in time. Instead, a small group or groups of experts (e.g., embassy staff within the country at issue along with colleagues working at the home office) typically assembles relevant data and frames various alternatives, then presents this information to other decision makers and elected officials. In addition to this internal dialogue there are often formal discussions with selected interest parties (e.g., allies, NGOs, and business leaders operating in the named country) and an informal dialogue with the general public (e.g., coordinated through the media).

These broader aspects of the intervention decision-making process, involving the justification and communication of possible intervention choices, are often neglected as part of analyses of intervention decision-making processes but hold important implications for their structure and outcomes. The prominence effect, noted earlier, can play a key role whenever political agendas enter into the picture. One result is that the expressed values of agency staff can be over-ridden by decision makers' perceived need to justify any eventual decision. As a result, humanitarian and other objectives that are thought to be more difficult to define or to defend, and that perhaps lack the emotional intensity of other concerns such as the maintenance of national security or positive relations with key allies, can be assigned less importance in the course of the decision-making process due to the perceived need to provide a defensible argument to elected officials or to citizens.

³⁰ Scott Slovic and Paul Slovic, *Numbers and Nerves: Information, Emotion, and Meaning in a World of Data* (Corvallis: Oregon State University Press, 2015).

³¹ Paul Slovic, "When (In)action Speaks Louder than Words: Confronting the Collapse of Humanitarian Values in Foreign Policy Decisions," *Illinois Law Review Slip Opinions*, 2015, no. 1 (2015), 24–31.

Case Study: Structuring Intervention Decisions with Experts

Workshop Background and Participants

To test these ideas and the role of decision-structuring aids in the context of decisions to prevent genocide and mass atrocities, a 1.5 day workshop involving experienced individuals was held in 2015 in Eugene, Oregon (with funding support from the U.S. National Science Foundation and the University of Oregon). Participants included Ambassadors, former officials of the U.S. Department of State, analysts, academics, and other knowledgeable experts with experience in genocide intervention decisions. Workshop objectives included discussing genocide intervention decision making processes and examining different decision aiding techniques that may improve deliberations related to intervention decisions. To ensure the relevance of workshop discussions and results, we enlisted the help of four invited participants—two Ambassadors, one Agency director, and one analyst—to review and comment on the agenda and background materials in advance of the workshop.

Our Day 1 introductory comments to the group emphasized that substantial insights often can be gained simply through organizing the various sources of decision complexity. To promote discussion, we presented the following initial listing of key contextual concerns, values, and alternatives:

- *Decision context:* geographic location, history, economic capabilities, leadership stability
- *Values/objectives:* national security, civilian lives and injuries (domestic, foreign), military lives and injuries (domestic, foreign), economic costs (intervention, aid), reputation of Nation (moral, legal, leadership), regional stability (social, political, economic)
- *Intervention alternatives:* diplomatic, economic, legal, military (covert or overt—air strikes, ground troops, etc.)

With this context as a common starting point, workshop participants explored a series of questions concerning the key elements of the decision context, the fundamental values that ultimately would determine whether the selected course of action was considered successful, and the various intervention alternatives that—singly or in combination—could be implemented. On Day 2 participants worked through a formal trade-off evaluation to explore each other's values and preferences and to identify the most sensitive factors influencing their choices. As several participants pointed out, this ordering of key decision elements could be reframed as a series of criteria or questions that might serve, in varying degrees, as a checklist to encourage more consistent thinking as part of any intervention decision.

The Decision Problem

All participants were provided with a short memo, reportedly from the U.S. Ambassador to the Assistant Secretary of State, which described the current humanitarian crisis in a fictional small Asian country (called "Adler") that threatens to soon expand to involve large numbers of civilian deaths and possibly genocide. Because this brief introduction necessarily left many questions unanswered—some of which typically would have been covered as part of agency memos and background discussions—participants were encouraged, as part of their small-group deliberations, to add (and document) contextual details as needed to proceed with a meaningful analysis of intervention choices.

The memo summarized the dramatic recent increases in violence as part of Adler's decade-long war between the ruling majority and rebels from an ethnic minority; participants were told that estimates placed the number of people killed over the past two years at 90,000, with civilian casualties accounting for over one-half the deaths. Information is scarce, however, with field reports infrequent since the recent killings of five foreign journalists (two American and three French). Rebel forces are demanding greater political and religious autonomy as well as a share of government funds received from petroleum exports, developed in conjunction with both U.S.-based and Chinese companies. The government, which has been in power for nearly 20 years and continues to enjoy U.S. support, has demanded that rebels lay down their arms as a pre-condition to the renewal of negotiations, which broke off nearly three months ago. However, both sides continue

to cite fundamental ethnic and religious differences. Some actions already have been undertaken: equipment has been brought in to jam TV and radio signals being used by rebel militants and the Ambassador has been working closely with neighboring countries to reduce the rebel's recruitment of fighters and supplies. In addition, a Financial Intelligence Unit has been formed to reduce rebel fund-raising through identification and freezing of foreign bank accounts. But the Ambassador's memo warns that new actions are urgently needed, with shipments of food and medicines largely prevented from reaching the areas most in need and large numbers of civilians—perhaps as many as 400,000 people—fleeing the country in search of safety and refugee status.

The Ambassador's memo was said to have prompted swift action from the Assistant Secretary of State, who called in six trusted advisers and led discussions focused on whether the US should quickly do more to prevent further civilian casualties and, if possible, to help stabilize the region. He prefaced his remarks by citing from the 2006 National Security Strategy that "Where perpetrators of mass killing defy all attempts to peaceful intervention, armed intervention may be required, preferably by the forces of several nations working together . . ."³² The Ambassador remains in the country but arrangements are being made for her evacuation, along with the remaining five staff members.

Following the discussion of the problem context and the Ambassador's memo, a proposed objectives hierarchy was discussed based on the information contained within the briefing note (see Table 1). In contrast to the usual focus on alternatives, the development of an objectives hierarchy at the start of discussions was intended to provide a common framework for highlighting what is important and the key values that could be affected as a result of the proposed actions. This discussion further distinguished fundamental concerns (e.g., maintaining national security, protecting human lives) from means objectives or contributing factors (e.g., obtaining congressional support). In addition, the creation of the objectives hierarchy helped to build a common understanding of terms such as "national security," "national reputation," or "regional stability," which—as participants confirmed—often claim a front and center position in intervention debates despite their ambiguous definition.³³ The objectives hierarchy was also used to facilitate the identification of sub-objectives, more detailed components of these larger concerns that served to aid understanding and, in turn, could lead to evaluation criteria useful for assessing the different intervention alternatives.

Once a common set of objectives and sub-objectives had been outlined, participants turned their attention to thinking about how to express the different consequences of each intervention option in terms of these identified concerns. This part of the deliberations built on the concept of using explicit performance measures or attributes that would track the ability of each option to satisfy the different objectives highlighted for the scenario. In some cases familiar quantitative measures (such as dollars or lives) were used to express differences in the objectives across the alternatives. In other cases, when concerns were brought into the evaluation that lacked familiar measures or that required additional context, qualitative constructed scales were used (see Table 2). Keeping in mind the illustrative nature of this decision-structuring exercise, substantially less time was spent on the development of precise measures than would characterize a real-life intervention decision. Nevertheless, participants felt that—at least as a first approximation—the range of objectives, sub-objectives, and scales were sufficient to ensure a common understanding of key decision elements and to facilitate an initial comparison of the consequences of the different intervention options.

Performance measures are particularly useful in the type of multidimensional, highly nuanced decision environment that typically characterizes intervention choices. This is because they help add precision to what otherwise often are vague criteria, thereby lowering the quality of initial

³² George W. Bush, *The National Security Strategy of the United States of America* (Washington, DC: The White House, 2006), 17.

³³ In his careful review of the APB, Finkel writes that "the Board's prescriptive deliberations" would be improved were it able to "develop a common understanding of what atrocity prevention means," in part because this would address the concern "... that various Board members have very different notions about what prevention should and can accomplish." James P. Finkel, *Atrocity Prevention at the Crossroads: Assessing the President's Atrocity Prevention Board After Two Years* (Washington, DC: United States Holocaust Memorial Museum, 2014), 3, 20, 23.

Table 1. Case study objectives hierarchy.

Category (Fundamental Objective)	Sub-Objectives	Potential Defining or Contributing Factors (Illustrative)
U.S. National Security <i>Within the context of assessing genocide intervention decisions, national security is broadly defined as potentially weakening or destabilizing domestic well-being.</i>	Domestic Political	Party support (internal) Congressional support Voter and public support
	Foreign/International	Consistency with and/or facilitating U.S. foreign policy priorities Support from key U.S. allies Support from other countries or agencies
	Economic	Costs to U.S. companies National budget Adverse energy security implications
	Homeland Security	Risk of terrorism (on U.S. soil) Perception or feeling of insecurity
	Exit Certainty	Avoiding enlarged or protracted conflict (certainty of exit strategy?)
Protecting Human Lives	Civilian Lives (and Injuries)	U.S. Foreign
	Military Lives (and Injuries)	U.S. Foreign
U.S. International Reputation	Moral Imperative	Requirement for action consistent with what is the right thing to do
	Legal Obligations	Consistency with ratified agreements / treaties (E.g. U.N. or Genocide Convention)
Intervention Costs	Costs to U.S. Government	Administrative and management costs Military costs (equipment, salaries, etc.) Humanitarian Costs (food, housing, medical—with vs. without intervention)
	Costs to Others	Foreign governments Foreign companies
Regional Stability	Political	Political upheaval Balance of power in the region
	Social	Social unrest
	Economic	Uncertainty & losses to local/regional economies

communication among decision participants and, at a later point in time, making it more difficult to evaluate the success of intervention initiatives. As noted by Power,³⁴ a decision-aiding framework should not seek to homogenize these concerns and priorities but, rather, to clarify value differences and to help decision makers understand their implications. She identifies two primary aspirations of U.S. decision makers when facing mass atrocities: to “avoid engagement in conflicts that posed little threat to American interests” and to “contain the political costs and avoid the moral stigma

³⁴ Power, *A Problem from Hell*, 508.

Table 2. Constructed scale used for estimating consequences of case study genocide intervention scenario.

+3	Significant Improvement: a significant net improvement is expected compared to current conditions
+2	Moderate Improvement: a moderate net improvement is expected compared to current conditions
+1	Small Improvement: a small but measurable improvement is expected compared to current conditions
0	No change: no changes are expected to occur relative to current conditions (i.e. neither a measurable improvement nor a worsening in conditions)
-1	Small Deterioration: conditions are expected to worsen slightly (but measurably) compared to current conditions
-2	Moderate Deterioration: conditions are expected to worsen moderately compared to current conditions
-3	Significant Deterioration: conditions are expected to worsen significantly compared to current conditions

associated with allowing genocide.” Being true to these two concerns requires an understanding of the other interests that also matter to decision makers, the types of threats that might be posed to specific American interests, and what kinds of political or moral costs might arise as the result of various levels of engagement in foreign conflicts.

Pre-workshop discussions with collaborating participants led to the generation of five intervention options—drawn from a much larger set of possible actions, but useful to help focus discussions—that would likely form the basis of intervention choices. These are briefly described below and also are shown as the columns in Figure 2.

- A first option is to continue the current “economic sanctions but no intervention” strategy, perhaps with the addition of new educational or communications initiatives.
- A second (“train and arm”) strategy would involve the identification of critical gaps in Adler’s military capability and bringing in needed new military equipment for use by Adler’s army. Costs for the one-year operation are about \$250 million.
- A third option (“air strikes”) would initiate bombing raids on rebel forces, using a U.S. aircraft carrier as a base of operations and working in conjunction with allied air forces. The targeted air strikes on rebel centers would cost nearly \$100 million/month and limit demands on an already overstretched U.S. military, but they could further reduce the amounts of food available in the markets and lead to criticism of foreign intervention.
- A fourth alternative (“safe zones”), to be organized in concert with regional and international allies, would bring in as many as 6,000 ground troops (half from the U.S.) to help create safe zones in areas of central Adler now experiencing the heaviest fighting. Initial cost estimates for the U.S. share of the military intervention range from \$3–5 billion, with concerns expressed by the White House about possible U.S. military casualties and adverse domestic implications as well as negative effects on the international reputation of the U.S.
- A fifth alternative (“full military intervention”), favored by some members of Congress, would seek to defeat rebel troops by bringing in as many as 60,000 U.S. ground soldiers and an equal number of troops from allies, with U.S. military personnel working alongside members of Adler’s military and cleared for combat roles. Key arguments in favor include the moral and legal obligations of the U.S. to prevent foreign civilian deaths and to protect the interests of U.S. oil companies, U.S. costs would be as high as \$5 billion, support among other countries is mixed, and questions are being raised about the lack of a clear exit strategy.

Objective	Units	Dir	Alt 1 - No More Intervention	Alt 2 - Train & Arm	Alt 3 - Air Strikes	Alt 4 - Safe Zones	Alt 5 - Full Military
National Security							
US public support	#	H	0	1	0	-1	-2
Foreign ally support	#	H	-1	1	0	-1	-2
Costs to US firms	#	H	-3	-2	-1	0	0
Homeland security	#	H	0	0	0	0	0
Exit Certainty	#	H	1	0	-1	-3	2
Protecting Lives							
Civilian lives saved	#	H	0	50,000	100,000	400,000	500,000
US military deaths	#	L	2	10	25	100	250
US Reputation							
Moral requirement	#	H	-2	1	1	2	3
Int'l Legal Obligations	#	H	-2	0	0	2	3
Financial							
Costs to US (Yr 1)	US \$ (millions)	L	50	250	2,000	5,000	20,000
Costs to Others (Yr 1)	US \$ (millions)	L	2,000	2,000	5,000	7,000	15,000
Regional Stability							
Economic Stability	%GDP	H	-25%	-20%	-15%	-15%	-10%

Figure 2. Consequence table for case study genocide intervention scenario. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

These structured decision elements were then used to predict and compare the consequences of the different intervention alternatives. These effects were summarized through a consequence table (Figure 2) that shows the concerns in rows and the five leading intervention options in columns. This visual display was useful in that it facilitated discussions of the pros and cons of different actions and, in some cases, led to the refinement and alteration of the anticipated consequences as new information was shared among the participants.³⁵ To more easily compare the performance between alternatives, the consequence table was color-coded to highlight significant differences in the performance measures relative to the selected reference alternative (the blue column in Figure 3); programming easily shows this comparison with reference to any of the alternatives. The use of colors facilitates the comparison of how well an alternative achieves each of the stated objectives:³⁶ cells shown in green mean that another alternative is preferred for that objective, cells shown in red mean that alternative is inferior with respect to the objective, and cells with no shading are functionally identical to the highlighted reference alternative.

Workshop participants undertook two distinct prioritization techniques—*direct ranking* and *swing weighting*—to identify their preferences about the intervention alternatives. Both involve the elicitation of experts and include techniques intended to minimize the judgmental errors (discussed in Section 2.1) which can bias experts' opinions. Direct ranking is a more intuitive and experiential technique (often associated with System 1 thinking and very common within governments) where the best option is selected outright: given a set of alternatives, which one is preferred? Swing weighting is a more deliberative and analytical technique (i.e., more closely aligned to System 2 thinking) whereby a preferred option is inferred based on the relative importance (i.e., the weights) assigned to the different sub-objectives that characterize, to a greater or lesser degree, each of the specified options. Direct ranking of alternatives is therefore viewed as more holistic and ranking of sub-objectives (through swing weighting) as more decomposed.

An important point—often missed as part of policy assessments—is that the value weights reflect importance of the relative differences in each of the sub-objectives rather than the importance of the sub-objective as a category. In other words, it is not just how important a particular objective

³⁵ The illustrative nature of this case study meant that there was less information than usually would be available; as a result, more rows of the consequence table are, of necessity, filled in using constructed scales.

³⁶ Keeney and Gregory, *Selecting Attributes to Measure*.

Objective	Units	Dir	Alt 1 - No More Intervention	Alt 2 - Train & Arm	Alt 3 - Air Strikes	Alt 4 - Safe Zones	Alt 5 - Full Military
National Security							
US public support	#	H	0	1	0	-1	-2
Foreign ally support	#	H	-1	1	0	-1	-2
Costs to US firms	#	H	-3	-2	-1	0	0
Homeland security	#	H	0	0	0	0	0
Exit Certainty	#	H	1	0	-1	-3	2
Protecting Lives							
Civilian lives saved	#	H	0	50,000	100,000	400,000	500,000
US military deaths	#	L	2	10	25	100	250
US Reputation							
Moral requirement	#	H	-2	1	1	2	3
Int'l Legal Obligations	#	H	-2	0	0	2	3
Financial							
Costs to US (Yr 1)	US \$ (millions)	L	50	250	2,000	5,000	20,000
Costs to Others (Yr 1)	US \$ (millions)	L	2,000	2,000	5,000	7,000	15,000
Regional Stability							
Economic Stability	%GDP	H	-25%	-20%	-15%	-15%	-10%

Legend

Better than selected

Worse than selected

Selected

Figure 3. Color-coded consequence table (using Alt 2 as the reference alternative). The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

or sub-objective may be (such as national security) but also how much it varies across the set of alternatives: if a sub-objective is fairly insensitive (i.e., the estimated performance measure values do not vary significantly) then it will be less important, and have a correspondingly lower weight, for selection of a preferred alternative.

Our goal was to highlight possible differences in preferred intervention scenarios depending on which technique was used (see Figure 4) and to stimulate dialogue among workshop participants. This goal is in line with general advice about how to deal with complex problems; in a paper titled “The Realities of Risk-Cost-Benefit Analysis,” for example, Fischhoff³⁷ suggests that the logic of analysts is to “Decompose complex systems into manageable components and then calculate how they might perform together.” However, decomposition brings its own set of challenges³⁸ and, for this workshop, we emphasized that neither technique necessarily provides the *right* answer; both have strengths and weaknesses. The decision-aiding benefit is that the two approaches offer different perspectives about people’s values and the associated trade-offs, which in turn often allows individuals to learn more about their own values and the reasoning underlying their choices.

The incorporation of decision-aiding tools also allowed participants to explore the degree to which they preferred one alternative over another and to observe how their preferences varied relative to everyone else (Figure 5). In addition, the use of a more decomposed approach permitted the invited experts to unbundle their thinking and to see which objectives were most instrumental in determining their preferred alternative. As shown in Figure 6, some alternatives were very successful at satisfying one objective and other alternatives were successful at satisfying other objectives. Discussions clearly revealed that participants found this information to be helpful; as several workshop members told us, the use of these visual tools permitted them to gain a better understanding of their own preferences and, in some cases, to realize that adjustments in their scoring of alternatives were requested to represent their own values accurately.

³⁷ Baruch Fischhoff, “The Realities of Risk-Cost-Benefit Analysis,” *Science* 350, no. 6260 (2015), 527.

³⁸ Gregory et al., *Structured Decision Making*.

Direct Weighting

	Alt 1 - No More Intervention	Alt 2 - Train & Arm	Alt 3 - Air Strikes	Alt 4 - Safe Zones	Alt 5 - Full Military
Participant 1	4%	42%	33%	21%	0%
Participant 2	43%	0%	0%	57%	0%
Participant 3	31%	4%	18%	44%	2%
Participant 4	6%	61%	18%	12%	3%
Participant 5	38%	15%	23%	25%	0%
Participant 6	10%	50%	5%	15%	20%
Participant 7	31%	39%	12%	12%	6%
Participant 8	7%	37%	22%	30%	4%
Participant 9	53%	26%	5%	16%	0%
Participant 10	13%	26%	5%	53%	3%
Participant 11	34%	43%	21%	2%	0%
Participant 12	24%	12%	6%	59%	0%

Swing Weighting

	More Intervention	Alt 2 - Train & Arm	Alt 3 - Air Strikes	Alt 4 - Safe Zones	Alt 5 - Full Military
Participant 1	10%	23%	22%	24%	20%
Participant 2	12%	23%	22%	26%	17%
Participant 3	12%	21%	21%	24%	23%
Participant 4	11%	22%	22%	26%	20%
Participant 5	9%	20%	20%	23%	28%
Participant 6	10%	24%	23%	26%	18%
Participant 7	12%	23%	22%	24%	18%
Participant 8	13%	23%	22%	24%	19%
Participant 9	13%	24%	23%	24%	17%
Participant 10	10%	23%	22%	25%	20%
Participant 11	11%	23%	22%	24%	20%
Participant 12	12%	23%	22%	25%	18%

Figure 4. Participant direct ranking and swing weighting preferences. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

Figure 5. Direct ranking weights of Participant 1 (in blue) of their preferred intervention alternative relative to other participants. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

Figure 6. Relative importance of the objectives for Participant 1 in determining their preferred alternatives according to swing weighting. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

Discussions on Day 2 of the workshop then led to the use of two other methods as aids for further exploring participants' reasoning. Figure 7 digs deeper into the importance of each objective in shaping choices by showing the sensitivity of the weights placed by each participant on the different objectives and how changes, small or large, in these weights could lead to the selection of a different alternative. Finally, participants also were able to compare the consistency in their rankings and weightings according to the two techniques using consistency plots (Figure 8) that show their preferred alternatives: the closer preferences are aligned to the 45 degree line, the more consistent they are across the two techniques, which suggests the presence of greater stability.³⁹

Participant Feedback

Participants' responses to the workshop were very positive, with an explicit values-based approach to making intervention decisions considered both new and promising. Some concerns were raised about the realism of the case-study scenario, which were anticipated; several of the participants had previous experience with scenario development lasting several weeks (e.g., through the National Defense University) and all participants, as part of their previous working experience, had been part of scenarios that took shape over years and with thousands of inputs. Nevertheless, a strong consensus emerged for adoption of a more structured framework to help in (a) untangling and organizing the fundamental values relevant to intervention deliberations, (b) highlighting potential decision biases that could lead to inferior choices, (c) clarifying information gaps and uncertainties critical to the decision context, and (d) exposing key trade-offs associated with different intervention choices.

As several participants pointed out, the framing of atrocities prevention as a core national interest and the initiation of high-level groups such as the Atrocities Prevention Board also underscore the importance of anticipating and preventing genocide as a fundamental interest of the United States. A keen interest was expressed by participants in identifying key elements that could help to characterize conflicts in the weeks or months prior to the escalation of violence and the beginnings of genocide or mass atrocities. If a more structured process could anticipate and target countries at risk of genocide and thus lead to effective, early-on intervention strategies, then the approach merits additional examination.

³⁹ We are well aware that this workshop focused on a hypothetical case-study and that not all groups would be so open to the sharing of information about the importance of objectives underlying members' expressed preferences; one implication is that increased anonymity might be required as part of the exploration of participants' reasoning in high-conflict situations.

Figure 7. Swing weight sensitivity analysis for Participant 1 between consistency plot of Participant 1's preferred alternatives according to their direct ranking and swing weighted results. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

Figure 8. Consistency plot of Participant 1's preferred alternatives according to their direct ranking and swing weighting results. The full-size version of this figure is available for download at <http://doi.org/10.5038/1911-9933.11.3.1496>.

Questions also were raised by participants about whether use of a more structured process for identifying and scoring intervention alternatives might ask too much of participants in terms of requiring them to be honest and transparent about what matters, both to themselves and to the agency they represent. The workshop organizers are familiar with this concern and have observed it in other contexts; it is real, but no more so—no more difficult to address and overcome successfully—in the realm of intervention choices than for any other complex, multi-dimensional problem. Workshop participants also noted that many of the key intervention decisions are made by a small number of government staff who know each other well and are experienced in shared

discussions, so that a basic level of ease and familiarity—at least in many situations—may already be established. This will aid in the creation of trust but it may also work against the introduction of any new approaches to analysis or deliberations.

Conclusion and Recommendations

The doctrine of responsibility to protect (R2P),⁴⁰ articulated in 2005, permits the international community to intervene in the affairs of a sovereign state if it fails to protect its population from mass atrocity crimes. In this paper we argue in favor of adopting a more structured decision making process when considering possible intervention strategies that may help to prevent or reduce the threat of genocide and mass atrocities. We link this argument to several shortcomings associated with conventional deliberation processes, including paying attention only to more prominent objectives (such as national security or economic costs) in order to justify a given strategy and failing to respond appropriately to larger numbers of injuries and deaths because our automatic, feeling response does not easily scale up from one to many. The workshop results highlighted the insights that can be gained, in terms of the role of competing objectives and inferences, from the use of different elicitation techniques to help select a preferred alternative. Leaving these factors implicit takes away the opportunity for decision makers to learn more about their own preferences as well as others' views and can have the unintended result of discouraging interventions to save lives unless this humanitarian objective aligns closely with the other economic, national security, or reputational interests that underlie the intervention choice.

The use of different structuring techniques for displaying the results of the scenario-evaluation exercises successfully stimulated discussions and prompted a constructively critical review of participants positions: because choices were being made without access to perfect information and because time constraints were severe (as they also would be as part of most real-world intervention choices), it was important that individuals be given an opportunity to revisit their expressed values and opinions and to reconsider their choices in light of the new information that becomes available both through introspection and through subsequent discussions with colleagues. In addition, the more structured deliberative process led to several new hybrid intervention scenarios that may not otherwise have been identified.

We also note that uncertainty may play a complementary role in this de-emphasis of the humanitarian aspects of the choice. If estimates of cost or the anticipated impacts of national security risks are perceived as subject to less uncertainty than are foreign lives saved, then as a result they may be weighted relatively more heavily. Analysis can address this possible bias, at least to some extent, through the careful examination and communication of uncertainty and through an accurate summary of the uncertainty associated even with supposedly precise estimates (e.g., predictions of future prices or expenditures).

Yet despite the best of intentions and the adoption of appropriate techniques, decision makers may ignore the results of a more structured process, relying instead on System 1 intuitions and prior experience. In such cases, highlighting the key elements and consequences of an intervention choice will at minimum document the argument for selecting an intervention action—including what is left out of the picture as well as what is included—and all this information will be available and transparent if a subsequent review is conducted to determine why a selected strategy failed to meet expectations. In time, this information is likely to make it more difficult for decision makers to overturn the results of a thoughtful deliberative process.

Workshop results, including feedback from participants, provided clear support for our hypothesis that depicting genocide intervention decisions in terms of fundamental values, clearly articulated measures of performance, and the consequences of different alternatives can help to organize what is known about the predicted consequences of interventions while highlighting key information gaps. Because the primary goal of the workshop was to obtain feedback from these experienced participants regarding the potential advantages and disadvantage of a more structured framework for making intervention decisions, we did not formally seek to compare results of the

⁴⁰ United Nations, *2005 World Summit Outcome*, paras. 138–140.

holistic vs. decomposed approaches (e.g., through the use of control groups or over different contexts) other than to observe afterwards that the two approaches offered different insights to participants as aids for exploring which alternatives may best achieve their interests. Based on the initial positive feedback we received from participants, this is clearly a subject for future study; as several workshop members pointed out, the relevance of results would be improved to the extent that the decision-making situation is an actual, unfolding case study and involves individuals engaged in the decision-making process.

A more structured approach to intervention decisions also has the capability to examine carefully a vague doctrine, such as “promote the national interest” or “implement our responsibility to protect” and transform it into an organized framework that promotes both understanding and discussion. Of course, no decision-aiding framework can or should “make” the tough choices required of the US government with respect to interventions intended to reduce genocide and mass atrocities. What it can do is to improve the quality and extent of intervention deliberations, laying the groundwork for a more comprehensive and nuanced understanding of the threats posed to American values and interests using a common language for analysis that facilitates input and involvement from all key parties.

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Book Review: *Nation Building in Kurdistan: Memory, Genocide and Human Rights*

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Nation Building in Kurdistan: Memory, Genocide and Human Rights

Mohammed Ihsan

London and New York, Routledge, 2017

178 Pages; Price: \$149.95 cloth

Reviewed by Michael M. Gunter

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“Genocide is not a crime that happens in dark alleys.”¹ This pithy observation and over-all graceful analysis investigates five separate genocides committed by the Iraqi government of Saddam Hussein: the Arabization of historical Kurdish lands such as Kirkuk, the forced displacement of Faylee Kurds, the disappearance of eight thousand Barzanis in 1983, the Anfal campaign in 1988-89, and the chemical attack on Halabja in 1988. However, the post-Saddam “Iraqi federal governments showed no will to heal the wound caused by these events . . . with the exception of some ineffective legal decisions.”² Thus, “justice has been very limited and has left the Kurds deprived of the compensation to which they were entitled, as well as feeling betrayed by Baghdad and its judicial system.”³

As a former member of the Kurdistan Regional Government (KRG)—serving as Minister for Human Rights between 2001 and 2005 and later as Minister of Extra Regional Affairs and the KRG representative in Baghdad until May 2014 as well as being an academic holding a Ph.D. in international law from the University of London and another Ph.D. in Arab and Islamic Studies from the University of Exeter—Mohammed Ihsan is well-placed to write this account. His concluding table on page 134 portrays each of the five genocidal crimes, how vast the Iraqi agencies participating in them were, but how paltry were the number of final retributive verdicts. Thus,

many felt that his Shia enemies executed the ex-president [Saddam Hussein] before he was made to pay for crimes against the Kurds. This led most Kurds to think that justice had been hijacked by the tensions between Sunnis and Shias, leaving the Kurds without the possibility of seeing justice for the crimes committed against them.⁴

As a result, “any attempt to build a credible judicial system in Iraq was severely undermined by this event.”⁵ In also blaming the “many witnesses . . . [and] the willingness of the greater part of society to do nothing”⁶ Ihsan further concludes that his analysis “has been able to demonstrate that the responsibilities lay far beyond the top of the regime.”⁷

The author further takes issue with the many well-placed who solely blame the murderous insurgency that ravished Iraq after the U.S. victory [in 2003] on Paul Bremer’s de-Ba’athification and disbanding of the Iraqi army, which put millions onto the streets with guns, but without jobs. He argues instead that “people who took part in the Arabization and genocide campaigns are still in the civil service and in the military structure of the government.”⁸ Nevertheless, General

¹ Mohammed Ihsan, *Nation Building in Kurdistan: Memory, Genocide and Human Rights* (New York: Routledge, 2017), 135.

² *Ibid.*, 4.

³ *Ibid.*

⁴ *Ibid.*, 134.

⁵ *Ibid.*, 21.

⁶ *Ibid.*, 135.

⁷ *Ibid.*, 135.

⁸ *Ibid.*, 35.

David Petraeus's reawakening gestures to the newly disenfranchised Sunnis temporarily stabilized Iraq until these lessons were tragically forgotten and ignored by Iraqi Prime Minister Nouri al-Maliki's disastrous Shite government that helped birth another genocidal disaster known as ISIS. Ihsan emphasizes ISIS's origin from "such myopic politics" and this "dangerous mismanagement of post-Saddam Iraq . . . [and resulting] vacuum of power" that has led to the "now-inevitable disintegration of the country."⁹

Ihsan further argues that this deplorable situation in part "stems from the Bush administration's ignorance of the history of Iraq and its multicultural population . . . [and] because the Bush administration never had a real postwar plan in place and it was merely looking for easy exit policies."¹⁰

As for Kirkuk, it

is about more than oil. . . . For Kurds, Kirkuk symbolizes decades of forced displacement, the destruction of their homes and the occupation of their lands by Arab settlers. . . . Kirkuk is key to peace settlement and the key to restoring justice to the [Kurdish] people.¹¹

Illustrating his attempt to be fair to Kirkuk's non-Kurdish population, however, Ihsan warns that "the Kurdish claim over this land could trigger a new, deadly sectarian war,"¹² one that this reviewer also feels might follow when ISIS is driven from Mosul and ethnic and sectarian boundaries reset. "The Kurds have to face reality. . . . Giving up the claims to Arab-majority towns, for example, in which Arab residents are not the consequence of Arabization, would be a first step to smoothing the negotiations with Baghdad."¹³

As for Halabja, "according to the Federation of American Scientists, this crime was, and still remains, the largest chemical weapons attack directed against a civilian-populated area in history."¹⁴ Thus, Ihsan concludes that "it is evident that Halabja constitutes the peak of the state-engineered genocide against the Kurds...[where] the regime distanced itself completely from an indifferent international community and international law."¹⁵

There are a few errors in the manuscript that should be flagged. The KRG first appeared after the election held on May 17, 1992, not "in November 1992."¹⁶ *Unifying the "Peshmerga, or local militias, into the Unified Peshmerga Force under the direction of the Ministry of Peshmerga Affairs"*¹⁷ is largely a myth since the Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK) still actually control these forces. *Jus cogens, not "jus gogens...is a basic concern, an independent principle, and a mandatory precept...in international law."*¹⁸ The author fails to explain why he thinks the cease-fire that ended the Gulf War against Saddam Hussein in February 1992 constituted "unjust terms."¹⁹ The domestic jurisdiction clause of the United Nations Charter is Article 2, paragraph 7, not "article 2, chapter 7."²⁰ It is not clear which war the author means when he states that "in particular the war in Europe, paved the way for a new phase in Kurdish and Iraqi relations."²¹ "KRG Prime Minister Nechir Van Barzani"²² almost sounds like a Dutch name. The correct spelling, of course,

⁹ Ibid., 25, 137, 118.

¹⁰ Ibid., 32.

¹¹ Ibid., 31.

¹² Ibid., 39.

¹³ Ibid., 129.

¹⁴ Ibid., 97.

¹⁵ Ibid., 112.

¹⁶ Ibid., 6.

¹⁷ Ibid., 13.

¹⁸ Ibid., 16.

¹⁹ Ibid., 17.

²⁰ Ibid., 17.

²¹ Ibid., 19.

²² Ibid., 35.

is Nechirvan. Endnote twenty-four on page forty-one confuses Gareth Stansfield as an editor of the book *Crisis in Kirkuk* when actually he is the co-author along with the correctly listed Liam Anderson. The well-known Kurdologist Ofra Bengio is a woman, and therefore it is not "his book"²³ that is referred to. If "killing members of a group is considered a basic element in the recognition of the crime of genocide,"²⁴ how does this differ from regular war?

Ihsan includes fourteen helpful maps, a list of abbreviations, five appendices each dealing with the five case studies of genocide detailed in the book, a short index, and a longer useful bibliography of secondary sources. However, one wonders why the author includes eleven separate works by the Armenian genocide scholar Vahakn N. Dadrian, dealing mostly with the Armenians, yet does not even mention the more apropos studies by Joost Hiltermann and Choman Hardi on the Iraqi Kurdish genocide. Nevertheless, Ihsan's jargon-free, reader-friendly study is recommended for scholars and practitioners as well as the intelligent lay public.

²³ Ibid., 79.

²⁴ Ibid., 105.

Book Review: *Reichsrock: The International Web of White-Power and Neo-Nazi Hate Music*

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Reichsrock: The International Web of White-Power and Neo-Nazi Hate Music

Kirsten Dyck

New Brunswick, Rutgers University Press, 2017

198 Pages; Price: \$25.95

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In mid-July 2017, six thousand people gathered at the white-power music festival *Rock gegen Überfremdung* (Rock against Foreign Domination) in Themar, a small town in Thuringia, Germany. At the event, the police recorded forty-six crimes, including assault, threatening behavior, contravention of German weapons law and displaying illegal (i.e. Nazi) symbols. Six people were arrested and the authorities recorded the identities of 440 festival-goers. An undisclosed sum was raised for the far-right political cause.¹ Music festivals of this kind and the violence that accompanies them are part of today's German political reality and, increasingly, of other countries around the world. This makes the white-power music scene worth the attention of any scholar studying extremist political movements, racism, or genocide.

The ethnomusicologist and genocide historian Kirsten Dyck is one of them. Unlike other scholars in the field of white-power music, she looks beyond the country-specific variations of such music scenes, and, in her book *Reichsrock*, makes a convincing case that festivals like the one in Thuringia are anything but fringe phenomena. On the contrary, as she reveals, the white-power music scene has become a diffuse ideological network with interconnected outposts in countries around the world.

Dyck begins by explaining why she applies the term white-power—as opposed to white-supremacist or white-nationalist—to the music scene she investigates. Because its promoters are convinced that the existence of the white race is threatened, their music must express a sense of power and of their empowerment. The umbrella term white-power music encompasses many local scenes, each with its own type of pro-white racist music; its musicians and fans may or may not interact or agree with their counterparts in other regions. She defines white-power music as “any music produced and distributed by individuals who are actively trying to advance what they view as a white-power or pro-white racist agenda.”² In general, these individuals believe in a so-called international Jewish conspiracy and stand in opposition to national governments and international power structures like the United Nations or the World Bank while displaying hostility toward racial, ethnic and sexual minorities.³ White-power music allows the far right to generate money for its cause, to disseminate its ideology, to offer opportunities for social bonding, and to provide a way in to white-power beliefs and activism for those who haven't yet had interest in or contact with such ideological beliefs and communities.

Dyck sets two ambitious goals for herself. The first is to present an in-depth study of white-power music as a transnational rather than merely a local phenomenon; the second is to explore the connections between seemingly non-racist elements of mainstream ideology and the blatantly racist aspects of white-power philosophy. Although issues of gender and religion are central themes of white-power ideology and music, they remain excluded from this study; the author plans to focus on them in her future work.

¹ “6,000-strong neo-Nazi music festival sparks call for ban on far-right gigs.” DPA/The Local, July 17, 2017, accessed September 22, 2017, <https://www.thelocal.de/20170717/6000-strong-neo-nazi-music-festival-sparks-call-for-ban-on-far-right-gigs>

² Kristin Dyck, *Reichsrock: The International Web of White-Power and Neo-Nazi Hate Music* (Brunswick: Rutgers University Press, 2017), 2.

³ Dyck, *Reichsrock*, 3.

Other scholarly works on the subject have mainly used ethnographic methods, but Dyck's work stands out for her analysis of the primary and secondary texts the white-power music web produces. White-power songs and albums, music magazines and Internet fora serve as sources; she also analyzes sales figures, market demographics, and other key statistics—to the degree that they are available in this murky arena.

In the following four chapters, the author first describes the history of the white-power music scene in Great Britain, where the genre was founded in the early 1970s. It was British musicians who drove its early development, in particular Ian Stuart Donaldson and his band "Skrewdriver." The following chapter then moves to continental Europe where white-power music soon appeared in Germany, and then in Sweden, Norway, and other western Mediterranean countries. Dyck follows the phenomenon through its rise in Eastern European countries like Russia, Belarus, Ukraine, Poland, and Greece, and finally into countries outside Europe, in particular the United States and Canada, Latin America, and finally Australia. The chapters link the regions' histories to their white-power ideology and their white-power music scenes, showing how they differ from country to country while retaining a common core ideology. These elaborations demonstrate the connections between particular lyrics and acts of violence by their fans, documenting cases of criminals who sang or shouted phrases from the lyrics as they committed acts of racist violence. She also argues convincingly that even the most forceful governmental interventions do not extinguish—indeed, they often hardly disturb—the white-power music scenes for longer periods of time. This is particularly evident in Germany, the spiritual home of most white-power neo-Nazi musicians today, and the physical home of the world's numerically largest white-power music scene. Although the German constitution allows the government to ban materials it sees as threats to democracy or to young people, and despite continued police monitoring, raids and law-suits, the German white-power music scene is still growing. In only one country—Great Britain—have anti-racist protests succeeded in making it more difficult for the white-power music scene to organize concerts and to attract large numbers of attendees. Dyck's study also shows the lasting influence of the Nazi-version of white-power ideology, which is glaringly evident in the names of bands, and songs, and of white-power ideological fan groups. There is, for example, a British organization called "Blood & Honour,"⁴ from the German *Blut und Ehre*, a slogan that was etched onto Hitler Youth knife-blades; a German band is called "Endstufe," a reference to the Nazi's so-called Final Solution to the Jewish Question (a Nazi plan for the extermination of the Jews during the Second World War); the Greek band name "Der Stürmer" (the stormer) takes its name from the Third Reich's main propaganda newspaper, while a Russian song is titled "Holocaust Erotica."

What stands out most in Dyck's study is the malleability and flexibility of the white-power ideology, which adapts to each country's historical situation and its music scenes' ambitions. Taken together, its hackneyed ideas do not represent an internally consistent or contradiction-free belief system. Although according to the Nazi and neo-Nazi systems of racial hierarchy, ethnic Slavs are considered *Untermenschen*, or sub-humans, white-power ideology and its music scene thrives in Russia and other Eastern European countries. In their ideology, Slavs are white and they reserve their hatred for targeting Jews and other non-Slavic ethnic minorities. Even more problematic for a German or Scandinavian neo-Nazi would be the way Spanish and South-American white supremacists claim membership in white power circles. Their standards of racial purity would not pass the Anglo or North American movement's standard concept of "one-drop of blood"—which automatically excludes individuals of mixed-race heritage—but instead involves a gradual hierarchy of racial value depending on the proportion of European ancestry in a given person's family.

The music that comes out of these different national scenes is as dynamic and innovative as its ideologies are flexible, encompassing the traditional British oi!-style and varieties of National Socialist Black Metal (NSBM), neo-folk, industrial, and even hip-hop and dub. Dyck's work supports her

⁴ The organization "Blood & Honour" started out to support struggling British white-power bands that were no longer under contract with mainstream music labels. It runs a glossy magazine and promotes activism and white-power violence. After various in-fights it allied itself with music labels in other countries. By 2009 the organization listed sixteen separate divisions within Britain and twenty-four non-British divisions around the world.

assertion that “one must understand white-power music as an international genre because one must understand contemporary white-power racism—along with the older forms of racism and white supremacy that have preceded it—as a global phenomenon.”⁵

The author also claims to show that mainstream western ideology is built on a form of unspoken and taboo racism that is ubiquitous but unacknowledged in the culture; and she claims to show that this mainstream ideology opens up the space for the extreme and outspoken forms of white-power music so present in contemporary societies around the globe. White-power musicians’ ideologies, she argues, descend directly from older types of racism which still persist and which mainstream, avowedly non-racist populations in European-descended societies continue to tolerate. Russia, for example, has long been profoundly xenophobic, an attitude that was sanctioned and even fostered by the state, especially in the Stalin years. This xenophobic paranoia expresses itself in hostility to actual foreigners but also to internal minority groups like the Ukrainians, Crimean Tatars, and Chechens. Russia’s post-Cold War oligarchy, its financial crisis in 1998 and other factors left large parts of the population in poverty and dissatisfaction, and it became fertile ground for racist ideologies. In Moscow alone there were 450 racist killings and more than 2,500 injuries from racist attacks between January 2004 and May 2010. The racism of Russian neo-Nazi groups finds support from mainstream organizations like the administration of Moscow State University and the Russian Orthodox Church.⁶ Similarly, the United States offers many examples of mainstream support of racism, as evidenced by, among other things, “police brutality toward African Americans and deep-rooted systems of structural inequality that leave this group living in poverty at rates far higher than the national average.”⁷

Although Dyck’s arguments here have a degree of plausibility, her examples remain rather broad, making her assertion that mainstream music and mainstream ideology supply the scaffolding for the white power music web less convincing than it might otherwise be. This lack of clarity is partly due to murky terminology (what is mainstream music and mainstream ideology, and what is its’ structure? How does the author define race—a pseudoscientific term to begin with—or racism, terms that she does not include in the otherwise excellent index of her book?). It also stems in part from some issues that are integral to the subject: the bands and their products are taboo in many societies and illegal in some, making sales figures hard to come by and hiding many distribution channels deep in the recesses of the dark web. Adding to the challenge is the fact that for copyright reasons, lyrics cannot be quoted, so the reader is not always clear about what exactly the author is referring to. Mainly though, the lack of clarity is due to the fact that Dyck is not specific about the theoretical frameworks or the political theory that informs her inferences, or her conclusions about the ways mainstream ideology and music influence or give rise to white-power ideology and music. Without a theoretical foundation, it is hard for the reader to determine if Dyck’s conclusions are the result of her scientific investigation or rather of her own liberal political beliefs.

These unanswered questions do not detract from the fact that *Reichsrock* is a significant contribution to the exploration of white-power racism in its contemporary forms. Its historical accounts are detailed and resourceful and their wide range and focus on worldwide connections are highly valuable. Kirstin Dyck has delivered a much-needed contribution to the field, one that historians, political scientists, and genocide scholars alike (as well as activists against extremist political movements) will find to be an important resource for their work.

⁵ Ibid., 11.

⁶ Ibid., 81.

⁷ Ibid., 107.

Book Review: *La Muerte del Verdugo: Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa*

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La Muerte del Verdugo: Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa

Séviane Garibian (ed.)

Buenos Aires, Miño y Dávila editores, 2016

266 Pages; Price: \$290 (Argentine Peso)

Reviewed by Vincent Druliolle

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The influence of perpetrators of massive violations of human rights does not vanish with their death. This idea is so self-evident that it hardly seems to require further research. However, *La Muerte del Verdugo. Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa* [The Perpetrator's Death. Interdisciplinary Reflections About Mass Murderers' Dead Bodies] takes up the challenge and sheds new light on several aspects of regime transition, transitional justice, and the politics of memory. The volume, edited by Séviane Garibian, Professor of Law at the University of Geneva and Associate Professor at the University of Neuchâtel, is a collection of chapters written by authors from various backgrounds (historians, legal scholars, anthropologists, psychologists, novelists) that brilliantly succeeds in drawing our attention to fascinating but hitherto neglected issues.

In the volume's introduction, Garibian underscores that while the literature has extensively discussed the question of the death and burial of victims of mass violence, analysing the perpetrators' dead body is "a taboo within the taboo itself"¹ insofar as their death is hardly discussed in the first place. Garibian introduces the three main questions around which the chapters are articulated, namely the circumstances of the perpetrator's death, "what to do with their remains?" and "how to approach their legacy, the memory of their person and of their crimes?," or their "patrimonialization."² The first question is used to divide the book into three sections ("natural death," "judicial execution" and "extrajudicial killing") that analyse case studies from various geographical areas and historical periods. These are preceded by a discussion of the legality of tyrannicide in international law. The status of this chapter as prologue seems rather odd since it is only related to the third kind of perpetrator's death. Including it in the third part of the volume would have made more sense as it complements the other chapters, in particular those about the death of Osama bin Laden and Muammar Gaddafi.

All the chapters are very informative and well-written, though their degree of engagement with the issues outlined in the introduction and analytical depth varies. The first section of the volume is entitled "Natural death, death under suspicion" to stress that its causes are often contested or questioned (which may be used to present perpetrators as victims of injustice or conspiracy), but also the fact that it means that perpetrators escape justice and accountability. The section includes chapters about Pol Pot, Jean-Bédél Bokassa and Idi Amin Dada, Francisco Franco and Augusto Pinochet, and Slobodan Milošević. The chapters about the Cambodian and African dictators recount the circumstances of their death and explain how cultural and religious beliefs, some of which pertain to the dead body, have shaped their surprisingly merciful memories. The consequence of the perpetrator's natural death are well highlighted by Milošević's fate. Because he died in prison a few days before the end of his trial, the truth about his role in the Balkan Wars could not be officially established. Florence Hartmann refers to his "posthumous victory"³ insofar

¹ Séviane Garibian, "Introducción: La muerte del verdugo o el tiempo incontable de su eternidad," in *La Muerte del Verdugo. Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa*, ed. Séviane Garibian (Buenos Aires: Miño y Dávila editores, 2016), 25.

² Ibid., 23.

³ Florence Hartmann, "La revancha póstuma de Slobodan Milosevic," in *La Muerte del Verdugo. Reflexiones Interdisciplinarias*

as Milošević will enjoy perpetual impunity, the truth about his crimes will remain partial, his responsibility can still be denied, and both the victims' work of mourning and reconciliation are significantly hindered. In other words, he "wins several of the battles he had fought during his life [...] [and ends up killing] Justice and Truth."⁴ Milošević's dead body reflects how his death represents a way out (*muerte-escapatoria*):⁵ no picture was ever seen and uncertainty surrounds the site where Milošević is buried. Finally, the contribution by Rosa Ana Alija Fernández further explores the relationship between the perpetrator's dead body, truth and justice by comparing the deaths of Franco and Pinochet. The author highlights the direct relationship between the dictator's dead body and the struggle for human rights and against impunity in both cases. Franco is buried in a huge monument outside Madrid, *el Valle de los Caídos* (the Valley of the Fallen). Franco himself had ordered its construction to celebrate his victory in the Civil War (1936-1939) and the works to build it entailed the death of hundreds of Republican prisoners. Over the past two decades, several actors have requested the transfer of Franco's remains to another site in an attempt to recover the site and resignify it, which has proved impossible. Alija Fernández argues that Franco's mortal remains symbolise the lack of a break with the past that characterised the Spanish transition to democracy, and the legacy of the dictatorship in contemporary Spain. She astutely observes that the demands to transfer Franco's body have increased since Spanish courts ruled out the possibility of judging his crimes, "as an alternative way of putting a symbolic end to impunity."⁶ On the other hand, though Pinochet had plans to have his own *Valle de los Caídos* built in Chile, he later decided that his ashes would remain in a family mausoleum. Stressing the contrast with Franco, the author underlines that the choice of a private burial site is the consequence of the political and judicial struggle for memory and justice in Chile.

The second section focuses on judicial executions and has only two chapters. While the chapter about Saddam Hussein's death focuses mainly on the religious symbolism surrounding the execution of "the Butcher of Baghdad" and the meanings of the footage of the event, Nicolas Patin offers a historical perspective on the issues surrounding the treatment of the perpetrators' dead bodies by analysing the debates about the execution of the Nazi leaders sentenced to death after the Second World War. He shows that the public character of the execution was seen as necessary to avoid transforming perpetrators into martyrs and to symbolise the birth of a new political system. Patin also critically engages with the idea that incinerating the perpetrators' bodies and denying them a burial (site) may prevent turning them into cult figures.

Finally, the third section is about extrajudicial killings or "death as vengeance." Garibian is interested primarily in the meaning and significance of the trial that led to the acquittal by a German tribunal of the survivor of the Armenian genocide who killed Mehmet Talaat Pasha. The following chapter by Didier Musiedlak about the mystery surrounding Mussolini's death is very detailed but fails to engage with the issues raised in the volume's introduction. In her chapter, Muriel Montagut is critical of the media and political leaders' silence (or, rather, silent relief) following the lynching of Muammar Gaddafi. She claims that the failure to condemn the cruelty of his death and the degrading display of his body in an industrial freezer turns us from distant witnesses into indirect accomplices and does not augur well for post-Gaddafi Lybia. The most challenging and theoretically sophisticated chapter of the third section is Frédéric Mégret's analysis of the "fugitive death" of Osama Bin Laden. Drawing on Foucault, he argues that it is a practice that constitutes and legitimises the knowledge and techniques of the so-called War on Terror at the same time as it reaffirms the state's sovereign power.

The chapters in *La Muerte del Verdugo* draw important lessons summarised by Garibian in the introduction: "Natural death [...] 'makes [perpetrators] more human' but does not repair. Judicial execution [...] condemns but does not demystify. [Extrajudicial killing] [...] dishonours

Sobre el Cadáver de los Criminales de Masa, ed. Séviane Garibian (Buenos Aires: Miño y Dávila editores, 2016), 135.

⁴ Ibid., 139.

⁵ Ibid., 135-9.

⁶ Rosa Ana Alija Fernández, "El inextricable camino entre el lecho de muerte y la lucha contra la impunidad: los casos de Franco y Pinochet," in *La Muerte del Verdugo. Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa*, ed. Séviane Garibian (Buenos Aires: Miño y Dávila editores, 2016), 111.

but does not pacify.”⁷ Besides, although it depends on a multiplicity of factors, the posthumous transformation of perpetrators into cult figures is almost inevitable.⁸

The book is very enjoyable to read, though readers will likely lament the fact that it does not include any pictures, which would have been particularly appropriate. The volume’s main weakness is the confusion about what the chapters actually focus on. Indeed, some of them are not so much about the perpetrators’ dead body—the book’s central theme—as about the pictures or footage that immortalise it, the perpetrators’ grave or memorial, or simply his/her death. Nevertheless, this may be one of the defects of volumes such as *La Muerte del Verdugo* that are innovative and truly interdisciplinary contributions to the existing scholarship.

⁷ Sévane Garibian, “Introducción: La muerte del verdugo o el tiempo incontable de su eternidad,” in *La Muerte del Verdugo. Reflexiones Interdisciplinarias Sobre el Cadáver de los Criminales de Masa*, ed. Sévane Garibian (Buenos Aires: Miño y Dávila editores, 2016), 33.

⁸ *Ibid.*, 34.

Book Review: *Politics of Innocence: Hutu Identity, Conflict and Camp Life*

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Politics of Innocence: Hutu Identity, Conflict and Camp Life

Simon Turner

Oxford and New York, Berghahn Books, 2010

185 Pages; Price \$120.00 Hardback

Reviewed by Andrea Purdeková

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With the recent migration crisis in the global North and the unrelenting pressure on host countries in the global South where the vast majority of refugees continue to reside, Simon Turner's is a book that should be read widely. Turner's careful ethnographic study of the micropolitics unfolding in Lukole refugee camp for Burundian refugees in Tanzania remains one of the few books offering an intimate portrait of daily life and conflicted politics of a refugee camp. By combining the bird's eye perspective with that of a close-up street view, Turner diverges from the removed global economy analyses or the overly technical language of humanitarian reports by offering a perspective that is both empirically rich and theoretically engaged.

Turner's aim is to explore not how history creates conflict but how conflict creates histories and how this relationship manifests in the space of the camp. As such, the book sits within an emerging body of literature that challenges a one-sided Agambenian characterization of camp inhabitants as "bare life" suspended in an exceptional state of limbo and an apolitical space of exclusion. Research in conflict-affected areas such as Western Sahara or Eastern DRC has shown that refugee camps are instead saturated with refugee politics, at extreme ends acting as quasi-states or "practice polities." While Turner doesn't deny that liminality and exceptionality do define the refugee camp, his picture is fundamentally one of ambiguity and he skillfully foregrounds the interplay of "powers" in Lukole— between Tanzanian authorities and humanitarian agencies on the one hand, and the refugees as they maneuver the space of the camp and construct their own subjectivities. At the same time as they link the space of the camp with social and moral decay, with experiences of status loss and emasculation ("UNHCR is a better husband"¹ being fed by "food distribution"²) Lukole's inhabitants also strategically take advantage of new opportunities. Chapter five excels in tracing concrete stories of such "liminal experts."

In fact, the book is at its best when it discusses such paradoxes and ambiguities of camp governance. Chapter three is especially strong on this, foregrounding the tensions between real disempowerment faced by the refugees due to the restrictions and prescriptions (down to the form and style of their *blindé*)³ imposed by the camp commandant and the humanitarian agencies, and on the other hand the "empowerment" in form of participation promoted by the same agencies,⁴ or the fact that indeed camp life did offer empowerment of sorts to its inhabitants by shaking up old hierarchies and opening up new opportunities.

Turner's careful study certainly succeeds in breaking down some of the pervasive stereotypes surrounding the figure of the refugee and the space of the camp. The book challenges the notion that the space of the camp is uniformly disempowering in chapter four by showing how the politics of gender plays out differently for men and women, and across status lines. The book also deconstructs the image of the refugee as a passive victim by foregrounding the politics of guilt and the loss of innocence among the Hutu, who in the 1990s can no longer claim the mantle of

¹ Simon Turner, *Politics of Innocence: Hutu Identity, Conflict and Camp Life* (New York and Oxford: Berghahn, 2010), 66.

² Ibid., 68.

³ Ibid., 45.

⁴ Ibid., 52.

“innocence” due to their own imbrications in violence inside Burundi. Through analysis of the political parties operating in the camp in chapter six, the book breaks down the image of refugee as an apolitical figure of a human in need. Turner’s distinct contribution here is his portrayal of the camp as a political arena where different parties and ideologies compete for allegiance and the ability to shape the historical narrative. Chapter six is a fascinating reflection on rumor as a currency mediating this political competition.

Turner’s *Politics of Innocence* presents a key contribution to the study of camps and encampment, in Africa and more widely. It builds on and extends the seminal work by Liisa Malkki⁵ who, incidentally also working with Burundian refugees in Tanzania a decade prior, linked the space of the camp to the production of strongly ethnonationalist historical narratives, narratives likely to perpetuate rather than diffuse violence. But Malkki left camp politics aside, making it seem that the narratives she gathered arose in a political vacuum. By contrast, Turner foregrounds the fundamental ambiguity of the camp as both a space depoliticized through humanitarian quasi-governance and hyperpoliticized through competition among political parties. Through the struggle between the CNDD and Palipehutu, Turner persuasively shows that production of history depends on power struggles in the space of the camp. The narratives of Hutu ethnic and moral purity that Malkki collected could simply not arise again. The histories that emerged during Turner’s time in the camp were not only conditioned by intra-Hutu political competition but also constrained by the loss of the Hutu victim position through their own imbrication in violence in the early 1990s and onwards.

Future work is needed to extend and systematize some of the insights that Turner offers in his book. The experiences of women in the camp are notably missing. Accent is also primarily on “big men” and the liminal experts benefitting from the opportunities of the camp rather than those “sitting around” or bemoaning their loss of status. Going forward, more historical depth and a comparative perspective would be useful in order to map out the historical transformation in the experiences of Burundian encampment, the changing operation of political parties in exile and across the different camps, and the circulation of refugees between the national space, the space of the camp and other exilic spaces. Only such more systematic political exploration could deliver the answer to the key question that Turner and Malkki open up to view: What is the relation between the space of the camp, the production of history and the nature of nationalism that emerges in exile? And how do these tie to the dynamics of ongoing conflict? If it is not Turner’s intention to provide such broader-ranging investigation, it is certainly the merit of the book that it inspires us to ask novel and more pointed questions about encamped experiences and their relation to both conflict and peace building in a region that has seen some of the most entrenched and large-scale violence of recent decades. The recent mass outflow of Burundians out of the country marks a new chapter in the regional conflict-displacement nexus and further underscores the continued and pressing relevance of the queries tackled in Turner’s *Politics of Innocence*.

⁵ Lisa H. Malkki, *Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania* (Chicago: Chicago University Press, 1995).

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Andrea Purdeková, in her review of *Politics of Innocence: Hutu Identity, Conflict and Camp Life*,¹ asks what the relationship is between the space of the camp, the production of history, and the nature of nationalism that emerges in exile? And, she continues, “how do these tie to the dynamics of ongoing conflict?”

These are important questions that go beyond the scope of my book. As she rightly points out ‘more historical depth and a comparative perspective would be useful.’ Let me, however, give some suggestions on the matter. In her seminal book *Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania*,² Liisa Malkki suggests that the kind of ethnic nationalism she found in Mishamo camp, did not appear among the self-settled Burundian refugees that she studied in Kigoma town. These apparently had a more cosmopolitan worldview. Rather than cultivating roots and purity like the camp refugees, they were more rhizomatic in a Deleuzian sense, living in the present and unconcerned with cultural purity. Malkki has indeed been criticized for projecting her own ideals onto these town refugees. I am not able to judge whether this is the case. I have, however, also done fieldwork among Burundian refugees who left Lukole camp to try their luck in Nairobi. While the picture is not as clear-cut, as Malkki suggests, several of the refugees suggested that they left the camp due to its saturation with politics, making individual choices nearly impossible. On the one hand, Nairobi was the hub of communication for opposition parties, while on the other hand, many chose to leave party politics and pursue individual hopes for a better future elsewhere – often strongly attached to charismatic churches.³

These findings seem to support the idea that the refugee camp became a place for shaping political ideologies—although I argue against Malkki’s findings that they must necessarily be radically ethno-nationalist. One of the main arguments in the book is that there are several, competing ideologies in the camp and that the dominant ideology was relatively ‘moderate’ and democratic in its outlook. I argue in the book that the answer to this must be found in recent history in Burundi and Rwanda, and therefore that we cannot see the camp in isolation from the outside world and from the history of the region.

The findings also support the idea that refugees outside the camp are less shaped by such political ideologies, although they also maintain relations with the camp and dreams of a different future Burundi—and are therefore not merely rhizomatically living in the present.

So to answer Purdeková’s questions: the camps do indeed play a central role in shaping certain political subjectivities that in turn shape the nature of conflict—and peace—in the region. And while the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian agencies seem to be oblivious to this fact and keep on treating refugees as innocent victims, other actors in the region are well aware of the ways in which camps shape political subjectivities. I have written elsewhere how the Rwandan state treated the returning refugees radically different to the international community.⁴ Rather than perceiving the refugees as ‘bare life,’ lacking political agency, the Rwandan state perceived them as what I have termed ‘bad life,’ containing harmful political agency that could threaten the post-genocide nation and hence in need of re-education in Ingando camps. Purdeková’s own book similarly demonstrates that the Rwandan state does

¹ Simon Turner, *Politics of Innocence: Hutu Identity, Conflict and Camp Life* (Oxford and New York: Berghahn, 2010).

² Lisa H. Malkki, *Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania* (Chicago: Chicago University Press, 1995).

³ Simon Turner, “Staying out of Place: The being and becoming of Burundians refugees in the camp and the city,” *Conflict and Society* 2, no. 1 (2016), 37-51; Simon Turner, “We Wait for Miracles—Ideas of Hope and Future Among Clandestine Burundian Refugees in Nairobi,” in *Ethnographies of Uncertainty in Africa (Anthropology, Change, and Development)* ed. Elizabeth Cooper et al. (London: Palgrave Macmillan, 2015), 173-192.

⁴ Simon Turner, “New Citizens and a New Beginning—Repatriation and Nation-building after genocide in Rwanda,” *Development and Change* 45, no.3 (2014), 415-433.

not see its education camps as places for simply containing victims of history without agency, but treats those who enter the Ingando camps as potentially having negative ideas that need removing and replacing with new, patriotic mentalities.

In a sense, Purdeková and I both explore camps as sites of intense identity making. However, the contexts and the foci of our work differ. The Ingando camps were created in the context of a post-genocide regime that was acutely aware of the threat of 'negative mentalities' and bent on creating subjects that were supportive of the new regime. The refugee camp, on the other hand, existed in a context of international humanitarianism that is blind to political subjectivities and more concerned with 'pure victims' devoid of agency—whether negative or positive.

In terms of focus, Purdeková primarily explores the camp from the outside, thus looking out on the negotiations and repositioning that might take place inside the camp, but demonstrating nicely how the Ingando camps are part of a larger state building project. She is in other words, making an important point about how camps are affected by the surrounding society and how they in affect society. In my book, on the other hand, I have neglected this aspect as Purdeková also remarks. Although I argue that 'the camp was not an island unto itself'⁵ and show how the conflict in Burundi followed the refugees into the camp, my focus was on the internal dynamics of the camp, demonstrating that the refugees transformed the camp into something else than was intended by its planners.

Both views are relevant and both are important, as much scholarship on camps makes the double mistake of firstly treating camps as isolated entities and secondly assuming that the policies of camp planning succeed. Our studies show that one should not assume either and that by understanding camps—in their context as well as from the inside—we may understand a lot about the constitution of society and its conflicts.

⁵ Turner, *Politics of Innocence*, 164.

Book Review: *The Failures of Ethics: Confronting the Holocaust, Genocide, and Other Mass Atrocities*

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The Failures of Ethics: Confronting the Holocaust, Genocide, and Other Mass Atrocities

John K. Roth

New York, Oxford University Press, 2015

264 Pages; Price: \$39.95 Hardcover

Reviewed by James Snow

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Genocide scholars are of course familiar with the work of John K. Roth who has authored, co-authored, and edited numerous volumes on the Holocaust and other genocides. His most recent book, *The Failures of Ethics: Confronting the Holocaust, Genocide, and Other Mass Atrocities*, may well be his most insightful work yet. It is a work that deserves a careful reading by all of us in the field of Genocide Studies, irrespective of disciplinary lens.

Perhaps most noteworthy is the fact that he is resolute in confronting the horrors of genocide. He quotes Emmanuel Levinas to the effect that “The Holocaust of the Jewish people under the reign of Hitler...seems to me the paradigm of gratuitous human suffering, in which evil appears in its diabolical horror.”¹ He concludes his chapter on “God’s Failures” with a call for “no more theodicy.” Roth explores the possibility that in an era of postmodern relativism the Holocaust might well be a “negative absolute.”² And following Jean Améry, Roth takes to heart the insight that the Holocaust and other atrocities including rape and torture mark “the destruction of trust in the world.”³ Yet like Primo Levi and Elie Wiesel—Roth acknowledges a deep debt to Wiesel—Roth refuses to abandon hope. At the conclusion of Part I (of II) Roth writes:

‘And yet . . . and yet,’ Elie Wiesel has said, ‘this is the key expression of my work.’ That outlook should also be a key response to the failures of ethics, including God’s failures, because life persists, history continues, and they embody so much that is good and precious, so much that must not be abandoned—perhaps even God?—lest failure is compounded to the point of no return.⁴

And Roth certainly strikes a similar albeit cautious message of hopefulness at the end of the entire work. What then, are the failures of ethics that Roth discusses? For as he is right to claim, “if ethics is to be a safeguard against its own failures, then people who try to be ethical have to acknowledge the failures, own them when they should, and protest against them.”⁵ The first failure he discusses is the problem and process of bystanding. Drawing from Wendy Lower⁶ and Omer Bartov,⁷ among others, Roth draws attention to the scope of the problem—most Germans during the Holocaust were neither perpetrators nor victims—and also problematizes the received understanding of bystanders as entirely passive and without agency. He is surely right in claiming “No single size fits all bystanders, but conditions for inclusion in that category involve knowledge

¹ John K. Roth, *The Failures of Ethics: Confronting the Holocaust, Genocide, and Other Mass Atrocities* (New York: Oxford University Press, 2015), 99. Roth is quoting Emmanuel Levinas, *Entre Nous: On Thinking-of-the-Other*, trans. Michael B. Smith and Marsha Harshav (New York: Columbia University Press, 1998), 97.

² Roth, *The Failures of Ethics*, 21.

³ *Ibid.*, 30.

⁴ *Ibid.*, 101. Roth is quoting Elie Wiesel, “Exile and the Human Condition,” in *Against Silence: The Voice and Vision of Elie Wiesel*, ed. Irving Abrahamson (New York: Holocaust Library, 1985), 1:183.

⁵ Roth, *The Failures of Ethics*, 7.

⁶ Wendy Lower, *Hitler’s Furies: German Women in the Nazi Killing Fields* (New York: Mariner Books, 2014).

⁷ Omar Bartov, ed. *The Holocaust: Origins, Implementation, Aftermath* (New York: Routledge, 2000).

and agency.”⁸ Many, if not most, of us have the power to in various ways challenge the scope and depravity of genocidal violence.

A second failure is the abandonment of moral absolutes in favour of a postmodern, Nietzschean celebration of the individual and the will to power as the source of value. A related problem is that celebrating the individual as the source of all value risks abandoning our responsibility to and for others. Roth is hesitant to call for the recovery of a religiously grounded moral absolutism—something embraced by, among others, David Patterson.⁹ Roth seems forced to acknowledge that “ethical outlooks” are social constructs with a history, but even so something like the Holocaust can still serve as a negative absolute; in his view even a socially constructed ethics can still be extremely powerful.¹⁰

The shortest chapter of the book, “Rape as Torture and the Responsibility to Protect”—a mere fourteen pages—is nevertheless important for its recognition that rape and other forms of torture have an as yet insufficiently understood enduring destructive potential: the ubiquity of rape as a weapon of genocide prompted the Outcome Document of the United Nations World Summit (2005),¹¹ along with Resolution 2150.¹² Roth, among others, remains sceptical about the efficacy of the Responsibility to Protect initiative; he argues that a sense of “urgency and reality” might well require attentive listening to the dead. He suggests that “listening to those ‘done to death’ by rape/torture-as-policy in war and genocide, [might] improve the odds that moral motives will bite in the ways we need them to do.”¹³

Additional chapters cover more familiar but nevertheless important topics. An additional chapter calls for a dialogue among Jew, Christians, and Muslims to refocus attention on the proscription of murder, a proscription at the heart of all three religions. He devotes a chapter to “God’s failures” as well. Part II, “Resisting Failures,” adopts a more personal voice; “The Holocaust’s impact on Christian-Jewish Relations” reads more like personal memoir. As a practicing Christian, Roth has spent decades confronting Christian-Jewish relations and how European Jews such as Elie Wiesel both understood and feared Christianity, and how “Christian understandings—better identified as *misunderstandings*—of Judaism have produced immense suffering and sorrow.”¹⁴ Strongly influenced by Elie Wiesel—Roth published “Tears and Elie Wiesel”¹⁵ in 1972—Roth does not shy away from the claim that but for centuries of Christian anti-Semitism the Holocaust would not have happened.¹⁶

Roth makes a strong case for the failures of ethics, and there are many. And many of these failures have their origins in philosophy itself. Philosophy is implicated in bystanding and failing to protect; philosophy is similarly implicated in the logic of racism and the collapse of moral absolutism. Reflecting on *Kristallnacht* and the destruction of the synagogue in the city of Nentershausen, Roth claims: “A decisive failure of ethics, the destruction of the Torah scrolls signified unbounded rejection of Jewish tradition, a ‘cleansing’ of the Ten Commandments and their injunction against murder.”¹⁷ Given the scope and depth of these failures, how does Roth propose, in his words, “resisting these failures?”¹⁸

⁸ Roth, *The Failures of Ethics*, 15.

⁹ David Patterson, *Genocide in Jewish Thought* (New York: Cambridge University Press, 2012).

¹⁰ Roth, *The Failures of Ethics*, 22.

¹¹ “Paragraphs 138-139 of the World Summit Outcome Document,” *International Coalition for the Responsibility to Protect*, accessed May 20, 2017, <http://responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/398-general-assembly-r2p-excerpt-from-outcome-document>.

¹² United Nations, “Resolution 2150,” accessed May 20, 2017, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-F6E4FF96FF9%7D/s_res_2150.pdf.

¹³ Roth, *The Failures of Ethics*, 37.

¹⁴ *Ibid.*, 107.

¹⁵ John K. Roth, “Tears and Elie Wiesel,” *Princeton Seminary Bulletin* 65, no. 2 (1972): 42-48.

¹⁶ Roth, *The Failures of Ethics*, 115ff.

¹⁷ *Ibid.*, 74.

¹⁸ *Ibid.*, 103.

As mentioned earlier in this review, Roth proposes reconceptualising the status of bystanding and recognizing that bystanding makes genocides possible. Moreover, bystanding involves some degree of agency and therefore moral culpability. He also advocates giving moral traction to the duty to protect, especially in the case of rape and torture, and deconstructing the concept of race. More provocatively, and in the continuing reverberations of the Holocaust, Roth claims, "Christians have yet to come to terms fully with the Holocaust's implication that Christianity can no longer take itself to be superior to Judaism." This recognition needs to deepen for Christianity to advance, and "such advancement," claims Roth, would require profound changes in Christian thought and practice.¹⁹

A great and still growing body of scholarship is devoted to concerns over how best to define genocide. Lemkin's definition that was adopted as part of The Convention on the Prevention and Punishment of the Crime of Genocide by the United Nations General Assembly (UNGA) in 1948 has been and continues to be contested both as a juridical term and as a scholarly concept.²⁰ Roth wades into the definitional issues only briefly but suggests that what is needed is courage and resolve. Roth claims that definitional conundrums aside,

"that *genocide* refers to a reality that deserves no more victories. Like so much else in human experience, more than half the battle depends on the force of will to say, in spite of imperfect definitions, that the most reliable evidence and straight forward clarity insist that genocide is taking place *there* and must be stopped, or that genocide is likely to take place *here* and must be prevented."²¹

Roth's chapter on "the politics of testimony" is especially illuminating for the recognition that genocide testimony, in all its forms, "plunges one into abysmal darkness."²² Here he quotes Philip Hallie: "You cannot go down into hell with impunity. You must pay an entrance fee, and an exit fee too."²³ The research of Lawrence Langer,²⁴ for example, contravenes our platitudes that good will prevail over evil or even that such testimonies can form a coherent narrative to help make sense of things. Victim testimony for Langer gives knowledge that "does not unify, edify, or dignify the lives of former victims."²⁵ Yet for Roth, the abyss of the darkness that is revealed in survivor testimony cannot be ignored. Contained in the abyss of darkness are glimmers of hope. Citing Primo Levi's *Moments of Reprieve*²⁶ and the story of Lorenzo Perrone, Roth reminds us that testimonies also provide "reminders of obligations and possibilities that can resist the failures of ethics, even when it may seem hopeless to do so."²⁷ In the end, one cannot continue to escape the moral responsibility of resisting the failures of ethics, and find meaning and joy in doing so.

At times I found *The Failures of Ethics* somewhat frustrating to read owing to the brevity of the arguments as they were cast. But then I was reminded of what Robert Pogue Harrison says of his own book, *The Dominion of the Dead*. Harrison warns his readers that his book is not a writer's book but a reader's book in that

"its articulation is full of empty spaces for the reader to enter and wander about in. It calls on the interlocutor not only to think along with the author but to establish independent connections,

¹⁹ Ibid., 127.

²⁰ For an overview of problems defining 'genocide' see James Snow, "'Don't Think But Look:' Using Wittgenstein's Notion of Family Resemblances to Look at Genocide," *Genocide Studies and Prevention: An International Journal*, no.3, 154-173. <http://doi.org/10.5038/1911-9933.9.3.1308>.

²¹ Roth, *The Failures of Ethics*, 137.

²² Ibid., 173.

²³ Ibid. Roth is quoting Philip Hallie, *Tales of Good and Evil, Hope and Harm* (New York: Harper Collins, 1997), 22.

²⁴ Lawrence Langer, *Holocaust Testimonies: The Ruins of Memory* (New Haven: Yale University Press, 1991).

²⁵ Roth, *The Failures of Ethics*, 178.

²⁶ Primo Levi, *Moments of Reprieve: A Memoir of Auschwitz*, trans. Ruth Feldman (New York: Penguin, 1987).

²⁷ Roth, *The Failures of Ethics*, 183.

leap over abysses, pursue his or her own paths of inquiry, bring to bear adventitious considerations, and, through the tracings offered here, discover the topic for him-or herself."²⁸

Harrison's description of the structure of his own book is also an apt description of Roth's book. Roth will not allow us to read his book as bystanders. Roth has written a reader's book, and that is what the best books are, after all.

²⁸ Robert Pogue Harrison, *The Dominion of the Dead* (Chicago: Chicago University Press, 2003), xii.

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The Cut

Director: Fatih Akin

Germany, France, Italy, Russia, Poland, Canada, Turkey and Jordan, 2014

Reviewed by Anna Batori

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Shifting his focus from the German-Turkish question to one of the biggest taboos in Turkish history, Fatih Akin continues digging deep in the racial-ethnic world-narratives. By honouring the memory of those died during the infamous and often forgotten Armenian Genocide, *The Cut* challenges the current ostrich policy to the Turkish ethnic cleansing that caused the death of about 1,5 million Armenians between 1914 and 1923.

After more than hundred years, the mass murder, deportation and systematic torture of thousands of Armenians still form a less-known territory in the official historio-political European discourse. The historical falsification and distortion causes a deep division between Turks and Armenians, and builds tension between those countries that recognize the Genocide and those who deny it. It is most probably because of this political tension that Akin decided to focus on the emotional perspective of the genocide and avoided to put any emphasis on the socio-political and historical context that embraces the tragedy.

The Cut follows the Armenian Nazaret Manoogian (Tahar Rahim) on his eight-year long transatlantic journey from Mardin through Aleppo and Cuba to as far as North Dakota. The story begins in 1915, when the blacksmith Nazaret, the father of two young twin-daughters, is forced into slave labour by Ottoman command. Together with his Armenian mates, the family man must build roads in the scalding desert, where they often witness Armenian groups marching through the squally, dry landscape. Although it is unclear whether Nazaret is aware of the systematic extermination of his folk, he tries his best to persevere and help his dying and tortured fellows. One day however, he and his mates must meet their end and the small Armenian working group gets executed. Luckily, Nazaret's executioner is incapable of cutting the man's throat, and only wounds his neck, in this way helping the family man to survive the massacre. Although Nazaret gets rescued by the Turkish soldier and later by a soap-maker from Aleppo, his wound makes him mute, which only exacerbates his already hopeless and depressing situation. When he accidentally learns that his daughters might be still alive, he gains new strength and, sparing no effort to reunite with his family, goes on an endless journey to find his twins.

While trying to communicate via writing into his small notebook, Nazaret always finds Turks and Armenians that help him on his journey. Thanks to this, he soon learns that his daughters got married and moved to Cuba. In Cuba then, it turns out that the twins work in the United States, which urges Nazaret to travel there as soon as possible. Despite his endeavour however, he eventually loses track of his family and starts working at a railway construction in North Dakota. We are in year 1923, when Nazaret overhears some Armenian songs coming from a small cottage and learns that her twins might be in Ruso, some miles away. In the end, he mysteriously finds his daughter on the icy-cold streets of the village, but the long-awaited reunification has a bittersweet aftertaste for Nazaret soon learns that only one of his daughters survived the eight-year long ordeal.

As the story illustrates, *The Cut* is an ambitious, cosmopolitan production that was shot in more than five countries with an international crew from all over the world. What Akin created this way, is a global road-movie that, by using the Armenian Genocide as core of its narrative, depicts a historical tableau of the early 20th century. Although the costumes, the design and the landscape of the movie provide a spectacular glimpse into the era, the vision often annihilates the personal motivation of the protagonist, who is illustrated as absolutely lost amidst the spotless

historical design. The more the story progresses, the more unclear it is how Nazaret feels about his own roots, own history, the death of his folks and the people who caused the massacre. Thanks to this blurry mental map, the blacksmith gets absolutely objectified in the story, a part of the historic design who, while walking great distances in the film sets, gets lost behind the beautifully choreographed images.

Akin tries to stress the transformation of Nazaret through the man's turning away from Christianity, which constructs the very core to his Armenian identity. However, he keeps this line too much on the surface, without explaining what Nazaret might think of his Saviour in the context of the tragedies he witnessed. In the first sequences of the film, Akin depicts the man as deeply religious who confesses his sins, prays before eating and stands for his Christian convictions when the Turks ask them to convert to Islam. After contributing to the death of his sister-in-law in the death camp of Ras-al-Ayn, Nazaret angrily throws stones in the air – as if aiming at Jesus – and hopelessly tries to erase his cross-tattoo from his wrists with a stone. His endeavour to get rid of the sign marks a turning point in the story and, together with the stone-motif, forms a metaphoric structure in the film. Later, at the Turks' march of shame in Aleppo, Armenian survivors throw stones on the walking crowd but Nazaret, similar to his Turkish executioner, is morally incapable of the act. Instead, being shocked of the image of a bleeding young Turkish boy, he quickly leaves the march and returns to his shelter.

With representing the crimes and cruelty, as well as the helpfulness of both the Armenian and Turkish folk, Akin tries his best to communicate a neutral standpoint in the film, thus urging *both* sides to take moral responsibility for the happenings. Also, with the stone-motif, he often refers to the Biblical message to throw back bread instead of stones, in this way to emphasize forgiveness and moral compassion. Unfortunately, Akin's mainly neutral point of view that is based on mercy, erases the personal perspective of Nazaret to religion, who never talks about his relationship with God. It is only in Cuba, where it becomes clear that the blacksmith has reckoned with his Christian past. The father does not wait for his hosts' pre-dinner prayer in Havana, nor is he willing to go to church anymore. However, these smaller signs of Nazaret's atheism are not exploited in depth, which is most probably due to the very episodic narrative formula of the film that embraces too many places in a time being way too short. Thanks to this structure that focuses on movement and visuals instead of the very personal world of Nazaret, the film turns into a road-movie halfway, thus shifting the emphasis from the Armenian genocide to a long flaneuring in the American landscape.

Another point that makes the identification with Nazaret and his journey rather problematic, and exacerbates his objectified position in the narrative, is his muteness that does not leave the man any space for any verbal-emotional communication. This Biblical motif – God rendered Ezekiel mute for seven and half years, which also corresponds to the length of Nazaret's journey – emphasises the already excluded position of the man. On the one hand, the blacksmith is member to one of the ethnic minorities of the Ottoman Empire that puts him at the margins of the society – existing outside the hegemonic power structure. In this Spivakian subaltern position, the only way of Nazaret to be heard is to convert to Islam which, however, would mean to give up his Armenian identity. He thus rejects the only opportunity to leave the camp and, such as Ezekiel, gets muted by God. Nazaret thus takes on a double subordinated position. First, he is the Other in the narrative, the inferior Armenian who is governed by the Turks who relocate him into the desert. This dispossessed position is exacerbated by his muteness that puts him in an ever more vulnerable and oppressed situation. He communicates by using Arabic, Turkish and English language and completely ignores Armenian, the other pillar to his very identity. Deprived of his language, home and religion, Nazaret becomes an absolutely homeless person and even more marginalized when he travels to Cuba. In Havana, he does not know the language while, because of his muteness, he cannot get a visa to the States. He drifts as a second-class citizen from one city to the other without any stable identity and legal status.

Nazaret's in-between position recalls the marginalized position of the German-Turkish director, which might be one of the reasons why Akin's attention has shifted to the Armenian question. Similar to Nazaret – his alter-ego – the director is subjected to the German law, while he himself has a constant longing for the land of his parents, Turkey. In his fatherland, however,

he is treated as an outsider for his German background, which results in an in-between, fractured and torn identity-structure, depriving him of a full identification with Germany or Turkey. The only way to acquire a pseudo-stable identity is to become a true cosmopolitan, constantly drifting in space and time – a fluid position where Akin locates Nazaret. This might be an explanation why all the Armenians speak English in the film. Avoiding the Armenian language and using a very accented English throughout the film is most probably the biggest shortcoming of *The Cut* that, only accelerates to the subaltern position of the characters and makes the identification with Nazaret difficult.

His muteness, together with his minority-and-cosmopolitan position and the loss of his religion, deprives Nazaret of his very Armenian identity that transforms the movie into a pseudo-blockbuster cinema whose narrative reflects the aimless journey of a lost soul. In this Homeric wandering, the landscape and its capturing in wide shots get special attention. Nazaret is often portrayed against the barren, rocky and windy scenery of the desert and the icy, inhospitable hills of the States. On the one hand, his long walks in the empty, austere landscapes signify his outsider position – the wanderer who is rejected by the virgin environment – while the extreme long shots that capture his stranger position put him into an even more isolated place. Nazaret's physiognomy and gestures that could help to understand his inner journey, and could overcome his muteness, thus remain hidden from the spectator whose attention shifts to the landscape instead of the man's personal tribulation.

The beautifully choreographed images, the very detailed historic settings and the breath-taking sceneries of Jordan, Malta, Cuba and Canada are linked by a recurring Armenian folk-music motif that accompanies the whole film. Together with the extended use of extras and the very episodic structure that is built on textual references to signal the exact time and space of the happenings, Akin's story becomes a grandiose attempt to mimic the Oscar-winning Hollywood-formula. Unfortunately, the most important message, the Armenian Genocide gets scarified on the altar of this ambitious experiment. Despite its shortcomings however – the pseudo-Hollywood aesthetics, a huge lack of historical references and possible identification – *The Cut* deserves critical attention for it is one of the first and bravest efforts to touch upon a taboo that deeply divides nations. While there were attempts to represent the Armenian Genocide on screen, most directors used the documentary genre (Eric Friedler's *Aghet, a Genocide*, 2010) or only referenced the massacre in feature films (Atom Egoyan's *Ararat*, 2002), which makes Akin's production a historio-political milestone in the representation of the systematic extermination of Armenians. *The Cut* and the recently released American production, *The Promise* (Terry George, 2016) illustrate that the collective remembrance on the Armenian Holocaust has just started, and the historical falsifications and speculations can be finally addressed not only in literature, but in the cinema as well.

Title of the Film: *The Cut*; Director: Fatih Akin; Screenplay: Fatih Akin, Mardik Martin; Producers: Fatih Akin, Karl Baumgartner, Reinhard Brundig; Music: Alexander Hacke; Cinematography: Rainer Klausmann; Editor: Andrew Bird; Sound Designer: Zubin Sarosh; Cast: Tahar Rahim, Simon Abkarian, Makram Khoury, Hindi Zahra, Kevork Malikyan, Bartu Küçükçaglayan; Country: Germany, France, Italy, Russia, Poland, Canada, Turkey and Jordan; Year of Release: 2014; Production Companies: Bombero International, Opus Film, Pandora Filmproduktion. Duration: 138 minutes.