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CURRENT AND POTENTIAL CAPACITY FOR THE PREVENTION OF GENOCIDE AND MASS ATROCITIES WITHIN THE UNITED NATIONS SYSTEM

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At the World Summit in 2005, United Nations Member States unanimously endorsed the 'Responsibility to Protect'. This acknowledged the responsibility of states to protect their populations from genocide and mass atrocities, but also that of the international community, acting "through the United Nations". A strong focus of the statement is on the necessity of prevention, and the appropriate "diplomatic, humanitarian and other peaceful means" the United Nations can employ in its service. But what capacity does the United Nations currently have to help protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing through preventative action? Is it adequate, or are there areas where capacity building is required? This paper will explore the current capacity to meet the preventive component of the responsibility to protect within the United Nations system. It will identify areas of strength that might be more explicitly utilised in support of prevention measures, and areas in which there are opportunities for improvement. It will also consider the potential of mainstreaming Responsibility to Protect considerations across the United Nations system, and the potential for UN involvement in contributing to longer-term, structural prevention.

INTRODUCTION

Unanimity is rare at the United Nations. It is a testament to the strength of world opinion, therefore, that the 'Responsibility to Protect' was unanimously endorsed by the international community at the World Summit in 2005. The Responsibility to Protect, or RtoP as it is commonly known, reaffirmed the responsibility of the international community to prevent genocide, ethnic cleansing, war crimes and crimes against humanity, and highlighted the central role of the United Nations (UN) in meeting this responsibility. It asserted a broad role for the UN; not only responding to crises and imminent emergencies, but also providing an early warning mechanism, supporting the Special Advisor for the Prevention of Genocide, and supporting the international community in taking preventive action to assist "those which are under stress before crises and conflicts break out."[1] The endorsement of RtoP is certainly a positive step for mass atrocity prevention. Yet the scope of the challenge is daunting. The twentieth century earned the moniker 'the century of genocide'; the bloodiest in world history. The record of the UN itself was far from blameless, particularly with respect to the 1994 Rwandan genocide and 1995 genocide in Srebrenica. Moreover, as recently as 2009 the Secretary-General acknowledged the UN remained "underprepared" to meet it's "most fundamental prevention" responsibilities with respect to RtoP.[2] The present article, therefore, seeks to explore the current capacity of the UN system to meet these responsibilities for mass atrocity prevention. Through examining key organs of the UN system, it will consider areas of strength, and gaps within the present capacity. It will explore possible approaches to augmenting capacity, including within specific organs and through mainstreaming RtoP considerations. Finally, it will also consider the capacity of the UN system to contribute to longer-term, structural prevention.

A History of Rhetoric and Inaction

> "There can be no more important issue, and no more binding obligation, than the prevention of genocide. Indeed, this may be considered one of the original purposes of the United Nations."[3]
>
> Kofi Annan, UN Secretary General, January 2004

The prevention of genocide has been a core goal of the United Nations since its inception in the aftermath of World War Two. In 1946, in its inaugural session, General Assembly resolution 96 (I) declared "genocide is a crime under international law which the civilised world condemns."[4] It invited Member States to enact domestic legislation for the prevention and punishment of genocide, and recommended "that international cooperation be organised between States" for this purpose.[5] It further requested that a convention on the crime be drafted for consideration at the next regular session of the General Assembly. The resulting *Convention on the Prevention and the Punishment of the Crime of Genocide* was finalised with astonishing speed and adopted by the General Assembly on 9 December 1948. It is regarded as the first "modern human rights treaty", being adopted even before the Universal Declaration of Human Rights.[6]

Yet in the six decades since the *Genocide Convention* came into force in 1951, it is widely recognised that the record of the UN in preventing genocide has been abysmal. The UN commitment to genocide prevention, while consistent at the rhetoric level, failed to translate into meaningful preventive action. During the period of the Cold War, the UN was paralysed by the hostility between the United States and the Soviet Union. It was unable to respond to the genocides in Bangladesh or Cambodia, or to act in a pre-emptory capacity "to prevent" the commission of genocide. In the post-Cold War era, there was renewed hope that the United Nations, and particularly the Security Council, could serve as the 'global peacekeeper'.[7] This was quickly dashed by the massive failures of the UN system associated with the 1994 Rwandan genocide and 1995 genocide in Srebrenica. In Rwanda, for example, the United Nations Assistance Mission in Rwanda (UNAMIR) largely withdrew as the genocide commenced. The mass killing progressed unimpeded as the UN Security Council bickered over an appropriate course of action. Later, the Independent Inquiry commissioned to investigate UN actions concluded:

> The response of the United Nations before and during the 1994 genocide in Rwanda failed in a number of fundamental respects. The responsibility for the failings of the United Nations to prevent and stop the genocide in Rwanda lies with a number of different actors, in particular the Secretary-General, the Secretariat, the Security Council, UNAMIR and the broader membership of the United Nations.[8]

In Srebrenica, the failure of the UN-declared 'safe area' led to the slaughter of over 7000 Bosnian men and boys. Again, a subsequent report recognised the failure of the UN "to help save the people of Srebrenica from the Serb campaign of mass murder."[9]

Yet despite these massive failures there have been relatively few calls for international efforts to prevent genocide and mass atrocities to move beyond the United Nations. Even the North Atlantic Treaty Organisation (NATO) intervention in Kosovo, despite its largely successful mission, provoked controversy rather than increased support for actors working outside the UN system. While the NATO intervention undoubtedly saved Kosovo Albanian civilians from being targeted by Serb forces, the absence of a UN Security Council resolution authorising the military action led to adverse international reaction. As the International Commission on Intervention and State Sovereignty (ICISS) subsequently remarked, "The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has."[10] The UN retains a unique universal legitimacy, and remains "unquestionably the principal institution for building, consolidating and using the authority of the international community."[11] Ongoing efforts to prevent genocide and mass atrocities have thus continued to focus upon improving the capacity of the UN system, the political will of key Member States, and learning lessons from the failures of the recent past.

The Responsibility to Protect

In the last decade, much of this effort has centred around the new norm of the 'Responsibility to Protect'. The concept of RtoP emerged from the ICISS in 2001. Established partially in response to the international failure to respond to the Rwandan genocide, the Commission

sought to reconceptualise the potential conflict between state sovereignty and humanitarian intervention. The resulting shift to 'responsibilities,' rather than 'rights,' reframed the discussion. At the World Summit in 2005, the Responsibility to Protect was unanimously endorsed by UN Member States. Member States acknowledged their primary responsibility to protect their populations from genocide, ethnic cleansing, war crimes and crimes against humanity. They recognised the value of international assistance in enabling States to meet this responsibility. In the event of a State "manifestly failing" to protect its population, responsibility to act "in a timely and decisive manner" fell to the international community, acting collectively through the United Nations Security Council.[12]

Within the Responsibility to Protect is an important preventive component. Member States affirmed "This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means."[13] The Summit Declaration advocates the establishment of an early warning capability at the United Nations; Member States also affirmed they "fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide."[14] Additionally, they committed "to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."[15] The preventive component of RtoP has attracted particularly strong international support. At the General Assembly discussion on RtoP in July 2009, for example, many States focussed particularly on the necessity for prevention. There is thus widespread international agreement on the need for the prevention of genocide and mass atrocities, and on the central role of the UN in facilitating and contributing to this task.

UNITED NATIONS CAPACITY FOR MASS ATROCITY PREVENTION

RtoP delineates a broad yet specific role for the UN in mass atrocity prevention, in a manner not previously enunciated. In the five years since 2005, however, there has been relatively little analysis of the current and potential capacity of the UN system to undertake this preventive role. Much greater attention has been given to role of the Security Council when mass atrocity crimes have appeared imminent or already been underway. Integral to RtoP, however, is also longer-term preventive work in "capacity building," and "assisting those which are under stress before crises and conflicts break out."[16] Furthermore, where such analysis has occurred, the results have been concerning. In 2009, for example, nine years after the release of the official reports on UN actions during the Rwandan genocide and the fall of Srebrenica, UN Secretary-General Ban Ki-moon acknowledged "many of their institutional recommendations, including on early warning, analysis and training, have not been fully implemented ... The United Nations and its Member States remain underprepared to meet their most fundamental prevention and protection responsibilities."[17] It is only through a nuanced analysis that the current capacity of the UN system for prevention activities can be assessed, and key strengths and areas for improvement identified. Of course a single paper cannot provide a comprehensive analysis of the full range of UN organs; nevertheless this paper seeks to contribute to this goal through selective examination of key

components of the UN system. The following section will explore a number of such components in turn.

Office of the Special Advisor for the Prevention of Genocide

The Office of the Special Advisor for the Prevention of Genocide (OSAPG) is the central focal point for prevention within the United Nations system.[18] With a small staff, this recently established office is mandated to collect existing information on "massive and serious" human rights and international humanitarian law violations that might lead to genocide; act as an early warning mechanism to the Secretary-General, "and through him to the Security Council"; make recommendations to the Security Council (through the Secretary-General) on preventive actions; and finally "liaise with the United Nations system on activities for the prevention of genocide."[19] The OSAPG has developed an 'Analysis Framework' through which it assesses the risk of genocide. Eight factors have been identified that 'cumulatively increase risk of genocide', including tense inter-group relations, weak institutional capacity to prevent genocide, the presence of illegal arms, underlying motivation to target a group, circumstances that facilitate perpetration of genocide, acts that could be elements of genocide, evidence of 'intent to destroy in whole or in part', and triggering factors such as elections.[20] Currently, the Office has identified three central priorities.[21] First, it seeks to 'raise awareness' through high-level events on genocide prevention and RtoP, and through training of UN staff and government officials. Secondly, it will "analyse situations of concern"; provide timely advice to the Secretary-General and the Security Council; and engage the General Assembly in dialogue on early warning and assessment. Finally, through 'advocacy' the Office seeks to "advise the Secretary-General on preventive action", mobilise the UN system "and other key partners", and conduct advocacy missions in cases when they are of particular value.

Through its mandate, however, the OSAPG is limited specifically to focussing upon genocide prevention. It is beyond the remit of the Office to undertake the wider task of "establishing an early warning capability" for the other mass atrocities specified as part of RtoP, including ethnic cleansing, war crimes and crimes against humanity.[22] Additionally, whereas the position of the Special Advisor for the Prevention of Genocide (SAPG) is a full-time, paid position with support staff, the corresponding position of the Special Advisor for the Responsibility to Protect lacks this institutionalisation. At present, therefore, the Special Advisor for RtoP lacks the capacity to develop an early warning capability for other mass atrocities. This is of particular concern given the "different precursors, root causes, and triggers" for each crime, necessitating a tailored approach for information gathering and early warning in each case.[23] The Secretary-General's plan to establish a joint office for the Special Advisors on the Prevention of Genocide and the Responsibility to Protect may lead to an integrated effort to establish the early warning capability for RtoP crimes endorsed in the 2005 Statement.[24] Whether the plan can overcome the financial and other barriers necessary for its enactment, however, remains unclear.

Beyond its own currently developing capacity, there are opportunities for the OSAPG to build the capacity of the wider UN system to prevent genocide and mass atrocities. In

particular, the OSAPG is well-placed to lead an initiative to operationalise, or 'mainstream' the preventive component of the Responsibility to Protect throughout the UN system. With appropriate training and awareness, incorporating RtoP considerations into the normal operating procedures of relevant UN organs and programs could have a significant impact on prevention. This could include utilising UN agencies and field staff to provide information relevant for an early warning system. It might incorporate the inclusion of specific preventive capacity building measures within preventive deployments or development assistance programs in at-risk nations. It may involve extending the conflict-sensitive development capabilities of the World Bank to include explicit consideration of RtoP risk factors. The potential of the OSAPG to have a greater impact through utilising the wider UN system is substantial. The small size of the Office and the complexities of inter-agency cooperation, however, indicate that at present a strategic approach is most likely to be effective. In particular, a review by the OSAPG of the capacity of the UN system for genocide prevention (and mass atrocity prevention should a joint office be established) would enable rapid identification of areas where there are opportunities to have maximal impact, and areas in which urgent improvement is required. This review could utilise the 2006 review of the UN system's capacity for conflict prevention, undertaking further analysis focussing specifically on genocide or the four RtoP crimes.[25]

There is also scope for a strategic decision regarding the balance between operational prevention – designed to have a short to medium term impact in States already at risk of mass atrocities – and structural, long-term prevention measures. According to Lawrence Woocher from the Centre for International Confliction Resolution, "The origins and terms of the Special Advisor's mandate strongly suggest the office was intended to concentrate on early warning for immediate and medium-term operational prevention rather than long-term structural prevention."[26] Yet a narrow focus on operational prevention might overlook the potential benefits of structural prevention work. Furthermore, the Secretary-General's 2009 report *Implementing the Responsibility to Protect* highlighted structural prevention as an important component of preventive action.[27] Research on the antecedents of genocide indicates that many of the risk factors can exist decades in advance of a genocidal event.[28] Moreover, commonly identified risk factors such as economic distress and legal discrimination against a minority may require long-term strategies for amelioration.

The OSAPG is uniquely placed to encourage agencies such as the United Nations Development Program (UNDP) and the International Financial Institutions (IFIs) to incorporate RtoP considerations within their programs, and potentially utilise strategies within them that contribute to the structural prevention of genocide and mass atrocities in tandem with their own developmental goals. RtoP researcher Eli Stamnes has suggested a 'quiet' approach to this kind of long-term structural prevention, to avoid "weakening" the RtoP concept.[29] Indeed, she has advocated avoiding "direct appeals" to the concept of RtoP for such structural prevention work.[30] This approach, however, may inadvertently undermine the perceived importance of structural prevention, and prevent the OSAPG from using the persuasive power of RtoP to promote structural prevention. An alternative might be to simply utilise the label of 'RtoP structural prevention'. This has the additional appeal of

enabling States to incorporate measures to reduce risk without being forced to acknowledge a pre-existing elevated risk – a politically sensitive issue. The small size of the OSAPG, and the large magnitude of mass atrocity prevention, indicate that leveraging off the wider UN system in this way could substantially increase its overall impact.

Security Council

The Security Council bears primary responsibility for the maintenance of peace and security internationally.[31] With a massive agenda and intense pressures upon its resources, it typically focuses upon situations of crisis or imminent crisis.[32] Its history with respect to the prevention of genocide and mass atrocities is most notable for its failure to prevent or curb the Rwandan genocide. Even as the full horror of the genocide became apparent during the course of April 1994, the Council failed to respond effectively. The Council's (in)action with respect to events in Bosnia and Kosovo in the 1990s, and its dithering and largely ineffective response to the situation in Darfur in recent years have further contributed to a reputation of failure even in the most dire of circumstances. Nevertheless, the Security Council does have substantial capacity to impact upon the prevention of genocide and mass atrocities.[33] The primary issue is rather one of political will.[34] As the political scientists Wheeler and Egerton noted: "The real test of the Summit Declaration is whether it increases the likelihood of the Council mustering the political will to act to prevent and halt future humanitarian crises."[35] A number of the ways in which the Security Council can impact upon the prevention of genocide and mass atrocities are enumerated below. For each of them, however, the critical issue of political will remains a key factor in determining the Council's approach.

The greatest contribution the Security Council can make to mass atrocity prevention is through providing a credible threat of reaction. Genocide is often a quasi-rational tactic, chosen as a deliberate strategy with a realistic prospect of meeting the desired goals of a perpetrator regime – however irrational the goals themselves may be.[36] A genuine, ongoing likelihood of Security Council intervention, however, is likely to change the calculus of potential perpetrators. There are several ways through which the Security Council could pursue this goal. Most ambitiously, there have been multiple proposals for a "rapidly deployable, robust military force, which can be threatened or used to deter or halt genocidal crimes."[37] Currently, however, there are substantial obstacles associated with this option, including political dissension and practical constraints.[38] More realistic, perhaps, are formal and informal opportunities to change the way the veto, and the threat of veto, are used around resolutions pertinent to preventing or curbing mass atrocities. In recent years, this has already undergone something of a process of change:

> The costs of using a veto in the UN Security Council in cases of emerging genocide or mass atrocities are now extremely high and the international community generally appears much less likely to "look the other way" in such situations than it was even a decade ago. However, ensuring an effective response is another matter.[39]

In place of the formal veto, the use of the 'informal veto', whereby a resolution is not formally put to a vote or is substantially weakened due to a prior indication that a member of the P5 is likely to veto it, has come to play an increasingly significant role in relevant

resolutions. This has repeatedly occurred in resolutions surrounding the mass atrocities in Darfur, both delaying them and weakening their content.[40] A stronger and more consistent commitment to a "timely and decisive" response to mass atrocity crimes could become a deterrent force over time.[41] The lack of such a credible threat of reaction, however, can substantially undermine wider preventive efforts, such as preventive diplomacy. Arguably, this is the largest and most concerning gap in the present capacity of the UN system for mass atrocity prevention.

The Security Council also has a clear opportunity to communicate the importance of mass atrocity prevention to the international community through the setting of its agenda. Ensuring that potential RtoP crises are rapidly considered, and allowing the Special Advisor for the Prevention of Genocide (SAPG) to directly brief the Council when appropriate, would effectively communicate that the Council considered these matters of great importance. In the past, this has not always occurred. In 2005, for example, former SAPG Juan Mendez was blocked from briefing the Security Council on his visit to Darfur.[42] Additionally, the Security Council has an opportunity to contribute directly to mass atrocity prevention through authorising peacekeeping operations and preventive deployments with appropriately robust mandates. The United Nations Preventive Deployment Force (UNPREDEP) in Macedonia in the 1990s, for example, is widely considered as a successful preventive deployment. Recent research by Erik Melander indicates that statistically, peacekeeping missions appear to "reduce the risk that mass killings of civilians will commence in intrastate armed conflicts".[43] Finally, preventive diplomacy can also be utilised by the Security Council more often, and at earlier stages of conflict.[44]

General Assembly

Apart from the Security Council and the Special Advisor for the Prevention of Genocide, the General Assembly is the only other organ of the UN specifically mentioned in the paragraphs on RtoP in the World Summit *Outcome Document*. The statement asserts: "We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law."[45] This highlights the important function of the General Assembly with respect to the normative development of RtoP. As the UN's most representative body, the General Assembly is the most appropriate location for intergovernmental dialogue on the concept, and for developing consensus around approaches to implementing it.[46] In particular, the General Assembly provides a forum for discussion of what types of action might contribute to prevention. While the General Assembly lacks the power to authorise direct preventive action in a specific situation, broad-based support for particular kinds of preventive strategies could promote and grant substantial legitimacy to their use in nations 'under stress'. Periodic discussion of RtoP in the General Assembly can also contribute to ensuring its ongoing importance within the international community.

The General Assembly can contribute directly to the UN's capacity for mass atrocity prevention through providing appropriate funding for the OSAPG or the proposed joint office

for the SAPG and the Special Advisor for RtoP. Currently, the OSAPG is funded both through the regular budget of the UN and voluntary contributions; in the past, however, a proposal for funding for the implementation of RtoP was not supported by the Fifth Committee.[47] The approval of funding for the proposed joint office, at the appropriate time, would improve UN capacity for early warning and prevention of the four RtoP crimes.

There are only limited opportunities for the General Assembly to directly contribute to prevention in specific crises. In circumstances of major crisis in which the Security Council is unable to act due to divisions, there is the possibility of invoking the 'Uniting for Peace' resolution. According to this resolution, "in situations where the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may make recommendations to members for collective measures."[48] As the ICISS report acknowledged, however, "The practical difficulty in all of this is to contemplate the unlikelihood, in any but very exceptional case, of a two-thirds majority, as required under the Uniting for Peace procedure, being able to be put together in a political environment in which there has been either no majority on the Security Council, or a veto imposed or threatened by one or more permanent members."[49] Nevertheless, the ICISS suggested, the possibility of a Uniting for Peace procedure could encourage decisive action from the Security Council.[50] Additionally, the General Assembly can consider crises not on the agenda of the Security Council, both as an alternative to the Council and a mechanism to encourage the Council to consider them in turn.[51] Overall, however, the General Assembly has a fairly limited capacity to contribute to the prevention of genocide and mass atrocities beyond at a rhetorical level.

Secretariat

The Secretariat, headed by the Secretary-General, is the administrative organ of the UN. With close to 40,000 staff across several departments and offices the Secretariat is responsible for the implementation of UN mandates internationally.[52] While a comprehensive examination of the departments of the Secretariat is beyond the remit of the present paper, the key roles of the Secretary-General and the Department of Political Affairs will be considered.

<u>The Secretary-General</u>

Leading the Secretariat, the Secretary-General has a unique ability to influence the path of the UN system. The practical and moral leadership of the Secretary-General is an important driver of the implementation of RtoP within the UN. Successive Secretary-Generals have focussed upon the need to progress from a 'culture of reaction' to a 'culture of prevention' with respect both to conflict prevention broadly, and more recently RtoP crimes specifically.[53] The establishment of the OSAPG, for example, institutionalises a preventive approach within the Secretariat. An established 'culture of risk aversion', however, has often prevailed over the possibility of preventive action in the past.[54] The issue of political will, it seems, "remains the essential challenge to a culture of prevention."[55] Nevertheless, the current Secretary-General, Ban Ki-moon, has demonstrated a substantial commitment to mass

atrocity prevention through the expansion of the role of SAPG from part-time to full-time, through expansion of the OSAPG, and through regular reports and statements on RtoP and its implementation.

There are considerable opportunities for the Secretary-General to take further action. Understanding of RtoP within parts of the Secretariat remains limited, and high-level outreach and training could be beneficial.[56] Moreover, the idea of mainstreaming RtoP throughout the UN system, including in the standard operating procedures of the departments of the Secretariat, is gaining increasing support.[57] Incorporating explicit consideration of RtoP within the mandates of the Department of Peacekeeping Operations (DPKO), Office for the Coordination of Humanitarian Affairs (OCHA) and Office of the High Commissioner for Human Rights (OHCHR), for example, could substantially increase UN capacity for preventive action. The Secretary-General could directly promote this consideration through requests for reports to include specific discussion of RtoP where relevant. In turn, the Secretary-General's reports to the Security Council could incorporate this information, highlighting the importance of RtoP considerations in the decision-making process.[58]

The 'good offices' function of the Office of the Secretary-General is an important component of the UN's capacity for mass atrocity prevention. The good offices function can be understood as "the independent political role of the Secretary-General in preventing or mediating conflicts among, and more recently within, States."[59] The Secretary-General can utilise the good offices function to privately mediate potential RtoP conflicts at times of imminent crisis.[60] The Secretary-General enjoys a reputation as a reasonably impartial actor, in whom many states place a high level of trust.[61] Moreover, under Article 99 of the UN Charter, the Secretary-General has the opportunity to bring to the attention of the Security Council "any matter which in his opinion may threaten the maintenance of international peace and security."[62] Judicious use of this provision, or a gentle reminder of its possible use in appropriate situations, may further strengthen this aspect of the Secretary-General's position.

Department of Political Affairs

The Secretariat, and within it the Department of Political Affairs, is the central focal point for preventive diplomacy within the UN system. Since the end of the Cold War, the UN has substantially increased its focus upon and capacity for preventive diplomacy.[63] These efforts have met with at least some success – according to the 2005 Human Security report, they have both prevented the escalation of multiple potential conflicts and resulted in a number of peace agreements for conflicts already underway.[64] In 2006, the Mediation Support Unit was established within the DPA "as a central repository for peacemaking experience and a clearing house for lessons learned and best practices."[65] Additionally, the 'Mediation Support Standby Team', established in 2008, "is a five-person expert team that can be deployed on short notice to assist UN and non-UN mediation efforts around the world."[66] Nevertheless, it is well recognised that the DPA's prevention capacity could be strengthened further, and utilised more assertively.[67] The endorsement of Secretary-General Ban Ki-

moon's proposals for strengthening the capacity of the DPA for preventive diplomacy and peacemaking would further enhance the capacity of the DPA for mass atrocity prevention.[68]

Additional areas of Preventive Capacity within the United Nations System

There are a number of further important foci for mass atrocity prevention within the UN system. The judicial organs of the system, including the International Court of Justice, the International Criminal Tribunals for the former Yugoslavia and Rwanda, the hybrid Extraordinary Chambers in the Courts of Cambodia and International Criminal Court (which is independent from the UN but works in cooperation with it), have received considerable attention regarding their preventive capacity through a deterrent effect. As the SAPG has commented with respect to these judicial organs within the UN system, "Justice is not only one of our main goals; it is in itself an important means of prevention."[69] At times the threat of justice does appear to have proved an effective deterrent, such as in 2004 when the SAPG reminded leaders in Côte D'Ivoire that could be held criminally liable for exacerbating inter-ethnic tensions through xenophobic hate speech.[70] However the power of deterrence for prevention remains controversial and contested.[71]

A number of other organs of the UN system can be identified as having a strong potential capacity to contribute to mass atrocity prevention, even if that capacity is largely to yet be realised. The Human Rights Council has the potential to contribute substantially, although at less than five years old, it has yet to have a meaningful impact. The Office of the UN High Commissioner for Refugees also has the potential to integrate specific RtoP considerations into its normal operating procedures. Refugees can be "not only a symptom but often a potential cause of RtoP situations;" programs concerning refugees should therefore ideally consider and seek to mitigate any identified risks where possible.[72] Other organs, discussed below, have greater potential for longer-term preventive strategies.

UNITED NATIONS CAPACITY FOR STRUCTURAL PREVENTION

Consideration of UN capacity for mass atrocity prevention has predominantly focussed upon the capacity for short-term and medium-term preventive action. Woocher and others have suggested that the mandate of the OSAPG advocates the primacy of operational prevention; while Stamnes has suggested avoiding the term RtoP altogether when considering structural, long-term prevention.[73] The political scientist Alex Bellamy has outlined a number of potential difficulties associated with incorporating structural prevention within the remit of RtoP, including that of establishing direct causal links between structural prevention measures and outcomes, and garnering political support.[74] As human rights lawyer and researcher Susan Harris Rimmer has responded, however, the problem with a narrow focus on operational prevention, and measures such as peacekeeping deployments and diplomatic crisis management, is that such measures are not truly preventive, but respond to a crisis already underway.[75] Thus far within the debate, specific UN capacity for structural

prevention has received scant attention, and even in the few places it has been considered, it has typically been only very briefly.[76] Yet a careful examination of Secretary-General Ban Ki-moon's 2009 report *Implementing the Responsibility to Protect* suggests that structural prevention forms an integral component of operationalising RtoP. As the report notes:

> Expanding development assistance to the "bottom billion" would undoubtedly have a net positive effect on preventing crimes and violations relating to the responsibility to protect if such assistance is targeted to give the poor and minority groups a stronger voice in their societies, enhances equality and social justice, raises their education levels and increases their opportunities for meaningful political participation. However, if additional assistance is distributed in a way that exacerbates, rather than narrows, differences in the status and living conditions of rival ethnic, religious or cultural communities within these societies, then the net effect would be destabilising and could fuel existing tensions and resentments. Aid programmes therefore need to be sensitive both to conflict and to the responsibility to protect.[77]

The report goes on to identify five "critical" capacities, "drawn from the practice of development assistance".[78] These include conflict-sensitive development analysis, indigenous mediation capacity and local dispute resolution capacity. This suggests a clear role for structural prevention within a broader preventive framework, and highlights how important such work can be. It also builds upon the place accorded to structural prevention within the original ICISS elucidation of the concept.[79] In the final section of this paper, below, UN capacity for structural prevention activities will be assessed.

United Nations Development Program

There is strong potential for the United Nations Development Program (UNDP) to make a major contribution to the capacity of the UN for mass atrocity prevention through early stage structural prevention work. Mainstreaming specific consideration of RtoP throughout the development assistance programs of UNDP could ensure that development assistance is delivered in a manner that also contributes to reducing risk factors for genocide and mass atrocities. Programs might specifically target risk factors identified by the OSAPG, such as 'tense inter-group relations' or 'weak institutional capacity to prevent genocide', through improving indigenous mediation capacity for example. Much of this work, however, would not require the addition of specific programs, but rather involve tailoring existing programs to mitigate risk wherever possible. For example, incorporating RtoP considerations into an aid program might involve designing the program to ensure aid is distributed in ways that provided equitable access for ethnic minorities, in a manner that does not inflame inter-ethnic tensions.

In particular, there is a great deal of scope for integrating RtoP considerations into programs targeting the Millennium Development Goals (MDGs). There is substantial commonality between many of the MDGs and the types of actions required for mass atrocity prevention. Consider, for example, the first MDG, that of eradicating extreme poverty and hunger. As former UN Secretary-General Kofi Annan enunciated, "Every step taken towards reducing poverty and achieving broad-based economic growth ... is a step toward conflict

prevention."[80] Of course it is important not to oversimplify the relationship between poverty and the commission of mass atrocities, and to recognise both that mass atrocities can occur in the absence of poverty, and that poverty is not always a risk factor.[81] Yet in many cases it can be a substantial contributing factor, and addressing poverty is widely regarded as a structural prevention measure for reducing the likelihood of RtoP crimes. Similarly, goal eight, that of developing a global partnership for development, is also an excellent example of common ground. From an RtoP perspective, the level of 'trade openness' – that is economic interdependence – is one of six key predictors of the likelihood of genocide and mass atrocities developed through quantitative studies by the political scientist Barbara Harff.[82] Nations with high levels of economic interdependence are far less likely to engage in mass atrocity crimes, while economic isolation is a risk factor. Collaboration can also augment the effectiveness of the MDG programs. At the simplest level, aid is more effective in reducing poverty in politically stable nations, while nations exhibiting risk factors for genocide or mass atrocities are typically poor and deteriorating environments for meeting the MDGs.[83] Integrating RtoP considerations into UNDP programs targeting the MDGs, therefore, can be mutually beneficial for both programs – and most importantly for the recipient nations themselves.

Additional areas of Structural Prevention Capacity within the United Nations System

There are also substantial opportunities for the International Financial Institutions and the United Nations Institute for Training and Research (UNITAR) to each contribute to structural prevention efforts. The facility of the World Bank in contributing to conflict prevention through institutional capacity-building and conflict-sensitive development analysis has been recognised by the Secretary-General.[84] Mainstreaming RtoP considerations into the normal procedures of the World Bank could contribute to strengthening the institutional capacity to prevent genocide in poor nations, for example. Programs that integrate poverty-reduction and risk-mitigation strategies could be mutually reinforcing for mass atrocity prevention. Finally, UNITAR, "a small gem in the crown of the UN," has a strong capacity to contribute to structural prevention work through its extensive training and research capabilities.[85]

CONCLUSION

The findings of the above review of the capacity for mass atrocity prevention in the UN system suggest there is a place for cautious optimism in considering the way forward. In the Secretariat, the OSAPG and through the Secretary-General, there is already a well-established capacity for operational prevention. Furthermore, recent reports from both the Secretary-General and the OSAPG suggest clear, practical and achievable routes to strengthening that capacity further. There are also opportunities to substantially augment capacity for prevention over time through incorporating specific considerations of RtoP within normal operating procedures throughout relevant agencies of the UN. Thus far, there has been very little consideration of the capacity of the UN for structural prevention. The Secretary-General's 2009 report *Implementing the Responsibility to Protect*, however,

suggests an important place for structural prevention within the arsenal of preventive action. As has been outlined above, there is strong potential for the UN to make a substantial contribution to structural prevention through tailoring existing programs to incorporate RtoP considerations and goals. While this would be a challenging undertaking, it is achievable within the current UN structure, and has the potential to be of substantial impact over the longer term. Alongside these positive findings, however, there exist concerning gaps within the current system, for which no solution appears readily available. In particular, the capacity of the Security Council to effective address situations in which urgent preventive action is required is doubtful. This has the potential to impact upon the effectiveness of other preventive actions, many of which are at least partially dependent upon a credible (if implicit) threat of reaction. Unless and until this major gap in capacity is addressed, the capacity of the UN for mass atrocity prevention will remain limited and incomplete.

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