

Deconstructing Prevention: The Theory, Policy, and Practice of Mass Atrocity Prevention

Speech delivered by Lieutenant-General, the Honourable Roméo Dallaire, (retired), Senator on February 26, 2013.

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INTRO

At long last mass atrocity prevention is the topic of the day. It may not seem like it at this moment, but to the veterans of this long and drawn out battle, this shift is truly incredible. To truly appreciate this shift, we have to look back a bit, and survey the territory behind us. I believe this will tell us a great deal about how far we have come and how far we still have to go. It may also give us new insights as to the expansive and at times counterintuitive scope of prevention.

HISTORICAL PREFACE

Violations of the norms of war have long been a part of our theoretical and legal lexicon. Arguably, this has been the case long before the Lieber Code of 1863, the first Geneva Convention of 1864, and even before Henri Dunant first saw the twisted fortunes that befell the corpses littering the battlefield in Solferino in 1859. But I think that most people today would agree that mass atrocities, as they are presently understood, as part of a spectrum that cumulates in the incomprehensible horror of genocide, came to the fore as a result of the unimaginable crimes of the Second World War (“WWII”), of which the Holocaust is emblematic. That cataclysmic event expanded our conception of the violations of the norms of war, birthing the concept of war crimes and eventually protecting civilians under the laws of war. The shock of the Holocaust also gave us the language of crimes against humanity, which harked back to the December 1915 reaction of the Allies to the Armenian genocide, reborn and elaborated in the judgments of the Nuremberg International Military Tribunal. Perhaps most importantly, the Holocaust forced us to come face-to-face with the persistence of genocide, the attempt to annihilate a whole race, nation, religion or ethnic group, by destroying all or some of its members, throughout recorded history.

THEORY – THE DIFFERENT FIELDS OF GENOCIDE

It was not until after the WWII that we, as a community of nations, and I beg to suggest, as a community of people, formally signalled our moral and legal excoriation of genocide as a crime in the United Nations *Convention for the Prevention and Punishment of the Crime of Genocide* (“Genocide Convention”). We owe this instrument to the eminent Polish Lawyer Raphael Lemkin, who himself lost 49 of his family members in the Holocaust, and who was the first to coin the term in his seminal 1944 work *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress*. The reason I bring up Raphael Lemkin, other than to pay tribute to his achievements, is because I want to make a point about the theory of prevention, and our understanding of genocide and other mass atrocities. Mr. Lemkin said that genocide was affected “through a synchronized attack on

[different] aspects of life of... [a captive people]”.¹ This definition does not at first glance depart too greatly from our present understanding of mass atrocities; that is, until we investigate further to see what Lemkin meant by “attack”. When Lemkin said “attack”, he meant:

in the political field (by destroying institutions of self-government and imposing a German pattern of administration, and through colonization by Germans); **in the social field** (by disrupting the social cohesion of the nation involved and killing or removing elements such as the intelligentsia, which provide spiritual leadership...); **in the cultural field** (by prohibiting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts, in order to prevent humanistic thinking, which the occupant considers dangerous because it promotes national thinking); **in the economic field** (by shifting the wealth... to Germans and by prohibiting the exercise of trades and occupations by people who do not promote Germanism “without reservations”); **in the biological field** (by a policy of depopulation and by promoting procreation of Germans in the occupied countries); **in the field of physical existence** (by introducing a starvation rationing system for non Germans and by mass killings, mainly of Jews, Poles, Slovenes, and Russians); [and] **in the religious field** (by interfering with the activities of the Church, which in many countries provides not only spiritual but also national leadership).²

Mass atrocities are not only carried out through mass murder, they can also be carried out in the political field and in the social field; in the cultural field and in the economic field; and, in the religious field and the biological field. Here, and I do not want to be too critical, Lemkin’s vision has remained far ahead of our present understanding of mass atrocities and the patterns which precede them.

LAW – THE KILLING FIELDS

Since WWII, we have been, with very few exceptions, focusing on the killing fields, the assault on physical existence. For example, our legislation on genocide criminalizes the “killing of members of a group”, the causing of “serious bodily or mental harm”, the prevention of births, and the forcible transfer of persons. The only clause of the Genocide Convention that comes close to approximating Lemkin’s more expansive definition refers to the deliberate infliction of “conditions of life calculated to bring about its [the protected group’s] physical destruction in whole or in part”. I suspect that the emphasis in that clause is not on the “conditions of life”, but on the “physical destruction” of the group. Unfortunately, the same is true for the definitions of crimes against humanity and for war crimes. In those cases, the only clauses that come close to approximating the scope of Lemkin’s definition are the abolition, suspension or inadmissibility “in a court of law... [of] the rights and actions of the nationals of the hostile party” or intentionally attacking “buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected”, both of which are war crimes. The efficacy of these clauses is very much in question, though the treatment of the recent attacks on the cultural heritage

¹ Dan Stone, “Raphael Lemkin on the Holocaust” (2005) 7 *Journal of Genocide Research* 539 at 540. Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), pp xi–xii.

² Dan Stone, “Raphael Lemkin on the Holocaust” (2005) 7 *Journal of Genocide Research* 539 at 540. Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), pp xi–xii.

of Muslims in Timbuktu by the International Criminal Court will invariably provide some clarity on the matter. My point is that we have been looking at this issue narrowly. While that may be justified to some extent in the sphere of international criminal law, our myopia regarding mass atrocities is evident in the terms of many of our instruments of peace and security.

IN PRACTICE – RECENT HISTORY

The march of history is somewhat to blame for this. After the *Genocide Convention* came into effect, the international community turned a blind eye towards mass atrocities. The security of peoples came second, after the security not only of nations, but also of superpowers. Indeed, it took the international community almost fifty years after the Convention entered into force to acknowledge the existence of genocide, not only as a concept but as a current reality within the international community at large, and particularly within a United Nations member state. The Rwandan genocide of 1994 provided a moment of reckoning for a number of reasons. It awoke the international community to the fact that, even at the end of the 20th century, mass atrocities were still happening, and more importantly, that we must not stand by while they happened. The failures in Rwanda, Bosnia, and Yugoslavia awoke us from our slumber and forced us to look beyond the opaque shell of the state and into the very core of our shared humanity. It reminded us that it is the very essence of our shared humanity that is at risk in genocide. This is what it comes down to. This is what I experienced personally: faced with the execrable acts of evil incarnate, one must either defend the right of fellow human beings to exist and flourish or become a complicit bystander. This axiom is also what the international community, and in particular the United Nations, was forced to confront.

POLICY – R2P AS A VEHICLE FOR PREVENTION

It is out of the crises of the early 1990s that our strongest instrument for the prevention and elimination of mass atrocities emerged: the responsibility to protect (“R2P”) concepts. The responsibility to protect re-oriented the discussion on mass atrocities. It re-ordered our priorities. International peace and security was no longer politics as usual, and the continuation of politics by other means. The definition I am using here is from the 2001 report by the International Commission on Intervention and State Sovereignty (“ICISS”), it starts off by paying respect to the concept developed by Dr. Francis Deng—whom we will all have the pleasure of hearing from in a few moments—that “State sovereignty implies responsibility”

... and the primary responsibility for the protection of its people lies with the state itself.

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.³

There are two reasons why I chose to quote the ICISS report here. First, the report is one of the more telling signposts along the march to mass atrocities prevention. It exemplifies what I described earlier as the narrow, contemporary approach to addressing mass atrocities. It draws the line in the

³ ICISS, *Responsibility to Protect* (Ottawa: International Development Research Centre, 2001) at XI.

sand: if genocide looms and we can prevent it without doing more harm than good, we will stop it. Now, do not mistake my intentions here. I know that there is a lot more to the ICISS report than that. My aim is not to sell short the report, this much will become clearer in a moment. The second reason I wanted to refer to the ICISS document is that, beyond the central message, which responded to the most pressing issue of the day, the ICISS report outlined the foundations of the concept, set out precautionary and operational principles, and outlined the three key elements of the responsibility to protect: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. If you recall, when paragraphs 138 and 139 were negotiated and embedded in the 2005 World Summit Outcome resolution adopted by the General Assembly, there was a common presentiment that the principles of the Responsibility to Protect report had been gutted. After all, it had shrunk from some 100 pages to a measly two paragraphs. This sentiment was voiced loudly in 2005 and later. In 2009, at the first informal and interactive debate on the responsibility to protect, there was an expert panel, on which sat two intellectual behemoths and R2P sceptics, Noam Chomsky and Jean Bricmont, who attacked the Responsibility to Protect doctrine from a different perspective. Bricmont said, and I am paraphrasing somewhat “you have to deal with the causes and you have to go in depth. You should not think that [genocide simply pops] out of... [a] box.” While I have little patience for such sceptics, he was right on that point, but he was wrong to assume that the supporters of the responsibility to protect did not share his concerns to not only stop mass atrocities once they were already underway, but to remedy their causes and prevent them in the first place.

Let me remind you that the responsibility to protect doctrine, as it was affirmed by the United Nations in paragraphs 138 and 139 of the 2005 *World Summit Outcome Document* (outcome document) and embodied in the three pillar approach outlined by the United Nations Secretary General, states: First, that each individual state has an “enduring responsibility... to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.” Second, that the international community has a concomitant responsibility “to assist States in meeting those obligations.” And finally [or third], that member states of the United Nations have the responsibility “respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.”⁴

In outlining the three-pillar approach to the responsibility to protect, the Secretary General emphasized, in addition to the equality of all pillars, the pre-eminence of prevention. Indeed, the Secretary General wrote that “[p]revention, building on pillars one and two is... key... for the responsibility to protect”.⁵

There has never been any question that prevention is key, at least theoretically. The ICISS report included the responsibility to prevent, and outlined what it may entail. The real difficulty arises in the

⁴ Ban Ki-moon, Implementing the Responsibility to Protect; Report of the Secretary General, UNGAOR, 63d Sess, A/63/677, (2009) at 8-9 [Implementing R2P].

⁵ Implementing R2P, *supra* note 4 at 9.

creation of policy and in its practical implementation. This is where the contributions of the 2009 report and the General Assembly dialogue on R2P, as well as the reports and dialogues that followed in each subsequent year, are so important. It is in these fora that the Special Advisors for the Prevention of Genocide and the Responsibility to Protect have been working with the missions to the General Assembly and Civil Society to expand the apparently sketchy paragraphs of the 2005 *Outcome Document* into a comprehensive and dynamic policy framework. As the policy lattice has taken shape, a common feature has emerged in the geometry of the framework: and that is the centrality of prevention. Indeed, prevention has been the goal all along. The only true way to eliminate mass atrocities is to prevent them by attacking them at their roots. Yes, if mass atrocities are already underway, as they were in Rwanda in 1994, and I am dismayed to say, as they are today in Sudan and in Syria, and we possess the capacity to prevent them, it is absolutely imperative that we act decisively to stop them. We have that responsibility today. Shelter can no longer be sought behind indefensible claims of absolute sovereignty. And this goes to the underlying truth of the matter: early prevention is to be preferred to late military intervention.

R2P- TOOLS FOR IMPLEMENTING PREVENTION

It is for this reason that the development of R2P has been focused on developing early warning mechanisms to identify the signs of unfolding mass atrocities and to facilitate early and decisive action to prevent those indicators from erupting into mass atrocities. The Office of the Special Advisor for the Prevention of Genocide and the Responsibility to Protect, which is the moral voice of prevention and the purveyor of practical tools such as the Analysis Framework, is the central and pivotal institution to coordinate and accomplish the task of early warning. In addition to early warning, regional and sub-regional bodies must play a key role, not only for their ability to inform the early warning mechanisms, but because they are best positioned to detect coming mass atrocities and assist member states to fulfill their obligations. That assistance may take a number of forms. It can mean acting as a wise and interested moral voice to encourage conciliation and discourage discrimination, providing development assistance and technical support, or the using Chapter 8 powers for the establishment of regional arrangements or agencies for the pacific settlement of disputes. Recently, the 2011 Libyan crisis emphasized the centrality of regional groups, but I think the best example of regional engagement, if we are to remain focused on prevention, was the 2008 *Agreement on the Principles of Partnership of the Coalition Government*, which through the leadership of African Union's Panel of Eminent African Personalities (chaired by former U.N. Secretary-General Kofi Annan) helped end the 2007-2008 post-election violence in Kenya. But we need to do better than that. If prevention is our goal then we must act before *any* violence occurs, and this will require structural and cultural change among the members of the international community, aided by international and domestic civil society groups, academics, the private sector, and the media.

As I have the pleasure of being hosted here today by both Cardozo Law School and the Auschwitz Institute for Peace and Reconciliation, I cannot help but point to the exemplary work being done by both of these institutions. Among its numerous projects, Cardozo has been labouring on the daunting task of outlining evidentiary standards to determine when states should act pursuant to

their R2P obligations. Central to effective action is “enabling [the] relevant stakeholders to focus on the practical implementation of measures to prevent mass atrocit[ies]” at the earliest stage possible.⁶ With tools like these, we can focus our resources on protecting the most vulnerable people internationally and minimize delays arising from the machinations of politics. Furthermore, we can be confident that we will possess the capacity act preventively. That is because organizations like the Auschwitz Institute for Peace and Reconciliation have been building the capacity of governments to prevent and eliminate mass atrocities by training government officials through its Raphael Lemkin seminars for the prevention of genocide and by assisting governments, such as that of the United States and Argentina, in developing policy mechanisms specifically geared towards preventing and eliminating mass atrocities. In fact, I hear that they have also started to work on increasing capacity at the regional level, having recently signed an MOU with the African Union to create an African Network for Genocide and Mass Atrocity Prevention. And I am happy to say that these are not the only examples of productive civil engagement. Another example worth pointing to is the Global Centre for the Responsibility to Protect’s Focal Point Initiative, which is working to link the relevant executive members of national governments around the world into a global prevention and response secretariat. And there is also the work of the Montreal Institute for Genocide and Human Rights Studies and the Aegis Trust, who are working with Parliamentarians from Canada and the United Kingdom, respectively, to advance the prevention and elimination of mass atrocities within their respective parliaments and to building an international network of concerned parliamentarians. I could keep going, but in the interest of time I simply want to emphasize the crucial role of civil society in the prevention and elimination of mass atrocities, and the fact that civil society actors are driving many of the most significant advances in the prevention of mass atrocities.

REVISITING THE DIFFERENT FIELDS WITH AN EYE TOWARDS PREVENTION

What is remarkable about the contribution of civil society is what it tells us about where we are in the elimination of mass atrocities. When we are faced with the killing fields, when corporeal existence itself is in imminent danger, our tools are very limited. We have little option but to turn towards high politics and hope that the member states of the UN, who have pledged restraint in the use of force, will cooperate with each other and act in the defence of humanity. In those circumstances the risk to both spirit and flesh are dire. On the other hand, when we turn to civil society, to NGOs, humanitarian actors and members of national legislatures, it becomes clear that we are now pursuing the elimination of mass atrocities in another way. We are looking beyond the killing fields, to the political fields, the economic fields, and the social fields. That is what true prevention is about, that is what Lemkin had hoped we would do nearly seventy years ago. We are now beginning to identify the underlying and proximate causes of mass atrocities. As we do so, we are gaining an understanding of the tools required to address these causes, and how they should be deployed. Most importantly, we now recognize the importance of addressing mass atrocities at the systemic level—where cultural identity is threatened, where economic insecurity and inequality breed famine and instability, and where the political and social rights necessary to human advancement are being stifled.

⁶ Cardozo, Evidentiary Standards for R2P -Draft (6.23.11), at 4.

CONCLUSION – THE SCOPE OF PREVENTION: BEFORE CONFLICT AND AFTER

I would like to pause here to draw your attention to something that is of the utmost importance to prevention, and that is timing. When we think of prevention we tend to think of what comes before. Clearly, if we are to prevent a conflict we must act *before* the conflict erupts. Well, that is not the whole picture. To paraphrase what the Secretary General said in last year's report on timely and decisive action, the protection of civilians from genocide, war crimes, crimes against humanity, and ethnic cleansing is an ongoing responsibility. It is not only a question of what needs to be done before atrocities occur, or what needs to be done if they occur, but also about what needs to be done after atrocities occur. In other words, to truly actualize the responsibility to prevent we need to also be cognisant of the responsibility to rebuild, as it was described in the 2001 ICISS report. I say this for two reasons. First, atrocities quite literally flow from one another, whether due to our inability to fully address atrocities in the first place or due to containment issues. One of our most intractable humanitarian catastrophes and the site of the UN's most substantial peacekeeping missions is the Democratic Republic of Congo, ripped apart by a conflict that has resulted in the most conflict deaths since the Second World War and innumerable atrocities, including widespread sexual violence and the use of child soldiers. I bring it up because in many ways, the conflict in the DRC is the progeny of the genocide of 1994 in Rwanda. It is unfinished business. There are many other examples, including the genocide in Darfur, but there is another example that makes the point more directly. One of the central causes underlying the recent collapse in Mali today was the flood of weapons and fighters that came down from Libya before and after the 2011 Civil War. Now, make no mistake about my point here. Resolution 1973 on the Libyan crisis responded to a real threat with effective action. Libya was a major victory for protecting civilians from imminent mass atrocities. I did not bring up Libya to discuss any so-called claims of regime change. I brought Libya up because we could have and should have done more to ensure that the appropriate steps were taken after the threat to Libya's population was neutralized. Second, beyond the mere fact that atrocities tend to flow from each other, there is a very close relationship between the post atrocity approach and the preventative approach. They both deal with structural/systematic issues and the threat to stability posed by competition for scarce resources such as land, water, jobs and influence. This is by no means to say that they are identical. For example, Disarmament Demobilization and Reintegration is clearly more closely related to rebuilding than it is to prevention. What I am thinking of is the fact that prevention and rebuilding involve capacity building and development. They both require the same type of actors, and the same systematic approach. In many ways, prevention flows from rebuilding. We cannot prevent the atrocities of the future without also helping survivors and their neighbors recover from those in the past.