Operationalizing the Responsibility to Prevent
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What is the Responsibility to Protect?

The responsibility to protect – known as R2P – is a global commitment to protect populations from widespread and systematic atrocity crimes. The principle of R2P was conceived in 2001 as part of the influential International Commission on Intervention and State Sovereignty (ICISS), and gained momentum during the 2005 United Nations World Summit when it was unanimously endorsed by Member States. Within the Summit Outcome Document, individual states are reminded of their responsibility to protect their populations from four specific crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. In instances where national authorities are ‘manifestly failing’ to protect their populations, the international community has a responsibility to take collective action ‘in a timely and decisive manner’ to protect populations from these four crimes. As paragraph 138 of the Outcome Document notes, this responsibility entails ‘the prevention of such crimes, including their incitement’.  

Prevention and the Responsibility to Protect

Although the principle of R2P has changed in significant ways over the years, the rhetorical commitment to prevention has remained a constant feature throughout R2P’s first decade. Scholars and policy-makers alike have consistently agreed that it is both normatively and politically desirable to act to prevent mass atrocity crimes from being committed – rather than to react after they are already underway. Nonetheless, this declared intention to prevent has yet to be operationalized. In its 2001 report, ICISS identified some of the challenges associated with the development of a strengthened preventive capacity, including: the inherently intrusive character of certain preventive strategies, the lack of funds available for preventive efforts, the dangers of exacerbating domestic tensions through increased international involvement, and the difficulty of mobilizing political will before a crisis becomes apparent. Ironically, in the years following the release of the ICISS recommendations, some of the very challenges referred to by the Commissioners facilitated the sidelining of the preventive component of R2P.

More recent developments, however, indicate that the responsibility to prevent has been restored to a prominent place on the R2P agenda. An emphasis on prevention is evident in the UN Secretary General’s 2009 report on the implementation of R2P, which advocated the creation of a joint office for the UN Special Advisor on R2P and the UN Special Advisor on the Prevention of Genocide, and the follow-up report in 2010 which focuses explicitly on enhancing the UN’s capacity for early warning and assessment. More recently, in a speech marking the first decade of the responsibility to protect, Ban Ki-moon declared 2012 ‘the year of prevention’, designating it as one of the five generational themes for the UN.

According to the Secretary General, prevention does not mean looking the other way in times of crisis, vainly hoping that...
things will get better. We have done that too often. Nor can it be just a brief pause while Chapter VII "enforcement measures" are being prepared. Instead, ‘prevention means proactive, decisive and early action to stop violence before it begins.’ Yet there is still very little scholarly analysis of how to approach the prevention of mass atrocities, or empirical research on what tools – both coercive and non-coercive – are most effective in preventing the four R2P crimes. This gap is partly explained by the fact that mass atrocity crimes remain high impact, yet low probability events, making it challenging to substantiate arguments and claims about what preventive strategies work best. In addition, the tendency to conflate the prevention of mass atrocities with the more general prevention of armed conflict has contributed to conceptual confusion over the appropriate scope and aim of the preventive dimension of R2P. Our research clarifies the aim of prevention, develops a strategic framework for preventing mass atrocity crimes, and assesses what we call systemic and targeted approaches to prevention.

Clarifying the Aim of Prevention

Mass Atrocity Prevention and the Prevention of Armed Conflict

Empirical studies on genocide and mass-killing have generated two important findings: first, that R2P-crimes frequently occur in the context of violent conflict; and second, that factors often identified as ‘root causes’ of genocide are similar to those identified as root causes of conflict. This has led a number of scholars and policy-makers to concentrate on conflict prevention as the key to a preventive agenda for R2P. However, it cannot be assumed that efforts to prevent or resolve conflict will simultaneously reduce the likelihood of mass atrocity crimes.

- First, while a large majority of the episodes of mass killing observed since 1945 occurred within the context of armed conflict, at least a third of the cases did not. These statistics come from Appendix 1 of Alex Bellamy, ‘Mass Atrocities and Armed Conflicts: Links, Distinctions, and Implications for the Responsibility to Prevent,’ Policy Analysis Brief, The Stanley Foundation, February 2011.

- Second, some instances of mass atrocities occur under the ‘cover’ of armed conflict,
but are not directly linked to either the causes of that conflict or the conduct of the war itself. Hitler’s extermination of Jews during World War II is a prominent example.

• Third, whereas strategies to prevent or resolve conflict are generally aimed at the elimination or avoidance of violence and the use of force, the prevention of mass atrocities – particularly at a late or imminent stage – may require military means (as illustrated by the 2011 NATO-led action in Libya). The Secretary General’s R2P framework incorporates, as part of Pillar III, a commitment on the part of UN member states to use force if all other means fail.

• Finally, armed conflict is regulated but not proscribed by international law, whereas mass atrocities are outlawed as crimes. While armed conflict involves parties to a conflict, mass atrocity crimes are committed by individuals in particular roles and positions, against other individuals. These acts represent socially stigmatized behaviour that has been condemned by the international community.

What Acts Does R2P Seek to Prevent?

While the original ICISS report defined the threshold for invoking R2P as ‘large-scale loss of life’, the 2005 Summit Outcome Document recast R2P as involving four specific international crimes. Framing R2P in this way has brought a greater degree of precision and clarity to the principle, and encouraged both analysts and policy-makers to draw on international legal standards.

Of the four R2P crimes referred to in the Summit Outcome Document, the legal category of crimes against humanity represents the best characterisation of what the principle of R2P was designed to halt or address. Whereas war crimes can include random acts committed by a single soldier or member of a rebel group, crimes against humanity are more widespread and demand some evidence of an organizational policy. Moreover, while crimes against humanity encompass instances of genocide, they do not need to satisfy the latter’s demanding requirements of proof of discriminatory intent. Finally, while genocide refers particularly to racial, religious, or ethnic groups as targets of violence (and, importantly, excludes members of political groups), the possible targets of crimes against humanity are more inclusive.

In sum, preventive strategies associated with R2P should be aimed at “attacks directed at any population, committed in a widespread or systematic manner, in furtherance of a state or organizational policy, irrespective of the existence of discriminatory intent or an armed conflict”.

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\[x\] This definition is drawn from the widely accepted definition of crimes against humanity found in Article 7 of the Rome Statute.
The current ‘prevention agenda’ for R2P has been created through an amalgamation of tools from conflict prevention and the prevention of genocide; it has not engaged sufficiently with existing knowledge on the nature and dynamics of the four R2P crimes. Research shows that crimes against humanity do not occur randomly, but often reflect a complex interaction of different factors over a long period of time. There are three stages (Figure 1) over which conditions usually escalate to produce mass atrocity crimes.

**Risk Factors:** The first stage is characterized by the presence or development of risk factors for crimes against humanity, such as established cleavages between different groups, social and political inequality, a history of prior mass atrocities or human rights violations, absence of the rule of law, or weak democratic structures. These risk factors create the potential for mass atrocity crimes, but do not make their commission inevitable. In short, they are necessary, but not sufficient causes of mass atrocity crimes.

**Crisis and Mobilisation:** During the second stage, general risk is transformed into likelihood. This stage can be initiated by the development and propagation of an extreme ideology, but most often it is facilitated by a shock or crisis (whether political, economic, or natural) which increases the probability of atrocity crimes. Such a shock or crisis can come in different forms, for example: an election (Kenya 2007/08), the murder/assassination of a president (Rwanda 1994), a large-scale protest against the ruling government (Libya 2011), the beginning of an armed conflict or a turn of fortunes in such a conflict (Srebrenica 1995), or a severe economic crisis. While the crisis or shock initiates this phase of escalation, atrocity crimes will not be committed unless there is explicit organization and mobilization. The signs of such mobilization include the spread of hate propaganda, the marginalization of moderate forces, and – more provocatively – organizing, arming, and training militia groups.

**Imminent Emergency:** The third stage features greater incidences of violent clashes, an increase of life integrity violations, systematic targeting of victim groups, and an intense show of opposition from the victim groups. These are clear indicators that the commission of large-scale mass atrocities are about to start, if no preventive measures are taken.

This staged approach to conceiving of mass atrocity crimes is crucial for designing appropriate preventive tools. Different measures are needed to address the distinct dynamics and logic of each of the three stages. Addressing the first stage requires long-term, systemic strategies, while the subsequent two stages (crisis and mobilization, or more imminent emergencies) call for more targeted measures.

- **Targeted strategies** are designed to change either the incentives or situation of those contemplating or planning mass atrocity crimes, as well as the vulnerability of potential victims; they seek to shift the consequences of a potential course of action in a particular context.
- **Systemic strategies**, by contrast, seek to mitigate risk factors and build resilience in a broader group of states, which exhibit some of the so-called root causes of mass atrocity crimes.

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**Footnotes:**
1. This definition is drawn from the widely accepted definition of crimes against humanity found in Article 7 of the Rome Statute.
2. See The Responsibility to Protect (3.18–3.33) which draws explicitly on the conflict prevention categories and tools of the Carnegie Commission for Preventing Deadly Conflict; Alex Bellamy, Mass Atrocities and Armed Conflict; (Table 2, The Common Prevention Agenda), p. 5.
3. This figure is an adaptation drawn from Asia-Pacific Centre for the Responsibility to Protect, Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation, 08 June 2009, p. 17.
Systematising Preventive Tools

The sequence outlined above may not unfold in the same way for every potential situation of mass atrocities. For example, there have been some cases – such as Libya in 2011 – when societies have not been identified as ‘at risk’, yet spiral very quickly into an imminent emergency. This suggests that policy-makers should focus on developing strategies for both systemic and targeted prevention.

When moving from the realm of systemic prevention (aimed at risk factors) into the realm of targeted prevention (aimed at crisis and imminent emergency), context-specific knowledge will form an essential part of any effort by international actors to change escalatory dynamics. A one-size-fits-all approach to prevention is unlikely to provide the kind of flexibility required by policy-makers in real situations. At the same time however, if preventive tools are to be applied in a timely and effective way, more focused atrocity prevention capacity is required on a variety of different levels (national, regional and international level). In short, some generic preventive capacity is required that can then be tailored to particular circumstances.

The first task in systematizing these generic policy tools is to acknowledge three distinct dimensions involved in the commission of an atrocity crime: a perpetrator, a victim, and a permissive environment or situation (Figure 2).

Positive changes in any of the three dimensions of the triangle can assist in the prevention of crime. So, for example, prevention might be aimed at denying perpetrators the means to commit crime or to deter their action through sanctions or threats of punishment. Alternatively, efforts could be focused on bolstering protection for victims or relocating them to a safer location. Finally, outside actors might seek to make the environment less conducive to criminal acts by increasing their surveillance efforts.

This third dimension – sometimes referred to as the ‘crime opportunity’ – has long been acknowledged as a key point of leverage in the field of criminology and is generally favoured over ‘root cause’ prevention because of its immediate impact on the calculations of potential perpetrators. Tools in this category could be directed towards altering the capacity of perpetrators to operate (such as the availability of weapons and resources), and the factors in their environment that facilitate their activity (such as a prevailing culture of impunity). Apart from impinging on perpetrators’ material capabilities, for example, through an arms embargo, measures directed at changing this third dimension will demonstrate the early resolve of third-party actors, which could send a powerful message to those contemplating the commission of crimes.

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**Figure 2. The Three Dimensions of Crime**

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Implications of a ‘Crimes’ Approach

Understanding the preventive dimension of R2P in terms of crime prevention has important implications for policy-makers. First, many of the actions required to change the incentives of perpetrators and the vulnerability of victims require the United Nations, regional organisations, and national governments to relinquish the principle of impartiality which has often dominated approaches to conflict prevention and resolution. In other words, to prevent the commission of crimes requires a willingness not to treat sides as equal. The UN, in particular, has faced this dilemma in the context of various crises in the past (most notably in the Balkans in the early 1990s, and more recently in its peacekeeping mission in the Democratic Republic of the Congo), but the imperative to prevent atrocity crimes makes it more acute. This relinquishing of impartiality could have significant effects on the perceived legitimacy of regional and international organisations, and limit opportunities for compromise or political settlement.

Second, the prevention of mass atrocity crimes (particularly through targeted measures) requires a willingness and capacity to deal with individuals – as perpetrators or victims – rather than sovereign states. This too challenges some of the core principles that have governed inter-state relations in the past, such as non-intervention and sovereign equality.

Finally, while the crimes framework set out above helps policy-makers to focus on particular agents, it also risks creating overly rigid categories of ‘perpetrators’ and ‘victims’. Such categories might inhibit outsiders’ appreciation of the fluid identities of actors within a conflict situation. To put it another way, third parties need to acknowledge the potential for today’s victims to become tomorrow’s perpetrators.

Assessing Preventive Tools

Figure 3 sets out a series of targeted measures that can be employed by third parties to change the behavior of perpetrators, reduce the vulnerability of victims, and create a less permissive environment for the commission of atrocity crimes. Following on from our staged approach, these tools are divided into those that respond to crises and signs of mobilization, and those that seek to address an imminent emergency.

In what follows we provide three examples of targeted preventive tools (drawn from our case study research), discuss the conditions under which they are effective, and identify issues that can arise from their application.

Mediation

Political mediation is widely regarded as an essential tool in the theory and practice of conflict resolution. In particular, mediation is valued as a non-coercive instrument that gives parties an equal stake in the conflict resolution process. The possibility of mediation being used in an atrocity setting gained traction after the 2007-08 post-election crisis in Kenya, where an African Union led mediation process helped facilitate a political solution to the crisis and end the widespread violence.\(^\text{xvi}\)

Chief among the factors that contributed to the success of mediation in Kenya was the unanimous support of the international community, which took the form of concerted pressure on the parties. In situations where international actors are more fragmented and external pressure is lacking – as the case of Burundi

The ICC has been deemed by many, including the body’s incoming Chief Prosecutor, as a critical tool for implementing the responsibility to protect. The significance of the ICC derives from at least two factors. First, the threat of punishment through the formal mediation process in Kenya was accompanied by informal, coercive pressure on the parties throughout the crisis (including travel bans on key figures, and coded threats to use force) and arguably went beyond what might be considered ‘impartial’ mediation. Therefore, in order for mediation to be effective as an atrocity prevention tool, it may need to be applied in a manner that is distinct from traditional conflict resolution.

**Referrals to the International Criminal Court (ICC)**

The ICC has been deemed by many, including the body’s incoming Chief Prosecutor, as a critical tool for implementing the responsibility to protect. The significance of the ICC derives from at least two factors. First, the threat of punishment through the ICC arguably has the potential to change the incentives of those who are actively planning mass atrocity crimes. Second, the Court is intended to function as a more general deterrent by sending a powerful message to potential perpetrators.

ICC referrals will only be effective, however, if heads of state or leading officials both fear prosecution and believe that prosecution is a real possibility. The latter ultimately depends on the willingness of governments to cooperate with the Court and on the steadfast commitment of international organizations to ensure that ‘side-deals’ (like asylum and exile) are not available. As the indictment of the Sudanese head of state (Omar Bashir) indicates, this level of cooperation and commitment is not always forthcoming.

With respect to the former assumption, there is still little evidence that the referral of a situation to the ICC deters actual or

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**VICTIMS (Vulnerability)**

- Opening borders to allow refugees to escape
- No-fly zones or safe havens
- Physical protection of camps
- Strengthening victims’ capacity to defend themselves
- Recognizing opposition groups
- Supporting exiles

**SITUATION/ENVIRONMENT (Permissiveness)**

- Mediation/ negotiations
- Satellite surveillance and intelligence sharing
- Provision of mobile communications technology
- Radio jamming
- Spreading of alternative views through UN broadcasts
- Emergency summits
- Peace operations

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**Perpetrators (Incentives)**

- Targeted sanctions (asset freezes, travel bans)
- Threat of International Criminal Prosecution
- Security Council Resolutions naming or warning individuals
- Breaking diplomatic Relations or economic ties

**Crisis & Mobilisation**

- Statements of concern (e.g. UN Secretary General or Human Rights Council)
- Travel advisories
- Economic incentives to adopt alternative behaviours (trade policy alterations, aid conditionality, debt relief)

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**Imminent Emergency**

- Preventive deployments of military force (consensual or non-consensual)
- Deployment of human rights monitoring missions
- Challenging dangerous speech
- Reducing the availability of weapons (bilateral and multilateral measures)
- Ambassador recall
- Increased NGO scrutiny
- Visible international engagement (e.g. Security Council agenda)
- Dissemination of relevant norms and legal obligations

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The prospect of military force being used to bolster the protection of potential victims does carry the risk of politicising what is otherwise intended to be a humanitarian mission.

No-Fly Zones
No-fly zones have been used as a means to protect potential victims and guarantee them access to humanitarian assistance, either in the context of an on-going armed conflict or as a protection strategy outside the context of conflict. A key question often raised in connection with no-fly zones is whether civilians can be protected from the air without the support of ground forces. In the case of Northern Iraq in 1991, when Western governments sought to protect the Kurds from brutal repression by Saddam Hussein, the initial no-fly zone was subsequently strengthened by 20,000 ground troops tasked with creating safe havens for Kurdish refugees. Yet, as the later tragedy in Srebrenica demonstrates, having troops on the ground does not necessarily ensure protection if those forces lack a suitably robust mandate.

The effectiveness of no-fly zones depends on the provision of a clear, but specific Security Council mandate, as well as a carefully conceived exit strategy. In order to achieve their desired effect – protection of civilians – no-fly zone missions must quickly neutralize ground-based air defenses (of a state or non-state group) and allow for the potential need to facilitate the delivery of humanitarian assistance.

The prospect of military force being used to bolster the protection of potential victims carries the risk of politicising what is otherwise intended to be a humanitarian mission. The imposition of a no-fly zone over Libya and subsequent actions to assist rebels fighting against the regime illustrates this dilemma. Although the protection of civilians was an explicit goal of UN Security Council Resolution 1973, the institution which took responsibility for implementing the UN’s mandate – NATO – engaged in actions which arguably went beyond protection, thereby leading to accusations that the UN had ‘chosen sides’ in a political conflict. In order to avoid ‘mission creep’, and the potential erosion of its legitimacy, the Security Council must develop stronger mechanisms for ensuring the accountability of those to whom it delegates the right to use force, and enhanced procedures for monitoring and assessing the way in which Security Council resolutions are interpreted and implemented.

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How Do We Improve the Capacity to Prevent?

The path toward developing effective atrocity prevention measures is likely to encounter a number of barriers along the way, including the lack of political will to act before a crisis develops, and the resistance of many states to preventive measures that would potentially infringe on their sovereignty. Here we identify two particular challenges related to the capacity to prevent, and suggest possible strategies for overcoming them.

Justifying the Need to Act Preventively

A key challenge facing any preventive agenda, whether in the domestic or international realm, is creating a credible and authoritative mechanism for assessing the probability that crimes will be committed. Preventive measures (particularly those which are coercive) will be resisted when:

a) the approach to assessing risk factors or the intentions of perpetrators is contested; and
b) when the body which assesses the potential for mass atrocity crimes is viewed as biased or lacking in relevant capacity or expertise. These challenges can be addressed in three ways:

- First, in order to enhance the credibility of systemic prevention further research and analysis is required to identify specific risk factors that tend to lead to atrocity crimes (as opposed to the more general phenomenon of conflict).
- Second, in order to enhance the credibility of targeted prevention, policy-makers can draw on domestic criminal law – for example, relating to the Law of Attempt – to establish the kind of evidence that would be required to reach the judgment that there is a clear intention to commit atrocity crimes.\textsuperscript{xxiv}
- Third, in order to address concerns about bias and politicisation within the Security Council, efforts should be taken both to enhance the UN system's capacity for rigorous and impartial analysis of crises and imminent emergencies and to ensure the timely flow of such analysis to decision-making bodies like the Council.

Building Generic Capacity for Prevention

A second challenge is the belief of many scholars and practitioners that every mass atrocity situation is unique, and requires tailor-made solutions. But while an appreciation of particular regional and local dynamics is critical, many of the most promising preventive tools – such as fact-finding or monitoring missions, targeted sanctions, satellite surveillance, mediation, or no-fly zones – require already-existing structures, skills, and technology if they are to be applied in a timely and effective fashion.

With respect to regional and international organisations, some of this generic capacity is already being established – particularly with respect to early warning. However, pressure from national governments and NGOs is required in order to ensure that the rhetorical commitment to prevention is matched by the allocation of real resources to these important capacities. In addition, institutions must identify lessons learned from previous applications of such tools, and systematically embed such lessons into the design of preventive capacity.

In terms of individual nation-states, governments should follow the lead of countries such as Denmark, Ghana, Costa Rica and Australia, which have recently created specific focal points within their national bureaucracies for coordinating responses to R2P situations. These focal points need to have sufficient authority to convene the most important policymakers across government, and to create links with their counterparts in other countries in order to coordinate efforts to prevent mass atrocity crimes.\textsuperscript{xxv}

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Prevention and the ‘Three Pillars’ of R2P

More broadly, the implementation of R2P rests on a concerted effort to fulfil three layers of responsibilities (or what the Secretary General refers to as ‘three pillars’): the responsibility of each and every nation-state to protect its population from mass atrocity crimes; the responsibility of the international community to assist states in fulfilling their responsibilities; and the remedial responsibility of the international community to act in a timely and decisive manner if states ‘manifestly fail’ in their protection role.

While Ban Ki-Moon has stressed that these three pillars are of equal importance, and can apply simultaneously, in practice the third pillar has often been perceived as the reactive and coercive aspect of R2P, and the first two pillars as the preventive and non-coercive dimensions of the principle. Our project challenges these assumptions. Most importantly, our research underscores that preventive action does not end with the onset of Pillar 3, and that prevention and reaction may not be mutually exclusive.

\textsuperscript{xxiv} For one attempt to set out standards for evidence, see the Cardozo Law School Project, The Responsibility to Protect: Evidentiary Standards. Available at http://www.r2pproject.org/about/the-project/

\textsuperscript{xxv} See Global Centre for the Responsibility to Protect and the Stanley Foundation, Policy Memo on National Focal Points, 12 March 2012. Available at http://www.globalr2p.org/media/pdf/FocalPointsPolicyMemoMarch2012.pdf
The Oxford Institute for Ethics, Law and Armed Conflict (ELAC) is a leading global centre for the interdisciplinary study of the ethics, law, and politics of armed conflict, housed within the Department of Politics and International Relations at the University of Oxford. Funded by the Oxford Martin School, its central aim is to strengthen law, norms and institutions to restrain, regulate and prevent armed conflict. Led by Professor Jennifer Welsh, Dapo Akande and Dr David Rodin, the Institute’s research addresses all aspects of armed conflict, including the recourse to war, conduct of war, and post-conflict governance, transition and reconstruction.

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