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Editor's Introduction

Genocide Studies and Prevention 4:2 is a combined issue. Part I is a symposium of invited commentaries on the report of the Genocide Prevention Task Force; Part II features three articles on various aspects of genocide.

Part I: Commentaries

The Genocide Prevention Task Force was officially launched in November 2007 by a consortium of non-governmental agencies—the US Holocaust Memorial Museum, the American Academy of Diplomacy, and the US Institute of Peace—under the joint chairmanship of Madeleine Albright and William Cohen. Albright served as US ambassador to the United Nations and then as secretary of state during the Bill Clinton administration, while Cohen was secretary of defense during Clinton's second term. Participants in the task force, including consultants, were more than fifty people with international, diplomatic, political, government, military, academic, humanitarian, and other relevant experience.

The task force's mandate is explained in the title of its official report, *Preventing Genocide: A Blueprint for U.S. Policymakers*. The co-chairs explain in their foreword,

This report provides a blueprint that can enable the United States to take preventive action, along with international partners, to forestall the specter of future cases of genocide and mass atrocities. The world agrees that genocide is unacceptable and yet genocide and mass killings continue. Our challenge is to match words to deeds and stop allowing the unacceptable.¹

Since the task force's report was deemed by *GSP*'s editors to be an important event, we thought we should invite a diverse set of commentaries on the report from as many perspectives as possible. A symposium held in Washington, DC, was co-organized by the International Association of Genocide Scholars, the International Institute for Genocide and Human Rights Studies (A Division of the Zoryan Institute), and the editors of *Genocide Studies and Prevention: An International Journal*.

The objective of this one-day symposium was to assemble a group of experts in genocide and international human rights from various disciplines and countries to provide an independent, in-depth, scholarly review and assessment of the report's findings and implications. The commentaries that follow were contributed by experts from at least four countries and provide a diversity of views. They range from in-depth scholarly analyses to editorial-style opinion pieces, reflecting different approaches to the report by the various commentators, and provide a series of stimulating views on the task force report that will, we hope, stimulate further attention and discussion.

The symposium begins with a broad critique by Hirsch in which he notes five overall problems with the report:

- (1) It is poorly written and filled with bureaucratic jargon.
- (2) It is historically inaccurate and, in some discussions, almost revisionist. Hirsch argues that because of this weak analysis of the recent history of genocide, the report cannot serve as a foundation for adequate policy.
- (3) It was written and edited by individuals who participated in past policy failures as their attempts to prevent genocide either failed or were not

undertaken. This is part, Hirsch notes, of a “recycling” process in the capital whereby policy makers never achieve a new perspective because former members of previous administrations are recalled when a new administration enters office, which makes it difficult for new or different views to be represented.

- (4) Reports by commissions often do not change policy; sometimes they do not even influence policy. Often, in government, the presence of a report is pointed to as the equivalent of policy. This is a form of cooptation: in place of taking action, policy makers focus on the report.
- (5) The “clashing cultures” of the academy and the policy makers may contribute to different perspectives, with academics taking a more analytic and critical view and policy makers arguing that they are more “practical.” In any case, Hirsch argues, these are critical weaknesses that must be addressed if this report is to influence policy.

Following this broad critique, we move on to more specific analyses. Since the report is directed at US policy, we thought it would be enlightening to include perspectives from European and Latin American genocide scholars. Interestingly, their views were quite divergent.

We begin with what might be termed a “Latin American” perspective. Daniel Feierstein, director of the Center of Genocide Studies, Universidad Nacional de Tres de Febrero, and a professor at the Universidad de Buenos Aires, Argentina, argues that “from a Latin American perspective,” the report is “interesting but confusing.” He contends that the report is “embedded” in the values of “American society” and that this makes it “difficult for outsiders to evaluate [it] as an action plan.” Feierstein’s primary criticism is not so much what the report says but what it leaves out—that is, what it does not discuss “about the causes of genocide and ways of preventing it.”

In particular, Feierstein refers to what he calls the “active role played by US governments in promoting such practices in the first place.” In fact, he points out that “anyone living in a Third World country in Latin America, Southeast Asia, or Africa would find almost laughable the idea, mentioned earlier, that the main problem of the United States with respect to genocide has been ‘non-intervention.’” It is a common belief in the rest of the world that reduced US intervention has actually led to a “significant reduction in the systematic processes of mass murder in recent years.” Ultimately, Feierstein believes that the report is “profoundly ethnocentric.”

While his analysis is primarily critical, Feierstein does note that there are “some positive aspects to the report,” including a willingness to broaden the definition of genocide and calls for “establishing systems of risk assessments and early warning of genocide around the world” and preventing arms sales to places or groups where there is a risk of genocide.

Feierstein concludes by noting that any attempt to prevent genocide must address two problems: “(a) what the United States can and should do to prevent genocide; and (b) what the United States should *stop doing*.” He is not the only one of the commentators to note this problem with the report; his perspective as a Latin American scholar likely makes the problem much more obvious and, therefore, contributes an additional and important dimension to the analysis of the report.

A second non-US analysis, much less critical of the report, is contributed by Jacques Sémelin, professor of political science (Center for International Research and Studies, Sciences Po, Paris) and founder and editor-in-chief of the online *Encyclopedia of Mass Violence*.²

Sémelin believes that the report is an event of “great significance in the field of genocide studies.” This is so, he believes, because it is

the first time that a group of experts, mainly former high officials, former diplomats, generals, and members of Congress, have worked together in order to propose a coherent and well-argued list of recommendations to a state so that its government will play a major role in preventing genocide throughout the world.

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The third commentary, also from a Europe-based scholar, shifts the focus to international law. Martin Mennecke, presently a visiting professor of international law at Washington and Lee University, views the report as “a welcome addition to the growing efforts” in the area of genocide prevention and would like to see European institutions concerned with this topic engage in a similar exercise. Mennecke’s basic critique is that the “treatment of international law in [the report] remains inconsistent and insufficient. Most often law is reduced to ‘international political challenges’ or less than that.” He argues that the report should have explored “how recent trends in international law could contribute and shape future policies in the field of genocide prevention.” Like most of our other commentators, Mennecke notes that, “overall, there is little self-critical assessment of past US policies *vis-à-vis* international law.” The report, he contends, focuses primarily on political considerations and appears to view international law as a “secondary category.”

Mennecke concludes that while it has a “number of shortcomings,” the report at least puts genocide prevention on the agenda.

The final comment from a non-US-based scholar continues the focus on international law. William A. Schabas, professor of human rights law at the National University of Ireland, Galway, and director of the Irish Centre for Human Rights (along with several other positions), is a leading international expert on international law and genocide prevention. Schabas notes that the report states an intent to avoid the problems associated with the term “genocide” by referring instead to “mass atrocities,” which would include genocide, crimes against humanity, and war crimes. This is, as Schabas notes, an old debate, and the report is misleading if its intent was to examine “genocide and mass atrocity” instead of genocide alone.

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An endorsement of the Albright-Cohen Report may be a step in the wrong direction . . . given the report’s exaggerated emphasis on the use of force and its cavalier dismissal of important legal distinctions . . . Prevention of genocide (and of mass atrocity) will result from stronger international institutions, in particular the United Nations and the International Criminal Court, not from the threat of unilateral military action by the United States.

The last three analyses are written by US scholars of genocide. As one might expect, their views are divergent, and they concentrate on different aspects of the report.

Scott Straus, a political scientist from the University of Wisconsin, Madison, argues that the “contents of the report are a decisive step forward in the debate over how to prevent . . . genocide”; he believes the report is insightful and provides policy options that are “concrete and sensible.” Straus identifies what he refers to as “five areas of specific strength”: identifying a coherent policy, providing a “comprehensive strategic approach,” making short-term recommendations, identifying a “series of specific coercive and non-coercive measures that can be taken to prevent genocide,” and engaging and incorporating “scholarship and debates in the genocide studies field.”

Even a quick reading of the discussion up to this point will make clear that Straus is at odds with some of our earlier commentators. In addition to disagreeing on the strengths he reports, some of the early analysis takes a diametrically opposed view. In fact, however, Straus also identifies several weaknesses. The primary weakness, also noted by Schabas and others, is that the report places too little emphasis on multilateral action with US cooperation and too much on unilateral US action, which, as Straus notes, misses an important opportunity to reinforce international doctrine.

The second commentary from a US genocide scholar is directed at some of the unstated and faulty assumptions upon which the report is based. Alan Kuperman, associate professor of public affairs at the LBJ School of Public Affairs, University of Texas at Austin, notes that “good intentions may be necessary, but they are not sufficient, to prevent genocide.” The unstated and flawed assumptions upon which the report is based therefore constitute, according to Kuperman, a “recipe for failure.”

While the report offers “several constructive reforms,” Kuperman believes that overall . . . the report ignores the most profound lessons of past failures, declines to make the hard choices on policy dilemmas, and neglects to call for the costly military reforms that could enable intervention to prevent future genocides. A more realistic assessment of these challenges gives rise to a very different set of recommendations than found in the report.

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The final analysis of the Albright-Cohen Report broadens the perspective from political science and international law to a more philosophical analysis. Henry Theriault, associate professor of philosophy at Worcester State College in Massachusetts, notes that the report is based—as Kuperman also argues—on faulty assumptions and a questionable interpretation of past history. These lead to a view of genocide that is essentially limited and “discounts precisely the kinds of genocide that the United States and other great powers are typically involved in.” This view is tied to a more comprehensive critique in which Theriault points out instances in which the United States not only knew genocide was being committed but, in several cases, actively supported such action. As a result, according to Theriault, “the report consistently ignores the foregoing issues, instead presenting the US relationship to genocide as one of mistaken inaction and unfortunate indifference.”

Theriault relentlessly highlights the report's consistent misrepresentation of US policy toward genocide, which goes so far as to ignore the founding genocide upon which the country was established—the genocide of Native Americans. In the absence of a forthright acknowledgment the United States' own role in supporting and committing genocidal acts, he argues, the report is constructed on false assumptions and reconstructed history, which cannot serve as the foundation for a successful policy of prevention.

After additional critical analysis, Theriault concludes by offering a series of recommendations that he believes are more likely than those in the report to set the United States on a path toward preventing genocide.

From a simple summary of the commentaries, it is obvious that the contributors to this symposium have a wide range of views on the historical accuracy and the possible impact of the report and of its recommendations. We, the *GSP* editors, hope to circulate this issue with these commentaries to the original authors of the report and, in a future issue, invite them to respond to the analysis presented above. In this fashion, we hope to stimulate a dialogue between what I have referred to as the two “competing cultures” of academics and policy makers. The success or failure of this endeavor, of course, depends upon the willingness of the report's authors to respond and to consider the analysis presented above.

Part II: Three Articles on Genocide

As noted above, this issue also includes three original research articles on three different aspects of genocide. The first argues that there is, in fact, something called “intergenerational moral responsibility.” Armen Marsoobian, professor of philosophy at Southern Connecticut State University, constructs an argument “for the claim that we are morally responsible (in the qualified sense proposed in the article) for the crimes of our ancestors if our ancestors, as a collectivity, were part of a community for whose sake and in whose name crimes were committed that meet the definition of the crime of genocide.”

Marsoobian posits two arguments to support this view. The first involves the idea that collectivities have an identity across time; the second involves the notion that large collectivities, such as nations, provide “moral reliability” within which individuals may function and on which they count to support their values. This means, he argues, that individuals have a moral responsibility “not to the past per se but to the past as it play an active role in the present.”

Marsoobian's interesting philosophical analysis is followed by a more conventional examination of failure to prevent genocide in three cases: Rwanda, Srebrenica, and Darfur. Fred Grünfeld, of the University of Maastricht Faculty of Law, University College Maastricht, the Netherlands, and the Maastricht Centre for Human Rights, and Wessel Vermeulen, a research assistant to Dr. Grunfeld, argue that in spite of ample warnings, the UN Security Council was not willing to take any action to prevent genocide or to stop the genocide taking place in these three contexts.

The final article examines the attempts to identify missing persons in Bosnia-Herzegovina. Kirsten Juhl, research fellow at the University of Stavanger, Norway, argues that it is important to solve the missing-persons issue in the aftermath of genocide and that this may be a "prerequisite to prevent recurrences."

Juhl's analysis examines missing-persons issues from what she calls a "risk management and societal safety perspective." Very important is the "state's ability to establish public confidence in critical social institutions and to build mutual trust among different groups within the population." Her study is based on empirical data and considers, as she notes, "how the emotional overrules the rational, how the predominantly ethnic discourse in society overpowers the weaker human-rights discourse, and how this may threaten the important building of confidence and trust."

* * *

GSP 4:2 is thus a heterogeneous mix of commentaries and wide-ranging substantive articles. The commentaries elucidate and draw attention to the shortcomings as well as the positive contributions of the Albright-Cohen Report, while the three articles raise a series of interesting questions and provide some new perspectives on the study of genocide. As noted above, in a future issue the editors will invite the authors of the Albright-Cohen Report to respond to the commentaries published in this issue. We hope that you, the reader, will look forward to these with the same anticipation of a productive debate that characterizes the editors.

Herb Hirsch
GSP Co-editor

Notes

1. Madeleine K. Albright and William S. Cohen, "Foreword: A Call to Action by the Co-chairs," in *Preventing Genocide: A Blueprint for U.S. Policymakers*, co-chaired by Madeleine K. Albright and William S. Cohen, ix-x (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 9 June 2009), ix.
2. Jacques Sémelin, ed., *Encyclopedia of Mass Violence* (Paris: Sciences Po, CNRS, CERI, Caen Memorial, Hamburger Institut für Sozial Forschung, 2008), <http://www.massviolence.org> (accessed 9 June 2009).

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Part II: Three Articles on Genocide

As noted above, this issue also includes three original research articles on three different aspects of genocide. The first argues that there is, in fact, something called “intergenerational moral responsibility.” Armen Marsoobian, professor of philosophy at Southern Connecticut State University, constructs an argument “for the claim that we are morally responsible (in the qualified sense proposed in the article) for the crimes of our ancestors if our ancestors, as a collectivity, were part of a community for whose sake and in whose name crimes were committed that meet the definition of the crime of genocide.”

Marsoobian posits two arguments to support this view. The first involves the idea that collectivities have an identity across time; the second involves the notion that large collectivities, such as nations, provide “moral reliability” within which individuals may function and on which they count to support their values. This means, he argues, that individuals have a moral responsibility “not to the past per se but to the past as it play an active role in the present.”

Marsoobian's interesting philosophical analysis is followed by a more conventional examination of failure to prevent genocide in three cases: Rwanda, Srebrenica, and Darfur. Fred Grünfeld, of the University of Maastricht Faculty of Law, University College Maastricht, the Netherlands, and the Maastricht Centre for Human Rights, and Wessel Vermeulen, a research assistant to Dr. Grunfeld, argue that in spite of ample warnings, the UN Security Council was not willing to take any action to prevent genocide or to stop the genocide taking place in these three contexts.

The final article examines the attempts to identify missing persons in Bosnia-Herzegovina. Kirsten Juhl, research fellow at the University of Stavanger, Norway, argues that it is important to solve the missing-persons issue in the aftermath of genocide and that this may be a "prerequisite to prevent recurrences."

Juhl's analysis examines missing-persons issues from what she calls a "risk management and societal safety perspective." Very important is the "state's ability to establish public confidence in critical social institutions and to build mutual trust among different groups within the population." Her study is based on empirical data and considers, as she notes, "how the emotional overrules the rational, how the predominantly ethnic discourse in society overpowers the weaker human-rights discourse, and how this may threaten the important building of confidence and trust."

* * *

GSP 4:2 is thus a heterogeneous mix of commentaries and wide-ranging substantive articles. The commentaries elucidate and draw attention to the shortcomings as well as the positive contributions of the Albright-Cohen Report, while the three articles raise a series of interesting questions and provide some new perspectives on the study of genocide. As noted above, in a future issue the editors will invite the authors of the Albright-Cohen Report to respond to the commentaries published in this issue. We hope that you, the reader, will look forward to these with the same anticipation of a productive debate that characterizes the editors.

Herb Hirsch
GSP Co-editor

Notes

1. Madeleine K. Albright and William S. Cohen, "Foreword: A Call to Action by the Co-chairs," in *Preventing Genocide: A Blueprint for U.S. Policymakers*, co-chaired by Madeleine K. Albright and William S. Cohen, ix-x (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 9 June 2009), ix.
2. Jacques Sémelin, ed., *Encyclopedia of Mass Violence* (Paris: Sciences Po, CNRS, CERI, Caen Memorial, Hamburger Institut für Sozial Forschung, 2008), <http://www.massviolence.org> (accessed 9 June 2009).

Notice of Errata

In *GSP 3.3* (December 2008), pp. 341–52, Henry Maitles is identified as sole author of the article titled "Why are we learning this?: Does Studying the Holocaust Encourage Better Citizenship Values?"; in fact, however, Paula Cowan (University of the West of Scotland) should also have been identified as an author of this article. Henry Maitles regrets the error.

Getting Things into Perspective

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From a Latin American perspective, *Preventing Genocide: A Blueprint for U.S. Policymakers* (the Albright-Cohen Report) is an interesting but confusing report.¹ Like many documents produced in the United States for domestic consumption, it is so embedded in the values of American society that even if we try to put ourselves in the writers' shoes, it is difficult for outsiders to evaluate it as an action plan.

Perhaps the most striking and significant feature of this report is not what it actually says but what it does not say about the causes of genocide and ways of preventing it. It is not that these omissions are deliberate; rather, they are a consequence of the perspective used to understand genocide. This perspective directs attention away from one of the principal causes of genocidal social practices since the beginning of the twentieth century, namely, the active role played by US governments in promoting such practices in the first place.

The Perspective of the Report

The Albright-Cohen Report reflects a point of view that is common in the United States and clearly discernible in Samantha Power's book *"A Problem from Hell": America and the Age of Genocide*, which focuses on genocide in Cambodia, Rwanda, and the Balkans.² Winner of a Pulitzer Prize, Power—a former Balkan war correspondent—has done perhaps more than anyone else to shape the way in which Americans view their country's relationship to genocide.

At the risk of oversimplifying her position, Power's book can be seen as a denouncement of the "failure" on the part of the United States to prevent, slow down, or hinder the development of genocidal processes when it has had the power to do so. Thus, Power complains of "America's toleration of unspeakable atrocities, often committed in clear view" and the fact that "the United States has consistently refused to take risks to prevent genocide."³ Similarly, she points out that "no U.S. president has ever made genocide prevention a priority, and no U.S. president has ever suffered politically for his indifference to its occurrence."⁴

The Albright-Cohen Report takes this logic a step further and tries to develop proposals for greater US involvement, often riding roughshod over the national sovereignty of other states and even over international agreements; gaining the support of regional and international organizations is considered important, but by no means necessary, for US intervention to occur. We will return to these issues in a moment; but first we need to understand what is missing in the report.

The "Epistemological Obstacle"

The term "epistemological obstacle" was coined by Gaston Bachelard in 1938 to describe those psychological difficulties that preclude a proper appraisal of knowledge.⁵ Later, Jean Piaget and Rolando Garcia extended this concept to account for the process whereby certain ways of constructing (or "re-presenting") reality make it

impossible for us to observe phenomena that contradict our representations—even though these would be patently obvious to any observer with a different point of view.

By way of example, anyone living in a Third World country in Latin America, Southeast Asia, or Africa would find almost laughable the idea that the main problem of the United States with respect to genocide has been “non-intervention.” From Mexico to Argentina, from India to Cambodia, and from Algeria to Angola, it is axiomatic that reduced US intervention in these regions has led to a significant reduction in systematic mass murder in recent years.

During the Cold War, the US government and its intelligence services played a key role in the processes of political violence and genocide around the world, from direct involvement of US advisers and troops in overthrowing democratic regimes and invading other states (e.g., the Dominican Republic, Guatemala, Vietnam, Cuba, Grenada, Panama, Afghanistan, Iraq) to support for local movements attempting to destabilize democratically elected governments or to bring about military coups (e.g., Chile, Uruguay, Argentina) and funding insurgent organizations as a way of undermining “enemy” governments (e.g., the Khmer Rouge to undermine the Vietnamese government, the *contras* in Nicaragua to subvert the Sandinistas, the Taliban in Afghanistan to fight the pro-Soviet government).

The fact that the 150-page report drawn up by the Genocide Prevention Task Force, chaired by former US secretary of state Madeleine Albright and former US secretary of defense William Cohen, does not even mention these events is so obvious to anyone living in the Third World that it calls for some sort of explanation. This is where the concept of the epistemological obstacle may prove useful. For if we assume—and there is no reason to suppose otherwise—that the task force is acting in the utmost good faith and that the authors of the report have not excluded any of these issues deliberately, then there is clearly a huge conceptual, emotional, and political obstacle—most likely arising from problems of self-esteem, public discourse, and the construction of common sense in the United States—that prevents everyone from seeing the obvious: *the direct intervention of the United States to commit mass murder in regions all over the world.*

Given these glaring omissions and the apparent naïveté of its approach, we might ask whether it is worth looking any further into the Albright-Cohen Report. I believe that it *is* worth examining a little more—if only to highlight some of its misunderstandings and to get things into perspective.

The Meanings of the Word “America” and Its Consequences

The key problem of the report, as I see it, is its profoundly ethnocentric approach, which is clear in its abundant use of the term “American.” Although the word “American” is used in English to refer to a whole continent (made up of seventeen separate states excluding the countries of the Caribbean) as well as to a specific country (the United States of America), many people from Central and South America object to being called “Americans,” as if they had no distinctive identity of their own.

Within the context of the Albright-Cohen Report, it is significant that there is not a single reference to the need for cooperation with other “American” states through organizations such as the Organization of American States (OAS), MERCOSUR (Mercado Común del Sur), and UNASUR (Unión de Naciones Suramericanas), which have played key roles in preventing conflicts in the region. This is despite the fact that

the report recognizes the distinctive nature of regional conflicts and repeatedly recommends—with certain reservations—joint regional action with the European Union (EU), the African Union (AU), the Economic Community of West African States (ECOWAS), the Association of Southeast Asian Nations (ASEAN), and the North Atlantic Treaty Organization (NATO) to prevent genocidal processes.

The implicit assumption is that “America” is the only country that really exists and has rights on the “American” continent, and the only country that can prevent genocide from occurring in its own backyard. Moreover, the neo-imperial power called “America” has repeatedly shown in the past that it does not consider itself bound by the guidelines or decisions of any international or regional organization. All this makes it difficult, if not impossible, to reach a negotiated settlement of any conflict in which the United States chooses to become involved—at least in the Americas.

On Sovereignty and International Agencies

Another major problem with the report is that its authors have not thought through the implications of their ideas. For example, a key idea running through the report is the need to limit national sovereignty in order to prevent genocidal practices. Thus, the authors argue that “sovereignty cannot be used as a shield” (xviii), that “traditional views of sovereignty have also been obstacles to more effective international action” (xix), and that, “aside from calculations of national interest, the generally accepted principles of national sovereignty and nonintervention present formidable barriers” (58), to cite just a few examples.

However, the recommendations of report contain no suggestion that the US government should set an example by ratifying the many international human-rights agreements that it has so far failed to sign. This is a glaring omission, given that the United States has, in the past, refused to sign on the grounds that to do so would limit state sovereignty. Indeed, the United States has been so determined not to sacrifice an inch of its sovereignty that in the case of the International Criminal Court (ICC), set up precisely to prosecute individuals for genocide, crimes against humanity, and war crimes, it not only voted against the ICC Statute at the Rome Conference in 1998 but decided to withdraw Economic Support Fund (ESF) aid in 2005 from all countries that ratified the ICC treaty unless they signed a bilateral immunity agreement with the United States.⁶

Similarly, the report does not make it clear to whom the rest of the world is supposed to surrender state sovereignty; there is no suggestion that greater powers should be vested, for example, in the United Nations, in regional organizations, or in international courts. In any case, this would hardly be feasible without the support of the United States. So, in the absence of any clearly defined international body with powers to determine that genocide or other heinous crimes are being committed and to intervene accordingly, charges of genocide could easily be manipulated to suggest that such decisions should be taken by, for example, some *ad hoc* committee within the US Department of State. From there it would be a short step to justifying unilateral US diplomatic, economic, or military intervention anywhere in the world. Conversely, no international or regional organization, and no organization within the United States itself, would have the power to intervene if US citizens committed similar crimes at home or abroad. Immunity would very quickly become impunity.

The examples given in the report of how the United States might intervene to prevent genocide are highly questionable. The US decision to invade Iraq was taken unilaterally, and, far from diminishing the possibility of genocide, US intervention has

worsened the already complex situation created by the regime of Saddam Hussein, destabilizing the political balance, deepening divisions between Sunnis and Shiites, and increasing the Iranian presence in the region. One of the central problems for the current US administration, which has publicly stated its aim of withdrawing troops from Iraq in 2010, is how to do this without serious internal conflicts' breaking out that might end in genocide. It is also surprising that US–NATO military intervention in Kosovo is mentioned as a valid example for future actions: numerous articles suggest that while this intervention stopped the massacres of Kosovar Albanians, it did nothing to prevent massacres and human-rights violations among the Kosovar Serb population.

Given the Albright-Cohen Report's deep contempt for international and regional organizations, and its insistence on the need for the United States to act independently of any consensus reached in these forums, it is hardly surprising that the report makes no serious attempt to understand the difficulties international agencies face in trying to prevent genocide and atrocity crimes. For example, the main obstacle to greater UN intervention in conflicts involving widespread and systematic killings of civilians has always been the power of veto held by permanent members of the Security Council (the United States, Russia, China, Britain, and France).

Now, the United States has used this power as much as other members—if not more—to veto investigations into violations of human rights. So, while it is true that the task force's Recommendation 6-2 proposes “diplomatic efforts toward negotiating an agreement among the permanent members of the United Nations Security Council on non-use of the veto in cases concerning genocide or mass atrocities” (106), this recommendation rings somewhat hollow, given the role of the United States in delegitimizing the efforts of the United Nations, and reads almost like an afterthought to the suggestion that “if the Security Council is unable to act, there may be other appropriate options” (97).

One cannot help thinking that instead of arguing for “non-use of the veto,” it might be more to the point to propose an amendment to the Statute of the United Nations to eliminate the Security Council's power of veto in matters relating to violations of human rights. This would allow decisions on preventive measures to be taken by simple majority of the General Assembly—a consensus of member states—rather than by just one state with superpowers to overrule international agreements.

One Step Forward, Two Steps Back

Despite all the problems mentioned so far, there are some positive aspects to the report that are worth highlighting, even if they are distorted by problems of vision and perspective. Among them is its willingness to extend the definition of terms beyond the four groups expressly protected by the UN Convention on the Prevention and Punishment of the Crime of Genocide to include the victims of “atrocity crimes” and “large-scale and deliberate attack[s] on civilians” (xxii). The report correctly points out that “there is little support for the conventional wisdom suggesting that religious or ethnic diversity in itself poses risks for genocide or mass atrocities” (24). Other important recommendations include establishing systems of risk assessment and early warning of genocide around the world, as well as preventing arms sales to countries or organizations that pose a risk of genocidal phenomena (42–43). However, these ideas are overshadowed by the notion of “genocide prevention” as a way to justify US intervention in various parts of the globe without the endorsement of any regional or international organization.

In short, most readers of the Albright-Cohen Report who are not US citizens will be left with the unpleasant feeling that moral condemnation of genocide may soon become little more than a pretext for intervention—limited only by the capacity of the State Department Office of War Crimes Issues, the Atrocities Prevention Committee, the National Security Council, and other US agencies to respond. The question is what level of international conflict we are prepared to accept if other countries decide to copy this model.

The fact that human-rights organizations within the United States have failed to understand the implications of the report can only be explained again by the concept of epistemological obstacle. The ethnocentric perspective of most “Americans” leads them to believe that the United States is incapable of genocide. Thus, rather than seeing their country as just another actor in the international arena, they are all too willing to accept the notion that it is the responsibility of the United States to “respond” when atrocities are committed in “backward” parts of the world—a modern version of “the White Man’s Burden.”

By Way of Conclusion

In my view, the main lesson to be learned from this report is how “American” politicians and academics, rightly preoccupied with risk assessment and early warning, are nonetheless incapable of understanding the causes of many genocidal processes because of their own the hegemonic perspective. Not to put too fine a point on it, any approach to genocide and atrocity crimes must address two fundamental problems: (a) what the United States can and should do to prevent genocide, and (b) what the United States should *stop doing*. From this perspective, a key issue in managing public policy would be how to establish a system of controls to prevent the United States from acting in ways that increase the possibility of genocidal events. Without such controls, risk assessment and early warning will have little impact in preventing new cases of genocide.

Let us begin with what the United States should *stop doing*. We have already mentioned the US role in fostering processes of political violence and genocide in various parts of the world during the Cold War. More recently, early recognition of Kosovo’s independence, the permanent destabilization of the Venezuelan government, and support for the territorial division of Bolivia are just three ways in which the United States has fueled conflict in different parts of the world. Indeed, the US embassies in Bolivia and Kosovo have actively supported secessionist claims, while the US embassy in Venezuela has even supported an attempted coup, increasing the chances of genocide or atrocity crimes.

The fact that Venezuela, Bolivia, and Kosovo have not slipped further into violence and bloodshed is due largely to the initiatives of international or regional organizations. For example, the refusal of other Latin American countries to recognize the US-sponsored coup in Venezuela in 2002 was clearly intended to prevent genocide. The UNASUR mission to investigate the massacres of peasants in Pando, Bolivia, in 2008 by armed groups opposing the government of Evo Morales, along with strong support for Morales from MERCOSUR, UNASUR, and the OAS throughout the crisis, prevented a possible backlash from Bolivian national police and armed forces in the face of attempts to destabilize the Morales government. These initiatives were clearly contrary to the wishes of the United States.

The intervention of the European Union and some of its governments to prevent further conflict in the Balkans after the largest EU countries recognized the

independence of Kosovo, simultaneously with the United States, on 16 February 2008 is also worth highlighting. The decision has generated similar demands within Bosnia-Herzegovina that threaten to destabilize the whole region.

What, then, can and should the United States do to prevent genocide? Fortunately, the Albright-Cohen Report has already been overtaken by political events in the United States. The prompt measures taken by President Barack Obama in January 2009 to close the Guantanamo Bay detention center (one of the main centers of human-rights violations in US territory), his announced plans to withdraw US troops from Iraq and other parts of the world, and his pledge to rebuild alliances with the United Nations and other international and regional organizations seem to indicate that the new US administration will adopt a far more productive approach to protecting human rights than that recommended in the report.

Referring in a foreign-policy speech delivered in April 2007 to the need to reform the United Nations, the World Bank and other international organizations, Obama pointed out that

such real reform will not come . . . by dismissing the value of these institutions, or by bullying other countries to ratify changes we have drafted in isolation. Real reform will come because we convince others that they too have a stake in change—that such reforms will make their world, and not just ours, more secure.⁷

Let us hope that this perspective becomes part of academic and political common sense in the United States and an antidote to the “epistemological obstacles” that have so often prevented America as a nation from understanding its complex role in the escalation of genocide and mass atrocities.

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 10 June 2009). Subsequent references appear parenthetically in the text.
2. Samantha Power, *“A Problem from Hell”: America and the Age of Genocide*, paperback ed. (New York: Harper Perennial, 2007).
3. *Ibid.*, 504, 503.
4. *Ibid.*, xxi.
5. Gaston Bachelard, *La formation de l'esprit scientifique* (1938; reprint, Paris: Vrin, 1993). The English translation is my own.
6. Such provisions (the so-called Nethercutt Amendment) were contained in appropriations bills passed by the US Congress for the 2005, 2006, and 2008 fiscal years and in legislation signed into law on 26 December 2007 as PL 110-161, but were not renewed for fiscal year 2009.
7. Barack Obama, address to the Chicago Council on Global Affairs (23 April 2007), <http://www.asksam.com/ebooks/releases.asp?file=Obama-Speeches.ask&dn=Chicago%20Council%20on%20Global%20Affairs> (accessed 15 July 2009).

An International But Especially American Event

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The report of the Genocide Prevention Task Force (the Albright-Cohen Report), prepared under the auspices of the US Institute of Peace (USIP), is of great significance to the field of genocide studies. I do not hesitate to say that this report is an international event. Indeed, this is the first time that a group of experts—mainly former high officials, former diplomats, generals, and members of Congress—have worked together to propose a coherent and well-argued list of recommendations to a state so that its government can play a major role in preventing genocide throughout the world. One may certainly regret that so few genocide scholars and NGO members were consulted; it seems clear that the report has been written for a public policy audience rather than an academic audience. Nevertheless, to my knowledge, there has been no equivalent document—directed to a particular state rather than to an organization such as the United Nations—in the young field of genocide studies or in international affairs. In particular, such reports cannot currently be found in the United Kingdom or in France.

Above all, this report is an American event, since the Genocide Prevention Task Force recommendations have been formulated mainly by American experts to convince the current American administration (that of President Barack Obama) to implement policy in the field of genocide prevention. As its subtitle indicates, the report is intended to be a “blueprint for U.S. policymakers.”¹ However, to grasp the significance of such an initiative, let us consider a broader vision of its historical importance, keeping in mind all the past failures of states in general, and the United States especially, to prevent and to stop genocide. This is why the Genocide Prevention Task Force is an “answer” or, at least, a follow-up to Samantha Power’s famous 2002 book, *“A Problem from Hell”: America and the Age of Genocide*.² Power’s book analyzes the constant passivity of the US government in the face of ongoing genocides throughout the twentieth century, including the Holocaust. To some extent, the Genocide Prevention Task Force was a way for America to say “never again”: never again will America maintain a position of passivity.

Now, the question is: Is this report convincing to its target audience? In the field of genocide prevention, one too often reads generous statements and wishful thinking. This is not at all the case with the Albright-Cohen Report, whose goal is to be accurate and realistic as well as well balanced. All the report’s vocabulary comes from strategic studies and international affairs. In this respect, the Task Force brings the debate on genocide prevention from the margins to the mainstream of foreign affairs. There is a price to be paid for this: the report’s terminology is sometimes bureaucratic, in order, I assume, to convince key members of the US administration to take action on genocide prevention.

Interestingly enough, the task force has decided to distance itself from the legal definition of genocide (as it is accepted and recognized by the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, or UNCG). This is a wise decision, not only because this definition is a matter of endless debate and controversy among genocide scholars but also because the legal definition protects only four kinds of groups. Furthermore, the legal definition places those who want to prevent genocide in a deep contradiction: as soon as lethal violence against civilian populations is legally recognized as the crime of genocide, it is by definition too late to prevent it.

But is the expression “mass atrocities,” from the legal expert David Scheffer, the most appropriate choice for enlarging the notion? This is matter of debate as well. Faced with the same problem of definition, the steering committee of the *Online Encyclopedia of Mass Violence* (OEMV) finally decided on the expression “mass violence,” which was perceived as more neutral and general. The term is used to refer to

human phenomena of collective destructiveness which are primarily due to political, social, religious or cultural causes. This category excludes natural disasters and technological accidents from the start. The notion of “mass violence” does not coincide with the armed combat inherent in war, but rather with all violence which directly or indirectly affects civilian populations, either in times of war or of peace.³

Thus, “mass violence” covers genocide, ethnic cleansing, massacre, and other sorts of lethal human behaviors that qualify as war crimes, crimes against humanity, or crimes of genocide.

In the Albright-Cohen Report, another problem of definition is posed by the scope of genocide prevention, or, more exactly, of limiting the definition. Is genocide prevention—a sort of diplomatic and strategic policy—fully autonomous or is it, rather, linked to the more general field of crisis prevention? Since genocide is considered in broader terms, the second option is much more satisfactory. But here we have another vocabulary issue: Are we dealing with *conflict prevention* or *crisis prevention*? The first formulation, often used in peace studies, is rather problematic, given that conflict is inherent to life. The expression “crisis prevention” is therefore much better and more realistic: prevention is aimed at ensuring that a given conflict does not evolve into a crisis that might generate mass violence. In other words, genocide prevention is “simply” a particular dimension of crisis prevention. While the report sometimes refers to “conflict prevention” in general terms, “crisis prevention” is used more frequently, including in the report’s summary. In my opinion, this is a good choice.

After reading the report, it is hard not to share its general argument: when mass violence is rising in a given conflict, between the two extremes of passivity and military intervention, a range of initiatives can be undertaken. This is exactly what the Genocide Prevention Task Force was about. Their report formulates interesting thoughts and recommendations, and raises critical issues and debates. I will focus my comments below on the report’s primary affirmation, recommendations, and assumption.

I.

One of the basic arguments of the Albright-Cohen Report, if not its main argument, is that genocide prevention is in America’s national interest and is not purely a humanitarian concern or a human-rights issue. Within the first few pages of the report

we find this solemn sentence: “As Americans consider our country’s role in the world in the years to come, we are convinced that the U.S. government can and must do more to prevent genocide, a crime that threatens not only our values, but our national interests” (ix). To justify this strong affirmation, the report notes that genocidal situations are deeply linked with major internal conflict or the taking of power by more radical or more harshly authoritarian leaders, which generates regional instability and an influx of refugees. Consequently, these crises

feed on and fuel other threats in weak and corrupt states, with dangerous spillover effects that know no boundaries. If the United States does not engage early in preventing these crimes, we inevitably bear greater costs—in feeding millions of refugees and trying to manage long-lasting regional crises. (xvi)

In other words, even if US policy makers have no desire to become engaged in situations that lead to genocide, they are inevitably forced to cope with them. On this basis, the authors assert that it is in the US national interest to contribute to ensuring that these situations do not escalate.

This interesting argument has already been supported by earlier reports advocating that the international community should play a major role in preventing such crises in order to limit the burden of their aftermath.⁴ However, the specificity of the Albright-Cohen Report is to underline the particular responsibility of the United States. But the argument correlating genocidal threat and US national interests is repeated so many times that one may wonder whether the authors really believe it.

It is regrettable that the report does not really discuss current case studies. Let us take the example of the ongoing crisis in the Democratic Republic of Congo (DRC). Partly a consequence of the 1994 genocide in Rwanda, this armed conflict has led the deaths of at least 4 million people. But can we seriously prove that this lethal crisis has threatened, and is threatening, American interests? I doubt that many US security experts really believe in such a threat.

It took me a long time to admit, as a genocide scholar, that states are not really interested in preventing genocide as long as their own populations are not targeted; in other words, they are not really concerned about rescuing foreign people. This is simply not their priority, unless they can profit from such actions for other purposes (economic gains, a military presence in the region, etc).

Does this mean that the “national argument” put forward in the Albright-Cohen Report is not relevant at all? That would be too simplistic a conclusion. Yet this argument will be acceptable only if it coincides with the desire of the United States to assume a leadership role as a great power in this highly sensitive issue, eager to deter “Hell on Earth”—that is, genocide. Inevitably, however, this would require America to embrace, yet again, the role of the moral leader against evil, standing at the head of the civilized world . . .

II.

A main recommendation of the Albright-Cohen Report is that “the president should demonstrate that preventing genocide and . . . mass atrocities is a national priority” (6).

Consequently, “the administration should develop and promulgate a government-wide policy on preventing genocide and mass atrocities”; this would involve creating “a standing interagency mechanism for [the] analysis of threats of genocide and mass atrocities and consideration of appropriate preventive action” (111).

The report also suggests that “the national security advisor and the director of national intelligence should establish genocide early warning as a formal priority for

the intelligence community as a means to improve reporting and assessments on the potential for genocide and mass atrocities” (112):

The State Department and the intelligence community should incorporate training on early warning of genocide and mass atrocities into programs for foreign service and intelligence officers and analysts. (112)

Finally, the task force proposes that

Congress appropriate an additional \$250 million annually to the international affairs budget to finance initiatives to prevent genocide and mass atrocities in countries at risk. This additional investment—less than a dollar for every American each year—would not only support valuable individual projects, but also provide focus for foreign policy professionals engaged in high-risk countries. (11)

This very ambitious plan is fully coherent with the report’s main statement (see above). For the first time, American policy makers have at their disposal a range of measures to implement genocide-prevention policy.

As a European scholar, I am not able to assess the relevance of these recommendations in the American political system. Certainly, the efforts of the task force are unprecedented; but can this impressive body of political, administrative, and financial proposals replace a lack of political will on the part of a given government? For example, let us take the case of early warnings. The Albright-Cohen Report suggests an inter-agency mechanism, including the creation of a list of countries under watch. But that kind of information is already provided by some NGOs, such as the International Crisis Group, founded after the Rwandan genocide for precisely that purpose. Similarly, genocide scholars already know more or less which countries are at risk. In January 2004, for instance, delegates from fifty-five nations at the Conference on Genocide Prevention, organized by Sweden, showed themselves to be well aware of these dangers, although the results of their work have gone almost unnoticed. According to their research, there was a risk of genocide in thirteen countries: Sudan, Myanmar/Burma, Burundi, Rwanda, the DRC, Somalia, Uganda, Algeria, China, Iraq, Afghanistan, Pakistan, and Ethiopia.⁵

It would be fine if the United States established its own list and improved its own system of early warning by taking genocidal threats into account. Nevertheless, the critical issue is not establishing the most sophisticated early warning mechanism but acting or to reacting in a timely manner on the basis of the information that mechanism would provide.

Let us hope that if the current US administration decides to implement the report’s recommendations, this will improve the analysis of crises by creating a “culture of genocide prevention” that would give decision makers a wider range of options at the early stages.

III.

Finally, the most important question must not be forgotten: What kind of decision or action would have a preventive effect? The entire work of the Genocide Prevention Task Force relies on the assumption that genocide is preventable. Having compared three cases (the Holocaust, Rwanda, and Bosnia) in my book *Purify and Destroy*, I have come to more or less the same conclusion.⁶ Fortunately, genocide is not the result of ancient hatred but, rather, a process that tends to instrumentalize ethnic and religious tensions. Theoretically, and possibly in practice, this process can be interrupted.

But the longer one waits, the worse it becomes. There are now hundreds of books on the passivity of the international community.

However, it is one thing to state that genocide can be prevented and another to determine the most judicious actions that might have a preventive effect in a given crisis. The Albright-Cohen Report notes that “action before or at an early stage of a crisis holds the greatest promise” (2). But action of what kind? There is simply no discussion in the report of what can be—or not be—effective. Rather, the report presumes that since genocide is most often planned, it can be interrupted by counter-measures. This general affirmation needs to be challenged. In theory it is correct, but the reality is much more complicated. While the report acknowledges the existence of a degree of uncertainty, policy making gives no guarantee of what the short and long-term effects may be. The outcome may be the opposite of what was expected.

The consequence of this unpredictability? We may suspect that prescribed initiatives, whether modest or ambitious, will not bring about the anticipated effects. Intellectuals seeking to exert an antidotal influence on a discourse of hatred may, of course, be acting in good faith. But it can also happen, against their wishes or through clumsiness, that their words ultimately increase tension rather than diffusing it. In the same way, the effectiveness of using economic sanctions against regimes accused of serious violations of human rights is also hotly debated, because of the harmful effects such sanctions can have on local populations; the sanctions taken against Iraq under Saddam Hussein are often cited as an example. Still more concretely, NGOs or states intervening in crises with the laudable intention of restraining or halting massacres cannot control the effects of their interventions, because they may not be best placed to intervene. In other cases, their knowledge of the realities of the country is limited, their actions may not have the desired impact, or their actions could even provoke the opposite effect of the one intended. The case of the American intervention in Somalia in 1992 is a well-known example, as is the US-led intervention in Iraq to bring down the regime of Saddam Hussein. It is regrettable that the report does not really discuss these different case studies from the 1990s to assess the relevance of potential preventive actions.

* * *

I wish to add two final remarks on this important report. Its last chapter suggests several possibilities in the field of international cooperation. The task force appears to endorse the UN doctrine of the “responsibility to protect” in general terms. However, it clearly recommends the creation, under US leadership, of an international network dedicated to genocide prevention: “The secretary of state should launch a major diplomatic initiative to create among like-minded governments, international organizations, and NGOs a formal network dedicated to the prevention of genocide and mass atrocities” (104). Is this not a way to bypass the United Nations? Such an international network of states and non-state actors could be more effective and reactive than the formal structure of the United Nations; however, if this network is indeed controlled by the United States, it will come across other difficulties—the first being its political legitimacy, since some significant actors will likely refuse to be part of it.

Nevertheless, let us admit the theoretical scenario that America really becomes the lead state willing to prevent genocide throughout the world. Such a global commitment will involve moral consequences and constraints that are particularly difficult for the United States. If it wants to be consistent, it must also join the 108 states already part of the International Criminal Court (ICC) in The Hague; unfortunately, the task force

does not recommend such a decision. I see a contradiction here: If the United States wants to have this moral authority in the world, how can it refuse to allow its own citizens to be judged by the ICC? The argument that Americans should be judged by an American court cannot be understood abroad, particularly in Europe. It took thirty-eight years for the United States to ratify the 1948 UNCG; let us hope that it will take much less time to sign the 1998 Rome Statute of the ICC.

Finally, the Albright-Cohen Report seems to have been written with the future administration of Barack Obama in mind. We know that the new president feels concerned about this issue. However, will he act in the direction suggested by the task force? Is the US Congress ready to allocate funds for such action? This seems unlikely, considering the overwhelming responsibilities of the president, who is dealing with so many extreme difficulties, both domestic and foreign.

But should voicing these criticisms prevent us from trying to do something, and lead actors to cripple themselves with the very thought of their potentially negative effects? It is true that, generally speaking, every situation of mass violence may be of paralyzing complexity, and it is vital to exercise caution and clear-sightedness. But it is too easy for scholars to criticize those who try to “do something” in the name of the complexity that it is their job to decipher. Looked at from the point of view of those who have died in massacres, and of those who still risk the same fate, this position is not morally tenable. It would, moreover, destroy the very basis for any political or social action, whatever the objective in view, to argue that because we can never be sure of the outcome, it is futile to intervene. Any political action in the name of change or peace would, by definition, be in vain; we would effectively be advocating a “contemplative immobilism” of world misfortunes. Whatever its future impact, the Albright-Cohen Report will stand as a first and promising step.

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 10 June 2009). Subsequent references appear parenthetically in the text.
2. Samantha Power, *“A Problem from Hell”: America and the Age of Genocide* (New York: Basic Books, 2002).
3. Jacques Sémelin, “Our Scientific Approach,” in *Online Encyclopedia of Mass Violence* (Paris: Sciences Po, CNRS, CERI, Caen Memorial, Hamburger Institut für Sozialforschung, 2008), ed. Jacques Sémelin, http://www.massviolence.org/IMG/pdf/Our_Project.pdf (accessed 11 June 2009), 4.
4. See Carnegie Foundation on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (New York: Carnegie Corporation of New York, 1997), <http://www.wilsoncenter.org/subsites/ccpdc/pubs/rept97/finfr.htm> (accessed 11 June 2009).
5. The conference noted that this list should without doubt be extended to other countries as well. See Jacques Sémelin, *Purify and Destroy: The Political Uses of Massacre and Genocide* (New York: Columbia University Press, 2007), 362–75.
6. Sémelin, *Purify and Destroy*.

Genocide Prevention and International Law

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The recently published report *Preventing Genocide: A Blueprint for U.S. Policymakers* (the Albright-Cohen Report) is a welcome addition to the growing efforts to realize the often invoked promise, “Never again.”¹ In fact, it constitutes the first attempt to translate the existing research on genocide prevention into a policy guide for decision makers, and it deserves praise for taking this step. In particular, from a European perspective, one would hope that institutions and actors such as the Imperial War Museum in London, the International Task Force for Holocaust Education, Research and Remembrance, and the Stiftung für Wissenschaft und Politik in Berlin will engage in similar work to add new perspectives and inspire European leaders.

Being the first of its kind, the Albright-Cohen Report invites a number of criticisms. This cannot come as a surprise, and it may, indeed, help to generate further debate and reflection. My focus here will be on the relationship between genocide prevention and international law. From a legal perspective, there are numerous obvious links between the two—of course, one might say, given that the crime of genocide is defined in a *legal* instrument, the UN Convention on the Prevention and Punishment of the Crime of Genocide (UNCG). Nonetheless, the treatment of international law in the report remains inconsistent and insufficient. Most often, law is reduced to “international *political* challenges” (75; emphasis added) or is accorded even less importance. This approach corresponds well with the state of art in the field of genocide studies, where much ink is still spilled on criticizing the alleged and real shortcomings of the legal definition instead of scrutinizing newer developments. The Albright-Cohen Report should have done better and explored how recent trends in international law could contribute and shape future policies in the field of genocide prevention.

The Albright-Cohen Report and International Law

On a number of occasions the report does touch on the interplay between genocide prevention and international law. Chapter six is in fact titled “International Action: Strengthening Norms and Institutions,” and references are made to legal concepts such as the responsibility to protect (xxi) and to institutions such as the International Criminal Court (101ff).² Some of the recommendations set forth are very agreeable,³ while others seem totally unrealistic;⁴ overall, there is little self-critical assessment of past US policies *vis-à-vis* international law.⁵ What is more, legal tools appear to be relegated to a secondary category, appended to and dependent on political considerations. An example of this approach occurs in the brief discussion of the potential need to initiate military operations when no UN authorization can be obtained. On the one hand, the report slurs over the fact that the use of force is generally prohibited under international law (97).⁶ On the other hand, it ignores the fact that the United States has no official policy supporting the existence of a right to humanitarian intervention.⁷

In what follows I shall highlight some of the report's shortcomings *vis-à-vis* international law and point to one particular and major omission: the failure to address the *legal* duty of the United States to prevent genocide.

(a) The Legal Definition of Genocide as ‘‘Definitional Trap’’ for Genocide Prevention

The Albright-Cohen Report begins by discussing the scope of genocide prevention, calling this ‘‘Defining the Challenge.’’ Should prevention focus on genocide alone, or should it also address crimes against humanity and other massive violations of human rights? Does genocide prevention depend on a determination of genocide? The task force behind the report defines the scope of the *Blueprint* ‘‘as the prevention of genocide and mass atrocities, meaning large-scale and deliberate attacks on civilians’’ (xxi). A number of recent developments, such as the mandate of the UN’s Special Adviser on the Prevention of Genocide, the scope of the responsibility to protect, and the newly discovered legal duty to prevent genocide, all point in this same direction. While lawyers were the first to call genocide the ‘‘crime of crimes,’’⁸ they have since moved beyond the notion of a hierarchy of suffering. Today, there is a growing readiness to view genocide together with other international crimes—and not only in terms of prevention. A very pertinent proposal has been made by David Scheffer, who for the purposes of prevention, suggests speaking of ‘‘atrocity crimes,’’ precisely to avoid the ‘‘definitional traps’’ to which the Albright-Cohen Report refers.⁹ The atrocity crimes terminology allows us to focus the debate on *how* to respond to a given crisis instead of spending time and energy discussing whether or not the strict requirements of the legal definition of genocide have been met.

Although the report does not mention Scheffer’s work,¹⁰ it includes a similar proposal, explaining that the authors’ ‘‘central purpose . . . [is] prevention’’ and that they advocate ‘‘the adoption of measures before acts of massive violence have been committed or labeled’’ (xxii). This makes a lot of sense. If the objective is to prevent genocide from happening, international efforts must logically be comprehensive, broader than the narrow notion of genocide, in order to prevent just that. Ideally, prevention measures will keep a situation from escalating into genocidal violence so that there will be no genocide. For this reason, any effective genocide-prevention policy also needs to combat crimes against humanity and other grave violations of human rights that could progress to genocide. The term ‘‘genocide’’ is often invoked by activists or the media in the belief that only this particular crime will engage the broader public and lead to a decisive response. The increased level of international interest in the Darfur crisis following the invocation of the term ‘‘genocide’’ seems to confirm the power of the ‘‘G-word’’; at the same time, however, this situation also shows the term’s inherent dangers. There continues to be disagreement about the appropriateness of labeling Darfur a genocide, as well as problems in some quarters with realizing that, even in a case of genocide, the situation on the ground may be more difficult than a fight between ‘‘good’’ and ‘‘evil.’’ ‘‘Genocide,’’ in its simplified public usage, often seems to blur observers’ ability to analyze and understand the relevant conflict.

It therefore comes as a surprise when the authors make a 180-degree turn, announcing that the report will ‘‘use the term *genocide* as a shorthand expression for [a] wider category of crimes’’ (xxii). This is boldly inconsistent and cannot convince. The same report warns that ‘‘legalistic arguments [as to whether or not a certain crisis fulfills the legal definition of genocide] have repeatedly impeded timely and effective action’’ (xxi)—yet still opts to use the term ‘‘genocide.’’ It is deplorable that the

Albright-Cohen Report, instead of sustaining its own arguments, falls for what it calls the “unmatched rhetorical power” of the term “genocide” (xxi).¹¹ A comprehensive approach, addressing all atrocity crimes, could put an end to lengthy and tiring debates over whether or not certain crimes—for example, those committed in the Darfur region—constitute genocide. Such a policy would be more effective than current efforts and would eventually also help to establish an understanding that, “depending upon the circumstances, *such international offences as crimes against humanity and large scale war crimes may be no less serious and heinous than genocide.*”¹²

(b) Impunity as Obstacle to Genocide Prevention—or as Bargaining Chip?

The question of accountability for genocide and other crimes against humanity is another area of concern addressed in the Albright-Cohen Report. But on this point, too, the report seriously lacks consistency and coherence. At the outset, in a section titled “Early Prevention: Engaging Before the Crisis,” the report states that impunity is a serious challenge to genocide prevention (46). Indeed, where there is no accountability for violations of human rights, criminal policies can more easily be implemented. Without the rule of law to distinguish right from wrong, no individual perpetrator will worry about the prospect of future trials. The significant detrimental effect of impunity is a standard feature of the literature on genocide prevention and is stressed by both genocide scholars and inter-governmental organizations. Moreover, it seems increasingly realistic to view the prospect of prosecutions before an international tribunal as potentially deterring future mass atrocities. While this once was a far-fetched scenario, the growing number of international tribunals, the existence of a *permanent* International Criminal Court, and the supplementary use of national prosecutions in third states (under the title of “universal jurisdiction”—a concept that is omitted from the report) do seem to have an impact on the ground.¹³ Thus, the report is right to assert that “threatening legal and moral accountability for violations of international law . . . signals potentially serious repercussions for inexcusable behavior” (43).

In this context, it is important to acknowledge and consider that this threat of prosecution as means of prevention can prove very costly. Only briefly mentioned in the report, this fact is starkly illustrated by the response of Sudan’s President Al-Bashir to the ICC’s arrest warrant. Is justice to be pursued even if it means that the conflict will be prolonged and that more people will die? Who is to make that decision? Proponents of international criminal justice must face these questions and must be prepared to deal with the unintended consequences of ICC investigations. The report claims that

responsible members of the international community, including the United States, have concluded that the potential benefits do indeed outweigh the costs, and they are unlikely again to allow disputes over the means of pursuing justice to overwhelm the principle that justice must be done. (103).

This assessment is overly optimistic. The ongoing debates surrounding the Bashir case before the ICC illustrate that there is no such agreement yet, not even among “responsible” Western states or among ICC member states.

The report also lacks consistency with respect to fighting impunity, readily proposing in a separate section that accountability be used as a bargaining chip. Discussing policy options and “Tools Available to the United States to Help Halt and Reverse Escalating Threats of Genocide and Mass Atrocities,” the report lists offering amnesties and immunities among these tools (60ff, Table 1)¹⁴. This idea is obviously irreconcilable with earlier statements in the report. Moreover, in trying to devise

a policy on genocide *prevention*, it would have been better to shift the emphasis from what combating impunity means for an *ongoing* conflict and what it means for *future* conflicts and for potential perpetrators. If amnesties remain an “available tool,” even within the context of genocide prevention, then potential *génocidaires* need not fear prosecution before the ICC or elsewhere.¹⁵ Furthermore, and equally importantly, it seems very questionable whether amnesties and immunities still are “available tools” *vis-à-vis* crimes against humanity such as genocide. It seems to be generally accepted that international tribunals, at least, are not bound by national amnesties and immunities; indeed, there is significant practice suggesting that contemporary international law prohibits outright amnesties for crimes against humanity and genocide. Is the Albright-Cohen Report suggesting that the United States place itself outside this trend?

(c) The Responsibility to Protect

Several times throughout the report the authors refer to the notion of a responsibility to protect (R2P). The most interesting contribution appears in chapter five, “Employing Military Options,” which makes a convincing case that the US government (as well as many other actors) needs to translate R2P into concrete guidance for military training and operations (73ff). Beyond that, however, the authors add little to the existing literature. Indeed, the Albright-Cohen Report displays some difficulties in properly situating R2P in the context of genocide prevention. For example, the report suggests that R2P “provide[s] the legitimate basis for overriding national sovereignty” (58)¹⁶—a serious misreading of what R2P is about, suited only to confirm concerns among readers from developing countries that R2P could serve as a standing excuse for US interventions. R2P is a significant departure from the traditional notion of sovereignty as an impermeable iron wall, protecting murderous regimes—instead of their people—from outside interference. At the same time, R2P confirms sovereignty and is conceived as its “ally, not [its] adversary.”¹⁷ Thus, it would be more appropriate to explore how R2P can contribute to efforts to *prevent* atrocity crimes, instead of deliberating (belated) military interventions.

The report’s only concrete recommendation on R2P is that the new US administration should reaffirm the commitment of the United States to this concept. R2P has indeed become a buzzword at the United Nations, and it deserves close attention. Adopted at the UN World Summit of heads of state in 2005, R2P was meant to go beyond the old debates on the legality of armed (“humanitarian”) interventions into internal conflicts and massive human-rights violations without UN authorization. According to the doctrine of R2P, state sovereignty confers on a government a responsibility to protect its people from genocide, war crimes, ethnic cleansing, and crimes against humanity; other states and the international community have a responsibility to support the government in this undertaking. If a state “manifestly” fails in its responsibility, “the international community...[is] prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the [UN] Charter,” to protect the affected people.¹⁸ R2P is thus not simply a remake of the older idea of “humanitarian intervention” but a new, comprehensive norm that builds and expands on the classic understanding of sovereignty and obliges both individual states and the international community as a whole to prevent, react, and rebuild. R2P is not yet binding law but is often described as “evolving” in that direction. Be that as it may, R2P was introduced on a broad basis

of international support, adopted at the highest level and in consensus by the UN General Assembly, and later reaffirmed by the UN Security Council.¹⁹

The Albright-Cohen Report calls R2P the “potentially most important normative addition” since the drafting of the UNCG—but does not translate this into concrete policies, instead reducing R2P to a tool of “moral suasion” (98). While the Darfur crisis and the enduring inability of the international community to fundamentally change the situation on the ground pose extreme challenges to R2P, there is also good news—which reinforces the need for this report, and any future genocide-prevention policy, to engage with R2P. For example, R2P was successfully invoked by former UN secretary-general Kofi Annan and others in mediating the post-election crisis in Kenya early in 2008.²⁰ In July 2009, UN member states will discuss how to implement R2P in the UN General Assembly, on the basis of a comprehensive report by the UN secretary-general (published on 12 January 2009, after publication of the Albright-Cohen Report) that presents first suggestions on how to operationalize R2P.²¹

(d) The Legal Duty to Prevent Genocide

If we have so far focused on areas in which the report’s treatment of international legal matters is insufficient or inconsistent, we now turn to an issue that is omitted completely. On 26 February 2007, the International Court of Justice (ICJ)—the highest judicial organ of the United Nations, which hears disputes between states and does not deal with the criminal responsibility of individuals—rendered a judgment in a case between Bosnia-Herzegovina and Serbia. Bosnia had asked the Court to rule that Serbia had violated the UNCG, and the judges did indeed find that this was the case; the Court specified, however, that Serbia was not, in a legal sense, responsible for the genocidal massacre committed at Srebrenica in July 1995. Instead, the Court ruled that Serbia had violated two legal duties enshrined in the UNCG: first, the duty to punish *génocidaires* present on its territory, and, second and independently, the duty to prevent genocide—outside its own territory.²²

This legal duty to prevent genocide is, of course, directly relevant to the matter discussed in the Albright-Cohen Report. After decades of protracted debates, the United States ratified the UNCG in 1988 and is thus bound by this duty.²³ To start with, this duty could—and, indeed, should—serve as one reason for the United States to formulate a policy on genocide prevention: it is, as a matter of law, legally obliged to prevent genocide. This is important, as the US government has been very reluctant to accept such duties in the past. In spring 1994, for example, the US government meticulously avoided calling the massive crimes committed in Rwanda by their rightful name (i.e., genocide); legal experts within the State Department warned the administration to “be careful” because calling it genocide “could commit the US [government] to actually do something.”²⁴ This reluctance again became evident in how the aforementioned R2P doctrine at the UN World Summit in 2005.²⁵ It is a glaring omission that this new development in international law is not even mentioned, let alone discussed, in the Genocide Prevention Task Force’s report.²⁶

The ICJ found the legal duty to prevent genocide established under the very first provision of the UNCG.²⁷ Article 1 reads, “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”²⁸ While this may seem to the layperson the most natural, perhaps even self-evident, reading of an international treaty through which states aim to prevent and punish genocide, this

part of the ruling did come as a surprise to international lawyers: prior to the ICJ's judgment, few had read a *legal* duty to prevent genocide as existing under the UNCG. Most believed that art. 1 entailed only a programmatic statement, not a legal duty.²⁹ In the context of formulating a policy on genocide prevention, therefore, this newly stated duty is of course an interesting development. What exactly is the scope of this obligation, and what does it mean for the US government?

The Court's judgment addresses these questions and formulates some conditions to help measure whether states comply with the duty to prevent genocide. Importantly, the Court decided that the "the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide."³⁰ There is little room for excuses, however, as states are expected "to employ all means reasonably available to them, so as to prevent genocide so far as possible"; in fact, it is "irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide."³¹ Accordingly, a state incurs legal responsibility for violating the UNCG "if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide."³² The ICJ acknowledges that different states may have different capacities to prevent genocide from being committed; the scope of the duty therefore depends on factors such as geographic proximity and political influence. Any measure taken to prevent genocide must comply with general international law (which, for example, makes the unilateral use of force—often discussed as "humanitarian interventions"—very questionable). Finally, the Court addresses the issue of when this legal duty applies. Calling it "absurd" in the context of prevention to wait until genocide has been committed and determined to fit the legal definition, the ICJ's judgment holds that "a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed."³³ Thus, the "definitional traps" referred to in the Albright-Cohen Report should not stop states in their endeavors: the question is not whether a certain crisis constitutes genocide but whether it could evolve into genocide. There is a link and potential overlap between the duty to prevent genocide and the responsibility to protect.

Even though judgments of the ICJ are legally binding only on the parties to the case in question, it is clear that all other parties to the UNCG are under the same obligation. What about the United States, then? On 9 September 2004, Colin Powell, then US secretary of state, informed the Senate Foreign Relations Committee of the results of the Atrocities Documentation Project, stating that "genocide has been committed" in Darfur.³⁴ This was a significant shift away from the attitude prevalent in 1994, when the "G-word" was avoided at all costs—but was Powell correct in claiming that "we have been doing everything we can to get the Sudanese Government to act responsibly"? Was, and is, the United States meeting the requirements set forth by the ICJ? What about other parties to the UNCG, such as China, Russia, and South Africa? Does not a particular responsibility rest with the permanent members of the UN Security Council, both because of their special status and because of their actual influence on Sudan? These are questions genocide scholars as well as anti-genocide activists need to explore. The Albright-Cohen Report's failure to undertake the first steps toward operationalizing this duty as it applies to the United States is a major shortcoming.

Concluding Observations

The Albright-Cohen Report sets out to “enable the United States to take preventive action, together with international partners, to forestall the specter of future cases of genocide and mass atrocities” (ix). In terms of incorporating and making use of international law in this task, the report has a number of shortcomings. Nonetheless, the authors and institutions behind the report deserve credit for engaging with this important topic and for putting it on the agenda. It is to be hoped that the institutions involved in authoring the report will succeed in bringing this matter to the attention of the new US administration. Moreover, it would seem advisable to follow up on the report; there could, for example, be an annual genocide-prevention report to review ongoing policies and make recommendations for the future. As the UN secretary-general recently stated, “We can, and must, do better.”³⁵

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 11 June 2009). Subsequent references appear parenthetically in the text.
2. See also the Executive Summary (xvii): “To prevent genocide, our government must draw on a wide array of analytical, diplomatic, economic, *legal*, and military instruments and engage a variety of partners” (emphasis added).
3. E.g., the suggestion to re-engage with the UN Human Rights Council (107ff). Despite all its flaws and misuse, the Human Rights Council, with its new Universal Periodic Review mechanism, may provide a welcome opportunity to introduce an annual review of genocide-prevention measures adopted by individual states.
4. E.g., the suggestion that the five permanent members of the UN Security Council should resolve that “unless three permanent members were to agree to veto a given resolution [concerning genocide prevention], all five would abstain or support it” (106). Given that the United States, together with the United Kingdom and France, could always block the other two permanent members (and not the other way around), it is not clear why China and Russia should agree to such a proposal.
5. See, e.g., the treatment of the ICC (101ff). The report states that the United States has not become a party to the ICC but continues to be committed to international justice; the authors choose not to mention either the fact that the United States still cannot envisage its own officials’ ever being submitted to international scrutiny or the hostile anti-ICC policy adopted by the first Bush administration. Similarly, the report’s discussion of the Darfur referral by the UN Security Council does not mention the United States’ strong initial opposition, which led to some highly questionable compromises in the relevant Security Council resolution (Resolution No. 1593 of 31 March 2005). For example, the costs of the ICC’s investigations in Darfur will be borne not by the United Nations (at whose request the ICC is addressing the Darfur situation) but by ICC member states.
6. The reference in the report to an allegedly growing practice by regional organizations of using force without prior authorization from the UN Security Council is unsubstantiated and seems very questionable. A closer examination of relevant operations suggests that the African Union as well as other actors confirm the significance of the UN resolutions. See Christine Gray, *International Law and the Use of Force*, 3rd ed. (Oxford: Oxford University Press, 2008), 370ff.
7. “Authority of the President under Domestic and International Law to Use Military Force Against Iraq” (Memorandum Opinion for Counsel to the President, 23 October 2002), 17.
8. *Prosecutor v. Kambanda*, Judgment and Sentence, ICTR-97-23-S (4 September 1998), para. 16.

9. Scheffer has written extensively on the notion of atrocity law. See David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention* 1 (2006): 229–50; on this topic see also Martin Mennecke, "What's In a Name? Reflections on Using, Not Using, and Overusing the 'G-Word,'" *Genocide Studies and Prevention* 2 (2007): 57–71.
10. Interestingly, however, Scheffer is listed as an expert consultant to the task force (128).
11. This inconsistency permeates the entire report; for example, the authors suggest the establishment of an *Atrocities* Prevention Committee within the US administration (xviii).
12. *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General*, UN Doc. S/2005/60 (25 January 2005), para. 522 (original emphasis).
13. On the notion of prevention through prosecutions see generally Martin Mennecke, "Punishing Genocidaires: A Deterrent Effect or Not?" *Human Rights Review* 8 (2007): 319–39.
14. See also page 70: "[A]lthough it is likely to be distasteful and morally hazardous, policymakers should not dismiss the potential benefits of rewarding 'bad people' for 'good behavior.'" Yet again, there is no mention of international law rules that regulate and ultimately prohibit certain rewards.
15. The report also notes that deterrence will be more effective if "the international community demonstrates its willingness to detain indicted fugitives and bring them before the court" (103).
16. On the topic of R2P, it seems particularly evident that the report draws on the work of several different expert groups; compare, for example, the much more accurate and cautious treatment on page 98.
17. UN Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677 (12 January 2009), para. 10a.
18. *World Summit Outcome Document*, UN Doc. A/60/1 (24 October 2005), paras. 138–9. The UN version of R2P builds on earlier work by the International Commission on Intervention and State Sovereignty (ICISS), a group of experts commissioned by the government of Canada. The ICISS report proposed a more far-reaching version of R2P; some have therefore called the UN version "R2P lite": see Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), 67.
19. UN Security Council Resolution 1674 (28 April 2006). The Albright-Cohen Report also refers to the "breadth of global consensus," which is "critical" and "represents a strong foundation for intergovernmental co-operation to prevent genocide and mass atrocities" (5).
20. See Roger Cohen, "How Kofi Annan Rescued Kenya," *New York Review of Books*, 14 August 2008.
21. UN Secretary-General, *Implementing R2P*.
22. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, <http://www.icj-cij.org/docket/index.php?p1=3&k=8d&p3=4&case=91> (accessed 12 June 2009) [*Bosnia v. Serbia*]. On the duty to prevent genocide, see generally William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 520ff.
23. On the complicated relationship between the United States and the crime of genocide see Lawrence J. LeBlanc, *The United States and the Genocide Convention* (Durham, NC: Duke University Press, 1991).
24. Office of the Deputy Assistant Secretary of Defence for Middle East/Africa Region, Department of Defence, Discussion Paper (1 May 1994). For an instructive analysis of the approach taken by the Clinton administration see Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Basic Books, 2002), 329ff.
25. See, e.g., the letter from the US representative to the United Nations, John Bolton, on 30 August 2005: "we would make changes to make clear that the obligation/responsibility

- [of the international community and the Security Council] discussed in the text is not of a legal [but a moral] character.”
26. The authors of the Albright-Cohen Report seem wholly unaware of this duty. On page 94, for example, it is suggested that the UNCG embodies “aspirations” rather than legal obligations. It should be noted that this criticism also can be leveled against the field of genocide studies. Since the ICJ issued its judgment in *Bosnia v. Serbia*, only one relevant article (William Schabas, “Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crime of Crimes,” *Genocide Studies and Prevention* 2 (2007): 101–22) has appeared in any of the journals focusing on genocide studies. The judgment is of interest to genocide studies not only because of the duty to prevent genocide but also for its finding that only the massacres committed at Srebrenica met the criteria of the legal definition of genocide. Most genocide scholars continue to list Bosnia as a whole among recent cases of genocide, without engaging with this recent ruling by the UN’s highest judicial organ. At the same time, the Court’s judgment has been heavily criticized for finding that Serbia did not exercise sufficient control over the Bosnian Serbs to be attributed direct responsibility for Srebrenica. It would be beneficial to the debate among international lawyers for genocide scholars to add their insights on this important question.
 27. See *Bosnia v. Serbia*, Judgment, paras. 425–32.
 28. *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277, http://www.unhchr.ch/html/menu3/b/p_genoci.htm (accessed 12 June 2009), art. 1.
 29. For an early publication arguing for the existence of legal duty see Stephen J. Toope, “Does International Law Impose a Duty upon the United Nations to Prevent Genocide?” *McGill Law Journal* 46 (2000): 187–94.
 30. *Bosnia v. Serbia*, Judgment, para. 430.
 31. *Ibid.*
 32. *Ibid.*
 33. *Ibid.*, para. 431.
 34. Colin L. Powell, “The Crisis in Darfur” (written remarks before the Senate Foreign Relations Committee, 9 September 2004), <http://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm> (accessed 12 June 2009).
 35. UN Secretary-General, *Implementing R2P*, para. 6.

“Definitional Traps” and Misleading Titles

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Many people don't pay much attention to the preface of a book. I think they presume that if the authors have something important to say, it will feature in the body of the text. Often the preface addresses rather perfunctory matters, such as acknowledging research assistants and copy editors. But a reader who skips the preface to the recent report titled *Preventing Genocide: A Blueprint for U.S. Policymakers* (the Albright-Cohen Report), the work of the Genocide Prevention Task Force, will miss something important, indeed primordial. Tucked away toward the end of the front matter, under the general heading “Defining the Challenge,” is a three-paragraph section titled “Avoiding Definitional Traps.” It refers to

the definitional challenge of invoking the word *genocide*, which has unmatched rhetorical power. The dilemma is how to harness the power of the word to motivate and mobilize while not allowing debates about its definition or application to constrain or distract policymakers from addressing the core problems it describes.¹

The task force indicates its intention to “avoid the legalistic arguments that have repeatedly impeded timely and effective action” (xxi). As a consequence, it defines the scope of the report as the prevention of “genocide and mass atrocities” (xxii). It says this means “large-scale and deliberate attacks on civilians” (xxii), pointing to the definitions of genocide, crimes against humanity, and grave breaches of the war crimes that are recognized in international treaties: “We use the term *genocide* in this report as a shorthand expression for this wider category of crimes” (xxii).

It's an old debate, really. The pages of this journal have often contained articles by academics questioning the scope of the definition of genocide. The scholarly literature is replete with proposals to redefine, and generally to expand, the concept. Others, such as David Scheffer, have advocated that the term “genocide” be replaced by the broader concept of “atrocity crimes.”² The task force goes further, simply confusing the concept of genocide with the much broader notion of mass atrocity. To start with, the packaging of this report is misleading: if the subject is preventing “genocide and mass atrocity,” then the authors should say so in the title.

The members of the Genocide Prevention Task Force will no doubt consider the views expressed here to be precisely the kind of legalistic pedantry that they are trying to avoid. But let me explain why there is more to this issue than a mere “definitional trap.”

As everyone now knows, the word “genocide” was invented in 1944 by Raphael Lemkin.³ Lemkin proposed his own definition, but as work advanced on incorporating the concept in international treaty law, the drafters had to take the views of states into account in an effort to build sufficient consensus to ensure adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) and its prompt ratification. Meanwhile, a cognate concept, “crimes against humanity,” was

also developed to address much the same phenomenon that Lemkin was concerned with. To a large extent, the terms “genocide” and “crimes against humanity” were used almost synonymously during the preparations for and the actual conduct of the Nuremberg trials. However, for reasons that remain obscure, those who established the International Military Tribunal chose to include “crimes against humanity” and not “genocide” in the statute, and it was on that basis that the Nazi leaders were tried and, for the most part, convicted.

One of the prosecutors at Nuremberg, Henry T. King, told the story of meeting Lemkin in the lobby of Nuremberg’s Grand Hotel a day or two after the judgment was pronounced, on 30 September–1 October 1946. ‘At the time, Lemkin was unshaven, his clothing was in tatters, and he looked disheveled.’⁴ According to King,

When I saw him at Nuremberg, Lemkin was very upset. He was concerned that the decision of the International Military Tribunal (IMT)—the Nuremberg Court—did not go far enough in dealing with genocidal actions. This was because the IMT limited its judgment to wartime genocide and did not include peacetime genocide. At that time, Lemkin was very focused on pushing his points. After he had buttonholed me several times, I had to tell him that I was powerless to do anything about the limitation in the Court’s judgment.⁵

Lemkin’s complaint was actually with the definition of crimes against humanity in the Charter of the International Military Tribunal, but, like many, he had hoped the shortcomings would be corrected by judicial interpretation. To his disappointment, the Nuremberg judges had done no more than confirm it. The problem lay in a limitation on crimes against humanity. Crimes against humanity consisted of a wide range of “atrocious crimes,” to borrow Scheffer’s expression, but their scope was restricted to acts perpetrated in association with an illegal war. International lawyers call this “the *nexus*.” The drafting history of the Nuremberg Charter clearly indicates that the *nexus* with armed conflict was imposed in order to avoid any precedent by which those who established the tribunal (namely the United States, the United Kingdom, France, and the Soviet Union) could be held accountable for the persecution of minorities within their own borders or those of their colonies.⁶

“The blackest day of my life” is how Lemkin later described the delivery of the verdict in the Nuremberg trial.⁷ Lemkin had recently learned that essentially his entire family had perished, victims of the crime to which he had given its name. He had been hospitalized in Paris⁸ and was evidently going through a period of great physical and emotional turmoil. According to biographer John Cooper, from his hospital bed “he happened to hear on the radio about the forthcoming meeting of the General Assembly of the United Nations in New York” and was “electrified by the news, believing that here at last was a forum which would listen to him.”⁹ Lemkin immediately returned to New York, where he launched a campaign at the first session of the UN General Assembly that led to the adoption of a resolution to condemn genocide as an international crime.¹⁰ At the General Assembly, Lemkin quickly obtained the support of three delegations—India, Cuba, and Panama—for a proposed resolution on genocide that he had drafted.¹¹ The Cuban delegate, Ernesto Dihigo, explained to the General Assembly that the resolution was necessary to address a shortcoming in the Nuremberg trials by which acts committed prior to the war were left unpunished.¹²

All of this resulted in the 1948 UNGA which proclaims, in article 1, that the crime can be “committed in time of peace or in time of war.”¹³ Thus, Lemkin’s campaign did indeed fix the flaw in the Nuremberg judgment. But there was a big price to pay.

Although the great powers who had established the International Military Tribunal in 1945 had only four votes in the General Assembly, strictly speaking, they also had many allies and some vassal states and could effectively control the results. After insisting at Nuremberg that crimes against humanity be perpetrated only in wartime, they were not about to reverse themselves a mere three years later. Thus, although the UNCG admits that genocide can be committed in peacetime, its scope is otherwise much narrower than that of crimes against humanity. It protects national, ethnic, racial, and religious groups but not political groups, which are covered by crimes against humanity. Moreover, it requires that the acts involve physical destruction of a group, and not mere persecution, as is the case with crimes against humanity.

Because of the limitations on the definitions of crimes against humanity and genocide adopted in the aftermath of World War II, from the 1940s until the 1990s there were important gaps in the ability of international law to deal with atrocities. This is no longer the case. An important legal evolution, which began with the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia¹⁴ and culminated in the Rome Statute of the International Criminal Court,¹⁵ means that "crimes against humanity" now addresses a broad range of atrocities committed in peacetime.

So, in fact, what the Albright-Cohen Report is talking about is "crimes against humanity," not "genocide." Why not simply title the report *Preventing Crimes Against Humanity*? The explanation is the "unmatched rhetorical power" of the "G-word." But this is not what Scheffer proposed, although I am told that his views were very influential when the task force was preparing its report. What the task force has done is really a form of deception: the report uses one term, whose definition is well recognized and well accepted in international law, to replace another. Both genocide and crimes against humanity began their terminological careers as international crimes. Criminal law insists upon rigorous definitions for a number of reasons, not the least of which is a requirement of precision that is deeply rooted in fair trial standards. Not every form of sexual harassment will qualify as rape; all homicide is not murder; not every fizzy drink should be described as champagne; and all meat is not filet mignon. Words matter.

It is not as if this were some technical issue of interest only to specialists. For several years now, the international community has been discussing whether to describe the atrocities occurring in Darfur as "genocide" or as "crimes against humanity." The "genocide" label has a lot of traction in the United States, having first been proposed by the Bush administration in late 2004.¹⁶ It has not, however, been adopted by most other governments, nor has it been endorsed by the leading international human-rights organizations. A UN report, prepared at the behest of the Security Council, concluded that criminal acts in Darfur were better described as crimes against humanity.¹⁷ Recently, a pre-trial chamber of the International Criminal Court authorized an arrest warrant for President Omar Al-Bashir of Sudan on charges of crimes against humanity, refusing, however, to also endorse charges for genocide.¹⁸

Is this merely a case of "legalistic arguments" that "impede timely and effective action," as the Albright-Cohen Report seems to suggest? In fact, at the practical level it makes no difference whatsoever whether Al-Bashir is charged with crimes against humanity or with genocide: one way or another, he is threatened with prosecution and, if convicted, will go to jail for a very long time.

The task force is focused on prevention, not on punishment. In this area, the principal document is the “responsibility to protect” (R2P) resolution, adopted by the UN General Assembly in 2005. Here is what it says:

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and should support the United Nations to establish an early warning capability.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. 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 of the United Nations and international law. We also intend to commit ourselves, as necessary and appropriate, to help states build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those which are under stress before crises and conflicts break out.¹⁹

Note the terminology: “genocide, war crimes, ethnic cleansing and crimes against humanity.” There is no distinction between them. The obligation to protect vulnerable populations applies whether the violations are characterized as crimes against humanity or as genocide.

I will not reprise here my arguments about why it may be useful to retain a distinction between genocide and crimes against humanity, despite the fact that such a distinction now has virtually no legal consequences.²⁰ But it is still extremely important at the political level.

The establishment of the UN Special Adviser on the Prevention of Genocide is an important recent development, following a pledge by UN Secretary-General Kofi Annan in January 2004 at the Stockholm International Forum titled Preventing Genocide: Threats and Responsibilities. In July 2004, the secretary-general announced that he had appointed Juan Méndez to the position.²¹ Annan explained that the mandate was derived from Security Council Resolution 1366 (2001), in which the Security Council acknowledged the lessons to be learned from the failure of preventive efforts that preceded such tragedies as the genocide in Rwanda and resolved to take appropriate action within its competence to prevent any recurrence. The Security Council also said it was willing to give prompt consideration to early-warning or prevention cases brought to its attention by the secretary-general. The “mission” of the Special Adviser was endorsed by the 2005 World Summit of heads of state and government.²²

An Advisory Committee on Genocide Prevention was appointed by the secretary-general in May 2006 to assist the special adviser. The committee recommended that the special adviser's title be changed by adding "mass atrocities," so as "to make it broader in scope without the need to determine first whether a specific situation has a 'genocidal' character."²³ When Francis Deng was appointed to replace Méndez, in mid-2007, the secretary-general described Deng as his "Special Adviser on the Prevention of Genocide and Mass Atrocity." Unusually, the Security Council took several months to respond to a letter from the secretary-general informing it of the proposed changes, and requested 'further details from you on the implications of the change in title for Mr Deng's post set out in your letter.'²⁴ In February 2008, the General Assembly authorized the upgrading of the position to the under-secretary-general level but continued to refer to it as "Special Adviser on the Prevention of Genocide."²⁵ Interpreting this as discomfort with his initial proposal, the secretary-general withdrew to the initial title of "Special Adviser on the Prevention of Genocide" that had been adopted in 2004.

There is no further information in the public record, and nothing to explain which UN member states were opposed to expanding the mandate of the special adviser, as proposed by the secretary-general. According to one rumor, the Russian Federation was uncomfortable with the proposed change. This makes sense: Moscow is probably satisfied that it is not committing genocide in Chechnya, and therefore unconcerned that it might be targeted by the special adviser; it cannot be so sure when it comes to crimes against humanity. And Russia is far from the only country in this situation. As was the case in 1948, when states were prepared to agree to a convention on genocide provided that it was narrowly defined, today they will accept a Special Adviser on Genocide but are uncomfortable with one named "Special Adviser on Genocide and Mass Atrocity." The fact is, sometimes states will agree to what are clearly important, progressive developments in law and politics only when they are relatively confident that the terms are precise and strictly defined. To that extent, it is terminological clarity, and not the confusing over-breadth proposed in the Albright-Cohen Report, that is truly mobilizing.

Any anxiety about muddling the boundaries of genocide with the much vaguer notion of "mass atrocity" will only be aggravated upon a full reading of the report. Of course, it is addressed to the US government rather than to the international community. But because it constitutes a blueprint for action for the most powerful nation in the world, it really concerns everyone. The fact that it is destined for consumption in Washington doesn't make the fact that it is rather short on multilateralism any more acceptable. Most countries would expect that initiatives to prevent genocide should originate from the United Nations in New York, not from the Department of State and the Pentagon in Washington. Particularly troubling are the report's hints at unilateral action by the United States (98). At one point, the report says that 'nations may act without Security Council authorization' (75). This proposition, which was used to justify the NATO bombing of Serbia in 1999, is today rejected by the vast majority of states—as is confirmed in the R2P resolution, which plainly excludes any intervention aimed at preventing genocide (or crimes against humanity) outside of the legal framework of the UN Charter.²⁶

Military action in breach of the UN Charter had a certain seductive ring about it in 1999, when we were being deluged with reports of "genocide" in Kosovo. In the early days of the bombardments, NATO leaders, including US President Bill Clinton, spoke of genocide.²⁷ Even the UN secretary-general referred to "the dark cloud of the crime of

genocide.”²⁸ At the time, many were taken in by the “rhetorical power” of the “G-word,” because it seemed that even the sacrosanct Charter of the United Nations ought to give way when genocide is being perpetrated. But “genocide and mass atrocity”? As defined by the government of the United States? This is a step too far.

President Barack Obama has done a great deal to improve the tarnished image of the United States in the world. He has emphasized the importance of multilateralism by such moves as agreeing to seek a place on the Human Rights Council. His acknowledgment of American arrogance in the past was a useful message, and appropriately humble. An endorsement of the Albright-Cohen Report may be a step in the wrong direction, however, given the report’s exaggerated emphasis on the use of force and its cavalier dismissal of important legal distinctions, and Obama might be wise to put it on the shelf. Prevention of genocide (and of mass atrocity) will result from stronger international institutions, in particular the United Nations and the International Criminal Court, not from the threat of unilateral military action by the United States.

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 11 June 2009), xxi. Subsequent references appear parenthetically in the text.
2. David Scheffer, “Genocide and Atrocity Crimes,” *Genocide Studies and Prevention* 1 (2006): 229–50.
3. Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for World Peace, 1944).
4. Henry T. King, Jr., Benjamin Ferencz, and Whitney R. Harris, “Origins of the Genocide Convention,” *Case Western Reserve Journal of International Law* 40 (2008): 13–34, 13.
5. *Ibid.*, 13–14.
6. For a more extensive explanation of this history, see William Schabas, “Semantics or Substance? David Scheffer’s Welcome Proposal to Strengthen Criminal Accountability for Atrocities,” *Genocide Studies and Prevention* 2 (2007): 31–36.
7. William Korey, *An Epitaph for Raphael Lemkin* (New York: Jacob Blaustein Institute for the Advancement of Human Rights, 2001), 25.
8. John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (Basingstoke, UK: Palgrave Macmillan, 2008), 73.
9. *Ibid.*, 74–75.
10. *The Crime of Genocide*, UN General Assembly Resolution 96(I), UN Doc. A/64/Add. 1 (11 December 1946).
11. Cooper, *Raphael Lemkin*, 76–87. For Lemkin’s account see Raphael Lemkin, “Totally Unofficial Man,” in *Pioneers of Genocide Studies*, ed. Samuel Totten and Steven Leonard Jacobs, 365–99 (New Brunswick, NJ: Transaction Publishers, 2002), 384–87. Also see Samantha Power, *“A Problem from Hell”: America and the Age of Genocide* (New York: Basic Books, 2002), 51–54.
12. *Official Records of the First Session of the General Assembly, Legal Questions, Sixth Committee, Summary Record of Meetings*, UN Doc. A/C.6/SR.22 (29 October 1946).
13. *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277, http://www.unhcr.ch/html/menu3/b/p_genoci.htm (accessed 12 June 2009), art. 1.
14. *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY-94-1-AR72 (2 October 1995), para. 141; *Prosecutor v. Tadić*,

- Judgment, ICTY-94-1-A (15 July 1999), para. 251; *Prosecutor v. Kordić et al.*, Judgment, ICTY-95-14/2-T (26 February 2001), para. 23.
15. *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9, (1998) 37 I.L.M. 999, 2187 U.N.T.S. 90, art. 7
 16. Colin L. Powell, “The Crisis in Darfur” (written remarks before the Senate Foreign Relations Committee, 9 September 2004), <http://www.2001-2009.state.gov/secretary/former/powell/remarks/36042.htm> (accessed 12 June 2009).
 17. *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1546 of 18 September 2004*, UN Doc. S/2005/60 (25 January 2005), http://www.un.org/News/dh/sudan/com_inq_darfur.pdf (accessed 12 June 2009), para. 184.
 18. *Prosecutor v. Bashir*, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09 (4 March 2009).
 19. *Outcome Document of the 2005 World Summit*, UN Doc. A/RES/60/1 (24 October 2005), paras. 138–39.
 20. These are set out in William Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 652–54.
 21. Letter dated 12 July 2004 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2004/567. See also letter dated 13 July 2004 from the President of the Security Council addressed to the Secretary-General, UN Doc. S/2004/568.
 22. *Outcome Document of the 2005 World Summit*, para. 140.
 23. Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2007/721.
 24. Letter dated 7 December 2007 from the President of the Security Council addressed to the Secretary-General, UN Doc. S/2007/722.
 25. *Special Subjects Relating to the Proposed Programme Budget for the Biennium 2008–2009*, UN Doc. A/RES/62/238, Part V, para. 10.
 26. *Outcome Document of the 2005 World Summit*, para. 139.
 27. John M. Broder, “In Address to the Nation, Clinton Explains Need to Take Action,” *New York Times*, 25 March 1999. See also Francis X. Clines, “NATO Refocuses Targets to Halt Serbian Attacks on Albanians in Kosovo,” *New York Times*, 30 March 1999; interview with David Scheffer on CNN, 18 April 1999, in which Scheffer refers to “clear indications of genocide” and adds, “I’m sure that the prosecutor [of the International Criminal Tribunal for the Former Yugoslavia] will have to start looking at that charge as she proceeds with her investigation.”
 28. *Secretary-General to Commission on Human Rights: I Have Made Human Rights a Priority in Every United Nations Programme*, UN Doc SG/SM/99/91 (7 April 1999), <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F9C47F20F44BDC118025674D00295223?opendocument> (accessed 15 July 2009).

A Step Forward

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Introduction

I begin this commentary with a general appreciation for the report of the Genocide Prevention Task Force (the Albright-Cohen Report).¹ The contents of the report are a decisive step forward in the debate over how to prevent and stop genocide and other forms of mass violence. The report synthesizes in a coherent and accessible fashion a significant body of research, policy analysis, and insights from actors inside and outside government; it provides a menu of concrete and sensible policy options that are likely to frame debate on genocide prevention in the short term. These strengths, and a few more I shall discuss, constitute a major advance on policy and academic discussions regarding the question of genocide prevention. Such is my overall assessment, even if I will push back on a few points.

Before moving to the substance of the report, I want to comment on the process of commenting. The Albright-Cohen Report brings to the fore a substantive tension in the field of genocide studies. On the one hand, many scholars in the field maintain and insist on a traditional scholarly approach to genocide-studies research. Their focus is on theory, evidence, methods, and argument. On the other hand, many scholars take a more normative and practical approach, often demonstrated by interest in the policy questions surrounding prevention and intervention.

Scholars of the former rightfully approach their research topics from a value-neutral position, and they do not want policy concerns to drive the research design, results, and analysis. Indeed, a not particularly helpful but somewhat common response to scholarship is—I am paraphrasing—“How will your theory help us stop genocide?” This response is not helpful for a number of reasons. To thrive as a field—to attract serious scholars, to advance research and understanding, and to earn recognition from and integration with other established scholarly arenas—a value-neutral scholarly approach that prizes theory, evidence, and methods is paramount. At the same time, it does not follow, as some researchers in the field maintain, that scholars should be uninterested in the normative and policy implications of scholarship. While researchers should aim for a value-neutral approach, the topic, in my view, is one that has unavoidable normative and ethical dimensions. Genocide studies is thus not a typical field of scholarly inquiry.

The community of scholars in the field of genocide studies will benefit if there is room for the theoretical and normative approaches to cohabit a common intellectual space. To be sure, many scholars already bridge a theoretical/scholarly approach with normative/policy concerns, and, indeed, *Genocide Studies and Prevention* embodies that synthesis, as its title indicates. But there is also a need, in my view, to articulate the importance of a scholarly community that respects these two positions and aims for mutual engagement. In the end, the health of the field will improve if both positions thrive. The best scholarship will likely contribute the best ideas and information, which in turn will shape policy options for the better, even if the policy implications are not immediately clear. Genocide scholarship should not put policy first, but that does not mean that the former will not inform the latter. At the same time, it is a chimera to

think that the normative, ethical, and policy dimensions of research on genocide can be bracketed out of the discussion. These dimensions are ineluctable, and to wish them away is to alienate students, scholars, and policy makers who are drawn to genocide studies.

Strengths

Turning to substance, I argue that the Albright-Cohen Report substantially broadens public and policy debate about the question of genocide prevention. Many existing public, policy, and even academic discussions of genocide prevention are narrow, usually revolving around the concepts of “political will” and “humanitarian intervention” (i.e., coercive military action to stop atrocities). The report does not ignore these issues; through careful language, concrete recommendations, and disaggregation, it provides significant substance and nuance to them. In addition, the report opens new domains of analysis in the debate. Below I identify five specific areas of strength.

First, the report identifies and addresses a significant and underappreciated gap in policy discussions of genocide prevention—namely, that the United States (like other powerful states, to my knowledge) lacks a coherent policy framework for genocide prevention. Moreover, there is no standing inter-agency process or substantial dedicated institutional capacity for addressing the question of genocide prevention. The fact that the United States lacks a coherent policy framework for genocide prevention may seem like an obvious point, but it is one that rarely attracts specific attention. Yet the report states this point clearly: “Simply put, the U.S. government does not have an established, coherent policy for preventing and responding to genocide and mass atrocities” (3). Highlighting this problem (and providing recommendations on how to solve it) is in itself a significant contribution, one that gives substance to the concept of “political will,” which can be nebulous and circular. The political will to take preventive action will be much more plausible if there are dedicated institutional mechanisms and a policy framework within which to make difficult decisions.

Second, the report takes a comprehensive strategic approach that highlights five domains (early warning, early prevention, preventive diplomacy, military options, and international engagement). This is a perspicacious view of genocide prevention, one that emphasizes US leadership (which is appropriate for a policy statement aimed at influencing US policy) but still recognizes the importance of international processes and actors; one that addresses long-term processes of prevention as well as short-term processes of halting and reversing escalating and genocidal conditions; and, finally, one that presents a set of concrete and sensible recommendations for implementation. The report recognizes the importance of conditions that make states, over the long term, vulnerable to mass violence; it recognizes the importance of diplomacy and of non-violent actions but does not shy away from the potential use of force; and it recognizes the importance of scholarship in designing early-warning mechanisms. These are all valuable perspectives and insights on genocide prevention without a clear omission.

Third, several of the short-term recommendations in chapters one and two deserve particular recognition. The suggestions not only are sensible and specific but also seem eminently doable. The recommendations that stand out include the notion that Congress appropriate a specific dollar amount for genocide prevention, that an inter-agency commission—the Atrocities Prevention Committee—be created, that the

president issue a policy directive on the importance of genocide prevention, that the director of national intelligence include an assessment of the risk of genocide in annual testimony to Congress, that foreign-service professionals be trained in early warning, and that genocide prevention be a candidate for an “automatic trigger.” These recommendations strike me as appropriate, doable, sensible, not obvious, and potentially significant in their impact—that is, they strike me as significant contributions to the debate. Others, such as the recommendation that the “American people” establish a “permanent constituency for the prevention of genocide,” are reasonable and important but perhaps less appropriate for a document aimed principally at policy makers.

Fourth, the report performs a service by identifying a series of specific coercive and non-coercive measures that can be taken to prevent genocide. In fact, the language of the report is more specific and careful; it discusses “tools available to the United States to help halt and reverse escalating threats of genocide and mass atrocities” (61). The measures in question are found principally in two smart tables, one on page 61 and one on page 83. I count twenty-four specific non-military options on page 61. These may not be earth-shatteringly new recommendations—they include everything from supporting dialogue to referral to international courts. But at the same time, having thoughtfully specified a range of concrete measures, the report enriches public debate on the issue and provides concrete measures to frame policy choices. The table on page 83 addressing “graduated military options for genocide prevention and response” is especially valuable. The table presents four sets of military options, both defensive and offensive. The defensive strategies aim to protect targeted populations through, for example, positioning militaries in deterrent positions or protecting safe areas; the offensive options aim to disrupt or defeat the military capacity of perpetrators, through, for example, precision targeting and deploying ground troops. To be sure, some of these military options will not work well in certain situations; some could backfire; and some might invite significant international reputational costs. In other words, I am not advocating the merits of any one particular action; as the report notes, a policy response is likely to be case specific. But the presentation of these options specifies a reasonable and specific range of military responses, thereby broadening and complicating the debate on “humanitarian intervention.”

Fifth, the report does a good job of engaging and incorporating scholarship and debates in the field of genocide studies. For example, it does not sidestep the knotty conceptual questions of what “genocide” means but, rather, from the beginning refreshingly states that it takes an expansive view of the outcome of interest—“large-scale and deliberate attacks on civilians” (xxii). The chapter on early warning does a particularly good job of engaging scholarship. The report is honest about gaps in knowledge: “while scholars have had some success in identifying long-term risk factors, it has proven much more difficult to find generalizable near-term indicators, ‘accelerators,’ or triggers” (21). The authors note that hate speech is often seen as a warning sign but that there are many cases of hate speech that did not lead to genocide or mass violence. The report calls for more research on the dynamics of escalation and argues that, in the mean time, case-specific indicators are important. Finally, to the extent that there is consensus on causes, the report argues that the presence of armed conflict and change in regime character are the most reliable indicators. These are all serious, thoughtful, and not obvious appraisals and syntheses of the existing genocide-studies literature, ones that recognize a place for and encourage more scholarship.

Weaknesses

Despite the strengths of the report, I see four major weaknesses, or, at least, four areas that deserve greater elaboration. Not a policy insider, I do not have a beat on the particular feasibility or likely success of the proposals I highlight in the previous section. What I like is that the report is smart, comprehensive, and specific; it makes good use of scholarly research; and it deepens and broadens existing discussions. Nonetheless, I see four areas for improvement.

First is the question of national interest. To come to fruition, the report's recommendations require making genocide prevention a priority. If implemented, the suggestions would necessitate significant action, energy, time, and resources, including diplomatic capital, on the part of policy makers. The report recognizes that for these outlays to occur, the American public and US politicians need to recognize that taking such actions would be in the national interest. Here the case should have been stronger. The report should also have provided more language about why genocide prevention, as opposed to some other policy priority, is a standout issue, given that any US administration will face a myriad of domestic and international policy needs and priorities. When discussing the national interest, the report points to four issues—genocide is an assault on universal human values; genocide fuels instability in states where terrorist recruitment and training occur; genocide has negative regional consequences, including refugee flows, that are expensive; and the United States' standing in the world is negatively affected if the government is perceived as a bystander. These are generally valid claims, but none of them is particularly compelling. There is thus something of a missed opportunity to produce a synthesis on why preventing genocide is so important—making the strength of the report lie with the recommended policy measures and options. Moreover, the connections between genocide and some of the stated national-interest concerns, such as terrorism, are tenuous; while genocide does have major negative regional repercussions, so do other types of disasters. It is also debatable how the rest of the world perceives the US position on genocide, and the report underestimates opposition to US leadership on genocide prevention, especially if such action is military and taken outside a UN framework (a point to which I will return). For example, the American leadership on Darfur has been met with significant international skepticism (as well as some support), which suggests that the issue of international reputation is more complicated than the report contends. In short, given how important making the case for genocide prevention is, the issue of national interest deserved the same attention, thoughtfulness, and research devoted to other topics in the report.

Second, the chapter on early prevention strikes me as a wish list of current foreign-policy nostrums with no clear focus or specific ties to the dynamics of genocide. The chapter advocates a tripartite approach that focuses on leaders, institutions, and civil society. On the question of altering leaders' calculus, the authors advocate the use of sanctions on particular industries, restricting funds and weapons, and changing a "zero-sum" mentality through training programs. However, sanctions often affect the vulnerable and poor, not the leaders; arms embargoes are very difficult to enforce, and genocides can be low-tech; and the idea of changing mentalities through training programs appears naïve. The report goes on to stress the importance of power sharing and democratic transition (even as it identifies political instability as one of two major known risk factors for genocide), strengthening the rule of law, reforming the security sector, developing civil society, supporting economic and legal empowerment, and supporting a free and responsible media. Here again the report does not demonstrate

the same sophistication of engagement with the existing literature that is evident elsewhere. Most of these recommendations are very difficult to achieve from the outside, and they do not have established links to genocide prevention. Establishing the “rule of law,” for example, is problematic in a host of ways—not because the rule of law is bad but because it develops in quite a complicated way and is not easily created through external actions. Perhaps more importantly, since contemporary genocide is usually a crime of state—a state policy—rule of law, *per se*, is not the main problem. A similar point can be made about civil society. Two decades’ worth of democracy promotion that included significant aid to civil society has had mixed effects at best. Not only is promoting civil society from the outside not necessarily effective, there is no clear link with genocide prevention. In short, this chapter seems less careful and specific than others, appearing more like a wish list taken from current democracy-promotion policies.

Third, the chapter on employing military options includes a diagram titled “Process of Violence: A Military Planning Tool” (82). On the one hand, the diagram is an important starting point, and the fact that the report disaggregates genocide into a five- or six-stage process is quite valuable. On the other hand, there is significant room to grow analytically, and, given how important understanding the process of violence is, more research is needed on this issue—a point made elsewhere in the report. There are a few problems with the diagram. One is that several key stages are analytical black boxes. For example, a key stage is when “leaders judge that target group seriously threatens their intent to keep/gain power or impose an ideology.” At another stage, “leaders see genocide as the way to prevail in ideological, political, or military contest.” There are questions here: Which leaders? How does one measure how leaders perceive threats? And so forth. There is also no discussion of local-level dynamics, which are often critical. But the key issue, from a theoretical perspective, is why leaders would hold these positions. The diagram, which is as close to a model of genocide as anything in the report, does not address that issue clearly. There is thus a need to have better analysis of the conditions, structures, and circumstances that lead to the process of violence; to create indicators of these stages; and to test whether or not this model does, in fact, apply to cases where genocide did and did not occur. Doing so will help provide a better model of how, when, and where genocide is likely to take place, which, in turn, is critical for genocide prevention.

Fourth, while the report recognizes the importance of international context—and stresses a normative context and capable international institutions—it does not provide strong enough legal, normative, and political arguments in this domain. The report claims that the United Nations can be a forum for action; if not, then NATO; and if not, then the United States should form a like-minded coalition. In part to support this claim, the authors assert that there has been a “revolution in conscience” (100) in the international community for support for genocide prevention. This claim is an exaggeration. If the United States were to take coercive military action outside the framework of the United Nations, such action would undoubtedly invite significant opposition, from powerful and less powerful states alike, but almost certainly from states that matter to the United States. The United States would need to provide a strong legal and normative justification to such states, as well as to domestic actors who would be worried about the costs of coercive US action. Here again the report has missed an opportunity to articulate a normative foundation for a robust response to genocide. If US leadership did invite significant opposition, it is not clear how policy makers should reconcile other diplomatic priorities or respond to such opposition.

My point here is simply that the report should have gone further in articulating an international doctrine or providing the legal and normative tools and language for justifying potentially diplomatically costly action.

But—to return to where I started—notwithstanding these concerns, the report is a critical advance on existing debates and establishes for the first time, to my knowledge, a largely cogent framework for developing a national policy on genocide prevention.

Note

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 12 June 2009), xxi. Subsequent references appear parenthetically in the text.

Wishful Thinking Will Not Stop Genocide: Suggestions for a More Realistic Strategy

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Good intentions may be necessary, but they are not sufficient, to prevent genocide. Unfortunately, this renders the recent report of the Genocide Prevention Task Force, *Preventing Genocide: A Blueprint for U.S. Policymakers* (the Albright-Cohen Report), a recipe for failure.¹ The co-chairs, former US secretaries of state and defense Madeleine Albright and William Cohen, obviously have good intentions, and they do offer several constructive reforms. Overall, however, the report ignores the most profound lessons of past failures, declines to make the hard choices on policy dilemmas, and neglects to call for the costly military reforms that could enable intervention to prevent future genocides. A more realistic assessment of these challenges gives rise to a very different set of recommendations than that found in the report.

The root of the problem is that the Albright-Cohen Report rests on six faulty, but largely unstated, assumptions: first, that the only substantial obstacle to stopping genocide is a lack of political will; second, that humanitarian intervention could be significantly improved by increased military planning and coordination with multi-lateral institutions; third, that the United States is often inhibited from intervening by financial considerations and by the belief that intervention must be all or nothing; fourth, that the political will for intervention can be fabricated by establishing new domestic and international institutions; fifth, that existing US diplomatic strategies to reduce genocidal violence are well conceived and thus could reduce genocidal violence if only they were backed by more funding and political will; and, sixth, that codifying humanitarian intervention as the automatic policy response to atrocities would reduce the amount of genocidal violence in the world.² These faulty assumptions give rise to prescriptions that either are inadequate or could backfire.

Flawed Assumptions

Obviously, insufficient political will can be an obstacle to effective intervention. But it is not the only, or even the major, hindrance in many cases. Genocidal violence often is perpetrated too quickly for military intervention to prevent it, at least given the current make-up and positioning of potential intervention forces. In Rwanda, for example, most Tutsi victims of the 1994 genocide were killed in less than three weeks; in Croatia in 1995, the army ethnically cleansed the entire Serb population of the Krajina region in less than a week; in Kosovo in 1999, Serb forces ethnically cleansed nearly half of the ethnic Albanian population in two weeks; and in East Timor in 1999, Indonesian-backed militias destroyed the majority of infrastructure and displaced most of the population in about a week. The Albright-Cohen Report calls for a new genocide early-warning system, but that probably would not have made a difference in these cases because US forces typically require several weeks to deploy to such hot spots, even by air, owing to their enormous equipment needs. Moreover, the United

States already has early-warning systems, but such systems have difficulty in differentiating quickly between civil war and genocide.

The report's main military proposals to improve humanitarian intervention—increased Pentagon planning and coordination with multilateral institutions—are insufficient and potentially counterproductive. Although the report does a good job of delineating the potential military options to suppress genocidal violence (83), its main Pentagon reform proposal is merely to draft a new doctrine focused on counter-genocide operations (87). The report neglects to call for a substantial overhaul of the equipping and basing of US forces, which would be politically divisive but necessary for any new doctrine to improve significantly the effectiveness of intervention. Rather than reconfiguring domestic forces, the report fancifully suggests that the lack of “rapid reinforcement capacity . . . for UN forces could be remedied by creating a strategic reserve that would be drawn from countries contributing to UN missions” (91). Unfortunately, history demonstrates that advance international commitments of force to UN interventions—whether peacekeepers and armored vehicles for Rwanda or helicopters for Darfur—are not worth the paper they are written on. Moreover, by passing the buck to the United Nations, such initiatives undercut the prospects for quicker, more effective unilateral action.

In another vain attempt to conjure alternative intervention forces, the report embraces a US policy, initiated in the 1990s, to train indigenous African troops for peace operations (84–86). This initiative had a reasonable premise—that African states would be more willing than others to risk the lives of their troops to stop conflict on the continent—but it has faced practical obstacles. First, because of inadequate resources and some concern about unintended consequences, the United States has provided little, if any, weaponry or combat training. Accordingly, the participating African forces are prepared only for the permissive environment of peacekeeping after a conflict ends, as in Liberia in 2003.³ Second, the initiative has so far failed to pre-position heavy weapons, armored personnel carriers, or helicopters at African bases; as a result, in the event of a crisis, such equipment would have to be transported and joined up with intervention forces on an ad hoc basis, wasting precious time. Third, most training has been conducted only within national units, so that the few trained forces remain unprepared for the multinational coalition operations that would be necessary for any large-scale intervention. The African Union did recently establish the framework for an African Standby Force of five regional, multinational brigades. But this project, even after receiving some foreign assistance, is so woefully underfunded that it remains skeletal, adding little to the few high-quality national military units that already existed on the continent.⁴ In light of these shortfalls, an all-African force has little hope of enforcing peace in a situation such as Darfur any time soon.

The ultimate multilateral fantasy is the report's suggested reform of UN Security Council procedures:

The P-5 should agree that unless three permanent members were to agree to veto a given resolution, all five would abstain or support it. This should apply, in particular, to resolutions instituting sanctions and/or authorizing peace operations in situations when mass atrocities or genocide are imminent or underway. (106)

In other words, China and Russia should permit the United States, the United Kingdom, and France to decide by themselves when it is legal to violate another state's sovereignty. The report could have added a health advisory: don't hold your breath.

No evidence is offered for the report's assertion that the United States has been inhibited from preventing genocide by the potential financial cost and the belief that intervention is an all-or-nothing proposition. "The question of who would pay the bill" (58), claims the report, blocked US intervention in Rwanda, Darfur, and Kenya. In reality, the United States dragged its feet in each case for political reasons: in Rwanda because of recent casualties in Somalia; in Darfur because US troops were overstretched in Iraq and Afghanistan and unable to contemplate another quagmire; and in Kenya, apparently, because the White House backed the candidate who stole the election.⁵ Creating a budget line for urgent intervention would not overcome such political obstacles.

The historical record also contradicts the report's assertion that, "in the past, the belief that little or nothing could be done to halt or reverse an escalating crisis, short of full-scale military intervention, has fatally undermined political will" (56). In reality, the United States has employed a range of flexible responses short of full-scale invasion by ground forces. In northern Iraq in 1991, the US military delivered humanitarian aid and imposed a no-fly zone. In Somalia in 1992, US Marines secured the delivery of relief aid. In Bosnia, between 1992 and 1995, the United States gradually escalated from aid flights, to a no-fly zone, to deterrent air strikes, to facilitating the arming and training of combatants, to bombing military installations.⁶ In Kosovo in 1999, the United States led NATO's strategic bombing of Yugoslavia. In Liberia in 2003, a small deployment of US Marines facilitated the departure of a brutal ruler and the end of a long-running civil war.⁷ Even during the Rwandan Genocide in 1994, the Pentagon planned a small-scale intervention on Rwanda's border to facilitate the escape of refugees, but the Clinton administration chose not to implement it until the fighting had stopped. In none of these cases was the United States deterred from responding flexibly by a belief that only "full-scale military intervention" with ground forces could do any good.

The report's proposal to create new domestic and international institutions could facilitate intervention, but only if there were also political will, which would not magically be created by those institutions. The institutional recommendations include spending \$250 million per year on conflict management, creating a new early-warning system, requiring policy reviews when warnings are received, establishing an Atrocities Prevention Committee to guide the response, and coordinating information sharing and intervention with international partners, including non-governmental organizations. These are fine suggestions, but they are neither sufficient to create the political will for intervention nor necessary when that political will already exists. The report claims that a lack of institutional capacity explains America's failure to stop genocide: "We know firsthand, for example, that the attention of senior policymakers was distracted from Rwanda in 1994 by other crises" (2). This excuse for non-intervention is demonstrably untrue and smacks of attempted self-exculpation by co-chair Albright, who at the time was ambassador to the United Nations. The Clinton administration knew immediately when violence broke out in Rwanda, figured out two weeks later that it was genocide, established an inter-agency task force that met daily, and yet still refused to deploy any forces to the region until three months later, after the genocide was over.⁸

Preventive or Pyromaniac Diplomacy?

The report assumes that current US strategies of preventive diplomacy are well designed and require only more funding and more political support in order to succeed.

But evidence has mounted for nearly two decades that aspects of these strategies can exacerbate conflict and, therefore, should be modified or discarded. For example, the report calls for promoting democratization and enhancing “civil society . . . [which] can be a bulwark against the spread of violence” (48). But scholars have repeatedly demonstrated that rapid democratization raises several-fold the risk of violence⁹ and that building intra-group civil society actually increases intergroup violence.¹⁰ Rwanda is exemplary: the infamous hate radio was the first station outside government hands, and the genocidal militias arose from the creation of new political parties—both developments ironically consistent with international pressure to expand democracy and civil society.

In keeping with recent US foreign policy, the report also advocates “threatening legal and moral accountability for violations of international law, especially in the era of the International Criminal Court [ICC] and ad hoc tribunals” (43). But there is no evidence that such international justice mechanisms produce any deterrent effect.¹¹ To the contrary, there is plentiful evidence that ICC indictments in Uganda have inhibited the resolution of a conflict that threatens millions of innocent civilians in that country and in neighboring Sudan and the Democratic Republic of Congo. The indicted rebel leader Joseph Kony offered to surrender if the ICC indictment were dropped in favor of local justice mechanisms, to which Uganda’s government agreed, but the ICC refused, thereby perpetuating the violence.¹² The report, to its credit, notes that “policymakers should not dismiss the potential benefits of rewarding ‘bad people’ for ‘good behavior’” (70). But it then ignores its own advice by endorsing uncompromising international justice mechanisms such as the ICC, concluding that “the potential benefits do indeed outweigh the costs” (103). This conclusion is hardly convincing, given that the benefits have yet to be identified while the costs already include thousands of innocent civilians lying in unmarked graves.

Equally disturbing is that the report advocates international sanctions to compel states to share power with opposition groups, without acknowledging or addressing the fact that such pressure has backfired disastrously in several recent cases.¹³ In Rwanda in the early 1990s, the international community withheld vital aid to successfully force the Hutu majority regime to sign an agreement to hand power to invading Tutsi rebels. But hard-line Hutu elements felt so threatened by the prospect of domination by the historically oppressive Tutsi, especially after the Hutu president was assassinated, that they instead perpetrated a final solution to kill all Tutsi.¹⁴ Similarly, in East Timor in 1999, international sanctions successfully compelled Indonesia to hold an independence referendum, but Indonesian-backed militias so feared the prospect of losing power and facing retribution that they rampaged in a vain attempt to retain control.¹⁵ The Albright-Cohen Report simplistically asserts that sanctions “may help deter or dissuade . . . [states] from committing atrocities” and that “aid conditionality may be used to improve the behavior of regimes” (42–43). But history demonstrates that attempting to use sanctions to compel a regime to hand over power or territory to its mortal enemy can backfire catastrophically—serving not as preventive but as “pyromaniac” diplomacy.¹⁶

The report also fails to recognize a crucial nuance—that international pressure can have drastically different consequences depending on whether it is used to support violent or non-violent domestic protest groups. When international sticks and carrots are used to aid peaceful resistance movements, the target state is more likely to make concessions toward freedom and equality. By contrast, when international pressure seeks to coerce a state to concede to rebels, the militants typically are emboldened

by the perceived diplomatic support, which compels the state to intensify its counter-insurgency, thereby exacerbating humanitarian suffering and reducing the prospects for democratization.¹⁷ Ironically, the report lists “nonviolent protest” as associated with “increased risk of genocide or mass atrocities” (25). This may be true compared to a situation of no protest, but it is exactly wrong in relation to the relevant comparison: violent protest.

This underscores the signal shortcoming of the report: a failure to appreciate how institutionalizing a humanitarian response can inadvertently backfire by creating more humanitarian suffering, a dynamic akin to “moral hazard,” as I and others have documented over the last decade.¹⁸ Since at least 1945, most genocidal violence has been state retaliation against perceived civilian supporters of rebellion. Humanitarian intervention aims to protect these civilians, but, in so doing, it often rewards the rebels as well, by enabling them to attain political objectives of autonomy or independence, as in Kosovo or Iraqi Kurdistan. The recent practice of humanitarian intervention thus creates a perverse incentive for rebellion by militants who cannot protect their own civilians against anticipated state retaliation—as in Bosnia, Kosovo, and Darfur. Counterintuitive as this conclusion may seem, institutionalizing humanitarian intervention thus causes some genocidal violence that would not otherwise occur.

The report alludes to this moral-hazard problem once, asking, “Will overt support to the threatened communities reduce their vulnerability or embolden them to take actions that will only escalate the problem?” (57–58). But the authors do not explain this conundrum, nor discuss what to do about it. Indeed, the report never uses the term “moral hazard”; it only once employs the related term “morally hazardous” (70) and, ironically, does so incorrectly. More troublingly, the report endorses a litany of “targeted measures” (66)—including economic sanctions, arms embargoes, covert assistance to rebels, and military intervention—all of which would exacerbate the moral-hazard problem. More enlightened intervention measures could mitigate this perverse dynamic, as I detail elsewhere and summarize below,¹⁹ but the report offers no such recommendations.

A More Realistic and Effective Strategy

The Albright-Cohen Report’s stated goal of reducing genocidal violence may be achievable by embracing a different, more realistic set of policy recommendations. These alternative proposals are based on two key insights. First, since most genocidal violence arises as a state response to rebellion, an enlightened intervention policy should aim to deter both rebellion and overreaction by states, thereby reducing the need for humanitarian military intervention to a level within the capacity of potential interveners.²⁰ Second, because genocidal violence can be perpetrated very quickly if and when diplomacy fails, a main determinant of the number of lives saved is the speed of deployment; therefore, military reforms should focus on stationing and structuring intervention forces for rapid reaction.

Five reforms of intervention policy could help reduce moral hazard and, thus, the amount of genocidal violence confronting potential interveners. The first reform is the most important: the international community should refuse to intervene in any way—diplomatic, economic, or military—to help sub-state rebels unless state retaliation is grossly disproportionate. This would discourage militants within vulnerable sub-state groups from launching provocative rebellions that recklessly endanger civilians in hopes of garnering foreign intervention. At the same time, by retaining the

intervention option for cases of disproportionate retaliation, this reform also would discourage states from responding to rebellion by intentionally harming civilians. All sides in civil conflicts would thus have incentives for less violent action.

Second, when interveners in a civil conflict aim to deliver purely humanitarian aid (food, water, sanitation, shelter, and medical care), they should do so in ways that minimize the help to rebels. Typically, rebels benefit from such deliveries by intercepting aid convoys or by transforming refugee and internally displaced persons (IDP) camps into training and recruitment centers. To prevent this, interveners should provide military escort for aid convoys and deploy well-trained troops or police to secure the perimeters of camps to prevent the entry of weapons.

Third, potential interveners should expend substantial resources to persuade states to address the legitimate grievances of nonviolent domestic groups. In combination with the first reform, this would undo the perverse incentive that arises from current intervention practices, which effectively ignore nonviolent groups because they do not provoke state retaliation but reward militants by intervening in ways that benefit them, thereby promoting violence. Rather than punishing states when they defend themselves against armed challenges, interveners should provide states with incentives to address nonviolent demands in hopes of averting such rebellion.

Fourth, interveners should not attempt to coerce states to hand over territory or authority to domestic opposition groups unless the interveners first take steps to reduce the danger of a deadly backlash. Failure to do so can have catastrophic consequences, as exemplified in Bosnia, Rwanda, Kosovo, and East Timor.²¹ In each of these cases, international coercion backfired when the state resisted and retaliated against domestic civilians, whom it perceived as allies of the enemy. At least three measures should be employed to reduce this risk. Interveners should offer oppressive rulers “golden parachutes,” including asylum and retention of wealth, if they leave office peacefully. Likewise, interveners should guarantee a continued share of power to existing elites, who would then have more to gain from peace than from attempting a desperate final solution. Because these first two steps may prove inadequate, interveners also should deploy peacekeepers prior to any coerced handover of power, such as an independence referendum. If interveners are unwilling to take these precautions, they should refrain from coercing regime change, to avoid magnifying the risks of genocidal violence.

Fifth, interveners should refrain from falsely claiming humanitarian motives for interventions that are driven primarily by other objectives, such as securing resources, fighting terrorism, or preventing nuclear proliferation. This is because each ostensible “humanitarian” intervention increases the expectations of sub-state groups elsewhere that they too will benefit from intervention if they rebel and provoke a humanitarian emergency. A false justification for intervention in one case may thus inadvertently promote civil war in others. In situations such as Iraq in 2003, interveners obviously have incentive to claim falsely, or to exaggerate, their altruistic motivation. Before doing so, however, they should weigh seriously the potential unintended consequences.

Military Reforms

Regardless of any policy reforms to reduce the incidence of genocidal violence, in some cases civilians will still be so threatened that only military intervention can save them. In light of the speed of violence in many recent cases, potential interveners should concentrate on two military reforms that could get forces into the field more quickly.

First, interveners should modify some power-projection forces so that they can deploy faster. Currently, each planeload of US troops requires at least ten planeloads of equipment before the troops can operate effectively, which slows deployment to a crawl because of limited airfield capacity. Lighter forces, with fewer heavy weapons and less armor, would require fewer cargo flights, enabling them to arrive sooner and save more lives. Of course, shedding protective armor and weaponry could also increase casualties, as US forces learned in Iraq after they transitioned from major combat operations to peacekeeping in 2003.²² Such a trade-off cannot be made lightly.

The second military reform is to pre-position forces—or, at least, their heavy equipment—at forward bases closer to where they are most likely to be needed for humanitarian intervention, such as in Africa. Interventions could be launched from these bases using small cargo aircraft, which are both more plentiful than wide-body intercontinental airlifters and better able to land at rudimentary African airfields. The tactical cargo aircraft could make several round-trips per day to a conflict zone from forward bases, rather than one trip every few days from distant US or European bases, and thus sharply reduce deployment time—from weeks to days. One potential hurdle is that many African states oppose foreign military bases as tantamount to neocolonialism, as demonstrated by the Pentagon’s recent difficulty in establishing a proposed continental headquarters for its new Africa Command (AFRICOM).²³ But such resistance could be overcome by offering sufficient incentives. The real obstacle is that the world’s major powers, including the United States, have proved unwilling to make significant military investments except to promote traditional national interests.

The Challenge Ahead

The Albright-Cohen Report’s recommendations cannot achieve their stated goal and therefore need to be supplemented. The proposals I have made here are more realistic, requiring less frequent military intervention, yet could do more to reduce genocidal violence. Admittedly, this alternative reform package would also face significant political hurdles. The good news is that the United States has by far the world’s greatest potential for humanitarian intervention—military, economic, and diplomatic—to prevent genocide. If the Obama administration is willing to learn from history and modify US intervention policy and forces accordingly, the United States can begin to fulfill the laudable ambitions of the Genocide Prevention Task Force.

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008), http://www.usip.org/genocide_taskforce/report.html (accessed 12 June 2009), xxi. Subsequent references appear parenthetically in the text.
2. In Alan J. Kuperman, “The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans,” *International Studies Quarterly* 52 (2008): 49–80, I define “humanitarian intervention” broadly as “any international action that is primarily motivated by the humanitarian desire to protect civilian targets of state violence. The spectrum of such action is wide, ranging from low-cost measures that respect traditional state sovereignty to high-cost ones that impinge on it. This includes the following: rhetorical condemnation; threats or imposition of economic sanctions; recognizing the independence of secessionist entities; air strikes on military or economic assets; military assistance to or coordination with rebels perceived as defending at-risk civilians; consensual deployment of peacekeepers; and non-consensual deployment of troops for peace enforcement.”

- The Albright-Cohen Report calls for an automatic policy review in response to early warning of violence (31) and lists a range of potential responses (61, 66) similar to that in my definition.
3. Ian Rudge, "Operation Focus Relief: A Program Evaluation" (unpublished manuscript, LBJ School of Public Affairs, University of Texas at Austin, 14 December 2005).
 4. Benedikt Franke, "Enabling a Continent to Help Itself: U.S. Military Capacity Building and Africa's Emerging Security Architecture," *Strategic Insights* 6, no. 1 (2007), <http://www.ccc.nps.navy.mil/si/2007/Jan/frankeJan07.asp> (accessed 12 June 2009).
 5. Mike McIntire and Jeffrey Gettleman, "A Chaotic Kenya Vote and a Secret U.S. Exit Poll," *New York Times*, 31 January 2009, A1.
 6. Alan J. Kuperman, "Humanitarian Intervention," in *Human Rights: Politics and Practice*, ed. Michael Goodhart, 334–53 (Oxford: Oxford University Press, 2009).
 7. Alan J. Kuperman, "A Small Intervention: Lessons from Liberia 2003," in *Naval Peacekeeping and Humanitarian Operations: Stability from the Sea*, ed. Jim Wirtz and Jeff Larsen, 153–69 (Abingdon, UK: Routledge, 2009).
 8. Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington, DC: Brookings Institution Press, 2001).
 9. Edward D. Mansfield and Jack Snyder, "Democratization and War," *Foreign Affairs* 74 (1995): 79–97. The Albright-Cohen Report does note that "the introduction of electoral competition into divided societies can heighten the prospect of conflict" (45), but, remarkably, this observation does not temper the report's enthusiasm for promoting democratization to reduce conflict.
 10. Ashutosh Varshney, "Ethnic Conflict and Civil Society: India and Beyond," *World Politics* 53 (2001): 362–98.
 11. Helena Cobban, "Think Again: International Courts," *Foreign Policy* 153 (2006): 22–28.
 12. "Rebels and Ugandan Government Agree to Terms of Prosecutions of War Crimes," *New York Times*, 20 February 2008.
 13. Alan J. Kuperman, "Ripeness Revisited: The Perils of Muscular Mediation," in *Conflict Management and Africa: Negotiation, Mediation, and Politics*, ed. Terrence Lyons and Gilbert Khadiagala, 9–21 (Abingdon, UK: Routledge, 2008).
 14. Alan J. Kuperman, "The Other Lesson of Rwanda: Mediators Sometimes Do More Damage Than Good," *SAIS Review* 16 (1996): 221–40.
 15. Alan J. Kuperman, "Once Again, Peacekeepers Arrive Too Late," *Wall Street Journal*, 21 September 1999.
 16. The term "pyromaniac diplomacy" comes from Ahmedou Ould Abdallah and Stephen Smith, *La Diplomatie Pyromane: Burundi, Rwanda, Somalie, Bosnie* (Paris: Calmann-Lévy, 1996).
 17. Adrian Karatnycky and Peter Ackerman, *How Freedom Is Won: From Civic Resistance to Durable Democracy* (Washington, DC: Freedom House, 2005). The study has methodological flaws, but it does suggest that nonviolent resistance movements lead to more democratic outcomes.
 18. Kuperman, "The Moral Hazard"; Alan J. Kuperman, "Strategic Victimhood in Sudan," *New York Times*, 31 May 2006, 19; Timothy W. Crawford and Alan J. Kuperman, eds., *Gambling on Humanitarian Intervention: Moral Hazard, Rebellion and Civil War* (New York: Routledge, 2006); Alan J. Kuperman, "Suicidal Rebellions and the Moral Hazard of Humanitarian Intervention," *Ethnopolitics* 4 (2005): 149–73; Alan J. Kuperman, "Humanitarian Hazard: Revisiting Doctrines of Intervention," *Harvard International Review* 26 (2004): 64–68; Alan J. Kuperman, "Transnational Causes of Genocide: Or How the West Inadvertently Exacerbates Ethnic Conflict," in *Yugoslavia Unraveled: Sovereignty, Self-Determination, Intervention*, ed. Raju G.C. Thomas, 55–85 (Lanham, MD: Lexington Books, 2003); Alan J. Kuperman, "False Hope Abroad: Promises to Intervene Often Bring Bloodshed," *Washington Post*, 14 June 1998.
 19. Alan J. Kuperman, "Mitigating the Moral Hazard of Humanitarian Intervention: Lessons from Economics," *Global Governance* 14 (2008): 219–40; Alan J. Kuperman,

- “Rethinking the Responsibility to Protect,” *Whitehead Journal of Diplomacy and International Relations* 10 (2009): 33–43.
20. The Albright-Cohen Report aptly observes that “preventing or ending violent conflict will have a direct and positive impact on preventing genocide or mass atrocities” (38). Unfortunately, its recommendations could increase such violent conflict.
 21. Kuperman, “Ripeness Revisited”; Kuperman, “Once Again.”
 22. R. Jeffrey Smith, “Study Faults Army Vehicle,” *Washington Post*, 31 March 2005, A1.
 23. Peter Fabricius, “SADC Shuns Spectre of US Africom Plans,” *Sunday Independent* (South Africa), 15 July 2007, 3; Gideon Nkala, “We Are Damned If We Do, Damned If We Don’t,” *The Reporter* (Botswana), 27 June 2008.

The Albright-Cohen Report: From Realpolitik Fantasy to Realist Ethics

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The Genocide Prevention Task Force's *Preventing Genocide: A Blueprint for U.S. Policy Makers* (the Albright-Cohen Report) has been touted as a comprehensive proposal for significantly improving the United States' response to genocide and other mass violence in foreign regions.¹ The report recommends various new initiatives, committees and groups, procedures, and resource allocations to support this goal. It also calls for increased attention to genocide at every level of the US government, from the president on down. The assumption is that if our leaders and others in government take genocide more seriously as an ongoing threat, and if effective institutional structures, processes, and resources are put in place, these will be used to prevent or intervene against genocide and other mass atrocities. At its most basic level, the report seeks to change the practical details and conceptual elements of the United States' relationship to genocide, from what the report presents as relative indifference to active, productive engagement.

1. The Report's Statement of the Problem

Crucial to such an exercise, of course, is an assessment of the current relationship. According to the report's authors, genocide happens in unstable societies, often in post-conflict situations or when contending forces, perhaps split along ethnic or other identity lines, vie for power in a new or a "failed" state. In addition, the US government is fully external to historical examples of genocide as presented in the report, and to potential genocides as discussed therein. Genocide is seen as a discrete dynamic that happens somewhere else, and the challenge is for the United States to overcome its external positioning in order to intervene before or during the execution of a given genocide. It might use a number of options, from diplomatic negotiation and targeted aid to economic sanctions and military action.

According to the report, there are three main problems with the United States' past relationship to genocide. First, the United States has often failed to recognize that what was occurring was genocide, as in the case of Rwanda. Second, even when it has recognized the potential for genocide or that genocide was under way, the United States has failed to take preventative steps or to intervene—in some instances through a lack of political will and in others because of a perceived conflict with overriding US interests. Third, prevention and intervention efforts, when made, have typically been inadequate or inconsistent. The challenge, then, is correctly to identify, hopefully well before situations are critical, societies in which genocide might occur or in which it is occurring, and to respond with diplomatic efforts, development projects, political initiatives, military intervention, and/or other tools to prevent genocide from occurring or to stop it once it has begun.

2. Evaluation

Is this general appraisal of the threat of genocide in the world and of problems with past US responses accurate? To some extent, perhaps; but it includes a number of problematic elements.

First, it is not true that genocides occur today, or have occurred in the past, only in fragmented, “failing” states. While this might have been the case in the former Yugoslavia, it was not true in Rwanda, which had stable borders and a fixed political structure that lent itself to a highly organized, carefully calculated, precisely executed, and tightly controlled genocide.² Similarly, while Sudan has seen internal division and conflict for decades, there is every indication that the genocidal assaults in Darfur are managed by a government solidly in control of what happens within its borders.³ If we extend the analysis to other cases, we find, for instance, that genocidal violence in East Timor began in the 1970s, when the Indonesian government was undeniably stable and powerful and had such control over the situation that it was able to use local paramilitary groups systematically as tools of genocide.⁴ The Herero Genocide, the Armenian Genocide, the Ukrainian Genocide, the Holocaust, the Guatemalan Genocide, the Cambodian Genocide,⁵ and genocides of indigenous peoples in the Amazon,⁶ among others, were perpetrated by fixed, established states with governments in firm control. While tensions within states have certainly contributed to genocide, similar and worse tensions exist in all sorts of other states without producing genocide. Indeed, historically, the “failed state” view of genocide at best captures one type among many. By focusing on that particular kind of case, the Albright-Cohen Report has produced recommendations that may well not apply to other contexts and thus cannot engage other kinds of genocides adequately. For instance, development aid will presumably not be a good method of intervention when the perpetrator state is economically strong or supported by economically strong outside actors. Further, this approach discounts precisely the kinds of genocides in which the United States and other great powers are typically involved.

Second, and relatedly, it is not the case that the United States failed to act, in the cases discussed in the report, because its leadership did not realize that genocide or other mass violence was occurring. We know very well that the US government understood that genocide was occurring in Rwanda, in the former Yugoslavia, and in other contexts.⁷ Some cases have dragged on genocidally for years, as in Sudan, even after recognition by the US government that genocide was occurring.⁸ Given this fact, the report’s emphasis on early warning seems designed to obscure the fact that US leadership—including Madeleine Albright herself, during the Rwandan Genocide⁹—has consistently failed to intervene as a result of conscious, explicit policy decisions made with full awareness of the situations in question and of the consequences of inaction.

Third, the implicit assumption that the United States has been or will be disconnected from past and future genocides is false. The United States has, in fact, been intimately involved in a number of genocides, even in recent years. This not only means that, since key decision makers in the US government have been well aware of cases such as East Timor and Guatemala while they were unfolding—because we were complicit in them—the concern about early warning is irrelevant, but also calls into question a further element of the report’s framework. Albright and Cohen’s claim, in their Foreword, that genocide is “a crime that threatens not only our [US] values, but our national interests” (ix)—a view repeatedly echoed in the report—is, historically,

simply not true. For instance, the United States provided weapons, logistical support, diplomatic cover, political support, and/or other support for Indonesia's genocide of East Timorese,¹⁰ Guatemala's genocide of Mayans,¹¹ the 1965 Indonesian genocide of so-called Communists,¹² Saddam Hussein's genocide of Kurds,¹³ and probably the Bangladesh Genocide, to name just a few cases. If the focus is broadened to mass atrocity as well, we must include substantial military and diplomatic support for Turkey's mass human-rights violations against Kurds; Israel's mass human-rights violations against Palestinians; the direct US involvement in the assassination of the democratically elected Salvador Allende in Chile on 11 September 1973, the installation in his place of mass human-rights abuser Augusto Pinochet, and subsequent support for Pinochet's regime; support for El Salvador's brutal government in the 1980s; support for the Shah of Iran; and many others. In short, it has been consistent US policy to support genocide and related mass violence against innocent targets whenever such support has been perceived to serve some kind of (usually military or corporate) US interest.

The United States has even retroactively involved itself in genocide on the side of the perpetrator state. While during the Armenian Genocide the record of US diplomats, led by Henry Morgenthau and including such figures as Leslie Davis and Jesse B. Jackson, was exemplary,¹⁴ it is striking that the then secretary of state, Robert Lansing, and others maintained a pro-Turkish policy¹⁵ that has been embedded in the State Department and in US policy ever since. The US government, with the exception of some Congressional leaders, has strongly supported the Turkish government's denial of the Armenian Genocide. It is noteworthy that both Albright and Cohen have actively attempted to prevent US recognition of the Armenian Genocide,¹⁶ a fact that calls into question their credibility on genocide issues generally. Reflecting their activities against recognition of the Armenian Genocide is the fact that the report contains no explicit reference to an "Armenian Genocide": what happened to Armenians is mentioned in only three places in the report, where it is characterized as a "mass atrocity" (19, 94), "forced exile" (19), and an "atrocity" (56); the report thus specifically avoids use of the technically correct and politically and ethically important term "genocide" for this heavily denied case. Rather than taking a stand against denial, with all that that would do for prevention of future genocides (helping to change the climate of denial to make it less likely that denial of ongoing cases will be accepted), the report itself, in this dimension, becomes a further obstacle to an appropriate US response to genocide.

The report consistently ignores the foregoing issues, instead presenting the United States' relationship to genocide as one of mistaken inaction and unfortunate indifference. For instance, the US "failure" in Rwanda, according to the report, was "that the attention of senior policy makers was distracted from Rwanda in 1994 by other crises unfolding at the same time in Somalia, Bosnia, and Haiti" (2). There is no mention that nothing substantive was done about Bosnia, either; moreover, this statement completely disregards the ample evidence that US leaders intentionally denied that the situation in Rwanda was a genocide, despite their knowledge to the contrary in the early stages, in order to avoid intervening.¹⁷ The United States has been far from indifferent to genocide. At a number of points, the authors, while pointing out that the United States has not been perfect, claim that on balance, with respect to genocide, the United States has done more good things than bad. This is simply not the case. Kenya seems the main "good case" cited, and what is presented as successful US intervention is mentioned many times (2, 20, 21, 45, 62, 68, 71, 94),

almost as if repeated mention of this one situation will somehow multiply into a whole history of positive US actions that, in fact, have not taken place. To support the claim that the United States has a good track record of prevention and intervention, the report states that

an honest accounting shows that the United States has much to its credit in these matters—from mobilization for total war to defeat the genocidal Nazi regime, to lesser military campaigns aimed at halting mass atrocities in Bosnia and Kosovo, to the enforcement of a no-fly zone in Iraq to protect that country’s Kurdish population from Saddam Hussein’s regime. In addition to military measures, the United States has been active diplomatically, for example in Kenya in early 2008, to prevent situations posing the danger of mass atrocities from escalating. (94)

This is followed by a caveat:

While the United States has much to its credit, candor demands acknowledgment that it has not always lived up to the aspirations codified in the Genocide Convention, the Universal Declaration of Human Rights, and the UN Charter—or the principles of our own Declaration of Independence, which insists that all people are endowed first of all with an inalienable right to live. Too often, the United States has failed to act in a timely fashion and has engaged in counterproductive finger-pointing and denial. (94)

These statements skew the reality of the particular cases (surely no one believes that World War II was actually fought to stop the Holocaust, especially given that the Allies would not spare the resources or make the effort to bomb railways used to transport victims to death camps) and understate and obscure the problem dramatically. The report becomes outright hypocritical when, following these statements, we discover that *other* countries do in fact “turn a blind eye to atrocities,” sometimes as “a direct result of their own complicity” (95): this obvious point is never made about the United States, yet is considered valid for other societies.

It should be noted that, where genocide and other mass violence do result from destabilization of a society, the United States has frequently been involved in this destabilization as well. Perhaps the most telling case is the bombing of Cambodia, which (though this point is still debated) by many accounts played a role in the later genocide.¹⁸

3. The Fundamental Problem

Yet even the foregoing is only the tip of the iceberg of the US relationship to genocide. To understand that relationship, it is crucial to recognize that the United States itself was founded territorially on genocide of Native Americans, as a matter of long-standing, centralized state policy as well as of attitudes and actions within civil society and popular culture. While a comprehensive account of US genocidal action against Native Americans and its embedding in our popular and political culture and institutions is beyond the scope of this commentary, certain elements pointing to a general account can be conveyed.

First, the extermination of Native Americans through direct killing, destruction of food supplies, forced deportation under deadly conditions, and other means—all of which fit the definition of genocide given in the Convention on the Prevention and Punishment of the Crime of Genocide—were government policy from the Revolutionary War at least until 1890. This was true of federal as well as state and local governments—for instance, through the infamous state “scalp bounties” used to pay private contractors to exterminate Native Americans deemed “hostile,” which ended up supporting the murder of many “pacified” Native Americans. While not every

Native American group was subjected to genocide, the overall effect of US policies and of governmental and non-governmental actions organized around the ideology of Manifest Destiny and its predecessor forms was the genocidal destruction of Native American societies. On the order of 10 million Native Americans resided in what would become the continental United States prior to European contact; only 237,000 lived on that territory by 1900. Even recognizing that a portion of the destruction occurred before the formation of the United States as an independent nation, the role of the United States was significant and generally determinative.

Second, even after the end of direct genocide with the Massacre of Wounded Knee in 1890, genocidal policies continued in the twentieth century against the residual indigenous population (largely captive on reservations by this point), most notably the brutal forced assimilation of Native American children in Christian boarding schools and the forced sterilization of Native American women. Where Native American political organizing has threatened the land and other gains of genocide, the US government has sponsored or countenanced direct violence, for instance with the assassinations of more than 100 American Indian Movement leaders and their family members in the early 1970s.¹⁹

What is particularly striking and American about this genocidal process is the extent to which it was decentralized and dependent on individual initiative within an overall state-sponsored framework. Groups of settlers as private citizens, paramilitary groups, and other groupings were important elements in the destruction of Native Americans. Thus, Native American genocides were not simply top-down affairs but involved a willing broader US population. The evidence of widespread approval for genocide is ample, as for instance in *Wizard of Oz* author L. Frank Baum's comments in the *Aberdeen Saturday Pioneer* on 20 December 1890, following Wounded Knee:

The nobility of the Redskin is extinguished... The Whites, by law of conquest, by justice of civilization, are masters of the American continent, and the best safety of the frontier settlements will be secured by the total annihilation of the few remaining Indians. Why not annihilation? Their glory has fled, their spirit broken, their manhood effaced; better that they should die than live the miserable wretches they are.²⁰

What does all of this mean? It means that genocide is at the core and foundation of American history and national formation, and that its influence on policy decisions today cannot be avoided. If most of us, in essence, “forget” the past treatment of Native Americans, that treatment is part of the organizational memory of US political, military, and cultural policies, practices, and institutions. Until this relationship to genocide is changed, our future engagements with genocide will be informed and compromised by it. Just as our perpetration of genocide against Native Americans has grounded our support for the other genocides with US complicity discussed above—particularly where the victims have been indigenous Americans, as in the case of Guatemala—the cumulative effect of this bedrock and what we have built on it will continue to provide powerful impetus for US indifference to and complicity in genocide around the globe. And, it is little wonder that so many in the US government, including the State Department, see nothing wrong with the Armenian Genocide and fully support Turkey in its denial: the role of the Armenian Genocide in the formation of the Turkish Republic is in some ways analogous to that of Native American genocides in the formation of the post-Revolutionary United States through territorial expansion. It is little wonder we have countenanced genocides around the globe.

The Albright-Cohen Report, in failing to engage this central issue of US identity, cannot offer meaningful recommendations on how to motivate an appropriate US response to genocide, no matter how many committees, administrative shifts, trainings, and resource allocations it proposes. The problem is not a technical challenge of how to develop successful mechanisms of prevention and intervention against genocide, nor of how to energize US governmental and popular sentiment to care about genocide as an issue to which we are otherwise indifferent. The problem is how to change the deep relationship between the United States and genocide.

4. Diplomatic, Military, and Other Intervention

The authors of the report recognize that there will be suspicion of US diplomatic, military, and aid-oriented attempts to prevent or stop genocide. However, they fail to engage this concern in a serious way. For instance, while they recognize that some such suspicion might come from the fallout of the Iraq War, they consider it mainly “a by-product of the U.S. position as the world’s leading military power” and “suspicion of U.S. ambitions to transform other societies through such long-standing policies as democracy promotion” (95–96). Clearly, the problem is not simply the fact that the United States has great military power but, rather, how we have used that power. In fact, we have used military power aggressively from the 1836 Mexican War through the Spanish-American War and the Vietnam War; we have used military intervention in many Latin American countries solely to promote our own interests from the early twentieth century on, including some of the cases already mentioned above; and so on. The suspicion of US militarism is valid, however much, from the vantage point of our own self-interest and national self-promotion, we might see the use of military violence to secure the desired goals of US political and economic elites as legitimate. Similarly, the idea of “democracy promotion,” which the authors of the Albright-Cohen Report uncritically accept at face value, is deeply problematic, as we have supported many repressive regimes around the world in the name of “freedom”²¹ and even claimed some non-democratic states, such as the contemporary Turkish Republic, as democracies because of their utility in advancing our interests. US-led international development efforts, most notably by the US Agency for International Development, the International Monetary Fund, and the World Bank, also have questionable histories. They have for years been widely criticized for imposing on countries desperate for help after being devastated by colonial exploitation, and in the face of the new inequalities of globalization, conditions that have destabilized their societies and driven local populations into abject poverty, conditions that have mainly served the interests of US-based multinational corporations.

This problem is compounded by the continued operation of such institutions and initiatives as the School of the Americas, which has been shown to train foreign soldiers and others in the abuse of human rights and many of whose graduates have been identified as major human-rights abusers in their home countries in Latin America.²² It is difficult to understand how the United States can promote human rights and try to prevent genocide on the one hand while clearly promoting abuse of human rights and systematic state violence on the other.

In the absence of a serious engagement of these issues and changes in the political culture and policies that have produced them, US intervention efforts—even those that are, in the moment, well-intentioned—will inevitably be identified with this broader, darker history and all too easily co-opted for continuation of that history.

5. A Key Omission

In the 100+ pages of the report, “rape” and “sexual violence” are mentioned a total of three times (xvi, xx, 49). Yet, as a growing literature has shown, violence against women is very often a central component in genocide and related mass violence. In a recent paper, in fact, I argued that sexual violence against women has historically been a key motivating factor for genocide.²³ What is more, gender violence as an element of genocide reflects deep structural features that are shared broadly across societies. If gender violence is a core component of genocide—the Armenian, Rwandan, and Bosnian cases are particularly well-documented in this respect—then prevention of genocide requires engaging the foundations of gender violence, which themselves go beyond specific features of a given society. At the very least, the report should include detailed analysis of this issue and recommendations on how to deal with this aspect of genocide and its likely causal role. Instead, not a single recommendation in the report addresses this central issue.

6. Alternative Recommendations

I have asserted above that the Albright-Cohen Report sidesteps or omits entirely the core problems the United States faces in preventing and intervening against genocide globally. My main objections are these:

- (1) The report mistakes a subset of genocides (“failed state” genocides) for the form of all genocides; even if its recommendations can improve the response to this form, they might well not address other forms.
- (2) The report fails to conceive accurately the true relationship of the United States to genocide.
- (3) The report fails to take seriously the active abuse of what it proposes as key methods of genocide prevention and intervention.

The first problem could be addressed in part through a more comprehensive approach to the various historical cases of genocide and a better use of the ample scholarly literature on the range of forms it takes. However, the particular view of genocide advanced in the report functions ideologically to prevent the raising of uncomfortable questions about US foreign and domestic policy: it maintains genocide as something distant and external, something particular to unstable postcolonial states in Africa, the odd aberrational European “failed state”, Asia, and so on. Thus, the problem is not simply an academic one, and its correction requires engagement with problem 2. For problems 2 and 3, I propose the following as prerequisites to any further policy recommendations.

- *Recommendation 1:* An independent government office should be created to evaluate all significant diplomatic, military, and related policies, actions, alliances, foreign aid, foreign weapons and other resource distributions, and so on, to determine their potential impact with respect to genocide: What are the potential long-term consequences, and how might these contribute to increased risk of genocide or other mass violence? How might a policy or action decrease the potential for genocide? What risks and uncertainties are involved? What can be done, and how difficult (expensive, complex, dangerous, etc.) will it be to do if the policy or action, once implemented, begins to increase the risk of genocide or other mass violence? To be effective, these evaluations must be subject to public scrutiny, where state secrets are not sufficient to outbalance the interest in good decision making, and to Congressional oversight.

- *Recommendation 2:* Such institutions as the School of the Americas/WHINSEC should be closed, both to decrease the number of trained human-rights abusers who are potential perpetrators of mass violence worldwide and to increase the credibility of future US prevention and intervention efforts.
- *Recommendation 3:* Through a comprehensive education initiative and policy modifications, US government institutions that promote genocide and other mass violence or hinder other governmental prevention and intervention efforts should be changed. For instance, US State Department personnel working with Turkey are often trained to deny the Armenian Genocide—for example, by attending workshops run by a prominent academic denier of the Armenian Genocide.²⁴ Not only is inculcation of this falsification of history detrimental to Armenians, it also—from the perspective of a pragmatic politics of US interests—actually impedes the reality-based relationship with Turkey that is crucial to negotiating the complex dynamics of the ever-changing Middle East. What is more, this training fosters in the State Department an institutional commitment to genocide denial through which other regions might be interpreted, as well as making effective denial strategies and arguments readily available to those who wish to cover up other cases. This conceptual framework might well have played a role in the US government’s disastrous denialist response to the Rwandan Genocide, for example. If the US government is to be committed to genocide prevention and intervention, ending denialist policies in its various institutions is crucial.
- *Recommendation 4:* The issue of sexual violence against women as tool of and motive for genocide must be given full weight and must be integrated explicitly into all US genocide-prevention and intervention efforts. Studies should be done to assess the correlation between sexual violence against women and increased risk of genocide.
- *Recommendation 5:* The US government, presumably through the Congress, should convene a wide-reaching and comprehensive US Genocide Truth and Responsibility Commission (USGTRC) to explore, through public testimony and documentation, the full history and implications of the United States’ involvement with genocide. In addition to a thorough accounting of US genocidal participation, the USGTRC should promote an understanding of the role of genocide in the territorial and identity formation of the United States. The commission should also open up space for consideration of how contemporary US citizens can take responsibility for this history, in terms of relations with victim groups and of changes in national culture, political institutions and practices, foreign policy, and so forth.

Short of taking these steps, it is difficult to see how the United States can meaningfully increase its effectiveness in preventing and intervening against genocide. While the Albright-Cohen proposals might perhaps enable better intervention against a case here or there, they will not improve the overall US engagement with genocide and other mass violence in the vast majority of cases—and might in fact provide better cover for US complicity in or perpetration of future genocides.

Notes

1. Madeleine K. Albright and William S. Cohen, chairs, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: Genocide Prevention Task Force, 2008),

- http://www.usip.org/genocide_taskforce/report.html (accessed 12 June 2009), xxi. Subsequent references appear parenthetically in the text.
2. See, e.g., Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), <http://www.hrw.org/legacy/reports/1999/rwanda/> (accessed 15 June 2009); Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Basic Books, 2002); "The Triumph of Evil," *Frontline* (Boston: PBS/WGBH, 1999).
 3. Even the *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (Geneva: United Nations, 2005), which concluded that genocide was not occurring in Sudan, recognizes that "government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur . . . on a widespread and systematic basis" (3). The report also details the close links between the government and Janjaweed militias. The Sudanese government has supplied weapons and other support, including salaries for militia members, and in many cases has directly ordered Janjaweed violence (34).
 4. See, e.g., Matthew Jardine, *East Timor: Genocide in Paradise (The Real Story)* (Monroe, ME: Odonian Press, 1996).
 5. On each of these cases, see, e.g., relevant entries in Israel W. Charny, ed., *Encyclopedia of Genocide*, vols. 1–2 (Santa Barbara, CA: ABC-CLIO, 1999).
 6. See Gerard Colby and Charlotte Dennett, *Thy Will Be Done: The Conquest of the Amazon—Nelson Rockefeller and Evangelism in the Age of Oil* (New York: HarperCollins, 1995). Though not specifically a work of genocide scholarship, this book highlights the coordination of state governments with a key corporate actor and evangelical organization in the destruction of indigenous groups in the Amazon region.
 7. See Power, *"A Problem from Hell."*
 8. Jim VandeHei, "In Break with U.N., Bush Calls Sudan Killings Genocide," *Washington Post*, 2 June 2005, A19. The pronouncement was made by President George W. Bush in 2005, but to date the United States has taken no substantive action to stop this genocide.
 9. See Samantha Power, "Bystanders to Genocide," *Atlantic Monthly*, September 2001, 84–108.
 10. Jardine, *East Timor*.
 11. See, e.g., Global Exchange, "Guatemala: A Brief History," <http://www.globalexchange.org/countries/americas/guatemala/history.html> (accessed 15 June 2009); and "Conclusions" in *Guatemala—The Memory of Silence: Report of the Commission of Historical Clarification* (commissioned by the United Nations), <http://shr.aaas.org/guatemala/ceh/report/english/concl1.html> (accessed 15 June 2009), paras. 13–14 ("The Cold War, National Security Doctrine and the Role of the United States").
 12. See Charny, *Encyclopedia of Genocide*.
 13. See Power, *"A Problem from Hell."*
 14. For example, see their reports on the Armenian Genocide as it occurred, in Ara Sarafian, comp., *United States Official Records on the Armenian Genocide, 1915–1917* (Princeton, NJ: Gomidas, 2004).
 15. Simon Payaslian, "The United States Response to the Armenian Genocide," in *Looking Backward, Moving Forward: Confronting the Armenian Genocide*, ed. Richard G. Hovannisian, 51–79 (New Brunswick, NJ: Transaction, 2003).
 16. For examples of their long-time denialist activities see Emil Sanamyan and Nareg Seferian, "U.S. Told to Give Higher Priority to Genocide Prevention: Albright-Cohen Report Sidesteps Armenian-American Concerns," *Armenian Reporter*, 11 December 2008, <http://www.reporter.am/go/article/2008-12-11-u-s-told-to-give-higher-priority-to-genocide-prevention> (accessed 15 June 2009). One of Albright's most striking acts was to sign a 25 September 2007 letter from eight former US secretaries of state to Nancy Pelosi,

- speaker of the US House of Representatives, strongly urging her to prevent House Resolution 106, recognizing the Armenian Genocide, from making it to the floor of the House for a vote. See “Turkey Enlists Former U.S. Secretaries of State,” *The Armenian Weekly*, 29 September 2007, <http://www.hairenik.com/armenianweekly/fpg09290702.htm> (accessed 15 June 2009).
17. Des Forges, *Leave None to Tell the Story*; Power, “A Problem from Hell”; “The Triumph of Evil.”
 18. See, e.g., Taylor Owen and Ben Kiernan, “Bombs over Cambodia,” *The Walrus*, October 2006, 62–69, <http://www.walrusmagazine.com/articles/2006.10-history-bombing-cambodia/> (accessed 15 June 2009).
 19. This analysis is drawn from the comprehensive and extremely well documented and well argued account of US genocidal acts against Native Americans in Ward Churchill, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present* (San Francisco: City Lights, 1998).
 20. Quoted *ibid.*, 244–45.
 21. There are many such examples, unfortunately. Obvious ones include the Shah of Iran, Anastasio Somoza in Nicaragua, Ferdinand Marcos in the Philippines, and Suharto in Indonesia.
 22. Because of the bad reputation it had developed, in 2001 the School of the Americas was renamed the Western Hemisphere Institute for Security Cooperation (WHINSEC), though its mission and approach remain the same. For information on the School of the Americas/WHINSEC’s devastating impact on human rights in various Latin American countries, see the extensive documentation and analysis at School of the Americas Watch, <http://www.soaw.org> (accessed 15 June 2009).
 23. Henry C. Theriault, “Rape as a Tool of Genocide or Genocide as a Tool of Rape?” (paper presented at the 8th Biennial Conference of the International Association of Genocide Scholars, Arlington, VA, 8 June 2009).
 24. Namely Heath Lowry, Ataturk Professor of Ottoman and Modern Turkish Studies at Princeton University: http://www.princeton.edu/~nes/faculty_lowry.html (accessed 16 June 2009). Lowry is a well-known denier of the Armenian Genocide whose direct link to and proxy actions for the Turkish Embassy to the United States were documented and exposed in Roger W. Smith, Eric Markusen, and Robert Jay Lifton, “Professional Ethics and the Denial of the Armenian Genocide,” *Holocaust and Genocide Studies* 9 (1995): 1–22.

Acknowledging Intergenerational Moral Responsibility in the Aftermath of Genocide¹

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This article argues for the claim that we are morally responsible (in the qualified sense proposed in the article) for the crimes of our ancestors if our ancestors, as a collectivity, were part of a community for whose sake and in whose name crimes were committed that meet the definition of the crime of genocide. This claim of “vicarious intergenerational moral responsibility” is supported by two arguments. The first counters the claim that one cannot have responsibilities for events in the past by arguing that this claim oversimplifies one’s relationship to one’s past and the collectivities in which people live. Such collectivities, both ethnic and religious, have identities across time; identification with these collectivities involves accepting certain moral obligations. The second argument is based on the following premise: the political, social, cultural, and educational institutions that mark all large collectivities, such as nations, provide a degree of moral reliability that is necessary for individuals to carry out their legitimate interests. We count on such institutions to exemplify the values that allow individuals to flourish in their life activities. These institutions are by their very nature intergenerational. The moral reliability of such institutions thus requires that we endeavor to acknowledge and repair the damage caused by the failure of these institutions in the past. Accordingly, their health engenders a moral obligation on our part. Vicarious intergenerational moral responsibility is a responsibility not to the past per se but to the past as it plays an active role in the present.

Keywords: intergenerational moral responsibility, collective responsibility, reconciliation, Armenian Genocide, Turkey

The thesis of this essay can be captured by the following question: Are we morally responsible for the crimes of our ancestors? This is a complex question with many components, but one to which I hope to bring clarity in the course of my argument. I will ultimately argue for a qualified affirmative answer to this question in the specific context of the crime of genocide: yes, we are indeed morally responsible for the crimes of our ancestors, if our ancestors, as a collectivity, were part of a community for whose sake and in whose name crimes were committed that meet the definition of the crime of genocide or crimes against humanity. I call this responsibility “vicarious intergenerational moral responsibility.” The chief motivation for writing this essay is to answer those who would deny the relevance of addressing injustices of the past. Such critics often argue that the passage of time, changed geopolitical circumstances, and transformed group identities militate against revisiting such old wounds. Even when the wounds are acknowledged, the moral burdens they may engender are not fully recognized, because of strong unexamined assumptions about how moral culpability is assigned. We assume that we should look for individual agents acting in temporally proximate relations of cause and effect. We find it hard to see ourselves

in these equations when it comes to past crimes perpetrated by collectivities. We distance ourselves from such collective actions and from the communities from which they arose, regarding them as in some sense alien to us. These assumptions, whether framed in the arguments of critics or implicit in the indifference of the general public, hinder dialogue and reconciliation between the descendants of perpetrators and those of their victims. My essay employs arguments from recent philosophical work on collective and intergenerational moral responsibility to respond to these concerns and to highlight the problematic nature of these assumptions.

Let me first provide some provisional definitions of the terms employed in addressing the question of whether we are morally responsible for the crimes of our ancestors. First, what do I mean by “ancestors”? What sorts of ancestors am I referring to? We typically think of an ancestor as a person from whom one is descended, often more distant than one’s grandparents. The Latin root of the word has the broader meaning “to go before,” and I adopt this broader meaning. One’s ancestors are the ethnic and/or religious community from whose members one is descended. In most instances there is a genealogical connection with one’s ancestors, though the connection could also be through adoption or full assimilation. Accordingly, I refer to “ancestors” and “descendants” not as individuals but as collectivities; a collectivity may have many members who are blood relatives, but it may include others who are members of an ethnic and/or religious community by happenstance or conscious decision.² What I am addressing in this essay are situations in which one dominant ethnic or religious community perpetrated the crime of genocide against another community. The “we” addressed in my question—“Are we morally responsible for the crimes of our ancestors?”—are those descendants who actively identify themselves with an ethnic or religious community some of whose members committed acts of genocide in the past. (More on what I mean by “actively identify” later.)³ Given my earlier qualifications, these descendants are not necessarily descendants in any genealogical sense, though they may be. Blameworthiness does not rest on familial ties, though having a close relative who has committed some evil act may impose an added moral burden. Such familial moral burdens do not rise to the level of moral responsibility except in the case of parental responsibilities, both moral and legal, for the misbehaviors of minor children. To reiterate, a descendant, as I use the term here, is one whose ancestors were members of a community, usually an ethnic or religious community, some of whose members committed acts of genocide.⁴ An ethnic German whose parents or grandparents lived in Nazi Germany or a Turk whose grandparents or great grandparents lived in Ottoman Turkey in the period of the Armenian Genocide from 1915 to 1923 would qualify as such a descendant. Again, being (or not being) the grandchild of Talât Pasha or Hermann Goering is not my focus; rather, I will focus here on the current relationship of the grandchild to his or her ethnic community. I will argue that moral assessment, whether self-assessment or the judgment of others, arises out of the nature of one’s relationship with one’s ethnic group and the social institutions of one’s nation. What counts is the relationship between oneself and one’s community.

Now that I have defined “ancestors,” let us turn to the notion of moral responsibility. The philosophical literature on this topic is vast, and there are many variations on and nuances to the basic meaning of the term “moral responsibility.” I adopt Seumas Miller’s rudimentary—and, one hopes, uncontroversial—definition. Miller has claimed that on the most basic level, “an agent is morally responsible for an action if the agent was naturally responsible for the action, that is, the agent

intentionally performed the action and did so for a reason, and the action was morally significant.”⁵ Failures to act, or acts of omission, fall under this analysis. An action is morally significant in a number of ways. In Miller’s words, “The action is intrinsically morally good or bad; the goal or end of the action is morally good or bad; and the (foreseen or unforeseen) consequence of the action is morally good or bad.”⁶ If one considers individual acts, a simple reading of moral responsibility usually involves some notion of causation: I drink heavily at a party, drive my car with my reflexes impaired, and cause an accident that results in significant harm to another person. Moral responsibility and blameworthiness appear to be clear-cut in this case. Yet responsibility does not always result from acts of commission; sometimes it results from acts of omission. I fail to show due diligence in locking up my firearms, my neighbor’s children are playing in my house and get access to a gun, the gun accidentally discharges, and a child is fatally injured. Again, moral responsibility appears to be clear-cut in this case. Now extend this reasoning to the case of descendants of genocide perpetrators. A typical response would be that nothing I did or failed to do today, or in my lifetime, caused the deaths of Jews at Auschwitz or of Armenians on the death marches to Der Zor (the desert in Syria where tens of thousands perished). No one can believe in temporally reverse causation. Current events do not cause past events. The past is past; I can do nothing to change it. The case is closed—or so some would claim. The fallacy of such reasoning is obvious, for it misses the point: in accepting moral responsibility in this instance, one is not being asked to change the past. On the contrary, I would claim that in accepting moral responsibility one is being asked to accept responsibility for the present, both for one’s own present behavior and for that of one’s community. The strategy of reducing moral responsibility to simple individual causation is often employed, whether consciously or not, as a means of avoiding responsibility. More on this point shortly.

Furthermore, I would claim that while causation is often a factor in determining moral responsibility, it is not a necessary condition for it. One can distinguish between backward-looking moral responsibilities and forward-looking claims of moral responsibility.⁷ The drunk-driver scenario is one in which causation—my reckless behavior—determines the backward-looking claim of moral responsibility. Yet even here, not all harms that I may cause generate claims of moral responsibility; for instance, an unforeseen mechanical failure in my car may lead to an accident in which other people are injured. Forward-looking claims do not involve causation at all. Many people recognize that as members of a community we have a moral responsibility to render assistance when a natural disaster strikes. We cannot cause earthquakes, and so we are not morally responsible for what happens when they strike, but we do have a moral obligation—at least, those of us who do not subscribe to a strong libertarian view—to render assistance to the victims of earthquakes in whatever way we can. Most world religions recognize such moral obligations, which apply both on the individual level and on the communal level. Conceptually, these forward- and backward-looking responsibilities are distinct, but in the real world the two are often found together. For instance, the devastation of Hurricane Katrina in New Orleans was both a man-made and a natural disaster. In that instance, there was plenty of responsibility and blame to go around.

The man-made aspect of the Katrina disaster highlights an important point that is central to my argument that we are morally responsible for the crimes of our ancestors. This is the idea that individual blameworthiness often derives from collective wrongdoing. To understand individual moral responsibility, especially in the case of

the crime of genocide, we need to make sense of collective agency and the resulting blameworthiness of collectives. A murder that takes place in the context of and as a part of genocide has an added moral feature that cannot be captured without reference to collective action. Those who would deny such collective responsibility commonly employ the strategy of reducing the crime of genocide to the aggregation of the actions of individuals, and especially the actions of a nation's leadership. The German nation was not guilty of genocide, but Adolf Hitler and the Nazi leadership were guilty and, for the most part, either were convicted of and punished for their crimes or died in the war; the Young Turk leadership, especially the wartime triumvirate of Talât, Enver, and Jemal Pasha, escaped judicial punishment, but "justice" was served in the case of Talât and Jemal as a result of their assassination by survivors of the Armenian genocide.⁸ Justice was served, so to speak, so why drag into this equation the so-called innocent, whether those who were alive at the time or those who are alive today? Shouldn't blameworthiness end with those who were "truly" responsible? My response is no; for I deny the restrictions implied by the qualification "truly," just as I would deny the blanket "innocence" of those living in communities whose leaders perpetrated genocides.

I do not want my denial to be misunderstood here, so I need to make a distinction: the distinction between law and morality. It is easy for our language to slip between the two. Legal responsibility for genocidal crimes covers the leadership and, to a certain extent, the agents who carried out that leadership's orders. But the scope of morality is not coextensive with the scope of law. Moral culpability is not the equivalent of legal culpability, and the latter should not be used to shield one from the former. Another distinction also needs to be made here, between punishment and compensation. In criminal law, wrongdoing is punished; in addition, compensation is sometimes given to the victims of such wrongdoing or to the state. Restitution of some form is made. Conceptually, one can think of these two aspects of redress as "punishment" and "repair." In the moral sphere, repair cannot simply be reduced to dollars and cents, though monetary compensation and reparations do play a significant role. Monetary repair is one component—an important component, even if only on a token basis—of the moral repair necessary for reconciliation between the survivors and the perpetrators of genocides. The fact that genocidal leaders and agents have been punished does not mean that the moral task of repair has been achieved; often this punishment is only a first small step on the road to moral repair. If punishment is used to shift moral responsibility away from the perpetrator community by limiting it to members of the leadership and their primary agents, then such punishment may hinder reconciliation. This is especially so today, when, unlike periods in the past, the institutions of international criminal law are in place to prosecute the major agents of genocide and crimes against humanity. The Nuremberg Trials were only a first step in the process of reconciliation between Jews and Germans. Justice is a necessary but not a sufficient condition for repair and reconciliation.

Now that I have dealt with the notion of causation and the strategy of denial by shifting the moral burden of responsibility to the law, I must still deal directly with the claim that one has moral responsibilities that derive *not* from one's own personal actions but, rather, from one's membership in a community in which historical acts of genocide occurred. While the philosophical literature on this issue is enormous and growing, the debate is relatively recent. In 1946 the German philosopher Karl Jaspers published his important study *The Question of German Guilt*, which explores the notion that the German people as a whole bore some moral responsibility for the

crimes of the Nazis.⁹ In 1948 the English philosopher H.D. Lewis wrote a groundbreaking article in the journal *Philosophy* on the concept of collective responsibility.¹⁰ But it was not until the late 1970s that the philosophical literature on collective moral responsibility expanded exponentially, with contributions by philosophers too numerous to mention here. Key to this late flowering was the notion that highly organized collectives, such as corporations, could act as moral agents and could thus be said to have moral responsibilities. The work of the American philosopher Peter A. French was central to the growing recognition of concept of collective moral responsibility.¹¹ The intricacies of these philosophical debates are not my concern here. I will argue for my position through the unusual strategy of first presenting the standard philosophical arguments *against* the notion that we have moral obligations that derive from the actions of our ancestors, and then taking a two-pronged approach toward refuting this argument. My first counterargument relies on the idea that moral responsibilities are conferred upon individuals on the basis of a qualified notion of ethnic identity; the second relies on the notion that maintaining the moral integrity of our social institutions requires us to assume the moral obligation of repair when such institutions have failed in the past.

To present the position against moral responsibility succinctly, I quote the American philosopher Bernard Boxill, from his article about reparations for slavery: “Since present day U.S. citizens were not complicit in the crime of slavery [the] claim [that the US government owes reparations to present-day African Americans] can only be based on the morally repugnant idea that individuals can be burdened with the duties that other people incurred.”¹² The assumption here is that one can be burdened with moral responsibilities only by one’s own actions or by actions that one has directly authorized (i.e., the actions of one’s present government). Since we are not citizens of the antebellum South, and our present government is not the same collective that existed prior to the Emancipation Proclamation, we therefore have no moral obligation to pay reparations to our African American citizens. We did not authorize our founding fathers to institutionalize slavery in our society. By extension, the post–World War II government of Germany is not the Third Reich, and the current government of the Republic of Turkey is not the Ottoman Young Turk government of World War I. Only highly organized hierarchical organizations such as business corporations can act as moral agents and thus engender moral obligations, obligations that may extend to individuals in their corporate management. The founding of the Federal Republic of Germany or the Republic of Turkey is the equivalent of the establishment of a new corporation, albeit one in which the assets of the bankrupt old regimes were assumed. These assets, it is claimed, come with no moral baggage.

I would argue, to the contrary, that this argument presents a rather weak analogy and reflects a very naïve view of history. The historical evidence for the claims in support of the argument, especially those with respect to slavery and to the Armenian Genocide, is not very strong, but to critique this evidence thoroughly would require writing another, more historically supported paper. The continuities, in terms both of personalities and ideology, between the Committee of Union and Progress (CUP, the Young Turks), who carried out the Armenian Genocide, and the founding nationalist movement of the Republic of Turkey are little acknowledged; yet these continuities contribute, in subtle and profound ways, to the inability of Turkey’s current political establishment to come to terms with its past.¹³ On a conceptual level, what the line of reasoning outlined above fails to acknowledge is that collectivities have identities across time. A person’s ethnic identity is one such identity. In more ethnically diverse

societies, there are institutional forms of identity. The two sometimes merge. Ethnic communities are collectivities, and these collectivities frequently transcend national borders. Often ethnic conflicts that eventuate in genocides are fueled by such cross-border tensions; this was true in the former Yugoslavia, and it is certainly true in Africa, where national boundaries are artificial remnants of colonial geopolitical competition. As I remarked earlier, identities across generations result from both social institutions and cultural institutions, the chief of which are marked by ethnic group identity. The philosopher Karen Kovach has argued that while mere biological membership in one's ethnic community is not sufficient to confer collective moral obligations, if one chooses (whether explicitly or implicitly) to identify oneself with one's ethnic community, then one assumes certain moral obligations with that choice:

An ethnic identity group is a collection of individuals, each of whom may align himself with an idea of the group—where that idea is, more precisely, the idea of a collective agent, whose collectivity rests on the shared ancestry of the individuals—and each of whom may, therefore, act and respond emotionally as a member of the group.¹⁴

One's shared ancestry opens up a space in which one acts in concert, whether intentionally or not, with the "idea of the group"; one acts and responds "emotionally as a member of the group," and thus one's actions have moral implications. The particularities of this alignment can vary greatly, from the relatively trivial to the profound—from one's tastes in cuisine to one's deeply felt religious beliefs. Through such an alignment one shares in the collective agency of the ethnic group and, in so doing, shares its history of moral achievements as well as its moral failures. Again, this is not simply a matter of assuming some moral obligation because of an event in the distant past; it is part of being who you are today, whether a German, a Turk, or an American.

Moral failures and their associated obligations may be inherited, but, as in the case of a defective gene, what counts are the consequences of this inheritance. While this is not true for all genetically inherited disorders, a useful analogy is the individual who has inherited the gene for alcoholism but whose behavior is not that of an alcoholic. What I have in mind here is not blissful ignorance of one's inheritance but, rather, the constant struggle to accept one's inheritance while at the same time remodeling oneself as a sober—that is, a moral—self. The philosopher Marina A.L. Oshana, in recognizing this sense of responsibility, employs Jaspers's and Larry May's ideas of self-authenticity:

What there is to account for as well as to attribute to the agent, and to praise or blame her for, is (to borrow from Jaspers and May) *authenticity with respect to one's self-conception* . . . Authenticity consists in truthfulness toward oneself and about oneself in word and in deed. One who is authentic "meets head on his or her faults, or those of one's fellow community members, and regards oneself as at least partially responsible for them" (May 1991, 243) . . . Similarly, one is inauthentic when one refuses to take a stance about one's position in the world in circumstances that pressure one to do so. Inauthenticity marks a kind of dishonesty with respect to one's self-conception.¹⁵

My own concern here is with those aspects of this "idea of the group" that fueled aggression and genocidal violence in the past and that continue to be actively present in the ethnic identities of today. We have seen evidence of this in many of the ethnic conflicts that have culminated in genocides in the past 100 years, one recent example being the wars in the former Yugoslavia. A necessary condition for genuine reconciliation between the descendants of perpetrators and the descendants of their victims is sincere moral assessment, on both sides, of the alignment of oneself with

one's ethnic identity group. This self-assessment, often aided by others, is crucial to moral authenticity.¹⁶

My second argument against those who would reject vicarious intergenerational moral responsibility based on a lack of individual culpability takes a slightly different focus. This argument is based on the following premise: the political, social, cultural, and educational institutions that mark all large collectivities such as nations provide a degree of moral reliability that is necessary for individuals to carry out their legitimate interests. We count on such institutions to exemplify the values that allow individuals to flourish in their life activities. In the words of the philosopher Janna Thompson, such collective institutions ought to value "the long-term and lifetime-transcending interests and projects" of individuals. Thompson puts it this way:

People care about how they will fare in old age, the outcome of their lifetime projects, the future well-being of their children, the fate of their community or culture, the disposal of their property, and their posthumous reputations. Their present activities, their ability to live a meaningful life, are often predicated on their ability to make plans for the more distant future, including the future beyond their lifetime, and on the presumption that institutions and practices of certain kinds will continue to exist... [They] make moral demands of citizens young and not yet born.¹⁷

If these interests are morally legitimate, then it follows that we ought to develop and maintain institutions that enable these interests to be met. There are limits to the kinds of institutions or practices I am discussing here; my claim here is restricted to what I have called "morally legitimate interests." Future generations are not obligated to maintain morally repugnant social practices and institutions (e.g., Jim Crow laws, Indian caste privileges, patriarchal inheritance rights). This is not the place to debate which interests qualify as morally legitimate, but some are fairly obvious. An institution that reliably allows one to convey one's property to one's descendants, when that property is human chattel, is not such an institution or practice; accordingly, we have no obligation to maintain or rehabilitate such institutions or practices. On the contrary, such inherited practices (e.g., slavery) obligate us to do quite the opposite—that is, to overturn them. Institutions that promote the flourishing of important life activities are by their very nature intergenerational; they do not abruptly end with a change in government, whether or not that change is politically or constitutionally legitimate. Our current government has inherited the moral obligation to provide the effective maintenance that these institutions demand. As individual citizens who are part of a collective, we have also inherited obligations under these institutions. If these institutions were perverted in the past—for example, by the US Constitution's legitimation of slavery or by the Nuremberg Laws of 1935—we have moral obligations to remedy such abuses. Repairing and making recompense for the past failures of these institutions can only serve to strengthen them in the future. Our present relationship with these institutions is what obligates us, not our complicity in some historic event in the past, be it slavery or genocide. When genocidal crimes were committed in the name of one's nation, be it Germany, Turkey, Serbia, or the United States, moral responsibility needs to be acknowledged and repair instituted. This was the path chosen in the post-World War II years by the government of Conrad Adenauer in the Federal Republic of Germany. Space does not allow me to go into the details here, but the German state's decision to pay reparations to the victims of the Nazis was the first step in reestablishing morally reliable institutions, and thus secured the trust and subsequent aid of the victorious Allied Powers. This decision solidified both the perception and the reality of Germany's commitment to democratic institutions.¹⁸

Unfortunately we cannot draw easy parallels between the founding of the Republic of Turkey and the post–World War II democratization of Germany. Both nations found themselves defeated and occupied by nations often in conflict among themselves. But modern Turkey was forged out of a nationalism whose ideology was developed and articulated in the same Young Turk movement that culminated in the genocide of the Armenian, Assyrian, and Pontic Greek populations of Anatolia. There is no substance to the claim by contemporary Turks that, by rejecting the national identity of Ottoman Turkey and embracing a different state form and national ethnic identity under Kemal Atatürk, they have been relieved of the obligation to repair the scars of the past. While many of the hardships and deprivations of the minority populations of the Ottoman Empire can be traced to the lack of a universal form of citizenship enshrined in aspects of Ottomanism, the extermination policies of the CUP’s Young Turk leadership can be traced to the pan-Turanian ideology embraced by many in this movement and carried forward in Atatürk’s nationalist movement. As I stated earlier, the historical details of these connections cannot be examined in detail here. Suffice it to say that there is a growing historical literature on this issue, produced by Turkish, Armenian, and third-party scholars. Taner Akçam, for example, captures well the unsupportable attempt of contemporary Turks to break with their historical past:

By condemning history to obscurity, Turks are not content simply to be released of all its burdens. They believe they have created an entirely new Turkish national identity. For this purpose they erase all the unpleasant connections between the Armenian Genocide and today’s Republic. Yet one of the key reasons for avoiding all discourse on the Genocide and the repression of the history of the Republic is precisely the connection between the two . . . My central argument is that there is a continuity of the ruling elite from the Ottoman Empire to the Turkish Republic, and so there is a strong relationship between the Armenian Genocide and the foundation of the Republic.¹⁹

Akçam goes on to document important continuities between the Armenian Genocide and the founding of the Turkish Republic.²⁰ He argues cogently for the claim that true democratization cannot take place in Turkey without an open and frank examination of Turkish history. This is why such reforms as opening up the education system and removing legal sanctions for insulting Turkish identity need to take place before open dialogue can begin. Nearly a century ago, John Dewey identified the key role that education plays in sustaining a democratic form of life. The truism that healthy democracies are less likely to commit genocides is relevant here.²¹ Strengthening such institutions is the best guarantee against the recurrence of genocidal violence.

I have touched on only a few of the many issues involved in my claim that we are, in some qualified sense, morally responsible for the crimes of our ancestors. My remarks are part of a larger project, one in which I try to understand the steps necessary to achieve true reconciliation between the descendants of the victims and the descendants of the perpetrators of genocide. There is a personal dimension to this project. Ultimately, I would like to identify a path, albeit a very difficult path, to Armenian and Turkish reconciliation. I say “a difficult path” because philosophical argumentation, moral suasion, and the historical lessons of German–Jewish reconciliation are insufficient and can only provide a rough compass to guide such path-making. The Armenian Genocide is a highly controversial topic in modern-day Turkey. I have dedicated this article to the Turkish-Armenian journalist Hrant Dink, who was murdered in front of the offices of his newspaper in Istanbul for publicly speaking out on the need to acknowledge the Armenian Genocide while at the same time advocating Turkish–Armenian reconciliation and Turkey’s admission into the

European Union. This was a dangerous position to take, because the official position of the modern state of Turkey with regard to the Armenian Genocide is one of denial.²² The governments of Turkey and of its ally Azerbaijan, Turkey's semi-official organs, and many members of Turkey's political and intellectual elites are actively involved in a campaign of genocide denial. As the Holocaust scholar Deborah Lipstadt has so eloquently written, "Denial of genocide strives to reshape history in order to demonize the victims and rehabilitate the perpetrators, and is—indeed—the final stage of genocide."²³ A recognition on the part of this current generation of Turks that their historical narrative is a complex mixture of the good and the bad, and that an open discussion of this history is necessary for the moral health of their emerging democracy, is a crucial first step in bringing to an end this final stage of genocide. Whether this discussion leads, in the short term or the long term, to an official acknowledgment of the Armenian Genocide by the Turkish government is actually a secondary consideration. The acceptance of moral obligations engendered by the burden of history is a slow and tortuous process that often takes place first in civil society. There are many cases in world history of incremental progress, but they are often marked by regression—as demonstrated in the American, Canadian, and Australian acknowledgments of the crimes committed against their native populations. Even for those courageous individuals who have acknowledged such dark events in their people's collective history, the process of meeting their own moral obligations is only beginning. Acknowledgment is the first, not the final, step in moral reconciliation between the descendants of the perpetrators and the descendants of the victims of genocide.

Notes

1. Dedicated to the memory of Hrant Dink, a Turkish-Armenian journalist martyred in the cause of Armenian–Turkish reconciliation.
2. A detailed discussion of the fine points of assimilation and of ethnic, racial, or religious identity is not the focus of this essay. These identities cut across one another in myriad ways; one can lose or intentionally reject such identities, and my argument does not address such individuals. On the other hand, of course, we know that it is often not easy for victims of genocide to lose their identity, as is evident in the case of assimilated German Jews and others during the Holocaust.
3. For an extended analysis of an ethnic identity group in the context of assigning collective moral responsibility see Karen Kovach, "Genocide and the Moral Agency of Ethnic Groups," in *Genocide's Aftermath: Responsibility and Repair*, ed. Claudia Card and Armen T. Marsoobian, 50–70 (Oxford: Blackwell, 2007). In my analysis I have adopted Kovach's notion of ethnic identity.
4. For this article's readership I need not define the crime of genocide. Suffice it to say that I accept for my purposes the definition set out in the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948. Obviously this convention sets out only the legal parameters of the crime and does not establish conceptual boundaries or the moral ramifications of such a crime.
5. Seumas Miller, "Collective Moral Responsibility: An Individualist Account," *Midwest Studies in Philosophy* 30 (2006): 176–193, 178.
6. *Ibid.*
7. I borrow this terminology from Margaret Gilbert, "Who's to Blame? Collective Moral Responsibility and Its Implications for Group Members," *Midwest Studies in Philosophy* 30 (2006): 94–114.
8. On 5 July 1919, Talât and Enver Pasha, along with other members of the Committee of Union and Progress (CUP) leadership, were convicted in absentia by a special military

- tribunal set up by the successor Turkish government after the armistice that ended World War I. They had escaped punishment by fleeing to Germany after the collapse of the CUP government in October 1918.
9. Karl Jaspers, *The Question of German Guilt*, 2nd ed. (New York: Fordham University Press, 2001).
 10. H.D. Lewis, "Collective Responsibility," *Philosophy* 23 (1948): 3–18.
 11. Peter A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984).
 12. Bernard R. Boxill, "A Lockean Argument for Black Reparations," *The Journal of Ethics* 7 (2003): 63–91, 71.
 13. See Taner Akçam, *From Empire to Republic: Turkish Nationalism and the Armenian Genocide* (London: Zed Books, 2004).
 14. Kovach, "Genocide," 61.
 15. Marina A.L. Oshana, "Moral Taint," in *Genocide's Aftermath: Responsibility and Repair*, ed. Claudia Card and Armen T. Marsoobian, 71–93 (Oxford: Blackwell, 2007), 86. The reference is to Larry May, "Metaphysical Guilt and Moral Taint," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman, 239–54 (Savage, MD: Rowman & Littlefield, 1991).
 16. See May, *ibid.*
 17. Janna Thompson, "Collective Responsibility for Historic Injustices," *Midwest Studies in Philosophy* 30 (2006): 154–67, 165.
 18. See Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W.W. Norton, 2000), esp. 3–29.
 19. Akçam, *From Empire to Republic*, 237–38.
 20. Akçam documents three of these continuities as follows: (1) "The Turkish resistance movement in Anatolia was essentially organized by the CUP, which also organized the Genocide"; (2) many individuals who enriched themselves financially as a result of the genocide played leadership roles in the national resistance organizations (e.g., Topal Osman); (3) many key government ministers and party leaders in the Republican People's Party founded by Mustafa Kemal had been arrested and charged for their roles in the Armenian Genocide. *Ibid.*, 238–40. See also Taner Akçam, *Insan Haklari ve Ermeni Sorunu* (Ankara: Imge Kitabevi, 1999).
 21. This remark is not intended to get either the American republican democracy or the British parliamentary democracy off the hook for the human-rights crimes or genocides they may have committed. As a Deweyan, I am not committed to any particular set of political structures that become identified with democracies; for Dewey, democracy was a shared way of life. See John Dewey, *The Public and Its Problems*, in *The Later Works, 1925–1953*, vol. 2: 1925–1927, ed. Jo Ann Boydston (Carbondale: Southern Illinois University Press, 1984), as well as numerous other writings.
 22. For a balanced treatment of the campaign of Armenian Genocide denial, see Donald Bloxham, "Epilogue: The Geopolitics of Memory," in *The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians* (Oxford: Oxford University Press, 2005).
 23. Deborah Lipstadt, "Armenian Genocide" (Letter), *Princeton Alumni Weekly*, 17 April 1996.

Failures to Prevent Genocide in Rwanda (1994), Srebrenica (1995), and Darfur (since 2003)

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This article presents the results of a comparative study of genocide prevention showing similarities that form a disappointing pattern of failure on the part of third parties to prevent genocide in three different situations: Rwanda, Srebrenica, and Darfur. Early, clear, and reliable warnings combined with a policy recommendation have not led to preventative action because they were not discussed by the responsible decision makers (Rwanda, Srebrenica) and/or because conflicting international concerns hindered firm action (Darfur). Instruments of prevention were available, in the form of UN peacekeeping troops who could have been empowered for successful prevention in combination with existing reinforcements (e.g., evacuation troops or NATO air support); however, this option was not on the decision makers' agenda. The main explanation for the decisions made by these third parties is their inability to perceive a change from a peace-settlement situation to an emerging genocide and their consequent inability to react to such a change adequately. Rwanda and Srebrenica may be explained in this way, but not Darfur. Here the situation is different and more complicated, as this study shows by reference to the continuing international attention to the situation, on the one hand, and the continuing inability of third parties to change the situation on the ground, on the other. Sudan's political position in the world, as well as the negotiating power the Sudanese government draws from domestic circumstances, has deterred decision makers from initiating measures against Sudan's national sovereignty.

Keywords: genocide prevention, early warning, Rwanda, Srebrenica, Darfur, UN decision making, bystanders

Introduction

In just 100 days, starting in the spring of 1994, an estimated 800,000 persons were killed in the Rwandan Genocide.¹ The early warnings issued before the killings started were clear, and they were put forward to the responsible decision makers at the United Nations. The information came from the most authoritative and reliable sources available: the UN peacekeeper commanders in the field. This information was completely reliable, and the commanders sent their early warnings in combination with a request for instructions and proposals on how to act in the circumstances.

For instance, the request from peacekeepers in Rwanda to track arms caches—the so-called genocide fax—was sent on 11 January 1994, three months before the genocide began. The alarming information in the fax was not disputed by the UN secretariat, but the peacekeepers were refused authorization for action because the seizure of weapons was seen as going beyond their mandate. As we will describe below, hardly any decision making to prevent—or, later, to stop—the genocide took place in the Security Council. Tragically, the failures of Rwanda are being repeated today. The task of tracking arms caches, which was included in the mandate for the peacekeepers in Darfur, was deleted in Security Council Resolution 1769 on 31 July 2007. The main question addressed in this article is, What are the lessons to be drawn from the genocides in Rwanda, Srebrenica, and Darfur? Our discussion of Rwanda is based on the study *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders*, published in 2007;² the discussion of Srebrenica is based on a study published in 2008, “The Role of Bystanders in Rwanda and Srebrenica: Lessons Learned.”³ The discussion of Darfur is based on ongoing research into early warning and early action between 2003 and 2008.

Rwanda

Long before the plane crash that triggered the ensuing events, the situation in Rwanda could have been described as a “possible genocide.”⁴ In the first week of the atrocities—after the plane crash—the killings were mostly of political adversaries (i.e., moderate political leaders), and can therefore be described as a politicide. In the second week, however, the killing of all persons from the Tutsi ethnic group began, with more than 100,000 killings committed in a week’s time. A month into the genocide, about half a million people had been killed. After the second month, invading forces of the Rwandan Patriotic Front under Paul Kagame captured the last strongholds of the prior government, and the genocide came to an end.⁵

Srebrenica

In one week in mid-July 1995, 8,000 Muslim men and boys were killed in and near Srebrenica, the UN-protected “safe haven” in Bosnia-Herzegovina. As in Rwanda, UN peacekeepers failed to provide protection after the Bosnian Serbs conquered the area, which had earlier been designated as a safe area by the United Nations. We describe below a number of warnings in the months preceding the atrocities that made the genocidal intentions of the Bosnian Serbs clear. The International Court of Justice established these intentions more than ten years later when it condemned another third party, Serbia-Montenegro, for violating the obligation to prevent genocide in Srebrenica. In its judgment of 26 February 2007, the court held that “a state does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”⁶ More information on the Bosnian Serb policy is expected to emerge from the trial of Radovan Karadžić, arrested in 2008, before the International Tribunal for the Former Yugoslavia.

Darfur

In a period of five years—between 2003 and 2008—an estimated 300,000 Sudanese people of African origin, mostly male, have been killed in the Darfur region of Sudan. The killings began in February 2003; by the end of that year 10,000 had been killed,

and the number of killings increased to 100,000 in 2004 and to 200,000 again from 100,000. Since 2005, the numbers have increased to about 300,000.⁷ The perpetrators are members of the Sudanese army and armed groups supported by the authorities, such as the Janjaweed militia. Some scholars⁸ and policy makers⁹ have labeled this a genocide, while others categorize the same atrocities as crimes against humanity.¹⁰ No international jurisprudence has been issued in this case to date, and this article does not intend to contribute to the debate on whether or not genocide has occurred.

The first military revolt by the African Darfuri people—mainly the non-Arab Fur, Zaghawa, and Massaleit—in February 2003 was met directly with reprisals that had the characteristics of a beginning genocide. Events and developments in Darfur since 2003 have been reported from the start by many NGOs, states, and international organizations. No clear signals with respect to the intentions of these ethnic killings and the emergence of warfare from before 2003 are available. Because the magnitude of the killings was much more limited, and the events spread over a longer period, than in Rwanda, Darfur has been referred to as “Rwanda in slow motion.”¹¹ The slow unfolding of events, the availability of information at an early stage, and remorse for the failures to act in Rwanda and Srebrenica made Darfur an outstanding case for political mobilization in the Western world to urge governments to act and stop the ongoing atrocities. The result, however, has been no better than in the other two cases.

This state of affairs raises a number of compelling questions: Why did international bystanders fail to act to prevent or to stop the genocides in Rwanda, Srebrenica, and Darfur? What are the similarities and differences among these cases? In what way would the international bystander have been able to act with the available instruments? Why were the warnings not translated into action, or, more precisely, what are the reasons for inaction or the ineffectiveness of the action that was undertaken? Who was involved in the international decision-making process, and why was that process continually hampered?

Before answering these questions, we will briefly describe, for each of the three cases, (1) the availability of information that could have been seen as early warning signs requiring action; (2) the availability of military and non-military instruments to prevent or stop these atrocities, here called genocide; and (3) the decision-making process that took place by governments and within the United Nations.

Rwanda

Warning

The warnings of the emerging genocide were already sounded a year before the killings began by many NGOs,¹² by the UN special rapporteur on extra-judicial executions,¹³ and by diplomats.¹⁴ Actors in the international decision-making arena, however, viewed the situation in Rwanda as a resolved conflict, with a peace process beginning whereby a mutually agreed peace plan (the Arusha Accords) needed to be implemented—a job that could be done with a small, lightly armed peacekeeping force. This vision did not change when the UN peacekeepers stationed in Rwanda (the UN Assistance Mission for Rwanda, or UNAMIR) sent alarming reports to New York asking for a stronger mandate to seize weapons and for a bolstering of their forces to act against the extremists,¹⁵ including the “genocide fax” that unveiled the intention to kill Belgian peacekeepers and the Tutsi population. In the months preceding the genocide, all these warnings were received but did not change the decisions of the UN Secretariat, which continued to think in terms of peace and

security and of the post-conflict transformation process of installing a new multi-ethnic government.¹⁶ In their bureaucratic vision, the UN had to maintain a traditional neutral peacekeeping role and not take sides against the perpetrators of the impending genocide through forceful action, as was requested by, for example, UNAMIR commander Lt.-Gen. Roméo Dallaire and the Belgian government. So the most reliable warnings, coupled with a policy recommendation on how to act, were forwarded and received in New York; but this information, including reports on the deteriorating situation, was not forwarded to the members of the Security Council, who were thus precluded from taking any action at all.

Instruments

The available instruments were rather weak, because, for reasons of political feasibility, the manpower and the mandate requested by the UN Secretariat from the Security Council were less than the situation required. No further options were put forward to the Security Council, despite requests from UN military experts and both parties to the Arusha Accords for a stronger mandate and more troops to implement the accords. Even with the available instruments, the peacekeepers were prohibited from taking action against the inciters of hatred and the planners of the genocide within the ranks of the extremists. After the genocide began and ten Belgian peacekeepers were deliberately killed, most of the remaining peacekeepers were ordered to leave the country when the Security Council approved their withdrawal in Resolution 912 (see Figure 1).

Perhaps the available instruments were too weak to enable action during the genocide or to stop the genocide. In order to evaluate this question properly, however, we must take two important considerations into account. First, the peacekeepers had been instructed in the six preceding months to act in a preventive way; they received no permission for forceful action from UN headquarters when the situation changed from “peace promotion” (i.e., facilitating the implementation of the peace accords) to the threat of an emerging genocide. The UN’s main threat to the extremist rulers in Rwanda was that the peacekeepers would be withdrawn if stability were not achieved; in fact, however, this was the outcome the *génocidaires* were longing for. Second, at the beginning of the genocide a huge fighting force arrived in Rwanda to evacuate foreign nationals.¹⁷ The possibility of combining this strong military force with the weaker UN peacekeeping force was never tabled in any Western capital or at UN headquarters—a clear signal to the *génocidaires* that no one from outside Rwanda would obstruct the unfolding genocide.

Decision Making

The members of the Security Council were not informed by the UN Secretariat about the alarming situation in Rwanda because the highest-ranking civil servants at the UN, who had no political legitimacy, feared a collapse of their peacekeeping department after the failures in Somalia.¹⁸ During the genocide the Security Council decided, in Resolution 912, to withdraw the UNAMIR forces. A decision to start again with another peacekeeping force (Resolution 918) could not be implemented during the genocide; only after the RPF victory did France initiate an enforcement force based on Chapter 7 of the UN Charter (Security Council Resolution 929) to protect the Hutu refugees in the neighboring country (see Figure 1). No attempt to prevent or to stop the genocide was made by the bystanders, who in this case, perhaps more clearly than in any other case of genocide, became collaborators

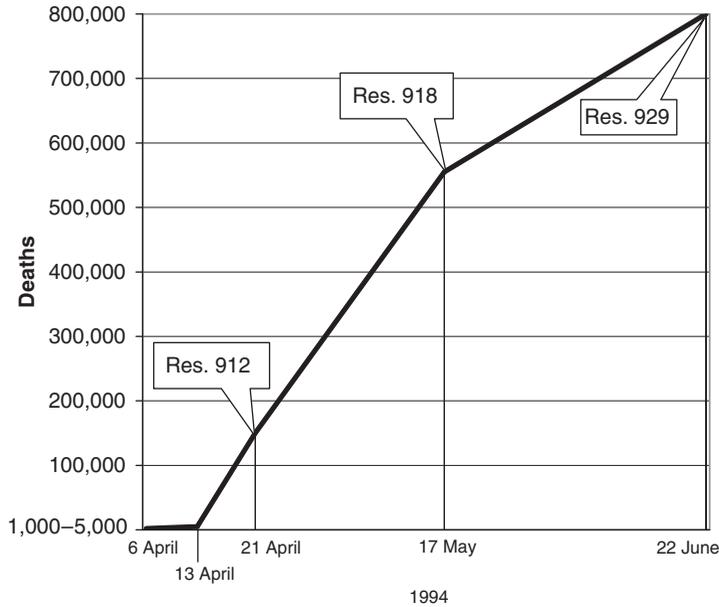


Figure 1. Deaths in Rwanda

of the perpetrators. All elements of genocide were very obvious; all were observed; but these observations were not acted upon. The “never again” spoken by so many after the Holocaust now rings alarmingly hollow: in 1994, 800,000 persons were killed within 100 days, with the most primitive instruments, while the most powerful states and international organizations, which had access to the most sophisticated instruments, knowingly allowed this to happen.

Srebrenica

Warning

Since January 1994, a detachment of peacekeepers from the Netherlands (Dutchbat) from the UN Protection Force (UNPROFOR) peacekeeping mission, had been charged with protecting the so-called safe area of Srebrenica. The official Dutch report on the events in Srebrenica¹⁹ argues that the enclave was taken by surprise and that because of the fall of the enclave, the genocide that took place could not have been prevented. According to this version of the events, no third party can be blamed for having failed to undertake preventive action. The situation is less comfortable than the report’s authors suggest, however, for several reasons:

- (1) At least two months before the attack occurred, members of the UN Security Council and the UN Secretariat were informed about the impending attack.²⁰ They did not share this information with the Dutch government or military officials.²¹ The possibility of preventive military enforcement was excluded by the UN and the major powers. No debate was held in the Security Council on maintaining the safe area in Srebrenica.
- (2) The genocidal intent of Bosnian Serbs toward Bosnian Muslims was known to third parties.²² With this knowledge, the subsequent failure to act to prevent the genocide makes the third party a collaborator with the perpetrators; that

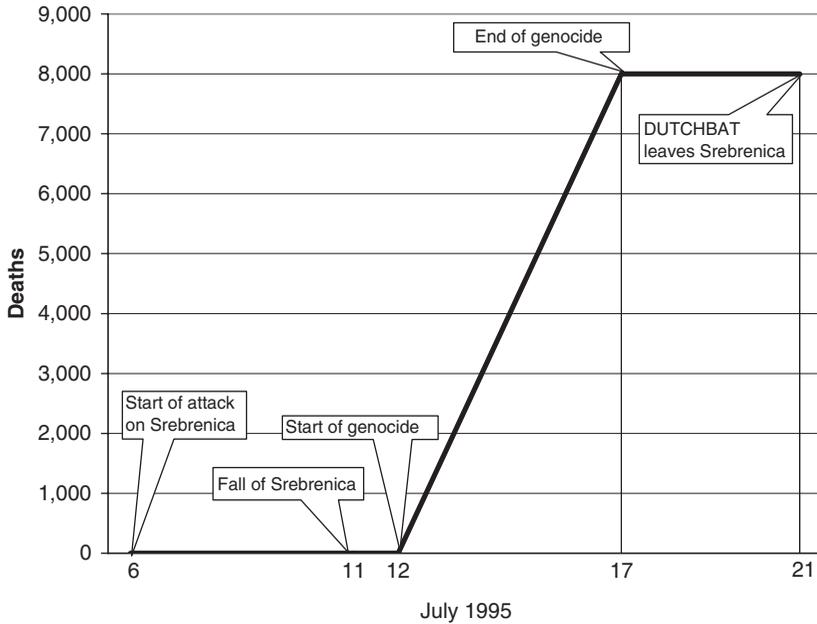


Figure 2. Deaths in Srebrenica

is why the state of Serbia-Montenegro, for instance, was condemned by the ICJ, as noted earlier. The legal duty to act to try to prevent genocide has now been established.

- (3) More than a year before the attack on Srebrenica, Tuzla, another safe area in Bosnia, was attacked by the Bosnian Serbs. The Danish and other Scandinavian troops stationed there successfully defended the enclave with force, protecting the Bosnian Muslims in Tuzla. In the fifteen-month period between these two acts of aggression, no lessons were drawn with respect to the defense of Srebrenica.²³

Although the period between the fall of Srebrenica and the beginning of the genocide was very short (see Figure 2), these three factors can be considered clear warnings on which action in the Srebrenica area could have been based.

Instruments

The Scandinavian peacekeeping troops in Tuzla (NORDBATT) had at their disposal powerful military weapons, including tanks, the availability of which they negotiated before agreeing to participate in UN peacekeeping in the area. The Dutch did not have such instruments at their disposal, and the troops of the “air mobile brigade” they sent had relatively little combat experience. From a legal standpoint, their ability to use force was no different from that of the Nordic troops: both were under the mandate of the larger UNPROFOR mission, which was based on UN Security Council Resolutions 819 and 824, and both were governed by the same rules of engagement, in which conditions for the use of force were precisely spelled out. These rules granted some discretion to the force commander to act according to his assessment of the situation, and this made a tremendous difference, as was evident after the killing of the 8,000 Bosnian Muslim men at Srebrenica.

The Dutch did not consider the strength needed, both in manpower and in weaponry, before accepting the peacekeeping mission. The decision on weaponry was taken at the national level: light armaments were chosen (a) because limited time was available for training, (b) in accordance with the current UN peacekeeping principles, and (c) to demonstrate that the weapons could be used for only self-defense, and thus avoid provoking the Serbs. However, both the UN secretary-general, Boutros Boutros-Ghali, and the UNPROFOR commander, Lt.-Gen. Francis Briquemont, favored more heavy weaponry and had communicated this to the Dutch government. The Canadian peacekeepers who preceded the Dutch unit in Srebrenica informed them of the harsh conditions and the impossibility of disarming the Muslim troops in this so-called safe area. In hindsight, the difference between a weak peacekeeping force, on the one hand, and a stronger defense force to protect the safe haven and the population, on the other hand, is evident; the light weaponry of the Dutch unit was suited to the first objective, but not to the second.²⁴ The strength of Dutchbat was inadequate to defend the enclave when it was confronted with such explicit aggression. Nonetheless, three factors must be considered to put this evaluation in context.

First, the Dutch troops did not attempt to defend the enclave, nor did they try to hinder the deportation of the Muslim men. They were criticized for this attitude in the UN secretary-general's inquiry report, prepared by David Harland.²⁵ Second, they put themselves in a very vulnerable position from the beginning of their mission and did not urge any strengthening of troops and equipment during the three years of their stay in Bosnia, even as the situation deteriorated enormously²⁶—for instance, in response to the continual obstruction of Dutchbat transportation between the enclaves of Zepa and Srebrenica.²⁷ Third, they put almost all their trust in NATO air forces based at Villafranca, in Italy, to protect them on the ground and to deter aggressors. This strategy failed particularly when peacekeepers were held hostage—the tactic of taking UN troops hostage to deter air attacks had already been used frequently by Bosnian Serb forces. On 11 July, air support had finally been activated, but several peacekeepers were taken hostage by the Bosnian Serbs, who broadcasted an ultimatum: the peacekeepers would be killed if the air attacks did not stop. This ultimatum was quickly put through to the Dutch minister of defense, Joris Voorhoeve, who then telephoned UN Special Representative Yasushi Akashi; the UN secretary-general, Boutros Boutros-Ghali; Willy Claes, secretary-general of NATO; the NATO Airbase at Vicenza, from which the fighter jets had been deployed; and military commanders in Bosnia, urging that air support be stopped immediately and planned actions be cancelled. The primordial reason was the Serbian threat of shelling and of harming the Dutch peacekeepers; above all, Voorhoeve feared for their safety. Other reasons were also communicated, however, including the closeness of Dutch peacekeepers to the Serbs and the refugees in between, which would make an air attack dangerous. Finally, Voorhoeve added that an air attack was no longer useful, since the enclave had already fallen.²⁸ The air attack was stopped. It later became clear that the decision to stop the attack was made in Sarajevo by Akashi (at 4:30 p.m. on 11 July) before Voorhoeve's telephone call to him (which was made at 4:50 p.m.).²⁹ Although Akashi made the decision to cancel the peacekeepers' air support without influence from the Dutch government, he repeatedly stated that "the SRS [Akashi] felt that he had no other choice but to comply with this request."³⁰ The argument that the Serbian and Dutch military were too close to each other for NATO to begin an air attack was also made by Gen. Bernard Janvier, the UN military commander in Zagreb, and by Gen. Frank van Kappen, military advisor to the UN secretary-general in New York.

The argument that the safe area had already been conquered by the Serbs was put forward by NATO military commanders as well. The threat of killing peacekeepers was very effective. In Rwanda, as we have seen, most peacekeeping forces were withdrawn after the killing of ten Belgian peacekeepers. In Srebrenica, military action was aborted following a threat to kill Dutch peacekeepers. The result, in both situations, was that the targeted populations became very vulnerable and were no longer protected; the *génocidaires* were not hindered by any third party.

Decision Making

The Dutch government had almost no involvement in the decision making (or lack of decision making) in the Security Council. This is remarkable, given that Dutch peacekeepers were on the ground in Srebrenica to protect the safe area. Only after the fall of Srebrenica was Voorhoeve, the Dutch minister of defense, informed by his intelligence service that two or three of his NATO allies and permanent members of the Security Council (the United Kingdom, the United States, and France) had spoken in May about a possible attack on Srebrenica, and that they decided not to take any action to prevent such an attack³¹ nor did they inform the government of the Netherlands at that time.³² By the time the attack took place, the Security Council had been incorrectly informed at least twice.³³ The false information provided gave the impression that what was taking place was not outright aggression but minor fighting in the field, to which no forceful response was required. This misinformation was distributed to the members of the Security Council by the UN Secretariat. Four days after the attack, Security Council members were again briefed with false information. Just after the attacks began, urgent requests for air support received by the UN were not sent to the Security Council; moreover, “the day before Srebrenica fell we [the UN Secretariat] reported that the Serbs were not attacking when they were. We reported that the Bosniacs had fired on an UNPROFOR blocking position when it was the Serbs..”³⁴

The inadequate information passed on to the members of the Security Council was thus of pivotal importance in both cases: the situation in Rwanda was perceived as a civil war, and the attack on Srebrenica was not perceived as outright aggression. Irrespective of other factors or of the reasons for these misperceptions, the genocides that followed in both cases were not seen as presenting an imminent danger by the decision makers in New York. After the fall of Srebrenica and during the days of the subsequent genocide, all bystanders became collaborators with the perpetrators, resulting in the first genocide in Europe since the Holocaust.

Darfur

Warning

While the onset of the conflict in Darfur is disputed, it is assumed here that the emergence of the Darfur Liberation Front (DLF) in claiming responsibility for an attack on a military garrison in Golo, in the Jebel Marrah district in February 2003, marks the *de facto* beginning of the rebellion. Soon thereafter, the Sudanese government retaliated with aerial bombardments of towns in Darfur.³⁵ Although some authors rightfully refer to the root causes of the conflict as relating to historical ethnic, economic, and geographical factors,³⁶ this attack was on a new scale that had not been publicly predicted before.

The direct cause of this conflict stems from the inferior position of the people of Darfur, who expected to get a better position, comparable with the greater autonomy accorded to South Sudan.³⁷ This is one of the reasons that the Darfur conflict has always been linked in many ways to the North–South conflict in Sudan. The main lines of reasoning to prioritize the North–South over the Darfur conflict were the following:

- (1) Only after the North–South conflict is resolved can the issue of Darfur be resolved.³⁸
- (2) North–South solutions are delayed to postpone involvement in Darfur.³⁹
- (3) North–South agreement must never be endangered by Darfur.⁴⁰
- (4) North–South as priority should be stabilized with military peacekeeping only to that area and not to Darfur. The UN Mission in Sudan (UNMIS) was restricted to the North–South conflict and could not be deployed in the Darfur region as well.⁴¹

G rard Prunier concluded from all these arguments that cooperating in the North–South negotiations allow the Sudanese government to commit genocide in Darfur without risk of foreign interference.⁴²

The reservations listed above on action against the rising conflict in Darfur should be taken into account. Information about what was going on in Darfur was available and made public in 2003 by NGOs (Amnesty International was the first, followed by the International Crisis Group⁴³), states (e.g., The Netherlands⁴⁴), and international organizations (e.g., Jan Egeland and Mukesh Kapila of the UN Office for the Coordination of Humanitarian Affairs, OCHA⁴⁵). In 2004 the United States and the European Parliament followed with very strong statements.⁴⁶ At that time the conflict was still rather limited. Thus, in 2003 warnings had been sounded, but the Security Council did not discuss the issue.⁴⁷ It is remarkable that between the beginning of 2003 and September 2004 no decision was made by the Security Council to prevent an escalation of the gross human-rights violations beyond the 10,000 killings that had already taken place in a year’s time. In later stages—since September 2004—the scale of killings increased significantly, as acknowledged by policy makers at the time.⁴⁸ At this point it was no longer possible to speak about preventive actions; instead, the debate that took place centered on limiting or resolving the conflict and was, therefore, not about the magnitude, scope, seriousness, or frequency of the conflict and the gross human-rights violations it involved but, rather, about the choice to be made as to what action could be taken. It was in July 2004 that the UN Security Council adopted a very weak resolution to disarm the Janjaweed—but without any sanctions against the Sudanese government if it should fail to do so.⁴⁹ By 9 September 2004, the American government, through secretary of state Colin Powell, had labeled the situation in Darfur a genocide, based on a field-mission report that made clear that the deliberate killings were focused on one ethnic group, sparing civilians from another ethnic group in the nearby village.⁵⁰ Figure 3 makes strikingly evident that after the adoption of this weak resolution in July 2004, atrocities began to take place on a much larger scale. The increase in the number of killings was very large—yet no one responded with forceful actions, although the deterioration of the situation in the second half of 2004 was reported and discussed at the United Nations. We will now examine the instruments used by the UN in the period between 2003 and 2008.

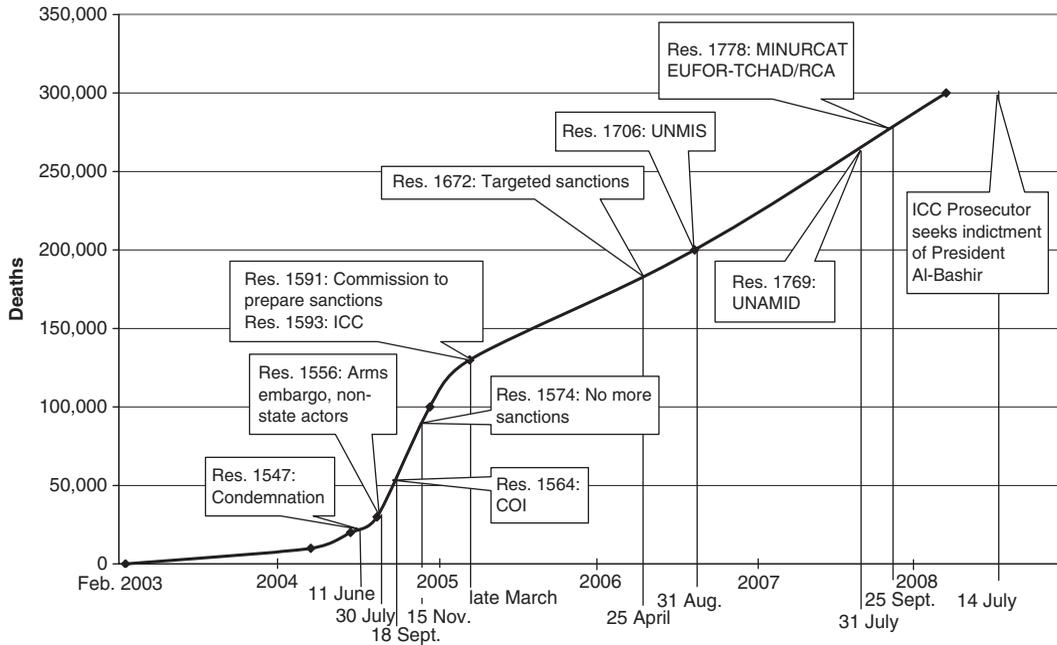


Figure 3. Deaths in Darfur (for data on casualties see note 6)

Instruments

The first UN official to raise the question of Darfur was the UN humanitarian coordinator for Sudan, Mukesh Kapila, in November 2003.⁵¹ Kapila labeled the situation the most alarming humanitarian emergency in the world. The UN coordinator of OCHA, Jan Egeland, was also very concerned about the large-scale ethnic cleansing, and he urged immediate action.⁵² The secretary-general took the opportunity of the memorial ceremonies for the tenth anniversary of the Rwandan Genocide, in April 2004, to address the situation in Darfur.⁵³ Ceasefires failed to hold, and the situation worsened; concern was expressed in a presidential statement by the Security Council on 26 May. The first more concrete action was the recognition of the crisis by the Security Council in June 2004, when Resolution 1547, addressing the North–South Sudan peace process, mentioned “bring[ing] an immediate halt to the fighting in Darfur.”⁵⁴ At the end of July, in Resolution 1556, the Security Council imposed an arms embargo on the militias in Sudan and threatened the government of Sudan with sanctions if it had not disarmed the Janjaweed within thirty days. This resolution had some impact: within a week, a twelve-point Darfur Action Plan was agreed on between the Sudanese government and the UN special representative for Sudan, Jan Pronk.⁵⁵ The threat of sanctions was then removed; Jan Pronk reported to the Security Council two months later that the situation had again worsened and large-scale militia violence had resumed.⁵⁶ The Security Council reacted with two more severe resolutions. First, in September 2004, when the United States had already determined that the Sudanese were committing genocide and the European Parliament had labeled the situation “tantamount to genocide,”⁵⁷ a resolution was adopted to establish a commission of inquiry to investigate whether or not the term genocide was applicable in this case.⁵⁸ The Security Council’s concern about the situation in Sudan, and particularly the North–South peace process, was great, and,

at the initiative of the United States, the next meeting on Darfur took place in Nairobi. The Comprehensive Peace Agreement of November 2004 addressed the North–South Sudanese conflict but did not address Darfur. The overwhelming opinion was that once the large-scale, long-lasting North–South conflict was resolved, a resolution for Darfur would automatically follow, particularly because leaders of the South were now involved in the government.⁵⁹

Because all the focus was on success in the North–South peace process, the threat of sanctions on Darfur was not repeated in November 2004. The hope for a positive development was not realized, however: on the contrary, because the Sudanese government now had more freedom to act in Darfur and no longer feared international pressure, warfare in Darfur increased, leading to a sharp rise in the number of killings, from 100,000 in November 2005 to 200,000 in August 2006 (see Figure 3). The Sudanese government successfully played on the fears of other states that an intervention in Darfur would jeopardize the peaceful end of the North–South Sudanese civil war—Africa’s longest war—which had resulted in 2 million deaths. The UN was increasingly reluctant to undertake any active involvement with respect to Darfur, leaving that role to the African Union. The AU had already pledged a peacekeeping mission of more than 3,300 personnel, but in October 2004 possessed only 597 soldiers (deployed as a protection force for observers),⁶⁰ while experts assessed that a relatively small number of well-equipped troops—approximately 5,000, which could have been made available quickly in July 2004, according a British chief of general staff⁶¹—could have protected the camps in Darfur, provided humanitarian assistance, and set up a no-fly zone (as had been proposed by the US Senate and European Parliament in the spring of 2004⁶²). The Sudanese government succeeded over the following years in obstructing any interference, with the support of both China and Russia in the Security Council, which, over the long term, has resulted in a declining willingness to act. This is a remarkable outcome, because the domestic pressure on Western democracies to act in Darfur was very strong—particularly across the United States.

Over the past three years, a stalemate has been more or less maintained. On 31 March 2005, after the publication of the report of the UN Commission of Inquiry, the Security Council adopted a resolution “to bring all those responsible to justice,” and the case of Darfur was referred to the International Criminal Court (ICC) in order to prosecute the perpetrators of the atrocities; on 29 March 2005 a resolution was adopted to establish a commission to prepare on targeted sanctions on specific persons and travel bans on the members of the government of Sudan.⁶³ This is not a firm position, however, because no instruments have been applied. Figure 3 shows that from mid-2005 on, the killings failed to slow from the increased pace reached by October 2004.

In 2006 the pressure was high to achieve some result, which led, for instance, to a Security Council ministerial meeting in May and a visit by all Security Council members in June to investigate the situation in Sudan/Darfur and Chad. The results, however, were meager. The proposed expansion of the UNMIS peacekeeping force in South Sudan to Darfur was adopted in August 2006 but never implemented.⁶⁴ Since then two decisions have been taken with respect to the peacekeeping force. On 25 September 2007, a peacekeeping mission (MINURCAT–EUFOR TCHAD/RCA) was established in Chad and the Central African Republic to protect refugees from Darfur. By this time a combined peacekeeping force about 31,000 UN and AU troops (UNAMID) had been proposed and adopted on 31 July 2007.⁶⁵ However, the implementation of this resolution was made conditional on Sudan’s consent to the

equipment of the troops and the selection of the troop-contributing countries, which Sudan has given only on a case-by-case basis.⁶⁶ Moreover, in the mean time the UN has weakened this instrument relative to the August 2006 mandate (Resolution 1706): the peacekeepers now lacks both the authorization to disarm the militias and a mandate to use all necessary means to protect civilians. It is very sad to observe that the assignment in the mandate of 2006—“to seize or collect arms or related material”—was not repeated in the mandate of 2007. The UN Secretariat’s prohibition on searches for weapons in Rwanda in 1994 has been seen as critical to the failure to prevent that genocide. Politics do not seem to have changed, and policy makers on Darfur have not learned from the lessons of Rwanda and Srebrenica.

Decision Making

In contrast to the cases of Rwanda and Srebrenica, as we have seen, the Security Council has been fully aware of the situation in Darfur. The Security Council has been informed every month by many parties, including UN Office of the High Commissioner for Human Rights in Geneva, on the current situation in Darfur. Public opinion has been outspoken, with much pressure on Western governments from their domestic constituencies to change the situation in Darfur and to act. Nonetheless, the Sudanese government has been able to resist this pressure, through a series of small accommodations and minor diplomatic moves, without ever really changing the situation on the ground. Sudan is one of the more powerful states in the world, and can afford not to give in, because of support from African and Arab states and from two permanent members of the Security Council (China and Russia). The greatest pressure was brought to bear in 2005 and 2006, but this pressure has also waned; the Security Council has brought only two indictments to the ICC, neither of which the Sudanese government is taking seriously. In 2008, the Security Council again urged Sudan to “cooperate fully with the Court” on the two indictments.⁶⁷ In fact, one of those charged—former interior minister Ahmed Haroun—was appointed minister of humanitarian affairs and advisor on human rights after his indictment. In July 2008, the ICC prosecutor also sought the indictment of Sudanese president Omar al-Bashir; an arrest warrant was issued by the ICC on 4 March 2009.

The United Nations has also failed to declare a no-fly zone, and UNAMID forces are still not fully deployed in the Darfur region to protect the internally displaced persons in the camps; so the atrocities are continuing. The UN has again failed an important test of the responsibility to protect.

Conclusions

This comparative genocide study has led us to the following conclusions on early warnings, available instruments, decision-making processes, and outcomes.

The *early warnings* on Rwanda were very clear, reliable, outspoken, and linked with a policy recommendation to the responsible decision makers. With respect to Srebrenica, the warnings were not clear and outspoken at the moment of decision; reconstruction of warnings is possible only in hindsight. The information available to some permanent members of the Security Council and to the UN Secretariat was not made public and did not lead to any preventive strategy. The warnings on Darfur were clear and reliable, and were made public at an early stage; in addition, the atrocities in Darfur were spread over a relatively long period, which made the development and implementation of a preventive policy possible. The data on Darfur, unlike the data on Rwanda and Srebrenica, were available to and discussed in the Security Council.

The *instruments to prevent genocide* in Rwanda and in Srebrenica were available. UN peacekeeping forces were deployed and could have been strengthened. In Rwanda, moreover, the peacekeepers could have been empowered to stop the genocide by combining their troops with the evacuation forces. In Srebrenica, lessons could have been drawn from the successful and effective defense of another safe haven by Scandinavian peacekeepers. In Darfur, the instruments were not available because of lack of consent from the Sudanese government and the Security Council's inability to enforce troop deployment: at least two permanent members of the Security Council rejected proposals for mandatory decisions. Moreover, the Sudanese North–South peace process was prioritized over the Darfur conflict, which has led to a postponement of action in Darfur in order not to jeopardize the North–South accord.

Decision making in the Security Council was hampered in the case of Rwanda by the actions of those civil servants at the UN Secretariat who had primary responsibility for supplying and withholding information on the conflict, and who perceived the situation as a peacemaking process involving the installation of a transitional government and not as an emerging genocide. The UN Secretariat—and, in particular, the DPKO—therefore favored a neutral rather than a confrontational position. A shift in perception from facilitating the implementation of a peace accord toward preventing an emerging genocide was needed, but no such shift took place.

In the case of Srebrenica, only after the fall of the “safe area” did the Security Council begin enforcement measures against the Bosnian Serbs, which ultimately resulted in the Dayton Accords. The available NATO air support was not used at the moment of the attack and was deployed only to a limited extent four days later; the Dutch peacekeeping force did not resist or deter the Bosnian Serb aggression. Moreover, over the five days of the genocide no decision was made to step in to contain the situation.

Beginning in 2004, the topic of Darfur was continually on the agenda of the Security Council; public opinion in the United States and Europe put pressure on political leaders to act on the issue, and Security Council members were briefed monthly by the UN Secretariats in New York and Geneva. No longer was a separation between peace and security, on the one hand, and protection of human rights, on the other hand, maintained. The situation was taken very seriously. For instance, at one point all members of the Security Council gathered in the region for a meeting. Nonetheless, because of the strong political position of the government of Sudan in the world and among some members of the Security Council, no action was taken against Sudan. Until now, all measures with respect to Darfur have been undertaken with the consent of the Sudanese government.

In retrospect, we can say that in all three cases genocide was not prevented because, at the appropriate moment, effective measures were not undertaken. For instance, the situation would have been different if the UN had acted against the extremist militia in Rwanda in February and March 1994, or against the Bosnian Serbs in Srebrenica in May and June 1995, by strengthening peacekeeping forces in manpower and in mandate. The situation in Darfur is different, because no UN peacekeepers were deployed; however, there was sufficient time to react in Darfur, as the first full-scale killings did not take place until a year after the first warnings were received. Yet, between February 2003 and mid-2005, no real or effective measures were undertaken to prevent the gross violations of human rights that were taking place in the region.

Notes

1. Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 15–16, estimates a total of 500,000 fatalities; a letter from the UN Secretary-General to the Security Council, 16 December 1999 (UN Doc. S/1999/1257), cites approximately 800,000 fatalities; Organization of African Unity, *Rwanda: The Preventable Genocide* [OAU Report], gives a range of 500,000 to 800,000. See also Catrien Bijleveld, “Missing Pieces: Some Thoughts on the Methodology of the Empirical Study of International Crimes and Other Gross Human Rights Violations,” in *Supranational Criminology: Towards a Criminology of International Crimes*, ed. Alette Smeulders and Roelof Havemans, 77–97 (Antwerp: Intersentia, 2008), on the difficulty of correctly estimating the number of casualties.
2. Fred Grünfeld and Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (Leiden: Martinus Nijhoff, 2007).
3. Fred Grünfeld, “The Role of Bystanders in Rwanda and Srebrenica: Lessons Learned,” in *Supranational Criminology: Towards a Criminology of International Crimes*, 457–86 (Antwerp: Intersentia, 2008).
4. Bacre Waly Ndiaye, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and other Dependent Countries and Territories: Extrajudicial, Summary or Arbitrary Executions, Addendum: Report by Mr B.W. Ndiaye, Special Rapporteur, on His Mission to Rwanda from 8 to 17 April 1993*, UN Doc. E/CN.4/1994/7/Add.1 (11 August 1993), §79 [Ndiaye Report].
5. Basic sources include Ingavar Carlsson, Han Sung-Joo, and Rufus M. Kupolati, *United Nations Report of the Independent Inquiry into the actions of the United Nations during the 1994 Genocide in Rwanda*, UN Doc. S/1999/1257 (15 December 1999) [Carlsson Report]; OAU Report; Assemblée Nationale de France, *Rapport d’information, “Mission d’information sur le Rwanda,”* No. 1271 (December 1998); Sénat de Belgique, *Rapport de la Commission d’enquête parlementaire concernant les événements au Rwanda* (6 December 1997) [Belgian Senate Report]; Des Forges, *Leave None to Tell the Story*. Scholarly works include, on the role of the UN, Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (London: Cornell University Press, 2002); Linda Melvern, *A People Betrayed: The Role of the West in Rwanda’s Genocide* (London: Zed Books, 2000); on the role of the United States, Samantha Power, *“A Problem from Hell”: America and the Age of Genocide (1959–1994)* (New York: HarperPerennial, 2003); on the role of France, Olivier Lanotte, *La France au Rwanda (1990–1994): entre abstention impossible et engagement ambivalent* (Brussels: Pie-Peter Lang, 2007).
6. Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia*), Judgment, 26 February 2007, para. 430.
7. Note that the figures given here include not only direct killings but also casualties from sickness and harm resulting from the miserable circumstances of flight and refugee camps. Unlike the figures mentioned for Rwanda and Srebrenica, casualty numbers from Darfur take in a much broader range of victims by including those indirectly killed by the war. The relevant figures for an analysis of decision making are those publicly stated by the decision makers: February 2003: Start of conflict; 31 April 2004: 10,000 deaths (EU Parliamentary Resolution P5-TA (2004) 0225); 13 July 2007: 20,000 deaths (UN estimate); 9 September 2004: 30,000 (US Department of State, *Documenting Atrocities in Darfur*, State Publication No. 11182 (21 September 2004)); 11 January 2005: 100,000 deaths (UN envoy Pronk to the Security Council, UN Doc. S/PV.5109); 31 March 2005: 130,000 deaths (statement by the United States to the UN Security Council, UN Doc. S/PV.5158); 18 September 2006: 200,000 deaths (statement by the United Kingdom to the Security Council, UN Doc. S/PV.5528); 23 April 2008: 300,000 deaths (John Holmes, UN head of humanitarian affairs, BBC News).

8. Gérard Prunier, *Darfur: An Ambiguous Genocide*, rev. ed. (London: C. Hurst, 2007); Alex de Waal, *Famine That Kills: Darfur, Sudan* (Oxford: Oxford University Press, 2005); M.W. Daly, *Darfur's Sorrow: A History of Destruction and Genocide* (Cambridge: Cambridge University Press, 2007).
9. Colin L. Powell, "The Crisis in Darfur" (written remarks before the Senate Foreign Relations Committee, 9 September 2004), <http://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm> (accessed 12 June 2009).
10. *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1546 of 18 September 2004*, UN Doc. S/2005/60 (25 January 2005), http://www.un.org/News/dh/sudan/com_inq_darfur.pdf (accessed 12 June 2009).
11. The term was first introduced by John Prendergast and Anthony Lake, "Stopping Sudan's Slow-Motion Genocide," *Boston Globe*, 20 May 2004.
12. See Amnesty International, "Rwanda: Persecution of Tutsi Minority and Repression of Government Critics 1990–1992" (AI document AFR 47/002/92, 1 May 1992).
13. See Ndiaye Report.
14. E.g., Johan Swinnen, the Belgian ambassador to Rwanda (see Belgian Senate Report, 493–95); CIA reports in January 1993 (Power, *A Problem from Hell*, 338) and January 1994 (Des Forges, *Leave None to Tell the Story*, 159 n. 77; Melvern, *A People Betrayed*, 91).
15. Their request was supported by the Belgian prime minister, Willy Claes: see Belgian Senate Report, 342, 392; Carlsson Report, 13. See further Grünfeld and Huijboom, *Failure to Prevent Genocide in Rwanda*, chapter 11.
16. See particularly Barnett, *Eyewitness to a Genocide*, chapter 4 (for the bureaucratic-politics view of the UN Department of Peacekeeping Operations); Linda Melvern, "The Security Council in the Face of Genocide," *Journal of International Criminal Justice* 3 (2005): 847–60.
17. More than 1,700 elite troops from the United States, France, Italy, and Belgium were either flown in or placed on standby in neighboring countries immediately after the plane crash, when the evacuation of their nationals was ordered. If these 1,700 well-armed, well-trained elite troops had been added to the 2,500 UNAMIR soldiers on the ground, the combined force would have totaled 4,200: exactly the number of soldiers requested by all Rwandan parties to the Arusha Peace Accords in 1993, and the number considered realistic by the military personnel who prepared the peacekeeping mission. Grünfeld and Huijboom, *Failure to Prevent Genocide in Rwanda*, chapter 14.
18. See especially Barnett, *Eyewitness to a Genocide*, 111.
19. J.C.H. Blom et al., *Srebrenica, een 'veilig' gebied. Reconstructie, achtergronden, gevolgen en analyse van de val van een Safe Area* (Amsterdam: Boom, 2002).
20. Television interview with Joris Voorhoeve, former Dutch minister of defense, ten years after Srebrenica (9 July 2005), http://nos.nl/nosjournaal/artikelen/2005/7/9/090705_voorhoeve_srebrenica.html (accessed 19 June 2009).
21. C. Wiebes, *NIOD—Intelligence and the War in Bosnia 1992–1995: The Role of the Intelligence and Security Service* (New Brunswick, NJ: Transaction Publishers, 2002).
22. Andreas Zumach, *US Intelligence Knew Serbs Were Planning an Assault on Srebrenica* (Basic Report No. 47, British American Security Information Council, 16 October 1995); Andreas Zumach, *New Evidence Further Implicates France in Fall of Srebrenica* (Basic Report No. 56, British American Security Information Council, 11 February 1997).
23. See Grünfeld, "The Role of Bystanders," 467–70.
24. Blom et al., *Srebrenica*, 1123–29; *Netherlands Parliamentary Inquiry Report on Srebrenica* (Tweede Kamer, file no. 28 506, nos.2–3, pp. 71–74; no. 5, p. 482).
25. *Report of the Secretary-General pursuant to General Assembly Resolution 53/35*, UN Doc. A/54/549 (15 November 1999) [Srebrenica Report].
26. Blom et al., *Srebrenica*, 1911–12.
27. Srebrenica Report, §165.
28. Joris (J.C.C.) Voorhoeve, Letter to the editor, *NRC-Handelsblad*, 2 May 1998.

29. Blom et al., *Srebrenica*, 2240–41, 2300–2308.
30. Srebrenica Report, §306.
31. ARGOS Interview with Joris Voorhoeve, Part 1 (VPRO's De Ochtenden—Radio 1—December 22, 2006) [English transcript], http://www.domovina.net/archive/2006/20061222_argose.php (accessed 22 June 2009).
32. Wiebes, *NIOD*, 145.
33. Srebrenica Report, §282.
34. Srebrenica Report, §496.
35. Prunier, *Darfur*, 99.
36. De Waal, *Famine That Kills*; Daly, *Darfur's Sorrow*.
37. Alex Cobham, "Causes of Conflict in Sudan: Testing The Black Book," *European Journal of Development Research* 17 (2005): 462–80.
38. This line of argument was backed by the UN Secretariat—see "Interview: Kieran Prendergast," *Frontline* (PBS, 29 June 2007), <http://www.pbs.org/wgbh/pages/frontline/darfur/interviews/prendergast.html> (accessed 22 June 2009); statement by UN Secretary-General Kofi Annan, UN Security Council Meeting No. 5080 (18 November 2004)—but also by some Western countries. James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power* (New York: Farrar, Straus & Giroux, 2006), 217.
39. "Interview: Mukesh Kapila," *Frontline* (PBS, 11 June 2007), <http://www.pbs.org/wgbh/pages/frontline/darfur/interviews/kapila.html> (accessed 22 June 2009).
40. House of Commons International Development Committee (UK), *Darfur, Sudan: The Responsibility to Protect* (5th Report of Session 2004–05, 30 March 2005), vol. 1, 36–37.
41. This line of reasoning was voiced in a Security Council meeting in Nairobi, Kenya, UN Doc. S/PV.5080 (18 November 2004). The extension of UNMIS to cover Darfur was addressed in Resolution 1706, UN Doc. S/RES/1706 (31 August 2006).
42. Prunier, *Darfur*, 116.
43. Amnesty International, *Crisis in Darfur: Urgent Need for International Commission of Inquiry and Monitoring* (AI document AFR/54/026/2003, 28 April 2003); International Crisis Group, "Sudan's Other Wars," *Africa Briefing* 14 (25 June 2003).
44. Ministerie van Buitenlandse Zaken, *Ambtsbericht Soedan Juli 2003* [Ministry of Foreign Affairs, *Note on Sudan* (July 2003)].
45. "Humanitarian Situation Worsens in Greater Darfur Region of Western Sudan," UN OCHA Doc. AFR/721-IHA/805 (7 October 2003).
46. On 24 June 2004, several US diplomats expressed their concern for the situation in Darfur: Eric Markusen and Samuel Totten, eds., *Genocide in Darfur: Investigating the Atrocities in the Sudan* (New York: Routledge, 2006), xxiv; Colin Powell, then US secretary of state, described the situation as "genocide": Colin L. Powell, "The Crisis in Darfur" (written remarks before the Senate Foreign Relations Committee, 9 September 2004), <http://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm> (accessed 12 June 2009); US Department of State, *Documenting Atrocities in Darfur*, State Publication 11182 (Washington, DC: US Department of State, 2004). The European Parliament issued a first resolution concerning Darfur, P5_TA(2004)0225, on 31 March 2003; a further resolution on Sudan, EU Doc. P6_TA(2004)0012, on 16 September 2004, calls the situation "tantamount to genocide."
47. Mukesh Kapila and Jan Egeland both sent several reports and internal memos to the UN Secretariat from October 2003 onward.
48. See statement by the United States to the UN Security Council, UN Doc. S/PV.5158, in which the US notes 30,000 casualties in September 2004 and 130,000 in April 2005.
49. UN Security Council Resolution 1556, UN Doc. S/RES/1556 (30 July 2004).
50. See Powell, "The Crisis in Darfur"; US Department of State, *Documenting Atrocities in Darfur*.
51. This message was first made public by OCHA on 5 December 2003. Several months later, Kapila compared the Darfur situation with Rwanda in a BBC news radio interview: "Mass Rape Atrocity in West Sudan," *BBC News*, 19 March 2004.

52. The term “ethnic cleansing” was first used in Jan Egeland, “Sudan: Ethnic Cleansing in Darfur,” UN Doc. RCHC/SUD/Note39 (22 March 2004).
53. “‘Risk of Genocide Remains Frighteningly Real,’ Secretary-General Tells Human Rights Commission as He Launches Action Plan to Prevent Genocide (Press Release), UN Doc. SG/SM/9245 AFR/893 HR/CN/1077, <http://www.un.org/News/Press/docs/2004/sgsm9245.doc.htm> (accessed 22 June 2009).
54. UN Doc. S/RES/1547 (11 June 2004).
55. *Report of the Secretary-General pursuant to paragraphs 6 and 13 to 16 of Security Council Resolution 1556* (2004), UN Doc. S/2004/703 (30 August 2004), §7–11.
56. Minutes of the 5071st Meeting of the UN Security Council, UN Doc. S/PV.5071 (4 November 2004)
57. EU Doc. P6_TA(2004)0012.
58. UN Security Council Resolution 1565, UN Doc. S/RES/1564 (18 September 2004).
59. Statement by the Secretary-General and SPLM/A leader Garang, UN Doc. S/PV.5080 (18 November 2004); Statement by China, Russia, Germany, UK, France, and the USA, UN Doc. S/PV.5082 (19 November 2004); *Report of the Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng. Mission to the Sudan—The Darfur Crisis*, UN Doc. E/CN.4/2005/8 (27 September 2004), §33. See further the sources cited in note 37 above. For scholarly works see Paul D. Williams and Alex J. Bellamy, “The Responsibility to Protect and the Crisis in Darfur,” *Security Dialogue* 36 (2005): 27–47; Alex De Waal, “Darfur and the Failure of the Responsibility to Protect,” *International Affairs* 86 (2007): 1039–54; Eric A. Heinze, “The Rhetoric of Genocide in U.S. Foreign Policy: Rwanda and Darfur Compared,” *Political Science Quarterly* 122 (2007): 359–83.
60. “The African Union Deploys More Troops in Darfur as Part of Its Efforts to Strengthen AMIS” (Press release no. 098/2004, 28 October 2004), http://www.africa-union.org/News_Events/Press_Releases/98%2004%20press%20release%20darfur%2027%2010%2004.pdf (accessed 23 June 2009).
61. Williams and Bellamy, “The Responsibility to Protect,” 34.
62. US Senate, “To promote peace and accountability in Sudan, and for other purposes,” 109th Congress, 1st Sess., S. 1462 (21 July 2005), 14 row 16; EU Doc. P5_TA(2004)0225.
63. UN Doc. S/RES/1593 (31 March 2005); S/RES/1591 (29 March 2005).
64. UN Doc. S/RES/1706 (31 August 2006).
65. UN Doc. S/RES/1778 (25 September 2007); UN Doc. S/RES/1769 (31 July 2007).
66. Minutes of the 5784th Meeting of the UN Security Council, UN Doc. S/PV.5784 (27 November 2007).
67. Statement by the President of the Security Council, UN Doc. S/PRST/2008/21 (16 June 2008).

The Problem of Ethnic Politics and Trust: The Missing Persons Institute of Bosnia-Herzegovina

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After the violent conflict in the 1990s, between 25,000 and 30,000 persons were missing in Bosnia-Herzegovina (BiH), their fates and whereabouts unknown. Solving the missing-persons issue, and thus reducing some of the damages of the conflict, has been important in the aftermath crisis management and has been considered a prerequisite to prevent recurrences. Two of the latest developments in these efforts are the adoption of the Law on Missing Persons in October 2004 and the establishment of a state-level institution, the Missing Persons Institute (the MPI BiH) in August 2005. This article examines the missing-persons issue from a risk management and societal safety perspective aimed at creating resilient societies. The state is regarded as a key actor, even when other actors are involved and considered co-responsible. Especially important is the state's ability to establish public confidence in critical social institutions and to build mutual trust among different groups within the population. Based on empirical data, the article explores risk factors and dynamics that may threaten the MPI BiH's ability to contribute to societal safety in a society that has run into what is conceptualized as a social trap. To get out of this trap, parties who profoundly distrust one another will need to cooperate. Explicit as well as implicit objectives, competing rationalities, and perceptions of reality among key actors are discussed. The article also considers how the emotional overrules the rational, how the predominantly ethnic discourse in society overpowers the weaker human-rights discourse, and how this may threaten the important building of confidence and trust.

Keywords: ethnic conflict, missing persons, societal safety, social traps, trust and distrust

Introduction

The Balkan wars of the 1990s were a complex crisis developing along the lines of ethnic division and polarization. In Bosnia-Herzegovina (BiH¹), the Dayton Peace Agreement of 1995 put an end to violence but also essentially cemented the divisions and demographic patterns established in BiH during the war, splitting the country in two autonomous territorial and administrative entities. At war's end, an estimated 30,000 persons were missing, and their fates and whereabouts unknown. Resolving the missing-persons issue, and thereby mitigating the damage caused by the violent ethnonational conflict, has played an important role in the aftermath crisis management. Investigations of mass graves and subsequent identification of the exhumed mortal remains have been conducted at a scale so far unparalleled in the world, and the results are also unparalleled. Since 1997, assisted by the International Commission on Missing Persons (ICMP), entity-level commissions on missing persons and local authorities have conducted recovery and repatriation operations of victims of

their own ethnicities on each other's territory—the so-called Joint Exhumation Process (JEP). This arrangement, however, upheld a division along the lines of ethnicity; true cooperation has been difficult, and has involved harsh mutual accusations of deliberate obstructionism on both sides.

Two of the latest efforts to change this pattern are the adoption in October 2004 of the Law on Missing Persons, detailing the rights of family members of missing persons as well as the duties of state authorities,² and the establishment of a state-level institution, the Missing Persons Institute of Bosnia and Herzegovina (MPI BiH), as one of the provisions of this law.³ This institution was co-founded by the Council of Ministers of BiH and the ICMP in August 2005.⁴ It will merge the two previously existing entity-level commissions, the Federal Commission on Missing Persons (Federal Commission) and the Office for Tracing Detained and Missing Persons of the Republika Srpska (RS Office), and take over their work, staff, and duties. Through representation in an advisory board, families of missing persons will get a formal role in the process. The stated objective of the MPI BiH is to speed up the process and increase the efficiency of activities related to establishing the fate and whereabouts of missing persons by centralizing and coordinating all efforts in one body. A highly important task will be the creation of a unique and rigorously verified Central Record of Missing Persons in BiH (CEN BiH).⁵ The crux is that in accordance with the Law on Missing Persons, all activities are to be carried out exclusive of “any form of discrimination, including sex, race, skin colour, language, religion, political or other beliefs, national and social origin, inclusion in a national minority group, property status, age, mental or physical disability, status acquired by birth, or any other status”⁶—whether among the missing or among their family members. By lifting these activities up from the entity level to the state level, one is basically trying to replace a predominantly *ethnic discourse* (focusing on collective ethnonational interests based on perceived group characteristics) that also affects the missing-persons issue with a *human-rights discourse* (focusing on the needs and rights of individuals) and to foster *intergroup trust* through institutional intergroup cooperation. A further goal is to draw the attention and awareness of political parties to resolving the issue rather than abusing and manipulating it as a convenient means to other political ends.

This article addresses the issue from the perspectives of risk management and societal safety, focusing on the importance of trust and trustworthiness in discussing factors that may put at risk the MPI BiH's ability to change the prevailing discourse, create confidence in its work, and build trust among the families of the missing across ethnonational dividing lines. In doing so, it takes into consideration the external pressures from a society still characterized by institutionalized polarization along ethnonational lines, attended by profound interethnic distrust and widespread denial or strongly biased interpretations of what happened during the war and further exacerbated by the dominance of chauvinistic nationalist partisan politics. The article is based on a study of a process that is still under way; it primarily covers the implementation period of the MPI BiH, from the drafting of the Law on Missing Persons and the protocol for establishing the institute, starting in 2003, to its coming into full functionality (in terms of having a full staff and steering functions in place, ready to proceed to operation), from 2008 onward.

Methods

The findings presented in the article are based on a critical review of a variety of sources, analyzed for their content in accordance with the principles of historical

source criticism. Source categories taken into account are related empirical studies and research reports; official and semi-official documents; internal reports by key institutions; English press summaries by ICMP of articles related to the missing-persons issue in Bosnian-Herzegovinian written news media from December 2004 through 2007; ICMP press releases from 2003 through 2007, usually carried in full text or reported on by a number of local media; qualitative interviews with key actors relevant to the missing-persons issue, conducted in June 2005 and November/December 2006; field conversations; and participant and non-participant observation data.

Field trips to BiH included a three months' secondment to the ICMP as an archaeologist—my original profession—in 2005, through the Norwegian Resource Bank for Democracy and Human Rights (NORDEM).⁷ This trip made me realize that although forensic science is a tremendously important and indispensable contributor, perfecting the forensic sciences is not the main key to resolving the missing-persons issue in BiH. In 2006 and 2007, I spent a total of two-and-a-half months doing research in BiH, during which time, in addition to conducting interviews, I had the opportunity to engage in field conversations and make observations on the interactions among key actors by attending and/or participating in various events such as exhumations, commemorations, burials, conferences, and everyday work situations. Key actors more formally interviewed were the head of BiH's Department for Protection of Human Rights at the Ministry for Human Rights and Refugees (MHRR); the then chair of the MPI Board of Directors; nine leadership representatives of Bosniak, Croat, and Serb missing-person family associations and/or their umbrella organizations, four of whom are also members of the MPI BiH Advisory Board; and the director of the ICMP's Civil Society Initiatives Department. All interviews were conducted face to face, those with Bosnian-Herzegovinians with the help of interpreters.⁸ Two were unstructured interviews; the rest were semi-structured, based on an interview guide discussed in detail with the interpreters.

The press summaries used total about 5,600 individual entries, predominantly from the daily newspapers *Dnevni avaz*, *Dnevni list*, *Glas Srpske*, *Nezavine novine*, and *Oslobođenje*; the weekly magazines *Slobodna Bosna* and *DANI*; the online news agency FENA; and the online *Bosnia Daily*.⁹ Frequently these entries are accompanied by a comment that the same news was carried by other named local news media as well. The press summaries cover the whole spectrum of the missing-persons issue: exhumations, DNA identification issues, anniversaries and reports on people missing after specific war events, commemorations, burials, opinions and statements by key actors, reactions to court procedures, problems concerning witnesses, and so on. About 450 entries directly cover the Law on Missing Persons and/or the MPI BiH. As a source on the character of the public discourse in BiH around this issue, they are invaluable.

Theoretical Perspectives

Societal Safety and the Necessity of Trust and Trustworthiness

In a white paper to the Norwegian Parliament in 2002, the concept *societal safety* was defined as “the ability society has to maintain critical societal functions, protect the life and health of the citizens and meet their basic requirements in a variety of stress situations.”¹⁰ The focus is on preventing undesirable events, characterized by extraordinary stresses and losses and occurring in complex and interdependent systems, that undermine trust in vital social functions. Societal safety further involves an ability to reduce the damage done by such events when they do nonetheless occur

and to establish normal conditions as soon as possible after such events. Even when other actors are involved and are considered co-responsible, the state is regarded as a key actor and the ultimate guarantor of societal safety, the very idea of which rests on a precautionary principle and aims to create a society that is essentially resilient to various intentionally as well as unintentionally imposed threats and dangers. Especially important is the state's ability to establish and maintain public confidence in critical social institutions and to build mutual trust among different groups within the population.¹¹

Of course, this is a far easier task in a society like Norway's—where the levels of generalized trust are the highest in the world,¹² where people have fair reason to trust their institutions, and where the undesirable events so far encountered have never caused a *complex emergency*, defined by a “total or considerable break down of authority resulting from internal or external conflict” requiring “an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing United Nations country program”¹³—than in a society that has experienced a complex emergency and where, in consequence, trust in both authorities and other individuals and groups within society has been fundamentally undermined.

Violent ethnonational conflicts are complex political and humanitarian crises. This type of crisis often has a long incubation period, characterized by escalating tensions and unresolved conflicts that may turn into repeated violent incidents before it reaches the peak of full-blown armed conflict and becomes a complex emergency. They are also slow-burning crises characterized by profound long-term consequences closely interrelated with other dimensions of the crisis. Handling these consequences is one of the major challenges in the aftermath of a complex crisis. The boundaries between conflict and post-conflict are blurred; “post-conflict” is a misleading term, as conflict is often continued by other means after arms have been laid down, and hence in the aftermath one can expect “crises after the crisis.”¹⁴ If issues at the root of the conflict are not adequately addressed, the vicious circle may very well start over again—even after a protracted period. The way one chooses to manage the aftermath makes a difference to whether or not society proceeds towards sustainable peace.

This choice cannot be seen independently of the conditions that one desires should characterize future society (i.e., be the *normal conditions* of society). As these definitely should not be the same as those that led society toward massive human-rights abuses, in the aftermath, society will be in transition, plowing unfamiliar ground in its efforts to establish rather than *reestablish* order, to build rather than *rebuild* society. In such a society, societal safety is not about improving by degrees an already existing safety but about creating that safety from scratch. However, strengthening societal safety in the larger society and in local communities, even by degrees, is an important goal that may help diminish the threat of the vicious circle's beginning again. If societal safety is to be sustainable, there are no alternatives to the state assuming its responsibilities.¹⁵ Even if the presence of the international community and of international relief organizations may be needed for years after war's end, the incorporation of local knowledge, resources, institutions, and self-organized victim groups is paramount to achieve this goal of societal safety successfully.

Societal safety must be created from within the affected society itself, from the top down and from the bottom up simultaneously, in order to establish a sustainable institutional and organizational framework and ensure a broad-based commitment to and a collective sense of ownership of both the problems and, not least, their

resolution. From a public planning perspective, the first is usually sought by applying an *instrumental rationality* that is top-down, benchmarking and document oriented, focusing on long-term objectives to govern short-term goals. Problem solving is viewed as a sequential, linear process. Ideally, one analyzes the problem at hand, benchmarks the alternative solutions and their consequences, chooses the best option, implements it, and thus achieves the preferred result. This is the kind of rationality that usually characterizes the ideal Weber bureaucrat, the professional administrator, and the scientific expert; it is supposed to be efficient and expedient and to create a foundation for the qualities that promote trust in institutions. The second is supposedly achieved through applying a *communicative rationality*, which is process oriented and consensus seeking and which may thus promote intergroup trust. It is sometimes conceptualized as a bottom-up process that provides everyone involved with a feeling of ownership of the chosen solution. In principle, decisions are reached through open dialogue among all stakeholders in the case. Ideally, all stakeholders are honest and sincere, fully and equally informed, and equally capable of attending to their interests and making themselves heard, and have equal influence on the outcome.¹⁶

Trust as Social Capital

Ever since Robert Putnam, in an empirical study of what makes democracy work in Northern Italy, coined the concept of *trust as social capital* brought about predominantly by extensive public engagement in *civil society networks*,¹⁷ trust as a social mechanism has become the topic of extensive research within the social sciences. Regardless of whether trust is conceptualized as a cognitive, psychological, or moral property of individuals, social relationships, or the social system itself, social trust is widely believed “to promote democratization, economic investments and growth, responsive and well-performing institutions, low levels of violence and other criminal behavior, as well as individual health and personal happiness.”¹⁸ A main reason for this is that by fostering dialogue and mutual cooperation, social trust reduces the transaction costs involved in human interaction—that is, it reduces the costs and efforts of rule enforcement, whether through legal or social sanctions, and the additional costs of elaborate control systems, whether formal or informal. As Bo Rothstein points out, like other kinds of capital, physical or human, social capital should be viewed as an asset possessed by individuals, organizations, and societies.¹⁹ Rothstein suggests that social capital has both quantitative and qualitative dimensions, the quantitative dimension being an actor’s number of social relationships and the qualitative being the quality of trust in these relationships. Social capital, however, differs from physical capital, and to some degree from human capital, in that it grows with use, cannot be bought, and is difficult to measure. In this connection it is important to remember that capital can be invested both wisely and unwisely, that only *wisely* invested capital yields a good return, and that to invest at all, start-up capital is required.

This has implications for society’s ability to establish and maintain societal safety. A person cannot feel safe in society if he or she has little or no trust in those responsible for this safety. Hence, these social institutions need to develop their assets of credibility and trustworthiness. *Institutional trust* refers to trust in the functioning of organizational, institutional, and social systems. According to Daniel Metlay, this kind of trust rests on “two distinctly different components or dimensions: (1) a tightly interconnected and intertwined set of affective beliefs about institutional behaviour, and (2) how competent the institution appears to be.”²⁰ *Affective elements* are openness

(all relevant, unclassified information is provided to the public), reliability and consistency (sincere commitment and genuine effort to keep promises), integrity and honesty (actions consistent with words and not unduly influenced by politics), credibility (facts not distorted), fairness (commitment to impartiality and acting in good faith), and caring and concern for the broad public interest (listening to the public); whereas *competence* is measured by the possession of the necessary skills to carry out the work and a first-class staff.²¹ These are exactly the qualities called for by representatives of the families of missing persons as a condition for them to trust the authorities and the work of the MPI BiH: transparency, accountability, predictability, impartiality, and strong inclusion of their own participation in the process; professionalism, efficiency, and deliverability. The crux of the matter, however, is not whether an institution actually possesses these qualities but whether it is *perceived* to possess them by those who depend on its work. Of course, the first is a prerequisite for the second, but the second does not automatically follow from the first. Both need constant attention and maintenance.

Getting into Social Traps

BiH appears to have run into what Bo Rothstein conceptualizes as a *social trap*: “a situation where individuals, groups or organisations are unable to cooperate owing to mutual distrust and lack of social capital, even where cooperation would benefit all.”²² His notion of social traps builds upon the work of John Platt, who coined the concept in 1973 and identified various types of traps and reinforcement mechanisms.²³ Among these are *collective traps*, prisoner’s dilemma situations in which opposing parties tend to lock into either steady cooperation or steady conflict with each other. Rothstein points to the cognitive side of game theory and claims that human action is not a result of aloof, rational utility maximization but a strategic answer to anticipations of how other actors are going to act: “Efficient cooperation for common purposes comes about only if *people trust that most other people will also choose to cooperate*.”²⁴ In the absence of that trust, the social trap will slam shut, worsening the state of affairs for everyone. People are not perfectly informed, strictly rational, memory-free automatons; they cannot rationally decide to forget treacherous and deceitful behavior. What is perceived as a rational choice of action is entirely context dependent and builds upon prior experiences with other actors, socially, historically, and culturally.²⁵ A related explanation of how social traps become stable is provided by Joel Bruckner and Jeffrey Z. Rubin’s concept of *entrapment*: “*a decision making process whereby individuals escalate their commitment to a previously chosen, though failing, course of action in order to ‘make good’ on prior investments*.”²⁶ They fall into the “sunk cost fallacy” of failing to exclude already made, irretrievable investments when making decisions about future investments.

Like many other important concepts in human relations, trust is so multifaceted that any attempt to pin it down must leave out important aspects. At the core of the concept, however, is the relationship between an actor (A) who trusts and one who is trusted (B), and a willingness to become vulnerable to the behavior of others who can and may harm you. Russell Hardin wants us to include a third clause in the definition, the matter (C) with regard to which one actor trusts another: trust is based on an assessment of the trustworthiness of the other in relation to a specific matter.²⁷ In his *encapsulated interest model of trust*, Hardin more specifically claims that this assessment is based on the degree to which the interests of the trusting party are perceived to be encapsulated in the interests of the trusted party. This requires an

ongoing relationship between the two; hence, in his conception, trust is strictly a person-to-person matter. Consequently, Hardin discards the concepts of generalized trust and trust in government as contradictions in terms.

However, as Rothstein points out, interpersonal trust relationships are governed by more than a self-interest-optimizing type of rationality, and interpersonal trust is also fundamentally different in character from institutional trust.²⁸ Actors can be collectives as well as individuals, and, even though collectives must ultimately operate through the individual, there is a distinct difference between individual and collective rationality. It is a collective action to construct *efficient institutions*, that is, institutions that enable trust and confidence to be established in organizations and societies and that reduce the transaction costs between parties with a mutual interest in interacting in repeated sequences—even if they have conflicting interests in the specific transactions. Social capital is generated predominantly by the existence of universal political institutions, rather than by a vibrant civil society. Rothstein underscores the distinction between representative (policy making) and executive (policy implementing) democratic institutions.²⁹ Whereas the main idea behind representational political institutions is partisanship and legitimate competition between conflicting interests, the main idea behind policy-implementing institutions is impartiality: fairness in procedures, equal treatment before the law, incorruptibility, non-discrimination, transparency, and so on. The latter are the institutions with which ordinary citizens have the most frequent contact, and the ones that generate social trust. In line with Metlay, Rothstein furthermore claims that people's experience of *procedural justice* matters as much as the final results of their interactions with public institutions.³⁰ This way of viewing the causal mechanisms behind the production of social capital shifts the responsibility for creating a viable democratic society from citizens to political and implementing authorities, in line with the above conception of societal safety: the state holds the main responsibility. The core function of a vibrant civil society, then, we may instead see as that of a watchdog. Social distrust that builds on a realistic public assessment of government failures and the imperfections of democratic institutions is a healthy social-control mechanism that may be just as important as social trust to the well-functioning society. As Paul Slovic points out, it is when the balance between trust and distrust becomes badly skewed toward unreasonable distrust that systems start to malfunction.³¹

The risk and vulnerability aspects of trust help to explain why actors continue to be trapped. Using a risk perspective, I define trust as an investment of positive expectations in the future conduct of others with no *a priori* certainty that these expectations will be met and reciprocated rather than violated. To decide whether or not to opt for trust, people make a *risk assessment* of the situation; in so doing, they rely on their experience with other actors' previous behavior and/or on what they *believe* they know about them, while carefully monitoring their present behavior for clues to their future intentions. The knowledge people believe they have about other actors may be false, or may build on imperfect information, but they will still act upon it. Getting this risk assessment right is essential, as trust bestowed on the untrustworthy can be disastrous. When people have experienced the hard way precisely how disastrous it can be to trust people or institutions that cannot be trusted—whether ethnic others, government, or the international community—they may understandably become risk averse, letting suspicion and generalized distrust become their default option. Unfortunately, this may have a self-reinforcing effect. Toshio Yamagishi has found that low trusters are more often wrong in their

assessments of the trustworthiness of others than high trusters are; when they are wrong, they become disappointed and react by withdrawing. As social intelligence is acquired through extensive interaction with others, this creates a vicious circle of distrust and insufficient social intelligence.³²

Getting Out of Social Traps

In BiH, the start-up capital for restoring lost trust, replacing the ethnic discourse with a human-rights discourse, and get out of the social trap is minimal. Nevertheless, if one can succeed in doing this within one institution—such as the MPI BiH—this success may have positive synergetic effects on the rest of society. Unfortunately, as there is no universal consensus on precisely how trust is produced, there exists no plain and unambiguous model for how to change a state of profound distrust into a state of reasonable trust, either at the interpersonal level or at the institutional level. Understanding the mechanisms of the social trap, as outlined above, may provide some guidance on finding the means to get out of such a trap. A few more aspects of trust, outlined below, may also come in useful: (1) two interrelated dichotomies, the conception of divisive/compatible ethnic entrepreneurs and that of bridging and bonding social capital; and (2) the concept of an asymmetry between trust and distrust, the notion that trust and formal control systems may be mutually reinforcing, and the possibility that trust may be both cause and effect.

In a study seeking to explain the rapid disintegration of the former Yugoslavia, Murat Somer defines *divisive ethnic entrepreneurs* as social-political entrepreneurs who advocate ethnic separation and exclusiveness, whereas *compatible ethnic entrepreneurs* are social-political entrepreneurs who advocate ethnic inclusiveness.³³ They constantly compete to shift the public discourse through *reputational cascade effects* by mobilizing a critical mass of people to publicly embrace a specific discourse. Self-reinforcing reputational pressures on individuals who fail to conform may then create cascades of interdependent choices that move society from one equilibrium to another. The more people depend on their group membership for social status, the more responsive they will be to reputational pressures; the more one-sided the “group view” is, the more compelling it becomes to conform, and the more difficult it becomes to dissent. This may lead people to publicly either downplay or exaggerate their private beliefs. Somer defines *public discourse* as the collection of views, beliefs, values, and cultural-political preferences that people feel comfortable expressing publicly, where they cannot control their audience, and *private discourse* as those they feel comfortable expressing exclusively in familiar settings, where they can control their audience. Public expressions of trust in ethnic others may differ considerably from people’s private trust; hence, the public discourse is a poor predictor of private trust in ethnic others. Still, people will draw their information about ethnic others from the public discourse, which will, over time, influence private levels of trust as well.

Somer claims that one’s trust in ethnic others depends on one’s level of involvement in cross-group relationships and on how beneficial that interethnic cooperation is. This brings us to Putnam’s conception of the “bridging” (*inclusive*) and “bonding” (*exclusive*) dimensions of social capital that develop in social networks.³⁴ Bridging social capital builds on weak ties transcending salient social cleavages; it facilitates self-organized networking and cooperation between people who are different from each other and promotes intergroup trust. However, not all self-organized civil groups produce intergroup trust. On the contrary, many networks develop from strong

ties based on a common denominator, bonding their members in mutual support of each other, at the same time making them focus inward. This produces strong *intra-group trust*, but it may simultaneously produce strong *intergroup distrust*. Rothstein calls this the “Hell’s Angels Syndrome.”³⁵ As Mark Baskin and Paula Pickering point out, it is also characteristic of extreme nationalist organizations that are “hierarchically structured, and willing to use violence to realize their exclusivist goals.”³⁶ However, in an antagonistic ethnonationalistic environment, even less extreme mono-ethnic organizations split along ethnic lines may be in danger of developing exclusivist bonding social capital. According to Pickering, high levels of bonding social capital may threaten democracy by providing increased opportunities for divisive ethnic entrepreneurs.³⁷ To support positive interethnic relations, organizations and institutions need to be ethnically diverse and acquaintance based, allow for individual norms, help people address practical matters that require repeated mutually dependent interaction, be rooted in local culture, and be difficult for people to avoid.

Slovic’s *asymmetry principle* posits that trust is asymmetrically related to distrust in favor of the latter.³⁸ First, the balance between trust and distrust is very easily disturbed because of certain psychological mechanisms. Trust is fragile, difficult to build, and easily destroyed; lost trust and confidence are even harder to restore than they are to build in the first place. Distrust, on the other hand, is easy to acquire and hard to overcome. Whereas trust building is incremental, the destruction of trust is instant. Second, distrust tends to reinforce and perpetuate itself, for two reasons: distrust tends to inhibit the kinds of contacts and experiences that are necessary to overcome distrust; and trust and distrust color our interpretations of events, thus reinforcing prior beliefs. As James G. March and Johan P. Olsen found in their study on organizational learning, distrust makes people avoid interaction with, oppose anything coming from, and tend to attribute all detrimental events to the distrusted actor.³⁹ Third, trust-destroying events are more visible and carry greater weight than trust-building events; they are given more attention, both by individuals and by the media, than trust-building events, which are often fuzzy and indistinct. Trust-destroying news is also perceived as more credible than trust-building news. Finally, problematic events increase distrust far more than favorable events decrease it. It may be wise, then, to pay as much attention to distrust and trust-destroying factors as to trust and trust-building factors—if not more. If the point of departure is a state of distrust, *lack of distrust* may be a more realistic first goal to achieve than actual trust.

There are two main perspectives on the relationship between trust and formal control. One is the *substitution perspective*, which holds the two to be inversely related; the other is the *complementary perspective*, which holds them to be mutually reinforcing. The latter is gaining more and more support. Along with T.K. Das and Bing-Sheng Teng,⁴⁰ Katinka Bijisma-Frankema and Ana Cristina Costa define formal control as “a regulatory process by which elements of a system are made more predictable through the establishment of standards in pursuit of some desired objective or state.” It aims “at establishing task reliability by designing a set of rules that specify an actor’s work and enforcing the actor’s compliance with these prescribed standards.”⁴¹ These authors claim that many of the benefits associated with trust—open communication and information exchange, belief in information received, increased perceptions of safety, commitment, mutual learning, attribution of positive motives, and heightened levels of cooperation and performance—can also be associated with modes of control. If the trust–control nexus really is positive, then ensuring task

and behavior specifications and codification through formal control mechanisms may be a good starting point for building trust.

Finally, the fact that trust may be both cause and effect—a consequence as much as a precondition of what it produces⁴²—means that the problem of trust can be approached from the angle of its supposed effects. If trust lubricates cooperation but cooperation also creates a basis for trust, and if the same applies to other positive outcomes attributed to trust, then reluctant or even compulsory cooperation, communication, and interaction may create a foundation from which trust can be built. Opinions very much to the same effect were also expressed by several of my interviewees, whose experience was that cooperation and interaction that they had only reluctantly agreed to had changed, over time, into what they perceived as true cooperation and mutual trust. They were convinced that the same would happen within the MPI BiH.

Empirical Findings

Background: Trust Perceptions among the General Public in BiH

In 2003, Peter Håkansson and Sarah Hargreaves conducted a comprehensive social trust survey across BiH for the Balkans Analysis Group in Sarajevo.⁴³ Since 2000, the UNDP Early Warning System (UNDP EWS) in BiH, aiming to identify and predict crisis and conflict, has produced quarterly summaries of the results of public opinion polls, media and event monitoring, and official statistics.⁴⁴ These surveys examine what can be seen as expressions of different kinds of trust, at and between different levels of society. In June 2005, UNDP EWS also conducted a special poll in connection with the conference Pathways to Reconciliation and Global Human Rights, surveying public opinions on transitional justice mechanisms.⁴⁵ Together, these surveys provide an empirical backdrop for the topic discussed here and indicate the general amount of social capital present in BiH during the period under research.

From a *generalized trust* level of 26.9% found by the World Values Survey in 1998, Håkansson and Hargreaves found that in 2003 the level had dropped to only 14.5%.⁴⁶ Differences were huge across the eighteen regions of BiH examined, ranging from 1.4% in Una-Sana Canton to 61.9% in West-Herzegovina Canton—the one outlier that brings the overall level up to 14.5%.⁴⁷ Most regions had a trusting population far below this level. Many of the least trusting regions were those worst affected by the war (which are also those having the greatest problems with missing persons). Generalized trust was poorest among individuals aged between thirty-six and fifty in 2003 (which is also the age group making up the majority of surviving family members of missing persons). Not surprisingly, most people were particularized or *partial* trusters (i.e., turning their trust toward “their own community”).⁴⁸ Respondents predominantly bestowed trust on family and relatives (ca. 85%). On a descending scale, they trusted neighbors, other people well known to them, and people of their own nationality. Least trusted were people of a different nationality or with a different way of life. However, respondents who trusted *some* or *all/most* of their own nationality would also trust *some* or *all/most* ethnic others. Still, 20% trusted no ethnic others, and the category of *outright distrusters*—those who trust no one at all—was also disturbingly large. A strong correlation was found between spending time with ethnic others and trusting ethnic others. Even so, 37% seldom or never spent time with ethnic others; among those who trusted no ethnic others, the figure was 75%.

According to the UNDP EWS special poll in 2005, about 60% of respondents had felt their lives threatened during the war. For about 50%, the war still had a huge negative impact on their everyday lives. About half of respondents considered everyone victims of the war to a certain extent; Serbs held this opinion more often than Bosniaks or Croats did. A great majority were in favor of criminal prosecution (96.7%), either of anyone “who caused unjustifiable harm to others during the war” (64.9%) or only of actual war criminals. A significant majority also believed that war criminals and war crime suspects “should not work in public institutions or be allowed to influence their operations” (72%). Still, most respondents had no great faith in the ability of either the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the domestic courts to secure criminal accountability.

With respect to *institutional trust* in general, Håkansson and Hargreaves found that trust in government was approximately 50% at both state and entity levels and about 60% at the municipal level; respondents had somewhat more trust in the executive bodies, the courts, the police, and the army. The 2003 EWS surveys were generally in agreement with the Social Trust Survey.⁴⁹ Since then, institutional trust has steadily decreased, reaching an all time low by September 2005; thereafter there has been a constant state of flux. However, even the highest peak of approval, by the end of 2006, did not reach 2003 levels. This trend seems inversely correlated with a steadily growing conviction that officials of the same institutions are either *very* or *quite considerably* corrupt. By September 2007, about two-thirds of respondents believed the same applied to governance structures at all levels, as well as to the police and the courts (which got the “best” score, ca. 50%). International institutions such as the Office of the High Representative (OHR),⁵⁰ the Organization for Security and Co-operation in Europe (OSCE), the UNDP itself, and the European Union have fared only somewhat better on both variables. In general, Bosniaks and Croats approved of state-level governance structures more than Serbs did until the end of 2005, when the pattern reversed. Bosniaks and Serbs also generally approve more of the governance structures of their “own” entity than of those in the “other” entity; Croats fall between the two with respect to both entities. Although two-thirds to three-quarters of respondents *basically* or *entirely disagree* that “only ethnic parties can secure the fundamental interests of the constituent peoples they represent,” people continue to vote ethnonationalist parties into power. Those who vote, that is—voter turnout for the general elections held in October 2002 and October 2006 was only about 50–55%. It took six months to form the legislature after the 2002 elections, and four-and-a-half months in 2006, which may be regarded as symptomatic of the general inefficiency of political decision-making processes in BiH. At any given time, apart from minor surges of optimism immediately following elections, at least half of respondents believe that the political situation is only getting worse, and at least one-fifth fear that war will break out again if international security forces are withdrawn.

The overall pattern is thus rather discouraging: trust of all kinds is low and has decreased since war’s end, and the *ethnic discourse*, fueled by nationalistic, polarizing partisan politics, is still the dominant public discourse.

Institutional Framework: The Law on Missing Persons of BiH

Supported by international organizations, notably the ICMP and the International Committee of the Red Cross (ICRC), families of missing persons have continually pressed for government to accept its responsibility toward the missing and their families. At the end of 2002, their persistence led the BiH Council of Ministers to

charge the Ministry of Human Rights and Refugees (MHRR) with drafting a domestic Law on Missing Persons. In March 2003, the ministry organized a roundtable discussion with family-association representatives, who were also consulted throughout the drafting process. A working group was established in May that included representatives from the MHRR, the entity-level commissions on missing persons, the entity and Brčko District governments, the ICMP, and the ICRC.⁵¹ The resulting law was passed by the BiH legislative bodies in October 2004 and entered into force on 9 November 2004.⁵²

The Law on Missing Persons addresses the social and economic rights of family members of missing persons. The core right is the *right to know* and the related *obligation to provide information* on the part of the state and entity authorities. The right to know the fate and whereabouts of a missing person is codified by the Geneva Conventions (1949) and their Additional Protocols (1977).⁵³ In a study by the Office of the High Commissioner on Human Rights (OHCHR), this right has additionally been declared an inalienable, non-derogable, and autonomous human right, linked to the duty of the state to protect and guarantee human rights, conduct effective investigations, and guarantee effective remedy and reparations.⁵⁴ This right is now also codified in the BiH Law on Missing Persons, which—by including families' right to know the circumstances, the cause of death, and the place of burial of a missing person proved dead and their right to have the mortal remains of their relatives returned to them actually goes further than international humanitarian law requires. In addition, anybody, including foreign citizens, can file a tracing request.⁵⁵ Other rights of importance are the *right to financial support* and the related establishment of a *fund for support to families of missing persons*; family members' right to temporarily dispose of the property of missing persons, even if the missing has not been proclaimed dead; and a guarantee the tracing process will not be concluded until the mortal remains have been found.⁵⁶

The implementation of international law into domestic law in itself increases societal safety, providing families with much stronger statutory protection and placing much more concrete obligations on the state than would mere ratification of international law. Although trust cannot be legislated into existence, law is an important first step in fostering trust in institutions. Laws are normative; they show the intentions of lawmakers and promise a certain level of commitment on their part. In the BiH case, the law was not forced or imposed from the outside but resulted from a negotiation process among domestic governance structures that have had great difficulty in cooperating on other reforms. The process was conducted under the auspices of a domestic political institution; it included the top officials of the executive bodies concerned, the entity-level commissions on missing persons; and, although definitely a top-down process, it included extensive public participation by the primary stakeholders, the families of missing persons.⁵⁷ From a social-safety perspective, it is also important that the law so clearly stresses the state's obligations as duty holder and emphasizes the obligations of the so-called relevant authorities at the state, entity, cantonal, and municipal levels to provide families and responsible institutions with all available information and necessary assistance required to resolve the issue. These bodies are furthermore instructed to cooperate unconditionally both amongst themselves and with the ICMP, the MPI BiH, the ICRC, and the BiH Red Cross Society.⁵⁸ Although it took years to get the lawmaking process started, once underway it was not excessively time consuming and should, overall, be deemed rather successful: on important principles, by and large, the parties have agreed without

major problems. Finally, via ICRC, the BiH Law on Missing Persons, a historical first, may also come to influence societal safety in other countries struggling to deal with large numbers of missing persons.⁵⁹

Challenges at the Institutional Level

In order to make an impact, law needs to be implemented, operationalized, and enforced—a far more difficult task than drafting the law itself, as it requires a vigor and capacity that seem not to be present to the same extent as were the good intentions. Part of the problem of implementing decisions in top-down processes in hierarchical systems is to make them filter down the system from the strategic policy-making level at the “blunt end” to the operational level at the “sharp end” of the system.⁶⁰ At each level, there will be several actors and stakeholders who have a certain degree of freedom to make choices about the means of, and time for, action and who will tend to meet local problems with local solutions. This applies particularly to so complex a public management system as exists in BiH, where the individual parts of the system are highly autonomous and are influenced to different degrees by the ethnic discourse in society. Getting actors at various levels to interact dynamically requires measures to secure information flow and feedback mechanisms between them; but first and foremost it requires that they actually know about the decisions they are expected to operationalize. Considering the emphasis laid on the obligations of “relevant authorities” at all levels, there is reason to ask how well aware “sharp end” authorities, public officials, and civil servants are of the demands made on them by the Law on Missing Persons. In 2006, in cooperation with ICMP, ICRC, OHCHR, and the BiH Centre for Free Access to Information (CSPI), the MHRR created a *Guide for Families of Missing Persons* on the application of the law, in order to make it easier for them to understand and exercise their rights.⁶¹ Family-association representatives, however, report mixed experiences with the usefulness of this guide *vis-à-vis* the authorities. They point to a frequent lack of knowledge at all levels, including the state level, about the very existence of the law, and suggest that a similar guide be created for the relevant authorities, to raise their awareness about the law itself, what the families need, and their own obligations in this connection.

Organizational Framework: The Missing Persons Institute of BiH

Originally proposed in 1998, a Missing Persons Institute was registered by the ICMP with the Cantonal Court in Sarajevo in August 2000, in connection with the responsibility for coordinating the Joint Exhumation Process (JEP) then being handed over by the OHR.⁶² In June 2003, the BiH presidency agreed that the state should become a co-founder and asked the Council of Ministers to establish a protocol on a BiH Missing Persons Institute. In December, a working group led by the MHRR and including representatives of the entity and Brčko District governments and of the ICMP was charged with drafting the protocol. Representatives of the Federal Commission, the RS Office, and the ICRC had observer status. In December 2004, families of missing persons were informed of the status of the implementation of the MPI; their representatives submitted their comments in mid-January 2005. An agreed-upon version of the protocol was presented to the Council of Minister in February and harmonized by the co-founders and the entity and Brčko District representatives in April.⁶³ Approved by the Council of Ministers on 5 August 2005, the “Agreement on Assuming the Role of Co-Founders of the Missing Persons institute of Bosnia and Herzegovina” was officially signed by the co-founders on 30 August, the

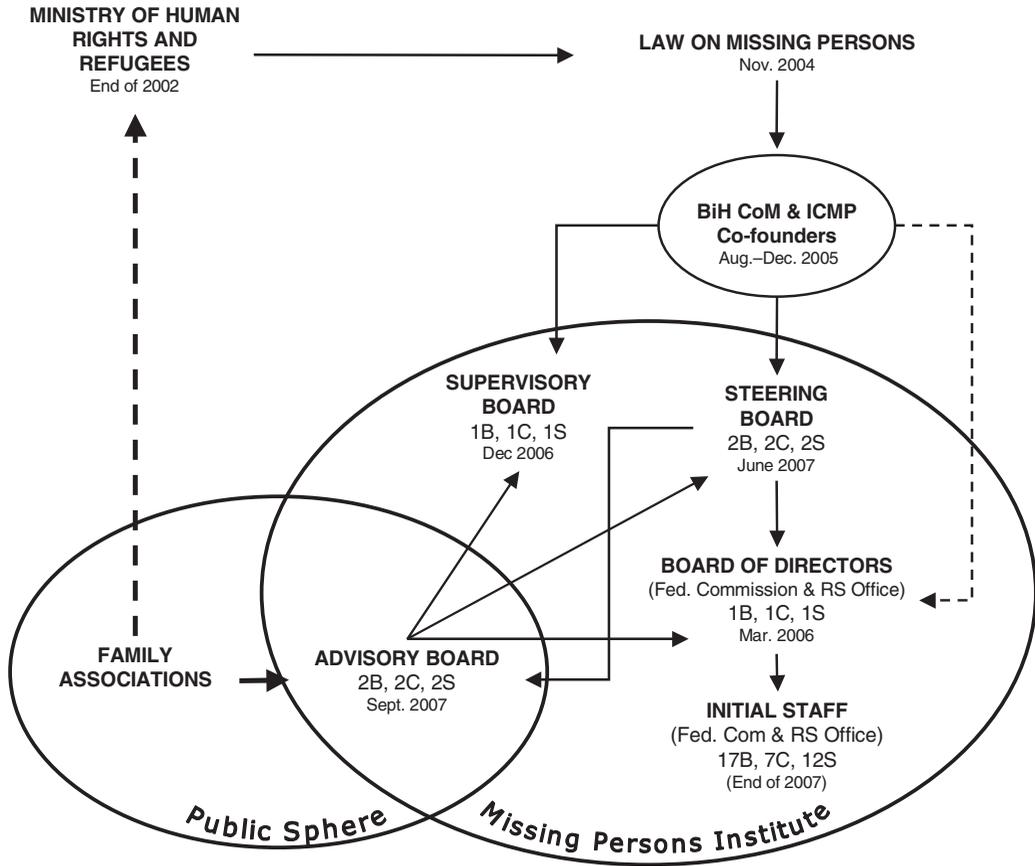


Figure 1. The organizational structure of the Missing Persons Institute of Bosnia and Herzegovina, including chronology of the implementation process

International Day of the Disappeared.⁶⁴ The agreement was ratified on 28 December, and the implementation of the MPI BiH as an independent state-level institution began with the agreement's publication in the BiH Official Gazette on 29 December 2005.⁶⁵

The organizational structure of the MPI BiH is fairly complicated, consisting of one structure for the permanent organization and one for a transitional phase (see Figure 1). The permanent organization includes three management bodies—a three-member Supervisory Board, a six-member Steering Board, and a three-member Board of Directors—and the staff. The staff report to the Board of Directors, which reports to the Steering Board, which reports to the founders; the Supervisory Board is a reviewing body that reports to the two other management boards and to the founders. In addition, an Advisory Board consisting of six family-association representatives advises the management bodies and monitors the work of the MPI; members of the Advisory Board have observer status on the Steering Board. The founders appoint members of the Supervisory Board and the Steering Board by consensus, nominating three members each to the Steering Board, which then appoints the Board of Directors and the Advisory Board. Advisory Board members are nominated by BiH family associations. All management-board appointments are to be based on professional

qualifications pursuant to an open public competition. In the case of the Steering Board and the Supervisory Board, a ranking of candidates is made by a selection committee appointed by the founders in consultation with entity and Brčko District governments; in the case of the Board of Directors, this process is carried out by the Steering Board. All board members' terms are fixed at four years. Members of the management boards may not, and Advisory Board members cannot, be reappointed. All board-member appointments must fulfill the constitutional principle of equal ethnic representation of the constituent peoples of BiH (Bosniaks, Bosnian Croats, and Bosnian Serbs). Chairs of the three management boards may not belong to the same constituent people; the chair of the Board of Directors must rotate every eight months, whereas no such requirements are made of the chairs of the two other boards. All boards are to make decisions by consensus, requiring a minimum quorum of one representative of each constituent people.

As a means of transition, the two co-chairs of the Federal Commission and the director of the RS Office were to be appointed to the initial MPI Board of Directors for a two-year term, after which the open competition for these positions would be held. This was to happen within ninety days of the *signing* of the agreement (i.e., the end of November 2005).⁶⁶ Their staff were to be transferred to form the initial staff of the MPI BiH. Bylaws to make possible the transfer of authority and competencies from the entity-level commissions were to be in place by end of June 2006, and these commissions were to cease their work by end of September 2006.⁶⁷ No other strict deadlines were set in the agreement, but by necessity the Steering Board would have to be in place by the same time for the MPI BiH to begin functioning at full capacity. The ICMP was to continue providing technical and expert assistance, but with time the intention was to hand over equipment and other assets, apart from the DNA laboratories, and then pull out by the end of 2007.⁶⁸

The initial Board of Directors was appointed at the end of February 2006.⁶⁹ Bylaws on the transfer of authority and competencies were adopted in June (RS, amended in October) and September (Federation of BiH) 2006, but their entry into force depended on the full establishment of the MPI.⁷⁰ Vacancy notices for the Steering Board and the Supervisory Board were issued in August 2006; although the one for the Supervisory Board had to be reissued in September because there were too few applicants, members of the Supervisory Board were appointed in December 2006. In contrast, despite the fact that a ranking of twenty-six qualified candidates was forwarded to the co-founders by the end of September 2006, members of the Steering Board were not appointed until June 2007.⁷¹ They formally appointed the Advisory Board members in September 2007, and at the end of November 2007 the BiH Council of Ministers finally adopted the steering documents needed for the MPI BiH to become operational⁷²—more than seven years after the original founding of the MPI by the ICMP, four years after it was agreed that it should become a BiH institution, three years after the Law on Missing Persons came into force, and more than a full year behind the schedule laid out by the agreement.

Risks to Institutional Trust Building Produced by Role Conflicts

The MPI BiH nearly did not get off the ground in the first place, as a result of major disagreements about the method of appointing the initial Board of Directors and whether or not its members should be exempted from article 5 of the Law on Missing Persons, whose application to implementation of the MPI the agreement specifically underscores.⁷³ This article states that “Officials with duties related to the tracing of

missing persons cannot carry out this duty if they are members of steering and other boards, or executive bodies, of political parties, or if they are politically engaged representatives, and must not follow political party instructions.⁷⁴ This became an issue because in order to secure transfer of experience and not lose momentum, it seemed natural to let the heads of the former entity-level commissions initially head the MPI BiH as well. However, the Bosniak co-chair of the Federal Commission, Amor Mašović, was and is a delegate of the Bosniak Democratic Action Party (SDA) to the House of Peoples of the Parliament of the Federation of BiH.⁷⁵ Republika Srpska (RS) politicians, the RS Office, and RS missing-persons family associations strongly opposed Mašović's candidature, arguing partly on the principle that it was against both the Law on Missing Persons and the Law on Conflicts of Interest and would bring ethnic politics directly into a process that needs to be depoliticized,⁷⁶ and partly *ad hominem*.⁷⁷ Mašović himself has chosen not to resign, either from his political position or from the MPI BiH, claiming that there is no conflict of interest. The RS organizations, however, have not been willing to leave the matter as it was temporarily settled, by giving the issue a two-year respite, but have routinely repeated their principled argument in almost every statement to the press about the MPI BiH. As the term of the initial Board of Directors expired at the end of February 2008, the issue was to be one of the first challenges presented to the Steering Board.⁷⁸ With respect to the principle of the matter, their worry is absolutely legitimate: the role of a politician and the role of a public official are by definition incompatible and cannot be executed simultaneously. Politicians are supposed to have agendas biased toward specific interests; public officials are supposed to administer political resolutions impartially, irrespective of their personal political preferences. Thus, from an institutional trust perspective, the situation is unfortunate, to say the least.

Another mixing of roles that may have set back the building of institutional trust involves the members of the initial Board of Directors and the fact that there has been no clear distinction between their roles as heads of their respective entity-level commissions and their roles as directors of the MPI BiH. People depending on the public administration should not have to wonder who they are dealing with at any given time; some predictability is required to enable people to trust their institutions and public officials. It is confusing, and produces uncertainty about the whole process, when the same persons make statements sometimes in one capacity and sometimes in another. The limbo in which the initial Board of Directors found itself for more than a year, between the appointment of its members and the appointment of the Steering Board—and specifically after October 2006, when the entity-level commissions did not cease to exist as planned—seems to have further exacerbated this situation. Rather than appearing in the public discourse unanimously as a *collegium* of directors, the Bosniak and Serb directors especially continued to predominantly represent their respective entity-level commissions, opposing or criticizing each other publicly even as late as November 2007.⁷⁹ However, only these incidents of non-cooperation made the news, whereas their cooperation on all the bureaucratic tasks of preparing and agreeing on system designs, rules and regulations, plans and budgets—essential to making the organization work as an efficient, universal institution—simply has not been of interest to the media. The same applies, of course, to the Working Group on Implementation of the Law on Missing Persons, the Expert Group on Central Records of Missing Persons, and the Expert Group on Excavation and Examination of Mortal Remains, in all of which they have participated.⁸⁰

An Inherent Structural Dilemma: The Embedded Ethnic Discourse

As is apparent from even a glance at the organizational structure of the BiH MPI, the ethnic discourse is incorporated in various ways into the organization itself. The structure closely follows the governance principles laid down in the consociational constitution, or group-based power-sharing system, of BiH, which was part of the Dayton Peace Agreement.⁸¹ From Hardin's trust perspective, such a system may be characterized as being based on the collective presumption that the interests of one ethnic group cannot possibly be encapsulated in the interests of other ethnic groups—hence the need for proportionality in group representation and the demand for consensus at every possible decision-making level. As Sumantra Bose points out, this kind of system is essentially discriminatory, in that it recognizes some collective identities to the exclusion of other possible identities and institutionally entrenches the cleavages and divisions based on these identities.⁸² Furthermore, it prevents the development of new collective identities. Such a system can work only if the will and capacity for cooperation exist at the highest levels.

In BiH, access to power and position is restricted almost entirely to the so-called constituent peoples—Bosniaks, Bosnian Croats, and Bosnian Serbs—although some access is also granted to the category of “others.” There exists no formal identity category for those who want to identify themselves simply as Bosnian-Herzegovians, and those BiH citizens who lost their former national identity as Yugoslavs have no other option but to conform to the existing system of ethnic identities. The organizational structure of MPI BiH, however, includes no representation of the “others” category in its organizational structure. This became a factor in delaying the appointment of the Steering Board.

Arguably, the selection committee began its work a little late to get the members of the Steering Board appointed in good time before the October 2006 deadline, which happened to coincide with the general elections. The delay in forming the legislature after the election further postponed the process, and meant that the ICMP had no real co-founding partner for an extended period. Pressed hard—for example, at a meeting on 8 December 2006, organized by the MHRR and the ICMP and attended by family-association representatives, the Board of Directors, and the ICRC⁸³—the outgoing Council of Ministers decided on their three nominees to the Steering Board on 28 December 2006, at which point the ICMP also made public the names of their three candidates.⁸⁴ Because three of the candidates in the “Serb” group were of mixed ethnicity, the Council of Ministers did not, as agreed, choose their candidates from the top of the ranking list. Publishing the names before having officially agreed on the appointments was arguably a mistake in terms of intergroup trust building. The person who had moved up the ladder to a nomination, the president of the Union of Associations of Families of Missing and Captured Persons of Republika Srpska in BiH (RS Union), immediately became the subject of harsh public dispute. For example, rather than perceiving her nomination as an opportunity to place an ally on the Steering Board, the Srebrenica family associations strongly opposed her candidature, claiming that she showed no respect for the victims of other nationalities—exactly the same type of claim that Serb umbrella organizations make about other nationalities' treatment of Serb victims.⁸⁵ By the end of May 2007, the issue remained unresolved. Despite a proposal from the Ministry of Human Rights and Refugees to appoint the three highest-ranked and the three second-highest-ranked candidates—as was agreed from the beginning, and became the solution in the end—other ministers requested that the selection process

be annulled and a new one be undertaken.⁸⁶ Had this happened, it would probably have been a trust-building catastrophe.

The Right Holders: The Missing and Their Surviving Family Members

According to the Law on Missing Persons, a missing person is a person who, due to the armed conflict in former Yugoslavia, went missing in or from BiH between 30 April 1991 and 14 February 1996,⁸⁷ remains unaccounted for, and at the time of disappearance was either a civilian or a member of the armed forces. According to the ICRC, about 92% of such persons were male.⁸⁸ Today, fourteen years after war's end, following the recovery of thousands of missing persons' mortal remains from mass graves, single graves, forest floors, and other environments, it is highly unlikely that any significant number of the missing will be found alive.

As of today, nobody knows the exact number of missing persons. Until the ICRC and ICMP databases are fully correlated, there is no way to determine exactly who is in both and who is only in one or the other of these databases. Still others may figure only on the lists of the former entity-level commissions, other entity-level authorities, or family associations. It is unlikely, however, that anyone would falsely uphold a tracing request for years, or would provide blood for identification of their missing family members without reason. Therefore, the number of ICRC tracing requests and the number of blood samples donated to ICMP represent a reliable basis for calculating the minimum number of missing persons.⁸⁹ As of 28 March 2008, 67,966 blood relatives had donated blood samples to the ICMP representing 23,022 missing individuals.⁹⁰ Through matching of DNA profiles obtained from bone samples with DNA profiles obtained from blood samples, 11,230 individuals had been identified.⁹¹ At the same time, the number of unique DNA profiles obtained from bone samples showed that 14,345 individuals were represented among the mortal remains. This means that 3,115 missing persons had been found, recovered, and DNA-profiled for whom there were no matching references, bringing the minimum number of the missing up to 26,137. The ICMP's estimate of about 30,000 missing persons in total is thus a realistic figure.⁹²

From a societal-safety perspective, the number of concern is not so much the number of missing persons as the number of their surviving relatives. They are the ones to whom the state now has a primary obligation to protect their life and health and to meet their basic requirements. The state can restore missing persons' dignity as human beings, which in itself is a strong signal of societal safety to other members of society; but it cannot give them back their life and health. It goes without saying that the closest family members of the missing—whether blood relatives or affiliated through marriage or cohabitation, the right holders according to the Law on Missing Persons⁹³—are the most deeply and directly affected members of society. Based on the DNA statistics, on average we can count on three living blood relatives for each missing person; adding those who are not related by blood, we will probably arrive at close to 100,000 people whose lives have been turned completely upside down. Not only were they bereaved of their loved ones, often under severely traumatic circumstances, but their social and economic life situation also became highly insecure and unstable, as in most cases the missing person was the main provider of the family. Because of the uncertain civil status of their missing relative, their own civil status remained unsettled. Until the passage of the Law on Missing Persons, problems concerning property, insurance, inheritance, and so on could not be resolved unless family

members were willing to proclaim their missing relatives dead and let the tracing process stop.

Associations of Families of Missing Persons

Among so many people, we may safely assume that there will be all sorts of personalities, with different capacities and coping capabilities. Admirably many have found within themselves the resources to address their extremely difficult situation and the stamina to continue doing so over many years, despite the magnitude of the problems they have had to address and the emotional exhaustion and frustration this causes. In order to search for their missing family members and pursue their legal and human rights, approximately 40,000 family members of missing persons have organized themselves into more than sixty family associations, almost all of them registered NGOs.⁹⁴ Because geographically specific events have typically been their organizing principle, these associations are all mono-ethnic. Apart from one association of families of missing Roma people, based in Tuzla and formed in 2003, all are made up of families of missing Bosniaks, Croats, or Serbs. The first Bosniak and Croat family associations were formed during the war, beginning in 1993; many were formed in 1996, when Serb families also began associating under the umbrella of the Republican Board of Families of Missing Persons (RS Board), a sub-organization of the Republican Organization of Killed and Detained Soldiers and Missing Persons of Republika Srpska (RS Organization). In 2002, a group of eight family associations broke away from the RS Organization and created their own umbrella organization, the Union of Associations of Families of Missing and Captured Persons of Republika Srpska in BiH (RS Union). A year before, in 2001, twelve Bosniak family associations had also created an umbrella organization, the Union of Bosniak Associations of Families of Captured and Missing Persons in Bosnia and Herzegovina (Bosniak Union), from which one association, the Association of Women from Prijedor 'Izvor,' later broke away. A number of other family associations—Serb, Bosniak, and Croat—are free-standing, the Croat associations, however, cooperating as if an umbrella organization existed. Also the family associations of victims of the Srebrenica Genocide are free-standing but bound together in a non-formalized cluster, at the core of which are the Women of Srebrenica, the Mothers of Srebrenica and Žepa Enclaves, the Srebrenica Mothers, and the Mothers of Srebrenica and Podrinje.

In 1998, the ICMP began actively supporting family associations in their efforts to advocate for their interests, through activities pertaining to four main areas: empowerment, networking, awareness building, and promotion of mutual understanding—for example, by providing grants for various activities initiated by the family associations themselves. Over the years, the ICMP's Civil Society Initiatives Department has organized a large number of workshops, seminars, and roundtables for family-association representatives of both mono-ethnic groups and groups of mixed ethnicity, both in BiH and across the former Yugoslavia. BiH family associations have participated in the annual Regional Networking Conferences on the Issue of Missing Persons in the Former Yugoslavia, organized by the ICMP since 1998, at which family-association representatives have come together to discuss common issues and had the opportunity to directly address invited representatives of their respective responsible national authorities. At the eighth such conference in 2005, family-association representatives decided to form a regional coordination board in order to jointly promote their common goals. This board constitutes an additional basis for developing bridging social capital and for strengthening the human-rights discourse. However, a

sub-regional coordination board of Serb family associations, created simultaneously to make this coordination process easier, instead developed strong bonding social capital based on the ethnic discourse. On a couple of occasions this has led to their withdrawing from planned joint activities, in consequence of which they have lost the trust of other family-association representatives.⁹⁵

In BiH, family-association representatives have been dissatisfied with the status and position given to the Advisory Board in the organizational structure of the MPI BiH, which they perceive as “their” institute. They wanted the Advisory Board to be appointed by the founders, so as to be on par with the Steering Board; and if not on par, they wanted, as a minimum, more than just an observer role on the Steering Board. They wanted to have real decision-making power, rather than, in the words of one representative, “only give recommendations, suggestions, advice, and proposals, [which] doesn’t oblige anyone to accept it.” They feel a strong need to be in control, derived from their distrust in the ability and will of the authorities to cooperate in the interests of all nationalities. They consider themselves much better at cooperating than the responsible authorities, and more willing to embrace the discourse of human rights.

There are, however, limits to the public participation of right-holder groups. As right holders, families of missing persons cannot be charged with duty-holder obligations; they cannot be made responsible for providing themselves with their own rights. From the point of view of the implementing authorities, the families have been included as far as is feasible throughout the drafting and implementation process. These authorities perceive the formal role that family representatives will have, through the Advisory Board, as important and far-reaching,⁹⁶ “the Advisory Board will monitor the work of the Institute and will essentially be its watchdog.”⁹⁷ This role may be a challenge in itself. Given the requirement of reaching decisions by consensus, members of the Advisory Board may be expected to act as a unit; furthermore, they will have to represent not just the associations or umbrella organizations from which they are recruited but all families and family associations of missing persons in BiH who have no direct representation on the Advisory Board. So far, they have no organizational system for obtaining information and opinions from these other associations, or vice versa. There must have been talk at some point of forming a joint BiH union of family associations, however, since in 2005 the president of the RS Union told a newspaper that her organization did not agree with establishing such a body.⁹⁸ Thus, apart from the interim Advisory Board, which existed for some years before it was officially appointed in autumn 2007, there has been no systematic attempt among the families to coordinate a common strategy toward the authorities.

Challenges to the Discourse of Human Rights among Families of Missing Persons

All family-association representatives I have interviewed agree that there is an ethnic polarization among the family associations. One interviewee said that the respect and understanding for one another that family-association representatives had gained by interacting at the leadership level was fragile and had not filtered down to ordinary association members. No multi-ethnic family associations exist, either locally or nationally. In fact, in many places several family associations exist side by side without trying to join forces, although some do cooperate on a minor scale.⁹⁹ Their mono-ethnicity, the nature of the specific events that made them associate, their sometimes strongly conflicting interests, the creation and fractioning of umbrella organizations,

and all the emotions these circumstances evoke make family associations prone to develop bonding social capital based on the ethnic discourse. In spite of this, they keep coming back to each other, keep trying to settle hurt feelings, keep trying to cooperate and develop bridging social capital. There has been great progress, but there have also been major setbacks because rationality, in the common sense of the word, has frequently been overruled by emotional reactions. These reactions should not be seen as simply irrational; there is a rationale and logic behind them that is difficult to overcome with reason. I therefore prefer to conceptualize this as *emotional rationality*, to put it on par with other kinds of rationality.

The majority of surviving family members are women, many of whom, before the war, were housewives and led traditional women lives, their main responsibility being to provide for well-being within the family. This applies across ethnicities to all family associations, but a number of Bosniak family associations, especially the Srebrenica-related ones, have turned it into an asset, achieving moral authority for their case by stressing their roles as women, as wives and mothers of innocent civilians, in the names of their organizations and in their way of presenting themselves as victims.¹⁰⁰ The various familial relations of surviving relatives to their missing family members, and whether the missing person was a (by definition innocent) civilian or a (implicitly not so innocent) soldier, produces certain status differences that are emotionally hard to overcome. However, whereas dying in battle is an occupational risk of being a soldier, going missing is not. Relatives of missing soldiers do not suffer from the loss of a soldier but from the loss of a husband, father, son, or brother; these families have the same right to know the fate and whereabouts of their loved ones as anyone else, which is exactly why the term *missing person*, in the Law on Missing Persons, includes all categories of persons unaccounted for, civilians and soldiers alike.¹⁰¹

That the missing are unaccounted for as the result of a criminal act also creates status differences among family members. The criminal act in question may vary from the gravest of crimes—genocide, crimes against humanity, war crimes—to the lesser crime of failing to secure and provide information on the identity, fate, and burial place of a combatant. Because the perpetrators are ethnic others, and because the crimes, in terms of severity and magnitude, are unequally distributed across ethnicities, the problem acquires a collective dimension, producing status differences between ethnic groups as well as among family associations. The collective identity easily comes to overpower the individual identity, the ethnic discourse to overrule the human-rights discourse. In the legal system, these crimes are hierarchically categorized according to their severity, and punishment is to be measured out proportionately. Family members' *right to know* cannot be categorized in the same way; it applies equally to all family members, regardless of which crime is suspected to have led to the disappearance. This is an important notion that is nevertheless very hard to cope with emotionally—especially because families are pursuing not only truth about what happened but also criminal justice for their victims, and because establishing this truth feeds into the pursuit of justice. It is important to remember that exhumations are carried out under the jurisdiction of the courts, and that the exhumation site is in fact a crime scene. This applies even when the primary purpose is to recover mortal remains for identification and repatriation and not to provide evidence for court procedures.

The lack of an explicitly formulated common strategy based on a human-rights discourse puts family associations in danger of being sucked into politics and being

exploited by divisive ethnic entrepreneurs, particularly because most family members have no pre-war experience of organizational life in terms of dealing either with authorities or with the media. They have had to go through a steep learning curve. To raise public awareness of their specific case, they all depend on media attention, which they attract to different degrees. Croat family associations and Bosniak family associations other than the Srebrenica associations seem to attract the least, but most sober, attention, predominantly in connection with exhumations, burials, anniversaries, commemorations, and court procedures. Most media exposed, and consequently most in danger of being carried away by the ethnic discourse of external actors, are the Srebrenica and RS family associations.

Clashes between Different Perceptions of Reality: The Identification Process

The ICMP made its first DNA match between blood and bone samples in November 2001. It has since perfected its DNA identification methods, which are now state of the art, incredibly time efficient and with increasingly more capacity. As odontology cannot be used for identification in BiH because of a lack of dental records, identification was originally based predominantly on anthropological evidence in combination with recognition of clothes and personal items by family members. The number of identifications based on these methods would have remained modest relative to the total number of missing persons; unidentified corpses had already begun to pile up, and the situation required a resolution. Without ICMP's unique research and development achievements with the DNA method, which would not have been possible in earlier days, resolving the missing persons issue would have been a completely different matter, requiring completely different solutions to almost all aspects of the issue.

However, DNA analysts are scientists, not magicians. They cannot provide answers unless they have all the necessary variables. Some problems, such as not being able to extract quality DNA material from submitted bone samples, may be solved scientifically. Most problems, however, seem to be caused by distrust arising out of a classical expert–layperson dilemma, the experts having difficulty in getting information across to lay people who perceive things from their own point of view, intricately mixed with the prevailing ethnic discourse. The lack of matching blood references for the 3,115 found, recovered, and DNA-profiled missing persons mentioned above is a huge problem. To some extent, it may simply be that there are no surviving relatives, or that only non-genetically related family members have survived. Unfortunately, however, despite intensive blood collection campaigns and public appeals, the major problem seems to be that blood relatives fail, or refuse, to provide blood samples for identification purposes. One reason may be the emotional dilemma involved—donating a blood sample may be perceived as equivalent to giving up hope of one's missing relatives being still alive. Another reason, however, is that people do not understand two essential variables of the process: the necessity of having the right combination of blood samples in relation to the submitted bone samples to make a DNA match, and the fact that there is a proportionality between the number of samples submitted and the number of identifications obtained—one of the topics discussed at both the Eighth and Ninth Regional Family Association Networking Conferences in 2005 and 2006.

The lack of matching reference blood samples is a problem among all ethnonational groups.¹⁰² However, distrust seems most pronounced among RS families. Although the

DNA-processing system has been carefully designed to be absolutely blind, and despite efforts to explain the process and the system, Serb family-association representatives suspect it of being ethnically biased and of deliberately discriminating against them. They argue that fewer DNA matching reports are received by Serbs and Croats than by Bosniaks, that Srebrenica victims are prioritized (5,332 identifications made as of 28 March 2008), and that many family members who donated blood samples years ago have not yet received any answers on the fate of their missing relatives. Incidents such as the case of the husband of the president of the RS Board—exchanged and buried unidentified in 1994, exhumed and stored in a Republika Srpska facility since 1998, and not identified until spring 2007—have not helped to produce more trust in the process.¹⁰³ As the problems in this case seem to have resulted mostly from a lack of transparency and coordination among different agencies performing various steps in the process, it could have shifted attitudes in favor of the MPI BiH, which is supposed to streamline the process in the future by applying precise rules and policies regulating the exhumation, examination, and identification processes. However, the ethnic discourse seems to be too strong. Despite the clear public attitude of the Serb co-director of the MPI BiH that the institute will be of benefit in the recovery and identification of Serb victims, the president of the RS Organization and former head of the RS Office wants to “return the entire BiH MPI establishment to its very beginning.”¹⁰⁴

Considering the former argument, first of all, in total there are simply fewer missing Serbs and Croats than missing Bosniaks. Furthermore, so far the search and recovery process has been ethnically divided, with the Federal Commission responsible for Bosniak and Croat missing persons and the RS Office for Serb missing persons. The ratio of bone samples submitted by the RS Office to those submitted by the Federal Commission (about 1:11) does not reflect the proportion either of registered or of found and recovered missing Serbs to missing non-Serbs (between 1:5 and 1:6). What it does reflect are the relative activity levels of the two commissions, which in turn reflect the financial resources allocated to the search and recovery process by the respective entity governments.¹⁰⁵ Who is identified and repatriated depends above all on whose mortal remains are recovered. Rather than suspecting biases in the identification process, Serb families of missing persons could have addressed this issue and questioned the priorities of their own political authorities. Unfortunately, their justified frustrations and their fear of being under-prioritized in the MPI BiH as well have taken an increasingly ethnically discursive tone, including, among other things, unfortunate comparisons of their own victimization with the victimization of other family groups—accentuated by the lengthy and heavily politicized dispute over the so-called Sarajevo Commission, which has been ongoing since 2004 and has so far produced no results.¹⁰⁶

Clashes between Different Perceptions of Reality: The Search and Recovery Process

Whereas the DNA identification process can be designed to be anonymous, the search and recovery process, by its very nature, cannot. To succeed in locating clandestine graves, one needs to know as precisely as possible for whom one is looking. Obviously, not all graves containing missing persons can be exhumed simultaneously. It has taken more than ten years to exhume about half the missing, and it may take another five to ten years to find and recover the rest. From a historical perspective, this will be a truly noteworthy achievement. However, life expectancy, not history, is the families'

frame of reference: they fear they will not get an answer before they die. From this perspective, when one has already waited ten or fifteen years, waiting another ten years for an answer is very different from waiting another year. In total, the waiting may make up as much as one-third of a lifetime, and both the professionals and the families know very well that a number of missing persons will never be found or identified. Families cannot be certain that the outcome will be an answer, and, of course, no one will volunteer to wait in uncertainty. In addition, despite efforts to develop and start using scientific search methods, witness information is still the most important means of locating gravesites and determining what to expect when opening a grave. This adds another aspect to the time factor. Potential witnesses may be surviving victims, perpetrators, or bystanders; the incitement to conceal may be stronger than the incitement to reveal information that can lead to finding missing persons. Even if they want to give information, they may be threatened or intimidated into silence, with negative consequences for the search for missing persons. The passing of time may have both positive and negative consequences. On the one hand, witnesses may eventually be induced to come forward with the information they possess; on the other hand, important witnesses may die without having revealed their knowledge. This whole situation, in addition to the above-mentioned conflicts, illustrates how immensely important the criteria for deciding upon how to prioritize the order of search and recovery will become, as well as the huge conflicts the planning of exhumation seasons may create. This prioritization may be one of the biggest risk factors to be encountered by the new institute, and it may make or break the success of institutional and intergroup trust-building.

Criteria for prioritizing search and recovery must be perceived as fair and impartial by families of all ethnicities; this may be difficult to achieve, and to achieve it one may have to decide upon criteria that may very well not be the most efficient in terms of either time or costs. From my purely professional point of view as an archeologist, the most time- and cost-efficient course of action is to concentrate on and finish one complex of graves at a time. To see the graves in their context would make the work on each grave easier and allow the excavators to better reveal the pattern of events. In the case of complexes comprising both primary and secondary graves and containing dissociated and commingled human remains, such as those related to the Srebrenica genocide, it would also ease the work in subsequent phases of the process: the re-association of bones from the same individual found in several graves, as well as the identification process. It would furthermore lessen the emotional stress on families caused by having to bury partial bodies or reopen burials in order to add additional remains identified later. However, what professionals judge to be efficiency gains may appear different to families, given the ethnic discourse that still prevails. Whatever criteria are decided on in the end, it is essential that they be acceptable to the families and that Advisory Board members participate in the decision process. The paradox is that in order to avoid discrimination and create the perception among the families of missing persons of a process that is just to all, decision makers may have to take discriminating factors into account when planning search and recovery operations. One thing that it is not wise to do, however, is to exhume one grave in one locality one year, another grave in the same locality the next year, and perhaps a third grave the third year—even if this serves the purpose of keeping up awareness among local and international notabilities and potential donors.¹⁰⁷ From a professional point of view, this is inefficient, and from a humanitarian point of view, it only prolongs the whole painful process, both for local communities and for the families whose missing relatives are buried in those graves.

Conclusions

The establishment and implementation of the Law on Missing Persons and the MPI BiH, based on principles of international humanitarian law and human rights, represent an increase of societal safety in BiH. However, there is no guarantee that this issue will automatically be followed up by the MPI BiH in its operational phase unless specific attention is paid to it. It is a paradox that the Missing Persons Institute was created to be a trust-building institution, but cannot function without itself being trusted. This trust has been difficult to build. An instrumental rationality has been used to create the institutional and organizational frameworks and best practice operational standards that are needed to develop the qualities that promote institutional trust; a communicative rationality has been employed in an effort to ensure that the chosen solutions are commonly accepted by all actors involved. Far from being sequential and linear, however, as theoretically assumed, in reality the process has been spiraling forward, with many sidetracking and trust-destroying setbacks. The art has been to prevent the loops backward from becoming bigger than the loops forward. It is a paradox that consensus-seeking processes are necessary to build both institutional and intergroup trust but, when they draw out indefinitely, become trust destroying. This applies also in the present case. Consensus-seeking processes are difficult and time consuming—the more so the further apart the interested parties are and the less willing they are to compromise. The prevailing ethnic discourse, particularly in the political system, has made almost every decision along the way a truly cumbersome affair. The interested parties have been, and still are, quite far apart on a number of issues, and the noble art of compromise is not held in the greatest esteem. Because all board decisions within the MPI BiH are to be made by consensus, this dilemma will likely persist, clashing with the demand for efficiency and the goal of speeding up the resolution of the missing-persons issue.

The MPI BiH has the potential to mobilize the critical mass of people that is needed to create a positive reputational cascade effect, changing the public discourse from an ethnic discourse to a human-rights discourse. Within the MPI BiH, however, the human-rights discourse must compete with an ethnic discourse embedded in the very structure of the institute. This is partly unavoidable, since the institute's structure must comply with the consociational constitution of the BiH. Furthermore, the human-rights discourse must compete with the emotional rationality of the families of missing persons, which builds predominantly on the ethnic discourse. Despite sincere efforts to build bridging social capital among themselves, they are still prone to develop bonding social capital exploitable by divisive ethnic entrepreneurs. In addition, the directors of the MPI BiH have to some extent been stranded with the ethnically based practices of the former entity-level commissions. Since the directors are the institute's public face, in terms of trustworthiness, it is vitally important that they not bring these practices with them into the new institute but follow a common path and see to it that their staff do the same. They should settle their disputes among themselves, within the walls of the institute, rather than in public.

The families' emotional rationality feeds into a classical expert-versus-layperson dilemma. Solid facts that are perceived as self-explanatory by experts, such as the results of DNA analysis, are perceived differently by the families of the missing, who interpret the facts according to their own perception of reality. To put it simply, they have different frames of reference that create communication problems and lead to distrust. The professionals' historical time reference also clashes with the families' time reference (i.e., their own lifespan); what looks like a success from a historical

perspective may seem a failure from a lifetime perspective. While professionals count bodies found and identified, families count their still-missing family members. In principle, professionals are not concerned about *when* particular missing individuals are recovered, as long as the recovery process is efficient and progresses steadily; to the families, *when* makes all the difference. Time- and cost-efficient recovery procedures may clash with families' perceptions of fairness and impartiality, making the criteria for deciding on the order of priority of exhumations/excavations a crucial trust-building factor.

In order to balance all these dilemmas, additional trust-building measures may be needed. Otherwise, contrary to intentions, the measures already employed may become trust destroying, the human-rights discourse the loser, and societal safety a fiction.

Notes

1. The official name of the state is Bosna i Hercegovina (Bosnia and Herzegovina). Throughout this article, I use the acronym BiH rather than the name "Bosnia," which has become widespread among contemporary writers but which, strictly speaking, refers to only one area of the country.
2. *Law on Missing Persons*, Official Gazette of Bosnia and Herzegovina No. 50/04 (9 November 2004). An unofficial translation into English is available on the Web site of the ICMP, http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp_en.pdf (accessed 22 January 2009).
3. *Law on Missing Persons*, art. 7.
4. *Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of Bosnia and Herzegovina*, Official Gazette of Bosnia and Herzegovina No. 13/05—International Agreements (29 December 2005) [*MPI Agreement*]. An unofficial translation into English is available on the Web site of the ICMP, http://www.ic-mp.org/wp-content/uploads/2007/11/agreement_en.pdf (accessed 22 January 2009).
5. *Law on Missing Persons*, arts. 21–23.
6. *Ibid.*, art. 10.
7. Norwegian Centre for Human Rights, University of Oslo, "Description of the NORDEM Programme," <http://www.humanrights.uio.no/programmes/nordem/about/> (accessed 29 June 2009).
8. I sincerely thank the persons who consented to participate in the interviews, which were both long and exhaustive, lasting between two and five hours, not including coffee breaks. I hope I have done them justice.
9. I want to express my sincere appreciation of the ICMP Press Office, and specifically press officer Jasmin Agović, who on a daily basis provides these press summaries and who always responds kindly to any request.
10. Norwegian Parliamentary White Paper No. 17 (2001–2002), "Societal Safety: The Road to a Less Vulnerable Society" (Oslo, 2002) [in Norwegian]. An English summary is available on the Web site of the Ministry of Justice and the Police, <http://www.regjeringen.no/en/dep/jd/Documents-and-publications/Reports/Reports/2002/Statement-on-Safety-and-Security-of-Soci.html?id=420173> (accessed 29 June 2009).
11. Odd Einar Olsen, Bjørn Ivar Kruke, and Jan Hovden, "Societal Safety: Concepts, Borders and Dilemmas," *Journal of Contingencies and Crisis Management* 15, 2 (2007): 69–79.
12. According to the World Values Survey, for several years Norway has had a generalized trust level of 65%, lying in a cluster with the other Nordic countries, the Netherlands, Canada, and China.
13. UN Office for the Coordination of Humanitarian Affairs [UNOCHA], *OCHA Orientation Handbook on Complex Emergencies* (Geneva: UNOCHA, 1999), http://www.reliefweb.int/library/documents/ocha_orientation_handbook_on_.htm (accessed 29 June 2009), 7.

14. Uriel Rosenthal, Arjen Boin, and Louise K. Comfort, "The Changing World of Crisis and Crisis Management," in *Managing Crisis: Threats, Dilemmas, Opportunities*, ed. Uriel Rosenthal, Arjen Boin, and Louise K. Comfort, 5–27 (Springfield, IL: Charles C. Thomas, 2001); Celesta Kofman Bos, Susann Ullberg, and Paul't Hart, "The Long Shadow of Disaster: Memory and Politics in Holland and Sweden," *International Journal of Mass Emergencies and Disasters* 23, 1 (2005): 5–26.
15. Kirsten Juhl and Odd Einar Olsen, "Societal Safety, Archaeology and the Investigation of Contemporary Mass Graves," *Journal of Genocide Research* 8, 4 (2006): 411–35.
16. Judith E. Innes, *Information in Communicative Planning* (Working Paper 679, Institute of Urban and Regional Development, University of California at Berkeley, 1998), <http://www.rmi.org/images/other/ER-InOpp-InfoCommPlng.pdf> (accessed 22 January 2009).
17. Robert D. Putnam, *Making Democracy Work: Civic Tradition in Modern Italy* (Princeton, NJ: Princeton University Press, 1993)
18. Peter Håkansson and Fredrik Sjöholm, "Who do you trust? Ethnicity and Trust in Bosnia and Herzegovina" (EJIS Working Paper No. 216, European Institute of Japanese Studies, 2005), <http://swopec.hhs.se/eijswp/papers/eijswp0216.pdf> (accessed 2 July 2009), 3.
19. Bo Rothstein, *Social Traps and the Problem of Trust* (Cambridge: Cambridge University Press, 2005), 65–68.
20. Daniel Metlay, "Institutional Trust and Confidence: A Journey into a Conceptual Quagmire," in *Social Trust and the Management of Risk*, ed. George Cvetkovich and Ragnar E. Löfstedt, 100–116 (London: Earthscan Publications, 1999), 101.
21. Ibid.
22. Rothstein, *Social Traps*, i.
23. John Platt, "Social Traps," *American Psychologist* 28, 8 (1973): 641–51.
24. Rothstein, *Social Traps*, 12.
25. Ibid., 12–26.
26. Joel Brockner and Jeffrey Z. Rubin, *Entrapment in Escalating Conflicts* (New York: Springer, 1985), 5.
27. Russell Hardin, "Conceptions and Explanations of Trust," in *Trust in Society*, ed. Karen S. Cook, 3–39 (New York: Russell Sage Foundation, 2001); Russell Hardin, *Trust and Trustworthiness* (New York: Russell Sage Foundation, 2002); Russell Hardin, *Trust* (Cambridge: Polity Press, 2006).
28. Bo Rothstein, "Social Capital, Economic Growth and Quality of Government: The Causal Mechanism," *New Political Economy* 8, 1 (2003): 49–47; Rothstein, *Social Traps*, 59–68.
29. Rothstein, *Social Traps*, 106–17.
30. Ibid., 122. See also Joel Brockner and Phyllis Siegel, "Understanding the Interaction between Procedural and Distributive Justice: The Role of Trust," in *Trust in Organizations: Frontiers of Theories and Research*, ed. Roderick Moreland Kramer and Tom R. Tyler, 390–413 (Thousand Oaks, CA: Sage 1996).
31. Paul Slovic, "Perceived Risk, Trust, and Democracy," in *Social Trust and the Management of Risk*, ed. George Cvetkovich and Ragnar E. Löfstedt, 42–52 (London: Earthscan Publications, 1999).
32. Toshio Yamagishi, "Trust as a Form of Social Intelligence," in *Trust in Society*, ed. Karen S. Cook, 121–47 (New York: Russell Sage Foundation, 2001).
33. Murat Somer, "Insincere Public Discourse, Inter-Group Trust, and Implications for Democratic Transition: The Yugoslav Meltdown Revisited," *Journal for Institutional Innovation, Development and Transition* 6 (2002): 92–112.
34. Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000), 134–47.
35. Rothstein, "Social Capital," 50; Rothstein, *Social Traps*, 55–56.
36. Mark Baskin and Paula M. Pickering, "Former Yugoslavia and Its Successors," in *Central and East European Politics: From Communism to Democracy*, ed. Sharon L. Wolchik and Jane L. Curry, 281–316 (Lanham, MD: Rowman & Littlefield, 2007), 301.

37. Paula M. Pickering, "Generating Social Capital for Bridging Ethnic Division in the Balkans: Case Studies of Two Bosniak Cities," *Ethnic and Racial Studies* 29, 1 (2006): 79–103.
38. Slovic, "Perceived Risk."
39. James G. March and Johan P. Olsen, "The Uncertainty of the Past: Organizational Learning under Ambiguity," *European Journal of Political Research* 3 (1975): 149–71.
40. T.K. Das and Bing-Sheng Teng, "Trust, Control, and Risk in Strategic Alliances: An Integrated Framework," *Organization Studies* 22, 2 (2001): 252–83.
41. Katinka Bijisma-Frankema and Ana Cristina Costa, "Understanding the Trust-Control Nexus," *International Sociology* 20 (2005): 259–82, 259.
42. Putnam, *Making Democracy Work*, 180; Slovic, "Perceived Risk."
43. Peter Håkansson and Sarah Hargreaves, *Trust in Transition—Generalised Trust in Bosnia and Herzegovina* (Sarajevo: Balkans Analysis Group, 2004), <http://www.balkansanalysis.org/reports/trust-in-transition.pdf> (accessed 30 June 2009); see also Håkansson and Sjöholm, "Who do you trust?."
44. All EWS reports since 2002 are available at <http://www.undp.ba/index.aspx?PID=14> (accessed 2 July 2009).
45. *Justice and Truth in BiH: Public Perceptions* (Sarajevo: UNDP BiH, 2005), <http://www.undp.ba/index.aspx?PID=14> (accessed 2 July 2009).
46. Both surveys defined *generalized trust* as "trust that extends beyond the boundaries of face-to-face interaction and incorporates people not personally known" and measured it by the question "Generally speaking, would you say that most people can be trusted or that you can't be too careful in dealing with people?"
47. Håkansson and Hargreaves, *Trust in Transition*, fig. 3.1.
48. *Ibid.*, fig. 4.1.
49. The equivalent question in the EWS surveys until 2002 addressed "confidence in the work of"; from 2003 on, the question used the phrase "approval of the work of" a number of governance structures and executive bodies, except the army.
50. The OHR was established as part of the Dayton Peace Agreement as an ad hoc institution to oversee the implementation of civilian aspects of the agreement on behalf of the international community through the Peace Implementation Council (fifty-five countries and agencies). See <http://www.ohr.int/> (accessed 22 January 2009). See *General Framework Agreement for Peace in Bosnia and Herzegovina* (14 December 1995), annex 10, "Agreement on Civilian Implementation," http://www.ohr.int/dpa/default.asp?content_id=366 (accessed 3 July 2009).
51. *Status of Activities pertaining to the Implementation of the Missing Persons Institute in BiH* (ICMP.GR.23.2.doc, 7 February 2007), ch. II.1 [*MPI Status Report*].
52. See note 2.
53. Predominantly Additional Protocol I, art. 32. For a useful short overview of the various articles in international humanitarian law pertaining to families' right to know the fate of relatives see ICRC, *Support to Families of People Unaccounted For* (Geneva: ICRC, 2002) s. 2.1.2, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5CBDZG/\\$File/ICRC_TheMissing_082002_EN_4.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5CBDZG/$File/ICRC_TheMissing_082002_EN_4.pdf) (accessed 3 July 2009).
54. *Promotion and Protection of Human Rights: Study on the Right to the Truth* (Report of the OHCHR), UN Doc. E/CN.4/2006/91 (8 February 2006), <http://daccessdds.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement> (accessed 3 July 2009).
55. *Law on Missing Persons*, arts. 3, 8.
56. *Ibid.*, arts. 11–17, 18, 9.
57. In line with the definitions put forth by George Cvetkovich and Timothy C. Early, "The Construction of Justice: A Case Study of Public Participation in Land Management," *Journal of Social Issues* 50 (1994): 161–78, 163, *public participation* is here understood as the direct involvement of individual citizens and citizen groups in information-seeking, decision-making, and public planning processes. As stated by Cvetkovich and Early, public participation may be enacted through a variety of forms, from participating in public

- surveys, hearings, and citizen advisory boards to exercising actual decision-making powers. The degree of involvement may likewise vary from one-time involvement, through short-term involvement in parts of a process, to sustained, long-term involvement with direct power over outcomes. The concept does not include voting in general elections or on referendums or the lay participation in political or legal institutions (e.g., serving on a jury).
58. *Law on Missing Persons*, arts. 4–6.
 59. Large parts of the BiH Law on Missing Persons are echoed, or reproduced verbatim, in *Guiding Principles/Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to Prevent Persons from Going Missing and to Protect the Rights and Interests of the Missing and Their Families* (ICRC Advisory Service on International Humanitarian Law, September 2007), [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/missing-model-law-010907/\\$File/Model%20law.missing-0907_eng%20.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/missing-model-law-010907/$File/Model%20law.missing-0907_eng%20.pdf) (accessed 3 July 2009). See also *Missing Persons and Their Families: Recommendations for Drafting National Legislation* (ICRC Advisory Service on International Humanitarian Law, October 2003), [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5T6E5T\\$File/Missing_and_Recommendations_Missing.pdf](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5T6E5T$File/Missing_and_Recommendations_Missing.pdf) (accessed 3 July 2009).
 60. Jens Rasmussen, “Risk Management in a Dynamic Society: A Modelling Problem,” *Safety Science* 27, 2/3 (1997): 183–213.
 61. This document was issued in Bosnian, Croatian, Serbian, and English. For English version see *Application of the Law on Missing Persons of Bosnia and Herzegovina: Guide for Families of Missing Persons* (Sarajevo: Ministry for Human Rights and Refugees, 2006), http://www.ic-mp.org/wp-content/uploads/2007/11/vodic_web_en.pdf (accessed 3 July 2009).
 62. International Commission on Missing Persons [ICMP], “Bosnia and Herzegovina” (2008), <http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina/> (accessed 3 July 2009); OHR Human Rights/Rule of Law Department, “Domestic War Crime Trials and Exhumations” (Office of the High Representative and EU Special Representative, September 2001), http://www.ohr.int/ohr-dept/hr-rol/thedep/war-crime-tr/default.asp?content_id=5231 (accessed 3 July 2009).
 63. *MPI Status Report*, ch. II.2.
 64. ICMP, “Missing Persons Institute Launched on International Day of the Disappeared” (Press release, 30 August 2005), <http://www.ic-mp.org/press-releases/missing-persons-institute-launched-on-international-day-of-the-disappeared/#more-441> (accessed 3 July 2009).
 65. *MPI Agreement* (see note 4).
 66. *Ibid.*, art. 13.
 67. *Ibid.*, art. 14.
 68. “Kathryne Bomberger, ICMP Chief of Staff, Search for the missing will not be over when ICMP leaves,” *Dnevni avaz* (6 November 2005), 5. Unless otherwise noted, all such citations are to English-language press summaries provided by Jasmin Agović of the ICMP; author names and page numbers are provided when this information was included in the ICMP summary.
 69. *Decision on appointing the acting members of the Board of Directors in the Missing Persons Institute* (Council of Ministers of Bosnia and Herzegovina, 107th session, 9 February 2006), signed by the co-founders on 28 February 2006.
 70. *Decision on Cessation of the Decision on Establishment of the State Commission on Tracing the Missing Persons*, Official Gazette of Bosnia and Herzegovina No. 22/06 (28 March 2006); *Decision on Transfer of Jurisdiction from the Office for Tracing Detained and Missing Persons of Republika Srpska to MPI*, Official Gazette of Republika Srpska No. 65/06 (29 June 2006); *Decision on Cessation of the Decision on Establishment of the Federation Commission on Missing Persons*, Official Gazette of Federation of BiH No. 55/06 (20 September 2006). The Republika Srpska decision had to be supplemented on 5 October to make its entry into force pending the establishment of the MPI.

71. *MPI Status Report*, ch. II.7; ICMP, "First Meeting of MPI Governance Structures" (Press release, 27 June 2007), <http://www.ic-mp.org/press-releases/first-meeting-of-mpi-governance-structures/#more-516> (accessed 3 July 2009).
72. ICMP, "ICMP Welcomes BiH CoM's Decision" (Press release, 30 November 2007), <http://www.ic-mp.org/press-releases/icmp-welcomes-bih-coms-decision/#more-600> (accessed 3 July 2009).
73. *MPI Agreement*, art. 15. See, e.g., Nataša Krsman, "Disagreements about Setting up the State Institute on Missing Persons," *Glas Srpske* (28 January 2005); "The Work of the Missing Persons Institute Depends on appointment of future directors," *Nezavisne novine* (10 April 2005).
74. *Law on Missing Persons*, art. 5.
75. UNDP Bosnia and Herzegovina, *Citizens' Guide to the Government Institutions of the Federation of Bosnia and Herzegovina*, 2nd ed. (November 2003), <http://www.undp.ba/index.aspx?PID=36&RID=20> (accessed 3 July 2009).
76. E.g., "Bukejlović no Manners," *DANI* (6 May 2005), 10; "RS Families of Missing Request Exclusion of Mašović from Collegium," *Bosnia Daily* (10 March 2006); "Union of Associations of the Families of the Missing wrote to the BiH Electoral Commission: Laws violated," *Nezavisne novine* (12 March 2006); "Justified Fear," *Glas Srpske* (14 March 2006).
77. E.g., "Mašović Is Salt on Our Wounds," *Glas Srpske* (18 July 2007), 2.
78. "Jasminka Džumhur, Chair of the BiH Missing Persons Institute Steering Board: The Mandate Has Not Expired," *Glas Srpske* (9 October 2007); SRNA, "Brano Dursun: Mašović Has Nothing to Do in the Institute," *Nezavisne novine* (12 October 2007), 3.
79. F. Vele, "Why Exhumed Victims Were Not Identified: The RS Team Failed to Do Their Job Right," *Dnevni avaz* (3 November 2007), 11; E.B., "Milan Bogdanić Responds to Mašović: RS Team Is Not Responsible for Anybody's Incompetence," *Dnevni avaz* (4 November 2007), 4.
80. *MPI Status Report*, chs. II.3–II.5, II.8.
81. *The General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 4: Constitution of Bosnia and Herzegovina" (14 December 1995), http://www.ohr.int/dpa/default.asp?content_id=372 (accessed 3 July 2009).
82. Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention* (London: Hurst & Co., 2002), 216–17, 246–52.
83. ICMP, "Family Associations of Missing Demand Functioning of MPI Before End of Year" (Press release, 8 December 2006), <http://www.ic-mp.org/press-releases/family-associations-of-missing-demand-functioning-of-mpi-before-end-of-year/#more-497> (accessed 3 July 2009).
84. ICMP, "MPI Steering Board Members Nominated by Council of Ministers" (Press release, 29 December 2006), <http://www.ic-mp.org/press-releases/mpi-steering-board-members-nominated-by-council-of-ministers/#more-499> (accessed 3 July 2009).
85. Sanita Rožajac, "Forming of the BiH Missing Persons Institute: Only Milijana Bojić Is Disputed," *Oslobođenje* (10 January 2007), 7; "Srebrenica Women Protest against New MPI Head," *Bosnia Daily* (13 January 2007), 4; G. Klepić, "Milijana Bojić on Accusations from F BiH: Attacks with No Evidence," *Glas Srpske* (20 January 2007), 2; "Resistance to Appointing Milijana Bojić to Steering Board: Srebrenica Associations Threaten with Boycott of the Missing Persons Institute," *Dnevni avaz* (6 February 2007), 12; "Srebrenica Women Protest over MPI Board Candidate," *Bosnia Daily* (6 February 2007), 5.
86. T. Lazović, "BiH Council of Ministers Session: Halilović: "Someone Would Like for the Institute not to Function," *Dnevni avaz* (25 May 2007), 5.
87. *Law on Missing Persons*, art. 2, para. 1.
88. As of 25 January 2005. ICMP, personal communication with author, 2005.
89. As of 1 November 2007, the number of missing persons registered with ICRC was 22,373, of whom 9,386 had been identified: "Search for 12,987 Missing Persons," *Nezavisne novine* (23 November 2007), 2. As of 23 November 2007, blood samples provided to the ICMP

- represented 22,934 missing persons, of whom 10,781 individuals had been identified: ICMP, *Tracking Chart by Conflict and Area of Disappearance* (23 November 2007).
90. ICMP, *Tracking Chart by Conflict and Area of Disappearance* (28 March 2008).
 91. This number represents cases closed by the court-appointed local pathologist in charge, who makes the official identification only after having compared all existing evidence on the identity of the person in question and having informed and obtained the approval of the person's family. DNA matching reports are just one type of evidence, albeit one with at least a 99.95% statistical probability of being correct.
 92. Readers should keep in mind that all of these figures change on a daily basis.
 93. *Law on Missing Persons*, art. 2, para. 2.
 94. Where no other source is specified, the discussion that follows is based on information provided by family-association representatives or by the ICMP Department of Civil Society Initiatives (CSI), including the latter's *Directory of Associations of Families of Missing Persons* (November 2007 version).
 95. One such incident occurred at the Ninth Regional Networking Conference, held in Brčko in November 2006, where the representatives of Serb family associations from across the former Yugoslavia refused as a group to visit a nearby mass gravesite under exhumation by the Federal Commission and gave reasons that were not acceptable to representatives of other family associations.
 96. Vedran Persic, "MPI Is Way Forward in Search for Missing," *Bosnia Daily* (20 July 2007), 3.
 97. ICMP, "Families Are Driving Force for Institute" (Press release, 26 August 2005), <http://www.ic-mp.org/press-releases/families-are-driving-force-for-institute/#more-438> (accessed 3 July 2009).
 98. "Milijana Bojić: No more humiliation!" *Glas Srpske* (10 September 2005), 3.
 99. In Brčko, for example, there is a family association for each of the three constituent peoples; in Biljejlina, there are two Bosniak and two Serb associations; in Mostar, two Croat and one Bosniak association; in Prijedor, two Bosniak and one Serb association; and eight associations are based in Tuzla: six Bosniak, one Croat, and the Roma association.
 100. Elissa Helms, "Women as Agents of Ethnic Reconciliation? Women's NGOs and International Intervention in Postwar Bosnia-Herzegovina," *Women's Studies International Forum* 26, 1 (2003): 1–23, calls this an "affirmative gender essentialism." Helms shows how powerful a strategy this may be in interactions both with foreign donors and with the formal, male-dominated domestic political sphere. But she also shows how, in the end, it may become counterproductive by excluding women's associations from this very sphere.
 101. The term *missing person* thus defines a much broader category of people than is included under the term *disappeared person*, as used in the UN Declaration on the Protection of All Persons from Enforced Disappearances; see *Report on the Enjoyment of the Rights of Families of Missing Persons in Bosnia and Herzegovina* (Office of the United Nations High Commissioner for Human Rights, Field Office in Bosnia and Herzegovina, May 2005), an unpublished report widely disseminated among local and international actors in the country.
 102. "Šejkovača Identification Center: 251 Bodies Unidentified," *Nezavisne novine* (3 April 2007), 9; N. Čano, "Dozens of Roma Await Identification," *Oslobođenje* (10 April 2007), 6.
 103. "Identifications in Republika Srpska: Body of Mile Simanić [Lay] in Lukavica for Almost 9 Years," *Dnevni avaz* (6 April 2007), 12; "Why Silence for Eight Years?" *Oslobođenje* (8 April 2007), 4; G. Klepić, "Families of the Missing Request Meeting with Prime Minister Dodik: Starting Over with the Institute," *Glas Srpske* (11 April 2007), 4; B. Bugarin, *Glas Srpske* (23 April 2007), 2.
 104. G. Klepić, "International Commission on Missing Persons on Nedeljko Mitrović's Statements: No Room for Doubts," *Glas Srpske* (13 April 2007), 4.
 105. In recent years, the Federation of Bosnia and Herzegovina has allocated ten times as much money to the Federal Commission (KM3,000,000) as the Republika Srpska has allocated to

- RS Office (KM300,000). "Ashdown's Last Strike Against the Dead!" *Oslobodjenje* (27 May 2005), cover, 4–5.
106. For an overview see Mirna Buljugic, "No Progress for Sarajevo Truth Commission," *Birn Justice Report* (23 February 2007), <http://www.birn.eu.com/en/71/10/2344/> (accessed 6 July 2009); Nidzara Ahmetasevic, "Between Truth and Politics," *BIRN Justice Report* (2008), <http://www.bim.ba/en/18/10/928/?tpl=58> (accessed 6 July 2009).
107. One example are the Budak graves, which are so conveniently close to the Potočari Memorial Center that they have been reserved as showcases. Since 2005, one grave has been exhumed every year in connection with the anniversary of the fall of Srebrenica. One of these exhumations was also visited by participants in the International Association of Genocide Scholars' Seventh Biennial Meeting in Sarajevo in 2007; see the conference program at http://genocidescholars.org/images/brosura_IAGS_0207.pdf (accessed 6 July 2009).

Contributors

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