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The United States' Record on Atrocity Prevention A Model in the Making?

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Introduction - Why the United States?

As a global leader and permanent member of the UN Security Council that has supported human rights, rule of law, and good governance in the past, the United States has the capacity to make a significant contribution to the implementation of the Responsibility to Protect (R2P), and indeed, the Obama administration has gone well beyond previous Republican or Democratic administrations in raising atrocity prevention on the government's agenda. Despite these gains, however, the atrocity prevention agenda has lost some momentum in Obama's second term based on the diminution of sustained, public attention it has received by top-level officials, particularly by the president. It is therefore fitting to reflect on whether the United States' (US) experience can fruitfully serve as a model for imbedding the R2P principle within government structures.

The purpose of this brief is to assess policy development on atrocity prevention during the Obama administrations and to highlight areas for improvement that can help consolidate the gains made by the administration before leaving office in 2016. This brief begins by tracing the evolution and implementation of R2P in the US under the Obama administrations. It assesses the efforts taken to develop and institutionalize an atrocity prevention policy during the first Obama administration and the extent to which these efforts have continued into the second term.

Finally, it considers three broader lessons that can be drawn from the US experience:

- Continue to use R2P language to emphasize that the principle remains a US government priority;
- Engage domestic and regional civil society to enhance public understanding of and support for R2P;
- Be transparent and open about the United States' efforts to support R2P and atrocity prevention.



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R2P in the US: the Path towards Institutionalization

During President Obama's first term, the President and key figures within the administration made a concerted effort to constitute atrocity prevention as a legitimate political agenda. The priority in the government during the administration's first term was loosely connected to Pillar 2 conceptions of prevention and assistance, achieved through improved policy coordination, planning, and analysis of at-risk countries.¹ For instance, the US was elected to the UN Human Rights Council (HRC) and supported resolutions condemning atrocities being committed in Libya and Syria. In Sri Lanka, Sudan, Somalia and other cases, it supported international inquiries into systematic human rights abuses. The government also continued programs deemed to have a positive impact on atrocity prevention and response, including training programs for UN peacekeepers.² For the most part, however, the government was focused on its own capacity to address mass atrocities and, to a lesser extent, on building a domestic constituency.

Early on there were promising signs that the commitment to atrocities prevention was more than pre-election rhetoric. In January 2009, Obama appointed Samantha Power, a prominent scholar and activist on atrocities prevention, to the National Security Council to lead on R2P issues and followed this up with an endorsement of R2P in the National Security Strategy (NSS) of 2010. Later that year, the State Department and USAID issued the joint Quadrennial Diplomacy and Development Review (QDDR) which stated 'Consistent with the U.S. having joined others in endorsing the concept of "Responsibility to Protect," situations that threaten genocide or other mass atrocities warrant very high priority for prevention.'³ These early policy gains continued in 2011 when Presidential Study Directive 10 (PSD-10) stated unequivocally that 'preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States of America.'⁴

The administration also attempted to build domestic support for atrocity prevention by highlighting the interconnection between US interests, values, and identity. Advancing this argument is critical to reduce domestic resistance and build domestic support because over the years political leaders who have resisted R2P and/or military intervention for humanitarian reasons have done so on the grounds that the US should only act on the basis of its national and strategic interests abroad and not for humanitarian reasons. Arguing against this view, Obama claimed that the 'choice' between pursuing US interests and upholding US values was a false one⁵ because 'when tensions threaten to escalate to mass atrocities, our core values as well as our security interests are deeply threatened.'⁶ Moreover, Obama argued that when it appears the United States is indifferent to mass atrocities, its international reputation and leadership suffers.⁷

However, the administration also preserved a high level of indeterminacy to facilitate domestic buy-in: it repeatedly stated that other competing US interests might take precedence over atrocity prevention in particular cases and that prudential concerns remain

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Spotlight on atrocity prevention tools – Executive orders

One of the tools Obama used regularly during his first term in response to atrocities was the issuance of executive orders to signal presidential attention to systematic human rights abuses and atrocities perpetrated by national governments against their people. The executive orders sanctioned persons threatening the peace, security, and stability – typically regime officials and military leaders – in Yemen, Somalia, Myanmar/Burma, Syria, and Libya.

Executive order 13566, for instance, portrayed the Libyan crisis as a threat to US national security and sanctioned key members of the regime. This, along with concerted efforts by international and regional organisations and key states, helped to frame the international community's perception of the crisis and build momentum against the regime. The UN Security Council sanctions that followed Resolution 1970 essentially internationalized a sanctions regime that the US had already put in place, although US sanctions were more comprehensive.

The US' and later the Arab League's framing of the Libyan crisis as a national security threat to other countries also contributed to NATO's willingness to intervene. NATO Secretary-General Rasmussen originally argued that Libya did not pose a threat to NATO or its allies, and thus it had no plans to intervene,⁸ but by 10 March 2011, NATO's position had shifted.

crucial in determining when, where, and how to act on a case-by-case basis. Importantly though, the administration made it clear that allowing atrocities to happen without taking action is not a viable policy option; instead the administration attached great importance to broadening the universe of mass atrocity prevention tools to enable earlier and possibly preventive action.

The administration set out to better organize and institutionalize atrocity prevention throughout US agencies by developing a series of processes and policy tools in order to move beyond the typical *ad hoc* and individual-driven approach. To that end, PSD-10 created an atrocities prevention board (APB) which brings together high-level officials of the Departments of State, Defense, Treasury, Justice, and Homeland Security, the Federal Bureau of Investigation, the Central Intelligence Agency, the U.S. Agency for International Development, the U.S. Mission to the United Nations, and the President's national security advisor.

The role of the board is to coordinate a whole-of-government strategy on the 'critical mission' of atrocities prevention by opening a direct line of communication between these different departments and to ensure that the White House is fully briefed on situations under consideration and actions being taken by each department.⁹ The board is also tasked with overseeing US government capacity-building, including the development of military

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doctrine, civilian training modules for US officials, and improved early warning indicators.¹⁰ A second task is to develop a wider range of policy tools to address mass atrocity situations so that the choices are not narrowed to either military intervention or doing nothing to prevent atrocities. These policy tools, for instance, may include: diplomacy, travel bans, technological deterrents, humanitarian relief, accountability mechanisms, justice capabilities, and sanctions, with military action being a 'credible last resort.'¹¹

Keeping up Momentum: Norm Consolidation and Deeper Institutionalization?

The task for Obama's second term is to consolidate gains made in the first term by building the capacity of government agencies and by providing them with tools to use to prevent and respond to these crises. In order to succeed, leadership, domestic legitimation, and institutionalization of the atrocity prevention agenda will all require greater sustained attention than has thus far been evident.

In terms of leadership, however, the president appears to have taken a step back from direct involvement in the majority of cases. Presidential prioritization of atrocity prevention in the first term – through the use of executive orders and in official statements – demonstrated the president's personal concern for large scale human rights abuses and mass atrocities and the US government's prioritization of these cases.¹² Although Obama has remained directly involved in efforts to halt atrocities in certain imminent and ongoing cases, such as the Central African Republic (CAR) and Syria, the consolidation of first term efforts has largely been left to the efforts of the APB. For example, the issuance of executive orders in response to mass atrocity situations and other systematic human rights abuses by national regimes has fallen from a dozen executive orders in the first term to only four in the second term (to prohibit the importation of Burmese jade and rubies and to block property of those contributing to conflict in the Democratic Republic of the Congo, CAR and South Sudan).¹³

Moreover, continuing a trend that began in the first term, the use of R2P language in US policy and in diplomatic communication has continued to decline. Instead, reference to atrocities prevention seems to have largely replaced the language of responsibility. There are three reasons for this, according to Bruce Jentleson, a leading expert on US foreign policy:

- To avoid antagonizing certain states against R2P, particularly Russia and China.
- Because it is the international community's purview and responsibility to invoke R2P. In other words, the US can push the international community to invoke R2P in specific cases, but it should not take its place in doing so.
- Because R2P is not well understood by the US public and by some members of Congress, including the perception that the use of R2P language confers international legal obligation.¹⁴

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The first two arguments put forward by the administration are not particularly compelling as a reason to avoid R2P language. Firstly, the United States government has not held back on other issues – including human rights violations or internet freedom – to avoid antagonizing Russia or China. Secondly, although it is the international community's responsibility to invoke R2P, that responsibility is necessarily shared by all member states. Thirdly, curtailing R2P language at this stage – after having used it in the first term, particularly in reference to Libya, action taken against the Lord's Resistance Army in central Africa, and in the build-up surrounding PSD-10 and the APB – makes it more rather than less likely for detractor states to claim that the United States government was merely instrumentally invoking R2P to enhance its international standing and to justify its actions in Libya. The final reason provided for the avoidance of R2P language – that the US public does not understand the concept – is the most plausible of the three. However, it is precisely because the US public does not fully understand R2P that the government needs to be more involved in outreach and public engagement concerning in the principle and its commitment to R2P. Another cause for concern is that the agenda to prevent and respond to genocide and mass atrocities is being framed as one on a spectrum of human rights abuses of concern to the government. This framing allows discussions of R2P offenders to take place alongside other human rights offenders such as Iran and North Korea. Of course there are crossovers in the terminology, but the atrocity crimes identified by the R2P principle speak to the most profound breaches of human rights and this distinction should not be diminished.¹⁵

The APB has also faced significant criticism from the press since 2012, particularly in relation to its perceived inaction on Syria and the lack of transparency surrounding its work such that no one really knows what is being done.¹⁶ However, the APB is working as described in PSD-10. Its primary mission is 'to push decision-making and policymaking on mass atrocities to the highest levels in government'¹⁷ and in doing so it brings together high-level members of US agencies to deliberate, determine, and coordinate responses to mass atrocities. The APB made considerable headway regarding prevention by ensuring that leaders are up-to-speed on potential and emerging atrocity situations which has given them the opportunity to take earlier action. However, its role is more limited once crises develop because the Secretary of State and the Cabinet are more directly involved in defining US policy in these cases. Once foreign policy has been determined, the APB's role is primarily to monitor the implementation of policy tools by various government agencies and to ensure all agencies are working towards a solution.

A continuing challenge for the APB is its budget-neutral status. This means that existing government agencies essentially volunteer staff and other resources to address atrocity related concerns. Given that meetings are intended to take place on a weekly, monthly, and annual basis (with more senior staff participating on a less frequent basis), this is a high resource commitment, especially during a time when many budgets are already tightening.

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Atrocity prevention and response – CAR and Syria

In November/December 2013, the media began issuing reports that independent and government-affiliated armed groups in the CAR were committing atrocity crimes against civilians. This was the second strong wave of violence against civilians following a March 2013 coup. Several factors facilitated US action, including support from France and other states and little opposition to US or international efforts. Some of the steps taken by the US government included:

- Co-sponsored an HRC resolution to have an independent expert examine the human rights situation in CAR and to advise the UN Security Council;
- President Obama issued an address to people of CAR calling for nonviolence;
- Supported UN Security Council Resolution 2149 to re-hat the African Union peacekeeping mission as a UN operation and committed US\$100 million to facilitate the training and deployment of peacekeepers;¹⁸
- Committed US\$67 million in humanitarian aid and US\$7.5 million for conflict mitigation, peace messaging, and human rights programs;
- On 13 May 2014 President Obama issued an Executive Order blocking the property of persons deemed to be contributing to the conflict in the CAR.

Despite the purported success of these efforts in the CAR,¹⁹ little has changed on the ground for civilians and atrocities continue to be perpetrated with impunity.

Syria serves as an obvious counterpoint to the 'success' of the US government's quick response to escalation of atrocities in the CAR. The administration has faced repeated criticism for its lack of a clear policy on the Syria crisis. According to one critic, 'if measured by real-world results in Syria, the administration has singularly failed to live up to its commitment [to atrocity prevention]'.²⁰

One thing that Syria has shown is that there are many policy-tools (besides the use of force) to use, including taking diplomatic actions and applying unilateral sanctions against regime officials. Clearly, however, these tools are inadequate in the face of a strong government in Syria. Moreover, a fractured Security Council has frequently prevented coercive and non-coercive multilateral action from being taken by the Council. Decisions to intervene militarily to stop mass atrocities have and will continue to balance reasonable hope of success, costs, and its foreseen impact on other interests. In Syria, these prudential concerns as much as lack of agreement in the Security Council have stymied the administration's willingness to intervene militarily.

The US continues to try to put pressure on the Assad government outside the Council as well. It has, for instance, co-sponsored multiple resolutions in the HRC condemning violence against civilians and calling for humanitarian access. It is also supporting projects designed to monitor atrocities in Syria to lay the ground works for accountability in the

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future. Since August 2013, the administration has been focused on the chemical weapons ban, rather than on the continuing R2P crimes. Sadly, this shift in discourse has obscured to some extent the continued crimes against humanity perpetuated by the regime with conventional weapons.

Unfortunately, the lack of a dedicated budget prevents the APB from developing a secretariat or staff, which means the effectiveness of the board rests entirely on personalities and the dedication of its temporary members. As current committed members rotate out, there is a risk that the lack of continuity will compromise the APB's longer-term results.²¹

The government claims to be working behind the scenes in specific countries deemed at risk for mass atrocities. For instance, the Department of Treasury has placed sanctions on human rights abusers in Myanmar/Burma, Iran, Zimbabwe and the DRC. However, sparse details of efforts made and lack of transparency remain an issue which continues to prevent the meaningful evaluation of policy tools and their impacts. This is problematic because it makes it difficult to differentiate successful engagement from unsuccessful engagement (in the absence of a clear resolution of the crisis), which is also an important factor in sustaining efforts into the future. US government efforts in the CAR at the end of 2013 (generally deemed successful) and throughout the ongoing civil war in Syria (generally deemed unsuccessful) illustrate this point and also show the limits of atrocity prevention tools in the absence of concerted action by the international community.

Conclusions and Policy Recommendations

In sum, encouraging signs of institutionalization run parallel to some heated criticism of the government's approach to atrocity prevention in Congress and civil society (even by those inclined to support US atrocity prevention measures). Further consolidation of domestic efforts and stronger support for the R2P principle internationally need to be prioritized by the United States government, because in the current climate it would not take much for the next administration to come in and erase the strides that have been made, as happened to the Atrocity Prevention Inter-Agency Working Group that President Clinton set up in 1998.²²

To further strengthen R2P, the Obama administration and other friends of R2P need to show continued leadership on the principle, engage transparently with the public to encourage domestic legitimacy, and further support the institutionalization of atrocity prevention practices within government agencies. The US has gone some way in achieving these goals, but the president and other political leaders need to become more open about the US government's continued commitment and the steps that have been taken. Ultimately, efforts to develop domestic buy-in for the R2P norm have been sorely lacking in the second term. The recommendations that follow highlight certain areas where there is significant room for improvement for the US 'model' of atrocity prevention.

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- **Use the term R2P both domestically and internationally.** As the Obama administration has discovered, highlighting its positive first term record on atrocity prevention does not make it immune to criticism that its second term record is markedly less stellar. R2P imposes no new obligations on states and the wording of paragraphs 138-139 in the World Summit Outcome Document is purposefully indeterminate in order to ensure compatibility with a range of state identities, values, and interests. There is therefore no compelling reason not to support R2P if a state supports its basic stricture that there are limits to national sovereignty. Moreover, given the strong emphasis on multilateralism and American leadership, the administration needs to take greater initiative to facilitate and build multilateral support for the norm internationally.
- **Engage civil society.** It is essential to develop domestic buy-in for the R2P principle and for capacity building. Without a domestic constituency to motivate presidential candidates to take a stand for the R2P principle during the upcoming elections, R2P could fade from the domestic political agenda. In the case of the US, although the US government is working to institutionalize atrocity prevention and response, it has largely failed to develop domestic buy-in or even to engage with civil society (or Congress) on the issue despite numerous requests by civil society groups. Given that low levels of understanding about R2P were identified as problematic for the administration, the government should partner with civil society organizations to increase domestic awareness and acceptance rather than minimize its commitment to R2P in order to avoid controversy.
- **Institutionalize efforts and improve transparency.** The US government should create a budget and permanent secretariat for the APB so that it is not an additional expense of participating agencies or an add-on to participants' existing job responsibilities with no additional support. Furthermore, atrocity prevention needs to be prioritized visibly by the APB and US government but also by the president. To that end the president must not shy away from discussing US atrocity prevention efforts in specific cases as well as in the abstract. On the whole, the US government has been very discrete (some would argue opaque) about its atrocity prevention activities. It has kept Congress and interested civil society organisations in the dark about its efforts and progress, failing to respond to repeated inquiries, recommendations, and offers of support by both groups.

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