



**Legacies and Prevention of Genocide and  
Mass Atrocities in the Asia-Pacific:  
A Workshop Report**

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The University of Queensland  
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## 1. Executive Summary

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The Asia Pacific Centre for the Responsibility to Protect held a two-day workshop entitled ‘Genocide and Mass Atrocities in the Asia-Pacific: Legacies and Prevention’ on 21-22 March at the University of Queensland. Attendees participated in a range of panels on key issues central to the workshop theme, including the legacies of mass violence, transitional justice, mass atrocity prevention, and specific regional issues. The purpose of the workshop was to initiate serious scholarly examination of a variety of topics surrounding the legacies and the prevention of genocide and mass atrocities in the Asia-Pacific region. The workshop was structured around four key areas of enquiry:

- The legacy of mass violence in Indonesia and East Timor
- Transitional Justice after mass atrocities
- Early warning and prevention of genocide and mass atrocities in the Asia-Pacific
- The United Nations, sovereignty and international intervention in mass atrocity crimes

The keynote speaker for the workshop was Professor Alex Hinton, Executive Director, Center for the Study of Genocide, Conflict Resolution and Human Rights, Professor of Anthropology and Global Affairs, Rutgers University (New Jersey). In conjunction with the workshop was the launch of the exhibition *Lessons from Rwanda: The United Nations and the Prevention of Genocide*. This exhibition, from the United Nations Department of Public Information, was on display for the first time in Australia at The University of Queensland.



## 2. Introduction

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The twentieth century has been labelled the ‘century of genocide’. According to some estimates, more than 250 million civilians were victims of genocide and mass atrocities during this period. The Asia-Pacific region has not been immune. Genocide and mass atrocities have occurred in East Pakistan (now Bangladesh) in 1971, Indonesia (1965-66), Cambodia (1975-79) and East Timor (1975-1999). At the opening of the twenty-first century, efforts to halt this massive loss of innocent life culminated in the emergence and acceptance of the ‘responsibility to protect’ principle in international discourse. More effort than ever before is being channelled towards preventing mass atrocities.

It is perhaps surprising therefore, that there have been very few attempts to examine this issue at the regional level. Regional influences can be of substantial impact in both dealing with the legacies of past atrocities and in endeavours to prevent future instances of genocide or mass atrocities. In the Asia-Pacific in particular, issues surrounding sovereignty and non-intervention, the dearth of capacity and mandate amongst regional organisations and the wide variance in approaches to governance provide a unique constellation of challenges. Many nations in the region are comprised of bipolar or multiethnic populations, with the associated challenges of maintaining national cohesion and working to avoid or limit ethnic cleavages. Empirically, those struggling with the legacy of past genocides are also at increased risk of future events – further compounding the struggle to rebuild.

This workshop was organised to bring a specific Asia-Pacific focus to the field of genocide prevention. It was the first workshop dedicated to exploring the legacies of past genocides and mass atrocities in the Asia-Pacific and examining genocide prevention from this specifically regional perspective. The workshop consisted of the following five panel discussions:

Panel One: Mass Violence in Indonesia and East Timor

Panel Two: Opportunities and Challenges for Mass Atrocity Prevention in the Asia-Pacific



Panel Three: Transnational Justice After Mass Atrocity

Panel Four: Early Warning and Prevention of Genocide and Mass Atrocities

Panel Five: The United Nations, Sovereignty and International Intervention in Mass Atrocity Crimes

As part of the workshop, an Exhibition Opening, entitled *Lessons from Rwanda: The United Nations and the Prevention of Genocide* and a Public Lecture, entitled *The Khmer Rouge Tribunal: A View from Critical Transitional Justice Studies* were held. The workshop concluded with a Roundtable, which invited participants to reflect on the key themes of the event and to identify issues for future consideration. The following report presents the topics and analysis from each panel, in addition to the public lecture and roundtable.



### 3. Panel One: Mass Violence in Indonesia and East Timor

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#### *East Timor: The Politics of Starvation*

Clinton Fernandes

#### About the Presenter:

Associate Professor Clinton Fernandes is a political scientist at UNSW@ADFA. His most recent publication is *The Independence of East Timor: Multidimensional perspectives – Occupation, Resistance and International Political Activism* (2011).

#### Abstract:

Indonesia invaded East Timor in 1975 and occupied it for 24 years. During that time, East Timor suffered perhaps the largest loss of life relative to total population since the Holocaust. The majority of deaths occurred between 1977 and 1979 as a result of a widespread famine caused by the Indonesian military's operations. This paper demonstrates that early warning of the famine was available but consistently ignored by Indonesia and by a number of Western governments. For Indonesia, the military objective of destroying the resistance overrode all other considerations. For Western governments, the maintenance of good relations with the Suharto regime took priority. They deliberately refrained from proposing humanitarian aid until they received the go-ahead from the Indonesian military. Humanitarian aid finally arrived in sufficient quantities after pressure generated by a relatively small number of activists, primarily in the USA, Australia and Britain. The efforts of these activists not only ended the famine, they also led to the creation of influential, long-term support for East Timor's independence among members of the US Congress and large media organizations.

#### About the presentation:

The first presenter in this panel was Associate Professor Clinton Fernandes from the School of Humanities and Social Sciences at the University of New South Wales whose paper was titled 'East Timor: The Politics of Starvation'. Associate Professor Fernandes began his presentation by explaining the context in which the mass atrocities in East Timor took place. For this purpose, he explained that Indonesia invaded East Timor in 1975 and occupied it for 24 years. The invasion was resisted by force of arms. He noted that East Timor's Commission for Reception, Truth and

Reconciliation concluded that the minimum-bound for the number of conflict-related deaths was 102,800 (+/- 12,000), and the upper bound may have been as high as 183,000. He further noted that Sarah Staveteig, a demographer at the University of California – Berkeley, applied standard demographic methods of indirect estimation and found that 204,000 was a conservative upper-bound estimate on excess mortality. This was out of a starting population 648,000. However, Associate Professor Fernandes noted that, unlike the Holocaust, the situation in East Timor was not classified as a genocide due to the fact that the intentions of the Indonesian military were to suppress the resistance movement in East Timor, and not to destroy either in whole or in part, a national, ethnic, racial or religious group as such. Killings and mass violence committed for such political objectives are not covered under the *UN Convention on the Prevention and Punishment of the Crime of Genocide (1948)*.

As noted by Associate Professor Fernandes, during this occupation of East Timor by Indonesian forces, the military objective of destroying the resistance overrode all other considerations. He explained that this was particularly evident during the period 1977 – 1979, which saw an extremely large loss of life in East Timor as a result of the widespread famine that was caused by the Indonesian military's determination to suppress the resistance movement. He asserted that only the Indonesian Red Cross, which was controlled by the Indonesian government, was given access to the country for most of this period. However, Associate Professor Fernandes argued that even in this instance, the food aid supplied by the Indonesian Red Cross failed to alleviate the widespread hunger that the famine had caused in East Timor, as this food aid was sold at significantly inflated prices by the Indonesian military to the East Timorese public for the purpose of securing profits and greater material power.

According to Associate Professor Fernandes, a number of Western governments had received early warnings of the famine, but these warnings were consistently ignored. He asserted that the reason for this was the high priority that these governments gave to preserving good relations with the Suharto regime. In explaining this, Associate Professor Fernandes highlighted that even within the United Nations, only four Western states (Cyprus, Greece, Iceland and Portugal) supported East Timor in the General Assembly from 1976 till 1982, when the matter was delegated to the UN Secretary-General. Only one-third of the UN's member states, mostly Third World or socialist, supported East Timor in the General Assembly. The United States, the United Kingdom and France acknowledged that East Timor had the right to self-determination but did not support any General Assembly resolutions on the issue between 1975 and 1982. Their actions in the Security Council shielded Indonesia from international reaction. Fernandes explained that China and the Soviet Union



supported Security Council resolutions and General Assembly resolutions on the issue between 1975 and 1982 (with the exception of 1979 for China).

According to Associate Professor Fernandes, while it was legal to listen to Timorese radio broadcasts in Australia, it was illegal to broadcast out of Australia without a licence. Fernandes explained how activists broke the law by setting up a clandestine radio broadcasting station. He argued that many scholars within Australia aligned their research priorities to fit in with the diplomatic position of the Indonesian government, staying clear of East Timor or actively defending the Indonesian occupation. This meant that even within academic circles, there was little mention of the situation in East Timor during this period.

One of the main consequences of such responses by Western governments was that the general public within most Western states had very little knowledge of the dire situation in East Timor. Furthermore, he also noted that much needed humanitarian aid was not supplied. However, Associate Professor Fernandes asserted that a key turning point did arrive with the emergence of a relatively small number of activists, primarily in the United States, Britain and Australia. These groups were vital in generating public awareness about the situation in East Timor and ending the famine in the country. He also emphasized that the work of these activists had other far reaching consequences. For example, in the United States, these activists attracted the support of a leading scholar in the field of international relations, Benedict Anderson, which was a significant development for the movement as it legitimised the East Timorese cause. Professor Noam Chomsky, the pre-eminent linguist and political activist, worked alongside US activist, Arnold Kohen, to create a structure of legitimacy for the East Timorese cause. Furthermore, Associate Professor Fernandes noted that as a result of this structure of legitimacy, the *New York Times*, which had earlier reported that the actual death toll was not as high as claimed by activists, completely changed their position and became an eminent supporter of the cause. Associate Professor Fernandes also highlighted that the work by the activists created pressure for the US Congress to play a more active role in the situation in East Timor, and rebutted earlier statements released by Western governments that had downplayed the situation in East Timor.

The presentation concluded that if it had not been for the efforts of the activists, little would have been done by the Western governments, which were consumed by their own priorities, in securing independence for East Timor from Indonesia.

## ***An Ongoing Legacy of Atrocity: Torture and the Indonesian State***

Annie Pohlman

### About the Presenter:

Annie Pohlman is Program Leader for the Responsibility to Protect in Southeast Asia at the Asia-Pacific Centre for the Responsibility to Protect. Her primary research interests include the 1965-66 Indonesian killings, and the experiences of women victims of torture in Indonesia.

### Abstract:

Twelve years after the end of the New Order regime (1966-1998) in Indonesia, the promise of reform has fallen short for the regime's many victims of gross human rights abuses. The very few trials of serious offenders have been farcical, the reforms put in place to check the power of the military and police lack strength and political will, and attempts to set up a national truth and reconciliation commission have failed. The continuing lack of redress for past serious violations has reinforced the entrenched culture of impunity in Indonesia, particularly for members of the security sector. One of the clearest examples of this relationship between past impunity and continuing atrocities in Indonesia is the use of torture by State and co-opted agents. Examining the use of torture by the Indonesian state over the past fifty years highlights the cyclical relationship between ongoing impunity for past incidents of serious abuses, the institutionalization of this abuse in the security sector, and the urgent need for redress and reform. To do this, this presentation briefly charts the use of torture during some of the major cases of systemic and severe human rights abuse during the New Order. It then describes evidence of the continuing use of torture by State agents over the past decade, highlighting a number of recent cases, and concludes by arguing for a number of avenues for redress and reform aimed at removing torture as a tool of state policy in Indonesia.

### About the Presentation:

In introducing her paper, Ms. Pohlman acknowledged that in the twelve years since the fall of the Suharto regime, there have been some changes for the better in terms of human rights within the country. These include greater civil liberties, press freedoms and constitutional amendments. Despite these improvements, Ms. Pohlman asserted that the promise of democratisation has fallen short, and has often been determined by power sharing deals amongst fragmented elites, at the expense of democratic quality and accountability. She also noted that attempts at transitional justice measures in Indonesia have produced very little justice, with very few offenders of human rights during Suharto's regime being tried, and those trials that have been conducted being completely farcical. In addition to this, Ms. Pohlman highlighted that the reforms put in place to check the power of the military and police lack strength and political will, and attempts to set up a national truth and

reconciliation commission have yet to succeed. Such failures at transitional justice have reinforced an already entrenched culture of impunity in Indonesia, particularly among members of the security sector.

In order to analyse the strong link between impunity for past atrocities and their continuation today in democratizing Indonesia, Ms Pohlman provided the example of the use of torture by state and co-opted forces in Indonesia. She argued that while the use of torture by state agents in Indonesia was evident both under the colonial government and the Sukarno regime, the mass violence that brought the New Order to power in 1966 was a major contributor to the institutionalisation of torture as routinised practice. It was noted that from 1965 until the late 1960s, the army carried out a genocidal campaign against its major political rivals. During this period, through operational use, large portions of the security sector and their co-opted civilian militias became increasingly more refined at the tools, tactics and strategies for questioning and harming victims. Ms Pohlman stated that this, in turn, played a vital role in the training and institutionalisation of torture as a form and means of policy within the security sector.

Ms Pohlman asserted that there was great hope that such human rights abuses would be abolished after the fall of the Suharto regime and in the early years of the Reform. However, this has not been the case. She provided the example of the incident of torture of two Papuan men, Tunaliwor Kiwo and Telangga Gire, in May 2010 by Indonesian soldiers. It was noted that this was a unique case for three main reasons. Firstly, it attracted widespread international attention and outrage due to the fact that a video of these two men being tortured was uploaded onto the Internet. Furthermore, as a result of the widespread international outrage that this video sparked off, the military had to acknowledge that torture had taken place, and given that the perpetrators in the video were all wearing military uniforms, that soldiers had clearly been the perpetrators of the torture. Another way in which this case was unique is that due to further international pressure, a trial of these soldiers was held in January 2011, with three of the soldiers involved being sentenced to 8 – 10 months imprisonment. However, Ms Pohlman observed that these soldiers have not been discharged from the military, and can return to service at the end of their sentence.

According to Ms Pohlman, the reasons for the continued violence in Indonesia are threefold. The first reason is the routinisation and eventual normalisation of violence as means of work for portions of the military and police. Second, is the failure to set up competent and accountable bodies and mechanisms to prevent and investigate incidents of torture. Ms Pohlman stated this is clearly seen by the relationship between the National Human Rights Commission (Komnas HAM) and the Attorney

General's Office. In 1999 and 2000, the mandate of the Komnas HAM was expanded to allow it to investigate cases of gross abuses, to prepare independent reports, and to make recommendations for prosecutions to the attorney general and even for a human rights court to be set up. While it can then be assumed that the case should then proceed to the Attorney General's Office for investigation and sentencing, this has been far from the reality. Recommendations issued by Komnas HAM have continued to be ignored by the Attorney General, and despite overwhelming evidence of abuse, many cases have simply gone nowhere and perpetrators have been left unpunished.

The third reason Ms Pohlman provided for the continued violence in Indonesia is that there seems to be a somewhat changed demographic amongst victims, at least in terms of cases reported. In expanding on this, she noted that there has been an increase in 'recreational torture' amongst the police against the socially vulnerable or marginalised in society. While she did note that these people have always been harassed and abused by the police, she highlighted that the number of cases reported has increased. However, she explained that this increase in reported abuses may be due to the improved ability of NGOs to intervene or at least report on these cases. Nevertheless, Ms Pohlman asserted that what can be extracted from this is that when torture becomes such an acceptable practice against perceived internal enemies, it can easily be carried out against anyone else who is seen as an enemy, especially when there is a lack of adequate mechanisms to hold perpetrators accountable.

#### *Panel One Question and Answer*

Following the presentations by Associate Professor Clinton Fernandes and Ms Annie Pohlman, the floor was open to questions from workshop participants. The following section summarises the questions and answers.

Q1: The first question asked if the patriarchal nature of Indonesian society may be a possible reason for the widespread violence that was perpetrated against women during the New Order, and which still continues today.

In response, Ms Pohlman remarked that patriarchy was, and continues to be, a significant factor contributing to the violence against women in Indonesia. During the New Order, the Suharto regime developed fictitious stories about the unorthodox behaviour of 'Communist women' in order to demonize them, and thus, encouraged their violent suppression by the Indonesian military. She also noted that the growing independence of Indonesian women has been perceived as an imminent

threat to the long established patriarchal nature of Indonesian society and hence, sexual violence has been used to re-establish this balance.

Q2: The second question asked for more clarification about the steps that have been taken at the local level in Indonesia to challenge this culture of impunity in Indonesia.

In response, Ms Pohlman noted that since 1998, which saw the fall of the Suharto regime, there has been an explosion of NGOs in Indonesia. By using the discourse of being victims, they have been relatively successful in getting both funding and sympathy. However, she emphasized there is a significant disconnect between NGOs working at a local level and the government, due to a lack of political will by the state.

Associate Professor Clinton Fernandes added to this, by highlighting that while the tactic of protest has been legitimised following the fall of Suharto and the subsequent relative democratisation process that has ensued, international dynamics have completely out-manoeuvred local NGOs. The reason for this is that the international community, particularly Western states such as Australia, have been very involved in training the Indonesian military. However, Associate Professor Fernandes argued that such training has not resulted in an improvement in the human rights records of these former perpetrators; rather, it has merely increased their chances of getting promoted. Hence, he proposed that one way that the international community can assist these local level NGOs to challenge the culture of impunity in Indonesia is by providing publicity and education to local activists, while denying training to members of the Indonesian military.





## 4. Panel Two: Opportunities and Challenges for Mass Atrocity Prevention in the Asia-Pacific

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### *Mediation in the Asia-Pacific: Constraints and Challenges*

Dale Bagshaw

#### About the Presenter:

Associate Professor Dale Bagshaw is Adjunct Associate Professor in the School of Psychology, Social Work and Social Policy at the University of South Australia. Associate Professor Bagshaw is the President of the Asia-Pacific Mediation Forum. Her most recent publication is *Mediation in the Asia-Pacific: Transforming Conflicts and Building Peace* (co-edited with Elisabeth Porter).

#### Abstract:

This paper focuses on the constraints and challenges faced by mediators who try to build culturally fluent models of mediation that are relevant to the Asia-Pacific context, acknowledge traditional ways of resolving conflict and also redress power imbalances and challenge structural inequities to ensure just outcomes for all involved. Mediation is a voluntary, cooperative process wherein an impartial mediator controls the process and assists the parties in conflict to make their own decisions. However, for mediation work, all relevant parties need to be willing to: be actively involved, allow the mediator to control the process, share relevant information and treat each other with respect. Mediation is not appropriate where parties in conflict hold rigid, intractable views or where the power inequity between the parties is so great that the mediator cannot redress the imbalance by using specific techniques. In some instances, mediation can be a useful approach, particularly in the early stages of a conflict or dispute when the mediator can assist the parties to manage, resolve or transform the conflict by: communicating openly with each other, identifying the factors contributing to the conflict, developing a range of possible options or solutions and engaging in principled negotiation, thereby preventing the conflict from escalating into violence.

### About the Presentation:

The first part of Associate Professor Bagshaw's presentation focused on the history of mediation in the Asia Pacific, and the role that cultural and religious factors have played in the mediation process. Associate Professor Bagshaw noted that in the Asia Pacific, there has been a long standing history of informal conflict resolution involving intermediaries or third parties. She highlighted that some of these traditional practices are quite similar to Western forms of mediation where the parties make their own decisions, while others are more like arbitration, where a third party makes the decisions. For example, she noted that the informal use of intermediaries was found to be common in many indigenous cultures in the Asia Pacific region, such as the Kon Chin among Chinese and Kampong Kutu or Penghulu among Malays. Associate Professor Bagshaw also asserted that in many of these traditional or cultural mediation practices, religious principles are strongly drawn on in many of these traditional or customary mediation practices. For example, in Islamic societies, the Holy Quran is used as a manual for resolving disputes amicably, while the Chinese view of dispute resolution is grounded in Confucian ethical principles.

Associate Professor Bagshaw then focused on the reasons for the increased interest in mediation in the Asia Pacific region. The first reason she highlighted was the inability of civil justice systems to deal with the increasing load of cases. Secondly, she noted that scarce resources such as legal aid, the rising costs of litigation and the need to preserve or restore ongoing relationships have all been contributing factors to the growing role of mediation in the Asia Pacific region.

Despite the growing importance of mediation practices in the region, Associate Professor Bagshaw emphasized that mediation may not always be appropriate. She claimed that the situations where mediation is most likely to be successful is where continuing relationships are important, where parties in conflict are willing to voluntarily participate, share relevant information and allow the mediator to control the process. It was also noted that in order for mediation to be effective, all parties should have a roughly equal amount of power and are competent to negotiate, and parties should be willing to compromise and not hold intractable views.

The presentation then focused on the importance of culture in mediation, and the challenges that mediators face when working cross culturally. Associate Professor Bagshaw drew on the work of Michelle LeBaron, who asserted that all conflicts are culturally based. In addition to this, she asserted that culture is vital to mediation practice due the fact that cultural values may determine the choice of mediators. For example, while an objective and impartial mediator may be prized in some cultural

groups or with regards to certain kinds of disputes, other cultural groups may prefer respected and well known elders.

While culture plays a determining role in mediation practice, Associate Professor Bagshaw stressed that mediators must be cautious of the fact that cultures are consistently changing, and there are wide variations within cultures. In further analysing the complex role of cultural principles in mediation, she explained that while individualised, direct, linear, confrontational and solution oriented approaches to conflict resolution tend to be promoted in most mainstream Western theoretical models of mediation, this may not be suitable for other non-Western cultures. For example, she noted that Australian indigenous communities and many other cultural groups and individuals in the Asia Pacific tend to value more indirect communication, holistic approaches, harmony and the preservation or restoration of relationships.

She also emphasized that mediators seeking to work across cultures must be wary of the possible power imbalances that may exist between parties and which are based on cultural factors. However, she noted that it may be difficult to spot power imbalances, as they are often subtle and difficult to define. However, Associate Professor Bagshaw argued that if mediators are not able to identify these power imbalances, mediation may merely help to reproduce abuses of power by the dominant party, and allow for the violation of rights of the weaker party.

Despite the importance of acknowledging cultural differences and sensitivities, Associate Professor Bagshaw contended that there still remain strong elements of imperialism as Western mediators and trainers try to transfer their mediation models to other cultures as the 'right way' to resolve conflict. However, she argued that this has actually constrained the ability to successfully mediate conflicts in many cases, as it may lead a process of 'othering', which can legitimise violence and construct a mythology based on inclusion and exclusion.

Nevertheless, Associate Professor Bagshaw noted that mediation may prove to be a very useful approach in solving conflicts, particularly in their early stages, when the mediator can assist the parties to manage, resolve or transform the conflict. However, to serve these means, she emphasized the importance for mediators to incorporate and value differences and pluralities of identity across cultures, and consider these issues within a framework of justice and human rights.

In her concluding remarks, Associate Professor Bagshaw stressed the need to train culturally fluent mediators in various societies in the Asia Pacific region. She proposed that this cultural fluency be made a compulsory part of the mainstream

curriculum from the first year at school and a pre requisite for all people in influential positions.

### ***The Role of Stable Small States in the Responsibility to Protect***

Charles Tay

#### About the Presenter:

Charles Tay is currently an intern at the Asia-Pacific Centre for the Responsibility to Protect. His research on the role of stable small states in promoting the responsibility to protect will shortly be published as a Centre Working Paper.

#### Abstract:

Though much contemporary scholarship has accumulated on the means with which the responsibility to protect can be translated from rhetoric to practice, opinion is scarce on the roles particular groups of state actors can play in furthering this agenda. This paper argues that there is a distinct category of small states with clear capacity to implement the responsibility to protect, and proposes that this category be identified by the fresh term – ‘stable small states’. Definitional issues surrounding stable small states are considered, along with why it is in the interests of stable small states to play a proactive role in promoting the responsibility to protect, and particularly its preventive component. Drawing on case studies from around the world, the paper advocates a range of strategies that are appropriate for stable small states to promote the responsibility to protect. Through the adroit usage of these strategies, stable small states can practically transcend their conventional limitations, raise their impact on the global stage, and make a meaningful contribution to mass atrocity prevention.

#### About the Presentation:

Mr Tay began his presentation by identifying the main benefits for greater stable small state involvement in the Responsibility to Protect. Mr Tay noted the defining feature of stable small states is that they rank above the 75th percentile for political stability and absence of violence in the World Bank’s governance indicators, and have a population under ten million. In this sense, the two important characterisations of small states are size and stability. According to Mr Tay, by setting an upper limit for small state populations at 10 million, it includes a fair number of potential R2P state actors while excluding traditional R2P proponents like Canada and the UK. Stability is important because it reduces the chances of these states being potential subjects of the R2P themselves.

For these reasons, Mr Tay asserted that they provide significant humanitarian benefits and can advance the role of R2P as a moral appeal. Furthermore, he noted that stable small states could provide immense strategic benefits. Firstly, it was noted that these states are often considered politically neutral. Moreover, stable small states make up 24 percent of the world's states. Due to their sheer number, Mr. Tay noted that they enjoy favourably disproportionate voting capacities in international and transnational organisations.

Following this, Mr Tay proposed four strategies through which stable small states can play an influential role in the Responsibility to Protect. The first strategy he highlighted was preventive diplomacy, which remains at the heart of the R2P. According to Mr Tay, stable small states are ideal for preventive diplomacy due to their traits of impartiality, credibility, political neutrality and policy consistency. In support of this argument, he provided the example of the role that Switzerland's Henry Durant Centre for Humanitarian Dialogue played in bringing about peace in Aceh in 2000.

The second strategy proposed for stable small state involvement within the R2P was alternative dispute resolution (ADR). Mr Tay asserted that this could be brought about through several techniques. For example, stable small states could facilitate preventive mediation within crisis areas. Moreover, these stable small states can expand their domestic ADR institution capacities to encompass transnational conflict resolution. Finally, it was asserted that stable small states could commission individual expert mediators and arbitrators to facilitate preventive negotiations. In order to showcase the potential of stable small states, Mr Tay highlighted the instrumental role that Norway played in the signing of the Oslo Accords between Israel and the PLO between 1992 – 1993.

Mr Tay also noted that a third way in which stable small states could play a greater role in the R2P is to use their large numbers to influence the decisions of the Security Council. For example, he highlighted that stable small states could influence resolutions from being vetoed through group formation and coalition management. Within this context, Mr Tay noted that even an abstention would suffice, as it was evident in Security Council Resolution 1593, which relates to the referral of the situation in Darfur to the ICC, and more recently, in Security Council Resolution 1973 regarding the establishment of a no fly zone in Libya. He also highlighted that stable small states could further sway the decisions of the Security Council by leveraging their influence on a multinational bloc of nations, such as the G77, the 3G or the Non Aligned Movement.



The fourth strategy that Mr Tay proposed through which stable small states could play a greater role in the R2P was through exporting good governance. According to Mr Tay, this is essential as good governance mitigates the preconditions of genocides and mass atrocities. He then highlighted some key aspects of good governance, which include legal system robustness, security sector reform, and corruption management. Mr Tay argued that Singapore is a key example of how stable small states can export good governance. Through the Singapore Cooperation Programme, it provides an array of technical assistance to developing countries and training at a low cost. This includes services such as public housing, public security and public management.

Finally, Mr Tay highlighted that stable small states could play a greater role in the R2P through norm advocacy in the United Nations and regional organisations. One of the main ways through which this could be done is through framing. Mr Tay noted that this was evident in the 2009 General Assembly debates on the R2P, where Qatar appealed to the moral obligations felt by states, by arguing that welfare and security of individuals should be considered above politico-economic agendas. Furthermore, Mr Tay argued that stable small states could carry out norm advocacy by using any opportunities they may receive to head regional or transnational organisations.

In his concluding statements, Mr Tay noted that stable small states should be provided an opportunity to play a greater role in the R2P as the success of this doctrine depends on international commitment and collaboration. Furthermore, he suggested that unlike certain other states, stable small states can transcend political limitations, and make not only rhetorical, but actual changes.

#### *Panel Two Questions and Answers*

Following the presentations by the two presenters, the floor was open to questions from workshop participants. The following section summarises the questions and answers.

Q1. The first question was regarding a perceived disconnection with the beginning of Associate Professor Bagshaw's presentation, which dealt with the importance of acknowledging the role of culture in mediation practice, and the end of the presentation, which highlighted the prospects that mediation provided for securing peace and justice.

In response, Associate Professor Bagshaw asserted that mediators cannot only focus on the notions of peace and justice within the context of the conflict, but need to focus on the 'bigger picture', which includes other factors such as culture.

Q2. The second question asked Associate Professor Bagshaw to explain the potential of mediation in situations where there are risk factors of mass atrocities.

Associate Professor Bagshaw replied that in such situations, the linear model of mediation is not applicable, as what is needed is to get the people involved to deconstruct the factors contributing to the conflict. Hence, she asserted that the question is not only the potential of mediation in mitigating mass atrocities, but also the skills of the mediator in understanding cultural sensitivities. Otherwise, the mediator could contribute to the institutionalisation of factors that contribute to the violence. However, Associate Professor Bagshaw also noted that the mediator should be mindful of certain constraints, such as legal and human rights frameworks. Hence, she noted that even if the goal of the mediator is to secure peace, it may be difficult to attain a long term agreement if there are also other legal and human rights issues. In such cases, she noted that short term agreements can make things worse, as people may feel that grievances are not being heard. Sometimes mediation just cannot solve all the issues.



## 5. Panel Three: Transitional Justice After Mass Atrocities

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### ***Political Manipulation at the Extraordinary Chambers in the Courts of Cambodia***

Rebecca Gidley

#### About the Presenter:

Rebecca Gidley is a former intern at the Asia-Pacific Centre for the Responsibility to Protect. In 2010, her report *The Extraordinary Chambers in the Courts of Cambodia and the Responsibility to Protect* was published as a Centre Working Paper. Later this year she hopes to intern at the ECCC.

#### Abstract:

The Extraordinary Chambers in the Courts of Cambodia (ECCC) has been in operation for four years with the Trial Chamber issuing a verdict in the first case in July 2010 and a second case expected to begin trial proceedings this year. Earlier attempts at transitional justice, the People's Revolutionary Tribunal and the Renakse petitions, were driven by political motives and despite the ECCC's claim to independence, its design and operations have been fundamentally shaped by the political narrative that the Cambodian government wishes to see perpetuated. In choosing a model of transitional justice for Cambodia in the late 1990s and early 2000s decisions were based not on what would be best for the Cambodian people but for the government; this resulted in a model strongly controlled by the Cambodian executive and with a strictly limited mandate. During the ECCC's operation the government has worked to ensure that the defendants and the witnesses at the court are restricted, especially excluding any reference to the fact current members of the government are former members of the Khmer Rouge. In doing so, the Cambodian government has damaged the reputation of the ECCC as an independent judicial body, and the limited scope of the trials may have broader implications for the possibility of long-term reconciliation in Cambodia.

### About the Presentation:

Rebecca Gidley opened the panel with her presentation, “Political Manipulation at the Extraordinary Chambers in the Courts of Cambodia”. Ms Gidley began by explaining the structure of the Extraordinary Chamber in the Courts of Cambodia (ECCC), a hybrid transitional justice system with both Cambodian and international participation. She explained that the majority of judges of the Court are Cambodian and the government has substantial control over the judiciary and the proceedings of the ECCC. Rules and voting regulations in the Court are complicated and attempt to balance the influence of the two groups of participants. The Court has undertaken two cases, one resulting in conviction and appeal, and a second case beginning later in 2011. Ms Gidley then turned to the challenges posed by the current political climate in Cambodia. In particular, she highlighted how the current ruling party in Cambodia is the Cambodian People’s Party (CPP) which has held power since 1979 when the Khmer Rouge was ousted from power. Members of the former Khmer Rouge who defected to the Vietnamese supported government after 1979 are members of the CPP and this must be considered when analysing Cambodian Transitional Justice.

Other processes for Transitional Justice in Cambodia were mentioned in the presentation. One of these, The Decree Law No 1 People’s Revolutionary Tribunal conducted by the Vietnamese supported Cambodian government in August 1979, had limited legal value and suffered from a lack of due process and credible defence. It was focused on Pol Pot and Ieng Sary and failed to implicate others. In the 1980s a process was conducted similar to a Truth and Reconciliation Commission involving the gathering of information and public meetings, but these meetings were very political and did not focus on individual experiences. Instead the government used their control over the process in their favour, to cast themselves in a favourable light and to criticise the United Nations. Finally, another mechanism for transitional justice was negotiated in the late 1990s. In what eventually became the ECCC, it involved a hybrid process of joint participation between the Cambodia government and the UN. At the conclusion of negotiations, the Court was given the mandate to try ‘senior leaders and those most responsible’ for the crimes committed during the Khmer Rouge period, limiting the number of potential defendants.

From this introduction to transitional justice in Cambodia, Ms Gidley continued to explore the political nature of the ECCC through the limitations on defendants and witnesses. To highlight some of the challenges faced by the Court, Ms Gidley first gave the example of the actions of the Cambodian government in opposing potential cases 003 and 004 (which may include defendants currently serving in government). Ms Gidley explained how, in December 2008, the international prosecutors sought permission to proceed with these cases. The Cambodian co-prosecutors were

against this action and the initial permission to investigate these cases by the Cambodian investigating judge was swiftly retracted; Ms Gidley believes this suggests government control. This suspicion was supported by the similarities between the language used by judges and the government spokespersons in refuting permission to prosecute the additional cases. Following this, the Cambodian government declared that there will be no case following 002.

Ms Gidley also examined another case of suspected government interference in the running of the Court by highlighting the example of the refusal by CPP members to appear as witnesses. In September 2009, the Court issued summons for 6 CPP leaders but the government maintained that they would not participate in ECCC proceedings. Ms Gidley suggests that the government is attempting to prevent those with links to the past appearing so as to maintain the perception of the CPP as the liberators of Cambodia. While police can compel witnesses to appear at the Court this was never publically considered.

Finally, Ms Gidley considered the effects of the Cambodian government's control over the ECCC and concluded: first, by not challenging the government's narrative, the Court may increase the perceived legitimacy of the Cambodian government and its control of proceedings; second, the reputation of the Court may have been damaged amongst the Cambodian population. When the Court publically called for CPP party members to appear as witnesses it indicated that CPP links with the Khmer Rouge were being concealed but the number of people who will access this information is limited. Ms Gidley raised questions about the merits of focusing on a small group of people responsible considering the time which has passed and how much effect 003 and 004, involving only 5 defendants, could really have.

### ***“Maximising” transitional justice opportunities: the case of East Timor’s CAVR***

Heather Castel

#### About the Presenter:

Dr Heather Castel taught the Genocide and Persecution course in the School of History, Philosophy, Religion and Classics at The University of Queensland in 2010. Her primary research interests are in the area of transitional justice, particularly the cases of South Africa and East Timor.

#### Abstract:

“Maximising” its opportunities to promote truth and reconciliation was a key issue in the South African Truth and Reconciliation Commission (TRC). East Timor’s Commission for Reception, Truth and Reconciliation (CAVR) heeded this lesson and incorporated this principle into its operations. East Timor’s history had been written



primarily by foreign scholars and highly contested by an illegal occupying power that had utilised the powerful politics of denial. Despite the CAVR having less opportunities to “maximise” its operations and less political influence than the TRC, its operations have contributed to the continuing debate on transitional justice with the establishment of innovative mechanisms that re-wrote the national East Timorese narrative, curbed denials and comprehensively established responsibility for crimes against humanity from 1976 - 1999. It has set some important transitional justice precedents as the first-ever Asian truth commission. Its utilisation of traditional, restorative law in its Community Reconciliation Process programmes was relatively successful and its National Public Hearings were themed hearings, mostly tailored to the provisions of international law that gave acknowledgement to victims that their violations were universally recognised crimes.

#### About the Presentation:

Dr Castel explained how the South African Truth and Reconciliation Commission had benefitted from a robust mandate and the power to grant amnesties, set its own agenda, subpoena people and set search warrants. In contrast, the CAVR was limited by its lack of independence and limited resources. The South African TRC achieved international attention and quickly translated testimonies into English but East Timor’s public relations efforts were not as successful. Both South African and East Timorese processes encouraged open forum statements and they both travelled to receive statements from those who wished to testify, instead of expecting those reporting to come to the court.

The CAVR emphasised the reporting of crimes and atrocities, particularly those which occurred in 1999. Hearings were related to: political imprisonments, torture, sexual crimes, forced displacement, famine, massacre and the rights of children. Dr Castel contrasted this to the South African context, where available resources meant hearings considered the complicity of the state in connection to: business, the health sector, the media, faith and other categories. The East Timorese government wished to focus on national unity and reconciliation throughout the process and favoured a conciliatory approach with Indonesia. This is different to South Africa where the focus was apartheid as a crime against humanity.

Dr Castel believes that the CAVR maximized its opportunities through a focus on crimes which allowed them to include past and historical crimes; this makes it more thorough than the South African approach. Dr Castel considered the CAVR to have had good outcomes despite its limited funding and resources. One of the outcomes was a good quality report but Dr Castel cautioned the workshop participants that ‘truth’ is always disputable, even in the results of Truth and Reconciliation Commissions.

## ***Righting the wrong after genocide? The global search for post-conflict justice***

Raymond Lau

### About the Presenter:

Raymond Lau is currently a PhD student at the Asia-Pacific Centre for the Responsibility to Protect.

### Abstract:

Genocide and mass atrocities are all too frequently recurring phenomena. But in recent years the world has seen a growing acknowledgment of seeking accountability for past atrocities. Progress in the development of post-conflict justice is evidenced by the establishment of International Criminal Tribunals for the former Yugoslavia and for Rwanda, new hybrid international-national war crimes courts and the coming into existence of the International Criminal Court (ICC). While 'bringing the devil to justice' may be the overarching goal in the aftermath of mass atrocities, the emphasis that states and international organisations place on advancing 'accountability' can be quite different. This paper explores the rationale of the search for accountability in the aftermath of mass violence. In particular, by questioning the tendency of adopting a 'one-size-fits-all' approach in specific cases, it asks whether international awareness of advancing post-conflict justice could be translated into meaningful prevention of future occurrences of such atrocities.

### About the Presentation:

Mr Lau considered the development of post-conflict justice and the rationale of searching for accountability. The establishment of international and hybrid tribunals in recent years suggests an increased interest in seeking accountability for violators of international humanitarian law. Mr Lau considers this a relatively recent phenomenon with a basis in the Nuremberg trials. The importance of justice is explained by a number of perspectives including: the backward looking perspective, based on retributive justice where individuals deserve punishment to right a wrong; the forward looking perspective, which has a utilitarian justification and punishment is used to achieve good results for society, through deterrence; and the expression perspective, which aims to restore the rule of law and educate about the crimes committed. Mr Lau suggests there is a strong preference for retribution and deterrence. The International Criminal Court was established in 2002 to end impunity and deter potential future atrocities. It has two aims, retribution and deterrence. This shows an accepted connection between holding the perpetrators accountable and atrocity prevention.

Taking a critical approach to these changes in international criminal justice, Mr Lau considered a number of problematic aspects of the international criminal judicial system. First, it presupposes an international standard but international criminal law simply extends Western Anglo-American law. Second, the ICC is intended to warn perpetrators of atrocities that the international community will not accept their actions, yet the institution is inherently responsive, rather than pre-emptive. Third, justice is not always supportive of peace and the threat of prosecution may prolong conflicts as leaders attempt to maintain power to avoid charges. Additionally, justice that takes place in the international criminal judicial system is likely to have the international community as the primary audience and victims as the secondary audience.

### *Panel Three Questions and Answers*

Q1: Raymond Lau was called to comment on the role of the ICC in raising awareness of mass atrocity crimes, considering the Eichmann Trial (1961-1962) as an example of raising awareness of the Holocaust. Mr Lau responded that thinking about the ICC as a means of raising awareness leads to questions such as: who are we seeking justice for? Who is the true target audience? Is it just public relations? Mr Lau considered this putting the system in danger of having conflicting goals and an incoherent focus. A discussion of whether justice as an act of deterrence is a disservice to victims led to a dialogue on the subject of reparations led by Heather Castel, during which the suggestion was made by Deborah Mayersen that reparations carry a symbolic value beyond their economic impact.

Q2: Rebecca Gidley was asked to comment on whether she thought two cases would be enough to sustain the positive public perceptions of the court. Ms Gidley responded that there had never been an expectation of more than ten cases and it is difficult to say how many defendants would be considered a suitable number by the public. The sentence given in case 001 (now under appeal) of 30 years to Kaing Guek Eav, responsible for the deaths of over 12,000 people, was given as an example of the imperfect nature of the Court.

Q3: Dr Castel was asked if the South African amnesty, conditional on guilt, was beneficial to reconciliation. Dr Castel responded that results were mixed. It was clear that jurists in the ANC (African National Congress) were determined that the amnesty was provided as a response to self-incriminating evidence. This approach meant that victims learnt more about who was responsible. However, reconciliation is a slow process and requires political will which has not been maintained and this failure to support the process combined with a lack of effective redistribution of

wealth has led to continuing social problems. Dr Castel suggested it was good to discuss atrocities openly as it does offer some closure but that this is just a starting point.

Q4: Dr Castel was also asked to comment on the value of reconciliation groups and other mechanisms. She responded that many mechanisms had been attempted in Cambodia but they were Western-centric and this diminished their value. Dr Castel suggested these mechanisms would benefit from further consultation, so as to understand the local culture. In South Africa there were ad hoc groups but money was squandered which could have addressed problems of development. In East Timor this opportunity did not exist due to insufficient resources; they were not in a position to give reparations and Indonesia would not offer reparations.

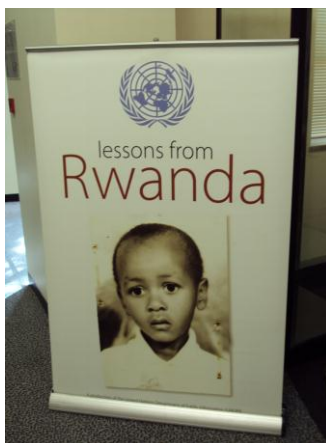


## 6. Exhibition Launch and Public Lecture

### ***Lessons from Rwanda: The United Nations and the Prevention of Genocide***

“Preventing genocide is a collective and individual responsibility. Rwanda’s survivors have made us confront the ugly reality of a preventable tragedy. The only way to truly honour the memory of those who perished in Rwanda 17 years ago is to ensure such events can never occur again.” - UN Secretary-General Ban Ki-moon

The University of Queensland was honoured to host the United Nations Department of Public Information exhibition, ‘Lessons from Rwanda: The United Nations and the Prevention of Genocide’ in its premiere showing in Australia. The exhibition was set up in the Foyer of the Social Sciences and Humanities Library, a space which attracts a high volume of students and staff on a daily basis. The exhibition was formally launched by Professor Gillian Whitehouse, Head of School, School of Political Science and International Studies, The University of Queensland.





## ***Public Lecture: The Khmer Rouge Tribunal: A View from Critical Transitional Justice Studies***

Alex Hinton

### About the Presenter:

Professor Alex Hinton is Founder and Director of the Center for the Study of Genocide, Conflict Resolution, and Human Rights and Professor of Anthropology and Global Affairs at Rutgers University, Newark. He is the author of the award-winning *Why Did They Kill? Cambodia in the Shadow of Genocide*, and most recently editor of *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*. Professor Hinton is the current president of the International Association of Genocide Scholars.

### Abstract:

On July 1, 2009, civil party Bou Meng took the stand during the first case being held by the Extraordinary Chambers in the Courts of Cambodia (ECCC or “Khmer Rouge Tribunal”), an international hybrid tribunal established to try the surviving leaders of the Khmer Rouge. Elevated on a raised dais in front of Bou Meng sat the trial chamber, comprising three Cambodian and two international jurists. To his right sat Duch, the former commandant of S-21, the secret interrogation and torture center where Bou Meng had been imprisoned during the Khmer Rouge regime (April 17, 1975 to January 6, 1979). Over 12,283 people perished at S-21, which was at the epicenter of a campaign of mass murder and repression that resulted in the death of perhaps 1.7 million of Cambodia’s 8 million inhabitants. Bou Meng was one of only a handful of survivors, a man who had only lived because he could paint portraits of Pol Pot. This presentation explores Bou Meng’s day at the court from the perspective of critical transitional justice studies. Specifically, it explores what the act of testifying and witnessing meant to Bou Meng, how his subject position and voice were produced in the juridical context, and what the speech acts of witnesses like Bou Meng and others at the tribunal mean in different discursive communities, ranging from international court personnel to villagers on the ground in Cambodia. The lecture concludes by considering what insights gleaned from the Khmer Rouge Tribunal have to say more broadly about transitional justice, genocide prevention, and the attempt to seek redress after genocide.

### About the Lecture:

The Workshop’s public lecture was presented by Professor Alex Hinton, entitled ‘The Khmer Rouge Tribunal: A View from Critical Transitional Justice Studies.’ Professor Hinton’s presentation considered the importance of a critical view of transitional justice in the Cambodian context, illustrating this through the example of Case 001 of the Extraordinary Chambers in the Courts of Cambodia. Professor Hinton had

followed the process throughout, considering the differing understandings of justice and the court process.

The defendant, Kaing Guek Eav, known as Duch, oversaw Tuol Sleng during the Khmer Rouge regime. The Civil Parties were 66 people acknowledged as direct victims. Some of these victims, including Bou Meng, survived Tuol Sleng because they were skilled in trades required by the prison. Professor Hinton described the experience of Bou Meng and the Civil Parties in the Extraordinary Chambers in the Courts of Cambodia. He expressed that they sometimes found themselves overcome with emotion as they faced the perpetrator of the crimes against them and recounted their horrific experiences.

The trial began on 30 March 2009 and presented the verdict and sentencing on 26 July 2010. The trial is currently in a state of appeal. The charges involved Crimes Against Humanity and Grave Breaches of the 1949 Geneva Convention. Duch accepted responsibility before the court and this cooperation is believed to have prevented the court from sentencing him to life in prison; instead the guilty verdict resulted in a 35 year sentence. This would mean that there was a limited chance Duch would live out such a sentence. Reparations included statements of apology and acknowledgement of responsibility, to be posted on the ECCC's official website. Professor Hinton drew the audience's attention to the lack of access most affected persons would have to the internet and differing opinions over the sentencing.

Professor Hinton considered the definition of Transitional Justice and how it emerged, historically. Professor Hinton emphasised the importance of considering what the tribunal and justice mean to Cambodians. 'Transitional' implies teleology and suggests states journeying from primitive violence through Western notions of justice to a perceived end point of conflict recovery. Professor Hinton explained the value of critical transitional justice as a means of unpacking 'common sense' assumptions to find their origin and determining how relevant they were for the people affected by violence. He described 'moments of slippage' at the courts. An example of this is when victims showed emotion during the court proceedings. The judges were not prepared for this and requested they control their emotions or else the courts would recess.

*Judge: Do you think [your wife was] killed at S-21?*

*Bou Meng: Your question reminds me [of] a question that I would like to ask Mr Kaing Guek Eav. I want to know whether he asked his subordinates to smash my wife at S-21 or at Choeung Ek so that I could collect the ashes or remains so that I can make her soul rest in peace.*

*Judge: You have not answered my question ...*

Professor Hinton also considered the symbolic meaning of the ECCC emblem. The emblem is a hybrid between the traditional Cambodian depiction of justice and Western understandings of justice with a figure from the Angkor period holding a sword, surrounded by a wreath of olive branches. The Cambodian figure of justice holds a sword to symbolise the authority of the court and is usually accompanied by two aids who consult scrolls of law. In contrast Lady Justice is blindfolded and holds scales to symbolise impartiality. Professor Hinton believes the different representations show different understandings of justice but that this has not been questioned.

To further illustrate the differing perceptions of justice, Professor Hinton referred to a Khmer Rouge Tribunal outreach booklet released by the Khmer Institute of Democracy and identified how it, like the courts, provides a limited view of a complex history and complex culture. The booklet shows how a person is transformed into a democratic citizen who gains rights and becomes a civil party. The booklet, part of a court outreach program, does not engage with the complexities of varied understandings of justice. Professor Hinton emphasised that transitional justice mechanisms are always highly politicised and that the Cambodian Courts are no different; but it is for this reason that it is important to question the assumptions of tribunals.



### *Public Lecture Question and Answer*

During question time Professor Hinton was asked his opinion of Truth Commissions and suggested these too are highly politicised to produce a certain truth and a particular result; they have value but must be examined critically.

Also questioned was the role of international courts in dealing with the international community's feelings of guilt. Professor Hinton suggested the idea of the Court as a mechanism for resolving the international community's guilt is true to some extent and suggests that for this reason donations should also be analysed as gifts that create a 'moral hierarchy'.

The final question asked about the Cambodian understanding of the court. Professor Hinton suggested that Buddhism is one way in which the Cambodian people understand justice and that some old people believe the guilty will be reborn as lower forms. He expanded on this point with an anecdotal reference to the view of monks. When he asked a monk "Why did you go to the tribunal?" the monk did not respond: "To see justice served", but rather "To see what's going on", indicating that Buddhists do not see justice in the operations of the Court.







## 7. Panel Four: Early Warning and Prevention of Genocide and Mass Atrocities

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### ***Political Instability and Large-Scale Violence in the Economic North and South: Is the process different for richer and poorer societies?***

Benjamin Goldsmith, Arcot Sowmya and Dimitri Semenovich

#### About the Presenters:

Associate Professor Ben Goldsmith is an Associate Professor in the Department of Government and International Relations at the University of Sydney. He is the author of *Imitation in International Relations: Observational Learning, Analogies, and Foreign Policy in Russia and Ukraine*. Professor Arcot Sowmya is a Professor in the School of Computer Science and Engineering at The University of New South Wales. Professor Sowmya's research interests are in the area of image analysis and recognition, and software engineering. Dimitri Semenovich (non-presenting co-author) is a PhD Student in the School of Computer Science and Engineering at The University of New South Wales.

#### Abstract:

This paper builds on existing scholarship in the areas of political instability, state failure, and mass violence (e.g., Harff 2003; Valentino, Huth & Balch-Lindsay 2004). It introduces two innovations, which add to understanding of the processes leading to serious political instability in states, and those leading from instability to large-scale violence. First, it distinguishes between North and South in economic terms by examining the processes separately based on higher and lower per capita gross domestic product. Second, it employs 2-stage selection models to correct for potential selection bias (Heckman 1979; Sartori 2003). Thus, the quantitative analysis will answer the questions of whether the processes leading to the most serious instances of internal violence are different for richer and poorer states, and whether current understanding of this process in the quantitative literature is biased by failure to consider selection effects explicitly.

#### About the Presentation:

The first presentation in this panel was "Political Instability and Large-Scale Violence in the Economic North and South: Is the process different for richer and poorer

societies?” Associate Professor Goldsmith offered workshop participants the opportunity to see the pattern recognition work the group are undertaking related to instability and large scale violence (mass atrocities, mass killing and large scale violence in civil wars) with the ultimate goal of creating software relevant to policy makers. Two areas of interest for the researchers were: firstly, if there is a difference between richer and poorer countries in the causes of large scale violence; and secondly, to analyse whether it is important to think of the path to large scale violence as a process, with more than one stage.

Associate Professor Goldsmith presented a visualisation of large scale violence and instability, displayed chronologically starting at 1960. Within the model ‘large scale violence’ was defined as the killing of one thousand people within a year and ‘political instability’ was determined by the Political Instability Taskforce’s assessment. The variables of interest were: military personnel; regime type; durability of the regime; GDP per capita; and others. The project aims to accurately forecast political instability for the following year; and in cases of instability the likelihood of mass violence. It is important to note that the model is still under development and findings thus far are tentative.

Associate Professor Goldsmith shared with the workshop participants some of the team’s hypotheses related to the project, including: that some actors involved in political instability also contemplate large-scale violence from the outset, meaning that selection bias is a danger for analysis of large-scale violence outcomes; that there will be a difference between the causal processes for richer and poorer states; and that wealthier states will have more capacity to resist large scale violence.

Many variables initially under examination have been found to be not robustly significant under this model; such as democracy with factions and elections. Other interesting outcomes from the project so far include that Gross Domestic Product per capita has not been identified as a significant cause of Large Scale Violence once its role in general political instability is considered. Results have also supported the view that newer regimes are not statistically subject to great instability but states which are poor and have very large armies have a higher incidence of large scale violence. Partial Democracy with factions is considered the most robust variable in the model for forecasting instability but as this variable remains quite constant over time it is difficult to use this variable to predict year-to-year instability. Partial democracy with factions has a negative correlation to large scale violence and full democracy appears to have a pacifying effect on situations of political instability, suggesting that regime type does matter.



## ***Understanding the Relationship between Risk and Resilience in the Long Term Prevention of Mass Atrocities: An Examination of Botswana and Zambia***

Stephen McLoughlin

### About the Presenter:

Stephen McLoughlin is a PhD student at the Asia-Pacific Centre for the Responsibility to Protect. Most recently he presented a paper at the International Network of Genocide Scholars conference in Sussex in July 2010.

### Abstract:

Too often, approaches to the prevention of genocide and mass atrocities are limited by a tendency to focus on what goes wrong, instead of what goes right. The purpose of this presentation is to provide a framework for analysis that will enable a greater understanding of why some countries that are located in vulnerable regions have not experienced genocide or other mass atrocities. Providing a focus on why such crimes have not occurred, rather than solely on why they have, will yield insights into the way that genocide and other mass atrocities can be prevented. The concept of prevention is premised on the identifying and addressing of 'root causes'. This is problematic because it assumes a linear inevitability of a particular outcome. To put it simply, addressing root causes of potential genocide or mass atrocities is not enough to ensure effective prevention, as it does not accurately account for the complex range of factors that both increase and mitigate risk. It is the incorporation of mitigating factors into this framework that gives insight into the complex contingencies that characterise the risk of genocide and mass atrocities. In examining this interplay of factors, the paper utilises the examples of Botswana and Zambia. Both countries have been referred to as African models - Botswana for its stable economic growth and robust multi-party democracy, and Zambia for being the first country on the continent to enjoy a peaceful transition from a one party state to a multi-party democratic form of governance. Despite this, both countries have displayed a number of risk factors, which are associated with mass atrocities. Using these countries as case studies, this presentation offers a different approach to prevention, one which looks at the way resilience factors within countries are able to mitigate the risk of mass atrocities.

### About the Presentation:

The second presentation in this panel was "Understanding the relationship between risk and resilience in the long term prevention of mass atrocities: An examination of Botswana and Zambia," by Stephen McLoughlin. This presentation investigated the social, political and economic factors which mitigate violence, using Botswana and Zambia as examples. Mr McLoughlin described the conditions of the San Bushman of

the Kalahari Game Reserve, a minority group who suffered discrimination. They were mass evacuated from and denied access to wells but they appealed to the judicial system and the resulting ruling was in their favour, classing the government's actions as illegal. Mr McLoughlin identified the effective operation of a legal system which can offer support to the struggles of groups, like the *Basarwa*, as a safety net. It is an example of a genocide prevention measure, as managing diversity is an important aspect in preventing the escalation of violence.

Mr McLoughlin continued by considering structural prevention through comparisons with public health models, premised on the idea of identifying root causes. In the public health context this approach is criticised by medical researchers as it creates grey areas between health and disease, and over-diagnosis can create sickness in healthy patients. Building upon these criticisms in the prevention of violence Mr McLoughlin identified problems with the current approach to mass atrocity prevention: the absence of consensus on the root causes of past atrocities; the limited progress toward resolving root causes of civil war; and the assumption of a linear inevitability of mass violence, ignoring the prevention of mass atrocities in certain states. Mr McLoughlin reminded the audience of the view of UN Secretary General Ban Ki-moon - that further research is required to explain why mass violence erupts in some states but not in others. This presentation also reflected on the somewhat contradictory nature of diagnosing root causes and the Responsibility to Protect; as the former assumes a third party is required to prescribe solutions while the latter emphasises the responsibility of the state to protect their citizens.

Mr McLoughlin suggested that it is important to consider the preconditions of mass atrocities, as mass violence rarely occurs without these preconditions and this provides a level of risk, but that the mitigating factors are also worth considering.

To further explore the value of mitigating factors, Mr McLoughlin presented the example of Zambia. Zambia underwent a peaceful transition from a single party state to a multi-party democracy in 1991 but is ranked tenth in the world in terms of risk of political instability, according to the Centre for International Development and Conflict Management. The identified pre-conditions for mass violence in Zambia include: social division, as there is a growing emphasis on ethno-linguistic identity in the selection of political leaders; limited democracy, for example the office of the president is extremely powerful and opposition parties suffer harassment; limited rule of law, as the judiciary is not impartial and corruption and police harassment occur; and inequality of economic opportunity, as Zambia is poor and wealth is highly concentrated amongst a small number of people. The mitigating factors identified in Zambia include: social cohesion and ethnic fluidity, as ethnic groups have a colonial, rather than historical basis, and are thus relatively new; a strong civil

society, which can support democratic reform; government management of ethnic diversity; and the peaceful transition to democracy. Mr McLoughlin suggested that these mitigating factors help prevent mass atrocity violence and that it is important to increase understanding of the link between the factors which mitigate and those which increase the risk of mass atrocity violence in states.

### ***Why Not Genocide? Exploring Constraints that Inhibit Genocide Onset in at-risk Societies***

Deborah Mayersen

#### About the Presenter:

Dr Deborah Mayersen is Program Leader for the Prevention of Genocide and Mass Atrocities at the Asia-Pacific Centre for the Responsibility to Protect. Her research interests include genocide prevention and the Armenian and Rwandan genocides.

#### Abstract:

In January 1962, United Nations Commissioner to Rwanda Majid Rahnema warned of the imminent danger of genocide there. In Rwandan society he saw “the symptoms of an explosive situation”, and accused the ruling party of a policy “apparently designed to eliminate ... the Tutsi minority.” Mr. Rahnema was correct about the danger of genocide, but seriously misjudged its imminence. While ethnic massacres did erupt in the country within two years of his warning, they were very rapidly quelled, and a further three decades passed before the 1994 genocide. Similar predictions of extermination also preceded the 1915 Armenian genocide by some decades. We can infer from the genocides that eventually occurred in these cases that the observations of risk were real. Yet in both Ottoman Turkey and Rwanda there were significant pre-genocidal massacres that did not escalate into genocide. These massacres can be considered as examples where genocide might have been expected to occur, but did not materialise. What prevented the violence from escalating into genocide in these cases? What can we learn from them about constraints against genocide? If we consider each of these examples of pre-genocidal massacres in conjunction with the subsequent genocides that occurred, key differences can be identified that influenced the extent and nature of the violent outbreaks. These provide new insights as to how constraints can effectively inhibit states from adopting genocidal policies and practices, even in circumstances of substantial risk.

#### About the Presentation:

Dr Mayersen began the presentation by suggesting that while the common focus in genocide prevention is the pre-conditions and risk escalation associated with genocide, it is also important to look at the constraints in situations where there is a grave risk of genocide, but it does not occur. Two cases of pre-genocidal massacres were presented, in Rwanda in 1963-64 and in Ottoman Armenia in 1894-96, to identify the constraints involved which limited the extent of the massacres.

In the 1880s and early 1890s ‘a deliberate policy of extermination’ and ‘a settled plan to slowly exterminate’ the Armenian minority were reported in Ottoman Armenia. As Christians in a Muslim empire, the Ottoman Armenians had been considered second class citizens but the decline of the Ottoman Empire led to an increase in persecution against the Armenians. The Treaty of Berlin aimed to aid the Armenians and allow them to practice their religion but led to further persecution and sporadic violence. The Armenians became adept at fighting Kurdish groups who attacked them. In 1894, aided by soldiers from the regular army, the Kurds attacked, resulting in the destruction of half the villages in the Sassoun region as well as massacres, rape and slaughter. Britain and France called for an end to the violence when the death numbered 6000, yet massacres continued sporadically. From 1894 to 1896 over 100,000 Armenians were killed in what became known as the Hamidian massacres, but they cannot be regarded as a global attempt to exterminate the Armenian minority. A massacre in Constantinople in August 1896, witnessed by many European diplomats, led to an international outcry that contributed to the cessation of massacres.

In January 1962, 32 years before the Rwandan genocide, the UN Visiting Commission to Rwanda reported that the government was “Adopting a social policy apparently designed to eliminate ... the Tutsi minority”. Just two years later in December 1963 and January 1964 several thousand Tutsi were killed in ethnic massacres, but they remained limited in scope and duration. Many historical factors contributed to the massacres, including a long history of inequality between the Hutu majority and Tutsi minority, the institutionalisation of racial policies under Belgian colonial rule and the political upheaval associated with decolonisation.

Dr Mayersen identified several factors in each case which may have prevented these massacres from escalating into genocide. In the Hamidian Massacres these included international factors in the form of the threat of European intervention, the ideological factor of the established place of Armenians within the Ottoman Empire, combined with the weakness of the Empire. In Rwanda, the massacres were limited by the size of the army, poor communications across the country, the perceived possibility of international intervention and the lack of an extremist ideology.

Dr Mayersen determined from this that international and ideological factors as well as a lack of capacity to commit genocide can have a constraint effect. International engagement can be effective, if it is both timely and perceived as genuine; intervention 2-5 years before genocide can disrupt the development of genocidal ideology and prevent genocide from being attempted. There is also a relationship between the power and capacity of a regime and the development of a genocidal ideology.



#### *Panel Four Question and Answer*

Q1: The first question posed to the panel related to the state-centric model of genocide and how genocide is defined. Deborah Mayersen responded first saying that the Rwandan mass atrocities of the 1960s were not called genocide at the time, not even by the UN. She determined this was a result of comparisons made to the Holocaust and genocide as the death of millions of people. She continued that the massacres in Rwanda in the 1960s are considered genocide in recent quantitative studies. Dr Mayersen defines genocide based on intention and in the Armenian and Rwandan massacres she presented, the intention was not to exterminate the groups.

Ben Goldsmith added that considering intent is a typical assessment mechanism and in relation to the question of why genocide is considered with a state-focus, in his study it was a result of data availability. Discussion then led to suggestions that there should be further investigation of localised models of mass atrocity analysis and that genocidal massacres may be a preferable term for smaller scale events. Also raised was the importance of genocide definitions as Crimes Against Humanity becomes entrenched in law.

Q2: A question addressed to Ben Goldsmith requested clarification about the way elections effect his model and whether there is a lag. Dr Goldsmith responded that there is a forward lag and that all elections are included in the model but only some have a significant effect. Generally, elections have been noted to provide a forum for political disagreement that can allow states to maintain stability. Dr Goldsmith emphasised that the model at this stage was best at revealing the preconditions for violence and not why violence or instability might be expected within a short time frame; for this reason time sensitive factors are a key area of current investigation.

## 8. Panel Five: The United Nations, Sovereignty and International Intervention in Mass Atrocity Crimes

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### ***Political Realism, Sovereignty and Intervention: Is Genocide Prevention Really Possible in a World of Sovereign States?***

Paul Bartrop

#### About the Presenter:

Dr Paul Bartrop is the Ida E. King Distinguished Visiting Professor in Holocaust and Genocide Studies at Richard Stockton College, New Jersey. His most recent published works include *Fifty Key Thinkers on the Holocaust and Genocide* (with Steven Jacobs, 2010) and *The Genocide Studies Reader* (co-edited with Samuel Totten, 2009).

#### Abstract:

This paper argues that the major inhibition to states intervening to prevent or stop genocide is the very states system prevailing in the world today. While it is true that the global move in recent decades towards the furtherance of internationalist principles has seen much in the way of international law-making and law-enforcing with regard to genocide, the single most decisive factor standing in the way of genocide prevention has been found in the reality of the world of nations; accordingly, states find intervention in humanitarian issues to be a luxury which often will not be pursued on the grounds of simple nation self-interest. While this depressing (and, some might say, old-fashioned and obvious) perspective leaves little room for optimism, there are examples from history that suggest it might be the most logical way of explaining why states do not (or do) become involved in the internal affairs of others for the purpose of stopping genocide. This paper considers why the international states system has not been successful in preventing state intervention to stop genocide, and further, shows why it was that such initiatives as international legislation and the creation of supposedly cooperative bodies as the United Nations have been neutralized by the persistence of Realpolitik in relations between states. It concludes with a reflection on what this signifies for the future of genocide prevention and intervention, and whether, as a result, existing strategies are likely to be effective in the 21<sup>st</sup> century.

#### About the Presentation:

Dr Bartrop argued that it is the high priority given to state sovereignty that has inhibited states from intervening in other states to stop or prevent genocide. In



order to support this argument, he provided several examples of past initiatives that have been undertaken by the international community, but which have been of limited utility due to concerns regarding state sovereignty. The first of these examples was the Hague Conventions of 1899 and 1907, which laid down important guidelines regarding the conduct of war and the prospects for diminishing the risks of war. Dr. Bartrop acknowledged that these conventions were important in that they set ideals that all states should aspire to, and codified actions that could be considered war crimes. However, despite the humanitarian standards that these conventions emphasized, Dr. Bartrop asserted that these conventions failed to establish any enforcement mechanisms (sanctions), such as an international court in which perpetrators of human rights abuses and war crimes could be tried. This was largely due to concerns raised by signatory states regarding the effects that such mechanisms may have for the impingement of their sovereignty. Hence, Dr. Bartrop noted that while the Hague Conventions were important in establishing humanitarian standards, they failed to adequately set up the mechanisms through which the international community could intervene to stop or prevent genocide.

Following this, Dr. Bartrop focused on the role that the League of Nations played in preventing genocide. He argued while the League conceptualised a new world order based on diplomacy and the rule of law, little was discussed in the way of multilateral intervention. The result was that member states were extremely unwilling to engage in any actions such as peacekeeping or multilateral diplomacy, which they perceived as an impingement upon other states' sovereignty, and, by interpolation, upon their own sovereignty.

However, despite the failure of the League of Nations to bring about lasting peace, as was signified by the outbreak of the Second World War, Dr. Bartrop argued it did highlight certain important issues that needed to be addressed. Firstly, the international community realised the urgent need to set up mechanisms that would constrain state behaviour regardless of the effects this may have on sovereignty. Dr. Bartrop also argued that the Second World War was pivotal in emphasizing the need to hold not only states, but also individuals responsible for their actions during times of war. This meant that no one was above the rule of law, and individuals could no longer hide behind the excuse of following the orders of superiors to avoid punishment for war crimes. As Dr. Bartrop noted, these developments were significant as they eventually led to the codification of the Nuremberg Conventions. Nevertheless, Dr. Bartrop noted that the most important contribution for the prevention of genocide was made by the United Nations, in the form of the *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*. The reason why this Convention was such a landmark document with regard to the prevention of genocide, coming as it did as the result of a series of political

compromises on the part of the great powers during the Cold War, was because it specifically defined the acts that could be considered as genocide, and asserted that persons committing such acts would be tried by a tribunal of the state in the territory of which the act was committed, or by an international penal tribunal. Despite these important contributions, Dr. Bartrop noted that even the Genocide Convention has not been able to adequately convince the international community to intervene for the prevention of genocide, as was evident by the lack of action taken by the international community in even the gravest cases of genocide, such as in Bosnia and Rwanda.

The presentation then focused one of the most controversial attempts undertaken by NATO to prevent genocide, a campaign referred to as Operation Allied Force. This was in response to a massive campaign of ethnic cleansing carried out by the Serbian government against the Albanian population in Kosovo. While supporters of NATO argued that this signified that NATO would not tolerate such atrocities by governments, Dr. Bartrop emphasized that it is important to keep in mind that NATO's interests primarily lie in the maintenance of peace in the North Atlantic region, and hence, is not an alliance that is active in genocide prevention. Furthermore, he noted that this invasion was highly criticised as being an act of aggression, due the fact that it was carried out without the approval of the UN Security Council.

In his concluding remarks, Dr. Bartrop asserted that there are no easy solutions to mitigate the reservations that states have in playing a more active role in genocide prevention, which are based on concerns for national sovereignty. He also noted that while physical intervention may be effective, states should be careful to get UN approval in order to prevent such actions being classified as an act of aggression. Furthermore, Dr. Bartrop argued that in order to ensure a world without genocide, the UN should be given greater authority to impinge on sovereignty, and there needs be greater firmness, political will and cooperation of all international players. He noted that while it is unlikely for all of this to come together soon, there remains great hope that it will crystallise and become effective sometime in the 21<sup>st</sup> century.

### ***The UN Security Council and Mass Atrocity Crimes: Prevention or Reaction?***

Jess Gifkins

About the Presenter: Jess Gifkins is a PhD student at the Asia-Pacific Centre for the Responsibility to Protect.

### Abstract:

The complex and convoluted dynamics involved in drafting resolutions in the United Nations Security Council mean that it can often take months of negotiations before weak, compromise resolutions are tabled. The slow and politically challenging nature of this process raises serious doubts about the effectiveness of the Security Council in responding to mass atrocity crimes in a timely and decisive manner, as agreed to at the 2005 World Summit. The Council was designed to be a selective body, particularly with the veto power of the five permanent members, and this raises further challenges for the Council in taking action when mass atrocity crimes are imminent or ongoing. This raises important questions about where the focus of the responsibility to protect is, and should be, in responding to mass atrocity crimes. Prevention and early engagement are often cited as the preferable and most cost effective response to mass atrocity crimes, but it is also important to note that we cannot necessarily rely on a timely and decisive response from the Security Council once the situation has deteriorated to the point where a robust response from the Council is needed. This further strengthens the role of the preventative aspects of the responsibility to protect.

### About the Presentation:

Ms Gifkins began her presentation by providing a brief background to the Responsibility to Protect Doctrine. Within this context, she noted that the R2P is based in paragraphs 138 and 139 of the *2005 World Summit Outcome Document*, and includes the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and their incitement. Ms Gifkins also asserted that the R2P was significantly a response to the questions that had emerged in the 1990s about whether there was a 'right to intervention'.

The presentation then focused on the three pillars which make up the R2P doctrine, and which are highlighted in paragraph 138 and 139 of the 2005 World Summit outcome document. Ms Gifkins identified the first pillar as being the responsibility of all states to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The second pillar was highlighted as being the responsibility of the international community to help states to uphold these responsibilities. The third pillar of the R2P was stated as being the responsibility of the Security Council to take collective action where a state 'manifestly fails' to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity.

Ms Gifkins also emphasized there are some disagreements as to whether R2P should be conceptualised as a speech act or a policy agenda. In explaining this, she drew onto arguments of Eli Stamnes who contented that 'speaking R2P' will eventually

lead to more robust action. Ms Gifkins noted that Gareth Evans holds a similar view, who also suggests that only a dozen situations at any one point in time can be defined as R2P situations. She highlighted that such views are in direct opposition to the way that R2P is conceptualised by Alex Bellamy, who perceives R2P as being applicable to all states at all times and thus, is a deep policy agenda.

Following this, Ms Gifkins focused on the array of barriers that R2P faces, with regards to 'automatic' R2P reaction by the United Nations Security Council. She noted that the first barrier is the power that the permanent five members in the Council have to formally veto any resolution from being passed. While recommendations have been made to limit the power of the veto with regards to situations involving genocide or crimes against humanity, these recommendations have not been supported by the P5. Nevertheless, Ms Gifkins did observe that formal vetos are very rarely used. What is more frequent is the informal veto, which means that the permanent five often threaten to veto a particular resolution if it is put to vote. In this way, they are often successful in ensuring that issues that are not in their interests are not even discussed. As Ms Gifkins noted, this is problem is further exacerbated by the wide discretion that the Council has in defining what exactly constitutes 'threats to international peace and security' and how to respond to such threats. She also asserted that even when the Council is able to find enough consensus to authorise an intervention, if the consent of the state is not provided, the Council is unlikely to take any effective action. Ms Gifkins also noted that the subjective terms included in paragraph 139 of the 2005 World Summit Document act as a further caveat to collective action by the Security Council.

In order to provide an example of these issues in an actual R2P case, Ms Gifkins focused on the United Nations Security Council resolution 1706, which dealt with the humanitarian crisis in Darfur. While there was broad acceptance that R2P crimes were committed in Darfur, the resolution was drafted using the phrase 'invites consent of Sudanese government'. Ms Gifkins noted that this was clear case of a situation whereby the lack of consent by the host government acted as a barrier to the Council taking action in a crisis situation, even when an issue has been elevated above 'politics as normal'.

In her concluding remarks, Ms Gifkins noted that resolution 1706 was a key instance of R2P as a 'speech action', where there was a deep gap between political accountability and words. She also observed that it demonstrated a clear conceptual confusion over the relationship between R2P and consent, which in theory can include non-consensual intervention. However, she asserted that in order for this to occur in practice, member states need to be willing to put forward their troops and military capabilities.

## ***Averting Regime-Induced Displacement in the Asia-Pacific: Successes and Failures***

Phil Orchard

### About the Presenter:

Dr Phil Orchard is a Lecturer in Peace and Conflict Studies in the School of Political Science and International Studies at The University of Queensland. His primary research interests include regime-induced displacement, and internally displaced persons.

### Abstract:

Regime-induced displacement, when governments deliberately displace their own populations, is an issue not only for the Asia-Pacific region, but also for the wider world. Such incidents not only lead to large scale flows of refugees and internally displaced persons, but at the extreme blur into cases of ethnic cleansing and genocide. Yet the international response remains ad hoc, discordant, and problematic. This presentation examines four historical and contemporary cases of regime induced displacement in the region, including East Pakistan (1971), East Timor (1999), Burma/Myanmar (2000-2006), and Sri Lanka (2005-2009) in order to understand the decision-making processes at the international and regional levels which contributed to differing forms of international involvement ranging from interventions and deployment of peacekeepers to limited or no response.

### About the Presentation:

Dr. Orchard began his presentation by defining regime induced displacements as being situations whereby governments deliberately use coercive tactics to cause mass displacement within their own population. He then identified the three main reasons why regime induced displacements are so problematic. Firstly, he noted that it transcends the traditional divide between refugees and internally displaced persons, whereby refugees receive protection under international law and internally displaced persons do not. Second, Dr Orchard noted that victims of internal displacement remain targets of their own government even after displacement, as is evident in the case of Darfur. Finally, he asserted that it can blur the lines between regime induced displacement, genocide, and ethnic cleansing, as all these tactics may be used by governments to bring about displacement.

Following this, Dr Orchard noted that within the years 1991-2006 there were a recorded 103 situations of mass displacement in 53 countries, which produced over a hundred thousand refugees and internally displaced persons. He asserted that out of this, 60 per cent were caused in whole or in part by regime induced displacement, while the rest was mainly the result of civil war. However, Dr. Orchard emphasized that it is important to keep in mind that governments often use civil war as a tactic

to bring about mass displacement, and hence, there is no clear division between regime induced displacement and civil war. With regards to mass displacement in the Asia Pacific during this period, he noted that there were twenty major cases. Four of these cases were large refugee flows, while the other sixteen cases were large scale IDP flows.

Dr Orchard then argued that UN Security Council plays a vital role in preventing such mass displacement. For instance, during the 1990s, there was a growing trend of framing refugees and IDPs as Chapter VII issues, which deals with the responsibility of the Security Council to take 'action with respect to threats to the peace, breaches of the peace, and acts of aggression'. According to Dr Orchard, the reason why mass displacement was framed within these terms was due to the potential that it holds to disrupt neighbouring states and regions, and thus, challenge international peace and security. However, Dr Orchard argued that while the Security Council has accepted this responsibility in rhetoric, as was seen with the signing of the Responsibility to Protect Doctrine, it has significantly failed to take direct action to prevent regime induced displacement. In fact, Libya was the only case in which the Security Council authorised intervention without the consent of the state to stop the mass atrocities, violence and displacement that was being carried out by the regime. For example, despite widespread evidence of mass atrocities being carried out in East Pakistan in 1971, the UN Security Council refused to authorise any form of intervention, by arguing that it was a domestic issue and thus, fell under the sovereignty clause of the UN Charter.

In his concluding arguments, Dr Orchard noted that it is evident by the authorisation of intervention in Libya that the Security Council has demonstrated greater willingness to engage in humanitarian issues. However, it remains to be seen if this will be a lasting trend.

#### *Panel Five Question and Answer*

Q1: The first question in this panel asked Dr Bartrop to respond to the claim that, unlike his reading of history which he describes as being very non interventionist, the 1990s was highly interventionist.

In response, Dr Bartrop argued that while there have been more interventionist resolutions passed since the end of the Second World War, there has also been a greater upsurge of anti human behaviour since 1945. Hence, he asserted that there is a great disconnection between these two trends, which makes it difficult to argue that there has been wide intervention by the international community.



Q2: Question two asked for a clarification on the role and prospects of non-invasive strategies in genocide prevention.

In response, Dr. Bartrop asserted that for whatever options are suggested, there is always going to be opposition due to concerns regarding national sovereignty. Hence, even with regards to non-invasive strategies, he argued that what is vital is political will by the international community.



## 9. Roundtable

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### About the Roundtable:

The roundtable session offered workshop participants the opportunity to explore the theme of “Genocide and Mass Atrocities in the Asia-Pacific: Legacies and Prevention” as well as providing a forum for the participants to interact and put forward further ideas. Workshop participants and guests were invited to consider and discuss a range of critical questions concerning our region, including:

- What are the ongoing legacies of mass atrocities in the Asia-Pacific region?
- How do they impact upon the current and future stability of the region, and on the lives of those who are affected?
- What are the risks of future mass atrocities in the Asia-Pacific region?
- What kinds of strategies can be utilised to mitigate those risks?
- Are there particular opportunities or challenges within the region that might influence these processes?
- What is the best way forward in addressing the legacies of past atrocities in the Asia-Pacific region?
- What is the best way forward in approaching mass atrocity prevention in the Asia-Pacific region?

The roundtable session concluded by asking participants to propose issues for future consideration, and to propose recommendations that may contribute to preventing future genocide and mass atrocities in the region.

### Roundtable Discussion:

Associate Professor Fernandes began the open discussion on the workshop theme by drawing attention to the role of civil society in early warning and the prevention of genocide and mass atrocities. He offered the example of East Timor in 1975 compared to East Timor in 1999. Australian journalists were killed on Timor’s border in 1975 but Associate Professor Fernandes suggested that, at that time, President Suharto had not decided to invade Timor. To support this view he suggested that President Suharto waited for five weeks after the incident to see what the international reaction would be and only when he believed that there would be no attempt to halt the invasion did he proceed. In 1975 the evacuation of Australian ex-

patriots was a high priority for the Department of Foreign Affairs and Trade (DFAT). Fernandes contrasted this account with Timor in 1999, when although the situation within Timor was unstable, civilians arrived to witness the ballot and provide their accounts to the rest of the world through the internet. This example illustrated the capabilities of civil society and the international community to allow information dissemination. Through micro-level organisation, early warning systems are created. In support of Associate Professor Fernandes' argument, Dr Phil Orchard shared with the workshop participants his insight into the East Pakistan case. In this case government control of the media was utilised to portray the situation as calm and stable. The true situation was revealed when a journalist defected; reaching West Pakistan and then the United Kingdom.

Dr Deborah Mayersen further explored the scope of civil society in genocide and mass atrocity prevention, drawing the group's attention to the existence of a genocide prevention network which receives donations in preparation for the possibility of genocide, rather than as a response. While pre-meditated actions have been open to states in the past, civil societies are now able to prepare and respond quickly to situations as they develop. Associate Professor Fernandes suggested that oppressed groups benefited from solidarity with Western activist groups and without this they will have lower chances for successful outcomes. Stephen McLoughlin also supported the view that civil society can be an asset to genocide prevention. He referred to Iran in the early 1980s to support this view. The regime had planned to destroy the Baha'i by killing a maximum of twenty-thousand, believing this would urge the remaining Baha'i population to convert to Islam. Early into this plan it became apparent that it would not be successful. The global Baha'i population conducted a spontaneous campaign which quickly became very well organised. They lobbied governments and media to make sure the Iranian government's actions received global scrutiny. International Alert models their operations on this campaign.

Professor Alex Hinton mentioned that the presentations at the workshop had a strong state focus and more attention could be offered to international, global and local perspectives. Dr Deborah Mayersen concurred with this point. Professor Hinton continued that it was important to understand how these levels of analysis were connected to provide a more accurate understanding of the issues in question as there is a tendency amongst academics to collect diverse views under simplistic categories.

Associate Professor Dale Bagshaw suggested that working at an individual level it was important to engage with the reactions of young people to conflict. The ability to analyse the dominant discourse was highlighted by Associate Professor Bagshaw

as a life-long skill which children should be taught. The introduction of peer mediation and conflict mediation skills to the mainstream curriculum was recommended, particularly if it involved the community. Associate Professor Bagshaw suggested that this approach would allow conflict prevention to occur at the individual and communal levels. Annie Pohlman drew on her field work and research to add that in situations where mass atrocities have occurred, individual choices are the relevant issue in spite of outside pressures. Dr Mayersen suggested education about common humanity as a long term genocide prevention measure and reminded workshop participants that risk of genocide can be a long term issue. Associate Professor Ben Goldsmith drew attention to the case of Yugoslavia where there was intermarriage and low levels of fractured nationalism but violence occurred despite these indications of inter-ethnic tolerance. Conversely, in the United States there is evidence of religious intolerance yet no mass atrocities. Associate Professor Goldsmith recommended analysing the institutions and ties which contribute to these factors, including in the context of civil society, to provide an understanding of the factors which contribute to the prevention of genocide. Also considered valuable is further investigation of how civil society functions effectively to prevent genocide and how it fails.

Associate Professor Bagshaw recognised that the workshop had not included the opportunity to talk about the contributions of women as peacemakers, which in some cases have been very successful. An example offered by Dr Mayersen was the local level conflict mediation training offered by Oxfam to women in Sri Lanka.

When the workshop participants were asked what could prevent genocide, there were a variety of responses. Associate Professor Bagshaw suggested increased education about genocide and more activists working to prevent it. Large armies were mentioned as a factor which might promote genocide by Annie Pohlman. Professor Hinton added that many of these indicators are currently appearing. He urged further engagement with these issues and suggested Libya and Burma as good candidates for this consideration.

Associate Professor Goldsmith suggested increased education, democratisation, development and higher GDP per capita could be beneficial. Dr Mayersen questioned whether it was economic growth or economic resilience which was most valuable. Rwanda illustrates this point as it experienced high levels of economic growth but did not have strong economic resilience and, when the country experienced an economic crisis, genocide occurred. Dr Mayersen recommended further unpacking the connection between economic variables and genocide. Professor Hinton was concerned about adopting democracy as a prevention strategy as it relies on liberal democratic teleology; he cautioned the workshop participants

to be aware of this as a Western-centric perspective.

Associate Professor Goldsmith argued that while these ideas of democracy may have Western roots, they are not exclusively Western. Taiwan and South Korea have both experienced effective democracy. These ideas seem to be able to function in many societies. Their effect has been visible in Associate Professor Goldsmith's data analysis. Another feature that Associate Professor Goldsmith considers important - although it did not appear in his model - is the ethnic division and the treatment of minorities which allow mass atrocities to take place. Discrimination does not have to have a legal basis to become an accepted norm. Rwanda and Indonesia were mentioned as examples of situations of discrimination.

Ms Pohlman noted that in Indonesia, one of the main factors that has contributed to the outbreak of mass atrocities has been the lack of strong and accountable institutions. As a result, even when there are strict laws preventing certain actions, there is a lack of effective institutions to enforce them. Dr Mayersen noted that legal discrimination is another main factor that has contributed to the risk of mass atrocities in numerous cases. Mr Tay asserted that ethnic discrimination may also lead to the outbreak of mass atrocities. In support of this argument, he provided the example of Malaysia, where the majority ethnic group, the Bumaputra, are given special privileges by the government. He stated that such practices have become so institutionalised that they are seldom even questioned by the general population. This highlights the importance of raising awareness within the local community about the nature and dangers of such injustices. In emphasizing the importance of this, Mr Tay compared the cases of Germany and Japan. He noted that in Germany, efforts undertaken by the government and other groups within the country to raise awareness about the Holocaust has resulted in a high level of shame among the German population. In contrast, the Japanese government has removed evidence of wartime atrocities committed by the Japanese army. As such, the Japanese population are generally unaware that such atrocities were ever committed.

Associate Professor Dale Bagshaw asserted that there is a general unawareness even among the Australian population about the mass atrocities that were committed against the indigenous population. Dr Mayersen voiced that the Australian population is generally ambivalent to genocide awareness and prevention, even in the broad community, with most schools only focusing on the Holocaust as part of genocide studies. Mr McLoughlin highlighted the dangers in this, as past atrocities are a high risk factor in future atrocities, with genocide denial being a major contributing factor for genocide. However, Professor Alex Hinton questioned the validity of the argument that the institutionalisation of racism is a contributing factor

for the outbreak of mass atrocities and genocide; as such practices are present even in stable democratic countries such as the United States.

The discussion then proceeded to the international community's involvement in Libya. Dr Mayersen questioned whether the international community was willing to intervene due to a progression of mass atrocities, or whether it was merely undertaken due to Libya's pariah status among the international community. Associate Professor Goldsmith asserted that this was a very complex issue with various contending views. One view is that the international community was so willing to intervene in order to deter other leaders from carrying out such mass atrocities. Dr Luke Glanville voiced that the West became may have become involved in Libya due to the widespread media attention that was devoted to the rebels' cause. In this sense, the international community was forced to intervene.

Dr Mayersen then questioned the criteria for distinguishing rebels as military combatants from civilians in need of protection. In response, Mr Tay noted that from a legal perspective, there is not much distinction between lawful and unlawful combatants. Dr Mayersen suggested that this distinction becomes more important with regards to how rebels are portrayed by the government and the international media. For example, in Sri Lanka, the government was very effective in portraying the Tamil Tigers as militants, which deterred international intervention. In contrast, the international media was successful in portraying the rebels in Libya as civilians, which has made it easier for the international community to intervene on the basis of humanitarian considerations. Mr McLoughlin asserted that also highlights the dangers of perceiving R2P as a speech act as opposed to a policy agenda, as it implies distinctions that are not always present.

Dr Mayersen then steered the discussion towards answering the question whether the intervention in Libya has reduced the risks of future mass atrocities, or whether it may prove irrelevant or even negative within the context of future intervention in situations of mass atrocities. Associate Professor Goldsmith contended that from a broad view of international relations, the decision by the UN Security Council to intervene and the reluctance of the US to lead the intervention, despite committing troops for the mission, suggests a major change. In terms of practical international relations, he asserted that the intervention in Libya sends clear deterrence signals and offers potential that the US will get involved in the future at an earlier stage. However, Ms Gidley opposed this argument, by asserting that the reason why the international community was so willing to intervene was merely due to the scale of violence. She therefore argued that it was unlikely that the UN Security Council would get involved in future cases of mass atrocities if the same scale of violence is not present.





## 10. Recommendations

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There was broad agreement that the issue of genocide and mass atrocity prevention in the Asia-Pacific region is extremely complex. Nevertheless, there are opportunities for governments, civil society organisations and centres such as the Asia-Pacific Centre for the Responsibility to Protect to promote actions that can reduce the risk of future mass atrocities in the region. Reflecting on the roundtable discussion, the panel presentations and the panel discussions, and the theme of the workshop, participants agreed on the following recommendations:

- Education programs in the Asia-Pacific region should be targeted at informing high school students, university students and the community about mass atrocities. They should also be used to encourage tolerance and create an understanding of a common humanity.
- Skills related to conflict prevention should be in the central curriculum for school students. These include peer-mediation and critical examination of sources.
- Civil society frameworks must be supported so that they can provide a means with which individuals can engage with issues associated with mass atrocity prevention.
- At the state level, structural prevention measures must be pursued.
- Fair and equal justice must be provided to prevent injustices escalating into violence or severe discrimination. Human rights violations must be answered by a legal framework capable of defending rights.
- It is critical for international community to assist states in preventing mass atrocities and if this fails they must be prepared to intercede to defend the lives of civilians.

Participants reflected that it was particularly valuable to bring an Asia-Pacific focus to the issue of genocide and mass atrocities. There was a unique legacy of mass atrocities in our region, and very specific issues concerning transitional justice and reconciliation. The region also faces unique challenges in preventing genocide and mass atrocities in the future. It was hoped that there might be future opportunities to bring a regional focus to the issue following on from this workshop.



## 11. Appendix I: Workshop Programme

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Monday 21 March 2011

8.45-9.15am Workshop Opening, Acknowledgement of Country

9.15-10.30am

Panel One: *Mass Violence in Indonesia and East Timor*

Chair: Dr Paul Bartrop

*East Timor: The Politics of Starvation*

Associate Professor Clinton Fernandes, UNSW@ADFA

*An Ongoing Legacy of Atrocity: Torture and the Indonesian State*

Annie Pohlman, Asia-Pacific Centre for the Responsibility to Protect

10.30am – 11am

Morning Tea

11am – 12.30pm

Panel Two: *Opportunities and Challenges for Mass Atrocity Prevention in the Asia-Pacific*

Chair: Associate Professor Ben Goldsmith

*Mediation in the Asia-Pacific: Constraints and Challenges*

Associate Professor Dale Bagshaw, University of South Australia

*The ASEAN Intergovernmental Commission on Human Rights (AICHR) and Mass Atrocity Prevention in Southeast Asia*

Catherine Drummond, Asia-Pacific Centre for the Responsibility to Protect

*The Role of Stable Small States in the Responsibility to Protect*

Charles Tay, Asia-Pacific Centre for the Responsibility to Protect

12.30pm – 1.30pm    Lunch

1.30pm- 3pm

Panel Three: *Transitional Justice after Mass Atrocities*

Chair: Professor Alex Hinton

*Political Manipulation at the Extraordinary Chambers in the Courts of Cambodia*

Rebecca Gidley, Asia-Pacific Centre for the Responsibility to Protect

*'Maximising' Transitional Justice Opportunities: The Case of East Timor's CAVR*

Dr. Heather Castel, School of History, Philosophy, Religion and Classics. The University of Queensland

3.15pm

Exhibition Launch and Afternoon Tea

*Lessons from Rwanda: The United Nations and the Prevention of Genocide*

United Nations Department of Public Information (UNDPI)

4pm-5.30pm    Public Lecture

*The Khmer Rouge Tribunal: A View from Critical Transitional Justice Studies,*

Professor Alex Hinton, Director, Center for Genocide, Conflict Resolution and Human Rights, Rutgers University

6.30pm

Conference Dinner

'A Night in India'

58 High St, Toowong

Tuesday 22 March 2011

9am-10.30am

Panel Four: *Early Warning and Prevention of Genocide and Mass Atrocities*

Chair: Associate Professor Dale Bagshaw

*Political Instability and Large-Scale Violence in the Economic North and South: Is the process different for richer and poorer societies?*

Dr Benjamin Goldsmith, University of Sydney

Professor Arcot Sowmya, Dimitri Semenovitch, University of NSW

*Understanding the Relationship between Risk and Resilience in the Long Term Prevention of Mass Atrocities: An Examination of Botswana and Zambia*

Stephen McLoughlin, Asia-Pacific Centre for the Responsibility to Protect

*Why Not Genocide? Exploring Constraints that Inhibit Genocide Onset in at-risk Societies*

Dr Deborah Mayersen, Asia-Pacific Centre for the Responsibility to Protect

10.30am-11am Morning Tea

11am-12.30pm

Panel Five: *The United Nations, Sovereignty and International Intervention in Mass Atrocity Crimes*

Chair: Associate Professor Clinton Fernandes

*Political Realism, Sovereignty and Intervention: Is Genocide Prevention Really Possible in a World of Sovereign States*

Dr Paul Bartrop, Bialik College

*The UN Security Council and Mass Atrocity Prevention: 'Timely and Decisive' Responses?*

Jess Gifkins, Asia-Pacific Centre for the Responsibility to Protect

*Averting Regime-Induced Displacement in the Asia-Pacific: Successes and Failures*

Dr Phil Orchard, School of Political Science and International Studies, UQ  
The University of Queensland

12.30pm-1.30pm Lunch

1.30pm-2.45pm

Roundtable: *Mass Atrocities in the Asia-Pacific: Legacies and Prevention*

Co-facilitators: TBC

In this roundtable, participants will be invited to consider a range of key questions concerning the legacies of mass atrocities in the Asia-Pacific, and prospects for future prevention.

2.45pm-3.15pm

Afternoon tea and Close of Workshop



*The Asia-Pacific Centre for the Responsibility to Protect is an Associate of the Global Centre for the Responsibility to Protect. The Centre's mission is to advance the Responsibility to Protect principle within the Asia-Pacific Region and worldwide, and support the building of capacity to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*

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