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The viability of the responsibility to prevent

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Article

The Viability of the "Responsibility to Prevent"

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Abstract

The efficacy of the Responsibility to Prevent suffers from two key problems; causal indeterminacy, and a dependence on the political will of states, particularly the permanent five members of the Security Council. The vast array of factors which can be cited as potentially contributing to the outbreak of conflict and atrocity crimes mitigates against the determination of definite "conflict triggers". This does not mean prevention is impossible but does limit the efficacy of "early warning systems". The dynamics of the "four crimes" within R2P's purview further limits the efficacy of prevention as the decision to engage in mass atrocities is taken in response to a perceived existential crisis. This significantly limits the scope for leveraging the "internal" aspect of R2P as the decision to commit these acts is invariably born from a belief that no other option is available to the potential aggressors. Thus the specifics of atrocity crime prevention places great emphasis on the operationalisation of the external dimension of R2P, namely the role of the international community. So long as the response of the "international community" is predicated on the political will of states, however, the efficacy of prevention in these areas will be limited, as the "international" response is prey to narrowly defined national interests.

Keywords

early warning; political will; responsibility to prevent; Security Council

1. Introduction

This article argues that the Responsibility to Prevent, though vaunted as the most useful element of the Responsibility to Protect (R2P), has limited potential efficacy. The Responsibility to Prevent suffers from two key problems; first the efficacy of prevention generally is undermined by causal indeterminacy. This problem is accentuated in the context of the Responsibility to Prevent due to the specifics of atrocity crimes—in terms of the conditions under which they are perpetrated—and the related mechanisms by which such acts—when in gestation—can be prevented. This latter fact leads to the second problem, namely that the Responsibility to Prevent depends ultimately upon the political will of states, and especially the national interests of the permanent five members of the Security Council (P5).

This article begins by charting the evolution of the Responsibility to Prevent before turning to an analysis of the literature on prevention strategies. Here I demonstrate that the array of factors which can plausibly be cited as contributing to the outbreak of conflict and atrocity crimes is so vast it mitigates against the determination of definite "conflict triggers". This does not mean prevention is impossible, of course, but it limits the efficacy of "early warning systems". The article then looks more specifically at the "four crimes" within R2P's purview and argues that the dynamics of these atrocities further limits the efficacy of prevention; the decision to engage in mass atrocities is taken

in response to a perceived existential crisis whereby those who decide to engage in such acts consider their very existence to be in jeopardy. This, therefore, significantly limits the scope for leveraging the "internal" aspect of R2P—namely the responsibilities of the host state—as the decision to commit these acts is invariably born from a belief that no other option is available to the potential aggressors. This means, therefore, that the specifics of atrocity crime prevention places great emphasis on the operationalisation of the external dimension of R2P, namely the role of the international community. As argued, however, so long as the response of the "international community" is essentially predicated on the political will of states, the efficacy of prevention in these areas will be limited. This is not because it is impossible to mobilise political will, but rather that at times the political disposition of the key states that determine the "international" response—especially the P5—is to actually support the perpetrator, or just ignore the victims, due to a lack of national interest. The problem inhibiting effective preventative action is, therefore, the structural conflation of politics and law-enforcement which R2P does not in any way address.

2. The Responsibility to Prevent

From its inception R2P has emphasised the importance of prevention. In its 2001 report *The Responsibility to Protect*, the International Commission on Intervention and State Sovereignty (ICISS) described prevention as "the single most important dimension of the responsibility to protect" (2001a, p. xi). In recent years the "responsibility to prevent" has been increasingly lauded in similar terms as both the most important and most viable aspect of R2P; in 2009 UN Secretary General Ban Ki-Moon stated that the "the ultimate purpose of the responsibility to protect [is] to save lives by preventing the most egregious mass violations of human rights" (2009, p. 28). Likewise Alex Bellamy, Director of the Asia Pacific Centre on R2P stated, "R2P has real value precisely because it has the potential to improve the prevention of mass atrocities and protection of vulnerable populations" (2015, p. 26). According to Simon Adams, Director of the Global Center for R2P, "R2P is primarily a preventive doctrine" (2013, p. 1), a sentiment echoed by Gareth Evans, co-chair of the original ICISS (2009, p. 79). Indeed, by 2011 R2P had, according to Thomas Weiss, a "virtually exclusive emphasis on prevention" (2011, p. 1).

Clearly there is a link between responding to intra-state mass atrocities and preventing them; it stands to reason that any strategy aimed at reducing the damage caused by intra-state mass atrocities would naturally promote the prevention of these conflicts. Yet, R2P very definitely emerged from a concern about *response* rather than *prevention*; the impetus for the establish-

ment of the ICISS was the question posed by Kofi Annan in the wake of the controversy surrounding NATO's 1999 intervention in Kosovo; "if humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?" (ICISS, 2001a, p. vii). The ICISS described its report as a "response to this challenge" and indeed in the first sentence of the report described *The Responsibility to Protect* as

> about the so-called "right of humanitarian intervention"; the question of when, if ever, it is appropriate for states to take collective—and in particular military—action, against another state for the purpose of protecting people at risk in that other state. (ICISS, 2001a, p. vii)

Later the report notes, "The 'responsibility to protect' implies *above all else* a responsibility to react to situations of compelling need for human protection" (ICISS, 2001a, p. 29). The genesis and remit was, therefore, clear; improving the international community's capacity to *react* to intra-state mass atrocities.

Given this, some have argued that the increased focus on prevention is a form of evasion and/or a misguided distraction from the key issue of reaction (Chandler, 2009; Hehir, 2012, pp. 103-116). Indeed, Weiss described the emphasis on prevention as "preposterous" and "a superficially attractive but highly unrealistic way to try and pretend that we can finesse the hard issues of what essentially amounts to humanitarian intervention". The concern with prevention, he claimed, "obscures the essence of the most urgent part of the spectrum of responsibility, to protect those caught in the crosshairs of war" (Weiss, 2007, p. 104).

Beyond this question of the contested importance of prevention within R2P, the actual added value of the Responsibility to Prevent has been the source of some debate. Research into, and calls for greater focus on, prevention existed prior to the emergence of R2P; the Carnegie Commission on Preventing Deadly Conflict, for example, was established in 1994 and had published some 26 reports, ten books and the landmark study *Preventing Deadly Conflict* prior to the ICISS report. UN Secretary-Generals Dag Hammarskjöld, Pérez de Cuéllar, Boutros Boutros-Ghali and Kofi Annan had each championed prevention as a key goal of the organisation and catalysed a plethora of studies on prevention (Miall, 2004).

The premise that preventing mass atrocities is preferable to responding to them is conceptually sound in terms of the preferential relative costs—in financial and humanitarian terms—of the former over the latter (Fein, 2009, pp. 321-322; ICISS, 2001b, p. 27; OSAPGR2P, 2014, p. 2). This has long been asserted and is,

indeed, a contention with an empirical basis established before the advent of R2P (Carnegie Commission on Preventing Deadly Conflict, 1997).

The ICISS report's recommendations on prevention do not especially advance these reflections on prevention; the prescriptions are quite vague and no more than a restatement of existing orthodoxy. Indeed, Bellamy described the ICISS's analysis and prescriptions on prevention as "brief, confused and unoriginal" and he recommended they be re-written (Bellamy, 2009, pp. 52-53). Likewise, Weiss dismissed the ICISS recommendations as "mumbling and stammering" (Weiss, 2007, p. 104). Michael Newman, in fact, claimed ICISS paid "inadequate attention to prevention" (2009, p. 190). Paragraphs 138 and 139 of the final 2005 World Summit *Outcome Document* (United Nations, 2005) recognised a variant of R2P and a third—Paragraph 140—recognised the Office of the Special Adviser on the Prevention of Genocide. Paragraph 138 mentions prevention—noting, "This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means"—but there is little beyond this single acknowledgment. Neither the 2001 ICISS report nor the World Summit *Outcome Document*, therefore, advanced detailed, or novel, recommendations on how to operationalise preventative measures and do not constitute a source of guidance for policymakers seeking to craft new preventative initiatives; indicatively the UK Government's "Building Stability Overseas Strategy"—which aims to "improve our ability to anticipate instability and potential triggers for conflict"—does not mention R2P (UK, 2012, p. 2).

The increased focus on prevention within R2P began to receive its most coherent stimulus in 2009 when UN Secretary General Ban Ki-Moon published his report *Implementing the Responsibility to Protect* which stressed the centrality of prevention to R2P (2009, p. 10). Since then the UN Secretary General has published annual reports on R2P with the 2010 and 2013 reports focused specifically on the issue of prevention. The prescriptions in these reports have been accompanied by publications from the Offices of the Special Adviser on the Prevention of Genocide and Responsibility to Protect (OSAPGR2P), particularly its 2014 "Framework of Analysis for Atrocity Crimes". These reports, therefore, constitute the most comprehensive and official treatment of the responsibility to prevent and form the primary sources for the forthcoming analysis.

3. Is Prevention Possible?

Investigations into how to prevent conflict predate the emergence of R2P and there are myriad books, articles, and reports across many disciplines which have advanced various recommendations. R2P deals with a particular set of "four crimes" however, and thus, is orientated towards a specific type of prevention. The 2005 World Summit *Outcome Document* stipulated that R2P is concerned with genocide, war crimes, ethnic cleansing and crimes against humanity. These atrocity crimes are, it has been suggested, of a gravity, nature and genesis which makes the determination of how best to prevent them different to studies on general conflict prevention (Bellamy, 2011a). Indicatively, in his 2010 report Ban Ki-Moon noted, "Preventing the incitement or commission of one of the four proscribed crimes or violations is not necessarily the equivalent of preventing the outbreak of armed conflict" (2010, p. 4).

This does not mean, however, that the prevention of these crimes bears no relation to the prevention of conflict; the two are certainly linked on a number of levels. Rather, atrocity crimes comprise dynamics which, as discussed in later sections, though stemming from the same broad framework of conflict prevention, are characterised by particular features and related imperatives for those concerned with preventing them. Thus, while "atrocity prevention" and "conflict prevention" are not synonymous, they are certainly related, and this is reflected in the Responsibility to Prevent literature. This poses an initial difficulty for the efficacy of the Responsibility to Prevent in so far as determining strategies for effective prevention—whether in terms of conflict or atrocity—is hampered by causal indeterminacy.

By definition discussions on improving prevention occur in the context of a failure to prevent; there is little need to agonise over ways to prevent things which do not happen. This creates an initial problem insofar as the discussion tends to focus on failures; "successful" prevention is often un-noticed or at least unheralded. As Payam Akhavan noted in the context of the OSAPGR2P, "The Special Adviser has a thankless job. His success in early warning and prevention is necessarily measured in terms of what *does not* happen" (2005, p. 11). That which "does not happen" invariably tends not to be acclaimed of course. In this sense, we are often simply not aware of the countless conflicts and atrocities which have *not* occurred, which *have* been successfully prevented. We can of course point to certain cases where there is widespread agreement that a looming conflict was prevented—the United Nations Preventative Deployment mission stationed on the Macedonian/Serbian border from 1992 to 1999 is often cited in this regard (Stamnes, 2005)—but such claims are by definition counterfactual. There is, therefore, by necessity, a degree of indeterminacy regarding what particular policies or actions successfully prevented conflicts or mass atrocities. As noted by the ICISS, "There are only a few unambiguous examples of successful preventative diplomacy in the post-Cold War era, while the catalogue of failed preventative action and missed opportunity is lengthy" (2001b, p. 27). Thus, the capacity to learn from these successes is limited.

This problem regarding the paucity of established

success templates relates to a more pervasive problem with prevention; identifying catalysts for conflict and/or atrocity commission is far from exact. Conflict can hardly be said to occur in a vacuum and while there are certain well established enabling conditions, there are so many that prescriptions become invariably vague. Clearly, conflict and atrocities do not occur in societies where there is social harmony; suggesting that disharmony constitutes fertile ground for their outbreak, however, does not lend itself to establishing focused preventative proposals. Indicatively, to mitigate the occurrence of the societal tensions that *could* lead to violence the ICISS recommended that states should implement a number of policies including,

> A firm national commitment to ensuring fair treatment and fair opportunities for all citizens....Efforts to ensure accountability and good governance, protect human rights, promote social and economic development and ensure a fair distribution of resources (ICISS, 2001a, p. 19).

These are quite clearly very expansive prescriptions, incorporating an array of issues which arguably stretch the scope of "preventative" action to such an extent that they lose coherence and focus. Likewise, in outlining what he describes as "structural policy options" designed to ameliorate the outbreak of conflict, Ban Ki-Moon's prescriptions on the Responsibility to Prevent in 2013 similarly include an immense range of guidelines;

> history has shown that building societies that are resilient to atrocity crimes reinforces State sovereignty and increases prospects for peace and stability. Building resilience implies developing appropriate legal frameworks and building State structures and institutions that are legitimate, respect international human rights law and the rule of law in general, and that have the capacity to address and defuse sources of tension before they escalate. It means building a society which accepts and values diversity and in which different communities coexist peacefully (2013, p. 2).

These may well be laudable goals but they are clearly vague and vast; what is being suggested here amounts to the universal promotion of democracy, judicial impartiality and good governance. Thus, the normative society advanced as a means to realise the Responsibility to Prevent comprises constitutional and institutional components that by definition imbue the prescriptions with a political and ideological flavour that mitigates against consensus and strays into the micromanagement of intra-state politics (Lund, 2004, p. 124; Welsh, 2010, p. 153). In addition, the absence of one or more of these normative features of good governance

does not guarantee conflict; as Ban Ki-moon noted, "The presence of risk factors does not directly or inevitably cause atrocity crimes. Societies can exhibit multiple sources of risk but not experience atrocity crimes" (2013, p. 4). Thus, it cannot be authoritatively stated that the absence of these features leads to conflict, just that it *could*. The OSAPGR2P's analysis of the occurrence of atrocity crimes confirms this noting that many states exhibit "the presence of most of the risk factors, but atrocity crimes have not yet taken place" (OSAPGR2P, 2014, p. 6).

If the Responsibility to Prevent is presented as a means to address the factors which can potentially lead to conflict and/or atrocity crimes, then it will arguably face dealing with an eclectic range of issues beyond the feasible scope of any single concept. For example, the range of enabling factors which contributed to the mass atrocities in Darfur from 2003–2008, includes inequitable farming practices and global warming (De Waal, 2007; Faris, 2007); can R2P realistically advance prescriptions on how to manage agricultural practices in Africa and tackle global warming without diluting its focus on mass atrocity prevention?

This also highlights a problem with the very idea that early warning systems constitutive a means of preventing conflict. Like the maxim that prevention is preferable to response, the notion that we should improve early warning systems is difficult to reject. This has become one of the dominant themes of the Responsibility to Prevent; Paragraph 138 of the 2005 World Summit *Outcome Document* pledged states to "support the United Nations in establishing an early warning capability" and the Secretary General's reports focus much attention on the need to improve early warning capacity within the UN. Yet, given the array of potential factors that could lead to the outbreak of conflict or the commission of atrocities, early warning systems arguably have an invidious remit; the list of warning signs is potentially infinite if one accepts that corruption, underdevelopment, disease, global warming, poor education, and many other factors contribute to the escalation of societal tensions. The problem facing those advocating prevention is, therefore, that the array of possible triggers is so vast, warnings, if issued at all, can be inherently speculative and thus lacking in imminence. As Henry Huttenbach warned, "...the capability to predict wars, civil strife and revolutions, let alone specific genocides, with any kind of reasonable, rational certitude escapes even the most knowledgeable" (2008, p. 472). There is a rich body of literature reflecting on past atrocities with a view to determining the key catalysts and warning signs; the results are certainly instructive but far from homogenous (Goldstone et al., 2010; Harff, 2003; Held, 2009; Straus, 2007). This is further accentuated by the fact that R2P is concerned with "four crimes"—genocide, war crimes, crimes against humanity and ethnic cleansing—which

each have very different definition's and catalysts, and thus the scale and scope of possible warning signs is enormous.

Additionally, certain crises have erupted in an extremely short period of time without previously exhibiting any notable warning signs (OSAPGR2P, 2014, p. 7). The crisis in Libya in 2011 is an obvious example; as noted by Bellamy,

> None of the world's various risk-assessment frameworks viewed the country as posing any sort of threat of mass atrocities. Neither was a conflict widely anticipated. For example, CrisisWatch, the early-warning arm of the International Crisis Group, did not even mention Libya in its report of February 2011, and did not issue a "conflict risk alert" until after the conflict had actually erupted (Bellamy, 2011b, p. 4).

The underlying cause of this conflict clearly related to the plight of those who had suffered under Gaddafi's regime for so long—which certainly *had* been flagged by human rights organisations (Amnesty International, 2010; Human Rights Watch, 2011)—but the means by which this could have been mitigated—such as recommended by Ban Ki-Moon in 2013—simply could not have been applied in February 2011. As Jennifer Welsh, the UN Special Adviser on R2P, accepts, "Structural or root-cause prevention strategies would have had little to say about this particular country" (2011, p. 7). One can certainly argue that the appropriate time to deal with the underlying causes of popular disquiet in Libya was five, ten or even twenty years earlier, but if this line of argument is adhered to then prevention becomes a call not just for universal democratisation, but for a near-revolution in international politics in terms of inter-state relations.

Continuing with Libya as the example, after decommissioning his stockpiles of weapons of mass destruction in 2003, Gaddafi was rehabilitated in the international community; trade with Libya increased, states openly sold arms to Libya, and the country's notorious jails were used in the network of venues involved in the extraordinary rendition process (Black, 2009; Open Society Foundation, 2013). If, as is clear, Gaddafi's regime was supported by the outside world and, as a result, enabled to engage in the very domestic oppression which led to the mass uprisings and resultant violence in 2011, then a causal link can be made between the policies of say the UK, France and Italy towards Libya and the crisis within the state in 2011 (Amnesty International, 2012). Yet, surprisingly little attention is paid to the deleterious role played by external actors in fomenting internal disaffection in the official reports on the Responsibility to Prevent. Neither of Ban Ki-Moon's reports, for example, recommend that states stop selling arms to, or trade with,

despotic regimes, despite this being a causal factor in the explosion of popular unrest across the Middle East in 2011 (PAX, 2015; Smith, 2011). The OSAPGR2P's 2014 report does briefly mention this; it lists "Armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others" as one of the eight "indicators" under "Risk Factor 5: Capacity to Commit Atrocity Crimes" (OSAPGR2P, 2014, p. 14). There are a total of 14 Risk factors in the report each with between six and eighteen "indicators"; the one mention of negative external influence in the report is, therefore, relatively minimal.

The narrative on prevention thus often coheres with a particular view of intra-state crises which neglects to recognise the part played by the external in creating internal problems (Orford, 2003, p. 85). The situation is thus often framed in binary terms with a sharp distinction between the internal and the external; intra-state crises are invariably framed in exclusively endogenous terms with little or no references to exogenous causes (Collins, 2002; Williams, 2005, p. 113). Kofi Annan's 2006 report on related issues *did* note the negative role played by external actors in escalating intra-state societal tensions, but such warnings were not made in the context of Ban Ki-Moon's prescriptions on the Responsibility to Prevent (Annan, 2006, p. 28). This of course presupposes two things; that external forces are not a causal factor in the occurrence of internal crises, and that a greater role for external actors is axiomatically a good thing; research suggests, particularly in the context of the preventative measures taken with respects to Rwanda between 1990 and 1994, that this is not always the case (Jones, 1995, p. 226; Wheeler, 2002, p. 214). Indeed, the ICISS acknowledged, "…when sustained measures have been undertaken, results have been mixed" (ICISS, 2001b, p. 27).

While this section has highlighted some potential problems related to prevention it has not sought to suggest that prevention is impossible. Rather the intention has been to demonstrate that while conflict prevention and atrocity prevention are different, both suffer the same problems of causal diffusion, indeterminacy and potential causal bias. This does not render prevention strategies inherently flawed or impotent but must temper expectations as to the potential efficacy of the Responsibility to Prevent. Building on these initial reflections, the following sections assess the particularities of atrocity prevention to highlight a further problem related to the Responsibility to Prevent, namely the centrality of political will.

4. "Triggering Factors"

Mass atrocities invariably involve acts of sadism and wanton violence, but they are not the product of a flash of madness in the way a random act of violence

may well be. By their very nature mass atrocities are, as perverse as it may seem, calculated and the product of careful deliberation (Howard, 1984, pp. 14-15). As Bellamy notes, "…mass atrocities tend to be rational, intentional and organized…it is actually quite difficult to persuade people to inflict harm intentionally on others" (2015, p. 29). Those who commit mass atrocities have clearly determined that their interests are best served if they resort to extreme violence; such acts are not committed on a whim or accidentally, however callous the act itself may be.

The decision to engage in such acts also cannot be born from an ignorance either of the legal prescriptions against such violence or the moral illegitimacy of systematic slaughter. In certain cases atrocities are, of course, carried out after a period of dehumanisation—whereby a target group is cast as sub-human as occurred most notably with respects to the Tutses prior to the Rwandan genocide (Hintjens, 1999)—but invariably the authorisation of atrocity committal will be from actors aware of the humanity of their victims.

This, therefore, enables a distinction to be made between conflict prevention and atrocity prevention; in the course of a conflict the warring parties seek military victory; atrocities—particularly ethnic cleansing, systemic crimes against humanity, and genocide—however, involve a determination to eliminate—either through extermination or expulsion—a perceived foe. Rather than stemming from strategic calculations based on a desire to achieve particular material aims, these crimes are calculated to inflict particular harm to individuals and thus "affect the core dignity of human beings" (OSAPGR2P, 2014, p. 1). Atrocities stem from underlying enabling factors which overlap with those related to conflict but, crucially, the decision to engage in a mass atrocity is different to the decision to engage in conflict; the latter may be born from a desire for greater material wealth, territory, or political change, whereas the former emerges from a sense of existential threat, invariably impelled by a particular catalyst described in the OSAPGR2P's report on prevention as "triggering factors" (OSAPGR2P, 2014, p. 3). The OSAPGR2P defines these "triggering factors" as "unpredictable events or circumstances [that] aggravate conditions or spark a sudden deterioration in a situation, prompting the perpetration of atrocity crimes" (OSAPGR2P, 2014, p. 17).

Those atrocities committed in the post-Cold War era which have generated the most international revulsion, such as in Rwanda (1994), Srebrenica (1995), Darfur (2003–2008), and Syria (2011–2015), have been undertaken by groups/actors who considered their victims to constitute an existential threat which had to be eliminated. The decision to plan a mass atrocity in each case preceded some political trauma; in the Rwandan case the shooting down of President Habyarimana's plane on April 6th provided the catalysts for the Hutu to initiate the genocide; the violence in Srebrenica was the most horrific massacre to occur in the break-up of the former Yugoslavia but it certainly wasn't the first. It occurred in the context of the savage escalation in identity-based violence which began in 1991 during which ethnic identity became a political fissure and the basis upon which new territories were demarcated; the conflict in Darfur had a long history but attacks by the Sudanese Liberation Army against government military installations in February 2003 led to the subsequent government-led brutal campaign; in Syria the turning point occurred in late March early April when the protestors changed their demands from reform to the overthrow of Assad's regime. This was accompanied by a series of violent incidents such as the burning down of the Baath Party headquarters in Daraa on 20th March and the killing of 7 policemen. The chances of dissuading the perpetrators from committing the atrocities was always minimal once the Rubicon of "existential threat" had been crossed.

Determining when this catalyst or "triggering point" will occur is, by definition, extremely difficult; as noted by the OSAPGR2P, "Triggering factors are not always predictable and a strong mitigating factor might weaken or disappear" (OSAPGR2P, 2014, p. 6). Thus the timeframe for, and potential efficacy of, preventative action was limited in each case. This means that the more holistic approaches advocated—as discussed above—were highly unlikely to have any traction during the period after the political trauma and before the commission of mass atrocities. Certainly, ideas related to education, employment, inter-communal dialogue etc. are far too long-term to have had any meaningful effect at this stage. Thus "Pillar I" namely the "internal" dimension of the Responsibility to Prevent—the host state's responsibility to protect its people from harm (Ki-Moon, 2009, p. 10)—is of limited effectiveness; the key, therefore, to preventing the commission of mass atrocities once an existential threat has been evoked is operationalising Pillars II and III, namely the external aspect (Ki-Moon, 2009, p. 15). Those about to engage in the commission of mass atrocities are likely to be dissuaded from doing so only by external actors.

4.1. The External Dimension

Reduced to its most basic components, prevention—in the context of mass atrocity crimes—involves external actors dissuading—possibly through coercive means—those planning to commit a mass atrocity from executing their plans. Naturally, if a group plans to commit a mass atrocity and then, through a process of exclusively internal deliberation, decides that this plan is no longer appropriate, there is no need for preventative action.

Prevention is thus by definition predicated on dissuading an agent from taking a particular course of ac-

tion and thus, it involves a bi-lateral dynamic. There are, therefore, two actors against whom the responsibility to prevent is leveraged; the group(s) planning the attacks and the external actor(s)—the "international community"—implored to prevent the attacks. This coheres with the internal and the external dimension of R2P which is central to the concept as reflected in the UN Secretary General's "Three Pillars" of R2P (Ki-Moon, 2009, p. 2). Both internal and external agents decide what action to take on the basis of a series of factors which determine the potential efficacy of preventative action.

Those committing mass atrocities clearly believe it is both in their interests and within their capacity to undertake a mass atrocity (Valentino, 2005, pp. 66-91). In terms of the latter, no group will plan to engage in a mass atrocity crime if it determines that in so doing their own situation will deteriorate. The decision to use force in this way is, therefore, logically born from a sense of capacity. Of course, not all actors with the capacity to commit atrocities against their enemies do commit these acts; while this is a necessary condition it is not an automatic trigger.

This rational calculation also means, therefore, that many groups which may actually want to commit mass atrocities are dissuaded from so doing simply because they calculate that the consequences would be, on balance, deleterious. There are, however, some cases where groups have, ostensibly, engaged in forms of violence designed to actually *increase* their own oppression, at least in the short term. Alan Kuperman has suggested that groups such as the Kosovo Liberation Army and the Sudanese Liberation Army engaged their respective enemies in such a way as to provoke them into committing atrocities against their people which would both galvanise their own communities and, more importantly, compel the international community to intervene on their behalf (Kuperman, 2006; for an opposing view see, Bellamy & Williams, 2012). In these cases, therefore, though the strategy employed is actually designed to accentuate the group's own suffering in the short term, the logic is ultimately that they will prevail with the aid of external support, and thus the balance of consequences remains a determining logic.

With respects to the means by which external agents can exercise leverage on potential perpetrators of mass atrocities, the key period is the immediate aftermath of the catalyst or "trigger point", when the cost-benefit analysis is undertaken; it is during this phase that coordinated international pressure is most effective and most needed. The decision not to commit an atrocity once an existential crisis is deemed to pertain, is therefore, dependent on altering the balance of consequences calculation so that committing the atrocity will be perceived as imprudent (rather than simply illegal or immoral). By definition the crimes R2P is orientated towards involve one party of vastly superior strength targeting another; this means that these crimes derive from a balance of consequences decision-making process which favours the latter. The means by which the costs of committing an atrocity are increased to the point where to undertake such acts would be manifestly self-defeating, derives from the positions taken by the international community and thus the leverage exercised by external actors is a function of political will. This has profound consequences for the Responsibility to Prevent. The problem is, the means by which this "international" action is coordinated and operationalised is essentially state-based and ultimately dependent on the P5.

While R2P has been presented by many of its advocates as revolutionary (Feinstein, 2007) and an idea "that has begun to change the world" (Bellamy, 2015, p. 111), it has actually not led to, nor has it sought to impel, any change to the existing international legal order. R2P is a restatement of existing laws—each of the "four crimes" were illegal long before R2P (Focarelli, 2008; Stahn, 2007)—and, perhaps more significantly, seeks to work with rather than alter the process by which these laws are enforced (Bellamy, 2015, p. 14; Evans, 2008, p. 137). This means in practice that the concept recognises the powers vested in the Security Council and does not involve, or propose, any institutional change (Davies & Bellamy, 2014).

International human rights law is extensive in its scope but this comprehensive remit is undermined by the process by which it is enforced. While international law establishes a range of inviolable human rights, in practice this system is based on self-regulation (Fitzmaurice, 2014, p. 182). State's essentially police themselves with respects to their adherence to the human rights laws they commit themselves to abide by (Henkin, 1990, p. 250). The only viable means by which the state's adherence to international human rights law can be coercively enforced is through Chapter VII of the UN Charter; this requires the consent of the Security Council and thus the veto power of the P5 becomes a key barrier to the enforcement of human rights law. Other UN bodies—such as the Human Rights Council and the High Commissioner for Human Rights—may issue recommendations and condemnations but they do not have the power to enforce compliance or punish criminality (Mertus, 2009, p. 34). This, indeed, is reflected in the OSAPGR2P's overview of international law on human rights and atrocity prevention (2014, pp. 1-3).

In a functioning domestic political system individuals obey the law either because they agree with the law or they fear punishment if they do commit a crime (Hurrell, 2005, p. 16). Thus, even if the moral conviction that murder is wrong is lacking, an individual faces considerable disincentives to kill, in the form of retrospective punishment meted out by the police and judiciary. If however the judicial system, police and government are corrupt, and the individual believes s/he

can escape punishment, then, provided s/he has no moral qualms about committing murder, a perceived need arises, and the potential murderer calculates that s/he has the capacity to undertake this action, then the chances that such an act will be committed naturally increase. This is, essentially analogous to the situation which pertains at present in international politics, a situation R2P has not remedied.

In the context of the Responsibility to Prevent, the manner in which preventative influence is exercised is largely dependent on the assent of the P5. In his 2010 report Ban outlined how Responsibility to Prevent would be operationalised;

> When the Special Advisers, based largely on information provided by, and in consultation with, other United Nations entities, conclude that a situation could result in genocide, war crimes, ethnic cleansing or crimes against humanity, they provide early warning to me and, through me, to the Security Council (2010, pp. 7-8).

Thus while reform of the early warning mechanism would ensure that warnings would be expedited more rapidly through the UN system, ultimately these reports would be placed before the Security Council for its consideration. Here politics invariably takes over; as Francis Deng stated when he was OSAPG, "every time an issue is brought to the Security Council you can predict how Russia, China and the others will vote" (Hehir, 2012, p. 223). The Secretary-General also notes the potential role of Regional Organisation acting through Chapter VIII of the UN Charter but again, while these bodies do not comprise a veto-wielding P5, they are state-based and cannot be said to be immune from the influence of political interests.

The only actual institutional innovation initiated in the context of the emergence of the Responsibility to Prevent is the creation of the Office of the Special Adviser on the Prevention of Genocide (OSAPG) in July 2004[1] (Annan, 2004, p. 2). The OSAPG was heralded by some as a potentially significant innovation and indicative of the new importance afforded to prevention (Hamburg, 2008, p. 226; Ramcharan, 2008, p. 180). Yet, in addition to being allocated a paltry budget (Deng, 2010) the mandate of the OSAPG was, and remains, heavily restricted and the capacity of the adviser to act independently was consciously circumscribed by the Security Council during the drafting of the OSAPG's mandate (Hehir, 2010, 2011). This has meant that though a new office was created with a specific remit to work on the prevention of genocide, the institutional distribution of power within the UN was unaltered.

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[1] The Office of the Special Adviser on the Prevention of Genocide merged with the Office of the Special Adviser on R2P in 2011

This coheres with the findings of the ICISS who noted, that while states had often lauded the importance of prevention these declarations, "…have not, however, been matched by an equal commitment by member states to build UN preventative capacities" (ICISS, 2001b, p. 29)

This all means in practice that a state which commits, or plans to commit, an atrocity crime can be shielded from external censure if they happen to have an ally amongst the P5; as Deng noted, whenever a crisis is brought to the P5, "you are going to get one member or another of the P5 to defend that country" (Hehir, 2012, p. 224). The case of Syria is illustrative here; once the rebel forces threatened the very existence of Assad's regime in March/April 2011 it clearly constituted an existential crisis for Assad personally and the regime around him. In determining how to respond Assad would have known that the tactics he came to employ were illegal; it is implausible that he was unaware when planning his violent response that the tactics he aimed to employ would involve breaking international law. Yet, in determining whether or not to commit these atrocity crimes he will certainly have been influenced by the fact that Russia has a permanent seat on the Security Council and thus the capacity to veto any proposed international censure. Thus, in terms of the external dimension of the Responsibility to Prevent a key means of dissuading Assad from engaging in mass atrocity crimes—namely the fear of external censure—was much less potent. Illustratively, on 22nd May 2014 despite the appeals of the UN Secretary General and the UN Hugh Commissioner for Human Rights, Russia and China vetoed a proposal put to the Security Council to refer Assad to the International Criminal Court (ICC); the use of the veto in this case—the fourth time it had been exercised by Russia and China in the course of the response to Syria—came as little surprise and once again highlighted the influence of politics on law enforcement. This constitutional conflation of politics and law enforcement clearly impacts on the efficacy of prevention; despite the ICC's existence, if the determination as to who is tried there is a political rather than a judicial one, then its punitive potential is a less effective deterrent than it could be.

The institutional configuration of the UN, and specifically the powers vested in the P5, thus whilst not a causal factor in Assad's decision to engage in mass atrocity crimes, constituted an enabling factor. In the same way we can say that Israel's tactics towards Gaza in 2014 derived from a sense that though these actions were illegal they would be protected from punishment by the US at the Security Council. Of course, having an ally on the P5 does not shield a government from international criticism; both Syria and Israel have been widely condemned by an array of actors from journalists, to academics to UN officials and other states but, crucially, though this condemnation has surely been

unwelcome, it has not been sufficient to sway these states from engaging in their actions, as they consider them to be impelled by an existential threat.

Thus, we can determine that those who decided to commit mass atrocities do so through a process of rational evaluation of the costs and benefits involved. Likewise, the international community's disposition during the immediate pre-atrocity phase is determined on a similar cost-benefit basis. This helps explain, for example, the differing response of the international community to the cases of Libya and Syria in 2011. With respects to Libya the UN reacted with unusual speed; in the Security Council passed Resolution 1970 on 26th February which sought to dissuade Gaddafi from engaging in mass atrocities. This was very clearly an attempt at preventative action employed only ten days after the situation began to rapidly deteriorate. Less than three weeks later on 17th March the Security Council passed Resolution 1973 with sanctioned the imposition of a no-fly zone over Libya. In this case, the nature of the Gaddafi regime and regional geopolitics were more of a factor in determining the international response than the scale of human rights abuses taking place; if the UN Security Council acted only on the basis of the scale of the potential or actual suffering then the response to Syria would not have been as lamentable as it has proved (Hehir, 2013; Morris; 2013). Clearly the speed with which the Security Council passed resolution 1970—aimed at preventing a mass atrocity—contrast sharply with the lamentable inaction and disunity which has characterised the Council's response to Syria.

The difference between Libya and Syria stemmed from the very different relationship between Libya and the international community, and Syria and the international community. The different response was essentially a function of the fact that Gaddafi, unlike Assad, did not have powerful allies willing to shield him from external censure. Whilst, as noted earlier, Gaddafi had very definitely "come in from the cold" since decommissioning his weapons programme he remained an isolated figure, actively despised by many in the West, and indeed, the Middle East (Bellamy & Williams, 2011, pp. 841-842). Assad, however, though also a divisive figure in the Middle East, benefitted from the robust support of Russia.

Thus, the leverage excised by the Responsibility to Prevent is heavily dependent on political will, as opposed to legal procedure and judicial oversight. This, severely restricts the efficacy of the Responsibility to Prevent as, to a great extent, the holistic approaches to conflict and atrocity prevention—which as discussed earlier are problematic in themselves—are ultimately of secondary importance to the political disposition of the great powers, a dynamic far less malleable than the measures advocated by Ban Ki-Moon. This is reflected in the literature on conflict prevention generally; as Bruce W. Jentleson observes, "Almost every study of

conflict prevention concludes that when all is said and done, the main obstacle is the lack of political will" (2009, p. 293). The ICISS report itself noted, "It is possible to exaggerate the extent to which lack of early warning is a serious problem…lack of early warning is an excuse rather than an explanation, and the problem is not a lack of warning but of timely response" (2001a, p. 21). Thus while paragraph 138 of the *Outcome Document* called for greater emphasis on early warning and Ban Ki-Moon called for greater sharing of information on looming atrocities, these do not constitute solutions to the problem posed by the P5's political approach to human rights law enforcement. Illustratively, graphic reports on the deteriorating situation in Darfur were regularly brought to the Security Council's attention from 2003 on, to little effect (Peters, 2009, p. 524). As Gregory Stanton succinctly observers, "Early warning is meaningless without early response" (2009, p. 319). Remedial action which did have a positive effect in Darfur was primarily the result of unilateral initiatives undertaken without the Security Council's collective support (Deng, 2010; Mayroz, 2008, p. 366; Straus, 2005). The fact that many of these initiatives did have a positive effect—USAID in particular has played a pro-active role in the region (USAID, 2015)—serves to further expose the Security Council's ineffectiveness.

Again, it is necessary to state that these institutional problems, though clearly of profound importance, do not mean preventative diplomacy can *never* be successful. The problem is not that preventative action cannot work but rather that the primary means by which it can be effectively leveraged is compromised by competing national interests amongst the P5. Two examples regularly cited as evidence of successful preventative intervention are the international community's response to the crises in Ivory Coast in November 2004 and Kenya in December 2007 (Ban Ki-Moon, 2009, p. 24). In both cases the intervention of the then UN Secretary General Kofi Annan and the Special Adviser on the Prevention of Genocide—Juan Méndez in 2004 and Francis Deng in 2007—helped to diffuse an escalating crisis. In the same way, it is simply untrue to say that, owing to the structure of the UN, the international community can *never* respond to actually occurring humanitarian crises; at times the response to crises has been timely and robust. The problem, however, is that these cases are the exception. Owing to the existing legal system the more common response is "inhumanitarian non-intervention" (Chesterman, 2003, p. 54) namely a situation where, despite the obvious humanitarian need, the lack of national interests amongst those with the capacity to act results in inaction. Precisely the same problem impacts on the efficacy of the responsibility to prevent; arguably more so given that calling preventative action is based on *possible* tragedy. As Weiss remarked,

Logically speaking if you can't even get people mobilised to do something in the midst of a crisis, the idea that somehow even before you have a crisis, they're all going to align and put money into it seems to me to be against the nature of human beings and certainly against the nature of the inter-state system (Hehir, 2012, p. 112).

The responsibility to prevent, as currently advanced, therefore, does not address the main obstacle to consistent and effective preventative action; the state-based nature of the international legal order and specifically, the powers vested in the P5. Without seeking to address this structural barrier the efficacy of the Responsibility to Prevent, will be limited.

5. Conclusion

Though initially catalysed by a perceived need to improve the international community's *response* to intra-state crises, R2P has increasingly focused on prevention. The "Responsibility to Prevent" indeed, has become widely championed at the primary aim of R2P and the means by which the concept as a whole can have the greatest impact. This article has argued, however, that the future efficacy of the Responsibility to Prevent will be circumscribed by causal indeterminacy and the barrier presented by the constitutional configuration of the UN Security Council.

Tackling looming crises naturally demands an understanding of how these crises emerge; the range of possible contributing factors is, however, so vast that this is arguably an unfeasibly onerous task which can at best only provide very general guidelines. Indicatively the ICISS urged the international community to tackle the "root causes" of internal conflict namely poverty, political repression and uneven distribution of resources (2001a, p. 22). Collectively addressing these three issues is clearly an enormous, if not impracticable, task (Lund, 2004, p. 122). Advocating expansive holistic changes—such as democratisation, impartial judiciaries, and equitable wealth distribution—constitutes an ideologically-inspired agenda for the micro-management of intra-state politics which is alienating—insofar as it will be perceived as political—as well as unfeasible.

Aside even from the scale and political nature of these "preventative" measures it is not clear that there is actually a causal link between the oft-cited danger signs and the actual occurrence of atrocity crimes; as the OSAPGR2P accepted, "…it is impossible to draw a direct causal relation between the presence of particular risk factors and the occurrence of atrocity crimes" (OSAPGR2P, 2014, p. 7). Thus, we remain unable to authoritatively determine causal patterns when it comes to identifying specific danger signs, and thus remain prey to the cumulative effect of case-specific exigencies.

Additionally, simply noting that these features exist

in a particular society does not in itself catalyse action. The UN's enquiry into the Rwandan genocide certainly noted gaps and weaknesses with respects to early warning information sharing but ultimately concluded that the "fundamental failure" was "a persistent lack of political will" (Security Council, 1999, p. 3). As Ban Ki-Moon noted, "…the crucial element in the prevention of genocide remains responding to concerns, once these have been communicated" (Human Rights Council, 2009, p. 17). History suggests that political will is all too often lacking, especially with respects to prevention which by definition seeks to mobilise action on the presumption that something *might* happen. In his 2014 report the Secretary General lamented,

there is still too little will to operationalize prevention. This is manifest most clearly in the reluctance of States to place country situations on the agenda of regional or international organizations before they reach a crisis point. It is also reflected in the resource allocations of many Member States, which still prioritize crisis response (2014, p. 18).

As R2P has not altered, or indeed sought to alter, the means by which the Security Council reacts to intra-state crises—looming or actual—the structural barriers to effective and consistent action—manifest in the competing national interests of the P5—remain. The Responsibility to Prevent is left, therefore, largely dependent upon the whims of particular states and thus prey to their often nefarious political interests.

Conflict of Interests

The author declares no conflict of interests.

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