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Prévenir les atrocités : vers de nouveaux paradigmes?
Preventing atrocities; towards new paradigms?

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Préface

Ignazio Cassis[1]

Génocides, crimes contre l'humanité, crimes de guerre et nettoyages ethniques : que l'on parle de l'Holocauste nazi, du génocide perpétré au Cambodge par les Khmers rouges ou du génocide de Srebrenica, toutes ces tragédies ont en commun d'avoir fait des millions de victimes en raison de leur appartenance culturelle ou religieuse. La communauté internationale se montre toujours étonnée, impuissante, face à un présent qu'elle n'a pas anticipé. Pourtant, ces crimes effroyables et la déportation de milliers de personnes ne se produisent pas du jour au lendemain : ils sont l'aboutissement sanglant d'une longue escalade de violences et de conflits.

Si nous voulons éviter de telles situations, nous devons comprendre comment elles ont pu se produire. La Suisse a présidé jusqu'en novembre le réseau international de prévention des atrocités (Global Action Against Mass Atrocity Crimes [GAAMAC]), qui poursuit plusieurs objectifs : promouvoir une gouvernance stable et des sociétés solides et résilientes, encourager la confrontation avec sa propre histoire, et faire prendre conscience que le travail de prévention commence dans son propre pays. L'anticipation est un facteur déterminant à cet égard : non pas l'anticipation qui découlerait exclusivement du passé, mais l'anticipation adaptative, fondée sur la connaissance scientifique, ses tendances et les débats qu'elle suscite entre des communautés plurielles et multidisciplinaires.

Comment nos sociétés, marquées par les conflits, peuvent-elle utiliser ces outils de progrès technologique et scientifique au service de la prévention et du développement durable ? C'est la question qui préoccupe le Geneva Science and Diplomacy Anticipator (GESDA), cette fondation créée il y a un an par la Confédération et par le canton et la ville de Genève. Le GESDA centre son action sur les avancées technologiques et scientifiques et leur rôle dans la résolution des grands défis planétaires. Elle vise à exploiter les opportunités porteuses d'avenir pour façonner le présent et appréhender dès aujourd'hui les foyers potentiels de conflits. Il ne s'agit pas de prédire l'avenir, mais d'équiper nos sociétés pour anticiper les défis de demain.

Chaque société devrait être à même d'affronter l'imprévu ; la convergence entre science et technologie recèle un potentiel immense pour l'évolution de l'humanité, mais comporte aussi des dangers. De nouveaux conflits potentiels émergent par exemple, en relation avec la sécurité des données, l'accès des individus à la santé et aux ressources. Si nous voulons réduire les risques de conflits futurs, nous devons instaurer aujourd'hui même des mécanismes qui placent le progrès technologique au service d'un développement inclusif et mettent le potentiel économique et social à la portée non pas des seuls pays riches mais de toutes les populations.

La prévention doit aussi pouvoir s'appuyer sur un système multilatéral performant, fondé sur le droit international et axé sur la résolution pacifique des conflits. La Suisse, forte de sa tradition en matière d'action humanitaire et de bons offices, peut apporter une contribution importante à la prévention, et contribuer au débat sur ce thème. Tel est précisément le sujet de cette ultime édition de Politorbis. Tout en rendant hommage au travail accompli, il nous encourage à poursuivre nos efforts en faveur de la prévention au plan national. Il explique de quelle manière cette prévention repose sur une collaboration interdisciplinaire, comment naissent et évoluent les contextes dans lesquels des atrocités sont perpétrées et pourquoi il est crucial d'identifier, à un stade très précoce, les indicateurs qui conduisent à ces crimes. Je me réjouis de poursuivre cet engagement et ce dialogue.

1 Conseiller fédéral, chef du Département fédéral des affaires étrangères de la Confédération suisse

Foreword

Ignazio Cassis[1]

Genocides, crimes against humanity, war crimes and ethnic cleansings, such as the Nazi Holocaust, the genocide by the Khmer Rouge in Cambodia or Srebrenica, claimed the lives of millions of people because of their ethnic, religious affiliation. The international community shows itself taken by surprise and rendered powerless in the face of unanticipated atrocities. Yet these appalling crimes and the deportation of thousands of people do not happen overnight: there are always the bloody climax of a long escalation of violence and conflict.

If we are to prevent such escalations, we need to understand how they come about. Until November of this year, Switzerland chaired the state-led prevention platform Global Action Against Mass Atrocity Crimes (GAAMAC) whose objective are for countries to strengthen stable governance and strong societies that engage in an honest reckoning with their history and legacy and recognise that prevention work begins at home. Anticipation is a determining factor in this regard: not anticipation that stems exclusively from the past, but adaptive anticipation; a process of adaptive forecasting based on an awareness of scientific trends and a dialogue about their implications among diverse and multidisciplinary communities.

How can our societies, marked by conflicts, use these tools and technological and scientific progress in the service of prevention and sustainable development? The Geneva Science and Diplomacy Anticipator (GESDA) is tasked with identifying ways for our conflict-ridden societies to harness technological and scientific advances for sustainable development. Launched a year ago by the Swiss Confederation and the Canton and City of Geneva, GESDA anticipates scientific frontier topics and technologies and the global challenges that these technologies could help tackle. GESDA's aim is to anticipate the future to build the present and address potential sources of conflict sooner rather than later. This is not about predicting the future, but preparing society for the future as effectively as possible.

The aim is to enable societies to manage unexpected developments. This convergence of science and technology bears potential benefits for the evolution of humankind, but also carries risks such as creating new tensions over secure access to data, access to personalised healthcare and individual resources. To minimise the potential for future conflict, we need to put mechanisms in place now that can harness technological advances towards an inclusive development, allowing people around the world – not just in rich countries – to reap the social and economic benefits.

Preventing atrocities ultimately requires an effective multilateral system that is based on international law and prioritises peaceful conflict resolution. With its humanitarian tradition and good offices, Switzerland can make a significant contribution to prevention and the international debate on this issue. This -final edition of POLITORBIS- aims to do just that. It pays tribute to the work realized, it encourages us to keep going and help make prevention a reality on the ground. It explains how atrocities can be prevented through interdisciplinary cooperation and how the contexts in which atrocities are committed emerge and evolve. It also explains how crucial it is to identify the patterns that lead to these crimes as early as possible. I look forward to continuing this important endeavour and this dialogue in the future.

1 Federal Councillor, head of the Department of Foreign Affairs of Switzerland

Introduction

Mô Bleeker[1]

Le Département fédéral des affaires étrangères, suisse, a pris l'initiative de réunir l'Institut des hautes études sur la justice et la fondation Sant'Egidio pour la paix et le dialogue pour réfléchir sur la prévention des atrocités. Nous partageons une même conviction : il faut urgemment développer une solide approche conceptuelle et opérationnelle de la prévention des atrocités. Cette édition de Politorbis est le résultat de ce processus de réflexion collectif qui devrait nous aider à mieux comprendre la nature des atrocités contemporaines, identifier les dangers émergents et surtout à mieux comprendre ce qu'est la prévention et comment la pratiquer. Alors que nous avions commencé notre réflexion, la pandémie de Covid-19 a largement démontré l'efficacité de la prévention et les risques énormes associés à l'absence de politique préventive. Dans ce sens, cette pandémie a joué un rôle de révélateur.

Un premier séminaire de réflexion, en janvier 2020, a permis de baliser les questions centrales liées à la nature des atrocités, à la place de la prévention et aux acteurs actifs dans ce domaine aujourd'hui. Les auteurs présents dans cet ouvrage occupent chacun une place unique et reconnue dans leurs milieux respectifs. Chacune et chacun ont une réflexion de qualité à partager, des leçons apprises, des pistes de travail et des recommandations.

Cette édition de Politorbis est divisée en plusieurs domaines.

La première partie aborde les enjeux émergents dans la prévention des atrocités : l'identification de nouvelles formes d'atrocités dans ce monde globalisé, touché par une crise écologique sans précédent, le rôle de l'État en profonde mutation, alors que d'autres opérateurs privés, guidés par la rationalité du marché, entrent en jeu. Alors que les Nations unies, et parmi elles le Conseil des droits humains, ont développé une panoplie d'outils et de cadres normatifs se référant à la prévention, la communauté internationale échoue largement à prévenir les atrocités ou à y répondre de manière pertinente.

Dans d'autres disciplines telle que la prévention en santé publique, la communauté internationale a accumulé savoir, expérience et pratique aux niveaux local, national, régional et international. Cette ingénierie et corpus de pensée préventive pourraient favorablement inspirer la création d'architectures et de politiques de prévention d'atrocités, depuis les diagnostics précoces jusqu'à la prévention tertiaire, en passant par la coopération entre les gouvernements avec le soutien de leur société civile et de la communauté scientifique. Les auteurs de ce premier chapitre s'accordent à dire que la prévention est une décision politique, une intention consciente, explicite, qui se pratique en dialogue avec la connaissance scientifique, en coopération avec la société. Pour ces raisons et de par son mandat de résolution de problèmes, la prévention ajoute de la valeur à nos démocraties.

L'aspect du genre est crucial, car la nature des atrocités affecte femmes et hommes de manière différente, mais cette question est aussi au cœur de la solution. Non seulement la participation des femmes joue un rôle clé dans une prévention effective, mais la déconstruction d'identités masculinisées construites uniquement autour de la violence et de la domination fait également partie du nécessaire changement de paradigmes culturels au cœur de la prévention.

Le troisième chapitre, écrit par des historiens, journalistes, spécialistes des médias sociaux, des nouvelles technologies digitales, ainsi que des experts de la liberté d'expression, du droit au rassemblement pacifique ou de l'éducation, nous confronte aux grands défis du négationnisme, des fausses informations, des nouvelles modalités de répression telles que l'instrumentalisation des lois contre les défenseurs des droits humains et les dérives autoritaires. Bonne nouvelle toutefois, les nouvelles technologies sont utiles dans la construction de dossiers judiciaires, l'éducation, et les politiques de mémoire continuent à se développer et mobilisent de nouveaux paradigmes pour mieux équiper la jeunesse à s'impliquer dans les valeurs démocratiques et résister contre les dérives négationnistes ou racistes. Les gouvernements commencent (à peine aujourd'hui) à développer un arsenal de réglementations, de cadres légaux et de mesures de reddition des comptes pour prévenir l'usage massif de fausses informations, la diffusion de discours de haine et d'appels à la violence, ou les cyberconflits qui peuvent devenir les guerres de demain. Les auteurs se rejoignent dans leur constat général: l'émergence de mouvements et

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gouvernements ouvertement anti-libéraux est une menace connue et récurrente contre la démocratie. Toutefois, elle prend aujourd'hui une ampleur nouvelle du fait des nouveaux outils de diffusion (médias sociaux), les nouvelles stratégies de domination, et aussi en raison de l'absence de contre-pouvoirs effectifs enracinés dans l'État de droit.

Des régimes autoritaires émergent sous toutes les latitudes qui conjuguent xénophobie ou racisme assumé, contrôle des médias, négation de problèmes sociétaux (Covid par exemple), invention d'un passé héroïque et imposition de modèles identitaires monoculturels. Loin du cliché des républiques bananières, cette situation prévaut dans tous les continents. La démocratie doit démontrer sa capacité d'y faire face : pensée et action préventive renforceraient précisément la démocratie en ce qu'elle permet le dialogue sur ce qu'est le bien commun ou le vivre ensemble pacifiquement.

Le chapitre suivant pose une lumière crue sur les tragédies actuelles vécues dans les pays en guerre, telles que la Syrie, le Yémen entre autres, les attaques massives contre le système humanitaire, le brouillage volontaire des frontières entre combattants et population civile et ses conséquences dramatiques qui se feront sentir pendant des générations. Ultime degré d'inhumanité, la traite des femmes et des hommes, l'esclavage pratiqué ouvertement et de manière exponentielle. Cette véritable gangrène fleurit dans les multiples zones grises en expansion, notamment parce que la communauté internationale n'a pas su/voulu prendre des décisions à temps pour éviter des tragédies innommables ; conflits armés, catastrophes écologiques, pauvreté massive, exclusions de toute sortes. Les migrations forcées génèrent un nombre de victimes individuelles équivalent en nombre à des atrocités de masse : enfants mineurs, femmes et personnes âgées sont sur la route, dans une précarité et vulnérabilité extrêmes alors que des normes et standards existent, notamment les obligations d'assurer une migration sûre, contrôlée et régulée. Les 20 000 morts dénombrés depuis 2014 en Méditerranée constituent un grave manquement aux devoirs humanitaires fondamentaux ; s'agit-il d'atrocités et qui en est responsable ?

La réflexion se poursuit avec un groupe d'articles abordant des nouvelles pratiques émergentes, parties intégrantes d'une approche holistique de la prévention en devenir. Les acteurs économiques privés peuvent et doivent jouer un rôle d'entraînement pour répondre aux nouveaux enjeux climatiques et s'engager aux côtés des États pour repenser un développement économique social écologique durable, compatible avec les objectifs de développement durable des Nations unies. Dans ce contexte, les peuples indigènes autochtones souhaitent non seulement être reconnus comme sujets sociaux, mais aussi comme partenaires de plein droit porteurs de pistes innovatrices qui doivent faire partie de la solution globale. La gestion constructive des minorités, pratiquée dans de nombreux contextes ouvre un horizon de possibles, un véritable horizon de développement civilisationnel.

Le développement de la justice internationale est contrasté. La promesse de la lutte contre l'impunité tarde à donner ses fruits, une meilleure complémentarité et coopération avec les États jouera un rôle clé dans ce domaine pour renforcer la capacité préventive de la justice, y compris dans le domaine écologique. Le développement intégral de l'État de droit est un enjeu majeur ; en effet, corruption et crime organisé prospèrent de manière accélérée en son absence, tel un cancer qui gangrène toutes sociétés. La justice transitionnelle et sa panoplie d'initiatives contribuent largement à la lutte contre l'impunité, mais doivent se libérer de leur origine uniquement rétributive et transitionnelle et apprendre à se conjuguer avec la prévention. De même, si les processus de médiation et d'application des accords de paix commencent à mieux associer les droits économiques sociaux et culturels, ils gagneraient à intégrer l'approche prévention de manière méticuleuse et systématique. Enfin, les acteurs culturels et religieux jouent d'ores et déjà un rôle clé dans la prévention, notamment lorsqu'ils sont organisés, qu'ils pratiquent un dialogue horizontal à la fois au sein de leur propre communauté et avec les autres acteurs religieux et culturels. Ils contribuent en effet à dresser des barrages contre l'ostracisme, le fondamentalisme et la construction négative de l'altérité. Les auteurs le soulignent bien : les institutions religieuses et culturelles traditionnelles sont aussi traversées de contradictions. D'où l'importance de ces dialogues pour renforcer un leadership bienveillant et démocratique et renforcer ce pilier crucial d'une coexistence pacifique dans la diversité.

Enfin, cette édition se conclut avec des exemples concrets de prévention sur le terrain, menés par des acteurs nationaux ou transnationaux. Telle la

conférence internationale des Grands Lacs qui, avec son protocole pour la prévention des génocides a donné vie à une dizaine de mécanismes nationaux actifs sur le terrain et à une coopération régionale s'accordant sur l'importance de passer de la « non-ingérence à la non-indifférence », permettant entre autres de travailler dans un esprit constructif avec son voisin en difficulté. Les parlementaires engagés dans la prévention jouent un rôle de plus en plus important dans l'approbation de lois et cadre légaux promouvant des mécanismes de prévention permanents. Les Institutions nationales des droits humains sont un autre exemple d'action concrète en prise directe avec les problèmes tels qu'ils s'expriment dans chaque contexte. Le Costa Rica enfin nous démontre comment un petit pays, ayant pris des décisions politiques fondamentales, s'engage de manière holistique dans la prévention, avec succès et des résultats tangibles. Finalement, on comprend que les processus de consultation et de coopération font partie de l'ADN de la culture et des pratiques de prévention ; l'alliance globale de prévention GAAMAC, cette communauté de pratiques est saluée et appelée à poursuivre son travail de mise en réseau et de dialogue horizontal.

Cette publication est non seulement un plaidoyer pour la prévention, c'est aussi un appel urgent : il faut investir maintenant dans la prévention des atrocités. La prévention implique une connaissance débouchant sur l'action précoce. Son succès est à la mesure de la qualité de la coopération qu'elle génère entre le politique, le scientifique et la société civile. La diversité des situations qui peuvent déboucher sur des atrocités implique en retour un véritable effort multidisciplinaire et un continuum dans l'action. La mission de la prévention est d'identifier les problèmes, les objectiver et proposer des solutions pour éviter toute dégradation. Il s'agit là d'un effort permanent, institutionnalisé, qui doit faire partie des agendas et budgets nationaux. Enfin, par sa nature, la prévention ajoute de la qualité à nos processus démocratiques.

L'équipe de rédaction est convaincue qu'il est plus que jamais temps d'investir pour donner vie à une pensée et action préventive multidisciplinaire en dialogue avec des pratiques ancrées dans leurs contextes. Une communauté permanente de prévention des atrocités est appelée à se constituer : c'est la seule voie pour dépasser la paralysie actuelle.

Introduction

Mô Bleeker[1]

The Swiss Federal Department of Foreign Affairs launched a partnership between the Institut des hautes études sur la justice and the Sant'Egidio Foundation for Peace and Dialogue in order to reflect on the subject of atrocity prevention. One thing we are all certain of is that it is crucial to develop a sound conceptual and operational approach to the prevention of atrocity crimes. This edition of Politorbis contains the results of this process of collective reflection. It is intended to improve our understanding of present ongoing atrocities, identify emerging threats, and, above all, improve understanding of what prevention actually means, as well as how it can be put into practice. When we started our reflection process, COVID-19 struck. The pandemic has provided ample proof of the effectiveness of prevention, as well as the major risks of not having preventive policies in place. In this way, the pandemic became an important indicator.

At our first seminar in January 2020 we identified the main issues concerning the nature of atrocity crimes, the scope for prevention, and the current relevant actors. The authors who contributed to this edition each hold a unique position in the area of atrocity prevention and are well-known in their respective circles. Each one offers thought-provoking reflections, lessons learned, working methods, and recommendations.

This Politorbis edition is divided into several areas.

The first part deals with emerging challenges in atrocity prevention: identifying new types of crimes in today's globalised world plagued by an unprecedented ecological crisis, and the rapidly changing role of the state, whereby market imperatives drive private operators to get involved. Although the United Nations, including the Human Rights Council, has developed an array of tools and normative frameworks for atrocity prevention, the international community has largely failed at preventing such crimes or responding to them in an adequate manner.

In other prevention-related fields such as public health, the international community has accumulated knowledge, experience, and practical know-how at the local, national, regional, and global level. Such a preventive structure and mindset could inspire the creation of architectures and policies for atrocity prevention – early warning and detection, secondary and tertiary prevention, as well as cooperation between governments with the assistance of civil society and the scientific community. The authors of this first chapter are in agreement that prevention is a political choice; it has a clear and deliberate purpose, and bases its practice on scientific knowledge and partnerships between governments and civil society. Because of this, and because prevention is also about finding solutions to problems, it adds value to our democratic systems.

The gender issue is central to atrocity prevention because gender based crimes affect women and men differently. But, this issue is also at the heart of the solution. Increasing the participation of women is key to effective prevention, but breaking down identities of masculinity built entirely around violence and domination is also necessary to achieve the cultural paradigm shift which is at the core of prevention.

The third chapter has been written by historians, journalists, specialists on social media and new digital technologies, and experts on the rights to freedom of expression, peaceful assembly, and education. It presents us with some of the major challenges we face today: negationism, fake news, and new forms of repression such as the instrumentation of laws to silence human rights defenders, as well as other authoritarian tendencies. There is some good news, however. New technologies are helping to build legal cases and improve education, while policies on memory continue to develop and stimulate new models that better equip young people to become involved in upholding democratic values and to confront racist or negationist positions. Governments are slowly starting to develop an arsenal of regulations, legal frameworks, and accountability measures to prevent the widespread dissemination of fake news, hate speech and incitement to violence, and cyber conflicts that may become the wars of tomorrow. All of the authors make the same general observation that the emergence of openly anti-liberal movements and governments is a clear and

1 Special Envoy for Dealing With The Past and Prevention of Atrocities, Federal Department of Foreign Affairs, Switzerland. Chair of the Prevention Platform Global Action Against Mass Atrocity Crimes GAAMAC.

persistent threat to democracy. Moreover, the threat this poses today has taken on a new dimension. This is due to the way information is shared (social media), new oppressive policies, and a lack of effective checks and balances rooted in the Rule of Law.

Authoritarian regimes sprouting up all over the world base their rule on a combination of overt xenophobia and racism, media control, the denial of social problems (such as COVID-19), a glorification of the past, and the imposition of a monocultural identity. This is not just happening in what once might have been dismissed as distant banana republics, but on every continent. Democracy must demonstrate its ability to confront this situation. A preventive mindset, as well as preventive action, would help to bolster democratic systems, precisely because they allow for dialogue about common good and peaceful coexistence.

The next chapter sheds a sharp light on the continuing tragedies in some of the world's ongoing wars, such as those in Syria and Yemen: large-scale attacks on the humanitarian system, a deliberate blurring of the distinction between combatants and civilians, and the grave consequences that will be felt for generations to come. The extent of today's inhumanity can be seen in the trafficking of women and men, and in the slavery practised openly and widely. This scourge is flourishing in a number of ever-expanding grey areas – armed conflicts, environmental disasters, mass poverty, and oppression in many different forms – particularly because the international community has not been willing or able to take timely decisions and prevent these horrific tragedies. Forced migration results in as many individual victims as a mass atrocity crime. Vulnerable young children, women, and the elderly people face extremely precarious situations, despite existing norms and standards that ought to ensure safe, controlled, and regulated migration. Since 2014, there have been at least 20,000 recorded deaths in the Mediterranean. This is a major breach of basic humanitarian obligations. Are these atrocity crimes? Who is responsible?

The reflection process gave space to reflections about the emerging practices that are part of a holistic approach to prevention, which is currently in the making. Private economic players can and should play a role in the response to today's climate challenges, committing themselves alongside national governments to a re-examination of sustainable development – economic, social, and environmental – in line with the Sustainable Development Goals (SDGs) set out by the United Nations. This is an area where Indigenous people do not only want to be seen as subjects of social policies, but as equal partners who can contribute innovative approaches that must be integrated into the overall solution. A constructive approach to working with minorities, as already practised in other contexts, would open up a wealth of possibilities for genuine civilizational development.

The path of international justice to date has been uneven. The pledge to fight impunity has produced contrasted results. Improving complementarity and cooperation between states will be key to strengthening preventive capacities in this field, including environmental justice. Developing the rule of law comprehensively is also a major challenge. In fact, its absence is hastening the rampant rise of corruption and organized crime, like a cancer spreading throughout our societies. Transitional justice and its range of initiatives make a significant contribution to the fight against impunity, but it must move on from its initial retributive and transitional purpose and be combined with prevention work. In the same vein, if the connection between economic, social, and cultural rights in mediation processes and the implementation of peace agreements were to be better integrated, they would achieve a great deal by including prevention in a systematic and thorough manner. Last but not least, cultural and religious actors already have a key role to play in the field of prevention. This is especially the case if they are well organized and engage in horizontal dialogue, both within their own communities and with other cultural and religious stakeholders. They help put up barriers against exclusion, fundamentalism, and the negative identity construction of otherness. The authors point out that traditional religious and cultural institutions are also replete with contradictions. This makes such dialogues vital: to support benevolent and democratic leadership, as well as peaceful coexistence in diversity, the linchpin of today's societies.

This edition concludes with some practical examples from the field that are being implemented at the national and transnational level. One example is the International Conference on the Great Lakes Region which, with its protocol on genocide prevention, has resulted in a dozen or so national mechanisms that are active on the ground, as well as a regional par-

tnership based on the importance of moving from non-interference to non-indifference. Parliamentarians committed to prevention also have an increasingly important role to play by adopting laws and legal frameworks that promote lasting prevention mechanisms. National human rights institutions are another example of practical and direct action tailored to specific contexts. We also turn to Costa Rica, which shows us how a small state, if it makes the basic political choice to do so, can commit itself to a holistic approach to prevention that is successful and achieves tangible results. To conclude, we can see that consultation and cooperation are in the DNA of the culture and practice of prevention. The Global Action against Mass Atrocity Crimes (GAAMAC) is carrying out notable work in horizontal dialogues and networking that must be continued.

This edition of Politorbis is not only advocating for prevention; it is also an urgent appeal for immediate investment in atrocity prevention. Prevention means knowledge, and knowledge allows for early warning and detection. The extent to which prevention is successful is measured by the effectiveness of the cooperation between politicians, the scientific community, and civil society. Given the countless situations that can result in the perpetration of atrocity crimes, comprehensive multidisciplinary efforts and ongoing action are required. The purpose of prevention is to identify and objectively document problems, and to come up with solutions to prevent situations from deteriorating. This requires an ongoing effort at the institutional level that must be included in national budgets and agendas. Indeed, by its very nature, prevention adds value to our democratic processes.

The editorial team believes that now is the time to invest in multidisciplinary prevention – both as a mindset and as concrete action – and engage in dialogue with practitioners who know their specific context. Creating a lasting community to prevent atrocities is imperative, and is the only way to overcome the international community's current paralysis.

Première partie: enjeux émergents de la prévention des atrocités

First Part; Emerging Challenges in Atrocity Prevention

Les nouvelles formes de violence de masse

Antoine Garapon[1]

Les crimes de masse changent de forme. Ou, plus exactement, ils se diversifient car de nouvelles formes déroutantes apparaissent sans toutefois chasser les anciennes. Si des peuples entiers demeurent persécutés par certains États (songeons aux Ouïghours en Chine, aux Rohingyas en Birmanie ou à des pays au bord de violences de masse comme le Burundi), si des armées régulières commettent éhontément, sous leur drapeau, des crimes de guerre comme le bombardement d'hôpitaux et d'écoles en Syrie, l'on voit également apparaître des violences de masse d'un genre nouveau. Pour rester sur le conflit syrien, on déplore l'exploitation inédite de la masse des refugiés qui sont convertis en armes de destruction massive. Des gouvernements les utilisent pour menacer l'Europe d'une « inondation » par des flux de migrants. Ce qui est problématique, aussi bien pour les États qui les manipulent que pour l'Europe qui les refuse. Toutes nouvelles atrocités de masse se présentent comme l'envers des précédentes qui procédaient des États, c'est pourquoi il est proposé de les regrouper sous le qualificatif de « violences de désintégration ».

I. Violences d'intégration, violences de désintégration

Les violences de masse peuvent en effet être rapportées à un mouvement général du monde plus profond que la surface politico-juridique sur laquelle on se concentre généralement. Le court XXe siècle (1914-1989), marqué par les deux conflits mondiaux, a été le siècle d'atrocités essentiellement commises par des États, notamment par des gouvernements totalitaires. Ces derniers se sont certes affrontés sur des champs de bataille mais ils ont également retourné leur organisation, leur puissance, leurs forces de sécurité, leur idéologie contre leurs propres populations. En réaction à ces massacres, ont été promus les droits de l'homme (et notamment la notion de crime contre l'humanité puis de génocide) garantis par un ensemble de mécanismes dont la mise en œuvre a été confiée auxdits États mais sous la surveillance de la communauté internationale. Ce mouvement connu son apogée avec la création de la Cour pénale internationale (CPI) en 1998 concluant ce sinistre siècle sur une note d'espoir.

Les multiples violences commises à une grande échelle visaient une intégration forcée par un régime autoritaire (pensons au nazisme et au stalinisme) : elles prenaient la forme de la chasse aux dissidents, de l'extermination de peuples incarnant la figure de l'autre, tout en réduisant la société civile au silence. La violence obéissait à une force centripète qui ramenait tous et tout au « grand Un » qui est, pour Claude Lefort, la vérité ultime du totalitarisme[2]. C'est pourquoi les instruments juridiques pour s'y opposer tentaient de résister à cette force de gravitation dévoreuse d'hommes. Toutes ces violences pouvaient être qualifiées de violences d'intégration.

Ce rappel fait ressortir la singularité d'un certain nombre de situations contemporaines qui semblent correspondre à une inversion de poussée : tout se passe comme si aux violations d'hier qui persistent, qui étaient le fait d'une force centripète (concentrant toute la force dans un pouvoir totalitaire refusant toute altérité) s'ajoutaient les victimes d'une force centrifuge n'ayant de cesse que de rejeter les hommes à l'extérieur, de les livrer à des forces non-étatiques qui nous déroutent car elles échappent aux armes juridiques du monde de l'après 45.

Une violence par abandon

Alors que les crimes précédents procédaient du corps-à-corps immonde de la torture, de la concentration dans un camp de la mort, cette nouvelle forme de violence trouve sa figure au contraire dans la vie nue, jetée sur les routes ou sur les mers, abandonnée de tous, à commencer par leur propre État. Le migrant perdu dans le monde, isolé, qui lutte pour sa survie, est non seulement abandonné mais la violence qu'il subit est commise par abstention, par invisibilité.

Les 30 000 morts noyés en Méditerranée ces dernières années illustrent bien ce que devient la violence de masse à l'ère individualiste. Ceux-ci ne forment pas en effet un groupe désigné mais la somme de destins individuels. Leur mort en dit long sur cette nouvelle violence de masse : ils meurent noyés au milieu de l'eau, abandonnés de tous. La mer est en soi un espace de non-droit, l'élément contraire de la terre. On est frappé par l'opposition entre le confinement dans un camp et son contraire, la dispersion dans l'immensité. Chacun offre une version actualisée de l'homme en trop des systèmes totalitaires, mais cet

1 Magistrat, secrétaire général de l'Institut des hautes études sur la justice.

2 Claude Lefort, La Complication : retour sur le communisme, Fayard, Paris, 1999.

homme en trop est exclu et non pas trop violemment inclus comme le dissident soviétique.

Le terrorisme

La violence terroriste peut également être interprétée sous l'angle de la désintégration. Notamment le terrorisme islamiste radical qui ne formule aucune revendication de nature politique. Cette violence signale tout d'abord une désintégration sociale qui contribue à pousser certains vers des formes de violences extrêmes. Un grand nombre d'aspirants au djihad se vivaient comme « étrangers » à leur propre pays et méprisés par une société qu'ils vont à leur tour, en la considérant comme mécréante, pouvoir mépriser. L'engrenage est doublement centrifuge : ils sont ou se sentent rejetés et ils nous rejettent. Se pose donc un défi majeur à l'État de droit car on ne voit pas d'issue politique autre que la défiance renforcée vis-à-vis de pans entiers de la société et une approche sécuritaire qui abîme les libertés. Une telle violence sera enfin d'autant plus difficile à surmonter qu'elle mêle le religieux et le politique, qu'elle ne formule aucune revendication précise, qu'elle s'explique autant par un mal-être intérieur que par une révolte politique. C'est la démission plus que l'emprise qui génère une violence qui s'en prend à des foules en tant que membres d'un État impur, qu'il soit laïque ou musulman.

Cette nouvelle violence terroriste en évoque une autre, celle des tueurs de masse. Ce type de massacres n'est pas nouveau en soi[3] mais semble s'intensifier dans la période très récente. Si la masse du XXe siècle faisait référence à une sélection politique (les minorités, telle population civile, tel groupe désigné, etc.) symbolisée par la notion de groupe dans le crime de génocide, dans ces tueries, la masse des victimes est totalement arbitraire. Ces dernières n'ont aucune autre caractéristique commune que de s'être trouvées là, sur l'itinéraire d'un tueur. Certains crimes se situent à mi-chemin entre l'attentat et cette nouvelle catégorie de droit commun comme en témoigne le massacre de la promenade des Anglais à Nice, le 14 juillet 2016 (86 victimes). Beaucoup ont en effet été frappés des similitudes entre le modus operandi de ce crime et le jeux vidéo GTA. Internet a promu, à son corps défendant car il ne s'agit que d'une technique, une sorte d'imaginaire de la violence décentralisée, c'est-à-dire d'une violence, apolitique, à la fois ludique et très cruelle, déréalisant l'autre mais plus sur le mode du crime contre l'humanité du fait de la virtualisation.

L'effondrement de certains États

Il est possible de parler de violences de désintégration lorsqu'elles sont commises en dehors des États qui ont perdu le monopole de la violence légitime quand ils n'ont pas failli purement et simplement. C'est le cas de la Centrafrique où les violences ont atteint il y a quelques années, des sommets dans la cruauté, dans la brutalité et la désacralisation du corps humain : cadavres émasculés, brûlés, décapités, découpés, dépecés voire cannibalisés. On peut se rassurer en imputant ces violences à des jeunes désœuvrés, désocialisés et souvent drogués. Mais cette violence ne nous est pas totalement étrangère car elle participe d'une culture mondialisée ; les auteurs de ces atrocités, nourris de films violents et de porno importés, postent immédiatement les terribles images de leurs forfaits qui circulent sur les réseaux sociaux et qui jouent un rôle déterminant dans la propagation de la barbarie et de la terreur.

Dans de nombreuses régions du monde, les atrocités sont le fait de groupes armés qui n'ont même plus vocation à prendre le pouvoir comme les terroristes : de groupes criminels extrêmement puissants qui contrôlent non seulement une activité (le trafic de drogue) très rémunératrice, mais également des régions entières. Parfois, de tels groupes criminels se rapprochent jusqu'à se confondre avec des entités armées politiques : on le constate aussi bien pour les Farc que pour Daech. Il s'agit là d'une hybridation[4] de la violence mi-politique, mi-criminelle de droit commun, que l'on constate un peu partout. Il faudrait ajouter à ces violences de masse d'un genre nouveau, les féminicides au Mexique (à ne pas confondre avec les victimes de violences conjugales parfois appelées de la même manière), c'est-à-dire des violences de masse genrées.

Daech montre en même temps les deux phénomènes d'intégration et de désintégration de la violence. Il faisait régner une discipline de fer à l'intérieur de ses troupes et sur les populations civiles qui furent martyrisées (on songe au traitement des homosexuels précipités du haut d'immeubles), imposait des châti-

3 Comme en témoigne Amok de Stefan Zweig.

4 Jean-François Gayraud, Théorie des hybrides. Terrorisme et Crime organisé, CNRS, Paris, 2017.

ments inhumains à ses prisonniers, et dans le même temps vendait les femmes yézidis (c'est ainsi qu'une femme pouvait avoir été vendue et rachetée une quinzaine de fois). Il pratiquait en même temps la répression impitoyable d'une idéologie totalitaire et la marchandisation du corps humain.

Le dérèglement climatique

Les violences peuvent également être directement en lien avec la désintégration d'un écosystème humain et géographique due au réchauffement climatique comme dans le cas de Boko Haram. L'assèchement du lac Tchad, qui faisait vivre près de 50 millions de personnes, est l'une des causes de la recrudescence de la violence dans cette région, les différents groupes terroristes pouvant recruter sans difficulté des jeunes sans aucun avenir. Partant, à quoi sert, de miser exclusivement sur la maitrise des États pour discipliner leurs forces armées (qui ont commis de nombreuses exactions) et rétablir l'ordre ? Ne faudrait-il pas mieux prendre le problème à sa racine ?

II. Réponses centralisées, réponses décentralisées

Puisque les atrocités de masse furent largement commises au cours du XXe siècle par les États, ou plus exactement par le pouvoir (car dans le cas du nazisme, le pouvoir et l'autorisation de la violence étaient sortis du cadre de l'État proprement dit et se logeaient en quelque sorte en chaque individu fanatisé), la réponse était isomorphe au mal : elle consistait à limiter le pouvoir des États en leur imposant des obligations supérieures à leur capacité normative. C'est que, pour le meilleur et pour le pire, l'État restait incontournable car il constituait dans le monde d'hier la principale force d'intégration et le droit opérait comme un système de simplification susceptible de rapatrier les multiples dimensions du réel dans un langage commun. L'État était, de surcroît, la garantie ultime du droit en interne et le seul sujet de droit international.

Voici que ces dernières décennies, l'État a perdu ce monopole de l'intégration du monde au bénéfice d'autres mécanismes comme le marché ou le numérique qui prétendent également unifier le monde. Il n'est donc pas possible de répondre aux nouveaux défis que posent les atrocités de masse exclusivement par des instruments stato-centrés – même s'il s'agit de conventions internationales – ou par une réactivation du contrat social.

Retourner le système contre lui-même

Ces nouvelles formes d'intégration symbolique que sont l'économie et le digital s'adressent directement à l'individu par-delà les États. Elles se présentent comme des solutions aux maux du monde notamment politiques, en tant qu'instruments d'une autonomisation à l'égard du politique (Mark Zuckerberg et Friedrich Hayek ont en commun leur détestation des États voire de la politique). Le contournement des États par l'économique et le numérique a un effet très heureux en desserrant l'étau répressif, en offrant par exemple la possibilité de dénoncer en temps réel les violences en train de se perpétrer. Mais remarquons l'ambivalence de ces nouveaux modes d'intégration. Ainsi aussi les réseaux sociaux qui sont une invention merveilleuse qui ont beaucoup œuvré en faveur de la liberté d'opinion – songeons au mouvement #MeToo – la menace également en répandant des fake news qui menacent à terme la démocratie. L'explosion d'un marché mondial a sorti des milliards d'individus de la grande pauvreté en même temps qu'il a causé des désastres écologiques et engendré de nouvelle atteintes à la dignité humaine.

Une telle ambivalence lance des défis inédits car la multiplicité et l'éparpillement des acteurs de marché et des utilisateurs ne sont pas les interlocuteurs habituels du droit humanitaire. Ils recèlent pourtant peut-être une partie de la solution. Comment ? En les guidant, les incitant, voire les obligeant à orienter la force désordonnée de leurs instruments vers la réalisation d'objectifs extra-économiques, de les rapatrier dans le monde commun. Prenons le cas du marché. Si les grandes entreprises sont principalement voire exclusivement sensibles à leurs clients et aux consommateurs, c'est par eux qu'il faut passer pour prévenir les crimes de masse. Le mouvement de la responsabilité sociale des entreprises (RSE) ou du *social reporting*, voire des lanceurs d'alerte, a pour objectif de faire converger en quelque sorte le marché et la vertu.

L'abondance des images et la profusion des preuves

Tournons-nous à présent vers les réseaux sociaux. Ils offrent une profusion de preuves ne serait-ce que par les images faites pendant les atrocités. Le meilleur exemple en est la Syrie où des militants se sont rapidement organisés pour tourner et centraliser des images sur la réalité des bombardements et autres

massacres. Même s'il est préoccupant de savoir que les GAFAM détiennent la mémoire visuelle de toute cette sale guerre, c'est là une opportunité extraordinaire qui demande à être travaillée afin de transformer ces images en preuves. D'autant que le temps travaille pour la justice à condition que nous nous donnions les moyens de conserver et de préserver ces images. *Veritas filia temporis…*

Prévenir les atrocités dans une ère post-juridique

Dans un monde qui ne tourne plus exclusivement autour des États, le droit n'est plus seul opérateur. L'une des difficultés à penser notre époque vient en effet de ce que nous sommes entrés dans une ère post-juridique. En raison d'un nouveau monde de l'effectivité comme le proposent l'économie ou la technique. Une ère post-juridique, c'est une ère où le droit est court-circuité par l'effectivité. Pour appliquer le droit, il faut des fictions partagées – des fictions avant même des valeurs ; une fiction comme celle de croire qu'il est nécessaire d'affirmer des valeurs même si l'on sait qu'elles ne sont – et ne seront jamais – réalisées. Les moyens d'hier tentaient de construire un monde, ces nouveaux instruments que sont le marché et le numérique mettent en place un système. Mais jamais un système, si fonctionnel et si bien huilé soit-il, ne pourra à lui seul construire un monde. D'où la nécessité de mettre ce système au service d'un monde plus humain, de la prévention des atrocités de masse et de la préservation de la planète.

Déseuropéanisation des réponses

Mais s'agit-il de la fin de l'hégémonie du droit ? N'assistons-nous pas à l'émergence de nouvelles formes de justices qui ne sont pas européennes ? Le génocide des Tutsis par les Hutus au Rwanda par exemple est sans conteste l'une des atrocités de masse les plus jugées de l'histoire. Une autre originalité vient de ce qu'une partie de la justice fut accomplie par des voies propres, les fameux tribunaux *gaçaça*. Cela oblige à aborder la justice de manière non formaliste, non procédurale, mieux : de la penser sans le droit, voire sans l'État de droit. En cela, les *gacaca* ont expérimenté une forme de justice presque impensable pour des juristes occidentaux ; c'est peut-être pour cela que ceux-ci les ont condamnés dans leur grande majorité. Mais n'est-ce pas un pas dans la bonne direction, celle de la déseuropéanisation des réponses aux atrocités de masse ?

Décentrement et recomposition du monde

Notre monde est également en voie de désintégration morale du moins sur le sujet des droits fondamentaux. En effet, la réponse aux violences de masse faisait en 1945 l'objet d'un consensus qui a perduré tant bien que mal jusqu'au début des années 2000 si l'on prend, une fois encore, comme date symbole la création de la CPI. Nombre de pays signataires, on le sait parfois de leur propre aveu, ne signeraient plus aujourd'hui le traité de Rome. Une fois encore, l'évolution du monde est ambivalente car l'on a vu dans cette même période des sujets comme le réchauffement climatique cliver le monde selon des lignes inédites. Peut-être nous dirigeons-nous vers un monde pluriversel plutôt qu'universel, qui, songeons au climat ou aux pandémies, va peut-être se réunir sous de nouvelles formes pour affronter de nouveaux défis. Sans oublier l'essentiel de la dignité humaine. C'est en tous les cas, l'espoir qu'il faut former.

Propositions

Le monde nouveau qui se profile, en tension entre des formes intégrées comme l'État et d'autres décentralisées comme les entreprises ou les réseaux sociaux, invite à repenser la prévention et la lutte contre les atrocités de masse. Celles-ci appellent une stratégie globale, c'est-à-dire qui intègre l'ensemble des acteurs intégrés ou désintégrés :

- la prévention doit continuer d'être confiée aux États sur lesquels elle pèse aujourd'hui mais elle doit aussi s'étendre aux grandes entreprises en promouvant les instruments permettant de mettre en cause leur responsabilité objective. Ceux-là existent déjà mais sont insuffisamment mis en œuvre ;
- elle doit être étendue à tous les citoyens et plus particulièrement à la multitude, c'est-à-dire à la masse des consommateurs. Ceux-ci ont plus d'influence sur les entreprises dont ils achètent les produits que sur leur États ; il faut donc développer une plus grande conscientisation de l'acte de consommation et, plus encore, de la manière de vivre. Celle-ci existe de plus en plus en matière d'écologie et de préservation de la planète, mais elle ne doit pas se limiter à l'écologie. L'objectif à long terme est une responsabilité élargie, non seulement à tous les gros joueurs du système (État, entreprises, institutions internationales), mais également à nous tous. Nous sommes les particules élémentaires de ce système, les seules qui

demeurent à la fin de ce processus de désintégration ;

- pour échapper au piège du présentisme et de l'urgence, la communauté internationale doit se donner les moyens de conserver toutes les preuves qu'offrent les réseaux sociaux et les nouvelles technologies de la communication, dans l'objectif de permettre à la justice de triompher le moment venu. Une authentique politique internationale, confiée à l'ONU ou à toute autre initiative, devrait être conçue en vue de la conservation des archives susceptibles de fournir des preuves (la Syrie sera un test).

From the Prevention of Genocide and the Responsibility to Protect to the Prevention of Atrocities

Andrea Bartoli[1] and Mauro Garofalo[2]

Prevention is at the forefront of the "International Convention on the Prevention and Punishment of the Crime of Genocide." Approved by the United Nations General Assembly on December 9, 1948, the Convention is very explicit about the goal of prevention[3]. Yet, while the text is clearly concerned about establishing genocide as a crime, specifying that it may occur during both war and peace times, and stressing the paramount responsibility of individual states in the matter, prevention is mentioned in the Convention in the context of a possible deficiency of the state.

Prevention is mentioned not only in the title of the Convention, but also in Article 1, "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish," clearly attributing the responsibility of prevention to the United Nations members signing the Convention.

The third mention of prevention in the Convention is the expression of the negative use of the verb: to prevent births within the group. This is considered by Article 2 as one of the five acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, and is intended as genocide. So, prevention is not unilateral, and it is not only positive. The Convention clearly identifies preventing births as potentially part of an act of genocide. Prevention is beneficial if it aims at preventing something wrong, evil, dangerous, or threatening. Unfortunately, something as positive as conceiving and giving birth can be constructed as something so dangerous to the political establishment that it must be prevented.

The fourth and last occasion in which the Convention mentions prevention is in Article 8, "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3." Once again, the responsibility lies with the United Nations Members signing the Convention. It is useful to note that all signatories of the Convention have the capacity to call upon the competent organs of the United Nations at any time. Article 8 is in that sense redundant, and the only occasion in which Article 8 was explicitly used was by United States Secretary of State Colin Powell in the context of the Darfur crisis.[4] Yet, the logic of the Convention is inescapable:

- the responsibility to prevent is fundamental to an effective response to genocidal threats and actions,
- the responsibility to prevent rest with the states, especially those signatories of the Convention,
- and the responsibility to prevent can be shared by states with the international community, especially through the United Nations system.

Prevention is dependent on knowledge and intentionality[5]. Humans can prevent only what they know and what they chose to prevent. Using the language of the Convention, it makes a difference if we are trying to prevent genocide or births. So, the question after the publication of the Convention was not only who was responsible to prevent genocide but exactly what was intended to be prevented. It is important to note that the Convention is far removed from conflict prevention language or concern.[6] War and peace are listed as two conditions under which genocide may occur. The reason for this is because the drafters knew well that killing members of a group, causing serious bodily or mental harm to members of a group, deliberately inflicting on a group conditions

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3 Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII

4 US Secretary Colin L. Powell Testimony Before the Senate Foreign Relations Committee Washington, DC September 9, 2004, retrieved from US Department of State Archive https://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm

5 Borislava Manojlovic, Tetsushi Ogata and Andrea Bartoli, (2016) Genocide Studies and Prevention: An International Journal: Vol. 9: Iss. 3: i-iv. Available at: https://scholarcommons.usf.edu/gsp/vol9/iss3/1

6 Alex J. Bellamy, Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent, The Stanley Foundation Policy Analysis Brief, February 2011

of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within a group, and forcibly transferring children of a group to another group have occurred in both war and peace time. Also, conspiracy to commit genocide, direct and public incitement to commit genocide, and attempt to commit genocide may occur well before any overtly violent act is recorded.[7]

From December 1948 until October 2005, there was a long hiatus which was described by some as willful neglect, as the efforts to understand, design, and implement national strategies to prevent genocide were minimal.[8] A few states have since signed the Convention (after the initial 41 Signatories there are now 152 Parties; but, today there are still more than 40 member states of the United Nations that are non-signatories). Significant loss of lives occurred in many countries, but a significant turning point occurred with the violence in Rwanda in 1994. Ten years later the United Nations member states were ready for a new consensus enshrined in the World Summit Outcome Document 2005.[9] In that text "prevention" is mentioned 14 times. Interestingly, as a verb "prevent" is used in Article 52. As stated in Article 52,"We reaffirm our commitment to the ultimate objective of the Convention: to stabilize greenhouse gas concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system."

Countries became aware that prevention must be applied to existing conditions and not only as reactionary responses to acts. The Outcome Document speaks about prevention in the context of urban dwellings using the expression "slum prevention" (which clearly has a very different meaning today during the COVID-19 pandemic which is lethally affecting so many slums around the world). Again, it speaks of prevention in the context of the commitment against HIV and AIDS. It stresses, "the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and solemnly renew(s) our commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world, as well as to strengthen the capacity of the United Nations for the prevention of armed conflict," and then specifically, "for conflict in the context of Africa, encouraging and supporting the African Union and sub-regional organizations to prevent, mediate and resolve conflicts with the assistance of the United Nations." The Outcome Document even suggests internal coordination among the Security Council, the General Assembly, the Economic and Social Council, and the Secretary-General. Unfortunately, the, "effective collective measures for the prevention and removal of threats to the peace," are not clarified but the intention is clear: collective action is possible and – at times – so necessary that if regional organizations should, "have a capacity for the prevention of armed conflict or peacekeeping," it should be placed, "in the framework of the United Nations Standby Arrangements System (170)." [10]

Significantly, prevention is mentioned in reference to the Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Article 94)[11] and – with greater emphasis – in relation to the role of women in the prevention and resolution of conflicts. The Outcome Document states: "We stress the important role of women in the prevention and resolution of conflicts and in peacebuilding. We reaffirm our commitment to the full and effective implementation of Security Council resolution 1325 of 31 October 2000 on women and peace and security." [12]Of interest are the references, "to prevent the recruitment and use of children in armed conflict, contrary to international law, by armed forces and groups, and to prohibit and criminalize such practices (Article 117)," and to, "preventing refugee movement from becoming a source of tension among States(Article.133)."

7 Benjamin A. Valentino, Final Solutions: Mass Killing and Genocide in the 20th Century, Cornell Univ Press, 2005

8 Dallaire, Romeo, Frank Chalk, Kyle Matthews, Carla Barqueiro, and Simon Doyle. 2009. Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities. Montréal: Montréal Institute for Genocide Studies, Concordia University.

9 A/RES/60/1, Resolution adopted by the General Assembly on 16 September 2005, 60/1. 2005 World Summit Outcome, 24 October 2005

10 A/RES/60/1, Resolution adopted by the General Assembly on 16 September 2005, 60/1. 2005 World Summit Outcome, 24 October 2005

11 A/CONF.192/15, Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects New York, 9-20 July 2001

12 S/RES/1325 (2000), Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000

The key reference to prevention – as relevant to mass atrocities – occurs in Article 138: "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability." Prevention is a responsibility of the state. Prevention of genocide, war crimes, ethnic cleansing, and crimes against humanity must be chosen, designed, implemented, realized, and verified in accordance with the stipulations of national and international law. We can argue that the 2005 consensus of the Outcome Document is truly a watershed moment through which it becomes clear that all four crimes (genocide, war crimes, ethnic cleansing, and crimes against humanity) are not only unacceptable in principle, but human-made sorrowful realities that must be prevented. Prevention is a responsibility that calls for intention. After reaching consensus on the 2005 Outcome Document, no state can exonerate itself. So, each state is called to accept that not only is no society immune from the danger of the four crimes, but that each state is responsible for their prevention.

The signing of the Stockholm Declaration,[13] the Regional Fora on Genocide Prevention,[14] the separate processes that led to the establishment of the Responsibility to Protect regional gatherings and national structures, [15], the establishment of the role of the Special Advisor on the Prevention of Genocide [16](formally supported by the Global Summit of 2005 in Article 140), and in 2008 the establishment of the Special Adviser of the Secretary-General on the Responsibility to Protect,[17] all indicate the emergence of a commitment and the need for more intentional expression of such commitment.

In an article entitled, *"Genocide and Atrocity Crimes," in Genocide Studies and Prevention* (December 2006),18 followed by, "The Merits of Unifying Terms: 'Atrocity Crimes' and 'Atrocity Law,'" (again published in *Genocide Studies and Prevention* April 2007),19 David Scheffer suggested the formulation "atrocity crimes" in reference to the four crimes listed in the 2005 Outcome Document (genocide, war crimes, ethnic cleansing, and crimes against humanity). Poignantly, the voice of victims could not be easily attributed to a single crime. Killing occurs. Humans become cadavers, but the attribution of the killings to any of the four crimes is a legal and cultural process of meaning attribution. The acts of victimization as told by the victims cannot be done by them alone. The voices of the victims speak of the horrors suffered by individuals due to the actions of other human beings. The systematic emergence of these voices through the work of Truth and Reconciliation Commissions around the world has profoundly transformed the way we can relate to human suffering. While very different in mandate and scope, these Commissions created the possibility for humanity to listen to the stories of the victims; this was a powerful reminder of the human responsibilities in such occurrences.

Natural disasters happen. Humans have been suffering from the consequences of natural disasters as long humanity has lived on this planet. But atrocities are different from natural disasters. They are chosen, planned, and executed by humans. They do not "just happen;" they are products of processes that require energy, power, and resources. Atrocities also happen because they are not confronted by effective counteraction. Genocide, war crimes, ethnic cleansing, and crimes against humanity require motivation, capacity, and a conducive environment to be actualized. The victims confirm, one after the other, that their suffering could have been avoided, and that decisions were made to let the horror happen and con-

13 The Declaration of the Stockholm International Forum on the Holocaust (or "Stockholm Declaration") is the founding document of the International Holocaust Remembrance Alliance and it continues to serve as an ongoing affirmation of each IHRA member country's commitment to shared principles. See https://www.holocaustremembrance.com/about-us/stockholm-declaration

14 The Regional Fora on Genocide Prevention where held in Buenos Aires, Argentina in 2008, Arusha, Tanzania in 2010, in Berne, Switzerland in 2011, and in Phnom Penh, Cambodia in 2013.

15 Alex Bellamy "Global Politics and the Responsibility to Protect: From Words to Deeds." (Routledge, 2011)

16 Press Release SG/SM/9197 AFR/893 HR/CN/1077 07/04/2004

17 S/2007/721, Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council

18 David Scheffer (2006) "Genocide and Atrocity Crimes," Genocide Studies and Prevention: An International Journal: Vol. 1: Iss. 3: Article 3.

19 David Scheffer (2007) "The Merit of Unifying Atrocity Crimes and Atrocity Law," Genocide Studies and Prevention: An International Journal: Vol. 2: Iss. 1 pp. 91-96

tinue. Yet, they also confirm that proper action did save lives. The literature on survivors and rescuers is of extraordinary importance because it testifies that, even in the most dramatic and almost impossible circumstances, humans have actually been able to save and protect the lives of others, and have even put themselves and their dear ones' lives in danger.

The 2005 consensus encouraged a movement towards the prevention of atrocities as a central pillar of state construction. States must be truly inclusive of all and recognize the primary role of society in its relation to the political structures. States are dynamisms of the polities in continuing evolution. The past becomes the source of understanding and motivation because prevention, too, requires motivation, capacity, and a conducive environment to be actualized.

With the establishment of the Global Action Against Mass Atrocity Crimes (GAAMAC), there is the emergence of an intentional space of commitment in which states and non-state actors can engage with one another in difficult learning that comes from sorrowful past experiences and provides the basis for courageous choices.[20] Humans have violently inhabited the planet long enough that memories of past atrocities are almost everywhere. Not only is no society or state immune, but almost each state and society can recall experiences of the past in which violence was used to kill, murder, oppress, suppress, eliminate, or exterminate humans. These sorrowful memories have no statute of limitations. We can still recognize them. We can still learn from them. We can still honor the victims and all learn for the good of all. Learning properly honors the victims. This learning is not just an individual, personal responsibility. States must learn as well.

Historical narratives are not irrelevant in the construction of functioning states. Prevention of mass atrocities is actually a very fundamental lens through which it is possible to evaluate the commitment of a state to its society and all its components. This learning is the premise to effective prevention. Among the many possible examples, it is appropriate to focus on Argentina, whose commitment to the prevention of mass atrocities is well established and follows serious work done in response to the violence of the "Dirty War" that ravaged the country from 1976-1983. After a 13-year amnesty, the trials of its leaders are back on track using regular courts, not specially established ones. Argentina was a democracy at the time of the violence. It had a long tradition of self-governance. It had well established political institutions and procedures. The case of Argentina truly confirms the disposition that no one is immune. Yet, the hope of true reconciliation and effective dealing with the past came as a gift of the Mothers of Plaza de Mayo, a group of activists who for years and years never let go of the memory of their dear ones made to disappear by the authoritarian forces.

What we see emerging is that prevention of mass atrocities will be the result of a new cultural awareness that prevention is possible, it actually is prescribed and must be a priority for each state. Each political entity has the responsibility of learn from the past of its own society and the world at large. Learning of this kind is a collective responsibility and the gathering, verification, and use of data must be carefully examined and maintained democratically. It is the task of each state, not only those who have recent memories of past atrocities. States now know that they can be held accountable (see Serbia in the International Court of Justice) if they do not take preventive measures, and everyone is now expected to make the prevention of atrocities a cornerstone of the state formation process.

How can humans learn after going through an extraordinarily bloody period? Is it possible to learn from the violent past? Is it possible to learn from atrocities? Learning is not condoning; it is not justifying; understanding is a duty and the necessary step to prevention. It must be repeated that the self-justification of the perpetrators is that they believe they are doing something right and necessary. States have the responsibility to prevent these erroneous and destructive claims often presented through the lens of protection and necessity.

20 GAAMAC is an inclusive network created in 2013 by States, civil society organizations and academic institutions with the support of theUnited Nations. It works collaboratively to provide a platform for the prevention of atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing). GAAMAC assists interested States in operationalizing the prevention of atrocities at the national level through information-sharing, enhancing links among and between States, civil society and academia, and peer-to-peer support. For more on GAAMAC's mission, take a look at its Founding Document.

Prévention des atrocités criminelles: la grande opportunité?

Adama Dieng[1]

L'ONU a maintes fois réfléchi à la nécessité de renforcer notre réponse collective aux crises. L'examen minutieux de l'action internationale face à la pandémie de Covid-19 en est un exemple clair. Si cette crise de santé publique constitue le plus récent défi mondial qui mérite un examen approfondi, d'autres défis urgents comme le changement climatique, la prolifération nucléaire ou le contrôle des armements, pour n'en nommer que quelques-uns, devraient également rester au premier rang des préoccupations de la communauté internationale. Il en est de même pour ce qui est de la prévention des atrocités criminelles (génocide, crimes contre l'humanité, crimes de guerre et nettoyage ethnique) que le secrétaire général de l'ONU a érigée au rang de priorité. À cet égard, il a jugé urgent et nécessaire de renforcer la détermination de la communauté internationale à combler l'écart entre les engagements pris par les États membres sur la responsabilité de protéger les populations contre les atrocités criminelles et la réalité de la perpétration présumée ou confirmée de ces crimes. En effet, mettre l'accent sur la prévention peut contribuer à promouvoir le dialogue politique et le consensus face à des situations préoccupantes. Cela constitue également une opportunité d'opérationnaliser notre programme collectif de prévention des atrocités criminelles.

L'impératif de la prévention

Comme l'a déclaré le secrétaire général, le manque de volonté politique reste le plus grand obstacle à la concrétisation de la responsabilité de protéger et de prévenir les atrocités criminelles. Les crises actuelles nécessitent une coopération internationale renforcée et des institutions multilatérales solides. Cependant, nous constatons un déclin troublant du multilatéralisme, tendance qui affecte également les efforts de prévention des atrocités criminelles. Bien qu'une absence d'unité internationale ne soit pas propre au programme de prévention des atrocités criminelles, l'écart s'est creusé entre les engagements pris et la réalité de la protection des populations vulnérables, avec un impact dévastateur.

Aux Nations unies, la prévention des atrocités criminelles n'est pas étrangère à l'effort global visant à donner la priorité à la prévention, élément clé de la vision du secrétaire général. En fin de compte, une action conséquente des États membres requiert que ceux-ci partagent la conviction qu'un renforcement de la prévention serait bien plus efficace que la gestion de futures crises.

La valeur ajoutée de l'action préventive – celle notamment de l'action préventive précoce – est souvent difficile à mesurer. Bien que l'action préventive soit plus susceptible de sauver des vies, il est plus difficile d'obtenir le soutien politique et les ressources nécessaires pour la mener à bien. Pourtant, un plus grand nombre d'options politiques est disponible dès que la situation est résolue et les points d'entrée sont susceptibles d'être plus élevés pour la myriade d'acteurs nationaux, régionaux et internationaux. Par ailleurs, les mesures liées à l'action préventive précoce sont souvent moins controversées politiquement et certainement moins onéreuses. Dans cette optique, donner la priorité à la prévention constitue une opportunité de renforcer la coopération multilatérale dans la prévention des atrocités criminelles, domaine dans lequel cet engagement fait déjà l'unanimité.

L'opportunité de la prévention aux Nations unies

Cette possibilité peut et doit être maximisée au sein des Nations unies, car la prévention recouvre tous les piliers du travail de l'Organisation. La prévention des atrocités criminelles est devenue plus explicitement intégrée dans des cadres plus larges de travail, comme le programme de développement durable à l'horizon 2030, le cadre de maintien de la paix, le programme pour les femmes, ou la paix et la sécurité internationales. Au niveau institutionnel, les organismes, fonds et programmes des Nations unies s'emploient à faire progresser cette intégration dans leur travail avec l'appui du bureau du conseiller spécial pour la prévention du génocide et la responsabilité de protéger (OSAPG).

Toutefois, il appartient aux États membres de traduire ces liens conceptuels en résultats concrets et autosuffisants au sein des organes intergouvernementaux du système des Nations unies. Comme l'a déclaré le secrétaire général, il est important de promouvoir au sein de ces différents organes intergouvernementaux une approche plus cohérente de la prévention des atrocités criminelles.

En raison de son rôle principal dans la promotion de la responsabilité de protéger, l'Assemblée générale

1 Ancien secrétaire général adjoint des Nations unies, conseiller spécial du secrétaire général pour la prévention du génocide.

demeure le principal forum de discussion pour ce qui concerne la prévention des atrocités criminelles et continue d'en fixer les priorités. Le secrétaire général a encouragé l'Assemblée générale à continuer de faire des recommandations sur les mesures pour prévenir les atrocités criminelles dans des situations spécifiques et, le cas échéant, établir des mécanismes appropriés pour les soutenir. L'Assemblée générale peut également examiner les options fixées par la charte des Nations unies pour inscrire à son ordre du jour les situations préoccupantes et recommander des mesures qui pourraient être prises en l'absence de décision du Conseil de sécurité sur de telles situations.

Le Conseil de sécurité joue un rôle inestimable pour répondre aux préoccupations liées aux risques de génocide, de crimes de guerre, de nettoyage ethnique et de crimes contre l'humanité. Ces responsabilités sont énoncées au paragraphe 139 du document final du Sommet mondial, où les États membres ont affirmé qu'ils seraient « *prêts à prendre des mesures collectives, en temps opportun et de manière décisive, par le biais du Conseil de sécurité, conformément à la Charte des Nations unies au cas où les autorités nationales ne protègeraient pas manifestement leurs populations contre le génocide, les crimes de guerre, le nettoyage ethnique et les crimes contre l'humanité et leur incitation* ».

La liste des situations figurant à l'ordre du jour du Conseil révèle un lien entre les préoccupations de cet organe en matière de paix et de sécurité et le risque d'atrocités criminelles ou de l'incapacité de les prévenir. Bien qu'ils ne soient pas toujours explicités, les facteurs de risque d'atrocités criminelles sont présents dans de nombreuses situations examinées par le Conseil. Il est essentiel que le Conseil considère les meilleurs moyens et outils à sa disposition pour prévenir les atrocités criminelles et renforcer la reddition des comptes pour de tels crimes. À cet effet, le Conseil devrait pouvoir utiliser l'autorité dont il dispose pour référer des situations graves à la Cour pénale internationale.

Dans la pratique, les délibérations du Conseil ne parviennent pas toujours à dégager des solutions, y compris dans des situations où il existe un risque imminent d'atrocités criminelles ou lorsqu'elles sont déjà commises. En adoptant en 2005 le principe de la responsabilité de protéger, la communauté internationale s'attendait à ce que le Conseil prenne des mesures opportunes et décisives pour protéger les populations contre les atrocités criminelles. Quinze ans plus tard, cette attente n'est pas encore réalisée. Aussi, des États membres ont-ils présenté différentes propositions visant à renforcer l'efficacité et la transparence des méthodes de travail du Conseil pour faire face à la menace et à la commission d'atrocités criminelles. Par exemple, en juillet 2015, le groupe interrégional sur la responsabilité, la cohérence et la transparence a appelé le Conseil à adopter un code de conduite volontaire, qui introduit une restriction du droit de veto. La France et le Mexique ont publié un mois plus tard une déclaration politique sur la suspension du veto dans les situations où des atrocités criminelles sont commises. Les deux initiatives visent le coût politique élevé de la non-action face au risque d'atrocités criminelles et ont suscité un soutien important depuis leur lancement.

Les délibérations du Conseil, bien que de nature intrinsèquement politique, se heurtent également à des aspects opérationnels qui peuvent incorporer des moyens d'atténuer les risques d'atrocités criminelles. Cette dynamique peut potentiellement faire avancer les efforts de prévention et, à son tour, augmenter l'espace de coopération. Par exemple, le Conseil de sécurité est chargé de veiller à ce que les mandats des opérations de paix soient adaptés au contexte et intègrent la fourniture de ressources adéquates. Les mandats de protection des populations doivent être robustes et réalisables, fondés sur une analyse claire et une stratégie politique. Il est également important que les États et les organisations intergouvernementales chargés de la mise en œuvre des mandats du Conseil de sécurité rendent compte au Conseil, afin de veiller à ce que ses décisions soient correctement mises en œuvre conformément à la Charte des Nations unies. Ces options peuvent accroître les possibilités de dialogue et d'accord entre les membres du Conseil, car elles peuvent accroître leur capacité de suivre la mise en œuvre du mandat et de remédier aux lacunes lorsqu'elles existent.

Le Conseil des droits de l'homme joue également un rôle très important dans la prévention des atrocités criminelles, dans la mesure où les déficits structurels de protection des droits de l'homme peuvent accroître le risque de leur survenance. Au Conseil des droits de l'homme, une plus grande importance peut être accordée à la prévention des atrocités criminelles dans le contexte plus large de la protection des droits de l'homme. Le processus d'examen périodique universel offre des points d'entrée

pour traiter les violations des droits de l'homme en tant que causes sous-jacentes de la violence qui, si elles ne sont pas traitées, pourraient entraîner des conflits ou des atrocités criminelles. De même, le mécanisme des procédures spéciales peut être utilisé pour prévenir de tels crimes. Le processus d'examen périodique universel, les rapports sur les droits de l'homme et les travaux des organes créés en vertu d'instruments relatifs aux droits de l'homme offrent d'autres possibilités de s'attaquer plus systématiquement aux facteurs de risque d'atrocités criminelles en complément des efforts nationaux. Par exemple, le Conseil des droits de l'homme peut aussi utiliser des missions d'enquête, des procédures spéciales et des commissions d'enquête pour soutenir la prévention des atrocités criminelles et la reddition des comptes pour les responsables de tels crimes.

D'autres organes intergouvernementaux des Nations unies s'intéressent également au programme de prévention des atrocités criminelles, notamment le Conseil économique et social (ECOSOC). La prévention des atrocités criminelles est fondamentale pour atteindre les objectifs de développement durable, en particulier l'objectif 16 sur la promotion de sociétés justes, pacifiques et inclusives. De même, la réalisation de ces objectifs contribue à renforcer la résilience contre le risque de survenance d'atrocités criminelles. Plus précisément, la réalisation de l'objectif de développement durable 16 nécessite une action déterminée pour « *réduire de manière significative toutes les formes de violence* », ce qui implique des mesures pour réduire le risque de la forme la plus systématique et destructrice de violence collective, les atrocités criminelles. Il est donc important d'examiner comment la coopération économique et sociale, y compris l'aide au développement, peut être mieux utilisée pour soutenir le renforcement des inhibiteurs nationaux d'atrocités criminelles, à savoir des capacités, des institutions et des acteurs particuliers qui contribuent à empêcher l'escalade du risque. Un accent particulier doit être accordé aux cibles 16.3 et 16.A de l'objectif 16 qui renforcent la nécessité de « *promouvoir l'état de droit* », d'assurer « l'égalité d'accès à la justice » et de renforcer la capacité nationale de prévenir les conflits, qui sont tous des inhibiteurs clés d'atrocités criminelles.

L'opportunité de la prévention : l'assistance internationale

Au stade précoce de la prévention, la responsabilité des acteurs internationaux consiste principalement à soutenir les efforts nationaux visant à créer une société résiliente aux atrocités criminelles et à soutenir les États qui ont besoin d'une telle assistance. L'appropriation nationale peut constituer un facilitateur important de la coopération et de la coordination internationales à l'appui des efforts locaux. À cet égard, la prévention constitue aussi une opportunité. Au niveau national, le renforcement de la résilience implique l'élaboration de cadres juridiques appropriés et la mise en place de structures et d'institutions étatiques légitimes, respectant le droit international des droits de l'homme et l'état de droit en général, et qui ont la capacité de traiter et de désamorcer les sources de tension avant qu'elles ne dégénèrent. Cela signifie la construction d'une société qui accepte et valorise la diversité et dans laquelle différentes communautés coexistent pacifiquement.

La configuration précise de chaque architecture nationale de prévention sera différente et devra tenir compte du contexte local et du cadre institutionnel. Il faut également noter que le secrétaire général a identifié sept principaux inhibiteurs d'atrocités criminelles qui, selon nous, peuvent aider à doter les sociétés de la résilience nécessaire pour prévenir les atrocités criminelles. Ces inhibiteurs ont été énumérés dans le rapport de 2014 du secrétaire général sur la responsabilité de protéger et comprennent : des secteurs de la sécurité professionnels et responsables ; des institutions impartiales pour superviser les transitions politiques ; des institutions judiciaires et des droits de l'homme indépendantes ; la capacité d'évaluer les risques et de mobiliser une action précoce ; la capacité locale à résoudre les conflits ; la capacité des médias à contrer les préjugés et les discours de haine ; et la capacité d'une justice transitionnelle efficace et légitime.

Aux Nations unies, nous avons également fait une distinction entre l'assistance préventive « structurelle » et « opérationnelle ». L'assistance structurelle vise à créer un environnement de résilience, à s'attaquer aux causes profondes des atrocités criminelles, à éliminer les principales sources de griefs et à créer des structures étatiques qui contribuent à entraver la commission de ces crimes ou à surmonter avec succès les périodes d'instabilité. Plus pré-

cisément, les efforts internationaux de prévention précoce impliquent que l'on s'attaque aux causes profondes des atrocités criminelles, y compris les schémas persistants de discrimination fondée sur l'identité, la privation économique et les disparités et faiblesses connexes dans les structures de l'État. L'objectif principal est la création de structures et d'institutions étatiques qui fonctionnent et sont légitimes, respectent les droits de l'homme et l'état de droit, fournissent des services de manière équitable et peuvent s'attaquer ou désamorcer les sources de tension avant qu'elles ne dégénèrent. L'assistance à la prévention précoce peut également être « opérationnelle ». Ce type d'assistance vise davantage à prendre des mesures délibérées pour atténuer les tensions et à mettre fin à la commission de crimes imminents ou en cours. Il vise aussi à assurer que les responsables des crimes commis répondent de leurs actes devant la justice, d'une part, et à prévenir de nouvelles violences, d'autre part. Les mesures opérationnelles comprennent également l'élaboration de mécanismes d'alerte précoce, d'évaluation et de réponse.

L'opportunité de la prévention : dimension régionale

Bien entendu, l'engagement international et l'unité partagés vont au-delà des Nations unies. La plupart des régions disposent désormais de leurs propres mécanismes régionaux ou sous-régionaux des droits de l'homme. Ces mécanismes devraient également être utilisés à des fins de prévention des atrocités criminelles. Bien que distinct, chaque mécanisme régional et sous-régional est bien placé pour renforcer les efforts de prévention des atrocités criminelles, en identifiant les risques potentiels, en recommandant des mesures et en appuyant le renforcement des capacités. Certains mécanismes peuvent également recevoir et examiner des plaintes d'individus ou de groupes, ou utiliser leur espace politique ou leurs mandats pour examiner telle législation nationale pertinente. Chaque État devrait envisager des moyens d'utiliser les capacités qu'offrent ces mécanismes régionaux et sous-régionaux pour renforcer et soutenir les procédures judiciaires nationales en matière de prévention des atrocités criminelles. Les États pourraient également envisager d'utiliser d'autres formes d'échanges entre pairs pour renforcer leurs efforts de prévention des atrocités criminelles et ouvrir des possibilités de soutien mutuel.

Conclusion

Si la prévention doit être priorisée, toutes les voies doivent être explorées pour identifier les risques à court, moyen et long terme, concevoir des réponses appropriées et rassembler les capacités nécessaires pour mettre en œuvre efficacement ces réponses. En ce qui concerne les efforts internationaux, l'accent mis sur la prévention peut être déterminant pour l'opérationnalisation de telles réponses. Dans tous les cas, il est essentiel que les décisions soient fondées sur des évaluations impartiales et sur des preuves des risques et qu'ensuite la stratégie la plus appropriée pour atteindre l'objectif de prévention collective soit envisagée. Des options politiques claires, basées sur une analyse solide, maximiseront l'opportunité d'une action de prévention coordonnée.

Aux Nations unies, une partie importante de cette responsabilité incombe aux hauts fonctionnaires dont le mandat consiste à fournir des évaluations, à identifier les préoccupations et à tirer la sonnette d'alarme. C'est notamment le rôle des conseillers spéciaux pour la prévention du génocide et la responsabilité de protéger, du Haut-Commissaire aux droits de l'homme et du secrétaire général adjoint aux affaires politiques. En fin de compte, cependant, ce sont les actions des États membres qui sont susceptibles d'avoir le plus d'influence sur la prévention des atrocités criminelles. Un regain d'intérêt pour la prévention peut contribuer à faciliter leur action collective.

The Responsibility to Protect at 15: Lessons Learned and Ways Forward

Karen Smith[1]

In a year that marks 15 years since the responsibility to protect was adopted at the 2005 World Summit, it is important that we use this opportunity to remind member states of what they made a commitment to. The Responsibility to Protect is concerned with protecting populations from the gravest human rights violations that could constitute genocide, war crimes, ethnic cleansing, and crimes against humanity. Sadly, despite the existence of the principle and repeated calls of "never again," atrocity crimes continue to be committed in many parts of the world. This has led some to say that the Responsibility to Protect has failed. I contend that it is not a failure of the principle itself, but rather of its implementation. This is primarily due to the fact that the gap between our words of commitment and the experience of vulnerable populations around the world has grown. This short piece will discuss some of the progress made since 2005 and consider some of the remaining challenges and opportunities for the future.

Fifteen years since its formal adoption, the responsibility to protect remains more important than ever, and considerable progress has been made in terms of its conceptual, institutional, and operational development. The United Nations Security Council has acted under chapter VII of the United Nations Charter to prevent violence that could result in atrocity crimes in Libya, Côte d'Ivoire, the Central African Republic, the Democratic Republic of Congo, South Sudan, and Darfur, amongst other places. Sadly, in many cases action was taken too late or mandates were not robust enough to prevent mass atrocity crimes from being committed. There has also been significant improvement in how peace operations prioritize the protection of civilians at risk, to how diplomats and mediators respond to the onset of violence, and to the establishment of different mechanisms to investigate and report on situations involving atrocity crimes and their imminent risk. The United Nations Office on Genocide Prevention and the Responsibility to Protect (OSAPG)'s 2014 Framework of Analysis for Atrocity Crimes is a useful tool by which to identify increased risk of atrocity crimes. A number of individual states and some regional organizations have integrated atrocity prevention into their work, and developed mechanisms to identify risk factors as part of early warning systems.

In response to Security Council inaction or lack of action, we have seen other parts of the UN system stepping in. For example, in reaction to Council deadlocks on Syria, the General Assembly created the International, Impartial and Independent Mechanism (IIIM), mandated to assist with national and international investigations and prosecutions of those responsible for atrocity crimes committed in Syria since 2011. Similarly, the Human Rights Council has created special investigative mechanisms, such as the one for Myanmar. Initiatives to limit the use of the veto by permanent members of the Security Council similarly reflects concerns about Council's inaction in the face of ongoing atrocity crimes being committed in a number of situations around the world. While there has been some progress, member states need to do more to use other parts of the UN system to actively prevent atrocities. This responsibility cannot be left solely in the hands of the 15 members of the Council.

With regards to conceptual and institutional development, the UN Secretary-General has published eleven annual reports on the responsibility to protect, and this year, for the third time, it is on the formal agenda of the UN General Assembly. More than sixty member states and two regional organizations - the European Union (AU) and the Organization of American States - have appointed a senior official as their responsibility to protect focal points to coordinate national activities, share good practices and spearhead international cooperation on the prevention of and response to atrocity crimes." If it is not clear, it could also be rephrased as "More than sixty member states and two regional organizations - the European Union (AU) and the Organization of American States - have appointed a senior official as their responsibility to protect focal points, tasked with coordinating national activities, sharing good practices and spearheading international cooperation on the prevention of and response to atrocity crimes.

Unfortunately, examples of successful prevention efforts are often overlooked in favour of those where the responsibility to protect is said to have failed. A notable case in point is the constitutional crisis in the Gambia in 2017. When the outgoing president, Yahya Jammeh, refused to hand over power to his elected successor and ordered troops to be deployed to act against the civilian population, the Economic Community of West African States (ECOWAS) de-

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ployed a mediation team. They were supported by the UN Security Council, the African Union (AU), the EU and key states. When the mediation failed, ECOWAS deployed a coalition of military forces to protect the civilian population. Eventually President Jammeh stepped down and ECOWAS forces remained to oversee the transition of power. As a result, violence and civilian casualties were averted. While this is a very clear example of the responsibility to protect in action, there are many ways that states build resilience and tolerance in their societies, including enacting laws to protect minorities, empowering women, addressing economic inequality, and strengthening the rule of law, to name a few. These activities should be recognized as constituting important acts of atrocity prevention.

Relatedly, we sometimes forget that accountability is also an important tool for atrocity prevention. Impunity for violations can exacerbate the risk of continued and future atrocity crimes. The protracted attacks against the civilian population in South Sudan during the civil war as well as the unacceptable suffering in Syria are tragic examples of the high cost of impunity. On the other hand, there are examples of where non-impunity and accountability has contributed to peace by holding perpetrators accountable. For example, in 2011, the International Criminal Court (ICC) arrested the former president of Cote d'Ivoire, Laurent Gbagbo, for his responsibility as indirect co-perpetrator for crimes against humanity committed during the post-election violence between 2010 and 2011. This was an important step in preventing further violence in the country. Likewise, the prosecution of several war criminals in the International Criminal Court and national courts in the Central African Republic and the Democratic Republic of the Congo contributed to peace efforts by delivering justice for crimes committed with impunity.

Despite these examples of progress, it is evident that challenges remain, particularly with regards to preventing atrocity crimes from being committed in the first place. In addition to the international community's lack of political will to unite around the principle of the responsibility to protect, prevailing misconceptions about what it entails remain. The first misconception relates to the idea that it is a western concept that has been imposed on the global South. This claim neglects its multiple origins, and the crucial contributions made by states from the global South to both the conceptual and operational development of the principle. The theoretical basis of the responsibility to protect stems from the scholarship of Francis Deng, a former Sudanese diplomat and later Special Adviser on the Prevention of Genocide, who formulated the notion of 'sovereignty as responsibility,' affirming that sovereignty is not simply about the rights of states. Deng's ideas were closely related to the peace and security architecture that was being developed at the time by the Organization of African Unity and later the AU, reflecting a shift from non-intervention to non-indifference. The genocide against the Tutsi in Rwanda, which the international community failed to prevent, played a catalytic role in the former United Nations Secretary-General Kofi Annan's challenge to member states to formulate an effective response to atrocity crimes. The essence of the responsibility to protect was also included in the African Union constitutive act under article 4h, which states that the organization can authorize collective action in or against a member state when the assembly determines that "grave circumstances" such as war crimes, genocide, and crimes against humanity exist.

Second, and closely related to the first misconception, is the understanding of the responsibility to protect as a foreign policy issue, primarily for western states. We must instead recognize that all societies are potentially vulnerable to the risk of atrocity crimes. One of the key lessons we have observed from past instances of genocide and other atrocity crimes is that these crimes do not happen randomly and, in the majority of cases, do not start with physical violence. Rather, they start with discrimination, with hate speech, incitement to violence and the dehumanization of "the other". Throughout the world, including in the United States of America and in Europe, we are witnessing a surge in anti-Semitism, anti-Muslim hatred, attacks against Christians, and intolerance targeting other groups simply because of their identity. Rising nationalist sentiments are often expressed through hate speech that targets vulnerable minority groups and refugees, a worrying development that should be of concern to all states.

The third and perhaps most persistent misconception is that the responsibility to protect is only about military intervention. While some states criticize the principle for being a guise for states wanting to use military means in other states, what we have witnessed in recent years is not over-eagerness to inter-

vene, but rather great reluctance of states to take any action, even in the face of grave crimes being committed. A regrettable outcome of the undue focus on military force is that our attention is distracted from the fact that the responsibility to protect is first and foremost about the prevention of atrocity crimes. It is only in the most extreme situations when member states are either unwilling or unable to protect their populations that collective action is needed. This action can take many forms, including all the peaceful and coercive instruments available under the UN Charter, as well as peacekeeping. Military action is the very last resort, and can only be authorized by a Security Council resolution, in line with the UN Charter and international law.

For many, the responsibility to protect remains associated with the intervention in Libya in 2011. Instead of continuing to dwell on the perceived failures of the Libyan case and dismissing the entire principle on the basis of a perceived failure of implementation, lessons from the Libyan intervention should be used constructively to further develop and improve the implementation of the responsibility to protect. One such area for development posits that when the Security Council invokes the responsibility to protect to authorize military action, there must be an agreement on accountability mechanisms that guide subsequent action. The Brazilian innovation of "Responsibility while Protecting" sought to address perceptions of misuse by developing criteria for use of military force, and also for holding the Council accountable when they authorize the use of force. This discussion should be revitalized.

In terms of promoting the implementation of the responsibility to protect, advancing a coherent and comprehensive approach to atrocity prevention across the UN system, regional organizations, and Member States is essential. Whether the issue being discussed is conflict prevention or responding to global pandemics, atrocity prevention must form an essential part of the discussion, including considerations of how certain actions could potentially exacerbate the risk of atrocity crimes being committed. The failure of the international community to protect the Rohingya in Myanmar serves as a stark reminder of what can happen when atrocity prevention is not prioritized.

To this end, in the Human Rights Council, for example, much greater emphasis can be placed on prevention of atrocity crimes in the broader context of human rights violations. As former UN High Commissioner for Human Rights Zeid Ra'ad al Hussein emphasized, "R2P is emphatically not just another agenda item but must guide the work on human rights". While some progress has been made in Geneva and New York to strengthen links between peace and security and human rights, much work remains to be done. By their very nature, atrocity crimes constitute the most serious human rights violations, and the responsibility to protect has its roots in existing international humanitarian and human rights law. Apart from the moral and ethical responsibility that we all have to protect populations at risk of atrocity crimes, both individually and collectively, there are also well-established legal obligations to do so, including the Convention on the Prevention and Punishment of the Crime of Genocide. As we have witnessed in practice, serious human rights violations are often precursors to the commission of atrocity crimes. The Human Rights Council and its mechanisms are often the first to raise the alarm on human rights violations and abuses and are therefore fundamental in contributing to the prevention of atrocity crimes. In addition, the Commissions of Inquiry, fact-finding missions and other mechanisms established by the Human Rights Council can through investigating the commission of atrocity crimes and pushing for accountability, contribute to preventing recurrence of those crimes or their continuation. As a case in point, the Commission of Inquiry on Syria alerted the international community to crimes committed outside of its own mandate when it reported on evidence of a possible genocide against the Yazidi population in Iraq. Similarly, the Universal Periodic Review and special procedures mandate holders are all in a unique position to identify and address concerns with member states about human rights issues and risk factors of atrocity crimes.

While progress has been made to connect the responsibility to protect more explicitly to human rights, further efforts are required to link it to other UN agendas, including the Sustainable Development Goals. The emphasis that the Secretary-General has placed on women is a case in point. The work to end inequality and discrimination and to protect and empower women and girls is mutually reinforcing with the responsibility to protect. We know that societies that tolerate violence against women and girls are more likely to experience gender-based atrocity crimes than those that do not. This year's Secretary-

General's Report on the Responsibility to Protect focuses on these linkages and identifies ways in which women and girls are affected by atrocity crimes, as victims as well as actors for prevention.

Beyond the UN system, regional and sub-regional organizations are often particularly well positioned to operationalize the responsibility to protect. These organizations can encourage governments to recognize their obligations under relevant international conventions and to identify and address sources of friction within their societies before they lead to violence or atrocity crimes. They can also play a critical role in helping to ensure the accurate and timely flow of country-level information and analysis to global decision makers, while lessening the risk of misinterpretation, misinformation and deliberate distortion. Many of these organizations are actively involved in a range of initiatives to prevent violence, including atrocities, all of which contribute to fulfilling their member states' individual and collective responsibility to protect.

Despite the important work that is being done by different actors to prevent the gravest of human rights violations from occurring, we are still witnessing daily incidences of atrocities being committed across the world. It is not the principle of the responsibility to protect that has led to failures by the international community to avert atrocity crimes in places like Myanmar, South Sudan and Syria, but rather a lack of political will and failure to agree on an effective and collective response by the international community. This state of affairs is not unique to the responsibility to protect, but is rather part of a troubling decline in international commitment to multilateralism and respect for international human rights, humanitarian and refugee law. In light of these challenges, while the responsibility to protect as agreed in 2005 puts the focus on state responsibility, atrocity prevention is everyone's business. Shared problems require collective responses. To close the gap between principle and practice, we must do a better job of tailoring our policy and practice to the specific threats and challenges faced by individuals and communities under risk of atrocity crimes, thinking creatively and harnessing the full capacity of our shared humanity to tackle the scourge of atrocity crimes.

The Role of United Nations Human Rights System in the Prevention of Atrocities

Mona Rishmawi[1]

Atrocity crimes are aggravated forms of human rights violations. They can give rise not only to state responsibility, but also to individual criminal responsibility.

This piece will argue that preventing serious human rights violations from occurring is vital to atrocity prevention. It will present examples from the United Nations human rights system to show how this system offers incentives and opportunities for integrating prevention into institutional frameworks, enabling the translation of knowledge into appropriate structures and behavioural change.

Understanding Prevention

Human rights violations and atrocity crimes stem from the same source often embedded in prejudice, negative stereotypes, and structural discrimination. When these acts are accompanied by policies producing systemic or widespread violence, the escalation may result in genocide, war crimes or crimes against humanity.

There are specific circumstances and factors that move violations into the criminal law sphere. Take as an example our human right to life. We can now understand it as an individual entitlement, "to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."[2] Under international criminal law, acts, including killing or causing serious bodily or mental harm, committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group can constitute genocide.[3] Murder when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, would constitute a crime against humanity.[4] Wilful killing may constitute a war crime, when committed against persons protected under the provisions of the relevant Geneva Conventions.[5] These are just examples of how under certain conditions an act can escalate from a human rights violation to an international crime. Preventing human rights violations, irrespective of the circumstances in which they occur, must therefore be at the centre of preventing atrocity crimes.

States are required to respect, protect and ensure the fulfilment of human rights. This entails that violations be prevented, through inter alia, the enactment of effective laws, policies, strategies and the establishment of institutions designed to serve human rights protection.

Prevention, therefore, needs deliberate action from States. It concerns specific conduct and means as the International Court of Justice (ICJ) has explained.[6] When interpreting obligations on the prevention of genocide, the ICJ considered that States are under the obligation, "to employ all means reasonably available to them, so as to prevent genocide so far as possible."[7] State responsibility is incurred if the State "manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide."[8]

Consequently, prevention has an institutional dimension as well as elements addressed to individual conduct. In the section below, we will discuss the institutional structures that are contributing to behavioral change in the case of torture.

Learning from Torture Prevention

There has been considerable international effort to eradicate torture. Torture is a crime under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT), and a war crime under the 1949 Geneva Conventions and the Rome Statute for the International Criminal Court. Under the Rome Statute, it can also constitute a crime against humanity or even contribute to the crime of genocide.

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2 General Comment 36, UN Human Rights Committee. CCPR/C/GC/36, paragraph 3.

3 Article 6 of the Rome Statute for the International Criminal Court (Rome Statute).

4 Article 7 (1) (a) of the Rome Statute.

5 Article 8 (2) (a) (i) and (c) of the Rome Statute.

6 ICJ, Bosnia and Herzegovina v. Serbia and Montenegro, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment 26 February 2007, paragraph 430.

7 Ibid.

8 Ibid.

The duty to prevent torture is clearly and practically spelled out in CAT. This Convention requires its current 169 State parties, to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction.[9]

The need for specific measures leading to changes in behaviour is stressed. Under CAT, States must ensure that education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, civil or military or medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.[10]

The institutional dimension is also addressed. CAT is explicit on the need to include the prohibition of torture in the rules or instructions issued concerning the duties and functions of any official involved in the deprivation of liberty.[11] There must be continuous review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture.[12]

Linking conduct and institutions, CAT adopts the vision that prevention can take place through accountability. Each State Party must ensure that there is a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.[13] Bringing the alleged perpetrators of torture to justice help in deterring others from following their path.

This approach of deterrence through accountability is a key human rights method reflected in the monitoring and reporting on human rights violations and in professional and independent fact-finding by other human rights bodies beyond those charged with monitoring the treaty. For instance, the UN investigative mechanisms, particularly Commissions of Inquiry and Fact-Finding Missions, address not only state responsibility but also individual accountability, sometimes even identifying suspected individuals and passing their names in sealed envelopes to other entities for possible future prosecution. The threat of being pursued in such a manner may have some deterrent effect and contribute to the non-recurrence of violations, transitional justice and accountability.[14]

Typical of human rights treaties, the establishment of a supervisory mechanism to oversee the implementation by States of their obligations is embedded in the treaty. CAT establishes a body of 10 experts elected by the States Parties, known as the Committee against Torture. States submit reports to this body on the measures they have taken to give effect to their undertakings under CAT. The Committee against Torture examines the reports and engages in a discussion with the concerned State. It then draws conclusions and recommendations, which are made public.

Additional measures to prevent torture can be taken under the Optional Protocol to CAT. Under this Optional Protocol, each of the 90 State parties[15] must put in place a national preventive mechanism (NPM). The main task of this national mechanism is to exercise oversight through conducting regular visits to places of detention.[16] For the NPMs to be effective, States must invest in them, guarantee their organizational and functional independence,[17] and provide them with the resources necessary to enable them to carry out their functions.[18]

At the international level, the Optional Protocol establishes the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Sub Committee is another international expert body focused on conducting analysis of the legal and administrative frameworks, procedural rights and guarantees of a fair trial.[19] At the invitation of States parties, the Sub-Committee also conducts visits to places of detention, meeting with detainees and others, and gathering relevant infor-

9 Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT).

10 Article 10, CAT.

11 Article 10 (2), CAT.

12 Article 11, CAT.

13 Article 12, CAT.

14 A/HRC/43/37, paragraph 31.

15 https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

16 CAT/OP/1/Rev1.

17 Ibid.

18 Ibid.

19 A/HRC/18/24, paragraph 44.

mation.[20] The Sub-Committee has so far visited 65 countries, sometimes more than once.[21] Its reports, containing its observations and recommendations, are either confidential, or public, depending on the circumstances, and aim at assisting States with the development of a measures and action plan to prevent torture.[22]

Another component of the international effort to eradicate torture is the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, mandated by the UN Human Rights Council.[23] The rapporteur intervenes with States with regard to individuals reported to be at risk of torture; undertakes fact-finding country visits to engage with State officials, civil society and victims, visits places of detention, and reports on these issues to the UN Human Rights Council and the General Assembly.[24]

Amongst the issues of focus pursued by the former Special Rapporteur, the late Sir Nigel Rodley, was prevention. In his 2001 report to the UN General Assembly, and based on his extensive experience, Sir Nigel stressed the importance of external supervision of all places of detention by independent officials, such as judges, prosecutors, ombudsmen and national or human rights commissions, and by civil society. Amongst the practical recommendations he suggested to prevent torture are the video-recording of interrogation sessions, the presence of the person's lawyer at such sessions, and support for monitoring by independent monitoring institutions, such as the International Committee of the Red Cross.[25] Sir Nigel argued against what he termed the "paradigm of opacity." He challenged what he termed "[]he basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view."[26] He said that this paradigm should be replaced by transparency.[27]

20 Ibid.

21 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical

22 Ibid.

23 https://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

24 Ibid.

25 A/56/156, paragraph 34.

26 Ibid, paragraph 35.

27 Ibid.

This robust system to prevent torture established by CAT and its Protocol, together with the expert special procedures of the UN Human Rights Council, provide an important model. Domestic and international systems can indeed work together in a deliberate and coordinated manner to prevent the occurrence of serious human rights violations and international atrocity crimes. It is naïve to consider, however, that the existence of such mechanisms would totally eliminate torture. Torture will exist, and can be exercised by rogue elements in certain States or indeed as a result of deliberate policies. When met with impunity, a State's unwillingness or inability to address this crime takes it to another level. States, and the individuals involved, try to hide their action through denial, but eventually, thanks to the comprehensive institutional and legal architecture around this crime, their action or inaction catch up with them.

Incentives for Prevention

Prevention succeeds when the environment is conducive to it. As we saw before, it needs awareness, persuasion, encouragement and exposure of States' policies, action and inaction. For prevention to work, States need to be able and willing to invest in it.

One human rights mechanism that embodies this dual function of the carrot and stick approach is the Human Rights Council's procedure, known as the Universal Periodic Review (UPR). The UPR was established in 2006, pursuant to the resolution establishing the Human Rights Council itself.[28] According to this resolution, the Human Rights Council must "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States."[29]

Through a State-driven process, the UPR enables the examination of the human rights record of each UN Member States by its peers, as well as by civil society. Each State is reviewed every 5 years with 42 States

28 UN General Assembly resolution 60/251.

29 The UPR was established a year later through what is known as the institution-building package providing a road map guiding the future work of the Council. One of the key element, establishing the Council itself, (A/HRC/RES/5/1) and further refined through subsequent resolution 16/21 and decision 17/119.

undergoing this process each year. The reviews are based on information provided by the State itself in the form of a national report. The Office of the UN High Commissioner for Human Rights (OHCHR) also complies information on the concerned State as contained in the reports of Special Procedures, human rights treaty bodies, and other UN entities. Other stakeholders including national human rights institutions and non-governmental organizations also submit information on the State, which are also compiled in a report prepared by OHCHR.

During the review, all States, large and small, are given equal time and are subjected to the same procedures. The reviewed State has the opportunity to declare what actions it has taken to improve the human rights situation and to overcome challenges it may have faced to achieve this goal. Other States offer their comments and make recommendations. There are possibilities of sharing experiences and promising practices. While much diplomacy is tossed around, often clear and pointed messages about areas that need improvement are delivered.

Following the review, a Final Report is prepared for each State, listing the recommendations to be implemented before the next review takes place. Technical assistance is often offered by the UN system to help in implementing the recommendations.[30] OHCHR produces country matrices, which list recommendations adopted during the previous cycle, clustered by theme. After the review, the High Commissioner for Human Rights sends a tailored letter to each State specifying some priority recommendations. States are encouraged to give these tools due regard and consideration. [31]

The universality and inclusiveness of the UPR make it uniquely placed to play a pivotal role in prevention.[32] States try to avoid the embarrassment of being publicly called out on their practices in a diplomatic setting. In anticipation of UPR, some States try to strengthen their national human rights system by acceding to human rights treaties, passing human rights-oriented laws, strengthening their national human rights institutions and other oversight mechanisms, and engaging with the OHCHR to seek advice and assistance.

As the UN Secretary-General recently pointed out, the UPR is a tool that unifies the UN system and provides an important entry point for collective action.[33] Its potential in playing a role in prevention can further be enhanced. A recent study carried out by the UN Human Rights Council referred in particular to the need to have "more informed, precise and results-based recommendations" to arrive at a systematic approach.[34] As examples of measures that could enhance coherence, the study specified "the clustering and prioritization of recommendations, during the review and when developing national implementation plans."[35]

Perhaps the most important potential for the UPR's role in prevention lies in its integration in the implementation of the Sustainable Development Goals (SDGs). Reports from the UN human rights system, including UPR outcomes should be integrated in national development planning and reporting. This is an objective that the UN system is pursuing. The practical implications of such an approach is an investment in addressing the root causes of grievances, which are often articulated in security, development and human rights terms. Here SDG 16 plays a vital role with its focus on addressing structural obstacles in the face of achieving just, peaceful and inclusive societies. Building resilience against atrocities is an essential tool in their prevention.

30 https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx

31 Supra, note 14, paragraph 29.

32 Ibid, paragraph 28.

33 "The Highest Aspiration: A Call to Action for Human Rights Call to Action", at 12. https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Asperation_A_Call_To_Action_For_Human_Right_English.pdf

34 Supra, note 14.

35 Ibid.

Conclusion

We have tried to show in this piece how the two endeavours for humanity: human rights protection and atrocity prevention can be connected strategically and operationally. Establishing a robust architecture to prevent atrocity crimes requires the full investment and utilization of the human rights system. This system revolves around principles, including legality, transparency, accountability, and national ownership. These principles are also key in the prevention of atrocities. The shared purpose of preventing human rights violations and atrocity crimes is to uphold the worth and dignity of each and every human being.

Prevention in Public Health and Atrocity: A Comparative Approach to Early Warning for Early Action

Jennifer Leaning[1]

Introduction

When health threats to individuals or populations are imminent, the science that underpins our knowledge of human health clearly recommends early intervention to improve the probability of good outcome. Such action is known as prevention and, in the case of populations, constitutes the principle strategy of public health. The field of public health has developed strategic stages of prevention depending upon evaluation of the nature of the threat. To support this assessment, experts in public health have built systems of early warning linked to stages of early action that might be required.

An understanding of how public health identifies, monitors, and then acts against threats may support a comparison with atrocity prevention. In both instances, a threat may begin with barely discernible indicators and then escalate in somewhat predictable ways to cause considerable and enduring harm.

The focus of public health

Public health as a discipline examines human health and behavior as an interaction with place, people, and disease. Interest in trying to support human life and understand why people die dates back to the ancients but public health as we know it today has a short history. Its modern form, wherein it deploys methods to analyze data and organize information, has evolved from the mid-19th century focus on the endemic communicable diseases (cholera, plague) which affected the increasingly dense populations of the industrializing cities of Britain and northern Europe.

Geographical place—or the relations of populations to place—has been a central parameter of public health analysis. The influence of Hippocrates (wind, water, humors)[2] has profoundly shaped our current medical and public health understanding that where one lives and works has great bearing on one's physical and mental health. Socio-economic status has also evolved as a pivotal independent variable in public health understanding, beginning with recognition that hunger and squalor promote death by disease.[3] In its early phases, public health was principally preoccupied with deaths--the actual numbers and then the mortality rate within a specified population.

In its evolution over the 20th century, public health has embraced the entire field of demography, tracking all parameters of death rates, birth rates, and migration in relationship to the public health of given populations. It has also expanded its gaze to the influence on health of socio-economic conditions, driven first by the extensive work on the social determinants of health.[4] More inclusive recognition of what factors affect the human condition have evolved under social pressure, such that analysis of of gender, culture, race or ethnicity are to some extent beginning to be included in many public health analyses.[5] Fundamental concepts of place in public health have in the last 40-50 years incorporated environmental conditions[6] and, more recently, climate change.[7]

Epidemiology is the core method of public health, using scientific and statistical methods to track and analyze data on disease or health conditions across a specified time and location.[8]
Public health relies on these methods to define and understand the timing, distribution, and potential

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2 On air, water, and places. Hippocrates. Translated by Francis Adams. The internet classics archive. http://classics.mit.edu/Hippocrates/airwatpl.mb.txt

3 Woodham-Smith, C. Florence Nightingale. Atheneum. New York 1983: pp 111-179.

4 Wilkinson R, Marmott M, eds. The social determinants of health. The solid facts. World Health Organization. Geneva, 2003.

5 Berkman L, Kawachi I, eds. Social epidemiology. Oxford University Press. Oxford, 2000.

6 Dignam T, Kaufmann RB, LeStourgeon L, Brown MJ. Control of lead sources in the United States, 1970-2017: Public health progress and current challenges to eliminating lead exposure. J Public Health Manag Pract. 2019Jan-Feb;25(Suppl 1 LEAD POISONING PREVENTION): S13-22. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6522252/

7 Haines A, Kovats RS, Campbell-Lendrum D, Corvalan C. Climate change and human health: Impacts, vulnerability and public health. Public Health 2006;(7):585-596. https://www.sciencedirect.com/science/article/abs/pii/S0033350606000059

8 MacMahon B, Pugh TF, Ipsen J. Epidemiologic methods. Little, Brown and Company. Boston USA, 1960: 3-9.

causal or influential relationships among the following: death rates, birth rates, rates of communicable disease and chronic health conditions (NCDs), environmental conditions, and changes in health status.

Prevention is the main strategy of public health. Beginning with the field's original focus on diseases of crowds (long before the germ theory of disease had been established), public health practitioners realized that to stem these epidemics it was necessary to stop them very early, or even better to create conditions where the epidemic would not recur. Hence the need for what is called primary prevention--to anticipate what is going on that might prove harmful to a population and then intervene early and appropriately to make sure this harmful element does not arise or if it does occur is stopped at once. Other terms in this continuum of prevention strategy are a) secondary prevention (measures to stop the condition from spreading and immunize or otherwise protect those who have not yet fallen ill); and b) mitigation (strategies to keep the condition from spreading and reduce its harmful effects).[9]

Public health systems for early warning

An effective public health system must rely on reporting and analysis of relevant data from a wide variety of actors and sources. The development of these data sets is a most complex historical and social process in every country.[10] This enterprise usually takes years to establish and requires public funding along with commitment from the public to understand what is happening to their collective lives.

The mission of a national or state public health enterprise is to fulfill two imperatives on behalf of the people within a specified location or jurisdiction. The first is to ensure that measures are in place to protect the lives of people as they carry out their daily activities (such as clean drinking water, restaurant inspections, and seat belts). The second is to track disease and illness in the population, signal a concern when the tracking systems indicate a departure from baseline conditions, and construct and institute appropriate preventive or mitigating actions.

Mandatory reporting of routine data to public health authorities at various levels of authority provides the basic information for meeting the first imperative. Active monitoring of these data and surveillance of key activities provides the information to meet the second. Systems of early warning and early alert are based on the data deriving from these processes.

Determining what it is that must be measured in these systems and setting up reliable key indicators requires forging a political and social consensus that ebbs and flows over years and decades. This process may become politicized through resistance from im-

9 Clark DW, MacMahon D. Preventive medicine. Little, Brown and Company. Boston USA, 1967:4-5.

10 In the United States, the US Bureau of the Census was the first national agency to gather population-based data, in 1850. This decanal activity did not directly count those who entered or left the population in the intervening decades but only those who were present, noted and recorded every ten years. Although there is no provision in the US Constitution for the federal government to maintain more detailed records of the population, it encouraged a vital registries system to be undertaken by states. Accordingly, in the 1930s, daily or weekly records of births and deaths began to be established at the state level. It was systematized by national guidelines issued during the early 1940s, as concern grew about the risk of epidemic disease during wartime. As social issues required more information about both births and deaths, from the 1970s on the US federal government issued more detailed official reporting forms and the various state and local agencies were expected (which they did) to comply with the added administrative burden of collecting more data from a wide array of sources. Hetzel AM. History and organization of the national vital statistics system. Major activities and developments 1950-1995. Includes reprint of "Historical Organization of the Vital Statistics System" to 1950. National Center for Health Statistics. Centers for Disease Control and Prevention. US Department of Health and Human Services, 1997. pp. 1-26. https://www.cdc.gov/Nchs/data/misc/usvss.pdf

plicated parties (polluting industries) or contending moral or religious groups.[11]

Monitoring systems (systematic observation of ongoing events) are built into regular reporting mechanisms of government agencies. Examples of surveillance systems (oriented to targeted monitoring of certain sites, conditions, behaviors) include police reports, mandatory reports from emergency departments regarding certain presenting conditions, traffic deaths by province or state, and reports of disease outbreaks in schools or communities.

Sentinel events are those that spring out as an unusual increase or decrease in the graphs and tables of monitoring data, such as sudden departures from the expected incidence of a condition or a behavior. Such events include sudden high numbers affected by a food-borne illness in a particular locale; or an uptick in number of emergency department visits for "flu" (signaling the start of influenza season or some other respiratory illness); or marked departure from trend lines, such as sudden increase in deaths of young men (the first indicator for the HIV/AIDS epidemic beginning in San Francisco in the early 1980s).[12]

Identification of structural and social risk factors for particular illnesses or diseases become controversial when this information is tracked by location. In many political systems, where geographically separate communities of different ethnicities or race may have very different views of the world, information on these issues may identify responsible parties as well as reveal abiding social vulnerabilities.

What is monitored and acted upon in a public health system directly relates to what the government is interested in promoting and finding out. In well-run democratic systems, the interests of the general public are also addressed. Many monitoring systems in untroubled situations show no change or a decrease in harmful trends. If a society or locality slips into internal or external difficulties, however, the shift in patterns will be evident and should, if the monitoring and surveillance systems are functioning properly, trigger an early warning alert.

Legal and normative supports to public health early warning

Public health interacts with the general public through a process of legal constraints and obligations and a diffusion of individual and group behaviors reinforced though social norms.[13]

Public health law and regulation

Public health governance through law and responsible implementing agencies, such as the local Boards of Health set up in many European and US cities by the end of the 19th century, are fundamental to formulating evidence-based measures that establish coherent and accountable public policy. These activities rely on social acceptance but can when necessary find resort to sanctions and punishments encoded in local, national and international law.[14] In federal systems of government, public health obligations and functions may be closely held at the federal level or delegated to the states or regions. In the US, many crucial aspects of public health regulation have been delegated to the states.[15]

The aim of public health law and regulation is to influence or mandate aspects of public behavior based upon the best scientific understanding of the factors that impinge upon human health. The law is in the background with required childhood vaccinations prior to entering school, rabies vaccinations for sus-

11 Heymann J. Health and social policy. In: Social Epidemiology, Berkman and Kawachi, eds, pp 368-382.

12 Pneumocystis pneumonia—Los Angeles. Morbidity and Mortality Weekly Report 1981:30;250-252. As cited in: Piot P and Quinn TC, Response to the AIDS Pandemic: A Global Health Model. In Readings in Global Health: Essential reviews from the New England Journal of Medicine, eds Hunter DJ and Fineberg HV. Oxford University Pr. Oxford 2016:53-67. Luce JM. A strange new disease in San Francisco. A brief history of the city and response to the HIV/AIDS epidemic. Annals of the American Thoracic Society September 17, 2012. Pub Med 23607844. https://www.atsjournals.org/doi/full/10.1513/AnnalsATS.201208-039PS

13 Gostin L. Public health law: Power, duty, restraint. University of California Press, Berkeley, CA: 2000.

14 World Health Organization. Strengthening health security by implementing the International Health Regulations (2005). States Parties to the International Health Regulations (2005). https://www.who.int/ihr/legal_issues/states_parties/en/

15 For instance, in signing the 2005 treaty on International Health Regulations (in 2007), the US mission to the World Health Organization (WHO) in Geneva forwarded a signing letter of reservations, noting that some of the responsibilities required of the country were matters for states to decide, although the federal government would urge adoption across the country. https://www.who.int/ihr/usa.pdf?ua=1

ceptible animals and mandatory reporting requirements in emergency departments for gastro-intestinal illness acquired in the community, dog bites, gunshot wounds, child abuse, domestic abuse, and elder abuse.

With breakdown of regulation and guidance on behavior or protection, one can anticipate population-based spread of infectious/contagious disease but also rising incidence of chronic disease, high-risk behavior, or morbid conditions. These laws, regulations, and policies are invisible to the ordinary person if things are progressing well. But if not, we see outbreaks of food-borne illnesses, epidemic disease, or widespread contamination of water, air or land.

Public health norms

The work of maintaining public health also relies on a normative culture diffused throughout society, beginning at home and reinforced at schools and monitored by officials at all levels. These norms exert strong preventive pressure on society, as can be seen by pervasive enforcement of such activities as insisting on hand-washing; covering one's mouth when coughing or sneezing; or stigmatizing spitting in public. These norms are usually first instilled at home but reinforced in a child's first encounter with group life—the school system.

The public health systems described here are found in varying degrees of reach and enforcement throughout the world. A key big difference among societies, however, is in the capacity of national and local governments to issue effective early warning. Often lacking is the consistency of funding streams and stability of administrative governance to create and sustain the data systems and set up the analytic capacities to monitor and discern negative trends.

Limitations to the public health approach

Preoccupations

The field of public health is constrained by its origin history, in that the topics of concern began with a focus on sanitation and infectious disease and its rules of engagement were formed by a small educated elite. This aspect has been retained, in that its concerns, data-gathering strategies, and responses are driven by political and social priorities which may not be in tune with many segments of an increasingly diverse population. For many reasons (such as funding and political will) surveillance is not sufficiently nuanced to gather information on population subsets and more preventive and early warning attention is given to issues affecting the majority.[16] In the US, influential political and economic actors have restricted regulations on environmental protection reduction and mitigation of toxic hazards.[17]

Public health authorities and analysts at times are reluctant to respond to what they may perceive as short-term, insignificant, or even politically inconvenient trends.[18] Conversely, in the 20th century, the public health community (with a few exceptions)[19] has also been slow to discuss the public health aspects of vast geo-political issues, such as war, nuclear war, migration, or climate change. Only after years of mobilizing are community and scientific challenges based on human rights dimensions of public health practice beginning to affect official understandings of the health impact of major disparities and inequities.[20]

Crisis leadership

A major public health emergency, such as an epidemic, constitutes a scientific and public health concern but also requires engagement with national actors at the level of policy and law. Funds for emergency measures and permissions to enact emergency public health law must be sought from local, state, or federal sources, depending upon jurisdictions. Wise political leaders when confronted with disasters and public health emergencies are counseled to let the

16 Krieger N. Discrimination and health. In: Berkman and Kawachi, eds. Social Epidemiology.

17 Pinko N, Mulvey K, Ekwurzel B, Frumhoff P, Hurd N, Sideris J. The 2018 Climate Accountability Scorecard: Insufficient progress from major fossil fuel companies. Union of Concerned Scientists. https://www-jstor-org.ezp-prod1.hul.harvard.edu/stable/pdf/resrep24129.pdf?ab_segments=0%2Fbasic_search%2Fcontrol

18 Trust for America 's Health. Pain in the nation: The Drug, alcohol and suicide crises and need for a national resilience strategy. 2017. https://www.tfah.org/report-details/pain-in-the-nation/

19 Early exceptions include organizations of physicians and health workers mobilized against nuclear war and those in organizations to promote health and human rights. Examples are US Physicians for Social Responsibility, International Physicians for the Prevention of Nuclear War, and Physicians for Human Rights.

20 Chapman AR. The social determinants of health, health equity, and human rights. Health and Human Rights 2010;12 (2):17-30.

scientists or other experts guide the fundamentals of the response and interact directly and decisively with the public and the press.[21] When these precepts are not followed, at a time when great clarity is required, misinformation and misdirection may befuddle policy makers, confuse the general public, and potentially introduce further delays in crafting early warning and protecting people from harm.

Prevention of mass atrocity

There are important similarities and differences in the ways that the atrocity prevention community approaches early warning.

Atrocity prevention relies on a long history of experience with this phenomenon and a short history of attempts to intervene against it. Devastating mass atrocities and genocides in the 20th century prompted sustained collective action to establish an international regime of treaties, law, and enforcement in order to prevent and prosecute these actions as among the most criminally violative of international norms of humanity, solidarity, and peace.[22] The focus on prevention is what links atrocity to public health.

Atrocity inflicts harm to individuals and groups as do diseases. Atrocity arises from the behavior of individuals or groups interacting with stresses within society to inflict a wide spectrum of harm on those deemed "the other." These targeted individuals and groups are blamed by the powerful majority (or, in some instances, the minority) for being "responsible" for the experienced stresses. These atrocity behaviors have acquired through time stereotypical features that can be observed and organized into patterns of threat and escalation, key risk factors, and key precipitating events. It is well understood that an atrocity crime such as hate speech, once fully underway, can explode into mass violence against the targets of that speech. Preventing that escalation by intervening early is a core tenet of the atrocity prevention community.

With atrocity prevention, the processes of specifying the nature of the harms and interventions and the systems for monitoring, extending surveillance, and establishing modes of intervention have strong parallels with the tasks of public health prevention. The expertise required to become alert to these patterns and assemble a targeted strategy of intervention makes the prevention process a subject for social scientists, historians, and legal experts and diplomats. The standing to support well founded interventions derives from government and international law.

Differences

Public health concepts derive from the science of human health and the collection and analysis of numerical and empirical data. The field of atrocity prevention cannot yet rely on a science of human hatred, although much is understood about the mechanisms of individual and group fear, threat, aggression, and grievance that feed into the creation and propagation of atrocity.[23] Nor has the field fashioned with sufficient precision the core features of escalation of hate speech and hate action.

The alert and analytic processes of these two fields are similar but not the same. The human pathway to disease is relatively universal, the analytic systems are relatively straightforward, and the preventive actions at strategic and operational levels are similar across nations. Yet it has taken decades for countries across the world to build accountable and robust public health systems for prevention and early warning.

In contrast, atrocities arise in markedly different social, historical, and economic circumstances. Recognizing the early indicators of escalation in hate speech, for instance, requires understanding the particularities of indicators (vocabulary used, mobilization avenues, leadership styles), the underlying social and economic stressors, and previous atrocity patterns within that society. The data gathering process (by which to construct patterns and trends) is not well developed in many countries of the world. Much more work needs to be done to establish a common language and then agree on what early indicators and escalation pathways prove most pivotal in raising immediate and productive alerts and ac-

21 Champion HR. A planning model for disaster response. In Health and medical aspects of disaster preparedness, ed Duffy JC. NATO Committee on the Challenges of Modern Society. Plenum Press. New York: pp 31-37.

22 Robertson G. Crimes Against Humanity: The struggle for global justice. The New Press. New York 1999. Schabas WA. Genocide in international law: The crime of crimes. Cambridge University Press. Cambridge, UK. 2002.

23 Osiel M. Mass Atrocity, collective memory, and the law. Transaction Publishers. London, 1997.

tions. As it is, the task of identifying and then assessing hate speech in a given country or region of the country requires specific expertise and considerable courage, since national leaders and power brokers may themselves be implicated in the propagation of atrocity crimes.

Yet surprisingly the field of atrocity prevention has progressed rapidly in terms of legal architectures and definitions of grounds for intervention.[24] The task of atrocity prevention has two important advantages over public health prevention. Atrocity is generally a group activity; it has generalizable features across nations and through history; and its manifestations can be generalized into patterns of atrocity escalation—all of which facilitate a process of early warning. Consequently, specifying the model of escalation and identifying the risks, indicators, and triggers to be tracked is a comparatively easy analytic task compared to the project of public health prevention—and much headway has been given to this enterprise by the 2014 publication of the UN Framework of Analysis for Atrocity Crimes.[25]

The difficulty remaining is that until local actors are trained in pattern recognition, by the time a given atrocity has risen to the local level of ascertainment, the warning may itself arise too late. For the warning to arrive early, a fine-grained, carefully tuned local apparatus has to be established, linked to state action. To support this early response there would need to be, at local levels throughout the nation, a prior agreement on pattern recognition (what occurrences are probably benign but require surveillance; what events or trends are harmful and should trigger an alert). To progress further on atrocity prevention, the challenge ahead is to build local and national infrastructure (such as the recommended National Focal Points) that can benefit from the positive support provided by international activities of atrocity early warning.

Second, the task of atrocity prevention has great support in international law, the United Nations, and a host of international agencies and civil society organizations. Legal definitions of major atrocities establish their global criminal status even when arising solely within one nation state. The diplomatic and legal pressures exerted by external states parties to these various conventions and treaties against mass atrocity crimes carry potentially great relevance to strategies of early warning and early intervention with regard to offending states parties.

In contrast, public health systems have grown up within the nation state and are distinctly shaped by its priorities and assets. In powerful nation states, local response to early warning signs is now routinized and generally appropriate. Yet when higher levels of authority are required, as with an epidemic or pandemic, then the isolation of national public health systems from dynamic international influence means that what happens internally (and indirectly may have negative consequences for other nation states) is entirely dependent on the whims of national elected leaders. The efforts of international agencies may also in turn be undermined by unilateral state action.

Conclusion

This preliminary inquiry reveals important and constructive parallels between these two complex systems designed to protect people from significant forms of harm. Those at risk in public health emergencies may be members of the general public or those made vulnerable through social determinants. In atrocity prevention, membership in a stigmatized group is always the dominant risk factor. The social factor in both settings is the crucial variable.

Public health and atrocity prevention mobilize different content measures for early warning and early action but sounding public and targeted early alerts is a shared key strategy. The need to understand the parameters of what is at stake are paramount for each enterprise.

With public health prevention and even more so for prevention of atrocity, grassroots commitment is essential to contain early instances of atrocity and to sound the alert to the national and international community. If norms of tolerance and mutual accountability are diffused within communities, then, as with public health prevention, it is possible to mo-

24 Rosenberg SP, Galis G, Zucker A, eds. Reconstructing Atrocity Prevention. Cambridge University Press. New York 2016. Rotberg RI, ed. Mass atrocity crimes: Preventing future outrages. World Peace Foundation. Brookings Institution Press, 2010.

25 UN Framework of Analysis for Atrocity Crimes. United Nations. 2014. https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf

bilize help while engaging in mitigating action at the same time.

State-based systems of surveillance, response, and accountability in mass atrocity prevention are not mature but could look at the public health systems for examples of a top-to-bottom approach (government commitment, national law, local capacity, and timeliness of systems for raising alert).

The negative, shameful valence of mass atrocity carries with it a reluctance on the part of the state and even of the international community to acknowledge the problem and take appropriate measures. In public health, populations demand accountability for the system's failure to act or failure to act robustly. A public health emergency is a usually domestic embarrassment, not an international crime. Yet when out of control, as in a pandemic, then the behavior of individual nation states may well come under withering international scrutiny, as has been the case for the several viral pandemics of the 21st century.

Top on the list of recent lessons learned is that the current pandemic, a failure of public health early warning and early action, reveals deep social and economic fissures in all our societies. These fissures have opened and been shown to be death-dealing. The lesson for public health is that an uncontrolled pandemic can begin to resemble a mass atrocity. It signals systems that are inadequate or broken or both and extraordinary measures are required to combat it. As Rudolf Virchow demanded in his 1848 reports on conditions arising from the wars in Central Europe: "Don't crowd diseases point everywhere to deficiencies of society?"[26]

26 Virchow, R. I. The epidemics of 1848. (Read at the annual meeting of the Society for Scientific Medicine, 27 November 1848. Archiv. F. pathol. Anatomie. u. Physiolgie u. f. kiln. Medicin. 1849. Vol. III, No. 1, p. 3). In: Rather LJ. ed. Rudolf Virchow. Collected essays on public health and epidemiology. Vol 1. Science History Publications. USA. Division of Watson Publishing International, Canton, MA. 1985. Excerpted from pp. 115-122.

Récits de pandémie: la revanche de la science

Victor de Currea-Lugo[1]

La multiplicité des points de vue est considérée comme quelque chose de positif, une revendication de la différence et un appel à la tolérance. Mais au risque de paraître intolérants, les débats scientifiques ne peuvent pas, sous prétexte de multiculturalisme, valider toutes les positions, ni applaudir à l'unisson des discours contradictoires. Une vision scientifique de la réalité implique de prendre parti et, face à une pandémie qui ne pourra être surmontée qu'avec le soutien de la science, les récits explicatifs qui ont prévalu pendant des décennies, s'effondrent.

La négation

La pensée prémoderne recourt souvent à la négation de la réalité. Ce faisant, elle établit une distance pour se protéger de ce qui se passe, en répétant inlassablement : « Ça n'arrive pas, ce n'est pas vrai. » Des adeptes de la terre plate à ceux de la pensée anti-vaccination, en passant par ceux qui croient que nous ne descendons pas du singe, tous s'unissent pour affirmer que la science est une grande tromperie.

Tout au long de son histoire, la science a suscité de profondes inimitiés : quand elle nie que la terre est le centre de l'univers ou quand elle questionne le pouvoir magique que s'attribuent les dirigeants, elle remet en question le pouvoir. Le déni est en quelque sorte un acte de foi contraire à la preuve scientifique ; il lui suffit d'affirmer que quelque chose ce n'est pas vrai, sans devoir ni fonder ni expliquer cette négation. Au Nigeria, par exemple, certaines autorités ont nié l'importance du vaccin contre la polio, alors que c'est l'un des pays au monde les plus touchés par la polio.

Pendant cette pandémie, des négationnistes ont soutenu que le virus n'existait pas donc, par conséquence, aucun vaccin ou quarantaine n'était nécessaire. D'autres ont affirmé qu'une série de régimes, d'exercices particuliers, de mesures alimentaires ou exercices magiques suffiraient à éradiquer ce virus potentiel qui, par ailleurs, n'existait même pas. D'autres encore ont affirmé qu'il ne s'agirait pas d'un virus mais d'une bactérie, donc qu'il « ne pourrait être traité avec un vaccin ». La méfiance absolue à l'égard des données scientifiques prévaut. Mais paradoxalement, aucun doute ne pourrait remettre ces actes de foi en question ; on préfèrerait même jeter l'eau du bain, la baignoire et l'enfant.

Puisque les États ont menti et sont manipulateurs, il s'ensuit que toute déclaration scientifique qui émarge du pouvoir, toute information académique qui reçoit le soutien des États serait, à la base, un mensonge. C'est ainsi que de respectables universitaires, parmi eux même un nobélisé, ont déclaré que le confinement est une arme médiévale qui pourrait tuer plus de gens qu'elle n'en sauverait. « Pourrait » est précisément ce genre d'expression qui part d'une prémisse non prouvée pour construire ensuite une architecture du déni.

La conspiration

La théorie du complot est une des constantes de ces débats : toutes choses seraient créées par une main cachée qui, à partir d'un pouvoir centralisé, déciderait de tout. Une sorte de main dotée d'un pouvoir universel, qui déciderait du cours de l'histoire. On retrouve ici celles et ceux qui soutiennent qu'une conspiration internationale expliquerait tous les conflits armés ; car en effet, nous ne sommes que les pions d'un grand jeu d'échecs conspirationniste.

Il en découle que le virus aurait été créé dans un laboratoire en Chine afin d'attaquer l'impérialisme américain, ou qu'il aurait été créé par les États-Unis et diffusé en Chine, dans le cadre d'une guerre biologique. Certains affirment même que le virus contiendrait des composantes du virus du sida. Les études génétiques publiées à ce sujet démontrent pourtant que le virus n'a pas été créé dans un laboratoire, et ces publications (certes parfois difficiles à comprendre pour les néophytes) nous permettent d'affirmer qu'un tel argument est faux.

D'autres prétendent que la quarantaine serait un mécanisme de contrôle développé par le capitalisme pour nous garder enfermés. C'est comme si l'on oubliait que le capitalisme a démontré, depuis des siècles déjà, ses capacités à contrôler les goûts et les produits à consommer. Ou bien, c'est faire accroire qu'on ne serait contrôlés qu'à partir de la quarantaine, comme si, avant la quarantaine, nous avions été libres et que l'aliénation n'existait pas.

Le capitalisme n'a pas besoin d'une quarantaine, bien au contraire, cela l'affecte. Et on ne peut réduire l'aliénation aux seules relations économiques ou à la vie du travailleur ; l'aliénation s'étend à l'ensemble de la société. Croire que le capitalisme est si fragile qu'il aurait besoin d'une quarantaine parce qu'il est

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au bord de l'effondrement est délirant. Non seulement le capitalisme nous contrôle déjà, mais aucune alternative sérieuse ne le menace aujourd'hui.

D'autres soutiennent qu'un vaccin existerait déjà, que son marché potentiel serait immense et que sa vente générera d'énormes profits. Mais si on observe la chute des marchés boursiers et le déclin du marché mondial, il serait naïf de penser que le capitalisme cesserait de produire des voitures ou provoquerait la faillite de grandes industries pour vouloir ensuite essayer de récupérer ces sommes par la simple vente de vaccins.

Un autre exemple d'utilisation biaisée et irresponsable de l'information scientifique est la confusion entre la famille des coronavirus et le virus Covid-19. Les partisans de la conspiration montrent ainsi des publications, datant de plusieurs années, où le coronavirus est déjà mentionné pour prouver que le virus existait déjà et qu'on nous l'avait caché. D'autres encore affirment que le virus aurait été créé pour nous implanter une puce, que la maladie serait propagée par des antennes 5G ou que, lors de dépistages, on inoculerait la maladie aux personnes au moyen de prélèvements contaminés par avance.

Dans le même ordre d'idée, sans penser plus loin que le bout de leur nez, certains affirment que « tout enfermement est fasciste », « tout est biopolitique ». Bien sûr, l'autoritarisme et la biopolitique existent, mais cela suffit-il pour tout expliquer ? De nombreux critiques condamnent la quarantaine en invoquant Foucault, mais ce sont les mêmes qui accusent ensuite le gouvernement d'être irresponsable s'il assouplit ces mêmes mesures.

Le contexte

La décontextualisation pointe sur certains éléments de la pandémie, les sort de leur contexte ou les cite de manière isolée. Quand on parle de comportement civique, par exemple, on se réfère à une situation où les gens pourraient idéalement rester chez eux, mais on n'inclut aucune autre variable. Ceci équivaut à la résolution de la pandémie dans un laboratoire virtuel, où toutes les variables seraient contrôlées. Mais, dans la réalité, ce n'est pas le cas.

On propose ainsi une quarantaine généralisée comme si tous les gens pouvaient facilement s'isoler du monde ou pouvaient attendre des semaines ou des mois, jusqu'à ce qu'une solution soit enfin trouvée. Or, des millions de personnes n'ont pas accès à l'eau potable : il leur est impossible d'appliquer la simple recommandation de se laver les mains. Le dilemme sera de choisir entre mourir du virus ou mourir de faim : quand le garde-manger est vide, il est tout simplement difficile, voire impossible d'attendre que tout aille pour le mieux. La décontextualisation empêche d'aborder les problèmes de manière scientifique.

Ainsi, les politiques conçues sur la négation des réalités de l'exploitation sociale ou de l'inégalité ne tiennent tout simplement pas la route ; c'est pourtant ce qui se passe actuellement, en pleine pandémie, aux États-Unis, au Brésil et en Colombie, pour ne citer que trois exemples où l'extrême droite est précisément au pouvoir.

Retenons trois éléments dans cette réflexion relative à la pandémie : la distanciation s'avère impossible quand il faut survivre et répondre à des besoins socio-économiques pressants. Ceci est plus grave encore dans les pays connaissant un niveau élevé de travail informel et de chômage.

Le deuxième élément déterminant est la capacité de réponse des services de santé. De nombreux systèmes de santé sont inéquitables, précaires et privatisés ; mais si, pendant des années, la santé a été considérée comme une activité commerciale, pourquoi en serait-il autrement aujourd'hui ? La pandémie a d'ailleurs aussi eu un résultat pervers inattendu : d'autres maladies comme l'hypertension, la malnutrition, le cancer n'ont subitement plus pu être prises en charge de manière adéquate.

Le troisième élément est celui de la vulnérabilité. Le principal facteur de risque face à une épidémie est la pauvreté. Dans un monde où les niveaux d'inégalité et de privation restent si élevés, les facteurs de risque augmentent. Ce problème ne peut être résolu que par des politiques sociales.

Dans ce cadre, l'appel lancé par les gouvernements en faveur d'une prétendue unité dans la lutte contre la pandémie semble non seulement maladroit mais aussi terriblement injuste. C'est un peu comme si on réduisait le débat à quelques variables immédiates produites par la pandémie, sans inclure les variables structurelles qui la favorisent: la ségrégation et le néolibéralisme.

Se réclamer des sciences ne signifie pas qu'on nierait le contexte politique, comme certains nous en font l'accusation. Les sciences sociales existent aussi et les sciences médicales peuvent et doivent travailler main dans la main avec les sciences sociales : parler d'une molécule n'implique donc pas de nier l'existence de la faim, c'est un faux dilemme.

Relativisme postmoderne

Le relativisme postmoderne, cette façon de voir le monde, se renforce en parallèle avec l'émergence du néolibéralisme et le développement des courants new age. En réalité, on assiste à la renaissance d'une pensée prémoderne : un mélange de lectures téléologiques et métaphysiques avec une validation purement locale.

Dans ce contexte, c'est comme si les dynamiques locales et particulières devenaient les seules règles valables, et que les méta-narrations de la postmodernité, en particulier l'universalité scientifique, seraient bonnes à jeter aux orties. Dans ce discours, le paradigme c'est la différence et l'universel, le grand échec. Tout ce qui fait appel à un argument basé sur le local suffit, pour justifier n'importe quelle explication de la pandémie.

Dans un monde où tout le monde pense avoir suffisamment de connaissances médicales pour poser un diagnostic sans tenir compte des connaissances scientifiques, dans cet univers où les mythes sont fondateurs de la pensée, on peut évidemment s'attendre à ce que chaque débat soit plutôt inspiré par un libre arbitre inventant de nouvelles théories sans aucune base scientifique, plutôt que par un débat ancré dans des solides arguments.

Récemment, un vice-ministre colombien a suggéré qu'il valait bien mieux trouver des solutions domestiques : « nous devons ouvrir le pays » et « les recettes des autres pays ne sont pas bonnes pour nous ». Un exemple de plus où l'on célèbre le culte de l'exceptionnalisme et où l'on jette les sciences à la poubelle : on navigue ainsi du relativisme culturel au relativisme épidémiologique. Si on suivait cette logique de pensée, on aurait bientôt aussi besoin d'un traitement domestique, local pour la tuberculose, car notre tuberculose est à la fois unique et non reproductible ailleurs.

Cette éthique postmoderne applicable aux pays développés, mais pas aux pays dits en développement, serait – à la limite peut-être – politique, mais en tous cas pas éthique. Moi qui suis profondément immergé dans la modernité, je pense que l'éthique (comme la vie) est universelle, qu'on ne peut la relativiser sans devoir renoncer à sa propre essence : l'éthique ne se laisse réduire ni à une remarque dans la marge, ni à une note de bas de page.

Médecines dites alternatives

Si la quête de la santé était un simple exercice de domination basé sur une science qui n'en est pas une, alors tout comportement antiscientifique serait par définition révolutionnaire. Marx s'est appuyé sur la science pour proposer des transformations, mais il est frappant de constater que ses héritiers ont fini par rejeter la science et se sont réfugiés dans la pensée magique. Ceux qui trouvent refuge dans la pensée magique se gaussent de tout argument : dire par exemple qu'une pratique est valable parce qu'elle est millénaire n'a aucun fondement, la guerre et la torture sont également millénaires.

Bien sûr, depuis l'époque d'Hippocrate, le pouvoir médical pratique ce que Foucault appellerait un exercice de micro-pouvoir ; mais cela ne signifie pas pour autant que toute avancée scientifique doive être méprisée parce qu'elle émane du pouvoir médical. Bien sûr, des sociétés pharmaceutiques cherchent à vendre des médicaments, mais cela ne nous amène pourtant pas à nier ouvertement les résultats scientifiques de certains traitements.

Les cures à l'eucalyptus, les bouillons à l'ail, la consommation de substances alcalines (le virus rejetterait tout ce qui est alcalin, selon un médecin local) ou encore les régimes au citron, pullulent comme remèdes contre le coronavirus ; pourtant, ils n'ont démontré aucune efficacité.

Même s'il est vrai qu'aujourd'hui, la science n'a pas toutes les réponses au sujet du virus, le problème n'est pas là ; il réside dans cette attitude dogmatique de négation de la science. Par exemple, quand on prétend que la médecine ancienne avait déjà des réponses sur cette maladie, pourtant si récente. Ce n'est pas parce qu'il est si difficile de comprendre le comportement physiopathologique du virus qu'il faut donner raison à n'importe quelle théorie ; l'état de la discussion évolue et le corps médical change d'opi-

nion après la publication de certaines recherches. En fait, la connaissance ne se base pas sur des spéculations, mais bien sur des observations réelles.

Prenons 100 patients infectés par un coronavirus, si 81% pouvaient être guéris en recevant des ondes bioénergétiques ou du quartz, le fait qu'ils puissent être guéris ne signifierait pas pour autant à 100% que la maladie n'est pas mortelle. En d'autres termes, qu'on leur donne ou non la somme d'un citron coupé en trois au clair de lune, 81% n'auront aucun symptôme ou seulement des symptômes légers. Prenez ces pasteurs religieux qui invitent les fidèles à venir prier dans les églises, quand ils affirment que le virus n'entrera pas dans la maison de Dieu, ils ne sont pas seulement ridicules, mais ils offensent également la raison et menacent la santé.

Conclusions

Bien sûr, chacun a le droit de douter. On peut par exemple douter de la qualité d'un pont, mais la question est de savoir si l'on dispose des informations nécessaires pour le faire. C'est une chose de vouloir que le savoir soit universel et démocratique, c'en est une autre de supposer que tout le monde sait tout sur tout.

Généralement, la validation de points de vue se réalise par le biais d'une acceptation mutuelle. Mais les scientifiques ne procèdent pas ainsi, cela reviendrait à nier leurs propres postulats. Ainsi, alors que les tenants de d'« alternatives »semblent aujourd'hui être les tolérants, ceux d'entre nous qui défendent la science deviennent subitement les intransigeants.

Que nous reste-t-il ? Retrouver la promesse d'une modernité qui, plus que d'être seulement un échec, serait un projet en attente. Un projet dont les composantes révolutionnaires seraient le débat argumenté, l'abandon des mythes, le sauvetage de l'universalisme et l'usage de la science. Blâmer les médias (cette stratégie courante et même simpliste) ne fonctionne pas ; la science présuppose l'existence d'un être humain rationnel même si aujourd'hui il semble inexistant.

Le débat ne porte pas seulement sur la pandémie, il porte sur notre vision du monde, sur nous-mêmes comme sujets politiques. Le dangereux culte des « ismes », conjugué avec celui des approches différentielles, a conduit à l'effondrement des discours universels tels que celui des droits de l'homme. Le mélange entre néolibéralisme, new age et postmodernité, a réduit la pensée scientifique à quelque chose d'honteux.

Aujourd'hui, pourtant, nous ne pouvons plus perdre de temps avec le relativisme. La science réapparaît comme un horizon de réalité dont nous avons tous besoin : c'est la revanche de la science.

Deuxième partie: abordages thématiques
Second Part: Thematic Approaches

Genre
Gender

Embedding Change: Reflections on Gender, Agency, and Prevention

Habib Nassar[1] and Christalla Yakinthou[2]

The field of addressing gendered, conflict-related violence is currently undergoing significant rethinking. This provides us with an opportunity to bridge the gaps between our knowledge and our practice of conflict and violence prevention. The following short reflections highlight five core elements worth focusing on at this critical point.

1. Women's experiences are complex

Women's experiences in periods of widespread human rights abuses are multifaceted and complex. However, when addressing gender-based violence or abuse, policymakers and practitioners often focus on sexual violence at the expense of exposing a much broader and interconnected range of harms that women or sexual minorities face during political repression/conflict. While recognizing that sexual violence is broadly weaponized during conflict and may, in many contexts, account for the most severe harms women face, it is certainly not the only violation experienced. Focusing on sexual violence without also recognizing the other violations women face, or understanding the structures that maintain and underpin gendered violence, limits our ability to create change.

For example, both men and women experience crimes such as arbitrary detention, enforced disappearance, torture, or persecution. But, for women these abuses are aggravated by structural discrimination and patriarchal hierarchies, exposing them to double jeopardy.

Though more men are forcibly disappeared than women, experiences globally show that disappeared people's female relatives are disproportionately affected by the crime of disappearance. Indeed, wives and mothers—who are direct victims under international law—not only endure the excruciating anguish caused by their loved one's disappearance, but in many societies also confront patriarchal rules and gender norms; becoming their family's breadwinners overnight, and navigating the male-dominated state apparatus in search for their relative(s). In Lebanon, when her husband was kidnapped, Jeanette Saliba's bank denied her any access to their funds. For 28 years she has consequently been unable to claim her money, even for their children's basic needs: "[When] I asked why, they told me they are *preserving his rights*."[3] Jeannette and her children's lives were fundamentally re-shaped not only by the disappearance, but also by Lebanon's institutional and social responses to the crime and to her place in society.

A landmark study commissioned by Morocco's truth commission showed that women, like men, were arbitrarily detained as punishment for their political activism and dissent.[4] However, women did not only suffer unfair detention or inhuman detention conditions, but also endured the trauma of permanent exposure to the threat of sexual abuse and rape by male-dominated security services and prison personnel. Once released, they faced social stigma from their families and communities, who rejected them as women "stained" by sexual abuse while in detention, and often blamed them for engaging in political activities "reserved for men".

These examples do not display the whole complexity of women's experiences. Often women experiencing violence and abuse also face other intersectional factors such as race, ethnicity, religion, class or gender identity. For instance, women survivors from a poor rural indigenous community in Peru would have greatly different experiences to middle-class women from Lima. Addressing and preventing gender-based abuses requires that the complexity and intersectionality of women's experiences are properly recognised and subsequently captured by any measure put in place.

Focusing exclusively on sexual crimes without examining other harms fails to adequately deal with gender-based abuses. It also perpetuates a one-dimensional patriarchal construction that presents women survivors as merely the passive objects of sexual attacks, and male survivors as only victims of political violence.

Only by breaking down such structures can we pave the way for multidimensional and effective prevention policies. This first requires a proactive recogni-

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3 Italics added. In Christalla Yakinthou, 'Living with the Shadows of the Past: The Impact of Disappearance on Wives of the Missing in Lebanon' ICTJ, 2015), 15–16.

4 Nadia Guessous, "Women and Political Violence during the Years of Lead in Morocco," CCDH and UNIFEM, 2009.

tion of women's agency, and then developing policies that integrate the full experience of women and sexual minorities.

2. Prevention means unpacking root causes and structural discrimination

In many contexts, transitional justice (TJ) processes have been criticised for treating abuses they address as if they had occurred in a vacuum. Such approaches have particularly compromised the field's role in reinforcing guarantees of non-recurrence and therefore prevention measures. Indeed, any efforts to prevent gendered abuses and human rights violations against women and sexual minorities would remain elusive if their root causes and the enabling structural discrimination and gender norms are not identified and challenged. This must be done early, and in genuine partnership with affected communities.

In the former Yugoslavia, for example, TJ was limited to a judicial approach to address conflict-related sexual violence; the visible side of violence perpetrated in the conflicts of the 1990s.[5] Policy interventions have failed to address the violence's structural causes, including on-going economic harm, social stigmatisation and discrimination, all responsible for violence against women, but often invisible.

Leaving root causes unaddressed failed to make a real transformative and sustainable difference for women in the region. This can be seen in Prijedor, Northern Bosnia, one of the region's earliest sites of ethnic cleansing.[6] Crimes committed were prosecuted by the International Criminal Tribunal for the Former Yugoslavia and other courts, but in reality, little has changed for women survivors. The trauma of ethnic cleansing is revived by provocation from local authorities through a revisionist reinterpretation of remembrance sites, and systematic economic discrimination.

3. Beyond victims: Women's agency in and after conflict

Women's experiences during violent conflict are far from solely being victims. It involves a range of roles, including being at the forefront of organising, and resistance movements.

Recognising and learning from women's activism, struggles, and strategies during conflict is essential when shaping post-conflict justice processes and longer-term reform. Post-conflict periods can take advantage of critical ruptures in social and institutional norms, and can provide opportunities for women to identify political priorities to shape policy, and pressure the government for change to the pre-conflict gendered status-quo.

For this to happen, however, women—especially those directly victimised—need the necessary space and tools to organise and advocate for their demands and visions of justice, reform and prevention. Crucially, space should also be made for meaningful participation in formal processes such as peace talks, constitutional drafting, truth commissions or reparation programs. Any process meant to address the harms caused to women which does not put them and their experiences at its heart would be simply replicating original systems of exclusion and alienation.

Focusing on re-powering women at every level creates an equality of meaningful representation that helps conflict prevention, especially when there is political backsliding. Both women's informal mobilisation, and their participation in formal processes, breaks with past practices of exclusion and paves the way for broader political participation. It allows women to take ownership of such processes and leads to policies that are informed by their experiences, their needs and their visions.

United Nations Security Council Resolution 1325 on Women, Peace and Security gave strong political impetus to women's participation in conflict prevention, peace-building and post-conflict justice and reconstruction. However, many obstacles on the ground prevent women from organising or effectively influencing policy making. These include a progressively narrowing civic space in many post-conflict or transitioning contexts, inadequate partici-

5 Impunity Watch, Balkan Chronicle: Gender Equality, Transitional Justice and the International Community, 2019, https://www.impunitywatch.nl/docs/PolicyBrief_Balkans_Chronicle_Gender_Equality_TJ_Intl_Community_eng.pdf.

6 Ibid. 15.

pation mechanisms in political or justice processes, lack of resources, and insecurity.

Thus, effective participation in shaping justice measures and long-term prevention policies depends on the political will and ability of governments and international organisations to overcome such obstacles. Here, international actors can play a key role in providing solidarity by supporting women activists and leaders, and tying funding to inclusion indicators.

4. Gender is not just women! Hegemonic masculinities undermine inclusive and just societies

The field of conflict prevention has made significant progress over the last decade, particularly around sexualised violence and gender-based violence against women and girls. However, limited attention has been paid to ideologies of domination embedded within and rewarded by existing social structures. Just as gender is a construct that orders power, hegemonic masculinity validates men's position in society.

Violent masculinity is a "hyper-macho" identity that subordinates all other gender identities and expressions. This form of masculinity closes space for alternative expressions of gender or masculinity that can help foster more just societies. Distorting and violently denying the legitimacy of all other ways of expressing identity, it also places a burden on men and women to "perform" and reshape their identities in adherence to this status quo.

Understanding the interplay between masculinities and the continuum of violence against women and men is important in order to strengthen primary prevention in policy and programming. Much progress has been made linking violent masculinity to cultures that objectify women and justify (especially sexual) violence, and developing legal norms that criminalise it during conflict.

More hidden, however, is the multitude of ways violent masculinity affects men. This includes both the silenced but widespread practice of sexual abuse of men, and the way the exercise of hegemonic masculinity creates tremendous existential pressures on men during conflict periods. This was particularly visible in Iraq following the emergence of ISIS. Armed groups' mobilisation propaganda, when recruiting young men to fight against ISIS, promoted a particularly violent form of masculinity praising the boldness and fearlessness of militiamen on the frontline. Facing the increasing pressure of hegemonic masculinities promoted in their communities, many young men experienced depression, resorted to substance abuse and in some cases committed suicide.

Beyond this, the close relationship between violent masculinities and access to power has a number of consequences for building a more safe, just, and inclusive society. Deconstructing violent hegemonic masculinities while creating space for alternatives that are inclusive and feminist is hard, but necessary work. Alternative approaches include working multi-generationally, and supporting innovative education and diverse narratives.

5. Methodological Suggestions

a: Link everyday gender justice to justice processes in times of transition

Often, post-conflict justice mechanisms receive disproportionate amounts of financial resources, expertise, and energy. When they focus only on one kind of harm, and remain disconnected from the everyday structures of a society, they create "justice in a bubble". Consequently, an opportunity is lost to use these resources to address the real needs of survivors, constructively transform the causes and effects of gendered violence, and create more inclusive and just societies.

For example, "the lack of post-conflict gender-justice in Timor-Leste impacts significantly on women's ability [today] to report and seek redress for ongoing violence in the new political era."[7] In contrast, Morocco's Equity and Reconciliation Commission's (2004-2005) work highlighting violence against women together with the feminist movement's mobilisation have paved the way for several advances on gender equality through citizenship and electoral reforms, new legislation to combat violence against women as well as additional guarantees incorporated in the 2011 constitution.

7 Galuh Wandita et. al., cited in Aisling Swaine, *Conflict-Related Violence Against Women: Transforming Transition* (Cambridge University Press, 2018), 269.

This is why accountability processes during transitions must connect conflict-related harms—as defined by victims and survivors themselves—to post-conflict processes that "engage with structural conditions."[8] This facilitates broader reform of discriminatory institutions, norms, and laws that connect everyday violence to political conflict.

Powerful areas of focus include reform of gendered rights around citizenship, family law, governance norms, property laws, access to wealth and resources, and the strengthening of women's labour rights. By connecting extraordinary mechanisms to the embedded justice system and public institutions, we are also able to address the replication of racism, misogyny and impunity in the everyday, thus doing the difficult work that helps prevent recurrence of conflict in the longer term.

b: Think about which strategies create inclusion

There are basic elements that appear obvious in prevention programming, but often become blindpoints for time-poor practitioners. Below are two key points.

First, map fellow organisations working in the same context and understand what they are doing. This serves the dual purposes of avoiding replicating resources and efforts, and sparing victims the secondary trauma of having to repeat their experiences to multiple parties. Relatedly, this will also help avoid unnecessary fatigue, competition and hierarchies of visibility among country partners.

Second, support strategies rather than ad-hoc projects. In Guatemala, for example, the sustained partnership of survivor associations, local civil society groups, and international non-governmental organisations enabled the strategic litigation of representative crimes against women during the conflict. Together with support of female judges and prosecutors, this has led to numerous judicial successes. In one key case, the Sepur Zarco litigation, a broad alliance led by women survivors from the Q'eqchi' community combined survivors' transformative mobilisation and participation with judicial accountability. This approach increased societal awareness of how the Guatemalan state and military used slavery, murder, and systematic rape to control the population.9

c: The benefits of valuing participation as a principle and a process

How we define harm, who experiences it, and what it looks like is an active process of selection and erasure, shaping the data we collect, and our responses to understanding and rectifying the selected harms. It is therefore important to capture the full spectrum of harms experienced, and how they are lived and sustained.

This is why investing in participatory processes for programming and research is so critical. Participatory processes maintain that "citizens can play an active role in producing public goods and services of consequence to them."[10] In this approach, stakeholder communities set and guide agendas. They are valuable for three key reasons.

First, participatory processes can be a form of remedy, because they embody both the principle and practice of inclusion. Creating space for affected communities to shape projects and policies helps undo the marginalisation and erasure of identity and power caused by victimisation. In Tunisia, with a convoluted TJ context and "multiple layers of silencing [caused by] authoritarianism," women survivors led a participatory process that, "yielded innovative ways to sidestep political obstacles and open public dialogue around past violations.".[11] Using art to connect a culturally sensitive discussion about women's experiences of harm during the Ben Ali period and brutality in prisons today, the Voices of Memory project navigated testimony, truth-telling, and ongoing oppression, and created discussion across the country's Islamist-Secular divide.

Second, participatory processes, if done with care, transparency, and respect, provide space for vic-

8 Swaine, 267.

9 Brisna Álvarez et al., 'Changing the Face of Justice: Keys to the Strategic Litigation of the Sepur Zarco Case', Impunity Watch, 2017, https://www.impunitywatch.nl/docs/ResearchReport_Changing_the_Face_of_Justice_Sepur_Zarco_Case_2017_eng.pdf.

10 Catherine Durose and Liz Richardson, *Designing Public Policy for Co-Production,* (Bristol: Policy Press, 2016), 33.

11 Virginie Ladisch and Christalla Yakinthou, 'Cultivated Collaboration in Transitional Justice Practice and Research: Reflections on Tunisia's Voices of Memory Project', *International Journal of Transitional Justice* 14, no. 1 (2020): 81.

tims to speak on their own terms. Setting one's own boundaries and pace around sharing experiences of harm can help lessen the trauma of re-telling, and the feeling of powerlessness around not being able to control one's own narrative.

Third, authentic participatory processes create relationships that help policymakers and practitioners ask and understand what new harms are occurring, thus connecting individual experiences to a broader pattern: a core part of prevention.

Conclusion

This set of approaches is harder, and slower. It needs time and trust. But as the Legacy Gender Integration Group for Northern Ireland notes in their work linking women-led reform to government policies, it sends a powerful message that values "gender expertise and lived experience."[12] And this, ultimately, is a key cornerstone in long-term prevention.

12 Legacy Gender Integration Group, 'Gender Principles for Dealing with the Legacy of the Past' (LGIG, 2015), 6, https://www.ulster.ac.uk/__data/assets/pdf_file/0009/66285/Gender-Principle-Report-Sept-2015_Final-Version.pdf.

L'agenda « Femmes, paix et sécurité »: cadre normatif, bonnes pratiques de sa mise en œuvre

Jelena Pia-Comella[1]

Historique et état des lieux

La résolution 1325 du Conseil de sécurité des Nations unies, qui donna lieu à l'agenda « Femmes, paix et sécurité » (FPS) en 2000, a marqué un tournant historique dans le multilatéralisme car, pour la première fois, ont été envisagé les questions sexospécifiques en matière de paix et de sécurité. La résolution non seulement met en exergue l'impact disproportionné des conflits armés sur les femmes et les filles, mais elle souligne aussi que celles-ci sont sous-représentées dans les processus formels de construction et de maintien de la paix.

La résolution 1325 constitue certainement un véritable cadre formel et juridique féministe : elle prévoie la participation significative des femmes aux processus de paix, exige que les parties prenantes à un conflit préviennent les violations des droits des femmes (sous l'angle des droits de l'homme et du droit international humanitaire). Elle exige en particulier que les violences sexuelles et à caractère sexiste lors des conflits soient prévenues et poursuivies.

Vingt ans après, et comme cela fut souligné dans les deux derniers rapports du secrétaire général des Nations unies sur la question (S/2019/280 et S/2019/800) et surtout lors du débat du Conseil de sécurité les 29 octobre et 4 novembre 2019, beaucoup reste encore à faire dans la mise en œuvre intégrale et effective de l'agenda : « Femmes, paix et sécurité[2] » :

- la participation des femmes aux processus de paix ainsi qu'aux opérations de maintien de la paix reste très maigre[3] : les femmes ne représentent que 2% des médiateurs, 5% des témoins et signataires, 8% des négociateurs et 6% du personnel militaire, policier, judiciaire et pénitentiaire sur le terrain[4] ;
- l'impunité des auteurs des violences sexuelles liées aux conflits demeure une réalité alarmante ;
- en janvier 2020, seuls 43% des États membres des Nations unies ont adopté des plans d'action nationaux dont seuls 34% étaient assortis d'un budget lors de leur adoption[5].

Or, rappelons que d'après l'étude mondiale sur la mise en œuvre de la résolution 1325 du Conseil de sécurité des Nations unies[6], les accords de paix mondiaux qui incluent les femmes et les organisations de la société civile ont 50% plus de chances de durer que les autres accords de paix non inclusifs. En outre, lorsque les femmes ont une forte influence sur un processus de paix, un accord est presque toujours signé, il a plus de chances d'être mis en œuvre et la probabilité qu'il dure quinze ans ou plus est supérieure à 35 %.

L'article propose une réflexion sur le rôle de l'agenda « Femmes, paix et sécurité » dans la prévention des atrocités de masse. Nous parcourons tout d'abord le cadre normatif de l'agenda FPS pour en faire ressortir les dispositions concernant de bonnes pratiques pour la prévention des atrocités de masse que nous analyserons plus en profondeur ultérieurement. Des recommandations concrètes seront proposées en guise de conclusion.

Cadre normatif

Sans trop nous attarder, nous voudrions mettre en exergue les dispositions les plus inédites des neuf résolutions[7] qui suivirent la résolution 1325. Le programme pour les femmes, la paix et la sécurité constitue un agenda multidimensionnel englobant quatre piliers principaux : la participation pleine et équitable des femmes à tous les niveaux de la société ; l'intégration d'une perspective de genre dans la prévention des conflits ; la protection des droits des femmes et des filles et l'intégration d'une perspective de genre dans l'aide humanitaire.

1 Coordinatrice générale du secrétariat de l'Action globale contre les atrocités de masse (GAAMAC).

2 Procès-verbal de la session du Conseil de sécurité du 29 octobre 2019 – S/PV. 8649, S/PV. 8649 (resumption 1) et S/PV. 8649 (resumption 2).

3 Statistiques d'ONU Femmes : https://www.unwomen.org/fr/digital-library/multimedia/2018/10/infographic-womens-meaningful-participation-builds-peace

4 https://peacekeeping.un.org/fr/women-peacekeeping

5 Données fournies par *Women's International League For Peace and Freedom* : http://peacewomen.org/member-states

6 *Prévenir les conflits, transformer la justice, obtenir la paix* : étude mondiale sur la mise en œuvre de la résolution 1325 du Conseil de sécurité des Nations unies, ONU Femmes 2015.

7 Les résolutions suivantes constituent le cadre normatif et juridique de l'agenda « Femmes, paix et sécurité », par ordre chronologique de leur adoption : 1325 (2000) ; 1820 (2008) ; 1888 (2009) ; 1889 (2009) ; 1960 (2010) ; 2106 (2013) ; 2122 (2013) ; 2242 (2015) ; 2467 (2019) ; 2497 (2019).

Les dispositions qui, à notre sens, constituent de bonnes pratiques afin de renforcer les mécanismes nationaux de prévention de violences sexuelles et à caractère sexiste en tant qu'atrocités de masse incluent :

- la mise en œuvre et le suivi de la mise en œuvre de la résolution 1325 : la résolution 1889 demande des outils pour améliorer la mise en œuvre de la résolution 1325, y compris des indicateurs et des propositions de mécanisme de suivi, de surveillance, et souligne en outre l'importance d'inclure les besoins des femmes liés aux groupes armés dans la planification du processus de désarmement, de démobilisation et de réintégration ;
- l'égalité entre les femmes et les hommes : la résolution 2122 demande la pleine participation des femmes aux élections, aux réformes du secteur de la sécurité et de la justice, promeut le déploiement de femmes militaires ou policières dans les opérations de maintien de la paix. La résolution 2242 va plus loin en plaçant les femmes au cœur de l'établissement de stratégies et de programmes de lutte contre le terrorisme et l'extrémisme violent, ainsi que dans les efforts d'éradication du trafic d'armes légères et de petit calibre ;
- la violence sexuelle liée aux conflits et atrocités de masse : la résolution 1820 est la première résolution adoptée par le Conseil de sécurité à reconnaître la violence sexuelle comme une tactique de guerre et qu'elle peut constituer un crime de guerre, un crime contre l'humanité ou un acte constitutif de génocide ;
- la justice de genre et paix : les résolutions 1820, 1888, 1960, 2106 et 2467 mettent toutes en exergue le rôle clé du Statut de Rome dans la lutte contre l'impunité et comme mécanisme de prévention de la récurrence des atrocités de masse. La résolution 1888 renforce les mécanismes nationaux de prévention en mettant sur pied une équipe de spécialistes de l'État de droit et des violences sexuelles qui doit être rapidement déployée là où des violences sexuelles sont commises pour lutter contre l'impunité. Cet effort est suivi par l'établissement de la *« liste de la honte8 »* prévue dans la résolution 1960. Enfin, la résolution 2106 place la justice transitionnelle exhaustive au cœur du nexus justice de genre et paix. La résolution 2467 fait appel au renforcement des législations nationales, elle met l'accent sur les enquêtes et les poursuites engagées dans les cas de crimes de violence sexuelle et à caractère sexiste liée aux conflits et post-conflits ;
- les besoins et les droits des victimes et des survivant(e)s : la résolution 2106 invite les entités des Nations unies et les donateurs à offrir aux victimes, aux survivant(e)s de violences sexuelles liées aux conflits des soins de santé, notamment des soins de santé sexuelle et procréative. La résolution 2467 constate que les violences sexuelles liées aux conflits visent aussi les hommes et les garçons, et exhorte les États à les protéger. Concernant les résolutions 2467 et 2493 dans lesquelles, pour la première fois, une place centrale est accordée aux victimes et aux survivant(e)s, il n'est cependant pas mentionné le besoin d'offrir des soins de santé sexuelle et procréative. Cela représente, à notre sens, un énorme pas en arrière et une leçon à apprendre afin d'affiner toute stratégie de positionnement sur ce sujet-là !

L'égalité entre les femmes et les hommes : condition sine qua non

L'agenda « Femmes, paix et sécurité » est avant tout un cadre féministe soulevant un certain nombre de problématiques auxquelles les femmes et les filles sont confrontées en situations de conflits armés, ce qui traduit d'une manière ou d'une autre les pratiques discriminatoires déjà mises en place auparavant.

La résolution 2122 du Conseil de sécurité rappelle que l'égalité des sexes et l'autonomisation des femmes sont des conditions essentielles à la paix et à la sécurité internationales, en soulignant tout particulièrement que l'autonomisation économique des femmes contribue grandement à stabiliser les sociétés sortant d'un conflit. Je me permets d'aller plus loin !

Les droits économiques et sociaux des femmes doivent en effet être respectés et promus à tout moment ainsi que l'accès des femmes à la justice. Les pratiques discriminatoires et la violence qui en découle, les violences sexuelles et à caractère sexiste envers les femmes, sont encore une réalité trop présente en temps de paix, aucun pays n'est à l'abri ! En effet, le mouvement #MeToo a mis en évidence que le harcèlement sexuel et sexiste est un phénomène

8 Liste dressée par le secrétaire général des Nations unies des parties à un conflit armé soupçonnées de commettre ou d'être responsables de viols ou d'autres formes de violence sexuelle comme tactique de guerre.

universel. En outre, les cas de féminicides et d'infanticides féminins sont encore très présents dans certaines régions[9]. Le dernier rapport du Fonds des Nations unies pour la population estime à près de 140 millions le nombre de « femmes manquantes » dans le monde[10]. ONU Femmes a caractérisé la violence à l'égard des femmes comme étant la pandémie fantôme : « *Avant l'apparition de la Covid-19, la violence domestique constituait déjà l'une des principales violations des droits humains. Au cours des douze derniers mois, 243 millions de femmes et de filles (âgées de 15 à 49 ans) dans le monde ont été victimes de violence physique ou sexuelle de la part d'un partenaire intime. Alors que la pandémie de Covid-19 poursuit sa progression, ce nombre devrait vraisemblablement augmenter, entraînant de multiples répercussions sur le bien-être des femmes, leur santé sexuelle, reproductive et mentale, ainsi que sur leur capacité à participer et à diriger la relance de nos sociétés et de notre économie.* »[11]

Certes, les niveaux persistants d'inégalité entre les sexes en temps de paix sont nettement exacerbés par les conflits, tels que le fléau de la violence sexuelle et à caractère sexiste, l'absence d'égalité des femmes devant la loi, le manque d'accès à l'éducation et aux services de base, la pauvreté et l'insécurité alimentaire, le taux bas de participation des femmes dans la vie politique et parlementaire.

Nous voudrions rappeler que ce qui est à la base de l'agenda « Femmes, paix et sécurité » est le souci d'équilibrer les relations de pouvoir entre les genres, de garantir une égalité d'opportunités, d'accès à la justice, de participation égalitaire entre les femmes et les hommes. L'agenda FPS recadre ainsi le rôle des femmes dans les sociétés, elles ne sont pas que des victimes, des survivantes des conflits, elles sont des actrices clés et actives de la paix.

Certes, c'est la reconnaissance du rôle de changement des femmes et le respect et la défense de leurs besoins et de leurs droits qui rend l'agenda FPS un outil transformateur et promoteur de la condition féminine.

9 https://www.unwomen.org/en/news/stories/2019/11/statement-un-women-confronting-femicide-reality-of-intimate-partner-violence; https://www.unfpa.org/sites/default/files/pub-

10 https://www.unfpa.org/fr/swop

11 https://www.unwomen.org/fr/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic

Les plans d'action nationaux : appropriation et dissémination

Les plans d'action nationaux (PAN) de la résolution 1325 sont l'instrument par excellence de la mise en œuvre de l'agenda FPS. Les PAN définissent ainsi les objectifs des politiques nationales et étrangères pour atteindre les résultats escomptés identifiés dans les plans d'action. Une mise en œuvre complète et effective des plans d'action nationaux ne fera que renforcer les institutions et les législations nationales en faveur de légalité femmes-hommes : le leadership des femmes, l'accès à la justice, la participation pleine et complète dans les processus de maintien de la paix y compris la participation dans les forces armées et de sécurité.

Comme nous le souligne l'étude globale de 2015 sur la mise en œuvre de la résolution 1325 et la résolution 2242 par exemple, l'inclusion de la société civile, notamment les organisations féminines et féministes dans les processus de paix, est une « valeur assurée ». Dans ce sens, nous voudrions mettre en exergue comme bonne pratique l'inclusion de la société civile dans les processus d'élaboration des plans d'action nationaux mais aussi dans leur dissémination. Au cours de notre parcours au sein de la société civile, nous avons pu observer un déficit dans la connaissance et l'appropriation des plans d'action nationaux parmi les communautés affectées.

Dans ce sens, nous avons pu apprécier le rôle crucial que joue la société civile dans la dissémination des plans d'action nationaux, ou d'autres instruments internationaux, ce qui permet aux communautés affectées de s'approprier ces instruments et de veiller à ce que les dispositions prévues par l'agenda FPS soient mises en œuvre pour prévenir les violences sexuelles et à caractère sexiste.

La lutte contre l'impunité des violences sexuelles et à caractère sexiste : mécanisme de prévention

L'adoption de la résolution 1820 fut une décision inédite et avant-gardiste à notre sens car la résolution offre une ouverture d'analyse très stratégique pour comprendre le nexus paix-justice.

La résolution 1820 non seulement reconnaît la violence sexuelle et à caractère sexiste comme une tactique de guerre mais elle précise que la violence sexuelle liée aux conflits peut constituer un crime de

guerre, un crime contre l'humanité ou un acte constitutif de génocide ; elle cite le Statut de Rome comme l'instrument phare pour la lutte contre l'impunité des crimes de masse. Dès lors une synergie s'est créée entre l'agenda « Femmes, paix et sécurité » et la justice internationale.

Rappelons-le, le Statut de Rome est le premier et, jusqu'à aujourd'hui, le seul traité international qui incrimine et définit explicitement les violences sexuelles et à caractère sexiste comme constituant des crimes contre l'humanité (article 7(1) g), des crimes de guerre (article 8 (2) a (xxii)) et, dans une certaine mesure, de génocide (article (6) d). Le Statut de Rome, par ses dispositions relatives aux victimes, assure la protection des victimes, leur droit de participation (article 68), prévoit dans le cas échéant des réparations et établit un fonds au profit des victimes (article 79).

Dans ce sens, le Statut de Rome permet aux victimes de se prévaloir d'un accès à la justice lorsqu'elles sont victimes des crimes les plus gravement condamnés par le droit international et met à disposition un nouveau standard de lutte contre l'impunité qui prévaut pour les crimes de violence sexuelle et à caractère sexiste liés aux conflits.

La mise en œuvre du Statut, en particulier la mise en œuvre de ses dispositions relatives au genre renforcera ainsi les législations et les systèmes juridiques nationaux pour enquêter et poursuivre ces crimes. C'est certainement cet aspect du principe de la complémentarité du Statut de Rome qui, à notre sens, permettra une prévention effective des atrocités de masse.

La mise en œuvre des plans d'action nationaux de la résolution 1325 offre donc une opportunité stratégique dans la promotion du principe de complémentarité du Statut de Rome en mentionnant ou incluant dans les objectifs du PAN la ratification et/ou la mise en œuvre du Statut.

Réflexions et recommandations

La pandémie de la Covid-19 nous mène à réfléchir sur l'état des lieux concernant la justice sociale, l'égalité des opportunités, l'égalité entre les femmes et les hommes. La crise de la Covid-19 pèse très lourd sur les plus démunis, notamment sur les femmes et les filles, plusieurs cris d'alarme ont été lancés dans ce sens par des leaders politiques ainsi que par la société civile[12]. Nous ne voudrions pas nous répéter, mais la crise sanitaire de la Covid-19 nous rappelle que notre lutte vers une véritable égalité entre les sexes doit se poursuive pour éradiquer la violence sexuelle et à caractère sexiste !

En guise de conclusion, nous voudrions proposer quelques recommandations très concrètes visant la prévention des violences sexuelles et à caractère sexiste liées d'abord aux conflits et post-conflits :

- veiller à ce que les plans d'action nationaux soient dotés d'un budget pour leur mise en œuvre ;
- - veiller à ce que la société civile soit inclue dans l'élaboration des plans d'action nationaux et dans leur dissémination, de même soutenir des ateliers de formation sur l'agenda « Femmes, paix et sécurité » ;
- veiller à ce que l'assistance internationale dans les processus de négociation d'accords de paix exige la participation des femmes et l'inclusion d'une perspective de genre ;
- soutenir et mener des campagnes de sensibilisation et des formations au soutien à la ratification et à la mise en œuvre universelle de la convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes et du Statut de Rome.

12 Appels du SG et de la SSG : https://www.un.org/en/un-coronavirus-communications-team/put-women-and-girls-centre-efforts-recover-covid-19 ; https://www.unwomen.org/fr/news/stories/2020/3/statement-ed-phumzile-covid-19-women-front-and-centre. La mobilisation de la société civile : http://www.globaljusticecenter.net/press-center/gjc-in-the-news ; https://www.womenpeacesecurity.org/womens-rights-security-councils-response-to-covid-19/

Révisionnisme, documentations et archives, populismes, nouvelles technologies, atrocités et éducation, droit à l'information, contre-pouvoirs et gouvernance

Revisionism, Documentation and Archives, Populisms, New Technologies, Atrocities and Education, the Right to Information, Counter-Powers and Governance

The Emergence of Denial of Facts, Revisionism, and the Distortion of the Past: How Can We Try to Advance the Prevention of Mass Atrocity Crimes?

Yehuda Bauer[1]

The political world of today is faced, i.a., by an increase in concentration on the history and the legacy of World War II, and especially on the genocide of the Jews (Holocaust). This may seem contrary to logic: with time, these events should slowly have receded into the background. And yet, the volume of academic studies, of art and literature, both serious and kitschy, dealing with these issues, is actually increasing. They are the subjects of international politics and increasingly harsh controversies between states, and the themes of major intergovernmental conferences. Attitudes towards mass atrocity crimes in the present day are shaped, to no small part, by these controversies.

We all are aware of the wave of nationalism and attempts at autarchy that have shaped the globe since the fall of communism. This is as true of so-called 'communist' China as it is of Russia, Thailand, the Philippines, India, the Middle East, much of Africa, Eastern and Southern Europe, Latin America, and the United States. Part of this overall trend appears to be the result of a long-term economic upswing and, paradoxically, globalization, which concentrated tremendous wealth in the hands of a group of mega-companies on the one hand, and forced national communities to seek refuge in defense against each other on the other. The standard of living has risen in the wealthier "North" (China, Japan, North America, Europe, Russia) in the longer run, but has caused a sharp decline in the birthrate. In order to maintain demographic equilibrium in any society, the birth rate has to be 2.1 children per woman at the minimum. The actual birth rate all over the "North" is 1.6-1.7, with some countries reporting even lower rates (in Europe, for instance, Italy and Lithuania are much below the minimum). That leads to an ageing of the population and a growing shortage of people of working age to support existing high standards of living. This in turn leads to immigration of people without whom it would not be possible to keep the societies and nations at the standards of living they are accustomed to. In the case of Europe and North America, this immigration essentially comes from four main regions: Africa, the Middle East, and the Ukraine to Western Europe; and from Latin America to North America. In Russia, some immigration comes from China, the Caucasus, and the Central Asian Republics, but it is not sufficient and will inevitably cause economic, social and political instability. China has no neighbors who will immigrate there, a problem that is already becoming clear to its rulers.

The human race – there are no individual 'races'; there is only one human race, as we all originate from East Africa – is a wandering race. Existing societies all over the globe are the results of human groups wandering, at first in search of hunting and collecting grounds; then in search of water and areas to produce agriculture; and later, crafts and industries. The so-called 'ethnic' make-up of the inhabitants of the Fertile Crescent, the European jungles and riverlands, China, India and Africa, in about 8-9000 BCE is very different, linguistically, culturally, politically, and so on, from the groups that live there today, though the present ones may well be to some degree the descendants of the former.

Thus, present-day mass migrations are actually nothing new: we have always moved from place to place. The reactions of 'natives' – themselves the creation of earlier migrations – are similar to those of our ancestors. There is an almost Pavlovian urge to 'defend' one's traditions, language, political systems, and more generally, one's ways of life from those of present-day migrants. In Europe and the U.S., societies and state organizations will inevitably change as a result of an influx of people with other traditions and cultures. Anglo-Saxons in the US will become a minority, and Germans, French people, Spaniards, Britishers, Italians, or Swedes will behave and look differently from people who lived in these places a couple of hundred years ago. 'Native' opposition takes the form of nationalism, often extreme nationalism, supported by large numbers of citizens who will turn to conservative-traditionalist – sometimes also radical leftist - movements and parties to protect and preserve familiar traditions. However, migration and immigration are inescapable, and while nationalism is a real and present danger, often a very extreme one, its rise is as understandable as is the inevitability of the immigration that produces it.

1 Historian, Honorary President of International Holocaust Remembrance Alliance IHRA

Nationalist elites aim to create a heroic narrative for their own specific nations and societies. Sometimes suffering, real or invented, comes instead of or in addition to heroism, or is an inevitable part of it. When facts do not support such a narrative, the narrative is invented, and ardently believed in. Politicians rely on academics and on mass media to help produce such a narrative, which then becomes a nationalist ideology. Such ideologies have tremendous force. Mass media companies, which are an essential part of the web of mega-companies and mega-industries, and whose sole aim, as with other such companies, is to maximize profits, are today an essential component of the spread of invented narratives.

It lies in the nature of nationalist ideologies that they see their own nation or group as superior to others. Racism, the idea of an essential difference between people of a different origin, color, or social behavior, is explicit or implicit in nationalist propaganda. Certain groups of people who historically have been the scapegoats of Western societies (Christian and Muslim) in crisis -- first and foremost, but not only, the Jews -- are accused of being the enemy or supporting him, and conspiracy theories are developed to explain disasters or problems.

The case of the Holocaust is paradigmatic, and at the same time serves as an extreme example of the global phenomenon of mass atrocities. In so-called 'Western' societies – i.e. the Americas, Europe, Japan, and Russia – outright Holocaust denial has become a relatively marginal phenomenon. This marginalization of denialism has not extended to a a number of Muslim countries, where it flourishes. What we are facing in the 'West' is distortion, not denial. Distortion, in most cases, relies in large or small part on proven facts, but it adds invented 'facts' ('fake facts'), hides unpleasant truths, exaggerates real suffering of perpetrators or invents it, and understates real victimhood of the group targeted for negative treatment. Nationalism needs a usable past, and when that is not available, it invents it, in whole or in part.

There is, for instance, the bitter Polish-Russian controversy about who is responsible for World War II, and as a result, for the genocide of the Jews. The Jews themselves play no autonomous role in this fight about the past; they are the victims, and therefore of secondary importance in this search for a usable national past. The Russian argument is that inter-war Poland was an ally of Nazi Germany, signing a neutrality agreement with it in 1934, and participating in the carving up of Czechoslovakia in 1938 (annexing the Silesian Těšín region in alliance with Germany). Polish resistance to the presence of the Red Army in a possible confrontation with Germany prevented, it is argued, an Anglo-French-Soviet alliance in July 1939 which could have stopped Hitler, preventing the war and the Holocaust. The Polish argument is that the Soviets signed their neutrality agreement with the Nazis (the Ribbentrop-Molotov Pact) of August 23, 1939, which enabled Germany to start the war by attacking Poland. The Soviets and the Germans partitioned Poland, exiled and murdered Poles in what, until then, had been Eastern Poland, and were responsible for the annihilation of 22,000 Polish officers and top leaders at Katyn near Smolensk, and elsewhere, in the spring of 1940. After the war, they forced a communist government in postwar Poland, which held sway for forty years.

Neither of these narratives is a lie, but both are distortions of history that ultimately fail to produce a usable past. Together, they are completely misleading, as the responsibility for the war lies with Nazi Germany, not Poland or the Soviet Union – or Britain or France (or the United States) - though each of these Powers contributed to Hitler's success through their own catastrophic political mistakes.

Distortion of historical facts is not limited to Eastern Europe, but can be found in more liberal societies as well. It took quite some time until the French government under Jacques Chirac recognized the co-responsibility of the collaborationist Vichy regime in the deportation of tens of thousands of French Jews to their deaths. Parallel distortions can be seen in many other countries – the Netherlands, Croatia, Norway, and others, as well as the neutral countries and the Allies. No one comes clean in this story, not even the victims. Historically, this is not new. Ethnic and national sagas are full of such distortions, from the ancient Empires, via the French Revolution, and right to the Myanmar denial of the ethnic cleansing of the Rohingya in the present day. They all create the kind of political, social and cultural reality that is one – though certainly not the only one - of the enablers of mass atrocities, ending up in genocides.

Today, perhaps the most extreme example is Poland, though it is not the only example. The current (2020) nationalist government was elected in free elections, and thus represents a majority of a population which

identifies with what is actually typical of Polish nationalism from the early 20th century on: a combination of nationalism and a right-wing Catholicism which has clear local features that do not represent current Vatican attitudes. Poland is seen as the Christ among the nations, crucified as a lamb of God for the sins of others ('Agnus Dei qui tollis peccata mundi'). The partitions of Poland, three at the end of the 18th century (1772,1793,1795), and two in the 20th (1939 and 1944 – by the Soviet Union) are the results of Poland's sacrifice and its loyalty to its identity and belief.

There is no doubt that the Polish people underwent a genocide – according to the definition of genocide in the UN 'Convention for the Prevention and Punishment of the Crime of Genocide' (12/9/1948) – which resulted in around two million ethnic Polish victims at the hand of the German occupiers. The suffering of Poles is thus no invention. But apart from an understandable concentration on the real suffering of the Polish people, Polish nationalists today argue that Poland was the only occupied country without political collaborators, that there was indeed no collaboration with the Nazis, that the underground (crystallizing in the Home Army – Armija Krajowa, AK) included most Poles, that most Poles tried to help the Jews who were bring annihilated, and that there was a huge number of Polish rescuers. There is partial truth in all this, but also a great deal of distortion: the reason why there was no Polish political collaboration was that the Germans made a conscious decision (with documents to prove it) not to permit any Polish - or Baltic, Belarussian, or Ukrainian - political representation, not even a very pro-Nazi one. Massive collaboration took place on the local level, with Polish heads of towns, townships, and villages being nominated by the Germans and out of necessity collaborating with them; the AK, and other smaller, underground groups were indeed very large, but the AK command made sure that there would not be mass armed resistance, because the German military was overwhelmingly powerful and the result of resistance would have been mass slaughter. Mass armed resistance took place only towards the end of the war, and was defeated; according to Polish internal documentation, the population was radically antisemitic. The rescuers were a small minority, but numerically numbered, probably, in the tens of thousands (it is estimated that in 1939 there were some 21 million ethnic Poles); they faced danger not only from the Germans, but from their neighbors who might denounce them. Liberal Polish historians and other academics estimate the number of Jews killed by Poles or delivered into German hands to be killed as between 130,000 and 200,000.[2] Almost 3 million others were murdered by the Germans on Polish soil. But, this is not a usable past, hence the distortion.

It is quite possible to generalize from this extreme example, and not only regarding the Holocaust. Most Lithuanian Jews were killed by Lithuanians under German direction; the same applies to Latvia, and to a non-trivial extent, Ukraine. But the Dutch, Norwegian, Czech, Slovak, Italian, Belgian, and French police also actively participated in delivering Jews into German hands. One can argue that in many cases of mass atrocities, including genocides and near-genocides, participation of neighbors, or parts – small or large – of local populations, are the norm, and the creation of myths, or historical distortions, are a contributing factor.

The Rwandan genocide (1994) serves as another example. Hutu Power intellectuals received their higher education in Belgian and French institutions, and there is a likelihood, though there is no proof, that they were aware of the history of World War II and the Holocaust. Mass murder of the Tutsi population was very efficiently propagated by radio (the Radio Television Libre de Mille Collines); the main propagandist, Ferdinand Nahimana, was later sentenced to a long jail sentence by an international court. The propaganda broadcast a distorted version of Rwandan history and contributed significantly to a mass participation of ordinary Hutu people in the murder of their immediate neighbors, and even of Tutsi members of their own families. The main Hutu militia, the Interahamwe, was composed of local Hutu young adults who acted in the name of a distorted view of their history: Tutsi were seen as evil strangers. Yet, they were not strangers at all. In actual fact, one might even argue that the Rwandan events were not a genocide according to the Convention, because Tutsi and Hutu are basically two different social strata of the same population – they speak the same language, go to the same Christian Churches, and share the same culture, so that they are not differ-

2 The names of some of these academics: Barbara Engelking, Jan Grabowski, Dariusz Libionka, Jacek Leociak, Dariusz Stola, among quite a number of others. Main publications: 14 volumes of the journal Zaglada Zydow, also, Engelking and Grabowksi, ed.: Dalej Jest Noc, Warszawa, PAN, 2018.

ent ethnic, national, racial, or religious groups as the Convention has it. Whatever the definition may be, the distortion of a common history was an important contributing factor to a mass atrocity.

In today's world, mass atrocity crimes, with genocides or near-genocides at the extreme end of the spectrum, are largely motivated by extreme nationalism and the wave of anti-liberalism that is sweeping through all continents. In many cases – Russia, Poland, Turkey, Egypt, the U.S., Israel, some of the Latin American countries, and a number of African states – formal democracy permits us to say that the majority of the population freely, or at least in part freely, chooses to identify with the nationalist and authoritarian trend. The fact that this is nothing new does not detract from the seriousness of the problem. The ideology supporting and often motivating this development has to build a view of the past that will justify radical nationalism. This requires revisionism, i.e. a re-interpretation of history, that distorts facts, invents fake facts, and thus advances the interests of the ruling elites. The only answer to this is a courageous insistence on the opposite: a careful, fact- and document-based, presentation to the public, using the very same methods – social media and mass education – used by the distorters.

New Opportunities and Challenges in Documenting Atrocities: Bellingcat and Open Source Documentation- Principles and Lessons Learned

Nick Waters[1]

Introduction

The last decade has seen a revolution in how human society interacts and creates information, primarily due to the convergence of the internet, smartphones and social media. The power to create and distribute information on vast scales no longer rest in the hands of a limited number of gatekeepers, but has devolved into the hands of anybody with an internet connected device. Anyone with a smartphone can create a video which is viewed millions of times by people around the world, within a few days of it being posted online. The vast majority of this information will become open source: information which is publicly accessible to anyone.

The removal of gatekeepers has allowed for the democratization of information production, and as a result people are able not just to draw information from a much wider variety of sources, but also to become a source themselves. Rather than reading a copy of the newspaper each morning and watching the news each evening, a person may read a story posted to Reddit in the morning, visit the New York Times website during their lunch break, and then happen to film a car-crash in the afternoon which is featured on the evening news.

The result is vast amounts of data. In 2019, YouTube's users uploaded 500 hours of content per minute.[2] In 2016, it was noted that the cumulative length of the video recordings of the Syrian conflict exceeded the length of the conflict itself.[3] This is a theme which is unlikely to change in future conflicts. These videos, images and text of events, represent a vast reservoir of information which can be used to establish what is happening in places that would otherwise be inaccessible. Whether suited for it or not, social media platforms are becoming an ad hoc form of archive for the recent history of humanity.[4]

It is also possible to monitor events around the world in almost real time, simply by tracking social media posts. When events happen, even life threatening ones, a significant minority of people will begin recording a video or take a picture and post to social media. This behaviour is driven by a complex set of motivations, including the desire to bear witness to atrocities.[5]

This information ecosystem is one which can provide potentially vital sources for the investigation of atrocities, including finding evidence for legal cases. It represents a corpus of data which, although relatively new, can be processed to produce verified information using a methodology which can be replicated by virtually anyone. The discovery, processing, and investigation of this kind of open source content has become known as Open Source Investigation (OSI), and is being used by journalists,[6] lawyers,[7] police,[8] Human Rights organisations[9] and international accountability mechanisms.[10]

1 Journalist at Bellingcat. Focused on the application of open source techniques to the investigation of conflict, primarily in Syria and Yemen.

2 "Hours of video uploaded to YouTube every minute as of May 2019", Statista, accessed 3 April 2020, https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/

3 Greenberg, Andy, "Google's New YouTube Analysis App Crowdsources War Reporting", Wired, (20 Apr 2016)

4 Banchik, Anna, "Disappearing acts: Content moderation and emergent practices to preserve at-risk human rights–related content", New Media & Society 1–18, (2020)

5 Reading, Anna, "Mobile Witnessing: Ethics and the Camera Phone in the 'War on Terror'", Globalizations, Volume 6, (2009)

6 Muhammad Idrees Ahmad, "Bellingcat and How Open Source Reinvented Investigative Journalism", The New York Review of Books, (10 Jun 2019)

7 "GLAN and Bellingcat host open source intelligence experts to investigate air-strikes in Yemen", Global Legal Action Network, accessed 4th April 2020, https://www.glanlaw.org/single-post/2019/02/03/GLAN-and-Bellingcat-run-open-source-intelligence-hackathon-on-air-strikes-in-Yemen

8 "NPCC Guidance on Open Source Investigation/Research", National Police Chief's Council, (April 2015)

9 "The Digital Verification Corps: Amnesty International's Volunteers for the Age of Social Media", Amnesty International, accessed 4th April 2020, https://citizenevidence.org/2019/12/06/the-digital-verification-corps-amnesty-internationals-volunteers-for-the-age-of-social-media/

10 "Bulletin No. 2", International, Impartial and Independent Mechanism for Syria, April 2019, accessed 2nd April 2020, https://iiim.un.org/wp-content/uploads/2019/05/IIIM-Bulletin2-2019-4-En.pdf

The methodology of verification

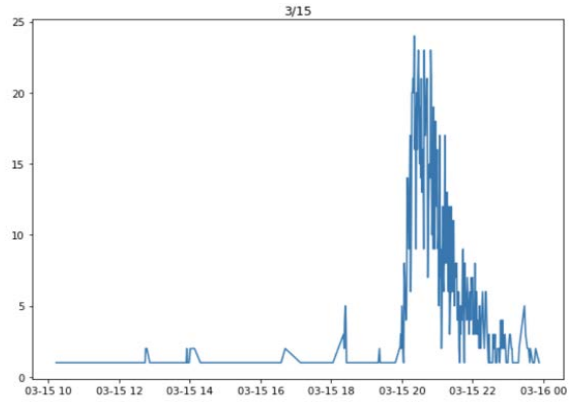
In order for this kind of information to be useful when holding perpetrators accountable, its reliability must be established. Stated information accompanying content may be incorrect, claims may be flawed, and the image or video posted may in fact show a completely different event or location from what it purports to show. Many images or videos will be posted either anonymously, or by a person who did not film it personally. However, by systematically verifying this kind of content, it is possible to demonstrate its validity.

As a result of the proliferation of this kind of content over the last decade, a methodology which aims to verify content whose provenance may be unknown has been developed. This methodology was initially applied to conflict media as a way to verify claims made by opposing sides. However, it has developed far beyond this original mission and can be applied to any number of subjects. It is now widely referred to as OSI and is distinct from, although similar to, Open Source Intelligence (OSINT). With the careful application of techniques developed by OSI and OSINT practitioners, a huge portion of content posted, even with limited knowledge of its provenance, can be verified in part or fully.

Verification is the process of verifying what a piece of content actually shows, and the most important tool for verification is context. Even a basic understanding of context allows misleading content to be identified. For example, if there were a riot in Iraq, it would be easy to identify if a person posted a video from a riot in Boston, USA, claiming to show the Iraqi riots. The architecture of the buildings, the language spoken in the video, the script used on signs, even features such as road markings or street cobbles could be used to identify a mislabelled video.

Even the meta-data associated with social media posts about an incident is helpful in verifying that event. For example, if there were a mass shooting or airstrike in a public place in a city, it would be accompanied by thousands of social media posts. This phenomenon has been dubbed a "Twitcident" and is identifiable every time something of note happens in a public place where people have access to the internet.[11]

For example, the graph below shows Tweets mentioning the word "Mastaba", a town in Yemen which was hit by an airstrike in March 2015, over time. Simply by charting the mentions of the word "Mastaba," it is possible to see that a significant event has taken place. Examining the content of those Tweets would allow an analyst to establish what that event was.



Tweets mentioning "Mastaba" over time[12]. Credit: Forensic Architecture & Bellingcat

Although in theory a similar effect could be created by tasking a bot army to post thousands of posts claiming there had been an attack, it would still be possible to verify whether an event had taken place or not. It is possible to differentiate between real people and bots, and automatically generating unique and verifiable content on the scale and type expected in this kind of event is, in reality, virtually impossible.

The most important way to verify the content people post, such as images or videos of the aftermath of such an attack, is to fix them in time and space. Identifying precisely where a piece of content was created is referred to by OSI practitioners as "geolocating." Working out when a piece of content was created is often referred to as "chrono" or "temporal" locating. A deep understanding of context allows a good OSI analyst to notice important details within a particular piece of content, and place it in time and space with surprising speed, often within a few minutes.

Geolocation is usually completed by the comparison of features seen in a video to satellite imagery. The arrangement of features such as buildings, trees, or

11 Bartlett et al, "Vox Digitas", DEMOS, (2014)

12 Forensic Architecture & Bellingcat, The Yemen Project, 2019

mountains produce unique "fingerprints" that can

be matched on satellite imagery and maps.The level of confidence of geolocations can often be determined with complete certainty. Good geolocation practitioners can often determine accuracy to within a few meters, or even less, in certain circumstances.

In order to establish a date, an analyst applying chronolocation will look at a wider variety of sources, including social media posts, phenomena such as Twitcidents, physical and linear changes in the environment such as building work, and other contextual changes. In order to establish a time, the primary tool has changed little in millennia, and remains the analysis of shadows cast by the Sun. However, glimpses of watch faces, the time live-streams were posted, and the earliest social media post about a subject may all be leveraged to assess what time an event took place. In cases with good data, an accuracy of 10 minutes from the event's actual occurrence is not unusual.

Bushes, buildings, and bloodstains: the Werfalli case study

In 2017, the International Criminal Court (ICC) issued its first arrest warrant based entirely on open source evidence.[13] The evidence consisted of videos uploaded to Facebook, which showed mass executions allegedly on the orders of the Libyan warlord, Mahmoud al-Werfalli. Without the application of OSI techniques, these videos would have simply been another one of the thousands of recordings of mass atrocities that litter the internet. However, despite lack of physical access, the application of OSI techniques resulted in the extraction of vital information from these videos.

Bellingcat, a website which specialises in OSI, examined one of these videos in order to assess what information could be ascertained from it. The video appears to show Mr. Werfalli reading from a document, and refers to a "decree decision," which, "shall be executed today 17/07/2017." This is followed by the execution of 20 people.

By examining this video in detail, it was possible to work out exactly where and when the video had been filmed. It could be geolocated precisely by comparing features seen in the video with those seen on satellite imagery. Initially beginning with macro-features; such as buildings, walls, and roads; the final geolocation was completed using the alignment of bushes, which fitted precisely with those seen in the video.

The appearance of small, dark spots on satellite imagery of this location provided further confirmation that this was the correct location. On July 17, 2017, these dark spots appeared for the first time in satellite imagery of this location. Previous satellite imagery taken before and on July 14 lacked these spots. After comparing these dark spots to the video of the execution, it became evident that they aligned precisely with the arrangement of the prisoners during the killings. It is most likely that these dark spots were the blood stains from the executed men.

Assessing when the execution took place was a relatively straightforward process. The dark spots seen on satellite imagery must have appeared either on the 15th, 16th, or 17th of July 2017. This was consistent with the claim made within the video that this, "decree decision," was carried out on July 17, 2020. In order to assess the time, people in the video were used as organic sundials, casting a shadow which could be used to tell the time, in this case about 6:30 in the morning.

By simply using details within the video, it was possible to work out precisely where this execution had taken place, and what time it had taken place within a three-day date range. This was all done using free tools, a satellite subscription service that, at the time, cost roughly $200 a year, and excellent analysts. This analysis was carried out entirely remotely by a core team of five people working part time over a period of about three weeks. During this time, they were also working on other projects. It is worth noting, as well, that the geolocation of this footage was unusually complex, and that most geolocations are completed much more quickly.

13 Warrant of Arrest, The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli, The International Criminal Court, accessed 1st April 2020, https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/11-01/17-2

Benefits and limitations of OSI

As each step of the OSI methodology is easily accessible to a person with even limited knowledge of the process, it allows the identification of mutually agreed facts upon which an analyst can base further analysis. Rather than relying on anonymous sources for unverifiable information, every step in an OSI methodology can be recreated by other analysts. This also means that any factual mistake produced by the analyst can be quickly identified and corrected. When applicable, OSI can be incredibly persuasive, generating a high level of trust in investigative processes and conclusions.

In theory, this open methodology means that an actor paying close attention to their digital footprint could potentially frustrate parts of open source investigation into their activities. However, the reality is that many atrocities are so egregious that there is the possibility not only of content produced by the perpetrator, but also by bystanders and by victims themselves.

It is vital to remember that, as with any other methodology, OSI has limitations. Being aware of these limitations when carrying out OSI does not limit an analyst, but instead results in an understanding of when to apply other techniques or sources of information. If these limitations are not kept in mind when conducting OSI, they risk undermining the integrity of those investigations.

For example, it is vital to understand data availability bias when conducting these kinds of investigations - just because there is limited or no data on a subject, it does not mean that event did not take place. Events that take place in private spaces or are regarded as taboo, such as sexual assault, are unlikely to feature on the open source record. This does not mean that these events did not happen, but rather that OSI may not be the right tool for investigating this subject.

Similarly, the usual material which OSI discovers is not well suited for establishing intent. Although it may be able to accurately establish that a particular weapon was used in a particular location at a specific time, and establish what appears to be a strategic pattern, confidential human sources or analysis of official documentation may be better suited to definitively identifying intent.

The longevity of content when placed on social media is also a concern. Content depicting atrocities may be permanently removed without warning for a variety of reasons. Even when alerted to the removal of content which may later constitute evidence of atrocities, social media platforms have been extremely reluctant to do anything other than permanently delete this content. Organizations such as the Syrian Archive, part of Mnemonic, and the International Impartial and Independent Mechanism (IIIM) currently carry out the vital role of preserving this kind of content for future investigations. Despite the best efforts of these organizations, much content which may later be useful as evidence continues to be deleted by social media platforms.[14]

The perception that OSI can do everything risks damaging OSI as a potential tool. Although the investigatory power of OSI is only starting to become fully appreciated, it cannot simply replace large portions of other methodologies. Rather it should be understood as a tool which, as with any other methodology, works best when combined with other forms of investigation. Amnesty International has led the way in this field, combining systematic application of open source investigation with on-the-ground investigations.[15]

Conclusion

OSI represents a set of sources and methodologies that can be combined to produce trustworthy information. Currently its primary use case remains journalism, but steps are being taken to develop ways to collect, process, and store this information in a way that would make it easier to use it as evidence in court. Global Legal Action Network (GLAN) and Bellingcat have worked together to develop a basic methodology for this, using it to investigate airstrikes in Yemen.[16] The Human Rights Center at Berkeley is currently developing a protocol with the intention to introduce guiding principles for using OSI in legal cases.

The application of OSI techniques in legal settings

14 Banchik, (2020)

15 "Libya: Civilians caught in the crossfire as militias battle for Tripoli", Amnesty International, accessed 8th April 2020, https://www.amnesty.org/en/latest/news/2019/10/libya-civilians-caught-in-the-crossfire-as-militias-battle-for-tripoli/

16 Bellincat's Yemen Project, accessed 12th April 2020, yemen.bellingcat.com

is increasing. As previously mentioned, in 2017 the ICC issued an arrest warrant based entirely on open source evidence, as of 2018, open source information has been used as evidence in court cases in Germany, Finland, and Sweden relating to war crimes.[17] Open source techniques are likely to play a prominent role in the court cases, both current and future, relating to Malaysia Airlines Flight 17, which was shot down over Ukraine in 2014. Indeed, the findings of the Joint Investigation Team into the MH17 case, using both OSI and more traditional techniques, have closely mirrored those of Bellingcat.

Over the past decade OSI has repeatedly been used to investigate atrocities, primarily in the sphere of investigative journalism. The findings of these open source investigations have consistently tallied with the conclusion of independent investigations into atrocities such as into MH17, the use of chemical weapons in Syria or Werfalli's executions. The open and easily replicable methodology of OSI has repeatedly been shown to be an excellent tool to track, identify, and investigate atrocities. As such, it is vital that legal systems, both international and domestic, work with OSI practitioners to establish how to use this information as evidence in courts.

17 "Prosecuting war crimes of outrage upon personal dignity based on evidence from open sources – Legal framework and recent developments in the Member States of the European Union", The Genocide Network, The Hague, (2018)

New Technologies, New War Crimes, and New Threats to Fundamental Rights: State of Play, Consequences, and Lessons for Prevention

Enzo Maria Le Fevre Cervini[1]

"Technology is capable of doing great things.
But it doesn't want to do great things.
It doesn't want anything.
That part takes all of us. It takes our values and our commitment to our families and our neighbours and our communities, our love of beauty and belief that all of our faiths are interconnected, our decency, our kindness.I'm not worried about artificial intelligence giving computers the ability to think like humans. I'm more concerned about people thinking like computers without values or compassion, without concern for consequences".[2]

A tsunami. This is the word used by many experts when describing the momentum the world is living in today in terms of change brought about by digital technologies and other emerging technologies. This wave is unprecedented as not only is the industry affected by it similarly to what happened with the advent of the industrial revolution, but the scale, spread and speed of change brought about by technologies is affecting the way our societies are living, producing and conceiving new forms of cultural habits. Technology is indeed redesigning our lives. This change has also affected international relations among countries and the relations between governments and the private sector, racing for the control of Artificial Intelligence and all emerging technologies, including military technologies.

It is a reality that the era of emerging technologies is leading to a constant paradigm shift in social relations and poses unprecedented challenges. While these technologies can represent an important tool at the disposal of the fight against inequalities and the affirmation of fundamental human rights, they also represent an incredible and sometimes ungovernable tool at the disposal of State and non-state actors to violate international law and fundamental rights.

The United Nations has recently highlighted how technology, thanks to data, is a tool used by States to automate, predict, identify, monitor, detect, hit and punish.[3]

Advances in science and technology may enable new methods, means and even domains of warfare, thereby raising unique questions about security, stability, law and ethics.[4]

The recent international conflict wars – Iraq and Afghanistan among the many - can be seen as a playground for the development of military robots, tele-operated uninhabited combat aerial vehicles (UCAVs), as well as robotic and cyber warfare.

A number of States are developing ICT capabilities for military purposes without proper control by international norms. The use of ICTs in future conflicts between States is becoming more likely.[5]

The current state of play guides us into a reality where remote war weapons, robots and cyberwar are more and more part of the "new normal." Seen by strategists also as a methodology to get conflicts away from headlines of mass media, the use of technology is becoming a way to get conflict operating in silence, avoiding "boots on the ground" with its many consequences of casualties, financial expenditures, logistical effort and international relations complications, and eliminating the enemy by playing with a joystick thousands kilometres away. The character of war is being transformed by emerging technologies. Technologies have undergone enormous improvement thanks to military Research and Development programs in the last decades – not only I would like to underline the use of defensive and offensive technology, it has always been part of the evolution process of our human history with the constant desire for military dominance. If the aspiration of many involved in these programs was linked to avoiding more casualties in war zones, the reality

1 Vice-Chair of the Foundation for the International Prevention of Genocide and Mass Atrocities and International Researcher of the Laboratory for Innovation and Artificial Intelligence of the Faculty of Law of the University of Buenos Aires.

2 Cook T., Apple CEO speech to MIT graduates, 2017, available at: https://qz.com/1002570/watch-live-apple-ceo-tim-cook-delivers-mits-2017-commencement-speech/

3 Alston P., 2019, Report of the Special rapporteur on extreme poverty and human rights, United Nations, New York

4 Resolution N° 72/154 General Assembly "United Nations Institute for Disarmament Research" A/72/154 (17 July 2017), recital 18, available at: https://undocs.org/en/A/72/154)

5 Resolution N° 70/174 General Assembly "Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security" A/70/174 (22 July 2015), recital 4, available at: https://undocs.org/A/70/174

is what we have witnessed in the past years. There is an increase of new wars, and micro-conflicts, that have a different but ultimately not less important increase in victims and damages than old-style conflicts with boots-on-the-ground. The effects of cyber attacks have, as an example, resulted in the closure of hospitals, have taken electrical grids offline, brought major cities to a standstill, and even affected the integrity of democratic processes.

Scientific and technological developments can have both civilian and military applications and that progress in science and technology for civilian applications needs to be maintained and encouraged.[6] Indeed the majority of applications developed nowadays is truly changing the capacity to give answers to the most complex challenges and endeavours mankind has ever aimed at being able to tackle. But with the increasing power derived by the control of these technologies more challenges are faced in terms of consequences for a peaceful coexistence and respect for conventional human rights and international law in general. Undeniably, military capacity is now also linked to a much more holistic vision that uses information derived from satellite images or social media, new sources of analysis and potential data to execute missions or deploy remote weapons against "enemies." This evolution benefitted not only the most advanced military powers but gave sophisticated tools to State and non-state actors that have been for ages dependents of States with more military capacity. Therefore, this has generated fundamental shifts in the way wars are conducted and the actors involved in conflicts.

There is increased reporting that States are developing information, communication and technology (ICT) as instruments of warfare and intelligence, and for political purposes. Uncertainty regarding attribution and the absence of common understanding regarding acceptable State behaviour may create the risk of instability and misperception.[7]
The varying degrees of ICT capacity and security among different States increases the vulnerability of the global network. Differences in national laws and practices may create challenges to achieving a secure and resilient digital environment, but also certainty in who is really able to control the abuse of international norms.[8]

Several new war methodologies were being noticed by international law and despite the numerous appeals by the non-governmental actors dedicated to the protection and advancement of human rights norms, many of the risks and violations remain untouched by the discussions at international level. International and national laws are not keeping pace with this exponentially rapid rate of technological change. This disconnect between the law and the reality of modern armed conflicts suffers also by the tone on how the world looks at technological progress. In the last few years a trend into setting ethical guidelines for Artificial Intelligence (AI) has imposed on the international community an enormous effort in conceiving ethical norms for technology. Definitely an important and pivotal debate, but on a technology that is far from being fully-developed – like willing to impose on a new-born rules of etiquette to participate in a royal gala – leading to a process that has somehow obscured all sorts of other debates regarding the impact of technologies and the role of data in conflicts – among others.

AI is certainly influencing all sorts of other technologies, including those related to new wars. The power of data analysis and management permitted the evolution of robots, drones, satellite and cyberwar to unthinkable applicability. This also leads to the focus of this series of studies which is understanding how the prevention of atrocities needs to gain a new momentum. New technologies might severely affect the situation in certain parts of the globe that are experiencing new waves of atrocity crimes committed by both State and non-state actors.

Indeed, Governments around the world are increasingly aware of the fact that without an appropriate regulatory environment, AI may replicate or even exacerbate human bias and discrimination and lead to unintended – or intended - and harmful

6 Resolution N° 74/35 General Assembly "Role of science and technology in the context of international security and disarmament" A/RES/74/35 (18 December 2019), page 1, available at: https://undocs.org/en/A/RES/74/35

7 Resolution N°65/201 General Assembly "Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security" A/65/201 (30 July 2010), recital 7, available at: https://undocs.org/A/65/201

8 Resolution N°65/201 General Assembly "Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security" A/65/201 (30 July 2010), recital 11, available at: https://undocs.org/A/65/201

consequences.

Human bias and discrimination are one of the most dangerous challenges posed by the use of AI in reference to the aspect of atrocity crimes and that requires a careful analysis of how these technologies might be used to harm fundamental human rights. As for other emerging technologies AI is not always perceived as a "good thing" for this and many other debatable reasons. This perception undoubtedly has solid foundations that need to be tackled.

Technology and the internet have provided tools for terrorists and violent extremist groups to incite violence, support recruitment, and plan and finance attacks. At the global level, the Internet is growing in all its facets, including the dark web, but is increasingly fractured along ideological and political lines leading to increasing instability.[9]

Information and communication technologies (ICTs) have unique attributes that make it difficult to address threats that States and other users may face. ICTs are ubiquitous and widely available. They are neither inherently civil nor military in nature, and the purpose to which they are put depends mainly on the motives of the user. Networks in many cases are owned and operated by the private sector or individuals. Because of the complex interconnectivity of telecommunications and the Internet, any ICT device can be the source or target of increasingly sophisticated misuse. Malicious use of ICTs can be easily concealed. The origin of a disruption, the identity of the perpetrator or the motivation can be difficult to ascertain. Often, the perpetrators of such activities can only be inferred from the target, the effect or other circumstantial evidence. Threat actors can operate with substantial impunity from virtually anywhere. These attributes facilitate the use of ICTs for disruptive activities and multiply the list of the enemies of democracy and human rights.[10]

The criminal misuse of information and communications technologies emphasizes the importance of countering such use while respecting human rights and fundamental freedoms, including a new wave of fundamental rights – such as the right to privacy - in compliance with other obligations under international law.

The 9/11 attack on the World Trade Center and the subsequent terrorist actions in many countries legitimated the military's previous focus on non-state actors and created an environment where States - not only the ones affected by terrorist attacks - were able to justify both the introduction of new surveillance laws and the evolution of massive repression instruments and new military tools empowered by technology. The important factor in the development of all these systems is that it is primarily private companies developing these systems for the military.[11] Such companies are looking for profit and not for the execution of a social corporate responsibility on human rights.

But beyond this particular fact, the issue around control that takes us back to Alston's report is the massive application of control measures that have been introduced progressively everywhere. These control measures are heavily empowered by technology and their use in a renewed nationalist world are seen as tools to empower discrimination and fight against opposing powers in States with fragile democracies. The recent use of these tools became evident in the recent Hong Kong protests but is massively used in different countries also with no apparent troubles to seize control and dominion over minority groups.

Preventing the potential use of ICTs for purposes that are inconsistent with the objectives of maintaining international stability and security, and may adversely affect the integrity of the infrastructure of States to the detriment of their security in both civil and military fields.[12] This needs to be seen as one of the primary objectives that should be pursued by the international community.

Prevention and protection practices should focus on

9 Resolution N°74/786 General Assembly "State of global peace and security in line with the central mandates contained in the Charter of the United Nations" A/74/786 (6 April 2020), recital 44, available at: https://undocs.org/en/A/74/786

10 Resolution N°65/201 General Assembly "Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security" A/65/201 (30 July 2010), recital 2, available at: https://undocs.org/A/65/201

11 Mobbs. P., 2013, Drones, cyberwarfare and democracy, Mobbs' Environmental Investigations

12 Resolution N° 70/237 General Assembly "Developments in the field of information and telecommunications in the context of international security" (30 December 2015), page 2, available at https://undocs.org/A/RES/70/237

strengthening human security in a holistic manner. Security should not be defined as physical security alone, but should be understood as encompassing multiple dimensions, including economic security, political security, environmental security, digital security and psychosocial well-being. New war crimes are more often affecting not all of these issues simultaneously as they also seek instability as a means to impose different outcomes such as a detriment of fundamental rights or the termination of peaceful coexistence.

Intensify efforts to build robust domestic security in information and communications technologies and the use thereof, consistent with their international obligations and domestic law becomes pivotal in combating the criminal misuse of the technologies and preventing the use of technology, communications and resources for criminal or terrorist purposes.

Building confidence and security in the use of information and communications technologies for sustainable development should also be a priority, especially given growing challenges, including the abuse of such technologies for harmful activities from harassment to crime to terrorism.[13]

Promoting multi-stakeholder cooperation at all levels and raising awareness on the effects of the use of robots, drones, satellites, cyberwar and emerging technologies is essential to empower a more solid human rights architecture. No country is immune from atrocity crimes and States should cooperate in developing and applying measures to increase stability and security in the use of ICTs and to prevent ICT practices that are acknowledged to be harmful or that may pose threats to international peace and security.
For many people, today's world is an insecure place, full of threats on many fronts. Prolonged crises, violent conflicts, natural disasters, persistent poverty, epidemics and economic recessions - they all impose disarming difficulties and prospects for peace, stability, and sustainable development. These crises are complex and involve multiple forms of human insecurity. When they overlap, they can grow exponentially, impacting all aspects of people's lives, destroying entire communities and crossing national borders. The world is experiencing this today in facing the crisis related to the Coronavirus pandemic and the many armed conflicts that didn't cease to exist despite the pandemic.

The complexity of the International Community's action hinges on the well-being of the individual and the planet, recognizing technology and data fundamental tools can be used to strengthen fundamental human rights. Emerging technologies can, or rather must, help governments ensure the fight against inequalities, accessibility and inclusiveness in an ever timelier manner. The Sustainable Development Goals challenges today can be addressed only thanks to emerging technologies and more virtuous use of the data we produce, while respecting and promoting the fundamentals that underpin the values of the UN Chart and the Universal Declaration. Prevention against the misuse of emerging technologies adopted to harm populations and use abusive control over minorities is more than ever necessary. Technology is not an end but an instrument, it takes humans to determine what technology should be able to do and to act for.

13 Resolution N° 70/125 General Assembly "Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society" A/RES/70/125 (1 February 2016), recital 10, available at: http://undocs.org/en/A/RES/70/125

Quatre principes pour améliorer l'enseignement des atrocités de masse

Joël Hubrecht[1]

« Les actes de violence inspirés par l'antisémitisme, la haine à l'égard des musulmans et les autres formes de haine raciale se multiplient à un rythme alarmant », s'est inquiétée, en février 2020, la secrétaire générale du Conseil de l'Europe[2]. Ce constat est d'autant plus troublant que depuis plusieurs décennies des programmes éducatifs sont mis en œuvre pour avertir les jeunes élèves des conséquences dramatiques qu'entrainent les politiques sectaires et xénophobes, histoire du génocide des Juifs d'Europe à l'appui. Mais rien n'y fait, ni les recommandations de l'UNESCO[3] ni les fiches pédagogiques du Conseil de l'Europe[4]. Alors, qu'est-ce qui ne fonctionne pas comme prévu ? D'où vient la faille ? De l'école qui, concurrencée par l'internet et les réseaux sociaux, ne serait pas ou plus le lieu adapté pour sensibiliser les jeunes à cette problématique ? De la surcharge des programmes qui empêche de lui consacrer le temps nécessaire ? De l'enseignement lui-même et de ses choix pédagogiques erronés ? Du hiatus entre une impression diffuse de connaissance chez les enseignants et la réalité d'un savoir scientifique en réalité mal maitrisé[5] ? Des élèves qui, biberonnés aux mirages de la société de consommation, seraient insouciants de périls qui leur semblent réservés à d'autres siècles et continents, alors même que certains de leurs camarades, exclus du système consumériste, se radicalisent jusqu'à plonger dans le terrorisme ?
Ces questions, urgentes à l'heure des triomphes du populisme, n'ont pas de réponses simples et tranchées. De plus, elles demanderaient d'être affinées car même si l'antisémitisme – pour prendre ce signal d'alerte particulièrement significatif – augmente en Pologne, en Allemagne, en France ou en Belgique, les contextes socio-politiques de ces pays divergent sensiblement. Cependant les ressorts de cette brutalisation des sociétés sont similaires et, même si la prise de conscience tarde encore, de nouveaux axes pédagogiques se dégagent pour tenter de sortir des impasses actuelles.

Se centrer sur les bourreaux plutôt que sur les victimes

L'UNESCO et l'institut Georg-Eckert pour la recherche internationale[6] ont dressé une cartographie mondiale montrant que l'histoire de la Shoah étaient enseignée dans de très nombreux pays. Cette primauté est justifiée car la Shoah est l'évènement matriciel à partir duquel la définition de génocide a été conceptualisée. De plus, son enseignement recèle de nombreuses leçons en termes de bonnes pratiques[7] : s'adapter en fonction des âges et prévoir sur plusieurs années une progression dans les contenus de l'enseignement ; favoriser la formation des enseignants et les liens entre les éducateurs et les chercheurs ; donner la priorité à l'approche historique mais en faisant appel à d'autres disciplines comme la philosophie et la littérature ; monter des projets mobilisant collectivement élèves et enseignants soit pour accueillir un témoin, se rendre sur un site mémoriel, ou réaliser un film8. A contrario, les méthodes contre-productives sont aussi identifiées : l'approximation, les images chocs, la politisation et le moralisme. Une grande marge de progrès demeure possible en mettant partout en œuvre les recommandations tirées de cette expérience. On ne peut toutefois s'en satisfaire si l'ambition est de mieux préparer les nouvelles générations à prévenir et à agir effectivement face au retour des peurs et des haines collectives.
Pour dépasser le stade de l'indignation stérile et de

1 Responsable du programme « Justice pénale internationale et justice transitionnelle » de l'Institut des hautes études sur la justice.

2 https://www.coe.int/fr/web/portal/-/ultra-nationalism-anti-semitism-anti-muslim-hatred-anti-racism-commission-raises-alarm-over-situation-in-europe

3 UNESCO, Enseignement de l'holocauste et prévention du génocide : guide à l'intention des décideurs politiques, 2017, disponible sur http://unesdoc.unesco.org/images/0025/002597/259701f.pdf

4 Recommandation (2001) 15 du Comité des ministres sur « l'enseignement de l'histoire au XXIe siècle », adoptée le 31 octobre 2001. Voir le site internet http ://www.coe.int/memory. Placé sous le contrôle du Conseil de l'Europe, ce site fournit les informations et les outils pédagogiques concernant le projet « Enseigner la mémoire. Éducation à la prévention des crimes contre l'humanité. »

5 Voir le rapport de la mission d'étude en France sur la recherche et l'enseignement des génocides et crimes de masse. Une synthèse des travaux par Vincent Duclert, qui a présidé cette mission, a été publiée aux éditions du CNRS en décembre 2018.

6 UNESCO / Institut Georg-Eckert pour la recherche internationale, The international status of education about the holocaust : a global mapping of textbooks and curricula, 2015. Disponible sur http://unesdoc.unesco.org/images/0022/002287/228776e.pdf

7 L'Alliance internationale pour la mémoire de l'Holocauste a recensé 400 études parues dans 600 publications en 15 langues. Voir Eckmann, Stevick, Ambrosewicz-Jacobs (dir.), Research in teaching and learning about the Holocaust, AIMH, 2017.

8 Un exemple parmi tant d'autres : le film réalisé par des élèves du collège André-Malraux de Paron pour d'autres élèves, intitulé Enseigner la Shoah. Le film est sorti en août 2013 et peut être visionné sur le site www.realisonsleurope.fr

l'accoutumance blasée, il faut paradoxalement nous détacher de la figure de la victime pour regarder ceux qui l'agressent. Le responsable des formations au Mémorial de la Shoah (Paris), Iannis Roder, est convaincu que l'approche exclusivement victimaire qui domine encore dans l'enseignement de la Shoah est devenue contre-productive. Elle doit être abandonnée au profit d'une approche plus politique basée sur l'analyse des bourreaux et du régime nazi[9]. Non pour trouver des causes justificatives ou un mobile rationnel au déchainement de la violence mais pour chercher les combinaisons des passions et des intérêts, des calculs et des croyances, de la peur et de l'hubris, qui composent leur univers de sens. Bien que gorgé de représentations irrationnelles, il n'est pas pure folie et cruauté. C'est un système où divergences et compétitions, loin de bloquer la machine de mort, la pousse à son paroxysme. L'histoire de la Shoah demeure une référence incontournable car la recherche sur les criminels nazis offre un fond inégalé d'analyses et de biographies[10] qui manque pour comprendre d'autres crimes de masse. En s'éloignant des thèses du monstre omnipotent (que Hitler a longtemps campé) et de l'assassin ordinaire que nous serions tous en puissance (que Eichmann a longtemps incarné), elle a progressivement affiné notre compréhension des contextes et des effets de chaînes, de la pluralité des acteurs et de la complexité des dynamiques, seule manière d'espérer pouvoir prévenir le mal et de ne pas seulement en pleurer les effets.

S'émanciper de la rigidité des catégories pour saisir les évolutions déroutantes

Traumatisme indélébile, surtout en Europe où elle a été perpétrée, la Shoah ne peut rester la seule référence digne d'être prise en compte par l'école. Sinon elle renforcera une concurrence victimaire qui n'est plus seulement un contre-effet indésirable mais qui est devenue un argument central des nouvelles formes d'antisémitisme et de complotisme. Il est urgent d'élargir l'enseignement à d'autres génocides, celui antérieur des Arméniens, ou un plus récent comme celui des Tutsis, voir contemporain comme celui des Yézidis (un génocide auquel de jeunes djihadistes européens ont participé). Malgré les spécificités du crime génocidaire, en tant que politique d'extermination d'un groupe, le comparatisme peut s'étendre à des crimes contre l'humanité et crimes de guerre, au Cambodge, en ex-Yougoslavie ou en Syrie car ces violences de masse partagent aussi des traits en commun et presque toujours se combinent dans le temps ou dans l'espace.

Le comparatisme, longtemps controversé, est désormais une méthode reconnue et plus fréquente dans la recherche spécialisée. Il demeure toutefois pour l'école un défi, l'information et les ressources, surabondantes pour la Shoah, manquent ou apparaissent trop sensibles dans d'autres cas. Ainsi la recontextualisation du génocide des Tutsis dans l'histoire du Rwanda, voire de la région des Grands Lacs, n'est pas simple, vu la faiblesse de l'enseignement sur l'Afrique dans beaucoup de pays européens. Bien que parfaitement documentés, les crimes en ex-Yougoslavie sont scandaleusement négligés aussi bien dans la recherche universitaire que dans l'enseignement. Quant au génocide des Yézidis, son histoire reste encore à écrire[11]. Le risque est alors de prendre dans le comparatisme ce qu'il a de plus contestable : son attrait pour des grilles de lecture modélisantes qui offre des visions panoramiques et englobantes saisissantes, parfois justes mais ouvrant la porte à tous les anachronismes et les amalgames.

L'exercice est donc délicat. Quelques ouvrages, comme celui de Jacques Semelin ou celui d'Yves Ternon[12], sont cependant à la fois suffisamment rigoureux et accessibles pour, à partir des cas arméniens, juifs, bosniaques et tutsis, dégager des étapes et décrire un processus graduel d'exclusion, de persécution, de massacres sporadiques puis systématiques. Au-delà des rapprochements, la compréhension des divergences est aussi fondamentale. Il faudrait dépasser le formalisme catégoriel qui empêche de saisir en profondeur les ressorts de ces évolutions. C'est au niveau des pratiques criminelles plus encore que dans les discours de la propagande que l'on peut saisir des configurations d'époque qui restent souvent opaques pour leurs contemporains et explique notre aveuglement devant des nouvelles formes de violence que nous sommes incapables de voir pour ce

9 Iannis Roder, Sortir de l'ère victimaire. Pour une nouvelle approche de la Shoah et des crimes de masse, Odile Jacob, 2020.

10 En France, voir les travaux de Johann Chapoutot, de Christian Ingrao, de Philippe Burin ; à l'étranger, ceux de Volker Ullrich, Peter Longerich, Ian Kershaw, Philippe Sands, entre autres.

11 Le projet « Action Yézidis » collecte les témoignages de survivants (voir le site de Yahad-In Unum).

12 Jacques Semelin, Purifier et détruire : usages politiques des massacres et génocides, Seuil, 2005 (rééd. en poche 2017) ; Yves Ternon, Génocide : anatomie d'un crime, Armand Colin, 2016.

qu'elles sont. C'est pourquoi l'enseignement sur les génocides et violences de masse devrait être conçu moins comme un enseignement du passé ou un devoir de mémoire que comme un apprentissage du regard pour saisir les changements de perception et de mentalités qui sont à l'œuvre dans nos sociétés et rester attentifs aux évolutions et aux aspects inattendus des violences contemporaines.

Choisir la prévention plutôt que la mémoire

En effet, on ne peut pas attendre de l'apprentissage du passé qu'il assure clairvoyance et réactivité. Au contraire, comme l'instrumentalisation du souvenir du camp de concentration de Jasenovac par la propagande nationaliste serbe le prouve, la mémoire des évènements peut aussi engendrer de nouvelles violences. Plutôt que de croire que la prévention découlerait de la connaissance des crimes du passé, il faudrait traiter la question de la prévention en tant que telle en présentant aux élèves son histoire, ses enjeux, ses outils et leurs limites[13]. En montrant la passivité ou la complicité des acteurs et institutions environnantes mais aussi les actions des Justes qui sont bien documentées pour la Shoah, pour le génocide des Tutsis et pour la guerre dans les Balkans. En s'interrogeant aussi avec les élèves sur ce qui aurait dû ou pu être fait et sur l'importance de la capacité de désobéir. La prévention ne peut cependant être traitée uniquement comme un dilemme moral individuel et surtout pas sur un mode rétrospectif (« et moi, est-ce que j'aurais été résistant ou collaborateur et criminel ? »). La prévention est aussi, et peut-être d'abord, le résultat de mécanismes internationaux ou associatifs créés à cette fin (les organisations d'alerte précoce et de suivi de conflits) et d'actions collectives pour se doter de règles (la convention de 1948 sur le génocide et les autres conventions postérieures) et des moyens d'agir. Si la création de l'ONU peut être présentée comme une réponse à l'échec de la SDN, l'abandon des victimes tutsis en 1994 par l'ONU et par les grandes puissances internationales nous place devant le gouffre entre les objectifs théoriques affichés et les moyens concrets disponibles, entre les déclarations de principe et la réalité des solidarités entre les États. Or ce système international reste le nôtre. Malgré de réels progrès, comme l'adoption de la doctrine de la « *responsabilité de protéger* »[14], rien n'a été fait pour empêcher la commission des crimes en Syrie, pas même la saisine par le Conseil de sécurité de la Cour pénale internationale pour, à défaut de les stopper, pouvoir en condamner les auteurs.

Abandonner l'approche moralisante pour privilégier la voie politique

La création du Tribunal militaire international de Nuremberg, puis le procès d'Eichmann à Jérusalem en 1961, constitue des moments cruciaux dans la prise de conscience et la connaissance de l'organisation du génocide par les nazis. L'abandon des juifs tentant de fuir l'Europe au moment de la conférence d'Evian en 1938 s'avère sans doute, rétrospectivement, plus dramatique que le fait de n'avoir pas bombardé Auschwitz en 1944. Des photos aériennes du camp exhumées dans les années 70 ont relancé le débat sur ce que savaient et auraient dû faire les Alliés pour sauver les juifs[15] mais le plus souvent en projetant sur le passé une vision anachronique et moralisante. Or le prisme judiciaire est le mieux à même de nous éviter de tomber dans ce moralisme facile en s'appuyant sur les éléments de preuve produits à l'époque et les débats contradictoires pour poser la question des responsabilités individuelles des plus hauts responsables et de leurs hommes de main.

Certes, le matériel pédagogique manque encore cruellement pour les autres juridictions comme le Tribunal pénal international pour le Rwanda, pour l'ex-Yougoslavie ou pour la Cour pénale internationale. Une exposition permanente visible dans les locaux de cette dernière (mais encore faut-il pouvoir aller avec sa classe jusqu'à La Haye) et des sites internet, souvent peu satisfaisants, constituent les seules ressources à la disposition des écoles. Il faudrait créer des centres permanents dédiés à l'histoire de la justice pénale internationale au travers d'expositions permanentes et temporaires sur des procès majeurs (comme le procès Karadzic au TPIY, le procès Habré au Sénégal, le procès Duch au Cambodge, etc..) et qui puissent délivrer des formations aux enseignants, organiser des projections et des débats.

13 Dans ce domaine, presque tout reste à faire pour doter les enseignants des connaissances et des outils pédagogiques sur ce sujet. Nous nous permettons toutefois de signaler notre ouvrage, édité chez Hachette en 2009 sous l'égide du Centre national de documentation et pédagogie : Enseigner l'histoire et la prévention des génocides, publié en collaboration avec la chercheuse rwandaise Assumpta Mugiraneza.

14 Jean-Baptiste Jeangène Vilmer, La Responsabilité de protéger, PUF, 2015.

15 Voir notamment les deux documentaires 1944 : il faut bombarder Auschwitz, de Tim Dunn (Royaume-Uni / Allemagne, 2019) et Ce qu'ils savaient de Virginie Linhart (2012).

Il ne s'agit pas de mythifier une justice internationale déterritorialisée qui a montré ses limites et ses dysfonctionnements. La justice transitionnelle constitue un processus complémentaire indispensable et les procès nationaux le véritable aboutissement de la lutte contre l'impunité. Le témoignage de victimes et d'associations qui se battent pour obtenir la vérité, la condamnation de leurs bourreaux et des réparations, permettent non seulement de revenir sur les souffrances endurées mais aussi sur des combats remportés. Et c'est bien cet esprit combatif qui est cœur de la prévention, qui n'envisage pas le pire par catastrophisme ou désespoir mais au contraire pour mieux résister aux premières manifestations du mal et le vaincre.

Émergences des populismes et nationalismes: état des lieux, conséquences et leçons pour la prévention

Michel Duclos[1]

Dans un livre collectif sur les « nouveaux autoritaires[2] », j'avançais il y quelques mois diverses idées sur des politiques permettant de prévenir ou de combattre l'ascension des populistes, la montée des nationalistes, l'avènement de l'ère des « hommes forts » de tous acabits.

Je voyais le salut bien entendu d'abord dans une réinvention de la démocratie libérale, car le projet libéral ne peut survivre que s'il s'adapte aux évolutions – fussent-elles de plus en plus rapides – de l'époque et des opinions. Je suggérais aussi que la lutte contre l'autoritarisme appelait une stratégie internationale : les démocraties n'avaient pas intérêt à retenir une approche « de bloc à bloc » car nous risquions dans ce cas de favoriser la création d'une internationale anti-libérale structurée, c'est-à-dire l'inverse de ce qui est souhaitable. Je pensais qu'il convenait justement de jouer sur les divisions entre les régimes populistes ou nationalistes, de chercher à conforter l'émancipation des sociétés civiles et de rechercher du côté de dispositifs anti-cleptocratie des moyens d'affaiblir les autoritaires par l'un des aspects où ils sont vulnérables.

Mais tout cela se situait en un temps désormais lointain, celui où la Covid-19 n'avait pas encore frappé. Nous avons changé d'époque. Toutes les analyses convergent sur l'idée que la crise sanitaire, économique, sociale, politique, etc., déclenchée par le virus, sert de révélateur et d'accélérateur à des tendances préexistantes. Par son ampleur même – sans équivalent en temps de paix –, elle a aussi nécessairement un effet transformationnel. Dès lors ne faut-il pas reprendre l'analyse de l'état des lieux de notre sujet ? Et les préconisations que je croyais pouvoir énoncer il y a seulement quelques mois, restent-elles encore pertinentes dans le contexte actuel ?

Dans *Le Monde des nouveaux autoritaires*, qui reprenait et synthétisait des études menées par l'institut Montaigne, les auteurs développaient une thèse à vrai dire un peu déviante. Ce qui retient en général l'attention, c'est la montée du populisme, reliée à des mouvements sociaux profonds tels que l'affaiblissement de la classe moyenne ou la précarisation du statut des travailleurs dans les pays développés, sous l'effet de la globalisation, des politiques néo-libérales puis de la crise de 2008, ou encore la crise de la représentation politique dans les démocraties. Sans contester ces explications, nous nous efforcions de les contextualiser sur le plan international : des affinités existent entre régimes autoritaires classiques (la Russie de Poutine, la Chine de XI, certaines dictatures du monde arabe), figures néo-autoritaires issues de systèmes démocratiques (Orban en Hongrie, Duterte aux Philippines, Erdogan en Turquie) et dirigeants populistes nationalistes (Trump aux États-Unis, Salvini en Italie, Bolsonaro au Brésil, Netanyahou en Israël, Modi en Inde). Les uns et les autres, à des degrés divers certes, puisent dans une boîte à outils commune, où s'entassent une xénophobie assumée, l'exaltation d'un rêve identitaire, la vindicte contre *l'establishment*, le contrôle des médias, l'identification du pouvoir populaire à un dirigeant fort. Le mouvement anti-libéral informel qui les réunit ne trouve pas seulement sa source dans des grandes tendances économiques mais aussi dans une série d'événements géopolitiques qui ont signé le déclin à la fois de la puissance et du prestige de l'Occident : l'invasion de l'Irak par les États-Unis, le refus d'Obama d'intervenir en Syrie sont les plus marquants ; et avec Trump, le phénomène incroyable d'un chef du monde libre qui donne une caution de respectabilité à tous les autocrates et abandonne tout soutien aux droits de l'homme.

La crise de la Covid-19 s'inscrit à vrai dire assez bien dans cette grille de lecture. Les similitudes dans les approches ont transcendé les systèmes politiques. Si l'on compare Trump et Poutine par exemple, on retrouve dans les deux cas le même reflexe de déni initial de la réalité, la confiance dans la fermeture des frontières, la volonté de privilégier la réouverture de l'économie par rapport à la santé publique, et enfin l'excès dans les mesures exceptionnelles pour faire face à la pandémie. L'instinct d'exploiter la crise pour faire reculer les libertés, durcir le régime et marquer des points de propagande à l'étranger a été le même à Ankara, Budapest, New Delhi, Moscou et évidemment Pékin. Passée la première période de déni et d'inefficacité, les Chinois ont donné le spectacle étonnant d'une contre-offensive de relations publiques internationales, fondée sur un mélange de séduction et d'intimidation sans complexe, destinée

1 Ancien ambassadeur, conseiller spécial à l'Institut Montaigne.

2 Le Monde des nouveaux autoritaires, éditions de l'Observatoire, novembre 2019.

à promouvoir leur modèle de gouvernance comme ils ne l'avaient jamais fait jusqu'alors.

Il faut aller au-delà du constat de la diplomatie des masques. Peut-être, dans *Le Monde des nouveaux autoritaires*, la Covid19 marque-t-elle un point d'inflexion à plusieurs égards. Nous annoncions dans notre livre, sans en anticiper la date, un inévitable transfert *du leadership* du mouvement anti-libéral, de la Russie de Poutine à la Chine de Xi. C'est peut-être ce qui est en train de se produire sous nos yeux. Moscou s'inquiète sans-doute de cette rétrogradation mais pour l'instant les dirigeants russes « collent » à la Chine (y compris dans les récits sur l'origine de la pandémie ou sur le sort de Hong-Kong). Il faudra voir quelles sont les implications idéologiques de ce passage de témoins. Le poutinisme avait cette grande force – nous avons évidemment tort d'en parler déjà au passé ! – d'insinuer dans nos opinions déboussolées une crypto-idéologie polymorphe, peu structurée et adaptable selon les pays, qui murmurait aux oreilles de tout un chacun une petite musique : « Le monde est dur, trop d'attention est portée aux droits individuels, mieux vaut se fier à la nation, incarnée dans un homme fort capable de repousser les infiltrations étrangères ou toute autre atteinte à votre identité. »

Il reste à voir si l'idéologie beaucoup plus structurée du Parti communiste chinois est aussi exportable. La réponse est non bien sûr mais les Chinois sont trop intelligents pour ne pas s'en rendre compte. Ce sont plutôt les recettes de la techno-surveillance – exploitant à fond le numérique et maintenant l'intelligence artificielle – qu'ils vont promouvoir et c'est sur la force de coercition que leur donne leur supériorité géoéconomique (les routes de la soie, la prédation technologique, etc.) qu'ils vont compter.

Le second point d'inflexion post-Covid19 pourrait être l'intensification de la rivalité sino-américaine et l'entrée dans une nouvelle guerre froide.

Il n'est pas certain que la diplomatie des masques ait rapporté beaucoup d'amis à la Chine. La carence de *leadership* de l'administration Trump et l'agressivité verbale du président américain font oublier en revanche que ce sont les Chinois qui ont été à l'offensive dans cette affaire. Les intérêts économiques sont tellement imbriqués entre la Chine et l'Ouest qu'on imagine mal une rupture – *decoupling* – totale. Et pourtant, l'hostilité mutuelle est allée si loin qu'un point de non-retour a sans doute été atteint. La nécessite de contenir la Chine fait maintenant l'objet d'un consensus politique absolu dans la classe politique américaine.

Dès lors, le paysage que nous décrivions dans *Le Monde des nouveaux autoritaires* devrait se trouver modifié. Nous évoquions un monde qui n'était pas en noir et blanc, un monde mouvant où coexistaient des régimes intermédiaires, où le dosage d'autoritarisme et de maintien de certains traits du libéralisme variait d'un pays à l'autre et continuait à évoluer. La caractéristique d'une nouvelle guerre froide pourrait être non pas de recréer un monde libre solidaire face à l'autoritarisme, comme jadis face au totalitarisme, mais plutôt de figer les régimes de la zone grise : la guerre froide avec l'URSS avait été une belle époque pour les dictateurs qui faisaient allégeance ou même se contentaient de ne choisir aucun camp. Nous pourrions nous retrouver dans une situation comparable où l'impératif de « combattre la Chine », fut-ce au nom des valeurs démocratiques, conduirait à fermer les yeux sur les dérives autoritaires en Inde, en Turquie, aux Philippines, etc.

Un troisième point d'inflexion majeur reste encore devant nous : ce sont les élections présidentielles américaines du 3 novembre 2020. Leur résultat aura un effet déterminant pour le cours de l'histoire. En réalité c'est cet événement qui déterminera l'impact géopolitique de la Covid-19, la portée transformationnelle du virus.

En cas de réélection de M. Trump, le durcissement de la rivalité sino-américaine se conjuguera au désintérêt pour la cause des libertés, une dégradation encore plus grande de la relation transatlantique et de ce qui reste de l'ordre mondial. Le mépris affiché par Trump à l'égard de l'Europe dans la gestion de la pandémie a atteint des sommets tandis que la rebuffade infligée à Washington par la chancelière allemande (refus de participer au G7 convoqué par Trump) est sans précédent. Une administration Trump II fournirait un contexte extrêmement difficile pour faire reculer le populisme et le nationalisme.

Pour autant, l'élection de Joe Biden ne règlerait pas tous les problèmes comme par enchantement. La nécessité de contrer les autoritarismes – bien au-delà du cas chinois – fait cependant partie du bagage de campagne des démocrates. On peut penser par exemple que la vie deviendrait plus difficile pour

M. Orban, pour l'instant instrument de choix des trumpistes pour diviser les Européens et qui, fort de l'endossement de Washington, peut se permettre de porter dans les délibérations à Bruxelles les couleurs de la Chine et de la Russie.

De surcroit, ce n'est que dans plusieurs mois, peut-être plusieurs années, que l'on pourra dresser un bilan plus précis des dégâts de la Covid-19. L'épidémie peut connaitre d'autres vagues. Les effets économiques ne se feront sentir complétement qu'à terme. Nous ne pouvons pas avoir une idée précise de ce que sera la géographie des rapports de force ou la hiérarchie des puissances dans quelques années : les régimes autoritaires ou les figures populistes, malgré l'inefficacité de la plupart d'entre eux face à la crise (Poutine, Trump, Bolsonaro, Johnson), ne sortiront-ils pas renforcés du « moment Covid-19 » ? Souvenons-nous que six ans s'étaient écoulés entre la crise financière de 2008 et le Brexit et l'élection de Trump. Il risque d'en être de même pour la Covid-19.

N'attendons pas six ans pour réfléchir à ce que nous devons faire pour désamorcer une nouvelle progression des populismes et des nationalismes. Sur deux points en particulier, les partisans d'une société ouverte, pluraliste, démocratique doivent clarifier leur stratégie. En premier lieu, on ne peut plus faire l'économie d'une compétition des modèles. Nous évoquions dans notre livre un nouveau libéralisme qui par exemple ferait une place au sentiment national et au droit de défendre des valeurs conservatrices pour s'ouvrir à d'autres sensibilités que celle des seuls bénéficiaires de la globalisation. Nous constatons aujourd'hui que la crise du Covid-19 impose une prise de conscience universelle des dégâts de l'anthroposphère. Les idées libérales ne survivront que si elles apportent une réponse à cette espèce de retour des temps eschatologiques, pour reprendre une expression de Remy Rioux dans un livre pourtant lui aussi antérieur à la Covid-19[3]. Ce qu'il faut opposer aux tentations autoritaristes, c'est un modèle de développement moins inégalitaire, plus soutenable, faisant une part à un certain souverainisme économique, sans négliger l'innovation et la compétitivité, et maintenant les libertés publiques et individuelles au centre du jeu politique – c'est-à-dire un projet capable de mobiliser une vaste coalition de forces politiques. C'est l'enfermement dans l'alternative mondialistes contre nationalistes qui affaiblit le libéralisme politique dans le marché des idées (qui, en politique, est surtout un marché des passions, comme Pierre Hassner[4] l'avait magistralement exposé).

C'est en partant d'un concept général de ce type que l'on peut déduire des contre-mesures plus précises face aux populistes et aux nationalistes. Nous avons mentionné le créneau de la lutte contre la cleptocratie, qui reste pertinent. Un autre exemple de plus en plus capital est celui de l'usage de la cybersurveillance : la crise de la Covid-19 met en relief le rôle important des techniques de traçage numérique mais il y a une version autoritaire et une version libérale de ces techniques. Ou encore, un nouveau modèle de société libérale ne peut pas laisser les mains entièrement libres aux grandes plateformes numériques – américaines comme chinoises. Sur un plan de gestion diplomatique au jour le jour, mettre notre drapeau dans notre poche – comme les Européens le font pour l'essentiel en ne protestant que du bout des lèvres contre les mesures prises par Pékin contre les libertés à Hong Kong – a toujours un effet contre-productif.

En second lieu, la compétition des modèles implique-t-elle un affrontement « bloc à bloc », pour reprendre une question que nous avancions au début de cet article ? Il nous semble qu'il n'y a pas de fatalité en ce sens, au moins pour deux raisons. D'abord il va de soi que nous avons besoin pour traiter les enjeux globaux – environnement, commerce, santé, développement – de la coopération internationale, y compris de pays comme la Chine qui soutiennent un modèle autoritaire, ou comme la Russie qui se font un devoir de chercher à déstabiliser les sociétés démocratiques. Ensuite, d'un point de vue tactique, les regroupements sur une base idéologique ont peu de chance d'atteindre leurs buts – du moins s'ils sont trop affichés. Nous avons déjà indiqué que dans le monde de l'après-Covid-19 une nouvelle guerre froide risquait de consolider les « hommes forts ». Les Britanniques, en quête d'un rôle pour *Global Britain* sur la scène internationale, ont avancé l'idée du groupe D10 (D comme démocraties) composé des pays du G7 plus l'Inde, l'Australie, la Corée du Sud, sur la base d'un agenda en fait antichinois. Une coopération informelle entre ces pays sur certains sujets serait peut-être utile, même s'il ne faut pas exagérer les convergences d'intérêts ou de valeurs entre les candidats au D10 : ni la Corée du Sud, ni le Japon ne sont prêts

3 Rémy Rioux, Réconciliations, éditions Débats publics.

4 Pierre Hassner, La Revanche des passions, Fayard, 2004.

à se lancer dans un affrontement avec la Chine ; les Européens eux-mêmes sont divisés sur la question chinoise ; sur le plan des valeurs démocratiques, l'Inde est dans une phase de régression inquiétante. Tenter de formaliser une nouvelle alliance entre ces pays risque de se révéler difficile et en fait de servir de repoussoir à l'égard de la majorité de pays dans le monde qui, sans être inféodés à la Chine, ont besoin d'entretenir de bonnes relations avec elle.

Jusqu'à nouvel ordre, nous maintiendrons donc notre proposition d'il y a quelques mois : pas de « bloc à bloc », du type démocraties contre autoritarismes. Sans exclure cependant qu'une approche de ce type ne soit imposée aux démocraties par ses antagonistes. Il faut sans doute y être prêts. Dans ce cas, ce serait un état de fait à assumer, non un choix voulu.

Civil Society and Counterpowers Under Attack: The Current Situation, Consequences, and Lessons for Prevention

Clément Voulé[1] and Christopher Roberts[2]

Protest movements are not new. They have historically been a major means of securing more democratic forms of governance, whether the target of that protest was a domestic authoritarian ruler or a foreign imperial power. Even recognizing the ubiquity of protests within the modern age, however, the 2010s stand out for the intensity of popular discontent that was revealed. Indeed, even attempting to catalogue all of the major protests that have taken place over the last decade constitutes a daunting task. Outlining the key features of those protests is important, however, to underscore the decade-long nature of the current period of protest and reaction, and the sheer extent of the demonstrations that have taken place.

Large-scale protests in Iran in 2009 were followed by the "Arab Spring" protests that broke out across the Middle East and North Africa in 2010. Mass demonstrations in Tunisia, Egypt, Libya and Yemen overthrew the governments of all four countries; large-scale protests in Bahrain were violently suppressed, while the violent response to protests in Syria led to a decade-long civil war. Like-minded protests took place in several other areas across the region as well, including Algeria, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Palestine, Saudi Arabia, Sudan, and Western Sahara. Major protests took place in many other countries across Africa in the early 2010s as well, including in Benin, Burkina Faso, Côte d'Ivoire, Djibouti, Gabon, Malawi, Mozambique, Nigeria, Senegal, South Africa, Uganda, and Zimbabwe, among other states. In 2010, Thailand also saw major protests, and protests in Kyrgyzstan led to the fall of the government the same year.

In many of these countries, protests have continued off and on to the present day, joined by major protests elsewhere as well. Protests in Burkina Faso and Ukraine in 2014 triggered democratic transitions in both countries. In Hong Kong, the "Umbrella Revolution" broke out in 2014; a large student protest took place in Taiwan the same year. In Ethiopia, major protests have taken place on numerous occasions since 2015. Protests in South Korea in 2016 and 2017 led to the impeachment of the president. The scale and extent of global protests has increased even further in the final years of the decade. In both Russia and the United States, large protests have been taking place since 2017. Major protests took place in Armenia in 2018. The "yellow vest" movement in France, which is ongoing to the present day, also kicked off in 2018, as were similarly ongoing protests in Nicaragua. Protests in Sudan in late 2018 and 2019 led to the fall of a government that had been in place for decades. Globally, 2019 saw things intensify even further, with major protests taking place in numerous countries and regions, including Algeria, Argentina, Bolivia, Chile, Colombia, Ecuador, Egypt, France, Palestine, Guinea, Haiti, Hong Kong, India, Iran, Iraq, Kazakhstan, Lebanon, Peru, Russia, Spain, the United Kingdom, and Venezuela, leading to 2019 being dubbed "the year of the protest" by many.

The targets of these protest movements have been diverse and context-specific, but some issues have arisen time and time again. In particular, protest movements have called for more democratic and responsive governments; for greater respect for human rights, including the need to end police and security service violence; for greater degrees of equality in society, and an end to poverty and austerity policies. Increasingly, protest movements have targeted the need for serious steps to address climate change as well.

This wave of individuals raising their voices and demanding the creation of more rights-respecting polities is highly encouraging. However, such protests have rarely been met by authorities willing to amend national law and policy in order to heed protestors' calls. Instead, popular protests have been met by an ongoing wave of crackdowns, that has continued from the early 2010s to the present day.

This counter-reaction has taken a variety of forms. In violation of their obligation to respect the right to freedom of association, states have passed laws restricting associations' ability to exist legally, have banned or criminalized associations of which they disapprove, including human rights organizations, and have imposed collective penalties on association members. In violation of their obligation to respect

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the right to freedom of peaceful assembly, states have tightly circumscribed the situations in which assemblies may legally take place, have used extreme, unwarranted, and often lethal force to disperse those assemblies that have taken place, and have imposed widespread and excessive penalties on organizers and participants.

The wave of attacks on civil society that has continued from 2009 until today shows the determination and resilience of those who have been resisting protesters' demands. At the same time, the large-scale and ongoing protests of the past decade show their weakness as well, and, in particular, the extent of popular resistance against them.

Many of the mass protests which began in 2019 were halted, at least temporarily, by the COVID-19 crisis. The crisis has seen states take several measures which pose profound challenges to human rights, many of which have a direct impact on civil society. In the realm of freedom of expression, the crisis has been relied upon to pass new laws penalizing the spreading of "fake news," or as justification for putting existing laws along similar lines into enhanced application, with journalists, health workers, and others who attempt to report on the crisis facing threats, censorship, prosecution, and at times expulsion. The crisis has also been used to justify expansions in security measures, including the deployment of street cameras utilizing facial recognition technology, drones, and cell phone tracking, among other techniques.

Freedom of assembly, meanwhile, has been even more sharply constrained, with public assemblies limited in state after state. While such constraints are justified on the grounds of a genuine public health emergency, in many cases, it remains to be seen whether the limitations imposed will be rolled back in the wake of the crisis; the fact that these constraints have often been imposed in discriminatory ways, with opposition activists more likely to be targeted, does not bode well. Some states have taken even more worrying measures, seizing upon the crisis to suspend constitutional guarantees, to pass sweeping emergency laws, or to delay or impose restrictions on elections, which seem more designed to limit democratic processes than to respond to the ongoing public health emergency.

All of these steps suggest that the underlying concerns with limitations on rights and democracy that drove the global protest wave prior to the outbreak of the COVID-19 crisis are likely to be exacerbated in the pandemic's wake. Inequality, another major driver of global protests, also seems likely to increase, on top of which governments will be tempted to reimpose austerity policies in an attempt to recuperate the massive financial outlays they have laid out in their attempt to mitigate some of the impacts of economic slowdown.

The future will, undoubtedly, be full of challenges. Lessons can be drawn from past experiences, however, that can provide guidance on the steps that can be taken in order to increase the strength of particular civil society organizations as well as civil society as a whole, and on the measures through which pressure may continue to be placed on state authorities to adopt more rights compliant measures. In particular, the following ten lessons are key.

First – building a strong civil society. The importance of civil society cannot be over-emphasized. Building a strong civil society is key to addressing every challenge that will be faced in the coming years, and to ensuring optimal public health in both the literal and figurative senses. In this context, it is vital that states come to recognize civil society organizations and movements as partners, and that they take steps to facilitate their health, growth, and valuable contributions, rather than imposing obstacles or viewing civil society work as threatening. Where civil society voices are ignored, or members of civil society are attacked, the result is, inevitably increased tensions and conflict, to the detriment of all. Among other things, recognizing civil society as key partners requires that they are consulted on key policy decisions and implementation strategies, as well as ensuring that there is a legal framework in which demonstrations are seen as valuable contributions to public debate, and where state decision-makers respond to the demands made through popular mobilizations.

Second – ensuring strong connections between national civil society and international rights mechanisms. The importance of connections between national civil society and international and transnational institutions has been demonstrated, with statements and rulings from regional and international human rights mechanisms playing a key role

in preventing crackdowns from becoming more severe, and, at times, helping to encourage transitions towards more rights-respecting orders. Regional and international human rights mechanisms must be strengthened, in order to enhance their ability to support work being done on various national levels. Regional human rights courts, such as the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, and the European Court of Human Rights, have all played a key role in supporting rights developments within their respective regions. However, courts cannot bear the burden alone—other mechanisms also have an important role to play, as illustrated by the powerful advocacy conducted by institutions such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights. It is to be hoped that other regions of the world, whether they already have regional human rights systems, such as those that exist in the context of the Association of Southeast Asian Nations and the League of Arab States, or not, as in East and South Asia, will take steps to create human rights institutions along the lines of those operating in the Americas, Africa, and Europe.

Third – fostering rights-based cultures and ensuring remedies. It is important to generate rights-based cultures, as well as to ensure the existence of a multitude of mechanisms geared towards receiving and addressing rights claims on the national level. This includes, of course, enabling national courts to hear rights-based complaints. In addition to courts, states should create quasi-judicial human rights institutions, which may similarly hear complaints and make case-based recommendations for reform, but should be granted other powers as well, including to hear collective complaints and to conduct hearings around particular rights issues. Whether through such institutions or stand-alone bodies, states should also ensure the existence of independent bodies with the ability to review state conduct in particular areas to ensure compliance with rights obligations. This is particularly crucial in the context of police violence, including police responses to assemblies; it is similarly essential in the context of emergency measures, including those that have been adopted in the face of COVID-19, in order to ensure such measures are implemented in a non-discriminatory manner and in full compliance with rights obligations. Most broadly, states should ensure widespread human rights education and training, in order to do everything possible to develop a society-wide rights culture.

Fourth – developing national and transnational connections. Connections among and between civil society and human rights organizations, both on and across the national level, are similarly of vital importance. In addition to being able to share best practices and support one another's messages and advocacy campaigns, such connections provide a vital support network when particular groups come under attack.

Fifth – ensuring open access to the internet for all. The rights to freedom of association and assembly apply online just as they do offline. The internet has been a key site for the development of a stronger civil society, as the Special Rapporteur has previously emphasized.[3] As such, it is key that access to the internet be expanded, and that the internet remain free from censorship, surveillance, or other forms of limitations and control.[4] In this context, the recent COVID-19 health crisis has only underscored the importance of online space.

Sixth – supporting freedom of association and assembly for workers. While civil society and human rights organizations have a key role to play, they cannot ensure the generation of more egalitarian societies on their own. In particular, labor unions have an indispensable role to play in terms of ensuring more just and equitable distributions of wealth and power within and across societies.[5] In this context, both national and international human rights organizations must do more to ensure legal and political space is provided for free and independent labor organizing.

Seventh – guaranteeing a free media. The importance of the media cannot be underemphasized. A strong and independent media is key to ensuring that human rights violations receive the attention they deserve, preventing violations from worsening, enhancing pressure for progressive change, and to

3 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/41/41 (May 17, 2019), paras. 21-8.

4 For an account of some limitations that governments have imposed, see id., paras. 29-57; for more detailed recommendations on steps that should be taken, see id., paras. 65-95.

5 On the importance of labor organizations to achievement of the Sustainable Development Goals in particular, see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/73/279 (Aug. 7, 2018), paras. 58-68.

holding power actors accountable. In addition to ensuring open access and the protection of the media from attack, it is of vital importance to ensure that there is a diversity of media voices and to prevent corporate consolidation in the media sphere.

Eighth – combating poverty and inequality. Poverty and inequality, both within and between nations, must receive increased attention. Around the world, poverty, inequality, and austerity policies have been key drivers of protests, as well as key subjects of civil society concern.[6] Combating poverty and inequality, and building more inclusive economies that work for the benefit of all citizens, will require bold new approaches to policy, be it in terms of more progressive taxation, extended social safety measures, or new forms of public and collective ownership. In addition to measures that may be applied on the national level, measures to address international inequality are also necessary, given the uneven global distribution of poverty. In this context, it is vital that several aspects of the current global financial system, including existing sovereign debts as well as the international taxation regime, be addressed and reformed, in order to ensure a more egalitarian distribution of global resources.

Ninth – confronting climate change. The importance of tackling the global climate crisis cannot be overemphasized. Much of what must be done is clear: states must act with resolve and coordination to ensure a transition away from heavily polluting energy sources towards green and renewable sources. Harnessing the necessary political will remains a challenge. As with struggles towards more rights-respecting policy measures across the board, civil society will have a key role to play. The growing strength of the global climate justice movement is extremely encouraging. Needless to say, unaddressed climate change exacerbates conflict situations and the suffering of populations everywhere.

Tenth – ensuring enabling, rights-respecting legal frameworks. Ongoing recourse to repressive public order laws around the world demonstrates the need for renewed emphasis on ensuring rights-respecting legal frameworks, as well as of remedial systems which are responsive to rights claims. In terms of freedom of association, it is key that associations be able to form and operate freely, that support for such organizations is not unjustifiably restricted, and that states facilitate associations' work and are responsive to associations' rights-based advocacy efforts. In terms of the right to freedom of peaceful assembly, it is key that states' legal frameworks take seriously the fundamental principle that assembly is a right and not merely a privilege, that excessive force is never used to police or disperse an assembly, and that state authorities are held accountable when they infringe on the right. Most broadly, it is crucial that state authorities come to view civil society and assembly participants not as enemies, but rather as key allies in the struggle to build more democratic and rights-respecting policies, which serve the interests of all members of society.

6 For more on the linkage between poverty and civil society space, see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/41/41 (Sept. 11, 2019).

Gouvernance de l'espace de l'information et de la communication: principes démocratiques et responsabilités des acteurs

Christophe Deloire[1]

En délégant la gestion de l'espace public à des entités privées, les citoyens, les parlements et les gouvernements ont permis l'avènement d'une jungle informationnelle. L'espace de la communication, le lieu où nous échangeons les idées, les opinions et les informations, n'est en effet régie que par la loi de la jungle, qui est celle du plus fort, de celui qui fait régner son ordre.

Les algorithmes des plateformes ont remplacé les lois de nos Parlements. Ces entités créent des moyens techniques, des architectures de choix et des normes pour l'espace de l'information et de la communication. Le code, c'est la loi, dit-on. Ce n'est pas qu'une formule. Elles décident seules, sans contre-pouvoir et de façon tout à fait opaque des règles de communication entre des millions voire des milliards de personnes. Les changements, même mineurs, qu'elles apportent à leurs algorithmes peuvent faire disparaître un média ou enfermer les citoyens dans des bulles idéologiques.

De plus, elles ne permettent plus de distinguer les différents contenus. Des contenus sponsorisés à l'information journalistique en passant par les influenceurs et les rumeurs, le nivellement des contenus a amené une nouvelle concurrence déloyale. Avec les biais cognitifs et les *business model* des plateformes valorisant l'engagement des utilisateurs, les contenus faux et sensationnels se diffusent plus rapidement et plus massivement que l'information fiable.

Afin d'imposer des principes démocratiques à ce nouvel espace de la communication et de l'information, globalisé, digitalisé et privatisé, l'ONG Reporters sans frontières (RSF) a lancé en septembre 2018, l'initiative internationale sur l'information et la démocratie. Elle est un exemple de coopération entre des États et une organisation de la société civile.

La déclaration internationale sur l'information et la démocratie

Soixante-dix ans après l'adoption à Paris de la Déclaration universelle des droits de l'homme, *la Déclaration internationale sur l'information et la démocratie,* publiée le 5 novembre 2018, pose les principes fondamentaux de l'espace global de l'information et de la communication, un *« bien commun de l'humanité »* est-il déclaré dans le préambule. L'organisation de cet espace *« relève de la responsabilité de l'humanité tout entière, par l'intermédiaire d'institutions démocratiques »*. Le texte précise les garanties démocratiques pour la liberté, l'indépendance, le pluralisme et la fiabilité de l'information, dans un contexte de bouleversement de l'espace public.

Cette déclaration est le fruit du travail de la Commission sur l'information et la démocratie, présidée par Christophe Deloire, secrétaire général de Reporters sans frontières (RSF), et Shirin Ebadi, lauréate du prix Nobel de la paix. Elle a été adoptée à l'unanimité des membres, parmi lesquels les lauréats du Nobel Amartya Sen, Joseph Stiglitz et Mario Vargas Llosa, la lauréate du prix Sakharov Hauwa Ibrahim, et, des spécialistes des nouvelles technologies, d'anciens dirigeants d'organisations internationales, de juristes et journalistes, à savoir par ordre alphabétique : Emily Bell, Yochai Benkler, Teng Biao, Nighat Dad, Primavera de Filippi, Mireille Delmas-Marty, Abdou Diouf, Can Dündar, Francis Fukuyama, Ulrik Haagerup, Ann Marie Lipinski, Adam Michnik, Eli Pariser, Antoine Petit, Navi Pillay, Maria Ressa, Marina Walker, Aidan White et Mikhail Zygar.

Reconnaître que l'espace global de la communication et de l'information est un bien commun de l'humanité, donne une base de légitimité à l'instauration de garanties démocratiques. La consécration d'un *« droit à l'information »*, entendu comme un droit à l'information fiable, est une innovation qui établit que les êtres humains sont titulaires d'un droit fondamental qui leur permet de revendiquer la réception d'informations collectées, traitées et diffusées de manière libre, conformément à un idéal d'engagement pour la vérité, de pluralité des points de vue et une méthode rationnelle d'établissement des faits. Cette extension prolonge une évolution historique de la régulation et de la jurisprudence du droit à l'information.

Alors que la notion de liberté d'expression est utilisée pour justifier l'irresponsabilité des plateformes et des réseaux sociaux, la déclaration rappelle que la liberté d'expression est un droit des individus, avec

1 Secrétaire général de Reporters sans frontières (RSF), président du Forum sur l'information et la démocratie.

des exceptions limitées. Les entités structurantes doivent respecter des principes fondamentaux : leurs activités doivent par exemple respecter une neutralité politique, idéologique et religieuse et il leur revient d'assurer le pluralisme, notamment par la sérendipité, et de mettre en place des mécanismes de promotion de l'information fiable. Ces entités structurantes doivent être prévisibles pour ceux sur qui elles ont de l'influence, résistantes à la manipulation et transparentes à l'inspection.

La déclaration s'attache aussi à consacrer la fonction sociale du journalisme, qui justifie un effort particulier pour assurer sa viabilité financière. Le journalisme a pour rôle d'être un tiers de confiance pour les sociétés. Les journalistes ont vocation à rendre compte de la réalité de la manière la plus large, la plus profonde et la plus pertinente possible, en s'attachant à décrire les événements mais aussi les situations complexes et les évolutions, en conservant un équilibre entre les aspects positifs et négatifs des activités humaines et en distinguant l'important du trivial. La liberté et la sécurité des journalistes, l'indépendance de l'information, le respect de la déontologie sont des conditions essentielles pour l'exercice du journalisme, quel que soit le statut de ceux qui l'exercent.

La reconnaissance des principes par les États démocratiques

Sur la base des principes édictés par la déclaration, douze chefs d'État et de gouvernement (Burkina Faso, Canada, Costa Rica, Danemark, France, Lettonie, Liban, Lituanie, Norvège, Sénégal, Suisse, Tunisie) ont répondu à l'appel lancé par la Commission sur l'information et la démocratie et se sont engagé à lancer un processus politique à l'occasion de la première édition du Forum de Paris sur la paix, le 11 novembre 2018. Ce fut à l'évidence une démarche historique en faveur de garanties démocratiques sur la liberté d'opinion. Depuis l'adoption de la Déclaration universelle des droits de l'homme en 1948, jamais des chefs d'État de pays démocratiques ne s'étaient positionnés aussi fortement en faveur de la liberté, de l'indépendance, du pluralisme et de la fiabilité de l'information, sur la base d'une déclaration édictée par une commission indépendante.

À cette occasion, le président de la République française Emmanuel Macron a déclaré : « Nous sommes aujourd'hui à un tournant majeur, soixante-dix ans après l'adoption de la Déclaration universelle des droits de l'homme, la liberté d'opinion et d'expression qui est au fondement de nos démocraties et dont nous pensions les progrès irréversibles, se trouve à nouveau menacée et contestée, », avant d'ajouter « je soutiens [cette] initiative, je suis favorable en nous inspirant de la déclaration présentée aujourd'hui à ce que nous nous mettions d'accord sur un ensemble d'engagements et à ce que nous nous efforcions de rallier à ces engagements le maximum d'États. Je suis favorable à ce que nous mettions en place un groupement international d'experts sur ce sujet, parce qu'il n'y a pas de bonheur sans liberté et de liberté sans courage. Vous avez décidé de prendre vos responsabilités, je pense que nous devons en tant que chefs d'État et de gouvernement les prendre aussi, et donc je veux ici dire la mobilisation complète de la France dans ce soutien et remercier mes amis chefs d'État et de gouvernement ici présents qui, je le sais, partagent cela. »

La directrice générale de l'Unesco, Audrey Azoulay, et le secrétaire général du Conseil de l'Europe, Thorbjørn Jagland, ont également affiché leur soutien à la tribune. Le secrétaire général de l'ONU, Antonio Guterres (ONU), avait d'ailleurs enregistré un message vidéo quelques jours plus tôt dans lequel il assurait : « Je salue l'initiative que vous avez prise de créer la Commission sur l'information et la démocratie. Elle intervient à un moment critique, où les nouveaux moyens de communication et de diffusion de l'information sont en train de transformer notre monde. Il est plus important que jamais d'avoir accès à des informations pertinentes et fiables. Or cette liberté est de plus en plus menacée (...). Aujourd'hui plus que jamais, nous devons réaffirmer l'importance du débat public, et rappeler qu'il doit se dérouler dans la rigueur et le respect, reposer sur des informations exactes et être ouvert à des voix plurielles. Je vous remercie de contribuer à ouvrir le chemin. »

Le Partenariat international pour l'information et la démocratie

Ce soutien initial a permis la négociation du Partenariat international sur l'information et la démocratie au printemps 2019. Celui-ci est inspiré de la déclaration du même nom, dont il reprend les principes essentiels. Il appelle les plateformes structurantes à *« respecter les principes de transparence, de responsabilité et de neutralité politique, idéologique et religieuse, notamment vis-à-vis de leurs propres services, tout en demeu-*

rant conscients de leurs responsabilités en la matière, et mettre en place des mécanismes visant à promouvoir l'accès à une information fiable et à lutter contre la propagation d'informations erronées ou manipulatrices destinées à tromper le public ».

Ce texte fut présenté lors de la session numérique du sommet du G7 à Biarritz (France), le 26 août 2019. Lors de sa conférence de presse finale, le président français a ainsi évoqué l'initiative : « Nous avons formalisé un soutien unanime au partenariat sur l'information et la démocratie qui est, comme vous le savez, une initiative extrêmement importante, qui a été lancée par Reporters sans frontières avec de nombreux partenaires, qui avait été présentée au premier Forum de Paris en novembre dernier. Il y a eu un très gros travail qui a été fait avec les acteurs économiques et les puissances qui étaient là et il a été endossé. Il y aura une signature formelle en marge de l'Assemblée générale des Nations unies au mois de septembre. »

Après différentes étapes de promotion de l'initiative, le partenariat fut signé lors du lancement de l'Alliance pour le multilatéralisme, en marge de la 74e Assemblée générale de l'ONU. Le 26 septembre 2019, devant plus de cinquante ministres des Affaires étrangères et vingt représentants de délégations réunis pour le lancement de l'Alliance pour le multilatéralisme aux Nations unies, le co-président de la Commission sur l'information et la démocratie, et secrétaire général de RSF, Christophe Deloire, a lancé un appel solennel : « Si ce ne sont pas les démocraties qui fixent les règles, les intérêts privés et les dictateurs s'en chargent (...). Ils ont remplacé les parlements pour réguler l'espace de la communication et de l'information. C'est pourquoi nous avons entrepris de reconstruire un système de garanties démocratiques, adapté à l'ère technologique. » Depuis, plus de trente États ont formalisé leur soutien au partenariat, appelant également à « la mise en œuvre du présent partenariat par la créat*ion d'un forum en collaboration avec d'autres organisations indépendantes, en particulier pour formuler des recommandations non contraignantes à l'intention des États et des fournisseurs de services en ligne* ».

Le Forum sur l'information et la démocratie

Répondant à cet appel, onze organisations de la société civile et de la recherche ont fondé le Forum sur l'information et la démocratie, une nouvelle entité internationale chargée de mettre en œuvre les principes du partenariat. Il fournit aux États, à la société civile, aux médias et aux plateformes numériques des recommandations pour discuter des solutions de régulation et d'autorégulation qui assureront des garanties démocratiques à l'ère numérique. Ses membres fondateurs sont représentatifs des différentes régions du monde et de différents champs d'expertise : le Center for International Governance Innovation (Canada), CIVICUS (Afrique du Sud), la Digital Rights Foundation (Pakistan), Free Press Unlimited (Pays-Bas), le Human Rights Center at UC Berkeley School of Law (États-Unis), l'Institute for Strategic Dialogue (Royaume-Uni), OBSERVACOM (Uruguay), l'Open Government Partnership (États-Unis), le Peace Research Institute Oslo (Norvège), Reporters sans frontières (France) et Research ICT Africa (Afrique du Sud).

Cette nouvelle entité est mandatée pour évaluer les moyens, les normes et les infrastructures de l'espace mondial de l'information et de la communication, enquêter sur la conformité des plateformes aux principes du partenariat et sur sa mise en œuvre, formuler des recommandations non contraignantes à destination des États et des fournisseurs de services en ligne (c'est-à-dire les plateformes numériques) pour réglementer cet espace mondial par des normes ou des bonnes pratiques, faciliter l'émergence de solutions d'autorégulation par et pour les acteurs de cet espace et soutenir le journalisme par des recommandations sur des modèles commerciaux viables afin d'assurer une information libre et indépendante à l'ère du digital.

Afin de poursuivre son mandat, le forum est chargé de former des groupes de travail composés d'experts internationaux indépendants et de divers domaines pour préparer les recommandations politiques, réunir les différents acteurs de l'espace mondial de l'information et de la communication (États, plateformes, médias, journalistes, société civile, universitaires et communauté technique) ainsi que fournir un environnement favorable pour faciliter et promouvoir des solutions et des projets concrets.

Un nouvel espace de gouvernance porté par la société civile

Cette initiative de Reporters sans frontières démontre la façon dont une organisation de la société civile peut impulser l'émergence de solutions structurelles à des enjeux globaux. La dialectique entre la Commission et les États membres du partenariat puis, à l'avenir, entre le forum et les différentes parties prenantes, montre une nouvelle façon de coconstruire les relations internationales.

Crises humanitaires, migrations forcées

Humanitarian Crises, Forced Migration

Humanitarian Aid in Danger: State of Play, Challenges, and Measures to be Taken Reasons Why the Conscience of the World Leaders Should Be Awakened

Amin Awad[1]

In the absence of concerted and robust conflict prevention, we have witnessed the fall of countries to poor governance, social upheaval, atrocities, and displacement. Those who are most impacted are the most vulnerable of society: the weak and dispossessed, communities under persecution, and those fleeing conflict and violence. Conflict prevention, and diplomatic and political negotiations platforms have retreated in recent years, allowing wars to grow and continue and the numbers of displaced and persecuted to increase rapidly. In the MENA region, Syria is a case in point. After almost ten years of war and destruction, millions remain displaced internally and externally and a whole generation is lost, with no solution in sight.

The humanitarian community can be highly effective at managing several challenging emergencies in complex political contexts. The principle of humanitarian action is based on the concept of service to those most in need. But humanitarian aid is in danger of being marginalized because of the shortage of funds it needs to continue to grow. Without robust political and diplomatic support, it is increasingly difficult to perform and deliver against the odds.

A broad set of issues confront the humanitarian community today: the politicization of humanitarian action, punishment of whole societies, smuggling and trafficking, displacement, protection of communities of minorities and stateless persons, and violence against women in conflict zones.

Political negotiations platforms to solve conflicts have diminished, allowing wars to rage for extended periods of time. The conflicts in the MENA region exemplify the challenges of internationalized conflicts that are increasingly protracted and intractable with enormous consequences for human suffering. While there was broad consensus in the Declaration of Shared Commitments as part of the Secretary General's Action for Peacekeeping Initiative, fault lines among Security Council member states have prevented meaningful progress on resolving international conflicts. Today the most serious disputes among the Security Council's permanent five members center on the MENA region.[2] Following the end of the Cold War there was optimistic global consensus around the momentum of collective action on global challenges.[3] Grounded in international law and the UN Charter, multilateralism functioning through global institutions has been critical to preserving peace and resolving deeply complicated conflicts such as the Balkan Wars in the 1990s. Today there is a general lack of visionary leadership to address the multifaceted and interconnected challenges facing the world. Leadership need not be in the form of one great personality; it can take the shape of institutional bodies born of aspirational social goals. However, in the midst of growing skepticism around the legitimacy and relevancy of multilateral institutions, and a rise in nationalism that stands in direct opposition to global cooperation conflicts, are likely to continue to be increasingly intractable.

Politicization of humanitarian action has reached untenable levels, and concrete steps must be taken to scale back politicization.

Humanitarian action is a needs-based system. In 2020, it is projected that 168 million people will require $28.8 billion in aid, the highest figure seen in decades.[4] Experts estimate that the numbers of people in need of humanitarian assistance will continue to rise.[5] Humanitarian response is primarily driven by conflict, particularly in sub-Saharan Africa and the Middle East, and experts estimate that the numbers of people in need of humanitarian assistance will continue to rise.[6]

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1 2020 Fellow, Advanced Leadership Initiative Harvard University

2 Gowan, Richard, "Navigating the Storms at the UN Security Council", International Crisis Group, 2020

3 Moreland Will, "The Purpose of Multilateralism, A Framework for Democracies in a Geopolitically Competitive World", Security, Strategy, and Order, 2019

4 Ibid.

5 Ibid.

6 Ibid.

Approximately 42 million people are expected to require humanitarian assistance in 2020 as a result of violence and conflict in Syria, Yemen, Libya, Iraq, and the occupied Palestinian territories, alone.[7] Approximately 20 million people in MENA are displaced internally or in neighboring countries.[8] The Syrian conflict is the world's largest source of refugees; there are 5.6 million Syrian refugees displaced across borders and an additional 6 million displaced internally.[9] Famine has left 80% of the Yemeni population in need, two thirds food insecure, 36% malnourished and over 9% of children experiencing acute malnutrition.[10]

Voluntary and fluctuating funding for UN humanitarian agencies and other humanitarian agencies is both insufficient and too unreliable to adequately meet humanitarian needs, making it difficult for agencies to make decisions about where already-scarce resources should be directed.[11] Humanitarian appeals for aid have already been made by over half of the countries deemed most vulnerable to climate change.[12] Certain crises go severely underfinanced when funding is based on media attention or political relevancy.[13] There is broad international agreement around the weaknesses of the current humanitarian funding framework, which is overly-dependent on a few donors and delays funding to immediate crises.[14] Funding reforms shifting towards a more stable, mandatory humanitarian budget have been proposed. However, states are resistant to this change, given that in reality, states fund humanitarian efforts when and where they align with geostrategic interests.[15] Humanitarian organizations strive to remain independent of such interests. However, their reliance on donor grants can lead to entanglement with political agendas.[16] The recent pressure exerted by some states on humanitarian organizations for repatriation of Syrian refugees, despite knowledge of on-going violence and human rights abuse exemplifies this.[17] Additionally, the blurring of roles between humanitarian action and military intervention poses risks to the effectiveness of humanitarian action being enveloped in political and military aims.

Fueled by public discourse on terrorism, humanitarian organizations operate in extreme caution out of fear that aid is being channeled into supporting armed groups. This places pressure on organizations to accept counterterrorism clauses written into aid programs.[18] This for example, has included arbitrary criteria to vet potential beneficiaries, despite organizations having existing procedures to ensure belligerents are not recipients of aid.[19] This additional criteria has resulted in victims being denied necessary assistance to survive and recover, and individuals being denied medical care based on their affiliation to an enemy group, which has created deeply unethical delineations between who is deserving of assistance.[20]

Collective punishments of whole societies

Asylum, citizenship, and immigration debates taking have led to a global rise of xenophobia that feeds into increasingly violent and exclusionary border security policies and justifications for disregarding international humanitarian law (IHL). IHL aims to reduce the impact of conflict on civilians who have historically suffered the most significantly from the consequences of war. Article 51 of Additional Protocol I prohibits targeting civilian objects, with exceptions of legitimate attacks to military objects in IHL. Giving immunity to civilian objects is as important as civilian immunity itself, as it protects key elements for civilian survival such as power stations,

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Reinhardt, Dieter, "A Global Common Good- Improving Financing for UN Humanitarian Aid", Friedrich-Ebert-Stiftung, 2019

12 United Nations Coordinated Support to People Affected by Disaster and Conflict, OCHA, "Global Humanitarian Overview 2020", 2019

13 Reinhardt, Dieter, "A Global Common Good- Improving Financing for UN Humanitarian Aid", Friedrich-Ebert-Stiftung, 2019; Narang, Neil, "Forgotten Conflicts: Need versus Political Priority in the Allocation of Humanitarian Aid across Conflict Areas" International Interactions, Vol. 42, No. 2, 2016, p. 189–216

14 Reinhardt, Dieter, "A Global Common Good- Improving Financing for UN Humanitarian Aid", Friedrich-Ebert-Stiftung, 2019

15 Ibid.

16 Bare, Fiona, "Competition, Compromises, and Complicity: An Analysis of the Humanitarian Aid Sector," Claremont McKenna College, 2017

17 Crisp, Jeff, "Unwilling and fearful refugees should not be forced to return home", The Guardian, 2019

18 Charny, Joel, "Counter-terrorism and humanitarian action: the perils of zero tolerance", Norwegian Refugee Council, 2019

19 Ibid.

20 Ibid.

infrastructure, and aid convoys.[21] IHL also requires states to determine whether destruction of a target has a definitive military advantage that outweighs civilian harm caused, in order to uphold the principle of proportionality and limit the excesses of war. Despite this, in Yemen the widespread civilian deaths from drone attacks used to target identified terrorists has been disproportionate to the military advantage gained and has arguably contributed to further radicalization.[22]

The targeting of civilian populations and urban infrastructure including places of worship, schools, hospitals, and public spaces is defended as unintended collateral damage or are deemed locations where enemy forces are thought to be using the facility to harbor combatants or weapons, which thereby precludes them from protection under IHL.[23] These claims are justifications, but are increasingly used as direct strategies to weaken or punish certain populations, spur resistance, or facilitate mass eviction.[24] Within eight months of 2019, there were 57 attacks on health care facilities in Libya, which was a 21% increase from 2018.[25] As has been the case in Iraq, the deliberate targeting of civilian infrastructure has had on-going implications for post-war reconstruction that can lead to additional humanitarian crises and on-going instability.[26]

The phenomenon of trafficking and smuggling people needs to be placed on the top of the world political agenda. Human trafficking and migrant smuggling targets the most vulnerable people in countries of origin, transit, and destination. Education, poverty, legal status, knowledge of laws and rights, and access to justice all contribute to an individual's vulnerability to smuggling and trafficking.

Global data on human trafficking and smuggling provides only a glimpse into the reality of the situation, and the gaps in official statistics are a significant challenge to addressing these rising trends.[27] Women and children account for the majority of victims; however, data indicates an increasing number of male victims.[28] In the MENA region it has been estimated that migrant smuggling from the Horn of Africa to Yemen by sea represents approximately 117,000 people annually, amounting to millions of USD in revenue.[29] Comparatively, migrant smuggling via land routes from Sub-Saharan Africa to North Africa amounts to approximately 480,000 people annually with an estimated revenue of 1-1.5 billion USD per year.[30]Overall, the MENA region has the highest number of reported cases of trafficking for organ removal compared to other regions.[31] Forced begging, sexual exploitation, and organ removal are the most common forms of human trafficking in North Africa where there the flows of trafficking mirror migrant smuggling routes.[32]

The growing tendency of states to criminalize irregular migration, as a means to reduce smuggling, puts vulnerable people at enormous risk and provides smugglers with greater profit opportunities.[33] People in desperate situations and confronted with restrictive border policies are compelled to seek the services of smugglers to seek protection as a means of survival. The human cost of smuggling is incredibly high with thousands dying each year from accidents, insufficient care during the journey, severe weather conditions, and deliberate killings.[34] Smuggled migrants are also highly vulnerable to other crimes such as rape, theft, kidnapping, and trafficking.[35] The majority of female refugees and migrants in Libya reported being either raped or witnessing gender-based violence by traffickers or smugglers.[36] The discourses around asylum seekers and nation-

21 Chertoff, Emily and Manfredi, Zachary, "Deadly Ambiguity: IHL's Prohibition on Targeting Civilian Objects and the Risks of Decentered Interpretation", Texas International Law Journal, Vol. 53, No. 3, 2017, p. 239- 284

22 Ibid.

23 Gordon, Neve and Perigini, Nicola, "'Hospital Shields' and the Limits of International Law", European Journal of International Law, Vol. 30, No. 2, 2019, p. 439- 463

24 Ibid.

25 United Nations Coordinated Support to People Affected by Disaster and Conflict, OCHA, "Global Humanitarian Overview 2020", 2019

26 Ibid.

27 IOM, "Migrant Smuggling Data and Research: A global review of the emerging evidence base, Volume 2", UN Migration, 2018

28 UNODC, "Global Report on Trafficking in Persons" 2018

29 UNOCD, "Global Report on Smuggling of Migrants", 2018

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 United Nations Support Mission in Libya, Office of the High Commissioner for Human Rights, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya", 2018

al security has supported highly restrictive border policies and the criminalization of asylum seekers and irregular migrants. The increasingly militarized language used in many states to talk about asylum seekers normalizes the growing inclination to indefinitely detain people who migrate through irregular channels and seek asylum.

"The Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" has been almost universally ratified, and many states have strong national laws in place. A majority of countries in MENA have officially criminalized trafficking; however, Yemen and Libya still have no legislation in place.[37] However, the low rate of prosecutions and convictions globally and in MENA demonstrate a significant gap in effective implementation.[38]

Communities of minorities and stateless people need direct support and should not be failed

Conflict in MENA has impacted existing groups of stateless people, as well as caused new risks of statelessness in situations where people have had their documents confiscated or destroyed.[39] Statelessness is a condition that has serious implications for a person's access to basic rights, which leads to difficulties accessing education, employment, freedom of movement, justice systems, marriage, and even hinders one's ability to reside lawfully in their birth country.[40] Without documentation, people are unable to register births, deaths, and marriages which interferes with their children's nationality status. Protracted crises in the region have led to large gaps in birth registration and significant family separation. Many children are unable to provide evidence of their parents' nationality, which undermines their ability to claim their nationality in the future and limits their access to health and education services.
Crises exacerbate the existing vulnerabilities of minorities both during the emergency as well as in seeking protection. Conflicts such as those in Syria and Iraq have led to the explicit targeting of minorities, creating vast humanitarian concerns as well as deep psychological and community impact stemming from the destruction of places of worship and cultural heritage.[41] Persecution on the basis of religion is growing both in scale and intensity globally.[42] However, humanitarian organizations can overlook minorities in response work when they are unaware of their presence, there is reluctance from authorities to provide access, or the communities are less visible due to their socio-economic status.[43] In Yemen it has been shown that the marginalization of minorities correlates with their access to aid and opportunities for relocation.44 Syrian Christians and Druze have been less likely to register and seek protection in formal refugee camps due to fears of reprisal attacks.[45] There may also be a reluctance from humanitarian organizations to distinguish people according to ethnicity or religion when they view it as a source of conflict or irrelevant in distinguishing needs.[46] However, the exclusion of minority status can impact communities' ability to access protection and humanitarian assistance.

Global specialized support for children needs to be integrated into every humanitarian action at all levels. The impacts of conflict, restricted access to schools and health facilities, and displacement have particularly negative impacts on children. Given the severity and length of the displacement crisis in MENA, conflict, violence, and loss have been defining features of millions of childhoods and formative teenage years. While research indicates that youth have demonstrated remarkable resilience throughout the conflicts in Syria and Iraq, the ability of their families and communities to provide supportive environments has severely diminished.[47] Moreover, it is estimated that the Syrian conflict alone has left approximately 10,000 children separated from their families.[48]

37 UNODC, "Global Report on Trafficking in Persons" 2018

38 Ibid.

39 UNHCR Middle East and North Africa Bureau, In Search of Solutions: Addressing Statelessness in the Middle East and North Africa, 2016

40 Ibid.

41 Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples- Iraq", 2018

42 Avis, William Robert, "Challenges religious minorities face in accessing humanitarian assistance", K4D Kelpdesk Report, 2019

43 Ibid.

44 Ibid.

45 Ibid.

46 Ibid.

47 No Lost Generation MHPSS Task Force, "MHPSS Programmes for Children, Youth (0-24 years) and Parents/Caregivers in Syria and from Syria and Iraq Crises Affected Countries, Mapping Report", 2020

48 Ibid.

Evidence collected by the No Lost Generation MHPSS Task Force on youth inside Syria and Iraq, as well as displaced, has demonstrated that children impacted by these crises are suffering from astounding levels of trauma and distress, which is impacting their physical and mental health, development, and emotional well-being. Traumatic experiences undermine children's sense of safety in the world, trust in adults, and hope for the future.[49] Many children and adolescents have been documented as experiencing constant strong feelings of anxiety, fear, grief, and sadness and display symptoms of toxic stress, such as nightmares and involuntary urination.[50] Behavioral issues such as aggression and the inability to regulate emotions were also common, as well as developmental concerns such as delayed speech.[51] Conflict and displacement leave many in highly economically precarious situations and uncertain conditions within countries of origin and in displacement; this impacts children and young people's access to basic needs which leads to poor health and nutritional outcomes, increased rates of school drop-out, child labor, and early marriage.[52] A lack of schooling impacts educational outcomes, a sense of social connection, and the development of critical social skills with far reaching implications for the prospects of social and economic recovery.

The mental and physical health of women in conflict conditions quickly deteriorates when humanitarian action and aid fail to devise adequate and efficient mechanisms that can swiftly respond to their plights. Conflict, situations of displacement, and disasters all significantly increase the rate of gender-based violence including rape, sexual assault, intimate partner violence, early and forced marriage, sexual exploitation, and trafficking.[53] The full scale of violence against women is difficult to ascertain given that the barriers of stigmatization and intimidation prevent many women from reporting.[54] Sexual violence is deployed as a tactic of war and terrorism to displace populations, recruit supporters, advance extremist ideology, acquire information, destabilize communities, and humiliate the enemy.55 Sexual violence also plays a key role in the political economy of war through slave markets and trafficking.[56] Young children are also increasingly targeted for sexual violence as a method to terrorize communities and parents with perceived affiliations; children are exceptionally vulnerable when displaced and separated from their families.[57]

Survivors of sexual violence require immediate medical and psychosocial care. However, humanitarian action to date has tended to fall short in fully integrating gender-sensitive indicators for implementation and monitoring of programs that aim to address all levels and types of gendered violence, and the introduction of policies that restrict women and girl's rights has further hindered this effort.[58] The use of gender sensitive warning signs, such as the level of access to reproductive health services and gendered violence, is critical for analyzing and preventing atrocities and conflict.[59] Insufficient disaggregated data has limited the ability of humanitarian actors to effectively understand the ways in which certain groups are impacted by conflict, and the ways in which gender intersects with other key vulnerabilities.[60] Without data that comprehensively captures the conditions of women and girls in conflict, policy makers will be ill-equipped to address their needs, support normative change, and address the root causes of conflict. Funding to local women's NGOs that work in gender equality and GBV response and are attuned to the needs of the community and are critical to responding to the plight of women in conflict. Supporting substantive participation and leadership among women and girls is a key contributor to ensuring that the design and implementation of activities most effectively targets and meets their needs. Beyond tokenistic participation, meaningful engagement with women and girls can allow them to be active agents of protection against violence.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Report of the United Nations Secretary-General, "Conflict Related Sexual Violence", 2019

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Roland, Jessica and Kremin, Marijke, "Bridging the Women, Peace, and Security Agenda with the Responsibility to Protect in Conflict Prevention", International Peace Institute, 2020

59 Ibid

60 Ibid.

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UNOCD, "Global Report on Smuggling of Migrants", 2018, available online at https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf [accessed 8/2/2020]

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Addressing Atrocities Against Migrants

Laura Thompson[1]

Established in 1951, the International Organization for Migration (IOM) is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental, and non-governmental partners. With 173 member states, eight states holding observer status, and offices in over 100 countries, IOM is dedicated to promoting humane and orderly migration for the benefit of all.

Safe, orderly, and regular migration mutually benefits migrants and societies. While most people who move between countries can do so safely, many migrants continue to experience atrocities when they venture away from home to seek a better life. Along migration routes around the globe, migrants, including many children, are subjected to physical violence, sexual abuse, kidnap and ransom, extortion, and exploitation. As we too often see in the media, many of them die in containers not fit for human transportation, drown in shipwrecks, or die of thirst in the desert on their way.

While avenues for safe and regular migration exist, they do not fully meet the existing demand. Many migrants' only option to cross borders is to resort to irregular and often dangerous migration routes. They turn to smugglers and face huge costs and risks, including unsafe transportation methods and conditions of travel. Their irregular status also puts them at the mercy of opportunists who take advantage of their desperate circumstances; it is not uncommon for those who travel with a smuggler to be abandoned on route, including at sea or in the desert. Others are deliberately targeted by human traffickers; they suffer deception, violence, and egregious rights violations at the hands of those who profit from their exploitation. For example, data from IOM shows that 73% of migrants interviewed along the Central Mediterranean route to Europe reported at least one indicator of exploitation.[2] A joint report by UNICEF and IOM analyzing the journeys of some 11,000 migrants, between 14 and 24 years old, also revealed the risks of human trafficking and exploitation among children and youths travelling along the Eastern and Central Mediterranean routes to Europe.[3]

Once they reach their destination, migrants may continue to face violence and abuse. They also remain vulnerable to human trafficking and other forms of exploitation.[4] For example, migrants may be targeted by unscrupulous employers, landlords, and service providers who take advantage of their limited knowledge of local conditions and weak bargaining power. Migrant workers are particularly vulnerable in labor situations that are either unseen, hard to access, or simply not covered by existing legal protections. This includes "out of sight" situations, such as migrant workers at sea or domestic workers in private homes. It can also include migrants who are effectively confined to worksites by private employers or agents, who deceitfully control their ability to retain a visa, their working and living conditions, or their wages.[5]

It is estimated that since 2014, more than 33,000 women, men, and children have died in the process of migrating towards an international destination. Most of these deaths (18,500) have been in the Mediterranean Sea. These numbers only reflect the incidents that IOM is aware of; tragically, an unknown number of deaths remain unreported.[6] In 2019, 509 women lost their lives during migration; however, we only know the names of 60 of them-including Briseyda whose story is told below. The rest died in anonymity.

Briseyda, a 20-year-old woman from Guatemala, and her 18-month-old baby, Denilson, were found dead in the bush just north of the Rio Grande outside McAllen, Texas, along with the remains of two other children, 20-month-old Marleny and three-year-old Juana. Briseyda left her hometown to join her two

1 Deputy Director General of the International Organization for Migration (IOM)

2 IOM. 2017. Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes (Geneva).

3 UNICEF and IOM. 2017. Harrowing Journeys: Children on the Move Across the Mediterranean Sea, at Risk of Trafficking and Exploitation (New York and Geneva).

4 According to the latest global estimates, almost a quarter of all victims of forced labour (23 percent) were exploited outside their country of residence. See ILO, Walk Free Foundation and IOM. 2017. Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (Geneva).

5 Available evidence suggests that nearly two thirds of victims of trafficking for forced labour are controlled through withheld wages. Source: IOM's Counter-Trafficking Data Collaborative (www.ctdatacollaborative.org)

6 https://migrationdataportal.org/themes/migrant-deaths-and-disappearances

brothers in the United States so that she could contribute to the healthcare costs of her six-year-old sister, who has a heart condition that requires regular medical care.

All four who died were part of a group of people who had crossed the Rio Grande from Mexico four days earlier. They then became lost in the inhospitable terrain of South Texas, and without access to adequate food, water, and shelter, Briseyda and the three toddlers lost their lives.[7]

These human stories of violence and predation are devastating. Unfortunately, despite widespread knowledge and consternation about lost lives; action to reduce the drivers of unsafe migration, or to address the protection and assistance needs of migrants, remains inadequate. Promoting the wellbeing of the world's migrants and working for the protection of those who are exploited is an enormous obligation. It will require significant investments and international cooperation.

The rapid spread of COVID-19 across the globe has significantly increased the risks for people on the move and will have a major impact on the world economy. Unemployment rates are likely to dramatically worsen and put unprecedented pressure on migrant workers, who tend to be employed in the informal or black sectors of the economy. As incomes decrease and jobs are lost, migrants are likely to adopt riskier coping strategies, increasing their exposure to exploitation. The closure of borders to contain the pandemic will further limit regular migration options and increase exploitation by smugglers and traffickers. Many migrants will be stranded as a result of COVID-19 mobility restrictions and left in precarious situations. At the same time, as governments and protection actors prioritize COVID-19 response, case identification, referral, and protection processes may also be weakened or leave migrants behind. This will lead to immediate protection gaps for vulnerable migrants who will go unidentified or unassisted.

The concept of "safe, orderly, and regular migration" has a long history in international discussions on migration. In the 2030 Agenda for Sustainable Development, states committed to, "cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status."[8] Target 10.7 of the Sustainable Development Goals (SDG) calls for the facilitation of orderly, safe, regular, and responsible migration and mobility of people. Eliminating human trafficking is also identified as an international priority and reflected in SDG targets 5.2, 8.7, and 16.2.

The notion of safe, orderly, and regular migration is also central to the Global Compact for Migration,[9] which was agreed upon in 2018. Anchored in the 2030 Agenda, the Global Compact contains numerous commitments to the protection of and assistance for migrants in situations of vulnerability, such as addressing and reducing vulnerabilities in migration (objective 7); saving livings and establishing coordinated international efforts on missing migrants (objective 8); preventing human trafficking (objective 10); strengthening screening, assessment, and referral (objective 12); and ensuring safe and dignified return and sustainable reintegration (objective 21).

Meeting these commitments requires practical measures to identify migrants in situations of vulnerability, such as victims of trafficking, unaccompanied and separated migrant children; and others vulnerable to violence, exploitation, and abuse. It also requires the capacity to design solutions for such migrants, and to work with a range of local and international partners to provide the necessary services (such as emergency food, shelter, and medical care) and sustainable solutions.

While the human rights framework establishes rights and protection for all human beings, existing frameworks to protect and assist migrants tend to be structured around categories of protected people, such as refugees, asylum seekers, and those who have been trafficked. Similarly, existing definitions of vulnerability tend to focus exclusively on membership in groups (e.g., women, children, and youth), with lit-

7 https://storyteller.iom.int/stories/remembering-women-and-girls-who-died-search-better-life

8 Resolution adopted by the UN General Assembly on 25 September 2015 ("Transforming our world: the 2030 Agenda for Sustainable Development"): https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

9 Resolution adopted by the General Assembly on 19 December 2018 ("Global Compact for Safe, Orderly and Regular Migration"): https://migrationnetwork.un.org/sites/default/files/docs/gcm-n1845199.pdf

tle recognition that vulnerabilities vary significantly within groups.

Basing "vulnerability" solely on being part of a particular group is at best simplistic, and at worst discriminatory. This approach obscures the many factors that may protect an individual from, or expose him or her to violence, exploitation, abuse, that may not be related to their particular group. It also downplays the agency and resilience of individuals and their abilities to overcome vulnerabilities. It may even exacerbate protection gaps, as protection actors may be blind to the needs of those who are not members of a group deemed vulnerable.

Based on its longstanding experience assisting and protecting migrants, IOM has developed a model to analyze and determine migrants' vulnerability. The model looks at a range of risk and protective factors that make individual migrants more or less likely to experience one form of vulnerability – vulnerability to violence, exploitation, or abuse – before, during, or after migration. It uses an ecological approach to examine these factors at individual, household/family, community, and structural levels. It recognizes that each migrant is living in a set of circumstances; some circumstances increase their vulnerability while others decrease it. All factors, and how they interact, need to be assessed to reach a true understanding of a person's situation and determine the best way forward for his/her recovery. The model is therefore focused on individual vulnerability, and not on vulnerabilities that pertain to categories or statuses, enabling individualized sustainable solutions.

The model is described in IOM's "Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse".[10] The aim of the Handbook is not only to provide guidance and tools to assess migrants' vulnerability, but also to provide programming guidelines on how to address such vulnerabilities at the individual, household, community, and structural levels. By understanding that migrant vulnerability is largely a result of individual, household, community, and/or structural risk factors – and that the particular combination of risk and protective factors at play at different levels – governments and other protection actors are better able to mitigate risks, reduce vulnerabilities, and enhance resilience.

At the individual level, for instance, migrants who are vulnerable to or have experienced violence, exploitation, or abuse, require responses that directly address their immediate needs, such as shelter, physical safety, mental health care, and more. At the household level, a holistic response requires understanding the position of the individuals within the household, and addressing any household factors that contribute to their vulnerability. Appropriate responses can include family tracing and assessment; alternative care options; improving abilities to provide for children in a fair and equitable manner; family counseling to address domestic violence; and more.

Community-level programming tends to require medium to longer term approaches, as addressing community risk factors often requires changes to broader social, economic, environmental, and cultural factors. Programmatic interventions could include efforts to ensure that community leaders and members view women and girls as full and equal participants in the cultural, social, economic, and political life of the community; that promote measures to adapt to, mitigate, and reduce the effects of climate change and environmental degradation, etc.

At the structural level, programming tends to be long term and is typically the domain of national governments and regional or international institutions. While it may be possible to identify structural factors that contribute to individual, household, and community vulnerability, it is not usually possible to affect structural changes in a manner or in a timeframe that would lead to any immediate reduction of those vulnerabilities. Programming that aims to address structural factors should support good migration governance, including the development of national laws and policies that offer adequate protections for migrants.

Addressing atrocities against migrants may seem daunting, and indeed there are many challenges. But, the challenges are not insurmountable. There is certainly a way forward. The following are practical and achievable measures that can be implemented.

First, policy, legislative, and regulatory reforms are fundamental. Without strong legal frameworks in

10 IOM. 2019. Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse (Geneva).

place, frontline responders are hamstrung in their efforts to identify and protect. All too often advances in policy and legislation are not matched with advances in regulations, or matched in the work processes that enable protection actors to effectively do their jobs. It is not enough to have the frameworks on paper. We must also have in place the systems, resources, training, and procedures that enable implementation.

Second, the capacity needs of partners are real. There is a genuine desire on the part of many governments and civil society actors to find and help migrants in need of assistance, but there are great disparities in skills and knowledge, not only between countries, but also between sectors. Some countries have made great strides in the detection, investigation, and prosecution of transnational organized crime, but have not equally invested in protecting the victims of these offenses. Others have stronger protection systems in place, but have not forcefully tackled the criminal networks that continue to abuse and exploit. Ending impunity for the criminals preying on vulnerable migrants is paramount. Combating human trafficking and the smuggling of migrants will require sustained commitment, including international cooperation to address transnational criminal networks, as well as facing uncomfortable truths about the many stakeholders who benefit from the exploitation of migrants - including states, the private sector, and individuals.

Third, protection responses to violence, exploitation, and abuse against migrants must be embedded in broader protective environments. They build on and complement the referral pathways and protection systems such as: child protection systems, protection systems for victims of domestic violence, and systems aimed at protecting and upholding the rights of workers. We must ensure that these are in place and have enough resources to meet the needs of all vulnerable people, including vulnerable migrants.

Finally, we must ensure that protecting migrants from violence, exploitation, and abuse, which is a whole-of-society problem, receives a whole-of-society response. In addition to their immediate needs, migrants' family, community, and structural dynamics must be considered. In particular, IOM and its partners need to work more with communities to identify the migrants most at risk, and to challenge and overcome community-level factors that facilitate violence, exploitation, and abuse by predators. These include discrimination against women and girls, and tolerance of violence against them. We also need better evidence on how structural dynamics shape an environment that tolerates and facilitates atrocities against migrants, and how structural dynamics work to prevent such crimes.

The challenge is great. We know how to help vulnerable migrants escape the cycle of violence and abuse, but none of the solutions are quick or easy. The COVID-19 global pandemic has made matters worse. Governments and societies are focusing their attention inwards, as borders close and airports empty. While many of us are finding safety at home and are reassured by being close to our family and community, many migrants find themselves far from their loved ones, and more vulnerable than ever. We cannot forget them and must redouble our efforts so that atrocities against them are never an option.

Environnement et business. Visions émergentes du futur, la contribution des peuples indigènes

Environment and business. Emerging Visions of the Future, the Contribution of Indigenous Peoples

Climate Challenges, Environmental Violence, and Genocide Prevention: New Issues, New Challenges

Jürgen Zimmerer[1]

Anthropogenic climate change is the most fundamental challenge for humankind in the twenty-first and twenty-second century. Rising sea levels, the loss of agricultural land, severe weather changes, and desertification will drastically alter the living conditions of tens of millions of people, starting with the inhabitants of the Global South, but by no means reduced to them.

The current Coronavirus pandemic offers the first glimpse into the vulnerabilities and disruptions that environmental violence on a global scale will bring about, and of the severe measures that might be taken by governments to curb its effects. This is particularly true, if the initial response is delayed or slow (as it already is in the case of anthropogenic climate change), and assuming that the effects can be curbed at all, particularly so late.

When modern societies struggle to design policies for a threat, like the COVID-19 virus, in which the time between measures (not) taken and effects showing – positive as well as negative – results is 14 days (the time it takes between the infection and the outbreak of the illness), how much more must we concern ourselves with the case of climate change where results (and possible mitigating effects) are shown only after decades? This time lag not only pushes our assessment of cause and effect to a new limit, but also questions our expectations of short-term fixes to problems. This alone challenges the traditional notion of prevention.

Taking environmental violence, and by that I mean the environment as both a source and resource of violence, seriously within genocide studies and prevention framework, influences both our assessment of the likelihood of the occurrence of (genocidal) atrocities, and the ways in which we have to deal with it to achieve sustainable prevention.[2]
Here, the focus is on the sustainability of prevention, which means not only to stop violence, or rather physical violence, but to initiate measures to avoid the occurrence of violence for a longer period of time. This is based on a more general understanding of prevention and includes policies to mitigate the effects that cause violence on a global scale.
Sustainable prevention means combating the root causes of genocidal violence. This leads to the question of what these root causes of violence are. Here, two schools of thought are identifiable: an older and more traditional school of thought which puts ideology at the centre, and a more recent one which emphasizes situational developments and processes of radicalization.

Intentionality and Ideology: The Holocaust Legacy

When World War II ended 75 years ago, after the liberation of the last concentration camps in Germany, news of Nazi atrocities started to spread. "Never Again" became the rallying cry for those who wanted to learn from history. As the main victorious allies had already decided during the war, an international body, the United Nations, was set up to foster multilateralism and international cooperation. In 1948, the newly founded international organization also adopted its first convention to battle organized collective violence, the United Nation's "Convention on the Prevention and Punishment of the Crime of Genocide."[3]

This convention was already part of a political compromise, as Great Britain and France, the main colonial world powers of that era, along with the Soviet Union de facto blocked the inclusion of class, in other words, social, respectively political groups as possible victim groups of genocide. They feared that their own behaviour, Stalin's 'terror', as well as the colonial suppression of anti-colonial revolts would have become the target of enquiry and persecution.

From the beginning, the Genocide Convention was part of the Cold War and its power games. This effectively prevented the General Assembly and the Security Council from applying the genocide convention, and therefore its preventative measures.

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2 Jürgen Zimmerer, Climate Change, Environmental Violence and Genocide, in: The International Journal of Human Rights 18 (3) 2014, pp. 265-280.

3 https://www.un.org/en/genocideprevention/genocide-convention.shtml (Assessed: 05.07.2020)

It was only after the collapse of the Soviet Union that the convention could be applied. As the United States was the only remaining superpower, many of the leading genocide scholars assumed it fell to her, to act as agent of genocide prevention, either unilaterally or as the leading force in a multilateral endeavour.

However, the last decade of the 20th century saw a failure of collective preventative measures of epic proportions. One example is the Rwandan Genocide of 1994, in which the international community acted too little and too late, some even supported the initial genocide perpetrators. The discussions of the United Nations Security Council are a shameful memory, as members discussed whether or not the term "genocide" was applicable to the murders in Rwanda, while hundreds of thousands of people suffered and died.

One of the consequences of this failure was that many scholars and activists attempted to amend the term genocide to make it more applicable to the increasing number of cases of civilians being killed by state actors. However, as a remnant of the Holocaust and its role in the development of the concept of genocide, ideology and state agency still lay at the centre of many such ideas. Ideology proved intent, and intent was deemed necessary to apply legal concepts of genocide. The perpetrators were the state or its representatives.[4]

Identifying Perpetrators: Decision Making and Individual Responsibility

The latter also had an impact on how the motives and the personality of the people that instigate genocide, and the decision-making processes that lead to it were perceived. Concepts were developed, and laws and regulations drafted that would allow or even request military intervention. For example, some developed multi-stage concepts of the road to genocide, with the aim of creating early warning systems. The most prominent one being that created by Gregory Stanton.[5] His basic - and correct - assumption being that genocidal murder does not start with the actual killing, but has ideological and discursive preparations. In order for prevention to be effective, attempted measures need to be initiated to stop the radicalization process, before the actual mass violence starts.

However, this early-warning approach rests, for historical reasons outlined above, on a rather narrow definition of the causes of collective violence and of its prevention. It is based on the conventional perception that genocide is an ideological crime instigated by atavistic and criminal minds, and driven by an obscure belief in primitive or irrational theories or rites. The ongoing and almost morbid fascination with certain rites and cultic elements of Nazism may serve as an example. Thus, genocide becomes a crime of psychopaths, an aberration of liberal modern history.

This attempt at incorporating those crimes in one's image of human history by defining it as a psychopathological aberration, and thereby excluding it, is understandable: Attributing mass violence of the most extreme kind to psychopathological cases alone, allows "us" who are apparently sound and "healthy," to be safe from becoming perpetrators ourselves. More importantly, our modern, "rational" world, based on "reason" and "enlightenment", becomes the very antithesis of genocide. All we have to do is continue our progression towards "progress", and all dangers will be averted.[6] Comforting as this may seem, this perspective is too narrow in its approach, and therefore misses out on one of the major causes of mass violence in the future.

What if genocide is not only perpetrated by irrational criminals and motivated purely out of ideology? What if the decision to commit genocide is seen as a rational political choice, as a "solution" during a (real or perceived) crisis? What if it is crises, resource

4 For an overview of the field of genocide studies see the multivolume anthologies by Adam Jones and Dirk Moses: Adam Jones ed.; Genocide 4 vols., New York: Sage 2008; Dirk Moses (ed.); Genocide: Critical Concepts in Historical Studies, 6 vols. Abingdon: Routledge 2010. A good overview is offered by Donald Bloxham& Dirk Moses (eds): The Oxford Handbook of Genocide Studies; Oxford: Oxford University Press, 2010. For more recent articles see the relevant journals: "Journal of Genocide Research", "Genocide Studies and Prevention" and "Genocide Studies International".:

5 Gregory Stanton, The Ten Stages of Genocide, https://www.genocidewatch.com/ten-stages-of-genocide (Assessed: 09.05.2020)

6 See for early ideas along the lines of this argument: Jürgen Zimmerer "From the Editors: Environmental genocide? Climate change, mass violence and the question of ideology", Journal of Genocide Research, 9:3 (2007), 349-351. Jürgen Zimmerer (2008) From the Editors: genocide and global social justice: towards sustainable prevention, Journal of Genocide Research, 10:2, 2008, 183-186.

scarcity, or social inequality that leads to genocide? What if our modern rational world is no barrier against genocide, but rather an accelerator of it, because it drives competition for resources?

Genocide and Resources

A global history of genocide shows how often competition for scarce resources has laid the foundation of mass atrocity and violence. In many cases, it is the competition for land that has led to genocide.

This is true for the colonial violence in the Americas, Australia, and Africa, where the urge to conquer territory for settlement was paramount. However, the scarceness of this commodity, land, can only be imagined. This was the case with German "Lebensraum-Ängste", the fear that the German nation would not have enough living space in the Social-Darwinian struggle with other nations. Without any real foundation, this idea, this fear, drove Germany first to Africa where the genocide of the Herero and Nama people in today's Namibia was committed, and later drove German armies to Russia during World War II.

Rather recently this case has also been made for the conflict in Darfur, which led to the 2009 indictment of the former Sudanese president, Omar al-Bashir, and others by the International Criminal Court for genocide.

Obviously, the choice for genocide is rational only within the parameters of the perpetrators' mental framework. In times of (systemic) stress, ideology supports constructing absolute others. Absolute others are groups that are deemed as fundamentally incompatible with one's own group, and therefore need to be removed, "cleansed," or made to "vanish." It uses already existing divisions, for example, entrenched group identities based on myths of common origins, or the belief in any form of racist hierarchy, and does not need a specifically exterminatory ideology.

It was Rudolph Joseph Rummel, one of the early pioneers of genocide research, who famously argued that liberal democracies are less prone to commit genocidal actions than other states.[7] We already touched upon the question of colonial genocide, which would somewhat turn the balance sheet, and which Rummel conveniently ignores. But his statement can be questioned on an even more fundamental basis. We just need to read the historical evidence slightly differently: liberal democracies are, historically, rather wealthy and stable societies. Therefore, one could conclude that wealthier societies are less likely to resort to genocidal violence than poorer ones, and that societies in crisis are more likely to become sites of genocidal violence than others.[8] This includes the imagination of crisis and fundamental threats to stability. Therefore, it becomes necessary to search for moments of crisis in conjunction with binary encodings in any given population, instead of looking for an outright exterminatory ideology.

Sustainable Prevention: Global Social Justice

Now, if crises are a major trigger of genocidal radicalization, and if scarcity of resources are a major reason for real and perceived crises, then peak fossil fuel use and climate change will make the 21st century and – should humans still be around – the 22nd century the age of genocide, a crisis exacerbated by the fact that human population is still growing.
There is agreement amongst the leading scientists that climate change will reduce large areas of land suitable for habitation and agriculture either by flooding – half the world's population lives in coastal regions – or desertification. Change of weather patterns on a global scale, with a rapid increase in severe weather conditions will add to this. Climate change will lead to massive migration, and increase population density in other areas. Real or imagined overpopulation in some areas will be the consequence.

Adding to this is the peak fossil fuel problem. As non-renewable energies by definition are limited and will be exhausted at some point, it is not difficult to imagine how this might intensify both the feeling

7 See for example Rudolph Rummel, Death by Government: Genocide and Mass Murder in the Twentieth Century (New Jersey: Transaction Publishers 1994); and Rudolph Rummel, Statistics on Democide. Center on National Security and Law(Charlottesville: University of Virginia 1997).

8 Mark Levene has repeatedly pointed to crises as a factor in the development of genocidal situations. Mark Levene "Genocide in the Age of the Nation State, 2. vol, London 2005; and Mark Levene: The Crisis of Genocide, 2 vol, Oxford 2016.

and the reality of crises. It will put societies under enormous stress; and if stress and crises are a threat multiplier for genocide, then prevention has to start today.

Therefore, we need to radically rethink the prevention orthodoxy: prevention has to start with a critical assessment of the global and globalized (political) economy. Preventing genocide and mass atrocities means combating climate change, decarbonizing our economy, and seriously tackling sustainability .

We need to debate prevalent ideologies of permanent growth, and accept de-growth scenarios to ease the strain on resource extraction and carbon dioxide emissions. We need to honestly contemplate a Global Social Justice approach to prevention. This will only work if poorer countries have a chance to improve the living conditions of all their citizens, which will ease tensions and strengthen their political voice. In a zero-growth world, this means lowering wealth levels in more prosperous countries. This is sustainable prevention. If we do not want to talk and think about it, we should be quiet about prevention altogether.

Access to Resources, Private Actors: From Exploitation to Prevention

Salil Tripathi[1]

The role of business in armed conflict is not new. Colonial history is replete with examples of businesses forming alliances with powerful states to advance corporate goals, or states supporting the economic ambitions of their corporations and subjugating sovereign nations. During World War II, several businesses were implicated through their actions in aiding and abetting mass atrocities, which led the international community to establish the Genocide Convention.[2] Financial institutions were also named, and some prosecuted.[3] In the years since, businesses have been accused of complicity in mass atrocities, such as trade facilitating conflict diamonds[4] which led to the establishment of the Kimberley Process Certification Scheme.[5] Other businesses, particularly in the extractive sector, have been accused of benefiting from violence unleashed on protesting communities, or in siding with one side in a conflict involving the state and armed opposition groups.[6]

The record of judicial remedy and restitution has been weak, and in many instances, the cases have reached out of court settlement without the company necessarily admitting any wrongdoing. The threshold of evidence is different in criminal cases, and prosecutors find it hard to find evidence that can link specific corporate acts with specific human rights abuses, as a result of which, few cases get tried.[7]

Laws do apply to zones of conflict, but in the fog of war companies often plead helplessness, saying they are victims of circumstances. They do not intend to cause harm and are often caught in situations not of their own making. If they withdraw, there would be loss of jobs or writing off investment with socio-economic consequences, and if they are to continue operations, they face the risk of complicity. Regardless of their intent, companies, their conduct, operations, and actions have had impacts on armed conflict. Sometimes their continued presence exacerbates conflict. Sometimes their interest in doing business in a particular location fuels conflict. Sometimes their specific conduct or action revives old rivalries or battles over resources, sparking fresh conflict. And sometimes their specific business actions drive conflict.

Other than companies that provide arms, ammunition, logistical support or wherewithal, including finance, to parties at conflict, most companies find that their links to an armed conflict are indirect. Their mere presence or continued operations sometimes contribute to ongoing tensions or hostilities or they benefit from such conflict. The argument, that companies should withdraw the theatre of conflict is idealistic and sometimes unrealistic; corporate presence can sometimes reduce hostilities because companies need some stability, and their presence is essential for continued supply of essential services, food, water, and infrastructure that civilians not involved with conflict but who are caught in it need for their survival.

Besides, certain businesses (such as resource extraction) are such that companies have little choice but to operate where they do, since the option of relocating elsewhere is not practical. Sudden withdrawal by a company can create job losses that can disproportionately affect vulnerable populations at the time of strife. Contrast that with colonial history – and even the post-colonial era – which is rife with instances of resource exploitation that has coupled with repression of local communities.

Extractive industries have argued that they do not have the choice of operating only in well-governed societies; they must operate wherever they find resources. Cases abound where companies have been implicated in violent incidents, whether or not intended. They point out to their philanthropic activities, usually done on a voluntary basis, to show how

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2 https://www.brennancenter.org/our-work/analysis-opinion/how-big-business-bailed-out-nazis

3 https://supreme.findlaw.com/legal-commentary/banks-and-human-rights.html

4 https://www.globalpolicy.org/the-dark-side-of-natural-resources-st/diamonds-in-conflict/un-documents.html

5 https://www.kimberleyprocess.com/

6 Consider, in particular, the allegations against oil companies operating in the Niger Delta, Indonesia, Colombia, and the Sudan. Some landmark cases include the 2009 settlement in New York between Shell and plaintiffs over the execution of Ken Saro Wiwa https://www.theguardian.com/world/2009/jun/08/nigeria-usa, the case against Chevron https://ccrjustice.org/home/what-we-do/our-cases/bowoto-v-chevron, the case against Exxon in Indonesia (https://www.rigzone.com/news), the case against Talisman Energy in Sudan https://law.justia.com/cases/federal/district-courts/FSupp2/244/289/2287736/, Anvil Mining in the Congo http://www.internationalcrimesdatabase.org/Case/210/CAAI-v-Anvil-Mining/, and most recently, Lafarge in Syria https://www.asso-sherpa.org/french-court-narrows-charges-against-lafarge.

7 One relatively rare case involves Frans van Anraat. http://www.internationalcrimesdatabase.org/Case/178/Van-Anraat/

responsible they are. Part of that communication is to enhance the company's reputation; partly they hope it mitigates any conduct that may have contributed to unrest or violence.

Given that corporations are present in zones of conflict, and their likely exposure to mass atrocities, it is legitimate to expect that companies should face heightened expectations to conduct enhanced due diligence when they operate in a conflict zone. Even if companies operate in an environment without clear rules of engagement, there are certain steps they must take to ensure they are not complicit in mass atrocities that violate peremptory norms.[8] The five grave crimes companies must be aware of are genocide, including incitement to commit genocide, attempt to commit it, or being complicit in genocide; killing members of a group (including severe harm, deliberately inflicting on a group conditions of life that can lead to physical destruction in whole or part, imposing measures that prevent births within the group, and forced transfer of children); crimes against humanity; war crimes; and ethnic cleansing. They have a legal obligation not to support any of it, and a moral duty to uphold human rights and protect lives. Legal purists may find it odd to invoke moral obligations, given that morality is subjective, but the imperative to protect life, and not harm it; is categorical, in its Kantian sense, even if the universe increasingly looks Hobbesian.

To be sure, the lack of clearly defined rules and the absence of political will to prosecute corporate actions that aid or abet conflict, creates a vacuum which may appear to permit companies to act as they please. There are a few frameworks that have emerged, but they are sometimes too broad to be of practical use at the critical moment, such as the laudable principles of the UN Global Compact,[9] or they are specific to a sector, such as the Kimberley Process, or are not specific to armed conflict, such as the Voluntary Principles for Security and Human Rights,[10] or, as is the case with several similar initiatives, they lack enforcement mechanisms and have not had a measurable impact in reducing armed conflict, even though some have had an impact in changing corporate practices because companies have undertaken rigorous due diligence, which may, in turn, have reduced tensions. Measuring the absence of an abuse is never simple.

The considerable attention placed on the extractive sector over the years has been for three reasons. One, as noted earlier, extractive companies – be they oil, mining, or gas – have to operate where resources exist. Two, they often have to operate in remote regions of a country which are resource-rich areas, but which have not economically developed. The presence of a company raises community expectations as the company begins operations. In the process of acquiring land in a conflict-prone area, the host government has often violated human rights, such as forced expulsions or evictions. The communities that live near the facilities are often indigenous and lack political power within the country. In some instances, there are secessionist movements raging in the country and the company gets caught in the crossfire between competing interests. Since the company's licence to operate is issued by federal authorities with little engagement from local communities, and often without the free, prior informed consent of the communities concerned, the relations between the company and the community sometimes turn hostile; the company requires the support of federal or local security forces to protect its assets, which only worsens the existing relations. Those scars take a long time to heal, as the tragic history of the Niger Delta shows.

There has been considerable criticism of companies for not doing enough to prevent mass atrocities when they occur near their area of operations. Companies that operated in Sudan during the civil war, in the Occupied Territories, and more recently in Syria, have been named and singled out for possible complicity.[11]

In times of mass atrocities, the challenges a company faces are even more acute. Except in rare instances (such as supplying arms and ammunition, financial support to the state or an armed opposition group, or offering logistical support to warring parties) a company risks being complicit by merely being present in the theatre of conflict. What role it should play depends less on laws and rules, and more on precedents or, as is often the case, exceptional acts by individual executives, who have gone beyond their legal obligations to assist people with whom

8 https://www.law.cornell.edu/wex/jus_cogens

9 www.unglobalcompact.org

10 www.voluntaryprinciples.org

11 https://www.theguardian.com/weather/2020/feb/12/un-publishes-list-of-companies-with-ties-to-israeli-settlements

they had no contractual obligation. When victims fleeing genocide turned up at the gate of Hotel del Mille Collines in Kigali,[12] the hotel's manager Paul Rusesabagina[13] decided to offer them protection and opened his doors, in the incident now widely-known through the moving film, *Hotel Rwanda*.[14] When hundreds of people faced what would have been a certain massacre in the Niger Delta, Chevron's executives airlifted nearly 2,000 people to safety during that violent upsurge - an act for which the U.S. State Department honoured the company.[15] When Arne Rinnan, the captain of a Norwegian ship, *M.V. Tampa,* came across a sinking ship in the high seas, he took on board 400 Afghan refugees and took them to the nearest port, in Australia, against Australian government's wishes. Australia ultimately allowed the refugees to seek asylum,[16] after initially refusing them clearance to disembark.[17] More recently, Carola Rackete, a German captain, saved lives of undocumented immigrants off the coast of Italy, even though she faced prosecution subsequently, and said she would do it again if she faced a similar situation.[18]

These are extraordinary actions by exemplary individuals, but such instances are rare because they are unprecedented. Many employees may not know what to do in similar situations. The dilemma for companies is real – what are their responsibilities towards those with whom they have no contractual relationship or obligations?

International law remains ambiguous – except in cases where the UN Security Council has imposed specific sanctions outlawing specific business activity, or where the company's home government has prohibited business in the affected country, most business actions in zones of conflict are legal. While international humanitarian law prohibits plunder and pillage, as well as actions that constitute aiding and abetting war crimes, few prosecutions have been brought forward, and fewer still have resulted in verdicts.

In such a context, companies rely on norms – either developed by industries, or in consultation with governments and civil society groups.[19] While helpful, these norms are often voluntary, lack regulatory oversight, and do not include all investors, enabling companies that do not face international scrutiny because they are not listed on stock exchanges, do not have brand recognition, or are based in countries where human rights are often disregarded, to act with relative impunity. Often called 'bottom-feeders,' they invest in riskier markets avoided by companies that are more susceptible to reputational damage or are otherwise more responsible. Normative standards lack punitive measures against companies that violate the norms, which weakens their effectiveness and credibility.

While the United Nations Guiding Principles for Business and Human Rights, adopted by the Human Rights Council in 2011, provide a new framework for companies to respect human rights. They represent the minimum standards with which companies should comply and they don't have enforcement capability in local laws or at international tribunals. Crucially, the guiding principles rely on the state obligation to protect human rights, which is often lacking, and call upon creative development of remedies, which is an uncharted territory, particularly where grave crimes are involved.

The rapid spread of the Internet and the ease with which communication is possible can be tremendously advantageous to disseminate messages that reduce tensions. But in contexts where the means of communication are controlled by one party, the vulnerability of others increases significantly. Internet-based communication can counter that – or it can make hate speech, virulent incitement, and speech that leads to mass atrocities or genocide more easily accessible and rapidly without restraint. Facebook faced significant criticism from the international civ-

12 www.millecollines.net

13 http://en.wikipedia.org/wiki/Paul_Rusesabagina. He has recently been arrested because he has been vocal in criticising the Rwandan government.

14 http://www.imdb.com/title/tt0395169/

15 http://www.ethicalcorp.com/content.asp?/contentid=1402

16 http://news.bbc.co.uk/2/hi/asia-pacific/1520097.stm

17 The Tampa case led to new Australian legislation "excising" Christmas Islands from Australia for asylum application purposes and it was a long time and after much lobbying that the refugees were allowed to enter Australia.

18 https://www.theguardian.com/world/2019/jul/05/captain-who-rescued-42-migrants-id-do-it-again-despite-jail-threat

19 These include the Voluntary Principles for Security and Human Rights for the extractive sector; the Kimberley Process Certification Scheme for conflict diamonds; the Extractive Industry Transparency Initiative; the Independent Code of Conduct for private security companies, and others.

il society as well as the United Nations[20] and it has since taken steps to mitigate risks.[21]

While freedom of speech as well as freedom to seek, receive and impart information are fundamental rights under the universal declaration of human rights,[22] there are caveats[23] that restrict those rights when other rights are at harm, in particular those rights which are non-derogable, as noted earlier. However, social media companies have been ineffective or unwilling in addressing these issues. Citing their compliance with home government laws or their own codes of conduct, some companies refuse to remove material that can incite violence. Expressing inability to defy local laws, some companies have followed the rules of national governments even if those governments have a poor human rights record.

Are there ways for companies to act to mitigate harm, in particular in cases where grave human rights violations occur? Can they prevent mass atrocities?

While any set of rules in such a context would be normative and voluntary, it should be noted that these norms can only be considered as *necessary conditions*, and not as *sufficient requirements*. Adopting these won't ensure an end to mass atrocities. But not adopting these won't eliminate mass atrocities either. And adopting these may help companies to act in ways that mitigate some harms. Some rules have emerged to help companies navigate the space.[24]

Regardless of legal obligations, companies have a civilizational responsibility, and a categorical imperative, to act to prevent mass atrocities. To do so, the following building blocks help establish a structure where good conduct becomes a matter of habit. It may not prevent harm in every case, but it creates a culture and sets up conditions where the risk of being complicit diminishes.

Respect rights: Companies should embed a rights-respecting culture, where the rights of their own staff as well as the rights of everyone affected by the companies' operations are respected.

Enhanced due diligence: Companies operating in zones of conflict should conduct e*nhanced due diligence* – that is, they should take extraordinary care in identifying risks, assessing impacts, and take effective and credible measures to reduce harm.

Eliminate complicity risk: The due diligence should require that companies have scrutinised local partners (to avoid doing business with those implicated in atrocities) and take all reasonable steps to ensure that their business operations do not contribute to further the aims of violent parties.

Consult communities: Companies should seek out and consult communities, even those that have an adverse view of the companies' operations.

Eliminate discrimination: Discrimination among communities – on grounds of race, ethnicity, class, caste, religion, and language – are often the root causes of violent conflict, leading to mass atrocities against specific groups. A judicious policy that ensures non-discrimination, including positive, affirmative action to empower historically-disadvantaged groups can help companies establish credibility and earn trust.

Be transparent: It is important for companies in zones of conflict to be candid and transparent about potential impacts of their activities, including cessation of operations during conflict. They should also take adequate steps to assist affected communities impacted by those operational decisions.

Establish credible remedies: Companies should establish transparent, inclusive grievance mechanisms to ensure that affected parties' grievances are addressed, particularly in contexts where the state is disempowered or even hostile.

Assist the affected: In cases of extreme violence, such as genocide-like conditions, companies should offer all possible assistance to the affected groups. That may not be a legal obligation, but it becomes a moral imperative.

20 https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf

21 https://www.nytimes.com/2018/11/06/technology/myanmar-facebook.html

22 http://ccnmtl.columbia.edu/projects/mmt/udhr/article_19.html

23 https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23944&LangID=E

24 https://www.ihrb.org/pdf/from_red_to_green_flags/complete_report.pdf

Provide safe haven: Where appropriate, and if feasible, companies should make their operations available for the safety of the affected parties, including their safe passage from a violent area.

Speak up: Provided that its intervention would not harm its own personnel nor adversely affect the rights of vulnerable groups, companies should speak up for peace and take proactive steps to establish peace.

Withdraw: In some extreme situations, companies have no choice but to suspend operations and withdraw. If their continued presence only enriches and benefits warring parties and provides minimal benefits to vulnerable groups, companies should withdraw, even if it means the limited positive benefits their presence offers the community gets withdrawn.

These steps are necessary for companies to act as agents of peace. Not undertaking these actions in zones of conflict where mass atrocities are imminent, is no longer an option for responsible business. Companies need to be part of a collective endeavour and harmonise their practices with international standards to ensure that they are on the right side of history.

No individual company, organisation, or individual can prevent mass atrocities on their own. But if everyone plays their part, we are more likely to move towards a more just, more humane, and more inclusive culture where everyone's rights are respected and everyone's dignity is ensured.

La pensée préhispanique: source d'inspiration pour la prévention

Juan Mayr[1] et Juana Londoño[2]

Au coin nord du continent sud-américain, au large de la côte de la mer des Caraïbes en Colombie, la Sierra Nevada de Santa Marta s'élève tel un majestueux complexe montagneux en forme de pyramide, isolé et indépendant de la cordillère des Andes. Avec ses 5775 m d'altitude, cette montagne est le plus haut sommet côtier du monde ; 42 kilomètres seulement séparent les côtes de la mer des Caraïbes des hauts sommets enneigés.

En raison de son gradient d'altitude et de sa situation géographique tropicale unique, cette île montagneuse abrite une mosaïque d'écosystèmes et un échantillon représentatif de la faune et de la flore du tropique américain, autant d'écosystèmes marins, de mangroves, de zones humides, de forêts sèches, de forêts pluviales et de haute montagne, de landes et de glaciers. Cette merveille de la nature est l'équivalent des Galapagos continentales. Au fil des siècles, ce lieu a été l'habitat d'importants groupes ethniques qui, malgré la dépossession agressive de leur territoire ancestral et les différentes formes de violence qu'ils ont dû endurer, ont réussi à survivre depuis les temps de la conquête jusqu'à nos jours. Aujourd'hui, leur résistance pacifique, leurs luttes et stratégies pour préserver leur culture et traditions et pour récupérer leur territoire et leur autonomie commencent à être reconnues.

Cet article fait référence aux persécutions et aux atrocités historiques auxquelles les Kogi ou les Kággaba, l'un des quatre groupes ethniques qui peuplent la Sierra Nevada, ont été soumis à différents moments de l'histoire depuis l'époque de la conquête jusqu'à nos jours où, grâce à la Constitution politique de 1991, des droits spéciaux furent octroyés aux minorités ethniques : autonomie, reconnaissance de formes autonomes de gouvernement, incluant justice, éducation et santé. Leurs territoires sont protégés : les peuples autochtones doivent être informés et consultés de manière préalable lorsqu'une activité ou un projet peut affecter leur territoire et leur culture. Cet article aborde les succès et les échecs des lois et politiques publiques relatives à la culture et l'autonomie accordées par la Constitution. Enfin, nous expliquerons comment, guidés par les mamas, leurs chefs spirituels, et grâce aux connaissances ancestrales et stratégies culturelles, ils ont maintenu leur culture, récupéré une grande partie de leur territoire ancestral et sont devenus aujourd'hui une référence centrale pour la résistance pacifique et la protection de l'environnement. Nous démontrerons pourquoi leur vision du monde, leurs pratiques culturelles, matérielles et spirituelles, est une importante source d'inspiration pour répondre aux grands défis de notre temps et inspirer les approches et pratiques contemporaines de prévention.

Une histoire de pillages et d'atrocités

Selon les chroniques de l'époque, le premier contact des Espagnols avec le territoire de la Sierra Nevada a eu lieu au début du XVIe siècle. S'est ensuivie une longue période de luttes et de guerres pour la conquête et la soumission de la population indigène. À cette époque, la population indigène avait déjà développé un système très évolué de villes et de villages lithiques reliés entre eux par un réseau complexe de routes pavées. La ville de Santa Marta, fondée en 1525, servait de centre administratif aux Espagnols. De là, les différents gouverneurs, assoiffés d'or et d'autres biens, faisaient des incursions dans les territoires indigènes. La résistance ne s'est pas fait attendre ; à de nombreuses reprises, les envahisseurs sont repoussés. Ce n'est qu'en 1599 que la résistance est vaincue, les chefs indigènes capturés et empalés publiquement pour servir d'exemple au reste de la population et le territoire divisé en grandes parcelles octroyées en guise de récompense par la Couronne à ses sujets, qui peuvent en exploiter le territoire et ses habitants. Chaque encomendero – colon espagnol – était tenu de verser des taxes à la royauté, à hauteur d'un cinquième des bénéfices obtenus. Une grande partie de la population indigène fut déportée dans les plaines, pour travailler comme main-d'œuvre dans les domaines agricoles qui commençaient à se créer. Chaque famille indigène recevait une parcelle de terre pour sa subsistance, et payait un impôt pour son usage.

Ainsi commence cette longue histoire de domination et d'imposition. Les atrocités commises pendant la conquête de l'Amérique étaient d'une telle ampleur qu'en 1542, la Couronne promulgua la « loi sur les Indiens » réglementant la gouvernance dans ces nouveaux territoires. L'établissement de réserves indiennes où ni les Espagnols, ni les métis ni les

1 Photographe, ancien ambassadeur, ancien ministre de l'Environnement.

2 Architecte, coordinatrice de l'Amazonian Conservation Team, Sierra Nevada de Santa Marta.

esclaves amenés d'Afrique ne pouvaient s'établir, contribuèrent à l'amélioration des conditions de vie des indigènes et leur donna un peu de répit, malgré la poursuite des abus. Pendant la colonie, les Espagnols s'installent peu à peu sur tout le territoire et imposent leurs lois. En 1718, toutefois, le roi accorde le droit d'évangéliser les territoires indigènes à l'ordre des Capucins. Les indigènes passent ainsi sous l'administration d'inspecteurs et de prêtres qui obligent les indigènes à s'installer dans le voisinage et à assister aux services religieux, sous peine d'être sévèrement punis.

Après les guerres d'indépendance au début du XIXe siècle, les populations indigènes de la Sierra Nevada sont aussi décimées par les maladies venues d'Europe. Au début de la République, en 1819, la situation ne s'améliore pas, au contraire. Simon Bolivar, « le libérateur », a une philosophie libérale d'égalité des droits pour tous les citoyens : il abolit l'impôt indigène et les formes de propriété collective. Les terres sont redistribuées et mises en vente, les terres indigènes sont perdues au profit des caciques locaux et des nouvelles entités administratives municipales. En 1886, une nouvelle Constitution est promulguée qui contient une nouvelle loi qui « détermine la manière dont doivent être gouvernés les sauvages vivant dans la vie civilisée ». Dans le meilleur style colonial, l'éducation et la gestion de la population indigène restent sous tutelle des missions catholiques pendant une grande partie du XIXe siècle et la première moitié du XXe siècle. Simultanément, la fonction d'inspecteur qui existait pendant la colonie est rétablie ; cette autorité, chargée d'exercer la justice et d'établir les titres de propriété pour les indigènes, paysans ou métis, pratique une justice arbitraire et commet de nombreuses injustices. Alors que le but de ces lois est l'intégration des populations indigènes dans la société ; dans la Sierra, ces nouvelles lois divisent les communautés entre traditionalistes, tenus à l'écart sur des terres inaccessibles, et les autres qui sont cooptés par l'administration publique et religieuse. Les inspecteurs instrumentalisent les conflits internes entre indigènes pour imposer sanctions et lourdes amendes ; les pratiques rituelles sont interdites et sévèrement punies.

Pendant la première moitié du XXe siècle, le développement du café accélère la colonisation des territoires indigènes. Dans les années 1950, des centaines de travailleurs agricoles déplacés par la violence, débarquent dans la région à la recherche de terres. Brûlant les villages, ils forcent, une fois de plus, les indigènes à migrer pour se protéger de la violence. Dix ans plus tard, les guaqueros – chasseurs de trésors –, réunis dans une association dont le statut légal est approuvé par le gouvernement national, pratiquent le pillage systématique des tombes dans ces anciennes villes aux routes pavées, abandonnées pendant les guerres de conquête. A la recherche de pièces d'or et de céramiques très prisées sur les marchés nationaux et internationaux, ils répondent à la demande croissante de musées et collectionneurs encourageant ce trafic illégal. Les sites sacrés, qui accueillent les restes des ancêtres enterrés, sont profanés. Une décennie plus tard, dans les années 70, les forêts et jungles du territoire indigène sont massivement déboisées pour planter la fameuse Santa Marta Golden, une marijuana de haute qualité très demandée sur le marché nord-américain.

Ce sont à nouveau des années de déplacements forcés et continus vers des terres encore plus élevées et moins fertiles. La plantation des cultures de marijuana entraîne aussi violence, répression et fumigation avec des agents chimiques. S'ensuit la culture de la coca qui s'accompagne de la création de groupes armés à la solde des narcotrafiquants, de l'arrivée des guérillas et de l'établissement de groupes paramilitaires ; tous luttent, à sang et à feu, pour le contrôle du territoire. Ces années sont très difficiles pour les indigènes, qui assistent, impuissants, à l'avancée de la colonisation, à la destruction de leur territoire, de leurs références culturelles, à l'irruption de la violence et au manque total de respect pour leurs valeurs et leur culture. De nombreux indigènes sont enrôlés de force par les différents groupes, ou utilisés comme sources de renseignements par l'armée ou par les autres groupes armés. De nombreux indigènes sont tués, ou sont victimes de disparition forcée, leurs femmes sont violées et les quelques animaux et récoltes subsistantes, sont emportés par les groupes armés.

Un espace de réflexion

De la conquête à nos jours, la Sierra Nevada a été un lieu de confrontation entre deux univers de pensée, deux façons irréconciliables de comprendre le monde. D'un côté, une pensée dominante étrangère, imposée violemment par les Européens, basée sur le pouvoir, l'individualisme et l'accumulation de richesses à tout prix. De l'autre, une pensée autochtone ancestrale, basée sur le respect et le soin de

toute forme de vie, où le territoire est un espace sacré interconnecté et indivisible, dans lequel se penser au monde et légiférer ont pour seul but la protection de la vie, de la nature et de la culture.

La vie n'est pas seulement abordée depuis le matériel, mais aussi dans ses dimensions spirituelles. La cohérence et la force de l'organisation traditionnelle résident dans l'action pour le bien commun. À l'instar de la nature, fondement de sa connaissance, la pensée indigène procède du lien entre toutes choses et selon un ordre. Ainsi, le mandat de leurs chefs spirituels – les mamas –, de leurs autorités et de la communauté, est de veiller à ce que chacun protège et maintienne cet ordre. Cet ordre, cette manière d'être au monde depuis les origines est immuable.

Depuis l'arrivée des Européens, la grande préoccupation du monde indigène est la destruction de leur territoire ancestral considéré comme l'équivalent d'une maison cérémonielle, léguée par la Mère universelle depuis la nuit des temps. Dans cette perspective, les dommages et pertes infligés au territoire et à la nature sont d'une gravité abyssale ; de fait, ils sont infligés à l'origine même de leurs connaissances ancestrales : l'origine de toutes choses, matérielles et spirituelles, qui fonde leur culture et tradition, en d'autres termes, leur identité.

Le changement et l'avenir

Au cours de la seconde moitié du XXe siècle, après avoir été déplacés par l'arrivée de milliers de colons, avoir assisté au pillage des tombes, à la destruction de la nature, à l'arrivée de groupes armés, les indigènes voient l'approbation de nouvelles lois qui, progressivement, promeuvent reconnaissance et protection du territoire. La loi forestière de 1959 et la création des parcs nationaux de Sierra Nevada et Tayrona dans les années 60 sont autant de mesures de protection de ces écosystèmes. Mais ce ne sera qu'en 1980 que les revendications séculaires des populations indigènes seront enfin entendues ; cela débouchera sur la création de la réserve de Kogi-Malayo-Arhuaco, qui reconnaît la propriété inaliénable, insaisissable et imprescriptible d'une grande partie de leurs territoires ancestraux. La nouvelle Constitution de 1991 reconnait les droits spéciaux des peuples indigènes de Colombie, et contient un chapitre sur l'environnement. Certes, cela redonne espoir, mais le bilan de sa mise en œuvre sur trois décennies est très contrasté. Les différents gouvernements peinent à respecter ces nouvelles normes constitutionnelles, notamment en ce qui concerne les projets de développement sur le territoire ancestral. Aujourd'hui les formes de violence continuent à se diversifier : on assiste entre autres à la destruction de sites sacrés pour construire des grands projets portuaires, la construction de routes et infrastructures pour le tourisme, ou de barrages pour l'approvisionnement en eau de la population urbaine dans les terres de basse altitude. Les tribunaux sont certes saisis par ces affaires, mais les modalités de justice indigène ne sont pas respectées.

Pourtant, bravant les difficultés imposées par la langue et la loi des « petits frères[3] », plusieurs affaires ont été soumises à la cour constitutionnelle qui a reconnu que, dans de nombreux cas, le gouvernement national et les autorités régionales ont fait preuve de partialité en faveur d'intérêts particuliers et ont soit ignoré soit violé la loi. L'un de ces cas emblématiques fut la destruction de l'un des principaux sites sacrés pour construire un port et, plus récemment encore, l'octroi de titres miniers dans des territoires collectifs sans consultation préalable. Dans tous ces cas, la cour constitutionnelle a statué en faveur de la reconnaissance des droits des indigènes. Suite à cela, la cour a demandé au gouvernement national de revoir le concept de territorialité indigène, car (il) « montre déjà son insuffisance et nécessite des dispositions plus adaptées aux besoins de la collectivité indigène », s'agissant « d'une zone de protection spéciale, en raison de sa valeur spirituelle et culturelle[4] ». En 2018, le président de la République, après un processus minutieux de consultation de ces quatre peuples indigènes, promulgue alors le décret 1500, qui reconnaît l'intégrité du territoire ancestral, la protection des sites sacrés qui le composent, et le respect de la vision indigène.

Ceci est une avancée sans précédent qui provoquera d'énormes tensions et résistances au sein de la société majoritaire. Les contradictions entre ces deux modes de pensée et ces différentes conceptions de la gestion du territoire sont bien loin d'être surmontées et la jouissance des droits culturels, très limitée, est constamment menacée.

Message aux petits frères

3 Terme désignant les étrangers, celles et ceux qui vivent hors de leurs territoires.

4 Auto-189/2013 Cour constitutionnelle Colombie, sentence T-849, 2014 et décret 1500-2018.

En plein XXIe siècle, époque de confluence de crises et conflits environnementaux, climatiques, sociaux, économiques, politiques et surtout éthiques, la pensée et les connaissances ancestrales des Kággaba peuvent constituer un précieux point de référence, une source d'inspiration et d'orientation pour résoudre nombre des défis auxquels sont confrontées les sociétés contemporaines qui n'ont pas de réponses à certains grands problèmes de l'humanité.

C'est précisément depuis le territoire ancestral de la Sierra Nevada, depuis ce microcosme où convergent de multiples réalités complexes, que les mamas Kággaba nous interpellent : nous, les petits frères, devons comprendre ces graves signaux d'alerte que la nature nous donne, qui touchent la planète et la vie dans son intégralité.

Avec leurs mots, les mamas, gardiens de la Sierra Nevada et « de ceux qui connaissent la philosophie de chaque chose », nous disent que le territoire ancestral – notre maison commune – est aujourd'hui intégralement affecté : « La terre est malade, l'eau est malade, l'air est malade, la forêt est malade, la mer est malade. Toute la nature, dans son intégralité, est concernée et nous sommes nous-mêmes affaiblis. Nous sommes tous concernés et n'avons pas le contrôle sur ce qui est nocif (…). Mère Nature s'exprime avec ses armes silencieuses ; lorsqu'une espèce, un arbre, un oiseau ou un animal s'éteint, une partie de la connaissance s'éteint (…). La nature est source de connaissance, nous devons donc la respecter (…). C'est pourquoi nous avons un accord avec elle, un accord avec la vérité : la nature fixe les règles qui établissent la paix dans et avec le territoire, et garantit l'équilibre de la vie. (…) Les petits frères ne comprennent pas cela : ils ne voient que le développement économique, ils ne pensent pas et manquent de conscience spirituelle (…) Si nous continuons à détruire, si nous ne guérissons pas la mère Nature, nous ne serons pas en bonne santé non plus. Ce n'est pas la nature qui doit changer, ce sont les humains qui doivent changer. Ce sont nos pensées qui nourrissent ou détruisent la nature et la vie : c'est pourquoi nous devons prendre soin de notre pensée et la guérir. Ce qui existe en dehors de nous provient de l'intérieur de nous-même : de la pensée. C'est pourquoi nous devons nettoyer nos pensées (...). Avant que les richesses naturelles et culturelles ne disparaissent, avant que nous n'ayons plus d'alternatives pour reprendre le chemin qui peut nous ramener aux principes de respect de la vie et d'harmonie, il importe de reconnaître qu'il existe d'autres façons de voir et de comprendre le monde. Il est nécessaire de sortir de la crise dans laquelle nous nous trouvons : la première étape est de s'écouter les uns les autres, d'écouter non seulement ce que disent les connaissances occidentales, mais aussi ce que nous enseigne la sagesse ancestrale, qui s'est maintenue malgré l'adversité, depuis les origines[5]. »

Réflexions, moment de changement

Après avoir enduré plus de cinq siècles d'atrocités qui se poursuivent encore sous d'autres formes, les Kogi ont fait preuve d'une capacité de résilience unique, fondée sur leur expérience historique, leur grande connaissance de la nature et du territoire, leur cohérence éthique, philosophique et leur sens profond de la spiritualité. Ils nous apprennent à chercher la force dans l'esprit et pas seulement dans la matière, si volatile et éphémère. La relation avec la vie est basée sur l'essentiel et l'intangible, sur une spiritualité nourrie par la nature, alors que la société occidentale vit (de l'exploitation) des ressources naturelles. Jour après jour, les gens courent après l'enrichissement matériel : cette obsession de l'accumulation a conduit au déséquilibre. Ce désir d'accumulation de richesses matérielles génère de graves problèmes et pousse certains à violer lois, principes, et à détruire la nature.

Nous avons de plus en plus de richesses matérielles et de moins en moins de richesses spirituelles. C'est pourquoi le concept de durabilité associé à la nature ne fonctionne pas ; la durabilité ne dépend pas seulement de l'accord entre le social, l'écologique et l'économique : le spirituel est indispensable. Chaque territoire a une spiritualité, mais les gens ne la connaissent pas, ou bien l'ont perdue ou ne l'intègrent pas. Si elle n'est pas intégrée, une « vérité complète[6] », un équilibre intégral, est impossible. Tant que la spiritualité est exclue, le vide règne : et les gens pensent que le vide doit être rempli par le matériel.

Avec leur approche holistique du monde, leur relation respectueuse et indivisible de toutes formes de vie, de la nature et du territoire, avec leur résistance

5 Extrait d'interviews de plusieurs mamas Kogi de la Sierra Nevada Santa Marta, lors de réunions où ils expriment leur préoccupation sur la situation dans le monde.

6 Vérité complète : terme utilisé par les Kogi exprimant l'inclusion (dans cette vérité) de tous les univers en un tout, le physique, la nature, le spirituel, le matériel et l'immatériel.

pacifique, la pensée des Kággaba et la sagesse de leur culture sont aujourd'hui plus vivantes que jamais. Cependant, la tragédie continue. Aujourd'hui, le territoire, le monde naturel et culturel de la Sierra, le « cœur du monde[7] », est en danger imminent de disparition, tout comme notre maison commune et, avec elle, notre espèce. Aujourd'hui, alors que notre société mondialisée a plus de questions que de réponses et que nous approchons d'un point de non-retour à cause de la cupidité sans bornes qui se traduit par la destruction effrénée de l'environnement et l'accélération du réchauffement climatique, la pandémie de Covid-19 révèle les aspects les plus misérables de l'humanité, les réalités les plus crues de nos sociétés et nous montre à quel point nous sommes fragiles et arrogants.

La pensée préhispanique du monde de Kággaba a résisté à l'extermination et nous offre aujourd'hui des connaissances empiriques, une diversité d'alternatives et d'approches pour promouvoir les changements et transformations exigés par la crise actuelle. Ils nous disent que, pour commencer, il suffirait de savoir écouter et de manifester respect et humilité. Changer notre façon de vivre est entre nos mains : les Kogi nous placent face à un défi éthique que nous pouvons relever. La pensée préventive contemporaine gagnerait largement à s'inspirer de cette profonde connaissance ancestrale.

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7 Le cœur du monde : pour les indigènes Kogi, la Sierra Nevada est à la fois le centre du monde et le centre du corps.

The Sama Dilaut Home and Journey: An Indigenous People's Perspective of Non-Violence and Peace

Mucha-Shim L. Quiling[1]

Introduction

Indigenous peoples' sense of belonging or not belonging will be at the core of it means for them to have a sense of security and maintain a balanced and sustainable way of life in a society quickly moving towards modernity. As a key concept of being and state of existence, belonging may be one of the most difficult to concretize into political and economic terms, and its precise social norms escape exact definition. To an indigenous sense, belonging is both imagined and lived experiences relating to metaphysical and symbolic values, attached to the physical environment that define selfhood and identity. At the same time, belonging is an experiential and phenomenal state that characterizes their relationship with human and animated beings, as well as their exploration and utilization of surrounding ecology and environment. Natural as well as cosmic processes are a major frame of reference regarding belonging related to a desired stability and balance of the indigenous being and existing.

An introspection into peace and practice of non-violence of an indigenous person is therefore necessarily a reflection on belonging and non-belonging and on what constitutes a person who belongs vis-à-vis the material environment.

This contribution draws largely from fieldworks immersing with one of the most marginalized indigenous political subjects of peacebuilding and processes in Southern Philippines. The Sama Dilaut or Bajau of Sulu Archipelago are perhaps the only remaining semi-nomadic and sea inhabitants in Southeast Asia.

The Sama Dilaut as a recalcitrant subject of writing
The Sama Dilaut has been literarily a recalcitrant subject eluding comprehension by academic as well as development researchers. Not only is there a dearth of available literature of well-researched Sama Dilaut political economy, but because of the limitations in the versions made available and accessible to mainstream documentary knowledge. Written translations and narrative discourses about the Sama Dilaut are either trivial anthropological take about cultural taxonomy, or tyrannical representations within nationalist's historical narratives that arbitrarily include the Sama Dilaut in totalized definitions of identity, territory, politics of belonging or un-belonging.

The overall homogenizing effect of these efforts at hostaging the Sama Dilaut in "tyrannical texts" has set them up, as most indigenous community have been prone to, as belonging to "everyone's history" except to their own. Overall, the result has rendered them not only muddled as autonomous and sovereign subject, but paradoxically inferior and reduced to perpetual periphery among nebulous entities remaining faceless and nameless, despite of the many names and faces drawn out to describe and capture to make them visible.

In the Philippines, they are various and identified *exonymically* as *Badjao, Badjau*, Pala-u, *Luwaan* or *Sama Dilaut.* By their own self-ascription, however, as sea-faring people and *Sinama* language speakers they want to be called simply as Sama, or specifically they prefer the toponym according to their abode as sea-based, *as Sama min dilaut*; or as land-based, *Sama min bihing* or *Sama min Deleya*. Sinama is the spoken language of the Sama people. The Sama group of sea faring nomads is one of the three Austronesian groupings recorded to have roamed in the Southeast Asian maritime realm where most colonial literature referred to them as 'sea-nomads' or 'sea-gypsies', as Sama Dilaut means 'sea people'. (Sather 1997:320-8)

Gaps in minority development policies and practice

The indigenous people who might both experience being a socially outcast minorities and at the same time being economically disenfranchised and pushed to the periphery, are often the usual targets of discriminatory practices. They are in utmost position of disadvantage, risking exclusion and neglect from the state in terms of allocation of resources for their development. Not only that, their disadvantaged position have made them invisible and their system of knowledge is not well appreciated let alone recognized by majority communities. More of-

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ten they are regarded by the mainstream as of lesser intellectual capacity.

There are two circumstances that can be considered as gaps in developmental frameworks or worldviews. The first is related to how minorities are objects of developmental interventions and civilizing missions and are targeted as project beneficiaries of programs that may not be consistent with their values and lifeways. The second issue is on how indigenous and minority peoples' intellectual competence are underestimated and their capacities for knowledge production undervalued. They often end up as subjects of historical writing and national identity construction in majority narratives where they are seldom part of its telling, hence, sometimes prejudicial and patronizing them. These worldviews impact on how the indigenous people's sense of belonging, conceived as home and journey, is construed.

The Sama Dilaut home and nomadic tradition

For an indigenous person, home is a sense of comfort: a safe, divinely-sanctioned, life-giving space whose anti-home is alien, malevolent, and life-threatening space. Home is therefore an essential requisite of belonging.

This is precisely the kind of home that the Sama Dilaut has in mind; the Sama sense of space as home or *paglahat* is simply one conducive and assuring a feeling of safety. It is also life-affirming where the divine dwell, and the spirits and the ancestors could visit and communion with the living. Home is associated with concrete structure dedicated to ritual purposes, its permanence makes it conducive for the meetings between the entities of the two worlds. The dynamic living and potent dead are co-existing in this divinely-protected dwelling.

The subsistent economy has made the Sama Dilaut to be traditionally nomadic. Semi-permanent structures with very basic amenities can easily be dismantled and abandoned, should the economic condition deems them to leave for another destination.

Abode to a Sama Dilaut can simply be a boat, a piece of roof or wall leaned-to or perched on a pile of rock or a stilt-supported hut. At the very best, the architecture is of one-room affair of space fluidly flowing, opened to the natural environment and nature pouring in, hence, the shallows or clump of mangrove or jutting rock are considered integral part of home. Home to the Sama is a dwelling of comfort to both the living and ancestral spirits; and the ideal community for a Sama Dilaut is one where the living would be guarded by the dead. The burial ground is therefore essential to indigenous village or shelter.

The modern paradigm of understanding home as a technical construction of permanence and an abode of solid material often misunderstand the meaning of *paglahat* or home to the Sama Dilaut.

Routes and journey

The Sama sea people possess an intimate knowledge of a particular littoral environment in which they live, as well as a more general but still thorough knowledge of the broader maritime space in which they travel. Through lifetimes of carefully calculated long-distance journeys as well as daily interaction with and movement throughout a particular seascape, Sama people have developed a deep familiarity with the vast expanse of the eastern seas of island SEA and have established far-ranging networks crisscrossing and connect those maritime spaces.

James Warren (1985/2002)[2] in his critical analysis of slave narratives, understood this and carefully angled his historical account of this maritime society, observing in even the lowliest Sama Dilaut pearl diver a strong sense of independence who could, at will, defy the Sulu Sultan to be potentially capable, as a collective to politically sabotage and cripple the trepang and pearl collection economy without any fear of retribution. This made Warren conclude that the Sama Dilaut and sultanate relationship was not one of patron-client relationship, but was exigent to the overall dynamics of maritime economy of Sulu zone. The Sama people of the Sulu maritime realm exercised autonomy and was clearly an equal player in the political economic life of Warren's construction of the maritime economic network called the "Sulu Zone".

2 Warren, James Francis. 1985. The Sulu Zone, 1763-1898. Dynamics of External Trade, Slavery and Ethnicity in the Transformation of A Southeast Asian Maritime State. Quezon City: new Day Press. Warren, James. 1998. Slavery and the Impact of External Trade: The Sulu Sultanate in the 19th C. in Alfred W. McCoy and Ed C. de Jesus (eds.) Philippine Social History: Global Trade and Local Transformations. Quezon City: ADMU Press. (Latest edition 1998; First edition 1982)

Nomadism and the rhetoric and logic of "home"

As is wont of anthropologists and sociologists, indigenous people like the Sama Dialut are objects of writing interests; not because of their sophistication but for the awe and sympathy elicited out of their naivety and simplicity, to the point that the common tales about them have almost always unjustly profiled their lot as limited to the basics primary needs for food, shelter, reproduction, as though the Sama Dilaut person was so basic that he/she could barely rise above animal instincts. Not many have dared delved into the complexity of their psyche and souls and interrogated and conversed with their philosophy and theology. Samas' conception of space and temporality can be a complex sophisticated philosophy that implies an intimate knowledge of his/her world and self.

- In the language of bureaucracy, the Sama Dilaut home is understood as the ordinary geographical space where the Sama Dilaut are located and are appellated to. The Sama Dilaut is in fact "tied" to that home in his identity and person. A typical anthropological description of the Sama Dilaut is as "nomadic sea-bound gypsies". So here, the location and space of the Sama Dilaut is generally assumed as the sea and their life revolves around the maritime world.
- In such understanding, the sea-based abode is also described as precarious and not conducive for human development, as the mainstream concept of the ideal home and the progressive society is that of a land-based and structurally sound and permanent abode or housing unit.
- In the bureaucratic parlance, therefore, the Sama Dilaut development is always conceived in terms of projects that would take them out of the impermanence and transitoriness of the sea world.

The Paglahat Sama Dilaut or Pala'u

The Sama Dilaut concept of space and home often prefers for transitoriness and vagabond life. The seaborne lifestyle sticks close to the sea and evades the permanence of land since land is considered captive spaces.

Because of this, mainstream society often misconstrue the Sama Dilaut as an outside of normal order, and consequently that they cannot follow any rule or law. To the contrary, the ephemeralness that guides the journeying gypsies is in itself a certain order or way of life. It is a life of patient constancy, and of resilience of remaining symbiotically bound to nature and submitted to the flows and changes driven by the dictates of nature.

Even before sophisticated political theories of migration came to construct borders and invisible demarcation, the Sama Dilaut were already inhabiting the vast oceanic world, and considered its infinity boundless. The Sama Dilaut clans seldom own any piece of land, instead they are themselves taken as integral part and "owned" by the infinite natural environment such as an islet, an intertidal reef, or a cove. Such high respect and deep reverence is also accorded to its Owner.

A Sama Dilaut tribal leader in one Sama Dilaut captive village of Bangkaw Layohan in Bongao, Tawi-Tawi eloquently expressed this when Panglima Katel (2014) said: *"Tagna seh tunggal Omboh Tuhan du magdapu ma lahat, tenaan sampay parinta magdapu na ma lahat"* (Before, God alone owned the home, now even government claims ownership). Their intimate knowledge of the sea can only be understood as their oneness with the sea, their ownership by the Sea.

Each day is lived by the moment with such freedom and lack of urgency; as though time and space do not exist. And since unbound time and space are distinctive feature of their sense of selfhood and residency, identity and citizenship is not at all essential to them.

The Sama Dilaut cosmology also guides their housebuilding, travel route and itinerary. A nomadic architecture is seamless and timeless. People inhabit nature and are inhabited by nature. Being and the existence of human and nature fuse in what they call "paglahat" or abode (dwelling). Believing that 'Mboh Tuhan (i.e. Allah) re-creates the world again and again in every moment - not renewing, but creating it again - the Sama Dilaut understanding of what it means to live is captured in the saying: *"seddi ellaw, seddi ridjiki. aa (manusiya) seddi seddi sukudna."* (roughly translates as: a different day brings different luck, each person is apportioned his own fortune). Following the subsistent life-ways, the Sama Dilaut work only for the moment's need, catching fish enough only for today's hunger, with most of his/her spare effort and opportunity spent in life-affirmation in celebrations with singing, dancing, and loving (taking care of each other). In such manner,

Sama Dilaut life pattern is cyclical, self-contented and integrative.

Conclusion

To developmentalist, life is patterned as a forward progression leaving behind an underdeveloped past. Meanwhile, modernity is a linear movement of human civilization in a monolithic and continuous historical track, ever aiming for more opportunities, increase in material accumulation in an unbridled desire for a future project with the least effort and little resource invested.

As gleaned from above discourse, this stands in complete contradiction with the case of the Sama Dilaut whose slow-grinding and repetitive everyday life can be interpreted to belong to the underdeveloped past. More so, the Sama Dilaut conception of home and journey that defines semi-permanent lifeways is regarded to be stagnant that deems to be intervened and saved from retrogression of stubborn tradition.

This dissonance between developmental goal of modern civilization and the aspirations to sustain a balanced life attuned to tradition and indigenous norms more often results into conflict and violence, inflicted upon the indigenous life.

Indigenous peoples' belonging is to be strategically assured and safeguarded in designing concrete and sustainable peace interventions. Peaceable processes can only happen within a framework of development including the understanding of how indigenous people inalienably link their lives and identity to nature and the ecological environment

Advocacy and information meant to impact on behavioral change and move people to action must seriously draw resources from the indigenous knowledge system itself, considering the deep integration in and utilization of metaphysical and symbolic worlds and the functions that these serve indigenous everyday life and material existence. In this, home and journey are two important concepts, both physical and cosmic, that must be well understood to contribute designing sustainable alternatives for seafaring and semi-nomadic indigenous community of Sama Dilaut.

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Responsabilité, complémentarité

Responsibility, Complementarity

Enhancing the Preventive Power of International Criminal Justice

Silvia Fernández de Gurmendi[1]

The impressive development of international criminal justice in the last three decades has been primarily based on the premise that the punishment of the perpetrators of atrocity crimes is a deterrent to future crimes, and, therefore, a contribution to peace and security. Gradually, more emphasis has been put on the concept of sustainable peace and on the potential of justice to contribute, not only to global security, but also to healing and reconciliation in affected societies. To that effect, the rights of victims to participate in the criminal processes and to seek effective reparation for the harm suffered have been increasingly recognized.

And yet, the deterrent effect of justice, fiercely debated in criminology, is also questioned at the international level. It is difficult, albeit impossible, to demonstrate empirically that the non-occurrence of atrocities is due to the impact of justice. Moreover, appalling violence against civilians in ongoing conflicts coexists today with a proliferation of international criminal tribunals for specific situations of crimes as well as with a permanent court of a general character, raising questions on their preventive power. Understandable as they may be, these questions are in fact premature as it is still too early to test the impact of justice in world affairs. Thanks to the sustained efforts of the international community, the concept of accountability has indeed been firmly put on the global agenda. However, as discussed below, justice for international crimes continues to be the exception, rather than the rule.

Why justice?

The belief that the punishment of perpetrators is an effective tool for the prevention of future crimes is not new. It is important to recall that the 1948 Convention on the Prevention and Punishment of Genocide is essentially an instrument to prevent the crime of genocide through prosecution and appropriate penalties for the perpetrators.

The proponents of criminal justice after the end of the Cold War not only took for granted the deterrent effect of retributive justice, but pushed forward as a corollary that combating impunity for the gravest crimes of international concern was necessary in order to restore and maintain peace and security under the United Nations Charter.

Indeed, such was the basic rationale for the establishment of the *ad hoc* tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR) in the early nineties, as well as other international jurisdictions that followed, including the International Criminal Court (ICC).

Both the ICTY and ICTR were created by the Security Council under Chapter VII of the UN Charter, therefore as measures appropriate to address a, "threat to the peace, breach of the peace, or act of aggression."[2] The relevant constituting resolutions explicitly spelled out that the establishment of these tribunals could contribute to halt, and effectively redress the crimes in the former Yugoslavia and in Rwanda and thus, "contribute to the restoration and maintenance of peace."[3]

In 1988, the same underlying objective guided the drafters of the Rome Statute, which gave birth to the ICC. This time, it was the international community as a whole that endorsed the premise that retributive justice, prevention, peace, and security go hand in hand. The Preamble of the Rome Statute acknowledges that grave crimes, such as those which marked the twentieth century, threaten the peace, security, and well-being of the world. Correlatively, putting an end to impunity for their perpetrators is regarded as a means to contribute to the prevention of such crimes and to restore peace and security. In this vein, the Rome Statute also recognizes the powers of the United Nations Security Council to refer a situation to the Prosecutor, under Chapter VII of the United Nations Charter.

In addition, for the first time, the Rome Statute brought a restorative dimension to international criminal justice by allowing victims to participate in all phases of the proceedings, not simply in order to assist trials as witnesses, but to provide their views and concerns and seek reparations for their harm.

These victims' rights, highly controversial at the time, are now an integral part of the international criminal justice system. Since the ICC was established, they have been incorporated in the legal frameworks of the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon, as well as the Kosovo Specialist Chambers.

1 Former ICC Judge and President. Chair elect of GAAMAC

2 Article 39 of the UN Charter

3 Res USC 827 (1993) & 955 (1994)

The limits of justice

Both the deterrent effect of justice, as well as its contribution to healing and reconciliation in fractured communities are extremely difficult to measure. The prevalence of peace and stability in any given society is unlikely to be the result of a single cause, but rather of a combination of multiple appropriate actions and long-term policies.

While the positive influence of justice is difficult to assess, it is easy to conclude, considering the state of the world today, that the deterrent effect of international justice, if any, has been limited. However, this does not in itself negate the belief underlying decades of justice efforts. As deterrence is premised on the existence of a "threat," the low impact of justice initiatives may simply indicate that the risk of punishment is not credible enough to be taken seriously by perpetrators. In the current circumstances, they know, as we do, that it is more likely than not that their crimes will be left unpunished.

Indeed, as impressive as the accomplishments of international criminal justice may be, we are far from having achieved a pattern of accountability. The concept of accountability has been put firmly into the global agenda. There is now an *expectation* that there will be accountability for the most serious crimes, and the conviction that this is necessary for sustainable peace. Now the question is not anymore whether to pursue justice, but rather when and how. This is a huge achievement, probably the most important one of the last thirty years.

However, in practice, accountability continues to be the exception rather than the rule. Despite the multiplication of efforts to investigate atrocities and prosecute their perpetrators; including through the creation of the ICC, a permanent court of a general character; the pursuit of justice continues to be essentially *ad hoc* and sporadic. There are huge gaps where impunity continues to flourish. These gaps result from the nature of the crimes themselves, as well as weaknesses in the current system of international criminal justice.

Firstly, the nature of the crimes.

International crimes will typically involve multiple perpetrators and thousands or hundreds of thousands of victims. It is unavoidable that justice will be selective. Prosecutorial discretion for these types of crimes is typically very broad. At the international level, in particular, prosecutorial efforts will normally focus on carefully selected events and perpetrators. This may result not only from practical difficulties, but also from peace imperatives, such as the need to facilitate the disarmament and reintegration of those involved in the violence.

Some international tribunals have been explicitly mandated to focus on those who bear the greatest responsibility. The statute for the Special Court for Sierra Leone, for example, limited the Court's jurisdiction to those who bore the greatest responsibility for the crimes committed on the territory of Sierra Leone.[4] As part of their downsizing, the ICTY and the ICTR were also specifically requested by the Security Council to focus their efforts on leaders suspected to bear the greatest responsibility. [5]

In addition to the limited number of individuals selected for prosecution, the scope of conduct that is charged is often far narrower than the actual extent of crimes committed. While the selection may be unavoidable for viable prosecutions and trials, it may result in impunity for many serious crimes and no redress for victims, who are thus left behind without recognition or reparation.

Secondly, the lack of universality.

In addition, not only crimes, but entire situations of crisis may be left unaddressed. The ICC has global aspirations, but the Rome Statute is not based on universal jurisdiction and has not yet attained universal participation. Unless the Security Council refers a matter to the Court or a non-party accepts its jurisdiction voluntarily, the ICC cannot address all situations of crimes equally.

Thirdly, insufficient cooperation.

Cooperation is crucial for international tribunals, which lack territory and enforcement powers. Unfortunately, experience shows that insufficient cooperation continues to hinder effective investigations and prosecutions as well as efforts to involve victims

4 Art.1 of Agreement for and Statute of the Special Court for Sierra Leone, 16 January 2002

5 See, inter alia SC Res 1503 (2003)

and repair their harm. At the ICC, fifteen defendants remain at large.

While cooperation is vital for international justice, we should not underestimate its importance at the national level. States have enforcement powers and an arsenal of tools to investigate and prosecute crimes within their borders. But, the perpetrators and the means of commission of crimes in our digital era have no borders. Perpetrators, victims, or witnesses, as well as, the various forms of evidence, including assets and products derived from the crimes, may be in various countries, some of which are still in conflict or post-conflict situations. Also, forms of criminality may be particularly diffused when committed by non-state actors. Available cooperation tools are insufficient and outdated.

Fourthly, insufficient access of victims to justice and effective reparations.

There is a growing recognition of the importance of having a victims-centred approach to justice, in order to maximize the contributions of criminal proceedings to peace and reconciliation and, thus, their preventative potential.

In practice, engaging victims fully in criminal proceedings is particularly difficult for international tribunals, which are detached from national systems and societies, and at most times need to proceed at a large distance from them. Moreover, the participation of sometimes thousands of victims raises legal and operational challenges as their participation must be meaningful without affecting the right of the accused to a fair and expeditious trial.

Improved communication and outreach

strategies in situation countries, as well as efforts to facilitate and streamline victims' access have significantly increased the number of participants and enhanced the participation regime in ICC proceedings. However, this has also demonstrated the innumerable challenges to the full involvement of victims, including security risks, which are impossible to confront without heightened cooperation.

Effective reparations to victims for the harm suffered are also crucial. As stated, the Rome Statute was the first instrument of its kind to provide the possibility of ordering reparations to victims in case of conviction, and the system is being tested in a number of cases.

Considering that international criminal justice can only address and repair a handful of cases and that reparations in international criminal proceedings are ordered against the convicted person, a large number of affected victims may be left without meaningful reparations. Therefore, it is important that the reparations scheme be complemented by broader assistance to victims in situations of atrocities under investigation, beyond the confines of a case against a particular perpetrator.

As part of the ICC reparations system, States Parties to the Rome Statute have established a Trust Fund for Victims, funded by voluntary donations from states and other donors. The Trust Fund may contribute financially to implementing reparations orders in case the convicted person is indigent, but also may provide broader assistance to victims of crimes in affected communities. This dual mandate has already proven to be extremely useful in some situations, but has also demonstrated the difficulties involved, as well as the obvious need to obtain sufficient resources from the international community.

Lastly, the inefficiency of courts and tribunals

International criminal proceedings are widely perceived as being too slow and ineffective. Some delays and difficulties derive from factors beyond the control of the tribunals, such as insufficient international cooperation, but others are the result of poor internal administration and poor management of cases.

While some initiatives have already been taken to expedite proceedings and improve the quality of justice that is delivered, they have not been sufficient to counter a growing disappointment with judicial institutions, including in particular with the ICC, which is central to the international criminal justice system. This undermines the credibility of the ICC and international criminal justice in general, reduces trust, and hinders efforts to promote universal participation and cooperation with investigations and prosecutions. As support is linked to performance, it is crucial to improve the efficiency and effectiveness of international criminal justice.

Conclusion and recommendations

In order to enhance the preventive power of justice, there is a need for a clear and unequivocal signal that justice for heinous crimes shall be done in all circumstances. The best remedy against insufficient justice is indeed more and better justice. To this effect it is recommended to:

1. Promote criminal proceedings at all levels

International tribunals and courts do not replace, but rather complement national systems of justice. Only through the combined efforts of all jurisdictions, national, international, or hybrid can we truly hope to reduce the impunity gap and establish an effective system of global justice.

States must exercise their primary duty to investigate and prosecute international crimes and enact all necessary legislation to that effect, including to criminalize international crimes domestically.

2. Support efforts to collect and preserve evidence for future prosecutions

While agreements are pending on the appropriate jurisdiction for certain situations of crisis, it is crucial to support current efforts by civil society and international organizations to collect and preserve the necessary evidence for future prosecutions. In this regard, the international community should cooperate fully, inter alia, with the international investigative mechanisms respectively mandated to collect evidence in Syria and Myanmar by the United Nations General Assembly and the Human Rights Council.[6]

Promote universal participation in the Rome Statute
Promoting the universal participation in the Rome Statute is of fundamental importance, as it enhances the effectiveness and the legitimacy of the institution. The international community and the ICC must take all necessary initiatives to enlarge membership, and to foster appropriate implementation of national laws.

3. Strengthen cooperation with investigations and prosecutions

This requires not only increased support for international jurisdictions, but also a strengthening of the capacity of national systems to investigate and prosecute through interstate cooperation. The current initiative for a new Mutual Legal Assistance Treaty (MLA) for international crimes is a step in the right direction.

5. Support access of victims to justice

Courts and tribunals, with the support of other states or the international community, must continue to deploy all efforts to design and implement appropriate strategies to reach out to victims, raise their awareness of and ensure their understanding of proceedings, facilitate their participation, and provide effective reparations.

6. Enhance the efficiency and effectiveness of international courts and tribunals

The ICC and other international tribunals should increase efforts to develop concrete initiatives to improve the management of their institutions, accelerate proceedings, and enhance the quality of justice that is delivered. The international community should encourage and support such initiatives as well as their recommendations. States should also improve their own practices regarding international jurisdictions, and focus on aspects such as the selection of international judges and prosecutors.

6 UNGA Res 71/248 of 2016 (Syria) and HRC Res. 39/2 of 2018 (Myanmar)

Corruption, Organized Crime, and International Crimes: Lessons for Prevention

Carlos Castresana[1]

Criminal law is one of the most powerful instruments employed by states to protect the values generally accepted as essential in human societies, and for prohibiting and sanctioning the conducts that may damage or endanger them. In the international field, criminal law guarantees the values of coexistence and peaceful settlement of disputes, and tries to guarantee the security and safety of the most vulnerable individuals and human groups. The exercise of the *ius puniendi* by States and sometimes by the international community itself can contribute to the prevention of atrocities. This paper briefly examines how corruption and organized crime damage or endanger our fundamental rights and values, and how enforcing efficient accountability regarding these criminal activities can contribute to a better protection of these rights.

Human rights: some shifts in paradigm

The Declaration of Independence of the United States is generally recognized as the certificate of birth for democratic States, and was soon followed by the French Declaration of 1789. Since then, the recognition of fundamental human rights as inherent to citizenship has been accepted as the cornerstone of the modern social contract, consecrated from that moment on in the Constitutions of most of the two newborn states. Guaranteeing the effective enjoyment of these individual rights became the first obligation and condition of legitimacy for any government. That national social contract was applicable to everyone governing and being governed in the territory of each state; the authorities exerted with exclusivity their national sovereignty. One of its most important manifestations was *ius puniendi,* the power of coercion of criminal law to maintain and preserve the legal order.

That model of the domestic social contract died in 1945, when the community of nations realized that most of the dead in WWII perished in the rearguard rather than in the battlefields: victims of the abuses of the governments that supposedly had the responsibility to protect them. The paradigm changed, and the protection of human rights was no longer exclusively entrusted to national governments. The new global social contract, as expressed in the Charter of the United Nations, had three contracting parties: the citizens bearers of the rights, the governments obliged to respect and guarantee these rights, and the international community before which individuals and states are accountable. In that moment, criminal law broke geographical boundaries. The first international crimes and tribunals were established, becoming the manifestation of a new *onus puniendi*. States must prosecute and punish genocide, crimes against humanity, and war crimes, all of which are considered violations of the universal values of mankind.

This new legal order was immediately frozen by the Cold War, and rendered useless for half a century. However, the nineties gave way to an unprecedented global honeymoon, a decade of multilateralism and cooperation. International bodies were permitted to be more efficient and proactive in their protection of human rights, and new concepts were developed: humanitarian intervention, the responsibility to protect, prevention of atrocities, and complementarity. The international community has not only a right but a duty to act, resulting in establishing international mechanisms of accountability for the protection of fundamental rights seriously threatened or violated. It was the time of peace agreements in Central America, the ICTY (International Criminal Tribunal for Yugoslavia), ICTR (International Criminal Tribunal for Rwanda), the Pinochet case, the Special Chambers in Cambodia, and in 1998, the Rome Statute. This new paradigm was characterized by:

a. The enactment of a new international permanent mechanism of accountability, the ICC (International Criminal Court), enabling criminal law as the main tool for the protection of human rights and preventing the most serious abuses.
b. The consideration of the effective protection of victims as the cornerstone of the new system.
c. The consideration of genocide, crimes against humanity, war crimes and aggression as international crimes.[2]

1 Member of the Career of Public Prosecutors. He has worked in the Special Prosecution Offices against Drug Traffic, Corruption, and the Supreme Court in Spain. In 1996 he initiated the prosecution of Augusto Pinochet before the Spanish National Court. From 2007 to 2010 he directed the International Commission Against Impunity in Guatemala.

2 The agreement includes the consensus on the status applicable to all of these crimes: duty to prosecute, no statute of limitation, no immunity, no asylum or refuge, no due obedience, no amnesty, universal jurisdiction, complementarity, etc.

d. The equal recognition as potential perpetrators of state and non-state actors.

Domestic, transnational, and international offenses

In parallel to the process of codification of international crimes, conventions and other instruments have been developed to increase the cooperation among states for the prosecution of certain offenses. Very serious crimes such as terrorism, arms traffic, mercenarism, piracy, apartheid, traffic of human beings, etc. have been regulated in different conventions but, lacking the political consensus in this regard, have not been widely accepted as international crimes in the legal sense of the term, and have been excluded from the list of crimes under the jurisdiction of the ICC.

In a similar way, offenses of corruption and organized crime have not been considered serious enough to justify their categorization as international crimes. However, there is a general understanding that the most serious manifestations of some of these ordinary offenses, are transnational in nature, because the networks dedicated to the sustained commission of these offenses have crossed borders, professionalized, become multinational enterprises and gained enormous power and resources. There is a common understanding that coordinated responses to these criminal activities are needed, because in many countries the strength of these organizations goes far beyond the capacity of response of the weakened and dysfunctional national security and justice systems, and the impunity enjoyed by these groups is widespread and threatens entire societies.

As a consequence, a new intermediate category of offenses, somewhere in the middle of the way between national and international, has begun to be recognized: *transnational crimes*, not so serious as to amount to international crimes, but more important and with a more serious impact in human societies than simple domestic offenses. Additionally, there is a growing concern regarding some manifestations of the activity of corruption and organized crime groups that provoke the failure of increasingly vulnerable states, with consequences and impact on human societies in a degree that compromises their development and welfare, undermine their institutions, and permanently threaten the life and integrity of human beings to a degree that implies a systematic and extremely grave violation of fundamental human rights. [3] In these societies where social services decline and collapse, human rights become privatized, are not universal anymore, and become privileges for a few: security, health, housing, education, are reserved for those who can afford to pay for them.

How does corruption and organized crime affect human rights? Do they constitute or pull the trigger of massive violations? Can the effective prosecution and punishment of organized crime and corruption contribute to preventing atrocities? Should we apply to the most serious manifestations of corruption and organized crime the status applicable to international crimes?

Corruption, organized crime, and human rights

The traditional offenses of corruption were just embezzlement and bribery. More modern manifestations include the abuse of information by insiders, trade in influence, illicit enrichment, money laundering, private corruption, unfair competition, massive tax fraud, and illegal financing of political parties, among others. Organized crime groups are dedicated mostly to the illegal markets: drug trade, arms traffic, human smuggling and traffic, illicit exploitation of non renewable resources, and illegal trade of flora and fauna. Environment is one of its most conspicuous victims!

In the emerging countries, both corruption and organized crime undermine the institutional structures, destroy the rule of law and the existing mechanisms of peaceful settlement of controversies, and catalyze violence. Today's armed conflicts are characterized by a very low degree of formalization: the traditional international conflicts among High contracting Parties of the Geneva conventions are over; most of the wars nowadays are never declared, do not respect conventions, borders or any kind of rules, have many multilateral irregular participants, and the national, religious, ethnic or territorial motives are secondary or absent. The new wars are organ-

3 See 2003 UN Mérida Convention against corruption. 2000 UN Palermo Convention against transnational organized crime and its three Additional Protocols, on arms and ammunition, traffic of migrants and traffic of human beings, specially women and children. The wide support to these Conventions as demonstrated by the high number of ratifications shows the extension of the concern for these crimes.

ized and sustained for economic interests. Tax havens and illegal markets are increasingly important in the global economy. Egregious corruption and organized crime are consubstantial to these informal conflicts. Let's see some examples.

Reliable sources[4] have identified the top ten countries most seriously affected by transnational organized crime.[5] They are –in this order- Colombia, Nigeria, Mexico, Democratic Republic of Congo, Central African Republic, South Sudan, Somalia, Sudan, Libya, and Cote d'Ivoire. It is not difficult to establish the existing connection between the most serious armed conflicts of the last decade and the activities in these very same territories of the most powerful organized crime groups. The relationship can also be established between the activity of these criminal groups and the loss of thousands of lives. The joint action of armed groups and organized crime groups is complemented with the presence in the same territories of the most serious corruption networks. According to the last Corruption Perception Index published, the rate of corruption in these ten countries stays among the worst in the world.[6]

There is no difficulty to conclude, therefore, that corruption and organized crime, being instrumental to armed conflicts, are causing or at least contributing decisively to the crimes committed in the conflict-affected areas. It is not a surprise that seven of the ten above mentioned countries are under investigation by the International Criminal Court. The illegal groups are fed by war and its power is growing exponentially. The endemic violence of the Great Lakes region in Africa is not conceivable today without the presence of clandestine groups providing arms and ammunitions deviated from the official trade channels to the rebel groups, obtaining in exchange natural resources smuggled into the commercial illegal markets, finally arriving at the legal ones. These natural resources include not only minerals, but also human beings, particularly women and children. The economy of these countries has been captured as much as its territories.

Likewise, the never ending violence in Mexico and Colombia can only be understood taking into consideration the enormous influence of drug traffic and smuggling of human beings in the economy and the GDP of the Latin American region.[7] The power accumulated by criminal groups in these countries includes its territorial control of the large geographical areas they conquer after informal wars in which only the apparent absence of the political intent prevents the application of the Geneva Conventions.[8] The extension and seriousness of transnational corruption as the usual procedure for making business contaminates the whole financial system.[9]

The conclusion seems clear: egregious corruption and organized crime should be considered international crimes and prosecuted accordingly, or at least granted the same status for investigation and prosecution,[10] because its seriousness is equivalent and its capacity of destroying human lives,[11] coexistence, development and governability can be even superior. New strategies and public policies regarding the prohibition of drugs, regulating migration, establishing arms control, and promoting fairness and transparency in the extraction and distribution of natural resources should be probably contemplated, trying to deactivate these social bombs before they explode.

Economy of crime must be targeted, finally, by effectively combating money laundering, regulating and controlling transnational financial flows and tax

4 Organized Crime Index in Africa, published by ENACT (Enhancing Africa's Response to Transnational Organized Crime) a Project of ISS, Interpol and Global Initiative against transnational organized crime, financed by the European Union. See web page.

5 The study compares all the African States with another 15 countries selected from all around the world because of the relevance of their TOC activity.

6 Web page Transparency International. Index 2018. The evaluation includes 180 countries. All of the ten countries

7 Drug traffic alone produces more revenues than the hydrocarbon sector and 15% of the world GDP located in tax havens. http://www.revistafolios.mx/dossier/el-desafio-de-la-delincuencia-organizada-en-mexico.

8 The Mexican "war on drugs" 2007-2012 has caused officially 35.000 deaths, employed 50.000 military and 400.000 policemen, and the criminal groups giving employment to 500.000, among them 30.000 minors under 18; the impunity rate amounting to 97%. Same source.

9 The Odebrecht scandal has disclosed a network of egregious corruption affecting to the highest authorities in twelve Latin American countries; not to speak about the 1,2 million members of the Communist Party convicted in China on counts of corruption.

10 See above, footnote 1.

11 See https://www.animalpolitico.com/2020/06/18-meses-amlo-muertos-asesinados-mujeres-menores/ In Mexico, 53.000 persons have been murdered in the last 18 months, almost 6.000 women and 2.000 children among them.

havens, and establishing and enforcing clear boundaries. This has to be done in cooperation with the private sector, media and consumers, between legal and illegal markets.

Meanwhile, other measures of coordinated domestic-international investigation and prosecution can be explored.

Some proposals

1. Victims first: In order to prevent atrocities, the strategies for an efficient investigation and prosecution of international crimes, corruption and organized crime, in order to avoid impunity and provide deterrence, should begin by placing victims at the very center of political priorities. The first question when establishing prosecutorial strategies should always be: what is the best decision for the protection of victims' lives and safety? How to reimagine the Rome Statute to prevent the future atrocities, or to stop the ongoing ones? How can the ICC and the judicial national bodies help to build a sustainable peace and promote the truth, provide justice and reparation for the victims, and facilitate reconciliation among conflicted societies?

2. Partnership: The Office of the Prosecutor of the ICC is a powerful engine without wheels. It has the authority to prosecute, but not the instruments to do it. The OTP should forge a permanent operational partnership with the prosecutorial authorities of member States. Their cooperation is indispensable for carrying out investigations, gathering strong evidence, making arrests, conducting searches, and freezing assets. The adequate investigation and prosecution of corruption and organized crime requires enhanced coordination as well. International and domestic authorities can conduct joint investigations focused on dismantling criminal groups and confiscating their resources.

3. Jurisdictional cooperation: The ICC needs to develop a jurisdictional network, enabling coordinated territorial, extraterritorial, universal and international jurisdiction within the judicial authorities of member States, as established in article 18 of the Rome Statute. Once the joint investigations are culminated, the cases can be fairly distributed among domestic and international Courts identifying the forum *conveniens* for trial according to each one's jurisdictional rules.

4. Prevention before the crimes: In order to prevent atrocities, the Rome Statute anticipates the threshold of accountability by considering punishable not only the execution of conducts damaging the protected values, but also some preparatory actions or omissions potentially dangerous to these same values, such as incitation through hate speech, induction, and facilitation of the crimes. When these conducts are considered punishable under the Rome Statute 25, 3 b), d), e) and f) and are committed in contexts of serious unrest threatening to unleash a confrontation, the Prosecutor of the ICC and the national Prosecution Offices should intervene early, acting before the atrocities are committed, trying to prevent them. To this fundamental purpose, ICC should increase its coordination with the Security Council, the relevant agencies in the United Nations and regional systems, the member States and their justice systems, the civil society, and the representatives of victims in every situation.

5. During the crimes: deterrence. Prosecutorial strategies should always be addressed to stop the conflicts when it is possible, attacking and eliminating the economy that fuel and sustain the confrontation, identifying and stifling the sources of financing of the combatting armed groups, freezing and confiscating their assets, intercepting their communications, impairing the supply of weapons, ammunitions, food and equipment, preventing any other illegal trade from/to conflict areas, and supporting the efforts of multilateral actors, prosecuting those aiding and abetting the criminal activity of the armed groups, and confiscating the profits obtained in illegal markets by those benefiting of spoils of war, as authorized by the Rome Statute 25, 3, c). In the scenarios of widespread atrocities, special attention must be given to the cases of sexual and gender based violence and trafficking of human beings in order to prevent these conducts and to avoid them becoming systematic.[12]

6. After the crimes: non recurrence. In conflict-affected and fragile countries, where mass atrocities have been committed, and the security and justice systems have virtually collapsed, the ICC can decisively contribute, interacting with domestic authorities, to the transformation of conflicts. They can help by building sustainable capacity and

12 As defined in the Civil society declaration on sexual violence: https://4genderjustice.org/wp-content/uploads/2019/09/Civil-Society-Declaration-on-Sexual-Violence.pdf

political will (positive complementarity), and enabling and facilitating domestic permanent mechanisms of justice (cooperative complementarity), thus creating ownership and facilitating reconciliation. And as a last resort, when the mechanisms of restorative and transitional justice have failed to produce results, the ICC and the national prosecutorial authorities must exert their jurisdiction and serve as enforcer to guarantee non-recurrence by providing effective and timely retributive justice, specially against those who, having committed the most serious crimes, refuse to cooperate with justice and undermine the efforts addressed towards peace.

7. Restoring values: Justice must be served and be seen. The ICC should engage broad constituencies, States and its institutions, private sector, civil society, and the victims' representatives, in order to develop strong outreach strategies to build inclusive narratives of justice, reconciliation, tolerance and a culture of peaceful settlement of controversies with the rule of law as the sole instrument. This would lead to the eradication of violence and corruption and prevent their recurrence by restoring the core values obliterated by the crimes.

Le principe de complémentarité contre les atrocités

Antoine Bernard[1]

Plus de la moitié de l'humanité est confinée lorsque le 23 avril 2020, s'ouvre à Coblence le procès d'Anwar Raslan, ancien colonel du régime de Bachar el-Assad et de son compatriote Eyad Al-Gharib, officier des services de sécurité. En pleine pandémie, la justice allemande fait le choix de suivre son cours : Raslan est le premier haut responsable du système de mort syrien à répondre devant une justice indépendante de crimes contre l'humanité. Quinze mois seulement après leur arrestation, les accusés font face à leurs juges. L'espoir de milliers de victimes reprend corps grâce à cette justice qui se donne à voir, sans apparat et ouverte malgré le confinement à la participation de victimes et d'ONG2. On la suppose indépendante, équitable et diligente : la justice internationale est incarnée.

Bien qu'il n'ait aucun rapport avec la Cour pénale internationale (CPI), malheureusement incompétente, le procès de Coblence résume l'esprit de la justice internationale contemporaine porté par le Statut de Rome de 1998 sur le fondement novateur du principe de complémentarité. Le Statut de la CPI inverse le principe de primauté de la justice internationale qui prévalait depuis Nuremberg : en instaurant dès le préambule et l'article premier un principe de complémentarité verticale attribuant la compétence première au juge national, sauf à démontrer son incapacité ou son absence de volonté d'enquêter et de poursuivre. Un régime de la recevabilité est instauré et fournit aux justices nationales une feuille de route indiquant au moins ce qu'elles doivent éviter ou *a contrario* les conditions à réunir et la conduite à tenir (articles 17 et 53 du Statut).

En confiant aux juges de la CPI le soin de déterminer si les conditions de recevabilité d'une affaire sont réunies, le Statut renforce l'autorité de décisions éminemment sensibles puisqu'elles touchent à l'exercice même de la souveraineté judiciaire de l'État concerné – en l'occurrence à sa défaillance. Et l'émergence d'un tiers indépendant, le juge international, sur les scènes de conflit armé prive les belligérants de l'exclusivité de l'administration d'une justice en général synonyme d'impunité, de partialité ou d'iniquité. Surtout, la désignation des justices nationales en tant que juges internationaux de première instance renforce la légitimité de la justice internationale. Si le Statut vise à l'évidence la justice de l'État de perpétration des crimes, il permet d'impliquer à la procédure celle des « *États qui (...) auraient normalement compétence à l'égard des crimes dont il s'agit*[3] ». Cette formulation peut s'entendre de la justice des États, même non parties au Statut, qui se trouverait compétente sur d'autres fondements comme la compétence universelle désormais "normalisée" par sa pratique constante.

C'est à l'édification d'un système de justice internationale que le Statut invite en réunissant, outre les organes de la CPI, un ensemble d'acteurs de la justice autour d'une finalité commune – la répression des crimes les plus graves dans le respect des normes internationales du droit à un procès équitable, et selon au moins une règle de répartition des rôles – le principe de complémentarité.

De la complémentarité invisible...

Le potentiel incitatif et dissuasif du principe de complémentarité a été largement ignoré jusqu'à la première stratégie pluriannuelle du procureur de l'époque Luis Moreno Ocampo en 2006[4]. La réflexion sur une pratique offensive de la complémentarité a été largement portée par les ONG. Elles ont inventé le concept de « complémentarité positive » : favoriser les enquêtes et poursuites nationales par l'incitation, la coopération avec les autorités judiciaires locales et l'évaluation des mesures prises, dès lors que sont réunies des conditions a minima démontrant volonté et capacité. Et déclencher la substitution internationale par la complémentarité négative dès lors que les efforts allégués par les acteurs nationaux trahissent leur absence de volonté ou que les obstacles obèrent la capacité.

Trop d'intérêts ont cependant convergé contre la mise en œuvre d'une véritable politique de complémentarité y compris positive. Depuis des années, les États parties manifestent leur volonté de garder sous contrôle le sujet de la « *complémentarité et [des]relations entre les juridictions nationales et la Cour*[5] ». La dé-

1 Chercheur associé à l'Institut des hautes études sur la justice (IHEJ), conseiller pour le contentieux international de Reporters sans frontières (RSF), enseignant à l'École des affaires internationales (PSIA) de Sciences-Po.

2 https://edition.cnn.com/2020/04/23/middleeast/syria-germany-trial-intl/index.html

3 Statut de Rome, article 18, paragraphe 1.

4 Bureau du procureur de la CPI, Stratégie en matières de poursuites, 14 septembre 2006.

5 https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-Res7-FRA.pdf

cision de l'Assemblée des États parties en décembre 2019 lançant un processus d'examen de la CPI et du système du Statut de Rome[6] pour tenter de surmonter la crise de la Cour confirme leur réticence.

De nombreux juges de la CPI ont pris de haut un domaine soi-disant pré-contentieux et relevant de la politique pénale du procureur, alors même qu'ils ont la possibilité de se saisir et de se prononcer d'office sur les questions de recevabilité[7]. Luis Moreno Ocampo n'a sans doute pas voulu prendre le risque de réduire la relative discrétion que le Statut confère au procureur en impliquant les juges sur les enjeux de recevabilité. On comprend que sa successeuse Fatou Bensouda a pu hésiter, face à la piètre performance de la CPI, à judiciariser un sujet lourd d'enjeux pour cette dernière.

Les changements majeurs attendus en 2020 avec le renouvellement d'un tiers du collège des juges et du procureur est l'occasion pour la procureure actuelle et son successeur de pousser la complémentarité au cœur de l'agenda de la Cour.

… à la complémentarité assumée ?

Fatou Bensouda a franchi un pas en saisissant les juges en décembre 2019 sur la compétence de la Cour dans la situation de la Palestine. Elle ou son successeur pourrait faire de même sur des enjeux de recevabilité. Leur judiciarisation renforcerait la portée des décisions de la CPI et clarifierait les seuils de l'incapacité et de l'absence de volonté des justices nationales. La Cour largement renouvelée aurait l'occasion d'asseoir son autorité dès l'examen des situations, soit le moment crucial où la Cour peut pousser les justices nationales et les acteurs qui les soutiennent à surmonter l'impunité ou à défaut s'y substituer.

L'action de la procureure sur l'analyse de la recevabilité contribue à des changements parfois significatifs dans les situations concernées[8]. Elle suscite aussi des campagnes de désinformation importantes et dangereuses pour les victimes et les acteurs qui les soutiennent. Une véritable stratégie de complémentarité augmenterait la fonction protectrice de l'action de la Cour dès le début de son intervention et alimenterait un récit public de nature à réduire les risques de manipulation de l'information. Elle soutiendrait dans leur quête de justice les victimes, ces actrices essentielles de l'activation de la justice internationale : passer de l'inaction à l'action judiciaire est l'un des éléments essentiels qui permet aux victimes d'atrocités de surmonter le *« drame de la passivité dont résultait leur condition de victime9 »*. La demande locale d'une justice indépendante, impartiale et efficace face aux atrocités de masse s'est constamment renforcée ces dernières années et peut peser dans certains contextes de transition : une stratégie de complémentarité pousserait à surmonter les réticences à l'adoption de politiques pénales adaptées aux atrocités commises. L'expérience confirme aussi que nombre d'États, parties au Statut ou pas (et parmi eux les plus puissants), sont très attentifs aux enjeux de compétence et de recevabilité devant la CPI. Ils confirment ainsi la portée incitative de la complémentarité et la valeur d'une véritable stratégie de la procureure dans ce domaine.

La procureure de la CPI évoque dans la dernière stratégie triennale de son bureau l'élaboration d'un document de clarification sur la complémentarité[10]. Son ambition reste à démontrer. Gain d'efficacité, de temps, d'efficience, de lisibilité : en pleine période d'examen et de renouvellement de la Cour, il serait regrettable de manquer l'occasion d'une stratégie de complémentarité offensive. La procureure souligne aussi à raison l'importance des enquêtes internationales coordonnées et de la mise en réseau des institutions d'enquête et de poursuite[11]. De fait le système de justice internationale s'est aussi singulièrement développé ces dernières années au-delà de la CPI autour de complémentarités horizontales.

Complémentarité des compétences : le renouveau de la compétence universelle

L'affaire Habré au Sénégal a spectaculairement démontré que la compétence universelle n'était pas le monopole des anciens pays colonisateurs. Concernant la Syrie, les affaires se multiplient dans une di-

6 Ibid.

7 Article 19 du Statut de Rome.

8 Voir les rapports du bureau du procureur relatifs aux examens préliminaires, https://www.icc-cpi.int/about/otp/Pages/otp-policies.aspx?ln=fr, et les désormais nombreux rapports d'ONG sur les différentes situations.

9 Victimes, et après ? Arthur Dénouveaux et Antoine Garapon, éd. Gallimard, « Tracts N°10 », novembre 2019, p. 22.

10 https://www.icc-cpi.int/itemsDocuments/20190726-strategic-plan-fra.pdf

11 Ibid.

zaine de pays. Si les obstacles politiques demeurent importants, la compétence universelle fait néanmoins un retour en force[12] depuis la fin des années 2010. Sa fréquence et son champ d'exercice attestent de sa normalisation. Celle-ci résulte de la conjugaison de plusieurs facteurs.

D'abord, l'adaptation des droits nationaux des États parties au Statut de Rome a été l'occasion de légiférer sur la compétence universelle pour les crimes du Statut voire pour les autres crimes qui la justifient. C'est peut-être l'un des succès les plus importants de la CPI. Elle a joué en faveur du recours à la compétence universelle autant que la marginalisation de la CPI – qu'elle soit le fait du Conseil de sécurité ou qu'elle résulte de ses propres turpitudes judiciaires.

Des complémentarités fonctionnelles : l'articulation des capacités nationales et internationales d'enquête et de poursuite

La spécialisation des organes nationaux d'enquête et de poursuite des crimes internationaux dans les années 2010 constitue un autre facteur de cette évolution. L'expérience accumulée permet aux acteurs de la justice internationale de forger une culture de la répression des crimes de masse et d'exercice de la compétence universelle. La création d'espaces de coopération spécialisée y contribue aussi à l'instar en 2002 du réseau européen de points de contact dit « Réseau génocide ». Il monte en puissance depuis 2014[13] et réunit les procureurs et enquêteurs spécialisés de huit États membres de l'UE (Allemagne, Belgique, Danemark, France, Hongrie, Pologne, Pays-Bas, Suède) auxquels s'ajoutent ceux de cinq États observateurs (Canada, États-Unis, Norvège, Suisse et Bosnie-Herzégovine) ainsi que la CPI, les juridictions ad hoc, les organisations de coopération judiciaire ou policière et quelques ONG. Les progrès sont concrets : coopération entre procureurs, recours croissant aux enquêtes conjointes ou combinaison des poursuites témoignent de la possibilité d'activer une *« galaxie de structures » pour « démêler la pelote des crimes et des culpabilités, arrêter les suspects et les juger*[14] ».

De création plus récente, le Mécanisme international, impartial et indépendant, chargé de faciliter les enquêtes sur les crimes internationaux perpétrés en Syrie (IIIM, 2016) ou son homologue sur Myanmar (IIMM, 2018), développe une activité novatrice de collecte et de traitement des preuves ainsi qu'une coopération judiciaire spécialisée avec toutes juridictions compétentes répondant aux exigences des normes internationales. Enfin, l'expérience des tribunaux hybrides démontre l'importance de l'appui international aux justices nationales des pays de perpétration des atrocités malgré les nécessaires progrès qui restent à accomplir[15].

Complémentarité des rôles et synergies : la contribution croissante des ONG

Un autre facteur de renforcement d'un système de justice internationale s'avère déterminant : l'implication de plus en plus experte des ONG dans le contentieux stratégique sur les atrocités de masse. Longtemps l'apanage d'ONG pionnières (FIDH, Redress, Trial, ECCHR), ce contentieux a été intégré à la stratégie d'ONG locales très introduites dans les territoires de perpétration des atrocités ou encore d'ONG spécialisées soucieuses d'innovation (Reporters sans frontières, Fondation Clooney pour la justice). Les organes d'enquête et de poursuite en témoignent, les ONG sont « des portes vers des informations qui peuvent devenir des preuves », elles « disposent d'informations et d'éléments matériels qui peuvent (nous) permettre d'établir une chaîne de commandement[16] ». « Ces ONG sont un relais entre nous et les victimes, témoins ou déserteurs », pour « faire remonter des éléments, rassurer sur le rôle de la justice, informer sur les moyens de protection[17] ». Les ONG peuvent aussi inciter à l'évolution des politiques de poursuite et d'enquête, notamment dans les systèmes juridiques qui permettent leur contribution voire leur participation à la procédure[18].

12 Fin 2018, au moins cent quarante-neuf suspects de crimes internationaux faisaient l'objet d'une enquête judiciaire dans quinze pays, en augmentation de 18% par rapport à 2017. En 2018, dix-sept accusés ont été jugés, huit condamnés et deux acquittés. Cf. UJAR 2019, Trial, FIDH, Redress, ECCHR, FIBGAR.

13 http://www.eurojust.europa.eu/Practitioners/Genocide-Network/Documents/Strategy-Genocide-Network-2014-11-FR.pdf

14 Colonel Éric Emereaux, chef de l'Office central de lutte contre les crimes contre l'humanité en France, Les Jours, 23 avril 2020.

15 Kirsten Ainley, Mark Kersten, Dakar Guidelines on the Establishment of Hybrid Courts, LSE/IGA, Wayamo Foundation, 2019.

16 Aurélia Devos, procureure dirigeant le parquet du pôle national Crimes contre l'humanité, crimes et délits de guerre en France, in Les Jours, 23 avril 2020.

17 Ibid note 11.

18 Pour ce qui concerne la CPI, l'article 15 du Statut de Rome permet au procureur de recevoir et rechercher des renseignements auprès notamment des ONG. L'article 68 permet aux victimes dont les intérêts personnels sont concernés d'exprimer leurs « vues et préoccupations ».

Des complémentarités matérielles : l'interconnexion des sujets

Ce dialogue a pu concourir à ce que les infractions terroristes soient aussi analysées et, le cas échéant, poursuivies devant la CPI et certaines juridictions nationales sous la qualification de crimes contre l'humanité après des années de traitement cloisonné[19]. Ça pourrait être le cas aussi des crimes contre l'environnement. La procureure de la CPI avait annoncé en 2016 qu'elle prêterait une attention prioritaire aux crimes de la compétence de la CPI *« impliquant ou entraînant, entre autres, des ravages écologiques, l'exploitation illicite de ressources naturelles ou l'expropriation illicite de terrain*[20] ». On pense aussi aux transferts forcés de population incriminés par le Statut et qui peuvent résulter de l'accaparement de territoires et de la déforestation. Il s'agit d'évolutions notables à encourager pour mieux appréhender des atrocités complexes et interconnectées. Les enjeux liés au financement ou plus largement à la facilitation et à la participation aux crimes internationaux demeurent largement inexplorés alors qu'ils permettraient de remonter aux donneurs d'ordre et d'élargir le champ des responsabilités notamment aux dirigeants de personnes morales.

Complémentarités et information : les défis de la représentation et de l'incarnation

« Justice must not only be done it must also be seen to be done[21] » : la justice internationale doit non seulement être rendue, elle doit aussi être vue dans son indépendance et son impartialité. L'enjeu est d'autant plus considérable dans une société de représentation globale, permanente et instantanée où ce qui ne se donne pas à voir n'existe pas. Or la performance informationnelle de la CPI et de l'ensemble des acteurs des complémentarités judiciaires internationales mérite d'être singulièrement améliorée. En particulier le développement des réseaux sociaux a eu deux effets majeurs trop longtemps sous-estimés.

Le premier est l'accélération du temps, notamment politique. Certes *tempus fugit* stat jus, le temps passe et la justice finit par passer. Après vingt-trois ans de fuite, l'arrestation de Félicien Kabuga, financier du génocide au Rwanda et cofondateur de la Radio télévision libre des Mille Collines (RTLM), le 16 mai 2020 par la justice française sur mandat d'arrêt du Tribunal pénal international pour le Rwanda (TPIR) en est un rappel bienvenu. Reste qu'un tel exploit est rare et les atrocités de masse nombreuses. À mesure que le temps politique s'accélère, la justice – quand elle passe – est en retard. Et sa fonction dissuasive se dilue dans les situations de fait générées par les crimes perpétrés, ce qui nourrit au surplus l'incompréhension, la déception et l'amertume. Les victimes le sont doublement. « Une justice moderne devra de moins en moins se laisser soumettre par le temps[22] » grâce à l'imprescriptibilité des crimes internationaux et aux progrès scientifiques. Grâce aussi à des stratégies d'information proportionnées aux stratégies de communication désormais mises en œuvre par les criminels internationaux pour conquérir l'espace public et accaparer le temps politique.

Le second résulte de la prégnance de la post-vérité et des faits alternatifs dans le nouvel espace public de l'information et de la communication. On sait que l'information fiable circule six fois moins vite que l'information non fiable en raison des biais cognitifs du consommateur qui privilégie les informations véhiculant le doute, l'incertitude et la peur[23]. Il se trouve au surplus incité par les algorithmes à l'enfermement dans ses *« bulles de filtre24 »*. Et 10% seulement de la population mondiale vit dans des pays dans lesquels la liberté de la presse est respectée[25].

Dans ce nouveau contexte, la justice pénale internationale cumule les handicaps. Éloignement, fonctionnement et vocabulaire complexes, compétences limitées, lenteur : elle est inintelligible pour le grand public et pour les victimes elles-mêmes alors que l'aspiration à la justice s'est universalisée à mesure que les institutions de la justice internationale se sont développées.

19 C'est le cas par exemple pour les situations ou affaires concernant le Mali ou la Colombie devant la CPI, des crimes perpétrés en Syrie et en Irak devant certaines juridictions nationales.

20 Bureau du procureur, document de politique générale relatif à la sélection et à la hiérarchisation des affaires, septembre 2016, paragraphe 41.

21 Delcourt c. Belgique (arrêt), N°2689/65, CEDH 1970-I.

22 Mes Raisons d'État, mémoires d'un épris de justice, Louis Joinet, La Découverte, 2013.

23 The Spread of True and False News Online, Soroush Vosoughi, Deb Roy, Sinan Aral, Science, 9 mars 2018, Vol. 359, Issue 6380, pp 1146-1151.

24 The Filter Bubble : What The Internet is Hiding From You, Eli Pariser, Penguin Press, 2011.

25 Classement mondial de la liberté de la presse 2020, Reporters sans frontières, www.rsf.org

Il n'est que temps pour la CPI et l'ensemble des acteurs des complémentarités judiciaires internationales de se doter de stratégies d'information efficaces. Précoces, elles permettraient de prévenir les effets pervers de la désinformation dont leur action est systématiquement la cible de la part des communicants aguerris que sont devenus les criminels internationaux. Offensives, elles placeraient au cœur de l'espace public l'ensemble des composants du système de justice internationale tirant ainsi pleinement profit de son potentiel dissuasif. À cet effet, elles devraient être mise en œuvre dès le stade préliminaire des procédures – dans la limite de ne pas contrevenir aux nécessités des enquêtes.

Conclusion

Après avoir suscité l'espoir pendant deux décennies, la CPI rencontre aujourd'hui de l'avis général d'importantes difficultés. Il n'en demeure pas moins que le temps politique s'accélère et que la demande d'une justice internationale diligente, cohérente, intelligible et incarnée, s'intensifie. Les complémentarités verticales et horizontales au sein et au-delà de la CPI forment les bases d'un système de justice internationale dont le potentiel reste largement à exploiter. Au moins cinq propositions peuvent être formulées en ce sens :

1. La procureure de la CPI dote son bureau d'une stratégie de complémentarité offensive[26].
2. La procureure de la CPI et le Réseau génocide de l'Union européenne impulsent la mise en réseau international des institutions d'enquête et de poursuite nationales, régionales et internationales, favorisent les enquêtes coordonnées et, plus largement, la coopération entre les acteurs de la complémentarité, y compris les ONG.
3. La procureure de la CPI et les pôles nationaux spécialisés développent une stratégie commune d'enquête et de poursuite des facilitateurs de crimes internationaux, en particulier les financeurs. À cet effet, une coopération systématique est instaurée avec leurs homologues spécialisés dans la traque des infractions financières liées aux crimes internationaux.
4. Les politiques de poursuite donnent la priorité aux crimes du Statut de Rome qui impliquent ou entraînent des crimes contre l'environnement. Le Statut est amendé pour y inclure ces crimes.
5. La procureure de la CPI et les pôles nationaux spécialisés se dotent de stratégies d'information offensives et articulées.

Une pratique assumée et partagée de la complémentarité entre ses différents acteurs relancerait l'espoir d'une plus grande répression et donc aussi celui d'une meilleure prévention des atrocités de masse.

26 Pour des propositions portant sur l'ensemble des opérations du Bureau du procureur de la CPI, voir aussi Improving the Operations of the ICC Office of the Prosecutor : Reappraisal of Structures, Norms and Practices, Open Society Justice Initiative, Amsterdam Center for International Law, april 2020.

Le rôle et l'effet préventif du droit à l'ère de l'anthropocène

Christian Huglo[1] et Joël Hubrecht[2]

Bien que l'ampleur des dégradations environnementales ait été établie de longue date sur un plan scientifique par les travaux du Groupe d'experts intergouvernemental sur l'évolution du climat mis en place en 1988 à la demande du G7 (Allemagne, Canada, France, Royaume-Uni, Italie, Japon, USA), force est de constater que les menaces et défis n'ont pas été pour autant véritablement anticipés et encore moins prévenus par les États. Non seulement les émissions de gaz à effet de serre sont loin de diminuer dans l'atmosphère mais la disparition progressive de la cryosphère et l'atteinte à la biodiversité se poursuit et ne cesse de s'accélérer. L'accord de Paris sur le changement climatique, s'il établit des devoirs des nations en respectant le principe des responsabilités globales mais différenciées, ne crée aucun mécanisme contraignant ni encore moins d'autorité pour les faire fonctionner. Conscientes de cette longue carence des pouvoirs publics et de l'urgence à agir, les sociétés civiles cherchent à inventer de nouveaux mécanismes et se mobilisent soit en opposition (par exemple le mouvement d'origine britannique Extinction Rebellion) soit en concertation (voir en France la mise en place de la Convention citoyenne pour le climat) avec leurs gouvernements, ou de façon totalement autonome (initiatives locales contre le gaspillage ou pour promouvoir la sobriété énergétique). Les méthodes et les champs d'action sont très divers mais la volonté de rendre les États et les entreprises plus responsables est largement partagée. De ce fait, le droit apparaît comme un terrain privilégié pour contrer et prévenir les activités contribuant le plus à la pollution de la planète et au changement climatique. Selon le dernier rapport du Grantham Research Institute on Climate Change[3], l'année 2019 confirme l'intensification du recours aux poursuites judiciaires dans de nombreux pays, notamment dans le contentieux climatique, et la crise COVID-19 de 2020 pourrait inciter les parties à trouver de nouveaux motifs de recours, en établissant un lien entre l'urgence sanitaire et l'urgence climatique. Pourtant, en dépit de cet engouement, la voie judiciaire parait encore relativement démunie face aux changements de dimension et de nature de la problématique environnementale[4].

Les faiblesses et les forces de la voie judiciaire

En effet, les dommages causés par les humains dans l'ère de l'anthropocène ont des caractéristiques[5] qui débordent les bases traditionnelles du contentieux environnemental, tel que nous le connaissions et pratiquions jusqu'à présent. Que ce soit par leur étendue qui nous place à une échelle globale et non plus locale (concernant par exemple les continents artificiels de déchets plastiques ou l'effondrement de la biodiversité), par l'invisibilité de certaines des pollutions les plus dangereuses (pollutions radioactives mais aussi aux microparticules), par la non-réversibilité (augmentation des températures) et la non-réparabilité (pollution nucléaire de Tchernobyl et de Fukushima) des dégâts causés, les notions de territorialité, d'espace et de temps sur lesquelles reposent le droit sont profondément bouleversées. Les phénomènes dits de globalité de causalité font éclater les notions les plus classiques de la procédure civile, pénale ou administrative. On ne sait plus ni sur (ou dans) quel air ni sur quel pied danser : la « glocalisation » (l'intrication du local et du global) complique les tentatives d'action. Au niveau des droits nationaux, les grandes avancées de la jurisprudence environnementale qui ont pu être gagnées ici et là – comme la théorie dite de la réparation du dommage écologique ou l'obligation de procéder à une étude d'impact pour un projet transfrontalier –, apparaissent insuffisantes et trop limitées. Au niveau international, les principes généraux du droit applicable à l'environnement, tels que les principes de prévention et précaution rappelés tant par la jurisprudence de la Cour internationale de justice que celle de la Cour européenne des droits humains sont sans doute d'un grand secours sur le plan théorique, mais ils ne trouvent pas aisément à s'appliquer de façon effective faute de juridictions à compétence universelle et faute de juridiction universelle.

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3 J. Setzer et R. Byrnes, Global Trends in Climate Change Litigation : 2020 Snapshot, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2020. Disponible sur https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf

4 Si on la compare à celle des années 1970 qui visait à la seule réduction des atteintes à la nature et la nécessité de combattre les nuisances.

5 Ces caractéristiques ont été dégagées par Dominique Bourg notamment dans Du risque à la menace, penser la catastrophe, Paris, PUF, 2013.

Pour autant, loin de nous condamner à l'impuissance et à l'accablement face à l'inéluctable catastrophe, cette situation dramatique a conduit le contentieux environnemental à commencer sa mue et à démontrer ses capacités d'innovation. Tout d'abord, avec les procès intentés par des ONG dans différents États pour obtenir des tribunaux des décisions établissant la responsabilité des grandes entreprises émettrices de carbone et la carence fautive ou l'inertie des États à agir. À travers ces démarches, on assiste à l'extension de la responsabilité civile en matière d'environnement et au renforcement des dimensions correctives et préventives. Ensuite, des tribunaux d'opinion permettent de porter le contentieux au-delà du droit interne, au plan mondial. Si on ajoute à cela des projets comme celui d'une Déclaration universelle des droits de l'humanité qui, au-delà des droits individuels, lierait des générations présentes à l'égard des générations futures[6], ou de conventions écocrimes et écocide[7], et sans chercher à être exhaustifs sur les innombrables autres initiatives qui existent, on constate que les leviers d'action sont multiples, allant du local vers le global, ou à l'inverse, du global au local, pour tenter d'échapper à la paralysie et aux impasses de la glocalisation. Les forces imaginantes du droit (selon la célèbre formule de Mireille Delmas-Marty) restent vives et pleines de ressources.

La multiplication et les évolutions des procédures civiles au niveau national

Comme l'a fait remarquer Camille Broyelle[8], l'accord de Paris a fixé des objectifs de réduction des émissions de gaz à effet de serre, pour obtenir un résultat en 2100 d'une augmentation de température limitée de 1,5°C si possible et de 2°C par rapport à la base 1990. Cet accord n'a pas de caractère obligatoire, et il renvoie finalement à la société civile le soin de mettre en œuvre ce dont il se dispense au titre de ses devoirs. C'est là une des origines d'un contentieux climatique extrêmement important qui se déroule sur toute la surface du globe et en particulier dans les pays de droit anglo-saxon.

Au total, 1587 cas de litiges climatiques ont été recensés entre 1986 et fin mai 2020 : 1213 affaires aux États-Unis et 374 dans 36 autres pays et huit juridictions régionales ou internationales, selon le Grantham Institute[9] qui précise également que le changement climatique était au cœur de l'argumentation juridique dans environ 41 % des cas. On peut distinguer plusieurs catégories de contentieux. On relèvera d'abord les procédures engagées contre l'État pour des actions en carence et en responsabilité, telle celle, emblématique, engagée par l'association Urgenda, regroupant 886 citoyens néerlandais. En rejetant, le 20 décembre 2019, le pourvoi de l'État néerlandais contre la décision d'appel d'octobre 2018 (qui confirmait le jugement de première instance rendu en juin 2015) lui ordonnant de réduire les émissions de gaz à effet de serre d'au moins 25 % d'ici fin 2020, par rapport à 1990, une juridiction a rendu, pour la première fois, une décision de justice contraignant un État à agir pour prévenir les changements climatiques.

Un autre type de contentieux vise des personnes privées aux activités dites climaticides. C'est ainsi qu'aux États-Unis de nombreux procès ont été intentés contre les sociétés pétrolières et les sociétés productrices de charbon ou les entreprises cimentières fort émettrices de gaz à effet de serre[10]. Ces actions en justice visent à atténuer les émissions ou à promouvoir des adaptations aux bouleversements climatiques à venir.

Mais se demandera-t-on quelle place faire à la responsabilité civile environnementale puisqu'il ne s'agit plus de la responsabilité d'un dommage précisément circonscrit ni non plus de la responsabilité individuelle puisque le dommage est causé à tous par tous ? Le paysage juridique actuel n'est plus celui d'il y a quarante ans quant à la place des droits fondamentaux : le droit l'environnement est relayé aujourd'hui la plupart du temps dans le droit constitutionnel (145 États sur 197 reconnaissent la supériorité du droit de l'environnement dans la Consti-

6 Voir le site droitshumanite.fr

7 L. Neyret (dir.), Des écocrimes à l'écocide, le droit pénal au secours de l'environnement, Bruylant, 2015.

8 C. Broyelle, « L'Autre Mobilisation citoyenne pour le climat », revue AJDA, Dalloz, 2019, p.1850.

9 En dehors des États-Unis, la majorité des affaires ont été introduites en Australie (98 affaires), au Royaume-Uni (62) et dans les organes et tribunaux de l'UE (57). Ces données ont été produites principalement par le Sabin Center for Climate Change Law de l'université de Columbia, avec des contributions du Grantham Research Institute et d'autres organismes. Voir Setzer J. and Byrnes R. (2020) Global Trends in Climate Change Litigation : 2020 Snapshot, op. cit.

10 C. Huglo, Le Contentieux climatique : une révolution judicaire mondiale, Bruylant, 2018 ; C. Cournil et L. Varison (dir.), Les Procès climatiques, entre le national et l'international, Pedone, 2018.

tution), ce qui entraîne la société civile à rechercher la responsabilité des entreprises et à agir en carence contre les États pour obtenir non pas simplement des compensations financières mais des compensations en nature. Il en est ainsi dans le contentieux dirigé par la ville de New York contre la société Exxon ou dans les contentieux dirigés en Californie contre la plupart des sociétés pétrolières.

Il faut aussi voir, en particulier dans le contentieux climatique européen, des références faites au principe de précaution et surtout au principe de prévention. La référence faite au principe de prévention dans l'affaire Urgenda impliquait que l'adoption de mesures plus significatives par les Pays-Bas aurait été plus rentable, équitable pour les générations futures. La Cour a considéré que les mesures de précaution n'étaient pas toujours adéquates pour prévenir les dangers du changement climatique et a fait peser ici la preuve d'une non-dangerosité sur l'État en interprétant le principe de précaution, comme l'avait fait la Cour suprême des États-Unis dans l'affaire dite de Massachusetts[11].

Le raisonnement est exactement le même en ce qui concerne les actions en responsabilité dirigées non pas contre l'État mais contre les entreprises qui posent pourtant des difficultés considérables relatives à la question du lien de causalité et de la réparation. C'est le cas du contentieux de cet agriculteur péruvien qui se plaint devant la juridiction de la République fédérale d'Allemagne des dommages qui pourraient lui être causés du fait du réchauffement climatique par l'effondrement du glacier situé à proximité de son habitation en lien avec l'activité charbonnière de la société allemande RWE qu'il estime responsable à 0,47 % du dommage qu'il risque de subir fatalement.

La recherche de la prévention plutôt que de la réparation est un souci permanent du contentieux climatique que l'on retrouve minutieusement développé dans le contentieux dit des études d'impact climatique. Les juridictions notamment australiennes, américaines ou canadiennes ont rendu des décisions considérant que les impacts, même indirects, d'un projet sur le climat pouvaient effectivement condamner celui-ci[12]. Tout aussi intéressant est le contentieux qui commence à être entrepris sur la base de la responsabilité sociale des entreprises (RSE) dans lequel la société civile estime que les impératifs de la lutte contre le réchauffement climatique ont insuffisamment été pris en considération dans la politique de l'entreprise. Il existe aujourd'hui une RSE climatique en Europe dont les développements sont très intéressants et placent la responsabilité civile dans une fonction purement préventive. Certes, elle est sans doute d'une efficacité relativement limitée, surtout contre des multinationales de l'envergure d'Exxon, de Total ou de Shell, mais n'en est pas moins fondamentale au niveau des principes
.

Vers l'internationalisation des contentieux : l'amorce des tribunaux internationaux d'opinion

À l'encontre de ceux qui négligent ou s'affranchissent de ces dynamiques non coercitives alors qu'ils comptent parmi les pollueurs les plus responsables, la sanction pénale des dirigeants et des entreprises, en tant que personne morale, apparaît comme le seul véritable moyen de les dissuader de poursuivre ou de recommencer leurs atteintes à l'environnement. La demande en particulier de la création d'un nouveau crime international d'écocide est portée avec force par de nombreux acteurs et groupes de la société civile. Mais elle bute encore sur le manque de consensus et les imprécisions, surtout en termes juridiques, de la définition qui serait donnée à un tel crime. Elle se heurte aussi aux divergences stratégiques : faut-il se concentrer sur son adoption dans un cadre international ou, face aux blocages des institutions multilatérales, amorcer le processus au niveau des droits nationaux? Enfin, il lui manque une juridiction internationale pour pouvoir être appliquée en dehors du cadre de la compétence universelle. Or on sait qu'il sera très difficile, sinon impossible, de modifier le Statut de la Cour pénale internationale et, malgré son volontarisme affiché, la procureure Fatou Bensouda n'a ouvert à ce jour aucune affaire pour poursuivre des atteintes à l'environnement au titre de crimes de guerres (une innovation du Statut de Rome mais qui se limite au cadre d'un conflit armé), voir au titre du crimes contre l'humanité (une gageure mais qui pourrait être tentée à partir de communications faites au sujet

11 C. Huglo, op. cit., p. 239-240.

12 T. Thuillier, « Dialogues franco-australiens sur la justice climatique », revue Énergie-Environnement-Infrastructures, avril 2019, n° 4, com. 21.

des situations au Cambodge ou au Brésil, deux États parties de la cour).

À ce stade, les seuls tribunaux internationaux qui se sont saisis de l'accusation de crime d'écocide sont donc des tribunaux dit d'opinion, c'est-à-dire des instances symboliques regroupant des personnalités reconnues, des juristes mais aussi des historiens et d'autres juges non-professionnels qui, sur la base de témoignages et de rapports, examinent et dénoncent sous une forme juridique des actes qu'elles estiment répréhensibles dans le cadre d'un droit international existant mais non appliqué ou dans le cadre d'un droit international émergeant qui n'est pas encore en vigueur. Le procès international fait à la société Monsanto qui s'est tenu à la Haye les 15 et 16 octobre 2016[13] a été conduit dans cette perspective afin de rassembler en un lieu unique des éléments de contestation des produits et procédés employés par cette société pour étendre sa puissance sur le monde agricole et sur la plus grande partie de la planète. Plus qu'une condamnation symbolique, il s'agissait en deux jours d'audience de faire entendre plus de vingt-quatre témoins devant un tribunal ad hoc composé d'éminents magistrats venant d'Argentine, d'Afrique, du Mexique, du Canada, présidé par la vice-présidente de la Cour européenne des droits de l'homme. Il leur a été demandé d'émettre un avis d'autorité sur six questions de droit importantes, comme le fait de savoir si l'entreprise Monsanto avait violé des droits reconnus au niveau international (tel que le droit à un environnement sûr, propre, sain et durable, le droit à l'alimentation ou encore la liberté de la recherche scientifique), ainsi que son éventuelle complicité d'un crime de guerre (affaire de l'agent orange au Vietnam à partir de 1962) ou la commission d'un crime d'écocide (défini comme le fait de porter une atteinte grave à l'environnement ou de détruire celui-ci de manière à altérer de façon grave et durable les biens communs ou des services écosystémiques dont dépendent certains groupes humains). À la différence d'autres instances plus militantes et politiques, ce procès conduit à La Haye, tout en étant fictif, s'est référé avec rigueur à un droit qui lui n'est pas fictif (hormis pour la question sur l'écocide) et les magistrats qui l'ont composé ne le sont pas non plus. Moins axée sur la condamnation symbolique et cathartique d'un accusé absent que sur la réponse à des questions de droit par des magistrats indépendants, qui se montrent prudents et nuancés, leur réponse, sans constituer une jurisprudence, peut être utilisée comme une référence dans des affaires et des instances en cours ou à venir. L'avis, rendu le 18 avril 2017, a été traduit en plusieurs langues. Il s'agit bien d'un retour du local vers le global car cette décision, formulée dans un cadre extra-judiciaire et constituée d'expériences locales, éclaire sur le droit à appliquer universellement et préfigure ce que pourrait faire un jour une juridiction internationale.

Le droit national et international qui sera véritablement adapté aux défis de l'ère de l'anthropocène reste donc à inventer mais la multiplication des recours devant les tribunaux civils et administratifs, l'enrichissement du droit mou (soft law) et du droit conventionnel, la mise en œuvre de procès fictifs et la demande de sanctions pénale à l'encontre des pollueurs les plus dangereux, montrent que, malgré son retard et ses failles, le droit participe aujourd'hui activement à la conscience collective sur l'urgence de la menace climatique. Nous le savons, les années qui viennent seront décisives pour limiter l'ampleur d'une crise écologique qui s'aggrave de jour en jour. S'il ne délivre pas les solutions effectives pour sortir concrètement du modèle socio-économique polluant qui dégrade l'environnement, le droit envoie un signal fort d'injonction aux responsables politiques et économiques et, au-delà, un message préventif de portée universelle pour nous pousser tous à agir.

13 Voir le site https://fr.monsantotribunal.org

Traitement du passé, médiation, mise en œuvre accords de paix

Dealing With the Past, Mediation, Implementation of Peace Agreements

Passé-présent-futur: justice transitionnelle et traitement du passé à l'heure de la prévention

Mô Bleeker[1]

La justice transitionnelle est un ensemble de moyens légaux et extra-légaux pour travailler sur les conséquences d'atrocités[2] commises dans le passé, dans une visée de reconnaissance (des faits qui ont eu lieu, des conséquences encourues par les victimes) et de prise de responsabilité (par les responsables individuels et institutionnels), notamment dans un but de non-répétition. Les Nations unies ont développé un éventail diversifié de résolutions, documents et rapports dès les années 90[3]. Parmi eux, les « *principes contre l'impunité*[4] » relatifs aux droits civils et politiques offrent une solide référence sur laquelle la justice transitionnelle, ou le traitement du passé[5], se sont développés. Ils comprennent quatre éléments complémentaires ; le droit à la vérité, la justice, les réparations et ce que le magistrat français Louis Joinet, à l'origine de ces principes, a nommé « les garanties de non-répétition ». Un autre rapport contre l'impunité pour les violations des droits économique, sociaux et culturels[6] fut aussi soumis en 1997 à la Commission des droits de l'homme, par El Hadji Guissé, mais il est pratiquement tombé aux oubliettes. Les droits humains sont reconnus comme étant indivisibles ; la séparation entre des droits humains, civils et politiques d'un côté et les droits économiques sociaux et culturels de l'autre a eu de nombreuses conséquences négatives.

La prévention est une stratégie volontariste, holistique de court, moyen, long terme impliquant une coopération entre gouvernement, société civile et communauté scientifique au niveau national, régional et international. Dans le domaine de la santé publique[7], on parle de prévention primaire – pour anticiper un évènement potentiellement néfaste ou, en intervenant de manière précoce et appropriée, pour empêcher qu'il se produise ou, s'il se produit, pour le stopper immédiatement. Pensée dans un *continuum*, la prévention primaire en santé publique se conjugue avec la prévention secondaire qui comprend des mesures visant à empêcher la propagation du problème (maladie par exemple), à immuniser et à protéger les personnes qui ne sont pas encore affectées. La prévention tertiaire vise à réduire la propagation de la maladie, ses effets néfastes et les risques de récidives.

La prévention (des atrocités) est un ensemble de stratégies et moyens mis en place par des États, des gouvernements, en coopération avec la société civile pour prévenir, dès l'apparition de signaux précoces, toute action, discours, lois et autres initiatives qui pourraient générer un environnement propice à la commission d'atrocités. Alors que la prévention des atrocités se concentre sur les crimes les plus atroces, elle est indissociable de tous les autres efforts de prévention en amont, notamment la prévention des conflits[8], de la violence, des discours de haine, de la xénophobie, du racisme, de la discrimination et de la violence genrée. La prévention est au cœur de la raison d'être des Nations unies. Mais si la quantité de résolutions, documents et rapports sur la prévention devait témoigner de son importance supposée, leur mise en œuvre demeure trop faible, voire inexistante et les efforts de prévention des atrocités sont généralement inefficaces, absents et trop tardifs[9].

1 Envoyée spéciale pour la prévention des atrocités et traitement du passé, Département fédéral des affaires étrangères, Suisse. Présidente de la plate-forme de prévention Action globale contre les atrocités de masse (GAAMAC).

2 Le terme « atrocités criminelles » couvre quatre catégories d'actes: le génocide, les crimes contre l'humanité et les crimes de guerre sont des crimes au regard du droit international; le nettoyage ethnique, bien qu'il ne soit pas explicitement considéré comme un crime à part entière en droit international, englobe des actes constitutifs de violations graves des droits de l'homme et du droit humanitaire qui sont susceptibles de constituer des crimes contre l'humanité, un génocide ou des crimes de guerre. (voir A/70/741-S/2016/71 (annexe 2016) et A/HRC/37/65 6.06 2018).

3 https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/InternationalInstruments.aspx#transitional

4 Question de l'impunité des auteurs des violations des droits de l'homme (civils et politiques). Rapport final établi par Louis Joinet, en application de la décision 1996/119 de la sous-commission, E/CN.4/Sub.2/1997/20 26 juin 1997.

5 Dans le texte, les expressions « justice transitionnelle » ou « traitement du passé » sont utilisés de manière interchangeable. Le « traitement du passé » est préféré, ne se réduisant ni à la justice ni à la transition.

6 Final report on the question of the impunity of perpetrators of human rights violations (economic, social and cultural rights) prepared by El Hadji Guissé, special rapporteur, pursuant to sub-commission resolution 1996/24 (E/CN.4/Sub.2/1997/8/FR) https://digitallibrary.un.org/record/240942?ln=en

7 Voir aussi le brillant article de Jennifer Leaning dans cette même édition.

8 https://unsdg.un.org/resources/conducting-conflict-and-development-analysis-tool

9 « Parmi les raisons qui expliquent cette contradiction figurent le manque de volonté politique, l'engagement annoncé en faveur de la prévention des atrocités ne s'étant pas traduit par des actes concrets, l'incapacité d'agir avec rapidité et diligence en cas de signes avant-coureurs, et la dispersion ou le «cloisonnement» des connaissances et des compétences. » A/HRC/37/65, « Étude conjointe sur la contribution de la justice de transition à la prévention des violations flagrantes des droits de l'homme, des atteintes patentes à ces droits et des violations graves du droit international humanitaire, y compris du génocide, des crimes de guerre, du nettoyage ethnique et des crimes contre l'humanité, et à la prévention de leur répétition », in https://undocs.org/fr/A/HRC/37/65

Praticiens, chercheurs et acteurs politiques tentent aujourd'hui de cerner plus précisément comment justice transitionnelle et prévention pourraient se renforcer mutuellement. Certains ont pensé trouver dans les « *garanties de non-répétition*[10] » le principal lien avec la prévention. Deux rapports récemment produits par les Nations Unies[11] explorent précisément les relations entre ces deux thématiques ; leurs auteurs se sont finalement penchés avant tout sur les réformes institutionnelles, l'éducation et la participation de la société civile. Pourtant, l'intérêt d'explorer les liens entre ces deux objets réside dans leur transformation réciproque : un véritable dialogue en profondeur entre prévention et justice transitionnelle devrait déboucher sur des résultats dépassant une simple addition entre ces deux perspectives.

Par exemple, un traitement du passé préventif dépasserait la négligence historique des droits économiques sociaux et culturels, l'attention quasi exclusive portée à la violence directe au détriment de la violence structurelle et culturelle, et repenserait sa mise en œuvre de fond en comble.

Les résultats contrastés de la justice transitionnelle

Trois décennies après l'émergence de la justice transitionnelle dans des contextes post dictatures ou conflits armés, et après plus de quarante-cinq commissions de vérité, des dizaines de programme de réparation, de tribunaux nationaux, hybrides et internationaux et de programmes de réforme institutionnelle*12*, les résultats de la justice transitionnelle restent toutefois très contrastés, à la fois prometteurs et décevants ; les raisons sont multiples.

« Les paysans sans terre furent massivement déplacés vers notre région, nous les avons accueillis à bras ouverts. Mais ensuite, ils nous ont violemment chassé de nos propres terres. Nous avons alors occupé les terres des indigènes que nous avons chassés à leur tour. Pour vivre ensemble pacifiquement, il faudra reconnaître et aborder ces différentes couches historiques d'oppression et de victimisation, tenir compte des dimensions structurelles notamment relatives à la terre et des dimensions culturelles de discrimination qui continuent à ce jour[13]*. »*

Les modalités des transitions sont différentes dans chaque contexte. Si l'urgence d'en finir avec un conflit armé ou un régime autoritaire s'impose à juste titre, elle a trop souvent pour corollaire l'attention presque exclusive aux conséquences de la violence directe (les violations des droits civils et politiques). Les dimensions structurelles, culturelles, idéologiques de la violence, ainsi que les violations des droits économiques, sociaux et culturels sont souvent laissées de côté[14], repoussées à plus tard, négligées, voire oblitérées.

Aujourd'hui, dans les contextes où des atrocités ont été commises, la justice transitionnelle s'est imposée comme une composante incontournable des accords de paix[15]. Malgré cela, dans les transitions de guerre à paix, l'attention prédominante est portée aux processus de démobilisation et réintégration, au détriment d'autres mesures agréées dans le cadre d'un accord de paix (réforme agraire, constitutionnelle, droits humains, questions environnementales, genre, minorités etc.). Par analogie, dans les contextes de régime autoritaire, la priorité serait accordée à la réforme des institutions de sécurité ou de la Constitution. Au final, les mesures visant à résoudre la violence structurelle ou culturelle restent souvent inexistantes ou, quand elles existent, elles sont difficilement ou rarement mises en œuvre.

« Mon pays a connu deux commissions de vérité, elles ont émis de nombreuses recommandations, mais n'ont

10 Voir les principes contre l'impunité, Louis Joinet E/CN.4/Sub.2/1997/20 26 juin 1997.

11 https://www.un.org/en/genocideprevention/documents/Joint-study-on-transitional-justice-and-atrocity-prevention-Summary-of-expert-meeting-discussions.pdf et « Étude conjointe sur la contribution de la justice de transition à la prévention des violations flagrantes des droits de l'homme, des atteintes patentes à ces droits et des violations graves du droit international humanitaire, y compris du génocide, des crimes de guerre, du nettoyage ethnique et des crimes contre l'humanité, et à la prévention de leur répétition ».

12 Réformes des institutions de sécurité, réformes constitutionnelles, réformes agraires, etc.

13 Témoignage recueilli aux Philippines.

14 Voir à ce sujet, l'approche du sociologue Johan Galtung, https://them.polylog.org/5/fgj-en.htm,

15 Voir par exemple les accords de paix en Colombie qui ont intégré de manière exemplaire ces aspects sur le plan du design, avec beaucoup de difficultés sur le plan de la mise en œuvre : https://www.peaceagreements.org/view/1845, chapitre 5. Concernant l'implémentation : https://www.cinep.org.co/Home2/temas/verificacion-internacional/secretaria-tecnica.html CINEP/CERAC secrétariat technique de la vérification de l'implémentation des accords (en bas de page) et https://peaceaccords.nd.edu/barometer. Aux Philippines, https://www.peaceagreements.org/view/881, les accords de paix Bangsamoro prévoient la création d'une commission justice transitionnelle et réconciliation : www.tjrc.ph. Pour l'implémentation de l'accord, voir http://tpmt.ph/resources/public-reports, Third Party Monitoring Team.

pratiquement débouché sur aucun résultat, encore moins en termes de justice. Au final, on se demande si le Nord n'essaie pas de nous imposer une justice de seconde classe, une justice au rabais[16]*. »*

Le déploiement opérationnel de la justice transitionnelle se signale aussi par ses tendances technocrates au détriment du politique : création de mécanismes et institutions exceptionnelles (durée, mandat, modes de création, composition) sans lien organique avec les mécanismes, institutions domestiques existant, ou sans effet sur leur renforcement ou sans complémentarité avec des mécanismes internationaux[17]. Portant haut l'étendard du transitionnel, créées *ex nihilo*, parfois sans mécanismes clairs de reddition de comptes, ces institutions transitionnelles se focalisent surtout sur les violations des droits civils et politiques, et leurs relations avec les institutions existantes sont soit concurrentielles ou conflictuelles. Cette déconnexion avec le politique, avec l'environnement institutionnel domestique, cette absence d'intégration dans – ou de dialogue avec – les politiques de long terme débouchent sur un impact trop limité à tous points de vue. Pire, les secteurs ou communautés affectés par la répression ou le conflit armé – s'ajoutant à l'exclusion structurelle et la discrimination séculaire – se retrouvent souvent désespérément seuls, lorsque l'horizon de la vérité, la justice, les réparations et les garanties de non-répétition se transforment en une nouvelle promesse non tenue.

Du « moi (sociétal) brisé »

« La notion d'être «brisé» (ou le «moi brisé») résume la douloureuse conséquence d'années d'exclusion sociale, politique et économique (...) Le sentiment de l''être brisé'' a été exprimé à maintes reprises pendant le processus d'écoute, les participants ont partagé leurs récits de dépossession, de négligence et de déni de leurs droits, y compris leur droit d'exister en tant que peuple avec son identité distincte (...) Malgré cela, certains pensent qu'il est nécessaire que toutes les parties (au conflit) travaillent ensemble pour un avenir commun. Reconnaissant la douleur et la peine que les communautés de tous les bords ont vécues, ils soulignent l'urgence de commencer des processus de réconciliation. Cependant, la plupart ne savent pas comment s'engager dans une telle entreprise[18]*. »*

Appréhender les vulnérabilités d'une société est un élément central pour toute politique de prévention[19]. Multidimensionnelle, différente dans chaque contexte et situation, la vulnérabilité sociale n'existe jamais dans le vide et se combine toujours avec de multiples facteurs culturels, historiques, genrés, économiques, sociaux. Il en va de même de son pendant, la résilience, cette capacité des personnes, groupes, et d'une société à anticiper, faire face, résister et se remettre, voire se transformer après des chocs et des stress intenses. Si on considère les dictatures, ou conflits armés, comme autant de chocs graves, de stress intense, extrême, imposés à des groupes et des sociétés, il en découle donc des conséquences différentes, selon les vulnérabilités ou capacités de résilience préexistantes, et selon les modalités que la violence structurelle, culturelle et directe a prises.

… à une pratique de prévention

La diversité des besoins, intérêts, des narrations, identités et visions des personnes et groupes sont au cœur de la vie de toute communauté et société et entraînent forcément des conflits. Dans les contextes où des atrocités furent commises, le « plus jamais ça » – formulation négative – est un postulat insuffisant. En effet, les vulnérabilités, les conflits, ne disparaissent jamais : ils se transforment, se recyclent, voire peuvent devenir de nouvelles opportunités. L'immense potentiel et la raison d'être d'une démarche préventive de traitement du passé réside dans la capacité de se projeter depuis les vulnérabilités existantes pour déboucher sur une résilience sociétale ; de la reconnaissance explicite de conflits d'intérêts ancrés au plus profond de la société à l'apprentissage collectif d'une gestion non violente, démocratique de ces intérêts, identités et besoins divergents en constante mutation.

L'État a souvent joué un rôle majeur dans la commission d'atrocités ; soit par action (régime autoritaire, répression, massacres, violations des droits humains

16 Témoignage recueilli au Guatemala.

17 Voir les articles de Silvia Fernandez de Gurmendi et Carlos Castresana dans cette édition de Politorbis.

18 http://cdn.viiworksdemo.com/pdf/bjov-TJRC%20Listening%20Process%20Report.pdf, pages 159-160.

19 Voir aussi https://www.researchgate.net/profile/Ben_Wisner/publication/285850126_Measuring_the_un-measurable_the_challenge_of_vulnerability/links/57031f6e08aea09bb1a308c7/Measuring-the-un-measurable-the-challenge-of-vulnerability.pdf

ou du droit humanitaire international, etc.), soit par omission (absence, abandon, négligence, cooptation active ou passive par le crime organisé, les intérêts privés nationaux ou transnationaux, etc.). Une vision préventive ne peut donc se faire l'économie d'une réflexion sur le rôle de l'État, des espaces publics de négociation entre divers groupes et communautés, sur les formes pertinentes de bonne gouvernance au service du bien commun, et sur la protection des citoyens, indépendamment de leur identité culturelle, politique, sexuelle. Question difficile s'il en est, à l'heure où l'État est non seulement largement amputé des prérogatives de l'État social du XXe siècle, mais aussi fortement remis en question, coopté au service d'intérêts particuliers, voire partiellement remplacé par les acteurs du privé, nationaux ou transnationaux.

Comprendre un monde en mutation constante

Nos sociétés, interconnectées et en mutation permanente, génèrent constamment de nouvelles (se combinant avec d'anciennes) formes de violences, d'exclusion ou de dangers susceptibles de dégénérer en atrocités. Par exemple, la crise écologique mondiale – que nous produisons – génère de nouvelles pressions, violences et violations qui affectent la vie quotidienne de millions de personnes et pourraient déboucher sur de nouvelles formes d'atrocités. Nous sommes toujours en retard d'un savoir et de mots pour décrire une réalité, de sa compréhension pour en prévenir les risques et conséquences. Alors, à l'instar de Moctezuma, nous mettons la main sur la bouche et restons immobiles et en silence[20]. Pratiquer une pensée préventive implique d'identifier, nommer, connaître, reconnaître et agir.
Pendant cette pandémie de la Covid-19, on a observé la création de nombreuses task forces multidisciplinaires ; autonomes, elles conseillent leur gouvernement d'un point de vue préventif, et livrent analyses scientifiques et recommandations, indispensables pour établir des politiques publiques de prévention. Analogiquement, une autre conséquence potentielle d'un véritable dialogue entre prévention et justice transitionnelle devient la prise en compte des différentes facettes de la vulnérabilité, des potentiels de résilience, des diverses dimensions de la violence et des violations des droits humains, ainsi que la projection du déploiement de la prévention dans un *continuum*.

Ainsi, pourquoi ne pas imaginer qu'un traitement du passé préventif débouche sur la recommandation de créer une entité nationale de prévention qui prendrait acte de l'archéologie et de l'impact de la violence et des violations des droits humains encourues ? Partant de la reconnaissance des vulnérabilités et capacités de résilience sociétale, une telle entité indépendante, permanente, composée de membres de la société civile et de serviteurs publics, mandatée par le Parlement, pourrait – sur le long terme – mobiliser horizontalement la société et faire remonter – de bas en haut – les multiples réalités, impacts, perceptions et besoins, et ainsi accompagner, aiguiller le lent chemin de transformation.

Une telle recommandation serait un résultat tout à fait plausible d'un travail de traitement du passé préventif. En effet, un travail préventif sur l'héritage d'atrocités du passé est forcément un effort de longue haleine ; transformer culture et structures de violence nécessite un effort dans un *continuum*, sur plusieurs générations. Une structure de prévention (des atrocités) est un chantier national, multifacette, multidisciplinaire, permanent, collectif et de longue haleine qui contribue à un dialogue public entre société et État, permanent, prenant pleinement acte du passé, réagissant aux mutations sociétales, anticipant les risques émergents et débouchant régulièrement sur de nouvelles initiatives. Au gré des mutations, une politique systématique de prévention permettrait que les politiques publiques de protection, de développement d'un bien commun s'adaptent plus facilement aux nouveaux enjeux et conflits, et assument de manière plus conséquente la conjugaison des droits et devoirs dans le respect des diversités. De fait, la pratique préventive a un potentiel énorme : celui d'améliorer la qualité de nos démocraties et, dans les sorties de dictature ou de conflit violent, elle contribue à la durabilité des transitions.

La réflexion ne fait que commencer. Mais on entrevoit déjà qu'un véritable dialogue entre justice transitionnelle et prévention déboucherait logiquement sur l'émancipation (du traitement du passé) de l'exclusive référence à la justice et au transitionnel.

20 La Conquête de l'Amérique, la question de l'autre, Tzvetan Todorov, Le Seuil, Paris, 1982.

Addressing the Legacy of Past Atrocities and Prevention: Lessons Learned from the Truth and Reconciliation Commissions in South Africa and Sierra Leone

Yasmin Sooka[1]

Introduction

This paper sets out how transitional justice and truth commissions play a critical role in the prevention of mass atrocity crimes such as genocide, war crimes, and crimes against humanity committed during conflict.[2] Most conflicts today are intra-state, involving the killing of hundreds of thousands of civilians, in which governments themselves are implicated, and are rooted in tribal, ethnic, religious, and sectarian differences, as well as the competition to control resources.[3] Transitional justice processes, which mitigate the political and socio-economic grievances that fuel violent conflict, and establish new systems of accountability are critical tools in upstream conflict and atrocity prevention. The paper examines how the evolution of the mandates of truth commissions support prevention primarily through their recommendations for institutional reforms aimed at achieving transformative justice, and contributing to preventive policy objectives.

In 2004, the United Nations Secretary-General formalized the normative understanding of transitional justice, defining it as, "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[4] It was further expanded in the, "Updated Principles to Combat Impunity," which sets out the obligations of states and the rights of victims in response to gross violations of human rights and serious violations of international humanitarian law through four complementary pillars: the right to truth, the right to justice, the right to reparation, and the guarantee of non-recurrence.[5] These four principles of transitional justice provide a holistic framework to any country seeking to ensure justice and accountability.

International law obliges states to prevent gross human rights violations and serious violations of international humanitarian law. International human rights law imposes on states an obligation to "ensure" human rights which entails both a duty to prevent the most serious violations such as genocide, war crimes and crimes against humanity, as well as a specific obligation to prevent the recurrence of violations that have already taken place.[6] Although "prevention" in the transitional justice context is narrowly interpreted as being limited only to "institutional reforms," in practice it encompasses a range of measures including the transformation of society at the level of state and civil society.[7] Redressing structural causes of violations and reforming institutions that were implicated in serious abuses and which have the means to repeat them, is critical for effective prevention.[8]

1 Chair Human Rights Commission South Sudan, member of the Truth and Reconciliation Commission, South Africa

2 Ruti Teitel, has described transitional justice as the concept of justice associated with periods of political change characterized by legal responses to confront the wrongdoings of predecessor regimes. Ruti G. Teitel, Transitional Justice (Oxford: Oxford University Press, 2000).

3 Uppsala Conflict Data Programme available at https://www.prio.org/Data/Armed-Conflict/UCDP-PRIO/ .

4 Report of the Secretary- General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc S/2004/616(3 August 2004).

5 UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997; UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

6 Art. 2, International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (entered into force 23 March 1976; UN Human Rights Committee, General Comment No. 31 [80] adopted on 29 March, CCPR/C/21/Rev.1/Add.13, 26 May 2004, § 7 as citied in Mayer-Rieckh and Varney, Recommending Change: Truth Commission Recommendations On Institutional Reforms: An Overview (DCAF) available at https://www.dcaf.ch/sites/default/files/publications/documents/International%20study%20%28ENG%29%20-%20Mapping%20of%20TRC%20recommendations%20-%20publication%20version.pdf. See also Mayer-Rieckh, 'Guarantees of Non-Recurrence: An Approximation', 39 Human Rights Quarterly (HRQ) (2017) 416.

7 UNGA, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. A/72/523, 12 October 2017.

8 Updated Principles to Combat Impunity, supra note 4, Principle 36; GA Res. 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, § 23 as cited in Mayer-Rieckh and Varney (DCAF).

Truth commissions are deeply connected to addressing historical grievances and socio-economic injustices, analyzing the root causes of the conflict, identifying individuals bearing the greatest responsibility for gross human rights violations, and establishing new systems of accountability.[9] Consequently, truth commissions have been well-placed to address a number of prevention policy objectives, given their advisory function which requires that they develop future oriented recommendations,[10] and provide advice to the heads of state, governments, judicial bodies, civil society, and even the private sector.[11] Through this advisory function, truth commissions, "intersect and reinforce other measures aimed at combating impunity, including reparations, criminal prosecutions and institutional reforms."[12]

The success of truth commissions is usually determined by how inclusive and participatory they have been, as well as how effective their recommendations are in terms of ensuring the non-recurrence and preventing violations in the future. While the contribution has not been empirically measured, truth commissions have done the following:

- Contributed through their truth-seeking function to the collective narrative about the past, which is critical to dealing with denial, building solidarity, and evoking the collective conscience;
- Identified the root-causes of conflict, including grievances and historical injustices, thus laying a solid basis for comprehensive peace-building;
- Created a safe space for victims and perpetrators to tell their stories, as it is important for the broader society to know what happened so that the society can heal;
- Identified institutions and structures complicit in the violations, which is usually a first step for further reforms, in order to dismantle the abusive structures and ensure that individuals implicated are held accountable either criminally or through vetting and screening processes;
- Developed recommendations for institutional reforms that will be implemented in the short term or long term to create long-lasting impact.

Truth commissions and prevention

The mandates of the earlier truth commissions (Argentina, Chile and Guatemala) were primarily concerned with civil and political rights violations and did not focus on socio-economic rights violations, which underpin structural violence and injustices, and are often the key conflict drivers in most countries. The mandate of the South African Truth Commission ("South African TRC") followed this trajectory, but the truth commissions' mandates, established after the South African TRC, namely Sierra Leone, Kenya, Peru, and Tunisia were expanded to include violations of social, economic and cultural rights as in.[13] The Sierra Leone Truth and Reconciliation Commission intentionally decided that its mandate would incorporate socio-economic rights and cultural violations. It resulted in the Sierra Leone Truth Commissionformulating recommendations that were transformative in advancing the rights of women in deeply patriarchal societies, and addressing the underlying causes of violence.

South Africa – the unaddressed legacy of apartheid-structural violence

The South African TRC examined the antecedents of the conflict, but did not address the systemic structural policies of racial exclusion and oppression of apartheid. The forcible removal of Black people from their land has been one of the most devastating aspects of apartheid. The government set aside more than 80 percent of the country's land for the white minority, forcibly moved black South Africans to rural areas called 'Bantustans', which plunged them into poverty and hopelessness. The TRC's failure to address the systemic question led to the critique by Mamdani, who argued that South Africa's apartheid system was not simply based on the retention of dictatorial power through orchestrated terrorlike the Latin American dictatorships were, but rather that under apartheid state power was intimately linked with racialized privilege through the systematic dis-

9 State-sanctioned and temporary entities typically set up in the aftermath of a conflict or a regime change that are mandated to investigate and establish a factual account of the patterns of violence for the purpose of publishing a report. P. B. Hayner, Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions (2nd ed., 2012).

10 Principle 12, Updated Principle to Combat Impunity.

11 Robinson and Varney, 'Principle 12: Advisory Functions of the Commissions', in F. Haldemann and T. Unger (eds), The United Nations Principles to Combat Impunity: A Commentary (2018)

12 Ibid.

13 Thus a key weakness of the Commission was its limited mandate linked to an examination of civil and political crimes, so murder, torture, disappearances and abductions as well as extra-judicial killings.

possession and exploitation of the non-white majority.[14]

Arguably had the South African TRC addressed the racial and structural injustices rooted in the unequal power relations between the white and black populations, it would have contributed to a more progressive discourse on the need to address rampant socio-economic inequalities and a narrative which would not have been so susceptible to denialism. Furthermore, had the TRC focussed on the structural violations such as land dispossession, poor education, and the racialized unequal distribution of resources, it is likely that there could have been a vastly different discussion on reparations as only a state obligation. It would have compelled the corporations who plundered South Africa and white beneficiaries to participate in a national reparations program.

Denial and collective memory

Truth commissions play an important role in dealing with denial and the mythologies which divide people by crafting a "collective memory" – a shared memory of the events which acknowledges and recognizes individual pain and suffering and is the basis for new conversations about the past. Truth commissions are able to move beyond the notion of individual memory to facilitate an understanding of the collective harms that characterize mass atrocities, which in turn can serve the goals of transitional justice such as nation building and reconciliation, the creation of a historical record, and legal reform.

The failure by the South African TRC to address the structural violence had led to many South Africans, including former apartheid President FW de Klerk, consistently denying that apartheid was a crime against humanity. President De Klerk has also refused to acknowledge, that South Africa had become a criminal state after the 1980s, setting up death squads to eliminate opponents, authorised by the State Security Council. They have also failed to acknowledge their roles as beneficiaries of these unjust policies.

14 M Mamdani, "A diminished Truth", After the TRC: reflections on truth and reconciliation in South Africa (2000), 58-61.

Examples of recommendations by truth commissions

Reforms of security forces

One of the main recommendations of the South African TRC was on how to effect security sector reform in the context of a negotiated settlement, in which no one in the apartheid state has been vetted. This led the Commission to make a number of recommendations, including that the new state impose civilian control and oversight over the security forces, which was successfully introduced. The Chief of Armed Forces is subject to the direction of the civilian Minister of Defence, and Defence Intelligence is banned from collecting non-military intelligence.[15] The government, following the TRC's recommendations, also addressed the imbalance in gender and racial composition of high court judges. It established the Independent Police Investigative Directorate (IPID), which is tasked with ensuring independent oversight over the police and investigating allegations of misconduct against them, which goes to the heart of institutional reform.[16]

In-depth reforms of state institutions addressing socio-economic rights

In the case of Sierra Leone, a key finding of the TRC was that, "endemic corruption was a central factor that produced the conditions that had made the civil war inevitable,"[17] The wide-ranging and mutually reinforcing anti-corruption measures recommended by the TRC in Sierra Leone included the adoption of

15 Berghof Research Center for Constructive Conflict Management, Security Sector Reform in Developing and Transitional Countries (2004) at 14 available at http://www.wulf-herbert.de/Berghofdialogue2.pdf (last visited 16 February 2018); Winkates, 'The Transformation of the South African National Defence Force: A Good Beginning', 26 Armed Forces and Society (AFS) (20004) 451, at 456 as cited in Mayer-Rieckh and Varney (DCAF).

16 See P. Maduna (Minister of Justice and Constitutional Development), 'Address at the Banquet of the Judicial Officers' Symposium', 120 South African Law Journal (SALJ) (2003) at 665; Website Politicsweb, C. Lewis, The Troubled State of South Africa's Judiciary, October 15, 2008 available at http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=106544&sn=Detail (last visited 16 February).

17 Volume Two, Chapter Three: Recommendations, Witness to Truth: Final Report of TRC, §206 available at http://www.sierra-leonetrc.org/index.php/view-report-text-vol-2/item/volume-two-chapter-three?category_id=20 (last visited 16 February 2018, § 264.

"committed leadership" principles;18 the enactment of a code of ethics for the senior public officials;19 disclosure of financial interests for senior public officials, and strict penalties for failure to comply.[20] The Commission also recommended that the Anti-Corruption Commission be authorized to pursue its own prosecutions independently from other organs of the state,[21] and that officials dismissed for a breach of this code be disqualified from holding any public office in the future.[22] The Sierra Leone TRC also included recommendations on the protection of whistle-blowers,23 and called on government, business, and civil society to form a united front against corruption.[24] These measures deal with how the structural violence underpinning the conflict can be addressed, and the non-recurrence of similar violations in the future can be ensured.

The role of truth commissions in addressing gender inequality

The mandates of earlier truth commissions have been poorly conceived when it comes to incorporating a "gender perspective."[25] It's only much later that the "gender-neutral" stance of the early Latin American Truth Commissions namely Argentina, Chile and El Salvador evolved to incorporate a gender focus as seen in the Truth Commissions established in Sierra Leone, Timor-Leste, Peru or Tunisi).[26] The TRC in Sierra Leone analyzed the impact of the conflict on both men and women, and is an example of a comprehensive gendered approach. The Sierra Leone TRC was specifically mandated to deal with sexual violence and the rights of women, resulting in the Final Report's chapter entitled, "Women in the Armed Conflict," which detailed sexual and gender-based violence. The TRC in Sierra Leone not only recommended the establishment of the Gender Commission,[27] but also included measures related to: women affected by armed conflict, domestic violence, sexual violence, sexual offences under customary law, discrimination against women, political participation and access to power, skills training and economic empowerment, education, access to justice, HIV/Aids, and legal reform, access to micro-credit, and free education for girl children of the most vulnerable women.[28] In terms of impact, the United Nations noted that the Sierra Leonean TRC, "helped generate momentum for subsequent legislation that enhanced rights and security for women including by criminalizing domestic violence."[29] Incorporating gender in the mandate of truth commissions has contributed to the transformation of patriarchal societies and advancement of women's rights, which in turn can prevent similar violations in the future.

Conclusion

A major challenge for truth commissions all over the world has been the largely limited implementation of the recommendations by governments following their work, including recommendations related to reparations and institutional reform. The negative consequences attached to the failure to implement are significant, particularly in terms of the intended impact of these truth commissions. These negative consequences include the failure to effectuate institutional reforms that are required; not implementing reparations programs, which constitutes a further violation of victims' rights; not recognizing victims as having suffered gross human rights violations, leading to further trauma and a sense of re-victimization; feelings of deep betrayal at the behaviour of the political elites; and the persistence of poverty and inequality particularly for those who had been previously marginalized, ultimately contributing to a deepening of impunity.

18 Ibid., §211-216
19 Ibid., §217-224
20 Ibid., §273-274
21 Ibid., §278-280.
22 Ibid., §222.
23 Ibid., §284-287
24 Ibid., §288-303.
25 Chile, Argentina, South Africa being cases in point.
26 Nesiah Ibid
27 TRC Sierra Leone Final Report, §365-366.
28 Ibid., §316-376.
29 UNSC, Report of the Secretary General: The Rule of Law and Transitional Justice In Conflict and Post-Conflict Societies, UN Doc. S/2011/634, 12 October 2011, § 43, at 12.

Sustaining a Peace Process Amidst High Atrocity Risks: A Contrasted Reading of the Philippines Narrative

Karen N. Tanada[1]

The monitoring brief on the Philippines by the Asia Pacific Centre on Responsibility to Protect (APCR2P) in April 2019 gives a dire assessment of very high and ongoing risks for the prevention of atrocities[2].

Similar findings are also reflected in the United Nations Human Rights Council report on the country released on June 4, 2020[3], discussing key human rights issues such as human rights violations in the context of the campaign against illegal drugs and the deletrious effects of counter-terrorism efforts on the civic space. The OHCHR can not verify figures independently, but cites data of the Philippine Drug Enforcement Agency: 5,601 persons killed in police operations from July 1, 2016 to January 31, 2020, and more than 29,000 "deaths under inquiry" (perpetrators unknown), of which the police claim only 3,026 were drug related. [4]

The report also cites extrajudicial killings of farmers, journalists, lawyers, environmentalists, and human rights defenders, often after a pattern of "red-tagging" and harassment. Indigenous peoples, in particular, have been victims of killings by both state and non-state actors. This has happened in the context of decade's long conflict between the Government and the Communist Party of the Philippines-New People's Army- National Democratic Front. Initial quick progress was achieved in peace negotiations early on in the Duterte administration, and occasional back-channel efforts continued, even in 2020, despite supposed suspension of formal talks. However, the security sector seems to have taken Executive Order No. 70, which calls for a "whole of nation approach to inclusive and sustainable peace and the creation of a National Task Force to end local Communist Armed Conflict"[5], as a mandate to push military operations to end the communist forces.

A critical breakthrough was achieved in March 27, 2014 with the signing of the Comprehensive Agreement on the Bangsamoro (CAB) between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF)[6]. However, efforts of the government to counter smaller violent extremist forces such as the Abu Sayyaf Group, the Bangsamoro Islamic Freedom Fighters, and the Maute Group-ISIL continue to result in enforced displacement of communities. The 2017 Marawi siege, in which five months of heavy battle left the main business and residential areas bombed-out in ruins, is considered by some as the most serious atrocity experienced by the Bangsamoro since the end of the Martial Law period.

Currently, the Covid 19 pandemic grips the whole country, like much of the world. However, it seems that fear has been weaponized in a kind of militarized approach, while health responses have been slow despite the tremendous budget and emergency powers given to the executive. After a month of quarantine, more than 136,000 persons have been tagged as violators of the quarantine, while 31,363 persons have been charged, and 2,467 have been placed in detention. A new Anti-Terrorism Law, considered by major lawyers' organizations as unconstitutional and a threat to human rights, has swiftly passed Congress[7].

Despite these developments that warn of a slide towards "atrocity" as per the parameters of the APC R2P, it is still possible to look at the achievement of the peace agreement on the Bangsamoro and see a different picture. On this front, where it has been just a year and a quarter since the inauguration of the new Bangsamoro Autonomous Region of Muslim Mindanao (BARMM) government, there is evidence in communities on the ground of progress towards peace.

1 Executive Director Gaston Z. Ortigas Peace Institute, member of Third Party Monitoring Team of the Bangsamoro Peace Agreements

2 Asia Pacific Centre for Responsibility to Protect, "The Philippines – Asia Pacific Regional Outlook April 2019"

3 Report of the United Nations High Commissioner on Human Rights on the situation of human rights in the Philippines A/HCR/44/22. June 4, 2020, https://www.ohchr.org/Documents/Countries/PH/Philippines-HRC44-AEV.pdf

4 ibíd.

5 https://www.officialgazette.gov.ph/2018/12/04/executive-order-no-70-s-2018/

6 https://www.officialgazette.gov.ph/2014/03/27/document-cab/

7 http://www.philstar.com/headlines/2020/06/09/2019721/ibp-parts-anti-terrorism-bill-contrary-constitution

The following are what I would consider as some factors and paradigms that supported the protracted negotiations from 1997 to the final signing on March 27, 2014. They continue to be important for maintaining the peace and preventing atrocities. These factors go beyond the sole content of the peace agreement itself, and clearly contain a series of important and innovative aspects, such as the "Block grant" (timely release of agreed budget percentage) to ensure fiscal autonomy. Another original provision of the CAB that was integrated into the Bangsamoro Organic Law is the promotion and support of traditional and indigenous justice systems alongside with the sharia system and national justice system.

A "coexistence ceasefire"

One aspect of the prolonged peace process is the long-term ceasefire, based on the Agreement for General Cessation of Hostilities, signed on July 18, 1997. Unlike other ceasefires that are usually declared for short periods, briefly giving respite from extended violent conflicts; in this case, the long-lasting ceasefire was maintained and suspended only three times - in 2000, 2003, and 2008, and restored not long after. Researcher Malin Akebo has called this a "coexistence ceasefire" which was sustained through coordination and relationships of trust between the GPH and MILF, and included military leaders. [8] The ceasefire was supported by groups such as the Coordinating Committees for the Cessation of Hostilities (CCCH) and the Ad Hoc Joint Action Group (AHJAG); these groups were finally brought together by the multi-country International Monitoring Team (IMT) by 2003. As this created space for international support, it also enabled grassroots, civil society participation, such as the Bantay Ceasefire (ceasefire watch) which was organized by local peace leaders and community peace monitors. All the official mechanisms for ceasefire monitoring continue to exist, and help to address occasional clashes and flashpoints, most of which are now more related to local ridos or clan conflicts.

International perspectives

Openness to the role of internationals in the ceasefire was eventually pushed further, despite the reluctance of the government, and internationals came to play a role in the peace negotiations. This was also seen as helpful, given the MILF status in this asymmetrical negotiation with the Philippine state. The International Contact Group (ICG), composed of representatives of some countries and some international NGOs, supported the negotiations mediated by the Malaysian government. Most of the countries involved, as well as the international NGOs soon, engaged in efforts to expose both government and MILF leaders to outside models or practices including parliamentary and federal government, forms of autonomy, DDR, and policing. Earlier initiatives such as by the Philippine Campaign to Ban Landmines, and working with Geneva Call, had already persuaded the MILF in 2002 to sign a deed of commitment to adhere to a total ban on anti-personnel mines and cooperation on mine action. The MILF also signed an Action Plan with the United Nations in 2009, which aimed at ending the recruitment and use of child soldiers.

Tri-people and peoples concept

A concept that emerged among peace, justice, and development practitioners in the 1990 was the "tri-peoples of Mindanao". This conceptual framework identified three main peoples in Mindanao: the Bangsamoro as peoples of Muslim faith, the Lumad or indigenous peoples, and the Christian settlers. Some leaders of the MILF, among others, were critical of the concept, noting that the Moro were also indigenous/autochthonous peoples of Mindanao – with thirteen main ethnolinguistic groups or tribes who had adopted tenets of Islam, and about eighteen non-Islamized indigenous groups.[9] Others therefore felt the term to be limiting, and preferred to use the word "peoples" of Mindanao. Despite this, the concept of tri-peoples in Mindanao somehow permeated the peace agreement, which while primarily, "addressing the Bangsamoro problem", also recognizes the rights of the non-Islamized indigenous peoples who have their own justice system, and of Christian settlers, with minimum political representation of

8 Malin Akebo , "Co-Existence Ceasefire in Mindanao", Peace and Change, Volume 44, No. 4, October 2019, Wiley Periodicals.

9 Blog -DXUP FM – 105.5 MHz-Upi for Peace – Identity Crisis , March 18, 2007, "Tri-People Concept in Mindanao?" https://bangsamoro.wordpress.com/2007/03/18/tri-people-concept-in-mindanao/

these different groups.[10] To the Christian majority, awareness of the tri-people concept means the recognition of their identity as Bangsamoro even if they resist the labelling of "settlers". The three people's denomination serves as a confirmation of the validity of the many interfaith and interreligious dialogue initiatives, which were led by Catholic and other Christian denominations who opened doors to their educational institutions. Interfaith events would also take place, such as "Duyog Ramadhan"(a solidarity event). Schools were also accessible, independent of students' religious affiliation. For example, many Muslims studied at the Notre Dame (OMI) schools in Cotabato and Sulu, Claret School in Basilan, and Dansalan College (UCCP –Protestant) in Marawi.

Beyond the bangsamoro homeland

A much different, yet parallel, reality that should be considered is that of the Bangsmoro diaspora. In her study for the Philippine Human Development in 2005, civil society leader Yasmin Busran Lao, noted the plight of many of the Bangsamoro, who had to leave Mindanao because of the conflict.[11] Yet, she was amazed by the fact that when campaigning as a senatorial candidate in 2010, Muslim residents in every city that she visited during her campaign would approach her. Even while fighting for the autonomy of their homeland territory in Mindanao, the Bangsamoro have also ventured to make their homes all over the Philippines, somehow making the idea of a separate independent state seem more remote. While in 2003 some in the Muslim communities in Metro Manila, such as Maharlikha Village in Taguig City, seemed unaware of realities of the then ongoing conflicts in Mindanao, by 2014 several of their Manila-based organizations were actively lobbying in the legislative for the Bangsamoro Organic Law.

Another phenomenon is the overseas work, notably of many young Muslim women from Mindanao, usually as domestic helpers in households in the Middle East. While salaries in that region are smaller than in other areas like East Asia or Europe, they feel more comfortable being in countries where they are no longer part of a religious minority. As they return home with some earnings and increased social status, they help to change roles and perceptions of women within the community, as well as in the family.[12] At the same time, the women support their families' survival amidst dire economic circumstances, and perhaps contribute to the prevention of violent extremism.[13]

Women claiming space in the bangsamoro

The role of women at the highest levels of the GPH-MILF peace negotiation, with Miriam Coronel Ferrer as chair and Yasmin Busran Lao as member of the panel, has often been cited. They were also assisted by very young women involved in the technical and secretariat team. While initially uncomfortable negotiating with women on the other side, the MILF eventually relied much upon the technical legal work of at least two women on their team. These women are now in leading positions in the Bangsamoro Transition Authority (BTA). In the BTA, 13 women were appointed out of 80 BTA members. The Comprehensive Agreement on the Bnagsamoro ensured the right of women to have meaningful political participation in the Bangsamoro, and women's organizations have been preparing themselves through various trainings, and by solidifying their agenda. During the peace process, which lasted years, leadership among peace CSO's has also shifted from the Christian led NGOs (from Davao and Manila) to Bangsamoro organizations in Central Mindanao, Lanao del Sur, and Basulta, and this was also the trend for women peace organizations.

10 "Bangsamoro" is used in the Comprehensive Agreement in the Bangsamoro in three ways, referring to 1) the people who identify as Bangsamoro 2) the autonomous political entity that will be established based on the agreement, and 3) the territory that will be covered by the autonomous entity. Bangsamoro translates as "Moro nation" and was taken on by the Muslim secessionist movement as they claimed the name for their revolutionary fronts. Previously "Moro" was a pejorative term of the Spanish colonizers in the Philippines for local people of Muslim faith, whom they associated with their history of Moorish domination of Al-Andalus.

11 Yasmin Busran-Lao, "Illustrative Case: Marawi City" Philippine Human Development Report of 2005, p.37, http://hdr.undp.org/sites/default/files/philippines_2005_en.pdf

12 Julienne Debonneville (2019) A 'Minority' on the Move: Boundary Work Among Filipina Muslim Migrant Domestic Workers in the Middle East, The Asia Pacific Journal of Anthropology, 20-4, 344-36,accessed through <https://www.doi.org/10.1080/14442213.2019.1632923>

13 https://asiapacific.unwomen.org/en/digital-library/publications/2020/05/academic-paper-a-gender-sensitive-approach-to-empowering-women-for-peaceful-communities

Ways forward in strengthening prevention

The elements and paradigms described above are among those that supported the protracted negotiation process, and similarly are the ones that contribute to ensure the implementation of the agreement. They should expand to respond to the ongoing and new challenges, as well as to mitigate existing risks developing in Mindanao and the country.

The Bangsamoro Parliament (BTA) has just begun working on legislation, and should be finishing important codes like the administrative, civil service, and electoral codes, in preparation for elections in 2022, where the first Bangsamoro Government will be elected. The good news is that among the first enacted laws are those creating the Bangsamoro Commission on Human Rights, the Bangsamoro Women Commission, and the Bangsamoro Youth Commission. These are important institutions in upholding basic human rights and ensuring the rights and participation of key constituencies. They should receive stronger public support. The Bangsamoro Women Commission, for example, is geared towards overseeing the mainstreaming of gender and development, as well as on the protection of women.

The law which would create a Ministry on Indigenous Peoples is still being discussed. Hopefully in its final version it will enable effective implementation of the national Indigenous Peoples' Rights Act, as stipulated in the Bangsamoro Organic Law. Increasing conflictual incidents are taking place between IPs and Moros, notably related to land issues that recently resulted in the displacement of several hundred families in UPI, Maguindanao. To create a more inclusive Bangsamoro there must be more effort to ensure the safety and rights of indigenous peoples.

The gains and lessons of the "co-existence ceasefire", along with its mechanisms, should be maintained as normalization continues. The expanded notion of Normalization, as stated by the Bangsamoro Peace Agreement rather than DDR (Disarmament, Demobilization, Reintegration) is significant for building peace that is more durable. The phased programming of the Normalization, reflected in an eight columns matrix, is a good illustration of this holistic approach and illustrates how all elements must work together in a mutually complementary manner.[14] Aside from the high visibility and impact decommissioning of combatants and their weapons, with 12,145 people already decommissioned, there should be a corresponding disbandment of private armed groups, and implementation of confidence building measures such as amnesty as defined by the Geneva Convention guidelines, accompanied by simultaneous commensurate progress on socio-economic development, and transitional justice and reconciliation measures.

One remarkable element of this is that for all of the dimensions of Normalization, decisions and implementation had to be bilateral, as they had to be accepted by both the MILF and the Philippine government. The establishment of the Bangsamoro Normalization Trust Fund is also crucial for its implementation, and should no longer suffer delay.

The Transitional Justice and Reconciliation Commission, another component of Normalization, has published a report entitled, "National Transitional Justice and Reconciliation Commission on the Bangsamoro," that highlights the legitimate grievances of the Bangsamoro people, historical injustices, human rights violations, and marginalization through land dispossession.[15] Its main recommendation advocates for nationally led infrastructure, and for 90 other recommendations to be implemented by existing national institutions. It will be particularly important to acknowledge the legacy of the conflict, address the root causes, and prevent past atrocities from reoccurring. While the Filipino nation still grapples with unfinished justice over the violations of the Martial Law period, and with the limited access to reparations through the Human Rights Victims Claims Law, transitional justice in the Bangsamoro could lead the way, or break more ground towards the nation dealing with its own past.

The current efforts of the government to counter or prevent violent extremism tend to be mainly through military operations, hence the risk of diminishing the peace dividends that the new Bangsamoro has promised. An event like the Marawi conflict must not happen again, and the current crisis of more than

14 These elements are: Transitory Components, Socio-Economic Programs, Confidence Building Measures, Decommissioning of MILF Forces, Redeployment of Armed Forces of the Philippines AFP, Policing, Disbandment of Private Armies and Other Armed Groups, Transitional Justice and Reconciliation.

15 <http;//www.tjrc.ph>

120,000 residents still displaced after three years and not allowed to return and rebuild must be promptly addressed. While accountability lies with the national government, hope lies in efforts started by the Bangsamoro Transition Authority to thoroughly investigate, recommend measures, and oversee the measures to remedy the grave injustices suffered by citizens of Marawi.

On the other hand, the Bangsamoro is part of the Filipino nation. But, the Philippines must become aware of, get to know, and accept its own fellow citizens: the Moros and Indigenous peoples. This is a long awaited acceptance process. Polls by the Social Weather Stations in 2015 showed greater support nationwide among Filipinos who claim some understanding about the peace agreement, in comparison to those who admit their lack of knowledge about the Bangsamoro issue.[16] Similar polls on public opinion in 2018 indicated a neutrality amongst the majority of Filipinos in regard to the passage by Congress of the Bangsamoro Organic Law. However, they moderately agree that the law will bring peace to Mindanao.[17] While the passage of the Anti-Discrimination Law may help address the issue of bias against Muslims, other measures that could directly spread knowledge and understanding may be more effective in countering biases.

As the Bangsamoro moves forward on a path of peace and development, some measures should be taken to avoid the risk that the rest of the country might enter onto a path of possible deterioration towards atrocities. Currently, the Bangsamoro government seems to be in the best position to potentially continue building the peace process and develop infrastructures to prevent conflict. Through exercising its autonomy, the BARMM may indeed become the model for good governance, a working justice system, and protection of human rights in the Philippines. It may become a crucial part of the evolution towards a better Filipino narrative.

16 Social Weather Stations, 2015, "Filipino Public Opinion on the Bangsamoro Basic Law and the Mamasapano Incident" pp 19-20.

17 Social Weather Stations, 2018, 2nd Quarter 2018 Survey- Filipinos neutral on the proposed Bangsamoro Basic Law, https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20180720173453

Médiation et prévention: Leçons apprises et voies à suivre

Mario Giro[1]

Aujourd'hui, dans notre opinion publique, les conflits sont incompréhensibles et complexes. Cela peut décourager et conduire à l'immobilisme. L'idée résignée qui prévaut chez l'homme et la femme occidentaux contemporains est que la guerre sera toujours la triste compagne de la vie humaine : face à elle nous sommes tous impuissants.

Mais la guerre ne peut pas être simplement considérée comme un passage de l'histoire : en réalité, le conflit marque le déclin des peuples. Après une guerre, un peuple n'est plus le même qu'avant. Nous l'avons vu en Afrique, nous l'avons constaté dans les Balkans et ailleurs. La guerre laisse derrière elle des traces profondes dans l'architecture sociale des peuples, les corrompt, désarticule la société et détériore l'âme d'une nation. C'est dans ce sens que l'on dit dans la Communauté de Sant'Egidio que « la guerre est la mère de toutes les pauvretés ».

Un certain regard hyperréaliste fait croire qu'il y a des moments dans l'histoire où la guerre ne peut être évitée. Beaucoup de conflits sont présentés comme le produit inévitable d'une situation objective (comme la guerre de l'eau, du cacao, des diamants, du pétrole, etc.), indépendamment de la volonté des individus et des peuples. L'expérience sur le terrain montre cependant que la question est différente : il y a toujours une décision humaine et politique à l'origine de la guerre. Cette décision peut être évitée ou changée. J'ai eu au fil du temps l'opportunité de parler à beaucoup de seigneurs de la guerre, de leur demander pourquoi ils avaient pris les armes et commis des atrocité ou ordonné de les commettre. Parmi les différentes réponses reçues, il en est une en particulier qui revient toujours : cette terrible décision n'est jamais simple. Il s'agit d'une déchirure profonde parce que (même intuitivement) celui qui la prend sait qu'il s'agit d'un chemin sans retour. Le sang pèse toujours. Aucune raison objective ne peut être évoquée comme une logique rationnelle qui dépasse la volonté humaine. C'est précisément sur cette volonté qu'il faut travailler.

Travailler à la prévention et à la résolution des conflits devient alors une descente dans l'histoire d'une nation ou d'un groupe, une descente dans sa conscience, dans sa perception de ce qu'il est en train de faire ou dans ce qui est en train de se passer. Il est nécessaire d'entrer en syntonie avec ce discernement, avec leurs raisons. Dans chaque conflit personne n'a raison mais tous ont leurs raisons. Peur, méfiance, culture du mépris, pathologie de la mémoire, victimisme, rancœur, torts : tout s'y trouve et s'enchaîne. En particulier, la mémoire des atrocités subies ou commises crée des abîmes. Pour réussir à aider, il faut apprendre la leçon de la patience et de l'écoute, le travail sur le terrain, l'humilité nécessaire pour parvenir à toucher les cordes sensibles qui pourront faire surgir l'étincelle de la paix.

Il ne s'agit pas d'une chose facile. Il n'existe pas de paix facile, ni de dialogue simple, ni de pardon aisé. Il n'existe pas non plus de formule magique, de schémas tout prêts, de documents élaborés à l'avance, de techniques de négociation sûres et valables dans tous les cas. C'est pourtant une tentation récurrente. Certes les formules et les idées créatrices sont nécessaires, mais leur succès n'a lieu que si le scénario global a changé ou est en cours de changement. L'expérience et le sens politique sont également nécessaires, mais tout cela ne suffit pas.

Il est toujours nécessaire, notamment pour les occidentaux, de sortir de leurs propres références culturelles, c'est-à-dire d'abandonner toute vision égocentrique, sans toutefois s'éloigner de ses propres principes. Ceci sert à apprendre l'art de la rencontre et de la recherche de la paix. C'est quelque chose de difficile pour nous occidentaux qui sommes peu flexibles ; nous n'aimons pas les situations contradictoires et nous croyons souvent que le dialogue est une faiblesse. Il s'agit de reconnaître le lien créé par la même aventure humaine et de reconquérir le sens d'une communauté de destins.

Qui fait la guerre, aussi loin semble-t-il, nous est proche. Il n'y a pas d'innocents devant un conflit : tous ont une part de responsabilité, tous ont commis des brutalités. La guerre est le règne de l'hybride. Il s'agit d'une leçon qui vient des profondeurs de la terrible fournaise de l'Holocauste : chez nous aussi l'indicible se produit, chez des peuples soi-disant civilisés.

Partir du bas, des derniers, c'est-à-dire de la réalité sociale d'une nation, sert à arriver à tous. Personne ne peut dire qu'une société qui marginalise et exclut soit réellement en paix. Regarder une société

1 Responsable des relations internationales de Sant'Egidio, ancien secrétaire d'État aux Affaires étrangères.

et le monde à partir des derniers est la seule façon d'obtenir la meilleure perspective. Les pauvres sont la partie de la société la plus sensible aux changements et aux transformations, ils ressentent avant les autres les poids et les conséquences de la haine, de la culture du mépris et de la violence. C'est pourquoi travailler pour la paix signifie beaucoup de choses au-delà des accords politiques : le retissage du tissu déchiré des périphéries urbaines où s'instaure la violence diffuse, la rencontre entre générations différentes, l'inclusion des derniers, le dialogue entre les religions, le partenariat entre les continents, qui doit devenir une réciprocité réelle, etc. En résumé, il s'agit de la construction du vivre-ensemble.

Souvent, la guerre éclate dans des univers où ce n'est pas la sympathie réciproque et le génie du vivre-ensemble qui ont été cultivés, mais la haine qui a été prêchée et s'est insinuée. La haine déshumanise et permet d'endormir les consciences face aux atrocités. Ceci devient le terrain sur lequel est cultivée la violence diffuse. Des regards pétrifiés par l'étrangeté et la suspicion peuvent conduire aux pires conflits. Au contraire, tisser patiemment la trame de l'estime et de la courtoisie est un travail long, mais qui donne des fruits très positifs.

Nous assistons depuis un certain temps à une nouvelle réalité des guerres et des conflits : dans la plupart des cas, il s'agit de conflits internes, autrefois appelées « guerres civiles » qui, aujourd'hui, se privatisent. Quelle que soit leur origine (ethnique, politique, idéologique, etc.), de tels conflits remettent rarement en cause les frontières internationales d'un pays. Nous assistons également à de nombreuses crises internes qui deviennent violentes du fait de la défaillance (ou de l'inexistence) d'amortisseurs politiques qui pourraient les éviter. C'est le cas des failed states (États en faillite), au sujet desquels le débat des spécialistes est considérable. Nous assistons à une forme de conflit atypique, qui se joue lui aussi des frontières : le terrorisme. Aujourd'hui on parle de feral cities... Toutefois la question la plus grave à laquelle se confrontent ceux qui travaillent pour la paix aujourd'hui est la privatisation des conflits. Au cours des quinze dernières années, près de la moitié de la population mondiale a vécu au contact d'une forme de violence organisée. Ce type de violence n'est plus seulement l'apanage de pays pauvres ou fragiles : elle apparaît également dans des États forts et en croissance économique. Suivant la logique de l'hyperlibéralisme mondialisé (la pensée unique) qui s'est affirmé après la fin de la guerre froide, la guerre et la violence se sont également mondialisées et privatisées. Aujourd'hui la guerre devient essentiellement une affaire entre organismes privés.

Il y a toujours eu des phénomènes subsidiaires de violence à côté du monopole de la force exercé par l'État. Il s'agissait toutefois de phénomènes temporaires que les États cherchaient à résorber rapidement, ou de formes de violence occulte, manipulée par les États mais qui ne devait jamais être révélée (guerres clandestines ou affaires sales). Des phénomènes comme l'utilisation de mercenaires, ou l'utilisation des services secrets comme cela s'est produit ailleurs, ou encore les guerres secrètes, etc. : il s'agissait d'affaires contrôlées directement par les États, destinées à rester inconnues. Officiellement (et essentiellement), l'usage de la force restait le monopole de l'État. À un moment donné, ce schéma a changé. Aujourd'hui les États, y compris les grandes puissances, ont accepté le principe de la privatisation de la guerre, en exploitant si possible les avantages, sans exercer le contrôle qu'ils avaient auparavant. Les États préfèrent même ne pas être impliqués directement.

Le phénomène le plus évident est l'utilisation desdits contractors, nouveau nom donné aux mercenaires. Fatigués de devoir ramener à la maison des cercueils enveloppés dans des drapeaux nationaux, certains États ont inventé un système de mercenaires officiels, en confiant des parties de leurs opérations militaires et (la totalité) de la sécurité des zones libérées ou protégées à des entreprises privées. Ces dernières restent certes sous le contrôle de l'administration pour les questions stratégiques, mais elles ne sont pas responsables devant elle de leurs actes. Leur autonomie est en train d'augmenter sur le marché de la sécurité qui offre d'innombrables opportunités. Les contrats avec les gouvernements avec lesquels elles travaillent sont à tous les effets des contrats privés. Il est facile d'imaginer que d'autres États suivront cette tendance. Si tel est le cas pour les grandes puissances, cela se passe dans les autres pays de manière moins organisée, mais tout autant marquée par une forme de privatisation toujours plus évidente. L'effet immédiat de cette orientation est la multiplication des milices (privées ou semi-privées) dans tous les théâtres de conflits. Il s'agit d'une croissance exponentielle qui change le visage même des guerres en cours. Les milices menées par des seigneurs de la guerre ont toujours existé, mais il s'agissait en

général d'un instrument pour prendre le pouvoir et devenir État (le cas le plus évident est celui du NPFL de Charles Taylor, le prototype des seigneurs de la guerre africains, qui se fit finalement élire président du Liberia). Aujourd'hui ce n'est plus – en grande partie – l'objectif de tels groupes, mais plutôt de se vendre au plus offrant, d'offrir des services de protection ou d'acquérir des ressources locales. En résumé, une façon de capter une partie de la richesse et des opportunités offertes par la mondialisation sans être responsable politiquement.

Dans un tel contexte, la violence devient hybride : souvent il n'est pas clair de savoir si on a affaire à un groupe armé qui travaille pour un État, pour une ethnie ou pour un clan, pour lui-même, pour une idée ou une idéologie, pour une puissance étrangère, un groupe terroriste, etc. La guerre privatisée devient hybride et la violence diffuse devient indéchiffrable. Certains groupes armés ou milices opèrent sur différents registres, en fonction des opportunités.

Ainsi s'explique le fait que, à la différence de l'époque bipolaire de la guerre froide, beaucoup aujourd'hui peuvent faire la guerre. Depuis la fin du XXe siècle, on observe que les États nationaux ne possèdent plus le monopole total de la violence. Face à cette nouveauté, les États nationaux semblent de moins en moins forts. Les règles multilatérales auxquelles ils se sont attaché dans le contexte de la communauté internationale semblent limiter leurs capacités de réaction. Ceci correspond à l'esprit de notre temps : de même que l'on privatise l'économie (diminuant ainsi le rôle de l'État), de même on peut privatiser la guerre : donc on peut privatiser aussi ses conséquences, même les plus brutales.

Toutefois, si la guerre se privatise et que beaucoup peuvent la faire, nous devons croire de la même manière qu'il est possible de travailler pour la paix. Ceci naît de la conscience que, en cette nouvelle phase de l'histoire, le contexte des relations internationales n'appartient plus seulement à un cercle réduit de spécialistes (ceux qui conduisent la diplomatie officielle), mais qu'il existe également un espace de responsabilité et d'intervention pour la société civile. Cette nouvelle forme de diplomatie civile et non institutionnelle représente une offre de méthodes innovantes, mises en œuvre par des citoyens et des organisations privées (Églises ou leaders religieux, universitaires, ONG, journalistes, entrepreneurs, anciens responsables politiques, etc.) mettant à disposition leurs bons offices. Toutefois, tout ceci ne peut remplacer la diplomatie officielle, faite de relations institutionnelles, dans le cadre de règles partagées. En effet, la résolution de conflits non institutionnelle n'aura jamais accès aux mêmes ressources et n'aura jamais (par sa nature) la même légitimité que celle des institutions nationales ou internationales. Mais elle offre au monde institutionnel ce dont il semble dépourvu actuellement : la compensation des limites imposées par le caractère officiel grâce à des méthodes plus flexibles, capables de s'adapter aux situations et personnalisées. Un dirigeant politique (ou son représentant officiel, un diplomate ou un fonctionnaire, une autorité), représente invariablement une constituency, une partie de la population qui l'a élu ou une institution qui le considère comme son représentant. S'il prend le risque d'intervenir dans la crise interne d'un autre pays, il doit être certain que sa constituency le soutiendra, même (et surtout) en cas d'échec. Ceci constitue une grande limite que les institutions s'imposent aujourd'hui elles-mêmes. C'est également le cas lorsque la crise en question regarde le pays d'origine du dirigeant ou de l'officiel. Nombreux sont les cas de dirigeants politiques qui se sont engagés dans des actions de dialogue dans leur propre pays, mais qui n'ont pas été compris et sont tombés.

La politique institutionnelle et la diplomatie officielle sont souvent freinées par des logiques internes : on intervient seulement quand on est sûr de réussir, dans un contexte d'opinion publique favorable et pour une courte période. Cela arrive face à des atrocités connues et reconnues par le grand public. Mais ce sont des situations toujours plus rares. Combien de fois avons-nous vu nos opinions publiques se fatiguer rapidement et retirer tout soutien ? Dans ce contexte, la résolution de conflit non institutionnelle peut offrir une alternative. Sa flexibilité, sa capacité de gestion du temps, sa fidélité à une situation ou sa disponibilité à l'exploration préalable, épargne aux institutions les inconnues de l'incertitude et des conséquences internes. Engager son propre prestige, ses ressources et son temps dans des actions à l'issue incertaine n'est pas perçu par les institutions comme avantageux. Ainsi se développe un espace d'opportunité, auparavant pris dans l'étau du bipolarisme.
L'arrêt de la violence reste une des cibles plus sérieuses qui donne autorité à une médiation de ce type : même si on ne peut arrêter définitivement une guerre ou résoudre assurément un contentieux, on peut toujours diminuer de manière importante le

taux de violence et d'atrocités qui sévit sur la population civile. Le cas des Juba Peace Talks pour la Lord's Resistance Army est un cas : Joseph Kony, un des seigneurs de la guerre les plus brutaux, est encore en cavale mais la guerre en pays acholi avec ses terribles brutalités est terminée. C'est un résultat partiel pour la communauté internationale mais un résultat définitif pour la population de cette région, c'est-à-dire deux millions de personnes.

Malgré les moyens à disposition, paradoxalement, la diplomatie officielle n'est pas toujours en mesure de répondre à la prolifération des crises internes de manière suffisamment rapide. Il existe également une difficulté à agir sur le terrain de la prévention des conflits, en particulier des conflits locaux qui ne mettent pas immédiatement en péril la stabilité mondiale. Les procédures dans le domaine institutionnel sont lentes et complexes. Quand elles s'occupent d'un conflit, les institutions (nationales, intergouvernementales ou internationales) doivent mettre en place un système complexe de groupes de contacts, d'équipes internationales de suivi, etc. qui ralentit leur action et rend toute prise de décision plus articulée. Les entités non institutionnelles peuvent activer des canaux rapides et confidentiels, sans la nécessité que ces derniers soient de caractère officiel. La résolution non institutionnelle de conflits est perçue comme moins conditionnée par les intérêts : les parties en cause savent qu'il y a moins de caractère officiel mais aussi moins de calendriers secrets et moins d'intérêts des parties. L'idée fondamentale est que la société civile est en général plus libre des conditionnements et des intérêts (économiques, militaires et politiques) et peut donc accéder aux protagonistes d'une crise sans susciter trop de méfiance ou de réactions.

Certaines conditions sont nécessaires au bon fonctionnement d'une médiation non institutionnelle. Tout d'abord, l'accord des parties. Une médiation de ce type ne peut en aucun cas imposer son intervention, comme peut le faire au contraire dans certains cas une institution nationale ou internationale. Les parties en conflit doivent obligatoirement choisir la voie du consensus.

Une règle importante est que la partie non institutionnelle doit se syntoniser avec celle institutionnelle et réciproquement. Il s'agit d'un défi difficile. C'est l'une des premières observations faites sur le modèle de Sant'Egidio : accepter dans chaque situation l'articulation complexe d'un conflit, entrer en relation avec les autres stakeholders : des États intéressés (qui se divisent à leur tour entre frontaliers et non-frontaliers) aux organisations internationales, à commencer par l'ONU. Mais cela doit se faire sans qu'elles ne perdent leur lisibilité et leur adaptabilité, c'est-à-dire sans s'institutionnaliser à leur tour (ce qui rendrait inutile la présence non institutionnelle ou la réduirait à une simple expertise). La synergie est absolument nécessaire pour éviter également les superpositions et – comme nous l'avons dit – la compétition. Un processus de paix dans lequel les différents médiateurs potentiels (institutionnels et non institutionnels) seraient en concurrence les uns avec les autres serait certainement voué à l'échec.

Dialogues Interreligieux

Inter Religious Dialogues

Interreligious Dialogue and Genocide Prevention: Reflections to Seek the Ways Forward

Rabbi David Rosen[1]

My own personal journey in interreligious relations began in Cape Town, South Africa, where I was a very young rabbi in the 1970s. I was motivated by the ethical teachings of my religious heritage to do whatever I could to combat the evil of the policies of racial separation enforced by the government in South Africa at that time. Religion was one of the few fields in which one could bring people together across the racial divides without automatically running foul of the authorities. Together with Jewish, Muslim and Christian colleagues from various denominations, we founded an Inter-Faith Forum that both brought religious leaders together and facilitated grassroots encounters between our respective communities. And so I came to interreligious dialogue out of a commitment to social justice. Indeed, I believe that the advancement of shared ethical values is, in and of itself, a critically important purpose and a goal of interreligious cooperation.

However, as I entered this field, I discovered that religious leaders of other faiths were amazingly ignorant about me and had misconceptions about me, my community, and our religious tradition that I needed to rectify. Yet, at the same time, I realized that I myself was rather ignorant about the other faiths and that I was also a perpetrator of misconceptions and distorted stereotypes. It became evident to me that if I wished to combat prejudice against me, I had to overcome my own; that if I wanted to be understood, I needed to understand.

Indeed, interreligious encounters and dialogue provide a critical role in cultivating a terrain that is inhospitable to prejudice and bigotry, and inoculating people against mutual demonization and the threat of inter-ethnic violence. As has been well-documented, acts of violence and genocidal atrocities do not emerge out of a vacuum. Negative attitudes and derogatory speech all contribute to creating a climate and a context in which violent acts become possible, legitimate, and even banal.

As the relevant PEW study revealed, religion is significant for some eighty-four per cent of humanity and thus advancing understanding and mutual respect between religious communities is of vital importance.

Yet, we also have to confront the fact that in the past and in the present, religion itself all too often seems to be part of the problem by promoting conflict, rather than part of the solution.

The sages of the Talmudic period showed an amazing willingness for self-criticism in this regard when they declared that Torah – used here to mean the Jewish religion as a whole – can *be sam hachayim*, the elixir of life, or sam hamavet, the potion of death. Religion can be the most powerful force of vivification, and it can also be a most potent poison.

But this still begs the question. What is it that leads to the abuse– sometimes the most terrible abuse - of religion? The eleventh century scholar Yehudah Halevi long preceded Lord Acton when, in his magnum opus The Kuzari, he highlighted the problem of human abuse of power. When Religion is linked to Power structures, it will inevitably betray its most noble métier.

Yet much violence in the name of religion today, derives from powerlessness, precisely reflecting the alienation of the marginalized.

Of course, we must not fall into the trap of assuming that Religions are the same thing across confessional or geographic lines. Indeed, often the same religion can be of a very different order in one place than another; and its relationship to and role in a society may vary greatly from one extreme to another. The sociologist Douglas Marshall has referred to the "three B's of Religion" – Belief, Behavior and Belonging; and different religions reflect varied combinations or emphases of these.

The abuse of religion has often been related to the first two, belief and behavior; but I think especially today, it has far more to do with the third component: belonging, and the socio-cultural, territorial, and political contexts in which religion functions.

Because religion seeks to give meaning and purpose to who we are, it is inextricably bound up with all the

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different components of human identity, from the most basic,such as family unit to larger communities, ethnic groups, nations and peoples, all the way up to the widest components of humanity and creation as a whole. These components of human identity are the building blocks of our psycho- spiritual wellbeing and we deny them at our peril. Scholars studying the modern human condition have pointed out just how much the counterculture, drug abuse, violence, cults etc. are a search for identity on the part of the disorientated who have lost traditional compasses of orientation.These components of our identity affirm who we are; but at the same time, they affirm who we are not! Whether the perception of distinction and difference is viewed positively or negatively depends to a large extent upon the context in which we find ourselves or perceive ourselves to be.

In contexts of conflict, identity (and what is referred to today as "identity politics") tends all too often to be not just a nurturing of positive affiliations, but also a vehicle for self-righteousness and disparagement of "the other". This can be done to the point of portraying the opponent – in the words of the historian Richard Hafstadter – as "a perfect model of malice".

An image I find useful in explaining the behavior of particular identities for good or bad is that of a spiral. The different components of identity are like circles within circles. When they feel secure within the wider context in which they find themselves, then they can open up, spiral out, affirm and contribute to the broader context; families engaging other families; communities working together with other communities; nations contributing to the commonweal of nations; and religions affirming all human dignity within the family of humankind. However, when these components of human identity do not feel comfortable in the broader context, they tend to resist any opening spiral to positively engage with the other, instead cutting themselves off from the wider context, isolating themselves and invariably denigrating the other/s, and compounding the sense of alienation.

Because Religion is bound up with identity, it plays a key role in nurturing identity when threatened (or perceived as being threatened). In the contexts of alienation and conflict, precisely because they are so inextricably bound up with the identities involved, religions not only provide support and succor. All too often, they also tend to become part and parcel of that aforementioned self-righteousness and denigration of the other, exacerbating the conflict and alienation, betraying their most sublime universal values. For Religions to be elixirs of life rather than death potions; the sources of alienation that make them into the latter, need to be addressed.

This certainly necessitates addressing central issues such as economic and political marginalization. However, there is more to the alienation that threatens societies today than just these tangible factors. The psychology of rejection is arguably the most potent factor of all. Indeed, it is not possible to begin to comprehend the hostility that exists among certain extremist militant violent groups that find their succor and inspiration in religion, if one ignores the power of this alienation, this sense of disparagement and humiliation.

It is also here that interreligious relations in particular can play such an important role. Reaching out to the other in the spirit of hospitality contributes enormously to giving communities a sense that they are welcome and respected by other communities. This of course is especially the case for communities that are more vulnerable either due to numbers, history, or recent immigration into a new society. Such a sense of being respected and appreciated enables the members of those communities to feel that they are part and parcel of the wider circle of identity and can contribute to it positively rather than feeling alienated from it, preventing the exploitation of such vulnerability by extremist violent ideologies.

It is extremely desirable that national and local authorities involve the different religious communities in their civic and social issues and, where appropriate, take measures such as establishing interreligious advisory councils to assist in these regards.

In societies where such diversity is not present, it is all the more important to encourage religious bodies and representatives to participate in international interreligious fora and gatherings, and for the images and messages from these events to be communicated nationally through the various media. This would contribute to respect and appreciation of religious and cultural diversity in communities.

This is all part of the educational challenge that religions must address, especially through giving primacy to the teachings present in all spiritual traditions regarding the reverence for the sanctity of human life and dignity. In addition, interreligious collaboration can play an invaluable role in communicating the lessons of past tragedies and the stages that have led to genocides, starting from the use of prejudicial language and stereotyping referred to above.

The Shoah serves as something of a paradigm in this regard. What was initially dismissed by many as "only words", became increasingly widespread, credible and even "respectable", leading to targeting "scapegoats" for grievances (primarily as a result of the experience of loss from the first World War.) Thus, hatred became a political tool for cohesion and empowerment leading to the dehumanization of "the other"; which in turn led to the intent and action of extermination.

While our world today is significantly different for that of Germany in the 1930s, there are dangerous echoes of such bigotry, prejudice, and stereotyping in our contemporary society that must ring alarm bells for every person of conscience.

Ignorance of the past condemns us to repeat it, said George Santayana. Thus, the need for Holocaust education in schools is of the utmost importance. And it is not only the Nazi Holocaust that must serve us as an urgent warning, but also other genocides in recent times. Religious communities in particular have the responsibility to keep alive also the memory of the genocides of the Armenians and other Christian communities under Turkish rule in the early 20th century; the genocide of Bosnian Muslims at Srebrenica and elsewhere; as well as the massacres in Rwanda at the end of that bloody century, and more recently the extermination of Yazidis, in particular, at the hands of ISIS.

Interreligious commemorations for the victims of these atrocities have an additional educational value and impact.
However, even worse than ignorance is denial.

Why people seek to deny these horrendous events, is not always clear. Often of course it stems from a deeply guilty conscience and thus a desire to minimize the extent and significance of these atrocities. The Israeli historian of the Holocaust Yehuda Bauer states it succinctly: "The denial of the Holocaust is due to the inability of a society to accept what it did." This, of course, is especially the case concerning genocide deniers from the communities that perpetrated these atrocities.

Often racism and prejudice themselves are the motives. In addition, conspiracy theories have their attraction in which, as mentioned in the case of Nazi Germany, the victim can be portrayed as the scheming manipulator and a convenient scapegoat for one's own ills.

The danger of denial of genocide has been described by the former Grand Mufti of Bosnia, Dr. Mustafa Ceric, as not only "a denial of the truth about real physical Genocide… that continues the real psychological genocide against the victims of genocide", but also "a justification for potential new genocide because everyone who denies the real evil of genocide, is ready to perpetrate that evil again". As he has written, in today's world "voices of anti-Islamism and anti-Semitism are getting louder and louder, [which demands that we] raise together our voices against this plague. Obviously the cry of 'Never Again' has not been loud and consistent enough".

This demands us all, especially religious leaders, to not only to combat the denial of genocide, but to do our utmost to combat the mindset that can allow genocide to happen. It demands that we condemn any denial of human dignity, stereotyping, and bigotry. For words might not kill in and of themselves, but they can certainly lead to such atrocities.

As it is written in the book of Proverbs 18:21, "life and death are in the power of the tongue". To speak out against all bigotry and inhumanity is our duty, to prevent such terrible genocidal atrocities. While people of faith, of religion, have arguably the greatest obligation in this regard, the facilitation of such public expression lies very much with civic and national secular leadership to ensure that human solidarity transcends, while still respecting, particular identities.

Returning to the theme of hospitality as an interreligious imperative, Judaism, Christianity and Islam all present Abraham as the personification of this virtue. According to Jewish tradition, Abraham's tent flaps were raised throughout the day so that sojourn-

ers from all four corners could find hospitality and welcome there.

Genesis Chapter 18 opens describing Abraham sitting at the entrance to his tent "and he lifted up his eyes and saw and behold three men were standing in front of him; and he saw and ran towards them"… Abraham greets them and offers them hospitality. He has no questions about their identities, their origins, or their beliefs. In the course of this encounter, he discovers that they are Divine messengers, and he is promised the wondrous birth of a son a year later. However, two of the three visitors still have work to do, and the next chapter opens with the words "and the two angels came to Sodom".

A Hassidic master raised the question of why the text refers to the visitors only as "men" when they appear before the loving and righteous Abraham; but when they go to Sodom, of all places, they are referred to as "angels"!
And he answered that it is because Abraham didn't need to be told that they were angels, because Abraham saw the angel in every human being.

That is the ultimate religious ideal of hospitality, when we can see the Divine presence in each and every person, all created in the Divine Image, and receive them accordingly.

Interreligious collaboration can and must play a critical role in this regard, demonstrating genuine respect for and even celebration of the other's diversity, and sending a powerful message of human solidarity to society at large .

Interreligious Dialogue and Prevention: Lessons Learned and Ways Forward – Reflections on/from United Nations Experiences

Azza Karam[1]

"It is essential to understand that the U.N.'s strength lies in its values. The values enshrined in the Charter, the values the U.N. stands for, the values all religions respect."
Antonio Guterres, Secretary-General, United Nations

Prevention is one of the priority areas for the United Nations Secretary-General, Mr. Antonio Guterres. Like in all big bureaucracies, what the management decides, the system will be reconfigured to deliver.. So when the UNSG made it clear that prevention would be his key task, the United Nations Secretariat (with its myriad offices) went into high gear. In this case, "prevention" referred to a comprehensive vision for how the United Nations can better support countries in averting the outbreak of crises, which can take a high toll on humanity and undermine institutions and capacities to achieve peace and development.

As stated on the official website of the Office of the UN Secretary-General, this prevention requires the United Nations to support governments to develop national disaster reduction plans (addressing climate change, environmental degradation, urbanization, and population growth); prioritizing early warning and early action on preventing violent conflict (through data and information, "supporting national capacities for facilitation and dialogue," and keeping the United Nations system offices ready to deploy); furthering a preventive approach to human rights through policy frameworks and human rights instruments; building resilience to external economic and financial shocks, and adopting social safety nets as well as policies which promote job-led growth.[2] In short, prevention, for the United Nations, is about development, peace and security, and human rights.

So far, so good. So where does interreligious dialogue come in?

It comes in through sustained work inside the United Nations system, beginning with the Millennium Summit in September 2000, where one thousand religious leaders gathered at the United Nations, to affirm the Millennium Development Goals (the "MDGs"). Although the United Nations was founded on, and remains, a trenchant bastion of secular principles, there have been many advocates within the United Nations system who have argued for the value of religion, or faith, as a key part of human existence, over its 75 year history. The second Secretary-General of the United Nations, Dag Hammarskjöld, the second Secretary General of the United Nations, was one such proponent. The intensity of his spirituality became apparent after the publication of his spiritual diary, Markings, following his death in a plane crash in the Congo in 1961. In *Markings*, Hammarskjöld wrote:

From scholars and clergymen on my mother's side, I inherited a belief that, in the very radical sense of the Gospels, all men were equals as children of God, and should be met and treated by us as our masters in God….
Faith is a state of the mind and the soul.
Dag Hammarskjold[3]

But the inner lives and beliefs of a UN Secretary-General do not translate into the workings of a universe - with over 45,000 staff (not counting United Nations peacekeepers), 6 principal organs, and 17 specialised funds and mechanisms agencies. Each of these are composed of constellations, planets, and stars. The United Nations system is too big a universe – all geared towards helping 193 governments - to incorporate any one spirituality or religion. Over the years, many of the planets within the UN, particularly those with country-level presence (referred to as operational entities) have worked with diverse forms of religious actors. But it was only after the events of September 11, 2001 that the seeds were planted at the United Nations in New York (the biggest headquarters outpost after Geneva), to be more deliberate and systematic in appreciating the role of religion.

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2 https://www.un.org/sg/en/priorities/prevention.shtml - accessed on April 14, 2020.

3 Radio interview 'Old Creeds in a New World' written for Edward R. Murrow's radio program 'This I believe', in CF II:194-6

Getting to Recognise the Role of Faith Actors: The United Nations Interagency Task Force on Religion

How does a secular bastion come to create its own interagency mechanism to work on, with, and about religion?

The short answer is by arguing for the recognition of the facts on the ground, advocating with diverse United Nations leadership, and bringing the multi-religious voices systematically to the United Nations tables. The facts on the ground were encapsulated in the oft-repeated narrative that religious institutions, in most parts of the world, still provide a minimum of one third of basic health care, and likely a similar estimate for educational establishments (The Lancet, Comment, 2015 [4]). This figure often spikes during humanitarian disasters and conflicts, where central governments find it hard to reach many remote areas.

But the realities of religion's less savory influences over behavior and social norms, as well as political dynamics, make themselves clear on a daily basis. The resilience (and sometimes surge) of harmful practices against girls and women perpetuated in the name of religion (e.g. FGM and child marriage) feature on the agendas of human rights work championed by diverse United Nations entities and their traditionally-secular NGO partners. As for the frequency of religious rhetoric being used to justify exclusivist narratives and violent practices in many parts of the world, the media's fascination with these subjects has made it more than obvious.

The role of religions as the oldest social service providers to humankind, and the roles played by religious discourse in challenging peace and security, were two sides of the same coins being tossed in the discourse of the UN. Both were used to legitimize the need for a United Nations system-wide approach to religion. This eventually led to the creation of the United Nations Interagency Task Force on Religion and Development.

The United Nations Interagency Task Force on Religion and Development ("UN Task Force on Religion" for short) came together in 2008, co-launched by the then UNFPA Executive Director (Ms. Thoraya Obaid) - with a general nod in her direction by then UN Secretary General (Mr. Ban Ki Moon) who, "did not object," as she would later say (in several public fora – together with Principals/heads of UNICEF, UNDP, UNAIDS, UNIFEM, the United Nations Alliance of Civilizations, and the UNDP. UNESCO, DESA, DPA, the World Bank, Habitat, and the WHO also participated. The United Nations Population Fund/UNFPA has served as the Coordinator/Chair and secretariat of the Task Force on Religion since.

In 2008, the UN Task Force members, led by UNFPA and UNAIDS, developed Guidelines for Engaging with Faith-Based Organisations (FBOs), which helped identify what FBOs were, and made the case for why they should be engaged across the United Nations board. Several United Nations system development entities then used these basic guidelines to develop more elaborate ones of their own in 2014, 2015, and 2016.

The UN Interagency Task Force members, led by UNFPA, began to collate a database of over 500 Faith-Based NGO partners of the United Nations' diverse entities. These faith-based partners work in almost all areas of development (including health, education, sanitation, nutrition, environment and humanitarian assistance), as well as human rights and peace and security (i.e. the UN's 3 main pillars), including governance, conflict resolution, and reconciliation.

Starting in 2010, the UN Interagency Task Force began to host its annual United Nations staff Trainings (Strategic Learning Exchanges/SLEs) which brought together United Nations staff and faith-based partners on a peer-to-peer basis, to learn from one another about the business of development, peace building, and human rights. To date, these SLEs have trained 500 United Nations system staff members in national, regional, and global United Nations offices, and almost 250 faith-based organizational partners.

Starting in 2008, the UN Interagency Task Force began to host advocacy consultations inside the UN, bringing together diverse United Nations system entities, FBOs, academics, and governments, as well as other intergovernmental partners. By 2018, the average number of yearly consultations co-hosted/co-organised by the UN Interagency Task Force had grown to twenty.

4 Azza Karam, Clague J., Marshall K., and Olivier J., "The view from above: faith and health" in Faith and Health Series, volume 386, issue 10005, E22-E24, October 31, 2015

The Coordinator of the UN Interagency Task Force supported the founding of a number of multi-religious global partnerships, geared to uphold the advocacy for sustained policy level engagement with religious organisations. These included the Joint Learning Initiative on Faith and Local Communities (JLI), the Moral Imperative which was stewarded by the World Bank, and the Donor-UN-FBO Policy Roundtables which later became the International Partnership on Religion and Sustainable Development (PaRD).

As a result, by 2018, the UN Interagency Task Force on Religion had effectively succeeded in normalizing discussions within the United Nations system around "religion" and "partnerships with religious actors," such that the pendulum has moved almost 180 degrees from little to no acknowledgement of religious actors, to relatively more systematic engagement with religious leaders, in particular. September 2018 saw the launch of the Multi-Faith Advisory Council (MFAC) of the UN Interagency Task Force. The MFAC consisted of over 40 Executive Officers of the UN's longest-standing and most active FBO partners. These FBOs were selected and nominated by the respective members of the UN Interagency Task Force, according to the same Guidelines established for religious engagement, i.e. religious and regional representation, thematic expertise, and gender balance.

The Sustainable Development Goals

In 2015, a global conversation was facilitated by the United Nations, to try to seek, "citizen feedback and active participation in determining the global development priorities." The conversation is estimated to have actively involved over 2.5 million people, and was entitled the "World We Want." The Goals, which were eventually developed and agreed upon by 193 governments, were termed the Sustainable Development Goals ("SDGs"), and are also referred to as Agenda 2030 (since they supposedly "end," i.e. should be achieved, by 2030).

The conversations underlined clearly and unequivocally that people around the world knew precisely what kind of world they wanted to live in. The top issues identified noted education appearing as the number one need, followed by access to education and quality health care for all. There was also a significant percentage of those who identified, "honest and responsive government," at par with those who noted "access to decent jobs." These were closely followed food security, gender equality, and freedom from fear and violence, all of which were also not included in the previous Millennium goals.

Unlike the MDGs, the SDGs involved broad civil society consultations. In 2012, the United Nations Development Group reached out to the UN Interagency Task Force to request them to host a consultation with some of the UN's FBO partners, in order to engage them in the post-2015 global development consultations. 50 FBOs were convened and their support for furthering the global feedback for what became known as the SDGs began. Thus, in fact, the SDG process involved multi-religious consultations. As a result of these consultations, the number of UN-hosted meetings and events in the United Nations around key intergovernmental moments spiked from around 5 per year in 2010, to an average of 50 per year in 2015 – the very same year in which the SDGs were launched.

One may ask how this how this is connected to the prevention of genocide works? An important background is the recognition of the importance of prevention of Genocide in particular. This came on the tenth anniversary of the Rwandan genocide in 2004. The then UN Secretary-General launched an Action Plan to Prevent Genocide, and based on a request from the UN Security Council, appointed the first Special Adviser on the Prevention of Genocide. The mandate of the Special Adviser is primarily outlined in a 2004 letter written by the Secretary-General to the President of the Security Council (S/2004/567), which lists the responsibilities of the Special Adviser as the following:

- To collect existing information (in particular from within the United Nations system), on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide;
- To act as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide;
- To make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; and
- To liaise with the United Nations system on ac-

tivities for the prevention of genocide and work to enhance the United Nations' capacity to analyze and manage information regarding genocide or related crimes.

This Office is not mandated to undertake any programmatic or operational activities in countries. Nevertheless, as will be shown shortly, the work of this Office has led it to host several consultations with select groups of civil society actors in multiple countries and regions.

In July 2014, then UN Secretary-General Mr. Ban Ki Moon wrote a foreword to the first United Nations "Framework of Analysis for the Prevention of Atrocity Crimes." This Framework was intended as a guide for assessing the risk of genocide, crimes against humanity, and war crimes, so that governments and intergovernmental mechanisms (primarily the UN), can, "better sound the alarm, promote action, improve monitoring or early warning by different actors, and help Member States to identify gaps in their atrocity prevention capacities and strategies."[5]

Interestingly, while this Framework specifically mentions "religious groups" 22 times, it does so mostly to highlight their vulnerabilities and/or to identify them as targets of atrocity crimes in diverse definitions. Nowhere in this Framework intended to "promote action" and "improve early warning by different actors", is there mention of the potential for or actual role of religious leaders and actors of any kind to be agents of peacebuilding.

Interfaith dialogue in action: moving towards a United Nations-sponsored plan of action with, for, and by religious actors

By the time the summer of 2014 came along - when the Office of the Special Advisor for the Prevention of Genocide and the Responsibility to Protect was launching their "Framework for Analysis for Atrocity Crimes" - the UN Interagency Task Force had gained plenty of experience and lessons to share. By then, the Task Force had worked with hundreds of faith-based NGOs (FBOs) to convene annual consultations about and around shared human rights concerns at the national, regional, and global levels. UN Task Force members had also learned to appreciate which of the myriad religious actors were specializing in peace and security debates and activities.

Several hard bumps along the way had also taught the UN Task Force members how best to convene religious actors in a manner that optimized their ownership over processes, and minimized the potential for discord. Last, but by no means least, the UN Task Force was learning, if not entirely to avoid areas of contention with and amongst religious actors, to at least to identify some of the weaknesses within the United Nations system's own universe that could render the United Nations offices more vulnerable to intra and inter-religious tensions.

The United Nations Special Advisor on Prevention of Genocide, Mr. Adama Dieng and his office, proved adept at immediately working to take on board the UN Task Force's suggestions for engaging religious actors. These included what I see as interfaith dialogue in action:

- Setting up an Advisory group of religious NGOs with a proven track record of working on peacemaking and peace-building activities, who had already been working with UN Task Force member entities at the country and global levels;
- Drafting clear terms of engagement with this Advisory group, which would also be based on the UN Task Force's criteria of engagement (inclusive of religious leaders but engaging more faith-based NGOs that were religiously and regionally diverse, presented a balance of thematic expertise, and where possible, a balance of gender representation).
- Working with the Advisory group members to host regional consultations that would convene the key actors and delve into the specific regional dynamics relevant to genocide prevention and atrocity crimes.
- Facilitating a consensus among the discussants gathered which would be theologically informed (while not mired in any theological rhetoric) around the specifics of how to work within their own religious communities to effectively prevent genocide, based on their own lessons learned; and also how to work in an interfaith manner, around these issues.
- Documenting the outcomes of these consultations, in the words of the very religious actors convened, towards a plan of action – rather than statements.

5 United Nations "Framework of Analysis for the Prevention of Atrocity Crimes accessed at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.49_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf

- Ensuring that the convenings with religious acors also included non-faith-based entities that were thought-leaders and experienced coordinators in the area of human rights relating to prevention of genocide, hate speech, and atrocity crimes.

With the wisdom of the UN Task Force as part of a powerful Advisory body, the United Nations Office for Genocide Prevention and the Responsibility to Protect were able to quickly and effectively steward a process that led to the development of the Plan of Action for Religious Leaders to Prevent Incitement to Violence, known as the "Fez Process." The "Fez Process" refers to a series of consultations organised by the United Nations Office on Genocide Prevention and the Responsibility to Protect between April 2015 and December 2016, with religious leaders, faith-based and secular organizations, regional organizations, and subject matter experts from all regions of the world.

The Plan of Action is one of the UN's flagship documents when it comes to recognizing the role of religious actors, and systematically working with them to harvest their wisdom. It is the first document of its kind, developed under the auspices of the United Nations, focused on including diverse religious actors from around the world – i.e. not just religious leaders, but faith-based NGOs (FBOs) with decades of experience in delivering along the continuum of development and humanitarian work - and not only working on human rights or peacebuilding per se. Moreover, the recommendations contained in the Plan of Action did not shy away from noting some sensitive religious aspects.

The latter, as always, tend to be related to gender equality, thus affirming what some of the UN Task Force members have systematically warned as the litmus test of religious action.

In the introduction to the Plan of Action, the Office of the Special Advisor who put together the whole process, noted that the, "Plan of Action is founded on human rights principles, in particular the right to freedom of expression and opinion, freedom of religion and belief and the right of peaceful assembly." They also stress the broad relevance of the recommendations in the Plan of Action, such that they are,

Relevant not only to situations where there is a risk of atrocity crimes, but also to other contexts, including the protection of human rights, the prevention of violent extremism and the prevention of conflict. As efforts to prevent atrocity crimes and their incitement are most likely to succeed when different actors are working in collaboration, the Plan of Action also includes recommendations for other actors, including States and state institutions and civil society, including new and traditional media. (Plan of Action, 2015, page 3)6 .

The Plan of Action contains three main clusters of recommendations that aim to prevent, strengthen, and build strategies for genocide prevention, by religious actors.

Faith for rights

In July of 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR), in cooperation with civil society groups – including the International Humanist and Ethical Union (IHEU) – launched the human rights initiative Faith for Rights. Civil society representatives from a wide range of faith-based backgrounds, United Nations experts (including the Special Rapporteur on Freedom of Religion or Belief, and on Summary or Arbitrary Executions), academics, and the IHEU, gathered for two days of meetings in Beirut, Lebanon, to agree on a declaration and commitments aimed at countering, "discrimination and religious-based violence through a shared objective to promote human rights and to uphold the freedom of religion or belief."

The Faith for Rights initiative seeks to appeal to those with influence within religious communities to help ensure that they speak out against human rights abuses, and resist any measures that use religion to justify extremism or actions undermining human rights. It urges religious representatives to put in place positive measures to counter discriminatory or hateful speech and to promote human rights.

The work builds on the OHCHR-led 2012 Rabat Plan of Action on the prohibition of incitement (PDF), which had clarified state obligations to prohibit incitement to hatred and the role of religious leaders in speaking out against violence and extremism and

6 United Nations Office for Genocide Prevention and the Responsibility to Protect Plan of Action for Religious Leaders to Prevent Incitement to Violence accessed at https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf

provided coherent protection for the rights to freedom of expression and freedom of religion or belief.

Beirut declaration (March 2017)

The Beirut Declaration [7] considers that all believers – whether theistic, non-theistic, atheistic or other – should join hands and hearts in articulating ways in which "Faith" can stand up for "Rights" more effectively so that both enhance each other. Individual and communal expression of religions or beliefs thrive and flourish in environments where human rights are protected. Similarly, human rights can benefit from deeply rooted ethical and spiritual foundations provided by religions or beliefs.

Rather than focusing on theological and doctrinal divides, the Beirut Declaration favours the identification of common ground among all religions and beliefs to uphold the dignity and equal worth of all human beings.

The Beirut Declaration reaches out to persons belonging to religions and beliefs in all regions of the world, with a view to enhancing cohesive, peaceful and respectful societies on the basis of a common action-oriented platform which is open to all actors that share its objectives.

18 commitments on "Faith for Rights"

Linked to the Beirut Declaration are 18 commitments on "Faith for Rights", with corresponding follow-up actions. These include the commitments:

- To prevent the use of the notion of "State religion" to discriminate against any individual or group;
- To revisit religious interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence;
- To stand up for the rights of all persons belonging to minorities;
- To publicly denounce all instances of advocacy of hatred that incites to violence, discrimination or hostility;
- To monitor interpretations, determinations or other religious views that manifestly conflict with universal human rights norms and standards;
- To refrain from oppressing critical voices and to urge States to repeal any existing anti-blasphemy or anti-apostasy laws;
- To refine the curriculums, teaching materials and textbooks; and
- To engage with children and youth who are either victims of or vulnerable to incitement to violence in the name of religion.

Lessons learned about interreligious dialogue and prevention writ large in multilateral contexts

"But what happens if we cannot put the religion genie back in the bottle?"

By urging for a consideration of the role that faith holds in shaping the development and peacebuilding - and thus prevention work - and by more systematic engagement of faith-based actors, there is a risk of mutual instrumentalisation. "Rubber stamping what the United Nations believes to be a way to do things," is something most religious actors decry. At the same time, United Nations entities are concerned that precisely because they hold such sway over behaviors and attitudes, religious leaders can counteract efforts, or indeed "use the legitimacy bestowed" by appearing to be "accredited" by the international policymakers, to further some positions which may not be in accordance with certain human rights.

To engage with religion requires discarding any notion of homogeneity. Religions are diverse - within each and between them. Moreover, religions are largely interpreted by men, and are riven with internal contradictions. There is a rush to "mobilise religious actors," but their complex and contradictory realities have to be factored into any and all such engagements. Neglecting these aspects of religion in development processes and world affairs is costly, and unwise. As a result, there is no alternative to a detailed case-by-case study of the role of religion, including all its ambiguities, especially – albeit not only - in prevention (including development, human rights and peacebuilding).

All this requires a certain level of religious literacy on the part of those working on prevention. Some faith-based actors can indeed contribute to achieving the SDGs and facilitating the changes required - as noted earlier. But the fact is, not all faith-based actors are well placed, nor indeed able to do so. In fact, I would contend that there is no evidence to justify asserting that FBOs are better placed to understand

7 Office of the UN High Commissioner for Human Rights (OHCHR), Beirut Declaration, accessed at https://www.ohchr.org/Documents/Press/Faith4Rights.pdf

local contexts, nor indeed to occupy the moral high ground, and enjoy the trust of civil servants - in spite of this being oft said.

To successfully work with FBOs, a careful analysis of their profile is required – including their own self-critical reflections. Beyond religious literacy therefore, I contend that what is required is a competency to deal with inter- and intra-religious sensibilities, and simultaneously with relational secular sensitivities, as a prerequisite to engagement with religion and with religious actors.

Here we come to other critical dimensions of the religion and development equation. There are, or should be, questions as to the identity and representativity of faith-based actors. This is particularly relevant given the difference between religious institutions - which are largely male dominated and rife with internal power dynamics - and between non-formal religious actors serving at the heart of their communities. Who are we actually talking to when we are speaking with representatives of FBOs? Moreover, who is excluded from the dialogue and consultation tables? Further, to what extent is the outreach taking into consideration, or indeed contributing to, issues of asymmetries of power among religious groups and communities?

Some of the ambiguities around "religion" arise partly from the differences between rank and file of religious communities, and religious leaders. These entail ongoing questions as to who are the traditional religious leaders actually speaking for - themselves or their membership, and whom exactly among the vast numbers of the communities of faith?

In that regard, secular (and faith-based actors) are also challenged by the fact that all major religions have a tradition of justifying war through [religious] text. Indeed, any value system can be - and has been - given to validate "just war" at diverse moments in history. Any value system is itself ambiguous, but religious actors often speak in the name of an absolute and incontrovertible – something hard to argue with

FBOs possess comparative advantages and are simultaneously confronted by certain limitations, when engaging with the governance agenda. Historically, religions have played strong political roles. After the severance of the link between Church and State, and with the independence of former colonies, some FBOs found themselves marginalized and displaced by new elites. This led to one of the lessons learned: that once religion engages with governance, it is bound, at some point, to grow weaker, and eventually to lose its foothold. Thus, it is best to distance the institution and organization from government institutions and the praxis of governance, and to maintain a relatively silent position.
Another lesson learned was that engaging in governance and with governmental institutions requires being active – and more accountable – to myriad public domains, sometimes entailing self-serving scrutiny and critique. Most FBOs have, over the years, learned to be wary of opening themselves up to random criticism. However, when it comes to the creation and management of effective institutions (rooted in communities, able to mobilize resources from within and to manage social service delivery relatively well), FBOs successfully constitute local, national, regional and international networks. Many of these engage with myriad stakeholders at the same time. Thus, in fact, many FBOs offer themselves – and some are seen - as effective institutional partners.

An example of the "double-edged sword" of religious involvement in conflict resolution can be seen in the Central African Republic. FBOs are often the first recourse for victims of the conflict. And yet when the religious conflict escalates, the very identity of an FBO becomes its liability. On the other hand, as experience in Tanzania illustrates, FBOs are critical deliverers of services to the poor. In fact, because they are deeply rooted and well managed, some FBOs work in tandem with governments, and successfully engage in public-private partnerships. Their experience also translates into an unparalleled database and knowledge capacities identifying what people need, how best to serve some of the most marginalized, and how to leverage governmental interface to serve the most vulnerable. These functions, or assets, are arguably the very tenet of sustainable peace building in any community.

The UN, and other intergovernmental bodies, will often be challenged by contexts where religious discourses play a prominent role in questions of the legitimacy of governance mechanisms. The example of the election of Hamas in the mid-1990s, as well as social and political upheavals in some Arab countries since 2011 are cases in point.

UN offices concerned with political, developmental and even humanitarian outreach are grappling with contexts where political Islam, or Islamism, in particular, features prominently in debates and altercations around governance. As an example, Egypt was cited as an example where a supposedly "moderate" and elected Islamist party was ousted by the military - albeit with significant populist support, and where a deliberate crackdown on the Islamists in question, is being undertaken by the current regime.

These developments, as well as others raised by the role of the Russian Orthodox Church vis-à-vis developments in the Ukraine, and the exercise of power by a Hindu nationalist leader in India, raise many questions about the nexus of religion, governance and peacebuilding.

Historically, there are many instances of countries where FBOs have played a key role in political contexts, e.g. in Indonesia when some religious organizations were behind the creation of broad based movements for political mobilization. There is a complex relationship between states, religious institutions and religious actors in situations, wherein some states seek to co-opt religion and/or religious groups to justify their own legitimacy, and as a means of securing community outreach.

The ongoing engagement between multilateral entities and faith-based actors highlights the complexities also from certain donor government perspectives. Some Arab donor governments, for instance, are heavily vested in developmental and humanitarian programmes within their region. Naturally, these involvements influence their level of comfort, so to speak, when it comes to discussions around the role of religion in governance, as well as on how their donor assistance may be conditional to furthering a specific vision or role of religious discourse, and on how disbursement of their development aid may be stipulated. For instance, some Arab governmental support – or resistance to - groups such as the Muslim Brotherhood, underlined the cultural and political schisms in the Arab region, as well as the implicit sectarian tensions which are at play. The Saudi involvement in Yemen is another case in point. These matters raise an important question: what happens when some donors also have a political stake in the religious dynamics of governance in countries other than their own?

Western donor governments are quick to claim that their governmental assistance has less and less interest in impacting on governance of other countries. Instead, they would note that they are more concerned with attempting to support the creation of meaningful spaces for people to have a voice in their own broad governance process, to counter the diminishing civil space with a view to supporting the inclusion of marginalized voices into the political mainstream. Given the so-called "migration crisis" that Western European donors themselves face, Western donors are now even more keen, it would seem, to leverage their development assistance towards providing better living standards - so that less people would consider migrating to their shores.

At the same time, there are plentiful voices within the faith communities who argue that many religious leaders, and some FBOs, are not necessarily equipped, nor would they want to, play a prominent role in national governance matters. It is often noted that some religious institutions (e.g. the Catholic Church) have learned from diverse experiences, not to engage openly in politics. The "horrific outcomes" that result from religious leaders' and religious groups' involvement in political space is often pointed out to back those assertions.

A parallel concern - albeit a less popular one - is that religious institutions themselves are not the most democratic of spaces and can be replete with political – and financial – mismanagement, if not downright corruption. It is important to note that the fallout of these dynamics are not merely political. Rather, these kinds of vulnerabilities, shall we say, have an impact on the inability of such religious institutions to deal with issues of violence – within domestic spaces, within the institutions themselves, and certainly in the broader public spaces.

On the other hand, while many FBOs are ill at ease challenging political order, and therefore tend to shy away from such engagement, the civil space is shrinking in many countries, and attempting to "stay out of politics" is increasingly unrealistic. Not only that, but increasing political instability in some parts of the world has effectively encouraged a search for, and a resurgence of, more faith-inspired activism.

Multilateral entities and several governments (both in conflict zones and outside thereof) are increasingly requesting guidance on how to engage with

religious actors. There are thus "culture shifts" and ensuing tensions which are taking place – particularly in the western headquarters of secular institutions, whereby the importance of the role of religion, and an awareness of faith-based service provision during and after situations of armed conflict, are undeniably increasing. This heightened awareness is also engendering more requests for targeted support – e.g. training of foreign service officers, and of United Nations and EU staff, on the nexus between faith, international relations and development.

Faith-based representatives also speak to a similar "culture shift" taking place within many of their own organizations, where there is a gradual move away from outright condemnation of multilateral governmental entities, and more about compassion towards them and for their agendas. There has been "an advance" in finding common ground between secular human rights ethos and religious dynamics, in organizational cultures, more generally.

Many in the United Nations and other governmental entities today, can see value in engaging with religious actors. And many initiatives are mushrooming which bring together governmental and faith-based entities to secure better partnerships and collaboration towards shared goals and to sustain the value added of such engagements around shared goals. And the learning which is taking place (as opposed to the literacy or the competency) is significant.

It is now nearly two decades since "religion and development/peacebuilding/reconciliation" became an acceptable and resourced area of engagement in the United Nations. The processes of mobilizing for joint advocacy, engaging in joint programmes, building of capacities (of some religious leaders, faith-based NGOs (FBOs) as well as some secular organizations themselves), is clearly yielding dividends, as the 2019 Annual Report of the UN Interagency Task Force reveals[8].

The approach of catalyzing the building of networks of religious leaders and other faith actors who can be prevention bulwarks and peace and security maintenance systems, has become an increasingly popular practice in the United Nations system.

This approach is itself predicated upon what some faith-based representatives advise and recommend as a means of building on and deploying the social capital of religious leaders. Yet some of those who suggested such an approach also argue that engagement with religious actors would be valuable and productive to the extent that the social capital of religious actors can indeed be harnessed beyond mediation of certain conflicts, and towards active engagement in all aspects of human rights.

Moreover, I maintain that these engagements needed to be multi-layered and multi-dimensional, thus requiring outreach and involvement of multiple faith organisations with each working to secure interreligious cooperation and collaboration. I also see that a deliberate engagement around addressing humanitarian/crises needs, as well as basic needs (poverty, housing, health, education, sanitation, etc.), is preventive. Multi religious collaboration around the provision of basic needs in any given context, allows for building of trust. In turn, this is an antidote to extremist narratives.

Moreover, as secular and faith-based development efforts are harnessed collaboratively, the outreach and quality of the services can be wider and better. In turn, this strengthens the visibility of a narrative of faith which is service oriented, rather than the ones designed to capture political power.

What is required from more secular development organizations therefore, is a harnessing of political will towards the creations of inclusive frameworks, strategies and mindsets which integrates multiple religious actors (not just individual leaders) more deliberately, as agents of sustainable peace, and therefore of prevention. This would be an alternative to the current modalities of either ignoring religious agency altogether, or seeing FBOs exclusively as the cause of conflict and strife (or part thereof), or undertaking ad hoc initiatives of engagement of religious leaders.

8 UN Interagency Task Force on Religion and Development - Annual Report 2019 accessed at https://www.unenvironment.org/resources/report/un-interagency-task-force-religion-and-development-annual-report-2019

Quelques acteurs de la prévention

Some actors of prevention

The Role of Smaller Countries in Mass Atrocity Prevention: The Case of Costa Rica

Ms. Shara Duncan-Villalobos[1]

When we talk about prevention of mass atrocities, I find myself asking the same two questions, namely how important is the prevention of massive atrocities for a small country without an army if, from the internal point of view, it does not seem to have great challenges in this area? And additionally, is there really a space for democracies like that of Costa Rica's, one of the longest-standing and strongest democracies in the region, to participate in and take action on issues that could be considered "foreign affairs," while also taking into account its apparent small international weight?

Costa Rica, which does not have an army, is committed to developing strong democratic institutions and dedicates a large amount of energy and resources to making them functional. On the other hand, precisely because it has a long-standing democratic tradition and stability from the political and institutional point of view, it has significant moral authority when carrying out initiatives that have, on many occasions, managed to amass the support necessary to become reality.

Through these pages, I do not pretend to give an exhaustive list of all the efforts Costa Rica has made in this field, but rather provide an overview of some of the actions at national level and international level that Costa Rica has undertaken in the field of mass atrocity prevention to provide an insight of the very diverse contribution that small countries can make.

In recent years, Costa Rica has started a transformational journey towards becoming an even more inclusive society. This journey has been influenced by a variety of factors including the engagement of civil society with government at the national and international levels. Engagement in international efforts to advance human rights, such as in the context of the process of the Durban Declaration of 2001, the Declaration of the International Decade for People of African Descent of 2014, and the negotiation and adoption of the 2030 Agenda, to name a few, has been paramount to this process. All of these measures have had a significant impact in the advancement of measures to ensure equality for all.

But, there are some other elements, besides the country's commitment that have been key to this journey, namely the exams and reports to Treaty Body mechanisms, the Universal Periodic Review, and the work of the Special Procedure Mandate holders, their country visits and the commitment of political actors and the government to follow up on the recommendations resulting from those visits. In the case of Costa Rica, there is an evident conversation between the national and the international spheres.

At the national level

Costa Rica does not have a national prevention mechanism for mass atrocity crimes. Nevertheless, it has undertaken a series of actions for the creation of conditions for coexistence, multicultural dialogue, consultation processes with the different communities, and inclusion in public policy development of the affected communities.

It also has created two relevant inter-institutional commissions namely:

a. The Commission for the Implementation and Follow Up on the International Obligations on Human Rights, which is called to collect, analyze and meet the recommendations made by international and regional human rights organizations and establish formulas for better implementing said recommendations internally, promote cooperation between the State and civil society to strengthen the promotion and respect for Human Rights.[2]
b. The Interinstitutional Commission for International Humanitarian Law: Costa Rica's tradition obliges it to attach great commitment to issues such as the promotion of peace and disarmament. In this context, the protection of civilians and cultural property in armed conflicts, among others, acquire a special relevance, fundamentally, in the areas of prevention and dissemination of International Humanitarian Law.

Both inter-institutional commissions are under the leadership of the Ministry of Foreign Affairs and have taken measures to educate public servants in the prevention of mass atrocities, early warning signs, and

1 Career diplomat currently serving as Deputy Permanent Representative of Costa Rica to the Office of the United Nations and other international organizations in Geneva. This article is an academic effort, written in her personal capacity and does not necessarily constitute the official position of her country.

2 http://biblioteca.fdi.cr/wp-content/uploads/2018/02/119-Decreto-36776-RE-2011-Creaci%C3%B3n-de-la-comisi%C3%B3n-interinstitucional-de-DDHH-Costa-Rica.pdf

human rights related matters. We partnered with the Auschwitz Institute for the Prevention of Genocide and Mass Atrocities in 2014 and have since engaged in multiple training opportunities as well as two sessions in Costa Rica; one about genocide prevention and the second, specifically about the protection of LGBTI population.

In 2014, Costa Rica adopted a public policy instrument to eradicate racial discrimination, racism and xenophobia, that aims to:

> Turn Costa Rica into a society that is more respectful of people's rights, inclusive, sensitive to sociocultural and ethnic diversity. The purpose of the National Policy and its Plan of Action is to promote conditions to make Costa Rica more inclusive and equitable, where, in addition to recognizing rights normatively, there is also a practice and implementation of affirmative actions to achieve the improvement of the living conditions of indigenous peoples, afro-descendants, populations of migrants and refugees. [3]

In the year 2015, the position of a "Presidential Commissioner on the issues of People of African Descent" was created for the first time. The position-holder works directly with the office of the President of the Republic and is in charge of articulating and coordinating actions regarding the promotion of culture, and facilitating specific action plans and activities regarding Afro-Costa Ricans. Since the position's creation, there have been 2 presidential commissioners, and the National Plan for Afro-Descendants in line with the objectives of the International Decade has been launched.[4]
In 2017, all public institutions were declared spaces free of discrimination based on sexual orientation and gender identity and in 2018, the figure of the Presidential Commissioner on issues of the LGBTI community was created with the aim to "follow up and evaluate plans against all types of discrimination based on sexual orientation and gender identity and expression in public institutions."

These measures are especially relevant today in the context of the social and political reality in the world from which Costa Rica is not exempt.

International efforts

Since the creation of the United Nations, Costa Rica has based its multilateral foreign policy in the defense of human rights and on the promotion of peace. It has actively participated in the discussions and negotiations of all relevant human rights instruments, including the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment. In the Convention Against Torture, Costa Rica was the first country to propose an optional protocol to that Convention before it was even adopted in the year of 1980, with the idea of establishing an international visiting mechanism focused on prevention[5]. By the time, the other delegations considered that the discussion should be focused on having the Convention first, so its discussion was postponed. Nevertheless, the text was presented again in the 1990s and, in response to Costa Rica's request, a Working Group was established to study and negotiate the proposal that finally became reality in 2002.[6]

Moreover, Costa Rica actively participated in discussions against racial discrimination, such as the question of the apartheid regimes in Namibia and South Africa, and the promotion of the program of action for the second decade against racism and racial discrimination, support for the decolonization processes across the world and had an important role in the pacification processes of Central America in the mid-1980s that led to the signing of the peace accords of Esquipulas I and II.

One of Costa Rica's most important contributions to the human rights field has been the creation of the High Commissioner for Human Rights, which it advocated for more than 30 years, following the Minister of Uruguay original proposal in 1951 that went unnoticed for decades. In 1965, Costa Rica again

3 For further information: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CRI/INT_CESCR_ADR_CRI_22761_E.pdf

4 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=79075&nValor3=99845&strTipM=TC

5 For further information: https://www.apt.ch/sites/default/files/publications/opcat-manual-english-revised2010.pdf

6 Rhenán-Segura, J. (1997). Costa Rica, las Naciones Unidas y los Organismos Internacionales. San José: Escuela de Relaciones Internacionales, Universidad Nacional

proposed the creation of a United Nations Commissioner for Human Rights, and the General Assembly created a working group to shape the proposal. This proposal had opponents who managed to block its advance. It was even proposed at one point that the High Commissioner be subordinated to the Security Council, along with the politicization that this implied. However, with the fall of the Berlin Wall and the change in global geopolitics, Costa Rica took advantage of the convening of the World Conference on Human Rights of 1993 in Vienna to propose the role of High Commissioner for Human Rights again, with the support of the Latin American region. This time, it garnered the desired support and was included in the Vienna Declaration and Program of Action[7] indicating the priority of presenting to the 48th UNGA the issue of the creation of the position of High Commissioner, which was finally adopted by the Third Committee on December 20, 1993.[8]

In late 2005, inspired by the World Summit Outcome document, Costa Rica, together with Switzerland, Liechtenstein, Jordan and Singapore, decided to create the Small Five (S-5): a group of small countries with the objective to make the UNSC more transparent and enhance its relationship with the General Assembly. To achieve this, they proposed a series of changes in the methods of work of the Security Council.

In 2012, the S-5 presented a draft resolution that was later withdrawn due to political and procedural considerations.[9] It proposed restrictions in the use of the veto power of the Permanent Members of the UN (P-5) in the cases of genocide, crimes against humanity and serious violations of International Humanitarian Law, amongst other provisions. Even though the resolution was not adopted by the General Assembly, this proposal was later taken up by France and Mexico in 2013 and it is invoked to this day in all conversations around the subject.

The prevention of genocide and mass atrocities and the Principle of Responsibility to Protect (R2P), are two of the axes of work that Costa Rica undertakes in the field of prevention of mass atrocities. Costa Rica has participated in all formal and informal debates on the principle of R2P in the General Assembly. In the Security Council, it participates in open debates on Women Peace and Security initiatives, attacks on medical facilities and personnel in conflict situations, and on children in armed conflict, among others.

In 2012, Costa Rica together with Australia, Denmark and Ghana, and the Centre for the Responsibility to Protect, promoted the establishment of an international Network of Focal Points for R2P. It is part of the Group of Friends of R2P that was created in 2006 and is getting ready to assume the co-chairmanship this year alongside Denmark and Qatar. It is also a part of the Latin American Network for Genocide and mass atrocity prevention, an informal network created in 2012. This is in addition to other initiatives such as GAAMAC (Global Action Against Mass Atrocity Crimes) created in 2013, which is a State-led initiative in which Costa Rica is part of the Steering Group together with Argentina, Denmark, Switzerland and Tanzania, accompanied by a large number of Non-Governmental Organizations dedicated to prevention of atrocities. GAAMAC has had three global meetings (one every two years), the first held in San José, the second in the Philippines and the last in Uganda in May 2018. The GAAMAC IV meeting scheduled for November 2020 in The Netherlands, is rescheduled to 2021 due to the COVID19 pandemic.

In February 16, 2012, Costa Rica became the first country on the continent to be a State Party to all international or relevant treaties for IHL, with the deposit of the instrument of ratification of the International Convention on the Protection of all Persons against Enforced Disappearances. It is also a vocal advocate for Transitional Justice processes and Universal Jurisdiction.

Costa Rica has been part of the United Nations Commission on Human Rights and the Human Rights Council, as well as the Security Council on several occasions.

In the run for its membership for the UNSC in 2008-2009 Costa Rica pledged to work "fighting those jurisdictions that intended to give impunity to the crimes established in the Rome Statute and to explore other avenues for cooperation between the Security Council and the ICC, in view of Security Council resolution 1593 referring the situation in Darfur to

7 https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

8 Rhenán-Segura, J. (1997). Op. Cit.

9 https://www.un.org/press/en/2012/ga11234.doc.htm

the ICC"[10]. Costa Rica proposed as a non-permanent member of the UNSC, a presidential statement S/PRST/2008/21[11] that was adopted by consensus, calling on the Sudanese authorities to cooperate fully with the court with an aim to end impunity for the crimes committed in Darfur.[12]

Costa Rica participates in the open debates that are organized around the reports of the Prosecutor of the International Criminal Court to the Security Council. Also, in the context of the General Assembly the country is active on the general debate organized in the occasion of the report of the President of the ICC to this principal organ of the United Nations in which it advocates for the UN to give the Court the resources for the cases it has referred. Additionally it engages in discussions within the working groups of the Assembly of States Parties of the International Criminal Court, both in The Hague and in New York, to ensure its independence through the defense of its budget, the transparent process for electing its judges, and most recently in the activation of the crime of aggression in the year 2017. Costa Rica also co-sponsored the amendments to article 8 of the Rome Statute presented by Belgium that same year, in which the list of war crimes was expanded by the inclusion of the use of some weapons as war crimes.

Costa Rica is also part of the Informal Ministerial Network for the International Criminal Court that coordinates some international actions for rendering political support to the ICC. The country also engages with several NGOs, including the International Coalition for the ICC and participates in the debates organized to commemorate the International Justice Day and is an active member of the Group of Friends of the ICC in New York, Geneva and The Hague.

In the year 2016, Costa Rica was invited by Liechtenstein, and worked with a group of countries in the resolution that established the Syria IIIM Mechanism (Res GA 71/248), with a view to prevent impunity of mass atrocity crimes that may have been committed in Syria since 2011. Since then Costa Rica has been an active and sustainable supporter of its work.
Lastly, Costa Rica has had the chairmanship ever since its establishment of the Working Group on the Scope and Application of the Principle of Universal Jurisdiction, which had its first session in 2011. The Group under its leadership dedicated efforts to compile international practice on the issue and established a roadmap for carrying out its job. The Group has worked on substantive matters including its concept, the crimes linked to it and other elements important for discussions in the Sixth Committee of the General Assembly.

It has been demonstrated in the last pages, that all countries, no matter their size and political weight can contribute to the bigger conversation in the field of atrocity prevention. Costa Rica has found ways to raise its voice for those who do not have the international stage to do it. Partnering with other like-minded countries and organizations has proved to be the most effective way to steer the discussion and to contribute to the promise of never again.

10 Stagno, B. (2013). Los caminos menos transitados: La Administración Arias Sánchez y la redefinición de la Política Exterior de Costa Rica. Heredia : Editorial Universidad Nacional (EUNA)

11 https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20SPRST200821.pdf

12 https://www.un.org/es/sc/repertoire/2008-2009/Part%20I/Africa/08-09_Sudan.pdf

ICGLR- 14 Years After the Signing of the ICGLR Pact and Protocol on Prevention of Genocide: Lessons Learned and the Way Forward

Liberata Mulamula[1]

I. Introduction

The evolution of the International Conference on the Great Lakes Region (ICGLR) is traced from the wars in the Great Lakes Region between 1994-2004 and genocide in Rwanda. It had as its core objective the prevention of cyclical violence and mass atrocities that dominated the Great Lakes Region for decades. Multiple peace initiatives, interventions, concepts, frameworks, legal instruments have been tried in the Great Lakes Region.

In November 2004, the ICGLR Heads of State and Government signed the Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, more commonly known as the Dar es Salaam Declaration.[2] The Declaration included explicit commitments to fight against all forms of discriminatory ideologies, policies, and practices; all acts of genocide and massive violations of human rights and international humanitarian law; terrorism; racism; ethnics; exclusion; as well as all other forms of violence against civilians.

The Pact, legal instrument to guide preventive measures- The Dar es Salaam Declaration was followed by the signing of a legally binding Pact in December 2006 as amended in November 2012 (herein referred to as the ICGLR Pact), with 10 Protocols integral to it which entered into force in 2008,[3] following ratification by the 11 Member States[4] and later acceded to by South Sudan which joined in 2012. The ICGLR Heads of State and Government collectively affirmed their determination to, "transform the Great Lakes region into a space of sustainable peace and security, political and social stability, shared growth and development, a space of cooperation based on convergent strategies and policies driven by a common destiny."[5]

The Protocols –Among the key Protocols of the Pact is the *"Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes against Humanity and all forms of Discrimination,"*[6] which is an important and key legal instrument of the regional architecture of genocide prevention. It served as a solid and clear expression of political will and collective effort to prevent and fight against mass atrocity crimes including genocide in the Great Lakes region of Africa.

The Great Lakes Region is currently a leading example of a legally binding commitment of state-led initiatives to prevent genocide and mass atrocities despite enduring crises. The institutional structures at regional and national levels represent unique features which don't exist in the case of any other regional organization in Africa, and allows for the organization and its member States to effectively address the situations at risk in the entire region.[7] The legal environment and the peace initiatives, as well as preventive diplomacy including dialogue and mediation efforts, have pointed to the ability of ICGLR to quickly alert the different mechanisms for preventing and addressing possible deterioration and escalation of situations.[8]

It has been rightly noted that the region has observed milestone achievements in building up capacities to prevent violent conflicts, there are challenges and gaps within the ICGLR which should be addressed from the perspective of prevention of mass atrocities.[9]

An analysis of the origins, methodological approaches and results of the ICGLR process can bring many lessons in terms of peace building and prevention in countries affected by endless conflicts and instability.

It is relevant therefore to recall the history of the ICGLR, reflect critically on the experiences and lessons learnt in its 14 years of its existence in implementing preventive measures and whether the vow

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2 See Background and full text of the Dar es Salaam Declaration: http://www.icglr.org/index.php/en/background

3 http://www.icglr.org/index.php/en/the-pact

4 The 12 member states of ICGLR(plus South Sudan) are: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, South Sudan, Sudan, Uganda, Tanzania and Zambia.

5 ICGLR Pact Preamble para.3

6 Downloadable from: http://www.icglr.org/index.php/en/protocols

7 African Task Force on the Prevention of Mass Atrocities (2016)

8 ibid

9 ibid

of "Never Again" to genocide will become a living reality in the Great Lakes Region.

I. Background to the establishment of ICGLR

The Great Lakes region as known today, has had a turbulent past. It is a region that has seen some of the world's deadliest conflicts. In the past little was known about this region other than conflicts, wars and atrocities. At one time the countries of the Great Lakes Region produced more refugees and Internally Displaced Persons than any other region in the world.

The trigger to the regional conflicts and inter-state wars was the horrific genocide in Rwanda in 1994 in which nearly 1 million people, mostly Tutsis, were murdered over the course of 100 days by the country's extremist groups and people. The aftermath of the genocide saw a refugee crisis in neighboring countries and new conflict in the Democratic Republic of Congo (DRC). No country remained immune to the effects the genocide in Rwanda. It became a regional problem. The cost of the ensuing humanitarian crisis was beyond imagination both in human casualties and monetary costs.

This brought to the fore the realization that each State has a role to play in bringing peace in the region for stability and sustainable development of individual countries and the region as a whole. Hence the Heads of State and Governments from the Great Lakes Region under the auspices of the United Nations and African Union signed a legally binding Pact on Security, Stability and Development in the Great Lakes, in Nairobi Kenya on December 2006 with the participation of 11 countries: Angola, Burundi, Central Africa Republic, Democratic Republic of Congo (DRC), Kenya, Republic of Congo, Rwanda, Tanzania, Uganda, Sudan, and Zambia. South Sudan joined in 2012.

The Pact was an important milestone in the search for peace and stability in the region. It established the International Conference on the Great Lakes Region (ICGLR), as a regional framework and an intergovernmental body with a Secretariat headquartered in Bujumbura, Burundi.

The idea of an international conference on the Great Lakes Region was therefore born out of the ashes of the tragic genocide in Rwanda and conflicts that embroiled the region (Burundi, Central African Republic, the Republic of Congo, the Democratic Republic of Congo, Uganda, Rwanda and Sudan). Its establishment was based on the recognition that political instability and conflicts in these countries have a considerable regional dimension and thus require a concerted effort to promote sustainable peace and development.

The ICGLR was also out of the recognition that people of the Great Lakes Region are interlinked ethnically, culturally and linguistically and the instability initially generated by purely internal causes in each country quickly spreads to the entire region. Hence, the need to seek solutions to the conflict and instability endemic to the region within a regional framework.

II. The Pact, the protocols and its implementation mechanisms

The signing of the Pact demonstrated the strong political will of States to build structures and expand the scope of responsibility to prevention beyond governments. This scope would include the civil society and other stakeholders such as women and youth groups.[10]

The Pact also established follow up regional mechanisms including the Summit, forums and national coordination mechanisms for effective implementation of the Pact and programs of peace and security, good governance and democracy, humanitarian issues and socio-economic development programs.

The regional approach was seen as the most viable framework for prevention and putting an end to mass atrocities as a collective responsibility of all States and people.

The overall vision of the ICGLR was clarified to transform the great lakes region into a zone of peace, stability and development. The added value of the organization lies in its regional character and scope. It is the only member States initiative in the region that combines political action with economic and social initiatives to respond to the challenges facing the region, grounded in a regional approach.
All the activities in the initiatives of the IC

10 ICGLR Background Documents (2006)

GLR have a regional focus. The leaders adopted the principle of, "thinking nationality and acting regionally." Since, through experience they had come to realize that the conflict experienced in the Great Lakes Region inevitably had regional dimensions, the approach of the ICGLR is to provide regional solutions that respond to regional challenges.

Protocol on prevention and punishment of the crime of genocide

One of the Protocols integral to the Pact is the Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all Forms of Discrimination. This protocol is provided for under Art 8 of the Pact. Member States agreed to respect, protect and fulfill five major commitments:

- to refrain from, prevent and punish the crime of genocide, war crimes, crimes against humanity and all forms of discrimination;
- to condemn and eliminate all forms of discrimination and discriminatory practices;
- to ensure the strict observance of this undertaking by all national, regional and local public authorities and institutions;
- to proscribe all propaganda and all organizations which are inspired by ideas or theories based on the superiority of a race or a group of people of a particular ethnic origin, or which try to justify or encourage any form of ethnic, religious, racial or gender hatred or discrimination.

This Protocol with a specific focus on prevention as a regional aspiration, needs to be read with the other ICGLR Protocols that focus on related causes and what drives violent conflicts in the region. They explore the history of grave human rights abuses, sexual violence, the illegal exploitation of natural resources, influx of refugees, and insecurity of common borders among many others.[11]

Also, of relevance are the UN Convention on the Prevention and Punishment of genocide, The Rome Statute (Statute of the International Criminal Court) and the statute of the International Criminal Court for Rwanda. They are mutually reinforcing.

Under Article 21 Member States are required to endeavor to ratify the Statute of the International Criminal Court in accordance with their constitutional requirements. And to cooperate with the International Criminal Court (ICC) (art 23). In case of a conflict between the request by the ICC and of another member state to extradite the same person, priority is given to the ICC (art 24).

Regional committee for genocide prevention

Particular to the protocol is the establishment of a fundamental institution: The regional committee for the Prevention and the Punishment of the crime of Genocide, war Crimes, Crimes Against Humanity and all forms of discrimination (otherwise referred to as a regional Committee on Prevention of Genocide) established in 2010 in Kampala, Uganda.

One of the functions of the Committee is to regularly review the situations in each Member State for the purpose of preventing genocide, war crimes and crimes against humanity and to collect and analyze information related to these crimes and to alert the Summit of the Heads of States of ICGLR in good time in order to take relevant measures to prevent potential crimes.

The Members are responsible for establishment of national mechanisms in their respective States which have the same mandate as that of the regional committee, to alert their governments of potential crimes against humanity that could unleash mass atrocities and genocide.

By establishing this Committee, the onus was now put on the Member States to come up with a common strategy and policies that would draw from interactive engagement of the grass roots and the communities to ensure that the clarion of "Never Again" becomes a reality.

As of now, there are such national mechanisms in Tanzania, Kenya, Uganda, Congo Brazzaville, DRC Congo, South Sudan and Rwanda. Rwanda is well ahead of the others due its historical past. The other Member States are at different stages of putting in place policies and laws to that effect.

A number of capacity building seminars have been conducted for the regional and national committees, where they exist, on early warning and response,

11 These Protocols are legally binding.

prevention of land and electoral conflicts, prevention of gender-based violence and other inter-communal conflicts.

Various country-level initiatives have been implemented as practical steps towards implementing the Protocol on prevention and punishment of the crime of Genocide e.g. establishment of Peace Committees in Tanzania and submission of the omnibus Parliamentary Bill in Uganda for domestication of this and other relevant protocols. Training manuals have been developed and training resources to guide development and implementation of tailored national and communal projects towards prevention of genocide and mass atrocities.

Building international partnerships

These include the UN Office of the Special Advisor on Genocide Prevention, United Nations High Commissioner for Human Rights (UNHCHR), George Mason University, the Auschwitz Institute for Peace and Reconciliation, GAAMAC, GPAnet, Swiss Peace, etc. to advance collaboration between international, regional, national and local actors in these efforts.

III. Lessons and way forward

- The Great Lakes Region despite relentless peace efforts and agreements, remains one of the most volatile regions. We still witness the cycle of violence and instability in the DRC, Burundi, CAR, the political tensions, insecurity caused by armed groups to humanitarian crises. There is also a growing concern about reports of linkages between these armed groups and international terror networks posing grave security threat in this volatile region.
- The fragility of States emerging from prolonged armed conflicts, the abject poverty, weak governance structures, ethnic tensions, policies of exclusion, non-respect of constitutional terms, heightened political tensions and violence during and after elections have characterized the region.
- The Pact and Protocols remain the valuable instruments to stabilize the region (there is no reason why ICGLR should not be more active in South Sudan and Sudan for example more than IGAD).
- The international support to the ICGLR Regional Committee for Prevention of Genocide has been remarkable. The article establishing this Committee opens doors of collaboration with other actors and bodies of the like mind including the African Commission on Human and People's Rights and Civil Society Organizations, UN Agencies and other institutions which are well placed furnish with information that would assist with the discharge of its mandate.
- Cultivating and sustaining political will remains the hardest challenge but is doable through sustained efforts.

Way forward

The various initiatives taken at the international and regional levels will have no effect if they work in isolation from the local initiatives. Without local ownership and sustainable commitment to regional and national processes, the prevention of mass atrocities and genocide in the Great Lakes Region will remain a daunting task.

There is growing recognition that regional and subregional initiatives are the primary approaches to prevention, despite underlying challenges such as lack of resources, weak capacity, and inadequate response capabilities of states to identify threats.

ICGLR framework provides a comprehensive architectural programme for peace building, post conflict reconstruction and development with overwhelming recognition of the inextricable link between security and development as well as good governance. It is also anchored on the fundamental principles of ownership, inclusiveness and partnership.

Sharing of information and intelligence, community participation and building trust among and between neighboring countries is critical- UN policy provides that conflict prevention, "should build on structured early warning, information gathering and a careful analysis of the factors driving the conflict."

The UN Secretary General Antonio Guterres has made prevention the overarching priority for achieving sustained peace and development. Countries should seize this opportunity to enhance engagement with the United Nations system in strengthening early warning systems for the prevention of genocide, crimes against humanity and war crimes, and a rapid intervention mechanism by building capacities of national committees established for that purpose.

There is no need for re-inventing the wheel. There already exist numerous frameworks, mechanisms, institutions at the national, regional and international levels which must be strengthened and capacitated for preventive, conflict management and resolution measures, and peacebuilding.

Regional Mechanisms and Prevention Experiences: Lessons Learned and Ways Forward

Lamberto Zannier[1]

A new geopolitical landscape

At the beginning of the 1990s, as new borders appeared on the map following the dissolution of the Soviet Union and of Yugoslavia, new conflicts erupted in Europe, provoked by a combination of nationalism and geopolitical factors. As emerging states were striving to assert their new identity (or revive their old one), diverse groups found themselves caught within the new borders, and this in many cases provoked instability and conflict. In some cases, these divisions were so deep that a number of those conflicts are still unresolved today.

It was against this background that the Organization for Security and Co-operation in Europe (OSCE) States, almost three decades ago, decided to establish the function of a High Commissioner on National Minorities (HCNM), mandated to provide early warning at the first sign of imminent conflict arising from tensions involving national minorities, and to assist countries in developing and implementing policies that facilitate the integration of diverse societies, which is key to conflict prevention. While the protection of minority identities and rights is certainly a central issue, the dynamics between minority and majority groups are looked at from a conflict prevention perspective: a clear recognition that, at a time when the degree of diversity in our societies has dramatically increased, the promotion of policies that facilitate integration is one of the most effective tools for preventing conflicts rooted in such diversity.

In fact, classic inter-state conflict has almost disappeared. Acute crises and conflicts have increasingly developed a hybrid nature and are often characterized by internal strife, sometimes in the context of failed or dysfunctional states, or violent separatism, in some cases accompanied by quasi-military operations affecting the civilian population. Societies divided by ethnic, political, religious, historical, cultural and linguistic factors have become unstable and this often makes it difficult to address effectively the factors that can ignite future crises and conflicts through traditional conflict prevention tools.

Recent waves of immigration have further diversified the demographic composition of society, posing additional challenges. Against this backdrop, populistic or nationalistic policies have found fertile ground, further complicating the progressive integration of societies through a broad and balanced range of policies.[2] Along with the increasing appearance of inflammatory language in mainstream political discourse, hate crimes and hate speech are on the rise. These dynamics can pave the way to further marginalization of certain segments of our societies and, in some cases, to radicalization and extremism.

In addition, the higher degree of polarization of international relations has in many cases affected the attitude of minorities, which increasingly look for support and protection from their "kin" states and often resist integration, demanding levels of autonomy that would effectively isolate them from the rest of the society of the country where they reside. The space allowed for efforts to find common ground between different parties has shrunk. States are increasingly urging the international community to take action against other states' policies that negatively affect their communities residing there, while, in some cases, resisting attempts to vet their policies towards those communities abroad or affecting their own internal minority groups.

The need for new approaches to conflict prevention

These developments are a clear demonstration of the centrality of the minority dossier to international peace and security. Indeed, today's crises in and around Europe often emerge over minority-related issues: legislation that is seen as infringing on rights, attempts by states to claim privileges for, and extend protection to, "their" minorities in other states, as well as multiple questions related to language, education, citizenship, historical legacies. Furthermore, even where minority-related issues are not the main cause of instability, how states choose to handle diversity can determine how strong and resilient societies are to internal or external threats. This is why policies promoting a balanced management of diver-

1 Former High Commissioner for National Minorities, OSCE

2 Cf. Francesco Palermo, Addressing Contemporary Stalemate in the Advancement of Minority Rights, in Minorities, their Rights, and the Monitoring of the European FCNM, edited by Tove Malloy and Ugo Caruso, Nihoff Publ., 2013, pp. 132-133

sity have also become a powerful conflict prevention tool.

The growing realization of the relevance of minority-related – and, more broadly, societal - issues to international peace and security should encourage us, both nationally and collectively, through effective multilateral policies, to rethink the effectiveness of the traditional conflict prevention methodology.

There is a need for a strong global leadership in promoting new approaches. United Nations Secretary General Guterres' appeal for a surge in conflict prevention is a good starting point. Regional organisations have a special role to play. They can be extremely helpful in promoting policies that foster better balanced and integrated societies and in tailoring them to the specific character of these societies, taking into account local cultural, historical, religious or political factors.

Sharing experiences with other regions is a good point of departure for promoting these new approaches to conflict prevention. A series of panel discussions has taken place over the last three years at the United Nations in New York, with a view of promoting an exchange of practical experiences and best practices in this field among key regional actors and United Nations institutions. They have provided a joint forum for reflection and exchange on lessons learned on how integration policies that address the root causes of instability can foster the inclusion and empowerment of all social groups, including women and youth, and as such contribute to more stable and resilient societies.

The OSCE High Commissioner on national minorities' policy advice to build resilient societies

With this in mind, successive OSCE High Commissioners on national minorities have developed over the years a comprehensive set of Recommendations and Guidelines addressing the most salient aspects of minority-related policies and challenges. It is interesting to note that these documents do not represent a consensual set of principles jointly developed and agreed upon by the States: they draw their authority from the personal accountability of the High Commissioner to the membership of the Organization, the prestige of the office and the high quality of experts and contributing partners. If their text were to be agreed by consensus, in line with the way the OSCE produces its decisions, in the current deeply divided political environment it would probably be impossible to issue any recommendations of real significance. Nonetheless, the respect for the institution translates into respect for its recommendations, which have become a fundamental policy tool guiding the action of the High Commissioner.

The existing set of Recommendations and Guidelines range from an overview of the policies needed to promote the overall processes of integration[3] or the challenges of looking at minority issues from the perspective of inter-State relations,[4] to others which address more specific angles, such as education, language, participation, media, policing in minority areas, or access to justice. There is a need to constantly invest in ensuring that this policy guidance remains relevant, up-to-date and addresses new challenges as they arise. It is also essential that it is well known and understood and, above all, used by governments and parliaments as guiding principles for all policies that have an impact on minorities and diverse societies in general.

In this context, education emerges as a central policy tool which, if not well managed, can divide societies and provoke clashes and crises. Over the years, the attention of successive High Commissioners has focused in particular on overcoming ethnicity-based segregation, which still persists in many contexts where they operated, and on the language in which education is delivered. In several multi-ethnic societies new trends towards greater investment in teaching in the state language (which is undeniably important for integration) are creating tensions, as the reduced investment in multilingual education is perceived as undermining the identities of minority communities. These tensions are often fuelled or exploited by external players, who may use minorities as proxies in the wider geopolitical game. As a reaction, one can often witness steps to accelerate the introduction of new legislation to strengthen the use

3 OSCE HCNM, The Ljubljana Guidelines on Integration of Diverse Societies, November 2012, available at: https://www.osce.org/hcnm/ljubljana-guidelines.

4 OSCE HCNM, The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, October 2008, available at: https://www.osce.org/hcnm/Bolzano-Bozen recommendations.

of the state language[5] by countries where minority languages had traditionally been given a stronger profile in the education system. In addition, in post-conflict situations, segregation in education based on language and ethnicity still prevails. And language is often seen as a tool to promote a higher status of a group within a diverse society.[6] To overcome these divisions, multilingual education is often the most appropriate method to achieve a balance between protecting minorities' mother tongues, and the need for fluency in the state language(s) to ensure minorities are fully engaged in public life and can realize their full potential in society, wherever they live.

The effective participation and representation of persons belonging to national minorities in public life is a key objective for the balanced integration of societies, as it is indicative of the level of inclusion of diversity in society as a whole. [7] A meaningful level of representation and participation of minorities in all aspects of a country's public life, such as elected assemblies, executive structures, the economic sector, the courts, and the civil service, is vital to foster loyalty towards and trust in state institutions.[8] This helps ensure ownership of decision-making processes by all members of society, which in turn positively affects social cohesion.

Another key area is the rule of law. If rule of law institutions do not reflect in their composition the diversity of the society and if they are perceived as instruments in the hands of the majority, this will greatly affect the credibility and effectiveness of the overall institutional setup of a country. For instance, when the police is representative of the composition of society and is responsive to the wishes and concerns of all ethnic communities, it has the potential to promote stability within the state and increase its legitimacy in the eyes of society, including among minorities.[9] The same notions apply to the judiciary.[10] A lack of adequate representation of minority communities in the judiciary diminishes minorities' confidence in the justice system. The failure to adequately prosecute crimes that disproportionately affect minority communities, such as hate crimes committed against them by members of the majority, can also affect confidence, thereby also diminishing the deterrent effect, but also the credibility, of the justice sector.

Geopolitical confrontation has also produced opposing, and indeed contradicting, narratives often reflected by mainstream media. This climate can deeply affect processes of integration. Also for this reason, it is important for states to recognise a need for space and active engagement of minorities in broadcast media, including in their own language.[11] Social media, in particular, and its ability to further polarise society is increasingly high on the conflict prevention agenda. [12] Transformations in the media landscape during the past decade have multiplied opportunities to access an abundance of diverse content, as well as tools for individualized and interactive participation in public debate. Its potential to defuse or, alternatively, ignite conflict has therefore been exponentially amplified.

As media increasingly transcends borders, minorities can easily form transnational networks, which in turn can play a key role in supporting the preservation of cultures and traditions. Regrettably, however, the media also carries risks for peace and stability. Transnational networks involving minorities spread across various states have the potential to interfere in, and possibly damage, bilateral relations. News media carries the risk of political manipulation, and minorities are particularly vulnerable to partisan narratives. States have a responsibility – but indeed

5 OSCE HCNM, The Oslo Recommendations regarding the Linguistic Rights of National Minorities, February 1998, available at: https://www.osce.org/hcnm/oslo recommendations.

6 Bob Deen and William Romans, Shaping language policies to promote stability, in "Language Policies and Conflict Prevention", Brill/Nijhoff, 2018, Brill.com

7 OSCE HCNM, The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999, available at: https://www.osce.org/hcnm/lund-recommendations.

8 Political participation of minorities: a commentary on international standards and practice, edited by Marc Weller and Katherine Nobbs, Oxford University Press, 2010

9 OSCE HCNM, Recommendations on Policing in Multi-Ethnic Societies, February 2006, available at: https://www.osce.org/hcnm/policing recommendations.

10 OSCE HCNM, The Graz Recommendations on Access to Justice and National Minorities & Explanatory Note, November 2017, available at: https://www.osce.org/hcnm/graz recommendations.

11 OSCE HCNM, Guidelines on the use of minority languages in the broadcast media, October 2003, available at: https://www.osce.org/hcnm/32310

12 OSCE HCNM, The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note, February 2019, available at: https://www.osce.org/hcnm/tallinn guidelines.

also an interest - to ensure that the media is used in a way that minimizes these risks and catalyses the integration of their societies.

An issue increasingly observed for its impact on inter-ethnic relations is related to competing and confrontational historical narratives, which often translates in controversial symbols, monuments and sometimes even education curricula. The way people understand, remember, and value history is an important factor affecting the self-image and personal identity of a community. When remembering the past, people have a tendency to glorify and commemorate achievements, victories, and sufferings, while glossing over the darker chapters concerning the tragedies and suffering their ancestors may have inflicted on others. As a result, different groups often attribute different meanings to the same events. Variations in the way people see and remember history can divide societies, even along ethnic lines, for decades or even centuries after the events have occurred. This is what has been referred to as the "mirror of pride and pain,"[13] where the pride of one group corresponds to the pain of the other.

The State has an important role to play in addressing these issues. While it is up to the central or local authorities to decide whether to permit or ban commemorations, to erect or remove statues, to name or rename public spaces, and to organize how history is taught and learned in schools, they should always consider that these political choices may provoke strong reactions from within a society and can sometimes fuel tensions and trigger conflict. History education is key in this respect, as it determines what future generations will learn about their past. It should take into account the diversity of society and acknowledge the presence of multiple and sometimes contrasting perspectives and narratives, focussing on developing students' critical, historical and inquisitive thinking skills, so they can make well-informed judgments about historical facts. And when it comes to public spaces, where States make it visible for all to see whom and what should be remembered, it is important that the public representation of historical memory – such as through monuments, symbols, or street names - promotes a sense of belonging for as wide a spectrum of the population as possible, including for national minorities. In some cases, objects can be contextualised or repurposed in a way that acknowledges their historical and artistic value, while accommodating the views of different groups in society.

13 Cf. Joke van der Leeuw-Roord, A Textbook for Europe: Could the "History of Europe" Avoid the Traditional European Mirror of Pride and Pain? , Internationale Schulbuchforschung, Vol. 18, No. 1, Europa / Europe (1996), pp. 85-95, at: https://www.jstor.org/stable/43057019

Conclusion

As minorities become an increasingly important pawn in the geopolitical game, a set of basic principles and rules applied equally to all can serve as a valuable tool to prevent crises and reduce tensions. In that sense, the High Commissioner's Recommendations and Guidelines become effective tools for conflict prevention if they are integrated in the policies of participating States and operationalized accordingly. Regrettably, however, at a time when there is an obvious need to make additional efforts to strengthen effective multilateralism and investing in principles and tools that can advance global stability and security, the impact of geopolitics is devastating: the insufficient investment in co-operative platforms by key players within the international community only reinforces the current geopolitical polarization and weakens existing tools for common reflection, dialogue, and concerted preventive action.

The High Commissioner's main working method of quiet diplomacy may therefore have to be complemented by new tools. New horizons need to be explored, and new partnerships created. Quiet diplomacy must be accompanied by high-profile initiatives aimed at better informing governments and the public about recommended policies, and promoting their implementation. There is also a need to continue to invest to forge and strengthen coalitions with other international players, including the United Nations, regional organizations and arrangements operating under Chapter VIII of the United Nations Charter, as well as with civil society, including in the context of the longer-term sustainable development agenda. The stronger engagement of women and youth should be actively promoted. Sharing tried and tested tools that have proven to be effective in many contexts, as widely as possible is an effective way to provide a concrete contribution to our common efforts to avert conflict and promote stable conditions for prosperity and peace.

Parliamentarians and atrocity prevention

Kyle Matthews[1] and Daniel Twijuke[2]

Mass atrocity crimes, notably genocide, crimes against humanity, war crimes, and ethnic cleansing, continue to plague numerous countries and remain a serious threat to human rights today. While the international community has come together to endorse the 1948 Genocide Convention, the creation of the International Criminal Court, as well as adopt the Responsibility to Protect principles, more needs to be done.

Important new institutions to prevent atrocities have been created at the multilateral level, including the United Nations office for the Prevention of Genocide and the Global Action Against Mass Atrocity Crimes initiative. Globally, new civil society organizations have emerged to advocate and propose public policies to prevent atrocity crimes. These include the Global Center for the Responsibility to Protect, the Asia Pacific Centre for the Responsibility to Protect, and the Coalition for Genocide Response.

Despite all these developments, preventing atrocity crimes and holding the perpetrators accountable continues to be an elusive target. The historically high numbers of refugees and internally displaced across the globe is a testament to this fact. Civilians in Syria, the Rohingya from Myanmar, the Yezidis in Iraq, and the Uyghurs in China are examples of situations where people face constant persecution.

As such, it is imperative that the atrocity prevention community continues to work to improve transnational mechanisms to prevent the large scale human rights abuses that we have seen splashed across the front pages of newspapers and media channels over the past decade. As a complement to new resources being dedicated to mass atrocity prevention, new focus must be applied in engaging and supporting parliamentarians as key allies, who have thus far been underutilized.

Engaging Elected Officials

Over the past decade there has been a substantial push by civil society groups and international organizations to engage and empower parliamentarians as key actors in the atrocity prevention community. In fact, while significant work on atrocity prevention is done by diplomats in their respective Foreign Ministries, as well as civil society activists, parliamentarians have not been used to their fullest capacity. These are elected officials and legislators whose responsibility is to use their legislative power and hold the executive branch of government accountable, while ensuring the implementation of all international treaties and human rights laws.

At the 128th Assembly of the Inter-Parliamentary Union held in Quito, Ecuador in 2013, the intergovernmental body designed to foster parliamentary diplomacy, with the goal of promoting global peace and security, approved a resolution to prevent atrocity crimes. The resolution entitled, "Enforcing the responsibility to protect: The role of parliament in safeguarding civilians' lives," contains over 30 action points that were identified as realistic steps individual parliamentarians could push for in their respective legislatures.[3] Some of the policy prescriptions called for targeted action, such as public education and awareness of mass atrocities situations, as well as strengthening oversight mechanisms to combat terrorism by non-state actors. Others included reaffirming existing commitments such as the need to protect citizens, especially vulnerable populations such as women and children, as well as continued adherence to international human rights laws. The resolutions marked the importance of elected officials in upholding the Responsibility to Protect, and the need for them to take coordinated action on both the domestic and international levels to ensure accountability in preventing large scale human rights abuses.

In April 2017, the Stanley Foundation, the Auschwitz Institute for Peace and Reconciliation, the Global Center for the Responsibility to Protect and the Montreal Institute for Genocide and Human Rights Studies convened a meeting in The Hague, Netherlands. Called "Global Parliamentarians: The Role of the Legislative Branch in Building National Mechanisms for Atrocity Prevention", the meeting's thematic focus was to discuss how parliamentary bodies can best leverage their frameworks to facilitate mass atrocity prevention. This important discussion was designed to facilitate discussions between lawmak-

1 Executive Director of the Montreal Institute for Genocide and Human Rights Studies MIGS at Concordia University

2 Youth Fellow at MIGS

3 Inter-Parliamentary Union "Enforcing the responsibility to protect: The role of parliament in safeguarding civilians' lives" http://archive.ipu.org/conf-e/128/Res-1.htm

ers from various jurisdictions, and was an opportunity to exchange information and best practices on atrocity prevention.

Following the meeting, the Stanley Foundation published a policy memorandum that explicitly recognized that parliamentarians have a unique "special speaking privileges and public profiles".[4] The memo called for elected officials to use a combination of legislative, advocacy, education, and oversight capacities to boost support of atrocity prevention efforts. The underlying linkage with the three aforementioned examples is the explicit recognition that legislative bodies can play a larger role in mass atrocity prevention.

Given the rise of non-state actors such as ISIS/Daesh in Iraq and Syria, Boko Haram in Nigeria and West Africa, and al-Shabaab in Somalia, many elected officials have expressed concern that these groups not only opposed democracies and the rule of law, but were also deliberately targeting civilians with deadly violence. In response Parliamentarians for Global Action, the Stanley Foundation and the Montreal Institute for Genocide and Human Rights Studies convened over 100 parliamentarians and subject matter experts under the umbrella of the Milan Forum for Parliamentary Action in Preventing Violent Extremism and Mass Atrocities.

The first of three outcome documents produced at the meeting was the, "Milan Plan of Action on Preventing Violent Extremism and Mass Atrocities." Endorsed by all lawmakers who were present, the plan of action went a step further in strengthening parliamentary collaboration through a commitment to address the root causes of mass atrocity through action directed toward 1) eliminating the causes of mass atrocity in accordance with the 2nd pillar of R2P, 2) addressing the proliferation of weapons to mass extremists and 3) ending impunity for violent extremists 4) addressing violent repression which can lead to mass atrocity and 5) promoting strong and healthy civil societies.[5]

The second outcome was the draft resolution which condemned the violence of ISIS/ Daesh, a group which disproportionately targeted the vulnerable Yazidi minority in Iraq.[6] The resolution calls for Iraq to ratify the Rome Statute as to provide the International Criminal Court the necessary jurisdiction to prosecute the people responsible for genocide and crimes against humanity in Iraq, fair and impartial trials for ISIS members, as well as reparations for all victims.

The third document, "Preventing violent extremism and mass atrocities - A handbook for parliamentarians"[7], provides the necessary criteria to individuals in legislative bodies to understand the growing link between countering violent extremism and atrocity prevention. The handbook elaborates on themes such as radicalization/ mobilization, community engagement as a preventative strategy, the role of justice as a preventative tool, as well as the unique role Parliamentarians have in global efforts to halt mass atrocities committed by non-state actors.

Legislative Leadership: Atrocity Prevention Focal Points

Since the Responsibility to Protect was endorsed by all UN member states during the Global Outcome Summit in 2005, we have seen national governments appoint individuals with the explicit task of preventing mass atrocity crimes. Known as "R2P focal points" and totaling more than 60 government representatives, they meet annually under the leadership of the Global Centre for the Responsibility to Protect, the official secretariat. The secretariat helps facilitate joint advocacy, capacity building initiatives, and the exchange of best practices between states.

4 Policy Memo, Preventing Mass Atrocities: A Road Map for Legislators, Stanley Foundation, July 11 2017 https://stanleycenter.org/publications/policy_memo/PreventingMassAtrocities-RoadMapPM718.pdf

5 Milan Plan of Action on Preventing Violent Extremism and Mass Atrocities, 39th Annual Forum of Parliamentarians for Global Action, 27 - 28 November 2017 http://www.concordia.ca/content/dam/artsci/research/migs/docs/Milan-Plan-of-Action.pdf

6 Draft Model Parliamentary Resolution http://www.concordia.ca/content/dam/artsci/research/migs/docs/Model%20Parliamentary%20resolution%20on%20returnees%20(ISIL-ISIS-Daesh).pdf

7 Preventing violent extremism and mass atrocities - A handbook for parliamentarians, Montreal Institute for Genocide and Human Rights Studies, 28 May 2018 https://issuu.com/migsinstitute/docs/380461454-preventing-violent-extrem

No efforts, however, have been made to appoint similar focal points in national legislatures. Given the public profile parliamentarians have compared to civil servants and diplomats, such as publically holding the executive branch to account via media interviews, writing an opinion piece in a newspaper and/or holding parliamentary hearings, this appears to be logical next step in enabling leadership in the fight to prevent atrocity crimes. Lawmakers can apply pressure on both legislative and executive members of governments to maintain adherence to international human rights law, mobilize additional financial resources for civil society organizations, and support the United Nations in countries where there is a risk of violence against civilians.

Most legislative bodies across the world have at least one individual who has an interest in human rights. With the support of civil society, these lawmakers can be mobilized to become atrocity prevention focal points. Most legislatures have a network of members in parliament who are associated with Parliamentarians for Global Action, an organization that works extensively on atrocity prevention and supports the International Criminal Court.
Building National Networks: Emulating Canada

Parliamentarians might build national networks, learning from the Canadian All Party Parliamentary Group for the Prevention of Genocide and Other Crimes Against Humanity.[8] Established in 2006 by then Senator Romeo Dallaire, the group is composed of Members of Parliament and Senators from various political parties. They work to ensure that Canadian parliamentarians have the support and knowledge of experts to ensure that Canada is taking timely and effective action to prevent genocide and crimes against humanity.

Supported by the Montreal Institute for Genocide and Human Studies, the parliamentary group hosts experts from the United Nations, foreign governments, and think tanks. The group also creates vital links with Canadian organizations and diaspora groups seeking justice and accountability, essentially forming a domestic constituency for atrocity prevention.

The group also compiles reports that are shared with its members and the wider Canadian government, and organizes press conferences to shine a light on situations of concern. Last but not least, the group also convenes stakeholders and conducts studies into Canadian foreign policy and atrocity prevention. Recent reports have focused on the role of emerging technologies, including social media, as a new tool in the atrocity prevention toolkit.

Mapping New Policy Tools for Parliamentarians in Legislating Atrocity Prevention

Over the past decade, parliamentarians have taken action to develop new policy tools to protect human rights, with some focusing directly on the prevention of mass atrocity crimes. In the United States in particular, several important initiatives are worthy of discussion and emulation.

The first is the Elie Wiesel Genocide and Atrocities Prevention Act, which was recently introduced in the U.S. Senate Committee on Foreign Relations, written by Democratic Senator Benjamin Cardin, and cosponsored by 20 Republican and Democrat senators. The act functions as a general mechanism for mass atrocity prevention.

The Elie Wiesel Act has four functions including: declaring the critically important nature of atrocity prevention and inter-agency coordination, connecting national interest and mass atrocity prevention, additional training requirements for Foreign Service Officers, and designating the President's responsibility to transmit reports on current efforts targeted towards atrocity prevention. Senator Cardin stated that, "Our values and national security interests require us to ensure that the United States utilizes the full arsenal of diplomatic, economic, and legal tools to take meaningful action before atrocities occur."9. Lawmakers in other countries should study the Elie Wiesel Act and work with their fellow parliamentarians to introduce a similar act. This would ensure atrocity prevention mechanisms are created and institutionalized prevention occurs in their respective countries.

8 http://www.concordia.ca/content/dam/artsci/research/migs/docs/Model%20Parliamentary%20resolution%20on%20returnees%20(ISIL-ISIS-Daesh).pdf

9 S.1158 - Elie Wiesel Genocide and Atrocities Prevention Act of 2018 https://www.congress.gov/bill/115th-congress/senate-bill/1158

From Law to Action: Magnitsky Sanctions

One of the most important developments has been the adoption of "Magnitsky" sanctions. In the United States, the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act) provides a framework that can be used by parliamentarians in their efforts to prevent and interdict mass atrocities. This framework originated from the "Russia and Moldova Jackson - Vanik Repeal and Sergey Magnitsky Rule of Law Accountability Act in 2012", which was designed to impose sanctions on Russian officials responsible for the death of Sergey Magnitsky, a Russian accountant who was believed to have been tortured to death in prison.[10]

The scope of the Sergey Magnitsky bill was expanded in 2016 to cover all individuals responsible for atrocities and human rights violations, culminating into what is now the Global Magnitsky Act. Passed with bipartisan support in the U.S. Senate, the act sets out the legal criteria that the U.S. President and the Secretary of State use, vis-à-vis the U.S. congress, in deciding whether to impose sanctions on individuals complicit in the violation of human rights and corruption. The official preamble calls for "… sanctions with respect to foreign persons responsible for gross violations of internationally recognized human rights, and for other purposes."[11]

The Act was strengthened by President Donald Trump through Executive Order 13818, which expanded on the "corruption" threshold scope and added "status based responsibility," in which an individual can be sanctioned simply for his or her status as an official or leader in an entity that is engaged in serious human rights abuse, corruption, or the transfer of the proceeds of corruption.[12]

Due to political pressure by the U.S Congress, the Office of Foreign Assets Control, which is situated in the Treasury Department, has applied Magnitsky sanction against Jammeh Yahyah (former President of Gambia), Joseph Kabila (former President of the Democratic Republic of Congo), and Maung Maung Soe (Myanmar military official) amongst others.[13]

Further demonstrating the potential of the Global Magnitsky Framework, other countries including Canada and the United Kingdom have adopted similar legislation. Furthermore, a resolution was passed by the European Parliament requiring all member states to adopt their own respective forms of Global Magnitsky legislation.[14]

The Global Magnitsky Act is also shaping new legislation with regards to holding Chinese officials accountable for the large-scale persecution of more than one million Uyghur Muslims. Drafted by Senator Marco Rubio, with bipartisan support from over 50 co-sponsors from the Senate Foreign Affairs Committee, the Uyghur Human Rights Policy Act authorizes financial and mobility sanctions against Chinese government officials complicit in the oppression of their minority Muslim population.

Moving Forward

The global struggle to prevent mass atrocities will continue well beyond this decade and well into the future. It is imperative that democratic states, civil society organizations, and international bodies increase their cooperation in upholding the responsibility to protect principles and in enforcing the Genocide convention. A key path forward is for parliamentarians to become much more engaged in these issues, and complement and support the work of others to make "never again" a reality. From targeted sanctions to mobilizing political will, parliamentarians have an increasingly important role to place in protecting civilians across the globe.

10 S.1039 - Sergei Magnitsky Rule of Law Accountability Act of 2012 https://www.congress.gov/bill/112th-congress/senate-bill/1039

11 H.R. 624 - The Global Magnitsky Human Rights Accountability Act https://www.congress.gov/bill/114th-congress/house-bill/624?q=%7B%22search%22%3A%5B%22S.+1463%22%5D%7D

12 Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-persons-involved-serious-human-rights-abuse-corruption/

13 https://home.treasury.gov/news/press-releases/sm0243

14 European Parliament Press Releases. MEPs call for EU Magnitsky Act to impose sanctions on human rights abusers. 2019.

Institutions nationales des droits de l'homme: Prévenir les atrocités, vers de nouveaux paradigmes?

Amina Bouayach[1]

Les atrocités qui ont marqué l'histoire de l'humanité représentent de véritables catastrophes humaines et humanitaires par le nombre de morts, blessés et déplacés qu'elles perpètrent, mais aussi un réel désastre sociétal, car elles coïncident toujours avec l'effondrement de la fabrique même des liens entre citoyens et du système de gouvernance et l'État de droit. Cependant, la majorité des atrocités, souffrances, peines et tragédies qu'elles engendrent sont évitables et ne sont pas une fatalité à laquelle on doit se résigner et que l'on doit subir.

Aboutissement d'un long processus de polarisation, de radicalisation et de violence, l'avènement des atrocités est toujours précédé de signes avant-coureurs qui doivent amener tout un chacun à rompre avec l'inertie habituelle et à agir avec sagacité sur les nombreux facteurs y prédisposant.

En tant que maillon entre l'État et la société civile, entre l'individu et les institutions, et entre le national et l'international, les Institutions nationales des droits de l'homme (INDH) ont le potentiel pour jouer un rôle majeur dans la prévention des atrocités, en adoptant une approche holistique qui prend en compte non seulement les facteurs de types judiciaires, mais aussi extra-judiciaires dans leur action. Bien que le processus amenant des individus ou groupes d'individus à commettre des atrocités soit non-déterministe, qu'il varie en fonction du cadre politique et institutionnel du pays, de son histoire et de sa culture, il est possible d'identifier plusieurs constantes ou étapes de radicalisation qui sont autant d'occasions d'agir afin d'éviter le pire.

En effet, les atrocités n'adviennent jamais *ex nihilo.* Elles sont le résultat d'une polarisation extrême de la société, dans laquelle un groupe ou minorité, perçu comme un danger pour la vie et une menace pour le bien-être des autres, est la cible d'une violence systématique et généralisée. Il est évident que l'absence d'institutions solides et d'une capacité étatique large ne peut que contribuer à l'impunité et à l'insécurité qui règnent là où sont commis de tels crimes contre l'humanité.

Néanmoins, la faible gouvernance, à elle seule, ne peut expliquer le phénomène des atrocités. Souvent, la violence physique n'est que la dernière étape de ce processus de radicalisation, après la violence et la haine dans la parole, la discrimination et l'intolérance dans l'attitude.

Tenant compte de la place grandissante qu'occupent les INDH dans le maillage institutionnel des États depuis l'adoption des Principes de Paris par l'Assemblée générale de l'ONU en 1993, et le large mandat en matière de droits de l'homme qui leur est octroyé, celles-ci peuvent influencer de manière directe et indirecte l'évolution des événements.

Nous détaillerons donc les possibles voies d'action disponibles pour les INDH en insistant d'abord sur les questions du discours de haine et d'incitation, avant de traiter celles d'ordre organisationnel.

Le discours des atrocités

Bien que la liberté d'expression soit un des droits fondamentaux de toute société démocratique, protégé par les traités des droits de l'homme et garanti par les juridictions internationales, son exercice de manière absolue et illimité n'est pas compatible avec le référentiel des droits de l'homme sur lequel il est fondé. Ainsi, l'incitation à la haine et à la violence, dont la multiplication est un fréquent précurseur aux atrocités, ne peut-elle trouver sa place dans toute société où les droits de chacun sont respectés, notamment le droit suprême de la vie.

Ce discours de haine et de violence peut prendre plusieurs formes, et ses modalités peuvent varier. Son but est, quant à lui, constant : amener la population à rejeter puis attaquer un groupe spécifique, perçu comme différent, menaçant et malintentionné. Au Rwanda par exemple, la métaphore de « cafard » a été largement diffusée sur les radios avant le génocide des Tutsis afin d'en dessiner un portrait déshumanisant. En ex-Yougoslavie, les musulmans étaient décrits comme des « traitres à la nation ayant pour intention de tuer les Serbes », d'où la nécessité d'éliminer tout musulman de manière préemptive.

S'il avait existé une presse libre et indépendante pour contrer la propagande des génocidaires d'une part, et une législation ferme criminalisant toute incitation

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à la haine et la violence d'autre part, peut-être aurait-on évité ces deux drames.

Pour les INDH donc, s'impose la mission de faire le plaidoyer devant l'institution législative afin d'inscrire dans les lois du pays la criminalisation d'un tel discours, tout en veillant à garantir l'équilibre avec la liberté d'expression de chacun.

Sur le terrain, un renforcement des capacités de tous les acteurs, notamment dans les médias, est primordial en matière de lutte contre ce type de discours. Par ailleurs, la synergie entre discours de haine et de violence et fake-news ou désinformation et propagande doit nous alerter. Vigilance et attention doivent donc rester les mots d'ordre, et la condamnation systématique dans ces cas de figure est la règle.

Le monitoring, premier rôle des INDH

Afin de pouvoir suivre de manière efficace tous signes que nous avons appelés avant-coureurs des atrocités, dont le discours de haine et de violence, mais aussi afin d'alerter l'opinion publique nationale et internationale sur les incidents ou politiques de nature discriminatoires ou insuffisantes, comme c'est le cas dans plusieurs pays où les lois électorales favorisent un groupe particulier, l'économie de rente et le clientélisme ne profitent qu'à une ethnie particulière et justice n'est rendue que pour une communauté restreinte.

C'est pourquoi, un monitoring vaste et efficient de ces violations journalières et systématiques des droits de l'homme, ô combien fréquentes et répandues dans les lieux à risque, est primordial, pour plusieurs raisons. D'abord parce que la collecte d'informations fiables et précises permet de suivre les indicateurs idoines, tels le nombre de crimes de haine, les incidents entre communautés ou les violations dont certains groupes sont cibles.

Ensuite parce que la communication et l'alerte de la communauté internationale concernant une situation potentiellement explosive, telles des violences policières ciblées et répétées, doivent se faire rapidement si l'on ne veut pas intervenir de manière trop tardive.

Enfin, parce qu'élaborer des campagnes de sensibilisation efficaces, à l'intention des citoyens, des décideurs nationaux et internationaux, des acteurs étatiques et non étatiques ne peut se faire sans une connaissance exhaustive du terrain et des spécificités locales ; et c'est en s'appuyant sur des acteurs locaux touchant le plus d'individus, que l'on peut mettre en place des systèmes de protection fonctionnels et que l'on prévient le mieux.

La mise en place de systèmes d'alerte précoce et d'actions urgentes en cas de violations graves et systématiques des droits de l'homme est donc d'une importance capitale, par exemple dans le cas de tortures ou de violences sexuelles.

La société civile : l'autre constante

Parmi les acteurs locaux que nous avons évoqués se trouvent les acteurs de la société civile, sans lesquels les opérations de monitoring, de protection et de promotion des droits de l'homme ne peuvent que difficilement se faire. Il n'y a en effet pas de campagne de sensibilisation ni d'action précoce sans partenariat avec les associations qui forment le tissu sociétal. De même, le partage d'information, la complémentarité dans les stratégies de prévention et la communication avec les ONG permettent de faire le pont entre l'État et la société civile locale, et entre ces dernières et les institutions internationales.
Tout un network en constante communication peut ainsi se former où l'information circule dans les deux sens, de même que les bonnes pratiques, les productions académiques, les nouvelles approches… Une relation avec la société civile peut parfois même être déterminante car elle permet d'organiser des campagnes internationales à même de sensibiliser les acteurs et leaders de différents pays à agir de manière individuelle ou consensuelle, comme ce fut le cas pour les violences post-électorales en 2008 au Kenya.

L'existence d'acteurs locaux capables d'agir de manière rapide et pertinente afin de désamorcer la situation peut être décisive.

L'existence de ce type de canaux est d'autant plus précieuse que les relations entre les autorités et le groupe concerné sont tendues. En effet, les INDH peuvent jouer un rôle de médiation et faciliter contacts ou négociations entre l'État et un groupe donné, entre différents groupes, voire entre l'État et les institutions internationales quand la situation l'exige. Il va sans dire qu'endosser le rôle de médiateur n'est pas chose aisée et qu'il ne peut se faire sans une réelle crédibilité de l'institution, découlant avant

tout de son indépendance, mais aussi de sa légitimité.

La préservation de la mémoire et les garanties de non-répétition

L'un des rôles les plus inconnus des INDH mais dont le symbolisme ne saurait être ignoré, est celui de la préservation de la mémoire. Il n'existe pas de pays sans passé douloureux, passé dont la lecture partielle ou biaisée peut donner naissance à des tensions dans la société.

C'est ainsi que révéler la vérité sur les atrocités et graves violations des droits de l'homme commises par le passé, et en préserver la mémoire, constitue une pierre angulaire dans les politiques de garantie de non-répétition. Mettre à disposition les témoignages, archives, vidéos et images collectés lors de périodes sombres de l'histoire sert non seulement à comprendre ce qu'il s'est passé, mais surtout à apprendre à éviter la répétition des violations graves et à rester attentif aux situations potentiellement dangereuses ou annonciatrices. Les témoignages des victimes et des auteurs des crimes peuvent en effet servir à illustrer pour les générations ordinaires comment les choses peuvent basculer d'un jour ou l'autre vers la violence ; et comment un individu d'apparence ordinaire peut commettre les pires crimes sans arrière-pensée, si le système le lui permet.

En outre, un système de réparation juste et équitable, ainsi qu'un véritable processus de justice transitionnelle permet de retisser, sur le plan matériel et symbolique, les liens rompus par l'avènement des atrocités. Bien qu'il ne puisse jamais suffire, ce type de geste est parfois le seul acte pouvant exprimer le regret, le remord et la responsabilité envers les victimes. Malgré leur apparente modestie, ces gestes sont loin d'être futiles et servent à rendre justice et hommage, bien que symboliques, aux victimes, et à effacer une partie des sentiments de ressentiment et de rancune pouvant mener à de nouvelles atrocités en guise de vengeance ; car il n'y a rien qui empoisonne le cœur comme le sentiment d'injustice.

Enfin, l'instauration de loi de protection des droits de l'homme et de loi de type mémorielle permet non seulement de doter les pays d'un arsenal visant à garantir la non-répétition en criminalisant tout acte contraire aux principes des droits de l'homme et de punir les auteurs des violations, mais aussi d'inscrire par écrit certaines vérités historiques qui doivent faire la mémoire de la nation et barrer la route à toute révision biaisée et au négationnisme, de même qu'elles représenteront une reconnaissance additionnelle du sacrifice des victimes dans la construction du pays.

Ainsi, les Institutions nationales des droits de l'homme sont-elles devenues des acteurs incontournables dans les systèmes nationaux de protection des droits de l'homme. Elles ne peuvent cependant pas jouer ce rôle, si fondamental, sans jouir de l'indépendance institutionnelle qui leur permet d'acter toutes les formes de violations des droits de l'homme, et de prendre les positions qui s'imposent ; lesquelles nécessitent parfois le courage de résister aux pressions des groupes radicaux ou des autorités responsables des violations.

L'indépendance des INDH reste la clé de voute à l'accomplissement de leurs missions de monitoring, de protection des victimes, de sensibilisation auprès des différents acteurs et d'information et de communication effectives avec toutes les organisations concernées. De même, les opérations de médiation, de lutte contre l'impunité et de révélation de la vérité ne peuvent que bénéficier de l'apport des INDH en la matière.

Dans le monde d'aujourd'hui, les INDH sont appelées à jouer un rôle croissant dans le monde numérique, nouvel espace de radicalisation, et d'embrigadement ; notamment avec la propagation des chambres d'échos et de *fake news* d'incitation à la haine et à la violence, de diffusion des idéologies radicales et d'endoctrinement ; que ce soit au service d'organisation terroristes, extrémistes ou racistes.
Ce nouveau défi, qui interpelle non seulement les États, mais aussi tous les acteurs de la société, nous oblige à innover dans de nouvelles approches de prévention qui puissent prendre en compte la rapidité de diffusion des informations, l'émergence de nouveaux partenaires d'action, notamment dans le secteur privé (entreprises dans le domaine des nouvelles technologies…) et l'effacement des frontières nationales au profit d'un front numérique à encadrer, d'une manière continue, par les principes des droits de l'homme et de l'État de droit.

Entre le réel et le virtuel, nous sommes tous confrontés à de nouveaux paradigmes requérant la mise en place de nouveaux systèmes d'alerte, de préven-

tion et de protection, en commençant d'abord par le cadre législatif ; mais surtout celui de l'éducation, les médias pour lutter contre la haine, la violence et la discrimination.

Facilitate your way out of this! How a disparate group of people with seemingly entrenched positions, came together to unite their forces against mass atrocity crimes

Jeremy Condor[1]

Global Action Against Mass Atrocity Crimes (GAAMAC) is a state-led initiative, working to prevent atrocities (genocide, war crimes, ethnic cleansing and crimes against humanity). It is a platform for exchange, dialogue, and the dissemination of learning and good practice on prevention. GAAMAC supports states that seek to build their capacities in atrocity prevention. It also assists states in the development and implementation of national preventive strategies.

At GAAMAC's founding meeting in Dar es Salaam, the participants asserted that effective national architectures are a critical factor in the prevention of mass atrocity crimes. They identified an urgent need to bring prevention and protection together in order to build a cooperative approach. They decided to work together to bring more states into the GAAMAC initiative, and that the support of civil society organisations would be an essential aspect for GAAMAC in its prevention efforts at the national, regional and international level.

Thus in Dar es Salaam, the six founding states underlined their common endeavour: the protection of human life and the prevention of mass atrocities, and they found common ground about the value and potential of engaging jointly in protection and prevention. The three subsequent GAAMAC global meetings have built on this foundation of complementarity.

GAAMAC has developed through an intense and creative participatory process, generating a culture of openness and commitment. An element of this culture is related to process facilitation. This article is the perspective of one of the main process designers/facilitators who has been involved in GAAMAC since its formation in Dar es Salaam in 2013. This testimony is shared as an invitation to enlarge personal and institutional capacity for the prevention of mass atrocities.

1 Jeremy Condor co-designed and facilitated the launch meeting of GAAMAC in Tanzania, and has co-designed and co-facilitated all its subsequent global meetings since then.

The launch

Spring 2014. Just back from Costa Rica – I am talking animatedly to a neighbour about an extraordinary political initiative called 'GAAMAC' (Global Action Against Mass Atrocity Crimes). I enthuse about the courage of this initiative; the vision, the skill and the sheer determination that it took to make it a reality. For the first time, a newly-minted 'community of commitment' has assembled champions of genocide prevention and advocates of the responsibility to protect to talk about how to work together and to make a real difference. Representatives from more than 20 states came. And growing. Brilliant.

My neighbour, a woman who works in real estate, looks at me kindly but sceptically and says: 'Nice idea. But does your GAAMAC thing stop genocide? Does it stop atrocities? Will it actually work?' A bit taken aback, I begin to explain how disjointed the anti-genocide movement seems to have been until now. And now ineffective. This is a real chance to bring everyone together in the struggle. But she is unimpressed. Behind her comments, I hear that familiar, corrosive despair – the cynicism and the apathy of the disengaged – the never engaged: 'We are powerless to change the world. It's all talk and no action. It's all about funding. Besides, the issues that really matter are beyond us. We can't change the future or even the present'.

The foundation

Rewind to Spring 2013. A medium-sized, mid-range hotel in Dar es Salaam. A meeting room, not particularly conducive to what most facilitators would call a 'workshop'. A busy, public corridor sends the buzz of hotel hospitality into a space intended for quiet reflection. In the room, pillars all over the place, obscure the sightlines. Clunky, impractical furniture. Clapped-out flip charts whose legs refuse to stand aligned - tilt alarmingly, their papers sliding away precariously just at that crucial moment when the hot idea has been found at last, and needs to be recorded, right now, in real time, owned by all the people in the room. Hotel marker pens, dried up and screeching like cracked nails on a chalk board as the

facilitator struggles to get the words to appear on the page, in all the wrong colours – in yellow, in pale, invisible blue. So nothing new here, then. All par for the facilitator's course perhaps, but somehow, this meeting, this founding event - feels different from anything I have facilitated before.

The challenge

Here, in this modest hotel, we will determine if it is feasible to bring the global struggle for the prevention of genocide and mass atrocities into the same room, into the same conversation, into the same struggle – and more; to include civil society actors, UN agencies, campaigning organisations, foundations, academe – and, most unusually – and most essential of all – states. A big, inclusive tent with room for everyone. Could a group of states from the global south and the global north really agree that a state-led initiative should come into existence, outside of the august confines of the United Nations? And, as mass atrocities continue to erupt around the world, could we agree that the innumerable high-level declarations, resolutions, lofty intentions and diplomatic platitudes need to be transformed into real action? Could we agree that genocide is about all of us – not just about some distant 'other', some 'them' – or about some expert committee, some self-interested funding battle? Could the struggle against genocide and mass atrocities be brought home to the real world of ordinary people? Could states finally get some support to help each other prevent genocide and mass atrocities in their own regions?

For any member of the public, these questions should surely be a no-brainer. 'You mean, all these self-appointed, anti-genocide champions don't already have a learning community, a global network where they all learn from each other, share their experience, argue, debate, and build strategies and tools in the struggle for a world without mass atrocities? This forum, this big tent doesn't already exist? You mean the current anti-genocide struggle is not about coming together at all, but rather about a fight to protect their own positions and resources? And some of them think they 'own' the issue, and that they have the answer? You mean, they are not united in common cause? Against *genocide*? Really?'

My neighbour, surely, has a point. She is scathing about how the burning issues of the day are co-opted by global bureaucracies; alienating and polarising people rather than empowering them.

Mercifully our own equipment arrives – flip charts that stand up straight, thick, black and deep blue monster markers that will allow us to harvest the work of the Prevention of Genocide Network (Argentina, Switzerland, Tanzania), representatives of the National Focal Point Initiative for the Responsibility to Protect. (Australia, Costa Rica, Denmark), representatives from the UN Office on Genocide Prevention and the Responsibility to Protect, regional and civil society organisations, and experts in genocide prevention.

Frenemies

What I understand is that within this vexed and murderously complex issue lie different perspectives and positions – sometimes at intellectual daggers drawn and expressed in seemingly entrenched postures: When a state permits violent speech to turn into organised violent action against its own people, who has the responsibility to protect those people when their own governments fail to do so? Is the struggle against genocide, war crimes, crimes against humanity and ethnic cleansing only about a responsibility to ensure 'protection'? What about preventing mass atrocity crimes before they start? Where does the hate germinate and how can it be prevented before it erupts into mass murder, into industrialised killing? Can genocide be prevented at all? Surely preventing genocide and mass atrocities goes hand in hand with the notion of protection if the killing starts. Isn't that self-evident? Surely it's obvious that these protection and prevention people need each other. So what would need to happen to bring these two concepts together? And how do we ensure that this conversation is co-owned by the global south with the global north? Where are all the anti-genocide resources? And who spends them?

There are many elephants in this room. Among the many misconceptions and fears:

- Is this about a fixed amount of funding being endangered by the rise of a competitor? I have to defend my position.
- Who gets to sit at the top table? Will my organisation be acknowledged? Will I be heard?
- My ideology is better than your ideology. The Responsibility to Protect and Prevention can co-exist

at a push, but let's not kid ourselves that they are actually complementary.
- Senior, high-level experts, diplomats, decision-makers and NGOs will never be able to agree on practical measures to combat mass atrocities and genocide.

If you can facilitate this, you can facilitate anything

Few people appreciate the meaning and value of good facilitation, especially when the issues are complex and positions are seemingly opposed or entrenched. For most people, when the meeting works well, it just happened by magic. But magic takes a lot of work.

Facilitation and moderation are not synonyms. The facilitator is not in the room to moderate in a conflict, but to co-design and enable a process. Facilitation is not about asking dignified people to dance with scarves and embarrass themselves. It's a process where the real issues can be revealed and dealt with. We create the conditions where people can climb down from their positions, look hard at their interests and discover their real needs. It's about creating the conditions, the atmosphere and the trust so that people can dare to open up. Facilitation is about making the implicit explicit. Effective facilitation isn't bolted on – it's built in to the process from day 1, from the day the Steering Committee decides to organise a meeting next year. So my first step is to work with what is to become the governing body of GAAMAC to begin the process design – and then to facilitate it.

The facilitator thinks about what success would look like in this context, and who is the client - will this be another room full of burned-out VIPs – the 'old white guys with ties'? Will this be one of those three-day nightmares of diplomatic posturing, political preening, jockeying for position and obfuscation? Will we spend our time speaking in the conditional, in the passive voice, in the dead language of noble intentions and defended bureaucracy? Here's the key question: Is it possible to get a huge conference room full of high-level people from all over the world to let their guard down and really come together?

What we have learned is that you can have the best of both worlds. You can open a major international event, with the Prime Minister, the high-level UN officials and the leading lights of academe and civil society, and you can demonstrate that you can do protocol as if it was your first language. That builds a level of comfort and familiarity. Then you gradually start chipping away at the formality, and gently undermine the posturing that maintains people in fixed positions. You can introduce humour. You can speak in plain language instead of taking refuge in acronyms and arcana. You can ask the difficult questions at just the right moment – and change the course of an entire meeting. You can actually get 250 people in the same room working on a common challenge, harvesting their ideas enthusiastically on huge charts, bringing their ideas together and engaging in a way with each other that surprises and delights even the most convinced protocol-defenders. You can juxtapose celebration of success with tough challenges to the status quo. And you can use symbols to reinforce messages. Perhaps the most powerful example here is when the idea of the 'big tent' became a tangible reality in Kampala. We hired a huge marquee and made it a dynamic forum for innovation.

But to do this, you need to know what the real issues are behind the presenting narrative. You need the total trust and confidence – and the full disclosure of the people who ask you to facilitate their process. You need to work with people with the humility to try a new approach. We were fortunate. It took time, but with each GAAMAC global meeting, the trust grew and the atmosphere lightened, as people began to trust in the process, and learn that the only loser in this struggle would be genocide itself.

Plenty more room in the tent

Srebrenica, Rwanda, Syria, the Rohingyas, the Uighurs. The madness and the cruelty continues unabated. So what do I say to my sceptical neighbour? 'Will GAAMAC 'work'? Is this really just another series of pointless conferences? Are we deluding ourselves? What I know about GAAMAC - and all the people who have learned to put their trust in its process - is that now there is no excuse, nowhere to hide, no-one to blame but ourselves if we permit the horror to continue unchallenged. Now there is a real global home to work together against genocide. Prevention and protection hand in hand. States helping states. Time to get down to work.

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44	**La politique étrangère de la Suisse : permanences, ruptures et défis 1945 – 1964** (01/2008)	▪ De la neutralité «fictive» à la politique de neutralité comme atout dans la conduite de la politique étrangère ▪ Partizipation oder Alleingang?Die UNO-Beitrittsfrage aus der Sicht Max Petitpierres (1945-1961) ▪ La Suisse et la conférence des Nations Unies sur les relations diplomatiques ▪ Die Guten Dienste als Kompensationsstrategie zur Nicht-Mitgliedschaft bei der UNO ▪ L'accord italo-suisse de 1964: une rupture dans la politique migratoire suisse ▪ Die Diplomatischen Dokumente der Schweiz (DDS) und die Datenbank DoDiS
45	**Power sharing** **The Swiss experience** (02/2008)	▪ Sharing History ▪ Sharing State and Identity ▪ Sharing Territory ▪ Sharing Rule ▪ Sharing Democracy ▪ Sharing Language and Religion ▪ Sharing Justice ▪ Sharing Wealth and Income ▪ Sharing Security ▪ Sharing the Future
46	**Efficacité de l'aide:** **Bilan et perspective** (01/2009)	▪ Efficacité de l'aide et querelles de méthodes: l'émergence de la 'Déclaration de Paris' et ses conséquences ▪ Wirksamkeit: Aktualität und Herausforderungen eines alten Anspruchs der Entwicklungspolitik ▪ Country Ownership and Aid Effectiveness: why we all talk about it and mean different things ▪ Die Wirkung der Entwicklungszusammenarbeit im ultilateralen System ▪ Public Private Partnerships und Wirksamkeit der Entwicklungszusammenarbeit ▪ Der Bedeutungszuwachs von Public Private Development Partnerships ▪ Can Coherent, Coordinated and Complementary Approaches to Dealing with Fragile State Yield Better Outcomes? ▪ The Prospects of Colombia and Latin America concerning the Paris Declaration ▪ Coopération au développement triangulaire et politique étrangère: simple avatar de la coopération bilatérale ou nouvel instrument pour une coopération publique «globale»? ▪ Von Paris nach Accra – und darüber hinaus Lehren aus der Aid Effectiveness Debatte aus der Sicht der Zivilgesellschaft ▪ Opportunities and Challenges for EU Development Cooperation after the Accra High-Level Forum ▪ Aid Effectiveness after Accra: What's next?
47	**Genocide Prevention** (02/2009)	▪ Today's conversation about Genocide Prevention ▪ Emerging paradigms in Genocide Prevention ▪ Genocide Prevention in Historical Perspective ▪ What is Genocide? ▪ What are the Gaps in the Convention? ▪ How to Prevent Genocide? ▪ Options for the Prevention and Mitigation of Genocide: Strategies and Examples for Policy-Makers ▪ Why the Responsibility to Protect (R2P) as a Doctrine or (Emerging) Norm to Prevent Genocide and Other Massive Human Rights Violations is on the Decline: The Role of Principles, Pragmatism and the Shifting Patterns of International Relations ▪ Risks, Early Warning and Management of Atrocities and Genocide: Lessons from Statistical Research ▪ How to Use Global Risk Assessments to Anticipate and Prevent Genocide ▪ Prevention of Genocide: De-mystifying an Awesome Mandate ▪ Prevention of Genocide: The role of the International Criminal Court ▪ Transitional Justice and Prevention ▪ Seeding the Forest: The Role of Transnational Action in the Development of Meaningful International Cooperation and Leadership to Prevent Genocide ▪ Religion and the Prevention of Genocide and Mass Atrocity ▪ The Systematic Violations of Human Rights in Latin America: The need to consider the concepts of genocide and crimes against humanity from the "Latin American margin"

		▪ Genocide Prevention and Cambodian Civil Society ▪ A Reflection from the United States: Advancing Genocide Prevention Through a High-Level Task Force ▪ The construction of a global architecture for the prevention of genocide and mass atrocities ▪ The regional fora: a contribution to genocide prevention from a decentralized perspective
48	**La situation des femmes dans le monde arabe** (01/2010)	▪ « La situation des femmes dans le monde arabe » ▪ La violence domestique à l'égard des femmes dans la société palestinienne ▪ Les femmes dans les professions de la santé en Jordanie ▪ « Dernier voyage à Marrakech » ou Comment moraliser le genre dans une chronique judiciaire ▪ « Féminisme d'État Tunisien »: 50 ans plus tard, la situation des Tunisiennes ▪ La longue marche des femmes marocaines. De Akhawât as-safâ' à la Caravane des droits ▪ Le parcours militant d'une femme kurde de Syrie. De la cause kurde à la défense des droits des femmes ▪ Les représentations des femmes dans le discours nationaliste palestinien autour de la commémoration du cinquantenaire de la Nakba ▪ Représentations de la place des femmes musulmanes dans l'Islam en Suisse romande
49	**Swiss Science Diplomacy** (02/2010)	▪ Genèse et première croissance du réseau des conseillers scientifiques suisses (1958-1990) ▪ Le réseau suisse des conseillers scientifiques et technologiques de 1990 à la création de swissnex ▪ Gedanken eines Zeitzeugen zum Start des Wissenschaftsrates von 1958 ▪ Douze années japonaises: 1986-1998 ▪ La nouvelle diplomatie scientifique de la Suisse et le modèle swissnex: l'exemple de Boston après 10 ans ▪ La Suisse scientifique dans le monde du 21ème siècle: maintenir le cap ! ▪ Science Diplomacy Networks
50	**Dealing with the Past** (03/2010)	▪ A Conceptual Framework for Dealing with the Past ▪ A normative conception of Transitional Justice ▪ The right to know: a key factor in combating impunity ▪ Rule of law and international, national justice mechanisms ▪ Reparation programs: Patterns, Tendencies, and Challenges ▪ The role of Security Sector Reform in Dealing with the Past ▪ Dealing with the Past in peace mediation ▪ Pursuing Peace in an Era of International Justice ▪ Transitional Justice and Conflict Transformation in Conversation ▪ Reflection on the role of the victims during transitional justice processes in Latin America ▪ Archives against Amnesia ▪ Business in armed conflict zones: how to avoid complicity and comply with international standards ▪ Masculinity and Transitional Justice: An Exploratory Essay ▪ The application of Forensic anthropology to the investigation into cases of political violence ▪ Dealing with the past: The forensic-led approach to the missing persons issue in Kosovo ▪ A Holistic Approach to Dealing with the Past in the Balkans ▪ West and Central Africa : an African voice on Dealing with the Past ▪ Dealing with the Past in DRC: the path followed? ▪ Challenges in implementing the peace agreement in Nepal: Dealing with the Impasse ▪ Switzerland, the Third Reich, Apartheid, Remembrance and Historical Research. Certainties, Questions, Controversies and Work on the Past
51	**Un Kosovo unitaire divisé** (01/2011)	▪ Définitions constitutionnelles du Kosovo ▪ Les prérogatives de l'Etat au Kosovo dans la pratique ▪ Approche ▪ Environnement humain au Nord du Kosovo ▪ Grille d'analyse, hypothèses et concepts ▪ Géographie ▪ Populations : descriptions et chiffres ▪ La division au quotidien

51	**Un Kosovo unitaire divisé** (01/2011)	▪ Economie ▪ Niveaux de vie ▪ Perceptions ▪ Institutions ▪ Trois niveaux de blocages ▪ Etat de droit : quel droit ? ▪ Institutions locales ▪ Efficacité des institutions ? ▪ Les institutions vues par les citoyens ▪ Organisations internationales ▪ MINUK, OSCE, KFOR ▪ EULEX ▪ ICO / EUSR ▪ Le facilitateur de l'UE pour le Nord du Kosovo ▪ Stratégies et discours ▪ Absence de dialogue – politique du fait accompli ▪ Discours inachevés ▪ Stratégie de Belgrade ▪ Stratégie de Pristina ▪ Du partage à la partition ? ▪ Implications d'une partition pour le Kosovo ▪ Dialogue et coopération régionale
52	**Religion in Conflict Transformation** (02/2011)	▪ Religion in Conflict Transformation in a Nutshell ▪ When Religions and Worldviews Meet: Swiss Experiences and Contributions ▪ Introduction to the Conference "When Religions and Worldviews Meet" ▪ Competing Political Science Perspectives on the Role of Religion in Conflict ▪ Transforming Conflicts with Religious Dimensions: Using the Cultural-Linguistic Model ▪ Culture-sensitive Process Design: Overcoming Ethical and Methodological Dilemmas ▪ Transforming Religious-Political Conflicts: Decoding-Recoding Positions and Goals ▪ Creating Shifts: Using Arts in Conflicts with Religious Dimensions ▪ Diapraxis: Towards Joint Ownership and Co-citizenship interviewed by Damiano A Sguaitamatti ▪ Diapraxis in Different Contexts: a Brief Discussion with Rasmussen ▪ Bridging Worlds: Culturally Balanced Co-Mediation ▪ Connecting Evangelical Christians and Conservative Muslims ▪ Tajikistan: Diapraxis between the Secular Government and Political Islamic Actors ▪ Swiss Egyptian NGO Dialogue as an Example of "Dialogue through Practice" (Diapraxis) ▪ Communities Defeat Terrorism–Counter-Terrorism Defeats Communities, The Experience of an Islamic Center in London after 9/11
53	**« Révoltes arabes : regards croisés sur le Moyen-Orient »** (01/2012)	▪ Révoltes arabes : Regards croisés sur le Moyen-Orient ▪ La position géopolitique de l'Asie antérieure ▪ Les révoltes arabes : réflexions et perspectives après un an de mobilisation ▪ Printemps arabe et droit public ▪ Le cas syrien ▪ The Arab Gulf Monarchies: A Region spared by the 'Arab Spring'? ▪ La France dans le piège du printemps arabe
54	**Tenth Anniversary of the International Criminal Court: the Challenges of Complementarity** (02/2012)	▪ Ten Years after the Birth of the International Criminal Court, the Challenges of Complementarity ▪ We built the greatest Monument. Our Monument is not made of Stone. It is the Verdict itself. ▪ Looking Toward a Universal International Criminal Court: a Comprehensive Approach ▪ What does complementarity commit us to? ▪ Justice and Peace, the Role of the ICC ▪ Towards a Stronger Commitment by the UN Security Council to the International Criminal Court ▪ Where do we stand on universal jurisdiction? Proposed points for further reflexion and debate ▪ Challenges in prosecuting under universal jurisdiction ▪ Commissions of Inquiry : Lessons Learned and Good Practices ▪ Towards the Creation of a New Political Community ▪ The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia-Serbia

		▪ When Politics Hinder Truth: Reflecting on the Legacy of the Commission for Truth and Friendship ▪ On Writing History and Forging Identity ▪ Colombia and the Victims of Violence and Armed Conflict ▪ Historical Memory as a Means of Community Resistance ▪ How We Perceive the Past : Bosnia and Herzegovina, 17 Years On ▪ Regional Approach to Healing the Wounds of the Past ▪ Challenges in Dealing with the Past in Kosovo : From Territorial Administration to Supervised Independence and Beyond ▪ Setting up Mechanisms for Transitional Justice in Burundi : Between Hope and Fear ▪ « My Papa Is There » ▪ Transitional Justice Mechanisms to Address Impunity in Nepal ▪ Nepal: Better no Truth Commission than a Truth Commission Manipulated ▪ Spain and the Basque Conflict : From one Model of Transition to Another ▪ Moving to a new Social Truth ▪ Peace and Coexistence ▪ EUSKAL MEMORIA : Recovering the Memories of a Rejected People ▪ France and the Resolution of the Basque Conflict ▪ Democracy and the Past
55	**L'eau – ça ne coule pas toujours de source** **Complexité des enjeux et diversité des situations** (01/2013)	▪ L'Eau douce est au centre du développement de l'humanité, la Suisse est concernée ▪ Empreinte hydrique: la Suisse et la crise globale de l'eau ▪ S'engager sur le front de la crise globale de l'eau au service des plus pauvres: un défi que doivent relever les entrepreneurs des Greentec suisses ▪ Le partenariat innovant de la Haute Ecole de l'Arc Jurassien dans l'acquisition des données pour l'eau et l'agriculture : les nouvelles technologies participatives au service du développement ▪ Se laver les mains avec du savon, une des clés de la santé publique mondiale ▪ De l'or bleu en Asie Centrale ▪ Ukraine: quand la décentralisation passe par l'eau ▪ Noël à Mindanao ▪ La contribution de la coopération économique du SECO au défi de la Gestion des réseaux d'eau urbains ▪ Diplomatie de l'eau: l'exemple du Moyen-Orient ▪ Le centime de l'eau: la solidarité de toute une ville !
56	**La diplomatie suisse en action pour protéger des intérêts étrangers** (01/2014)	▪ Swiss Diplomacy in Action: Protective Power Mandates ▪ Aperçu historique sur la représentation des intérêts étrangers par la Suisse et sur les activités de Walter Stucki en France ▪ Du mandat suisse de puissance protectrice des Etats-Unis en Iran ▪ Le mandat suisse de puissance protectrice Russie-Géorgie : négociations avec la Russie et établissement de la section des intérêts géorgiens à Moscou ▪ Questions et réponses lors du débat du 15 décembre 2011 ▪ Documents et photographies
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58	**Bei Not und Krise im Ausland** Konsularischer Schutz und Krisen-management der Schweiz im 21. Jahrhundert **En cas de détresse et de crise à l'étranger** La protection consulaire et la gestiondes crises de la Suisse au 21ème siècle (03/2014)	▪ „Plane Gut. Reise gut" Der konsularische Schutz der Schweiz ▪ « Départ réfléchi. Voyage réussi » La protection consulaire de la Suisse ▪ Das Krisenmanagement-Zentrum des EDA – Heute und in Zukunft ▪ Le Centre de gestion des crises du DFAE – Aujourd'hui et demain ▪ « Responsable moi ? » La perception de la notion de responsabilité individuelle chez le citoyen suisse se rendant à l'étranger ▪ « Un indien averti en vaut deux » Le point sur l'aventure psychologique des voyageurs

		▪ „Ich denke immer wieder daran!» Langfristige Verarbeitung von schwerwiegenden Ereignissen ▪ Abseits der Normalrouten Reisealltag eines Afrikakorrespondenten ▪ Konfrontiert mit dem Ungewissen Zwischen institutioneller Pflicht und Eigenverantwortung am Beispiel einer Mitarbeiterin von Mission 21 in der Republik Südsudan ▪ Das kollektive Gedenken zur Bewältigung von Katastrophen ▪ Luxor – 1997 ▪ Drei Tage, die eine Ewigkeit waren ▪ Halifax – 1998 ▪ SR 111 ▪ Thailand – 2004 ▪ Tsunami im indischen Ozean / Tsunami dans l'océan indien ▪ Rückblick vom damaligen Missionschef der Schweizer Botschaft in Bangkok ▪ Rückschau eines Detachierten der Schweizer Botschaft zur Situation im Unglücksgebiet in Thailand ▪ Détachement pour la coordination des interventions dans la zone de Phuket ▪ Learing by doing an der Tsunami-Hotline ▪ Liban – 2006 ▪ « Evacuez ! » ▪ Guerre Hezbollah / Israël ▪ Haiti - 2010 ▪ Im Kriseneinsatz nach dem Erdbeben in Haiti ▪ À la recherche de concitoyens ▪ Evakuation von Kindern ▪ Fukushima - 2011 ▪ Erdbeben, Tsunami, nukleare Verstrahlung ▪ Organisation der Verwaltung / Organisation administrative ▪ Das Krisenmanagement des EDA im Zeitraum 2002 bis 2006 ▪ Das Krisenmanagement des EDA, die Entwicklung bis 2010 ▪ Création du Centre de gestion des crises Multiplication des crises et des défis ▪ Die Konsularische Direktion Konsequente Weiterführung eines Erfolgsmodells ▪ Umsetzungsinstrumente / Instruments de mise en oeuvre ▪ Im Büro fühle ich mich am sichersten Reisehinweise des EDA ▪ Es ist wahrscheinlich, dass das Unwahrscheinliche geschieht Die Entwicklung der Hotline und Helpline EDA ▪ Missions KEP : un témoignage Synergies d'actions Collaboration entre l'Aide humanitaire et le Centre de gestion des crise (KMZ) ▪ Zusammenarbeit in Krisen, eine Notwendigkeit Zusammenarbeit des Eidgenössischen Departements für auswärtige Angelegenheiten mit dem Bundesamt für Bevölkerungsschutz ▪ Protection consulaire : le dynamisme indispensable d'une institution millénaire
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		▪ Mediating Ambiguity – Contrasting the Mediation Perspectives of the Belgrade-Pristina Dialogue and the Geneva International Discussions ▪ Neither War Nor Peace in Georgia: Geneva Discussions Seen from a UN Angle ▪ The EUMM's Work in Georgia
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63	**Die Auslandschweizergemeinschaft: Profil – Netze – Partnerschaften** **La communauté des Suisses de l'étranger : profil – réseaux – partenariats** (03/2016)	▪ Internationale Wanderungen von Schweizer Staatsangehörigen ▪ Schweizerinnen und Schweizer in der Volksrepublik China: jung, mobil und auf der Suche nach Herausforderung ▪ Les habitants suisses des régions françaises limitrophes de la Suisse ▪ Südbaden und die Schweizer – einkaufen ja, wohnen nein? ▪ Zuwanderung von Schweizerinnen und Schweizern: eine deutsche ▪ Perspektive ▪ Auslandschweizer sind mehrheitlich Doppelbürger – Grund und mögliche Folgen ▪ Chancen und Schwierigkeiten der Doppelbürgerschaft in Frankreich ▪ Wenn Statistiken an ihre Grenzen stossen – das Beispiel der Schweizerinnen und Schweizer in Israel ▪ Integration und Assimilation in fremden Ländern ▪ Kästen und Interview: Beispiel Thailand ▪ «Migration in den Herkunftsstaat der Vorfahren»: Das Beispiel von Personen schweizerischer Abstammung aus Argentinien ▪ La Cinquième Suisse, maillon important du réseau de contacts de notre diplomatie ▪ Die Partnerschaften des Bundes
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