

Protecting Populations from Atrocity Crimes

Keynote address delivered by H.E. Adama Dieng, Founder-President of the Pan-African Alliance for Transparency and the Rule of Law, Former UN Under-Secretary-General and Special Adviser on the Prevention of Genocide at the 2023 Annual Evans-Sahnoun Lecture on R2P

Before I begin my address, allow me to pay my deepest gratitude to Gareth Evans in whose name, along with the name of the late Mohamed Sahnoun, this lecture is conceived and organized. As a person who has had a privilege to work with both, I can confidently say that they have done more for our common humanity, and to that we are extremely grateful for their dedication and commitment to service.

I met Sahnoun in 1993 when I was the Secretary-General of the Geneva-based International Commission of Jurists. Following our discussions, I resolved to mobilize civil society actors from the Great Lakes region through Synergies Africa to support his efforts in trying to bring peace in Zaire. As for Gareth, my most recent interaction with him was on the eve of the 29th commemoration of the Genocide of the Tutsis in Rwanda. We decided to co-sign a letter on 6 April aimed at drawing attention to the situation in the Democratic Republic of the Congo and to mobilize the resolve necessary to prevent atrocity crimes. We both were concerned about the gravity of the situation, particularly the escalating risk of atrocities targeting vulnerable segments of the population. For me, an opportunity to speak for a few minutes on a topic Gareth has dedicated his life, is not only a privilege but I accept this role with enormous gratitude and humility.

Let me also express my profound appreciation to the Global Centre for the Responsibility to Protect for their kind invitation but also, to our friends from the Irish Mission here in New York for hosting this event. Ireland has consistently demonstrated its deep commitment to multilateralism and a more peaceful and just world. Thank you for this commitment. Today I am pleased and

indeed honored to share a few reflections inspired by my journey at the United Nations on “*Protecting Populations from Atrocity Crimes.*”

While we reaffirm the words of the Charter to protect our collective humanity, unfortunately, the history of humankind is littered with tragic examples in which states have spectacularly failed in their primary duty to protect their own citizens. In some cases, states have actively engaged in actions which not only violate the fundamental rights of their people but also breach their national and international obligations. This failure can be attributed to the weak and in some cases non-existent state institutions to effectively guarantee peace and security of our common humanity, but also to a deliberate unwillingness of states to protect their own people despite having capability to do so due to domestic factors especially political considerations. It is these challenges that continue to define how states relate to their own people that raise fundamental concerns.

Prevention of conflicts and protection of populations from atrocity crimes remain a primary responsibility of States. Indeed, in the World Summit Outcome Document in 2005, United Nations member states reaffirmed their responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement. The Responsibility to Protect (R2P) *does not nor does it purport to outsource* this primary role of states to protect their own people onto the international community. Rather it reinforces the claim that states should undertake to fulfill this role as part of their general obligations toward their people.

Today we are not short of tools to prevent atrocity crimes. I will simply mention the Framework of Analysis for Atrocity Crimes – an integrated analysis and risk assessment tool which was developed by the Office of the UN Special Advisers on the Prevention of Genocide and the Responsibility to Protect (the Joint Office) and that identifies risk factors of atrocity crimes, including those that may constitute triggers of violence that could lead to those crimes, or on the contrary, mitigate that potential. The Framework of Analysis is centered on risk factors for atrocity crimes and their indicators. While the list of factors is comprehensive, a context-specific analysis allows for an assessment of atrocity risk regardless of how many factors are present. While many of the factors relate to general human rights indicators, some are specific to an increased risk of atrocity crimes (for example, discrimination against particular groups).

The value added of the Joint Office is that it bases its analysis on the same facts that others in the UN system might be looking at, but as a result of its atrocity prevention lens, it is able to identify potential risks of imminent atrocity crimes that may be missed by others focusing on other UN agendas such as humanitarian access, peace processes or democratization.

On occasion, prevention involves field visits and meetings with relevant stakeholders. For example, in December 2013 I traveled, along with Leila Zerrougui, the Special Representative of the Secretary-General for Children and Armed Conflict, to the Central African Republic to assess the impact of the conflict on the civilian population, especially women and children. Similarly, in April 2014, along with Navi Pillay, then UN High Commissioner for Human Rights, I took a trip to South Sudan following reports of ethnic violence in the country, returning again in 2016. In 2015 I traveled to Burundi following reports of increased tensions and the risk of further violence in the country, as well as to Iraq. My visit to Iraq resulted in a paper on accountability options, which I prepared, and which subsequently led to the adoption of the UN Security Council (UNSC) resolution establishing the UNITAD.

These visits are significant in several ways. Besides offering an opportunity to meet directly with relevant stakeholders, they also hold symbolic value in indicating to national and international actors that the country is on the radar of the Joint Office. For civil society actors, such a high-level UN visit serves to raise awareness of their plight and provides opportunities for mobilizing allies and pressuring governments.

An impediment to the prevention work of the Special Advisers on the Prevention of Genocide and on the Responsibility to Protect is the persistent resistance to distinguishing between mass atrocity prevention and other agendas, including preventing human rights violations, conflict prevention and protection of civilians. Ed Luck calls the UN's conflation of conflict prevention and atrocity prevention "the mother of all muddles." While armed conflict is undoubtedly a driver of atrocity crimes, not all atrocities occur in situations of conflict as we witnessed for instance in Guinea, North Korea, and Myanmar. In addition, even in situations of conflict, the predictors of conflict will not necessarily predict a rise in atrocity crimes, or vice versa.

Identifying warning signs based on the monitoring and rigorous analysis of country situations at an early stage and before atrocity crimes occur is one of, if not the main role of the Joint Office. This is also meant to set it apart from the work of other UN offices and bodies like the UNSC, which mostly address situations once they have reached the level of crisis. Simply identifying the risks is, of course, not enough, and so the two advisers' early warning role is perhaps even more important.

The value added of R2P to the broader effort to prevent atrocities should not be underestimated. As Ed Luck noted, "the advent of R2P has undoubtedly spurred far more attention and analysis to the question of how to prevent atrocity crimes and protect populations than had been achieved over the more than a half century between the agreement on the Genocide Convention in 1948 and the ICISS report introducing R2P in 2001."

For effective prevention efforts, those who violate human rights, including those who perpetrate atrocity crimes, should be held accountable. Increasingly both at the international and the national level it is recognized that impunity is not an option, and that whoever commits atrocity crimes must be held to account.

While early warning is an essential part of the work of the Joint Office, it could also be interpreted as prematurely alarmist, and raise concerns about interference in the internal affairs of states by the international community. As former Special Adviser on the Prevention of Genocide Juan Mendez said, "If I wait until all the elements of genocide are in place according to international law, then by definition I have not prevented it." This also relates to which states the Special Advisers highlight in their early warning. There have also been differences of opinion between different Special Advisers on this issue. While some prefer to be more cautious and act in line with the rest of the UN system (following the imperative to "speak

with one voice”) others feel that it is incumbent on their mandate to err on the side of caution.

While it may well be the case that “the Special Adviser’s most valuable contributions may lie in relatively obscure situations largely overlooked by the international community” (Akhavan 2016: 1051) there is also the issue of resources. With a limited staff and budget, difficult decisions must be made with regard to which situations to monitor. Ideally, and if early prevention were taken seriously, this would mean continuously monitoring all states through an atrocity prevention lens, and flagging the earliest signs of increased risk, where possible in close collaboration with the relevant government under the responsibility to protect their population from atrocity crimes and prevent their incitement.

State representatives often interpret meetings, especially with the Special Adviser on the Prevention of Genocide, as suggesting that genocide is present or imminent in their countries, which results in defensive behavior. This skepticism is also reflected in what is perhaps the most significant challenge facing the work of the two advisers: resistance from within the UN-system. In an interview in 2010, former Special Adviser on the Prevention of Genocide Francis Deng lamented, “there are colleagues within the UN-system who when I come in with my title ‘genocide prevention’, think I’m complicating their lives because they want to work with governments, politically and economically. Therefore, I have seen in a number of situations the first line of resistance is from our own people.” Those parts of the UN-system whose mandate relates to mediation and peacemaking, for example, do not appreciate the possible negative impact that mention of atrocity crimes may have on the peace process.

Ed Luck noted that, during his term in office, he frequently experienced “that warnings from UN headquarters to parties in a conflict about behavior that was troubling from an atrocity prevention perspective were sometimes seen by SRSGs [Special Representatives of the Secretary-General] in the field and officials of the Department of Political Affairs in New York as too pointed or untimely.” In many such country situations, the Department of Political Affairs takes the lead and other UN bodies have to fall in line so that the UN can “speak with one voice.”

Unfortunately, prioritizing impartiality and humanitarian access often translates into maintaining good relations with governments that may be perpetrating mass atrocities against their populations. This was seen in the UN Secretariat’s response to the increased violence against civilians in the final stage of

the civil war in Sri Lanka in 2008/2009. Despite early warning by the Special Advisers, a decision was taken to frame the situation as a humanitarian emergency, with the Emergency Relief Coordinator and the Office for the Coordination of Humanitarian Affairs put in charge. As Ed Luck emphasizes, “R2P and genocide prevention perspectives were not welcome in the deliberations.” We have witnessed similar scenarios play out more recently in Myanmar and Ethiopia where the emphasis was on framing the situations as peace processes, conflict or humanitarian crises. The Special Adviser on the Prevention of Genocide’s presence is often equated with a situation in which genocide is imminent, rather than also with situations where the prevention of genocide or other atrocity crimes is relevant.

Esteemed colleagues,

An important element of early warning is mobilizing action within the UN system. In this regard, besides the Secretariat, the interaction with the UNSC, the Human Rights Council and the General Assembly is of particular interest.

In light of the UNSC’s special powers to act in the face of genocide and other mass atrocities, as well as its special obligations under the Responsibility to Protect, as outlined in paragraph 139 of the World Summit Outcome Document, the Special Advisers’ engagement with the Council is an important aspect of its early warning function. In practice, however, the Council has not been forthcoming in facilitating either of the Special Advisers to address it. During my tenure as Special Adviser on the Prevention of Genocide, I was invited to address the Council only on a handful of occasions, while this privilege was never extended to the Special Adviser on R2P. In fact, our presence has, in the past, been deliberately blocked.

Another challenge is that the UNSC remains very much focused primarily on situations that are seen as posing a direct threat to international peace and security. The fact that many atrocity crimes occur in cases of intra-state conflict or outside of conflict means that the Council resists engaging with them. Despite the rhetorical emphasis on the importance of prevention, the UNSC also continues to operate as a reactive rather than a proactive body. This has, of course, to do with concerns about sovereignty and intervention on the internal affairs of a state, especially those with close ties to the Permanent 5 (P5) members. Even if the Special Advisers are able to communicate their early warnings to the Council (whether directly or via the Secretary-General) this by no means guarantees that any action will be taken.

Relatedly, one could add the more bureaucratic obstacles, including that the Special Advisers' memos to the Secretary-General are not automatically forwarded to the Council, and therefore encounter a process of gatekeeping in the Executive Office of the Secretary-General. This despite the 2000 Brahimi peacekeeping report famously commenting that, in the context of mass atrocity prevention, the Secretariat has an obligation to tell the UNSC what it needs to hear, not what it wants to hear.

Considering the seemingly intractable structural limitations of the Council, it is incumbent on members who are supportive of the mandates of the two advisers to consistently call for this, and to be creative in ensuring that atrocity risks are considered in all Council consultations. Besides inviting the Special Advisers for regular briefings, members of the Council could also re-institute regular horizon scanning exercises where they invite different UN principals, including the Special Advisers, for briefings. As mentioned elsewhere, it is essential that an atrocity risk lens is included in such exercises to avoid such risks being overlooked when the focus is solely on other agendas like peacebuilding or humanitarian assistance.

CONCLUSION

Despite the centrality of the work of the two Special Advisers to the core business of the UN, the evidence suggests that theirs are not mandates that are regarded as priorities by either member states or the wider UN system. Considering the increase in the commission of atrocity crimes globally, accompanied by a concerning rise in hate speech and incitement to violence, identity-based discrimination and intolerance, this does not bode well for the organization's future ability to prevent or respond to atrocity crimes.

If we continue to rely on the political will of the UNSC, particularly the P5 members, to authorize action, the UN's record when it comes to preventing and responding to the gravest of human rights violations will, unfortunately, remain selective and inconsistent, and the UN will continue commissioning reports about its failures in future situations of genocide and other atrocity crimes. In addition, consistently prioritizing the UN's neutrality makes it almost impossible to take a strong position on atrocity crimes, which usually requires taking sides in identifying the perpetrator and the victims.

Prevention is a collective responsibility. The involvement of everyone, whatever their role, will help humanity

achieve its goal of a world without genocide and other atrocity crimes.

1. First and foremost, a core part of the mandate of the Special Adviser is prevention. As such, anything she or he does as Special Adviser must revolve and advance the prevention component. You prevent by alerting relevant actors to take action to ensure that the situation is prevented from happening.
2. The role of the Special Adviser is that of a messenger. Messenger in a sense that, you identify and frame the situation and bring it to the attention of relevant actors, including the UNSC, Secretary-General, member states and others. It is up to the Council and others to take decisive action to address particular situations as recommended by the Special Adviser.
3. Framing the situation is also critical, because the Special Adviser must base his or her recommendations on clear and actionable information. Indeed, it is a reason that the Joint Office developed the Framework of Analysis. We developed this to help all UNSC members in their decision making. Essentially, both the UNSC and member states can see the basis of our recommendations. For example, why we believe a particular situation merits immediate action. The Framework of Analysis also helps with transparency. It demonstrates to member states and others that there are basic criteria, on which we based our analysis and recommendations. Otherwise, one can be accused of alarmism or interference in domestic affairs.
4. Lastly, the Special Adviser has a role of ensuring that recommendations made by the Joint Office to the UNSC or relevant member states, are not simply condemnation in nature rather are made in the spirit of supporting the concerned country to address the situation. As such, framing the situation helps to ensure that action envisaged will further state peaceful coexistence and ensure that the human rights of the populations concerned are upheld.