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U.S. Efforts To Combat Genocide and War Crimes

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I am the current U.S. Ambassador-at-Large for War Crimes Issues, and for those unfamiliar with this position, I will give a brief overview of my responsibilities. I report directly to the Secretary of State, Condoleezza Rice, advising her on U.S. policy responses to atrocities committed in areas of conflict and elsewhere throughout the world. My position is unique in the world, in that the United States is the only government that maintains a position at the ambassadorial level that focuses exclusively on war crimes issues. My office has responsibility within the U.S. State Department for monitoring atrocities globally as well as for monitoring transitional justice mechanisms, such as international, hybrid, and domestic war crimes tribunals. In relation to ongoing crises or to accountability processes, we in my office have lead responsibility for formulating U.S. Government policies, which we do in conjunction with other components of the State Department and the U.S. Government as a whole. And, as my title suggests, I have a diplomatic role: to engage other governments on our policies and to generally advocate for greater accountability for atrocities.

My educational and work background is primarily in the justice sector, having served as a state prosecutor in New Orleans, a federal organized crime prosecutor in Washington, and a trial attorney for seven years at the International Criminal Tribunal for the former Yugoslavia

* © 2008 Clint Williamson. Clint Williamson, a career federal prosecutor, serves as the U.S. Ambassador-at-Large for War Crimes Issues. During the course of his career, he has served as a prosecutor at the International Criminal Tribunal for the Former Yugoslavia, as Director of Justice for the U.N. Mission in Kosovo, and on the National Security Council staff as Director for Stability Operations. Ambassador Williamson holds a law degree from Tulane University. This is a reflection by Ambassador Williamson based in part on a lecture he gave at Tulane Law School on October 23, 2007.

(ICTY). I have also spent years working in the area of postconflict stabilization and reconstruction, with a focus on rule of law and security issues. I served in field assignments in Iraq, Kosovo, and other places throughout the Balkans. During my time at the National Security Council (NSC), my portfolio encompassed issues of postconflict stabilization and reconstruction—first as Director for Stability Operations and then in my last job at the White House, as Special Assistant to the President and Senior Director for Relief, Stabilization, and Development. It is this combined justice sector/reconstruction and stabilization perspective that I want to discuss. In part, I would like to highlight the integral role of transitional justice in successful postconflict reconstruction and stabilization efforts and, consequently, its role in genocide prevention.

I will present some of my thoughts on how, practically speaking, governments could marshal their resources to be as productive as possible at addressing some elements of an overall strategy to prevent mass-scale atrocities. In this regard, I am not necessarily laying out a comprehensive, theoretical approach to preventing genocide. Instead, I will discuss a few areas where governments can apply additional resources that will have a multiplier effect. I have observed four areas in particular where I believe governments can and should do a better job: monitoring potential atrocities, implementing preventative measures, responding immediately to ongoing atrocities, and planning for potential accountability mechanisms. I would like to outline the progress made by the United States and other actors in these areas and conclude by offering my assessment of where things are headed in the future.

An obvious first step toward the prevention of genocide is the accurate and precise monitoring of areas where atrocities may potentially occur. The United States has developed a fairly comprehensive monitoring system, given limited resources. Policymakers receive in-depth and timely information on potential atrocities. There are a number of entities within the U.S. Government that track these issues, analyze data, and report findings to policymakers.

An ideal system of monitoring atrocities might work in the following way: officers in the field would have a clear sense of the warning signs of potential atrocities and know how and when to report them. From there, a strong network back in Washington would channel the information into accurate pieces of analysis that weigh all factors. This analysis then would find its way to the right policymakers, who would know how to read these analyses and integrate the information into broader policy discussions.

In this process, there is a major role for nongovernmental organizations (NGOs)—not just those NGOs that report on atrocities, but also relief organizations and others that often maintain a larger and more geographically robust field presence than governments can in conflict zones. Their input of information strengthens the system of reporting and monitoring. I find this to be an invaluable tool. For this reason, in my position as ambassador, I have met on a monthly basis with a number of NGOs working on issues relating to mass atrocities to get their thoughts and to have frank discussions about crisis areas around the world.

The U.S. Government monitoring system has worked fairly well. Nevertheless, gaps remain. More can be done. Many officers in the field are trained to focus their reporting on political or other issues; many may miss important warning signs of impending atrocities because they do not know how to recognize them. We need to do more to ensure that diplomats, intelligence officers, and aid and development specialists are attentive to warning signs. Prevention should become integrated into regular reporting responsibilities; reports on potential warning signs should not be anomalies. Officers heading to posts where atrocities are most likely to occur should receive more thorough training on what warning events merit reporting and further follow-up. Greater resources could be devoted to additional analysts in Washington to process and package all this information for policymakers.

In order to make use of this effort to track early warning signs, we must develop a system of tools to address problems that are identified at the earliest point possible. Policymakers must do a better job listening to their analysts and integrating prevention concerns into their general political calculus. Despite some progress, this is one area in which I believe the United States still lags. We have not adequately assembled a toolbox of responses to different warning signs. In advance of any specific incident, we could develop a range of strategies that could be pulled off the shelf to deal with specific cases that we believe might potentially lead to atrocities. A few examples include: a press strategy to counter a dangerous pattern of hate speech, the assignment of a team to strategize about how to engage local leaders diplomatically, or a strategy for diplomatic efforts to build international consensus for action before events spiral out of control. These are all things that the United States does presently when faced with potential impending incidents. However, our efforts to date have been reactive, ad hoc responses to specific crises. We have not looked at these tools through the lens of prevention and focused on developing the best practices.

The next area where I believe governments can exponentially increase their ability to deal with atrocities is in the field of immediate response. Over and over again, postconflict stabilization and reconstruction operations have been organized in an ad hoc fashion. States, NGOs, or international organizations gather people with the requisite expertise to put together an appropriate response to a particular crisis. Sometimes this works well, but often it does not. One recurring theme of these types of ad hoc arrangements is their transient nature. As a consequence, plans often focus on short-term political expediency at the expense of permanent solutions. Better advanced planning—having a concrete coordination mechanism in place to deploy the necessary personnel given the nature of the conflict—will help build in longer-term considerations to stabilization operations.

We need to be careful not to be too rigid in our coordination. We must not sacrifice our flexibility to respond to various crises in an effort to seek broad consensus or a one-size-fits-all approach to planning and coordination. Each country and each conflict is different. Each requires a different response. For each conflict, there may be different international actors that seek to play larger or smaller roles. For these reasons, we cannot allow a rapid response mechanism to become too rigid. We must ensure that a small number of states cannot prevent a majority of nations from acting when responsive actions are needed. I want to commend the efforts of the Canadian government and others in facilitating discussion on establishing a “Justice Rapid Response,” a flexible approach to the problem of the judicial component of this concept of rapid response.

One concrete example of the need for long-term planning, one that falls within this judicial area, involves securing evidence of atrocities. In the immediate aftermath of a conflict, there is often a short window when certain types of evidence that could later be useful in transitional justice mechanisms are easily accessible. Often, obtaining that same information at a later date is difficult or impossible. It is imperative that future postconflict stabilization operations include individuals who are qualified and capable of preserving the evidence necessary to support ensuing accountability processes. Among these individuals would be forensic experts to identify and secure mass grave sites before they are damaged, either deliberately or by family members searching for their loved ones. These operations must include individuals who know how to locate witnesses and take statements that would hold up in court, specialists who can identify and secure documents, and so on.

During my time at the ICTY, I participated directly in efforts to secure evidence of atrocities in Kosovo in 1999 and later with the U.S. Government in Iraq in 2003. In both instances, the resources were not adequate to deal with the scale of the problem we faced. During the Kosovo conflict, I managed the ICTY's operations in Albania, where we had a sizeable team of investigators and lawyers. However, the team size was nowhere near what was needed to manage the crisis situation as hundreds of thousands of refugees flooded across the border, many with pertinent information on crimes that we would later prosecute. When the war ended, I went into Kosovo with the first North Atlantic Treaty Organization (NATO) troops on June 12, 1999, and within days, we were being inundated with reports of mass graves. Although we had done a lot of preplanning and had arranged a multinational group of forensic teams, NATO did not have the resources to secure all of the grave sites, and we could not deploy the forensic teams quickly enough. We did not have the ICTY resources on the ground to prioritize adequately mass grave sites nor to secure incriminating documents before they were destroyed or pilfered. Likewise, in Iraq, after Saddam Hussein's fall, people who were free for the first time to go find their loved ones started digging up mass graves all over the country. Vandals looted buildings housing crucial records, and so on. These, unfortunately, are not isolated incidents. Most interventions have been underresourced and inadequately supported by military forces to deal with the issue of war crimes.

Recently, the United States has begun to tackle this general problem through the creation of the Office of the Coordinator for Reconstruction and Stabilization (S/CRS) at the State Department. I was very involved in this initiative during my time at the White House, and my interest in this issue stemmed directly from the experiences I have just recounted. When I first started at the NSC and was going through my entry interviews with then-National Security Adviser Condoleezza Rice and her deputy, Steve Hadley, they picked up on my postconflict work and asked me to look at how the U.S. Government could do a better job of preparing for and fielding civilian responses to postconflict or crisis situations. My general approach was to suggest a U.S. Government equivalent of the United Nations Department of Peacekeeping Operations that could enhance U.S. participation in U.N.-peacekeeping missions, NATO missions, or interventions by the United States and other interested states. Because of my direct experience, I felt strongly that the most robust component of a standing civilian response mechanism should be in the area of rule of law, recognizing that one of the most pressing concerns from the outset of any mission is dealing with

accountability for atrocities. My proposal eventually made its way through the process and has resulted in the creation of S/CRS.

While S/CRS has experienced a rather bumpy start and growing pains akin to any new office fighting for bureaucratic turf, hopefully, it will soon receive a green light from Congress to go ahead with planning the first phase of a "Civilian Stabilization Initiative" that will be composed of "on-call" individuals. Among the slots envisioned in this initial tranche are several for transitional justice and other rule of law issues. In this way, preplanning of a postconflict stabilization coordination mechanism can serve to ensure that issues critical to long-term stability, such as accountability, do not get pushed aside in favor of short-term expediency.

The U.S. efforts to create this sort of capability have not gone on in isolation. A number of other governments, including the United Kingdom, Germany, and Canada, have undertaken similar initiatives over the last few years and have advanced beyond the United States in implementation of their plans. I am certain that these governments made findings consistent with my own experience. Individuals from these countries and many others have shared the same frustrations and have come out of these situations with a determination that the whole approach can be improved significantly. The more governments that implement these plans, the better. It is vitally important that these types of undertakings not be limited just to North America and Europe. Having strong regional actors in Latin America, Asia, the Middle East, and particularly Africa will strengthen any framework that is created. Argentina, as an example, has already had a huge impact in the area of war crimes response. Argentine forensic experts have played a very prominent role in ICTY and International Criminal Tribunal for Rwanda investigative efforts. Their experience, from a country that went through similar tragedies, makes them doubly effective—first as experienced experts in the forensics field and second because they have credibility with victims that an American, Briton, or Canadian would not. The more robust framework there is for response, and the more diverse it is, the more it will benefit the United Nations, the International Criminal Court (ICC), and other international, hybrid, and domestic justice initiatives.

The final area in which I believe governments can get real value added from additional attention is in the field of transitional justice. It is often necessary to focus resources on postconflict justice for years following a conflict. As a specific example, following the International Court of Justice (ICJ) verdict in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of

Genocide, *Bosn. & Herz. v. Serb. & Mont.* 2007 I.C.J. 91 (Feb. 26), nationalist rhetoric in Bosnia and Herzegovina returned to a height not seen in several years. From our experience in Bosnia, in the Great Lakes region of Africa, in Cambodia, and elsewhere, it is clear that the full resolution of conflicts can take years beyond the conclusion of hostilities. Coupled with the fact that a prior case of violent conflict is one of the strongest indicators of risk for future conflict, it becomes increasingly apparent that long-term follow-through in dealing with past conflicts is a tool of genocide prevention.

One key element of this approach is the establishment of judicial or nonjudicial mechanisms for dealing with those who may have committed atrocities. This is an essential tool for genocide prevention because it contributes to the overall stability of a postconflict society. It decreases the likelihood that small incidents will escalate into broader patterns of violence. If done successfully, it imbues in the local community a sense of confidence that judicial (i.e., nonviolent) mechanisms can “set things right” and can mete out justice without resorting to retaliation and “settling scores.” Firmly setting the precedent that people are held to account for the atrocities they have committed is a valuable tool to have when, invariably, something goes wrong.

Going back to the Bosnia and Herzegovina example, if an individual or small group commits an interethnic hate crime, there is a smaller chance of that escalating into a larger conflict if the affected population feels that it can turn to some judicial system, be it local or international, and successfully seek redress. Seeing the success of the ICTY and the domestic Bosnian State Court, the population is more likely to seek this avenue for crimes that may be committed in the future.

My office has recently been trying to get ahead of the curve, educating ourselves on situations that may, at some future point in time, require accountability mechanisms. We are looking at what types of processes would be appropriate based on the history of the country and the conflict and the capability and resources of the country involved. We look at all the tools available to us, starting with international support for local courts and nonjudicial mechanisms, when these institutions are robust enough and their members may simply need a small amount of training and additional resources. If this is not a possible solution to the problem of accountability, we examine options for a hybrid-type accountability mechanism. Finally, when other options are not available, we consider international courts, including the ICC, to be a realistic, final option for cases that simply cannot be handled in other fora, as we did with the Darfur situation. This method also tracks with the ICC

approach that seeks first to have domestic institutions handle an issue, potentially with external assistance through some sort of hybrid process, and finally to use the ICC as the court of last resort. As a practical matter, this general approach is the only one that will keep the ICC from being totally overwhelmed.

With our limited resources, my office is looking at a handful of countries where there is potential for atrocities, but we are hoping to branch out and eventually cover all the countries most likely to require accountability mechanisms. The result of this planning exercise still will be a policy position of only one government. Any type of accountability mechanism—even one initiated within a state system such as the State Court of Bosnia and Herzegovina—requires the support and coordination of multiple local, national, and sometimes international actors.

As I have outlined, I see four areas in which governments can constructively focus their resources in order to bolster the capacity for conflict prevention and response—early warning, preemptive measures, rapid response, and accountability. These steps alone will certainly not solve the world's conflicts, but they can go a long way toward preparing governments to deal with crises in a consistent, productive manner. A great deal of work is ongoing within our government, in other governments, and in the NGO community. However, more can be done. I am confident that, as each part of this strategy is developed and as these parts begin to function more smoothly, they will mutually begin to reinforce one another. The ultimate goal is for us to enhance our opportunities to prevent genocide or other mass atrocities at each step of the process, recognizing that the first two areas—early warning and preemptive measures—are crucial for making an immediate impact, and the last two—response to atrocities and accountability—will likely have only long-term impact. Ultimately, it comes down to preparation, with a stable of resources and practical knowledge of how to approach each of these problems.

Despite the claims of “never again,” genocide is a challenge we will indeed face again and again until we construct a robust, dependable approach to prevention and response.