POLICY*dialogue* BRIEF

Violent Nonstate Actors as Perpetrators and Enablers of Atrocity Crimes

Recent world events have highlighted the threat posed by violent nonstate actors that perpetrate mass atrocity crimes, including genocide, crimes against humanity, ethnic cleansing, and war crimes. On October 14–16, 2015, experts and policymakers from academia, government, international organizations, and civil society gathered at the Airlie Center outside Washington, DC, to participate in the Stanley Foundation's 56th annual Strategy for Peace Conference. As part of the conference, 29 participants convened for a roundtable titled "Nonstate Actors as Perpetrators and Enablers of Mass Atrocity Violence," which considered the range of nonstate actors that operate as direct perpetrators or third-party enablers of atrocity violence, identifying the varied motives and means that drive their actions and the policy responses available for prevention and protection. Within this discussion, participants examined the immediate policy challenges posed by terrorist groups and networks as perpetrators of atrocity violence and the relationship between atrocity prevention, counterterrorism, and preventing and countering violent extremism (P/CVE).

Participants rooted their discussion in existing political and normative frameworks for the prevention of mass atrocity crimes and the protection of populations under threat. Before the conference, they received copies of the *United Nations Framework of Analysis for Atrocity Crimes, the Draft Follow-On Action Agenda* from the February 2015 White House summit on countering violent extremism, and "Punishment of Non-State Actors in Non-International Conflict" by William Schabas. The three documents provided a foundation to compare how the related but distinct atrocity-prevention and CVE-policy communities think about atrocity violence and the manner in which the justice community has understood and dealt with nonstate actors as perpetrators of atrocity crimes.

This dialogue brief summarizes the key points of the discussion, identifies areas requiring further investigation and understanding, and puts forward recommendations that resulted from the dialogue.

The Responsibilities of Nonstate Actors

Roundtable participants agreed that nonstate actors with state-like characteristics, such as control over territory, are obligated to abide by the laws of war under the Geneva Conventions. The Geneva Conventions

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This brief summarizes the primary findings of the conference as interpreted by the rapporteur, Rachel Gerber, and the chair, Stephen J. Rapp. Participants neither reviewed nor approved this brief. Therefore, it should not be assumed that every participant subscribes to all of its recommendations, observations, and conclusions.

outline specific criminal prohibitions for which state and nonstate actors can be directly prosecuted. Additionally, participants considered the roles and responsibilities held by violent nonstate actors under the Responsibility to Protect (R2P) principle, which was agreed on by all UN member states in the 2005 World Summit outcome document and reflects a political commitment to prevent and halt genocide, war crimes, ethnic cleansing, and crimes against humanity. Participants noted that R2P stretches beyond criminal prohibitions and establishes a proactive obligation to protect populations and prevent mass atrocity crimes.

Although there has been debate over the extent to which R2P—generally viewed as state-centric—addresses nonstate actors, participants argued the language in the outcome document identified the entire international community as a bearer of prevention and protection responsibilities. Thus, nonstate actors share an affirmative responsibility to ensure the protection of populations that may be impacted by their operations.

Furthermore, participants discussed the fact that UN member states have never disputed the application of R2P to nonstate actors and have largely accepted that when national authorities do not hold control, the responsibility to protect then falls to armed groups. Yet some participants felt it important to recognize that member states have rarely explicitly addressed the roles and responsibilities of nonstate actors in accordance with R2P, and political concerns may not yet have been voiced. Some participants pointed to potential pushback in response to fears of legitimizing nonstate actors through recognition and engagement on their protection responsibilities. There are also sensitivities inherent in efforts to deny the means of perpetration to groups operating in other states.

Regardless, participants affirmed the shared responsibility of state and nonstate actors to support protection. The challenge to the international community, then, is understanding whether and how to engage armed nonstate actors over (real or potential) perpetration of atrocity crimes. This challenge requires consideration of the diversity of violent nonstate actors and the ways variations in motives, means, and tactics—as well as positions within wider political constellations—shift parameters and policy options for prevention and response.

Understanding Violent Nonstate Actors and Options for Policy Response

In order to identify these parameters and their implications for effective policy response, participants outlined the spectrum of potential nonstate perpetrators and enablers. They then began to assess the complex interplay between contextual drivers, motives, justifications, and means that give rise to violent, civilian-targeted strategies.

Nonstate Actor Types, Drivers, and Motives

The ability to meaningfully engage with violent nonstate actors was an important topic throughout the dialogue and one that demonstrated that engagement depends entirely on context. Some participants pointed to a history of productive humanitarian engagement with violent nonstate actors, suggesting those that control territory or aspire to statehood may wish to demonstrate suitability to join the international community and operate by its established standards. Under these circumstances, organizations like the International Committee of the Red Cross have successfully developed and employed a framework for engagement with nonstate actors on the laws of war. However, in other cases, violent nonstate groups use weapons banned under international law and resist the notion they are part of the framework of actors that must adhere to the ban. Similarly, participants highlighted the increasing profile of nonstate actors that explicitly reject the existing international order and flout its norms and standards as an expression of opposition.

Bearing these examples in mind, participants emphasized that nonstate actors, like states, are not monolithic. Stark differences that impact drivers, objectives, and strategies lie not only between but also within groups, making it challenging to recognize pressure points and opportunities for prevention and protection. For instance, addressing the threats posed by violent nonstate actors who actively oppose the basic foundations of the international community will require different tools than those used to engage groups vying for legitimacy and recognition within preexisting global norms and structures. Complicating matters further, it may also be true that within groups certain factions could be more accepting of international norms than others, depending on the degree to which their grievances can be addressed.

Discussants also insisted on the importance of distinguishing between motives and justifications at the group and individual levels. It requires only a small group of individuals to make strategic decisions, and the leadership of a group may operate on one set of motives but invoke a different set of justifications. The justifications for atrocity violence may, in fact, draw heavily on the contextual drivers of a conflict, which key deeply into the motives that compel their recruit base, without accurately depicting the leaders' true motives. While these complexities create challenges for assessment, they also create multiple entry points for engagement, whether at the level of elite interests or member-based motives and grievances. For example, if elite interests cannot be countered, addressing contextual drivers can stifle recruitment and cut off human capital as an important means of perpetration. Participants acknowledged that understanding the core drivers of individual and small groups of leaders may also clarify the developmental process of the group, revealing strategic points where

certain needs could be satisfied in order to change the trajectory of the organization.

Participants specifically considered groups that operate in accordance with extremist ideologies, indicating that recruits are often motivated by feelings of marginalization and long-term political, social, and economic grievances. Experiences of violence at the hands of state authorities have often provided justification for violence undertaken against the state. It was emphasized that the international community has the responsibility to consider the long-term consequences of ineffective, divisive, and repressive governance and to engage preventively with regimes that do not respond to the political, social, and economic needs of their populations.

Participants highlighted the increasing marginalization of youth in such contexts of inadequate and oppressive governance. The Internet provides an effective medium to communicate radical ideologies to young people who feel alienated by their immediate political, social, and economic contexts. Yet participants stressed that vulnerable youth are not radicalized by a tweet. Social media do, however, provide an effective tool for channeling existing grievances and building networks for disseminating ideology and connecting recruits to a cause. Participants underscored the importance of generating a deeper understanding of the psychological drivers and past experiences of violence that make young people receptive to radical messages.

In particular, participants discussed the challenge of addressing past violence, emphasizing the role of justice and rule of law in responding to and preventing atrocity crimes. Participants highlighted a strong statistical correlation between the early establishment of constitutions post-conflict and decreased risks of recidivism. Establishing effective transitional justice mechanisms has been critical to stabilization in post-conflict contexts. Where crimes have taken place, transitional justice and accountability mechanisms undermine impunity and create disincentives for future violence.

For example, anticorruption commissions, mobile courts, and police reform provide concrete policy options for addressing corruption and impunity in communities marred by violence. Participants also acknowledged there are key moments of change when these tools are most effective, such as transitions of a political system or government authority.

Participants emphasized the importance of understanding the distinct drivers, motives, and justifications of different types of nonstate actors and how those drivers, motives, and justifications operate in specific contexts. However, they also cautioned against categorizations that create artificial divisions and encourage siloed policy responses. Participants highlighted the missed opportunity for learning and policy development that results from inadequate collaboration between policy communities engaging with different categories of nonstate actors.

Unique Challenges Presented by Nonstate Actors

Considering entry points for policy response to violent nonstate actors, participants sought to identify key differences between violent nonstate actors and state perpetrators of atrocity crimes that impact the potential for effective prevention and protection. Among these differences, some participants noted that violent nonstate actors are often the party of "lower capacity" in an asymmetric conflict. Operating against an established state apparatus and often outside of legitimate supply lines, nonstate actors must invest heavily in mobilizing the means to execute their strategies, including human and financial capital, arms, and fuel.

The degree to which violent nonstate actors rely on creative processes of acquisition, including recruitment of foot soldiers and specialists (e.g., engineers and medical professionals), creates openings to interrupt such processes with significant impact. For instance, as noted above, violent nonstate actors rely on social media and new communications technologies to support recruitment and operations. Participants urged governments and civil society to consider how to better mobilize these same technologies for atrocity prevention, investing in soft power and communication strategies that counter nonstate actor recruitment efforts.

Noting differences between nonstate actors and state perpetrators, participants stressed significant challenges that impede the ability to identify how policies can be developed to address the specific drivers, motives, and means involved in nonstate actor atrocity perpetration.

In particular, several participants pointed to the common policy approach taken by individual states and the international community that seeks to isolate and contain violent nonstate actors, blocking all engagement with blacklisted actors. While these actions stem from a desire to withhold legitimacy and stifle support for violent nonstate actors, participants argued that such policies also prevent proper assessment and analysis that would help states and the international community better understand—and thus more effectively counter—the nonstate actors in question.

One participant noted that for civil society researchers, visiting the websites of a blacklisted nonstate actor to investigate its recruitment strategy can attract negative attention from state authorities. Others spoke to the need to lift blocks that prevent engaging with nonstate actors for education and training to encourage compliance with human rights standards and international humanitarian law. For nonstate actors that seek recognition by the international community,

isolation can create a backlash and generate further rejection of global standards and institutions.

A second challenge raised by participants pointed to the inability to effectively impact the operations of global networks with isolated national responses. This problem extends beyond the difficulties in directly countering transnational networks of perpetrators. It applies also to addressing the supply chain provided by transnational criminal networks that sustains their activities, as well as those of nonstate actors operating in more isolated contexts with local ambitions. One participant emphasized that while perpetrating groups come and go, the criminal networks that have supplied the means of their violence have remained largely intact over many decades, redirecting their routes with ease in response to isolated national regulations and enforcement. Participants stressed that coordinated global efforts are required to dismantle these enabling networks and to strengthen the ability to hold actors along the entire supply chain accountable for their actions.

Means and Enablers of Violent Nonstate Actors

Turning discussion toward means and enablers for atrocity crimes, participants stressed the challenges involved in engaging actors that enable atrocity violence and limiting the access of nonstate actors to the means necessary to commit atrocities. Participants observed that these two activities are interdependent, as enablers provide the means of committing atrocities. For example, perpetrators must navigate the financial system in order to access the capital necessary to commit atrocities. Thus, strengthening reporting from the banking sector could restrict violent nonstate actors' abilities to exploit financial systems. However, existing accountability mechanisms are weak, and, importantly, whether in moving finances or other enabling activities like trade, the intermediaries at work must also be held accountable.

Participants described many of the challenges faced in engaging private sector and financial institutions that may enable atrocity violence. In particular, they noted that government actors and civil society operate separately from financial institutions and the private sector and that lack of coordination and collaboration between them is a fundamental obstacle. They also stressed that these actors operate on fundamentally different principles with different objectives and understandings of cost and risk. Encouraging human rights actors to make a greater investment in building relationships with the private sector, participants highlighted the need to find better ways to communicate common interests.

Within government and among civil society actors, participants said, strengthening analytics across silos is one way to grapple with the means and enablers of violent nonstate actors. Currently, capacity limitations and security concerns restrict sharing between policy silos.

Most organizations or departments are set up to work on country-specific or sector-specific analysis and have only a limited amount of people assigned to such tasks, restricting capacity for collaboration. Furthermore, governmental institutions lack the clearance or mechanisms to enable collaboration with civil society and the private sector over sensitive security issues where coordination could greatly enhance effective action. For instance, participants indicated that some private sector actors are generating substantial amounts of data on nonstate actor means and enablers, yet they are not being included in discussions on mass atrocity prevention.

Participants agreed that strengthening collaboration across silos and between these communities would be an important way to maximize the impact of the research and analysis that is already under way. To do so successfully requires political will and increased resources in human and financial capital.

Some mechanisms exist to support cross-sectoral analysis and learning, such as UN panels of experts or commissions of inquiry and community-level information gathering through local engagement, often in the context of peacekeeping operations. Participants also recognized opportunities to learn from related (often better-resourced) policy communities that have managed to bridge information gaps, including counternarcotics and counterterrorism efforts. They expressed the need for generating and sharing information purposefully, remarking that analysis should not focus solely on generating information but rather on assessing information gaps, the effectiveness of available tools, and circumstances where new tools are needed.

Supporting Local Solutions

In reviewing the complex spectrum of violent nonstate actors, discussants reinforced the need for differentiated approaches that address the core drivers particular to individual nonstate actor groups. Developing effective targeted responses requires bridging the gap between structural and proximate prevention. Stressing the need for nuanced, context-specific analysis, participants also encouraged a broad survey to better understand the tools that work, the circumstances under which they are effective, and the areas for which new tools are required. One participant cautioned against exclusive focus on the minority of the population that chooses to join violent groups and advocated for policies that support the peaceful majority that not only refrains from but also discourages violence.

Participants pointed to common (and often significant) gaps between external and local perceptions of the drivers of conflict, which can only be bridged via engagement with local communities. At the same time, participants cautioned that external intervention to prevent or curtail violence is inherently limited.

Solutions driven by internal actors who have deeper contextual awareness are likely to be more successful. The international community can support this process by recognizing opportunities to elevate local voices that seek to counter violence and radical ideologies and providing necessary protection and support for local activists that work to marginalize extremist ideologies and actors. External actors can support long-term structural investments key to building resilience and aiding in the prevention of mass atrocity violence.

Finally, participants highlighted the fact that, for external actors, prevention begins at home. Preventive action requires that actors appealing to justice and human rights adhere fully to these agendas in their own behavior. Perceptions of double standards coming from some of the strongest supporters of prevention policy only hinder prevention efforts.

Atrocity Prevention, Counterterrorism, and Preventing and Countering Violent Extremism

Participants noted that the last decade has seen an overall increase in mass atrocity crimes committed by nonstate actors. Correlated with this rise, recent events have also reflected an increase in the use of atrocity tactics by terrorist organizations that seek to elevate their public profile through widespread and systematic attacks against civilians.

Participants therefore focused on terrorist organizations as a specific type of violent nonstate actor and the implications of their use of atrocity tactics in discussing the relationship between atrocity prevention, counterterrorism, and the countering/prevention of violent extremism. For the purposes of the discussion, participants defined counterterrorism as the full range of activities undertaken by states to address the threats posed by terrorism. The emerging agenda for CVE has introduced the importance of human rights to counterterrorism efforts and has added a focus on community engagement and upstream structural investments to address the contextual drivers that fuel recruitment to terrorist organizations. Participants described PVE, another commonly invoked framework, as encompassing a prevention focus similar to CVE but without the kinetic components of the wider counterterrorism agenda.

Real-world events have forced a practical convergence of these agendas. As threats to international peace and security arise, for example, counterterrorism and atrocity prevention often must be considered concurrently by the UN Security Council. Participants also noted important conceptual and technical overlaps between CVE/PVE and atrocity prevention. Research into risk factors that promote individual participation in violent extremism, for example, has identified state repression, absence of civil liberties, and perception of a threat to religion as core risk indicators, all of which have important implications for atrocity prevention and civilian protection. Some participants argued that atrocity-prevention work inherently contributes to CVE and counterterrorism because of its preventive focus. Similarly, participants identified commonalities between the methodologies for criminal investigations of individual terrorists and perpetrators of mass atrocities and pointed to the shared objective of accountability.

These overlaps led many participants to encourage more effective coordination and information sharing among atrocity-prevention, counterterrorism, and CVE/PVE actors. However, participants argued strongly against merger or conflation of the agendas and insisted on the need to preserve the independent integrity of atrocity prevention and avoid its co-optation.

While welcoming CVE's integration of human rights concerns and its official recognition of the insufficiency of existing counterterrorism approaches, several participants pointed to long-range contradictions between counterterrorism and atrocity-prevention objectives that have been left unresolved in the development of CVE/PVE. Although CVE/PVE expands counterterrorism to include greater emphasis on prevention, in practice counterterrorism continues to prioritize immediate-term objectives, in particular kinetic activities focused on consolidating the state's monopoly on the use of force. Participants argued that efforts to shift CVE focus to greater investment in upstream prevention have yet to take root. In particular, they noted the discouraging tendency of immediate threats (such as Islamic State and Syria) to crowd out focus on human rights and upstream prevention at the UN CVE summit held in September 2015.

Participants pointed to additional challenges posed by CVE. In particular, they expressed concern regarding its tendency to put too much of the onus on civil society actors to be the solution for violent extremism. They emphasized the importance of including local actors in atrocity prevention but noted that civil society cannot address violent extremism and terrorism alone, particularly when key structural issues have not been addressed (e.g., access to means). Even more importantly, the international community must be careful not to export risk to civil society, as speaking out or acting against violent extremism and terrorism is constructive but also an enormous risk.

Given these concerns, several participants expressed strong reservations against establishing any direct relationship between atrocity prevention and counterterrorism/CVE. Many communities, they argued, continue to associate counterterrorism with human rights violations, and there remains a common perception that counterterrorism and CVE are one and the same. Participants also suggested that for the sake of progress and to reduce the risk of

alienation, it would be best to keep development, peacebuilding, transitional justice, and international justice fully distinct from the counterterrorism framework.

Considering these caveats, participants generally agreed that atrocity-prevention principles can (and should) usefully inform the developing CVE/PVE agenda, particularly by shifting the focus of CVE to upstream prevention. Specifically, atrocity prevention can inform counterterrorism on efforts to strengthen community resilience, inclusive governance and societies, gender equality, and access to justice, among other things. However, any relationship between the agendas needs to be conscious and careful not to subsume atrocity prevention under other labels. It should also be managed in a manner that ensures the overriding primacy of atrocity-prevention objectives, human rights, and international humanitarian law.

Finally, participants agreed that the commission of mass atrocities—including but not limited to those committed by terrorists and violent extremists—should be understood as an issue of national security as well as a protection imperative. They argued that exclusive framing as a moral imperative has undermined atrocity prevention and response, and they insisted that mass atrocity prevention should be elevated as a key priority of national security.

Addressing Violent Nonstate Actors: Guiding Principles and Recommendations

Participants outlined the following guiding principles and recommendations to frame and support the international community's approach to the distinct challenges presented by violent nonstate actors that perpetrate or enable mass atrocity crimes.

Guiding Principles

- Ensure that overriding respect for human rights and international humanitarian law sets the parameters for all responses to violent nonstate actors, including efforts to counter terrorist groups and violent extremism.

- Draw on atrocity-prevention principles to inform the prevention of violent extremism while preserving the distinct integrity of the atrocity-prevention agenda.

- Prioritize multilateral approaches, involving regional and global actors wherever possible, and increase cross-sectoral collaboration and engagement.

- Engage civil society and empower individuals in all efforts to build community buy-in and inclusivity.

- Focus on long-term objectives over short-term gains.

- Develop a clear division of labor; tailor solutions to actors responsible for implementing them as well as intended targets.

Recommendations

Preventive Efforts to Address Contextual Drivers

- Increase the resources available for effective structural prevention that is guided by atrocity prevention, conflict prevention, and human rights principles.

- Mobilize moments of change for key structural investments such as the development of constitutions, anticorruption commissions, and police reform.

- Invest in addressing impunity and expand access to justice through means such as mobile, mixed/hybrid, and special courts, and cases involving high profile perpetrators.

- Work with communities to better understand and respond to their indicators of security.

Targeted Policy Approaches

- Build analytical capacities for evaluating existing data.

- Distinguish group leaders from recruits and differentiate their motivations; focus on motives over justification.

- Increase flexibility for constructive engagement with violent nonstate actors that encourages a better understanding of motives and means, and enables education and training on human rights and international humanitarian law.

- Increase cooperation with banks and other financial institutions to better monitor enabling resource flows.

- Increase engagement between counterterrorism and atrocity-prevention communities to strengthen shared strategies and objectives.

Areas for Additional Research and Analysis to Improve Policy Development

Enhance investment in research and analysis to better identify the challenges and opportunities to address violent nonstate actors, particularly in the following areas:

- The distinctive challenges presented by violent nonstate actors.

- Supply chains and the economic incentives of enablers.

- Religion and/or ideology as justification or motivation for violence.

- Use of new media and communications technologies by violent nonstate actors.

- The effectiveness of existing tools when applied to nonstate actors, distinguishing between those that are ineffective and those that are underutilized, and areas where new tools are needed.

Participant List

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