

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

State Department Issues First U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities
doi:10.1017/ajil.2022.64

On July 15, 2022, the U.S. Department of State issued the U.S. government's first Strategy to Anticipate, Prevent, and Respond to Atrocities.¹ According to Deputy Secretary of State Wendy Sherman, who headlined the strategy's public release, the "plan will help coordinate resources and direct activities not only at the State Department but across the federal government."² The product of interagency deliberation—the emblems of seven departments and agencies are listed on the report's cover, including State, Justice, Defense, USAID, FBI, Homeland Security, and Treasury—the strategy builds upon and extends existing authorities and policies that date to the early years of the Obama administration in order "to prioritize resources for prevention activities, while necessarily responding to and assisting in recovery from atrocities."³

More than those that preceded it, the Obama administration, with a "foreign policy team . . . [that] include[d] many 'progressively oriented multilateralists' who believed that the previous administration had abandoned US values, and [wanted] to reclaim that space by reestablishing US leadership on foreign policy issues with a renewed moral dimension," sought to center atrocity prevention in U.S. foreign policy and establish institutional structures that would effectuate that novel move.⁴ The 2010 National Security Strategy indicated that "[t]he United States is committed to working with our allies, and to strengthening our own internal capabilities, in order to ensure that the United States and the international community are proactively engaged in a strategic effort to prevent mass atrocities and genocide."⁵ A 2011 Presidential Study Directive (PSD-10) went further and identified "preventing mass atrocities and genocide" as "a core national security interest and a core moral responsibility of the United States."⁶ To ensure "that the full range of options is available" to take action against mass atrocities, there needed to be "a level of governmental organization that matches

¹ 2022 United States Strategy to Anticipate, Prevent, and Respond to Atrocities (July 15, 2022), at <https://www.state.gov/2022-united-states-strategy-to-anticipate-prevent-and-respond-to-atrocities> [hereinafter Strategy].

² U.S. Dep't of State Press Release, Remarks of Wendy R. Sherman, On the 2022 Elie Wiesel Act Report to Congress and New U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities (July 15, 2022), at <https://www.state.gov/on-the-2022-elie-wiesel-act-report-to-congress-and-new-u-s-strategy-to-anticipate-prevent-and-respond-to-atrocities>; see also White House Press Release, Statement by NSC Spokesperson Adrienne Watson on the Release of the U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities (July 18, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/18/statement-by-nsc-spokesperson-adrienne-watson-on-the-release-of-the-u-s-strategy-to-anticipate-prevent-and-respond-to-atrocities>.

³ Strategy, *supra* note 1, at 4.

⁴ Stephen Pomper, *Atrocity Prevention Under the Obama Administration: What We Learned and the Path Ahead*, at 5 (U.S. Holocaust Memorial Museum, Feb. 2018).

⁵ National Security Strategy, at 48 (May 2010).

⁶ White House Press Release, Presidential Study Directive on Mass Atrocities, Presidential Study Directive-10/PSD-10 (Aug. 4, 2011), at <https://obamawhitehouse.archives.gov/the-press-office/2011/08/04/presidential-study-directive-mass-atrocities> [hereinafter PSD-10]. See John R. Crook, Contemporary Practice of the United States, 105 AJIL 775, 805 (2011). A 2008 report by a bipartisan Genocide Prevention Task Force—Madeleine K. Albright & William S. Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers* (2008)—"provide[d] something of a blueprint for the PSD-10 deliberations." James P. Finkel, *Atrocity Prevention at the Crossroads: Assessing the President's Atrocity Prevention Board After Two Years*, at 2 (Center for the Prevention of Genocide Series of Occasional Papers No. 2, 2014).

the methodical organization characteristic of mass killings.”⁷ PSD-10 therefore established an Atrocities Prevention Board (APB), composed of national security departments and agencies, “to coordinate a whole of government approach to preventing mass atrocities and genocide.”⁸ Following an interagency review, overseen by the National Security Staff’s director for war crimes and atrocities (a new position created in 2010), the president issued a “A Comprehensive Strategy” that set up the APB and outlined tools that the Executive Branch would employ to prevent and respond to atrocities, including a National Intelligence Estimate on the Global Risk of Mass Atrocities and Genocide.⁹ During the Obama years, the APB “played a significant role in focusing policy attention on the plight of Burma’s Rohingya and the situation in Burundi; contributed to discussions aimed at reducing the risk of violence during Kenya’s . . . parliamentary elections; [and] helped orchestrate Washington’s response to the political and humanitarian crisis in the Central African Republic.”¹⁰

Efforts to further mainstream atrocity prevention shifted to Congress during the Trump administration.¹¹ The Women, Peace, and Security Act of 2017 made it “the policy of the United States to promote the meaningful participation of women in all aspects of overseas conflict prevention, management, and resolution, and post-conflict relief and recovery efforts, reinforced through diplomatic efforts and programs.”¹² The Act required the adoption of a Women, Peace, and Security Strategy, which was released in 2019.¹³ The Elie Wiesel Genocide and Atrocities Prevention Act of 2018 codified the link between atrocity prevention and national security.¹⁴ Endorsing the work of the APB as “critically important,” the Act made it U.S. policy to

(1) regard the prevention of atrocities as in its national interest; (2) work with partners and allies, including to build their capacity, and enhance the capacity of the United States, to identify, prevent, and respond to the causes of atrocities, including insecurity, mass displacement, violent conflict, and other conditions that may lead to such atrocities; and (3) pursue a United States Government-wide strategy to identify, prevent, and respond to the risk of atrocities.¹⁵

⁷ PSD-10, *supra* note 6.

⁸ *Id.* Ambassador-at-Large for War Crimes Issues David Scheffer established an Atrocities Prevention Interagency Working Group during the last few years of the Clinton administration. See James P. Finkel, *Atrocity Prevention from Obama to Trump*, in PREVENTING MASS ATROCITIES: POLICIES AND PRACTICES 113, 116 (Barbara Harff & Ted Robert Gurr eds., 2019).

⁹ See White House Press Release, Fact Sheet: A Comprehensive Strategy and New Tools to Prevent and Respond to Atrocities (Apr. 23, 2012), at <https://obamawhitehouse.archives.gov/the-press-office/2012/04/23/fact-sheet-comprehensive-strategy-and-new-tools-prevent-and-respond-atro>. The president’s strategy and APB’s responsibilities, structure, protocols, and tasks were detailed in Executive Order 13729, 81 Fed. Reg. 32611.

¹⁰ Finkel, *supra* note 8, at 115. For a comprehensive review, analysis, and assessment, see also Pomper, *supra* note 4.

¹¹ The one area in which the Trump administration went beyond the actions of its predecessor was in blocking the property of persons involved in serious human rights abuse. See Executive Order 13818, 82 Fed. Reg. 60839. The Order implemented the Global Magnitsky Human Rights Accountability Act, Pub. L. 114-328, div. A, tit. XII, subtit. F, 130 Stat. 2533 (Dec. 23, 2016).

¹² Pub. L. 115–68, 131 Stat. 1202, sec. 4 (Oct. 6, 2017).

¹³ See U.S. Strategy on Women, Peace, and Security (2019), available at https://www.state.gov/wp-content/uploads/2021/01/WPS_Strategy_10_October2019.pdf.

¹⁴ Pub. L. No: 115-441, 132 Stat. 5586 (Jan. 14, 2019).

¹⁵ *Id.*, secs. 2–3.

And the Global Fragility Act of 2019 stated that “[i]t is the policy of the United States to seek to stabilize conflict-affected areas and prevent violence and fragility globally.”¹⁶ In accordance with the Act, in December 2020, the Trump administration issued a Strategy to Prevent Conflict and Promote Stability.¹⁷ These three laws established an overall framework for the government’s atrocity prevention work, requiring or promoting strategies and establishing regular reporting obligations to Congress.

In accordance with the goals of the Elie Wiesel Act, the new Strategy is intended to align with and integrate information and principles from the many and disparate authorities, policies, and processes put in place during the past decade.¹⁸ Its starting point is the connection between atrocity prevention, morality, and national security.¹⁹ The Strategy emphasizes that “[a]trocities inflict long-term trauma and destroy lives and communities. Atrocities may violate international human rights law, contribute to widespread displacement, regional and international instability, and economic disruption, and threaten U.S. and partner nations’ security and interests.”²⁰ Ultimately, the Strategy seeks to enable the government to take “timely and effective action to anticipate, prevent, and respond to atrocities, in coordination with partner governments, and international, civil society, and local partners.”²¹

At its core, the Strategy outlines three policy goals to be pursued by the Atrocities Prevention Task Force (Task Force), the successor to the Atrocities Prevention Board.²² It first emphasizes “atrocity prevention, response, and recovery” by “[p]ursu[ing] [e]arly [a]ction and [l]ocally [d]riven [s]olutions in [p]riority [c]ountries.”²³ This is to be accomplished through the use of “quantitative and qualitative assessments, drawing upon input

¹⁶ Global Fragility Act of 2019, Pub. L. 116–94, div. J, tit. V, 133 Stat. 2534, 3060 (Dec. 20, 2019).

¹⁷ United States Strategy to Prevent Conflict and Promote Stability (2020), available at <https://www.state.gov/wp-content/uploads/2021/01/2020-US-Strategy-to-Prevent-Conflict-and-Promote-Stabilit-508c-508.pdf>. President Biden added a “prologue” to this strategy in April 2022. See White House Press Release, Letter from the President on the Implementation of the Global Fragility Act (Apr. 1, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/01/letter-from-the-president-on-the-implementation-of-the-global-fragility-act>; Prologue to the United States Strategy to Prevent Conflict and Promote Stability (Apr. 2022), available at <https://www.state.gov/wp-content/uploads/2022/06/CSO-2022-SPCPSprologue-EN-FINAL-508-Accessible-05172022.pdf>.

¹⁸ Other policy initiatives mentioned include the U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally, the Stabilization Assistance Review, an ongoing interagency Counterterrorism Resources and Policy Review, and the administration’s democracy and human rights agenda. See, e.g., U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally (2016), available at <https://www.state.gov/wp-content/uploads/2019/03/258703.pdf>; Stabilization Assistance Review: A Framework for Maximizing the Effectiveness of U.S. Government Efforts to Stabilize Conflict-Affected Areas (2018), available at <https://www.state.gov/wp-content/uploads/2019/06/SAR-Final.pdf>.

¹⁹ President Biden’s 2021 International Holocaust Remembrance speech is quoted to this effect. Strategy, *supra* note 1, at 3 (quoting Statement by President Joseph R. Biden, Jr. on International Holocaust Remembrance Day (Jan. 27, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/statement-by-president-joseph-r-biden-jr-on-international-holocaust-remembrance-day>).

²⁰ *Id.* at 3.

²¹ *Id.*

²² During the Trump administration, the Atrocities Prevention Board became the Atrocity Early Warning Task Force. The Biden administration renamed it the Atrocities Prevention Task Force. The Task Force is an Interagency Policy Committee, led by NSC staff, with the State Department’s Bureau of Conflict and Stabilization Operations serving as a secretariat. It includes representatives from State, Defense, FBI, Homeland Security, Justice, Treasury, USAID, and the Intelligence Community. Its work is to “feed into a higher-level Prevention and Stabilization Steering Committee, which will coordinate the implementation of the Elie Wiesel Act.” *Id.* at 4.

²³ *Id.*

from civil society, to identify priority countries for atrocity prevention efforts, including addressing conflict-related sexual violence.”²⁴ More intensive focus will be placed on a subset of these countries through “assessments of risk factors and pathways to atrocities.”²⁵ The Task Force will also “[a]ssess current efforts, including gaps inhibiting sufficient action, and available tools to mitigate atrocity risks”; “develop targeted response plans”; “coordinate a whole-of-government response”; and “[s]upport and ensure U.S. Government entities, including U.S. missions abroad, adjust and update Integrated Country Strategies, Country Development Cooperation Strategies, defense cooperation programs and agreements” and other documents and processes.²⁶ Next, the Strategy calls for “invit[ing] collaboration with a wide range of stakeholders including UN agencies, regional organizations, partner governments, local populations, and civil society and related consortia.”²⁷ Finally, the Strategy recognizes that for “the U.S. Government to identify, prevent, and respond to atrocities effectively, U.S. Government personnel must be trained to recognize and report on early warning indicators and escalatory risk, as well as potential U.S. interventions.”²⁸ It calls upon departments and agencies to “develop[] and provid[e] relevant atrocity prevention training and guidance to [their] personnel.”²⁹

The Strategy goes on to allocate the work and specify available techniques. Each pertinent federal department and agency is tasked with “clear roles and responsibilities for advancing [the] Strategy.”³⁰ The Task Force “is responsible for monitoring and alerting decision-makers to early warning signs and escalatory risks, and countries of concern,” and “participates in and provides support to existing regional policy processes involving response and recovery activities.”³¹ The Strategy identifies a non-exhaustive list of tools available and how they might be used, including: diplomacy; foreign assistance/programming; defense support and cooperation; trade, investment, commercial diplomacy, and international and bilateral engagement on financial transparency; sanctions and visa restrictions; law enforcement; intelligence and analysis; justice and accountability; and strategic communications.³² As with any plan, implementation will be critical to its success. Thus, a key component of the Strategy is its commitment to have the Task Force monitor and evaluate its own work through an internal annual work plan, “consult regularly with relevant civil society stakeholders, congressional members, and local populations,” “incorporate lessons learned and best practices,” and “continuously adapt its approach and recommendations when new information and lessons become known.”³³

The Strategy is especially focused on anticipation and prevention. As Robert Faucher, the then-Principal Deputy Assistant Secretary for the Bureau of Conflict and Stabilization Operations, said at a July 20 discussion at the United States Institute of Peace: “We’re aligning our efforts to disrupt the processes that lead to atrocities. The earlier the better. . . . We

²⁴ *Id.*

²⁵ *Id.* The approach here, and in other ways, is similar to that of the Global Fragility Strategy.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ *Id.* at 8.

³² *Id.* at 9–10.

³³ *Id.* at 8.

need to start ahead of time. . . . And that is one of the main strengths of this strategy.”³⁴ As part of that, the Strategy recognizes that the U.S. government cannot work successfully as a solo operator. The Strategy is deliberately based in multilateralism, with collaboration and coordination with like-minded partner countries and international organizations, and the participation of civil society is intentional, as that is where much atrocity prevention research, analysis, and ideas are conducted and generated.³⁵

The United States is not alone in considering an atrocity prevention strategy. In September 2018, in response to the “international community’s failure to act and intervene meaningfully in Syria,” the UK House of Commons Foreign Affairs Committee concluded that the “Government needs to act urgently to produce a comprehensive atrocity prevention strategy and implementation plan to ensure it moves beyond words and towards concrete actions.”³⁶ The Committee reiterated the point in a June 2021 report on the “UK’s Responsibility to Act on Atrocities in Xinjiang.”³⁷ In November 2021, the UK House of Commons International Development Committee began “an inquiry into the effectiveness of the UK government’s approach to atrocity prevention within and outside conflicts, including its work in promoting dialogue and reconciliation between communities.”³⁸ Consideration in the Committee is again being given to a cross-government strategy that focuses on atrocity prevention. The inquiry has not concluded. In May 2022, *The UK Government’s Strategy for International Development* referred to the pending establishment of “a new conflict and atrocity prevention hub” within the Foreign, Commonwealth and Development Office but there was no mention of a strategy.³⁹

³⁴ U.S. Leadership in Atrocity Prevention, at 24:56 (July 20, 2022), at <https://www.youtube.com/watch?v=V60t52vXzIw>.

³⁵ See, e.g., Armed Conflict Location & Event Data Project, at <https://acleddata.com>; Early Warning Project, at <https://earlywarningproject.ushmm.org>; UN Office on Genocide Prevention and the Responsibility to Protect, at <https://www.un.org/en/genocideprevention/index.shtml>.

³⁶ House of Commons, Foreign Affairs Committee, Global Britain: The Responsibility to Protect and Humanitarian Intervention, at 3, 11 (2018), available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/1005/1005.pdf>.

³⁷ See House of Commons, Foreign Affairs Committee, Never Again: The UK’s Responsibility to Act on Atrocities in Xinjiang and Beyond, at 23 (2021), at <https://committees.parliament.uk/publications/6624/documents/71430/default>.

³⁸ House of Commons, International Development Committee, Inquiry Seeks to Prevent Atrocities in Bosnia and Beyond, at <https://committees.parliament.uk/committee/98/international-development-committee/news/159302/inquiry-seeks-to-prevent-atrocities-in-bosnia-and-beyond>.

³⁹ The UK Government’s Strategy for International Development, at 16 (May 2022), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1075328/uk-governments-strategy-international-development.pdf. Plans for the hub are described briefly in oral evidence given to the International Development Committee on May 24 and in a June 22 answer to a written question for the government submitted by a member of the House of Lords. See International Development Committee, Oral Evidence: Promoting Dialogue and Preventing Atrocities: The UK Government Approach, HC 149 (May 24, 2022), available at <https://committees.parliament.uk/oralevidence/10329/pdf>; Question for Foreign, Commonwealth and Development Office, UIN HL726, tabled on June 7, 2022, at <https://questions-statements.parliament.uk/written-questions/detail/2022-06-07/HL726>.