

Disrupting the Supply Chain for Mass Atrocities

How to Stop Third-Party Enablers of Genocide and Other Crimes Against Humanity

Executive Summary

Mass atrocities are organized crimes. Those who commit genocide and crimes against humanity depend on third parties for the goods and services—money, matériel, political support, and a host of other resources—that sustain large-scale violence against civilians. Third parties have supplied military aircraft used by the Sudan Armed Forces against civilians, refined gold and other minerals coming out of eastern Democratic Republic of the Congo, and ensured a steady flow of arms into Rwanda. Governments seeking to prevent atrocities cannot afford a narrow and uncoordinated focus on the perpetrators of such violence. Rather, an effective strategy must include identifying and pressuring third-party enablers—individuals, commercial entities, and countries—in order to interrupt the supply chains that fuel mass violence against civilians.

The first-ever Director of War Crimes, Atrocities, and Civilian Protection on the National Security Staff recently convened a meeting that appears to initiate an interagency structure to coordinate atrocities-prevention initiatives across the government. The Administration has an opportunity in the newly initiated structure to activate all of the U.S. government's resources to institute an atrocities-prevention policy that goes beyond responding to individual crises. This structure should incorporate a systematic approach to disrupting enablers and should ensure that all possible tools are developed and used to counter these complex crimes. The intelligence community and the Department of the Treasury, along with the Departments of State and Defense, are key to successfully tackling third-party enablers of atrocities.

What Is An Enabler?

A third-party enabler of genocide or other crimes against humanity is any government, commercial entity, or individual that directly or indirectly provides to the perpetrator resources, goods, services, or other support that help sustain the commission of atrocities. An enabler knows or should know both about the atrocities and how its goods or support are likely to contribute to the commission of these crimes.¹

Intelligence collection and analysis are crucial to identifying third parties and tracing supply chains to determine whether and where they can be interrupted. Ensuring timely and comprehensive dissemination of all relevant intelligence is crucial as well, to allow policy makers to develop and use the most effective tools against third-party enablers. The Treasury Department could target enablers of mass atrocities by freezing their assets and isolating them from financial markets—tools already used to combat supporters of terrorism, money launderers, drug traffickers, and some perpetrators of atrocities. Largely through the State Department, the United States can also exert political and diplomatic pressure—at the United Nations and elsewhere—to publicly and privately pressure these enablers.

Human Rights First offers the following recommendations to the U.S. government to identify and thwart third-party enablers and thereby improve its capacity to prevent or mitigate mass atrocities:

1. The President should publicly announce an interagency structure for preventing and mitigating atrocities, under the leadership of the Director for War Crimes, Atrocities, and Civilian Protection. This

- structure should be announced by December 2011 to ensure it is implemented in full by the end of the Obama Administration's first term.
2. The President should highlight the importance of tackling enablers as part of an effective government-wide strategy to prevent and mitigate atrocities by directing all U.S. government agencies engaged in efforts related to the prevention or mitigation of mass atrocities to identify third-party enablers, act to interrupt their enabling activity, and disrupt the supply chains that connect these actors to the perpetrators.
 3. The National Security Staff Director for War Crimes, Atrocities, and Civilian Protection should ensure that identifying and disrupting third-party enablers are included as explicit objectives in the interagency structure being developed to counter mass atrocities, that these objectives are addressed in all interagency discussions on situations where atrocities are threatened or are underway, and that enablers are addressed explicitly in policy measures focused on the situations of concern.
 4. In situations in which atrocities are threatened or are occurring, the relevant parts of the intelligence community should be tasked by the NSS-led interagency structure or the appropriate member thereof with collecting and analyzing intelligence on enablers, and policy makers should ensure that distribution of relevant intelligence is coordinated and comprehensive. The collection, analysis, and distribution of intelligence on enablers should support policy makers' efforts to pressure third-party actors on whom the potential or actual perpetrators depend.
 5. Congress, through legislation granting standing authority, or the President, through an executive order under IEEPA, should give the Treasury Department's Office of Foreign Assets Control authority to designate for sanctions not only those who perpetrate atrocities, but also enablers of atrocities wherever they occur. Congress and the administration should also ensure that OFAC has adequate resources to thoroughly investigate enablers of atrocities.
 6. The relevant officials on the National Security Staff and at the State Department should, as part of their bilateral and relevant multilateral discussions with other governments, raise concerns about those governments' transfers of arms, ammunition, and other goods to potential or actual perpetrators of atrocities. U.S. officials should be prepared to consider a range of political, economic and other tools that may be effective in pressuring those involved in enabling activities.
 7. The U.S. Permanent Representative to the United Nations should lead other Security Council members to meet and publicly discuss options for multilateral action, including imposing, expanding, and better enforcing sanctions and other measures, to prevent enablers of atrocities against civilians in Sudan, Democratic Republic of the Congo, and other places at high risk for mass atrocities. The discussions should include consideration of enablers identified in relevant U.N. expert panel reports.
 8. Congress, through its oversight of the intelligence community, should express its interest in a third-party enablers strategy and work with the relevant parts of the community to ensure it is sufficiently and effectively collecting, analyzing, and disseminating intelligence on third-party actors on whom the potential or actual perpetrators depend and the connections in their supply chain that may be particularly susceptible to pressure or interruption.
 9. Congress should include a focus on third-party enablers as part of any legislation on genocide prevention.

Disrupting the Supply Chain for Mass Atrocities

Successive U.S. administrations, including the Obama Administration, have recognized that preventing and halting genocide and other mass atrocities is in the national interest of the United States.² Yet despite repeated declarations of “Never again” and “Not on my watch,” and despite the use of criminal tribunals, diplomatic pressure, military intervention, celebrity concern, rallies, and sanctions on perpetrators, the international community, led by the United States, has failed repeatedly to avert atrocities.

Genocide and other mass atrocities against civilians are invariably complex crimes, involving savvy players, detailed planning, and intricate webs of political and economic factors; addressing these complex crimes requires a multifaceted approach. Because the perpetrators of mass atrocities often rely on third parties to provide the money, matériel, and political support necessary to sustain these crimes, states that seek to prevent or end them must have a strategy to interrupt the efforts of these third-party “enablers”—states, commercial enterprises, and individuals—that supply goods and services that sustain those who perpetrate mass atrocities.³

Why Enablers of Atrocities are Important

Mass atrocities are organized crimes. Perpetrators of those crimes usually are unable to produce all of the goods and services, from the mundane to the sophisticated, needed to carry them out, so they must procure them. These goods and services include arms, ammunition, other military matériel, training on operating and maintaining sophisticated weapons, air cargo space, refining of minerals, financial support and transactions, jet fuel, and truck fuel. Disrupting perpetrators’ access to the external actors—governments, commercial entities, and individuals—that provide those goods and services can disrupt the planning and execution of mass crimes against civilians. Some actors that supply these goods and

services are sufficiently linked to the criminal enterprise that their involvement rises to the level of legal complicity; for others, the link may be less direct. Actors in both categories may be susceptible to political and economic pressure from the U.S. government, its allies, and multilateral organizations; they are often more vulnerable to pressure than the perpetrators themselves, because their stake in the crimes may be purely economic and thus subject to recalculation. Disrupting the activities of these third-party enablers should therefore be a priority of the U.S. government and its allies in the fight to prevent and halt mass atrocities.

Case: South Sudan

Despite predictions that the January 9, 2011 referendum in Southern Sudan could trigger widespread violence against civilians, keen attention by the Obama Administration to the region in the months leading up to the vote helped avert the worst-case scenario. But delayed decisions—such as whether Abyei will go with the South or stay in the North—and political tactics in the weeks leading up to the South’s July 9 independence have led to increased violence in several regions of Sudan.

Many of the supply chains on which the Government of Sudan has relied in Darfur, such as those ensuring supply of military aircraft, could be put to use in planning and carrying out atrocities in other regions of the country, where the history of such government-sponsored violence may be prologue. Indeed, the Sudan Armed Forces have reportedly used Russian jets in recent aerial bombardments of South Kordofan.⁴ A 2009 report by Small Arms Survey documented the gathering of weapons by the armies of both Northern and Southern Sudan.⁵ If violence against civilians continues in Abyei, South Kordofan, and elsewhere in Sudan after the July 2011 date of independence, the U.S. government should investigate not only perpetrators of atrocities but also their connections to third-party sources and conduits of goods and services that help enable or sustain such mass atrocity crimes, and that might be susceptible to pressure or interruption.

U.S. government responses to imminent and ongoing mass atrocities have varied widely, from inertia (Bosnia) and lack of support (Rwanda) to participation in NATO bombing (Kosovo and Libya). Recent policies have relied on a range of tools, including unilateral and multilateral sanctions (some enforced more strictly than others), special envoys to lead diplomatic efforts, offers of incentives such as removal from the state-sponsor of terrorism list, and efforts to deploy peacekeepers. Some of those tools have resulted in short-term or isolated changes in the behavior of perpetrators, but successful, sustained prevention and mitigation remains elusive. The lack of coordination and inadequate planning by the U.S. government has contributed to this failure, as has the narrow focus on perpetrators. Those who commit or are inclined to commit atrocities tend to be international pariahs who prove time and again to be fiercely resistant to diplomatic pressure.

Applying pressure to third-party enablers isn't simple, but it can be done—with a mixture of new tools and methodologies adapted from efforts to counter other transnational threats. The U.S. government should therefore add to its prevention and mitigation tools, currently focused mostly on pressuring perpetrators, a systematic approach to enablers: identifying who they are, how the supply chains run, and where the vulnerable parts of the supply chains are, and then disrupting them. Efforts to disrupt third-party enablers, such as blocking transactions, applying diplomatic pressure on countries that host those parts of the supply chains, and coordinating with bilateral and international partners to strengthen domestic laws and international mechanisms, hold promise in the complicated arena of preventing and mitigating atrocities.

Targeting third-party enablers of atrocities is not an entirely new concept. Activists focused world attention on China's role in Sudan leading up to the 2008 Olympics in Beijing, when the Chinese government seemed to be in a particularly sensitive public spot. That pressure is generally thought to have contributed to the Chinese government's appointment of an envoy to Sudan.⁶ And the focus on the role of "conflict minerals" in fueling mass atrocities in the Democratic Republic of the Congo

culminated in U.S. legislation designed to stem the use of such minerals in electronics and other goods.⁷ While some debate the ultimate impacts of these efforts, they highlighted opportunities to apply or increase pressure to a previously ignored piece of the supply chain leading to atrocities. That these efforts have had any success at all underscores the utility of making such efforts systematic. Future attention to third-party enablers would be strengthened by incorporating the lessons learned from these past efforts, starting with the need for a coordinated approach.

Case: Democratic Republic of the Congo

In the case of the eastern region of the Democratic Republic of the Congo (DRC), many third parties help to sustain atrocities through their involvement in exports, as well as imports, of key resources. It has been widely documented that armed groups in eastern Congo generate significant revenues from their control and exploitation of lucrative mines and trading routes. The illicit extraction and trade of gold, tin, coltan, and other precious minerals generate massive profits for these groups, enabling them to consolidate and project power, and to purchase weapons and other goods used to commit atrocities against civilians.

Commercial entities, large and small, operate at various points along the value chains that flow out of eastern Congo and help to sustain the armed groups that terrorize the local population. Revenues are generated at a number of stages along that chain, including from armed groups' control of the mines directly, as well as through their "taxation" of trade along transportation routes.⁸ A U.N. Group of Experts reported in 2009 that the trade in gold alone may generate several millions of dollars in revenue each year for the Democratic Forces for the Liberation of Rwanda (FDLR), one of the major militias in eastern Congo. The same report noted that significant amounts of gold are trafficked through Uganda and Burundi, and that there are clear commercial ties to third parties in the United Arab Emirates (UAE).⁹ Minerals are not the only items that end up supporting armed groups. Specific individuals have also been identified in a number of cases by U.N. investigators for their role in providing satellite communications to armed groups' commanders, or facilitating money transfers for rebel groups, or engaging in arms transfers.¹⁰

Types of Enabling

Nations and commercial entities involved in questionable trading chains or opaque transshipment practices involving weapons, vehicles, or other forms of equipment may enable atrocities, even if indirectly. Illicit commercial activities often depend on lax or badly enforced state regulations. But as with terrorist financing, not all steps in the atrocities-enabling chain are illicit; to tackle enablers of mass atrocities, the U.S. government must look at all activities, both legal and illegal, that supply and sustain these crimes.

State and commercial enablers may also play a go-between role. During the Rwandan genocide, even after the U.N. imposed an arms embargo in an effort to stop the flow of weapons into that country, arms continued to arrive via nearby countries, facilitated by international corporations.¹¹ A 2009 SIPRI study revealed that more than 90% of air cargo carriers used by international organizations and humanitarian agencies to transport crisis response supplies were also named in open source reports on arms trafficking.¹²

Individual business people can also be instrumental as suppliers or middle-men. Russian arms merchant Viktor Bout is an infamous example; in 2010 he was extradited to the United States after having long been suspected of facilitating the illicit sale and transport of weapons to conflict zones in Africa, which helped sustain atrocities against civilians. Other individual enablers include Frans van Anraat, a Dutch businessman convicted in 2005 in the Netherlands of providing chemical components that Saddam Hussein's regime used against Kurdish civilians in 1998.¹³

Perpetrators and Enablers Will be Halted Only through Systematic and Coordinated Policy

The complexity of mass atrocities is always a challenge to U.S. policy makers seeking to prevent and respond to them. Complicating their efforts is the absence of a

coherent government-wide approach to the problem, based on early planning and analysis. Ad hoc policy measures have limited effect in urgent situations where many civilian lives are at risk and miss important opportunities that underused tools offer.

When atrocities are threatened or underway, U.S. government policy should be based on a thorough and systematic analysis of all of the actors and the dynamics in the affected region, including the third-party actors that are or may become critical to the capacity of the perpetrators.

Leadership and Coordination by the National Security Staff

President Obama signaled his commitment to prioritizing genocide prevention when he appointed Samantha Power, recipient of the Pulitzer Prize for *"A Problem from Hell": America and the Age of Genocide*, as Special Assistant and Senior Director of Multilateral Affairs on the National Security Staff (NSS). The President took another significant step in establishing a strategic response to genocide in April 2010, when he appointed the NSS's first Director of War Crimes, Atrocities, and Civilian Protection.

While these leadership appointments are critical, government efforts to prevent or halt mass atrocities require a robust interagency structure led by the NSS to coordinate initiatives across the government, including the diverse efforts at the State Department, the Treasury Department, the Defense Department, and other relevant agencies. In June 2011, the NSS convened a meeting that appears to initiate such a structure. To be most effective, this structure should be a coordinating body for a comprehensive set of policy tools, including tasking the intelligence community to gather and analyze intelligence not only on perpetrators of atrocities but also on third-party enablers; the application of lessons learned from efforts to fight terrorist financing, money laundering, and narcotics trafficking to disrupt enablers of mass atrocities; and increasing efforts to lead U.N. sanctions committees to enforce the embargoes they oversee.

United Nations Oversight of Sanctions Regimes

Most United Nations Security Council resolutions that impose a sanctions regime also create a committee to oversee the implementation of that regime; frequently, they also create a small group of experts to monitor compliance with the regime and investigate violations.¹⁴ Each sanctions committee consists of all members of the Security Council. The monitoring groups are typically small, consisting of four to six members, and have expertise on topics relevant to the particular country or region at issue, such as aviation, arms, finance, human rights, and natural resources (including diamonds, other minerals, and timber).

The expert panels usually operate under a year-long mandate, during which time they travel to the region at issue to interview violators and consult with government and diplomatic staffs, U.N. personnel, and representatives of the private sector and civil society. They typically monitor movement of military matériel or other embargoed goods, as well as aviation and maritime vessels, and document their findings. They develop evidence of sanctions violations by tracing chains of custody and requesting the assistance of the country of origin of the embargoed goods. In cases where the panel is mandated to monitor compliance with international humanitarian rights and law, its members build case files for each of the alleged violators.

The expert groups are required to make recommendations for the listing of violators for targeted sanctions, based on the evidence they have gathered. Each expert group presents a final report to its sanctions committee. Despite the groups' meager resources, their lack of subpoena power, and the challenges to their investigations often posed by the investigated governments, these reports consistently provide clear evidence of embargo violations. They therefore consistently provide information that the U.S. government and other, better supported investigators, should follow. Because the Sanctions Committees operate by consensus, however, they rarely take the steps necessary to punish violators.

In the absence of an interagency structure, the office has focused on particular cases such as Kyrgyzstan, Kenya, Sudan, and, most recently, Libya. Such keen attention to ongoing and potential crises is necessary and unavoidable. However, the administration has an opportunity in the newly initiated structure to activate all of the U.S. government's resources to institute an atrocities-prevention policy that goes beyond responding to individual crises. That policy should start with tackling those who help sustain atrocities.

The Director for War Crimes, Atrocities, and Civilian Protection cannot be successful without clear leadership from the President, preferably in the form of a public statement—to underscore his commitment to the issue—about the new approach and strategies this administration brings, including a robust focus on the infrastructure and systems that enable genocide.¹⁵ The President should publicly task the Director with leading the National Security Staff and the interagency team in developing and implementing an interagency structure for preventing and mitigating atrocities.

Intelligence Community

Intelligence collection and analysis are key to identifying threats of mass atrocities and developing responses. Better intelligence on third-party enablers of atrocities would reveal additional policy options to prevent or mitigate violence against civilians. Mapping the actors and dynamics in atrocity situations will clarify the identities of the enablers, their specific roles, and the actors or connections in the supply chain that may be particularly susceptible to pressure. The government alone can accomplish this work; no non-governmental entity, whether in journalism, research, or advocacy, has sufficient money, people, and networks to draw a complete picture.

In some cases, the enablers will be the very same actors that interest the United States for their role in other illicit transnational networks. By prioritizing a focus on enablers of atrocities in intelligence collection, and by sharing information and analysis across agencies, intelligence collection can yield high-value information on a broader set of national security challenges such as money laundering, terrorist financing, and narcotics trafficking.

Policy makers should ensure that the intelligence it routinely analyzes can be used to an even broader extent. For example, the CIA's office on war crimes contributes to the twice-yearly Atrocities Watch List and supports war crimes tribunals; the information collection and analysis required for those functions, and the Watch List itself, should be expanded to include (if they do not already) not

only perpetrators of ongoing atrocities and potential perpetrators in regions listed on the Watch List, but also the third-party actors that enable them. The intelligence community (IC) should also be charged with identifying and collecting intelligence on those enablers that have played roles in recent atrocities, since past behavior—such as the Government of Sudan’s in Darfur—may well continue even in other regions—such as South Kordofan or Abyei.

OFAC

The Office of Foreign Assets Control (OFAC) implements sanctions once it is given authority, typically in one of two ways. Congress may give OFAC standing authority directly, as it did through the Kingpin Act.¹⁶ The President may also give OFAC standing authority under the International Emergency Economic Powers Act (IEEPA) by declaring an emergency in a particular country or region with respect to “any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States”¹⁷ Congress or the President should give OFAC authority to designate not only those who perpetrate atrocities, but also enablers of atrocities – wherever those crimes occur.

Congress’s oversight function could be used more consistently to ensure that the IC maintains a focus on atrocities as a national security priority. In 2010, then-Director of National Intelligence Dennis Blair told Congress at a hearing on the ODNI’s Annual Threat Assessment that “over the next five years, a number of countries in Africa and Asia are at significant risk for a new outbreak of mass killing. . . . a new mass killing or genocide is most likely to occur in Southern Sudan.”¹⁸ DNI James Clapper’s February 2011 testimony regarding the Annual Threat Assessment included no such attention to atrocities, despite the ongoing violence in Darfur, the absence of resolution of many problems in Southern Sudan, and violence against civilians in Côte d’Ivoire, Kyrgyzstan, and elsewhere in the previous nine months, as well as worries about violence around upcoming elections in Kenya.

While intelligence on enablers can help policy makers target key actors or interruption points, the coordinated and committed use of the appropriate policy tools—political pressures, economic sanctions, or even military actions—is also critical to effective action.

Department of the Treasury

If the U.S. government seeks to disrupt enablers, the Treasury Department must apply to those actors its extensive experience using economic tools to attack other global threats, including terrorism, narcotics trafficking, and money laundering. Targeting the assets and financial transactions of individual persons, companies, or other entities has, in other contexts, effectively disrupted their malignant activities. For example, in 2005, the Treasury Department targeted Banco Delta Asia, based in Macau, believed to be a “willing pawn” in North Korean money laundering schemes.¹⁹ The move froze \$25 million in North Korean assets, prompted consumers to withdraw more than one-third of total deposits from the bank, and hampered North Korea’s efforts to execute international financial transactions.²⁰

In recent years, these targeted tools have been among the key policies the U.S. government turns to when seeking to disrupt activities that threaten U.S. national security. For example, in its ongoing efforts to stop Iran’s development of nuclear weapons, the Treasury Department designates for sanctions those financial institutions that do business with entities involved in the Iranian government’s nuclear proliferation efforts. In September 2010, it designated Europäisch-Iranische Handelsbank (EIH), a German bank doing business with Iranian banks that had already been designated.²¹ And in May 2011, the Department of the Treasury designated an Iranian state-owned bank, the Bank of Industry and Mine (BIM), which acted as a conduit for transactions of already-sanctioned banks.²²

The U.S. government also continues to use broad sanctions, as in the case of those blocking any trade with Sudan. Broad sanctions tend to have more detractors than targeted sanctions, in part because it is difficult to spot particular effects caused by such sanctions alone, save unintended humanitarian consequences, which are often

exploited by the government being sanctioned. The Sudanese government has, however, suffered ill effects from the broad U.S. sanctions, despite that government's ability to find other sources for essential goods and services. For example, in 2009 the Treasury Department reported that "[a]lthough growth in the oil industry is strong, prolonged limitations on access to U.S. and Western European expertise, infrastructure, and technology are slowing and dampening the long-term efficiency, capacity, and profitability of the sector."²³

Targeting Commercial Actors Directly

In the case of commercial actors, a set of mechanisms has emerged over the past decade to engage multinational companies in more responsible practices that protect human rights.²⁴ U.N. Special Representative on Business and Human Rights John Ruggie has developed a three-pillar framework for managing business and human rights challenges, which looks at the role of states as well as companies.²⁵ The Guiding Principles for Business and Human Rights, which outline how that framework should be implemented, were issued in March 2011 and endorsed by the U.N. Human Rights Council in June 2011. This and other efforts²⁶ to promote more responsible corporate behavior have helped frame a broad obligation to recognize and adhere to human rights standards. As such, they mark an important series of normative advances, though without a focus in any case on the particular risks and responsibilities inherent in atrocity situations. Furthermore, they are insufficient to bring about enforcement of those norms. Building on these efforts, Human Rights First released in August 2010 a guidance document to help companies identify and mitigate the risks that their relationships and activities might enable mass atrocities.²⁷ The first steps companies must take are to acknowledge both their responsibility to act with due diligence to avoid infringing on the rights of others in their own business activities and through their relationships with other parties and entities in their value chains, and a commitment to avoid or mitigate the risks of enabling mass atrocities. Other steps include conducting thorough and ongoing risk analyses in countries where they operate or have business activities with a particular view to identifying actual, potential, or perceived risks of enabling mass atrocities against civilians, and ensuring that they comply with all sanctions.

The ability of the Treasury Department to take action against an individual or entity depends on authorization by the President in an executive order or by Congress in legislation granting standing authority, and on resources sufficient to investigate potential targets. Executive orders have granted authority to the Treasury Department to designate for sanctions the perpetrators of particular mass atrocities and those associated with perpetrators' regimes. For example, Executive Order 13067, issued by President Clinton in 1997, directs the Treasury Department to freeze Government of Sudan property and interests in property located in the United States or in the control of U.S. persons.²⁸ While President Bush also granted the Treasury Department authority to block the assets of a broader set of actors in the Darfur conflict, including some categories of enablers, that authority has been exercised only with respect to eight Sudanese individuals.²⁹ One hurdle to imposing sanctions on additional individuals or entities is money: the Treasury Department currently oversees nearly twenty sanctions programs³⁰ and has limited resources to investigate new potential targets. To improve the government's ability to prevent and mitigate mass atrocities, the Treasury Department should be granted broader authority as well as the resources necessary to investigate and disrupt third-party actors who enable those crimes wherever they occur.

In addition to Congress or the President authorizing U.S. sanctions on enablers of mass atrocities, the U.S. government should seek ways to make multilateral sanctions more effective. Such sanctions are, in theory, more effective than unilateral sanctions because they cut off all sources of goods and services. But U.N. sanctions are also poorly, if ever, enforced. Where unilateral sanctions are put in place by the United States, they are generally well enforced, as the Office of Foreign Assets Control (OFAC) and the State Department diligently work to compile the lists of specially designated nationals, or those on whom sanctions apply, and then to impose the sanctions. For example, the Government of Sudan's intense desire to see U.S. sanctions lifted indicates the effectiveness of their enforcement. In contrast, individuals or businesses suspected or confirmed to be acting in violation of U.N. sanctions face few, if any, consequences.

The United States should assert leadership in exerting even more of its political capital at the U.N. to enforce and expand sanctions.

Countries and networks that are sources or transshipment points for goods that help sustain atrocities may also be helping to fuel other national security risks. It is therefore in the broader interest of the United States that third-party enablers of mass atrocities be subjected to measures that are currently used to target entities or individuals involved in money laundering, narcotics trafficking, and even licit businesses that end up financing terrorism. The U.S. government should therefore commit financial and political capital into blocking assets of third-party enablers of atrocities, isolating those enablers from the international financial and commercial system, and subjecting them to legal measures.

Some enabling governments are, of course, particularly powerful or have strong political protectors. But opportunities for action do exist. For example, a congressional hearing in July 2010 focused on the persistent weaknesses in the export control laws of the United Arab Emirates (UAE) and Malaysia, which allow the trafficking of sensitive goods to Iran and other countries of concern to the United States.³¹ The UAE is also the major hub for trucks that are mounted with weapons and turned into “technicals,” and used to commit atrocities in Darfur, Sudan; the UAE has also been identified in several U.N. Group of Experts reports on Congo as a hub for refining and trading precious minerals that sustain violence in eastern Congo despite the existence of U.N. sanctions.³² Halting the involvement of UAE entities in supporting mass atrocities should be a U.S. security priority, similar to the effort to halt involvement in money laundering and terrorist financing. The first step that should be taken is to discuss with UAE entities the problem of enabling mass atrocities; these discussions should take place in ongoing efforts to strengthen UAE export control laws. If this sort of diplomacy is not sufficiently effective, the U.S. government could also consider launching potential sanctions against financial institutions, vehicle dealers, and others in UAE and bringing attention to the problem through the UN Security Council.

Department of State

Diplomacy is critical to effectively pressuring enablers—enabling states in particular. The United States will often have broad and complex relationships with states that enable atrocities elsewhere, and to be effective, pressure must be applied at all levels—including and especially that of the Secretary. The behavior of enabling states, and the U.S. interest in changing it, must be on the Secretary’s agenda when she holds bilateral and multilateral talks with relevant states.

Embassies also play a crucial role in preventing and mitigating atrocities, as they gather information on perpetrators and enablers, monitor escalation, and try to defuse violence from the earliest stages on. Those efforts should encompass enablers as well, because, as discussed above, a detailed understanding of enablers and their networks is essential to disrupting them; embassies will already have or can gather information to build that understanding. The State Department’s Intelligence and Research Bureau (INR) will also be a critical part of deepening the State Department’s comprehension of the actors and networks sustaining atrocities.

In addition to embassies and INR, the Office of the Coordinator for Reconstruction and Stabilization (S/CRS), the Bureau of International Organization Affairs (IO), the Bureau of Democracy, Human Rights and Labor (DRL), and regional bureaus will also take part in efforts to defuse any escalating atrocity. Effective action against enablers of atrocities will depend on coordination of all of these offices, as well as a particular focus on the issue by each office. The State Department’s Sub-Working Group on Genocide and Mass Atrocities Prevention, chaired by S/CRS and IO and subsidiary to the S/CRS’s Conflict Prevention Working Group, is one effort to coordinate work within the State Department and with other agencies. However, at this time the sub-working group does not have a clear relationship with the NSS’s Director of War Crimes, Atrocities, and Civilian Protection, depending instead on ad hoc meetings and personal relationships to ensure coordination.

Outside Enablers

Supply chains that flow into or out of areas suffering civilian atrocities offer potential leverage. Each actor at each stage—from the source to transit points to delivery—on which the perpetrator depends can be targeted by policy makers who wish to limit the perpetrators' access to essential means and thereby alter their calculus and the behavior.

The atrocities committed in Darfur by the Government of Sudan and its proxy militias demonstrate the range of goods and services provided by outside actors that have helped to sustain that campaign of violence against civilians. The capacity of the Government of Sudan and its proxies to operate in Darfur has been a direct function of their organizational structures and logistical support mechanisms. Those mechanisms furnish its fighters with arms, ammunition, and vehicles, as well as with food, fuel, communications equipment, and spare parts. Few of these demands can be met exclusively from within Darfur and many cannot be met anywhere in Sudan. They require cross-border trade to enable their crimes, which increases the potential to find enablers vulnerable to scrutiny. A broad range of third-party states, commercial entities, and individuals were involved at various points along the critical supply chains on which the perpetrators of atrocities in Darfur depended for the basic means to commit these crimes.



For example, sophisticated arms such as helicopters and jets, as well as fuel for those aircraft, were imported from outside Sudan. The coordination of the Government of Sudan's military operations in Darfur is based on the telephones and satellite communications services of Thuraya, a United Arab Emirates-established company. The supply of Toyota trucks turned into militarized vehicles or "technicals," and used to commit widespread attacks on civilians also comes mainly from the Gulf region. The 2009 U.N. Panel of Experts on Sudan reported that Al-Futtaim Motors Company, the official Toyota dealership in the United Arab Emirates (UAE), was, along with second-hand dealers in UAE, the source of "by far the largest number of vehicles that were documented as part of arms embargo violations in Darfur..." That dealership, however, "declined or replied ... in a perfunctory manner" to three requests by the Panel for information about buyers of the trucks identified in Darfur.³³

In fact, despite the existence of the U.N. arms embargo designed to stem the flow of military supplies to the parties in Darfur, six years of reports by successive Panels of Experts mandated to monitor the embargo reveal that the Government of Sudan is essentially unaffected by international restrictions and is able to circumvent the provisions of the embargo with ease.

As with all military units, the larger and more secure the source of resupply, the larger and more active a force may be sustained. The third parties supplying these needs in Darfur—including but not limited to governments of or companies in the UAE, Russia, and China, as well as the air cargo carriers that transport their goods—therefore have enabled the Government of Sudan to support its own troops as well as proxy militias in large numbers, to attack in force, and therefore to commit crimes against civilians of a severity, intensity, or frequency that would be impossible without this support.

Department of Defense

The Department of Defense, through the Office for Rule of Law and Detainee Policy, is developing a Mass Atrocities Prevention and Response Operations (MAPRO) project, which focuses on identifying how the military can identify imminent mass atrocities and help prevent them before

lethal operations are the only option.³⁴ Other parts of the Department of Defense could be particularly helpful in targeting enablers of atrocities. For example, military personnel involved in training or other programs with militaries in states at risk of atrocities could be tasked with educating and training foreign military officers about the

role enablers of atrocities can play and ways to monitor their activities.

Furthermore, the Department of Defense is the largest consumer of intelligence on a daily basis and has broad intelligence capabilities. As discussed above, good intelligence properly disseminated is critical to tackling enablers. Given the Defense Department's level of use of intelligence, policy makers trying to make wise choices about pressuring enablers should ensure that the Department's intelligence on the topic has been sent to the appropriate channels.

Recommendations

Human Rights First offers the following recommendations for the U.S. government to interrupt third-party enablers of atrocities against civilians:

1. The President should publicly announce an interagency structure for preventing and mitigating atrocities, under the leadership of the Director for War Crimes, Atrocities, and Civilian Protection. This structure should be announced by December 2011 to ensure it is implemented in full by the end of the Obama Administration's first term.
2. The President should highlight the importance of tackling enablers as part of an effective government-wide strategy to prevent and mitigate atrocities by directing all U.S. government agencies engaged in efforts related to the prevention or mitigation of mass atrocities to identify third-party enablers, act to interrupt their enabling activity, and disrupt the supply chains that connect these actors to the perpetrators.
3. The NSS Director for War Crimes, Atrocities, and Civilian Protection should ensure that identifying and disrupting third-party enablers are included as explicit objectives in the interagency structure being developed to counter mass atrocities, that these objectives are addressed in all interagency discussions on situations where atrocities are threatened or are underway, and that enablers are addressed explicitly in policy measures focused on the situations of concern.
4. In situations in which atrocities are threatened or are occurring, the relevant parts of the intelligence community should be tasked by the NSS-led interagency structure or the appropriate member thereof with collecting and analyzing intelligence on enablers, and policy makers should ensure that distribution of relevant intelligence is coordinated and comprehensive. The collection, analysis, and distribution of intelligence on enablers should support policy makers' efforts to pressure third-party actors on whom the potential or actual perpetrators depend.
5. Congress, through legislation granting standing authority, or the President, through an executive order under IEEPA, should give the Treasury Department's Office of Foreign Assets Control (OFAC) authority to designate for sanctions not only those who perpetrate atrocities, but also enablers of atrocities wherever they occur. Congress and the administration should also ensure that OFAC has adequate resources to thoroughly investigate enablers of atrocities.
6. The relevant officials on the National Security Staff and at the State Department should, as part of their bilateral and relevant multilateral discussions with other governments, raise concerns about those governments' transfers of arms, ammunition, and other goods to potential or actual perpetrators of atrocities. U.S. officials should be prepared to consider a range of political, economic and other tools that may be effective in pressuring those involved in enabling activities.
7. The U.S. Permanent Representative to the United Nations should lead other Security Council members to meet and publicly discuss options for multilateral action, including imposing, expanding, and better enforcing sanctions and other measures, to prevent enablers of atrocities against civilians in Sudan, Democratic Republic of the Congo, and other places at high risk for mass atrocities. The discussions should include consideration of enablers identified in relevant U.N. expert panel reports.
8. Congress, through its oversight of the intelligence community, should express its interest in a third-party

enablers strategy and work with the relevant parts of the community to ensure it is sufficiently and effectively collecting, analyzing, and disseminating intelligence on third-party actors on whom the potential or actual perpetrators depend and the connections in their supply chain that may be particularly susceptible to pressure or interruption.

9. Congress should include a focus on third-party enablers as part of any legislation on genocide prevention.

Endnotes

¹ Our definition of enablers does not extend to the provision of moral support or political cover, as these do not constitute the sort of practical support described above and are more difficult to quantify and interdict.

² E.g., White House, National Security Strategy (May 2010), pp. 40, 48 available at http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf; White House, The National Security Strategy (March 2006), available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2006/sectionIV.html>; White House, A National Security Strategy for a Global Age (December 2000), pp. 46-47, available at <http://www.bits.de/NRANEU/others/strategy/nss-0012.pdf>; White House, A National Security Strategy for a New Century (December 1999), p. 2, available at <https://digitalndulibrary.ndu.edu/cdm4/document.php?CISOROOT=/strategy&CISOPTR=9082&REC=20>.

³ We use “mass atrocities” to mean genocide and crimes against humanity. For widely recognized definitions of crimes against humanity and genocide, see <http://www.un.org/icc/crimes.htm#humanity> and <http://www.un.org/icc/crimes.htm#genocide>.

⁴ Maram Mazen and Matt Richmond, “Sudanese MiGs Bomb Border State of Southern Kordofan, United Nations Says,” Bloomberg.com, June 10, 2011, available at <http://www.bloomberg.com/news/2011-06-10/sudanese-jets-bomb-southern-forces-as-up-to-40-000-people-flee-un-says.html>; see United Nations Office for the Coordination of Humanitarian Affairs, *Sudan Situation Report on South Kordofan 2*, June 9, 2011 (New York: United Nations, June 9, 2011), available at http://www.unsudanig.org/docs/OCHA%20Situation%20Report%200_2%20South%20Kordofan%209%20June%202011.pdf (list of such reports available at http://www.unsudanig.org/new_gateway/info/index.php).

⁵ Mike Lewis, *Skirting the Law: Sudan’s Post-CPA Arms Flows* (Geneva: Small Arms Survey, September 2009), available at http://reliefweb.int/sites/reliefweb.int/files/resources/9EC8752BBA5C7338C1257641004674B2-Full_Report.pdf.

⁶ It did not, however, have much practical effect on stemming the flow of Chinese weapons to the Khartoum government.

⁷ 15 U.S.C. § 78m(p) (2010). That legislation may help prevent “conflict minerals” from reaching U.S. markets, though it may have deleterious unintended effects as well, such as a *de facto* boycott of Congolese minerals, even those extracted by legitimate miners.

⁸ Global Witness, *Do No Harm: Excluding Conflict Minerals from the Supply Chain* (London: Global Witness, July 2010), available at http://www.globalwitness.org/sites/default/files/pdfs/do_no_harm_global_witness.pdf.

⁹ United Nations Group of Experts on the Democratic Republic of the Congo, *Final Report of the Group of Experts on the Democratic Republic of the Congo* (New York: United Nations, November 23, 2009), S/2009/603 ¶¶ 124-125, available at <http://www.un.org/sc/committees/1533/egroup.shtml>.

¹⁰ For example, Kasereka Manghulu (a.k.a. Kavatsi) was identified in Final Report, *supra* note 8, ¶¶ 57-63, as “one of the most important individuals” anchoring a supporting network for armed groups in eastern Congo.

¹¹ Human Rights Watch, *Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide* (New York: Human Rights Watch, May 29, 1995), available at <http://www.hrw.org/legacy/reports/1995/Rwanda1.htm>.

¹² Hugh Griffiths and Mark Bromley, *Air Transport and Destabilizing Commodity Flows*, SIPRI Policy Paper 24 (Solna, Sweden: Stockholm International Peace Research Institute, May 2009), p. 24, available at <http://books.sipri.org/files/PP/SIPRIPP24.pdf>.

¹³ Van Anraat judgment, District Court of The Hague, December 23, 2005, available at http://www.haguejusticeportal.net/Docs/NLP/Netherlands/vanAnraat_Judgment_23-12-2005_EN.pdf. See also “Saddam’s ‘Dutch link,’” BBC News, December 23, 2005, available at http://news.bbc.co.uk/2/hi/middle_east/4358741.stm; “Red Flags: Liability Risks for Companies Operating in High-Risk Zones,” available at http://www.redflags.info/index.php?topic=meanstokill&style_id=0.

¹⁴ See, e.g., United Nations Security Council, *Resolution 1591* (New York: United Nations Security Council, March 29, 2005), S/RES/1591 ¶¶ 3(a), (b); United Nations Security Council, *Resolution 1533* (New York: United Nations Security Council, March 12, 2004), S/RES/1533 ¶¶ 8, 10.

¹⁵ The 2010 National Security Strategy includes such a statement, but a more accessible and better known forum would give the statement more lasting power.

¹⁶ Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901-1908 (1999), 8 U.S.C. § 1182 (2010).

¹⁷ 50 U.S.C. § 1701(a).

¹⁸ *Annual Threat Assessment of the U.S. Intelligence Community, Before the S. Select Comm. on Intelligence*, 111th Cong. (2010) (statement of Dennis C. Blair, Director of National Intelligence), available at http://www.dni.gov/testimonies/20100202_testimony.pdf.

¹⁹ U.S. Department of the Treasury, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern under USA PATRIOT Act,” press release, September 15, 2005, available at <http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>.

²⁰ David Lague and Donald Greenlees, “Squeeze on Banco Delta Asia Hit North Korea Where It Hurt,” *International Herald Tribune*, January 18, 2007, available at

<http://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html>.

²¹ U.S. Department of the Treasury, "Treasury Department Targets Iranian-Owned Bank in Germany Facilitating Iran's Proliferation Activities," press release, September 7, 2010, available at

<http://www.treasury.gov/press-center/press-releases/Pages/tg847.aspx>.

²² U.S. Department of the Treasury, "Treasury Designates Iranian State-Owned Bank for Facilitating Iran's Proliferation Activities," press release, May 17, 2011, available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1178.aspx>.

²³ U.S. Department of the Treasury, Office of Foreign Assets Control, Report to Congress: Effectiveness of U.S. Economic Sanctions with Respect to Sudan, January 2009, p. 11, available at http://www.treasury.gov/resource-center/sanctions/Documents/sudan_report_030509.pdf.

²⁴ These include cross-sector initiatives such as the Voluntary Principles and the OECD Guidelines for Multinational Enterprises, as well as efforts to tackle the role of particular commodities in fueling violent conflict and atrocities, for example the Kimberly Process to regulate the diamond trade. The U.N. Global Compact offers resources and tools to companies to help align their operations and strategies with principles on human rights among other areas.

²⁵ United Nations Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises* (New York: United Nations, 2010), A/HRC/14/27 ¶ 1, available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

²⁶ Another noteworthy initiative is the Red Flags project, which identifies legal liability risks for companies in high-risk situations. "Red Flags," *supra* note 12, available at <http://www.redflags.info>.

²⁷ Human Rights First, *Enabler of Mass Atrocities? What Companies Should Know and Do About the Risks of Contributing to the World's Worst Crimes* (Washington, DC: Human Rights First, August 2010), available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/CAHP_Commercial-Enablers_3pg.pdf.

²⁸ Exec. Order No. 13,067, 62 Fed. Reg. 59989 (Nov. 5, 1997).

²⁹ Exec. Order No. 13,400, 71 Fed. Reg. 25483 (May 1, 2006). The list of persons designated under that order is available at <http://www.treasury.gov/ofac/downloads/prgrmlst.txt>.

³⁰ The list of sanctions regimes is available at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

³¹ *Transshipment and Diversion: Are U.S. Trading Partners Doing Enough to Prevent the Spread of Dangerous Technologies: Hearing Before the Subcomm. on Terrorism, Nonproliferation, and*

Trade of the H. Comm. on Foreign Affairs, 111th Cong. (2010), available at <http://foreignaffairs.house.gov/111/57609.pdf>.

³² *E.g.*, United Nations Group of Experts on the Democratic Republic of the Congo, *Final Report of the Group of Experts on the Democratic Republic of the Congo* (New York: United Nations, November 29, 2010), S/2010/596 ¶¶ 296-297, available at <http://www.un.org/sc/committees/1533/egroup.shtml>; United Nations Group of Experts on the Democratic Republic of the Congo, *Final Report of the Group of Experts on the Democratic Republic of the Congo* (New York: United Nations, November 23, 2009), S/2009/603 ¶¶ 133-134, 136, available at <http://www.un.org/sc/committees/1533/egroup.shtml>; United Nations Group of Experts on the Democratic Republic of the Congo, *Final Report of the Group of Experts on the Democratic Republic of the Congo* (New York: United Nations, December 12, 2008), S/2008/773 ¶¶ 91-101, available at <http://www.un.org/sc/committees/1533/egroup.shtml>.

³³ United Nations Panel of Experts on Sudan, *Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan* (New York: United Nations, 2005), S/2009/562 ¶ 158, available at <http://www.un.org/sc/committees/1591/reports.shtml>.

³⁴ MAPRO builds on some of the recommendations of the MARO Project, a joint effort of the Peacekeeping and Stability Operations Institute at the U.S. Army War College and the Carr Center for Human Rights Policy at Harvard University.