

**Civil Society Assessment<sup>1</sup>  
of the 2021 Report to Congress Pursuant to Section 5 of the  
Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (P.L. 115-441)**

**Prepared for the United States Congress**

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## **Congressional Action**

### *Oversight*

The Elie Wiesel Act specifically identifies atrocity prevention and response as a critical national security interest of the United States. The Act clearly lays out the sense of Congress and the American people that the U.S. Government should be engaged in affirmative efforts to respond to, mitigate, and prevent mass atrocity events, regardless of where they may occur and what other national security interests may or may not be implicated. As the mechanism by which the United State Congress evaluates the executive branch's compliance with the Elie Wiesel Act, the annual Report is a critical piece of information to identify the success of those efforts. Congress' oversight role is essential in ensuring that the goals of the Elie Wiesel Act are achieved. As is referenced in the Assessment below, the U.S. Government's foreign policy apparatus was not designed with the goal of atrocity prevention in mind. Nothing short of regular and repeated engagement by Members of Congress committed to seeing the objectives of the Act achieved will change the overwhelming governmental inertia these efforts face.

Given the Biden-Harris Administration's repeated statements in support of a human rights driven foreign policy, Members of Congress should be engaging regularly with the relevant principles of the participating Task Force offices, departments, and agencies. Effective oversight requires that Members of Congress be informed and aware of the ongoing efforts of the Task Force, especially when addressing early intervention attempting to operate "upstream" and diffuse the risk at atrocity crimes. This should include regular briefings, including classified briefings, so that members are aware of the ongoing actions of the Task Force and can express their concerns about specific countries and regions. It should also include regular hearings, where Administration officials should be called upon to testify about the Administration's progress and where civil society groups should be invited to testify about ongoing concerns or areas of improvement.

### *Appropriations*

A true commitment to atrocity prevention requires an early commitment to analysis and program management that can only be accomplished with a robust civil service sector backed up by dedicated funds and logistical support designed to allow those government officials to pursue the goals of the Elie Wiesel Act. It is critical that Congress take up the cause of atrocity prevention when considering annual appropriations for the offices, departments, and agencies engaged in the work of the Atrocity Early Warning Task Force. This support must extend to calling on and engaging with the Task Force participants to ensure they are prioritizing hiring in these areas and are spending the funds allocated to them by Congress. Ongoing atrocity prevention is a complicated and difficult objective. Only with the appropriate Congressional oversight and support will U.S. foreign policy be shaped to fully embrace the commitment to these principles represented in the Elie Wiesel Act.

## Executive Summary

This Assessment assembles the input of a wide variety of civil society actors, convened through the [Prevention and Protection Working Group](#) (PPWG),<sup>2</sup> on the [2021 Annual Report to Congress](#) (the Report) Pursuant to Section 5 of the [Elie Wiesel Genocide and Atrocities Prevention Act](#) (the Act or the Elie Wiesel Act). While the Third Annual Report contained very welcome additions to the communication of activities by the Task Force, there are still specific areas of focus that need further development by the Task Force and its relevant offices, departments, and agencies.

The Assessment includes a review of the new elements in the Third Annual Report that are worth specific praise, as well as specific attention on five issues that PPWG considers to be of critical importance:

- the need for a focus on early warning signs and atrocity prevention activities;
- the need for a regularized atrocity crimes determination process;
- the need for a holistic strategy when using sanctions to achieve atrocity prevention;
- the need for increased multilateral and international engagement for identification, prevention, and response; and
- the need for a true whole-of-government approach to drive all U.S. Government atrocity prevention activities.

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<sup>2</sup> PPWG is a coalition of human rights, religious, humanitarian, anti-genocide, and peacebuilding organizations and scholars dedicated to improving U.S. government policies and civilian capacities to prevent violent conflict, avert mass atrocities, and protect civilians threatened by such crises. The [Friends Committee on National Legislation](#) serves as the working group's coordinator. Individual and collective members of the civil society community may disagree with some of the elements of this assessment or may wish to highlight additional or different issues under each of the below categories in their own meetings with U.S. Government representatives.

## 1. Successful Elements in the Third Annual Report

We should pause for a moment to recognize the important milestone that three years of annual Elie Wiesel Act Reports, under two different Administrations from two different political parties represents in the pursuit of the goal of atrocity prevention legislated by Congress. The regularization of atrocity prevention as part of the foreign policy objectives of the U.S. Government is an important and welcome development and the efforts of the career civil servants to achieve this over the years since the Act was passed is welcome and commendable. Previous PPWG assessments<sup>3</sup> include reference to welcome portions of the Report. Those elements remain present in the Third Annual Report and PPWG continues to support their inclusion. The Third Annual Report also represents a significant movement forward in including many of the elements required by the Act that have been missing from previous reports. These improvements in the Third Annual Report are specifically highlighted in this section.

- A. *Naming Countries:* This Report is the first time that specific countries were identified as being perpetrators of atrocity crimes. The explicit recognition of ongoing atrocities in Burma, the People's Republic of China (PRC), Ethiopia, Syria, and South Sudan represent a level of compliance with the Elie Wiesel Act that has been missing in previous Reports. The inclusion of specific responses to those past or ongoing atrocities is a welcome addition and an important step in ensuring proper communication of the Atrocity Early Warning Task Force's efforts, not only to Congress and the American public, but also to current and potential perpetrators of atrocity crimes. China's need to respond to the specific mention of the Uyghurs in the 2021 Report is a clear demonstration of the impact that making such public statements can have.<sup>4</sup> The Task Force should continue to identify these situations and detail the steps being taken to respond. PPWG does recommend again that these identifications be more regularly communicated beyond the annual Report required by the Act. See Section 3 for more about the need for atrocity determination procedures. PPWG still believes that a public release of countries at risk for future atrocity crimes is a required and necessary part of compliance with the Act. While recognizing that inclusion of intelligence community data will always necessitate a classified section of the report, the intent of the Act is still clearly seeking to have as much information provided publicly as possible.<sup>5</sup>
- B. *Funding Details:* The Elie Wiesel Act specifically requires that the Task Force identify how allocated funds have been deployed in achieving the objectives of the Act.<sup>6</sup> This again represents the first Report that has included this information. The specific identification of accounts used for supporting atrocity prevention efforts is critical to allowing Congress and civil society actors to support and advocate effectively for the relevant budget appropriations.

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<sup>3</sup> See [Civil Society Assessment of the 2020 Report to Congress Pursuant to Section 5 of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 \(P.L. 115-441\)](#) October 21, 2020; and [Civil Society Assessment of the Administration Report submitted in compliance with The Elie Wiesel Genocide and Atrocities Prevention Act](#), November 4, 2019.

<sup>4</sup> Secretary Blinken's [further guidance to State Department employees](#) is also worth specific note. Recognizing the United States' failures to achieve our own goals is not evidence of weakness. It is evidence of an actual desire to achieve those objectives in a real and meaningful way for our own citizens, as well as members of the global community subject to atrocity crimes.

<sup>5</sup> Elie Wiesel Genocide and Atrocities Prevention Act (P.L. 115-441), Section 5(a)(1)(E)

<sup>6</sup> Elie Wiesel Genocide and Atrocities Prevention Act (P.L. 115-441), Section 5(a)(1)(C)

It also serves to demonstrate to the American public the important efforts to which its taxpayer dollars are being used. Finally, the explicit inclusion of dollar amounts demonstrates how little funding is being spent on atrocity prevention efforts when compared to the overall diplomatic and development budgets of the United States Government, let alone when compared to the size of the funds spent on intervention and post-conflict repair that must take place when atrocity prevention efforts are not pursued. PPWG does continue to emphasize the need for dedicated, repeated, and expanded funding for atrocity prevention activities, separate from funds used to respond to emerging crises situations, which may or may not be available in any given year.<sup>7</sup>

- C. *Targeted Sanctions*: PPWG welcomes the specific reference to the use of targeted sanctions, including the [2016 Global Magnitsky Human Rights Accountability Act](#) and the U.S. Department of the Treasury's [Financial Action Task Force](#). The commitment to engage in cooperative sanctions with allies and multilateral organizations is a critical step to holding governments engaged in ongoing atrocity crimes accountable. The use of individually targeted sanctions, specifically used to identify and inconvenience government officials responsible for ongoing atrocities has the potential effect change in a way that government-focused sanctions may not. Collaboration with the European Union and other multilateral actors to develop a coherent global strategy regarding sanctions for human rights violations is a welcome addition. See Section 4 for further discussion on the critical need for sanctions to have an overarching framework for implementation and cessation, the importance of targeting the business and financial interests funding the perpetration of atrocity crimes, the need to ensure that sanctions do not negatively impact humanitarian aid and access, and the importance of developing sanctions in consultation with trusted local civil society organizations.
- D. *Recommendations to Improve U.S. Government Capabilities*: The inclusion of specific recommendations for the U.S. Government to improve its own activities is a critical step forward in recognizing that the purpose of the Elie Wiesel Act and the Task Force is not to check the box of an annual report. Rather, PPWG welcomes an honest self-critique by the U.S. Government, alongside oversight responsibilities of Congress and accountability efforts by the global civil society community to ensure that the Task Force is constantly improving. The diplomatic and development institutions and mechanisms of the United States were not designed to support atrocity prevention. In many instances, their core operating assumptions were at best indifferent and sometimes outright hostile to such efforts. Overcoming the institutional resistance to centering human rights generally and atrocity prevention specifically within the U.S. Government will require honest, open, and painful evaluation of past and current performance and innovative consideration of potential future action. These recommendations represent the first step in achieving a culture of critical self-awareness necessary for the interagency system to effectively recruit the individual offices, departments, and agencies of the U.S. Government to buy in to atrocity prevention as a core goal of U.S. foreign policy.

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<sup>7</sup> [Peacebuilding and Prevention Appropriations](#), Friends Committee on National Legislation

## 2. The Need for a Focus on Early Warning & Prevention Activities

Throughout the Third Annual Report, there is a notable lack of specific reference to the atrocity prevention work of the Task Force. This is not to say that the Report contains no references to individual offices, departments, and agencies pursuing such objectives, but rather that the evidence of coordinated oversight and direction of those efforts by the Task Force is either absent or not well identified. In fact, at the press briefing on July 12, where Acting Assistant Secretary of State for the Bureau of Conflict and Stabilization Operations Robert J. Faucher presented details on the Third Annual Report and spoke with the press, the first question addressed the fact that the Report read as one focused on current atrocity events, not efforts of atrocity prevention.<sup>8</sup>

The section on “Current U.S. Government Efforts to Prevent and Respond to Atrocities” presents a snapshot of individual office, department, and agency actions dedicated to responding to ongoing atrocities. The objective of the Elie Wiesel Act was to create a coordinated whole-of-government strategy that represents cohesive approaches to atrocity prevention across different government agencies to enhance the effects of existing objectives. This section will identify specific actions PPWG believes can be undertaken to improve the focus on prevention activities, not just responding to ongoing atrocities, as well as more concrete prevention activities that should be added to the Task Force’s toolbox.

A. *Identifying Factors Used for At-Risk or Ongoing Designations:* Creating a cohesive approach to atrocity prevention across the myriad of government offices, departments, and agencies all implicated in achieving the objectives of the Elie Wiesel Act requires a common working framework. There has long been reference to an Atrocity Prevention Strategy and an updated Atrocity Assessment Framework. Both the 2020 and 2021 Reports makes specific mention of the “State Department Early Warning Assessment,” however, this document has not been released to the general public. Currently, the only publicly available model is the [2015 working draft](#) of the “Atrocity Assessment Framework,” which is specifically referenced as a supplement to existing State Department and USAID frameworks. PPWG once again emphasizes how critical it is that the metrics used to make decisions about the countries and regions on which the Task Force should focus must be made public. Ongoing research among the atrocities prevention community has resulted in ever-changing identifying factors, early warning signs, and understanding of the impact that specific regional cultures may have on whether there is a heightened risk of a mass atrocity event.<sup>9</sup> There are many instances in which civil society is likely to have better information on which countries are currently at-risk of greater atrocity crimes. Without access to and understanding of the metrics the Task Force is using to focus its efforts, and so long as the annual Report continues to lack any specificity as to which countries are already included in the “at-risk” list, civil society has no way in which to identify if there are countries where their own sources of information and insight reveal a heightened risk but which are not currently being addressed by the Task Force.

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<sup>8</sup> [Briefing with Acting Assistant Secretary for Conflict and Stabilization Operations Robert Faucher On Release of the 2021 Congressional Report Pursuant to the Elie Wiesel Genocide and Atrocities Prevention Act](#), July 12, 2021.

<sup>9</sup> See, e.g., [The Onset, Spread, and Prevention of Mass Atrocities](#), Charles H. Anderton & Jurgen Brauer, 21(4) *Journal of Genocide Research* 2019; [Deterring Wartime Atrocities](#), Jacqueline R. McAllister, 44(3) *International Security* 2019/20;

PPWG also recommends that the engagement with the assessment framework used to make determinations about what countries are at risk of a mass atrocity event should be a regular activity. Ongoing consultation with civil society, including local civil society, and the academic community around updating this framework, once it is released publicly, should be built into the Task Force's operational plan. It is critical that the Task Force remain current on a field of study that is changing rapidly and has such a significant implication for the objectives of the Elie Wiesel Act. This should include making sure that the Task Force is regularly meeting with allies and international actors and understands the programs they have deployed, so that the U.S. Government is working collaboratively, rather than potentially at cross purposes.

Finally, while the understanding of what metrics to use to identify potentially high-risk regions and countries will continue to evolve, it remains a constant that where there is armed conflict, either international or non-international, the risk of atrocity crimes is exponentially greater. The Task Force should include in its framework a formal, structured, inter-agency conflict assessment upon the outbreak of any violence rising to the level of an armed conflict. This assessment should be revisited periodically throughout the duration of any armed conflict, since "acceptable" levels of use of force during an armed conflict can quickly transition to actions that create heightened risk for atrocity crimes.

- B. *Training Materials, Coordination, and Public Release:* While the ongoing training efforts by the U.S. State Department are well received, PPWG remains committed to the ideal of a whole-of-government approach to training on atrocity prevention, mitigation, and response issues. The 2019, 2020, and 2021 Reports all emphasized the excellent work being done by many of the offices, agencies, and departments outside of the State Department. PPWG agrees with this assessment but continues to recommend that there must be a government-wide approach to training, without which there cannot help but be differences in standards and metrics that are used to identify and report potential warning signs and ongoing events to the Task Force. The Task Force should affirmatively undertake an effort to coordinate a government-wide training regime, available to all offices, agencies, and departments engaged in atrocity prevention efforts or deployed in settings where warning signs or indicators of ongoing atrocity events may be present.

As previously recommended,<sup>10</sup> public release of the official training curricula being used to comply with the Elie Wiesel Act should be made publicly available, to the fullest extent possible. PPWG also further recommends including local civil society groups in any in-country trainings conducted for U.S. Government officials. Such inclusion during times of relative peace would greatly increase the effectiveness, trust, and capacity of these groups to engage with U.S. Government representatives during politically tense or fraught times when rapid awareness of identified early warning risk factors could make all difference in the ability of the Task Force to provide the appropriate support.

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<sup>10</sup> See Section 2B of the [Civil Society Assessment of the 2020 Report to Congress Pursuant to Section 5 of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 \(P.L. 115-441\)](#) October 21, 2020; and Section 2C of the [Civil Society Assessment of the Administration Report submitted in compliance with The Elie Wiesel Genocide and Atrocities Prevention Act](#), November 4, 2019.

The training curriculum referenced in the 2021 Report was first utilized in 2019 and was under development for at least a year prior to that. That timeframe already creates the risk that it includes outdated or superseded information that should be refreshed. There have also been significant actions on the part of the U.S. Government generally and the Task Force specifically that should now be included in the training, as models for both desirable and undesirable outcomes.

- C. *Declassification & Public Communication:* While political negotiations and diplomatic approaches can require circumspection, the use of public lists by annual efforts such as the [Trafficking in Persons Report](#), the [Country Reports on Human Rights Practices](#), and the new [Global Fragility Strategy](#) all demonstrate that such lists are not only able to be managed by the diplomatic staff of the United States, but they also succeed in achieving their objectives, despite their listing of specific countries. While classification is and always will be a necessary part of the Task Force's efforts, the default assumption should not be towards classification. This is especially true of the at-risk countries list, even more so than the ongoing atrocities list. The latter is widely known and recognized, while the nature of the former is such that both international and local civil society input is critical to identify any at-risk regions not actually being addressed by the Task Force. PPWG strongly urges the Task Force to provide as much public information as possible about the at-risk list and to approach the listing process with a commitment to ensuring that every country identified as at-risk is included on the unclassified portion to the extent possible.

PPWG continues to emphasize the critical importance of engaging with the public about the efforts being undertaken to prevent potential mass atrocities and respond to ongoing atrocity crimes. At a minimum, the Task Force should work to demonstrate the current Administration's commitment to transparency within government by creating an online repository that identifies the history of atrocity prevention activities in the U.S. Government, the current structure under which those activities are pursued, the Task Force's sources of authority, including the Elie Wiesel Act, the participating government offices, agencies, and departments, the designated representatives from each of those entities and the appropriate institutional contact information, and the annual reports filed by the Task Force.

### 3. The Need for a Regularized Atrocity Crimes Determination Process

The means by which the U.S. Government publicly calls out atrocity crimes, whether they be genocide, crimes against humanity, war crimes, or other gross human rights violations, is unacceptably politicized. The welcome designation of China's treatment of the Uyghur population only serves to highlight the failure to reach the same determination in the situation of the Rohingya in Burma, where far more evidence of genocide exists. The 2021 Report references to Burma, the PRC, Ethiopia, Syria, and South Sudan only serves to illustrate the wide variety of different situations of ongoing atrocity events that are being addressed with no clear indication of why these countries and not others were included. PPWG strongly recommends that the Task Force undertake to regularize all the elements around the determination, public recognition, and consequences of an ongoing atrocity crimes event, as well as the determination around at risk countries.

- A. *Regularized Process:* The Task Force should create a formal process to monitor the risk or presence of a mass atrocity event, as defined by the Act. This process should involve engagement with the various offices, departments, and agencies included in the Task Force and should be conducted separately from the political appointees in charge of those relevant offices. Once a recommendation has been prepared by the Task Force staff, it should be presented to the committee of the principles for their approval. That approval should carry with it a list of recommended actions for the principles of the Task Force to consider implementing, once a determination has been made.

The atrocity prevention community has focused on this topic in the specific circumstance of a genocide determination for obvious and understandable reasons. As mentioned above, the recognition of the Uyghur situation as genocide and the continued lack of recognition of the situation of the Rohingya highlights the inherent politicized lack of process. However, the Elie Wiesel Act addresses crimes against humanity and war crimes in addition to genocide, as well as the risk of any of the three of those crimes occurring. The process for making a determination that a region or country is experiencing or at greater risk of experience war crimes and/or crimes against humanity is also a critical one that can be subjected to political influence contrary to the purposes of the Act.

This process should be included in the Atrocity Assessment Framework and made available to the offices, departments, and agencies participation in the Task Force, as well as the public. It should include instructions on how career staff who see indicators included in the Atrocity Assessment Framework can initiate such a determination process.

It should be noted that this recommendation requires a significant commitment to staffing and resources at the Task Force members, specifically at the relevant State Department and Intelligence Community offices. PPWG recognizes that this represents an expansion of the role of the Task Force, but believes that the ability of the Task Force to achieve the objectives of the Elie Wiesel Act is limited at best without this expansion.

- B. *Regularized Standards:* Not only should the process by which the presence or increased risk of an atrocity crime is determined be regularized, but the standards used to come to that conclusion should be clearly outlined in the Atrocity Assessment Framework. The legal

definitions of genocide and war crimes may be found in United States Code.<sup>11</sup> However, the Elie Wiesel Act does not contemplate action by the Task Force only when a criminal case can be made against an individual for the commission of an atrocity crime, and they certainly do not address the elements of what an “at risk” situation looks like. Instead, the Task Force should use the elements found within the U.S. Code to inform the standards used to make a determination that war crimes or genocide are or are at risk of occurring.

The United States still lacks a crimes against humanity statute and thus it cannot look to a specific section of the U.S. Code to provide a similar standard to genocide and war crimes. PPWG does strongly recommend that the United States adopt both criminal liability and a civil cause of action for crimes against humanity, but in the interim, reference to international law and specifically the definitions for crimes against humanity used by the various international criminal tribunals<sup>12</sup> should be used for determining if crimes against humanity are or are at risk of occurring.

It is important to note that the Task Force is not responsible for building a criminal case against any individual for atrocity crimes. The legal standards referenced in the U.S. Code and the recommendation for such standards for crimes against humanity are not a recommendation that a Task Force determination rise to the level of a criminal indictment. Rather, they represent a useful and previously agreed upon definition upon which the Task Force can reach a determination of the current level of atrocity risk or ongoing crime in a specific country or region. This determination is inherently political in nature and is not meant to be used for criminal prosecution.<sup>13</sup>

Once a discrete set of standards is identified for use in the determination process, the Task Force should take the lead in requesting evidence from the relevant offices, departments, and agencies to facilitate the decision-making process. This may involve interviews and engagement with local civil society actors, including women- and youth-led organizations, in regions where their interaction with the United States Government may represent a risk to their personal security. Should this be the case, the Task Force should work with the country and/or regional desk officers to ensure the safety of these individual.

- C. *Regularized Consequences:* When a determination has been made that a situation of increased risk or actual atrocity event is present, the Task Force should notify the appropriate departments, agencies, and offices of the U.S. Government and should serve as the coordinating body for the U.S. Government response. To the extent possible, such determinations and the steps being taken to address the situation should be announced publicly by the appropriate department, agency, or office.

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<sup>11</sup> 18 U.S.C. 50A – Genocide and 18 U.S.C. 2441 – War Crimes, respectively.

<sup>12</sup> Article 7, the [Rome Statute of the International Criminal Court](#), Article 3, the [Statute of the International Tribunal for Rwanda](#), and Article 5, [Updated Statute of the International Criminal Tribunal for the Former Yugoslavia](#).

<sup>13</sup> Of course, any actual evidence that meets evidentiary standards should be preserved for potential use by either U.S. Government offices, departments, and agencies or sharing with international criminal justice or transitional justice mechanisms.

Currently, when a U.S. Government official, up to and including the President of the United States, conveys that the U.S. Government has officially determined that a current situation includes evidence of genocide, war crimes, or crimes against humanity there is no action required by the laws of the United States. Unlike the recent situation in Burma, where Section 7008 required<sup>14</sup> the U.S. Government suspend certain foreign aid and assistance once a determination of a coup d'état had been made, the finding of an ongoing atrocity crime has no foreign aid or assistance implications. This creates a situation where the expenditure of political will necessary to designate a situation as one involving atrocity crimes does not actually result in any required foreign policy actions that might be utilized to mitigate or prevent further violations.

PPWG recommends that, at a minimum, the Task Force develop a broad spectrum of measures that might be adopted once a determination has been made. This “toolbox” of responses might include diplomatic engagement, increased aid, targeted engagement with non-state actors or local civil society, or, in appropriate situations, limitations on current foreign aid and, eventually, a sanctions regime targeted to the specific country. See Section 4 for more specific recommendations regarding sanctions regimes specifically.

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<sup>14</sup> See “[Coup-Related Restrictions on U.S. Foreign Aid Appropriations](#),” Congressional Research Service, April 21, 2021

#### 4. The Need for a Holistic Sanctions Strategy

As evidenced by the inclusion of repeated references in the 2021 Annual Report, sanctions are a growing tool used by the U.S. Government and the international community to accomplish atrocity prevention objectives. However, there is no coordinated approach to what types of sanctions best accomplish atrocity prevention goals with the least impact on civilian populations, how sanctions regimes should be implemented, what exceptions should exist, and how they contribute to the long-term objectives of the US to build healthy, just, and safe societies.

Sanctions are one tool in an overarching toolkit of accountability and atrocity prevention mechanisms. Sanctions that are not part of a larger strategy to deal with root causes of violence, the participation of marginalized communities, the lack of accountability, the presence of corruption, and other underlying causes are likely going to leave power vacuums for nefarious actors to fill or to push such actors towards other orbits (See Section 3.C. for a recommendation of a broader response portfolio). Sanctions are an important tool that can address economic drivers of conflict but will not prevent atrocities on their own.

- A. *Identifying Effective Sanctions Regimes*: The development and deployment of the 2016 Global Magnitsky Human Rights Accountability Act in the United States and similar sanctioning methods by multilateral and foreign actors point to the recognition that not all sanctions regimes are created equal. PPWG strongly recommends that the U.S. Government develop a coherent strategy for what sanctions are most effective in seeking to achieve the objectives of the Elie Wiesel Act. This should include prioritizing sanctions regimes that have the least impact on civilian populations and are targeted most directly on the government entities, non-state actors, and individuals perpetrating or contributing to the increased risk of atrocity crimes. The decision matrix for identifying which sanctions regime should be applied in specific circumstances should be included in the Atrocity Assessment Framework (or a separate Atrocity Strategy Framework) and should be reviewed after each use of sanctions to determine what modifications might be necessary.
- B. *Humanitarian Exceptions*: The use of any sanctions regime, even individually targeted sanctions, can sometimes have unexpected consequences on the very civilian populations the U.S. Government is seeking to protect.<sup>15</sup> Any sanctions regime implemented because of a finding increased risk or presence of atrocity crimes should include specific humanitarian and peacebuilding exceptions devised by the Task Force with the specific country circumstances in mind. Consultation with local civil society groups where possible, and U.S.-based civil society groups when not possible, should be included *before* a sanctions authorization is issued.

PPWG recommends that when the decision is made to deploy sanctions, the default sanctions regime should be individually targeted, such as those authorized by the 2016 Global Magnitsky Human Rights Accountability Act. Broad, country-based sanctions have proven to be disproportionately harmful to civilian populations and correspondingly ineffective in changing

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<sup>15</sup> [Safeguarding Humanitarian Action in Sanctions Regimes](#), Alice Debarre, International Peace Institute, June 2019.

political leadership behavior.<sup>16</sup> There is no such thing as a sanctions regime that does not impact civilians in some form or another, but the Task Force should take the lead on devising sanctioning guidelines that create as little negative impact on civilians as possible. Additionally, it is critical that in situations where violence escalates, the U.S. Government continues to support programs and people that are building trust, documenting human rights triggers and abuses, reducing tensions, and working towards peaceful outcomes. Any sanctioning effort that negatively impacts these efforts will only further exacerbate the situation on the ground for the affected population, defeating the initial intent of the sanctions.

- C. *Arms Embargoes*: Conventional weapons represent the greatest threat to populations at-risk of or experiencing an atrocity event. Yet the U.S. Government continues to conduct or permit arms sales to countries and regions where the local government's potential to cause harm to their civilian population is well known. The United States should suspend and embargo all arms sales to any country or region found by the determination process identified in Section 3 to be experiencing or at risk of an atrocity crime. While a presidential waiver or override, as is the case in the Leahy Laws, may be permitted, it should be rarely, if ever, used, and should be subject to a vote by Congress.

Situations like the current reality in Afghanistan, where the U.S. Government has left behind billions in military equipment and supplies, including weapons systems, small arms, and vehicles only exacerbates the risk to civilian populations. Some news agencies are already reporting that equipment specifically left to the Afghan Government have been seized by the Taliban,<sup>17</sup> a potential perpetrator of atrocity crimes repeatedly warned about by civil society organizations and recognized as such by the U.S. Government. The presence of an increased risk or presence of atrocity crimes should generally result in the Task Force coordinating with the offices, departments, and agencies which address security sector assistance in those regions.

- D. *Concluding Sanctions Regimes*: There remains a risk that sanctions put in place without a clear governing principle, such as preventing or mitigating atrocity crimes, may carry on long after their effectiveness has ended. Such unending sanctions often contribute to ongoing challenges in addressing the root causes that led to atrocity crimes. Any sanctions regime authorized under the Task Force should include clear guidance on the ending criteria and should, at the very least, require a mandatory review and affirmative extension by the sanctioning authority if the Task Force finds that the precipitating factors are no longer present.<sup>18</sup>

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<sup>16</sup> See, e.g.: [Sanctioning Genocide](#), Whitney Taylor & Holie Nyseth Brehm, Sociological Perspectives, February 2021; [The Effect of Economic Sanctions on the Severity of Genocides or Politicides](#), Matthew Krain, 19(1) Journal of Genocide Research 2017.

<sup>17</sup> See, e.g.: [No Clean Hands](#), Quincy Institute for Responsible Statecraft, Paper No. 8, July 19, 2021; ["Taliban Parade New Weapons Seized from Afghan Military as U.S. Withdraws,"](#) NBC News, July 6, 2021

<sup>18</sup> See, e.g.: [How Very Massive Atrocities End](#), Bridget Conley & Chad Hazlett, 58(3) Journal of Peace Research 2020.

## 5. The Need for a Multilateral & International Engagement

The current Administration has publicly identified multilateral engagement as a priority in achieving its foreign policy objectives. This reflects the requirements of the Elie Wiesel Act itself, which includes an emphasis on “enhancing multilateral mechanisms” and “strengthening relevant regional organizations.” This engagement with partners, allies, and international and regional organizations may take many forms and be accomplished publicly or privately. PPWG recommends the following objectives as U.S. foreign policy leaders evaluate where to invest time and resources.

- A. *Informal Engagement:* There exist a series of informal, collaborative bodies at the international level. These include such entities as the International Atrocity Prevention Working Group, previously convening as the “Coffee Group,” where effective and proactive engagement on atrocity prevention efforts can be coordinated. The United States has maintained these relationships in the past Administration and into the current, despite the challenges of the COVID-19 pandemic. This should be an area where the principles of the Task Force continue to engage with their counterparts to accomplish the effective diplomacy that often needs to take place behind the scenes to achieve the more public objectives. To the extent that specific countries are not included on the public list required by the Act, those countries should be priorities for engagement in these informal mechanisms. Otherwise, the justification for leaving them off the list is limited, at best.
  
- B. *International Organizations:* The international community continues to operate through the formal organizations designed to address atrocity prevention, international justice, and accountability. Cooperation with the [United Nations Office on Genocide Prevention and the Responsibility to Protect](#) should be an area for the U.S. to exercise leadership in the coordination of international responses to areas at risk of a mass atrocity event. The United States’ role as a permanent member of the [U.N. Security Council](#) requires it take on politically challenging and difficult global situations where other permanent members may express reluctance or outright opposition. The United States should aggressively pursue actions within the Security Council that further the atrocity prevention objectives of the Elie Wiesel Act, even if such actions will be opposed. The “agreement” to not put forward a resolution if it is known that a permanent member will oppose it should not be adhered to in circumstances of ongoing or heightened risk of atrocity crimes. For example, the lack of even a UN Security Council Resolution condemning the current military coup in Burma, let alone a global sanctions regime and arms embargo, is an unacceptable response. The United States has a vested interest in the UN system being effective at addressing global challenges like this. China and Russia’s likelihood of a veto should not stop the United States from putting forward a resolution condemning the Tatmadaw and recommending actions to facilitate a peaceful resolution. Neither, for that matter, should the “penholder” status of the United Kingdom on Myanmar, if the British Government refuses to submit a resolution.

There are additional UN and international organizations which the United States government should support as it pursues multilateral approaches to atrocity prevention. Prime among these should be the support of The Gambia in its ongoing case against Myanmar before the

International Court of Justice (ICJ).<sup>19</sup> While the United States is no longer a party to the Statute of the ICJ, there are numerous ways that it could officially and unofficially make known its support of the premise that international organizations, and especially the ICJ (which has oversight of the Convention on the Prevention and Punishment of Genocide, which the United States ratified), should be able to find nations in violation of the Genocide Convention when their actions clearly rise to that level. The Provisional Measures<sup>20</sup> issued by the Court in January of 2020 represent a plausible course of action that the U.S. Government could support, especially in light of the subsequent military coup d'état by the military junta in Burma.

The United States' relationship with the International Criminal Court (ICC) is a known issue and we do not expect the Task Force to repair or address this relationship outside of the leadership of the Office of the President and the Secretary of State. However, PPWG does wish to emphasize that there are many ways in which the United States' support would promote its own foreign policy objectives and the objectives of the Elie Wiesel Act.<sup>21</sup> Specifically, the United States should support the investigation by the ICC into the potential violations of the Rome Statute by the Republic of the Union of Myanmar on the territory of the People's republic of Bangladesh.<sup>22</sup>

- C. *Transitional Justice & Accountability:* The work of the Office of Global Criminal Justice represents an important commitment to pursuing transitional justice and accountability programs, especially with local civil society communities to encourage and enhance local ownership of transitional justice and accountability mechanisms, which generally leads to positive outcomes and greater investment in prevention of future possible atrocity events. PPWG encourages the Task Force to adopt this model and build in local community engagement in its efforts to improve transitional justice and accountability for atrocity events, ideally by having country and regional desk officers communicate directly with local civil society organizations.
- D. *Best Practices:* The Elie Wiesel Act represents a successful model for domestic enforcement of the principles of the [Convention on the Prevention and Punishment of the Crime of Genocide](#). The U.S. Government should engage with its allies and partners around the world to share best practices and encourage the adoption of similar national approaches to atrocity prevention. Collaborative action will always have a better success rate in addressing the inherently complex situations that require the Task Force's engagement. Improving the global community's capacity to address these situations will better accomplish the goals of the Elie Wiesel Act, while also relieving some of the burden felt by the U.S. Government to serve as the "global policeman."

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<sup>19</sup> [Application of the Convention on the Prevention and Punishment of the Crime of Genocide](#) (The Gambia v. Myanmar), international Court of Justice

<sup>20</sup> [Order of 23 January, 2020](#), The Gambia v. Myanmar, International Court of Justice.

<sup>21</sup> See, e.g.: [ASIL Task Force on Policy Options for U.S. Engagement with the International Criminal Court](#), April 2021, [Essential Proposals to the Biden Administration to Advance International Justice](#), Human Rights Watch, June 2021.

<sup>22</sup> See the [Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar](#), International Criminal Court, ICC-01/19.

## **6. A Focus on the Whole-of-Government Approach Required by the Act**

The underlying premise of the Elie Wiesel Act is that coordinating the various offices, departments, and agencies under a unified approach to atrocity prevention will result in a more efficient, effective, and engaged U.S. Government response. The 2021 Annual Report contains many references to the individual work that various U.S. Government entities are undertaking in pursuit of atrocity prevention. What is notably lacking is the overarching strategy of the Task Force to coordinate those responses. This type of approach requires a fully staffed and politically supported Task Force. The career staff who have dedicated their professional lives to supporting atrocity prevention activities can only move the needle so much, especially when stacked against the overwhelming bureaucracy of the United States Government.

The Atrocity Early Warning Task Force and the Elie Wiesel Act are both entities specifically designed to circumvent that inertia and achieve unexpected and unusual results outside the norm of the U.S. Government's foreign policy process. This cannot be accomplished when the financial, personnel, and political resources required to achieve these objectives are absent.

PPWG renews its calls to fully staff and expand the atrocity prevention teams at the various offices, departments, and agencies which participate in Task Force activities. Clear direction from principles of these entities should be conveyed to all staff, indicating the primacy and importance to U.S. foreign policy objectives of the atrocity prevention goals laid out in the Elie Wiesel Act.

As referenced in Section 2A, a coherent strategy and framework guiding the interagency process should be created and made available to all government staff. The Task Force should regularly engage with Congress, the civil society community, and the public on the atrocity prevention activities it has taken beyond the requirements of the Annual Report. Communication is essential to solidifying the whole-of-government approach envisioned by the Elie Wiesel Act and the Task Force. The importance of fully funding the various accounts designated to support atrocity prevention activities, as detailed in Section 2B, cannot be overstated. The willingness of offices, departments, and agencies to commit their own personnel and resources to specific policy objectives is enhanced when they know that there is dedicated funding to support those activities.

As each U.S. Embassy around the world works to develop and update their own integrated country strategy documents, those strategies should include a section on how missions will identify early warning triggers of atrocity crimes, developed in cooperation with the Task Force. Each country strategy should include planning for how to address an outbreak of violence or dramatic increase in early warning signs, as well as a list of trusted local civil society organizations with whom the U.S. Government can work to quickly respond to an emerging crisis. Waiting to develop these plans once a triggering event has already occurred is a recipe for failure.

## **7. Conclusion**

The 2021 Annual Report includes information that the civil society community has been seeking since the passage of the Elie Wiesel Act. PPWG celebrates those additions but recognizes that there is always more that needs to be done. The cause of atrocity prevention is too critical for any group to rest on its laurels. The recommendations and concerns raised in this Assessment reflect the input of the members of PPWG but are made with the sincere desire to collaborate with the U.S. Government officials who have made atrocity prevention their mission in public service.