ARTICLE

LEGISLATING ATROCITY PREVENTION

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Despite promises made by the international community after the Holocaust to “never again” allow genocide, war crimes, and crimes against humanity to be committed, these “atrocity crimes” have been perpetrated again and again. To-

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While serving on the U.S. Senate Foreign Relations Committee (“SFRC”) staff in 2016-17 as a Council on Foreign Relations International Affairs Fellow, the author drew on his book, United States Law and Policy on Transitional Justice: Principles, Politics, and Pragmatics (Oxford University Press, 2016), to work as a lead architect of both the Elie Wiesel Genocide and Atrocities Prevention Act and the Syrian War Crimes Accountability Act. The author has subsequently advised the White House National Security Council (“NSC”) and SFRC on implementing both laws.

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day—from Syria and South Sudan to Myanmar and Yemen—such catastrophes still rage around the world, and many more may erupt. This is therefore a crucial time to consider new initiatives to address existing and future humanitarian crises.

In addition to political, normative, and technological advancements, novel legal developments in the United States hold great potential to help address atrocity crimes. Two such pieces of legislation—the Syrian War Crimes Accountability Act and the Elie Wiesel Genocide and Atrocities Prevention Act—recently became law in the United States. These landmark acts unprecedentedly enshrine “atrocity prevention” and define “transitional justice” in U.S. law. In addition, for the first time, one of the acts refers to the Atrocities Prevention Board—an interagency body established by executive order—in a non-appropriations law, endowing this entity (and its successor) with greater congressional support and legitimacy. Amid an era in the United States that is more polarized than at any time since the Civil War, that each law garnered overwhelming support from both Democratic and Republican officials demonstrates that Americans can still agree on at least some basic principles. This Article provides the first comprehensive analysis of these groundbreaking laws and how they relate to other scholars’ and my own studies on atrocity prevention and transitional justice.

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[c], two anonymous officials at the U.S. Department of State (one of whom participated in two interviews), an anonymous former official at the U.S. Department of State’s Office of the Legal Adviser, and an anonymous former USAID official. The author is also grateful to Katy Badeaux and Matthew Hines for helpful research assistance.

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“We must take sides. Neutrality helps the oppressor, never the victim.
Silence encourages the tormentor, never the tormented.
Sometimes we must intervene.”

—Elie Wiesel¹

I. INTRODUCTION

Despite promises made by the international community after the Holocaust to “never again” allow genocide, war crimes, and crimes against humanity to be committed, these “atrocity crimes”² have been perpetrated again and again.³ Today—from Syria and South Sudan to Myanmar and

³ Kelly Dawn Askin, “Never Again” Promises Broken Again. Again. And Again., 27 CARDOZO L. REV. 1723, 1723 (2006) (“The world is now well aware that the promise of ‘never again’ after the Holocaust was an empty one. Or perhaps the promise itself was not empty, as it
Yemen—such catastrophes still rage around the world, and many more may erupt. This is therefore a crucial time to consider new initiatives to address existing and future humanitarian crises.

In addition to political, normative, and technological advancements, novel legal developments in the United States hold great potential to help address atrocity crimes. Two such pieces of legislation—the Syrian War Crimes Accountability Act (“Syrian Accountability Act”) and the Elie...
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Wiesel Genocide and Atrocities Prevention Act\(^\text{10}\) ("Elie Wiesel Act")—recently became law in the United States.\(^\text{11}\) These landmark acts unprecedentedly enshrine "atrocity prevention"\(^\text{12}\) and define "transitional justice"\(^\text{13}\) in U.S. law. In addition, for the first time, one of the acts refers to the Atrocities Prevention Board\(^\text{14}\)—an interagency body established by executive order—in a non-appropriations law, endowing this entity (and its successor) with greater congressional support and legitimacy. Amid an era in the United States that is more polarized than at any time since the Civil War,\(^\text{15}\) that each law garnered overwhelming support from both Democratic and Republican officials demonstrates that Americans can still agree on at least some basic principles.\(^\text{16}\)


\(^{11}\) During this period, President Trump also signed into law two other pieces of legislation concerning atrocity crimes. Women, Peace, and Security Act of 2017, Pub. L. No. 115-68, 131 Stat. 1202 (2017); Iraq and Syria Genocide Relief and Accountability Act of 2018, Pub. L. No. 115-330, 132 Stat. 4390 (2018). However, while these laws are important, they are outside the scope of this Article.


\(^{12}\) For a definition and discussion of the term “atrocity prevention,” see STRAUS, FUNDAMENTALS, supra note 2, at 113–84.

\(^{13}\) For a definition and discussion of the term “transitional justice,” see infra Part IV.B.1.

\(^{14}\) For a description and discussion of the Atrocities Prevention Board, see infra notes 99–112 and accompanying text and Part IV.B.2.


This Article provides the first comprehensive analysis of these groundbreaking laws and how they relate to other scholars’ and my own studies on atrocity prevention and transitional justice. Part II briefly describes the U.S. government’s pre-enactment approach to preventing and responding to atrocity crimes. While the U.S. government had taken no principled or consistent approach to addressing these offenses, it had already made some progress in its legal, normative, conceptual, and infrastructure commitments to doing so. Part III provides an overview of the Elie Wiesel and Syrian Accountability Acts, summarizing how these laws seek to prevent and respond to atrocity crimes in Syria and beyond. Part IV reflects on the laws’ significance. These acts constitute a radical departure from past law by recognizing atrocity prevention as in the U.S. national interest, mainstreaming aspects of atrocity prevention in U.S. policymaking, promoting domestic and international cooperation, demonstrating bipartisanship, conveying preferred transitional justice options, and prodding similar legislation abroad. Part V considers potential criticisms of the laws. The final Part concludes by suggesting cautious optimism and continued oversight. As this year is the twenty-fifth anniversary of the Genocide against the Tutsi in Rwanda, this Article draws in part on lessons about atrocity prevention and response from that avoidable tragedy.

II. U.S. Progress on Atrocity Prevention

The U.S. government has often responded too late or ineffectively, if at all, to atrocity crimes, including the Holocaust; genocides in Armenia, Bosnia, Cambodia, Darfur, Iraq, and Rwanda; and recent crises in Myanmar, South Sudan, Syria, Venezuela, and Yemen. Yet over time the U.S. govern-
ment has made some progress in its legal and normative commitments to, conceptualization of, and infrastructure for preventing such offenses.

A. Laws and Norms on Atrocity Prevention

Foundational domestic and international laws to which the U.S. government subscribes implicitly compel the U.S. government to prevent and respond to atrocity crimes. The inalienable rights to life and liberty recognized in the Declaration of Independence, the UN Charter, and the Universal Declaration of Human Rights effectively include a right not to be victimized by genocide, war crimes, or crimes against humanity.

The U.S. government’s explicit obligation to prevent at least one type of atrocity crime—genocide—was initially expressed through its eventual signing of a related treaty that was broadly endorsed in 1948. Almost forty years after the UN General Assembly unanimously adopted the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), and following 3,211 daily speeches over nineteen years by U.S. Senator William Proxmire urging U.S. ratification, the U.S. Senate voted in 1986 to ratify the treaty, albeit with multiple caveats. Two years later, the
Senate passed implementing legislation (known as the “Proxmire Act”).\cite{GenocideConventionImplementationAct}
Upon signing the Proxmire Act, President Ronald Reagan called it “a strong and clear statement by the United States that it will punish acts of genocide with the force of law and the righteousness of justice.”\cite{ReaganProxmireAct}
The Genocide Convention obligates the United States and 151 other parties to it\cite{GenocideConvention} to prevent and punish genocide whether the crime is committed during peacetime or war.\cite{GenocideConventionArticleI}

Two decades later, the U.S. government explicitly committed itself to prevent atrocity crimes even beyond genocide. In 2005, UN member states, including the United States, unanimously adopted a UN resolution, the 2005 World Summit Outcome, part of which declared the “Responsibility to Protect” (“R2P”) doctrine.\cite{R2P}
The United States and all other signatories pledged to defend their own people and, through the UN, foreign populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.\cite{R2PResponsibility}

In addition, all signatories declared that they “fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.”\cite{R2P
duty to prevent}

B. Conceptualization of Atrocity Prevention

Nine years after the U.S. government ratified the Genocide Convention, and after multiple subsequent genocides and other atrocity crimes were perpetrated,\cite{AfterRatificationOfGenocideConvention}
the Clinton administration more formally began articulating the government’s conceptualization of atrocity prevention. The 1997 National Security Strategy\cite{1997NSS} (“NSS”) was the first such document\cite{NSS}
to mention the


\cite{ReaganProxmireAct} Roberts, supra note 27 (quoting Reagan).


word “genocide” and include text that could be interpreted as officially considering atrocity prevention, although the language was tentative and only justified the policy with an appeal to values. The NSS two years later advanced a more interest-based argument in favor of atrocity prevention; under a heading of “threats to U.S. interests,” the document asserted: “States that fail to respect the rights of their own citizens and tolerate or actively engage in human rights abuses, ethnic cleansing or acts of genocide not only harm their own people, but can spark civil wars and refugee crises and spill across national boundaries to destabilize a region.” The NSS the following year pledged an even stronger dedication to atrocity prevention in such a document, rooted in both values and interests but conditioned on “serious national security concerns.”

Thus, by 2000, no NSS had articulated an unqualified commitment to atrocity prevention as inherently ingrained in both values and interests. Writing the following year—soon after widespread, systematic offenses against peoples in Rwanda and the Balkans—Samantha Power observed that the U.S. “national interest remains narrowly constructed to exclude stopping genocide.”


37 1997 NSS, supra note 35.

38 Id. at 12 (“In the event of natural or manmade disasters or gross violations of human rights, our nation may act because our values demand it.” (emphases added)).


40 The White House, A National Security Strategy for a Global Age 46–47 (2000), https://nssarchive.us/NSSR/2001.pdf [https://perma.cc/58Z2F-HJJA] (“Ethnic conflict represents a great challenge to our values and our security. When it erupts in ethnic cleansing or genocide, ethnic conflict becomes a grave violation of universal human rights. We find it clearly opposed to our national belief that innocent civilians should never be subject to forcible relocation or slaughter because of their religious, ethnic, racial, or tribal heritage. Ethnic conflict can also threaten regional stability and may well give rise to potentially serious national security concerns. When this occurs, the intersection of our values and national interests make it imperative that we take action to prevent—and whenever possible stop—outbreaks of mass killing and displacement.” (emphasis added)).

41 Samantha Power, Bystanders to Genocide, The Atlantic, Sept. 2001, at 106 [hereinafter Power, Bystanders to Genocide] (noting that “[o]fficials in the Bush Administration say the United States is as unprepared and unwilling to stop genocide today as it was seven years ago. ‘Genocide could happen again tomorrow,’ one said, ‘and we wouldn’t respond any differently’”). Power would later make the case that the United States should stop genocide for moral and enlightened self-interest reasons. Samantha Power, “A Problem from Hell”: America’s Role in the Age of Genocide 512 (2013) [hereinafter Power, “A Problem from Hell”] (arguing that those who subscribed to the latter reason “warned that allowing geno-
Retreating from the 1999 and 2000 National Security Strategies (“NSSs”) that grounded atrocity prevention in at least a conditional interest-based justification, the George W. Bush administration’s inclusion of atrocity prevention in its two NSSs did not feature any such rationale. The 2002 NSS proclaimed atrocity prevention as imperative but offered no reasoning.\(^42\) Two years later, and for the first time during an ongoing crisis,\(^43\) the Executive Branch characterized the atrocity crimes in Darfur as “genocide.”\(^44\) No doubt inspired in large part by Darfur, the Bush administration’s only other NSS, in 2006, dedicated an entire subsection to the topic of genocide, articulating the longest declaration to that date in favor of atrocity prevention but basing it only on values.\(^45\)

Within just a few years, though, that notion of a values-only justification of atrocity prevention began to change. This evolution was partly because Power herself—who had earned wide acclaim, including a Pulitzer Prize,\(^46\) for her writing on atrocity prevention—became an influential government official.\(^47\) In 2008 (during the sixtieth anniversary of the Genocide Convention and the twentieth anniversary of the U.S. government’s ratification of it), a bipartisan group led by Democratic former Secretary of State

cide undermined regional and international stability, created militarized refugees, and signaled dictators that hate and murder were permissible tools of statecraft”).


Legislating Atrocity Prevention

Madeleine Albright and Republican former Secretary of Defense William Cohen published “a blueprint for U.S. policymakers” on preventing genocide.48 The Albright-Cohen report declared genocide to be “a crime that threatens not only our values, but our national interests.”49 The report, building on and echoing Power’s writing,50 observed that atrocity crimes “threaten core U.S. national interests” because they exacerbate related risks, cause refugee and regional crises, and compromise U.S. leadership.51 Breaking from the prior NSSs, this report thus described atrocity prevention as inherently ingrained in both U.S. values and interests.

The Albright-Cohen report’s quasi-governmental52 observation was soon embodied in a presidential study directive (“PSD”), NSS, and executive order (“EO”), all from President Barack Obama. In August 2011, President Obama (for whom Power was then working as a senior director on the National Security Council (“NSC”) and would later serve as Ambassador to the United Nations) issued a PSD on Mass Atrocities (“PSD-10”) declaring that “[p]reventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.”53 This PSD, which Power co-drafted,54 reiterated Power’s writing and the Albright-Cohen report.55 While the Obama administration’s first NSS, in 2010, included a

48 ALBRIGHT & COHEN, supra note 19.
49 Id. at ix.
50 See POMPER, supra note 47, at 3.
51 ALBRIGHT & COHEN, supra note 19, at xv (Atrocity crimes “feed on and fuel other threats in weak and corrupt states, with dangerous spillover effects that know no boundaries. If the United States does not engage early in preventing these crimes, we inevitably bear greater costs—in feeding millions of refugees and trying to manage long-lasting regional crises. In addition, U.S. credibility and leadership are compromised when we fail to work with international partners to prevent genocide and mass atrocities.”). U.S. leadership is currently conspicuously absent in addressing atrocity crimes. As Samantha Power notes: “Senior U.S. diplomacy is nowhere to be found in trying to mobilize the international community to combat atrocities in places like South Sudan, the Central African Republic, the Democratic Republic of the Congo, and beyond.” Ralph Ranalli, The “Next Rwanda” Will Look Different: Samantha Power Reflects on What We’ve Learned and Forgotten 25 Years After the Genocide, HARV. KENNEDY Sch. (Apr. 4, 2019), https://www.hks.harvard.edu/faculty-research/policy-topics/human-rights-justice/samantha-power-reflects-what-weve-learned-and- [https://perma.cc/YTG3-T8SZ] (quoting Power).
52 The Albright-Cohen report was issued by the Genocide Prevention Task Force, which was jointly convened by the U.S. Holocaust Memorial Museum, the American Academy of Diplomacy, and the U.S. Institute of Peace. ALBRIGHT & COHEN, supra note 19, at iv, 149. The U.S. Congress established the first and third of those organizations. See Mission and History, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, https://www.ushmm.org/information/about-the-museum/mission-and-history [https://perma.cc/7QT6-C9YW] (noting that the museum was chartered by a unanimous Act of Congress); What We Do, UNITED STATES INSTITUTE OF PEACE, https://www.usip.org [https://perma.cc/3DPL-9VZH] (“USIP is a national, nonpartisan, independent institute, founded by Congress.”).
54 POWER, IDEALIST, supra note 47, at 268.
55 PSD-10, supra note 53 (“[U.S.] security is affected when masses of civilians are slaughtered, refugees flow across borders, and murderers wreak havoc on regional stability and
subsection on preventing genocide and other atrocity crimes that did not provide a justification, the administration’s only other NSS, five years later, did include a subsection that offered the first commitment to atrocity prevention in such a document unconditionally based on both values and interests. Then, in 2016, President Obama issued EO 13,729 reinforcing his administration’s view, initially articulated in PSD-10, that atrocity prevention is an American core national security interest and core moral responsibility.

While the Obama administration’s pronouncements represent the zenith of the U.S. government’s official conceptualization of atrocity prevention to date, the Trump administration’s similar declarations, while sometimes unclear, are far from the nadir. In the Trump administration’s only NSS to date, in 2017, the first item in a list of “priority actions” is to “support the dignity of individuals.” In this subsection, the Trump administration indicates that it will seek to address atrocity crimes, but does so through language that is tentative (indicating that it “may” use various tools), ambiguous (by invoking values and interests but not stating whether atrocity prevention qualifies as either), and reactive (by declaring that it will pursue accountability for atrocity crimes but not mentioning prevention of such offenses). Moreover, while President Donald Trump has revoked at least twenty-one past EOs, he has not rescinded EO 13,729, meaning its presidential declaration livelihoods. America’s reputation suffers, and our ability to bring about change is constrained, when we are perceived as idle in the face of mass atrocities and genocide.

57 THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 22 (2015), https://nssarchive.us/wp-content/uploads/2015/02/2015.pdf [https://perma.cc/MW8G-WP73] (“The mass killing of civilians is an affront to our common humanity and a threat to our common security. It destabilizes countries and regions, pushes refugees across borders, and creates grievances that extremists exploit. We have a strong interest in leading an international response to genocide and mass atrocities when they arise, recognizing options are more extensive and less costly when we act preventively before situations reach crisis proportions.”).
60 Id. (“We may use diplomacy, sanctions, and other tools to isolate states and leaders who threaten our interests and whose actions run contrary to our values. We will not remain silent in the face of evil.” (emphasis added)).
61 Id.
62 Id. (“We will hold perpetrators of genocide and mass atrocities accountable.”).
of atrocity prevention as both “a core national security interest and a core moral responsibility of the United States” still stands. Consistent with that view, in 2017, President Trump pronounced a national security interest in combatting serious human rights abuses and the following year he referred to the prevention of at least one type of atrocity crime, genocide, as a “moral obligation.” Currently, then, the Executive Branch implicitly continues to abide by the Obama administration’s view of atrocity prevention as core to both U.S. national security and ethical responsibility.

C. Infrastructure for Atrocity Prevention

Leaders of both major political parties have created infrastructure in the U.S. government to address atrocity crimes, significantly enhancing the government’s capabilities but not necessarily its political will. These bodies now exist within the White House as well as several Executive Branch departments and agencies. This section describes such infrastructure by department.

The Treasury Department’s efforts to thwart atrocity crimes began on April 9, 1940, when then-Secretary of the Treasury Henry Morgenthau successfully requested that the Federal Reserve Bank of New York freeze the accounts of Denmark and Norway to block Adolf Hitler’s access to those funds. While the Department does not have an office specifically dedicated to atrocity prevention, it does use its financial tools, including sanctions, to combat and deter atrocity crimes. Among other measures, the Department

64 EO 13,729, supra note 58.
65 E-mail Interview with Nicole Widdersheim, former White House National Security Council and U.S. Agency for International Development Official (July 12, 2019) [hereinafter Widdersheim Interview].
66 Exec. Order No. 13,818, 82 Fed. Reg. 60,839 (Dec. 20, 2017) (“I therefore determine that serious human rights abuse and corruption around the world constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and I hereby declare a national emergency to deal with that threat.”).
67 On Yom HaShoah, or Holocaust Remembrance Day, in 2018, President Trump declared: “We have a responsibility to convey the lessons of the Holocaust to future generations, and together as Americans, we have a moral obligation to . . . prevent genocide.” Press Release, The White House, President Donald J. Trump Proclaims April 12 through April 19, 2018, as the Days of Remembrance of Victims of the Holocaust (Apr. 11, 2018) (emphasis added), https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-proclaims-april-12-april-19-2018-days-remembrance-victims-holocaust/ [https://perma.cc/JND2-MCNY].
68 For further description of U.S. government agencies involved in atrocity prevention, see, for example, LEE FEINSTEIN & TOD LINDBERG, ALLIES AGAINST ATROCITIES: THE IMPERATIVE FOR TRANSATLANTIC COOPERATION TO PREVENT AND STOP MASS KILLINGS 21–25 (2017); STRAUS, FUNDAMENTALS, supra note 2, at 123–30.
70 E-mail Interview with Samantha Sultoon, former Senior Sanctions Policy Advisor, U.S. Dep’t of the Treasury Office of Foreign Assets Control (June 5, 2019) [hereinafter Sultoon Interview].
blocks the flow of money to and freezes assets of abusive regimes and individuals suspected of committing serious human rights violations. The Department’s Office of Foreign Assets Control (“OFAC”), created in 1950, administers and enforces sanctions related to atrocity crimes and other human rights abuses.

The Carter administration’s Justice Department created an Office of Special Investigations (“OSI”) within the Criminal Division in 1979 to investigate and prosecute Nazis from World War II who emigrated to the United States. The George W. Bush administration’s Justice Department then established within the same Division the Domestic Security Section (“DSS”) in 2002 to prosecute and promote policy on international human rights violations and certain other crimes. Two years later, Congress expanded OSI’s mandate to include investigating and seeking to revoke the citizenship of any naturalized U.S. citizen involved in genocide or certain other crimes. Then, in 2010, the Obama administration’s Justice Department combined OSI and DSS into a Human Rights and Special Prosecutions Section.

In 2009, the Obama administration’s Federal Bureau of Investigation (“FBI”) established a Genocide War Crimes Program in its Counterterrorism Division. Five years later, that program was rearranged under the FBI’s Criminal Investigative Division and renamed the International Human Rights Unit (“IHRU”). The IHRU plays a self-described “vital role in the U.S. government’s coordinated efforts to identify, locate, investigate, and


76 See Crook, supra note 74, at 510; DoJ Press Release, supra note 75.


78 Id.
prosecute perpetrators of genocide, war crimes, and other related mass atrocities."\textsuperscript{79}

The Clinton administration’s State Department established the Office of War Crimes Issues (“S/WCI”) in 1997.\textsuperscript{80} Later renamed the Office of Global Criminal Justice (“J/GCJ”), it advises senior State Department officials on issues related to atrocity crimes, particularly the prevention of, responses to, and accountability for these offenses.\textsuperscript{81} J/GCJ also counsels the U.S. and foreign governments on the development and use of transitional justice mechanisms.\textsuperscript{82} The inaugural head of this office, David Scheffer, established an Atrocities Prevention Interagency Working Group, which met monthly between 1998 and 2000 and served as a precursor to the Atrocities Prevention Board (“APB”).\textsuperscript{83} (Scheffer has remarked on the significance and uniqueness of this position he first held.\textsuperscript{84}) In 2011, the Obama administration established the State Department’s Bureau of Conflict and Stabilization Operations (“CSO”).\textsuperscript{85} CSO’s mission is “to anticipate, prevent, and respond to conflict that undermines U.S. national interests.”\textsuperscript{86} CSO has officially become the focal point for atrocity prevention within the State Department and throughout the whole U.S. government.\textsuperscript{87}

\textsuperscript{79} Id.
\textsuperscript{80} See David Scheffer, All the Missing Souls: A Personal History of the War Crimes Tribunals 11 (2012). Because the Office of War Crimes Issues was directly under the Secretary of State, its abbreviation was “S/WCI.” Anonymous State Dep’t Official #2 Interview, supra note 71.
\textsuperscript{81} See Our Mission, U.S. Dep’t of State, Office of Glob. Criminal Justice, https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-of-global-criminal-justice/ [https://perma.cc/5W22-AJSJ]. In 2012, the Office moved from reporting directly to the Secretary of State to being housed under the Under Secretary for Civilian Security, Democracy, and Human Rights. Because that Under Secretary oversees what is known as the “J” directorate, the Office’s abbreviation became “J/GCJ.” Anonymous State Dep’t Official #2 Interview, supra note 71.
\textsuperscript{82} Our Mission, supra note 81.
\textsuperscript{84} See Scheffer, supra note 80, at 3 ("On the one hand, this initiative marked a sad commentary on the state of the world at the close of the twentieth century—fifty years or so after the Holocaust and the Nuremberg and Tokyo tribunals and two decades after the atrocity crimes that devastated Cambodia during the rule of Pol Pot. On the other hand, my ambassadorship demonstrated that the United States recognized the gravity of the situation and rose to the challenge. No other nation had seen fit to designate anyone as an ambassador to cover atrocity crimes.")
The George W. Bush administration founded the Office of Conflict Management and Mitigation (“CMM”) in 2002 in the Bureau of Democracy, Conflict, and Humanitarian Assistance (“DCHA”) of the U.S. Agency for International Development (“USAID”). Later, the Obama administration created within USAID the Center of Excellence for Democracy, Human Rights, and Governance (“DRG”). Initially, CMM and DRG shared the task of generating atrocity prevention training and tools for USAID field officers, but DRG soon took the lead. USAID’s atrocity prevention publications include a 2013 technical brief about early warning signs of atrocity crimes against civilians and a 2015 field guide on atrocity prevention. In 2018, as part of a larger Trump administration-led reformation of the federal government, USAID proposed creating a Bureau for Conflict Prevention and Stabilization (“CPS”), which would serve as the U.S. government’s technical lead on conflict and violence prevention; consolidate the current DCHA offices, including CMM; and manage the Complex Crises Fund (“CCF”). In a press release dated April 3, 2019, USAID Administrator Mark Green stated that Congress had approved CPS’s creation.

The George W. Bush administration created the Human Rights Violators and War Crimes Unit (“HRVWCU”) at the Department of Homeland

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89 Widdersheim Interview, supra note 65.

90 Id.


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Security in 2003.96 HRWCU’s mission includes preventing the admission into the United States of, identifying and prosecuting, and removing human rights abusers,97 and the unit works with the FBI to pursue that mission.98

In 2011, President Obama’s PSD-10 directed the establishment in the White House of the APB, the primary purpose of which was “to coordinate a whole of government approach to preventing” atrocity crimes.99 The Obama administration created the interagency body the following year and directed it to meet monthly.100 In 2016, President Obama’s EO 13,729 elaborated on PSD-10, including details about the APB’s responsibilities, structure, and protocols.101 A senior director of the NSC chaired the APB, and representatives at the Assistant Secretary level or higher from eleven agencies and offices across the U.S. government participated.102 Since its establishment until at least January 2017, the APB met at minimum monthly,103 and the sub-APB (the APB’s working-level subcommittee) met more frequently.104

In 1993, the Clinton administration created within the Department of Defense (“DoD”) the U.S. Army Peacekeeping and Stability Operations Institute (“PKSOI”).105 PKSOI has published several atrocity prevention-related documents.106 For example, PKSOI partnered with the Harvard University Kennedy School of Government’s Carr Center for Human Rights Policy to publish in 2010 a conceptual framework for military prevention of

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98 Widdersheim Interview, supra note 65.
99 PSD-10, supra note 53.
100 See Comprehensive Strategy, supra note 71. For an insider’s view of the APB under the Obama administration, see Pomper, supra note 47.
101 EO 13,729, supra note 58.
102 See Comprehensive Strategy, supra note 71 (stating that “the APB will include representatives of the Departments of State, Defense, Treasury, Justice, and Homeland Security, the Joint Staff, the U.S. Agency for International Development, the U.S. Mission to the United Nations, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the Office of the Vice President”); Atrocities Prevention, U.S. DEP’T OF STATE, https://www.state.gov/atrocity-prevention/ [https://perma.cc/M2LM-J5FT].
104 Participants in the sub-APB during the Obama administration differ on how frequently it met during that time. Compare Pomper, supra note 47, at 9 (stating that the sub-APB met “generally on a weekly basis”), with Widdersheim Interview, supra note 65 (stating that the sub-APB “sometimes” met weekly).
105 See Background & History, PEACEKEEPING & STABILITY OPERATIONS INST., https://pksoi.armywarcollege.edu/index.cfm/who-we-are/background-history/ [https://perma.cc/9AY7-NE3M].
and response to atrocity crimes.\textsuperscript{107} Other components of DoD are also involved in atrocity prevention,\textsuperscript{108} including as representatives to the APB.\textsuperscript{109}

Finally, the Intelligence Community also participates in atrocity prevention. Both PSD-10 and EO 13,729 include representatives from the Office of the Director of National Intelligence and the Central Intelligence Agency (“CIA”).\textsuperscript{110} Furthermore, EO 13,729 indicates that the APB may conduct its work by “[r]equest[ing] information or analysis from the Intelligence Community.”\textsuperscript{111} The Obama administration created within the CIA an analytical unit on atrocity crimes.\textsuperscript{112}

III. OVERVIEW OF NEW ATROCITY PREVENTION LAWS

Despite all of this progress on atrocity prevention in the U.S. government’s legal, normative, conceptual, and infrastructural commitments, the impact of federal U.S. law remained comparatively weak until recently. In 2018 and 2019, new legislation called on the Executive Branch to make more substantial and specific contributions to addressing atrocity crimes. Congress incorporated the Syrian War Crimes Accountability Act of 2017\textsuperscript{113} into the John S. McCain National Defense Authorization Act (“NDAA”) for Fiscal Year 2019,\textsuperscript{114} which President Trump signed into law on August 13, 2018.\textsuperscript{115} Five months later, on January 14, 2019,\textsuperscript{116} President Trump signed into law the Elie Wiesel Genocide and Atrocities Prevention Act of 2018.\textsuperscript{117}

A. Syrian War Crimes Accountability Act

The Syrian Accountability Act is designed, inter alia, to “require a report on, and to authorize technical assistance for, accountability for war crimes, crimes against humanity, and genocide in Syria.”\textsuperscript{118} The law man-

\textsuperscript{108} Widdersheim Interview, supra note 65.
\textsuperscript{109} PSD-10, supra note 53 (noting that the APB includes representation from DoD).
\textsuperscript{110} See id.; EO 13,729, supra note 58.
\textsuperscript{111} EO 13,729, supra note 58.
\textsuperscript{112} Widdersheim Interview, supra note 65.
\textsuperscript{118} Syrian War Crimes Accountability Act of 2017, S. 905, 115th Cong. pmbl. (2017). When incorporated into the NDAA, this preamble was omitted.
dates five measures. First, it requires the Secretary of State to conduct a study of the feasibility and desirability of potential transitional justice mechanisms for Syria.\footnote{NDAA § 1232(b)(1).}

Second, the law mandates the Secretary of State to submit to partially overlapping committees in each chamber of Congress two sets of reports.\footnote{See infra note 210 and accompanying text.} The first set is on atrocity crimes in Syria,\footnote{NDAA § 1232(a).} including a description of such offenses and a summary and assessment of programs the U.S. government has undertaken to ensure accountability for those crimes (such as supporting the International, Impartial, and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (“IIIM”) and the Independent International Commission of Inquiry on the Syrian Arab Republic (“CoI”).\footnote{Id. § 1232(a)(2). For background and discussion of the IIIM and CoI, see Kaufman, Recent UN Investigations, supra note 4.} The second report concerns the transitional justice study’s results.\footnote{NDAA § 1232(b)(2).} The law requires the Secretary of State to transmit both sets of reports within the same timeframe from the law’s enactment and also requires an updated version of the first set of reports to be submitted within a particular period after the conflict’s cessation.\footnote{See infra notes 212–13 and accompanying text.}

Third, the law authorizes the Secretary of State to provide appropriate technical assistance to support entities pursuing accountability and transitional justice for atrocity crimes in Syria.\footnote{NDAA § 1232(c).} The law then requires the Secretary of State to provide detailed, biannual briefings about this assistance to designated committees in each chamber of Congress.\footnote{Id. § 1232(c)(3).}

Fourth, the law amends the statute underlying the State Department’s Rewards for Justice Program, which offers monetary incentives for information leading to the arrest or conviction of certain individuals.\footnote{Id. § 1232(d); see 22 U.S.C. § 2708 (2018).} In the section on foreign nationals covered by the program, the amendment adds explicit reference to individuals accused of committing atrocity crimes in Syria beginning in March 2011,\footnote{See Mid-East Unrest: Syrian Protests in Damascus and Aleppo, BBC News (Mar. 15, 2011), https://www.bbc.com/news/world-middle-east-12749674 [https://perma.cc/GG4K-UPUC].} when the country’s civil war erupted.\footnote{NDAA § 1232(d); see 22 U.S.C. § 2708(b)(10) (2018).}
Finally, the law encourages the Secretary of State to exercise the U.S. government’s influence at the UN to advocate that the UN Human Rights Council (“UNHRC”) annually extends the mandate of the CoI until the CoI has completed its function.\footnote{NDAA § 1232(e). The UNHRC established the CoI on August 22, 2011, to investigate all alleged violations of international human rights law since March 2011 in Syria. See Independent International Commission of Inquiry on the Syrian Arab Republic, United Nations Human Rights Council, https://www.ohchr.org/en/hrbodies/hrc/images/syria/pages/independentinternationalcommission.aspx [https://perma.cc/4G3A-ZP34]. As the U.S. government is no longer a member of the UNHRC, see infra notes 237–38 for further discussion.}

Three Democrats (bill sponsor Senator Ben Cardin plus Senators Robert Menendez and Jeanne Shaheen) and three Republicans (Senators Bob Corker, Marco Rubio, and Todd Young)—all Senate Foreign Relations Committee (“SFRC”) members\footnote{At the time, Senators Corker and Cardin were SFRC’s Chair and Ranking Member, respectively.}—introduced the Syrian Accountability Act in April 2017.\footnote{See Press Release, U.S. Senate Comm. on Foreign Relations, Syrian War Crimes Accountability Bill Introduced by Cardin, Bipartisan Colleagues (Apr. 7, 2017), https://www.foreign.senate.gov/press/ranking/release/syrian-war-crimes-accountability-bill-introduced-by-cardin-bipartisan-colleagues [https://perma.cc/76VS-TTPA].} As their rationale for the legislation, all six Senators cited the need to ensure justice and accountability for Bashar al-Assad and his regime’s atrocity crimes in Syria over the previous six years, which killed hundreds of thousands of Syrians and caused millions more to flee as refugees.\footnote{Id.}

B. Elie Wiesel Genocide and Atrocities Prevention Act

The Elie Wiesel Act is more general than the country-specific Syrian Accountability Act. Through four measures, the former law aims to “prevent acts of genocide and other atrocity crimes, which threaten national and international security, by enhancing United States Government capacities to prevent, mitigate, and respond to such crises.”140 First, the law declares the sense of Congress that the U.S. government’s “efforts at atrocity prevention and response through interagency coordination” are “critically important” and suggests that appropriate U.S. officials cooperate through holding meetings, identifying gaps in U.S. foreign policy, facilitating policy, providing recommendations to the President and Congress, conducting outreach with civil society, and dedicating resources.141

Second, the law states that the U.S. government’s policy is to “regard the prevention of atrocities as in its national interest,” to “work with partners and allies . . . to identify, prevent, and respond to the causes of atrocities,” and to pursue a U.S. government-wide “strategy to identify, prevent, and respond to the risk of atrocities.”142 Third, the law amends the Foreign Service Act143 to add training for Foreign Service Officers on atrocity crime anticipation, prevention, and response.144

Finally, the law mandates that the President transmit to designated committees in each chamber of Congress reports about atrocity prevention and response.145 The law requires the President to convey these reports within a particular timeframe and at regular intervals thereafter for a set amount of time.146 The law directs the reports to include a detailed description of U.S. government efforts to prevent and respond to atrocity crimes (such as a global assessment of ongoing atrocity crimes, any steps taken to respond to such offenses, and a description of countries and regions at risk of atrocity crimes), recommendations to ensure shared responsibility by international and regional organizations, the implementation status of such recommendations contained in the previous report, and identification of organizations inside and outside the U.S. government that were consulted in preparing the report.147

Democratic Senator Cardin and Republican Senator Young (both members of the SFRC), along with twenty original cosponsors (three Republicans

141 Id. § 2.
142 Id. § 3.
144 EWGAPA § 4.
145 Id. § 5.
146 Id. § 5(a); see also infra note 211 and accompanying text.
147 EWGAPA § 5(a).
and seventeen Democrats), introduced the Elie Wiesel Act in May 2017.148 This bill succeeded a similar but failed legislative initiative that Senator Cardin and Republican Senator Thom Tillis introduced the previous year.149 Regarding the Elie Wiesel Act, Senators Cardin and Young both cited ethical and practical motivations for the legislation. The former stated that “our values and national security interests require us to ensure that the United States utilizes the full arsenal of diplomatic, economic, and legal tools to take meaningful action before atrocities occur,” and the latter declared that “[t]he United States has a moral and strategic imperative to help prevent and respond to acts of genocide and other mass atrocities.”150

One month after the Elie Wiesel Act’s introduction in the Senate, Republican Representative Ann Wagner and Democratic Representative Joe Crowley, along with twenty-six original cosponsors (ten Republicans and sixteen Democrats), introduced the House companion of the bill.151 In May 2018, the House Foreign Affairs Committee (“HFAC”) passed the bill by voice vote.152 SFRC then unanimously passed the Act the following month.153 In July of that year, the full House voted in favor of the legislation 406 to 5.154 The full Senate unanimously passed an amended version of the


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IV. SIGNIFICANCE OF NEW ATROCITY PREVENTION LAWS

The Elie Wiesel and Syrian Accountability Acts hold great significance. Among other lofty, laudable implications, these laws recognize and codify atrocity prevention as in the U.S. national interest. Both laws also mainstream transitional justice and the APB in U.S. policymaking, promote domestic and international cooperation on addressing atrocity crimes, demonstrate bipartisanship on protecting human rights, convey the U.S. government’s current preference for particular transitional justice options, and prod other countries to consider enacting similar legislation.

A. Recognizing Atrocity Prevention as in the National Interest

While the U.S. government’s legal commitment to atrocity prevention dates back to the Genocide Convention ratification in 1986, U.S. law has characterized this duty as in the national interest only recently. With President Obama’s 2011 PSD-10, 2015 NSS, and 2016 EO 13,729, the Executive Branch alone had officially recognized atrocity prevention as in the U.S. national interest. Not until passage of the Elie Wiesel Act did the Legislative Branch—and federal law—adopt similar language to President Obama’s by “regard[ing] the prevention of atrocities as in [the U.S.] national interest.”\footnote{157}{Elie Wiesel Genocide and Atrocities Prevention Act (“EWGAPA”), Pub. L. No. 115-441, § 3(1), 132 Stat. 5586 (2019). A resolution unanimously adopted by the U.S. Senate in 2010 “affirms that it is in the national interest and aligned with the values of the United States to work vigorously with international partners to prevent and mitigate future genocides and mass atrocities.” S. Con. Res. 71, 111th Cong. § 2 (2010). However, the House did not pass the resolution. S. Con. Res. 71, 111th Cong. (2010), https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/71/all-actions [https://perma.cc/TXB8-5U3H] (indicating that the resolution’s latest action was that the Senate sent it to the House).} More recently, the Trump administration emphasized that the Elie Wiesel Act “prioritizes the prevention of genocide as a matter of America’s national security interest.”\footnote{158}{E-mail from The White House, info@mail.whitehouse.gov, to subscribers of West Wing Reads (Jan. 28, 2019) (on file with author).}
Subsequent legislation recognizing past atrocity crimes invokes the Elie Wiesel Act’s characterization of atrocity prevention as a U.S. national interest. On October 29, 2019, the U.S. House of Representatives cited this aspect of the Elie Wiesel Act in passing a resolution recognizing the Armenian Genocide,\textsuperscript{159} the first time that a chamber of Congress had formally made such a declaration.\textsuperscript{160}

B. Mainstreaming “Transitional Justice” and the Atrocities Prevention Board (or Successor Entity) in U.S. Policymaking

The Elie Wiesel and Syrian Accountability Acts represent the mainstreaming in U.S. policymaking of two separate aspects of atrocity prevention. One is the concept of “transitional justice” (a term coined by Ruti Teitel in 1991\textsuperscript{161}), which can contribute to atrocity prevention.\textsuperscript{162} The other is the institution of the APB (or its successor entity).

I. Transitional Justice

Both laws mention transitional justice on multiple occasions, significantly raising the prominence of this concept in U.S. policymaking. The term appears nine times in the Syrian Accountability Act\textsuperscript{163} and four times in the Elie Wiesel Act.\textsuperscript{164} These acts are the first to define transitional justice in U.S. law, and they do so by using identical language: Transitional justice means “the range of judicial, nonjudicial, formal, informal, retributive, and restorative measures employed by countries transitioning out of armed conflict or repressive regimes to redress legacies of atrocities and to promote long-term, sustainable peace.”\textsuperscript{165}

\textsuperscript{159} H.R. Res. 296, 116th Cong. pmbl. (2019).
\textsuperscript{161} See \textit{Ruti G. Teitel, Globalizing Transitional Justice}, xii, 3 (2014).
\textsuperscript{165} Id. § 6(3); see also NDAA § 1232(g)(4).
But these laws are not the only or even first federal legislation to include the term. The phrase “transitional justice” also explicitly appears in ten other federal laws passed since 2007.\textsuperscript{166} Including unenacted bills and resolutions, the term appears in a total of seventy-five pieces of federal legislation since 2007.\textsuperscript{167} Employment of the term in such legislation has increased steadily since that year.\textsuperscript{168}

The progressively common usage of “transitional justice” in federal legislation reflects the greater familiarity and comfort policymakers have with the term. That Congress has also finally defined transitional justice in not just one, but two, laws further weaves the term into the fabric of federal law. These developments demonstrate the U.S. government’s official acknowledgement of and perhaps increasing priority on supporting transitional justice as a significant component of U.S. foreign policy.

Outside the U.S. government, however, there is no consensus on the definition of transitional justice. The version Congress used in these two laws is a near-verbatim reproduction of the definition the U.S. Department


\textsuperscript{167} See “Transitional Justice” Search, supra note 166.

\textsuperscript{168} See id. The following table shows the number of the Congress, the two-year span of that Congress, and the number of pieces of legislation (enacted and unenacted) during that Congress in which “transitional justice” appears:

<table>
<thead>
<tr>
<th>Congress</th>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>110</td>
<td>2007-2008</td>
<td>2</td>
</tr>
<tr>
<td>111</td>
<td>2009-2010</td>
<td>3</td>
</tr>
<tr>
<td>112</td>
<td>2011-2012</td>
<td>7</td>
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<tr>
<td>113</td>
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<td>114</td>
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<td>115</td>
<td>2017-2018</td>
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</tbody>
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As of September 29, 2019, the 116th Congress (2019-20) features nineteen pieces of legislation in which “transitional justice” appears. That Congress is not included in the chart above because its two-year span is not complete.
of State employed in 2016, as part of the Executive Branch’s first public white papers on the subject. The similar definition of transitional justice employed by Congress and the State Department partly accords with my own, but features a significant distinction. I refer to transitional justice as “both the process and objectives of societies addressing past or ongoing atrocities and other serious human rights violations through judicial and non-judicial mechanisms.” The key difference between these two definitions is whether they explicitly include a reference to altering the underlying situation. The definition used by Congress and the State Department makes this reference (by limiting the context in which countries employ various measures to when the “countries [are] transitioning out of armed conflict or repressive regimes”), whereas mine does not. As Phil Clark, Kalypso Nicolaidis, and I have argued, the first word in the term “transitional justice” may be a misnomer, as attempts to promote transitional justice objectives (such as accountability and reconciliation) may be merely aspirational and can even exacerbate or indirectly cause conflict. Definitions of “transitional justice” should thus reflect the reality that no “transition” from conflict to peace may actually be achieved. One option to express this nuance, as in my definition of transitional justice, is to omit reference to any actual transition.

Although the Elie Wiesel and Syrian Accountability Acts ensured that the term—and a definition for—“transitional justice” are now firmly part of

169 On May 16-17, 2016, the U.S. Department of State issued six policy papers on transitional justice that were created by the Department (specifically its J/GCJ; Bureau of Democracy, Human Rights, and Labor; Bureau of International Narcotics and Law Enforcement Affairs; and Bureau of Conflict and Stabilization Operations) and USAID (particularly its DRG). See U.S. Dep’t of State, Transitional Justice Policy Paper Series (May 16-17, 2016), https://www.state.gov/j/gcj/transitional/index.htm [https://perma.cc/85TK-B2ZX]. The State Department employed the following definition of transitional justice: “a range of measures—judicial and non-judicial, formal and informal, retributive and restorative—employed by countries transitioning out of armed conflict or repressive regimes to redress legacies of atrocities and to promote long-term, sustainable peace.” U.S. Dep’t of State, Transitional Justice Overview (May 16, 2016), https://2009-2017.state.gov/documents/organization/257771.pdf [https://perma.cc/H9UY-S75P]. The State Department based this definition on a combination of sources, including one formulated by the International Center for Transitional Justice (“ICTJ”) and input from transitional justice specialists at the State Department and USAID. E-mail Interview with Anonymous Official #1, U.S. Dep’t of State (Feb. 22, 2019) [hereinafter Anonymous State Dep’t Official #1 Interview]. ICTJ’s definition of transitional justice is “the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.” What is Transitional Justice?, INT’L CTR. FOR TRANSITIONAL JUSTICE (2019), https://www.ictj.org/about/transitional-justice [https://perma.cc/2HCP-6V3Q].

170 See Anonymous State Dep’t Official #1 Interview, supra note 169.


U.S. law, controversies will undoubtedly persist within the U.S. government about describing and operationalizing the concept. Indeed, the U.S. government has a long, troubling, and inconsistent relationship with transitional justice around the world\textsuperscript{173} and even within its own borders\textsuperscript{174}

2. **Atrocities Prevention Board (or Successor Entity)**

The Elie Wiesel Act, the first law to refer explicitly to the APB (or its successor entity) outside the appropriations context, mentions the interagency body three times\textsuperscript{175}. Since the APB was established, four appropriations laws have featured a section about it, although none of these laws actually granted the APB itself any funding\textsuperscript{176}. Including unenacted bills and resolutions, explicit reference to the APB appears in a total of thirty-one pieces of federal legislation\textsuperscript{177}. But the APB’s prominent, repeated presence in the Elie Wiesel Act—like the references to transitional justice in the Elie Wiesel and Syrian Accountability Acts—reflects increasing awareness and acceptance of the body throughout the U.S. government. Furthermore, congressional embrace of the APB in a non-appropriations law, particularly a law that originated in a committee with subject-matter expertise (the SFRC), gives the APB additional support and legitimacy\textsuperscript{178}.

\textsuperscript{173} See KAUFMAN, supra note 171, at 214 (examining case studies of Germany and Japan after World War II, the 1998 bombing of Pan Am flight 103, the 1990-1991 Iraqi offenses against Kuwaitis, the atrocity crimes in the former Yugoslavia in the 1990s, and the 1994 Genocide against the Tutsi in Rwanda and concluding that “[t]he USG is unlikely to take a principled or consistent approach to transitional justice. Rather, the USG will prioritize political and pragmatic factors, particularly concerning security.”).

\textsuperscript{174} Id. at 28–29 (noting that, in the United States, at least three truth commissions have been established, and others have been proposed).


Because the APB is an entity of the NSC, Congress could not directly appropriate funding to it. The APB itself does not implement programs, so it does not need funding other than for staffing. E-mail Interview with Theo Sitther, Legislative Sec’y for Peacebuilding, Friends Comm. on Nat’l Legislation (May 24, 2019) [hereinafter Sitther Interview May 2019].


\textsuperscript{178} Interview with Former U.S. Senator Russ Feingold, in Stanford, Cal. (Mar. 4, 2019) (“The Elie Wiesel’s explicit mention of the APB gives the body more credibility, strengthens its status, and makes it harder for the executive to eliminate it.”) [hereinafter Feingold Interview].
Lack of funding for the APB may, however, suggest the opposite. As with transitional justice, the APB will likely remain controversial, as the Elie Wiesel Act’s own reference to the APB “or successor entity” implicitly countenances. Indeed, the Trump administration has rebranded the “Atrocities Prevention Board” as the more modestly named “Atrocity Early Warning Task Force,” implicitly managing expectations that the interagency body will actually—or even attempt to—prevent atrocity crimes.

C. Promoting Domestic Cooperation

The Elie Wiesel and Syrian Accountability Acts both seek to promote cooperation domestically within and between the Executive and Legislative Branches. The need for such cooperation is painfully clear from history. The type of cooperation the laws prompt differs depending on whether it is intra- or inter-branch.

1. Importance of Domestic Cooperation

The importance of ensuring internal collaboration is a tragic lesson of U.S. government decision-making when confronting atrocity crimes. The 1994 Genocide against the Tutsi in Rwanda provides a glaring example.

During that humanitarian crisis, U.S. officials ignored intelligence and inhibited debate. One neglected expert was Joyce Leader, then deputy to U.S. Ambassador to Rwanda David Rawson and the person who shuttered the U.S. Embassy in Kigali after the massacres erupted. Once Leader was evacuated to DC, she prepared the State Department’s daily briefings on Rwanda. However, despite her background and contacts in Rwanda, other U.S. officials seldom consulted Leader when formulating policy in response to the genocide. Moreover, during the entirety of the genocide, while a mid-level interagency working group on Rwanda did meet daily, neither President Bill Clinton nor National Security Advisor Anthony Lake ever convened their senior policy advisers to discuss the crisis and the U.S. government never even debated military intervention.

The Genocide against the Tutsi illustrated that the U.S. government needed to bolster its bureaucracy on atrocity prevention and response, including when devising “early warning” systems to detect risks sooner and

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179 Widdersheim Interview, supra note 65.
180 EWGAPA § 2.
181 ELIE WIESEL ACT REPORT, supra note 87, at 5. It is unclear to what extent this successor entity will de-prioritize seeking to prevent atrocity crimes in favor of merely warning of them, given how frequently atrocity prevention is emphasized throughout this report.
182 See Power, Bystanders to Genocide, supra note 41, at 86.
184 See id. at 364.
185 Id.
186 Id. at 364, 366, 370.
thereby access a broader range of policy options. Of course, presidential attention, internal coordination, and full deliberation are no panacea; they do, however, ensure that decision-makers remain engaged, subject-matter experts are consulted, and reasonable options are considered. High-level convenings are particularly crucial, as they facilitate leadership on a problem by a senior policymaker with decision-making authority and thus obviate the need for unempowered lower-ranked officials to fill the void. Whether political will exists to actually pursue effective policy is a separate matter.

2. Promoting Interagency Cooperation

Each law endeavors to foster cooperation within and protect parts of the Executive Branch. The laws do so in part by explicitly and repeatedly calling upon that branch to consult with components of itself whose existences have been in jeopardy. The Syrian Accountability Act refers to J/GCJ three times and the Elie Wiesel Act refers to the APB also three times as bodies that should play a role in the respective law’s purpose.

While J/GCJ’s creation and contributions to addressing atrocity crimes date back over two decades, it was almost dissolved recently. In July 2017, the Trump administration’s State Department reportedly considered shuttering J/GCJ and reassigning its personnel within the State Department. However, after immediate, strong pushback, the administration reversed course the following month. Almost two years later, the White House fi-
nally announced President Trump’s intent to nominate a new Ambassador-at-Large to lead J/GCJ.194 The Syrian Accountability Act lists J/GCJ among the “appropriate agencies” that shall include in the Secretary of State’s reports to Congress a description and assessment of programs that the U.S. government has undertaken to ensure accountability for atrocity crimes in Syria.195 The law also names only J/GCJ as among the “appropriate officials and offices” through which the Secretary of State should act to complete and submit to Congress a report of the transitional justice study196 and to provide technical assistance to support entities pursuing accountability and transitional justice for atrocity crimes in Syria.197

Like J/GCJ, the APB was created under a Democratic president198 and its fate has been questioned in the current Republican administration. Upon President Trump’s election, commentators doubted that his “America First” doctrine199 would include continuing the APB’s operations, as the administration was under no legal obligation to do so (given that President Trump could overrule PSD-10 and EO 13,729).200 The Elie Wiesel Act declares that the U.S. government’s interagency coordination of efforts to prevent and respond to atrocity crimes is “critically important” and cites only the APB as such a collaborative body.201 The law also refers only to the APB as illustrative of “appropriate interagency representatives” with which the President should consult in developing the required reports for Congress on atrocity prevention and response.202

The Syrian Accountability and Elie Wiesel Acts emphasize the value J/GCJ and the APB add to interagency coordination by articulating the roles

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196 Id. § 1232(b).
197 Id. § 1232(c)(1).
198 See supra notes 99–104 and accompanying text.
199 For discussion of President Trump’s “America First” doctrine, see, e.g., HAROLD HONGJU KOH, THE TRUMP ADMINISTRATION AND INTERNATIONAL LAW 13, 107, 145 (2018); Robert Kagan, Opinion, “America First” Has Won, N.Y. TIMES, Sept. 24, 2018, at A27 (describing the three pillars of the Trump Administration’s “America First” doctrine as isolationism, protectionism, and anti-immigration sentiment); Ana Swanson & Jim Tankersley, Trade Deals Still in Motion, U.S. or No U.S., N.Y. TIMES, Jan. 24, 2018, at B1 (describing the Trump administration’s explanations of its “America First” doctrine).
202 Id. §§ 5(a)(1), 5(a)(1)(D).
these entities play in preventing and responding to atrocity crimes in Syria and more generally. With the futures of these two entities so uncertain at the beginning of the Trump administration, calling attention to them in these laws facilitated their continued existence and empowered their staff within the foreign policy bureaucracy. In effect, these laws help institutionalize J/GCJ and the APB (or successor entity) more permanently within the U.S. government with the intention of making the Executive Branch’s atrocity prevention efforts more centralized, consistent, coordinated, and significant. Such micromanagement of the Executive Branch through this legislation exemplifies what Rebecca Ingber calls “congressional administration,” which she defines as “the management and manipulation of internal executive branch decisionmaking processes for the purpose of advancing a substantive agenda.” As part of that administration, Ingber argues that Congress employs what she terms “process controls”: indirect tools to influence presidential policymaking. These controls are demonstrated by the procedural requirements and decisionmaker designations featured in the Syrian Accountability and Elie Wiesel Acts.

3. Promoting Inter-Branch Cooperation

The Elie Wiesel and Syrian Accountability Acts both aim to stimulate synchronization between the Executive and Legislative Branches. That coordination varies along three dimensions. To maximize the effectiveness of atrocity prevention and response, where requirements in the acts differ, the President and Secretary of State should voluntarily adopt the higher priority, more comprehensive, and more frequent procedures, and Congress should formalize those methods in future legislation.

First, the particular Executive Branch official mandated to provide reports to the Legislative Branch under each law differs. The Elie Wiesel Act requires the President to transmit reports, whereas the Syrian Accountability Act designates the Secretary of State to do so. Experts differ on whether this distinction is significant in practice. Those who think it is note that mandating the President to submit reports ensures that the White House (the highest-level component of the Executive Branch) includes an institutional hub (within the NSC) so tasked. And those who think the distinction is not significant note that the President usually delegates responsibility for
such reports to the relevant departments and agencies anyway. 208 Regardless of this debate, to convey the highest symbolic priority on the subject matter, the Executive Branch should adopt for the Syrian Accountability Act the Elie Wiesel Act’s approach of directing the President to submit reports as well.

Second, the congressional committees designated to receive reports from the Executive Branch under each law only partially overlap. The Elie Wiesel Act requires the Executive Branch to transmit atrocity prevention reports to the Foreign Relations and Appropriations Committees in both the House and Senate, whereas the Syrian Accountability Act requires the Executive Branch to submit reports on atrocity crimes in Syria to the Foreign Relations, Armed Services, and Judiciary Committees in each congressional chamber and to submit the transitional justice report to the Foreign Relations, Judiciary, and Appropriations Committees in each chamber. 210 To ensure all relevant congressional committees remain apprised of the U.S. government’s atrocity prevention work in Syria and more generally, the Executive Branch should provide all three sets of reports to all four of these relevant committees in each chamber of Congress: Foreign Relations, Appropriations, Armed Services, and Judiciary.

Third, the number, frequency, and stoppage of reports mandated by each law differ. The Elie Wiesel Act requires the Executive Branch to convey the first atrocity prevention report within 180 days of the law’s enactment and subsequent reports annually thereafter for the following six years. 211 In contrast, the Syrian Accountability Act requires the Executive Branch to (1) submit the first report on atrocity crimes in Syria within 90 days after the law’s enactment and the only other report on the subject within 180 days after the Secretary of State determines that the violence in Syria has ceased and (2) submit a single report on transitional justice, and to do so within 180 days of the law’s enactment. 212 Given that the conflict in Syria may continue indefinitely, more frequent reports on both atrocity crimes therein and the feasibility and desirability of potential transitional justice mechanisms would help keep Congress apprised of the situation. The Executive Branch should thus exceed the bare minimum of the Syrian Accountability Act’s requirements by proactively adopting the Elie Wiesel Act’s construct of transmitting to Congress annual reports on offenses in and transitional justice for Syria until the final reports that are already mandated 180 days after the conflict ceases. In addition, given that the conflict in Syria
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may persist for six or more years and that atrocity crimes will likely continue elsewhere well beyond then, the sunset provisions of both the Elie Wiesel Act’s atrocity prevention reports and the Syrian Accountability Act’s transitional justice study report are almost certainly premature. Congress should thus begin contemplating further legislative action to extend these laws.

D. Promoting International Cooperation

Like domestic cooperation on atrocity prevention and response, international cooperation in this issue area should be strengthened. The Genocide against the Tutsi again provides a compelling illustration, and the Elie Wiesel and Syrian Accountability Acts reflect this lesson.

1. Importance of International Cooperation

The UN Security Council (“UNSC”) withdrew most of its peacekeeping operation, the UN Assistance Mission for Rwanda (“UNAMIR”), during the height of the Genocide against the Tutsi, cutting its number of troops by about 90 percent. In addition to demanding UNAMIR’s withdrawal, the U.S. government pledged to provide but then delayed delivering armored vehicles to the peacekeeping operation until after the genocide had concluded. A reinforced peacekeeping operation might have mitigated casualties. Michael Barnett, a political officer at the U.S. Mission to the UN at the time, argues that “the international community could have intervened at relatively low cost before the effects were fully realized” but chose instead to respond “with willful ignorance and indifference.”

Lessons from the Genocide against the Tutsi include the need to bolster international cooperation on atrocity prevention, such as through peacekeeping operations. The 2008 Albright-Cohen report recommended both that “[t]he State Department and USAID should expand ongoing cooperation with other governments, the United Nations, regional organizations, NGOs, and other civil society actors on early warning of genocide and mass atroci-

\(215\) See \textit{ALBRIGHT} \& \textit{COHEN}, \textit{supra} note 19, at 26 (“[C]ooperation between the U.S. government and other governments, international organizations, and NGOs with respect to early warning [of atrocity crimes] remains relatively underdeveloped.”); \textit{FEINSTEIN} \& \textit{LINDBERG}, \textit{supra} note 68, at 1 (“Without better cooperation among [the United States, Canada, and Europe] and their like-minded cousins, efforts to address mass atrocities will continue to be reactive, slow, and devastating to human life and potential.”).

\(216\) The UNSC reduced UNAMIR’s troops from approximately 2500 to 270. See U.N. Secretary General, \textit{Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda}, ¶ 7, U.N. Doc. S/1994/470 (Apr. 20, 1994) (noting that the total UNAMIR personnel was originally 2486); \textit{id.} ¶¶ 15–18 (recommending, as one option, reducing the total UNAMIR personnel to about 270); S.C. Res. 912 ¶ 8(c) (Apr. 21, 1994) (authorizing the UN Security-General’s recommended force level of about 270).

\(217\) See \textit{POWER}, “A PROBLEM FROM HELL,” \textit{supra} note 41, at 334, 379.

\(218\) See \textit{Kaufman}, \textit{Lessons from Rwanda}, \textit{supra} note 17, at 6 n.32 and accompanying text.

\(219\) \textit{BARNETT}, \textit{supra} note 17, at 1–3.

\(220\) See \textit{Kaufman}, \textit{Lessons from Rwanda}, \textit{supra} note 17, at 6–8.
ties” and that “[t]he secretary of state should launch a major diplomatic initiative to create among like-minded governments, international organizations, and NGOs a formal network dedicated to the prevention of genocide and mass atrocities."

2. Promoting International Cooperation

The Elie Wiesel and Syrian Accountability Acts heed this advice. To improve atrocity prevention generally, the Elie Wiesel Act prompts the U.S. government to conduct outreach at least every six months with non-governmental organizations ("NGOs") and civil society, work with partners and allies, improve the use of foreign assistance, bolster local civil society, and exercise leadership in multilateral efforts. The Elie Wiesel Act also requires the President to report recommendations to Congress to strengthen the role of relevant international and regional organizations.

The Syrian Accountability Act is more specific. To help address atrocity crimes in Syria, the law, among other things, prods the Secretary of State to: report on U.S. government programs to train atrocity crime investigators within and outside of Syria and to support Syrian, foreign, and international NGOs and other entities (including the IIIM and CoI); consider supporting potential transitional justice mechanisms, including a hybrid tribunal; contemplate providing assistance to support entities involved in building Syria’s judiciary, prosecuting crimes in Syria’s domestic courts, and conducting investigations by third-party states; and advocate for the UNHRC to extend the CoI’s mandate annually as appropriate.

However, these new laws implicitly acknowledge that the U.S. government—perhaps particularly under the current Trump administration, which has expressed hostility towards multilateralism—views certain aspects of

\[\text{\textsuperscript{221}}\text{ Albright & Cohen, supra note 19, at 32.}\]
\[\text{\textsuperscript{222}}\text{ Id. at 104.}\]
\[\text{\textsuperscript{224}}\text{ Id. § 3(2).}\]
\[\text{\textsuperscript{225}}\text{ Id. § 3(3)(B).}\]
\[\text{\textsuperscript{226}}\text{ Id. § 3(3)(D).}\]
\[\text{\textsuperscript{227}}\text{ Id. § 3(3)(F)(ii).}\]
\[\text{\textsuperscript{228}}\text{ Id. § 5(a)(2).}\]
\[\text{\textsuperscript{230}}\text{ Id. §§ 1232(b), (c)(2).}\]
\[\text{\textsuperscript{231}}\text{ Id. § 1232(c)(1).}\]
\[\text{\textsuperscript{232}}\text{ Id. § 1232(c).}\]
\[\text{\textsuperscript{233}}\text{ The Trump administration’s stated and actual animosity towards international law and organizations is well documented. See, e.g., Koh, supra note 199 (describing the Trump administration’s hostility to international law); Catherine Amirfar & Ashika Singh, The Trump Administration and the ‘Unmaking’ of International Agreements, 59 Harv. Int’l L.J. 443, 443 (2018) (observing that President Trump’s “America First” doctrine has ‘manifested in part as skepticism of, if not outright hostility to, the rules-based, interconnected international order that the United States had played a central role in painstakingly constructing since World War II’).}\]
international cooperation as controversial or even threatening. Three aspects of the Syrian Accountability Act in particular exemplify this perspective. First, while the Syrian Accountability Act authorizes the Secretary of State to provide assistance to entities that support investigations by third-party states, the law does not authorize such assistance for prosecutions by third-party states. This distinction reflects a compromise between Democrats and Republicans to support accountability efforts of third-party states to which some suspected atrocity perpetrators from Syria have fled without endorsing the contentious assertion of “universal jurisdiction,” which Republicans generally oppose. However, that distinction in principle may not represent a distinction in practice, as investigations are a necessary prelude to accountability efforts by third-party states to which some suspected atrocity perpetrators have fled. Second, the law does not authorize assistance for investigations by third-party states to which some suspected atrocity perpetrators have fled. This distinction is significant because investigations are a necessary prelude to accountability efforts by third-party states to which some suspected atrocity perpetrators have fled. Third, the law does not authorize assistance for prosecutions by third-party states to which some suspected atrocity perpetrators have fled. This distinction is significant because investigations are a necessary prelude to accountability efforts by third-party states to which some suspected atrocity perpetrators have fled.
cursor to prosecutions. The U.S. government, by supporting the former, would ultimately still be supporting the latter (even under a universal jurisdiction claim).

Second, the Syrian Accountability Act’s encouragement of the Secretary of State to advocate for the UNHRC to extend the CoI’s mandate is expressed with the caveat that the provision applies “while the United States remains a member” of the UNHRC.237 Yet on June 19, 2018, the U.S. government withdrew from the UNHRC, the first time a member had voluntarily done so.238 (That the withdrawal occurred almost two months before President Trump signed into law the Syrian Accountability Act, including the condition about ongoing UNHRC membership, reflects either an oversight in updating the bill or an unwillingness to revise the bill’s text so late in the process of passing the massive NDAA, of which the Syrian Accountability Act is but a tiny portion.) Since that condition is no longer met, it is unclear whether the Trump administration would interpret the law as still urging advocacy for the CoI’s mandate extension.

Finally, the entire Syrian Accountability Act carries the qualification that “nothing in [it] shall be construed to violate the American Servicemembers’ Protection Act of 2002” (“ASPA”).239 The ASPA, which President George W. Bush signed into law on August 2, 2002, as part of a broader piece of legislation,240 contains five main provisions. The law prohibits U.S. government cooperation with the International Criminal Court (“ICC”),241 restricts U.S. participation in certain UN peacekeeping operations,242 prohibits transfer of classified national security and law enforcement information to the ICC,243 prohibits U.S. military assistance to ICC parties (unless the President waives this prohibition on certain grounds or the law explicitly exempts a country from the prohibition),244 and authorizes the President “to use all means necessary” to free members of the U.S. armed forces and certain others detained or imprisoned by or on behalf of the ICC.245 (The so-called “Dodd Amendment” to the ASPA permits an important exception.246) Because of its threat to use force against the Hague-based

239 NDAA § 1232(f).
242 Id. § 7424 (2012).
243 Id. § 7425 (2012).
244 Id. § 7426 (2006) (repealed 2008).
245 Id. § 7427 (2012).
246 Id. § 7433 (2012) (“Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic,
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court, critics have dubbed this final provision the “Hague invasion clause” and the entire ASPA the “Hague Invasion Act.” The ASPA qualification in the Syrian Accountability Act thus clarifies that the law’s promotion of international coordination has limits by affirming the U.S. government’s hostility to the ICC and willingness to use even military force to thwart the court.

This qualification about the ASPA in the Syrian Accountability Act parallels the Trump administration’s simultaneous opposition to the ICC through other means. On September 10, 2018—approximately one month after President Trump signed the Syrian Accountability Act into law—John Bolton seized the occasion of his first public address as President Trump’s then-National Security Advisor to pledge the use of sanctions and “any means necessary” to protect U.S. and its allies’ citizens from ICC prosecution, calling the court “ineffective, unaccountable, and indeed, outright dangerous” and “already dead to us.” Six months later, Secretary of State Mike Pompeo announced “a policy of U.S. visa restrictions on those individuals directly responsible for any ICC investigation of U.S. personnel” and that “implementation of this policy has already begun.” Within a few weeks,
the U.S. government revoked the ICC prosecutor’s visa. Some commentators credit the Trump administration’s pressure on the ICC as contributing to the court’s Pre-Trial Chamber’s decision in April 2019 to reject the ICC prosecutor’s request to pursue an investigation of atrocity crimes in Afghanistan, including offenses allegedly committed by U.S. forces.

E. Demonstrating Bipartisanship

Before President Trump signed the Elie Wiesel and Syrian Accountability bills into law, both pieces of legislation received overwhelming bipartisan support in Congress. Each bill was cosponsored by members of Congress from both major parties, who heralded the legislation as pathbreaking. Given that congressional votes on both bills were near-unanimous, such endorsement from almost all Democrats and Republicans echoes the bipartisan nature of both the Proxmire Act and the Albright-Cohen report. In addition, a diverse coalition of over seventy NGOs lobbied for the Elie Wiesel Act. Even with broad support for these two pieces of legislation, questions arise as to why President Trump, who is often criticized about his rhetoric and regard for human rights, would ultimately sign them and whether he would implement their provisions.

While the Trump administration does refer to “human rights” in its NSS, the administration is not known for its genuine or consistent commit-

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252 See supra Part III.
253 See supra Part III.
254 See supra Part III.
257 2017 NSS, supra note 59, at 42.
ment to protecting and promoting such rights, especially when doing so does not align with its “America First” doctrine. President Trump has indeed sought to prevent or respond to some atrocity crimes, but each of those measures was narrow in scope. For example, although the Trump administration bombed Syrian military targets in 2018 supposedly in response to a chemical attack allegedly perpetrated by the Assad regime, within a few months President Trump had announced the withdrawal of U.S. troops from the country despite the ongoing humanitarian crisis, including the regime’s continued targeting of civilians. In addition, while President Trump mentioned “genocide” in his 2019 State of the Union address, he did so only with respect to one arguably threatened by Iran, a state the Trump administration considers a strategic enemy rather than actual genocides, such as the one many consider to have been perpetrated recently in Myanmar.

258 See, e.g., Posner, supra note 256.
259 For commentary on the Trump administration’s “America First” doctrine, see generally supra note 199.
262 President Donald J. Trump, Remarks by President Trump in State of the Union Address (Feb. 5, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-state-union-address-2/ [https://perma.cc/DDR4-34C9] (stating “We will not avert our eyes from a regime that chants ‘Death to America’ and threatens genocide against the Jewish people” in reference to Iran).
thermore, President Trump has repeatedly praised human rights abusers, such as North Korean leader Kim Jong-un and Philippine President Rodrigo Duterte.

The Trump administration has even taken measures to reduce the U.S. government’s own infrastructure for atrocity prevention and response. Although the White House and State Department ultimately chose not to dissolve the APB or the J/GCJ respectively, in February 2019 the FBI confirmed that it would dismantle its IHU. The Trump administration’s dissolution of the IHU appears antithetical to the administration’s mission, attitudes, and actual threats. Given the Trump administration’s “America First” doctrine (that presumably would seek to protect Americans from suspected atrocity perpetrators within the United States), the IHU’s authority over alleged perpetrators, regardless of nationality, who are located in the United States, and the President’s hostility to immigrants, it seems

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265 See, e.g., Simon Denyer & David Nakamura, Trump Again Appears to Take North Korea’s Side Against His Own Military, Allies, WASH. POST, Aug. 11, 2019, at A17 (quoting President Trump referring to Kim as a “friend” who has a “great and beautiful vision for his country”), Colby Itkowitz & John Hudson, Trump Praises Kim Jong Un, Saying He Received a “Beautiful” Letter from Him, WASH. POST (June 11, 2019), https://www.washingtonpost.com/politics/trump-praises-kim-jong-un-saying-he-received-a-beautiful-letter-from-him/2019/06/11/4359f4d6-8c70-11e9-b08e-cfd89bd36d4e_story.html (quoting President Trump saying he received a “beautiful” and “very warm, very nice letter” from Kim); Edward Wong & David E. Sanger, Leaders Start Formal Talks, With a Signing Ceremony Scheduled, N.Y. TIMES, Feb. 28, 2019, at A9 (noting that President Trump and Kim exchanged praise and quoting the former referring to the latter as “a great leader”).

266 David E. Sanger & Maggie Haberman, Trump Praises Philippine President in Call Transcript, N.Y. TIMES, May 24, 2017, at A12 (quoting President Trump telling President Duterte he is doing an “unbelievable job” and “great job” and that President Trump “wanted to congratulate” him).

267 See supra notes 181, 198–200 and accompanying text.

268 See supra notes 191–94 and accompanying text.


269 See International Human Rights Violations, supra note 77 (noting that various statutes grant the FBI authority when, inter alia, “[t]he perpetrator, regardless of nationality, is located in the U.S.”).

270 See Kaufman, Lessons from Rwanda, supra note 17, at 5 n.23 and accompanying text; John Fritz, Trump Used Words Like “Invasion” and “Killer” to Discuss Immigrants at Rallies
counterproductive for the Trump administration to eliminate infrastructure that addresses suspected atrocity perpetrators on American soil, especially as the United States is a known haven for such individuals.272

However, that the Trump administration would support legislation that strengthens the APB (or successor entity), which was created by the Obama administration, is particularly notable, given how forcefully President Trump has sought to undermine his predecessor’s legacy273 and how less active the APB has been274 and its successor will be275 under the Trump administration.

Yet President Trump signed both the Elie Wiesel and Syrian Accountability Acts, conveying his administration’s commitment to address egregious human rights violations. Perhaps President Trump did so precisely because neither law obligates him to adopt policies he finds objectionable. Due to the Constitution’s separation of powers among the branches of government,276 both laws characterize certain prompts as suggestions rather than requirements,277 giving the Trump administration free rein to disregard any or all of them. Of the few requirements the laws do impose,278 President Trump may feel he can simply ignore them, as he has increasingly defied Congress on other matters and demonstrated hostility to the notion of legislative oversight of the Executive Branch.279 Indeed, the Trump administration’s Department of Justice sent a letter to SFRC in 2018 notifying it that the administration


274 E-mail Interview with Theo Sitther, Legislative Sec’y for Peacebuilding, Friends Comm. on Nat’l Legislation (Feb. 22, 2019).

275 In September 2019, the Trump administration announced that the APB’s successor, the Atrocity Early Warning Task Force, will meet at the leadership level only once per year and at the working level only quarterly. Elie Wiesel Act Report, supra note 87, at 5. This Task Force’s meeting rates are significantly less frequent than the APB’s convenings at both levels. See supra notes 103–04.

276 U.S. CONST. arts. I–III.


278 See supra Part III.

would treat the Elie Wiesel Act’s provisions as mere suggestions. The Trump administration has already been delinquent in submitting reports the Elie Wiesel and Syrian Accountability Acts require, further suggesting that the administration believes and will act as if it is not bound by the laws. Moreover, considering that the Elie Wiesel Act emphasizes that it does not authorize the use of force and the Syrian Accountability Act affirms hostility to the ICC, the laws even support policies the Trump administration favors.

Former U.S. Senator Russ Feingold, who chaired the SFRC’s Subcommittee on African Affairs and served as Special Envoy to the Great Lakes region of Africa, was unsurprised by President Trump’s support for the laws for these reasons and because of their focus on atrocity crimes specifically rather than human rights generally. According to Senator Feingold, ‘‘genocide’’ has different connotations to conservatives than ‘‘human rights,’’ which generally has a liberal undertone.

F. Conveying Preferred Transitional Justice Options

The U.S. government’s support for particular transitional justice options has fluctuated dramatically over time and context, and has included the general options of and specific variations on inaction, lustration, amnesty, exile, indefinite detention, lethal force, and prosecution. The Elie Wiesel and Syrian Accountability Acts provide insight into the U.S. government’s currently preferred transitional justice options.

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280 Letter from Prim F. Escalona, Principal Deputy Assistant Attorney Gen., U.S. Dep’t of Justice, to Bob Corker, Chairman, U.S. Senate Comm. on Foreign Relations (Aug. 17, 2018), https://www.justice.gov/ola/page/file/1162811/download [https://perma.cc/TDV7-TMEJ] (declaring that “[t]o the extent these provisions require or could be read to require the President to adopt a prescribed foreign policy relating to the prevention of genocide and other atrocities, they would interfere with the President’s authority to represent the United States in foreign affairs and to pursue its interests outside the borders of the country” and warning that the Trump administration “would treat [these provisions] as advisory and non-binding” (internal quotation marks and citations omitted)).

281 As the Syrian Accountability Act was enacted on August 13, 2018, the Executive Branch’s first report on atrocity crimes in Syria (due within 90 days of the law’s enactment) was due around November 13, 2018, and the Executive Branch’s only report on transitional justice (due within 180 days of the law’s enactment) was due around February 13, 2019. See supra notes 212–13 and accompanying text. The Trump administration did not submit either report until May 2019. Anonymous State Dep’t Official #2 Interview, supra note 71.

282 As the Elie Wiesel Act was enacted on January 14, 2019, the President’s first report on atrocity prevention (due within 180 days of the law’s enactment) was due around July 14, 2019. See supra note 211 and accompanying text. The Trump administration did not submit this report until September 12, 2019. ELIE WIESEL ACT REPORT, supra note 87.

283 See infra note 338 and accompanying text.

284 See supra notes 239–47 and accompanying text.

285 See, e.g., supra note 233 and accompanying text.

286 Feingold Interview, supra note 178.

287 Kaufman, supra note 171, at 40.
Both laws explicitly note the objective of “accountability,” suggesting that the U.S. government currently disfavors transitional justice options that do not promote such a goal, such as inaction and amnesty. The Syrian Accountability Act is even more specific about the type of accountability it envisions and endorses. That law refers to “prosecution” multiple times, conveying that the U.S. government is presently disinclined to support non-prosecutorial transitional justice options even if they may promote accountability, such as lustration, exile, indefinite detention, and lethal force.

But even among the myriad prosecutorial transitional justice options, the Syrian Accountability Act suggests preferences. Invocation of the ASPA demonstrates the U.S. government’s continuing aversion to the ICC, even in the remote possibility it could be used to prosecute atrocity crimes in Syria. Authorizing technical assistance to “support prosecutions in the domestic courts of Syria” expresses an openness to local trials. The law repeatedly cites a “hybrid tribunal” as a potential transitional justice mechanism for Syria, and such a court is the only transitional justice option the law defines. A preference for such a mixed local-international court may reflect the “fatigue” over the number, cost, delays, mismanagement, and other problems of the two purely international courts (besides the ICC)—the ad hoc UN International Criminal Tribunals for Rwanda and for the Former Yugoslavia—that began arising two decades ago.

289 NDAA §§ 1232(c)(1)(D), (c)(1)(F).
290 See supra note 239 and accompanying text.
291 See Joshua D. Bauers, Syria, Rebels, and Chemical Weapons: A Demonstration of the Ineffectiveness of the International Criminal Court, 15 RUTGERS J.L. & RELIGION 328, 342–43 (2014) (“The factors preventing this case being brought before the ICC are: 1) there is no direct jurisdiction because Syria did not ratify the Rome Statute; 2) there is very little chance of the situation being referred via the [UNSC] because of a veto from Russia and China, and 3) the events took place inside the borders [of] Syria [sic] and not internationally against a State party.”); Eric Engle, The International Criminal Court, the United States and the Domestic Armed Conflict in Syria, 14 CHI.-KENT J. INT'L & COMP. L. 146, 169–70 (2013) (noting the unlikelihood that either the United States, Russia, or China would use their seats on the UNSC to support referral of the situation in Syria to the ICC).
292 NDAA § 1232(c)(1)(D).
293 A “hybrid tribunal” is “a temporary criminal tribunal that involves a combination of domestic and international lawyers, judges, and other professionals to prosecute individuals suspected of committing” atrocity crimes. Id. § 1232(g)(3).
294 Id. §§ 1232(b)(1), (c)(2).
295 Id. § 1232(g)(3).
G. Prodding Similar Legislation Abroad

The Elie Wiesel and Syrian Accountability Acts may prompt similar legislation in foreign countries. The United Kingdom was the first state to invoke the Elie Wiesel Act in considering enacting a comparable bill. Just six weeks after President Trump signed the law, the House of Lords debated its assessment of it and measures the U.K. government was taking to prevent atrocity crimes. Two Lords referred to the Elie Wiesel Act generally in asking whether their government should introduce similar legislation. A third Lord noted the Elie Wiesel Act’s specific provision about Foreign Service Officer training in “ur[ging] the [U.K.] Government to look seriously at co-operating with the United States and other allies on this trend . . . .” The U.K. government subsequently published a policy paper describing its approach to atrocity prevention. Despite being enacted only recently and invoked first by one of the U.S. government’s closest and most likeminded allies, the legislative ripple effects of the Elie Wiesel and Syrian Accountability Acts may prove to be swift and far-reaching.

V. Potential Criticisms of New Atrocity Prevention Laws

Given the neglect of atrocity crimes by the Trump administration and the overall U.S. government, it is understandable that the Elie Wiesel and Syrian Accountability Acts would be met with skepticism. In particular, critics would reasonably raise concern over the laws’ effectiveness, prioritization of their subject matter, lack of funding, omission of a key definition, and consequences for military intervention, Foreign Service Officer training, and Executive Branch reporting to the Legislative Branch.
A. Effectiveness

Skeptics may dismiss these two new laws as empty rhetoric. Even worse, critics may contend that this legislation, with its lofty prose, could promote an illusion of progress, alleviating at least some pressure on the U.S. government to actually prevent and respond to atrocity crimes. This would not be the first time doubters viewed a seemingly positive policy on atrocity crimes as substituting for a more meaningful one. Critics suspected the U.S. government of supporting the establishment of ad hoc UN international criminal tribunals for Rwanda and for the former Yugoslavia to create the appearance of doing something without actually doing anything to mitigate atrocity crimes in those regions.302

Such cynicism is understandable. After all, the U.S. government has a long record of ignoring, abetting, or even perpetrating its own atrocity crimes,303 and the Trump administration demonstrates indifference or outright hostility to defending human rights either where it views doing so as strategically unimportant or unless doing so serves another goal that the administration deems strategically important.304

Regardless of the current and past administrations’ approach to atrocity crimes, these two acts are now the law of the land; the Trump administration and all future administrations are technically bound by their provisions until they sunset or become irrelevant. The laws urge the U.S. government to proactively address atrocity crimes. As Elisha Wiesel, son of the Elie Wiesel Act’s Nobel Peace Prize Laureate and Holocaust survivor namesake, declared: “My father loved this country and believed in it as a powerful moral force in the world. We are grateful that his life’s mission to call atrocities by name and tilt the balance toward action will be enshrined in this important piece of legislation.”305 If not successful in prompting action, the laws will at least raise the costs of inaction. According to Senator Feingold:

It is of great interest and concern to the Executive Branch when Congress speaks, even when it’s just a letter or a hearing. With these acts bumped up to the level of laws, the Executive Branch

302 Discussion of whether and, if so, what type of tribunal to create for Rwanda and for the former Yugoslavia began in each case before atrocity crimes concluded. See Kaufman, supra note 171, at 137–38.

303 See generally Dirty Hands and Vicious Deeds: The U.S. Government’s Complicity in Crimes Against Humanity and Genocide (Samuel Totten ed., 2018); Power, “A Problem from Hell,” supra note 41, at 503–04 (“What is most shocking about America’s reaction to Turkey’s killing of Armenians, the Holocaust, Pol Pot’s reign of terror, Iraq’s slaughter of the Kurds, Bosnian Serbs’ mass murder of Muslims, and the Hutu elimination of Tutsi is . . . that U.S. policymakers did almost nothing to deter the crime . . . . Indeed, on occasion the United States directly or indirectly aided those committing genocide.”).

304 See generally Kofi, supra note 199; Posner, supra note 256.

will feel compelled not to act contradictorily, especially given how bipartisan the support. These laws are tools Congress and American diplomats can use to prod the President on atrocity issues.306

Even if the current administration does not fulfill the laws’ objectives, the legislation still holds symbolic weight. As John Dwyer argued, despite their weaknesses, symbolic laws “can redirect society by reallocating resources” and “establish government priorities and public values.”307 Similarly, James Q. Wilson contended that such laws are “a vitally important and easily neglected causal factor in politics” because “[a]dopting policies that provide largely symbolic gratifications for demands may achieve little of substance in the immediate case but constitute nonetheless a positive reinforcement for the demands themselves and the legitimation of a governmental role in dealing with these demands.”308 The Elie Wiesel and Syrian Accountability Acts reflect broad, bipartisan concern about atrocity crimes, conveying the U.S. government’s prioritization of atrocity prevention as in the national interest and a public value. These laws call attention to such offenses, prodding the U.S. government to invest more resources in preventing and responding to them and adding heft to civil society’s related advocacy campaigns. Whether these laws are ultimately effective may take years, or even decades, to determine.

B. Priority

The Elie Wiesel Act’s identification of atrocity prevention as a national priority reflects significant progress, but this support could be even more pronounced. President Obama’s characterizations in 2011 and 2016 of atrocity prevention as a “core” national interest, one with a parallel ethical obligation, is stronger than the Elie Wiesel Act’s reference to atrocity prevention as simply in the U.S.’s “national interest,” without modification of how central such an interest is or whether it is accompanied by a moral duty. When national interests are in tension, difficult decisions must be made about which to prioritize and how to resolve conflicts among interests of supposedly equal priority.309 President Obama’s description of atrocity prevention

306 Feingold Interview, supra note 178.
309 In 2000, the Commission on National Interests, a bipartisan civil society initiative, published a report identifying a hierarchy of U.S. national interests: “vital interests,” “extremely important interests,” “important interests,” and “less important or secondary interests.” Comm’n on Am.’s Nat’l Interests, America’s National Interests 2 (2000), https://www.belfercenter.org/publication/americas-national-interests-report-commision-americas-national-interests-2000 [https://perma.cc/9A2U-MQ7G]. The report then identified interests that fall into each category. Id. at 5–8. The Commission placed “prevent genocide” in the second highest (“extremely important”) category. Id. at 6. Ruminating on why the Commission re-
as a “core” national interest means that it would trump national interests valued less highly even if it still competed with other “core” concerns.310 The Elie Wiesel Act’s unmodified characterization of atrocity prevention as a “national interest” leaves the priority placed on such activities far less certain. That the Syrian Accountability Act is silent on the relative importance of atrocity prevention as compared to other objectives in Syria similarly conveys ambiguity.

C. Funding

Neither law contains provisions to fund its ambitious objectives. The closest either law comes is the non-binding “Sense of Congress” in the Elie Wiesel Act, which states in part “that appropriate officials of the United States Government should . . . ensure resources are made available for the policies, programs, and tools related to atrocity prevention and response.”311 However, a “Sense of Congress” is used merely for messaging purposes and thus is less impactful than other components of the legislation.312

The versions of the Elie Wiesel Act introduced in the Senate on May 17, 2017, and the House on June 22, 2017, both included the establishment of a “Complex Crises Fund” (“CCF”) in the U.S. Treasury “to enable the Secretary of State and the Administrator of the United States Agency for International Development to support programs and activities to prevent or respond to emerging or unforeseen foreign challenges and complex crises overseas, including potential atrocity crimes.”313 However, this section referred


312 Sultoon Interview, supra note 70.

313 Elie Wiesel Genocide and Atrocities Prevention Act of 2018, S. 1158, 115th Cong. (2017) (introduced in the Senate on May 17, 2017); Elie Wiesel Genocide and Atrocities Prevention Act of 2018, H.R. 3030, 115th Cong. (2017) (introduced in the House on June 22, 2017). The CCF already exists, has been appropriated since 2010, and has been used for atrocity prevention, response, and recovery activities. Nevertheless, the CCF has not been permanently established or authorized in law. Furthermore, observers note that “[a]dvocates struggle each year to secure adequate funding for the relatively new account” and “the amount of money allocated has been on the decline despite its demand.” FRIENDS COMMITTEE ON NAT’L LEGIS., THE COMPLEX CRISSES FUND, https://www.fcnl.org/documents/118 [https://perma.cc/AY66-VYS4]. CCF funding has been used for atrocity prevention in Central African Republic. See id.; BROWN, OBAMA ADMINISTRATION, supra note 47, at 24 n.99; Sultoon Interview May 2019, supra note 176.
ring to the CCF was stripped out of the Elie Wiesel Act by the time the bill was reported to the Senate thirteen months later.314

Critics may argue that the lack of funding in each law signifies the absence of real reform. After all, Congress’s greatest power is that of the purse,315 which was not wielded in these laws. However, Congress generally uses an annual appropriations process to allocate funding, thereby conveying its priorities.316 While appropriators could decline to provide money to operationalize the laws, the laws may nonetheless compel the Executive Branch to allocate part of its budget to fulfill them.317 To date, however, such dedicated funds without congressional intervention have been lacking, leading some to refer to atrocity prevention as an "unfunded mandate."318 In future appropriations, Congress should earmark sufficient funds for both of these laws’ objectives to be fully realized.

Even then, though, Congress should clearly state the purpose of such funding to avoid unintended uses. Given President Trump’s fixation on building a “wall” along the U.S.-Mexican border, his inability to deliver on his campaign promise that Mexico will pay for it,319 and his current attempt to divert funds appropriated for other military construction projects to spend instead on border security,320 he could try to raid an entity so nebulous as a CCF by arguing that undocumented immigration qualifies as a crisis for which the CCF should support programs and activities to address.321

317 Feingold Interview, supra note 178 (“The appropriations committee could refuse to appropriate but the Executive Branch may still be obligated to find funding to faithfully execute the laws.”).
318 Finkel, supra note 83, at 2, 16–17; see Brown, Assessment, supra note 103, at 14–15 (describing how “one of the biggest challenges [to atrocity prevention training] is resource constraints”); Pomper, supra note 47, at 36, 39.
320 Emily Cochrane & Helene Cooper, Pentagon Lists Projects That Will Be Delayed by Border Wall, N.Y. Times, Sept. 5, 2019, at A16.
321 Indeed, President Trump has already argued that undocumented immigration is a crisis. President Donald J. Trump, President Donald J. Trump’s Address to the Nation on the Crisis at the Border (Jan. 8, 2019), https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-address-nation-crisis-border/ (characterizing undocumented immigration “as a growing humanitarian and security crisis at our southern border”).
D. Definitions

As comprehensive as the Elie Wiesel and Syrian Accountability Acts are, neither includes definitions of all key terms. Each law refers to the subject matter covered as “war crimes, crimes against humanity, and genocide.”322 (These are the three offenses under the umbrella term of “atrocity crimes,” coined by David Scheffer.323) And each law defines two of those terms—“war crimes” and “genocide”—in reference to their meanings under the U.S. Code.324 But neither law provides a definition of the remaining term: “crimes against humanity.”

“Crimes against humanity” are defined in international law (in the statutes of international and hybrid criminal tribunals and as part of customary international law)325 but not U.S. domestic law. Even in international law, however, the term is not consistently codified.326 Omitting a definition of “crimes against humanity” in the Syrian Accountability and Elie Wiesel Acts reflects a compromise to include the term, which Democrats wanted in order to cover the relevant atrocity crimes comprehensively, without citing foreign or international law, which Republicans generally oppose doing in domestic legislation.327

323 See supra note 2.
324 NDAA § 1232(g)(2) (defining “genocide” as an offense described in 18 U.S.C. § 1091(a); EWGAPA, § 6(1) (same); NDAA § 1232(g)(5) (defining “war crimes” as an offense described in 18 U.S.C. § 2441(c) (2018)); EWGAPA § 6(4) (same).
325 Christopher Roberts, On the Definition of Crimes Against Humanity and Other Widespread or Systematic Human Rights Violations, 20 U. Pa. J. L. & Soc. Change 1, 5, 22 (2017) (observing that the International Military Tribunal in Nuremberg offered the first definition of “crimes against humanity” and that the Rome Statute of the International Criminal Court provides the most comprehensive definition to date); see also Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90 (defining “crimes against humanity”).
326 Leila Nadya Sadat, Crimes Against Humanity in the Modern Age, 107 Am. J. Int’l L. 334, 334 (2013) (observing that “the absence of a consistent definition and uniform interpretation of crimes against humanity has made it difficult to establish the theory underlying such crimes and to prosecute them in particular cases”).
327 Feingold Interview, supra note 178 (“Conservatives, particularly in U.S. Supreme Court opinions, tend to reject reliance on foreign and international law. Republicans’ unwillingness to cite only an international law definition of crimes against humanity was probably a legislative version of this tendency.”); see also Zachary D. Kaufman, From the Aztecs to the Kalahari Bushmen: Conservative Justices’ Citation of Foreign Sources: Consistency, Inconsistency, or Evolution?, 41 Yale J. Int’l L. Online 1, 2 (2015) (observing that conservative justices have expressed opposition to citing foreign law). However, some commentators believe that the division over whether to incorporate “crimes against humanity” in U.S. law has less to do with partisanship and more to do with whether particular U.S. officials believe such incorporation would expose American servicemembers to potential prosecutions overseas. E-mail Interview with Charles J. Brown, Former Senior Advisor on Atrocity Prevention & Response, U.S. Dep’t of Defense (Sept. 16, 2019).
Efforts to define “crimes against humanity” in the U.S. Code persist, including through scholarship, congressional testimony, and legislative initiatives. That these two and other U.S. domestic laws invoke any contested term without definition creates ambiguous laws that could cause confusion. Perhaps even worse, from the perspective of Republicans, without a definition in domestic law, interpretation of the term in the Elie Wiesel and Syrian Accountability Acts may require, by default, reference to foreign and international law. Citation without codification is evidence that, if such a term will only be defined in domestic legislation with reference to federal law, then Congress, including Republicans, should complete the process of incorporating such a definition into the U.S. Code.

E. Intervention

Some commentators express concern that new initiatives regarding atrocity prevention and response will necessarily lead the U.S. government
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into more wars.334 These critics may be wary that the U.S. government could even use the Elie Wiesel and Syrian Accountability Acts as pretexts for military interventions that are primarily motivated by political interests and only secondarily, if at all, by humanitarian concerns.335 These laws, the argument could be made, would be akin to the controversial humanitarian doctrine of R2P serving as the pretext for NATO’s 2011 involvement in Libya336 and Russia’s 2014 incursion into Ukraine.337

The Elie Wiesel Act itself explicitly addresses this concern, noting that “[n]othing in this Act shall be construed as authorizing the use of military force.”338 (This provision, added to the bill when SFRC reported it to the full Senate, was included to assuage concerns by two Republican SFRC members, Senators Rand Paul and Mike Lee, that the legislation might otherwise prompt the use of force.)339 The more general of the two laws thus anticipates and limits the possibility of military interventions.

The qualification in the Syrian Accountability Act about the ASPA, which arguably authorizes armed action against the ICC, implicitly reminds the President that he can use force if certain conditions arise. So, quite opposite of the Elie Wiesel Act, the Syrian Accountability Act anticipates and affirms the possibility of military intervention. While some may be concerned that the new laws will undesirably prompt the use of force, others may be reassured that the laws will not prevent it.

F. Training

The training of Foreign Service Officers (“FSOs”) on atrocity crime anticipation, prevention, and response required by the Elie Wiesel Act can be traced back to a recommendation published in the 2008 Albright-Cohen report.340 In announcing its signing of the law, the Trump administration

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335 Colin Thomas-Jensen, Fighting Fire with Fire 4 (Simon-Skojdt Center for the Prevention of Genocide, Working Paper No. 8, 2018) (“A major obstacle to greater multilateral cooperation on atrocity prevention has been the argument (frequently employed by opponents of humanitarian intervention) that preventing atrocities is simply a cynical cover for the intervening state (or state) to pursue its (or their) economic and security interests.”).
337 FEINSTEIN & LINDBERG, supra note 68, at 3.
339 E-mail Interview with Theo Sitther, Legislative Sec’y for Peacebuilding, Friends Comm. on Nat’l Legislation (June 7, 2019).
340 ALBRIGHT & COHEN, supra note 19, at 29 (“The State Department . . . should incorporate training on early warning of genocide and mass atrocities into programs for foreign service . . . officers.”).
noted only this provision about training FSOs, suggesting that the administration considers this aspect of the law to be the most significant. The mandated training targets FSOs “who will be assigned to a country experiencing or at risk of mass atrocities, as determined by the Secretary of State, in consultation with the Director of National Intelligence and relevant civil society organizations.” While any such training for FSOs is a positive development, and some has already occurred voluntarily, the law’s limitations may leave certain FSOs (and other U.S. officials) as well as their foreign counterparts unprepared—with dire consequences.

The Secretary of State, even in consultation with the intelligence and nongovernmental communities, may misjudge a country’s actual or potential atrocity crimes. After all, history is replete with unpredicted atrocity crimes (including those unforeseen by the U.S. government, despite all of its capabilities) and forecasting such offenses is notoriously difficult and unreliable. The State Department may thus omit designating some FSOs to receive what would prove to be beneficial training.

Even if the Secretary of State correctly assesses countries experiencing or at risk of atrocity crimes, training only FSOs who “will be” assigned to such countries leaves untrained FSOs who are already deployed. Given that the tenure of FSOs in a particular country can be as long as four years and that the situation in-country may radically change during that time, FSOs may face atrocity crimes without preparation.

Moreover, even if the Secretary of State correctly determines all of the FSOs that should receive atrocity crime-related training, the schooling itself may not be effective. The Elie Wiesel Act requires “instruction on recognizing patterns of escalation and early warning signs of potential atrocities, and

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341 Press Release, White House, Bill Announcement (Jan. 14, 2019) (on file with author) (announcing that “the President signed into law . . . S. 1158, the ‘Elie Wiesel Genocide and Atrocities Prevention Act of 2018,’ which directs the Department of State to provide training to Foreign Service officers on preventing and responding to genocide and other atrocities”).

342 EWGAPA § 4.

343 For an overview and assessment of training and education on atrocity prevention within the U.S. government until 2016, see Brown, Assessment, supra note 103.

344 Since at least the Obama administration, the State Department and USAID have voluntarily trained certain FSOs and civil servants on atrocity prevention. Anonymous State Dep’t Official #2 Interview, supra note 71; Widdersheim Interview, supra note 65.

345 See, e.g., Margaret M. DeGuzman, When are International Crimes Just Cause for War?, 55 Va. J. Int’l L. 73, 106 n.192 (2014) (“For instance, the Arab Spring, which involved large-scale war crimes as well as crimes against humanity, came as a surprise to virtually the entire world.”).

346 For example, President Clinton claimed in 1998 that he “did not fully appreciate the depth and the speed” of the 1994 Genocide against the Tutsi in Rwanda. Power, “A Problem from Hell,” supra note 41, at 386.

347 See Straus, Fundamentals, supra note 2, at 68 (“[I]t is important to recognize that there are limits in our ability to predict genocide and mass atrocity.”); DeGuzman, supra note 345, at 106 (“Although substantial governmental and nongovernmental resources are being expended on efforts to predict the likelihood of future international crimes, no one claims to be able to do it accurately.”).

348 E-mail Interview with Stephanie Schmid, former U.S. FSO (Feb. 16, 2019).
methods of preventing and responding to atrocities, including conflict assessment methods, peacebuilding, mediation for prevention, early action and response, and appropriate transitional justice measures. Few of these numerous, complicated subjects enjoy consensus on best practices, and each is the focus of constant development and refinement.

Additionally, even if the Secretary of State provides effective training to all FSOs that could confront atrocity crimes, limiting such instruction to FSOs is insufficient to address both the enormity and complexity of these crises and the fact that, as acknowledged by the APB’s creation, the U.S. government’s responses are interagency efforts. Other U.S. officials within the State Department (besides FSOs) and outside it (such as in the Departments of Defense, Homeland Security, Justice, and Treasury as well as in the FBI and CIA) also work on atrocity crime issues. In September 2019, the Trump administration announced that it would provide atrocity prevention training to personnel of the Departments of State, Defense, and Justice, as well as USAID, but did not list members of other agencies the administration itself acknowledged were involved in such activities, such as the Departments of Treasury and Homeland Security, as well as the Intelligence Community.

Finally, even if the U.S. government effectively trains all U.S. officials who work on atrocity crimes issues, foreign officials who do or could engage on the subject may be left unprepared. And these counterparts may be better positioned actually to prevent such crises.

To address these potential problems, the State Department should educate all FSOs—including those already in the field—on anticipating, preventing, and responding to atrocity crimes. The U.S. government should also school non-FSO officials—both within and outside the State Department—who do or could work on such matters. Furthermore, the U.S. government should seize opportunities to train willing foreign counterparts on atrocity prevention. In the process, the U.S. government should continu-

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350 For example, in transitional justice, the classic, supposed tension between peace and justice has not been resolved and probably never will be. See, e.g., Kaufman, supra note 171, at 24, 43, 44, 53, 55, 131, 148, 150, 156, 162, 197, 205. More generally, transitional justice features tensions within certain themes (aspiration v. capability and retributive v. deterrent v. restorative justice) and tensions among certain themes (profound v. pragmatic objectives and reconciliation v. truth v. justice). Clark, Kaufman & Nicolaïdis, supra note 172, at 382–87.
351 See Brown, Assessment, supra note 103.
352 See supra Part II.C.
354 See id. at 1, 7–8.
355 The U.S. government—through the Departments of State and Justice—helps partner countries strengthen their criminal justice systems. See, e.g., About Us, U.S. Dep’t of State Bureau of Int’l Narcotics and Law Enforcement Affairs, https://www.state.gov/about-us-bureau-of-international-narcotics-and-law-enforcement-affairs/ [https://perma.cc/Q9QF-JHBG] (describing the Bureau’s mandate in part as “helping partner governments assess, build, reform, and sustain competent and legitimate criminal justice systems”; Global Reach
G. Reporting

The Executive Branch’s reporting to Congress mandated by the Elie Wiesel and Syrian Accountability Acts is a tool the Legislative Branch uses to focus the Executive Branch’s attention and accountability on an issue area (here, atrocity prevention and response). However, given the Trump administration’s track record on such reporting, it is reasonable to question whether it will have any impact until at least the next President takes office.

While the Elie Wiesel and Syrian Accountability Acts direct the Executive Branch to submit to Congress reports on atrocity crime issues, it is unclear whether such reports will be comprehensive or otherwise satisfy the laws’ intent. Already the Trump administration is bucking the trend since President Obama’s PSD-10 for the Director of National Intelligence (“DNI”) to include atrocity crimes in the annual Worldwide Threat Assessment of the U.S. Intelligence Community. Congress may need to provide


For example, a joint initiative between the U.S. Holocaust Memorial Museum and Dartmouth College is the first public system to use qualitative and quantitative methods to assess the risk of atrocity crimes around the world. See U.S. HOLOCAUST MEMORIAL MUSEUM, supra note 5.

See, e.g., Daniel Richardson, Note, Congressional Control of Agency Expertise, 105 Va. L. Rev. 173 (2019) (describing objectives and outcomes of congressionally mandated Executive Branch reporting). Not all experts agree that reporting requirements have such effect. According to a former member of the State Department’s Office of the Legal Adviser: “Burdensome reporting requirements occupy considerable staff time for government officials and may in fact divert them from doing their substantive work. As someone who spent lots of time in government working on congressionally mandated reports that I don’t think many people on the Hill paid much attention to, I have doubts about the power of reporting requirements to produce policy changes.” E-mail Interview with Anonymous Former Official, U.S. Dep’t of State Office of the Legal Adviser (July 12, 2019).

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further input to the President on what it seeks in the reports. But even if the intelligence community identifies risks of atrocity crimes, the President may be skeptical and thus not seek to address the offenses. After all, President Trump notoriously doubts the assessments of his own intelligence officials360 and those of U.S. allies.361

VI. Conclusion

Amid the current, extremely partisan era in U.S. politics, it is at least a symbolic achievement that the Elie Wiesel and Syrian Accountability Acts received overwhelming bipartisan support. They codified into law principles, policies, and procedures that signify how clear an objective atrocity prevention has become even among ardent political opponents.

Nevertheless, it is too early to tell how meaningfully the unprecedented yet imperfect laws will actually contribute to mitigating genocide, war


361 See, e.g., Katie Rogers et al., Allies Dispute Trump boast of Seizing All of Caliphate, (N.Y. TIMES, Mar. 1, 2019), at A6.
crimes, crimes against humanity, and other atrocity crimes. A wide gulf has often existed between the rhetoric and reality of U.S. policy on atrocity prevention. Declarative declarations, infrastructure, training, studies, technical assistance, and reports are helpful, but the U.S. government’s will to act is essential.

In theory, these two laws hold great potential to relieve suffering and reinforce security. In practice, they may prompt major, minor, or even no change.

Even if advancements the laws lead to are ultimately dramatic, they may only be aspirational and incremental for now. Legislators—especially the bills’ sponsors—must closely monitor and, where necessary, advocate for relevant appropriations and fulfillment of the laws’ letter and spirit. If the Executive Branch neglects these decrees, Congress should take further measures to compel compliance. American values, interests, and leadership require such vigilance.

362 See Zachary D. Kaufman, It’ll Take More than Political Rhetoric to Stop Genocide, FORBES, May 10, 2016, https://www.forbes.com/sites/realspin/2016/05/10/itll-take-more-than-political-rhetoric-to-stop-genocide/ (E)ven when America’s eyes are clear, its policy on atrocities is often ineffective. Rival strategic concerns as well as political, financial and logistical obstacles often thwart meaningful action. These factors include: competing foreign priorities, such as combating terrorism and dealing with increasingly assertive states like China, North Korea, and Russia; competing domestic priorities, such as economic recession and inequality, racial tension and a vacancy on the U.S. Supreme Court; an American public distracted by a presidential election and wary of additional foreign entanglements while the U.S. military remains actively involved in the Middle East; an international community skeptical, after Iraq and Libya, of U.S. government claims to be motivated by humanitarian concerns; and veto-wielding permanent members of the UN Security Council willing to block collective action to protect their own self-interest or their allies.