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Tom Lantos Human Rights Commission

Hearing
on
Reducing the Risk of Mass Atrocities

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Statement of George A. Lopez¹
Rev. Theodore M. Hesburgh, C.S.C., Professor Emeritus of Peace Studies
Kroc Institute for International Peace Studies,

I am grateful to Congressman James P. McGovern [MA-02] and Congressman Randy Hultgren [IL-14], co-chairs of the Lantos Commission, for inviting me to share these ideas with you this morning. In particular, I want to build from the smart, on-point statements of my colleagues already presented to address an aggressive, proactive dimension that targeted economic, particularly financial sanctions can contribute to atrocity prevention.

In this testimony, I argue that to have any realistic hope of halting or preventing mass atrocities through the imposition of smart sanctions requires a significant change in policy thinking and action. Decision-makers must expand their thinking beyond the targeting of dictators and the few perpetrators of atrocities (most of whom are identified after the fact). I urge a focus on the immediate elite supporters of a killing regime, those who directly or indirectly support and authorize mass atrocities. I urge use of in-depth intelligence to focus our resources on constraining the less visible actors, and especially on those processes and products that significantly enable these abuses to occur and sustain the direct perpetrators' violence over time. Such action requires a more rapid and deeper analysis of the tools and techniques that are being, or soon will be, used to kill large numbers of people. It also demands some risk-taking by

¹ This testimony draws in part from my prior published work on the question of sanctions application to the prevention and mitigation of mass atrocities as appearing in: Chapter 8 in *Reconstructing Atrocity Prevention*, Edited by: Sheri P. Rosenberg, Tiberiu Galis, Alex Zucker. September 2015; Cambridge University Press, <http://www.wildy.com/isbn/9781107094963/reconstructing-atrocity-prevention-hardback-cambridge-university-press>; <http://www.globalr2p.org/media/files/lopez-sanctions-brief-1.pdf>; and then in slightly different form for the Kroc Institute's May 2018 edition of *Peace Policy*, <https://kroc.nd.edu/news-events/news/preventing-mass-atrocities/>.

policymakers to cast a wider net of controls and sanctions quickly on material and actor targets than has been the case in the past.

I will begin with an overview of the type of targeted sanctions available to U.S. policymakers as an effective tool for accomplishing these objectives. Secondly, I will turn my attention to why expanding our focus to those actors and entities that enable the atrocities of perpetrators is critical for mitigation and prevention. Thirdly, I will mention the conditions under which the success of targeted sanctions can be maximized. Finally, I will suggest some bold uses of targeted sanctions that can be employed with the proper political will to achieve a new level of success in order to prevent and mitigate against mass atrocities.

Mobilizing Smart/Targeted Financial Sanctions for Atrocity Prevention

The development and institutionalization of ‘smart’ or ‘targeted’ economic sanctions is well-known and amply utilized by U.S. policymakers. They include sanctions regarding currency and financial activities, trade in goods and services, arms, travel bans, and other measures. For our purposes this morning, I focus almost exclusively on targeted financial sanctions (TFS) because these are the most rapidly implemented in today’s economy. These measures deny access to overseas financial markets by the target government’s national bank and other government entities, as well as private banks, financial firms, and companies, investors in prohibited materials, and the individuals and shadow companies operating these entities.

Targeted financial sanctions include:

- freezing financial assets held outside the country by [a] the national government, [b] regime members in their individual capacity, [c] those persons designated as key supporters or enablers of the regime;
- freezing financial assets held outside the country by individuals and entities not represented in the categories above who comprise militias or other non-governmental agents engaged in prohibited activities;
- suspending credits, aid, and loans available to the national government, its agencies, and those economic entities within the nation who deal with monies involving international financial institutions;
- denying access to overseas financial markets, often to the target government’s National Bank and other governmental entities, as well as to designated private banks, financial firms, and companies, banks, investors and individual designees;
- and restricting the trade of specific goods and commodities that provide power resources and revenue to the norm-violating actors, most especially highly traded and income producing mineral resources.

In practice, targeted financial sanctions work best when they are imposed by a coalition of United Nations Security Council resolutions and equally strong measures imposed by regional and national governmental actors, especially the United States. But their record of failure has been high in improving human rights and especially in mitigating the most terrible cases of mass atrocities over the past quarter century. In at least four cases—Yugoslavia, Rwanda, Liberia (until 2001), and Sudan/Darfur—multilateral and U.S. sanctions resulted in little or no reduction in atrocities. Some, but not all, of the lessons from those cases have been thoroughly examined and illustrate the failure to act as early warning signs emerged and misplaced understandings of the brutality of ongoing wars, combined with too little international or U.S. resolve. These factors led to a meager application of the multiple intervention tools, including sanctions, that were needed to thwart the premeditated killing plans.

It is a bitter irony indeed that the case in which TFS made a significant contribution to preventing an impending atrocity occurred in response to Libyan dictator Muammar Gaddafi's plans to level the opposition city of Misurata in what would be the opening phase of a multi-year violent conflict that itself had no management or stabilization plan after initial atrocity prevention. The Security Council expressed directly a concern with stifling Gaddafi's announced intentions to massacre the opposition by noting in resolutions 1970 and 1973 that the concept 'Responsibility to Protect' [R2P] was the guiding framework for both the sanctions and later for the imposition of a no-fly zone. Without question, national sanctions imposed by the United States and the European Union locked down the bulk of the identifiable assets of the Gaddafi regime and gave a needed boost to the UN targeted financial sanctions, asset freeze, travel ban and arms embargo.

By cutting off nearly half of Gaddafi's usable monies—about \$ 36 billion in Libyan funds were locked down in the first week of sanctions—the international community immediately denied the dictator the monies to import heavy weapons from various sellers, to hire foot soldier mercenaries from Chad, or to contract with elite commando units from South Africa and elsewhere. These constraints prevented the Libyan war from being longer and deadlier than it would have been had they not been successfully imposed and enforced. Tripoli, for example, was not destroyed in an all-out battle and Libyan cities were spared the terrible death, destruction, and massive population displacement that was inflicted on Syrian cities by Bashar al-Assad's tanks and air force.

Of course, this sanctions episode also included massive NATO bombing as an enforcement action that ultimately helped the Libyan rebels overthrow the Gaddafi government. And this case of stifling mass atrocities gave way, unfortunately, to an all-out civil war among various forces in Libya that continues to this day.

Adding Enablers to Those Designated for Targeted Financial Sanctions

The lessons of both the multiple failed and the temporarily successful Libyan case show that in employing targeted financial sanctions we need a more precise, but also agile, strategy of tactical application of these measures. Specifically, we must move beyond targeting the ‘leader’ and the ‘killer-on-the-ground’ with sanctions (although these must indeed continue) to cast a broader and deeper net to target the individuals, networks, and entities that the best available evidence-based findings link to the direct perpetrators of atrocities. The aim here is to change the basic dynamics when atrocities are underway and expand who and what we stifle and thwart even before violence against civilians unfolds. I argue that we must also focus on a new category of actor—the enabler—and the materials they provide to the mass atrocity equation as also being listed for targeted financial sanctions. By exploring the scope and examples of enabling, we recognize that mass atrocities are organized crimes involving diverse persons and entities, which should make crippling the means (such as money, communications networks, and other resources) to organize and sustain such actions a high priority.

While atrocities vary in cause and method and perpetrators are generally both creative and resourceful, we can identify a core set of activities that enable and sustain the violence. By developing the correct categories to target the third parties engaged in those activities, it may prove possible to decrease or interrupt the perpetrators’ access to the necessary means. This may, in turn, alter their calculus for committing atrocities against civilians. Targeting the enablers is not a panacea, but it should lead to a better understanding of the dynamics of atrocities and present a practical lever with significant untapped potential to halt the world’s worst crimes.

In 2010, a working group from Human Rights First and United States Institute of Peace identified three essential elements to enabling. First, a third party provides resources, goods, services, or other practical support—directly or indirectly—to the perpetrator of ongoing atrocities. Secondly, this support is a critical ingredient that empowers or sustains the commission of the atrocities, without which the atrocities would not have taken place to the same extent. Thirdly, the third party knew, or clearly should have known, about the atrocities and about the ways in which its goods or support were likely to contribute to the commission of these crimes. This includes the large financial reserves accumulated by violent actors, with special attention to the diverse form such assets now take (from sovereign wealth funds to shadow holding companies). Often such enterprises are linked to substantial networks of illicit extraction or trafficking of natural resources that generate revenue for the enabler and perpetrator alike.

Countries, commercial entities, and individuals may all be enablers. There are many other examples in the recent past in which third party governments provided weapons to their allies or proxies even when it was clear they were being used to commit crimes against humanity. Countries involved in questionable trading chains or opaque transshipment practices involving weapons, vehicles, or other forms of equipment may also be enabling atrocities in less direct ways.

Uncovering those who are linked economically and/or politically to a killing faction or leadership in a country is no longer the work of only the intelligence agencies of the most powerful states. Now there are a number on-going investigative units within NGOs and research centers that have been consistently able to pinpoint the allies and enablers of violent actors and establish early warning indicators of likely atrocity development. Some of the most well-known, high capacity groups include International Alert, International Crisis Group, and the Global Centre for the Responsibility to Protect [R2P]. To these should be added groups studying kleptocracies, including the Hudson Institute and the Sentry project of the organization, ENOUGH. Thus, there is little excuse for inaction on the basis of lack of knowledge regarding what individuals and entities are enabling mass killings.

How to Increase the Potential for Financial Sanctions to Work

From the past 25 years of various sanctions cases, we learn that for targeted financial sanctions to prevent mass atrocities, they must be planned and implemented by those imposing the sanctions in a manner that ensures their success. Specifically, targeted sanctions are most effective when they are one tool among a variety of others that are coordinated to achieve violence prevention. Too often, the vigor put into sanctions implementation and maintaining their coercive strength becomes the essence of the policy, rather than the sanctions being in service to a larger policy where the diplomats are manipulating and using other tools as well. Thus, imposers need a full schematic of the prevention of mass atrocities and a wider range of actions for which sanctions play their particular role, but they should not rely on sanctions to singularly accomplish prevention. From our colleagues here this morning we've heard some of those complementary tools and I would reinforce their prescriptions.

Secondly, for sanctions to be effective they must not only enrage the targets and deny them resources, but find ways to directly engage them politically and diplomatically in a concentrated manner that changes their behavior in exchange for the sanctions relief. To a certain degree, this claim changes much of the equation that considers TFS as punishment, and a threat and isolation strategy operates between the imposers and the targets. That strategy assumes that coercive economic action speaks for itself, such that speaking directly and frequently between the parties defeats the goal of target capitulation. Such an approach actually reinforces the willingness of the target to suffer and encourages its resistance to the sanctions and the powers that levied them. We want the opposite: to be in continual dialogue with enablers and perpetrators regarding their political and social behavior.

Thirdly, research and practice indicates that both the threat of sanctions and escalatory steps in imposition of sanctions that are laid out transparently are rather effective in producing some changed behavior from a target. While rapid, comprehensive financial action produces important constraints on perpetrators, the ability to have the target understand the escalating pain and to see the resolve in the plan of the imposers of sanctions adds to the first two important dimensions I've noted above.

Finally, for every strong financial stick used economically and diplomatically, there should be a corresponding carrot which may change the behavior of some perpetrators and enablers. To astutely use economic incentives and sanctions relief to disrupt the coalition of enablers and perpetrators that carry out atrocities is an important strategy to keep in mind. This can be particularly effective in light of my suggestion below for preemptive action in the application of TFS.

New Policy and Action Approaches that Maximize TFS impact

Let me conclude by sharing a few ideas, most of which are outside the box of the normal application of TFS, but can be of particular utility for atrocity prevention. The first casts the largest possible net ‘to catch’ suspected enablers and presumed perpetrators at the start of targeted financial sanctioning. This largest net approach should come with the provision that there will be a prompt and fair due process for those designated persons and entities that claim ignorance to provide evidence that they should not be sanctioned due to their innocence.

Until now the use of TFS has had to await strong evidence verifying a direct connection between actors and atrocities. Given the deteriorating set of events that we know predict large-scale killings, I’m advocating that strong pre-emptive action of TFS be implemented. Much like executive leaders can declare martial law and control travel during riots, or for national security reasons and concern about terrorism some individuals can be arrested and detained for short periods of time before due process rights commence, the U.S. and others should be able to impose strict TFS for short time periods. An appropriate appeals and clarification process would be available to all so that if innocent actors are caught in the net, their sanctions can be revoked and their assets restored.

Secondly, TFS need to be more integrated with other U.S. tools that alert would-be enablers and perpetrators to the reach of legal and political mechanisms that are being applied to them in their potential and actual behavior. Thus, warrants for arrest on suspicion of aiding and abetting the impending perpetrating of atrocities, whether it be by local courts or the ICC, should accompany the designation of individuals on a sanctions list. An even tougher set of approaches to both state and non-state actors involve the myriad political, economic, or legal mechanisms that can be used against countries, commercial entities, or individuals to deter or dissuade their actions. In its bilateral relationships, the U.S. can bring pressure to bear on enabling governments through public or private condemnations, by suspending business or cultural exchange programs, by withdrawing diplomatic representation, by reducing aid and other forms of support, or by implementing a wide range of other smart sanctions tools.

Finally, in order for the US.. to apply TFS effectively and promptly, and to venture into the pre-emptive approach I have called for, demands high-level diplomatic knowledge and leadership. To ensure this, the U.S. Congress should take action to ensure the re-invigoration of the Atrocity Prevention Board which has languished over the past 18 months as changes continue to unfold in

the U.S. State Department. Clear, strong, and coordinated TFS must be the product of a focused and fully-staffed office of professionals knowledgeable about the process of mass atrocities and how U.S. policy can prevent them.

Respectfully submitted,

George A. Lopez