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IN MEMORIAM OF PROFESSOR SHERI ROSENBERG

DEDICATION

Volume 24, Issue 1 of the *Cardozo Journal of International and Comparative Law* is dedicated to the life and memory of Professor Sheri Rosenberg.

Professor Sheri Rosenberg's contributions to the field of human rights and atrocity prevention have been far reaching. A dedicated scholar, advocate, teacher, mentor, and colleague, she impacted the lives of thousands of people through her successful human rights litigation, winning landmark cases on non-discrimination and citizenship rights in the European and African human rights systems. She inspired a generation of Cardozo law students to see that making change is possible, be it by protecting the lives of vulnerable asylum seekers or providing crucial research and assistance to leading human rights groups and the United Nations.

For Professor Rosenberg, every day was guided by honoring and remembering the victims of the Holocaust and other mass atrocities. Her imprint is permanent, and her visionary work continues through the Cardozo Law Institute in Holocaust and Human Rights.

In October 2015, Cardozo hosted a memorial to pay tribute to Professor Rosenberg and to commemorate her life's work. A number

of her colleagues and friends spoke about her tremendous contributions to the field of human rights and atrocity prevention; many others produced short essays extolling her life's work, to be distributed to her family. This journal has included, as the first piece in this issue, both the oral remarks from the memorial as well as the collection of essays produced.

As colleagues, students, members of her professional community, and others interested in her work, may we always remember and reflect upon Professor Rosenberg and the legacy she left in her wake.

ORAL REMARKS

Introductory Oral Remarks by Dean Melanie Leslie[1]

Today we reflect on and celebrate the life and work of Professor Sheri Rosenberg. Sheri was a deeply respected and beloved member of the Cardozo Law School community, and she was my friend. I am honored to pay tribute to her today.

In 2005, Cardozo Law Professor Richard Weisberg and Dean David Rudenstine created the Holocaust, Genocide and Human Rights Program with unclaimed funds from a Holocaust claims litigation settlement. Sheri was hired to administer that program. Although it was clear that Sheri was a smart and passionate lawyer, no one could have predicted what she was going to accomplish. A loving daughter who never forgot the pain inflicted on her family by the Holocaust, Sheri channeled the dark shadow of those atrocities into a brilliant life and career. In no time, the Program became the center for high-level discussion on Holocaust remembrance and atrocity prevention.

For example, Sheri produced a documentary, "Nueremberg: Reflection and Resonance," which highlighted the work of prosecutors Ben Ferencz and Telford Taylor and explored the influence that the historic trials had on modern international tribunals

[1] Dean, Benjamin N. Cardozo School of Law, Yeshiva University.

that investigated crimes against humanity. The film premiered at Cardozo, and the Moot Court Room was packed with hundreds of people. If it wasn't clear before, it was certainly established that evening that Sheri was an extraordinary person with extraordinary vision.

But Sheri wanted to do more – she wanted to inspire students to go out in the world and work toward peace.

She launched the Human Rights and Atrocity Prevention Clinic to engage Cardozo students with the broader human rights community to work on human rights issues in Darfur Sudan, Rwanda, Bosnia, and Kosovo as well as those generated by the war on terror. Before long, Sheri and her students were participating in international human rights cases in United States and foreign courts and before United Nations treaty bodies and international criminal tribunals. Sheri challenged the students who had the privilege of working with her to set goals and pursue them relentlessly – and those students received an incomparable education as a result.

Whether helping a family seek asylum from persecution or helping an ethnic group seek constitutional recognition on the world stage, Sheri was there, and she was in the game to win it. During one of our lunches together, I mentioned to Sheri that not enough people at the law school were aware of the scope and importance of the work she was doing. She brushed me off, saying that she had no interest in spending valuable time on self-promotion or idle conversation. *That* was Sheri –humble, altruistic and determined to spend every minute purposefully.

Prevent, protect and rebuild. Those words became Sheri's mantra, and she lived them every day. Her passion for the work was ferocious, her energy unrelenting. In 2009, Sheri and her students took on the Bosnian Government and the Dayton Accords to challenge a constitutional framework that excluded certain ethnic groups from running for elected office. Sheri argued this landmark case before the European Court of Human Rights — and won.

As Sheri got more deeply into her work on atrocity and genocide prevention, she became increasingly interested in understanding how genocide unfolds — specifically, she asked, *What are its preconditions?* She examined the how and why of genocide because she, and her closest colleagues – many of whom are here today – believed that identifying the key elements of that process would enable early intervention to disrupt it before it culminated in atrocities. Her work helped us understand that the very first steps on

the path to atrocity can be identified and responded to.

She argued, for example, that the instant a nation takes its first step to disenfranchise an ethnic minority, there can and should be a unified international response. Sheri truly believed that genocide prevention was not an abstract goal but an achievable reality. The world could use more of that kind of thinking.

Several years ago, Sheri was diagnosed with cancer and told that her condition was terminal. Yet Sheri committed herself to living, every day, with the same level of commitment and intensity that she had always brought to her work. She renamed the Program the Cardozo Law Institute in Holocaust and Human Rights and set out to build the endowment to ensure that her work would continue. And as recently as this past spring, Sheri was making travel arrangements and working on plans to expand the Institute.

Some of you here today helped Sheri and the law school take the first steps toward achieving her goal of raising an endowment that would enable the work to continue in perpetuity. The Cardozo community is committed to continuing the Sheri's work, and to realizing her vision for the Institute.

We were extremely fortunate to have witnessed Sheri's outstanding contributions to the field of human rights — as a lawyer, an advocate, a scholar and a teacher. My hope today is that this gathering of distinguished scholars and advocates will inspire us and others to work for peace. I firmly believe that this is what Sheri would have wanted.

A Postmodern Woman of Valor – Oral Remarks by Monroe E. Price[2]

Strip away all the rituals of universities, the climbing ambitions, the internal politics. Strip away the writings, the issues of status and the world: what's left is the idealism where people shape themselves—where institutions provide the umbrella to help them do so. Sheri learned at Cardozo, but she deployed Cardozo; she organized it for her enormously valuable purposes. Today, and for the last months, we are all writing love letters to a deceased friend reflecting on her wondrous but truncated local and global significance.

[2] Director, Center for Global Communication Studies (CGCS), Annenberg School for Communication, University of Pennsylvania.

We are mostly still in a state of shock—suspended in time. There are so many of us in so many places who were in mid-conversation with Sheri, animatedly engaged in some extraordinary Rosenbergian plan or venture.

I have read, for example, a note from the well-known British international law professor William Schabas: "Sheri was a wonderful scholar and a determined activist who was deeply engaged in the prevention of genocide and the promotion of the responsibility to protect, equality and non-discrimination. Sheri was to have been presented with the Outstanding Educator Award at the Spirit of Anne Frank Awards Gala on June 15 in New York City. The award 'recognizes the outstanding leadership and dedication of educators who inspire students, and who teach about the dangers of intolerance and prejudice and urge those around them into action.' Sheri was also named a 2015 Peace Ambassador by the Centre for Peacebuilding and was to have participated in International Peace Week in Bosnia and Herzegovina in September 2015." He noted how generous and persistent she was.

I think of how she contributed to Cardozo; and we should reflect with pride on how Cardozo embraced Sheri, seeing her work as emblematic of a law school that aimed to teach its students about purpose in the world. Sheri was an imaginative legal actor, creatively stretching and interpreting that complex and often internally contradictory concept of international law.

We were all awaiting the next news on how she would engage with the grand concepts: human rights, transitional justice, safety for refugees—how she would breathe greater life into these concepts. We wondered how she would manage all this from her cubicle on the ninth floor office, building and honing her team, people she had been proud to recruit and hone for adventures in Rwanda or Libya or finding justice for murdered nuns in Central America.

Sheri was a canny fighter—whether in the Chambers of the European human rights court or encouraging financial support for the Center from family, from institutional supporters, or from friends.

It is one of the immense pleasures of teaching when the door knocks, a student enters, and it becomes the start of a lifetime conversation. It does not happen often, but for that reason, it is all the more satisfying. Sheri was my research assistant. I think I counseled her through various professional engagements. I can

easily say that it was a privilege—the gracious privilege that comes to academics who see their students grow rapidly and effectively.

Sheri was important to me as a person deeply affected by the very long arm of the Holocaust. Product of a wonderful Viennese family, she was brought up to think of the necessities, obligations, large processes of recuperation, terrible lessons of injustice and horror resulting from those mad years in Europe.

The Center bears the word "Holocaust" in its title and Sheri worked hard to think of ways the word, the concept, the idea should be harnessed, evolved, used as a prod both for memory and for action.

She took modern orthodoxy and made something real and even more beautiful out of it with her own belief and practices—being independent but paying homage to her family tradition.

She was a force in fashioning a role as a dedicated and zealously ambitious professional and studied builder of family. She was an extraordinary aunt and daughter—that I know. But she was an amazing wife as well. I could knock on the door of their Philadelphia house and find a collection of Gregg's friends and family, visiting members of an extended tribe, spirited, very spirited children. I remember Marcus selling lemonade and coolly calculating modes of expanding business.

She and Gregg negotiated two cities, two careers, issues of religious practice—commutes, modes of education. She did so (with Gregg) in an exemplary way.

Sheri was a modern Aishes Chaiyil, a woman of valor. She was the girl who listened to all those sermons on high holidays and integrated all those lessons at Hebrew school.

So much of what Sheri did is *in media res*. We're waiting to see her creative arguments before the European Court on Human Rights might change Bosnian and Hercegovinian political realities.

We're waiting to see how more lives of asylum seekers can be improved and how Rwandan justice can be enhanced.

We're waiting to see what occurs with the "Responsibility to Protect," a doctrine that intrigued Sheri, that she wrote about and sometimes advocated. When she first spoke with me, it was a distant impractical concept. For her it would become an operative moment, a cause to which she could contribute by scholarship and action.

Sheri was and remains part of a great hope: the hope of Tikkun Olam, the recognition of the desperate imperfection of humankind but some consequent stubbornness to make things better.

Sheri's existence and blossoming reminded the institution why law schools exist and why they should be supported. Yeshiva is not an environment where everything always comes easily, but she negotiated the halls of with style and grace, and the law school responded in kind. Our new dean who continues to be immensely supportive would have been blessed by having her as a partner at this difficult time.

I close with a note about two large paintings by the artist Peter Krasnow I had lent her. They hung in her office. These were paintings full of experimentation, of spirit, of lofty ambition, of ties to history, to religion, to style. I loved that these paintings were in her office. More, I loved that their qualities were ones that epitomized Sheri and her work. This artist understood the responsibilities of his talent. Sheri did as well. And that, among other reasons, is why we miss her.

Thoughts About Sheri Rosenberg – Oral Remarks by Richard Weisberg[3]

My earliest memories of Sheri date to February of 2004. She had applied for a position in our just launched Program on Holocaust/Human Rights Studies. Like cream, her résumé rose to the top. Many wanted the job. It was Sheri's for the taking, and to our great good fortune, she accepted our offer. By June of that year, she was an active player, meeting frequently to articulate a vision for the Program, with a group that included Eric Freedman, who was visiting from Paris and became the Program's European Advisor. Others assisted us from the outside, including such luminaries as Floyd Abrams, whose participation in the settlement of a Holocaust restitution case stands as a landmark in that litigation and an important part of the genealogy of the Program. Elie Wiesel lent his name to our original list of Advisors.

In early 2005, Sheri and I attended a U.N. event on the 60th anniversary of the liberation of Auschwitz, and in March of that year, Sheri was instrumental in organizing a two-day program at Cardozo on the Nuremberg trials. That event inspired a documentary about

[3] Founder of the Program in Holocaust and Human Rights, Benjamin N. Cardozo School of Law.

Nuremberg that Sheri, in effect, produced. In June, we travelled together to New Haven, where she helped negotiate Cardozo's partnership in accessing part of the Yale Fortunoff Video Archives of Holocaust testimony. She was a principal player in many Cardozo events through the years that focused on anti-Semitism. One of these was our Fall 2010 symposium on the Dreyfus Affair, also co-organized by Monroe and Aimee Price. To everybody's great delight, Sheri by then had agreed to become Director of the Program we re-named the Cardozo Law Institute in Holocaust and Human Rights.

On the personal side of things, Cheryl and I attended Sheri and Gregg's wedding in late August of 2005. The couple and their three wonderful kids eventually moved to Philadelphia, but we lured them back every once in awhile to New York's Central Park for softball games and picnics.

Sheri, from the get-go, saw the unique direction of the Program in nesting the most contemporary concerns about genocide and mass atrocities within an understanding of the Holocaust and Nuremberg principles. Her own interests, of course, were in clinical teaching, in the preparation of students to face and combat or try to prevent mass atrocities threatening the 21st century world. She took a group of students to Auschwitz, and she also took them to Rwanda. She helped them represent asylum seekers, and she helped them win victories in international courts, such as the European Court of Human Rights' 2009 ruling that the Bosnian Constitution could not exclude ethnic minorities from running for President or the Parliament.

When one speaks of Sheri's "interests", one is understating her commitment to wherever her focus was at any given time. In fact, one searches in vain for the right noun to use about Sheri's professional motivation. You could try "Sheri's passion" or "Sheri's obsession" or "Sheri's single-mindedness," or a noun I like to use "Sheri's intransigence." Anybody who worked with her knows that those abstractions do not adequately describe her zeal. Her style was quiet and sometimes elusive; but her goals became clear and her stubborn-ness in pursuing them became meritorious when one saw the outcome of her tireless efforts.

I have my reasons, based on many conversations with her, and on her own accomplishments, to invoke Auschwitz and Nuremberg as I try to describe her. A movie currently showing here in town, called "Labyrinth of Lies," is about Auschwitz and post-

Nuremberg German trials of Nazi war criminals. It is set in and around 1959. The Israelis were covertly maneuvering to capture Eichmann in South America and bring him to Jerusalem for trial. But in Germany, where the film is set, there was quiescence: the politics had turned away from Nazi wrongdoing to opposing the Soviets. There was little or no interest in stoking up wartime coals through domestic investigations of what went on at places like Auschwitz, or of who did the dirty work there.

The young judge/investigator in the movie reminds me of Sheri. He bucks the system and the odds. He will not be distracted by common wisdom or professional pragmatism. He has a personal life that matters to him, but his priority is the pursuit of justice. By ruthlessly tracking down some of Auschwitz's worst henchmen, all living lives either anonymously or with little attention to hiding their genocidal past, he succeeds over time in defying the probabilities.

That young lawyer utters a line that sums up, for me, Sheri Rosenberg: "The only personal response to Auschwitz is to do the right thing."

The deck, as it turned out, was stacked against Sheri. She didn't care. She did the right thing, right up to the end.

In Memory of Sheri Rosenberg – Oral Remarks by Jennifer Leaning[4]

I have known Sheri as a cherished friend and colleague for well over a decade, perhaps even for 15 years. Encountering her had become a way of life, so I am not sure now when it began.

Her brilliance and commitment to the law and prevention of genocide inspired all of us in the many circles she built and nourished. She was a feisty yet luminous presence—poised to be critical yet receptive, happy in constructive fast argument, elliptical and often very funny in choice of phrase and anecdote. Once she knew you cared as much as she about these vast questions of law and suffering, of how to act in the face of complexity, she proved always generous and always responsive. Her loyalty stayed firm but did not, however, dissuade her from dissecting your position. It was exacting, even exhilarating to be in dialogue with her.

[4] Director of FXB Center for Health and Human Rights, Harvard University School of Public Health.

A marvelous and oddly humble leader, she created institutions, led organizations, interrogated received wisdom, and brought everyone along with her.

Much has been or will be said about Sheri's extraordinary intellectual and organizational contributions to the Cardozo Law School, her creation of their Holocaust and Human Rights Program, and her efforts on behalf of the Auschwitz Institute for Peace and Reconciliation and the Institute for the Study of Genocide.

Here I would like to offer a few reflections on Sheri's pivotal role in two organizations with which I am associated-- GPAnet, the Genocide Prevention Advisory network and GAAMAC, the Global Action Against Mass Atrocity Crimes. These associations are in nature both analytical and advocacy, aiming to develop ideas, options, and policy for governments and civil society at once. GPAnet, a group of genocide scholars, other academics, and policy practitioners, has been supported by the Swiss Ministry of Foreign Affairs (and other governments) and has been meeting periodically since 2005 to confer on key issues and provide informal advisories to diplomats and other decision makers. GAAMAC was established in 2008 as a consortium of government R2P focal points and civil society and aims to promote the growing engagement of national governments in early assessments and early action against elements within their own societies that might escalate to mass atrocity crimes.

Participants in each of these organizations are expected to travel to international meetings and conferences and contribute substantively to the proceedings and reports. Sheri rapidly proved central to the debates and framing of arguments up until 2012, when her illness surfaced and in the midst of recurrent tough treatments, she doggedly joined in person when possible or when not by conference call. She was a quiet, listening force and an incisive voice when she intervened. Her deep knowledge of international criminal law with regard to mass atrocity crimes, her expertise relating to the law and practice of the International Criminal Court, and her field experience in assessing mass atrocity crimes in various settings proved highly influential in these many gatherings.

But what above all compelled people to listen to her were two things—the quality of her thinking and the participatory nature of her contributions.

Sheri has written persuasively and intricately about the relationship between deterrence of mass atrocity crimes and the work of the International Criminal Court. In essence, her argument is that,

claims to the contrary, the evidence is not sufficient to conclusively establish that the prosecutory efforts of the ICC really do support prevention of atrocity crimes. The argument dissects the concept of deterrence and finds that in recent times it remains entirely unclear whether the processes of referral, indictment, capture, and trial have restrained or deflected or reduced the commission of these terrible actions. She argues instead that the arduous work of prevention is local, owned by those who live in and preside over societies and nation states. On the basis of accumulating evidence, she suggests that the preventive efforts of local and state actors (and the U.N. within the R2P framework) may show tighter connections to observed containment of atrocity occurrence or escalation.

Sheri has identified a number of definitional and strategic challenges to the implementation of the R2P framework, which, in many ways, the essays in this recent volume (Reconstructing Atrocity Prevention) aim to address. She recognizes as well that the ICC has a crucial role to play in prosecution of committed crimes and a more remote but necessary responsibility to define and promote the norms of state behavior towards ordinary people caught in war.

This argument, linking extensive jurisprudence, legal history, and instances of crisis early warning and early action, can only be launched by someone with a confident and disciplined mind, realms of experience, and fortitude against heavy dissent.

Sheri knew that to climb the mountain she had chosen would require organizations, networks, joint projects, collaborations with colleagues and confrontations with more adversarial players. She knew that this effort to understand how to prevent mass atrocity had preoccupied the lives of generations before her—and she realized that among her responsibilities was equipping those who came after her to carry on the work.

She drove herself to organize; write; include others. She honored all of us she assembled to work on this new and path-breaking book. In the several drafting workshops and conferences leading up to the book's publication, Sheri's focus prevailed in her fluent and penetrating comments and respectful but clear requests for more empirical detail and more nuanced argument.

We had been working on a collaborative research project for the last year and a half. It was and is a complex mixture of legal analysis and framework assessments for prevention of mass atrocity crimes. Her dedication and courage embolden us to finish the job.

Her absence brings inexpressible sadness. Yet we must wrest some small comfort from the certainty that her courage and spirit live on in the hearts of those who knew her and whom she touched.

In Memoriam – Oral Remarks by Sam Permutt[5]

When I think about Sheri, I keep coming back to that inscription on the base of the Statue of Liberty.

"Give me your tired, your poor, your huddled masses yearning to breathe free…"

Those words remind me of HER because everything Sheri taught us was infused with the message of that famous sonnet: accept the "other," protect the vulnerable, help those who need it most.

As her former student, it's very easy for me to go on and on about how Sheri was an excellent professor. But I think that's self-evident by this point.

What I want to say is that Sheri stood apart. And that's why it's so devastating for Cardozo to have lost her.

She took us around the world – to the camps in Poland, to the courts in Europe, to the killing fields in Cambodia – and demonstrated that we were there to fight for good. We were like her rag-tag bunch of freaks and geeks, not worrying about working for Big Law but worrying – for instance – about whether we were sufficiently looking at the warning signs of genocide.

She turned on its head what law school could have been for us. She took us out of what oftentimes could be a sterile, sanitized world where you have to learn X, Y, and Z in order to pass the bar and get a "*good* job." Rather, she breathed new meaning into school: to prepare ourselves to work for the betterment of society. She was an idealist, and we loved her for it.

If it's any indication, take a look at where her alumni have ended up:

Carse Ramos is in Hungary attempting to improve the plight of the Roma.

Chauniqua Young was just working on a landmark case to ensure that people's 4th Amendment rights are upheld.

[5] Development Executive, UJA Federation.

Shoshana Smolen has been making sure women and children asylum seekers have gotten fair treatment at detention centers in Texas.

Now, to be clear, Sheri encouraged us to improve the lives of others. But she was also laser-focused on how we were doing ourselves. When I was asked to speak this evening, I asked some of Sheri's other students what they'd say if they were standing here in my place.

What became immediately clear was just how much Sheri cared about the personal – that, yes, we could be zealous human rights advocates, but never at the expense of our health and happiness and, in particular, our family.

For example, Maria Chickedantz emailed me this: "Sheri gave me a lot of support throughout law school - first, when I was trying to figure out what career path to take, and later when I was about to become a mother. She totally supported the idea of me being an activist lawyer and mother at the same time, and I will always heed her advice to do BOTH - mothers don't have to choose one or the other. It's sad to think about her advice in hindsight… I see now, even more, just how wise she was."

And Anastasia Holoboff wrote the following: "As a woman in law, it is often hard to find examples of women with successful careers but also successful family lives. Sheri showed me that it is possible to have both and introduced me to other women similar to her who had been able to achieve this meaningful balance. For that I will always be deeply grateful. Sheri spoke of her family so often and with such warmth and love. She will continue to serve as an inspiration to me as I start my own career and family."

On behalf of these women, and the hundreds of other students Sheri's life and work have touched, I want to express just how much we adore her, how much we miss her, and how – no matter where we go – her legacy will carry on in each of us.

A Visionary – Oral Remarks by Teresa M. Woods[6]

Sheri had a way of working across disciplines and approaching traditional legal concepts with a fresh set of ideas. She was open to new ways of doing things. She was a visionary who understood the power of collaboration. She set lofty goals and achieved them. She welcomed the contributions of others.

I came to work with Sheri in 2011 on a refugee rights project that she had envisioned several years before I got there. For me, it was the start of a new journey; a journey for which I am eternally grateful. The work I cared so much about would begin to hold an even deeper meaning. Notions of human dignity underpinning refugee rights would complement a larger canon of ideas making justice more accessible in vast and myriad ways.

Earlier versions of these remarks included the story of the first asylum client that the Clinic represented. I was unable to find the right words to describe Sheri's interest in the case of a young man from Ethiopia of Eritrean descent who had lived through the Red Terror and found himself in a position of *de facto* statelessness. It was difficult to capture her interest in the person, her zealous advocacy on his behalf, her tenacity. The story instead focused on her response to a lengthy court delay and Sheri's response to the man's emotional breakdown outside of Immigration Court at 26 Federal Plaza in downtown New York City after hearing that he would not have a trial date for several years meaning that he would not see his wife and infant children. In a flash of a matter of seconds, Sheri ran to a nearby corner deli and was back with a cup of tea to console our client. In the simplest of ways she brought him comfort and calm. Her demeanor, her voice, her approach all turned that moment of emotional crisis into something manageable for him. We returned to the office so that our client could call his family back home. The Clinic found a way to get his court date moved up and ultimately granted. With every telling, that story did not seem to capture what Sheri did for our client, so it was omitted and I did not plan to tell it here during the Memorial. What does convey the meaning of the story, however, is that this client, to our surprise, is present here tonight. He heard about the memorial and wanted to

[6] Associate Director of the Refugee Representation Project, Human Rights and Atrocity Prevention Clinic, Cardozo Law Institute on Holocaust and Human Rights (CLIHHR), Benjamin N. Cardozo School of Law, Yeshiva University.

honor Sheri's memory because of all that she did for him. His presence sums up the impact that Sheri had on individual lives.

Sheri's work through the Clinic did not conform to any existing model. She forged a unique framework around the concepts of Prevention – Protection – Rebuilding. She chose projects that would allow her to advance human rights norms through legal means while supporting the development of budding young law students. Sheri's work not only advanced atrocity prevention efforts, it also shaped the development of many young lawyers learning how to engage with the field of human rights. She made human rights work accessible. She helped her students understand that not only is working toward change more than the stuff of rhetoric, but there are real avenues for achieving change, and they are very much within reach. She was the architect for a structure within Cardozo that would give students an opportunity to learn how to do human rights work.

Sheri taught her students and colleagues to be critical human rights lawyers. She would start the first class of each semester with the question – what are human rights? She would end each semester with an examination of that same question in light of what we had all learned through the work. By keeping that essential query at the forefront of everyone's minds, Sheri reminded students: (1) that they were working in an area of the law with a long arc; (2) an area that is still developing; and (3) that we have the tools to help determine its future.

I am only one of a great many people who Sheri mentored. I am only one of a great many people who is saddened by her loss. I have been inspired and empowered by knowing Professor Sheri Rosenberg and I am one of many who will continue the work that she began.

ESSAYS WRITTEN BY PROFESSOR ROSENBERG'S COLLEAGUES

Professor Rosenberg's Contributions to the Responsibility to Protect (R2P) – by Professor Edward C. Luck[7]*

**Mr. Luck also gave oral remarks at Cardozo's memorial event*

In the enormous and ever-expanding academic and policy literature on the Responsibility to Protect (R2P), Professor Rosenberg's publications and substantive contributions stand out as among the most timely, relevant, and influential. She approached R2P with the precision and rigor of a legal scholar and the compassion and insight of a human rights advocate. This combination, along with unfailing pragmatism and an undaunted determination to build bridges between academic disciplines and between the worlds of scholarship and practice, made her an invaluable partner in the effort to realize R2P's full potential as a policy instrument. Her cross-disciplinary instincts are well utilized in her most recent contribution, a co-edited volume on atrocity prevention that offers seminal thinking and innovative approaches to policy making.[8] Despite the rapid development of thinking about R2P, even her earliest academic and policy reflections on the subject have withstood the test of time. What is most striking, on rereading her articles and reports from the years of R2P's contested infancy, is how little would have to be adjusted to meet more recent developments. Curbing genocide and other mass atrocities was an abiding concern of Professor Rosenberg, and her reflections on R2P stand at the core of her considerable intellectual legacy.

In seeking to understand Professor Rosenberg's approach to R2P, it is essential to look first at how her legal training and previous work experience on advancing human rights, human protection, and accountability, particularly in the context of the mass atrocities in Bosnia-Herzegovina, shaped the way she perceived this innovative

[7] Dr. Luck is the Arnold A. Saltzman Professor of Professional Practice in International and Public Affairs and Director of the Specialization in International Conflict Resolution, School of International and Public Affairs (SIPA), Columbia University. He served as the United Nations' first Special Adviser on the Responsibility to Protect (R2P) from 2008 to 2012.

[8] RECONSTRUCTING ATROCITY PREVENTION (Sheri P. Rosenberg, Tibi Galis, & Alex Zucker, eds., 2015); *See* Edward C. Luck & Dana Zaret, *The Individual Responsibility to Protect (IR2P)*, *in* RECONSTRUCTING ATROCITY PREVENTION, *id.* at 207 (offering a bottom-up complement to the initially state-centric R2P paradigm).

concept. For her, R2P was a promising, if unfinished, new tool for preventing genocide and other mass atrocities, not just the object of academic debate. When she began to write and speak publicly about R2P in 2008, she had already accumulated a decade and a half of experience in human rights and genocide prevention, including internships at the Lawyers' Committee for Human Rights and the United Nations Centre for Human Rights in Geneva and, importantly, several years as Panel Registrar, Judicial Law Clerk, and Expert Consultant at the Human Rights Chamber of Bosnia and Herzegovina.[9] She understood how few and fragile are the legal and policy instruments for protecting populations and preventing future mass atrocities. At every juncture, she sought to draw on her legal training and human rights experience to find ways of strengthening R2P, both conceptually and operationally. For all of the ambiguity of the language endorsing R2P in the Outcome Document of the 2005 World Summit, and for all of the ambivalence that states exhibited toward the commitments they undertook for protecting populations at the World Summit, she recognized that this was an opportunity unprecedented in the six decades since the negotiation of the Genocide Convention.

Professor Rosenberg's bridge-building skills were on full display in her path-breaking 2009 article on the "Responsibility to Protect: A Framework for Prevention."[10] One of the primary objectives of the piece was "to mediate the debate between those who claim R2P is a major departure from existing law and those who claim it adds nothing new to the existing body of law."[11] This was much more than an academic dispute, as many of R2P's strongest critics among the UN Member States had been contending that the new principle would undermine existing international law and the rules that had defined relations among sovereign states since Westphalia. As the point person representing the UN Secretary-

[9] Professor Rosenberg's seminal article, *Promoting Equality After Genocide*, 16 TUL. J. INT'L L. 329 (2008) based on her 2003 thesis for an LL.M. at Columbia University School of Law, does not reflect an R2P perspective. In retrospect, however, the conclusions of that article, drawing on her experiences in Bosnia-Herzegovina, could offer some useful cautionary advice for international planners and policy-makers when they are attempting to rebuild national judicial systems following the commission of mass atrocities.

[10] Sheri P. Rosenberg, *Responsibility to Protect: A Framework for Prevention*, vol. 1, no. 4 GLOBAL RESPONSIBILITY TO PROTECT 442 (2009) *available at* http://responsibilitytoprotect.org/The%20Responsibility%20to%20Protect%20A%20Framework%20For%20Prevention%20(Rosenberg).pdf.

[11] *Id.* at 442.

General in that sometimes polarized dialogue, I was relieved to see that Professor Rosenberg, in her typically sensible and balanced way, had concluded that "while a number of constituent parts of R2P are unquestionably grounded in international law, R2P as a whole does not presently constitute a legal norm."[12] As she put it, "while R2P in some respects may reinforce or reiterate existing law, its strength lies in the framework it establishes—unearthing, interpreting, and crystallizing the obligation to act in the face of mass atrocity crimes."[13] Further, she noted, R2P "harnesses the disparate body of law on the duty to prevent and provides a modicum of conceptual clarity and discipline to its application to mass atrocities."[14]

The article articulated two other key themes that were to inform much of her later work: 1) that "prevention is the best form of protection"[15] and 2) that human rights law, institutions, and practice have much to offer to the emerging strategy and doctrine for implementing R2P. At that early stage of R2P development, she understood, as many commentators did not, that R2P was about both prevention and protection. Unless both sides of R2P were fully taken into account and integrated into a cohesive doctrine, it could not serve as the basis for viable public policy. The heads of state and government at the 2005 World Summit certainly saw prevention as the preferred form of protection, as they pledged unequivocally to protect their populations by preventing genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement.[16] However, they went further, declaring that they were "prepared" to undertake "timely and decisive" collective response under the Charter and through the Security Council "when national authorities are manifestly failing to protect their populations" from these crimes and peaceful means "be inadequate."[17]

Professor Rosenberg's emphasis on prevention reflected an understandable reaction to those pundits—and there were many of them—who caricatured R2P as being largely about the use of force. It may also have been a tacit admission on her part—though her tact may have dissuaded her from saying so publicly—that the United Nations and other international institutions tend to be much better at

[12] *Id.* at 445.
[13] *Id.* at 448.
[14] *Id.* at 442.
[15] *Id.* at 443.
[16] 2005 World Summit Outcome, G.A. Res. 60/1, ¶138, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).
[17] *Id.* at ¶139.

peaceful than forceful measures. Yet in practice, as this author learned in his five years as Special Adviser, prevention and response tend to merge to some degree, as preventive steps are responses to developments of concern in the country in question, just as response measures are undertaken in part to prevent an escalation or recurrence of violence.

In that 2009 article, she began an exploration of human rights norms and practices that continues to offer both conceptual and operational benefits for the further development of R2P. She underscored that the "*duty* to protect" is a well-known principle in international human rights law that "requires states to prevent, punish, investigate or redress human rights violations."[18] Drawing parallels to the 2005 Summit formulation of R2P, she observed that the duty to protect created symbiotic collective obligations for the international community and national ones for individual states.[19] She articulated positive obligations, as well, for states to cooperate in a manner to foster compliance with the law and to refrain from taking steps that could "contribute to mass atrocities outside of their borders."[20]

With exemplary and lawyerly reasoning, she pointed out that non-state actors, as well as states, had been committing atrocity crimes and that the positive obligation to prevent such violations had "developed as a standard of due diligence."[21] Citing a series of cases from different parts of the world, including the 2007, *Bosnia and Herzegovina v. Serbia and Montenegro* decision of the International Court of Justice,[22] she concluded that there is an "emerging obligation" of state responsibility "to prevent mass atrocities extraterritorially."[23] In particular, "the specific obligation to prevent requires a state party to the Genocide Convention to employ *all* means *reasonably* available to it, so as to prevent genocide so far as possible."[24] Her timely and incisive analysis was very helpful in buttressing the simultaneous but more political effort that I was making to convince Member States, on behalf of the Secretary-General, to accept the expansion of the scope of R2P to cover non-

[18] Rosenberg, *supra* note 10, at 448.
[19] *Id.*
[20] *Id.* at 449.
[21] *Id.* at 451-54.
[22] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz v. Serb. and Mont.), 2007 I.C.J. 43.
[23] Rosenberg, *supra* note 10, at 464.
[24] *Id.* at 466.

state actors, even though neither the report of the International Commission on Intervention and State Sovereignty (ICISS), which introduced the R2P concept in 2001, nor the 2005 World Summit Outcome Document had mentioned non-state actors in this context.

Always sound and prudent in her policy assessments, Professor Rosenberg never let her enthusiasm and advocacy run away with her judgment. At a time when many authors and advocates were quick to assert the deterrent effect of the 2002 establishment of the International Criminal Court (ICC) on potential perpetrators, Professor Rosenberg was more balanced, even cautious, in weighing the evidence. At a September 2012 Hebrew University Symposium on Genocide in Jerusalem, she underscored that "the deterrent effect of international criminal justice is empirically indeterminate; it cannot be proved or disproved in a methodologically sound way."[25] Though she highlighted potential synergies between international criminal justice and broader atrocity prevention efforts "energized by the Responsibility to Protect Principle," she wisely cautioned that "our continued focus on trials has the potential to circumscribe and short-circuit our understanding of the particular prevention tools that should be utilized in a specific situation."[26] Quite presciently, she observed that "the goals of atrocity prevention and protection of populations, namely accountability and deterrence,"[27] do not always coincide with those of conflict prevention and resolution. Moreover,

> ICC justice has and may have the potential to allow member states of the UN to avoid their responsibility to protect by engaging in their responsibility to prosecute, as witnessed by the fact that crimes under the jurisdiction of the court were referred to the ICC two years after the conflict in Darfur, Sudan broke out.[28]

Nevertheless, Professor Rosenberg concluded that the combination of innovative prevention measures and the "greater certainty of prosecution by a permanent court, makes the deterrent possibility of the Court a greater possibility." She saw promise, as

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[25] Sheri P. Rosenberg, The Relationship between the International Criminal Court and the Prevention of Mass Atrocities, Iss. 12 GENOCIDE PREVENTION NOW (2012) http://www.genocidepreventionnow.org/Portals/0/docs/Relationship_ICC_Prevention_HU.pdf (presented at the Hebrew University Symposium on Genocide, Jerusalem, Israel, September 2012).

[26] *Id.*

[27] *Id.*

[28] *Id.*

well, in the further convergent development of "the notion of 'shared responsibility' under R2P and complementarity under ICC justice." As her analysis would have predicted, my experience as Special Adviser was mixed on this score, as there were situations in which invoking the possibility of ICC prosecution appeared to influence the behavior of those who may have been contemplating the incitement or commission of atrocity crimes and other situations in which such warnings had little or no noticeable effect. Her emphasis on the potential synergies between shared international responsibility and national complementarity was well taken and, in many respects, reflected the purposes of the second pillar, on international assistance, of the implementation strategy that I had developed for the Secretary-General.[29] As happened so often, her academic work contributed directly to what we were trying to achieve in terms of policy development and application.

From 2009 to 2012, Professor Rosenberg undertook an ambitious research project on evidentiary standards for R2P that—typically for her—would have timely and important implications for the making and implementation of public policy on both the national and international levels.[30] It would prove to be her most extensive engagement with R2P, as well as my prime opportunity to interact with her in my role as Special Adviser. The project was funded by the Asia-Pacific Centre for the Responsibility to Protect at the University of Queensland as part of a global research competition launched by the Government of Australia.[31] The motivation for the project, as I understood it, was to try to develop more rigorous and consistent standards for deciding when a situation should be given an R2P label and appropriate international action be contemplated to prevent possible mass atrocities and protect vulnerable or threatened populations. Professor Rosenberg recognized, quite properly in my view, that the lack of such standards was already creating concerns among some Member States that R2P principles could be applied prematurely or for extraneous political reasons.

At the outset of the project, I was worried both that the term "evidentiary" might work better in the legal realm than in the highly

[29] U.N. Secretary-General, *Implementing the Responsibility to Protect*, pp. 9, 15-22, U.N. DOC. A/65/677 (Jan. 12 2009) .

[30] SHERI P. ROSENBERG, CARDOZO L. HOLOCAUST, GENOCIDE AND HUMAN RIGHTS PROGRAM, A COMMON STANDARD FOR APPLYING THE RESPONSIBILITY TO PROTECT, (2012).

[31] This author chaired the advisory group that evaluated the many proposals submitted from around the world.

political world of UN and Security Council decision-making and that it might fit somewhat awkwardly with the notion of early and flexible response that I had developed for the Secretary-General. Yet the flexibility that Professor Rosenberg displayed in grappling with these very real policy dilemmas ensured that the project was productive in both expected and unexpected ways. First, her instincts were absolutely on target in terms of the need for such an exploration. Second, the thoughtful, balanced, and scholarly manner in which the project was conducted helped to relieve many of the political concerns the larger project was designed to address. For instance, she organized a series of meetings and consultations among international experts and scholars that had a ripple effect in terms of convincing some skeptical diplomats and policymakers that R2P was a serious enterprise in which their concerns would be taken into account. Third, she consulted extensively with the secretariat of the newly-formed UN Joint Office on Genocide Prevention and the Responsibility to Protect.

These consultations undertaken by Professor Rosenberg reflected her determination to build bridges between academia and policymaking, law and politics, and norms and practice. They were, moreover, typically productive. They spurred fresh substantive thinking not only in the reports produced by her project, but also in the Framework for Analysis being developed by the Joint Office. In several critical respects, the Common Standard and Guiding Principles produced by the Cardozo Law project and the revised UN Framework for Analysis developed by the Joint Office point in similar directions in terms of assessment and frameworks for decision-making in situations where there is an acute risk of mass atrocities. Though such guidelines and frameworks are not binding on the political decisions of states and inter-governmental organs, they do make a difference. When such ideas spur convergent thinking in key capitals and international institutions, as these have, they begin to form an accepted standard for international engagement in efforts to prevent atrocities and protect populations.

Professor Rosenberg's commitment to ending atrocity crimes was for the long term. In quiet but determined ways, she shaped an intellectual foundation on which future generations of scholars can build. Understanding that influencing policy and practice takes years of patient and persistent effort, she sought change not headlines. Through sound analysis and scholarship, dialogue and reflection, she demonstrated that mass atrocity prevention is as possible as it is imperative. That is a legacy for the ages.

In Memoriam – by Tibi Galis[32]*

**Mr. Galis also gave oral remarks at Cardozo's memorial event*

Sheri Rosenberg's thinking about mass atrocity prevention marks deeply my work in mass atrocity prevention, as a practitioner looking for policy options that can effectively prevent these horrific events around the world. As a global resource for understanding and developing mass atrocity prevention around the world, Sheri's thought was one of the golden strands of coherence within the set ideas that led to the institutionalization of the organization I lead, the Auschwitz Institute for Peace and Reconciliation.

I would like to outline in this article several mass atrocity prevention principles that our joint work with Sheri consolidated as essential for effectively thinking about developing mass atrocity prevention policy. These principles seem more pertinent now than ever because they enable action for prevention in a time when the management of existing crises caused by mass atrocities dominates policy concern. Unfortunately, these moments when putting out fires seems to be the general focus, in the past have allowed room for a multiplication of the mass atrocities we aim to see prevented.

I. Mass Atrocity Prevention is an Interdisciplinary Policy Complex

In the not so remote past, several areas of study dealing with mass atrocities experienced their imperial hubris in relation to the prevention of atrocities: advocates for transitional justice seemed to have the solution to all ills of post-conflict societies in the 90s, advocates for international criminal law (ICL) institutions were emphasizing ICL immediate preventive function as central in all their public statements, just like advocates of transition studies in the 80s and 90s were very convinced that their neoinstitutional approach would lead to societies more immune to the risk of mass atrocities. While all these approaches have contributed greatly to shaping how we understand preventive policy today, we have very quickly learned that a mix of approaches is necessary to prevent mass atrocities from happening.

Sheri's work is illustrative of this. Her last published work, a

[32] Executive Director of the Auschwitz Institute for Peace and Reconciliation.

chapter in a volume we co-edited with Alex Zucker,[33] identifies the expressive function of international criminal law as the essential contribution of international criminal law practice to the wide agenda of atrocity prevention. In her keen analysis of the actual consequences of mass atrocity prevention discourse, Sheri Rosenberg fully identified the risk of a policy's promising more than it can achieve and shifted the attention to the immensely clear and important impact that the expressive function of international criminal law plays in mass atrocity prevention.

We need to be comfortable with a sober analysis of what certain policies achieve and can achieve because, as we have learnt through the years, many of the deficiencies presented by the policies proposed within a certain discipline have solutions in other areas. Consequently, mass atrocity prevention policies need to be informed by interdisciplinary tools that combine the intellectual traditions of legal studies, transitional justice studies, human rights theory, political science, performance studies, social psychology, history, and numerous other fields that one cannot even think about now. Essential to the success of such an interdisciplinary effort in proposing policy, though, is the willingness to analyze rigorously the impact of policies with a willingness to abandon theoretically attractive assumptions when they are contradicted by policy practice during testing in a mass atrocity prevention environment.

II. Mass Atrocity Prevention is a Political Process

In the last few decades much of the work of genocide studies was directed towards developing tools that would make mass atrocity a technocratic process, ensuring a reaction from political bodies that would not be dependent on political will. Unfortunately, the thorny issue of 'political will' resurfaces every time decisive but costly action is needed in reaction to the emergence of a risk factor for atrocities.

Inspired by Sheri Rosenberg's work with the Auschwitz Institute for Peace and Reconciliation, I can confidently argue that in today's world it is a mistake to expect from politicized bodies, like executives, a non-political decision, especially on issues related to mass atrocity prevention, which are by definition very politically

[33] Sheri Rosenberg, *Audacity of Hope: International Criminal Law, Mass Atrocity Crimes and Prevention in* RECONSTRUCTING ATROCITY PREVENTION 151-174 (Sheri Rosenberg, Tibi Galis and Alex Zucker, eds., 2015).

sensitive issues. This is why I believe that it is essential to work on creating constituencies for atrocity prevention within governments and the societies for which they work. Creating these constituencies necessarily represents a series of long-term processes, involving new education and training processes both within executives and societies at large. Mass atrocity prevention requires a radical change in the way politics happen; necessarily, the shift to a mass atrocity prevention-sensitive politics and policy-making is a long-term process that engages political concerns and creates communities of support for preventive policies.

III. The Domestication of Mass Atrocity Prevention is Essential for the Success of the Prevention Agenda

A much-loved assumption in the field of mass atrocity prevention is that the success of the prevention agenda is dependent on the actions of the international community. Thinking about mass atrocity prevention as a "New York issue" within the UN framework is the result of such an assumption, and this type of thinking continues to reinforce this assumption.

Unfortunately, the "international community" lacks the capacity to implement the detailed aspects of the prevention work: making domestic group protection mechanisms work, improving the output of national human rights bodies, improving the preventive potential of national education policies, rethinking existing domestic resource distribution models to make them less prone to reinforce societal cleavages, etc. All these, and many other policy areas intimately related to mass atrocity prevention, are the result of national processes that can be at best encouraged and assisted by the international community. This is why moving the epicenter of the discussion about mass atrocity prevention to the national level is essential.

The move to the national level depends, of course, on having national capacities to apply a mass atrocity prevention lens to national policies. And in many situations these capacities do not exist. It is extremely encouraging, however, that different regional initiatives (for example, The Latin American Network for Genocide and Mass Atrocity Prevention that Sheri Rosenberg helped found the International Conference for the Great Lakes Region) and the naming of national focal points for the responsibility to protect through the Global R2P Focal Points Network contribute to the creation of domestic capacities within States and to the

multiplication of those capacities within executives.

These networks and frameworks that create support and pressure for the emergence of national models of domesticating prevention have contributed largely to the emergence of national mechanisms for mass atrocity prevention. These national mechanisms are governmentally established bodies that coordinate mass atrocity prevention policy within state institutions. These national mechanisms are at different degrees of institutionalization in the Great Lakes Region (Tanzania, Uganda, Kenya, etc.), Latin America (Paraguay, Argentina, Mexico, etc.) and the USA. Often they include civil society within their work either by making civil society part of the national mechanism, a model that is preferred in African States, by making civil society organizations an official consultative partner of the mechanism, a model preferred in Latin American States, or by making civil society an implementation partner, a model preferred by the US. In spite of the different degrees of inclusion of civil society within the work of a national mechanisms, it is absolutely clear at this point that governmental action by itself is insufficient and needs to engage coordinated and independent civil society action to obtain durable change within society.

I would like to argue that current experience reinforces the idea that national mechanisms for mass atrocity prevention have to be both inward and outward looking. By this I mean that national mechanisms need to deal with mass atrocity prevention both domestically and outside their borders. We all can agree that States experience very different degrees of risk regarding mass atrocities. Nonetheless, there is no State in the present world that does not experience some degree of risk regarding the emergence of mass atrocities at home. And these risks, in keeping with a truly preventive approach, need to be dealt with appropriately. A secondary reason for the need to deal with domestic issues effectively is also one of legitimacy on the international stage: a State that engages into international mass atrocity prevention policies without having a domestic approach for the same issue is seen as arrogant and will have a hard time finding genuine partners in at-risk regions.

Further, a national mechanism is a great opportunity for States that engage in development assistance to analyze how development assistance programs play into successful policies of mass atrocity prevention. I would like to argue that donor States have an obligation to engage in this analysis and to improve the connection between their development assistance and a preventive peace and security

agenda, understood as building societies that are unlikely to experience mass atrocities. Much remains to be done in this field - our policy findings about the link between development and prevention are in their infancy.

Domestication of mass atrocity prevention also brings attention to the diversity of tools that we have available when working to develop mass atrocity prevention. This is why the prevention agenda looks very different in different national contexts. For example, while some Latin American states focus on transitional justice and indigenous populations' rights, others focus on policing reform and structural inequalities. In the US and Canada, there is a focus on starting transitional justice and on protection of indigenous populations' rights. On the other hand, some African States focus on land conflict and voting rights, while others focus on developing State capacity during periods of crisis management. The landscapes of mass atrocity prevention challenges and the tools that can be used for them are infinite. Nonetheless, an analysis of the tools we use in these diverse contexts indicates that more attention needs to be given to the tools that are particularly relevant within the space between structural prevention and crisis management. Sheri used to call this "mid-term prevention" and the "sweet-spot for engagement." Detailed comparative analysis in this policy space needs to be a priority in our field, given that it is under-theorized and underdeveloped.

IV. Instead of a Closing

I would propose these three principles derived from my joint work with Sheri as essential in today's mass atrocity prevention agenda. At the same time, I invite us all to review continuously and be inspired by Sheri Rosenberg's work. Sheri's legacy is monumental - her ideas, captured in her writings, are a source of innovation in our field that need to be used very much more. Her legacy also includes a dedication to setting big goals and achieving them through arduous work. Sheri has shown us that changing the world for the better is not only possible but very much within our reach.

I commit to continuing Sheri's legacy through my thinking and working within mass atrocity prevention. The organization I lead, the Auschwitz Institute for Peace and Reconciliation (AIPR), will continue its work in the spirit of Sheri Rosenberg, given that she intimately shaped our work at all its levels. We at AIPR also commit

to honor activist academics like Sheri through the creation of a Sheri Rosenberg Prize, to be awarded to those who bring us revolutionarily closer to successfully preventing mass atrocities.

I invite you all to honor Sheri's legacy by finding the way in which you can best contribute to preventing mass atrocities today.

In the Tradition of Raphael Lemkin: Sheri Rosenberg's Scholarship and Activism on Human Rights and Genocide Prevention and Analysis of 'Genocide by Attrition' – by Joyce Apsel[34]

At the 10th bi-annual International Association of Genocide Scholars (IAGS) conference at Yerevan, Armenia held in July 2015, Donna Lee-Frieze of Monash University, Australia, vice-president of the association in the opening session, where hundreds of scholars and international dignitaries including the President of Armenia were gathered, honored Sheri Rosenberg for her contribution to genocide studies and toward prevention of genocide. The following remembrance that I wrote was read aloud:

Remembering Sheri Rosenberg (1967-2015)

It is with a deep sense of personal loss that I remember Sheri Rosenberg. I have known Sheri for over ten years, and admired all her work and accomplishments on both a personal and professional level. Sheri served as an extraordinary model for a new generation of scholar activists in human rights and genocide studies, building on Raphael Lemkin's model of engaged scholarship.

Originally, I met Sheri at a conference of the IAGS just as she began to develop and expand the Holocaust and Human Rights Program at Cardozo Law School. She created a series of programs and clinics, most recently as the Director of the Human Rights and Atrocity Prevention Clinic, that made Cardozo Law School a center for international human rights dialogues, advocacy and educational initiatives. And, she, along with her students and associated faculty, took part in important legal cases including at the European Court of Human Rights to Boston and teaching about the Armenian Genocide to New York City asylum claimants.

Sheri and I met periodically over the years in New York City, discussing a range of issues, brainstorming, a combination of the personal and professional. Her vision, knowledge and intelligence were extraordinary, and her willingness to share ideas and dedication

[34] Professor, New York University, and President, Institute for the Study of Genocide.

was inspiring.

At my suggestion, as President of the Institute for the Study of Genocide (ISG), she became a member, and later a Board Member and served as Executive Director of ISG. Sheri's vision was continually growing, as evidenced by a series of cutting edge programs and conferences at Cardozo Law School beginning with an important re-evaluation of the Nuremberg trials. And, under her leadership, the Institute for the Study of Genocide was a co-sponsor or participant in a number of these conferences about post-genocide Rwanda, atrocity crimes and most recently, *The Responsibility to Protect: a Framework for Confronting Identity*. Sheri participated in an ISG conference sponsored at the University of Notre Dame, and co-authored an article on "Genocide by Attrition: silent and efficient" included in the edited volume *Genocide Matters*.[35] In 2011 and 2013, under Sheri's auspices, the Institute for Study of Genocide Biennial Lemkin Award Ceremony and Lecture, for the outstanding work on genocide or other gross human rights violations chosen by scholars from the Lemkin Award Committee, was held at Cardozo Law School attended by Cardozo law students as well as NYU undergraduates, faculty and the public.

One of the things that was remarkable about Sheri was her capacity to pull together different networks and people across regions and generations who were interested in a range of human rights and genocide studies topics. Based in part on earlier work with the Human Rights Chamber in the Balkans, she presented a number of papers at conferences and wrote articles on issues related to justice in the Balkans such as "Equality after Genocide: Jurisprudence of the Legal Institutions Established in Dayton's Bosnia."[36] More recently, I heard her analyze the legal implications of the responsibility to protect (R2P) at a panel she organized at the American Jewish Historical Society for their series honoring Raphael Lemkin; and I read an article she wrote on the R2P which provides a unique interpretation based on her expertise in law and genocide studies. These are just some examples of the many projects and works she led and/or contributed to.

Two images among many stand out: visiting Sheri in

[35] Sheri P. Rosenberg & Everita Silina, *Genocide by Attrition: Silent and efficient, in* GENOCIDE MATTERS: ONGOING ISSUES AND EMERGING PERSPECTIVES 106 (Joyce Apsel & Ernesto Verdeja, eds., 2013).

[36] Sheri P. Rosenberg, *Equality after Genocide: Jurisprudence of the Legal Institutions Established in Dayton's Bosnia, in* DECONSTRUCTING THE RECONSTRUCTION 115 (Dina Francesca Hayes ed., 2008).

Philadelphia after she gave birth to her third child, Margaux, and watching her as a loving mother with her three small children. The other is of Sheri at the podium at Cardozo Law School (standing on a platform to be seen) at the end of one of the many conferences she organized, her voice ringing out clearly and with brilliance pulling together the themes and their significance about a range of human rights issues. Her presence and vision are cherished and remembered; my condolences and that of ISG and other members of the scholarly community extend to her entire family.

This essay focuses on Sheri Rosenberg's contribution to an invited conference held at the University of Notre Dame and co-sponsored by the Institute for the Study of Genocide and the Kroc Institute for International Peace Studies in spring, 2011. This symposium grew out of earlier conversations of ISG members about the direction of scholarly research in genocide studies, and the need to re-evaluate the field and consider new directions and ongoing challenges. The volume that emerged out of these two days of discussion was *Genocide Matters: Ongoing issues and emerging perspectives* co-edited by Joyce Apsel and Ernesto Verdeja.[37] Scholars analyzed a series of themes about the state of genocide studies from UK comparative historian, Donald Bloxham on the tensions and connections between Holocaust studies and genocide studies, to political scientist Paul D. Williams on the obstacles and prospects of humanitarian military intervention after the responsibility to protect. Sheri Rosenberg and Dr. Everita Silina's essay, "Genocide by Attrition: silent and efficient"[38] emphasized new directions in understanding how groups are undermined, weakened, and eliminated through the purposeful withdrawal of life sustaining necessities.

This co-authored essay reflects Sheri Rosenberg's unusual ability and success in working with people trained in different disciplines on a range of projects as well as her ongoing work with a series of United Nations representatives, including special rapporteurs, and agencies at the UN on torture, genocide, responsibility to protect and related issues. It also attests to her recognition that too often on issues of human rights and genocide studies the legal discourse and court decisions are isolated from the literature emerging in history or the social sciences, on these

[37] GENOCIDE MATTERS: ONGOING ISSUES AND EMERGING PERSPECTIVES 106, 107 (Joyce Apsel & Ernesto Verdeja, eds., 2013).

[38] Rosenberg & Silina, *supra* note 35.

subjects. Dr. Everita Silina, a political scientist at the New School for Social Research was her partner in this project, and initially they had several meetings with representatives from the UN Office of Special Rapporteur for Genocide Prevention in the early stages of compiling the study and gave several presentations.[39] They submitted a report of findings and continued to research cases (research was conducted by Sheri Rosenberg's Cardozo Law School students and Dr. Everita Silina's undergraduate honors students in a political science course at Yeshiva University). As Dr. Everita Silina recalls, "The report was meant to aid in the updating of the concept of genocide (in terms of more recent scholarship on the concept) and to help craft the prevention framework."[40] They developed the genocide by attrition project further and workshopped their evolving research and manuscript to a number of audiences including colleagues at the. Cardozo Law School, the Auschwitz Institute, and the New School for Social Research.

Issues of how people are destroyed continue to be taken up in scholarship as well as fascinate the general public. Simultaneously, new methods continue to be invented alongside age-old ones such as displacement and starvation as part of the processes of human destructiveness. And, the methods of violence, how atrocities are carried out, have long been a preoccupation of scholars of war in history, sociology, anthropology, and other fields; and it is not surprising that the study of genocide and genocidal atrocity has certainly been taken up with these themes as well. The UN Convention on the Prevention and Punishment of the Crime of Genocide[41] includes five different series of acts "committed with intent to destroy, in whole or in part . . . ."[42] Both Holocaust and genocide studies as they emerged in the 1970s have been taken up with analysis of a range of methods of destruction. For example, in a classic article, "The Modernity of Genocides: War, Race and Revolution in the Twentieth Century," historian Eric Weitz points out that 20th century violence "is reflected not only in the number and intensity of wars."[43] But, that "[w]oven through and wrapped

[39] E-mail from Dr. Everita Silina, to author (Sept.18, 2015) (on file with author)..

[40] *Id.*

[41] U.N. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

[42] *Id.* art. 2.

[43] Eric Weitz, *The Modernity of Genocides: War, Race, and Revolution in the Twentieth Century* ,*in* THE SPECTER OF GENOCIDE: MASS MURDER IN

around wars both large and small were radical violent population politics—-the categorization and then the internments, deportations, killings, and ultimately, genocides of defined population groups."[44]

The growing literature in genocide studies from colonial settler societies to death and displacement in Darfur, Sudan has expanded the understanding of genocide as process and the range of cases and methods used to weaken and eliminate groups of people. Another factor in expanding interpretations of the methods used to carry out "killing in whole or part" [45]under the provisions of the U.N. Convention on the Prevention and Punishment of Genocide have been a series of court rulings by the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for the former Yugoslavia (ICTY) as well as national and local court rulings.

The "genocide as attrition" project and the co-authored essay that appeared in *Genocide Matters* (the original version of the essay was over 23,000 words and a substantial section on the legal basis for the harms carried out and the rights cited written by Sheri Rosenberg were shortened due to space limits) builds on the earlier report submitted to the UN and earlier research in genocide studies, but is situated in the new directions of a more nuanced understanding and expanding analysis of how genocide and other mass atrocities are carried out. Ironically, often in articulating this more nuanced understanding, scholars need to return to "seeing" and understanding the impact of age old, recurrent patterns of displacement or withdrawal of life necessities. And, this is linked to the idea that if the range of methods, the early and later indicators, which all too often are overlooked, are analyzed and highlighted, that a better early warning and prevention model can be designed and acted on.

In their essay, Rosenberg and Silina examine a series of case studies: The Ottoman Empire (May-August 1915), Cambodia (1975-79), the Ukraine (1932-33), the Warsaw Ghetto (1940-1943), Bosnia-Herzegovina (1992-1995) and Darfur, Sudan (2003-present). Each case study (the authors had a number of other examples they planned to explore further) had at least two or more elements characteristic of genocide by attrition methods. By combining legal, historical and political analysis, the essay fills a gap in understanding

INTERNATIONAL PERSPECTIVES, 53 (eds. Robert Gellately and Ben Kiernan, 2002)

[44] *Id.*.

[45] U.N. Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 41.

the processes of destruction through a much-needed further articulation of the concept "genocide by attrition."i By using comparative and transnational analysis, across space and time, Rosenberg and Silina demonstrate the importance of highlighting the methods of attrition that have "been proscribed under international human rights law since the 1960s."[46]

The processes focused on in looking at methods of attrition were: forced displacement, the denial of health and health care, famine and malnutrition, sexual violence and rape. In analyzing each of these elements, Sheri Rosenberg grounded the analysis by articulating the relevant international human rights legal history including norm setting from declarations and guiding principles to conventions and court decisions.

For example, in looking at forced displacement, which is a part of the processes of elimination in a number of cases under examination, the phenomenon is a significant, ongoing tactic in a range of mass atrocities. But, it is emphasized that international law has only recently begun to directly address this crime as a distinct phenomenon. Refugees have been defined since the 1950s as individuals who among other characteristics cross state borders,[47] and their condition triggers a series of rights and conditions for seeking asylum. But, the plight of internally displaced people (IDPs), that is, individuals who have been forced out of their homes and traditional places of sustenance and livelihood, but remain in a new space (often displaced persons camps) within the same state, was only introduced in independent international law in 1998, through the Guiding Principles on Internal Displacement.[48] And, it needs to be pointed out that even that new space of IDPs may be purposely threatened, IDPs may experience repeated displacements. Such Guiding Principles place a "positive obligation upon states."[49] These include what is described as "a compelling need for international human rights protection," reflecting how such individuals "are at a high risk of being deprived of such basic rights as security, health care, food and work, and of being subjected to forced labor and

[46] Helen Fein, *Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between Human Rights, Health and Mass Death*, 2/2 HEALTH AND HUMAN RIGHTS 11 (1997).

[47] *See e.g.,* 1951 Convention Relating to the Status of Refugees, G.A. Res. 429 [V], 189 U.N.T.S. 150, (Jul. 28, 1951).

[48] Rosenberg & Silina, *supra* note 35, at.113.

[49] *Id.*

sexual violence."[50] The analysis points to how Principle 10 of the Guiding Principles recognizes that forced displacement may play a role in genocide calling, specifically for the protection of IDPs from genocide.[51] Further, recent court decisions of the ICTR and ICTY refer to forced displacement as part of the destruction, and for example, in *Prosecutor v. Radislav Krstic*[52], the ICTY recognized forced displacement as part of the mechanism of moving forward "the genocidal plan."[53]

Throughout the essay, the links between international law and the right to healthcare, security, and food as well as protection from malnutrition, displacement, and sexual violence and rape are connected. The essay traces through a comparative perspective, with co-author political scientist Dr. Everita Silina's analysis, the processes of destruction of targeted groups, that is annihilation through attrition—including Armenians in the Ottoman Empire, Cambodians in the killing fields, Jews in the Warsaw ghetto to the targeted groups of IDPs in Darfur today. Finally, in its conclusion, the essay discusses how a more "elastic understanding" of genocide that includes the processes described in genocide by attrition may be helpful in expanding the tool box used to create models and governmental mechanisms toward prevention of genocide and other mass atrocities by further refining and highlighting early warning and early action.[54]

Sheri Rosenberg's scholarship and work is in keeping with the model of Raphael Lemkin, lawyer, scholar, and activist who coined the term "genocide" and contributed to drafting the 1948 UN Genocide Convention. The article on genocide by attrition reflects a number of these scholarly interests in bringing together different discourses about genocide and other mass atrocities, and contextualizing the significance of legal history and developments. Sheri Rosenberg's commitment to human rights was deep and ongoing, combining application and advocacy. Her analysis and research addressed understanding both severe human rights violations and application toward models and strategies of how to prevent genocide and other mass atrocities in the future.

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[50] Quoted from the Office of the UN High Commissioner for Human Rights, "Questions and Answers about IDPs," United Nations. *Id.* at 114.

[51] *Id.*

[52] Case No. IT-98-33-T, Trial Judgment, (Int'l. Crim. Trib. for the Former Yugoslavia August 2, 2001).

[53] Rosenberg & Silina, *supra* note 35, at 114.

[54] *Id. at*. 120-122.

Memories of Sheri Rosenberg – by Barbara Harff[55]

I don't remember when I met Sheri for the first time—it must have been anywhere from 10 to 15 years ago–but she certainly left an impression. Energetic, intense, a hard worker, and full of ideas about what can be done to prevent gross human rights violations and future genocides. She was also realistic and matter of fact, yet one could sense that something drove her, she wanted to make a difference, to remind us that the Holocaust was and is unfortunately not the only case in human history in which people are killed because of who they are, not for what they have done. Though much older, I felt a kinship with her. Here I was, German-born, non-Jewish, with the baggage left by my former countrymen. I was angry and ashamed at being born a German, blaming all Germans who were 25 years older than me. I was intensely anti-authoritarian, cynical,and secular when I met Sheri. After listening carefully, Sheri said that she did not believe in collective guilt and that my family, who maintained their Communist and Social Democratic convictions during the Nazi era, should not be blamed. I begged to differ, pointing out that "Zivilcourage" was missing from the Germans during Nazi's rise and rule, and that guilt should be carried by all those who did nothing.

I vividly remember another conversation with Sheri that taught me that here was a woman with an enormous capacity for empathy, something I always thought was key to understanding what truly happened to people. We had discussions on how people feel when facing certain death, and my question always was: why did they not kill at least a few of their tormentors? The question that haunted us was: how could you hurt, maim, and kill the elderly, children, women—that is, people who look at you in disbelief, asking why me?

Sheri was scholar, teacher, activist and organizer, and during the last years of her life she was a member and then the convenor of the Genocide Prevention Network (GPANet) that I co-founded with Yehuda Bauer in 2004. Our original plan was to invite only senior scholars, those who had the connections and status to reach upper echelons of bureaucracies. I wanted Sheri to join because of her many talents and for what she had accomplished in her time as an Associate Professor—a decision endorsed with enthusiasm by

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Yehuda, Ted Robert Gurr, Jennifer Leaning, Helen Fein, Eric Reeves, Juan Mendez, David Scheffer, James Smith of the Aegis Foundation, Roy Gutman, and Andrea Bartoli. Our goal was to educate diplomats and governments (free of charge) about how to anticipate and prevent mass murder. The Auschwitz Institute for Peace and Reconciliation, of which Sheri was a board member, did this in a much more direct way, teaching successive international cohorts of young diplomats at Auschwitz's research center. It boggled my mind how one could teach in one of the largest mass graves in recent history. It takes a very special person to overcome one's revulsion and teach in a former SS barracks with torture chambers in plain sight.

About Sheri's scholarship: though I have background in international law, particularly humanitarian intervention issues, my key interests lay in prevention based on risk assessments and early warning. Sheri was one of three people who literally ran with the tested model that I developed for the American intelligence community.[56] Here, I am referring especially to her "Early Warning in Ethiopia: Analysis," done in 2006 with her students in the Human Rights and Genocide Clinic at Cardozo.[57] It was a superb case study applying not just a theoretical model but testing its findings in a country largely ignored by the scholarly community. Not only did her findings validate the model, but she went way beyond in identifying and producing a chart of legal obligations. This was scholarship at its best: build, revise, test, and recommend policy.

Her conferences were extraordinaire. In February 2013, I attended the Deconstructing Prevention Conference at Cardozo. It was probably the best-organized conference I have ever attended. Why? People were engaged, the presentations excellent, side conversations proved to be beneficial for exchanging ideas, and the number of interesting people that I met here for the first time gave me hope that applied genocide scholarship was well on its way. In contrast the growing membership of the International Association of Genocide Scholars dissipated their energies in squabbling about right and wrong directions and re-inventing the wheel. The Deconstructing Prevention Conference showcased fresh and exciting

[56] Barbara Harff, *No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955*, Vol. 97 No. 1 AM. POL. SCI. REV. 56 (2003).

[57] Christina Holder, Zeba Huq & Mary Catherine Ryan, Early Warning in Ethiopia: Analysis 61, app. (Dec. 2006) (unpublished report) (on file with the Cardozo Human Rights and Atrocity Prevention Clinic).

scholarship.

In November of the following year, Sheri and my husband Ted attended a meeting of GPANet hosted by the Foreign Ministry of Sweden (I could not go). In a side conversation Sheri told Ted how much she appreciated my mentorship. He replied, he told me later, that in his recollection I had never spoken of her as though I had mentored her, she was a valued and independent colleague of great knowledge and energy, not in need of mentoring!

At a meeting in Jerusalem sponsored by the Israeli Academy of Science, held in September of 2012, Sheri told me about her cancer. She was matter of fact about it. I was upset. Over breakfast, where she in her usual fashion worked on a response to a paper we had heard the previous day, told me about her plans, how she would go about dealing with her illness. Mainly she would live and do as she had done in the past–and she did! When she passed, members of our group wondered what in the world had happened. Ted Gurr and I are in the process of co-editing a book on prevention of mass atrocities to which each GPANet member will contribute a chapter. This book will be dedicated to Sheri, one small way to help ensure that she will be remembered.

Last, here are some brief comments on her work on prevention. Quoting Sheri:

> Tension between conflict prevention, conflict resolution and atrocity prevention needs to be resolved. Or at least better understood. Many suggest that conflict prevention and resolution aim toward a neutral and stabilized outcome among combatants or potential combatants. Pursuing these goals, however, may conflict with the goals of atrocity prevention and protection of populations, namely accountability and deterrence. We the legal community should not be trying to foist the prevention role on the [International Criminal Court] in an attempt to mitigate each communities' weaknesses and salvage each communities' reputation, instead of focusing on how to best achieve our aims. Basically talking about prevention without acting, until societies descend into chaos, is not an option.[58]

[58] Sheri P. Rosenberg, *The Relationship between the International Criminal Court and the Prevention of Mass Atrocities*, Iss. 12 GPN (Winter, 2012), http://www.genocidepreventionnow.org/Home/tabid/39/ctl/DisplayArticle/mid/1138/aid/666/Default.aspx.

Here is the voice of the scholar, activist and teacher—let us listen! I mourn a friend who left us much too early, but one who will not be forgotten.

Sheri Rosenberg as Convener of the Genocide Prevention Advisory Network – by Tetsushi Ogata[59]

Prof. Sheri Rosenberg was Convener of the Genocide Prevention Advisory Network,[60] an "informal-formal" network of more than 20 scholars and experts who provide scientifically based risk assessments, analysis of mass human atrocities, and advice to all interested parties, including academic bodies, the United Nations, individual governments, regional organizations, and non-governmental organizations, to prevent genocide and other mass atrocities.

She assumed the role of Convener of GPANet in 2013, following the former conveners, Prof. Ted R. Gurr and Prof. Andrea Bartoli. GPANet was founded in the late 1990s as a combined initiative of a number of academics. In 1999, most of the original group members (i.e., Yehuda Bauer, Barbara Harff, Roy Gutman, Ted Gurr, David Scheffer, James Smith, and Helen Fein) formed the academic group responsible for the content of the First Stockholm Forum of 2000, initiated by then Swedish Prime Minister Göran Persson, on Holocaust Education, attended by a large number of governments. The same group was subsequently responsible for the content of the Inter-governmental Stockholm Forum in 2004 on Genocide Prevention.

While GPANet is not an NGO, its unique "informal-formal" nature of the network has provided a space to explore and discuss "theory-based practicality" of genocide prevention with government officials. Since its founding, and in its work with governments, GPANet has presented: a) research and investigation into genocidal events and other mass atrocities – risk assessments, possibilities of early warning; b) investigation into non-military options of preventing genocidal events and other mass atrocities; c) investigation into options of non-military steps to stop or at least alleviate ongoing events of that nature; d) provision of advice to UN bodies (mainly the UN Special Adviser on Genocide Prevention, and now also the Special Adviser on the Responsibility to Protect) and

[59] Lecturer in Peace and Conflict Studies, University of California, Berkeley.
[60] GENOCIDE PREVENTION ADVISORY NETWORK, http://GPAnet.org,

interested governments, when such advice is sought; f) examining the possibilities of international interventions of different kinds.

In 2013, Prof. Rosenberg presided over the GPANet meeting in Stockholm, which was hosted by the Swedish and Swiss governments, in collaboration with the Folke Bernadotte Academy. State level participation also included representatives from seven governments – Argentina, Canada, Denmark, the Netherlands, Sweden, Switzerland and the United States.

At the end of the Stockholm meeting, she presented "Convener Statement" summarizing a number of recommendations raised during the sessions, as follows:

Recognizing the global character of the dangers we face, now and in the future, of genocide and mass atrocities, we will support every diplomatic effort to arrive at compromises in the UN framework and outside of it, creating a common ground between great and small Powers to prevent and combat massive loss of lives.

Genocide and mass atrocities are closely interrelated phenomena, which we can prevent best when we have reliable and general knowledge about causes and processes. We recommend using existing risk assessments as provided by GPANet and enhanced early warning capabilities, in collaboration with others including interested NGOs, to further our understanding of the sources and processes of genocide and mass atrocities, and thus allow planning and deployment of policies that aim at reducing the sources of those risks as early as possible. In other words, the ultimate goal is to identify a developing escalation and interrupt it.

The emerging doctrine of R2P, which presently is a political norm grounded in international law, may be a useful tool in identifying pre-conditions of genocide and mass atrocities. Assessments made with reference to R2P may give more substance to how the doctrine is understood and applied.

We recommend that assessments include attention to exclusionary ideologies and hate propaganda which are likely risk factors and early warning indicators of genocidal intentions.

We recommend close attention to information on terrorism and the groups that perpetrate it. They may perpetrate mass atrocities and their ideologies and actions can foreshadow genocidal policies they would use if they controlled a region or country. Both genocide and terrorism involve one-sided killings of civilians and while the international community has taken forceful measures to prevent and control terrorism, it has lagged behind in responding to genocide with equal determination. Given the similarity in targeting civilians,

there is a need for closer collaboration when it comes to prevention and control.

Our understanding of the sources of genocide and mass atrocities is not matched by comparable knowledge about the best tools for responding to them. We recommend major research efforts to identify the policies that have been most used and most effective in past efforts to deter and deescalate humanitarian crises. This means both general assessment of the impacts of diplomatic, political, and economic strategies, and "lessons learned" studies of specific episodes.

We recommend that knowledge about impending and ongoing atrocities be shared widely among NGOs, civil society, and the general public by an informed media. Dissemination of such information should help create and sustain support ("political will") for policies of response.

We recommend that large-scale, ongoing atrocities and genocides, like those in Sudan and Syria, be monitored and publicized especially closely, so as to sustain public and political awareness, and to focus attention on the continuing need for international responses. Disillusion about lack of effective international action should be a spur to more innovative and collaborative development of alternative policies.

When foreknowledge and international policies fail to halt progression to mass atrocities and genocide, the need for humanitarian responses will be especially great. We recommend planning for sustained and creative efforts to provide humanitarian assistance in such circumstances. Policies for providing such assistance may include establishing and securing safe zones for international refugees and internally displaced persons.

People in the communities, civil society, and/or polities that are at risk of genocide and mass atrocities often are the first to recognize those risks and may be able to alert authorities and outsiders. We recommend that governments support civilians in their efforts to provide warnings.

Prevention of genocide and mass atrocities requires multilateral coordination and action. We recommend that governments identify their national focal points for such tasks and engage with the multilateral platform to share knowledge, assessments and policy planning through the Global Action against Mass Atrocity Crimes (GAAMAC).

Prevention of genocide and mass atrocities requires commitment. We recommend that governments reaffirm the

Declaration of the Stockholm International Forum on Preventing Genocide in 2004 and build upon it in concrete ways.

Regional and international organizations should acknowledge and act on the same commitments. We recommend that governments enhance existing risk assessments and early warning capabilities by developing their own capacities for prevention action. The governments present at the GPANet 2013 Stockholm meeting are well placed to provide encouragement and assistance to regional organizations in this regard.

Mass atrocities are occurring in the Central African Republic. There is a real risk that exceptionally grave human rights violations, as described by international legal instruments outlawing genocide and crimes against humanity, are occurring or could occur in the future. Immediate action must be taken to interrupt the escalation in the Central African Republic.

Although these points do not necessarily reflect all the members' views, it was the first time for GPANet to produce such tangible list of recommendations. We are indebted to her leadership in bringing together various viewpoints from the members and making it possible to leave such legacy. Her contribution will be greatly missed but will be remembered by all the GPANet members.

In Memoriam: Sheri Rosenberg – by Yehuda Bauer

I did not really know Sheri. It is true that I was one of those in the Genocide Prevention Academic Network (GPAN) who asked her to join it, after I had read some of her work, and had been very much impressed by it, although international law is most definitely not my area of expertise. We then were in touch quite a number of times, and once I even met her with her husband. I organized a meeting on genocide prevention at the Israeli Academy of Science, and invited her to chair the session on international law; she accepted and did a tremendous – and quite difficult - job in presiding over an unruly group of individualistic, quarreling academics, ignoring an insult and keeping proceedings under control. She certainly contributed a great deal to the success of that symposium. I was very glad that she accepted the position of convener of GPAN, on top of all her other work such as doing her duty at the Cardozo School, and writing her own contributions. I had a suspicion that she was not well, but when I asked her point blank, she denied it, saying it was just a passing problem. I did not inquire further. Then she did not answer mails, and I got frustrated. A short time before she passed away, she

returned to her convener responsibility, and I thought that whatever the problem had been, it was settled. A short while after that I was utterly shocked to hear that she had died.

Though my acquaintance with Sheri was superficial, I thought she was a jewel in our collective crown – a sensitive but at the same time down-to-earth, practical person, a supreme expert in her field, a wonderful and enthusiastic collaborator in a difficult area that is developing, and that needs a lot of Sheris to get anywhere. I knew that if one asked her to do something really worthwhile then she would be there to do it. I never inquired about her private life, her beliefs, her upbringing, or anything of a private nature. I respected her too much to appear as the inquisitive outsider. I certainly miss her, along with a large number of her friends and colleagues.

Sheri Rosenberg's Scholarship on Equality Law – by Julie Suk[61]

Sheri Rosenberg spent a significant period of her human rights career in Bosnia and Herzegovina, serving first as an expert consultant and then a lawyer for the State Department in the Human Rights Chamber there. That experience influenced her broader ambitious ideal of a pluralistic society in which people of different ethnic backgrounds could share a polity peacefully. Sheri's article, "Promoting Equality After Genocide,"[62] is a thoughtful and thorough scholarly account of the functions and dysfunctions of the primary tools of constitutional and human rights law–equality and non-discrimination– in building a democratic society in Bosnia and Herzegovina (BiH).

On the one hand, Sheri saw the law of equality and non-discrimination as critical to the future of BiH, but on the other, she also saw the absurdity of invoking such norms immediately following ethnic cleansing, genocide, and war. As she put it, quite starkly: "What use is the notion of equality when brutal crimes against human dignity have been perpetrated based upon nothing more than one's ethnic identity?"[63] What can legal equality possibly mean to people harboring fresh memories of violent ethnic cleansing? And how should constitutional equality be enforced to create the conditions for a new pluralistic and peaceful regime?

[61] Professor, Benjamin N. Cardozo School of Law, Yeshiva University.

[62] Sheri P. Rosenberg, *Promoting Equality After Genocide*, 16 TUL. J. INT'L & COMP. L. 329 (2008).

[63] *Id.* at 331.

Sheri knew that human rights would not flourish by repressing or ignoring the ethnic divisions that had produced such devastating consequences in the former Yugoslavia. But, at the same time, she was deeply concerned about the law's potential for retrenching those ethnic divisions by institutionalizing them, and foreclosing the possibility of a truly pluralistic democracy in Bosnia-Herzegovina.Her critique of the early equality decisions of the Constitutional Court of Bosnia-Herzegovina began to build a highly context-sensitive jurisprudence that would cautiously tread this volatile divide.

First and foremost, Sheri was passionately convinced that the constitutional guarantee of equality in BiH had to be understood as substantive equality, not merely formal equality, in order for it to be effective. Substantive equality, as Sheri understood it, required attention to alleviating structural inequalities that resulted from social and historical circumstances. Formal equality focused on eradicating race and ethnic distinctions in the law. Sheri was concerned that, despite an acknowledgment of substantive equality as an operative principle, the Constitutional Court of BiH often reverted to formal equality, sometimes in ways that perpetuated the ethnic divisions that had given rise to war.

In the property context, for instance, Sheri was critical of the BiH's Constitutional Court's inability to recognize the equality violation in the Law of Abandoned Apartments. Although that law was found to violate Croat claimants' rights to respect for home and rights to property, no discrimination was found. On Sheri's view, the Law on Abandoned Apartments was discriminatory: it essentially provided that apartments abandoned by their owners after the onset of war would be reallocated to people who remained and participated in "the fight against the aggressor." Those who were abandoning their apartments during this period were those most likely to be subject to violence or persecution based on ethnicity, whereas those who stayed were most likely to be perpetrators of this violence. Those who were displaced could not reclaim their apartments unless they did so within seven to fifteen days; otherwise the apartment would be declared permanently abandoned.

For Sheri, the Croat claimant's victory on grounds of property or respect for home grounds was inadequate, because of the Court's inability to declare the law to be discriminatory. According to the Chamber, the claimant in the case, a Croat, was not similarly situated to a member of the Bosniak community, and therefore they could not be compared for the purposes of discrimination analysis. Sheri

found this to be absurd:

> The fact that the law was not applied to Bosniaks, because they did not leave, only illustrates the invidious and discriminatory intent of the legislation. Requiring a symmetrical analysis in this asymmetrical context clearly produces results that are unfair and unjust. Such analysis stymies the law's ability to provide substantive equality and redress the inequality created by the policy of ethnic cleansing. The fact that laws in BiH were created to enact discrimination based upon ethnicity, and would therefore never be applied in a similar fashion among ethnic groups, was completely ignored.[64]

Sheri was critical of the Constitutional Court's tendency to "subordinate discrimination claims to the claims of the rights to home and property."[65] As Sheri was well aware, however, making equality claims dependent on other fundamental rights claims is a familiar move in the history of the jurisprudence of the European Court of Human Rights, and the United States Supreme Court. Indeed, in the U.S. context, constitutional scholars have suggested that invoking liberty, rather than equality, is more likely to garner widespread support in divided and pluralistic societies. Why, then, was Sheri so committed to recognizing discrimination as a primary human rights prism to overcome the legacy of genocide in postwar BiH?

Sheri's reading of the landmark Constituent Peoples Case provides a partial answer to this question. In that decision, the Constitutional Court invalidated provisions of the Republika Srpska Constitution and the Federation Constitution which had granted special rights to Serbs in Republika Srpska and Bosniaks and Croats in the Federation. The Constitutional Court held that all ethnic groups – Bosniaks, Croats, Serbs, and "Others" are "constituent peoples," and equal across the entire territory of BiH, regardless of where they reside. Practically speaking, this meant that political power could not be assigned across territorial/ethnic lines only; that while some forms of collective group-representation rights could remain, a constitution committed to human dignity and a multi-ethnic state had to respect individuals by preventing ethnic segregation or domination. Sheri endorsed the Constituent Peoples Decision as a

[64] *Id.* at 357.
[65] *Id.*

step towards a new liberal vision of group rights:

> In order to understand how best to promote equality in societies with the collective experiences of ethnic cleansing and genocide, (which only solidifies group consciousness), it is necessary to appreciate that group identity is dialogical; that it depends on social interaction, including legal and political interaction; and that it is located in culture and history. This is particularly salient in Bosnia, where geographical location and historical development have made it the crossroads of many cultures, religions, and empires.[66]

Sheri's approach to equality after genocide was both practical and visionary. Formal equality had to be rejected; it was absurd to be blind to the ethnic effects and hidden ethnic motivations of many neutrally framed policies in an ethnically divided society. At the same time, recognizing the ethnic dimension of many policies and practices, and the deep ethnic hatreds that had led to their adoption, should not perpetuate ethnically defined institutions as the only *modus vivendi*. It was the job of human rights lawyers and constitutional courts to move these institutions towards a more optimistic–and more challenging–framework for the future of multi-ethnic states.

Sheri spent her career responding to atrocity. But despite all the horrific things she observed and critiqued, she was ultimately driven to action by her optimism. Even while seeing the impossibly difficult and complicated paradoxes, she had a unique ability to let optimism drive tremendous action. I will always be moved by this powerful legacy of Sheri Rosenberg.

Genocide as Process: A pathway to prevention – by Rebecca J. Hamilton ∗

Central to Professor Rosenberg's work was a determination to move genocide prevention from an abstract ideal marked mainly by its oft-lamented absence, to a concrete and achievable goal. This

[66] *Id.* at 388.

∗ Associate-in-Law, Post-doctoral research fellow, Columbia Law School; J.D. Harvard Law School. I am grateful to the Cardozo Journal of Comparative and International Law for the opportunity to contribute to this volume celebrating Professor Rosenberg's scholarship. She was an extraordinary colleague and mentor.

was consistent with her broader approach; scholarship was not an end in itself, but a means of serving the real people affected by atrocity crimes.

To prevent genocide, policymakers must first identify a situation as one that is, or is likely to become, genocide. This raises at least two challenges: one concerns the standard of proof required for preventive action and the other concerns the way that genocide is conceptualized in the public imagination. The first challenge stems from the degree to which the definition of genocide, set out in the UN Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"),[67] has become associated with the strictures of criminal law. While the criminal law standard of proof beyond a reasonable doubt is crucial for ensuring individuals are not held criminally liable for genocide without overwhelming evidence, this standard is often too high for the purposes of defining a situation as genocide on a timeline that is useful for prevention. The second challenge flows from the fact that the general public, as well as many policymakers, view genocide as a single catastrophic event. This conceptualization is not only a poor fit with the reality of how most genocides are committed, but it also diverts attention away from the early warning signs that could serve prevention efforts. Professor Rosenberg's scholarship grappled with both of these challenges.

Starting with the question of proof, the identification of genocide involves two prongs. First, the *actus reus* (guilty acts) constituting genocide must be identified. These include acts such as killing and inflicting serious physical or mental harm.[68] Second is the *mens rea* (guilty mind), and for genocide this is set at a high "specific intent" standard. Thus even where the *actus reus* are present, acts are not genocide unless those acts were conducted "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."[69]

It is usually possible to establish the *actus reus* of genocide with a high degree of certainty thanks to the presence of human rights reporters and journalists and/or the testimony of eyewitnesses who managed to flee. But in most cases proving the *mens rea* of genocide

[67] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat 3045, 78 U.N.T.S. 277, U.N. GA Res. 260, U.N. GAOR, 3d Sess., 179th plen. mtg. at 174, U.N. Doc. A/810 (1948). [hereinafter Genocide Convention].

[68] For the complete list of *actus reus see* Genocide Convention, art. 2(a)-(e).

[69] Genocide Convention, art. 2.

requires piecing together circumstantial evidence.[70] Such an arrangement is perfectly satisfactory from the perspective of a trial lawyer tasked with proving intent after the fact. But if proof beyond a reasonable doubt is demanded, then this circumstantial approach is all but useless for those seeking to prevent genocide; "strict legal analysis makes early identification impossible and prevention a moot point."[71] Rare is the genocidaire who announces his intent to destroy a protected group, and rarer still is the one who makes such intentions known unambiguously and in public.[72]

The atrocities in Darfur, Sudan, provide a recent example of this problem. As reports of mass killing in Darfur filtered out through the news media in 2004, the United Nations established a Commission of Inquiry. Its 176-page report concluded that while the *actus reus* of genocide had been committed against Darfur's non-Arab groups, the specific *mens rea* was unclear:[73]

> Some elements emerging from the facts including the scale of atrocities and the systematic nature of the attacks, killing, displacement and rape, as well as racially motivated statements by perpetrators that have targeted members of the African tribes only, could be indicative of the genocidal intent. However, there are other more indicative elements that show the lack of genocidal intent. [. . .] the populations surviving attacks on villages are not killed outright, so as to eradicate the group; they are rather forced to abandon their homes and live together in areas selected by the Government . . .the living conditions in those camps, although open to strong criticism on many grounds, do not seem to be calculated to bring about the extinction of the ethnic group to which

[70] *See generally* Daniel Ntanda Nsereko, *Genocide: A Crime Against Mankind in* SUBSTANTIVE AND PROCEDURAL ASPECTS OF INTERNATIONAL CRIMINAL LAW: THE EXPERIENCE OF INTERNATIONAL AND NATIONAL COURTS 113, 126-128 (Gabrielle Kirk McDonald & Olivia Swaak-Goldman, eds. 2000); *see also* Jason Abrams, *Atrocities in Cambodia and Kosovo: Observations on the Codification of Genocide*, NEW ENG. L. R. 303, 309 (2001).

[71] Sheri P. Rosenberg & Everita Silina, *Genocide by Attrition: Silent and efficient in* GENOCIDE MATTERS: ONGOING ISSUES AND EMERGING PERSPECTIVES 106, 107 (Joyce Apsel & Ernesto Verdeja, eds., 2013).

[72] *But see* The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-9WT, Judgement, ¶¶ 332-362 (Int'l Crim. Trib. Rwanda, Trial Chamber I, Sept. 2, 1998) (as an example of a public speech displaying evidence of genocidal intent).

[73] Rep. of the Int'l Comm'n of Inquiry on Darfur to the United Nations Secretary General, ¶ 518 U.N. Doc. S/2005/60 (Jan. 25, 2005).

the IDPs belong.[74]

The Commission's uncertainty over the *mens rea* led it to conclude that the situation was not genocide. And while it was at pains to point out that very serious crimes were nonetheless being committed, this did not stop the wind being taken out of the sails of preventive action as global headlines proclaimed "U.N. Finds Crimes, Not Genocide in Darfur."[75]

Subsequently, some argued that the UN Commission was politically motivated, or that they simply interpreted the evidence incorrectly.[76] But the problem cannot be so readily dismissed. Another contemporaneous assessment of the situation in 2004, made by the U.S. State Department, also found equivocal evidence on the issue of specific intent.[77] Finding evidence of the *mens rea* of genocide in real time is simply very difficult, and requiring that it be established to a criminal law degree of certainty may render the exercise impossible.

Any effort to overcome this problem must begin with the explicit acknowledgment that the Genocide Convention was crafted, as its very title explains, to serve two purposes – one penal, the other preventative. The extraordinary success of institution building in support of international criminal law trials for genocide and other atrocity crimes in the past few decades has resulted in the penal purpose behind the Genocide Convention gaining a dominant position in the discourse.[78] In the process, a criminal law standard of proof beyond a reasonable doubt has become a taken-for-granted aspect of the process of identifying genocide. Yet there is no reason

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[74] *Id.* ¶ 515.

[75] Warren Hoge, *UN Finds Crimes, Not Genocide in Darfur*, THE NEW YORK TIMES (Feb. 1, 2005) *available at* http://www.nytimes.com/2005/02/01/world/africa/un-finds-crimes-not-genocide-in-darfur.html?_r=0.

[76] *See, e.g.,* Eric Reeves, *Report of the International Commission of Inquiry on Darfur: A critical analysis (Part I)*, SUDAN RESEARCH ANALYSIS, AND ADVOCACY, (February 2, 2005), http://sudanreeves.org/2005/02/11/report-of-the-international-commission-of-inquiry-on-darfur-a-critical-analysis-part-i-february-2-2005/ ("so egregiously poor are the legal and factual arguments about the issue of "genocidal intent" that we must conclude this Commission did not feel politically free to make a determination of genocide.").

[77] *See* REBECCA HAMILTON, FIGHTING FOR DARFUR: PUBLIC ACTION AND THE STRUGGLE TO STOP GENOCIDE 38 (2011) (describing then-U.S. Secretary of State Colin Powell's recollection that his legal advisor told him that the issue of specific intent was debatable).

[78] *See, e.g.,* Mark A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity,* 99 NW. U. L. REV. 539, 547 (2005).

for this to be the case outside of the criminal adjudication of an individual.

Acknowledgement of the Genocide Convention's dual purposes demands that the standard of proof should not be restricted to a level that would thwart the Genocide Convention's preventive objective. What this suggests, controversially for those steeped in international criminal law, is that lawyers, with the high degree of certainty they seek for penal purposes, should not have sole purchase on the use of the term genocide.[79] Part of Professor Rosenberg's normative project was undoubtedly to free the task of identifying genocide from the constraints of legal formalism. To grant the preventive goal of the Genocide Convention equal standing alongside its penal goal, it may be that the straitjacket imposed by a criminal law standard of proof must be loosened outside of the courtroom setting.

A related yet distinct challenge with respect to the identification of genocide is conceptual. In the public imagination genocide is generally conceived of as a "directly murderous event."[80] Yet this does not comport with the reality of how genocide is committed. Even with respect to the Holocaust, so strongly associated in the public mind with the gas chambers of Auschwitz, some 700,000 Jewish victims died from disease and malnutrition in ghettos without ever even setting foot in a concentration camp.[81]

To counter these inaccurate perceptions about how genocide unfolds, Professor Rosenberg had begun to develop the concept of genocide by attrition.[82] In her work with Everita Silina, Professor

[79] Indeed this is the position that then-Secretary of State Powell ultimately decided to take in the Darfur situation. He used the label genocide, notwithstanding the advice of his State Department lawyer that the evidence on specific intent was ambiguous, specifically with a view to spurring preventive measures. *See* Rebecca Hamilton, *Inside Colin Powell's Decision to Declare Genocide in Darfur*, THE ATLANTIC, Aug. 17, 2011, *available at* http://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/.

[80] Sheri P. Rosenberg, *Genocide is a Process, Not an Event*, Vol. 7: Iss. 1: Art. 4 GENOCIDE STUD.& PREVENTION: AN INT'L J. 16, 20 (2012).

[81] This figure, accounting for approximately 13.7% of all Jewish victims in the Holocaust, has been cited by both Sheri Rosenberg and by Helen Fein. *See id.* at 18; Helen Fein, *Genocide by Attrition 1939 – 1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between Human Rights, Health, and Mass Death*, Vol.2 No. 2 HEALTH AND HUM. RTS 12 (1997). The original data comes from RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWRY 767 (1961).

[82] The term was first introduced into the genocide literature by Helen Fein. *See* Helen Fein, *Genocide by Attrition 1939 – 1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between Human Rights, Health, and Mass Death*, 2(2) HEALTH AND HUM. RTS 10 (1997).

Rosenberg drew attention to such indirect methods of destruction as forced displacement, or the denial of healthcare.[83] Their key conceptual move was to re-frame genocide: from an event to a process.

To return to the example of atrocities in Darfur, developments since the UN Commission of Inquiry released its report illustrate the value of such a re-framing. At the time of writing in 2005, the Commission argued that the camps into which the displaced were forced were not intended to bring about their destruction because "the Government of Sudan generally allows humanitarian organizations to help the population in camps by providing food, clean water, medicines, and logistical assistance."[84] But in the years since the Commission's report was released, the Sudanese government has severely limited the amount of humanitarian assistance available to the displaced. Reports from the UN Office for the Coordination of Humanitarian Affairs quantify the degree to which humanitarian access has been constricted over time. At the start of 2009, the 2.7M Darfuris who had been displaced were supported by 17,700 aid workers.[85] Months later, the agencies employing those workers were expelled en masse.[86] The loss in capacity stemming from the expulsion of these aid workers was never regained, and by February 2015, the more than 2.55M that remained displaced were supported by just 5,540 aid workers.[87] Viewing genocide as a process, and extending the analytical lens across the decade following the Commission's report, builds a much stronger case for the existence of genocidal intent behind the forced

[83] Rosenberg & Silina, *supra* note 71, at 116 - 118.

[84] Rep. of the Int'l Comm'n of Inquiry on Darfur to the United Nations Secretary General*, supra* note 7, ¶ 515.

[85] U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Darfur Humanitarian Profile No. 34, (Jan. 1, 2009) *available at* http://reliefweb.int/sites/reliefweb.int/files/resources/D85EAF37950F12548525758B006DF908-Full_Report.pdf.

[86] Xan Rice & Tania Branigan, *Sudanese President Expels Aid Agencies*, THE GUARDIAN, (Mar. 5, 2009, 9:50 AM), http://www.theguardian.com/world/2009/mar/05/sudan-aid-agencies-expelled; *see also Expelled Aid Worker: Situation in Darfur is Dire*, NPR (Mar. 10, 2009, 4:00 PM), http://www.npr.org/templates/story/story.php?storyId=101669767. "If there's no one there to vaccinate and if there's no one there to manage the meningitis cases, the mortality rate would be expected to be anywhere between 50 and 80 percent" an expelled aid worker explained." *Id*..

[87] U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Darfur Profile February 2015, (Feb. 28, 2015) *available at* http://reliefweb.int/report/sudan/sudan-darfur-profile-february-2015.

displacement of certain Darfuri groups.

Professor Rosenberg is not the only genocide scholar to have argued for genocide to be framed as a process. But her work with Silina consciously deviated from existing work that had developed a unitary conception of this process. In Gregory Stanton's work on the "stages" of genocide for instance, genocide is viewed as something that progresses from earlier to later stages in a single process until the stage of extermination (followed by denial) is reached.[88] By contrast, Professor Rosenberg and Silina argued that there are "various types of processes of genocide that unfold based on their own internal logics."[89] They noted that these processes vary by factors including technological sophistication, geographical conditions, and the risk that victims will fight back.[90] And they emphasized that various indirect forms of killing play a greater role than a linear-stage model suggests.[91]

The payoff for the conceptual move from event to process lies not only in its accuracy as a descriptive matter, but also in the opportunity it can provide for preventive action. If genocide is understood as a process, then policymakers do not have to wait for that process to be completed before taking action. Professor Rosenberg and Silina argue that in Nazi Germany for instance, an understanding of genocide as a process would have directed attention to the possibility of indirect methods of destruction. This in turn would have made it possible to see through the public health rationales presented by the Nazi regime for the decision to confine Jews inside the Warsaw Ghetto, and to instead understand its genocidal dimensions.[92]

Re-conceptualizing genocide as a process does not mean that the definition of genocide itself needs revision. Indeed Professor Rosenberg's development of the notion of genocide by attrition was thoroughly consistent with the text of the Genocide Convention. Article 2(c) of the text explicitly contemplates the possibility of

[88] *See* Gregory Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH, http://genocidewatch.net/genocide-2/8-stages-of-genocide/ (last visited Nov. 3, 2015)

[89] Rosenberg & Silina, *supra* note 71, at 110.

[90] *Id.*

[91] *Id.*

[92] *Id.* at 113 (arguing that an analysis of broader contextual factors would have made it was possible to see the genocidal dimensions of the decision to confine Jews inside the Warsaw Ghetto (as contrasted with the public health rationale presented by the Nazi authorities)).

genocide being conducted through the imposition of "conditions of life" calculated to bring about the destruction of a protected group.[93] Her work on genocide by attrition shows how it is possible to retain the genocide definition enshrined in the text of the Genocide Convention while simultaneously opening the window for preventive action "long before the courts have been convened to establish if genocide has occurred."[94]

Of course the identification of genocide is a necessary but far from sufficient condition for the prevention of genocide. Political will and viable policy options are also vital. Crucially, the pathway through these elements is rarely sequential and the relationship between them is typically a dynamic one.[95] To begin with, the perception of what policy options are available varies as a function of political will. Sanctions against a genocidal regime that is a close trading partner are unlikely to be seen as a viable policy option in the abstract, but in the midst of an overwhelming domestic outcry about genocide, such sanctions may come to be viewed as a plausible option. Likewise, the early identification of genocide makes comparatively low-cost policy options, like condemnation through closed diplomatic channels, potentially effective. Such options require significantly less political will than options involving for instance, the direct protection of civilians, which is often the only remaining policy option when identification does not occur until the peak of a genocide.

The early identification of a situation as genocide is only one element of the genocide prevention puzzle. But the positive effects of early identification appear throughout the policy process, increasing the number of policy options available and reducing the level of political will required to address the situation relative to what occurs when genocide is identified at a later stage. Professor Rosenberg's call for the determination of genocide to be released from the stranglehold of criminal law, and her development of a theoretical framework around genocide by attrition, were both ways in which her scholarship tackled the challenge of early identification. Further development of these ideas will take genocide prevention one further step along the road from ideal to actual.

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[93] Genocide Convention, art. 2(c).

[94] Rosenberg & Silina, *supra* note 71, at 110.

[95] For a seminal work on these relationships within the policy-making process, *see generally* JOHN KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES (2003).

Moralizing States – by Kathleen A. Cavanaugh

The notion that a state has a duty or responsibility to protect is not new. It has been raised not only in the context of armed conflict but also when addressing economic, social and cultural rights.[96] In both contexts, the concept has included: the duty to respect, that is, not actively to deprive people of the guaranteed right; the duty to protect, that is, not allow others to deprive people of the guaranteed right and; the duty to fulfil, that is, to work actively to establish political, economic, and social systems as well as infrastructure that provide access to the guaranteed right to all members of the population. Imposing a duty on nation-states to fulfil these obligations within their own borders is consistent with the principle of sovereignty. The most contentious aspects of these duties arise when we turn to the question of humanitarian intervention.[97] Defined as a coercive action exercised against a state in order to protect people within its borders, this duty to 'intervene' in times of humanitarian crisis pinpricks the notion of sovereignty.

How to balance a state's sovereignty against the responsibility of the international community to protect vulnerable peoples hung heavy in the failure of the international community to respond to the unfolding humanitarian crises in Somalia, Bosnia, Rwanda, and Kosovo during the 1990s. It would also mark the beginning of the legal and political unpacking of the concept of "humanitarian" intervention and, more contemporaneously, atrocity prevention. Since that time, the questions posed by humanitarian intervention—what are the rules on how and when to intervene and under whose authority—have begun to shift to how do we prevent atrocities from occurring in the first place? The language of intervention replaced by a "responsibility to protect" that all sovereign states owe to their citizens.

This re-ordering and reframing characterizes the responsibility to protect (or R2P) doctrine. R2P comprises three main elements: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. While R2P does not exclude intervention

[96] *See* HENRY SHUE, BASIC RIGHTS (1980) (in which Shue introduced this as part of "social democratic concept").

[97] For a critique of the politics of the practice, see CONOR FOLEY, THE THIN BLUE LINE: HOW HUMANITARIANISM WENT TO WAR (2008). *See also* THOMAS G. WEISS. HUMANITARIAN INTERVENTION: IDEAS IN ACTION (2007).

as a last resort (addressed in the responsibility to react), it is a doctrine rooted in the idea of prevention, to put a legal responsibility on states to "protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity."[98] Although the intent of the gatekeepers of the doctrine is clear, since September 11th it has been invoked in circumstances that are practically and conceptually distinct from R2P. Interventions in Iraq and Afghanistan, for example, are best rooted in questions related to self-defense but have been raised in the R2P debate in the public domain. This has happened, in part, because these kinds of interventions can trigger the call for similar precautionary principles attached to R2P.[99] That said, using the language of R2P has also allowed states to shift the argument from the more controversial doctrine of "hot pursuit" to one that provides both a moral and legal suasion. It is unsurprising then, to find that for the gatekeepers of R2P, there is an ongoing battle for the hegemonic control of the doctrine.

In her piece *Responsibility to Protect: A Framework for Prevention*, Sheri Rosenberg acknowledges the push and pull between those who understand the doctrine of a Responsibility to Protect as "another name for humanitarian intervention," and those who argue, as she did, that "prevention . . . is the most important part" of R2P.[100] In her work on R2P, Sheri understands well that, "[w]here one locates R2P on the spectrum from politics to law matters."[101] That Sheri Rosenberg chose to work to "[protect] populations from mass atrocities [and ensure] that they do not occur in the first place"[102] is unsurprising. While her drive to prevent atrocities may have been informed by her past, her time spent in the Human Rights Chamber in Sarajevo, Bosnia & Herzegovina was a stark reminder of the currency of intolerance and discrimination. For Sheri, R2P was a framework for prevention "insofar as it requires states to take action in the face of genocide, crimes against humanity, war crimes and ethnic cleansing, short of military intervention," and she argued that these requirements were derived from "established

[98] 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

[99] These are: right intention, last resort, proportional means and, reasonable prospects.

[100] Sheri P. Rosenberg, *Responsibility to Protect: A Framework for Prevention*, vol. 1, no. 4 GLOBAL RESPONSIBILITY TO PROTECT 442 (2009).

[101] *Id.* at 446.

[102] *Id.* at 448.

norms of international human rights law."[103] She recognized that "moral suasion" and political arrangements were part of such an obligation but "they need a relationship with legal norms that give weight and clarity to political aspirations."[104] It was this task—to give the concept legal legs—that subsequently underpinned Sheri's academic writings, her activism and advocacy.[105] It would also be the issue that would, in the summer of 2013, trigger my most vibrant (and contentious) engagements with Sheri Rosenberg.

In the summer of 2013, as the issue of intervention in Syria hung heavy, Sheri's belief in the possibilities of the doctrine contrasted sharply with my reservations about how the use of the doctrine would play out if applied to the Syrian case. Having just co-authored a book on the Middle East,[106] I had been asked to write a piece on the question of intervention by my publisher with a focus on whether the international community had a *duty to protect*. This was Sheri's terrain but it was a space that was, as I would soon find, already quite populated. Like most parts of international law, the question of R2P and even the means by which one evaluated its criteria, could not, in my view, be divested from the political context within which the obligation was raised. As EP Thompson once argued, using legal rhetoric and rules can curb power and check intrusions whilst at the same time disguise the true realities of power.[107] Those engaging with the debates around intervention in Syria would draw, selectively, on the legal rhetoric and rules of the R2P doctrine. While not all of the engagement was rigorous and would (as I noted earlier) conflate issues that were conceptually and even practically distinct, invoking a 'duty to protect' in the case of Syria demanded that the question of intervention not be left as the unwanted orphan in R2P discourse. It was in working through this case, within an R2P framework, that my conversation with Sheri and my engagement with this debate began.

At a time when there are renewed calls for the international community to intervene in Syria, it seems both fitting and timely for

[103] *Id*. at 447.
[104] *Id.* at 446.
[105] *See e.g.,* Sheri Rosenberg & Ekkehard Strauss, *A Common Standard for Applying R2P*, Vol. 2. No. 2. ASIA PAC. CTR. FOR THE RESPONSIBILITY TO PROTECT (2012).
[106] JOSHUA CASTELLINO & KATHLEEN A. CAVANAUGH, MINORITY RIGHTS IN THE MIDDLE EAST (2013).
[107] E.P. THOMPSON, WHIGS AND HUNTERS, THE ORIGINS OF THE BLACK ACT 266 (1975).

me to return to those questions around the responsibility to protect that preoccupied our debates in 2013. While Sheri's arguments would, on this and broader issues, enrich, push and challenge my approach to how I interrogated the law, the question as to whether it was ever truly possible to ensure a "right intent" by a state was never resolved. Like Koskenniemi, my reading of international law was informed by "what or whose view,"[108] a position that sharply contrasted with Sheri's more focused and clinical approach. While it might be possible to frame some of the debate about the responsibility to protect within international law, as Adam Roberts suggests, there are very real limitations when employing legal language to construct solutions to what are essentially political problems:

> The language of law can easily become a language of right and wrong, of moralistic reproach, of the clothing of interest in the garments of rectitude, of the concealment of factual changes with legal fictions, of refined scholasticism in the face of urgent practical problems, and of the facile application of general rules without a deep understanding of situations that are unique. Such approaches are hardly the highest expressions of law; nor are they necessarily the best way of addressing complex and multilayered international problems.[109]

Rooting the R2P debate in the Syrian case, what emerges is an often clouded, and rarely consistent analysis of a complex political terrain, one that is reproduced in a broader regional context. There is a hegemonic contestation over how we are to understand and respond to the crisis. In 2013, when I first engaged with the issue of R2P and Syria, what had been an internal conflict had already bled into neighboring states. The sectarian entrepreneurship of the Assad regime had been devastatingly effective in erasing boundaries that were, at least in the initial stages of the conflict, defined mainly by either support or dissent for the regime. The involvement of Russia and Iran, who provide support to the Assad regime, and the US and its allies that side with the opposition has made this a crowded and morally corrupt space; a surface over which ideological struggles are

[108] Marrti Koskenniemi, *International Law and Hegemony: A Reconfiguration*, 17 CAMBRIDGE REV. OF INT'L AFF. 197, 199 (2004).

[109] Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 THE AM. J. OF INT'L LAW 44, 45 (1990).

being waged. Yet as the images and analysis on Syria from media and other commentators press on the public conscience, the language of intervention informed (and continues to) the international community's thinking on Syria. Against this backdrop, the Syrian case presents an opportunity to engage key aspects of the intervention discourse and ask how these might map on to the Syrian case and what lessons might emerge. It was a conversation I began with Sheri in 2013 and it seems fitting, as we come together to engage in Sheri's work, to revisit it here.

Since the conflict in Syria began in March 2011, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) reports that over 250,000 civilians have died, one million have been injured and over half of the Syrian population have become refugees or are internally displaced persons.[110] The civilian death toll is not solely attributed to the al-Assad regime. Since the international community "intervened" in late 2011, the civilian casualty rate has soared. Against this backdrop, insuring proportionality and finding a clear relevance of motive for potential interveners ("right intent"), both requirements of R2P, raises a number of questions. I have broken these down into must we, should we and finally, can we assess the motives on behalf of the intervener? In the remainder of this chapter I want to try and imagine the possibility of answering these as we look at the situation in Syria.

In the first instance, we must decide whether it is desirable (therefore non-essential) or mandated to know the motive of the intervener? Secondly, (and regardless of how we answer the first) can we ever forensically know whether a state intervenes with the "right intention"? If this requires that the primary purpose of the intervener is to halt or avert suffering, is it really possible to forensically evaluate the motives of a state? Trying to construct a moral imperative underpinned by a liberal case for humanitarian intervention (as Fernando Tesón has endeavored to do in his thesis) is to imagine the state as a moral agent. The moral imperative that Tesón compellingly addresses, does indeed exist. As he has argued, "sovereignty is dependent on justice and we have a right to assist victims of injustice"[111]; a point on which both camps—the

[110] *About the Crisis,* UNITED NATIONS OFF. FOR THE COORDINATION OF HUMANITARIAN AFF. http://www.unocha.org/syria (last visited Nov. 2, 2015).

[111] Fernando R. Tesón, *The Liberal Case for Humanitarian Intervention, in* HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 93,

interventionists and non-interventionists—are not likely to disagree.

What is contested, however, is twofold. First, "interventionists claim that foreigners may help to stop the injustice and non-interventionists claim that they may not."[112] This is a debate that lends itself to some degree of empirical assessment-based either on precedent or existing political conditions. Secondly, interventionists understand the dangers of suggesting that a state can be a moral actor but, like Michael Walzer,[113] they tend to accept there can be no purity of motive and that states can, and should be attentive to their own state interests, but still proffer that it is possible for the state to assume both strategic and moral armour. Non-interventionists suggest that these are more often than not, competing interests that pull in different directions. No matter where the arguments go, we find ourselves at the same intersection. So how do we divest the moral imperative from the proposition to intervene? It is here perhaps that we can, as Noam Chomsky has argued, "ask whether the pursuit of self-interest might happen to benefit others in particular cases, or whether unremitting public pressure might overcome the demands of the 'principal architects' of policy and the interests they serve."[114]

As we move Syria back into our frame, the answer to this question is far from clear. Sectarian entrepreneurship continues to serve the Assad regime well, leaving Syria fragmented—territorially, socially, politically and militarily. Imagining a cohesive public voice to emerge from this space that has sufficient leverage to push back against the multiple stakeholders jockeying for control is difficult. This forensic analysis will sit uneasily when pressed up against a violent geography in Syria will continue to give birth to human suffering. Even if we put aside reservations about yet another western "intervention" in the Middle East and are able to distill a "right intent" from public pressure, what would be a proportional response? On what basis could we calculate a "reasonable prospect" that a military intervention would end the suffering? The failure to satisfy these conditions of R2P, I argue, leaves us back at the door of diplomacy. This does not suggest, as some have done, that R2P has failed. In fact, that states are engaging in the precautionary

95 (J. L. Holzgrefe & Robert O. Keohane eds. 2003).

[112] *Id.*

[113] MICHAEL WALZER, ARGUING ABOUT WAR (2004).

[114] Noam Chomsky, *Humanitarian Intervention*, CHOMSKY.INFO (Dec. 1993 – Jan. 1994), http://chomsky.info/199401__02/.

principles under R2P can be one way of marking its success.

Sheri Rosenberg and I never had an opportunity to continue the conversation we started in 2013. As I wrote this piece, I couldn't help but wonder what gap in my approach she might have exposed or what new way of thinking about the issues I have raised here she might have suggested. I have no doubt that for Sheri's friends, colleagues, and students, there are many other unfinished conversations (or ones we would wish to start). Perhaps it is in keeping these conversations alive that will be, in the end, our best tribute to her.

Shame and Genocide – by András Sajó[115]

In the Spring of 2009, I was reading various observations submitted in a case called *Sejdić and Finci v. Bosnia and Herzegovina*,[116] pending at that time before the Grand Chamber of the European Court of Human Rights. At a certain point I noticed that the applicants were represented by Sheri Rosenberg. There was also a reference to her affiliation with Cardozo Law School. I taught many students at Cardozo but there were only a few whose names I have remembered; she was one of the most attentive students I ever had. I read the various observations prepared by the applicants' team and I was very much looking forward to seeing her in action in an international court on a matter of highest political and constitutional importance. The case concerned a provision of the Dayton agreement, a major document of international conflict resolution. I recall her pleadings very well for one specific reason: the reaction of my colleagues and my reactions to their remarks. They were really impressed with the quality of her presentation. After listening to these remarks, at a certain point I very proudly disclosed that once upon a time she was in my class. We agreed that not even the best American legal education can be effective when the lawyer does not have the proper intelligence and moral character. As to Sheri's intelligence, it is sufficient to compare her legal arguments with the votes of the Court: fifteen votes in a panel of seventeen judges went in favor of the applicants represented by Sheri. As to her moral

[115] Judge and President of the First Section, European Court of Human Rights, Strasbourg.

[116] 1 App. Nos. 27996/06 & 34836/06 (Eur. Ct. H.R. Dec. 22, 2009). The judgments and decisions of the European Court of Human Rights, as well as its basic texts, are available at http://www.echr.coe.int.

commitment, one should consider her relentless work in the field of genocide prevention.

I met her a couple of times after her victory at the Strasbourg Court, but I always had to rush and never had much time to discuss a point related to her main academic and practical interest in the area of genocide prevention. I never understood why is it so difficult for a nation to accept responsibility for past atrocities committed by previous generations in the name of that nation. As a tribute to her interest and wisdom in this area, I will pose a few questions, with the sad knowledge that there will be no answer from her except the inspiration from her commitment to search for an answer that brings peace in dignity.

Nations are reluctant to recognize responsibility for past mass atrocities, including genocide, and individuals have all sorts of defence mechanisms against accepting shame. But when it comes to genocide, and the Holocaust in particular, it is difficult to deny *in abstracto* that genocide triggers the highest level of responsibility. After all, it is internationally agreed that genocide is the worst kind of mass scale (social) evil that we know. This agreement seems to be the moral foundation of the post World War Two international order, and no one of right mind and no nation that considers itself part of the world community and international order would deny that genocide is wrong. There is fundamental agreement today on this matter, even if, in some instances, the condemnation of genocide is only the tribute of vice rendered to virtue, and when it comes to specific instances there is a lot of denial and false blaming and the legal characterisation of the actual events and the very occurrence or sequence of such events becomes hotly contested.

However, it must be admitted that notwithstanding important elements of recognition this was not obvious after 1945 when nations and politicians were concerned primarily with the practicalities of reconstruction in a word partitioned by the Cold War. The political climate determined the handling of past genocide. Even in West Germany, which later became a model state for the recognition of responsibility for the Holocaust, it took decades of resistance to remembrance, recognition of collective responsibility. Today it is often heard even in the exemplary Germany that the legacy of Nazism shall be held as irrelevant and cannot be held as a source of special German responsibilities for current generations, born without guilt (*Schuld*). In many other European countries responsibility is more or less denied. Not only that many among the present generations will find irrelevant for their Nation and for themselves

what happened in the past but many people continue to deny the tragic events or at least the responsibility of past authorities and fellow citizens for the tragedy of the Holocaust. Similar emotional resistance is common in many other countries with genocidal past.

From a purely pragmatic perspective this denial is odd. With the disappearance of the last survivors of the Holocaust there is no further practical (financial) consequence (except perhaps the return of certain assets). To admit that the majority of the generation of grandparents or even a minority acting in the name of the nation and government would not change much, except that national pride, a (not always healthy) component of national identity (and hence personal identity) will diminish or will be offended. The recognition of responsibility for the Holocaust, a simple and apparently easy thing does not occur! The distortions and delays in the recognition of past genocidal complicity cannot explain why three or four generations later there is still reluctance both at the governmental and social/personal level to accept that the ancestors and predecessor governments, often even without full legitimacy (e.g. a puppet Quisling collaborationist government) where responsible for past mass injustice. Shaming is successfully resisted. But is it appropriate to use shaming?

Many scholars (e.g. Martha Nussbaum) argue that the imposition of shame for injustice is a wrong strategy. As participants in the policy debates about the use of shaming in criminal law, in education, and in social control in general have argued, shame generates negative actions tendencies, and it causes suffering. Nevertheless, it seems to me that feelings of shame for past mass atrocities, genocide, and the Holocaust in particular can have positive and healthy effects in coping with such atrocities. The shame based inscription in the collective memory of a level of responsibility contributes to the moral integrity of a nation including the prevention of future genocides. It is important to understand that here we are not talking about the four types of (German) guilt famously described by Karl Jaspers after World War Two (The Question of German Guilt, 1947). The contemporary citizen is certainly not co-responsible for actions which have occurred before her birth but there seems to be place for something that Jaspers described as metaphysical guilt. Jaspers claimed that there is some co-responsibility based on solidarity for all crimes witnessed. Technically speaking the present generation did not witness the Holocaust (but witnesses with sad regularity genocide every 2-3 years). The lack of special sensitivity for what occurred in the name of your country in the thirties and

forties, the denial that a Nation through its government was responsible for atrocities which were committed or supportively witnessed by one's distant and not so distant relatives makes one to live in moral denial. Such denial will diminish sensitivity to contemporary genocide. It is at this point that shame and shaming become relevant. Shame, like other moral emotions, enables humans to accept moral arguments, and it generates moral judgments. Further, it creates a predisposition for the social generation of social norms.

How shame could work here? Where there is a shame based (i.e. emotionally sustained, easy to activate) attitude towards past genocide, the citizen will be reminded of the negative potentials historically coded in the national identity. Such reminders make one attentive. Official recognition (e.g. an official Report that is accepted in Parliament, as it happened in Belgium in 2007, or other forms of legal recognition) of national responsibility are of considerable importance here. These official statements put the stamp of authority on a position. Official recognition requires and implies some democratic endorsement too and hence it may function as a matter of collective action. In 1995 President Chirac recognized unconditionally the responsibility of France for the deportation of the Jews. This was a game changer in France: the social norms changed. Of course, such recognition was impossible under De Gaulle, who had a policy of reinforcing French identity by creating a myth of France as a country of resistance (which of course, was not a pure fantasy) and it was difficult to change this heroic identity until former collaborators continued to serve the State. (The same is true for Germany, where Germany had to be rebuilt in the conditions of the Cold War with a people and an elite that had deep and embarrassing roots in the Nazi past.) But these "objective" obstacles do not exist any more, and yet in many countries national pride still dictates denial.

Consider once more the role of shame. We are ashamed because we are seen as something different from what we pretend to be or what our social status would require. If seen in the company of "deviants," I am ashamed because I assume that being seen in the company of despicable people will lead others to the conclusion that I am one of "them." As a decent citizen of a constitutional democracy I feel uncomfortable in the company of racists. I am afraid people will consider me a racist. I am concerned because I might be in their company, because we have things in common. A decent member of a community with a genocidal past is ashamed

that there are active racists in her society. I am ashamed of being classified as their tacit accomplice, a member of a society where racism is possible, even legitimate. I am seen (in my internal mirror) as "one of them," even in the absence of the disapproving glances of observers. One does not need actual observers (like the official shaming forum of the EU or the UN) for such a moral feeling to occur in a nation. But this mechanism, which already presupposes a personal commitment to a specific kind of decency, a commitment that pertains to the moral high ground, is less likely to occur where membership is not actual, only virtual, as is the case with membership in the past of a nation. Hence the difficulty of acknowledgment of metaphysical collective responsibility.

The Evidentiary Standards Project: Activating the international community's responsibility to protect – by Jennifer M. Welsh and Adama Dieng[117]

The agreement by Member States of the United Nations at the 2005 World Summit to focus the scope of the Responsibility to Protect (RtoP) on four specified acts – genocide, war crimes, crimes against humanity, and ethnic cleansing[118] – was widely seen as a way to give the principle greater "operational utility."[119] Whereas the original 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) had conceptualized the application of RtoP to those grave and rare circumstances where there was "serious and irreparable harm occurring to human beings, or imminently likely to occur,"[120] it left unclear whether this included only intentional violence or killing or other forms of humanitarian emergency, such as, natural disasters. The Summit Outcome Document, by contrast, signals that RtoP concerns only those

[117] Jennifer M. Welsh, Special Adviser on the Responsibility to Protect, United Nations Office of the Special Adviser on the Prevention of Genocide; Adama Dieng,Special Adviser on the Responsibility to Protect, United Nations Office of the Special Adviser on the Prevention of Genocide.

[118] 2005 World Summit Outcome, G.A. Res. 60/1, ¶¶ 138-139, U.N. Doc. A/RES/60/1 (Sept. 16, 2005). Ethnic cleansing is not defined as a separate international crime per se, but is most commonly subsumed under either genocide or crimes against humanity.

[119] U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep. of the Secretary-General,* ¶ 10(b), U.N. Doc. A/63/677 (Jan. 12, 2009).

[120] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, The Responsibility to Protect XII (2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf.

exceptionally grave and "conscience-shocking"[121] acts that the international community has stigmatized as international *crimes*. As Gareth Evans has insisted, if RtoP "is to be about protecting everybody from everything, it will end up protecting nobody from anything."[122]

But as Sheri Rosenberg rightly suspected, this agreement on RtoP's narrow scope–which was essential to reaching a political consensus in 2005–"both comforted and confused"[123] those entrusted with implementing the principle. It also left a number of crucial issues unresolved. Central among these is the question of how to honor the preventive imperative at the heart of RtoP. To put it most simply, if the international community wants to prevent imminent or on-going commission of the crimes specified by the principle, is it desirable to wait for situations to fully satisfy legal criteria of criminality? In the eyes of many, including Sheri, demanding the standard of proof required to establish individual guilt would effectively stymie the normative impulse behind the creation of RtoP. Indeed, actors could hide behind a prosecutor's standard of proof either to deny the legitimacy of international involvement or to avoid triggering their international responsibility to act.[124]

These concerns also hover beneath the surface of the French government's current proposal to reach a voluntary agreement restricting the use of the veto by the permanent members of the UN Security Council (UNSC) in cases of 'mass atrocities' – a broader category of acts that seemingly does not require the meeting of an explicit legal 'test.'[125] Nevertheless, given that the umbrella term 'mass atrocities' does not have the same standing in international law as the four acts specified in the Summit Outcome Document, it has given rise to a certain degree of analytical confusion that some fear could undermine the credibility of those advocating early action to

[121] *See* MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS 107 (3d ed. 2000).

[122] GARETH EVANS, THE RESPONSIBILITY TO PROTECT: ENDING MASS ATROCITY CRIMES ONCE AND FORALL 65 (2008).

[123] SHERI P. ROSENBERG, A COMMON STANDARD FOR APPLYING THE RESPONSIBILITY TO PROTECT 23 (2012), https://www.cardozo.yu.edu/sites/default/files/Common%20Standard_R2P_Full%20Report.pdf.

[124] *Id.* at 24.

[125] This proposal was first articulated publicly by the French Minister for Foreign Affairs and International Development, Laurent Fabius. *See* Laurent Fabius, *A Call for Self-Restraint at the UN*, N.Y. TIMES (Oct. 4, 2013), www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html?r=4.

implement the responsibility to protect.[126] It has also motivated some governments, in responding to the French proposal, to stress the need for an "authoritative and respected entity" that can bring on-going or imminent instances of international crimes to the attention of the Security Council and broader international community.[127]

The *Evidentiary Standards Project* was designed by Sheri and her team to bring greater rigor to the determination of such instances and thereby to contribute to a more general de-politicization of RtoP. To critics who argued that the identification of atrocity crime situations could never be an exact science, and that attempts to set numeric thresholds were doomed to fail, Sheri maintained that concerns about selectivity and inconsistency would continue to undermine RtoP's standing and trajectory unless concrete steps were taken to develop and apply common standards for implementing the principle. Thus, far from being impractical, this project aimed at establishing a benchmark against which states and other actors could evaluate incoming information and establish whether their RtoP commitments had been activated.

A central strength of the project was that–despite being conceived and executed by a legal scholar–it maintained a keen appreciation for RtoP's *political* status and character. As Sheri insisted in the Introduction to the project findings, the standard was not designed to stand as a "legally binding test against which to gauge the appropriateness of action," but rather to assist relevant actors – extending beyond the confines of legal departments - in determining whether a situation could benefit from the application of the RtoP principle. The standard was to be flexible and open to interpretation, but still "bound by the common values shared by States and their populations to prevent mass atrocities."[128]

At the same time, however, the *Evidentiary Standards Project* made skillful use of the various standards used within international

[126] Scott Straus, *Identifying Genocide and Related Forms of Mass Atrocity* (U.S. Holocaust Memorial Museum, Working Paper, 2011), *available at* http://www.ushmm.org/m/pdfs/20111219-identifying-genocide-and-mass-atrocity-strauss.pdf.

[127] *See* H. E. Dr. Aurelia Frick, Minister of Foreign Affairs of the Principality of Liech., Address at the U.N. Ministerial Side-Event: Regulating the Veto in the Event of Mass Atrocities (Sept. 25, 2014), *available at* https://storify.com/GCR2P/a-responsibility-not-to-veto. The representative of Liechtenstein spoke on behalf of eleven countries that collaborate on issues of Security Council working methods reform: Australia, Chile, Costa Rica, Estonia, Hungary, Ireland, Norway, Saudi Arabia, Slovenia, Switzerland, and Lichtenstein.

[128] ROSENBERG, *supra* note 123, at 8.

law–particularly stemming from the International Court of Justice and the International Criminal Court – to demonstrate the legitimacy of determining the future prospect of grave crimes based on present facts and circumstances. More specifically, the project report argued that the ICC's requirement of "reasonable basis" (used to establish whether the Chief Prosecutor will conduct an investigation) and the ICJ's requirement of "serious risk" (used to justify the implementation of provisional measures) were the most appropriate standards to draw upon for determining the applicability of RtoP. But the project also referred to other strands in international law, related to the obligations of States with respect to torture and non-refoulement, to operationalize RtoP's preventive dimension. So, for example, the European Court of Human Rights has argued that the Convention Against Torture's non-refoulement obligation in Article 3 can be activated if there are "substantial grounds to believe that an individual would face a real risk" of being subjected to the treatment covered by the Convention.

Over the past decade, as the debate on RtoP has evolved from a focus on the essence and parameters of a concept, to a concern for real-world implementation, the need for a common standard for application has grown. Given the nature of the measures and tools available to implement RtoP–particularly those mechanisms which imply a significant level of external involvement in a state's domestic jurisdiction–the question of when the international community's responsibility to protect is activated (as opposed to the responsibility of the national government) has become increasingly pertinent. Recent cases in which application of the RtoP 'label' has been contentious (for example, the NATO-led action in Libya in 2011) have added greater urgency to the quest for more consistency. The *Evidentiary Standards Project* contributes to this quest, by providing a common reference point on which a variety of actors can converge, and from which they can–at the very least–explain their judgments about particular situations. It thus confers transparency and credibility on discussions over the applicability of RtoP at a critical time in the principle's development.

A final benefit of the project is the set of 'Guidelines' that accompany the common standard, which reflect Sheri's capacity for making academic research relevant to policy-makers. These practical recommendations were an essential part of the project design, and emerged from consultations with stakeholders in a variety of geographic locations. It was Sheri's firm belief that a common standard, on its own, could not galvanize the kind of *strategic*

approach to prevention that would: 1) promote a full range of actions (from early to late stage); and 2) focus on those initiatives with the most impact and most likely to succeed. In setting out the guidelines to assist actors in applying the standard, Sheri confronted some of the thorniest issues which have accompanied discussions about RtoP– including the relationship between so-called atrocity crimes and human rights violations, and the indicators that could establish whether a state was "manifestly failing" to protect its population.

The *Evidentiary Standards Project* represents one of Sheri's most valuable contributions to advancing implementation of RtoP. As with all of her work, it was based on thorough research, extensive discussion, and a reluctance to overstate claims. Above all, it showcases her ability to rise above a particular discipline and to appreciate political realities and constraints. Let us hope the project will influence today's policy-makers, and bring the legitimizing effect to RtoP that she strove for.

Stopped On Track – In Memoriam of Sheri P. Rosenberg – by Dr. Ekkehard Strauss[129]

The memories of our joint professional journey of fifteen years start with my first encounter with Sheri on the street in Sarajevo, opposite the building of the Presidency of Bosnia-Herzegovina, which was about half-way between the Human Rights Chamber and the Organization for Security and Co-operation in Europe (OSCE) Mission Headquarters, thus describing well our professional meeting point at that time. It must have been in late 2000, when I served as Senior Legal Adviser with the OSCE Mission in Bosnia-Herzegovina and was responsible for the support of the national human rights institutions, including the Chamber. Sheri presented herself as a new lawyer seconded by the U.S. as she had seen me on the corridors of the Chamber. While my regular counterparts were usually the Registrar and the President of the Chamber, it was important for me to learn also directly from the lawyers, who worked on the individual cases. For the OSCE Mission and the Office of the High Representative (OHR), implementation of the decisions was a priority, and for me, implementation, or rather implementability, started with the structure, wording and findings of decisions and the presentation of argument, hence with the individual case.

[129] Researcher and Consultant; Member, European Task Force on Genocide Prevention; Member, Genocide Prevention Advisory Network.

We started to chat and I asked what her first impression was and which cases she worked on. Her responses were direct, straightforward and short. She came across as a very sharp thinking lawyer who had no time to waste on small talk. We got straight into a legal debate and I envied her for being able to take clear positions based on the law, while I had to think about implementing decisions by agreeing on digestible steps with the government agents.

This was the beginning of quite regular exchanges, often over lunch. Sheri concentrated on the work of her particular cases and we discussed relevant case law of the European Court for Human Rights and explored the differences in civil and common law in treating questions raised by the post-war context in Bosnia-Herzegovina. Soon, we went beyond the cases at hand, and spoke about the need of promoting the integration of the decisions of the Chamber into national court decisions[130] and the role of the Chamber in providing reference and precedent.[131] Sheri also started to elaborate on what became an increasingly dominant subject of our discussions: the fundamental flaws of the Dayton Peace Agreement[132] in distributing power strictly among the three main ethnic groups responsible for the war. While this issue may have been on the minds of other people as well at that time, it was politically almost impossible to raise it within the international community. I had reached out to Jakob Finci, the de-facto leader of the Jewish Community in Sarajevo, to explore possibilities of addressing the problem of transitional justice through the rights of a neglected minority. For Sheri, the solution to the political difficulty of renegotiating Dayton was clear and straightforward: it should be argued on the basis of the right to non-discrimination under the European Convention on Human Rights applicable directly in Bosnia-Herzegovina through the Dayton Peace

[130] Sheri supported the approach of making the case law of the Chamber more accessible for national lawyers as reflected in: LEIF BERG & EKKEHARD STRAUSS, THE HUMAN RIGHTS CHAMBER OF BOSNIA AND HERZEGOVINA, SARAJEVO, 2000; CHRISTOPHER HARLAND, RALPH ROCHE, EKKEHARD STRAUSS, COMMENTARY TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS APPLIED IN BOSNIA AND HERZEGOVINA AND AT STRASBOURG, SARAJEVO, 2003.

[131] Parts of the discussions are reflected in: Ekkehard Strauss, *Monitoring Human Rights in Post-war Bosnia and Herzegovina: The Human Rights Chamber and its Contribution To The Establishment of Rule of Law in Post-war Bosnia and Herzegovina*, *in* INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOUR OF JAKOB TH. MOLLER 687-694 (Martinus Nijhoff ed., 2nd. rev. ed., 2009).

[132] The General Framework Agreement for Peace in Bosnia and Herzegovina, 50th Sess., Agenda Item 28, U.N. Doc. S/1995/999 (Dec. 14, 1995) *available at* http://www.ucdp.uu.se/gpdatabase/peace/BoH%2019951121.pdf.

Agreement.

In my eyes, it was one of the characteristic features of her professional career, to follow an issue through until she accomplished what she had put her mind to. She did not give up; she persisted, she could wait for the right moment and then use an opportunity that came her way. This is how she was able to obtain the decision of the European Court on Human Rights in the Finci and Sjediće case[133]. While I had forgotten our discussions from 2000 and moved on to Belgrade and Geneva, Sheri did not forget and, suddenly, sent me an e-mail with the different papers of her case asking for my opinion. I had not heard from her for some time other than the occasional exchange of signs of life and I was surprised how far she had progressed on the case and, as always, she demanded a response as soon as possible. I do not think I had anything intelligent to contribute, but this episode reflects the way we worked throughout our friendship. While I could identify ideas, structures and processes, Sheri was able to actually realize, revise, and improve them... And then everything had to be finished immediately with too little time left.

I met Sheri again in New York in 2005. She had started and I had started collaborating with the newly appointed UN Special Adviser on the Prevention of Genocide. She invited me to teach in her genocide class. I was intrigued by the clinical concept she had developed to study human rights and genocide. This was a far cry from the academic*, ex cathedra* way of teaching, which I had experienced during my short University career. We both enjoyed the possibility of addressing practical problems we faced with the new Special Adviser through the approach of a genocide clinic. The first result of this cooperation was a report of genocide by attrition that I still consider profound in the area of genocide studies.[134]

During the preparations for the 2005 UN World Summit I became more and more interested in the newly developing concept of the responsibility to protect (R2P). After its adoption, until 2007, the concept remained rather dormant. At one point, Sheri invited me to teach about it in her genocide class. Based on the discussions with the students, we both realized the potential of this newly developing

[133] Sejdić and Finci v. Bosnia and Herzegovina, App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

[134] Sheri P. Rosenberg & Everita Silina, *Genocide by Attrition: Silent and efficient in* GENOCIDE MATTERS: ONGOING ISSUES AND EMERGING PERSPECTIVES 106, 107 (Joyce Apsel & Ernesto Verdeja, eds., 2013).

concept for the prevention of genocide. We discussed it at various occasions and observed the same shortcomings and needs for its application. In particular, its preventive dimension was important for Sheri to explore.[135] We addressed those in articles and other publications independently, while trying to identify possibile opportunities to work on this together.

This opportunity came up finally after I had left New York and taken a leave of absence temporarily from the UN from 2011-2013. This was the period when Sheri and I most intensively and closely cooperated. She introduced me to GPANet[136], a community of genocide scholars, and invited me to work with her on a project of developing a common standard of application of the R2P. We had identified this as the core problem in the implementation of the R2P and, as in the past, Sheri had followed through and finally got the funding. I came to New York for a week, hosted by Cardozo, to coordinate and plan our work. We spent a lot of time discussing the project, as well as additional pr ojects. It must have been then when she told me about her health problems for the first time, but only as something of the past that she had overcome. She was full of plans and ideas for joint projects and very keen on the idea of her Clinic becoming an institute. In publishing this paper, Sheri had succeeded in proposing a standard for the application of the R2P, which was easy and well-tested.[137]

Around the same time, we also spent a few days together in Auschwitz teaching classes in the Auschwitz Institute's Global Lemkin seminar on the prevention of genocide.[138] It was the only time that I remember where we discussed our respective family histories during the Third Reich and how much we were motivated by it for our line of work, which appeared to be more of an inevitability than a choice by us.

In 2012, she invited me to join a book project on atrocity prevention. I was glad to return to New York for a gathering of the

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[135] Sheri P. Rosenberg, *Responsibility to Protect: A Framework for Prevention*, vol. 1, no. 4 Global Responsibility to Protect 442 (2009) *available at* http://responsibilitytoprotect.org/The%20Responsibility%20to%20Protect%20A%20Framework%20For%20Prevention%20(Rosenberg).

[136] *See* GENOCIDE PREVENTION ADVOCACY NETWORK, http://www.gpanet.org/ (last visited Nov. 2, 2015).

[137] SHERI P. ROSENBERG, A COMMON STANDARD FOR APPLYING THE RESPONSIBILITY TO PROTECT, (Benjamin N. Cardozo Sch. Of Law, Holocaust, Genocide and Human Rights Program, 2012)

[138] *See* THE AUSCHWITZ INSTITUTE FOR PEACE AND RECONCILIATION, http://www.auschwitzinstitute.org/ (last visited Nov. 2, 2015)

authors for an international conference that Sheri had arranged. She was very gifted in bringing together different people of different backgrounds, ages, and nationalities to participate in her conferences and round tables. This was mainly due to Sheri's academic rigour, which came across clearly during the preparations, and the quality of discussion, and the writing it eventually provoked.[139]

It was at the end of this conference that I walked Sheri from Cardozo to Penn Station for her train to Philadelphia. Sheri was exhausted from the conference and her medical treatment against a health problem, which no longer belonged to the past. Sheri was sad and afraid, for her family, her children, but also for her work. She spoke very clearly about the possibility of not surviving this time. We spoke about the big issues left we could look at in regards to R2P. We both had the impression that after the common standard publication and now this new book, there was not much left to do for the moment. The problem was more that people had not noticed what we considered as groundbreaking. So we thought it may be better to hold off on new ideas and instead try to promote what we had already done so far. Nevertheless, we still discussed new ideas and ways to realize them.

I went to Mauritania for the U.N. in 2013 and that is when our contact became more sporadic. I followed from a distance how she started to become recognized for what she had contributed. I believe her contribution will have even more real impact in the future, when the political will to apply the R2P will have grown and the desperate search for ways to implement it in a concrete manner will automatically lead to Sheri's profound and rigorous work and the practical and straightforward solutions she offered, all firmly based on international law. She was stopped on track, but in the end, she would have followed through again and made her contribution on a subject that was so close to her heart.

Citizenship and International Human Rights – by Julia Harrington Reddy[140]

I did not know Sheri before 2009, but her reputation preceded her. Over the years, I spoke with various colleagues in human rights

[139] *See e.g.*, RECONSTRUCTING ATROCITY PREVENTION, (Sheri P. Rosenberg, Tibi Galis & Alex Zucker eds., 2015).

[140] Senior Legal Officer for Equality and Citizenship, Open Society Justice Initiative.

non-government organizations (NGOs) about working with law school human rights clinics. It was acknowledged to be risky if one were working on a major case or tricky issue, since in some clinics students stayed for a single semester, in others for a year, and then moved on. By contrast, putting together a case for an international human rights tribunal is usually a multi-year exercise involving initial fact-finding and research, framing arguments, and then, in many of the cases I worked on, gathering affidavits that constituted the chief evidence, before finally drafting the briefs. These cases are effectively legal services for people who have serious problems, and carry strong lawyer-client duties. It was challenging to find a clinic that would stay with a project through the time required. Everything depended on the clinic's director.

"Cardozo is good to work with, thanks to Sheri Rosenberg. She's very smart and she really works with the students, so what you get is high quality." This was the word on the street. It turned out to be true—that, and more.

Sheri was deeply committed, not only to the clients, but to professional relationships. Since the first semester that we worked with the Cardozo clinic, the Justice Initiative partnered with Sheri and the clinic almost every semester, in some instances following the same case through different issues and phases for years.

For the Justice Initiative, joint work is complicated by the fact that citizenship, the area of human rights we work to elaborate, was historically not a human right at all. Conventional reasoning runs that if one's state of citizenship declared that one wasn't a citizen, well, that's the end of the matter: the state is the sole arbiter. At the inception of our program, we struggled with how to express our intuition that this wasn't a complete picture, and to describe the situation of having one's citizenship formally denied, but having a legal right to citizenship that existed despite the state's denial of it. What was the origin of that right to citizenship? What were the conditions of denial or deprivation of citizenship that made it 'arbitrary' (in the language of Article 15 of the Universal Declaration of Human Rights) and therefore contrary to international human rights law?

In Sheri, intellectual interest and temperament were inextricable. She seemed never to have internalized the myriad constraints relating to 'what's possible' or 'how things are done', with respect to either law or social conventions. She had a rigorously trained legal mind, but had escaped being enchained by precedent or the conservative instincts of most lawyers. She was the epitome of a free spirit, a

wholly unselfconscious one; she had an internal compass that pointed her straight to heartbreaking cases and hard issues, and her courage was so unflinching she did not even conceive of what she was doing as hard. It was just what she wanted to do.

Although I wasn't aware of it until later, Sheri had already been involved in what we would later characterize as a "content of citizenship" case: *Sedjiće and Finci v. Bosnia Herzegovina*[141], which the European Court decided in favor of the plaintiffs in 2009. Her client was Mr. Finci, who, although he was Bosnia's ambassador to the UN in Geneva, was ineligible to run for president because he was not a member of one of Bosnia's "constitutive groups" (Bosniak, Serb, and Croat) mentioned in the constitution. The Justice Initiative, independently of the Cardozo clinic, filed an amicus brief in this case.

With her background in genocide studies, Sheri already grasped the violence done to individuals when their ethnic identity was permitted to trump their civil one, or when an individual's relationship with the state was calibrated according to ethnic distinctions. Never far from her mind was Nazi Germany, where ethnicity-based restrictions and denationalization were key steps towards genocide.

So for Sheri, thorny questions on the right (or not) to citizenship were a thrill. We talked over a case with her—a challenge to Denmark's refusal to naturalize a man who was a refugee and permanent legal resident, but who couldn't pass the Danish-language test due to a disability resulting from the torture that was the basis of his asylum claim. Although this client had no claim under Danish law, since granting Danish citizenship is at the absolute discretion of the Parliament, Sheri instantly grasped what was at stake, in this case and in citizenship work in general. *HP vs. Denmark* became the first case that we worked on with the Cardozo clinic, and we filed it with the European Court of Human Rights.[142]

After the Danish case came mass deprivation and denial of citizenship in Côte d'Ivoire. We wanted to attack the Ivoirian citizenship law as circular and vague: it granted citizenship on the basis of having Ivoirian parents, but did not define who was 'Ivoirian' at independence—a gaping hole filled with mischievous

[141] Apps. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

[142] App. No. 55607/09, Eur. Ct. H.R. (the case is still pending, although the Danish government finally granted citizenship to our client; now at issue is compensation.).

interpretations. The Cardozo clinic did a great memo on vagueness, one that I still learn more from when I re-read it. We won the Côte d'Ivoire case before the African Commission on Human and Peoples' Rights this year, not in time for Sheri to know.

In early 2012, Sheri called me up and said, "I have a great French speaking legal intern at the clinic, and funds for a mission. Where would it be most useful for us to go?" I probably hesitated for ten seconds before proposing Burundi. Sheri was a Great Lakes maven. We spent a fruitful four days interviewing Swahili speakers in Bujumbura who, while their families had lived in Burundi for generations, well before independence, were being denied citizenship on the grounds that they were "Congolese," because their mother tongue was not Kirundi and because most of them were Muslim. This case we ultimately couldn't file. It was too risky for individuals to put their names on the case, since they were already persecuted. The Swahili speakers' association could have been the plaintiff, but it couldn't get legally registered because the Burundian government said a Swahili-speaking minority in Burundi didn't exist, so how could it have an association? We brainstormed a freedom of association case, but ran into the same problem of who the plaintiff could be, and never did figure it out.

It was on the Burundi mission that I got to know Sheri well. Missions involve a lot of togetherness and for various reasons, I brought along my daughter who had just turned two. Sheri had a daughter just a few weeks younger. I already knew that Sheri was tough, high energy, committed, smart, hardworking, and had high standards, but in Burundi we connected as women who saw dedication to human rights as inseparable with love for our children. Far from being in conflict with our commitment to our kids, our work was integral to it: what kind of world do we want to leave them, anyway?

In the months following the Burundi mission, I starting thinking about developing a law school course on the right to citizenship. I don't remember how clear the idea was when I mentioned it to Sheri—I don't remember, because from the moment I mentioned it to her it became real, in fact, inevitable. She said, "teach it at Cardozo. Let's co-teach it!" The next thing I knew, we were framing out a syllabus. I remember vividly sitting in her office, talking about the themes of the course. It was one of the most intellectually stimulating conversations of my life.

The course description was a mini-essay on citizenship, crystalizing our thinking on the topic. We started with the

relationship between an individual and a state, by which, in common parlance, they could be said to "belong" to each other. This belonging, in most states, conveyed to individuals based on either place of birth or descent, results in assignments of citizenship that are usually so intuitively logical that they are never examined. However, the "core content" of citizenship—what rights and duties are essentially constitutive of citizenship—is undefined.

Sheri's background in the study of genocide, plus the clinic's work on citizenship, meant she was finely attuned to manipulation of citizenship for political ends, a manipulation that is becoming more common. Legal distinctions on the basis of citizenship status, such as restrictions on political rights or on ownership of land, retain legitimacy in that these distinctions are almost the only remaining justification for limiting the rights of entire groups.

Simultaneously, systems for state-issued documentation of identity have transformed citizenship from a lived status, resulting from years of social interactions, to a bare bureaucratic fact. Lack of documentation by the organs of the state, which in the past might have left non-citizens to still enjoy equal treatment with citizens in most spheres, now usually results in citizenship rights being denied. Thus, discriminatory policies are often justified with circular arguments—that they are not discriminatory at all but justified based on lack of citizenship, while at the same time discrimination in access to citizenship itself, and to documentation of citizenship, is taking place.

As co-teachers, Sheri and I decided to alternate weeks. Sheri knew she was working with a hybrid wild-eyed idealist/litigator (me)—far from a law-school lecturer. Wisely and diplomatically, she proposed framing/grounding weeks to place citizenship within the context of post-WWII human rights treaty law. Then, she volunteered to teach these classes, among them: the class on the legal regime for the protection of stateless people; children's right to citizenship, one of the areas where citizenship is most developed as a right *per se*; and on forced migration and statelessness. She also, somewhere during the planning process, got me approved as an adjunct professor, virtually painlessly.

While we alternated classes, we tried as much as possible to both be present at each one, so that the classes often became a dialogue between the two of us, one presenting, the other asking questions and commenting. Sheri was particularly deft in bringing me back to Earth or qualifying my wilder statements; she was the voice of academic rigor to my more unrestrained activism. But she

also generously indulged me, for example by giving me free reign to talk about "governmentality," Foucault's term for the ever-extending reach of the state into virtually all aspects of life, which I saw as driving the need for ever more documentary evidence of identity and citizenship.

We were somewhat concerned that the material and concepts would be difficult or alien for law students, who were accustomed to courses in standard, well-defined subjects, grounded in black letter law. We freely incorporated news stories into the syllabus as they came up (Uighars wrongly imprisoned in Guantánamo finally resettled by the US—but without any citizenship rights—in Bermuda!) But we also had plenty of case studies—we used *Finci and Sedjićе v. Bosnia and Herzegovina,*[143] and all the citizenship cases we had worked on through the clinic.

With Sheri's hand firmly on the wheel, it worked beautifully (according to the course reviews). We taught it a second year and it got better. The students, about ten each year, were active and engaged, and their papers were fascinating. It was also, dare I say it, fun. I would have liked nothing better than to keep repeating the course.

However, in the in the spring of 2015, Sheri was planning to travel on a fellowship and proposed that in lieu of teaching we write a paper together on ethnic designations on denationalization as indicators of genocide. Sadly, we never got beyond the outline. But the legacy that Sheri leaves in the field of the right to citizenship will stand.

ESSAYS WRITTEN BY PROFESSOR ROSENBERG'S STUDENTS

"Sheri" – by Katherine J. Hwang[144]

I first met Sheri as a name on a piece of paper: "Professor Sheri Rosenberg, Director of the Benjamin N. Cardozo Human Rights and Genocide Clinic" (the Clinic)[145]. I had applied to be a student in the Clinic near the end of a challenging first year, at a time when I was questioning my decision to pursue a career in law. I had decided to

[143] App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

[144] Former Student in the Human Rights and Atrocity Prevention and Former Research Assistant, Holocaust and Human Rights Program; Assistant Attorney General, New York State Attorney General's Office, Real Estate Finance Bureau.

[145] The Clinic was re-launched on March 9, 2015 as part of the Cardozo Law Institute in Holocaust and Human Rights (CLIHHR).

attend law school with the mission of "changing the world," a goal of many idealists, but my first year courses challenged my perceptions of law school and even my ideas of what it meant to be a lawyer. When it came time to choose my second year classes, including the opportunity to participate in one of Cardozo's renowned clinical programs such as its Human Rights and Genocide Clinic, I eagerly applied.

Upon receiving an interview for the Clinic, I remember walking to Sheri's office, Room 935 of Cardozo Law School, and being surprised upon opening the door and meeting the woman who was in charge of the Clinic. She was wearing a colorful bandana and was very welcoming; we hit it off immediately. We spoke at length and she outlined the goals of the Clinic and the various cases that she was choosing from, such as providing support to the prosecutors at the International Criminal Tribunal for Rwanda, advocating on behalf of Bosnian nationals in *Sedjić and Finci v. Bosnia & Herzegovina*[146] before the European Court of Human Rights, and drafting a report on minority rights in Africa. I was inspired then as I am inspired today by Sheri's dedication to the Clinic and human rights work. The work renewed my faith in why I applied to law school in the first place: to bring about positive social change.

The Clinic and Sheri shaped my development as a lawyer working on the human rights issues that I still care about today. While I was at student in the Clinic, my project was to draft a report on the denial of citizenship in Africa for Gay McDougall, the first holder of the post of United Nations Independent Expert on Minority Issues,[147] established to promote the implementation of the United

[146] App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

[147] *Independent Expert on Minority Issues* homepage, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, http://www2.ohchr.org/english/issues/minorities/expert/ (last accessed August 18, 2015). "The Independent Expert will: receive information from diverse sources including States, expert bodies, United Nations agencies, regional and other inter-governmental organizations, NGOs and other civil society organizations. Based on such information, she will issue communications to States concerning implementation of the Declaration on the Rights of Minorities, where appropriate; submit annual reports on the activities undertaken by the mandate to the Human Rights Council including thematic studies on key minority rights issues; undertake, at the invitation of Governments, country visits to further constructive consultation, observe relevant programmes and policies, register concerns, and identify areas for cooperation. She will study national legislation, policy, regulatory frameworks and institutions and practices, in seeking to promote the effective implementation of the Declaration on the Rights of Minorities." *Id.;* Statement by the United Nations Independent Expert on minority issues, Gay

Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and to identify challenges as well as successful practices in regard to minority issues. The project was seemingly insurmountable. We faced two challenges together. First, what is deprivation or denial of citizenship? Second, how would we survey all of Africa?

Because citizenship is a fundamental human right, international law mandates that states must guarantee this right "without distinction as to race, color, or national or ethnic origin."[148] In Africa, however, there was widespread denial and deprivation of citizenship of religious, ethnic, cultural, or linguistic minority groups.[149] Furthermore, the methods used to render minority groups stateless were different in each country, and the discrimination was not necessarily detectable on its face. Some countries may use burdensome administrative hurdles that render minorities stateless. Our job was ambitious but important–it was to provide a survey of the various ways minorities are discriminated against in Africa through citizenship laws and provide recommendations for the Special Rapporteur on how to tackle this problem, including specific ways national legislation should be amended. In her report to the Human Rights Council, the Special Rapporteur used the Clinic's report to describe the status of citizenship deprivation in the Africa region and highlight the plight of certain minority groups, such as the Banyamulenge in the eastern Republic of Congo, the Baha'i in

McDougall, on the conclusion of her official visit to Colombia, 1 to 12 February 2010, Office of the High Commissioner for Human Rights, News and Events, *available at* http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9821& (last visited August 18, 2015).

[148] International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969);
Comm. on the Elimination of All Forms of Racial Discrimination, General Recommendation No.30, Discrimination against Non-Citizens, 64th Sess., U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004).
Paragraph 14 provides additional support for the prohibition of discriminatory citizenship practices. The General Comment "[r]ecognize[s] that deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality."; The Universal Declaration of Human Rights,, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) at Art. 15 (Dec. 10, 1948). 1) Everyone has the right to a nationality. 2) No one shall be arbitrarily deprived of his nationality nor denied his right to change his nationality.

[149] KATHERINE J. HWANG, NOEL CASEY, & SHERI ROSENBERG, STUDY ON ISSUES RELATED TO MINORITIES AND THE DENIAL OF CITIZENSHIP IN AFRICA (2007).

Egypt, the Nubians in Kenya, and black Mauritanians expelled in Senegal and Mali.[150] To be able to give a voice to those discriminatorily deprived of citizenship and highlight the injustice of their statelessness to the Human Rights Council was a meaningful experience that reminded me why I went to law school.

The Clinic's work on statelessness did not end there, and Sheri remained engaged with the area of statelessness and deprivation of citizenship as one of the Clinic's thematic areas. With the Open Society Justice Initiative in *The Justice Initiative v. Côte D'Ivoire*, the Clinic assisted in drafting the admissibility submission before the African Commission on Human and People's Rights,[151] prepared memoranda of law and assessed procedures implemented under the Ouagadougou Peace Agreement in 2007 for issuing new national identity cards in connection with the October 2010 presidential election.[152] In addition, the Clinic continued advocacy with regard to statelessness by supporting Minority Rights Group International in an amicus brief in *Yean v. Bosico v. Dominican Republic* before the Inter-American Commission of Human Rights, and by supporting the Center for Justice and International Law and the *Movimiento de Mujeres Dominico-Haitianas* before the Inter-American Court of Human Rights.[153] The continual work of the Clinic in advocating on behalf of minority groups deprived of citizenship and challenging countries to change their discriminatory policies is a direct result of Sheri's relentless pursuit of justice. Sheri's work with statelessness gave a voice to disenfranchised minority groups.

Sheri's legacy is the Clinic, which reached far beyond the area of statelessness. Students who participated in the Clinic were given an invaluable opportunity to work on substantive projects, develop strategies to address issues in practical ways, and implement their plans. Students developed solutions to real world problems. The

[150] UN Human Rights Council, Report of the independent expert on minority issues, Gay McDougall, 28 February 2008, A/HRC/7/23, available at: http://www.refworld.org/docid/47d685ea2.html.

[151] The Justice Initative v. Côte D'Ivoire, Commc'n 318/2006 (May 2009) available at https://www.opensocietyfoundations.org/sites/default/files/admissibility-submission-20090514.pdf (last visited August 21, 2015).

[152] Cardozo L. Human Rights and Atrocity Prevention Clinic, *Citizenship and Statelessness Project*, *available at* http://www.cardozo.yu.edu/humanrightsclinic (last visited August 21, 2015).

[153] Cardozo L. Human Rights and Atrocity Prevention Clinic, *Equality and Nondiscrimination Project,*, *available at* http://www.cardozo.yu.edu/humanrightsclinic (last visited September 6, 2015).

Clinic's pedagogy empowered students and gave them the opportunity to make a difference while learning valuable skills in lawyering.

One thing that was remarkable about Sheri was that even though she was renowned in her field, she never let ego get in the way of doing the right thing. She was humble and let her work speak for itself. As a professor, she challenged me to give more and demand more. She inspired me to be both relentless in my pursuit of justice and to live compassionately and generously as a human being.

Sheri was also a great mentor and friend. She allowed me to discover my own path and never failed in her support of my goals. She believed in me and in all of her students. She was always gentle with her advice, which was dosed with honesty, compassion, and non-judgment. As my friend, she shared stories about her children and her life with me. I will never forget the time we spent on safari in Tanzania as part of Cardozo's first seminar to Africa, chatting with her in her office about the challenges she faced in her journey to become a human rights attorney, and her trying to get me to babysit her children, whom she loved so much.

In her unlimited capacity of generosity, Sheri gave all of her friends a gift. Even in the wake of her passing, she has given her friends the gift of opportunity to reconnect. I have reconnected with colleagues in the field of human rights so that we may continue her legacy as a human rights advocate in a meaningful way. I have reconnected with friends that knew her and we are reminded to live the way that Sheri did, with the highest integrity, without pretention or ego, and as intelligent human beings who speak with honesty and compassion. Sheri Rosenberg was and is a unique person, and will always be remembered as our "Sheri."

A Tribute – by Carse Ramos[154]

It is an honor to write this tribute to Sheri Rosenberg. Beginning this piece while sitting in Sarajevo feels almost unnervingly appropriate, as Bosnia is the site and subject of, arguably, one of her greatest cases. Sheri always held the strong conviction that we have an obligation to fight discrimination wherever we find it and perhaps nowhere is this better exemplified

[154] Former Student in the Human Rights and Atrocity Prevention Clinic; PhD Candidate, Anthropology and Sociology Development, Graduate Institute of International and Development Studies in Geneva.

than in her work on *Sejdić and Finci v. Bosnia and Herzegovina* (2009) before the European Court of Human Rights (ECtHR).[155]

War in the former Yugoslavia was ended in1995 with the General Framework Agreement for Peace in Bosnia and Herzegovina (more commonly referred to as the Dayton Peace Agreement), and the country's constitution was written into the agreement as an annex.[156] They say that in Bosnia, you always have to think in threes, and this was certainly the case with the new power-sharing arrangements and governmental structures that were established in an effort to keep the peace in the country. Under the constitution, there was not to be a single president, but rather a tri-partite presidency, representative of each of Bosnia's three recognized 'constituent peoples,' Bosniaks, Serbs, and Croats.[157] Similarly, the upper house of parliament, known as the House of Peoples, was to consist of fifteen members, five being elected from each of the constituent peoples.[158]

While intended to broker peace through power sharing, the Constitution, through its definitions, formalized ethnic division resulted in the exclusion from the government of anyone who could not – or chose not to – affiliate as Bosniak, Serb, or Croat. For this reason, despite being Bosnian citizens and active political figures, Jacob Finci, of Jewish origin, and Dervo Sejdić, a Roma, were unable to stand for election to either of these bodies.

Sheri joined forces with Minority Rights Group International to bring a case in the European Court of Human Rights against the state of Bosnia, arguing that the provisions in the Constitution violated rights of both applicants and of all those who did not choose to identify as Bosniak, Croat, or Serb. Sheri and her partners won the case, with the ECtHR ruling that the constitution in its current form was discriminatory and ordered Bosnia to undergo constitutional reform.[159] This case was groundbreaking for a number of reasons. First, this was the first application to win a claim under Protocol 12 of the European Convention on Human Rights[160] – which is a

[155] Sejdić and Finci v. Bosnia and Herzegovina, App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

[156] The General Framework Agreement for Peace in Bosnia and Herzegovina, 50th Sess., Agenda Item 28, U.N. Doc. S/1995/999 (Dec. 14, 1995) *available at* http://www.ucdp.uu.se/gpdatabase/peace/BoH%2019951121.pdf.

[157] *Id.*, Annex 4, Art. V.

[158] *Id.*, Annex 4, Art. IV(1)..

[159] *Sejdić and Finci*, App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R.

[160] European Convention for the Protection of Human Rights and Fundamental

general discrimination provision[161] – thus widening the competency of the ECtHR regarding discrimination cases. Second, it marks the first time the ECtHR found part of a state constitution discriminatory and mandated changes. Both of these have the potential to hugely shape further jurisprudence.

Despite having won the case and being committed to numerous other projects, over the next few years, Sheri kept a watchful eye on Bosnia and its lack of action. I worked with her at this time, and we would (rather unsuccessfully) brainstorm ways to try to make the country comply. When the Bosnian government still had not taken any action to implement the court's decision by 2013, Sheri flew to Brussels to try to get the Committee of Ministers to take a firmer stance to push for these changes before the next election in 2014. This was emblematic of Sheri's tireless commitment to human rights issues, but also an extension of her dedication to genocide prevention.

While the majority of her work on this case predated our relationship, I also developed a vested interest in the case through my work with her. During that summer, I too found myself doing a lot of follow-up, trying to gauge popular opinion as well as the likelihood of governmental action regarding constitutional reform. The degree to which I had internalized the case gave me pause, and made me contemplate the impact that Sheri had on my own life – and this also flows back to Bosnia.

In late spring of 2008, I was deciding between law schools and making preparations to go to Uganda, which was to be the first of many trips to East Africa. A mutual friend put us in touch to discuss Cardozo and tips for traveling around East Africa generally. I went to Sheri's office – a bit nervous – and she welcomed me instantly as a collaborator and confidante. Our discussion quickly turned to the Balkans and we spent the better part of the next hour chatting about food, people, coffee, and life. The connection was instant. We later talked about some of her current projects and agreed to work together in the future regardless of where I ended up studying, but I knew by the time I had left the meeting that I would go to Cardozo.

Working with Sheri over the next several years, I unsurprisingly learned a great deal about law, genocide prevention, and what it

Freedoms, Protocol 12, Nov. 4, 1950, E.T.S. No. 005.

[161] *Id.* Art. 14 The discrimination provision in Article 14 of the ECHR is bound to the treaty, meaning that it only applies when it attaches to another provision within the treaty.

meant to be an advocate. However, I also learned a great deal about myself. Sheri was the only true mentor I have ever had. In addition to instilling a sense of hope and possibility in me that atrocities *could* be stopped and that we *could* make a difference, she helped me to learn to trust my own questions and misgivings and to follow through on them. In a place like law school, where things can feel pre-set, Sheri always encouraged and nurtured my growing need to analyze our profession itself. She helped me see that this made me a better, not a weaker, advocate, and that seeing connections that others did not could be a powerful force once I learned to direct it.

She was also the one who introduced me to a multitude of ideas, which have in so many ways put me on my current track. It was through her that I first began working in transitional justice (TJ), and my entry point into the field was a project, which included TJ as a crucial part of genocide prevention. While by no means the only one, Sheri was also the first person I ever heard articulate the cyclical nature of violence in a nuanced and grounded way. Both of these concepts strongly influenced the way I understand conflict and prevention. They have also have stuck with me in during all of the work I have done since then and ultimately led to my dissertation work. Looking back at my own trajectory over the past several years, her imprint is everywhere. When I get lost in trying to examine and establish relationships between the legal and social, I think back to conversations we had when she first encouraged me to pursue this in the first place. When I get stuck thinking that everything relating to TJ and memory has already been covered, I remember her enthusiasm when I would bring these ideas and thought processes to her.

Sheri was also the primary reason I ended up in Rwanda. During my second year of law school, in 2010, I participated in a program she was leading on "Justice and Reconciliation in Post-Genocide Rwanda." As I was Sheri's fellow at the time, I was responsible for finding much of the background literature and preparation, which positioned me well for subsequently doing substantive research in the country. While I had long been interested in Rwanda and had actually been there briefly once before, it was during this trip that many of the questions I still grapple with in my work first took hold of me. While in the country, we met with survivors, survivors' organizations, civil society representatives, governmental bodies, and through this, I got my first taste of what the system in Rwanda was like and how the various puzzle pieces fit together. It was not only these meetings that were formative, but

also the conversations Sheri and I had, both in the country and long after we were back in New York about many of the issues and concerns that were arising. It was these same issues and her guidance that set the stage for future research in and visits to the country–six in total now–and the themes that continue to direct and form my research very closely trace back to our trip.

Not only was she unfailingly supportive academically, but Sheri was always there for me personally. After experiencing a series of health-related setbacks during law school, Sheri was my primary voice of reason. Unfailingly patient regarding the work we did together, she also seemed to recognize that I frequently needed saving from myself; she insisted repeatedly that I not push myself too hard and focus on self-care. Anyone who ever met Sheri knows that she was almost superhuman in terms of her workload, but without exception, she took the time to check in with me regularly during these periods, at least weekly, in person or via Skype, phone, or whatever I could manage.

Sheri was my professor, advisor, cherished mentor and, most importantly, dear friend. And while she will be deeply missed by so many people and in so many areas of genocide prevention and human rights advocacy, the personal loss is also profound.

This special issue is dedicated to Sheri's legacy, and without question, it is vast. She has worked on countless cases, campaigns and projects, with vision and tireless dedication, and her contribution to the world of genocide and mass atrocity prevention–and other area–has been immense. But we must not forget that we, too, are her legacy: her students, colleagues, collaborators, anyone who has been touched and shaped by her vision, drive, and warmth. And it is through us that her legacy will be preserved, as we move forward to make our own mark towards the better world she so strongly believed possible.

Unrelenting Persistence in the Field of Atrocity Prevention – by Shoshana Smolen[162]

Like many students with a passion for human rights, Professor Rosenberg began influencing my career path before I even enrolled at Cardozo. Professor Rosenberg's years of work dedicated to

[162] Former Student in the Human Rights and Atrocity Prevention Clinic and Holocaust and Human Rights Program Fellow; Advocacy/Editorial Officer at Jacob Blaustein Institute for the Advancement of Human Rights.

advancing the presence of human rights in the Cardozo curriculum and building up the Holocaust, Genocide, and Human Rights Studies Program was one of the main factors that attracted me to the school. Although I had read a great deal about the program and the incredible projects Professor Rosenberg and her students had undertaken, I knew very little about Sheri Rosenberg beyond her name and title. After having spent two years working very closely with Professor Rosenberg, her partial anonymity seems particularly fitting. Professor Rosenberg never looked to have her name prominently featured or sought out public recognition for the trailblazing human rights efforts she pursued; she was all business, always ensuring first and foremost that important work was being done, and that it was being done well.

As a first year law student, armed with a vested interest in genocide prevention and the intention of ultimately becoming a human rights lawyer, I sought out all the human rights opportunities available to me. The greatest source of such opportunities proved to be the Holocaust, Genocide and Human Rights Program. The first time I met Professor Rosenberg, she and one of her clinic students were presenting at a lunchtime lecture about the Responsibility to Protect. Just watching her while sitting at a long boardroom table, her intensity was palpable and the knowledgebase she drew from seemed bottomless. She was simultaneously inspiring with her thorough understanding of the field, while subtly intimidating due to her depth of experience. In that hour, listening to her explain the nuances of a complex human rights phenomenon with ease and watching her engage with her student and the enthralled attendees, it was immediately apparent why students were drawn to her.

In addition to the clinic and the programs comprising the Human Rights and Genocide Program (now the Cardozo Law Institute in Holocaust and Human Rights), there is also a fellowship available to one or two students each year that work alongside Professor Rosenberg to help with the program's research and events. During my interview, Professor Rosenberg asked me to tell her about my courses and commitments outside of class. After I listed my courses, extracurricular involvement, and part-time jobs, she looked at me skeptically with raised eyebrows and asked plainly if I would have the time to dedicate to the fellowship, because there was much to do and she needed someone committed. Throughout my year working as one of Professor Rosenberg's fellows, I found the same candid reactions in every subsequent meeting I had with her. She consistently demanded top quality work and expected her students to

put in the time necessary to accomplish the goals of the projects in which they were engaged.

Professor Rosenberg's style as a supervisor was equal parts guidance and sharing her experiences while still allowing for independence and pursuit of my own interests under her direction. In addition to planning a year-long series of lunchtime lectures and completing several smaller research assignments, I worked with Professor Rosenberg on a large project that would take much of the year. She had laid the foundations for a major conference on the prevention of genocide that would raise public awareness, galvanize support, and unite some of the foremost experts in the field to work together for durable solutions and effective techniques to implement. While Professor Rosenberg described to me her vision for the event and what steps had already been taken, I began to see the enormous scope of the event and the impact it could have.

The conference entitled "Deconstructing Prevention: The Theory, Policy, and Practice of Mass Atrocity Prevention" took place over two days in late February 2013, hosted by Cardozo in conjunction with the Auschwitz Institute for Peace and Reconciliation. The first day was closed to the public as about 25 experts from all over the world in different facets of the field of atrocity prevention met to brainstorm and discuss feasible, effective prevention strategies. I was tasked with writing the bios for each of the contributors to the conference and I was astounded by the group that Professor Rosenberg had convened. The wide cross-section of practitioners she had assembled who had dedicated their lives to ensuring the better protection of human rights for vulnerable populations, increasing accountability and fighting impunity for the perpetrators of these horrific crimes was beyond impressive. The attendees were divided into moderated discussion groups based upon their particular specialties and collaborated in various sessions throughout the day. Each expert was also authoring a chapter of a book that was to be compiled and published following the conference.

The second day of the conference was open to the public and included panels by many of the experts from the first day as well as a keynote address by Lt. Gen. (ret) Roméo Dallaire, former Force Commander for the United Nations Assistance Mission for Rwanda. Over 250 attendees from schools, NGOs, and UN agencies arrived that day, demonstrating the heightened level of public concern on the issue and the topical nature of the conference. The showing was incredible and the feedback we received from both days of the

conference was glowing. As proud as I was of the response to the conference, seeing Professor Rosenberg enjoy the fruit of her labor made it even better. The remarkable investment she made into gathering such an esteemed group of experts and putting together such an ambitious event is emblematic of the person Professor Rosenberg was. She approached challenges as motivation rather than obstacles, and she insisted on taking proactive steps to resolution of the most complex issues plaguing societies and threatening our collective humanity. As a direct result of Professor Rosenberg's determination, helping put on the atrocity prevention conference was one of my most fulfilling experiences in law school.

The entire conference was the product of nearly a year of preparation, but for Professor Rosenberg, it was the culmination of a lifetime of work and passion. Between her focus on the massacre at Srebrenica, her deep knowledge of the gacaca justice system implemented following the Rwandan genocide, her work on developing the norm of the Responsibility to Protect, Professor Rosenberg's unfailing dedication to furthering atrocity prevention permeated all aspects of her work. Ensuring respect for the most fundamental human rights through the various projects Professor Rosenberg pursued and shared with her colleagues and students all seemed to stem from her firm devotion to protection of the most vulnerable groups from mass elimination attempts. I deeply admire Professor Rosenberg's drive, creativity, and steadfast commitment to human rights. She approached each undertaking with unwavering aspirations and confidence, and embodied the full spectrum of what it means to be a human rights lawyer.

Aside from the enormous impact Professor Rosenberg made on the human rights world, I cannot adequately express in words the impression Professor Rosenberg has had on me as a human rights defender and as a person. At the end of the year, Professor Rosenberg took her fellows out to a closing lunch where she proceeded to thank us both for our tremendous commitment to the program and for the assistance we had provided her throughout the year. I thanked her in return for her guidance and the opportunities she had provided me, but I don't think I was ever able to properly convey my gratitude to Professor Rosenberg. She inspired me in ways I'm sure I haven't even completely appreciated, and I am privileged to have called her a teacher, a mentor, and a role model. Watching her and working alongside her was an incomparable learning experience that reinforced my persistence in pursuing a career in international human rights, and showed me the innumerable

rewards this work provides. Professor Rosenberg made a significant and lasting mark on the human rights field and I look forward to contributing to her continuing legacy.

An Inspiration – by Tara Pistilli[163]

Sheri Rosenberg was more than a professor to those students and colleagues who had the honor of working with her; she was a mentor, a friend, and a true inspiration. Her steadfast and dedicated commitment to international human rights, anti-discrimination, equality, and genocide prevention were unparalleled. She was equally as devoted to equipping her students with the tools necessary to fight injustice as she was to fighting her own battles. She encouraged her students to believe that they indeed could make a difference in the world. In addition to her professional acumen, Professor Rosenberg was also an inspiration on a personal level. She taught her students that it was possible to have successful careers and do what they loved, but remain committed to their families and meaningful personal pursuits. Most importantly, she led by example and demonstrated her commitment to atrocity prevention and battling injustice through action. She was a fearless advocate who proved to her students firsthand what it means to be a true activist–always exhibiting tireless effort to effectively promote change.

Professor Rosenberg was unique in both the way she viewed the world and how she attacked her cases as a human rights lawyer. She was not simply a scholar opining on how to prevent atrocity and cure injustice; rather she was a strategic thinker who had the ability to connect concepts of international law to practical solutions. She was action oriented and took on cases that could affect societies at risk of major atrocities, or individuals who were being discriminated against or treated unequally. Sheri Rosenberg's work on the groundbreaking case of *Sejdić and Finci v. Bosnia and Herzegovina*[164] is a prime example of her exceptional talents as a strategic litigator and dedicated activist.

The case of *Sejdić and Finci v. Bosnia and Herzegovina* was argued before the Grand Chamber of the European Court of Human Rights in 2009. The case originated from two cases that were merged, one brought by each of the two plaintiffs, Dervo Sejdić and

[163] Former Student in the Human Rights and Atrocity Prevention Clinic; Agency Attorney, NYC Human Resources Administration, Department of Social Services.

[164] App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R. (2009).

Jakob Finci. Both plaintiffs were citizens of Bosnia and Herzegovina. Sejdić was of Bosnian Roma ethnicity and Finci was of Bosnian Jewish ethnicity. Professor Rosenberg represented Finci in the European Court of Human Rights case and addressed the Grand Chamber at the hearing in June 2009. She and her colleagues brought the case under the theory that the Bosnian Constitution was discriminatory in that it prevented Sejdić and Finci from running for high level political offices due to their respective ethnicities.

The 1995 Constitution of Bosnia and Herzegovina was created as part of the Dayton Agreement[165], which ended the 1992–1995 Bosnian War. The Constitution unjustly named ethnic Serbs, Croats and Bosniaks as members of the "Constituent People," the only individuals eligible to run for the presidency or the House of Peoples of the Parliamentary Assembly. The Constitution denied Sejdić, Finci, and other individuals making up the fourteen national minorities in the country the ability to run for office. These individuals were all legal citizens of Bosnia and Herzegovina and many possessed the requisite experience to hold office.

Professor Rosenberg saw that the provisions of the 1995 Constitution were discriminatory purely on the basis of ethnicity. She successfully argued that the Constitution violated the European Convention of Human Rights (ECHR)[166], specifically Article 14 in conjunction with Article 3 of Protocol 1, which provides for a prohibition on discrimination with regard to the right to free elections; and Article 1 of Protocol 12, which establishes a right to equal treatment without discrimination. Sheri believed that citizenship should be a leveler and a protector. She once passionately explained that in front of the law, all citizens should be equal. Demonstrating her instinctive ability to connect theories of international law to practical solutions for real world problems, she was able to convince the court of her beliefs. Professor Rosenberg successfully drew a connection among political participation and the vital link between a citizen and a state, arguing that denying a citizen their right to political participation amounts to a deprivation of citizenship itself.

Significantly, this case was the first time the Court examined

[165] The General Framework Agreement for Peace in Bosnia and Herzegovina, 50th Sess., Agenda Item 28, U.N. Doc. S/1995/999 (Dec. 14, 1995) *available at* http://www.ucdp.uu.se/gpdatabase/peace/BoH%2019951121.pdf

[166] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

how to apply the anti-discrimination provisions of the ECHR. The Courts view of the importance of the case was demonstrated by the fact that it was referred directly to the upper chamber, bypassing the normal procedure. Through Professor Rosenberg and her colleagues' diligent and persistent work, the European Court of Human Rights announced on December 22, 2009 that it found Bosnia and Herzegovina to be in breach of both Protocol 12 and Article 14 of the ECHR. The Court found that the inability to run for office based on ethnicity alone was lacking "an objective and reasonable justification" and therefore violated Article 14.[167] The courts finding that the Constitution violated Article 1 and Protocol 12 was also significant. It was the first case ever in which the Court ruled under Protocol 12 of the ECHR, defining new boundaries. The ruling in this case was not only a victory for Sejdić, Finci, and the attorneys who worked diligently to defend them, it had much broader implications in the world of international human rights and anti-discrimination law.

Aside from the remarkable impact the decision would have on the political participation process in Bosnia and Herzegovina, it more broadly stood to dissuade other nations from implementing such discriminatory practices with regard to political participation. The potentially far-reaching effects of this decision could allow many more individuals the fulfillment of the fundamental human right to government participation. Furthermore, the case serves as a binding judgment in other countries under the court's jurisdiction. The court made it clear that it took the issue of racial discrimination seriously and would review all such cases using the equivalent of strict scrutiny.

Professor Rosenberg further broadened the reach of this case by taking the victory and delving into the connection between an individual, their state and the enforcement of international human rights. She did this in part by co-teaching a class at Cardozo Law School titled "Citizenship, Equality, and International Human Rights." The class was launched just a few years after this groundbreaking decision. It gave students the opportunity to not only understand the complicated link between enforcement of human rights where a state refused to recognize its citizens, among other topics, but also allowed students an opportunity to learn from Professor Rosenberg's strategic thinking skills and advocacy minded

[167] *Sejdić and Finci*, App. Nos. 27996/06 and 34836/06, Eur. Ct. H.R.

view of human rights law. Through this class and the Human Rights and Atrocity Prevention Clinic, she offered students the unique opportunity to take away a piece of her expertise in the areas of International Human Rights Law and Atrocity Prevention, but more importantly she demonstrated what it meant to truly be a good lawyer and fight for what you believe in. She instilled in her students the importance of the drive it takes to be successful advocates, but also inspired many with her own passion and success.

Professor Rosenberg's work on the case of *Sejdić and Finci v. Bosnia and Herzegovina*, and more broadly on citizenship and statelessness issues in general, embodies much of her work throughout the years. Through tireless effort and impeccable lawyering, she obtained a decision that now allows individuals who were once discriminated against an opportunity to be effective members of their society. One impact of the decision, instilling pride in the country's minority, further contributes to the prevention of internal conflict. Her work on this case and its broad application portrays her keen ability to prevent atrocity and injustice through practical, well thought out solutions, as well as her ability to instill these skills in her students. Most of all, it proves why she was and continues to be an inspiration to so many students and colleagues.

Sheri Rosenberg: A Great Educator – by Anna Shwedel[168]

Professor Rosenberg was the kind of professor that students would seek out before they even arrived on campus. Her incredibly long résumé provided only a small window into the kind of person she was to her students, colleagues, and family. She provided mentorship, guidance, awe, and advice to many students who passed through her office and worked under her supervision.

The continuing impact of these projects is one of her biggest contributions to the field of human rights advocacy. Professor Rosenberg's work was wide-ranging, interdisciplinary, filled with a variety of actors. She left a legacy through the projects and the people she touched. Because of her unique understanding in this regard and her ability to blend these efforts together, she had an incredible impact on the world of clinical teaching, human rights advocacy, and bettering the lives of human rights victims.

The Human Rights and Atrocity Prevention Clinic gave students

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the opportunity to work with Professor Rosenberg and other clinical faculty members. The projects that clinical students undertake last years, morphing through the influence of the various students who worked on them. As a result, the projects take on different identities and influences, but still retain the supervisor who managed the students. One such project was the Blasphemy Laws Project, which I had the pleasure of working on with Professor Rosenberg during the 2013-2014 school year.

As a quick refresher for the uninitiated, blasphemy laws seek to criminalize those who insult or defame religion or the sacred. The countries that seek to prohibit blasphemy do so under the concepts of preventing social harm and protection of religious freedom, but in practice they in fact do the opposite. In reality, blasphemy laws polarize society and disrupt social harmony. While many organizations focused on freedom of religion, freedom of expression, incitement to hatred and hate speech, none had yet tackled the complicated subject of blasphemy laws. Thus, the Clinic, through Professor Rosenberg, was given a large task and incredible opportunity for advocacy in this venture.

The Blasphemy Laws Project was a two-step project: first, it catalogued the text of each blasphemy law from all over the globe into a compendium. The second step involved understanding the language and application of blasphemy laws and how they can and do undermine fundamental human rights. The Clinic partnered with both Human Rights First and with the U.S. Commission on International Religious Freedom to achieve these two steps.

This type of project was emblematic of the academic and advocate that Professor Rosenberg was. It was a multi-faceted project that blended many different areas into one. We had to use a variety of research tools, think beyond the law, consider different political and historical facets of the laws, and draw upon previous coursework. Students in the project had to push themselves to understand things generally atypical of a law school curriculum: qualitative analysis, comparative procedural law, religiously-based laws, and drafting and writing laws. It is this type of collaborative project that made Professor Rosenberg such an incredible teacher.

Frequently in class, and for this project in particular, we would discuss the different "toolbox" available to human rights lawyers. Professor Rosenberg knew this toolbox well: it included calling upon a variety of different actors to help promote a cause, it meant utilizing non-legal techniques despite our propensity towards legal training, and it included understanding how public relations

campaigns can sometimes have a greater effect than litigation. Professor Rosenberg's emphasis on these multidisciplinary approaches makes her stand out in within her field and her teaching style.

It is notable that the Blasphemy Laws Project itself was, and is, intended to be a toolbox for human rights advocates. In our discussions while beginning the second step of the project (creating the set of indicators to measure the law) Professor Rosenberg was excited and emphatic about the use of these indicators for a wide variety of people: policymakers, think tanks, human rights lawyers, journalists, bloggers, civil society organizations, and NGOs. We discussed how social media and internet companies, themselves facing pressure in cases of blasphemy, would benefit from such a tool that compares countries on the basis of an objective set of indicators. It was this type of excitement that made students realize just how wide-reaching our work as lawyers could be, as well as appreciative of the work in which we were able to engage with Professor Rosenberg. She had an understanding of the importance and the ability to call on all different resources in pursuit of her goals.

By emphasizing a multidisciplinary and multifaceted approach to students, she further demonstrated how future lawyers should draw upon their stamina, determination, and persistence in this field. Through all these qualities, Professor Rosenberg taught us how to be human rights lawyers. She showed us how to push forward on a project, and continually question each other and ourselves. She taught students that questions don't always have answers, and that we should approach a problem from as many angles with as many resources, as possible.

Professor Rosenberg cultivated relationships at a variety of organizations, like HRF and USCIRF, throughout her career. She did so in order to both involve herself in a variety of human rights projects, and also to provide her students with these opportunities for advocacy. Most importantly, by pairing her vast knowledge in human rights with students, it allowed for her to create a wide legacy in human rights. The projects she touched and worked on will continue with the Clinic at Cardozo, and the reverberations from these projects will not cease with Professor Rosenberg's passing.

I no longer worked on The Blasphemy Project after my time ended with the Clinic. I did, however, recently meet with my other supervisor, Jocelyn Getgen Kestenbaum, on the project who worked closely with Professor Rosenberg to help develop the indicators.

Jocelyn showed me the final draft of the indicator report, streamlined from our initial discussions two years ago. It will be published and distributed for use by all. It brought a smile to my face then, as it does now, to think of not only this project's physical manifestation of work, but all the projects that the Clinic and Professor Rosenberg have touched. She has ensured, through her clinical model, that her work will continue to be utilized. There will be toolboxes for other advocates to use; and students, lawyers, bloggers, and policymakers everywhere will benefit from her work.